

**“A RELATIONSHIP ENDEARED TO THE PEOPLE”:  
ADOPTION IN HAWAIIAN CUSTOM AND LAW**

Judith Schachter  
*Carnegie Mellon University*

My paper explores intersections between American state institutions and constructions of family and kinship among native Hawaiians in terms of the following: expressions of affection and of loyalty across and within generations; continuity and content of the relationships between individuals; and claims to property and resources in a day-to-day context and after a crisis, such as a death. I focus on the tensions between American law and customary concepts of “having children” in a contemporary Hawaiian context. I also raise the question of how what I am calling “entry” into a family influences the definition of rights, duties, obligations, and feelings by the individuals who experience these different modes of entry. I explore the question in a historical framework, tracing the changes over the past half century both in terms of the individuals in the ‘ohana and in terms of social and cultural developments in the state of Hawai‘i.

ONE AFTERNOON, Sam Mentona brought out an armful of photograph albums. We were sitting in the garage of his Waimanalo house, talking and drinking cold soda. He went inside and came out with a multicolored pile of albums and put them down on the table nearby. “I have one album for each child,” he announced. There were fourteen albums in all.

The afternoon was in 1992, and I had known Sam for three years. He had already told me stories about meeting his wife Lydia, beginning a family, adding to the family, moving from Manoa to the homestead area in Waimanalo, and watching the children grow up. This was only the third or fourth time I had visited the house, though we had talked at the beach and

in restaurants, and I realized that the display of photos was one step in the process of incorporating me into the Mentona *‘ohana*.

Sam and Lydia “had” children in the range of ways possible in Hawai‘i in the second half of the twentieth century. When Sam met Lydia in 1950, she had two children from her first marriage. He took them into the household and raised them “as my own.” Together they had four biological children, two boys and two girls. In the 1950s, Sam and Lydia became foster parents of two children they later adopted. Not too many years later, his sister gave him her three children to take care of, and a few years after that he and Lydia adopted two infants from a cousin. In the mid-1960s, the family added another child, Lihua, the child Sam called his *hanai* child, the first daughter of one of his sons. Asserting a customary prerogative, Sam and Lydia took the first child of Keona, promising a more stable household than could the infant’s as-yet unsettled parents.

The stories I heard about *coming in* to the family of Sam and Lydia contain inconsistencies, silences, and anecdotal digressions that reveal the ongoing dialogue between “custom” and “law” that emerges from and shapes the choices individuals make. In the time I knew Sam and in my conversations with members of the extended family, the stories grew more complicated and penetrated more deeply into the peculiar experience of American colonialism for individuals who identify themselves, as Sam did, as “Native Hawaiian.”<sup>1</sup>

My paper focuses on the shifting practices and ideologies of re delegating parenthood in Hawai‘i over two centuries. The customary and the legal mode of transferring a child share features: a designated parent replaces a biological parent as primary caretaker of the child, and the arrangement is presumed to be permanent.<sup>2</sup> The two modes also differ in the mechanisms that establish a new relationship and in the institutionalization of permanence. Comparable on the one hand, contrasting on the other, the two modes do not divide into Hawaiian versus non-Hawaiian or indigenous versus foreign. Customary and legal strategies for incorporating a child into a family intertwine in practice and in ideology, while not entirely losing their distinguishing features. Going to court to legalize a transfer of parenthood is not the same as moving a child from one household to another according to customary procedures. Yet both create a parent-child relationship with behavioral entailments and emotional content. The perception of court and custom as alternative ways of constructing kinship opens options for individuals like Sam, who then bear the burden of choice. These perceived alternatives have persisted from the earliest arrival of *haole* “strangers,” their differences accentuated by pragmatic concerns and their similarities offering a framework for interpreting kinship.

### Law and Custom Intersect

Sam's decisions about parenthood demonstrate the freedom of choice available to a Native Hawaiian in an American state. But of course freedom is not quite that simple: Sam's choices are constrained by a history of changing relationships between custom and law. The history is long in terms of events, short in terms of chronology: in a century and a half, Hawai'i lost its status as an independent monarchy and became an American state. Sam's choices respond to cultural and political forces that continue to evolve and, at the same time, individual choices like his own shape these forces.

Sam recognized the value of adoption, with its legal prescription for the duties of a parent, and he chose that mode twice, for two sibling sets. He also recognized the value of custom, and the demonstration of love that characterized his "taking in" of Lihua and his designation of her as *keiki hanai*. Adoption made everything clear: the rights he and Lydia acquired superseded the claims of the biological parent, whether mother or father, stranger or kin. Sam considered the hanai arrangement equally unambiguous, defined and sanctioned by customary norms that had been in existence for centuries. Sam's interpretation of his choices, in talking with me, constitutes a kind of identity politics—though he would not have used the phrase. When he speaks as a self-proclaimed Native Hawaiian, he meshes adoption and hanai: both are expressions of love—*aloha*—and of Hawaiian values. For him, at those moments, there was no difference between adopting four children and hanai-ing another child. Yet Sam was also a citizen of an American state with access to its legal system. In going to court to adopt, he exploited the principles of law and the policies of an American child welfare system.

The decisions in the Mentona 'ohana are not unique, either in the past or in the present. One hundred years before Sam and Lydia went to court, residents of the islands took their pleas before judges, using the law to regulate kinship. From the moment that laws were introduced by haole, the native Hawaiian population regarded the legal system as a resource for making and unmaking relationships. The decisions Sam and Lydia made exemplify a long-term process: when individuals treat alternative ways of building a family as strategies that serve their personal interests, both law and custom bend to individual actions. Sam's story of fatherhood, then, provides a tool for analyzing the broader implications of adoption practices in Hawai'i. His story shows how the particular, intimate, and daily decisions people make eradicate the dichotomy between law and custom, and expose the heterogeneity of both systems.

The explanation Sam offered and the practices he followed in building a family argue against the assumption that law is hegemonic, inevitably eroding custom. Furthermore, the example of the Mentona 'ohana argues for the *situational* quality of both law and custom. Sam chose custom when it served one purpose, law when it served another purpose. Likewise, judges cited legal precedents when those pointed to a decision and turned to custom when "ancient ways" constituted a clearer path to the resolution of a conflict. Never separate, law and custom collide with particular force when it comes to issues of kinship, family, and parenthood. Structurally central and emotionally diffuse, kinship consists equally of stricture and of sentiment. In a courtroom dispute over a parent-child relationship, references to commitment and caring collide with a strict interpretation of rule. The collision is further amplified in Hawai'i by the contrast between Western (Christian) notions of the family, based on blood and contract, and Polynesian notions of the family, based on trust and conduct.

Sam's account of family building was embedded in cultural politics. The decisions he made about parenthood constituted a negotiation of identity and demonstrate the ongoing nature of this negotiation. From first to last, his role as father represented his assessment of the sociopolitical context in which he lived. When he talked with me about the contract he signed in court and the loving commitment he made in hanai, he did not construct a dichotomy. He juxtaposed the two, and revealed the ambiguities in concepts like contract and commitment when they apply to parenthood. Those ambiguities persist in the history of Western legal adoption, which never totally escapes the sinews of custom. At the same time, Sam discriminated between legal and customary adoption, with an acute sense of the components of his identity. Sam's identity as a Native Hawaiian integrated the American citizen who honored the power of impersonal law with the *kanaka maoli* (person of Hawaiian descent) who respected the force of custom.

Sam's choices at the end of the twentieth century reflect one hundred years in which the virtues of custom and the advantages of law engage in complicated choreography. His choices tell of the shifting practices and ideologies of delegating parenthood that began with the nineteenth century imposition of a rule of law on marriage and the family in Hawai'i. The emotions of individuals and the erudition of lawyers drove the evolution of the legal system, and so did the persistence of customs that lay outside the shadow of the law.

### **Precedents in the Past**

In 1840, American (*haole*) advisors convinced King Kamehameha III to accept a constitution. Modeled on the American constitution, this new

government document proclaimed a Christian kingdom and established a polity that had divine backing. "God must be our aid, for it is His province alone to give perfect protection and prosperity."<sup>3</sup> While the constitution does not discuss domestic relations, statutes immediately following upon its acceptance most assuredly did. Marriage and family, as well as expressions of sexuality and of love, were not to be the same again in the Hawaiian Islands.

Haole advisors to the king perpetuated the Christian doctrine that, by 1840, had already influenced members of the royal family. Arriving in the 1820s, the missionaries found much to horrify them, perhaps most of all the apparent laxness of ties between husbands and wives and between parents and children. And apparent the laxness was, as the missionaries witnessed the public enjoyment of sexuality and the easy freedom with which children moved from household to household. With a strong conviction that sex ought to be private and marital, and an equally strong conviction that children ought to stay with one set of parents, missionaries set about putting order to the Hawaiian family. While marriage came under scrutiny first, parent-child relationships were not far behind. By 1841, Hawai'i had a law of adoption—fifteen years before the United States passed an adoption law.<sup>4</sup> The imperative to "civilize" the savages by regulating domestic relations put Hawai'i ahead of the curve, so to speak, in developing laws of adoption and interpreting their meaning.

The 1841 law responded to a perceived random and unsupervised movement of children from one household to another. Missionary wives despaired of knowing who a native child's "real" parents were and persuaded their husbands to take the matter on. Like their wives, the missionaries-turned-government-advisors agreed that a clear ascription of parenthood contributes to a stable civil society. Laws regulating marriage also implicated the relationship between parent and child, basing legitimate parenthood on biological procreation within marriage. A grounding of parenthood in biology (birth) framed the social relationship and brought in its wake the strict regulation of nonbiological parent-child relationships. Governing authorities in nineteenth-century Hawai'i recognized the significance of transactions in parenthood (possibly because such transactions prevailed in the royal family) and brought these transactions into the purview of the state.

According to the 1841 law, every transfer of a child had to be recorded in writing and signed before a judge in Honolulu in order to have status as an adoption. "It shall be competent to parents to consent in writing, and in the presence of a judge, to the adoption of their children by any suitable third party, but in that case the terms of the adoption must be definitely stipulated in the agreement, and must not be a beneficial consideration to the parents,

but to the child, satisfactory to the judicial officer acknowledging the adoption.”<sup>5</sup> Twenty years later, the importance of a written record (on *pepa*) received further emphasis when the right of approval was extended to all judges in the kingdom.

Officially promulgated to protect children, adoption laws supplemented marriage laws to inscribe the nuclear family on the Hawaiian landscape. Yet the individuals who initially used adoption law were not interested in making a family. The individuals who turned to the law did so in order to gain a legitimate adoptive status that would serve their interests. The demands of law for specificity compelled an analogous examination of the entailments of customary adoption and the rights that arrangement granted. To discover the basis for a claim to adoptive status, judges inquired into the motivations for “taking” a child. Custom, like the young law, underwent microscopic analysis when individuals petitioned for adoptive status. The reasons for a petition varied, but most often they involved a dispute over the inheritance of property.

The property most often under dispute was land, newly privatized by the Great Mahele Act of 1848. From the start, adoption cases in court reflected differences in status: those with claims to acreage used the law to ensure their rights. When Prince Liholiho brought his case to court in 1864, the judge decided that King Kamehameha had intended this hanai child to be heir to royal lands. He also expressed a caution: “an adopted child did not inherit from its adopted parents, unless given the right specifically in the agreement of adoption.”<sup>6</sup>

Rights to inherit plagued interpretations of customary and of legal adoption throughout the nineteenth century. Adoption law did not offer a clearer solution than did the testimonies of witnesses to the entailments of hanai. Judges worried endlessly about whether adoptive or hanai status placed a child in the position of heir when a parent had the misfortune to die intestate.<sup>7</sup>

Judges found themselves in philosophical and linguistic debates. Not just property but parenthood entered judicial deliberations; not just the terms of the arrangement but also the nature of attachment between adult and child came into consideration. Judges in Hawai‘i’s courts delved into the meaning of *child*, the significance of *blood*, and the indicators of a *civilized people*—and inscribed the connections.

### Defining the “Real” Child

Opinions in inheritance cases brought concepts of biological and social, nature and culture, real and constructed into discussions of adoption,

dichotomies that persist into the twenty-first century. Lacking precedent in Anglo-American law or clarity in customary arrangements regarding the transmission of property, judges regarded the relationship given by birth as a guide to the relationship created by adoption. In doing so, they confronted the key dilemma of adoption: did an arranged parent-child relationship have the same prerogatives as a genetic parent-child relationship? Hawai'i's legal experts did not agree with one another. Some lawyers and judges equated both legal and customary arrangements to the ties of blood. Others distinguished customary from legal arrangements, claiming equivalence only for the contracted (written) arrangement. Still other jurists considered the motives of the adult and the well-being of the child the true test of parenthood.

In an 1869 inheritance dispute, the lawyer for the petitioners asked what point adoption would serve if it did not replicate the biological bond. He argued the adoptee's claim to property on the basis of this replication: "The law of adoption would be worse than a dead letter, if adopted children did not inherit." The judge, First Associate Justice Hartwell, ruled against the petitioners and dismissed the case. He did not disagree that as a replication of the biological bond adoption ought to grant a right of inheritance. He disagreed with the claim that customary forms were the same as legal forms of adoption in this regard. "But no one would claim that every relation of *keiki hanai* carried the inheritance." Only legal adoption could be equated with blood kinship.

Hartwell further asserted that custom was generally haphazard on the rules of relationship. "If the usages in regard to the force and meaning of adoption prior to 1841, had been uniform, so as to establish a custom having the force of law, in all cases of adoption, this case would present a different aspect," he crankily chided the courtroom.<sup>8</sup>

True to his training, Hartwell considered law superior to the caprice he saw in custom. From his perspective, natives assumed parenthood at whim and without regard for continuity and clarity. Whether intentionally or not, by emphasizing the chaos of custom Hartwell drew attention away from the inconsistencies regarding inheritance in Western law.<sup>9</sup> His strongest suit lay in the symbolic importance of birth, core of the nuclear family and represented by the orderly transmission of property from one generation to the next. Such order was, in Hartwell's view, the mark of civilization, a pinnacle the native had yet to reach.

During the same July 1869 term, as if to taunt him with the inconsistencies of the natives, Hartwell had to rule on the authenticity of an adoption based on ancient custom. The opposing lawyer introduced a new consideration into interpretations of adoption. He argued that treatment in her

childhood proved the falsity of a claimed keiki hanai status. The claimant had, he stated, been shuffled back and forth between households, knowing no permanence or security. Against this several persons testified to having witnessed an oral agreement, which established a hanai relationship whatever the personal outcome. Happy to ignore questions of personal outcome, and noting that nothing material was at stake, Hartwell ruled in favor of the petitioner. His court deemed Kaoaopa the keiki hanai of Nakuapa and Puhalahua.<sup>10</sup>

Three years later Kaoaopa was back in his courtroom, claiming her right as hanai to inherit property. Chief Justice Allen defended her claim by referring to custom. "As adoption was recognized by the ancient customs and has continued to be by the laws of the Kingdom, it is evident that it was a relationship endeared to the people, and regarded by them of the highest importance. Is it reasonable to suppose then, that it imparted no rights—that it was the relationship of a day, and for a comparatively unimportant purpose?" Chief Justice Hartwell disagreed, once more claiming a keiki hanai did not have as-if-begotten status. Lacking a contractual basis, hanai was not a facsimile of the blood relationship and therefore did not possess the statutory inheritance rights that adoption had. Kaoaopa's claim failed.

This did not mean Kaoaopa lost her inheritance. There was another twist to the case. Hartwell concluded: "On the fact that the appellant is cousin of the blood of the intestate and her next of kin rests the statute which makes her the heir at law of the intestate, and I cannot say that she is not the heir at law." Kaoaopa inherited as the closest blood relative of the deceased.

*In re Estate of Nakuapa* underlined the equivalence of contract and blood, the link between concepts of property and definitions of the child, and the role of the court in "civilizing" the savage.

Hartwell articulated the connections in his opinion. He claimed that the statute making adoption a facsimile of the biological relationship, with rights to inherit, represented a stage in the civilizing of the Hawaiian people. He further noted, through the eyes of his culture, that Hawai'i would join "modern" nations in recognizing that only law—a written contract—gives adoptive kinship the force of a blood relationship. "The Hawaiian native leaders, trusting the good sense and wisdom of their foreign friends domesticated here, caused the enactment of a code of laws that in many respects were radically at variance with former national customs, and in advance of the usages of the people at large." A benign imperialist, Hartwell assumed custom would simply (and rationally) vanish. "This country presents a remarkable instance of a change in the laws antedating a change in the general usages and convictions of the race."<sup>11</sup>



### Custom, Law, and the Best Interests of the Child

With Koaopa, a new element crept into the courtroom. Judges considered the treatment of the child in determining adoptive status and opened the way to discussions of well-being, care, and love.

Koaopa could not have been adopted, Judge Allen claimed, inasmuch as she had been shuttled back and forth between households. In his view she was not a true hanai child. Hartwell doubted the entailments of hanai, and insisted that only adoption by law guaranteed the performance of parental roles. Adoption, he wrote, “is an agreement whereby the adopters agree with the parents to take the child to treat as their own in all respects; including nurture and education, and with the further understanding that if they do not otherwise dispose of their property by will, the child at their death shall inherit it.” While still primarily concerned with inheritance, Hartwell also anticipated a principle of American adoption law: the child is *as if one’s own*. Although neither Judge Allen nor Judge Hartwell used the phrase, both framed adoption in terms of the best interests of the child.

“The welfare of the infant is the polar star by which the discretion of the court is to be guided.” The opinion in an 1883 case turned adoption into a matter of securing the child’s future rather than of perpetuating rights to property.<sup>12</sup> At the same time, on the mainland representatives of what became known as the Progressive Era emphasized the importance of the child in decisions about placement. The principle of “the best interests of the child” entered courtroom decisions, where it remains to this day. Territorial status reinforced the dependency of Hawai‘i’s judges on American legal strictures but did not erase the equally significant reference to customary modes of transferring a child that had been present in Hawai‘i’s courts for six decades.

Judge Hartwell reduced confusion by choosing one word to represent adoption by custom. “The term *hanai*, as a verb, means ‘to feed,’” he proceeded to explain, for his fellow jurists. “As a noun it refers to the provider or to a person for whom one provides food.” Further to clarify, he compared the term to a familiar concept. “The English equivalent of hanai is a ‘foster child’ or ‘ward’. The word ‘hanai’ in the older [Hawaiian] dictionary is given the meaning of ‘to feed, to nourish, to support those in need; to entertain, as strangers, etc.; also, one fed or sustained by another; a foster child or a ward’.” His next sentences grant the term a privileged status in the courtroom. “The ‘keiki hanai’ relationship supplies the reason why the courts required that oral evidence, supporting an ancient adoption must be clear and concise so that it could be definitely distinguished from a mere foster child or ward relationship.”<sup>13</sup> Keiki hanai was no longer “mere” fosterage, but as close to legal adoption as custom got.

Intersecting with best interests in the early part of the twentieth century, hanai acquired a positive cast. Beyond Hartwell's linguistic definition lay an understanding of the meanings given by native Hawaiians—the special love and attention the hanai child received. Rooted in notions of nurture and caring-for, fosterage reinforced the significance of hanai in legal placement decisions in Hawai'i's courts. For legislators and experts new to the principle of best interests the connotations of fosterage, like the meanings of hanai, provided a guideline for determining the well-being of a child. In the turns that history makes, fosterage and legal adoption became interchangeable concepts, as if best interests had pushed nurture and caring-for forward to include all modes of transferring a child from one adult to another.<sup>14</sup> Judge Hartwell might have noted that law followed custom in this instance.

### **Parenthood, Fitness, and Love**

American law prescribed best interests and pointed the principle toward the child. Yet the principle left judges, lawyers, and social workers with the problem of discovering the environment in which a child's interests would be served. The problem led officials to evaluate the adults who claimed parenthood and to develop tests of parental *fitness* that continue to evolve. In North American discourse, the transfer was premised on denying an unfit and granting a fit parent rights to the child. Under this rubric, adults did not *exchange* a child; one person lost parenthood to another through the offices of the court. Under American law, the adults remained anonymous to one another, strangers for the whole of the child's life.<sup>15</sup> Agreements between adults, the form hanai took, fell into the shadows, leaving a residue in law in references to love, commitment, and nurture.

When Sam and Lydia went to court to adopt their children in the 1960s, they met the criteria for good parenthood. Married for over fifteen years, with a steady income, and a reliable residence, the two fulfilled the demands of the court for adoptive parenthood. The court transaction, however, represented only a slice of the understanding Sam and Lydia had of bringing a child fully into the family. Sam told me the narrative, at various times and in various versions. I never knew Lydia and learned of the nature of her parenthood from Sam and from the children they raised to adulthood.

Episodic and anecdotal, Sam's narrative painted a picture of parenthood framed by the choices he made in building his family. When he met Lydia, she had two children and "I took them as my own," Sam told me. Together they had four biological children and they adopted four more children, two sibling sets. In addition to a keiki hanai, they also took permanent care of three children, given to them by Sam's sister. Behind these instances lies an

account of the decisions that for Sam and Lydia juxtaposed Hawaiian identity with American citizenship. In making a family, Sam and Lydia created relationships that transcended their origins in biology, in nature, in law, or in custom.

In talking with me, Sam distinguished the ways in which he assumed parenthood. He did not prioritize or imply that one way was easier or less intentional than another. The echo of legal adoption's "as if one's own" in his decision to take Lydia's children suggests the significance of the decision—and its implications. More than ten years later, he and Lydia went to court together to adopt two children according to American law. These children, too, became their *own*.

In the late 1950s, Sam told me, a friend from military days dropped by with his two children. The man left the children and went drinking, not returning for days. After a while, Sam and Lydia decided to search for the father. They put the youngsters into a car and drove off looking for Sam's friend. As they drove around, Sam recalled for me, "On the radio I heard my license plate number being called by the police." A cop car followed his, and when Sam stopped, the police accused him and Lydia of kidnapping two children. The father had reported that his children were missing and claimed his rights to them as biological father. Under these circumstances, battle lines drawn, Sam and Lydia turned to state social services. In court, Sam and Lydia were deemed the "fit" parents according to the impersonal standards of an American child welfare system, and they received permanent custody.

The decision did not end the situation. Nine or ten years later, the biological parents, father and mother, returned to ask for the children back. Once again Sam and Lydia protested, and after failing to settle the case through mutual agreement, took the case to court. This time they petitioned for a legal adoption and an absolute transfer of parenthood. Once again the decision went in their favor, and they became full parents of the near-adolescent siblings. Just as Judge Hartwell predicted, the written contract removed any ambiguity from parenthood, creating an as-if-begotten kinship between Sam and Lydia and the children.

Sam's second adoption story differed in content and in implication from the first. A young cousin, Sam told me, gave birth to a baby boy and then, a year later, to a baby girl. Fifteen years old, she was unable to care for the children and her household did not have the resources to support her growing family. In this instance, the larger kin group, the 'ohana, met and discussed the problem. In Sam's memory, the young cousin willingly gave the children to him and Lydia, trusting them as "good" parents. The decision was mutual, and echoed traditional customs of child exchange. Over time, the little girl became Lydia's pet, her favorite child. Sam was not the only one

who told me that part of the story. He did, however, elide a bit on the next step: the decision to legalize the arrangement in an American court. There are several possible explanations for the decision, but they are my own and not Sam's.

By all reports, Lydia was a person who knew her own mind, and she may have worried that the cousin would change her mind and reclaim the children. The cousin remained part of the 'ohana, in contact with the children, and she might have posed a threat to Lydia. Having once turned to the American legal system to ensure the continuity of parenthood, Lydia and Sam may have seen the advantages again. At any rate, when Nina and Nick were six and seven years old, Sam and Lydia took the case to court. Abiding by American law, the judge deemed them the fit, proper, and best parents of the children. Both children continued to have contact with the biological mother, though neither regarded her as a parent.

Sam offered a perspective on, if not the details of the decision to adopt. Phrased in terms of his love for Lydia and her love for the little girl, he justified the (remembered) decision by citing the "better" environment his household provided. The cousin, he said, never established a stable life. Some twenty-five years after the adoption, Sam designated the girl heir to his Homestead property.<sup>16</sup> I do not think he brought the case to court earlier in order to facilitate this decision. Nina had remained with Sam after Lydia died, raising her own four children in his household. He explained his choice of her as heir in terms of the loyalty and love she had always shown him. State adoption law ensured the inheritance rights of an adopted child, and Nina met the criterion for owning Homestead property: she had 50 percent Hawaiian blood. In Sam's narrative, Homestead policy and American law reinforced a decision to legalize parenthood he had made on quite other grounds.

Through the 1960s Sam and Lydia continued to expand the family, choosing the options available to them. Some years after Nina and Nick entered the family, Sam and Lydia acquired an infant girl. The firstborn child of one of their sons, Lihua fit perfectly the traditional role of *keiki hanai*—a gift of one generation to another.<sup>17</sup> Sam referred to her as "my hanai" in his conversations, a designation that served several purposes. For one, in the context of his self-presentation, the designation reiterated his Hawaiian identity, his choice to follow Hawaiian custom. Another interpretation is possible: Sam may have reinforced the *hanai* designation to assert the terms of agreement with his son and daughter-in-law. In my experience with the family, the relationships between the three generations proceeded smoothly, and Lihua referred to Sam and Lydia as "Mama" and "Papa." So did her biological parents.

There is a further element in the story that would have disturbed a nineteenth-century judge and might have influenced Sam's references to the arrangement in the late twentieth century. The biological father of Lihua, the son of Sam and Lydia, had himself been given to the household.

Sam's sister Elena was unable to maintain a stable household because her partner was alcoholic and abusive. She worried about the safety of her three children, and eventually brought them "home" to her brother in Hawai'i. Elena asked Sam to take the adolescents in, and he did. His attachment to Elena, the youngest of his sisters, was intense and threaded through with sympathy for her plight. The three siblings lived with him and Lydia until adulthood, as much their "own" children as the other eleven in the household. The exchange of a child in hanai testified to the substance of the kinship, as did the presence of all three siblings at family celebrations and events.

And so by the time I arrived on the scene in the late 1980s, fourteen photograph albums indicated the equivalence of the fourteen children in practice and in representation. As we pored over the pictures, Sam talked of his involvement as a parent and of the respect and the commitment he extended to each child. He talked of aloha, of a generosity and nurturing that amalgamated the ways the children had come into the family. Yet the diverse ways, ranging from birth to "keeping," tell the more elaborate story of Sam and Lydia's negotiation of custom and of law. The strategies they used to build a family, and the retrospective accounts Sam provided to me of those strategies, continue the larger historical story that began with the arrival of missionaries in the early nineteenth century and continues in Hawai'i in the early twenty-first century.

### **Aloha, Kinship, and Culture**

Sam and Lydia took advantage of the options available in a late twentieth century context for building a family. They went to the law when contract served the interests of the child and they followed custom when that arrangement promised the child a secure parenthood. They "kept" children, three permanently and others for brief periods of time. In the eyes of a haole court and child welfare system, Sam and Lydia were biological, adoptive, foster, and custodial parents. In their own eyes they erased the boundaries between kinds of parenthood, honoring the Hawaiian value of aloha. In my eyes, those of an anthropologist, their decisions (as I heard them from Sam and his children) evoke a process that is as old as the clash of cultures: the process by which individuals use, bend, and rewrite both law and custom. Sam's narrative points to the role of individuals in maintaining a dynamic, complex relation between law and custom.

Like officers of the court, Sam was alert to the lawful nature of custom and to the customary aspects of law, and he applied the rules as needed. Sam appreciated the similarities and the differences between law and custom, recognizing his agency in determining which mode would best serve his interests. Unlike the judges, whose decisions built on and added to legal precedent, Sam could manipulate the components of law and of custom to establish his identity and his role as a parent. In a court, by contrast, the choice between law and custom has a public face that renders the negotiation of both realms more difficult and, perhaps, more consequential.

A judge whose court I observed in 1989 revealed another side of the story, his own balance of “American” and “Hawaiian” more problematic than Sam’s. As we sat in his office one afternoon, he illustrated Hawaiian custom for me by saying, “If we were Hawaiian and I said I liked your earrings, you would give them to me. It’s the same with children.” The remark was multileveled: a test of my reaction to a comparison between earrings and children, and a revelation of his dilemma, caught between the strictures of law and the spontaneity of gift. The analogy also revealed his impartiality. From his point of view, the difference between American calculations of fitness and Hawaiian emphasis on generosity was moot when it came to the best interests of a child. He implied that the law’s criteria might be as capricious, whimsical, and personalized as gift exchange. In the decisions I witnessed, he adjusted legal precedent and custom to the particulars of the case. Not unlike Sam, the judge made choices that destabilized the relationship between law and custom, according neither a permanent superiority.

When Sam went to court in the 1960s and when I interviewed the judge at the end of the 1980s, the parallel presence of law and of custom offered individuals options for transferring parenthood. Sam’s decision to legalize his relationship to four children he had taken in would have given Hartwell satisfaction: a Native Hawaiian man had embraced modern law. The decision, however, tells less about the triumph of American law than about the choices an individual can make among alternative forms of having children. These choices constitute a version of identity politics and demonstrate the heterogeneity of sources of identity in a colonial setting like that of present-day Hawai‘i. Sam’s story of becoming a parent also demonstrates the extent to which the conflict between regimes can be redressed through the actions of individuals, exploiting different systems for their own ends. His story underlines the central role of kinship to asserting cultural and personal identities.

Sam and Lydia chose legal adoption in two instances in order to remove any ambiguity about their rights to the children. With its impersonal standards of judgment, the law overrode personal entanglements in determining

parenthood. Occurring over one hundred years after the first adoption law had been passed in Hawai'i, the actions of Sam and Lydia belie assumptions of legal hegemony and of law's suppression of individual autonomy. The decisions about becoming a parent that Sam described to me indicate the resource that law can be for its subjects.

The passage of an adoption law forced a consideration of customary adoption practices. Customary exchanges of children continued through the codification of adoption law, contributing to the explication of the rights and duties of parenthood. Analogously, the opportunity to legalize a transaction and to specify its entailments on *pepa* influenced the customary practice of child exchange. The alternation persisted, evident in the opinions of the judge I mentioned above and in Sam's account of his family-building strategies.

The compromises in colonial rule are particularly notable in parent-child relationships, where matters of emotion muddy the strict reading of precedent. One hundred years of decision-making leaves the final determination of best interests still in the hands of individuals who variously interpret cultural assumptions. In the end, the practices of creating kinship resist both the hegemony of law and the force of custom. The existence of diverse strategies for having children gives the meaning of kinship to those who construct relationships.

### Identity Politics

Sam and Lydia used adoption law instrumentally, to gain permanent parental rights to four children. They did not succumb to the law's discrimination among parent-child relationships. Looking at his photograph albums, Sam described the obligations and emotions of fatherhood without regard to how a child had entered the family. In an important sense for Sam the difference between *hanai* and legal adoption—and, for that matter, birth—was structural and not substantive. The love and commitment he attached to parenthood remained the same for the fourteen children he had gathered into the 'ohana. In insisting on a parenthood that transcended the origins of the relationship, Sam presented me with his face as a Native Hawaiian. He further underlined the resonance with Hawaiian values when he stressed the incorporative nature of his family building.

Law allowed him to implement his image as a Native Hawaiian. For Sam, American law proved crucial to fulfilling his goals as the patriarch of an extended family. Like the *hanai* arrangement, which followed tradition, legal adoption served a purpose under a particular circumstance. Different as

strategies, law and custom did not differ in the outcome for his understandings of kinship. Like individuals generations before him, Sam appraised custom and law through the intimate decisions he made about his family and through the day-to-day behaviors that accorded the family permanence. In this respect he was freer than the officials who wrote and executed laws and freer than those who set themselves up as arbiters of custom. Sam combined aspects of custom and of law in his own interests and he shunned the ideological debates that plague legislators, lawyers, and experts.

Sam's narrative of parenthood conveys an identity politics he did not explicitly outline. He talked to me about the advantages of haole law and about the value of custom for counteracting the impersonality of law. He did not put this in terms of haole versus Hawaiian, or stranger versus native, but in terms of diverse alternatives for accomplishing his ends. His reminiscent references to the fourteen children he raised illuminated his ability to combine haole and Hawaiian, American and indigenous into a labile, composite identity. While he talked about "tradition" and "modern," Sam did not construe these as any more dichotomous than custom and law. Differing modes of organizing life allowed him to combine his role as head of an 'ohana with that of citizen in an American state.

Sam's strategic use of custom and of law was not unique. Nor was his emphasis on the incorporativeness represented by hanai and by adoption (as well as foster care and "taking in") as a mark of Hawaiian identity. When I began my fieldwork in the mid-1980s, I was surprised at the widespread claim of hanai in families divergent in class, location, and politics. People I talked with used the term hanai as if it covered all permanent transfers of parenthood, but in the end they distinguished hanai from going to court.<sup>18</sup> Like Sam, many considered the decision to legalize a relationship necessary for pragmatic reasons, either to void the claim of a biological parent or to ensure that the child be recognized as the heir to property. Like Sam, too, many of the people I knew talked of hanai as a primary indication of Hawaiian-style family, an enactment of the generosity and openness evoked by the concept of aloha. As a concept that in the contemporary setting includes diverse manifestations, hanai can be an assertion of Hawaiian identity even for those individuals who reject the politics of cultural autonomy and consider the sovereignty movement elitist or misguided. For them, hanai was a way of taking care of children through the framework of generosity and love.<sup>19</sup> The framework also marks a rejection of the American child welfare policy that assumes transfers of parenthood must occur in court in order to be reliable.

When Sam and Lydia went to court in the 1960s, the principle of best interests ruled placement decisions. Always a difficult a principle to apply,



best interests demands an interpretation of parenthood by those in charge of placement decisions. The interpretation inevitably reflects a cultural context, at a moment in time. Sam and Lydia chose the option of legal adoption during a period that saw the resurgence of Hawaiian values and an adjustment of the Americanized family to Hawaiian concepts of kinship.<sup>20</sup> With best interests guiding North American policy, courts look for evidence of caring and for signs of love. In a Hawaiian court, once love enters the discussion, custom is not far behind. With its emphasis on generosity and incorporation, *hanai* brings the ideology of *‘ohana* in its stead. In turn, the ideology of *‘ohana* expands the designation of parent-child kinship.

The doorway to diverse forms of family was further opened by changes in adoption policy on the mainland at the end of the twentieth century. Child welfare experts, legislators, and participants in adoption reviewed best interests and concluded that exclusive dyadic parenting might not best serve the child's interests. Protests against the secrecy and confidentiality of North American adoption, with its complement in the strict separation of birth and adopting parent, shifted the terms of adoption law. In my fieldwork, I met social workers and lawyers who, in an echo of the mid-nineteenth century, recognized the virtue of Polynesian customs, seeing in those a model for opening legal adoption and expanding the meaning of family. In Hawai'i, advocates of change in adoption law considered *hanai* the best example of loving concern for a child's well-being. Aloha might, as Sam and Lydia exemplified, determine placement decisions in an American courtroom.

Appealing in its references to care and generosity, aloha pervades the discourse on the best interests of a child. At the same time, in response to bids for the recognition of Hawaiian cultural practices, the concept of aloha has entered other judicial and legislative debates, including land claims and environmental issues.<sup>21</sup> Insertion of the concept into a variety of decisions, from the placement of a child to protection of the seabed, runs the risk of instrumentalizing the concept and eroding its original meaning. While aloha may enhance decisions in a child placement case, its role in the politics of cultural identity predicts a vaster turn in the intersection of law and custom.

In 1986, the concept of aloha became part of Hawaiian state law. "In exercising their power on behalf of the people and in fulfillment of their responsibilities, obligations and service to the people, ... [officials] may contemplate and reside with the life force and give consideration to the 'Aloha Spirit'."<sup>22</sup> The inclusion of the concept seems to recognize native custom, to compensate for long years of Americanized language in Hawai'i's statutes, and to acknowledge the indigenous population of the islands. Adding the concept to state law can also be seen as a way of diffusing demands for

cultural autonomy and sovereignty by the appropriation of a key lever in those demands. Once codified, aloha risks losing its cultural resonances and becoming trivialized, as happened in the tourist industry. So alien is the idea of “the life force” and the “aloha spirit” to the exercise of Anglo-American law that one wonders how it can be enacted or if it should be enacted.

The history of adoption and hanai offers one possible answer. The codification of hanai in the process of developing and implementing laws of adoption did not destroy either the behaviors or the ideologies behind the customary form of adopting children. Rather hanai persisted, a thorn in the side of judges and a practice in the shadow of the leviathan for subjects in kingdom, territory, and state. Individuals, like Sam and Lydia, brought custom to law when they petitioned for parenthood. These petitions, recurring for more than two centuries, demonstrate the difficulty of applying a strict construction to parent-child kinship and argue for the intertwining that eventually introduced aloha into the calculation of best interests in Hawaiian courts.

Consonant with commitment and with caring-for, the concept of aloha legitimizes the social construction of kinship by emphasizing the motives for making kin. In Hawai'i, the social construction of kinship enacts an ideology of incorporativeness that merges family with assertions of cultural identity. Sam and Lydia represent a historical process that began as soon as North Americans reconstructed the laws and the governance of the Hawaiian Islands. The decisions they made about their family, incorporating children into the 'ohana in multiple ways, constitutes an interpretation of *belonging* that connects intimately with contemporary Hawaiian notions of nationhood.

Adoption in all its forms is a reminder, in practice as well as in interpretation, of the flexibility built into a concept of belonging, so that being a citizen of Hawai'i, belonging to the land, does not reduce to fealty to the United States or to an independent Hawaiian nation. Rather, the synonymy of aloha with incorporating, as hanai practice and ideology exemplify, expands the notion of citizenship from nation to a community of residents in which kinship is not an artifact but a founding feature.

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## NOTES

1. “Native Hawaiian with an upper case ‘N’ refers to all persons of Hawaiian ancestry regardless of blood quantum.” *Native Hawaiian Data Book*, Office of Hawaiian Affairs (1998).

2. See Carroll [ed.] (1970) and Brady [ed.] (1976).

3. “It is our design to regulate our kingdom according to the above principles and thus seek the greatest prosperity both of all the chiefs and all of the people of these Hawaiian Islands. But we are aware that we cannot ourselves alone accomplish such an object—God must be our aid, for it is His province alone to give perfect protection and prosperity.—Wherefore we first present our supplication to HIM, that he will guide us to right measures and sustain us in our work.”

4. On the mainland, what is considered the first American law—in the state of Massachusetts—was passed in 1855.

5. *Statutes of Kamehameha III*. Chapter 1, “Of the Parental duties.” Section III: 198 (Honolulu, HI 1846).

6. *In re Kamehameha IV Estate*, 2 Haw. 715.

7. The implication of adoption for rights of inheritance was a problem on the mainland as well, unresolved by the laws of adoption passed state by state at the end of the nineteenth century. Inheritance is still a sticking point in adoption law, handled differently in the fifty states.

8. *In re Mellish*, 3 Haw. 123 (1869).

9. See Jack Goody (1969), a valuable overview of adoption custom and law in Western societies.

10. *In re Estate of Nakuapa*, 3 Haw. 143 (1869).

11. *In re Estate of Kakuapa, Deceased*, 3 Haw. 342 (1872).

12. *In re Kamarawa*, 6 Haw. 386.

13. 7 Haw. 544 (1889).

14. See Modell [Schachter] (2000).

15. For a full and detailed account of American laws of anonymity and confidentiality, see Carp (1998).

16. Land granted to the Hawaiian people by a Congressional Act of 1921. Sam had owned Homestead property since the early 1970s.

17. See Pukui, Haertig, and Lee (1972).

18. See Howard (1970).

19. For people I met in economically disadvantaged homestead communities, hanai was a crucial method for circulating resources: an adult providing resources to a child whose parent cannot offer the same opportunities. Hanai also stands in for foster care, in a state where the need for foster care homes has been growing and the number of foster parents approved by the state not growing enough.

20. The Hawaiian “renaissance” has been described in, among others, Davenport (1969); Kanahele (1986); Merry (2000).

21. See, for instance, Sullivan (2002) on the difficulty of applying aloha in disputes over land.

22. Hawai'i (Revised) Const. (1986).

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