Christianity and Coverture: Impact on the legal status of women in Hawaii, 1820-1920

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"This is our communication to you all, ye parents from the countries whence originate the winds: have compassion on a nation of little children, very small and young, who are yet in mental darkness, and help us to do right and follow with us that which will be for the best good of this our country."

Kauikeaouli October 7, 1829

I. INTRODUCTION

The period between 1820 and 1920 was a time of enormous change for Hawaiians. When the first Christian missionaries arrived in 1820 they found a highly organized, non-Christian culture with a feudal monarchy. The rigid set of rules which governed many aspects of life, the kapus, had been abolished by Kamehameha II in 1819 but many of the old practices and beliefs remained. By 1920, the date that all women were given the vote in the United States and its territories, Hawaii was a Christian land, the monarchy had been overthrown, a Republic had existed between 1894 and 1898 and in 1898 Hawaii had been annexed as a territory of the United States.

This article is a study of the radical restructuring of the status of women during this remarkable century. Section II is an analysis of the

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status of women in the New England culture from which the missionaries came, focusing on the two primary determinants of that status, the Christian religion and the common law theory of coverture. Section III is a brief analysis of the status of women in pre-1820 Hawaiian society. Section IV, the major section, traces the rapid process by which women’s role and status in Hawaii in several important areas were remade to fit the New England model.

It should be pointed out here that the focus in Section IV is on women’s legal status. That the legal status did not, and in some places still does not, fit the pattern of many people’s lives must be acknowledged at the outset. This article is only a modest beginning in the study of the impact of western laws and culture on women in Hawaii. Considerably more work will have to be done before we will know with any certainty whether the radical changes written into the law corresponded with radical changes in behavior.

II. WOMEN IN NEW ENGLAND

The missionaries brought with them an intellectual, legal, cultural, and religious heritage in which the position of women was quite firmly fixed. In New England in the early 1800s there were two major determinants of the relationships between men and women—the Protestant Christian religion and the common law theory of coverture. Although many variants of Christianity were extant, the focus in this analysis will be on Congregationalism, since that is the tradition from which most of the missionaries came, and it was also the dominant one in New England.

A. Women in Congregational Christianity

Christianity, as interpreted by a line of thinkers from John Calvin through John Winthrop, to the preachers of the early 1800s, detailed an important but subservient role for women. As opposed to other interpretations of the Bible, the Congregationalists believed all souls, those of women as well as those of men, were important and worthy of salvation. This is an essential key to understanding the role of women because part of the result of this belief was a sincere respect for women and their work within their own sphere. Their own sphere, however, was almost totally separate from and subservient to men’s.

The Bible was the key to this subservient status and the basis for it started with the beginning, the book of Genesis. There are two different creation stories in Genesis, one in which the statement of creation is that “God created man in his own image, in the image of God created he him; male and female created he them.” The other is the Adam’s rib version
which says, “And the rib, Which the Lord God had taken from man, made he a woman, and brought her unto the man.” This one, which has man being made first and woman only a part of man, is the one which dominated the thinking of the time studied here.

In the New Testament, the letters of Paul to various 2nd century Christian congregations spelled out in some detail the role women were to have in the church and family. To the Corinthians he said, “But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God.” The Ephesian women were ordered to:

Submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the savior of the body. Therefore as the church is subject unto Christ, so let the wives be to their own husbands in everything. Husbands, love your wives, even as Christ also loved the church, and gave himself for it.

To his fellow disciple Timothy he wrote:

Let the woman learn in silence with all subjection. But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence. For Adam was first formed, then Eve. And Adam was not deceived, but the woman being deceived was in the transgression. Notwithstanding, she shall be saved in childbearing, if they continue in faith and charity and holiness with sobriety.

Thus, Paul and those who followed him believed that it was the will of God that women serve men and that, like latter day children, women should be seen but not heard in the councils of the church.

This is not to say that women were not valued in the church. Indeed, the charge to the first company of missionaries to Hawaii said in part:

When the Son of God was on his mission, woman—many women testified the deepest interest in it, ministering to him of their substance, attending him in his journeyings and labors, and even followed him when his disciples forsook him and fled, and earth and heaven were in dismay—followed him out to the scene of crucifixion. These favored daughters of Zion, then, who, with so much tender cheerfulness, have given themselves to their Savior and Lord for this arduous service, are not without warrant for thus leaving the world to its own opinion and pursuits.

Woman was to be man’s helpmate, his subordinate, whose Christian duty was to fulfill the roles of wife and mother.

Marriage was a solemn sacrament. Jesus had said, “For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh. Wherefore they are no more twain, but one flesh, what therefore God hath joined together, let no man put asunder.”

A woman was not to be a preacher or hold lay offices, except perhaps in the Sunday or church school. Lucy Thurston, one of the women in
the first missionary company, expressed this view of woman's role when she said, "The missionary best serves his generation who serves the public, and his wife best serves her generation who serves her family."\textsuperscript{11}

In addition to establishing the father as the head of the household, Christianity had an impact on the lives of women in many other ways. Divorce, adultery, and fornication had been proscribed by Jesus in the Sermon on the Mount. Divorce on grounds of adultery was permissible; remarriage, however, was not.\textsuperscript{12}

Divorce, adultery, and fornication, along with sodomy, rape, statutory rape, and prostitution were all illegal in New England in the early 1800s.\textsuperscript{13} Opinion varies on the question of what the Bible requires in relation to abortion, but in 1800 abortion after quickening was generally considered murder and was illegal.\textsuperscript{14}

A modest Christian woman wore conservative clothes and covered her head in church in respect to Paul's command.\textsuperscript{15} Indeed, Lucy Thurston was criticized by other missionary wives for allowing her young daughter to wear a colorful bonnet instead of a somber one.\textsuperscript{16} Lewd and lascivious conduct was also both unchristian and illegal.

There runs through the Bible and through Christianity of the time under discussion here two separate views of woman's morality. On the one hand there is the immoral Eve, the temptress; on the other is Mary, the pure, suffering virgin. These two themes found their way into the New England laws, on the one hand regulating women's morals to protect both them and the men they might lure into sin as Eve had lured Adam, and on the other protecting women from certain unpleasant duties required of men. Thus, for example, women were forbidden by law to go into saloons, pool halls, etc., where they might be tempted or where they might tempt men.\textsuperscript{17} Likewise, women could not legally hold certain jobs which involved strenuous manual labor, and were exempt from certain obligations such as military duty.\textsuperscript{18}

B. Women Under the Common Law

The common law theory of coverture, first developed in England and brought to America as the missionaries later brought it to Hawaii, grew directly from the Christian belief of the unity of the spouses described above. An early description of the theory said:

Man and wife are one person but understand in what manner. A woman as soon as she is married, is called covert, in Latin nupta, that is, veiled, as it were, clouded and overshadowed, she hath lost her streame. . . . To a married woman, her new self is her superior, her companion, her master. Eve, because she had helped to seduce her husband, had inflicted upon her special bane . . . [women] make no laws, they consent
to none, they abrogate none. All of them are understood either married or to be married and their desires are their husbands. I know no remedy, though some women can shift it well enough. The Common Lawe here shaketh hand with divinitye.\textsuperscript{19}

United States Supreme Court Justice Hugo Black in a dissent to a 1966 United States Supreme Court decision upholding a Texas coverture law commented that coverture “rests on the old common-law fiction that the husband and wife are one. This rule has worked out in reality to mean that though the husband and wife are one, the one is the husband.”\textsuperscript{20}

The result of this theory was seen in most aspects of a married woman’s relations with her husband and with the community. Because women were presumed either married or to be married, many of the restrictions, properly called “disabilities” in the law, were applied to unmarried women as well.

The husband was given almost total responsibility for and control over his wife. She could not own property and what property she had had before marriage became his when they were married. Likewise, what property she gained during the marriage through inheritance or her own labor was also his. She could not sue or be sued or make contracts.\textsuperscript{21} She was by law, “civily dead.”

Her husband was responsible for her support and, on the theory that she did nothing without his authority, he was responsible for her torts (violations of the civil laws) as well. Since he was responsible for her, he could “chastize” her if he did not kill or seriously injure her.

Although her primary role was that of wife and mother, her husband was legally responsible for the support of the children, and for their behavior. If there was a divorce, which was rare, the husband received custody of the children.\textsuperscript{22}

In her relations with the larger society, a woman was also severely restricted because of the coverture theory. Women could not vote, run for political office, or serve on juries. In most places they were not eligible for appointive office either. Since they could not make contracts, married women were excluded from many aspects of business. There were numerous individual exceptions,\textsuperscript{23} but the legal restrictions on women, especially married women, narrowly circumscribed their activities.

Since the adult female role was limited by law and custom to that of Christian wife and mother, a woman was educated for that role, if she were educated at all. A woman might be taught enough to be able to read the Bible, but subjects such as mathematics, geography, and science were thought not only unnecessary but perhaps dangerous to her presumed weaker nature and smaller brain. In addition, independence from her husband either through education or most outside activities,
except those with other wives, was believed destructive of the marriage relationship and was therefore discouraged.

III. WOMEN IN PRE-1820 HAWAII

The Statutes of the State of Connecticut cannot be compared with the Statutes of the Kingdom of Hawaii for 1820 since there were none in Hawaii. It would, however, be taking a very narrow view of law to say that there was no law in Hawaii because there was no written law. There were rules, regulations, and expectations, many of which carried sanctions. Just as in New England, in Hawaii women’s roles and men’s roles were different and some of these differences were reflected in those kapus for which there were sanctions. However, the entire frame of reference for the roles was different from that in New England. In Hawaii, rank was a much more important determinant of both men’s and women’s roles, and of their rights and responsibilities, than it was in the United States. Women who were of ali‘i rank could do many more things than women or men who were commoners.

The period covered in this analysis was the beginning of an enormous upheaval for the Hawaiians, an upheaval which had begun before the missionaries arrived. In 1819, Kamehameha II (Liholiho) had “overthrown” the kapus.24 The most immediate result was the removal of the kapu which prohibited men and women from eating together and the kapu forbidding the eating of certain foods by women. Of the restraints on women, the food kapu seems to have been one of the most oppressive and it must have been a nuisance for the men as well. The missionaries, however, had nothing to do with this major rearranging of the daily lives of men and women.

There were a number of other kapus which similarly were disappearing in the early years of the 19th century. These included segregation of women during menstruation and childbirth and separation of young boys from the family’s women at an early age.

Despite the demise of the kapus, the religion of which they had been a part continued in most places. Compared with women in 19th century Christian New England, Hawaiian women had a much more important role in both the theology and the practice of Hawaiian religion. While the four major deities were male, many important ones such as Pele were female.25 Genealogies which tied humans to the gods included women, unlike those in the Bible.26 Women had household deities of their own to worship. The most sacred female ali‘i could enter the heiau, although most priests were men and the heiau was kapu to most women.

As noted above, rank was the major determinant of power and status. A child’s rank was inherited from either or both parents, although the
male seems to have been preferred. Females of high rank had most of the prerogatives of similarly situated males (especially after the overthrow of the kapus) and far more than males of lesser rank.

Politically, women were undoubtedly much more powerful and had more rights in Hawaiian society, compared to men of the same rank, than was true in New England. There are records of female queens before Kamehameha I's consolidation of the kingdom, and at the time the missionaries arrived the two most powerful people in the kingdom were women—Kaahumanu and Keopuolani. The office of kuhina-nui was already established, and is described in Section IV below. In addition to serving in specific offices, women also acted as advisers to the king. The missionaries were in fact, quite struck by the power women had in Hawaii. Lorenzo Lyons commented that, "women often usurp authority over the men and hold the reins of government over large districts. . . ." The property system in Hawaii was different from that of New England, but insofar as people held real or personal property, their rights in relation to it do not seem to have been determined by sex at all. Alii women could and did inherit land and give it away. There is no indication that the personal effects of wives belonged to their husbands.

The early 19th century Hawaiian moral code, standards of conduct, and relative importance placed on various sexual activities also were different from those of Christian New England, and were considerably less restrictive. Almost every early writer commented on the sexual freedom of the women. While an initial mating, particularly of the alii, might be carefully controlled, after the birth of the first child both partners were free to seek additional lovers. Incest was not only tolerated, but in some instances demanded. Polygamy and polyandry were permitted. The idea of prostitution did not seem to exist.

Work was one of the activities in which sex was an important determinant of role. Men and women both contributed to the subsistence economy but there was a division of labor. Men, for example, did the fishing and cooking, women wove mats and tended young children. This difference seems to have held through the various ranks.

From the very brief discussion above, it should be evident that men and women were treated differently in Hawaii and New England and in both societies, in important parts of the life of the family or of the community, men’s status was the preferred one. It should also be clear that in most areas of life, Hawaiian roles, expectations, rights, responsibilities, and sanctions, were different from those found in New England. Indeed, the values, mores, customs, and life styles of the two cultures had very little in common.
The remainder of this article consists of an analysis of the rapid transformation of the status of women, as defined through the newly created Constitution and Statutes of the Kingdom, from what had characterized traditional Hawaii to a remarkably close copy of mid-19th century New England.

IV. THE TRIUMPH OF COMMON LAW AND CHRISTIANITY

A. Morality and Marriage (1820–1840)

The missionaries quickly made their presence felt as advisers to the ali`i. In his sermon given at the marriage of Hiram Bingham and Sybil Moseley before the first company had left New England, Thomas Gaullaudet had said:

It were enough to justify such an enterprise, if it only aimed to promote improvement and civilization; to produce husbandry and manufacture; to inculcate conjugal fidelity and domestic attachment, parental care and filial obedience with all the duties and charities of life; to educate the rising generation; to meliorate the condition of the female sex; . . .

But I mistake, such an undertaking could not succeed. The civilization of these islanders cannot be effected without at the same time, Christianizing them.35

Early missionary journals indicate that one of the initial goals of the company was to convert the important ali`i and convince them that the customs and regulations which ordered the lives of the Hawaiians should be brought in line with Christian theology.36 Indeed, two of the most important early religious converts were Keopuolani and Kaahumanu whose influence is seen in many of these early post-1820 laws.

During this period the laws, insofar as they related to women, focused on sexual morality and marriage, although other issues also appeared. Prodmed by missionaries, Kaahumanu evidently issued a proclamation against prostitution in 1825, but there seems to be no record of it now.37 The first written law, published in 1827, outlawed, among other things, prostitution and illicit intercourse (fornication and adultery).38

In September, 1829, the major elements of Christian marriage were set in law and the method of solemnizing the union was established:

It is proper that the marriage of a man with a woman be perpetual, if they wish to marry, but if the union be forbidden, it will not be proper to marry, let them make known their intention to the teacher and then if it be right let them be properly married and let their names be both written in the marriage certificate, so they will be observing the laws of the present time.39

At the same time, "mischievous mating" (adultery) was outlawed and the penalties established. If the husband were guilty the wife could obtain a divorce from the Governor. She could remarry, the husband
could not. If he were caught twice, he was to pay three hogs to the Governor and three to the husband of his paramour. If the wife were the guilty party her husband could be granted a divorce. The wife had to pay $5 to the Governor and $5 to the wife of her paramour. If she were found guilty four times the King could take her land. A guilty chief would have to pay $200 to the King and if the crime were committed four times the King could take the chief’s land.

Bigamy was outlawed. Common law marriage, living together as husband and wife without having been formally married, was not permitted, except that, “If a man or a woman have co-habitated they are by this law made man and wife. . .”

An October 1829 law returned to the subject of common law marriage, stating that

Christian Marriage is proper for men and women. But if a woman regard her man as her only husband, and the man regard his woman as his only wife, they are legally husband and wife; but if the parties are not married, nor regard themselves as husband and wife, let them be forthwith entirely separate.

In 1833 Nahienaena, sister of Liholiho and daughter of Kamehameha I and Keopuolani, issued a proclamation forbidding “women from going to the market enclosure, for the purpose of sightseeing or to stand idly by.” The authority by which this was issued is not clear, since she was neither king nor kuhina-nui, and the prohibition does not appear in the later laws.

By 1835 the problems posed by the marriage of alien men to native women were becoming clear and the first of many attempts to protect the women was made. The Twelfth Law of that year required that marriages between aliens and citizens be “in accordance with the laws of the kingdom.” No law was ever passed regulating the marriage of native men to foreign women, probably because such marriages were rare.

Also in 1835 the penalty for adultery was made harsher: a fine of $15 or four months in prison or at hard labor, applicable to either the husband or wife. Any who “cohabit illegally in this new age” were guilty, as were people who aided andabetted the adulterers. Divorce because of adultery was allowed but the adulterer could not remarry until the former spouse died. Anyone having intercourse with an adulterer also was guilty of adultery. Fornication and prostitution and making a living off of prostitution were outlawed.

In the same year rape appeared in the written laws for the first time. The law said, “but the man who with a strong arm, employs force upon a woman because his wishes are not assented to by the woman whom he forces,” was to be fined $50 or imprisoned five months or required to
serve up to five months at hard labor. Fifteen dollars of the fine was to go to the judge and $35 to the woman.44

In 1838 a poor law was announced, establishing in the law the first differential job and pay system based on sex. Men would work at stone cutting, wood chopping, or in the cane fields. Women would make mats and hats and sew. Men would be paid $2, women $1, and children 50c.45

In 1839 a poll tax of $1 for men, half a dollar for women, quarter of a dollar for boys, and an eighth of a dollar for girls was imposed.46 A labor tax was also established, the wording of which was ambiguous. It began, “the first week in the month the people work two days for the King and one for the land lords. . . .”47 The section on violations used the word “men.”48 It would appear, however, that women were included. In an 1840 law titled “The Business of Females”, women are admonished to teach their children and the section continues, “but if any woman does not conduct according to the requirements of this section, then let her return to the labor of her landlord as in former times, to such labor, however, as is appropriate to women. The tax officer will look to and manage this business.”49

One of the major distinctions between New England and Hawaii in the treatment of women at this time was the insistence that both girls and boys receive a basic education. The 1840 law cited above is the first in a series of acts dealing with the education of the young, and, while there were different curricula established subsequently for boys and girls, compulsory education was always provided for both sexes.

B. The Constitution of 1840

The first Constitution of the Kingdom of Hawaii reveals a society in transition. That there even was a constitution, plus the basic outline of the government it established, clearly reflected the counsel of the American missionaries. Yet, many of the older Hawaiian traditions remained. Of particular interest here is that this Constitution was considerably less sexist than those which followed.

The House of Nobles was evidently to be appointed by the king.50 In 1840 it had four female and ten male members.51 No mention of sex was made in the sections dealing with the qualification of the representatives or the sections outlining who could send letters of nomination to the king for members of the House of Representatives.52

The office of the kuhina-nui has been extensively analyzed elsewhere.53 The position was created for Kaahumanu at the death of Kamehameha I. The occupant served as regent during the minority of the king and as co-ruler after the king came of age. Almost all of the kuhina-nui were women. Prior to 1840 some of the kuhina-nui, notably Kinau, had acted
as virtual administrators of the kingdom even after the king became an adult. Under the 1840 Constitution the *kuhina-nui*’s approval was required before the “important business of the Kingdom” could be transacted; the king and the *kuhina-nui* had veto power over each other’s acts; she was to be a special counselor to the king; and laws passed by the legislature had to be approved by both before becoming law. She was ex-officio a member of the House of Nobles and of the Supreme Court.\(^{54}\)

Succession of the crown was to Kamehameha III’s heir, whom he and the chiefs would appoint but if none were chosen, the chiefs and House of Representatives would select the heir at Kamehameha III’s death. Male heirs were not given preference over female heirs in this Constitution.\(^ {55}\)

Thus, the Constitution of 1840 reflected a political equality between men and women of the same rank and continued the tradition of having women as well as men in positions of power in government.

C. **Marriage and Morality, continued (1840–1845)**

In the period between 1840 and 1845 numerous laws were passed attempting to regulate the morality of the populace and to deal with problems deriving from the imposition of Christian marriage restrictions on a population accustomed to other ways for men and women to relate to each other. The Preface to the *Translation of the Constitution and Laws of the Hawaiian Islands*, written in 1842, described the state of the laws:

> At these islands as well as in more civilized countries there is something like a system of common law, independent of special statutes. It consists partly in their ancient taboos, and partly in the practices of the celebrated chiefs as the history of them has been handed down by tradition, and at the present period the principles of the Bible are fully adopted.\(^ {56}\)

Those principles, in regard to women, have been analyzed in Section II above.

In 1841 a law on marriage and divorce consolidated the previous provisions and added several new ones. Common law marriages, clearly a difficult problem, were approved for those already in such a relationship, but “from the present time all persons are prohibited from uniting together according to the former customs, it is proper to marry.”\(^ {57}\) Thus, the foundation of both Christian morality and common law coverture was established in the law as early as 1841. These legal theories had a number of ramifications as will become clear below, since a legitimate child and legal wife had certain claims on the father’s and husband’s income and property that those not in that relationship did not have.
In addition, in three years almost all of the common law disabilities would be placed on married women. On paper, these laws represented a substantial restructuring of several basic human relationships.

According to the 1841 law, the Governor was to approve marriages and a Christian “priest” to solemnize them.\(^58\) The law also included a list of people who were not allowed to marry. These included boys under the age of fourteen and girls under twelve, and persons with a living spouse. The requirement that an adulterous husband wait until his divorced wife died before he remarried was dropped. Boys under twenty and girls under eighteen had to have parental approval to marry. The law also contained a list of people that an individual could not marry. Incestuous relations were forbidden as well as some non-incestuous ones such as marriage between a man and his son’s wife. The punishment for violating the incest laws was twice that for violating other marriage laws. Incestuous marriages were null.\(^59\)

In addition, the law strengthened regulations governing marriage between foreign men and native women. Foreigners who deserted and those who landed without government permission were forbidden to marry native women and all foreigners who married native women were required to take an oath of allegiance to the government. The man had to declare that he had no living wife and if it were later found that he lied, his property was to be given to his local wife and he was to be driven from the Kingdom.\(^60\)

Bigamy remained illegal. If a woman married a man without knowing that he already had a wife, one half of the fine imposed on him would go to her. On the other hand, if she knew of the existence of the other wife, she was to be fined one half the amount the man was fined and the marriage was nullified. The same was true for an already married woman who married a second time.\(^61\)

Desertion by a husband was punishable by a fine of up to $10, double for repeat offenses. If a husband left for a foreign land and did not communicate with his wife for four years she could apply to the government to be free to marry again. However, if her first husband returned, she had to “put away” her second husband. The spouse of a person banished for four or more years could also remarry. The banished person could remarry after one year of good conduct following the return from banishment if in the meantime his or her spouse had also remarried.\(^62\)

Spouse abuse was outlawed. Spouses who physically injured each other could be charged with common assault and the husband could be chained in irons at the discretion of the judge. Particularly quarrelsome spouses could be tried for neglect of their marriage vows and chained separately in the evenings.\(^63\)
Divorce on account of adultery was possible only if one spouse was of "unblemished character." If both the husband and wife had sinned there could be no divorce. Divorce could also be granted if the life of one spouse were in danger because of the violent acts of the other spouse. The innocent party could remarry, the guilty one could not. If there were a dispute over child custody the judge was to award the children to the innocent party.  

If a women of good character found that her husband was an adulterer she could have him banished for four years or, alternatively, have him fined thirty dollars or set to eight months hard labor. Fifteen dollars of the fine was to go to the husband of his paramour and $15 to the government. If the paramour had no husband the whole fine was to go to the government. The 1841 law further provided that "if the wife of said man be of bad character, then she shall have nothing to say in the case; they shall separate; the man shall not be banished to another land. His fine shall be thirty dollars or he shall be put to hard labor...." The same provisions applied to an adulterous wife.

In the case of adultery between a married and unmarried person, if the unmarried person provoked the affair he or she was to be fined $30 or sentenced to six months hard labor or confined in prison. If the affair was instigated by the married person the unmarried one would only be fined $15 or sentenced to hard labor for three months.

If a married man seduced a young "woman of good character" the man was to pay the father of the girl $15 in addition to whatever other punishment he might be given.

Unmarried persons who committed fornication and later agreed to marry were to be fined $3 and permitted to marry. Otherwise, the "soliciting party" would be fined $20 and the "yielding party" $10 or if it were not possible to make such a determination, both would be fined $15. If they could not pay the fines they were to be put to hard labor for five and two and a half months respectively or, if equally guilty, for four months each.

A woman who became pregnant through fornication was to be punished if the child were stillborn. If the child lived and she took care of it she would not be punished, but if she did not take care of the child she would be fined $10, the fine going "to the benefit of the child."

Prostitution was still outlawed and, as opposed to later laws, the client as well as the prostitute could be punished. He was to be fined $5, she was to be sent to the house of corrections for four months at hard labor. If she had solicited him she was also to be fined $10 and he evidently would not be punished at all.
A parent who gave "up his child to whoredom" or a husband who did the same to his wife, was to be fined $50 and flogged thirty strokes. The child (but evidently not the wife) would receive the fine. Pimping and procuring were illegal.\textsuperscript{69}

In addition, the rape law was modified. If the man were "a man of distinction" or property or if the woman were a "woman of distinction" the man could be banished for four years or put to hard labor. The penalty for attempted rape was one-half of that for rape. However, "a woman of bad character, even though she suffer violence, shall receive no part of the fine of the condemned man."\textsuperscript{70}

Lewd conversation, seductive language, and lascivious conduct were outlawed. The statute of limitations for these crimes was two years.\textsuperscript{71} Section 15 of the 1841 law had an all-inclusive clause which stated that "if any other species of lewdness be committed, such as is not mentioned in this law, the judge shall consider it well, according to the best of his knowledge, he shall pass sentence in accordance with the general spirit of the law. Thus shall he punish that crime."\textsuperscript{72}

It is evident that the people who wrote these laws were determined to stamp out all sexual relations except those sanctified through Christian marriage. A number of sexual activities and relationships which had been permitted before the advent of Christianity in the Hawaiian Islands were now illegal and legal concepts such as prostitution and procuring had been introduced, concepts which evidently did not exist in the past.

In addition to radical changes in sexual and family relationships, some of the laws were becoming sex-specific, working to exclude women from various activities and occupations. Teachers evidently could be of either sex, but the assumption was that they would be male since the teacher and "his wife" were exempt from the poll tax. Yet, in another section of the same act, the school agent was required to give a teacher's certificate to any "man [who] can read, write, and understand geography, and arithmetic, and is a quiet and moral man. . . ."\textsuperscript{73}

According to a "Law Respecting the Making of Roads," three men were to be appointed to estimate the amount of property which must be condemned for road construction.\textsuperscript{74} Also starting in 1841 female and male criminals were separated for the first time, both in their work and in their housing. Furthermore for the first time, pregnant criminals were protected from doing hard labor.\textsuperscript{75}

In 1842 a system of dual juries was established by which Hawaiians would be tried by Hawaiians and foreigners by foreigners, with a mixed jury if Hawaiians and foreigners were both involved. The language in the section on the Hawaiian jury uses the word "men" but that for the foreign jury consistently uses "person."\textsuperscript{76}
An interesting example of the contrast between the new, foreign-influenced Hawaii and traditional society is an 1842 law, “Respecting Parental Duties.” It states that “if the parents are not agreed in relation to the child, then the father’s decision shall stand in law [coverture], though if the mother be the higher chief, then the decision of the mother shall stand, and not the father’s [tradition].” The same law also created the category of “illegitimate” child and placed the responsibility for such children’s “direction” on the mother. The court was empowered to take the child from the mother if she were “unfaithful.”

D. Coverture (1845)

In 1845 another major change in the legal relationship between husband and wife appeared for the first time. Having four years earlier written Christian marriage into the laws of the Kingdom as the only legal marital relationship, the common law ramifications of that marriage contract appeared in a law titled “The Marriage Contract.”

Article I, Section III, laid out the rights and responsibilities of the husband. He was to provide for and support his wife in the same manner that he supported himself. By virtue of the marriage and because of his responsibilities, he was “virtual owner” of all of his wife’s property belonging to her before the marriage, and of all of her moveable property acquired during the marriage. He was given absolute control, for sale or otherwise, of her moveable property, which could be used to pay his private debts. In addition, he had custody and use of all her fixed property and could rent or dispose of it for any term not longer than his natural life.

Article I, Section IV, stated that the wife “shall be deemed for all purposes, to be merged in her husband, and civilly dead.” She could not, without his consent, make contracts, or sell or dispose of her property. She was not civilly responsible in any court without joining her husband in a suit (that is, she could not sue or be sued alone) and in no case was she liable for prison in a civil action. Her husband was personally responsible for all her torts, assaults, and slanders.

The wife was given one-third life interest in her husband’s fixed property and an absolute one-third ownership of his moveable property after payment of his debts at his death. This was her “dower.” The husband likewise was given “curtesy” rights to his wife’s property, amounting to a one-third interest in his wife’s fixed property during the minority of any of their children, after which time the property was to go to her heirs. The wife could release her dower interest by swearing, out of the presence of her husband, at the Register of Conveyance, that
she was releasing it willingly, that is, without compulsion, fear, or constraint from her husband.

The father was made liable for the support and control of all legitimate children under the age of twenty. He was their guardian, had control of their property, and was liable for their torts. The husband was not only responsible for the support of his wife and children but of his wife's parents and her children by previous marriages unless she was able to support these dependents herself. His legal relationship to his children was almost the same as his relationship to his wife.

The section of the 1845 law on the responsibilities of the children to their parents is yet another indication of how rapidly the New England view had come to dominate family law. In the 1842 law cited earlier the mother was to be obeyed in those cases where she was of a higher rank than the father. By 1845 rank had disappeared and children were charged first to obey their fathers and then their mothers.

Children of unwed parents were declared "bastards" and could not inherit from their fathers without specific bequest. The mother was compelled to support them.

Divorce still was to be granted only on grounds of adultery, but separation was permitted because of excessive and habitual ill treatment, habitual drunkenness, or continual refusal of the husband to provide necessities for the wife.

In divorce, if the wife were the guilty party, she forfeited her dower and alimony. Her own property was immediately given to her husband although her fixed property would go to her heirs on the death of her husband. If the husband were the guilty party, the divorced wife became femme sole, that is, as a single woman. She could buy or sell property, sue or be sued, and make contracts. She was to receive alimony, custody of any children, and she retained her dower. She did not receive her husband's property as he did hers if she were the guilty party.

Likewise, in a separation, the wife became femme sole in relation to her property and she regained her civil rights. She was entitled to support if she was not guilty of adultery and her husband was liable for child support even if he was the wronged party.

This law also raised the age at which men could marry to seventeen years and that of women to fourteen years. Marriage within the fourth degree of consanguinity continued to be illegal but the non-incestuous relationships noted above were eliminated from the incest law.

Thus, by 1845, the major outlines of the Christian and common law relationships were in place. Sexual sins were outlawed, Christian marriage institutionalized, and the common law responsibilities and disabilities of marriage were firmly implanted in the law. The only area
of life in which the legal status of women in Hawaii differed substantially from that of women in New England was in the Hawaiian women’s greater political freedom, and that was sharply curtailed in 1850.

These radical changes were only one aspect of the changes that were taking place in Hawaii. Already by 1844 the government was, to some extent, in the hands of foreigners. Whether they hoped to save the Hawaiians or intended to exploit them, most foreigners acted on the premise that Western mores, customs, values, and institutions were superior to indigenous Hawaiian ones. Many Hawaiians felt the same way. The changes that affected the status of women were so significant in part because the position of women had been so different in Western and Hawaiian societies.

The remainder of this paper essentially details the many refinements that took place between 1845 and 1920 in the already described legal status of women.

E. Marriage, Morality and Political Power—Legal Refinements (1852–1888)

The developments in the law relating to women between 1845 and 1888 can be divided into four major categories. One was the expansion of the laws regulating marriage, including extension of the coverture disabilities, new rules concerning divorce, and continued efforts to control the actions of foreign males who married native women. Closely related in substance to these laws were several dealing with various sexual practices considered immoral, dangerous, or both. A third group of laws established differential treatment of men and women in a variety of areas of community life, and a fourth served to further diminish women’s role in the body politic.

Some of the ramifications of coverture appeared as early as 1850 in the first Penal Code of the Hawaiian Islands. According to the Code, a husband and wife could not be guilty of conspiring together, on the assumption that they were already one person. A person found guilty of being disorderly could post a bond to ensure that he would not commit the same offense within the following two years; but, if the person were a minor or a married woman, a third party (presumably the father or husband) would have to do it for her. Provision was made for an individual to act as a “surety” for the appearance of another person accused of a crime, that is, to guarantee that the accused would appear at the trial. However, no woman could be received as surety.

The wife as well as the husband could be charged with keeping a house for the purpose of prostitution; however, while it was also illegal to keep a house where there was gambling, indecent exposure, or the
sale of liquor without a license, the wife would not be charged with any of these crimes.90

One of the results of coverture was that married women were often treated like children and idiots (and sometimes criminals) in the civil law because they were made legally incapable of handling their own affairs. An 1853 law setting limits on the amount of time permitted to bring a case to court illustrates this. Section 4 of the law said, “If any person entitled to bring any action in this act specified . . . shall, at the time of the cause of the action accrued be either,

1. Within the age of twenty years; or
2. Insane; or
3. Imprisoned . . .; or
4. A married woman,

[s]uch person shall be at liberty to bring such actions within the respective times in this act limited, after such disability [is] removed.”91

However, the 1859 Civil Code permitted a spouse to act as a witness for the defense at the criminal trial of the other spouse.92 The Code also provided that when a female minor married her guardianship ended, but the guardianship of a male minor continued until he became an adult.93

The final major coverture-related disability appeared in 1860 when a married woman was required to adopt her husband’s name.94 Legitimate children were to adopt their father’s name and illegitimate children their mother’s name. A provision existed for making a formal name change but this provision did not apply to married women. As with several other requirements, however, this was observed in the breach as well as in the practice. A number of ali`i women including Fanny Kekelaokalani Young, wife of George Naea and mother of Kamehameha IV, the king who signed the name change law, always used their maiden names. Ane Keohokalolo, mother of King Kalakaua, and Queen Liliuokalani herself were others who did not change their names when they married.95

Numerous acts regulating divorce appeared during this time. The 1850 Penal Code section on adultery included a new provision permitting divorce if the spouse were absent for four years or longer. The requirement that the wife “put aside” her second husband if her first husband returned was deleted.96

In 1852 a law was again passed forbidding an adulterer to remarry while the former spouse was alive.97 This provision was then dropped in 1863. Children of such an illegal union would be considered legitimate, however, and would have all the rights of legitimate children.98 Also in 1852 the dower law was modified.99
The annulment, separation, and divorce laws were revised and consolidated in 1853. The Preamble to the law indicates the frustration that existed over the series of similar acts which had already been passed. It said, "... the present laws relating to Divorce, owing to the different enactments on that subject, are in a state of confusion and uncertainty, which it is very desirable to remedy; and ... the power of granting Divorces is in too many hands ...", thus a new law had to be proclaimed. The grounds for annulment remained the same.

Divorce could be granted on the grounds of adultery, willful desertion for five years (which was presumptive evidence of adultery), five years absence in a foreign country and unheard of, or being sentenced to prison for five or more years. In the case of adultery, the court had to require proof other than the allegation of the parties and might still deny the divorce if (1) the adultery had been procured with the connivance of the complainant (the wronged party), (2) the adultery had been forgiven, by the two parties continuing to live together after the wronged one knew of the adultery, (3) the complainant had not brought suit within two years of discovering the adultery, or (4) the complainant was also guilty of adultery.

Divorce on the grounds of the husband's adultery did not affect the legitimacy of the children. Divorce on the grounds of the wife's adultery also did not, unless the question was raised, in which case there was to be a trial on the issue. The adulterous husband could be required to support his former wife and children.

Expanded separation provisions continued to permit the wife to act as femme sole during a legal separation.

In 1860, in addition to the grounds for separation already given the wife, the husband was given cause for legal separation if his wife had "forsaken bed and board and refused to cohabit with him." The court was to attempt reconciliation, but if that failed, the guilty party could be sentenced to one month hard labor.

In 1868, spouses of lepers were permitted to divorce their partners and remarry. The same year, a married woman was given the right to take insurance on her husband's life and any claims on the insurance were to be made to her, free from claims of the husband or his creditors.

A residency of unspecified length in Hawaii before a divorce could be granted was established in 1870.

Revisions of the Masters and Servants Act in 1872 provided that marriage revoked a woman's will, but a man's will was not revoked until the birth of a legitimate child. Married women were given the right to
make wills disposing of their own property "in like manner as a person
under no disability might do."\textsuperscript{109}

The problem of how to deal with foreigners who married native
women was one of the continuing difficulties of this period. In 1845, as
part of the law discussed in the section above, foreigners were required
to become naturalized citizens before they could marry a native.\textsuperscript{110}
However, they were also to have the same rights in marriage as citizens.\textsuperscript{111}
The law was changed in 1847. The new law required the foreigner to
have lived in Hawaii for two years and to give a bond of not more than
$1,000 to assure that he would support his family and not abandon them.
The bond was also to assure that he would make provisions for his family
during his temporary absences. He had to swear that he had no other
living wife, or alternatively, he could pledge allegiance to the king.\textsuperscript{112}

The same month that this law was enacted, another provision also
became law stating that a man could be arrested as he left the islands if
he had not made provisions for his family to be taken care of during his
absence and that he could be detained until he did make such provisions.
The next year an added requirement appeared. In order to obtain a
passport, notice in English and Hawaiian had to be given two weeks in
advance of departure from the islands.\textsuperscript{113}

The law regulating marriage to foreigners was again revised in the
1859\textit{ Civil Code}, this time going back to the requirement that the
foreigner become a naturalized citizen including taking an oath of
allegiance.\textsuperscript{114} In addition, a wife who found herself not provided for and
her husband absent from the Kingdom could go to the court and be
given authority to make contracts in her own name, sell her real or
personal property, and sue or be sued. Her changed status had to be
announced in the papers three months before it became effective and her
coverture disabilities returned with the return of her husband.\textsuperscript{115}

Laws dealing with sex crimes, the result of continuing attempts to
legislate morality, were brought together in the\textit{ Penal Code} of 1850. In
the years that followed more were added to the already substantial
number.

The concern with the purity of the female is found throughout these
laws, and is perhaps clearest in the section of the\textit{ Penal Code} which made
illegal the seduction of a female to commit fornication through conspiracy
or willful falsehood. If the female later married the guilty party the
charge would be dropped.\textsuperscript{116}

The 1850\textit{ Penal Code} was revised in 1852 to provide that no woman
who became pregnant through adultery or fornication could be punished
before the birth of the child. If the child did not live until the age of
four, the woman could be punished in accordance with the provisions
outlined above; but, if the child lived past the age of four the woman was not to be punished. A 1852 law changed the time period to four months after the birth of the child, and in 1862 this whole provision was abolished. Along the same lines, in 1862 women who were seduced were relieved from their liability of prosecution under fornication or adultery statutes.

Abortion was made illegal in 1850. If the woman was quick, the penalty was $1,000 and up to five years in prison; if she was not quick the penalty was $500 and up to two years in prison. This section appears not to apply to the woman but rather to the person who performed the abortion. An exception was made if the abortion was necessary to save the life of the mother. It was illegal for a woman to conceal the death of a child or the "issue of her body."

Rape was another problem that received attention during this time. In 1850 the definition of rape was changed to "ravishing or having carnal knowledge of a female by force and against her will." The penalty was fixed at $1,000 and up to life in prison or at hard labor. If the female was under ten years of age the penalty was death. Intent to commit rape was also made illegal, as was abducting a female for the purpose of marrying her or carnally defiling her.

There was evidently a fear, common in the United States at that time also, that an innocent man would be accused by an unscrupulous female of a sex crime, thus the provision that no person could be convicted of the sex crimes listed in the paragraph above "on the mere testimony of such female uncorroborated by other evidence direct or circumstantial." However, the 1842 clause relating to the character of the victim was dropped.

Statutory rape (intercourse with a girl under a particular age with her consent) became a crime in 1864. The age of the female was set at fourteen years. An 1876 Act provided that a jury could find a man charged with rape, sodomy, or statutory rape guilty of assault if there were not enough evidence to convict him on the more serious charge.

The problem of young girls coming into the cities to work as prostitutes was again faced in 1854 when such activities were again forbidden. If caught by the police the girls were to be returned to their parents or guardians within forty-eight hours. A provision in the 1859 Code made it illegal to knowingly convey women to board a vessel for the purposes of prostitution and the laws against permitting prostitution in rooming houses, etc., continued.

Prohibition of prostitution proved to be a failure, however, and in 1860 a different approach was used. Titled "An Act to Mitigate the Evils and Diseases Arising from Prostitution," the law admitted that the
attempt to "crush out" prostitution had failed. Thus, prostitutes (in Honolulu only) were required to register with the Sheriff and to be checked every two weeks by a doctor, free of charge. The Act did not specifically decriminalize prostitution in Honolulu, however, and evidently did not change the status of the activity elsewhere at all. Even this provision was not adequate, and in 1864 females under the age of twenty-five coming to Oahu from the other islands were required to obtain passports.

The differential treatment of men and women in the law continued to grow. Males between the ages of eighteen and forty were subject to military duty. The differential poll tax was continued and "persons debilitated by age and females living with their parents" were exempt. The labor tax was applied only to males born of native aboriginal females, thus exempting foreign males and all females. The Masters and Servants Act of 1850 provided for boys becoming servants until the age of twenty and girls until eighteen or until they married. Fifty or more adult males were permitted to petition the minister of public instruction for permission to build a church. On the other hand, the chapter dealing with the qualifications of teachers no longer was sex-specific; it referred only to "persons."

Separate prisons were provided for women in 1851. The keepers were to be female and the jobs to be assigned the inmates were much like those in the original poor law of 1838—making mats, sewing, and additionally, washing the male inmates' clothes.

The act to organize the fire department included a provision forbidding "all women who are not the occupants of the buildings on fire . . . from attending at or near buildings on fire under a penalty of five dollars for each offense."

Also in 1851 a law was enacted permitting fathers, but not mothers, of school age children to join together to elect trustees for the public schools. Protective legislation in the form of exempting women from konohiki labor was enacted the same year. In 1853 women were exempted from the newly imposed road tax and from the jury of twelve men established for condemnation proceedings associated with the building of roads.

Education continued to be important. Even under the Masters and Servants Act masters were required to teach females reading and writing, and males reading and writing and arithmetic. By the terms of this Act, minors could be bound out by their fathers, or if the father were dead, drunk, absent, or incapacitated, by their mother.

In 1860 a special school was established for Hawaiian girls, the purpose of which was to teach them "domestic training," using English as the
medium of instruction. Females continued to be exempt from the school tax which males were obligated to pay. In 1862 school districts were ordered to segregate students by sex if there were sufficient students and teachers and to try to have males teaching boys and females girls. In the same year publicly funded scholarships were established for students to attend privately operated Oahu College and these were not limited to boys. Having segregated the sexes in the schools, it next became necessary to make illegal trespassing on the grounds of a girls school, a prohibition which was accomplished in 1882.

Certainly one of the most important changes to occur during this time was the loss of women's suffrage. The new elections law of 1850 said that, “every male subject of His Majesty, whether native or naturalized, and every denizen of the Kingdom, who shall have attained the age of 20 years. . . .” was eligible to vote. The poll tax on women was eliminated two years later. The disenfranchisement of females affected them in many ways in succeeding years because one of the qualifications for other kinds of public activities was being a qualified voter.

It is interesting to note that at the same time married women were being denied the right to own property and all women were being disenfranchised, alien males were given the right to own property on the same terms as natives, and “denizens” were given the right to vote. Denizens were temporary residents who were given the rights, privileges and immunities of Hawaiian citizens but who did not have to give up their own citizenship and did not have to swear allegiance to the king.

Perhaps as important as what was included in the law was what was not. Women were evidently not excluded from jury duty and they were not excluded from judgeships.

The political power of women was further reduced in the Constitution of 1864 with the abolition of the office of kuhina-nui. There had been other efforts to reduce or eliminate the office, and it had, in fact, probably outlived its usefulness. The king felt it detracted from the prestige of his own office, and the Hawaiians had found that such an office did not have a close parallel in other countries.

Throughout this entire period, however, some ali`i women continued to have great political power. Major contenders for the throne at the death of Kamehameha V in 1872 included High Chiefess Bernice Pauahi (Mrs. Charles R. Bishop), Princess Ruth Keelikolani, and Queen Emma. Following the death of Lunalilo in 1874 both Queen Emma and Bernice Pauahi had significant backing to become monarch. Indeed, a large political party coalesced around Queen Emma.
F. Married Women’s Property Act (1888)

In 1888 an act entitled “Relating to the Property and Rights of Married Women” brought the Kingdom of Hawaii’s laws governing the rights of women during coverture in line with similar laws that had been passed in the United States in the preceding decades.¹³³

The law permitted the real and personal property of a woman to remain her own when she married and allowed a married woman to gain, own, and sell her own property and keep her own wages during marriage, although she could not sell or mortgage her real estate without her husband’s consent. A married woman was given the right to make contracts alone, except that in contracting for personal service she needed the consent of her husband. Her contracts were not binding on her husband nor on his own property.

A married woman was permitted to become administratrix, guardian, or trustee and to act for the estate she represented without her husband. She could sue and be sued, although suits between husband and wife were not permitted.

The wife’s property was no longer liable for her husband’s debts. The husband, however, remained liable for the support of his wife and for her debts contracted during the marriage; but not those contracted by her separately in connection with her separate business. His responsibility for her torts was limited to those that she committed with his authority and consent during the marriage. His curtesy right (see section D above) was also limited to a one-third life interest in her real property.

In order for a married woman to do business separately, a statement of the couple’s name and address and the purpose of the business had to be registered with the Minister of the Interior. If this were not done, the wife’s business property became liable for the husband’s debts and his property became liable for her business debts to the same extent that it would have been if he had made them himself.

This law was a major step in freeing women from the common law restraints that had been progressively imposed starting in 1845. Potentially it gave them much more control over their own futures than they had had in the immediate past.

Between 1888 and 1893, as things were beginning to come to a head between the Americans and the Monarch, very little was done to change the status of women. The only major change occurred in 1892 when women were excluded from membership in the House of Nobles.¹⁵⁴ However, since 1850 few had served, so the change was more symbolic than substantive.
G. *Of Revolution, Constitutions, and Organic Acts*

In 1892 Liliuokalani proposed to alter the Constitution of 1884 in an attempt to reverse the flow of power from the Monarchy and its supporters to the Americans and their supporters. Her proposal was the immediate, although not the underlying, cause of the overthrow of the Monarchy. There followed in quick succession a Provisional Government (1893–1894), a Republic (1894–1898) and, finally, in 1898 Hawaii was annexed to the United States.

Unfortunately, one cannot be absolutely confident of the authenticity of the various documents which exist purporting to be the Constitution of 1892, the one which was proposed and then withdrawn by Liliuokalani. Of interest here, however, is that all of the documents extant, and those purporting to be copies of the Constitution drafted by Liliuokalani’s supporters during the time of the Provisional Government, exclude women from membership in the House of Representatives and from voting. Additionally, some specifically exclude women from the House of Nobles, although others do not. While some state that there is to be “universal suffrage,” all limit suffrage to males.  

In the succession established by these documents, specific individuals were to inherit the throne from Liliuokalani. All documents declare that first in line was Princess Ka‘iulani, and some then name David Kawananakoa and Prince Jonah Kūhiō Kalaniana‘ole. In each case succession was first to the named individual’s own heirs with the male being preferred over the female, and then to the next named person.

Following the revolution which overthrew Liliuokalani, a Provisional Government was established. The laws of this government created a four person Executive Council and a fourteen person Advisory Council. By law, all the members were male. In 1894 an Act was passed to provide for a Constitutional Convention whose electors and delegates were all male.  

The Constitution of the Republic of Hawaii established an all male legislature and electorate. The Council of State was also limited to men since its members had to have the qualifications of members of the legislature. In addition, women continued to be excluded from jury service.

Hawaii was made a territory of the United States in 1898. The Organic Act which completed that process excluded women from membership in the Territorial House of Representatives and Senate and from the electorate. Since the Territorial Delegate had to have the same qualifications as members of the Territorial House of Representatives, women were also excluded from that position. Likewise, the Act
stated that “no person who is not a male citizen of the United States...” could serve as a juror or grand juror. There seems to have been only modest resistance to excluding women from the political process in the new territory. Susan B. Anthony, famed suffragette, wrote:

I have been overflowing with wrath ever since the proposal was made to engraft our half-barbaric form of government on Hawaii and our other new possessions. I have been studying how to save, not them, but ourselves, from disgrace. This is the first time the United States has ever tried to foist upon a new people the exclusively masculine form of government. Our business should be to give the people the highest form which has been attained by us.

Her outrage did not move people sufficiently to demand a change in these provisions.

What Anthony had said, however, missed the point. The date that the American system was “foisted” on Hawaii, as far as women were concerned, was 1850 when women were disenfranchised; or in a less narrow sense, 1842 when Christian marriage was required; or 1845 when coverture was established. In any event, by the date of the Organic Act, women in Hawaii had been legally completely “Americanized” for many years.

H. More of the Same (1898–1920)

Not surprisingly, the legal status of women changed very little between 1898 and 1920. There were a number of laws in the areas of morality, coverture, marriage, divorce and education which affected women, but they were almost all modifications of already existing Acts. For all intents and purposes, women’s status remained basically what it was after the passage of the Married Women’s Property Act in 1888.

The age of majority for women was raised to twenty, the same as that for men, and women with or without children were given the right to assume their maiden names after divorce.

For the first time, fathers of illegitimate children could be forced to support the children up to the age of fifteen years. A woman quick with child or who had given birth within six months of the paternity action could have the alleged father arrested if he refused to support the child, and the father could also be required to post a bond to assure that he would pay support payments. A woman who was tricked into marrying an already married man could request the court to order the bigamist to support her from his income.

The problem of deserted women and children was approached in a new way in 1919 through a law which provided for a Board of Child
Welfare. This Board, to be composed of three men and two women, was to give money to children of women who were unmarried, widowed, or deserted by their husbands or whose husbands were inmates or patients in an institution. The Board’s charge was to ascertain whether the woman was a “suitable person” to bring up the children, and if so, whether an allowance from the government was necessary in order for her to do so.¹⁷²

Women continued to be protected in a variety of ways that men were not. Females were forbidden to go into billiard or pool halls and saloons, and no liquor was to be sold to them.¹⁷³ Female prisoners were to have special female matrons when being conveyed to and from prison.¹⁷⁴ New practices had appeared with the importation of Asian laborers, and footbinding of females under the age of eighteen was made illegal.¹⁷⁵

What has come to be known as protective labor legislation for women first appeared in the form of a 1913 law which forbade females under sixteen to work in any “mercantile institution, office, laundry, manufacturing establishment, cannery, sugar mill, work shop, restaurant, hotel, apartment, house, or in the distribution or transmission of merchandise or messages between 9 p.m. and 6 a.m.”¹⁷⁶

Women were specifically permitted to be Commissioners of the Department of Education but not more than two of the six Commissioners could be women.¹⁷⁷ The concern for the education of women as well as men appears in the requirement that the College of Agriculture and Mechanical Arts,¹⁷⁸ and later the University of Hawaii, be open to everyone regardless of sex.¹⁷⁹

The exclusion of women from the electorate continued to have ramifications in other areas as well. Jury commissioners and jurors were to be drawn from voter lists¹⁸⁰ and county officers were to be elected by the same electorate as was eligible to vote for the Territorial House of Representatives.¹⁸¹

I. Postscript

The plan of this article was to conclude in 1920 with the adoption of the 19th Amendment to the United States Constitution which enfranchised (or in some cases, including Hawaii, re-enfranchised) women in the United States and its territories. It is therefore something of an irony to have to note that the Organic Act of Hawaii was not amended to give women the right to serve in the Territorial House and Senate and as Congressional Delegates until 1922,¹⁸² and it was not until 1930 that the Act was amended to give women in Hawaii the right to vote.¹⁸³ In fact, however, beginning in 1920 women did vote in Hawaii because the constitutional amendment took precedence over the Organic Act.
V. CONCLUSION

This paper has traced the changes in the legal status of women which took place in Hawaii between 1820 and 1920. Armed with the Bible and law books, the missionaries and those who followed them into political power in Hawaii succeeded in quickly transforming the legal status of women in Hawaii into what it was in New England. This transformation involved the control of certain sexual practices that the missionaries found sinful and the institution of Christian marriage, followed by coverture disabilities. Two important ancillary issues also dealt with in the law were confining sexual relations to marriage and restraining husbands (particularly foreigners) from deserting their wives and families.

Women were also rapidly excluded from the political process. The two institutions most closely tied to the traditional system of rank, that of the House of Nobles and the position of kuhina-nui, were the last to become all male, the latter being eliminated entirely and the former becoming de facto and then de jure all male.

With the major exception of access to education, women in Hawaii were in the same legal relationship to their families and the larger society as women in New England by 1850. In that sense, they were “Americanized” nearly fifty years before Hawaii was annexed.

NOTES

1 Laws, October 7, 1829. AH.
2 E.g., John Calvin, Institutes of the Christian Religion (Grand Rapids, 1957), 1, xii, 1; 1, xvii, 13; Cotton Mather, Marah Spoken To (Boston, 1718), pp. 29–30; A Glorious Espousal: A Brief Essay to Illustrate and Prosecute the Marriage, Wherein our Great Saviour offers to Espouse unto Himself the Children of Men . . . . (Boston, 1719); John Winthrop, The History of New England from 1630 to 1649, ed. James Savage (Boston, 1853), Vol. 2, p. 281.
4 Genesis 1:27.
5 Genesis 2:22.
6 I Corinthians 11:3.
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