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The aloha paradox: law, language, and culture in Hawai‘i

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ABSTRACT
This paper examines the paradoxical relationship between law and the concept of aloha in contemporary Hawai‘i. In examples of public space, such as the airport, the courtroom, the roadway, the retail store, and the community park, the Native Hawaiian concept of aloha is culturally celebrated as the practice of social affirmation. Yet, in these same places, this same concept is commodified as an identity through which law seeks affiliation and dominance. This paper examines the socio-legal construction of aloha found in linguistic policies that convey a particularly conflicted notion of aloha that characterizes law’s dependency on custom for its legitimacy.

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‘Aloooooooha!’ is the extended greeting heard on the sidewalk, at social gatherings, and to open community functions throughout Hawai‘i, the 50th American state. Aloha is the official and un-official greeting of the Hawaiian Islands in public discourse. The Hawaiian word, aloha, is symbolic of the aloha spirit that values the practice of empathy, tolerance, and acceptance. In Hawai‘i, the concept of aloha is complexly layered in public life. As a cultural concept, aloha is a customary norm indicating social welcome as well as formal greeting. As a social concept, aloha represents compassion and respect and often accompanies a friendly embrace. As a linguistic concept, aloha has been appropriated in its usage as a continuation of American colonization (Silva, 2004; Trask, 1999). And finally, as a legal concept, aloha paradoxically symbolizes a practice of governance that amalgamates cultural, indigenous, and economic characteristics of this island place.

Law often commodifies cultural concepts in an attempt to garner social legitimacy and justify its position of authority over collective identities, community relationships, and social values (Cramer, 2005; Donzelot, 1977; Hage, 2000). Law’s identity is often in need of repair as it is often tarnished through racist, sexist, and other sorts of discriminatory policies and practices. For example, in her excellent work on Native American tribal recognition and casino politics, Cramer (2005) considers the role that law has played in defining the identities of Native Americans. This role is assumed by the federal government through the lengthy and often unproductive tribal recognition process in which many trying to prove Native American ancestry are rejected for not meeting proper bureaucratic criteria. A similar situation confronts the ‘proving’ of Native Hawaiian
lineage for the same legal purpose of establishing a federally recognized indigenous identity.¹

According to Hawai‘i Revised Statute Section 5-7.5, aloha is expressed through ‘kindness, unity, agreeable-ness, humility, and patience’. If one is not from Hawai‘i, ‘aloha’ may seem trite, even kitsch, stereotypically associated with grass skirts, bikinis, and the bright blue ocean. However, in the Aloha State, as Hawai‘i’s state motto describes, aloha is a commonly used expression to convey respect and understanding in everyday interactions, public discourse, and meetings. The recognition, if not celebration, of this indigenous framework could be heralded as a novelty for the United States as indigenous ways of knowing and living have traditionally either been ignored through deceitful treaties or marginalized through segregated reservation living. In Hawai‘i, Native Hawaiian language and culture have witnessed a recent revitalization from previous attempts at erasure by a colonial power. However, for some, colonization has simply morphed into tourism. As a tourist destination for sun-seeking mainlanders from the continental United States or those travelling from Japan, Hawai‘i is perpetuated as an exotic destination through the mythologizing of indigenous ways of being and understanding one’s world (Bacchilega, 2007).

In Hawai‘i, the commodification of aloha through official, state-sanctioned and state-sponsored tourist programmes is embedded in law’s commodification of the Hawaiian language and culture. Constructions of place that are publicly managed and governed through the legal usage of aloha happen in airports, legislative environments, and on public streets. The usage of aloha in these places presents a notion of public space discursively juxtaposed between post-colonial footings of legal authority and localized understandings of community. In this state, celebrated for its multicultural, multiethnic, and multiracial identities and societal harmony, these aspects of the aloha spirit are marketed by the State of Hawai‘i as one reason why Hawai‘i is so special (and, from state’s perspective, an optimal tourist destination). However, the aloha spirit is much more complex than simply a passive embrace of newcomers to the islands. The concept of aloha has historical foundations in the formerly independent and thriving island nation of the Kingdom of Hawaii. In this newest state within the American governance repertoire, the relationship of past to present is often quite tense with vocal opposition to continued American presence in the island chain (Sai, n.d.). Yet despite the political, social, and cultural complexities of contemporary Hawai‘i, aloha endures.

In considering this promotion of community and political imaginary through language (Anderson, 1983; McBride, 2005), this paper will examine the paradoxical usage of aloha as a socio-legal concept of public governance that problematically amalgamates a re-enlivened indigenous heritage at the state level with its concurrent commodification for legal purposes and economic gain. The layout of the paper follows a methodological approach in which legislative activity is tethered to empirical observations that demonstrate the nuances of applicable legal theories involving public space. The first section of this paper will explore the touristically driven normalization of the Hawaiian language on streets and in major airports throughout the state. The second section will examine the porosity of this normalization when the non-touristic framework involving the use of the Hawaiian language is rejected. The paper’s conclusion will discuss the paradoxical framing of a legal imagination in which the Hawaiian language is politically used by the state of Hawaii to promote a strategically positioned identity rooted in indigenous
celebration while failing to fully address and protect the state’s constitutional guarantees of bilingualism in the local community.

**Legally imagined community**

In his work on national identities, Anderson (1983, p. 4) describes the link between speaking and identity as a vital contributor to imagined communities of people who share a language. Anderson states ‘nationality, or, as one might prefer to put it in view of that word’s multiple significations, nation-ness, as well as nationalism, are cultural artefacts of a particular kind’. In this way, those who speak a common language can collectively join to form a national unit. These aspirations of collectivity are articulated in frameworks and policies that root identity within a nation. The nation is imagined through such a community in which people share a common language. In Hawaii, government programmes and policies support a notion of the state’s identity that are rooted in Hawaiian language and a uniquely indigenous Hawaiian customs and cultural practices. Through linguistic platforms, the state desires to frame Hawaii through the Hawaiian language in an effort to remind visitors of the place to which they visit. In recognition of language revitalization efforts of the 1970s and 1980s, Hawaiian is a language to be learned, spoken, and celebrated by a wide range of people even if they do not identity within the ethnic category of Native Hawaiian.

However, for residents, these programmes may be more symbolic than real as some policies exist counter to these articulations involving community through language. In her work on politically imagined communities, McBride (2005, p. 9) describes the discursive framing of community as involving a ‘tension between the normative understanding of communities and the everyday experience of them’. In Hawai‘i, the normative framing of Hawaiian and English as the state’s official languages in the bilingual 1978 Hawai‘i State Constitution is often more rhetorical than actual in everyday situations. Yet, despite this disparity, law and society mutually engage with one another (Brigham, 1996) to reveal the multiple layers of community and identity envisioned through the nexus of hegemonic positioning of language and sustained and enlivened indigenous presence.

In Hawai‘i, the constitutive approach to law and society results in the paradoxical interplay between cultural concepts in public space. On Hawai‘i state vehicular licence plates, there is an image of a rainbow with the words ‘Hawaii’ written above and ‘Aloha State’ written below. Hawai‘i’s nickname, ‘The Aloha State’, refers to the Native Hawaiian word aloha that might be translated as ‘hello’, ‘goodbye’ and conceptualized through the practices of love, tolerance, acceptance, and welcome. The rainbow also characterizes Hawai‘i’s climate of rain, sunshine, and warmth on this island chain in the Pacific where rainbows are practically an everyday occurrence. These licence plates designate cars within the state, whether belonging to residents or driven by tourists (officially referred to by Hawai‘i’s official discourse as ‘visitors’). Metaphorically, the semiotic of the rainbow symbolically represent a multicultural society involving all colours of people who drive licensed cars within the state. In this way, Hawai‘i residents are framed through law as a community united by rainbows and aloha. The framework of the rainbow and wordage of the ‘aloha state’ become part of Hawai‘i’s public discourse concerning a vision (yet not always reality) of racial harmony in paradise, as McBride’s juxtaposition alludes to. Importantly, however, not all drivers who drive in the state display this
particular state-approved licence plate, as some cars display yellow sovereignty plates, such as from the Kingdom of Hawai‘i (Marusek, 2013). This refusal to display the state’s rainbow plates is a political statement rejecting American law and the accordingly problematic usage of the word aloha by a colonizing power (i.e. the United States).

Yet, the normalization of this Hawaiian concept on the majority of licence plates is ubiquitous to the extent that the concept of aloha is encouraged on public roads as the phrase ‘Drive with Aloha’ appears on road construction signs. On the more rural eastside of Hawai‘i Island (the Big Island of Hawai‘i) in Hilo, the aloha spirit is alive in vehicular environments. On these slowly travelled, mostly two-lane highways, it is not uncommon to yield the right of way at four way stops, intersections, or even in the middle of the road. Vehicular expressions of aloha characterize Hawai‘i, even beyond Hilo, as the extension of aloha in which friendly gestures (such as waves or the locally recognized ‘shaka’ hand motion) between drivers are commonplace, even expected; angry honking is rarely heard. On roadways, aloha is a socio-legal concept that constitutively embodies the legal recognition of the local culture emphasizing respect for one another in daily interactions. As testament of this cultural attitude (and community practice), Governor David Ige tells drivers directly in the Hawai‘i Department of Transportation’s Driving Manual: ‘I encourage to show your ‘aloha spirit’ when you drive. Be patient, be courteous, and watch the road at all times. By becoming a good driver, other motorists will follow your lead’ (Director of Transportation, 2006, p. 3). Furthermore, this manual urges to ‘treat bicyclists with aloha’ (Director of Transportation, 2006, p. 97).

The gubernatorial encouragement of driving with aloha by cars officially designated by a rainbow and ‘the aloha state’ are two aspects reflective of what Valverde (2003) refers to as ‘law’s dream of a common knowledge’. Valverde characterizes the value of social knowledge as a source of understanding about life that law depends upon to function. In Hawai‘i, law acknowledges, and even depends upon, the cultural operationalization of aloha as legal source of knowledge and a lawful behaviour. In the Aloha State, aloha is the ‘common knowledge’ for social interaction, and consequently, social order. Even in the meetings of state government, governing officials must exercise the aloha spirit as ‘exercising their power on behalf of the people and in fulfillment of their responsibilities’ (HRS Section 5-7.5). Recently, the late U.S. Representative Mark Takai from Hawai‘i requested that the aloha spirit be recognized in the nation’s capital through the wearing of Hawaiian print shirts. Takai advocated the wearing of a flowery ‘aloha’ shirt on Fridays (also known in Hawai‘i as ‘Aloha Fridays’) at the Capitol in Washington, DC. Presently only ‘full business attire’, which does not include the bright coloured flowers and designs of Aloha wear, is allowed under House rules. In his January 2016 letter to Paul Ryan, Speaker of the House, Takai stated,

The Aloha shirt is a tangible symbol of the Aloha spirit – it embraces diversity, inclusion, and friendliness that pervades throughout the State of Hawaii. Embracing the Aloha shirt will allow members to embrace the Aloha Spirit – something that Washington could use a little more of. (“Takai Asks to Wear”, 2016).

Washington DC, as a site of law, is similar in its visibly clothed construction of authority as at the United States Supreme Court. Brigham (1987) describes the black robing of these nine Justices as contributing to ‘the cult of the court’ in which the representation of power is externally emblematized. It seems that Takai recognizes and challenges this
cult of power through standard dress on Capitol Hill and hopes to alter its effect on the seeming absence of collegiality between members of Congress.

This actualizing of social practice becomes law’s dream of a common knowledge, according to Valverde, in which responsibility is placed upon the individual to respond with respect to others. The state’s platform in promoting Hawai‘i as a place uniquely characterized by the aloha spirit is a form of social discipline with public pronouncement articulated in various forms of state mantra (airport greetings, Aloha Friday attire, licence plates, drivers manual language). For Valverde (2003, p. 169), Ige’s statement, as well as Takai’s desire for change, are indicative of such knowledge as interpreted as responsibility as ‘the legal duty to know’. In the wording of the Driver’s Manual, the duty to react with aloha is the responsibility of drivers in Hawai‘i to know and practice aloha. This public responsibility of aloha for residents and visitors alike is schooled through the vitality of aloha and is used as an example of the host culture’s indigenous language. Hawaiian is the foundation for Hawai‘i, and aloha is the reminder of this place’s history and cultural contribution to contemporary society (among other ways which are too numerous for the scope of this paper). Aloha becomes a form of both common as well as administrative knowledge, also discussed by Valverde, as the concept is used as a foundation for governance. Moreover, as a socio-legal concept of behaviour, aloha symbolizes a form of non-expert knowledge that law’s experts, whether Ige or Takai, depend upon the general public being aware of and able to engage such knowledge in everyday situations.

In everyday situations in Hawai‘i, residents and tourists come together in this island paradise. Attracting millions of visitors each year, Hawai‘i’s economy is largely tourist-oriented and driven. To promote paradise, the state’s Hawaii Tourism Authority (http://www.hawaiitourismauthority.org/about-hta/) is tasked with the development, management and coordination of various plans to help ensure a sustainable tourism economy and achieve the state’s vision for tourism to:

- Honor Hawaii’s people and heritage;
- Value and perpetuate Hawaii’s natural resources;
- Engender mutual respect among all stakeholders;
- Support a vital and sustainable economy; and,
- Provide a unique, memorable and enriching visitor experience.

The 2012–2013 Strategic Plan of the Hawai‘i Tourism Authority (HTA) called for a twofold Brand Marketing Directive that sought to develop the state as a leisure and business destination in collaboration with Hawai‘i’s visitor industry. The ‘Hawai‘i Brand Experience’ (a framework articulated in the 2013–2014 Plan) creates a legal directive that prioritizes the visitor experience as pivotal to the state’s relationship to industry according to the ‘Aloha Spirit, the natural environment, and the state’s people, place, and culture.’ As an indigenously Hawaiian concept of welcome, the state has capitalized upon aloha for purposes of marketing the island chain. Through these strategies, the state’s marketed aloha spirit characterizes Hawai‘i as unique in the tourist market and ideal as a business destination (Hawaii Tourism Authority 2012–2013 Strategic Plan).

With the majority of visitors to the state arriving and speaking either English or Japanese, exactly what these visitors see, hear, and encounter represents a particular imaginary for the state. With this branding perpetuated at public airports via the Hawaiian language greeting, this framing of the tourist gaze (and ear) is carefully constructed according to
legally structured messages, symbols, and experiences and presents a paradox between celebrating an indigenous host culture and exploiting it. The construction of aloha as a form of legal materiality provides insight into the public discourse of the Hawaiian language and accompanying local customs that construct the visitor experience, enliven local definitions of belonging, and perpetuate the commodification of place through legal frameworks and public articulations concerning aloha.

Importantly, not all those who come to Hawai‘i are tourists (or visitors). Many already live here and are returning home. Upon arrival to the state’s international airports, travelers returning to the Islands as well as arriving for the first time, hear a greeting of welcome from the Hawaii Tourism Authority in the Hawaiian language with subsequent translation in English (“Hawaiian Language Greeting”, 2016). With greetings recorded by local residents and heard in Hilo, Kona, Maui, Kauai, Honolulu, and Molokai Airports, the Hawaiian Language Greeting Program is unique to each island in the state. An example of this greeting, as heard at Moloka‘i Airport on the Island of Moloka‘i, is:

E na makamaka kipa mai i ke Kahua Mokulele O Molokai, o ka heke o ke aloha ia oukou! E na hoa e haalele ana, mahalo keia kipa ana i ka aina hanau o Hina. No na kamaina no hoi, e hele a hoi palekana mai no. A ia oukou e malihini3 me na kupa aina pu i hoea mai nei, ke aloha o nei aina ia oukou a pau!

Translated into English: Welcome to Molokai Airport. To our departing kamaaina, travel safely and come back soon. If you’ve just returned, welcome home. And to our visitors, we hope you enjoy your stay and come back to visit again. Ke aloha!

This greeting is the marketing of cultural indigenous authenticity and is complex in its presentation as the greeting paradoxically exoticizes yet reaffirms the bilingual character of the state. Through the word aloha, one hears the Hawaiian language, and through such audibility, experiences this place as distinctly American despite hearing a non-English language. Arguably, this perception of exoticism correlates with a visitor’s perspective, as the Hawaiian language is heard everyday in bits and pieces whether in Pidgin, also called Hawaiian Creole, or as part of regularly spoken English within the state. In this way, the Hawaiian language is part of everyday life in Hawai‘i and is seen on street signs, public buildings, and elsewhere. Paradoxically, the Hawai‘i Tourism Authority manages the aural dimensions of indigenous embodiment in this Pacific island chain while concurrently affirming decades of cultural revitalization movements that have fought and succeeded for the legal recognition and formal inclusion of the Hawaiian language.4 Interestingly, the translation of Hawaiian greetings in airports provides a welcome for non-Hawaiian speakers (both visitors as well as local residents), but also reinforces the state’s celebration (some suggest commodification) of indigeneity for purposes of marketing and state control.

As employed by the Hawai‘i Tourism Authority, the Hawaiian welcome heard in airports is a public expression that connects the state, the Hawaiian language, Hawaiian concepts, local culture, and tourism. These connections symbolize the public discourse of what Hawai‘i is for residents and what Hawai‘i means for visitors. Through the marketing of Hawai‘i as a business and tourist destination, airports are touristically managed for purposes of visitation management. Interestingly, if visitors are viewed as not being ‘of this place’, then the distinction between visitor and non-visitor (or kama‘aina) is formed.5 Being kama‘aina indicates residency and can be superficially demonstrated through a
Hawai‘i State Driver’s License, which often results in kama‘aina discounts in tourist destinations such as hotels and other attractions. Importantly, kama‘aina does not always align with indigeneity as the notion of belonging is not translatable solely through skin colour, accent, or even rental car. However, through the state’s marketing plans and policies, the visitor is embodied as separate, temporary, and not of ‘this place’. Interestingly, this message is what is purported through the Hawaii Tourism Authority’s greetings and branding of Hawaii.

The notion of public space is then rife with social cleavages of who is visiting. What does it mean to visit? Are those who visit always tourists? MacCannell (1999, p. 1) asserts that a tourist is ‘an actual person, mainly middle-class sightseers searching for an experience through which modern civilization emerges. In Hawai‘i, that experience is indigenized in conjunction with the state’s usage of Hawaiian language and concepts for purposes of publicly branding a sense of civilized island hospitality. In Hawai‘i, the experience of MacCannell’s modern civilization involves a language other than English, with residents as well as visitors encouraged to live with kind regard for one another through aloha as the legal framework that celebrates the indigenous origins of respect. Importantly, in a constitutive sense, the law that perpetuates aloha is in response to an indigenous as well as non-indigenous culture of generosity, tolerance, and understanding about community. This aspect of tourism (Bacchilega, 2007) links heritage to the lived present day and can be characterized as the enlightening of mainstream American (and perhaps Japanese) life that could benefit from kinder approaches to living among stranger.

**Socially imagined community**

While the legal imagination of Hawaii in conjunction with the perpetuation of aloha serves the economic needs of the state’s tourist economy, the political reality of this imagined community may be less convincing. At this point, we might consider the popular bumper sticker in Hawaii ‘Don’t Mistake Aloha for Weakness’ for its contribution to the public discourse involving aloha. This bumper sticker is the affirmation of aloha as a source of empowerment with indigenous meaning and intention rather than the often trite association with paradise and palm trees. The statement on this bumper sticker might be translated to mean that Hawai‘i, as a place with aloha, should not be taken for granted and that each member of the community should contribute accordingly. This statement is also an indication that aloha as a concept has been commodified as something kitsch and lacking substance. This commodification has historical roots in the colonizing actions of Christian missionaries during the 1700s and 1800s towards Hawaiians. Christian messages of kindness and ‘turning the other cheek’ were aligned with a discourse that attempted to domesticate and pacify Native Hawaiians (also called Kānaka Maoli) in the face of political prowess that ultimately overthrew the Hawaiian monarchy in 1893. Even after the Hawaiian Islands became the 50th American state in 1959, the mollified discourse of tolerance and mutual respect fuelled the needs of a growing tourist industry and accompanying image of a welcoming native embrace. However, with the sovereignty movements of the 1970s and 1980s, the concept of aloha has been re-articulated as still kindness and strength of character, but now rooted in an indigenously Hawaiian identity that refers to Kānaka who are empowered, strong, and no longer able to be walked all over.
Despite the legal perpetuation of aloha, there are many ways that state fails to fully engage the Hawaiian language in politicized, non-tourist-drive, aspects of everyday life. For example, although the use of Hawaiian is constitutionally asserted, it remains legally under-protected as shown in the recent case involving the arrest of protesters at the controversial Thirty Meter Telescope on the summit of Mauna Kea on Hawai’i Island. During their trial, some of the protesters addressed the court in the Hawaiian language to which the presiding judge stated she could not understand them and therefore could not respond to them without a translator (Burnett, 2015a). The dominant language of governmental and court proceedings is in English despite the bilingual framing of state discourse. In this way, fluency in the Hawaiian language can be associated with assertions of Hawaiian sovereignty in which English is still the language of those who illegally overthrew the Hawaiian Monarchy in the nineteenth century. English is publicly dominant among other languages spoken in Hawai’i, including Cantonese, Chuukese, Ilokano, Japanese, Korean, Kosraean, Mandarin, Marshallese, Pohnpeian, Samoan, Spanish, Tagalog, Tongan, Vietnamese, and Hawaiian, which are dependent upon translation (“Court Interpreting”, 2016). In this way, the legally formal use of aloha in tourist discourse remains a complexly layered response and doesn’t fully engage with the official bilingualism, much less linguistic multiplicity of this place.

A few years back, one of my undergraduate students, Ethann Oki, wrote a paper for my Legal Geography course on the legal semiotic of a check written in the Hawaiian language. In his account, a friend named Kalei was shopping at a large U.S.-based franchise retailer in an upscale Honolulu mall and wrote a check for her purchase. When she handed the check, written in ‘Ōlelo Hawai’i (the Hawaiian language) to the cashier, her payment was refused. Unable to read the check, the cashier was puzzled with the writing and gave the check back to Kalei and asked for another means of payment. Taken off guard by the denial of payment, Kalei politely asked for an explanation. The cashier explained that the language used was unreadable and could not be received as a legitimate form of payment, particularly as the store’s policy stated that all payments should be in the English Language. Aware of her rights under the State of Hawai’i Constitution to use ‘Ōlelo Hawai’i in trade or commerce, Kalei requested to see the manager of store. Despite the legality of English and Hawaiian as state languages, the store manager supported the cashier’s refusal of the check as payment under the policy of receiving payments only in English. This check constitutively represents the paradoxical positioning of law in a state whose social and legal culture embraces ‘Ōlelo Hawai’i but is faced with an ever-expansive privatized economic presence. Through the check’s refusal, the public interest of a community in which both English and ‘Ōlelo Hawai’i are officially recognized languages is at stake in this denied performativity of rights. As this example shows, certain rights must be performed as semiotic markers of law and culture in order to be recognized. Yet the performance of aloha through law in tourist discourse is an incomplete, and arguably duplicitous semiotic of officially celebrated indigeneity.

In expanding upon a Peircean semiotic framework, Kevelson (1988, p. 15) reminds us that ‘law [is] a sign system, interrelated with other social sign systems such as language, economics, government, family, and the many cultural institutions historically recognized as such’. In this way, the check written in Hawaiian by Kalei is a sign system just like the other examples discussed throughout this paper that reveal how law works in everyday life. Therefore, the rejection of the check written by Kalei can be viewed as more than having
just monetary relevance. Instead, the rejection of the check is a challenge to legal rights that constitute a culture and way of life sustained in the public forums of Hawaiian life and breathed anew in Constitutional foundation and daily application. With this in mind, we can see that the rejection of Kalei’s check represents an economic attempt to re-create law and culture in a limited manoeuvring.

In 2006, the Hawai‘i State Legislature passed State of Hawai‘i’s Language Access Law (HRS Sections 371-71 to 371-37 (2006 Haw. Sess. L. Act 290)). This law clarifies language access according to public or private accommodations. Entities that do not receive state funding nor provide services to the public on behalf of the state are exempt from the law that expands language access to English, ‘Ōlelo Hawai‘i, and other languages through interpreter representation. Accordingly, private stores are exempt from the law’s provisions that also include the gubernatorial appointment of ‘one representative of a Hawaiian language advocacy organization’. This exemption seems to reject the rights associated with the 1978 Constitutional provision that ‘Ōlelo Hawai‘i was one of two state languages. However, as this law is intended for state-funded programmes and activities (HRS Sec. 371-71 “Purpose”), places like this major retailer and other private businesses and not held to the same standards as public entities. The consequence of the ability of such companies to privatize legal rights held by and exercised in numerous places public is one in which the struggles and successes of the revitalization of ‘Ōlelo Hawai‘i are in jeopardy.

In his analysis of ‘the extent and the manner in which legal systems contribute to the perpetuation of capitalist systems’, Hunt (1993, p. 17) describes the ways in which law and class domination are intricately bound. He tells us ‘the most pervasive ideological effect of law is to be found in the fact that legal rules and their application give effect to existing social relations’ (Hunt, 1993, p. 25). In heeding Hunt, we can see that if one is legally entitled to use the Hawaiian language, but is denied that right when writing a check to a private business that is legally able to reject it, the application of law is in fact hollow. If private entities are not required to provide language access to speakers of ‘Ōlelo Hawai‘i, the Hawaiian language as suggested by the 2006 Language Access Law, then rights are more myth-based than reality-based. Scheingold (2004) describes this division as the myth of rights versus the politics of rights in which a right is only as good as its exercise. However, if the rights of language cannot be exercised as the rejection of a check written in ‘Ōlelo Hawai‘i suggests, then rights based in language are effectively mythical in practice.

Yet, aloha as distinctly ‘Ōlelo endures. According to Mike McCartney, of the Hawai‘i Tourism Authority, ‘It’s about resetting who we are as a people, place, and culture’ (Morales, 2011). ‘It’s a way to reconnect the visitors to true Hawaiian culture and to give respect and aloha to Native Hawaiians’ (Morales, 2011). Former Governor Neil Abercrombie echoed this sentiment in his support for the bilingual announcement in airports as ‘Today is the day that Hawaiian language began a new era in Hawai‘i’ (Morales, 2011). This welcome showcases ‘Ōlelo Hawai‘i in the public venue provided by the airport as a state with a rich history, indigenous culture, and officially recognized bilingualism at the hands of the Governor as well as state agencies such as the Hawai‘i Tourism Authority. News channels and radio stations within the State of Hawai‘i have daily excerpts and weekly shows in ‘Ōlelo Hawai‘i. Additionally, the internet has been an extremely powerful tool in spreading the language throughout society. The application of ‘Ōlelo Hawai‘i can
even be seen in the popular social networking site of Facebook. Google has ‘Google Hawai’i’ with the language of the site as ‘Ōlelo Hawai’i. The conversations, comments, and captions of individual accounts can be written with ‘Ōlelo Hawai’i. Furthermore, many organizations, companies and schools use ‘Ōlelo Hawai’i as their method of communication with their customers who are either speakers of the language or new students of the language.

Ironically, the cultural presence of the Hawaiian language uniquely characterizes Hawai’i as a state with a rich indigenous history celebrated through the legal recognition of ‘Ōlelo Hawai’i used and spoken in everyday places. Socially, the use of the Hawaiian language reaffirms the connection between law and culture. Brigham (1996, p. 47) emphasizes the importance of this constitutive relationship as one in which ‘the assertion of a legal right indicates the social relations the legal form constitutes’. He further tells us ‘the answer to why rights persist lies in their social reality’ (Brigham, 1996, p. 48). In adopting Brigham’s constitutive approach to the relationship between law and society to think through the many earlier examples of experiencing the Hawaiian language in everyday places, we can see that the social reality in Hawai’i overwhelmingly supports and sustains the concept of aloha in which strangers are respected and a thriving community is sustained. Yet, the experience of aloha nonetheless characterizes aloha through cultural appropriation as the state’s use of aloha without the substantive backing by law to either write checks in Hawaiian or to speak Hawaiian without translation in court could actually be interpreted as a threat to the cultural identity of the Hawaiian people, the Kānaka Maoli. While the community in Hawai’i is more aware of the language than ever before in public discourse, the need to keep the words used from diluting the original meaning of the language and its concepts is extremely important as the fear of total integration with foreign ideals creates a dilemma for people of all indigenous races.

So, what remains is whether or not retail stores and malls truly is private or whether it, like other publicly used places, is really a public forum providing a form of public service? The social relations that places such as this store, or in the earlier contexts of the airport or roadway, foster are sites of public discourse. The difference then becomes an understanding about power, insofar as who owns versus who uses this place. Ownership by itself privatizes those places that otherwise arguably could be framed as public gathering points or publicly available spaces. Kohn (2004) examines the disappearance of the public forum in her book Brave New Neighborhoods. Kohn (2004, p. 7) asserts, ‘according to modern conceptions of property rights, ownership also implies control over the range of permissible uses’. In our context, the public form is trumped by the ability of a private company to ignore a constitutional right through the rejection of Kalei’s check. However, until legal action is taken to ameliorate this form of everyday injustice, the ownership of a company such as the one involved here will prevail against Kalei’s rights to use the language of her choosing by privatizing the public space in which constitutional rights can be exercised. And, not to be missed in this denial of rights is the state’s complicity in granting such private businesses exception to the state’s constitutional mandates.

Using a language is the affirmation of culture, and when legally protected, must be recognized in all aspects of life, public as well as private. In the case of ‘Ōlelo Hawai’i, the Hawaiian language, rights are performed through such semiotic avenues as checks written in Hawaiian, road signs using Hawaiian words, and the visual presence of the Hawaiian language in the mundane aspects of our everyday lives. Socially, culturally,
and legally, we can challenge the narrow interpretations of law harnessed by the economic motivations of privately owned businesses by asserting the public nature of spaces in which the language of a culture is protected by state mandates. What really is the public forum when language is concerned? Should the private rights of ownership command which languages can be used on private property? Is all private property outside the realm of public forum? Should private rights trump public rights in the area of language? The contest over the exercise of language rights effectively juxtaposes the 2006 Hawai'i’s Language Access Law against the 1978 Hawai'i State Constitution. As the story of Kalei illustrates, legal rights are actually diluted if they cannot be socially used. In this way, rights are performed. Here, performative semiotics is the notion that the rights of language, as constitutionally granted, must be performed visually and symbolically in daily life to be valid. In his work on the use of English and Hopi in Hopi courts, Richland (2007, p. 554) describes the speaking of Hopi as a semiosis of sovereignty. Richland’s insight into the vitality of language as the political representation of rights in courtrooms is useful when comparing the rights of language exercised, but denied, in a private retail store.

However, property assertions need not dichotomize public with private. In his essay entitled ‘Aloha Jurisprudence: Equity Rules in Property’, Brophy (2006) writes about the historical trends in judicial property division in Hawai'i. Brophy describes a sense of aloha that prevails in property case law and provides a notion of ‘aloha jurisprudence’ that balances community rights with property ownership. In his review of Hawaiian case law involving land distribution, access, and ownership, Brophy discusses a ‘humanitarian analysis of property law’ that takes into account ‘the interests of the dispossessed’ (including Native Hawaiian and other dispossessed groups). For Brophy, ‘aloha jurisprudence seems to prefer fewer property rights and more community rights, which seems to be facilitated by the restriction of less costly liability rules’ (2006, p. 809). Brophy’s conceptualization of ‘aloha jurisprudence’, as the decisions and effects of courts receptive to and respondent to a localized appreciation of communal values, provides insight into law’s relationship with public life in Hawai'i. In these islands in the Pacific, the concept of aloha flourishes and is enacted as well as interpreted through a variety of socio-legal concepts.

Despite its complex legal existence, aloha is also a source of informal governance. As a form of habitus (Bourdieu, 1984), aloha is a practice of everyday life in Hawai'i (De Certeau, 1984). While ubiquitous in name and recognized throughout the state, aloha can become a source of power, as resistance to a status quo that is opposed to cultural norms. In many situations, the aloha spirit may be more theoretical than applied as one might ask ‘where’s the aloha?’ as a way of discouraging unwanted social behaviours. Social governance, or the practice of informal law (Marusek, 2005), is a way to constitutionally demonstrate the relationship between local understandings of an aloha-focused culture and unwelcome actions that seem contextually out of place. One such example of aloha-based social disciplining is the controversial presence of Mr James Borden at Lincoln Park in Hilo. Borden, a self-proclaimed minister of his own church, parks his truck on a public street at Lincoln Park, a park with green grass, playground structure, picnic tables, and pavilions. In the centre of downtown Hilo, Lincoln Park is also located at a well-travelled, heavily populated intersection. Nearly each day for the past five years, Borden sits under a tree in the park adjacent to his truck, on which a very
tall poster is displayed. On this poster are a range of images, including the portrayal of President Obama as a rat, bloodied aborted foetuses, and evangelical Bible verses used to denounce Islam.

To many in Hilo, Borden is offensive and does not belong. The public nature of Borden’s positioning ironically depends on the public protection for his unpopular, extremist views through his parking on public streets in parking spaces times for the allotted eight hour timeframes. Technically, he is not breaking any laws, including sign ordinances regarding the height of his various signs over the years. However, many ask, ‘Where’s the aloha’ and have begun to rally in protest against him. The group called ‘Take Back Lincoln Park’ displays signs that read ‘Take Back da Park’ and ‘Honk 4 Aloha’ (Burnett, 2015b). Honking for aloha was an outlet for angered residents, tired of Borden’s seemingly endless tirade against Obama, Islam, and pro-life attitudes. As noted earlier, honking in the Hilo, Hawai’i vehicular environment is socially frowned upon as a undesired practice reflective of vehicular hostility in the United States mainland. Rather than honking, one should be patient. However, in the case of James Borden, honking was re-enlivened as an audible message in support of protesters and against Borden. Honking became a positive noise interruption of the status quo (both in terms of not honking and also of passively permitting Borden’s anti-aloha messages). Perhaps ironically, and as perhaps characteristic of aloha as a concept, Borden is still there (as of this writing) in Lincoln Park. He is tolerated, yet effectively ignored.

Constitutively and intuitively … aloha!

The framework of aloha is one of mutual exchange, in which all persons give and take, as part of the larger good. Law, in its social framing of aloha as presented in this paper, is not quite an equal member of the aloha exchange as law is in a position of authority with power over rather than power with or through. Arguably, this positioning of aloha as a reminder for social discipline stands in paradoxical positioning to the concept of aloha that is authentically and individually generated in interpersonal relations. Rather than an organically generated notion that constitutively creates and sustains community, law’s use of aloha is one of direct command and formal articulation of how the law would direct its subjects to act. In addition to this normative framing of aloha as official policy, some scholars consider the attention to aloha by law as a problematic source of economic exploitation despite its celebration of an indigenously Hawaiian world view on social relations. The tension that arises comes from the islands’ history of American overthrow and the contemporary relationship of Western law to the Hawaiian language in public spaces.

The public forum and associated forms of public discourse constitutively shape law’s relationship to cultural and social life. Whether in airports, on roadways, or in private retail venues, an imagined community is legally created as well as politically contested through the complex conceptualization and practice of aloha. Yet, aloha is all of these things, from the indigenous to the non-indigenous; from the tourist to the residential; from the celebrated to the commodified. Despite law’s interaction with the notion of aloha in representing its authority within a culture that practices aloha, aloha endures as law depends upon the social and cultural frameworks perpetuating aloha for its own success. In this mutually constructive relationship, aloha in public discourse is
paradoxically enlivened in which community and law are tethered to one another in complex, and often contradictory ways that celebrate while simultaneously appropriate life in this Pacific island chain.

Notes

1. For more information, see the recent controversy involving the proposed Akaka Bill and relationship between the United States Department of the Interior and Native Hawaiian sovereignty status at the federal level.
2. For a more in-depth study of Waikiki tourism, see Downey (2007).
3. An anonymous reviewer for this article gently inquired whether 'A ia oukou e malihini' should instead be 'e na malihini'. I rechecked the state's Hawaiian Language Greeting as launched at Molokai Airport, and A ia oukou e malihini is as it appears according to the Greeting’s publisher, the Hawai‘i Tourism Authority. While I appreciate the reviewer’s careful reading and wish to respect the reviewer’s suggestion for a change in language, because I am not a native speaker of Hawaiian, I will leave it as originally published.
4. The HTA’s statement on the Diacriticals of the Hawaiian Language is as follows:

   HawaiiTourismAuthority.org recognizes the use of diacritical markings of the (modern) Hawaiian language including the ‘okina [’] or glottal stop and the kahakō [ō] or macron (e.g., in place names of Hawai‘i such as Lāna‘i). However, you may notice these diacritical markings have been omitted throughout the website to ensure the best online experience for our visitors. HawaiiTourismAuthority.org recognizes the importance of using these markings to preserve the language and culture of Hawaii and respectfully uses them in all communications beyond the online platform.

   The writer of this not well-versed in Hawaiian diacritics and is limited, at the moment, to the use of the ‘okina in Hawai‘i and means no disrespect.
5. This viewing, and subsequent judging, may be based on skin tone, speech habits, and mannerisms.
6. For further discussion of belonging in Hawai‘i, please see Rohrer (2010).
7. For further discussion of this and related issues and contexts, please read further: Silva (2004); Kēhaulani (2008); Goodyear-Kaopua, Hussey, and Wright (2014); and Merry (2000).
8. Ethann and I presented our written collaboration as a paper to an audience of multiple departments at our university and also at a regional academic conference. I include sections here from our earlier collaboration with his permission.

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No potential conflict of interest was reported by the author.

Notes on contributor

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