

Opium and the Law

Hawai'i, 1856–1900

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THE EMERGENCE OF "THE PROBLEM"

Moved by the demand for agricultural products due to the California Gold Rush, the 1850 legislature of Hawai'i enacted a series of statutes to encourage the development of export agriculture in the kingdom. Included was a Master and Servant Act that provided the legal framework for the recruitment of foreign contract labor. In 1852 some 293 male Chinese contract laborers from Amoy in southern Fujian joined the small Chinese community in Hawai'i. After this first group another 1,247 male Chinese, along with fifty-four women and five children, were imported from China through 1863. These immigrants and all subsequent contract laborers stemmed from Guangdong.

Given the locations from which the Chinese laborers had come, it should have been no surprise that they brought along the practice of opium smoking. China had begun importing opium for medicinal purposes about 1535 (Parker, 1888: 2), and by 1680 the Chinese had developed a process for preparing it which greatly increased its potency. Smoking for pleasure became more widespread, and the number of addicts increased. In 1729 the first imperial edict was issued prohibiting the sale of opium and the maintenance of places where it could be smoked. However, England developed a substantial trade deficit with China because of the addiction of the English to China's tea. The efforts of the English government to restrict this "luxury" to the wealthy through high tariffs had produced a vast smuggling operation characterized as a "guerrilla war" (Winslow, 1975). England's "solution" had been to counter Chinese tea with India's opium.

Between 1796 and 1839, the Chinese emperor in turn countered with a series of edicts prohibiting importation of opium, each with more severe punishments, but opium continued to pour into China through the collusion of Chinese

mandarins and foreign smugglers, primarily British, backed up by the massive and largely government-controlled opium production system in India (Allen, 1850: 4–9; Fay, 1975: Ch. 4).¹ In 1839 an imperial edict established new penalties for opium smuggling—beheading for foreigners and death by strangulation for natives—and the government began a major effort to close this trade around Canton. The ensuing Opium War of 1839–42 and the related "unequal" treaties opened several Chinese ports to general trade and established the British colony of Hong Kong, which rapidly became the center for opium trade and smuggling. The Chinese emperor continued to issue edicts prohibiting the importation and smoking of opium, but the quantities smuggled from abroad increased until the Chinese began their own illegal domestic production (King, 1972: 6–10).

Nathan Allen (1850: 12 and 21) reported of Amoy, "I was told on good authority that every man who could afford to buy opium was in the habit of smoking," and that Amoy had as many as one thousand opium shops in 1843. He reported similar situations in many other locations in southern China.

Nevertheless, we have found no evidence of any expressed concern about opium in Hawai'i when plans were devised to import Chinese laborers. In fact, during the 1850s opium was a component of several of the patent medicines or "health elixirs" regularly advertised and dispensed by pharmacies as well as other retail stores in Honolulu. The newly arriving Chinese simply introduced the practice of smoking it, and Honolulu retailers added "prepared opium" to their list of wares. For example, in 1855 Richard Coady, the keeper of a general retail store, advertised that he had just received "Cases of Prepared Opium, put up in Copper Packages of 2 and 3 Taels each, 49–21" (*Polynesian*, April 14, 1855). It is possible that many people in Honolulu were quite naive about the consequences of opium addiction.

However, by the very next year, 1856, the Chinese became a special problem for law enforcement and crime control in Hawai'i. In January 1856 the police justice of Honolulu, J. P. Griswold (quoted in Chief Justice, 1856: 13) asserted that "the introduction of a foreign eastern element among the people" has brought a crime "heretofore almost unknown to the islands . . . that of burglary." Since the early 1820s the government of the kingdom had struggled with

the problem of the favorite abused substance of the haoles—“spirituous liquors”—and its threat to the native Hawaiians (Tokishi, 1988). Opium was now defined as the analogous “Chinese problem.” William Lee (1856: 2), chief justice of the Supreme Court, who as the first president of the Agricultural Society had strongly supported the recruitment of the “industrious” Chinese, now called upon the legislature to take action, and King Kamehameha IV, who throughout his reign manifested great concern for the health and declining numbers of the Hawaiians, underlined the urgency of the matter in his opening address to the Legislature of 1856 (Lydecker, 1918: 66–67).

OPIUM CONTROL LEGISLATION, 1856–1900

The Legislature of 1856 responded and passed the first of fourteen enactments that would deal with opium between 1856 and 1900. Analysis of these statutes and the debates accompanying their passage makes several points clear: throughout this period the population was continuously divided over what the public policy should be; the divisions were based upon both economic interests and moral considerations; and these divisions cut across the various ethnic groups, including the Chinese.

1856–59: Physician Monopoly for “Medicinal Purposes”

In their calls for legislative action Lee and Kamehameha IV advanced two reasons for the needed regulation: (1) to protect sugar plantations by preventing opium smoking and addiction from interfering with the efficiency of “coolie labor,” and (2) to protect the “life and health” of the declining native Hawaiian population, for the Hawaiians, it was claimed, had a “sociable nature and readiness to acquire any new thing” (Castle, 1884: 1).

The 1856 enactment was intended to limit the use of opium to medicinal purposes only. It provided that, beginning August 30, 1856, only licensed physicians and surgeons who purchased an additional special license for \$40.00 per year could lawfully import, sell, vend, or furnish opium to any person (Laws, 1856: May 30). The penalty for violation was a fine of \$50 to \$250. Possession or use per se was not prohibited and there was no requirement that a possessor have a prescription. Of course, the already existing laws pertaining to illegal imports and smuggling might also be applicable.

This regulatory scheme concentrated the legal supplies of opium in the pharmacies and offices of the physicians, who in turn soon became a special target for Chinese burglars.² However, it was hardly necessary to commit such crimes to obtain opium. The licensed physicians were legally importing large amounts of opium and regularly referred to it in

the advertisements for their pharmacies.³ Moreover, whether opium was purchased originally from physicians or smuggled into the kingdom, its sale and resale were quite lively in the Chinese community in Honolulu, which was growing rapidly as labor contracts expired. “Opium shops” or “dens” also had begun to appear. In May 1858, the *Pacific Commercial Advertiser* (PCA) raised questions about the government’s efforts to enforce the laws on unlicensed importing and selling (PCA, May 1858). The *Polynesian* (May 8, 1858) responded by advising the editor of the *Advertiser* to visit the police court and see for himself.

The published court statistics indicate that there were only four convictions for illegal selling for the years 1856 through 1859, but we have located five such cases, those of Awung, Ahsea, Akiulau (alias “Buck”), and Akina on Oahu and Kipeau on Kauai. A sixth person, Atiak, was convicted of furnishing opium to a prisoner. The usual penalty was a fine of \$50, which was paid within three days. Clearly the Chinese engaged in illegal selling or furnishing had little difficulty in paying their fines. Furthermore, Mr. Bartlett’s Chinese servant, who was committed to the fort in a contempt proceeding for desertion from service, informed the jailer that “he preferred the Fort to going home as he got plenty of opium whenever he wanted it, his Master paying for his support while in confinement” (*Prison Log*, February 18, 1857, in *Paahao Press*, January 1948: 14).

1859–60: “Prescriptions” for Chinese and Tougher Penalties

In 1859 the legislature reviewed all existing licensing laws as it compiled the first full civil code for the kingdom, and it made two major changes in the opium sections. First, sales to “Chinese or coolies” were expressly forbidden unless under a *written* prescription from a licensed physician. Second, the range of permissible fines was increased from \$50 to \$500, and an alternative sentence of imprisonment up to six months was authorized for the first time. Possession per se, even for Chinese without a written prescription, was not specifically prohibited (Civil Code, 1859: Ch. 7, Secs. 83–89). This more stringent policy remained in effect for only one year. Suddenly it was reversed.

1860–75: A Chinese License

By 1860 it was generally acknowledged that the existing efforts to control opium smoking among the Chinese were not effective. The prohibitionists, moreover, had suffered a major defeat when word came in that U.S. minister William B. Reed had taken the lead in forcing China to include full legalization of incoming opium shipments in the treaties negotiated in 1858 during the Second Anglo-Chinese War (King, 1972: 9). In addition, the kingdom was in dire need of additional income as it moved from a primary

dependence on whaling to sugar. In these circumstances the Legislature of 1860 added a policy of cultural pluralism to its policy of recognized medicinal purposes. Just as it had previously been forced to adopt a policy of legal licenses for the importation and distribution of spirituous liquors to the haole residents and transients, so it now established a licensing system for nonmedicinal importation and distribution of opium—but only to Chinese.

The new law, effective August 21, 1860, allowed the unrestricted sale of opium “to Chinamen” only (Laws, 1860: 22). Three “Chinese licenses,” two for Honolulu and one for Lahaina, were authorized at an upset price of \$2,000 each. Each license was conditioned upon the execution of a bond in the penal sum of \$1,000 not to sell to anyone except the Chinese. Licensed physicians could continue to import, sell, and furnish opium for medicinal purposes without the special additional license to import. All others were prohibited from dealing in and using opium on pain of a fine up to \$1,000 or imprisonment at hard labor for up to six months.

This act remained in effect for fourteen years, during which time the government collected a total of \$123,714 from license sales. However, it failed to produce the anticipated income for the first six years (1860–67) because each year the Chinese, “with their rare ability for combination and respect for Chinese obligation” (Castle, 1884: 2), joined together, bid \$2,000 for the first license, and did not seek the second Honolulu license. Of course, there were only about 850 Chinese residents in 1860 and this number had increased to only about 1,200 in 1866. Nevertheless, it was estimated on the basis of the duty paid on opium imports that during this period the opium trade was a \$15,000-a-year business (PCA, January 21, 1864).

However, in 1868 the two major local Chinese groupings, the bendi (Punti or “natives”) and Kejia (Hakkas or “guests”) began to compete for the Honolulu license. Hence its price rose to \$2,952. For the two-year period 1869–70 the average price was \$9,267 each year; for 1871–72 it was \$11,124; and for 1873–74 it was \$23,357. The government, of course, gained additional revenue from the duty paid on legal importations. When new legislation was passed in 1874 to eliminate the license in mid-1875, the 1875 license was still bought for \$19,266 on the chance that it would be valid (Castle, 1884: 2). At that time there were about four thousand Chinese residents and, if the same ratios held as in 1864, the opium trade then amounted to a \$60,000-a-year business.

At the same time as the licenses became more profitable to the government, the first Japanese laborers, 140 men, 6 women, and 2 children, arrived in 1868 with three-year contracts. However, the Japanese government soon expressed dissatisfaction with the manner of recruitment and the character of the recruits. It refused to send additional workers and made no attempt to insist upon or encourage the return of the first group, most of whom remained in Hawai‘i (Kuykendall, 1953: 183). Although a treaty between Hawai‘i and

Japan was signed in 1871, Japan permitted no more laborers to come to Hawai‘i until 1885 (Kuykendall, 1967: 154).

One reason for Japan’s refusal was Hawai‘i’s opium policy and the extent to which the 1868 group had become users of opium. The laws of Japan were very hostile to opium use.⁴ If Hawai‘i desired more Japanese laborers, something had to be done about “the Chinese problem.” The relationship between the two was highlighted in May 1874, when fifteen Japanese laborers were charged with assaulting Henry Treadway, their overseer. The assault reportedly occurred because they had “lost time” because of using opium, for which Treadway had declared he was going to “dock” them (PCA, May 23, 1874).

1875–79: Prohibition

The elections of 1873 produced many new faces in the 1874 legislature (Kuykendall, 1953: 262). Five opium bills were introduced. Only two went beyond a first reading, but these placed the issues dividing the community squarely before the house. Mr. Simon Kaai’s bill was to continue a single annual Chinese license, to be sold at public auction with an upset price of \$16,000. Mr. Komoihuehue’s bill sought to eliminate the special treatment for the Chinese and return to the 1856–59 policy of restricting the importation and use of opium to medicinal purposes only.

An organized movement quickly emerged in support of a new prohibition. Many petitions protesting Mr. Kaai’s bill poured in daily to the Assembly. The petitioners included “some 500 Chinese [from Oahu] alone . . . asking for the suppression of opium” (PCA, May 21, 1874). The petitions represented a broad spectrum of the community, and while most seemed primarily concerned with the problems of addiction and exploitation of the Chinese or a spread of the smoking habit to the Hawaiians, a few seemed more concerned with breaking the legal monopoly over the “Chinese market.” Despite the petitions, Mr. Kaai’s bill passed the Assembly by a vote of twenty-one to fifteen on July 21, received the sanction of the king on August 1, and was published as Chapter 38 of the Session Laws of 1874. There was to be a new Chinese license, and it would cost at least \$16,000 for 1875.

However, passage of the Kaai license bill did not automatically kill the Komoihuehue bill, and the opponents of a Chinese license increased their pressure on the legislators and the king. When the prohibitory bill came up for third reading on August 7, it too was passed. The king approved it the next day, and it was published as Chapter 56 of the Session Laws of 1874. Its effective date was August 8, 1875.

This second act authorized only the Board of Health to import and furnish opium, and then only for medicinal purposes. It prohibited all others from importing, selling, furnishing, or giving opium or its preparations under penalty of imprisonment for up to two years. For the first time mere possession of opium or preparations of opium became an offense, punishable by up to one year of imprisonment

at hard labor. Any physician who sold, prescribed, or otherwise furnished opium to persons “in the habit of smoking or otherwise using the same” was to forfeit his opium and to be subject to a fine of \$25 to \$100.

This prohibitory bill was generally well received by the press and large segments of the community. However, the fact that it did not take effect until August 8, 1875, coupled with the fact that the government had already sold the Chinese license for 1875 as authorized by Chapter 38, produced a spate of appeals to the Supreme Court when criminal prosecutions began under the new Prohibitory Act.⁵

Moreover, many persons continued to protest against the discriminatory nature of the Prohibitory Act. A good example is the letter by “Fair Play” (PCA, January 22, 1876), which argued that: (1) to a Chinese addict smoking was a “habit as irresistible as the impulses of the maniac,” (2) sudden suspension could “render death the inevitable consequence of its withdrawal,” and (3) many patent medicines readily available in the stores contained opium. The letter then concluded that it was “a ghastly parody” of justice “when the poor Celestial alone is held to account for the violation of a law which is equally violated in nearly every household in the Kingdom.” Of course, the “Fair Play” letter was not written in a vacuum, for just the month before Albert McWayne, a general retailer who claimed to be an “unlicensed pharmacist,” had been convicted in the police court and fined \$50 for selling laudanum to Mary Magdeline College Bickerton.

The 1876 legislature made only a few technical changes in the Prohibitory Act, but the debate in the community continued in the pages of the pro-license *Advertiser* and the prohibitionist *Hawaiian Gazette*.⁶ When the 1878 legislature convened, Representative Simon Kaai again introduced his Chinese-license bill, and on July 17 the Assembly passed the bill by a vote of eighteen to fourteen (*Gazette*, July 17, 1878). However, a month later King Kalakaua vetoed the bill, and the Prohibitory Act of 1874, as amended, continued in effect.

Two court cases kept the public’s attention focused on the opium issue. In December 1878, Henry Bradley, a Honolulu saloon keeper who was very visible because of his high lifestyle, was convicted in the police court for smuggling opium and became the first smuggler sentenced to imprisonment at hard labor under the mandatory provision of the 1874 Act rather than a fine under the general smuggling statute. Bradley appealed, and in January 1879 the Supreme Court held that mandatory imprisonment was the only sentence applicable to the crime of smuggling opium. Thereafter “the rule of no fine” was to be strictly enforced.

Two months later a dramatic murder case gave additional impetus to the fear the opium addiction was spreading to the native Hawaiians. In March 1879, it was reported that Akela, a Chinese storekeeper at Wailuku, Maui, had been killed in a robbery at his store (PCA, March 7 and 15, 1879), and in July

a young Hawaiian woman, Keliihanawai Davis, was tried in Honolulu for the murder. The trial disclosed that Ms. Davis had once been the mistress of Akela, that she had become an opium addict, and that the robbery had been carried out to obtain opium. She was convicted by a native jury and sentenced to be hanged. Her appeal to the Supreme Court was denied, but the case had generated much turmoil in the community. The Privy Council stayed her hanging until it could review the case (PCA, October 25, 1879). The king, upon the advice of the council, commuted her sentence to life imprisonment.

1880: The Moreno Bill and Licensed Chinese Physicians

Against this background four very wide-ranging opium bills were introduced in the 1880 legislature. The first proposed to liberalize the procedures for licensed physicians to import opium for medicinal purposes, the second to strengthen the Prohibitory Act, and the third to provide a single two-year Chinese license with an upset price of \$60,000. The fourth, known as the Moreno Bill, took note of the increasing opposition in England to Hong Kong’s place in the opium traffic (Faulkner and Field, 1975: 142–43) and proposed to have the Kingdom of Hawai’i replace Hong Kong as the opium manufacturing and exporting center of the Pacific. This was one of a package of proposals by one Celso Caesar Moreno, “an impecunious adventurer” who had recently arrived in Hawai’i (Kuykendall, 1967: 210). Several of Moreno’s proposals raised the anti-Chinese sentiments of many haole residents.⁷ The Assembly passed all four bills between July 9 and August 11.

However, just before the introduction of the Moreno (on July 21) another trial highlighting the danger of the spread of opium to native Hawaiians had been held in Honolulu. On June 5 a young Hawaiian lad, Kanui (alias Keoni Aiko), had been smoking opium with friends. Kalahoolewa came up to him and asked him for fifty cents. Kanui said he had no money. Kalahoolewa then grabbed Kanui’s horn of opium and ran. Kanui chased him and stabbed him with a knife. Kalahoolewa died. Kanui was convicted of murder in the second degree by a native jury and sentenced to ten years’ imprisonment at hard labor.

On August 11 and 14, messages came from King Kalakaua that he had signed the bills to toughen the penalties of the Prohibitory Act and to liberalize the procedures for importing opium for medicinal purposes, while providing for more detailed record keeping. He also announced that he had withheld assent from the Chinese Licensing Bill and the Moreno Bill (*Journal*, 1880; *Laws*, 1880: Chs. 18 and 25).

It is important to note that this legislature also enacted a short statute which provided for the first time that “Chinese physicians” were to be licensed to practice medicine “subject to the same laws and restrictions as other licensed physicians” (*Laws*, 1880: Ch. 19).

*1881–85: The Struggle Continues
and the Japanese Arrive*

Eighteen months after King Kalakaua withheld his assent to the Chinese-license and Moreno bills, Chief Justice A. Francis Judd reported to the Legislature of 1882 that enforcement efforts had increased substantially in 1880–81, with convictions increasing fourfold over the previous two years, and that “the strict law against its possession is valuable as tending to restrain our native population from the use of opium” (Chief Justice, 1882: 2).

But a Chinese license was not a dead issue. In 1884, Representative Lilikilani proposed to sell one \$30,000 license for sales to Chinese only, with an express prohibition on selling or furnishing opium to native Hawaiians (Castle, 1884: 3). Again, the Assembly passed the bill but the king did not assent to it.

Shortly thereafter, in February 1885, a shipload of 943 Japanese (676 men, 159 women, and 108 children) arrived from Japan, the first since 1868 (Kuykendall, 1967: 165).

1886–87: A Chinese License

The arrival of Japanese did not end the strong support for a Chinese-license law in the 1886 legislature. Moreover, shortly before the opening of the session the *Advertiser* (April 17, 1886) reversed its position and its editor, Charles Creighton, advocated a Chinese license on the grounds that the smuggling could not be prevented and that licensing would generate revenue for the government. The *Daily Bulletin* now became the opposition press, blaming the uncontrolled smuggling on the inefficiency of the government (April 17 and July 13, 1886).

On August 20 Representative Kaunamano introduced a bill providing for two Chinese licenses with an upset price of \$40,000 each and an auction if there were more than two applicants (*Hawaiian Hansard*, 1886: 492). The bill had the support of the *Advertiser* and its former editor, who was now Foreign Minister Creighton. The Sanitary Committee amended the bill to provide only one license at \$30,000 per year for four years without an auction.

The debate at the third reading of the amended bill started on October 11 and lasted three days. The opposition was led by Attorney General J. T. Dare, who took the “high road,” and Representative Lorrin Thurston, who took the “low road.” Among other things, Dare argued that there was “an implied Covenant” with His Imperial Majesty, the Mikado of Japan, to maintain the prohibitory policy (*Hawaiian Hansard*, 1886: 685). Thurston portrayed Foreign Minister Creighton as a British subject representing the worst of Britain’s past: “[I]t was not enough

that England had forced opium upon the helpless Chinese, but she had given us one of her citizens to impose the drug upon this Kingdom” (*Hawaiian Hansard*, 1886: 686). He also argued that the Prohibitory Act had reduced opium use among the Hawaiians. Noble Charles Bishop added a prediction that provision of only a single license without an auction would lead to corruption and a scandal (*Hawaiian Hansard*, 1886: 688–89).

Representatives Kaunamano and Aholo led the support for the bill in the debates. Kaunamano protested against the purported concern for the Hawaiians. As summarized in the *Hansard* (1886: 686), he asserted: “Opium had been generally used among native Hawaiians as far back as 1856. . . . He had used opium himself and could speak from experience after giving it a fair trial.” Among other points, Aholo charged that much of the opposition to the license bill consisted of “people engaged in the illicit trade” (*Hawaiian Hansard*, 1886: 690–91 and 696).

Throughout the debate a series of efforts were made to amend the bill on the floor. Some amendments were incorporated into the final version assented to by King Kalakaua on October 15 (Laws, 1886: Ch. 73). Hence the act represented a strange combination of elements. It provided for one license for \$30,000 per year, with a bond of \$2,000 conditioned upon the licensee not selling to “native Hawaiians,” “Japanese,” or “any other person” except on a doctor’s prescription with proper records kept by the licensee of each purchase. Any violation was sanctioned by revocation of the license, enforcement of the bond, a fine of \$1,000 to \$5,000, and a jail term of two to ten years at hard labor. The same fines and jail terms were provided for selling without a license or possessing opium with the intent to sell. There was no explicitly stated penalty against mere possession of opium.

Minister Creighton and the *Advertiser* (October 12, 1886) withdrew their support for this amended version the day before its passage, and an October 16 editorial asserted that “the bill had passed in such a questionable shape that we can hardly suppose the King will approve it.” Apparently this opinion was offered before the editor knew that the king had already given his approval. Soon the *Advertiser* (November 27) agreed with Bishop’s prediction that a single license without an auction would lead to bribery of people in high places, and added that any license issued would not escape “the idiom and suspicion of corruption.”

1887: The Great Bribery Scandal

Rumors of bribery began circulating immediately after the issuance of the license to Chun Lung on December 31, 1886 (*PCA*, January 3, 1887; *Gazette*, January 18 and February 1,

15, 1887; *Daily Bulletin*, January 13, 1887). The unfolding story held that a Chinese rice planter, Tong Aki, had been persuaded by Junius Kaae, the registrar of conveyances, to make a gift to the king of \$75,000, in return for which Aki was to receive the license. After Aki had given \$71,000, the license was issued to Chun Lung. Aki demanded the return of his money. When this was refused, the unsuccessful bribery attempt was made public in the form of twelve affidavits filed by Aki and some of his friends and coinvestors (*Gazette*, May 17, 1887).

Initially the king, through his minister of foreign affairs, disclaimed any involvement (Merrill, 1887). Soon, however, the *Gazette* (May 17) charged that the attorney general had acknowledged the money was paid by Aki and had "informed the gentlemen interested in getting the money back that he would never accomplish his object so long as he allowed the newspaper to speak of the affair." Instead, the attorney general had suggested that a "quiet tongue be kept in the matter . . . for the bribe may be returned."

1887: The "Bayonet Constitution" and Prohibition

The Aki scandal was one of the events that mobilized many of the haole residents to secretly organize, establish an armed body, and force King Kalakaua's chief minister, Walter Bigson, to resign and leave the kingdom (*Thrum's Hawaiian Annual*, 1888: 71). Then, in July 1887, King Kalakaua was induced to promulgate a new constitution, known as the "Bayonet Constitution of 1887."

The constitution provided for the special election by a reduced electorate of a new legislature with enlarged powers. This new legislature met in special session late in 1887. It repealed the License Act of 1886 and sought to reenact the Prohibitory Act of 1874, as amended (Laws, 1887: Ch. 20). It also provided that "until the expiration, cancellation, or surrender of the licenses granted" under the 1886 act, the "holders thereof shall be entitled to exercise the rights and privileges granted by the law."

A short time later these "rights and privileges" were sharply reduced when the Supreme Court in *King v. Chun Lung* held that the Chinese license was granted to Chun Lung *only* and that he had no legal right to appoint agents to sell the drug in the outer islands. On the other hand, the loose language used in the 1886 act to reenact the 1874 law quickly produced a challenge in July 1888 to a prosecution for possession under the 1874 act. Subsequently the court held that the reenactment effort had failed because "it has not been clearly expressed by the Legislature that the statutes we are considering were revived by the Act of 1887." Unlicensed selling was still an offense; simple possession was not.

1888–92: Prohibition, but Lessened Penalties

The Legislature of 1888 rectified this, but not before the reformers were shocked by the mere introduction of another

Chinese-license bill, which died in committee (*Thrum's Hawaiian Annual*, 1889: 124). The bill reenacting the Prohibitory Act of 1874, as amended in 1876 and 1880, passed and was signed by King Kalakaua on September 12 (Laws, 1888: Ch. 70).

Meanwhile, the suit brought by A. K. Loo Ngawk and Tong Chong Soy, executors of the estate of the now-deceased Tong Aki, to recover the money given to King Kalakaua in 1886 was being aired in the Supreme Court. On September 22, Justice Preston awarded the money to Aki's estate, holding that while "in the eye of the law . . . the King cannot be bribed," a "gift must be returned."

The Legislature of 1890 liberalized the sentencing provisions of the Prohibitory Act by eliminating mandatory imprisonment for unlawful importation, selling, or possession, instead authorizing a fine *and/or* imprisonment (Laws, 1890: Ch. 66).

1892: The Ashford "Opium Den" Act

However, the reform supporters of the republic got a real shock from the Legislature of 1892, which convened when the government of Queen Liliuokalani was facing a financial crisis due to a general depression. Three Chinese-license bills were introduced but only one was reported out of a special Opium Committee.

The main element of this bill, introduced by attorney Clarence W. Ashford, called for four Chinese licenses, one each for Oahu, Kauai, Hawai'i, and Maui, issuable at public auction at upset prices of \$15,000, \$7,000, \$12,500, and \$10,000, respectively. Sales could only be made on those "authorized premises" specified on the licenses between 6:00 a.m. and 10:00 p.m., and never on Sunday. The licensees were to give a bond of \$2,500 with the following conditions: (1) to keep the premises in good and clean sanitary condition; (2) not to allow minors or women onto the premises; (3) not to sell, give, or furnish opium to any person other than Chinese over the age of twenty years; (4) not to allow any persons other than Chinese over the age of twenty to use any of the facilities; (5) not to transfer stamps affixed to opium containers to other containers; and (6) to destroy all opium containers after they had been emptied. Besides forfeiture of the bond and license, any violation of these conditions called for a fine of \$200 to \$2,000 or imprisonment at hard labor for two months to two years.

"Illegal possession" meant any possession of opium outside of the licensed premises, even though the opium had been legally purchased, and the authorized penalties of fine or imprisonment were greater if no duty had been paid on the opium. Informants were entitled to one-half of any pecuniary penalty.

The "Opium Ring" was now joined in support of the bill by many "respected members of the community of all races" who believed that the "evil" could best be minimized by a system of licensed "shops." It passed by a very substantial majority on December 31 (*Bulletin*, December 31, 1892).

It is unclear what the exact circumstances were on January 13, 1893, when the Queen signed the Opium Shop Bill (Laws, 1893: Ch. 110) along with a much-debated Louisiana Lottery Bill. Just prior to this time she had accused Representative White of “railroading” both the bills. Later on, she blamed the new ministers whom she had appointed for advising her to approve both bills, saying, “I had no option but to sign” (Blount, 1895: 396).

*1893–1900: The Overthrow of the Monarchy
and a New Prohibitory Act*

Four days later a Committee of Public Safety, composed primarily of a faction of prominent haoles, overthrew the government of Queen Liliuokalani by armed insurrection with the active support of U.S. Minister John L. Stevens and the passive support of a detachment of U.S. Marines (Loomis, 1976: Ch. 1). On January 17, 1893, they proclaimed a provisional government and established an Executive Council of four and an Advisory Council of fourteen. Along with President Sanford B. Dole and Lorrin Thurston, most of the members had been long-time opponents of the opium trade.

On February 12, 1893, the Ashford Act was repealed, and pre-1886 prohibitory laws were reinstated, but with more stringent penalties attached (Laws, 1893: Act 12). Illegal importation now called for a fine of \$500 to \$2,000 and imprisonment for six months to two years, illegal possession for a fine of \$50 to \$250 and/or imprisonment for one to six months. In May 1894, the council reduced the minimum mandatory prison term for illegal importation from six months to one (Laws, 1894: Act 77).

These enactments carried over after the establishment of the Republic of Hawaii in July 1894 and remained in effect without further changes when the United States annexed the Islands in 1898. Of course, the unsuccessful counterrebellion in 1895 did give the leaders of the republic grounds, real or imagined, to force a number of the leading advocates of a Chinese license to accept exile from the Islands, especially Charles Creighton and Clarence W. Ashford. In 1901 Chief Justice A. Francis Judd of the Supreme Court of the Territory of Hawaii reported to the legislators that the opium cases “are confined almost exclusively to Chinese,” and called to their attention the possibility that they “may henceforth disappear in whole or in part under the operation of certain provisions of the federal constitution” (Chief Justice, 1901: xxii).

ENFORCEMENT DEVICES
AND STRATEGIES

As we have seen, the statutory schemes to control opium included penalties for smuggling (1851–78), illegal importation (1874–1900), unlicensed and/or otherwise unlawful selling (1856–1900), and unlawful possession (1874–1900).

The contraband could be confiscated (1856–1900), as could a vessel employed in smuggling (1859–1900). In addition, the statutes authorized warrantless arrests of suspects in port towns, warrantless searches of ships, and warrantless seizures of smuggled goods and smugglers, though once the goods were ashore the strict statutory warrant requirements for searches, seizures, and arrests applied. Throughout the period there were a variety of statutory provisions for the reward of informants.

Given the particular behaviors prohibited at different times and the changing political context, sanctions, and enforcement resources available, one would expect changes through time in both the level and the strategies of enforcement. Figure 1 presents the ups and downs of the overall level of enforcement, defined as numbers of arrests and convictions. Enforcement rose as the price of the Chinese license rose, increased greatly in the initial period of the Prohibitory Act (when possession became a crime), declined with the anticipated passage of a license bill in 1880, rose again after its veto, declined during the period of continuous legislative uncertainty leading to the short-lived License Act of 1886 and the Aki scandal, shot up to new heights under the “reformer cabinet” under the Bayonet Constitution, dropped slightly in anticipation of a smoking-shop law, reached its highest levels with the overthrow of the queen and the seizure of power by the Provisionals, then declined only slightly under the republic in the face of substantial resistance through the court appeals process.

However, within this general pattern there were strategy shifts with respect to the various offenses. Let us examine these individually for smuggling, illegal selling or furnishing, and possession.

Smuggling and Illegal Importation

From 1856 to 1875 prosecutions for smuggling or illegally importing opium had low priority. During that period only two cases have been found at the level of circuit courts or the Supreme Court, those of Chung Harn in 1872 and Esser in 1875. Chung Harn was found not guilty by a haole jury after thirteen minutes of deliberation.

However, the case of Esser (Esu), a Chinese woman, was more significant. She was convicted in the Honolulu Police Court and sentenced to pay a fine of \$100. Her attorney, Sanford B. Dole, appealed to the Supreme Court. In January 1875, the court held that “the proper method of taking out and executing a warrant to search for goods suspected of having been smuggled, can be decided in an action for damages by the prisoner against the officer serving it, but not in the case before the Court.” There was to be no exclusionary rule for unlawfully seized opium.

It probably was not coincidental that this case arose between the passage of the Prohibitory Act of 1874 and its effective date of August 1875. At that time the government greatly increased the resources committed to cutting off the

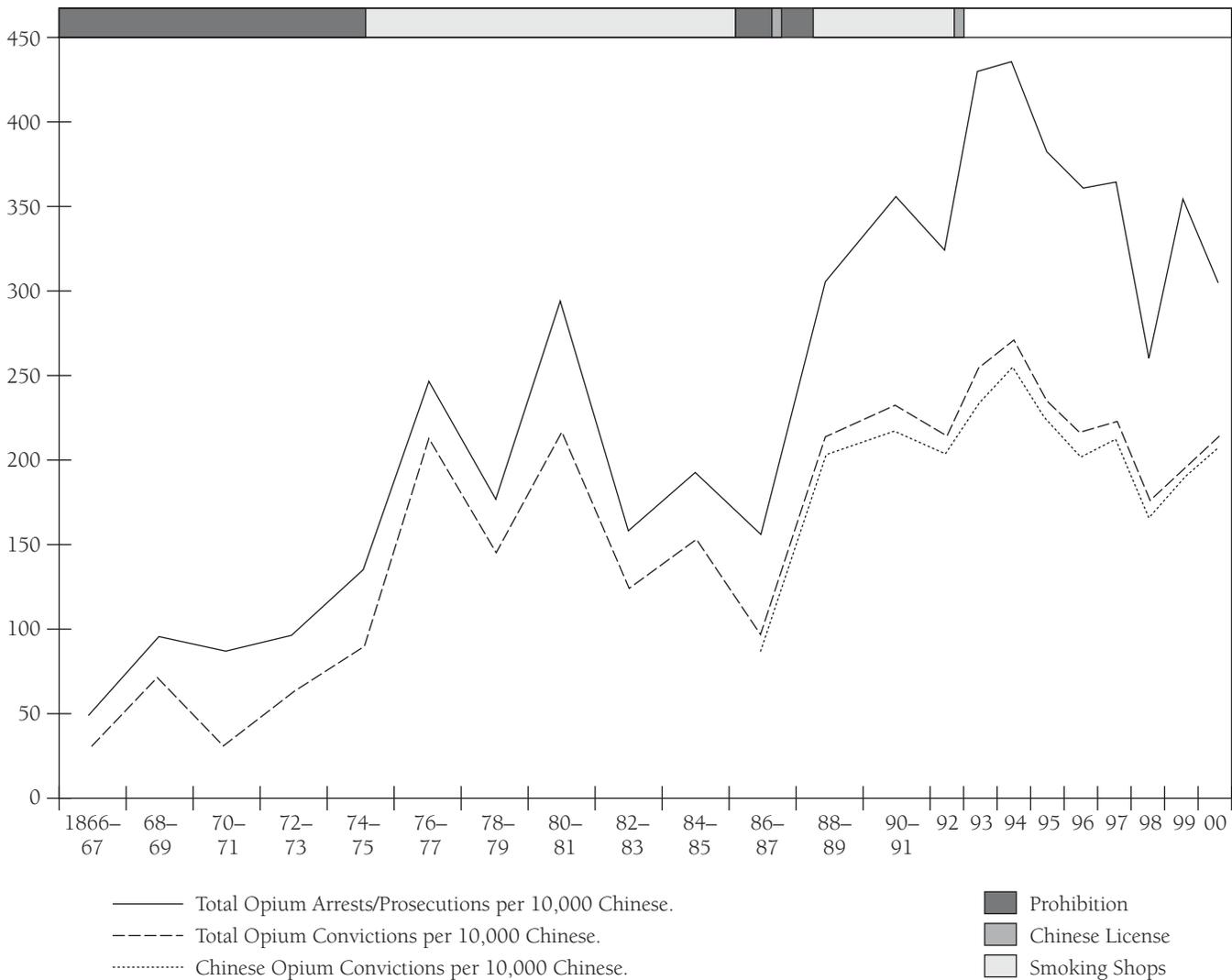


Figure 1. Total Opium Arrests/Prosecutions, Total Opium Convictions, and Chinese Opium Convictions per 10,000 Chinese, Hawai'i, 1866–1900

now-illegal importation (smuggling) of opium (PCA, June 2, 1877). From 1876 to 1879 there were thirty-eight prosecutions and twenty-six convictions for “illegal opium importation” and another 239 prosecutions with 206 convictions for “smuggling.” According to the chief justices almost all these latter cases involved opium smuggling (Chief Justice, 1878; Chief Justice, 1880: 3–4). During this same period the government initiated a few confiscation proceedings against ships involved in opium smuggling, but even when it succeeded such proceedings created problems with foreign governments and were rarely used thereafter against ships under a foreign flag.

Efforts to cut off opium supplies were also made more difficult by the increasing sophistication of the smugglers and their distributors. While false bottoms in trunks and suitcases were commonplace, opium also came in the shape of

Bologna sausage coiled about the body of the carrier, in the form of “a pair of blacksmith bellows,” packed with shipments of “hair” and “beer,” in “bean sauce” and “bean curd,” and even in broomstick handles and the legs of sewing machines. The most difficult to detect were shipments from the United States inside sealed cans made to look like regular canned goods, such as Campbell’s Soup. Moreover, opium was no longer coming directly from Asia; it was being transhipped by way of the Pacific Northwest (Vancouver, Seattle, Portland). Smuggling had become “almost an everyday affair” (PCA, November 9, 1878).

The *Bradley* decision, which made imprisonment mandatory in smuggling cases, also operated to reduce smuggling prosecutions, for convictions meant retaining “undesirable transients” in the kingdom at state expense. It became much easier to let ship stewards, who were regularly employed as

“mules,” make the deliveries and then prosecute the parties to whom the deliveries were made.

Given all these problems, the efforts to cut off the supply by pursuing prosecutions for smuggling that marked the initial five years of the Prohibitory Act of 1874 were greatly reduced in the subsequent years.

We should note here that opium smuggling involved networks of Chinese as well as non-Chinese. Of the ten persons actually sentenced to prison for illegal importation from 1883 to 1886, five were Chinese, four haole, and one Portuguese (*Oahu Prison Photo Index Book*). After 1886 the only persons sentenced to Oahu Prison for smuggling were the one Chinese (Ho Wai) and five haole men who constituted the crew of the schooner *Henrietta*, an “opium runner” that was confiscated by the government after it was intercepted at Keau, Hawai‘i, in 1895.

Illegal Selling and Furnishing

From 1856 to 1875 “illegal selling or furnishing” was the only penal offense besides smuggling. The major purpose of prosecuting this offense was to secure the monopoly of the licensees, whether physicians (1856–59) or holders of Chinese licenses (1860–75). Only five such prosecutions (1.7 per year) occurred under the earliest legislation. During the Chinese-license period the number grew to an average of 4.0 per year for 1860–70 but increased to an average of 25.2 per year after 1870, reaching a peak of 54 in 1874–75. From 1870 to 1875 they constituted 85 to 100 percent of the opium prosecutions in any given year. This suggests that as the monopoly price of the Chinese license increased, so did the enforcement efforts against illegal sellers. The evidence also suggests that there was more “freelancing” on Kauai during the Chinese-license period than on the other islands.

During the initial period of the 1874 Prohibitory Act, from 1876 to 1879, when the offense of “possession” was somewhat ambiguous, there was an average of 13.8 prosecutions (and 9.8 convictions) per year for illegal selling, and they constituted about 13 percent of the opium prosecutions. However, in no year after that did they exceed 6 percent of the opium prosecutions, even though they did show a short-term peak with an average of 20.0 per year in 1884–85.

Illegal Possession

As we saw, possession per se only became a crime with the Prohibitory Act of 1874, and from 1876 to 1879, when there were several ambiguities concerning the offense of “mere possession,” the annual number of prosecutions for possession was less than the combined total for smuggling and illegal selling. However, once the situation was clarified, almost all opium prosecutions were for possession, the percentage from 1880 to 1900 varying only between 90 and 98. A review of the cases indicates that from 1880 on, sub-

stantial enforcement efforts were aimed at the local market of consumers—the smokers—at least some of whom had also become low-level sellers.

Reliance upon Informants

The evidence is substantial that, whatever the intensity of the enforcement efforts at any point in time, most arrests and prosecutions for opium violations relied upon informants. Thus, the information contained in the *Oahu Prison Cash Book* for 1880–83 indicates that of the 332 cases in which fines were collected before convicts were discharged from custody, 198 involved payments to informers. Almost all these 198 cases were opium violations and 174 involved Chinese defendants.

The use of informants was not without problems. One member of the anti-license faction asserted that it was a frequent practice for Hawaiians to make a purchase, smoke the opium, and then turn informant against the seller, who was usually Chinese (Castle, 1884: 3). Other cases indicate that native Hawaiians arrested for illegal possession could receive deals from the police provided they testified against their Chinese sellers, as Halawai, Lolo, and Niku Kamaka did in the case of Ah Hung and Ah Hin. Nevertheless, not all the informants were non-Chinese. An incomplete review of the files of those cases that reached the circuit court level in the late 1880s and the 1890s suggests that the percentage of informants who were Chinese increased during this period.

Police regularly used informants to spot violators whose behavior might be directly observed by an officer, thus establishing the basis for a warrantless “in plain view” arrest. This practice is illustrated by the Chung Park case (March 1880).

Informants were also employed to make purchases themselves or to act as middlemen, getting a third party, even an unwitting third party, to make purchases under the observation of the police, as in the case of Apo (1877). This involved a relationship among police officers Bartholomew and Moihiai, a native Hawaiian informant, and a middleman, Keikiohua, and a possibly unwitting Chinese buyer, Kiani. The two officers made an agreement with Keikiohua to get Kiani to purchase opium from Apo. Apo’s place was searched and he was arrested for physically resisting search. In the police court Apo’s counsel, J. M. Davidson, moved for a dismissal on the grounds that warrantless arrest and search was contrary to the Constitution. Police Justice Jones denied the motion, found Apo guilty, and sentenced him to three months’ imprisonment at hard labor. Apo posted bond and appealed for a jury trial.

Apo’s jury trial was held in the April 1877 term. His foreign jury was most unusual, for in addition to eleven haole men it included one Chinese, Ah See. The prosecution presented the same case as it had in the police court. Apo and three others, Kaau, Kaiuimanoa, and Hooaa, the last a female, testified for the defense. Counsel Davidson again moved for

a dismissal on the grounds that the warrantless arrest and search had been illegal, and Chief Justice C. C. Harris denied the motion based upon the Supreme Court's prior decision in *Esser*. Nevertheless, Davidson's argument carried weight with the jurymen, who found Apo not guilty by a vote of nine to three. After all, "a man's house was his castle."

In many instances, of course, it was necessary for the police to seek to protect the identity of their informants. A good illustration of this is found in the case of Achuck, a prominent Chinese actor, whose bedroom was searched by officers under a search warrant. Officer Kalama found two unopened tins of opium under the mattress of Achuck's bed, which was tightly closed with mosquito netting.

On September 5, Achuck, represented by attorney John Russell, was convicted in the Honolulu Police Court and sentenced to one month at hard labor. He appealed to the Supreme Court, where his jury trial was held in the October term. He was then represented by W. O. Smith and Lorrin Thurston. All the witnesses agreed that Achuck's room had no smell of opium and that Achuck himself did not have the "appearance now of being a smoker." Achuck testified that he knew nothing about the opium and that he had never smoked opium, but that "my boy told me a man named Achak was in my room while I was on stage." Defense counsels Smith and Thurston asked officers Akiona (a Chinese) and Mehrtens who the informant was. Akiona did not know, and when Mehrtens was asked the prosecutor objected to the question as being "against public policy." The court sustained the objection. Achuck was unanimously found not guilty by a haole jury.

The Danger of Corrupting the Police and Dangers for the Police

The problems of enforcing the law concerning opium violations and the related problems of informant protection and potential police corruption are demonstrated in a series of cases in 1883. We have not yet examined all the cases that might indicate corruption of the police. However, *King v. William Kukona* (1898) illustrates that bribery could involve as little as \$5.00 a week to protect "an opium joint" on Maui.

If the profits in the illegal opium business increased the possibility of police corruption, they could also create dangers to the officers seeking to enforce the law. In February 1894, two plainclothes detectives, Kauhane and Kaouli, received a tip from a Chinese informant that opium would be brought ashore from the *S. C. Allen*. That night, after darkness had set in, the informant fingered a man, Joseph Caecires, who was coming ashore and was known to have been previously involved in opium smuggling (*Oahu Prison Photo Index Book*, Foreigner No. 46, October 18, 1885). The detectives followed Caecires, and when he approached a lighted intersection they closed in. Caecires tried to run, but Kaouli grabbed both his wrists. Caecires had a knife and lashed out

behind, cutting Kaouli. In the subsequent struggle Kauhane was also stabbed. Five tins of opium were recovered. Detective Kauhane died two days later and Caecires was brought to trial for murder in the second degree.

Legal Representation

As these cases illustrate, the combination of relatively strict statutory requirements for warrants, the actual police practices, and the high profits in opium resulted in the defendants often being represented by the leading attorneys. Most of the attorneys who defended the Chinese brought to court (e.g., William R. Castle, J. M. Davidson, John Russell, W. O. Smith, and Lorrin Thurston) will be readily recognized as leading prohibitionists and annexationists who actively participated in the overthrow of the monarchy. However, this did prevent them from aggressively defending opium sellers against overreaching police conduct and against "legal retaliation" if sellers testified against police corruption, even if such testimony was only forthcoming when the police appear to have failed to provide the purchased protection.

However, the situation changed dramatically after the overthrow of the queen. Then the defense counsels in opium cases came from that segment of the bar loyal to the queen: Charles Creighton, Paul Neumann, Clarence Ashford, and A. S. Hartwell. The effectiveness of their efforts can be gauged by an examination of the cases on Oahu in 1893–94. In that two-year period 709 persons were arrested and brought before police and district judges. However, only 337 (47.5 percent) were convicted. Of those, 90 (26.7 percent) appealed for a jury trial *de novo* in the circuit court and only 38 (42.2 percent) were convicted in that trial. Stated otherwise, of the 709 originally charged, 424 (60 percent) ended up with a "not guilty" verdict.

Sentencing and Judicial Noncompliance

The best legal talent was available on Oahu. Most opium cases ended at the level of the police or district court, and for any two-year period between 1878 and 1900, between 59 and 85 percent of the total opium cases in the kingdom resulted in convictions, with the proportion usually being about two-thirds. Moreover, for the period when data are available (1886–1900), about 95 percent of the persons convicted on opium charges were Chinese, with the actual number exceeding 350 in some years.

Many Chinese served a term of imprisonment at hard labor for opium offenses, but this varied sharply by time period and by judicial district. Thus in 1888 the Chinese constituted almost 70 percent of the 174 prisoners received at Oahu Prison, and almost 80 percent of these Chinese were in for opium offenses. The same pattern held in 1893, when almost 80 percent of the new prisoners were Chinese and almost 75 percent of them were opium offenders. However,

by 1897 fewer Chinese were imprisoned on opium charges. Of the 153 new prisoners in that year, only 41 (26.8 percent) were Chinese, although 32 of these (78 percent) were in for opium offenses.

At certain times there was a clear clash between public policy on imprisonment for opium offenses and the needs of the plantations for labor. Thus in the two-year period 1882–83 imprisonment was imposed in 100 percent of opium cases in the Supreme Court and in the Honolulu Police Court, but in only 53 percent in the rural Oahu district courts, 20 percent in the rural Hawai'i courts, 17 percent in the Kauai courts, and a mere 5 percent in the Hilo Police Court. In those areas dominated by the plantations, where many convicted possessors were contract laborers, the “inferior court” judges would not impose imprisonment, which was disruptive of the labor supply. At times the problem was given public recognition. In 1886 Representative Dickey of Makawao, Maui, presented a petition to the legislature asking his colleagues “to prevent the imprisonment of contract laborers” (*Hawaiian Hansard*, 1886: 23). This judicial behavior, which at times involved noncompliance with statutory mandates for imprisonment, was one factor in a larger, continuing struggle in the legislature over who was going to appoint the lower-court judges and how responsive these judges should be to “local needs.”

The Perceptions of the Chinese

Finally a word may be said about the probable perception of these penalties by the Chinese. As noted earlier, the authorized penalties for opium offenses in China were much more severe and by that standard the typical Chinese smoker must have seen even the maximum sentences authorized, much less those actually imposed, in Hawai'i as extremely minor. In the light of the potential profits this would have been even more true of a substantial smuggler or distributor. The policy of the prohibitors, especially as it was implemented, might very well have appeared to be intended more to induce bribery and extortion (or corrupt “cooperation”) among rational men than to “nip opium smoking in the bud.” To the laborers, it may have appeared to be intended to reduce their financial savings and increase the pressure upon them to extend their labor contracts.

CONCLUSIONS

The arrival in Hawai'i of Chinese contract laborers beginning in 1852 generated several kinds of group conflict. The Chinese on the one hand represented a needed supply of cheap labor; on the other hand they brought few women and many different “habits,” not all of which met with the approval of the “establishment.” The rapid evaporation of the initial euphoria over the Chinese arrivals resulted, in part, when it appeared

to many that the “vice” of opium smoking and the presence of the Chinese were inseparable. Thereafter, the government would be confronted at virtually every legislative session with the “Chinese opium question.” While the community in general accepted medicinal use of opium, it was continuously divided on whether or not some special provision should be made to permit opium smoking by the Chinese.

Still the mere fact of vacillation between policies favoring Chinese licenses and prohibition between 1856 and 1900 hardly indicates the complexity of the conflicts of values and interests of the different factions involved. Nor do these conflicts reveal the reasons opium was a standard issue in every legislative session. Finally, this vacillation and these conflicts do not show the extent to which opium was an important symbol in the broader disputes over the status of the Chinese in Hawai'i and the maintenance of the monarchy.

There were several facts with which the factions, whether motivated by ethnic (national) identity, personal or collective economic interests, or considerations of morality, had to contend. These were: (1) the native Hawaiian population was diminishing; (2) commercial agricultural development required an alternative labor force; (3) the Chinese were an important source of labor; (4) with the Chinese went opium; (5) a major possible alternative source of labor was Japan; (6) the Japanese government was hostile to opium; and (7) the opium trade, legal or illegal, was very profitable.

The first identifiable value split is that between cultural pluralism and cultural imperialism. Cultural pluralism refers to the value proposition that in a multiethnic community each subcommunity should permit and respect the different lifestyles of the others, including their “vices.” Cultural imperialism refers to the belief of a group that its particular practices not only are more highly valued, but should be imposed upon other groups with conflicting practices.

However, the factions involved were further divided along a dimension of humanitarianism versus self-interest. Humanitarian cultural imperialists believed they were obligated to “help” others and to force the “others” to change their ways because it was in the others' interest. Humanitarian cultural pluralists argued that it was inhumane to force certain changes upon another group. The self-interest factions believed that no one was his brother's keeper and that in the economic realm one's only obligation was to protect and advance one's own interest, which made it quite permissible to profit off the “frailties” of others.

These value orientations were further divided by economic interests, which split on perceptions of individual or collective advancement and on long-term versus short-term gains. Thus disputes about what was to be “legal” and what “illegal” often represented a hidden debate over who was to profit. Finally, the orientations of actors included their degree of identification with some foreign nation, as distinct from a strong identification with Hawai'i as an independent sovereign state.

There is ample evidence that both the ali'i and their foreign advisors supported the initial policy of commercial agricultural development with its corollary of imported labor. This was seen as representing both their individual economic interests and the long-run economic interests of "the nation." The Chinese were a prime labor source. When opium smoking became an issue it was soon defined as "a Chinese problem" and a cultural-pluralist policy (favoring the Chinese license) was adopted.

Later the issue split the sugar planters and those commercial and financial players dependent upon the plantation economy. One faction, the cultural imperialists, saw opium smoking by the Chinese as a threat to the efficiency of this labor in both the short and the long run, as well as a threat to the native Hawaiians. The humanitarians among them also believed that the suppression of the practice was a merciful act in the best interest of the Chinese. These persons became the prohibitionists. They emerged early and remained strong. Their dislike of opium was also central to their desire to find an alternative source of labor. The availability of the Japanese only reinforced their determination to maintain prohibition and, at least for some, to seek to exclude additional Chinese or even to force out the resident Chinese. Ultimately their power base was enhanced by their ties to the United States (and their desire for annexation). These ties finally permitted them to overthrow the queen and suppress any opposition to their policy.

A counterfaction of planters were cultural pluralists who believed the Chinese should be permitted access to their opium in a reasonable fashion, especially since they viewed the elimination of the traffic as impossible and the effort as a corrupting influence in government. They were also guided by their interests. They contended that their labor force should turn over frequently, that at any given time the workers should be young, and that a reasonable provision of opium served to increase the satisfaction, stability, and docility of the laborers. Prohibition, especially prohibition with mandatory jail terms, was disruptive of the labor supply, so regulated access at reasonable prices was their preferred choice. This faction appears to have included a disproportionate number of British. The humanitarians among them also argued that to cut off the opium from or to punish an addict was an inhumane act.

The Chinese were divided. Some were prohibitionists on the grounds of Confucian and/or Christian morality and their perceptions of the long-run interests of the Chinese residents in terms of health and acceptance by other elements of the community. Others supported a Chinese license in one form or another. This faction used the values of cultural pluralism even to claim a "right" to a "Chinese monopoly" over the sale of opium to "the Chinese market." It is well established that the sale of opium to Chinese was a substantial source of profit to several leading Chinese merchants, who proceeded to reinvest this income in other businesses. However, the

Chinese profiteers did not differ from many persons in other immigrant groups in their desire to exploit the "weaknesses" of their fellow ethnics (Light, 1977).

Finally, a counter group of sellers, mostly non-Chinese, appeared in two different guises. One was composed of physicians and pharmacists whose interest lay in a policy of medicinal use only, with each having a legal right to be his own importer. This group, of course, was opposed to a monopoly arrangement under a Chinese license. It was recognized throughout the community, however, that some physicians and pharmacists imported far more opium than one would normally use in a medical practice when individual import-sale licenses were available (*Hawaiian Hansard*, 1886: 689). The other group was made up of storekeepers and saloon keepers who were willing to engage in smuggling and illegal selling. The profit potential was substantial. Since members of this group had little likelihood of being recognized as legal sellers and in any case the Chinese always obtained a monopoly of any legal sale to the Chinese, their primary goal was prohibition. Their secondary goal was to keep the price as high as possible for any legal Chinese license, thus generating an opportunity for them to undercut the price of the Chinese monopoly. While this suggests that under prohibition the haole and the Chinese smuggling rings often competed with each other, we have seen in many cases that smuggling operations were very often inter-ethnic and quite cooperative.

The native Hawaiians were also divided. Some in decision-making positions were clearly prohibitionists, primarily motivated by a concern with the long-run effects of opium smoking upon the native Hawaiians. Another faction supported a Chinese license as a source of income for the government. Some seemed to view decisions on proper opium policy as belonging to the king or queen and supported multiple, even contradictory, bills in the legislatures, a practice that also permitted them to accept gratuities from more than one faction. A small number even gave public support to a policy of open access to opium by any group, including the Hawaiians, and there is evidence during this period that such access, along with access to alcohol, was a growing symbolic issue among the native Hawaiians—a reaction against their perceiving the haole establishment as treating them as "children."

While the contending factions constantly charged each other with potential or actual bribery, it is clear that the profitability of the opium business posed a constant danger of corrupting law enforcement, while the great dependence upon informants and the reward system regularly produced questions about the legality of some enforcement tactics.

Significantly, the study of opium and the law in Hawai'i during 1856–1900 discloses that Chinese sided with more than one opposing faction and were often involved in opium cases as informants and enforcement officers as well as users and lawbreakers. The prison records and legal cases

cited in this study suggest that only a small proportion of the expanding Chinese population directly engaged in factional disputes over laws and policies or became involved in opium litigation and enforcement procedures. Nevertheless, the entire Chinese society in Hawai'i and all strata within it were affected by the ongoing opium issue during this eventful period.

NOTES

1. The leading British smugglers were William Jardine and James Matheson, the founders of the present firm of Jardine-Matheson, Ltd., of Hong Kong, the parent company of Theo. H. Davies & Co. of Honolulu.
2. For example, in February 1857, thirty pounds of opium was stolen from the cellar under Dr. McKibbin's drugstore (*PCA*, February 19, 1857). Two Chinese, Yong and Chor, were arrested and charged with the offense (*Polynesian*, February 21, 1857). However, when brought to trial before a haole jury they could only be tried for receiving stolen goods, since no one could place them at the scene of the burglary. Only Yong was convicted, and he received a sentence of three years' imprisonment at hard labor. Before long opium was stolen from Dr. Lathrop's drugstore. When four Chinese were later arrested for burglarizing Waterhouse's warehouse, some of Lathrop's opium was found in the possession of one of them. The offender, Saico, was convicted of receiving stolen goods and sentenced to six months' imprisonment and a fine of \$50 (*Polynesian*, August 22, 1857; Fort, August 14, 1857).
3. In 1859 import duty paid on opium was valued at \$12,143 (Castle, 1884: 2). In August 1859 the *Advertiser* noted that the latest two importations of opium had totaled 3,700 taels (345 lbs.) and called upon the authorities to look into this, lest "the natives be affected" (*PCA*, August 18, 1859).
4. The 1857 treaty between Japan and the Netherlands had been "the first treaty to prohibit the opium trade in Japan" (Statler, 1969: 489–90). This prohibition became a regular component of later treaties. Japanese law prohibited any importation or manufacture of opium, subject to a penalty of twelve to fifteen years' banishment to a lonely island, or any manufacture of any smoking apparatus, subject to banishment for six to eight years.
5. See *King v. Yet Sing [Seng]*, *King v. Asiu [Asia] et al.*, and *King v. Auwai (Pake)*.
6. For excellent examples of this debating process, see *PCA*, June 2, 1877, and *Gazette*, June 6, 1877.
7. See the speech of the minister of interior opposing the Moreno-Ahlo Opium Bill, *PCA Supplement*, August 31, 1880: "Pass this bill, the liquor bill, the Chinese steam subsidy and the \$10,000,000 loan and Hawaii will go down to nothing; then the Chinese will monopolize and invade your territory. . . . Pass this opium bill and Hawaii will suffer to such an extent that she will never recover."

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