Empire of Notebooks: Lorrin A. Thurston, Columbia Law School's Molding of Racialized "Professionalism," and American Settler Colonialism in Hawai'i

Lorrin Thurston was the grandson of American missionaries who had arrived in Hawai'i in 1820. In early 1887, Thurston formed the Hawaiian League, banding it together with the settler colonial white male militia, the Honolulu Rifles, to undermine King Kalākaua. In 1887, the Bayonet Constitution, drafted by Thurston, was signed—stripping the Hawai'ian monarchy of much of its authority & introducing racialized citizenship. In 1893, a group of white settler colonials spearheaded by Lorrin Thurston & Sanford Dole overthrew the Hawai'ian monarchy in a coup to create what they called the "Republic" of Hawai'i." Finally, by 1898 Thurston helped play an important role in ensuring that Hawai'i was annexed by the United States through the Newlands Resolution.

Introducing "educational and property qualifications" as necessary thresholds for exercising voting rights in post-1893 Hawaii came with the following explanation: "There are many natives and Portuguese [in Hawaii] […] who are comparatively ignorant of the principles of government," and introducing the said voting rights restrictions would be the "only plan by which the government can be kept out of the control of the irresponsible element, and consequently of the professional politicians."[1]

This appears when Sanford P. Dole—an American kingpin settler colonist who, alongside Lorrin A. Thurston (the focus of this project), initiated the 1893 coup d'état that ousted the monarchy in Hawaii—writes to Columbia Law and Political Science Professor, John W. Burgess, in 1894, seeking advice on how governmental power can be racially constructed through a new constitution. In other words, as Burgess clarifies in his response, Burgess' fundamental questions were about how to best construct a "constitution which will place the

[1] Madden, Dole, and Burgess 1936, 72.

government in the hands of the Teutons, and preserve it there." (Madden, Dole, and Burgess 1936, 73) But what is most interesting is the rhetoric of "native ignorance" and "Teutonic professionalism." There is an understanding between them that the people writing the new constitution are not only "aware" (opposite of "ignorant"), but also "professional."

Reading the Dole-Burgess correspondence raises two key questions:

1. Who connected Dole to Burgess (i.e., why does Dole, writing from Hawaii, specifically reach out to Burgess, a professor at Columbia in New York, for advice)?
2. From where does the shared understanding of racialized "professionalism" in law and politics emanate?

The answers to both questions, I suggest, can be found (at least to some degree) in understanding the third and only other named figure mentioned in passing[2] in the Dole-Burgess conversation: Lorrin Thurston. Thurston, born in 1858 to a white American missionary family in Hawaii, worked (as his collected writings reveal, see p. 56–57) with the Wailuku Sugar Company in Hawaii as a *luna* (a plantation overseer of labor) and bookkeeper, and used the money he earned there to attend (as the Columbia alumni register 1754–1931 ascertains, see p. 879) Columbia Law School (CLS) between 1880 and 1882. He was studying at CLS at a time when Burgess was more than present as a faculty member and intellectual contributing to the Dunning school. He worked as an attorney after he graduated and spent the rest of his life drafting racialized legal texts and implementing them as an active politician in Hawaii—in other words, Thurston was very much an "exemplary" and racist legal "professional" of his time, and I ask to what extent can this racialized legal "professionalism" be attributed to his CLS education? My hypothesis is that the CLS

[2] Dole writes, "I would not have you think that the first draft of our constitution was my sole work. Mr. Thurston aided me largely, and our draft was carefully scrutinized by a dozen or more thoughtful men." (Madden, Dole, and Burgess 1936, 75)

curriculum and pedagogical atmosphere significantly affected Thurston's racist legal practice. To examine/test this hypothesis, I think two questions need to be answered:

1. What kind of intellectual formation was Thurston getting at CLS? What did Columbia's late-19th century legal pedagogical environment that Thurston inhabited look like?
2. What (if any) kinds of overlapping between this legal education and Thurston's racist legal practice can we identify and explain?

I, therefore, ask: how did the pedagogical and ideological preoccupations of CLS in the early 1880s impact the way Thurston realized racialized legality through settler colonialism in Hawai'i? What did the CLS curriculum look like in the early 1880s, and (how) does that translate into Thurston's writings on Hawai'i? By identifying the discursive similarities between notebooks, course notes, and syllabi I found in the Columbia Rare Book and Manuscript Library and the Columbia Law School archives on the one hand and Thurston's own writings on the other, I attempt to find the traces of Thurston's time at Columbia, what he may have studied here at Columbia Law School in the early 1880s, and how that curriculum shaped his racist, white supremacist, and settler colonial lawyering and politics in Hawai'i. I argue that Thurston's writings heavily borrowed from the charged racist discourse that animated the CLS curriculum in the late 1800s, which in turn reflected the increasingly intense racial angst surrounding citizenship, "national" identity, and imperialism in the United States at the time.

Citizenship, Ethnicity/Race, Property

An 1881 notebook for a Municipal Law class features a section titled "Citizens vs. Aliens," which delineates a property-ownership-based model of citizenship. Municipal Law was a compulsory lecture taught at Columbia Law School in the first/"junior" year. Since the Law

School's twenty-fourth annual catalog for the academic year 1881–1882—when Thurston himself was a junior—states that "the first year of the course is devoted to the study of general commentaries upon municipal law, and contracts and real estate,"[3] it is highly likely that Thurston may have taken this course at Columbia. Theodore Roosevelt, who was Thurston's Columbia Law School classmate, indicates in his class notes for the Municipal Law lecture that there was a section ("Chapter V") of the lecture devoted to the question of "Citizens vs Aliens." Here, he writes: "Citizenship is not a privilege but a condition or status and has no relation to age or sex," where he significantly omits race/ethnicity as a category upon which citizenship should *not* be based. He goes further to write that "all persons not citizens nor subjects are to be treated as aliens; they are usually placed under certain disabilities either of a political nature such as incapacity to hold office or to exercise the elective franchise or the incapacity to acquire certain kinds of property."[4] It is interesting to note that citizenship in this CLS lecture is seen not only as an inability to exercise political rights (franchise), but also as a qualified lack of access to certain types of property ownership (the capacity to possess land is seen as a function of citizenship).

This needs to be viewed in light of the 1887 Bayonet Constitution's approach towards property-based citizenship thresholds. Thurston, one of the key drafters of the Bayonet Constitution introduced a new provision in Article 59 wherein "Nobles," who would be elected to office in Hawaii, could only be elected by "every male resident of the Hawaiian Islands, of Hawaiian, American or European birth or descent [… and] that he shall own and be possessed, in his own right, of taxable property in this country of the value of not less than three thousand dollars over and above all encumbrances, or shall have actually received an

[3] Law School of Columbia College, *Annual catalog of the officers and students of the Law School of Columbia College*, (New York: Columbia University Press, 1881), 24.
[4] Theodore Roosevelt, *Class notes taken by Theodore Roosevelt at the School of Law, Columbia University: manuscript*, 1880-1881, Boxes 1-2, Legal notebooks at Columbia Law School collection, Arthur W. Diamond Law Library, New York. https://clio.columbia.edu/catalog/law381413.

income of not less than six hundred dollars during the year next preceding."[5] Firstly, it is important to note that Thurston introduces a form of ethnic/racial identification of who is eligible to be a voting citizen, unlike any of the previous constitutions which do not mention ethnicity/race in this sense. It is now only possible for the enlisted groups—"Hawaiian, American, or European birth or descent"—to be eligible as voting citizens, thereby creating an ethno-racial, legal heuristic as a threshold for the exercise of political rights. Secondly, it is important to note that this article now mandates taxable property of over "three thousand dollars" and an income of over "six hundred dollars" as criteria for voting which marks a significant jump in comparison with the 1864 constitution that only required voters to have one hundred and fifty dollars-worth land and an income of seventy-five dollars.[6]

Besides, Thurston's Columbia Law School professor, John Burgess, writes to Sanford Dole on April 13th, 1894 in the Dole-Burgess correspondences, identifying Dole's (and, by consequence, Thurston's) "problem to be the construction of a constitution which will place the government in the hands of the Teutons, and preserve it there, at least for the present."[7] He eventually goes on to write that if Dole (and Thurston) deem it "desirable to make the electoral college still more conservative, you can accomplish this by requiring property qualifications and advanced age for membership in the college and electing by general ticket."[8] It is evident that Burgess (a CLS professor) and Thurston (a former CLS student) are deeply concerned about the way citizenship, the franchise, and political participation can be legally constructed using logics of inequality that would ensure that political power would constitutionally remain in the hands of a white, landed, planter-class elite in Hawaii.

[5] 1887 Constitution of Hawaii, Article 59.
[6] 1864 Constitution of Hawaii, Article 62.
[7] John Burgess, "Letter to Sanford Dole, April 13th 1894," 73.
[8] Ibid., 74.

Racial Exclusion, the "Asiatic Solution," and Citizenship

The lectures in International Law and Constitutional Law, both taught by John Burgess in the early 1880s (including the time when Thurston was a CLS student—1880-82—and beyond), were two other courses at the Law School that were taught fairly frequently in both the Junior and Senior years, and it is fairly likely that Thurston himself may have taken both courses, considering that they were taught by Burgess. In any case, even if he had not taken the courses in reality, the nature of discourse in both courses gives a sense of some preoccupations of the Law School at the time and the pedagogical locus that Thurston inhabited, in terms of the way racialized legality was constructed and reckoned with by the Law School in the early 1880s. In a notebook written in the academic year 1882-1883 for the lecture on International Law, we see that the pages on the right-hand side of the notebook feature lecture notes, and the adjacent pages on the left appear to be short-hand sidenotes, reflections, and related information taken either during or after the lecture. One right-hand page in the talks about the "Establ [sic] of Relationship of Commerce and Intercourse w. China & Japan," and its adjacent page talks about "Claim of Europe [sic] Christians to occupy heathen territories."[9] There seems to be a link being made between the notion of trade relations on the one hand, and the creation of imperial, missionary-based settlements on the other hand.

In a notebook for the Constitutional Law lecture, we see that the note-taker writes: "Patriarchal solution: One universal father, all the rest docile children […] But this the [sic] Asiatic solution, in the earliest forms of European civilization."[10] This creates a racialized sliding scale of "civilization," wherein the lecture appears to have suggested to the

[9] Series IV. Edwin R.A. Seligman/John W. Burgess, 1882-1883, Box 4, Folders 4-11, Lecture notes collection (1817-1969, bulk 1877-1913), Columbia University Rare Book and Manuscript Library, New York.
[10] Ibid.

student/note-taker that the "Asiatic [political] solution" is "patriarchal" and that "Asiatic" people can be qualified as "docile children" at a similar end of the "civilizational" spectrum as "the earliest forms of European civilization."

Thurston, in his 1897 treatise, *Handbook on the Annexation of Hawaii*, echoes very similar discourse. He writes that were there an economic "competition between Europeans and Americans on the one side and Japanese and Chinese on the other," there would be a "substitution of the Asiatic in the place of the white man, by reason of the fact that the Eastern standard of civilization and living is so much lower than the Western."[11] He paints a picture of ethnic antagonism based on racist, Orientalist tropes of "Eastern civilizational backwardness." He builds on this rhetoric of a civilizational clash and racial backwardness by adding that "the issue in Hawaii today, is the preliminary skirmish in the great coming struggle between the civilization and the awakening forces of the East and the civilization of the West."[12] He continues to assert that the question of annexing Hawaii and introducing a model of citizenship that privileges white European and American populations over people who were ethnically Chinese and Japanese—many of whom immigrated to Hawaii as indentured and contract laborers who mostly engaged in chopping, weeding, and other manual agricultural activities in Hawaii's sugar and fruit plantations alongside African American, Filipino, Korean, and Portuguese laborers[13]—by suggesting that there is "an in inevitable struggle [over the question of whether] Asia or America shall have the vantage ground of the control of the naval 'Key of the Pacific,' the commercial 'Cross-roads of the

[11] Lorrin Thurston, *Handbook*, 8.
[12] Ibid.
[13] Library of Congress, *Hawaii: Life in a Plantation Society*, https://www.loc.gov/classroom-materials/immigration/japanese/hawaii-life-in-a-plantation-society/.

Pacific.'"[14] He even goes on to add that he wants to "prevent Hawaii from retrograding into an Asiatic outpost."[15]

It is important to situate this deep racist angst both at Columbia Law School in the early 1880s and in Thurston's writings in the late 1890s alongside the 1882 Chinese Exclusion Act in the United States which introduced a complete 10-year ban on Chinese laborers immigrating to the United States. It is interesting to note that Thurston strongly advocated for and ensured that the Chinese Exclusion Act was expanded to cover Hawaii after annexation. The Chinese Exclusion Act was approved in the US on May 6, 1882, and it applied to all Chinese laborers "both skilled and unskilled laborers and Chinese employed in mining."[16] By 1898, following Hawaii's 1897 annexation by the United States, the Chinese Exclusion Act was expanded to apply in Hawaii and the Philippines by 1902, when it became a US territory, demonstrating that the act resided within the shadows of and followed the course of US imperialism.

Thurston argued that "The Chinese and Japanese are an undesirable population from a political standpoint, because they do not understand American principles of government. […] Shut off the source of supply, and in ten years there will not be Asiatics enough left in Hawaii to have any appreciable effect."[17] Evidently, Thurston is attempting to insinuate that "Asiatic" people, like commodities, follow the rules of demand and supply, and that here, the "supply" of immigrant "Asiatics" can be curbed through an extension of the Chinese Exclusion Act. He goes on to explicitly add that the treaty of annexation of Hawaii should bring forth an extension of the Chinese Exclusion Act alongside and exclusion of immigrant Japanese laborers to Hawaii, with effect in 1899. Speaking of Chinese and Japanese immigrants, he

[14] Lorrin Thurston, *Handbook*, 8.
[15] Ibid.
[16] Chinese Exclusion Act (1882), Section 15.
[17] Lorrin Thurston, *Handbook*, 32.

finally posits: "They are not citizens, and by the Constitution of Hawaii, they are not eligible to become citizens; they are aliens in America and aliens in Hawaii; annexation will give them no rights which they do not now possess, either in Hawaii or in the United States."[18] This way, he bridges together discourse on racialized citizenship, immigration, and legal personhood.

Conclusion

By mapping discursive affinities between Thurston's writings and Columbia Law School notebooks, course materials, and syllabi from the early 1880s (when Thurston was a student at Columbia), I argued that there is a network of intellectual proximities between Columbia Law School's racist, legal-pedagogical angst and Thurston's own racist legal-political treatises regarding the "Hawaiian question." I first demonstrated that there was an intense pedagogical thrust on conceptualizing citizenship along racialized, property-based lines and how that was echoed by the Bayonet Constitution's language and the eventual Dole-Burgess communication. I then showed how the CLS curriculum and Thurston's stance on "Asiatic" populations and the labor they could perform and how their bodies could be legally racialized can be read in the light of the 1882 Chinese Exclusion Act in the US and the impacts it had on Hawaii before and after annexation. Finally, I showed how these patterns of racialized legality had the propensity to dispossess indigenous populations through violent mythic genealogies.

This is all to suggest that the Columbia Law School curriculum from the 1880s bears the blood of the violence Thurston perpetrated in Hawaii, and that this is something Columbia would need to reckon with as we present Columbia Law School's curriculum and alumni in

[18] Lorrin Thurston, *Handbook*, 32.

the late 1800s as progressive and innovative, while we live with the dark shadows of an incredibly racist legal pedagogy and people like Thurston at the same time.

Methodological Issues

A key issue I'm grappling with is the voices that my paper would unintentionally amplify in the process of using archival material to answer my question. Most of the primary sources I am referring to are written by explicitly racist men who created, substantiated, or at the very least bought into the narrative of racialized legality and settler colonialism. This is mainly because the question I am asking (the nature of legal education at CLS and the impacts it had on students who eventually engaged in deeply racialized legal practice and settler colonialism in Hawai‘i) requires me to read such sources and critique them, their viewpoint, and their positionality. But at the same time, I wonder if by focusing only on such sources (although I am in deep disagreement with and critiquing them), I am not epistemologically giving more currency to these sources by using them in a historical paper? I.e., I am concerned that by using sources produced by such writers—without using (because I am unable to find them) archival material produced by indigenous people, or at least historical documents that counter such narratives that the sources I am currently using create—I am, in a way, giving more "historicity" to these deeply problematic documents and, by consequence, am further invisiblizing voices of indigenous people or counternarratives? I am reminded of Hartman's *Venus in Two Acts*, where she talks about the violence of the archives and how giving historical attention to sources by dominant voices recreates the violence of the archives and of the past.

Another methodological issue is that most of the primary source evidence I have about details from Thurston's life outside of CLS is from his own autobiographical writings. I recognize that this poses a special challenge in my understanding of Thurston because a lot of what I

can potentially know about him and his activities is carefully curated by his own writings: i.e., Thurston selects for his readers what we can know about his life. While this might be valuable in some ways because it allows me to critically read what moments or life "facts" were important to him which therefore allows me to understand his worldview, this is also problematic because the life "facts" I can know about him are mostly selected for me by him. One way to address that is by looking for other data records about Thurston such as (potentially) census records about him, newspaper obituaries about him, etc. Another way to address this (especially if I'm not able to find such kinds of sources) is to define the scope of my paper by recognizing the limitations of what I have at hand. I.e, I could highlight that my paper addresses how Thurston's legal education at CLS affected his *worldview* on settler colonialism and how it could be realized, or how this affected what Thurston *presented/projected* about his own life and career (as against what he *actually* did).

A final concern I have is the extent to which I can make a definitive link between what I can possibly guess about Thurston's legal education at CLS (through other people's class notes, university records, etc.) on the one hand and Thurston's views/actions after that on the other hand. I.e., I am thinking about my burden of proof: how much evidence would I need to give to show that the CLS curriculum *did* in fact play a role in molding Thurston's legal practice? Is noting similarities between both their ideological commitments sufficient to show conclusively that one influenced the other, or is this link more tenuous?

Bibliography

<u>Primary Sources</u>

Bishop, Sereno Edwards. 1916. *Reminiscences of Old Hawaii.* Honolulu: Hawaiian Gazette Co. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=uc1.$b58792&seq=1.

Class notes taken by Theodore Roosevelt at the School of Law, Columbia University: manuscript, 1880-1881, Boxes 1-2, Legal notebooks at Columbia Law School collection, Arthur W. Diamond Law Library, New York. https://clio.columbia.edu/catalog/law381413.

Columbia University Committee on General Catalogue. 1932. *Columbia university alumni register, 1754-1931.* New York: Columbia University Press. Accessed September 2023. https://babel.hathitrust.org/cgi/pt?id=uc1.b4525470&seq=1&q1=lorrin.

Hawaii Legislature Select Committee on Complaint of People of the Island of Lanai. 1886. *Report of the Select committee on the complaint of some of the people of the Island of Lanai, as presented by the resolution of the Hon. L.A. Thurston.* Honolulu: Hawaiian Gazette Publ. Co. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=hvd.hnp322&seq=1.

Madden, Henry Miller, Sanford B. Dole, and John W. Burgess. 1936. "Letters of Sanford B. Dole and John W. Burgess." *Pacific Historical Review* (University of California Press) 5 (1): 71-75. Accessed September 2023. https://www.jstor.org/stable/3633320.

Potter, Horatio. 1972. "Sermon preached before the graduating class of the Law School of Columbia College in the church of the Holy Saviour, New York, on the Sunday after the Ascension." New York: American Church Press, May 12. https://clio.columbia.edu/catalog/law556448.

Series IV. Edwin R.A. Seligman/John W. Burgess, 1882-1883, Box 4, Folders 4-11, Lecture notes collection (1817-1969, bulk 1877-1913), Columbia University Rare Book and Manuscript Library, New York. https://findingaids.library.columbia.edu/ead/nnc-ua/ldpd_6256279/dsc/4.

Teaching notes taken by Munroe Smith for lectures held at the School of Law, Columbia University: manuscript, 1880, Boxes 1-3, Legal notebooks at Columbia Law School collection, Arthur W. Diamond Law Library, New York. https://clio.columbia.edu/catalog/law480587.

Thurston, Lorrin A. 1897. *Handbook on the Annexation of Hawaii.* Michigan: St. Joseph. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=uiug.30112049383455&seq=1.

—. 1936. *Memoirs of the Hawaiian Revolution.* Honolulu: Advertiser publishing co., ltd. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=uc1.b4350186&seq=1&q1=columbia.

—. 1897. *Statement of reasons from an American standpoint.* Washington: Gibson. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=coo.31924032242988&seq=1.

—. 1915. *The effect of the Panama canal on Hawaii.* Washington, D.C. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=hvd.hnfcf7&seq=1.

—. 1920. *The foreign language school question; an address to the Honolulu Social Science Association, November 8, 1920.* Honolulu. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=uc1.$b92757&seq=1.

—. 1909. *The liquor question in Hawaii, what should be done about it?* Honolulu. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=uiug.30112087602766&seq=1.

—. 1936. *Writings of Lorrin A. Thurston.* Honolulu: Advertiser publishing co., ltd. Accessed October 2023. https://babel.hathitrust.org/cgi/pt?id=uc1.$b58797&seq=1.

Secondary Sources

Aikau, Hōkūlani K. 2021. "Centering Hawai'i: Lessons on and beyond United States Empire." *American Quarterly* (Johns Hopkins University Press) 73 (4): 867-876. Accessed October 2023. http://ezproxy.cul.columbia.edu/login?url=https://www.proquest.com/scholarly-journals/centering-hawaii-lessons-on-beyond-united-states/docview/2615627741/se-2?accountid=10226.

Ching, James C. 1963. "Campaign speaking in the Hawaiian kingdom: 1874–1891." *Quarterly Journal of Speech* (Taylor and Francis) 49 (4): 395-402. Accessed October 2023. https://doi-org.ezproxy.cul.columbia.edu/10.1080/00335636309382630.

Kam, Ralph Thomas. 2021. "The First Attempt to Overthrow Lili'uokalani." *Hawaiian Journal of History* (University of Hawai'i Press) 55: 41-69. Accessed October 2023. 10.1353/hjh.2021.0001.

Kam, Ralph Thomas, and Jeffrey K. Lyons. 2019. "Remembering the Committee of Safety: Identifying the Citizenship, Descent, and Occupations of the Men Who Overthrew the Monarchy." *Hawaiian Journal of History* (University of Hawai'i Press) 53. Accessed October 2023. https://muse-jhu-edu.ezproxy.cul.columbia.edu/article/742973.

Library of Congress. n.d. *Hawaii: Life in a Plantation Society.* https://www.loc.gov/classroom-materials/immigration/japanese/hawaii-life-in-a-plantation-society/ .

Moblo, Pennie. 1999. "Leprosy, Politics, and the Rise of Hawaii's Reform Party." *The Journal of Pacific History* (Taylor and Francis) 34 (1): 75-89. Accessed October 2023. https://www.jstor.org/stable/25169428.

Nelson, Megan Kate. 2023. "California and Hawai‘i Bound: U.S. Settler Colonialism and the Pacific West, 1848–1959." *Journal of American History* (Organization of American

Historians) 109 (4): 934–935. Accessed October 2023. https://doi.org/10.1093/jahist/jaad071.

Smith, Tom. 2019. "Hawaiian history and American history: integration or separation?" *American Nineteenth Century History* (Taylor and Francis) 20 (2): 161-182. Accessed October 2023. https://doi.org/10.1080/14664658.2019.1656890.

Smithsonian Institution. n.d. *Lorrin Thurston (1858–1931).* Accessed October 2023. https://1898exhibition.si.edu/node/247.