Column: Civil disobedience has changed the law


Dr. Jamaica Heolimeleikalani Osorio, chained to a cattle grate at Mauna Kea Access Road since 3 a.m., looked into the camera and sent out her call: “This is an invitation to join our lahui … we plan to be here as long as Mauna Kea needs us.” Thousands responded, creating a standoff that will go down in history.

Many who don’t know Osorio and her colleagues talk of crazy Hawaiians breaching the rule of law. The hearings, agency consults and judicial opinions are done, the permits issued. If the legal process is thwarted by a vocal minority, what about the rule of law? As legal scholars who have dedicated our lives to teaching the rule of law, we are called to respond.

Pay attention to what is happening on the Mauna. It is anticipated by our democracy. These are not crazy Hawaiians, but committed practitioners of kapu aloha. Nothing lawless, impulsive or disrespectful is allowed: no drugs, no weapons, no violence, no unkindness, not even to the police in riot gear. These rules are enforced by respected elders.

The state issued permits to build on ceded lands held in trust for Hawaiians. The Hawaiians who believe the Thirty Meter Telescope construction is both wrong and illegal, are not using lawless means to challenge existing law. They use kapu aloha: disciplined, non-violent, love-filled. This is the Ahimsa of Gandhi, the Beloved Community of King: We will lay our bodies down to show our love, forcing the law to confront our humanity.

Historically, settled law can give way when a committed minority heeds the justice call. The Mauna Kea protectors stand in an honorable line of those called to civil disobedience.

When Charles Lawrence’s great-grandfather fled slavery, this constituted theft under slave codes. The abolitionists who hid Great-grandfather in their homes violated the fugitive slave law.

Nelson Mandela’s and Martin King’s letters from jail, calling on citizens to resist unjust laws, are studied in ethics courses. The 13th, 14th and 15th Amendments to the Constitution are products of citizen rejection of prior law, as are the Federal Civil Rights Laws of 1964. The protectors of the Mauna are law-makers, wholly within the tradition of the rule of law in democracies, calling on fellow citizens to consider new understandings of justice.

During our own lifetimes it was legal to deny us a job or sell us a house because of our race. People sat in, got arrested, disrupted business as usual, until the law changed.

In 2019 people everywhere are choosing resistance. The Mauna Kea protectors are one with the Japanese-American elders who held their ground at the gate of Fort Sill army installation to stop incarceration of immigrant children, one with churches and synagogues giving sanctuary to families hunted down by ICE, one with students walking out for climate action.

On the Mauna, there are medics, cooks, professors, dancers, chanters — everyone has a job to do and everyone is valued. Everyone is fed and everyone has a place to lay peacefully at the side of the road — the rule of law decreed by King Kamehameha. Dr. Osorio, chained to the grate, said that resistance is not all Hawaiians have to give: “we want to build things.”

As Hawaii confronts a climate apocalypse we are woefully ill-equipped for; we face annihilation if we cannot learn kapu aloha and a new rule of law: one based on caring for the land and for one another. Instead of seeing the protectors on the mountain as crazy Hawaiians, we should consider whether they bring a vision of law that will save our lives.

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