Traversing the Hawaiian Nationalist Political Gulf

J. Kēhaulani Kauanui

This essay offers some thoughts on how those of us committed to the exercise of Hawaiian self-determination can bridge the seeming divide between de-occupation and decolonization without compromising our national claims under international law. It suggests that it is imperative that one distinguish the legal genealogy of independent statehood, which emerged within a global context of coloniality, from the US state and its subsidiary, the so-called "50th state," as occupying and settler colonial forces that dispossess the Kānaka Maoli as an indigenous people. Some Kānaka Maoli oppose a critical analysis of any form of colonialism by claiming the problem is solely based on occupation. Clarifying what the stakes seem to be for Kānaka Maoli scholars and activists, in response, I propose engaging settler colonialism as a social formation, while also drawing on normative frameworks of international law. I stress the spiritual and material importance of decolonial resistance to both settler colonialism and occupation.

CORRESPONDENCE MAY BE SENT TO:
J. Kēhaulani Kauanui, Wesleyan University
255 High Street, Middletown, Connecticut 06469
Email: jkauanui@wesleyan.edu

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For the 10th anniversary issue of *Hūlili*, my aim is to offer some brief thoughts on how those of us committed to the exercise of Hawaiian self-determination can bridge the seeming divide between de-occupation and decolonization without compromising our national claims under international law. At this point in our nationalist struggle, it is imperative that we distinguish our legal genealogy of independent statehood, which emerged within a global context of coloniality, from the US state and its subsidiary, the so-called "50th state," as occupying and settler colonial forces that dispossess the Kānaka Maoli as an indigenous people. Inspired by the publications in this venue over the last decade, my hope is to take up the mandate advanced by the kumuhana of the journal signified by its very name.

Over the years I have noticed a perplexing shift in nationalist political discourse, where some pro-independence leaders have increasingly denied that Kānaka Maoli ever historically experienced colonialism because, as the logic goes, the Hawaiian Kingdom was an independent state. Some go even further to assert that we are not "indigenous" because of the historical existence of an internationally recognized nation. For instance, in August 2002, I was confronted by this false binary after delivering the lecture "Containing Hawaiian Sovereignty: Defining 'Native Hawaiian' in the Akaka Bill" at Chaminade University. I delineated the history of using blood quantum to define Kānaka Maoli as a process tied to a colonial process of dispossession because it also works to limit Hawaiian political participation by setting an exclusive standard for eligibility within an already limited framework for self-governance. Officials at the Department of the Interior had just marked up a bill for federal recognition insisting that, among other things, the definition of "native Hawaiian" in the proposal resemble the one found in the Hawaiian Homes Commission Act of 1920, which relies on a 50 percent blood quantum rule (something I made clear I opposed).

During the Q & A, a longtime activist and leader in a prominent pro-independence group announced that she was a "full-blooded Hawaiian" and proceeded to say that Hawaiians had never been colonized by the United States because the US annexation was illegal, and therefore Hawai'i was never an actual colonial territory. She countered my argument that Akaka's proposal was detrimental to Hawaiian sovereignty claims by asserting that if it passed, its imposition would be illegitimate and therefore would have "no effect on Hawaiians whatsoever." I agreed with her on the question of legitimacy but disagreed that just because something is illegal means it has no power. This individual, who identified herself as a national of the Hawaiian Kingdom, produced a memo from the Hawaiian Women's

Patriotic League specifically addressed to me[1] and then asserted that she was "not indigenous!" For her, claims to indigeneity were a tacit admission of US colonial subjugation.

In 2009, I had a related experience at the launch of my book, *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity*, at Native Books/Nā Mea Hawai'i. When Noenoe K. Silva, co-organizer of the event, read the title of the work, someone interrupted her, "It's occupation, not colonialism." However, the legal framework of occupation does not suffice for a critical understanding of blood quantum, which is an imposition crafted to sever the genealogical connectivity of our lāhui. After the event, other activists in attendance scolded us both for "getting it wrong" because we referenced colonialism as a part of the historical experience of Kānaka Maoli. As Jonathan Kay Kamakawiwo'ole Osorio has suggested, "One crucial aspect of law is that it enables contending and competing groups within a society to coexist, compensating for the lack of faith between them by requiring that they place their faith in the law instead" (Osorio, 2004).

The crux of the debate here is based on the notion that occupation and colonialism are mutually exclusive, regardless of their basis in law, as we draw attention to our national claim within the US Empire. This brief essay outlines the ways some Kānaka Maoli oppose a critical analysis of any form of colonialism by claiming the problem is solely based on occupation, clarifying what the stakes seem to be for Kānaka Maoli scholars and activists. I propose an alternative concept of settler colonialism, while also drawing on normative frameworks of international law. In conclusion, I stress the spiritual and material importance of decolonial resistance to both settler colonialism and occupation.

Settler Colonialism and Occupation

In light of the unlawful 1893 US-backed overthrow of Queen Lili'uokalani, the 1898 annexation of an independent state, and the subsequent treatment of Hawai'i as a colonial territory from 1900 to 1959, many Kingdom nationalists contest the legitimacy of the 50th state as part of the US occupation. As David Keanu Sai's scholarly contributions to the Hawaiian nationalist movement have made clear, under international law, occupation is distinguished from annexation in that it

entails the effective provisional (temporary) control of a territory not under the formal sovereignty of the occupying entity (Sai, 2008). In the Hawai'i case, the United States (as the occupying entity) made claims for permanent sovereignty based on the 1898 unilateral annexation despite the massive objections of Kānaka Maoli and in violation of international law (International Committee of the Red Cross, 2004; Lâm, 2000).[2] Because that annexation was recognized by the world community (since Hawai'i is widely considered globally to be part of the United States), some assert that this distinguishes Hawai'i's situation from an occupation. However, annexation was arguably a way of masking the fact that the Hawaiian Kingdom was an occupied state.

Today many in the Hawaiian independence movement assert that the case of Hawai'i ought to be guided by the Hague Conventions (1899 and 1907), which have the status of customary international law and provide a definition of occupation upon which the Fourth Geneva Convention relies (Convention II, 1899; Convention IV, 1907).[3] A key principle governing occupation spelled out primarily in both the 1907 Hague Regulations (arts. 42–56) and the Fourth Geneva Convention (GC IV, art. 27–34 and 47–78), as well as in customary international humanitarian law, is that occupation is only *a temporary situation*, and the rights of the occupying power are limited to that period (International Committee of the Red Cross, 2004, p. 88). Given the duration of the US hold on the Hawaiian Kingdom, it is no wonder many have described our current situation as a prolonged occupation.

In his book, *Overthrow: America's Century of Regime Change from Hawaii to Iraq*, Stephen Kinzer argues that the case of Hawai'i, where the elite white minority worked in collaboration with the US Navy, the White House, and Washington's local representative to remove Queen Liliu'okalani from the throne in order to protect the continental US sugar market, served as the model for subsequent US-backed regime changes in the 20th century (Kinzer, 2006). He examines a dozen case studies of US-backed toppling of foreign governments to gain access to natural resources.[4] Yet, although he argues that the Hawai'i case set the paradigm, Kinzer remains an apologist for Hawaiian statehood, claiming that there was no resistance because Native Hawaiians gained so much by being fully incorporated within the United States. He further suggests that Native Hawaiians are pleased with statehood and that when the US government assumes responsibility for the territories it seizes, "it can lead toward stability and happiness" (Kinzer, 2006, p. 88). Kinzer's account ignores settler colonialism entirely—including our historical

loss of language and everyday cultural practice as white American culture became hegemonic, cutting us off from knowledge of our own history and ancestors and from native spiritual practices. This history of dispossession has dealt a severe blow to our collective sense of Hawaiian well-being that continues into the present. Settler colonialism is an oppressive structure that Native Hawaiians continue to endure. This form of subjugation includes ongoing institutional racism, military expansion, indigenous criminalization, homelessness, disproportionately high incarceration rates, low life expectancy, high mortality, high suicide rates, and other forms of structural violence including the constant unearthing of burials, the desecration of sacred sites, economically compelled outmigration, and many more outrages, not least of which is the ongoing process of illegal land expropriation from which most of these issues arguably stem (Blaisdell, 2005; Blaisdell & Mokuau, 1994).

Patrick Wolfe has theorized the concept of settler colonialism (Wolfe, 2006), arguing that this social and political model of domination operates by "the logic of elimination of the native" because land acquisition is its central feature. Notably, he differentiates settler colonialism from other forms of colonial processes such as franchise colonialism, which I liken to the difference between Britain in North America and Britain in India. As Wolfe argues, "Settler colonies were (are) premised on the elimination of native societies. The split tensing reflects a determinate feature of settler colonization. The colonizers come to stay—*invasion is a structure not an event"* (emphasis added) (Wolfe, 2006, p. 2). He notes that "elimination refers to more than the summary liquidation of Indigenous peoples, though it includes that." In other words, elimination may entail "frontier homicide" (violent exterminatory campaigns) at one end of the spectrum or assimilative policies (for the purposes of defining people out of existence as native) on the other. He further explains that settler colonialism is a structure rather than an event due to its "complex social formation and as continuity through time," meaning it is both durable and enduring (Wolfe, 1998, p. 387). Wolfe concludes, "[S]ettler colonialism is an inclusive, land-centered project that coordinates a comprehensive range of agencies, from the metropolitan centre to the frontier encampment, with a view to eliminating Indigenous societies. Its operations are not dependent on the presence or absence of formal state institutions or functionaries" (Wolfe, 1998, p. 393). I want to concentrate on this last point: the processes of settler colonialism need not hinge on the existence or nonexistence of state entities. In Hawai'i, we can find an example of this approach in the history of Calvinist conversion of

Kānaka Maoli by the missionaries. This process, which became settler colonial in nature, began long before the US-backed overthrow or purported annexation and under the auspices of the Hawaiian Kingdom.

Many contemporary scholars and activists are politically invested in tracing just how well Hawaiians transitioned to Westernization as evidence of the capability for self-governance. One can see this as a serious effort to reclaim a sense of dignity and pride in past accomplishments, a historical adaptation that enables us to reframe Hawaiian history as more than a story of dispossession and promote a collective sense of wholeness. One rich example of this is Kamanamaikalani Beamer's book, *No Mākou ka Mana: Liberating the Nation*, which highlights the agency of the founders of the Hawaiian Kingdom and how ruling Ali'i selectively appropriated tools and ideas from the West, including laws, religion, educational models, protocols, weapons, printing and mapmaking technologies, seafaring vessels, clothing, names, and international alliances (Beamer, 2014). Beamer argues that they created a hybrid system based on an enduring tradition of Hawaiian governance that was intended to preserve, strengthen, and maintain lāhui, the nation. Beamer contends that only after the US occupation beginning in 1893, which transferred the power of the monarch to a haole oligarchy, did events begin that he terms "faux-colonial" or "quasicolonial" (Beamer, 2014). One can see the strong affective appeal of this rereading of Hawaiian history, especially when it is bolstered by the authority of "legal fact" with the argument that the Hawaiian Kingdom continues to exist as a sovereign and independent state and is merely occupied. It could also, perhaps, be read as a way to refute the logic of elimination that constructs the "native" as someone to be eliminated.[5]

Nonetheless, this history of modern transformation should also be viewed in relation to the trajectory of settler colonialism and its "tipping point" (where a series of small changes becomes significant enough to cause a larger, more important change) that led to haole encroachment within the Hawaiian government, as Osorio so convincingly argues in his earlier work, *Dismembering Lāhui* (Osorio, 2002). It seems crucial to face the aspects of Hawaiian cultural practices that missionaries deemed savage and in need of eradication. Noenoe Silva offers a compelling history of Kanaka Maoli resistance to these forms of degradation, the political, economic, and linguistic oppression that can be understood as forms of US colonialism (Silva, 2004). Her book, *Aloha Betrayed*, documents how the Kingdom's adoption of Western forms of governance, including a constitution, was a response to foreign aggression and that adhering to external norms of nationhood was a strategy to protect Hawaiian sovereignty (Silva, 2004).

States, Colonies, and Peoples

Independent states recognized Hawaiian Kingdom sovereignty precisely because indigenous elites reformed the monarchy to meet Western criteria.[6] In order to operate through international law, the elites had to take up a very particular framework—a legal system that was (and still remains) deeply based on Christianity. The Papal Bull "Inter Caetera" of 1493, issued by Pope Alexander IV to Christopher Columbus on his second voyage to the Americas, along with the 1494 Treaty of Tordesillas, sought to establish Christian dominion over the world and called for the subjugation of non-Christian peoples and seizure of their lands. These decrees continue to undergird international law today and are the reason why indigenous peoples are not afforded the right of full self-determination that states are (Newcomb, 2007).

Westerners have historically viewed indigeneity itself as incommensurate with civic life because it is always already defined as premodern and uncivilized. Westerners viewed indigenous peoples as lawless, with no advanced civilization, satisfactory religion, or appropriate government, and living in a State of Nature—the "natural condition" of humankind before the rule of man-made law and a state of society with established government. Social contract theorists have argued that the formation of the democratic state within modernity is enabled by a contract between men to decide to live together and make laws. Of course, they specifically mean European men, to whom they compare the rest of the world. This legacy of Western sovereign domination is at the heart of the contemporary battle over the rights of indigenous peoples (in relation to states) under international law.

Although international law provides no single decisive definition of colonialism, the United Nations Declaration on Colonialism "indicates that a situation may be classified as colonial when the acts of a State have the cumulative outcome that it annexes or otherwise unlawfully retains control over territory and thus aims permanently to deny its indigenous population the exercise of its right to self-determination" (Human Sciences Research Council, 2009). This historical lineage of the world standard on colonialism is worth revisiting despite the fact that the UN process of decolonization has historically excluded indigenous peoples enduring settler colonial situations. Part of this is due to the "salt water thesis"; to avoid having to deal with the Native American question in relation to self-determination, the US government pushed to codify eligibility for decolonization based on the presence of "blue water" between the colony and the colonizing country (Roy, 2001). In other words, the colonizer has to be an ocean away, like

the United States in relation to Guåhan. But even then, though supported by international law, we see the persistent imperialist stranglehold as the US holds "Guam" as an "unincorporated territory" subject to federal plenary power, while the Chamoru (aka Chamorro) endure rapidly expanding settler colonial control and military occupation.

After the 1898 purported annexation, the US government treated Hawai'i as a colonial territory, and in 1946 it added it to the UN list of non-self-governing territories in compliance with Chapter XI of the UN Charter, the Declaration Regarding Non-Self-Governing Territories. Article 73 delineates the obligations of members of the United Nations regarding territories whose peoples have not yet attained a full measure of self-government, which include recognizing "the principle that the interests of the inhabitants of these territories are paramount" and accepting "as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories," including the development of self-government (United Nations, 1945).[7] Hawai'i was on that list until 1959, when the US administration held a plebiscite to deny it a chance at full independence. This vote preempted the application of protocols established by the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, which stated that all peoples have a right to self-determination and proclaimed that colonialism should be brought to a speedy and unconditional end (United Nations, 1945, 2007).[8] Still, though, the 1960 Declaration does not fully apply to all peoples, such as indigenous peoples (United Nations, 2007).

The decades-long work to develop the UN Declaration on the Rights of Indigenous Peoples emerged from this historical exclusion. Even after the UN General Assembly's passage of the Declaration in 2007, there has been no consensus. Article 46 of the Declaration limits indigenous peoples' self-determination: "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent States" (United Nations, 2007). In other words, indigenous peoples can mobilize for self-determination so long as the existing states that encompass them are not threatened. The strategies used by dominant groups to undercut indigenous claims to sovereignty vary and are deeply rooted.

Given this legacy, there are numerous conflicts and contradictions that arise with regard to contemporary Hawaiian political claims. The disavowal of indigeneity by many Kingdom nationalists is a central feature of Hawaiian political resistance despite the fact that the struggle is led by and focused on Kānaka Maoli. A dictionary definition of "indigenous" as "born or produced naturally in a land or region" obviously cannot account for the wide range of relations to region and nation of the more than 370 million indigenous people who are spread across 70 countries worldwide (United Nations, 2009). Some indigenous peoples define themselves by their historical continuity with precolonial and presettler societies; others by ties to territories and surrounding natural resources; others in relation to distinct social, economic, or political systems; and still others by their distinct languages, cultures, and beliefs (Byrd, 2011). Curiously, some Kingdom nationalists reject the term "indigenous" while claiming "aboriginal."

In rejecting the state-driven push for indigenous self-determination through federal recognition, the focus of some Hawaiian nationalists has been misdirected at tribal nations instead of the abuse of the federal government. These sentiments have been part of a broad objection to the Native Hawaiian Government Reorganization Act, the seemingly never-ending legislative proposal that was the Akaka bill from 2000 until 2013. Although promoted as a model similar to that for federally recognized Indian tribes, the provisions for the 50th state in relation to any future "Native Hawaiian Governing Entity" exposed it as offering much less. Past proposals suggested the entity would have no civil or criminal jurisdiction like tribal nations, since there is likely to be no territorial base from which to exercise that power over the entity's "citizens." However little it provided in the way of self-governance, fortunately the legislation has never made it through the US Congress. Now Hawaiian elites affiliated with the 50th state are moving to another avenue.

At the time of this writing, the Department of the Interior is holding public meetings in Hawai'i from June 23 to July 8, 2014 "to consider reestablishing a government-to-government relationship between the United States and the Native Hawaiian community" (Department of the Interior, 2014). The named purpose of the hearings says it all: How can there be a government-to-government relationship between a government and a community? This seems to be a last-ditch effort driven by the trustees of the Office of Hawaiian Affairs (OHA) and the Council for Native Hawaiian Advancement to go the executive route since the legislative path did not work out for those wanting federal recognition. Without the late Senator Daniel K. Inouye's seniority in the US Senate and now-retired

Senator Daniel Akaka's political and symbolic influence as the initial sponsor of the legislative proposal, it seems that officials of the 50th state and their lackeys are pushing to go this alternative route, which could be facilitated by changes to the federal regulations.

Many Native Hawaiians support this effort because they have been told that it is the only politically realistic thing they can expect for restoring some form of self-governance. For the long years when the Akaka bill was on and off the table and repeatedly revised to suit both conservatives in the US Congress and 50th state officials, those driving the proposal repeatedly misrepresented the legislation as one that would offer parity with federally recognized Indian tribes. This was a sham since the state insisted that the sovereignty of any recognized Native Hawaiian governing entity would be delegated rather than recognized as inherent. But even if regarded as inherent, federal recognition would not resolve the contradiction between the existence of the Hawaiian Kingdom as an independent state and the push to convert that entity into a domestic dependent nation within US federal policy. Moreover, the legislative proposal made it clear that the 50th state would have both civil and criminal jurisdiction over a "Native Hawaiian governing entity," because with no territory, there would be no allowance for even the limited jurisdiction that most tribal nations exercise (Kauanui, 2014).

The US Supreme Court in the 2009 case *State of Hawaii v. Office of Hawaiian Affairs* ruled on whether the 50th state was empowered to sell the Kingdom Crown and Government Lands (designated as trust lands in the 1959 Hawaii Admission Act) in light of the 1893 Apology Resolution, which affirmed that the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States. According to the US High Court, the Apology was merely conciliatory and its findings had no intended or operative effect, and the 50th state has perfect title to these stolen lands. As if that was not bad enough, the 50th state legislature passed Act 176 in the immediate aftermath of the case once it was remanded back to the state—in the midst of a deal between the trustees of the Office of Hawaiian Affairs, three of the four individual plaintiffs, and the executive branch of the 50th state.[9] In 2011, the same year the 50th state passed legislation for the recognition of a Hawaiian "First Nation" in anticipation of federal recognition, it also passed Act 55, which created the Public Land Development Corporation (PLDC). Although the PLDC was repealed due to public outcry, clearly 50th state representatives, regardless of party affiliation, intend to sell off or otherwise alienate these lands to keep them out of the hands of nationalists or a Native Hawaiian governing entity.

Kingdom nationalists typically reject indigenous self-determination under both US policy and international law as legal strategies for recuperating Hawaiian sovereignty. Most also reject decolonization under the UN Charter and instead advocate for "de-occupation." Occupations typically end with the occupying power withdrawing from the occupied territory or being driven out of it. Also, the transfer of authority to a local government reestablishing the full and free exercise of sovereignty will usually end the state of occupation. But, as the Hawaiian case shows, the structural condition of settler colonialism cannot be remedied by de-occupation (Kauanui, 2005, 2008, 2011). Settler colonialism is itself an occupation.

Coloniality and Decoloniality

Setting aside for the moment the argument that the process of Hawaiian adaptation to Western modalities led by our Ali'i was not colonization, settler colonialism, or even "faux-colonial" or "quasicolonial," let us consider the concept of coloniality as theorized by Walter Mignolo in *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Mignolo, 2011). He defines coloniality as "the underlying logic of the foundation and unfolding of Western civilization from the Renaissance to today"—the "colonial matrix of power"—which he argues was foundationally interconnected to historical colonialisms (Mignolo, 2011, p. 2). As Mignolo explains, coloniality is the substance of the historical period of colonization: its social constructions, imaginaries, practices, hierarchies, and violence. Vast differences exist in the histories, socioeconomics, and geographies of colonization in its various global manifestations. For example, French colonization in Tahiti differs from British colonization in Aotearoa (aka New Zealand), which both differ from Chilean colonization in Rapa Nui (aka Easter Island). However, as Mignolo argues, coloniality—the establishment of racialized and gendered socioeconomic and political hierarchies according to an invented Eurocentric standard—is part of all forms of colonization. To return to my earlier example, that would include both Britain in North America (a settler colonial case) and Britain in India (a franchise colonial case), despite their differences.

Whether one asserts that Hawai'i/Kānaka Maoli underwent colonization prior to 1893 (e.g., settler colonialism) or not, we must reckon with the dominance of coloniality. This entails an understanding of decolonization beyond its limited scope within international law or the easily available historical and political case studies

of former colonies. Moreover, Mignolo argues, coloniality manifested throughout the world and determined the socioeconomic, racial, and epistemological value systems of contemporary society, commonly called "modern" society. This is precisely why coloniality does not just disappear with political and historical decolonization, the end of the period of territorial domination of lands, when countries gain independence. Given this distinction, one can see that coloniality is part of the logic of Western civilization.

This is where the concept of "decoloniality" is crucial. As Mignolo explains, decoloniality is a term used principally by emerging Latin American movements and "refers to analytic approaches and socioeconomic and political practices opposed to pillars of Western civilization: coloniality and modernity. This makes it both a political and epistemic (relating to knowledge and its validation) project;" it is the refusal of the assumption that Western European modes of thinking are in fact universal ones, or that the Western ways are the best (Mignolo, 2011, p. xxiv). We have rich examples of decolonialist "thinking and doing" in Hawai'i that are pono for our people and, in the spirit of *Hūlili*, provide well-being for our lāhui. These are grounded in indigenous Hawaiian sovereignty, what we might refer to today as ea, the power and life force of interconnectedness between deities, ancestral forces, humans, and all elements of the natural world. Ea is distinctly different from the Western concept of sovereignty. As Noelani Goodyear-Ka'ōpua points out from a Kanaka Maoli perspective, "In fact, one can use the same word to indicate life *and* sovereignty: *ea*. The two are crucial to one another" (Goodyear-Ka'ōpua, 2013).[10]

We must not rely on the US state and its subsidiary, nor can we wait for the resurrection of the Hawaiian Kingdom. Given the complex political realities we face as Kānaka Maoli in the face of aggressive attacks on our nation and lands, pursuing ea is critical. I stand in awe and appreciation of those laboring to revive and strengthen Hawaiian cultural practices, including the work of lo'i restoration and kalo cultivation, ahupua'a and watershed replenishment, traditional voyaging, kākau, lā'au lapa'au, lomi, 'ōlelo Hawai'i, hula, mele, oli, makahiki and other spiritual ceremonies, and much more.[11] All of this is part of the ongoing decolonial process, which refuses the "logic of the elimination of the native." Such activities can also heal the internalized racism that self-degrades the "primitive." These forms of cultural renewal are central to fostering the continuous growth of ea, which does not need a state to survive and flourish. It is also important that we not allow the rebirth of indigenous knowledge and practices to be used as a weapon in battles over Hawaiian "authenticity," commoditized for the market, or co-opted by the state.

Conclusion

Although settler colonialism need not hinge on the existence or nonexistence of state entities, it is clear that the 50th state continues to expropriate our national lands—ʻāina it has no rightful claim to—even as we challenge the legitimacy of the state. Illegality is not a barrier to power. Whether through the legislative branch or the executive branch, efforts by the US government and its subsidiary to extinguish the outstanding sovereignty claims to national sovereignty under international law threaten our lāhui. If a substantial proportion of the Hawaiian people go the domestic route, their participation in that process, even though regarded by many as a legal fiction, could be used as evidence of acquiescence. We must kūʻē this ongoing theft and all attempts by the 50th state and US federal government to alter our existing political status. We must not forfeit our national rights or otherwise surrender!

References

Beamer, K. (2014). *No mākou ka mana: Liberating the nation*. Honolulu, HI: Kamehameha Publishing.

Blaisdell, K. (2005). I hea nā Kānaka Maoli? Whither the Hawaiians? *Hūlili: Multidisciplinary Research on Hawaiian Well-Being, 2*(1), 9–20.

Blaisdell, K., & Mokuau, N. (1994). Kanaka Maoli, indigenous Hawaiians. In U. Hasager & J. Friedman (Eds.), *Hawaiʻi: Return to nationhood* (pp. 49–67), IWGIA-Document 75. Copenhagen, Denmark: IWGIA.

Byrd, J. (2011). *The transit of empire: Indigenous critiques of colonialism*. Minneapolis, MN: University of Minnesota Press.

Convention (II) with respect to the laws and customs of war on land and its annex: Regulations concerning the laws and customs of war on land. (1899). The Hague. Retrieved from http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/150

Convention (IV) respecting the laws and customs of war on land and its annex: Regulations concerning the laws and customs of war on land. (1907). The Hague. Retrieved from http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/195

Department of the Interior. (2014). Interior considers procedures to reestablish a government-to-government relationship with the Native Hawaiian community [Press release]. Retrieved from http://www.doi.gov/news/pressreleases/interior-considers-procedures-to-reestablish-a-government-to-government-relationship-with-the-native-hawaiian-community.cfm

Goodyear-Kaʻōpua, N. (2013). *The seeds we planted: Portraits of a Native Hawaiian charter school*. Minneapolis, MN: University of Minnesota Press.

Human Sciences Research Council: Democracy and Governance Programme Middle East Project. (2009). *Occupation, colonialism, apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law*. Cape Town, South Africa: Author.

International Committee of the Red Cross Resource Center. (2004). *Occupation and international humanitarian law: Questions and answers*. Retrieved from http://www.icrc.org/eng/resources/documents/misc/634kfc.htm

Kauanui, J. K. (2005). The multiplicity of Hawaiian sovereignty claims and the struggle for meaningful autonomy. *Comparative American Studies, 3*(3), 283–299.

Kauanui, J. K. (2008). *Hawaiian blood: Colonialism and the politics of sovereignty and indigeneity*. Durham, NC: Duke University Press.

Kauanui, J. K. (2011). Hawaiian nationhood, self-determination, and international law. In Florencia E. Mallon (Ed.), *Decolonizing native histories: Collaboration, knowledge, and languages in the Americas* (pp. 27–53). Durham, NC: Duke University Press.

Kauanui, J. K. (2014). Hawaiian sovereignty 101: The growing fight for native independence. Interview with Gale Courey Toensing, *Indian Country Today Media Network*, June 28, 2014. Retrieved from http://indiancountrytodaymedianetwork.com/2014/06/28/hawaiian-sovereignty-101-growing-fight-native-independence-155531

Kinzer, S. (2006). *Overthrow: America's century of regime change from Hawaii to Iraq*. New York, NY: Times Books.

Lâm, M. C. (2000). *At the edge of the state: Indigenous peoples and self-determination*. Leiden, Netherlands and Boston, MA: Martinus Nijhoff.

Mignolo, W. (2011). *The darker side of western modernity: Global futures, decolonial options*. Durham, NC: Duke University Press.

Newcomb, S. (2007). *Pagans in the promised land: Decoding the doctrine of Christian discovery*. Golden, CO: Fulcrum Publishing.

Osorio, J. K. (2002). *Dismembering lāhui: The history of the Hawaiian nation to 1887*. Honolulu, HI: University of Hawaiʻi Press.

Osorio, J. K. (2004). Kūʻē and kūʻokoʻa: History, law, and other faiths. In S. E. Merry & D. Brennis (Eds.), *Law and empire in the Pacific, Fiji and Hawaiʻi* (pp. 213–238). Santa Fe, NM: SAR Press.

Roy, A. J. (2001). *Sovereignty and decolonization: Realizing indigenous self-determination at the United Nations and in Canada* (Master's thesis). University of Victoria, Canada.

Sai, D. K. (2008). The Hawaiian Kingdom. Retrieved from http://www.hawaiiankingdom.org/ and "Publications" http://www2.hawaii.edu/~anu/publications.html

Silva, N. K. (2004). *Aloha betrayed: Native Hawaiian resistance to American colonialism.* Durham, NC: Duke University Press.

United Nations. (1945). Charter. Retrieved from http://www.un.org/en/documents/charter/chapter11.shtml

United Nations. (1960). Declaration on the granting of independence to colonial countries and peoples. Retrieved from http://www.un.org/en/decolonization/declaration.shtml

United Nations Office of the High Commissioner for Human Rights. (2007). Declaration on the rights of indigenous peoples. Retrieved October 12, 2011 from http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx

United Nations. (2009). *State of the world's indigenous peoples.* Department of Economic and Social Affairs, Division for Social Policy and Development, Secretariat of the Permanent Forum on Indigenous Issues. New York, NY: Author.

Wolfe, P. (1998). *Settler colonialism and the transformation of anthropology*. London, UK and New York, NY: Continuum International Publishing Group.

Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research, 8*(4), 387–409.

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About the Author

J. Kēhaulani Kauanui is an associate professor of American Studies and Anthropology at Wesleyan University, where she teaches on settler colonialism, indigenous politics, critical race studies, and anarchism. Her first book is *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity* (Duke University Press, 2008). Kauanui is one of six cofounders of the Native American and Indigenous Studies Association, and she is currently an elected member the national council of the American Studies Association. She also serves on the advisory board of the US Campaign for the Academic and Cultural Boycott of Israel.

Notes

1 Part of the memo stated: "We oppose the lies vehemently perpetuated by intellectuals who call themselves native indigenous Hawaiians when...they are Hawaiian nationals...." I recount the entire episode in more detail elsewhere. See J. Kēhaulani Kauanui, "The Multiplicity of Hawaiian Sovereignty Claims and the Struggle for Meaningful Autonomy," *Comparative American Studies*, 3(3), 283–299.

2 The prevailing definition of an occupation is guided by Article 42 of the 1907 Hague Regulations, which states that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." The legality of any particular occupation is regulated by the UN Charter and the law known as jus ad bellum (the right to go to war). But whether an occupation is considered "lawful" or not, and regardless of what it is called—an "invasion," "liberation," or "administration"—once a situation exists that factually amounts to an occupation, the law of occupation applies. See "Occupation and international humanitarian law: Questions and answers," International Committee of the Red Cross Resource Center, April 8, 2004, http://www.icrc.org/eng/resources/documents/misc/634kfc.htm.

See also Maivân Clech Lâm, *At the Edge of the State: Indigenous Peoples and Self-Determination* (2000).

3 The Hague Conventions of 1899 and 1907 are a series of international treaties and declarations negotiated at two international peace conferences at The Hague. The First Hague Conference was held in 1899 and the Second Hague Conference in 1907. They were among the first formal statements of the laws of war and war crimes in the body of secular international law. Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, July 29, 1899, http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/150. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, October 18, 1907, http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/195. Although the US government backed the overthrow of the Hawaiian Kingdom and annexed Hawai'i prior to 1899, earlier laws and customs of war are delineated in the Brussels declaration of 1874, which formed the basis of the two Hague Conventions on land warfare and the Regulations annexed to them, adopted in 1899 and 1907. See Project of an International Declaration concerning the Laws and Customs of War, Brussels, August 27, 1874, http://www.icrc.org/applic/ihl/ihl.nsf/INTRO/135?OpenDocument.

4 He details the three eras of "regime-change century": the imperial era, which brought Cuba, Puerto Rico, the Philippines, Nicaragua, and Honduras under US domination; the cold war era, which employed covert action against Iran, Guatemala, South Vietnam, and Chile; and the invasion era, in which US troops took down governments in Grenada, Panama, Afghanistan, and Iraq.

5 Thanks to Ty P. Kāwika Tengan for making this point. Personal communication via email, June 23, 2014.

6 These are questions I am taking up in my forthcoming book, *Thy Kingdom Come? The Paradox of Hawaiian Sovereignty*, which is a critical study of contemporary state-centered Hawaiian nationalism and its attendant disavowal of indigeneity with a focus on mid-19th-century social transformations and the implications then and today for land tenure and title, as well as gender roles and relations and sexual norms, identities, and practices.

7 In 1947, the General Assembly set up a special committee to report on the information received. In 1949, this committee was established as the Committee on Information from Non-Self-Governing Territories, http://www.un.org/en/documents/charter/chapter11.shtml.

8 The US Virgin Islands, American Samoa, and Guam are still on the list; Puerto Rico was on that list until 1952, and the United States still asserts plenary power over all of these territories and their inhabitants, including Puerto Rico as well as the Northern Mariana Islands despite the fact that the latter two are referred to as "commonwealth" governments.

9 Not surprisingly, steadfast aloha ʻāina defender Jonathan Kay Kamakawiwoʻole Osorio refused to sell out like the other plaintiffs (Pia Thomas Aluli, Charles Kaʻaiʻai, and Keoki Maka Kamaka Kiʻili). The supreme court of the 50th state eventually threw the case out, saying it was no longer "ripe" for adjudication, but only after OHA and the other three plaintiffs tried to settle the case in dubious ways, which included challenging Osorio's standing based on the claim that he does not meet the 50 percent blood quantum rule (and thus cannot claim beneficiary status).

10 I first learned of the concept of ea from esteemed kupuna and sovereignty leader Kekuni Blaisdell. See Noelani Goodyear-Kaʻōpua, *The Seeds We Planted: Portraits of a Native Hawaiian Charter School* (2013), pp. 3–7. Speaking to the concept of "sovereign pedagogies," she theorizes the concept of ea.

11 There are myriad examples, too numerous to even give a representative sample.