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August 21, 2023

Major General Kenneth Hara
State of Hawai‘i Adjutant General
Department of Defense
3949 Diamond Head Road
Honolulu, HI 96816

Re: Urgency of establishing a Military Government for Hawai‘i

Dear Major General Hara:

Despite the prolonged nature of the occupation and 130 years of non-compliance to the law of occupation, there are two fundamental rules that prevail: (1) to protect the sovereign rights of the legitimate government of the Occupied State; and (2) to protect the inhabitants of the Occupied State from being exploited. From these two rules, the 1907 Hague Regulations and the 1949 Fourth Geneva Convention circumscribe the conduct and actions of a military government, notwithstanding the failure by the occupant to protect the rights of the occupied government and the inhabitants since 1893. These rights remain vested despite over a century of violating these rights. The failure to establish a military government facilitated the violations.

The law of occupation does not give the occupant unlimited power over the inhabitants of the Occupied State. As President McKinley interpreted this customary law of occupation that predates the 1899 and 1907 Hague Regulations during the Spanish-American War, the inhabitants of occupied territory “are entitled to security in their persons and property and in all their private rights and relations,”¹ and it is the duty of the commander of the occupant “to protect them in their homes, in their employments, and in their personal and religious beliefs.”² Furthermore, “the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are

¹ General Orders No. 101, 18 July 1898, *Foreign Relations of the United States, 1898*, 783. General Orders No. 101 is also reprinted in *Ochoa v. Hernandez*, 230 U.S. 139, 156 (1913).

² *Id.*

considered as continuing in force”³ and are “to be administered by the ordinary tribunals, substantially as they were before the occupation.”⁴

United States practice under the law of occupation acknowledges that sovereignty remains in the Occupied State, because “military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty”⁵ through effective control of the territory of the Occupied State.

The prolonged occupation did not diminish Hawaiian State sovereignty and the continued existence of the Hawaiian State was acknowledged by the Permanent Court of Arbitration in 1999 in *Larsen v. Hawaiian Kingdom*.⁶ On March 22, 2023, the United Nations Human Council, at its 49th session in Geneva, was made aware of the Hawaiian Kingdom as an Occupied State and the commission of war crimes and human rights violations within its territory by the United States and the State of Hawai‘i and its Counties.⁷

International humanitarian law is silent on a prolonged occupation because the authors of 1907 Hague Regulations viewed occupations to be provisional and not long term. According to Professor Scobbie, “[t]he fundamental postulate of the regime of belligerent occupation is that it is a temporary state of affairs during which the occupant is prohibited from annexing the occupied territory. The occupant is vested only with temporary powers of administration and does not possess sovereignty over the territory.”⁸ The effective control by the United States since Queen Lili‘uokalani’s conditional surrender on January 17, 1893, “can never bring about by itself a valid transfer of sovereignty. Because occupation does not transfer sovereignty over the territory to the occupying power, international law must regulate the inter-relationships between the occupying force, the ousted government, and the local inhabitants for the duration of the occupation.”⁹

Despite the prolonged nature of the American occupation, the law of occupation continues to apply because sovereignty was never ceded or transferred to the United States by the Hawaiian Kingdom. At a meeting of experts on the law occupation, that was convened by the International Committee of the Red Cross, the experts “pointed out that the norms of occupation law, in particular Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention, had originally been designed to regulate short-term occupations. However, the [experts] agreed that [international humanitarian law] did not

³ *Id.*

⁴ *Id.*

⁵ Department of the Army, Field Manual 27-10, *The Law of Land Warfare*, para. 358 (1956).

⁶ Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, PCA Case No. 1999-01, online at <https://pca-cpa.org/en/cases/35/>.

⁷ International Association of Democratic Lawyers, *Video: Dr. Keanu Sai’s oral statement to the UN Human Rights Council on the U.S. occupation of the Hawaiian Kingdom* (Mar. 22, 2023) online at <https://iadllaw.org/2022/03/video-dr-keanu-sais-oral-statement-to-the-un-human-rights-council-on-the-u-s-occupation-of-the-hawaiian-kingdom/>.

⁸ Iain Scobbie, “International Law and the prolonged occupation of Palestine,” *United Nations Roundtable on Legal Aspects of the Question of Palestine, The Hague*, 1 (May 20-22, 2015).

⁹ Eyal Benvenisti, *The International Law of Occupation* 6 (2nd ed., 2012).

set any limits to the time span of an occupation. It was therefore recognized that nothing under [international humanitarian law] would prevent occupying powers from embarking on a long-term occupation and that occupation law would continue to provide the legal framework applicable in such circumstances.”¹⁰ They also concluded that since a prolonged occupation “could lead to transformations and changes in the occupied territory that would normally not be necessary during short-term occupation,” they “emphasized the need to interpret occupation law flexibly when an occupation persisted.”¹¹ The prolonged occupation of the Hawaiian Kingdom is, in fact, that case, where drastic unlawful “transformations and changes in the occupied territory” occurred.

As the occupant in effective control of 10,931 square miles of Hawaiian territory, the State of Hawai‘i, being the civilian government of the Hawaiian Kingdom that was unlawfully seized in 1893, is obligated to transform itself into a military government in order “to protect the sovereign rights of the legitimate government of the Occupied State, and [...] to protect the inhabitants of the Occupied State from being exploited.” The military government has centralized control, with you as its military governor, and by virtue of your position you have “supreme legislative, executive, and judicial authority, limited only the laws and customs of war and by directives from higher authority.”¹²

The reasoning for the centralized control of authority is so that the military government can effectively respond to situations that are fluid in nature. Under the law of occupation, this authority by the occupant is to be shared with the Council of Regency, being the government of the Occupied State. As the last word concerning any acts relating to the administration of the occupied territory is with the occupying power, “occupation law would allow for a vertical, but not a horizontal, sharing of authority [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory.”¹³

By virtue of this shared authority, the Council of Regency, in its meeting on August 14, 2023, approved an “Operational Plan for Transitioning the State of Hawai‘i into a Military Government,” to assist you in your duties as the theater commander of the occupant. International humanitarian law distinguishes between the “Occupying State” and the “occupant.” The law of occupation falls upon the latter and not the former, because the former’s seat of government exists outside of Hawaiian territory, while the latter’s military government exists within Hawaiian territory.

The insurgents, who were not held to account for their treasonous actions in 1893, were allowed by the United States to control and exploit the resources of the Hawaiian Kingdom and its inhabitants after the Hawaiian government was unlawfully overthrown by United States troops. Some of these insurgents came to be known as the Big Five, a collection of

¹⁰ Report by Tristan Ferraro, legal advisor for the International Committee of the Red Cross, *Expert Meeting: Occupation and other forms of Administration of Foreign Territory* 72 (2012).

¹¹ *Id.*

¹² Department of the Army, Field Manual 27-5, *Civil Affairs Military Government*, para. 3 (1947).

¹³ International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 20 (2012), online at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>.

five self-serving large businesses, that wielded considerable political and economic power after 1893. The Big Five were Castle & Cooke, Alexander & Baldwin, C. Brewer & Company, American Factors (now Amfac), and Theo H. Davies & Company. One of the Big Five, Amfac, acquired an interest in Pioneer Mill Company in 1918, and in 1960 became a wholly owned subsidiary of Amfac. Pioneer Mill Company operated in West Maui with its headquarters in Lahaina. In 1885, Pioneer Mill Company was cultivating 600 of the 900 acres owned by the company and by 1910, 8,000 acres were devoted to growing sugar cane. In 1931, the Olowalu Company was purchased by Pioneer Mill Company, adding 1,200 acres of sugar cane land to the plantation. By 1935, over 10,000 acres, half-owned and half leased, were producing sugar cane for Pioneer Mill.¹⁴ To maintain its plantations, water was diverted, and certain lands of west Maui became dry.

The Lahaina wildfire's tragic outcome also draws attention to the exploitation of the resources of west Maui and its inhabitants—water and land. West Maui Land Company, Inc., became the successor to Pioneer Mill and its subsidiary the Launiupoko Irrigation Company. When the sugar plantation closed in 1999, it was replaced with real estate development and water management. Instead of diverting water to the sugar plantation, it began to divert water to big corporations, hotels, golf courses, and luxury subdivisions. As reported by Hawai'i Public Radio, "Lahaina was formerly the 'Venice of the Pacific,' an area famed for its lush environment, natural and cultural resources, and its abundant water resources in particular."¹⁵ Lahaina became a deadly victim of water diversion and exploitation. It should be noted that Lahaina is but a microcosm of the exploitation of the resources of the Hawaiian Kingdom and its inhabitants throughout the Hawaiian Islands for the past century to benefit the American economy in violation of the law of occupation.

Considering the devastation and tragedy of the Lahaina wildfire, your duty is only amplified and made much more urgent. It has been reported that the west Maui community, to their detriment, are frustrated with the lack of centralized control by departments and agencies of the federal government, the State of Hawai'i, and the County of Maui. The law of occupation will not change the support of these departments and agencies, but rather only change the dynamics of leadership under the centralized control by yourself as the military governor. The operational plan provides a comprehensive process of transition with essential tasks and implied tasks to be carried out.

The establishment of a military government would also put an end to land developers approaching victims of the fire who lost their homes to purchase their property. While land titles were incapable of being conveyed after January 17, 1893, for want of a lawful government and its notaries public, titles are capable of being remedied under Hawaiian Kingdom law and economic relief by title insurance policies.¹⁶ It is unfortunate that the

¹⁴ University of Hawai'i at Mānoa Library—Hawaiian Collection, Hawaiian Sugar Planters' Association Plantation Archives, *Register of the Pioneer Mill Company, Lahaina, Maui, 1873-1960* online at https://www2.hawaii.edu/~speccoll/p_pioneer.html.

¹⁵ Ku'uwehi Hirashi, "Lahaina fires reveal ongoing power struggle for West Maui water rights," Hawaii Public Radio (Aug. 17, 2023) online at <https://www.hawaiipublicradio.org/local-news/2023-08-17/lahaina-fires-reveal-ongoing-power-struggle-for-west-maui-water-rights>.

¹⁶ See Royal Commission of Inquiry, *Preliminary Report—Legal Status of Land Titles throughout the Realm* 48 (July 16, 2020) online at

tragedy of Lahaina has become an urgency for the State of Hawai'i to begin to comply with the law of occupation and establish a military government. To not do so is a war crime of omission.

Given the severity of the situation in Maui and the time factor for aid to the victims, the Council of Regency respectfully calls upon you to schedule a meeting to go over its proposed operational plan and its execution.

Na'u me ka 'oia'io,



David Keanu Sai, Ph.D.

Chairman of the Council of Regency

enclosure

https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Land_Titles.pdf; see also *Supplemental Report—On Title Insurance* (Oct. 28, 2020) online at https://hawaiiankingdom.org/pdf/RCI_Supp_Report_Title_Insurance.pdf.

Operational Plan for Transitioning the State of Hawai‘i into a Military Government

by

The Council of Regency
Occupied Government of the Hawaiian Kingdom



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14 August 2023

A blue ink signature of David Keanu Sai.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior
Acting Minister of Foreign Affairs *ad interim*

A black ink signature of Kau'i P. Sai-Dudoit.

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

A black ink signature of Dexter Ke'eumoku Ka'iama.

Dexter Ke'eumoku Ka'iama, *Esq.*,
Acting Attorney General

ABSTRACT

Adhering to the sharing of authority between the Occupying Government and the Occupied Government under the law of occupation, the Council of Regency has drafted an operational plan that addresses 130 years of the violation of international humanitarian law and the law of occupation by the United States of America. This operational plan lays out the process of transition from the State of Hawai'i government to a Military Government in accordance with international humanitarian law, the law of occupation, and U.S. Army regulations in Field Manuals 27-5 and 27-10. The 1907 Hague Regulations and the 1949 Fourth Geneva Convention shows there are four essential tasks of the Military Government. This operational plan will address these essential tasks with their implied tasks for successful execution despite the prolonged nature of the occupation where the basic rules of occupation have been violated for over a century. The operational plan will lay out governing rules of maintaining a Military Government until a peace treaty has been negotiated and agreed upon between the Hawaiian Kingdom and the United States of America.

TABLE OF CONTENTS

THE AMERICAN OCCUPATION OF THE HAWAIIAN KINGDOM.....5
Hawaiian Independence.....5
United States’ Invasion and Overthrow of the Hawaiian Kingdom Government.....6
Presumption of Continuity of the Hawaiian State under International Law.....8
International Humanitarian Law Prohibits Annexation of the Occupied State.....10
Hawaiian Citizenry under Military Occupation.....11
*Restoration of the Hawaiian Government and the Acknowledgment
of the Hawaiian State by the Permanent Court of Arbitration*.....13
War Crime of Usurpation of Sovereignty during Military Occupation.....15
The State of Hawai‘i is the Civilian Government of the Hawaiian Kingdom.....18
Prolonged Occupation.....18
Strategic Plan of the Council of Regency.....19
The Royal Commission of Inquiry—Investigating War Crimes.....23

MILITARY FORCE OF THE HAWAIIAN KINGDOM.....25

MILITARY GOVERNMENT OF HAWAI‘I.....30

ESSENTIAL TASK: *Temporary Administrator of the Laws of the Occupied State*.....38
IMPLIED TASK: *Proclaim the Establishment of a Military Government of Hawai‘i*.....38
IMPLIED TASK: *Proclaim Provisional Laws in order to bring the Laws of the
Hawaiian Kingdom up to date*.....38
 Doctrine of Necessity.....42
 Constitutional Necessity.....43
 Exercising the Constitutional Prerogative without a Monarch.....45
 Legal Status of American Municipal Laws in the Hawaiian Kingdom.....46
 *Application to State of Hawai‘i statutes on Murder, Manslaughter,
and Negligent Homicide*.....47
 Hawaiian Kingdom law on Murder and Manslaughter.....50
 General Analysis and Application of the Formula.....51
IMPLIED TASK: *Disband the State of Hawai‘i Legislature
and the County Councils*.....54

ESSENTIAL TASK: *Temporary Administrator of Public Buildings, Real Estate,
Forests, and Agricultural Estates that belong to the Occupied State*.....56
IMPLIED TASK: *Remove the United States flag from all Public Buildings
of the Hawaiian Kingdom*.....56

ESSENTIAL TASK: <i>Protect the Institutions of the Occupied State</i>	58
IMPLIED TASK: <i>Re-align Departments and Agencies to the Status Quo Ante</i>	59
IMPLIED TASK: <i>Oath of Allegiance by Those in the Military Government</i>	61
IMPLIED TASK: <i>Reinstate Universal Healthcare for Aboriginal Hawaiians</i>	62
IMPLIED TASK: <i>Take Affirmative Steps to End Denationalization through Americanization</i>	63
 ESSENTIAL TASK: <i>Protect and Respect the Rights of the Population of the Occupied State</i> ...	66
 <i>Figure 1. National Flag of the Hawaiian Kingdom</i>	57
 <i>Appendix 1. Proclamation of a Military Government</i>	
<i>Appendix 2. Proclamation of Provisional Laws</i>	
<i>Appendix 3. 1882 Lahainaluna Annual Exams</i>	

THE AMERICAN OCCUPATION OF THE HAWAIIAN KINGDOM

Hawaiian Independence

On 28 November 1843, both Great Britain and France jointly recognized the Hawaiian Kingdom as an independent State making it the first country in Oceania to join the international community of States. The United States followed on 6 July 1844. According to Professor Oppenheim, once recognition of a State is granted, it “is incapable of withdrawal”¹ by the recognizing State, and that “recognition estops the State which has recognized the title from contesting its validity at any future time.”² And the “duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood may not be ‘derecognized.’”³

As a progressive constitutional monarchy, the Hawaiian Kingdom had compulsory education, universal health care, land reform and a representative democracy.⁴ The Hawaiian Kingdom treaty partners include Austria and Hungary, Belgium, Bremen, Denmark, France, Germany, Hamburg, Italy, Japan, Luxembourg, Netherlands, Portugal, Russia, Spain, Switzerland, Sweden and Norway, the United Kingdom and the United States.⁵ By 1893, the Hawaiian Kingdom maintained over 90 Legations and Consulates throughout the world. This fact of Hawaiian Statehood was acknowledged in 2001 by the arbitral tribunal, in *Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration, which stated, “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”⁶

To preserve its political independence, should war break out in the Pacific Ocean, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. As a result, provisions recognizing Hawaiian neutrality were incorporated in its treaties with Sweden-Norway, Spain, and Germany. “A nation that wishes to secure her own peace,” says Vattel, “cannot more successfully attain that object than by concluding treaties of neutrality.”⁷

¹ Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).

² Georg Schwarzenberger, “Title to Territory: Response to a Challenge,” 51(2) *American Journal of International Law* 308, 316 (1957).

³ Restatement (Third) of the Foreign Relations Law of the United States, §202, comment g.

⁴ David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 58-94 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

⁵ “Treaties with Foreign States,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 237-310 (2020).

⁶ *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* 566, 581 (2001).

⁷ Emerich De Vattel, *The Law of Nations* 333 (6th ed., 1844).

The Hawaiian Kingdom also became a full member State of the Universal Postal Union (“UPU”) on 1 January 1882, which is currently a specialized agency of the United Nations and the postal sector’s primary forum for international cooperation. While being a member State of the UPU, the Hawaiian Kingdom has been inactive since 17 January 1893 because it was incapacitated as a result of the illegal overthrow of its government by the United States as it is explained below.

United States’ Invasion and Overthrow of the Hawaiian Kingdom Government

On 16 January 1893, under orders by U.S. Minister John Stevens, the city of Honolulu was invaded by a detachment of U.S. troops “supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies.”⁸ This invasion coerced Queen Lili‘uokalani, executive monarch of the Hawaiian Kingdom, to conditionally surrender to the superior power of the United States military, whereby she stated:

Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.⁹

President Cleveland initiated a presidential investigation on 11 March 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and provide periodic reports to the U.S. Secretary of State Walter Gresham. Commissioner Blount arrived in the Islands on 29 March after which he “directed the removal of the flag of the United States from the government building and the return of the American troops to their vessels.”¹⁰ Blount’s last report was dated 17 July 1893, and on 18 October 1893, Secretary of State Gresham notified the President:

The Provisional Government was established by the action of the American minister and the presence of the troops landed from the *Boston*, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.

The earnest appeals to the American minister for military protection by the officers of that Government, after it had been recognized, show the utter absurdity of the claim that it was established by a successful revolution of the people of the Islands. Those appeals were a confession by the men who made them of their weakness and timidity. Courageous men, conscious of their strength and the justice of their cause, do not thus act.

⁸ United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawaii: 1894-95*, 451 (1895) (hereafter “Executive Documents”).

⁹ *Id.*, 586.

¹⁰ *Id.*, 568.

[...]

The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign [...].

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.¹¹

On 18 December 1893, President Cleveland delivered a manifesto¹² to the Congress on his investigation into the overthrow of the Hawaiian Kingdom Government. The President concluded that the “military occupation of Honolulu by the United States...was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property.”¹³ He also determined “that the provisional government owes its existence to an armed invasion by the United States.”¹⁴ Finally, the President admitted that by “an act of war [...] the Government of a feeble but friendly and confiding people has been overthrown.”¹⁵

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from 13 November through 18 December, an agreement of peace was reached. According to the executive agreement, by exchange of notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen.

Five years later, at the height of the Spanish-American War, President Cleveland’s successor, William McKinley, signed a congressional joint resolution of annexation on 7 July 1898, unilaterally seizing the Hawaiian Islands. The legislation of every State, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that “the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”¹⁶ According to Judge Crawford, derogation of this principle will not be presumed.¹⁷ Since 1898, the United States has unlawfully

¹¹ *Id.*, 462-463.

¹² *Manifesto* is defined as a “formal written declaration, promulgated by...the executive authority of a state or nation, proclaiming its reasons and motives for...important international action.” Black’s Law Dictionary 963 (6th ed., 1990).

¹³ Executive Documents, 452.

¹⁴ *Id.*, 454.

¹⁵ *Id.*

¹⁶ *Lotus*, PCIJ Series A, No. 10, 18 (1927).

¹⁷ James Crawford, *The Creation of States in International Law* 41 (2nd ed. 2006).

imposed its municipal laws and administrative measures throughout the territory of the Hawaiian Kingdom, which is the war crime of *usurpation of sovereignty during military occupation* under particular customary international law.

Stark parallels can be drawn between what the United States did to the Hawaiian Kingdom and what Iraq did to Kuwait in 1990, commonly referred to as the First Gulf War. Just as Iraq, without justification, invaded Kuwait and overthrew the Kuwaiti government on 2 August 1990, and then unilaterally announced it annexed Kuwaiti territory on 8 August 1990, the United States did the same to the Hawaiian Kingdom and its territory. Where Kuwait was under a belligerent occupation by Iraq for 7.5 months, the Hawaiian Kingdom has been under a belligerent occupation by the United States for 130 years. Unlike Kuwait, the Hawaiian Kingdom did not have the United Nations Security Council to draw attention to the illegality of Iraq's invasion and annexation of Kuwaiti territory.¹⁸

Presumption of Continuity of the Hawaiian State under International Law

Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof and what is to be proven. According to Judge Crawford, there “is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no, or no effective, government,”¹⁹ and belligerent occupation “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”²⁰ Addressing the presumption of the German State's continued existence despite the military overthrow of the Nazi government during the Second World War, Professor Brownlie explains:

Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence.²¹

¹⁸ United Nations Security Council Resolution 662 (9 August 1990). In its resolution, the Security Council stated: “Gravely alarmed by the declaration by Iraq of a ‘comprehensive and eternal merger’ with Kuwait, Demanding once again that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990, Determined to bring the occupation of Kuwait by Iraq to an end and to restore the sovereignty, independent and territorial integrity of Kuwait, Determined also to restore the authority of the legitimate Government of Kuwait, 1. Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void; 2. Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation; 3. Demands that Iraq rescind its actions purporting to annex Kuwait; 4. Decides to keep this item on its agenda and to continue its efforts to put an early end to the occupation.”

¹⁹ Crawford, 34.

²⁰ *Id.*

²¹ Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).

“If one were to speak about a presumption of continuity,” explains Professor Craven, “one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.”²² Evidence of “a valid demonstration of legal title, or sovereignty, on the part of the United States” would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*²³ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.²⁴

In layman terms, you start off with the presumption of the existence of the Hawaiian State until there is rebuttable evidence that the Hawaiian State had been extinguished under international law by its consent, *i.e.*, treaty. One does not start off with proving the Hawaiian Kingdom exists today. The presumption is that since “in the nineteenth century the Hawaiian Kingdom existed as an independent State,” it continues to exist today. Until there is rebuttable evidence that the Hawaiian State had been extinguished by the United States, the Hawaiian State continues to exist. Like the presumption of innocence, the accused does not start off with proving his/her innocence because the innocence is presumed. Rather, the burden of proof is on the opposing side to prove with rebuttable evidence that the person is not innocent. Until there is rebuttable evidence, the person remains innocent.

Rebuttable evidence that the Hawaiian Kingdom no longer exists as a State is a treaty between the Hawaiian Kingdom and the United States whereby the former ceded its sovereignty and territory to the latter. There is no treaty, and, therefore, the Hawaiian Kingdom continues to exist with all its rights and obligations under international law. Conversely, the United States, as the occupant, has certain duties and obligations to comply with international humanitarian law and the law of occupation considering the continued existence of the Hawaiian Kingdom as a subject of international law. Without rebuttable evidence, there is no dispute as to the Hawaiian Kingdom’s continued existence since the nineteenth century.

²² Matthew Craven, “Continuity of the Hawaiian Kingdom as a State under International Law,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).

²³ 9 Stat. 922 (1848).

²⁴ 30 Stat. 1754 (1898).

International Humanitarian Law Prohibits Annexation of the Occupied State

The United States purportedly annexed the Hawaiian Islands in 1898 by a municipal law called the *joint resolution to provide for annexing the Hawaiian Islands to the United States*.²⁵ As a municipal law of the United States, it is without extraterritorial effect. It is not an international treaty. Annex “is to tie or bind[,] [t]o attach.”²⁶ Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. Because the Hawaiian Kingdom retained the sovereignty of the State despite being occupied, only the Hawaiian Kingdom could cede its sovereignty and territory to the United States by way of a treaty of peace. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.²⁷ International law does not permit annexation of territory of another state.²⁸

Furthermore, in 1988, the U.S. Department of Justice’s Office of Legal Counsel (“OLC”) published a legal opinion that addressed, *inter alia*, the annexation of Hawai‘i. The OLC’s memorandum opinion was written for the Legal Advisor for the Department of State regarding legal issues raised by the proposed Presidential proclamation to extend the territorial sea from a three-mile limit to twelve.²⁹ The OLC concluded that only the President and not the Congress possesses “the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States.”³⁰ As Justice Marshall stated, the “President is the sole organ of the nation in its external relations, and its sole representative with foreign nations,”³¹ and not the Congress.

The OLC further opined, “we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States.”³² Therefore, the OLC concluded it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that

²⁵ 30 Stat. 750 (1898).

²⁶ Black’s Law, 88.

²⁷ There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.

²⁸ Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).

²⁹ Douglas Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” 12 *Opinions of the Office of Legal Counsel* 238 (1988).

³⁰ *Id.*, 242.

³¹ *Id.*, 242.

³² *Id.*

the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”³³ That territorial sea was to be extended from three to twelve miles under the United Nations Law of the Sea Convention and since the United States is not a Contracting State, the OLC investigated whether it could be accomplished by the President’s proclamation. In other words, the Congress could not extend the territorial sea an additional 9 miles by statute because its authority was limited up to the 3 mile limit. This is not rebuttable evidence as to the presumption of the continuity of the Hawaiian State. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the “laws of no nation can justly extend beyond its own territories.”³⁴

Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby who stated the “constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it.”³⁵ Professor Willoughby also stated that the “incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is [...] essentially a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts.”³⁶

Hawaiian Citizenry under Military Occupation

On 21 January 1868, Ferdinand Hutchison, Hawaiian Minister of the Interior, stated the criteria for Hawaiian nationality. He announced that “[i]n the judgment of His Majesty’s Government, no one acquires citizenship in this Kingdom unless he is born here, or born abroad of Hawaiian parents, (either native or naturalized) during their temporary absence from the kingdom, or unless having been the subject of another power, he becomes a subject of this kingdom by taking the oath of allegiance.” According to §429, Hawaiian Civil Code, the Minister of the Interior:

shall have the power in person upon the application of any alien foreigner who shall have resided within the Kingdom for five years or more next preceding such application, stating his intention to become a permanent resident of the Kingdom, to administer the oath of allegiance to such foreigner, if satisfied that it will be for the good of the Kingdom, and that such foreigner owns without encumbrance taxable real estate within the Kingdom, and is not of immoral character, nor a refugee from justice of some other country, nor a deserting sailor, marine, soldier or officer.

³³ *Id.*, 262.

³⁴ *The Apollon*, 22 U.S. 362, 370 (1824).

³⁵ Kmiec, 252.

³⁶ Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).

Once a State is occupied, international law preserves the *status quo ante* of the occupied State as it was before the occupation began. To preserve the nationality of the occupied State from being manipulated by the occupying State to its advantage, international law only allows individuals born within the territory of the occupied State to acquire the nationality of their parents— *jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not [...] transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to 17 January 1893. All other individuals born after 17 January 1893 to the present are aliens who can only acquire the nationality of their parents. According to von Glahn, “children born in territory under enemy occupation possess the nationality of their parents.”³⁷

According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, the population of which, according to the State of Hawai‘i, numbered 1,302,939 in 2009,³⁸ the *status quo ante* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore their presence constitutes war crimes.

According to United Nations Special Rapporteur Awn Shawkat Al-Khasawneh of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, population “transfers engage both state responsibility and the criminal liability of individuals.”³⁹ “The remedy, in case of breach of the prohibition,” states Professor Ronen, “is reversion to the status quo ante, *i.e.* the occupying power should remove its nationals from the occupied territory and repatriate them. [...] At any rate, since the occupying power cannot grant what it does not have, the settler population could not acquire status in the territory during the period of occupation.”⁴⁰

³⁷ Gehard von Glahn, *Law Among Nations* 780 (6th ed., 1992). See also Willy Daniel Kaipo Kauai, “The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai‘i” (PhD dissertation, University of Hawai‘i at Mānoa, 2014).

³⁸ State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009) (online at <http://www.ohadatabook.com/F01-05-11u.pdf>); see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 *Haw. J.L. & Pol.* 46, 63-65 (Summer 2004).

³⁹ Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and Population Transfer: Final Report of the Special Rapporteur*, Mr. Al-Khasawneh E/CN.4/Sub.2/1997/23, para. 60.

⁴⁰ Yael Ronen, “Status of Settlers Implanted by Illegal Regimes under International Law,” *International Law Forum of the Hebrew University of Jerusalem Law Faculty* (Dr. Tomer Broude, ed.) 38 (3 Oct. 2008).

*Restoration of the Hawaiian Government and the Acknowledgment of the Hawaiian State
by the Permanent Court of Arbitration*

According to Professor Rim, the State continues “to exist even in the factual absence of government so long as the people entitled to reconstruct the government remain.”⁴¹ In 1997, the Hawaiian government was restored *in situ* by a Council of Regency under Hawaiian constitutional law and the doctrine of necessity in similar fashion to governments established in exile during the Second World War.⁴² By virtue of this process the Hawaiian government is comprised of officers *de facto*. According to U.S. constitutional scholar Thomas Cooley:

A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.⁴³

Under Hawaiian law, the Council of Regency serves in the absence of the Executive Monarch. While the last Executive Monarch was Queen Lili‘uokalani who died on 11 November 1917, the office of the Monarch remained under Hawaiian constitutional law. The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and third, prepare for an effective transition to a *de jure* government when the occupation ends.

There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States’ recognition of the Hawaiian Kingdom as an independent State on 6 July 1844,⁴⁴ was also the recognition of its government—a constitutional monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, and the Council of Regency in 1997. The legal doctrines of recognition of new governments only arise “with extra-

⁴¹ Yejoon Rim, “State Continuity in the Absence of Government: The Underlying Rationale in International Law,” 20(20) *European Journal of International Law* 1, 4 (2021).

⁴² David Keanu Sai, “The Royal Commission of Inquiry,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020); see also Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333 (2021).

⁴³ Thomas M. Cooley, “Grave Obstacles to Hawaiian Annexation,” *The Forum*, 389, 390 (1893).

⁴⁴ U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

legal changes in government” of an existing State.⁴⁵ Successors to King Kamehameha III were not established through “extra-legal changes,” but rather under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “[w]here a new administration succeeds to power in accordance with a state’s constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”⁴⁶

On 8 November 1999, arbitral proceedings were instituted at the Permanent Court of Arbitration (“PCA”) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws that denied him a fair trial and led to his incarceration.⁴⁷ Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes. This brought the dispute under the auspices of the PCA.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law that apply to established States must be considered, and not those rules of international law that would apply to new States such as the case with Palestine. Professor Lenzerini concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, ‘the legal existence of [...] States [is] preserved from extinction,’ since ‘illegal occupation cannot of itself terminate statehood.’”⁴⁸

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal on 9 June 2000 after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that “States can act only by and through their agents and representatives.”⁴⁹ As Professor Talmon states, the “government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile.”⁵⁰

⁴⁵ M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice*, 1815-1995 26 (1997).

⁴⁶ *Restatement (Third)*, §203, comment c.

⁴⁷ *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

⁴⁸ Lenzerini, 322.

⁴⁹ *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

⁵⁰ Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency. The PCA identified the international dispute in *Larsen* as between a “State” and a “Private entity” in its case repository.⁵¹ Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai‘i.

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom (emphasis added).⁵²

It should also be noted that the United States, by its embassy in The Hague, entered into an agreement with the Council of Regency to have access to the pleadings of the arbitration. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal.⁵³

War Crime of Usurpation of Sovereignty during Military Occupation

Usurpation of sovereignty during military occupation was listed as a war crime in 1919 by the Commission on Responsibilities of the Paris Peace Conference that was established by the Allied and Associated Powers at war with Germany and its allies. The Commission was especially concerned with acts perpetrated in occupied territories against non-combatants and civilians. *Usurpation of sovereignty during military occupation* is the imposition of the laws and administrative measures of the Occupying State over the territory of the Occupied State. Usurpation is the “unlawful encroachment or assumption of the use of property, power or authority which belongs to another.”⁵⁴

While the Commission did not provide the source of this crime in treaty law, it appears to be Article 43 of the 1907 Hague Regulations, which states, “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” Article 43 is the codification of customary

⁵¹ Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

⁵² *Id.*

⁵³ Sai, *The Royal Commission of Inquiry*, 25-26.

⁵⁴ Black’s Law, 1545.

international law that existed on 17 January 1893, when the United States unlawfully overthrew the government of the Hawaiian Kingdom.

The Commission charged that in Poland the German and Austrian forces had “prevented the populations from organising themselves to maintain order and public security” and that they had “[a]jided the Bolshevik hordes that invaded the territories.” It said that in Romania the German authorities had instituted German civil courts to try disputes between subjects of the Central Powers or between a subject of these powers and a Romanian, a neutral, or subjects of Germany’s enemies. In Serbia, the Bulgarian authorities had “[p]roclaimed that the Serbian State no longer existed, and that Serbian territory had become Bulgarian.” It listed several other war crimes committed by Bulgaria in occupied Serbia: “Serbian law, courts and administration ousted;” “Taxes collected under Bulgarian fiscal regime;” “Serbian currency suppressed;” “Public property removed or destroyed, including books, archives and MSS (e.g., from the National Library, the University Library, Serbian Legation at Sofia, French Consulate at Uskub);” “Prohibited sending Serbian Red Cross to occupied Serbia.” It also charged that in Serbia the German and Austrian authorities had committed several war crimes: “The Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, judicial organisation, etc.,” “Museums belonging to the State (e.g., Belgrade, Detchani) were emptied and the contents taken to Vienna.”⁵⁵

The crime of *usurpation of sovereignty during military occupation* was referred to by Judge Blair of the American Military Commission in a separate opinion in the *Justice Case*, holding that this “rule is incident to military occupation and was clearly intended to protect the inhabitants of any occupied territory against the unnecessary exercise of sovereignty by a military occupant.”⁵⁶ The war crime of *usurpation of sovereignty during military occupation*, however, has not been included in more recent codifications of war crimes, casting some doubt on its status as a crime under customary international law. According to Professor Schabas, “there do not appear to have been any prosecutions for that crime by international criminal tribunals.”⁵⁷ While this war crime is questionable under customary international law, it is a war crime under “particular” customary international law. According to the International Law Commission, “A rule of particular customary international law, whether regional, local or other, is a rule of customary international law that applies only among a limited number of States.”⁵⁸

⁵⁵ Violation of the Laws and Customs of War, Reports of Majority and Dissenting Reports, Annex, TNA FO 608/245/4 (1919).

⁵⁶ *United States v. Alstötter et al.*, Opinion of Mallory B. Blair, Judge of Military Tribunal III, III TWC 1178, 1181 (1951).

⁵⁷ William Schabas, “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 156 (2020).

⁵⁸ Conclusion 16—Particular customary international law, International Law Commission’s Draft conclusions on identification of customary international law, with commentaries (2018) (A/73/10).

In the 1919 report of the Commission, the United States, as a member of the commission, did not contest the listing of the war crime of *usurpation of sovereignty during military occupation*, but rather only disagreed, *inter alia*, with the Commission's position on the means of prosecuting Heads of State for the listed war crimes by conduct or omission. As a war crime under particular customary international law it is binding on the Allied and Associated Powers of the First World War—United States of America, Great Britain, France, Italy and Japan, principal Allied Powers and Associated Powers that include Australia, Belgium, Bolivia, Brazil, Canada, China, Cuba, Czech Republic, formerly known as Czechoslovakia, Ecuador, Greece, Guatemala, Haiti, Honduras, Liberia, New Zealand, Nicaragua, Panama, Peru, Poland, Portugal, Romania, South Africa, Thailand, and Uruguay.

In the Hawaiian situation, *usurpation of sovereignty during military occupation* serves as a source for the commission of secondary war crimes within the territory of an occupied State, *i.e. compulsory enlistment, denationalization, pillage, destruction of property, deprivation of fair and regular trial, deporting civilians of the occupied territory, and transferring populations into an occupied territory*. The reasoning for the prohibition of imposing extraterritorial prescriptions or measures of the occupying State is addressed by Professor Benvenisti:

The occupant may not surpass its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts. The reason for this rule is, of course, the functional symmetry, with respect to the occupied territory, among the various lawmaking authorities of the occupying state. Without this symmetry, Article 43 could become meaningless as a constraint upon the occupant, since the occupation administration would then choose to operate through extraterritorial prescription of its national institutions.⁵⁹

In the situation of Hawai'i, the *usurpation of sovereignty during military occupation* would appear to have been total since the beginning of the twentieth century. This is an ongoing crime where the criminal act would consist of the imposition of legislation or administrative measures by the occupying power that goes beyond what is required necessary for military purposes of the occupation. Since 1898, when the United States Congress enacted an American municipal law purporting to have annexed the Hawaiian Islands, the United State has imposed its legislation and administrative measures to the present in violation of the laws of occupation.

Given these impositions are criminal violations of the law of occupation involving government action or policy or the action or policies of an occupying State's proxies such as the State of Hawai'i and its Counties, a perpetrator who participated in the act would be required to do so intentionally and with knowledge that the act went beyond what was required for military purposes or the protection of fundamental human rights. *Usurpation of sovereignty during military*

⁵⁹ Eyal Benvenisti, *The International Law of Occupation* 19 (1993).

occupation has not only victimized the civilian population in the Hawaiian Islands for over a century, but it has also victimized the civilians of other countries that have visited the islands since 1898 who were unlawfully subjected to American municipal laws and administrative measures.

The State of Hawai‘i is the Civilian Government of the Hawaiian Kingdom

There is a common misunderstanding that the State of Hawai‘i is an American civilian government established by the U.S. Congress. It is not. Its governmental infrastructure was established by the Hawaiian Kingdom to govern Hawaiian territory. Unlike the United States, which is a federated government, the Hawaiian Kingdom is a unitary government, which “is the efficient organization of power” by a central government.⁶⁰ Its civilian governmental infrastructure was founded upon a constitutional monarchy.

On 17 January 1893, the Hawaiian Kingdom civilian government was seized by insurgents under the protection of U.S. troops that invaded Honolulu the day before. All governmental officials remained in place except for the Queen, her Cabinet, and the Marshal of the police force. The civilian government was renamed the so-called provisional government. On 4 July 1894, the name was changed to the so-called Republic of Hawai‘i. After the United States illegally annexed the Hawaiian Islands in 1898, the Congress changed the name of the Republic of Hawai‘i to the Territory of Hawai‘i on 30 April 1900,⁶¹ and on 18 March 1959, the Congress renamed the Territory of Hawai‘i to the State of Hawai‘i.⁶²

After investigating the overthrow of the Hawaiian Kingdom government, President Cleveland concluded that the provisional government “was neither a government *de facto* nor *de jure*,”⁶³ and that the government of the Hawaiian Kingdom “was undisputed and was both the *de facto* and the *de jure* government.”⁶⁴ The State of Hawai‘i is the direct successor to the provisional government, and, therefore, is “neither a government *de facto* nor *de jure*.”

Prolonged Occupation

International humanitarian law is silent on a prolonged occupation because the authors of 1907 Hague Regulations viewed occupations to be provisional and not long term. According to Professor Scobbie, “[t]he fundamental postulate of the regime of belligerent occupation is that it is a temporary state of affairs during which the occupant is prohibited from annexing the occupied territory. The occupant is vested only with temporary powers of administration and does not

⁶⁰ Daniel J. Elazar, “Contrasting Unitary and Federal Systems,” 18(3) *International Political Science Review* 237-251, 243 (1997).

⁶¹ An Act To provide a government for the Territory of Hawaii, 31 Stat. 141 (1900).

⁶² An Act To provide for the admission of the State of Hawaii into the Union, 73 Stat. 4 (1959).

⁶³ Executive Documents, 453.

⁶⁴ *Id.*, 451.

possess sovereignty over the territory.”⁶⁵ The effective military control of occupied territory “can never bring about by itself a valid transfer of sovereignty. Because occupation does not transfer sovereignty over the territory to the occupying power, international law must regulate the inter-relationships between the occupying force, the ousted government, and the local inhabitants for the duration of the occupation.”⁶⁶

Despite the prolonged nature of the American occupation, the law of occupation continues to apply because sovereignty was never ceded or transferred to the United States by the Hawaiian Kingdom. At a meeting of experts on the law of occupation that was convened by the International Committee of the Red Cross, the experts “pointed out that the norms of occupation law, in particular Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention, had originally been designed to regulate short-term occupations. However, the [experts] agreed that [international humanitarian law] did not set any limits to the time span of an occupation. It was therefore recognized that nothing under [international humanitarian law] would prevent occupying powers from embarking on a long-term occupation and that occupation law would continue to provide the legal framework applicable in such circumstances.”⁶⁷ They also concluded that since a prolonged occupation “could lead to transformations and changes in the occupied territory that would normally not be necessary during short-term occupation,” they “emphasized the need to interpret occupation law flexibly when an occupation persisted.”⁶⁸ The prolonged occupation of the Hawaiian Kingdom is, in fact, that case, where drastic unlawful “transformations and changes in the occupied territory” occurred.

Strategic Plan of the Council of Regency

The Council of Regency’s strategic plan entails three phases. Phase I—verification of the Hawaiian Kingdom as an independent State and a subject of international law. Phase II—exposure of Hawaiian Statehood within the framework of international law and the laws of occupation as it affects the realm of politics and economics at both the international and domestic levels.⁶⁹ Phase III—restoration of the Hawaiian Kingdom as an independent State and a subject of international law. Phase III is when the American occupation comes to an end. After the PCA verified the continued existence of Hawaiian Statehood prior to forming the arbitral tribunal in *Larsen v. Hawaiian Kingdom*,⁷⁰ phase II was initiated, which would contribute to ascertaining the *mens rea*

⁶⁵ Iain Scobbie, “International Law and the prolonged occupation of Palestine,” *United Nations Roundtable on Legal Aspects of the Question of Palestine, The Hague*, 1 (20-22 May 2015).

⁶⁶ Eyal Benvenisti, *The International Law of Occupation* 6 (2nd ed., 2012).

⁶⁷ Report by Tristan Ferraro, legal advisor for the International Committee of the Red Cross, *Expert Meeting: Occupation and other forms of Administration of Foreign Territory* 72 (2012).

⁶⁸ *Id.*

⁶⁹ Strategic Plan of the Council of Regency (online at https://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf).

⁷⁰ David Keanu Sai, “Backstory—Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration (1999-2001),” 4 *Haw. J.L. Pol.* 133-161 (2022).

and satisfying the element of awareness of factual circumstances that established the existence of the military occupation.

Implementation of phase II was initiated at the University of Hawai‘i at Mānoa when the Chairman of the Council of Regency, David Keanu Sai, entered the political science graduate program, where he received a master’s degree specializing in international relations and public law in 2004 and a Ph.D. degree in 2008 on the subject of the continuity of Hawaiian Statehood while under an American prolonged belligerent occupation since 1893. This prompted other master’s theses, doctoral dissertations, peer review articles and publications on the subject of the American occupation to be published. The exposure through academic research also motivated historian Tom Coffman to change the title of his 1998 book from *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i*,⁷¹ to *Nation Within—The History of the American Occupation of Hawai‘i*.⁷² Coffman explained the change in his note on the second edition:

I am compelled to add that the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with the takeover of Hawai‘i. In the book’s subtitle, the word Annexation has been replaced by the word Occupation, referring to America’s occupation of Hawai‘i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word occupation.

In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, “The challenge for ... the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.” In the history of the Hawai‘i, the might of the United States does not make it right.⁷³

As a result of the exposure, United Nations Independent Expert, Dr. Alfred deZayas sent a communication from Geneva to State of Hawai‘i Judges Gary W.B. Chang, Jeannette H. Castagnetti, and members of the judiciary dated 25 February 2018.⁷⁴ Dr. deZayas stated:

I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a

⁷¹ Tom Coffman, *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i* (1998).

⁷² Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i* (2nd ed. 2009). Duke University Press published the second edition in 2016.

⁷³ *Id.*, xvi.

⁷⁴ Letter of Dr. Alfred deZayas to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai‘i (25 February 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).

fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

The exposure also prompted the U.S. National Lawyers Guild (“NLG”) to adopt a resolution in 2019 calling upon the United States of America to begin to comply immediately with international humanitarian law in its long and illegal occupation of the Hawaiian Islands.⁷⁵ Among its positions statement, the “NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”⁷⁶

In a letter to Governor David Ige, Governor of the State of Hawai‘i, dated 10 November 2020, the NLG called upon the governor to begin to comply with international humanitarian by administering the laws of the occupied State. The NLG letter concluded:

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai‘i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are “protected persons” who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware.

We urge you, Governor Ige, to proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. We further urge you and other officials of the State of Hawai‘i and its Counties to familiarize yourselves with the contents of the recent eBook published by the RCI and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai‘i and its inhabitants.

⁷⁵ *Resolution of the National Lawyers Guild Against the Illegal Occupation of the Hawaiian Islands* (2019) (online at <https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf>).

⁷⁶ National Lawyers Guild, *NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (13 January 2020) (online at <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>).

On 7 February 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (NGO) of human rights lawyers that has special consultative status with the United Nations Economic and Social Council (“ECOSOC”) and accredited to participate in the Human Rights Council’s sessions as Observers, passed a resolution calling upon the United States to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom.⁷⁷ In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas (“AAJ”), which is also an NGO with consultative status with the United Nations ECOSOC and accredited as an observer in the Human Rights Council’s sessions, sent a joint letter dated 3 March 2022 to member States of the United Nations on the status of the Hawaiian Kingdom and its prolonged occupation by the United States.⁷⁸ In its joint letter, the IADL and the AAJ also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

On 22 March 2022, the Dr. Sai delivered an oral statement, on behalf of the IADL and AAJ, to the United Nations Human Rights Council (“HRC”) at its 49th session in Geneva. The oral statement read:

The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs *ad interim* for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999-2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State.

The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command.

⁷⁷ International Association of Democratic Lawyers, *IADL Resolution on the US Occupation of the Hawaiian Kingdom* (7 February 2021) (online at <https://iadllaw.org/2021/03/iadl-resolution-on-the-us-occupation-of-the-hawaiian-kingdom/>).

⁷⁸ International Association of Democratic Lawyers, *IADL and AAJ deliver joint letter on Hawaiian Kingdom to UN ambassadors* (3 March 2022) (online at <https://iadllaw.org/2022/03/iadl-and-aaj-deliver-joint-letter-on-hawaiian-kingdom-to-un-ambassadors/>).

For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.

None of the 47 member States of the HRC, which included the United States, protested, or objected to the oral statement of war crimes being committed in the Hawaiian Kingdom by the United States. Under international law, acquiescence “concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State would be called for.”⁷⁹ Silence conveys consent. Since they “did not do so [they] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*”⁸⁰

The Royal Commission of Inquiry—Investigating War Crimes

Determined to hold to account individuals who have committed war crimes and human rights violations throughout the Hawaiian Islands, being the territory of the Hawaiian Kingdom, the Council of Regency, by proclamation on 17 April 2019,⁸¹ established a Royal Commission of Inquiry (“RCI”) in similar fashion to the United States proposal of establishing a Commission of Inquiry after the First World War “to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.” Dr. Sai serves as Head of the RCI and Professor Federico Lenzerini from the University of Siena, Italy, serves as its Deputy Head.

In mid-November of 2022, the RCI published thirteen war criminal reports finding that the senior leadership of the United States and the State of Hawai‘i, which includes President Joseph Biden Jr., Governor David Ige, Hawai‘i Mayor Mitchell Roth, Maui Mayor Michael Victorino and Kaua‘i Mayor Derek Kawakami, are guilty of the war crime of *usurpation of sovereignty during military occupation* and are subject to criminal prosecutions. All of the named perpetrators have met the requisite element of *mens rea*.⁸² In these reports, the RCI has concluded that these perpetrators have met the requisite elements of the war crime and are guilty *dolus directus* of the first degree. “It is generally assumed that an offender acts with *dolus directus* of the first degree if he desires to

⁷⁹ Nuno Sérgio Marques Antunes, “Acquiescence”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* para. 2 (2006).

⁸⁰ *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, International Court of Justice, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

⁸¹ Proclamation: Establishment of the Royal Commission of Inquiry (17 April 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf).

⁸² Website of the Royal Commission of Inquiry at <https://hawaiiankingdom.org/royal-commission.shtml>.

bring about the result. In this type of intent, the actor’s ‘will’ is directed finally towards the accomplishment of that result.”⁸³

The evidence of the *actus reus* and *mens rea* or guilty mind were drawn from the perpetrators’ own pleadings and the rulings by the court in a U.S. federal district court case in Honolulu, *Hawaiian Kingdom v. Biden et al.*⁸⁴ The perpetrators were being sued not in their individual or private capacities but rather in their official capacities as State actors because the war crime of *usurpation of sovereignty during military occupation* involves “State action or policy or the action or policies of an occupying State’s proxies” and not the private actions of individuals. The perpetrators are subject to prosecution and there is no statute of limitation for war crimes.⁸⁵ The commission of the war crime of *usurpation of sovereignty during military occupation* can cease when the United States, through the State of Hawai‘i, begins to comply with Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention to administer the laws of the Occupied State—the Hawaiian Kingdom as a military government.

⁸³ Mohamed Elewa Badar, *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* 535 (2013).

⁸⁴ *Hawaiian Kingdom v. Biden et al.*, civil no. 1:21:cv-00243-LEK-RT, United States District Court of the District of Hawai‘i.

⁸⁵ United Nations General Assembly Res. 3 (I); United Nations General Assembly Res. 170 (II); United Nations General Assembly Res. 2583 (XXIV); United Nations General Assembly Res. 2712 (XXV); United Nations General Assembly Res. 2840 (XXVI); United Nations General Assembly Res. 3020 (XXVII); United Nations General Assembly Res. 3074 (XXVIII).

MILITARY FORCE OF THE HAWAIIAN KINGDOM

In 1845, the Hawaiian Kingdom organized its military under the command of the Governors of the several islands of Hawai'i, Maui, O'ahu and Kaua'i but subordinate to the Monarch. According to the statute, "male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicil, whenever so required by proclamation of the governor thereof."⁸⁶ Those exempt from military duty included ministers of religion of every denomination, teachers, members of the Privy Council of State, executive department heads, members of the House of Nobles and Representatives when in session, judges, sheriffs, notaries public, registers of wills and conveyances, collectors of customs, poundmasters and constables.⁸⁷

In 1847, the *Polynesian* newspaper, a government newspaper, reported the standing army comprised of 682 of all ranks: the "corps which musters at the fort, including officers, 286; corps of King's Guards, including officers, 363; stationed at the battery, on Punch Bowl Hill, 33."⁸⁸ On 17 December 1852, King Kamehameha III, in Privy Council, established the First Hawaiian Cavalry, commanded by Captain Henry Sea.⁸⁹

In 1886, the Legislature enacted *An Act to Organize the Military Forces of the Kingdom*, "for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26th of the Constitution."⁹⁰ The Act of 1886 established "a regular Military and Naval force, not to exceed two hundred and fifty men, rank and file," and the "term of enlistment shall be for five years, which term may be extended from time to time by re-enlistment."⁹¹ This military force was headed by a Lieutenant General as Commander-in-Chief and the supreme command under the Executive Monarch as Generalissimo.⁹² This military force was renamed the King's Royal Guard in 1890,⁹³ and the Executive Monarch was thereafter called the "Commander-in-Chief of all the Military Forces"⁹⁴ and not Generalissimo. While the King's Royal Guard was the only active military component of the kingdom,⁹⁵ there was a reserve force capable of being called to active duty. The statute provides that "[a]ll male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective

⁸⁶ "Statute Laws of His Majesty Kamehameha III," *Hawaiian Kingdom*, Vol. I 69 (1846).

⁸⁷ *Id.*, 70.

⁸⁸ "Military," *Polynesian* 138 (9 Jan. 1847).

⁸⁹ "First Hawaiian Cavalry," *Polynesian* 130 (25 Dec. 1852).

⁹⁰ *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I 37 (1886).

⁹¹ *Id.*

⁹² *Id.*, 38.

⁹³ *An Act to Provide for a Military Force to be Designated as the "King's Royal Guard,"* Laws of His Majesty Kalakaua I 107 (1890).

⁹⁴ *Id.*

⁹⁵ *Id.*, 108.

islands where they have their most usual domicil, whenever so required by proclamation from the governor thereof.”⁹⁶

Upon ascending to the Throne on 29 January 1891, Queen Lili‘uokalani, as the Executive Monarch, succeeded her predecessor King David Kalākaua as Commander-in-Chief of the Royal Guard. The command structure of the Royal Guard consisted of a Captain and two Lieutenants. These officers were authorized “to make, alter and revoke all regulations not repugnant to the provisions of [the Act of 1890], concerning enlistment, discipline, exercises, accoutrements, arms and clothing and to make such other rules and orders as may be necessary to carry into effect the provisions of [the Act of 1890], and to provide and prescribe penalties for any violations of such regulations not extending to deprivation of life or limb, or the infliction of corporeal punishment.”⁹⁷ All rules, regulations or orders required the approval of the Executive Monarch and was to be countersigned by the Minister of Foreign Affairs.⁹⁸

On 17 January 1893, a small group of insurgents, with the protection of United States troops, declared the establishment of a provisional government whereby all “officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, [and] Arthur P. Peterson, Attorney General, who are hereby removed from office.”⁹⁹ The insurgency further stated that all “Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”¹⁰⁰ The insurgency unlawfully seized control of the Hawaiian Kingdom civilian government.

The military force of the provisional government was not an organized unit or militia but rather armed insurgents under the command of John Harris Soper. Soper attended a meeting of the leadership of the insurgents calling themselves the Committee of Safety in the evening of 16 January 1893, where he was asked to command the armed wing of the insurgency. Although Soper served as Marshal of the Hawaiian Kingdom under King Kalākaua, he admitted in an interview with Commissioner James Blount on 17 June 1893, who was investigating the overthrow of the Hawaiian Kingdom government by direction of U.S. President Grover Cleveland, that he “was not a trained military man, and was rather adverse to accepting the position [he] was not especially trained for, under the circumstances, and that [he] would give them an answer on the following day; that is, in the morning.”¹⁰¹ Soper told Special Commissioner Blount he accepted the offer

⁹⁶ Section 3, *Appendix to the Civil Code*, Compiled Laws 493 (1884).

⁹⁷ *Id.*, 107.

⁹⁸ *Id.*

⁹⁹ *Proclamation*, Laws of the Provisional Government of the Hawaiian Islands vii (1893).

¹⁰⁰ *Id.*, viii.

¹⁰¹ Executive Documents, 972.

after learning that “Judge Sanford Dole [agreed] to accept the position as the head of the [provisional] Government.”¹⁰² The insurgency renamed the Hawaiian Kingdom’s Royal Guard to the National Guard by *An Act to Authorize the Formation of a National Guard* on 27 January 1893.¹⁰³ Soper was thereafter commissioned as Colonel to command the National Guard and was called the Adjutant General.

On 17 January 1893, Queen Lili‘uokalani conditionally surrendered to the United States and not the insurgency, thereby transferring effective control of Hawaiian territory to the United States.¹⁰⁴ Under customary international law, a State’s effective control of another State’s territory by an act of war triggers the Occupying State’s military to establish a military government to provisionally administer the laws of the Occupied State. This rule was later codified under Articles 42 and 43 of the 1899 Hague Regulations, which was superseded by Articles 42 and 43 of the 1907 Hague Regulations. When Special Commissioner Blount ordered U.S. troops to return to the *U.S.S. Boston* on 1 April 1893,¹⁰⁵ effective control of Hawaiian territory was left with the insurgency calling itself the provisional government.

Special Commissioner Blount submitted his final report on 17 July 1893, to U.S. Secretary of State Walter Gresham.¹⁰⁶ Secretary of State Gresham submitted his report to President Cleveland on 18 October 1893,¹⁰⁷ and President Cleveland notified the Congress of his findings and conclusions on 18 December 1893.¹⁰⁸ In his message to the Congress, he stated:

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister’s recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen’s troops were quartered), though the same had been demanded of the Queen’s officer’s in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her

¹⁰² *Id.*

¹⁰³ *An Act to Authorize the Formation of a National Guard*, Laws of the Provisional Government of the Hawaiian Islands 8 (1893).

¹⁰⁴ Executive Documents, 586.

¹⁰⁵ *Id.*, 597.

¹⁰⁶ *Id.*, 567.

¹⁰⁷ *Id.*, 459.

¹⁰⁸ *Id.*, 445.

side and at her disposal, while the Committee of Safety, by actual search, had discovered that there but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusation in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves." This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States.¹⁰⁹

Under international law, the provisional government was an armed force of the United States in effective control of Hawaiian territory since 1 April 1893, after the departure of U.S. troops. As an armed proxy of the United States, they were obliged to provisionally administer the laws of the Hawaiian Kingdom until a peace treaty was negotiated and agreed upon between the United States and the Hawaiian Kingdom. As a matter of fact and law, it would have been Soper's duty to head the military government as its military governor after President Cleveland completed his investigation of the overthrow of the Hawaiian Kingdom government and notified the Congress on 18 December 1893. A Military Government was not established under international law but rather the insurgency maintained the facade that they were a *de jure* government.

The insurgency changed its name to the Republic of Hawai'i on 4 July 1894. Under *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard* of 13 August 1895, the National Guard was reorganized and commanded by the Adjutant General that headed a regiment comprised of battalions with companies.¹¹⁰

Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,¹¹¹ the Act of 1895 continued in force. Under section 6 of the Act of 1900, "the laws not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States." Soper continued to command the National Guard as Adjutant General until 2 April 1907, when he retired. The Hawai'i National Guard continued in force under *An Act To provide for the admission of the State of Hawaii into the Union* enacted by the U.S. Congress on 18 March 1959.¹¹²

¹⁰⁹ *Id.*, 453.

¹¹⁰ An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard, Laws of the Republic of Hawaii 29 (1895).

¹¹¹ An Act To provide a government for the Territory of Hawaii, 31 Stat. 141 (1900).

¹¹² An Act To provide for the admission of the State of Hawaii into the Union, 73 Stat. 4 (1959).

MILITARY GOVERNMENT OF HAWAI‘I

There is a difference between military government and martial law. While both comprise military jurisdiction, the former is exercised over territory of a foreign State under military occupation, and the latter over loyal territory of the State enforcing it. Actions of a military government are governed by international humanitarian law while martial law is governed by the domestic laws of the State enforcing it. According to Birkhimer, “[f]rom a belligerent point of view, therefore, the theatre of military government is necessarily foreign territory. Moreover, military government may be exercised not only during the time that war is flagrant, but down to the period when it comports with the policy of the dominant power to establish civil jurisdiction.”¹¹³

The 1907 Hague Regulations assumed that after the occupant gains effective control it would establish its authority by establishing a system of direct administration. United States practice of a system of direct administration is for the Army to establish a military government to administer the laws of the occupied State pursuant to Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention. This is acknowledged by letter from U.S. President Roosevelt to Secretary of War Henry Stimson dated 10 November 1943, where President Roosevelt stated, “[a]lthough other agencies are preparing themselves for the work that must be done in connection with relief and rehabilitation of liberated areas, it is quite apparent that if prompt results are to be obtained the Army will have to assume initial burden.”¹¹⁴ Military governors that preside over a military government are general officers of the Army. In the current command structure of the State of Hawai‘i, that general officer is the Adjutant General.

Under Article 43, the authority to establish a military government is not with the Occupying State, but rather with the occupant that is physically on the ground. Professor Benvenisti explains, “[t]his is not a coincidence. The *travaux préparatoire* of the Brussels Declaration reveal that the initial proposition for Article 2 (upon which Hague 43 is partly based) referred to the ‘occupying State’ as the authority in power, but the delegates preferred to change the reference to ‘the occupant.’ This insistence on the distinct character of the occupation administration should also be kept in practice.”¹¹⁵ This authority is triggered by Article 42 that states, “[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.” Only an “occupant,” which is the “army,” and not the Occupying State, can establish a military government.

After the 1907 Hague Conference, the U.S. Army took steps to prepare for military occupations by publishing two field manuals—FM 27-10, *The Law of Land Warfare*,¹¹⁶ and FM 27-5, *Civil*

¹¹³ William E. Birkhimer, *Military Government and Martial Law* 21 (3rd ed., 1914).

¹¹⁴ Earl F. Ziemke, *The U.S. Army in the Occupation of Germany 1944-1946* 22 (1975).

¹¹⁵ Eyal Benvenisti, *The International Law of Occupation* 5 (2nd ed., 2012).

¹¹⁶ Department of the Army, Field Manual 27-10, *The Law of Land Warfare* (1956).

Affairs Military Government.¹¹⁷ Chapter 6 of FM 27-10 covers military occupation. Section 355 of FM 27-10 states, “[m]ilitary occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.” A military government is the civilian government of the Occupied State headed by a U.S. Army general officer called a Military Governor. The State of Hawai‘i governmental infrastructure is the civilian government of the Hawaiian Kingdom.

Article V of the State of Hawai‘i Constitution provides that the Governor is the Chief Executive of the State of Hawai‘i. He is also the Commander-in-Chief of the Army and Air National Guard and appoints the Adjutant General who “shall be the executive head of the department of defense and commanding general of the militia of the State.”¹¹⁸ Accordingly, the “adjutant general shall perform such duties as are prescribed by law and such other military duties consistent with the regulations and customs of the armed forces of the United States as required by the governor.”¹¹⁹ In other words, the Adjutant General operates under two regimes of law, that of the State of Hawai‘i and that of the United States Army.

The State of Hawai‘i Constitution is an American municipal law that was approved by the Territorial Legislature of Hawai‘i on 20 May 1949 under *An Act to provide for a constitutional convention, the adoption of a State constitution, and appropriating money therefor*. The Congress established the Territory of Hawai‘i under *An Act To provide a government for the Territory of Hawaii*, on 30 April 1900.¹²⁰ The constitution was adopted by a vote of American citizens in the election throughout the Hawaiian Islands held on 7 November 1950. The State of Hawai‘i Constitution came into effect by *An Act To provide for the admission of the State of Hawaii into the Union* passed by the Congress on 18 March 1959.¹²¹

In *United States v. Curtiss Wright Corp.*, the U.S. Supreme Court stated, “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”¹²² The Court also concluded that “[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”¹²³ Therefore, the State of Hawai‘i cannot claim to be a

¹¹⁷ Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* (1947).

¹¹⁸ Hawai‘i Revised Statutes, §121-7.

¹¹⁹ *Id.*, §121-9.

¹²⁰ 31 Stat. 141 (1900).

¹²¹ 73 Stat. 4 (1959).

¹²² *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

¹²³ *The Apollon*, 22 U.S. 362, 370 (1824).

de jure government because its only claim to authority derives from congressional legislation that has no extraterritorial effect.

Article 43 of the 1907 Hague Regulations provides that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”¹²⁴ Article 64 of the 1949 Fourth Geneva Convention also states, “[t]he penal laws of the occupied territory shall remain in force.”¹²⁵ Under Article 43 sovereignty is not transferred to the occupying State.¹²⁶ Section 358, United States Army Field Manual 27-10, declares, “military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty.” The United States possesses no sovereignty over the Hawaiian Islands.

“The occupant,” according to Professor Sassòli, “may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.” Professor Sassòli further explains that the “expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders.”¹²⁷

In *Hawaiian Kingdom v. Biden et al.*,¹²⁸ the State of Hawai‘i argued that the Hawaiian Kingdom’s “Amended Complaint challenges the legality of Hawaii’s admission to, and continued existence as a state of, the United States. As such, Plaintiff presents a nonjusticiable political question to this Court for determination.”¹²⁹ A political question is not an affirmative defense, but a jurisdictional argument where “there is [arguably] a textually demonstrable constitutional commitment of the issue to a coordinate political department.”¹³⁰ More importantly, it is a court precedence of American jurisprudence and like congressional legislation has no extra-territorial effect. For the

¹²⁴ 36 Stat. 2277, 2306 (1907).

¹²⁵ 6.3 U.S.T. 3516, 3558 (1955).

¹²⁶ See Eyal Benvenisti, *The International Law of Occupation* 8 (1993); Gerhard von Glahn, *The Occupation of Enemy Territory—A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); Michael Bothe, “Occupation, Belligerent,” in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3, 765 (1997).

¹²⁷ Marco Sassòli, “Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century,”

International Humanitarian Law Research Initiative 6 (2004) (online at <https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>).

¹²⁸ *Hawaiian Kingdom v. Biden et al.*, Amended Complaint for Declaratory and Injunctive Relief (11 August 2021) (online at [https://hawaiiankingdom.org/pdf/Amended_Complaint_and_Exhibits_1_&_2%20\(Filed_2021-08-11\).pdf](https://hawaiiankingdom.org/pdf/Amended_Complaint_and_Exhibits_1_&_2%20(Filed_2021-08-11).pdf)).

¹²⁹ *Hawaiian Kingdom v. Biden et al.*, State of Hawai‘i Memorandum in Support of Motion 8 (12 August 2022) (online at [https://hawaiiankingdom.org/pdf/\[ECF_241-1\]_Memo_in_Support_SOH%20Motion_\(Filed_2022-08-12\).pdf](https://hawaiiankingdom.org/pdf/[ECF_241-1]_Memo_in_Support_SOH%20Motion_(Filed_2022-08-12).pdf)).

¹³⁰ *Baker v. Carr*, 369 U.S. 186, 217 (1962).

State of Hawai‘i to have established an affirmative defense, it would have provided rebuttable that the Hawaiian Kingdom as a State was extinguished despite its government having been unlawfully overthrown by the United States on 17 January 1893, and not argue jurisdiction under the political question doctrine.

Moreover, in *Lin v. United States*, the United States District Court for the District of Columbia dismissed a case concerning Taiwan as a political question.¹³¹ The federal court in its order stated that it “must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss.” When this case went on appeal, the D.C. Appellate Court underlined the modern doctrine of the political question, “[w]e do not disagree with Appellants’ assertion that we could resolve this case through treaty analysis and statutory construction; we merely decline to do so as this case presents a political question which strips us of jurisdiction to undertake that otherwise familiar task.”¹³² In other words, for the defendants to argue that the *Hawaiian Kingdom v. Biden* case “presents a nonjusticiable political question” is to accept “as true all factual allegations contained in the complaint.”

Because the State of Hawai‘i Constitution and its Revised Statutes are situations of facts and not laws, they have no legal effect within Hawaiian territory. Furthermore, the State of Hawai‘i Constitution is precluded from being recognized as a provisional law of the Hawaiian Kingdom, pursuant to the 2014 Proclamation by the Council of Regency recognizing certain American municipal laws as the provisional laws of the Kingdom, because the 1864 Hawaiian Constitution, as amended, remains the organic law of the country and the State of Hawai‘i Constitution is republican in form.¹³³ As such, all officials that have taken the oath of office under the State of Hawai‘i Constitution, to include the Governor and his staff, cannot claim lawful authority without committing the war crime of *usurpation of sovereignty during military occupation* with the exception of the Adjutant General who also operates under U.S. Army doctrine and regulations.

Since the Council of Regency recognized, by proclamation on 3 June 2019, “the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law,”¹³⁴ the State of Hawai‘i and its Counties, however, did not take the necessary steps to comply with international humanitarian law by transforming itself into a military government. This omission consequently led to war criminal reports, subject to prosecution, by the Royal Commission of Inquiry finding the senior leadership

¹³¹ *Lin v. United States*, 539 F. Supp. 2d 173 (D.D.S. 2008).

¹³² *Lin v. United States*, 561 F.3d 506 (2009).

¹³³ Council of Regency, *Proclamation of Provisional Laws* (10 Oct. 2014), (online at https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf); see also David Keanu Sai, *Memorandum on the Formula to Determine Provisional Laws* (22 March 2023) (online at https://hawaiiankingdom.org/pdf/HK_Memo_Provisional_Laws_Formula.pdf).

¹³⁴ Council of Regency, *Proclamation Recognizing the State of Hawai‘i and its Counties* (3 June 2019) (online at https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf).

of the United States, State of Hawai‘i and County governments guilty of committing the war crimes of *usurpation of sovereignty during military occupation, deprivation of a fair and regular trial and pillage*.¹³⁵

While international humanitarian law has effectively stripped the authority of senior leadership of the State of Hawai‘i, it did not strip the Adjutant General’s “military duties consistent with the regulations and customs of the armed forces of the United States.”¹³⁶ International humanitarian law acknowledges the military duties of the Adjutant General as the occupant of the territory of the Hawaiian Kingdom as an occupied State. Although the Commanding General of the United States Army Pacific (USARPAC), whose troops comprise the largest Army unit in the Hawaiian Islands, USARPAC is not in effective control of the majority of Hawaiian territory like the State of Hawai‘i and, therefore, there is no duty to establish a military government pursuant to Article 42 of the 1907 Hague Regulations. According to U.S. Army Field Manual 27-5:

3. COMMAND RESPONSIBILITY. The theater commander bears full responsibility for [military government]; therefore, he is usually designated as military governor or civil affairs administrator, but is authorized to delegate his authority and title, in whole or in part, to a subordinate commander. In occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only by the laws and customs of war and by directives from higher authority.

4. REASON FOR ESTABLISHMENT. a. Reasons for the establishment of [military government is] either military necessity as a right, or as an obligation under international law. b. Since the military occupation of enemy territory suspends the operation of the government of the occupied territory, the obligation arises under international law for the occupying force to exercise the functions of civil government looking toward the restoration and maintenance of public order. These functions are exercised by [military government]. An armed force in territory other than that of an enemy similarly has the duty of establishing [military government] when the government of such territory is absent or unable to function properly.¹³⁷

The transformation of the State of Hawai‘i into a military government would be the first step toward correcting the course of the United States’ non-compliance with international humanitarian law for 130 years. The Adjutant General would make the proclamation of the establishment of the military government, as the military governor, in similar fashion to the establishment of the Office of military government for Germany on 1 October 1945 that was responsible for administering the U.S. zone of occupation and the U.S. sector of Berlin.

¹³⁵ Website of the Royal Commission of Inquiry at <https://hawaiiankingdom.org/royal-commission.shtml>.

¹³⁶ Hawai‘i Revised Statutes, §121-9.

¹³⁷ Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* 4 (1947).

The legal effect of Title 32, United States Code, has a significant impact on the Hawai‘i Army and Air National Guard because they are situated outside of U.S. territory. First, as an enactment of Congress, the United States Code has no legal effect beyond the territory of the United States. According to international law, the concept of jurisdiction is linked to the territory of a State.¹³⁸ As stated by the Permanent Court of International Justice in 1927, “the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention [...] all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.”¹³⁹ And the U.S. Supreme Court affirmed this rule in 1936, that “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory.”¹⁴⁰ Also the Hawaiian Kingdom Supreme Court addressed this in 1858, where it stated, “The laws of a nation cannot have force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in the municipal laws may be, they must always be restricted in construction, to places and persons upon whom the Legislature have authority and jurisdiction.”¹⁴¹ Adhering to the limitation of jurisdiction, the decision by the Hawaiian Kingdom Supreme Court and the Permanent Court of International Justice are binding, but not the U.S. Supreme Court decision, which is merely informative of the same rule.

Second, paragraph 353, FM 27-10, acknowledges that the military occupation of a foreign State “necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. Occupation is essentially provisional. On the other hand, subjugation or conquest implies a transfer of sovereignty, which generally takes the form of annexation and is normally effected by a treaty of peace. When sovereignty passes, belligerent occupation, as such, of course ceases, although the territory may and usually does, for a period at least, continue to be governed through military agencies.” There is no treaty of peace between the Hawaiian Kingdom and the United States, which is why the military occupation persists today. Because there is no treaty where the Hawaiian Kingdom ceded its sovereignty and territory to the United States, the Permanent Court of Arbitration acknowledged the Hawaiian Kingdom’s continued existence as a State in *Larsen v. Hawaiian Kingdom* in 1999. The Hawaiian Kingdom has sovereignty over the Hawaiian Islands and not the United States.

Since the 1959 Statehood Act (73 Stat. 4) and Title 10 United States Code have no effect within the territory of the Hawaiian Kingdom, the State of Hawai‘i Department of Defense’s status under international law, however, is recognized under the 1907 Hague Regulations as a militia of the

¹³⁸ Arthur Lenhoff, “International Law and Rules on International Jurisdiction,” 50 *Cornell Law Quarterly* 5 (1964).

¹³⁹ *Lotus*, 18.

¹⁴⁰ *United States v. Curtiss Wright Corp.*, 299 U.S. 304, 318 (1936).

¹⁴¹ *In re Francis de Flanchet, a Prisoner in the Fort*, 2 Haw. 96, 108 (1858).

occupying State—the United States. Article 1 states, “[t]he laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: 1. To be commanded by a person responsible for his subordinates; 2. To have a fixed distinctive emblem recognizable at a distance; 3. To carry arms openly; and 4. To conduct their operations in accordance with the laws and customs of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination ‘army.’”

Notwithstanding the territorial limits of United States Code, it does clearly state that the Hawai‘i National Guard forms part of the U.S. Armed Forces. Title 32, U.S.C. §104(b) states, “[e]xcept as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army [...]; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force [...].” Therefore, the Hawai‘i Army National Guard comes “under the denomination ‘army’” in the 1907 Hague Regulations and not the State of Hawai‘i as a whole. United States practice is for the Army to establish a military government and not the Air Force.

As a Title 10 combatant unit, the Indo-Pacific Command is not in the chain of command for the military government of Hawai‘i. It would appear that since the Adjutant General oversees both the Army and Air National Guard he would not have to report to both the Secretaries of the Army and Air Force, but rather to the Secretary of Defense since the Hawai‘i militia is comprised of more than one branch of the U.S. Department of Defense. The Secretary of Defense reports to the President. Army regulations on military government, however, provides flexibility and it must adapt to the uniqueness of every situation that presents itself like the Hawaiian situation. According to paragraph 9(b)(4), FM 27-5, “[s]ince the conditions under which [military government] operate will vary widely in a given area as well as between different areas, flexibility of action must be provided by the preparation of alternate plans in order to meet the rapid changes and alterations which may occur.”

As the last word concerning any acts relating to the administration of the occupied territory is with the occupying power, “occupation law would allow for a vertical, but not a horizontal, sharing of authority [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory.”¹⁴² United States practice acknowledges that “[t]he functions of the [occupied] government—whether of a general, provincial, or local character—continue only to the extent they are sanctioned (para. 367(a), FM 27-10).” With specific regard to cooperation with the occupied government, it is also recognized that “[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions (para. 367(b)).”

¹⁴² International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 20 (2012), online at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>.

Since the occupying State does not have the sovereignty of the Hawaiian Kingdom, the Council of Regency, which has the authority to exercise Hawaiian sovereignty, can bring the laws and administrative policies of the Hawaiian Kingdom in 1893 up to date so that the military government can fully exercise its authority under the law of occupation. The purpose of the military government is to protect the population of the occupied State despite 130 years of violating these rights.

According to the 1907 Hague Regulations and the 1949 Fourth Geneva Convention there are four essential tasks that apply to the occupation of the Hawaiian Kingdom. First, temporary administrator of the laws of the occupied State.¹⁴³ Second, temporary administrator of public buildings, real estate, forests, and agricultural estates that belong to the occupied State.¹⁴⁴ Third, protect the institutions of the occupied State.¹⁴⁵ And, fourth, protect and respect the rights of the population of the occupied State.¹⁴⁶

¹⁴³ Article 43, 1907 Hague Regulations and Article 64, 1949 Fourth Geneva Convention.

¹⁴⁴ Article 55, 1907 Hague Regulations.

¹⁴⁵ *Id.*, Article 56.

¹⁴⁶ Articles 27 and 47, 1949 Fourth Geneva Convention.

ESSENTIAL TASK: *Temporary Administrator of the Laws of the Occupied State*

Under customary international law relevant to Queen Lili‘uokalani’s conditional surrender to the United States on 17 January 1893, the United States, as the occupying State, was obligated to administer Hawaiian Kingdom law, which consist of the Civil Code,¹⁴⁷ together with the session laws of 1884¹⁴⁸ and 1886,¹⁴⁹ and the Penal Code.¹⁵⁰ This norm of customary international law was later codified under Article 43 of the 1907 Hague Regulations¹⁵¹ and Article 64 of the 1949 Fourth Geneva Convention.¹⁵² However, instead of administering the laws of the Hawaiian Kingdom,¹⁵³ the United States unlawfully annexed the Hawaiian Islands in 1898 during the Spanish-American War and began to impose its municipal laws over Hawaiian territory since then to the present.

IMPLIED TASK: *Proclaim the Establishment of a Military Government of Hawai‘i*

To begin to comply with Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention, the State of Hawai‘i Adjutant General shall proclaim the establishment of the military government by a public proclamation in accordance with United States’ practice and Army regulations FM 27-5 and 27-10. See Appendix 1.

IMPLIED TASK: *Proclaim Provisional Laws in order to bring the Laws of the Hawaiian Kingdom up to date*

To administer Hawaiian Kingdom law as it existed in 1893 would not be prudent given the longevity of the military occupation that is now at 130 years. Therefore, to bring the laws of the Hawaiian Kingdom up to date, the Council of Regency proclaimed provisional laws for the Realm because of the prolonged military occupation. The proclamation of provisional laws of 10 October 2014 states:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom,

¹⁴⁷ Civil Code of the Hawaiian Kingdom (1884) (online at <https://hawaiiankingdom.org/civilcode/index.shtml>).

¹⁴⁸ Session Laws of the Hawaiian Kingdom (1884) (online at https://hawaiiankingdom.org/pdf/1884_Laws.pdf).

¹⁴⁹ Session Laws of the Hawaiian Kingdom (1886) (online at https://hawaiiankingdom.org/pdf/1884_Laws.pdf).

¹⁵⁰ Penal Code of the Hawaiian Kingdom (1869) (online at https://hawaiiankingdom.org/pdf/Penal_Code.pdf).

¹⁵¹ Article 43 of the 1907 Hague Regulations states, “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

¹⁵² Article 64 of the 1949 Fourth Geneva Convention states, “The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.”

¹⁵³ See David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 57-94 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

do hereby acknowledge that acts necessary to peace and good order among the citizenry and residents of the Hawaiian Kingdom, such for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government, but acts in furtherance or in support of rebellion or collaborating against the Hawaiian Kingdom, or intended to defeat the just rights of the citizenry and residents under the laws of the Hawaiian Kingdom, and other acts of like nature, must, in general, be regarded as invalid and void;

And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void;

And, We do hereby further proclaim that the currency of the United States shall be a legal tender at their nominal value in payment for all debts within this Kingdom pursuant to *An Act To Regulate the Currency* (1876).¹⁵⁴

Before determining what United States statutes, State of Hawai‘i statutes, and County ordinances (collectively referred to herein as “American municipal laws”) are not “contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law,” there must be a type of interpretive methodology for extracting a conclusion based on the doctrine of necessity and the principle of constitutional necessity allowable under Hawaiian law.

This memorandum provides a formula to be used for determining what American municipal laws may be considered the provisional laws of the Hawaiian Kingdom during the American military occupation that augments and not replaces the Civil Code, together with the session laws of 1884 and 1886, and the Penal Code. American municipal laws to be considered as provisional laws exclude the provisions of the constitutions of the United States and the State of Hawai‘i. The Hawaiian Constitution of 1864, as amended,¹⁵⁵ remains the constitutional order and organic law of the country. This memorandum is intended for the use of American authorities operating within

¹⁵⁴ Council of Regency, *Proclamation of Provisional Law* (10 Oct. 2014), (online https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).

¹⁵⁵ 1864 Constitution, as amended (online at https://hawaiiankingdom.org/pdf/1864_Constitution.pdf).

the territorial jurisdiction of the Hawaiian Kingdom to determine which American municipal laws may be considered provisional laws during its effective control of Hawaiian territory.

With a view to bringing compliance with international humanitarian law by the State of Hawai‘i and its County governments and recognizing their effective control of Hawaiian territory in accordance with Article 42 of the 1907 Hague Regulations,¹⁵⁶ the Council of Regency proclaimed and recognized their existence as the administration of the occupying State on 3 June 2019. The proclamation read:

Whereas in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai‘i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Powers of the Kingdom, do hereby recognize the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;

And, We do hereby further proclaim that the State of Hawai‘i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law.¹⁵⁷

The State of Hawai‘i and its Counties, under the laws and customs of war during occupation, can now serve as the administrator of the “laws in force in the country.”¹⁵⁸ Prior to the proclamation, the State of Hawai‘i and its Counties were established by virtue of U.S. Congressional legislation unlawfully imposed within Hawaiian territory, being the war crime of *usurpation of sovereignty during military occupation*. According to Professor Schabas, “the actus reus of the offense of ‘usurpation of sovereignty’ would consist of the imposition of legislation or administrative

¹⁵⁶ Article 42 of the 1907 Hague Regulations states, “Territory 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.”

¹⁵⁷ Council of Regency, Proclamation Recognizing the State of Hawai‘i and its Counties (3 June 2019) (online https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf).

¹⁵⁸ Article 43 of the 1907 Hague Regulations.

measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation.”¹⁵⁹

The establishment and maintenance of the civilian governments of the United States and the State of Hawai‘i and its Counties within the territory of the Hawaiian Kingdom are not “necessary for military purposes of the occupation,” but rather have been established to benefit the United States and its citizenry. The existence of these civilian governments also constitutes a violation of the Hawaiian citizenry’s right to self-determination under international law. Professor Saul explains that the principle of self-determination is where “the people of a state as a whole should be free, within the boundaries of the state, to determine, without outside interference, their social, political, economic, and cultural infrastructure.”¹⁶⁰

Moreover, according to Article VIII of the 1849 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States, “each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects [...] but subject always to the laws and statutes of the two countries respectively.”¹⁶¹ The imposition of American municipal laws is not only a violation of international humanitarian law and international criminal law, but also a violation of the 1849 treaty.

Professor Benvenisti explains that “[d]uring the occupation, the ousted government would often attempt to influence life in the occupied area out of concern for its nationals [...]. One way to accomplish such goals is to legislate for the occupied population.”¹⁶² While some “national courts, and a number of scholars have rejected any duty to respect legislation made by the ousted government while it is outside the occupied area [,] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign’s new legislation as long as it addresses those issues in which the occupant has no power to amend the local laws.”¹⁶³ The difference here, however, is that the Council of Regency is not operating in exile or “outside the occupied area,” but rather was established and is operating *in situ*—within the territorial jurisdiction of the Hawaiian Kingdom. Furthermore, “even if the occupant does not have to respect such new legislation, the legislation would be regarded as

¹⁵⁹ William Schabas, “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 157 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

¹⁶⁰ Matthew Saul, “The Right to Self-Determination and the Prolonged Occupation of Palestinian Territory,” in Gentian Zyberi (ed.), *Protecting Community Interests through International Law* 3 (2021).

¹⁶¹ Treaty with the United States of America, in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 305, 307 (2020).

¹⁶² Benvenisti, 2nd ed., 104.

¹⁶³ *Id.*

valid nevertheless by the returning sovereigns or by its courts which would apply them retroactively at the end of the occupation.”¹⁶⁴

To legislate is also an exercise of the police power of the Occupied State. While police power escapes an exact definition, it is understood to be the ability of the government of a State to enact legislation to safeguard its citizenry. In *The King v. Tong Lee*, the Hawaiian Supreme Court stated that “an exercise of the police powers of the State with regard to the comfort, welfare and safety of society, and is constitutional.”¹⁶⁵ During times of military occupation, international humanitarian law allows for the government of the Occupied State, *in situ*, to exercise its police power to legislate by necessity “with regard to the comfort, welfare and safety of society.”

Based on the *doctrine of necessity*, Professor Lenzerini states that “the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom.”¹⁶⁶ He also holds that the Regency “has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.”¹⁶⁷

Doctrine of Necessity

Under English common law, Professor de Smith states that deviations from a State’s constitutional order “can be justified on grounds of necessity.”¹⁶⁸ He also asserts that “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”¹⁶⁹

Certain principles of English common law have been recognized in the Hawaiian Kingdom. In *The King v. Agnee et al.*, the Hawaiian Supreme Court stated that “[w]e do not recognize as conclusive the common law nor the authorities of the courts of England or of the United States, any farther than the principles which they support may have become incorporated in our system of laws, and recognized by the adjudication of the Supreme Court.”¹⁷⁰ In *Agnee*, the Court cited English common law commentators on criminal law such as Chitty and Bishop as well as English criminal cases.

¹⁶⁴ *Id.*, 105.

¹⁶⁵ *The King v. Tong Lee*, 4 Haw. 335 (1880).

¹⁶⁶ Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333, 324 (2020).

¹⁶⁷ *Id.*, 325.

¹⁶⁸ Stanley A. de Smith, *Constitutional and Administrative Law* 80 (1986).

¹⁶⁹ *Id.*

¹⁷⁰ *The King v. Agnee et al.*, 3 Haw. 106, 112 (1869).

Professor Oppenheimer explains that “a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country.”¹⁷¹ In *Madzimbamuto v. Lardner-Burke*, Lord Pearce stated that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful [...] Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”¹⁷²

Other national courts, to include the U.S. Supreme Court,¹⁷³ have consistently held that emergency action cannot justify a subversion of a State’s constitutional order. The doctrine of necessity provides the necessary parameters and limits of emergency action so as not to subvert. Of the five governing principles of necessity which apply to the assumption of vacant government office(s), four of these principles apply to the current situation of interpreting what laws are to be considered the provisional laws of the Hawaiian Kingdom. These include:

1. an imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function to the State;
2. there must be no other course of action reasonably available;
3. any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. it must not impair the just rights of citizens under the Constitution[.]¹⁷⁴

Constitutional Necessity

According to Professor Paulsen, the constitution of necessity “properly operates as a meta-rule of construction governing how specific provisions of the document are to be understood. Specifically, the Constitution should be construed, where possible, to avoid constitutionally suicidal, self-destructive results.”¹⁷⁵ U.S. President Abraham Lincoln was the first to invoke the principle of constitutional necessity, or in his words “indispensable necessity.” President Lincoln determined his duty to preserve, “by every indispensable means, that government—that nation—of which the constitution was the organic law.”¹⁷⁶ In his letter to U.S. Senator Hodges, President Lincoln explained the theory of constitutional necessity.

¹⁷¹ F.W. Oppenheimer, “Governments and Authorities in Exile,” 36 *Am. J. Int’l. L.* 568, 581 (1942).

¹⁷² See *Madzimbamuto v. Lardner-Burke*, 1. A.C. 645, 732 (1969). See also *Chandrika Persaud v. Republic of Fiji* (Nov. 16, 2000); and *Mokosto v. HM King Moshoeshe II*, LRC (Const) 24, 132 (1989).

¹⁷³ *Texas v. White*, 74 U.S. (7 Wall.) 700 (1868).

¹⁷⁴ *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const) 35, 88-89 (1986).

¹⁷⁵ Michael Stokes Paulsen, “The Constitution of Necessity,” 79(4) *Notre Dame L. Rev.* 1268 (2004).

¹⁷⁶ Letter from Abraham Lincoln, U.S. President, to Albert G. Hodges, U.S. Senator (April 4, 1864), in *Abraham Lincoln: Speeches and Writings 1859-65*, Don E. Fehrenbacher (ed.), 585-86 (1989).

By general law life and limb must be protected; yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb. I felt that measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the constitution, through the preservation of the nation. Right or wrong, I assumed this ground, and now avow it. I could not feel that, to the best of my ability, I had even tried to preserve the constitution, if, to save slavery, or any minor matter, I should permit the wreck of government, country, and Constitution all together.¹⁷⁷

Like the United States, the Hawaiian Kingdom is a constitutional form of governance whereby the 1864 Constitution, as amended, limits governmental powers. The American republic's constitution is similar yet incompatible to the Hawaiian monarchical constitution. The primary distinction is that the former establishes the functions of a republican form of government, while the latter establishes the function of a constitutional monarchy. Both adhere to the separation of powers doctrine of the executive, legislative and judicial branches. Where they differ as regards this doctrine, however, is in the aspect that the American constitution provides separate but equal branches of government, while the Hawaiian constitution provides for separate but coordinate branches of government, whereby the Executive Monarch retains a constitutional prerogative to be exercised in extraordinary situations within the confines of the constitution.

Under the American construction of separate but equal, the Congress, as the legislative branch, can paralyze government if it does not pass a budget for government operations, and the President, as head of the executive branch, can do nothing to prevent the shutdown. On the contrary, the Hawaiian Kingdom's executive is capable of intervention by constitutional prerogative should the occasion arise, as occurred in 1855.

In that year's legislative session, the House of Representatives could not agree with the House of Nobles on an appropriation bill to cover the national budget. King Kamehameha IV explained that "the House of Representatives framed an Appropriation Bill exceeding Our Revenues, as estimated by our Minister of Finance, to the extent of about \$200,000, which Bill we could not sanction."¹⁷⁸ After the House of Nobles "repeated efforts at conciliation with the House of Representatives, without success, and finally, the House of Representatives refused to confer with the House of Nobles respecting the said Appropriation Bill in its last stages, and We deemed it Our duty to exercise Our constitutional prerogative of dissolving the Legislature, and therefore there are no Representatives of the people in the Kingdom."¹⁷⁹ A new election for Representatives occurred and the Legislative Assembly was reconvened in special session and a budget passed.

Under Article 24 of the 1864 Constitution, the Executive Monarch took the following oath: "I solemnly swear in the presence of Almighty God, to maintain the Constitution of the Kingdom

¹⁷⁷ *Id.*

¹⁷⁸ Robert C. Lydecker, *Roster Legislatures of Hawaii, 1841-1918* 62 (1918).

¹⁷⁹ *Id.*

whole and inviolate, and to govern in conformity therewith.” The Ministers, however, took another form of oath: “I solemnly swear in the presence of Almighty God, that I will faithfully support the Constitution and laws of the Hawaiian Kingdom, and faithfully and impartially discharge the duties of [Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General].”

Lincoln viewed the source of constitutional necessity as arising from the oath taken by the executive chief, whereby the duty for making “constitutional judgments—judgments about constitutional interpretation, constitutional priority, and constitutional necessity—[is] in the President of the United States, whose special sworn duty the Constitution makes it to ‘preserve, protect and defend the Constitution of the United States.’”¹⁸⁰ The operative word for the Executive Monarch’s oath of office is “to maintain the Constitution of the Kingdom whole and inviolate.” Inviolable meaning free or safe from injury or violation. The Hawaiian constitution is the organic law for the country.

Exercising the Constitutional Prerogative without a Monarch

In 1855, the Monarch exercised his constitutional prerogative to keep the government operating under a workable budget, but the king also kept the country safe from injury by an unwarranted increase in taxes. The duty for making constitutional decisions in extraordinary situations, in this case as to what constitutes the provisional laws of the country during a prolonged and illegal belligerent occupation, stems from the oath of the Executive Monarch. The Council of Regency serves in the absence of the Monarch; it is not the Monarch and, therefore, cannot take the oath.

The Cabinet Ministers that comprise the Council of Regency have taken their individual oaths to “faithfully support the Constitution and laws of the Hawaiian Kingdom, and faithfully and impartially discharge the duties” of their offices, but there is no prerogative in their oaths to “maintain the Constitution of the Kingdom whole and inviolate.” Therefore, this prerogative must be construed to be inherent in Article 33 when the Cabinet Council serves as the Council of Regency, “who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.” The Monarch’s constitutional prerogative is in its “Powers” that the Council of Regency temporarily exercises in the absence of the Monarch. Therefore, the Council of Regency has the power “to maintain the Constitution of the Kingdom whole and inviolate,” and, therefore, provisionally legislate, through proclamations, for the protection of Hawaiian subjects during the American military occupation.

¹⁸⁰ Paulsen, 1258.

Legal Status of American Municipal Laws in the Hawaiian Kingdom

Under public international law, the laws and administrative measures of the United States that have been imposed throughout the territory of the Hawaiian Kingdom have no extra-territorial effect. In *The Lotus* case, the Permanent Court of International Justice explained, “[n]ow the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.”¹⁸¹ According to Judge Crawford, derogation of this principle will not be presumed.¹⁸² Therefore, under public international law, American municipal laws being imposed in the Hawaiian Kingdom are not laws but rather situations of facts. Within the Hawaiian constitutional order, this distinction between situations of facts and Hawaiian law is fundamental so as not to rupture the Hawaiian legal system in this extraordinary and extralegal situation of a prolonged military occupation.

As Professor Dicey once stated, “English judges never in strictness enforce the law of any country but their own, and when they are popularly said to enforce a foreign law, what they enforce is not a foreign law, but a right acquired under the law of a foreign country.”¹⁸³ Any right acquired under American municipal laws that have been unlawfully imposed within the territory of the Hawaiian Kingdom, being a situation of fact and not law, must be recognized by Hawaiian law. Without it being acquired under Hawaiian law, there is no right to be recognized. Before any right can be claimed, American municipal laws must first be transformed from situations of facts into provisional laws of the Hawaiian Kingdom.

In determining which American municipal laws, being situation of facts, shall constitute a provisional law of the kingdom, the following questions need to be answered. If any question is answered in the affirmative, with the exception of the last question, then it shall not be considered a provisional law.

1. The first consideration begins with Hawaiian constitutional alignment. Does the American municipal law violate any provisions of the 1864 Constitution, as amended?
2. Does it run contrary to a monarchical form of government? In other words, does it promote a republican form of government.
3. If the American municipal law has no comparison to Hawaiian Kingdom law,

¹⁸¹ *Lotus*, 18.

¹⁸² Crawford, 41.

¹⁸³ A. V. Dicey, *The Conflict of Laws* 12 (6th ed., 1949).

would it run contrary to the Hawaiian Kingdom's police power?

4. If the American municipal law is comparable to Hawaiian Kingdom law, does it run contrary to the Hawaiian statute?
5. Does the American municipal law infringe vested rights secured under Hawaiian law?
6. And finally, does it infringe the obligations of the Hawaiian Kingdom under customary international law or by virtue of it being a Contracting State to its treaties? The last question would also be applied to Hawaiian Kingdom laws enumerated in the Civil Code, together with the session laws of 1884 and 1886, and the Penal Code.

*Application to State of Hawai'i statutes on
Murder, Manslaughter, and Negligent Homicide*

§707-701 Murder in the first degree. (1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

- (a) More than one person in the same or separate incident;
 - (b) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;
 - (c) A person known by the defendant to be a witness in a criminal prosecution and the killing is related to the person's status as a witness;
 - (d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section;
 - (e) A person while the defendant was imprisoned;
 - (f) A person from whom the defendant has been restrained, by order of any court, including an ex parte order, from contacting, threatening, or physically abusing pursuant to chapter 586;
 - (g) A person who is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order;
 - (h) A person known by the defendant to be a witness in a family court proceeding and the killing is related to the person's status as a witness; or
 - (i) A person whom the defendant restrained with intent to:
 - (i) Hold the person for ransom or reward; or
 - (ii) Use the person as a shield or hostage.
- (2) Murder in the first degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656. [L 1972, c 9, pt of §1; am L 1986, c 314, §49; am L 2001, c 91, §4; am L 2006, c 230, §27; am L 2011, c 63, §2; am L 2016, c 214, §1]

§707-701.5 Murder in the second degree. (1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person; provided that this section shall not apply to actions taken under chapter 327L.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656. [L 1986, c 314, §50; am L 2018, c 2, §6]

§707-702 Manslaughter. (1) A person commits the offense of manslaughter if:

- (a) The person recklessly causes the death of another person; or
- (b) The person intentionally causes another person to commit suicide;

provided that this section shall not apply to actions taken under chapter 327L.

(2) In a prosecution for murder or attempted murder in the first and second degrees it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be; provided that an explanation that is not otherwise reasonable shall not be determined to be reasonable because of the defendant's discovery, defendant's knowledge, or the disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the other person made an unwanted nonforcible romantic or sexual advance toward the defendant, or in which the defendant and the other person dated or had a romantic relationship. If the defendant's explanation includes the discovery, knowledge, or disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, the court shall instruct the jury to disregard biases or prejudices regarding the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation in reaching a verdict.

(3) Manslaughter is a class A felony. [L 1972, c 9, pt of §1; am L 1987, c 181, §8; am L 1996, c 197, §2; am L 2003, c 64, §1; am L 2006, c 230, §28; am L 2018, c 2, §7; am L 2019, c 149, §1]

§707-702.5 Negligent homicide in the first degree. (1) A person commits the offense of negligent homicide in the first degree if that person causes the death of:

(a) Another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol; or

(b) A vulnerable user by the operation of a vehicle in a negligent manner.

(2) A person who violates subsection (1)(a) shall be guilty of a class B felony; provided that the person shall be guilty of a class A felony when the person:

(a) Has been convicted one or more times for the offense of operating a vehicle under the influence within fifteen years of the instant offense;

(b) Is, at the time of the instant offense, engaging in conduct that would constitute a violation of section 291E-62; or

(c) Is a highly intoxicated driver as defined by section 291E-1.

(3) A person who violates subsection (1)(b) shall be guilty of a class B felony.

(4) Notwithstanding sections 706-620(2), 706-640, 706-641, 706-659, and any other law to the contrary, the sentencing court may impose a lesser sentence for a person convicted of a class A felony under this section if the court finds that strong mitigating circumstances warrant the action. Strong mitigating circumstances shall include but not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(5) For the purposes of this section, a person “has been convicted one or more times for the offense of operating a vehicle under the influence” if the person has one or more:

(a) Convictions under section 291E-4(a), 291E-61, 291E-61.5, or 291E-64;

(b) Convictions in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

(c) Adjudications of a minor for a law violation that, if committed by an adult, would constitute a violation of section 291E-4(a), 291E-61, or 291E-61.5, that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside before the instant offense shall not be deemed prior convictions for the purposes of this section. [L 1988, c 292, pt of §1; am L 2012, c 316, §2; am L 2022, c 48, §2]

§707-703 Negligent homicide in the second degree. (1) A person commits the offense of negligent homicide in the second degree if that person causes the death of:

(a) Another person by the operation of a vehicle in a negligent manner; or

(b) A vulnerable user by the operation of a vehicle in a manner that constitutes simple negligence as defined in section 707-704(2).

(2) Negligent homicide in the second degree is a class C felony. [L 1972, c 9, pt of §1; am L 1988, c 292, §2; am L 2012, c 316, §3]

§707-704 Negligent homicide in the third degree. (1) A person is guilty of the offense of negligent homicide in the third degree if that person causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

(2) “Simple negligence” as used in this section:

(a) A person acts with simple negligence with respect to the person’s conduct when the person should be aware of a risk that the person engages in that conduct.

(b) A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.

(c) A person acts with simple negligence with respect to a result of the person's conduct when the person should be aware of a risk that the person's conduct will cause that result.

(d) A risk is within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of the person's conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

(3) Negligent homicide in the third degree is a misdemeanor. [L 1972, c 9, pt of §1; am L 1988, c 292, §3]

Hawaiian Kingdom law on Murder and Manslaughter

Penal Code, Chapter VII (As amended by the Act of 30 June 1860)

1. Murder is the killing of any human being with malice aforethought, without authority, justification or extenuation by law.

2. When the act of killing another is proved, malice aforethought shall be presumed, and the burthen shall rest upon the party who committed the killing to show that it did not exist, or a legal justification or extenuation therefor.

3. Whoever is guilty of murder shall be punished by death.

4. In every case of sentence to punishment by death, the court may, in their discretion, order the body of the convict to be dissected, and the marshal in such case shall deliver the dead body to any surgeon who may wish to have the body for dissection.

5. Whoever kills a human being without malice aforethought, and without authority, justification or extenuation by law, is guilty of the offense of manslaughter.

6. Manslaughter is of three degrees, and the jury under an indictment for murder or manslaughter may return a verdict of manslaughter in either degree, or of assault and battery, as the facts proved will warrant.

7. Whoever is guilty of manslaughter in the first degree shall be punished by imprisonment at hard labor, for a term of years not less than ten, nor more than twenty, in the discretion of the court.

8. Whoever is guilty of manslaughter in the second degree shall be punished by imprisonment at hard labor, not more than ten years or less than five years.

9. Whoever is guilty of manslaughter in the third degree shall be punished by imprisonment at hard labor not more than five years, or by a fine not more than one thousand dollars, in the discretion of the court.

10. Whoever, under an indictment for murder, or manslaughter, shall be found guilty of assault and battery, as provided in section 6 of this chapter, shall be punished by imprisonment at hard labor not more than two years, or by a fine not exceeding five hundred dollars, in the discretion of the court.

11. No person shall be adjudged to have killed another unless death ensues within a year and a day from the injury inflicted.

12. Chapter VII of the Penal Code is hereby repealed from and after the passage of this chapter: Provided, however, that such repeal shall not take affect any offense committed or penalty or forfeiture incurred under said chapter, but that the same shall remain in full force in respect to the liability of any person to be proceeded against, or against whom proceedings are pending, for any offense committed under said chapter.

General Analysis and Application of the Formula

The Hawaiian Kingdom law on murder draws from the English law—the 1752 *Murder Act*.¹⁸⁴ Like the *Murder Act*, the Hawaiian statute provides that “[w]hoever is guilty of murder shall be punished by death,” and “[i]n every case of sentence to punishment by death, the court may, in their discretion, order the body of the convict to be dissected, and the marshal in such case shall deliver the dead body to any surgeon who may wish to have the body for dissection.” Section 2 of the *Murder Act* provides that after the execution, the body of the murderer be delivered “to the hall of the Surgeons Company...to be dissected and anatomized by the said Surgeons.”

Teaching human anatomy “became essential for a European medical education, with Paris, Edinburgh and London (in that order of priority) attracting fee-paying students anxious to obtain extra qualifications as physicians and surgeons from dissecting criminal corpses.”¹⁸⁵ Under the *Murder Act*, post-mortem dissection was also viewed as post-mortem punishment to serve as a deterrent for the crime. In the Hawaiian Kingdom, there was no Surgeons Company but only surgeons in private practice or employed by Queen’s Hospital being a quasi-public medical institution. Unlike the *Murder Act*, the sentence to post-mortem dissection was discretionary by the court and only considered if the body was requested by a surgeon, which would appear for the purpose of medical education and not post-mortem punishment.

¹⁸⁴ 25 George II, c. 37.

¹⁸⁵ Elizabeth T. Hurren, *Dissecting the Criminal Corpse: Staging Post-Execution Punishment in Early Modern England* 5 (2016).

Under the 1850 Penal Code, the murder statute had two degrees, but this was repealed by the Legislature in 1860 to have none.¹⁸⁶ Manslaughter, however, had three degrees to be considered by the jury.

Do the State of Hawai‘i statutes on murder, manslaughter and negligent homicide violate any provisions of the 1864 Constitution, as amended? No.

Do they run contrary to a monarchical form of government? No.

If the State of Hawai‘i statutes on murder, manslaughter and negligent homicide have no comparison to Hawaiian Kingdom law, would it be authorized under the Hawaiian Kingdom’s police power? Not applicable because the Hawaiian Kingdom has a law on murder and manslaughter.

If the State of Hawai‘i statutes on murder, manslaughter and negligent homicide are comparable to Hawaiian Kingdom law, does it run contrary to the Hawaiian statute on murder and manslaughter? Under the 1850 Penal Code, the Hawaiian statute on murder provided first and second degrees. First-degree murder carried the death penalty and second-degree murder carried “imprisonment at hard labor for a term of years not less than five nor more than twenty, in the discretion of the court.” The 1850 statute on manslaughter, however, did not have degrees, which stated:

The laws should make some allowance for human infirmity; therefore whoever kills another without malice aforethought, under the sudden impulse of passion, excited by provocation or other adequate cause, whether insult, threats, violence or otherwise, by the party killed, of a nature tending to disturb the judgment and faculties, and weaken the possession of a self-control of the killing party, is not guilty of murder but manslaughter; and shall be punished by imprisonment at hard labor not more than ten years, or by fine not less than one thousand dollars, nor more than ten thousand dollars.

The 1860 Legislature amended that statute to remove the degrees of murder and provide three degrees of manslaughter. The punishment for murder was death and the punishment for the degrees of manslaughter varied by years of imprisonment. The State of Hawai‘i statute has two degrees of murder, no degrees for manslaughter, and three degrees of negligent homicide.

While the punishment under Hawaiian statute is death for murder and imprisonment at hard labor, it does reflect criminal laws of other foreign States in the nineteenth century to include the United States. Hard labor is a “punishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary for serious crimes, or for misconduct while in prison.”¹⁸⁷

¹⁸⁶ An Act to Amend the Law Relating to Murder and Manslaughter (1860).

¹⁸⁷ Black’s Law, 717.

However under Hawaiian Kingdom criminal statutes, all sentencing to imprisonment is at hard labor. It was not an addition to imprisonment.

With the progressive affirmation of human rights in international law, the death penalty has started to be seen as inconsistent with the very idea of human dignity. Since then, the international community of States adopted several instruments that ban the use of the death penalty. These instruments include:

- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;¹⁸⁸
- Protocol No. 6 to the European Convention on Human Rights, concerning the abolition of the death penalty, and Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances;¹⁸⁹ and
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.¹⁹⁰

As a member of the community of States, the Hawaiian Kingdom's statute on the death penalty and imprisonment at hard labor is inconsistent with the most recent developments of international law and should no longer be enforced.

Nearly every state in the American Union and the federal government has a felony murder rule. The "rule allows a defendant to be charged with first-degree murder for a killing that occurs during a dangerous felony, even if the defendant is not the killer."¹⁹¹ The felony-murder rule has been used to support murder convictions of defendants where one victim of a robbery accidentally shoots another victim,¹⁹² where one of the defendant's co-robbers kills another co-robber during a robbery for the latter's refusal to obey orders and not as part of the robbery transaction,¹⁹³ and where the defendant (a dope addict) commits robbery of the defendant's homicide victim as an afterthought following the killing.¹⁹⁴ The application of the felony-murder rule dispenses with the need to prove that culpability with respect to the homicidal result that is otherwise required to support a conviction for murder and therefore leads to anomalous results. Therefore, the felony murder rule is inconsistent the Hawaiian statute on murder.

Does the State of Hawai'i statutes on murder, manslaughter and negligent homicide infringe on vested rights secured under Hawaiian law? No.

¹⁸⁸ General Assembly resolution 44/128.

¹⁸⁹ Council of Europe, European Treaty Series – No. 114.

¹⁹⁰ Organization of American States, Treaty Series – No. 73.

¹⁹¹ Justia, *Felony Murder* (online at: <https://www.justia.com/criminal/offenses/homicide/felony-murder/>).

¹⁹² *People v. Harrison*, 203 Cal. 587, 265 P. 230 (1928).

¹⁹³ *People v. Cabalero*, 31 Cal. App. 2d 52, 87 P.2d 364 (1939).

¹⁹⁴ *People v. Arnold*, 108 Cal. App. 2d 719, 239 P.2d 449 (1952).

Does the State of Hawai‘i statutes on murder, manslaughter and negligent homicide infringe on the obligations of the Hawaiian Kingdom under customary international law or being a Contracting State to its treaties? Yes. Although not a party to any treaty banning the use of the death penalty and cruel punishment, the Hawaiian Kingdom recognizes that banning the death penalty and cruel punishment is a duty of States, in line with the recent developments in the field of international human rights law. Therefore, the Hawaiian Kingdom statute on the death penalty and imprisonment at hard labor should be considered as no longer consistent with international law.

Considering this analysis, the State of Hawai‘i laws on murder, manslaughter and negligent homicide are not “contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law.” To the extent that the felony murder rule is omitted, the State of Hawai‘i law on murder would be consistent with the Hawaiian Kingdom law on murder.

The military government shall proclaim provisional laws for the Occupied State of the Hawaiian Kingdom as law proclamation. See Appendix 2.

IMPLIED TASK: *Disband the State of Hawai‘i Legislature and the County Councils*

Legislation is the exercise of sovereignty under the State’s police power. The State of Hawai‘i has no sovereignty over the Hawaiian Islands because sovereignty remains vested in the Hawaiian Kingdom as an independent State. However, limited legislation under the law of occupation is allowable to a military governor under Article 43 of the 1907 Hague Regulations in order “to restore and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the territory.” Article 64 of the 1949 Fourth Geneva Convention, which is seen as “a more precise and detailed [expression of] the terms of Article 43,” states:

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

While the opening paragraph may lead with criminal law, “it is accepted that the legislative power conferred on the occupant by virtue of the second paragraph.”¹⁹⁵ According to Professor Scobbie:

This competence is, nevertheless, circumscribed. The occupant may only adopt new measures which are “essential” in relation to the issues enumerated in paragraph 2—namely, in order that the occupant may fulfill its obligations under the Fourth Convention; for the orderly government of the territory; and to ensure its own security interests principally within the occupied territory.

United States practice affirms this understanding. Section 1, paragraph 3, of FM 27-5 states, “[i]n occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only by the laws and customs of war and by directives from higher authority.” The limitation “by the laws and customs of war” is reflected in Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention. Furthermore, the legislation by the State of Hawai‘i and the Counties constitutes the war crime of *usurpation of sovereignty during military occupation*.

¹⁹⁵ Scobbie, 13.

ESSENTIAL TASK: *Temporary Administrator of Public Buildings, Real Estate, Forests, and Agricultural Estates that belong to the Occupied State*

Article 55 of the 1907 Hague Regulations provides, “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the [occupied] State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.” The term “usufruct” is to administer the property or institution of another without impairing or damaging it. Article 147 of the Fourth Geneva Convention lists as a grave breach the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

With respect to occupied territory, the relevant provision is Article 53, “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” The Commentary to the Fourth Geneva Convention explains the implication of Article 53:

In the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of co-operative organizations. The extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences must be respected.¹⁹⁶

IMPLIED TASK: *Remove the United States flag from all Public Buildings of the Hawaiian Kingdom*

On 25 May 1845 a revised national flag was unfurled at the opening of the Hawaiian legislature. The Hawaiian flag previous to 1845 differed only in the amount of stripes and also the arranging of the colors. The person accredited with the designing of the new flag was Captain Hunt of H.B.M.S. *Baselisk*. It has since remained unchanged to date. In the *Polynesian Newspaper* of May 31, 1845, which was the government newspaper, was the following article:

“At the opening of the Legislative Council, May 25, 1845, the new national banner was unfurled, differing little however from the former. It is octo. (eight) parted per fess

¹⁹⁶ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War* 301 (1958).

(horizontal band), first, fourth and seventh, argent (silver represented by the color white): second, fifth and eighth, gules (the color red): third and sixth, azure (light purplish blue), for the eight islands under one sovereign, indicated by crosses saltire, of St. Andrew and St. Patrick quarterly, per saltire counter changed, argent (white) and gules (red).”

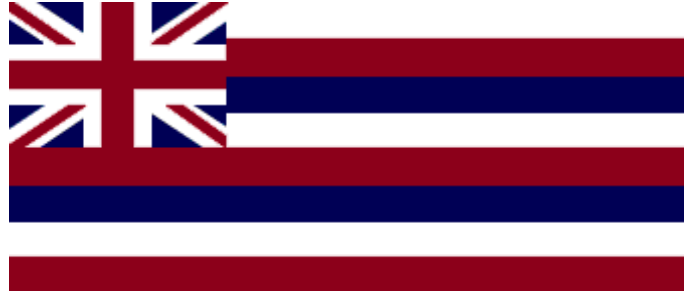


Figure 1. Hawaiian Kingdom National Flag

There is no Hawaiian law providing for the flying of the United States flag over public buildings of the Hawaiian Kingdom. The national flag of the Hawaiian Kingdom, which is currently claimed to erroneously be the flag of the State of Hawai‘i, is the national flag of the Hawaiian Kingdom within its territory and would also fly over the legations and consulates of the Hawaiian Kingdom in foreign States.

To maintain the political and legal *status quo ante* of the Hawaiian Kingdom that existed prior to the occupation, the military government shall take affirmative steps to remove the national flag of the United States currently flying over the public buildings of the Hawaiian Kingdom within its own territory.

ESSENTIAL TASK: *Protect the Institutions of the Occupied State*

The law of occupation prohibits “changes in constitutional forms or in the form of government, the establishment of new military or political organizations, the dissolution of the State, or the formation of new political entities.”¹⁹⁷ In the case of the Hawaiian Kingdom, the United States, either through its puppet regime calling itself the Provisional Government and later calling itself the Republic of Hawai‘i, or through its national legislation since 30 April 1900 under *An Act To provide a government for the territory of Hawaii* (“Territorial Act”),¹⁹⁸ to include *An Act To provide for the admission of the State of Hawaii into the Union* on 18 March 1959 (“Statehood Act”),¹⁹⁹ made drastic changes in the form of government.

On 17 January 1893, the Provisional Government made no changes to the governmental infrastructure except for the replacement of the Queen and her cabinet ministers along with the Marshal of the police force with an Executive and Advisory Councils comprised of the leadership of the insurgency. Structural changes took place on 4 July 1894 when the insurgency declared the form of government to be a so-called republic. The executive branch was changed from Executive Monarch, together with a Cabinet Council and the Privy Council, to a President that headed an Executive Council along with a Council of State. The military force of the Hawaiian Kingdom called the King’s Guard was changed to the National Guard. No other changes were made to the rest of the executive branch. The police court was eliminated in the judicial branch. The legislative branch was changed from a unicameral legislative assembly comprised of Nobles and Representatives to a bicameral legislature comprised of a Senate and House of Representatives.

On 30 April 1900, the United States took control of the governmental infrastructure of the Republic of Hawai‘i and made the following changes. Section 8 of the Territorial Act provided that “the offices of President, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor-general, deputy auditor-general, surveyor-general, marshal, and deputy marshal of the Republic of Hawaii are hereby abolished.” Section 9 provided that “wherever the words ‘President of the Republic of Hawaii,’ or ‘Republic of Hawaii,’ or ‘Government of the Republic of Hawaii,’ or their equivalents, occur in the laws of Hawaii not repealed by this Act, they are hereby amended to read ‘Governor of the Territory of Hawaii,’ or ‘Territory of Hawaii,’ or ‘Government of the Territory of Hawaii,’ or their equivalents, as the context requires.”

Section 80 of the Territorial Act provided that the executive branch was comprised of a Governor and Secretary of the Territory who were appointed by the U.S. President with the advice and consent of the U.S. Senate. Section 80 further states that the Governor with the advice of the

¹⁹⁷ Jean Pictet, Commentary, IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War 273 (1958).

¹⁹⁸ 31 Stat. 141 (1900).

¹⁹⁹ 73 Stat. 4 (1959).

territorial Senate appointed the “attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of public character that may be created by law.” The legislative branch remained bicameral with a Senate and House of Representatives. Structurally, the judicial branch remained unchanged with the exception that the U.S. President nominates with the advice and consent of the U.S. Senate appoints the chief justice and justices of the supreme court and the judges of the circuit courts. The Territorial legislature created the counties.

By virtue of the Statehood Act, the following departments and agencies were established: Department of Accounting & General Services; Department of Agriculture, Department of the Attorney General; Department of Budget & Finance; Department of Business; Economic Development & Tourism; Department of Commerce & Consumer Affairs; Department of Defense; Department of Education; Department of Hawaiian Home Lands; Department of Health; Department of Human Resources Development; Department of Human Services; Department of Labor & Industrial Relations; Department of Land & Natural Resources; Department of Public Safety; Department of Taxation; Department of Transportation; Office of Information Practices; Office of Hawaiian Affairs; Hawai‘i Health Systems Corporation; and the University of Hawai‘i.

IMPLIED TASK: *Re-align Departments and Agencies to the Status Quo Ante*

The cornerstone of the law of occupation is to maintain the political and legal *status quo ante* of the Hawaiian Kingdom that existed prior to the occupation. Especially as a democratic government, the political institution of the Hawaiian Kingdom is prohibited from being changed or altered by the United States or its proxies. The Hawaiian Kingdom government is separated into three branches—the legislative, the executive, and the judiciary.

The legislative branch represents the three political estates of the kingdom, to wit, “the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives elected by the people.”²⁰⁰ Being unicameral, the Legislative Assembly is comprised of a President, Vice-President and Secretary. The four Ministers of the Cabinet “hold seats *ex officio*, as Nobles, in the Legislative Assembly.”²⁰¹

The executive branch is headed by an Executive Monarch. The Monarch has a Privy Council of State that provides “advice, and for assisting him in administering the Executive affairs of the Government.”²⁰² The Monarch has a Cabinet that consists “of the Minister of Foreign Affairs, the

²⁰⁰ Article 45, 1864 Constitution, as amended.

²⁰¹ *Id.*, Article 43.

²⁰² *Id.*, Article 41.

Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom."²⁰³ The executive branch has four departments. The Department of the Interior is headed by the Minister of the Interior. The Department of Foreign Affairs is headed by the Minister of Foreign Affairs. The Department of Finance is headed by the Minister of Finance. And the Department of Public Instruction is headed by "a committee of the Privy Council, to consist of five members, and to be called the Board of Education. The members of the said Board shall be chosen by the King; and one of their number shall, by him, be appointed President, and all shall serve without pay."²⁰⁴ The Attorney General appears "for the Crown or Government personally or by deputy, in all courts of record of this Kingdom, in all cases criminal or civil in which the Crown or Government may be a party, or be interested, and he shall in like manner appear in the police and district courts when requested so to do by the marshal of the Kingdom or the sheriff of any one of the islands."²⁰⁵

The judicial branch is comprised of the Supreme Court, Circuit Courts, Police Courts, and District Courts. The Supreme Court and the Circuit Courts are courts of record. The Supreme Court consists of a Chief Justice and two Associate Justices. The Kingdom is divided into four judicial circuits. The First Circuit Court consist of the Island of Oahu, whose seat of justice is in Honolulu. The Second Circuit Court consist of the Islands of Maui, Molokai, Lāna'i, and Kaho'olawe, whose seat of justice is in Lahaina, Island of Maui. The Third Circuit Court consist of the Island of Hawai'i, whose seat of justice is in Hilo and Waimea. The Fourth Circuit Court consist of the Islands of Kaua'i and Ni'ihau, whose seat of justice is in Nawiliwili, Island of Kaua'i. Police Courts were established in the port cities of Honolulu, Lahaina, and Hilo. There are eight District Courts on the Island of Hawai'i established at Hilo, Puna, Ka'u, South Kona, North Kona, South Kohala, North Kohala, and Hamakua. There are six District Courts for the Islands of Maui, Molokai, Lāna'i, and Kaho'olawe, as follows: from Kahakuloa to Ukumehame, including Kaho'olawe, called the Lahaina District; from Waihe'e to Honuaua inclusive, called the Wailuku District; Kahikinui, Kaupo, Kipahulu, Hana and Ko'olau, called the Hana District; Hamakualoa, Hamakuapoko, Hali'imaile, Makawao and Kula, called the Makawao District; Molokai; and Lāna'i.

The military government shall re-align departments and agencies of the State of Hawai'i back to the *status quo ante* of the Hawaiian Kingdom that existed before the military occupation on 17 January 1893. Therefore, the functioning of the State of Hawai'i Department of Accounting & General Services, Department of Agriculture, Department of Business, Economic Development & Tourism, Department of Commerce & Consumer Affairs, Department of Health, Department of Human Resources Development, Department of Human Services, Department of Labor & Industrial Relations, Department of Land & Natural Resources, Department of Public Safety,

²⁰³ *Id.*, 42.

²⁰⁴ Section 2, An Act to Repeal Chapter 10 of the Civil Code, and to Regulate the Bureau of Public Instruction (1865), Compiled Laws 199 (1884).

²⁰⁵ Section 1, Defining the Duties of the Attorney-General, Compiled Laws 315 (1884).

Department of Transportation, and the Office of Information Practices shall come under the Department of the Interior headed by Dr. David Keanu Sai, Minister of the Interior. The Department of Budget & Finance and the Department of Taxation shall come under the Department of Finance headed by Ms. Kau'i P. Sai-Dudoit as Minister of Finance. The Attorney General's office shall be headed by Dexter K. Ka'iama, Attorney General. There shall be reinstated the Department of Foreign Affairs headed by Dr. David Keanu Sai, Minister of Foreign Affairs *ad interim*.

The University of Hawai'i shall come under the Department of Public Instruction. The Department of Defense shall come under the Royal Guard. The Hawai'i Health Systems Corporation shall come under the Board of Health. Since, the lands of the Department of Hawaiian Home Lands are Crown Lands and they service aboriginal Hawaiians, their function shall come under the Crown Land Commissioners. There is no place for the Office of Hawaiian Affairs under the Hawaiian Kingdom legal order because the rights of aboriginal Hawaiians are acknowledged and protected by the legal order of the Kingdom.

The military government shall also align departments and agencies of the Counties under the Department of the Interior, Department of Finance, Office of the Attorney General, and the police force under the command of the Marshal with the County Police Chiefs serving as Sheriffs presiding over the islands. The mayors shall be replaced by governors.

IMPLIED TASK: Oath of Allegiance by Those in the Military Government

According to the 1874 *Act to Provide for the Taking the Oath of Allegiance by Persons in the Employ of the Hawaiian Government*, as amended in 1876, "[f]rom and after the passage of this Act, every person of foreign birth who may be appointed to any office of profit or emolument under the Government of this Kingdom, shall, before entering upon the duties of his office, take and subscribe the oath of allegiance in manner and form prescribed by Section 430 and 431 of the Civil Code." Black's Law Dictionary defines an "emolument" as the "profit arising from office, employment, or labor; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites."²⁰⁶ Therefore, all those employed by the State of Hawai'i after it has been transformed into a military government shall take the oath of allegiance as provided under §430 of the Civil Code, to wit:

The undersigned, a native of _____, lately residing in _____, being duly sworn, upon his oath, declares that he will support the Constitution and laws of the Hawaiian Islands, and bear true allegiance to [the Hawaiian Kingdom].

Subscribed and sworn to this __ day of _____, A.D. 20__, before me, _____.

²⁰⁶ Black's Law, 524.

Persons in the employ of the military government shall be of the nationality of the Hawaiian Kingdom—Hawaiian subjects. For those not of Hawaiian nationality and have taken the oath of allegiance shall be made a Hawaiian subject as if they had been naturalized.²⁰⁷ §432 of the Civil Code states:

Every foreigner so naturalized, shall be deemed to all intents and purposes a native of the Hawaiian Islands, be amenable only to the laws of this Kingdom, and to the authority and control thereof, be entitled to the protection of said laws, and be no longer amendable to his native sovereign while residing in this Kingdom, nor entitled to resort to his native country for protection or intervention. He shall be amendable, for every such resort, to the pains and penalties annexed to rebellion by the Criminal Code. And every foreigner so naturalized, shall be entitled to all the rights, privileges and immunities of an Hawaiian subject.

United States citizens cannot hold any office of profit or emolument under the military government because it is the civilian government of the Hawaiian Kingdom.

IMPLIED TASK: Reinstate Universal Healthcare for Aboriginal Hawaiians

On 31 July 1901 an article was published in *The Pacific Commercial Advertiser* in Honolulu.

The Queen’s Hospital was founded in 1859 by their Majesties Kamehameha IV and his consort Emma Kaleleonalani. The hospital is organized as a corporation and by the terms of its charter the board of trustees is composed of ten members elected by the society and ten members nominated by the Government, of which the President of the Republic (now Governor of the Territory) shall be the presiding officer. The charter also provides for the “establishing and putting in operation a permanent hospital in Honolulu, with a dispensary and all necessary furniture and appurtenances for the reception, accommodation and treatment of indigent sick and disabled Hawaiians, as well as such foreigners and other who may choose to avail themselves of the same.”

Under this construction all native Hawaiians have been cared for without charge, while for others a charge has been made of from \$1 to \$3 per day. The bill making the appropriation for the hospital by the Government provides that no distinction shall be made as to race; and the Queen’s Hospital trustees are evidently up against a serious proposition.

Queen’s Hospital was established as the national hospital for the Hawaiian Kingdom and that health care services for Hawaiian subjects of aboriginal blood was at no charge. The Executive Monarch would serve as President of the Board together with twenty trustees, ten of whom are from the government.

²⁰⁷ Opinion of the Justices of the Supreme Court to the Legislative Assembly of 1884, as to the Allegiance of Aliens and Denizens, 5 Haw. 167, 169 (1884).

Since the hospital's establishment in 1859 the legislature of the Hawaiian Kingdom subsidized the hospital along with monies from the Queen Emma Trust. With the unlawful imposition of the 1900 Organic Act that formed the Territory of Hawai'i, American law did not allow public monies to be used for the benefit of a particular race. 1909 was the last year Queen's Hospital received public funding and it was also the same year that the charter was unlawfully amended to replace the Hawaiian Head of State with an elected president from the private sector and reduced the number of trustees from twenty to seven, which did not include government officers. These changes to a Hawaiian quasi-public institution is a direct violation of Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention.

Despite these unlawful changes, aboriginal Hawaiian subjects, whether pure or part, are to receive health care at Queen's Hospital free of charge. This did not change, but through denationalization there was an attempt of erasure. Aboriginal Hawaiian subjects are protected persons as defined under international law, and, as such, the prevention of health care by Queen's Hospital constitute war crimes. Furthermore, there is a direct nexus of deaths of aboriginal Hawaiians as "the single racial group with the highest health risk in the State of Hawai'i [that] stems from [...] late or lack of access to health care"²⁰⁸ to the crime of genocide.

This is not a matter that aboriginal Hawaiians should receive health care at no cost, but rather a law that provides health care at no cost through the Queen's Hospital. The military government shall enforce the law providing health care at no cost for aboriginal Hawaiians, whether pure or part. This is not a matter of blood quantum but rather a matter of vested rights for aboriginal Hawaiians, whether pure or part, to receive health care at no cost.

IMPLIED TASK: Take Affirmative Steps to End Denationalization through Americanization

In 1905, the American editor of the *Pacific Commercial Advertiser* newspaper in Honolulu, which was the propaganda newspaper for the insurgents, Walter Smith, unabashedly reveals the American import of white supremacy being injected in the school system. Under the heading of "The American Way," Smith wrote:

It would have been proper yesterday in the Advertiser's discussion of schools to admit the success which the High School has had in making itself acceptable to white parents. By gradually raising the standard of knowledge of English the High School has so far changed its color that, during the past year seventy-three per cent were Caucasians. It is not so many years ago that more than seventy three per cent were non-Caucasians. At the present rate of progress it will not be long before the High School will have its student body as thoroughly Americanized in blood as it long has been in instruction.

²⁰⁸ Office of Hawaiian Affairs, *Native Hawaiian Health Fact Sheet 2* (2017).

The idea of having mixed schools where the mixture is of various social and political conditions is wholly American; but not so mixed schools where the American youth is submerged by the youth of alien races. On the mainland the Polacks, the Russian Jews, the Huns and negroes are, as far as practicable, kept in schools of their own, with the teaching in English; and only where the alien breeds are few, as in the country, are they permitted to mingle with white pupils. In the South, where Americans of the purest descent live, there are no mixed schools for whites and negroes; and wherever color or race is an issue of moment, the American way is defined through segregation. Only a few fanatics or vote-hunters care to lower the standard of the white child for the sake of raising that of the black or yellow child.

One great and potent duty of our high schools, public and private, is to conserve the domination here of Anglo-Saxon ideas and institutions; and this means control by white men. We have faith in any attempt to make Americans of Asiatics. There are too many obstacles of temperament and even of patriotism in the way. The main thing is to see that our white children when they grow up, are not to be differentiated from the typical Americans of the mainland, having the same standards, the same ideals and the same objects, none of them tempered by the creeds or customs of decaying or undeveloped or pagan races.²⁰⁹

The following year, the Territory of Hawai'i intentionally sought to "Americanize" the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of *denationalization*. Under the policy titled "Programme for Patriotic Exercises in the Public Schools," the national language of Hawaiian was banned and replaced with the American language of English.²¹⁰ Young students who spoke the Hawaiian language in school were severely disciplined. One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of *denationalization*. The *Hawaiian Gazette* reported:

As a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].²¹¹

²⁰⁹ Walter G. Smith, *The American Way*, *The Pacific Commercial Advertiser* 4 (8 Sep. 1905).

²¹⁰ *Programme for Patriotic Exercises in the Public Schools*, Territory of Hawai'i, adopted by the Department of Public (1906) (online at: http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf).

²¹¹ *Patriotic Program for School Observance*, *Hawaiian Gazette* 5 (3 Apr. 1906) (online at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf).

It is important here to draw attention to the word “inculcate.” As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term. When a reporter from the American news magazine, *Harper’s Weekly*, visited the Ka’iulani Public School in Honolulu in 1907, he reported:

At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.... Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.... “Attention!” Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. “Salute!” was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: “We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!”²¹²

When the reporter visited Honolulu High School, he commented, “[t]he change in the color scheme from that of the schools below was astounding. Below were all the hues of the human spectrum, with brown and yellow predominating; here the tone was clearly white.”²¹³ While the schools today are predominantly non-white, Americanization remains entrenched. Furthermore, *denationalization* is a war crime as well as a crime against humanity.²¹⁴

The military government shall take affirmative steps to implement the curriculum in the high schools in line with the 1882 annual exams of Lahainaluna Seminary. See Appendix no. 3. The middle schools and primary schools shall continue except for curriculum based on Americanization.

²¹² William Inglis, “Hawai’i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children,” *Harper’s Weekly* 227 (16 Feb. 1907).

²¹³ *Id.*, 228.

²¹⁴ Schabas, 159-161, 168.

ESSENTIAL TASK: *Protect and Respect the Rights of the Population of the Occupied State*

Article 47 of the 1949 Fourth Geneva Convention addresses inviolability of rights where “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

Annexation of an occupied State by the Occupying State is a situation of fact, not law. So long as the occupation persists, “the Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.”²¹⁵ According to *The Handbook of Humanitarian Law in Armed Conflicts*:

The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.²¹⁶ International law does not permit annexation of territory of another state.²¹⁷

Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*²¹⁸ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.²¹⁹ There is no peace treaty between the Hawaiian Kingdom and the United States where the former ceded its sovereignty and territory to the latter.

The legal order of the Hawaiian Kingdom is a constitutional monarchy based on democratic principles. Hawaiian governance is founded on respect for the *Rule of Law*. Hawaiian subjects rely on a society based on law and order and are assured that the law will be applied equally and impartially. Impartial courts depend on an independent judiciary. The independence of the judiciary means that Judges are free from outside influence, and notably from influence from the Crown. Initially, the first constitution of the country in 1840 provided that the Crown serve as Chief Justice of the Supreme Court, but this provision was ultimately removed by amendment in 1852 in order

²¹⁵ Pictet, 275.

²¹⁶ There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.

²¹⁷ Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).

²¹⁸ 9 Stat. 922 (1848).

²¹⁹ 30 Stat. 1754 (1898).

to provide separation between the executive and judicial branches. Article 65 of the 1864 Constitution of the country provides that only the Legislative Assembly, can remove Judges by impeachment. The *Rule of Law* precludes capricious acts on the part of the Crown or by members of the government over the just rights of individuals guaranteed by a written constitution. According to Hawaiian Supreme Court Justice Alfred S. Hartwell:

The written law of England is determined by their Parliament, except in so far as the Courts may declare the same to be contrary to the unwritten or customary law, which every Englishman claims as his birthright. Our Legislature, however, like the Congress of the United States, has not the supreme power held by the British Parliament, but its powers and functions are enumerated and limited, together with those of the Executive and Judicial departments of government, by a written constitution. No act of either of these three departments can have the force and dignity of law, unless it is warranted by the powers vested in that department by the Constitution. Whenever an act purporting to be a statute passed by the Legislature is an act which the Constitution prohibits, or does not authorize, and such act is sought to be enforced as law, it is the duty of the Courts to declare it null and void.²²⁰

Unlike the United States where there is no constitutional provision or statute vesting U.S. federal courts with judicial oversight, the Hawaiian Kingdom does have a statute for judicial review. §824 of the Hawaiian Civil Code states, “The several courts of record shall have power to decide for themselves the constitutionality and binding effect of any law, ordinance, order or decree, enacted or put forth by the King, the Legislature, the Cabinet, or Privy Council. The Supreme Court shall have power to declare null and void any such law, ordinance, order or decree, as may upon mature deliberation appear to it contrary to the Constitution, or opposed to the laws of nations, or any subsisting treaty with a foreign power.”

The 1864 Constitution, as amended, provides the protection of civil rights guaranteed to all persons residing within the territory of the Hawaiian Kingdom whether they be Hawaiian subjects or resident aliens.

ARTICLE 1. God hath endowed all men with certain inalienable rights; among which are life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

ARTICLE 2. All men are free to worship God according to the dictates of their own conscience; but this sacred privilege hereby secured, shall not be so construed as to justify acts of licentiousness, or practices inconsistent with the peace or safety of the Kingdom.

²²⁰ *In Re Gip Ah Chan*, 6 Haw. 25 (1870).

ARTICLE 3. All men may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press, except such laws as may be necessary for the protection of His Majesty the King and the Royal Family.

ARTICLE 4. All men shall have the right, in an orderly and peaceable manner, to assemble, without arms, to consult upon the common good, and to petition the King or Legislative Assembly for redress of grievances.

ARTICLE 5. The privilege of the writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension.

ARTICLE 6. No person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a Court having jurisdiction of the case.

ARTICLE 7. No person shall be held to answer for any crime or offense (except in cases of impeachment, or for offenses within the jurisdiction of a Police or District Justice, or in summary proceedings for contempt), unless upon indictment, fully and plainly describing such crime or offense, and he shall have the right to meet the witnesses who are produced against him face to face; to produce witnesses and proofs in his own favor; and by himself or his counsel, at his election, to examine the witnesses produced by himself, and cross-examine those produced against him, and to be fully heard in his defense. In all cases in which the right of trial by Jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than Fifty Dollars.

ARTICLE 8. No person shall be required to answer again for an offense, of which he has been duly convicted, or of which he has been duly acquitted upon a good and sufficient indictment.

ARTICLE 9. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

ARTICLE 10. No person shall sit as a judge or juror, in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror, may have, either directly or through a relative, any pecuniary interest.

ARTICLE 11. Involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free.

ARTICLE 12. Every person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers and effects; and no warrants shall issue but on

probable cause supported by oath or affirmation and describing the place to be searched, and the persons or things to be seized.

ARTICLE 13. The King conducts His Government for the common good; and not for the profit, honor, or private interest of any one man, family, or class of men among His subjects.

ARTICLE 14. Each member of society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to law; and, therefore, he shall be obliged to contribute his proportional share to the expenses of this protection, and to give his personal services, or an equivalent when necessary but no part of the property of any individual shall be taken from him, or applied to public uses, without his own consent, or the enactment of the Legislative Assembly, except the same shall be necessary for the military operation of the Kingdom in time of war or insurrection; and whenever the public exigencies may require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ARTICLE 15. No subsidy, duty or tax of any description shall be established or levied, without the consent of the Legislative Assembly; nor shall any money be drawn from the Public Treasury without such consent, except when between the session of the Legislative Assembly the emergencies of war, invasion, rebellion, pestilence, or other public disaster shall arise, and then not without the concurrence of all the Cabinet, and of a majority of the whole Privy Council; and the Minister of Finance shall render a detailed account of such expenditure to the Legislative Assembly.

ARTICLE 16. No Retrospective Laws shall ever be enacted.

ARTICLE 17. The Military shall always be subject to the laws of the land; and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by the Legislature.

In 1847, Chief Justice William Lee of the Hawaiian Kingdom Supreme Court established a legal maxim to be applied by all courts of the Kingdom that speaks to the role of a Hawaiian constitutional monarchy. Chief Justice Lee stated:

For I trust that the maxim of this Court ever has been, and ever will be, that which is so beautifully expressed in the Hawaiian coat of arms, namely, "The life of the land is preserved by righteousness." We know of no other rule to guide us in the decision of questions of this kind, than the supreme law of the land, and to this we bow with reverence and veneration, even though the stroke fall on our own head. In the language of another, "Let justice be done though the heavens fall." Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals

may err—they do err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequence.²²¹

The military government shall take affirmative steps to assure the population of the Hawaiian Kingdom that their rights are protected in conformity with the laws of the Hawaiian Kingdom, whether as Hawaiian subjects or resident aliens.

²²¹ *Shillaber v. Waldo et al.*, 1 Haw. 31, 32 (1847).

Appendix 1

PROCLAMATION No. 1

TO THE PEOPLE OF HAWAI'I:

I, _____, Adjutant General of the State of Hawai'i, do hereby proclaim as follows:

ARTICLE I.

1. For the past 130 years, the Hawaiian Kingdom, being an internationally recognized sovereign and independent State since the nineteenth century, has been under the military occupation of the United States of America since Queen Lili'uokalani conditionally surrendered her authority to the United States armed forces on 17 January 1893. On 8 November 1999, the Permanent Court of Arbitration, The Hague, Netherlands, acknowledged the continued existence of the Hawaiian Kingdom as a State under international law and the Council of Regency as the Government of the Hawaiian Kingdom when arbitral proceedings were instituted in *Larsen v. Hawaiian Kingdom*. The federal government of the United States of America did not contest the Permanent Court of Arbitration's acknowledgement of the Hawaiian Kingdom as a State, and entered into an agreement with the parties to the arbitration allowing the United States access to the pleadings and records of the arbitral proceedings.
2. At the center of the dispute was the unlawful imposition of American municipal laws over the territory of the Hawaiian Kingdom, which according to customary international law is the war crime of usurpation of sovereignty during military occupation. In order to cease the commission of war crimes and begin to rectify violations of international law against the population of the Hawaiian Kingdom, it is my duty and obligation as the most senior army general officer of the State of Hawai'i in effective control of the majority of the territory of the Hawaiian Kingdom to establish a military government and administer the laws of the Hawaiian Kingdom in compliance with the law of armed conflict, the law of occupation, and U.S. Army regulations.

ARTICLE II.

3. The United States of America system of Government is hereby abrogated.

ARTICLE III.

4. A Military Government for the control and management of public affairs and the protection of the public peace is hereby established to exist until a treaty of peace between the Hawaiian Kingdom and the United States of America has been negotiated and agreed upon. Establishment of a Military Government is an obligation under the law of armed conflict and

U.S. Army regulations when foreign territory is under military occupation. The obligation arises under the law of occupation for the occupying force to exercise the functions of civil government looking toward the maintenance of public order. The law of occupation allows for authority to be shared by the Military Government and the Council of Regency, provided the Military Government continues to bear the ultimate and overall responsibility for the occupied territory.

ARTICLE IV.

5. Supreme legislative, judicial, and executive authority and powers within the occupied territory are vested in me as Commander of the State of Hawai'i Department of Defense and commanding general of the Army and Air National Guard, limited only by the law of armed conflict and the law of occupation, and the Military Government is established to exercise these powers under my direction. All persons in the occupied territory will obey immediately and without question all the enactments and orders of the Military Government.

_____,
[Rank],
Supreme Commander,
Adjutant General of the State of Hawai'i Department of Defense

Appendix 2

Law No. 1

DECLARATION OF PROVISIONAL LAWS

To comply with article 43 of the 1907 Hague Regulations and article 64 of the 1949 Fourth Geneva Convention, and to restore to the people of Hawai'i the rule of justice and equality before the laws of the Hawaiian Kingdom, it is hereby ordered:

ARTICLE I.

ABROGATION OF THE LAWS OF THE UNITED STATES OF AMERICA

1. The following fundamental laws of the United States of America enacted since 7 July 1898, together with all supplementary or subsidiary carrying out laws, decrees or regulations whatsoever are hereby deprived of effect, within the occupied territory:
 - (a) Constitution of the United States of America.
 - (b) Constitution of the State of Hawai'i.
 - (c) Legislation of the United States of America.
 - (d) Legislation of the State of Hawai'i.
 - (e) Legislation of the Counties of the State of Hawai'i.
 - (f) Decisions of United States and State of Hawai'i Courts, to include Administrative Courts.

ARTICLE II.

PROVISIONAL LAWS OF THE OCCUPIED STATE

2. All Federal laws, State of Hawai'i statutes, and County ordinances, together with all judicial decrees or regulations whatsoever, are hereby deprived of effect, within the occupied territory, unless they conform to the Council of Regency's proclamation of provisional laws of 10 October 2014, together with the laws of the Hawaiian Kingdom that existed prior to the overthrow of the Hawaiian government on January 17, 1893.

ARTICLE III.

GENERAL FORMULA TO DETERMINE PROVISIONAL LAWS

3. In determining which American municipal laws, being situation of facts, shall constitute a provisional law of the kingdom, the following questions need to be answered. If any question is answered in the affirmative, except for the last question, then it shall not be considered a provisional law.

- (a) The first consideration begins with Hawaiian constitutional alignment. Does the American municipal law violate any provisions of the 1864 Constitution, as amended?
- (b) Does it run contrary to a monarchical form of government? In other words, does it promote a republican form of government.
- (c) If the American municipal law has no comparison to Hawaiian Kingdom law, would it run contrary to the Hawaiian Kingdom's police power?
- (d) If the American municipal law is comparable to Hawaiian Kingdom law, does it run contrary to the Hawaiian statute?
- (e) Does the American municipal law infringe vested rights secured under Hawaiian law?
- (f) And finally, does it infringe the obligations of the Hawaiian Kingdom under customary international law or by virtue of it being a Contracting State to its treaties? The last question would also be applied to Hawaiian Kingdom laws enumerated in the Civil Code, together with the session laws of 1884 and 1886, and the Penal Code.

ARTICLE VI.
EFFECTIVE DATE

4. This Law shall become effective upon the date of its first promulgation.

BY ORDER OF THE MILITARY GOVERNMENT.

Appendix 3

ANNUAL EXAMINATION
 OF THE
 LAHAINALUNA SEMINARY,



July 12th, 13th and 14th, 1882.

WEDNESDAY, July 12th--A. M.

Arithmetic.....Freshman Class
 Geography.....Sophomore Class
 Grammar.....Middle Class
 Theology and Physiology.....Senior Class

COMPOSITIONS—P. M.

Arithmetic.....Sophomore Class
 History.....Junior Class
 Geometry.....Junior Class

DIALOGUE.

Class Paper.....Juniors

THURSDAY, July 13th--A. M.

History.....Middle Class
 Science of Common Things.....Junior Class
 Algebra.....Middle Class
 Trigonometry.....Senior Class

COMPOSITIONS—DRILL—P. M.

History.....Senior Class
 Grammar.....Junior Class
 Political Economy and Constitution.....Senior Class

DIALOGUE.

Class Paper.....Seniors

Exercises will begin punctually at 9 o'clock A. M.
 Singing will be interspersed throughout the exercises.

ulator: 100113

RHETORICAL EXERCISES

AT

WAINEE CHURCH,

FRIDAY, JULY 14th, 1882,

LAHAINA, MAUI.

Exercises begin at 10 o'clock A. M.

"The Earth is the Lord's" (Chant)	Prayer
See the Sun's First Gleam.....	Chorus
"Shiftlessness, the Root of our Poverty".....	Nahera Hipa
"The Old Clock on the Stairs" (Longfellow).....	Nawai
Gaily our Boat Glides o'er the Sea".....	Chorus
The Village Choir.....	Ed. Kauai
Rain in Summer (Longfellow).....	Malakaua
There is Sunshine after Rain.....	Chorus and Duett
Perseverance.....	George Kauhi
Tom Corwin's Militia Speech.....	Wm. Edmonds
Forest Echoes	Chorus
Thanatopsis (Bryant).....	Moses Meheula
Mistakes of Young Men.....	Joseph Liwai
In Silent Mead at Eventide.....	Quartette
Hustle Them In (Harpers' Weekly).....	Waialeale
Hear Our Prayer.....	Quartette
Unproductive Consumption.....	John Maipinepine
Song of the Lark.....	Quartette

Remarks.

O, Rose of the May Time.....Chorus

Distribution of Diplomas.

Senior Class.....Song

Doxology—"Praise God, from Whom all Blessings Flow."

CATALOGUE OF STUDENTS.

SENIOR CLASS.

John Maipinepine.....Lahaina, Maui
George K. Kauhi.....Hilo, Hawaii
Joseph Liwai.....North Kona, Hawaii
Nahora Hipa.....Koloa, Kauai

JUNIOR CLASS.

Moses Meheula.....Kaanapali, Maui
Robert Waialeale.....Waimea, Kauai
Edward Kauai.....Waimea, Kauai
G. W. Pilipo.....South Kona, Hawaii
Hosea Nawai.....Waimea, Kauai
M. Malakaua.....Wailuku, Maui
William Edmonds.....Makawao, Maui
John Kauwe.....Hana, Maui
Daniel Damiana.....Koolau, Maui
Peter Noah.....Olowalu, Maui

MIDDLE CLASS.

Samuel Haluapo.....North Kona, Hawaii
George Rutherford.....Kohala, Hawaii
Adam Pali.....Lahaina, Maui
E. Kaeha.....Kaanapali, Maui
Joseph Kapali.....Ewa, Oahu
Obed Kekuewa.....Kona, Hawaii
Aiu Apo.....Kohala, Hawaii
Titus.....Kau, Hawaii
Mololani.....Koolau, Maui
Joseph Kealoha.....Ulupalakua, Maui
Paul Aea.....Honolulu, Oahu

SOPHOMORE CLASS.

David Keliokamoku.....Lahaina, Maui
William Meheula.....Kaanapali, Maui
Kaukau Meheula.....Kaanapali, Maui
Ramon Makekau.....Lahaina, Maui
Kuhaulua.....North Kona, Hawaii
Moku.....Olowalu, Maui
Koa.....Wailuku, Maui
James Merseburg.....Kohala, Hawaii
Mai Kaawa....." "
Mai Kanakanui....." "
Kahoe....." "
Kakae....." "
Samuel Haina....." "
Mano....." "

1881
L27
A15
1882

FRESHMAN CLASS.

Daniel Keliiaa.....	Ulupalakua, Maui
Solomon Kupihea.....	Molokai
Daniel Abraham.....	Lahaina, Maui
Philip Pali.....	" "
David Taylor.....	" "
Solomon Maheha.....	Punaluu, Oahu
Daniel Poikalani.....	Lahaina, Maui
Moses Kuahine.....	Wailuku, "
Kaanaana (died).....	Lahaina, "
David Kahaulelio.....	" "
Kamakani.....	" "
John Pihe.....	Molokai
Joseph Kaoililani.....	Hana, Maui
John Naai.....	Hanalei, Kauai
Kamaka.....	Kahakuloa, Mani
Keawe.....	Honokahau, "
Namauu.....	Kahakuloa, "
Harry.....	" "
Lanui.....	Wailuku, "
Ephraim.....	Honokahau, "
David Lono.....	" "
David Paku.....	" "
Levi Kamai.....	Ulupalakua, "
Daniel Namauu.....	Kona, Hawaii
Anthony.....	Lahaina, Maui
Naone.....	" "
Achi Apana.....	Hilo, Hawaii
David Aea.....	Honolulu, Oahu
Cum Lan.....	Haiku, Maui
Kapuã.....	Hilo, Hawaii
Jesse.....	Kona, "

FRESHMAN CLASS.—READING.

LAHAINALUNA, JULY, 1882.

CORRECT THE FOLLOWING SENTENCES:

1. In the country a house nise this is.
2. Pitty and poor should we those who are onest.
3. One of these men he has found in it a paper and which he has bin readin a story.
4. What kind our parents when we young are cair of us take.
5. When at night we rise from bed and when in the morn-
in in prayer we lie down to god our lift we should harts.
6. Into the field the two friends are sittin on a mosy bank
and now they have gone into the shade of a tree.
7. At the entrance of the churchyard is now shutt and no
one goin out or cumin in the gate is.
8. Coastin along a sort of bluf or hedland they came to the
suthern shore.
9. Muny a bad thing is when put to a good use and a bad
use when it is put to a good thing it is.
10. Remember the earth of children
Its hour is on each way
Report its own to heaven bearing
You all do or say of.
11. The boy has been with the hat on awa from a printin
office and has at bin workin home.
12. Neighbors good with each other in piece leave and all
times ready to help are at each other.
13. A when speaks liar truth not the believed is.
14. When reach he can with hand his them will he them
take and into the bag which is tied his waist aroud put them.
15. A man took the baby out of the cradel when and ran
into the house the loom was ful of smoke.
16. The trap with his boy up set the dore so that might go
in the labit.
17. When boys and girls go to skool they are cent must to
reed and spel learn well and all get lesons their.
18. If a drunkard to be you wish do not not taste do or
any other rum strong drink.

CORRECT THE FOLLOWING WORDS:

broaken	peepel	munny	widdo
leves	afrade	slugerd	bruthar
kitin	beleave	oba	cuvvering
baskitt	deseave	onast	thotfull
resite	smokt	tobacko	litest

FRESHMAN CLASS—MENTAL ARITHMETIC.

LAHAINALUNA, JUNE, 1882.

1. If you can buy one hat for 3 shillings and 6 pence, how ~~many~~ hats can you buy for 1 pound ?

2. If you can buy 12 marbles for 3 pence and 3 farthings, how many marbles can you buy for 11 pence and 1 farthing ?

3. If you can buy 2 gallons and 1 quart of molasses for half a dollar, how much will 1 barrel of molasses cost ?

4. David, Daniel, and Moses together bought a melon; David paid 4 pence and 2 farthings, Daniel paid 9 pence, and Moses paid 6 pence and 2 farthings: what part of the melon should each boy have ?

5. David, Daniel, and Moses together bought 2 melons; David paid 1 dime and 2 cents; David and Daniel together paid 2 dimes; and Daniel and Moses together paid 3 dimes: what part of two melons ought each boy to have.

6. Philip and John do a job of work together, Philip works 4 days, and John works 3 days; but John does twice as much work in a day as Philip does. They are paid \$2.50 for their work. How much ought each to receive ?

7. If $1\frac{1}{2}$ eggs cost 27, 36 cents, how many eggs may be bought for a quarter of a dollar ?

8. If you can buy one melon for 6 oranges, and 2 oranges for 8 apples, and four apples for 12 mangoes, and 6 mangoes for 8 marbles, and 24 marbles for 5 cents, how many cents will 1 melon cost ?

9. There is a pole standing in a pond of water: $\frac{3}{8}$ of the pole is in the water, $\frac{1}{2}$ as much is in the mud below the water, and 21 feet of the length of pole are above the water; how long is the pole, and how deep is the water ?

10. Philip runs to catch David, who is 30 yards ahead of him. But David runs only 5 feet, while Philip runs 7 feet. How many yards must Philip run before he catches David ?

FRESHMAN CLASS—GEOGRAPHY.

LAHAINALUNA, JUNE, 1882.

1. What do maps show ?
2. Name the largest divisions of land and water in each hemisphere.
3. What is a peninsula ? (b) Name five peninsulas in the Western Hemisphere.
4. Name the natural divisions of water.
5. Name the branches of the Pacific Ocean found in the Eastern Hemisphere.
6. Name the important islands in Oceanica.
7. What is a city ? Name four of the chief cities in Oceanica.
8. Name the provinces of Canada.
9. Into how many sections are the United States divided ? (b) How many States ? (c) How many Territories ?
10. Name and locate the capital of the United States, and four of the chief cities.
11. Name the sections of the United States which produce cotton, rice, wheat, sugar, pork.
12. Name five of the largest rivers in the United States.
13. What are the important productions of South America ?
14. Name the mountains and animals of South America.
15. Where is Rio Janeiro ? Valparaiso, San Francisco ? New Orleans ? Montreal ?
16. Bound Russia.
17. Name and locate five of the largest cities in Europe.
18. Name four of the most mountainous countries in Europe, and their mountains.
19. For what manufactures are England and France noted ?
20. Name five of the largest rivers in the Eastern Continent, and describe the largest one.
21. What is a volcano ? Name three.
22. What are the divisions and productions of the Chinese Empire ?
23. What are the chief productions of India ?
24. Where is Calcutta ? Jeddo ? Peking ? Mecca ? Teheran ?
25. Bound the Desert of Sahara.
26. In what countries are the following found : Diamonds ? oases ? pyramids ? ostriches ? pampas ?
27. Correct the following names, and describe them :

Apenines

Rine River

Kiro

Egipt

Himilaia

Jappan iles

Sanwitch iles

Mouna Roa

Hanalula

Californy

Ilynoy

Caribbean

Cheasapeke

Delywair

Nu Jursy

Mane

Nu Hamshear

Road iland

Taxas

Luisiana

Misisipi

Misury

FRESHMAN CLASS—WRITTEN ARITHMETIC.

LAHAINALUNA, JUNE, 1882.

I. What is a quantity? (b) Arithmetic? (c) A unit? (d) A number?

II. What is a numeration? (b) Give rule for writing numbers. (c) Give names of the first six orders of figures? (d) Give the names of the 3d, 9th, 7th, 11th, 8th orders of figures.

III. Write a number having six orders, first in English; then in figures.

(b) Write a number having ten orders of figures; first in Hawaiian, next in English, and lastly in figures.

(c) Write the number of the present year of the christian era; first in Arabic notation, next in Roman notation, and lastly in English.

IV. What is Addition? (b) Give the rule for Addition. (c) Write 8 numbers in figures, using 6 orders, and find their sum. (d) Write 20 numbers in figures, going no higher than the 10th order, and find their sum.

V. What is Subtraction? (b) What is the minuend? (c) How do you prove subtraction? (d) Add together three numbers of ten orders each, then add together 4 more numbers of 8 orders each, and from the greater sum subtract the less, and prove your work.

VI. From the sum of $90,100 + 4,500 + 875 + 2,025 + 15,650 + 19,045 + 2,711$, subtract the sum $6,108 + 84,975 + 25 + 156 + 19,856 + 4728$; then multiply the greater of the two sums by the less, and divide the product by 1, 12 of the smaller of the two sums.

SOPHOMORE CLASS—TRANSLATION.

TRANSLATE INTO HAWAIIAN.

1. George Jones was an idle boy. He did not love study. The teacher of the school often told him, if he did not study diligently when young, he would never succeed well. Yet, George would often go to school without having made any preparation for his morning lesson; and, when called on to recite, he would make so many blunders that the rest of the class could not help laughing at him.

2. At last George went with his class to enter college. Though he passed a very poor examination, he was admitted with the rest; for those who examined him thought it was possible that the reason why he did not answer questions better was because he was frightened. Now came hard times for poor George. In college there is not much mercy shown to poor scholars; and George had neglected his studies so long that he could not now keep up with his class, let him try ever so hard.

3. Charles Barlow was a classmate of George. He was in the academy with him, and he went with him to college. He was about the same age as George, and did not possess superior talents. But Charles was a hard student. When quite young, he was always careful and diligent at school.

4. Charles would sometimes stay in at recess to learn his lessons. This, however, was very seldom. It was only when the lessons were very hard indeed. Generally, he was among the first on the play-ground. Hard study gave him a relish for play, and play, again, gave him a relish for hard study.

5. "Little by little, and lesson after lesson, I will gather up the knowledge which I find in books, and in the world around me," said the thoughtful boy. By learning a little every day, and learning it well, he became at length a wise and useful man, honored and respected by all who knew him. The idle boy is almost always poor and miserable; the industrious boy is happy and prosperous.

SOPHOMORE CLASS—GEOGRAPHY.

LAHAINALUNA, JUNE, 1882.

1. What is Geography? (b) Name and define its divisions.
2. Name the motions of the earth. (b) What does each produce?
3. Name the seasons, and the months of each.
4. Name the zones. (b) Name one country in each zone, together with its productions
5. Define the earth's diameter and circumference, and give the number of miles of each.
6. What is a map?
7. Define latitude and longitude.
8. Give the latitude and longitude of Honolulu; (b) San Francisco; (c) New York; (d) Cape Town; (e) New Zealand.
9. Describe the mariner's compass and its uses.
10. Name the races, and the estimated number of persons of each.
11. Define a republic; (b) an empire; (c) a city; (d) Name an example of each.
12. Define commerce.
13. Name (a) five of the chief imports of the Hawaiian Islands; (b) five of their chief exports.
14. Name the sections into which the States and Territories of the United States are divided. How many States are there? How many Territories?
15. Name and locate the capital of the United States; (b) the most important city in each of the sections.
16. How are lakes formed? (b) Name and locate four of the largest lakes in the world.
17. What is a mountain? (b) an oasis?
18. Name five of the highest mountain peaks of the world, and give their heights.
19. Name the five largest rivers of the world, and describe the largest of them.
20. What countries are noted for gold and silver mines?
21. What countries are noted for the production of (a) sugar; (b) cotton; (c) coffee.
22. Name ten different kinds of animals, natives of the temperate and frigid zones.
23. Name the divisions and productions of the Chinese Empire.
24. Name the divisions of Oceanica, and the most important islands in each.
25. Name the Hawaiian Islands and the Legislative districts of the Kingdom.
26. Name five of the principal mountains, and five of the principal bays of the Hawaiian Islands.
27. Name the ports at which the "Likelike" touches in her weekly trips.
28. Travel by the most direct route from Honolulu to Liverpool.

SOPHOMORE CLASS—CONSTRUCTING SENTENCES.

LAHAINALUNA, JUNE, 1882.

Re-arrange the following mixed up sentences, and then translate them into good Hawaiian. Put capital letters in their proper places, and interrogation marks after questions.

1. laud the wharves at the Boat which does of.
2. You have seen the Ever Shiuing daytime in the stars.
3. And drink tobacco avoid of the Strong use.
4. glass people In Stones should not throw Houses.
5. sleep their briny Fishes ever in the do home.
6. to-morrow from evening meeting the early return.
7. except in the room he No Find book could this other.
8. A Hundred Horse bought Three dollars for a man.
9. Straps your boot lift you can by yourself.
10. shower had a Nice Night what we last of rain.
11. Absence you remember your during friends.
12. And all Wide Windows the open doors.
13. That Beard what has a beautiful White Old Man.
14. Money ought to find how we can make the way.
15. And how in the next exist am i where to world.
16. Country into the Journey on a short go.
17. Many sky can count in the how you Stars.
18. nests without their Birds Instruction the build.
19. your Brother Books the pass the table to on those.
20. That there swearing of what man's need is.

MIDDLE AND SOPHOMORE CLASSES—ARITHMETIC
EXAMPLES.

LAHAINALUNA, JUNE, 1882.

1. Sold 45 pieces of studding $17\frac{1}{2}$ feet long, $7\frac{1}{2}$ inches wide, and $2\frac{1}{2}$ inches thick, at $3\frac{1}{2}$ cents a foot; 94 boards, 15 feet and 7 inches long and 13 inches wide, at $4\frac{1}{2}$ cents a foot; 2750 shingles at \$14.65 per M.; 3 kegs of nails, 93 pounds each, at $9\frac{1}{2}$ cents a pound; a pile of wood 4 feet wide, $3\frac{1}{2}$ feet high, and 11 feet long at \$8.50 a cord, and received as part payment 93 pounds of coffee at $16\frac{1}{2}$ cents a pound; 2 packages of sugar $91\frac{3}{8}$ pounds each, at $7\frac{1}{4}$ cents a pound; 7 pounds and 3 ounces of pepper at $3\frac{1}{2}$ cents an ounce. How much remains due? and how much will it take to settle the account if a discount of $3\frac{1}{2}$ per cent. be made for cash?

2. The longitude of Boston is $71^{\circ} 3' 30''$, that of Chicago is $87^{\circ} 35'$; when it is noon at Boston, what is the time at Chicago?

3. Sold three horses for \$100 each; on one I gained 20 per cent; on another I gained 10 per cent.; but on the third I lost 25 per cent.; did I gain or lose by the whole transaction? and how much?

4. What must a merchant ask for goods which cost \$30 that he may take off 30 per cent. from the asking price and yet make 30 per cent. on the cost?

5. In what time will the interest of \$1230, at 7 per cent. per annum, be \$247?

6. A note for \$450 dated July 7th, 1881, payable in one year, at 7 per cent. interest bore the following endorsements, Sept. 10th, 1881, received \$45. Jan. 1st, 1882, received \$110. March 10th, 1882, received \$123. How much should be paid at the time of maturity of the note?

7. What is the face of a draft on 4 m., bought for \$1260, the interest being 8 per cent. per annum, and the premium 4 per cent?

8. Solve the following example by analysis and also by proportion: If 9 men working 10 hours a day, can make 18 sofas in 30 days, how many sofas can 50 men make in 90 days working 8 hours a day?

9. One side of a rectangular field is 19.2 chains and the 14.4 chains other what is the distance between the opposite corners?

10. Divide the cube root of 614125 by the square root of 595984, and express the result as a decimal fraction true to five decimal places.

MIDDLE AND SOPHOMORE CLASSES — ARITHMETIC—DEFINITIONS.

LAHAINALUNA, JULY, 1882.

1. Define arithmetic, number, notation.
2. How many kinds of notation are there in common use? Name each and tell for what it is used.
3. Define prime number, composite number, factor.
4. Define greatest common divisor; least common multiple.
5. Define fraction, numerator, denominator, complex fraction, compound fraction.
6. What is a compound number? reduction?
7. Name the three kinds of weights in common use, and tell in what respects they differ.
8. What is the difference between simple and compound addition?
9. How do you know that a difference of one hour between the time of two places indicates a difference of fifteen degrees in their longitude?
10. Name the elements of percentage, and define each.
11. How many problems of percentage are there? What is given and what is required in each?
12. What is interest? and what elements are there to be considered in calculating interest?
13. What is a bill of exchange? a set of exchange?
14. What is a foreign bill? a domestic bill? What are domestic bills generally called?
15. Define port of entry, duties, specific duties, ad valorem duties.
16. Define ratio, terms, direct ratio, inverse ratio.
17. Define proportion, simple proportion, compound proportion.
18. State the principle upon which a missing term may be found.
19. What is involution? evolution? a perfect power?
20. Define square root, cube root.

MIDDLE CLASS—ALGEBRA, DEFINITIONS.

LAHAINALUNA, JULY, 1882.

1. Define quantity, mathematics, algebra.
2. What is a co-efficient? an exponent? a term?
3. Define power, root, degree.
4. What is a monomial? a polynomial?
5. What is a homogeneous quantity?
6. What is an axiom? State five axioms.
7. What is the apparent sign of a fraction? its real sign?
8. State the principle governing the change of signs.
9. How do you multiply an entire quantity by a fraction?
10. How do you divide an entire quantity by a fraction?
11. What is an equation? a member?
12. How do you transpose any term of an equation?
13. How do you clear an equation of fractions?
14. State the axioms upon which the transformations of equations are based.
15. What is meant by the solution of an equation?
16. What is proportion?
17. How is a proportion changed to an equation?

MIDDLE CLASS—ALGEBRA, EXAMPLES AND PROBLEMS.

LAHAINALUNA, JULY, 1882.

Perform the operations indicated in the following examples:

1. $(3x + \frac{x}{n}) - (x - \frac{x-a}{c})$

2. $\frac{a^4 - 1}{a^2 - 2ab + b^2} \times \frac{a-b}{a^2 - ab}$

3. $\frac{a-1}{a-1} \div \frac{1+z}{1-b}$

Write out the solution and analysis of the following problems :

4. A man has a lease for 15 years ; being asked how much had already expired, he answered that two-thirds of the time past was equal to four-ninths of the time to come. What was the time past ?

5. A man spends seven-twelfths of his salary for board, and three-fourths of the remainder for clothes, and saves \$125 a year. What is his salary ?

6. In a certain orchard one-third are apple trees, four-ninths peach trees, and 400 cherry trees. How many trees are there in the orchard ?

7. What is that number to which if its $\frac{1}{2}$, $\frac{1}{3}$ and $\frac{1}{4}$ be added, the sum will be a .

8. A can do a piece of work in a days, and B can do the same in b days ; how long will it take them if they work together ?

9. The difference of two numbers is 12, and the greater is to the less as 11 to 7 ; what are the numbers ?

10. A man was hired for a year for \$100 and a suit of clothes ; but at the end of eight months he left, and received the clothes and \$60 as full pay for the time he had worked ; what was the value of the clothes ?

MIDDLE CLASS—GRAMMAR.

LAHAINALUNA, JULY, 1882.

1. Define English Grammar and its four parts.
2. Give seven rules for the use of Capitals.
3. Define the Parts of Speech.
4. What modifications have nouns ?
5. Define the numbers and genders.
6. Write the plural of
mouse, goose, loaf, tooth,
thief, sheep, child, hand-full.
7. Define the two principal kinds of Adjectives and give an example of each.
8. Define comparison, and compare
near, good, beautiful,
9. Define the different kinds of Pronouns and give an example of each.
10. What is declension ?
11. Decline the personal pronouns of the first person and third person.
12. Write four short sentences containing adverbs of different kinds.
13. Define transitive verb, potential mode, passive voice, past-perfect tense, and write examples of each.
14. What is conjugation ?
15. Write the conjugation of the verb FIND in the present-perfect ind.
16. Of the verb STRIKE in the potential mode, passive voice, past tense.
17. Write the imp. and inf. of HEAR, and participles both active and passive of TELL.
18. Write a sentence containing all the parts of speech.
19. Arrange the parts of speech in tabular form in the following :
“Casca, who was behind Caesar, drew a dagger and stabbed him in the shoulder. ‘Wretch, what doest thou,’ cried Caesar, snatching the weapon. The other conspirators now rushed upon him, but he defended himself with the valor which he had shown in a hundred battles.”
20. Parse the words in the first sentence of the above.

MIDDLE CLASS—HISTORY.

LAHAINALUNA, JUNE, 1882.

1. What is history ?
2. Name the earliest event in History and give its date.
3. When did the deluge take place, and why ?
4. What happened after the confusion of tongues ?
5. When was the first Empire founded, and by whom ?
6. What can you tell of the cities of this empire ?
7. When was the Egyptian nation founded ? (b) the Chinese ? (c) the Israelitish ? [d] by whom was each founded ?
8. When did the Israelites return to Canaan, and who was their leader ?
9. What country in Europe was settled about this time, and by whom ?
10. Name two of the Judges and two of the Kings of Israel, and tell something of the life of each.
11. By whom were the Jews carried into captivity ? (b) Who set them free ?
12. What event occurred in 490 B. C. ? in 480 B. C. ? in 330 B. C. ?
13. Who built the great Chinese wall, and why was it built ?
14. What prophets foretold the coming of Christ ?
15. In what year, and by what Roman General was Jerusalem destroyed ?
16. Who was the most famous of the Egyptian Kings, and what made him famous ?
17. Give the names of two famous Queens of history, and the date in which they lived.
18. Tell what you know of (a) Lycurgus ? (b) Homer ; (c) Confucius.
19. Tell what you know of the gods of ancient Greece and of Egypt.
20. Give a short account of the slave trade.

JUNIOR CLASS—GEOMETRY—DEFINITIONS.

LAHAINALUNA, JUNE, 1882.

I. What is a line ? (b) a point ? (c) a plane surface ? (d) a geometrical solid ? (e) a physical solid ?

II. What is a circle ? (b) a chord ? (c) a segment of a circle ? (d) a sector ? (e) a tangent ? (f) an inscribed angle ? (g) draw a diagram showing each of the above.

III. Name and define the different kinds of geometrical lines, and draw an example of each. [Three definitions and examples.]

IV. Name and define the different kinds of triangles, and draw a diagram of each. [Four definitions and diagrams.]

V. Name and define the different quadrilaterals, and give a diagram of each. [Six definitions and diagrams.]

VI. The complement of an angle is $16^{\circ} 20'$, what is the angle ? (b) The supplement of an angle is $68^{\circ} 18 \text{ min. } 25 \text{ sec.}$, what is the angle ?

VII. The vertical angle of an isosceles triangle is $45^{\circ} 30 \text{ min.}$ and the base of the triangle is produced; what is its exterior angle. Demonstrate your answer.

VIII. One of the interior angles of a parallelogram is $44^{\circ} 15 \text{ min.}$ what are the other angles ? Demonstrate.

IX. The sum of four interior angles of an irregular polygon of five sides is 472° . what is the 5th interior angle ? Demonstrate.

X. If each of the sides of a regular polygon of twelve sides be produced, what will each exterior angle be ? Demonstrate.

JUNIOR CLASS—GEOMETRY—THEOREMS AND
PROBLEMS.

LAHAINALUNA, JUNE, 1882.

I. *Problem.*—To draw a perpendicular to a straight line from a given point without the line.

II. *Problem.*—From a point without a given straight line to draw another line parallel to the given straight line.

III. *Problem.*—From a given point without a given straight line, to draw an angle to that line which shall be equal to a given angle.

IV. *Problem.*—Describe three equal circles which shall touch each other, and then describe another circle which shall touch all the other circles.

V. *Theorem.*—If the base of an isosceles triangle be produced, the exterior angle exceeds one right angle by half the vertical angle.

VI. *Theorem.*—If on the sides of a square, at equal distances from the four angles, four points be taken, one on each side, the figure formed by joining these points will also be a square.

VII. *Theorem.*—The parallelogram whose diagonals are equal is rectangular.

VIII. *Theorem.*—If the diameter of a circle be one of the equal sides of an isosceles triangle, the base of the triangle will be bisected by the circumference.

IX. *Theorem.*—Through any three points not in a straight line but one circumference can be made to pass.

X. *Theorem.*—If one side of a triangle be produced, the exterior angle is equal to the sum of the two interior and remote angles, and the sum of the three interior angles is equal to

JUNIOR CLASS—SCIENCE OF COMMON THINGS.

LAHAINALUNA, JULY, 1882.

1. What is matter? Give illustrations.
2. Name some of the general properties of matter.
3. What is attraction of gravitation?
4. What is centrifugal force? How can you illustrate it?
5. Define center of gravity.
6. In what position only can a body be at rest?
7. What are machines? Do they create power?
8. What is capillary attraction? How does it benefit us?
9. What are artesian wells? Why does water flow from them?
10. Explain the cause of tides.
11. What is the difference between a liquid and a gas?
12. How are the clouds formed?
13. Why are clouds seen about the tops of mountains more frequently than elsewhere?
14. How is a common pump constructed? Draw an illustration.
15. How is a forcing pump constructed? Draw an illustration.
16. Name the sources of heat.
17. What is the effect of heat on substances generally?
18. What is a thermometer?
19. Name three good conductors of heat. Also three bad.
20. What are the chief sources of light?
21. What is reflection? Refraction?
22. How is it known that a ray of light consists of different colors?
23. Why are the clouds red when the sun is near the horizon?
24. What is a lense? and what are its uses?
25. Name the uses of electricity and magnetism.

JUNIOR CLASS—HISTORY.

LAHAINALUNA, JULY, 1882.

1. Give some account of the Crusades.
2. Describe the Feudal System.
3. What can you tell about Charlemagne?
4. What of the Maid of Orleans?
5. Tell what occurred in the reign of Charles 9th.
6. Give some account of events in France from 1789 to 1800.
7. Sketch the career of Bonaparte.
8. Name the rulers of France, in proper order, from the time of Bonaparte to the present.
9. What is the present form of Government of France, and who is its chief officer?
10. Sketch the history of Switzerland.
11. What of Germany in 1870?
12. Tell the story of Peter the Great.
13. Who was Bernadotte?
14. Describe the ancient inhabitants of Great Britain.
15. For what was Alfred the Great noted?
16. In whose reign was Ireland conquered; Wales; Scotland?
17. What was Magna Charta?
18. Sketch the events of the reign of Henry 8th.
19. What can you tell about George 3d?
20. Give some account of affairs in Ireland at the present time.

JUNIOR CLASS—GRAMMAR.

LAHAINALUNA, JULY, 1882.

1. Define Grammar, English Grammar and its four parts.
2. Give rules for the use of Capitals.
3. Define the several Parts of Speech.
4. What modifications have Nouns ?
5. Define the cases.
6. Write the declension of the pers. pronouns of the 3rd pers.
7. What modifications have verbs ?
8. Define the several modes.
9. Write the synopsis of the verb *speak*. 3rd per. sing. com-form.
10. Synopsis of verb *tell*. 3rd sing. prog. form.
11. Write the conjugation of the pres. perf. ind. of the verb *learn*, in the int. reg. and prog. forms combined.
12. Write the infinitives and participals of the verb *bring*, in all possible forms.
13. Define sentence, subject, predicate, modifier.
14. How are sentences divided in form ?
15. How by their propositions ?
16. Define eight kinds of sentences.
17. Define adj. adv. and obj. elements.
18. Define elements of the 1st, 2nd and 3rd class.
19. Enlarge the following sentences by adding modifiers of each class. *Horses run Did Napoleon die? Speak.*
20. Analyze the following.

“Then the master, with a gesture of command
Moved his hand; and, at the word,
Loud and sudden there was heard,
All around them and below,
The sound of hammers, blow on blow,
Knocking away the shores and spurs.”

SENIOR CLASS—CONSTITUTION OF HAWAIIAN ISLANDS.

LAHAINALUNA, JUNE, 1882.

1. What is government? (b) Name the forms of government in civilized nations. (c) To which of these forms of government does our government belong?

2. What is the constitution of a country? Give a short history of the Constitution of 1864.

3. Name the personal rights which the Constitution guarantees in its first six articles.

4. What does Article II. of the Constitution prohibit?

5. How is property protected by the Constitution?

6. How is the Supreme power of the Kingdom divided? Can these powers ever be joined together in the same person?

7. What are the characteristics which disqualify a person from becoming Sovereign of the Hawaiian Islands?

8. Name as many powers of the Sovereign as you can recollect in twenty minutes.

9. Name the councils provided for the King. (b) Who form the Cabinet council?

10. How many branches are there in the Legislature? (b) What is the highest number of persons that can be members of each branch? (c) How is each branch appointed?

11. What are the qualifications for a Representative? (b) For an elector?

12. How is the judicial power of the Kingdom vested? (b) How are the judges appointed? (c) How long do they hold office?

13. What persons are forbidden from holding any office under the government?

14. How can the Constitution of the Kingdom be amended?

LAHAINALUNA, JUNE, 1882.

1. What does Political Economy treat of?
2. Mention some of the natural laws which govern the production of wealth.
3. Mention some human laws which relate to the production and distribution of wealth.
4. What is wealth.
5. Define *natural riches*, and give as many examples as you can.
6. Define capital, and its divisions.
7. Mention a business in which the capital invested is chiefly *fixed*; demonstrate.
8. Mention a business in which the capital is chiefly *circulating*; demonstrate.
9. What are the three elements, or things, necessary to the production of wealth?
10. Define unproductive consumption, and give an example.
11. Define productive consumption and give an example.
12. Into how many parts is wealth produced divided, and to whom do those parts respectively belong?
13. Why should skilled labor be paid more than unskilled labor?
14. What is the test of the highness of wages?
15. If the average money wages of a common laborer are 75 cts. a day in 1882, whilst in 1842 they were 25 cts. a day, and if the cost of living in 1882 has increased three-fold since 1842, what is the difference between the real wages of the two periods?
16. Explain the difference between *market value*, and *intrinsic value*.
17. Demonstrate that the division of labor increases its efficiency.
18. Why is not barter a good method for the exchange of values?
19. What is money?
20. Why are gold and silver used as the universal medium, or common measure of all values?
21. When is a paper currency a good, and when is it an evil?
22. What causes a commercial crisis?
23. Define taxes. (b) Duties. (c) Tariff.
24. Is the tariff of the Hawaiian Kingdom a protective tariff, or a tariff for revenue?
25. Why are the luxuries of life taxed more than the necessities of life.

SENIOR CLASS—ENGLISH COMPOSITION.

LAHAINALUNA, JUNE, 1882.

1. Describe a horse and a donkey, so that the two animals may be recognized from your description by one who sees them for the first time.
2. Write a business letter.
3. Write a letter of information, describing the Hawaiian Kingdom, its natural riches, chief industries, government, and social condition.
4. Write an imaginary news letter to a friend.
5. Write an imaginary account of a journey in some foreign land, and what you saw and did there.
6. Write your opinion on the question—"Is it better for an educated young man to seek his living in public office, or in private business?"
7. Describe the burning of the chapel building of Lahainaluna in 1880.
8. What are your future plans in life?

SENIOR CLASS—MISCELLANEOUS MATHEMATICS.

LAHAINALUNA, JUNE, 1882.

1. I had a triangular piece of land, whose sides were 35, 40 and 45 rods, which I changed for a square piece of equal area. What will it cost me to fence my square piece at \$1.25 a yard?

2. *Theorem.*—The square on the base of an isosceles triangle, whose vertical angle is a right angle, is equal to four times the area of the triangle.

DEMONSTRATE WITH DIAGRAM.

3. *Problem.*—Draw a triangle, and inscribe a circle in it, and circumscribe a circle around it.

4. *Theorem.*—Any line drawn through the center of the the diagonal of a parallelogram to meet the sides is bisected in that point, and also bisects the parallelogram.

5. *Problem.*—Divide a right angle into three equal angles.

6. Given the legs of a right angled triangle 455 and 1092 respectively, to compute the segments into which the hypotenuse is divided by a perpendicular from the right angle, and to compute the perpendicular.

7. Three men hire a pasture. A pays $\frac{5}{16}$ of the cost, whilst A and C together pay three-quarters as much as B and C. If C pastures 65 cattle, how many cattle may A and B each pasture?

8. A regiment of soldiers, consisting of 1066 men, forms into two squares, one of which has four more men in a side than the other: what number of men are in a side of each square?

Analyze fully the above examples.

SENIOR CLASS—TRIGONOMETRY—FIRST PAPER.

LAHAINALUNA, JUNE, 1882.

1. Draw a diagram showing all the functions of an arc, and define each function.
2. From the above diagram show the relations of the functions to each other; first, in the form of proportions, then in the form of equations. State the theorem in geometry by which you obtain your proportions.
3. The natural tangent of an arc of 65 degrees, whose radius is unity, is 2.145; compute the secant, sine, and cosine of the arc.
4. What are logarithms?
5. What is the base of the common system of logarithms?
6. What is the characteristic of a logarithm?
7. Find by logarithms the product of 225×345 .
8. Find by logarithms the quotient of $621432 \div 756$.
9. Find the logarithm of the fifth-power of 216.
10. What is the logarithm of the cube root of 871?
11. From the table of logarithmic sines and tangents find the log. of the tangent of an arc of $45^\circ 25' 15''$ and from it compute the logarithm of the secant and co-tangent of the same arc, the logarithm of radius being 10,000,000.

SENIOR CLASS—TRIGONOMETRY—SECOND PAPER.

LAHAINALUNA, JUNE, 1882.

1. From the base of the trunk of a tree, which stands perpendicularly on a plane, to a certain point is 25 rods. From that point the tree subtends an angle of 9 deg. 15 min. from its base to its top; what is the highth of the tree.

Calculate first, by construction, then by trigonometry.

2. How must three trees, A, B, C, be planted so that the angle at A may be double the angle at B, and the angle at C may be one-half the angle at B, and a line of 400 yards may just go around them ?

Calculate by construction, by assuming a line at first. Then analyse by trigonometry.

3. A May pole 50 feet 11 inches high, at a certain time will cast a shadow 98 feet 6 inches long. What then is the breadth of a river which runs within 20 feet 6 inches of the foot of a steeple 300 feet 8 inches high, if the steeple at the same time throws its shadow 30 feet 9 inches beyond the stream ?

4. From the extremities of a base line measured 10 feet above sea level, parallel with it, and 25 chains long, an object on the summit of a distant hill makes two angles, respectively, 67 deg. 45 min. and 102 deg. 15 min. and the vertical angle which the object makes with the base line is 12 deg. 15 min. What is the highth of the hill, and how distant is the summit from the base line ?

SENIOR CLASS—HISTORY.

LAHAINALUNA, JULY, 1882.

1. Give some account of the cause and progress of the French Revolution.
2. Sketch the career of Bonaparte.
3. What happened to France in 1870 ?
4. Name some of the more important events in Russian history during the last 30 years.
5. Name the different royal families of England and the founder of each.
6. Give some account of the reign of Queen Elizabeth.
7. Sketch the history of England during the last half of the 17th Century.
8. What wars have been waged by England during the present reign ?
9. Give some account of the discovery of America and its date.
10. What Colonies established by the English, French, Dutch and Spanish ?
11. Give some account of the capture of Quebec.
12. State the principal causes which led to the American Revolution.
13. Describe the battle of Bunker Hill.
14. When and where was the last battle of the Revolution fought ? Describe the surrender.
15. In what other wars has the United States been engaged ?
16. Describe the condition of the country when Mr. Lincoln became President.
17. Sketch the career of General Grant in the war of Secession.
18. When and by whom were the Hawaiian Islands discovered ?
19. When and by whom was a Constitution granted ?
20. When did Missionaries first come to these Islands, and what was the condition of the people at that time ?

SENIOR CLASS—PHYSIOLOGY.

LAHAINALUNA, JULY, 1882.

1. Define Anatomy, Physiology, Hygiene.
2. Define Vegetable and Comparative Anat, &c.
3. How many bones in the body and how divided ?
4. Describe the teeth and their function.
5. Describe a muscle, tendon, joint.
6. Name and describe the organs of digestion.
7. What changes does the food undergo in digestion ?
8. Describe the circulation of the blood.
9. Name and describe the parts of the eye.
10. Give six general rules for the preservation of health.

SENIOR CLASS—THEOLOGY.

LAHAINALUNA, JULY, 1882.

1. Define Theology, Natural Theology, Revelation and Christianity.
2. Define Monotheism, Dualism, Pantheism and Polytheism, and name the principal representatives of each.
3. Give four reasons why you believe there is a God.
4. Give six proofs that the Bible is the Book of God.
5. What attributes of God may be known without the Bible ?
6. Why was the Bible needed ?
7. Sketch the life of Jesus.
8. How would you prove Christ's divinity ?
9. State arguments which prove the Holy Ghost is God.
10. What is man's duty to God, and how can it be performed.