

H.E. DAVID KEANU SAI, PH.D.

Head, Royal Commission of Inquiry
P.O. Box 4146
Hilo, HI 96720
Tel: +1 (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/royal-commission>

November 7, 2024

Lieutenant Colonel Michael I. Rosner
Executive Officer, 29th Infantry Brigade
Email: michael.i.rosner.mil@army.mil

Via electronic mail

Re: Establish a military government no later than November 28, 2024

Lieutenant Colonel Rosner:

It is now over a year since the Hawai'i Army National Guard's leadership became aware that the war crime of usurpation of sovereignty during military occupation is being committed and that its their duty to put a stop to it by establishing a military government in accordance with U.S. Department of Defense Directive 5100.1, U.S. Army Field Manual 6-27—chapter 6, and the law of occupation. Major General Kenneth Hara's willful failure to obey Army regulations, and resulting his dereliction of duty, has led to war criminal reports for the war crime by omission on himself, Brigadier General Stephen Logan, Colonel Wesley Kawakami, Lieutenant Colonel Fredrick Werner, Bingham Tuisamatatele, Jr., Lieutenant Colonel Joshua Jacobs, and Lieutenant Colonel Dale Balsis. As a result, you are, now, the most senior officer in the Army National Guard.

Their conduct and omission to establish a military government falls squarely under Department of Defense Law of War Manual, para. 18.22.1, which states, "Any person who commits an act that constitutes a crime under international law is responsible therefor and liable to punishment. International law imposes duties and liabilities on individuals as well as States, and individuals may be punished for violations of international law." And under para. 4-24, Army Regulations 600-20, which states that "Commanders are legally responsible for war crimes they personally commit, order committed, or know or should have known about and take no action to prevent, stop, or punish."

MG Hara, BT Logan, Colonel Kawakami, LTC Werner, LTC Tuisamatatele, Jr., LTC Jacobs, and LTC Balsis “knew” that the war crime of usurpation of sovereignty during military occupation was being committed by the federal government, the State of Hawai‘i, and the Counties and they each took no action to stop it by establishing a military government. According to Major Michael Winn, who is chief of administrative law at U.S. Army Combined Arms Support Command at Fort Lee, Virginia, in his article *Command Responsibility for Subordinates’ War Crimes—A Twenty-First Century Primer*, he states “Commanders who fail to comply with their obligations with regard to the LOAC are at risk of an administrative reprimand or elimination. Worse, failure to comply could serve as the basis for a court-martial for dereliction of duty.”¹ Major Winn then concludes:

Meeting our Nation’s obligations under the law of war does not come automatically—it requires leadership. In this era of increased focus on command responsibility for war crimes, legal advisors have an important role to play in helping their commanders prevent, stop, and punish such offenses. Accordingly, legal advisors keep their commanders on the high road of command responsibility, where they can focus on their mission—to prepare Soldiers for combat and lead them in defense of our Nation.²

Because the senior leadership of the Army National Guard committed war crimes, para. 18.22.1 and para. 4-24 renders them all unfit to lead. Consequently, as the most senior officer, you have a duty to assume command under Army Regulation 600-20, paragraph 2-11, which states that the “senior officer, WO, cadet, NCO, or junior enlisted Soldier among troops at the scene of an emergency will assume temporary command and control of the Soldiers present.” *Black’s Law Dictionary* defines an emergency as a “sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. Emergency is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation.”³

We are approaching November 28th, a national holiday, where Great Britain and France jointly recognized the Hawaiian Kingdom as an independent State. This day of Hawaiian independence ushered the Hawaiian Kingdom into the *family of nations* as a subject of international law. As a government officer of the Hawaiian Kingdom and Head of the Royal Commission of Inquiry (RCI), I am giving you until November 28, 2024, to transform the State of Hawai‘i into a military government or become the subject of a war criminal report like the commanders before you.

¹ Michael D. Winn, “Command Responsibility for Subordinates’ War Crimes: A Twenty-First Century Primer,” 2 *Army Lawyer* 39, 43 (2022).

² *Id.*, 44.

³ *Black’s Law* 522 (1990).

To comply with Army regulations and directives and to avoid criminal culpability, you must obtain legal advice from Lieutenant Colonel Lloyd Phelps, who is the Staff Judge Advocate for the Hawai‘i National Guard and now your legal adviser. I recommend that you immediately request of LTC Phelps an answer to the following two questions.

First question: Do I have a duty to assume command of the Hawai‘i Army National Guard under Army Regulation 600-20, paragraph 2-11? If yes, then go to the second question. If no, give me a legal reason why I do not have this duty.

Second question: Do I have a duty to establish a military government Under DOD Directive 5100.1, U.S. Army Field Manual 6-27—chapter 6, and the law of occupation? If yes, then begin the mission of transforming the State of Hawai‘i into a military government by November 28, 2024. If no, give me a legal reason why I do not have this duty.

The law of occupation provides for a working relationship between the occupant, the government of the occupied State, and the population. Para. 6-24, FM 6-27, states “Military occupation of enemy territory involves a complex, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of the occupied territory.” Appropriately, Professor Federico Lenzerini explains this relationship between the occupant and the Council of Regency in his “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom.”⁴ Professor Lenzerini states:

In light of the foregoing, it may be concluded that the working relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the “supreme” decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as “administrator” of the Hawaiian territory, as stated in the Council of Regency’s Proclamation recognizing the State of Hawai‘i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.⁵

After serving 10 years in the Hawai‘i Army National Guard and having been the commander of Charlie Battery, 1/487th Field Artillery, I know Army regulations. In my

⁴ Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol317_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf)).

⁵ *Id.*, 333, para. 20.

letters to you, I provided the legal framework regarding occupied territory and war crimes under customary international law. Military occupations are matters of fact and not law. The law of occupation comes into play when the occupant is in effective control of occupied territory—1907 Hague Regulations (art. 42). The State of Hawai‘i is in control here and not the federal government. The law of occupation regulates the actions and conduct of U.S. military personnel within the occupied territory.

Attorney General Anne Lopez has provided no legal explanation that the State of Hawai‘i is within the territory of the United States. Instead, her instructions were to ignore all of this information. Until she provides the legal basis for this assertion, the presumption, that the State of Hawai‘i is within the territory of the Hawaiian Kingdom, remains, and you, as the senior officer in the Hawai‘i Army National Guard, are duty bound to comply with U.S. Department of Defense Directive 5100.1, U.S. Army Field Manual 6-27—chapter 6, and the law of occupation.

I am enclosing my *curriculum vitae* so you can see my credentials, qualifications, and publications. Of note, is my forthcoming chapter titled *Hawai‘i’s Sovereignty and Survival in the Age of Empire* in a book titled *Unconquered States: Non-European Powers in the Imperial Age*, which I am also enclosing. Here is the abstract for my chapter:

From archaic state to a British protectorate to a sovereign and independent state, the Hawaiian Kingdom’s evolution of governance during the imperial age is unparalleled in the world. While being the first country of Oceania to become a member of the international community of states since the nineteenth century, the Hawaiian Kingdom was not able to escape the tentacles of empire, but it was able to engage foreign aggression on its own terms and ultimately survive. This chapter covers the Hawaiian Kingdom from the death of Captain James Cook, the rise of the warrior king Kamehameha I—progenitor of the kingdom, government reform, independence, the overthrow of its government by United States forces, and its continued existence as a state under international law.

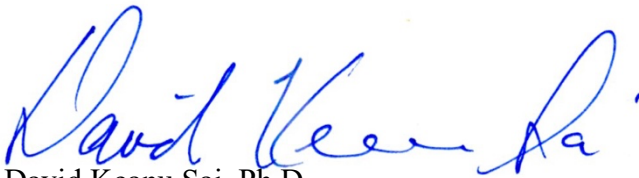
Oxford University Press, a renowned academic publisher in England, is publishing this book. If it is a frivolous assertion of the Hawaiian Kingdom’s ‘continued existence as a state under international law,’ then Oxford University Press would not have accepted my chapter for publication.

In addition, a book review of my latest book *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian*

Kingdom (2020)⁶ was published in the Polish Journal of Political Science, which I am also enclosing. In her book review, Professor Anita Budziszewska concludes:

I regard this publication as an exceptionally valuable one that systematises matters of the legal status of the Hawaiian Kingdom, taking up the key issues surrounding the often ignored topic of a difficult historical context occurring between Hawaii and the United States. The issue at stake here has been regenerated synthetically, on multiple levels, with a penetrating analysis of the regulations and norms in international law applying to Hawaii – starting from potential occupied-territory status, and moving through to multi-dimensional issues relating to both war crimes and human rights. This is one of the few books – if not the only one – to describe its subject matter so comprehensively and completely. I therefore see this work as being of exceptional value and considerable scientific importance. It may serve not only as an academic source, but also a professional source of knowledge for both practicing lawyers and historians dealing with the matter on hand. The ambition of those who sought to take up this difficult topic can only be commended.

Thus, it has now become a known fact that the Hawaiian Kingdom is an occupied State under international law.



David Keanu Sai, Ph.D.

Head, *Royal Commission of Inquiry*

Enclosures

cc: Professor Federico Lenzerini, Deputy Head, Royal Commission of Inquiry
(federico.lenzerini@unisi.it)

Lieutenant Colonel Lloyd Phelps, Staff Judge Advocate
(lloyd.c.phelps4.mil@army.mil)

Major Keoki A. Leong
Executive Officer, 1st Squadron, 299th Cavalry Regiment
(keoki.a.leong.mil@army.mil)

⁶ David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (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)).

Major Dane V. Antoque
Executive Officer, 1st Battalion, 487th Field Artillery Regiment
(dane.v.antoque.mil@army.mil)

Major Dane R. Calvin
Executive Officer, 227th Brigade Engineer Battalion
(dane.r.calvan.mil@army.mil)

Major Cavan U. Cabatbat
Executive Officer, 29th Brigade Support Battalion
(cavan.u.cabatbat.mil@army.mil)

Enclosure “1”

Curriculum Vitae

DAVID KEANU SAI



EXPERTISE:

International relations, state sovereignty, international laws of occupation, United States constitutional law, Hawaiian constitutional law, and Hawaiian land titles.

ACADEMIC QUALIFICATIONS:

- Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai‘i, Manoa, H.I.
- Doctoral dissertation titled, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.”
- May 2004: M.A. in Political Science specializing in International Relations, University of Hawai‘i, Manoa, H.I.
- May 1987: B.A. in Sociology, University of Hawai‘i, Manoa, H.I.
- May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.
- May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

P.O. Box 4146
Hilo, HI 96720
Cell: (808) 383-6100
Email: anu@hawaii.edu

ACADEMIC POSITIONS:

Aug. 2017 – present: Affiliate Faculty, University of Hawai‘i College of Education, graduate program

Aug. 2010 – present: Senior Lecturer, Hawaiian Studies and Political Science, University of Hawai‘i Windward Community College

Aug. 2009 – 2010: Lecturer, Political Science, University of Hawai‘i Kapi‘olani Community College

Doctoral Committee Membership:

- Willy Daniel Kauai, Ph.D., political science, University of Hawai‘i at Manoa (2011-2014)
- Brandi Jean Nalani Balutski, Ph.D. student, education, University of Hawai‘i at Manoa (2019-2024)

Referee, *Law and History Review*, Cambridge University Press

Referee, *Hawaiian Journal of Law and Politics*, University of Hawai‘i

GOVERNMENT POSITIONS:

March 1, 1996: Appointed Regent *pro tempore* by the Hawaiian Kingdom Trust Company that served in place of the absentee government—the Hawaiian Kingdom government.

Sep. 26, 1999: Resumed the office of *acting* Minister of the Interior, and Chairman of the Council of Regency, after the vacancies for the office of the Minister of Foreign Affairs and Minister of Finance were filled on September 7, 1999, and the office of the Attorney General was filled on September 9, 1999.

1999-2001: Served as lead Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, PCA Case no. 1999-01.

April 17, 2019: Appointed Head of the Royal Commission of Inquiry by the Council of Regency

Nov. 11, 2019: Appointed *acting* Minister of Foreign Relations *ad interim* after the death of H.E. Peter Umialiloa Sai on October 17, 2018.

PANELS AND PRESENTATIONS:

- *Myth Busting—Hawai‘i is not the 50th State, but rather an Occupied State*, NCORE—National Conference on Race & Ethnicity in Higher Education, Hawai‘i Convention Center, Honolulu, May 29, 2024.
- *Bringing Compliance with International Law: The American Occupation of the Hawaiian Kingdom*, 2023 Class of the National Defense University, East-West Center, University of Hawai‘i at Mānoa, May 2, 2023.
- *The Royal Commission of Inquiry—Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* with Dr. David Keanu Sai, Professor William Schabas, and Professor Federico Lenzerini, the Hawaiian Society of Law and Politics Symposium at the University of Hawai‘i at Mānoa, February 11, 2023.
- *Bringing Compliance with International Law: The American Occupation of the Hawaiian Kingdom*, Central Connecticut State University, April 25, 2023.
- *Bringing Compliance with International Law: The American Occupation of the Hawaiian Kingdom*, St. University of Saint Joseph, Connecticut, April 25, 2023.
- *Paradise Lost: A Conversation about Hawai‘i and the United States* with Dr. Keanu Sai and Professor Williamson Chang, webinar, American Constitution Society, Stetson University’s College of Law, March 2, 2022.
- *Hawaiian Kingdom, United States and International Law*, webinar, Centre for International Legal Studies, Jindal Global Law School, and Addis Ababa University IHL Clinic, April 8, 2021 (online at <https://hawaiiankingdom.org/blog/dr-keanu-sai-to-present-on-the-hawaiian-kingdom-united-states-and-international-law-on-april-8/>).
- *War Crimes and the U.S. Occupation of Hawai‘i* with Dr. Keanu Sai and Professor Federico Lenzerini, webinar, International Association of Democratic Lawyers and the National Lawyers Guild, on January 9, 2021 (online at <https://iadllaw.org/2021/01/video-webinar-on-war-crimes-and-the-u-s-occupation-of-hawaii-with-dr-keanu-sai-and-professor-federico-lenzerini/>).
- *The Law of Occupation—Hawai‘i, Iraq, Afghanistan and Palestine*, National Lawyers Guild International Committee online Continuing Law Education. Webinar panelists along with Professor Federico Lezerini, University of Siena, Italy, Professor Marjorie Cohn, Thomas Jefferson Law School, and Dr. Valentina Azarova, Global Legal Action Network, September 21, 2020.
- *The United States Prolonged Occupation of Hawai‘i: War Crimes and Human Rights Violations*, presentation at Middlesex University School of Law, London, U.K., October 15, 2019.

- *Status of the Hawaiian Kingdom under International Law*, (3) workshops for the Maui County Council’s Planning and Sustainable Land Use Committee, May 15, 2019, June 5, 2019, and August 21, 2019.
- *Permanent Court of Arbitration: International Commission of Inquiry—Larsen v. Hawaiian Kingdom*, presentation with Professor Federico Lenzerini, Kamehameha Schools at Kapalama, Honolulu, January 30, 2017.
- *Hawai‘i Reloaded, The Matrix Alive*, Smithsonian Asian Pacific American Center—A Culture Lab on Imagined Futures, New York City, November 12-13, 2016.
- *The American Occupation of the Hawaiian Kingdom: Genocide Through Denationalization*, presentation at University of Torino, Department of Anthropology, Italy, October 21, 2016.
- *The American Occupation of the Hawaiian Kingdom: Genocide Through Denationalization*, presentation at University of Siena Law School, Italy, October 18, 2016.
- *The American Occupation of the Hawaiian Kingdom: Genocide Through Denationalization*, presenter at a conference, “eVenti Nativi 2016,” Ravenna, Italy, October 14, 2016.
- *Hawai‘i—Let the Truth be Told: Genocide Through Denationalization*, presentation at New York University, New York City, June 11, 2016.
- *Hawai‘i—Let the Truth be Told: Genocide Through Denationalization*, presentations at Smithsonian National Museum of the American Indian, Washington, D.C., June 6, 2016.
- *Sovereignty and Imperialism: Non-European Powers in the Age of Empire*, invited presenter at an academic conference, University of Cambridge, UK, September 10-12, 2015.
- *The Aftermath of the U.S. Department of Interior Proposals Regarding Federal Recognition: Clarification*, American Constitution Society’s William S. Richardson School of Law Student Chapter and ‘Ahahui o Hawai‘i, University of Hawai‘i at Manoa, Presenter-Panelist with Professor Williamson Chang and Dr. Willy Kauai, September 2, 2014.
- *Alternative Visions of Sovereignty*, American Constitution Society’s William S. Richardson School of Law Student Chapter, University of Hawai‘i at Manoa, Presenter-Panelist with Professor Williamson Chang and former Governor John Waihe‘e, III, April 17, 2014.

- *The Hawai‘i-Connecticut Missionary Connection: Rumors and Realities*, Hartford Seminary, Panellist-Discussant with Aolani Kailihou, Dr. Stephen Blackburn, and Dr. Clifford Putney, April 10, 2014.
- *Hawai‘i: An American State or a State under American Occupation*, Central Connecticut State University, April 10, 2014.
- *Hawai‘i: An American State or a State under American Occupation*, University of Massachusetts Boston, April 8, 2014.
- *Hawai‘i: An American State or a State under American Occupation*, Harvard University, April 8, 2014.
- *Hawai‘i: An American State or a State under American Occupation*, New York University, April 7, 2014.
- *Hawai‘i: An American State or a State under American Occupation*, Swiss Diplomats—Zurich Network and Foraus, University of Zurich, Switzerland, November 11, 2013.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai‘i. A presentation entitled “1893 Executive Agreements and their Impact Today,” March 15, 2013.
- *Why the Birthers Are Right For All The Wrong Reasons*, Harvard University, Massachusetts, October 12, 2012.
- *Why the Birthers Are Right For All The Wrong Reasons*, University of Massachusetts, Boston, October 12, 2012.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai‘i. A presentation entitled “1893 Executive Agreements and their Impact Today,” March 16, 2012.
- “The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” *Sustainability for Biological Engineers Lecture Series*, University of Hawai‘i at Manoa, Agricultural Science Bldg. 219, December 7, 2010.
- “1893 Cleveland-Lilu‘uokalani Executive Agreements and their Impact Today.” Presentation at the *Annual Convention of Hawaiian Civic Clubs*, Sheraton Keauhou Bay Resort & Spa, Island of Hawai‘i, November 9, 2010.
- “The History of the Hawaiian Kingdom.” Presentation at the annual convention of the *Victorian Society of Scholars*, Kana‘ina Bldg., Honolulu, October 28, 2010.

- “Pu`a Foundation: E pu pa`akai kakou.” Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Healing Our Spirit World, The Sixth Gathering*, Hawai`i Convention Center, September 7, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the County of Maui, Real Property Tax Division, HGEA Bldg, Kahului, June 28, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the City & County of Honolulu, Real Property Assessment Division, Mission Memorial Auditorium, June 9, 2010.
- “Hawai`i’s Legal and Political History.” Sponsored by *Kokua A Puni Hawaiian Student Services*, UH Manoa, Center for Hawaiian Studies, UHM, May 26, 2010.
- “Ua Mau Ke Ea: Sovereignty Endured.” Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Native Hawaiian Education Association Conference*, Windward Community College, March 19, 2010.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled “Evolution of Hawaiian Land Titles and its Impact Today,” March 12, 2010.
- “1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement).” Sponsored by the Haloa Research Center, Baldwin High School Auditorium, February 20, 2010.
- “1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement).” Sponsored by Kamehameha Schools’ Kula Hawai`i Teachers Professional Development, Kapalama Campus, Konia, January 4, 2010.
- “The Legal and Political History of Hawai`i.” Sponsored by House Representative Karen Awana, National Conference of Native American State Legislators, State of Hawai`i Capital Bldg, November 16, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Hawaiian Studies, Ho`a and Ho`okahua (STEM), Maui Community College, Noi`i 12-A, November 2, 2009.
- “The Legal and Political History of Hawai`i.” Presentation to the *Hui Aloha `Aina Tuahine*, Center for Hawaiian Studies, University of Hawai`i at Manoa, October 30, 2009.

- “The Legal and Political History of Hawai‘i.” Presentation to *Kahuewai Ola*, Queen Lili‘uokalani Center for Student Services, University of Hawai‘i at Manoa, October 23, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Kamehameha Schools Ka‘iwakiloumoku Hawaiian Cultural Events Series, Ke‘eliokalani Performing Arts Center, Kamehameha Schools Kapalama campus, October 21, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by ASUH and Hawaiian Studies, Paliku Theatre, Windward Community College, September 10, 2009.
- *Puana Ka ‘Ike Lecture Series (Imparting Knowledge)*, Kohana Center/Kamehameha Investment Corporation, Keauhou II Convention Center, Kona, Hawai‘i. A presentation entitled “The Myth of Ceded Lands: A Legal Analysis,” March 13, 2009.
- “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” Briefing for Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers, Wheeler AAF Courthouse, U.S. Army Pacific, Wahiawa, Hawai‘i, February 25, 2009.
- *Ka Nalu: Towards a Hawaiian National Consciousness*, Symposium of the Hawaiian Society of Law and Politics, University of Hawai‘i at Manoa, Imin Conference Bldg (East West Center). Presented a portion of my doctoral dissertation entitled “The Myth of Ceded Lands: A Legal Analysis,” February 28, 2009.
- *Manifold Destiny: Disparate and Converging Forms of Political Analysis on Hawai‘i Past and Present*, International Studies Association Annual Conference, San Francisco, California, March 26, 2008. Presented a paper entitled “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian Nationality and Hawaiian Indigeneity and its Use and Practice in Hawai‘i today,” March 26, 2008.
- *Mana Kupuna Lecture Series*, University of Waikato, New Zealand. A presentation entitled “Legal and Political History of the Hawaiian Kingdom,” March 5, 2008.
- *Indigenous Politics Colloquium* speaker series, Department of Political Science, University of Hawai‘i at Manoa. Presented an analysis and comparison between Hawaiian State sovereignty and Hawaiian indigeneity and its use and practice in Hawai‘i today,” January 30, 2007.
- Conference at Northeastern Illinois University entitled *Dialogue Under Occupation: The Discourse of Enactment, Transaction, Reaction and Resolution*. Presented a paper on a panel entitled “Prolonged Occupation of the Hawaiian Kingdom,” Chicago, Illinois, November 10, 2006.
- The 14th Biennial Asian/Pacific American Midwest Student Conference, “Refocusing Our Lens: Confronting Contemporary Issues of Globalization and Transnationalism.”

Presented article “American Occupation of the Hawaiian State: A Century Unchecked” on Militarization Panel, Oberlin College, Ohio, February 18, 2006.

- 2005 American Studies Association Annual Conference. Panelist on a roundtable discussion entitled, “The Case for Hawai‘i’s Independence from the United States - A Scholarly and Activist Roundtable Discussion,” with Keala Kelly and Professor Kehaulani Kauanui. Renaissance Hotel, Washington, D.C., November 4, 2005.
- Kamehameha Schools 2005 Research Conference on Hawaiian Well-being, sponsored by the Kamehameha Schools *Policy Analysis & Systems Evaluation* (PACE). Presented article “Employing Appropriate Theory when Researching Hawaiian Kingdom Governance” with two other presenters, Malcolm Naea Chun and Dr. Noelani Goodyear-Kaopua. Radisson Prince Kuhio Hotel, Waikiki, October 22, 2005.
- 1st Annual Symposium of the *Hawaiian Society of Law & Politics* showcasing the first edition of the *Hawaiian Journal of Law & Politics* (summer 2004). Presented article “American Occupation of the Hawaiian State: A Century Gone Unchecked,” with response panellists Professor John Wilson, Political Science, and Kanale Sadowski, 3rd year law student, Richardson School of Law. Imin International Conference Center, University of Hawai‘i at Manoa, April 16, 2005.
- “A Symposium on Practical Pluralism.” Sponsored by the *Office of the Dean*, William S. Richardson School of Law. Panelist with Professor Williamson Chang and Dr. Kekuni Blaisdell, University of Hawai‘i at Manoa, Honolulu, April 16-17, 2004.
- “Mohala A‘e: Blooming Forth,” *Native Hawaiian Education Association’s 5th Annual Conference*. Presented a workshop entitled “Hawaiian Epistemology.” Windward Community College, Kane‘ohe, March 23, 2004.
- “First Annual ‘Ahahui o Hawai‘i Kukakuka: Perspectives on Federal Recognition.” Guest Speaker at a symposium concerning the Akaka Bill. Sponsored by the *‘Ahahui o Hawai‘i* (organization of native Hawaiian law students), University of Hawai‘i at Manoa Richardson School of Law, Honolulu, March 12, 2004.
- “The Status of the Kingdom of Hawai‘i.” A debate with Professor Didrick Castberg, University of Hawai‘i at Hilo (Political Science), and moderator Professor Todd Belt University of Hawai‘i at Hilo (Political Science). Sponsored by the *Political Science Club*, University of Hawai‘i at Hilo, Campus Center, March 11, 2004.
- “The Political History of the Hawaiian Kingdom: Past and Present.” A presentation to the *Hawai‘i Island Association of Hawaiian Organizations*, Queen Lili‘uokalani Children’s Center, Hilo, February 13, 2004.
- “Globalization and the Asia-Pacific Region.” Panel with Dr. Noenoe Silva (Political Science). *East-West Center Spring 2004 Core Course*, Honolulu, February 4, 2004.

- Televised symposium entitled, “Ceded Lands.” Other panelists included Professor Jon Van Dyke (Richardson School of Law) and Professor Lilikala Kame‘eleihiwa (Center for Hawaiian Studies). Sponsored by the *Office of Hawaiian Affairs*, Wai‘anae, August 2003.
- “Hawai‘i’s Road to International Recovery, II.” Sponsored by *Kipuka*, University of Hawai‘i at Hilo, September 25, 2003.
- “An Analysis of Tenancy, Title, and Landholding in Old Hawai‘i.” Sponsored by *Kipuka*, University of Hawai‘i at Hilo, September 26, 2002.
- “The Hawaiian Kingdom in Arbitration Proceedings at the Permanent Court of Arbitration, The Hague, Netherlands.” A presentation at the 6th World Indigenous Peoples Conference on Education, Stoney Park, Morley, Alberta, Canada, August 6, 2002.
- “The Hawaiian Kingdom and the United States of America: A State to State Relationship.” *Reclaiming the Legacy*, U.S. National Archives and Records Administration, University of San Francisco, May 4, 2002
- “Hawai‘i’s Road to International Recovery.” Sponsored by *Kipuka*, University of Hawai‘i at Hilo, April 11, 2002.
- “Hawai‘i’s Road to International Recovery,” a presentation to the Officers Corps of the 25th Infantry Division, U.S. Army, Officer’s Club, Schofield Barracks, Wahiawa, February 2001.
- “Lance Larsen vs. the Hawaiian Kingdom,” presentation to the *Native Hawaiian Bar Association*, quarterly meeting, Kana‘ina Building, Honolulu, 2001.
- “Hawaiian Political History,” *Hawai‘i Community College*, Hilo, March 5, 2001.
- “The History of the Hawaiian Kingdom,” A guest speaker at the *Aloha March* rally in Washington, D.C., August 12, 1998.
- Symposium entitled, “Human Rights and the Hawaiian Kingdom on the occasion of the 50th anniversary of the Universal Declaration of Human Rights.” Other panelist included Francis Boyle (Professor of International Law, University of Illinois), Mililani Trask (Trustee, Office of Hawaiian Affairs), Richard Grass (Lakota Sioux Nation), and Ron Barnes (Tununak Traditional Elders Council, Alaska). University of Hawai‘i at Hilo, April 16, 1998.
- Symposium entitled, “Perfect Title Company: Scam or Restoration.” Sponsored by the *Hawai‘i Developers Council*, Hawai‘i Prince Hotel, Honolulu, August 1997.

PUBLICATIONS:

Chapter 21, “Hawai‘i’s Sovereignty and Survival in the Age of Empire,” in David Motadel and Houchang-Esfandiar Chehabi (eds.) *Unconquered States: Non-European Powers in the Imperial Age* (Oxford University Press) (forthcoming)
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9. *State of Hawai‘i v. Asam*, case no. 1DCW-17-0000364
10. *State of Hawai‘i v. Asam*, case no. 1DCW-18-0000395

MILITARY:

- Aug. 1994: Honourably Discharged
- Dec. 1990: Diploma, *U.S. Army Field Artillery Officer Advanced Course*, Fort Sill, OK
- May 1990: Promoted to Captain (O-3)
- Apr. 1990: Diploma, *U.S. Air Force Air Ground Operations School*, Hurlbert Field, FL
- May 1987: Promoted to 1st Lieutenant (O-2)
- Sep. 1987: Diploma, *U.S. Army Field Artillery Officer Basic Course*, Fort Sill, OK
- Sep. 1984: Assigned to *1st Battalion, 487th Field Artillery*, Hawai‘i Army National Guard, Honolulu, H.I.
- May 1984: Army Reserve Commission, 2nd Lieutenant (O-1), Early Commissioning Program (ECP) from the New Mexico Military Institute, Roswell, NM

GENERAL DATA:

- Nationality: Hawaiian
- Born: July 13, 1964, Honolulu, H.I.

Enclosure “2”

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Hawai‘i’s Sovereignty and Survival in the Age of Empire

David Keanu Sai

Abstract

From archaic state to a British protectorate to a sovereign and independent state, the Hawaiian Kingdom’s evolution of governance during the imperial age is unparalleled in the world. While being the first country of Oceania to become a member of the international community of states since the nineteenth century, the Hawaiian Kingdom was not able to escape the tentacles of empire, but it was able to engage foreign aggression on its own terms and ultimately survive. This chapter covers the Hawaiian Kingdom from the death of Captain James Cook, the rise of the warrior king Kamehameha I—progenitor of the kingdom, government reform, independence, the overthrow of its government by United States forces, and its continued existence as a state under international law.

Three years after the tragic demise of Captain James Cook on the shores of the royal residence of Kalaniopu‘u, King of the Hawai‘i Island kingdom, civil war broke out after the elderly king died in January of 1782. While the civil war lasted nine years, it set in motion a chain of events that would facilitate the rise of the celebrated chief Kamehameha to be King of Hawai‘i in the summer of 1791. Just three years later, Kamehameha joined the British Empire under an agreement with Captain George Vancouver on 25 February 1794. According to Willy Kauai, “Kamehameha’s foresight in forming strategic international relations helped to protect and maintain Hawaiian autonomy amidst the rise of European exploration in the Pacific.”¹

The agreement provided that the British government would not interfere with the kingdom’s religion, government and economy; “the chiefs and priests...were to continue as usual to officiate with the same authority as before in their respective stations.”² Kamehameha and his Chiefs acknowledged they were British subjects. Knowing that the religion would eventually have to conform to British custom, Kamehameha also “requested of Vancouver that on his return to England he would procure religious instructors to be sent to them from the country of which they now considered themselves subjects.”³ After the ceremony, the British ships fired a salute and delivered a copper plaque, which was placed at the royal residence of Kamehameha. The plaque read:

On the 25th of February, 1794, Tamaahmaah [Kamehameha], king of Owhyhee [Hawai‘i], in council with the principal chiefs of the island assembled on board His Britannic Majesty’s sloop Discovery in Karakakooa [Kealakekua] bay, and in the presence of George Vancouver, commander of the said sloop; Lieutenant Peter Puget, commander of his said Majesty’s armed tender the Chatham; and the other officers of the Discovery; after due consideration, and unanimously ceded the said island of Owhyhee [Hawai‘i] to His Britannic Majesty, and acknowledged themselves to be subjects of Great Britain.⁴

¹ Willy Daniel Kaipo Kauai, “The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai‘i” (PhD dissertation, University of Hawai‘i at Manoa, 2014), 55.

² George Vancouver, *A Voyage of Discovery to the North Pacific Ocean and Round the World* (London: G. G. and J. Robinson, and J. Edwards, 1798), 3:56.

³ Manley Hopkins, *Hawaii: The Past, Present and Future of Its Island Kingdom* (London: Longmans, Green, and Co., 1866), 133.

⁴ Vancouver, 56-57.

In April of 1795, Kamehameha conquered the kingdom of Maui and acquired the islands of Maui, Lanaʻi, Molokaʻi and Oʻahu. By April of 1810, the kingdom of Kauaʻi capitulated and its ruler, Kaumualiʻi, ceded his kingdom and its dependent island of Niʻihau to Kamehameha, thereby becoming a vassal state, with the Kauaʻi king paying an annual tribute to Kamehameha.⁵ Thus, the entire archipelago had been consolidated by the Kingdom of Hawaiʻi, which was renamed the Kingdom of the Sandwich Islands, with Kamehameha as its king.

With the leeward islands under his rule, Kamehameha incorporated and modified aspects of English governance, including the establishment of a prime minister and governors over the former kingdoms of Hawaiʻi, Maui, and Oʻahu.⁶ The governors served as viceroys over the lands of the former kingdom “with legislative and other powers almost extensive as those kings whose places they took.”⁷ *Kālainmoku* (carver of lands) was the native term given to a king’s chief counselor, and became the native equivalent to the title prime minister. Kamehameha appointed Kalanimoku as his prime minister, who thereafter adopted his title as his name – Kālainmoku.

Foreigners also commonly referred to Kālainmoku as Billy Pitt, the namesake of the younger William Pitt, who served as Britain’s prime minister under King George III. Kālainmoku’s duty was to manage day-to-day operations of the royal government, as well as to be the commander-in-chief of all the military, and head of the kingdom’s treasury. Samuel Kamakau, a Hawaiian historian, explained: the “laws determining life or death were in the hands of the treasurer; he had charge of everything. Kamehameha’s brothers, the chiefs, the favorites, the lesser chiefs, the soldiers, and all who were fed by the chief, anyone to whom Kamehameha gave a gift, could secure it to himself only by informing the chief treasurer.”⁸

After the death of Kamehameha I in 1819, the kingdom would continue its transformation as a self-governing member of the British realm. As Lorenz Gonschor writes, “when Kamehameha [learned] of King George and styled his government a ‘kingdom’ on the British model, it was in fact merely a new designation and hybridization of the existing political system,”⁹ and the “process of hybridization was further continued by Kamehameha’s sons Liholiho (Kamehameha II) and Kamehameha III throughout the 1820s, 1830s, and 1840s, culminating in the Constitution of 1840.”¹⁰ In 1824, Protestantism became the national religion, and in 1829, Hawaiian authorities took steps to change the name from Sandwich Islands to Hawaiian Islands.¹¹ The country later came to be known as the Hawaiian Kingdom.

On 8 October 1840, Kamehameha III approved the Hawaiian Kingdom’s first constitution. Bernd Marquardt acknowledges that Hawaiʻi’s transformation into a constitutional monarchy even precedes that of Prussia.¹²

⁵ This vassalage, however, was terminated in 1821 by Kamehameha’s successor and son, Kamehameha II, when he removed Kaumualiʻi to the island of Oʻahu and replaced him with a governor named Keʻeaumoku.

⁶ Walter Frear, “Hawaiian Statute Law,” *Thirteenth Annual Report of the Hawaiian Historical Society* (Honolulu: Hawaiian Gazette Co., 1906), 18. Frear mistakenly states that Kamehameha established four earldoms that included the Kingdom of Kauaʻi. Kaumualiʻi was not a governor, but remained a king until 1821.

⁷ *Ibid.*

⁸ Samuel Kamakau, *Ruling Chiefs* (Honolulu: Kamehameha Schools Press, 1992), 175.

⁹ Lorenz Gonschor, *A Power in the World: the Hawaiian Kingdom in Oceania* (Honolulu: University of Hawaiʻi Press, 2019), 22.

¹⁰ *Idem.*, “Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania,” in Sebastian Jobs and Gesa Mackenthun, eds., *Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens* (Münster: Waxmann, 2013), 161.

¹¹ “Capt. Finch’s Cruise in the U.S.S. Vincennes,” U.S. Navy Department Archives. “The Government and Natives generally have dropped or do not admit the designation of the Sandwich Islands as applied to their possessions; but adopt and use that of Hawaiian; in allusion to the fact of the whole Groupe having been subjugated by the first Tamehameha [Kamehameha], who was Chief of the principal Island of Owhyhee, or more modernly Hawaii.”

¹² Bernd Marquardt, *Universalgeschichte des Staates: von der vorstaatlichen Gesellschaft zum Staat der Industriegesellschaft* (Zurich: LIT, 2009), 478.

While other European monarchs instituted constitutional reforms before Prussia, what is remarkable is that Hawai'i was the first consolidated non-European constitutional monarchy. According to the Hawaiian Supreme Court:

King Kamehameha III originally possessed, in his own person, all the attributes of absolute sovereignty. Of his own free will he granted the Constitution of 1840, as a boon to his country and people, establishing his Government upon a declared plan or system, having reference not only to the permanency of his Throne and Dynasty, but to the Government of his country according to fixed laws and civilized usage, in lieu of what may be styled the feudal, but chaotic and uncertain system, which previously prevailed.¹³

After French troops temporarily occupied the Hawaiian Kingdom in 1839 under the command of Captain Laplace, Lord Ingestre, a British Member of Parliament, called upon the Secretary of State for Foreign Affairs, Viscount Palmerston, to provide an official response. He also “desired to be informed whether those islands which, in the year 1794, and subsequently in 1824 ... had been declared to be under the protection of the British Government, were still considered...to remain in the same position.”¹⁴ Viscount Palmerston reported he knew very little of the French occupation, and with regard to the protectorate status of the Islands “he was non-committal and seemed to indicate that he knew very little about the subject.”¹⁵

In the eyes of the Hawaiian government, Palmerston's report quelled the notion of British dependency and acknowledged Hawaiian autonomy.¹⁶ Two years later, a clearer British policy toward the Hawaiian Islands by Palmerston's successor, Lord Aberdeen, reinforced the position of the Hawaiian government. In a letter to the British Admiralty on 4 October 1842, Viscount Canning, on behalf of Lord Aberdeen, wrote:

Lord Aberdeen does not think it advantageous or politic, to seek to establish a paramount influence for Great Britain in those Islands, at the expense of that enjoyed by other Powers. All that appears to his Lordship to be required, is, that no other Power should exercise a greater degree of influence than that possessed by Great Britain.¹⁷

In the summer of 1842, Kamehameha III moved forward to secure the position of the Hawaiian Kingdom as a recognized independent and sovereign state under international law, which was unprecedented for a country that had no historical ties to Europe. He sought the formal recognition of Hawaiian independence from the three naval powers in the Pacific at that time – Great Britain, France, and the United States. To accomplish this, Kamehameha III commissioned three envoys: Timoteo Ha'alilio; William Richards, who was at the time an American citizen; and Sir George Simpson, a British subject.

While the envoys were on their diplomatic mission, a British Naval ship, HBMS *Carysfort*, under the command of Lord Paulet, entered Honolulu harbor on 10 February 1843. Basing his actions on complaints in letters from British Consul Richard Charlton, who was absent from the kingdom at the time, that British subjects were being treated unfairly, Paulet seized control of the Hawaiian government on 25 February 1843, after threatening

¹³ *Rex v. Joseph Booth*, 3 Hawai'i 616, 630 (1863).

¹⁴ Ralph S. Kuykendall, *The Hawaiian Kingdom*, vol. 1, *Foundation and Transformation, 1778-1854* (Honolulu: University of Hawai'i Press, 1938), 185.

¹⁵ *Ibid.*

¹⁶ Robert C. Wylie, *Report of the Minister of Foreign Affairs, 21 May 1845* (Honolulu: The Polynesian Press, 1845), 7.

¹⁷ The Historical Commission, *Report of the Historical Commission of the Territory of Hawai'i for the two years ending 31 Dec. 1924* (Honolulu: Star Bulletin, 1925), 36.

to level Honolulu with cannon fire.¹⁸ Kamehameha III was forced to surrender the kingdom, but he did so under written protest, and pending the outcome of his diplomats' mission in Europe.

News of Paulet's action reached Admiral Richard Thomas of the British Admiralty, who then sailed from the Chilean port of Valparaiso, and arrived in the islands on 25 July 1843. After a meeting with Kamehameha III, Admiral Thomas concluded that Charlton's complaints did not warrant a British takeover and ordered the restoration of the Hawaiian government. The restoration took place in a grand ceremony on 31 July 1843.¹⁹ At a thanksgiving service after the ceremony, Kamehameha III proclaimed before a large crowd, "*ua mau ke ea o ka 'āina i ka pono*" (the life of the land is perpetuated in righteousness). The king's statement later became the national motto for the country.

The Hawaiian envoys succeeded in obtaining a joint proclamation by Great Britain and France formally recognizing the Hawaiian Kingdom as a sovereign and "Independent State" on 28 November 1843 at the Court of London.²⁰ The United States followed on 6 July 1844 by a letter of Secretary of State John C. Calhoun.²¹ Thus the Hawaiian Islands became the first Pacific country to be recognized as an independent and sovereign state. According to the legal scholar John Westlake, the Family of Nations comprised "first, all European States ... Secondly, all American States ... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."²²

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. Hawaiian statute provided that "all 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 domicile, whenever so required by proclamation of the governor thereof."²³ The legislature enacted in 1886 a statute "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."²⁴ This military force was renamed the King's Royal Guard in 1890.²⁵ Augmenting the regular force was the call for duty of the civilian population under the 1845 statute.

Hawaiian Attorney General John Ricord established a diplomatic code for Kamehameha III and the Royal Court, which was based on the principles of the 1815 Congress of Vienna by virtue of the fact that Hawai'i was admitted as a monarchical member of the Family of Nations.²⁶ The first diplomatic post was established in

¹⁸ Kuykendall, *The Hawaiian Kingdom*, 1:214.

¹⁹ *Ibid.*, 220.

²⁰ United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95* (Washington, DC: Government Printing Press, 1895), 120. "Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, taking into consideration the existence in the Sandwich Islands of a government capable of providing for the regularity of its relations with foreign nations, have thought it right to engage, reciprocally, to consider the Sandwich [Hawaiian] Islands as an Independent State, and never to take possession, neither directly or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed."

²¹ Wyllie, 1845 Report, 4.

²² John Westlake, *Chapters on the Principles of International Law* (Cambridge: University Press, 1894), 81.

²³ *Statute Laws of His Majesty Kamehameha III*, Hawaiian Kingdom (Honolulu: Government Press, 1846), 1:69.

²⁴ *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I (Honolulu: P.C. Advertiser Steam Print, 1886), 37.

²⁵ *An Act to Provide for a Military Force to be Designated as the "King's Royal Guard"*, Laws of His Majesty Kalakaua I (Honolulu: Gazette Publishing Company, 1890), 107.

²⁶ "Besides prescribing rank orders, the mode of applying for royal audience, and the appropriate dress code, the new court etiquette set the Hawaiian standard for practically everything that constituted the royal symbolism." Juri Mykkanen, *Inventing Politics: A New Political Anthropology of the Hawaiian Kingdom* (Honolulu: University of Hawai'i Press, 2003), 161.

London with the appointment of Archibald Barclay as Hawaiian Commissioner on 17 May 1845.²⁷ Within fifty years, the Hawaiian Kingdom maintained more than ninety legations and consulates throughout the world and entered into extensive diplomatic and treaty relations with other states, including Austria-Hungary, Belgium, Chile, China, Denmark, France, German states, Great Britain, Guatemala, Italy, Japan, Mexico, Netherlands, Peru, Portugal, Russia, Spain, Sweden-Norway, Switzerland, the United States, and Uruguay.²⁸ The Hawaiian Kingdom also became a member state of the Universal Postal Union on 1 January 1882.

On 16 March 1854, Robert Wyllie, Hawaiian Minister of Foreign Affairs, announced to the resident foreign diplomats that the Hawaiian domain included twelve islands.²⁹ In its search for guano, the Hawaiian Kingdom annexed four additional islands, under the doctrine of discovery, northwest of the main islands. Laysan Island was annexed by discovery of Captain John Paty on 1 May 1857.³⁰ Lisiansky Island also was annexed by discovery of Captain Paty on 10 May 1857.³¹ Palmyra Island, a cluster of low islets, was taken possession of by Captain Zenas Bent on 15 April 1862 and proclaimed as Hawaiian territory.³² Ocean Island, also called Kure Atoll, was subsequently acquired on 20 September 1886, by proclamation of Colonel J. H. Boyd.³³ In all cases, the acquisitions were effected according to the rules of international law.

The Hawaiian Kingdom continued to evolve as a constitutional monarchy as it kept up with rapidly changing political, social, and economic conditions. Under the 1864 constitution, the office of prime minister was repealed, which effectively established an executive monarch, and the separation of powers doctrine was fully adopted.³⁴ It was also a progressive country when compared to the other European states and their successor states on the American continent in the nineteenth century. Its political economy was not based on Smith's capitalism of *The Wealth of Nations*, but rather on Francis Wayland's approach of cooperative capitalism. According to Juri Mykkanen, Wayland was interested in "defining the limits of government by developing a theory of contractual enactment of political society, which would be morally and logically binding and acceptable to all its members."³⁵

Wayland's book *Elements of Political Economy* became the fundamental basis of Hawaiian economic policy making when translated into the Hawaiian language and adjusted to apply to Hawaiian society accordingly. The book was titled *No Ke Kālai'āina*, which theorized "governance from a foundation of *natural rights* within an agrarian society based upon capitalism that was not only cooperative in nature, but also morally grounded in Christian

²⁷ Robert C. Wyllie, *Report of the Minister of Foreign Affairs*, in Annual Reports read before His Majesty, to the Hawaiian Legislature, May 12, 1851 (Honolulu: Government Press, 1851), 39.

²⁸ Thos. G. Thrum, *Hawaiian Almanac and Annual for 1893* (Honolulu: Press Publishing Co., 1892), 140-141. For the treaties with Austria-Hungary, Belgium, Bremen, Britain, Denmark, France, Germany, Hamburg, Italy, Japan, the Netherlands and Luxembourg, Portugal, Russia, Samoa, Spain, Sweden-Norway, Switzerland, and the United States, see "Treaties with Foreign States," in David Keanu Sai, ed., *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (Honolulu: Ministry of the Interior, 2020), 237-310.

²⁹ A. P. Taylor, "Islands of the Hawaiian Domain," unpublished report, 10 January 1931, 5. "I have the honor to make known to you that the following islands, &c., are within the domain of the Hawaiian Crown, viz: Hawai'i, containing about, 4,000 square miles; Maui, 600 square miles; Oahu, 520 square miles; Kauai, 520 square miles; Molokai, 170 square miles; Lanai, 100 square miles; Niihau, 80 square miles; Kahoolawe, 60 square miles; Nihoa, known as Bird Island, Molokini, Lehua, Kaula, Islets, little more than barren rocks; and all Reefs, Banks and Rocks contiguous to either of the above, or within the compass of the whole."

³⁰ *Ibid.*, 7.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, 8.

³⁴ Article 20 of the 1864 Constitution provides that the "Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct."

³⁵ Mykkanen, *Inventing Politics*, 154.

values.”³⁶ The national motto “*ua mau ke ea o ka ‘āina i ka pono*” (the life of the land is perpetuated in righteousness) reflects this national discourse and was adopted by the Hawaiian Kingdom Supreme Court as a legal maxim in 1847. In the words of Chief Justice William Lee:

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.³⁷

Education was through the medium of the native language. On 7 January 1822, the first printing of an eight-page Hawaiian spelling book was carried out, and all “the leading chiefs, including the king, now eagerly applied themselves to learn the arts of reading and writing, and soon began to use them in business and correspondence.”³⁸ By 1839, the success of the schools was at its highest point, and literacy was “estimated as greater than in any other country in the world, except Scotland and New England.”³⁹

The Privy Council in 1840 established a system of universal education under the leadership of what came to be known as the minister of public instruction. A Board of Education later replaced the office of the minister in 1855 and named the Department of Public Instruction. This department was under the supervision of the minister of the interior and the monarch served on the board as its president. The president and board administered the educational system through school agents stationed in twenty-four school districts throughout the country. And in 1865, the office of inspector general of schools was formed in order to improve the quality of education.

The Hawaiian Kingdom became the fifth country in the world to provide compulsory education for all youth in 1841, which predated compulsory education in the United States by seventy-seven years. The previous four countries were Prussia in 1763, Denmark in 1814, Greece in 1834, and Spain in 1838. Education was a hallowed word in the halls of the Hawaiian government, “and there [was] no official title more envied or respected in the islands than that of a member of the board of public instruction.”⁴⁰ Charles de Varigny explained:

This is because there is no civic question more debated, or studied with greater concern, than that of education. In all the annals of the Hawaiian Legislature one can find not one example of the legislative houses refusing – or even reducing – an appropriation requested by the government for public education. It is as if this magic word alone seems to possess the prerogative of loosening the public purse strings.⁴¹

Secondary education was carried out through the medium of English in English immersion schools. At Lahainaluna Seminary, a government-run secondary education school, the subjects of mathematics (algebra,

³⁶ 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* (Honolulu: Hawaiian Kingdom, 2020), 60.

³⁷ *Shillaber v. Waldo et al.*, 1 Hawai‘i 31, 32 (1847).

³⁸ W. D. Alexander, *A Brief History of the Hawaiian People* (New York: American Book Company, 1891), 179.

³⁹ Laura Fish Judd, *Honolulu: Sketches of Life, Social, Political, and Religious, in the Hawaiian Islands* (New York: Anson D. F. Randolph & Company, 1880), 79.

⁴⁰ Charles De Varigny, *Fourteen Years in the Sandwich Islands, 1855-1868* (Honolulu: University of Hawai‘i Press, 1981), 151.

⁴¹ *Ibid.*

geometry, calculus, and trigonometry), English grammar, geography, Hawaiian constitutional history, political economy, science, and world history were taught. Secondary schools were predominantly attended by aboriginal Hawaiians after completing their common school education.⁴² The Hawaiian Kingdom also had a study abroad program in the 1880s through which seventeen young Hawaiian men and one woman “attended schools in six countries where they studied engineering, law, foreign language, medicine, military science, engraving, sculpture, and music.”⁴³

As Gonschor points out, Hawaiian governance also had an impact on other states in Oceania and Asia.⁴⁴ In particular, Dr. Sun Yat-sen, who received his secondary education in the Hawaiian Kingdom at Iolani College and Punahou between 1879 and 1883, told a reporter when he returned to the country in 1910: “This is my Hawaii. Here I was brought up and educated; and it was here that I came to know what modern, civilized governments are like and what they mean.”⁴⁵ Sun Yat-sen would not have learned “what modern, civilized governments are like” in the United States but only in the Hawaiian Kingdom, where racism was, at the time, unthinkable.

Virginia Dominguez has found that before the United States’ seizure of Hawai‘i in 1898 there was “very little overlap with Anglo-American” race relations.⁴⁶ She found that there were no “institutional practices [that] promoted social, reproductive, or civic exclusivity on anything resembling racial terms before the American period.”⁴⁷ In comparing the two countries she stated that unlike “the extensive differentiating and disempowering laws put in place throughout the nineteenth century in numerous parts of the U.S. mainland, no parallels – customary or legislated – seem to have existed in the [Hawaiian Kingdom].”⁴⁸ She admits that with “all the recent, welcomed publishing flurry on the social construction of whiteness and blackness and the sociohistorical shaping of racial categories...there are usually at best only hints of the possible – but very real – unthinkability of ‘race.’”⁴⁹ According to Kauai, the “multi-ethnic dimensions of the Hawaiian citizenry coupled by the strong voice and participation of the aboriginal population in government played a prominent role in constraining racial hierarchy and the emergence of a legal system that promoted white supremacy.”⁵⁰

Hawaiian society was not based on race or gender, but rather class, rank, and education. Hawaiian women in the nineteenth century served as monarchs – Victoria Kamāmalu (1863) and Lili‘uokalani (1891-1917); regents – Ka‘ahumanu (1823-25) and Lili‘uokalani (1881, 1891), and prime ministers – Ka‘ahumanu (1819-23, 1825-32), Elizabeth Kina‘u (1832-39), Miriam Kekāuluohi (1839-45), and Victoria Kamāmalu (1855-63).

In 1859, universal healthcare was provided at no charge for aboriginal Hawaiians through hospitals regulated and funded by the Hawaiian government.⁵¹ Even tourists visiting the country were provided health coverage

⁴² Annual Examination of the Lahainaluna Seminary (12, 13, and 14 July 1882), website of the Hawaiian Kingdom, online. Lahainaluna’s 1882 annual exams reflect the breadth of Hawaiian national consciousness.

⁴³ Agnes Quigg, “Kalākaua’s Hawaiian Studies Abroad Program,” *The Hawaiian Journal of History* 22 (1988): 170.

⁴⁴ Gonschor, “Ka Hoku o Osiania,” 157-186; Gonschor, *A Power in the World*.

⁴⁵ Albert Pierce Taylor, “Sun Yat Sen in Honolulu,” *Paradise of the Pacific* 41:8 (1928): 8; see also Yansheng Ma Lum and Raymon Mun Kong Lum, *Sun Yat-sen in Hawai‘i: Activities and Supporters* (Honolulu: University of Hawai‘i Press, 1999), 5.

⁴⁶ Virginia R. Dominguez, “Exporting U.S. Concepts of Race: Are There Limits to the U.S. Model?” *Social Research* 65:2 (1988): 372.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., 371-372.

⁵⁰ Kauai, “The Color of Nationality,” 31.

⁵¹ Jeffrey J. Kamakahi, “A Socio-Historical Analysis of the Crown-based Health Ensembles (CBHEs) in Hawaii: A Satrean Approach” (PhD dissertation, University of Hawai‘i at Mānoa, 1991), 49-125. As to the dismantling of the universal health care during the American occupation, David Keanu Sai, “United States Belligerent Occupation of the Hawaiian Kingdom,” in Sai, *The Royal Commission of Inquiry*, 115-116.

during their sojourn under *An Act Relating to the Hospital Tax levied upon Passengers* (1882).⁵² As part of Hawai'i's mixed economy, the Hawaiian government appropriated funding for the maintenance of its quasi-public hospital, the Queen's Hospital, where the monarch served as head of the Board of Trustees, comprised of ten appointed government officials and ten persons elected by the corporation's shareholders. According to Henry Witney: "Native Hawaiians are admitted free of charge, while foreigners pay from seventy-five cents to two dollars a day, according to accommodations and attendance."⁵³ It wasn't until the mid-twentieth century that the Nordic countries did what the Hawaiian Kingdom had done with universal health care.

Kamehameha III sought to secure the independent status of Hawai'i by ensuring international recognition of the kingdom's neutrality. "A nation that wishes to secure her own peace," said Emmerich de Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."⁵⁴ Unlike states that were neutralized by agreement of third states, such as Switzerland, Belgium and Luxembourg, the Hawaiian Kingdom took a proactive approach to secure its neutrality through diplomacy and treaty provisions. The country made full use of its global location and became a beneficial asylum for all states who found themselves at war in the Pacific. Hawaiian Minister of Foreign Affairs, Robert Wyllie, secured equal and most favored nation treaties for the Hawaiian Kingdom, and wherever possible, included in the treaties the recognition of Hawaiian neutrality.⁵⁵ When he opened the Legislative Assembly on 7 April 1855, Kamehameha IV stated in his speech:

My policy, as regards all foreign nations, being that of peace, impartiality and neutrality, in the spirit of the Proclamation by the late King, of the 16th May last, and of the Resolutions of the Privy Council of the 15th June and 17th July. I have given to the President of the United States, at his request, my solemn adhesion to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between his Majesty the Emperor of all the Russias, and the United States, concluded in Washington on the 22nd July last.⁵⁶

Since 1858, Japan had been forced to recognize the extraterritoriality of foreign law operating within Japanese territory. Under Article VI of the American-Japanese treaty, it provided that "Americans committing offences against Japanese shall be tried in American consular courts, and when guilty shall be punished according to American law."⁵⁷ The Hawaiian Kingdom's 1871 treaty with Japan provided for Hawaiian extraterritoriality of Hawaiian law under Article II, which stated that Hawaiian subjects in Japan would enjoy "at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation."⁵⁸ This was a sore point for Japanese authorities, who felt Japan's sovereignty should be fully recognized by these states.

During a meeting of the cabinet council on 11 January 1881, a decision was made for King Kalākaua to undertake a world tour, which was unprecedented at the time for any monarch. His objectives were, "first, to

⁵² *Compiled Laws of the Hawaiian Kingdom* (Honolulu: Printed at the Hawaiian Gazette Office, 1884), 666. Section 1 provides that "the Trustees of the Queen's Hospital are hereby authorized and directed to reserve and apply to uses hereinafter mentioned the sum of two thousand and five hundred dollars per annum out of all moneys received by them as and for hospital tax levied upon and received from passengers arriving at the several ports of this Kingdom."

⁵³ Henry Witney, *The Tourists' Guide through the Hawaiian Islands Descriptive of Their Scenes and Scenery* (Honolulu: Hawaiian Gazette Company's Press, 1895), 21.

⁵⁴ Emmerich de Vattel, *The Law of Nations; Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, 6th ed. (Philadelphia, PA: T. & J. W. Johnson, 1844), 333.

⁵⁵ Provisions of neutrality can be found in the treaties with Sweden/Norway (1852), under Article XV; Spain (1863), under Article XXVI; Germany (1879), under Article VIII; and Italy (1869), under its additional article.

⁵⁶ Robert C. Lydecker, comp., *Roster Legislatures of Hawaii, 1841-1918* (Honolulu: Hawaiian Gazette Co., 1918), 57.

⁵⁷ *Treaty of Amity between the United States and Japan*, (29 July 1858) U.S. Treaty Series 185, 365.

⁵⁸ "Treaty with Japan," 19 August 1871, in *Treaties and Conventions Concluded between the Hawaiian Kingdom and Other Powers since 1825* (Honolulu: Elele, 1887), 115.

recuperate his own health and second, to find means for recuperating his people, the latter...by the introduction of foreign immigrants.”⁵⁹ The royal party departed Honolulu harbor on 20 January 1881 on the steamer *City of Sydney* headed for San Francisco. From San Francisco, they embarked for Japan on 8 February. The world tour would last ten months and take the Hawaiian king to Japan, China, Hong Kong, Siam (Thailand), Singapore, Johor (now in Malaysia), India, the Suez Canal, Egypt, Italy, France, Great Britain, Scotland, Belgium, Germany, Austria, Spain, and Portugal. All graciously received the King and he exchanged royal orders with these countries.⁶⁰ After he returned home, Kalākaua also exchanged royal orders with Naser al-Din Shah of Persia.⁶¹

When Kalākaua visited Japan, the Meiji Emperor “asked for Hawai‘i to grant full recognition to Japan and thereby create a precedent for the Western powers to follow.”⁶² Hawaiian recognition of Japan’s full sovereignty and repeal of the Hawaiian Kingdom’s consular jurisdiction in Japan provided in the Hawaiian-Japanese Treaty of 1871 would not take place, however, until 1893, by executive agreement through exchange of notes. By direction of Queen Lili‘uokalani, successor to King Kalākaua, R. W. Irwin, Hawaiian minister to the court of Japan in Tokyo, sent a diplomatic note to Mutsu Munemitsu, Japanese minister of foreign affairs in which he stated: “I now have the honour formally to announce, that the Hawaiian Government do fully, completely, and finally abandon and relinquish the jurisdiction acquired by them in respect of Hawaiian subjects and property in Japan, under the Treaty of the 19th August, 1871.”⁶³

On 10 April 1894, Munemitsu responded: “The sentiments of goodwill and friendship which inspired the act of abandonment are highly appreciated by the Imperial Government, but circumstances which it is now unnecessary to recapitulate have prevented an earlier acknowledgment of your Excellency’s note.”⁶⁴ This dispels the commonly held belief among historians that Great Britain was the first to abandon its extraterritorial jurisdiction in Japan under the 1894 Anglo-Japanese Treaty of Commerce and Navigation. This action taken by the Hawaiian Kingdom, being a non-European power, ushered in Japan’s full and complete independence of its laws over Japanese territory.

Japan’s request also serves as an acknowledgment of Hawai‘i’s international standing as a fully sovereign and independent state. This would not go unnoticed by Polynesian kings such as King George Tupou I of Tonga, King Cakobau of Fiji, and King Malietoa of Samoa. In 1892, Scottish author Robert Louis Stevenson wrote: “it is here alone that men of their race enjoy most of the advantages and all the pomp of independence.”⁶⁵

The population of the Hawaiian Kingdom consisted of aboriginal Hawaiians, naturalized immigrants, native-born non-aboriginals, as well as resident foreigners. In 1890, the majority of Hawaiian subjects were aboriginal Hawaiians, both pure and part, at 40,622, and non-aboriginal Hawaiians subjects at 7,495.⁶⁶ Of the alien population, Americans were at 1,928, Chinese at 15,301, Japanese at 12,360, Norwegians at 227, British at 1,344, Portuguese at 8,602, Germans at 1,034, French at 70, Polynesians at 588, and other foreigners at 419.⁶⁷ The

⁵⁹ Ralph S. Kuykendall, *The Hawaiian Kingdom*, vol. 3, *The Kalakaua Dynasty, 1874-1893* (Honolulu: University of Hawai‘i Press, 1967), 228. Kalākaua’s motto was “*bo‘oulu labu*” (increase the race). The native population was decimated by foreign diseases of which they had no immunity, and Hawaiian leaders sought a resolution by introducing foreigners to intermarry.

⁶⁰ Gonschor, *A Power in the World*, 76-87.

⁶¹ Persian Foreign Minister to Hawaiian Foreign Minister, F.O. Ex. 1886 Misc. Foreign, July-September, Hawai‘i Archives.

⁶² Gonschor, “Ka Hoku o Osiania,” 163.

⁶³ Mr. Irwin to the Japanese Minister for Foreign Affairs, 18 January 1893, in *British and Foreign State Papers*, vol. 86, 1893-1894, edited by Augustus H. Oakes and Willoughby Maycock (London: Her Majesty’s Stationery Office, 1899), 1186.

⁶⁴ The Japanese Minister for Foreign Affairs to Mr. Irwin, in *ibid.*, 1186-1187.

⁶⁵ Robert Louis Stevenson, *A Footnote to History: Eight Years of Trouble in Samoa* (New York: Charles Scribner’s Sons, 1895), 59.

⁶⁶ Thos. G. Thrum, *Hawaiian Almanac and Annual for 1892* (Honolulu: Press Publishing Co., 1891), 11.

⁶⁷ *Ibid.*

total population of the Hawaiian Kingdom in 1890 was 89,990. The country's primary trading partners were the United States, Great Britain, Germany, British Columbia, Australia and New Zealand, China and Japan, and France.⁶⁸

While preparing to celebrate the fiftieth anniversary of Hawaiian independence, the Hawaiian Kingdom was invaded, without just cause, by American troops on 16 January 1893. Under orders of U.S. minister John Stevens, "a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu."⁶⁹ This invasion force coerced Queen Lili'uokalani to conditionally surrender to the superior power of the United States military, on which 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."⁷⁰

President Cleveland initiated an investigation on 11 March 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and to provide periodic reports to Secretary of State Walter Gresham. After receiving the final report from Special Commissioner Blount, Gresham, on 18 October 1893, notified the president:

The Government of Hawaii surrendered its authority under threat of war, until such time 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. Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.⁷¹

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.⁷² "Countries were either in a state of peace or a state of war; there was no intermediate state."⁷³ This distinction is also reflected by the renowned jurist of international law, Lassa Oppenheim, who separated his treatise on *International Law* into two volumes: *Peace* (volume 1) and *War and Neutrality* (volume 2).⁷⁴ In the nineteenth century, war was recognized as lawful if justified under *ius ad bellum*. International law distinguishes the state, being the subject of international law, from its government, being the subject of the state's municipal law.⁷⁵ In *Texas v. White*, the United States Supreme Court stated that "a plain distinction is made between a State and the government of a State."⁷⁶ Therefore, the military overthrow of the government of a state by another state's military in a state of war does not equate to an overthrow of the state itself. Its sovereignty and legal order continue to exist under international law, and the occupying state, when it

⁶⁸ Ibid., 33.

⁶⁹ United States House of Representatives, *Executive Documents*, 451.

⁷⁰ Ibid., 586.

⁷¹ Ibid., 462-463.

⁷² Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflict* (New York: Oxford University Press, 1995), 39-63, 39.

⁷³ United States House of Representatives, *Executive Documents*, 586.

⁷⁴ L. Oppenheim, *International Law: A Treatise*, vol. 1, *Peace* (London: Longmans, Green & Co., 1905) and vol. 2, *War and Neutrality* (London: Longmans, Green & Co., 1906).

⁷⁵ Sai, "The Royal Commission of Inquiry," in Sai, *The Royal Commission of Inquiry*, 11, 13-14.

⁷⁶ *Texas v. White*, 74 U.S. 700, 721 (1868).

is in effective control of the occupied state's territory, is obligated to administer the laws of the occupied state until a treaty of peace.

An example of this principle was the overthrow of Spanish governance in Santiago de Cuba in July 1898. The military overthrow did not transfer Spanish sovereignty to the United States but triggered the customary international laws of occupation later codified under article 43 of the 1899 Hague Regulations and the 1907 Hague Regulations, whereby the occupying state has a duty to administer the laws of the occupied state over territory of which it is in effective control. This customary law was the basis for General Orders no. 101, issued by President McKinley to the War Department on 13 July 1898:

Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force...⁷⁷

An armistice was eventually signed by the Spanish government on 12 August 1898, after its territorial possessions of the Philippines, Guam, Puerto Rico, and Cuba were under the effective occupation of U.S. troops. This led to a treaty of peace that was signed in Paris on 10 December 1898 ceding Spanish territories of Philippines, Guam and Puerto Rico to the United States.⁷⁸ It was after 11 April 1899 that Spanish title and sovereignty was transferred to the United States and American municipal laws replaced Spanish municipal laws that previously applied over the territories of the Philippines, Guam, and Puerto Rico. Unlike Spain, there is no treaty where the Hawaiian Kingdom ceded its territory to the United States.

On 18 December 1893, President Cleveland notified Congress that the “military demonstration upon the soil of Honolulu was of itself an act of war,”⁷⁹ and that “Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands...except the United States Minister.” He also determined “that the provisional government owes its existence to an armed invasion by the United States.”⁸⁰ And, finally, the president admitted that by “an act of war...the Government of a feeble but friendly and confiding people has been overthrown.” Customary international law at the time obligated the United States, as an occupying state, to provisionally administer the laws of the Hawaiian Kingdom, being the occupied state, until “either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant.”⁸¹

Through executive mediation an agreement of restoration was reached on 18 December 1893.⁸² Political wrangling in the Congress, however, blocked the president from carrying out his obligation under the agreement. Five years later, at the height of the Spanish-American War, President William McKinley, Cleveland's successor, unilaterally annexed the Hawaiian Islands by congressional legislation on 8 July 1898, in violation of international law at the time. Senator William Allen clearly stated the limitations of United States laws when the resolution of annexation was debated on the floor of the Senate on 4 July 1898. Allen argued:

⁷⁷ *Ochoa v. Hernandez*, 230 U.S. 139, 155 (1913).

⁷⁸ 30 Stat. 1754 (1899).

⁷⁹ United States House of Representatives, *Executive Documents*, 451.

⁸⁰ *Ibid.*, 454.

⁸¹ Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Clarendon Press, 1996), 224.

⁸² United States House of Representatives, *Executive Documents*, 1269-1270, 1283-1284.

The Constitution and the statutes are territorial in their operation; that is, they can not have any binding force or operation beyond the territorial limits of the government in which they are promulgated. In other words, the Constitution and statutes can not reach across the territorial boundaries of the United States into the territorial domain of another government and affect that government or persons or property therein.⁸³

Two years later, when the Senate was considering the formation of a territorial government for Hawai‘i, Allen reiterated, “I utterly repudiate the power of Congress to annex the Hawaiian Islands by a joint resolution such as passed the Senate. It is ipso facto null and void.”⁸⁴ Krystyna Marek asserts that “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”⁸⁵ Only by way of a treaty can one state acquire the territory of another state.

Without a treaty between the Hawaiian Kingdom and the United States whereby Hawaiian territory had been ceded, strictly speaking congressional laws have no effect within Hawaiian territory. This is what prompted the U.S. Department of Justice in 1988 to admit it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.”⁸⁶ The conclusion by the Justice Department is in line with the United States Supreme Court, which stated in a 1824 decision that the “laws of no nation can justly extend beyond its own territories [and they] can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”⁸⁷ Furthermore, under international law, the Permanent Court of International Justice stated:

Now 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.⁸⁸

On 28 February 1997, a group of Hawaiian subjects set up a restored government of the Hawaiian Kingdom under a Regency in accordance with the kingdom’s constitutional law.⁸⁹ 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, 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-legal changes in government” of an existing State.⁹⁰ Successors to King Kamehameha III were not established through “extra-legal changes,”

⁸³ 31 Cong. Rec. 6635 (1898).

⁸⁴ 33 Cong. Rec. 2391 (1900).

⁸⁵ Krystyna Marek, *Identity and Continuity of State in Public International Law*, 2nd ed. (Geneva: Librairie Droz, 1968), 110.

⁸⁶ Douglas W. Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea,” *Opinions of the Office of Legal Counsel of the United States Department of Justice*, vol. 12 (Washington, DC: Government Printing Press, 1996), 238, 252.

⁸⁷ *The Appollon*, 22 U.S. 362, 370 (1824).

⁸⁸ *Lotus* case (France v. Turkey), PCIJ Series A, No. 10, 18 (1927).

⁸⁹ David Keanu Sai, “The Royal Commission of Inquiry,” 18-23; Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” The Hawaiian Kingdom, 24 May 2020, online; and Royal Commission of Inquiry, “Preliminary Report: The Authority of the Council of Regency of the Hawaiian Kingdom,” The Hawaiian Kingdom, 27 May 2020, online.

⁹⁰ M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* (New York: St. Martin’s Press, 1997), 26.

but rather under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “Where 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.”⁹¹

Two years later, the restored government found itself in a dispute with one of its nationals, Lance Larsen, who alleged that the Regency was liable “for allowing the unlawful imposition of American municipal laws over [his] person within the territorial jurisdiction of the Hawaiian Kingdom.” On 8 November 1999, the dispute was submitted to binding arbitration at the Permanent Court of Arbitration, The Hague, Netherlands, whereby the Secretariat acknowledged the continued existence of the Hawaiian Kingdom as a state in *Larsen v. Hawaiian Kingdom*, and the Council of Regency as its government.⁹² Because the United States was a necessary third party for Larsen to maintain his suit against the Hawaiian government and the United States denied the offer by the parties to join in the arbitration, the dispute came to an end on 5 February 2001.

This awareness of Hawai‘i’s prolonged occupation brought about by the *Larsen* case also caught the attention of United Nations Independent Expert, Dr. Alfred-Maurice de Zayas, in Geneva, Switzerland. In a letter to members of the judiciary of the State of Hawai‘i dated 25 February 2018, de Zayas concluded:

I have come to understand that the lawful political status of the Hawaiian Islands is that of 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 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).⁹³

Despite over a century of revisionist history, “the continuity of the Hawaiian Kingdom as a sovereign State is grounded in the very same principles that the United States and every other State have relied on for their own legal existence.”⁹⁴ The Hawaiian Kingdom is a magnificent story of perseverance and continuity.⁹⁵

⁹¹ American Law Institute, *The Restatement Third of the Foreign Relations Law of the United States* (St. Paul, MN: American Law Institute Publishers, 1987), §203, comment c .

⁹² Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, online; also David Bederman and Kurt Hilbert, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii,” *American Journal of International Law* 95:4 (2001): 927-933; and *Larsen v. Hawaiian Kingdom*, 119 Int’l L. Rep. 566 (2001).

⁹³ Sai, “The Royal Commission of Inquiry,” 33.

⁹⁴ David Keanu Sai, “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai‘i today,” *Journal of Law and Social Challenges* 10 (2008): 132.

⁹⁵ Sai, *The Royal Commission of Inquiry*.

Enclosure “3”

Anita Budziszewska*

Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom

edited by Dr. David Keannu Sai, Head of the Hawaiian
Royal Commission of Inquiry, 2020, 380pp.

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The subject of review here is the multi-author publication *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, edited by Dr. David Keannu Sai, Head of the Hawaiian Royal Commission of Inquiry, published in 2020. The book is divided into three parts, i.e. Part 1 *Investigating war crimes and human rights violations committed in the Hawaiian Kingdom*; Part 2 *The prolonged occupation of the Hawaiian Kingdom*; and Part 3 *Hawaiian law, treaties with foreign states and international humanitarian law*. This final part represents a collection of source documents in such fields as Hawaiian law, but also international-law treaties with foreign states (in fact 18 including the USA) – dating back to the 19th century. A selection of treaties from the sphere of international humanitarian law has also been made and included.

The essence of the publication nevertheless resides in its two first parts, in which the authors offer an in-depth treatment of the complicated long-time relationship between Hawaii and the United States. Nevertheless, the thesis pursued here overall is the straightforward one that Hawaii has been

* University of Warsaw, e-mail: anita.budziszewska@uw.edu.pl, <https://orcid.org/0000-0002-1950-2612>

occupied illegally and incorporated into the United States unlawfully, with that occupation continuing to the present day and needing to be understood in such terms. The authors also pursue the difficult thread of the story relating to war crimes.

The above main assumption of the book is emphasised from the very beginning of Part I, which is preceded by the text of the Proclamation Establishing the Royal Commission of Inquiry, recalling that that Commission was established to “ensure a full and thorough investigation into the violations of international humanitarian law and human rights within the territorial jurisdiction of the Hawaiian Kingdom.”¹

In fact, the main aim of the above institution as called into being has been to pursue any and all offences and violations in the spheres of humanitarian law, human rights and war crimes committed by the Americans in the course of their occupation of Hawaii – which is given to have begun on 17 January 1893.

Presented next is the genesis and history of the Commission’s activity described by its aforementioned Head – Dr. David Keanu Sai. He presents the Commission’s activity in detail, by reference to concrete examples; with this part going on to recreate the entire history of the Hawaiian-US relations, beginning with the first attempt at territorial annexation. This thread of the story is supplemented with examples and source texts relating to the recognition of the Hawaiian Kingdom by certain countries (e.g. the UK and France, and taken as evidence of international regard for the integrity of statehood). Particularly noteworthy here is the author’s exceptionally scrupulous analysis of the history of Hawaii and its state sovereignty. No obvious flaws are to be found in the analysis presented.

It is then in the same tone that the author proceeds with an analysis relating to international law, so as to point to the aspects of Hawaii’s illegal occupation by the United States – including an unprecedentedly detailed analysis of the contents of documents, resolutions, mutual agreements and official political speeches, but also reference to other scientific research projects. This very interesting strand of the story is followed by Matthew Craven in Chapter 3 on the *Continuity of the Hawaiian Kingdom as a State under International Law*. Notwithstanding the standpoint on the legality of the occupation or annexation of Hawaii by the United States, the matter of the right to self-determination keeps springing up now and again.

1. *Proclamation Establishing the Royal Commission of Inquiry*, in: *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. D.K. Sai, Royal Commission of Inquiry 2020, p. 8.

Considerable attention is also paid to the multi-dimensional nature of the plebiscite organised in 1959 (with regard to Hawaii's incorporation as a state into the United States of America), with the relative lack of transparency of organisation pointed out, along with various breaches and transgressions that may have taken place.

In turn, in Chapter 4 – on *War Crimes Related to the United States' Belligerent Occupation of the Hawaiian Kingdom* – William Schabas makes attempts to verify the assertion, explaining the term war crimes and referring to the wording of the relevant definition that international law is seen to have generated. The main problem emerging from this concerns lack of up-to-date international provisions as regards the above definition. The reader's attention is also drawn to the incomplete nature of the catalogue of actions or crimes that could have constituted war crimes (in line with the observations of Lemkin).²

While offering narration and background, this Chapter's author actually eschews Hawaiian-US examples. Instead, he brings the discussion around to cases beyond Hawaii, and in so doing also invokes examples from case-law (e.g. of Criminal Courts and Tribunals). While this is a very interesting choice of approach, it would still have been interesting for the valuable introduction to the subject matter to be supplemented by concrete examples relating to Hawaii, and to the events occurring there during the period under study.

Chapter 5 – on *International Human Rights Law and Self-Determination of Peoples Related to the United States' Occupation of the Hawaiian Kingdom* – allows its author Federico Lenzerini to contribute hugely to the analysis of the subject matter, given his consideration of the human rights protection system and its development with a focus on the right to self-determination. The author separates those dimensions of the law in question that do not relate to the Hawaiian Kingdom³, as well as those that may have application to the Hawaiian society.⁴ Indeed, the process ends with *Applicability of the Right to Self-Determination During the American Occupation* – a chapter written with exceptional thoroughness, objectivity and synthesis. The author first tells the story on how the human rights protection system came to be formulated (by the 1948 Universal Declaration of Human Rights and the Covenants of 1996, but also by reference to other Conventions). Rightly signalled is the institutional dimension to the protection of human rights, notably the Human Rights Committee founded to protect the rights outlined in the Covenant on Civil and Political Rights. It is of course recalled that the US is not a party to the relevant Protocols, which is preventing US citizens from assert-

2. W. Schabas, *War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom*, in: *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. D.K. Sai, Royal Commission of Inquiry 2020, p. 156.

3. F. Lenzerini, *International Human Rights Law and Self-Determination of Peoples Related to the United States' Occupation of the Hawaiian Kingdom*, in: *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. D.K. Sai, Royal Commission of Inquiry 2020, p. 212.

4. *Ibidem*, p. 214.

ing the rights singled out in the 1966 Covenants.⁵ Again rightly, attention is also paid to the regional human rights mechanism provided for by the 1969 American Convention on Human Rights, which also lacks the United States as a party.

The focus here is naturally on the right to self-determination, which the author correctly terms the only officially recognised right of a collective nature (if one excludes the rights of tribal peoples). The further part of the chapter looks at the obligations of states when it comes to safeguarding their citizens' fundamental human rights. The philosophical context underpinning the right to self-determination is considered next (with attention rightly paid first to liberty related aspects and the philosophical standpoints of Locke and Rousseau⁶, along with the story of the formulation of this right's ideological basis and reference to what is at times a lack of clarity regarding its shape and scope (not least in Hawaii's case).⁷ What is therefore welcome is the wide-ranging commentary offered on the dimensions to the above rights that do relate to Hawaiian society as well as those that do not.

In summing up the substantive and conceptual content, it is worth pointing to the somewhat interdisciplinary nature of the research encompassed. Somewhat simplifying things, this book can first be seen as an in-depth analysis of matters historical (with much space devoted to the roots of the relations between Hawaii and the United States, to the issue of this region's occupation and the genesis of Hawaii's incorporation into the USA). These aspects have all been discussed with exceptional thoroughness and striking scrupulousness, in line with quotations from many official documents and source texts. This is all pursued deliberately, given the authors' presumed intention to illustrate the genesis of the whole context underpinning the Hawaiian-US relations, as well as the further context through which Hawaii's loss of state sovereignty came about. This strand to the story gains excellent illustration thanks to Dr. Keannu Sai.

The second part is obviously international law related and it also has much space devoted to it by the authors. The publication's core theses gain support in the analysis of many and varied international documents; be these either mutual agreements between Hawaii and the United States or international Conventions, bilateral agreements of other profiles, resolutions, instruments developed under the aegis of the UN or those of a regional nature (though not only concerned with the Americas, as much space is devoted to European solutions, and European law on the protection of human rights in particular). There is also much reference to international case-law and juris-

5. *Ibidem*, p. 177.

6. *Ibidem*, p. 209.

7. *Ibidem*, p. 214.

prudence in a broader sense, the aim being to indicate the precedents already arrived at, and to set these against the international situation in which Hawaii finds itself.

However, notwithstanding this publication's title, the authors here do not seek to "force-feed" readers with their theses regarding Hawaii's legal status. Rather, by reaching out to a wide range of sources in international law as well as from history, they provide sufficient space for independent reflection and drawing of conclusions. In this regard, it would be interesting if few remarks were devoted to present-day relations between Hawaii and the rest of the USA, with a view to achieving a more-profound illustration of the state of this relationship. However, it might seem from the book's overall context that this was done deliberately so that the foundations of this unique dispute gain proper presentation. All is then augmented further by Part 3 – the collection of agreements and documents considered to sustain the main assumptions of the publication under review. Were I to force myself to point out any failure of the book to meet expectations, I would choose the cultural dimension. There is no way of avoiding an impression – only enhanced by cover-to-cover reading – that this publication is deeply rooted in the Hawaiians' sense of cultural and historical identity. So it would have been interesting to see the cultural dimension addressed, including through a more in-depth analysis of social awareness. At the very least, I have in mind here Article 27 UDHR, traditionally regarded as the source of the right to culture and the right to participate in cultural life. To be added to that might be Article 15 of the International Covenant on Economic, Social and Cultural Rights, as well as Article 27 of the International Covenant on Civil and Political Rights. While (as Boutros Boutros-Ghali noted in 1970) the right in question initially meant access to high culture, there has since been a long process of change that has seen an anthropological dimension conferred upon both culture and the right thereto. A component under that right is the right to a cultural identity⁸ – which would seem to be the key space in the Hawaiian context. The UN and UNESCO have in fact been paying a great deal of attention to this matter, with the key relevant documents being the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* that in general links these issues with the human rights dimension as well as the *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It* (1976).

So a deeply-rooted cultural-identity dimension would have offered an interesting complement to the publication's research material, all the more so as it would presumably reveal the attempts to annihilate that culture (thus striking not merely at statehood, but at national integrity of identity). An interesting approach would then have been to show in details whether and to what extent

8. See: Y.M. Donders, *Towards a Right to Cultural Identity?*, Intersentia 2002.

this is resisted by the USA (e.g. in regard to the upholding of symbols of material and non-material cultural heritage).

However, given the assumption the book is based on – i.e. the focus on state sovereignty (not the right of cultural minorities, but the right of a nation to self-determination), the above “omission” actually takes nothing away from the value of the research presented. However, the aspect of national identity – of which cultural and historical identity is a key component – may represent an impulse for further, more in-depth research.

I regard this publication as an exceptionally valuable one that systematises matters of the legal status of the Hawaiian Kingdom, taking up the key issues surrounding the often ignored topic of a difficult historical context occurring between Hawaii and the United States. The issue at stake here has been regenerated synthetically, on multiple levels, with a penetrating analysis of the regulations and norms in international law applying to Hawaii – starting from potential occupied-territory status, and moving through to multi-dimensional issues relating to both war crimes and human rights. This is one of the few books – if not the only one – to describe its subject matter so comprehensively and completely. I therefore see this work as being of exceptional value and considerable scientific importance. It may serve not only as an academic source, but also a professional source of knowledge for both practicing lawyers and historians dealing with the matter on hand. The ambition of those who sought to take up this difficult topic can only be commended.

Donders Y.M., *Towards a Right to Cultural Identity?*, Intersentia 2002.

Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom, ed. D.K. Sai, Royal Commission of Inquiry 2020.

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