



# Hawai'i

## An Occupied Country

**NOELANI GOODYEAR-KA'OPUA**

One hundred and twenty years have passed since the United States Marines were deployed to support a coup by a small group of sugar businessmen against the democratically elected, Native-led, independent government of Hawai'i. Presently, the Hawaiian struggle to end what is considered, in international law, a prolonged military occupation continues. It has been one hundred and twenty years since US President Grover Cleveland told Congress that its military and diplomatic representatives had committed an "act of war" against a country with which the US had numerous treaties of friendship and commerce. Today, the Hawaiian people still maintain that our sovereignty endures.

These facts, however, are little known to most Americans and the eight million people who visit Hawai'i each year. Though people around the world see the Hawaiian Islands as a tourist destination and a site for real estate investment, few are aware of the on-going dispute over political sovereignty and land.

By the late-1800s, the independent Hawaiian King-

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dom government was recognized by all the major powers of the world. A member of the Universal Postal Union, the Hawaiian Kingdom government established over ninety legations and consulates in multiple cities around the world. Comprised of a multiethnic citizenry in which aboriginal people—Kanaka Maoli—were the majority, the Hawaiian Kingdom had its own national school system and boasted a literacy rate as high, if not higher, than all the major world powers of the time.

The onset of prolonged US occupation that began in 1898 abruptly halted the growth of Hawaiian national life. Control of the national land base was wrested from

the Hawaiian Kingdom. The Hawaiian language was also banned and for most of the 20th century, Hawai'i did not have a single school that made the Native Hawaiian language or culture central to its curriculum. Stories of Hawaiian resistance to American takeover were hidden and overwritten by American historical narratives and fabricated to make people believe there was a legal merger between the Hawaiian Kingdom and the United States. In fact, no such treaty was ever ratified.

Roughly 1.8 million acres of Hawaiian national lands were seized by the US in 1898, and not a single acre has been returned to Hawaiian sovereign control. The stifling of Hawaiian legal and political sovereignty continues to have all sorts of harmful effects on Kanaka Maoli. In 1983, the first two major studies on the status of Native Hawaiians were completed: the Native Hawaiian Educational Assessment project and the Native Hawaiian Study Commission report. Both showed that Kanaka Maoli had the highest rates of family poverty, incarceration, academic underachievement (including drop-out and absentee rates) and various negative health indicators. These such "health indicators" included behavioral health such as suicide and depression. Data gathered in the first decade of the 2000s show that these statistics remain largely unchanged thirty years later.<sup>1</sup> This is why issues of land and sovereignty remain so urgent.

### *Land and Sovereignty Struggles: Two Streams*

The vast majority of the lands controlled by the US federal government and the State of Hawai'i are the Hawaiian Kingdom's Crown and Government lands that were seized at the start of the US occupation in the 1890s. Of the four million acres that make up the islands, 1.8 million comprise these two classes of seized Hawaiian national lands. Under US control, the two separate inventories of lands became co-mingled.

Just over twenty years later, the US government threw a crumb toward the benefit of native Hawaiians. In 1921, the US Congress set aside 200,000 acres for a beneficiary class defined by a 50 percent blood quantum. Thus the statute came to define "native Hawaiian" in those fractionalizing terms. In 1959, the US federal government transferred the remainder of lands that were not reserved for US military usage or for the Hawaiian Homelands trust to the newly formed State of Hawai'i.

These lands are frequently referred to as the "ceded

<sup>1</sup> For instance, a 2010 study on "The Disparate Treatment of Native Hawaiians in the Criminal Justice System" documented the ways disparate treatment of Native Hawaiians is apparent at every stage in the criminal justice system from arrest through parole. The biennial Youth Risk Behavior Survey, a project of the Centers for Disease Control and Prevention, shows that year after year Native Hawaiian high school students attempt suicide at least twice as often as non-Hawaiian students, and Native Hawaiian high school females are raped at roughly twice the rate of non-Hawaiians. As compared with non-Hawaiian students in Hawai'i and all public high school students in the U.S., Native Hawaiian youth have the highest rates of self-reported drug use and almost all other high-risk behaviors measured on the survey.

lands," a moniker which many Kanaka Maoli oppose, since the lands were illegally seized from, rather than legally transferred by, the Hawaiian Kingdom.

In post-World War II Hawai'i, hotels and resorts replaced sugar plantations. Newly built luxury homes and suburban sprawl accommodated the rush of US American settlers in the years after 1959. These "developments" displaced people who continued to live "Hawaiian style," relying on land-based subsistence practices like fishing, gathering and farming. Multiethnic working class communities began to challenge the unfulfilled commitments of a post-WWII, local political establishment that had risen to power on promises of land reform. In addition to



**A "native Hawaiian" in a traditional lei and headdress on the Washington Mall during the grand opening of the Smithsonian National Museum of the American Indian.**

anti-eviction movements, struggles were waged against the continued use and destruction of Hawaiian lands by the US military. Out of these diverse land struggles, a Hawaiian cultural and political nationalist consciousness re-emerged.

Over the next few decades, two parallel streams of thought developed within the Hawaiian sovereignty movement. One sought some measure of justice within existing structures of the US government. This has included a "nation-within-a-nation" approach, which seeks US federal recognition of a domestic-dependent, "reorganized" and ethnically defined Hawaiian nation. The other stream fundamentally questioned the jurisdiction of the US in Hawai'i, invoking fundamental principals of international law and emphasizing the independence of Hawai'i as a country unto itself.

The “nation within a nation” stream of the Hawaiian sovereignty movement grew out of a pragmatic desire to uplift Native Hawaiian people by accessing collective resources held by the settler state. In the late-1970s, the Council of Hawaiian Organizations and Alu Like sponsored a series of meetings that brought together hundreds of representatives of different Hawaiian associations. The sessions produced many ideas about how to improve the collective conditions of the Hawaiian people. One strand emphasized holding the State government accountable to its legal mandate to use the public lands under its control to benefit Hawaiians.

A fiery leader from Waianae, Adelaide “Frenchy” DeSoto, represented her district in the 1978 Hawai‘i State Constitutional Convention and became the chair of the Hawaiian Affairs committee. She championed the initiative to create an office within the State’s system that is intended to receive 20 percent of the revenues from the Public Lands Trust (since the betterment of native Hawaiians is one of five purposes laid out in the Admissions Act). As a result, the Office of Hawaiian Affairs (OHA) was

Sand Island in 1980 pointed out that the “ceded lands” were in fact stolen Hawaiian lands. After their arrest for resisting the State’s eviction of Sand Island residents in 1980, Puhipau and his two brothers, Bobby and Walter Paulo, retained Pōkā Laenui to represent them based on the argument that the US had no jurisdiction over these lands.

Over the next two decades more and more people began to remember the Hawaiian Kingdom lands as such and began referring to them as “sovereign lands,” or simply “Hawaiian lands.” Building consciousness about the history, status, and health of these lands provided a critical piece in the development of Hawaiian sovereignty discourse. Independence leaders that rose to prominence throughout the 1980s and 1990s, such as Kīhei Soli Niheu, Keli‘i Skippy Ioane, and Kekuni Akana Blaisdell, rejected reconciliation approaches and argued for nothing less than full autonomy, recognizing the connection between the health of the people and our ability to connect to our lands.

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established in 1978 to utilize the income derived from the Public Lands for the benefit of native Hawaiians and to have ownership of any property conveyed to that entity.

At the same time though, many K naka were concerned to push further than simply holding the settler government responsible for its historical neglect of trust responsibilities under its own laws. People began to challenge the very legitimacy of the US Federal and State of Hawai‘i governments on Hawaiian soil in the first place.

The same year that OHA was established, attorney Pōkā Laenui challenged US jurisdiction in his 1978 motion to dismiss a case brought by the State of Hawai‘i against Wilford “Nappy” Pulawa. Whereas OHA was founded to work within the settler state system, Laenui was arguing: “We are not American citizens, we are citizens of the nation of Hawai‘i, and we refuse to dignify the court by entering a plea.”<sup>2</sup> Beyond the courts, protests at specific sites brought to light the buried history of the Hawaiian Kingdom lands. For instance, anti-eviction protesters at

to build a broad, popular movement of educated Hawaiians who can then exercise their right to informed self-determination. The massive organization of Hawaiians in the 1990s required popular education based on sound research. Not only academics but also people of all vocations were striving to remedy a century of historical miseducation, or lack thereof. This movement of informal and formal education has included community-based educational workshops, dramatic reenactments of key moments in the history of Hawaiian sovereignty, documentary films, books, marches, music, and legal cases.

In 1998, petitions documenting the mass resistance of 19th century Hawaiian citizens to US annexation were brought to light, through the research of Dr. Noenoe Silva and others. Nicknamed the “Kū‘ē petitions,” the stacks of paper moved many toward the independence side of the sovereignty movement spectrum. Many individuals came forward to look at and touch the signatures of their ancestors who expressed their opposition to Hawai‘i’s incorporation into the United States.

The petitions had been successful in helping to defeat attempts to pass a treaty of annexation through the US Congress in 1897. According to the US constitution, treat-

2. Quoted and discussed in Vogeler, “Outside Shagri La: Colonization and the US Occupation of Hawai‘i” in *A Nation Rising: Hawaiian Movements for Life, Land and Sovereignty*. Goodyear-Ka‘ōpua, Hussey and Wright, eds. Durham: Duke University Press, 2014.

ties must be ratified by a two-thirds majority vote of the Senate. The 1898 Newlands Resolution, by which the US claimed Hawai'i, was a Joint Resolution of Congress passed by a simple majority. In the 55th Congress of the United States, both chambers had a Republican majority. The House of Representatives had 357 total members, and the final vote on the Newlands Resolution was 209 in favor and 91 opposed. The Senate, after some secret debates, voted 42 to 21 with 26 senators abstaining. One will not find the Newlands Resolution on a listing of bilateral treaties to which the United States has been or is currently a party, because it is not a treaty. The Kū'ē petitions helped bring this history to light and catalyzed Hawaiian movement,

the Hawaiian people.

Since then, the U.S. has not done either. And so the efforts to raise international awareness have continued, and have ramped up in the last two years. In August 2012, Dr. David Keanu Sai filed a Protest and Demand, on behalf of the Hawaiian Kingdom, with the President of the United Nations General Assembly (UNGA). The document calls all forty-six States and one hundred twenty-seven successor States who are parties to treaties with the Hawaiian Kingdom to honor their treaty relations and obligations by recognizing the United States of America's presence and authority in Hawai'i as unlawful under international law. The Protest was received and acknowledged by Dr. Hanifa Mezoui of the Office of the UNGA President. The Protest was also acknowledged by the Executive Secretary of the G-77, the largest intergovernmental organization of developing countries in the United Nations, and by the Executive Secretary of the Council of Presidents, a think tank of former Presidents of the United Nations that advise the sitting President of the General Assembly.

Most recently, in June 2013, a Hawaiian delegation carried a similar message about Hawai'i's political history to Indigenous allies from around the world gathered in Alta, Norway. Representatives of Indigenous nations from every region in the world had gathered for an international preparatory meeting for the UN World Conference on Indigenous People (WCIP) to be held in 2014. The WCIP will

not be a conference of Indigenous people but rather of high-level plenary meeting UNGA member states talking about Indigenous people. Thus, the Alta meeting was an opportunity for Indigenous leaders to come together and put forward a document representing Indigenous voices for the upcoming WCIP.

Attorney and Hawaiian representative, Dexter Ke'eaumoku Ka'iaha carried a communiqué (quoted in the epigraph of this article) asserting the continuity of Hawaiian political independence despite on-going US occupation. The Hawaiian statement was signed by 190 people who identify as Hawaiian nationals—citizens of independent Hawai'i—including community leaders, former elected officials, public school teachers, librarians, filmmakers, accountants, peace facilitators, tradesmen, academics, and attorneys. The Hawaiian statement at Alta is evidence of at least two things: the on-going struggle for Hawaiian land and sovereignty, and the ambivalent



**A native Hawaiian wears an American flag after protesters cut out the 50th star at a rally on the 50th anniversary of Hawaiian statehood in Honolulu advocating for an independent Hawaii.**

once again, at the dawn of the 21st century.

### *Independence and International Awareness*

In the last two decades, Hawaiian independence supporters have made concerted efforts to remind the international community about Hawaiian national sovereignty and to generate some level of pressure on the US. The United Nations General Assembly declared 1993 as the International Year of the World's Indigenous People, and that same year the Kanaka Maoli, led by Dr. Kekuni Blaisdell, convened a Peoples' International Tribunal, Ka Ho'okolokolo Nui Kanaka Maoli. It investigated the US role in obstructing Hawaiian sovereignty and in various acts of genocide against the Hawaiian nation. In their findings, the panel of nine judges called for two main actions: that the U.S. return all the Hawaiian national lands without delay to Kanaka Maoli, and that the U.S. observe the UN Declaration of the Rights of Indigenous Peoples as the minimum standard in its interactions with

relationship that Hawaiians today have with the category “Indigenous.”

This is because settler states such as the US, Canada and Australia have consistently worked to confine Indigenous self-determination to a limited level of self-governance over internal affairs but perpetually subordinate to the settler’s sovereignty.

### *The Limits of State-defined Indigeneity*

Following the “nation-within-a-nation” approach that mirrors tribal governance within Indian Country, the State of Hawai‘i’s U.S. congressional delegation has pushed for US federal recognition of Native Hawaiians. The “Akaka bill,” or Native Hawaiian Government Reorganization Act, has been introduced into the US Senate each year since 2000. However, it has never passed, and in the last decade no hearing on the legislation has ever been held in Hawai‘i. The legislation defines Native Hawaiians as “indigenous, native people of the United States” and maintains that the US has legitimate sovereignty over the Hawaiian archipelago—a claim which Hawaiian historians, political scientists and activists have now challenged for years.

Since federal recognition legislation has been unsuc-



**Thousands of native Hawaiians and local supporters carry large Hawaii state flags as they march for “Ku I Ka Pono” of “justice for Hawaiians”.**

cessful, Hawai‘i State lawmakers made a move toward state-level recognition with the passage of Act 195 in 2011. While Sai was delivering the aforementioned Petition and Demand to the UN in the summer of 2012, Hawai‘i State Governor Neil Abercrombie and the Native Hawaiian Roll Commission (created by Act 195) were launching an

initiative to create a base roll of Native Hawaiians. This roll will be a registry of individuals who will be eligible to participate in the formation of “a reorganized Native Hawaiian governing entity.”

The terms “reorganized governing entity” and “reorganization” have a specific history within US law dating back to the 1934 Indian Reorganization Act. After a period of ignoring all treaties with Indian nations, “reorganization” allowed for limited self-governance under US plenary power. The reorganized governing entities were not modeled on Indigenous forms of governance but rather on American-styled bureaucratic and representative forms. The terms “self-governance” and “self-determination” also have a specific history and meaning in US law.

The difference between “governance” or “governing entity” and “government” are crucial. Native “self-governance” or “self-determination,” in US legal terms, typically includes a limited form of governance that can, but does not necessarily, include taxation on tribal lands, enforcement of civil and criminal law on tribal lands, and licensing and regulating activities on those lands. The relationship between the tribe and the state varies from case to case.

If the Native Hawaiian registry is successful, there is no guarantee that US federal recognition will be forthcoming, since such recognition is contingent upon the political winds of the time. Additionally, the state-level enrollment effort has struggled because people are unsure of what exactly is at stake. Like the 1993 Apology Bill passed by the US Congress, the State’s Act 195 does not put any lands or specific rights on the table. Initiatives, such as Act 195, that are geared toward ethnic, Indigenous Hawaiians within the framework of US domestic law, do not address a major issue: the Hawaiian Kingdom was an internationally-recognized, multi-ethnic country, in which Kanaka Maoli were the majority but not the only citizen subjects.

The question remains: what obligations do the US and the State of Hawai‘i have with respect to Kanaka Maoli and Hawaiian sovereignty? Land is, and always will be, the crux of the issue. Whether a formal process of deoccupation or decolonization is undertaken, the US and State of Hawai‘i must commit to transferring back the lands that originally belonged to and were illegally seized from the Hawaiian Kingdom. Since such a process would likely take many years if not decades, in the meantime the settler state has an obligation to create as many opportunities as possible for Kanaka Maoli and other Hawaiian nationals to reconnect with lands for cultural, ceremonial, subsistence and educational purposes. Moreover, these lands should not be transferred, further built upon, or exploited until the Hawaiian national claims to them are settled. [\[4\]](#)