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American Imperialism in Hawai'i: How the United States Illegally Usurped a Sovereign Nation and Got Away With It

by Noelani Nasser*

Abstract

In 1778, England's Captain Cook first landed on the Hawaiian Islands. Since then, the Native Hawaiians have struggled to maintain their indigenous identity as distinct from the outside world and indigenous to Hawai'i. In the one thousand years preceding this early invasion, Native Hawaiians established unique political structures and cultural identities that were not present in England or the newly independent United States. Following the United States' overthrow of the Hawaiian monarchy in 1893, the United States quickly enacted legislation that severely impacted the Native Hawaiians. This paper will discuss historical events in Hawai'i from 1778 to the twenty-first century that demonstrate the atrocities and injustices of American imperialism that prevented the Native Hawaiians from profiting from the islands' rich lands in a period of immense economic growth, stemming largely from agricultural developments. As a result of Americans seizing the Hawaiian lands for their own economic benefit and their subsequent disregard for the plight of an entire indigenous culture and people, Native Hawaiians are left by the wayside. American imperialism systematically disregarded the value of this native group's culture and history and now only calls for remembering Native Hawaiians when it serves the interests of furthering their imperial agenda.

Introduction

"[T]he Hawaiian Islands . . . [make up 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."¹ This powerful and

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pointed message came from a memo by Alfred de Zayas of the Office of the Commissioner for Human Rights at the United Nations in Geneva in February of 2018. In his memo, De Zayas argues that international law mandates that Hawaiian Kingdom law should still govern Hawai'i and, therefore, the American laws that currently govern the islands do so illegally.² Keanu Sai, a lecturer of political Science at the University of Hawai'i, says "you can't pass a law annexing a foreign country."³ Sai equated the unilateral annexation of Hawai'i by the U.S. government in 1898 to the United States passing a law to annex any country, even one as established as the United Kingdom, today.⁴ Nevertheless, it was through the Newlands Resolution, signed by President McKinley on July 7, 1898, that the Republic of Hawai'i ceded sovereignty over the Hawaiian Islands to the United States.⁵

This "official" annexation involved the Republic of Hawai'i ceding to the U.S. 1,800,000 acres of crown, government, and public lands belonging to the Hawaiian Kingdom.⁶ The Newlands Resolution required cessation of this land without consent from or compensation to the Native Hawaiians or their sovereign government.⁷ One reason why this annexation was not challenged by local Native Hawaiian government is because the natives did not hold title to the islands after the 1893 invasion and establishment of a Provisional Government by foreigners.⁸ Given what we now know about the history of Native Hawaiians and our society's increased access to the islands, why are Americans not more outraged—if at all—by the illegal overthrow of the sovereign Hawaiian Kingdom? The body of this paper will discuss events in Hawai'i from the initial invasion in 1778 through today that highlight reasons why Americans *should* be outraged. Namely, that an entire indigenous group was robbed of their rights to self-determination and self-governance, only to have their culture appropriated when billions of tourist dollars are at stake.

1. Breena Kerr, *Hawaiian Politician Stops Voting, Claiming Islands are 'Occupied Sovereign Country'*, THE GUARDIAN (Nov. 30, 2018), <https://www.theguardian.com/us-news/2018/nov/29/hawaii-politician-jennifer-ruggles-sovereign-country>.

2. Kerr, *supra* note 1.

3. *Id.*

4. *Id.*; see S.J. Res. 55, 55th Cong., 30 Stat. 750 (1898) [hereinafter Newlands Resolution] (joint resolution to provide for annexing the Hawaiian Islands to the United States).

5. *Rice v. Cayetano*, 528 U.S. 495, 505 (2000).

6. Newlands Resolution, *supra* note 4.

7. *Id.*

8. *See id.*

I. History of the Hawaiian Nation and Native Hawaiian People

According to Western, specifically British, accounts of the discovery of the Hawaiian Islands, it was British explorer James Cook's arrival in January 1778 that spurred the adventurers, settlers, and visitors to the islands that persist to present day.⁹ However, many accounts from Native Hawaiians, or *Kanaka Maolis*, as they refer to themselves in Hawaiian, recount a different story. These Native Hawaiian records assert "Cook was *not* the first white foreigner to arrive in Hawai'i."¹⁰

Samuel Manaiakalani Kamakau, between 1866 and 1867, penned the longest account about Cook written in Hawaiian.¹¹ Before Kamakau even begins his telling of Cook's arrival, "he recounts many stories concerning people who traveled to Hawai'i from foreign lands, and the voyagers who sailed between Hawai'i and distant lands in the Pacific."¹² Kamakau and others before him knew that Native Hawaiians sailed long voyages and that others endured comparable journeys to reach the Hawaiian Islands before Cook arrived.¹³ Despite the Western accounts of history that permeate our education system and society, it is clear that if one asks the Native Hawaiians, Cook was not the first to "discover" Hawai'i.

Kamakau embeds his account of Cook within the greater history of King Kamehameha I.¹⁴ Cook arrived on the Hawaiian Islands in the midst of several wars between the islands of Hawai'i, Maui, and O'ahu, and his presence only added to the already tumultuous period on the islands.¹⁵ Kamakau describes Cook and his men as violent "from the very first contact."¹⁶ The day Cook arrived, a native warrior began to take iron pieces from Cook's ship and was almost immediately shot down and killed by one of his men.¹⁷ The Native Hawaiians did not retaliate and instead heeded the advice of their elders to welcome the foreigners.¹⁸ But that same night, Cook and his men intended to instill fear in the Native Hawaiians by putting on "a

9. Brittany Lyte, *Native Hawaiians Again Seek Political Sovereignty With a New Constitution*, WASH. POST (Nov. 5, 2017), https://www.washingtonpost.com/national/native-hawaiians-again-seek-political-sovereignty-with-a-new-constitution/2017/11/05/833842d2-b905-11e7-be94-fabb0f1e9ffb_story.html.

10. NOENOE K. SILVA, *ALOHA BETRAYED: NATIVE HAWAIIAN RESISTANCE TO AMERICAN COLONIALISM* 18 (2004).

11. *Id.* at 16.

12. *Id.*

13. *Id.* at 19.

14. *Id.* at 17.

15. SILVA, *supra* note 10.

16. SILVA, *supra* note 10, at 21.

17. *Id.*

18. *Id.*

display of firepower, shooting guns, cannons, and fireworks.”¹⁹ This is just one example of the stories missing from Western histories of Hawai’i. In addition, the venereal disease, epidemics, and prostitution Cook brought to the islands severely devastated the Native Hawaiian population.²⁰ As many as one million natives lived on the islands in 1778, and by 1823, only an estimated 135,000 Native Hawaiians remained.²¹

In 1810, years after Cook’s arrival and his death at Kealahou Bay on Hawai’i in 1779, King Kamehameha I united the Hawaiian Islands as one kingdom under his rule.²² King Kamehameha I established a monarchy over all the islands, and a principle example of his impact in this era is the traditional system he employed to divide the lands of the nation. In the wake of the presence of Cook and his crew, and their various attempts to take the islands for themselves, Kamehameha I tried, in his own monarchical fashion, to give the land back to his people. He divided the lands among his principle warrior chiefs and retained a portion, albeit a substantial portion, for himself to be cultivated or managed by his servants.²³ Each principle chief then divided his lands and gave portions to inferior chiefs and/or persons of rank.²⁴ Those individuals then subdivided their lands and gave them to people in lower classes, such that land ultimately passed from the King to the lowest class of residents.²⁵ Through this system, Kamehameha I allowed even the poorest people to have rights to land and control over the cultivation of the plot.²⁶ However, under this system, the King maintained possessory rights over all of the land he originally held; the King owned the land while the person who had rights to the land held it in trust.²⁷

Clearly, Kamehameha I’s system for dividing land was not without flaws. The rights of the landholders were never specifically defined, and the King ultimately owned all of the land.²⁸ King Kamehameha III sought to change this system in 1839.²⁹ In 1840, Hawai’i adopted the first constitution of the islands and established a constitutional monarchy to govern the nation.³⁰ This constitution, along with the 1839 version of the document known as the 1839 Hawaiian Bill of Rights, was an effort by Kamehameha III to affect an historic and fundamental division of land, known as the Great

19. *Id.*

20. *Id.* at 24.

21. SILVA, *supra* note 10, at 24.

22. *Id.*; Rice, 528 U.S. at 501.

23. Rice, 528 U.S. at 502.

24. *Id.*

25. *Id.*

26. Rice, 528 U.S. at 502.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 503.

Mahele.³¹ According to the Supreme Court of Hawai'i, it was believed that the internal resources of Hawai'i could not be developed and utilized to their fullest potential until the established system of undefined ownership of land was abolished.³² So, Kamehameha III sought to maximize Hawai'i's potential by defining ownership of the lands.

Under Kamehameha III, certain chiefs and select individuals received freehold title in some lands, while the King, as to be expected, retained significant portions of land for himself.³³ Kamehameha III further distinguished himself from his predecessors by allocating extensive lands to be held by the government.³⁴ Setting aside land to be used and owned by individuals other than himself, Kamehameha III paved the way for Native Hawaiians to own and reap the benefits of their homeland. However, the intent of the Great Mahele was not to give lands to the Native Hawaiians, rather, it was to facilitate development of the Hawaiian lands for the benefit of the nation overall, by transforming the land tenure system into one of private land ownership.³⁵ This intent was made clear in 1850 when foreigners were given the right to own Hawaiian lands.³⁶

The decision to convey to foreigners the right to own land in Hawai'i came at a time when the Kingdom was already vulnerable to foreign influence. The American Board of Commissioners for Foreign Missions sent over one hundred missionaries from the United Church of Christ to Hawai'i between 1820 and 1850.³⁷ Despite the fact that the U.S. government recognized the independence of the Hawaiian Kingdom from 1826 to 1893, extended full diplomatic recognition to the Hawaiian monarchy, and even entered into treaties relating to commerce and navigation with Hawaiian monarchs, the U.S. nevertheless found reason to justify efforts to westernize Hawaiian culture through Christianity.³⁸

Missionaries claimed Native Hawaiians they encountered on the islands were "savage and uncivilized."³⁹ Other foreigners on the islands in the nineteenth century described the Hawaiians' political-economic relationships and agricultural systems as notably similar to the European

31. *Id.* at 503.

32. *Rice*, 528 U.S. at 502.

33. *Id.*

34. *Id.* at 503.

35. *See id.*; SILVA, *supra* note 10, at 41.

36. *Rice*, 528 U.S. at 503.

37. Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai'i, Pub. L. 103-150, 107 Stat. 1510 (1993) [hereinafter Apology Bill] (issued by President Clinton to acknowledge the 100th anniversary of the overthrow of the Hawaiian Kingdom).

38. *Id.*

39. SILVA, *supra* note 10, at 37.

feudal system of the Middle Ages.⁴⁰ But this is a wholly inaccurate depiction of the nineteenth century Native Hawaiian farming system.

For years before missionaries and other Western foreigners began arriving to the islands, the landholding chiefs and the Hawaiians of lower classes who worked the lands existed in a symbiosis under both Kamehameha I and III.⁴¹ However, it was under Kamehameha III, as discussed, that land use was able to flourish and the Hawaiian philosophy of “take care of the land and it will take care of you” predominated.⁴² Explicit in the authority that allowed certain chiefs to rule a district or island was the obligation to manage land and ocean resources wisely so as to ensure their sustainability.⁴³ This reflected Kamehameha III’s intention of maximizing the benefits his people could reap from their lands.⁴⁴ The chiefs provided the land and planning required to produce enough food to support their growing population, while those of the lower classes worked the land to feed and clothe themselves and the chiefs.⁴⁵ The Native Hawaiian land tenure differed dramatically from the European system of the Middle Ages through these “bonds of affection” between the higher and lower classes that were absent in Europe.⁴⁶

The chiefs who held title to the land under Kamehameha III’s land distribution scheme related more “closely and affectionately” to those of lower classes who worked the land than did the European landlords to their serfs.⁴⁷ Maintaining a reciprocal relationship between those who worked the land and the landholding chiefs was essential to the Native Hawaiians in order to maintain *pono*—the Hawaiian term with a multiplicity of meanings including: justice, righteousness, and what is good for the people.⁴⁸ The cultural interest in *pono* and maintaining the societal balance inherent in carrying out “what is good for the people” led to the interdependent socio-economic system the Native Hawaiians had in place before missionaries began arriving in 1820. This system, while not governed by specific codes, regulations, or industries, was nevertheless united by the cultural significance of *pono*. A landholding chief would be persuaded not to be “stingy and cruel to commoners . . . [or] he or she would cease to be *pono*, lose favor with the [god] and be struck down[.]”⁴⁹ However, the transition

40. *Id.* at 39.

41. See SILVA, *supra* note 10, at 39.

42. See NOELANI GOODYEAR-KA’ŌPUA ET AL., A NATION RISING HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY 27 (2014).

43. SILVA, *supra* note 10, at 40.

44. *Id.*

45. *Id.*

46. *Id.* at 41.

47. *Id.* at 39.

48. SILVA, *supra* note 10, at 37, 39.

49. *Id.* at 39.

to privatized land ownership allowed foreigners to take over land left behind by Native Hawaiians who perished from the diseases brought to the islands by settlers, it destroyed this established symbiosis and forced Native Hawaiians to find their place in a new society that considered them savage.⁵⁰

A. The Bayonet Constitution for the Kingdom of Hawai'i: A Constitutional Monarchy, Revised

King Kalakaua, predecessor and brother to Queen Liliuokalani, reigned over the Hawaiian Kingdom from 1874 to 1891.⁵¹ In the 1874 election, Kalakaua ran against and defeated the Dowager Queen Emma for the throne.⁵² This race for the throne was essentially an election between the British and American Empires for the islands of Hawai'i. Queen Emma was a member of the royal Kamehameha dynasty and married King Kamehameha IV.⁵³ She was selected by Kamehameha III to be eligible for the Hawaiian throne when she was princess.⁵⁴ Although she was groomed and prepared to reign as queen over the kingdom, her supporters in the election against Kalakaua were overwhelmingly in favor of the British empire controlling the islands.⁵⁵ Kalakaua on the other hand, held the support of pro-American empire voters.⁵⁶

The pro-American and pro-British residents on the islands "engaged in a brief conflict" before the election, wherein U.S. marines anchored off the islands.⁵⁷ While the introduction of U.S. armed forces purported to "maintain order" during the election, their arrival ultimately supported the "pro-American Kalakaua against the pro-British Emma."⁵⁸ Kalakaua won the election, became King Kalakaua of the Kingdom of Hawai'i in 1874, and owed his victory to the Americans.⁵⁹ The opinions of the Native Hawaiians meant little to nothing in this pivotal election, for the interests of British and American landowners and businessmen on the islands, and the military

50. *See id.* at 37.

51. *Kalakaua King of Hawai'i*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/biography/Kalakaua> (last visited Nov. 30, 2019).

52. HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAI'I* 10 (2d ed. 1999).

53. *Princess Emma Naea Rooke*, ROYAL HOUSE OF KEOUA NUI, <https://www.crownofhawaii.com/queen-emma-rs> (last visited Nov. 30, 2019).

54. *Id.*

55. TRASK, *supra* note 52.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

support they brought with them, effectively quieted the voices of the natives.⁶⁰

In 1886, King Kalakaua appointed Sanford B. Dole to the role of Associate Justice for the Supreme Court in Hawai'i.⁶¹ Born in Hawai'i in 1844 to American parents, Dole was born into privilege and a highly educated family.⁶² In 1840, Dole's parents moved from Maine to Hawai'i, where his father took over managing Oahu College, known today as Punahou School.⁶³ Dole was a prominent figure in Hawaiian politics and business in the late nineteenth century, as well as a leader of the reform movement in the islands that effectuated the adoption of a new constitution for the Kingdom.⁶⁴

Dole led the Hawaiian League, "an all-white gang of businessmen, armed with guns from San Francisco, formed specifically to protect the interests of *haole* [white foreigner] property owners."⁶⁵ The Hawaiian League, with the interests of the highly profitable sugar industry in mind, wrote a new constitution for the Kingdom.⁶⁶ With the gunpower of their subgroup, the Honolulu Rifles, the Hawaiian League intimidated King Kalakaua with their weapons and forced him to sign the appropriately named Bayonet Constitution at gunpoint on July 6, 1887.⁶⁷

The Bayonet Constitution effectively annulled the constitution promulgated by King Kamehameha III and revised under Kamehameha V.⁶⁸ The new constitution reduced the power of the King to a figurehead and placed most of the legal authority in the legislature.⁶⁹ Written in both Hawaiian and English, the Bayonet Constitution mirrored many of the articles and amendments of the U.S. Constitution. For example, Article 9 states, "[n]o person shall be compelled, in any criminal case, to be a witness against himself," reflecting the sentiments of the Fifth Amendment to the U.S. Constitution.⁷⁰ Article 12 states, "[e]very person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and effects; and no warrants shall issue, except on probable

60. *Id.*

61. *Sanford Ballard Dole*, HAWAI'I HISTORY, <http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&PageID=407> (last visited Nov. 30, 2019).

62. Dole, *supra* note 61.

63. *Id.*

64. *Sanford Ballard Dole President of the Republic of Hawai'i*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/biography/Sanford-Ballard-Dole> (last visited Nov. 30, 2019).

65. TRASK, *supra* note 52, at 11.

66. *Id.*

67. *Id.*; HAWAIIAN KINGDOM CONST. July 6, 1887 [hereinafter BAYONET CONST.].

68. BAYONET CONST., art. III.

69. TRASK, *supra* note 52, at 11.

70. BAYONET CONST., art. IX.

cause,” mirroring the language and purpose of the Fourth Amendment.⁷¹ This effort to align the new government of the Kingdom of Hawai‘i with that of the United States foreshadowed the ultimate overthrow of the monarchy, annexation of the islands, and Hawai‘i’s entry into the Union.

The Bayonet Constitution began the institutional conversion of the Kingdom of Hawai‘i into an extension of the United States. The new constitution granted suffrage to foreigners, most of whom were descendants of missionaries who settled on the islands in an effort to spread Christianity and convert the Native Hawaiians.⁷² Article 59 specifically states those qualified to vote for Nobles to represent their district are “[e]very male resident of the Hawaiian Islands, of Hawaiian, American or European birth or descent, who shall have attained twenty years of age, and shall have paid his taxes, and shall have caused his name to be entered on the list of voters for Nobles in his district[.]”⁷³ The article further requires that the individual voting “shall own and be possessed . . . of taxable property in this country of the value of not less than three thousand dollars . . . or shall have actually received an income of not less than six hundred dollars during the year preceding his registration for such election” and must be literate and “able to read and comprehend an ordinary newspaper in either Hawaiian, English or some European language[.]”⁷⁴ The right to vote was also contingent on an individual’s willingness to take “an oath to support the Constitution and laws” in allegiance to the new government.⁷⁵

These conditions on voting placed significant barriers on those with low incomes and those who did not own substantial property. Prior to Kalakaua signing the Bayonet Constitution at gunpoint, there were thirty-two plantations on the islands dominating the economy, twenty-five of which were American-owned.⁷⁶ The limitations on voters of the legislature indicate an intent on the part of the Hawaiian League to “ensure *haole* domination of the legislature[.]” for the majority of landowners at the time were “missionary descendants, whose parents had benefited” from the Great Mahele land division and gained the right to own land as foreigners in 1850.⁷⁷ These landowning *haoles* “captured the legislature” in the first election following the enactment of the Bayonet Constitution, thereby realizing the intent of the Hawaiian League members to gain political control over lands which they already dominated economically.⁷⁸

71. BAYONET CONST., art. XII.

72. BAYONET CONST., art. LIX.

73. *Id.*

74. *Id.*

75. *Id.*

76. TRASK, *supra* note 52.

77. *Id.* at 11; *see Rice*, 528 U.S. at 503.

78. TRASK, *supra* note 52, at 11.

B. United States' Illegal Overthrow of the Hawaiian Monarchy

In 1887, a group of predominantly American businessmen (the Hawaiian League) “decided to augment their economic control” of the islands “by first undermining and then ousting the ruling monarchy.”⁷⁹ The same year, representatives from the Hawaiian League and Queen Liliuokalani’s monarchy went to lobby President Harrison in his final days in office.⁸⁰ The imperialists persuaded President Harrison of the benefits of annexing Hawai’i, and he sent a treaty for annexation to the Senate.⁸¹ However, the wheels of bureaucracy turned too slowly, and President Cleveland took office before the Senate could confirm the treaty.⁸² As one of his first acts in office during his 1885 term, President Cleveland withdrew the treaty and attempted to return the islands to its monarch.⁸³

In the nineteenth century, over one hundred missionaries went to Hawai’i on assignment from the Christian church to Westernize the population.⁸⁴ Specifically, the United Church of Christ sent minister John L. Stevens to the islands to spread the faith.⁸⁵ However, Stevens was not solely interested in spreading Christianity. It is on record that he conspired with a small group of non-Hawaiian residents on the islands, including U.S. citizens, to overthrow the indigenous and lawfully recognized sovereign government of Hawai’i.⁸⁶

On January 16, 1893, Stevens revealed his intention to overthrow the Kingdom when he, in association with the U.S. Navy, caused armed forces to “invade the sovereign Hawaiian nation . . . to intimidate Queen Liliuokalani and her Government[.]”⁸⁷ The following day, on January 17, 1893, the Committee of Safety, representing American and European sugar planters, descendants of foreign missionaries, and financiers ousted the Hawaiian monarchy and established a Provisional Government over the islands.⁸⁸ This Provisional Government is an alarming example of American imperialism, as it is a governing body created out of thin air. The Provisional Government charged itself with overseeing a land and people to which the

79. Bob Buyer et al., *Grover Cleveland Tried to Save Hawai’i’s Queen from U.S. Imperialists*, THE BUFFALO NEWS (May 28, 1994), <https://buffalonews.com/1994/05/29/grover-cleveland-tried-to-save-hawaiiis-queen-from-u-s-imperialists/>.

80. Buyer, *supra* note 79.

81. *Id.*

82. *Id.*

83. *Id.*

84. Apology Bill, *supra* note 37, at 1510.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

representatives had no ties, aside from an interest in utilizing the rich lands for their own benefit. Queen Liliuokalani subsequently yielded her authority to the U.S. government “under protest and impelled by . . . force[,]” pleading the government to “undo the action of its representatives and reinstate [her] in the authority which [she] claim[ed] as the Constitutional Sovereign of the Hawaiian Islands.”⁸⁹

Unfortunately, yet unsurprisingly, Queen Liliuokalani’s pleas fell on deaf ears. On February 1, 1893, Stevens “raised the American flag and proclaimed Hawai’i to be a protectorate of the United States.”⁹⁰ Even before the U.S. technically overthrew the Hawaiian monarchy, a foreign entity established Hawai’i as a state under U.S. control. Despite criticism from President Grover Cleveland (who considered the illegal actions of the Committee of Safety and the Provisional Government to be illegal acts of war, and who called for the restoration of the Hawaiian monarchy), the Provisional Government maintained its power over the islands and pursued annexation.⁹¹

President Cleveland, concerned for the preservation of the Hawaiian monarchy, sent James Blount, a former chairman of the House of Foreign Affairs Committee, to Hawai’i to investigate the overthrow of the monarchy.⁹² Blount, acting as an arm of the executive, “sent the American troops back to their ship and lowered the American flag.”⁹³ Blount remained in Hawai’i for four months to investigate Stevens and the actions of his “missionary gang.”⁹⁴ Blount’s report to President Cleveland “found the United States and its Minister guilty” of illegally overthrowing the Hawaiian government.⁹⁵ Blount concluded “the subsequent recognition of the provisional government pointed to clear conspiracy” between Stevens and the other missionaries on the islands to take land to which they had no claim.⁹⁶

President Cleveland’s response to Blount’s report is detailed in the President’s correspondence with Congress. President Cleveland conveyed his sympathy for the Native Hawaiian people to Congress, as he described the overthrow of the monarchy as a “but for” result of American forces.⁹⁷

89. *Id.* at 1511.

90. Apology Bill, *supra* note 37, at 1511.

91. *Id.*

92. Buyer, *supra* note 79.

93. TRASK, *supra* note 52, at 13.

94. *Id.*

95. *Id.*

96. *Id.*

97. H.R. Rep. No. 47-53 (Dec 18, 1983) (Blount Report on missionaries’ actions in Hawai’i and investigation into the overthrow the Hawaiian Government).

His message was persuasive and strongly worded as he chastised actions by American settlers in the islands, stating:

But for the notorious predilections of the United States Minister [Stevens] for annexation, the Committee of Safety, which should be called the Committee for Annexation, would never have existed.

But for the landing of United States forces upon false pretexes respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.⁹⁸

Nevertheless, the Provisional Government attempted to annex Hawai'i to the United States in February of 1894 but failed when less than two-thirds of the U.S. Senate voted to ratify the treaty of annexation.⁹⁹ In July of the same year, the "all-white Provisional Government" declared itself the Republic of Hawai'i in a second attempt to move towards annexation.¹⁰⁰ Sanford Dole then announced the inauguration of the Republic of Hawai'i and declared himself president thereof.¹⁰¹ It was not until January 24, 1895 that the Republic of Hawai'i completely overthrew the Hawaiian monarchy.¹⁰² The Republic held Queen Liliuokalani prisoner in Iolani Palace and representatives from the Republic forced the Queen to officially abdicate her throne.¹⁰³ The queen yielded her power under protest and "to avoid any collision of armed forces and perhaps the loss of life[.]"¹⁰⁴

When President Cleveland's term ended on March 4, 1897, "a real imperialist" took office with ambitions to expedite the "final annexation" of Hawai'i to the United States.¹⁰⁵ The election of William McKinley to the presidency in 1897 brought the change in perspective the American colonizers in Hawai'i needed to effectuate the legal control over the islands

98. H.R. Rep. No. 47-53 (Dec 18, 1983).

99. Apology Bill, *supra* note 37, at 1512.

100. TRASK, *supra* note 52, at 15; Apology Bill, *supra* note 37, at 1512.

101. Buyer, *supra* note 79.

102. Apology Bill, *supra* note 37, at 1512.

103. *Id.*

104. *Id.* at 1511.

105. TRASK, *supra* note 52, at 15.

they sought since their arrival. In the Newlands Resolution, President McKinley provided for the annexation of Hawai'i to the United States and called for the Republic of Hawai'i to cede Hawaiian lands to the U.S. government.¹⁰⁶ Through annexation, the Republic of Hawai'i ceded to the United States 1.8 million acres of crown, government, and public lands of the Hawaiian Kingdom.¹⁰⁷ Almost two million acres of Hawaiian land passed from an illegally established "Hawaiian" government, which did not include any Native Hawaiian representatives, to the U.S. government without consent from or compensation to the Native Hawaiians or their (formerly) sovereign government.¹⁰⁸

Through the Newlands Resolution, Congress and the executive annexed Hawai'i as part of the United States and thereby vested title to the land in Hawai'i to the U.S. government.¹⁰⁹ The Native Hawaiians "never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum."¹¹⁰ It was the Republic of Hawai'i, the government body established by foreigners in place of the Hawaiian monarchy, that consented to annexation and actually ceded Hawaiian lands to the United States. This distinction in who actually instigated and agreed to annexation highlights the illicit nature of Hawai'i's annexation, and raises a troubling question: how is it possible that so many people in the federal government simultaneously turned a blind eye to the illegal overthrow of a sovereign nation in order to effectuate the annexation? A look at contemporaneous federal dealings with Native Americans in the continental United States serves to shed some light on how the federal government justified its overthrow of the Hawaiian monarchy.

II. Native American Struggles with American Imperialism on the Mainland Reflect the Similar, Yet Relatively Unacknowledged Experiences of Native Hawaiians

While today we acknowledge the atrocities, Native American tribes endured because of Western colonialism in North America, the reality is that American intellectuals and scholars wrote the majority of these accounts. Arguably, the pervasiveness of American and Spanish accounts of North American colonialism have "erased violence and colonialism from discussions of the region's past, performing acts of representational violence

106. Apology Bill, *supra* note 37, at 1512.

107. Apology Bill, *supra* note 37, at 1512.

108. *Id.*

109. Newlands Resolution, *supra* note 4, at 750.

110. Apology Bill, *supra* note 37, at 1512.

whose power continues to misinform assessments of these Native people.”¹¹¹ The Anglo-American and Spanish perceptions of Native Americans as savages continued to taint society’s understanding of these native groups. Even Mark Twain described the Goshute Shoshone of eastern Nevada as “very considerably inferior to even the despised Digger Indians of California, inferior to all races of savages on our continent . . . [they] are manifestly descended from the self-same gorilla, or kangaroo or Norway rat, whichever animal-Adam the Darwinians trace them to.”¹¹² The poverty of Native American tribes in the late nineteenth century that scholars like Twain interpreted as the tribes’ inferiority and wretchedness, is in fact a result of American colonization.¹¹³ The decimation of established Native American societies and the subsequent poverty they endured were “products of the most rapid territorial expansion in world history.”¹¹⁴

In response to this impoverishment and abrupt shift in their cultural landscape, Native Americans in the Great Basin between the Sierra Nevada and Rocky Mountains fought to maintain control over their homelands and communities.¹¹⁵ This reaction to colonial efforts echoes the Native Hawaiian’s fight to access and utilize the lands that were once theirs. The famous explorers and cartographers Meriwether Lewis and William Clark, while relatively non-violent in their interactions with Native Americans, paved the way for the settlers that followed them and eventually ousted indigenous peoples from their lands.¹¹⁶ While white foreigners, and eventually the U.S. government, pushed Native Hawaiians out of their own government and lands, Native Americans in the Great Basin became outsiders on their own land as a result of the settlers who followed Lewis and Clark’s maps to “open” land.¹¹⁷

A. The Western Shoshones and the 1863 Treaty of Ruby Valley

Since the initial colonization of Native American lands, specifically in the Great Basin, the U.S. government has made several attempts at reconciliation with the Great Basin Tribes. However, these efforts to dispel tensions between American settlers and the indigenous groups were disproportionate and, in many ways, ineffective. For example, the 1863 Treaty of Ruby Valley established an agreement for “peace and friendship”

111. NED BLACKHAWK, *VIOLENCE OVER THE LAND: INDIANS AND EMPIRES IN THE EARLY AMERICAN WEST* 13 (Harvard Univ. Press 2008) (2006).

112. BLACKHAWK, *supra* note 111, at 11.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 10.

117. BLACKHAWK, *supra* note 111, at 10.

between the people of the Western Shoshone tribes and the people and government of the United States while the U.S. constructed a railway westward from the plains to the Pacific Ocean.¹¹⁸ But this “treaty of peace and friendship” only established peace by requiring the Western Shoshone to cease “hostilities . . . upon the citizens of the United States within their country.”¹¹⁹ In exchange, the U.S. government promised and agreed to pay the Western Shoshone “annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes” and alluded to the possibility that reservations may be established in the Nevada area.¹²⁰ Despite the fact that the treaty explicitly acknowledged “the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men,” the Western Shoshone in Nevada spent the entire twentieth century fighting for the establishment of a reservation on the same lands described in the 1863 document.¹²¹

The Treaty of Ruby Valley did not state that the U.S. government would take or get the Western Shoshone’s land described in the treaty itself.¹²² However, the treaty did allow Americans and the U.S. government to explore and mine the Western Shoshone’s land for “gold and silver, or other minerals,” erect mills, and establish military posts “as may be necessary for the comfort and convenience of travelers[.]”¹²³ The benefits to the U.S. government and its people enumerated in this treaty exemplify the disproportionate nature of colonialism that impacted not only the Western Shoshone in Nevada, but all indigenous groups affected by the rapid growth that made the U.S. what we know it as today.

The immense leeway granted to the U.S. and its citizens to establish infrastructure on land that was not legally theirs in the Treaty of Ruby Valley ultimately led to the Western Shoshone losing their land to the United States. Initially, the land was illegally seized under the Treaty because of the access to the land granted to Americans in the agreement. Then, in 1973, the Indian Claims Commission (established in 1946, the Commission determined the merits of claims brought by Native Americans against the federal government), awarded twenty-six million dollars to the Western Shoshone

118. Treaty with Western Bands of Shoshonee Indians, October 1, 1863, 18 Stat. 689 [hereinafter Treaty of Ruby Valley].

119. Treaty of Ruby Valley, at 689.

120. *Id.* at art. 690.

121. *Id.* at 690; BLACKHAWK, *supra* note 111, at 13.

122. *Treaty of Ruby Valley*, NEVADA PUBLIC RADIO, <https://knpr.org/knpr/2014-01/treaty-ruby-valley> (last visited Nov. 17, 2019).

123. Treaty of Ruby Valley, *supra* note 118, at 690.

for twenty-four million acres of land.¹²⁴ In *United States v. Dann*, the Supreme Court of the United States held in 1985 that the allocation of twenty-six million dollars to the Western Shoshone constituted payment for the land such that the native peoples no longer held title to the land.¹²⁵ But many in the tribe remain dissatisfied with this ruling because what they want is the land itself that had “been in the possession of their family from time immemorial[.]”¹²⁶ The illegal seizure of native lands that was upheld through a series of decisions by U.S. institutions is alarming in how it grossly undervalued the ties people had to the land for generations.

While the U.S. government demonstrated time and again that it has the man (and gun) power to illegally seize land from sovereign nations within what is now the continental United States, it is even more outrageous that these illegal seizures became legal through mechanisms established by the U.S. government itself, like the Indian Claims Commission. Even more disturbing is the fact that title to the approximately 56.2 million acres of Native American reservations in the continental United States and Alaska are held in trust by the U.S. government on behalf of the tribes.¹²⁷ In the case of the Western Shoshone, this means that the United States took their land and all of their rights to it, only to give *parts* of it back to them to *use* after the tribe fought with the U.S. government throughout the twentieth century “to receive some new lands and federal recognition.”¹²⁸ The injustice of the U.S. government in its dealings with Native Americans is undeniable. But what is even more egregious than the government’s treatment of Native Americans is its seemingly arbitrary recognition of certain tribes to make them eligible for funding and services from the federal Bureau of Indian Affairs, while ignoring others.

B. The Forgotten Native Hawaiians

Perhaps the U.S. government does not recognize Native Hawaiians as an indigenous group or sovereign people because Hawai’i is a group of islands apart from the rest of North America. To give the U.S. government the benefit of the doubt, maybe it is an “out of sight, out of mind” situation that has led the government to leave the Native Hawaiians off the list of 573

124. *United States v. Dann*, 470 U.S. 39, 44–45 (1985); *Treaty of Ruby Valley*, *supra* note 122.

125. 470 U.S. at 44.

126. 470 U.S. at 43; *Treaty of Ruby Valley*, *supra* note 122.

127. “What is a Federal Indian Reservation?”, *Frequently Asked Questions*, U.S. DEPARTMENT OF THE INTERIOR INDIAN AFFAIRS, <https://www.bia.gov/frequently-asked-questions> (last visited Nov. 17, 2019).

128. BLACKHAWK, *supra* note 111.

tribal entities it recognizes and aids.¹²⁹ However, the reality is that native groups “within the contiguous [forty-eight] states and Alaska” are the only peoples legally recognized by the U.S. government.¹³⁰ Considering this acknowledgement of over two hundred native groups in Alaska, “out of sight, out of mind” is not a sufficient rationale for leaving Native Hawaiians off of an otherwise long list of groups that *do* receive federal recognition and funding.¹³¹ This is true especially when considering that 200 of them are outside of the contiguous United States.

As of 2012, there were approximately 400 tribes in the contiguous forty-eight states that did not receive federal recognition or the benefits thereof.¹³² This large number of groups that self-identify as Native American tribes but lack acknowledgement from the U.S. Secretary of the Interior is notable, as it highlights the pervasive control indigenous people had over North American land before Europeans made the journey to conquer it. But it does not rationalize or excuse the fact that there is no federal recognition provided to the native peoples of Hawai‘i, the most recent to be conquered in the efforts to create what we now know as the United States of America.

III. Establishment of the Government for the Territory of Hawaii

Throughout the second half of the nineteenth century, the U.S. federal government enacted several acts to provide for the governments of newly acquired territories that would ultimately become states.¹³³ It is of note that a great number of these land acquisitions for the contiguous United States occurred in the midst of rising tensions between proslavery plantation owners and abolitionists, and the Civil War that followed.¹³⁴ The U.S. government created states by carving territory out of sovereign nations in what is now the western and central United States.¹³⁵ Hawai‘i’s history is unique in that its position in the Pacific Ocean isolated the islands and prevented them from absorption by another territory or state.

129. *Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, BUREAU OF INDIAN AFFAIRS 1200–05 (Feb. 1, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2019-00897.pdf> [hereinafter *Indian Entities Recognized*].

130. *Id.* at 1200.

131. *Indian Entities Recognized*, *supra* note 129, at 1204–05.

132. U.S. GOV’T ACCOUNTABILITY OFFICE, *Indian Issues: Federal Funding for Non-Federally Recognized Tribes* 1 (Apr. 12, 2012), <https://www.gao.gov/assets/600/590102.pdf>.

133. See *Boundary of Texas*, 9 Stat. 447 (1850); *Arizona Organic Act*, 12 Stat. 664 (1863).

134. See *Abolitionist Movement*, HISTORY, <https://www.history.com/topics/black-history/abolitionist-movement> (last updated Nov. 9, 2019).

135. *Arizona Organic Act*, *supra* note 133, at 664–65 (describing the boundaries for the Territory of Arizona, carved out of the Territory of New Mexico).

Haunani-Kay Trask is the author of the 1993 seminal book on Hawaiian sovereignty, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i*. Trask argues, “as indigenous peoples, we are all outside the Constitution, the settler document that declares ownership over indigenous lands and peoples. Since the Constitution is an imposed colonial structure, nothing therein prevents the taking of Native lands or the incorporation of unwilling Native people into the United States.”¹³⁶ Trask says the overwhelming power of the U.S. Constitution and its accompanying military forces explain why the U.S. invaded and occupied Hawai'i in 1893, overthrew the Hawaiian government, and “forced annexation” of the islands to the United States in 1898 without legal repercussions.¹³⁷ Therefore, it was because of various loopholes implicit in the pro-colonialist, pro-imperialist sentiment of the Constitution that the U.S. did not technically violate civil rights when it incorporated the resource-rich islands into its fold.

A. The Systematic Institution of English as the Predominant Language in the Territory and the Resulting Elimination of the Hawaiian Language

In 1840, King Kamehameha III established the public education system on the islands.¹³⁸ This public-school system “is the oldest education system west of the Mississippi” and is the “only system established by a sovereign monarch.”¹³⁹ Furthermore, some consider Kamehameha III’s public school system to be the first system of Hawaiian education, as the curriculum was taught in Hawaiian.¹⁴⁰ In 1896, Congress passed the Act of June 8, 1896, effectively banning instruction in Hawaiian in “all public and private schools,” and declared “[t]he English language shall be the medium and basis of instruction” in schools within the Territory of Hawai'i.¹⁴¹ Hawaiian elders who survived the overthrow of the monarchy and lived through the annexation, and even admittance of the islands into the United States, revealed they remembered being punished for speaking Hawaiian at school after 1896.¹⁴² The attempts to erase the Hawaiian language from the day to day culture of the Native Hawaiians and those who lived in the Territory illustrate the U.S. government’s interest in making Hawai'i its own.

136. TRASK *supra* note 52, at 26.

137. TRASK *supra* note 52, at 26.

138. *History of Hawaiian Education*, HAWAI'I STATE DEP'T OF EDUC., <http://www.hawaiipublicschools.org/TeachingAndLearning/StudentLearning/HawaiianEducation/Pages/History-of-the-Hawaiian-Education-program.aspx> (last visited Nov. 27, 2019).

139. *History of Hawaiian Education*, *supra* note 138.

140. *Id.*

141. Act of June 8, 1896, ch. 57, sec. 30 (1896) (codified at 1897 HAW. COMP. LAWS § 123 (1897)).

142. *History of Hawaiian Education*, *supra* note 138.

Imposing English as the only language in the Territory's schooling system resulted in a significant decrease in the presence of the Hawaiian language. Before 1778, prior to the influx of Europeans and Americans who followed John Cook to the islands, Hawaiian was a purely oral language with no written form.¹⁴³ The American missionaries between 1820 and 1850 introduced Western-style schooling, and initially kept Hawaiian as the medium of instruction.¹⁴⁴ It was the missionaries who created the alphabet for the Hawaiian language.¹⁴⁵ This means that influences of American missionaries are inherent in the Hawaiian language as we know it today and explains why Hawaiian is an intuitively phonetic language. Thus, by learning to read and write in Hawaiian, a person gained familiarity with the English alphabet and made strides toward literacy in a language foreign to the islands. This arguably illustrates an imposition of the English language on Native Hawaiians, under the guise of teaching the natives to be literate in the language of their ancestors.

The interest in westernizing the education system in Hawai'i stemmed from the missionaries' goal of saving the islanders from what they "perceived to be [the] superstitious and immoral ways" of the Native Hawaiians "through conversion to Christianity."¹⁴⁶ They brought a printing press with them to the islands and printed "instructional materials, newspapers, and a Bible, all in the Hawaiian language" in order to spread their religion by converting and "saving" the Native Hawaiians from their "heathen" practices.¹⁴⁷

Despite the success the missionaries saw in increasing the literacy of Native Hawaiian adults in the Hawaiian Language, by the 1850s, teaching the natives to read their own language was not enough for the missionaries; there remained a desire to completely westernize the native population and the pinnacle of "westernization" was the English language.¹⁴⁸ Members of the Native Hawaiian elite, mainly royalty and chiefs, expressed an interest in learning English, thereby facilitating the missionaries' goal of making English the predominant language of the islands from the top down.¹⁴⁹ Prior to the enactment of the Act of June 8, 1896, there were seventy-seven schools in Hawai'i that taught students in the Hawaiian language.¹⁵⁰ After 1896,

143. Shari Nakata, *Language Suppression, Revitalization, and Native Hawaiian Identity*, 2 CHAP. DIVERSITY & SOC. JUST. F. 14, 17 (2017).

144. *Id.*

145. Nakata, *supra* note 143.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 19.

there was only one Hawaiian-language school, and by 1902, it closed and English-medium schools were the only option for citizens of the Territory.¹⁵¹

The U.S. government further imposed the English language on Native Hawaiians through the Hawaiian Organic Act of 1900 (“Organic Act”). The Organic Act was an act to provide for an English speaking government for the Territory of Hawai’i.¹⁵² The U.S. Constitution, favoring American imperialism, allowed for not only the annexation of a formerly independent and sovereign nation, but also for the U.S. federal government to extend its powers to the islands and its people, putting the Native Hawaiians “at the mercy of federal, state, and county governments.”¹⁵³ The Organic Act established three branches of government in Hawai’i, mirroring the executive, legislative, and judicial branches inherent in the structure of the U.S. government.¹⁵⁴ The Act declared all persons who were citizens of the Republic of Hawai’i prior to annexation in 1898 to be “citizens of the United States and citizens of the Territory of Hawai’i.”¹⁵⁵ This was problematic on its face because it required Native Hawaiians who had no interest or desire to become U.S. citizens to forfeit their nationality. Even worse, it forced Native Hawaiians to replace their nationality with a foreign one that represented brute militaristic force and imperialism.

The Organic Act, in instituting a state government of the United States in the Territory of Hawai’i, systematically restricted Native Hawaiians from holding office in the newly formed government. The Organic Act provided that “all legislative proceedings shall be conducted in the English language,” and all voters for representatives of the legislature must “be able to speak, read, and write in the English or Hawaiian language[.]”¹⁵⁶ Furthermore, to serve as a juror or grand juror in the courts of the Territory of Hawai’i, the Organic Act required the person to “understandingly” speak, read and write in English.¹⁵⁷ These strict requirements mandating the use of English in official legislative and judicial proceedings present a stark contrast to the Hawaiian system in place before the overthrow of the monarchy.

151. *Id.*

152. Hawaiian Organic Act of 1900, ch. 339 31 Stat. 141 (1900) [hereinafter Hawaiian Organic Act].

153. TRASK, *supra* note 52, at 26.

154. Hawaiian Organic Act § 12, 66, 81.

155. *Id.* § 4.

156. *Id.* § 44, 60.

157. *Id.* § 83.

B. The Effect of Instituting an English-Language Government in the Territory of Hawai'i

The systematic imposition of the English language on Native Hawaiians was only one step toward the ultimate imperialization of the islands that the U.S. sought to achieve. The Organic Act provided for the establishment of the government for the Territory of Hawai'i, while acts like that of June 8, 1896 functioned as a stepping-stone toward implementing the regulations set out in the Organic Act. The Organic Act undoubtedly established an English-language government in the Territory.

Language, however, was not the only overt assertion of U.S. power in the Territory at the turn of the twentieth century. The Organic Act bars Native Hawaiian citizens from the choices inherent in democratic governments. Per the Organic Act, the governor of the Territory, appointed by the President, was tasked with nominating, by and with the advice and consent of the senate of the Territory, the attorney general, treasurer, auditor, commissioner of public works, superintendent of public instruction, and other officers of the Territory.¹⁵⁸ Thus, the President, through his appointed governor, exerted control over the selection of officers for the territory.

In addition, the Organic Act stipulated that "no person who is not a male citizen of the United States and twenty-one years of age and who cannot understandingly speak, read, and write the English language shall be a qualified juror or grand juror within the Territory of Hawai'i."¹⁵⁹ These qualifications required of jurors and grand jurors meant that only those Native Hawaiians who had learned to speak, read, and write English by 1900 (only four years after English was instituted as the medium for instruction in schools) were permitted to be jurors. Prior to the enactment of the Organic Act, laws of the Republic of Hawai'i permitted "juries to be composed of aliens or foreigners only, or to be constituted by impaneling natives of Hawai'i only[.]"¹⁶⁰ Thus, the laws of the Republic allowed for the appointment of jurors based on their race, thereby permitting a person on trial, for civil or criminal charges, to have a jury of his peers. In sum, the Organic Act instituted an American government in Hawai'i that favored the interests of American settlers and declared the Native Hawaiians citizens of the United States, setting the stage for the final legislative acts that would make Hawai'i part of the United States.

158. Hawaiian Organic Act § 80.

159. *Id.* § 83.

160. *Id.*

IV. Land Laws in the Territory of Hawai'i and the Effect Pre-Statehood Laws Still Have on Native Hawaiians Today

In the final years of the nineteenth century, with President McKinley in office, the Senate ratified the treaty for the annexation of Hawai'i, followed by the enactment of the Hawaiian Organic Act, all laying the groundwork for further legislation to divide the lands. A hallmark of these subsequent pieces of legislation is the Hawaiian Homes Commission Act of 1921 (HHCA). The HHCA gave Hawaiian lands enumerated in the act the title of "Hawaiian Home Lands" and provided for the distribution of indicated tracts to Native Hawaiians as a means of rehabilitating the native people.¹⁶¹ However, the fact that Congress drew lines for specific lands to be allocated to Natives Hawaiians did not mean that any land was automatically returned to the natives.

A. Hawaiian Home Commission Act of 1921

The HHCA begins with a broad description of "available lands," encompassing all public lands on the islands, excluding any lands within forest reservations, cultivated sugar cane lands, and any public lands held under a lease, certificate of occupation, or special homestead agreement.¹⁶² Section 204 of the HHCA provides, "upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian Home Lands" and be under the control of the Hawaiian Homes Commission "to be used and disposed of in accordance" with the provisions in the act itself.¹⁶³ The HHCA established the Commission and dictated it shall be composed of five members including, the governor of the Territory (charged to act as chairman of the Commission) and four citizens of the Territory, appointed by the governor (who was appointed by the President), with the requirement that "[a]t least three of the appointed members of the commission shall be native Hawaiians."¹⁶⁴

Even though Congress considered the interests of the Native Hawaiians in these "available lands," the requirement to have three natives appointed to the Commission was not enough to ensure the rehabilitation of Native Hawaiians. The HHCA named about 150,000 acres of land to be set aside as "Hawaiian home lands," while simultaneously limiting the Native Hawaiians access to less than one-third of those same tracts.¹⁶⁵ Only

161. Hawaiian Homes Commission Act of 1921, ch. 42, § 201-04 42 Stat. 108 (1921) [hereinafter Hawaiian Homes Commission Act].

162. Hawaiian Homes Commission Act § 203.

163. *Id.* § 204.

164. *Id.* § 202.

165. *Id.* § 203-04.

approximately 39,700 acres, the majority of which on the island of Molokai—the fourth largest island of the five islands described in the HHCA—were set aside for five years after the passing of the HHCA to be “available for use and distribution” by the Commission.¹⁶⁶ Pursuant to the HHCA

none of the remaining available lands named in said section 203 shall, after the expiration of the said five year period, be leased, used, or otherwise disposed of by the commission . . . except by further authorization of Congress and . . . the Secretary of the Interior of the United States.¹⁶⁷

The HHCA set aside over 150,000 acres of land and gave them the name “Hawaiian home lands,” however these efforts by the legislature were no more than mere gestures that did nothing to repair the lives of natives, considering that less than 40,000 acres were actually available for distribution.¹⁶⁸ The HHCA authorized the Commission to “lease to Native Hawaiians the right to the use and occupancy of a tract of Hawaiian home lands” in line with specific limitations.¹⁶⁹ The Commission had full discretion to grant or deny leases to native applicants and issued leases to only those “qualified[.]”¹⁷⁰ The Native Hawaiians were limited to lease no more than 80 acres of agricultural lands and a maximum of five hundred acres of “first-class pastoral lands” to which the title of those lands “remain[ed] in the United States.”¹⁷¹ The “title,” which remained in the hands of the U.S., is arguably nothing more than a legal fiction created by the Republic of Hawai‘i when it forced Queen Liliuokalani to cede her power to the Republic. The U.S. had no legal claim to the lands of the islands, but the illegal overthrow of the monarchy left an avenue for the Republic and U.S. to create an artificial “title” to lands that never belonged to them.

B. A Brief Look at Twenty-First Century Dealings with the Hawaiian Homes Commission Act as it Relates to Hawai‘i’s Entry into the Union

Less than forty years after the enactment of the HHCA, Hawai‘i entered the Union as a state in 1959.¹⁷² Upon admission, the state constitution for

166. *Id.*

167. *Id.* § 203-04.

168. Hawaiian Homes Commission Act § 204.

169. *Id.* § 207(a).

170. *Id.* § 207(b).

171. *Id.* § 207(a), (b).

172. Hawai‘i Statehood, Pub. L. No. 86-3, 73 Stat. 4 (1959) [hereinafter Hawai‘i Statehood].

Hawai'i adopted the HHCA as a provision therein.¹⁷³ The act granting statehood to Hawai'i gave the state title to all public lands on the islands and provided that all proceeds from the sale or distribution of these public lands "shall be held by said State as a public trust" for a number of purposes, including "for the betterment of the conditions of native Hawaiians."¹⁷⁴

The state government of Hawai'i established the Office of Hawaiian Affairs (The Office) in 1978.¹⁷⁵ The Office holds title to all real and personal property set aside or conveyed to it; the title is held in trust for Native Hawaiians and Hawaiians, as defined in the HHCA.¹⁷⁶ Native Hawaiians are "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."¹⁷⁷ "Hawaiians," as defined by state statute, are all "descendants of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778[.]"¹⁷⁸ At its inception, the board of trustees for The Office was to be composed of Hawaiian people as elected by Hawaiian voters.¹⁷⁹ However, these restrictions on eligible voters and potential board members did not last long.

In 2000, the United States Supreme Court held in *Rice v. Cayetano* that these restrictions violated the Fifteenth Amendment to the U.S. Constitution.¹⁸⁰ Hawai'i argued that The Office and the voting provision challenged in the case afforded "Hawaiians a measure of self-governance."¹⁸¹ Hawai'i further contended that the voting and board member restrictions were "not a racial category . . . but instead a classification limited to those whose ancestors were in Hawai'i at a particular time, regardless of their race."¹⁸² The state asserted, "the voting restriction does no more than ensure an alignment of interests between fiduciaries and the beneficiaries of a trust."¹⁸³ However, the Court found that "ancestry can be a proxy for race. It is that proxy here."¹⁸⁴ Therefore, the Court held that Article XII, section 5 of the Constitution of Hawai'i, describing these regulations for The Office, violated the Fifteenth Amendment to the U.S. Constitution which prohibits a state and the federal government from

173. *Id.* § 4.

174. *Id.* § 5(f).

175. HAW. CONST. art. XII, § 5.

176. *Id.*

177. Hawaiian Homes Commission Act § 201(a)(7).

178. *Rice*, 528 U.S. at 506.

179. HAW. CONST. art. XII, § 5.

180. *Rice*, 528 U.S. at 524.

181. *Id.* at 520.

182. *Id.* at 514.

183. *Id.* at 523.

184. *Id.* at 514.

denying or abridging the right to vote to any U.S. citizen on account of race.¹⁸⁵

The result of *Rice v. Cayetano* is manifold. The ruling made clear what was already known: Hawaiians and Native Hawaiians are not a sovereign people and are subjects of the United States, required to conform to the country's constitution. Thus, Hawaiians and Native Hawaiians cannot control their own elections, even if the purpose of the election is ultimately to serve only the interests of these specific peoples. Despite legislative efforts to improve the conditions for Hawaiians and the illegal overthrow of the Kingdom in 1898, the Court's holding in *Rice v. Cayetano* cements the notion that Hawaiians are Americans in the eyes of the federal government. The result being that Hawaiians are not entitled to special treatment or considerations. Nevertheless, the rich history of the Hawaiian people, the illegal overthrow of their monarchy, and the subsequent seizure of their land by the U.S. suggest that they *should* be a sovereign people. An analysis of the twentieth century in Hawai'i will reveal why this 2000 Supreme Court decision is unsurprising, although it removed one of the last vestiges of independence for the Native Hawaiian people.

C. How the Hawaiian Homes Commission Act Paved the Way for American Imperialism in Hawai'i as It Stands Today

Included in the HHCA are amendments to the Organic Act of 1900. Most notable of these amendments are the changes made to the regulation of agricultural land sales, specifically in relation to corporate ownership of these lands. Section 302 of the HHCA deleted section fifty-five of the Organic Act—the section which limited both foreign and domestic corporations to hold no more than 1000 acres of land.¹⁸⁶ This allowed for corporations like the Dole Pineapple Company to purchase and lease as much land as they needed to grow their companies.¹⁸⁷ As a result of this amendment, sugar cane corporations and Dole's pineapple company owned and operated the vast majority of the islands' prime agricultural lands throughout the nineteenth century.¹⁸⁸ Plantation owners used their influence and capital to buy land from Native Hawaiians—land once used for subsistence farming—into “plantations for the production of the cash crop

185. *Id.* at 524; U.S. CONST. amend. XV.

186. Hawaiian Homes Commission Act § 302.

187. See Karen Harris, *Pineapples Aren't Native to Hawaii: The Story of James Dole and Hawaiian Gold*, HISTORY DAILY (Aug. 1, 2019), <https://historydaily.org/pineapples-arent-native-to-hawaii-the-story-of-james-dole-and-hawaiian-gold>.

188. See SILVA, *supra* note 10, at 48.

sugar.”¹⁸⁹ This left the natives with the least arable land for farming and led to their dependence on foreigners and their industries.¹⁹⁰

Additionally, the 1921 amendments to the Organic Act called for all agricultural or undeveloped public land “which is capable of being converted into agricultural land” to be “sold at public auction to the highest bidder.”¹⁹¹ This further prevented Native Hawaiians from regaining their independence from foreign forces after the overthrow because they did not have the financial means to purchase land and compete with American settlers.¹⁹² Further, the growth of sugar cane plantations required more laborers. As a result, many Native Hawaiians who lost their own farmlands became “impoverished wage laborers” on the plantations to prevent “the importation of immigrant labor to fill the ‘need[.]’”¹⁹³ But the success of sugar and pineapple cultivation on the islands required more labor than the natives could provide on their own.

D. A Booming Pineapple Industry Left Native Hawaiians by the Wayside

To better understand the impact of the HHCA and the Organic Act on Native Hawaiians, one must take a step back to look at the agricultural industry on the islands before these laws took effect. From this detached perspective, the boom in the agricultural market after 1921 seems to be a direct result of these legislative acts. None of the major sugar cane producing farms or plantations were owned by Native Hawaiians.¹⁹⁴ The Great Mahele of 1850 allowed foreigners to buy and lease land, and the 1921 amendments to the Organic Act discussed above removed limitations on the amount of land corporations could lease and purchase. These legislative developments facilitated the “male-dominated, all-white hierarchy” that was pervasive in Hawaiian agricultural industries in the nineteenth and twentieth centuries.¹⁹⁵

Before Hawai’i’s pineapple industry dominated the global market, the sugar cane industry on the islands predominated and required an influx of laborers to take on the physical work. Between 1885 and 1908, kingpins of the sugar cane industry brought Japanese men to the islands as indentured laborers.¹⁹⁶ Once their period of indentured labor was over, many went on

189. *Id.* at 51.

190. *Id.*

191. Hawaiian Homes Commission Act § 304.

192. *See* SILVA, *supra* note 10, at 47.

193. *Id.*

194. Duane P. Bartholomew et al., *Hawaii Pineapple: The Rise and Fall of an Industry*, 47 AM. SOC’Y FOR HORTICULTURAL SCI. 1390, 1391–92 (Oct. 2012) (discussing the growth of pineapple cultivation in Hawai’i and Dole’s Hawaiian Pineapple Company).

195. *Id.* at 1392.

196. Bartholomew et al., *supra* note 194, at 1392.

to work in the pineapple industry, drawn in by “easier working conditions, more freedom, and greater opportunity for advancement.”¹⁹⁷ By 1908, growers of Japanese ancestry controlled about 7.5 percent of pineapple farms, most of which were on Oahu.¹⁹⁸ These smaller farms would supply pineapples to larger companies that grew and canned pineapples on the islands.¹⁹⁹

In 1920, ethnic Japanese owned and operated about eighty-seven percent of the *small* pineapple farms in Hawai‘i.²⁰⁰ The second largest group of Asian immigrants brought to Hawai‘i to work the farmlands came from the Philippines.²⁰¹ By 1920, Filipinos made up a “significant segment of the plantation workforce and that remains the situation to this day.”²⁰² Of note is the absence of Chinese laborers in Hawai‘i at this time. This is because the Newlands Resolution, which provided for the annexation of Hawai‘i, included a ban on Chinese immigration to the islands.²⁰³ The resolution barred the immigration of Chinese people to Hawai‘i and stated “no Chinese . . . shall be allowed to enter the United States from the Hawaiian Islands[,]” preventing any ethnic Chinese already in Hawai‘i from moving to the mainland.²⁰⁴ This language and its effect mirror that of the Chinese Exclusion Act, which suspended Chinese immigration to the United States in 1882.²⁰⁵

The restriction on Chinese immigration set out in the document that annexed Hawai‘i to the United States further illustrates the federal government’s intent to absorb the islands and make it an extension of America. As the pineapple industry consolidated throughout the twentieth century, the vast number of small farms run by Japanese farmers declined.²⁰⁶ This consolidation of the industry was made possible by James Dole’s Hawaiian Pineapple Company.²⁰⁷

James Dole, second cousin of Sanford B. Dole (author of the Bayonet Constitution, president of the Republic, and instigator of Hawaiian annexation), left New England and followed his cousin to the islands in 1899.²⁰⁸ James was aware of the booming sugar cane industry in Hawai‘i

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. Bartholomew et al., *supra* note 194, at 1392.

203. Newlands Resolution, *supra* note 4, at 751.

204. *Id.*

205. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (suspending the immigration of Chinese laborers into the United States).

206. Bartholomew et al., *supra* note 194, at 1392.

207. *Id.* at 1393.

208. Harris, *supra* note 187.

and “listened as his cousin explained the short-comings of a non-diversified economy.”²⁰⁹ Sanford described how the economy of the entire region suffered whenever the sugar cane crop had a poor growing season.²¹⁰ So James built his pineapple empire on the advice of his cousin who sought to turn the islands into a modern democracy and diversify its exports.²¹¹

While many former indentured laborers of Japanese origin realized their goals and found success as small pineapple farmers, the all-white agricultural business oligarchy on the islands arguably “actively discouraged the middle-class ambitions of Hawai’i’s non-white communities to maximize the number of potential plantation laborers.”²¹² Plantation owners like Samuel N. Castle, co-founder of Castle & Cooke, one of the biggest agricultural (predominantly sugar) companies in the islands, advocated for sugar plantations.²¹³ Castle said he pushed for sugar plantations on the islands not for his own financial benefit, but ““to benefit the workless Hawaiians.”²¹⁴ Labor, as Castle saw it, would “help elevate the savage to civilization,” a notion all too reminiscent of Confederates’ arguments in defense of enslaving blacks in the American South.²¹⁵

With imported Asians and a local supply of Native Hawaiians to work the sugar and pineapple plantations, white plantation owners and businessmen rapidly developed mechanisms to improve efficiency and productivity on their lands. In 1911, James Dole’s Hawaiian Pineapple Company hired Henry Ginaca to develop a machine to produce “fruit cylinders at a much higher rate.”²¹⁶ Ginaca acquired eleven patents for his inventions, all of which he assigned to the Hawaiian Pineapple Company.²¹⁷ Ownership of these patents allowed Dole’s company to sell machines that could process up to one hundred fruit per minute for as much as \$4,200 per machine.²¹⁸ But Dole’s contributions to the pineapple industry in Hawai’i did not end there.

In 1914, the Hawaiian Pineapple Company bought the rights to an impregnated paper mulch invented to control weed growth.²¹⁹ The mulch cost Dole \$50,000, which he patented to be used for pineapple farming.²²⁰ By 1932, the Hawaiian Pineapple Company collected over \$735,000 in

209. *Id.*

210. *Id.*

211. *Id.*

212. Bartholomew et al., *supra* note 194, at 1393.

213. SILVA, *supra* note 10, at 53.

214. SILVA, *supra* note 10, at 53.

215. *Id.*

216. Bartholomew et al., *supra* note 194, at 1393.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

royalties from other Hawaiian pineapple growers who used his patented mulch.²²¹ In 1923, the company bought up most of the land on the island of Lanai to dedicate to pineapple cultivation—an act that would have been impossible, but for the 1921 amendments to the Organic Act.²²²

By 1936, about 89,000 acres of Hawaiian lands were solely devoted to pineapple production.²²³ The patented mulch not only helped control weeds, but also increased soil temperatures below the mulch.²²⁴ Pineapple planting was seasonal and it was found that raising soil temperatures during the cooler months of the year led to significant increases in plant growth.²²⁵ Thus, despite the fact that the total acreage dedicated to pineapples decreased by nearly twenty-five percent by 1942, “the decline in planted area was more than offset by increased yields.”²²⁶

Dole sought to create a pineapple empire and construct a link between Hawai'i and pineapples that would intrigue Americans on the mainland and foreigners alike.²²⁷ He achieved this by marketing the pineapples to housewives in the 1900s and 1910s with the slogan “Insist on Hawaiian Pineapples.”²²⁸ His goal was to link the fruit to the “lush, tropical paradise” and it worked.²²⁹ People perceived Hawaiian pineapples to be sweeter and better than other pineapples available from the Bahamas or Florida, and by 1922, the Hawaiian Pineapple Company supplied seventy-five percent of the world's pineapples.²³⁰ Dole's Hawaiian Pineapple Company was integral in developing the pineapple industry on the islands that quickly came to dominate the global pineapple market, making the Dole name unforgettable to residents of the island and mainland alike.

The Dole name carried, and still carries, significant weight in Hawai'i. Sanford Dole was aware of the significance his family name would hold from as early as 1910.²³¹ Sanford sent James a letter that year, urging his cousin to rebrand the “Hawaiian Pineapple Company” as the “Dole Pineapple Company.”²³² According to Sanford, the Dole name “is a name which has long been associated in these islands with religious, educational, and philanthropic enterprises.”²³³ Whether or not his assertion is actually true is

221. *Id.*

222. Bartholomew et al., *supra* note 194, at 1393.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. Harris, *supra* note 187.

228. *Id.*

229. *Id.*

230. *Id.*; Bartholomew et al., *supra* note 194, at 1391.

231. Harris, *supra* note 187.

232. *Id.*

233. *Id.*

certainly up for debate. It is possible that James did not agree with his cousin's assumptions, for the company's name did not change to Dole Pineapple Company until after James died in 1958.²³⁴ Considering the Asian men imported from Japan and the Philippines and the reliance on Native Hawaiians to make up the rest of the labor work force, it is possible that James did not consider his family's enterprises to be philanthropic as much as they were purely economic, for he considered himself a businessman.²³⁵ James was intent on building a pineapple empire and thought that linking Hawai'i to pineapples in the minds of consumers would help him achieve this goal.²³⁶

E. The Dole Legacy Lives on

Today, the plantation house James Dole built for his family and the land it sits on are open for tours on Oahu.²³⁷ Although James passed away in 1958, his descendants with the Dole name carried on the family business.²³⁸ Keith Richards' autobiography, *Life*, presents an anecdote exemplifying the power of the Dole name, the favoritism shown to white foreigners in Hawai'i by other white men, and by extension, the insignificant role Native Hawaiians have been relegated to in the Hawaiian economy.

Richards's story begins in early 1973, when the Rolling Stones were finishing their "Far East" tour. The tour took them to Australia and New Zealand, but surprisingly no country in Asia, and Honolulu served as their "point of exit and reentry into the United States[.]"²³⁹ Before they left for Australia, Richards and Bobby Keys met the "Pineapple Princess."²⁴⁰ They spent the night "Dole-ing it out at the mansion" belonging to Mr. Dole, a descendant of James Dole, and the man who was in charge of the Dole Pineapple Company at the time.²⁴¹ Keys was "screwing the Pineapple Princess" and Pineapple Princess was excited to introduce the musician to her father.²⁴² Mr. Dole was "gracious" to both Keys and Richards and told Keys, "[i]f there's ever anything I can do for you if you're passing through Hawai'i, give me a call. Here's my private number, goes straight

234. *Id.*

235. *See id.*

236. *Id.*

237. Harris, *supra* note 187.

238. *See* KEITH RICHARDS, *LIFE* 353 (2010).

239. *Id.* at 351.

240. RICHARDS, *supra* note 238, at 353–54.

241. *Id.* at 353.

242. *Id.* at 353–54.

through.”²⁴³ As it turns out, Keys was going to need Mr. Dole’s help on his way back into Hawai’i.

Airport customs in Honolulu found a syringe and capsules of heroin on Keys when he and Richards returned from the Far East tour.²⁴⁴ Terrified he would end up in prison, Keys called Mr. Dole from the airport interrogation room.²⁴⁵ After asking a series of questions, Mr. Dole told Keys, “I’ll see what I can do,” before hanging up the phone.²⁴⁶ Then the phone on the desk of the customs official rang.²⁴⁷ The official looked at Keys, back at the phone, and then hung up, shaking his head as he tore up the charge sheet.²⁴⁸ Not only did Keys walk free to board the plane with Richards, he left with the contraband that he was originally charged for possessing—the official gave the heroin back to him!²⁴⁹ So the story goes of how the Pineapple King of Hawai’i saved the musicians from prison with a single phone call.

Considering James Dole’s quick and overwhelming success in dominating the pineapple market and the power the Dole name still carries in Hawai’i today, it is clear that he achieved his goal of building a pineapple empire. While beneficial for the Hawaiian economy overall, the Dole pineapple plantation, which continues to serve as a tourist attraction on Oahu today, contributed to the erasure of the Native Hawaiian culture in the islands.²⁵⁰ The Dole name immediately brings pineapples to mind, and pineapples in turn, thanks to Dole’s marketing campaign, brings Hawai’i to mind. Therefore, Dole became and is a representation of Hawai’i as we know it today. So, if a tropical beach vacation with piña coladas appeals to you, I challenge you to ask yourself, what about the Native Hawaiians? Do they stand to benefit from the tourism on the islands today?

F. Current Status of the Native Hawaiian Population

Throughout this paper, I have asserted that the illegal seizure of the Hawaiian Islands and the legislation the U.S. government enacted since said seizure have negatively impacted the Native Hawaiian population. But even this is an understatement in many ways. While amendments to the 1921 HHCA have allowed Native Hawaiian communities to assert some independence, the population remains the most impoverished group with the

243. *Id.*

244. *Id.* at 352.

245. *Id.* at 354.

246. *Id.*

247. *Id.*

248. *Id.*

249. RICHARDS, *supra* note 238, at 354.

250. *See* Harris, *supra* note 187.

largest homeless population on the islands.²⁵¹ About seventy percent of the people who live “along the shores, in cars and vans, in parks, and in the bushes that line highways” on the islands are Native Hawaiians.²⁵² Of the roughly 1.4 million people who live in Hawai’i, Native Hawaiians make up just over ten percent of the population.²⁵³ The median household income in Hawai’i is \$74,923 while the median household income for Native Hawaiians is only \$65,893.²⁵⁴ This can likely be attributed to the fact that only 13.9% of Native Hawaiians have attained bachelor’s degrees, whereas thirty-two percent of the overall population of Hawai’i has at least a bachelor’s degree.²⁵⁵ The overall poverty rate of Native Hawaiians—16.1%—is nearly twice that of the general population of Hawai’i, of which 8.8% live in poverty.²⁵⁶

These census figures depict a population at the bottom of the socio-economic ladder. But how can it be that people whose ancestors once ruled these islands as a sovereign nation are now relegated to the lowest class? Ultimately, money talks, and legislators listen, especially when the legislators have a vested interest in the success of white foreigners who had the money to purchase lands sold to the highest bidder. Remember, Sanford Dole was president of the Republic and his cousin James Dole became the pineapple mogul. The 2001 Amendments to the HHCA recognize the need to “rehabilitate a landless and dying people” that resulted from the U.S. government’s (and its representatives’) legislative actions beginning in the mid-nineteenth century.²⁵⁷

These 2001 Amendments acknowledge the need for self-governance among a people who long for the sovereign nation of their ancestors. The bill granted Hawaiian homestead communities the right to democratically elect organizations to represent homestead communities and vested in them the authority delegated to the state “relating to the administration of the Hawaiian Homes Commission Act, 1920[.]”²⁵⁸ While this right to self-

251. 2001 Hi. SB 1102 (bill for an act amending the Hawaiian Homes Commission act, 1920); see GOODYEAR-KA’ŌPUA ET AL., *supra* note 42, at 38.

252. GOODYEAR-KA’ŌPUA ET AL., *supra* note 42, at 38.

253. *Hawaii*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/HI/PST045218#> (last visited Dec. 13, 2019) (census for population of Hawai’i as of July 1, 2018).

254. *Hawaii*, *supra* note 253; *Selected Population Profile in the United States*, AMERICAN FACT FINDER UNITED STATES CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_S0201&prodType=table (last visited Dec. 13, 2019) (census for Native Hawaiian population from 2017).

255. *Hawaii*, *supra* note 253.; *Selected Population Profile in the United States*, *supra* note 254.

256. *Selected Population Profile in the United States*, *supra* note 254.

257. 2001 Hi. SB 1102 § 1(C)(i).

258. *Id.* § 2.

governance in their own communities is a nice gesture, it does little to actually rehabilitate this impoverished group.

In 2018, Hawai'i received nearly 10 million visitors who spent a total of over \$17.64 billion.²⁵⁹ The hotel industry benefitted from 42.2% (about \$7.44 billion) of this spending while the food and beverage sectors drew 20.5% or \$3.62 billion in net profit.²⁶⁰ What does this have to do with Native Hawaiians? Little to nothing. Logically, it does not make sense that the group that makes up seventy percent of the lowest class would benefit from these tourist dollars. But efforts to attract tourists to the islands suggest that the Native Hawaiians will host and welcome all visitors.

Flights to Hawai'i, whether with Hawaiian Airlines or another popular commercial airline, regularly serve tropical drinks like guava juice and passion-orange-guava (POG). Tourists may even be greeted with traditional orchid *leis* upon arrival. California's Oakland airport website, as of December 2019, has on its homepage a photo of beautiful tropical mountains with the slogan "Aloha begins at OAK" scrawled across it.²⁶¹ And their marketing campaign does not end there. There are posters with messages like this all across the Powell BART station in San Francisco. The posters display pictures of luscious tropical destinations with phrases in Hawaiian printed across them. A picture of a big surf wave has the words "*nalu nui*" with the English translation "big wave" printed right below it in a smaller font. These advertisements essentially appropriate the Hawaiian culture that Western influence has nearly erased, taking into account the Act of June 8, 1896 (banning Hawaiian language in schools), the abject poverty of the Native Hawaiians today, and the limited amount of land natives use, let alone own. The vestiges of the Native Hawaiian culture that remain are only prominent today because of these efforts to entice visitors to come to the islands.

The newly renovated International Market Place in Waikiki on Oahu is an outdoor mall in the middle of a popular tourist district. Before its 2016 renovation, the marketplace was a maze of kiosks with thatched roofs and small stores that sold handmade jewelry, *Aloha* wear, and other artisanal crafts.²⁶² While it cannot be said that the forced closure of the majority of these kiosks meant that Native Hawaiians specifically closed down their businesses, the International Market Place, since its inception in 1957, was a place in Waikiki where "small-business owners of modest means . . . might

259. *2018 Annual Visitor Research Report*, HAWAII TOURISM AUTHORITY 1, 2 (2018), <http://files.hawaii.gov/dbedt/visitor/visitor-research/2018-annual-visitor.pdf>.

260. *2018 Annual Visitor Research Report*, *supra* note 259.

261. OAKLAND INTERNATIONAL AIRPORT, <https://perma.cc/XLF6-D8K9> (last visited Dec. 13, 2019).

262. See Terri Inefuku, *New International Market Place Opens in Waikiki*, KHON2 (Aug. 25, 2016), <https://www.khon2.com/local-news/new-international-market-place-opens-in-waikiki/>.

have a shot.”²⁶³ Since the overthrow of the Hawaiian monarchy in 1893, Native Hawaiians struggled to find their place in the economy and it is not too far-fetched to say that it is likely a number of native individuals found their place in the kiosks at the International Market Place. Today, the International Market Place is hardly a marketplace at all; it is now home to stores like Burberry, Balenciaga, Saks Fifth Avenue, and Rolex.²⁶⁴ The independently owned and operated kiosks, while not completely gone, no longer have a space all their own. A handful of the kiosks I remember from my childhood can be found in the alley next to the new marketplace, adjacent to the parking garage exit.

This is arguably a twenty-first century version of the effect the sugar and pineapple industries had on Native Hawaiians; the companies left little land for the natives to use themselves, and so they had little choice but to work the plantations as laborers.²⁶⁵ Here, the corporations are luxury retail stores, but the effect is the same—the Native Hawaiians and others of the middle and lower classes who worked the kiosks of the old International Market Place no longer have the opportunity to operate their own businesses and instead are left with little to no economic autonomy. They can offer up their services in the stores or other tourist attractions or reopen their kiosks in the alley with the hope that passersby see them and stop to shop. Regardless, the effect of American Imperialism in Hawai’i relegated the Native Hawaiians to positions of servitude and reliance on foreigners from the nineteenth century to today.

Conclusion

The illegal overthrow of the Hawaiian monarchy and the subsequent seizure of the lands by the United States continues to affect the socio-economic landscape of Hawai’i today as much as it did in 1898. The United States usurped the Hawaiian Kingdom in what is arguably the most egregious exercise of the supposed right of Manifest Destiny and did so without repercussions. American imperialism in Hawai’i pushed the native peoples to the fringes of society and left them without any option but to conform to American laws and capitalism. Native Hawaiians can only hope to eventually receive federal recognition as a sovereign people, like many

263. David Thompson, *The Rise, Fall and Rebirth of Waikiki’s International Market Place*, HONOLULU MAGAZINE (Dec. 3, 2013, 6:00 AM), <http://www.honolulumagazine.com/Honolulu-Magazine/December-2013/The-Rise-Fall-and-Rebirth-of-Waikikis-International-Marketplace/index.php?cparticle=3&siarticle=2#artanc>.

264. *Stores*, INTERNATIONAL MARKET PLACE, <https://shopinternationalmarketplace.com/stores/> (last visited Dec. 13, 2019).

265. SILVA, *supra* note 10, at 47.

indigenous groups in the other forty-nine states, but it is unlikely any Native Hawaiians alive today will live to see this come to fruition.
