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UNIVERSITY OF CALIFORNIA
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Sovereign Embodiment: Native Hawaiian Expressions of Kuleana in the Diaspora

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Ethnic Studies

by

T. Kēhaulani Natsuko Vaughn

September 2017

Dissertation Committee:

Dr. Keith Camacho, Co-Chairperson

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2017

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University of California, Riverside

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ABSTRACT OF THE DISSERTATION

Sovereign Embodiment: Native Hawaiian Expressions of Kuleana in the Diaspora

by

T. Kēhaulani Natsuko Vaughn

Doctor of Philosophy, Graduate Program in Ethnic Studies
University of California, Riverside, September 2017
Dr. Keith Camacho and Dr. Robert Perez, Co-Chairs

This dissertation examines diasporic Native Hawaiians who embody their Indigeneity through a praxis of kuleana—responsibilities/privileges. Maintaining reciprocal relationships with land and people are essential qualities of being Indigenous. I argue that treaty-making between Native nations is one method whereby Native Hawaiians living in the diaspora can embody their understandings of ‘āina—land and engaged in a praxis of kuleana by acknowledging the genealogical caretakers of the places where they now reside. I highlight the Treaty of Friendship and Mutual Recognition between Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians, Acjachemen Nation, ratified in 1992. Tracing the history of treaty-making by Native nations, I demonstrate that treaty-making among Native nations is neither a colonial by-product nor a historical anomaly. Rather, treaty-making represents a unique form of Indigenous statecraft: one that recognizes Native nationhood and

self-determination and one that refuses the authority and interference of a settler colonial government.

Diasporic Native Hawaiians living in California, engaging in social-political forms of recognition, such as treaty-making, that acknowledge other Indigenous people and the traditional tribal territories on which they reside can also be understood as a praxis of kuleana. I articulate kuleana as praxis through ethnographic interviews with Hawaiians living inside and outside of the homeland. Around fifty percent of Native Hawaiians now live outside of their homeland. Displacement is a specific modality of settler colonialism and California is residence to the largest populations of Hawaiians who have become displaced from their homeland. Additionally, I interview Native Hawaiians and Acjachemen to understand the contemporary significance of the Treaty of Friendship and Mutual Recognition. Alongside my interviewees, I argue that this treaty is a direct expression of sovereignty beyond the American nation-state. While both groups remain federally unrecognized, they engage in treaty-making to recognize each other as Indigenous self-determining nations, thereby subverting dominant state institutions. My research reveals that trans-Indigenous collaborations, such as the one central to this study, are invaluable in combatting settler colonial institutions that continue to displace both California Indians and Native Hawaiians from their own lands and resources actively regenerating social and political futures for their communities.

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INTRODUCTION

Ke ho'i a'e la ka 'ōpua i Awalua

The rain clouds are returning to Awalau

Said of a return to the source

-Mary Kawena Pukui

'Olelo No'eau, Hawaiian Proverbs and Poetical Sayings¹

Kanaka 'Ōiwi have a deep source of culture and knowledge that has been passed down by their kūpuna—ancestors.² Despite an American colonial project that aims to eliminate Indigenous people from their land and resources, Native Hawaiians and other Indigenous people continue to survive. The high cost of living in Hawai'i due to both tourism and military incursions has caused a growing Native Hawaiian diaspora. California, for instance, is now home to the largest population of displaced Native Hawaiians in the United States. In California, diasporic Hawaiians also struggle to create a sense of community and to maintain Indigenous life in a way that honors their kuleana to the lāhui. Like the 'ōlelo no'eau quoted above, Native Hawaiians living inside and outside of their homeland are actively maintaining culture and themselves through ancestral knowledge and protocol. Maintaining reciprocal relationships with land and people are thus essential

¹ Mary Kawena Pukui, *'Ōlelo Noe'au: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum Press, 1993), 183.

qualities of being Indigenous. These bodies of knowledge continue to be actively transported across time and space and involve engaging in social-political forms of recognition that acknowledge other Indigenous people, including those whose land they may be residing on. My dissertation, “Sovereign Embodiment: Native Hawaiian Expressions of Kuleana in the Diaspora,” illuminates how Native Hawaiians from Ka Lāhui Hawai‘i (Ka Lāhui) and the Juaneño Band of Mission Indians, Acjachemen Nation, a federally unrecognized California Indian tribe, forge trans-Indigenous collaborations. Although this case study focuses on one California tribal community, there are, in fact, many collaborations that have yet to be documented. These relations, I argue, have one main purpose: Indigenous cultural survivance. Building upon Native American scholar Gerald Vizenor’s theorization of cultural survivance in the context of literary traditions, my dissertation uses this term to articulate how the active cultivation of Indigenous existence produces dynamic cooperatives that resist settler colonial violence and erasure.³

Trans-Indigenous collaborations, like the one central to this study, offer evidence of Native communities recognizing each other in ways that subvert dominant state institutions and that honor and embody Indigenous self-determining practices. These relations also provide spaces for diasporic Native communities to

² Kanaka ‘Ōiwi, Kanaka Maoli, Hawaiian, and Native Hawaiian will be used interchangeably throughout this dissertation. They refer to the Indigenous people of Hawai‘i regardless of federal and state definitions of Native Hawaiians. I also choose not to italicize Hawaiian words, and to indicate their English translation via an em dash.

engage in cultural continuance outside of their homelands. The diasporic Hawaiians from Ka Lāhui that initiated the treaty engaged in a kuleana praxis. I articulate kuleana as well as a kuleana praxis through ethnographic interviews with Hawaiians living inside and outside of the homeland. The interviewees detail the expansiveness of kuleana as well as how its continued embodiment is necessary for the maintenance of Hawaiians as a people. This includes working and assisting with other genealogical caretakers of lands where Hawaiians now reside and possibly will be buried. In doing so, my research reveals how trans-Indigenous collaborations are invaluable both in combating settler colonial institutions that continue to displace both California Indians and Native Hawaiians from their own lands and resources and in actively regenerating social and political futures for Indigenous communities.⁴

In the spring of 1992, Ka Lāhui Hawai‘i signed a Treaty of Friendship and Mutual Recognition with the Juaneño Band of Mission Indians, Acjachemen Nation.⁵ Engaging in treaty-making has been a long tradition for Hawaiians and other Indigenous nations and should not be considered a historic anomaly or solely as a colonial expression of nationhood. While the Acjachemen Nation and Native

³ Gerald Robert Vizenor, *Survivance: Narratives of Native Presence* (Lincoln: University of Nebraska Press, 2009).

⁴ Indian and Native will be used interchangeably throughout this dissertation.

⁵ The Treaty of Friendship and Mutual Recognition Between the Government of Ka Lāhui Hawai‘i and The Juaneño Band of Mission Indians/Acagchemen Nation, 1992. The official name of the tribe on the treaty is the Juaneño Band of Mission Indians/Acagchemem Nation, but Acjachemen and Juaneño will be used interchangeably.

Hawaiians have an ongoing ambiguous relationship to federal recognition with the U.S. government, both communities continue to engage in Native practice and protocol outside of the state.⁶ Their oral histories likewise provide insight into the political motivations that led to a treaty between the two Indigenous groups—a treaty that is a direct expression of sovereignty beyond the American nation-state.

In 1992, one of Ka Lāhui’s citizens, Carolyn Kualī’i was pursuing their undergraduate studies at the University of California at Irvine, which is the traditional territory of the Acjachemen people. Kualī’i then met and worked with the local tribal leadership during her undergraduate work and became a facilitator of the treaty-making process between the Acjachemen and Ka Lāhui Hawai’i. Such recognition and friendship emphasized the significance of contemporary treaty-making for both Indigenous groups within a settler colonial context.

Methodology

One of the central questions within the discipline of Hawaiian Studies, and for scholars of Hawaiian Studies is: Who are Kanaka Maoli? As Native Hawaiian scholar Jonathan Kamakawiwo’ole Osorio stated, “‘O ia ka nīnau maoli (That is the real question). Who the hell are we? If our own activism and scholarship does not continually seek the answers to that question, then it is activism and scholarship for

⁶ During the writing of the dissertation, the U.S. Department of the Interior (DOI) ruled that Native Hawaiians would be provided a pathway for self-governance, but there is no clear understanding of how this would change the current political and legal relationship between Native Hawaiians and the U.S. federal government.

someone else.”⁷ As Osorio points out, defining who we are and expanding our previous notions of ourselves should be central to research inquiries in Hawaiian Studies. Furthermore, how do we understand and define the community in light of the dynamic shifts and changes in Hawai‘i and the diaspora? Defining identity through the logics of authenticity, for instance, produces a diminishing Native community. Specifically with Native Hawaiians, authenticity is often restricted to Native Hawaiians living *in* Hawai‘i. In this way, Native Hawaiians residing in California and elsewhere are often perceived as less culturally authentic. By perpetuating these logics, Native Hawaiians themselves reinforce and legitimize Native erasure, a modality of settler colonialism.

Following the work of Native Hawaiian scholar Noelani Goodyear-Ka‘ōpua that charted the values framing Hawaiian Studies, my dissertation accounts for and incorporates the growing Native Hawaiian community that lives within the diaspora. Currently, close to half of the Native Hawaiian population resides outside of Hawai‘i.⁸ California is home to the largest population of Native Hawaiians living outside of their homeland.⁹ In Hawaiian Studies as well as in the larger field of Native Studies, many have yet to elaborate solutions in regard to the growing

⁷ Noelani Goodyear-Ka‘ōpua, “Reproducing the Ropes of Resistance: Hawaiian Studies Methodologies,” in *Kanaka ‘Ōiwi Methodologies: Mo‘olelo and Metaphor*, ed. Katrina-Ann R. Kapā‘anaokalāokeola Nākoa Oliveira and Erin Kahunawaika‘ala Wright (Honolulu: University of Hawai‘i Press, 2016), 6.

⁸ “Native Hawaiian Population by Region in the United States: 1990, 2000, 2010,” Office of Hawaiian Affairs, *Native Hawaiian Data Book*, table 1.19, accessed July 10, 2017, <http://www.ohadatabook.com/T01-19-13.pdf>.

problem of diasporic or displaced Natives and the logics that identify them as “no longer Native,” since ‘āina or land is so central to Native Hawaiians and Indigenous communities in general.¹⁰ Moreover, Indigeneity often encompasses creation stories detailing existences from a specific place, and exemplifies genealogical responsibilities to land and resources for the next generations. For Native Hawaiians, these responsibilities represent specific kuleana tied to place and family. Taking these central notions of Indigeneity and kuleana, how do we sincerely incorporate Native Hawaiians and Natives in general who no longer reside in their homelands into their Native nations while documenting their stories within Native Hawaiian and Native Studies?¹¹ Additionally, how can Native Hawaiians living outside their homeland fulfill a specific kuleana that acknowledges their family and the lāhui?¹²

The following methodology seeks to expand definitions of Indigeneity that are grounded in self-determination and survivance. To demonstrate an embodied Indigeneity, I highlight an example of Native Hawaiians who are living off-island and

⁹ *A Community of Contrasts: Native Hawaiians and Pacific Islanders in California, 2014* a report by Empowering Pacific Islander Communities (EPIC).

¹⁰ ‘Āina means land, but also means that which feeds. This feeding can be both a physical nourishment as well as a spiritual one. Mary Kawena Pukui, *‘Ōlelo Noeau: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum Press, 1993).

¹¹ Native Hawaiian kūpuna have been travelling for generations. Like other Pacific Islanders, the oceans were viewed as highways connecting islands to one another. Some consider Turtle Island part of the history of travel between Indigenous communities. However, Native Hawaiians as well as other Indigenous communities are disproportionately being pushed out of their homelands due to settler colonialism and are unable to return due to various modalities of Native erasure.

¹² Lāhui is defined here as nation.

who support the community at home by engaging in reciprocal relationships with the genealogical caretakers of the land where they now reside. I argue this to be a specific embodiment and praxis of kuleana. In this way, treaty-making *from home and afar* is an expression of nationhood. However, treaty-making should not be considered a historical anomaly or solely within the statecraft of colonial governments. Specifically, this study highlights the ratification of a treaty in 1992 between the Juaneño Band of Mission Indians, the Acjachemen Nation and Native Hawaiians who were citizens of Ka Lāhui Hawai‘i. Therefore, my dissertation adds to the growing body of Native Hawaiian and Native scholarship that contributes to the central questions about culture, nation, and diaspora raised by Osorio, Goodyear-Ka‘ōpua, and others. My work expands Native Hawaiian methodologies grounded in ‘āina to encompass Native Hawaiians in the diaspora. Moreover, my interdisciplinary methodology attempts to account for landscapes and oral traditions as vessels of knowledge and histories that supplement, and at times complicate, traditional historical archives. Goodyear-Ka‘ōpua describes the core values for Native Hawaiian methodologies and the principal goals for Native Hawaiian Studies. The four values that she defines as aho—cords, are as follows: (1) lāhui—collective identity and self-definition; (2) kuleana—positionality and obligations; (3) ea—sovereignty and leadership; and (4) pono—harmonious relationships, justice, and healing.¹³ Grounded in these values and definitions, my

¹³ Goodyear-Ka‘ōpua, “Reproducing the Ropes of Resistance: Hawaiian Studies Methodologies,” 2.

research humbly strives to add to the growing body of research in Native Hawaiian Studies that enriches our definitions of who we have been and who we continue to be. As a Native Hawaiian scholar living in the diaspora, I engage with the aho—cords that Goodyear-Ka'ōpua articulates. I ask, how can lived experiences on the 'āina inform this research? Furthermore, how can my research regenerate the ways of life that allow us to be pono or in balance with the 'āina?

As noted by Goodyear-Ka'ōpua, it is important to find practices and protocols that can be productive for the building and maintenance of the lāhui.¹⁴ In this vein, she draws upon her own lineages while engaging with other 'Ōiwi scholarship, and more broadly other intellectual lineages and traditions. She terms this practice as being selectively promiscuous.¹⁵ Thus, I also work closely with other Native studies thinkers and scholars who center both Native Hawaiian life in the diaspora *and* the Native people that now host us.

By highlighting a relationship between Ka Lāhui Hawai'i, Native Hawaiians in the diaspora, and an unrecognized California Indian tribe through a ratified treaty, I respectfully attempt to illustrate how Native Hawaiian values grounded in 'āina are still central to those who reside outside of the homeland. By being selectively promiscuous, this dissertation thereby highlights how a treaty reinforces a genealogical responsibility to land and tribal self-governance. In fact, as I plan to show, Juaneño tribal members identify the treaty as a specific Indigenous refusal

¹⁴ Ibid, 9.

¹⁵ Ibid.

that resists state logics of recognition and instead embodies a direct expression of Native self-governance while providing models for decolonization.¹⁶ By highlighting tribal voices, this methodology is intrinsically tied to the Native Hawaiian value of ‘āina, which is expressed as protocol in the acknowledgement of a Native host community. This should not be seen as a mere acknowledgement, but should also be understood as a specific kuleana grounded within our own understanding of ‘āina. Like our homeland, there is, and always will be, a genealogical responsibility to care for and protect the land and resources. In this respect, California is no different than Hawai‘i, meaning that Kanaka Maoli who live outside of Hawai‘i should assist the people who have similar responsibilities to land. Therefore, I argue that one of the main responsibilities of Hawaiians living outside of Hawai‘i is to be engaged in a praxis of kuleana. This praxis entails an acknowledgement of relationships to land, including relationships to its genealogical caretakers. By engaging in these relationships, Hawaiians embody an understanding of ‘āina and kuleana that is embedded in a Native Hawaiian cultural protocol. This honors kūpuna or ancestral knowledge and serves the greater lāhui.

Since there are a greater number of Native people being displaced from their homelands due to settler colonialism, understanding who is a Native and who is a settler is a central question to any particular locale. Although Native Hawaiians are

¹⁶ The Indigenous refusal being noted here is from Audra Simpson’s work articulated in *Mohawk Interruptus*. Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham; London: Duke University Press, 2014).

an Indigenous people and have a genealogical connection and responsibility to land, we are only Indigenous to Hawai'i. Native Hawaiian scholar Haunani-Kay Trask in her seminal work reminds us of the prevalence of Native erasure in Hawai'i, and overall in American society. She states, "As on the continent, so in our island home. Settlers and their children recast the American tale of nationhood; Hawai'i, like the continent, is naturalized as but another telling illustration of the uniqueness of America's 'nation of immigrants.'"¹⁷ Therefore, Native Hawaiians living in the diaspora should actively work against settler colonialism, including its logics and its structures that displace and marginalize Native people. Furthermore, positive collaborations with Native American tribes can affirm Native self-governance and directly work against the settler colonial assertion of individual rights to land and resources within nation-state structures. For these reasons, we should align our struggles for self-determination and build larger social movements that center understandings of and responsibilities to 'āina as a collective.

In "Holographic Epistemology: Native Common Sense," Manulani Meyer discusses Indigenous worldviews that "begin with the idea that relationships are not nouns, they are verbs."¹⁸ These worldviews encompass the physical, spiritual, and mental simultaneously. "Indigenous is simply a synonym for that which has

¹⁷ Haunani-Kay Trask, "Settlers of Color and 'Immigrant' Hegemony: 'Locals' in Hawaii," *Amerasia Journal* 26, no. 2 (2000): 2.

¹⁸ Manulani Aluli Meyer, "Holographic Epistemology: Native Common Sense," *China Media Research* 9, no. 2 (2013): 98.

endured,” she poignantly states.¹⁹ Meyer’s understanding of Native common sense informs my concept of a kuleana praxis, which I utilize to describe the ways that Indigenous people, and specifically Native Hawaiians who reside in the diaspora, embody cultural philosophies and traditions across time and space. I thus argue that Native Hawaiians living outside of their homeland can and do embody Native Hawaiian values of kuleana, ea, pono, and lāhui.

My project also makes a unique contribution to Indigenous Studies in two key ways. First, my work provides an in-depth analysis of how Native Hawaiians living in California maintain practices of Indigenous survivance. These communities are largely ignored in Indigenous Studies and my work demonstrates the importance of recognizing Native Hawaiians and other Pacific Islander communities in the U.S. to illuminate how Indigenous cultures and knowledge are actively transported across time and space. Second, while Native American and Pacific Islander scholarship increasingly draw from Indigenous Studies, no scholarly work has analyzed the specific circumstances that bring these diverse communities together in both radical and everyday ways. Additionally, outside of a historical scope, there is a dearth of research on California Indians, especially those from federally unrecognized tribes. My dissertation broadens the critical scope of Native Hawaiian Studies, Pacific Studies, Native Studies, Indigenous Studies, and Comparative Ethnic Studies to theorize issues of diaspora and political forms of

¹⁹ Ibid.

Indigenous survivance through community building that is centered on Trans-Indigenous knowledge and cultures.

Methods

I interviewed both Native Hawaiians and Acjachemen regarding their thoughts and feelings on the significance of the Treaty of Friendship and Mutual Recognition between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i. Native Hawaiian interviewees include Mililani Trask, a well-known international attorney who has garnered both domestic and international attention to issues concerning Hawaiian sovereignty. Trask was also *kia‘āina*, or prime minister, for the first eight years of Ka Lāhui – the same time that Ka Lāhui engaged in treaty-making with other Native nations, including the treaty with the Acjachemen. Another Ka Lāhui Hawai‘i citizen I interviewed was Carolyn Kualī‘i, one of the main architects of the treaty with the Acjachemen. Kualī‘i grew up in California and built collaborative relationships with several California Indian tribes, including the specific tribal band of the Acjachemen that signed the treaty with Ka Lāhui Hawai‘i. Other Native Hawaiians interviewed include: Malia Akutugawa, Kumu Kau‘i Peralta, Andre Perez, Ty Kawika Tengan, and Erin Kuhunawaika‘ala Wright. These interviewees are affiliated with institutions of higher education and have backgrounds in Native Hawaiian Studies as well as other specializations. In addition, all have spent time in the diaspora, if they do not live there currently. All are also involved with Native Hawaiian community organizations either in Hawai‘i

or California. In our discussions, I asked interviewees to define kuleana and for their thoughts concerning honoring kuleana while outside of the homeland.

Acjachemen tribal members I interviewed include: Wyatt Belardes, L. Frank Manriquez, Angela Mooney-D’Arcy, Joyce Perry, and Charles Sepulveda. They are all members of the tribe that recognized David Belardes as the hereditary chief. Belardes was the tribal chief of the Juaneño Band of Mission Indians, Acjachemen Nation at the time of the treaty signing and was one of the main signatories from the Acjachemen. None of these tribal members are a part of either of the groups (84a and 84b) that have applied for federal acknowledgement for the Acjachemen. All remain active in tribal community issues. These interviewees were asked about their knowledge regarding the relationship between Native Hawaiians and the tribe, including details about the treaty with Ka Lāhui Hawai’i and the potential significance of the treaty for them.

Chapter Summaries

My first chapter, “Treaties: An Expression of Indigenous Statecraft,” provides an overview of the historical and legal importance of treaties within U.S. and international law, and within Native nationhood. In order to understand the significance of the Treaty of Friendship and Mutual Recognition between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai’i, this chapter details the history of treaty-making for Native nations and the Kingdom of Hawai’i. Uncovering this history demonstrates that treaties are neither a historical anomaly nor a colonial byproduct. Thus, I argue that treaties are an expression of

Indigenous statecraft and that the treaty between the Acjachemen and Ka Lāhui demonstrates a continuance of this practice.

Chapter two, “Kuleana: Reverence for the Land Governed Through Responsibility,” then details the importance of kuleana as a praxis that is intimately woven within a Native Hawaiian identity. Therefore, honoring kuleana is integral to maintaining who Native Hawaiians are as a people. This chapter provides an analysis of kuleana to explain its continued significance for Native Hawaiians in their resistance to settler colonialism. Additionally, Native Hawaiian interviewees articulate an embodied kuleana that endures while outside of the homeland. These understandings of kuleana are tethered to ‘āina, which entails responsibilities to ancestors and future generations.

Chapter three, “Embodied Kuleana: Treaty Making Between Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians, Acjachemen Nation,” examines the Treaty of Friendship and Mutual Recognition as an example of a nation-to-nation relationship. This nation-to-nation relationship exists outside of colonial governance despite both nations’ statuses as unrecognized by the United States, a country that claims sovereignty over the Native nations’ lands in California and Hawai‘i. The treaty not only affirmed self-determination for the two Native nations involved, but also provided an example for Native Hawaiians living in California of how to engage in a political process that affirmed the lāhui back home. Diasporic Hawaiians involved in the treaty process engaged in a praxis of kuleana that acknowledged both the land and their hosts where they lived. The rationale and

significance of the treaty is also understood within and connected to the contemporary realities of both communities.

The fourth and final chapter, “The Federal Recognition Game: Creating Native Alternatives for Decolonial Possibilities,” features interviews from both communities about their understandings of federal recognition. Given that the Juaneño Band of Mission Indians, Acjachemen Nation and Native Hawaiians remain unrecognized by the U.S. federal government, this chapter discusses the alternatives to federal recognition theorized and lived by members of their communities. Those interviewed emphasize the Treaty of Friendship and Mutual Recognition as an alternative to federal recognition practices that provides Native alternatives.

Settler Colonialism in California and Hawai‘i

Focusing on the role of settler colonialism specifically in Hawai‘i and Southern California will illuminate different modalities of Indigenous erasure. Since the Acjachemen and Native Hawaiians are both affected by U.S. settler colonialism, collective understandings of colonialism inform their strategies for engaging in trans-Indigenous collaborations, which are a direct embodiment of survivance. An analysis of settler colonialism is useful to analyze their shared lived experiences.

Scholar Patrick Wolfe defines settler colonialism as a logic of elimination.²⁰ He poignantly states, “the primary motive for elimination is not race but access to

²⁰ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006): 397.

territory. Territoriality is settler-colonialism's specific, irreducible element."²¹ Since settlers do not have the intention of leaving, settler colonialism is based on a rationale that continuously "destroys to replace."²² Although many articulate colonialism as a specific event, Wolfe indicates that it is better to understand invasion as a "structure not an event."²³ Since land bases of settler colonial nations are constructed on the sustained conquest of Indigenous lands, structures of settler colonialism often function to eliminate and suppress Native relationships and access to land and ways of being. In light of settler colonialism being based on access to land, Native Studies scholar Audra Simpson states, "Settler colonialism is predicated on a territorial possession of some, and thus, a dispossession of others."²⁴ Both Hawai'i and Southern California, including Orange County, are places where settlers outnumber the Indigenous people deriving from that area.²⁵ While both groups

²¹ Ibid, 388.

²² Ibid.

²³ Ibid.

²⁴ Audra Simpson, "Settlement's Secret," *Cultural Anthropology* 26, no. 2 (2011): 11-39.

²⁵ According to the United States Census Bureau, Orange County as of July 1, 2016, has an estimated total population of 3,172,532. The Census in 2010 included 12,476 American Indian and Alaska Natives, and 9,529 Native Hawaiian and Other Pacific Islanders. Both categories are representational of peoples having self-identified as one race. In demographics for Orange County schools (2016-2017), an estimated 1,313 students (0.3%) identified as Native, and 1,725 (0.4%) were identified as Pacific; this was out of a total of 490,430 students enrolled in K-12.

Orange County Census data:

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>. "2016-17 Enrollment by Ethnicity, Orange County Report," Data Reporting Office, California Department of Education, accessed [July 1, 2017],

<http://dq.cde.ca.gov/dataquest/dqcensus/EnrEthLevels.aspx?cds=30&aggllevel=county&year=2016-17>.

continue to live within settler colonial structures that continuously undermine Indigenous rights, the treaty-making process between the two groups is a direct action that subverts dominant government structures and settler colonial logics. Specifically, this process reinforces the fact that each group still exists, which directly undermines ideas of Native erasure, and concurrently utilizes Native governmental and political practices that reinforce Native self-determination and sovereignty.

Although Wolfe asserts that this logic of elimination is not inherently genocidal, but rather can function as a process of subsuming Native people within the nation-state structures, this method can also be seen as a specific form of violence because Native ways of being in relation to people and land have been drastically altered in light of this “incorporation.” These processes seek to incorporate Native people as ethnic minorities and immigrants and not as Indigenous peoples with rights to self-determination and sovereignty, and more importantly as caretakers that have a continued genealogical responsibility for land and resources. Collaborative relationships between Indigenous groups affirm each other as Native people and simultaneously disrupt settler logics that attempt to incorporate Native nations and people solely as racial minorities within the nation state.

Settler colonial economies including the United States are not dependent on Native labor, but rather on Native land. Recognizing the difference in Native relationships with the United States, Wolfe asserts that the primary form of

resistance by Natives is ideological.²⁶ The treaty-making process between Native Hawaiians and the Juaneño can be seen as an ideological form of resistance in their decision not to involve the U.S. government. Instead, both Indigenous groups recognize their own inherent rights to self-determination and sovereignty and the importance of utilizing and asserting such processes. For Ka Lāhui Hawai'i citizens, engaging in treaty-making with the Juaneño not only affirmed Hawaiians' inherent rights to self-determination, it also provided an avenue for Native Hawaiians living within the Acjachemen territory to acknowledge the inherent right and responsibility of the Juaneño to take care of the land that Hawaiians are now residing on.

Similar to Wolfe's analysis of settler colonialism, scholar Andrea Smith also discusses settler colonialism and its discourses as constituted by logics of elimination. Smith adds to the analysis of settler colonialism by understanding it as enmeshed with the structure of heteropatriarchy. Smith asserts that settler colonialism employs a discourse that Native people and by extension their lands are inherently violable.²⁷ This logic encompasses California and Hawai'i, as the colonizer implements discourses that determine and challenge Native ways of being, and settler colonial institutions and structures that disturb and violate all aspects of Native life. Settler colonial structures of heteropatriarchy include domination and

²⁶ Patrick Wolfe, *Settler Colonialism and The Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassel: New York, 1999), 3.

²⁷ Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005), 10.

violence against lands, family and community formations, and political structures. Furthermore, settler discourses projects California Indians and Native Hawaiians as relics of the past with no connection to living communities. Comparably, in California, Native people are viewed as part of a Spanish Imaginary that celebrates a genocidal mission system that purportedly worked as a civilizing project that all Californians now benefit from.²⁸ In this context, being Californian becomes defined as anyone from California regardless of ethnic or racial background. Moreover, the pervasive Spanish imaginary simultaneously erases the political identity of California Indians.

With regards to the consumability of Native Hawaiians and their lands, Native Hawaiian scholar Haunani-Kay Trask discusses settlers of color and their complicity in Native erasure. In her work, Trask illuminates how Asian American settlers in Hawai'i maintain settler hegemony by upholding a system of white supremacy on the islands.²⁹ She says, "For our Native people, Asian success proves to be but the latest elaboration of foreign hegemony. The history of colonization becomes a twice-told tale, first of discovery and settlement by Europeans and American businessmen and missionaries, then of the plantation Japanese, Chinese,

²⁸ Acjachemen and Tongva scholar Charles Sepulveda defines the Spanish Imaginary as the legacy of the Spanish fantasy past and the myth making of California that disregards the genocide and sexual violence against Native Californians that was perpetrated through Christian Spanish colonialism. Charles Anthony Sepulveda, "California's Mission Projects: The Spanish Imaginary in Riverside and Beyond" (PhD diss., University of California, Riverside, 2016).

²⁹ Haunani-Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i* (Honolulu: Latitude 20, 1993).

and eventually Filipino rise to dominance in the islands.”³⁰ Asian Americans’ rise in political power necessitates the maintenance and reinforcement of a constructed local identity that justifies their ascendancy and domination of Native Hawaiians in Hawai‘i. As Trask reveals, Asian American settlers, the military, and the corporate tourism industry marginalize and destroy Native Hawaiians in their own homeland. Trask demonstrates how, instead of working independently, these government and private interests collude to control Native Hawaiian lands and people, which ultimately leads to their growing displacement and erasure.³¹ With Trask’s analysis in mind, how can we begin to think of diasporic Native people and their relationship to “new” lands and people? And how can we work against Native erasure and instead provide an avenue for survivance? How can a kuleana praxis acknowledge the lands and their hosts where we currently reside, and simultaneously reaffirm Native self-determination and governance?

Juaneño Band of Mission Indians/Acjachemen Nation

The Juaneño have several creation stories.³² Like other Indigenous groups, they believe they come directly from the land. One origin story, which they share with the nearby Luiseño people, discusses a time when there were several periods of only darkness and light until figures came into being. Ké-vish-a-ták-vish made a

³⁰ Ibid., 2.

³¹ Ibid.

³² I seek to honor this creation story despite the difficulty in writing and framing it within a western linear trajectory for this section. I did have Acjachemen tribal members read it to make sure that this creation story in its written form was acceptable.

man, Túk-mit, the Sky; and a woman, To-maí-yo-vit, the Earth. They were siblings and came to create the Kaamalam, the original living beings on earth including plants and rocks.³³ One of the Kaamalam, Wiyot, created the first humans and other animals. After Wiyot lusted after a woman as she was bathing, the people became upset with him and devised a plan to kill him for his unfavorable actions. Before the end of Wiyot's cremation, Coyote jumped into the fire to steal and eat the heart of Wiyot, and singed his tail. Wiyot was resurrected and ascended into the sky to become the moon, Moyla, so that when looking at the moon, the people are reminded of both his presence and the proper way to respect women. After this event, Chinigchinich, a prophet, taught the people to live within their life order and to honor the ceremonies that are necessary to sustain life.³⁴ This creation story, along with the life lessons of living reciprocally with the land and all living things, has been embedded in the songs and ceremonies of the Juaneño.

California Missions

While there were foreigners who came to California and travelled the coast before the end of the 18th century, none of them had a significant impact on the Native people until the founding of the missions. The Mission period in California

³³ For more information about Juaneño creation origins, please see the following paper that describes several creation stories of Southern California tribes: Cari Raybourn, "The People' in the Beginning," *Edgings, CSU Stanislaus University Honors Program* (May 2010): 61-68, accessed April 15, 2015, <https://www.csustan.edu/sites/default/files/honors/documents/journals/Edgings/ThePeople.pdf>.

began in 1769 with the establishment of Mission San Diego. Junípero Serra, a Spanish missionary, used Indian labor to build Mission of San Juan Capistrano in 1775, from which the name Juaneño originates. This mission was abandoned by the Franciscans due to an Indian attack at the mission in San Diego. However, in 1776 they re-established Mission of San Juan Capistrano and in 1778 built it on the site where it remains today. Mission San Juan Capistrano significantly impacted and changed Juaneño life. Its effects on Juaneño culture and people are still felt to this day.

Missions were strategically built near established Native villages in California. With livestock introduced to the local area by the Franciscans, much of the Native subsistence lifestyle was negatively affected. This caused many Natives to leave their villages, as they were not able to readily obtain food. As livestock increasingly caused environmental degradation, many Natives turned to the mission. While some Indians came to the mission of their own free will, once at the mission most Natives were not allowed to leave. Indians essentially became enslaved, and their labor was used to build the existing mission structures that we have today. Natives worked long hours, were forced into a Western Christian lifestyle, and had their Native spiritual beliefs outlawed. Diseases introduced by foreigners also affected California Indian life. California Indian social and governmental structures were similarly affected by these drastic changes. Oral

³⁴ Charles Sepulveda (Acjachemen tribal member and scholar) in discussion with the author, April 2014.

histories from California Indians who were missionized tell us that the Franciscan monks enforced strict code of discipline that often involved cruel forms of punishments that occasionally resulted in death.³⁵ Poor food rations coupled with the large number of people incarcerated at the missions created high rates of disease, which also caused deaths. Essentially, missions were the first institutions in which genocide along with sexual violence were naturalized as disciplining tactics targeting Native communities.³⁶ Although the history of the mission period is typically glorified, which is evident through the prevalence of mission-style architecture and the fourth grade public school curriculum in California, the mission period had devastating effects for California Indians, including the outlawing of their language and culture and the death of many.³⁷

Under the mission system, Spain legally classified Indians as “wards” and “minors,” and this classification as wards under the government did not change under Mexico. When Mexico gained its independence from Spain in 1821, the missions became secularized. Mission lands came under the control of the Mexican government, and settlers were encouraged to move to California and establish ranchos. Mexican settlers were given huge land grants, and the resources and labor

³⁵ Deborah Miranda, *Bad Indians: A Tribal Memoir* (Berkeley: Heyday Press, 2013), 11.

³⁶ *Ibid.*

from the former mission system were transferred to the rancho system. Although the Mexican government directed the former missions to establish stable, autonomous Indian settlements, this did not occur in the mission areas, including San Juan Capistrano.³⁸ Instead, most Indians became laborers on the huge ranchos that were established by the Mexican land grants. Each rancho was assigned to have six hundred Indian laborers. California Indians largely became serfs in the rancho economy. Stripped of their land, California Indians were unable to return to a subsistence lifestyle and therefore relied heavily upon the rancho system for the continuation of life.

In 1846, the United States and Mexico went to war, and with the signing of the Treaty of Guadalupe-Hidalgo in 1848, California became a part of the United States. With the discovery of gold in Northern California that same year, the population of settlers increased dramatically, which once again had devastating effects on California Indians. One hundred thousand immigrants had arrived in California by the time it became a state in 1850, and over the next two years the

³⁷ Current fourth grade history curriculum in California has a section on the mission period. Most fourth graders visit a nearby Mission and are usually assigned to construct and build a replica of that Mission. The history taught of this period is usually one of California Indians “becoming” civilized through the aid of Franciscan monks and the Missions. Seldom is there any discussion of the negative effects on California Indians.

³⁸ Robert H. Jackson and Edward Castillo, *Indians, Franciscans, and Spanish Colonization: The Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1995), 87-106.

settler population more than doubled.³⁹ In this context, California Indians were hunted by settlers and were seen as impediments to individual riches. State policy coincided with the science of the time that believed Indians would inevitably become extinct through ideas of “survival of the fittest.” The first governor of California, Peter Burnett, through the Act of The Government and Protection of Indians, legalized the kidnapping of California Indian children and made them indentured servants to white guardians.⁴⁰ A huge California Indian slave trade was established and was followed by policies which legally authorized payment for the killing of Indians by the state government.⁴¹ California was later reimbursed by the federal government for payments made to citizens who killed California Indians; thereby making genocide an endorsed policy at the federal and state level.

Devastated by both diseases introduced by foreigners and the intentional genocide that occurred, the California Indian population plummeted. Some tried to conceal their identities by adopting Spanish surnames and mixing in with the Spanish and Mexican population that still remained in California. This was a strategy for survival. However, generations later these survival strategies have become obstacles for the current generation in proving lineal descent to the Native

³⁹ Leonard Pitt, *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846-1890* (Los Angeles: University of California Press, 1966), 48-53.

⁴⁰ Kimberly Johnston-Dodds, *Early California Laws and Policies Related to California Indian: Prepared at the Request of Senator John L. Burton, President pro Tempore* (Sacramento: California Research Bureau, California State Library, September 2002).

⁴¹ Ibid.

communities from which they originate. Proving ancestry is often required by governmental agencies including the Office of Federal Acknowledgement, which federal recognition procedures require.

In 1852, the U.S. signed eighteen treaties with California Indian nations. Unbeknownst to the Natives and the Native Nations who agreed to these treaties, they remained unratified by Congress.⁴² The purpose of these treaties was to designate land for reservations; but since they were not ratified, most California Indian reservations were not created until the turn of the century. However, a reservation was never created for the Juaneño Band of Mission Indians and some of the other nearby tribes including the Chumash of Malibu and the Tongva of the Los Angeles area. Currently, none of the California Indian tribes in Los Angeles and Orange County are federally recognized. Describing the non-acknowledgement of the Acjachemen and other tribes by the federal government, scholar Candace Coffman says, "Since their land was already overtaken, there was no need for the U.S. government to make treaties with them. Minimal efforts made in the 1800's to formalize relations with California tribes neglected to include the Juaneño-Acjachema, as it did many other tribes."⁴³ While the federal government developed the Rancheria system to address the deplorable conditions that California Indians faced in the early 1900s, many tribes like the Juaneño did not receive a Rancheria

⁴² Ibid.

⁴³ Candace Coffman, *The Juaneño-Acjachema: Exploring Identity and the Reproduction of Culture* (Dubuque: Kendall Hunt Publishing: 2012), 11.

and therefore remained unrecognized.⁴⁴ Coffman quotes Lafayette Dorrington, an Indian agent at the time, stating, “the federal government should try to divorce itself from the responsibility for native groups therefore more than 100 bands never received Rancherias.”⁴⁵ Although two bands of the Juaneño have applied to be federally recognized, the federal government has denied them recognition. The rationale for this denial is that the government deems that the Juaneño ceased to exist as a contemporary Native American tribe.⁴⁶ Notwithstanding this decision and designation, the Juaneño Band of Mission Indians, Acjachemen Nation continue to engage in sacred site protection, practice cultural and spiritual beliefs, and honor their inherent responsibility to care for and protect their homeland.⁴⁷ What is the significance then for Native Hawaiians from Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians to recognize each other’s personhood, Indigeneity, and nationhood in contemporary times?

Kuleana in the Diaspora and Native Interlopers

Natives in the diaspora have to actively work and collaborate with their Indigenous hosts in order to disrupt the logics of Native erasure. If Native people do not acknowledge the responsibility to their Native hosts, then they can potentially fall into the trap of becoming Native interlopers. Native interlopers are Native

⁴⁴ Ibid, 35.

⁴⁵ Ibid.

⁴⁶ Acjachemen tribal member Charles Sepulveda in discussion with the author, April 2014.

people who do not recognize a genealogical responsibility to land. According to the Merriam-Webster dictionary, interloper is defined as, “essentially one who jumps in the midst of things without an invitation to do so. In its earliest uses, ‘interloper’ referred specifically to one who interfered in trade illegally - that is, a trader who trespassed on the rights or charters of others.”⁴⁸ Therefore, I define Native interlopers as Natives who live outside of their homeland and who do not actively recognize the land or its genealogical caretakers. By not doing so, they cannot or do not engage in a praxis of kuleana. Furthermore, Native interlopers may even encompass Natives that have been displaced from their own homelands due to settler colonialism. However, by not acknowledging and assisting the genealogical caretakers of the land where they now reside, these Natives become complicit in logics and structures of settler colonialism that are ultimately premised on Native erasure. If Native people living outside of their homelands do not recognize that there is a living host to that land they reside on, they are like many settlers including settlers of color who view the land as no longer having any Indigenous connections. This process of erasure also involves communities that are against the privatization

⁴⁷ This can be seen through the protection of sacred sites including the opposition of a toll road being built directly through a historic village and sacred site area. They also continue to engage in culture and ceremony.

⁴⁸ "Interloper," *Merriam-Webster*, accessed July 23, 2017, <https://www.merriam-webster.com/dictionary/interloper>.

of land and advocate for the commons, but do not acknowledge Native genealogical connections to land derived from creation stories.⁴⁹

Native communities need to continue to find dynamic ways of addressing issues of displacement that work against notions of identity politics that fracture the community. As Native Hawaiian scholar Noelani Goodyear-Ka'ōpua notes, “Like our ‘āina we are dynamic and changing people, and thus Hawaiian studies practitioners continue to explore what it means to be ‘Ōiwi because the answers are never complete. This tension—between powerfully asserting who we are against forces that work toward our extinction and holding open space to acknowledge that who we are is not a closed question—animates Hawaiian studies scholarship.”⁵⁰ Thus, for Hawaiians in the diaspora the concern for maintaining themselves as ‘Ōiwi is intimately tied to the political responsibility of honoring and best representing the lāhui. Included in this responsibility is the honoring of iwi kūpuna—ancestors or ancestral remains wherever they are buried. This also now frequently includes burials outside of the ‘āina. Honoring this responsibility involves a larger conception of identity that recognizes that since we are made up of our iwi kūpuna—ancestors or ancestral remains, our Indigeneity is always embodied wherever we go.

⁴⁹ An example of failing to acknowledge Native genealogical ties to land is in the work of Sharma and Wright: Nandita Sharma and Cynthia Wright, “Decolonizing Resistance, Challenging Colonial States” *Social Justice* 35, no. 3 (2008): 97.

⁵⁰ Goodyear-Ka'ōpua, “Reproducing the Ropes of Resistance,” 6.

As such, Native Hawaiians in the diaspora need to be concerned about being incorporated into a settler society that is premised on an individual's access to rights. Within a settler society, individual rights are predicated on the continual erasure of Native people and their belief systems. While carrying on their own particular community traditions outside of their homeland, diasporic Natives including Native Hawaiians need to understand that the land is not theirs. As such they have a responsibility to recognize a Native host and actively work to protect their land, resources, and sacred sites because they have the specific genealogical connection to place. This understanding and relationship to land is analogous to our own relationship with 'āina. Therefore, these ideas contained within Native Hawaiian epistemology need to be embodied wherever we reside.

To understand how settler colonialism functions in Hawai'i and anywhere else in a settler nation, we have to understand settler colonial logics in relationship to settlers of color and Native interlopers, not only in relationship to white settlers. This includes an analysis of Native interlopers and how they are different from white settlers and from settlers of color. This analysis is necessary in understanding how all these groups can reinforce logics that maintain settler colonialism in very specific and particular ways that ultimately sustain the nation state. For instance, the United States is a white supremacist settler nation based on the continual erasure of Indigenous people and its promotion of the country as a "nation of immigrants." Consequently, in our current era of neo-liberal multiculturalism, many settlers of color assert rights to "U.S." lands and to political and social inclusion

based on their specific histories of exploitation and marginalization by dominant white America. Although these histories of exploitation and marginalization should not be discounted, the advancement of political agendas based on logics of a shared oppression often fail to acknowledge differing relationalities to white supremacy.⁵¹ This includes the specific relationality of Native erasure in the maintenance of white supremacy and the nation state. Therefore, Native interlopers who are displaced from their homelands due to settler colonialism can become complicit in settler colonial logics by failing to acknowledge their particular Indigenous hosts while still actively perpetuating their own Native customs and traditions outside of their homeland.⁵²

Unfortunately, many Native Hawaiians who are displaced from their homeland due to settler colonialism cannot go back home for a plethora of reasons.⁵³ This is a strategic goal of settler colonialism that encompasses various modalities of Native erasure. Displacement represents a particular modality of erasure that J. Kēhaulani Kauanui describes as deracination.⁵⁴ Poignantly, Kauanui

⁵¹ Andrea Smith, "Heteropatriarchy and the Three Pillars of White Supremacy," in *Color of Violence: The Incite Anthology*, ed. Incite! Women of Color Against Violence (Cambridge: South End Press, 2006), 68.

⁵² For example, many Native Hawaiians living in California participate in the perpetuation of cultural traditions of hula and paddling. These Native Hawaiians may work on preserving their own cultural traditions while also reinforcing the erasure of a Native host community.

⁵³ Native Hawaiians are disproportionately unable to return to Hawai'i due to the high cost of living, limited resources, Hawaiians not having a national land base, and settlers outright destroying Native land and resources, amongst other reasons.

⁵⁴ J. Kēhaulani Kauanui, "Diasporic Deracination and "Off-Island" Hawaiians," *Contemporary Pacific* 19, no. 1 (2007): 138.

notes deracination in multiple forms, including off-island Hawaiians and cultural appropriation by non-Hawaiians. Native Hawaiians that are pushed out of their homelands due to settler colonialism need to acknowledge their diasporic Native status and assist in highlighting the local Indigenous caretakers of the land. Kauanui poignantly states, “Non-Hawaiian claims to Hawaiian identity are related to colonialism as a form of cultural usurpation and dominance, a way of further displacing the displaced.”⁵⁵ Therefore, Native Hawaiians in Hawai‘i and those living outside of their ancestral homeland need to perpetuate Indigenous knowledge, which includes respecting the land and the Indigenous people of the land where they are currently residing. This works against settler colonial logics of Native erasure and whereby Native Hawaiians resist becoming the cultural usurpers of another Native group. Therefore, understanding the mo‘ōlelo—stories and histories of the land from its genealogical caretakers, is a necessary protocol.⁵⁶ This is important since about half of the Native Hawaiian community is living off-island, the majority of whom live in California.⁵⁷ In addition, the majority of Native Hawaiians living in California reside in the traditional territories of Native American tribal

⁵⁵ Ibid., 153-154.

⁵⁶ Mo‘ōlelo depicts physical landscapes as a complex and ever-growing archive. For more information, please see Carlos Andrade’s *Ha‘ena: Through the Eyes of the Ancestors*.

⁵⁷ The high cost of living in Hawai‘i due to tourism and military incursions has increasingly made it more difficult for Native Hawaiians to remain on the land. We also have the poorest health, the highest proportion of those incarcerated, and low educational attainment. These statistics are similar for Native communities living in settler society in the continental United States.

communities that remain unrecognized by the colonial state.⁵⁸ For Native Hawaiians who are living in California, it is important to build and collaborate with the local Indigenous communities in the areas where they reside. As more Hawaiians find themselves living outside of their homeland, including in California, it is vital to work against logics that define us as being Native Hawaiian or Indigenous solely if we remain on the ‘āina—land. These logics are confining and are meant to perpetuate static notions of Native people as unable to be dynamic in addressing challenges in a constantly changing world.

Continued Occupation

The homelands of both Native Hawaiians and the Acjachemen continue to be occupied by the United States. Although the Juaneño have experienced multiple formations of colonialism with colonizers including Spain, Mexico, and the United States, they remain an Indigenous people with inherent rights to self-determination. Located in Southern California in the urban area of Orange County, the Juaneño people have consistently resisted Native erasure through the maintenance of culture, including the reclamation of language and the protection of sacred sites.

As the Acjachemen continue to engage in the perpetuation of culture, so do Native Hawaiians. Despite U.S. colonization and its attempts to eradicate Hawaiian language, culture, and people, Native Hawaiians and their culture continue to

⁵⁸ The majority of Native Hawaiians living in California reside in the San Francisco Bay Area and the Los Angeles and Orange County areas. None of the tribal communities of these areas are federally recognized.

survive.⁵⁹ Both communities continue to engage in cultural and spiritual traditions that directly undermine colonial structures that attempt to erase them. Self-determination, sovereignty, and trans-Indigenous collaborations provide alternatives to existing policies, which persistently undermine Indigenous ways of life.⁶⁰ By acknowledging who has the genealogical connection and responsibility to the land, Natives living in the diaspora can actively work against the settler colonial logics that are actively attempting to incorporate them as Native interlopers, settlers of color, or ethnic minorities. Instead, Natives living on lands that are not their own can collaborate with their Native hosts to protect cultural sites, burials, and other resources that are places of active significance for Native people.⁶¹ They can demonstrate a praxis of kuleana that highlights Indigenous survivance and methods of recognition outside of the state while simultaneously providing decolonial possibilities.

⁵⁹ Examples of persistence are the revitalization of the Hawaiian language, emersion schools, hula hālaus, and the Hawaiian Studies program and Hawai‘inuiākea - the School of Hawaiian Knowledge at the University of Hawai‘i.

⁶⁰ Studies demonstrate that with self-governance indigenous groups have consistently done better in relation to social, political, and economic livelihood. Policies implemented by the government have consistently been shown to undermine native communities and culture. Sovereignty provides an alternative for indigenous communities to create and implement policies that are culturally sensitive and appropriate for their own community.

For more information see: Joseph P. Kalt and Joseph William Singer, “Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule” *Harvard University John F. Kennedy School of Government Faculty Research Working Paper Series* (2004).

⁶¹ There are many examples of such collaborations already occurring, but I think all examples including this case study should be highlighted to further provide avenues to work against settler colonial logics and structures.

CHAPTER ONE:

Treaties: An Expression of Indigenous Statecraft

‘A‘ohe pa ka ‘ike I ka hālau ho‘okāhi

One can learn from many sources

-Mary Kawena Pukui, 1983

‘Ōlelo No‘eau, Hawaiian Proverbs and Poetical Sayings

In April of 1992, the Juaneño Band of Mission Indians, Acjachemen Nation signed a treaty with Ka Lāhui Hawai‘i. The treaty signing between the two Native nations is a contemporary expression of Indigenous statecraft. To understand treaties as a contemporary form of statecraft for Native nations, this chapter traces a history of treaty-making by Native nations amongst each other as well as with colonial governments. This chapter also discusses the legal significance of treaties within U.S. domestic and international law as well as the significance of treaties within Indigenous statecraft. Tracing the shifts of power amongst Native nations and colonial powers is essential to understand the unlawful practices of disregarding or failing to honor treaties that have never been abrogated. However, to underscore that treaty-making is neither a colonial byproduct nor a historic anomaly, this chapter illustrates Indigenous communities engaging in contemporary treaty-making as a particular form of Indigenous refusal. This refusal encompasses the recognition of Native nationhood despite a settler government and structures that are premised on Native erasure.

Kanaka 'Ōiwi have a responsibility to care for the land. This understanding is tied to cosmologies that articulate a genealogical connection to land and highlights a sense of responsibility in and a reciprocal relationship with the earth. One creation story, the Kumulipo, is a two thousand-word mele (chant) that explains the origin of the Hawaiian people and their intrinsic connection to the Hawaiian Islands. The mele ko'ihonua (genealogical chant) centers Wākea and Papa, sky-father and earth mother, who are the parents that gave birth to the islands. Also born was kalo (taro plant), which is a staple food for the Hawaiian people. Next was the birth of the earliest human ancestor (Hāloakanaka) of the Kanaka 'Ōiwi people.¹

Hawaiians believe that they can learn from 'ike kūpuna, ancestral knowledge, while simultaneously being open and observant to the outside world. While striving for pono, balance, and maintaining kuleana, Native Hawaiians acquired new knowledge and relationships in order to positively benefit the lāhui or nation. In order to improve society and maintain the lāhui, Native Hawaiians not only believed that they could learn from many sources – they believed it was essential.² Thus, Native Hawaiians adopted new technologies, forms of government, and societal structures based on the needs of the community. This is a dynamic function of Indigenous societies and cultures. However, colonial institutions often define Native identity as stagnant or performative. As Elizabeth Povinelli has argued, in order to

¹ Carlos Andrade, *Ha'ena: Through the Eyes of the Ancestors* (Honolulu: University of Hawaii Press, 2008), 5.

² Lāhui has other meanings within Hawaiian language, but I choose for it to mean nation in this context.

be recognized as an Indigenous community, they must display a “continuity of traditional beliefs, [and] practices...” despite the loss of land title and having “some features and practices of ‘customary law...’ prohibited.³ This perception reinforces colonial ideas and definitions of Nativeness that are central to Native erasure. Rather than staying immobile or one-dimensional, however, Indigenous communities represent dynamic living cultures that are constantly growing. Along these lines, this chapter will detail how treaties were utilized as part of an Indigenous statecraft.

Like the *olelo no‘eau* (Hawaiian proverb) mentioned at the beginning of this chapter, Hawaiians believed that they could learn from many sources. Native Hawaiian scholar Kamanamaikalani Beamer describes the way that Hawaiians understood themselves within a constant state of evolution. He cites a particular *mo‘olelo* that illustrates this concept, stating:

I interpret the phrase ‘*mai nā kūpuna mai*’ as what comes from the ancestors into this time. The phrase does not suggest an antithesis, for example ‘modern’ versus ‘traditional.’ Conceptually, *mai nā kūpuna mai* can be interpreted to mean that as generations pass, more knowledge can be passed down from the ancestors to the succeeding generations. This process is open

³ Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham, N.C.: Duke University Press, 2002), 3.

ended and collective; it is intergenerational and always expanding. Clearly, its implications are more open than suggested by the word 'traditional.'⁴ Beamer's quote epitomizes Hawaiian epistemology that incorporates change and views it as something inevitable and needed. Moreover, it suggests that Native Hawaiians believed they were in a constant state of learning that could not be confined by Western notions of tradition that dictate culture and people as static.

Similarly, Leech Lake Ojibwe scholar Scott Richard Lyons discusses a philosophy of Ojibwe culture and people as constantly evolving. To illustrate his point, he uses the Ojibwe story of the Great Migration. He explains:

The Ojibwe envisioned life as a path and death as a journey; even *Ojibwemowin*, the Ojibwe language, is constituted by verbs on the move. What does migration produce? As we can see in the story of the Great Migration, it produces *difference*: new communities, new peoples, new ways of living, new sacred foods, new stories, and new ceremonies. The old never dies; it just gets supplemented by the new, and one result is diversity.⁵

As noted by Lyons, the story of the Great Migration demonstrates an understanding within Ojibwe culture of the state of being mobile. This mobility is what creates a variety of people and understandings that become encompassed as Ojibwe. Thus, both Native Hawaiian and Ojibwe epistememes and cultures understood that change is

⁴ Kamanamaikalani Beamer, *No Mākou ka Mana Liberating the Nation* (Honolulu: Kamehameha Publishing, 2014), 15.

⁵ Scott Richard Lyons, *X-Marks: Native Signatures of Assent* (Minneapolis: University of Minnesota Press, 2010), 4.

necessary in order for the continuations of their communities. These philosophies within Native communities operate outside the Western paradigm of “tradition” that permanently places Native people as unable to shift or adapt. Instead, Indigenous cultures understand/position people and cultures as inherently mobile.

Native Hawaiian Statecraft

Before the presence of Asian and European settlers, Native Hawaiians had a highly organized and stratified society from which the Hawaiian Kingdom originated. Reflecting on the creation of this Native Hawaiian state, Kamanamaikalani Beamer explains, “The existence of the *aupuni* (government) in ancient Hawaiian society enabled the Hawaiian Kingdom to create a nation-state by modifying existing structures rather than replacing or erasing the ancient forms of governance, chiefly rule, and land management.”⁶ Therefore, Beamer notes that the Kingdom of Hawai‘i was developed out of pre-existing Hawaiian and governmental structures that pre-date European intervention. These structures embodied “the material, metaphysical and genealogical.”⁷ But the incorporation of these elements into Native Hawaiian government and society did not necessarily separate the sacred from the state. Instead, the *lāhui* was based on cultural and spiritual values that dictated how Hawaiians should live, respect one another, and care for the land and its resources. Although Native Hawaiian society was not perfect, it developed

⁶ Beamer, *No Mākou ka Mana Liberating the Nation*, 19.

⁷ *Ibid.*

and evolved around Native Hawaiian values that emphasized reciprocity between people and the land.

As more foreigners came to Hawai'i, Native Hawaiians became interested in learning and understanding the world beyond their shores.⁸ These interactions and observations enabled Native Hawaiians to incorporate different ideas and technology that was believed to strengthen and maintain the Kingdom of Hawai'i. For example, the Kingdom of Hawai'i allowed foreigners to become citizens and also enlisted haole (outsiders) as foreign advisors. These relationships with foreigners assisted some Kanaka Maoli in becoming educated at foreign institutions and in constructing political alliances with other nations.⁹ Yet Native Hawaiians, like other Indigenous communities, were not always aware of the outcomes resulting from the incorporation of various changes. Nonetheless they adapted. As Native Hawaiians learned more about the world around them, they were interested in creating relationships that would sustain and benefit the lāhui. Kamanamaikalani Beamer elaborates this point by discussing the ali'i and their ability to incorporate foreign technologies and understandings within the nation. He notes, "Hawaiian ali'i of the late nineteenth century were able to exercise agency to choose which foreign technologies they wanted and to what degree. As skilled statesmen, the ali'i were

⁸ David Chang, *The World and All the Things Upon It: Native Hawaiian Geographies and Exploration* (Minneapolis: University of Minnesota Press, 2016).

⁹ There are numerous examples of this including those mentioned above as well as the allowance of foreign missionaries, the incorporation of English, and the acceptance of Hawaiian language into a written format. Haole literally means foreigner. However, current use of the word refers to Caucasians or white people.

intentional in fronting certain abilities and putting others aside for later use.”¹⁰

Beamer likewise describes the agency of Native Hawaiian ali‘i in their thoughtful incorporation of outside ideas and technologies while remaining Kanaka.

With these increased interactions, many foreign powers grew interested in Hawai‘i because of its geographic location and immense resources. Specifically, foreign nations desired to acquire Hawai‘i as a colonial outpost due to its potential strategic military importance in Asia and the rest of the Pacific. For example, Great Britain temporarily seized the Kingdom of Hawai‘i in 1843 as per the business interests of British ex-pats.¹¹ Nonetheless, this was short-lived and the Kingdom was quickly restored after British diplomats discovered this plan. Although power balances shifted, as with the British attempt to colonize Hawai‘i, some Native Hawaiian scholars such as Beamer, Dudley and Agard, and Trask argue that there was in fact a balance of power prior to 1893 and the subsequent rise of the U.S. empire in Hawai‘i.¹² Beamer states, “The power balance was demonstrated through the creation of international alliances and the mastery of native and foreign protocols of governance, allowing ali‘i to secure their national laws from foreign possession while integrating aspects of European culture into the islands.”¹³ Thus,

¹⁰ Beamer, *No Mākou ka Mana Liberating the Nation*, 13.

¹¹ Admiral Thomas immediately came to Hawai‘i after finding out that the Kingdom of Hawai‘i had been ceded to Britain because of the threat of Commander Lord George Paulet. Admiral Thomas quickly restored the Kingdom of Hawai‘i and diplomatic relations were restored.

¹² Haunani-Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai‘i* (Honolulu: Latitude 20, 1993).

¹³ Beamer, *No Mākou ka Mana Liberating the Nation*, 10.

the Kingdom believed it had to transform its government and societal structures into what appeared as “civilized” to international powers in order to maintain sovereignty for the Hawaiian people.¹⁴

Clearly, the Kingdom of Hawai‘i was not the only Native nation to implement and adopt Western forms of government and societal structures within their Indigenous statecraft. For example, the Cherokee Nation adopted a written constitution modeled off of the U.S. Constitution. The Cherokee also became pastoralists, adopted Christianity, and owned African slaves like their southern counterparts.¹⁵ Although the Cherokee took on the social practices and political formation of their Western counterparts, they nevertheless became targets of removal. While under the belief that instituting these practices would make their nation appear “civilized” and assist them in remaining autonomous, they were still forced out of their traditional territory and suffered through the catastrophic Trail of Tears.¹⁶

While colonialism is often undergirded by ideologies that depict Natives as savage, uncivilized or timeless, these two instances provide counterpoints to the narrative that is based on progression and advancement. Settler colonial scholar Patrick Wolfe discusses this occurrence:

¹⁵ Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8, no. 4 (2006): 396.

¹⁶ Theda Perdue and Michael D. Green, *The Cherokee Removal: A Brief History With Documents* (Boston, MA Bedford: St. Martin's, 2016).

The reason why the Cherokee's Constitution and the agriculture prowess stood out as such singular provocations to the officials and legislators of the state of Georgia—and this attested over and over again in public statements and correspondence—is that the Cherokee's farms, plantations, slaves, and written constitution all signified *permanence*. The first thing that the rabble did, let us remember, was burn their houses.¹⁷

Wolfe articulates that although settlers use the rationale of savagery to justify Native removal and genocide, the actual threat to settlers is Native permanence. This is akin to the permanence that the Kingdom of Hawai'i represented to the foreign powers that desired access and control over Hawaiian lands and resources. This permanence therefore warranted the taking over of the Kingdom, its resources, and its lands. While the Cherokee Nation and Native Hawaiians have similarities regarding the loss of self-governance, California Indians, specifically the Acjachemen, have a distinctive story and history of removal.

Indigenous Nationhood

Indigenous nations, including Hawai'i, had highly organized societal and governmental structures pre-existing the arrival of foreigners. Indigenous nations had processes and procedures already in place based on their own epistemologies, customs, and values that incorporated differing groups and utilized diplomacy rather than force. One way to ensure the continuation of the Kingdom after contact

¹⁷ Wolfe, "Settler Colonialism and the Elimination of the Native," 396.

with foreigners was to engage in foreign diplomacy; this included treaty making and the signing of treaties. Hawai'i like other Indigenous nations used foreign diplomacy including treaty making with other nations as an embodiment of self-determination.¹⁸ Each nation had developed its own procedures to mitigate disagreements both within the community and outside of it. The agreements that were created, including treaties, were understood as sacred and binding. Thus, promulgating treaties contemporaneously is a continuation of Indigenous diplomatic procedures that pre-date colonialism.

Treaties as Sacred

Treaties symbolize a sacred agreement between two nations. Accordingly, treaty-making involved the building of new relationships and alliances. These formal agreements took time, effort, and trust. Covenants that included protocol were part of a ceremonial process that acknowledged and honored a new relationship and was considered a sacred act.¹⁹ Although two nations may not fully understand each other's motives to engage in treaty making, treaties are formalized contracts. Furthermore, the incorporated agreements contained within treaties cannot be re-negotiated or terminated unless both parties agree or wage war upon

¹⁸ In 1842, the US recognized the sovereignty of Hawai'i and declared it to be the official policy of the United States to support Hawaiian independence. The ratification of a treaty is recognition of nationhood status. The US recognized Hawai'i as a nation through numerous treaties. Hawai'i was also recognized by other countries including France and Japan. For more information see *Native Hawaiian Rights Handbook*, edited by Melody Kapilialoha Mackenize.

each other according to Article 6, section 2 of the U.S. Constitution.²⁰ Therefore, the ratification of a treaty itself is recognition of nationhood and the abrogation of treaties can only transpire between two sovereign nations. In “Native Hawaiians and U.S. Law,” legal scholar Melody Kapilialoha MacKenzie states, “The most basic right of a nation is its right to exist. From the first right, a nation derives all other rights: the right to control internal affairs, to choose a form of government, to make and amend laws, to provide for its citizens, and to administer its domain.”²¹ Hence, the power to not engage in treaty-making and to not recognize another nation through a treaty is just as important as the power to do so. As treaties reaffirm nationhood status within international law, treaties can also be understood as sacred agreements between sovereign communities.

Treaties Within International Law

Treaties are a foundational principle within international law. The agreements made between nations are significant in brokering peace, trade, recognition, and other arenas of foreign relations. The importance of nationhood under international law is further explained by MacKenzie:

¹⁹ Robert A. Williams, Jr. writes about the ceremonial aspects of treaty making in his book, *Linking Arms Together: American Indian Treaty Visions of Law and Peace 1600-1800*.

²⁰ “America’s Founding Documents; The Constitution of the United States: A Transcription,” National Archives and Records Administration, accessed July 19, 2017, <https://www.archives.gov/founding-docs/constitution-transcript>.

The right to exist gives rise to the rights to enter into intercourse with other nations, to conclude special relationships and agreements with other nations, to acquire territory, and to admit and expel aliens. Perhaps the primary right arising from the right to exist is the right of independence. A corollary *duty* arising from the right of independence is the principle of nonintervention: the duty not to intervene in the internal affairs or the external sovereignty of another nation.²²

The above quote exemplifies what I had previously stated: treaty-making is an expression of nationhood and sovereignty; determining not to engage in treaty making and corresponding agreements with particular nation states is also an expression of independent nationhood. Independence, as argued by MacKenzie, includes the ability to form relationships with other nations while also maintaining a responsibility of non-intervention. This responsibility as used through treaty-making is an expression of a sacred relationship that links two nations together.

Treaties represent a relationship that is grounded in official agreements between nation states. There are many purposes for nation-to-nation treaty-making. For example, treaties define: the recognition of territorial boundaries; the regulation of commerce; the commitment of resources and protection; the building of allies;

²¹ Melody Kapilialoha MacKenzie, "Native Hawaiians and U.S. Law," in *Native Hawaiian Law A Treatise*, ed. Melody Kapilialoha MacKenzie with Susan K. Serrano and D. Kapua'ala Sprout (Honolulu: Kamehameha, 2015), 268.

²² *Ibid.*

the use of particular ports and lands; and the waging and ending of warfare.²³

According to the Vienna Convention on the Law of Treaties, which is the main instrument to regulate treaties, treaties are considered “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”²⁴ Furthermore, treaties can be bilateral or multilateral agreements.

Treaties between nations are also referred to by a number of names that may include: Memorandum of Understandings (MOU’s), international conventions, covenants, final acts, charters, accords, protocols, and pacts.²⁵ The process for the adoption of a treaty is often described in these terms: “An agreement ‘enters into force’ when the terms for entry into force as specified in the agreement are met. Bilateral treaties usually enter into force when both parties agree to be bound as of a certain date.”²⁶ Since treaties were and are considered a foundational principle of international law, treaties were not seen as agreements that were supposed to be taken lightly or even disregarded at a later time by one of the parties. Therefore, treaties are considered legally-binding and sacred documents that formalize a diplomatic process with one or more communities and signify their relationship

²³ Ibid.

²⁴ The Vienna Convention on the Law of Treaties, May 23rd, 1969. It is important to note that the U.S. never ratified this convention.

²⁵ "International Legal Research Tutorial," *International Legal Research Tutorial*, accessed August 7, 2016, https://law.duke.edu/ilrt/treaties_2.htm.

²⁶ Ibid.

with one another. Although many treaties serve purely as testaments of friendship and mutual recognition between nations, they are still considered binding agreements that recognize each nation's land, government, and citizens within the international context despite their assumed simplicity.

The Legal Foundation of Treaties in the U.S.

In the United States, treaties are considered the “supreme” law of the land via the Constitution, and correspondingly represent the highest laws according to the Federalist Papers.²⁷ Treaties and agreements, within U.S. law, are also distinguished by necessitating two-thirds of the Senate formally approve or reject the resolution of treaty ratification.²⁸ If the Senate did not consent or meet the requirements for authorization, for example, then the agreement is referred to as an executive agreement and not as a treaty.²⁹ Further, treaties that are ratified by the Senate are valid until both parties decide to abandon and/or change the treaty. The first Supreme Court Chief Justice John Jay, one of the authors of the Federalist Papers, details the importance of honoring treaties. He states:

They insist, and profess to believe, that treaties like acts of assembly, should be repealable at pleasure. These gentlemen would do well to reflect that a treaty is only another name for a bargain, and that it would be impossible to find a nation who would make any bargain with us, which should be binding

²⁷ Robert Perez, “Understanding Treaties With Indian Tribes” (presentation, Ethnic Studies 007: Native American Studies in Comparative Perspective, University of California, Riverside, February 2013).

²⁸ Ibid.

on them absolutely, but on us only so long and so far as we may think proper to be bound by it.³⁰

Chief Justice John Jay reflects that the United States has an obligation to honor the contracts that they ratify. Otherwise, he believed, no other nation would engage in treaty making with the United States in the future knowing that the U.S. government would not respect their contracts and agreements.

Additionally, to underscore their binding nature, treaties cannot be changed or repealed by Congress or the Executive branch without the approval and consent of the other party. Chief Justice John Jay had argued, “They who make laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them; but still let us not forget that treaties are made, not by only one of the contracting parties, but by both; and consequently, that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter or cancel them.”³¹ It was important for Chief Justice Jay, one of the initial framers of the U.S. Constitution, to emphasize that treaties could not be modified or repealed by the Executive branch or by Congress without the consent and approval of the contracting party. These points mentioned above became overtly expressed through Article 2, Section 2 in the U.S. Constitution. Although the U.S. Constitution clearly dictates that failure to abide by treaties is entirely unlawful, treaties made between the United States and many Native American nations, as well

²⁹ Ibid.

³⁰ The Federalist No. 64 (John Jay), *supra* note 34, at 389.

as the Kingdom of Hawai'i, have been undermined and broken despite both parties not agreeing to repeal or change their respective treaties.³²

Treaties between the U.S. and Native Hawaiians as well as Native American tribes have been disproportionately disregarded, modified, and/or outright ignored. Thus, tracing the genealogy of how these relationships changed is important to understand the shifts in power. Understanding this history will also emphasize the continued importance of treaties and treaty-making for Indigenous communities. Moreover, uncovering the history of treaty-making with Native nations and communities illuminates the varying legal understandings of Native peoples and their relationships to the U.S. federal government. To underscore that treaty-making is neither a colonial byproduct nor a historic anomaly, this chapter will demonstrate how Indigenous communities engage in contemporary treaty-making.

Treaty-Making Between the U.S. and Native Nations

At the time when relationships with the U.S. federal government commenced for both Native Hawaiians and Native American tribes, they were considered outside the domestic sphere of the United States. As the U.S. became an organized government and drafted its Constitution, Native Americans did not participate in the

³¹ Ibid.

³² There are many examples of broken treaties amongst Native nations and the United States. For example, the Fort Laramie Treaty of 1868 guaranteed the Black Hills to the Lakota, which is now being used as national park land and is the site for Mount Rushmore. Another example would be the treaties the Kingdom of Hawai'i had with the U.S. that were still in effect during the U.S.-military-supported takeover in 1893.

government's organization because they were considered foreign nations.³³ Furthermore, the U.S. government signed treaties with Indigenous groups, including Native American tribes and Native Hawaiians, recognizing their nationhood status. The governance of both Native American tribes and the Kingdom of Hawai'i therefore were considered outside the purview of the U.S. Constitution because all were considered foreign powers. The initial treaties amongst the United States and Native Nations, including the Kingdom of Hawai'i, were created to develop and establish regulations of commerce between foreign nations. As Vine Deloria Jr. notes, before 1849 all treaties between the United States and Native American tribes were concerned with the regulation of commerce.³⁴ Exemplifying that the United States understood tribes to be akin to foreign nations, the commerce clause of the U.S. Constitution, Article I, Section 8, Clause 3, states that Congress shall have the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."³⁵ Outside of commerce, treaties between the Kingdom of Hawai'i and the United States also pertained to mutual recognition and friendship.

³³ Or as the Declaration of Independence called them, "merciless Indian savages."

³⁴ Vine Deloria and David E. Wilkins, *Tribes, Treaties and Constitutional Tribulations* (United States: University of Texas Press, 2000), 60.

³⁵ "America's Founding Documents; The Constitution of the United States: A Transcription," *National Archives and Records Administration*, accessed July 19, 2017, <https://www.archives.gov/founding-docs/constitution-transcript>.

Treaties Between the U.S. and the Kingdom of Hawai'i

The first treaty between the Kingdom of Hawai'i and the United States was in 1826, but remained un-ratified.³⁶ Although the treaty was never ratified the Kingdom of Hawai'i remained unaware. This was a common practice of the United States, which has a history of not officially ratifying treaties and not informing the other contracting party. The treaties following the initial treaty established between the United States and the Kingdom of Hawai'i demonstrate the shifting power dynamics between the two nations including the shift to treaties primarily benefitting the United States. Native Hawaiian scholar Haunani-Kay Trask notes that from 1826-1842 a policy of recognition and friendship prevailed by way of the, "Tyler Doctrine, which imposed an American sphere of influence on Hawai'i and [warded] off the predations of Britain and France."³⁷ After the Tyler Doctrine, Trask notes, "All treaties and conventions between the United States and Hawai'i subsequent to 1842 favored the United States over Hawai'i."³⁸ The shift to treaties primarily benefitting the United States corresponded with the foreign economic pressure on the islands that aspired for the annexation of Hawai'i to the U.S. The foreign economic players in the islands, mostly American missionary descendants, wanted to ensure Anglo control over Hawaiian lands, economy, and government.

Significant Treaty Periods with Native American Tribes

³⁶ We see this throughout the history of U.S. treaty-making including treaties that were negotiated but remained unratified in California such as the Treaty of Temecula.

³⁷ Haunani-Kay Trask, *A Native Daughter*, 75-76.

The major periods of treaty-making amongst the federal government and Native American tribes are summarized below. In the initial period, as mentioned previously, treaty-making primarily concerned the regulation of commerce. According to Native American scholar Vine Deloria Jr. and legal scholar David Wilkins, treaties negotiated outside of this sphere were related to Indian removal.³⁹ The following period of treaty-making between the U.S. federal government and Native nations lasted until 1865. This treaty era was principally related to eliminating other colonial nations' titles to Indian lands within the contiguous United States, thereby securing U.S. jurisdiction.⁴⁰ The next period between 1865-1868 is described as establishing "peace" with western plains tribes, while the federal government acquired more tribal lands. The federal government accomplished this by restricting Indians to confined geographical areas, now known as reservations.⁴¹

After the period establishing reservations, we see a shift in relations with the U.S. federal government's dealings with Native Nations. By 1871, the federal government had moved away from the practice of treaty-making through the Indian Appropriation Act and instead used agreements that no longer recognized tribes as

³⁸ Ibid.

³⁹ Deloria and Wilkins, *Tribes, Treaties, and Constitutional Tribulations*, 60.

⁴⁰ Ibid.

⁴¹ Ibid.

foreign powers.⁴² Deloria and Wilkins note this shift. They explain that, “There were a series of agreements with Indian tribes, primarily in the western states, that sought to gain large cessions of land and allot the remaining lands to tribal members. The major difference between agreements and treaties is that agreements are ratified in the form of regular congressional status, passed into law by both houses of Congress and signed by the president, whereas treaties only needed the approval of the senate.”⁴³ The federal government’s changing procedures with American Indian tribal nations can be characterized as a shift from one regarding them as foreign nations to one of domestic concerns.⁴⁴ This can be seen procedurally with the shift from the utilization of treaties to Congressional acts. Hence, the procedural techniques highlight the shift from regarding Native American nations as foreign and outside the purview of federal government to regarding them as domestic dependent nations.

The passage of the General Allotment Act of 1887 notes the extreme shift in power dynamics that was epitomized by the privatization and individualization of tribal communal lands.⁴⁵ This particular act exemplifies a major shift in dealings with Native American tribes. While the act still required both tribal consultation and Congressional approval, tribal nations were now considered within the domestic

⁴² Phillip M. Kannan, “Reinstating Treaty-Making with Native American Tribes,” *William & Mary Bill of Rights Journal* 16, no. 3 (2008), <http://scholarship.law.wm.edu/wmborj/vol16/iss3/5>.

⁴³ Deloria and Wilkins, *Tribes, Treaties, and Constitutional Tribulations*, 60.

⁴⁴ Ibid.

⁴⁵ Vine Deloria, *Of Utmost Good Faith* (New York: Bantam Books, 1972).

sphere. American Indian tribes were no longer treated as foreign nations, instead they would be completely enveloped into Chief Justice Marshall's mythological ruling in *Cherokee v. Georgia* (1831) as "domestic dependent nations."⁴⁶ This new policy regarded Native American tribes in domestic terms even though their treaties with the United States were never repealed or abridged.

Despite treaties being the "highest law of the land," the United States suddenly transformed their policy dealing with Native American tribes into domestic affairs. This shift in its relationship with tribal nations formalized through the Indian Appropriation Act of 1871 created a "rationalization" for the United States to not honor, if not disregard, treaties with Native nations.⁴⁷ Mark Rifkin discusses the ambiguous legal position of federally recognized American Indian tribes and relates it to the state of exception theorized by Giorgio Agamben. He states, "The content of 'sovereignty' in the decisions is the assertion of the authority to treat Native peoples as having constrained, diminished, political control over themselves and their lands, and such a contention rests on the assumption that despite their existence before and after the founding of the United States as 'separate people[s], with the power of regulating their internal and social relations' (*U.S. v. Kagama*, 381- 82), they somehow do not have equivalent status to 'foreign'

⁴⁶ Chief Justice Marshall ruled American tribes including the Cherokee Nation to be "domestic dependent nations" and not foreign entities. Therefore, the United States is considered ward and Native Americans are considered trustee.

⁴⁷ Deloria, *Of Utmost Good Faith*.

nations.”⁴⁸ He articulates this unique relationship of recognition that is produced whereby, “The jurisdictional imaginary of the United States is made possible only by *localizing* Native peoples, in the sense of circumscribing their political power/status and portraying Indian policy as an aberration divorced from the principles at play in the rest of U.S. law, and that process of exception quite literally opens the *space* for a legal geography predicated on the territorial coherence of the nation.”⁴⁹ Although there are many Supreme Court cases that have attempted to articulate the precarious position of both Native American tribes and Native Hawaiians throughout different periods in U.S. history, changing policies related to the federal government’s dealing with Native American tribes and Native Hawaiians have been inconsistent and have disproportionately benefitted the United States. Rifkin notes the exceptionalness of these shifting laws and policies, which is expressed in the lack of enforcement of treaty agreements with both Native Americans and the Kingdom of Hawai‘i.

Consequently, with the lack of enforcement of treaty agreements with Native nations, the United States has been able to illegally acquire millions of acres of tribal land and resources, while manipulating or repressing tribal self-governance.⁵⁰

Although the United States continues to not abide by its own laws and sacred

⁴⁸ Mark Rifkin, “Indigenizing Agamben: Rethinking Sovereignty in Light of the ‘Peculiar’ Status of Native Peoples,” *Cultural Critique* 73 (2009): 90.

⁴⁹ Ibid.

⁵⁰ Several interactive maps illustrate land dispossession of Tribal nations by the United States over time without the modification of treaties. View one such map at: <http://invasionofamerica.ehistory.org>

agreements, Native nations continue to resist by filing lawsuits domestically and internationally. They also engage in the protection of sacred sites, and continue hunting, gathering, and fishing practices that were guaranteed through treaties. Sometimes these practices receive criticism by non-Natives who characterize treaty agreements and self-determination as “special rights” or reverse discrimination.⁵¹ Today, the federal government functions as a trustee, and Native nations and people function as wards. This gives the federal government the legal authority to decide what is best for Native people and their lands within the domestic dependent nation structure of the United States. Scholar Robert C. Perez articulates the moral and legal flexibility that undergirds the success of colonialism and its structures and that allows for nations such as the U.S. to maintain the moral and legal supremacy. Perez states:

The resistance and the objections of the colonized must be accounted for in a manner that allows the colonizer to retain a moral and legal high ground.

This moral and legal flexibility is a concomitant aspect of all colonial systems, particularly since the fifteenth century. This flexibility allows for legal and moral justifications for such things as appropriation of land, genocide, forced

⁵¹ Many lawsuits in Hawai'i have challenged Native Hawaiian rights of self-determination as reverse racism. These court cases include but are not limited to: *Rice v. Cayetano*, *Arakaki v. Lingle*, and *Kamehameha Schools v. John Doe*.

relocation, and enslavement of indigenous populations while allowing the colonizer to retain moral superiority.⁵²

Perez and other scholars articulate how colonizers such as the U.S. can break their own laws and purported values while remaining largely unchecked by most people and governments domestically and internationally. Furthermore, Perez highlights that the procedures in which colonized populations (Natives) can challenge colonial powers will always be structured to allow for the colonial power to remain as the social and legal authority. Despite the ongoing violations of Indigenous communities by state and federal governments, Indigenous people continue to challenge the violations of their communities. One method, of many, for contesting these conditions and dynamics is registering challenges through the legal system.

To address many of these issues, some Indigenous people, including Native Hawaiians, use both the domestic and international courts as a legal forum not only to contest rights and legal claims, but also to evoke counter-narratives in a public legal setting. Legal scholar Eric Yamamoto describes the counter-narrative and its importance in a court setting. Quoting legal scholars Mather and Ygnvesson, he states:

A counter-narrative challenges those assumptions and the vantage point from which they are made. By offering a 'framework' not

⁵² Robert Perez, "Guantanamo and the Logic of Colonialism: The Deportation of Enemy Indians and Enemy Combatants to Cuba," *Radical Philosophy Review* 14, no. 1 (2011): 28.

previously accepted, the counter-narrative challenges 'established categories for classifying events and relationships by linking subjects or issues that are typically separated' or by elevating previously suppressed voices, thus 'stretching or changing accepted frameworks for organizing reality.' It thereby undermines the clarity and strength of the master narrative, infusing complexity and providing a competing perspective.⁵³

Thus, Native Hawaiians and other Native nations have used the domestic and international court system as a way of producing counter-narratives that challenge colonial legal discourses under a dual rights legal strategy.⁵⁴ Since the colonial juridical system is premised on a denial of Indigenous rights, and by and large Indigenous life, legal scholar Eric Yamamoto affirms that Indigenous people like Native Hawaiians are asserting themselves and "rethinking and recasting the 'cultural performance' role of the federal and state courts."⁵⁵ Moreover, many Hawaiians are bringing issues to an international level to affirm themselves under Indigenous human rights frameworks. This strategy can bring more attention to the

⁵³ Eric Yamamoto, Moses Haia and Donna Kalama, "Courts and the Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue," *University of Hawai'i Law Review* 16, no. 1 (1994): 6.

⁵⁴ For more information, please see Julian Aguon, "Other Arms: The Power of a Dual Rights Legal Strategy for the Chamoru People of Guam Using the Declaration on the Rights of Indigenous Peoples in U.S. Courts," *University of Hawai'i Law Review* 31, no. 1, 113 (2008).

⁵⁵ Eric Yamamoto, "Courts and the Cultural Performance," 6.

suppression of self-determination amongst Native communities and to the plethora of issues that inhibit communities due to colonialism.

While Hawai'i has a specific political history and relationship with the United States, the undermining of Native Hawaiian self-determination and nationhood is akin to the experiences of other Native nations and people in the United States. This can further be understood through the illegal U.S. occupation of Hawai'i beginning with the supporting of the military coup of 1893 that overthrew Hawai'i's last monarch Queen Lili'uokalani. This act consequently permitted the illegal acquisition of millions of acres of the Hawaiian Kingdom, government, and royal lands. This was followed by the illegal annexation of Hawai'i in 1898, in which there was no treaty of annexation. This process of annexation is illegal in U.S. domestic law. Statehood followed in 1959, a process which many assert as fraudulent.⁵⁶ After the illegal overthrow of Queen Lili'uokalani, Grover Cleveland became President and wanted a full investigation before the annexation treaty could be ratified. President Cleveland removed the treaty that the conspirators of the provisional government sent to the federal government. The United States assigned special commissioner James H.

⁵⁶ The U.S. recognizes their involvement in the illegal takeover of the sovereign Kingdom of Hawai'i in several documents. These documents include the Blount report and the Apology Bill, Public Law 103-150 of 1993. Before the takeover of Hawai'i, the Kingdom of Hawai'i enjoyed full diplomatic recognition as an independent nation. The Hawaiian Kingdom's nation-to-nation status was recognized by many nations including the U.S. through treaties. The U.S. specifically ratified treaties with the Kingdom of Hawai'i in 1826, 1842, 1849, 1875, and 1887. These treaties were based on perpetual peace, friendship, commerce, and navigation. Moreover, the treaties between the U.S. and Hawai'i were never terminated and were still in affect at the time of the overthrow.

Blount to investigate the situation in Hawai'i.⁵⁷ After reviewing Blount's findings, President Cleveland addressed Congress on December 18, 1893, and made several notes of American culpability. President Cleveland stated:

By an act of war committed with the participation of a diplomatic representative of the United States and without the 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.⁵⁸

Cleveland insisted that the United States must restore the monarchy of the legitimate Hawaiian government. Furthermore, President Cleveland also reported to Congress that Queen Lili'uokalani, "Surrendered, not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States."⁵⁹ With these findings, President Cleveland maintained that the treaty of annexation of Hawai'i would be withdrawn from Congress and never introduced again under his administration.

⁵⁷ James H Blount served in the United States Congress from 1873 to 1893, representing the sixth district of Georgia.

⁵⁸ Keoni Kealoha Agard and Michael Kioni Dudley, *A Call for Hawaiian Sovereignty* (Honolulu, Hawai'i: Nā Kāne O Ka Malo Press, 1993), 22.

Illegal Annexation of Hawai'i

According to the U.S. Constitution, the annexing of territories must occur through a treaty of annexation.⁶⁰ Moreover, ratification of the treaty of annexation needs two-thirds of Senate approval.⁶¹ Five years after U.S. investigator James H. Blount exposed the illegality of the military coup that overthrew Hawai'i's last monarch, President McKinley ignored international law and annexed the Hawaiian Islands to the U.S. in 1898.⁶² The treaty of annexation did not have the necessary support for its passage.⁶³ Therefore, proponents of annexation constructed the Newlands Resolution, a joint resolution which only needed a simple majority from both the House of Representatives and the Senate. It secured passage on July 7, 1898. Through the Newlands Resolution, the U.S. acquired the Hawaiian Islands as a U.S. territory and in the process, acquired crown, government, and public lands of the Hawaiian Kingdom.⁶⁴ Furthermore, the Newlands Resolution specified that all treaties between the Kingdom of Hawai'i and other foreign nations were "null and

⁵⁹ Ibid., 44.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Upon the eve of the Spanish-American war McKinley found Hawai'i to be of strategic military importance, especially as the US wanted a colony and military outpost in the Pacific. However, the annexing of Hawai'i ignored international law. The provisional government did not represent the citizens of Hawai'i and therefore could not legally annex Hawai'i to the U.S.

⁶³ The US Constitution states that annexing of territories must occur through a treaty of annexation. Moreover, ratification of the treaty needs two-thirds of Senate approval.

⁶⁴ These were the same lands that King Kamehameha III set up in a trust for the Native Hawaiian people through the Great Māhele. These vast lands amounted to an estimated 1.75 to 2 million acres.

void.”⁶⁵ Yet, Native Hawaiians and their self-government never consented to the annexing of their lands and sovereignty. The illegality of the Newlands Resolution is obvious, as a vote never took place because Native Hawaiians overwhelmingly opposed U.S. annexation.⁶⁶ In the process, Native Hawaiians were dispossessed both of their lands and of their right to exercise self-governance, according to U.S. law.

The annexation of Texas has a somewhat similar history, as it was also a foreign nation and a treaty to annex it was unsuccessful. John Quincy Adams, writing specifically about Texas, had argued that the constitution does not provide a legal procedure for the U.S. to annex a foreign nation:

Resolved, That by the constitution of the United States no power is delegated to their congress, or to any department or departments of their government, to affix to this union any foreign state, or the people thereof. Resolved, That any attempt of the government of the United States, by an act of congress or by treaty, to annex to this union the republic of Texas, or the people thereof, would be a violation of the constitution of the United States, null and void, and to which the free states of this union and their people ought not to submit.⁶⁷

⁶⁵ Agard and Dudley *A Call for Hawaiian Sovereignty*, 63.

⁶⁶ A vote amongst the citizens of Hawai‘i never occurred, therefore calling into question the legality of annexation.

⁶⁷ As quoted in Earl M. Maltz, "The Constitution and the Annexation of Texas," *Constitutional Commentary* 23, no. 3 (2006): 388.

Using the same logic as Adams, a highly respected U.S. statesman, the annexation of Hawaii was clearly a “violation of the constitution...”⁶⁸

Doctrine of Discovery

It is not difficult to understand the illegality surrounding all of these events if we understand the basis of international and settler property law established by European colonial nations through the Doctrine of Discovery. After Columbus arrived in 1492, Christian European powers justified their claims to land in the Americas through the Doctrine of Discovery.⁶⁹ European powers wanted to stake claim to the Americas and its resources and as a result, Britain, France, Portugal, and Spain battled for control over a land that was not theirs. Although utilized differently by each settler nation, the Doctrine of Discovery has also been employed to establish claims to land outside of the Americas: including in Africa, Australia, Canada, and New Zealand.

Justified by religious and ethnocentric ideas of European superiority, the Doctrine of Discovery set legal precedence that is still relied on to define, relegate, and suppress Native sovereignty and Indigenous human rights. Legal scholar Robert Miller details the importance of the assumed property rights encompassed within

⁶⁸ Ibid.

⁶⁹ The Doctrine of Discovery is described as a policy of Christian European powers to acquire, subdue and vanquish non-Christian people and lands. This doctrine was used when Columbus arrived to the Americas and claimed legal title of the lands for Spain. The U.S. federal government dispossessed American Indians out of their land and resources by using this as a legal foundation. Steven T. Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Golden, Colorado: Fulcrum Pub, 2008).

the Doctrine of Discovery. He states, “The Doctrine provided, under established international law, that newly arrived Europeans immediately and automatically acquired property rights in native lands and gained governmental, political, and commercial rights over the inhabitants without knowledge nor the consent of the Indigenous people.”⁷⁰ Furthermore, the Doctrine of Discovery justifies the extinguishment of Native title to land based on their presumed inhumanity. Legal scholar Tracy Lindberg discusses the core of the Doctrine of Discovery. She states, “Empire and the laws of empire required that Indigenous inhumanity be lawfully constructed to support the empirical legal understandings of inherency.”⁷¹ With this poignant explanation, Lindberg exposes the crux of the Doctrine of Discovery: Indigenous people are not considered humans and therefore do not have rights to property, protection, or essential human rights. Lindberg explains, “Indigenous peoples who lived in accordance with their own and different set of philosophies, laws, values, and principles were easily dismissed as land owners and as humans.”⁷² Not recognized as human under the Doctrine of Discovery, Indigenous peoples and their societies, governments, and lands are delegitimized.

⁷⁰ Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis and Clark and Manifest Destiny* (Lincoln: University of Nebraska Press, 2008), 1.

⁷¹ Robert J. Miller, Jacinta Ruru, Larissa Behrendt, and Tracy Lindberg, *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* (Oxford: Oxford University Press, 2010), 123.

⁷² *Ibid.*, 95.

Europeans also argued that pre-emption gave the discovering country property rights that specifically excluded any other European nation from claiming the same land. Robert Miller notes, “This ‘European title’ was the exclusive right to buy the newly discovered lands whenever the natives consented.”⁷³ Native Americans were seen as having occupancy rights until they were ready to sell to the “discovering” European nation. By regarding Native American and other Indigenous people as nonhuman and thus as incapable of owning land, the civilized European powers were deemed the “natural” owners. Some European colonial nations, including England and France, and later the United States, utilized the concept of “terra nullius” in their justification to access and eventually own Native lands, and at times peoples. Robert Miller describes one author’s definition of terra nullius as a “defined area that was populated by inhabitants who were not members of the family of nations and subject to international law. Europeans did not recognize the sovereignty of such ‘non civilized’ people to the land they occupied. Needless to say Europeans regarded North America as a vacant land that could be claimed by right of discovery.”⁷⁴ Therefore, the inhumanity of Native people undergirded terra nullius, which justified the initial taking of Native lands; but the continued dehumanization of Native and Indigenous people legitimizes the contemporary legal fiction of domestic dependent nationhood. Domestic dependent nation status affords Native nations and their people the status of wards with the federal

⁷³ Robert J. Miller, *Native America, Discovered and Conquered*, 9.

⁷⁴ *Ibid.*, 21.

government as trustee. This allows the federal government to have the ultimate decision-making power while federally recognized tribes have a type of limited sovereignty. By understanding that the legal frameworks for occupying and claiming land are all premised on the legal fictions of Indigenous inhumanity and European supremacy, it is understandable that most Indigenous people and nations struggle to find ways to legally challenge their continued suppression and exploitation by the U.S. into something that is legally cognizable.⁷⁵

Manifest Destiny

As the thirteen colonies formed the United States, colonists relied on the elements of the Doctrine of Discovery to stake claims. The theoretical and legal claims encompassed within the Doctrine of Discovery led to the advancement of the ideas of Manifest Destiny, which justified the divine right of the United States to occupy and expropriate lands from the east to west coast. Since the Doctrine of Discovery is premised on Native inhumanity, then ideas of Manifest Destiny furthered the idea of Native people and their lands as consumable. Manifest Destiny presumed that the United States had a mission to spread a republican-style democracy to lands and people who were not a part of the divinely chosen Western European people. Thus, Manifest Destiny continued to support ideas of Western European superiority by juxtaposing non-Anglo people, societies, and governments as not only inferior but as outright illegitimate and disposable.

⁷⁵ Robert J. Miller, Jacinta Ruru, Larissa Behrendt, and Tracy Lindberg, *Discovering Indigenous Lands*, 149.

To support their efforts, European colonial powers established alliances and treaties with American Indians and regarded American Indian tribes as foreign entities. This was different from other settler nations that did not promulgate treaties with Indigenous groups due to a lack of competing colonial interests.⁷⁶ The Doctrine of Discovery defined Native American treaty rights as one of occupancy rather than ownership. It was not until the war of 1812 that the U.S. assumed the position of predominant sovereign amongst the competing colonial powers.⁷⁷ While treaties were signed between the colonial government and Indigenous nations, these understandings were often based on Native ideas of sharing land and not on ideas of owning land as property.⁷⁸

Treaty Rights?

The courts have ruled in several cases that Indigenous communities' rights guaranteed under treaties were solely for subsistence purposes (not commercial).⁷⁹ Thus, many Native nations continue to be caught in ambiguous legal positions. In order to prove continued rights to treaties, Indigenous communities need to legally prove that they have remained "traditional" and unchanged despite colonization.

⁷⁶ There were no competing colonial powers for Australia. Thus, Australia regarded all land as *terra nullius* and did not engage in treaty-making with the Aboriginals of Australia.

⁷⁷ Deloria, Vine and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations*, 26.

⁷⁸ Ibid.

⁷⁹ Michael C. Blumm, "Indian Treaty Fishing Rights and the Environment: Affirming the Right to Habitat Protection and Restoration," *Washington Law Review* 92, no. 1 (2017).

Therefore, Native communities are not able to evolve in order to legally access rights guaranteed through ratified treaties. This argument of “traditional versus modern” provides legal rationale and justification for not honoring various treaties and their encompassed agreements.⁸⁰ Whether disguised in legal fictions of ward/trustee, domestic dependent nationhood, or the incorporation of Indigenous people into a national body as ethnic minorities, the principles of the Doctrine of Discovery endure because they form the legal basis for the United States as well as other settler colonial nations.

Many U.S. laws that promote the legal fictions contained within the Doctrine of Discovery have been designed and implemented with the goal of the erasure of Indigenous people. Furthermore, the legal principals derived from the Doctrine of Discovery have set legal precedence, which justify the denial of important human rights for Indigenous people. As legal scholar Robert Williams notes, the ward/trustee and domestic dependent nation status allow for a structure of paternalism and validate control over Indian land and lives. These legal principles can also apply to Native Hawaiians. For example, the current trusteeship of “ceded” land by the State of Hawai‘i functions analogously. Although neither the Hawaiian people nor their national government have ever relinquished these lands, the State of Hawai‘i and the federal government continue to control their lands under the guise of a federal trust relationship.

⁸⁰ Ibid.

Legal Fictions and the Interest Convergence Theory

American Indian tribes are not monolithic and have distinct governments and communities with specific histories and relationships (or lack thereof) with the United States and other colonial powers. Furthermore, if the premise for settler law and international law is derived from the principles of the Doctrine of Discovery, which is based on Native inhumanity, then all Western forms of government are based in legal fictions. Moreover, the loss of Native Hawaiian nationhood can be understood as part of a larger project of U.S. settler colonialism. While some Native Hawaiians and legal scholars argue the specifics of Native Hawaiian dispossession and the loss of Native Hawaiian self-governance as exceptional, this framing further disregards other Native nations and the various legal fictions used to pilfer and possess tribal lands and resources as part of producing and maintaining the myth and narrative of the U.S. nation-state. Furthermore, this line of argument has not restored the Kingdom of Hawai'i despite legal challenges brought domestically and internationally under the United Nations.

In this instance we can consider how legal scholar Derrick Bell's interest-convergence theory can apply toward the loss of Native Hawaiian self-governance. Bell's theory asserts that whites will only support minority rights when it also benefits them.⁸¹ This theory applies to Native Hawaiians even though Native

⁸¹ Derrick A. Bell, "Brown v. Board of Education and the Interest-Convergence Dilemma," *Harvard Law Review* 93, no. 3 (1980): 518-533.

Hawaiians possessed nationhood or at least a supposed nation-to-nation relationship. Native Hawaiian self-governance is not fully realized because Hawaiians hold an ambiguous relationship with the U.S. federal government and therefore are viewed as ethnic minorities. Viewing Native Hawaiians this way frames the Native Hawaiian sovereignty dilemma as one of inclusion analogous to a framework of civil rights and equality. However, the two are incommensurate. Although Native Hawaiians were considered a part of the family of nations and have treaties that recognized nationhood status, the loss of self-governance can be explained by the same principles of the Doctrine of Discovery, which regarded Native lands as empty through *terra nullius*. Since the Kingdom of Hawai'i's government was led by Native Hawaiians and therefore non-white, under the Doctrine of Discovery whites were still able to possess Hawaiian lands and dispossess Hawaiian government. Thus, Native Hawaiian claims to land and self-governance continue to be overlooked both historically and contemporarily despite being part of the family of nations and having treaties with other nations including the U.S.

Interest-convergence theory is useful to comprehend how the U.S. could commit such acts while violating not only its own laws and policies, but also those recognized under international law. Despite Native Hawaiians and other Native nations contesting these acts within Western legal courts, legal decisions will never surmount to undermining the entire nation-state project or narrative. Furthermore, these legal contestations are confined within a racial justice and equality framework

that will only be supported as far as it somehow overall benefits the majority or maintains white interests and power.⁸² As Western and international property laws derive from the Doctrine of Discovery, then consequently these legal systems will never be able to fully address Native nations. While many Native nations and Native Hawaiians utilize the U.S. and International law to address contemporary challenges, Western legal principles will never unravel Western settler nation states.

Additionally, other settler nations within the international community did not aid Hawai'i despite appeals and pleas by Native Hawaiians to restore self-governance. This lack of advocacy and action can be understood as maintaining settler nationhood that derives from principles of the Doctrine of Discovery. While all Native nations have inherent sovereignty that pre-dates the United States and other colonial powers since time immemorial, many Native communities understand the legal limitations within settler government and laws. Thus, many Native nations utilize multi-pronged approaches including working within the state and outside of it toward the betterment of their community. While finding legal solutions within state law may provide short-term benefits that cannot be dismissed, the overall system cannot be transformed from within since it's premised on Native erasure. Striking a similar chord, black feminist scholar Audre Lorde poignantly states, "For the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never

⁸² Ibid.

enable us to bring about genuine change.”⁸³ Although Audre Lorde is specifically discussing heteropatriarchy and the struggles of black queer feminists within U.S. society, her famous quote describes the formation of a U.S. society that is based on the production of certain bodies and characteristics as expendable, while other bodies and traits become normalized. Additionally, Lorde’s quote epitomizes the fact that people cannot rely on the established system if they want to accomplish significant change. While working in the system may grant some improvements for certain people who are marginalized and dispossessed, these gains will never undo the system. They certainly will never undo the dispossession of Native nations and people because the settler nation state project is ultimately premised on the suppression and erasure of Native people and nations.

Treaties Within Indigenous Statecraft

As noted, treaty-making is significant within U.S. and international law and exemplifies nationhood. Additionally, it has been a tradition amongst Native nations and other Indigenous communities. As noted in the beginning of the chapter, treaties represent sacred agreements. These agreements represented the joining and building of relationships or the re-committing of a relationship between two or more groups. Treaties amongst Native communities usually encompassed various protocols including ceremony and gift-giving that signified the importance of one’s previous relationship(s) or aspirations for a new relationship.

⁸³ Audre Lorde, “The Master’s Tools Will Never Disrupt the Master’s House,” in *Sister Outsider: Essays and Speeches* (Berkeley, CA: Crossing Press, 2007), 111.

Scholars such as Robert Williams have emphasized Native American agency in the process of treaty-making and have created counter-narratives articulating that various colonial powers were, in fact, incorporated into Native/Indigenous treaty-making traditions.⁸⁴ Discussing the building of these relationships, Williams states:

In eastern North America, Europeans fortuitously found an already existing system of Indian diplomacy with its own distinctive language and ceremonial forms. For most of the European colonies on the eastern half of the continent, given their small numbers and weak tactical position, it was easier to adapt into an ongoing system. Indians simply refused to accept alien symbols and ceremonies of the European language of diplomacy that demanded their unquestioning subjugation to a monarch an ocean's distance away.⁸⁵

As Williams notes, the colonial powers were not initially in a position to dictate diplomatic, trade, or treaty relationships. Natives Americans had complex social and political structures pre-existing European visitors. Part of this system included protocols to deal with newcomers or outsiders. Therefore, Native nations initially incorporated Europeans into a pre-existing system. Hence, treaty-making should

⁸⁴ Scholars such as Robert A. Williams and Brian Klopotek as well as many others have articulated Native American agency when dealing with colonial powers.

⁸⁵ Robert A. Williams, *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800* (New York: Oxford University Press, 1997), 32.

not be considered a historic anomaly or a colonial byproduct. Instead, we can consider treaty-making as a representation of Indigenous statecraft.⁸⁶

Treaties and treaty-making comprise certain aspects found within Indigenous statecraft that predate the arrival of Europeans and their government structures. For example, treaties represent sacred agreements between communities, not between individuals. While western society values individualism, Indigenous societies value communalism, community, and peoplehood. If one did not honor the agreement, the whole community would be affected. Correspondingly, treaties represent a process of recognizing a community's peoplehood. Peoplehood recognizes another's ability to live according to their culture, practices, and beliefs. Thereby peoplehood represents a community's ability to live a certain way.

By recognizing another community's peoplehood, groups respected each other's boundaries, people, government, and way of life. Therefore, recognizing peoplehood is a community's ability to remain undisturbed. Accordingly, when one community acknowledged another community's peoplehood, permission would have to be granted before visiting the territory of the other community. Rather than a contract, treaties represented a sacred agreement between groups that would be honored until either group agreed to terminate or modify the agreement. As communities entered into these agreements within an Indigenous statecraft, ceremonies epitomized the sacredness of the agreements. While treaties between

⁸⁶ Native Hawaiian statecraft is a concept coined by Kamanamaikalani Beamer in his book, *No Mākou Ka Mana: Liberating the Nation*, 15.

Native nations and the U.S. federal government represent Indigenous statecraft, diplomatic relations including treaty-making amongst Native nations can also represent a unique form of Indigenous statecraft: one that does not have the authority or interference of a settler colonial government. Furthermore, collaborations – such as treaty-making – amongst Indigenous nations can affirm Native self-governance, including Native nations’ existence as international actors.

The treaty between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i is an example of Indigenous statecraft that is grounded in Indigenous survivance.⁸⁷ This is what Native Studies scholar Audra Simpson refers to as “sovereignty within a sovereignty” or “nested sovereignty.”⁸⁸ She describes Native nationhood and the ongoing tension that exists between Indigenous and settler nations. Simpson states, “One challenges the very legitimacy of the other. As Indigenous nations are enframed by settler states that call themselves nations and appear to have a monopoly on institutional and military power, this is a significant assertion.”⁸⁹ Simpson describes the political resistance of Indigenous communities that refuse to be incorporated into the nation-state by *remaining* Indigenous. As Wolfe described the anxiety around Native permanence, Indigenous people continue

⁸⁷ Although Ka Lāhui Hawai‘i represents a specific Native Hawaiian sovereignty group and not the political views of all Native Hawaiians, Ka Lāhui recognizes the ability for Native Hawaiians to continue practices of nationhood and self-governance. One such practice is treaty-making.

⁸⁸ Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014), 11.

⁸⁹ *Ibid.*, 10-11.

to resist through the assertion of practices and protocols that embody Indigeneity.⁹⁰ Therefore, contemporary practices of Indigenous statecraft such as treaty-making represent a community's refusal to accept a settler status. And within these communities, it is a refusal of being American. Instead, these communities highlight a continuance of Indigenous values that profess survivance which include asserting a nationhood that actively resists incorporation into the U.S. nation-state.

Treaties as Refusals

As Indigenous people continue to find ways to resist incorporation into the settler state, the promulgation of treaties with each other is one way to express continuing self-determination and nationhood. This is an alternative to "recognition" which implies consent between tribes and the federal government. Additionally, treaties between Native nations also resist the normalization of the settler state's ability to "recognize" Native nations and Indigenous groups. Thus, operating alternatively to recognition, Simpson describes "refusal" which, "comes with the requirement of having one's *political* sovereignty acknowledged and upheld, and raises the question of legitimacy for those who are usually in the position of recognizing: What is their authority to do so? Where does it come from? Who are they to do so?"⁹¹ Thus, Native nations that continue to challenge Western authority and dominance that are tied to discourses of recognition perform what Audra Simpson articulates as a "refusal." Although the federal government may

⁹⁰ Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 396.

dictate that certain groups are un-recognized, Native nations and people embody refusals by practicing and living as Indigenous people and communities. Ultimately, this process resists incorporation within the nation-state as much it challenges settler colonialism and its erasure of Native people. These “refusals” signal the incompleteness of colonialism; they are a type of “unsettling.”⁹²

Throughout this chapter, I have argued that Native nations contemporarily engage in treaty-making amongst each other as an expression of Native nationhood as well as a particular refusal. While simultaneously engaged in Indigenous survivance, this refusal resists incorporation into the settler nation-state. Although treaties represent the “highest law of the land” within the United States, as exemplified by the U.S. Constitution, treaties amongst Native nations and the U.S. have continuously been undermined and have not been honored. Despite the countless number of treaties that have been broken amongst settler colonial powers and Native nations, treaties and treaty-making do not represent a historic anomaly or colonial statecraft. Rather, Native nations have a history of treaty-making as part of an Indigenous statecraft. Therefore, the treaty between Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i represent a continued tradition of Native nations. Moreover, the signing of the treaty signifies a nation-to-nation relationship without colonial interference. This subverts settler colonial recognition politics that reassert colonial power by situating the colonial government as trustee

⁹¹ Ibid., 11.

⁹² Ibid.

and Native people as wards. Instead, the treaty represents the two groups' self-determination and builds trans-Indigenous collaborations embedded in survivance.

CHAPTER TWO:

Kuleana: Reverence for the Land Governed Through Responsibility

“Understanding our kuleana develops our human potential because it ties us to our function and our function ties us to our people. It is this sequence because we value what we must do in order to continue to be stewards of our language, our oceans, our lands. We must because we have that responsibility. Knowing who we are, then, becomes a pre-requisite to know how best we can serve.” - Manulani Meyer, 2003

Kuleana is defined as right, privilege, concern, and responsibility.¹ It is considered an individual and collective responsibility that can be both acquired and inherited. Kuleana is intimately woven within Native Hawaiian identity and honoring kuleana is integral to maintaining who Native Hawaiians are as a people. This chapter provides an analysis of kuleana in order to explain its continued significance for Native Hawaiians in their resistance to settler colonialism. This chapter also provides Native Hawaiian articulations of kuleana both within and outside the homeland through ethnographic interviews. Interviewees include Native Hawaiians who are either students or educators within higher educational institutions and who spent time in the diaspora and remain active in the Hawaiian community in both Hawai‘i and California.

Maintaining and honoring kuleana is crucial for a Native Hawaiian futurity through its tethering of people to ‘āina. Additionally, Native Hawaiians articulate kuleana as being intimately tied to understandings of ‘āina. Some assert that ‘āina is

embodied while outside of the homeland and therefore can be transformed while honoring and fulfilling kuleana to the lāhui—nation. This can be understood through the maintenance of human-land relationships that continue while outside of the homeland. Thus for Native Hawaiians, kuleana and responsibilities to ‘āina and iwi kūpuna also persist while off-island.² Utilizing traditional knowledge, Native Hawaiians actively honor their lāhui while simultaneously respecting the people and the land that have become their host. One example of a praxis of kuleana is the Treaty of Friendship and Mutual Recognition between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i. It is my assertion that in order to best understand the intentions of the treaty it is crucial to provide an analysis of kuleana. This analysis should emphasize the complexity and expansiveness of kuleana that is interwoven both as a philosophy through its tethering to ‘āina and as an embodied praxis.

Manulani Aluli Meyer, in her seminal work *Ho‘oulu: Our Time Becoming*, explains how Native Hawaiian traditional knowledge, epistemology, and pre-contact methods can be understood as “rights.” She argues, “As Hawaiians, it is a simple idea to develop efficacy with growing responsibilities as we honor our children when they earn these rights. It is a real acknowledgement, a real-world sense of

¹ Mary Kawena Puku‘i and Samuel H. Elbert, *Hawaiian Dictionary* (Honolulu: University of Hawai‘i Press, 1986), 179.

² Iwi kūpuna is defined as bones of the ancestors, or ancestral remains.

accomplishment, a real community need.”³ Through an embodiment of kuleana, Native Hawaiian traditional worldviews are critically connected to the values of responsibility, both individually and collectively as Indigenous peoples who maintain an umbilical bond to place.⁴ Juxtaposed with the Western understanding of individual rights, kuleana focuses on a collective well-being grounded in Native relationships and responsibilities to land, place, and people. This is a remarkably different political ethos from Western rights and responsibilities.

Native Hawaiian scholar Ty Kāwika Tengan articulates kuleana as both genealogical connection to place and as something that is embodied in my interview with him. Tengan is a University of Hawai‘i Associate Professor of Ethnic Studies. Originally from Maui, he attended college at Dartmouth College in New Hampshire and studied Anthropology and Native American Studies. After graduating, he returned home and continued to be heavily involved in Hawaiian community affairs including issues around the repatriation of iwi kūpuna. In my interview with Tengan, he explained the connectedness of kuleana and that it included:

Responsibilities, rights, and sometimes authority . . . it is important that responsibility is . . . at the forefront. In that way . . . the big difference, at least in my experience, is that kuleana comes to you. It's usually something that

³ Manulani Meyer, *Ho‘oulu: Our Time Becoming* (Honolulu: ‘Ai Pohaku Press, 2003), 13.

⁴ For more information on Indigenous embryotic connections to land, please see Christine Taitano DeLisle, “A History of Chamorro Nurse-Midwives in Guam and a ‘Placental Politics’ for Indigenous Feminism,” *Intersections: Gender and Sexuality in Asia and the Pacific* 37 (2015).

chooses you rather than you choosing it. I mean there is a combination of your individual choice and a broader sort of determination by kūpuna.⁵

Tengan reveals that kuleana may be inherited through kūpuna—ancestors both living and those that have passed—and also acquired through experiences and praxis. He also states that the responsibility aspect of kuleana should be understood at the forefront, followed by rights and authority. He further explained kuleana as tied to place:

A certain kuleana comes from those deeper familial connections... responsibility and rights [originate] from previous generations and from specific connections to ‘āina. Connections that are about the relationships of families to land and to place and connections that come from being buried and from also the act of kanu[ing]—the act of planting that is part of the organic familial relationship that creates kuleana that is also something that comes to you from all these generations.⁶

Thus, Tengan reveals that kuleana is tied to a specific place: the ‘āina from which a family and individual derives can be accumulated over generations. Tengan also notes that kuleana is derived from the places that iwi kūpuna (ancestral remains) are planted and buried, which creates a genealogical responsibility to place.

⁵ Ty Kāwika Tengan (Native Hawaiian scholar) in discussion with the author, June 2014.

⁶ Ibid.

Tengan and other interviewees note that individuals have the agency to choose if they honor, maintain, and fulfill their kuleana. Tengan further discussed the ways in which individuals maintain agency despite the burden of responsibility:

Well, I see it as both individual and collective because there are lots of people who ignore kuleana and prefer to have something else. So even if kuleana is more about a collective, at the end of the day, when, and if, the individual is going to take it up or not it is up to the individual. So you definitely have that aspect. So even if it is a more of a collective thing, it is up for that particular individual to carry it on and transform it into ways for succeeding generations. It is also important for that individual to convey kuleana to their children and their grandchildren and those after them. So if that individual isn't going to pass that on, then others will not understand kuleana. I am thinking more about the family rather than the individuals and particular ways that it would go in genealogy. Again, I guess it is not only an individual's kind of responsibility because you have others within that generation who can also help pass on to children. Again, I'm thinking of a more expansive sense of the nuclear family and passing on the broader relations of family who can come together and help to pass on kuleana.⁷

Tengan reveals in the passage above how important it is for kuleana to be passed down to successive generations. This makes it both an individual and collective

⁷ Ibid.

responsibility that can be carried on, transformed, and possibly extinguished. Also, he articulates that individuals have agency and can choose whether or not to honor and pass down kuleana. Again, he reminds us that if that particular individual does not want to teach or inform kuleana to successive generations, then others within that individual's generation should have the responsibility to teach kuleana to those in the successive generations. Therefore, it is not only a responsibility for an individual, but also a responsibility within the family. This explains how kuleana is important to Native Hawaiians and how teaching and learning kuleana is tied to the health and longevity of families and, indeed, the collective lāhui.

Further elaborating on the significance of kuleana is one of the interviewees, Native Hawaiian scholar Erin Kahunawaika'ala Wright. Growing up in Kalihi, O'ahu, Wright attended undergrad at the University of Hawai'i, Manoa where she majored in Native Hawaiian studies. She received her doctorate in Education from the University of California, Los Angeles. Wright proceeded to spend time in California after graduating and worked as a Director of Education for a California Native tribe. After working for the tribe for several years, she returned home and became the Director of Native Hawaiian Student Services at the University of Hawai'i at Manoa. Currently, she is a Professor of Education at UH Manoa.

Wright elaborates upon the significance of kuleana with respect to the greater Native Hawaiian community and nation. Specifically, she recounts her time as an undergraduate in Hawaiian Studies and her understanding of kuleana. This understanding was influenced by one of her teachers and mentors, Haunani-Kay

Trask. Trask framed kuleana as a set of rhetorical questions that asks, "What will you do for your lāhui, your nation or your people? That should be the driving force behind your life as a Hawaiian!"⁸ Reflecting on Trask's notion of kuleana, Wright says, "For her it doesn't matter what you do as a Hawaiian person, it just needs to some way contribute back to the lāhui and for the betterment of the lāhui."⁹ Trask's broad framing assisted Wright in her own construction of kuleana. She asserts, "So I always felt like kuleana was this really expansive thing, but was also focused. For me, that really was super helpful in thinking about how I would use my life to do that and for me that's been the question that's driven me to do my research."¹⁰ In this way, kuleana helped Wright understand her function and place in the greater community as much as kuleana helped her to create a sense of responsibility. Additionally, kuleana allowed her to think about how her life's work should contribute to the Native Hawaiian community in Hawaii and even in the diaspora.¹¹

Kuleana and the Relationship to 'Āina

In her articulation of the expansiveness of kuleana, Wright discusses its various meanings including its relationship to 'āina. She says,

⁸ Erin Kahunawaika'ala Wright (Native Hawaiian scholar) in discussion with the author, June 2014.

⁹ Ibid.

¹⁰ Ibid.

¹¹ For more information, please see Yoo, David, Russell Leong, Keith Camacho, Roderick Labrador, and Erin Kahunawaika'ala Wright, "Engaging Indigeneity in Pacific Islander and Asian American Studies," *Amerasia Journal* 37, no. 3 (2011): 135-147.

If you look at kuleana the word, [it is] very expansive, it's like pono. It's one of those things that have a multiplicity of meanings. And for me, it always struck me that kuleana is a right, as in property rights, and back in the days where kuleana was a family's parcel of land they had to be responsible for, and it contributed back to the larger community and their larger ahupua'a. But it also means a privilege. So who gets a privilege to do this work? But to do this work it's also a burden.¹²

Wright describes the expansiveness of kuleana as it relates to the Hawaiian concept of pono, which she also defines expansively. She relates kuleana to kuleana lands, which were lands granted to families after the Great Mahele.¹³ These lands usually consisted of the places where families already lived and subsisted. But with changes to land titles through the Great Mahele, the lāhui created a way to preserve land for Hawaiians who did not have a Western understanding of private land ownership.¹⁴ Wright also relates kuleana to privileges and burdens, stating, "It's totally awesome to do this work, but it's also very burdensome at some points, but it's also a privilege

¹² Erin Kahunawaika'ala Wright (Native Hawaiian scholar) in discussion with the author, June 2014.

¹³ Some people still live on kuleana lands that have been passed down within the family for generations. However, with Western legal concepts of private land ownership, adverse possession, acquired title action, and partition action, many Hawaiians have lost their ancestral lands.

¹⁴ The Great Mahele of 1848 divided and privatized Hawaiian land, an agenda developed by American foreign missionary advisors who were able to convince the reigning monarch, King Kamehameha III, that privatization of land was necessary for Hawai'i's sovereignty and independence. Although Kamehameha III thought the Act would benefit Native Hawaiians by creating more land available for the maka'ainana (commoners), it separated many Native Hawaiians from their land.

because we are in privilege positions and we have to remember that. That's the way I think about it."¹⁵

Other Native Hawaiians also discuss kuleana as both a privilege and an obligation. Native Hawaiian educator Kumu Kau'i Peralta discusses her views of kuleana growing up. Peralta grew up on the Big Island of Hawai'i. She lived on O'ahu when she attended Kamehameha Schools. She has been living in the San Francisco Bay Area for over ten years, and is a professor of Hawaiian language at Stanford University. While believing that kuleana is absolutely necessary, Peralta says:

So you grow up understanding . . . that's your kuleana, and when you move away from home you really start to examine what the hell does kuleana mean. It is such a burden. That's the way I was raised to understand, but as I examined it, and lived it, and, if you know, my take right now on kuleana is that kuleana is absolutely necessary. It's absolutely necessary because kuleana defines your place and not only in Hawaiian cosmologies, but in Indigenous cosmologies. You have to have a purpose and your purpose is defined by your kuleana and all the things that come with kuleana.¹⁶

For both Wright and Peralta, kuleana was described as both an individual and collective concept encompassing responsibilities and obligations that at times could be burdensome. However, they both believed that kuleana was absolutely necessary for an individual and family.

¹⁵ Ibid.

Native Hawaiians also believe that kuleana determines an individual's place and function within the world. This assists in keeping Native Hawaiians grounded in an increasingly changing world that attempts to eradicate Indigenous ways of life.

Relatedly, Peralta describes the consequences of not knowing or honoring kuleana:

Because if you don't have kuleana then you have no place, and what is your purpose? Before it was like, oh my god we don't want to talk about the k-word. We don't want to talk about kuleana because nobody wants to have kuleana, but there are rules to kuleana as well. You know if you have kuleana and you can have both kuleana that is inherited and acquired. No matter the case you cannot pick and choose when you can take care of kuleana . . . You can't do that because someone else has to, and that means that you lost trust because it is a trust factor and it affects your relationships.¹⁷

Peralta expresses that although kuleana may be burdensome, the consequences of not recognizing and honoring kuleana are related to not having a place or purpose in the world. Furthermore, she emphasizes that one cannot choose kuleana, because ultimately kuleana affects trust and relationships. By not honoring kuleana, an individual puts the relationships between people and place in jeopardy.

For Wright, her articulation of kuleana is not only a personal and collective responsibility that is sometimes burdensome; she also describes how kuleana is tied to her relationship to 'āina. Therefore, she believes that her kuleana is preparing the

¹⁶ Kumu Kau'i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

‘āina for the greater lāhui, including those Native Hawaiians who may have been displaced and are now residing off-island. She says:

I think for me, it’s . . . about the Hawaiian people. Kuleana first to me is our ‘āina here, and our people here, because this is the place that we all came from, so I think for me that’s the reason why I have continued to just come back. Because even when I left, I never thought I would live anywhere else because I felt like there is so much work to be done at home because our physical ‘āina is hurting so much because we have all of this stuff happening. There is also the kuleana to honor our kūpuna who really sacrificed a lot for us to be here. So I want to fulfill that kuleana first for me.¹⁸

Wright describes the importance for herself as an individual to contribute back to the greater community, and prioritizes the physical ‘āina and the people who remain in the homeland. Additionally, she articulates a personal responsibility since she believes that her ancestors have sacrificed for her to be in the position she is in today. Although she describes moving away for a period of time, she felt the urgency to come back and serve the homeland.

Native Hawaiians remaining on the land face many issues, including economic, health, and political challenges. Wright describes the preparation for the ‘āina that is essential for all Hawaiians to come home. She says,

¹⁷ Ibid.

¹⁸ Erin Kahunawaika‘ala Wright (Native Hawaiian scholar) in discussion with the author, June 2014.

That's what I would love and that's what we would always talk about. We would love for Hawaiians to all come back to Hawai'i, but on the flip we also have to make sure that the 'āina is ready, and the 'āina is able to receive our people when they come back, because I feel like right now we couldn't. There are no jobs, we don't have a national land base for people to actually live.¹⁹

For Wright, she envisions a Hawai'i where all Native Hawaiians would have the option to live in their original homeland. She understands the causes for Native Hawaiian displacement resulting in a growing diaspora. Thus, she recognizes that Hawaiians are being forced out of their homeland through ongoing settler colonialism and its institutions. Since the takeover of the Kingdom of Hawai'i and the resulting loss of its national government and lands, Hawaiians continue to face challenges imposed by a settler colonial government and economy. Consequently, Native Hawaiians do not have a national land base and are forced to engage in a settler-controlled economy and government where settlers outnumber Hawaiians.²⁰

Native Hawaiian legal scholar Malia Akutugawa articulates the importance of 'āina and its relationship to the Hawaiian people. Akutugawa was born and raised on the island of Moloka'i. She attended college in Washington state and returned to Hawai'i to attend the Richardson School of Law at the University of Hawai'i, Manoa. She worked as an attorney for Native Hawaiian Legal Corporation and then became

¹⁹ Ibid.

²⁰ Jonathan Y. Okamura, *Ethnicity and inequality in Hawai'i* (Philadelphia: Temple University Press, 2008).

an Assistant Professor of Law and Hawaiian Studies at [where she is currently]. She teaches Native Hawaiian Studies and environmental law. Akutugawa states:

Just in terms of land, the word Hawaiians use is 'āina and I believe David Malo has a very good quote. He talks about the difference in 'āina and moku. He says the difference between the word moku and 'āina is moku is land surrounded by water. It's just land, but 'āina is the land with people on it. So 'āina cannot exist without people and vice-versa. It really is about a relationship.²¹

This particular human-land relationship is different than Western concepts of land that view it as a commodity. Akutugawa exemplifies this difference by juxtaposing Native Hawaiian and Indigenous ideas of land with Western views of land:

In Western thought, land is just a commodity. For Hawaiians and a lot of Indigenous people, if not all of them, it's like a family member. I know also if you read Mary Pukui whose writings are on the Polynesian family system, she talks about 'āina as that which feeds. When people identify 'āina, they are identifying their feeder and what land nurtured them.²²

Akutugawa articulates the importance of land, but also the specific understandings of land and its relationship to people. Moreover, Hawaiian conceptions of land incorporate land as a family member that is in need of care.

²¹ Malia Akutugawa (Native Hawaiian scholar) in discussion with the author, June 2014.

²² Ibid.

Akutugawa elaborates on the Hawaiian understanding of love and caring for the 'āina and the inherent responsibility to do so while highlighting the similarities and differences with Western conceptions of land. She notes:

When you speak to Hawaiians about their 'āina, especially their mokū'auhau where they were born, or where they have genealogical ties to, 'āina is a living being and must be protected. Maybe the closest thing for a Westerner to understand or an American to understand is love of country. Even like aloha 'āina means this patriotism, this love for country, this love for land. For Hawaiians it could be a small strip of land, or an ahupua'a.²³

Akutugawa highlights the different relationalities to land among Westerners, Americans, and Native Hawaiians, and other Indigenous people. Land is viewed as something that should be protected because of the specific genealogical relationship to place.²⁴ She highlights the difference between aloha 'āina, which means love for the land, and the American idea of "love for country." Here, love for country in the American context has a patriotic and nationalist connotation. Indeed, aloha 'āina has a nationalist connotation, but it also signifies a love of land that embodies a living genealogical connection to place or territory. Take for instance fishing practices in Moloka'i, Hawai'i. Akutugawa explains:

²³ Ibid.

²⁴ Jonathan Goldberg-Hiller and Noenoe K. Silva, "The Botany of Emergence: Kanaka Ontology and Biocolonialism in Hawai'i," *Native American and Indigenous Studies* 2, no. 2 (2015): 1-26.

On Moloka‘i where people still live off of the land and the ocean is their icebox. There’s still that relationship to ‘āina, very close. Maybe not all Hawaiians are experiencing that now because we’ve become so modernized. I see that in the erosion of fishing practices. People don’t stay in their ahupua‘a, or they even go to other islands and they express that they have “rights” there. Some say, “I’m Hawaiian so I have every right.” I think that is so bogus and is a total erosion of the values and the kūpuna understandings. You have rights to your ahupua‘a. You have rights to your special place where you’re genealogically connected; where you have created a relationship, not other places. You have to respect that those other places are special to people who have a really intimate relationship with that land. So ‘āina is really special.²⁵

Akutugawa illuminates that kuleana is a right and responsibility tied to a specific place to which people have a genealogical connection and relationship. She clarifies how this can become misunderstood even amongst Hawaiians who sometimes believe that they should have access to all of Hawai‘i regardless of relationship or genealogical connection. Although all Native Hawaiians should understand the importance of ‘āina and strive to have a reciprocal relationship to land, this relationship does not mean that Hawaiians have rights and access to all land, including land outside of their homeland. Native Hawaiians should understand that

²⁵ Malia Akutugawa (Native Hawaiian scholar) in discussion with the author, June 2014.

Native Americans and other Indigenous people have specific relationships to land that are genealogically similar to their own. Furthermore, protocol is an expression of this understanding. While we have a right and responsibility through kuleana to our own special place that we are genealogically connected to, we need to recognize that other people, especially Indigenous people, have similar relationships to land wherever we reside.

Detailing the complex understandings of land within the Hawaiian language, Kumu Kau'ī Peralta further expands upon the word 'āina. She says:

The concept of 'ai and the different āina without the okina and the 'āina with the okina and the kahako. One is land, one is food, and the other is procreation. Why is that, and what is the significance of that? Because every one of them sustains. The 'āina sustains the food, and the food sustains us, and it's a whole cycle. The sense for us is not necessarily cyclical, but it's a symbol of the triangle, because it's the strongest symbol.²⁶

Peralta describes a system of interdependence that exists between people, land, and kuleana. She references the triangle as a symbol that represents this relationship because food, land, and procreation can and do sustain people and the lāhui. The lokahi triangle thus represents balance and harmony. Describing this understanding of lokahi Peralta notes:

²⁶ Kumu Kau'ī Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

So you know I look at 'āina and the whole thing of kuleana and lokahi and sort of did this model with the lokahi triangle. The values that lead up to lokahi for me is sort of unattainable. However, it's the constant reminder and the constant goal and the constant reasons for why we do what we do to be in that space of harmony with 'āina, po'e (people), and akua (god). So how do we get that if I don't mālama (take care) the 'āina and how can I be in alignment with akua because 'āina is of akua? And so it's almost unattainable of a goal. However, through kuleana you have the work of pono. So knowing your place, so once you can identify and know what it means to have kuleana then it is about being pono (righteous) in your kuleana.²⁷

Peralta discusses the constant goal of balance and its direct relationship with taking care of the land and having a responsibility to do so. Since pono is seen as a relationship with harmony as the constant goal, people are always striving to be in balance and to maintain relationships between land, people, and god(s). She views this as almost unattainable; however, she believes that this value is a constant reminder of a person's function in the world to both their family and their community. She believes that once a person understands their kuleana, they will be able to understand their function. Subsequently, it's a matter of honoring their kuleana and being righteous to their responsibilities. She considers honoring land as part of honoring akua or god. Since she believes that land is of akua, then having a relationship to land is having a relationship to god. The interdependence of these

²⁷ Ibid.

three values can be represented in a lokahi triangle, which she argues is the strongest shape.

While Peralta and the others have illustrated Hawaiian philosophies and values that encompass relationships between land and people that necessitate balance, Akutugawa explains that Native cultures have a different, and incompatible, understanding of land and land management from that of the West. She says:

I see it, too. Not just in terms of how real estate is looked at, but how property is looked at. I see it in conservation work, in natural resource management work where the underlying philosophy is one that humans are separate from nature. So when humans are separate from nature then you have these conservations policies of, 'we're not going to allow any people here, because people are the pestilence. They're the ones that exploit resources and we can't trust humans.'²⁸

Land management and land conservation in the Western context does not include reciprocal or genealogical relationships between land and people. Land and resources are merely regarded as a commodity within the capitalist free market that can be bought, sold, and possibly exploited. Balance between land and people can only be accomplished through the removal of people from the land. Thus, Western conservation policies designate certain lands to be protected, while others can be exploited.

²⁸ Malia Akutugawa (Native Hawaiian scholar) in discussion with the author, June 2014.

Akutugawa furthers this understanding of Western land conservation practices which are devoid of humans. She states:

We are going to call this the wilderness where no humans exist or where no humans should exist and we'll do a land trust, or we'll make a national park, and we'll limit how much people can come here, if at all. This is off limits because nature will do better without humans. But that very concept is what causes environmental degradation. That idea of separateness.²⁹

Akutugawa reiterates that the Western concept of land conservation and land management is one where people are removed from land. She illustrates this Western conservation philosophy through the practice of land trusts and national parks. She believes this separateness within Western conservation practices is the basis for environmental degradation. The Western relationship with land is contrasted with that of Native Hawaiians who believe in people living in balance with the land, which necessitates responsibility, care, and protection.

Other land and environmental conservation policies within Western law highlight ideas that demand a separation of humans from land in order to protect it. Since land conservation designates only certain pieces of land to be protected and conserved, land outside of conservation protection is vulnerable to exploitation.³⁰ Moreover, the land that is designated for conservation or protection is selected in a

²⁹ Ibid.

³⁰ Tom Holm, J. Diane Person, and Ben Chavis, "Peoplehood: A Model for the Extension of Sovereignty in American Indian Studies," *Wicazo Sa Review* 18, no. 1 (2003): 7-24.

specific area that is usually removed from humans. These lands are also used for recreation and as resources for tourist exploitation. These ideas suggest that only certain portions of land and resources should be protected. It also begs the questions of who determines which pieces of land, and what in particular about the land establishes whether it should be protected? Moreover, it suggests that responsibility to land is only a responsibility to certain places, but not to land in general, or resources, or to the environment as a whole. Akutugawa observes:

It has allowed for certain policies. I remember reading Van Jones' book, "The Green Collar Economy" and he talked about this kind of concept. Having these wilderness parks and it was like they conveniently forgot that Native American tribes lived there and that they created a relationship with the land. They had what the Hawaiians say mālama (care). They cared for this land and that's why it was abundant and that's why it was pristine. It wasn't because no person lived there.³¹

Akutugawa highlights the specific Western understandings of land management that are solidified in environmental policies of land management. These policies separate certain pieces of land from humans. She asserts that the idea of removing people from land is what furthers environmental degradation. She also reiterates that Native people, who had that responsibility to take care of land, are removed from the land that they had previously kept pristine. Although she highlights the

³¹ Malia Akutugawa (Native Hawaiian scholar) in discussion with the author, June 2014.

similarities in land and environmental practices amongst Native Americans and Native Hawaiians, Akutugawa points out how both are seen as inferior and are often removed from the land. Instead of adhering to Native conservation practices that have kept land in balance with people since time immemorial, Western conservation policies demarcate only certain pieces of land for conservation. Not all land is believed to be worth conserving, and so the question becomes which land and resources to conserve. These pieces of land subsequently become devoid of people.

Kuleana in the Diaspora

Many of the people I interviewed explained the expansiveness of kuleana. It is, for instance, a right and privilege premised on Native Hawaiian notions of belonging, reciprocity, and nation-building. As Akutugawa, Peralta, Tengan and Wright reveal, kuleana is a complex relationship between an individual, their family, their land and the greater lāhui. But in my interviews with these Native Hawaiian cultural practitioners and educators, I also wanted to explore how Native Hawaiians articulate and embody their kuleana as a praxis outside of their genealogical area of responsibility. I asked, how do Native Hawaiians express their kuleana when they travel or reside off-island? As mentioned in the introduction and previous chapter, there is a vast Native Hawaiian diaspora due to U.S. settler colonialism, militarism, and tourism. Although Native Hawaiians have a long history of leaving Hawai'i since the mid 1800's to explore the world and to seek employment, they have become

increasingly displaced from their homeland.³² Native Hawaiian scholar Andre Perez discusses the phenomenon of Hawaiians being driven off the land due to the Western capitalist system. Andre is a current graduate student in Hawaiian Studies at the University of Hawai'i at Manoa. He has done work with incarcerated Native Hawaiians on the continent. He also is heavily involved in Native community activism and has participated in several demonstrations both in Hawai'i and outside, including the encampment at Standing Rock. He says:

After the overthrow, the provisional government, the Republic, systematically drove Hawaiians off the land by changing the laws as it pertains to tax. They made it to cash. You could no longer barter; you know fish and agricultural commodities to pay your taxes. It was cash money.³³

This imposition of a settler colonial government and wage economy has led to Native Hawaiians becoming displaced in and from their homeland.

Perez discusses, for instance, how the high costs of living causes houselessness for some Native Hawaiians.³⁴ Reflecting on his own experience of being homeless, he says:

And then you can sort of tie in obviously the bigger picture, the more recent times where it is too expensive to live in Hawai'i, and it's true. In my life, I

³² David Chang, *The World and All the Things Upon It: Native Hawaiian Geographies and Exploration* (Minneapolis: University of Minnesota Press, 2016).

³³ Andre Perez (Native Hawaiian scholar) in discussion with the author, June 2014.

³⁴ Houselessness is a term that Perez used instead of homelessness. Homeless refers to having access to short-term place that you are housed, but still remaining transient an unable to make a permanent home.

have been homeless a lot of times. We were homeless when we were kids. I remember one time, I think I was in the tenth grade, and my mom and dad divorced and I stayed with my dad and he was struggling. He was working construction and we were just renting and times got hard and we lived in the car for a while.³⁵

Perez recalls that, as a kid, he was homeless multiple times. He directly ties his experience to the high cost of living in Hawai'i, where it has become too expensive for many Native Hawaiians to live. Rather than seeing it as an individual experience for him as a Hawaiian, Perez discusses houselessness or being homeless as a larger phenomenon amongst Native Hawaiians. To this effect, Perez discusses how he still faces homelessness today. He says, "But even as [recently as] three years ago I was homeless. Just in between like...you run out of money...have to move and nothing to move into yet. I stayed at the beach a lot."³⁶ For Perez being Hawaiian and being homeless was not just something that he theorized about. He had personal experiences being homeless many times in his life. Perez relates his own experiences of being homeless with that of the larger Native Hawaiian community and the anxieties of utilizing social services. He explains:

A lot of Hawaiians will say they're houseless, not homeless, but houselessness in Hawai'i is big. People do not want to live in the shelters. Shelters are kind of predominantly immigrant and they tend to flood social

³⁵ Andre Perez (Native Hawaiian scholar) in discussion with the author, June 2014.

³⁶ Andre Perez (Native Hawaiian scholar) in discussion with the author, June 2014.

services. Hawaiians do not want to be in these warehouses with beds, they want to be on the beach where they can be Hawaiian.³⁷

Perez describes how Hawaiians are ambivalent to utilize social services including shelters despite the huge challenge that many Native Hawaiians face being houseless. Part of this ambivalence comes from being housed in shelters that are removed from the land where he believes many Native Hawaiians want to be.

Another reason for this non-utilization of shelters is due to the belief that these services are for immigrants and are predominately utilized by them.³⁸ Thus, Native Hawaiians believe that as the people of the land they should not be utilizing these services that are perceived as being for newly-arrived immigrants.

In my interviews with Perez, he described the historical foundations of Native Hawaiian displacement that directly connect to the contemporary issues of houselessness. Within our conversations, he also talked about the growing Native Hawaiian diaspora. He says, "So a lot of people obviously have moved away in search of jobs. Of course, we all know Vegas, Alaska, and all along the west coast. Hawaiians have gone in search of jobs."³⁹ Thus, many make the hard choice of

³⁷ Ibid.

³⁸ This also can be attributed to anti-Micronesian sentiment. Currently, Micronesians have the highest utilization of social services in Hawai'i. For more information, please see: Arvin, Maile, "Possessions of Whiteness: Settler Colonialism and Anti-Blackness in the Pacific," *Decolonization* (blog), June 19, 2014, accessed July 30, 2017, <https://decolonization.wordpress.com/2014/06/02/possessions-of-whiteness-settler-colonialism-and-anti-blackness-in-the-pacific/>.

³⁹ Andre Perez (Native Hawaiian scholar) in discussion with the author, June 2014.

moving away. This is such a common practice that Perez details many of the well-known destinations that Hawaiians have now made their home.

As more Hawaiians are unable to live in the places where their families originate, some are articulating the challenges of being able to fulfill their kuleana. Akutugawa discusses issues of displacement while honoring kuleana. She says:

I think about it a lot myself. I think of them like these concentric rings and wherever you're located along those rings, you take care of that. That sector or whatever. I was born and raised on Moloka'i. But now I live on O'ahu and it's been a struggle for me to not be connected every single day to Moloka'i. I've had to do things to maintain myself in my own equilibrium.⁴⁰

Akutugawa describes a sense of maintaining herself even though she is outside of the area to which she feels that she has a specific kuleana to. For her living in O'ahu, and not Moloka'i, makes her think about how she honors the place where she currently resides. She illustrates this point by stating, "This island is crawling with human ants that are overtaking a lot of things. I have to be solid in myself. I have to remember my practices even though nobody else around me is doing that. It is a sense of loneliness."⁴¹ To maintain her sense of self outside of Moloka'i, Akutugawa then explains how she practiced kuleana in O'ahu and elsewhere. Akutugawa says:

⁴⁰ Malia Akutugawa (Native Hawaiian scholar) in discussion with the author, June 2014.

⁴¹ Ibid.

I used to live in Washington. I always knew I was coming back. I knew I had to hold it together for four years. I'll be all right. I had Christmas and summer vacations back home so I'm like, 'Okay, I'm just a visitor here.' But I think you know even in that experience, it was remember who you are, remember where you are from. No make your kūpuna shame. Don't shame your family and not just the living family, but also the ones already on the other side. No shame them in what you do. So it's the expression of your being then. You got to hold it together. You have to carry yourself in a way that your family will be proud and your kūpuna will stay by your side. So then it becomes a very individual journey, but you still call upon your ancestors to help guide you.⁴²

Akutugawa details her time away in Washington and her feeling of accountability to her family and her kūpuna. These kūpuna are those who are living and those who have passed on. She thus feels a sense of responsibility—and not necessarily loneliness—in how she carried herself and in not wanting to cause any type of shame. Although she depicts her time away as an individual journey, she also describes how her kūpuna—ancestors remained with her and how she relied on that knowledge during her time away.

Akutugawa and others explain the protocol and responsibility that should be embodied as part of kuleana as praxis when Native Hawaiians are living in another land. More importantly, several of the interviewees justified the need for Hawaiians to remain Hawaiian even if they move away. This is expressed as following Native

⁴² Ibid.

Hawaiian concepts such as protocol, a concept which requires an understanding of place and function in the world. In other words, Hawaiians still need to understand their kuleana while residing outside of the homeland. Akutugawa says:

You got to be pa'a [firm] in yourself. And there is this thing of hoi hoi [to give back], you have to give back in some way. Hawaiians are good with this protocol. You go to a new place, you oli [chant], you say your genealogy, where you come from and then you thank this new place that you're at. You thank the people that have kept this place beautiful. You say, 'I want to learn from you and I thank you for welcoming me.' So the kuleana is to somehow give back to the new place that is taking care of you. You give back with the essence of what you learn and where you came from. It might mean sharing some of your culture with them, but also being open to learning their culture and helping in a way that is meaningful but without stepping over toes and saying now I own this. No, you're not in your homeland, so you have to respect. So there is this natural appreciation and respect for a place that you are at now.⁴³

Akutugawa describes how Native Hawaiians need to understand themselves as a guest in a new place and should attempt to contribute positively to the place and to the people who have a genealogical responsibility to that place. More importantly, she describes an acknowledgement of the people that have maintained the land. Instead of acting like one owns the land, as a Native interloper would, she

encourages a practice of being open to learning from the new place and its people. This follows the teachings of kūpuna that are grounded in having a respect and responsibility to a people and place.

Some articulated themselves as guests since other Indigenous people have a similar genealogical relationship to place as Hawaiians do. Kumu Kau‘i Peralta defines Hawaiians living outside of the homeland as guests. She says, “You know, we’re guests. We are here to mālama this ‘āina that is continuing to sustain us—our families. It’s our job you know with all the gentrification stuff, and it happens it happens everywhere, so what are we doing, and that needs to be put in a very important compartment in our minds.”⁴⁴ Peralta stresses that Native Hawaiians living away from home need to recognize themselves as guests. Additionally, she says that Hawaiians need to still mālama ‘āina while they are away from home, because the land still sustains our people and our families that are living elsewhere.

Describing these concepts further, Peralta, who resides in the San Francisco Bay Area, demonstrates that while it is important for Hawaiians to honor kuleana at home and to help with the issues that are taking place there, Hawaiians have an additional kuleana to the new place and people who have become our hosts. She states:

How are we giving back? I started to put out the narrative of us being guests.

So I put it out there last night after Uncle Ritte was finished and we were

⁴³ Ibid.

closing. I said, 'you know as much as we are asking Uncle how much we can help in Hawai'i, we also need to make sure that we are standing with and for Corina Gould, Ohlone, and the things that she is doing and that we're supporting the Winnemen Wintu and we are supporting things here in the 'āina and wherever we live, and that we are taking care of the Natives in our area.' So you know I started and that started to be my narrative over the last five years and really started to understand that and live that.⁴⁵

Specifically, Peralta describes an example where Native Hawaiians in the San Francisco Bay Area came to an event featuring Uncle Ritte from Moloka'i as a speaker who discussed the ongoing challenges in Hawai'i. As illustrated above, Peralta believes that Native Hawaiians living in the Bay Area, or off-island in general, need to not only help and assist Hawaiians back home, but also the Native Americans whose land they reside on. Moreover, she believes that Hawaiians need to understand themselves as guests to Native American lands. Thus, she urges Native Hawaiians living in the diaspora to support the local Native/Indigenous people wherever they reside, as with the Ohlone, Winnemen Wintu, and other Native tribes in the Bay Area and Northern California.

As with Peralta, Erin Kahunawaika'ala Wright details her own experience of being away from home and fulfilling kuleana. Addressing kuleana while being away from home and her growing conception of lāhui, Wright says:

⁴⁴ Kumu Kau'i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

I think a lot of the tenets still fit. I felt like when I was away because I was in the position of where I was here and then I was somewhere else and then I came back. I always had that in mind like how am I going to contribute to my lāhui and not just the lāhui, island bound, but also just your people. Then I remember that's probably the first time I expanded that notion of lāhui and it would be different again for me in Hawai'i. Lāhui is different for when I'm away, but I did expand it. My thinking about who I have responsibility for, and who I'm responsible and accountable to, and for me [it] was other Pacific Islanders and it was also the Native folks of wherever I was in California.⁴⁶

Wright explains having a responsibility to the Native communities of the land that was hosting her. While living in California, she not only believed in fulfilling her kuleana to the lāhui at home, but also started to expand her idea of the lāhui by including other Native Hawaiians that were off-island. Additionally, she started to relate herself to other Pacific Islanders and to broaden her understanding of the kuleana she held for local Native Americans. She states:

I think that kuleana to each other, and that acknowledging that you're on somebody else's land, and you're using somebody else's resources to prosper yourself, so what are the ways in which you're going to contribute back so that you're not just a mana—mana sucker. Because you want to ho'omana (recall or recognize) them, but you know part of it too, it doesn't, and I don't

⁴⁵ Ibid.

feel like it takes away anything from my own identity. I feel like that's part of the identity and if you understand your place in the world then it really makes it a lot easier when you go to other places to figure out how you're going to behave in that way.⁴⁷

Wright discusses how it was through her understandings of kuleana that she was able to find grounding in the way she should act in a new place. As others have illustrated, kuleana always requires responsibility. Wright additionally believes, like Peralta and Akutugawa, that Hawaiians away from home should not just be taking advantage of resources; as Native interlopers, they need to be conscious of how they are contributing back to the land and the local community where they now reside. She describes, for instance, the practice of taking resources without giving anything back, and designates someone who engages in this practice a “mana sucker.”

While articulating the embodiment of kuleana away from home and how Hawaiians should act outside of the homeland, some of my interviewees also discuss how they would want non-Hawaiians conducting themselves in Hawai'i. Wright says, “I also think about how would I want people to act when they came to Hawai'i, so you want to be a contributor, and you want to make sure that you're doing things in the way that those folks would like it to be done because that's their 'āina.”⁴⁸

Akutugawa and Peralta expressed similar sentiments in their interviews. Basically,

⁴⁶ Erin Kahunawaika'ala Wright (Native Hawaiian scholar) in discussion with the author, June 2014.

⁴⁷ Ibid.

⁴⁸ Ibid.

they reiterated that Hawaiians should conduct themselves as they would want non-Hawaiians to act in Hawai'i.

While some Hawaiians discuss Hawaiian displacement and its direct ties to settler colonialism, Wright also describes how Native Hawaiians have contributed significantly to the larger world in the process of leaving Hawai'i. By doing so, Wright articulates kuleana as helping and assisting others through Native Hawaiian successes. She says:

I feel like Hawaiians have also been people to go out into the larger world to also share some of the wisdom that we've also acquired through our different experiences with colonialism, and settler colonialism, and also culture revitalization. I feel like Hawaiians are some of the best learners and one of the best teachers. For us, I think it's very reciprocal like that so that's maybe part of this kuleana. Because if you look at in terms of Native rights in America, Hawaiians have really been on the forefront of really pushing the envelope with American and even to Alaska Natives and just Native Americans in general to their benefit. When I think of NAGPRA, for example, and it was Hawaiians who designed NAGPRA, for better or worse, we're really the ones to push that issue, so I think we have a lot to contribute to the betterment of all people in general, not just Native people.⁴⁹

⁴⁹ Ibid.

Wright describes Native Hawaiians as having an additional kuleana of learning and teaching others that can successfully contribute back to other communities and the larger world. Contrary to the view shared by some Hawaiians that Native Hawaiians should always remain on the ‘āina, Wright explains that kuleana can apply to the sharing of resources, especially in regards to cultural revitalization amongst Alaska Natives, Native Americans, and others.

Nonetheless, the maintaining of kuleana both inside and outside of the homeland can prove difficult. For instance, Native Hawaiian community worker and activist, Carolyn Kualī‘i, discusses some of the challenges that Native Hawaiians face living in the diaspora. Kualī‘i was one of the main architects of the treaty between Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians, Acjachemen Nation. She was raised in Southern California and became politically active when she was pursuing her education first at Santa Ana Community College and then at the University of California at Irvine. She became a member of Ka Lāhui during her undergraduate education. After finishing her degree, she moved to Maui and then returned to California. Currently residing in the San Francisco Bay Area, she remains active in community work. She says, “Hawaiians here have to have more intention of being Hawaiian here. In many ways, it is easier for Hawaiian to be Hawaiian in Hawai‘i, because they are on their ancestral land. They are reminded everyday who they are. Here people can get lost.”⁵⁰ Kualī‘i describes the challenges of being Hawaiian in the

⁵⁰ Carolyn Kualī‘i (Native Hawaiian educator) in discussion with the author, March 2015.

diaspora and of remembering important cultural values while residing outside of the homeland. She believes that Native Hawaiians committed to maintaining themselves as Hawaiian need to be very intentional. Additionally, she describes how Hawaiians remaining in their ancestral homeland have it easier because they remain on the 'āina and are reminded of their obligations on a daily basis. While some articulate it as being easier to maintain kuleana in the homeland, Hawaiians inside and outside of Hawai'i need to actively engage in honoring kuleana regardless of where they reside.

Like Kualī'i, Peralta also describes the challenges of maintaining yourself as a Native Hawaiian outside of the homeland. She states:

I think in Hawai'i, there are so many things. Every day you are inundated by Hawaiian things and Hawaiian struggles. Up here [in the Bay Area], we only hear what we want to hear and we are able to be selective. Right now the energy is going into Merrie Monarch. So all the good things about being Hawaiian, wonderful, but how does that contribute to our community here?⁵¹

Peralta details the struggles of maintaining Hawaiianness outside of the homeland, but also notes how Native Hawaiians can be selective about how they engage with being Hawaiian. She specifies that sometimes Native Hawaiians only focus on the “wonderful” things, and not on some of the more challenging issues. The wonderful things that Peralta alludes to are the practice of and participation in cultural dances.

⁵¹ Kumu Kau'i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

Yet, this perpetuation of Hawaiian culture sometimes can fall short of connecting the cultural to the political. For Native Hawaiians residing outside of the homeland, this may include the ongoing political issues that are taking place back at home, but it also includes the local political issues. Although she uses the example of Hawaiians participating in hula hālau (hula schools) on the continent and Merrie Monarch hula festival, she believes that Native Hawaiians sometimes fall short of their responsibility by not contributing actively to the local community.⁵²

Later in my interview with Peralta she gave an example of hula hālaus not giving back to the local Native American host community beyond the surface level of protocol and pageantry.⁵³ Recognizing this, she says there needs to be more meaningful interactions between Native Hawaiians and local Native Americans. Furthermore, she argues that Hawaiians need to continue to assist local tribes that are now hosting them because doing so is a part of Native Hawaiian protocol that encompasses recognizing and respecting the genealogical connection and responsibility to the land and its caretakers. She believes that this understanding is directly tied to Hawaiians understanding themselves and is encompassed within our own cultural values.

⁵² Merrie Monarch is an annual hula competition that takes place in Hilo, Hawai'i. The hula festival honors King David Kalākaua who was known as the "Merrie Monarch" and is credited for revitalizing a lot of Hawaiian cultural traditions including hula. It is a week-long festival and is the most prestigious hula competition that has participants from off-island including internationally.

⁵³ Kumu Kau'i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

Others like Peralta recognize that although challenging, Native Hawaiians can still fulfill their kuleana away from the homeland. Part of this is understanding the core values and beliefs that are encompassed within kuleana and its relationship to 'āina. Articulating how kuleana can be maintained, fulfilled, and honored outside of the 'āina, Tengan says:

I think an important way—just at least understanding the philosophies and values that come from that connection to 'āina can still be conveyed even if you are not on the 'āina. I think it is in large part, or I think relating to 'āina, and land, is also about relating to each other as a lāhui, and as individuals, and also our kūpuna, and our akua. Those who are kind of not seen as well as those who are seen, and so just having that understanding that these kind of lessons about kuleana that comes from 'āina are also about how we relate to each other is really important and for those who don't have that opportunity to be on 'āina. There is still all kinds of opportunities to hear the voices that come from the land.⁵⁴

Tengan reinforces that although some Native Hawaiians may be away from the 'āina, the philosophies of the 'āina can be embodied and transformed anywhere that Hawaiians go. Embodying the concepts of 'āina and the understanding of the interdependence of 'āina and its importance to maintain Hawaiians as a people is significant for Hawaiians to strive to fulfill kuleana on or off 'āina.

⁵⁴ Ty Kāwika Tengan (Native Hawaiian scholar) in discussion with the author, June 2014.

Like Tengan, Akutugawa also discusses the concept of embodying 'āina, but with an emphasis on their kino or bodies. Because their bodies are made up of all the elements of the 'āina including family, she says:

You take the island with you and you take your family with you and you take your values with you. I really like what Mark Ho'omalua said. He is a kumu hula in California, and has lived there many years. If you listen to it, I think it's his first CD. There's this little Q and A thing at the end and then it was like, 'How do you mālama 'āina if you're not on the 'āina anymore, the Hawai'i 'āina? And he said, 'Your kino is your 'āina. It's made of all the elements of 'āina. So if you take care of your kino—your body and you take care of the spirit that dwells in that body, you mālama 'āina. You're caring for the land.' So you got to take care of yourself, and when you take care of yourself you're taking care of the land. When you take care of yourself, your kūpuna and your ohana are happy and the 'āina you're connected to is happy. You always can go back.⁵⁵

In the above passage, Akutugawa references Kumu Hula Mark Ho'omalua's reflection on being able to fulfill kuleana while away from the 'āina by taking care of himself and his body. He believes that through the process of taking care of your body, you are caring for land, because your body is made up of the elements of both family and land. Through this process, Akutugawa believes that you still can make your kūpuna

⁵⁵ Malia Akutugawa (Native Hawaiian scholar) in discussion with the author, June 2014.

and ohana happy. She also discusses how this process connects the person back to the 'āina. This connection can be to the 'āina to which the person has a genealogical connection and to the 'āina where they are currently located.

Along with Akutugawa, Tengan believes that you can embody 'āina as a Hawaiian no matter where you go. He asserts that this belief is tied to the understanding that Native Hawaiian bodies are derived and are composed of both the 'āina and of the kūpuna—ancestors that derive from the 'āina. Therefore, Tengan details how Hawaiians come from and are composed of the 'āina:

I think that is important to understand that even if we are not on the 'āina that the 'āina is always in us and it is part of what comes with mo'oku'auhau—genealogy. It comes with genealogy, and that 'āina is still in us, because it was in our kūpuna, and our kūpuna was in the 'āina, and so we have that in us as well and you know it is there. It is something that like 'āina, you need to nurture, you need to tend to, you need to mālama you need to make grow in healthy ways and again it is something that is best accomplished collectively or communally. While one can do their own individual caring for the 'āina it is usually best done with family or with friends.⁵⁶

Tengan discusses the notion of bodies being made of their ancestors and therefore containing the 'āina. He reflects that Hawaiians are composed of the 'āina itself since kūpuna or specifically iwi kūpuna are buried there. After being buried, the bones of

⁵⁶ Ty Kāwika Tengan (Native Hawaiian scholar) in discussion with the author, June 2014.

ancestors provide the sustenance and growth of the Native Hawaiian people. Having this understanding, he urges that Hawaiians need to mālama the ‘āina with either friends or family although one can do that on their own. He encourages Hawaiians to feel a sense of responsibility to take care of land and to recognize how that understanding is a central part of who Hawaiians are and continue to be.

Iwi Kūpuna

As Tengan illustrates the idea of embodying ‘āina and the concepts and philosophies that are inherent to ‘āina, he also asserts that these values can be carried and transformed by Native Hawaiians while living in the diaspora. Ideas related to ‘āina and its relationship to people are believed to be in conjunction with kuleana and iwi kūpuna—ancestral remains. Kuleana as praxis, in fact, is inseparable from ‘āina and iwi kūpuna. Hawaiians have a strong reverence for iwi kūpuna and that has been evident through their continued protection of ancestral remains despite fines, arrests, and lawsuits.

Hawaiians honor iwi kūpuna through their kuleana because they believe that it contains the mana (spiritual essence) of the Native Hawaiian people. Kanaka ‘Ōiwi is one of the traditional ways that Native Hawaiians identify themselves. Scholar Ty Kawika Tengan explains the significance of the term. He says, “While Kanaka is a generic term for people, ‘Ōiwi metaphorically means ‘Native’ but literally translates as ‘of the bone.’”⁵⁷ In regards to the importance of iwi kūpuna, Hawaiians believe

⁵⁷ Edward Ayau and Ty Kawika Tengan, “Ka Huaka‘i O Na ‘Ōiwi: The Journey Home,” in *The Dead and their Possessions: Repatriation in Principle, Policy, and Practice*, ed.

that ancestral remains are a particular part of a larger life cycle that feeds Kanaka ‘Ōiwi both physically and spiritually. The significance of ancestors to Kanaka ‘Ōiwi is evident in how they refer to their homeland. Tengan states, “Likewise our homeland is referred to as kulāiwi (literally, bone plain) indicating a connection between the land and the people, as our homeland is defined as the place in which the bones of our ancestors and eventually ourselves and our descendants are buried.”⁵⁸ Tengan and Ayau explain the significance of ancestral remains as part of a larger life order. This larger cycle is emphasized with the word to bury. The word kanu means both to bury and plant. Tengan explains how the burial of iwi results in both the physical and spiritual growth of the people. He states, “The burial of iwi results in the physical growth of plants and the spiritual growth of mana. The living descendants feed off the foods of the land [and] are nourished spiritually by the knowledge that the iwi kūpuna are well cared for, and in their rightful place.”⁵⁹ Thus, honoring and protecting iwi kūpuna in order to allow for this life cycle is an important process for Native Hawaiians because it is tied to the healthy continuation of the Hawaiian people. Tengan says:

That is kind of why we have this identity as ‘ōiwi as a term for who we are as a people it’s because we are that you know, it is in our bones – people of the bones – kanaka ‘ōiwi and why words like kanu means both burial and

Cressida Fforde, Jane Hubert, and Paul Turnbull (New York: Routledge Press, 2002), 177.

⁵⁸ Ibid.

⁵⁹ Ibid., 178.

planting and it is that kind of connection like planting the iwi back into the land that's what kind of returns that mana to the land, which kind of makes it grow and makes it fruitful to feed us so that we can grow. You know the first kanu being hāloa that's part of our genealogy and to the point that it is essential to our identity.⁶⁰

Tengan describes the way that Hawaiians traditionally refer to themselves and the significance of iwi kūpuna in that identification. Additionally, he recounts the Hawaiian creation story of hāloa that refers to the planting of a stillborn baby and resulted in the first kalo (taro) plant that is the staple food of the Hawaiian people. Thus, the physical planting of the stillborn resulted in hāloa, the first taro plant that feeds and sustains the Hawaiian people. This creation story is grounded in the understanding that ancestral remains contained mana and if cared for will protect and provide for the succeeding generation.

Maintaining kuleana through the protection of ancestral remains has become increasingly challenging due to colonialism and settler colonialism. Tengan comments, "These revelations lend themselves to an understanding of how the disturbance of our burials is intimately tied to colonialism – the complicated processes by which Euro-Americans appropriated our lands, exploited our resources, disenfranchised our people and transformed the very way we think about

⁶⁰ Ty Kāwika Tengan (Native Hawaiian scholar) in discussion with the author, June 2014.

who we are.”⁶¹ Tengan reiterates that the inability to protect iwi kūpuna—ancestral remains is intimately tied to issues of colonization that have severely altered relationships to land and resources. Correspondingly, these altered relationships have significantly changed the ways that Native Hawaiians can actively engage in the core values of ‘āina, kuleana, and iwi kūpuna. Colonialism and settler colonialism have acutely affected the ways in which Native Hawaiians can fulfill relationships to land and people both inside and outside of the ‘āina. However, regardless of where they live, Native Hawaiians still have an ongoing responsibility and kuleana to honor iwi kūpuna.

Tengan reveals that there is a process to honor iwi kūpuna while there is also a method that represents disrespecting ancestors. He details some examples of disrespecting iwi kūpuna, which include leaving the bones out in the sun causing them to bleach. He also discusses bones that were used to create arrows and fish hooks. These actions not only signify disrespect, but also represent the loss of mana for a family. As he explained, these actions do not only hurt the individual, but entail consequences for the entire family including succeeding generations.

Iwi kūpuna can be honored and respected, but also disrespected. In my interview with him, Tengan reiterates the importance of iwi kūpuna to Native Hawaiian identity. Elaborating his points on the relationship with iwi kūpuna and succeeding generations he states:

⁶¹ Edward Ayau and Ty Kawika Tengan, “Ka Huaka’i O Na ‘Ōiwi,” 179.

On the whole, issue of identity and iwi, for me I think this part of kuleana that comes as an 'ōiwi is this kuleana to mālama iwi and to care for iwi. It's not only the physical caring for, but also the honoring of what iwi represents. It represents our connection to the land, to the akua, to our kūpuna, and it is part of this whole interdependence between akua, 'āina, and kanaka—of the gods, the land and the people. That is literally kind of in our bones. There is a number of different olelo no'eau (Hawaiian proverbs) that kind of reference that with the term 'ōiwi, and about who we are as a people, kula iwi as our homeland metaphorically signify the bone plain. The term ola nā iwi, which is the bones live, is a part of understanding kuleana as an elder whose children are looking after them. So it is also about that responsibility and right of the grandchildren to care for their elders, so that when you are in old age, if you have done your job right, your grandchildren are going to take care of you, and your bones will live. Also, that your bones will live through them, so that they are also carrying on the kuleana that they have been given, so you're making sure that they are carrying that on.⁶²

Tengan reiterates the importance of iwi kūpuna because of how it is intimately tied to Native Hawaiian identity and is epitomized by the ways that they refer to themselves and their homeland. In the passage above, Tengan discusses that when, and if, the life cycle is fulfilled, then Hawaiians can be comforted with the fact that

⁶² Ty Kāwika Tengan (Native Hawaiian educator) in discussion with the author, June 2014.

they will be taken care of and that they will live on through the succeeding generations and their kuleana.

The interdependence of 'āina, kuleana, and iwi kūpuna have been articulated and discussed by many of the interviewees. Honoring kuleana to both iwi kūpuna and correspondingly the 'āina are core beliefs and are embedded in a Native Hawaiian identity. Although it has become increasingly challenging to honor kuleana to land and ancestral remains, Hawaiians strive to do so because it is deeply connected to the maintenance of themselves as Native Hawaiians. Thus, honoring and fulfilling kuleana and its ongoing relationship to land is directly connected to Native Hawaiian understandings of iwi kūpuna. Hence, some of the interviewees asserted that honoring kuleana away from the homeland includes respecting iwi kūpuna that continue to be buried outside of the homeland. This would require that Native Hawaiians build relationships to the land and the genealogical caretakers where iwi kūpuna are buried/planted.

Conclusion

Many of the interviewees including those above would consider recognizing Native people and land as a very important practice that embodies and honors kuleana outside of the homeland. With this understanding, some of the interviewees urge Native Hawaiians living in the continental United States to take responsibility and to assist Native Americans who are the genealogical caretakers of the land. Since some of the Native Hawaiians who were interviewed reside in California, they give specific examples of tribes that are local to where they reside, but also remain

federally unrecognized. Hence, regardless of federal recognition status, Native Hawaiians acknowledge them as the genealogical caretakers of the land and acknowledge that Hawaiians residing there have an obligation and continued responsibility.

Because Native Hawaiians are now living and being buried on lands that have another genealogical caretaker, fulfilling our obligations to the new land and people requires an acknowledgement of a Native host. In articulating these revelations, Peralta recalls how some Native American tribes have said that Native Hawaiians have yet to fulfill these responsibilities and have asked why Hawaiians have not done so. She recalls how some tribes have said, “We need you Hawaiians to stand with us and we need you to mālama the iwi of your kūpuna that are here that we are caring for.”⁶³ Peralta reveals that her work with Native American tribes over the years has changed her consciousness and her identity so that she recognizes herself as a guest.⁶⁴ This includes recognizing and honoring the land where Native Hawaiian ancestral remains have been buried. In addition, she especially believes that kuleana entails the recognition of a Native host by assisting them in ways that can help them fulfill their genealogical responsibility to their land. She recalls one ceremony that she participated in between Native Hawaiians and members of a Northern California Indian tribe. They asked, “When are you going to take care of your people, because we have been taking care of them for over one hundred years?”

⁶³ Kumu Kau’i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

When are you going to take care of your people?"⁶⁵ Peralta said that she understood the magnitude of the statements being made due to understanding the importance of ancestral remains. While the importance of ancestral remains is common amongst many Native cultures including Native Hawaiians, Native Americans have started to ask Hawaiians why they have not fulfilled their obligation to iwi kūpuna that now have been buried in their land for generations. Peralta acknowledges that fulfilling this would entail building relationships with Native American tribes. These relationships are necessary because they are the genealogical caretakers of the land where Native Hawaiians now reside and have been buried. Therefore, Native Hawaiians not only have a kuleana to their own homeland, but also to the people and the land where they now reside.

Respectfully, it means that Native Hawaiians living outside of the homeland have a responsibility to honor the kuleana to the 'āina and the lāhui at home, but it also requires an additional kuleana to the land and people that have become their host. This kuleana requires understanding the expansiveness of 'āina that necessitates a recognition of themselves as guests. As many have detailed throughout this chapter, this process is an embodiment of Native Hawaiian protocol and epistemology as a kuleana as praxis. These relationships are necessary because as more Kanaka Maoli live and die outside of the homeland, they have to fulfill kuleana to our kūpuna, and increasingly to Native host communities.

⁶⁴ Ibid.

⁶⁵ Ibid.

The Treaty of Friendship and Mutual Recognition between Ka Lāhui Hawai'i and the Juaneño Band of Mission Indians, Acjachemen Nation is one example of this type of acknowledgement. Since one of the orchestrators of the treaty was a Native Hawaiian residing on Acjachemen land, her process with the treaty-making and signing was an embodiment of her kuleana to the land and people that became her host. In my interview with her, Carolyn Kualī'i discusses this as a kuleana that just came to her. She says, "It wasn't something that I sought after, it was something that came to me. When it came to me it was obvious that it was my kuleana and it [was] something that I needed to be involved with. I truly feel that it was meant to be."⁶⁶ Thus, she was able to fulfill her kuleana to the lāhui, the land, and the people where she was residing. By doing so, the treaty fulfills a kuleana to 'āina on the one hand, and resists settler colonial structures and systems that are built on Native erasure on the other. This praxis of fulfilling of kuleana maintains her as a Native Hawaiian in the diaspora.

⁶⁶ Carolyn Kualī'i (Native Hawaiian educator) in discussion with the author, March 2015.

CHAPTER THREE:

Embodied Kuleana: Treaty Making Between Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians, Acjachemen Nation

In April of 1992, Ka Lāhui Hawai‘i (Ka Lāhui) and the Juaneño Band of Mission Indians, Acjachemen Nation, entered into treaty negotiations on the campus of the University of California, Irvine (UCI). Traveling to the traditional territory of the Acjachemen and the Tongva, Ka Lāhui Hawai‘i gathered with several Native nations in order to negotiate and sign treaties of mutual recognition. UCI undergraduate student Carolyn Kualī‘i organized the event, which included cultural exchanges of song, dance, and gifts.¹ Kualī‘i was a member of Ka Lāhui Hawai‘i and was one of the primary planners of the treaty with the Acjachemen. During this period, Ka Lāhui was engaged in diplomatic relations with many Native nations domestically and internationally in an effort to strengthen Native Hawaiian self-governance.²

The ratification of the treaty provides an example of a nation-to-nation relationship outside of colonial governance despite both nations’ status as unrecognized by the United States. The treaty not only affirmed self-determination practices for the two Native nations, but also provided an example for Native Hawaiians living in California of a political process that affirmed the lāhui at home.

¹ Malcolm Margolin, “Hawaiian Connections,” *News from Native California* 6, no. 3 (Summer 1992): 33.

² Ka Lāhui signed several treaties with other Indigenous Nations. These Nations include but are not limited to the Confederation of the Thlingit Nation of Canada, the Kwakiutl Band, and the Black Hills Sioux.

The Hawaiians living in the diaspora who were involved in the treaty process engaged in kuleana as praxis: acknowledging both the land and their hosts. A kuleana praxis, embodies a longer genealogy of acknowledging land while identifying who possesses a specific kuleana to said 'āina. This understanding assists with locating one's larger function in the world. In this instance, the efforts of a diasporic Native Hawaiian, Carolyn Kualii, show how one can express kuleana and 'āina outside of the homeland. I argue that the work of diasporic Native Hawaiians fostering nation-to-nation treaty negotiations honors kuleana to the lāhui. Additionally, it also embodies a kuleana that recognizes a responsibility to a Native host who has a genealogical responsibility to the land where they now reside.

This chapter provides an overview of the treaty between Ka Lāhui Hawai'i and the Acjachemen, and explains the rationales for the treaty. This chapter also details the historical and contemporary realities of Ka Lāhui Hawai'i and the Juaneño Band of Mission Indians, Acjachemen Nation, which provides the context and the significance for the treaty signing.

Historic Treaty Signing

News from Native California, a quarterly magazine published by Heyday Books, included an article in its summer 1992 edition that documented the treaty between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai'i.³ Written by Malcolm Margolin, the founder and longtime Executive Director of Heyday, the article explains that the treaty signing was an important occasion

with significance for the Native people of California. It notes that it was particularly meaningful to the Native communities traditionally from Los Angeles and Orange County that remain unrecognized as tribal nations by the U.S. government.

Describing the contemporary lives of the Tongva, who are the Native people to the Los Angeles area, and the nearby Juaneño or Acjachemen of Orange County, the article notes that “the federal government has never given recognition or acknowledgement as sovereign Indian nations... and anthropologists generally ignore the living descendants, having declared the culture all but extinguished.”⁴

The fallacy of the tribes’ extinction further reifies the importance of being recognized as living people within a contemporary tribal nation by another Indigenous people. Margolin, in his exposition, provides a brief sketch of the treaty’s importance in comparison with the federal government’s view of limited tribal sovereignty:

The treaties of mutual aid point toward a more cooperative effort in which each group, in dealing with the federal government, will also watch out for the interests of its treaty allies. Also, the signing of such treaties reaffirms the principles of sovereignty which the federal government would like to reduce to little more than a legal fiction that grants a few carefully defined and relatively minor privileges.⁵

³ Margolin, “Hawaiian Connections,” 33.

⁴ Ibid.

⁵ Ibid.

Margolin explains the significance of the treaty signing and the benefits for both Native nations. Critical of federal recognition, Margolin depicts the constraints of a sovereignty that is not fully realized, but rather controlled by the federal government, which only allows for certain legal benefits and supposed privileges.

Instead of seeking limited sovereignty granted by the federal government, which places Indigenous nations into domestic dependent nationhood,⁶ the two groups acted as international sovereigns and recognized each other through the ratification of a treaty. Describing the significance, the article states, “By signing these treaties the native people of southern California went beyond resisting a government that tries to erode tribal rights, and took it upon themselves to expand those rights as befits nations that are independent not only in name but in spirit as well.”⁷ In his article, Margolin recognizes the political significance of the treaty ratification as Native nations continuing their own self-determining practices that they understood as exceeding the privileges granted through federal recognition. Their status as unrecognized allowed the Acjachemen to view themselves as international actors instead of being enveloped into a federally-limited sovereignty.

The article describes the formal treaty-making activities and also the cultural and social exchanges that took place between the Native communities. Describing the festivities, Margolin stated, “An outdoor fair was held on campus, with Hawaiians from the Los Angeles area and native people displaying beautiful objects

⁶ Vine Deloria, Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (Austin: University of Texas Press, 1985), 114.

and sharing traditions. Hawaiians treated everyone to a genuine hula dance.”⁸

Noting the significance of the treaty signing for both communities, Margolin also noted that Hawaiians that were local to the area participated in the momentous occasion.

In addition to the gift exchanges that included song and dance on UCI’s campus to commemorate the occasion, the two groups as ocean/water people gathered at Dana Point beach where they also shared in ceremony. This ceremony included the drinking of Native Hawaiian kava and traditional song and dance next to the ocean that was described by several participants as spiritual. The drinking of kava marks the ceremonial nature of the occasion and is usually done with accompanying protocol.⁹ The article highlights the spiritual significance of the occasion as such:

As the ceremony on the beach was being held, suddenly and gloriously a humpback whale emerged from the ocean and spouted.¹⁰ This whale, native both to the coast of California and the coast of Hawaii, seemed by its presence to become part of the treaties as well. ‘All my relations’ a voice muttered as the whale paid its regards and slipped back into the sea.¹¹

⁷ Margolin, “Hawaiian Connections,” 33.

⁸ Ibid.

⁹ Kava is a ceremonial drink found throughout the Pacific. Now consumed for social consumption, it was previously restricted to ceremonial occasions.

¹⁰ L. Frank Manriquez and Carolyn Kualii both discussed seeing the whale on the beach and its significance in their individual interviews.

¹¹ Margolin, “Hawaiian Connections,” 33.

Margolin, along with several people I interviewed, described the gathering on the beach with the appearance of the whale and the cultural and spiritual confirmation that it provided. This marked the occasion not only as political, but also as spiritual; often times for Native people, the spiritual intersects with the political.

Ka Lāhui Hawai‘i

Ka Lāhui was formed in 1987 through grassroots efforts.¹² During the period of the treaty signing, Ka Lāhui Hawai‘i was one of the largest and strongest Native Hawaiian sovereignty groups in existence. They offered classes and workshops on self-determination and sovereignty domestically and internationally, and on overall political education. During this time, there were 8,000 Native Hawaiian citizens of Ka Lāhui Hawai‘i out of a membership of over 23,000.¹³ Non-natives could join Ka Lāhui Hawai‘i and were encouraged to participate in debates and conventions, but could not vote or hold office because the central goal was to achieve self-determination for Native Hawaiians.¹⁴ Amanda Mae Kahealani Pacheco characterizes Ka Lāhui Hawai‘i as “arguably one of the most mobilized and public native Hawaiian sovereignty organizations. Some of its key members have also held positions in the Office of Hawaiian Affairs, as well as the Center for Native Hawaiian Studies at the University of Hawai‘i.”¹⁵ While there were many Native Hawaiian

¹² Noe Noe Wong-Wilson, “A Conversation with Mililani Trask,” *The Contemporary Pacific* 17, no. 1 (2005): 146.

¹³ Amanda Mae Kahealani Pacheco, “Past, Present, and Politics: A Look at the Hawaiian Sovereignty Movement,” *intersections* 10, no. 1 (2009): 353.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

sovereignty organizations, Pacheco notes that Ka Lāhui Hawai‘i had a diverse citizenry that were composed of people that represented different constituencies such as academics, cultural practitioners, and state officials.

Ka Lāhui Hawai‘i was created as a Native initiative for self-governance. A constitution structured its government. According to Mililani Trask *kia‘āina*—Prime Minister of Ka Lāhui Hawai‘i, “every few years there would be a convention to consider constitutional amendments.”¹⁶ The original constitutional convention was held in 1987.¹⁷ Ka Lāhui Hawai‘i was most concerned with creating and maintaining a government structure that was culturally appropriate for Native Hawaiians and that would allow them, “to interface with the United States and other Native nations.”¹⁸ Ka Lāhui Hawai‘i’s plan and constitution, otherwise known as *Ho‘okupu A Ka Lāhui Hawai‘i*, outlines a structure of governance that was approved through consensus by both its citizens and honorary members. This structure of governance differs from western structures of government, but continues to be viewed and described as democratic.¹⁹ For example, Ka Lāhui Hawai‘i has a unicameral collective decision-making process that diffuses power and moves away from a one person, one vote model.²⁰ Elaborating upon the unicameral model of governance within Ka Lāhui Hawai‘i, Mililani Trask states, “In Ka Lāhui Hawai‘i, power is equalized. Each island—O‘ahu, Kaua‘i, Ni‘ihau, Maui, Moloka‘i, Lana‘i and Hawai‘i

¹⁶ Wong-Wilson, “A Conversation with Mililani Trask,” 146.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 147.

¹⁹ *Ibid.*

Island—has eight votes. Regardless of the population, everyone has a fair say.”²¹ The unicameral structure of governance allows for each of the islands to have political leadership and representation with an equal number of votes regardless of population size.²² This was created with the intention of providing equal power and representation amongst the people who came from non-urban and rural, and less populated islands. It also allowed for islands to discuss and make decisions that were island-specific. However, Ka Lāhui’s governance structure initially included no representation for diasporic Hawaiians.

In my interview with Mililani Trask, I raised the question about diasporic Native Hawaiians and political power and representation within Ka Lāhui Hawai‘i was raised. She said that originally Hawaiians residing off-island did not have specific representation or voting. She detailed the way that the governance structure worked this specific issue out, explaining that, “by working through nationhood we found the solution and it was a traditional solution.”²³ An additional caucus was formed for Native Hawaiians in the diaspora. She states, “In Ka Lāhui we had all the islands represented and then we had another caucus specifically for those Hawaiians who were involved in the diaspora.”²⁴ The traditional solution that Trask refers to was that Native Hawaiians residing off-island would be understood

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Mililani Trask (Native Hawaiian legal scholar) in discussion with the author, July 2015.

²⁴ Ibid.

as yet another island named mokū honu—turtle island. Therefore, mokū honu had appropriate representation, leadership, and voting rights.²⁵ Acknowledging diasporic Native Hawaiians within Ka Lāhui Hawai‘i as another island caucus has multilayered significance. First, the diasporic caucus was named and understood as an island, if not an extension of the ‘āina and kuleana. Additionally, Native Americans often reference North America as Turtle Island, a name stemming from an Ojibwe creation story of the continent.²⁶ Thus, naming the caucus as mokū honu refers to, and recognizes, the Native people of Turtle Island as much as it invokes Native Hawaiian protocols for place, community, and reciprocity.

While the issue of voting representation amongst Hawaiians in the diaspora was ultimately resolved through nation building, other parts of the constitution included the protection of land and cultural resources. For example, sections of the constitution addressed conflict resolution, cultural and spiritual practices, and marine resources.²⁷ Therefore, Ka Lāhui Hawai‘i’s constitution can be understood as an expression of Native Hawaiian self-determining practices and rights. Haunani-Kay Trask described the self-determining practices of Ka Lāhui Hawai‘i as “an alternative polity that was in opposition to federal and state entities.”²⁸ Therefore, the development of Ka Lāhui Hawai‘i was to implement a government that was

²⁵ Wong-Wilson, “A Conversation with Mililani Trask,” 147.

²⁶ Leanne Simpson, *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence* (Arp Books: Winnipeg, 2011), 69.

²⁷ Wong-Wilson, “A Conversation with Mililani Trask,” 147.

culturally appropriate to address ongoing concerns for Native Hawaiians.

Ultimately, Ka Lāhui Hawai‘i cultivated political strategies to assist with developing and enhancing Native Hawaiian self-determination in the homeland and the diaspora.

Ka Lāhui Hawai‘i and U.S. Federal Recognition

Ka Lāhui Hawai‘i’s political work spanned Hawai‘i, the continental United States, and internationally. This included working on Indigenous rights within the United Nations. Ka Lāhui Hawai‘i likewise advocated for federal recognition with the United States. However, federal recognition was not considered the ultimate expression of Hawaiian sovereignty for Ka Lāhui, as evidenced in their treaty-making with other nations. Ka Lāhui Hawai‘i was fully aware of the confines of federal recognition. Mililani Trask elaborates, “there were limitations under the U.S. system that could never be addressed under U.S. domestic law.”²⁹ Rather, Ka Lāhui advocated for a nation-to-nation status in order to “place the Hawaiian land base on the United Nations list of non-self-governing territories, since the land base still lies within the territory of the United States.”³⁰ Thus, Ka Lāhui Hawai‘i supported the nation-to-nation status achieved through federal recognition for the purpose of receiving a land base that would be placed on the U.N. non-self-governing territories list and eventually achieving the ultimate goal of a complete sovereign status.

²⁸ Haunani-Kay Trask, “The Case for Hawaiian Sovereignty and Ka Lāhui Hawaii,” *Policy Sciences* 33, no. 3 (2000): 382.

²⁹ Wong-Wilson, “A Conversation with Mililani Trask,” 148.

Describing the rationale for this political strategy, Native Hawaiian scholars Keoni Agard and Michael Dudley state, “This would place the Hawaiian nation under United Nations supervision and give it special guarantees of security accorded non-self-governing nations. It would also guarantee Hawaiians the right to further determine the kind of relationship they want with the United States.”³¹ Thus, Ka Lāhui Hawai‘i believed that U.S. federal recognition served as a stepping stone toward an international strategy for achieving sovereignty and one where Hawaiians could determine their political future.

Clarifying the intended relationships between the United States and the United Nations, Mililani Trask says:

A lot of people looked at Ka Lāhui and said we were selling out, we wanted to be under the U.S. system. This was not quite accurate because what we were saying was that the first priority was not a political relationship with the United States. The first priority was to protect the land, to protect the people; education, health, and cultural preservation. The first priority was to create a Hawaiian nation to facilitate self-determination at home. The political strategy for dealing with the United States was the second priority. Under the United States, indigenous people can achieve only limited rights, but we could obtain land for our people’s needs. And, we could at least get a share of

³⁰ Keoni Kealoha Agard and Michael Kioni Dudley, *A Call for Hawaiian Sovereignty* (Waipahu: Na Kane O Ka Malo Press, 1993), 136.

³¹ *Ibid.*

our revenues to develop health, education, and culture. Those were Ka Lāhui's priorities for the eight years I served as *kia'āina* of the nation.³² Trask illustrates that although federal recognition was part of Ka Lāhui Hawai'i's strategic plan, it was not the main goal. Ka Lāhui Hawai'i's priority was to acquire a land base that could accommodate and provide for the Hawaiian people. They believed that they could acquire land via federal recognition. Part of this land base would include "ceded lands" or areas controlled by the State of Hawai'i and the U.S. federal government.³³ In addition, the Office of Hawaiian Affairs was created to function as a pseudo Bureau of Indian Affairs (BIA). But, as a state agency, it is held to the policies and laws of the State of Hawai'i and the federal government.³⁴ It cannot function as an international entity, nor as a sovereign Native government. Other objectives of Ka Lāhui Hawai'i included health, education, and the preservation of culture for Native Hawaiians.

Additionally, it can be argued that Ka Lāhui Hawai'i is an un-recognized Native Hawaiian Indigenous nation. As the Kingdom of Hawai'i was recognized through international treaties, it can be asserted that Ka Lāhui Hawai'i is a

³² Wong-Wilson, "A Conversation with Mililani Trask," 148.

³³ Ceded lands represent crown and government lands of the Kingdom of Hawai'i. These lands belong to the Native Hawaiian people. After the takeover, the Republic of Hawai'i claimed these lands and they have been used by the state and federal government for the purposes of, but are not limited to: state and national parks, military bases, public education institutions, airports, and federal and state buildings. A portion of the revenue from these lands is administered by the Office of Hawaiian Affairs for the betterment of the Hawaiian people. Native Hawaiians have never consented to the taking or usage of these lands.

³⁴ Wong-Wilson, "A Conversation with Mililani Trask," 145.

government that is in continuance of practices of Native nationhood. As a regeneration of a national polity, they have a ratified constitution that includes parameters for citizenry and voting. Part of Ka Lāhui's Master Plan, otherwise known as Ho'okupu a Ka Lāhui Hawai'i, included a strategy for self-governance and sovereignty for the Indigenous people of Hawai'i.³⁵ The Master Plan was put forth as a gift from Ka Lāhui to all the people of Hawai'i, including Native Hawaiians and non-Natives.³⁶ However, the Master Plan mainly sought to achieve self-determination for the Native Hawaiian people.³⁷ Discussing Ka Lāhui Hawai'i and the purpose of its creation, the Master Plan states:

Ka Lāhui Hawai'i is a political expression of self-determination. Ka Lāhui was created by Native Hawaiians and their descendants. Our Constitution is a reflection of what we believe about ourselves, our culture, traditions and political rights, and other inalienable rights. Ka Lāhui Hawai'i was created without the interference or financial support from the United States of America or its agent, the State of Hawai'i.³⁸

In the Master Plan, Ka Lāhui Hawai'i specifies their formation is a product of consensus building that has taken place over several generations without the interference of the United States. The quote also positions Ka Lāhui Hawai'i as a

³⁵ "Ho'okupu a Ka Lāhui Hawai'i, the Ka Lāhui Master Plan" (Ka Lāhui Hawai'i Constitution, Hilo, Hawai'i, 1994), 1. Used with the permission and written consent of Mililani Trask.

³⁶ Ho'okupu in the Hawaiian language translates to gift.

³⁷ "Ho'okupu a Ka Lāhui Hawai'i," 1.

³⁸ Ibid., 4.

group that is not seeking the approval of the United States. As the Master Plan clarifies:

Ka Lāhui Hawai‘i is the evolutionary product of several generations of Hawaiians who sought to address past and present injustices arising from the subversion of our indigenous culture and political system and the overthrow and annexation of our territories by the United States of America.³⁹

Therefore, Ka Lāhui Hawai‘i was created as a political government to address ongoing issues of both the past and the present. The Master Plan also included language that terminated the policy of wardship amongst Native Hawaiians in the State of Hawai‘i. In return, the U.S. federal government would then recognize Ka Lāhui Hawai‘i as the sovereign governing body.⁴⁰

Another aspect of the Master Plan presents the importance of treaties both past and present. Ka Lāhui Hawai‘i proclaims that treaties ratified between the Hawaiian government and its signatories occurring prior to the illegal takeover by the United States in 1893 would be recognized and honored.⁴¹ Therefore, Ka Lāhui Hawai‘i saw themselves as a sovereign government that operated in continuation of the Kingdom of Hawai‘i. They were committed to honor the prior commitments and relationships of the Kingdom of Hawai‘i while creating new diplomatic relations that

³⁹ Ibid.

⁴⁰ Ibid., 7.

⁴¹ Ibid., 11.

epitomized them as international actors. This would move away from the domestic nationhood structure within the United States.

To express Native self-governance while enacting kuleana, Ka Lāhui Hawai'i engaged in treaty making with other Native nations. Articulating the importance of treaty-making during my interview, Trask says:

We did find it was time to use our opportunities to begin to make treaties with other Indigenous peoples. Also, we noticed there was a strong bias. People wanted to look at treaties between Hawai'i and the United States and Hawai'i and Japan, but just as important or perhaps more important were modern treaties that were made with non-colonizers. So this is the reason why we did what we did. It was part of a broader effort and not only Hawai'i, but in New Zealand and the Pacific. So that was why we did this. It was really to strengthen their [Native] nation and Ka Lāhui Hawai'i. And it was done in the anticipation that we have to work collectively on critical issues towards Indigenous peoples in a globalized world.⁴²

In their efforts to strengthen diplomatic relations between Native nations, Ka Lāhui Hawai'i thus signed and ratified a significant number of treaties. Describing this achievement, the Master Plan stated, "To date, Ka Lāhui Hawai'i has negotiated and ratified 17 treaties with 85 indigenous nations on the American Continent."⁴³ In my

⁴² Mililani Trask (Native Hawaiian legal scholar) in discussion with the author, July 2015.

⁴³ "Ho'okupu a Ka Lāhui Hawai'i," 11.

interview with Mililani Trask, she explains that treaty making for Ka Lāhui Hawai‘i represented:

Strengthening our communication and supporting the authority of [Native] nations to make treaties. I think it was appropriate in pointing out that we don’t want people to interpret Indigenous national treaty making as something that was a historical anomaly or colonial practice. It isn’t.⁴⁴

Therefore, Ka Lāhui Hawai‘i, as well as other Native nations were engaged in treaty-making as a continued expression of sovereignty and to strengthen Native nations. The Treaty of Friendship and Mutual Recognition between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i is just one of the many treaties Ka Lāhui Hawai‘i ratified during this period.

Expressing this view of treaty making, “The Ka Lāhui Hawai‘i Platform on the Four Arenas of Sovereignty” specifies the different arenas of sovereignty defined by Ka Lāhui Hawai‘i. The four political arenas included: Native to Native, Native to Nation/State, the International Arena, and Nation to Nation. The political arena that discussed treaty making is the Nation-to-Nation arena. It noted:

Regardless of whether Nations/States (U.S.) recognize indigenous nations whose lands they have colonized, Native Nations can and must solidify diplomatic relations between themselves and other Nations/States.

Indigenous nations face common threats and issues in the international

⁴⁴ Ibid.

arena. Native nations need to forge unified positions in the global arena for the protection of their lands, territories and human rights.⁴⁵

Within the “Four Political Arenas of Sovereignty,” the Nation-to-Nation arena discusses the importance of Native nations to engage in treaty making with other nations, both Indigenous and non-Indigenous. This was believed to be important to demonstrate a unified front within the international arena. Detailing a subset from the four arenas on sovereignty, the section asked, “How can we benefit from or help other native nations who are dealing with similar health, housing, education, etc. problems and issues?”⁴⁶ Hence, Ka Lāhui Hawai‘i’s political agenda included the forging of trans-Indigenous collaborations that were expressed in treaty-making with other Native nations. Part of the belief was that Native nations could help each other when dealing with similar issues of education, health, and the general welfare of their people.

Moreover, the agenda in this arena was to, “enter into treaty negotiations with other Native nations in the U.S. to mutually benefit our people.”⁴⁷ As Mililani Trask explains:

The main motivation was to strengthen the ability of [Native] nations to engage in treaty making, to make a foundation for future collaborative work.

The movement at that time was generated in Indian Country primarily by

⁴⁵ “Ka Lāhui Hawai‘i Platform on the Four Arenas of Sovereignty” (The Government of Ka Lāhui Hawai‘i, Hilo, Hawai‘i, 1994), 12. Used with the written consent of Mililani Trask.

⁴⁶ Ibid.

Wilma Mankiller of the Cherokee Nation. In a talk a few years earlier, Wilma encouraged Native nations to begin treaty making with each other. She had pointed out that more and more Indigenous people living under the U.S. flag were finding common ground.⁴⁸

Mililani Trask describes the rationale for Ka Lāhui Hawai'i to engage in treaty-making with other Native nations as part of larger efforts and a movement that had derived from Indian Country. The movement for treaty-making included Native nations within the United States and the Pacific. Wilma Mankiller, the first woman to be elected chief of the Cherokee Nation, served as chief for ten years between 1985-1995. She led economic development efforts on the Cherokee Nation that politically strengthened her nation. Specifically, Mililani Trask notes Wilma Mankiller's call for Native nations to engage in political relations, including treaty-making. Mankiller was an inspiration for Trask and, ultimately, the treaty-making that would be instigated by Ka Lāhui and the Acjachemen.

In my interview with Trask, she also reflects on how the U.S.'s involvement in the international arena affects Indigenous people. She and others within Indian Country, believed it was important for Native nations to engage in treaty-making in order to recognize themselves as international actors.⁴⁹ She also believes that this expression of Native self-governance fell outside the purview and frameworks of

⁴⁷ Ibid.

⁴⁸ Mililani Trask (Native Hawaiian legal scholar) in discussion with the author, July 2015.

⁴⁹ Ibid.

colonial nation-states. Trask says, “we did enter into treaty making as an expression of our right to self-determination outside of the context of [Nation] states because the right of self-determination is not qualified, not restricted and not limited to states.”⁵⁰ Trask explains that treaty-making was a praxis of Native self-governance, and that the treaties between Ka Lāhui Hawai‘i and other Native nations were the product of trans-indigenous relationships.

Mililani Trask describes some of the challenges that were faced by Native nations within her interview. This included the patenting of life forms and Native healing and medicinal practices.⁵¹ Trask mentions that there was going to be legislation that was going to affect Native communities that were un-recognized. She says, “There were going to be bills that came up in the future that gave entitlements to federally recognized and left out those that were not. So we wanted to prepare for the future and work collectively with other Indigenous sovereigns.”⁵² For instance, Trask explains a specific example of genetically modified corn that was brought to Ka Lāhui Hawai‘i’s attention by community organizer, environmental activist, and artist Winona La Duke from the White Earth Reservation of the Ojibwe Nation:

When American Indians began to object to [genetically modified corn] on the continent, Monsanto quietly implemented a plan to bring all the GMO testing for seed corn to Hawai‘i. They did that because they had an interest in manipulating the genetics of the corn and they didn’t want to do it on the

⁵⁰ Ibid.

⁵¹ Ibid.

continent where there were corn people. Corn is not a part of our Indigenous culture. So they brought [it] into Hawai'i. It took a few years to catch up on the issue of GMO, but thankfully with the help of our sister, Winona La Duke, who came from Indian Country, we became alerted to the issue.⁵³

This example of GMO seed testing exemplifies the need for treaty-making in order to create solidarity amongst Native nations. Ka Lāhui's rejection of GMO corn, based on the trans-indigenous relationship with Winona La Duke further exemplifies the responsibility the sovereignty movement was fostering. This brief example, along with the influence of Wilma Mankiller, highlights the connections that Ka Lāhui was making internationally, as a sovereign with the ability to act outside of the state.

Ka Lāhui Hawai'i in California

Beginning in the 1980's, Carolyn Kualii, a student and citizen of Ka Lāhui began community organizing in California Indian Country.⁵⁴ In my interview with Kualii, she explained that her involvement with Ka Lāhui began in the early 1990's after she had attended an Indigenous people's conference in the Bay Area. This is where she first met some of the leadership of Ka Lāhui Hawai'i, including Kalani English and Mililani Trask.⁵⁵ She recalls approaching them because they were Native Hawaiian. Describing her experience at the conference, she says:

When I was at the conference, there were trustees from the Office of

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

Hawaiian Affairs and others. Kalani English, at that time was just a normal Hawaiian guy. He wasn't a Senator and there was Mililani. So, I gravitated to them because they were fellow Hawaiians. So, I was a Hawaiian here on the continent and they were Hawaiians from back home. Mililani and Kalani English were leadership from Ka Lāhui Hawai'i and they were a moving force in the Hawaiian community.⁵⁶

Kuali'i then explains that she was drawn to members of Ka Lāhui because they were fellow Hawaiians. After the conference, she became a part of Ka Lāhui Hawai'i. She recognized that they were one of the largest sovereignty groups that were doing crucial work back home.⁵⁷ In her interview with me, she notes that this was the start of her work in connecting Native Hawaiians with California Indian Country.⁵⁸

As one of the main architects of the treaty, Kuali'i defines her work in Indian Country as part of her kuleana. She says, "It wasn't something that I sought after, it was something that came to me. When it came to me it was obvious that it was my kuleana and it was something that I needed to be involved with. I truly feel that it was meant to be."⁵⁹ Kuali'i articulates her work with California Indians as part of her kuleana that came to her. In this way, she describes kuleana as praxis.

While believing that her work in California Indian Country was part of her kuleana, she also describes how some Hawaiians questioned her about her work in

⁵⁶ Carolyn Kuali'i (Native Hawaiian educator) in discussion with the author, March 2015.

⁵⁷ Ibid.

⁵⁸ Ibid.

Indian Country. However, she was reaffirmed in her effort because she believed it was her kuleana. She says, “You know I even had some Hawaiians question me and say, ‘Why are you working so much with Indians and not working with our people?’ And it came to the point where I believed you shouldn’t question where the ancestors put me.”⁶⁰ Through her kuleana, Kualii understood that her kūpuna had an influence over the work that she was doing with California Indian tribes, and because of this it was a sacred responsibility for her to persist through the criticism. Although she acknowledges that she is not the first, or only, Hawaiian to engage in this work, she also believes that her work with California Indians and Indian Country in general has built lasting relationships.⁶¹

It was within her work in California Indian Country that she first heard the story of the Rainbow Bridge from Pit River tribal member Darryl Wilson. Although there are specific iterations of the story, she describes the one shared by Wilson.⁶² She says, “The whole story was about how Native Hawaiians came to California during ancient times over a Rainbow Bridge in their canoes and broke down and his people, the Pit River people, were able to take care of them.”⁶³ In an SF Gate publication detailing a festival honoring the relationships between California Indians and Native Hawaiians, Wilson discusses hearing the story of the Rainbow

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Darryl Wilson was a Pit River tribal member that was a Native American author and well-known educator.

Bridge from Pit River elder Craven Gibson. He says, “Long, long ago, in a time when there was still powerful magic in the world, when the San Joaquin and Sacramento Valleys were a huge shallow lake, the native Hawaiians sailed their voyaging canoe to the coast of California.”⁶⁴ Although different iterations of the story include the Chumash, another California Indian tribal community, both stories include Native Hawaiians and California Indian groups traveling back and forth from Hawai‘i to California via a Rainbow Bridge. While there is anthropological and linguistic data to support that Native Hawaiians sailed their canoes to the California coast in areas traditional to the Chumash, Kualī‘i did not cite this data as a particular grounding or affirmation of her work.⁶⁵ Rather, she cited the Rainbow Bridge story that was told to her by Darryl Wilson as confirmation that the work she was doing maintained continuance of relationships—that is, her kuleana—that existed previously.

For Kualī‘i, the Rainbow Bridge had a particular importance that had reaffirmed her work within California Indian Country. She says:

So it’s just like ancient stories, the Rainbow Bridge, it keeps on resurfacing in more generations of people because the stories are not lost. The momentum of these connections continue; so I think on a spiritual level our kūpuna just

⁶³ Carolyn Kualī‘i (Native Hawaiian educator) in discussion with the author, March 2014.

⁶⁴ Karen Pierce Gonzales, “Festival of tales bridges Native cultures/Event highlights common heritage of Hawaiians and California Indians,” *SF Gate* (San Francisco, CA), October 17, 2003, <http://www.sfgate.com/bayarea/article/Festival-of-tales-bridges-native-cultures-Event-2582262.php>.

find the opportunities for a successful new era to allow those connections to happen again.⁶⁶

Kuali'i understood her work as part of a larger history of continued relations between Native Hawaiians and Native Californians. She believes that hearing this story from a California Indian gave her cultural and spiritual confirmation.

Some of the relationships that Kuali'i was able to establish encompassed working with several Southern California Indian communities, including the Acjachemen Nation. She started to work with the tribal leaders from the Acjachemen, including the Lobo family and the descendants of Clarence Lobo, who had been one of the tribal chiefs for the Acjachemen Nation.⁶⁷ This is how Kuali'i began working with David Belardes, the tribal chief at the time of the signing of the treaty with Ka Lāhui Hawai'i. While finishing her undergraduate education at UCI, she formed a personal friendship with Belardes and his family. She believed that these relationships established with the nations/tribes California Indian Country were part of her kuleana as a Native Hawaiian living in California.⁶⁸

⁶⁵ Kathryn A. Klar and Terry L. Jones, "Linguistic Evidence for a Prehistoric Polynesia—Southern California Contact Event," *Anthropological Linguistics* 47, no. 4 (2005): 369.

⁶⁶ Carolyn Kuali'i (Native Hawaiian educator) in discussion with the author, March 2014.

⁶⁷ Ibid.

⁶⁸ Ibid.

American Indian Movement, Federal Acknowledgement and the Acjachemen Nation

Similar to Native Hawaiian creation stories, those of the Acjachemen dictate an inherent genealogical responsibility to protect and reciprocally live with the land. Located in Southern California in the contemporary urban landscape of Orange County, the Juaneño have become severely outnumbered in their own land. Although the tribe has consistently resisted Native erasure through the maintenance of culture and the protection of sacred sites, the Juaneño, along with other California Indians, experienced multiple formations of colonialism. These include specific colonial histories and relationships with Spain, Mexico, and the United States. The first colonial relationship began in 1769 with Spain through the establishment of Mission San Diego, followed in 1775 by the foundation of Mission San Juan Capistrano, where the Juaneño were imprisoned and enslaved.⁶⁹

As mentioned in the introduction, California Indians such as the Juaneño Band of Mission Indians, Acjachemen Nation, concealed their identities due to the genocidal policies and the political and social suppression. It was not until the 1970's that the American Indian Movement, and other movements created by communities of color spurred an atmosphere to be proud of an American Indian identity. Scholar Candace Coffman discusses this phenomenon including the shift in policies that generated new processes for federal acknowledgement. She says,

“Many families and individuals sought to rediscover their American Indian identity. Concurrent with this was a political shift in which the Federal government allowed for a formal process for groups to gain Federal acknowledgement.”⁷⁰ Furthermore, Coffman notes, “This motivated the Juaneño in Southern California to seek to reestablish not only themselves individually as Indians, but to reestablish their tribe as a political entity.”⁷¹ Although Coffman implies that the federal acknowledgement process motivated the Juaneño on an individual and collective level, the Juaneño were active politically much earlier. This is most notable through their participation with the Mission Indian Federation (MIF).

In 1919 the Juaneño became a part of the Mission Indian Federation.⁷² The Mission Indian Federation was a grassroots political organization that encompassed tribal leaders from Southern California and addressed issues between the tribes, the federal government, and the Bureau of Indian Affairs.⁷³ The Mission Indian Federation created a structure for tribal leaders to come together and politically advocate for themselves. The federation folded in 1965.⁷⁴ As a group they asserted “rights to internal sovereignty, rejecting the Bureau of Indian Affairs (BIA)

⁶⁹ Mission San Juan Capistrano was abandoned by the Franciscans due to an Indian attack at the Mission San Diego. However, they re-established the mission in 1776 and re-built it where it is currently located in 1778.

⁷⁰ Coffman, *The Juaneño-Acjachema*, 35.

⁷¹ Ibid.

⁷² Ibid., 36.

⁷³ "Mission Indian Federation," *Juaneño Band of Mission Indians Acjachemen Nation*, accessed July 8, 2017, <http://www.juaneno.com/index.php/history/mif-articles>.

⁷⁴ Ibid.

paternalism.”⁷⁵ Thus, the Mission Indian Federation can be seen a mechanism for self-determination that rejected the paternalistic process that largely treated Native tribal nations as wards. The Mission Indian Federation included membership “from reservation and non-reservation California Indians of southern California, the MIF could best be described as a quasi-governmental, pan-Indian organization purporting to represent the collective will of Southern California’s reservation people.”⁷⁶ Challenging the paternalistic views of the BIA, the Mission Indian Federation provided tribes in Southern California a mechanism for political involvement that was self-determining amongst tribal leadership in Southern California including the Acjachemen. Although a pan-Indian organization, the Mission Indian Federation is akin to Ka Lāhui Hawai‘i as both are expressions of Native self-governance. Additionally, each entity formulated structures that were culturally appropriate for their citizens.

Contemporary Acjachemen Nation

Notwithstanding the non-federal acknowledgement of the Acjachemen, the tribe has remained culturally and politically active. While not having a land base, most of the Acjachemen reside in Los Angeles, Riverside, San Diego, and Orange Counties.⁷⁷ Some tribal members have been able to remain in San Juan Capistrano, which is the tribe’s cultural center. San Juan Capistrano is the location of Mission San Juan Capistrano, the tribal office, and the Blas Aguilar Adobe Museum and

⁷⁵ Ibid.

⁷⁶ Ibid.

Acjachemen Cultural Center. Thus, San Juan Capistrano continues to function as the cultural, political and spiritual gathering place for the Acjachemen Nation with annual events such as Swallows Day, the Swallows Day Parade, and Mission Days.⁷⁸

San Juan Capistrano attracts numerous visitors every year who learn of the civilizing and assimilating work done by the Catholic Church, its Mission, and Father Junípero Serra. Many fourth graders attending school in California are assigned a mission project that encompasses a field trip to a local Mission, and thus many students in Southern California visit Mission San Juan Capistrano. Tribal members have continued to work with the mission to not only access ancestral burials, but also to provide cultural education work and an alternative to the mainstream narrative. The Blas Aguilar Adobe Museum and Cultural Center, for example, provides historical and cultural education that has been curated by tribal members and leaders. Despite being surrounded by urban sprawl and the constant development in Orange County, the Acjachemen Nation and its members strive to protect sacred sites and burials, and to continue cultural traditions. Tribal members serve as living symbols that challenge a profound narrative of Native erasure.

Wyatt Belardes, a Juaneño youth leader and grandson of the late tribal chief David Belardes, discusses his experience growing up in Orange County. He says, “Everyone seems to have money. Being Native especially or any minority living there, you are always looked down upon. I see how racist Orange County can be and

⁷⁷ Coffman, 42.

⁷⁸ Coffman, 12.

how they really don't think that if you are Native you can do anything."⁷⁹ Belardes portrays the immense wealth of Orange County and the oppression felt by Natives and other minorities. He also depicts the racism that is prevalent in the area and the idea that Natives are powerless. He illustrates a paternalistic view of Natives that continues to exist into the contemporary moment. He also describes the immense degree of Native erasure, evidenced by people's shock that Acjachemen continue to live as a people. He states, "I feel like telling people that there's Indians is a shock to them. And I feel like especially in Orange County the erasure is a lot bigger because it is related to everyone having power and money. Like why would they want to hear about a group who they believe to be inferior and will not amount to nothing? No one wants to know the true history of where they are living."⁸⁰ Belardes describes the people living in Orange County, believing that the erasure is prevalent because of the higher incomes and power in the area. Despite these sentiments, the Acjachemen continue to challenge stereotypical perceptions of Natives from the Spanish fantasy past that romanticizes the missions to the present.

Treaty of Mutual Friendship and Recognition

Today, the treaty between the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai'i provides an alternative to government structures that have continuously denied their living presence. Although the Acjachemen Nation has made several attempts to establish a nation-to-nation relationship via federal

⁷⁹ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

recognition, their efforts have been unsuccessful under the pretext that they ceased to exist as a tribal Nation.⁸¹ Native Hawaiians also occupy an ambiguous political position with the U.S. federal government.⁸² They have been recognized in numerous pieces of legislation including the Native American Graves Protection and Repatriation Act (NAGPRA) and the Native Hawaiian Education Act, but they are not recognized as having a nation-to-nation relationship with the United States.⁸³ Regardless of their recognition statuses with the United States, the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i engaged in treaty-making as independent sovereign nations.

As detailed previously, the Juaneño Band of Mission Indians, Acjachemen Nation and Ka Lāhui Hawai‘i engaged in diplomatic relations including a treaty signing in April of 1992 at the University of California, Irvine. The treaty opens with a preamble that summarizes the inherent sovereignty and self-determination of both groups to engage in treaty making. Article I states, “The Government of Ka Lāhui Hawai‘i is recognized by the Juaneño Band of Mission Indians/Acagchemem Nation as the constitutionally elected Sovereign Government of the original Native

⁸⁰ Ibid.

⁸¹ The last attempt that was made for federal recognition was denied in 2011. The decision was appealed and their appeal was denied in 2013. The issue of federal recognition has created a lot of tension and dissension in the tribe that are evident from its various factions.

⁸² Since the Supreme Court decision in *Rice v. Cayetano* in 2000, several court cases followed contesting the programs and benefits created for Native Hawaiians.

⁸³ These are a few pieces of legislation that exemplify the legislative history between the federal government and Native Hawaiians.

Hawaiian people and their lands.”⁸⁴ This is significant because the Juaneño explicitly recognize Ka Lāhui Hawai‘i, and conversely not the Office of Hawaiian Affairs (OHA), the State of Hawai‘i, or any other group, as holding the sovereign authority for the Hawaiian people. In Article II, Ka Lāhui Hawai‘i recognizes the Juaneño Band of Mission Indians/Acagchemem Nation as the sovereign government of the Acjachemen people. It states, “The Juaneño Band of Mission Indians/Acagchemem Nation is recognized by the Government and the people of Ka Lāhui Hawai‘i as the traditional government of the Juaneño Band of Mission Indians, Acagchemem people of the traditional, territorial lands that lay within the area of Southern California.”⁸⁵ This is significant for the Juaneño Band of Mission Indians, Acjachemen Nation because the federal government has not recognized them, but also because the issue of federal recognition has resulted in the formation of many factions within the tribe.⁸⁶ Therefore, Ka Lāhui Hawai‘i is recognizing the elected members of the government represented by its signatories as the sovereign government of the Juaneño/Acjachemen people.

Article IV of the treaty pledges both governments to support each other. It notes, “The Government and the People of Ka Lāhui Hawai‘i and the Juaneño Band of

⁸⁴ Treaty of Mutual Friendship and Recognition Between the Government of Ka Lāhui Hawaii and the Juaneño Band of Mission Indians/Acagchemem Nation, April 1992.

⁸⁵ Ibid.

⁸⁶ In conversation with the author, many tribal members note that the issue regarding federal recognition has caused many factions within the tribe. Tribal members expressed a diversity of views regarding federal recognition.

Mission Indians/Acagchemem Nation pledge mutual friendship and support of each Nation's efforts to perpetuate the spiritual, cultural, political, and economic self-sufficiency for the future generations of our peoples."⁸⁷ This article signifies that this relationship is recognized as ongoing. Both Native nations are obliged to support one another's efforts in perpetuating cultural and spiritual traditions of their people. This should also mean that either group would be responsible for offering support if the other group was facing obstacles preventing them from doing so. To ensure that diplomatic relations continued past the treaty signing, Article V of the treaty states, "The Government and People of Ka Lāhui Hawaii and the Juaneño Band of Mission Indians/Acagchemem Nation will meet at the highest level a minimum of every three years to review and evaluate this treaty."⁸⁸ Although Article V of the treaty was created with the intention of ensuring ongoing diplomatic relations and collaboration between the two Native nations, the people I interviewed have alluded to the failure to maintain diplomatic relations between the two entities. Nonetheless, diplomatic correspondence did continue in the form of updates and informal meetings. These updates included the ratification of the treaty with Ka Lāhui Hawai'i by the Juaneño Band of Mission Indians/Acagchemem Nation a year after it was signed, as well as Ka Lāhui Hawai'i making the government of the Acagchemem Nation aware that Ka Lāhui engaged in the signing of treaties with

⁸⁷ Treaty of Mutual Friendship and Recognition Between the Government of Ka Lāhui Hawaii and the Juaneño Band of Mission Indians/Acagchemem Nation, April 1992.

other Native nations. For example, the Ministry of Foreign Affairs for Ka Lāhui, Kalani English, sent an official correspondence to elected Tribal Chairman David Belardes on January 8, 1993. It stated, "I have the great honor of informing the Juaneño Nation that yesterday eve the Government of Ka Lāhui Hawai'i signed a Multilateral Treaty of Friendship and Mutual Recognition with the Confederation of the Thlingit Nation of Canada and the Kwakiutl Band of our National Capitol, Hilo, Hawai'i."⁸⁹ Thus, diplomatic relations continued between the two nations. The Treaty of Friendship and Mutual Recognition between the two nations was taken seriously and is evidenced by Ka Lāhui Hawai'i sending official correspondence updating the Juaneño Government of its treaty signing and subsequent political relationships with other Native nations.

Another official correspondence sent in 1993 updates Ka Lāhui Hawai'i on the official ratification of the treaty by the Juaneño Band of Mission Indians, Acjachemen Nation. David Belardes, elected Tribal Chairman sent a letter to Mililani Trask, kia'āina of Ka Lāhui Hawai'i, on April 30, 1993. He said, "It is with great pleasure that I inform you that the Mutual Treaty of Peace and Recognition between the Sovereign Nation of the Acagchemem Nation and Ka Lāhui Hawai'i was unanimously ratified at the annual tribal reunion held at Descanso Park in San Juan

⁸⁸ Ibid.

⁸⁹ Kalani English (Ministry of Foreign Affairs, Ka Lāhui Hawaii) to David Belardes (Tribal Chairman, Juaneño Band of Mission Indians/Acagchemem Nation), January, 1993.

Capistrano, California on August 29th, 1992.”⁹⁰ Belardes also mentioned, “It was also a personal pleasure to finally meet you [Mililani Trask] at the signing of the treaties between the Black Hills Sioux Nation Council and Ka Lāhui Hawai‘i which was the one year anniversary of the signing of our treaties.”⁹¹ Although diplomatic relations did not continue every three years, correspondence did occur shortly after their interactions.

Whereas Carolyn Kualī‘i, a Ka Lāhui Hawai‘i citizen living in Southern California, assisted in the development of the treaty between the two groups, she said that she did so as recognition of her kuleana. Although her expression of this is within the involvement of a national body politic of Ka Lāhui Hawai‘i, her efforts are part of a larger endeavor that includes honoring a kuleana. These processes of recognition through the treaty are not defined or contained by the nation state. She developed relations between Native Hawaiians and California Indian nations and other Indigenous nations in general that have persisted into the present. The Juaneño/Acjachemen Nation members I interviewed in regards to the treaty discuss the importance of having another Native nation recognize them, whereas the federal government has continuously determined that they ceased to exist as a Native people. Many of the Juaneño who I interviewed state that it reaffirms their existence as a people and as a Native nation with sovereign powers. This is significant

⁹⁰ David Belardes (Tribal Chairman, Juaneño Band of Mission Indians/Acagchemem Nation) to Mililani Trask (Kia‘āina, Ka Lāhui Hawai‘i), April, 1993.

⁹¹ Ibid.

because, due to the constant development of their homeland and various issues associated with settler colonialism, the tribe faces a considerable amount of erasure and enormous challenges in preserving their land and culture. Thus, the treaty provides a form of recognition that occurs outside of the confines of the settler state. Moreover, treaty-making amongst Native nations can provide a model to actively work against settler colonialism. For Hawaiians, it reaffirmed Native nationhood and provided a praxis of kuleana that recognized an Indigenous host. The treaty between Ka Lāhui Hawai'i and the Acjachemen for Hawaiians only embodies a kuleana to the lāhui back home, but also represents an embodied kuleana and praxis that honors and recognizes a Native host and continued relationships between Native Californians and Native Hawaiians.

CHAPTER FOUR:

The Federal Recognition Game: Creating Native Alternatives for Decolonial Possibilities

As discussed throughout this dissertation, neither Native Hawaiians nor the Juaneño Band of Mission Indians, Acjachemen Nation, are federally recognized. While the Office of Federal Acknowledgement (OFA) has received petitions for federal acknowledgement from the Juaneño, all have been denied. In addition, the issue of federal recognition amongst the Juaneño has caused factions in the tribe.¹ Hence, the BIA received two different petitions for federal acknowledgement from the Juaneño. The Bureau of Indian Affairs (BIA) identified the Juaneño petitioners as 84a and 84b and issued a denial decision in 2011.² Further, the band of the Acjachemen Nation that signed the Treaty of Friendship and Mutual Recognition with Ka Lāhui Hawai‘i has never applied to be federally recognized.³ With Native Hawaiians, the question of federal recognition became front and center after the Supreme Court decision in *Rice v. Cayetano* in 2000.⁴ With this decision, the U.S. Supreme Court ruled that it was unconstitutional for the Office of Hawaiian Affairs

¹ Both L. Frank Manriquez and Carolyn Kualī‘i discussed the factions caused by the issue of federal recognition amongst the Juaneño.

² “Recent Acknowledgement Actions,” *U.S. Department of Interior, Indian Affairs*, <https://www.bia.gov/as-ia/ofa/recent-acknowledgment-actions>

³ All the interviewees were from this band of the Juaneño Band of Mission Indians and all have made it definitively clear that they as a group have never applied for federal recognition.

⁴ Although discussions about federal recognition occurred prior to the findings in *Rice v. Cayetano*, the Supreme Court decision solidified the fact that Native Hawaiians did not possess a relationship with the United States federal government akin to federally recognized American Indian tribes.

(OHA) to restrict voting for board member elections to Native Hawaiians. According to this ruling, since OHA was an office affiliated with the state of Hawai'i and fell under the parameters of state law, it could not carry out its duties with a board elected and administered solely by Native Hawaiians. Subsequent to this ruling, other lawsuits were filed challenging Native Hawaiian entitlements.⁵ Although not possessing federal recognition does have its challenges, the interviewees from both groups have expressed that they engaged in treaty-making as an expression of self-determination and sovereignty. This chapter features interviews from both communities concerning their understandings of federal recognition. In addition, the interviews provide insight to the assorted meanings that the treaty has for both communities and also detail the alternatives to federal recognition that are theorized and lived by members of their communities. Those interviewed emphasize the Treaty of Friendship and Mutual Recognition as an alternative to federal recognition practices that provides decolonial possibilities.

Got (Federal) Recognition?

While many would argue that federally recognized tribes possess a nation-to-nation relationship with the U.S. federal government, in practice this relationship epitomizes a form of limited sovereignty for Native nations. This limited sovereignty is paternalistic in nature and is characterized by a governance structure where Natives are considered wards and where the federal government is understood as

⁵ Some of these lawsuits include: *Arakaki v. Lingle* and *John Doe vs. Kamehameha Schools*.

the trustee.⁶ Native studies scholar Glen Coulthard describes the politics of recognition in *Red Skin, White Masks* as a, “recognition-based approach to reconciling Indigenous people’s assertions of nationhood with settler-state sovereignty via the accommodation of Indigenous identity-related claims through the negotiation of settlements over issues such as land, economic development, and self-government. I argued that this orientation to the reconciliation of Indigenous nationhood with state sovereignty is still colonial insofar as it remains structurally committed to the dispossession of Indigenous peoples for our lands and self-determining authority.”⁷ While some unrecognized tribes have gone through the arduous and tedious process of applying for federal recognition, they have done so in the hopes that receiving recognition will guarantee certain legal protections and resources. These legal protections include, but are not limited to: religious freedom; the protection of sacred sites; the right to consultation when disturbing ancestral remains; and the repatriation of ancestral remains and funerary objects.⁸ Some Native Hawaiians believe that federal recognition can provide certain legal protections that can resolve the numerous court cases that have contested their

⁶ Vine Deloria Jr. and David Wilkens, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 1999), 78.

⁷ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 151.

⁸ There are many federal laws specific to federally recognized Native American tribes including but not limited to: Native American Religious Freedom Act, Native American Graves Protection and Repatriation Act, and the Native American Education Act. These various acts mentioned above include Native Hawaiians and Alaskan Natives.

Indigenous rights.⁹ Additionally, federal recognition can also afford selected control over economic endeavors such as gaming and the sales of alcohol and tobacco on reservations.¹⁰ However, these economic endeavors also involve the negotiation of compacts with state governments. Although tribes have come under scrutiny at times by the general public, especially in regards to gaming, this denigration epitomizes the limited sovereignty that is afforded to federally recognized tribes.¹¹

Possessing federal recognition does provide tribal members and communities with certain legal protections and resources, and alternatively not possessing federal recognition presents a number of challenges. These include, but are not limited to, not having a land base, not obtaining certain federal legal protections, and not receiving supplementary resources associated with health and education. As articulated previously, land has a significant meaning and corresponding responsibility for Native people. Thus, not having a secure land base especially in an area where a tribe is genealogically connected is the most significant challenge by those who are federally unrecognized.¹² Although unrecognized tribes

⁹ Federal recognition advocacy by some Native Hawaiians includes the state agency of the Office of Hawaiian Affairs (OHA) that has proliferated after the court case of *Rice v. Cayetano* (2000), which successfully argued that restricting voting rights to Native Hawaiians for the elections of OHA trustees was racially discriminatory.

¹⁰ Not all tribes that have federal recognition have gaming privileges. This is a complicated and nuanced process that also involves individual State compacts.

¹¹ I believe more denigration occurs amongst non-Indians because they do not understand the nation-to-nation relationship or sovereignty that federally recognized tribes inhabit. More often than not, sovereignty or the limited sovereignty afforded to tribes is understood as “special rights.”

¹² Although I recognize that some federally recognized tribes possess land, this land may not be directly connected to their origins.

come from areas that are both urban and rural, being from an unrecognized tribe in an urban area presents unique obstacles. For example, Acjachemen tribal member Wyatt Belardes articulates some of these challenges in relation to preserving culture. Wyatt Belardes grew up in San Juan Capistrano and is the grandson of David Belardes, who was the hereditary chief of the Acjachemen Nation and one of the main signatories of the treaty with Ka Lāhui. He remained tribal chief until his passing in 2015. Wyatt is currently finishing his undergraduate education at the University of California Riverside, majoring in Native American studies. On the challenges of preserving culture while being from a federally unrecognized tribe in an urban area, Belardes says, "Various family members have wanted me to become a cultural monitor [of burial and other significant sites], but from what I hear from my dad and uncle that both do cultural monitoring work is that it's a struggle especially when you come from a non-federally recognized tribe. I know NAGPRA is only for federally recognized tribes, so it's been an issue to get things back."¹³ Belardes continues:

I know now we are working with some federally recognized tribes to get some of our artifacts and things repatriated. With all the development in San Juan [Capistrano] it becomes a struggle because there are so many old buildings with the possibility of artifacts and burials. I feel like it's a constant struggle with developers who always want to get the most out of their

¹³ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

money. They don't want to pay someone to go out there and find something because they view it as being [in]significant.¹⁴

Specifically, he details that tribes do not have the benefits of the Native American Graves Protection and Repatriation Act (NAGPRA), thus leaving the Juaneño to work with federally recognized tribes in an attempt to repatriate artifacts and burials. Additionally, he highlights the effects of the constant development of San Juan Capistrano and of the overall coastal area of Orange County. Accordingly, he also describes how the tribe works with developers in order to ensure the proper care and preservation of remains and artifacts despite the developers' views of tribes as obstacles to progress.¹⁵

While Belardes discusses some of the challenges of not having federal recognition, he also discusses some of the potential problems his tribe would face if granted federal recognition. He says critically of recognition, "If we were to be federal recognized in Orange Country it would be a big deal. People would be up in arms, because they wouldn't want us to get our land back. Everybody wants our land since we are by the coast and that's where the money is at, so it would be a struggle and we would see a lot more racism."¹⁶ Belardes describes the perceived pushback that would accompany his tribe being federally recognized. As a result, he

¹⁴ Ibid.

¹⁵ One example includes the building of a toll road through the ancient village site of Panhe. For more information, please see: David Reyes, "O.C. Toll Way Could Spoil Burial Site," *Los Angeles Times*, August 20, 2007, accessed July 31, 2017, <http://articles.latimes.com/2007/aug/20/local/me-toll20>.

believes that more racism would accompany federal recognition and that people would be upset due to the perception of a “minority group” receiving “special rights.” This is partially the result of the Acjachemen homeland being located in a highly valuable area. “Special rights” and “privileges” are often the argument used against the nation-to-nation political relationship that federally recognized tribes supposedly have with the federal government.¹⁷ Although Belardes articulates the potential backlash that he believes would occur if the tribe were to receive federal recognition, he also notes the practical benefits afforded with federal recognition, such as additional resources, money, and healthcare.¹⁸ In *Peace, Power and Righteousness*, Native scholar Taiaiake Alfred articulates his views on recognition and the incommensurability in addressing ongoing settler colonialism. He states, “colonial recognition politics serves the imperatives of capitalist accumulation by appearing to address its colonial history through symbolic acts of redress while in actuality ‘further entrenching in law and practice the real bases of its control.’”¹⁹ Therefore, recognition would never be able to address the loss of land and self-governance.

¹⁶ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

¹⁷ There are many court cases that challenge the trust relationship between federally recognized tribes and the federal government. We also see this in the *Rice v. Cayetano* case and the cases that followed suit. The rhetoric encompassed in these legal challenges is that a certain minority group of people is receiving special rights/incentives that could be construed as reverse discrimination.

¹⁸ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

At the same time, Belardes believes that if tribal members gained too much capital then such money could hurt the community as a whole because they would not safely manage it.²⁰ He says, "For example, some people get large sums of money if they are federally recognized, but if you are not used to having that type of money, you are not going to be able to manage it and big struggle comes with that."²¹ Here, Belardes is referring to a very small subset of Indians that come from successful gaming tribes. Some of the most successful gaming tribes reside in Southern California.²² Their experiences are distinct from those of most federally recognized tribes, whose members typically live below the poverty line.²³ Moreover, Belardes describes how excessive capitalism can lead to problems, which is directly opposed to ideas of success within Western society. Within this understanding, Belardes details that if his nation were to receive federal recognition, he would put more resources into preserving and revitalizing the culture.²⁴ Explicitly, he mentions the

¹⁹ Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Don Mills, Ont: Oxford University Press, 1999), xiii.

²⁰ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

²¹ Ibid.

²² "2016 California Tribal Government Gaming Impact Study," *California Nations Indian Gaming Association*, accessed July 30, 2017, http://cniga.com/wp-content/uploads/2017/02/0301_CNIGA_EIS-Summary-Brochure_R7.pdf.

²³ U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, *Status and Trends in the Education of American Indians and Alaska Natives:2008*, by Jill Fleury DeVoe, et al., NCES 2008-084, Washington, DC: US Department of Education, 2008, https://nces.ed.gov/pubs2008/2008084_1.pdf.

²⁴ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

necessity for language revitalization and for more research on and documentation of cultural songs.

Native Hawaiians, such as Carolyn Kualii, have also reflected on the implications for federal recognition among the bands of the Acjachemen. She says:

They have been working on [the] recognition thing since [Clarence] Lobo. It goes to show you the breadth of time, work, and money that they have put into being federally recognized. I can see the advantages for those, but on the other hand if they continue to deny you with all the evidence that they have, why bother? What I see with recognition is it causes a lot of division. I saw a lot of division amongst the people. A lot of those people by blood, by ancestry, that are put out of the tribe.²⁵

Kualii cites the amount of resources and time that has gone into the Juaneño pursuit of federal recognition. Although she is not critiquing the quest for federal recognition by some of the Juaneño, she describes the continued denial as a losing battle. Additionally, she expresses that it has caused a lot of division within the tribe. These divisions have in turn triggered a lot of dysfunction. She describes this dysfunction through the example of tribal members questioning each other's blood quantum and ancestry.

The question of federal recognition had insightful responses from Belardes and others as well. When asked whether being unrecognized stops the tribe from

²⁵ Carolyn Kualii (Native Hawaiian educator) in discussion with the author, March 2015.

existing, Acjachemen tribal member Joyce Perry explains their unrecognized status and what it means to her. Perry grew up in Orange County and remains there to this day. She worked closely with tribal chief David Belardes and other tribal members on the preservation of culture. She remarks, “It has no relevance whatsoever for me—the non-federal recognition status is just an instrument that the federal government has established and it doesn’t change anything. It has no validity to our relationships or the realities of Indigenous peoples and their relationships.”²⁶ Perry underscored that federal recognition is expected to further a colonial process and, therefore, by not having recognition the Juaneño are actually fortunate as a tribe. Without having federal recognition, she believes that the tribe is not in a relationship of forced dependency and consequently does not have to mold itself to various mandates of the U.S. government. Similar to Belardes, Perry believes that being unrecognized has its benefits—mostly to not be controlled by the federal government.

Belardes holds a similar view to Perry in regard to their status of being unrecognized. In response to question of if recognition is the determining factor for if the tribe exists or not, he says, “Not at all. I mean I feel like the government shouldn’t determine who is a tribe either. I mean the government is based on racist things and people.”²⁷ For Belardes, it does not matter if the federal government does

²⁶ Joyce Perry (Acjachemen tribal member) in discussion with the author, March 2013.

²⁷ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

not federally recognize the Juaneño/Acjachemen because he does not recognize the federal government as having the type of power to determine who is a tribal nation. To support these ideas, Belardes highlights the pervasive racism in the founding of the United States. Accordingly, he does not regard the federal government's processes and determinations as altering the tribe.²⁸ Similarly, Taiiaki Alfred and Leanne Simpson discuss the ideological dilemma of federal recognition. They state, "settler colonial rule is a form of governmentality: a relatively diffuse set of governing relations that operate through a circumscribed mode of recognition that structurally ensures continued access to Indigenous peoples' lands and resources by producing neocolonial subjectivities that coopt Indigenous people into becoming instruments of their own dispossession."²⁹ Therefore, those interviewed argued, similarly to Alfred, Simpson, and Coulthard, that federal acknowledgment is a form of co-optation that limits the sovereignty of a tribe while simultaneously resulting in benefits they may not have without it.

Perry, Belardes, and others interviewed believe that the tribe is fortunate to not have federal recognition. They articulate this as the tribe not being controlled by the government and remaining sovereign. Belardes states, "You become federally recognized and the government is right there breathing down your neck. That's why

²⁸ There are many Native scholars that have written critically about federal recognition. These scholars include and are not limited to: Taiiaki Alfred, Glen Coulthard, J. Kēhaulani Kauanui, Brian Klopotek, Audra Simpson, and Leanne Simpson.

²⁹ As cited in Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 156.

you hear about tribes being corrupt especially their tribal councils. It's like what do you expect? The government is right there and you need to do things for them because they are giving you money."³⁰ Belardes discusses the forced dependency that exists with federal recognition. He believes that it can negatively impact tribal communities that alter themselves due to the influence of money and resources. Moreover, with federal recognition, he says, "[there will] always be a government presence in your ear and so I believe in sticking true to yourself and to who you are as a people and not get involved [with the government] and have them change who you are."³¹ Although Belardes believes that federal recognition would provide much needed benefits for many tribal communities, he also believes it creates dynamics of forced dependency that would influence the tribe to change in negative ways that have lasting impacts.

Articulating the advantages of not being federally recognized, Perry, like Belardes, believes that the principal benefit is to not be controlled and influenced by the federal government. She also acknowledges that her thought process regarding federal recognition has evolved over time:

There was a time when I believed that being a federally recognized tribe gave our community a status that was necessary. [However,] the more I learned, I realized that we were fortunate in the fact that we don't have the mandatory oversight of colonial mandates. We get to pick and choose and in some ways I

³⁰ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

sort of feel sorry for the federally recognized tribes—especially the gaming tribes, as they have become corporations. They have had to mold into a corporation to meet criteria. I know in their hearts this is not the way they wanted to be, but it is what it is.³²

Perry acknowledges that although her belief regarding federal recognition has changed over time, she does believe that being unrecognized allows the tribe to act as sovereign and not be constrained by the federal government. Additionally, Perry goes as far as to say that she feels bad for federally recognized tribes, especially those who are involved with gaming.

Similarly, when asking a Native Hawaiian about her views regarding federal recognition, Kumu Kau'i Peralta said:

I think the whole fed rec thing comes from a place [that] if we don't do this we are going to lose our benefits, or we are going to lose our trust. We stand to lose so much, so I get it, but we also have so many examples of Native tribes that are federally recognized that have been messed up. I mean look at Standing Rock. I don't understand how we can continue to proceed with fed rec after Standing Rock. I mean they have a treaty with United States and they say, 'eh whatever.'³³

³¹ Ibid.

³² Joyce Perry (Acjachemen tribal member) in discussion with the author, March 2013.

³³ Kumu Kau'i Peralta, (Native Hawaiian educator) in discussion with the author, March 2017.

Similar to the tribal members of the Juaneño Band of Mission Indian, Acjachemen Nation, Kumu Kau’i Peralta views federal recognition, and therefore recognized sovereignty originating from the state, as something that is controlled at the whim of the federal government. She uses the example of Standing Rock and the Dakota Access Pipeline (DAPL) to highlight that although there are treaties between the United States and other federally recognized tribes, it does not stop the federal government from failing to honor those treaties.

In August 2016, the Army Corps of Engineers approved the construction of the DAPL, an oil pipeline under the main water source of the Standing Rock Sioux Reservation.³⁴ The decision by the Army Corps of Engineers occurred despite the tribe’s opposition to the project. Despite Standing Rock’s repeated attempts to assert their nation-to-nation relationship with the U.S. government as a recognized tribe in order to halt construction and to have a full environmental impact study conducted, construction of the oil pipeline proceeded, in violation of various federal laws including a longstanding treaty. Although the Sioux and the U.S. signed the Fort Laramie Treaty of 1868, which provides the Sioux with the use and occupation rights to the land in question, the pipeline was approved. Subsequently, Natives and non-Natives alike camped at the site and garnered domestic and international media

³⁴ The Army Corp of Engineers approved DAPL by utilizing an environmental assessment developed by Dakota Access LCC, the construction company building the pipeline. This was done despite three federal government agencies rejecting the findings from the report. Please find the report at: <https://www.documentcloud.org/documents/3036302-DAPLSTLFINALEAandSIGNEDFONSI-3Aug2016.html>

attention.³⁵ NoDAPL, as the movement came to be known in opposition to the construction of the pipeline, gathered the largest assemblage of Native nations and their allies in over one hundred years.³⁶ The media covered violent armed standoffs between the peaceful resisters and state, federal government, and private security hired by the pipeline construction company Dakota Access LLC. This included the arrests of many who remain opposed to the pipeline at the camp. Hence, in reference to the ongoing issue with DAPL and federal recognition, Peralta says, “It’s a fear-based argument. Why would we want to do this to ourselves? Basically we would put zip ties on our hands and handcuff ourselves into this form of governance that is so pono a’ole—not proper or right.”³⁷ Moreover, she articulates that having federal recognition would not protect Native Hawaiians. Like other federally recognized tribes, the federal government decides when it will honor the nation-to-nation political relationship of tribal nations, which includes honoring treaties.

Relatedly, L. Frank Manriquez, Tongva and Acjachemen artist and community educator, theorizes being sovereign and the hypocrisy involved in soliciting permission from the U.S. federal government. Manriquez articulates the absurdity of having to ask for permission from the federal government when tribes are sovereign. She says, “Oh we’re going to do this, but we have to ask for permission.

³⁵ A camp of peaceful resisters of Natives and non-Natives gathered near the construction site of the oil pipeline in resistance to DAPL.

³⁶ "Life in the Native American Oil Protest Camps," *BBC News*, September 01, 2016, accessed July 31, 2017, <http://www.bbc.com/news/world-us-canada-37249617>.

³⁷ Kumu Kau’i Peralta, (Native Hawaiian educator) in discussion with the author, March 2017.

What the hell does that mean? You are either sovereign or you are not. I get mad at people for their faux sovereignty.”³⁸ As expressed by Manriquez, being sovereign does not equate to being federally recognized. On the contrary, the interviewees defined federal recognition as a form of U.S. governmental control, which Manriquez defines as the opposite of sovereignty.

While both Native Hawaiians and the Acjachemen I interviewed articulated various viewpoints in regard to federal recognition, interviewees overall expressed the significance of self-determination and sovereignty, which they found with the Treaty of Friendship of Mutual Recognition between Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians, Acjachemen Nation. For those interviewed, the treaty represented the ongoing self-governance of two sovereign nations and reflects an ongoing resistance to settler colonialism. Juaneño tribal member Angela Mooney-D’Arcy articulates her views that the relationship recognized by the treaty surpasses colonial government and institutions. D’Arcy is a Native legal scholar heavily involved in protecting cultural sites. She currently teaches at the University of California Riverside in Ethnic Studies. She says that the treaty represents:

An ongoing commitment to upholding our traditional relationships with one another and to that extent outside of, and prior to, and will extend after the settler colonial government is gone. It’s an expression of sovereignty. To me it’s not relevant if it’s with an unrecognized Nation because our engagement

³⁸ L. Frank Manriquez (Tongva and Acjachemen tribal member) in discussion with the author, March 2017.

with each other is an expression of sovereignty. If we're serious about recognizing sovereignty, then settler colonial recognition or non-recognition should not be relevant.³⁹

Regardless of federal recognition, Acjachemen tribal member Angela Mooney-D'Arcy describes the inherent sovereignty that exists within Native nations. D'Arcy believes that the treaty is a testament to sovereignty that will endure past the current settler colonial government structure. Therefore, being federally recognized or having an unrecognized status has no relevance in regard to the inherent sovereignty expressed by the treaty.

Belardes has similar views to D'Arcy regarding the treaty as an expression of sovereignty. He says:

We are self-determining who we are and we are not asking the government to be a part of it. So we are decolonizing [ourselves] because we are basically doing something that the government doesn't want. We are actively showing them this is what we are going to do and don't care if they like it or not. We are the original people of this land and we don't need [the government] to decide who we are.⁴⁰

³⁹ Angela Mooney-D'Arcy (Acjachemen tribal member and legal scholar) in discussion with the author, April 2017.

⁴⁰ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

Belardes describes a praxis that exceeds the “asking for permission” entailed in seeking recognition from the federal government. He believes the treaty operates as an expression of sovereignty and serves as a decolonial act.

Therefore, the treaty between the Juaneño Band of Mission Indians, Acjachemen Nation and Native Hawaiians of Ka Lāhui Hawai‘i is a direct testament to ongoing self-determining practices outside of the federal government. When I asked another Acjachemen tribal member and Native Studies scholar, Charles Sepulveda, what the treaty meant for them, he stated, “I thought that it was one of the most amazing things that I had ever learned about my tribal nation and their recognition of themselves as being people who could make contemporary treaties with other nations.”⁴¹ Charles Sepulveda is both Tongva and Acjachemen. He is a professor of Native Studies at California State University Polytechnic Pomona. He also stated:

The impact of colonialism has often disallowed tribal nations to see themselves as international actors. Often times we are predisposed to see ourselves in relationship to the U.S. federal government rather than as a Nation who has relationships with other nations, including Indigenous nations. Having two Indigenous nations from occupied lands coming together to negotiate a treaty based on peace and friendship is powerful. It is an act of

⁴¹ Charles Sepulveda (Acjachemen tribal member and Native studies scholar) in discussion with the author, April 2015.

resistance in relation to a genocidal continuum that was created to dispossess us of land and life.⁴²

Sepulveda describes the impact of the treaty as re-recognition of the tribe's ability to be international actors. The impact of colonialism has often influenced how tribes understand themselves. This is often expressed in the belief that Native self-governance can solely be in relationship with the U.S. federal government.

Like Sepulveda, Belardes describes an ongoing relationship between the two Native nations and the similarities between them as Indigenous people with a genealogical relationship to land and resources. He also believes that the treaty is an expression of sovereignty and, correspondingly, a form of resistance. He states:

There is a whole ocean between us, but we are fighting the same battles and we are fighting to protect mother earth. Although we are two worlds apart, we are still going through the same struggles and both fighting, as our ancestors would have too. We are two governments fighting against the government that is supposed to be ruling over us and all other people that is trying to take advantage of you.⁴³

Belardes relates the Juaneño/Acjachemen people with the Native Hawaiians as people who are fighting to protect the land and its resources. He also mentions that both communities are actively working against a government that has dissimilar values. Throughout Belardes' interview he discusses the relations that existed

⁴² Ibid.

between the two groups as Native/Indigenous people, but also references the connection amongst the two Nations as ocean people.⁴⁴ Therefore, Belardes suggests that this is a continued relationship that started much earlier. This is similar to Carolyn Kualii's belief that the treaty represented a continuance of a relationship between Native Hawaiians and California Indians as referenced in the story of the Rainbow Bridge in Chapter Four. Like Kualii, Belardes believes that the relationship between the two communities started much earlier and that the treaty serves as a recent expression of this ongoing relationship.

Charles Sepulveda believes that the treaty is an embodiment of the continued relationships of distinct Native nations who enter into one another's territory:

The treaty is an example of what the tribe is doing, or has done, that can allow us to see concrete things that we can do to work with other people. We can't exist without having a relationship with other people. Having the Hawaiians recognize us as living people is an example of how other communities of color should interact with us. People don't have to be settlers; they can be guests. The Hawaiians acted as guests. Their actions can help provide hope. We can't control what other people do, but this is an

⁴³ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

⁴⁴ Epeli Hau'ofa, "Our Sea of Islands," *The Contemporary Pacific* 6, no. 1, (Spring 1994): 147-161.

example of how Indigenous peoples should enter into each other's lands and territories.⁴⁵

Sepulveda describes a kuleana praxis that other Natives and other people can embody that acknowledges the Native genealogical caretaker of the land where they reside. He acknowledges that his tribe cannot exist without relations with others. He believes that engaging in an Indigenous protocol and praxis of kuleana can be a model for the ways that others can conduct themselves outside of their homelands. They can carry their Indigeneity and embody those understandings. This includes recognition of a host—a Native host that has a continued genealogical responsibility to take care of land and ancestors. Furthermore, Sepulveda makes the poignant case that embodying Indigeneity encompasses a kuleana praxis that distinguishes people as either settlers or as what he refers to as guests. He believes that engaging in protocol, which includes acknowledging a Native host, actively works against Native erasure which is ultimately tied to settler colonialism. Thus, he refers to people who engage in actions that recognize tribal existence and their accompanying sovereignty as guests of the tribe and not as settlers. He believes that the Treaty of Friendship and Mutual Recognition with Ka Lāhui represents the type of acknowledgement and praxis that other people should engage in. These actions can provide hope for both communities as they continue to work against settler colonialism. Therefore, Natives who live outside of their homeland should embody a

⁴⁵ Charles Sepulveda (Acjachemen tribal member and Native Studies scholar) in discussion with the author, April 2015.

praxis of kuleana that works against settler colonialism and works with local Native peoples in ways that acknowledge their continued existence and presence.

Otherwise, they take up land, profit from its resources, and can be seen as Native interlopers.

When I asked a Native Hawaiian community member for her thoughts about the treaty, Kau'i Peralta stated, "I'm so excited about the treaty. I think our community, as a whole needs to start learning about the importance of treaties because that is the crux; that is the piko—center of our whole sovereignty movement.⁴⁶ It's about treaties and there was no treaty of annexation, so what does that mean?"⁴⁷ Peralta references the importance of treaties to the overall Hawaiian sovereignty movement. Additionally, she believes that Native Hawaiians need to know and understand more about the importance of treaties. In my interview with Peralta she also referenced the tradition of treaty making that existed with the Kingdom of Hawai'i.⁴⁸ Peralta also notes that there was not a treaty of annexation and references the fraudulent process of illegally annexing Hawai'i first as a territory and then as a state.⁴⁹ Further articulating the importance of the Treaty of Friendship and Mutual Recognition, Peralta says, "Our community needs to know that we have these relationships and that we have treaties and continue to have treaties. These are things that carry a lot of weight that come with expectations and

⁴⁶ Peralta refers to piko as center in this reference.

⁴⁷ Kau'i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

⁴⁸ Ibid.

rules of engagement and all of those things that go with the treaties. I just think that people don't know that we have one, or that we had as many treaties as we had."⁵⁰ Peralta suggests that Native Hawaiians need to know how the tradition of treaty-making that occurred with the Kingdom has carried on into the present. She also illuminates that the treaty represents ongoing relationships that continue to hold significance.

Since settler colonial economies are not dependent on Native labor, but on Native land, Patrick Wolfe asserts that the primary form of resistance by Natives is ideological.⁵¹ By not having the U.S. government involved, the treaty-making process between Native Hawaiians and the Acjachemen can be seen as an ideological form of resistance. Both Indigenous groups recognize their own inherent rights to self-determination and sovereignty that allow them to engage in decolonial praxis and understand the importance of doing so. Making this point in regards to the treaty, Charles Sepulveda states, "The treaty, as an act of resistance, is based on the love of ourselves as survivors that have continued responsibility to place. The treaty is a symbol of enduring sovereignty and the ability of an unrecognized nation to continue as international actors."⁵² Sepulveda refers to the treaty as an act of resistance that is based on love—a love that is centered in having a continued

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Patrick Wolfe, *Settler Colonialism and The Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (Cassel: New York, 1999), 3.

⁵² Charles Sepulveda (Acjachemen tribal member and Native studies scholar) in discussion with the author, April 2015.

genealogical responsibility to place and to their people. Like Sepulveda, Belardes explains the ideological resistance that is encompassed in the treaty and also describes the treaty as providing hope. He says, "It provides hope in the sense that we can tell the government that we don't need them. It's more telling ourselves too that we are still here. We are who we say we are and don't need for you [federal government] to determine that for us."⁵³ Belardes articulates the meaning of the treaty as an expression of sovereignty that encompasses an ideological affirmation amongst tribal members as having inherent sovereignty.

Analogously, L. Frank Manriquez describes the affirmation of Native survivance the treaty with Ka Lāhui Hawai'i conveyed. Manriquez describes the treaty as a particular relationship, recognition, and connection. She says:

To make a connection and have other people see us and to have other people see what's happening to you. They [Native Hawaiians] didn't think because we didn't have paperwork that we weren't real. So it was just too much cosmic confirmation that, 'yes, you do exist, and no, you were not rubbed out.' The treaty may have meant something else politically over there, but to me it changed how I looked at everything.⁵⁴

Although Manriquez acknowledges that the treaty may have meant something different for the Native Hawaiians from Ka Lāhui Hawai'i, they still express that the

⁵³ Wyatt Belardes (Acjachemen tribal member) in discussion with the author, October 2016.

⁵⁴ L. Frank Manriquez (Tongva and Acjachemen tribal member) in discussion with the author, March 2017.

treaty affirmed their identities as people and as a nation. While many people do not recognize the existence of the Acjachemen and the other tribes that remain federally unrecognized, Manriquez and others noted that the Hawaiians from Ka Lāhui Hawai'i acknowledged their continual existence.

Native Hawaiian Exceptionalism?

Some legal scholars argue that the loss of self-governance in Hawai'i is distinctly different from the loss of American Indian tribal governance through which tribes are legally defined as domestic dependent nations.⁵⁵ Additionally, some scholars regard the Hawaiian situation as a special and even exceptional case. Therefore, the restoration of the Hawaiian Kingdom requires distinct legal solutions. These distinctions need to be considered when discussing Native Hawaiian self-determination. While the history of the Hawaiian Kingdom and its political relationships with the United States and other nations are unique, distinguishing Native Hawaiians in this way could infer a discourse of Native Hawaiian exceptionalism. Specifically, it can produce a discourse in which the Kingdom of Hawai'i is the only Native nation that has been wrongfully colonized by the United States and is in need of decolonization. Furthermore, this discourse of Native Hawaiian exceptionalism does not acknowledge that American Indian tribal relationships with the federal government are also contentious and ongoing. In order not to perpetuate this discourse, the wrongful takeover of the Kingdom of

⁵⁵ These Native Hawaiian legal scholars and academics include: Melody Kapilialoha MacKenzie, Michael Kioni Dudley, and Keoni Kealoha Agard.

Hawai'i and the resulting suppression of Native Hawaiian self-governance needs to be understood within a continuum of U.S. settler colonialism. Thus, Native Hawaiians are one of many Indigenous groups that continue to be affected by U.S. settler colonialism.

Although federal recognition is seen as one possible solution to address ongoing issues involving the suppression of Native Hawaiian self-governance, there is a diversity of opinions on federal recognition within the community. There are some Native Hawaiians that view federal recognition as a solution while others view it as an incomplete and incommensurable resolution to the loss of self-governance. Specifically, opponents of federal recognition believe that the application of the “domestic dependent nation” status to Hawaiians would further entrench them into an oppressive system. While these arguments are valid, the articulations against federal recognition are usually framed around a Native Hawaiian legal exceptionalism.⁵⁶ This legal exceptionalism places the suppression of American Indian tribal nations and their ongoing legal challenges to settler colonialism as a foregone conclusion. Native Hawaiians, according to the exceptionalist argument, continue to have opportunities to be sovereign unlike Indians who are relegated through law as domestic dependent nations.

Scholar Jodi Byrd illustrates this logic through the words of Queen Lili'uokalani when she was actively attempting to restore the Kingdom of Hawai'i.

⁵⁶ Jodi Byrd, *The Transit of Empire: Indigenous Critiques to Colonialism* (Minneapolis: University of Minnesota, 2011), 165.

Queen Lili'uokalani feared that Native Hawaiians would end up like Native Americans whom she viewed as being oppressed and marginalized within U.S. society. Byrd states:

Queen Lili'uokalani worried that her people might be relegated to the condition of American Indians, a condition that Native Hawaiian historian Samuel Manaiakalani Kamakau and the first Hawaiian Historical Association in 1841 described as 'a race without a history.' Justifiably concerned that her people would become voiceless in determining their own future (or past) like 'the aborigines of the American continent,' Queen Liliuokalani herself relegates American Indian nations to a teleological and completed narrative that not only absented the ongoing conditions of colonialism at the time, but negated any possible usable past or future for the indigenous people on the continent.⁵⁷

Scholar Jodi Byrd references Queen Lili'uokalani's anxiety for the potential of Native Hawaiians to end up like American Indians. She notes that this view does not acknowledge the ongoing resistance to colonialism by American Indians because it viewed their colonization as something settled with no legitimate means of undoing. Since Queen Lili'uokalani had a certain understanding of the American Indian tribal nations and their relationship with the U.S. federal government, it is fathomable that she did not want that sort of fate for her nation and people.

⁵⁷ Byrd, *The Transit of Empire*, 162.

Similar to Queen Lili‘uokalani’s understanding of the fate of American Indians, mainstream society understands the loss of Native Hawaiian self-governance as an issue set in the past with no clear way of addressing it contemporarily. Furthermore, akin to what Acjachemen interviewees noted concerning mainstream understandings of Native self-determination, Native Hawaiians have also fallen prey to allegations of reverse discrimination. Such understandings are produced by legal discourses on equality that are reinforced by ideas of “special rights.” Meanwhile, several lawsuits have challenged Native Hawaiian rights and have put the issue to a question for possible solutions within the U.S. nation state. However, the Native Hawaiian sovereignty movement has a diversity of approaches and solutions, with no single solution for colonialism and its ongoing affects.

In the appeal to address ongoing concerns and challenges to ongoing U.S. occupation via settler colonialism in Hawai‘i, some Native Hawaiians continue to articulate a paradigm of Native Hawaiian exceptionalism. While Queen Lili‘uokalani adhered to the teleological finality of American Indians during her effort to restore the Kingdom, some Native Hawaiians currently articulate these same logics. Specifically, these Hawaiians distinguish themselves as distinct from American

Indians. These perceptions have materialized during current dialogues regarding Native Hawaiian federal recognition or reorganization.⁵⁸

While Native Hawaiians continue to argue for the specificity of the loss of Native Hawaiian self-governance, some Hawaiians have articulated the situation as being non-analogous to American Indians through racialized understandings of Indians. Failing to articulate the similarities that exist between various American Indian tribes does not allow for an exploration of the intersections that exist between Native Hawaiians and American Indians. Additionally, it erases the diversity within Native American communities and their continued and varied resistance to U.S. settler colonialism. It relegates American Indian communities to U.S. domestic dependent nationhood status at best, and at worse does not recognize tribal self-governance. Not questioning the legal framework itself and instead arguing the specificities within the legal framework does nothing to call into question the illegality of the theft of tribal lands and resources. Furthermore, it does nothing to highlight the ongoing suppression of Native American tribal governments or that the overall formation of the U.S. nation state is based on principles of Native inhumanity.⁵⁹ It continues to place Hawai'i's loss of self-governance as something that is illegal yet repairable, while situating American Indian tribal nations' loss as something beyond the means of repair.

⁵⁸ For example, the recent bills regarding Native Hawaiians' federal recognition used the terminology of reorganization as a way of differing from American Indian federal recognition in the hopes of appealing to more Native Hawaiians.

As Native Hawaiians continue to look for various ways to challenge U.S. suppression of Native Hawaiian governance, the historic and legal specificity continues to be important in clarifying the Native Hawaiian situation in order to develop legal solutions. Native Hawaiian legal scholar Melody Kapilialoha MacKenzie states:

The claims of Kanaka Maoli have often been analogized to those of Native American groups. While there are many similarities, there also are significant differences. By 1831, the U.S. Supreme Court had held that the Indian nations were 'domestic dependent nations' that possessed, some, but not all, aspects of sovereignty. The Kingdom of Hawai'i, however, possessed all of the attributes of sovereignty and was recognized by the world community of nations. Native Hawaiians were citizens of an organized, self-governing nation whose status as an independent sovereign entity was acknowledged by other nations, including the United States.⁶⁰

Unfortunately, this legal discourse does not challenge or call into question the status of Native Americans tribes as "domestic dependent nations." By solely arguing that Native Hawaiians' loss of self-governance was illegal while not questioning the illegality of other Native nations' loss of self-governance, falls short of fully critiquing ongoing colonialism and the legal apparatuses. Therefore, according to

⁵⁹ The shifting legal interpretations and decisions highlight the ambiguous nature of tribal self-governance within Federal Indian law.

the logic of Native Hawaiian exceptionalism, the construction of Native Americans as wards of the federal government is accurate while it is not accurate for Native Hawaiians.

Although Hawai'i was considered part of the family of nations and was therefore recognized on an international level, the Kingdom of Hawai'i was not restored. Instead, it was illegally annexed and eventually became a territory and later a state. These processes of acquiring Hawai'i as a territory and eventually a state in 1959 were illegal under both domestic and international law.⁶¹ We can apply the principles of the Doctrine of Discovery and the ensuing logics of Manifest Destiny to the continued occupation and possession of Hawai'i. Despite recognition of the Kingdom of Hawai'i on an international level, Hawai'i was non-white and specifically Indigenous, and therefore their self-governance was legally disregarded. Hawai'i's land and government were not restored, but rather fell into the control of Western business interests who staged a military coup with the assistance of the U.S. military. Eventually, the business interests of the Western leaders who assumed political control of Hawai'i converged with the military and economic interests of the United States, which ultimately led to the illegal annexation and statehood.

⁶⁰ Melody Kapilialoha MacKenzie, "Native Hawaiians and U.S. Law," in *Native Hawaiian Law A Treatise*, ed. Melody Kapilialoha MacKenzie with Susan K. Serrano and D. Kapua'ala Sprout (Honolulu: Kamehameha, 2015), 267.

⁶¹ Hawai'i was placed on a list of non-self-governing territories for decolonization. Before a tribunal could take place, the U.S. held the statehood vote, but the only two choices were remaining a territory or becoming a state. Furthermore, the general population was allowed to vote even though Native Hawaiians were the only ones who stood to lose self-governance.

Therefore, the continued occupation of Hawai'i is part of a larger genealogy of U.S. colonization that relied on similar principles and logics.

Anti-Indian(ness)

While it is important to understand the uniqueness of the loss of self-governance for Native Hawaiians, we need to also understand the illegal takeover of Hawai'i within the larger trajectory of Manifest Destiny and the Doctrine of Discovery. As Native Studies scholar Jodi Byrd states:

Taking as my entry point, then, the current debates over federal recognition for Native Hawaiians that continue to play out in the local politics of Hawai'i and that have stretched into U.S. continental presidential and congressional elections, I interrogate how the United States has deployed 'Indianness' as a function of colonial incorporation at the same time that I consider the ways in which resistance to those discourses of 'Indianness' further entrench U.S. control over American Indian nations.⁶²

Further, Byrd describes the way Indianness "functions as [an] imperial sign and infection within the contact zones of what have become, through colonization and occupation, 'U.S. indigeneities.'⁶³ To Hawaiians, Indianness represents a discourse of incorporation and in particular of U.S. incorporation. Byrd elaborates and explains that Indianness represents the finality of U.S. colonialism with no possibility of its undoing.

⁶² Byrd, *The Transit of Empire*, 148.

⁶³ *Ibid.*

Discussions of recognition and Indianness came to a head during the summer of 2014 when the U.S. Department of the Interior (DOI) held a series of public hearings known as the Advanced Notice of Proposed Rulemaking (ANPRM). The hearings, according to the DOI, solicited consultations to “help determine whether the Department develops a formal, administrative procedure for reestablishing an official government-to-government relationship with the Native Hawaiian community.”⁶⁴ The DOI hearings that were held on the mainland were substantially different from the ones held in Hawai‘i. On the mainland, the DOI primarily consulted federally recognized tribes who had previously objected, or expressed concerns, about extending recognition to Native Hawaiians.⁶⁵ On the other hand, the two meetings that were held in California only came about because of community members, like Kau‘i Peralta, who insisted that Native Hawaiians in California should also have a forum. However, the DOI did not send representatives to attend the two

⁶⁴ "Interior Considers Procedures to Reestablish a Government-to-Government Relationship with the Native Hawaiian Community," *U.S. Department of the Interior*, June 18, 2014, <https://www.doi.gov/news/pressreleases/interior-considers-procedures-to-reestablish-a-government-to-government-relationship-with-the-native-hawaiian-community>.

⁶⁵ This can also be seen as provoking some of the tensions between Native Hawaiians and Native Americans. Yet, both entities share common concerns over federal recognition, as evidenced in the interviews I conducted. Indians from recognized tribes have also warned Native Hawaiians of the pitfalls of federal recognition. For example, the late Russel Means of the Oglala Lakota visited Hawaii in 2001 and warned through a recitation of what his grandfather had told him, “Grandson, all of this land someday will not be yours. That’s the reality of federal recognition. Someday, none of this will be yours. Welcome to America.” Imani Altemus-Williams, *Toward Hawaiian Independence, December 7, 2015*, <https://intercontinentalcry.org/towards-hawaiian-independence/>.

meetings in California and no official transcriptions of these meetings took place as these meetings were considered unofficial.

Explaining what she perceived to be anti-Indian behavior by Native Hawaiians at the various DOI hearings, Native Hawaiian community member Carolyn Kualii says:

Now, you know, it's like many Hawaiians don't even want to acknowledge American Indians because they don't want to be like American Indians. That is the mantra now. I'm a Hawaiian, which in some ways has hurt me because of the work and my relationships to Indians. I've seen some very ignorant statements made by Hawaiians and I consider them to be well educated. Like that photograph that went around on Facebook with Colette Machado with a Plains Indian bonnet and calling her something like Chief Lie in the Safe.⁶⁶

Kualii references some of the perceived anti-Indian behavior that was displayed by Native Hawaiians. In particular, she mentions a meme of Colette Machado wearing a Native American headdress. At the time, Machado was an OHA trustee and supported the process of reestablishing a government-to government relationship via federal recognition. Kualii references being hurt by what Hawaiians were doing in their criticism of federal recognition that connected to displays of anti-Indianness. She further articulates these feelings of frustration, stating:

⁶⁶ Carolyn Kualii (Native Hawaiian educator) in discussion with the author, March 2014. Unfortunately, I could not uncover the meme even though I did see it myself being circulated on Facebook.

Finally, I said this is wrong. American Indians are fighting about sports using Indian mascots. Why are we as Indigenous people putting a headdress on someone to put her down? And I said, number one, Hawaiians are really ignorant because that headdress represents something very spiritual and very powerful in leadership. I feel like we can say why we don't want to live on reservations without being disrespectful to Indian people who are very connected to their land. No, it's not trash to them. Sacred sites and their ancestors are buried there. Just things like that irks me.⁶⁷

Kuali'i describes her feelings about Hawaiians who were not in favor of federal recognition, but who expressed their views against federal recognition by making anti-Indian remarks. She expresses this in relation to Indians fighting issues against Native appropriation and sports mascots.⁶⁸ She also states that she did not understand how Hawaiians, as Indigenous people who have similar ideas about something being sacred, could participate in the abuse of another Indigenous people's culture.

Other analyses of the comments made about Indians by Native Hawaiians during the time period of the Department of Interior hearings were that the comments were expressing how the two situations are dissimilar and not analogous. Discussing the comments about Indians made by Hawaiians, Kau'i Peralta elaborates:

⁶⁷ Ibid.

⁶⁸ I could not procure the meme, but did see it during the time it was circulating.

I did see that and I did hear more along the lines of not being Indian. I really just took it, as you can't compare us. We are not Indians and our situation are totally different and that there is no comparison.⁶⁹

Kau'i Peralta also recalls hearing comments about Indians during the time of hearings with the Department of Interior. Unlike Kualii'i, she took these comments by Hawaiians as expressing that the Hawaiian case was not analogous to that of Native Americans. She then hosted a session in the Bay Area in the fall of 2014 for Native Hawaiians to express their views regarding federal recognition and she reported that no one in attendance at her meeting made any such comments.⁷⁰ She does reference other hearings where she believed that Native Americans were present from both recognized and unrecognized tribes. She recalls:

It depends on where you were and whoever was hosting [the session], but they did have sessions where they had a Native American member of a tribe that was federally recognized, and then had members of tribes that were not federally recognized [present]. Again, I'm thinking to myself why are we putting ourselves in this situation and doing that. I didn't understand that.⁷¹

Peralta recalls that there were some sessions attended by Native Americans both from federally recognized tribes and unrecognized tribes. Tribal members attending the DOI hearings shared their experiences in relation to federal recognition. The

⁶⁹ Kau'i Peralta (Native Hawaiian educator) in discussion with the author, March 2017.

⁷⁰ Ibid.

⁷¹ Ibid.

majority of Native Hawaiians that attended the DOI hearings that were televised in Hawai'i were opposed to federal recognition. However, in 2016 the DOI issued a Final Rule that would enable the (re)establishment of a government-to-government relationship with the Native Hawaiian community.⁷²

The Final Rule according to the Department of the Interior's 43 CFR Part 50, "sets forth an administrative procedure and criteria that the Secretary would use if the Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States. The rule does not provide a process for reorganizing a Native Hawaiian government. The decision to reorganize a Native Hawaiian government and to establish a formal government-to-government relationship is for the Native Hawaiian community to make as an exercise of self-determination."⁷³ Furthermore, the DOI argues that Congress has already acknowledged, or recognized, Native Hawaiians through, "over 150 enactments. This unique special political and trust relationship exists even though Native Hawaiians have not had an organized government since the overthrow of the Kingdom of Hawai'i in 1893."⁷⁴ The Final Rule allows the DOI to

⁷² "Interior Department Finalizes Pathway to Reestablish a Formal Government-to-Government Relationship with the Native Hawaiian Community," *U.S. Department of the Interior*, September 23, 2016, accessed July 8, 2017, <https://www.doi.gov/pressreleases/interior-department-finalizes-pathway-reestablish-formal-government-government>.

⁷³ Federal Register, Vol. 81, No. 199, October 14, 2016. Rules and Regulations. Department of the Interior. Office of the Secretary. 43 CFR Part 50. "Procedures for Reestablishing a Formal Government-to-Government Relationship With the Native Hawaiian Community."

⁷⁴ Ibid.

form a “process and criteria for reestablishing a formal government-to-government relationship that would enable a reorganized Native Hawaiian government to represent the Native Hawaiian community and conduct government-to-government relations with the United States under the Constitution and applicable Federal law.”⁷⁵ The Hawaiian government once recognized through the process outlined in section 50.10 “would have virtually the same legal basis and structure as the formal government-to-government relationship between the United States and federally-recognized tribes in the continental United States. Accordingly, the government-to-government relationship with the Native Hawaiian Governing Entity would have very different characteristics from the government-to-government relationship that formerly existed with the Kingdom of Hawai‘i.”⁷⁶ This difference is mainly the way in which Hawai‘i would continue to be within the sovereign boundaries of the United States and not as a decolonized territory. Instead, Federal Indian law would apply, allowing the U.S. to affect its legal fictions of plenary power over the government of Hawaii in the same way they have with tribal nations. According to the DOI, “The Native Hawaiian Governing Entity would remain subject to the same authority of Congress and the United States to which federally-recognized tribes in the continental United States are subject and would remain ineligible for Federal Indian programs, services, and benefits provided to Indian tribes in the continental United States and their members (including funding from the Bureau of Indian

⁷⁵ Ibid.

⁷⁶ Ibid.

Affairs and the Indian Health Service) unless Congress expressly declared otherwise.”⁷⁷

Following the decision, a Huffington Post article entitled “Feds Lay Out ‘Pathway’ for Native Hawaiian Self-Governance,” described a press conference held at Iolani Palace by Hawaiians in opposition to the decision and stated, “[the] DOI invented a process to create a Native Hawaiian Tribe.”⁷⁸ While some Native Hawaiians express their views of not wanting to be incorporated into the United States, some of their responses in opposition to U.S. federal recognition can be read as a form of anti-Indianness.⁷⁹ Being Indian in this context further represents a loss to Native self-determination. Although some Native Hawaiians note the exclusivity of Hawaiian history, and in particular the loss of Hawaiian self-governance as exceptional, tribal governments should also be given the same consideration.⁸⁰

⁷⁷ Ibid.

⁷⁸ Chad Blair, “Feds Lay Out ‘Pathway’ to Native Hawaiian Self-Governance,” *Civil Beat*, September 24, 2016, accessed July 8, 2017, http://www.huffingtonpost.com/entry/native-hawaiian-self-governance-doi_us_57e59380e4b08d73b8315d07.

⁷⁹ Jodi Byrd, *The Transit of Empire: Indigenous Critiques to Colonialism* (Minneapolis: University of Minnesota, 2011).

⁸⁰ Many Native Hawaiians who were against federal recognition expressed the exclusivity of the Hawaiian situation while simultaneously evoking anti-Indian sentiments during testimonies at the Department of Interior Hearings in Hawaii in the summer of 2014. An example of this can be found from Mililani Trask’s testimony: Mililani Trask, “Mililani Trask - Dept. of Interior hearing in Keaukaha (July 2, 2014),” YouTube video, 4:34, posted by Big Island Video News, July 5, 2014, <https://www.youtube.com/watch?v=nRf44D5ytAI>.

While the history of Hawai'i is unique, so is that of each tribal nation and their relationships or lack thereof with the United States.⁸¹

Decolonial Acts and Relations Among Native Nations

Tribal communities represent diverse nations each possessing particular religious, social, and political views. Currently there are 567 federally recognized tribes. This number has remained the same since May 2016 when the Pamunky Tribe of Virginia was recognized.⁸² Additionally, there are approximately 400 unrecognized tribes.⁸³ Each of these communities has diverse views in regard to tribal sovereignty and their relationships to the U.S. federal government. While some have hope for what federal recognition can achieve, others are not concerned with a status "granted" by the United States and consider themselves to be tribal and Indigenous without being "recognized." Furthermore, others believe that having any type of formalized designation granted by the United States leads to a

⁸¹ The DOI's move to recognize a Native Hawaiian government follows a lengthy history of the failed Akaka Bill. The purpose of this bill was similarly to have a process to recognize a Native Hawaiian government. It was championed by Senator Danial Akaka of Hawai'i. The DOI Final Rule ended the legislative hurdles faced by the Akaka Bill. For more on the Akaka Bill see: Kēhaulani Kauanui, "Precarious Positions: Native Hawaiians and U.S. Federal Recognition," *The Contemporary Pacific* 17, no. 1 (Spring 2005): 1-27.

⁸² "Bureau of Indian Affairs Releases Annual Listing of Recognized Tribes," *Indianz.com*, January, 18, 2017, <http://www.indianz.com/News/2017/01/18/bureau-of-indian-affairs-releases-annual.asp>.

⁸³ Gale Courey Toensing, "Federal Recognition Process: A Culture of Neglect," *Indian Country Today*, January 23, 2013, <https://indiancountrymedianetwork.com/news/politics/federal-recognition-process-a-culture-of-neglect/>.

relationship with the federal government that will always benefit the United States. These relationships create dynamics of a forced dependency. Moreover, Indigenous communities who are not federally recognized continue to be Indigenous despite their lack of formal designation. The lack of recognition does not make them cease to be Native and/or Indigenous. This chapter highlighted tribal communities who are federally unrecognized and continue to operate and express themselves as Native nations. These expressions of Native sovereignty include everyday acts and outright “refusals,” while also including Native nations’ engagement and ratification of treaties with other Native nations, the practice of Indigenous spirituality, the protection of sacred sites, and the act of (re)learning and utilizing Native languages.

While many Indigenous communities face a plethora of factors that push them out of their Native homelands, Native communities continue to be resilient and are creating new social and political futures that maintain Native culture and life. The Treaty of Friendship and Mutual Recognition between the Juaneño Band of Mission Indians, Acjachemen Nation, and Native Hawaiians from Ka Lāhui Hawai‘i is one example of the cultural protocol and acknowledgement that expresses self-determination and sovereignty outside of the state. Referencing African scholar Ngugi Wa Thiong’o’s work on the decolonial mindset, Mililani Trask elaborates on the treaty. She says:

Thiongo instructs us as we begin to exercise our human rights, our cultural rights and our rights of self-determination, we begin first by decolonizing our minds. This action in treaty-making between Ka Lāhui and Juaneño indicates

that these two nations have passed that first threshold. When you see treaty-making between and among Indigenous peoples and nations, you can see that they have decolonized their minds. Those who only see treaty-making under American and through America, that's a sign of a colonized mind.⁸⁴

Trask believes that Native nations can perform decolonial acts by engaging in treaty-making amongst Native nations. She believes this takes a decolonial mindset, because you have to believe in the authority and inherent sovereignty of a Native nation in order to do so. Colonialism and settler colonialism have suppressed self-determination and sovereignty of Native nations. Thus, reasserting Native self-governance is decolonial in nature because they are not relying on a colonial government or asking for permission.

For the Acjachemen, the Treaty of Friendship and Mutual Recognition with Ka Lāhui Hawai'i provides a form of Indigenous recognition whereas federal recognition has been continuously denied. The treaty and its corresponding relationship also offer allies and new cooperatives to assist with the maintenance of culture and sacred sites. Matias Belardes, Acjachemen tribal chair and son to the late David Belardes, explains the challenges of reaching the full potential that the cooperatives could offer the tribe. He says, "It was good for two Indigenous groups to recognize each other, but probably more needs to be done on that, but since more needs to be done within the tribe, it makes it hard, but more should be done, but we

⁸⁴ Mililani Trask (Native Hawaiian legal scholar) in discussion with the author, July 2015.

have remained busy with our own group to build upon it.”⁸⁵ Matias Belardes believes that since the tribe has remained internally busy, the two groups have not reached their full potential in assisting and collaborating with each other. Nonetheless, he along with other Acjachemen tribal members expressed the importance of another Native nation recognizing their existence. In Southern California, this is especially significant given the revisionist history of the mission system that romanticizes a Spanish fantasy past and treats native Acjachemen as extinct. As more people move to Southern California, it is vital to center Native life and build relationships amongst Indigenous communities that directly honor people of the land. This includes Native Hawaiians living in California and broadly in the diaspora. Native Hawaiians living outside of their homeland can still embody Native Hawaiian values of kuleana, ea, pono, and lāhui. These understandings of Native Hawaiian epistemologies do not have to be restricted within the homeland; rather they need to be embodied across time and place. There is much potential in the relationships that can be built across Indigenous communities. These relationships can strengthen individual groups and can assist with cooperatives and collaborations that are both needed and necessary. Furthermore, these embodied understandings of Native Hawaiian epistemologies can be viewed as decolonial acts because they do not buy into the erasure of Native nations, but instead express Native nationhood. Thus, Native Hawaiians living outside of their homeland

⁸⁵ Wyatt Belardes and Josh Little, “Hawaiian and Native American Solidarity” (zine, ETST 144: Race and Indigeneity in Hawaii taught by Professor Maile Arvin,

including in California should acknowledge, work with, and support local Native hosts wherever they reside; as should members of tribal nations living in Hawai'i. As Carolyn Kualii says, "All Hawaiians should be mindful of where they are. All have a kuleana to be respectful especially those who are visitors to somewhere else."⁸⁶

University of California, Riverside, 2016).

⁸⁶ Carolyn Kualii (Native Hawaiian educator) in discussion with the author, March 2015.

CONCLUSION

Ke ho'i a'e la ka 'ōpua i Awalua

The rain clouds are returning to Awalua

Said of a return to the source

-Mary Kawena Pukui

'Ōlelo No'eau, Hawaiian Proverbs and Poetical Sayings¹

Returning to the 'ōlelo no'eau by Mary Pukui featured at the beginning of this dissertation, I would like to reflect on the idea of returning to the source. Native Hawaiians engage in protocol, both in the past as well as in the present, because it is considered important knowledge that has been passed down by our kūpuna (elders/ancestors). One example of protocol is the acknowledgement and respect given to the original people of the land. This can clearly be observed within the values of kuleana, ea, pono, and lāhui. Moreover, before we gather plants for na lapa'au (traditional medicine) or implements for hula, or enter a sacred site, we have protocol. As our kūpuna once did, we continue these traditions, reaffirming us as na kanaka 'ōiwi. Native Hawaiian scholar Ty Kawika Tengan believes that in order for Native Hawaiians to return to the source, it is imperative to center our own ideas and philosophies. He says:

I think it's one of the things of getting back to our own terms and concepts. It help[s] to remind us, rather than kind of accepting those discourses. In a lot

¹ Mary Kawena Pukui, *'Ōlelo Noe'au: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum Press, 1993), 183.

of ways, [we need] to get back to the ‘ōlelo—language. And what’s in the ‘ōlelo in our own words, and in our own mo‘ōlelo—stories.²

Tengan thinks that in order for Hawaiians to develop a healthy Hawaiian society, they must remain Hawaiian. Although colonialism and settler colonialism have built a society premised on Native erasure, he believes that the answers to societal and community issues will be found within Native Hawaiian language, culture, and traditions. Although he believes that it can be challenging for Native Hawaiians who are away from home and may not have access to Hawaiian language resources as they would back home, he believes that it can be done, and that it continues to be done. He says, “Through the writings of people who were kind of trying to open up the insights that comes from the language. Even if individuals themselves may not speak, they can read the works of people who do and try to draw on that as an alternative way of talking and thinking.”³ Tengan refers to a type of embodiment of Native Hawaiian culture and values that has been discussed throughout this dissertation. Native scholar Leanne Simpson highlights similar sentiments regarding decolonization. She describes this process as an Indigenous resurgence:

Building diverse, nation-culture-based resurgences means significantly reinvesting in our own ways of being: regenerating our political and intellectual traditions; articulating and living our legal traditions; language learning; creating and using our artistic and performance based traditions.

² Ty Kāwika Tengan (Native Hawaiian scholar) in discussion with the author, June 2014.

[Decolonization] requires us to reclaim the very best practices of our traditional cultures, knowledge systems and lifeways in the dynamic, fluid, compassionate, respectful context in which they were originally generated.⁴

As indicated, both Tengan and Leanne Simpson argue for a reinvestment and grounding in our own languages and cultural traditions in order to decolonize and implement healthy relevant futures for our peoples.

Native Hawaiians continue this ancestral knowledge within the homeland and are engaging in ways to maintain these traditions while living outside Hawai'i.⁵ For example, to enter someone else's land without asking for permission or following protocol would not only be disrespectful, but would reaffirm a Western-dominant lifestyle that seeks to constantly remove and erase Native people from their land. These actions could lead us to be Native interlopers. Acjachemen and Tongva community artist and author L. Frank discusses a significant Native protocol. She states, "Every Indian knows that there is protocol and you do not go into someone else's land and do something without asking permission from the Natives of that land."⁶ To disrupt the settler colonial logics that are meant to eradicate and erase Indigenous ways of life, trans-Indigenous collaborations, as exemplified by treaty-making, demonstrate intentions that surpass a sole

³ Ibid.

⁴ Leanne Simpson as quoted in: Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 154.

⁵ Many others are active in revitalizing and reclaiming culture and language.

community's survival, and create a larger shared community of Indigenous survivance in California and Hawai'i. Moreover, for diasporic Native Hawaiians it is imperative for them to be engaged in a kuleana praxis. This would encompass understanding our role and function while outside of the homeland and would require recognition of the genealogical caretakers of the land wherever Native Hawaiians reside. By not engaging in these values, we fail to continue and embody our own cultural and spiritual traditions that define us as Indigenous people and specifically as Native Hawaiian. We also become complicit within the structures of settler colonialism that are simultaneously working toward Native Hawaiian erasure. Therefore, we should not only embody a praxis of kuleana, but also acknowledge the Native Hawaiian values of ea, pono, and lāhui that are of central importance for a healthy Hawaiian nation.

Elaborating upon the Native Hawaiian value of ea, for instance, Leilani Basham articulates ea as:

a political independence and is often translated as 'sovereignty.' It also carries the meanings of life, breath, and emergence, among other things. A shared characteristic of each of the translations of ea is an active state of being. Like breathing, ea cannot be achieved or possessed; it requires constant action day after day, generation after generation.⁷

⁶ "The L. Frank Project," YouTube video, 4:01, posted by "BaciPix," July 31, 2008, <https://www.youtube.com/watch?v=KA32en5G7lM>.

⁷ Noelani Goodyear-Ka'ōpua, "Reproducing the Ropes of Resistance: Hawaiian Studies Methodologies," in *Kanaka 'Ōiwi Methodologies: Mo'olelo and Metaphor*, ed.

In other words, Native Hawaiians living in the diaspora are a part of the call to actively work toward ea. Hawaiians in California especially need to actively work against settler colonial logics that seek native erasure including their own. This work can begin with an acknowledgement of an Indigenous host and of their land as a living entity. Working toward ea requires a recognition that these actions are a part of Native Hawaiian culture and protocol. Grounding actions within this understanding would empower Native Hawaiians in the diaspora in understanding that their actions toward ea constitute an indigenous resurgence.

By examining the Treaty of Friendship and Mutual Recognition between the Juaneño Band of Mission Indians, Acjachemen Nation, and Ka Lāhui Hawai‘i as a case study, this dissertation demonstrates the importance of engaging in a praxis of kuleana that acknowledges responsibilities to land held by other Native communities. Self-defining our groups and the rights to do so along with protocol is a direct expression of ea. As the Native Hawaiian teacher and community activist ‘Īmai Winchester explains:

Ea, I think, is the full realization that our purpose here is greater than owning material wealth, that our purpose needs to be aligned with aloha, pono, and mālama ‘āina, with finding some sort of the balance in our interactions between ourselves and nature, between one another. The push for sovereignty and independence is much about the interdependence and the

Katrina-Ann R. Kapā‘anaokalāokeola Nākoa Oliveira and Erin Kahunawaika‘ala Wright (Honolulu: University of Hawai‘i Press, 2016), 9.

realizations of it. The emphasis that we place on individual success is going to start to become overshadowed by the need for interdependent cooperation.⁸

In this way, Winchester articulates ea as an interdependence with land and as a cooperation between people. These understandings need to be embodied while outside of Hawai'i. Instead of pursuing access to individual rights, Native Hawaiians in the diaspora need to acknowledge a kuleana to Native hosts. By doing so, we engage in a form of interdependence that is strived for within ea. These actions encompassed in kuleana not only align with our community's goal of being pono and in balance with the people and land around us, but also needs to be actively expressed for the greater lāhui. Goodyear-Ka'ōpua defines pono as, "the search for and maintenance of harmonious relationships, justice, and healing."⁹ With this understanding, we can actively work against the logics of individual rights, which are the backbone of settler individualism. Failing to do so, we advance the logics and structures of Native erasure and fail to engage in a protocol and praxis that are integral to the maintenance of Native Hawaiian culture.

The treaty between the Acjachemen and Ka Lāhui Hawai'i affirmed Native nationhood and the diplomatic process of treaty-making as a contemporary expression of Indigenous statecraft. Treaties amongst Native nations serve as important alternatives to settler state structures of recognition that ultimately are meant to assert control over Native communities. Although federal recognition

⁸ Ibid., 11.

⁹ Ibid.,18.

provides material benefits, including certain “legal protections” and often land, many of the interviewees have stated that these benefits all come at a price. Therefore, continued collaborations between Native communities including the treaty are assertions of an Indigenous refusal. These refusals center Native life. Instead of seeking permission or recognition from the settler colonial government, these collaborations seek permission amongst Native communities which simultaneously provide a recognition of each other.

Trans-Indigenous collaborations including those between Ka Lāhui Hawai‘i and the Juaneño Band of Mission Indians, Acjachemen Nation, demonstrate how we can align our ‘aho, or cords, together in order to have greater ropes of resistance.¹⁰ This resistance supports land, resources, and self-governance that recognize sacred sites, and that live with Papa and Wākea in a reciprocal manner. As Maori scholar Linda Tuhiwai Smith stated:

What is more important than what alternatives indigenous peoples offer the world is what alternatives indigenous people offer each other. To be able to share, to have something worth sharing, gives dignity to the giver. To accept a gift and to reciprocate gives dignity to the receiver. To create something new through that process of sharing is to recreate the old, to reconnect relationships and to recreate our humanness.”¹¹

¹⁰ Goodyear-Ka‘ōpua, “Reproducing the Ropes of Resistance: Hawaiian Studies Methodologies,” 6.

¹¹ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 2012), 110.

Therefore, trans-Indigenous collaborations provide the process that allows us to honor our ancestors by working with another community in our shared sense of responsibility to not only ensure our survival as an individual group, but as a larger community that wants to ensure life for the next generations. This reaffirms who we are as Indigenous people and provides better clarification to the question posed by Osorio at the beginning of this dissertation, asking, “who the hell are we?”¹²

As more Hawaiians find themselves living in California, it is vital to work against logics that define being Native Hawaiian or Indigenous as possible only if they remain on the ‘āina.¹³ These logics perpetuate static notions of Native people as unable to address challenges in a constantly changing world. Pacific scholars J. Kēhaulani Kauanui and Vince Diaz remind us how Pacific Islanders and Native people are both rooted and routed. They state, “Roots and their identities and traditions are also routed both metaphorically and literally, as in the sense of moving islands. This routedness is also present in native discourses on the inseparability of land and blood.”¹⁴ Instead, Native Hawaiians in the diaspora are expressing a protocol that acknowledges their Indigenous hosts that have a direct genealogical relationship to land.¹⁵ Therefore, diasporic Natives can personify Indigeneity through a centering that does not erase other Natives, but instead

¹² Goodyear-Ka‘ōpua, “Reproducing the Ropes of Resistance: Hawaiian Studies Methodologies,” 6.

¹³ Vicente Diaz and J Kēhaulani Kauanui, “Native Pacific Cultural Studies on the Edge,” *The Contemporary Pacific* 13 no. 2 (2000): 315-342.

¹⁴ *Ibid.*, 319.

directly acknowledges them. This acknowledgement as a practice of protocol reflects a resilience and a continuance of Native epistemology. Native Hawaiian scholar Manulani Aluli-Meyer discusses the significance of protocol for Native Hawaiians, stating, “Given the nature of protocol, or the rituals for how one enters the ocean and forest, or even our neighbor’s yard, is it any wonder that Hawaiians have something to say about intention?”¹⁶ Indigenous protocols are a direct expression of intention. Protocols are reminders of the way that Indigenous people believe they should and want to live in the world.

The treaty between the Native Hawaiians of Ka Lāhui Hawai‘i and the Juaneño not only demonstrates the importance of continuing self-determining practices outside of the state, but also provides a way for diasporic Kanaka ‘Ōiwi to reaffirm themselves by recognizing their Indigenous hosts. This is one way to honor kūpuna knowledge and directly disrupt logics and systems that are meant to continually erase Indigenous people. Poignantly, Pacific Scholar Epeli Hau‘ofa writes, “Oceania is vast, Oceania is expanding...Oceania is us. We are the sea, we are the ocean, we must wake up to this ancient truth and together use it to overturn all hegemonic views that aim to confine us again, physically and psychologically, in the tiny spaces that we have resisted accepting as our sole appointed places, and from

¹⁵ There are many other examples of trans-Indigenous collaborations. They have yet to be written about, but many exist.

¹⁶ Manulani Meyer, *Ho‘oulu: Our Time Becoming* (Honolulu: Ai Pohaku Press, 2003), 53.

which we recently liberated ourselves.”¹⁷ As our ancestors once did, our wa‘a (canoes) continue to take us across oceans, lands, and islands, including Turtle Island of North America. We carry our traditions and protocols and engage in relationships that reaffirm our values as Kānaka ‘Ōiwi, or broadly as Indigenous people. If we engage in these understandings and relationships, we can (re)define, (re)envision and enlarge the world as we know it, providing an array of decolonial possibilities where Indigenous knowledges are at the center and are direct expressions of Indigenous survivance. As Leanne Simpson wrote in *Dancing on Turtle’s Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence*,

The starting with the Indigenous theoretical frameworks then is different than from within western theories: the spiritual world is alive and influencing; colonialism is contested; and storytelling, or ‘narrative imagination,’ is a tool to vision other existences outside of the current ones by critiquing and analyzing the current state of affairs, but also by dreaming and visioning other realities.¹⁸

From Mauna Kea, Oak Flats, Shasta River, and Standing Rock, Indigenous people continue to form trans-Indigenous collaborations in their resistance to settler states and for their collective survivance. These collaborations embody acts of Indigenous refusals and resurgence. These actions reaffirm individual self-

¹⁷ Epeli Hau‘ofa, “Our Sea of Islands,” *The Contemporary Pacific* 6, no. 1 (Spring 1994): 147–161.

¹⁸ Leanne Simpson, *Dancing on Our Turtle’s Back: Stories of Nishnaabeg Re-creation, Resurgence and a New Emergence* (Arp Books: Winnipeg, 2011), 40.

determining Native communities, while building larger trans-Indigenous communities, and can provide models for decolonization. As Leanne Simpson reminds us, although these examples of Indigenous resurgence can last for short periods of time, they also can give us, “a glimpse of a decolonized contemporary reality; [that] is mirroring of what we can become.”¹⁹ As argued throughout this dissertation, Native Hawaiians and the Acjachemen collaborated to build collective strategies for survivance. These relationships exemplify Indigenous self-governance and inherent responsibilities to land that may never be acknowledged by colonial structures of federal recognition. For Native Hawaiians, this can reaffirm the core values that reinforce the life and land of the lāhui.

Taiiaki Alfred, Kahnawake Mohawk scholar and educator, reminds us in *Wasase* about the urgency of this process:

Our fight is no different from previous generations; it is a struggle to defend the lands, the communities, and the languages that are our heritage and our future, but the new imperialism that we experience has a special character. The close danger of a technological empire and co-optation is the insidious effort of the Settler society to erase us from the cultural and political landscape of the countries they have invaded and now claim as their own. Survival demands that we act on the love we have for this land and our people. This is the counter-imperative to empire. Our power is a courageous

¹⁹ Ibid., 98.

love. Our fight is to recognize, to expose, and to ultimately overcome the defining features of imperialism on a personal and collective level.²⁰

Although the Treaty of Friendship and Mutual Recognition between the Acjachemen and Ka Lāhui Hawai'i is one example, there are many waiting to be documented or (re)told. As Carolyn Kualii (re)told the story of the Rainbow Bridge and her belief that her work in California Indian Country was a continuance of the relationships between Native Hawaiians and California Indians, we are reminded of kuleana and in particular a praxis of kuleana that is necessary for all of us to be engaged in an Indigenous resurgence.

²⁰ Taiaiake Alfred, *Wasase: Indigenous Pathways of Action and Freedom* (Toronto: University of Toronto Press, 2005), 36.

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