

Responses to J. Kēhaulani Kauanui

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Law and Lawlessness in Hawai‘i

Professor Kauanui’s work on Hawaiian indigenous rights claims highlights how law sanctions violent processes of settler colonialism and imperial expansion in democratic states. For example, legal recognition of Hawaii as an autonomous state within a nation-state, a proposal put forth by certain segments of Hawaiian independence movements, furthers the U.S. settler-colonial occupation of Hawai‘i by coercively imposing an alien system of legal rule on subjects that did not initially consent to be bound by the laws of the U.S. Further, in *Paradoxes of Hawaiian Sovereignty: Land, Sex, and the Colonial Politics of State Nationalism* (2018), Kauanui notes that the notion of “lawlessness” was racially ascribed to indigenous peoples who were thought to be pre-modern, uncivilized, and incapable of governing themselves through law (52). The law is also implicated in violence in its erasure of Hawaiian indigeneity. Kauanui claims, for example, that the legal categorization of Hawaiians as “Asian Pacific” renders them “immigrants” within the U.S. before the law.¹ Kauanui further notes that the “blood quantum rule” designates a certain percentage as constituting full Hawaiian-ness (100). In doing so, this classification renders certain native Hawaiians both on the island and in the diaspora invisible as Hawaiian indigenous subjects.

How does law relate to Hawaiian politics as it historically unfolded? Kauanui charts the progression of Hawai‘i as a “multi-tribal” state, to a kingdom, to a U.S. colony, and finally as a 50th U.S. state, and she highlights the fault-lines within indigenous and native rights movements during each stage. Existing U.S. law, however, does not have a framework for understanding this complex debate over recognition and indigeneity. One reason for this is the primacy of U.S. civil rights law and Native American tribal law in determining equality for minority groups in the U.S. Kauanui articulates this insight succinctly in relation to Hawaiian politics: “neither civil rights nor indigenous rights under U.S. federal law can account for the full Hawaiian sovereignty claim to national statehood.”² Both ideas obliterate “unadjudicated claims to “former crown and government lands of the Kingdom of Hawai‘i.”³ Both reject the full extent of Hawaiian self-rule. U.S. civil rights efforts for equality before the law and the subsequent legislation that led to equal voting rights and employment opportunities cannot account for indigenous specific rights claims. Indigeneity, unlike race, is tied to an original claim to rootedness in the land. Thus, Kauanui’s analysis suggests that legal recognition of Hawaiian indigeneity through U.S. civil rights efforts is insufficient to address the full extent of the myriad exclusions of Hawaiian claims for independence from existing U.S. jurisprudence.

Kauanui’s analysis of international law suggests that international agreements both inhibit and enable certain indigenous rights-claims. She suggests that international legal

¹ J. Kēhaulani Kauanui, “Colonialism in Equality: Hawaiian Sovereignty and the Question of U.S. Civil Rights” in *South Atlantic Quarterly* 107:4, Fall 2018, 637.

² Kauanui, “Colonialism in Equality,” 642.

³ Kauanui, “Colonialism in Equality,” 641.

frameworks such as the 1907 Hague Resolutions nor article 73 of the UN Charter and the Committee on Decolonization are wholly reliable resources for a decolonial project. Recourse to these documents often leads to disputes over legalistic terminology. Kauanui writes that these disputes over terminology can divert attention from “the white supremacist practices and policies that are part and parcel of the colonial subordination of Kanaka Maoli, whether Hawai’i is considered to be a former U.S. colony or not” (66). For Kauanui, the locus of Hawaiian politics should be “indigenous dispossession and colonial-induced poverty” (67). However, international law can also be a source for resistance for indigenous groups. Professor Kauanui’s analysis suggests that some Hawaiian groups turn to the decolonization imperative in international law to contest their subordinate status as a 50th U.S. state.

Finally, we would like to end this discussion with some questions to provoke further inquiry and discussion: What exactly causes law's inability to reflect and realize the political implications of indigeneity? Is there something inherent in the concept of indigeneity that resists the abstraction of legal or juridical language? Or, does the problem lie somewhere else, say, with constraints and problems that beset American democracy?

Decolonial Approaches to Sovereignty, Activism, and Comparison

J. Kēhaulani Kauanui's work *Paradoxes of Hawaiian Sovereignty: Land, Sex, and the Colonial Politics of State Nationalism* (2018) raises crucial questions about the politics and methods of comparison considering ongoing consequences of settler colonialism and movements of indigeneity revitalization in contexts both internal and external to Hawai'i.

Expanding our seminar discussions of different instances of settler colonialism, we would like to ask Prof. Kauanui about the relevance of comparison in competing indigenous land-based and settler colonial notions of Hawaiian sovereignty. During her discussion, Kauanui examines the "colonial biopolitics" and legislative frameworks underlying transition points in Hawaiian sovereignty such as the nineteenth-century recognition of the Hawaiian Kingdom as observing Westphalian sovereignty (19). Given the historical particularities of Hawaiian sovereignty, can broader transnational discussions incorporate insights from contemporary Hawaiian discourses on sovereignty? What are the implications of adopting a comparative approach to questions of indigenous and native sovereignties? To what extent can these decolonial approaches outlined in her conclusion inform work on enduring indigeneity and settler colonialism as "a structure, not an event"?⁴

To briefly summarize, in Hawai'i there are two distinct ways in which Kanoka Maoli are claiming sovereignty, and Kauanui highlights two distinct paradoxes with each claim. On one hand, there are those who are proponents of US federal recognition (54). Yet, the process through which becoming a dependent nation is currently a state-driven effort, not federal, and "appear[s] to be preemptive attempts to squash outstanding sovereignty claims that were not legally extinguished when Hawai'i was admitted as the 50th state of the American "union"" (61). The other claims of sovereignty are organized in order to restore the Hawaiian Kingdom Government and they advocate for deoccupation. (66,72). A paradox of the deoccupation argument is that it does not acknowledge as colonial the continued appropriations of land, culture, and language.

A strong thread in Kauanui's argument considers sovereignty in relation to activism outside the state framework, including revitalizing ancestral Hawaiian land management practices related to the concept of *ea*. Introducing this term, Kauanui centers its definition on an ethical relationship to the land through acknowledging "the power and life force of interconnectedness among deities, ancestral forces, humans and other animals, and all elements of the natural world" (200). We were fascinated by Kauanui's second chapter and conclusion as she emphasizes the decolonial aspects of land-based restitution projects such as community gardening plots connected to ancestral practices of land management. She envisions cultural renewal as enduring resistance to the logic of the elimination of the native that underlies settler colonialism.

How does this new imagining of indigenous sovereignty impact activism in and out of Hawai'i? Can the diaspora community participate in activism structured through *ea*? Does Kauanui's portrayal of *ea* transcend "competing sovereignty models of contemporary Hawaiian

4 J. Kēhaulani Kauanui, "'A Structure, Not an Event': Settler Colonialism and Enduring Indigeneity," *Lateral* 5, no. 1 (May 2016).

nationalist projects” (37)? The models of native sovereignty that Kauanui describes share a dynamism and life with models of the land. How might current activists in contemporary nationalist projects respond to this concept? While based on traditional Hawaiian practices, could *ea* as depicted by Kauanui also relate to forms of diasporic and decolonial solidarity outside the Hawaiian context?

As we consider our own research methodologies and frameworks for understanding indigenous resistance, Kauanui’s work is pivotal for contemporary discussions of resistance, activism and solidarity. We would additionally like to ask Professor Kauanui: How would you counsel scholars who want to consider the questions you raise when thinking about our own work? How do you think about your academic work on indigenous sovereignty and activism in your own activism?

Gender, Sexuality, and Recovery

How do we decide what forms of gender and sexual politics to hold onto, revise, or abandon in the pursuit of decolonization? What are the futures of feminist, queer, and trans critique as critiques of settler colonialism? These are pressing questions identified by our team upon reading the fourth chapter of *Paradoxes of Hawaiian Sovereignty: Land, Sex, and the Colonial Politics of State Nationalism* (2018), “Savage Sexualities,” in which Professor Kauanui addresses Western and precolonial Hawaiian forms of sexuality that are variously adopted, distorted, celebrated, and vilified in the Hawaiian sovereignty movement. We were particularly struck by the subsection on “Same-Sex Marriage as Decolonization?” in this chapter. Here Kauanui looks at the passage of the 2013 bill certifying same-sex marriage in the Hawaiian state legislature, which “indicates a form of settler colonial continuity in Hawai‘i that extends the introduction of male-female marriage and legal coverture for women in the early nineteenth century to the contemporary politics of assimilation and affirmation of settler colonial governance (and U.S. occupation) under the cover of LGBTQ inclusion in a multiracial liberal democracy.” Hawaiians and non-Hawaiians alike mobilized Hawaiian concepts to justify their support and opposition of this bill. For example, the “True Aloha” movement countered the misrepresentation of aloha and ohana as rooted in Christianity by highlighting Indigenous Hawaiian values and practices that revealed “multiplicity in terms of gender and sexuality” (188). But by centering “marriage equality” as the primary frame of reference for this recuperation, Kauanui writes that “these affirmations could easily be co-opted into state logics,” particularly because it renders same-sex marriage as “true aloha” and puts forth these assimilationist schemes “as the new return to the old” (188). In response to these distortions of Indigenous Hawaiian concepts within the rhetoric of liberal inclusion, Kauanui advances Kahikina de Silva’s work on “the erotics of land” as a “testing ground in imagining a decolonial Kanaka erotic autonomy: a politics of sexuality that is grounded in rich Hawaiian lineages of possibility—consensual and sensual” (193).

Lineage, recuperation, recovery, and genealogy are central to Kauanui’s decolonial approach to the study of sexuality as both key practices and major problematics. As Kauanui describes in “Savage Sexualities,” Western understandings of sexuality on Indigenous Hawaiian concepts that were translated and recorded in English, and then recirculated across generations, have created a “conceptual gap between languages and worldviews” that make it difficult “to understand and articulate what our kūpana were discussing or portraying in regard to gender and sexuality” (162). Decolonial forms of cultural recovery involve a historicizing glance unto the past that simultaneously imagines decolonial futures which include diverse forms of gender and sexual positions beyond the impositions of colonialism. These practices of recuperation attempt to undo the damages of colonial homophobia, heterosexism, and gender binarism even as they are predicated on pasts, presents, and futures that are sometimes difficult to know and feel.

The most urgent concern in this portion of our response involves the intersection of decolonial approaches to sexuality—in this chapter illustrated by Kauanui’s examination of precolonial and colonial forms taken up by Hawaiian activists, elites, and communities—with historical, methodological, textual, and critical approaches that do not explicitly critique settler colonialism but may be retooled to traverse the conceptual gaps it has opened. Kauanui’s critical revisions to the work of Michel Foucault are a key example, though we are interested in where and how Kauanui envisions potential intersections between indigenous critique and approaches

to gender and sexuality that may depart from a biopolitical/Foucauldian framework. Does, for example, indigeneity as a category of analysis have affinity with queer(ness?) or trans*(ness?) as categories of analysis? In the pursuit of the decolonial here and now, or then and there, how can we know what needs to be preserved or scavenged?

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