Tax Appellant

Address

Current Date

Board of Review

c/o Tax Assessor

Department of Taxation Administrative Appeals Office
830 Punchbowl Street, Room 221
Honolulu, HI 96813-5094

Re: Appeal of Final Assessments contained in Letters \_\_\_\_\_\_\_\_\_\_\_ of­­­­­­­­­­­­­­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 or any other final assessments which may have been issued to me for which an appeal has not been filed

Dear Review Panel.

 I appeal the assessments contained in the above letters identified for tax assessment of General Excise and/or use tax \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_..

 The basis of my appeals is founded in the question of jurisdiction or authority of the State of Hawaii and of the United States of America to be taxing people such as myself who are Hawaiian nationals who come from a distinct historical, political, and human rights background such that the State of Hawaii and the United States of America have no proper authority to tax myself as well as others in my circumstance. To attempt to tax us and to issue penalties of whatever kind against us who have taken our position based on our particular facts should result in a violation of a set of laws/rules/principles which would find those taking that action as themselves the delinquents to those laws/rules/principles and subject to appropriate chastisement.

 While it may be true that the enforcement of such penalties against such delinquents are not readily available, it raises even more the force of morality and respect for what is appropriate and pono, to abide by such higher calling of the laws, not because of fear of enforcement but because of one’s sense of honor and what is right and good for the soul of our society. The first law of the land is our fundamental constitution “Ua Mau Ka Ea o ka `Āina I ka Pono” which comes to us from the early period of our Hawaiian nation and which has persisted to the present day, even through the changes of forms of government. We hold one another, especially those who perform service to our community out of a sense of duty and responsibility, to that high principle of pono.

 This question of jurisdiction or authority will invoke your patience and challenge your fearlessness to delve not matter which confront long held and deep beliefs which had been accepted as true, factual, or beyond question. It is, however, no more a challenge than was faced by people of earlier times who were forced to come face to face with the facts and not the shibai or the excuses conjured up by those to create an expediency to accomplish an outcome generally to better feed one’s greed or to protect one’s current position.

 We can take the early controversy between two mind-sets of yester-year, one we could call the pancake folks or flat-earth believers and the second the ball folks or the round earth believers. The pancake folks were found gathered around the symbols of authority such s the Catholic Church which had existed for several centuries, and had built a grand theory of the Earth being the center of the Universe and all things revolve around it, including the Sun, the stars, and the other bodies of the universe. This was the belief based upon the authority of religion, an interpretation of God and the very rules of existence.

 The ball folks followed from the teachings of Plato who taught that one must “save the appearance.” This belief, as taught by Professor Bernatowicz at the University of Hawaii in the 1960s, was that one can believe in any theory, but in the end, the theory must meet the observable facts, the appearance. When there is a disjuncture between the theory and the fact, it is the theory which need to change, not the observable facts. One must always “save the appearance.”

 But the appearance of the Earth actually being shaped more like a ball than like a pancake challenged the many years of teachings by the Church. It attacked the very foundation of what the Church was built upon and what held up the Church over these many centuries. So rather than addressing the many findings from sailors who began sailing into distant lands and could testify to the shape and curvature of the Earth as one approaches new lands, or observe other ships at sea, the Church refused to accept such findings and called it heresy, condemning those who spoke of such observations as heretics. When Galileo Galilei insisted that the heavenly objects did not revolve around the Earth but instead the Earth and other heavenly bodies revolved around the Sun, in line with Copernicus’ theory of the same, he was charged with heresy and condemned to excommunication from the Church! He was forced to recite and sign a formal abjuration:

I have been judged vehemently suspect of heresy, that is, of having held and believed that the sun in the centre of the universe and immoveable, and that the earth is not at the center of same, and that it does move. Wishing however, to remove from the minds of your Eminences and all faithful Christians this vehement suspicion reasonably conceived against me, I abjure with a sincere heart and unfeigned faith, I curse and detest the said errors and heresies, and generally all and every error, heresy, and sect contrary to the Holy Catholic Church. 4. Galileo and the Church, Galileo Galilei, Stanford Encyclopedia of Philosophy, 5/10/2017 https://plato.stanford.edu/entries/galileo/

 What is truth? Is it determined by the existing authority which is just as interested in protecting its own position within a society, or is it to be found in the surrounding facts relevant to the question at hand?

 What is truth with respect to the subject of jurisdiction and authority of Hawaii and the US in impose its taxing laws upon those who are Hawaiian nationals? Where does jurisdiction come from in this matter? Can it simply be conjured up out of thin air such as a society of pirates, led by brute force, or must it follow a legitimate transfer or ceding of authority from one legitimate entity to another as established upon principles of civil society? Where do we begin our examination?

 I propose we examine jurisdiction through the lens of a civil society which respects the long-established laws of nations, equally applied to all nations and peoples large and small. Preamble of the Charter of the United Nations

1. We move back to the year 1892, the place, Hawai`i, the political/legal reality, a nation-state recognized in the international community as sovereign and independent with treaties between almost every other state of the international community.
2. The United States and Hawai`i engaged in various treaties and agreements and each had recognized the other as sovereign independent nations.  (Public Law 103-150, Nov. 23, 1993, hereafter **Apology Resolution**),
3. On January 16, 1893, in pursuance of the conspiracy to overthrow the Government of Hawai`i, the United States Minister caused U.S. naval forces to invade Hawai`i. (President Cleveland’s Message to Congress, December 18, 1893) hereafter **Cleveland’s Message**), (**Apology Resolution**), (See also Hawaiian Sovereignty Advisory Commission Final Report hereafter **HSAC Final Report**), Preliminary Report of the Sovereignty Advisory Council, State of Hawai`i to the 16th Legislature, hereafter **SAC Report**, Act 359, Hawai`i State Legislature 1993, hereafter **Act 359 SLH 1993**.
4. The invasion by U.S. forces constituted an act of war, and by such an act, the government of a peaceful and friendly people was overthrown.  (Cleveland’s Message), (Apology Resolution), (HSAC Report), (SAC report), (Act 359, SLH 1993)
5. A provisional government was formed for the explicit purpose of annexing Hawai`i to the United States.  That attempt failed by the Presidential intervention of Grover Cleveland, President of the United States.  It subsequently converted itself into the Republic of Hawai`i.  The Republic of Hawai`i was not the representative voice of the Hawaiian people.  It instead, suppressed the voices of the people and proceeded on its project of annexation.  (Cleveland’s Message), (Apology Resolution), (HSAC Report), (SAC Report), (Act 359 SLH 1993),
6. Hawaii’s people had a history of democratic participation in government, were accustomed to participate in the Constitutional forms of Government, in the election of Legislatures, in the administration of justice through regularly constituted magistrates, courts and juries, and in the representative administration of public affairs, in which the principle of government by majorities had been acknowledged and firmly established.  But in the action to form a government called the Republic of Hawai`i, and to annex Hawai`i to the United States, the consent of the people of the Hawaiian Islands had never been asked by nor accorded to the people of the Hawaiian islands.  Instead, both projects were subversive of the personal and political rights of the Hawaiian people and Nation and constituted a negation of the rights and principles proclaimed in the Declaration of American Independence, and in the schemes of government of all other civilized and representative Governments.  The success of both schemes were not without the active support of the Government of the United States of America.  (Cleveland’s Message), (HSAC Report), (SAC Report), (Act 359, SLH 1993)
7. The illegitimate Republic of Hawai`i signed a treaty with the United States for annexation.  The U.S. was already on notice of the illegality of this Republic of Hawaii, given the Cleveland joint message to the Congress in 1893 and the Blount Report which accompanied his message.
8. The vast majority of the Hawaiian nationals protested this treaty, and implored the U.S. Congress not to participate in this theft.  The U.S. Senate failed to obtain the constitutionally required 2/3rds vote of the U.S. Senators present in order to ratify the treaty of annexation.  Members of Congress, in order to skirt the U.S. Constitutional requirement of Article 2, Section 2, eventually adopted a joint resolution of Congress, the Newland Resolution, as a form of treaty ratification.  (Apology Resolution), (HSAC Report), (SAC Report), (Act 359, SLH 1993) That Newland Resolution is an ultra vires act not in consonance with the U.S. Constitution.
9. The Hawaiian nationals never relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchial form of government or through a plebiscite or referendum.  (Apology Resolution), (HSAC Report), (SAC Report), (Act 359 SLH 1993),
10. The U.S. Congress proceeded to establish a colonial government in Hawai`i.  It established the Territory of Hawai`i and set up a governmental form in which the U.S. President appointed Sanford B. Dole, the same man who acted as President of the Provisional Government and the Republic of Hawai`i, as Governor of the Territory of Hawai`i .  A long period of colonization followed in which a program of resocialization, economic dependence, military occupation, education takeover, control over the judicial system, control over the media, attack upon the indigenous  language and culture, and a denial of the continued existence of Hawaiian nationality took place.  (SAC Report),
11. The Hawaiian people have maintained a continued resistance to the exercise of  U.S. jurisdiction over them or their national territory since the invasion in 1893 up to the present time.  They have maintained their national consciousness as Hawaiian nationals, and the continued existence of their nation, distinct and apart from the United States of America.  Their cry for independence from the United States of America has never been extinguished over the 100 years since the 1893 U.S. military invasion.  (HSAC Report), (Hawaiian Sovereignty Elections Council Final Report - hereafter HSEC Report), (SAC Report), (Act 359, SLH 1993), (Newspaper articles reporting on the continued resistance of the Hawaiian people up to the present time
12. In 1959 and following years of transmigration of American citizens into Hawai`i, many from the U.S. military, the United States allowed only American citizens residing in Hawai`i for a minimum of 1 year to participate in a vote for Statehood.  The Hawaiian nationals were not allowed unless they accepted instead U.S. citizenship.  The U.S. government presented only one choice in the plebiscite, integration within the United States, either as a State or a territory of the United States.  The choice of independence or free association with the United States was not offered.  The action taken in 1959 was in contravention of the principles of the United Nation’s Charter as well as its resolutions on the subject of decolonization and human rights. (The Politics of Forgetting & Remembering by Poka Laenui, January 14, 1998 published in the Honolulu Weekly, January 1998 and republished as Hawaiian Statehood Revisited, Chapter 3, Reclaiming Indigenous Voice and Vision, Edited by Marie Battiste UBC Press, 2000)  (HSAC Report at pages 44 - 46), U.N. Charter, Article 73, U.N. General Assembly Resolutions 66, 1514, 1541
13. The U.S. Congress acknowledged the historical significance of the events which have taken place in Hawai`i resulting in the suppression of the inherent sovereignty of the Native Hawaiian people, recognized and commended efforts of reconciliation, apologizes to Native Hawaiians for the overthrow of the Kingdom of Hawai`i and the deprivation of the rights of Native Hawaiians to self-determination, committed to acknowledging the ramifications of the overthrow of the Hawaiian Kingdom in order to provide a proper foundation for reconciliation between the U.S. and the Native Hawaiian people, and urged the U.S. President to also acknowledge the same ramifications and to support reconciliation.  (Apology Resolution)
14. The State of Hawai`i also acknowledged the need for reconciliation based upon the facts reflecting the illegalities which have taken place in Hawai`i.  (Act 359, SLH 1993), (Act 200, Session Laws of Hawai`i, 1994)

 Summary of the Arguments

There is no instance throughout the relationship between Hawai`i and the United States of America which justifies or legitimizes the acquisition by the U.S. of Hawai`i, either as a territory or as a State of its union.  Nor is there any instance by which I legitimately lost my Hawaiian nationality or undertook U.S. citizenship. That being the case, the laws of the United States have no territorial or personal jurisdiction over a Hawaiian national whose residence and activities are limited within Hawai`i. U.S. and Hawai`i State assertion of jurisdiction over myself constitutes a lawless application of force and not on the laws of civil societies. It is the practice of piracy condemned by civil societies. Those officials who enforce such practices are nothing more than enablers of lawless conduct.

Argument

Like others of Hawaiian nationality, I am looking for a few honest folks, who, when circumstances place them in situations as thieves sitting in judgment of themselves, they are still able to see beyond self-interest and met out the justice they are charged with pursuing, even to the extent of stretching beyond the bounds of customary or domestic constitutional constraints..

The case I present with my few documents and references with respect to Hawaii’s history, the U.S. invasion into Hawai`i, and the steps taken to claim Hawai`i as a territory and State of the United States are all unchallenged by the U.S. and State of Hawai`i government.  This case, therefore, is not one of factual determination.  Based upon the uncontested facts, the only question before this panel is the appropriate application of the law.

A. **The Constitution of the United States is the supreme law of the United States and to the extent the U.S. laws contradicts or violates the constitution, such laws are unconstitutional and unenforceable.**  U.S. Constitution, Art. VI

B. **International law applicable to and binding upon the United States of America are a part of the supreme law of the land and to the extent any internal law contradicts or violates such international laws, the internal laws are unconstitutional and unenforceable.**U.S. Constitution, Art. VI; The Paquete Habana; the Lola, 175 U.S. Reports 677 (1900)

C. **The United States of America and all of its branches of government must conduct its international affairs in accordance with international law.**  1 M. Whiteman, Digest of International Law 1 (1963); U.S. Constitution, Art. VI

D. **A state in international law or individuals acting as agents of the state may not excuse themselves for violations of international law on the basis that its municipal or internal constitution or laws permitted such violations.** Werner Levi, Contemporary International Law, A Concise Introduction, Westview Press, 1979 at p. 25; Declaration of Rights and Duties of States, adopted by the International Law Commission, 1949, Art. 13; The Judgment at Nuremberg, 1 International Military Tribunal, Trial of the Major War Criminals 171 (1947)

E. **The activities and transactions engaged in by the United States of America in its dealings with and with regards to Hawai`i was not in accordance with international law.**  The Judgment at Nuremberg, 1 International Military Tribunal, Trial of the Major War Criminals 171 (1947); Bradford W. Morse and Kazi A. Hamid, American Annexation of Hawai`i: An example of the Unequal Treaty Doctrine, Connecticut Journal of International Law Vol. 5, No. 2, Spring 1990; Cleveland's Message; Apology Resolution;

F. **A treaty of Annexation must be entered into between proper parties, without coercion, and consistent with the internal rules of both state parties.** Vienna Convention on the Law of Treaties, May 22, 1969 at Articles 51, 52, 53;

G. **The internal laws of a state do not have extra-territorial jurisdiction unless the person over which jurisdiction is sought is a citizen of such state or the activity alleged to have been committed has special significance to the state.**  Werner Levi, Contemporary International Law, A Concise Introduction, Westview Press, 1979 at p. 116;

**H.  The entry of Hawai`i into the union of States of the United States does not obviate the illegalities of annexation of the territory and the declaration of Hawaiians as U.S. citizens.**Definition of Aggression, U.N. Resolution 3314 (14 Dec. 1974); Article 73, Charter of the United Nations; U.N. General Assembly Resolutions 66 (1946), 1514 (1960), 1541 (1960).

The tax laws of the United States Congress and of the State of Hawaii are not omnipotent.  They are limited by the Constitution of the United States as well as by International Law which has been made part of the domestic law of the United States.  Specifically, the jurisdiction of the U.S. Congress & the State of Hawaii is limited by the general limitations of personal or territorial jurisdiction.  There must either be a basis for personal jurisdiction, i.e., the individual is a citizen or resident of the United States; or a territorial jurisdiction, i.e., the governing entity has jurisdiction over the physical territory.  The third prong for the possible application of jurisdiction is subject matter jurisdiction which simply does not apply to this case as the matter of taxation by governments have never been seen as an appropriate application of such jurisdiction. Examples of subject matter jurisdiction would be crimes recognized as international prohibitions such as slavery, genocide, crimes against humanity, piracy and colonization,

Stated another way, the U.S. government has no power to impress a law upon non-nationals or non-citizens who maintain neither domicile nor residence within the territory of the United States.  Restatement (third) of the Law:  The Foreign Relations Law of the United States, §§411, 412, As Adopted and Promulgated by The American Law Institute, May 14, 1986  §411.

Proof of jurisdiction, when challenged, becomes the obligation of the party asserting such jurisdiction, to prove that it exists.  Jurisdiction should not be something assumed, taken by default, or undertaken because of custom.  If there exist no certain basis upon which jurisdiction can be supported, going forward in applying it simply invites the practice of power and not law, obedience to which is founded not upon ethics and good conscience but merely upon fear and a hope to avoid such brute power. The fact that there exists no entity which has the authority to exercise jurisdiction does not confer jurisdiction upon a neighboring entity or upon the culprit responsible for the demise of that government which previously held jurisdiction. It simply means that there is a void in jurisdiction for the time. This is especially true when considering principles of unclean hands, estoppel principles, or the fruit of the poisonous tree.

I present to this court that fundamental challenge of jurisdiction to extend U.S. and Hawaii State laws over myself, a Hawaiian national for my conduct within the territory of my sovereign nation, Hawai`i.

As to my nationality, there has been no act committed by myself nor by my national forefathers which constitute the legitimate loss of my Hawaiian nationality.  The Government can neither assert nor present any evidence to the contrary.  One cannot be arbitrarily deprived of one’s nationality. Article 15, Universal Declaration of Human Rights  Nor have I nor my ancestors committed any act to undertake U.S. citizenship beyond the demands of U.S. colonization.

As to Hawaii’s inclusion into the United States of America, let us start from a point in history when Hawai`i and the United States engaged in treaties according the recognition of one another as equal members of the family of nations.  From that initial point to the present time, if there is U.S. jurisdiction over Hawai`i and Hawaiian nationals, there must be a trail of legitimacy bringing Hawai`i into the fold of the U.S. union.  But there is none.   At every turn in which Hawai`i was said to have been brought closer into U.S. union, there are violations of international, Hawaiian, and U.S. laws which obviate the inclusion of Hawai`i.

What are the laws with which we should proceed with our analysis?  There are three - international law, Hawaiian law, and U.S. law.  Of these, I need only concentrate on two, international law and U.S. law for these are the laws which obligate U.S. conduct.

I will not recite the historical record here, instead incorporating the factual statements recited in Cleveland’s Address, in the Apology Resolution, the reports of SAC and HSAC, Act 359, SLH 1993 as well as matters for which judicial notice would be appropriate in this case.

 The United States violated international law through its aggression against Hawai`i in 1893.  Cleveland’s Message, at. p. 28.  It was a direct breach of the treaty between the United States and Hawai`i. Treaty of Friendship, Commerce, Navigation and Extradition (hereafter FCNE Treaty) ratified August 24, 1850   No territorial acquisition or special advantage resulting from such aggression should be recognized as lawful. United Nation’s General Assembly Resolution 3314 (XXIX) of 14 December 1974, Definition of Aggression, hereafter Definition of Aggression.

The actions of the United States in relation to Hawai`i suggests that the United States is above international law and that the courts of the United States are to simply carry out the internal laws of the U.S. government without regards to international law.  We come face to face with fundamental issues of international and domestic legal principles:

A. **Is the U.S. obligated to conduct itself in international affairs in accordance with international law?**  Yes.

The U.S. Constitution has incorporated treaties of the United States of America with other states as "the supreme Law of the Land; and the Judges of every State shall be bound thereby. U.S. Constitution, Art. VI.

The U.S. Constitution explicitly recognizes the validity of international law when it conferred to Congress the right to define and duty to punish offenses against the law of nations. The United States Supreme Court has already stated that it must take judicial notice of international customary law. U.S. Constitution, Art. I, §8 Piracies & felonies, The Paquete Habana; the Lola, 175 U.S. Reports 677 (1900)

While international law may differ from municipal, internal or domestic laws in that internal laws have a system of enforcement while the enforcement of international law is uncertain at best, the fact that a law is enforceable doesn't make it law.  Rather, the fact that it is law demands its obedience, whether enforceable by arms or by moral conscience. President Grover Cleveland, in his message to the joint houses of the U.S. Congress, declared that:

“The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace” Cleveland’s address to Congress, Dec. 18, 1893

The U.S. Constitution itself requires courts to view treaties as part of the supreme law of the land (Article VI).  Furthermore, **it is a fundamental doctrine of international law that a state may not excuse itself for violations of international law on the basis that its municipal constitution or laws permitted violations of such international laws**, Werner Levi, Contemporary International Law: A Concise Introduction, Westview Press, Colorado, 1979 at p. 25; Article 13, Declaration of Rights and Duties of States adopted by the International Law Commission 1949; The Judgment at Nuremberg, 1 International Military Tribunal, Trial of the Major War Criminals 171 (1947)

Thus, a court is obligated to look beyond the mere legislative pronouncements of the Congress and hold up these transactions against the backdrop of international law and the Constitution of the United States.  The tax court utterly failed in this responsibility.

B. **Were the transactions engaged in by the U.S. in its dealings with Hawai`i in accordance with international law?**No.

The U.S. violated international law in its pattern of conduct attempting to annex Hawai`i to the U.S.  To begin, the United States had formally recognized Hawai`i as an international personality, recognizing the Nation of Hawai`i as a sovereign, independent state.

 King Kamehameha III transformed the government into a written constitutional monarchy, having signed a Declaration of Rights (also known as the Hawaiian Magna Charta) in 1839 and a Constitution for the Kingdom of Hawai`i in 1840. S..M. Kamakau, Ruling Chiefs of Hawai`i, (Revised Edition) Published by Kamehameha Schools/Bishop Estate, 1992 at 370-371

Throughout the 19th century and until 1893, the United States recognized the independence of the Hawaiian Nation and extended full and complete diplomatic recognition to that Government.  The United States government entered into at least five treaties or conventions with the United States.   Treaty of Commerce, December 24, 1826; Treaty of Friendship, Commerce and Navigation, August 24, 1850, Rights of Neutrals at Sea, March 26, 1855; Treaty of Commercial Reciprocity, September 9, 1876; Treaty of Commercial Reciprocity, November 9, 1887, Treaties and Other International Agreements of the United States of America, V. 8

On November 28, 1843, Great Britain and France signed a joint declaration recognizing the independence of Hawai`i and pledging never to take possession of Hawai`i.  When the Unites States was invited to join this declaration, J.C. Calhoun, U.S. Secretary of State, replied that the President adhered completely to the spirit of disinterestedness and self-denial which breathed in that declaration.  ‘He had already, for his part’, Calhoun pointed out, ‘taken a similar engagement in the message which he had already addressed to Congress on December 31, 1842.’ Dispatch from Pageot, French representative in Washington, to Guizot, French minister of Foreign affairs, No. 55, June 11, 1844, AMAE (Paris), Etats Unis, Vol. C.

The treaty of Friendship, Commerce, and Navigation and Extradition (hereafter FCNE) proclaimed Nov. 9, 1850, declared, "There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors. Art. 1, p. 908  Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers  1776 - 1909, William M. Malloy, Vol. 1, Washington, Government Printing Office, 1910.

The U.S. was to violate this treaty time and again.

The United States Minister assigned to the Kingdom of Hawai`i, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawai`i.

In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused 162 armed naval forces of the United States to invade the sovereign Hawaiian Nation.  On January 16, 1893, American marines landed in peaceful Honolulu armed with Gatling guns, Howitzer cannons, double cartridge belts filled with ammunition, carbines and other instruments of war.  The protest by Hawai`i’s Queen that such landing was a breach of treaty and international law was simply ignored.  The troops marched along the streets of Honolulu, rifles facing the Queen’s palace.

The following day, the resident conspirators numbering 18, mostly Americans, sneaked to a government building a few yards from where the American troops lodged the night before.  There, an American lawyer who had been a resident of Hawai`i less than a year previous proclaimed they were now the government of Hawai`i.  Calling themselves the ‘provisio­nal government’ and selecting Sanford Dole president, they were to exist for the explicit purpose and until terms could be arranged with the U.S. for annexation.

Before the full declaration had been read, the U.S. marines marched into the building to protect and support them.   American Minister Plenipotentiary and commander of all U.S. forces in Hawaii, John L. Stevens, gave them immediate recognition as the government of Hawaii as had been planned.  He than joined in their demand that the Queen surrender under threat of war with the U.S.   East Wind Magazine, Vol. III, No. 1 Spring/Summer 1984, "Hawaiian Sovereignty," article by Pōkā Laenui. The United States Minister thereupon extended diplomatic recognition to a provisional government declared by 18 conspirators, mostly American.

This Provisional Government was declared without the consent of the native people of Hawai'i or the lawful Government of Hawai'i.  The landing of U.S. troops and the recognition of the Provisional government constituted violations of treaties between the two nations and of the laws of nations.

Without warning or a declaration of war, this surprise attack upon a friendly and peaceful nation caught the government and its citizens totally unprepared to respond.  Protesting the U.S. role in this conspiracy and receiving assurances of an immediate and fair investigation, Queen Lili`uokalani, on January 17, 1893, trusted the ‘enlightened justice’ of the United States and yielded, under protest, to the United States forces until an investigation could be completed and she could be restored.  She wrote:

‘I, Lili'uokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

 ‘That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

‘Now to avoid any collision of armed forces, and perhaps the loss of life, I do under this protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representative and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.

                 Done at Honolulu this 17th day of January, A.D. 1893.Taken from Hawaii’s Story by Hawaii’s Queen, Liliuokalani

On January 18, 1893, the day after Lili`uokalani yielded, the "provisional government", forbade any of the Queen's supporters from boarding the only ship leaving Hawai`i and rushed off to Washington to obtain annexation.  By February 16, 1893, a treaty of annex­ation was hurriedly negotiated, signed and presented by President Harrison to the United States Senate for ratification.

Queen Lili'uokalani and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawai'i, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian nation, but this petition was not acted upon.

The Harrison administration attempted to obtain Senate approval of the treaty, required by the Constitution of the United States under Article 2, Section 2.  The Senate did not approve the treaty.  President Harrison’s term subsequently expired and a new President, Grover Cleveland, took office.

In a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts, described by the President as **‘acts of war, the government of a peaceful and friendly people was overthrown’**, and the President concluded that 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 that we should endeavor to repair.’**  Public law 103-150, November 23, 1993, Joint Resolution of the Congress of the United States, 13th Whereas clause (added)

Cleveland’s message to the U.S. Congress laid out the following specifically:

1. The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.
2. ‘But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed. . .
3. ‘But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.  . . .
4. ‘And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens' recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never  have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States. . .
5. ‘Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration . . .
6. ‘By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown.  A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.  . . .

Cleveland continues, “I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned.” Address from Grover Cleveland to the Joint Houses of the U.S. Congress, December 18, 1893)

 The provisional government refused to acquiesce to President Cleveland's request to restore the Queen to the throne.  They continued to hold state power and lobby for annexation to the United States.  Cleveland, not ready to shed American blood for the Hawaiian people and their Queen, took no further action.

The ‘provisional government’ was under international criticism for being a government without the support of its people, existing, in fact, without a constitution or other fundamental document to afford even the appearance of legitimacy.  Faced with the predicament of an American administration which would not condone the conspiracy, yet would not abandon American lives in Hawai`i evidenced by the remaining American war ships in Honolulu Harbor, they devised a plan to restructure themselves to appear as a permanent rather than a provisional government. When a new American president came to office, the restructured government would act as the vehicle to place the conspiracy back on course.

A constitution giving them permanence and validity had to be drafted.  Dole, acting as President of the Provisional Government, announced a constitutional convention of thirty-seven delegates, nineteen, selected by him, and the remaining eighteen elected.  The candidates and voters for these eighteen posi­tions were first required to renounce Queen Lili`uokalani and swear allegiance to the provisional government. Gavin Daws, Shoal of Time, September 1974, The University of Hawai`i Press, p 2 80-281, Kuykendall, Hawaii--A History p.183.

Less than 20% of the other­wise qualified voters participated in their election.

A ‘Constitutional Convention’ was held.  A document substantially as submitted by Dole and Thurston was adopted.  The constitution of the ‘Republic of Hawai`i’ claimed dominion over all lands and waters of Hawai`i.  It claimed all citizens of Hawai`i automatically its citizen.  Foreigners who supported the new regime could vote; citizens loyal to the Queen could not; and because the Japanese and especially the Chinese supported Lili`uokalani, they were, as a group disenfranchised.  Further, only those who could speak, read and write in English or Hawaiian and explain the constitution, written in English, to the satis­faction of Dole's supporters could vote.

“On July 4, 1894 while Americans were celebrating their Independence Day by firing their cannons from their war ships in Honolulu Harbor, Dole ascended the steps of `Iolani Palace and proclaimed the Constitution and thus the ‘Republic of Hawai`i’ into existence.   In so doing, he declared all of the government lands and the crown lands and all the waters of the Hawaiian nation was now the Republic's.  All Hawaiian citizens were automatically considered citizens of the Republic.  No vote was taken on the matter. Gavin Daws, Shoal of Time, September 1974, The University of Hawai`i Press, p. 281

The Republic of Hawaii remained in control with the continued presence of United States warships.   Lili`uokalani, remembering the warning of Minister Blount not to take up arms lest the marines land and forever squash the hopes of returning Hawaii to the Hawaiians and still believ­ing in the enlightened justice of the United States, waited in patience. Queen Lili`uokalani, Hawaii’s Story by Hawaii’s Queen (Boston: Lothrop, Lee & Shepard, Co. 1898; reprint Tokyo: Charles E. Tuttle Company, 1977), p. 254-255

 A number of her supporters attempted to restore justice by arms but were discovered before they could make serious advances. Lili`uokalani, p.262-266; Daws, p.282-283, Mellen, An Island Kingdom Passes, p. 301-312

William McKinley replaced Cleveland as President.  A McKinley campaign plank: ‘The Hawaiian Islands should be controlled by the United States and no foreign power should be permitted to interfere with them.’ Dole's group rushed to Washington to complete the conspiracy.  With a self-serving ‘Constitution’ in hand declaring that they governed Hawaii, the ‘Republic of Hawaii’ ceded ‘absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands. . .’    A ‘treaty of annexation’ was signed on June 16, 1897 and forwarded to the U.S. Senate for ratification.

On September 9, 1897, the Senate of the Republic of Hawai`i ratified the treaty.

U.S. Senator John T. Morgan of Alabama, Chairman of the Committee on Foreign Relations, appeared in Hawai`i on September 14, 1897, leading a contingent of fellow annexationists of the U.S. Congress (Congressmen Joseph G. Cannon of Illinois, James A. Tawney of Minnesota, Henry C. Loudenslager of New Jersey, and Albert S. Berry of Kentucky).  Morgan was author of the Morgan report of early 1894 - an attempt to refute the findings of President Cleveland’s Special Commissioner to Hawai`i, James Blount.  Special Commissioner Blount had uncovered a multitude of violations of international law and of American foreign policy in the U.S. conduct in Hawai`i during the events of the overthrow.  Morgan insisted that the U.S. conduct was appropriate.  Now for the first time in Hawai`i, Morgan was trying to boost the annexation attempt on-going in the Congress. He engaged in public speeches and newspaper interviews.  He tried persuading native Hawaiians that their status as American citizens would be an improvement in their condition, assuring them that the Americans wanted only to “secure you from aggression from foreign powers.”  He promised protection from the Chinese and told the people that a Hawaiian could become President of the United States! (The U.S. Constitution requires, however, that a President must be born an American.)  He further promised that Hawai`i would be annexed as a State, that the public lands would go to the people, and that there was no need to submit the question of annexation to a popular vote.

Hawaiian loyalists were just as vocal and were unafraid to go “brain to brain” against Morgan.  James Kaulia is a prime example.  Kaulia, President of the Hawaiian Patriotic League (Hui Aloha `Āina) declared, ‘The destiny of Hawaii, situated in the mid-Pacific as she is, should be that of an independent nation and so she would be were it not for the policy of greed which pervades the American Legislators and the spirit of cowardice which is in the breasts of those who first consummated the theft of Hawaiian prestige.’

In the style of Shakespeare’s Mark Anthony, Kaulia honors the Senator as an honorable representative of that great Government of the U.S., ‘a good and faithful servant’ with the seeming love for God in his heart, who should be the last man to aid, ever so little, in the consummation of a wrong.  He then calls upon Morgan, ‘let us reason together.’   Kaulia points to dispatches from ex-American Minister Stevens to his superiors confessing to conspiring with American citizens to overthrow the Hawaiian Government and asking for ‘wise and bold action’ to accomplish the overthrow.

Kaulia asks, ‘Can the United States in consistency with past principles annex these islands until she has made herself right before the world by undoing everything that this Minister has done?’  He reminds Morgan that the protest of Her Majesty Lili`uokalani to the U.S. had still remained unanswered.

“‘And why this greed for the Hawaiian Islands?’ Kaulia writes.  ‘Is it a naval station that is needed?  For that it would seem that American home ports are much in need of such protection.  Is it a coaling station that is desired?  That is obtainable by treaty.  Or is it the islands’ wealth that America desires?  If so, then America will desire to annex the earth.’

Kaulia closed by saying, “Ask for the voice of Hawaii on this subject - Mr. Senator, and you will hear it with no uncertain tones ring out from Niihau to Hawaii - ‘Independence now and forever.’”

Hawaiian loyalists gathered by the thousands to protest the expected annexation to the United States.  In one of such gatherings on October 8, 1897 at Palace Square, today, the area fronting the U.S. Main Post Office and the old Federal Building, directly opposite the coronation stand on `Iolani Palace grounds, the mass meeting adopted a Memorial addressed to the President, the Congress and the American People.  In it, Hawaiian citizens, both aboriginal and foreign born, pointed out they were ‘held in subjection by the armed forces of the Provisional Government of the Hawaiian Islands, and of its successor, the Republic of Hawaii; and have never yielded,’ that neither governments had the allegiance or support of the people.  Those governments’ very existence were challenged - the Memorial stating, ‘the Government of the Republic of Hawaii has no warrant for its existence in the support of the people of these Islands; that it was proclaimed and instituted and has hitherto existed and now exists, without considering the rights and wishes of a great majority of the residents, native and foreign born, of the Hawaiian Islands; and especially that said Government exists and maintains itself solely by force of arms, against the rights and wishes of almost the entire aboriginal population of these Islands.’

In his December 18, 1893 message to the joint houses of Congress, Cleveland pointed out that the established practice of the U.S. was to recognize revolutionary government after it became apparent that they were supported by the people, conceding to people of foreign countries the same freedom and independence in the management of their domestic affairs that the U.S. had always claimed for themselves.

The Memorial continued to detail the contradictions of the Republic of Hawai`i with basic principles of governance.  It said, for example, that the Republic was not founded upon a basis of popular government, that its constitution had never been submitted to a vote of the people, and that it was that very government with which the U.S. was engaged in agreeing to extinguish the Hawaiian nation’s sovereignty.

The Memorial continued that Hawai`i’s people had a history of democratic participation in government, accustomed to participate in the Constitutional forms of Government, in the election of Legislatures, in the administration of justice through regularly constituted magistrates, courts and juries, and in the representative administration of public affairs, in which the principle of government by majorities had been acknowledged and firmly established.

Contained within this protest was an ‘appeal to the President, the Congress and the People of the United States, to refrain from further participating in the wrong’ and invoked the spirit of ‘the Declaration of American Independence; and especially the truth therein expressed, that Governments derive their just powers from the consent of the governed.’  Lili`uokalani, p.262-266; Daws, p.282-283, Mellen, An Island Kingdom Passes, p. 301-312

The Memorial declared that the consent of the people of the Hawaiian Islands to the forms of Government imposed by the so-called Republic of Hawaii, and to said proposed Treaty of Annexation, has never been asked by and is not accorded, either to said Government or to said project of Annexation.  Annexation would be ‘subversive of the personal and political rights of these memorialists, and of the Hawaiian people and Nation, and would be a negation of the rights and principles proclaimed in the Declaration of American Independence, in the Constitution of the United States, and in the schemes of government of all other civilized and representative Governments.’ See William Adam Russ, Jr., The Hawaiian Republic (1894-98) Associated University Presses, Inc., 1992 at p. 207 - 209

Hawaiian loyalists sent 4 emissaries to Washington on November 20, 1897, Colonel John Richardson, representing especially the people of Maui, confidant to Queen Lili`uokalani, former Kuhina nui and member of the House of Nobles and House of  Representatives, William Auld, high priest of Hale Naua, the secret society of Kalākaua, who also officiated at the King’s funeral and led the burial procession to Mauna`ala, James Kaulia, President of Hui Aloha`Āina and David Kalauokalani, President of Hui Kalai`āina.  They gained entrance to the Senate floor through the good offices of Senator R. F. Pettigrew.

The U.S. Senate debated the treaty in secret.  The Senate was not open to the public or the press!  U.S. House of Representatives also debated the treaty although they had no authority in the matter.

By early December, it was obvious that the treaty was stalled in the Senate.

By February 1898, a head count showed that the Senate was not able to pass the Hawai`i annexation treaty by the Constitutional margin of 2/3rd.  Discussion now moved to a joint resolution of Congress, a device which brought Texas into the union as a State.

The following month, the Senate Committee on Foreign Relations reported that it was unable to obtain a 2/3rd Senate majority for a Treaty of Annexation and the only way of resolving the matter in favor of annexation was through a joint resolution of annexation.  Ibid. p. 293

On May 4 1898, Representative Francis Newland introduced a joint resolution of annexation in the House of Representatives.  The resolution says in part:

Whereas, the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America, all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States, the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance there unto appertaining: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The resolution passed the house on 15 June 1898 and was sent to the Senate.

The Senate passed the joint resolution by mere majority, 42 for, 21 against, 6 others present but not voting.  Even at these numbers, the U.S. Constitutional requirement called for treaties to be ratified by two/thirds of the Senators present was not met.  (Excerpted from Straight Talk on Hawaiian Sovereignty and other documents published at www.opihi.com/sovereignty by the Institute for the Advancement of Hawaiian Affairs.)

McKinley signed the joint resolution on 7 July, 1898. Newland Resolution of July 7, 1898; 30 Stat. 750; 2 Supp. R.S. 895

Every one of these acts was in violation of international law, both as a matter of customary international lawas well as the FCNE treaty.  Acts of aggression constitutes international crimes against the human species.  Unanimous resolution of 18 February 1928 of 21 American republics at the Sixth (Havana) Pan-American Conference.  International Law & World Order, at p. 155; By 1893, acts of aggression were already contrary to international law in the Americas and in the South Pacific., p. 246-247. They were also in contradiction to the much earlier declaration of the U.S. President to the congress on December 31, 1842, recognizing Hawai`i's independence and pledging never to take possession of Hawai`i. Dispatch from Pageot, French representative in Washington, to Guizot, French minister of Foreign Affairs, No. 55, June 11, 1844, AMAE (Paris), Etats Unis, Vol. C.

In Article 6(a) of the Nuremberg Charter, we find

“Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.” Judicial Decisions, International Military Tribunal (Nuremberg). Judgment and Sentences, 41 American Journal of International Law 174 (1947).

The United Nations’ General Assembly at its first session in 1946 recognized the principles set out in the Nuremberg Charter. U.N. General Assembly Resolution 95(1), U.N. Doc. A/6. at 188 (1946).

The United States committed crimes against peace under the law of nations by planning and implementing the use of force to overthrow the Hawaiian monarch without any provocation by her (Hawai`i’s) official representatives.  United States President Grover Cleveland in addressing the joint houses of Congress on December 18, 1893, stated it accurately when he said, "a candid and thorough examination of the facts will force the conviction that the Provisional Government owes its existence to an armed invasion by the United States."  The United States Congress, in its apology bill signed by President William Clinton on November 23, 1993, was equally explicit when it stated:

“Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawai`i conspired with a small group of non-Hawaiian residents of the Kingdom of Hawai`i, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawai`i;

“Whereas, in pursuance of the conspiracy to overthrow the Government of Hawai`i, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the `Iolani Palace to intimidate Queen Lili`uokalani and her Government.”

Thus, the U.S. action in Hawai`i resulting in the overthrow of the Hawaiian monarchy, the establishment of the Provisional Government and the subsequent change of name to the Republic of Hawai`i were all part of the scheme to extinguish the life of an independent, peaceful, trusting and sovereign state and integrate its territory and citizens into the United States of America.

These chains of events propelled by agents of the United States government all constituted numerous breaches of international law.   The fact that the U.S. Congress in 1898 via the Newland Resolution (Senate Joint Resolution 55, June 15, 1898) and 1900 via the Organic Act(An Act to Provide a Government for the Territory of Hawaii, Act of April 30, 1900, c 339, 31 Stat 141) took a hand in these transactions, attempting to obviate the trail of deceit, thievery and lawlessness does not overcome the fact of U.S. delinquency measured against the laws of nations.

C. **Is the treaty of annexation valid?**  No.  The Republic of Hawai`i was not a party which had capacity to engage in such a treaty.  The fraud of the Republic of Hawai`i as representative of the people of Hawai`i, or of the proper recipient of transfer of sovereignty from the Hawaiian nation, was manifest.  In Hawai`i, no one (outside of the Constitutional Convention which cooked up this Constitution for the Republic of Hawai`i) was permitted to vote for or against the constitution.  The members of the convention were appointed by Sanford Dole (19 consisting of himself and eighteen others) or elected by the "qualified" voters (18).  To qualify to vote, one needed to disavow any loyalty to Queen Lili`uokalani and pledge his support to the Provisional Government.  There was absolutely no semblance of the Republic of Hawai`i being representative of the people, for the people or by the people of Hawai`i. It was merely a self-declared government.   Kuykendall, The Hawaiian Kingdom. 1874-1893, p. 649 (1967) UH Press

The United States presence in Hawai`i was plainly visible throughout the day of the ceremony, July 4, 1894, declaring the Republic of Hawai`i into existence.  It was obvious that the Republic of Hawai`i was not representative of the will of the people but instead the instrument of supremacists led by a handful of Anglo Saxons.  To have entered into a treaty with such a government was not mere error.  It was fraudulent on the part of both parties, the representatives of the United States of America and the hooligans who called themselves the Republic of Hawai`i.  It was a fraud against the international community as well as the citizens and residents of the Nation of Hawai`i.  It was a repudiation and insult to the principle of self-determination which the forefathers of the United States of America took such great pains in establishing as a preemptory norm of international law when they wrote:

“**We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.  That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed**.” American Declaration of Independence

The principle contained in the American declaration is also contained in the various documents of the United Nations extolling the right to self-determination.  The Universal Declaration of Human Rights declares in part:

 **“The will of the people shall be the basis of the authority of government;”**

The Hawai`i - U.S. annexation treaty itself is void, for it conflicted with a preemptory norm of general international law, that is, a treaty can only be signed by proper parties.

In this particular case, the treaty is doubly void because not only was the Republic of Hawai`i an illegitimate government, but it gained its position and power through the direct instigation of the United States of America.  Both the Republic of Hawai`i and the United States of America were operating with unclean hands!  Both were working hand in hand with each other to steal the Nation of Hawai`i from the people of Hawai`i.  They passed papers between themselves in a self-promotional campaign, knowing full well that there was no substance to the documents called the Constitution of the Republic of Hawai`i, the Treaty of Annexation, or the Joint Resolution of Congress.

**A government de facto does not become a government de jure when working with an international co-delinquent to effectuate the termination of the life of a nation.  The appropriate term for such transactions is thievery, an indictment upon the governments and the men who participate in the execution of the relevant acts**.  The international response to this thievery is the disdain by peoples and nations throughout the world societies to the succeeding government which pretends authority over the victimized people, territory and nation.

This so-called treaty of annexation is therefore void ab initio.  The provisions of a void treaty have no legal force upon the citizens of the Nation of Hawai`i.

D. **Does the Newland's Resolution containing the treaty of annexation measure up to the U.S. Constitutional requirement?**  No!

Article II, §2 of that fundamental document requires all treaties to be ratified by two-thirds of those present in the U.S. Senate.  It made no exception for the McKinley Administration, it made no exception for Hawai`i, it made no exception for special opportunities of thievery, it made no exceptions at all!

 The Newland's Resolution, through which the treaty of annexation between the United States of America and the Republic of Hawai`i glided through the U.S. Congress, never received the requisite vote of the U.S. Senate.  It failed to pass the requirement of the Constitution of the United States of America.

Therefore, the annexation of Hawai`i through the Newland’s Resolution cannot have been under the treaty consent powers of the United States Senate.  If it is to pass U.S. constitutional muster, the resolution will have to be constitutionally justified in some other way.  Under what provision of the U.S. Constitution has the Congress been granted the power to annex the territory of an independent nation-state to the United States of America as a territory of the United States?  There is no such constitutional provision.

The opinion of the Office of Legal Counsel, U.S. Department of Justice, 12 U.S. Op. Off. Legal Counsel, 238, beginning at p. 251 recites:

The United States also annexed Hawaii by joint resolution in 1898.  Joint res. 55, 30 Stat. 750 (1898).  Again, the Senate had already rejected an annexation treaty, this one negotiated by President McKinley with Hawaii.  And again, Congress then considered a measure to annex the land by joint resolution.  Indeed, Congress acted in explicit reliance on the procedure followed for the acquisition of Texas.  As the Senate Foreign Relations Committee report pronounced, “[t]he joint resolution for the annexation of Hawaii to the United States . . . brings that subject within reach of the legislative power of Congress under the precedent that was established in the annexation of Texas.”  S. Rep. No. 681, 55th Cong., 2d Sess. 1 (1898).  This argument, however, neglected one significant nuance:  Hawaii was not being acquired as a state.  Because the joint resolution annexing Texas relied on Congress’ power to admit new states, “the method of annexing Texas did not constitute a proper precedent for the annexation of a land and people to be retained as a possession or in a territorial condition.”  Andrew C. McLaughlin, A Constitutional History of the United States 504 (1936).  Opponents of the joint resolution stressed this distinction.  See, e.g., 31 Cong. Rec. 5975 (1898) (statement of Rep. Ball). [FN30]

Moreover, as one constitutional scholar wrote:

The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press.  The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. . . .  Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force — confined in its operation to the territory of the State by whose legislature it is enacted.  1 Westel Woodbury Willoughby, The Constitutional Law of the United States §239, at 427 (2d ed. 1929)

Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1893.  Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable.  The stated justification for the joint resolution — the previous acquisition of Texas — simply ignores the reliance the 1845 Congress placed on its power to admit new states.  It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.

The U.S. Department of Justice’ opinion continues, “We believe that the only clear congressional power to acquire territory derives from the constitutional power of Congress to admit new states into the union.”

If the Justice Department’s opinion is correct, did Congress legislate beyond its powers granted by the Constitution?  If it did, its act is unconstitutional and therefore void.  If it did not, what was the Constitutional power given for it to have adopted such legislation?

E. **Do the internal laws of the United States of America have extra-territorial jurisdiction over me as a Hawaiian national?**No.

The primary restriction imposed by international law upon states is that they may not exercise powers in any form in the territory of another state except by virtue of permission derived from custom or treaty. In Schooner Exchange v. M'Faddon, 11 U.S. 116, 135 (1812), Chief Justice Marshall asserted "the jurisdiction of the nation within its own territory is necessarily exclusive and absolute.  It is susceptible of no limitation not imposed by itself."

The laws of the United States of America, therefore, have no extra-territorial jurisdiction beyond its national borders, unless permitted by customary or treaty law.  There is no customary law applicable to Hawai`i or treaty between the United States and the Nation of Hawai`i which permits the taxation of myself, a citizen of the Nation of Hawai`i for my actions within the territorial boundaries of the Nation of Hawai`i.

**F.  Does the entry of Hawai`i into the union of States of the United States obviate the illegalities of annexation of the territory and the declaration of Hawaiians as U.S. citizens?**  No.

The United States’ taking Hawai`i into its union of States does not moot the issue I am raising.  First, to do so would ignore the principle of the “fruit of the poisonous tree”.

Second, it would violate the principle of not rewarding a State for its aggressive action against another, resulting in the annexation of the invaded victim’s territory.  UN GA RESOLUTION DEFINING AGGRESSION

Third, a colonial annexation of a territory must meet the strict requirements of international law, in this specific case, the principles established by the United Nations Charter (Article 73), General Assembly Resolutions 66, 1514, and 1541.

The conspiracy between the U.S. Minister Plenipotentiary and the Committee for Public Safety, the sneak attack by U.S. military upon the shores of Hawai`i in 1893, the formation of a Provisional Government submitting Hawai`i for annexation to the United States, the formation of a Republic of Hawai`i out of the Provisional Government, and the re-submission of annexation of Hawai`i by the United States, followed by the appointment by the U.S. President of the man who was at the helm on the Hawai`i side, of this give-away of Hawai`i, Sanford Dole, as the Governor of the Territory of Hawai`i - these steps reflect a long period of planning and execution, requiring the participation of many people at various levels of government, evidencing a greed in the character of an American bureaucracy separated from its founding principles.  Every year since that American invasion, the U.S. has continually failed to take the steps necessary to correct this injustice, instead, findings ways to dig itself deeper into possession of Hawai`i.  It is the ethical responsibility of lawyers and judges to do what is honest.  Preamble: A Lawyer’s Responsibility, Model Rules of Professional Conduct, ABA

There is no international legal principle upon which the United States can legitimize its invasion of Hawai`i.  And it was upon this invasion that the United States was able to advance its stronghold into Hawai`i, in violation of the Definition of Aggression adopted by UN General Assembly Resolution #3314 (XXIX) of 14 December 1974

The U.S. Congress has, through its confession of U.S. wrongdoing and apology to the native Hawaiians, recited,

“Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum . . .”

The Congress acknowledged the significance of the “illegal overthrow of the Kingdom of Hawai`i” (using the Congress’ words) and expressed a commitment to acknowledge the ramifications of the overthrow “in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people. . . .”

**Conclusion**

1. The U.S.A. violated the laws of nations in several instances, to wit, committing an act of aggression upon Hawai`i, conspiring in the overthrow and eventual annexation of Hawai`i, exceeding the bounds of interaction with a de facto government by engaging in two treaties of annexation, entering into unequal treaties, willfully entering into treaties with the Provisional Government and the Republic of Hawai`i with knowledge that the parties negotiating and signing such treaties were not proper parties acting on behalf of the people of the nation of Hawai`i, refusing to obtain the consent of the Hawaiian people to a change in governance, and violating treaties existing with Hawai`i and the United States, including the Treaty of Friendship, Commerce, Navigation and Extradition ratified August 24, 1850
2. The failure or refusal of the U.S.A. to recognize the existence of a nation or state does not result in the conveyance of jurisdiction to the United States.  Jurisdiction must be founded upon a positive relationship, such as personal or territorial nexus with a state, and not a lack of recognition of another state. In this case especially, where the U.S. has been the primary culprit for the collapse of the state, it should be estopped to raise the non-existence of a state.
3. The uncontroverted evidence is that I am a Native Hawaiian, descendant of and claim my citizenship in the Hawaiian nation and not in the United States of America.  My personal and territorial nexus have been within the historical entity known as the Hawaiian nation.  Because of U.S. aggression into Hawai`i, the U.S. has been able to take physical possession of Hawai`i.  No territorial acquisition or special advantage resulting from aggression should be recognized as lawful. United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974, Definition of Aggression,
4. The U.S.A. violated its domestic law found in its Constitution at Article 2, §2 in treating the “treaty of Annexation” as a joint resolution of the Congress in the failure to obtain the 2/3rd majority required to ratify a treaty.  The subsequent Organic Act and Statehood Act were internal acts of the U.S. founded upon a train of illegal conduct from foreign aggression to violation of its own Constitution and are nothing more than a harvest from the poisonous grove in Hawai`i.
5. The Statehood Act for Hawaii adopted by the U.S. Congress, (An Act to Provide for the Admission of the State of Hawaii into the Union, (Act of March 18, 1959, Pub L 86-3, 73 Stat 4), was a double fraud in its failure to abide by the Treaty (Charter of the United Nations) between the United States of America and the United Nation, adopted pursuant to Article 6 of the U.S. Constitution which was to promote self-determination to the people of the Hawai`i territory who were not self-determining. Article 73 of the U.N. Charter and UNGA Resolution 66 (I) identifying Hawai`i as a territory listed as a non-self-governing territory by the United States. See A Call for Review of the Historical Facts Surrounding UNGA Resolution 1469 (xiv) of 1959 Which Recognized Attainment of Self-Government for Hawaii, 2019, Dr. Michael Kioni Dudley, Ambassador Leon Siu, U.N. Special Expert Alfred deZayas, & Pōkā Laenui, J.D., www.hawaiianperspectives.org/documents
6. By the submission of Hawai`i under Article 73 of the United Nations Charter through General Assembly Resolution 66 (1), the United States took an official act in placing upon itself a “sacred trust” obligation to bring about self-governance to the people of the territory of Hawai`i. This submission thus over-rode any decision by U.S. domestic courts, of Hawai`i being properly incorporated as a territory into the United States in any decision made prior to 1946, the year of Hawai`i having been inscribed as one of the territories for self-determination as a non-self-governing territory.
7. The historical record is clear that the sacred trust obligation of the United States and of the General Assembly of the United Nations to bring about self-determination to Hawai`i pursuant to the international order as set forth in the various international obligations of members of the international community, including the Charter of the United Nations, the Bill of Human Rights, and the various decisions reached by the International Court of Justice and resolutions of the various organs of the United Nations has been violated and continue to be so as the United States and its subsidiary organs including the State of Hawai`i continue to assert jurisdiction over Hawaiian nationals residing in Hawai`i.
8. In so doing, the U.S.A. violates its domestic law found in its Constitution at Article VI in its failure to abide by the U.N. Charter, ratified by the U.S. Senate, in that the U.S. has violated its sacred trust responsibilities to Hawai`i as a non-self governing territory, which responsibilities are set forth at Article 73 and in the various declarations on decolonization, human rights and self-determination,  adopted subsequently and elaborating on those charter responsibilities.
9. The Republic of Hawai`i violated international and domestic laws in its conduct.  It violated the principle of self-determination as set forth in the American Declaration of Independence whereby governments derive their just power only through the consent of the governed.  (See also, the Universal Declaration of Human Rights, UNGA Reso. 217, 10 Dec. 1948, Article 21 (3), International Covenants on Civil & Political and Economic, Social and Cultural Rights, UNGA Reso. 2200, 16 Dec. 1966)  The Memorial Statement adopted by the mass meeting of Hawaiian nationals at Palace Square, October 10, 1897 and accompanied the Ku`e Petitions sent to the U.S. Congress
10. The Republic of Hawai`i was nothing more than a step in the transaction of conspiracy in colonization, beginning with the aggression of the United States armed forces into Hawai`i.  It violated the domestic laws of the Nation of Hawai`i committing acts of treason and violence in contravention of the laws of the Hawaiian nation.
11. At such a point, it seems all that is left for one intent on concluding that jurisdiction exist is to throw one’s hands up and proclaim either 1) the passage of time has overcome all illegalities, or 2) to grasp into some dark historical corner of American experience and generalize a comparison of Hawaiians and native American Indians as basis for jurisdiction.  Such a practice is a comment on the intellectual and moral character of those in decision making power.  It is wrong.  It is a poor foundation upon which a government should attempt to rule. It is an act enabling piracy, lawlessness, and the application of brute force when reason and justice fails to provide a foundation in law.

I declare that the statements I make in this document regarding my nationality, ancestry and history are true and correct to the best of my knowledge and belief and that the application of law and principles are submitted not for any purpose of distraction or confusion but based on many years of study and understanding of the various laws and principles of proper conduct.

Dated: Wai`anae, Hawai`i this \_\_\_ day of March 2020

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Assistance in the preparation of this document was given by Poka Laenui (Hayden F. Burgess) Attorney at Law. #1740