



BOR Testimony <bortest2@hawaii.edu>

Testimony in support of OMKM

Amber Imai-Hong <akrimai@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:36 AM

Aloha Board of Regents,

I am writing in support of the Office of Mauna Kea Management (OMKM). I feel like over the past two decades, OMKM has been doing a good job of managing the Mauna. I am a UH Manoa Alumnus from the College of Engineering. I currently work on campus as a researcher with the Hawaii Space Flight Laboratory. I was born and raised in Hilo where my ohana still resides. I support your efforts and ask you to continue to make strides to carefully and respectfully manage the ecologic and cultural resources on our sacred Mauna Kea, as a Native Hawaiian.

Mahalo nui,
Amber Imai-Hong
Avionics Engineer
Hawaii Space Flight Lab



BOR Testimony <bortest2@hawaii.edu>

Testimony in Support of TMT

Sam King <kingsam2@gmail.com>

Thu, Aug 1, 2019 at 10:40 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Aloha UH Board of Regents,

Please do not listen to all the noise from the TMT protesters. The TMT is an excellent project. It is culturally compatible. Many native hawaiiians have stuck their necks out to support the TMT and are now receiving threats and intimidation from the protesters. Please do not abandon us to that fate by backtracking just because the Rock showed up to promote his movie. Dont abandon the future of my children and all the keiki of Hawaii who want to study the stars by giving into the lawlessness of the protesters. Please stay strong and continue to push for what is right and what the Native Hawaiians actually want - which is to study the sky and the stars in all their glory and contribute to humanity's great journey of knowledge and learning.

Mahalo,

Samuel Wilder King II



TMT

chris king <kingces95@gmail.com>
To: BOR Testimony <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 10:56 AM

Actually, there was a typo. Use this:

Do a majority of self identified Native Hawaiians support the TMT?

The latest polling says yes!

<https://www.staradvertiser.com/2018/03/25/hawaii-news/support-is-building-for-tmt-even-among-hawaiians/?HSA=ce26884fb64542ae5c92bde8a66b048acf74df6e>

There is a >95% chance that a majority support TMT (that's after computing the margin of error for the subset of self identified Hawaiians). Those in support are a silent majority and they are counting on you to stand in the gap on their behalf. Before folding we owe it to them to at least take another poll to verify we're not bowing to a vocal minority.

[Quoted text hidden]



TMT

chris king <kingces95@gmail.com>
To: BOR Testimony <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 11:49 AM

I attached the notice for requests for written testimony. I also updated my testimony and attached the polling results I referenced in my testimony. Can you attach the poll to my testimony? Thanks!

I'm writing in support of TMT. Do a majority of self identified Native Hawaiians support the TMT?

The latest polling says yes (see attached poll).

There is a >95% chance that a majority support TMT (that's even after computing the margin of error for the subset of self identified Hawaiians and assuming the worst). Self described Native Hawaiians in support are a silent majority and they are counting on you to stand in the gap on their behalf. Before folding we owe it to them to at least take another poll to verify we're not bowing to a vocal minority.

[Quoted text hidden]

2 attachments

 **374711098-The-Hawaii-Poll-March-2018-TMT.pdf**
62K

 **201908020900.special.pdf**
53K



MASON-DIXON
POLLING & STRATEGY

WASHINGTON, DC - 202-548-2680
JACKSONVILLE, FL - 904-261-2444

HOW THE POLL WAS CONDUCTED

This poll was conducted by Mason-Dixon Polling & Strategy of Washington, D.C. from March 13 through March 18, 2018. A total of 800 registered Hawaii voters were interviewed statewide by telephone. All stated they vote regularly in state elections.

Those interviewed were selected randomly from a telephone-matched Hawaii voter registration list that included both land line and cell phone numbers. Quotas were assigned to reflect voter registration by county.

The margin for error, according to standards customarily used by statisticians, is no more than ± 3.5 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if all voters were surveyed. The margin for error is higher for any subgroup, such as a gender or age grouping.

The margin for error on the sub-sample of 535 Oahu voters is $\pm 4.3\%$. The margin for error on the sub-sample of 498 likely statewide Democratic primary voters is $\pm 4.5\%$. The margin for error on the sub-sample of 242 likely Democratic primary voters in the 1st Congressional District is $\pm 6.4\%$

QUESTION: Do you support or oppose the construction of the Thirty Meter Telescope (TMT) on Mauna Kea?

	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
STATE	77%	15%	8%
<u>REGION</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
Oahu	80%	12%	8%
Neighbor Islands	74%	19%	7%
<u>SEX</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
Men	81%	12%	7%
Women	75%	17%	8%
<u>AGE</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
<50	75%	16%	9%
50+	79%	14%	7%
<u>RACE/ETHNICITY</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
White	81%	10%	9%
Japanese	78%	18%	4%
Hawaiian	72%	23%	5%
Filipino	78%	10%	12%
Mixed/Other	76%	15%	9%
<u>PARTY IDENTIFICATION</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
Democrat	74%	18%	8%
Republican	80%	6%	14%
Independent	81%	15%	4%

DEMOGRAPHICS

PARTY IDENTIFICATION:	Democrat	353 (44%)
	Republican	176 (22%)
	Independent/Other	272 (34%)

RACE/ETHNICITY:	White	207 (26%)
	Japanese	182 (23%)
	Native Hawaiian	78 (10%)
	Filipino	94 (12%)
	Other Asian	22 (3%)
	Mixed Race	155 (19%)
	Other	54 (7%)
	Refused	8 (1%)

AGE:	18-34	135 (17%)
	35-49	223 (28%)
	50-64	234 (29%)
	65+	201 (25%)
	Refused	7 (1%)

SEX:	Male	385 (48%)
	Female	415 (52%)

CONGRESSIONAL DISTRICT:	1st Congressional District	390 (49%)
	2nd Congressional District	410 (51%)

REGION:	Oahu	535 (67%)
	Neighbor islands	265 (33%)

INTERVIEWS:	Land-line	520 (65%)
	Mobile	280 (35%)



Support for the Thirty Meter Telescope and Task Force for MaunaKea Governance

Thayne Currie <thayne.currie@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:58 AM

I write for the University's continued support of the Thirty Meter Telescope and for the Board of Regents' interests in improving governance of Maunakea.

I support the Thirty Meter Telescope for the following reasons:

1. Equitable, Environmentally Conscious Science: TMT is a paradigm shift in how we carry out scientific research in Hawai'i. TMT was specifically designed and sited to be as minimally impactful to cultural and environmental resources as possible. The telescope itself is barely taller than Subaru or Gemini yet will be far more difficult to see due to its lower elevation. TMT is not located on any shrines/burials and will not impact longstanding cultural practices. TMT's construction requires the decommissioning of five older telescopes -- four of which are at higher elevation, on the summit -- leading to a net reduction in astronomy buildings on Maunakea.
2. Giving Back to the Community -- TMT has supported Hawaii's students through the Akamai Workforce Initiative and the THINK fund. I personally know students who have benefited from these opportunities: I do not want to see them taken away for other students.
3. Jobs -- TMT will result in 300 construction jobs over ~a decade providing a much needed jolt for the Big Island economy. About 140 permanent observatory staff will have jobs with TMT. While some critics claim all these jobs will be for outsiders, even the existing observatories (like Keck) are well staffed by locals. With TMT's educational initiatives they are helping train potential future employees for these observatory jobs.
4. The Process - TMT went through a lengthy and transparent legal process to get permits to build the telescope. This is in contrast to construction projects of the past which had the state cut corners and degrade trust (e.g. the SuperFerry).
5. The Science - TMT will provide the leading ground-based astronomy telescope in the northern hemisphere (perhaps the world) for the next 50+ years. Current observatories like Keck have discovered dark energy and revealed the first images of planets around other stars. TMT will peer back to the beginning of time and perhaps yield our first images of Earth-like planets around other stars. Astronomy is a source of pride in Hawai'i; these discoveries make Hawai'i the center for understanding key philosophical questions about humanity's place in the universe.
6. Building TMT is the will of the community -- The best scientific evidence we have (from scientific polls) suggests that about 70-80% of Hawaii residents support TMT and the majority of those who identify as Hawaiian also support TMT. In my personal experience, much of the opposition comes not from TMT itself but from misunderstandings about the project, past grievances about Maunakea management (which I believe has been improved), or larger issues for which TMT is a symbol (e.g. self-determination/sovereignty). These issues should be clearly separated from the building of the telescope itself.

Maunakea Governance:

In my own experience, as an astronomer by vocation and a frequent visitor to the summit of Maunakea since 2006. The past 12 years have provided me ample opportunities to witness OMKM's ability to care for and manage Maunakea. I firmly believe that OMKM excels at the exceptionally difficult task of managing and protecting the natural and cultural resources of Maunakea, while providing an unrivaled center for scientific discovery through astronomical research and safe access to the summit for a wide range of visitors. I have found OMKM personnel to be highly professional and knowledgeable about the many facets of Maunakea that Hawai'i residents value.

However, if revisiting Maunakea's governance can help partially resolve some of the current grievances highlighted by protests over TMT, then I am for it.

Thank you for considering my testimony:

Thayne Currie



Continued support for TMT

manifestaloha@yahoo.com <manifestaloha@yahoo.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 11:52 AM

Aloha

I am Katherine Roseguo, an alumni of Roosevelt High School and UH Manoa, and a teacher in Haawai'i public school. I would like to voice my continued support for the construction of the Thirty Meter Telescope.

I write for the University's continued support of the Thirty Meter Telescope and for the Board of Regents' interests in improving governance of Maunakea.

I support the Thirty Meter Telescope for the following reasons:

1. Equitable, Environmentally Conscious Science: TMT is a paradigm shift in how we carry out scientific research in Hawai'i. TMT was specifically designed and sited to be as minimally impactful to cultural and environmental resources as possible. The telescope itself is barely taller than Subaru or Gemini yet will be far more difficult to see due to its lower elevation. TMT is not located on any shrines/burials and will not impact longstanding cultural practices. TMT's construction requires the decommissioning of five older telescopes -- four of which are at higher elevation, on the summit -- leading to a net reduction in astronomy buildings on Maunakea.
2. Giving Back to the Community -- TMT has supported Hawaii's students through the Akamai Workforce Initiative and the THINK fund. I personally know students who have benefited from these opportunities: I do not want to see them taken away for other students.
3. Jobs -- TMT will result in 300 construction jobs over ~a decade providing a much needed jolt for the Big Island economy. About 140 permanent observatory staff will have jobs with TMT. While some critics claim all these jobs will be for outsiders, even the existing observatories (like Keck) are well staffed by locals. With TMT's educational initiatives they are helping train potential future employees for these observatory jobs.
4. The Process - TMT went through a lengthy and transparent legal process to get permits to build the telescope. This is in contrast to construction projects of the past which had the state cut corners and degrade trust (e.g. the SuperFerry).
5. The Science - TMT will provide the leading ground-based astronomy telescope in the northern hemisphere (perhaps the world) for the next 50+ years. Current observatories like Keck have discovered dark energy and revealed the first images of planets around other stars. TMT will peer back to the beginning of time and perhaps yield our first images of Earth-like planets around other stars. Astronomy is a source of pride in Hawai'i; these discoveries make Hawai'i the center for understanding key philosophical questions about humanity's place in the universe.
6. Building TMT is the will of the community -- The best scientific evidence we have (from scientific polls) suggests that about 70-80% of Hawaii residents support TMT and the majority of those who identify as Hawaiian also support TMT. In my personal experience, much of the opposition comes not from TMT itself but from misunderstandings about the project, past grievances about Maunakea management (which I believe has been improved), or larger issues for which TMT is a symbol (e.g. self-determination/sovereignty). These issues should be clearly separated from the building of the telescope itself.

Maunakea Governance:

In my own experience, as a science teacher by vocation and a frequent visitor to the summit of Maunakea. The past 12 years have provided me ample opportunities to witness OMKM's ability to care for and manage Maunakea. I firmly believe that OMKM excels at the exceptionally difficult task of managing and protecting the natural and cultural resources of Maunakea, while providing an unrivaled center for scientific discovery through astronomical research and safe access to the summit for a wide range of visitors. I have found OMKM personnel to be highly professional and knowledgeable about the many facets of Maunakea that Hawai'i residents value.

However, if revisiting Maunakea's governance can help partially resolve some of the current grievances highlighted by protests over TMT, then I am for it.

Mahalo nui

Katherine Roseguo

Thank you for considering my testimony:

Please - remember, reduce, reuse, recycle, renew, refresh, recover, restore, respect, refuse, reintegrate, rethink, revitalize, replant, replanet, regreen, refurbish, regrow, rot.

**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

Testimony to BOR on Mauna Kea

Vernadette Gonzalez <vvg@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 12:31 PM

Aloha mai kākou e members of the UH Board of Regents:

My name is Vernadette Gonzalez, and I am a professor in the American Studies Department and Director of the University of Hawai'i at Mānoa's Honors Program. I have been a faculty member at the University of Hawai'i for the past 13 years, and I have never once attended or submitted testimony to BOR. Today is the first time I have been motivated to address you. I am a Filipina settler to this place, and an ally of Kānaka Maoli struggles to undo the legacies of colonialism and occupation.

I want to specifically address item III.D. regarding the appointment of a group to make recommendations based on Mauna Kea governance. I would like instead for the BOR to forfeit the Conservation District Use Permit for the TMT.

It has been made abundantly clear that the TMT process and project are fundamentally flawed. As a professor, I work with my undergraduates to develop them as thinkers and researchers. Fundamental to this development is an understanding that any research endeavor must demonstrate ethical standards of not doing harm and obtaining consent.

Kanaka Maoli and their allies have fought long and hard against the construction of the TMT, but the university and the state have not listened to their concerns. The BOR, the University, and the State have been told time and time again that there are significant cultural and environmental concerns relating to the TMT's construction, and that these concerns would ultimately result in the kind of impasse that exists today. None of you have listened. As of today, over 700 astronomers have signed a statement testifying to the breach in ethics of your decision to continue with the TMT's construction. As the trustees of this University, you have demonstrated that you are unable to uphold the standards of research ethics that we teach our students.

This decision has created a huge stain on the reputation of the University. It is laughable that we continue to claim that the University is an Indigenous-serving institution or a Hawaiian place of learning when you create conditions that make it clear that Kānaka Maoli knowledge and rights do not have a place at the table, that have driven Kānaka Maoli to desperate measures in defending their claims. As the University's governing board, it is your responsibility to fix this deep breach in trust, and to demonstrate that you value Kānaka Maoli people—your students, faculty, and staff—and not just as symbols to prop up a fantasy of diversity.

I urge you to forfeit the CDUP for the TMT and to ask that the TMT to go elsewhere. I urge you to use this moment to instead build something else—a truly Native Hawaiian serving and learning institution.

Sincerely,

Vernadette Gonzalez

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Vernadette Vicuña Gonzalez
Associate Professor, American Studies Department
Director, Honors Program

Honors Campus Address

2425 Campus Road
Sinclair Library 128
University of Hawai'i at Mānoa
(808) 956-5404

To schedule an appointment, please go to: <https://meetme.so/VernadetteGonzalez>



BOR Mauna Kea Testimony

Alex Miller <alexjm@hawaii.edu>

Thu, Aug 1, 2019 at 12:47 PM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Aloha, I am writing as a student and employee of UH Mānoa to submit comment on the proposed construction of the Thirty Meter Telescope on Mauna Kea. Let me begin by saying that I am not Native Hawaiian, and the voices of the Native Hawaiian community are by far the most important in this debate. I deeply and strongly oppose TMT in solidarity with my Kanaka Maoli friends, colleagues, teachers, students, and neighbors.

The basis of the argument against TMT by the Hawaiian community rests on its status as a sacred place, a dwelling place of akua, the wao akua, and a kupuna itself, sharing genealogical ties with all Kānaka Maoli. For example refer to the story (recounted beautifully by No‘eau Peralto in A Nation Rising) of Queen Emalani ascending its slopes to hi‘uwai in the waters of sacred Waiau and wash away the pain of the deaths of her husband and child and reaffirm her pilina (relationship, connection) to the ‘āina of the archipelago in preparation for her democratic run for Mō‘ī. She emerged from Waiau reborn into her full power, mana equal to any in the Pae ‘Āina and indeed the world. The peak of Mauna Kea has always been a sacred place of healing for the Hawaiian people, and testimonies against the TMT in recent years, such as that of Mehana Kihoi in her final testimony and rebuttal in the TMT contested case hearing in September of 2017, remind us that this legacy is alive today. To bulldoze and irrevocably alter such a place is detrimental to Native Hawaiians, who to this day seek healing from colonial violences they experience as Indigenous people of Hawai‘i dispossessed of self-determination in their own homelands. Their refusal of consent on these grounds alone should be enough. No means no—dedication to upholding bodily, spiritual, intellectual, and national autonomy demands it. However since UH and TMT have persisted in this project, I will continue to lay out my objections to the process by which TMT is being pushed forward.

Beyond the spiritual argument against the TMT, I think it important to properly contextualize who and/or which entities hold proper title to access, use, and stewardship of the summit of Mauna a Wākea. Before the illegal overthrow of the sovereign and internationally recognized Hawaiian Kingdom in 1893, the summit and surrounding areas were held by the crown, namely Lili‘uokalani. Under duress, those crown lands, later renamed “ceded lands” passed into the hands of the provisional and then territorial governments. It is an obvious truth that these lands are in fact unceded lands, as anything surrendered under threat of violence is in fact not ceded, but stolen. I stand by this claim that the entire archipelago is illegally occupied territory and no US or State of Hawaii government agency has any rights to determine land use in this still sovereign nation.

Nonetheless, with the establishment of the State of Hawaii, these so-called ceded lands passed into the control of the State to be held in trust for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920. The state has failed in its duty to properly steward these lands, leasing the land to The University of Hawai‘i for pennies a year. There is no revenue being generated for the betterment of the Hawaiian people by the lease of one of the most unique areas on the planet. Surely the rent on the top of the world should be in the millions of dollars a year, money which could be used to support the Hawaiian community. This is one layer of offense of State stewardship. Even more importantly, the State has disregarded decades of opposition to development on the summit by Kānaka Maoli, and has been legally found to be in mismanagement of the summit area in the past two decades. The summit ecosystem is a unique and fragile ecosystem not meant to sustain the development of over a dozen massive telescope facilities and to think this mismanagement would change with the construction of yet another telescope is naive at best. The construction of the TMT further threatens the health of an already damaged ecosystem as well as contamination of the massive Ka‘ohe aquifer which provides water to the community on Hawai‘i Island. Native Hawaiians know and have always known the science of ecology in their islands, and so the claim that this contest is between religion and science is a false and racist claim. Whose science is valued and heard? Why should it take white scientists using algorithms to predict adverse environmental impacts from construction of the TMT for us to “know,” when Native Hawaiian scientists

and kūpuna are already here telling us it will (and has). It is time to decolonize our assumptions about what is science and whose science is valued as we oppose the construction of the TMT.

In response to the mismanagement of the summit area, UH has drafted a new set of management rules which they claim will protect the summit from further adverse environmental impact. Anyone reading these rules can tell that they are not meant to protect Mauna Kea but in fact are meant to protect the TMT. Activities such as loud noises and use of lights at night are forbidden and punishable with increased fines under the new rules. Native Hawaiian cultural practitioners and mountain protectors who plan to occupy sites around the summit during the construction of the TMT will need lights for safety and will be chanting and singing as part of ceremonial and religious practices. Criminalizing Native Hawaiian cultural and religious practice (and indeed presence) is racist and a continuation of the colonial policy of Indigenous disappearance both in Hawai‘i and across the North American continent. It is also important to note that the proposed rules utilizes language for native Hawaiians with a lower-case “n” rather than an upper-case “N.” Those who know understand that this subtlety in convention has been used to enforce arbitrary blood-quantum rules which affect some Native Hawaiians’ access to government services such as homesteads, and has no basis in Native Hawaiian reckoning of Indigeneity. Of course, UH is hypocritically not obligated to follow its own rules as set down in the proposed management rules, which is heinous considering UH is the entity which has been mismanaging the summit area throughout the entire tenure of its lease. The UH Mānoa campus also rests on unceded crown lands, so the legitimacy of its authority to determine any land usage without the leadership and input of the Native Hawaiian community is extremely questionable. UH wishes to build the TMT to further research objectives and meet research goals, but I maintain that, if in 2019 meeting research goals requires violence against Native bodies, then your ethical research standards have not advanced in the last two centuries. Continuing the construction of the TMT brings international shame to our so-called Indigenous-serving research institution.

It is clear to me, as it should be to you and is increasingly so to the Hawai‘i community, that the construction of the TMT is foremost about the

protection of sacred lands, but also importantly about a legacy of colonial oppression of Kānaka Maoli by the US and State of Hawai‘i. As the beneficiaries of crown lands and the Indigenous people of this archipelago, Kānaka Maoli have the right to refuse consent to construction in their territories which is recognized in the United Nations Declaration on the Rights of Indigenous Peoples. The State has a history of mismanagement of this archipelago, not only at Mauna Kea, but also at Kaho‘olawe, Pōhakuloa, and Makua, to name only a few. Luckily for us all, Kanaka Maoli kia‘i mauna are showing us kapu aloha, a different way forward, a way to heal their people, this ‘āina, our relationships with them, and even the world. This is the only pono way forward. We must do it, even if it is hard, even if it is painful. Let us all take this time on Mauna Kea, whether physically or in thought and spirit, to heal in the waters of Waiau and be reborn into a new future together. Kū Kia‘i Mauna.

Alex Miller

MA candidate in Dance

Graduate Assistant, Center on Disability Studies

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Alex Miller

M.A. candidate, Dance--Cultural and Performance Studies

Department of Theatre and Dance

University of Hawai‘i at Mānoa

Graduate Assistant, Center on Disability Studies



Testimony Board of Regent 8.2.19

Crystal Kia Paul <crystalkiapaul@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 12:58 PM

Aloha,

I humbly submit my testimony for tomorrow's Board of Regents meeting.

Mahalo,
Crystal Kia-Paul

 **BOR 8.1.19.pdf**
41K

Crystal Kia-Paul
8577 Travis Road
Sanger, Texas 96266
crystalkiapaul@gmail.com

August 1, 2019

University of Hawaii
Board of Regents
Information Technology Building
First floor conference room 105A/B
2520 Correa Rd.
Honolulu Hi 96822

RE: New Appointment of Permitted Interaction Group for Maunakea

Aloha Members of Board of Regents,

My name is Crystal Kia-Paul, a descendant of Nae'ole who is tied to Moku o Keawe (Hawai'i Island) and Mauna a Wakea and are well known through our mele and mo'olelo.

As members of the Board of Regents, it is imperative that you have a clear and conscious understanding of each situation before you, as your decisions will make an impact on the community. I believe the general function of universities within communities is not just about education and learning but it also serves as a safe place that fosters proper debates that include all perspectives of the issue all the while defending the institution's mission. I believe that you not only have a fiduciary responsibility but more importantly, a moral responsibility to the community you are about to impact. It's not about the quantity of support towards a particular debate or issue, but the quality of knowledge that should guide your decision making process. I believe that is how all universities are set up to function.

In recent protests on Maunakea, the community has voiced their frustrations. Although, there are a few media sources that mention the "silent majority", it's not about numbers, but about who shows up to debate the validity of the action or impact. As a Native Hawaiian, I would like to mention that as a Board member who makes decisions that

impact the State government, you are responsible to uphold the constitution and laws of the State of Hawaii and that the State of Hawaii has an obligation to protect traditional and customary rights to its fullest extent. To fully understand what that means, the University of Hawaii, Manoa Campus houses the Native Hawaiian Law School.

The community's expectation is that the Board of Regents would also make decisions that represent factions such as Native Rights and Tenancy and Astronomy. It is the general view of the community that Native Rights have taken a back seat at many decision making forums and that it is time that those parties be held responsible to their obligations as cited in the State's Constitution article XII, sec. 7, where the State of Hawaii "reaffirms" traditional and customary rights and based on the Hawaii Supreme Court ruling on the Kalipi case where the court determined its obligation "to preserve and enforce such traditional rights". (Kalipi, 66 Haw. at 10, 656 P.2d at 751) This is a clear indication that the Board of Regents, and any of the UH's affiliates cannot ignore the rights and practices of Native Hawaiians, but is obligated to actively address the concerns.

The current Maunakea issues to include but not limited to the construction of the TMT have drawn publicity from around the globe. Some members of the community are concerned about how that would affect the UH's accreditations and its reputation the UH is gaining and how it's impacting other collegiate programs.

I am a firm supporter for the Kia'i on Maunakea, and many eyes are watching every inch of this situation ensuring that the UH, as a State agency, uphold its obligatory commitments to the Native Hawaiian community prior to any contract or agreement with any corporation or entity.

THE WORLD IS WATCHING.

Sincerely,
Crystal Kia-Paul



Testimony re: meetings about Mauna Kea

bethleeds22@yahoo.com <bethleeds22@yahoo.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 1:15 PM

August 1, 2019

Aloha Board of Regents and Interested Parties!

The following is my testimony for your meeting tomorrow, August 2, 2019.

I understand that you are considering a "sub group" to discuss Mauna Kea related issues.

1. Can you please tell me what these issues are?
2. I am opposed to the construction of the TMT and want my voice to be heard and discussed.
3. I have brought a lawsuit in the past regarding the Sunshine Act and Law in California and I proved that the law was being violated... Because they met in secret to do the public's business. Please... At least be above board with your discussions of this issue.
4. Please dismantle those telescopes that are obsolete...
5. Please add a stipulation that the Bond for the TMT MUST be in place.

Thank for your consideration and reading my points. And let me know what issues you will be discussing so I can give another and more in depth testimony.

Mahalo,

Beth Leeds

**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

Regarding TMT.

MAJ Mc <waikikibeauty@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 1:22 PM

Dear Board of Regents of UH:

I am writing to you as a community member in support of the TMT project on Mauna Kea.

This technology is a huge honor for Hawaii and Mauna Kea to host.

The protestors are vocal but make many materially false claims while acting with hostility towards the workers who are assigned to attend the telescopes and begin construction on the TMT project.

The protestors are out of line and are strangely using high technology to live stream their protests of high technology in Hawaii.

Absolutely shameful!!

The TMT project has been through rigorous review and has passed every criteria for permission to construct.

The protestors are morphing into anti-American, pro-sovereignty/restoration of the monarchy...in a strange anachronism where the original impetus for stopping the TMT project had its inception after the TMT pad had been dozed and was subsequently occupied by campers who decided it was a heiau and that the summit was therefore sacred.

They're basing their position on materially false claims. They are calling for the overthrow of the USA in Hawaii.

They are encouraging people from around the world to add to their angry protests and they are using union members (SAG, employees of the UH, and others) to generate civil disobedience which is a violation of the AFL-CIO charter. The union members are violating their sworn oath.

The protestors are vocal and act like bullies as they block the road with their media circus and photo ops.

Please see to it that the Hawaiian studies department employees are brought to bear for their unacceptable actions against the TMT project.

The department of astronomy has been as diligent as possible about managing the summit: it's a harsh environment where no one lives and no one has ever worshipped any deity prior to the TMT project pad being dozed.

Thank you for your wisdom going forward.

Imua TMT.

With Sincere Aloha, Mary McAndrew



BOR Testimony <bortest2@hawaii.edu>

OPPOSITION TO TMT IN HAWAII NEI

Kiki Kiki <maorimauiqueen@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 2:40 PM

TMT Needs to LEAVE HAWAII. We will not stop protecting our aina (land) We will not be bought our minds will not be changed. We stand firm on OPPOSING this "project" Mauna Kea and all of this aina (land) is sacred to our people. All our people! We are uniting to oppose the building of the TMT Telescope on Mauna Kea or anywhere in Hawaii. On top of Mauna Kea already has 13 telescopes. We do not need more building. NASA has enough equipment already for us as humans to navigate the stars. In fact Native Cultures worldwide have been navigating this world since the beginning of time. We do not need to dig deeper into space. We need to Malama (take care) of our people here on this aina. We need to spend the 1.4 billion on helping the homeless, programs and treatment for mentally ill. Keeping school programs open, giving scholarships to children so they may complete school and go to college. THIS NEEDS TO STOP. Please also remember if you are NOT already aware The United States of America illegally occupied our lands, held OUR QUEEN LILIUOKALANI CAPTIVE, and took all our land. WE ARE NOT AMERIKAN! WE ARE KANAKA MAOLI! Our islands and people were taken advantage of and we as a people were pushed to the side and ignored. WE ARE STANDING UP FOR ALL OUR ANCESTORS THAT CAME BEFORE US WHO HAVE FELT THIS SAME OPPRESSION THIS SAME COLONIZATION THAT HAS TAKEN PLACE HERE SINCE 1893...196 years later AND WE WILL NOT STOP PROTECTING. THE WORLD IS LISTENING AND ALL THOSE WHO BELIEVE AND AGREE WITH """"KEEPING OUR PEOPLE FROM CONTINUED OPPRESSION WILL RISE WITH US"""" WE WILL CONNECT LIKE THE WATERS THAT CONNECT US ALL AS ONE""""WE WILL STAND MILLIONS STRONG AND NOT STOP STANDING UP FOR OUR RIGHTS UNTIL TMT LEAVES THESE LANDS. PLEASE LISTEN TO OUR KUPUNA (Elders) PLEASE LISTEN TO OUR KEIKI (Children) PLEASE LISTEN TO EACH AND EVERY ONE OF US WHO IS ASKING YOU TO LEAVE. PLEASE LEAVE. LEAVE NOW! LEAVE NOW! LEAVE NOW!

I KU MAU MAU

I KU WA

I KU MAU MAU

I KU HULUHULU

I KA LANAWAO

I KU WA

I KU LANAWAO

I KU WA

I KU WA HUKI

I KU WA KO

I KU WA A MAU

A MAU KA EULU

E HUKI E

KULIA

Sent from my iPhone



BOR Testimony <bortest2@hawaii.edu>

A'ole TMT

Chris Canubida <ChrisC@hsfcu.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 2:55 PM

To whom it may concern,

I am writing this email in regards to the construction of TMT. As a native Hawaiian, I am opposed to the TMT being built because of what Mauna Kea means to the Hawaiian people and the desecration that it will cause to what we consider sacred land to the people and our ancestors. How much more damage do you need to cause to Mauna Kea. You've already caused enough damage by the building of the previous telescopes which have already been mismanaged with disregard to the Mauna. You say that this will create jobs, but how much of these jobs will be for the people of Hawaii or will these jobs be for people from outside of Hawaii? How would that help Hawaii? With the length of time that it would take to build it, how obsolete will it be once it's completed and does that mean that you would need to build another one in the future? If so, then no don't build it now or ever. I see your spokes people mentioning that we are not allowing science to progress. For myself, this is not an attack on science, we as a people loved science. This is about saying no to corporations, like yours, that enough is enough and I am tired of seeing this disregard to our 'aina because of money. There are two other countries that are waiting in open arms to have the TMT built there. You would not be damaging sacred land there so what is the issue with going there? Can't you see that people and supporters against the TMT around the world are asking you not to build it here?

Your motto is "Maluna a'e o na lahui a pau ke ola ke kanaka" which means "Above all nations is humanity". How the hell is building the TMT following this motto of yours when the people are crying out to you that they don't want it? Everything you are doing here is going against what it says. If you still decide to build it then you better change that motto as well.

If you have a heart then you should see that this is not something that should be done. After all that our people went through and continue to go through we will not let this happen anymore.

A'ole TMT, build it elsewhere!

Aloha,

Chris Canubida

Human Resources Professional

Hawaii State Federal Credit Union
[560 Halekauwila Street](#)
Honolulu, HI 96813
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8/1/2019

University of Hawaii Mail - A'ole TMT

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**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

A`ole TMT

Cynthia Franklin <cfrankli@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 3:01 PM

Dear BOR:

I am a professor who has been teaching in the UH-M English department for 25 years. I am writing to oppose the constitution of a "Permitted Interaction Group" (or PIG), and to urge you to oppose the construction of the TMT on Mauna Kea.

Thousands of Kanaka Maoli and their allies, from within Hawai`i and across the world, have demonstrated with passion, ethical integrity, political vision, and with brilliance why the construction of the TMT on Mauna Kea is an act of desecration; how it is environmentally devastating; and how it is an act of violence politically, culturally and religiously. This special BOR meeting is being held as a response to a massive international outcry, and because the people to whom the land belongs have shown their willingness to put their bodies on the line for as long as it takes to protect their Mauna.

Given these circumstances, you should only be meeting to put a stop to the TMT, not to figure out matters of governance. Under what authority can you or the university press forward with this project? How can it be your right to determine how to govern the mountain or this situation? How can you do anything at this point other than apologize to the people you, through your support for the university and governor and TIO corporation and through the abdication of your responsibilities, have subjected to state violence?

On a personal note, I would like to share that I was at the Mauna this week to stand in solidarity with those there—most especially the students I teach (and learn from), the colleagues I work with (and learn from), and UH staff I greatly admire (and learn from). If ever a place was not in need of guidance from a group with the designation of PIG, it is the people who in less than three weeks have established, at the crossroads of a highway, a whole beautiful world. Along with everyone else who visits, I was welcomed into this world. It gave me a vision of what is possible if people work together in Kapu Aloha for what is pono. I could speak of the kitchen that feeds hundreds, of the tent that supplies people with clothing and blankets, of the medics tent that tends to people's health, of the art being made, the classes being taught, of the culture being sustained and created, of the rules of governance that make the space safe for all, but what I really want to say is this: the port-a-potties are sparkling clean—beyond any I have ever stepped foot into. Think about this: what does it mean that people, none of them being paid, are doing this daily kind of work? How is this possible without the highest order of love, commitment, pride, ethos, and organization? Without the most impressive organizing?

I arrived the day after the two-year extension of the TMT Permit was announced and saw the resolve of those there to stay, for as many years as it takes. The governance there will only continue to grow stronger. And people will keep coming to this place, because people are hungry for a place of such spiritual integrity in a world that is riven with colonial violence, reckless environmental degradation, corporate corruption and racial capitalism, and all the ills that are plaguing the world—and that are the very ones driving construction of the TMT.

I urge the BOR to step out of the way and let the Kanaka Maoli continue to build this beautiful world. It will continue to be built whether or not you oppose it—whether or not you impose upon it your undesired, unneeded, and destructive "governance." Stand up to the corporate and colonial interests out to destroy what is being built on the Mauna and do your job as Regents responsible for the well-being of the University and

the many UH students, faculty and staff who are part of the protection and flourishing that is happening at Mauna a Wākea. No TMT, not now, not in two years, not ever.

Sincerely,

Cynthia Franklin
Professor
Co-Editor, *Biography: An Interdisciplinary Quarterly*
Department of English (KUY 224)
University of Hawai'i
1733 Donaghho Road
Honolulu, Hawai'i 96822
cfrankli@hawaii.edu



Testimony for August 2, 2019 BOR meeting

Candace Fujikane <fujikane@hawaii.edu>
To: bor.testimony@hawaii.edu
Cc: Candace Fujikane <fujikane@hawaii.edu>

Thu, Aug 1, 2019 at 3:37 PM

To: University of Hawai'i Board of Regents

From: Candace Fujikane, Associate Professor of English, University of Hawai'i

Re: Appointment of a Permitted Interaction Group to Investigate Issues and Make
Recommendations Related to Maunakea Governance

August 1, 2019

Aloha mai kākou e members of the UH Board of Regents:

My name is Candace Fujikane, and I am a professor in the English Department. I have been a faculty member at the University of Hawai'i for the past 24 years.

I want to address agenda item III.D. regarding appointment of a group to make recommendations based on Mauna Kea governance and urge that the entire Board do one thing first: forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

I want to be clear: there is already a fundamental problem of a conflict of interests in decision-making regarding Mauna Kea. I speak directly to you as regents. I do not know your mo'okū'auhau, your genealogies, but if you do not have Kanaka Maoli genealogy, then you are a settler. All of us who do not have this genealogy are settlers. I am yonsei, a fourth generation Japanese settler.

If you are not Kanaka Maoli, how do you measure your family's generations in Hawai'i to that of Kanaka Maoli? What is five generations compared to one hundred generations? Or the Kumulipo tracking Kanaka Maoli genealogy for more than 800 generations? Why are settlers who have lived in Hawai'i for less than five generations making decisions about Mauna Kea that are harmful to Kanaka Maoli?

Kānaka Maoli have engaged in millennia of careful observation of how best to live in the particular conditions of Hawai'i. As Ku'ulei Higashi Kanahale explains, the oli remind us that Mauna Kea is a pahuwai, a water container. There has been no comprehensive hydrological study of the TMT site, and the hydrologist who was the expert witness admits that he does not know where the groundwater is in Mauna Kea. In these times of global climate change and lessening rainfall, the TMT and the Red Hill jet fuel tanks are both posing grave dangers to our most precious source of life: water. This is settler colonialism.

The overthrow happened 126 years ago. That is not a very long time. The Civil Rights Act was passed just over fifty years ago. When I was growing up, we had so much respect for Hawaiian people and culture, and when a sign said "KAPU: KEEP OUT," that meant something to us. How is it that you have forgotten? How is it that you have forgotten our debt to Kanaka Maoli? How is it that the University of Hawai'i came to be here? How is it that you came to be here? How is it that you have become so disconnected by class and racial privileges from Kanaka Maoli communities who have been saying no to the TMT from the very beginning? Through their efforts, Kanaka Maoli have kept new telescopes off the mountain for over twenty years, and the TMT knew this when it started. This is settler colonialism.

And under these conditions of settler colonialism, Kānaka Maoli have built this movement to protect Mauna Kea on aloha. They have extended only aloha to you, and what have you given them in exchange? Kūpuna being arrested on Mauna Kea. The kūpuna are our greatest warriors. They have been sleeping on the mauna for 20 days, in chairs, when temperatures have plummeted to bitter cold or soared to blazing heat. They are firm in their commitment to protecting the mauna.

The whole world is watching. Over 700 astronomers have stated clearly that it is unethical to proceed with research that necessitates the arrests of people, of elders, who are standing for their survival as a people. I know that there are many STEM scientists at the University who believe in decolonizing STEM and are opposed to the TMT but they cannot speak out.

As settlers, we always have a choice. We can either be responsible for perpetuating settler colonialism against Kanaka Maoli, or we can choose to be settler aloha 'āina. We are in dire straits when it comes to global climate change, and being settler aloha 'āina means standing with Indigenous people on the frontlines of restoring this planet.

I urge you to forfeit the CDUP for the TMT and to ask that the TMT to go elsewhere.



BOR Testimony <bortest2@hawaii.edu>

Hawaiian people, true Hawaiian people; NO TMT

Summer Lee Yadao <summerle@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 4:26 PM

Aloha Board,

I have been a student of the UH system since I graduated from High School in 1996.

There have been a few great professors but none more valuable than the Hawaiian culture/language classes.

I feel like you all have either forgotten or never truly knew what being in Hawai'i means, and especially what responsibility being decision makers for the students and future leaders of society in Hawai'i means.

Allowing the people of Hawai'i to be split about a useless, yes useless telescope for 99.9% of the people of Hawai'i is so ridiculous and an abuse of power.

The lies you all are spreading about it being a benefit for the people is just another way for those who are profiting from this to make sure you get paid. So shameful.

Countries around the world are looking upon these islands, watching the Native TRUE people of these islands, as they show up every single fake state agency in the island chain.

They are proving to the people who have been oppressed for so long, that when we rise together, we will overthrow all who have tried to destroy us.

Make no mistake, the kia'i, the people in support of protecting Maunakea will NEVER move.

So I hope that you all will be on the right side of history when the people are learning at UH in the future, how the BoR made the most beautiful monumental decision of staying true to the people, the kanaka and choosing them over profit.

Mahalo,

Summer-Lee K. Yadao
BSW student
UH-Manoa



Testimony on Agenda Item III-D

Aaron Kiilau <akiilau@hawaii.edu>

Thu, Aug 1, 2019 at 5:30 PM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Aloha,

My name is Aaron Ki'ilau and I am a PhD student, recent graduate, and incoming English instructor at the University of Hawai'i at Mānoa. I am also a graduate of Leeward Community College and the University of Hawai'i at West O'ahu. I am an editor for the *Hawai'i Review* as well as a valued writing tutor for Student Athlete Academic Services.

I am (perhaps most importantly) a Kanaka Maoli scholar and employee here at the University, and can trace my lineage more than twenty generations and at least five centuries back to Hawai'i's first human inhabitants. My family has lived on this 'āina for as long as Kanaka feet have walked it. I can also trace it to my first Filipino, Chinese, and English ancestors that have more recently arrived here since the 1850s.

I ask you, then, as one of many whom share the privilege of having been stewards of this land to allow the Thirty-Meter Telescope (TMT) to be built elsewhere than upon our sacred Mauna a Wākea.

I am not a particularly religious or spiritual person and am also quite fond of astronomy and western science. But regardless of the merits and benefits that the TMT may bring to the University and Hawai'i, it is not worth desecrating hallowed land that my people and friends (many of whom are not themselves Kanaka Maoli, but valued 'āina allies nonetheless) have been urging the university, the state, and the world to hold in just as high esteem.

Something within me says that no matter what I learn throughout my life—here at the university or elsewhere—that when kūpuna travel many miles to lay themselves upon the ground before police and machines, it must give us pause to reconsider what we are doing. This is not stubborn traditionalism, but an echo to which our world has become deaf and to the detriment of our environmental integrity.

The global community has largely agreed with the notion that pushing this project through—and despite the courageous and perilous lengths that our kūpuna have gone to protect one of our most sacred and celebrated sites—is wrong.

Other locations have expressed their readiness to receive the TMT, so this is not a difficult decision. It would speak very highly of you all, and of this university's commitment to being a "Hawaiian place of learning" if it were to abide by Hawai'i's centuries-old commitment to 'āina.

Please, please, please: let it be built elsewhere. Let us give future generations of any background something to remember as a poignant moment of reflection, and a brave and just decision.

Me ke aloha,
Aaron Ki'ilau
Editor | *Hawai'i Review*

Graduate Assistant | English Department

Web Coordinator | The Writing Center
Writing Tutor | Student Athlete Academic Services
University of Hawai'i at Mānoa

LATE TESTIMONY**UNIVERSITY
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BOR Testimony <bortest2@hawaii.edu>

Special Board of Regents Meeting - Agenda D and Maunakea Governance

Nikki Kepoo <kepoonikkia@hotmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 6:14 PM

Aloha,

Please accept my written testimony with respects to the management of Mauna Kea and appointment of the permitted interaction group.

It is my understanding that the P.I.G. are appointed by the board but contain less than the quorum of the board. The group can be made up of the board and/or others who can contribute to the purpose. However, the group is not bound to the sunshine laws and therefore can conduct meetings without public notice or input.

I also understand the impact this group will have to the overall responsibility in investigating all implications placed onto the governing duties of those commissioned to manage Mauna Kea.

I implore you to please consider each line item that was outlined to the purpose of the land and its use. Consider the current seen impacts but the underlining unseen impact. Your current responsibilities now include potentially righting the wrongs of those before.

I give all my aloha and mana to empower this board to truly see the overall responsibility of the LAND you are meant to care for and not the influences of those who don't.

I put my trust you will see the faces of your Keiki, Mo'opuna, and every generation holding your name after that point. Please realize those originally assigned may not have been given a full transparent view of the impact and based on historical and current demeanor, it's very clear the the care for the land, the pu'uhonua o Pu'uhuluhulu was and continues to be mismanaged.

Mahalo for your time,
Nikki Kepo'o - a member of your lāhui.

Sent from my iPhone



Testimonial letter, support for TMT

Gardner De Aguiar <BudhagRizzo@msn.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 6:22 PM

Greetings and Aloha,

My name is Gardner De Aguiar and I am a Native Hawaiian who has lived all my 55 years on the Big Island of Hawai'i. Because I live on the Big Island, I am unable to personally attend this Board of Regents Meeting in Honolulu. So instead, I am submitting this testimonial letter.

I am in support of the construction of the Thirty Meter Telescope. I endorse it in the spirit of our ancient ancestors. Our ancestors were people of discovery, travelling the seas and using the stars to navigate. Our ancestors were brave, adventurous Explorers, using the technical skills available to them. If not for this spirit of exploration, they would have never discovered these islands. The TMT is the next step to this spirit of exploration.

I feel that, somewhere along the way, our people have lost this sense of discovery and will to venture. We have become complacent and now place our energies in endeavors which only serve to divide us more. The Sovereignty Movement has successfully hi-jacked the project, unfairly equated it to Imperialism, and has used it as a lightningrod to give their political agenda much media attention. This is simply disingenuous and intellectually dishonest.

As well, we stand to lose so much if the TMT project is rejected. \$300,000 to \$1,000,000 annual rent. Employment contracts with various construction, technician, and maintenance crews. Monies going to grants, scholarships, Think Fund. Job and career opportunities. A pipeline to more STEM research. All this circulated into our economy at no cost to our state.

Also, if rejected, it will send a dangerous message to future financial endeavors wishing to invest in Hawaii's economy. The projects will dry up.

The journey of Discovery reflects the ways of our ancestors, and should be a key goal for the Hawaiian people living today. We need to get over the past injustices we have suffered and channel this energy into progressing our people in the ever-evolving Global Theater, and I feel that the Thirty Meter Telescope is a step in this direction. Culture and Science can coexist on the Mauna. The willingness to do so just has to be there.

Mahalo,
Gardner De Aguiar
BudhagRizzo@msn.com



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BOR Testimony <bortest2@hawaii.edu>

Support TMT

James Rhoads <jameserhoads@gmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 6:31 PM

Hi- I would like to encourage the Board of Regents to support the construction of TMT on Maunakea. Hawaii'i needs an economy that is not overly reliant on tourism. Astronomy brings technical jobs. And astronomy is about a sense of wonder at the universe. It does not need to stand in opposition to a sense that the mountain is sacred. Management of Maunakea should include a mechanism for Hawaiian voices to be heard and compromises to be reached, but stopping this telescope is bad for Hawaii'i.

Thanks, James Rhoads.



Testimony to BOR on Mauna Kea

Janet Graham <janetjg@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 6:55 PM

Dear BOR:

Thank you for the opportunity to submit late testimony regarding Agenda Item III.D. I am PhD student at the University of Hawai'i at Manoa. I am not Native Hawaiian, but I stand with my Kanaka Maoli professors, classmates, friends, and students and their allies in opposing construction of the TMT on Mauna Kea. Rather than create a "Permitted Interaction Group" (or PIG), I urge you to oppose the construction of the TMT on Mauna Kea. The international and local outcry as well as the inspiring commitment Kanaka Maoli and their allies have shown on the Mauna to halt its construction through peaceful and highly organized means should be sufficient reason be part of the effort to stop the construction of the TMT on Mauna Kea as a board.

Sincerely,

Janet Graham

UHM, Dept. of English



TMT testimony

Bri Onde <brialyonodera@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 7:01 PM

Aloha

My name is Brielyn Onodera. My mother is of Hawaiian descent, with ancestral ties that place our roots in Miloli'i. My father is Japanese but generations of Onodera have laid their roots in Kamuela. I was born and raised in Hilo, attended Kamehameha Schools and eventually got my bachelor's degree at UH Manoa in mechanical engineering... that being said, I am a massive supporter of the Thirty Meter Telescope.

First, I want to highlight my support for outreach programs with a focus on STEM. Growing up, my parents enrolled me in outreach programs like those and I 100% believe that without my exposure to such programs I never would've found my passion in engineering until much later in life. Early exposure is so important because it gives keiki the opportunity to nurture important skills for the future. TMT supports this goal with money allocated to education. Education in general is important and allows locals to fill high-paying jobs while staying in Hawai'i.

Secondly it is undeniable that TMT will continue to bring necessary economic diversity. The world is watching and how we proceed with this conflict is going to determine the kind of attitude other corporations and organizations will expect when coming here. TMT followed the process required to build, and to allow anarchy from the protestors to the point where they will hold the mountain hostage so they can run things on their terms, is absolute madness. Astronomy emerged in the wake of the 1946 tsunami, as an economic solution to help Hilo rebuild. We are now knee deep in the wake of another natural disaster (eruption) and I think TMT will help us recover. On top of that the project promotes diverse opportunities for locals who have become educated in a STEM field. As an engineer I found an alarming lack of diversity when I graduated and my options were fundamentally working for a hotel, construction or the military. Right now I work for a telescope on Maui and I love my work so I'm grateful I didn't have to leave the islands to pursue better opportunities.

Finally I want to say that Mauna Kea is sacred, but astronomy is a sacred art. Many ancient civilizations built temples to deities to pray for a better understanding of the universe and to observe space. Hawaiians are no different, making observations with the naked eye and using the knowledge they've gained on astronomy to influence their lives, eventually causing them to migrate to Hawaii. Hawaiians were (and some still to this day are) amazing scientists. There is a constant blending of Hawaiian cultures with modern technology so it holds both cultural significance and contributes to future generations. Saying the Mauna is sacred to the ends where we don't use it is like saying the taro is sacred so we do not touch it /farm it, or the ocean is sacred so we must not build fish ponds. Hawaiians sought to co-exist with their surroundings by treating it with respect yet still utilizing what it has to offer. The Mauna is slated to be the origin of life to some people sure. Although personally my family found their livelihood came from the sea. Yet that didn't mean they did not fish it or gather from its tidepools or learn how to ride it's waves. TMT will NOT be built at the summit, or even visible from the summit. Nor is it built on culturally significant sites. Why can't the Mauna be shared for both religious practice and to increase sacred knowledge of Astronomy. Hawaiians were world class naked eye astronomers, to me it makes sense that they continue to make amazing, new astronomical discoveries in Hawaii and to continue to encourage future generations to reach for the Stars.

8/1/2019

University of Hawaii Mail - TMT testimony

I understand that what is transpiring on Mauna Kea has evolved to more than just the TMT and hope the project can be built soon. Hawaii has so much to gain from the project, and I am trying to share this information so others can understand what may be lost as well.

Thank you for reading my commentary, I hope it has influenced you to support the project (or continue to support the project).

Brialyn Onodera



Opposition to TMT

Jana Soli <janaksoli@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 7:04 PM

Hello,

My name is Jana Soli. I am a graduate of the University of Hawaii, as well as a Native Hawaiian. I am writing in opposition of the Thirty Meter Telescope and all future construction on Mauna Kea.

I hope the board will rescind its approval of construction for the Thirty Meter Telescope on Mauna Kea. This mountain is a sacred site for Native Hawaiians, and an invaluable and endangered resource to all of Hawaii.

Please consider the impact of this important decision. You have a unique opportunity to lead the world in understanding how to care for people and the environment. As an institution for learning, is it not your job, and your duty, to instill the younger generations with open minds and deep respect for the beliefs of others? Please consider how building TMT on Mauna Kea will result in TMT symbolizing the prioritization of money and business over the will of the people and the care of the land.

We who stand opposed to TMT do not oppose science, but we do stand against the dismissal of factors more important than building a telescope on a specific mountain site. Please do all that is in your power to send TMT elsewhere, such as the proposed building site in the Canary Islands.

With respect,

Jana Soli



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BOR Testimony <bortest2@hawaii.edu>

Agenda Item IIID - Testimony

Casey Nakamura <caseynakamura@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 7:13 PM

Dear Board of Regents,

My name is Casey Nakamura. I am a resident of Hilo, Hawaii born and raised. I am writing to you today to voice my concerns about the construction of the Thirty Meter Telescope on top of Mauna Kea. In addition to my concerns about the construction itself, I am equally disturbed by the process in which TMT has advanced to this day.

This telescope will bring further destruction and loss to the mountain (as seen within previously conducted environmental studies, as well as with our own eyes), in an already fragile ecosystem. It claims to have proceeded with utmost respect for Native Hawaiians and yet their very voices have been the most disregarded. The very laws in place to regulate this type of activity has been altered to fit the conditions of a personal agenda.

All of these issues should be acutely analysed, and with total transparency. Which arises concerns with the nature of the Board of Regents meeting on Aug. 2, 2019, in regards to the Interaction Group that will investigate TMT on Mauna kea. I, and other protectors of Mauna Kea, want to know what issues will be investigated, the timeliness of this group's research and reports. We want to make sure the group will act and report in full transparency.

The people of Hawaii do not want this telescope here and the Canary Islands will gladly allow its construction there, as has been confirmed by the Institute of Astrophysics of the Canary Islands.

Mahalo,
Casey Nakamura



Agenda Item III. D.

Nicholle Konanui <nicholle@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 7:21 PM

Aloha mai kākou e members of the UH Board of Regents:

My name is Nicholle Konanui, and I am an alumna and employee of the University of Hawai'i. I speak for myself, my kupuna and my descendants.

I would like to address agenda item III.D. regarding appointment of a group to make recommendations based on Mauna Kea governance and urge that the entire Board forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

Please do not further continue to fail the people of Hawai'i by not upholding your kuleana to the Mauna. Please do not let your legacy be the rift in Hawai'i's communities, caused the errors created by your predecessors. You have the power to correct this. This project will come and go, but the people of Hawai'i will remain and always remember. Our blood quantum will soon diminish, but our connection to our 'āina and nā 'ike a me nā hana will continue.

I urge you to forfeit the CDUP for the TMT and to ask that the TMT go elsewhere.

Aloha nui,

Nicholle S. L. Konanui



Maunakea Governance

sylviedahl@aol.com <sylviedahl@aol.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 8:22 PM

I wrote the OpEd below published in Civil Beat in 2015 to express support for Astronomy on Maunakea and TMT construction. It seemed appropriate to share for consideration of the Board of Regents. With aloha, Sylvia Dahlby - Hilo

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Who will write the next chapter of Hawaiian history?

"As it has for America's other indigenous peoples, I believe the United States must fulfill its responsibility to Native Hawaiians." ~Daniel Akaka

How did the #WeAreMaunaKea mantra morph into the vanguard of the Hawaiian sovereignty movement? For many years, Native Hawaiian organizations have been working to establish a system of self-governance. Some dream of a day when the Kingdom of Hawaii is restored, the same way India and Hong Kong were returned to the rightful owners. More power to them. So how does shutting down construction of the Thirty Meter Telescope will help rebuild a nation? How will razing the 13 existing telescopes in the Astronomy District improve the quality of life for the average Hawaiian? Neither of these demands further the cause of sovereignty; they may do more harm than good.

"It concerns me that the TMT protestors are reacting, rather than planning. It's short term and emotional decision-making." ~Richard Ha, owner of Hamakua Springs Country Farms, a 600-acre Big Island farm, and founding board member of Ku'oko'a, part of the Hawaii Clean Energy Initiatives.

The protestors did not object to Saddle Road improvements when we bulldozed and paved a hundred miles of the sacred mountain with toxic asphalt. The convenience, economic benefits and safety of a modern road clearly outweigh any risks in the EIS, and none of the culture warriors are saying Daniel K. Inouye Highway is a desecration.

"I firmly believe the highest level of desecration rests in actions that remove the opportunity and choices from the kind of future our youth can own." ~ Chad Kalepa Baybayan, captain and navigator of the Hokulea, Hawaiioloa, and Hokualakai, graduate of UH Hilo's Ka Haka Ula O Keelikolani College of Hawaiian Language, with a Masters in Education from Heritage College.

We have a lot to learn from Hawaiian culture. The ancient Hawaiians knew plenty about making the best use of limited resources. Advanced fish husbandry and ahupua'a farming methods were models of sustainability. Old Hawaii was home to a sophisticated society, and the most advanced science of the day in navigation and astronomy. Hawaiians held Mauna Kea sacred, yet that didn't stop them from building a quarry and using the mountain's resources for practical purposes.

"They ventured to Mauna Kea, reshaped the environment by quarrying rock, left behind evidence of their work, and took materials off the mountain to serve their communities, with the full consent and in the presence of their gods. Using the resources on Mauna Kea as a tool to serve and benefit the community through astronomy is consistent with the example of the adze quarry." ~ Chad Kalepa Baybayan

Born at the time of Haley's comet, Kamehameha The Great believed the stars were writ large in his destiny. Yet, Kamehameha I abolished the old religion in favor of one God. He was a forward-thinking monarch who used western weaponry to unify the Kingdom and modernize it under his rule. If he were king today, would he see the construction of telescopes on Mauna Kea as kumu waiwai (source of wealth) an opportunity to make Hawaii the most important spot for astronomy in the world, and bring great na'auao (learning, knowledge, wisdom, science) and mana to the 'āina? Or would he rule against TMT on superstitious or religious grounds?

Hawaii was once a place where science, nature and spirituality co-existed in harmony. When waves of immigrants hit the shores of Hawaii, they brought Asian and European influence, new technology, and new religions. Native Hawaiians embraced the ukulele and developed a written language. King David Kalakaua is famous for early adoption of electricity. The Hawaiians took the best that the world had to offer, and gave aloha to the world.

Modern cultural practitioners are reviving ancient belief systems and Hawaiian traditions. Yet they choose which arts and sciences to perpetuate, and which customs to consign to history. Nobody wants to reserve the best surf breaks exclusively for the ali'i. Twenty-first century Hawaiians continue to adopt new technology like satellite telecommunications, and use the internet to track the Hokule'a from space as it continues its sacred journey of exploration and discovery.

Present day Hawaiians build houses, drive pick-up trucks and love spam musubi. Hawaiian culture is thriving all over the world, more than in any other time in history. Hawaiian music, fashion and surfing are more popular than ever. Thanks to the Merrie Monarch festival, you can find hula halau in Paris. Native Hawaiian cultural practitioners are bringing back the best parts of old Hawaii, writing new songs, and adding fresh pages to the Islands' rich history. Everywhere you look there's Hawaiian pride. O'iwi TV, immersion schools, and conservation. Honu are making a comeback. Kaho'olawe is healing.

"As a Native Hawaiian, I feel that it is important to acknowledge our heritage, but we shouldn't blind ourselves to the future. TMT offers Hawai'i the cutting edge of scientific progress, and we should embrace it. Not only could the telescope give us a leadership role in astronomy, but it is also in full compliance with the environmental and cultural challenges Mauna Kea presents. Most importantly, our ancestors cherished knowledge and prioritized the future of their children." Alexis Acohido, Candidate for Bachelors of Science in Mathematics at the University of Hawaii at Manoa.

The TMT protesters have had their day in court. They failed to prove claims of adverse impacts on the land, water table, and wildlife beyond what was considered and approved under the EIS. They also could not show how the presence of the existing telescopes in the Astronomy District or construction of the TMT interferes with religious or cultural practices.

Why aren't the Protectors of the mauna calling for the removal of Hawaii's "occupiers" at the Pohakuloa Training Area? Surely the presence of a US military garrison where live fire ordnance tests are conducted across 133,000 acres - an area six times the size of Kaho'olawe - must be more offensive to Native Hawaiians, Anonymous hackers, and bandwagon environmental activists, than the construction of one very large telescope on only five acres. If we're going to protect Mauna Kea from more desecration, shouldn't we start by at least downsizing the PTA?

"The ancient Hawaiians were astronomers." ~ Queen Lili'uokalani, 1897

The telescopes in the Astronomy District are instruments of peace. In the starry darkness of Mauna Kea's wondrous nights, people from dozens of countries work together in cooperation for the advancement of knowledge that benefits all humankind.

"It will afford me unfeigned satisfaction if my kingdom can add its quota toward the successful accomplishment of the most important astronomical observation of the present century and assist, however humbly, the enlightened nations of the earth..." ~ King Kalākaua, September 1874, as quoted in the Pacific Commercial Advertiser, upon arrival of a British expedition of astronomers to Hawaii.

King Kalakaua sought recognition for the Kingdom of Hawaii on the global stage; he knew scientific leadership was one way to assert national sovereignty. Would he pass up an opportunity to gain international prestige for Hawaii and position the Big Island as a center for higher learning? Wouldn't he want his nation to take its rightful place at the forefront in the exploration of the final frontier?

Most folks don't think space exploration benefits them. Yet space science touches every one of our lives, and makes life better on earth every single day. Weather satellites save millions of lives every year. NASA-developed materials like Kevlar and fire-retardant foam, bio-technology and artificial hearts have saved tens of thousands more. NASA technology has given us GPS, climate change tracking technology and environmental science, Google Earth and cordless drills.

The stewards of Mauna Kea have made mistakes. The University of Hawaii, Office of Maunakea Management, and the island's scientific community can and must more to protect the environment, benefit the local people, economy, and our educational institutions.

Unite to move forward. ~ Hawaiian proverb

The unparalleled scientific achievements of the Observatory Complex have been a source of local pride for the University of Hawaii and the international academic community for over 40 years.

Will shutting down the Astronomy District and returning Mauna Kea to its pre-colonial condition restore the soul of a nation and pave the way to self-determination for Native Hawaiians? Will the reborn Kingdom be ruled by mystics and seers? The mixture of religion and politics is both volatile and dangerous.

Gov, David Ige, the UH Board of Regents, the Office of Hawaiian Affairs, and even Hawaiian sovereignty advocates cannot allow a minority of believers in any religion, no matter how fervently they believe they are right, to dictate matters of public policy. We expect our leaders to make the highest and best use of natural resources for the greater good, and honor their commitments. Instead, they have allowed the TMT shutdown mob to create a hostile climate for public discourse, just say a'ole to scientific and economic development projects, and put major investments in STEM education in jeopardy.

"The THINK fund helps our kids not fortunate enough to have gotten a Kamehameha Schools education. They are the ones who need help. Once you get an education, no one can take it away." ~Richard Ha

Higher education is the great equalizer, the best weapon against racism and injustice, and the key to righting past wrongs. Education and economic opportunity are a one-way ticket to a better life. Yet too many of Hawaii's best and brightest go to the mainland to study or find better paying jobs and more affordable homes everywhere but here. This brain drain hurts local communities when jobs go unfilled in medical, professional, technical and skilled trades. Lack of opportunity for personal and professional growth on the Big Island limits options for entrepreneurship and creating a technically literate, knowledge-based economy. A strong middle class is a more solid foundation on which to rebuild a nation.

"Who among us would not want Hawaii's keiki to reach for the stars?" ~Barry K. Taniguchi, president and CEO of KTA Super Stores

8/1/2019

University of Hawaii Mail - Maunakea Governance

The Kingdom of Hawaii valued education, literacy and innovation – and adventure. The TMT is not only in line with these values, it would be a giant monument to the sacred quest for knowledge, and daring exploration that led the original Hawaiians to discover new worlds.

"Mauna Kea is the celestial portal into the universe. Mauna Kea, like life, is sacred, and we need to proceed with the important work of ensuring our future." ~ Chad Kalepa Baybayan



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BOR Testimony <bortest2@hawaii.edu>

A letter of Aloha

Nicole Hyde <nqh777@yahoo.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 8:25 PM

Aloha Board of Regents,

My name is Nicole and I am a student and I work at UH Manoa. I am taking this time away from my family to write to you directly and hopefully I will be in attendance to share this personally. The university's motto is Above all Nations Is Humanity, it is inscribed on the founders gate in both Hawaiian and English.

The past few decades, the university and its board or regents has placed profit over humanity. The people of Hawai'i by the thousands are asking you do the Pono, righteous, action. We are asking you to please withdrawal your stance and let TMT be built in a place that is welcoming them with open arms.

The university has to STILL dismantle the exhausting decommissioned telescopes. There are countless environmental audits that recommended you do so saying back to at least a decade. The damages done to Mauna Kea's fragile ecosystem are close to irreversible. But you have the power to make sure no more damage and harm can be done.

Your past actions, more like non-action, speaks volumes compared to the empty promises of responsibility and care. To take more is a shameful attempt of bulldozing. Forcing a structure to be built, that would be the biggest structure in all of Hawai'i island and breaks the actual laws in place, on the most sacred of places is also a shameful attempt at bulldozing. Telling us that "all of humanity will benefit from this" is another shameful attempt at damning us for standing up. The damages far outweighs the so called "benefits".

But it is not too late, you all have the power to do what is right. You all can allow TMT to be built in the Canary Islands. There is no loss, the telescope will be built and it would be built somewhere that is welcoming it with open arms. There will be no more delays and it could start construction now.

There would be no destruction to Conservation lands and no irreversible damage to the people who come from this Land. It is the true win, win. If you're only for profit then I guess it would seem a little short-handed. But if you're truly doing this for the betterment humanity then you would KNOW that forcing TMT on Mauna Kea is not acceptable.

Aloha,
Nicole

Sent from my iPhone

8/1/2019

University of Hawaii Mail - TMT

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

TMT

Tierra K M-Aiolupotea <kamamalu3@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 8:27 PM

I Tierra Aiolupotea a Kanaka Maoli Hawaiian National oppose the construction of the TMT and most definitely oppose a 2yr extension for TMT to begin construction..

The Canary island government along with the Spain government are ready and willing for the TMT to begin construction there immediately; and they have made that known thanks to social media.

Sacred land is Sacred land!

indigenous people have rights and this is in violation of that!

No TMT NO EXTENSION!

Build TMT where it's wanted!?! in the Canary islands.

thank you

Sent from my iPhone



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Testimony for August 2, 2019 meeting of the BOR regarding Agenda Item III.D

Maya Saffery <msaffery@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 8:45 PM

Aloha kākou,

Please find attached my written testimony addressing agenda item III.D of the August 2, 2019 meeting agenda for the Board of Regents.

Mahalo,

Maya Kawailanaokeawaiki Saffery
Kumu Hoomohala Haawina
Curriculum Specialist
Kawaihuelani Center for Hawaiian Language
Hawaiiinuiakea School of Hawaiian Knowledge
University of Hawaii at Manoa
Spalding Hall 253
808 956-4028

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 MSaffery_BORTestimony2019-Item3.D.pdf
376K

2 August 2019

**TESTIMONY TO BE HEARD BY THE BOARD OF REGENTS
OF THE UNIVERSITY OF HAWAI'I**

Aloha mai kākou,

My name is Maya L. Kawailanaokeawaiki Saffery, and I am an Assistant Specialist for Curriculum at Kawaihuelani Center for Hawaiian Language within Hawai'i inuiākea School of Hawaiian Knowledge. I have been a faculty member at the University of Hawai'i at Mānoa for the past 14 years. I wish to address agenda item III.D of the August 2, 2019 meeting agenda for the Board of Regents. I urge you to reject the appointment of a Permitted Interaction Group to make recommendations related to Mauna Kea governance and instead immediately forfeit the Conservation District Use Permit for the Thirty Meter Telescope and implore TMT to take their project to the Canary Islands.

I submit this testimony in strong opposition to the construction of the TMT on Maunakea as a Kanaka (Native Hawaiian) educator and cultural practitioner who is genealogically tied to Mauna a Wākea (Maunakea) and all the many kūpuna (ancestors) who continue to reside there. My deep commitment to aloha 'āina (the practice of loving and protecting the land) motivates me to add my voice to the chorus of voices you hear today calling for a permanent halt to any further development and desecration of our sacred mauna (mountain).

As a tenured faculty member and former and current student at UH Mānoa, I take the university's commitment to "promote a Hawaiian place of learning" (Achieving Our Destiny, 2011-2015 UHM Strategic Plan, p. 6) very seriously. It is my kuleana (responsibility, obligation) as a Kanaka working at the university to not only contribute to the realization of a Hawaiian place of learning on my campus through my own professional and scholarly work, but also to hold the institution and its leaders accountable when they engage in actions that fall short or, in this case, conflict entirely with this strategic goal.

While a "Hawaiian place of learning" can be understood in many ways, I know for sure that they cannot exist without Hawaiians and should in fact be shaped and stewarded by Hawaiians. In addition, Hawaiian places of learning facilitate the revival of our land- and water-based practices; they recognize these practices as spiritual, cultural, and scientific all at the same time; they encourage development of new knowledge inspired by and grounded in ancestral knowledge; and they help to raise the consciousness of our community about our past and present so that we can work towards a future where justice prevails, Kānaka flourish, and our Native voices and knowledges matter.

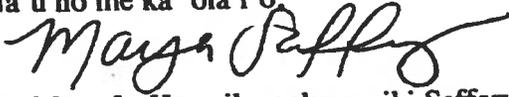
On the contrary, Hawaiian places of learning do not ignore the shared genealogy of Kānaka and our 'āina; they do not erase the presence and voices of our people and our allies; they do not restrict access to or contribute to the desecration of our sacred places and fragile ecosystems in the name of innovation; they do not disregard our fight to protect our fragile ecosystems as the actions of an uneducated people stuck in the past; they do not advocate for the pursuit of knowledge no matter what the cost; and they do

2 August 2019

not appropriate Hawaiian words and values in order to distract attention away from projects motivated by greed and power that will serve to negatively impact Hawaiians and Hawai'i as a whole.

With these perspectives in mind, there should be no question that the construction of the TMT on Maunakea is in direct conflict with UH's commitment to promoting a Hawaiian place of learning as well as all the other relevant legal, environmental, and moral standards and regulations. But for those of you who are still not convinced, I challenge you to make the journey to Maunakea yourself, engage with the protectors of the mauna face to face, and see with your own eyes the people, land, and water that will be impacted by a structure 18 stories high, 2 stories deep, and 5 acres across. After allowing yourself to be touched by the mana of that place and the aloha of its protectors, then ask yourself, can I still in good conscience support the TMT? I do not know how you could still say yes.

Na'u nō me ka 'oia'i'o.

A handwritten signature in black ink, appearing to read 'Maya Saffery', written in a cursive style.

Na Maya L. Kawailanaokeawaiki Saffery



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Strongly Oppose TMT on Mauna Kea - Board of Regents, August 2

Danielle Espiritu <despirit@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 8:51 PM

Aloha mai kākou,

My name is Danielle Espiritu, and I am currently a doctoral candidate pursuing a PhD in Education with a specialization in Curriculum and Instruction at the University of Hawai'i at Mānoa. I am also an alumna of the University, having received my Masters in Education, Teaching in 2012.

I am writing to express my strong opposition to the building of the Thirty Meter Telescope on Mauna Kea. Considering the University's commitment to the welfare and wellbeing of its students and to becoming a Native Hawaiian place of learning, I implore you to abandon all plans for construction on Mauna Kea. Failure to do so would reflect a lack of care and consideration for the students and faculty who have expressed serious concern regarding the University's actions on the mauna. In addition, it would reflect an intentional dismissal of the thousands of Kanaka Maoli who continue to stand in protection of the mauna.

Mahalo,

Danielle Espiritu

8/1/2019

University of Hawaii Mail - TMT

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

TMT

Adrian Kozuki <kozukia001@hawaii.rr.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:10 PM

I am pro TMT. I am for science. I am for boosting the economy for the county by getting jobs for the community. I am for the future generation to have something special to look at the universe and beyond and discovering special wonders of the universe. Why stay stagnant when you can go forward? People don't realize the good things they are offered by the building of the telescope. Let's go forward and reap what is being offered to us!

Sent from my iPad



Support for TMT

Cara K <clkkimura@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:20 PM

Board of Regents:

I am writing to offer my testimony in strong support of the construction of the Thirty Meter Telescope (TMT) on Maunakea. I am aware that this is not an item up for discussion on your agenda, but it has been brought to my attention that those who are protesting this project plan to rally at your Aug. 2 meeting to ask you to withdraw your support of the project and stop it from being constructed.

The people of Hawaii need TMT, whether they realize it or not. The economic well-being of Hawaii county suffered devastating losses due to the volcanic eruptions last year and still has not recovered. We cannot continue to rely on tourism to bring us the revenue we need to operate the state efficiently and effectively. We simply cannot let a small yet vocal group of protesters decide our collective fates.

TMT has put a lot of effort into being a good neighbor - grants, scholarships and a workforce pipeline will help Hawaii's children pursue jobs in STEM that can provide a better living than service jobs available through tourism. Turning them away now will have a domino effect of discouraging other businesses from investing in Hawaii and our future, making us further dependent on the fickle tourism industry.

With respect to the cultural significance of Maunakea, the mountain is large enough to accommodate culture, history AND science. This has been rehashed over and over in the Environmental Impact Statement and at the various hearings. If we allow the religious beliefs of a small group stop a project that has gone through due legal process and contested case hearings – twice – what is next? Shall we also stop teaching Darwin's theory of evolution because it offends the religious beliefs of Christian extremists? Shall we also remove all portions of UH's campuses that occupy ceded lands? Where does it end?

Please support the construction of TMT.

Cara Kimura



testimony

Tina Taniguchi <tinammlt@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:23 PM

Aloha, my name is Tina Taniguchi (Native Hawaiian, registered voter, works, mother of 4, lineage traces back here on Kauai to the 1700s!) I am no longer a student of the UH system but I did receive my degree at KCC under the UH system. I completed my associate's degree and chose to not follow my heart with Hawaiian studies or a higher degree because of a particular instructor at the time that refused to acknowledge my opinion paper on genocide of the Hawaiian people. The UH system failed me then and here again! Your actions of not listening to the native people of this land, your commercializing and selling off of our culture, our land, our language and degrading of our people you UH only prove what I tried to prove then! Genocide on native Hawaiians is real and still occurring.

My testimony is not about my experiences with the UH system but your agenda item IIID. "Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Mauna Kea Governance"

I would like to ask you:

- What "issues" are being investigated?
- Will the Group's report back come in ahead of the Regents' August 30th vote on the Mauna Kea management rules?
- Why are the Regents pressing ahead with the controversial Mauna Kea management rules when they still need information on "issues related to Mauna Kea governance"?
- Who is the Group going to talk to as part of its investigation?
- What is a permitted interaction group anyway?
- Why is this group necessary?

I ask you all to consider the above questions, and to keep the discussion about the management of Mauna Kea a fair and transparent process. I would also like to end with my heart aches! I cry, I pray, I cry, this matter of us having to stand in protection of land is not new but it is a constant heart ache! I pray for our protectors and all wahi pana of Hawaii! Mahalo!



Please proceed with TMT as soon as possible

Michael Zhang <mzzhang2014@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:26 PM

Dear Board of Regents,

I am writing to address agenda item D, regarding Mauna Kea governance. The occupation of the Mauna Kea Access Road by protestors over the past three weeks is unconscionable. The mountain has effectively been ceded to a group of protestors who call themselves native Hawaiian protectors, but who in reality do not represent even the majority of native Hawaiians, let alone the majority of all Hawaiians. If the protestors truly spoke for native Hawaiians, they would support the Thirty Meter Telescope.

In my opinion, the University of Hawaii should request police assistance to clear the access road and allow TMT to begin construction. It should furthermore hire security guards to protect the construction site as well as existing observatories from disruption. I am sure the Board knows that TMT has meticulously followed all legal requirements over the past decade. It has not only ensured that the TMT site is far from any shrines, altars, or burial sites, but has gone above and beyond in implementing "a \$1 million annual community-benefits package, a program to recruit and train local workers for science jobs, and the development of exhibits to highlight the links between Hawaiian culture and astronomy" (source: The Atlantic). While TMT has been as accommodating as possible, Kahookahi Kanuha, one of the protestors' leaders, said "we are not willing to negotiate. We are not willing to compromise."

The contributions that astronomy has made to humanity are incalculable. Astronomy allowed the Polynesians to roam the Pacific, bringing them to Hawaii and many other islands across the vast ocean. Astronomy is the science which launched humanity into the modern world. Without astronomy, there would have been no Galileo, Kepler, or Newton; no Scientific Revolution, and therefore no modern science. With the Thirty Meter Telescope, astronomers will have the ability to search for life on habitable planets around other stars, see the very first galaxies of our universe, and advance our understanding of fundamental physics.

Please stand firm and do not make any more compromises. Do not allow a fringe minority to make a mockery of the rule of law. 72% of native Hawaiians support you. 77% of all Hawaiians support you. All of TMT's international partners—Japan, China, India, and Canada—support you. Science lovers around the world support you.

Sincerely,

Michael Zhang



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8/1/2019

University of Hawaii Mail - Opposition to building of TMT telescope

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

Opposition to building of TMT telescope

Cielle Watjen Brown <clwatjenbrown@ucdavis.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:41 PM

Hello,

My name is Cielle Watjen Brown and I am a resident of Hawaii. I am writing to state my opposition to the building of the TMT telescope on sacred native grounds. Please consider my testimony and the testimony of others at the UH Board of Regents meeting.

Thank you,

Cielle Watjen Brown
Hawaii resident
UC Davis '19

8/1/2019

University of Hawaii Mail - TMT PROJECT

LATE TESTIMONY



**UNIVERSITY
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BOR Testimony <bortest2@hawaii.edu>

TMT PROJECT

Steven Leong <stevenleonghawaii@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:43 PM

Dear UH Board of Regents,

Please be aware, and research the fact that the majority of Hawaiian citizens are pro TMT being built. We may not choose to stop traffic, or fly upside down flags, but we exist. We have not been out there trying to get our point across, because we felt that it was already done! The Hawaiian Supreme Court seconded it by their ruling.

Lies and judgments have been circulated to gain out of state support. I trust that all of you are far too educated to believe in the mistruths that have been circulated. Seek out the truth, from the quiet, trusting majority of Hawaii's people before giving in to threats.

Sincerely,
Steven Leong

Sent from my iPad



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BOR Testimony <bortest2@hawaii.edu>

Agenda Item IIID. "Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Mauna Kea Governance"

Samantha Tanuvasa <samantha.tanuvasa@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:52 PM

To the University of Hawaii Board of Regents:

Per Agenda Item IIID "Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Mauna Kea Governance" I respectfully request the following queries be considered:

- What "issues" are being investigated?
- Will the Group's report back come in ahead of the Regents' August 30th vote on the Mauna Kea management rules?
- Why are the Board of Regents (as well as President Lassner) pressing ahead with the controversial Mauna Kea management rules when information on "issues related to Mauna Kea governance" is still needed?
- Who is the Group going to talk to as part of its investigation?

I request that discussions about the management of Mauna Kea be conducted in a fair and transparent process. I also request that the Board of Regents, President Lassner, as well as Governor Ige open up direct communication and conversation with the Mauna Kea Protectors, otherwise known as *kia'i*, and be open to the concerns and appeals of the native Hawaiian community.

Respectfully,
Samantha Makahi Tanuvasa



TMT and astronomy on Maunakea

Veronica Ohara <hula.clay@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 9:53 PM

Dear Board of Regents of the University of Hawaii,

Please accept my written testimony as I am a graduate of UHM.

I am writing to ask you to continue your support of the astronomy department and the Thirty Meter Telescope on Maunakea. I am greatly alarmed that a single department at a state university should come under attack for teaching science.

The 2017 Malama Maunakea Resolution addressed many of the issues of the past and should have ushered in a time of scholarship and knowledge. But this monumental commitment by you has been over looked by the Hawaiian/Ethnic Studies Department. It's absolutely unthinkable that these professors urge students to intimidate fellow student in physics and astronomy. It's appalling they do nothing to counter the lies that are repeated by their students and the opponents of TMT. They are using state funds, tax payers dollars to bring an end to astronomy in Hawaii.

Astronomy is at least 10% of the economy and a vital part of the Big Island. TMT will increase the revenue for the entire State of Hawaii.

Please take the necessary steps to protect astronomy on Maunakea and begin construction of TMT.

Mahalo,

Veronica Ohara

-

Veronica

8/1/2019

University of Hawaii Mail - TMT

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

TMT

Tia DeLaO <tia-pet@hotmail.com>

Thu, Aug 1, 2019 at 9:54 PM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Although we may not be ranting and raving in the streets, most of us do want TMT built here. Astronomy is an integral part of our culture and Hawaii deserves to be at the forefront of this science. Using a telescope as a scapegoat for past wrongs committed here is wrong. This is not a pipeline, hotel, shopping center or billionaire's home. This is deeply connected to why we hold the Mauna sacred and they have been more than respectful to that, regardless of what you hear. There is much more to say, but I thank you for your time. I ka heiau o na lani! Aloha!
Sent from my iPhone

8/1/2019

University of Hawaii Mail - Testimony for 8/2 meeting

LATE TESTIMONY



UNIVERSITY
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BOR Testimony <bortest2@hawaii.edu>

Testimony for 8/2 meeting

Sam Ikehara <sike808@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:03 PM

Aloha e UH Board of Regents,

I've attached my testimony to this email.

Sam

 8:2 Testimony.docx
14K

LATE TESTIMONY

Dear UH Board of Regents,

My name is Sam Ikehara. I earned my BA and MA at the University of Hawai'i at Mānoa and I am currently working towards my PhD at the University of Southern California. I am an Asian settler who stands in strong support of Hawaiian self-determination and sovereignty. I am testifying today to address agenda item regarding Mauna Kea "governance." I strongly urge the Board to oppose the construction of the TMT on Mauna Kea by forfeiting the conservation district use permit and asking TMT investors to take their plans elsewhere.

As many scholars and community organizers have elucidated, Mauna Kea has been subject to a violent history of mismanagement at the hands of the University of Hawai'i and settler state governance more generally. The telescopes already on Mauna Kea, several of which no longer even in use, were built without proper permits and without listening to the environmental and cultural concerns from the community. That dangerous problems with waste disposal and spills have happened on Mauna Kea because of this negligence is simply inexcusable especially given how sacred Mauna Kea is and how the mauna serves as the primary aquifer and source of freshwater for Hawai'i island. It is absolutely shameful that the University of Hawai'i and the state government continues to prioritize their own corporate and academic interests over the well-being of all Hawai'i's people, but especially Kānaka Maoli. Given this history of violence, why should the people of Hawai'i trust the University of Hawai'i with the mauna's health and well-being? How can we? In what way is this institution at all equipped to "govern" Mauna Kea, especially now that we have so clearly seen the inspired leadership of those at Pu'uhonua o Pu'uhuluhulu?

The other night I received a call from the University asking for donations and I said no for this very reason and I have urged all my family and friends to withhold their donations as well. As an alumni, I refuse to support an institution that actively perpetuates violence against Kānaka Maoli and that carries out its academic pursuits in harmful and unethical ways. No amount of money is worth the desecration of Mauna Kea. No rhetoric of scientific advance justifies violence to Kānaka Maoli. Right now, the University of Hawai'i has the opportunity to begin to try and rectify its long history of wrongdoings and it needs to do so by 1) forfeiting the conservation district use permit, and 2) urging TMT investors to take its project elsewhere. The entire world is watching Mauna Kea right now and is inspired by the kapu aloha of Pu'uhonua o Pu'uhuluhulu. The support for Mauna Kea will only continue to grow both locally and internationally, and this extended two year period for construction will only inspire more acts of solidarity and resistance. As scholar and historian Maile Arvin has said, "Science and colonialism deeply shape Mauna Kea's past, but they do not have to determine its future."

Sam Ikehara
University of Southern California
sikehara@usc.edu

8/2/2019

University of Hawaii Mail - cancel the sublease

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

cancel the sublease

Piper H <paharron@math.hawaii.edu>
Reply-To: piper@math.hawaii.edu
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:14 PM

Hi,

Please allow TIO to move TMT to another location. UH Mānoa is meant to be a benefit to its Hawaiian students, but its actions on Mauna Kea have been detrimental to students and their families. We are a place of learning, but learning goes both ways. It is okay that UH thought this was going to be okay, but now they must recognize their mistake, recognize past missteps, and give this project to someone who actually wants it. A beautiful moment is happening on Mauna Kea and it will be written about in history books, please don't be on the side of squashing resistance. Please be on the side of listening, learning, adapting, and letting go. We owe our students nothing less.

Thank you,

Piper H
Dept of Mathematics
University of Hawai'i at Mānoa

I stand against oppression. I stand in support of the people, including women, people of color, native people, the LGBTQ+ community, Muslim people, Jewish people, those suffering from mental illness or physical disabilities, immigrants regardless of status, the poor. Silence is violence.



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BOR Testimony <bortest2@hawaii.edu>

Testimony in favor of TMT

Andrew Repp <arepp@hawaii.edu>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:25 PM

Dear Board of Regents:

Aloha! My name is Andrew Repp, and I am a graduate student in the UH Manoa Institute for Astronomy's Ph.D. program. Before returning to school for this degree, I had the privilege of teaching high school for 15 years in a small school on the Big Island. Thus education on that island is concern that is dear to my heart,

I am writing in support of the Thirty Meter Telescope for multiple reasons, one of which is precisely the educational impact on the youth of the Big Island. As you know, the TMT has already—even though construction was halted for four years—contributed millions of dollars to Big Island high schools, to scholarships for native Hawaiian students, and to internships in STEM fields. This funding is meeting a desperate need on the Big Island.

I am also writing because of the sheer volume of misinformation existing about this project. It is disappointing to hear stated as fact that the project will pollute the aquifer, that it will use dynamite on the mauna, that it will be nuclear powered, that the existing telescopes are sitting unused, etc. It seems that though the facts are available (e.g., <http://www.maunakeaandtmt.org/get-the-facts/>) many would prefer believe—and to propagate—fictions instead.

It also seems that some of the project opponents are determined to shout down anyone who disagrees with them. For instance, UH Manoa's GSO rushed an anti-TMT resolution through without notice to our department's representative, after which the leadership refused to allow submission of a resolution noting alternate views. In addition, the UH Student Caucus recently made a statement against the TMT without seeking or allowing any comment from our department. One must wonder, how strong are the opponents' arguments if they must resort to intimidation and misinformation?

As you know, the Contested Case Hearing (and the appeals to the Hawaii Supreme Court) provided opponents with multiple opportunities to make their best case—opportunities which they took advantage of, for hours on end. But after hearing their arguments, both the hearings officer and the Supreme Court found those arguments wanting and allowed to project to proceed.

Finally, let me thank you for the opportunity to submit this testimony. I urge you to support this project—as do over 70% of the voters in this state.

Sincerely,

Andrew Repp

8/2/2019

University of Hawaii Mail - Mauna Kea hearing - 9/2, 9 AM

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

Mauna Kea hearing - 9/2, 9 AM

Meredith Buck <meredithbuck@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:27 PM

Aloha,

I am writing to express my support for the protection of Mauna Kea. I strongly oppose the Thirty Meter Telescope and hope the University of Hawaii will appoint a Permitted Interaction Group to investigate issues concerning Mauna Kea and Hawaiian sovereignty.

This is no longer just about a telescope, but about Hawaiian rights to determine the fate of their own homelands. So much has been lost by now – so what better time to create a better path forward into the future for First Nations rights everywhere? The world is watching.

Respectfully,
Meredith Buck, 26
Kailua Kona, HI

8/2/2019

University of Hawai'i Mail - TMT Testimony

LATE TESTIMONY



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of HAWAII**
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BOR Testimony <bortest2@hawaii.edu>

TMT Testimony

Hualalai Grance <hualalaig@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 10:44 PM

Aloha-

As Native Hawaiians and a student of the UH system here in Hawai'i, we OPPOSE the building of the Thirty Meter Telescope (TMT) on the sacred, ancestral land of Mauna A Wākea. Please do the right thing for the native kānaka of this 'āina.

Mahalo-
Hualalai Grance and Chad Keaulana

Sent from my iPhone



Anti TMT Aloha Aina Warrior

Kade Yam-Lum <kade@hawaii.edu>

Thu, Aug 1, 2019 at 10:57 PM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

My name is Kade Hemakanakauanoekoolaulani Yam-Lum. I am a Native Hawaiian. I am also a student here under the University of Hawai'i, ask for the chair and it's board to look at the multitudes of people whom have gathered along the road side of the lower portion of Mauna Kea in solidarity with Human Rights, Land Protection, and Appreciation for those whom came before us. In recent times we have seen the elders arrested. They have played a major role in the Nations History. The UH system has made decisions with not only bad intensions, but with cataclysmic outcomes. If the TMT is to be built everything along the lower water shed of Mauna Keas many valleys will be chemically polluted. It's hills will bleed the oil and gases your department chooses to pump into its veins. Every man, woman, and child will drink of those waters you chose to pollute with only one intention "science". This Science is based off of assumptions that we would be able to see farther than the known universe has ever seen before. But, if it is just assumptions how do we know that it's affects and effects will be positive. Hawaiians base our daily life on balance. The balance of both positive and negative. The telescope and its supporters as of now have dwindled. The Anti-TMT supporters are increasing daily. Social media is blazing with feeds about Mauna Kea and the sanctity it plays for humans today. All humans **no matter** what race have everything to do with **Mauna Kea**. Because like science says matter can never be created nor destroyed. Meaning that the matter within us is **Mauna Kea**. And all other land masses **throughout** the world. Why **build** and continue to build on **Mauna Kea** if there is an equal opportunity for it being built in the Canary Islands. **Spain** is looking forward to its arrival in the

8/2/2019

University of Hawaii Mail - Anti TMT Aloha Aina Warrior

near future. So, why continue delaying it being built on Hawaiian soil...

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Me ke aloha aina



CheyenneKanani TMT opposition Letter.

Seaforcoral Cheyennekanani <cheyennekanani@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 11:15 PM

My name is Cheyenne kanani, I am a resident on the north shore of O'ahu. I am able to trace my lineage back to its origins on both sides of my family. My mother, is of the Opupele ancestry (and others), traced back to Hilo, on Hawaii island. My father is of the Pua'a ancestry (and others) from Wailau, Moloka'i. My mo'okuauhau spans in all directions, as I myself am Hawaiian on every level. As an indigenous Hawaiian, I strongly oppose the Thirty Meter Telescope being built on top of Maunakea.

Although I am able to understand the reasoning behind wanting to build atop our sacred mauna, I am not able to agree with the cost being forced upon the Hawaiian people.

Native Hawaiian lands, have been mismanaged for generations, not only on top of Maunakea by UH and the BLNR but since the introduction of foreign land ownership.

In 1959, the United States military "set aside" several hundred thousand acres of ceded land for military installation. That is 25 percent of O'ahu, and all of Kaho'olawe. All the military bases occupy ceded lands, and at least six occupy, without consent or compensation, Hawaiian Home Lands. Among those, Pohakuloa on the Big Island is an Army training camp, Lualualei in Waianae is a Navy target range and Kekaha on Kauai is a Navy ammunition dump.

For 20 years The Department of Hawaiian Homelands has been operating largely unchecked by the government. During that time it has leased more land to non-hawaiians than to Hawaiians. Never following through with its duty to distribute land intended for the native Hawaiian people, allowing them to die off before ever getting the land that belongs to them.

The Department of Land and Natural Resources (DLNR) allowed the use of ceded lands by other state departments without adequate compensation, and executed a slew of summary land swaps. In 1985, the state swapped a Big Island forest preserve for another acreage so Campbell Estate could construct a geothermal development, now plagued with technical problems and lawsuits. Then, in 1986 the "Final Report on the Public Lands Trust" did manage to identify some major parcels of ceded or Hawaiian Homes land commandeered for public use without compensation. Such as: Hilo Municipal Golf Course, Maui's Waiehu Golf Course, Kauai's Wailua Golf Course, Ala Wai Golf Course, Sand Island, Ala Moana Beach Park, Kapiolani Park, and their rentals, Honolulu Harbor, Kahului Harbor, Kewalo Basin, Keehi Lagoon, Honolulu International Airport, General Lyman Field, Molokai Airport and the University of Hawaii.

All occupy in part or whole ceded and/or Hawaiian Home lands, at the expense of Hawaiians and native Hawaiians.

As you can see, by the examples previously stated, the issue with the proposed TMT project stems back decades. Native Hawaiians of today, are simply saying no more. We will no longer allow the misuse and mismanagement of our lands, especially on this sacred mountain.

If the University of Hawaii' would like to leave behind the legacy of cultural genocide committed against the Hawaiian people then they are doing an extremely good job. This is no longer about the building of a telescope; it is about the fundamental rights of the indigenous and rightful caretakers of the islands being violated, in this case, in the name of science.

Ceded land was meant to be used for the people of Hawaii, with preference to the aboriginal Hawaiians, who have separate rights to those of the citizens of the United States. Not foreign business interests. Science should not be able to say what is worth sacrificing if it is not their sacrifice to make. While I am for the advancement of science, I am not for the extraordinary cost, it expects the indigenous Hawaiian people to pay.

My name is Cheyenne Kanani, and I oppose the construction of TMT on top of Maunakea.



Testimony to 08/02 UH Board of Regents: Regarding Mauna Kea Governance

Guhl, Elizabeth <eguhl@lion.lmu.edu>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Thu, Aug 1, 2019 at 11:15 PM

Aloha,

Today and until the last Aloha 'Āina, I stand with the Kūpuna and Kia'i. I denounce the TMT board, University of Hawai'i, and the state's decision to continue with plans of desecration. Mauna Kea is an ancestor, sacred land, designated conservation lands, provider of life giving wai, and home of Hawaiian culture, history, and intelligence and now, a new Hawaiian Renaissance.

Native Hawaiians and local families should no longer have to fear further mismanagement, adding to the already 50 years of mismanagement, and lack of accountability by UH that has defiled and disrespected the most sacred land and the people that Mauna Kea means the most to. As a place of learning and particularly Hawaiian education, UH has a responsibility to respect Native Hawaiian's right to place, right to worship, their culture, their past history, and their continued existence. Choosing profits over the people who's culture, history, and land you market and profit off of is unethical. Partnerships in our own state can fund our own STEM pathways and diversify our own economy. We can achieve the benefits TMT offers to our youth and community on our own, or through more ethical means. We don't have to sell a sacred ancestor, set bad precedent for environmental law, and ignore in a place of learning that science exploration must adhere to ethics to achieve that. As a once prospective student and member of the Hawai'i community, I am extremely disappointed to learn UH's history of mismanagement on Mauna Kea and its refusal to rectify its past when presented the opportunity today.

Despite countless calls from students and members of the community for the halt of the TMT construction, the UH Board of Regents holds this meeting today to discuss the creation of a PIG "to investigate issues and make recommendations related to Mauna Kea governance." From my own understanding of a PIG, I have concerns about the use of a PIG to host discussions with such intimate consequences due to a PIG's lack of commitment to public involvement. In addition to my concerns, I call on you to answer the questions raised by Mauna Kea protectors and leadership.

Specifically, (but not limited to)

- What issues are being investigated?
- Why are the Regents moving ahead with controversial Mauna Kea management rules when they still need information on issues related to Mauna Kea governance?
- Who specifically will the PIG be interviewing during its investigation?
- How will the Regents ensure inclusivity and transparency?

Mahalo for your time. Find it in your hearts to continue forward justly.

Sincerely,
Elizabeth Menchaca-Guhl

8/2/2019

University of Hawaii Mail - Public Comment on "Notice of special board of regents meeting" regarding Mauna Kea



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Public Comment on "Notice of special board of regents meeting" regarding Mauna Kea

Wai'ala Ahn <waiala.ahn@gmail.com>

Thu, Aug 1, 2019 at 11:18 PM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Aloha UH Board of Regents,

I'm writing to submit Public Comment on Mauna, in Strong Opposition to TMT, and to request that the UH and Board of Regents keep the discussion of Mauna Kea a open, fair and transparent process. Also, please take into the consideration the native and local communities here and world wide who are standing in opposition of the sacrilegious, harmful, exploitative and colonialist nature of this purposed project.

Mahalo for your time and consideration,
Wai'ala Ahn

8/2/2019

University of Hawaii Mail - TMT

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

TMT

John Hankwitz <jhankwitz2000@yahoo.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 11:33 PM

I support Native Hawaiian rights and cultural practices and oppose the building of the Thirty Meter Telescope on Mauna Kea. Please consider the other location in the Canary Islands.

Thank you

John Hankwitz



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BOR Testimony <bortest2@hawaii.edu>

Special Board of Regents Meeting

Kenneth Wagner <poiboy1964@hawaiiantel.net>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 11:50 PM

My short testimony:

If the Permitted Interaction Group will provide oversight for current Mauna Kea management (OMKM) practices and assist UH in becoming fully compliant with the auditor recommendations in 2014 and 2017, I am fully supportive.

This endeavor must be a team effort, between PIG and OMKM, with effective communication, not two separate groups shuffling paperwork back and forth. This also should not resemble an auditor-auditee relationship.

There needs to be a collective mindset and not an culture of individualism. Diversity of thinking and individual perspectives can fit into the framework of collectivism.

On a side note, please make sure that public testimony follows the agenda and does not stray off topic. Thank you for your time.

Mahalo,

Kenneth Wagner

1724 Beckley Street #323

Honolulu, HI 96819

(808) 778-7966

8/2/2019

University of Hawaii Mail - A'ole TMT

LATE TESTIMONY



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BOR Testimony <bortest2@hawaii.edu>

A'ole TMT

Makani Souza <makanisouza@yahoo.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 11:51 PM

Aloha,

I am writing to oppose the TMT. The building of TMT is illegal. What this mountain means to me no earthly words can describe. The mountain is my religion and culture. It is our everything. Please do not further desecrate Mauna Kea.

Mahalo,

Jasmine Souza

Sent from my iPhone



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Testimony for Special Board of Regents Meeting on August 2, 2019

kahealani keahi <kahealanikeahi@gmail.com>
To: bor.testimony@hawaii.edu

Thu, Aug 1, 2019 at 11:55 PM

Aloha Chair Benjamin Kudo and members of the board of regents,

My name is Kahealani Keahi. I am a Native Hawai`ian and Hawai`ian Homestead Lessee living on Kalawahine Hawai`ian Homelands located on O`ahu adjacent to Papakolea. I am the president of Hui Maka`ainana a Kalawahine, a Hawaiian Homestead community group. I am an educator at Anuenue Hawaiian immersion school and mother of a current Univerity of Hawai`i Manoa student.

I strongly oppose the rights and management of Maunakea by the University of Hawai`i because I feel that it was never the University's kuleana in the first place to have and because of the continued mismanagement and disrespect of this sacred place considered Wao Akua.

I and my children stand strong as kia`i mauna of Mauna a Wakea and oppose the building of the TMT upon our wao Akua. We oppose the appointment of a permitted interaction group as it relates to Maunakea governance.

Ke Aloha `Āina,
Kahealani Keahi



Testimony for Special Board of Regents Meeting on August 2, 2019

Pūnohu Keahi <punohukeahi@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:00 AM

Aloha Chair Benjamin Kudo and members of the board of regents,

My name is Pūnohu Keahi. I live in Kalawahine Hawaiian Homestead. And I am a student at Hālau Kū Māna Public Charter School in Makiki Valley.

I strongly oppose the rights and management of Maunakea by the University of Hawai'i because I feel that it was never the University's kuleana in the first place to have and because of the continued mismanagement and disrespect of this sacred place considered Wao Akua.

Ke Aloha Āina,
Pūnohu Keahi



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

TMT Testimony

Pi'imoku Keahi-Wood <piimoku@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:01 AM

Aloha Chair Benjamin Kudo and members of the board of regents,

My name is Pi'imoku Keahi. I am a resident of Kalāwahine Hawai'ian Homestead and undergraduate at UH Mānoa. I stand along in unity with all kia'i of Maunakea and all other po'e aloha 'āina in opposition to the construction of the TMT and further desecration to our 'āina.

I strongly oppose the rights and management of Maunakea by the University of Hawai'i because I feel that it was never the University's responsibility to have and because of the continued mismanagement and disrespect of Maunakea Wao Akua.

Ke Aloha 'Āina,
Pi'imoku Keahi



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LATE TESTIMONY
BOR Testimony <bortest2@hawaii.edu>

Testimony in Support of the TMT

Laurie Chu <laurieurban711@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:04 AM

Aloha,

I support the construction of the TMT. I am a current graduate student at the University of Hawaii and have benefited greatly from the telescopes on Maunakea, where I used seven of the existing telescopes for my PhD dissertation. I think the TMT has a great opportunity to not only bring great scientific advancement to mankind, but to Hawaii specifically. I look forward to the day students will get to use the TMT and because of all the funding toward education we will have native Hawaiians at the forefront of astronomy once again as their ancestors once were. I believe the jobs created and the opportunities for our keiki are priceless and the telescopes can live in harmony with the culture.

It may seem like the people as a whole do not want the telescope, but I know it is a silent majority who support it. Just today, I sat next to a Hawaiian local in a fast food restaurant and we started chatting. When he found out I was an astronomy graduate student he said right away how he thought we should be moving forward, not living in the past, and that one more telescope could be great for our kids. He was wise with what he said, and though I probably would never see him at a pro-TMT rally, I know he and many others support the TMT. These people are all over the place in Hawaii when you sit down and talk. Talk to the introverts, the people that are working too many jobs to even get on social media, the scientists, the people who do not enjoy big social events. Don't be moved by the vocal activist group collected on the mountain to go against the TMT. In the end, if the TMT leaves, the people will lose.

We have heard the cry from many Native Hawaiians to do better, to listen to them, and we can and we will. But to deny Hawaii the TMT would not be the answer. Please stay with the majority of people who support the telescope. Mahalo.

Laurie Chu



UNIVERSITY of HAWAII SYSTEM

LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Testimony regarding ITEM III.D. APPOINTMENT OF A P.I.G. RELATED TO MAUNA KEA GOVERNANCE

Rosie Alegado <r alegado@hawaii.edu> To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:09 AM

TESTIMONY PRESENTED TO THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII SPECIAL MEETING AUGUST 2, 2019 ITEM III.D. APPOINTMENT OF A P.I.G. RELATED TO MAUNA KEA GOVERNANCE

Aloha Chair Kudo and Members of the UH Board of Regents, my name is Rosanna 'Anolani Alegado, Associate Professor of Oceanography at UH Mānoa, SOEST Maile Mentoring Bridge Program Director.

I am providing testimony today regarding agenda item III.D, concerning a "Permitted Interaction Group" (or PIG) Related to Mauna Kea Governance. I urge the BOR mandate the PIG to convene negotiations for an agreement of mutual respect that would allow TMT International Observatory to be released from the sublease with UH. It is within the BOR's power to allow TIO to move the siting of the TMT to the Canary Islands without either party filing litigation against the other.

Specifically, I urge the PIG be tasked in exploring pathways for releasing UH rom the sublease under Section 9, Term and Termination. A. Mutual Cancellation of Master Lease 5. Sublessee and Master Lease d. Termination Without Cause Sublessee shall have the right to terminate this Sublease at any time upon six (6) months prior written notice to Sublessor. Termination for Breach - non-use for 11 continuous months f. non-use and Abandonment

The past two weeks have provided clear and unequivocal evidence that there is broad opposition to construction of TMT atop Maunakea. While it may have once been possible in 2015 to find a way to find a community-centered way to construct TMT here Hawai'i, the show of force against the peaceful protectors of the mauna - particularly the arrest of dozens of kupuna, was at once an appalling lack of respect to the Native Hawaiian community and a galvanizing force that served to shift perspectives across the globe and more importantly, within the people of Hawai'i. Where once residents may have had a neutral to no position on TMT, Governor Ige's stance to those at the pu'uhonua caused many to reflect and reconsider.

The BOR should also deeply consider the damage that has been wrought across all campuses in the UH system. Being a "Hawaiian place of learning" has been an aspirational goal for UH Mānoa since the 1986 Ka'ū report in which an all-Native Hawaiian taskforce comprised of true luminaries (Isabella Abbott, Kekuni Blaisdell, David Sing, Haunani Trask, Ilei Beniamina, Pualani Kanahale and my mother Davianna McGregor to name a few) demanded that UH align itself with the people of Hawai'i and most particularly, the indigenous people of this land. Thus the arrest of Dr. Kanahale on July 17th came as the ultimate insult to the Hawaiian faculty, staff and students who have spent over 30 years working toward making UH a "Hawaiian place of learning". Continuing to pursue construction of TMT will reverse the hard won gains that I and my colleagues have made toward indigenizing UH and particularly in recruiting and nurturing Native Hawaiians into STEM fields here.

This is the first test of whether UH-Mānoa can fulfill the WASC Thematic Pathway for Reaffirmation (TPR) of Aloha 'Āina. Native Hawaiian concerns are grounded in aloha 'āina, a spiritual reverence for Mauna A Wākea as a realm where the earth pierces into the realm of our akua and centers a space of creative convergence, a nexus of elemental forces, a piko. Cultural, including burial, sites established by our ancestors attest to the supreme sanctity and reverence held for the mountain. Scientific observations and knowledge about the natural resources and elemental forces essential for the cycles of rainfall, springs, streams, the island's aquifers and surrounding ocean are transmitted in oli and perpetuated through protocols. Our living science defines behavior for appropriate stewardship of lands and resources, the kuleana our ancestors laid out for us in oli and mo'olelo - to protect the sacred realm at the summit of Mauna A Wākea.

Please align with the Native Hawaiian community to uphold aloha 'āina.

Mahalo, Kapu Aloha and Aloha 'Āina,

Rosie 'Anolani Alegado

Rosie Alegado, PhD Associate Professor of Oceanography and the Sea Grant College Program

8/2/2019

University of Hawaii Mail - Testimony regarding ITEM III.D. APPOINTMENT OF A P.I.G. RELATED TO MAUNA KEA GOVERNANCE

Director, Sea Grant Center of Excellence in Integrated Knowledge Systems
Principal Investigator, SOEST Maile Mentoring Bridge Program
Center for Microbial Oceanography: Research and Education
1950 East-West Road
University of Hawai'i, Mānoa
Honolulu, HI 96822
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BOR Testimony <bortest2@hawaii.edu>

ALOHA 'AINA

Visa Castillo <visa4empress@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:14 AM

Native Hawaiian, mixed. For the advancement of my people, but not at the expense of my people. History has shown the disregard for all things pono - the land, the people, the culture. We allowed telescopes that were neglected and left to perish. What do you expect us to feel when you want to do it again? We cannot! I will not, until the last Aloha 'āina. My kūpuna were born and buried here. My heart is broken that we have to even defend our own sanctity. We are humans. We deserve. Please take TMT to where hearts will not be broken and a culture perished. Mahalo. #aoletmt #kukiaimauna #wearemaunakea

Visaluana Castillo
Sent from my iPhone



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

JUST SAY NO TO TMT!

Karen Murray <kmurray.testimony@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:35 AM

There is nothing scientific about more pollution on Mauna Kea. There is good science and bad science. Are we abandoning the other sciences which we vitally need right now? Earth and environmental sciences tell us to conserve. We need to recognize the wisdom of the 8 criteria for conservation areas in the limited lands the we have in Hawaii. What is important here is that the University should be a place of higher learning, which should include ethics. We have lost our way chasing money from the military and private corporations.



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

UHM involvement in TMT

Siena <schaar@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:47 AM

Aloha,

I am writing this email in strong opposition of UHM's continued involvement in the placement of TMT on Mauna Kea. As a natural resources and environmental management graduated student in the NREM department at UHM, I feel that the TMT project is unethical and unsustainable. I hope that the board can see that this issue extends well beyond an environmental issue and is also an infringement on the rights of native Hawaiians - after all, it is proposed to be built on crown lands that were zoned as conservation land.

Please stand with the countless students, faculty and affiliates across all University of Hawai'i campuses and consider leaving the TMT project to be built in the Canary Islands where it will be welcomed. Any science that undermines marginalized communities, is unethical science and the University of Hawai'i should have no part, especially at the expense of the indigenous native Hawaiian community.

Mahalo for your time,

Siena I. Schaar
MEM Candidate, NREM department UHM



8/02/19 Testimony for BOR meeting

AnnaMichelle Freed <afreed@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:55 AM

Aloha mai kākou,

O wau 'o Ku'ulei Freed. I am currently a graduate student here at the University of Hawai'i and I want to address item III. D. on the agenda regarding the appointment of a permitted interaction group to investigate issues and make recommendations related to Mauna Kea governance.

The time for this kind of investigation and recommendations have come and gone. The University of Hawaii and other state agencies have mismanaged Mauna Kea for years, this is documented fact. If in fact the University wanted to be good stewards, they would have. If in fact the University wanted to actually work on the governance of Mauna Kea you would actively be speaking with and engaging with us (the kia'i). It wouldn't cost thousands of dollars, or even hundreds, to learn of all the ways the Mauna has been mismanaged and all the ways it could be better managed. But that is not what the University is actually seeking. The University is actually seeking a way to get us off your backs and out of the way. But in case you haven't yet realized, I will tell you that is not going to happen.

It has been almost 50 years since the Hawaiian Renaissance and those who helped fuel it - those who were labeled as angry Hawaiian activists or troublemakers - they are currently holding space and blocking the Mauna Kea access road. And they have taught us well. We stand with them and we aren't going anywhere.

But how can the University move forward? Well, I have a solution. We all know this is so much more than a debate over science or religion. So I ask you, why are you standing in the way of progress? Because we are progressing. Anyone who is watching can see how much we have progressed in the 3 weeks that we have occupied the Mauna. This is not just a fad of the moment or a selfie that you can take for likes. If you think that is what is going on, you're wrong. My solution is to stand with us, to represent Hawai'i. Our lāhui is moving and no obstacle is too big. Stand with us and benefit from this momentum. Or don't. The choice of course is yours. But the TMT will not be built here.

Me ka ha'aha'a a me aloha nui,
Kuulei Freed



Statement for BOR Special Meeting Scheduled for August 2, 2019

Wendell Perry <wperry@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 12:56 AM

Dear Board of Regents,

Attached is a statement submitted on behalf of the faculty of the Mauna Kea Protectors at the University of Hawai'i. The statement is submitted as part of the testimony for the Special BOR meeting scheduled for Friday, August 2, 2019 relating to item III.D. of your agenda.

Thank you.

Peace,
Kekailoa Perry
Associate Professor
Kamakakūokalani Center for Hawaiian Studies.

--

"If the learner believes that institutional education is all that there is to learning, then their growth as a whole person will be stunted upon completion of the institutional credential." - Nicole R. Harper.

"Until the philosophy which holds one race superior than another, is finally and permanently discredited and abandoned, until there no longer first class and second class citizens of any nation, until the color of a man's skin is of no more significance than the color of his eyes, until that day the dream of lasting peace, world citizenship, rule of international morality, will remain in but a fleeting illusion to be pursued, but never attained." - Robert Nester Marley



UH Faculty Statement to BOR [Aug 2 2019].pdf
58K

“MA LUNA A’E O NĀ LĀHUI A PAU KE OLA KE KANAKA[?]”

Statement to the University of Hawai‘i Board of Regents
By the Mauna Kea Protectors at the University of Hawai‘i

August 2, 2019

We, the faculty of the Mauna Kea Protectors at the University of Hawai‘i, call on all members of the University of Hawai‘i Board of Regents to honor your legal and ethical obligations as public servants to our University’s students, faculty, and staff. These obligations require you to acknowledge your biases in your support of the Thirty Meter Telescope (TMT) project and your flagrant disregard for the health and well-being of our University’s stakeholders and for the health and well-being of our Native Hawaiian people. The Board of Regents is meant to be OUR Board, acting in OUR best interests.

As appointed members of the current Board of Regents, you are in violation of the BOR bylaws and policies, as well as the state constitution. Your Board is ignoring its trust obligation to conduct the affairs of our University in a manner that serves students, faculty, staff, and the public good. You have consistently made decisions that promote a single political and economic agenda relating to Mauna Kea and the TMT project, while ignoring the safety, wellbeing, and greater interests of the University, the Native Hawaiian people, and the Hawai‘i community.

The Board of Regent’s constitutional obligations are supported by policies, bylaws, and common sense; all of which declare that each member is appointed to be a good public servant who heeds the voices of our University stakeholders when making decisions. Therefore, you are legally expected to make conscious decisions for the betterment of our community including the Native Hawaiian community whose culture and identity are constitutionally protected and who are central to our University’s commitment to being a place of Hawaiian learning.

In fact, the Hawai‘i State Constitution requires state institutions like the Board of Regents to reaffirm and protect “all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua’a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.” Your Board has ignored this important constitutional provision by staking what is left of your reputation on the last clause of the law and ignoring what is the most significant and direct duty of protection. Clearly, you have done nothing to reinforce the legal and ethical mandates that require protection of the rights, responsibilities, and values of Native Hawaiians. As such, you are in breach of your fiduciary responsibilities.

The BOR’s Special Board Meeting Agenda item III.D. advocates for a Permitted Interactive Group (PIG) investigative body for Mauna Kea to provide cover for the construction of the TMT. In blatant contravention of the State of Hawai‘i Sunshine Law, PIG is designed to carry out the biased, prejudged actions of your Board that favor the TMT project while shielding you, the University administration, the Office of Mauna Kea Management, and the Institute of Astronomy from public scrutiny.

We object to this action because it is legally and ethically deficient and further erodes the rights of University stakeholders and the Native Hawaiian people.

Let us be clear:

Since July 17, human and civil rights institutions and organizations locally, nationally, and worldwide have called on University of Hawai'i President Lassner and Governor Ige to stop their threats of violence and end the TMT project. Even though the emergency declaration has been rescinded, the police and national guard threat is still present. Your Board has taken no leadership in this matter and has chosen to follow the dictates of President Lassner, the Governor, the TMT partners, and political operatives.

Your silence as members of the Board of Regents in the face of overwhelming local, national, and international objections to the building of the TMT shows a willingness to endorse the TMT's extractive and colonizing agenda, the University of Hawai'i's business agenda, and Governor Ige's racially-insensitive and hyper-aggressive deployment of law enforcement agencies. In recent weeks your Board has allowed for a wholesale attack on the Protector's state and federal constitutional rights by President Lassner, Governor Ige, and other State and local government officials. In particular, your Board's acquiescence to these attacks constitutes collusion in the deplorable arrests of 33 peaceful kūpuna on Mauna Kea. Hundreds of other Protectors will suffer a similar fate if your Board fails to halt the TMT project.

As members of the Board of Regents, you are public servants, not agents of the TMT partners or private interests. You must, therefore, carry out your trust responsibilities in the best interest of all stakeholders. The actions taken by your Board in recent years clearly display a level of prejudice and bias in your unwavering support for Governor Ige's dangerous and overzealous executive law enforcement policies that falsely characterize Native Hawaiians and Protectors on Mauna Kea as miscreants, delinquents, and lawbreaking criminals.

In plain language, your Board's non-action is cowardly. You have not been relieved of your trust responsibility to protect the cultural and environmental integrity on Mauna Kea. Nor does the inaction of your Board excuse you from your fiduciary obligation to advocate for the safety of the Protector community (in particular, UH faculty, staff, and students) who have been routinely threatened with state-sanctioned violence on Mauna Kea, and who have looming over them the UH's administrative rules, which are designed to punish those exercising their rights to religious freedom, academic freedom, freedom of speech, and freedom of peaceful assembly.

Your Board's disregard for community concerns and outrage relating to

- the Mauna Kea management rules,
- the negative environmental and cultural impacts on Mauna Kea (past and present),
- the cultural degradation that the building of the TMT will cause,
- the serious breach of ethical and professional research (on all levels) towards all individuals (including our Mauna a Wakea) who experience negative impacts from a research *development* project as massive as the Thirty Meter Telescope, and
- the trauma that the TMT project is now creating on Mauna Kea (and on our campuses),

demonstrates negligence in the fulfillment of your trust responsibilities.

Each member of the Board has a tangled history of supporting the TMT project and other similar developments that negatively impact our public trust lands and Hawaiian culture. At least one of your members sits on the Board for Mauna Kea Management. These actions illustrate your Board's inability to carry out mandated trust obligations fairly and equitably. Your callous disregard for these concerns makes it abundantly clear that your Board is approaching all matters relating to Mauna Kea and the TMT project with disdain for the cultural and spiritual beliefs of the Protectors. Your Board's decision regarding Mauna Kea takes our University on a path of cultural violence, the intention of which is to override Native Hawaiian sovereignty that we note, has never been relinquished.

All your actions reveal that you have adjudged any facts and rules relating to Mauna Kea in favor of the TMT project in advance of final votes on the matter. Your Board's predetermined stance in favor of the TMT project highlights an embedded bias that guarantees an unfair process and ensures that the merits of the Protectors claims will be ignored as the you move the TMT into "predestined grooves" for development. As such, our confidence in your governance has reached a tipping point and we are no longer willing to have our University conduct "business as usual".

This statement invites you to rescind all actions supporting the TMT on Mauna Kea.

Common sense dictates that your Board of Regents unshackle itself from the patronage bonds of the Governor and special interests, and find the courage to protect Mauna Kea from the Thirty Meter Telescope thereby ending the physical and emotional trauma in our communities. Common sense—and any sense of doing what is ethical—demands that your Board take immediate action to terminate the TMT license and development agreement.

To accomplish this, your Board should immediately negotiate with the Mauna Kea Protectors to create an independent decision-making body inclusive of their representatives, as well as members of our UH Protector community to review and act on all matters that relate to the TMT project and the UH's overall management of Mauna Kea.

To truly represent our University stakeholders, to truly be OUR Board of Regents, you must choose a more pono approach from this point forward. Be courageous. Honor the trust responsibility you pledged to uphold by protecting Mauna Kea's sacredness and the Protectors so that our University can truly begin behaving like a Hawaiian place of learning!

Submitted on behalf of all the faculty of the Mauna Kea Protectors at the University of Hawai'i.

Dr. Konia Freitas

Dr. Cynthia Franklin

Dr. ku'ualoha ho'omanawanui

Dr. Subramanian Shankar

Dr. Margie Maaka

Dr. Laiana Wong

Kekailoa Perry, JD



Testimony for August 2, 2019 BOR meeting

Pi'ikea Everett <piikeya.everett@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 1:04 AM

Aloha mai kākou,

"Ma luna a'e o nā lāhui a pau ke ola ke kanaka." These are the words inscribed on the Founder's Gate at the University of Hawai'i at Mānoa. I have walked through the entrance of that gate several times as a graduate student of this institution without taking the time to pause and reflect upon its meaning. A loose English translation of that phrase can be interpreted as "Above all nations is humanity." The phrase "ke ola ke kanaka" has been used in this context to capture this Western idea of humanity. But taking a closer look at this phrasing, we can also come to an understanding that as kanaka or as people our OLA, meaning our life, health, well-being, livelihood, survival, and ability to thrive should be valued above all other nations. I would implore the Board of Regents to truly reflect upon that phrase. Is the University of Hawai'i doing its best in living up to its own motto to ensure the life and survival of our kanaka continues to be treated with dignity and respect?

Let's talk about the word ola. By pushing forward with the construction of the Thirty Meter Telescope on Mauna Kea, the University of Hawai'i is severing our connection and our ability to maintain our cultural identity and practices. It is as if you are taking away our ola- our life, our heal, our well-being, our ability to survive and thrive upon our ancestral lands. Let's talk about the word humanity. On July 17, 2019, thirty-eight of our kūpuna were arrested protecting a place that is sacred to our people. I will never forget that day as me and my students watched the live feed of those events on the Mauna Kea access road. We were shocked. We were disheartened. We were in disbelief that the University of Hawai'i would permit these actions. Where is the humanity in that?

I want to express my concerns regarding **Agenda Item III.D "The Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Mauna Kea Governance."** First of all, it is extremely difficult for me to trust an organization who has for many years mismanaged Mauna Kea. Based upon the brief memorandum that was provided a few days ago, it is also unclear to me what specific issues and concerns the University seeks to investigate along with the people, groups, or organizations that you intended on gathering information from your investigation. I would also strongly recommend that a third party should be involved- a group that does not have strong ties or allegiances to the University of Hawai'i or a group that does not promote the construction of the Thirty Meter Telescope to make the investigation. I am also curious as to what will happen with the information that will be gathered from this investigation. My biggest concern is that this process will be the lack of openness and transparency to the public- where such discussions will take place behind closed doors without community input.

To the Board of Regents, I would implore you to demonstrate that you care about the ola of our kanaka above all other things. That you will abide by the motto that is inscribed at the front of your campus. That you will treat our lāhui with the dignity and respect that we deserve. That this process will always seek to include the community in this decision-making process rather than exclude them. That you will remember that such decision-making processes belong to the people who have an intimate connection to that place and who are familiar with its winds, hills, rains, and other characteristics.

Me ka ha'aha'a,
Pi'ikea Everett



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Testimony for August 2, 2019 BOR Meeting re: Agenda IIID - Protect Maunakea

Sharde Freitas <shardem@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 1:08 AM

Aloha,

Please find my testimony attached for the UH BOR's meeting on August 2, 2019, regarding Agenda IIID.

Mahalo,

Sharde Mersberg Freitas, Esq. MPH

 **Freitas, S. BOR Testimony - Protect Maunakea.pdf**
66K

August 1, 2019

UH Board of Regents
2444 Dole Street
Bachman Hall, Room 209
Honolulu, HI 96822

Dear University of Hawai'i Board of Regents,

I submit this testimony with regards to Agenda IIID, "Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Maunakea Governance." I earned my Masters in Public Health (MPH) from the University of Hawai'i at Mānoa (UH). After earning my MPH, I continued my education at the William S. Richardson School of Law to earn my law degree. I have many concerns with regards to this "Permitted Interaction Group," and ultimately urge you to heed former Regents, and current advisor, Master Navigator, Nainoa Thompson's warning from approximately twenty years ago with not continuing the desecration of our lands with the Thirty-Meter Telescope (TMT) atop Maunakea.

With my background in health and law, everything that I have come to learn from professors at the University of Hawai'i at Mānoa is the opposite of what is being pursued with TMT. My esteemed professors taught me the importance of involving the community with research, how to conduct research with integrity, how to involve community in a meaningful way as partners, upholding ethical principles of the health and legal professions, and to trust my na'au. As an educational institution, I know that you are very familiar with the power of education with regards to equity. Where is the compassion and empathy that I was taught to feel when I was a student at UH? In addition to religious rights and cultural practices being protected by the highest law of this land, shouldn't Maunakea being sacred be enough of a reason to not support TMT atop Maunakea?

Especially with the TMT, what is at stake is more than just a telescope. As one my professors would often ask as a teaching tool for us students to take a step back, trust our na'au, and look at the bigger picture, ask yourself: what is really going on?

With that background, now looking more specifically at this proposed "Permitted Interaction Group" to be known as "Maunakea Governance Task Group" ("group"), I have many concerns with what this means and the process involved with what this group will do. Were the State of Hawai'i's Office of the Auditor's reports on the management of Maunakea (more specifically, the lack thereof) not sufficient? As per the notice published, this group is "to investigate issues related to the university's stewardship and governance activities on Maunakea, and make findings and recommendations to the Board of Regents regarding the development of a statement expressing principles supported by the Board... ." What principles does the Board support?

I also stand in solidarity with others asking these questions:

- What "issues" are being investigated?

- Will the Group's report back come in ahead of the Regents' August 30th vote on the Mauna Kea management rules?
- Why are the Regents pressing ahead with the controversial Mauna Kea management rules when they still need information on "issues related to Mauna Kea governance"?
- Who is the Group going to talk to as part of its investigation?

Please ensure that this group's discussions will remain open and transparent as required under Hawai'i Revised Statutes 92-2.5.

Additionally, when further examining potential answers to the question of what is really going on, I am also concerned with regards to the apparent lack of coordination, communication, leadership, stewardship, and integrity of the different administrative stakeholders involved: the University of Hawai'i, the Department of Land and Natural Resources, and the State of Hawai'i. In light of the two-year extension granted for the start of construction for TMT, why would UH want to continue supporting a project that is continuously delayed and will continue to be faced with opposition from the community, specifically the native people of this land?

President Lassner was recently interviewed and reported to not apologize for UH's prior mismanagement of Maunakea. This is deeply concerning. Although President Lassner is not necessarily personally responsible for passed mismanagement of Maunakea, UH must acknowledge its wrongdoings. While the Hawai'i Supreme Court may have ruled in support of upholding TMT's Conservation District Use Permit (CDUP), I ask that you look further into Justice Wilson's dissenting opinion that specifically speaks to the injustice of UH, "the party that caused the substantial adverse impact is empowered by the degradation principle to increase the damage." This is the opposite of equity.

As Regents, you have many justified reasons to not support TMT atop Maunakea. For brevity, I will list two reasons here. First, TMT is specifically not within the scope of the latest UH Maunakea Comprehensive Management Plan. Second, acting as a fiduciary, which by definition requires that you "serve a public interest role" and make decisions "solely on the basis of a desire to promote the best interests of the University and the public good" (per your BOR bylaws), I urge you to forfeit the CDUP and not support building TMT atop Maunakea.

Mahalo for your service.

Kū Kia'i Mauna.

Aloha 'Āina,

Sharde Mersberg Freitas, Esq., MPH
shardem@hawaii.edu



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Special Board of Regents Meeting 09/02/19

Lee Trent <ltrent808@yahoo.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 1:09 AM

Hi my name is Lee Trent. I respectfully request you will consider my testimony along with the others that are in Favor of the Installation of TMT. I am a Native Hawaiian as well as a local resident on the island of Oahu. I have spoken to many of my peers and they have also expressed they are in favor of TMT. We appreciate the contribution that TMT has provided to our students and local economy. I strongly request that TMT start building immediately despite the opposition.

President Lassner - We are here to support you and TMT. Please consider building immediately because each day that passes, the support for the opposition grows. With social media, their support has taken off like a wildflower. Celebrities such as Dwayne "The Rock" Johnson, Damien Marley, Jack Johnson and the latest Jason Momoa have gone up to Mauna Kea.

Do not let the Protestors continue with their illegal behavior and to stop the construction. Take control of the roads and Let's get TMT built now!!! Call the National Guard to assist.

**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

Testimony against Continued Investment in TMT Construction

Rebecca Goldschmidt <rimgoldsc@hawaii.edu>
 To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 1:55 AM

Aloha e Board of Regents,

My name is Rebecca Maria Goldschmidt,
 Master of Fine Arts & Graduate Assistant in the Department of Art & Art History

Former Events Coordinator on the EC of the GSO
 Former Political Action Chair for Academic Labor United

During this time working with students across disciplines and in various points of their academic careers, I have heard many stories of the dysfunction within departments, on the admin level, abuses of power, and far too many stories of sexual harassment and violence, often perpetrated by faculty and especially within the fields of the hard Sciences.

I am here to testify that, based on the mismanagement of the following extremely pertinent issues on campus, I believe that UH administration is ill-equipped to and incapable of effectively managing Maunakea and the construction of the Thirty Meter Telescope and therefore should immediately withdraw from the project. Examples include:

- 1) The mishandling of sexual violence cases between 2010-2016, as concluded by a federal investigation of UH Manoa in 2018 which found UH admin non-compliant w/ federal laws and in violation of rules of handling sexual harassment cases.
- 2) The confusing and incomplete reorg of the University, which was not approved by many, including the faculty union, UHPA, who also called for the resignation of President Lassner earlier this year after his breach of union contract by releasing names of faculty who were potentially going to be laid off.
- 3) Refusal to acknowledge graduate students' demands for unionization the labor backbone of the university who will supposedly "benefit" from the investment in the TMT with STEM career opportunities.... meanwhile female grad students, especially native Hawaiian women and women of color, continue to be mistreated in the workplace without justice every day on campus.
- 4) Pretty much everything surrounding the "False Alarm" and the "Nuclear missile" situation, from the panic-inducing emails, to the shelter misinformation, to the moment when students were running from their dorms and frantically trying to get into locked buildings marked as shelters...
- 5) The extremely dysfunctional Counseling and Student Development Center (CSDC), which has long waitlists for students needing services, according to a recent letter from concerned professors and community members.

and most damningly:

- 6) Bankrupt claims to be an "indigenous-serving institution", utilizing 'Olelo Hawai'i as a selling point while continuing to disrespect the Hawaiian community by remaining committed to the construction of the TMT on sacred grounds.

Each of these messes shows CLEAR inability to manage the myriad obstacles to running a well-functioning university, especially in regards to the health and well-being of STUDENTS.

I demand that the Board of Regents abandon UH's investment in the TMT Project and instead reallocate time and resources to the following:

- 1) Recognizing the error and apologizing for many years of disrespect and violence endured by the Kanaka Maoli people that the University has already perpetrated by the following recent actions: junk-ing the sacred ahu on the Mauna; allowing the arrests of elders and threatening students and faculty with physical force and violence through the presence of armed riot police; and the continued violence of still considering a project that will desecrate and poison a sacred, culturally significant and ecologically vital being and space.

- 2) Creating a stable, indigenous-led and organized University structure through true participation and input of faculty, staff, and students and REAL collaboration on including Hawaiian values and governance.
- 3) Seriously addressing the myriad health issues plaguing our campuses: food insecurity, mental health emergencies, a pervasive culture of patriarchal sexual violence and abuses of power.

I have been on the Mauna and have witnessed the beauty of cooperation, collaboration, and the openness of learning space, an "ACTUAL" place of Hawaiian learning, of Pu'uuhuluhulu University. If UH were to truly embody and invest in its role as an "indigenous-serving institution", as opposed to serving the interests of private and foreign investment and the US Military, the actual payoff would be infinitely greater than any empty promises of construction jobs or STEM research jobs years down the line.

This decision is about making the choice to acknowledge years of abusive, violent, colonial science, imposed racial hierarchy, abuses of power and the normalization of violence against women and the land.

A'ole TMT. UH has NO RIGHT to manage a sacred space when it can't even take care of its own responsibilities to faculty, staff, and students on our campuses.

Mahalo, Agyamanak for your time,

Rebecca Maria Goldschmidt

--

rebecca maria goldschmidt

m.f.a. candidate
dept. of art & art history
university of hawai'i mānoa

8/2/2019

University of Hawaii Mail - TMT

LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>



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TMT

Tierra K M-Aiolupotea <kamamalu3@gmail.com>

Fri, Aug 2, 2019 at 2:45 AM

To: bor.testimony@hawaii.edu

Cc: lealataua80@gmail.com

I Lealataua Aiolupotea (Tierra Aiolupotea-Wife)
forward my testimony for special board meeting held Aug 2 2019.
I OPPOSSE CONSTRUCTION BEING BUILT ON MAUNAKEA PERIOD.

P.s

What exactly is a "Permitted Interaction Group"?

Thank you
Lealataua Aiolupotea
(808-374-0444)



**UNIVERSITY
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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

TMT testimony for 8-2-2019 special board meeting

Tierra K M-Aiolupotea <kamamalu3@gmail.com>

Fri, Aug 2, 2019 at 2:48 AM

To: bor.testimony@hawaii.edu

Cc: jojorholi@gmail.com

I Joanna Holi "oppose" to the TMT being built on Maunakea.

Thank you
Joanna Holi
808-203-3934



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

TMT testimony 8-2-2019 special board meeting

Tierra K M-Aiolupotea <kamamalu3@gmail.com>

Fri, Aug 2, 2019 at 2:51 AM

To: bor.testimony@hawaii.edu

Cc: namaka21@yahoo.com

I Jerezhiah Namaka Park highly OPPOSE the TMT being built on Maunakea.

Please build the TMT in Canary Islands where it is most welcome.

Thank you
Jerezhiah Park
808-228-0308



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BOR Testimony <bortest2@hawaii.edu>

Maunakea Testimony

Lauren M. Weiss <weisslm@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 3:19 AM

Aloha,

Please consider my testimony in support of the future of astronomy on Maunakea.

Mahalo,

--
Lauren M. Weiss
Parrent Postdoctoral Fellow
Institute for Astronomy
University of Hawaii at Manoa
2680 Woodlawn Dr.
Honolulu, HI 96822
weisslm@hawaii.edu

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49K

LATE TESTIMONY

Lauren Weiss
Testimony Regarding Maunakea
8/2/2019

To the University of Hawai'i Board of Regents:

Please consider my testimony in support of astronomy on Maunakea, including the construction of the Thirty Meter Telescope.

I have always known how to chase big dreams. At the time I set off for college, my dream was to walk into the flaming hearts of stars. Over a decade later, I am leading a world-class research program to discover and better understand the planets that orbit those distant stars.

My dream has become a reality through a combination of my own determination and some aspect of grace or luck. I earned my bachelor's degree at Harvard University. I then won a fellowship to attend the University of Cambridge for a year, followed by national and private fellowships to pursue my doctorate at the University of California, Berkeley. Looking back, I feel increasingly fortunate to have had these opportunities.

But when family, friends and new acquaintances ask me which is the best institution to do astronomy, I say without hesitation, "the University of Hawai'i." The look I get is often one of confusion. Harvard's endowment is one hundred times the size of the University of Hawai'i's, and nearly triple the State of Hawai'i's annual expenditure. What does UH have that Harvard does not? UH has access to Maunakea, the site of the most productive observatories in the world.

It was for this reason, several years ago, that I set my sights on the Institute for Astronomy at UH. Just last year, the Parrent postdoctoral fellowship opened up here, and I won it. I have flourished here, embarking on a bold new research project to use the Keck Observatory on Maunakea to study how small planets form. From a scientific standpoint, my program is not possible to conduct at any other telescope in the world. The combination of my privileged position here at UH and support from a nationally competitive NASA program awarded me nine nights of observing time at Keck this semester, which might be a record allocation for a postdoctoral scholar. I doubt that a postdoc at any other institution could be this successful in winning coveted telescope time.

The Thirty Meter Telescope is one of the next big dreams of astronomy. The purpose of TMT is to further our understanding of humanity's origin and our place in the universe. TMT will likely help us see the first galaxies that ever formed. It will capture pictures of planets around nearby stars, and perhaps even small planets. It will likely give us insight about the detailed structure and atmospheric compositions of these planets, and help us interpret whether they could support life. It will almost certainly help us discover things we have not yet had the courage or the imagination to ask.

Whatever site is chosen for TMT will likely be among the top sites for astronomy in the world ten years from now. The dream of TMT is shared by six partners across five nations. It is also the dream of Hawaii's next generation of astronomers, including current UH astronomy undergraduate and graduate students who grew up in Hawaii, as well as students Mailani Neal and Devin Chu, who are from Hawaii but are currently pursuing their astronomy education on the mainland.

To support these students and future students, TMT has funded the Akamai Workforce Initiative, an internship program that connects local talent with premier STEM opportunities. The goal is that future generations of observatory staff can be increasingly drawn from a prepared local population. Serving minority groups is a cornerstone of the program; 47% of Akamai interns are underrepresented minorities, and 24% are Native Hawaiian. The program is working: 70% of its former participants are gainfully employed in STEM, and 17% are continuing their STEM education, including at UH.¹

The eight-plus years of TMT's engagement with the community has opened pathways for strengthening the relationship between the science activities on Maunakea and the flourishing of the Hawaiian language. This year, telescopes on Maunakea contributed to the first-ever photograph of a black hole. To honor and celebrate the role of Maunakea in this discovery, UH-Hilo professor of Hawaiian language Larry Kimura named the black hole Powehi: the embellished dark source of unending creation. In 2017, when a UH-Manoa astronomy team discovered the first interstellar asteroid, Professor Kimura named it 'Oumuamua, scout. This new shared scientific and cultural tradition is continuing, as Hawaiian language students are giving newly discovered asteroids Hawaiian names.

I cannot imagine how many beautiful things we will discover with TMT and what lovely Hawaiian names they will have. I think it is marvelous that the whole world will be using the Hawaiian language to describe what our students find in the sky. My dream from a long time ago was to walk into the flaming hearts of stars. A new dream of mine is that Hawaiian students will send the Hawaiian language on that voyage.

Reflecting on these aspects of TMT, let us consider the mission statement of the University of Hawai'i²:

The primary mission of the University of Hawai'i system is to provide environments in which faculty and students can discover, examine critically, preserve and transmit the knowledge, wisdom and values that will help ensure the survival of the present and future generations with improvement in the quality of life.

¹ <https://akamaihawaii.org/impact/>

² http://www.hawaii.edu/offices/app/bor/Reference_Guide_08_2009.pdf

...The University embraces its unique responsibilities to the indigenous people of Hawai'i and to Hawai'i's indigenous language and culture."

TMT will help faculty and students make new discoveries, and communicate both scientific knowledge and the Hawaiian language to the world. It will enhance the career opportunities for local students, including Native Hawaiian students, in astronomy and other STEM fields. And it will enhance the quality of life for the students and future residents of Hawai'i through an enriched understanding of the universe and of the Hawaiian language. As such, it directly supports the mission of the University of Hawai'i. Conversely, without TMT, UH will lose its preeminence as a top research university for astronomy in the world. Without TMT, Hawai'i will lose opportunities to train the next generation of scientists. And with TMT elsewhere, Hawai'i will lose an incredible opportunity to spread its language to the stars.

Sincerely,

Lauren M. Weiss
Beatrice Watson Parrent Fellow
Institute for Astronomy
University of Hawai'i at Manoa
weisslm@hawaii.edu



TMT and Mauna Kea

Peggy Wandersee <p.wandersee217@gmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 3:35 AM

Dear sirs,

I respectfully oppose the building of the TMT at this site. For the following reasons

Most importantly because this area is and has been protected for the native people for hundreds of years because it is sacred to them

The Hawaiian people go there much like most of the people on this planet go to church. Their church is Mauna Kea.

Just because Mauna Kea is there doesn't mean it can be taken and used for whatever science or any organization wants. This is going back to the horrible days when land or really anything was taken from indigenous people. We can't digress to those days again. It was wrong in the past and is wrong now.

Building TMT on Mauna Kea is going to negatively impact everything on the island. There are many more opposed to this than for it. People will not forget and will not come spend their money there.

There is another proposed site at the Canary islands that will not have negative impacts. I don't understand why you insist on building TMT on Mauna Kea.

All of this can be avoided.

Thank you
Peggy Wandersee



Opposition of TMT

Cantillo, Kyla <cantillo@seattleu.edu>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 4:03 AM

Aloha,

My name is Kyla Cantillo and I am a resident of Kailua, Hawaii. I am emailing to testify in opposition of the construction of the Thirty Meter Telescope on Mauna Kea.

As a Hawaii native, I recognize the effects of this construction to be detrimental to the islands on levels environmental and social. The impacts to our land and community will far outweigh the benefits that could be received from this telescope. I strongly believe that our focus as a state and as a country should be out stewarding the land and supporting our indigenous people and culture. For these reasons I oppose the construction and funding of TMT.

I would be glad to further explain my position and continue to testify against the thirty meter telescope. I can be reached at this email or at (808)864-0953.

Mahalo,

Kyla Cantillo

**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

Testimony for BOR Meeting today, 8/2/19

Leora Kava <lkava@hawaii.edu>
 To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 5:05 AM

To the University of Hawai'i at Mānoa Board of Regents:

I am not Kanaka Maoli, but I am a daughter of Oceania. My genealogical ties—and therefore my responsibilities to my ocean, to our islands, and to Kānaka Maoli—come from my Tongan ancestors, my Tongan family. I am a recent graduate of UH, completing both my Masters in 2015 and recently completing my PhD from Mānoa this past May.

As a graduate student and lecturer during my time at UH, it was my responsibility to stand and teach in solidarity with Kānaka Maoli. In the classes I taught, across departments of English, Ethnic Studies, and Pacific Islands Studies, I took very seriously the need to educate my students on the importance of knowing their position here in Hawai'i; what it means to pay close attention to the histories that brought them here; what it means to write and study in this place, on occupied Hawaiian land.

The first questions I ask my students each semester are: what responsibilities do you have to this place? To writing in this place? How did you get here? What relationships do you have as students in this university, to knowledge? What forms of knowledge do we value? Which ones have we been taught are disposable? What are our responsibilities then, to these islands?

Clearly, these are the questions that you, as the Board of Regents, have not yet answered satisfactorily in order to be responsible decision-makers at this university, in Hawai'i, in this ocean. What are your responsibilities to these islands? What are your responsibilities to the sacred? What are your responsibilities to yourselves as people living in a time of climate change; in a time where indigenous peoples are fighting to steward and protect their lands, their sacred sites, their ancestors?

Your actions continue to send the message to your alumni, your faculty, your staff, your students, your future generations, that you are invested in overwriting Kānaka Maoli in their stewardship of the sacred, their stewardship of Mauna Kea. By insisting on the building of the TMT, this board equates research to further oppression and erasure tactics against Kānaka Maoli and their ways of knowing, the stewardship of their ancestral homes, their practices for just and liberated future.

As a Pacific Islander, I understand my people's connections to Kānaka Maoli through our shared ancestral ties and responsibilities to the health and well-being of our islands and ocean. I see the ways in which this university treats Kānaka Maoli as an iteration of the way it is choosing to relate to all indigenous peoples, for the pursuit of resources regardless of the health, well being, knowledge, and futurity of Native peoples, and the lands and waters we have held sacred and sustainable for millennia.

But this is not how your relationship with Kānaka Maoli, and indeed, the broader community of indigenous peoples, must remain. These relationships are not yet set in stone, not yet symbolized in the construction of a Thirty Meter Telescope at the summit of a sacred mountain. To salvage and begin building a just and anti-colonial relationship with Kānaka Maoli—and indeed, the very land and waters that feed you—immediately cease all construction of the TMT. You lose nothing by protecting these islands.

You have the chance to be the people that made the right decision to invest in a future for this university that actually is “indigenous-serving,” that listens to and learns from the stewards of this land. You have the chance to practice and be aloha ‘āina. Shift your love of this place, however you understand it now, to also be a love for justice, a love that remembers, a love that aligns with protecting the sacred. Remember that money is not sacred. These islands are.

Stop arresting kūpuna. Listen to Kānaka Maoli. Protect the sacred. Do your duty. Cease the construction of the TMT.

Sincerely,
 Leora Kava



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Testimony

Sina Sison <sinasison@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 5:15 AM

Aloha Kakou,

I hope you all are well.

I'm writing this with the hope that you understand how important these land and waters are to myself and our people.

Please, put a stop to TMT. We as a people can no longer allow the desecration to our land and waters.

You as the same people, have the knowledge and understanding of what is happening to our home.

Please make decisions that will preserve Hawai'i for future generations!

Mahalo,
Sina Sison



**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

Late testimony for UH BOR special meeting today

Yvonne Geesey <geesey@hawaii.edu>
To: bor.testimony@hawaii.edu
Cc: Yvonne Geesey <geesey@hawaii.edu>

Fri, Aug 2, 2019 at 5:22 AM

Aloha UH BOR Regents:

I am writing today to encourage modification of your bylaws. Your agenda for today's meeting is extremely vague as to what will be modified in your bylaws but I have a few suggestions.

#1

Article II C 1 a Chairperson

a. Appoint the chairperson and members of standing committees with quorum approval of the BOR. (Removes chairperson's ability to unilaterally appoint members and leaderships of standing committees).

#2

Article II D Standing Committees of the Board

1. Establishment of standing committees.

Establishment of Standing Committees: to facilitate consideration of policy matters that must be approved by the board, eight standing committees are established. (Adds one additional standing committee).

2. Standing Committees:

The following are standing committees of the board and their functions.

h. Committee on Stewardship of the `Āina and Cultural Competence

(1) Serve as a liaison between the Kanaka Maoli and the Board of Regents.

(2) Advise the Board regarding its responsibility to Malama `Āina.

(3) Promote recommendations to the Board regarding culturally competent behavior.

(4) Review existing land use permits and make recommendations to the Board.

(This would create a new standing committee)

Finally I would like to call bullshit on the "permitted interaction group." Have no idea who came up with that idea but it is a no-go.

E kala mai for the late testimony, I am ill from a work related illness.

Mahalo for your consideration.

Aloha, Yvonne Geesey

No longer proud alum of UH nursing and law schools

LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>



Please stop construction on Mauna Kea

Cathy Kapua <cathykapua0@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 5:43 AM

Dear Board of Regent

I hope to appeal to you today as an alumni of the University of Hawai'i system and as a Native Hawaiian Māhū. I write to you today with a heavy heart. I am dismayed by the actions to move forward with the construction of the Thirty Meter Telescope on Mauna Kea, the subsequent arrests of kūpuna and other citizens of Hawai'i Nei, and the continuous threat of police and military force against protectors of the Mauna.

I believe you intend to represent the best interests of the people of Hawai'i; however, your recent actions to support the construction of the Thirty Meter Telescope contradict your intentions to stand by the values of the people of Hawai'i.

I believe you have the opportunity to be a true leader and to start the healing process from the harm taken by the University of Hawai'i. I ask you to please:

1. Call for an immediate halt to the construction of the Thirty Meter Telescope;
2. Rescind the sublease to the Thirty Meter Telescope;
3. Issue a formal apology to the people of Hawai'i.

I am deeply concerned by the state of affairs in our beloved Hawai'i community because of the misguided and inappropriate actions taken by the University of Hawai'i. I beseech you to immediately take action to set things right. As the University of Hawai'i commits to the value of education, I hope to see culture and its practice is also upheld. As protectors of the land, we shall not allow science to supercede the values of the hawaiian culture. Please initiate the healing process and set things right.

Respectfully,
Cathy Kiana Keiko Kapua
(808) 349-9242

8/2/2019

University of Hawaii Mail - Ku Kiai Mauna

LATE TESTIMONY



**UNIVERSITY
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BOR Testimony <bortest2@hawaii.edu>

Ku Kiai Mauna

Joy Puckett <kahalehoe4@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 5:56 AM

Oppose TMT, build it elsewhere.



Please stop construction of Thirty Meter Telescope

Cathy Kapua <dkapua@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 5:58 AM

Dear Board of Regents

I hope to appeal to you today as an alumni of the University of Hawai'i system and as a Native Hawaiian Māhū. I write to you today with a heavy heart. I am dismayed by the actions to move forward with the construction of the Thirty Meter Telescope on Mauna Kea, the subsequent arrests of kūpuna and other citizens of Hawai'i Nei, and the continuous threat of police and military force against protectors of the Mauna.

I believe you intend to represent the best interests of the people of Hawai'i; however, your recent actions to support the construction of the Thirty Meter Telescope contradict your intentions to stand by the values of the people of Hawai'i.

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Respectfully,
Cathy Kiana Keiko Kapua
(808) 349-9242



Testimony Opposing the Thirty Meter Telescope Atop Mauna Kea

KeivaLei Cadena <keivalei@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 6:00 AM

Dear Board of Regents

I hope to appeal to you today as a Native Hawaiian and as a professional. I write to you today with a heavy heart. I am dismayed by the actions to move forward with the construction of the Thirty Meter Telescope on Mauna Kea, the subsequent arrests of kūpuna and other citizens of Hawai'i Nei, and the continuous threat of police and military force against protectors of the Mauna.

I believe you intend to represent the best interests of the people of Hawai'i; however, your recent actions to support the construction of the Thirty Meter Telescope contradict your intentions to stand by the values of the people of Hawai'i.

I believe you have the opportunity to be a true leader and to start the healing process from the harm taken by the University of Hawai'i. I ask you to please:

1. Call for an immediate halt to the construction of the Thirty Meter Telescope;
2. Rescind the sublease to the Thirty Meter Telescope;
3. Issue a formal apology to the people of Hawai'i.

I am deeply concerned by the state of affairs in our beloved Hawai'i community because of the misguided and inappropriate actions taken by the University of Hawai'i. I beseech you to immediately take action to set things right. As the University of Hawai'i commits to the value of education, I hope to see culture and its practice is also upheld. As protectors of the land, we shall not allow science to supercede the values of the hawaiian culture. Please initiate the healing process and set things right.

Respectfully,
Keiva Lei Kealohimaka Cadena

(808) 699-5482

**I support TMT!**

1 message

DeWeert, Michael (US) <michael.deweert@baesystems.com>

Fri, Aug 2, 2019 at 6:08 AM

To: "bor@hawaii.edu" <bor@hawaii.edu>

Cc: "deweert@hawaii.rr.com" <deweert@hawaii.rr.com>

Dear Regents,

The blockade of Mauna Kea by activists protesting construction of the Thirty Meter Telescope (TMT) is a tragedy for all the people of Hawai`i. The TMT is a worthy enterprise, supported by the majority of the people of Hawaii, and has been through extensive environmental, technical, and cultural vetting.

I see the opposition to TMT in two ways: first as a conflict of religion with science, and second as a desperate cry for help from a community that has legitimate grievances, but has targeted astronomers out of frustration.

With respect to the religious case, our Constitution guarantees everyone the right to practice their own religion, and the TMT plans include provisions and safeguards for religious and cultural observances on the Mauna – there is more than enough room at the summit for religions and science to co-exist. At the same time, no religion or supernatural belief systems should be allowed to impose it's dogma on the rest of society.

With respect to the historical injustices that have led to poverty, homelessness, lack of opportunity, action by the government and business sectors to solve the problems is long overdue. Too many have been left out of the prosperity that our supposedly booming economy could provide. Stopping TMT will make those problems worse, not better.

Injustice cannot be cured by imposing another an injustice, and stopping astronomy on Mauna Kea would be an injustice, not just to the astronomers and scientists who have spent decades getting the world's best observatory built at world's best observing site, but also:

- to the construction workers who will not have jobs building TMT or demolishing the five telescopes the University will decommission;
- to the community of Hilo, which has the highest unemployment rate in Hawai`i, much worse than the national average; and, most importantly,
- to the children of Hawai`i who would have a bleaker and poorer prospects unless they choose to leave Hawai`i. The clear message they will get is "don't you dare aspire to science, astronomy, or any other career that is not approved by our dogma."

To be fair, anti-science is not confined to one state or community. The most famous current example is the persistent denial of evidence linking fossil-fuel emissions with climate change. Many other examples abound, in medicine (such as the anti-vaccination movement), and in the social sciences (such as denial of Thomas Piketty's evidence on economic inequality.)

8/5/2019

University of Hawaii Mail - I support TMT!

I am urging everyone who works in or supports science to stand up for your rights and stand up for science (everywhere, not just TMT). The cause of justice for all is weakened by letting oneself be cowed or bullied into acquiescence to injustice, no matter how well-intentioned or woke it may seem.

Aloha and Regards,

Mike

~~~~~

Michael J DeWeert, PhD

**45-343 Mahalani Street**

**Kane`ohe, Hawai`i 96744**

(808) 372-1483 (mobile)

[Michael.deweert@hawaii.rr.com](mailto:Michael.deweert@hawaii.rr.com)

**SPIE** Senior Member

~~~~~



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Opposition of the Thirty Meter Telescope

Nicole Kwan <nicolekwan88@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 6:21 AM

Aloha Board of Regents,

As a graduate of the University of Hawaii at Mānoa, I am against the building of the Thirty Meter Telescope.

Mahalo,

Ciel Nicole K. Kwan



testimony for today's meeting

Eomailani Kukahiko <eomai@hawaii.edu>

Fri, Aug 2, 2019 at 6:31 AM

To: bor.testimony@hawaii.edu

Here is my testimony.

--

Mahalo,

Eōmailani K. Kukahiko, Ph.D.
Associate Specialist
Everly Hall 221
College of Education
University of Hawai'i at Mānoa
eomai@hawaii.edu
Virtual Office: [Ko Eōmailani Ke'ena](#)



Leka Maunakea (1) - BOR.docx
126K

1776 University Avenue - Everly Hall 221 - Honolulu, Hawai'i 96822

We envision an educational system in Lāhui Hawai'i based on the tenets of aloha 'āina, mālama, 'ike Hawai'i, and pono that liberates and empowers Native Hawaiians to execute our genealogical kuleana to 'āina, lāhui, and keiki.

Aloha e ka papa o nā kahu kula o ke kulanui. My name is Eōmailani Kukahiko and I am an Educator that has taught in the College of Education since 2006, and prior to that was a student at the University of Hawai'i from 1995-2014. My kuleana here at UHM is the preparation of teachers for the HDOE, particularly Hawaiian Immersion education and STEM. I am writing to oppose the constitution of the Permitted Interaction Group (PIG), item IIID on today's agenda.

For the past few weeks, I like others in Hawai'i and the world beyond have tuned in to media, social media, and oral reports of news regarding the imminent proposed construction of the Thirty Meter Telescope atop Mauna a Wākea. As the Native Hawaiian Faculty Council of the College of Education, 'Āinahou, we stand adamant and resolute in our opposition of this construction project against the will of the vocal majority of Hawaiians, and allies alike. This proposed project will desecrate our wao akua, a sacred space where our divine elements dwell, and should not be considered for any further construction tantamount to desecration.

In 2013, the University of Hawai'i system also signed a Memorandum of Understanding, Promise to Children, with the Hawai'i Department of Education, "We will transform our schools, empower youthful voices, and accept responsibility of Mālama Honua. We believe that by inspiring children to explore, discover and learn about island Earth, they will navigate the future of humanity toward vitality, renewal, and compassion." The document goes on to read "It is imperative that our public school students help to shape how Hawai'i fits into the global society and that the vision of Mālama Honua, which is grounded in the Hawaiian philosophy of caring, can guide our practice of becoming responsible for the health and well-being of our island home and its people, if we care for earth as if it were our island home, we will ensure its sustainability for future generations". While Mālama Honua as a formal expedition may be complete, mālama honua and aloha 'āina, as a framework for interaction with 'āina, akua, kūpuna, and keiki extends in perpetuity. I thank you for this as now it allows me to use your promise to children, my children who are stakeholders in these schools, to reject the current initiative of TMT construction as they are responsible for the "health and well-being of our island home and its people".

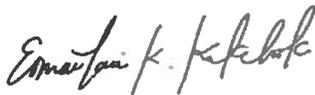
I also support the statement issued July 12, 2019 to the UH Mānoa listserv that "the safety of our faculty, staff and students is paramount. This includes emotional, intellectual and physical safety. UH Mānoa provides support for these situations, and those who experience emotional trauma or stress regarding this issue or any other should reach out to campus support services." We feel however as the aggressor, the University of Hawai'i at Mānoa is complicit in creating an environment that induces the very trauma that it purports to assuage.

In both scorching heat and frigid cold, we have seen our kia'i chain themselves to cattle guards for 10-11 hours, in the extreme cold we have seen kūpuna arrested, our sources of wisdom treated criminally, and we have seen our UH students use all of the knowledge that they have gained from our university to resist this kind of tyrannical leadership intent on using scientific education as a means to further capitalist interests in Hawai'i with the the paternalistic assertion that in the long run that this is something that is being done on our behalf.

In spite of the many desperate actions of this university with support from the State of Hawai'i, the lāhui across the pae'āina rejoice in the strength and courage of each kia'i. I experienced the collective power of the Pu'u honua o Pu'u huluhulu as it continues to get stronger, and takes on the many kuleana needed to support a thriving lāhui, feeding people, child care, health care, cultural and spiritual education. Everyday more international attention in solidarity with the protectors is brought to the fore, and each day the insistence to continue with the TMT project in Hawai'i becomes a further embarrassment.

UH Hawaiian faculty members, students, and graduates, remain a significant portion of the strongholds that remain, folks that have contributed significantly to the intellectual mana of the flagship university at Mānoa and as such we demand that the University at Mānoa divest from the continued desecration of Maunakea through the construction of the Thirty Meter Telescope. We demand that true Kapu Aloha be utilized by the UH Mānoa leadership and that UH faculty and students opposed to the TMT construction be treated respectfully and no longer subject to ongoing physical and psychological trauma and stress currently inflicted under current UH Mānoa leadership.

With Kupuna James Kaulia's 1897 encouragement, we will be fearless, and steadfast in our opposition to this project until the very last aloha 'āina.



Dr. Eōmailani Kukahiko



UNIVERSITY
of HAWAII
SYSTEM

LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

UH mismanagement of Native Hawaiian identify

KB <keliiboy@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 6:40 AM

As a c/o 99 graduate of Hawaiian Language from UHM, it truly disappoints me that we are still having to justify our existence as Kanaka Maoli and people of the land. The government, and by extension UH system, has been complicit in attempting to eradicate our native culture. In the late 90's we had to contend with fighting for access rights just to practice cultural activities and now the actual destruction of a most sacred site is being contemplated.

WHERE IS THE LOYALTY TO THE PEOPLE OF WHOSE STOLEN LAND YOUR PROPERTIES SIT??

WHERE IS THE CONSCIENCE AND COMPASSION FOR INDIGENOUS WORTH??

Killing a people's culture is the beginning of genocide. Don't be on the wrong side of morality. Stop selling Kanaka Maoli out.



Testimony

'Chelle . <hawaiiurl55@hotmail.com>
To: "Bor.testimony@hawaii.edu" <Bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 7:01 AM

Aloha,
My name is Michelle Ramos from Maui.

I have questions such as what "issues" are being investigated? Will the group's report back be in before the August 30 vote on the management rules of mauna a Wākea? Why are the regents pressing for the controversial management rules when they still need to know the issues regarding the governance of mauna a Wākea? And who will this group be talking to as part of their investigation?

TMT should not be built here. Let's really search within ourselves and understand the continuous desecration of our lands especially sacred. It is not worth any money and jobs as claimed. We need to preserve and take care of what little we have left if not what will be left for future generations? Please help stop TMT and protect mauna a Wākea and our islands as a whole.

Mahalo.

Sent from Outlook



Student testimony in opposition of TMT on Mauna Kea

Nanea Lum <nanealum@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 7:20 AM

Aloha,

This testimony calls for the immediate decommissioning of the Thirty meter telescope project on Mauna Kea. As a Native Hawaiian student enrolled at the University of Hawaii from the first inception of this project in 2013 until now, the constant disapproval of this proposal has been made explicit by the Native Hawaiian student population. The cultural importance of Mauna Kea has been illustrated and disseminated across the world, this Indigenous system of knowledge is recognized as the valid perspective for which to cultivate any further development on the Mauna.

The University of Hawaii student body has remained organized in opposition of this project since the beginning and have submitted countless petitions against the construction of the Thirty meter telescope. Between those concerned with the commission of this project, The University of Hawaii, The state, The TMT board of directors, the Native Hawaiian people have been treated as a minority group, for the reception of other systems of knowledge. All the while, the world recognizes Hawaiian lands as the source of indigenous knowledge production, in which our relationship to the mauna shapes the conduct of study of the universe.

The threat of construction of this project has produced a Hawaiian Nation rising, we are a human blockade between, law enforcement and Mauna Kea. The Kupuna, our living ancestral connection to 'āina, that which feeds, are demonstrated for the world today.

We do not allow our kupuna to be violated in silence. I am traumatized and my family is afraid for the elderly and the sacrifices they make that put their lives in direct leverage of the protection of Mauna Kea. Because we matter, we as a collective people matter more than anything, our children, our water, land and cultural resources matter more than the money this project will condemn our state to.

The ethics of this project should truly be readdressed by the University in order to maintain its place as a valid source of education! The student body of the University of Hawaii is the developing forces of the future of Hawaii, it's economy, it's law, culture, and health. We will have justice for the future of our people, we will have our world free from violent colonial rule, because of our discipline as a collective, and high level of community ethics.

I have placed my life as my only leverage powerful enough to stop this project from stealing the connection I have to my ancestors. The sacredness of Mauna Kea reaffirms the sacredness of my body, the holiness that is inside of my life force is not to be extinguished for any amount of money. The people's response to this proposal is NO! 'A'ole TMT this answer alone should be enough.

-Nanea Lum
Master of Fine Arts Candidate
University of Hawaii Mānoa
Sent from my iPhone



Tmt

Shawna Kahoopii <shawnakahoopii@icloud.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 7:27 AM

Aloha,

I would first like to thank you for the opportunity for my voice to be heard.

As a native Hawaiian born and raised in Hawaii it is very disturbing and disheartening the destruction my people have had to endure all these years. We are constantly taken advantage of and pushed to the side. As a university of "Hawaii" you should be for the people and for the land of Hawaii. We all have to live on Mother Earth we should be caring for her not selling her out for more money. And shame on you for desecrating the most sacred place for Hawaiians in the name of "science". How much more will we have to give and sacrifice for the sake of "science". How much more till we have no more fresh water or natural resources. How much more will it take for you to open your eyes to realize the repercussions that will follow if you DONT STOP NOW! Ask yourself how will your grandkids and great grand kids and so forth feel when there is nothing left for them in Hawaii because greedy corporations were allowed to come in and rape all our land. What will become of us if our water table is broken on big island the same way it was broken on kahoolawe..? How much more must we let the United States of America destroy our precious home? For once take a stand and do what's right for Hawaii and not for your pocket!

Mahalo,
Shawna Kahoopii.

Kū Kia'i Mauna! Eō!

Sent from my iPhone



Testimony of Williamson Chang as to Mauna Kea Interaction Task Force

wbchang <wbchang@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 7:38 AM

Below is my written testimony. The attachment is my written testimony with relevant attachments.
Mahalo. Williamson Chang

Testimony of Williamson Chang UH Board of Regents August 2, 2019

Professor of Law, William S. Richardson School of Law
The University of Hawai'i at Manoa

Supporting the Creation of a Task Force to Review Mauna Kea
The Honorable Board of Regents, the University of Hawai'i
I have submitted written testimony with exhibits.

Aloha: I wish to support the interaction task force.

First, I hope the task force can go to the summit of Mauna Kea and meet with the protectors. Governor Ige and President Lassner have done so. Meeting the protectors and especially the Kupuna is important as this is the best means of understanding the values being defended. I testified before this body in 2015. In that testimony I explained how difficult it is to enter the world and context of Hawaiians to understand Mauna Kea. The word sacred, as President Lassner pointed out, has many meanings. A single word cannot convey deep and inarticulable values.

Second, the Interaction Task Force must approach the decision in a fresh light. The permit was granted based on and EIS filed a long time ago. Much has changed over the past ten years. The EIS process was limited. Many considerations were not a part of that process. Whether TMT has a legal permit is no longer the sole consideration. The permit was the result of administrative action. The Supreme Court of Hawaii was not compelled to review each claim, such as the claim to protecting Native Hawaiian culture and religion in its broad context. The Supreme Court did not have to consider more recent developments. US Supreme Court jurisprudence would apply the "Chevron doctrine" where the decision of the administrative agency, DLNR, is presumptively valid. Moreover, TMT was only required to examine two alternatives—to build or not to build. I think the depth of this issue, cutting through the legal, ethical social and political fabric of Hawaii, the nation and the world, compels the

interaction task force to approach a decision with new eyes—a view that encompasses all that a rational individual would consider in choosing to “do the right thing.”

Third, the interaction task force should now consider national and world opinion. In the original EIS TMT only produced the comments from people in Hawaii appearing before the Board of Land and Natural Resources. TMT cited to surveys conducted in Hawaii only. Even then, those showed that 62 per cent of Hawaii residents supported construction of TMT and 29 per cent opposed construction.

The opinion of others outside Hawaii are also relevant. Mauna Kea has become a matter of world-wide concern. The reputation of this University will turn on this decision. In the first of my attachments I attach a letter from graduate students from the Universities participating in TMT. Others, largely students or faculty around the world, have joined the letter. The number of signatories is now over one thousand. As of late, far more have become publicly involved: Congresswoman Tulsi Gabbard, Senator Elizabeth Warren, Dwayne Johnson, Bruno Mars, Jason Momoa, Jack Johnson, Jason Yamamoto, Kolten Wong and Max Holloway. The few days after Bruno Mars expressed his support for the protectors some 165,000 persons retweeted his message. The public debate on Mauna Kea has become national, with support from around the world.

Fourth, TMT faces a crisis as it does not have full assurances of adequate funding for construction and operation. Originally, the TMT consortium sought funding from its own sponsors and the National Science Foundation. In 2012, the Giant Magellan Telescope and TMT competed against one another for NSF funding. Over the past decade, TMT was not able to secure full funding.

TMT was competing with the European consortium that was planning to build a one hundred meter telescope. The ESO, the European consortium, downsized the one meter telescope to a thirty-nine meter telescope or ELT.

The Extremely Large Telescope, or ELT has already broken ground in Chile and it will see first light, operational capacity, far before TMT. In the past decade, GMT and TMT NSF and other American sources of funding have not been able to adequately fund both the Giant Magellan Telescope and GMT. Thus, as of 2018 GMT and TMT entered into a joint agreement. TMT and GMT have a larger consortium of two American projects competing with Europe and others.

Most important, under the present administration, NSF will receive 1 billion less in funding. This has put NSF funding of TMT in jeopardy. The 30 per cent cut in NSF funding will severely impact TMT. The NSF astronomy budget shows continued funding for the Daniel K. Inouye Telescope, but there is no mention of GMT or TMT. TMT was seeking 25 per cent of its funding from NSF. In exchange it was offering other universities viewing time.

The interaction Task Force should carefully consider the prospects of TMT succeeding. The University must be assured that TMT presently has the final commitments to see it through construction and operation. It would be tragic to allow TMT to proceed with ground-breaking, drilling and grading if there is any possibility that it must cease and desist, with no telescope and a damaged Mauna Kea in its wake. That would be most tragic for this University.

Williamson Chang



Williamson Chang Testimony with Attachments August 2, 2019 BOR.pdf

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Testimony of Williamson Chang before the Board of Regents August 2, 2019
9:00 A.M. Page 1

Testimony of Williamson Chang UH Board of Regents August 2, 2019
Professor of Law, William S. Richardson School of Law
The University of Hawai'i at Manoa

Supporting the Creation of a Task Force to Review Mauna Kea

The Honorable Board of Regents, the University of Hawai'i

Introduction and Outline of Written Testimony:

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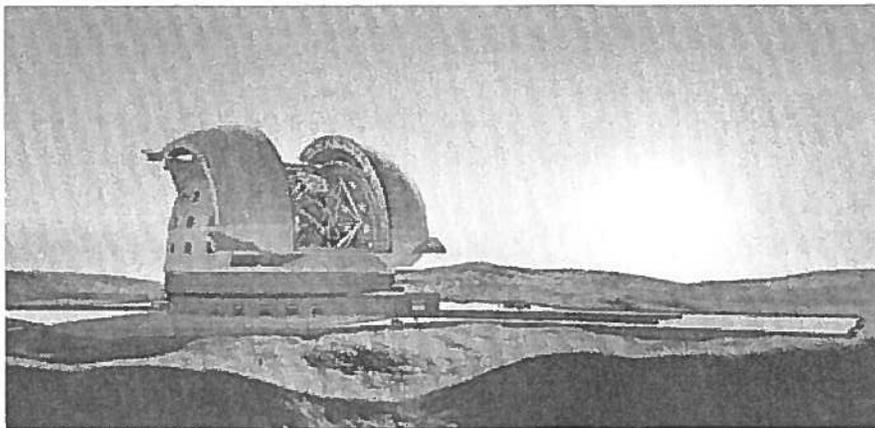
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Williamson Chang

Megatelescopes look for support

As a huge European observatory nears approval, a National Science Foundation funding competition between equivalent US projects remains in a holding pattern.

Eric Hand



The European Extremely Large Telescope in Chile, as envisioned when completed around 2022, may be the first instrument to witness the birth of galaxies. ESO

Astronomers in the United States may have to do without government support in the race to create the world's biggest telescopes and gather photons from the Universe's first stars. Two projects — the Thirty Meter Telescope (TMT) and the Giant Magellan Telescope (GMT) — are vying for support from the US National Science Foundation (NSF), but the cash-strapped agency says that it may not be able to fund either before 2020, by which time both projects had hoped to be finished (see *Nature* **469**, 451; 2011). That makes it even more likely that a comparable project, the European Extremely Large Telescope (E-ELT), will be ready years ahead of its US-led counterparts.

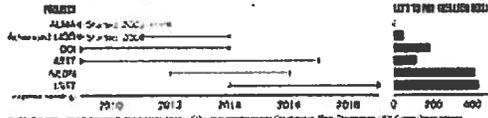
Jim Ulvestad, director of the NSF's astronomy division, is charged with holding a competition to choose which project the agency should support — a move emphatically recommended by the 2010 decadal survey in astronomy, an assessment of priorities for US agency planners. "But the decadal survey also assumed we'd have a lot more money than we do," Ulvestad says.

The problem, says Ulvestad, is a long queue of major new facilities that the NSF is already committed to funding between now and the end of the decade (see ['Join the queue'](#)). Even the cancellation of the Deep Underground Science and Engineering Laboratory in December 2010 (see *Nature* <http://dx.doi.org/10.1038/news.2010.683>; 2010) is not enough to overcome a poor allocation for such projects from Congress earlier this year.

Ulvestad says the agency may still launch a competition in December or January — although the winner would not be guaranteed any money. The competition could coincide with approval of the 39-metre E-ELT, planned for Cerro Armazones in Chile. At a council meeting in December, member states of the European Southern Observatory (ESO), based in Garching, Germany, plan to authorize limited construction on the €1.1-billion (US\$1.6-billion) telescope — a move that could lure frustrated international partners away from the two US-led efforts.

JOIN THE QUEUE

Overseas firms to a succession of projects (NSF) with large capital costs. If they over the next 20 years they keep the US National Science Foundation from contributing to a large US-led mission until 2020.



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The US teams are at odds in their views on an NSF competition. The consortium behind the \$1-billion TMT, planned for the top of Mauna Kea in Hawaii, thinks it has a good chance of besting its rival; it has lobbied for years for the NSF to pick a winner. "Let's get on with it," says Richard Ellis, a member of the TMT board and an astronomer at the California Institute of Technology in Pasadena. "Let's at least make plans, even if the money comes later."

Ellis says that NSF backing would help the TMT to nail down other partner nations, especially China, which wants to see US government action before it commits completely. He adds that even if the NSF lacks money for construction, it could become a partner by paying operating expenses later on. And holding a competition might compel the agency to find money in the future. "The NSF has to rise to the challenge of lobbying for facilities," says Ellis. "It has been too passive."

The GMT prefers the passive approach. The 25-metre telescope, planned for Las Campanas, Chile, is the smallest of the projects, and will be about \$300 million cheaper than the TMT. The involvement of wealthy institutions such as Harvard University in Cambridge, Massachusetts, is assured, so the consortium might be able to raise its capital without the NSF. It already has something to show for its efforts: astronomers cast the first of the GMT's seven mirrors in 2005, and since then have been configuring it to a unique off-axis reflecting surface. Wendy Freedman, chairwoman of the GMT board and director of the Carnegie Observatories in Pasadena, says that the GMT still wants to partner with the NSF, but would prefer to hold off on a competition.

"Making decisions without money strikes us as an unusual thing to do," she says. "The logical thing to do would be to wait." She doesn't agree that NSF backing will help to attract partners; the GMT already has financial commitments from institutions in Australia and South Korea. Ultimately, says Freedman, the GMT may elect not to compete.

The ESO has a steady stream of funding, but even so, the E-ELT's price tag could prove problematic. Current treaty-enforced annual fees from the 14 member states will account for only about one-third of the cost. Brazil became the source for another third when it agreed in December 2010 to join the ESO. And on 13 October, Chile formally donated the site on which the E-ELT will be built.

But the observatory still has to find the remaining third of the cost, says Tim de Zeeuw, director-general of the ESO. One way would be to recruit yet more members. De Zeeuw notes that a number of countries are "asking questions" about membership: Russia, Poland, Canada (currently a TMT member) and Australia (committed to the GMT). But in the meantime, de Zeeuw is trying to muster approval from the member states for an annual 2% fee increase, along with a one-time special contribution proportional to the state's income.

Three nations — Sweden, Finland and the Czech Republic — have agreed to unlock the money, he says. But the remaining 11 are not likely to rally approval by December; nor is the Brazilian government expected to have ratified its membership treaty by then.

Approval of the full E-ELT budget won't come before a meeting in March 2012. Instead, the council is planning to approve early contracts and crucial infrastructure, such as a road to the E-ELT's mountain location. But even this limited construction authority will give the project momentum. "They could have said, 'We'll decide next year'," says Roberto Gilmozzi, principal investigator of the project.

ADVERTISEMENT

The US competition, once begun, would probably be decided in less than a year. Ulvestad says that the NSF would want to evaluate the risk of the projects, and would ask how, for instance, the telescope consortia might provide publicly accessible archives or user support for astronomers not associated with consortium institutions.

But Ulvestad also realizes that, with so long until the money will materialize, the telescopes might be completed without the NSF's help. Much of the US academic astronomy community relies on NSF support to get access to telescope time, which might not be possible with the giant telescopes unless the NSF has contributed to them. But, he says, with a total of seven US universities signed on to the TMT or GMT, there is already "a lot of US community in their partnerships"

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COMMENT

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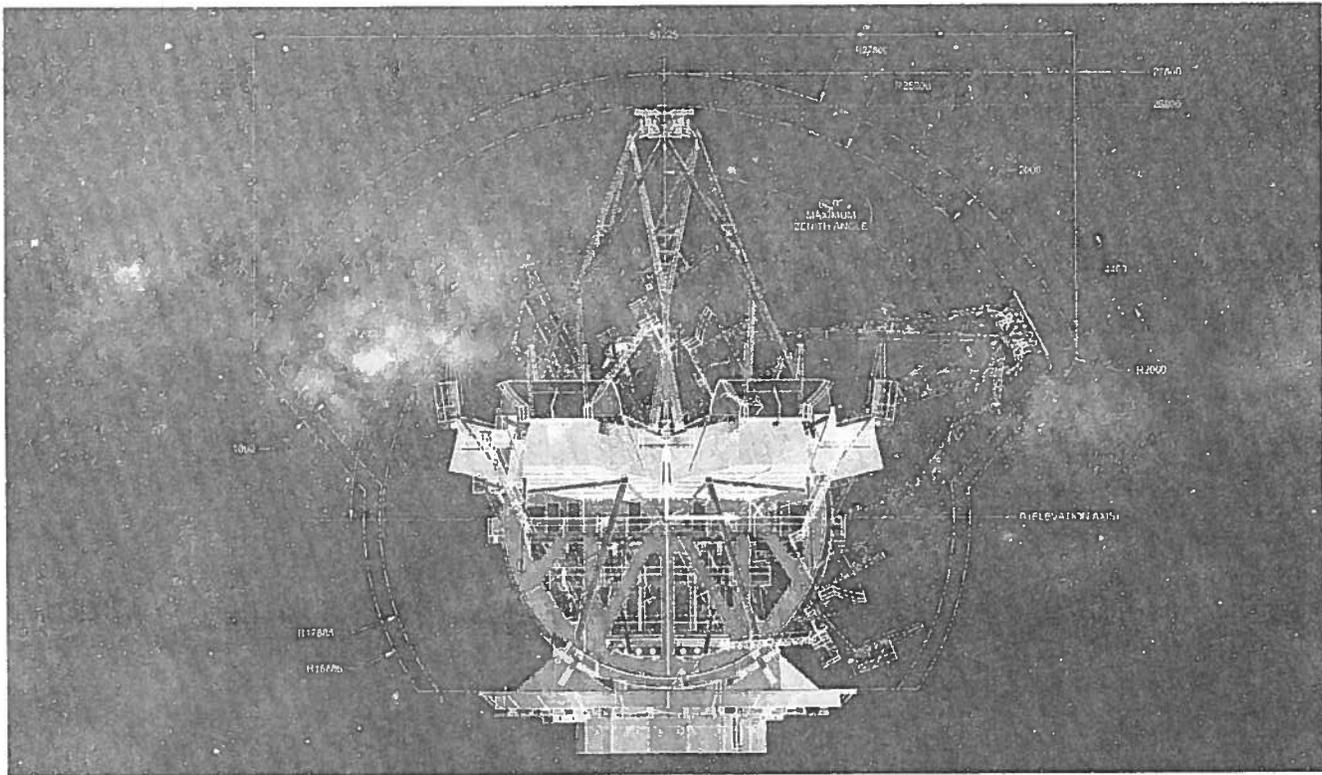


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MEDICAL RESEARCH Japanese trial of stem-cell therapy needs tightening up **p.431**

OBITUARY David Pines, physicist who described how electrons interact **p.432**

GIANT MAGELLAN TELESCOPE/GMTO CORPORATION



Blueprint of the Giant Magellan Telescope, a 25-metre-mirror telescope being built in Chile. It is run by an international consortium that includes US universities.

US astronomers face hard decisions

Building billion-dollar facilities in the 2020s and beyond will be impossible with the current model for funding and collaboration, warn **Matt Mountain** and **Adam Cohen**.

Every ten years, US astronomers set research priorities for the following decade. The latest cycle to pick projects for the 2020s has just started. In July, the US National Academy of Sciences launched the seventh Astronomical Decadal Survey (Astro2020) with a call for proposals for future telescopes and space missions. Over the coming year, these will be collected, assessed and discussed in open meetings. A ranked list of priority projects will be released in 2021. Funding permitting, those

at the top will be built over the next decades.

The two-year process is widely viewed as a gold standard for building consensus — many other fields have adopted it, from Earth sciences to solid-state physics¹. It carries weight with policymakers and funders. But as astronomy firmly enters the 'big science' era, we think that the decades-old system for funding federal astronomy needs debating and updating.

The science has never been so exciting. Earth-like planets have been found orbiting

other stars². Cosmologists are quantifying mysterious forces of 'dark matter' and 'dark energy'³. Completely new windows have been opened onto the cosmos thanks to facilities such as the Atacama Large Millimeter/submillimeter Array (ALMA) in Chile and the Laser Interferometer Gravitational-Wave Observatory (LIGO), in the states of Washington and Louisiana.

But large facilities that can explore these frontiers cost billions of dollars and take decades to design, build and operate. ▶

► ALMA was proposed in 1990 and became operational in 2013. The James Webb Space Telescope (JWST) was approved in 2000 and will be launched in 2021. The Large Synoptic Survey Telescope, recommended in 2010 and under construction in Chile, will begin to map the sky in 2023. The fruits of the 2020 Decadal Survey won't see light until the 2030s.

The US community faces a daunting task. Each generation of facilities is getting more expensive and harder to build. Operational costs are mounting. Meanwhile, the research budgets of the US National Science Foundation (NSF) and NASA have remained more or less flat since the 1990s (see 'Astronomical costs'). Hard decisions have been made to close old but still-productive telescopes, which has proved insufficient to pay for new ones. And these pressures will only get worse as more big projects come online.

International competition is growing. The European Space Agency has picked its key projects as far ahead as 2044, including an advanced X-ray space observatory. The European Southern Observatory has fully funded its Extremely Large Telescope (ELT) in Chile. From the mid-2020s, its 39-metre-diameter mirror will collect more than ten times as much light as the largest optical telescopes today. China opened the world's biggest radio telescope in Guizhou province in 2016, and plans to launch a competitor to the Hubble Space Telescope⁴.

Without a concerted effort, a US scientist in the 2030s will be left without similarly capable facilities. We will face an unacceptable dilemma: support existing grants and cede US leadership, or abandon funding for key areas of research to support a few world-leading facilities.

As the presidents of organizations that build and operate major US publicly funded telescopes on behalf of the NSF and NASA, here we set out how entrenched assumptions and patterns of funding, development and collaboration must be reassessed.

FEDERAL SUPPORT ESSENTIAL

The United States has historically built its strength in astronomy on an eclectic mix of private and public observatories. Early telescopes such as those at the Mount Wilson, Griffith and Lick observatories in California were funded by foundations and run by universities. Edwin Hubble discovered the expansion of the Universe at Mount Wilson in the 1920s, for example. Until 2009, the United States hosted the world's largest telescopes: the twin W. M. Keck telescopes in Hawaii each have mirrors 10 m across and were paid for largely by philanthropy. (That accolade is now held by the 10.4-m Gran Telescopio Canarias in the Canary Islands, Spain.)

After the Second World War, the US federal government set up national observatories for radio and optical astronomy. The rationale was to boost national and economic security

by investing in basic science. On the ground, this has led the NSF to establish major facilities such as the Very Large Array in New Mexico, the Gemini Telescopes in Hawaii and Chile, and, most recently, ALMA. In space,

"Financial pressure will only worsen in the 2020s."

NASA runs iconic observatories such as the Hubble and Spitzer space telescopes and the Chandra X-Ray telescope. US astronomers from any institution compete through a peer-review process for time on telescopes.

This mixed system has worked well for decades. But the next generation of ground-based telescopes has become so expensive that even consortia of universities and institutes are struggling, despite hefty contributions from billionaires, state governments and international partners.

US-led efforts to construct giant telescopes to match the European ELT plans have stalled. Both the Giant Magellan Telescope (GMT), a 25-metre-mirror telescope under construction in Chile, and the Thirty Meter Telescope (TMT), which it is hoped will be built on Mauna Kea in Hawaii, have been unable to find the billion dollars or more that each will need. In May, the two teams joined forces and announced they would seek extra NSF funding through the Decadal Survey⁵. In return, they will enable broad US community access to the two telescopes, providing coverage of both hemispheres of the night sky.

BIG SCIENCE PERCEPTIONS

Space astronomy has always been federally supported, and is expensive. The total bill of the JWST has mounted to more than US\$9 billion, not helped by a series of delays. The proposed Wide-Field Infrared Survey Telescope (WFIRST), which will examine exoplanets and dark energy should it launch in the late 2020s, would cost at least \$3 billion.

Both projects have come under fire for their costs. In February, US President Donald Trump proposed cancelling WFIRST, although Congress subsequently approved funding for it. Incoming NASA administrator Jim Bridenstine has queried the need for any large science missions. He said in May⁶: "If we can do smaller missions with multiple satellites, then any one of them that runs over doesn't clobber the decadal [survey] not only for this decade but also the next decade".

Yet if inflation is taken into account, the cost of the JWST is comparable with that of the Hubble telescope: \$3 billion in 1990 translates to around \$9 billion today (see 'Astronomical costs', middle right panel). Even in its peak funding year (2014), the JWST consumed less than 4% of NASA's total budget of \$17.6 billion, or almost 13% of NASA's science budget that year.

Even so, the costs of major projects already under way are eating into existing budgets. This problem is particularly acute at the NSF,

where the capital and operational costs of ground-based facilities are funded from different accounts. Each time the NSF issues an award to build a new telescope, the running costs must be found from the same limited pot of money that supports existing facilities and research grants. Other NSF-funded fields, such as ecology, face the same challenge.

This NSF funding structure was predicated on the idea that old telescopes would be mothballed, and budgets would grow. Some facilities have been shut or divested. For example, the McMath Pierce Solar Telescope in southern Arizona is due to become part of the Kitt Peak Visitor Centre. The 44-year-old Blanco Telescope in Chile, which just discovered 12 new moons orbiting Jupiter, is now funded by the US Department of Energy and the NSF, together with funding agencies in the United Kingdom, Spain, Brazil and Germany, and contributions from institutions.

But this strategy has reached its limits. Big science facilities will always be much more expensive to run than older, simpler ones. They are technically more complicated, use more energy and need many highly trained personnel. For example, the NSF contributes about \$40 million a year to ALMA's annual running cost of \$120 million; international partners cover the rest⁷. The Blanco telescope, commissioned in 1974, requires only \$7 million a year to operate.

Financial pressure will only worsen in the 2020s if big facilities such as the GMT and the TMT come online. We can no longer assume that mothballing older facilities or taxing grants will magically work 20 years from now. There are not enough older telescopes in the NSF's portfolio to shut down to pay for even part of the operational costs of these two proposed facilities.

The choices for the community and agencies are stark⁸. Facilities will need to be funded appropriately from the start, and operations funds planned beyond the end dates of agencies' budgets. Without realism and a genuine commitment to the next generations of scientists, the United States will give up its lead in areas of astronomy where it has excelled for decades. And this at a time when the scientific frontier of astronomy and astrophysics beckons more powerfully than at any other point since Galileo lifted his telescope to the night sky more than 400 years ago.

REDRAW THE LANDSCAPE

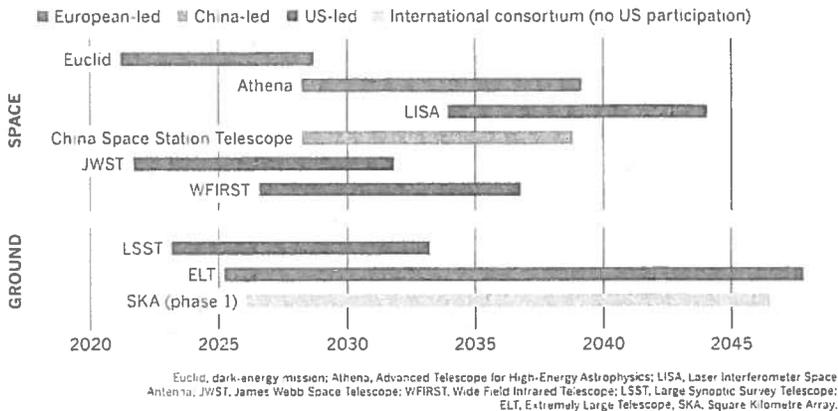
Astronomers need to keep the following three points in mind while they discuss options for the 2020s and beyond.

Recognize that size matters. Funding agencies and the community must accept that ever-larger facilities are inevitable if we are to explore frontiers. Astronomers are often asked whether they can get around the inexorable demand for larger telescopes by being more innovative. Can we do the same science

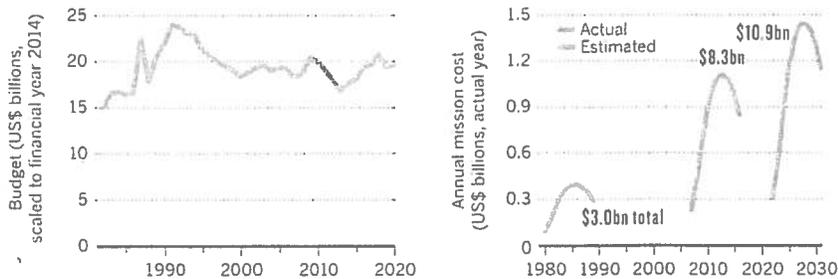
SOURCES: TOP, ESA/CNESA/NAO/NASA/SKAO; MIDDLE, LEFT, PLANETARY SOC.; MIDDLE, RIGHT, NASA/US BUREAU OF LABOR STATISTICS; BOTTOM, NSF

ASTRONOMICAL COSTS

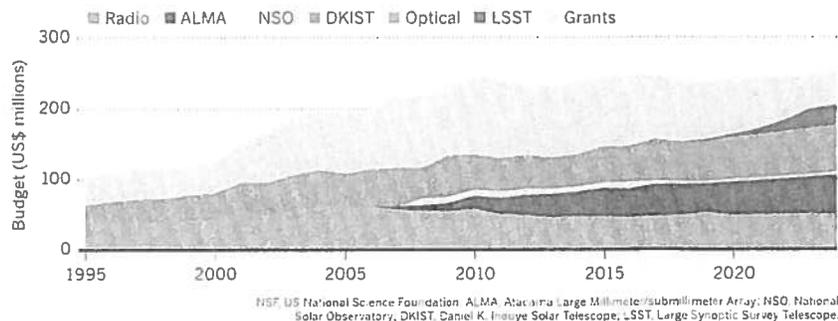
International astronomy projects are under way or planned, irrespective of the US Decadal Survey. US astronomers must decide in 2019 what competitive capabilities they need in the 2030s and beyond.



NASA's budget has changed little since the 1980s (left), but inflation has boosted mission costs (right), approximate cost of a Hubble Space Telescope if construction began in 2007 or 2022 rather than 1980.



The operating costs of observatories account for an increasing proportion of the NSF's Astronomy Division budget. This has put further pressure on grant funding since 2010 because of flat budgets.



with lots of small missions, for example? In many areas we cannot, at least with today's engineering options. Physics is unforgiving if you are trying to detect the earliest galaxies some 13.5 billion light-years away, or an Earth-like planet around another star 30 light years away. Larger optical telescope mirrors, a bigger array of radio antennas and more-powerful computers are necessary to catch and process more photons. Other countries already recognize that 20–40-m telescopes are inevitably the next step for optical astronomy on the ground, for example.

Plan internationally. Future big science facilities must be multinational, if they are

to be fully funded given the constraints and priorities for US federal funding. International planning and collaborations must be integrated into US plans. For example, the scientific potential, challenges and \$1.3-billion price tag of building ALMA at high altitude in Chile resulted in a partnership between the United States, Canada, Europe, Japan, South Korea, Taiwan and Chile. The JWST would not get off the ground without the 15% contribution from the European Space Agency and a 5% contribution from the Canadian Space Agency.

US researchers can no longer draw up their plans in splendid isolation, but must work alongside other nations' schedules. These

collaborations necessitate sharing of valuable telescope time and data with international partners, but also yield richer science that benefits the entire community.

Think long-term. The ten-year window of traditional decadal surveys is now insufficient to lay out a compelling, globally relevant science programme. Astronomers need to lay out the scientific narrative for at least the next 20 years. Each subsequent survey can always apply course corrections on a decadal cadence in response to a changing scientific landscape.

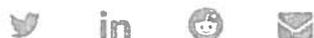
In this context, the impact of inflation needs to be recognized. Economic factors alone increase the costs of large projects whose development spans decades. Long-term projects resulting from the upcoming Decadal Survey have to be seen in this context. Facilities such as the JWST cannot be viewed as one-off burdens, but as long-term investments. Without this vision we would never have had the Hubble Space Telescope, ALMA or LIGO. We need to recognize the real impact of indexing the funding for our long-term big projects with inflation, and not just try to count the cost in today's dollars — or worse, yesterday's. We can no longer build a Hubble Space Telescope for \$3 billion.

It will be tough to create an ambitious future for US astronomy 20 years from now. The Decadal Survey needs to be far-sighted, strategic and responsive. Science, not economics, must come first. And the outcomes must meet the needs of future researchers: today's postdocs and PhD students, not just those sitting at National Academy tables. To quote Michelangelo, "The greater danger for most of us lies not in setting our aim too high and falling short; but in setting our aim too low, and achieving our mark." ■

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NEWS & ANALYSIS GROUND-BASED ASTRONOMY

Pleading Poverty, NSF Delays Plans for Giant Telescope

Yudhijit Bhattacharjee

+ See all authors and affiliations

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Article

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Summary

The architects of the Giant Magellan Telescope (GMT), a 24.4-meter instrument that a consortium led by Carnegie wants to build in Las Campanas, Chile, and the Thirty Meter Telescope (TMT), a rival project planned for a Hawaiian mountaintop, have long expected the U.S. National Science Foundation (NSF) to bear a significant part of the sizable cost of the two instruments: GMT's price tag stands at \$700 million and TMT's at \$1.1 billion. But last month, NSF announced that it would not be able to support construction of either project in this decade. The best the agency can offer

U.S. researchers hope Congress will dig NSF out of a \$1 billion budget hole

By Jeffrey Mervis Mar. 19, 2019 , 4:30 PM
AAS Journal

For the second time in 3 years, President Donald Trump has recommended deep cuts to the National Science Foundation (NSF) in Alexandria, Virginia. And scientists are hoping Congress will again come to the agency's rescue.

One month after signing a 2019 spending bill that gave NSF a record \$8.1 billion budget, Trump has proposed shrinking it by \$1 billion in 2020. The president's \$7.1 billion request was apparently so depressing that NSF's director, France Córdova, did not participate in a media call yesterday to review the request. Instead, she left it to her aides to insist that NSF will continue "to push the frontiers" of knowledge despite the proposed 12.5% reduction.

The chair of the National Science Board, NSF's presidentially appointed oversight body in Alexandria, also sees a silver lining in the dark budget clouds. "NSF will persevere at \$7.1 billion and do wonderful things," says Diane Souvaine, a professor of computer science at Tufts University in Medford, Massachusetts. "And if it gets additional funds, its impact on research will be even greater."

There's some reason to think NSF could see an increase once the annual budget battle is over. Last year, Congress turned Trump's proposed \$295 million reduction into an increase of \$308 million, and in 2018 it transformed a proposed \$820 million cut into a \$295 million boost.

NSF's low-ball 2020 budget is part of the administration's attempt to squeeze domestic discretionary programs while boosting military spending. Democrats and some Republicans in Congress oppose such an approach and in the past 2 years, Congress has reversed most of the administration's proposed research cuts. But without an agreement on top-line numbers, the dispute is expected to extend beyond the 1 October start of the new fiscal year. NSF's budget could be frozen at current levels if no agreement is reached, and an impasse could even trigger another government shutdown.

If adopted, the 2020 budget would be NSF's smallest since 2013. NSF officials estimate that the foundation would make 1000 fewer new awards (the figure was 9000 in 2018) and that the success rate for grant applicants will dip by 1%, to 21%. The proposed cuts stretch across all six research directorates, as well as its education directorate.

Despite having \$1 billion less to work with, Córdova found room to push ahead with a major new cross-disciplinary initiative, called NSF's 10 Big Ideas. She's seeking a total investment of \$357 million in the multifaceted effort, up \$75 million—some 26%—over projected spending this year.

Each of the six research areas, which span from navigating the Arctic to understanding the underlying rules of life, would receive \$30 million in 2020 to go with \$30 million apiece this year. Two of the six—Harnessing the Data Revolution and the Future of Work at the Human-Technology Frontier—would also get \$30 million each to accelerate private collaborations and build institutional capacity.

With both Congress and the science board backing more spending on new research facilities, NSF hopes to launch two such programs in 2020. The first, for projects costing between \$6 million and \$20 million, would be funded by adding \$30 million to an existing \$60 million pot spread across its research directorates. The second, to finance projects of between \$20 million and \$70 million, would tap into a \$45 million allocation in 2020 within NSF's major construction account.

The construction account, for which NSF has proposed \$223 million, would also provide \$98 million for the second year of a 5-year Antarctic modernization project. Its price tag has grown recently from \$355 million to \$410 million, fueled by the rising cost of steel, aluminum, and concrete as well as an overheated construction industry that has pushed up labor costs. NSF has also requested \$33 million to begin a 5-year, \$150 million upgrade to the Large Hadron Collider at CERN near Geneva, Switzerland. The account has room for these new starts because NSF has completed the 81-site, continentalwide National Ecological Observatory Network and has received full funding for three midsize research vessels now under construction.

In contrast, a few activities would be sharply curtailed in 2020 under the president's budget. A politically popular program to help states with little NSF funding become more competitive would be trimmed by \$25 million, or 14%. The number of new slots in NSF's flagship graduate research fellowships, begun shortly after NSF was created in 1950, would dip next year to 1600, from 2000 in 2018. Programs across the foundation to support early career scientists would shrink by 13% from 2018 levels, and efforts to foster research at predominantly undergraduate institutions would plunge by 28% from 2018.

The deep overall cuts in the president's budget would translate into \$87 million less for its education directorate, now funded at \$910 million. And that has prompted a realignment of several programs.

Funding for a precollege computer science initiative would shrink by more than half, to \$10 million, despite the fact that computer science education is an administration priority. A scholarship program for would-be science and math teachers would shrink by 27%, to \$47 million. A \$40 million program to support colleges with large Hispanic populations would receive only \$15 million.

There would also be a few winners. A long-running program at the nation's community colleges to train more technical workers—another Trump administration priority—would grow by 14%, to \$75 million. And the Inclusion across the Nation of Communities of Learners of Underrepresented Discoverers in Engineering and Science program to foster diversity across all levels of science, a signature effort by the director, would receive an 11% bump, to \$20 million.

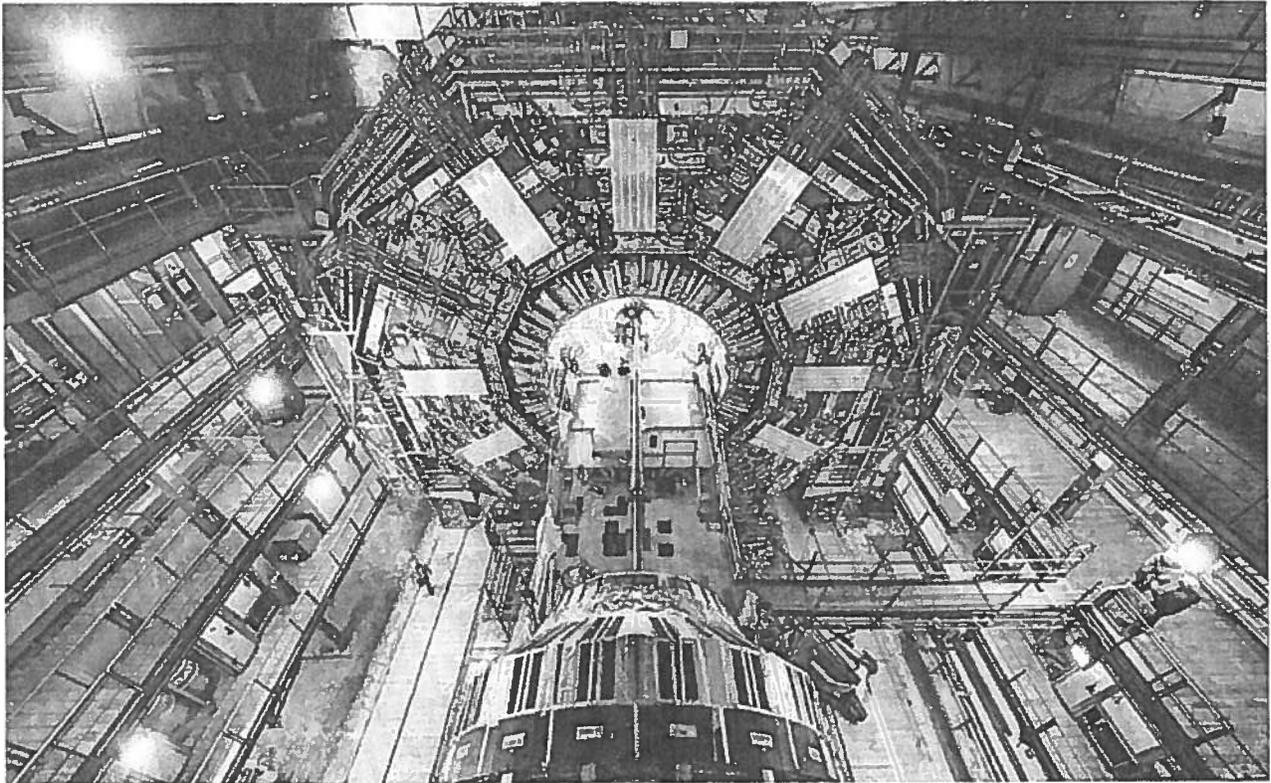
****Correction, 19 March, 6 p.m.:*** *This article has been updated to correct numbers in the fourth paragraph.*

FY20 Budget Request: National Science Foundation

AIP aip.org/fyi/2019/fy20-budget-request-national-science-foundation

April 5, 2019

FY20-request-NSF-cms-detector-740x459.jpg



The Compact Muon Solenoid (CMS) is one of the flagship detectors at the Large Hadron Collider in Europe. NSF's latest budget request includes \$33 million to begin major upgrades of CMS and a separate detector at the facility.

(Image credit – Maximilien Brice / CERN)

Funding for the National Science Foundation would drop 12 percent to just over \$7 billion under President Trump's latest budget request, near where it stood at the beginning of the Obama administration. The proposal distributes cuts relatively evenly across NSF's research and education programs, while favoring work related to administration priorities such as quantum science and artificial intelligence. Figures for NSF's main accounts are available in FYI's Federal Science Budget Tracker.

To date, Congress has shown no appetite for entertaining such a steep topline cut to NSF. At a hearing last week, the top Democrat and Republican on the House Commerce-Justice-Science Appropriations Subcommittee defended spending on NSF as a worthy investment even in times of fiscal restraint.

"NSF helps our economy grow, sustains our economic competitiveness, and enables us to remain the world leader in innovation," said Committee Chair José Serrano (D-NY). "We will continue to work in a bipartisan manner to ensure that it is well-funded."

Pressed to explain the proposed cuts, NSF Director France Córdova pointed to the president's overall goal of shrinking the deficit by constraining non-defense spending. "The president's budget reflects that steps we take today to reduce the deficit will help the nation remain globally competitive and allow our children and grandchildren to remain unencumbered by today's spending," she said.

She nevertheless thanked Congress for the recent budget increase it provided NSF and highlighted how the agency currently is unable to fund about \$4 billion worth of highly rated grant proposals each year.

Research and Related Activities (R&RA)

The R&RA account would drop 13 percent to \$5.7 billion, with the cuts spread across NSF's research directorates. The exact distribution of the cuts is unclear because the budget document does not report how much NSF plans to spend on each directorate for fiscal year 2019. NSF submitted its final spending plan to Congress for approval shortly after the request was released.

The budget request does however provide the first comprehensive picture of how NSF distributed a large increase that Congress allocated to the R&RA account in fiscal year 2018. The Mathematical and Physical Sciences (MPS) Directorate and the Geosciences (GEO) Directorate stand out as the biggest beneficiaries, each receiving 10 percent increases over the prior fiscal year.

Much of this money went toward one-time facility upgrade and repair projects. Accordingly, these directorates are slated to receive larger cuts than most others for fiscal year 2020.

FY20 NSF R&RA Budget Request (\$ millions)

Account	FY17 Actual	FY18 Actual	Change FY17-18	FY20 Request	Change FY18-20
Research & Related Activities	6,007	6,380	6%	5,663	-11%
Mathematical & Physical Sciences	1,362	1,503	10%	1,256	-16%
Geosciences	826	908	10%	787	-13%
Polar Programs	468	502	7%	403	-20%
Engineering	931	978	5%	881	-10%
Computer & Information Science & Engineering	936	961	3%	883	-8%
Biological Sciences	742	757	2%	683	-10%

Integrative Activities	420	471	12%	491	4%
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There is also considerable variation in how the money was allocated among divisions within these directorates. In MPS, the Astronomical Sciences Division received the lion's share of the increase, which supported upgrades to several observatories. These ranged from repairing railroad tracks that move telescopes within the Very Large Array to developing a cutting-edge adaptive optics system for the Gemini Observatory.

The National Center for Atmospheric Research was a primary beneficiary of the boost to GEO. NSF reports it spent \$27 million on "critical maintenance at the NCAR Mesa Laboratory, major upgrades to the NCAR Research Aviation Facility, and a new Early Career faculty visitor's program."

The steepest cuts proposed for fiscal year 2020 generally fall on divisions that received these one-off infusions. Conversely, divisions dedicated to multidisciplinary and integrative activities would grow because they manage each directorate's contribution to NSF's "Ten Big Ideas," which the agency has prioritized in its recent budget requests.

**FY20 NSF Budget Request for MPS and GEO Directorates
(\$ millions)**

Account	FY17 Actual	FY18 Actual	Change FY17-18	FY20 Request	Change FY18-20
Mathematical & Physical Sciences	1,362	1,503	10%	1,256	-16%
Astronomical Sciences	252	311	23%	217	-30%
Chemistry	246	246	0%	214	-13%
Materials Research	314	337	7%	274	-19%
Mathematical Sciences	234	238	2%	203	-14%
Physics	281	311	10%	248	-20%
Office of Multidisciplinary Activities	35	60	73%	100	66%
Geosciences	826	908	10%	787	-13%
Atmospheric & Geospace Sciences	253	276	9%	222	-20%
Earth Sciences	179	180	0%	157	-13%
Ocean Sciences	317	366	16%	315	-14%
Integrative & Collaborative Education & Research	76	86	12%	93	9%

Big Ideas. The budget makes clear NSF remains committed to the Big Ideas framework, requesting funds to advance all ten of the initial set. Six of the ten focus on particular areas of research, and the remainder represent “enabling ideas” that are dedicated to topics such as diversity in STEM and mid-scale research infrastructure. At the hearing, Córdova sought to dispel concerns that the Big Ideas represent a move toward prioritizing a handful of areas over the broader portfolio of “core” research. Referring to the initial ten ideas, she remarked, “They came out of the core and they will go back into it once they’re funded for a few years, and new strategic thrusts will emerge.”

NSF requests \$6.5 million to support planning for future Big Ideas. The bulk of the amount would go toward fleshing out winning submissions to the “Idea Machine” competition it held in 2018, which accepted proposals from both the scientific community and the general public. NSF further indicates it plans to explore additional novel mechanisms for identifying long-term research priorities that span directorates.

Convergence research. The budget also fleshes out how NSF intends to use the Big Idea framework to foster efforts that draw on multiple disciplines to address scientific and societal challenges. NSF requests \$16 million for the Growing Convergence Research Big Idea to support capacity-building activities, exploratory grants, and identification of reviewers for convergent grant proposals. It also requests \$60 million for a pilot Convergence Accelerator that would form teams of researchers drawn from different sectors to tackle projects that “have a high probability of resulting in deliverables that will benefit society within a fixed term.” The pilot would be limited to the Big Ideas on the Future of Work and Harnessing the Data Revolution. NSF anticipates that external partners will provide \$40 million to the effort.

Quantum information science. The budget includes approximately \$106 million for quantum information science, which is 13 percent above the amount spent in fiscal year 2018. The largest contribution would come from MPS (\$58 million), followed by the engineering and computing directorates (\$29 million and \$15 million, respectively). The biology directorate would pitch in the remaining \$3 million, supporting fundamental research on quantum phenomena in living systems. As a part of its Quantum Leap Big Idea, NSF states that it plans to increase support for “center-scale” quantum research activities through the recently issued Quantum Leap Challenge Institutes solicitation, fulfilling requirements of the National Quantum Initiative Act.

Multi-messenger astrophysics. NSF requests \$55 million for the Windows on the Universe Big Idea, which is about double the amount spent in fiscal year 2018. The program will support integrated observations of electromagnetic, particle, and gravitational signals with NSF’s existing facilities. It will also support planning for the next generation of astronomical observatories.

Facility O&M pilot program. As part of its effort to mitigate the burden of rising research facility operations and maintenance costs, NSF requests \$10 million to launch a “Facility Operation Transition” pilot program. Its primary purposes would be to “(1) partially support initial O&M of new facilities so that the full O&M costs can be gradually absorbed into the managing division or directorate, and (2) partially support divestment of lower-priority facilities, the full cost of which may significantly impact individual division or directorate funding.” In its first year, \$8 million would be split between three major facilities that are within five years of beginning operations: the Daniel K. Inouye Solar Telescope, the Ocean Observatories Initiative, and the National Ecological Observatory

Arecibo Observatory. NSF proposes to ramp down O&M funding for the Arecibo Observatory in Puerto Rico to \$4.3 million, with the costs equally split between the MPS and GEO directorates. Both contributed about \$5 million each in fiscal year 2018, and NSF seeks to reduce their contribution to \$1 million each by fiscal year 2023. Serrano, who has previously criticized NSF's plans to divest from the facility, asked several questions about Arecibo at the hearing and vowed to be a strong supporter for the observatory during his remaining time in Congress. (Just before the hearing, Serrano announced that he has Parkinson's disease and will not seek reelection in 2020, though he plans to serve out his term.)

Major Research Equipment and Facility Construction (MREFC)

The budget includes \$223 million for the MREFC account, which is the highest amount the administration has requested to date but 25 percent below the current enacted level. The Daniel K. Inouye Solar Telescope and the Regional Class Research Vessels projects received their final construction appropriation this year, freeing up funds for new projects.

Large Hadron Collider upgrades. NSF requests \$33 million to begin a five-year, \$150 million upgrade for two flagship detectors at the Large Hadron Collider. The Compact Muon Solenoid (CMS) and A Toroidal LHC Apparatus (ATLAS) detectors would each receive \$75 million through the project to prepare them for higher luminosity beam operations that will begin in 2026. Meanwhile, the Department of Energy Office of Science is also requesting \$50 million for an associated upgrade to the particle accelerator and \$46 million for upgrades to CMS and ATLAS.

Mid-scale research infrastructure. NSF proposes to expand its new agency-wide program dedicated to building research infrastructure that costs between \$6 million and \$70 million. For the first time, NSF requests funding for the program through the MREFC account to support projects in the \$20 million to \$70 million range. Projects in the \$6 million to \$20 million range would be funded through a separate agency-wide program in the R&RA account.

NSF identified high demand for mid-scale projects through a survey of the research community, and the National Science Board endorsed the creation of an agency-wide program. Córdova told the House Appropriations Committee that NSF has received about 400 proposals totaling \$4.7 billion worth of projects through a recent solicitation for the program. Asked by Serrano for examples of what types of projects the program might support, Córdova cited recently funded mid-scale projects: Advanced LIGO Plus, the Frontera supercomputer at the University of Texas at Austin, upgrades to the Alvin submersible vehicle, and refurbishment of a shake table at an earthquake research center.

Large Synoptic Survey Telescope. Funding for LSST will ramp down slightly to \$46 million as it nears completion in fiscal year 2022. Located in Chile, LSST will repeatedly image wide tracts of the sky over an initial survey period of ten years, enabling studies of transient phenomena and helping to identify asteroids that could impact the Earth.

Education and Human Resources (EHR)

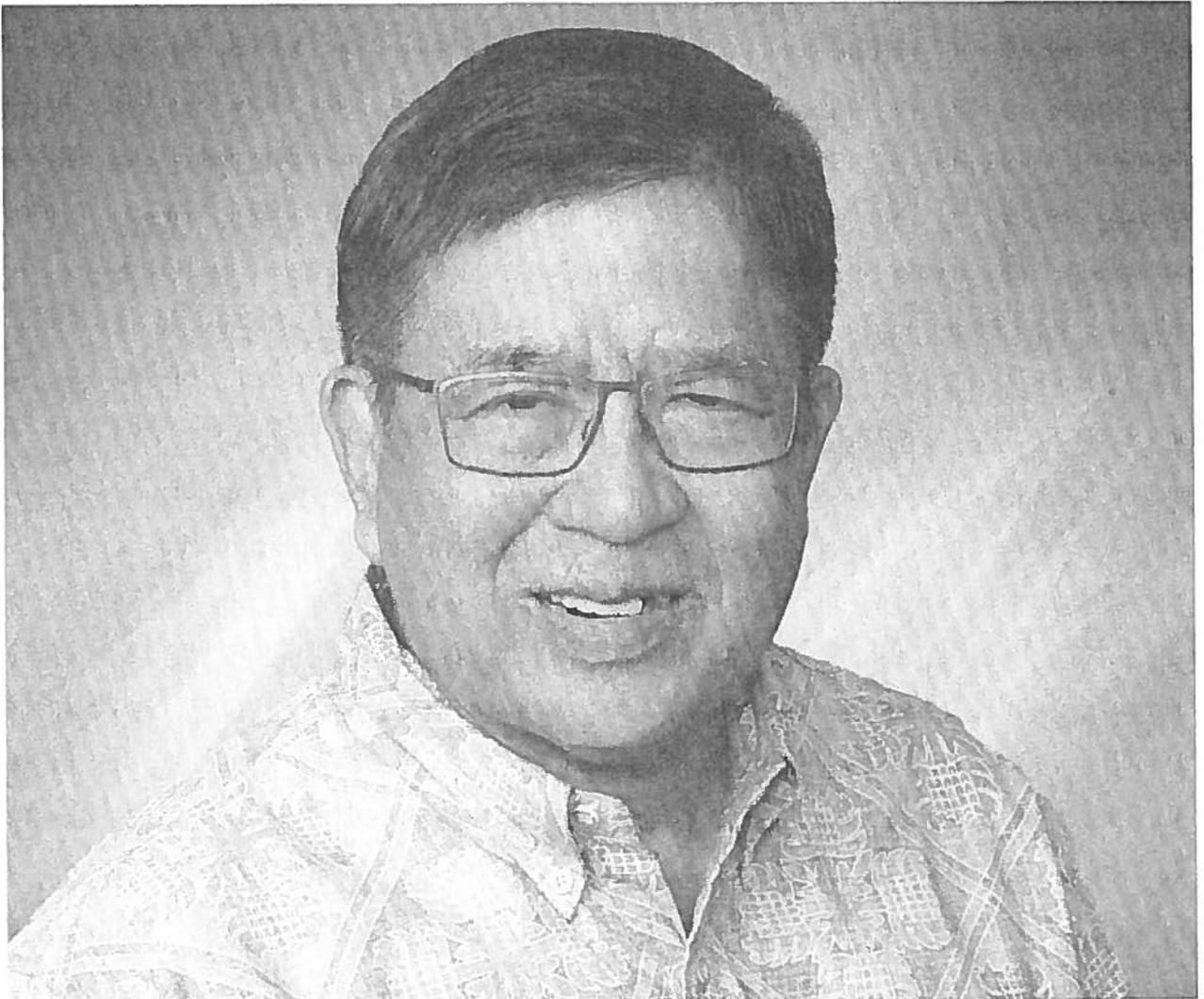
The budget for the EHR Directorate would drop 10 percent to \$823 million under the request. The cuts are spread across the directorate, which supports a variety of fellowship programs and research on STEM education pedagogy. Funding for NSF's flagship Graduate Research Fellowship Program

A few programs tied to priority areas would receive steady funding or slight increases. NSF's agency-wide Innovation-Corps program, which teaches scientists entrepreneurial skills, would remain at \$33 million, though EHR's small contribution would be zeroed out. The Advanced Technological Education program, which supports career and technical education programs at community colleges, would rise to \$75 million, a 14 percent increase over the amount spent in fiscal year 2018. NSF has recently taken a strong interest in better understanding the types of jobs that require STEM skills but that do not necessarily require a four-year degree.

NSF's marquee effort for broadening the participation of underrepresented groups in STEM fields — the INCLUDES Big Idea — would receive steady funding of \$20 million. At the hearing, Córdova stressed that INCLUDES is meant to build on successful strategies NSF has developed through its host of other STEM diversity programs.

"The basic challenge is how do you scale really good ideas," she said. "That's what the INCLUDES program is really trying to do — that hasn't been done so much before."

Hawai'i law professor provides insight on Mauna Kea to University of Hawai'i Board of Regents



Pictured: Williamson B.C. Chang is Professor of Law at the University of Hawaii at Manoa, William S. Richardson School of Law.(Photo: University of Hawaii at Manoa)

By **Williamson BC Chang**
2 hrs-edited

Testimony of Williamson B.C. Chang, Professor of Law, University of Hawaii at Manoa, William S. Richardson School of Law, on “The Management of Mauna Kea and the Mauna Kea Science Reserve,” April 16, 2015, University of Hawai’i at Hilo

I have had the honor and pleasure to serve as a Professor of Law at the University of Hawai’i for the last 39 years. I have served the University and the community well. I am also grateful for the opportunity to serve and work in the University.

Let me start by saying this: I know a place; I know a country where there would never be a question whether to build an eighteen-story thirty meter telescope on the summit of Mauna Kea. That country, that nation is “Hawai’i.”

Before 1893, it would have been unthinkable that the Government of the Kingdom of Hawai’i would ever conceive of such a plan. Yes, Kalakaua loved astronomy. All Hawaiians loved the stars. However, they loved Mauna Kea even more. Mauna Kea is “sacred” it is the Sky-Father it is the essence, the beginning of the creation chant of the Hawaiian people. All Hawaiians, all Islands, even Taro are descendants of Mauna Kea.

When I say “Mauna Kea” is sacred, I do not mean to use “sacred” the way most people use that term. I mean “sacred” not in the same sense of worship. I use “sacred” in the sense of “precious” and “so important that nothing else counts” — I apply it to those things and people that we care so much about that we would do anything, even flout and break the law, to preserve their existence.



Pictured: Mauna Kea. (Photo: Ivtorov, CC BY-SA 3.0
[<https://creativecommons.org/licenses/by-sa/3.0/>])

The child of a parent, especially a young child is “sacred” in this sense. So are parents to their children. So are grandparents. Even the family pet is “sacred.” If your house was burning down would you risk your life to go into the burning house to rescue your children, your mother, your grandparents, even your beloved dog or cat? Would you go even if forbidden by first responders, firemen or policemen? Yes, many of us would go without hesitation—without thinking of the consequences. Would you give a kidney to save or extend the life of your child, your brother, your uncle? Would you spend all your money to save a loved one from cancer? from Lou Gehrig’s disease or from a life in prison without parole? Yes, we all would.

Moreover, we praise such emotions and desires of others who make such sacrifices every day. We understand the soldier who sacrifices himself by instinctively jumping on a grenade. We understand the parent or grandparent who gives all their money to see their child or grandchild through college.

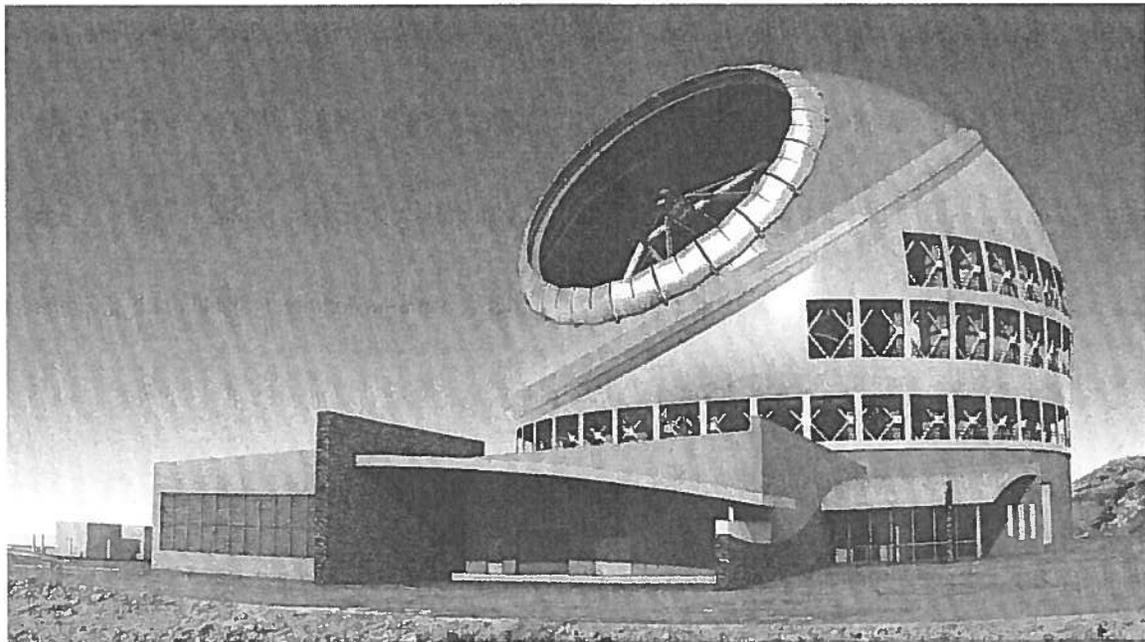
Whether one worships Mauna Kea or not, whether one considers it “sacred” does not matter as much as understanding the instincts that drive those to defend and save Mauna Kea — much as one would understand the absolute love for a child, or a parent even if such acts break the law.

When we see the instinct of family, of brotherhood, of sisterhood of love for mankind in others we celebrate that—we gravitate to that. We love and defend Mauna Kea because it reminds us what makes us human. Sacred is not necessarily

a place. It is a relationship, a deep visceral relationship: beyond reason, beyond law, beyond rationality.

The Mauna Kea movement is a movement that has grown because of young people. They live in new confusing world themselves—a world of cognitive dissonance. That is, they live within an outright contraction—a Hawaii in decline where there is nothing they can do. They see their world being attacked and destroyed, its water taken, its plants doused with foreign chemicals, its agricultural lands disappear in the name of gentlemen farmers, its open lands used for artillery practice, and its shoreline becoming high-end condominiums that only rich foreigners can afford.

Moreover, to the young, Hawaii is unlivable, there is no viable future: There are no places to rent, no jobs that fit their training, no money for retirement and the endless, life-sapping traffic congestion. And now an eighteen story telescope on Mauna Kea!



Pictured: A 3-D rendering of the Thirty Meter Telescope.(Image: tmt.org)

It would never be built on other sacred sites: not over the Western Wall, the Dome of the Rock, Angkor Wat, Gettysburg, Arlington, or the Arizona Memorial? No one would think of putting a pair of glasses on the eyes of God. Why then, Mauna Kea? We, and our youth are inundated today with the attacks on the treasures of the earth and why?

So, what happened to this “nation” called Hawai‘i, where Mauna Kea was loved and adored? Hawai‘i was a nation, that by a series of events, starting with an overthrow in 1893 and ending with annexation in 1900, by which another nation, the United States, forcefully took the sovereignty of Hawai‘i.

What do I mean by that? — to take one nation’s sovereignty? Sovereignty is the monopoly of a government on the legitimate use of violence.

By that I mean the State, the police and DLNR are the only ones today who can do so-called “legal” violence to Mauna Kea. Similarly, the police of Hawai‘i County and the officers DLNR are the only ones who can use the violence of arrest and jail or fine to force down the protectors of Mauna Kea. Protect the mountain and you go to jail. It is legal. It is called law. It is a power possessed only by the sovereign of a nation. There once was a time in Hawaii when that monopoly on the use of legal power protected not defiled Mauna Kea.

In 1893 and 1900 a new Nation took over in Hawai‘i — a new nation with new rules. These were new rules that had the power to interfere with our very human, emotions and instincts, instincts derived over time from our kupuna, our ancestors and the culture of this nation of Hawai‘i. Hawai‘i has changed.

Today, government has the legitimate power to do violence to families as well. Government agencies can take a child away from a parent. Government agencies can put a Hawaiian in prison for the smallest of offenses — denying him or her freedom and the chance to be with and raise their families. The world of Hawai‘i has been turned upside down.

The answer lies in power, that is law — the shift over their lives by which all is reversed.

In 1898 the United States, by Joint Resolution took the nation of Hawai‘i. I am a legal historian. In the appendix attached I show my work — that concludes definitively that the joint resolution had no such power. It was impotent, it was an act of Congress not a treaty. It could no more take Hawai‘i by a law then Hawai‘i by a law could take America.

It was a fraud — it created a disease that spread, a malaise we all suffer — called the myth of annexation. We all believe we are part of America; we all act as if that were true. We have been taught that way. We follow the lead of others who act that way.

The truth is that the joint resolution did not give to the United States the monopoly on the use of legitimate violence — a violence to build on Mauna Kea, the violence to arrest those who seek to stop that building. Most of all the University claims Mauna Kea by lease — a lease derived from the Joint Resolution.

It is said that the Joint Resolution gave Mauna Kea to the United States, which gave it to the State, which gave it to the University. As a matter of law that is false. It is a lie. The University has no power over Mauna Kea. It cannot build, it cannot give permits, it cannot arrest us.

The mass of young people are here today in protest because we live in a world of cognitive dissonance. They live in a world where they are learning, at the University about the truth of the Joint Resolution, which gives no power, no sovereignty to the state. Outside of their classes they see the State taking what they love—preventing them from running into the burning house to save their Mauna Kea, their father, their sky-father.

And this dissonance makes them ill. It makes our youth sick. It is a crisis that creates mental illness. In short, to build on Mauna Kea is to cast a sickness throughout these islands, a sickness and sadness, not only on Native Hawaiians but on all people who live here.

I have included an appendix, taken from my work, which speaks to the myth of annexation and demonstrates that the Joint Resolution had no capacity to take the Nation of Hawai'i. I will place this testimony and my appendix on my "Scholar Space" at Hamilton Library, the University of Hawai'i at Manoa, under my name. This is the link to that site.

Mahalo and Mahalo Ke Akua.

Williamson B.C. Chang is Professor of Law at the University of Hawaii at Manoa, William S. Richardson School of Law. Professor Chang has taught at the William S. Richardson School of Law since 1976. He is a graduate of Princeton where he concentrated in international affairs at the Woodrow Wilson School of Public and International affairs. He obtained his A.B. degree at Princeton in three years. Professor Chang attended the University of California at Berkeley School of Law. He was an associate editor of both the California Law Review and the Environmental Quarterly. After graduation Professor Chang clerked for the Honorable Dick Yin Wong, United States District Court for the District of Hawai'i. In 2017

During his four decades at the William S. Richardson School of Law Professor Chang has taught courses ranging from Corporate Taxation and Securities Regulation to Jurisprudence.

In Professor Chang also was appointed a Special Deputy Attorney General representing the Hawai'i Judiciary. In 1989- 1990 Professor Chang served as Senior Legislative Counsel to the Senate Select Committee on Indian Affairs.

During the 1980s he was the Reporter for the State Advisory Commission and assisted in drafting the State Water Code.

He has been the primary investigator on numerous grants from the Federal Agencies such as the United States Geological Survey and the Administration for Native Americans. The grant from the Administration for Native Americans was used to fund the work of a non-profit to assist Hawaiians as to water rights. Professor Chang was the litigation director of Native Hawaiian Advisory Council and led a drive to file some 5000 claims of Native Hawaiians and small farmers to register their water rights. In 1982 and 1995, he was recognized by the Honolulu City Council for his outstanding community work.

He has taught at the University of Wisconsin at Madison, the University of San Francisco, the National University of Hiroshima University, and the University of Western Australia. He was a Senior Fulbright Scholar in Australia studying indigenous rights. In the past three years, he has given presentations at a United Nations NGO forum in Geneva, at the Smithsonian Museum in Washington D.C. and at Nagoya University in Japan. In 2016, Professor Chang was elected as one of forty delegates to draft a constitution for the Native Hawaiian nation. He has made numerous presentations on water rights to community and corporate groups. He has testified before Committees of the United States Senate and before the Hawai'i State legislature. In 2017, Professor Chang was recognized as the Native Hawaiian Patriot of the year.

Note: Published with express permission from Williamson B.C. Chang.



Testimony opposing TMT

tiffany keamo <tiffykeamo101@gmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 7:39 AM

Aloha Board of Regents of UH,

Here I state my testimony as a kia'i of Mauna Kea. I am a Hawaiian that is part of a younger generation who is finally standing up for what is RIGHT. Which confuses me because that is what we are told to do, but when we do it, nobody listens. I think it's time you listen to the people of Hawaii and decide to put TMT somewhere else. Obviously, I oppose TMT being built on Mauna Kea because she is a not just a mountain. Mauna Kea is our ancestor that not only protects us, but teaches us. When I visited the mauna, my eyes saw something new and great for the very first time. I learned things that you cannot learn anywhere else, like cultural practices, the history behind Hawaii, and the ability to stand up! I saw a community and nation standing united for Mauna Kea. I saw organization, peace, hospitality, and most important, love. I met people that would care for me, no matter who I was. I met people that would teach me the ways of my ancestors. I met my leaders that I wish to be some day. I met Mauna Kea. She is so important to us as a people and I cannot believe you guys want to take her away from us. She is bringing this nation together and as soon as you guys see us uniting, you want to break us apart. Little do you guys know, that will only make us stronger. I am a Hawaiian, part of a strong generation and I will not stand in favor of TMT, but with the people who I strive to be. I ask that you please build TMT anywhere else, but here in Hawaii.

Mahalo,
Tiffany Keamo

**LATE TESTIMONY**

Board of Regents <bor@hawaii.edu>

Concerning Mauna Kea

1 message

Kaylene Sheldon <kauwilamahina@icloud.com>

Fri, Aug 2, 2019 at 7:44 AM

To: bor@hawaii.edu

Aloha Board Of Regents:

My name is Kaylene Kauwila Sheldon and I am a proud but concerned alumni of the University of Hawai'i at Mānoa. I was a student of the University in 1998 when we the students or nā haumana had major concerns about the telescopes on Mauna Kea. The four concerns I have with the building of the TMT telescope is one conservation, cultural, ethics, and eco-economic. One is conservation, there are different species that thrive on the mauna and needs to be away from construction, the 30 meter telescope could disturb this friendly eco-system environment. The second is cultural, there are stories that talk about a 2000 year relationship with the Mauna from the goddess Poli'ahu to the mo'onanea and the giving of one's piko and ewe or the umbilical cord to Lake Waiau which is important to my 'ohana. The third is ethics where the key role people have been put into position like Judge Amano, convicted felon Catherine Kealoha to provide corruption to allowing TMT this site. This kind of corruptible reputation lies in the responsibility of UH. The fourth is eco-economics, the money that will be brought into Hawai'i's economy is not long-lasting nor will it balance out the scales of being eco-friendly vs. capitalism. There are other solutions to Hawai'i's economy as you have seen Iōkahi, self-sustainability and in uniting communities. Please place dignity to the words, "Ua Mau Ke 'ea o Ka 'Āina I Ka pono" into your University once again.

Me Ke Kapu Aloha a hiki Kealoha I Hope Loa,

Kaylene Kauwila Sheldon

Sent from my iPhone



Board of Regents Meeting

Hooheno Haumea <hdarciehaumea@gmail.com>

Fri, Aug 2, 2019 at 8:01 AM

To: bor.testimony@hawaii.edu

Aloha,

I am Hooheno Haumea, from Waianae Oahu. I would like to address agenda item IIID. "Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Mauna Kea Governance."

I oppose any further decoration of Mauna Kea, any further development of any kind. Either it be a telescope or any other type of structure. The mismanagement of Mauna Kea by the University has gone on for long enough. Out of the 13 telescopes up there, only one of them is legal, which is the first one.

Do not just, 'take this into consideration' as just some person who opposing your plans. Take it from a human level.

Mahalo nui



Testimony Against TMT

karenmartin808@gmail.com <karenmartin808@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 8:03 AM

Aloha,

My name is Karen Martin. I am a registered voter and taxpayer. I live in Honolulu.

I am kanaka maoli and I am against the build of TMT on top our sacred Mauna Kea!

As a protected person and a Hawaiian Kingdom subject, I am awake to the illegal dealings going on with a sham government. On the other hand, I don't believe UH has the legal authority to have control on the Mauna or management which if built will have devastating effects to the protectors and communities around the islands and world! It will also destroy the pristine landscape and sacredness that the people hold high above all things!

Ige, Lasner, and Kim should resign for putting TMT back room deals first over the people. We are no longer brainwashed and see what is happening. You might still have people brainwashed and those are the ones that haven't opened their eyes! Soon they will see!

My rights have been violated many times over and lawsuits will be filed for the war crimes committed and no statute of limitations! I am asking you to cease and desist!

Take TMT to the Canary Islands!!!

Karen Martin
Hawaiian Kingdom Subject



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

Regarding Mauna Kea

Kimberly Sales <maheadlioncourt@yahoo.com>

Fri, Aug 2, 2019 at 8:21 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

I'm not sure if you are still accepting emails for testimonies for your August 2nd 2019 Board Of Regents meeting and I'm not good at formal emails but here is mine.

Hawaiian land belongs to Kanaka Maoli. If they don't want something built on their land, then it should not be built on their land. TMT needs to take their telescope to the Canary Islands, provided the Native People of the Canary Islands want it there. If not, then it needs to be taken to a place where it is wanted by the Native People. The science is beautiful but take it someplace where it is wanted. Mauna Kea is sacred land and should not be desecrated. This is Hawaii's Standing Rock. The Native People are far more important than money. This telescope is not needed or wanted here. It's time to stop the mismanagement of Mauna Kea. And if David Lassner wants to go against the Protectors and the Hawaiian people, then the University Of Hawaii needs a new President.

**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

TMT testimony

Robert <nimo1767@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 8:23 AM

Aloha

Thank you for the opportunity to submit testimony. I apologize for being late as I only just learned of the meeting. It's obvious the process has disenfranchised the Hawaiian community and landowners who have demonstrated how Mauna Kea is historically sacred and culturally irreplaceable. Further cultural practitioners and beneficiaries of those ceded lands oppose any further large developments on arguably one of if not the most culturally significant place in Hawaii today for religious desecration beliefs and for environmental reasons. Many have argued against more development on Mauna Kea for years even for proposed developments prior to TMT and been ignored or marginalized by UH. Many feel and the auditors agree that UH has mismanaged this unique and culturally irreplaceable site. All decisions seem to be based on scientific or financial benefit, giving little if any weight to the damage done to a race of people when you alter their cultural and religious belief system. Many believe it causes loss of cultural identity and is a form of genocide that erases or alters traditional belief systems, there is research that supports that position and a study of the effects of such losses specifically on Native Hawaiians is now underway. TMT has been welcomed in the Canary Islands thus any contribution to science will not be lost by stopping further development of this telescope on Mauna Kea against the wishes of the landowners. For all the reasons outlined here I oppose any further efforts to build TMT on Mauna Kea and support the kia'i, please end this now before you do any further damage to our community and host culture.

mahalo
Robert Petricci



Please Stop TMT

Celine Kitaoka <celineleikitaoka@gmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 8:26 AM

Aloha Board of Regents,

The date is August 2nd. My name is Celine Kitaoka. As a citizen of Hawai'i, I am writing this testimony to express my strong opposition to the building of TMT on top of Mauna Kea. The reasons for my opposition include:

- Mauna Kea is a sacred site and should be preserved & treated with utmost reverence
- Mauna Kea is the peak of our ecological system, therefore, what takes place there effects the water of the entire island, as well as our ocean
- Substantial ecological research has not been conducted to determine the long term effects that the construction of TMT on Mauna Kea would have on our delicate ecosystem
- Subpoenaed documents have revealed that spills of sewage, ethylene glycol, diesel fuel, and toxic mercury have already taken place on Mauna Kea due to the construction of previous telescopes
- An environmental study prepared by NASA concludes that 35 years of astronomy activity on Mauna Kea has caused "significant, substantial and adverse" harm

In conclusion, the construction of the Thirty Meter Telescope on top of Mauna Kea will put the entire island of Hawai'i in danger. The health of the people, animals, and ecosystem will have a high chance of be harmed. And as members of the BOR, you all are public servants. So you are accountable to us the students, faculty, staff, and citizens of Hawai'i. Therefore, it is your duty to stand with the people and stop TMT.

Mahalo Nui Loa for your kōkua.



Testimony: Today's BOR meeting

Michelle Cabalse <cabalse.mc@gmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 8:36 AM

Aloha,

I would like to clarify that this is my official testimony for today's BOR meeting. I have great concern about the lack of public input and oversight as well as the process surrounding the management plans.

Mahalo,
Michelle Cabalse

On Friday, August 2, 2019, Michelle Cabalse <cabalse.mc@gmail.com> wrote:

Aloha,

I want to address agenda item III.D. regarding appointment of a group to make recommendations based on Mauna Kea governance and urge that the entire Board do one thing first: forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

I want to be clear: there is already a fundamental problem of a conflict of interests in decision-making regarding Mauna Kea. I speak directly to you as regents. I do not know your mo'okū'auhau, your genealogies, but if you do not have Kanaka Maoli genealogy, then you are a settler. All of us who do not have this genealogy are settlers. I am yonsei, a fourth generation Japanese settler.

If you are not Kanaka Maoli, how do you measure your family's generations in Hawai'i to that of Kanaka Maoli? What is five generations compared to one hundred generations? Or the Kumulipo tracking Kanaka Maoli genealogy for more than 800 generations? Why are settlers who have lived in Hawai'i for less than five generations making decisions about Mauna Kea that are harmful to Kanaka Maoli?

Kānaka Maoli have engaged in millennia of careful observation of how best to live in the particular conditions of Hawai'i. As Ku'ulei Higashi Kanahale explains, the oli remind us that Mauna Kea is a pahuwai, a water container. There has been no comprehensive hydrological study of the TMT site, and the hydrologist who was the expert witness admits that he does not know where the groundwater is in Mauna Kea. In these times of global climate change and lessening rainfall, the TMT and the Red Hill jet fuel tanks are both posing grave dangers to our most precious source of life: water. This is settler colonialism.

The overthrow happened 126 years ago. That is not a very long time. The Civil Rights Act was passed just over fifty years ago. When I was growing up, we had so much respect for Hawaiian people and culture, and when a sign said "KAPU: KEEP OUT," that meant something to us. How is it that you have forgotten? How is it that you have forgotten our debt to Kanaka Maoli? How is it that the University of Hawai'i came to be here? How is it that you came to be here? How is it that you have become so disconnected by class and racial privileges from Kanaka Maoli communities who have been saying no to the TMT from the very beginning? Through their efforts, Kanaka Maoli have kept new telescopes off the mountain for over twenty years, and the TMT knew this when it started. This is settler colonialism.

And under these conditions of settler colonialism, Kanaka Maoli have built this movement to protect Mauna Kea on aloha. They have extended only aloha to you, and what have you given them in exchange? Kūpuna being arrested on Mauna Kea. The kūpuna are our greatest warriors. They have been sleeping on the mauna for 20 days, in chairs, when temperatures have plummeted to bitter cold or soared to blazing heat. They are firm in their commitment to protecting the mauna.

The whole world is watching. Over 700 astronomers have stated clearly that it is unethical to proceed with research that necessitates the arrests of people, of elders, who are standing for their survival as a people. I know that there are many STEM scientists at the University who believe in decolonizing STEM and are opposed to the TMT but they cannot speak out.

As settlers, we always have a choice. We can either be responsible for harm against Kanaka Maoli, or we can choose to be settler aloha 'āina. We are in dire straits when it comes to global climate change, and being settler aloha 'āina means standing with Kānaka Maoli and other Indigenous people on the frontlines of restoring this planet.

I urge you to forfeit the CDUP for the TMT and to ask that the TMT go elsewhere.

8/2/2019

University of Hawaii Mail - Testimony: Today's BOR meeting

Aloha,

Michelle Cabalse



Sacred Maunakea

Christy Kalama <cekalama@hawaii.edu>

Fri, Aug 2, 2019 at 8:42 AM

To: bor.testimony@hawaii.edu

Aloha kakahiaka BOR,

Maunakea is precious
She and her protectors unlocked my vocal box
A vocal box that had for so long been in the grips of fear
Fear the Residue of past ancestral trauma
115 years of vocal oppression
Finally and together breaking free from the muzzles and chains of colonialism
Denationalization the weak attempt to Obliterate our past
We will not be erased
We will raise our voices and speak for our land from the mountains to the sea

I oppose the construction of the TMT on Maunakea
Enough is enough is enough
TMT is not what our community needs
Our community needs sustainability
The environment is our real wealth
We need to become one with earths ecology and live in balance.
Our existence is dependent on our cooperation and connection with our environment.
Let's heal our discord by going into nature
Barefoot
Let's observe a functioning system
Let's get grounded
Give ourselves permission to connect and heal
dissolve tension and be open to transformation
Breathe in the air and listen to a flowing stream
Let's bury our hands in the dirt and
Allow nature to Restore us whole
nature has so much to teach us
Be brave in Preserving our home
Our Hawaii
Preserve Maunakea from further desecration
Praying for right action and inner guidance for all
Mahalo nui loa,
Kelaoha Kalama

**LATE TESTIMONY**

BOR Testimony <bortest2@hawaii.edu>

Testimony about the TMT

Travis Berger <taberger@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 8:44 AM

Hi, my name is Travis Berger. I am an astronomy graduate student at the Institute for Astronomy in Mānoa, and I would like to voice my support for the TMT. As an astronomer, I understand all too well the benefits of Maunakea for the TMT. Maunakea is arguably the best place in the world to conduct astronomical observations, due to the gradual slope of the mountain and the resulting laminar wind flows which improve the efficiency of observations compared to other sites. Economically, I believe TMT will provide many opportunities to rising scientists throughout the state, in addition to many local jobs throughout its construction.

However, I also respect the protestor's right to protest, as well as their right to defend the mountain. While I support the TMT, I do not support it at all costs — if any force must be used to build the telescope, I will no longer support its construction. I am submitting this testimony with the hope that civil compromise can be reached between TMT and the protestors. I hope that conversations can be had between both sides, and that construction can be halted until and if an agreement is reached. I hope that these can be productive conversations, and that those who currently object to the telescope can be included in the process, their opinions listened to, considered, and allowed to affect future decisions on the mountain. If compromise cannot be reached, then I believe TMT must consider other options, because astronomy cannot have a Standing Rock-like situation on its hands. I hope that we can come to a compromise that both sides support, and instead of merely coexisting on the mountain, we can respect one another and promote understanding and collaboration.

Travis Berger
Ph.D. Candidate
Institute for Astronomy
University of Hawai'i at Mānoa
<http://www.ifa.hawaii.edu/~taberger/>



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

McGregor Testimony Aug 2 Item III.D

Davianna McGregor <davianna.mcgregor@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 8:45 AM

Aloha Kākou

Attached is testimony I am presenting at the special BOR meeting today, August 2, 2019.

mahalo and aloha,
davianna pomaikai mcgregor

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*Davianna Pomaika'i McGregor
Professor of Ethnic Studies
University of Hawai'i , Manoa*



Malama Mauna A Wakea_BOR.docx
20K

Davianna Pōmaika'i McGregor
Professor, Department of Ethnic Studies, UH-Mānoa
1942 Naio St.
Honolulu, Hawai'i 96822

TESTIMONY PRESENTED TO THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAI'I
SPECIAL MEETING AUGUST 2, 2019 ITEM III.D. APPOINTMENT OF A P.I.G. RELATED TO
MAUNA KEA GOVERNANCE

Aloha Chair Kudo and Members of the UH Board of Regents, I am Davianna Pōmaika'i
McGregor, Professor of Ethnic Studies at UH – Mānoa and Director of the Center for Oral
History.

‘Eha ka pu’uwai – I come with a heavy heart, having witnesses by live stream the arrest
of our honored kupuna, particularly, my own kumu, Dr. Pualani Kanakaole Kanahale and Luana
Busby-Neff. No one chose to get arrested. Our kūpuna chose to stand firm, with dignity and
determination, to uphold a kuleana to protect the sanctity of Mauna A Wākea and prevent severe
irreversible impacts upon its pristine and unique ecosystem. When the kūpuna take a stand, it is
not okay to pause, ask forgiveness and proceed to arrest them. **It is a strong signal that we all
need to stop, seriously re-think what we are doing and map out a new path.**

I come before you to say that you are in that moment when you can step back, re-think
and intentionally decide to pursue a new path: Should you decide to set up a Permitted
Interaction Group Related to Mauna Kea Governance, you can mandate this group to convene
negotiations for an agreement of mutual respect that would allow the TMT International
Observatory to be released from the sublease with UH. You can allow them to take their project
to the Canary Islands without either party filing litigation against the other – cut each other's
losses at this point. The group can be asked to explore pathways for releasing the UH from the
sublease under Section 9 Term and Termination. A. Mutual Cancellation of Master Lease 5.
Sublessee and Master Lease. d. Termination Without Cause Sublessee shall have the right to

terminate this Sublease at any time upon six (6) months prior written notice to Sublessor.

Termination for Breach - non-use for 11 continuous months f. non-use and Abandonment.

Moreover, the Board as a whole should consult with and work with the protectors of the Mauna to seek this solution.

Our university needs to distinguish ourselves from Governor Ige's stance to privilege and protect the corporate interests of TMT International Observatory against the clearly expressed, deep-rooted and massive opposition of the Native Hawaiian community – from Hawai'i to Kaua'i. I can say that not since the Protect Kaho'olawe Aloha 'Āina movement have I witnessed this massive and widespread concern across the depth and breadth of the islandwide Hawaiian community focussed on a common goal. The continued pursuit of the construction of the TMT will cause a deep rift between the university and our Native Hawaiian community, that will take at least a generation to repair. It is not too late to reverse the damage and align the university with the Native Hawaiian community and the UH aspiration to be a Hawaiian place of learning. This is the first test of whether UH-Mānoa can fulfill the WASC Thematic Pathway for Reaffirmation (TPR) of Aloha 'Āina.

Native Hawaiian concerns are grounded in aloha 'āina, a spiritual reverence for Mauna A Wākea as a realm where the earth pierces into the realm of our akua and centers a space of creative convergence, a nexus of elemental forces, a piko. Cultural, including burial, sites established by our ancestors attest to the supreme sanctity and reverence held for the mountain. Scientific observations and knowledge about the natural resources and elemental forces essential for the cycles of rainfall, springs, streams, the island's aquifers and surrounding ocean are transmitted in oli and perpetuated through protocols. Our living science defines sustainable practices, protocols and behavior for appropriate stewardship of lands and resources. Historical

scientific observations by ancestors have been conveyed to us via oli and mo‘olelo informing us of our kuleana and responsibility as kanaka to protect the sacred realm at the summit of Mauna A Wākea.

I ask you to decide to align with the Native Hawaiian community, uphold aloha ‘āina and find a way to release the TMT International Observatory to seek their manner of science in the Canary Islands, where they are welcome.

Mahalo, Kapu Aloha and Aloha ‘Āina – Davianna Pōmaika‘i McGregor



TMT Construction

Erica Sawczynec <ericasaw@hawaii.edu>
To: bor.testimony@hawaii.edu
Cc: Roy Gal <roygal@hawaii.edu>

Fri, Aug 2, 2019 at 8:48 AM

Dear Board of Regents,

I hope that this email finds you in time for the meeting today. I am an undergraduate student on campus who supports the construction of TMT (there are many of us, even if we are not always the loudest). For the future of Hawaii and this University, please do not let the protesters convince you to drop this project. TMT is one of the biggest community funders on the Big Island and gives so many students the opportunity to participate in STEM learning that they wouldn't have been able to experience otherwise. Growing up with STEM education encouraged me to pursue a field that I otherwise would have found too intimidating as a woman. They are changing the course of many students lives, and their funding continues to ensure that Hawaii students will be able to work at the telescope after completion (because the programs they fund teach skills that will be needed at the telescope in the next decade).

It is not often we get the opportunity to expand an industry other than tourism in the Hawaiian Islands, I've lived here my whole life and seen my entire island taken over by hotels, coral reefs destroyed by sunscreen and by people stepping on them, and overcrowding to the point there are no more places for locals to live. TMT gives us the chance to expand an industry that pours hundreds of millions of dollars into the economy each year and takes up little space compared to the masses of hotels and other tourist commodities. I truly think that science is the future of the Hawaiian islands, the way tourism continues to expand is not sustainable. Please continue to support TMT on Maunakea.

Lastly as a student at UH I have immense pride for our university participating in this project. I am excited for future undergraduate and graduate students that will get to use the most premier telescope in the world for their research. I also think that supporting the TMT project will attract extremely prestigious faculty who want to use the telescope. It will rocket UH's physics and astronomy programs to an entirely new level. I know many students here who come just for the opportunity to earn an undergraduate degree in astrophysics, because its the best place in the world to do so. TMT will continue to attract a large amount of students from all over the world to Hawaii. I am excited to see the physics and astronomy department bloom as a result.

In summary, I know science students are not always the loudest, but we have opinions too, and many of us support TMT on Maunakea. I am one of them. Please continue to support TMT on Maunakea.

Sincerely,

Erica Sawczynec



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LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

TMT Opposition

Gabriella M <gabriella.037@icloud.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 8:51 AM

Aloha UH Board of Regents,

Mauna a Wakea, what does that mean to you? Say the name of the place you live, or a place that is sacred to you.

Could it be Mt. Ka'ala or Konahuanui of the Ko'olau Mountain on Oahu, or Haleakala on Maui or Mt. Kamakou on Moloka'i?

Those places named above are the high areas within our Hawaiian islands. Could you imagine these places desecrated with a massive Telescope? How do you feel about these places? Are they sacred to you? Do you cherish the land you live on?

The saying stands true- E Malama 'oe I ka 'Āina, e Malama ka 'Āina ia 'oe. Take care of the land and the land will take care of you.

We have enough telescopes on our Mauna. And some of the existing telescopes are dormant. When will it end? TMT is not welcomed here on our Mauna. It is time to stop the building of telescopes, especially of this magnitude, on our Mauna.

I ask humbly for you to rescind the building of TMT on our beautiful pristine Mauna a Wakea and ask for continued prayers for the healing of our lands.

Mahalo Nui Loa,
Gabriella K. Mata-Wong



Testimony

Debbylynn Hookano <sui-lan_hookano@enumclaw.wednet.edu>

Fri, Aug 2, 2019 at 8:57 AM

To: bor.testimony@hawaii.edu

My name is Sui-LAN Ho'okano

District cultural program director

Alumni UHH

Kanaka Mokunui O Hawaii

I would like to ask the board a few questions then give my professional and personal statement...

1. What "issues" are being investigated? Please can the board elaborate on exactly what issues are being looked at?? Cultural beliefs? Ethical practices? Environmental protection and wellness of not just the lands but the people of Hawaii? The historical psychology social economical impacts and trauma the Hawaiian Islands and people have been subjected to and the future impacts that are related to the movements of TMT. Will the board investigate on the alleged falsified Cultural Impacts reporting During the originating reports? will the groups report back come in ahead of the Regents' August 30th vote on the Mauna Kea management rules? In regards to the questions that are being posed??? Why are the Regents pressing ahead with the controversial Mauna Kea management rules when they still need information on "issues related to Mauna Kea governance"? Such as Dr. Keanu Sai intellectual academy on the existing Hawaiian Kingdom? Who is the Group going to talk to as part of its investigation? Will the lāhui be included and Will their be sufficient notice so that those of us who have to travel are able to make the gatherings. And can we have an answer to what is a permitted interaction group?
2. I ask you to consciously look at when advancements in science, education, and economical growth is unethical??? As an educated person in dual Pathways one in the dominant formal Educational system and the other cultural traditional Pathways and beliefs, It is mine and all our responsibilities to make the right decisions for our next 7 generations.
3. Governor Ige stated in his press conference that there has been historical injustices upon the people of Hawaii and we must take this into consideration when navigating decisions that impact the people!!! ...We are still in a healing space for our people... I am here to ask everyone to look at how these historical events still impacts our people today... Our communities are still struggling to find a place in a home that has erased them in Education, in sciences, Land displacements, and their ability to stand with a sense of pride and identity as kanaka to be valued for our knowledge languages and beliefs of who we are and where we are...
4. Our youth are still trying to make sense of the economical social psychology impacts that continue to impact our communities... We still face drugs and alcoholic displaced families and broken communities... for far to long we have been invisible and the minority in our own homelands and Educational institutions... When these actions of the past still impact the economical social and psychological well being of the people today how do you expect the healing to occur from that!!!
5. In order for a community to even begin to heal from these historical traumas we must allow hope!!! Hope that the people can preserve and hold on to what they have left. Hope to believe that they have a chance to be finally heard and recognized for the inherent knowledge and understanding of what it means to be connected to hope, to have the ability to manage there communities and natural resources...
6. That what this movement is about!!!! It is not about a telescope it is about an awakening of a people who cling on to hope!!! An awakened for our youth and communities to hope that we can finally be seen, hope that our whaling has finally come to the surface and can be heard, hope that there will be some justice finally made in history..

8/2/2019

University of Hawaii Mail - Testimony

I urge you to consider the hegemonies that have crept into the thinking of our educational and governmental leadership and ask that you think of the environmental and human relationships and impacts moving forward with TMT will have... We are not against growth, we are not against education, we are not against science. The question I posed earlier was when are these practices unethical and the decisions should be based on these beliefs that I hope we all have as conscious humans. This division is not about the telescope it's on how we value our human relationships...

Sent from my iPhone E Kala Mai (Please Forgivness) for any typos 🙏🙏

**LATE TESTIMONY**

BOR Testimony <borrest2@hawaii.edu>

Testimony against Agenda item IIID.

Iuka zavas <luka.zavas@gmail.com>

Fri, Aug 2, 2019 at 9:03 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Dear BOR:

I am a current student of CTAHR working on my MEM through NREM. I am writing to address agenda item III.D, to oppose the constitution of a "Permitted Interaction Group" (or PIG), and to urge you to oppose the construction of the TMT on Mauna Kea.

Thousands of Kanaka Maoli and their allies, from within Hawai'i and across the world, have demonstrated with passion, ethical integrity, political vision, and with brilliance why the construction of the TMT on Mauna Kea is an act of desecration; how it is environmentally devastating; and how it is an act of violence politically, culturally and religiously. This special BOR meeting is being held as a response to a massive international outcry, and because the people to whom the land belongs have shown their willingness to put their bodies on the line for as long as it takes to protect their Mauna.

Given these circumstances, you should only be meeting to put a stop to the TMT, not to figure out matters of governance. Under what authority can you or the university press forward with this project? How can it be your right to determine how to govern the mountain or this situation? How can you do anything at this point other than apologize to the people you--through your support for the university president and governor and TIO corporation and through the abdication of your responsibilities--have subjected to state violence?

On a personal note, I would like to share that I was at the Mauna earlier this month, to stand in solidarity with those there. If ever a place was not in need of guidance from a group with the designation of PIG, it is the people who in less than three weeks have established, at the crossroads of a highway, a whole beautiful world. Along with everyone else who visits, I was welcomed into this world. It gave me a vision of what is possible if people work together in Kapu Aloha for what is pono. I could speak of the kitchen that feeds thousands, of the tent that supplies people with clothing and blankets, of the medics tent that tends to people's health, of the art being made, the classes being taught, of the culture being sustained and created, of the rules of governance that make the space safe for all, but what I really want to say is this: the port-a-potties are sparkling clean--beyond any I have ever stepped foot into. Think about this: what does it mean that people, none of them being paid, are doing this daily kind of work? How is this possible without the highest order of love, commitment, pride, ethos, and organization? Without the most impressive organizing?

After the announcement of the two-year extension of the TMT Permit, I saw the resolve of those there to stay, for as many years as it takes. The governance there will only continue to grow stronger. And people will keep coming to this place, because people are hungry for a place of such spiritual integrity in a world that is riven with colonial violence, reckless environmental degradation, corporate corruption and racial capitalism, and all the ills that are plaguing the world--and that are the very ones driving construction of the TMT.

I urge the BOR to step out of the way and let the Kanaka Maoli continue to build this beautiful world. It will continue to be built whether or not you oppose it--whether or not you impose upon it your undesired,

unnneeded, and destructive "governance." Stand up to the corporate and colonial interests out to destroy what is being built on the Mauna and do your job as Regents responsible for the well-being of the University and the many UH students, faculty and staff who are part of the protection and flourishing that is happening at Mauna a Wākea.

I and my children stand strong as kia`i mauna of Mauna a Wākea and oppose the building of the TMT upon our wao Akua. Stop the desecration of sacred land for the "advancement" of science. No TMT, not now, not in two years, not ever.

Sincerely,
Luka Nicole Zavas

Masters Student
University of Hawaii at Manoa
Haumana of Hālau 'Ohī'a



August 2 BOR - Maunakea

Kahelelani Cruz <kahelelani.clark@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 9:32 AM

Aloha kākou e members of the UH Board of Regents:

My name is Kahelelani Cruz, and I am an assistant professor in Arts and Humanities at Kapi'olani Community College. I also serve as the Vice Chair of the 'Aha Kalāualani and as a member of the Pūko'a Council. I have been a faculty member in the UH system for the past 12 years.

I would like to specifically address item III.D. regarding the appointment of a group to make recommendations based on Maunakea governance. I would like instead to urge the BOR to forfeit the Conservation District Use Permit for the TMT. The TMT project has created a state of emergency throughout the pae 'āina, The National Guard has been called in for this disaster. The cause of this disaster is the mismanagement of Maunakea for the last 50 years.

I most recently witnessed the flaws in the UH process through my service on the system's Native Hawaiian council. The Pūko's council is tasked with advising the President as the Native Hawaiian voice for the 10 campuses. For years, President Lassner has avoided conversations, meetings, and questions regarding the TMT project. His tactics clearly demonstrate his disregard for Native Hawaiians on our campuses, in the community, and as a lāhui with a vibrant culture.

He is quick to point out the amount of money TMT will bring to Hawai'i. However he does this without any acknowledgment of the benefits the University receives through Native Hawaiian enrollment not to mention the use of Hawaiian lands. There is no aloha in his disregard for our culture. There is **no aloha** in his disregard of Native Hawaiians and all the other members of our community who are working diligently towards pono community goals.

There is **no aloha** without **aloha 'āina**. Lassner's latest interview also shows his disregard for the natural environment. This is not the leadership that we need in such trying times for our planet. The Board of Regents, each and everyone of you, have the opportunity to stand in aloha for the environment and for the people. The world is watching, live streaming, and the University of Hawai'i will forever be remembered for this decision.

The TMT project has the world questioning the research standards of the University of Hawai'i. Over 700 astronomers have signed a statement about the unethical methods used for implementation of the TMT. The University of Hawai'i has a chance to support higher standards in the field of astronomy and emerge as leaders. Please think about the technology in your hands and at your fingertips. Is your phone or computer 10 years old? Would you desecrate a sacred site or the highest mountain in Oceania to install a 10 year old technology?

If the university is truly committed to being an indigenous serving institution, it will follow the rules of the land and the culture of this place. You are the University of Hawai'i's governing board. You all have the power to do what is pono for the land and the community you serve. Demonstrate your **aloha** for the land, the people of Hawai'i, and this institution.

I urge you to forfeit the CDUP for the TMT and to ask that the TMT to go elsewhere.

Me ke aloha,

Kahelelani Cruz



**UNIVERSITY
of HAWAII**
SYSTEM

Testimony for 08/02/19

Sharnelle Renti Cruz <sprc@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 9:37 AM

Aloha,

Here is my letter.

Mahalo,
Sharnelle Renti Cruz

 **BOR letter**

LATE TESTIMONY

Sharnelle Puamokihana Renti Cruz
PO Box 824
Kekaha, HI 96752

Aloha Mayor Kim,

My name is Puamokihana Renti Cruz, I am a Library and Information Science M.A. candidate at the University of Hawai'i at Mānoa as well as one of your constituents. I write this letter to share my mana'o, and comments regarding the construction of the thirty meter telescope on Mauna Kea.

As Mayor of Kaua'i you oversee many of the changes and decisions affecting Hawai'i island. Foremost, you have the responsibility to look out for the welfare of our people and our interests; which I feel the TMT does not fulfill, it will do anything but provide for me and my fellow community members. As you already know from the protests from protectors of Mauna Kea, TMT although having given money to numerous entities and communities, prior to the construction of their TMT, will be constructing their massive telescope on sacred land, on conservation land! Here are some of my concerns:

If TMT is built, it will encompass a majority of Mauna Kea, 8 acres of it. Just imagine the extent of this telescope, 1.32 acres is the size of an average football field! And let us not forget the excavation which needs to be done, 64,000 cubic yards of summit area, 3,400 feet of new road, 20 feet below ground, 18 stories tall! And will produce approximately 120-250 cubic feet of solid waste a week, just these facts alone should make anyone reconsider TMT.

Construction will impact fragile habitats, ecosystems where native plants and animals dwell, some of these like the Wēkiu bug, moths, beetles, spiders and others reside there. Mauna Kea in cultural context, Mauna Kea is a representation of Hawaiians, the indigenous people of Hawai'i, the area where Papa and Wākea, the progenitors of the Hawaiian people meet, where they separated after creating Hawai'i, thus forming the space and heavenly realm, and is an ancestral tie to creation itself.

The conservation lands, which encompass Mauna Kea are not for industrial development which TMT would be, this natural beauty, and sacred area will forever be changed, can anyone really put the land back, restore what was loss? Reinstate the pristine conditions it was once in, reverse global warming, restore a contaminated aquifer? Restore

First and foremost, as Mayor, you can halt the construction, or at least voice your concerns over the construction of the TMT telescope, and change the stewardship of Mauna kea. Along with many other entities, you share the responsibility to oversee these lands, like a konohiki to take care of the land and ensure the preservation of the area and it's people, which I would like to point out includes the aquifer under Mauna kea and of course Mauna kea itself, which has been clearly overlooked and disregarded. Please, if there is anything you can do to halt the TMT telescope, or voice our concerns to the Governor or Mayor of Hawai'i island, please do so.

Please do not stand idle why they damage this sacred space, this connection to my heritage, my family, my identity as a Hawaiian! If not for our people today, please consider the future of Hawai'i and it's future generations like your grandchildren and their children. I would

like to leave you with these quotes, **“Hahai no ka ua i ka ulula’au!”** Destroy the forest, the rains will cease to fall, and the land will become a desert. If Mauna kea ceases to exist, imagine the irreversible effects this will have on this present Hawai’i and the future citizens of this land, we can never reverse the damage done, just look at Kaho’olawe, Pōhakuloa.

“We do not inherit the land from our ancestors; we borrow it from our children!”

Sincerely,

A handwritten signature in cursive script that reads "Thanelle Rente Curran". The signature is written in black ink and is centered below the word "Sincerely,".

Also, if there is anything you could do regarding the Hanapēpē salt pans and the expansion of the Maverick Helicopters, Smoky Mountain please, the pollution and possible harm this can do, not to mention chemical runoff and the damage of these practices which have been going on for generations. This art form and cultural practice is so rare now a days, please help to perpetuate this, and support the local pa’akai practitioners and their families.



TMT Testimony

Shirley Lam <slam73@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 10:18 AM

Aloha Board of Regents,

Maluna a'e o na lahui a pau ke ola o ke kanaka ("Above all nations is humanity") is inscribed at the gates at UH Manoa. There is no humanity in desecrating a sacred mountain, the Hawaiians and their culture. Their people and culture is one of the reasons why I am proud to have been born and raised here in Hawai'i. I support the first people of Hawai'i who are protecting Mauna a Wakea. I am not Hawaiian but I understand the importance of protecting their culture, their beliefs and their land.

Culture are traditions and beliefs. It is our moral and ethical code. With globalization, colonization...we are losing our unique traditions, unique beliefs, unique perspectives that could help us survive the changing conditions of today. Culture gives meaning to our lives! I urge you all to think with your hearts and not your pockets (\$\$\$) and move TMT to the Canary Islands. They are ready for TMT.

Thank you for your time.

Best,
Shirley Lam

**TMT**

1 message

G. Umeda <writegyu@gmail.com>

Fri, Aug 2, 2019 at 10:27 AM

To: bor@hawaii.edu

The ancient Hawaiians and Polynesians were astronomers, scientists and engineers. They designed the double-hulled sailing canoe and navigated using the stars. There has always been a strong cultural connection, history and reverence for the stars by the ancient Hawaiians. Why is this small fringe group allowed to stop this tradition, this history by stopping TMT? This is taking the Hawaiians' tradition of astronomy and studying the stars into the 21st century. It is for their children and their children's children. TMT has bent over backwards for this group, and it is this group who have broken the trust by blockading the roads for construction. Now they decide who they "choose" who can have access to the mountain, and they've decided astronomers are to be excluded. Why does such a small fringe group allowed so much power?

I entreat you to stop this--this fringe group is breaking the law. Please do not concede to this group. They are irrational and unreasonable, and keep demanding more and more--in other words, it is a moving target they have created. Once a demand has been met, they move the target again and protest. Their ultimate goal is not about the mountain or telescope--it is about power and Hawaiian sovereignty and trying to take back what they consider is "theirs." If they are allowed to stop TMT, they will be empowered to stop all projects, stop everything they don't like, with the ultimate goal of overthrowing the US government.

Do you really want this telescope built? Think of all the new discoveries awaiting scientists and astronomers. Think of how the University of Hawaii will be an astronomical force not only in the community but the entire world. TMT is the future for generations to come and for discoveries to be made. TMT would allow the children of Hawaii to stay and work here, instead of having to go to the mainland to get science/technological jobs. Allowing a small fringe group to stop it would be a travesty with serious consequences in the future. It will be a huge loss for our keiki and for Native Hawaiians who want the projects, who want to continue the tradition of astronomy and discovery that is their heritage.

Thank you-



Part Hawaiian

g kai <mokuleleboy@hotmail.com>

Fri, Aug 2, 2019 at 10:35 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Dear UH,

Stop, just Stop, this Mauna you are suppose to manage is out of control. \$\$\$\$ is all you think of and is proven by what has taken place.

If anyone should have stewardship it should be that Kupuna of the Hawaiian people.

Greed has taken everything from the people of Hawaii.

There is so much disrespect for Hawaiians from the state and country. Treat others as you would treat yourself. You would not like it if someone from another place came to you and said your beliefs are not valid. You are living on stolen land today. you are ruling other people that don't believe what you do, so you use force. not much different than Hitler.

I beg you to STOP. Please Stop.

And support ALOHA, even though you are not Hawaiian.

It's time you walk the talk.

mahalo nui loa,

greg kai

Sent from my iPhone



Part Hawaiian

g kai <mokuleleboy@hotmail.com>

Fri, Aug 2, 2019 at 10:38 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Dear UH,

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It's time you walk the talk.

mahalo nui loa,

greg kai

Sent from my iPhone



TMT

Ken Smith <ken@trinity-aloha.org>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 10:41 AM

Aloha

Seem to me that the real problem with the "Locals" against TMT is lack a of Hawaiian Historical knowledge.

In the Historical Restoration of Hale Halawai o Holualoa in the 1980's I had the privilege of researching the old Historical documents of Kona at the old Congregational Church Library.

This was recorded of November of 1819 prior to the arrival of the Missionaries on 3/30/1820. So the Christian Missionaries had no part in the over through of the old gods and kapu system.

The death of Kamehameha



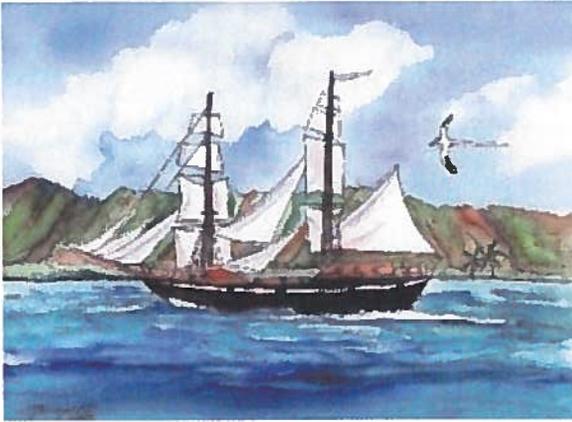
After the death of Kamehameha I, in November of 1819 and before the arrival of Christian missionaries, doubts about the ancient religion led to its abandonment by the regent, Ka'ahumanu, and Liholiho (Kamehameha II). Traditionalists rallied to Kekuakalani, custodian of the war god. Here, in the Battle of Kuamo'o they were defeated by the Monarchy troops led by the premier, Kalanimoku, and the old religion died in a blaze of musket fire. Both sides had firearms, and more than 300 were killed, including Kekuakalani and his wife Manono. The dead were interred in the rock cairns visible on this lava field in the Lekeleke Burial Grounds at Kuamo'o Bay at Keauhou.

The kapu system was finally destroyed by the Hawaiian Monarchy and the priests & kahunas were overthrown, killed or dispersed, temples were demolished and the kapu's shattered. This was the end result of the bondage and pain caused by the kapu system and the privileged treatment that was demanded by the kahunas. This action resulted in both peace and a great spiritual vacuum for the Hawaiians as a people.

And after this event on March 30/1820 the following happened:

The ship Thaddeus

The ship Thaddeus arrived with Congregational Missionaries to Hawaii. And began to teach the people against the orgies, opium dens, soliciting of native women and other forms of vice. The missionaries were not versed in Hawaiian customs but they did know about the serious problems concerning the STD's of their days and tried to,



unsuccessfully, help the Hawaiian people avoid this great scourge. It is my personal opinion that the Hawaiian people who remained after the great plagues of death through that century owe their lives to the 1820 missionaries. These missionaries came by invitation of Henry Opuakahaia of 1809 and the Hawaiian Alii. The Hawaiian people had heard about the “Torch of

Life” of Jesus Christ and were searching for a new spiritual ethos. So as the Christian faith came in 1820 and thousands were taught “The Way” and found peace in the Christian faith

It was obvious to the missionaries that God had prepared the way for them. The great Hawaiian miracle had taken place all of the obstacles that could have prevented the Gospel from being preached had been removed. Even Hewahewa the highest kahuna (priest) and direct descendant of Paau, the original Kahuna from Tahiti, was the first to set fire to a heiau (temple). He declared: “I knew the wooden images of deities, carved by our own hands, could not supply our wants, but worshiped them because it was a custom of our fathers. My thoughts has always been, there is only one great God, dwelling in the heavens.” Hewahewa also prophesied that a new God was coming and he went to Kawaihae to wait for the new God, at the very spot were the missionaries first landed.

King Kamehameh died five months before the missionaries sailed but they had no knowledge of his death before their departure. In less than the span of one year from his death, and as the missionaries were at sea, the Kapu system had been dissolved, and a civil war had taken place. Only the creator of the universe, Jehovah, could have scripted these timely events. In the midst of this chaos, the stage is divinely set for the entrance of the missionaries with the Gospel of Jesus Christ. The missionaries brought a message of peace, tranquility, and Aloha.

I am the Lord: that is my name: and my glory will I not give to another, neither my praise to graven images. Behold, the former things are come to pass, and new things do I declare: before they spring forth I tell you of them. Sing unto the Lord a new song, and his praise from the end of the earth, ye that go down to the sea, and all that is therein;

the isles, and the inhabitants thereof. Let the wilderness and the cities thereof lift up their voice, the villages that Kedar doth inhabit: let the inhabitants of the rock sing, let them shout from the top of the mountains. Let them give glory unto the Lord, and declare his praise in the islands. Isaiah 42:8-12

So it seems to me that Mauna Kea is no longer be a "Holy Place" in the sense of the "old gods" who were rejected as being false. And that the Sovereignty Movement has kidnapped the TMT to make further gains with their Movement. A Movement that personally I respect if they will allow unity of all who love and live only in Hawaii. Seems to me that the Creator of Mauna Kea is well able to battle a little telescope if not wanted. But personally I would love to see the cleanest air in the world united with the best telescope in the world.

Seems these are two very different issues, The Sovereignty Movement and the TMT and should be sorted from each other. But only an accurate education can do that. On the King's Crown of the last kings of Hawaii there are 5 Christian Cross's A testimony of the death of the old gods and of their faith in the Christian GOD of the Creation in all things. Perhaps it would be wise for the Hawaiian People to carefully reconsider the direction of their Alii. After all, "The Life of the Land is Perpetuated in Righteousness."

**I will declare the decree: the Lord hath said unto me,
Thou are my Son: this day have I begotten thee.
Ask of me, and I shall give thee the heathen for thine inheritance,
and the uttermost parts of the earth for thy possession.**

Psalms 2:7-8 <https://trinity-aloha.org/history/history-of-hawaii/>

Be blessed in your day and may our Great Creator give you wisdom in your task.

Aloha: Ken Smith<><

(The Rt. Rev. Dr. +N. K. Smith, ThD, DD) www.Trinity-Aloha.org



TMT opposition

Kanoa Nakamura <kanoanak@hawaii.edu>

Fri, Aug 2, 2019 at 10:42 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Aloha,

I am writing to express my opposition to the Thirty Meter Telescope project's location on Mauna Kea. The simple fact that Spain is ready to embrace the construction of the telescope NOW and those on Mauna Kea are steadfast in their resolve to NOT allow construction to begin at all should be enough. I understand that there are people who are upset about the relocations and consider it an inconvenience. These next two years will be much more inconvenient if the plan continues to go forward in Hawaii. Those protesting will only gain support and momentum while those who stand against that which is right will know only frustration and anger.

Aloha

Kanoa Nakamura



Part Hawaiian

g kai <mokuleleboy@hotmail.com>

Fri, Aug 2, 2019 at 10:43 AM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Dear UH,

Stop, just Stop, this Mauna you are suppose to manage is out of control. \$\$\$\$ is all you think of and is proven by what has taken place.

If anyone should have stewardship it should be that Kupuna of the Hawaiian people.

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There is so much disrespect for Hawaiians from the state and country. Treat others as you would treat yourself. You would not like it if someone from another place came to you and said your beliefs are not valid. You are living on stolen land today. you are ruling other people that don't believe what you do, so you use force. not much different than Hitler.

I beg you to STOP. Please Stop.

And support ALOHA, even though you are not Hawaiian.

It's time you walk the talk.

mahalo nui loa,

greg kai

Sent from my iPhone



Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Mauna Kea Governance

Demiliza Saramosing <saram005@umn.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 10:59 AM

Aloha mai kākou e members of the UH Board of Regents:

My name is Demiliza Saramosing and I am a Pinay settler, born on O`ahu and raised in Kalihi. I am currently a PhD student in American Studies at the University of Minnesota and I am taking Hawaiian language classes at UH-Mānoa this summer. Being that Filipinos and Kānaka Maoli share similar struggles, I choose to stand alongside Kānaka Maoli as an ally and work to undo legacies of colonialism and occupation, which the TMT project is surely part of.

I join the countless voices on addressing agenda item III.D. regarding appointment of a group to make recommendations based on Mauna Kea governance and urge that the entire Board do one thing first: forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

As a student scholar, I am being trained in the ethics of research. It is my responsibility to go through an ethical process to obtain consent prior to beginning research and ensure that I do not commit harm in my own fieldwork. This is important for us scholars of color who do not want to replicate the historical violences of academic scholarship against communities like ours. This is surely not the case in regard to the TMT where over 700 astronomers have stated clearly that it is unethical to proceed with research that necessitates the arrests of people, of elders, who are standing for their survival as a people and the sustenance of Mauna Kea. It is the shame of the BOR, the University and the State for not listening to the concerns of Kanaka Maoli and their allies on the monumental cultural and environmental violent impacts the TMT construction will have on Mauna Kea.

I am proud to have grown up in Hawai`i where I was taught what it means to aloha `aina or love the land. But what these past events have shown, the moving forward of the TMT project is not aloha for the land as well as for the rightful stewards of Hawai`i. For this reason, I urge you to forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

—

Best,
Demiliza S. Saramosing, M.A.
AMST Ph.D. Student | University of Minnesota- Twin Cities
Asian American Studies M.A. | University of California, Los Angeles
Ethnic Studies & Journalism B.A. | University of Oregon

Pronouns: She/Her/Hers
SARAM005@umn.edu

"You will become a graveyard of all the women you once were before you rise one morning in your own skin. You will swallow a thousand different names before you taste the meaning held within your own." - Pavana



UNIVERSITY
of HAWAII
SYSTEM

LATE TESTIMONY

BOR Testimony <bortest2@hawaii.edu>

testimony Aug 2 2019

Kau'i Trainer <kauitrainer@gmail.com>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 11:15 AM

Aloha,

I am asking the Board of Regents to cease and desist in the support of the TMT. I also reject the proposed Administrative Rules, which are in opposition to my right as a kanaka maoli Hawai'i to access and live my cultural and traditional rights on the mauna, on my own terms as a native person of this 'āina as well as a person of genealogical descent of Wākea and Papahānaumoku.

Mahalo,

Kau'i Trainer
kauitrainer@gmail.com

Aloha kekahi i kekahi.



**UNIVERSITY
of HAWAII**
SYSTEM

BOR Testimony <bortest2@hawaii.edu>

No TMT

Stephanie L Wood <swood23@uw.edu>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 11:16 AM

To whom it may concern:

I am writing to express my concerns over the 18-story telescope that non-Indigenous Hawaiians are trying to build on top of Mauna Kea. Mauna Kea is sacred land: a burial site, a prayer site, and more meaningful to the Indigenous peoples of Hawaii than anyone trying to build on it can understand. Clearly, or they would not be trying to.

There is nothing more important than protecting the rights of Indigenous Peoples, and for too long they have been pushed aside while their lands, homes, and cultures are desecrated. No more.

Please make the right decision and support Native people over private interests.

Stephanie Wood

Seattle, Washington



TMT

Earth Mama <myvirtualmail@protonmail.com>
Reply-To: Earth Mama <myvirtualmail@protonmail.com>
To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Fri, Aug 2, 2019 at 11:17 AM

We don't need a telescope to look into the past. That is ridiculous. To peer into the past is to stand upon the lands that our elders are buried, it's to look into the eyes of your children, it's knowing that the bacteria that grows in your body, matches the one of the earth, the one of your grandparents, it's knowing that your red blood carries their dna; to understand ourselves better as a race, to understand Earth and it's inhabitants capabilities is to focus our energy and attention RIGHT HERE, on Earth, the land, the people, its creatures, not OUT THERE. Go inward.

NO MORE TELESCOPES ON MAUNA KEA.

Olga Alvarado

Sent with [ProtonMail](#) Secure Email.



Appointment of a Permitted Interaction Group-MaunaKea

Cody Anderson <codytand@hawaii.edu>

Fri, Aug 2, 2019 at 11:20 AM

To: bor.testimony@hawaii.edu

Aloha Board of Regents,

My name is Cody Anderson. I write in opposition of the proposed construction of the TMT on Mauna Kea.

Board of regents, all of your actions reveal that you will judge any facts and rules relating to Mauna Kea in favor of the TMT project, in advance of final votes on the matter. Your board's predetermined stance in favor of the TMT project highlights an imbedded bias, that guarantees an unfair process, and ensures that the merits of the protectors claims will be ignored as you move the TMT to what seems like predetermined grooves toward development.

I invite you to rescind all actions supporting the TMT on Mauna Kea. Unshackle yourselves from the patronage bonds of the governor and special interests, and find the courage to protect Mauna Kea from the TMT. This is the ethical solution, to terminate the TMT license and development agreement. To accomplish this, immediately negotiate with the the Mauna Kea protectors and UH protector community to make an independent decision making body inclusive of their representatives to review and act on all manners that relate to the TMT project, and the university's overall management of Mauna Kea. Be courageous, regents, by protecting Mauna Kea's sacredness and its protectors, so that the our university can begin to behave like a Hawaiian place of learning.

Respectfully,
Cody Anderson

Cody Anderson
MFA Candidate
Dept. of Art & Art History
University of Hawai'i Mānoa

**RESEND: 'A'ole TMT!**

Demiliza Saramosing <demiliza@hawaii.edu>
To: bor.testimony@hawaii.edu

Fri, Aug 2, 2019 at 11:45 AM

Aloha mai kākou e members of the UH Board of Regents:

My name is Demiliza Saramosing and I am a Pinay settler, born on O'ahu and raised in Kalihi, a largely working-class Filipinx neighborhood. I am currently a PhD student in American Studies at the University of Minnesota and I am taking Hawaiian language classes at UH-Mānoa this summer. Being that Filipinos and Kānaka Maoli share similar struggles, I choose to stand in solidarity with Kānaka Maoli and work to undo legacies of colonialism and occupation, which the TMT project is surely part of.

I join the countless voices on addressing agenda item III.D. regarding appointment of a group to make recommendations based on Mauna Kea governance and urge that the entire Board do one thing first: forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

As a student scholar, I am being trained in the ethics of research. It is my responsibility to go through an ethical process to obtain consent prior to beginning research and ensure that I do not commit harm in my own fieldwork. This is important for us scholars of color who do not want to replicate the historical violences of academic scholarship against communities like ours. This is surely not the case in regard to the TMT where over 700 astronomers have stated clearly that it is unethical to proceed with research that necessitates the arrests of people, of elders, who are standing for their survival as a people and the sustenance of Mauna Kea. It is the shame of the BOR, the University and the State for not listening to the concerns of Kanaka Maoli and their allies on the monumental cultural and environmental violent impacts the TMT construction will have on Mauna Kea.

As Filipinx in Hawai'i, we share the colonial trauma of 1898 with the Hawaiian people. We understand what it feels like to be illegally annexed and for our colonizers to extract from and desecrate our sacred lands. As a Pinay born and raised in Kalihi, I along many others still carry this trauma while our working-class families know too well the workings of capitalism that take our kin and their long hours of labor into the urban city of Honolulu. This same capitalist system is the same one that attempts to turn sacred land into commodity; that wants to build the settler TMT project for profit while refusing to listen to Kanaka Maoli that state firm: 'A'ole!

I am proud to have grown up in Hawai'i where I was taught what it means to aloha 'aina or love the land. But what these past events have shown, the moving forward of the TMT project is not aloha for the land. This is not aloha for the rightful stewards of the 'aina who are the Kanaka Maoli of Hawai'i. As Filipinx, we will not stand idly by. We continue to stand with Kanaka Maoli and their struggle for sovereignty and their protection of their most precious sacred sites. For this reason, I urge you to forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere. 'A'ole TMT. Ku Kia'i Mauna!

—
Best,
Demiliza S. Saramosing, M.A.
Elementary Hawaiian Language Student | University of Hawai'i-Manoa Outreach College
AMST Ph D. Student | University of Minnesota-Twin Cities
Asian American Studies M.A. | University of California, Los Angeles
Ethnic Studies & Journalism B.A. | University of Oregon

Pronouns: She/Her/Hers
SARAM005@umn.edu

"You will become a graveyard of all the women you once were before you rise one morning in your own skin. You will swallow a thousand different names before you taste the meaning held within your own." - Pavana

 ReplyForward

8/2/2019

University of Hawaii Mail - RESEND: 'A'ole TMT!



Oppose TMT built on Mauna Kea

Kemole Belanio <kemole.b@live.com>

Fri, Aug 2, 2019 at 12:29 PM

To: "bor.testimony@hawaii.edu" <bor.testimony@hawaii.edu>

Aloha my name is Kemole Belanio I am 27 years old, born and raised in Kona on the Big Island. I oppose the construction of the TMT Telescope on Mauna Kea and the further desecration of all lands on Mauna Kea. To some Mauna Kea isn't sacred but to us Hawaiians it is. The University of Hawaii has no kuleana to be in charge of Mauna Kea. The mismanagement for the past 50 years is enough. I plead to the university to think of all the wrongs that have been done and do the right thing and stop TMT, and also fix the problems happening with the management on Mauna Kea.

Mahalo Nui,

Kemole Belanio



Testimony of Routh Bolomet August 2, 2019



Esteemed Regents;

In order to assist you in reaching the correct and righteous decision I offer to you the following:

In order for you to have authority over the Mauna Kea summit you propose to lease for the Thirty Meter Telescope (TMT) first your lease must give you the authority over those lands.

In order for you to have lawful authority by lease possess, you must have a lawful lease by the owners of the land; The STATE OF HAWAII Corporation (SOH) eludes to you that they are the lawful owners and therefore the lawful authority.

The first part of your inquiry into the TMT is investigating the source of the SOH Jurisdictional Authority; in this packet is the information you may or may not have seen already which includes the:

The SOH Constitution Art. XV(15)- "BOUNDARIES" which does not include the Hawaiian islands, by specifically excluding the name of the most northern and most souther islands, and failing to name any of the eight inhabited islands but giving the illusion they are included in the Territory of Hawaii.

The Territory of Hawaii is defined in the Organic Act of 1900 by referring to the Newland's 'Joint Resolution'.

The Newland's Resolution is the alleged Annexation Instrument. In the first paragraph it gives over absolutely and without reservation to the United States all its rights of sovereignty of whatsoever kind.....which is of "no kind".

On October 4, 1988 the US Dept. of Justice provided its opinions of the Office of the Legal Counsel on the *Legal Issues raised by Proposed Presidential Proclamation to Extend the Territorial Sea*.

when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea. 31

The evidence shows that the US did not lawfully acquire the Hawaiian Islands by a Treaty of Annexations. This is supported by Queen Liliuokalani's Protest Letter in 1898, protesting the wrongful taking of the Hawaiian Kingdom Government Lands and King Kamehameha's Private (Crown) Lands.

This was further confirmed by Dr. Alfred de Zayas the former Independent Expert in the UN Office of the High Commissioner for Human Rights. He confirms *that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a Fraudulent annexation. As such the Hague and Geneva Conventions require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).*

The submitted documents confirms the SOH has no lawful authority to assert its laws or authority to lease Hawaiian Kingdom Government lands in unfavorable terms to the beneficiaries or private lands under any terms without the consent of the allodial title holder or his heirs.

The next thing to determine is whose land is it, and who does have the authority to lease these lands.

Government Lands vs. Crown Lands?

Victoria Kamamalu relinquished the lands known as Kaohe and Kalopa Ahupuaa in Hamakua, Hawaii Island to Kamehameha III in 1847. The Kalopa Map Survey shows to its north the ahupuaa o Kaohe. This map is part of the Crown Land Map Surveys.

The proposed site of the TMT is in the Ahupuaa o Kaohe; attached is a map. The Government lands run on the border of Kaohe according to the map survey.

If the TMT is on Crown Lands aka Kamehameha III's private allodial title lands, these lands belong to him in perpetuity, limited by a 30 year lease, according to Hawaiian Kingdom Legislative Act XXXIV enacted on January 3, 1865. A 30 year + 1 day lease is void. A 65 year lease is void.

If the STATE cannot give a lease, who can? According to FS Pratt - Hawaiian Consul-General San Francisco, the Crown Lands lacking a monarch on the throne the land

belong to the Heirs of Kamehameha III. Original Letter available at the STATE ARCHIVES. It is my understanding that it is for the heirs 'use, enjoyment and to maintain the heirs representation of the Kamehameha leadership in a dignified manner'; not to be divided and split amongst them, but preserved in the trust for generations to follow and for the day that our government will be restored to its Constitutional Monarchical status for our independent neutral nation.

So who are the heirs? Kamehameha's heirs live today and have taken leadership roles in our society. I am one such Kamehameha heir. Dr. Alfred de Zayas wrote a second Memorandum to the UN Secretary General and the UN member states. In it he confirmed Hawaiian Nationals Protected Persons Status for their person and private land and property. He also confirm that I am not only qualified as a Hawaiian National civilian protected person, but also have international Diplomatic Protected Person status as a direct heir of Kamehameha I & III.

For this reason I invite you to look closely at my submitted documentation and to follow the correct laws recognizing first that the UH Regents have no authority over the private lands of Kamehameha III where the TMT is proposed in Kaohe ahupuaa and therefore no lawful authority to write a lease to the investors of the TMT or anyone else. Only the Heirs of Kamehameha have the authority to approve any leases for the Kamehameha III's private lands; I as an heir of Kamehameha I & III hereby put you on Notice that we will not be approving a lease for the TMT to be built on our sacred grounds on the Summit of Mauna Kea and I ask that you do not waste any more time or resources on this matter.

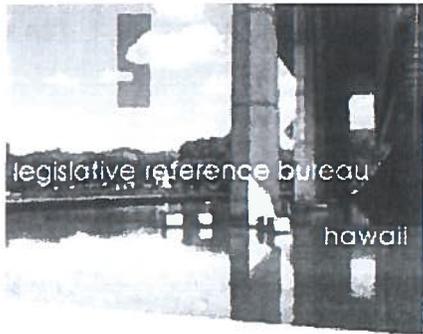
I Invite you to be the example of righteous to the student body of the University of Hawaii and the answered to the prayers of the Kanaka Maoli and other Hawaiian Nationals by following, Hawaiian Kingdom law and the directives of King Kamehameha III's private express TRUST; The World and the United Nations is watching, and this situation speaks volumes as to the integrity of the leadership in the STATE OF HAWAII and the UNITED STATES OF AMERICA.

Mahalo nui loa for allowing me this forum to speak on this matter.

Routh Bolomet

Routh Bolomet - Heir of Kamehameha I & III





section titles

[preamble](#)[article I](#)[article II](#)[article III](#)[article IV](#)[article V](#)[article VI](#)[article VII](#)[article VIII](#)[article IX](#)[article X](#)[article XI](#)[article XII](#)[article XIII](#)[article XIV](#)[article XV - State Boundaries;](#)[Capital; Flag; Language And Motto](#)[1. Boundaries](#)[2. Capital](#)[3. State Flag](#)[4. Official Languages](#)[5. Motto](#)[article XVI](#)[article XVII](#)[article XVIII](#)[index \(pdf, 45K\)](#)[disclaimer](#)

updated 12.06.16

[<<home](#)

THE CONSTITUTION OF THE STATE OF HAWAII

ARTICLE XV

STATE BOUNDARIES; CAPITAL; FLAG; LANGUAGE AND MOTTO

BOUNDARIES

Section 1. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters, included in the Territory of Hawaii on the date of enactment of the Admission Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters: but this State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters. [Am 73 Stat 4 and election June 27, 1959; ren and am Const Con 1978 and election Nov 7, 1978]

CAPITAL

Section 2. Honolulu, on the island of Oahu, shall be the capital of the State. [Ren and am Const Con 1978 and election Nov 7, 1978]

STATE FLAG

Section 3. The Hawaiian flag shall be the flag of the State. [Ren Const Con 1978 and election Nov 7, 1978]

OFFICIAL LANGUAGES

Section 4. English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law. [Add Const Con 1978 and election Nov 7, 1978]

MOTTO

Section 5. The motto of the State shall be, "Ua mau ke ea o ka aina i ka pono." [Add Const Con 1978 and election Nov 7, 1978]

OFFICIAL BALLOT

SATURDAY, JUNE 27, 1959

VOTE ON ALL THREE PROPOSITIONS

Shall the following propositions, as set forth in Public Law 86-3 entitled "An Act To provide for the admission of the State of Hawaii into the Union," be adopted?

1. Shall Hawaii immediately be admitted into the Union as a State?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

2. The boundaries of the State of Hawaii shall be as prescribed in the Act of Congress approved March 18, 1959, and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

3. All provisions of the Act of Congress approved March 18, 1959, reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawaii are consented to fully by said State and its people.

YES	<input checked="" type="checkbox"/>
NO	<input type="checkbox"/>

is this area "outside the boundaries" limited to Puerto Rico & Saipan as the 50th state or the whole wa

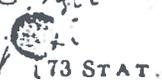
To vote on a proposition, make an X in the square to the right of the word "YES" or "NO".

VOTE ON ALL THREE PROPOSITIONS

Hawaii Statehood Act *Hele Make 7411*

4

PUBLIC LAW 86-3-MAR. 18, 1959



173 STAT.

Public Law 86-3

AN ACT

March 18, 1959
[S. 50]

To provide for the admission of the State of Hawaii into the Union.

Hawaii, state-
hood.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 7(c) of this Act, the State of Hawaii is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Hawaii entitled "An Act to provide for a constitutional convention, the adoption of a State constitution, and the forwarding of the same to the Congress of the United States, and appropriating money therefor", approved May 20, 1949 (Act 334, Session Laws of Hawaii, 1949), and adopted by a vote of the people of Hawaii in the election held on November 7, 1950, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

Territory.

Sec. 2. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (inshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters.

CHAP. 338.—An Act To provide an American register for the steamship Garonne.

April 27, 1900

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Navigation is hereby authorized and directed to cause the foreign-built steamship Garonne, owned by Charles Richardson, of Tacoma, State of Washington, and Frank Waterhouse, of Seattle, State of Washington, citizens of the United States, to be registered as a vessel of the United States.

Steamship Garonne.
Granted American
register.

Approved, April 27, 1900.

CHAP. 339.—An Act To provide a government for the Territory of Hawaii.

April 30, 1900.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Hawaii.
Provisions for gov-
ernment of.

CHAPTER I.—GENERAL PROVISIONS.

General provisions.

DEFINITIONS.

Definitions.

SEC. 1. That the phrase "the laws of Hawaii," as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

—"laws of Hawaii."

The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled "Civil Laws" and "Penal Laws," respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as "Civil Laws," "Penal Laws," and "Session Laws."

"Civil laws," etc.

TERRITORY OF HAWAII.

SEC. 2. That the islands acquired by the United States of America under an Act of Congress entitled "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the Territory of Hawaii.

Name of annexed
territory.
Vol. 30, p. 750.

GOVERNMENT OF THE TERRITORY OF HAWAII.

SEC. 3. That a Territorial government is hereby established over the said Territory, with its capital at Honolulu, on the island of Oahu.

Government.

CITIZENSHIP.

SEC. 4. That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.

Citizenship.

And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight, and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii.

APPLICATION OF THE LAWS OF THE UNITED STATES.

SEC. 5. That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inappli-

Application of Fed-
eral laws

Territory of Hawaii

The **Territory of Hawaii** or **Hawaii Territory**^{[1][2][3]} was an organized incorporated territory of the United States that existed from August 12, 1898, until August 21, 1959, when most of its territory, excluding Palmyra Island and the Stewart Islands, was admitted to the Union as the fiftieth U.S. state, the State of Hawaii. The Hawaii Admission Act specified that the State of Hawaii would not include the distant Palmyra Island, the Midway Islands, Kingman Reef, and Johnston Atoll, which includes Johnston (or Kalama) Island and Sand Island, and the Act was silent regarding the Stewart Islands.^[4]

The U.S. Congress passed the Newlands Resolution which annexed the Republic of Hawaii to the United States in 1900. Hawaii's territorial history includes a period from 1941 to 1944—during World War II—when the islands were placed under martial law. Civilian government was dissolved and a military governor was appointed.

Contents

Provisional Government

Organic Act

- Territorial governors
- Congressional delegates

Tourism

Military bases

Industrial boom and the "Big Five"

Pineapples and Hawaii

Race relations

- Massie Trial

Martial law

Democratic Revolution of 1954

Hawaii 7

Statehood

See also

References

Further reading

- Surveys
- Specialty studies
- Primary sources

External links

Territory of Hawaii

Panalā'au o Hawai'i

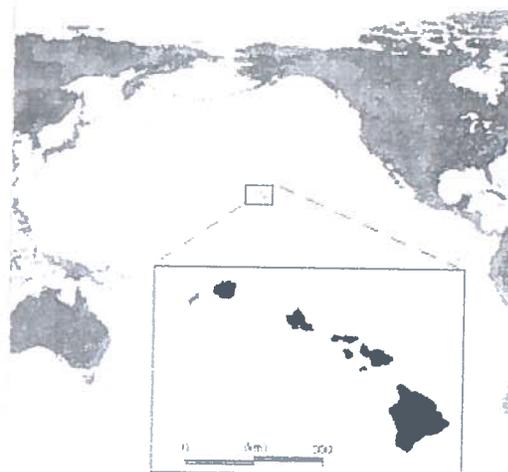
Organized incorporated territory of the United States



Flag



Seal



Main islands of the Territory of Hawaii

Capital

Honolulu

Government

Organized incorporated territory

Governor

- 1900–1903 Sanford B. Dole
- 1957–1959 William F. Quinn

Military Governor

- 1941–1944 Maj. Gen. T. H. Green

History

- Republic proclaimed July 4, 1894
- Annexation of Hawaii August 12, 1900
- Organic Act 1900

NEULANDS RESOLUTION

To Provide for Annexing the Hawaiian Islands to the United States

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 thereunto 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 existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided,* That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct: and the President shall have the power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The public debt of the Republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed four million dollars. So long, however,

United States Department of Justice,
*Legal Issues Raised by Proposed
Presidential Proclamation to Extend the Territorial Sea,*
Opinions of the Office of Legal Counsel,
vol. 12, p. 238-263, October 4, 1988

Excerpts commenting on the annexation of Hawai'i taken from pp. 250 – 252

C. Congress' Power to Assert Sovereignty over the Territorial Sea

We next consider whether H.R. 5069, which provides for the establishment of a territorial sea twelve miles wide, is within the constitutional power of Congress. H.R. 5069 states, "The sovereignty of the United States exists in accordance with international law over all areas that are part of the territorial sea of the United States." H.R. 5069, 100th Cong., 2nd Sess., §101(b) (1988). Congress, however, has never asserted jurisdiction or sovereignty over the territorial sea on behalf of the United States.²⁸ Because the President—not the Congress—has the constitutional authority to act as the representative of the United States in foreign affairs, Congress may proclaim jurisdiction or sovereignty over the territorial sea for international law purposes only if it possesses a specific constitutional power therefor.²⁹

²⁸ Congress has occasionally considered legislation to extend the territorial sea of the United States. E.g. H.J. Res. 308, 91st Cong., 1st Sess. (1969); S.J. Res. 136, 90th Cong., 2nd Sess. (1968); H.R. 10492, 88th Cong., 2nd Sess. (1964). None of these bills had been enacted.

²⁹ Congress has certain constitutional powers that can affect the claims of the United States over the seas. For example, Congress has the power to regulate foreign commerce, art. I, §8, cl. 3, the power to define and punish crimes committed on the high seas and offenses against international law, art. I, §8, cl. 10, and the power to declare war, art. I, §8, cl. 11. Congress also exercises considerable authority over the territory of the United States. The Constitution authorizes Congress to admit new states, art. IV, §3, cl. 1, and to dispose of and regulate the property of the United States, art. IV, §3, cl. 2.

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 (2nd ed. 1929).

Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. 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. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.³¹

5975 (1898). He thus characterized the effort to annex Hawaii by joint resolution after the defeat of the treaty as “a deliberate attempt to do unlawfully that which can not be lawfully done.” *Id.*

³¹ Additionally, Congress has authorized the extension of United States’ control to guano island discovered and occupied by citizens of the United States. The Guano Islands Act provided: “Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.” 48 U.S.C. §1411. In *Jones v. United States*, 137 U.S. 202 (1890), the Supreme Court held that the statute was valid and that Navassa, a guano island claimed under that statute, “must be considered as appertaining to the United States.” *Id.* at 224. The Guano Islands Act does not appear to be an explicit claim of territory by Congress.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the *Paquete Habana Case* (1900),

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and
correct copy of documents in his custody.



SIGNATURE <i>Vernon R. Smith</i>	
NAME Vernon R. Smith <i>4 Pages Attached</i>	DATE 02-10-2012
TITLE Supervisory Archivist, Research Support Branch	
NAME AND ADDRESS OF DEPOSITORY National Archives at College Park 8601 Adelphi Road College Park, MD 20740-6001	

NA FORM 14007 (10-88)

stroy the independence of Hawaii. My people constitute four-fifths of the legally qualified voters of Hawaii, and excluding those imported for the demands of labor, about the same proportion of the inhabitants.

BECAUSE, - Said treaty ignores not only the civic rights of my people, but further the hereditary property of their chiefs. Of the four million acres composing the territory said treaty offers to annex, one million or 915 000 acres has in no way been heretofore recognized as other than the private property of the constitutional monarch, subject to a control in no way differing from other items of a private estate.

BECAUSE, - It is proposed by said treaty to confiscate said property, technically called the Crown Lands, those legally entitled thereto, either now or in succession receiving no consideration whatever for estates their title to which has always been undisputed and which is legitimately in my name at this date.

BECAUSE, - Said treaty ignores not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

BECAUSE, - By treating with the parties claiming at this time the right to cede said territory of Hawaii, the government of the United States receives such territory from the hands of those whom its own magistrates legally elected by the people of the United States and in office in 1893 pronounced fraudulently in power and unconstitutionally ruling Hawaii.

THEREFORE, I, LILIUOKALANI of HAWAII do hereby call upon the President of that nation to whom alone I yielded my property and my authority to withdraw said treaty (ceding said Islands) from further consideration. I ask the honorable Senate of the United States to decline to ratify said treaty and I implore the people of this great and good nation from whom my ancestors learned the Christian religion, to sustain their representatives in such acts of justice and equity as may be in accord with the principles of their fathers, and to the Almighty Ruler of the Universe, to Him who judgeth righteously I commit my cause.

DONE at Washington, District of Columbia, United States of America this Seventeenth Day of June in the year Eighteen Hundred and Ninety-seven.

Joseph Hale
Waikeki Hoelua
Julius C. Palmer
Liliuokalani
Witnesses to signature

Ex. R – Hand written Letter from Consul General F.S. Pratt to Sanford B. Dole

His Ex. Sanford B. Dole

Minister of Foreign Affairs

Sir,

I have the honor in State that acting under advice, I forwarded the accompanying protest against the session of the Croown Lands by Treaty to the United States, for the sole purpose of saving the right of appeal to the Courts to adjudicate upon the claim of my wife as one of the heirs of Kamehameha the Third in said lands upon the suppression of the Crown and annex- action of the Country to the United States.

So far as the policy of annexation is concerned, I did not antagonize it in any way. I also enclose herewith extract from the San Francisco "Chronicle" of the 19th in I bring a letter addressed by me to the Editor on the same subject.

I have the honor to be Your Obedient Servant,

F.S. Pratt
Consul General

set apart by the king as his private estate, distinct from the lands which he voluntarily surrendered to provide revenue for the Government, and which are known as the "Government lands." The latter lands the provisional Government has a perfect right to cede, but I contend it has no more right to cede, but I contend it has no more right to cede the private lands of the Kamehamehas, now that the crown has been suppressed, that it has to transfer the Bishop or Lunalilo estates, or any other lands owned "or held in trust under bequest from members of the Kamehameha Line".

The treaty of annexation guarantees the enjoyment of all private property, and it is so prevents the United States Government violating this obligation through misinformation that I lodge my protest.

I notice that the commissioners of the provisional Government state, in reference to my protest that the crown lands have been under the control of the Government since 1865 "and their proceeds disbursed for governmental purposes." **This is not the fact.** I was Registrar of Public Accounts- that is, permanent head of the Hawaiian Treasury Department- from February 1882, up to December 1892, and during that entire period not one cent of the proceeds of the crown lands was ever paid into the treasury as a Government realization, and during this period of about eleven years, and indeed during the forty years which I lived on the islands, the income of the crown lands had not been treated as public revenue and was not in any shape or way under the disposition of control of the governments of the day. No portion of it was ever appropriated by the Hawaiian Legislature. A crown lands commission, first appointed under the Kamehamehas administered these lands and paid over the proceeds of the trust to the sovereign.

These facts should be known to the Senate, and I rely upon your sense of justice and fair play to publish this statement. If the heirs of the Kamehamehas cannot establish their claim before a competent tribunal, the crown lands would become public property, but they should not be denied this right without a hearing, because the lands are valuable and may assist the commissioners in making a showing of revenue to offset the debt and other obligations which the United States must assume under annexation.

My contention in law and fact is that the crown of Hawaii having been suppressed, the crown lands or royal domain which constituted part of the "Private lands" of Kamehameha KKK should revert to his heirs,

1. The Crown lands of the Hawaiian Kingdom constitute a trust created by Kamehameha Third, out of his personal and individual estate to maintain the state and dignity of the Hawaiian Crown.
2. That this trust has been scrupulously observed.
3. The rents from the crown lands have never been treated as public revenue, available for appropriation by the Hawaiian Legislature, but has gone to sustain the state and dignity of the Hawaiian sovereigns up to the date of the late revolution.
4. That the monarchy having been abolished and a republican or provisional Government having been established, the specific object for which the crown lands trust was created simultaneously disappears, and these lands revert of right to the legitimate heirs of Kamehameha the Third, according to well-established principles of law and also to the customs of Hawaiian inheritance and descent.

THE TRUST OF KAMEHAMEHA III

5. That the late reigning house of Kalakaua had no property right in the crown lands, either by blood descent or adoption, but simply enjoy the income therefrom in terms of the trust created by Kamehameha III providing a fund to support with becoming dignity the sovereign state to which they had been called by election. Upon their expulsion from the throne their interest to the crown lands was at an end and any act or deed assenting or purporting to assent to the transfer of said lands to the United States Government, either by Liliuokalani or Ka`iulani, by an agent or otherwise, is hereby protested against as incompetent and inoperative without the approval assent of the heirs of Kamehameha III.
6. That the Crown lands, never having belonged to the Hawaiian Government, it is not competent for the Provisional Government of Hawaii to cede them, and further, that the protestant on his own behalf and for and on behalf of the heirs of Kamehameha the Third hopes and believes that the United States Senate will not ratify an instrument which would involve the confiscation of a large amount of property, without investigation or compensation.

ARE THEY PRIVATE?
The Crown Lands of the Hawaiian Kingdom.
To the Editor of the Chronicle:— Sir: In to-day's issue you remark that my contention regarding the crown lands of Hawaii cannot be sustained by the United States Government, as it would be an acknowledgment that the monarchy had not been overthrown. It is just because the monarchy has been overthrown that I lodged my protest on behalf of the heirs of Kamehameha III, who thereby became entitled to the reversion of so much of the private lands of that King as were held in trust to provide a fund to maintain the dignity of the Hawaiian crown under his successors. That the facts are as I have stated is proven from the following editorial article in the Hawaiian Gazette, the official organ of the Provisional Government, of February 7, 1893:

The cession of the title of the crown lands will undoubtedly be considered in connection with Hawaii entering the American Union. The original ownership of these lands was in the Kamehameha line. The title of that line made over to the Government and people a long list of lands which were sold or awarded and patented to private individuals. In making this transfer, which was in 1848, the King declared that the rest of his lands as a "private land" to have and to hold to himself, his heirs and successors forever. His lands which have since been treated as the crown lands or royal domain. The line of "succession" having failed in the title now in the "heirs," or in the public government land? We believe the latter view to be the only sound one.

The Provisional Government hereby admits the fact, but ignores the heirs of the maker of the crown lands trust upon the suppression of the crown. Professor W. D. Alexander, a scrupulously conscientious man, personally familiar with the facts, in his "History of the Hawaiian People," published by authority, states unequivocally that the crown lands were set apart by the King as his private estate, distinct from the lands which he voluntarily surrendered to provide a revenue for the Government, and which were known as "Government lands." The latter lands the Provisional Government has a perfect right to cede, but I contend it has no more right to cede the private lands of the Kamehamehas, now that the crown has been suppressed, than it has to transfer the Bishop of Lonsdale's estate, or any other lands owned or held in trust under bequests from members of the Kamehameha line.

The treaty of annexation guarantees the enjoyment of all private property, and it is to prevent this obligation through misinformation that I lodged my protest. I notice that the commissioners of the Provisional Government state, in reference to my protest, that the crown lands have been under the control of the Government since 1855 "and their proceeds disbursed for governmental purposes." This is not the fact. I was Registrar of Public Accounts—that is, permit head of the Hawaiian Treasury Department—from February 1852, up to December, 1892, and during that entire period not one cent of the proceeds of the crown lands was ever paid into the treasury as a Government revenue, and during this period of about a even years, and indeed during the forty years which I lived on the islands, the income of the crown lands had not been treated as public revenue and was not in any shape or way under the disposition or control of the governments of the day. No portion of it was ever appropriated by the Hawaiian Legislature. A crown lands commission, first appointed under the Kamehamehas, administered these lands and paid over the proceeds of the trust to the sovereign.

These facts should be known to the Senate, and I rely upon your sense of justice and fair play to publish this statement. If the heirs of the Kamehamehas cannot establish their claim before a competent tribunal, the crown lands would become public property, but they should not be denied this right without a hearing, because the lands are valuable and may assist the commissioners in making a show-up of revenue to offset the debt and other obligations which the United States must assume under annexation.

My contention in law and fact is that the crown of Hawaii having been suppressed, the crown lands or royal domain which constituted part of the "private lands" of Kamehameha III should revert to his heirs, according to his act and declaration of settlement, to have and to hold to himself, his heirs and successors forever. The ex-Queen and her heirs have no claim whatever to the reversion of these lands, and any provision made for her and them should be made either from the Government lands or by permanent charge of the same, as I remain, etc.

F. S. PRATT,
Hawaiian Consul-General.

THE DELEGATE OF PROTEST
SAN FRANCISCO, February 10, 1893.
Hon. Lee C. Stockton, Vice-President of the United States Senate.
As a person directly interested in the Hawaiian treaty now before the United States Senate for ratification, I have the honor to request that you submit the following protest to that honorable body, to be considered with the said treaty. Respectfully,
F. S. PRATT, Hawaiian Consul-General.

To the President and Senate of the United States:— On behalf of my wife, Kamehameha, and other heirs of the royal line of Kamehameha founder of the Hawaiian monarchy, I hereby protest against the ratification of so much of the treaty of annexation negotiated between the United States Government and certain agents appointed by the Provisional Government of Hawaii as purports to cede the Crown lands of Hawaii to the United States Government, for the following among other reasons, which shall be reiterated and sustained by proof upon an independent and unprejudiced commission to be appointed by the President of the United States:

1. That the Crown lands of the Hawaiian Kingdom constitute a trust created by Kamehameha III, the third of his personal and individual estate, to maintain the state and dignity of the Hawaiian Kingdom.
2. That the trust has been scrupulously observed.
3. That the revenues of the crown lands have never been treated as public revenue, available for appropriation by the Hawaiian Legislature, but have gone to sustain the civil and dignity of Hawaii as a sovereign up to the date of the late revolution.
4. That the monarchy having been abolished and a republican or provisional Government having been established, the specific object for which the crown lands trust was created, and which has since disappeared, and these lands revert to the legitimate heirs of Kamehameha III (the Third) according to well established principles of law and plan to the custom of Hawaiian inheritance and descent.

THE TRUST OF KAMEHAMEHA III.

5. That the late reigning house of Kalakaua had no property right in the crown lands either by direct descent or adoption, but simply enjoyed the income therefrom in form of the trust created by Kamehameha III providing a fund to support with becoming dignity the sovereign state to which they had been called by election. Upon their expulsion from the throne their interest in the crown lands was at an end and any act or deed asserting or purporting to assert to the transfer of said lands to the United States Government, either by individual or by public, by an agent or otherwise, is hereby protested against as incompetent and illegitimate without the approval and assent of the heirs of Kamehameha III.
6. That the Crown lands, never having belonged to the Hawaiian Government, it is not competent for the Provisional Government of Hawaii to cede them, and further, that the protestant on his own behalf and for and on behalf of the heirs of Kamehameha III the Third begs and believes that the United States Senate will not ratify an instrument which would involve the confiscation of a large amount of property, without investigation or compensation.
7. That protestant believes that such an act of injustice by the United States Government would have a most disturbing effect upon the Hawaiian American under their loss of country and independence, and might probably lead to disastrous consequences, without any compensating advantages.

Respectfully submitted,
F. S. PRATT,
Hawaiian Consul-General.
San Francisco, February 10, 1893.

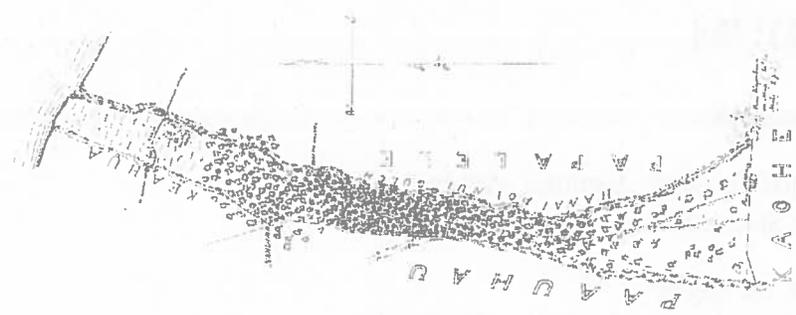
Notes of Survey.

Kalofun, Hamakha, Hawaii.

Survey of land in Hamakha, Hawaii, by W. G. Hall, U.S. Geol. Surv., 1877.

THE LANDS	NEW BEL	MEASUREMENT	EXPLANATION	REMARKS
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Plan of Survey.



Survey by W. G. Hall, U.S. Geol. Surv., 1877.





GENEVA SCHOOL OF DIPLOMACY & INTERNATIONAL RELATIONS

UNIVERSITY INSTITUTE

MEMORANDUM

Date: 14 December 2018

To: United Nations Secretary General, António Guterres
and Member States of the United Nations

From: Dr. Alfred M. de Zayas
Professor of Law, Geneva School of Diplomacy
United Nations Independent Expert on the promotion of a democratic and equitable
international order (May 2012-April 2018)

Re: The application of international law in the context of the Hawaiian Islands

On 25, February 2018, in my capacity as Professor of Law and UN Independent Expert for the promotion of a democratic and equitable international order, I stated in a Memorandum to Honorable Jeanette H. Castagnetti, Honorable Gary W.B. Chang, and members of the U.S. State of Hawaii Judiciary;

"... the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)."

My memorandum was based on knowledge obtained during decades of work as a lawyer with the Office of the UN High Commissioner for Human Rights, followed by six years as Human Rights Council mandate holder, spanning the study of reports, complaints, interventions and petitions submitted by Hawaiians to various Committees and bodies of the United Nations with regard to the situation of the Hawaiian Islands.

Legal and historical questions raised by Hawaiians at the United Nations regarding the political status of the Hawaiian Islands stretch back over forty years. Admittedly controversial and complex, these issues were relevant to my mandate pursuant to Human Rights Council Resolution 18/6, which emphasizes the necessity to implement the *jus cogens* right of self-determination.

to its security or an obstacle to the application of the international law of occupation. 3) Reprisals against protected persons or their property are prohibited. 4) The confiscation of private property by the occupier is prohibited.

Madam Bolomet not only meets the definition of a Civilian Protected Person under Geneva Convention (IV) defined in the 12 August 1949. COMMENTARY OF 1958 [p.45] ARTICLE 4; as a direct descendant of several Hawaiian Kingdom High Ali'i (Royalty), thus also qualifying as a descendant of a Head of State for "International Protected Person" status under the Protection of Diplomats Convention the UNGA adopted 14 December 1973.

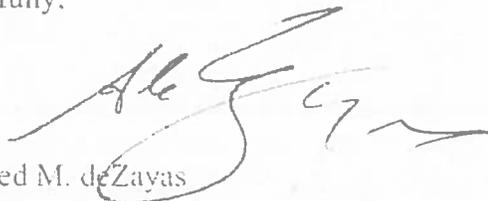
A central provision of the convention is the principle of *aut dedere aut judicare* — that a party to the treaty must either (1) prosecute a person who commits an offence against an internationally protected person or (2) send the person to another state that requests his or her extradition for prosecution of the same crime.

All members of the State of Hawaii Judiciary are required to take an oath to uphold the U.S. Constitution. Article VI, Paragraph 2 of the U.S. Constitution, establishes that federal laws made pursuant to it, and treaties (such as the Geneva and Hague conventions) duly ratified, constitute **the supreme law of the land**. This is also the tenor of the US Supreme Court judgment in the *Paquete Habana* case (175 U.S. 677 (1900))
<https://supreme.justia.com/cases/federal/us/175/677/>

Therefore, judges and other officers of the courts of the State of Hawaii are bound by their oaths to respect, honor and apply such international laws to which the United States has subscribed. The judges and justices serving in the U.S. State of Hawaii judicial system are bound by their oaths of office to comply with appropriate international laws when applicable. But numerous complaints submitted to the UN indicate the judges and justices of the U.S. State of Hawaii completely disregard and even display contempt for international laws.

The ongoing plundering of Hawaiian Kingdom Private Lands by the legal systems of the United States and the State of Hawaii calls for an emergency investigation and intervention holding all those who are willful participants to be held accountable to U.S. Federal and international law. It is my understanding that the U.S. Executive Office and the U.S. Department of State have been put on notice of Mme Bolomet's "International Protected Person's Status" as a Hawaiian Kingdom subject as well as an heir of the Head of State; King Kamehameha I. But those U.S. offices have refused to acknowledge Mme Bolomet's status and have not made any effort to provide relief. Therefore, by *aut dedere aut judicare*, all signatories to the Hague and Geneva Conventions have a legitimate interest and an *erga omnes* obligation to hold wrong doers to the highest standard of compliance to the Conventions.

Respectfully,



Dr. Alfred M. deZayas

UN Independent Expert on the promotion of a democratic and equitable international order 2012-2018...

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Presiding Officer Pro Tempore
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Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 2, 2019

Mr. Benjamin Kudo, Chair
and Regent Board Members
University of Hawai'i System
2444 Dole Street, Bachman Hall 209
Honolulu, HI 96822

**SUBJECT: PROPOSED CONSTRUCTION OF THIRTY-METER
TELESCOPE ON THE SUMMIT OF MAUNA KEA**

Dear Chair Kudo and Board Members,

Aloha mai kakou, my name is Tamara Paltin, and I am testifying today on behalf of myself as an elected official of the Maui County Council, the Maui County Council has not taken a stance on this issue and so I am speaking as an individual councilmember.

I want to address agenda item III. D. regarding the appointment of a group to make recommendations based on Maunakea Governance and urge that the entire Board do one thing first: Forfeit the Conservation District Use Permit for the TMT and direct the TMT to go elsewhere.

I have already written two letters to University of Hawaii President David Lassner, regarding my concerns about what appears to be the invalidity of General Lease S-4191, originally granted to the University of Hawaii by the Board of Land and Natural Resources in 1968 and now subleased to TMT.

To date, he has not addressed the concerns for native tenant rights and the destruction of property presented in my original letter.

I would like to remind you, that the general understanding of Hawaii's legal and political history has evolved significantly since the lease was originally granted to the University of Hawaii in 1968. This is not an issue of science and jobs versus Native Hawaiian culture; the issue is violations of the law and just rights of Native Hawaiians in the name of science and jobs.

Ben Kudo, Chair
and Regent Board Members
August 2, 2019
Page 2 of 2

The University of Hawaii cannot escape the fact that even the United States Congress, in its Apology Resolution in 1993 (107 Stat. 1512), admitted that the overthrow of the Hawaiian Kingdom government was not only unlawful but that the so-called transfer of Hawaiian government and crown lands, which included the ahupua'a of Ka'ohē, to the United States in 1898, was done without the consent of or compensation to the Native Hawaiian people of Hawai'i or their sovereign [Hawaiian Kingdom] government. Therefore, because the transfer of property occurred without consent, the lease and subsequent sublease to TMT is invalid and none of this was known in 1968.

When Congress admitted that the transfer of the property occurred without consent, it is an admission of who the true owner of the fee-simple title to Ka'ohē is, which isn't the United States or the State of Hawai'i. The University of Hawai'i's general lease needs to be understood in this light which clearly makes it invalid, and, therefore, the sublease to TMT is invalid.

The proposed scope of the Permitted Interaction Group to be known as the Maunakea Governance Task Group, is to investigate issues related to the university's stewardship and governance activities on Maunakea, and make finding and recommendation to the Board of Regents regarding the development of a statement expressing principles supported by the Board as it pertains to Maunakea.

I am requesting that you as the Board of Regents and the Maunakea Governance Task Group have the University's legal counsel review the assessment of the current situation and defend the validity of the general and sublease. Please also consider there are currently two storms headed towards Hawai'i and there is grave concern for kupuna and all those on Maunakea.

Thank you for your genuine consideration of this very serious matter, your earnest attention is greatly appreciated. Should you have any questions regarding my request, please contact me by email at Tamara.Paltin@mauicounty.us or by phone at (808) 270-5504.

Sincerely,



TAMARA PALTIN
Councilmember

Attachments

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

July 12, 2019

David Lassner, President
University of Hawai'i System
2444 Dole Street, Bachman Hall
Honolulu, HI 96822

**SUBJECT: PROPOSED CONSTRUCTION OF THIRTY-METER
TELESCOPE ON THE SUMMIT OF MAUNA KEA**

Dear President Lassner:

This urgent plea is in response to Governor Ige's recent announcement informing of the July 15, 2019 construction start date of the Mauna Kea Thirty-Meter Telescope ("TMT") under the purview of the University of Hawaii at Hilo.

I have grave concerns for the safety of Maui County's residents and all individuals mobilizing to access and assemble atop Mauna Kea.

It is unsettling that "preparation for potential arrests if people illegally protest construction on Mauna Kea" is underway, as well as the tactics of allegedly engaging the use of Long-Range Acoustic Hailing Devices also known as "LRAD" on our people by law enforcement personnel.

Instead, if safety was truly a concern by both the Governor and yourself President Lassner, sensitivity and accommodations should be deployed for our citizenry who have every right to be on that summit for their religious and cultural practices and for protest purposes. Extreme weather is common place up at the Summit, maybe the presence of law enforcement can be replaced with first responders should our kupuna elders, keiki or anyone on that Mauna need the assistance.

Mr. David Lassner
July 12, 2019
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Replace the deployment of LRADs with the staging of portable personal care units (i.e. porta-potties) so our people don't have to worry about holding back on hydrating themselves while on the Mauna.

Recently, the Maui County Council's Planning and Sustainable Land Use Committee ("PSLU Committee"), which I serve as Chair, invited Dr. Keanu Sai to present an "Update on Land Use and Planning in Consideration of Hawai'i's Status Under International Law." As you may be aware, Dr. Sai is a product of our University of Hawai'i at Manoa political science department where he received his M.A. degree specializing in international relations in 2004 and his Ph.D. on the continuity of the Hawaiian Kingdom under international law in 2008.

On May 15, 2019, Dr. Sai provided a workshop for the committee members titled "Legal Status of the Hawaiian Kingdom under International Law," which was filmed and televised as a two-part series and uploaded online. Maui Time Weekly newspaper also did a feature story on Dr. Sai's presentation, which has a wide circulation throughout the island of Maui.

Dr. Sai's presentation on the continued existence of the Hawaiian Kingdom under international law was evidence-based and very compelling and undeniable. The evidence clearly demonstrated that Hawai'i has been under a prolonged and unlawful occupation by the United States since January 17, 1893.

We learned that as an occupying Power, the United States was, and still is obligated to administer Hawaiian Kingdom law and not the laws of the United States, which included the 1959 Statehood Act. This understanding prompted Council member Alice Lee, after providing a historical and legal narrative of the occupation, to ask Dr. Sai, "How do we operate in the meantime?"

Because Dr. Sai's presentation prompted questions by the Council members as to how the Council should deal with the impact of international law, he was asked to do a follow-up presentation on June 5, 2019. The title of his second workshop was "Stability versus Change: Compliance and the Rule of Law," which was also filmed and televised as a four-part series and uploaded online. In my capacity as the Chair of the PSLU Committee, and to uphold our

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duties as legislators for the County of Maui we are taking steps to address compliance with international humanitarian law.

In the meantime, it has recently been brought to my attention that residents from the County of Maui will be flying to the Island of Hawai'i this month to assemble on the summit of Mauna Kea to exercise traditional Native Hawaiian customs and practices, as well as to protest the proposed construction of the TMT.

It is because of the further clarity and awareness gained from Dr. Sai's trainings, and the understanding that the Hawaiian Kingdom has been under an illegal and prolonged occupation, that I requested from Dr. Sai, whom I recognize to be an expert on international and Hawaiian Kingdom law, insights on the matter of the legality of the TMT on so-called ceded lands, the ability of our people to safely assemble and protest, and exercise their cultural traditions and practices atop their Mauna that for centuries has been considered sacred and revered by Native Hawaiians.

In my July 5, 2019 letter of request to Dr. Sai, I specifically asked, "With regard to the aspects of the proposed construction of the thirty-meter telescope ("TMT"), please provide your insight as it relates to the topic of so-called ceded lands and the proposed construction of the TMT on the summit of Mauna Kea, as the ahupua'a of Ka'ohē is government so-called ceded lands." On July 9, 2019 I received Dr. Sai's response.

Dr. Sai's letter addressed three topics that underlie the proposed TMT construction. The first topic he covered was the invalidity of General Lease No. S-4191 between the State of Hawai'i Board of Land and Natural Resources, as the lessor, and the University of Hawai'i, as the lessee. The second topic covered was the war crime of destruction of property on the summit of Mauna Kea by the previous telescopes. And the third topic was native tenant rights within the ahupua'a of Ka'ohē. Dr. Sai's response was quite illuminating to say the least, and it deserves your serious attention given the profound ramifications under international law. I have enclosed Dr. Sai's letter with his enclosures.

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After Dr. Sai covers the serious subject of alleged war crimes, he specifically addresses the University of Hawai'i's general lease. On this he concludes:

Complicating matters would be the fact that the University of Hawai'i's general lease is invalid and therefore its sublease to TMT is void. As there is no evidence of consent from the Hawaiian Kingdom government to either the University of Hawai'i or for TMT, to include TMT's construction company Goodfellow Bros., to be on the summit of Mauna Kea, they would be the trespassers on government lands, and not those who would oppose the destruction of the property. Aboriginal Hawaiians who call themselves protectors of the mauna have more of a right to the summit under their "native tenant rights" than the University of Hawai'i or TMT who have no rights in the absence of a valid lease. They are, after all, protecting their rights against an unlawful encroachment by entities lacking permission of the true titled owner.

As my foremost concern is for the safety and protection of residents of Maui County who will be opposing TMT's construction, **I urgently request that you put a hold on the construction until you have reviewed Dr. Sai's letter,** which has been made a part of the record of the PSLU Committee.

I also recommend that you provide his letter with attachments to your legal counsel at the University of Hawai'i to also review and to determine whether or not Dr. Sai's assessment of the situation is misplaced given the severity of the consequences upon the University of Hawai'i System and those that are implicated in the proposed construction of TMT as noted by Dr. Sai. TMT's construction company Goodfellow Bros. is home based in the County of Maui.

Please do not disregard my urgent request to stand down there are severe consequences that may ensue as explained by Dr. Sai. This is not a political issue, but an issue of the rule of law, which is foundational and for our communities throughout the islands to have confidence that State of Hawai'i officials, to include the Counties, believe in and abide by.

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Thank you for your consideration of this very serious matter and your earnest attention would be greatly appreciated.

Should you have any questions regarding my urgent request, please contact me by email at Tamara.Paltin@mauicounty.us or by phone at (808) 270-5504.

Sincerely,



TAMARA PALTIN
Councilmember

Attachments

cc: The Honorable David Ige, Governor, State of Hawai'i
Clare Connors, Attorney General, State of Hawai'i
Suzanne Case, Chair, Board of Land and Natural Resources, State of Hawai'i
Henry Yang, Ph.D., Chair, TMT International Observatory (TIO) Board of Governors
Chad Goodfellow, Chief Executive Officer, Goodfellow Bros., Inc.
The Honorable Harry Kim, Mayor, County of Hawai'i
The Honorable Valerie T. Poindexter, Councilmember, Hawai'i County Council
The Honorable Aaron Chung, Chairman, Hawai'i County Council
The Honorable Karen Eoff, Vice-Chair, Hawai'i County Council

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cc cont'd:

The Honorable Susan L.K. Lee Loy, Councilmember, Hawai'i County Council

The Honorable Ashley Lehualani Kierkiewicz, Councilmember, Hawai'i County Council

The Honorable Matt Kaneali'i-Kleinfelder, Councilmember, Hawai'i County Council

The Honorable Maile Medeiros David, Councilmember, Hawai'i County Council

The Honorable Rebecca Villegas, Councilmember, Hawai'i County Council

The Honorable Herbert M. Richards III, DVM, Councilmember, Hawai'i County Council

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References Cited:

Public Meeting Notice, Council of the County of Maui—Planning and Sustainable Land Use Committee (9 May 2019), Pursuant to Rule 7(B) of the Rules of the Council, the Committee intends to receive a presentation from Dr. David Keanu Sai relating to an update on the land use and planning in consideration of Hawaii’s status under international law and other related matters,” available online at <https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/26015>. Minutes also available online at <https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/26151>.

Video of Dr. Keanu Sai’s Presentation to the Maui County Council’s Planning and Sustainable Land Use Committee (15 May 2019) available at <https://hawaiiankingdom.org/blog/video-of-dr-keanu-sais-presentation-to-the-maui-county-council-on-the-status-of-the-hawaiian-kingdom-under-international-law/>.

Maui Time newspaper, *Hawai‘i: The Fake State—Dr. David Keanu Sai talks to the Maui County Council about the ongoing American occupation of the Hawaiian Kingdom* (24 May 2019), available at <https://mauitime.com/news/politics/hawaii-the-fake-state-dr-david-keanu-sai-talks-to-the-maui-county-council-about-the-ongoing-american-occupation-of-the-hawaiian-kingdom/>.

Public Meeting Notice, Council of the County of Maui—Planning and Sustainable Land Use Committee (30 May 2019), “The Committee received a presentation from Dr. David Keanu Sai at its meeting of May 15, 2019. The Committee may receive another presentation from Dr. David Keanu Sai and discuss related matters,” available online at <https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/26079>.

Video of Dr. Keanu Sai’s Second Presentation to the Maui County Council’s Planning and Sustainable Land Use Committee (5 June 2019), available online at <https://hawaiiankingdom.org/blog/video-of-dr-keanu-sais-second-presentation-to-the-maui-county-council-on-how-the-county-council-complies-with-international-law/>.

July 9, 2019

Hon. Madame Chair Tamara Paltin
Planning and Sustainable Land Use Committee
Maui County Council

Re: Letter of July 5, 2019 requesting insight on proposed TMT construction on Mauna Kea summit

Aloha Madame Chair:

This memorandum is in response to your letter dated July 5, 2019, requesting any insight I might have “as it relates to the topic of so-called ceded lands and the proposed construction of the TMT on the summit of Mauna Kea, as the ahupua‘a of Ka‘ohe is government so-called ceded lands.” Additionally, you stated that you “have grave concern for the safety of Maui County’s residents who may choose to assemble at Mauna Kea in support and solidarity for the protection of Mauna Kea and in opposition to the proposed development.”

Your letter acknowledges the two training sessions I did for the Maui County Council Planning and Sustainable Land Use Committee (“Land Use Committee”) on the subject of Hawai‘i’s status under international law and that the “information of historical facts and events spanning Hawai‘i’s past one-hundred-seventy-six years provides a foundational framework to be considered as part of our modern-day decision-making.” You further wrote, “Now we overlay the foundational framework with what is occurring on the ground in real time, and question what is happening vs. what should be happening considering this foundational framework we’ve all learned from the training.”

First, I would like to state that your concerns are well founded and that the proposed construction of TMT on the summit of Mauna Kea has serious implications under the international law of occupation, also called international humanitarian law, and human rights law.

In light of the Land Use Committee’s awareness of: the continued existence of the Hawaiian Kingdom that has been under a prolonged occupation by the United States since January 17, 1893 (Enclosure “1”); the restoration of the Hawaiian government as a Regency in 1996 that represented the Hawaiian Kingdom in international arbitral

proceedings at the Permanent Court of Arbitration, The Hague, Netherlands, in *Larsen v. Hawaiian Kingdom* from 1999-2001 (Enclosure “2”); the 2014 proclamation of the Council of Regency recognizing current United States laws that have been illegally imposed in Hawaiian territory as the provisional laws of the Hawaiian Kingdom so long as these laws do not run contrary to the letter, spirit and intent of Hawaiian Kingdom law (Enclosure “3”); the 2019 proclamation of the Council of Regency establishing the Royal Commission of Inquiry to investigate the consequences of the United States’ belligerent occupation, including with regard to international law, humanitarian law and human rights, and the allegations of war crimes committed in that context (Enclosure “4”); and, the 2019 proclamation of the Council of Regency recognizing the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law (Enclosure “5”), I respectfully submit for your consideration the following insights on this very important topic.

This memorandum will first address what are three salient topics that underlie the proposed TMT construction. These topics include: first, the invalidity of General Lease No. S-4191 between the State of Hawai‘i Board of Land and Natural Resources, as the lessor, and the University of Hawai‘i as the lessee; second, the war crime of destruction of property on the summit of Mauna Kea; and, third, Native Tenant property rights within the ahupua‘a of Ka‘ohe, which includes the summit of Mauna Kea. I will finish with my concluding remarks.

General Lease No. S-4191 is Invalid

Under General Lease No. S-4191 dated June 21, 1968, the Board of Land and Natural Resources of the State of Hawai‘i, as lessor, issued a 65-year lease to the University of Hawai‘i with a commencement date of January 1, 1968 and a termination date of December 31, 2033. The lease is comprised of 11,215.554 acres, more or less, being a portion of Government lands of the ahupua‘a of Ka‘ohe situated at Hamakua, Island of Hawai‘i identified under Tax Map Key: 3rd/4.4.15:09.

The State of Hawai‘i claims to have acquired title under Section 5(b) of the 1959 *Hawai‘i Admissions Act*, Public Law 86-3 (73 Stat. 4), whereby “the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States’ title to all public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union.” The United States derives its title from the 1898 *Joint Resolution of Annexation* (30 Stat. 750), which states “Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution...to cede and transfer to

the United States the absolute fee and ownership of all public, Government, or Crown lands.”

The Republic of Hawai‘i proclaimed itself on July 3, 1894, by a convention comprised of appointed members of the Provisional Government and eighteen “elected” delegates. The Provisional Government proclaimed itself on January 17, 1893 and claimed to be the successor of the Hawaiian Kingdom. The Hawaiian Kingdom’s title derives from the 1848 *Act Relating to the Lands of His Majesty The King and of the Government*, whereby the ahupua‘a of Ka‘ohe is “Made over to the Chiefs and People, by our Sovereign Lord the King, and we do hereby declare those lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants.”

According to President Grover Cleveland, in his message to the Congress after investigating the illegal overthrow of the Hawaiian Kingdom government that took place on January 17, 1893, the Provisional Government “was neither a government *de facto* nor *de jure*.”¹ He did not consider it a government. The President also concluded that “the provisional government owes its existence to an armed invasion by the United States.”² Being a creature, or creation, of the US, it could not claim to be the lawful successor of the Hawaiian Kingdom government with vested title to the ahupua‘a of Ka‘ohe. As the successor to the Provisional Government, the Republic of Hawai‘i, as it self-declared successor, could not take any better title than the Provisional Government and hence did not have title to Ka‘ohe. The U.S. Congress in the 1993 Apology Resolution noted that the Republic of Hawai‘i was “self-declared.”³

The United States claims to have acquired title to Ka‘ohe, by cession, from the Republic of Hawai‘i under the 1898 Joint Resolution of Annexation. International law recognizes that the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State.”⁴ The Joint Resolution of Annexation is not “an agreement embodied in a treaty.” It is a U.S. municipal law from the Congress merely asserting that cession took place. The situation is not unlike a neighbor holding a family meeting and claiming that they have agreed that your house is now their house.

In a debate on the Senate floor on July 4, 1898, Senator William Allen stated:

The Constitution and the statutes are territorial in their operation; that is, they can not have any binding force or operation beyond the territorial limits of the

¹ President Cleveland’s Message to the Congress (Dec. 18, 1893), p. 453, available online at [https://hawaiiankingdom.org/pdf/Cleveland's_Message_\(12.18.1893\).pdf](https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).

² *Id.*, p. 454.

³ 107 Stat. 1510.

⁴ L. Oppenheim, *International Law*, vol. 1, second edition, 286 (1912).

government in which they are promulgated. In other words, the Constitution and statutes can not reach across the territorial boundaries of the United States into the territorial domain of another government and affect that government or persons or property therein.⁵

The joint resolution is ipso facto null and void.⁶

In 1988, the U.S. Department of Justice, Office of Legal Counsel (“OLC”) issued a legal opinion on the lawfulness of the annexation of Hawai‘i by a joint resolution.⁷ In its opinion, it cited constitutional scholar Westel Willoughby:

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 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.⁸

The OLC concluded, “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”⁹ The United States cannot produce any evidence of a conveyance of the ahupua‘a of Ka‘ohe from a grantor, vested with the title. All it can produce is a joint resolution of Congress. This is not a conveyance from a foreign State ceding territory.

Instead of providing evidence of a conveyance of territory, i.e. treaty of cession, the State of Hawai‘i Supreme Court in its October 30, 2018 majority decision *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, quoted from a book titled *Who Owns the Crown Lands of Hawai‘i* written by Professor Jon Van Dyke.

The U.S. Supreme Court gave tacit recognition to the legitimacy of the annexations of Texas and Hawai‘i by joint resolution, when it said in *De Lima v. Bidwell*, 182 U.S. 1, 196 (1901), that “territory thus acquired [by conquest or treaty] is acquired as absolutely as if the annexation were made, as in the case of Texas and Hawaii,

⁵ 31 Cong. Rec. 6635 (1898).

⁶ 33 Cong. Rec. 2391 (1900).

⁷ Douglas Kmiec, Department of Justice, “Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” 12 *Opinions of the Office of Legal Counsel* 238 (1988).

⁸ *Id.*, p. 252.

⁹ *Id.*

by an act of Congress.” See also *Texas v. White*, 74 U.S. (7 Wall.) 700 (1868), stating that Texas had been properly admitted as a state in the United States.¹⁰

It is unclear what Professor Van Dyke meant when he stated that the U.S. Supreme Court “gave tacit recognition to the legitimacy of the annexation of Texas and Hawai‘i by joint resolution,” because tacit, by definition, is to be “understood without being openly expressed or stated.”¹¹ Furthermore, this statement is twice irrelevant: first, the Court as a third party to any cession of foreign territory has no standing to make such a conclusion as to what occurred between the ceding and receiving States; and, second, its opinion is a fabrication or what American jurisprudence calls a legal fiction. Legal fictions treat “as true a factual assertion that plainly was false, generally as a means to avoid changing a legal rule that required a particular factual predicate for its application.”¹²

According to Professor Smith, a “judge deploys a new legal fiction when he relies in crafting a legal rule on a factual premise that is false or inaccurate.”¹³ These “new legal fictions often serve a legitimating function, and judges may preserve them—even in the face of evidence that they are false—if their abandonment would have delegitimizing consequences.”¹⁴

The proposition that Texas and Hawai‘i were both annexed by joint resolutions of Congress is clearly false. In the case of Texas, Congress consented to the admission of Texas as a State by joint resolution on March 1, 1845 with the following proviso, “Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments.” This condition was referring to Mexico because as Texas was comprised of insurgents who were fighting for their independence, Mexico still retained sovereignty and title to the land. In its follow up joint resolution on December 29, 1845 that admitted Texas as a State of the Union, it did state that the Congress consented “that the territory properly included within, and rightfully belonging to, the Republic of Texas.” These actions taken by the Congress is what sparked the Mexican-American War in 1846.

Congress’ statement of “rightfully belonging” is an opinion and the resolution mentions no boundaries. The transfer of title to the territory, which included the territory comprising Texas, came three years later on February 2, 1848 in a treaty of peace that ended the Mexican-American War.

¹⁰ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Opinion, State of Hawai‘i Supreme Court (Oct. 30, 2018), p. 46.

¹¹ Black’s Law, 6th ed. (1990), p. 1452.

¹² Peter J. Smith, “New Legal Fictions,” 95 *The Georgetown Law Journal* 1435, 1437 (2007).

¹³ *Id.*

¹⁴ *Id.*, p. 1440.

Under Article V of the treaty, the new boundary line between the United States and Mexico was to be drawn. “The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte.”¹⁵ Rio Brava del Norte is the southern tip of Texas. If Texas was indeed annexed in 1845 by a joint resolution with its territory intact, there was no reason for the treaty to specifically include the territory of Texas. If it were true that Texas territory was ceded in 1845, Article V of the treaty would have started the boundary line just west of the Texas city of El Paso, which is its western border, and not from the Gulf of Mexico at its southern border. The truth is that the territory of Texas was not annexed by Congress in 1845 but was ceded by Mexico in 1848. The Rio Grande river is the southern border for the State of Texas.



With regard to the so-called annexation of Hawai'i in 1898 by Congress, there is no treaty ceding Hawaiian territory as in the case of Texas. Like the Texas resolution, Congress stated,

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

¹⁵ Treaty of Guadalup Hidalgo, 9 Stat. 926 (1848).

belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining...

The reference to consent by its constitution is specifically referring to Article 32, which states, the “President, with the approval of the Cabinet, is hereby expressly authorized and empowered to make a Treaty of Political or Commercial Union between the Republic of Hawaii and the United States of America, subject to the ratification of the Senate.”¹⁶ There is no treaty between the so-called Republic of Hawai‘i and the United States. Furthermore, a constitutional provision is not an instrument of conveyance as a treaty would be. So without a treaty from the Hawaiian Kingdom government as the ceding State vested with the sovereignty and title to government lands, which includes the ahupua‘a of Ka‘ohe, there was no change in the ownership of the government lands.

Furthermore, Hawaiians of the day knew there was no treaty as evidenced in the Maui News newspaper published October 20, 1900. The Editor wrote,

Thomas Clark, a candidate for Territorial senator from Maui holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come into power they will show the thing up in its true light and demonstrate that that the Islands are de facto independent at the present time.

The legal fiction that Texas and Hawai‘i were annexed by a joint resolution of the Congress is just a patently false when measured “against the results of existing empirical research.”¹⁷ For the State of Hawai‘i Supreme Court to restate, and embrace, this falsifiable legal fiction is simply a trick that allows it to fabricate its own false and falsifiable fiction regarding the State of Hawai‘i. In its TMT decision the Court, in conflict with overwhelming evidence, stated, “[W]e reaffirm that ‘[w]hatever may be said regarding the lawfulness’ of its origins, ‘the State of Hawai‘i...is now a lawful government.’”¹⁸ For the State of Hawai‘i to be a “lawful government” it must be vested with lawful authority absent of which it is not lawful. The State of Hawai‘i Supreme Court, being a branch of the State of Hawai‘i itself, cannot declare it “is now a lawful government” without making reference to some intervening factor that vested the State of Hawai‘i with lawful authority.

When addressing the lawful authority and sovereignty of the United States of America, the United States Supreme Court specifically referred to a particular and significant intervening factor. It stated that as “a result of the separation from Great Britain by the

¹⁶ Constitution of the Republic of Hawai‘i, *Roster Legislatures of Hawaii*, 1841-1918 (1918) p. 198.

¹⁷ Smith, “New Legal Fictions,” p. 1439.

¹⁸ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Opinion, State of Hawai‘i Supreme Court (Oct. 30, 2018), p. 46.

Colonies, acting as a unit, the powers of external sovereignty passed from the Crown not to the Colonies severally, but to the Colonies in their collective and corporate capacity as the United States of America.” The Court was referring to “the Treaty of Paris of September 3, 1783, by which Great Britain recognized the independence of the United States.”¹⁹

It has been erroneously assumed that the US Congress vested the State of Hawai‘i with lawful authority in the 1959 Statehood Act²⁰ in an exercise of the constitutional authority of Congress to admit new States into the Federal union under Article IV, section 3, clause 1. There is no provision in the US constitution for the admission of a state to the union that is on territory not owned by the US. So before the US Congress can admit a new State to the US the US must “own” the territory. According to the United States Supreme Court:

Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens...., and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.²¹

Since the Hawaiian Islands were never annexed by the United States via treaty, Congressional acts, which are municipal laws, may only operate on the territory of the United States. The United States Supreme Court is relatively clear on this point and has stated that the “municipal laws of one nation do not extend in their operation beyond its own territory except as regards its own citizens.”²² In another decision, the United States Supreme Court reiterated, that “our Constitution, laws and policies have no extraterritorial operation unless in respect of our own citizens.”²³

Under international law, the United States is an occupying power in the Hawaiian Islands and as such the occupying Power is obligated, under Article 43 of the 1907 Hague Convention, IV, and Article 64 of the 1949 Geneva Convention, IV, to administer Hawaiian Kingdom laws. In his communication to the members of the Judiciary of the State of Hawai‘i of February 25, 2018, the United Nations Independent Expert, Dr. Alfred deZayas, reiterated this obligation under international law.

I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application

¹⁹ *United States v. Louisiana et al.*, 363 U.S. 1, 68 (1960).

²⁰ 73 Stat. 4.

²¹ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

²² *The Appollon*, 22 U.S. (9 Wheat.) 362 (1824).

²³ *United States v. Belmont*, 301 U.S. 324, 332 (1936).

of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States) (Enclosure “6”).

The United States never acquired any kind of title to Ka‘ohe and, since one can only convey what one has, it could not convey what it did not have to the State of Hawai‘i under Section 5(b) of the 1959 Admissions Act. Thus the State of Hawai‘i was never lawfully vested with any title to the ahupua‘a of Ka‘ohe, and therefore its so-called general lease no. S-4191 to the University of Hawai‘i dated June 21, 1968 is defective. Under Hawaiian Kingdom law, the ahupua‘a of Ka‘ohe is government land under the management of the Ministry of the Interior and not the State of Hawai‘i Board of Land and Natural Resources. Consequently, all 10 subleases from the University of Hawai‘i that extend to December 31, 2033 are defective as well, which include:

- National Aeronautics and Space Administration dated November 29, 1974;
- Canada-France-Hawai‘i Telescope Corporation dated December 18, 1975;
- Science Research Council dated January 21, 1976;
- California Institute of Technology dated December 20, 1983;
- Science and Engineering Research Council dated February 10, 1984;
- California Institute of Technology dated December 30, 1985;
- Associated Universities, Inc., dated September 28, 1990;
- National Astronomical Observatory of Japan dated June 5, 1992;
- National Science Foundation dated September 26, 1994; and
- Smithsonian Institution dated September 28, 1995.

As such, the University of Hawai‘i’s sublease to TMT International Observatory, LLC, is also defective. Therefore, the University of Hawai‘i cannot sublease what it does not have to TMT International Observatory LLC.

The War Crime of Destruction of Property

According to Article 55 of the 1907 Hague Convention, IV, “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.” As the title to Ka‘ohe remains vested in the Hawaiian government as public land there is a duty that anything done on public property must be in accordance with the rules of usufruct, which, by definition, is the “right of using and enjoying and receiving the profits of property that belongs to another.”²⁴

Article 147 of the Geneva Convention, IV, lists as a grave breach the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully

²⁴ Black’s Law, p. 1544.

and wantonly.” This grave breach is expanded under Article 53, any “destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State [Hawaiian Kingdom], or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” The Commentary to the Geneva Convention, IV, states:

In the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of cooperative organizations. The extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences must be respected.²⁵

Section 402 of the United States Army Field Manual 27-10 provides:

Real property of the [occupied] State which is essentially of a non-military nature, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged or destroyed unless such destruction is rendered absolutely necessary by military operations ... The occupant does not have the right of sale or unqualified use of such property. As administrator, usufructuary, he should not exercise his rights in such a wasteful and negligent manner as seriously to impair its value.

In international criminal law, the *actus reus* present on Mauna Kea are the acts of destruction of property belonging to the Hawaiian Kingdom as the Occupied State. The *mens rea* requires that the perpetrator act with intent to destroy the property and with knowledge that the owner of the property is the Hawaiian Kingdom government. The *actus reus* and *mens rea* are met as evidenced in the State of Hawai‘i Supreme Court decisions *In the Matter of Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka‘ohe Mauka, Hamakua, Hawai‘i, TMK (3) 404015:009*.

On October 30, 2018, the Hawai‘i Supreme Court affirmed a decision of the Board of Land and Natural Resources which issued a conservation district use permit for TMT near the

²⁵ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 301.

summit of Mauna Kea.²⁶ In its decision, the majority of the court did not, because it could not, refute the claim that “the ahupua‘a of Ka‘ohe in the District of Hamakua are lands still held by the Hawaiian Kingdom.”²⁷ Somewhat amazing was its open acknowledgement that eleven observatories built since 1970²⁸ on the summit of Mauna Kea did destroy the property.

The majority stated:

Construction of these observatories and roads has had significant cumulative adverse impacts on cultural, archaeological, and historic resources in the MKSR [Mauna Kea Science Reserve]. The observatories have also had significant cumulative adverse impacts on geology, soils, and slope stability in the MKSR because they significantly modified the preexisting terrain, the tops of certain pu‘u were flattened to accommodate observatory foundations, and some materials removed from the pu‘u were pushed over their sides, creating steeper slopes more susceptible to disturbance.²⁹

Associate Justice Michael Wilson dissented from the majority of the court and filed his dissent on November 9, 2018. At the heart of Justice Wilson’s dissent was the destruction of the summit of Mauna Kea. He acknowledged that

the party responsible for the substantial adverse impact to this protected resource is the State of Hawai‘i (State). It is uncontested that the State authorized previous construction within the Astronomy Precinct of the MKSR that created a substantial adverse impact. Thus, the party that caused the substantial adverse impact is empowered by the degradation principle to increase the damage. Now the most extensive construction project yet proposed for the Astronomy Precinct—a 180-foot building 600 feet below the summit ridge of Mauna Kea—is deemed to have no substantial adverse impact due to extensive degradation from prior development of telescopes in the summit area.³⁰

²⁶ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Opinion, State of Hawai‘i Supreme Court (Oct. 30, 2018), available at: <http://www.courts.state.hi.us/wp-content/uploads/2018/10/SCOT-17-0000777.pdf>.

²⁷ *Id.*, p. 45.

²⁸ The University 2.2-meter Telescope (1970), the United Kingdom Infrared Telescope (“UKIRT”)(1979)(now owned by the University), the NASA Infrared Telescope Facility (operated by the University)(1979), the Canada-France-Hawai‘i Telescope (1979); (5) the California Institute of Technology (“Caltech”) Submillimeter Observatory (“CSO”)(1986), the James Clerk Maxwell Telescope (“JCMT”)(1986)(now owned by the University), the Very Long Baseline Array (1992), the W. M. Keck Observatory, first phase (1992) and second phase (1996), the Subaru Observatory (“Subaru”)(1999), the Gemini North Observatory (1999), and the Submillimeter Array (2002).

²⁹ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Opinion, State of Hawai‘i Supreme Court (Oct. 30, 2018), p. 5-6.

³⁰ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Dissenting Opinion, Wilson, J. (Nov. 9, 2018), p. 5, available at: <http://www.courts.state.hi.us/.../11/SCOT-17-0000777dis.pdf>.

He concluded that the “substantial adverse impacts to cultural resources presently existing in the Astronomy Precinct of Mauna Kea combined with the impacts from TMT—a proposed land use that eclipses all other telescopes in magnitude—would constitute an impact on existing cultural resources that is substantial and adverse.”³¹

Native Tenant Rights

All lands throughout the Hawaiian Islands, including the ahupua‘a of Ka‘ohe, are subject to the vested rights of native tenants. In *Kekiekie v. Dennis*, the Hawaiian Kingdom Supreme Court acknowledged that the “people’s lands were secured to them by the Constitution and laws of the Kingdom, and no power can convey them away, not even that of royalty itself.” The acknowledgment of native tenant rights in the lands can be found in the:

act of 1839, declaring protection for tenants as well as for landlords. That act particularly recognizes but three classes of persons as having rights in the sale, viz: the King or government, the landlords and the tenants ... It being therefore fully established, that there are but three classes of persons having vested rights in the lands,—1st, the government, 2nd, the landlord, and 3^d, the tenant.³²

The division began in 1848 of these vested undivided rights between the Hawaiian Government and 253 Konohiki (landlord), which included Kamehameha III as the highest of all Konohiki.³³ Once divided, the lands were subject to the rights of native tenants who comprised the commoner class. As the right is vested in the class of commoners the recipients of this right are infinite as opposed to the Government and 253 Konohiki which is finite. For the ahupua‘a of Ka‘ohe, native tenant rights remain in the land under the management of the Ministry of the Interior. These rights include the right to purchase and the right to access. Hawaiian Kingdom legislation provides:

That a certain portion of the government lands in each island shall be set apart, and placed in the hands of special agents, to be disposed of in lots from one to fifty acres, in fee-simple, to such natives as may not be otherwise furnished with sufficient land, at a minimum price of fifty cents per acre.³⁴

³¹ *Id.*, p. 36.

³² *Principles Adopted by the Board of Commissioners to Quiet Land Titles, in Their Adjudication of Claims Presented to Them*, adopted by Resolution of the Legislative Council (Oct. 26, 1846).

³³ *Minutes of the Privy Council* (Dec. 11, 1847), p. 87, “The King now claims to be Konohiki of a great portion of the lands. He therefore makes known to the other Konohiki’s, that they are only Holders of Lands under him, but he will only take a part and leave them a part.”

³⁴ Section 4, *An Act Confirming Certain Resolutions of the King and Privy Council, passed on the 21st day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges* (Aug. 6, 1850)

When the landlords [including the government] have taken allodial titles to their lands, the people on each of their lands, shall not be deprived of the right to take firewood, house timber, aho cord, thatch, or ti leaf, from the land on which they live, for their own private use, but they shall not have a right to take articles to sell for profit. The people shall also have a right to drinking water, and running water, and roads shall be free to all, on all lands granted in fee-simple. Provided that this shall not be applicable to wells and water courses which individuals have made for their own use.³⁵

Religious rights are secured to all people under Hawaiian constitutional law. Article 2 of the 1864 Constitution provides “All men are free to worship God according to the dictates of their own consciences.” The constitutional provision of worshipping God is not confined to a particular religion but rather the conscience of the person who does the worship so long it does not “justify acts of licentiousness, or practices inconsistent with the peace or safety of the Kingdom.”³⁶ International humanitarian law and human rights law also provide for the protection of religious rights of people within the territory of the occupied State.

The 1907 Hague Convention, IV, provides:

Article 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Article 56. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

The 1949 Geneva Convention, IV, provides:

Article 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.

As a matter of human rights, the International Covenant on Civil and Political Rights provides that that all persons “shall have the right to freedom of thought, conscience and religion.”³⁷ And that freedom “to manifest one’s religion and beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”³⁸

³⁵ *An Act to Amend an Act Granting to the Common People, Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges* (June 11, 1851).

³⁶ Article 2, 1864 Constitution.

³⁷ International Covenant on Civil and Political Rights, Article 18(1).

³⁸ *Id.*, Article 18(3).

Concluding Remarks

The implications of the proposed construction of TMT are profound in that it not only draws attention to the war crimes of destruction of property done by the prior construction telescopes on the Mauna Kea summit, but that TMT's construction pales in comparison in that the summit will be destroyed by excavating to a depth of 600 feet. A pit as deep as a 43-story building. Since the construction of TMT has not commenced there is, as yet, no destruction of property and, as yet, no war crimes.

The proposed construction, however, could lead to other war crimes that would include unlawful arrest and confinement of persons³⁹ who would be preventing the evil of the added destruction of the summit. These people could include aboriginal Hawaiians, which Hawaiian law recognizes as native tenants that have vested rights in the ahupua'a of Ka'ohē as aforementioned.

Complicating matters would be the fact that the University of Hawai'i's general lease is invalid and therefore its sublease to TMT is void. As there is no evidence of consent from the Hawaiian Kingdom government to either the University of Hawai'i or for TMT, to include TMT's construction company Goodfellow Bros., to be on the summit of Mauna Kea, they would be the trespassers on government lands, and not those who would oppose the destruction of the property. Aboriginal Hawaiians who call themselves protectors of the mauna have more of a right to the summit under their "native tenant rights" than the University of Hawai'i or TMT who have no rights in the absence of a valid lease. They are, after all, protecting their rights against an unlawful encroachment by entities lacking permission of the true titled owner.

Should these people be charged with a crime, they would face an unfair trial, which is, itself, a war crime,⁴⁰ i.e., a criminal complaint of trespass would be invalid if the complainant has no title to the property, and, therefore, should be quashed. The 2019 proclamation by the Council of Regency recognizing the State of Hawai'i and its Counties as the occupying power transformed the State of Hawai'i Courts into regularly constituted courts. "A court is regularly constituted if it has been established and organized in accordance with the laws and procedures already in force in a country."⁴¹ These properly constituted courts, however, could still commit a war crime if the court denies judicial guarantees recognized under international law, including those of the 1949 Geneva Convention, IV, and the International Covenant on Civil and Political Rights.

³⁹ Article 147, 1949 Geneva Convention, IV, "unlawful confinement of a protected person."

⁴⁰ *Id.*, "willfully depriving a protected person of the rights of a fair and regular trial."

⁴¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Law, Vol. I: Rules* (2005), p. 355.

As your Committee is already aware of the formation of the Royal Commission of Inquiry, these war crimes and human rights violations could well come under the purview of the Commission's investigation.

Should you require further information or elaborations on the information provided, please do not hesitate to contact me.

Sincerely,



David Keanu Sai, Ph.D.

Enclosures

Enclosure “1”

Continuity of the Hawaiian Kingdom

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Being a portion of a Legal Brief provided for the acting Council of Regency

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THE CONTINUITY OF THE HAWAIIAN KINGDOM

General Considerations

The issue of State continuity usually arises in cases in which some element of the State has undergone some significant transformation (such as changes in its territorial compass or in its form of government). A claim as to state continuity is essentially a claim as to the continued independent existence of a State for purposes of international law in spite of such changes. It is essentially predicated, in that regard, upon an insistence that the State's legal identity has remained intact. If the State concerned retains its identity it can be considered to 'continue' and *vice versa*. Discontinuity, by contrast, supposes that the identity of the State has been lost or fundamentally altered such that it has ceased to exist as an independent state and that, as a consequence, rights of sovereignty in relation to territory and population have been assumed by another 'successor' state (to the extent provided by rules of succession). At its heart, therefore, the issue of State continuity is concerned with the parameters of a state's existence and demise (or extinction) in international law.

The implications of continuity in case of Hawai'i are several:

- a) That authority exercised by US over Hawai'i is not one of sovereignty i.e. that the US has no legally protected 'right' to exercise that control and that it has no original claim to the territory of Hawai'i or right to obedience on the part of the Hawaiian population. Furthermore, the extension of US laws to Hawai'i, apart from those that may be justified by reference to the law of (belligerent) occupation would be contrary to the terms of international law.
- b) That the Hawaiian people retain a right to self-determination in a manner prescribed by general international law. Such a right would entail, at the first instance, the removal of all attributes of foreign occupation, and a restoration of the sovereign rights of the dispossessed government.
- c) That the treaties of the Hawaiian Kingdom remain in force as regards other States in the name of the Kingdom (as opposed to the US as a successor State) except as may be affected by the principles *rebus sic stantibus* or impossibility of performance.
- d) That the Hawaiian Kingdom retains a right to all State property including that held in the territory of third states, and is liable for the debts of the Hawaiian kingdom incurred prior to its occupation.

Bearing in mind the consequences elucidated in c) and d) above, it might be said that a claim of state continuity on the part of Hawai'i has to be opposed as against a claim by the US as to its succession. It is apparent, however, that this opposition is not a strict one. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one state to another, or occasionally in case of unification. Continuity and succession are, in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a

great deal in terms of their effect. Whilst State continuity certainly denies the applicability of principles of succession and holds otherwise that rights and obligations remain intact save insofar as they may be affected by the principles *rebus sic stantibus* or impossibility of performance, there is room in theory at least for a principle of universal succession to operate such as to produce exactly the same result (under the theory of universal succession).¹ The continuity of legal rights and obligations, in other words, does not necessarily suppose the continuity of the State as a distinct person in international law, as it is equally consistent with discontinuity followed by universal succession. Even if such a thesis remains largely theoretical, it is apparent that a distinction has to be maintained between continuity of personality on the one hand, and continuity of specific legal rights and obligations on the other. The maintenance in force of a treaty, for example, in relation to a particular territory may be evidence of State continuity, but it is far from determinative in itself.

Even if it is relatively clear as to when States may be said to come into being for purposes of international law (in many cases predicated upon recognition or admission into the United Nations),² the converse is far from being the case.³ Beyond the theoretical circumstance in which a body politic has dissolved (for example by submergence of the territory or the dispersal of the population), it is apparent that all cases of putative extinction will arise in cases where certain changes of a material nature have occurred—such as a change in government and change in the territorial configuration of the State. The difficulty, however, is in determining when such changes are merely incidental, leaving intact the identity of the state, and when they are to be regarded as fundamental going to the heart of that identity.⁴ The problem, in part, is the lack of any institution by which such an event may be marked: governments do not generally withdraw recognition even if circumstances might so warrant,⁵ and there is no mechanism by which membership in international organisations may be terminated by reason of extinction. It is evident, moreover, that states are complex political communities possessing various attributes of an abstract nature which vary in space as well as time, and, as such, determining the point at which changes in those attributes are such as to affect the State's identity will inevitably call for very fine distinctions.

It is generally held, nevertheless, that there exist several uncontroversial principles that have some bearing upon the issue of continuity. These are essentially threefold, all of which assume an essentially negative form.⁶ First that the continuity of the State is not affected by changes in

¹ Cf. article 34 Vienna Convention on State Succession in Respect of Treaties (1978).

² See on this point Crawford J., *The Creation of States in International Law* (1979); Dugard J., *Recognition and the United Nations* (1987).

³ *Ibid.*, p.417.

⁴ See generally, Marek K., *The Identity and Continuity of States in Public International Law* (2nd ed. 1968). For early recognition of this principle see Phillimore P., *Commentaries upon International Law* (1879) p. 202.

⁵ See, Guggenheim P., *Traité de droit international public* (1953) p. 194. Lauterpacht notes that '[W]ithdrawal of recognition from a State is often obscured by the fact that, having regard to the circumstances, it does not take place through an express declaration announcing the withdrawal but through the act of recognition, express or implied, of the new authority.' Lauterpacht H., *Recognition in International Law*, (1947) pp. 350-351.

⁶ Further principles have also been suggested, such as: i) the state does not cease to exist by reason of its entry into a personal union, Pradier-Fodéré, *Traité de droit international public Européen et Américain* (1885) s.148, p.253; ii) that the state does not expire by reason of becoming economically or politically weak, *ibid.*, s. 148, p.254; iii) that the state does not cease to exist by reason of changes in its population, *ibid.* p. 252; iv) that the state is not affected by changes in the social or economic system, Verzijl, *International Law in Historical Perspective*, p. 118; v) that the State is not affected by being reduced to a State of semi-sovereignty, Phillimore, *supra*, n. 4, p. 202. According to

government even if of a revolutionary nature.⁷ Secondly, that continuity is not affected by territorial acquisition or loss,⁸ and finally that it is not affected by belligerent occupation (understood in its technical sense).⁹ Each of these principles reflects upon one of the key incidents of statehood—territory, government and independence—making clear that the issue of continuity is essentially one concerned with the existence of States: unless one or more of the key constituents of statehood are entirely and permanently lost, State identity will be retained. Their negative formulation, furthermore, implies that there exists a general presumption of continuity.¹⁰ As Hall was to express the point, a State retains its identity

‘so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts.’¹¹

Vattel, the key to sovereignty was ‘internal independence and sovereign authority’ (Vattel E., *The Law of Nations or the Principles of Natural Law* (1758, trans Fenwick C., 1916) Bk. I, s.8)- if a state maintained these, it would not lose its sovereignty by the conclusion of unequal treaties or tributary agreements or the payment of homage. Sovereign states could be subject to the same prince and yet remain sovereign e.g Prussia and Neufchatel (*ibid*, Bk. I, s.9). The formation of confederative republic of states did not destroy sovereignty because ‘the obligation to fulfill agreements one has voluntarily made does not detract from one's liberty and independence’ (*ibid*, bk. I, s.10) e.g. the United Provinces of Holland and the members of the Swiss Confederation.

⁷ For early versions of this principle see, Grotius, *De Iure Belli ac Pacis* Bk. II, c. xvi, p. 418. See also, Pufendorf S., *De Jure Naturae et Gentium Libri Octo* (1688, trans Oldfather C. and Oldfather W., 1934) B. VIII, c. xii, s.1, p. 1360; Rivier, *Principes du Droit des Gens*, (1896) I, p. 62; De Martens F., *Traité de Droit International* (1883) 362; Westlake J., *International Law* (1904) I, 58; Wright Q., ‘The Status of Germany and the Peace Proclamation’, 46 A.J.I.L. (1952) 299, p. 307; McNair A., ‘Aspects of State Sovereignty’ B.Y.I.L. (1949) p. 8. Jennings and Watts (Oppenheim’s *International Law* (9th ed. 1996), p. 146) declare that:

‘Mere territorial changes, whether by increase or by diminution, do not, so long as the identity of the State is preserved, affect the continuity of its existence or the obligations of its treaties. Changes in the government or the internal polity of a State do not as a rule affect its position in international law. A monarchy may be transformed into a republic, or a republic into a monarchy; absolute principles may be substituted for constitutional, or the reverse; but, though the government changes, the nation remains, with rights and obligations unimpaired’.

See also, *US v. Curtiss Wright Export Corp. et al* 299 US (1936) 304, p. 316 (J. Sutherland): ‘Rulers come and go; governments end and forms of government change; but sovereignty survives.’

⁸ Westlake, *supra*, n. 7, p. 59; Pradier-Fodéré, *supra*, n. 6, s. 148, p. 252; Hall W., *A Treatise on International Law* (4th ed. 1895) p. 23; Phillimore, *supra*, n. 4, I, pp. 202-3; Rivier, *supra*, n. 7, I, pp. 63-4; Marek, *supra*, n. 4, pp. 15-24 Article 26 Harvard Research Draft Convention on the Law of Treaties 1935, 29 AJIL (1935) Supp. 655. See also, *Katz and Klump v. Yugoslavia* [1925-1926] A. D. 3 (No. 24); *Ottoman Debt Arbitration* [1925-26] A. D. 3; *Roselius and Co. v. Dr Karsten and the Turkish Republic intervening*, [1925-6] A. D. (No. 26); *In re Ungarische kriegsprodukien Aktiengesellschaft*, [1919-22] A.D. (No. 45); *Lazard Brothers and Co v. Midland Bank*, [1931-32] A.D. (No. 69). For State practice see e.g. Great Britain remained the same despite the loss of the American Colonies; France, after the loss of territory in 1814-15 and 1871; Austria after the cession of Lombardy in 1859 and Venice in 1866; Prussia after the Franco-Prussian Peace Treaty at Tilsit, 1807. See generally, Moore, J., *A Digest of International Law*, (1906), p. 248.

⁹ See below, paras. .

¹⁰ Crawford points out that ‘the presumption—in practice a strong one—is in favour of the continuance, and against the extinction, of an established state’, Crawford, *supra*, n. 2, p. 417.

¹¹ Hall, *supra*, n. 8, p. 22.

The only exception to this general principle, perhaps, is to be found in case of multiple changes of a less than total nature, such as where a revolutionary change in government is accompanied by a broad change in the territorial delimitation of the State.¹²

If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States. It might be objected that formally speaking, the survival or otherwise of a State should be regarded as independent of the legitimacy of any claims to its territory on the part of other States. It is commonly recognised that a State does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entirety of the territory of the State, as they do in case of Hawai'i, and when they are accompanied by effective occupation to the exclusion of the claimant, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is, it seems, premised upon the legal ineffectiveness of present or past US claims to sovereignty over the Islands.

In light of such considerations any claim to State continuity will be dependent upon the establishment of two legal facts: first that the State in question existed as a recognised entity for purposes of international law at some relevant point in history; and secondly that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of 'observable' or 'tangible facts', but more specifically of 'legally relevant facts'. It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of 'authority' (understood as 'a legal entitlement to exercise power and control'). Authority differs from mere control by not only being essentially rule governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control. As Arbitrator Huber noted in the *Island of Palmas Case*:

'Manifestations of sovereignty assume... different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas.'¹³

Thus, whilst 'the continuous and peaceful display of territorial sovereignty' remains an important measure for determining entitlements in cases where title is disputed (or where 'no conventional line of sufficient topographical precision exists'), it is not always an indispensable prerequisite for legal title. This has become all the more apparent since the prohibition on the annexation of territory became firmly implanted in international law, and with it the acceptance that certain factual situations will not be accorded legal recognition: *ex inuria ius non oritur*.

¹² See e.g. Marek, *supra*, n. 4.

¹³ *Island of Palmas Case (Netherlands v. United States)* 2 R.I.A.A. 829.

The Status of the Hawaiian Kingdom as a Subject of International Law

Whilst the Montevideo criteria¹⁴ (or versions of) are now regarded as the definitive determinants of statehood, the criteria governing the 'creation' of states in international law in the 19th Century were somewhat less clear.¹⁵ The rise of positivism and its rejection of the natural law leanings of early commentators (such as Grotius and Pufendorf) led many to posit international law less in terms of a 'universal' law of nations and more in terms of an international public law of European (and North American) States.¹⁶ According to this view, international law was gradually extended to other portions of the globe primarily in virtue of imperialist ambition and colonial practice - much of the remainder was regarded as simply beyond the purview of international law and frequently as a result of the application of a highly suspect 'standard of civilisation'. It was not the case, therefore, that all territories governed in a stable and effective manner would necessarily be regarded as subjects of international law and much would apparently depend upon the formal act of recognition, which signaled their 'admittance into the family of nations'.¹⁷ Thus, on the one hand commentators frequently provided impressively detailed 'definitions' of the State. Phillimore, for example, noted that 'for all purposes of international law, a state... may be defined to be a people permanently occupying a fixed territory (*certam sedem*), bound together by common laws, habits and customs into one body politic, exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace, and of entering into all international relations with the other communities of the globe'.¹⁸ These definitions, however, were not always intended to be prescriptive. Hall maintained, for example, that whilst States were subjected to international law 'from the moment... at which they acquire the marks of a state'¹⁹ he later added the qualification that States 'outside European civilisation... must formally enter into the circle of law-governed countries'.²⁰ In such circumstances recognition was apparently critical. Given the trend to which this gave rise, Oppenheim was later to conclude in 1905, that 'a State is and becomes an international person through recognition only and exclusively'.²¹

Whatever the general position, there is little doubt that the Hawaiian Kingdom fulfilled all requisite criteria. The Kingdom was established as an identifiable, and independent, political community at some point in the early 19th Century (the precise date at which this occurred is perhaps of little importance). During the next half-Century it was formally recognised by a number of Western

¹⁴ Montevideo Convention on the Rights and Duties of States, Dec. 26th 1933, article 1: 'The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.'

¹⁵ Doctrine towards the end of the 19th Century began to articulate those criteria. Rivier, for example, described the 'essential elements of the state' as being evidenced by 'an independent community, organised in a permanent manner on a certain territory' (Rivier, *supra*, n. 7). Hall similarly speaks about the 'marks of an independent State are, that the community constituting it is permanently established for a political end, that it possesses a defined territory, and that it is independent of external control.' *Supra*, n. 8, p. 18.

¹⁶ See e.g., Lawrence T., *Principles of International Law* (4th ed. 1913) p. 83; Pradier-Fodéré, *Traité de droit international public Européen et Américain* (1885).

¹⁷ Hall comments, for example, that 'although the right to be treated as a state is independent of recognition, recognition is the necessary evidence that the right has been acquired. Hall, *supra*, n. 8, p. 87.

¹⁸ Phillimore, *supra*, n. 4, I, p. 81.

¹⁹ Hall, *supra*, n. 8, p. 21.

²⁰ *Ibid*, pp. 43-44.

²¹ *International Law: A Treatise* (1905) I, p. 109.

powers including Belgium, Great Britain,²² France,²³ and the United States,²⁴ and received and dispatched diplomatic agents to more than 15 States (including Austria, Belgium, Denmark, France, Germany, Great Britain, Italy, Japan, Mexico, the Netherlands, Portugal, Spain, Sweden and Norway and the United States). Secretary of State Webster declared, for example, in a letter to Hawaiian agents in 1842 that:

‘the government of the Sandwich Islands ought to be respected; that no power ought either to take possession of the Islands as a conquest or for purpose of colonization, and that no power ought to seek for any undue control over the existing Government, or any exclusive privileges or preferences with it in matters of commerce.’²⁵

This point was reiterated subsequently by President Tyler in a message to Congress.²⁶ In similar vein, Britain and France declared in a joint declaration in 1843 that they considered ‘the Sandwich Islands as an independent State’ and vowed ‘never to take possession, either directly or under the title of protectorate, or under any other form, of any part of the territory of which they are composed’.²⁷ When later in 1849, French forces took possession of government property in Honolulu, Secretary of State Webster sent a sharp missive to his French counterpart declaring the actions ‘incompatible with any just regard for the Hawaiian Government as an independent State’ and calling upon France to ‘desist from measures incompatible with the sovereignty and independence of the Hawaiian Islands’.²⁸

In addition to establishing formal diplomatic relations with other States, the Hawaiian Kingdom entered into an extensive range of treaty relations with those States. Treaties were concluded with the United States (Dec. 23rd 1826, Dec. 20th 1849, May 4th 1870, Jan. 30th 1875, Sept. 11th 1883, and Dec. 6th 1884), Britain (Nov. 16th 1836 and July 10th 1851), the Free Cities of Bremen (Aug. 7th 1851) and Hamburg (Jan. 8th 1848), France (July 17th 1839), Austria-Hungary (June 18th 1875), Belgium (Oct. 4th 1862), Denmark (Oct. 19th 1846), Germany (March 25th 1879), France (Oct. 29th 1857), Japan (Aug. 19th 1871), Portugal (May 5th 1882), Italy (July 22nd 1863), the Netherlands (Oct. 16th 1862), Russia (June 19th 1869), Samoa (March 20th 1887), Switzerland (July 20th 1864), Spain (Oct. 29th 1863), and Sweden and Norway (July 1st 1852). The Hawaiian Kingdom, furthermore, became a full member of the Universal Postal Union on January 1st 1882.

There is no doubt that, according to any relevant criteria (whether current or historical), the Hawaiian Kingdom was regarded as an independent State under the terms of international law for some significant period of time prior to 1893, the moment of the first occupation of the Island(s)

²² Declaration of Great Britain and France relative to the Independence of the Sandwich Islands, London, Nov. 28th, 1843.

²³ *Ibid.*

²⁴ Message from the President of the United States respecting the trade and commerce of the United States with the Sandwich Islands and with diplomatic intercourse with their Government, Dec. 19th 1842. The Apology Resolution of 1993, however, maintains that the US ‘recognised the independence of the Hawaiian Kingdom, extended full and complete diplomatic recognition to the Hawaiian Government ‘from 1826 until 1893’.

²⁵ Letter of Dec. 19th 1842, Moore’s Digest, *supra*, n. 8, I, p. 476.

²⁶ Message of President Tyler, Dec. 30th 1842, Moore’s Digest, *supra*, n. 8, I, pp. 476-7.

²⁷ For. Rel. 1894, App. II, p. 64.

²⁸ Letter of June 19th 1851, For. Rel. 1894, App. II, p. 97.

by American troops.²⁹ Indeed, this point was explicitly accepted in the *Larsen v. Hawaiian Kingdom* Arbitral Award.³⁰

The consequences of Statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being 'entitled' to sovereignty. This entailed, amongst other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the State.³¹ It was, however, admitted that intervention by another state was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements or of opposing wrong-doing. Although intervention was not absolutely prohibited in this regard, it was generally confined as regards the specified justifications. As Hall remarked,

'The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it.'³²

A desire for simple aggrandisement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.³³ In any case, the right of independence was regarded as so fundamental that any action against it 'must be looked upon with disfavour'.³⁴

Recognized Modes of Extinction

In light of the evident existence of Hawai'i as a sovereign State for some period of time prior to 1898, it would seem that the issue of continuity turns upon the question whether Hawai'i can be said to have subsequently ceased to exist according to the terms of international law. Current international law recognises that a state may cease to exist in one of two scenarios: by means of that State's integration with another in some form of union (such as the GDR's accession to the FRG), or by its dismemberment (such as in case of the Socialist Federal Republic of Yugoslavia or Czechoslovakia).³⁵ As will be seen, events in Hawai'i in 1898 are capable of being construed in several ways, but it is evident that the most obvious characterisation was one of annexation (whether by cession or conquest).

The general view today is that, whilst annexation was historically a permissible mode of acquiring title to territory (as was 'discovery'), it is now regarded as illegitimate and primarily as a consequence of the general prohibition on the use of force as expressed in article 2(4) of the UN Charter. This point has since been underscored in various forms since 1945. General Assembly Resolution 2625 on Friendly Relations, for example, provides that:

²⁹ For confirmation of this fact see e.g. Rivier, *supra*, n. 7, I, p. 54.

³⁰ *Larsen v. Hawaiian Kingdom*, P.C.A. Arbitral Award, Feb. 5th 2001, para. 7.4.

³¹ Phillimore, *supra*, n. 4, I, p. 216.

³² Hall, *supra*, n. 8, p. 298.

³³ See e.g. Lawrence, *supra*, n. 14, p. 134.

³⁴ Hall, *supra*, n. 8, p. 298.

³⁵ Jennings and Watts add one further category: when a State breaks up into parts all of which become part of other states (such as Poland in 1795), *supra*, n. 8, p. 204.

‘The territory of a State shall not be the object of acquisition by another State resulting from the threat of use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal.’³⁶

Practice also suggests that the creation of new States in violation of the principle is illegitimate (illustrated by the general refusal to recognise the Turkish Republic of Northern Cyprus), and that the legal personality of the State subjected to illegal invasion and annexation continues despite an overriding lack of effectiveness³⁷ (confirmed in case of the Iraqi invasion of Kuwait). Such a view is considered to flow not only from the fact of illegality, and from the peremptory nature of the prohibition on the use of force, but is also expressive of the more general principle *ex iniuria ius non oritur*.³⁸ It is also clear that where annexation takes the form of a treaty of cession, that treaty would be regarded as void if procured by the threat or use of force in violation of the UN Charter.³⁹

Even if the annexation of the Hawaiian Islands would be regarded as unlawful according to accepted standards today, it does not necessarily follow that US claims to sovereignty are unfounded. It is generally maintained that the legality of any act should be determined in accordance with the law of the time when it was done, and not by reference to law as it might have become at a later date. This principle finds its expression in case of territorial title, as Arbitrator Huber pointed out in the *Island of Palmas* case,⁴⁰ in the doctrine of inter-temporal law. As far as Huber was concerned, there were two elements to this doctrine – the first of which is relatively uncontroversial, the second of which has attracted a certain amount of criticism. The first, uncontroversial, element is simply that ‘a juridical fact must be appreciated in light of the law contemporary with it, and not the law in force at the time when a dispute in regard to it arises or falls to be settled’.⁴¹ In the present context, therefore, the extension of US sovereignty over Hawai‘i should be analysed in terms of the terms of international law, as they existed at the relevant point(s) in time. This much cannot be disputed. The second element outlined by Huber, however, is that, notwithstanding the legitimate origins of an act creating title, the continued existence of that title – its continued manifestation – ‘shall follow the conditions required by the evolution of law’. The issue in consideration, here, is whether title based upon historical discovery, or conquest, could itself survive irrespective of the fact that neither is regarded as a legitimate mode of acquisition today. Whilst some have regarded this element as a dangerous extension of the basic principle,⁴² its practical effects are likely to be limited to those cases in which the State originally claiming sovereignty has failed to reinforce that title by means of effective occupation (acquisitive prescription). This was evident in case of the *Island of Palmas*, but is unlikely to be so in other cases – particularly in light of Huber’s comment that sovereignty will inevitably have its

³⁶ Declaration of Principles of International Law, GA Resn. 2625. See Whiteman, *Digest of International Law* (1965), V, pp. 874-965.

³⁷ See, Crawford, *supra*, n. 2, p. 418.

³⁸ Such a principle has been recognised in e.g., *Free Zones of Upper Savoy and the District of Gex* (2nd Phase), 1930, PCIJ, Series A, No. 24; *South-Eastern Territory of Greenland*, 1932, PCIJ, Series A/B, No. 48, p. 285; *Jurisdiction of the Courts of Danzig*, 1933, PCIJ, Series B, No. 15, p. 26; *Legal Status of Eastern Greenland*, 1933, PCIJ, Series A/B, No. 53, pp. 75, 95.

³⁹ Article 52 Vienna Convention on the Law of Treaties 1969.

⁴⁰ *Island of Palmas (Netherlands v. United States)* 2 R.I.A.A. (1928) 829

⁴¹ *Ibid.*

⁴² Jessup, 22 A.J.I.L. (1928) 735.

discontinuities. In any case, it is apparent that, as Huber stressed, any defect in original title is capable of being remedied by means of a continuous and peaceful exercise of territorial sovereignty and that original title, whether defective or perfect, does not itself provide a definitive conclusion to the question.

Turning then to the law as it existed at the critical date of 1898, it was generally held that a State might cease to exist in one of three scenarios:

- a) By the destruction of its territory or by the extinction, dispersal or emigration of its population (a theoretical disposition).
- b) By the dissolution of the corpus of the State (cases include the dissolution of the German Empire in 1805-6; the partition of the Pays-Bas in 1831 or of the Canton of Bale in 1833).
- c) By the State's incorporation, union, or submission to another (cases include the incorporation of Cracow into Austria in 1846; the annexation of Nice and Savoy by France in 1860; the annexation of Hannover, Hesse, Nassau and Schleswig-Holstein and Frankfurt into Prussia in 1886).⁴³

Neither a) nor b) is applicable in the current scenario. In case of c) commentators not infrequently distinguished between two processes – one of which involved a voluntary act (i.e. union or incorporation), the other of which came about by non- consensual means (i.e. conquest and submission followed by annexation).⁴⁴ It is evident that, as suggested above, annexation (or 'conquest') was regarded as a legitimate mode of acquiring title to territory⁴⁵ and it would seem to follow that in case of total annexation (i.e. annexation of the entirety of the territory of a State) the defeated State would cease to exist.

Although annexation was regarded as a legitimate means of acquiring territory, it was recognised as taking a variety of forms.⁴⁶ It was apparent, to begin with, that a distinction was typically drawn between those cases in which the annexation was implemented by Treaty of Peace, and those which resulted from an essentially unilateral public declaration on the part of the annexing power. The former would be governed by the particular terms of the treaty in question, and gave rise to a distinct type of title.⁴⁷ Since treaties were regarded as binding irrespective of the circumstances surrounding their conclusion and irrespective of the presence or absence of coercion,⁴⁸ title acquired in virtue of a peace treaty was considered to be essentially derivative (i.e. being transferred from one state to another).⁴⁹ There was little, in other words, to distinguish title acquired

⁴³ See e.g. Pradier-Fodere, *supra*, n. 7, I, p. 251; Phillimore, *supra*, n. 4, I, p. 201; de Martens *Traite de Droit International* (1883) I, pp. 367-370.

⁴⁴ See e.g., Westlake J., 'The Nature and Extent of the Title by Conquest', 17 L.Q.R. (1901) 392.

⁴⁵ Oppenheim (*supra*, n. 31, I, p. 288) remarks that '[a]s long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory'.

⁴⁶ Halleck H., *International Law* (1861) p. 811; Wheaton H., *Elements of International Law* (1866, 8th ed.) II, c. iv, s. 165.

⁴⁷ See e.g. Lawrence, *supra*, n. 14, p. 165-6 ('Title by conquest arises only when no formal international document transfers the territory to its new possessor'.)

⁴⁸ Cf. now article 52 Vienna Convention on the Law of Treaties 1969.

⁴⁹ See e.g. Rivier, *supra*, n. 7, p. 176.

by means of a treaty of peace backed by force, and a voluntary purchase of territory: in each case the extent of rights enjoyed by the successor were determined by the agreement itself. In case of conquest absent an agreed settlement, by contrast, title was thought to derive simply from the fact of military subjugation and was complete 'from the time [the conqueror] proves his ability to maintain his sovereignty over his conquest, and manifests, by some authoritative act... his intention to retain it as part of his own territory'.⁵⁰ What was required, in other words, was that the conflict be complete (acquisition of sovereignty *durante bello* being clearly excluded) and that the conqueror declare an intention to annex.⁵¹

What remained a matter of some dispute, however, was whether annexation by way of subjugation should be regarded as an original or derivative title to territory and, as such, whether it gave rise to rights in virtue of mere occupation, or rather more extensive rights in virtue of succession (a point of particular importance for possessions held in foreign territory).⁵² Rivier, for example, took the view that conquest involved a three stage process: a) the extinction of the state in virtue of *debellatio* which b) rendered the territory *terra nullius* leading to c) the acquisition of title by means of occupation.⁵³ Title, in other words, was original, and rights of the occupants were limited to those which they possessed (perhaps under the doctrine *uti possidetis de facto*). Others, by contrast, seemed to assume some form of 'transfer of title' as taking place (i.e. that conquest gave rise to a derivative title⁵⁴), and concluded in consequence that the conqueror 'becomes, as it were, the heir or universal successor of the defunct or extinguished State'.⁵⁵ Much depended, in such circumstances, as to how the successor came to acquire title.

It should be pointed out, however, that even if annexation/ conquest was generally regarded as a mode of acquiring territory, US policy during this period was far more sceptical of such practice. As early as 1823 the US had explicitly opposed, in the form of the Monroe Doctrine, the practice of European colonization⁵⁶ and in the First Pan-American Conference of 1889 and 1890 it had proposed a resolution to the effect that 'the principle of conquest shall not... be recognised as admissible under American public law'. It had, furthermore, later taken the lead in adopting a policy of non-recognition of 'any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928' (the 'Stimson Doctrine') which was confirmed as a legal obligation in a resolution of the Assembly of the League of Nations in 1932. Even if such a policy was not to amount to a legally binding commitment on the part of the US not to acquire territory by use or threat of force during the latter stages of the 19th Century, there is room to argue that the doctrine of estoppel might operate to prevent the US subsequently relying upon forcible annexation as a basis for claiming title to the Hawaiian Islands.

US Acquisition of the Islands

⁵⁰ Baker S., *Halleck's International Law* (3rd ed. 1893) p. 468.

⁵¹ This point was of considerable importance following the Allied occupation of Germany in 1945.

⁵² For an early version of this idea see de Vattel E., *supra*, n. 7, bk III, ss. 193-201; Bynkershoek C., *Quaestionum Juris Publici Libri Duo* (1737, trans Frank T., 1930) Bk. I, pp. 32-46.

⁵³ Rivier, *supra*, n. 7, p. 182.

⁵⁴ Phillimore, *supra*, n. 4, I, p. 328.

⁵⁵ Baker, *supra*, n. 50, p. 495.

⁵⁶ 'The American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers.'

As pointed out above, the continuity of the Kingdom of Hawaii as an independent state for purposes of international law is theoretically independent of the legitimacy of claims to sovereignty over its territory on the part of other states. By the same token, the fact that the entirety of the Hawaiian Islands have been occupied, administered, and claimed as US territory for a considerable period of time, means that attention must be given to the legitimacy of the US claims as part of the process of determining Hawaiian continuity. US claims to sovereignty over the Islands would appear to be premised upon one of three grounds: a) by the original acquisition of the Islands in 1898 (by means of ‘annexation’ or perhaps ‘cession’); b) by the confirmation of the exercise of that sovereignty by plebiscite in 1959; and c) by the continuous and effective display of sovereignty since 1898 to the present day (acquisitive prescription in the form of adverse possession). Each of these claims will be considered in turn.

Acquisition of the Islands in 1898

The facts giving rise to the subsequent occupation and control of the Hawaiian Kingdom by the US government are, no doubt, susceptible to various interpretations. It is relatively clear, however, that US intervention in the Islands first took place in 1893 under the guise of the protection of the US legation and consulate and ‘to secure the safety of American life and property’.⁵⁷ US troops landed on the Island of O’ahu on 16th January and a Provisional Government was established by a group of insurgents under their protection. On the following day, and once Queen Lili’uokalani had abdicated her authority in favour of the United States, US minister Stevens formally recognised *de facto* the Provisional Government of Hawai’i. The Provisional Government then proceeded to draft and sign a ‘treaty of annexation’ on February 14th 1893 and dispatch it to Washington D.C. for ratification by the US Senate.

According to the first version of events as explained by President Harrison when submitting the draft treaty to the Senate, the overthrow of the Monarchy ‘was not in any way prompted by the United States, but had its origin in what seemed to be a reactionary and revolutionary policy on the part of Queen Lili’uokalani which put in serious peril not only the large and preponderating interests of the United States in the Islands, but all foreign interests’.⁵⁸ It was further emphasised in a report of Mr Foster to the President that the US marines had taken ‘no part whatever toward influencing the course of events’⁵⁹ and that recognition of the Provisional Government had only taken place once the Queen had abdicated, and once it was in effective possession of the government buildings, the archives, the treasury, the barracks, the police station, and all potential machinery of government. This version of events was to be contradicted in several important respects shortly after.

Following receipt of a letter of protest sent by Queen Lili’uokalani, newly incumbent President Cleveland withdrew the Treaty of Annexation from the Senate and dispatched US Special Commissioner James Blount to Hawai’i to investigate. The investigations of Mr Blount revealed that the presence of American troops, who had landed without permission of the existing government, were ‘used for the purpose of inducing the surrender of the Queen, who abdicated

⁵⁷ Order of Jan. 16th 1893.

⁵⁸ For. Rel. 1894, App. II, 198.

⁵⁹ Report of Mr. Foster, Sec. of State, For. Rel. 1894, App. II, 198-205.

under protest [to the United States and not the provisional government] with the understanding that her case would be submitted to the President of the United States.⁶⁰ It was apparent, furthermore, that the Provisional Government had been recognised when it had little other than a paper existence, and ‘when the legitimate government was in full possession and control of the palace, the barracks, and the police station’.⁶¹ On December 18th 1893, President Cleveland addressed Congress on the findings of Commissioner Blount. He emphasised that the Provisional Government did not have ‘the sanction of either popular revolution or suffrage’ and that it had been recognised by the US minister pursuant to prior agreement at a time when it was ‘neither a government *de facto* nor *de jure*’.⁶² He concluded as follows:

‘Hawai’i was taken possession of by United States forces without the consent or wish of the Government of the Islands, or of anybody else so far as shown, except the United States Minister. Therefore, the military occupation of Honolulu by the United States... was wholly without justification, either of an occupation by consent or as an occupation necessitated by dangers threatening American life or property’.

Given the ‘substantial wrong’ that had been committed, he concluded that ‘the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods’.

It is fairly clear then, that the position of the US government in December 1893 was that its intervention in Hawai’i was an aberration which could not be justified either by reference to US law or international law. Importantly, it was also emphasised that the Provisional Government had no legitimacy for purposes of disposing of the future of the Islands ‘as being neither a government *de facto* nor *de iure*’. At this stage there was an implicit acknowledgement of the fact that the US intervention not only conflicted with specific US commitments to the Kingdom (particularly article 1 of the 1849 Hawaiian-American Treaty which provides that ‘[t]here shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and successors’) but also with the terms of general international law which prohibited intervention save for purpose of self-preservation, or in accordance with the doctrine of necessity.⁶³

This latter interpretation of events has since been confirmed by the US government. In its Apology Resolution of 23rd November 1993 the US Congress and Senate admitted that the US Minister (John Stevens) had ‘conspired with a small group of non-Hawaiian residents of the Hawaiian Kingdom, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawai’i’, and that in pursuance of that conspiracy had ‘caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16th 1893’. Furthermore, it is admitted that recognition was accorded to the Provisional government without the consent of the Hawaiian people, and ‘in violation of treaties between the two nations and of international law’, and that the insurrection would not have succeeded without US diplomatic and military intervention.

⁶⁰ Moore’s Digest, *supra*, n. 8, I, p. 499.

⁶¹ *Ibid*, pp. 498-99.

⁶² Moore’s Digest, *supra*, n. 8, p. 501.

⁶³ Brownlie, *International Law and the Use of Force by States* (1963) pp. 46-7.

Despite admitting the unlawful nature of its original intervention, the US, however, did nothing to remedy its breach of international law and was unwilling to assist in the restoration of Queen Lili'uokalani to the throne even though she had acceded to the US proposals in that regard. Rather it left control of Hawai'i in the hands of the insurgents it had effectively put in place and who clearly did not enjoy the popular support of the Hawaiian people.⁶⁴ Following a proclamation establishing the Republic of Hawai'i by the insurgents in 1894 – the overt purpose of which was to enter into a Treaty of Political or Commercial Union with the United States⁶⁵ - *de facto* recognition of the Republic was affirmed by the US⁶⁶ and a second Treaty of Annexation was signed in Washington by the incoming President McKinley. Despite further protest on the part of Queen Lili'uokalani and other Hawaiian organisations, the Treaty was submitted to the US Senate for ratification in 1897. On this occasion, the Senate declined to ratify the treaty. After the breakout of the Spanish-American War in 1898, however, and following advice that occupation of the Islands was of strategic military importance, a Joint Resolution was passed by US Congress purporting to provide for the annexation of Hawai'i.⁶⁷ A proposal requiring Hawaiians to approve the annexation was defeated in the US Senate. Following that resolution, Hawai'i was occupied by US troops and subject to direct rule by the US administration under the terms of the Organic Act of 1900. President McKinley later characterised the effect of the Resolution as follows:

'by that resolution the Republic of Hawai'i as an independent nation was extinguished, its separate sovereignty destroyed, and its property and possessions vested in the United States...'.⁶⁸

Although the Japanese minister in Washington had raised certain concerns in 1897 as regards the position of Japanese labourers emigrating to the Islands under the Hawaiian-Japanese Convention of 1888, and had insisted that 'the maintenance of the status quo' was essential to the 'good understanding of the powers having interests in the Pacific', it subsequently withdrew its opposition to annexation subject to assurances as regards the treatment of Japanese subjects.⁶⁹ No other state objected to the fact of annexation.

It is evident that there is a certain element of confusion as to how the US came to acquire the Islands of Hawai'i during this period of time. Effectively, two forms of justification seem to offer themselves: a) that the Islands were ceded by the legitimate government of Hawai'i to the United States in virtue of the treaty of annexation; or b) that the Islands were forcibly annexed by the United States in absence of agreement.

The Cession of Hawai'i to the United States

The joint resolution itself speaks of the government of the Republic of Hawai'i having signified its consent 'to cede absolutely and without reserve to the United States of American all rights of

⁶⁴ See, Budnick R., *Stolen Kingdom: An American Conspiracy* (1992).

⁶⁵ Article 32 Constitution of the Republic of Hawai'i.

⁶⁶ For. Rel. 1894, pp. 358-360.

⁶⁷ XC B.F.S.P. 1897-8 (1901) 1248.

⁶⁸ President McKinley, Third Annual Message, Dec. 5th 1899, Moore's Digest, *supra*, n. 8, I, p. 511.

⁶⁹ See, Moore's Digest, *supra*, n. 8, I, pp. 504-9.

sovereignty of whatsoever kind', suggesting, as some commentators have later accepted, that the process was one of voluntary merger.⁷⁰ Hawai'i brought about, according to this thesis, its own demise by means of voluntary submission to the sovereignty of the United States.⁷¹ This interpretation was bolstered by the fact that the government of the Republic had exercised *de facto* control over the Islands since 1893 – as President McKinley was to put it: 'four years having abundantly sufficed to establish the right and the ability of the Republic of Hawai'i to enter, as a sovereign contractant, upon a conventional union with the United States'.⁷² Furthermore, even if it had not been formally recognised as the *de jure* government of Hawai'i by other nations,⁷³ it was effectively the only government in place (the government of Queen Lili'uokalani being forced into internal exile).

Such a thesis overlooks two facts. First of all, whilst the Republic of Hawai'i had certainly sponsored the adoption of a treaty of cession, the failure by the US to ratify that instrument meant that no legally binding commitments in that regard were ever created. This is not to say that the US actions in this regard were therefore to be regarded as unlawful for purposes of international law. Even if doubts exist as to the constitutional competence of US Congress to extend the jurisdiction of the United States in the manner prescribed by the Resolution,⁷⁴ this in itself does not prevent the acts in question from being effective for purposes of international law.⁷⁵ Indeed, as suggested above it was widely recognised that, for purposes of international law, annexation need not be accomplished by means of a treaty of peace and could equally take the form of a unilateral declaration of annexation. The significance of the failure to ratify, however, does suggest that the acquisition was achieved, if at all, by unilateral act on the part of the United States rather than being governed by the terms of the bilateral agreement.

Furthermore, and in consequence, US title to the territory would have to be regarded as original rather than derivative. This point is well illustrated by the decision of the Supreme Court of India in the case of *Mastan Sahib v. Chief Commissioner Pondicherry*⁷⁶ in which it was held that Pondicherry was not to be considered as part of India, despite India's administration of the territory, until the 1954 Agreement between France and India had been ratified by France. This was the case even though both parties had signed the agreement. Similarly, albeit in a different context, the Arbitral Tribunal in the *Iloilo Claims Arbitration* took the view that the US did not fully acquire sovereignty over the Philippines despite its occupation until the date of ratification of the Peace Treaty of Paris of 1898.⁷⁷

Doubts as to the validity of the voluntary merger/ cession thesis are also evident when consideration is given to the role played by US troops in installing and maintaining in power the

⁷⁰ See e.g. Verzijl, *supra*, n. 6.

⁷¹ *Ibid*, I, p. 129.

⁷² Message of President McKinley to the Senate, June 16th 1897, Moore's Digest, *supra*, n. 8, I, p. 503.

⁷³ Some type of recognition was provided by Great Britain in 1894, however.

⁷⁴ See, Willoughby W., *The Constitutional Law of the United States* (2nd ed. 1929) I, p. 427.

⁷⁵ Article 7 of the ILC Articles on State Responsibility (2001) provides, for example, that '[t]he conduct of an organ of a State... shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.'

⁷⁶ I.L.R. (1969) 49.

⁷⁷ *Iloilo Claims Arbitration* (1925) 6 R.I.A.A. 158. To similar effect see *Forest of Central Rhodope Arbitration* (Merits, 1933) 3 R.I.A.A. 1405; *British Claims in Spanish Morocco* (1924) 2 R.I.A.A. 627.

Republican government in face of continued opposition on the part of the ousted monarchy. If, as was admitted by the US in 1893, intervention was unjustified and therefore undoubtedly in violation of its international obligations owed in respect of Hawai'i, it seems barely credible to suggest that it should be able to rely upon the result of that intervention (namely the installation of what was to become the Republican government) by way of justifying its claim that annexation was essentially consensual.

Central to the US thesis, in this respect, is the view that the government of the self-proclaimed Republic enjoyed the necessary competence to determine the future of Hawai'i. Notwithstanding the fact that the Republic was itself maintained in power by means of US military presence, and notwithstanding its recognition of the legitimate claims on the part of the Kingdom, the US recognised the former as a *de facto* government with which it could deal. This, despite the fact that US recognition policy during this period was 'based predominantly on the principle of effectiveness evidenced by an adequate expression of popular consent'.⁷⁸ As Secretary Seward was to indicate in 1868, revolutions 'ought not to be accepted until the people have adopted them by organic law, with the solemnities which would seem sufficient to guarantee their stability and permanence.'⁷⁹ The US refusal, therefore, to recognise the Rivas Government in Nicaragua in 1855 on the basis that '[i]t appears to be no more than a violent usurpation of power, brought about by an irregular self-organised military force, as yet unsanctioned by the will or acquiescence of the people',⁸⁰ stands in marked contrast to its willingness to offer such recognition to the government of the Republic of Hawai'i in remarkably similar circumstances. Given the precipitous recognition of the government of the Republic – itself an act of unlawful intervention – it seems unlikely that the US could legitimately rely upon the fact of its own recognition as a basis for claiming that its acquisition of sovereignty over Hawai'i issued from a valid expression of consent.

The Annexation of Hawai'i by the United States

If there is some doubt as to the validity of the voluntary merger thesis, an alternative interpretation of events might be to suggest that the US came to acquire the Islands by way of what was effectively conquest and subjugation. It could plausibly be maintained that annexation of the Islands came about following the installation of a puppet government intent upon committing the future of the Islands to the US and which was visibly supported by US armed forces. According to this interpretation of events, the initial act of intervention in 1893 would simply be the beginning of an extended process of *de facto* annexation which culminated in the extension of US laws to Hawai'i in 1898. Whether or not the Republican government was the legitimate government of Hawai'i mattered little, and the apparent lack of consent of the former Hawaiian government largely irrelevant. According to this thesis the unlawful nature of the initial intervention would ultimately be wiped out by the subsequent annexation of the territory and the extinction of the Hawaiian Kingdom as an independent State (just as Britain's precipitous annexation of the Boer Republics in 1901 was subsequently rendered moot by its perfection of title under the Peace Treaty of 1902). Support for this interpretation of events comes from the fact that the Queen initially abdicated in favour of the United States, and not the Provisional Government of 1893 (although she did eventually give an oath of allegiance to the Republic in 1895) and from the persistent

⁷⁸ Lauterpacht, *Recognition in International Law* (1947) p. 124.

⁷⁹ US Diplomatic Correspondence, 1866, II, p. 630.

⁸⁰ Mr. Buchanan to Mr. Rush. Moore's Digest, *supra*, n. 8, I, p. 124.

presence of US forces which, no doubt, reinforced the authority of the Provisional Government and subsequently the Government of the Republic.

The difficulties with this second approach are twofold. First of all, even if the Government of the Republic had been installed with the support of US troops, it is apparent that it was not subsequently subject to the same level of control as, for example, was exercised in relation to the regime in Manchukuo by Japan in 1931.⁸¹ Thus, for example, the Provisional Government refused President Cleveland's request to restore the monarchy in 1893 on the basis that it would involve an inadmissible interference in the domestic affairs of Hawai'i.⁸² It could not easily be construed, in other words, merely as an instrument of US government. Secondly, it is apparent that whilst the threat of force was clearly present, the annexation did not follow from the defeat of the Hawaiian Kingdom on the battlefield, and was not otherwise pursuant to an armed conflict. Most authors at the time were fairly clear that conquest and subjugation were events associated with the pursuit of war and not merely with the threat of violence. Indeed Bindschedler suggests in this regard, and by reference to the purported annexation of Bosnia-Herzegovina by Austria-Hungary in 1908, that:

'unless preceded by war, the unilateral annexation of the territory of another State without contractual consent is illegal. It makes no difference that the territory involved may already be under the firm control of the State declaring the annexation.'⁸³

The reason for this, no doubt, was the tendency to view international law as being comprised of two independent sets of rules applicable respectively in peacetime and in war (a differentiation which is no longer as sharp as it once was). A State of war had several effects at the time including not merely the activation of the laws and customs of war, but also the invalidation or suspension of existing treaty obligations.⁸⁴ This meant, in particular, that in absence of armed conflict, in other words, the US would be unable to avoid its commitments under the 1849 Treaty with Hawai'i, and would therefore be effectively prohibited from annexing the Islands by unilateral act. This, no doubt, informed President Cleveland's unwillingness to support the treaty of annexation in 1893, and meant that the only legitimate basis for pursuing annexation in the circumstances would have been by treaty of cession.

Ultimately, one might conclude that there are certain doubts, albeit not necessarily overwhelming, as to the legitimacy of the US acquisition of Hawai'i in 1898 under the terms of international law as it existed at that time. It neither possessed the hallmarks of a genuine 'cession' of territory, nor that of forcible annexation (conquest). If, however, the US neither came to acquire the Islands by way of treaty of cession, nor by way of conquest, the question then remains as to whether the sovereignty of the Hawaiian Kingdom was maintained intact. The closest parallel, in this regard, is to be found in the law governing belligerent occupation.

Belligerent Occupation and Occupation Pacifica

⁸¹ See, Hackworth G., *Digest of International Law*, (1940) I, pp. 333-338.

⁸² Moore's Digest, *supra*, n. 8, I, p. 500.

⁸³ Bindschedler R., 'Annexation', in *Encyclopedia of Public International Law*, III, 19, p. 20.

⁸⁴ Brownlie, *supra*, n. , pp. 26-40.

From the time of Vattel onwards it was frequently held that the mere occupation of foreign territory did not lead to the acquisition of title of any kind until the termination of hostilities.⁸⁵ During the course of the 19th Century, however, this became not merely a doctrinal assertion, but a firmly maintained axiom of international law.⁸⁶ Up until the point at which hostilities were at an end, the control exercised over territory was regarded as a ‘belligerent occupation’ subject to the terms of the laws of war. The hallmark of belligerent occupation being that the occupant enjoyed *de facto* authority over the territory in question, but that sovereignty (and territorial title) remained in the hands of the displaced government. As President Polk noted in his annual message of 1846 ‘by the law of nations a conquered territory is subject to be governed by the conqueror during his military possession and until there is either a treaty of peace, or he shall voluntarily withdraw from it.’⁸⁷ In such a case ‘[t]he sovereignty of the enemy is in such case “suspended”, and his laws can “no longer be rightfully enforced” over the occupied territory and that “[b]y the surrender, the inhabitants pass under a temporary allegiance to the conqueror.”⁸⁸ The suspensory, and provisional, character of belligerent occupation was further confirmed in US case law of the time,⁸⁹ in academic doctrine⁹⁰ and in various Manuals on the Laws of War.⁹¹ The general idea was subsequently recognised in Conventional form in article 43 of the 1907 Hague Regulations,⁹² and in the US Military Manual of 1914.⁹³

In essence, the doctrine of belligerent occupation placed certain limits on the capacity of the occupying power to acquire or dispose of territory *durante bello*. By inference, sovereignty remained in the hands of the occupied power and, as a consequence it was generally assumed that until hostilities were terminated, title to territory would not pass and the extinction of the state would not be complete. This doctrine was subsequently elaborated during the course of the First and Second World Wars to the effect that States would not be regarded as having been lawfully annexed even when the entirety of the territory was occupied and the government forced into exile, so long as the condition of war persisted, albeit on the part of allied States. The general prohibition on the threat or use of armed force in the Charter era since 1945 has further reinforced this regime to the point at which it might be said that ‘effective control by foreign military force can never bring about by itself a valid transfer of sovereignty’.⁹⁴

⁸⁵ See e.g. de Vattel *supra*, n. 6, III, s. 196.

⁸⁶ Graber believes this was the case following the Franco-Prussian war. Graber D., *The Development of the Law of Belligerent Occupation 1863-1914: A Historical Survey* (1968) 40-41.

⁸⁷ President Polk’s Second Annual Message, 1846, Moore’s Digest, *supra*, n. 8, I, p. 46.

⁸⁸ President Polk’s Special Message, July 24th, 1848. Moore’s Digest, *supra*, n. 8, I, pp. 46-7.

⁸⁹ *US v. Rice*, US Supreme Court, 1819, 4 Wheat. 246 (1819).

⁹⁰ Heffter, *Das europäische Völkerrecht de Gengenwart* (1844) pp. 287-9; Bluntschli, *Das Moderne Völkerrecht* (3rd ed. 1878) pp. 303-7.

⁹¹ The Oxford Manual on the Laws of War on Land, 1880 provided (article 6): ‘No invaded territory is regarded as conquered until the end of war; until that time the occupant exercises, in such territory, only a *de facto* power, essentially provisional in character.’ See also, article 2 Brussels Code of 1874.

⁹² Regulations Respecting the Laws and Customs of War on Land, annex to the Convention (IV) Respecting the Laws and Customs of War on Land, The Hague, October 18, 1907. The Brussels Declaration of 1874 provided similarly (article 2) that ‘The authority of the legitimate power being suspended and having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety’.

⁹³ Rules of Land Warfare, 1914, pp. 105-6: ‘Military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty of the occupant, but simply the authority or power to exercise some of the rights of sovereignty’.

⁹⁴ Benvenisti E., *The International Law of Occupation* (1993) p. 5.

Until the adoption of common article 2 of the 1949 Geneva Conventions,⁹⁵ however, the doctrine of belligerent occupation applied primarily to time of war or armed conflict where military intervention met armed resistance. Indeed, the absence of resistance would not infrequently be construed either as an implicit acceptance of the fact of occupation, or as a signal that the original sovereign had been effectively extinguished in virtue of *debellatio*. It is evident, however, that by the turn of the century a notion of peacetime occupation (*occupatio pacifica*) was coming to be recognised.⁹⁶ This concept encompassed not merely occupation following the conclusion of an agreement between the parties, but also non-consensual occupation occurring outside armed conflict (but normally following the threatened use of force).⁹⁷ Practice in the early 20th Century suggests that even though the Hague Regulations were themselves limited to occupations *pendente bello*, their provisions should apply to peacetime occupations such as the British occupation of Egypt in 1914-18,⁹⁸ the Franco- Belgian occupation of the Ruhr in 1923-5⁹⁹ and the occupation of Bohemia and Moravia by Germany in 1939.¹⁰⁰ Indeed, the Arbitral Tribunal in the *Coenca Brothers v. Germany Arbitration Case*¹⁰¹ took the view that the Allied occupation of Greece in 1915 was governed by the terms of the law of belligerent occupation notwithstanding the fact that Greece was not a belligerent at that time, but had merely invited occupation of Salonika in order to protect the Serbian State. Similarly, in the *Chevreau Case* the Arbitrator intimated that the laws of belligerent occupation would apply to the British forces occupying Persia under agreement with the latter in 1914.¹⁰²

If the general terms of the Hague Regulations are to apply to peacetime occupations, it would seem to follow that the same limitations apply as regards the authority of the occupying State. In fact it

⁹⁵ Common Article 2 of the 1949 Geneva Conventions 75 U.N.T.S. 31 reads:

‘In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.’

It would seem that the purpose of this ‘extension’ of the regime of military occupation was to take account of the peculiar facts surrounding the German occupation of Czechoslovakia in 1939 and Denmark in 1940.

⁹⁶ See, Robin, *Des Occupations militaires en dehors des occupations de guerre* (1913).

⁹⁷ Llewellyn Jones F., ‘Military Occupation of Alien Territory in Time of Peace’, 9 *Transactions of Grotius Soc.* (1924) 150; Roberts A., ‘What is a Military Occupation?’, 55 *B.Y.I.L.* (1984) 249, p. 273; Feilchenfeld, *The International Economic Law of Belligerent Occupation* (1942) 116.

⁹⁸ *Leban and Others v. Alexandria Water Co. Ltd. and Others Egypt*, Mixed Court of Appeal, 25 March 1929, A.D. 1929/30, Case No. 286.

⁹⁹ See *In re Thyssen and Others* and *In re Krupp and Others*, 2 A.D. (1923-4) Case No. 191, pp. 327-8.

¹⁰⁰ See Judgment of Nuremberg Tribunal, p. 125; *Anglo-Czechoslovak and Prague Credit Bank v. Janssen* 12 A.D. (1943-5) Case No. 11, p. 47.

¹⁰¹ 7 M.A.T., 1929, p. 683.

¹⁰² *Chevreau Case* (France v. Great Britain) 27 A.J.I.L. (1931) 159, pp. 159-60.

is arguable that the rights of the pacific occupant are somewhat less extensive than those of the belligerent occupant. As Llewellyn Jones notes:

‘[i]n the latter case the occupant is an enemy, and has to protect himself against attack on the part of the forces of the occupied State, and he is justified in adopting measures which would justly be considered unwarranted in the case of pacific occupation...’¹⁰³

Whether or not this has significance in the present context, it is apparent that the US could not, as an occupying power, take steps to acquire sovereignty over the Hawaiian Islands. Nor could it be justified in attempting to avoid the strictures of the occupation regime by way of installing a sympathetic government bent on ceding Hawaiian sovereignty to it. This point has now been made perfectly clear in article 47 of the 1949 Geneva Convention IV which states that protected persons shall not be deprived of the benefits of the Convention ‘by any change introduced, as a result of the occupation of a territory, into the institutions of government of the said territory’.

It may certainly be maintained that there are serious doubts as to the United States’ claim to have acquired sovereignty over the Hawaiian Islands in 1898 and that the emerging law at the time would suggest that, as an occupant, such a possibility was largely excluded. To the extent, furthermore, that US claims to sovereignty were essentially defective, one might conclude that the sovereignty of the Hawaiian Kingdom as an independent state was maintained intact. The importance of such a conclusion is of course dependent upon the validity and strength of subsequent bases for the claim to sovereignty on the part of the US.

Acquisition of the Islands in virtue of the Plebiscite of 1959

An alternative basis for the acquisition of title on the part of the US government (and hence the conclusion that the Hawaiian Kingdom has ceased to exist as a State) is the Plebiscite of 1959 exercised in pursuit of article 73 of Chapter XI of the United Nations Charter. In 1945 Hawai’i was listed as a Non-Self-Governing Territory administered by the United States together with its other overseas territories including Puerto Rico, Guam, the Philippines, American Samoa and Alaska. Article 73 of the Charter provides that:

‘Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a) to ensure, with due respect for culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free

¹⁰³ Supra, n. , p. 159.

- political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement...
- d) to transmit regularly to the Secretary-General for information purposes... statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible.'

Central to this provision is the 'advancement of the peoples concerned' and the development of their 'self-government'. Unlike the United Nations Trusteeship System elaborated in Chapters XII and XIII of the UN Charter, however, Chapter XI does not stipulate clearly the criteria by which it may be determined whether a people has achieved the status of self-government or whether the competence to determine that issue lies with the organs of the United Nations or with the administering State. The United Nations General Assembly, however, declared in Resolution 334(IV) that the task of determining the scope of application of Chapter XI falls 'within the responsibility of the General Assembly'.

The General Assembly was to develop its policy in this respect during the subsequent decades through the adoption of the UN List of Factors in 1953 (Res. 742 (VIII)), the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 (Res. 1514 (XV)), supplemented by Resolutions 1541 (XV) (1960) and 2625 (XXV) in 1970. Central to this policy development was its elaboration of the meaning of self-determination in accordance with article 1(2) UN Charter (which provided that the development of 'friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples' was one of the Purposes and Principles of the United Nations). According to the General Assembly, colonial peoples must be able to 'freely determine their political status and freely pursue their economic, social and cultural development' (Resn. 1514 (XV), and Resn. 2625 (XXV)), and primarily by way of choosing between one of three alternatives: emergence as a sovereign independent State; free association with an independent State; and integration with an independent State (Resn. 1514 (XV) and Resn. 1541 (XV) principles II, VI). The most common mode of self-determination was recognised to be full independence involving the transfer of all powers to the people of the territories 'without any conditions or reservations' (Resn. 1514 (XV) principles VII, VIII and IX). In case of integration with another state, it was maintained that the people of the territory should act 'with full knowledge of the change in their status... expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage' (Resn. 1541 (XV), principle IX).

A higher level of scrutiny was generally exercised in case of integration than in respect of other forms of self-determination. Until the time in which self-determination is exercised, furthermore, 'the territory of a... Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State' (Resn. 2625 (XXV) para. VI).¹⁰⁴ As the ICJ subsequently noted in its Advisory Opinion in the *Namibia case*, the 'development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them'.¹⁰⁵ It emphasised, furthermore, in the

¹⁰⁴ This follows by implication from the terms of article 74 UN Charter.

¹⁰⁵ ICJ Rep. (1971), 31, para. 51.

Western Sahara case that ‘the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned’.¹⁰⁶

An initial point in question here is whether Hawai’i should have been listed as a Non-Self-Governing Territory at all for such purposes. Article 73 of the Charter refers to peoples ‘who have not yet attained a full measure of self-government’ – a point which is curiously inapplicable in case of Hawai’i. That being said, the regime imposed was designed, primarily, to foster decolonisation after 1945 and it was only with some reluctance that the United States agreed to include Hawai’i on the list at all. The alternative would have been for Hawai’i to remain under the control of the United States and deprived of any obvious means by which it might re-obtain its independence. The UN Charter may be seen, in that respect, as having created a general but exclusive system of entitlements whereby only those non-State entities regarded as either Non-Self-Governing or Trust Territories would be entitled to independence by way of self-determination absent the consent of the occupying power.¹⁰⁷ It may be emphasised, furthermore, that to regard Hawai’i as being a territory entitled to self-determination was not entirely inconsistent with its claims to be the continuing State. The substance of self-determination in its external form as a right to political independence may be precisely that which may be claimed by a State under occupation. Indeed, the General Assembly Declaration on Friendly Relations (Resn. 2625) makes clear that the right is applicable not simply in case of colonialism, but also in relation to the ‘subjection of peoples to alien subjugation, domination and exploitation’. Crawford points out, furthermore, that self-determination applies with equal force to existing states taking ‘the well-known form of the rule preventing intervention in the internal affairs of a State: this includes the right of the people of the State to choose for themselves their own form of government’.¹⁰⁸ The international community’s subsequent recognition of the applicability of self-determination in case of the Baltic States, Kuwait and Afghanistan, for example, would appear merely to emphasise this point.¹⁰⁹ One may tolerate, in other words, the placing of Hawai’i on the list of non-self-governing territories governed by article 73 only to the extent that the entitlement to self-determination under that article was entirely consonant with the general entitlements to ‘equal rights and self-determination’ in articles 1(2) and 55 of the Charter.

Notwithstanding doubts as to the legality of US occupation/ annexation of Hawai’i, it would seem evident that any outstanding problems would be effectively disposed of by way of a valid exercise of self-determination. In general, the principle of self-determination may be said to have three effects upon legal title. First of all it envisages a temporary legal regime that may, in effect, lead to the extinction of legal title on the part of the Metropolitan State.¹¹⁰ Secondly, it may nullify claims to title in cases where such claims are inconsistent with the principle. Finally, and most importantly in present circumstances, it may give rise to a valid basis for title including cases where it has resulted in free integration with another State. In this third scenario, if following a valid exercise of self-determination on the part of the Hawaiian people it was decided that Hawai’i

¹⁰⁶ ICJ Rep (1975) 12, p. 32.

¹⁰⁷ For a review of the practice in this regard see Crawford J., ‘State Practice and International Law in Relation to Secession’, 69 B.Y.I.L (1998) 85.

¹⁰⁸ Crawford, *supra*, n. 2, p. 100.

¹⁰⁹ See Cassese A., *Self-Determination of Peoples: A Legal Reappraisal* (1995) pp. 94-5.

¹¹⁰ Crawford, *supra*, n. 2, pp. 363-4; Shaw, *Title to Territory in Africa*, pp. 149 ff.

should seek integration into the United States, this would effectively bring to a close any claims that might remain as to the continuity of the Hawaiian Kingdom.

Turning then to the question whether the Hawaiian people can be said to have exercised self-determination following the holding of a plebiscite on June 27th 1959. The facts themselves are not in dispute. On March 18th 1959 the United States Congress established an *Act to Provide for the admission of the State of Hawai'i into the Union* setting down, in section 7(b) the terms by which this should take place. This specified that:

'At an election designated by proclamation of the Governor of Hawai'i ... there shall be submitted to the electors, qualified to vote in said election, for adoption or rejection, the following propositions:

1. Shall Hawai'i immediately be admitted into the Union as a State?...

An election was held on June 27th 1959 in accordance with this Act and a majority of residents voted in favour of admission into the United States. Hawai'i was formally admitted into the Union by Presidential Proclamation on August 21st 1959. A communication was then sent to the Secretary-General of the United Nations informing him that Hawai'i had, in virtue of the plebiscite and proclamation, achieved self-governance. The General Assembly then decided in Resolution 1469(XIV) that the US would no longer be required to report under the terms of article 73 UN Charter as to the situation of Hawai'i.

Two particular concerns may be raised in this context. First, the plebiscite did not attempt to distinguish between 'native' Hawaiians or indeed nationals of the Hawaiian Kingdom and the resident 'colonial' population who vastly outnumbered them. This was certainly an extraordinary situation when compared with other cases with which the UN was dealing at the time, and has parallels with one other notoriously difficult case, namely the Falkland Islands/ Malvinas (in which the entire population is of settler origin). There is certainly nothing in the concept of self-determination as it is known today to require an administering power to differentiate between two categories of residents in this respect, and indeed in many cases it might be treated as illegitimate.¹¹¹ By the same token, in some cases a failure to do so may well disqualify a vote where there is evidence that the administering state had encouraged settlement as a way of manipulating the subsequent result.¹¹² This latter point seems to be even more clear in a case such as Hawai'i in which the holders of the entitlement to self-determination had presumptively been established in advance by the fact of its (prior or continued) existence as an independent State. In that case, one might suggest that it was only those who were entitled to regard themselves as nationals of the Kingdom of Hawaii (in accordance with Hawaiian law prior to 1898), who were entitled to vote in exercise of the right to self-determination.

A second, worrying feature of the plebiscite concerns the nature of the choice being presented to the Hawaiian people. As GA Resn. 1514 makes clear, a decision in case of integration should be made 'with full knowledge of the change in their status... expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage'. It is far from

¹¹¹ See, Hannum H., 'Rethinking Self-Determination', 34 Va.J.I.L. (1993) 1, p. 37.

¹¹² Cf. the case of Israeli settlements in the Occupied Territories, Cassese, *supra*, n. 97, p. 242.

clear that much, if any, information was provided as regards the ‘change in status’ that would occur with integration, and there is no evidence that the alternative of full independence was presented as an option. Judged in terms of the later resolutions of the General Assembly on the issue, then, it would seem that the plebiscite falls considerably short of that which would be required for purposes of a valid exercise of self-determination.¹¹³

An important point, here, as is evident from the discussion above, is that most of the salient resolutions by which the General Assembly ‘developed’ the law relating to decolonisation post-dated the plebiscite in Hawai’i, and the organisation’s practice in that respect changed quite radically following the establishment of the Committee of Twenty-Four in 1961 (Resn. 1700 (XVI)). Up until that point, many took the view that Non-Self-Governing Territories were merely entitled to ‘self-government’ rather than full political independence, and that self-determination was little more than a political principle being, at best, *de lege farenada*.¹¹⁴ There was, in other words, no clear obligation as far as UN practice at the time was concerned, for the decision made in 1959 to conform to the requirements later spelled out in relation to other territories – practice was merely crystallising at that date. The US made clear, in fact, that it did not regard UN supervision as necessary for purposes of dealing with its Non-Self-Governing Territories such as Puerto Rico, Alaska or Hawai’i.¹¹⁵ Whilst such a view was, perhaps, defensible at the time given the paucity of UN practice, it does not itself dispose of the self-determination issue. It might be said, to begin with, that in light of the subsequent development of the principle, it is not possible to maintain that the people of Hawai’i had in reality exercised their right of self-determination (as opposed to having merely been granted a measure of self-government within the Union). Such a conclusion, however, is debatable given the doctrine of inter-temporal law. More significant, however, is the fact that pre-1960 practice did not appear to be consistent with the type of claim to self-determination that would attach to independent, but occupied, States (in which one would suppose that the choice of full political independence would be the operative presumption, rebuttable only by an affirmative choice otherwise). As a consequence, there are strong arguments to suggest that the US cannot rely upon the fact of the plebiscite alone for purposes of perfecting its title to the territory of Hawai’i.

Acquisition of Title by Reason of Effective Occupation / Acquisitive Prescription

As pointed out above, it cannot definitively be supposed that the US did acquire valid title to the Hawaiian Islands in 1898, and even if it did so, the basis for that title may now be regarded as suspect given the current prohibition on the annexation of territory by use of force. In case of the latter, the second element of the doctrine of inter-temporal law as expounded by Arbitrator Huber in the *Island of Palmas case* may well be relevant. Huber distinguishes in that case between the acquisition of rights on the one hand (which must be founded in the law applicable at the relevant date) and their existence or continuance at a later point in time which must ‘follow the conditions required by the evolution of the law’. One interpretation of this would be to suggest that title may be lost if a later rule of international law were to arise by reference to which the original title would no longer be lawful. Thus, it might be said that since annexation is no longer a legitimate means by which title may be established, US annexation of Hawai’i (if it took place at all) would no

¹¹³ Similar points have been made as regards the disputed integration of West Irian into Indonesia.

¹¹⁴ See, Jennings R., *The Acquisition of Territory in International Law* (1963) pp. 69-87.

¹¹⁵ US Department of State Bulletin, (1952) p. 270.

longer be regarded as well founded. Apart from the obvious question as to who may be entitled to claim sovereignty in absence of the United States, it is apparent that Huber's *dictum* primarily requires that 'a State must continue to maintain a title, validly won, in an effective manner – no more no less.'¹¹⁶ The US, in other words, would be entitled to maintain its claim over the Hawaiian Islands so long as it could show some basis for asserting that claim other than merely its original annexation. The strongest type of claim in this respect is the 'continuous and peaceful display of territorial sovereignty'.

The emphasis given to the 'continuous and peaceful display of territorial sovereignty' in international law derives in its origin from the doctrine of occupation which allowed states to acquire title to territory which was effectively *terra nullius*. It is apparent, however, and in line with the approach of the ICJ in the *Western Sahara Case*,¹¹⁷ that the Islands of Hawai'i cannot be regarded as *terra nullius* for purpose of acquiring title by mere occupation. According to some, nevertheless, effective occupation may give rise to title by way of what is known as 'acquisitive prescription'.¹¹⁸ As Hall maintained, '[t]itle by prescription arises out of a long continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so.'¹¹⁹ Johnson explains in more detail:

'Acquisitive Prescription is the means by which, under international law, legal recognition is given to the right of a State to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time, provided that all other interested and affected states (in the case of land territory the previous possessor...) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected states have failed within a reasonable time to refer the matter to the appropriate international organization or international tribunal or – exceptionally in cases where no such action was possible – have failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests.'¹²⁰

Although no case before an international court or tribunal has unequivocally affirmed the existence of acquisitive prescription as a mode of acquiring title to territory,¹²¹ and although Judge Moreno Quintana in his dissenting opinion in the *Rights of Passage* case¹²² found no place for the concept in international law, there is considerable evidence that points in that direction. For example, the continuous and peaceful display of sovereignty, or some variant thereof, was emphasised as the basis for title in the *Minquiers and Ecrehos Case (France v. United Kingdom)*,¹²³ the *Anglo-*

¹¹⁶ Higgins R., 'Time and the Law: International Perspectives on an Old Problem', 46 I.C.L.Q. (1997) 501, p. 516.

¹¹⁷ *Supra* n. 94.

¹¹⁸ For a discussion of the various approaches to this issue see Jennings and Watts, *supra*, n. 8, pp. 705-6.

¹¹⁹ Hall W., *A Treatise on International Law* (Pearce Higgins, 8th ed 1924) p. 143.

¹²⁰ Johnson, 27 B.Y.I.L. (1950) 332, pp. 353-4.

¹²¹ Prescription may be said to have been recognized in the *Chamizal Arbitration*, 5 A.J.I.L. (1911) 785; the *Grisbadana Arbitration* P.C.I.J. 1909; and the *Island of Palmas Arbitration*, *supra* n. 13.

¹²² ICJ Rep. 1960, p. 6.

¹²³ ICJ Rep. 1953 47

*Norwegian Fisheries Case (United Kingdom v. Norway)*¹²⁴ and in the *Island of Palmas Arbitration*.¹²⁵

If a claim as to acquisitive prescription is to be maintained in relation to the Hawaiian Islands, various *indicia* have to be considered including, for example, the length of time of effective and peaceful occupation, the extent of opposition to or acquiescence in, that occupation and, perhaps, the degree of recognition provided by third states. As Jennings and Watts confirm, however, ‘no general rule [can] be laid down as regards the length of time and other circumstances which are necessary to create such a title by prescription. Everything [depends] upon the merits of the individual case’.¹²⁶ As regards the temporal element, the US could claim to have peacefully and continuously exercised governmental authority in relation to Hawai’i for over a century. This is somewhat more than was required for purposes of prescription in the *British Guiana-Venezuela Boundary Arbitration*, for example,¹²⁷ but it is clear that time alone is certainly not determinative. Similarly, in terms of the attitude of third states, it is evident that apart from the initial protest of the Japanese Government in 1897, none has opposed the extension of US jurisdiction to the Hawaiian Islands. Indeed the majority of States may be said to have acquiesced in its claim to sovereignty in virtue of acceding to its exercise of sovereign prerogatives in respect of the Islands (for example, in relation to the policing of territorial waters or airspace, the levying of customs duties, or the extension of treaty rights and obligations to that territory). It is important, however, not to attach too much emphasis to third party recognition. As Jennings points out, in case of adverse possession ‘[r]ecognition or acquiescence on the part of third States... must strictly be irrelevant’.¹²⁸

More difficult, in this regard, is the issue of acquiescence/ protest. In the *Chamizal Arbitration*¹²⁹ it was held that the US could not maintain a claim to the Chamizal tract by way of prescription in part because of the protests of the Mexican government. The Mexican government, in the view of the Commission, had done ‘all that could be reasonably required of it by way of protest against the illegal encroachment’. Although it had not attempted to retrieve the land by force the Commission pointed out that:

‘however much the Mexicans may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico can not be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence.’¹³⁰

It would seem, in other words, that protesting in any way that might be ‘reasonably required’ should effectively defeat a claim of prescription.

¹²⁴ ICJ Rep. 1951 116.

¹²⁵ *Supra*, n. 13.

¹²⁶ *Supra*, n. , p. 706.

¹²⁷ The arbitrators were instructed by their treaty terms of reference to allow title if based upon ‘adverse holding or prescription during a period of 50 years’. 92 BFSP (1899-1900) 160.

¹²⁸ Jennings, *supra*, n. 114, p. 39.

¹²⁹ *US v. Mexico* (1911), 5 A.J.I.L. (1911) 782.

¹³⁰ *Ibid.*

The difficulty of applying such considerations in the current circumstances is evident. Although the Hawaiian Kingdom (the Queen) protested vociferously at the time, and on several separate occasions, and although this protest resulted in the refusal of the US Senate to ratify the treaty of cession, from 1898 onwards no further action was taken in this regard. The reason, of course, is not hard to find. The government of the Kingdom had been effectively removed from power and the US had *de facto*, if not *de jure*, annexed the Islands. The Queen herself survived only until 1917 and did so before a successor could be confirmed in accordance with article 22 of the 1864 Constitution. This was not a case, moreover, of the occupation of merely part of the territory of Hawai'i in which case one might have expected protests to be maintained on a continuous basis by the remaining State. In the circumstances, therefore, it is entirely understandable that the Queen or her government failed to pursue the matter further when it appeared exceedingly unlikely that any movement in the position of the US government would be achieved. This is not to say, of course, that the government of the Kingdom subsequently acquiesced in the US occupation of the Islands, which of course raises the question whether a claim of acquisitive prescription may be sustained. In the view of Jennings, in cases of acquisitive prescription, 'an acquiescence on the part of the State prescribed against is of the essence of the process'.¹³¹ If, as he suggests, some positive indication of acquiescence is to be found, there is remarkably little evidence for it. Indeed, of significance in this respect is the admission of the United States in the 'Apology Resolution' of 1993 in which it noted that 'the indigenous Hawaiian people never directly relinquished their claims to the inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum'. By the same token, the weight of evidence in favour of prescription should not be underplayed. As Jennings and Watts point out:

'When, to give an example, a state which originally held an island *mala fide* under a title by occupation, knowing well that this land had already been occupied by another state, has succeeded in keeping up its possession undisturbed for so long a time that the former possessor has ceased to protest and has silently dropped the claim, the conviction will be prevalent among states that the present condition of things is in conformity with international order.'¹³²

The significant issue, however, is whether such considerations apply with equal ease in cases where the occupation concerned comprises the entirety of the State concerned, and where the possibilities of protest are hampered by the fact of occupation itself. It is certainly arguable that if a presumption of continuity exists, different considerations must come into play.

¹³¹ *Supra*, n. 114, p. 39.

¹³² *Supra*, n. 7, p. 707.

Enclosure "2"



Larsen v. Hawaiian Kingdom

Case name Larsen v. Hawaiian Kingdom

Case description Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.

In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.

The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.

Name(s) of claimant(s) Lance Paul Larsen (Private entity)

Name(s) of respondent(s) The Hawaiian Kingdom (State)

Names of parties

Case number 1999-01

Administering institution Permanent Court of Arbitration (PCA)

Case status Concluded

Type of case Other proceedings

Subject matter or economic sector Treaty interpretation

Rules used in arbitral proceedings UNCITRAL Arbitration Rules 1976

Treaty or contract under which proceedings were commenced Other
The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America

Language of proceeding English

Seat of arbitration (by country) Netherlands

Arbitrator(s) Dr. Gavan Griffith QC
Professor Christopher J. Greenwood QC
Professor James Crawford SC (President of the Tribunal)

Representatives of the claimant(s) Ms. Ninia Parks, Counsel and Agent

Representatives of the respondent(s) Mr. David Keanu Sai, Agent

Mr. Peter Umialiloa Sai, First deputy agent
Mr. Gary Victor Dubin, Second deputy agent and counsel

Representatives of the parties

Number of arbitrators in case 3

Date of commencement of proceeding [dd-mm-yyyy] 08-11-1999

Date of issue of final award [dd-mm-yyyy] 05-02-2001

Length of proceedings 1-2 years

Additional notes

Attachments **Award or other decision**

> [Arbitral Award](#) 15-05-2014 English

Other

> [Annex 1 - President Cleveland's Message to the Senate and the House of Representatives](#) 18-12-1893 English

> [Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.](#) 23-11-1993 English



Enclosure “3”

Proclamation

Whereas, the armed forces of the United States of America have invaded and occupied the shores of the Hawaiian Islands on two separate occasions, the first being from January 16, 1893 to April 1, 1893, and the second since August 12, 1898 to the present, whereby the latter being an illegal and prolonged occupation; and

Whereas, the armed forces of the United States of America on January 17, 1893 aided and abetted a small group of insurgents in seizing the Executive office of the Hawaiian Kingdom government and thereafter participated in the coercion of all government employees and officials in the executive and judicial branches of the government of the Hawaiian Kingdom to sign oaths of allegiance to the insurgency calling themselves the so-called provisional government; and

Whereas, United States President Grover Cleveland concluded, through a presidential investigation, that the overthrow of the Hawaiian Kingdom government was unlawful, and that the United States bears the sole responsibility for the overthrow of the government of a friendly State, and provide restitution; and

Whereas, executive mediation took place between United States Minister Plenipotentiary Albert Willis and Her Majesty Queen Lili'uokalani beginning on November 13, 1893, at the United States Legation in the city of Honolulu, and on December 18, 1893 an agreement was reached through *exchange of notes* committing the United States to reinstate the government, and thereafter the Hawaiian Kingdom to grant amnesty to the insurgents; and

Whereas, United States President Cleveland and his successors in office failed to faithfully execute the agreement and allowed the insurgency to gain power through the hiring of American mercenaries in order to seek annexation to the United States of America; and

Whereas, during the Spanish-American War, the armed forces of the United States of America unlawfully occupied the Hawaiian Islands on August 12, 1898, being a neutral State, to wage war against the Spanish colonies of the Philippines and Guam in the Pacific Ocean; and

Whereas, since the second occupation, the armed forces of the United States of America have not complied with international law, the international laws of occupation, both customary and by conventions, and international humanitarian law; and

Whereas, the armed forces of the United States of America under the guise of civilian authority seized control of the government of the Hawaiian Kingdom calling itself the so-called Republic of Hawai'i, being the successor to the provisional government, and renamed the same as the government of the Territory of Hawai'i on April 30, 1900, and then subsequently renamed as the government of the State of Hawai'i on March 18, 1959; and

Whereas, the so-called provisional government, the Republic of Hawai'i, the Territory of Hawai'i, and the State of Hawai'i have no legal basis under Hawaiian Kingdom law or the international laws of occupation; and

Whereas, the occupant State has unlawfully levied pecuniary contributions of various kinds that included taxes and the imposition of fines in violation of international law; and

Whereas, the occupant State has unlawfully seized public and private property for the construction of its government agencies and military installations from the occupied State and its inhabitants, and that restoration and compensation shall be made under *jus post liminii*; and

Whereas, the failure of the armed forces of the United States of America to administer the laws of the Hawaiian Kingdom as

it stood prior to the insurrection of July 6, 1887 has placed the Hawaiian Kingdom into a state of emergency that could lead to economic ruination and calamity; and

Whereas, war crimes have and continue to be committed as a result of the failure of the armed forces of the United States of America to administer the laws of the Hawaiian Kingdom in accordance with the 1907 Hague Regulations and the 1949 Geneva Convention IV; and

Whereas, customary international law recognizes that the rules on belligerent occupation will also apply where a belligerent State, in the course of war, occupies neutral territory, being the territory of the Hawaiian Kingdom; and

Whereas, customary international law recognizes that when neutral territory is militarily occupied by a belligerent, the occupant State does not possess a wide range of rights with regard to the occupied State and its inhabitants as it would in occupied enemy territory; and

Whereas, customary international law recognizes that legislative power remains with the government of the occupied State during military occupation of the occupied State's territory; and

¶ *Whereas*, Her late Majesty Queen Lili'uokalani died on November 11, 1917, without an heir apparent proclaimed in accordance with Hawaiian law; and

¶ *Whereas*, it is provided by Article 33 of the Constitution, that should a Monarch die without confirming an heir apparent in accordance with Hawaiian law, the Cabinet Council shall serve as an *acting* Council of Regency who shall administer the Government in the name of the Monarch, and exercise all the Powers which are constitutionally vested in the Monarch, until the Legislative Assembly may be assembled to elect by ballot a *de jure* Regent or Council of Regency; and

¶ *Whereas*, according to Article 42 of the Constitution, the Cabinet Council consists of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance and the Attorney General of the Kingdom; and

¶ *Whereas*, an *acting* Regency, by virtue of the offices made vacant in the Cabinet Council, was established under the doctrine of necessity by proclamation on February 28, 1997, pursuant to Article 33 of the Constitution, and possesses the constitutional authority to temporarily exercise the Royal Power of the Hawaiian Kingdom; and

Whereas, the Legislative Assembly is unable to be assembled in accordance Title 3—Of the Legislative Department, Civil Code of the Hawaiian Islands (Compiled Laws, 1884), in order to elect by ballot a *de jure* Regent or Council of Regency as a direct result of the prolonged occupation of the Hawaiian Kingdom by the armed forces of the United States of America and the Rules of Land Warfare of the United States; and

Whereas, the public safety requires:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby acknowledge that acts necessary to peace and good order among the citizenry and residents of the Hawaiian Kingdom, such for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government, but acts in furtherance or in support of rebellion or collaborating against the Hawaiian Kingdom, or intended to defeat the just rights of the citizenry and residents

under the laws of the Hawaiian Kingdom, and other acts of like nature, must, in general, be regarded as invalid and void;

And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void;

And, We do hereby further proclaim that the currency of the United States shall be a legal tender at their nominal value in payment for all debts within this Kingdom pursuant to *An Act To Regulate the Currency* (1876);

And, We do hereby call upon the said Commander of the United States Pacific Command, and those subordinate military personnel to whom he may delegate such authority to seize control of our government, calling itself the State of Hawai'i, by proclaiming the establishment of a military government, during the present prolonged military occupation

and until the military occupation has ended, to exercise those powers allowable under the international laws of occupation and international humanitarian law;

And, We do require all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law;

And, We do further require that all courts of the Hawaiian Kingdom, whether judicial or administrative, shall administer the provisional laws hereinbefore proclaimed forthwith;

And, We do further require that Consular agents of foreign States within the territory of the Hawaiian Kingdom shall comply with Article X, Chapter VIII, Title 2—Of the Administration of Government, Civil Code of the Hawaiian Islands (Compiled Laws, 1884) and the Law of Nations;

And, We do further require every person now holding any office of profit or emolument under the State of Hawai'i and its Counties, being the Hawaiian government, take and subscribe the oath of allegiance in accordance with *An Act to Provide for the Taking of the Oath of Allegiance by Persons in the employ of the Hawaiian Government* (1874).



In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 10th day of October A.D. 2014.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior

Peter Umialiloa Sai,
Acting Minister of Foreign Affairs

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

Dexter Ke'eaumoku Ka'iama, Esq.,
Acting Attorney General

Enclosure “4”

Proclamation

By virtue of the prerogative of the Crown provisionally vested in us in accordance with Article 33 of the 1864 Constitution, and to ensure a full and thorough investigation into the violations of international humanitarian law and human rights within the territorial jurisdiction of the Hawaiian Kingdom, it is hereby ordered as follows:

Article 1

Head of the Royal Commission of Inquiry and terms of the investigation

1. His Excellency David Keanu Sai, Ph.D., *Acting* Minister of the Interior and Chairman of the Council of Regency, because of his recognized expertise in international relations and public law, is hereby appointed head of the Royal Commission of Inquiry, hereinafter "Royal Commission," on the consequences of the belligerent occupation of the Hawaiian Kingdom by the United States of America since January 17, 1893.
2. The purpose of the Royal Commission shall be to investigate the consequences of the United States' belligerent occupation, including with regard to international law, humanitarian law and human rights, and the allegations of war crimes committed in that context. The geographical

scope and time span of the investigation will be sufficiently broad and be determined by the head of the Royal Commission.

3. The results of the investigation will be presented to the Council of Regency, the Contracting Powers of the 1907 Hague Convention, IV, respecting the Laws and Customs of War on Land, the Contracting Powers of the 1949 Geneva Convention, IV, relative to the Protection of Civilian Persons in Time of War, the Contracting Powers of the 2002 Rome Statute, the United Nations, the International Committee of the Red Cross, and the National Lawyers Guild in the form of a report.
4. The head of the Royal Commission shall be responsible for the implementation of the inquiry. He shall determine, with complete independence, the procedures and working methods of the inquiry, and the content of the report referred to in paragraph 3.
5. The head of the Royal Commission shall take the following oath:

“The undersigned, a Hawaiian subject, being duly sworn, upon his oath, declares that as head of the Royal Commission of Inquiry duly constituted on

April 17, 2019, I will act correctly, truly and faithfully, and without favor to or prejudice against anyone.”

Article 2

Financing

1. All costs incurred by the Royal Commission shall be borne by the Hawaiian Government, by its Council of Regency, and that the latter has granted on this day \$15,000.00 (USD) for initial expenditures of the Royal Commission.
2. The management of the expenditures of the Royal Commission shall be subject to contracts between the head of the Royal Commission and the *Acting* Minister of Finance.
3. The head of the Royal Commission shall be accountable to the *Acting* Minister of Finance for all expenditures.

Article 3

Composition of the Royal Commission of Inquiry

The composition of the Royal Commission shall be decided by the head and shall be comprised of recognized experts in various fields.

Article 4

Entry into effect and expiration

This decision shall take effect on the day of its adoption and shall expire on the day that the head is satisfied that the mandate of the Royal Commission has been completed.



In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 17th day of April A.D. 2019.

A handwritten signature in blue ink that reads "David Keanu Sai".

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior

Peter Umialiloa Sai, deceased
Acting Minister of Foreign Affairs

A handwritten signature in black ink that reads "Kau'i P. Sai-Dudoit".

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

A handwritten signature in black ink that reads "Dexter Ke'eaumoku Ka'iama".

Dexter Ke'eaumoku Ka'iama, *Esq.*,
Acting Attorney General

Enclosure “5”

Proclamation

Whereas, the insurgency, with the support and protection of United States troops, unlawfully seized control of the Hawaiian Kingdom governmental infrastructure on January 17, 1893, and called themselves the so-called provisional government; and

Whereas, the insurgency maintained the Hawaiian Kingdom's governmental institutions with the exception of the Executive Monarch and Cabinet, to include the head of the police force; and

Whereas, all Hawaiian government officials were coerced to sign oaths of allegiance to the unlawful regime; and

Whereas, the State of Hawai'i, and its Counties, is a successor of the Territory of Hawai'i, the Republic of Hawai'i, and the so-called provisional government, all of which have no legal basis under Hawaiian Kingdom law or the international laws of occupation; and

Whereas, the United States, including through its proxy, the State of Hawai'i and its Counties, as an administrative body, is

in effective control of the territory of the Hawaiian Kingdom without lawful authority; and

~~Whereas~~, according to Article 42 of the 1907 Hague Convention, IV, a State's territory is considered occupied when it is placed under the authority of the Occupying State; and

~~Whereas~~, Article 42 has three requisite elements: (1) the presence of a foreign State's forces; (2) the exercise of authority over the occupied territories by the foreign State or its proxy; and (3) the non-consent by the occupied State; and

~~Whereas~~, United States President Grover Cleveland's manifesto to the Congress on December 18, 1893, and the continued United States presence today without a treaty of peace firmly meets all three elements of Article 42; and

~~Whereas~~, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;

And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law.



In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 3rd day of June A.D. 2019.

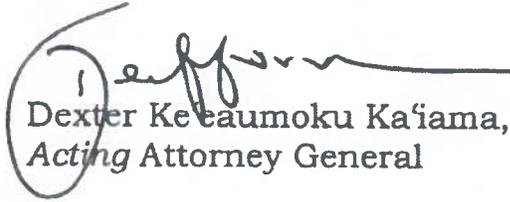
A handwritten signature in blue ink that reads "David Keanu Sai". The signature is written in a cursive style and is positioned above the printed name and title.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior

Peter Umialiloa Sai, deceased
Acting Minister of Foreign Affairs



Kau'i P. Sai-Dudoit,
Acting Minister of Finance



Dexter Ke'eaumoku Ka'iama, *Esq.*,
Acting Attorney General

Enclosure “6”



Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

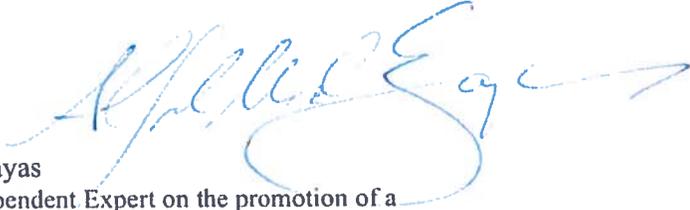
As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the *Paquete Habana* Case (1900),

U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Alfred M. deZayas', with a long horizontal flourish extending to the right.

Dr. Alfred M. deZayas
United Nations Independent Expert on the promotion of a
democratic and equitable international order
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland



UNIVERSITY
of HAWAII®

July 18, 2019

Tamara A. M. Paltin
Councilmember, Maui County Council
200 South High Street, 8th Floor
Wailuku, HI 96793
Email: Tamara.Paltin@mauicounty.us

RE: PROPOSED CONSTRUCTION OF THIRTY-METER TELESCOPE ON
THE SUMMIT OF MAUNA KEA

Dear Councilmember Paltin,

This is to acknowledge receipt of your letter dated July 12, 2019. Thank you for sharing your concerns. The safety of all persons (members of the public and construction workers alike) is the highest priority of everyone involved in the Thirty Meter Telescope project. The Governor and other State officials handling the public safety arrangements for the start of project construction have emphasized this point, and that the project has all approvals required by law.

Sincerely,

A handwritten signature in black ink that reads 'David Lassner'.

David Lassner
President

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

July 26, 2019

David Lassner, President
University of Hawai'i System
2444 Dole Street, Bachman Hall 202
Honolulu, HI 96822

**SUBJECT: PROPOSED CONSTRUCTION OF THE THIRTY-METER
TELESCOPE ON THE SUMMIT OF MAUNA KEA
(COMMUNICATION II)**

Dear President Lassner,

Mahalo for your acknowledgement of my July 12th communication. This follow-up letter is in response to statements made in your July 18, 2019 correspondence.

With regard to the content of your letter in which you write, "*The safety of all persons (members of the public and construction workers alike) is the highest priority of everyone involved in the Thirty Meter Telescope project. The Governor and other State officials handling the public safety arrangements for the start of project construction have emphasized this point, and that the project has all approvals required by law.*" I partially concur that, as week two of protests concludes, it is apparent that common ground has been established by high levels of government, law enforcement, kia'i, etc. that safety of all involved and affected by the proposed TMT construction stands as the highest priority and of utmost importance.

However, with all due respect to the position you hold as President of Hawai'i's highest educational institution - the University of Hawai'i System, and as the lessee to the summit of Mauna Kea, which the University of Hawai'i subleased to TMT, your rather curt response is unacceptable and irresponsible

Mr. David Lassner
July 26, 2019
Page 2 of 5

considering what appears to be the irrefutable historical information now publicly available on a global level.

My letter specifically addressed the invalidity of General Lease No. S-4191, the war crime of destruction of property, and native tenant rights. Your letter does not address any of these issues. And whether or not, as you stated, the "Governor and other State officials [are] handling the public safety arrangements," this is an apparent attempt to shift attention away from the substance of my letter, which is the invalidity of the leases.

The media, except for Maui Now and the Maui News, that covered my press release concerning my July 12th letter to you, has managed to portray the proposed TMT construction as if it is an issue of science and jobs versus Native Hawaiian culture. As a Council member and kama'aina from Lahaina, Maui, I am not against science nor am I against jobs. I am, however, against violations of the law and just rights of Native Hawaiians in the name of science and jobs.

The University of Hawai'i, not the Governor, is responsible for what has and continues to take place on the summit of Mauna Kea since its lease was granted in 1968 by the Board of Land and Natural Resources and subsequently subleased to TMT. This includes the responsibility for the recent arrests of 38 people, including kupuna, at least four of whom are residents of the County of Maui. Your failure to adhere to my urgent request to stand down until your legal counsel could refute the information provided in my July 12th letter to you resulted in irreparable harm to our kupuna, and your letter provided no such refutation.

This shifting of the focus of attention to the Governor was recently brought up by Lee Cataluna in her article in the Star-Advertiser on July 24, 2019 titled "Ige throws mountain of distraction as TMT foes stay focused." She wrote:

It would be wrong to focus on Gov. David Ige as the source of the problem and the key to the solution. Ige has the power of his current position, but he's not the money behind TMT or the ambition behind the consortium. He's just a passive-aggressive politician with zero leadership skills. Protecting Mauna Kea is not about winning over or defeating Ige. It just means going around him.

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What we knew about Hawai'i's legal and political history in 1968 when the university was granted the lease has dramatically changed as a result of academic research at the University of Hawai'i at Manoa, which you preside over. Dr. Sai is a product of the political science doctoral program at the University of Hawai'i at Manoa attending from 2004 to 2008, and the professors who were members of his doctoral committee speak to the caliber of his doctoral research and conclusions regarding the prolonged occupation of Hawai'i by the United States since 1893.

Professor Neil Milner, political scientist and former ombudsman for the University of Hawai'i at Manoa, served as chair of Dr. Sai' doctoral committee. Other professors from the political science department included John Wilson and Katherina Hyer. Outside of the political science department, members included Professor Aviam Soifer, Dean of the William S. Richardson School of Law; Professor Matthew Craven, Dean from the University of London, SOAS, School of Law; and Professor Jon Osorio from the University of Hawai'i, currently serving as Dean of the University of Hawai'i's Hawai'inuiakea School of Hawaiian Knowledge. I would not consider any of the members of his doctoral committee as academic activists, but rather as reputable professionals in their own fields. Dr. Sai is also a faculty member at the University of Hawai'i who teaches undergraduate as well as graduate courses on this subject, in addition to sitting on doctoral committees himself.

Furthermore, the University of Hawai'i cannot escape the fact that even the United States Congress, in its Apology Resolution in 1993 (107 Stat. 1512), admitted that the overthrow of the Hawaiian Kingdom government was not only unlawful but that the so-called transfer of Hawaiian government and crown lands, which included the ahupua'a of Ka'ohē, to the United States in 1898, was done "**without the consent** of or compensation to the Native Hawaiian people of Hawai'i or their sovereign [Hawaiian Kingdom] government." This was not known in 1968.

The United States did not acquire title to Ka'ohē in 1898, therefore it could not convey what it didn't have to the State of Hawai'i in 1959. Consequently, the State of Hawai'i could not lease what it didn't have to the University of Hawai'i in 1968, and, therefore, the University of Hawai'i could not sublease what it didn't have to TMT. When Congress admitted that the transfer of the property occurred **without consent**, it is also an admission of who the true owner of the

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fee-simple title to Ka'ohē is, which isn't the United States nor the State of Hawai'i. The University of Hawai'i's general lease needs to be understood in this light, which clearly makes it invalid, and, therefore, the sublease to TMT is invalid.

Your letter provided no evidence to the contrary clearly showing that the lease is valid; that the war crimes of destruction of property did not take place with the previous construction of the previous telescopes; and that the summit of Mauna Kea is not subject to the rights of native tenants. Therefore, I have to take your letter as agreeing with me that the **lease is invalid, war crimes have been committed, and native tenant rights are not intact.**

If I am mistaken and you indeed are **NOT** in agreement with me, then it would be imperative for you to immediately have your legal counsel at the University of Hawai'i "determine whether or not Dr. Sai's assessment of the situation is misplaced," which I specifically requested in my initial July 12th letter to you. To not do so is a dereliction of your duty as the grantor of the sublease to TMT, which consequently places Goodfellow Bros., a Maui company, and their employees, in legal jeopardy.

As the grantor of the sublease, I call upon you, in your capacity as President of the University of Hawai'i System, to warrant and defend the validity of the sublease due to the legal implications that have been placed on the aforementioned residents of the County of Maui that have been unlawfully arrested and the employees of Goodfellow Bros. If the lease is valid, then your legal counsel should have no problem showing the errors of Dr. Sai's assessment. I look forward to your legal counsel's response.

Should you have any questions regarding this urgent request to seek legal review of the points raised in this letter, please contact me by email at Tamara.Paltin@mauicounty.us or by phone at (808) 270-5504.

Sincerely,



TAMARA PALTIN
Councilmember

cc: The Honorable David Ige, Governor, State of Hawai'i

Clare Connors, Attorney General, State of Hawai'i

Suzanne Case, Chair, Board of Land and Natural Resources, State of
Hawai'i

Henry Yang, Ph.D., Chair, TMT International Observatory (TIO) Board of
Governors

Chad Goodfellow, Chief Executive Officer, Goodfellow Bros., Inc.

The Honorable Harry Kim, Mayor, County of Hawai'i

The Honorable Valerie T. Poindexter, Councilmember, Hawai'i County
Council

The Honorable Aaron Chung, Chairman, Hawai'i County Council

The Honorable Karen Eoff, Vice-Chair, Hawai'i County Council

The Honorable Susan L.K. Lee Loy, Councilmember, Hawai'i County
Council

The Honorable Ashley Lehualani Kierkiewicz, Councilmember, Hawai'i
County Council

The Honorable Matt Kaneali'i-Kleinfelder, Councilmember, Hawai'i County
Council

The Honorable Maile Medeiros David, Councilmember, Hawai'i County
Council

The Honorable Rebecca Villegas, Councilmember, Hawai'i County Council

The Honorable Herbert M. Richards III, DVM, Councilmember, Hawai'i
County Council