Still in the Blood: Gendered Histories of Race, Law, and Science in *Day v. Apoliona*

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> Article XI, Section 6 clearly states that the income and proceeds from the §5(f) trust must be used solely for native Hawaiians not native Hawaiians and Hawaiians.
>
> —Appellant's opening brief, *Day v. Apoliona* (2008)

In 2005 five Native Hawaiian men sued the Office of Hawaiian Affairs for failing to restrict several of its social programs to the definition of "native Hawaiians" as being "of not less than one-half part blood." The case, *Day v. Apoliona*, eventually reached the US Court of Appeals for the Ninth Circuit four years later. Superficially, the only difference between "native Hawaiians" and "Native Hawaiians" is a matter of capitalization, yet state and federal law distinctly distinguishes the two. The *Day* plaintiffs, Virgil Day, Mel Hoʻomanawanui, Josiah Hoʻohuli, Patrick Kahawaiolaʻa, and Samuel Kealoha, argued that the Office of Hawaiian Affairs (OHA) was obligated to enforce the legal definition of "native Hawaiian" as first stipulated in the 1921 Hawaiian Homes Commission Act (subsequently reinforced in the 1959 State Admission Act) as a person having at least 50 percent "blood." As noted in their distinction between "native Hawaiians" and just plain "Hawaiians" in the epigraph, the plaintiffs saw "native Hawaiians" as the only recognizable indigenes in law.

Drawing from Native feminist and critical ethnic studies frameworks, the present essay advances a critical reading of the *Day* plaintiffs' actions that positions the case within the histories of race and settler colonialism in the Pacific. Though the plaintiffs' actions accede to Western heteropatriarchal and racial norms in defining Native Hawaiian membership, I question both why these men "called the law" on their own community as they sought to enforce a divisive legal definition, and what it means that the law effectively refused to answer, denying the plaintiffs' claims but also stopping short of challenging or ending the 1921 blood quantum definition.

My critical entry into the *Day v. Apoliona* case is through a focus on how law and science are activated by the Native Hawaiian plaintiffs and the Ninth Circuit judges in the audio recording of the final hearing of *Day v. Apoliona*

in 2009, and the resulting written decision in 2010. Especially evident in the audio recording, there is much confusion and contention in how boundaries can be drawn and maintained between native Hawaiians and Native Hawaiians. In the face of this confusion, how and why do the *Day* plaintiffs maintain such boundaries? In valorizing blood quantum policies and insisting on the 50 percent definition of native Hawaiian, I see the *Day* plaintiffs participating in what could be read as simultaneously "calling the law on the law" and "calling the law on themselves." In the first instance, they insist that OHA (a state agency) is neglecting state blood quantum laws. Yet in the process they also call the law on themselves in insisting that legal and scientific distinctions must be drawn in their own communities between native Hawaiians and Native Hawaiians.

These ideas about "calling the law" stem from a conference on law, violence, and the state that I attended at the University of Southern California in September 2010, specifically two talks given by the scholars Sora Han and Fred Moten.[1] Han's talk addressed the *Lawrence v. Texas* case of 2003, famous for striking down Texan sodomy laws, by examining the initiation of the case as an account of racist profiling perpetuated by Robert Eubanks, a white man who had been sexually involved with Tyron Garner, a black man who was arrested for sodomy along with another sexual partner, John Lawrence, because Eubanks called the police on him. Han, as well as Moten in his own talk, "On (Non) Violence," asked what it meant for Eubanks to call the law on himself—by asking for homosexual sex (and his own former sexual partner) to be violently policed—and theorized that the law was so effectively galvanized here precisely because Eubanks had framed the relationship between Garner and Lawrence as an injury to (his) whiteness. Moten further questioned how we could escape this and other uses of law to policing our own selves and communities, through reinforcing the legal sovereignty of whiteness, by provoking the audience of largely critical ethnic studies and American studies scholars to think about "how not to want this shit." "This shit," being, in my reading, the same status or recognition for any nonwhite community as enjoyed by whiteness in law.[2]

Incited by Han and Moten, I argue that the Native Hawaiian plaintiffs of *Day v. Apoliona* also "called the law on themselves" in order to have Native Hawaiian indigeneity formally recognized in law with a similar, if never quite the same, weight of whiteness. In part, the case can be understood as an example of a legal counterclaim of sorts within the larger context of legal challenges to Native Hawaiian–only programs that have proliferated in the last few decades. For example, in *Rice v. Cayetano* (2000), the US Supreme Court ruled in favor

of Harold F. Rice, a white resident of Hawai'i, who had claimed that the policy of allowing only Native Hawaiians to vote for the trustees of OHA violated the racial discrimination clauses of the US Constitution. In another example, the private Kamehameha Schools' admissions policy of admitting Native Hawaiian students first has been repeatedly challenged by lawsuits from non-Native Hawaiian plaintiffs who charge that Kamehameha Schools' policy is also unconstitutional and racially discriminatory.[3] This context mirrors in some ways the conflicts over blood quantum and enrollment for Native American tribes with gaming rights, as the resource-rich Kamehameha Schools and other Native Hawaiian programs are seen by white conservative groups as "special treatment" that results in a Hawaiian version of the "welfare queen" or "rich Indian."[4] Though the Native Hawaiian plaintiffs also chose to sue OHA, *Day v. Apoliona* could be understood as an attempted reversal of legal attacks on Native Hawaiian programs. The *Day* plaintiffs are seeking to regain some of the power that Native Hawaiians may have lost over their own resources through such lawsuits. Yet, in doing so, the *Day* plaintiffs reinforce US colonial definitions of Native Hawaiians as a race whose authenticity is measurable through blood percentages, as they advocate limiting Native Hawaiian programs to an even smaller membership of Native Hawaiians with the proper blood quantum.

While I heartily agree with many Indigenous studies scholars that such efforts toward recognition and formal, legal equality are misguided and incomplete at best, as it often strengthens the sovereignty of the colonial nation-state at the expense of Native nations, I remain haunted by Moten's words: in practical terms, how exactly do we (and our diverse communities, with many for whom legal recognition is not so easily dismissed) go about *not wanting* this shit?[5] For indeed, in the face of scarce and endangered resources and rights, how can Native Hawaiians *not* desire stronger protections under the law? This essay pursues such questions while more broadly asking: how might critical ethnic studies and American studies view such desires with complexity, even with one eye always on the overarching settler colonial structures that shape our desires and identities?

In approaching *Day v. Apoliona* this way, I find that perhaps the most productive questions raised by the case is not a question I nonetheless still deeply feel: "How could they?" That is, how could these Native Hawaiian men defend and actually seek to extend the reach of the 50 percent blood quantum definition? Rather, this essay asks: Why did they choose to use blood quantum to gain greater resources and recognition, blood quantum being a technology "not of our own making" but nonetheless one that has become an undeniable part of

many Native nations?[6] Why did they think that this suit could be successful, and what did they hope to actually have recognized? In denying their claim, what was the motivation of the state and federal governments, and why did they stop short of striking down blood quantum policies for Native Hawaiians altogether? To be clear, framing my questions in this manner is meant not to sanction the *Day* plaintiffs' actions but to more deeply understand them and their part in shaping dominant forms of Native Hawaiian identity and recognition, especially this clearly heteropatriarchal and colonial, but nonetheless persistent, desire to have "no less than one-half parts blood," a desire circulated both by the state and among Native Hawaiians. Overall, my approach fleshes out Moten's provocations about calling the law from a Native feminist standpoint that critiques how heteropatriarchy structures settler colonialism.

This essay pursues such questions by first providing a brief background in the legal and scientific histories of the "native Hawaiian." Prior to the institution of blood quantum in law, the pure and Part-Hawaiian were prominent figures in eugenics discourse. I then contextualize *Day v. Apoliona* within broader, and at times conflicting, Native Hawaiian ideas about race, gender, and membership, before moving into a more textual analysis of the confusion surrounding "native Hawaiian" and "Native Hawaiian" in the final hearing of *Day v. Apoliona* in 2009. The essay concludes by meditating further on how to reckon with the ways that imposed structures of race and settler colonialism continue to write the Native Hawaiian as a matter of blood. Overall, while the essay examines *Day v. Apoliona* as a case study, it also seeks to contribute to broader discussions about how indigenous peoples' struggles toward decolonization and justice are so often deeply intertwined with and constrained by imposing Western racial and gender categories.

Legal and Eugenic Histories of the "Native Hawaiian"

As a Native Hawaiian woman, I grew up knowing that because of the way Native Hawaiians are defined in the 1921 Hawaiian Homes Commission Act (which remains in force today with only a few revisions), many of my family members will never be eligible to lease a homestead.[7] More specifically, it means that many of us cannot make Waimānalo, our family home, where my grandparents had a homestead, our permanent home, because we cannot prove that we have "no less than one-half part" Hawaiian blood. This is not a mistake on the part of the law's makers: they limited the definition of Native Hawaiian in order to limit the number of those who would have a claim to

the land, and they encouraged those with less than "one-half part blood" to understand themselves as already largely assimilated into white American society. As Kēhaulani Kauanui has examined in detail, the "one-half part blood" stipulation is deeply divorced from Native Hawaiian understandings of identity, which traditionally are based in (an all-inclusive) genealogy.[8] During negotiations over the Hawaiian Homes Commission Act (HHCA), Prince Jonah Kūhiō Kalaniana'ole argued that Native Hawaiians of even the thirty-second degree deserved to be eligible for homesteads, but the Big Five, a consortium of sugar plantation owners that had dominated economic and political life in the islands since the early 1800s, sought to limit the definition of Native Hawaiian in order to allow themselves access to as much land as possible.[9]

Far beyond the legal eligibility, this definition and the ideology of scientific, biological authenticity it carries continues to create fissures in countless Native Hawaiian families and communities. While "one-half part" native Hawaiian "blood" is officially tallied by verification of the race listed on birth certificates and other genealogical documents, such documents are notoriously incomplete or incorrect. Any characteristics that do not fit popular images of the average "Polynesian" or "Hawaiian type"—whether it is skin or hair color, birthplace, cultural knowledge and practices—can always call "blood" amounts into question. Native Hawaiian identity has never been reducible to Western ideas about blood and race, and homesteads have always been notoriously impossible to obtain, as waitlists stretch over decades even for those who are eligible.[10] Yet the desire to be authentic and recognizable as Native Hawaiian, and to be able to own a home in your own homeland, is deep-seated within the Native Hawaiian community and encourages buy-in to such racial classificatory systems.

Indeed, the legal institution of blood quantum for Native Hawaiians is not just a matter of state and federal law but must be understood within the longer history of Western scientific knowledge production about the Polynesian race, which also often acceded to white settler, capitalist interests.[11] Indeed, scientific speculation on the racial origins of Polynesians fascinated many late nineteenth-century and early twentieth-century social scientists who referred to it as "the Polynesian problem." Through linguistic, archaeological, and mythological comparisons, scientists attempted to prove that Polynesians were descended from ancient Greeks or Romans, or even the original Aryan race.[12] Notably, Polynesian "almost" whiteness was in stark contrast to Melanesian blackness, informed, as I write elsewhere, by a logic of possession through whiteness that was used to justify the appropriateness of whites settling Polynesia and forming sexual relationships with Polynesian women.[13] By the early 1900s eugenics and

physical anthropology lent new fuel to the search for white Polynesian racial origins and the insistence on Part-Hawaiians who were "nearly Caucasian" in appearance and character.[14] As historians remind us, eugenics at this time in the United States was understood as a central component of Progressivism.[15] In Hawai'i, too, white liberals took up the eugenics mantle in their concern for the Part-Hawaiian.

Uldrick Thompson, for example, a storied principal of Kamehameha Schools for Boys, authored two eugenics manuals for instructing Native Hawaiian male youth.[16] His "Eugenics for Young People" manual, published in 1913, stressed learning and abiding by the rules of inheritance in order to improve the human race and the Native Hawaiian race specifically. His young male students were to avoid any unions with biologically and psychologically inferior women who might cause their offspring to fall into the category of "the weak, the cowardly, the dishonest, the foolish, the lazy, and the diseased."[17] Not incidentally, though he seems to have held ample hope for the specific, relatively privileged and (in his eyes) assimilable Native Hawaiian youth he taught, Thompson also felt that other Native Hawaiians should have been subject to medical sterilization. Outside the classroom, Thompson worked to pass a policy of medical sterilization in Hawai'i's Territorial legislature. Though it did not pass, his proposed bill would have made it legal "to refuse parenthood to those who are plainly unfit to reproduce humans."[18]

This kind of eugenics teaching fit with the overall mission of Kamehameha Schools at this time, to civilize and domesticate Native Hawaiians.[19] Though established for Native Hawaiian youth by the trust of a Native Hawaiian *ali'i* (a chief or royal leader), Bernice Pauahi Bishop, the Bishop estate trust was first executed by her haole (white, foreigner) husband Charles Bishop, with a board entirely composed of white, male trustees who were all supporters of the overthrow of the Hawaiian monarchy in 1893.[20] Accordingly, as Noelani Goodyear-Ka'ōpua has shown, Kamehameha Schools in its early, formative years (the Kamehameha Schools for Boys opened in 1887 and a separate Kamehameha Schools for Girls opened in 1894) operated from the premise that Kānaka Maoli (one of several Hawaiian language terms for Native Hawaiians) were "a tender and vulnerable race, easily moldable by white educators through a program of manual labor and domestic training."[21] Boys learned manual trades suitable for industry or agriculture, and girls learned to run American-style households as wives.[22] Thus, as Goodyear-Ka'ōpua persuasively writes, Kamehameha Schools at this time basically was "in the business of producing a heteronormative middle class that would participate in an industrial, capitalist economy and consent to American political rule."[23]

Part of becoming heteronormative and middle class involved inculcating Kamehameha Schools students with white, American racial norms about marriage and reproduction. This is abundantly evident in Thompson's eugenics manual, which notes that the largest sin of Native Hawaiians in Thompson's eyes was that most of the "old time Hawaiians" had "died without having reproduced their kind."[24] By this, Thompson did not necessarily mean that "old time Hawaiians" had had no children at all but that they had had children with non-Hawaiians, therefore producing Part-Hawaiians without any of the admirable qualities of their more noble ancestors—resulting in a degenerate contemporary population. Thompson was far from alone in viewing past generations of Native Hawaiians as noble and strong, but believing contemporary Native Hawaiians to be morally, spiritually, and physically degenerated. Degenerate in this sense stems from the Latin verb *degenerare*, meaning "to depart from its race or kind."[25] For example, a 1919 biography of Kamehameha the Great by the American scholar Herbert Gowen described contemporary Native Hawaiians as Kamehameha's "degenerate off-spring," with only "a hundredth part of the manhood possessed and used, mainly for good, by this heroic savage."[26]

Thompson therefore saw his work as helping reverse the trend of degeneration and believed that under his tutelage, his male Kanaka Maoli students could effectively "rehabilitate" their race. In a special section of the manual, titled "To a Remnant," he addressed the particular eugenic challenges faced by Native Hawaiians.[27] Characterizing "old time Hawaiians" as "gigantic in stature and great in strength," "patient and persevering," "honest and hospitable," and "intelligent," Thompson questions how many of these good qualities were passed on to the contemporary generation of Native Hawaiians, whom he deems "a small remnant."[28] He suggests that

> the qualities which made the old-time Hawaiians great, in their time and under their conditions, have been transmitted and are still in the blood. Latent, if you will; but present; and capable of development.[29]

Thompson argues overall that eugenics can help reverse such decay and foster a stronger Hawaiian race for the future. This use of eugenics as applied to improving the Native Hawaiian race is a somewhat surprising repurposing of more commonplace eugenics discourses of the time about bettering the white race. Eugenics pedagogy in the United States generally focused on wholesale prevention of reproduction among those considered members of a lower class or inferior race. Thompson also supported sterilization measures for certain

Native Hawaiians. Yet he simultaneously maintained a belief in the possibility of contemporary "pure" Native Hawaiians.[30] Thus Thompson's plan for biologically bettering the Hawaiian race, by carefully cultivating the "qualities which made the old-time Hawaiians great," displayed a unique belief in the reversibility of Native Hawaiians' supposed extinction.

The advocacy and power Thompson granted in encouraging his students' belief in a Native Hawaiian future should not be easily dismissed. Yet we also cannot ignore that Thompson understood Hawaiian-ness as fundamentally biological and racial, and argued that it was the "pure," "old time Hawaiians," who were the ideal. For Thompson, modern Part-Hawaiians (many of his students included) were clearly distinguishable from (and lesser than) the "old-time Hawaiian," of whom he talks completely in the past tense. In his eyes, the Part-Hawaiian was the true degenerate, and the only way that Native Hawaiians could hope to preserve their "good character" was through pursuing racial purity (as modeled after white racial purity). Thompson believed Native Hawaiians' best qualities were their similarities to European Americans; thus, keeping their pedigrees within those of a "finer" nature was the only viable future for Native Hawaiians. This approach put the blame of Native Hawaiians' loss of power and land under settler colonialism on Native Hawaiians and Native Hawaiian women in particular for betraying the "pure" Hawaiian race and producing degenerate Part-Hawaiians. His eugenics pedagogy was specifically aimed at Native Hawaiian young men, who were expected to regain control over their race, and over Native Hawaiian women.

Dilution Interests: Situating *Day v. Apoliona* within Debates about Native Hawaiian Race and Gender

Uldrick Thompson's eugenic pedagogy of the early twentieth century may seem outrageously outdated to a contemporary audience. Yet the HHCA's definition of "native Hawaiian" was formed and continues to be steeped in the same white supremacist and patriarchal ideological context: there are "pure" Hawaiians, quickly dying out, and "part" Hawaiians, quickly becoming American. Unlike Thompson, the HHCA authors ostensibly saw more value in Part-Hawaiians because they were more Americanized and thus did not need the additional pedagogical instruction of a homestead (including paying rent and maintaining a nuclear family home) in order to be civilized American citizens. Despite the differences in value judgment, however, the HHCA would (if inadvertently) permanently embed Thompson's advice to "develop" the great qualities of the

"old-time Hawaiians," which are "still in the blood," within Native Hawaiian communities. For the treasured promise of a homestead still requires maximizing one's percentage of Hawaiian blood—and thus pressure remains on Native Hawaiian men to regain control of their race and encourage Native Hawaiian women to "save the race." If Native Hawaiian women do not have children with Native Hawaiian men (of the appropriate blood quantum), one view is that they are "diluting" Native Hawaiian claims to land.

The *Day* case specifically uses the language of dilution in a similar way. The claims against the Office of Hawaiian Affairs are in fact described as "dilution interest" claims, "referring to their assertion of an interest in preventing the dilution of benefits to Native Hawaiians by limiting eligibility to native Hawaiians only."[31] In suing the trustees of the OHA for failing to use state trust monies for the sole benefit of "native Hawaiians," the plaintiffs based their claims on the Section 5(f) clause of the Admission Act, which, they argued, restricted the use of state monies given to OHA from the revenue of "ceded lands" (amounting to approximately 20 percent of OHA's total funds) to the "betterment of the condition of native Hawaiians."[32] Ceded lands refer to the lands formerly belonging to the Hawaiian Kingdom, which were seized first by the American businessmen who overthrew Queen Lili'uokalani in 1893 and later ceded by those who overthrew the queen to the US government, to be held after statehood in "public trust."[33] The *Day* plaintiffs alleged that OHA failed to follow this mandate for the use of ceded lands money specifically in funding four items: first, lobbying for the Akaka Bill (which refers to federal legislation intending to formally recognize and create a so-called Native Hawaiian governing entity) and support of three social welfare–type programs: the Native Hawaiian Legal Corporation, Nā Pua No'eau Education Program, and Alu Like.[34]

In Hawai'i District Court, OHA trustees, as the defendants, repeatedly filed for summary judgment (i.e., a ruling in their favor without a full trial), arguing that their expenditures from the Section 5(f) trust funds were not legally limited to solely "the betterment of native Hawaiians," as stipulated in the HHCA, but instead could be extended to the more broadly defined Native Hawaiian public. The District Court granted summary judgment in 2008.[35] The plaintiffs appealed to the Ninth Circuit. In 2010 the Ninth Circuit definitively ruled that federal law does not require OHA to use the Section 5(f) trust funds solely for native Hawaiians.[36] Though the suit was ultimately unsuccessful for the plaintiffs, and thus did not legally change any laws or policies on the use of blood quantum for Native Hawaiians, this case

showcases well the "ideological half-life" of eugenic thinking about "blood" and "racial betterment," as well as the difficulties Native Hawaiians face in asserting any kind of self-determination over their racial recognition.[37] For the five plaintiffs of this case, "native Hawaiians," those "of not less than one-half part blood quantum," are a distinct group, clearly separate from and, indeed, "more oppressed" and thus "more entitled" to state money than Native Hawaiians.

Native feminist activists and scholars, including Native Hawaiian feminists, have long noted that blood quantum laws—state, federal, and tribal legislation that imposes the requirement of a certain amount of Native "blood" (e.g., one-half or one-fourth) for legal recognition or tribal enrollment—are a pressing feminist issue.[38] Such laws create a social and political pressure for Native women to have children with Native men of high blood quantum to preserve rather than diminish a community's identity and authenticity. In some cases, Native women are explicitly disenrolled from a tribe if they marry a non-Native man, whereas Native men who marry non-Native women are not subject to the same rule.[39] Native women are therefore called on to "save the race" in a way that Native men are not. Native feminists have advanced important critiques of blood quantum laws while highlighting alternative modes of recognizing and regenerating Native communities that do not shame or penalize Native women for the sexual and reproductive choices they make.[40]

Some Native women, notably including the well-known and respected Native Hawaiian activist and scholar Haunani-Kay Trask, have distanced themselves from the feminist label, because of mainstream feminism's overwhelming whiteness and concern with rights and equity rather than with Indigenous nation-building decolonization.[41] Others prefer different terms or concepts, such as *mana wahine*, defined by kuʻualoha hoʻomanawanui as "the physical, intellectual, and spiritual (or intuitive) power of women" that is "individually embodied, but often employs collaborative strategies with other women for the benefit of the ʻohana [family] or Lāhui [nation], where women are the source of knowledge."[42] However, many contemporary scholars and activists value both such culturally specific understandings while maintaining a claim to redefining feminisms in ways that refuse to cede feminism to white women. At heart, Native feminist theories simply address how "settler colonialism has been and continues to be a gendered process," in the face of much conventional scholarship and activism that has ignored the centrality of gender to colonization or treated gender as a secondary or tertiary issue at best.[43] Native feminist theories also refuse to split Native nations up in a simple opposition between Native men and women: "Native men are not the root

cause of Native women's problems; rather, Native women's critiques implicate the historical and ongoing imposition of colonial, heteropatriarchal structures onto their societies."[44]

Similarly, the *Day* plaintiffs are not the root cause of the problematic ways that race and gender have been shaped for Native Hawaiians; that blame lies with the structures of heteropatriarchy and settler colonialism that govern the US occupation of Hawai'i. Nonetheless, the case can be viewed as a flashpoint in contemporary debates and struggles within the Native Hawaiian community that have often broken along gendered lines. Of these rifts, Ty Kāwika Tengan notes, in his deeply considered study of a Native Hawaiian men's cultural group, that Native Hawaiian women have at times discounted Native Hawaiian's men's leadership in cultural and political movements, and that in response, there has been a sense of "resentment brewing" on the part of Native Hawaiian men.[45] Tengan describes anecdotal experience of times "when men have made statements such as 'Wāhine need to step aside.'"[46] Noting such sentiments as a "cause for concern," Tengan cautions us against understanding "leadership in the community as a zero-sum gain, wherein the emergence of male leadership requires the removal of female leadership."[47]

Hokulani Aikau has used Hawaiian cosmology and the tradition of the double-hulled canoe to argue that "gender complementarity" is a core concept of Hawaiian culture and is seen to produce "pono" or, in her definition, "appropriate behaviors or codes intended to create balance."[48] These analyses of the gendered conflicts among Native Hawaiians are important especially because they remind us that such tensions are not natural or inevitable within the community but exist precisely because settler colonialism is upheld through the enforcement of heteropatriarchy. Thus decolonizing efforts must address how colonialism has structurally divided Native Hawaiian men and women, rather than view Native Hawaiian men as the oppressors of Native Hawaiian women or Native Hawaiian female leaders as necessarily emasculating Native Hawaiian men.

Calling the Law on the Law: The Final *Day v. Apoliona* Hearing

The structural barriers to justice are clear in a closer examination of the final *Day v. Apoliona* hearing in the Ninth Circuit Court of Appeals in October 2009. Overall, the *Day* plaintiffs framed their claims as a problem of neglect, of OHA's failure to "better the condition of native Hawaiians," as the plaintiffs argued was their duty according to the Admission Act. Yet the plaintiffs also

constantly challenge the legal authority of the state and federal government. They gesture toward the view of native Hawaiians as a dispossessed and colonized people, even while they carefully insist that their argument is solely about enforcing the blood quantum definition enshrined in state and federal law. For example, in his opening address, Walter Schoettle, the plaintiffs' attorney, attempts to demonstrate for the court what he calls "the big picture."[49] He states that the "Kingdom of Hawaii" dispossessed native Hawaiians from their lands (referring, he clarifies in his opening brief, to the division and privatization of lands in the Great Māhele of 1848, prior to even the 1893 overthrow of the Hawaiian Kingdom by American citizens) just as the Native Americans were dispossessed by the United States. To this claim, a justice interrupts to say, "Now that we're a statehood, and it went to a popular vote of the people, I take it that it's part of the union. . . . Let's take it as is."[50] Even though it is the Kingdom of Hawaii that Schoettle identifies as the dispossessor, not the United States, the justice is eager to foreclose any further discussion that Schoettle may be setting up—such as Native Hawaiians' inherent sovereignty over the whole of Hawai'i— which he sees as far outside the scope of his court and long settled. Schoettle responds, "I'm not . . . [laugh] I'm not challenging annexation. I'm just stating the fact."[51] The justice intervenes again: "Let's take it like it is. And in the course of becoming a state, certain agreements were entered into between the Kingdom and the United States government, approved by the Senate. That's what we're looking at isn't it?"[52] Schoettle responds, "That's what I'm getting to, your honor, and I'd like to see those agreements enforced."[53] Thus Schoettle quickly abandons the language of dispossession—not even challenging the judge's erasure of the history of the Hawaiian Kingdom's illegal overthrow and annexation. He returns to the language of neglect, insisting on the duty of the state to "better" native Hawaiians:

> My point is . . . that even though this court has indicated on several occasions that 5(f) [section of the Admission Act] by itself doesn't require the state to do anything in particular for native Hawaiians. . . . if you look at 5(f) in connection with 5(b) and section 4 . . . . The state has to do something to better the . . . condition of native Hawaiians . . . and that is to implement the Hawaiian Homes Commission Act. That is what Congress said in 1959.[54]

The justices respond to Schoettle's claims with two main lines of inquiry—the blood quantum definition and accounting in accordance with the Section 5(f) trust. Justice Susan Graber brings up blood quantum twice in the hearing. As Schoettle explains the details of the foundation of the OHA and its negligence in serving native Hawaiians, Graber interrupts to ask, "So your

complaint has to do with the definition of Native Hawaiian, at bottom?"[55] Schoettle empathetically responds, "My complaint has to do with the fact that OHA has been *ignoring* the definition of native Hawaiians."[56] This again emphasizes the fact that it is the state and federal definition of native Hawaiian that Schoettle and his plaintiffs are attempting to enforce, simply as a matter of law. Graber brings up blood quantum later in the hearing as well, however, as Schoettle emphasizes that his plaintiffs' challenges are grounded in the fact that the use of Section 5(f) trust funds for the Native Hawaiian Legal Corporation, Nā Pua Noʻeau, and Alu Like, all programs that provide services without reference to blood quantum, is illegal. They have a heated exchange about blood quantum:

> Graber: That's what caused me to ask you the question I asked you much earlier. Isn't this an argument about blood quantum and the definition of who's sufficiently Hawaiian to receive this money?
>
> WS: Yes, that's what the whole case is all about, is the blood quantum.
>
> Graber: But anyone who can . . . anyone who meets the definition that you want also meets the definition for these entities, do they not?
>
> WS: No. . . . all these entities provide services to Hawaiians without regard to blood quantum.
>
> Graber: Right, so people with more blood quantum by definition . . .
>
> WS: With less, less . . . I represent Hawaiians that have the blood quantum . . . that are not less than one half part . . .
>
> Graber: If there is a .001 bottom, that people who are fifty percent or above by definition are within that group, are they not?
>
> WS: Yes.
>
> Graber: Okay.[57]

At this point another justice redirects the discussion by questioning if the case is primarily a problem of accounting—of OHA failing to properly record how its funds affect specifically native Hawaiians (as distinct from Native Hawaiians more broadly). Schoettle agrees that this is a central part of the plaintiffs' claims—"That's the objection we're making. There is no accounting."[58] The justice goes on:

> Justice: Have they received any benefit?
>
> WS: Who?
>
> Justice: native Hawaiians.[59] Are you saying no native Hawaiian has received any money from the trust?
>
> WS: I don't know. All I know is, from this record, that they have given trust money to three entities that provide benefits to non-beneficiaries as well as beneficiaries . . . and what the entities have done with it. . . . they could have spent all the money on native Hawaiians, they could have spent the money on non-native I mean Hawaiians with less than one half part. . . . they could have spent some of it on one and some of it on the other. . . . we do not know . . . I am saying that by giving the money to an entity that is not restricted to the blood quantum, they have breached the trust because there is no accounting.[60]

The confusion about which type of Native Hawaiians the attorneys and justices are referring to is as palpable in this section as it is in the more heated exchange between Schoettle and Graber about the blood quantum definition. Though Schoettle's argument is that native Hawaiians (of no less than one-half part blood) such as his plaintiffs are the authentic native Hawaiian population that is in most need of "betterment," even he hesitates and stumbles over his words in his explanations. He starts to refer to the broader Native Hawaiian population as "non-native" before clarifying, "I mean Hawaiians with less than one half part." He also begins to rely on the language of accounting in describing his clients and native Hawaiians as "beneficiaries," in contrast to the Native Hawaiian "non-beneficiaries."

As the justices move toward the particular challenge to OHA's support for the Akaka Bill, in contrast to the challenges of funding for the Native Hawaiian Legal Corporation, Nā Pua Noʻeau, and Alu Like, Schoettle creates an even stronger divide between native Hawaiians and Native Hawaiians. He repeatedly refers to the Akaka Bill as a project of "Native Hawaiians with a capital N," explaining:

> They are trying to establish a government for Native Hawaiians without regard to blood quantum. This is not a benefit to the small number of actual beneficiaries. . . . This is a benefit that goes to all Hawaiians. There are 400,000 Hawaiians. There are only at most 80,000 native Hawaiians.[61]

Schoettle goes on to proclaim that "without blood quantum, *everyone* will be Native Hawaiian," as the Akaka Bill legislation as drafted had no blood quantum requirement.[62] For these reasons, Schoettle claims that the Akaka

Bill is "of no benefit" to native Hawaiians, as it is basically a way to "deprive" them of their lands. Schoettle further asserts that the Akaka Bill will be held unconstitutional in any case because "without a blood quantum," it will be a violation of the Fourteenth Amendment of the US Constitution—specifically the equal protection clause. "Racial classification without blood quantum is unconstitutional," Schoettle insists. He goes on to paraphrase the opinion of Justice Stephen Breyer in the *Rice v. Cayetano* case, that he had "never heard of an Indian tribe without a blood quantum."[63] Justice Breyer in his *Rice* opinion further wrote:

> Of course a Native American tribe has broad authority to define its membership. . . . There must, however, be some limit on what is reasonable. . . . And to define that membership in terms of 1 possible ancestor out of 500, thereby creating a vast and unknowable body of potential members . . . goes well beyond any reasonable limit.[64]

Using Breyer's argument, Schoettle insists that his clients' native Hawaiianness is not reducible to a racial classification and is instead a properly, "reasonably," defined Indigenous classification—that is, one based on a native Hawaiian sovereign right to decide its own membership, but that does not exceed, or even approach, that specter of the "vast and unknowable body of potential members" that so threatens Justice Breyer's sense of order in the *Rice* case. "We would have no objection to governance similar to a Native American tribe," Schoettle explains.[65] The point of contention for the *Day* plaintiffs is that the "governing entity" that the Akaka Bill would establish starts with the full Native Hawaiian population as a base, instead of the smaller and more "in need" native Hawaiian population. He concludes:

> It's up to the tribes to determine the blood quantum . . . on their own. And what they [Native Hawaiians with a capital N] want to do is to have this entity establish a blood quantum . . . which they won't . . . if you start out with no blood quantum, there won't be a blood quantum.
>
> This bill is trying to deprive native Hawaiians of their lands . . . it is of no benefit to native Hawaiians.[66]

In a generous reading, the plaintiffs are trying to mark n/Native Hawaiians as a sovereign, Indigenous people— a people "deprived" of "their lands," not just a race. Yet the only way this can be "reasoned" in the law is by enforcing a restrictive blood quantum, which is, in practice, undeniably *racial* and thus must be limited to native Hawaiians only. Their arguments ultimately rest, then, with what can be characterized as "calling the law on the law"— on an

insistence that the state and federal governments are failing to follow their own laws and agreements with native Hawaiians. Yet this also requires "calling the law on themselves"—on dividing communities and families into native Hawaiians as opposed to Native Hawaiians. Like Justice Breyer's remark that an Indigenous population with "a vast and unknowable body of potential members" is "well beyond any reasonable limit," the *Day* plaintiffs are accepting that their potential status as the "real" native Hawaiians, and thus any sovereignty associated with that status, is entirely dependent on state and federal limits.

As for the OHA trustees, the defendants in the case, their claims are limited as well. They do not explicitly contest the formal definition of native Hawaiian as referring only to those of "no less than one-half part." In part, this reluctance to explicitly challenge the blood quantum is a careful stance— OHA had previously supported a referendum to assess and potentially change the blood quantum requirement, and this referendum was also legally challenged by some of the very same plaintiffs of the *Day* case.[67] OHA's defense in the final *Day* hearing simply argued that their programs do benefit both native Hawaiians and Native Hawaiians more broadly, and that the Section 5(f) clause did not stipulate any strict accounting measures that required proof that their programs would primarily benefit native Hawaiians only.[68]

In the end, the 2010 published decision from the Ninth Circuit's hearing of *Day v. Apoliona* found that OHA had not breached Section 5(f) in its use of funds for any of the challenged programs. The decision concludes:

> We hold that, although §5(f) permits Hawaii to impose further rules and restrictions on management of the §5(f) trust, it does not require the state and its agents to abide by those rules and restrictions as a matter of federal law. Those alleged violations are actionable under state law, if at all. . . . The trustees have established as a matter of law that each of the challenged expenditures constitutes a "use" "for one or more of the [sec. 5(f)] purposes" and that is sufficient to defeat plaintiffs' §1983 claim under federal law for breach of the §5(f) trust.[69]

The justices ultimately decided that Congress had given the state of Hawai'i wide latitude in deciding how to manage Section 5(f) funds and that the OHA was not limited to spending its money solely on "the betterment of native Hawaiians."[70]

Decolonizing Desires for Native Hawaiian Identity and Life

The strategy of the *Day* plaintiffs to sue the state to limit resources to Native Hawaiians with the proper blood quantum is not representative of the larger, multifaceted landscape of the Native Hawaiian sovereignty movement. Many

Native Hawaiians do not buy into any sort of blood quantum thinking, or Western definitions of race, gender, and justice, and many also absolutely refuse to acknowledge the authority of the United States or the state of Hawai'i over their own affairs. Further, many insist that Native Hawaiians are not a race but the political subjects of the Hawaiian Kingdom, which was multiracial. The political group Movement for Aloha No Ka 'Āina, for example, is vocal in its stance that its vision of an independent Hawai'i will be a multicultural, diverse, and inclusive one. The movement's "platform of unity" stresses the need to respect and honor Kanaka Maoli ways of knowing and living, but also notes: "We will build unity and solidarity with all who share our values and principles."[71] This is but one of many visions of "ea," a complex Hawaiian word meaning political independence or sovereignty but also, as Noelani Goodyear-Ka'ōpua has written, interdependence, and the active state of being, living, and breathing.[72]

Thus, certainly, Native Hawaiians often divest from settler colonial structures and terminology that foreclose decolonial justice at their very roots. Native Hawaiians, especially in the last few decades, have made tremendous strides in revitalizing the Hawaiian language and cultural practices like seafaring and *kalo* (taro) terracing.[73] The importance of such reclamations can hardly be overstated and provide part of an answer to Fred Moten's beautiful provocation that I began this essay with: "how do we not want this shit?" and how do we stop "calling the law on ourselves?" We start not wanting the (settler colonial) law to structure our lives when we build different institutions and different laws that reflect our own visions of justice. What my analysis of *Day v. Apoliona* suggests, and why the case deserves critical attention alongside other Native Hawaiian political actions, is that another essential first step toward ending "calling the law on ourselves" may be to remember that Native Hawaiian (and native Hawaiian) identity is a site of conflict that is deeply structured by colonialism—and not, as some would (perhaps understandably) like to see it, as a pure site of culture, resistance, or revitalization. Native American scholar Scott Lyons reminds us that "on top of blood, enrollment, and behavior . . . another material used for the intersubjective construction of Indian identity [is]: the historical fact of American participation."[74] My analysis has shown that blood itself is also an idea and material object that is constructed through American participation. Keeping our fingers on precisely this pulse—"the historical fact of American participation" in the construction of Indigenous identity and the perpetuation of blood quantum, in particular—is important because it is necessary to remember that it is not the *Day* plaintiffs who created the blood quantum laws. Blood quantum laws are a state and federal creation, and it will require further efforts in and beyond the courts to change them.

Yet, as Moten also recognizes, it is never as easy as simply recognizing and then discarding "the historical fact of American participation" in black and Indigenous identities. This fact is never easily discarded or excised; it is too deeply embedded in individual and community ideals. The Native Hawaiian scholar Brandon Ledward addresses some of these complications in his ethnographic approach to issues of identity and authenticity among Native Hawaiians. He notes, "For some poʻe haʻawina [a Hawaiian-language phrase denoting Native Hawaiians], being mistaken for a haole is commonplace"—himself included. He cites an interviewee, a woman who works at a Hawaiian organization, who analyzes an instance of her own experience of how Native Hawaiian communities can be divided by racial authenticity, who described speaking to a coworker who

> thought they should make it part of the admission procedure that you should look Hawaiian to get into Kamehameha. And she's someone I respect and is a friend of mine. I just looked at her like [expression of puzzlement]. I thought to myself, "So I don't have the right to go there? 'Cause I don't have dark skin and ūpepe [broad] nose?" I wanted to say something, but I just blew it off. . . . It's like now we're back in the South in the '50s. We're discriminating on the basis of what skin color you have.[75]

Ledward goes on to conclude that "Hawaiians need to recognize that 20th-century American racialization causes both personal and collective fragmentation among our people. We must actively challenge these discourses whenever we encounter them."[76] Yet obvious in Ledward's nuanced readings of his interviews is also a sense that Native Hawaiians are already—and have long been—living with racial discourses and challenges within their own communities, and that their responses (even when unvoiced) are important and complicated.[77] The interviewee quoted above did not feel the need to engage her coworker, in part because she recognized that racial discourses or other aspects of being Native Hawaiian must also "frustrate" that coworker. In that sense, perhaps Ledward's interviewee has shown one mode of how not to call the law on ourselves; she chose not to further solidify the divide her coworker had set up between those who look Hawaiian and those who don't by simply blowing it off. Yet she did not give up her own vision of who Native Hawaiians are or what they can look like.

Ledward's nuanced approach shares much with Native feminist perspectives, which note that the refusal to accept racism and heteropatriarchy within Indigenous nationalisms is not about pitting Native women against Native men, or native Hawaiians against Native Hawaiians, but about building

a radically different future for all of us. Lisa Kahaleole Hall, for example, notes that combating heteropatriarchy is important because it has been key to colonialism for Native Hawaiian men and women alike: "The deliberate destruction of non-heteronormative and monogamous social relationships, the indigenous languages that could conceptualize these relationships, and the cultural practices that celebrated them has been inextricable from the simultaneous colonial expropriation of land and natural resources."[78] As with eugenics discourses, heteropatriarchy is an important but unvoiced part of blood quantum and its use in the *Day* case. In the case of eugenics, Alexandra Minna Stern has noted: "As androcentric eugenics highlighted male desire and bodies in pursuit of perfection it frequently demoted or symbolically—and literally—erased women."[79] The claims of the *Day* plaintiffs can also be characterized as androcentric—that the five plaintiffs are native Hawaiian men is not coincidental. The distinctions that Schoettle is eager to create and maintain a strict difference between "Native Hawaiians with a capital N" and "native Hawaiians of not less than one half part" are dependent on biological, heteropatriarchal definitions of native Hawaiians. Native Hawaiian women (and native Hawaiian women) are required to biologically reproduce and maintain communities of native Hawaiians of not less than one-half part—crucially with native Hawaiian men who are also of not less than one-half part. That none of the plaintiffs, the defendants, or the justices ever mention the difficulties in maintaining a distinct native Hawaiian population seems shocking—yet it is also fitting because the blood quantum law (which is not being contested in itself, only its proper application) is entirely dependent on heteropatriarchal definitions. If the court is loath to even hear that the Kingdom of Hawai'i, not even the United States, dispossessed native Hawaiians of their lands, they would certainly be dismissive of attempts to change the basis of native Hawaiian recognition altogether. As Schoettle points out, the government "has never heard of a tribe without a blood quantum." We might also add, or an Indigenous people who are not a tribe.

Through a generous reading of the *Day* case, we can understand the plaintiffs' actions as, in part, regenerative—though regenerative in a crass, eugenic mode, meant to stave off the encroachment of the broader Native Hawaiian population on the rights and privileges of those legally recognized as native Hawaiians with more than 50 percent blood. Yet, from the perspective of Native feminisms, it is clear that a more substantially regenerative response to blood quantum laws is also possible and would involve more fundamentally exorcising ourselves of forms of recognition based on science, heteropatriar-

chy, and whiteness. As Ledward suggests, it is possible for Native Hawaiians to recognize other Native Hawaiians even when they may not "look" like a "pure Hawaiian type." He argues, "Precisely because a Hawaiian framework of identity is based on bilateral kinship and genealogical ties, there is room for diversity and multiplicity to thrive in our community."[80] Similarly, it should not be expected that a native Hawaiian woman is required to birth a Native Hawaiian person—there are other culturally appropriate modes of recognition, such as *hanai* or adoption, that Native Hawaiians still depend on to enlarge and grow our communities. Overall, drawing on these older modes of constituting Native Hawaiian community could be important not because they are more authentic or traditional but because they threaten to destabilize whiteness and heteropatriarchy—to cut the possessive stronghold that whiteness has held over Native Hawaiians and Polynesians since the nineteenth century.

Notes

1. To my knowledge, these presentations by Han and Moten have not been published.
2. On whiteness as legally protected property of white people, see Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106.8 (1993): 1707–91; and George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 2006).
3. For discussion about such lawsuits, see Judy Rohrer, *Haoles in Hawai'i* (Honolulu: University of Hawai'i Press, 2010); and Noelani Goodyear-Kā'opua, Ikaika Hussey, and Erin Kahunawaika'ala Wright, eds., *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty* (Durham, NC: Duke University Press, 2014).
4. Cathy J. Cohen, "Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?," *GLQ: A Journal of Lesbian and Gay Studies* 3.4 (1997): 437–65, doi:10.1215/10642684-3-4-437; Alexandra Harmon, *Rich Indians: Native People and the Problem of Wealth in American History* (Chapel Hill: University of North Carolina Press, 2010).
5. Glen Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6.4 (2007): 437–60; Andrea Smith, *Native Americans and the Christian Right: The Gendered Politics of Unlikely Alliances* (Durham, NC: Duke University Press, 2008); Gerald R. Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Peterborough, ON: Broadview, 2005).
6. Scott Richard Lyons, *X-Marks: Native Signatures of Assent* (Minneapolis: University of Minnesota Press, 2010).
7. Although minor provisions for the passing on of homesteads to descendants who are "at least one-quarter Hawaiian" were added in 1997, "one-half part" remains the requirement for original leaseholders of Hawaiian Homelands. See J. Kēhaulani Kauanui, *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity* (Durham, NC: Duke University Press, 2008), 5; Hawaiian Homes Commission Act, secs. 208(5), 209.
8. Kauanui, *Hawaiian Blood*.
9. Ibid.
10. See, e.g., "Long Wait for Justice—Hawaii News—Honolulu Star-Advertiser," *Honolulu Star-Advertiser—Hawaii Newspaper*, www.staradvertiser.com/specialprojects/2013/kalima-v-state/20130714_Long_wait_for_justice.html?id=215339111 (accessed January 16, 2015).
11. See also Maile Arvin, "Pacifically Possessed: Scientific Production and Native Hawaiian Critique of the 'Almost White' Polynesian Race" (PhD diss., University of California, San Diego, 2013).

12. John Dunmore Lang, *View of the Origin and Migrations of the Polynesian Nation; Demonstrating Their Ancient Discovery and Progressive Settlement of the Continent of America* (London: Cochrane and M'Crone, 1834); Edward Tregear, *The Aryan Maori* (Wellington: G. Didsbury, Government printer, 1885); Louis R. Sullivan, *New Light on the Races of Polynesia* (1923).
13. Maile Arvin, "The Polynesian Problem and Its Genomic Solutions," *Native American Indigenous Studies* (forthcoming).
14. Sullivan, *New Light on the Races of Polynesia*.
15. Robert Osgood, "Education in the Name of 'Improvement': The Influence of Eugenic Thought and Practice in Indiana's Public Schools, 1900–1930," *Indiana Magazine of History* 106.3 (2010): 272–99.
16. Uldrick Thompson, *Eugenics for Young People: Twelve Short Articles on a Vital Subject* (Honolulu: Kamehameha Schools, 1913); Thompson, *Eugenics for Parents and Teachers* (Honolulu: Kamehameha Schools, 1915).
17. Thompson, *Eugenics for Young People*.
18. In my research, I have not found any evidence that this bill passed. See C. K. Szego, "The Sound of Rocks Aquiver? Composing Racial Ambivalence in Territorial Hawai'i," *Journal of American Folklore* 123.487 (2010): 46–47.
19. See, e.g., Noelani Goodyear-Ka'ōpua, "Domesticating Hawaiians: Kamehameha Schools and the 'Tender Violence' of Marriage," in *Indian Subjects: Hemispheric Perspectives on the History of Indigenous Education*, School for Advanced Research Global Indigenous Politics Series (Santa Fe: School for Advanced Research Press, 2014), 16–47; Ty Kāwika Tengan, "Re-Membering Panalā'au: Masculinities, Nation, and Empire in Hawai'i and the Pacific," *The Contemporary Pacific* 20.1 (2008): 27–53.
20. Goodyear-Ka'ōpua, "Domesticating Hawaiians," 19.
21. Ibid., 25.
22. Ibid.
23. Ibid., 30.
24. Thompson, *Eugenics for Young People*, 9.
25. *OED Online*, s.v. "degenerate, v."
26. Herbert H. Gowen, *The Napoleon of the Pacific, Kamehameha the Great* (New York: Fleming H. Revell, 1919), 11, 316, catalog.hathitrust.org/Record/008727460; quoted in Ty Kāwika Tengan, *Native Men Remade: Gender and Nation in Contemporary Hawai'i* (Durham, NC: Duke University Press, 2008), 71.
27. Thompson, *Eugenics for Young People*, 9–10.
28. Ibid., 9.
29. Ibid.
30. Other eugenicists writing about Hawai'i in the early twentieth century tended to view Native Hawaiians as irreversibly doomed to extinction and were primarily interested in promoting racial intermarriage. L. C. Dunn, for example, wrote, "The decrease in numbers of the native Hawaiians, and the increase in the number of hybrids indicate that the Hawaiian type will eventually exist only in hybrids between Hawaiians and other races" (quoted in Charles Benedict Davenport, *Scientific Papers of the Second International Congress of Eugenics Held at American Museum of Natural History, New York, September 22–28, 1921. Committee on Publication* [Baltimore, MD: Williams & Williams, 1923]).
31. See *Defendant-Appellees Apoliona et al. Answering Brief*, No. 08-16704, January 5, 2009, 3–4.
32. Ibid.
33. Jon M. Van Dyke, *Who Owns the Crown Lands of Hawaii?* (Honolulu: University of Hawai'i Press, 2008), site.ebrary.com/lib/ucsc/Doc?id=10386715.
34. Walter Schoettle, *Day v. Apoliona Appellants' Opening Brief*, US Court of Appeals for the Ninth Circuit, November 19, 2008.
35. Ibid.
36. Raymond Fisher, *Day v. Apoliona*, 10687, U.S. Circuit of Appeals for the Ninth Court, 2010.
37. Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (London: Cassell, 1999), 3.
38. See, e.g., Mishuana R . Goeman and Jennifer Nez Denetdale, "Guest Editors' Introduction: Native Feminisms: Legacies, Interventions, and Indigenous Sovereignties," *Wicazo Sa Review* 24.2 (2009): 9–13; and Andrea Smith and J. Kēhaulani Kauanui, "Native Feminisms Engage American Studies," *American Quarterly* 60.2 (2008): 241–49.

39. Joanne Barker, "Gender, Sovereignty, Rights: Native Women's Activism against Social Inequality and Violence in Canada," *American Quarterly* 60.2 (2008): 259–66, doi:10.1353/aq.0.0002; Audra Simpson, "Captivating Eunice: Membership, Colonialism, and Gendered Citizenships of Grief," *Wicazo Sa Review* 24.2 (2009): 105–29.
40. Chris Finley, "Decolonizing the Queer Native Body (and Recovering the Native Bull-Dyke): Bringing 'Sexy Back' and Out of Native Studies' Closet," in *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature* (Tucson: University of Arizona Press, 2011), 31–42.
41. Lisa Kahaleole Hall, "Navigating Our Own 'Sea of Islands': Remapping a Theoretical Space for Hawaiian Women and Indigenous Feminism," *Wicazo Sa Review* 24.2 (2009): 27.
42. ku'ualoha ho'omanawanui, *Voices of Fire: Reweaving the Literary Lei of Pele and Hi'iaka* (Minneapolis: University of Minnesota Press, 2014), 132.
43. Maile Arvin, Eve Tuck, and Angie Morrill, "Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy," *Feminist Formations* 25.1 (2013): 9.
44. Ibid., 18.
45. Tengan, *Native Men Remade*, 160.
46. Ibid.
47. Ibid.
48. Hokulani K Aikau, *A Chosen People, a Promised Land: Mormonism and Race in Hawai'i* (Minneapolis: University of Minnesota Press, 2012), 178, 214.
49. *Day v. Apoliona*, No. 08-16704, U.S. Court of Appeals for the Ninth Circuit Hearing, October 13, 2009, Windows media audio.
50. The justice speaking is not identified in the audio recording; it is either Justice Robert Beezer or Justice Raymond Fisher (ibid.).
51. Ibid.
52. Ibid.
53. Ibid.
54. Ibid.
55. Ibid.
56. Ibid.
57. Ibid.
58. Ibid.
59. "native Hawaiian" is my own interpretation of the judge's words here, based on context.
60. *Day v. Apoliona*.
61. Ibid.
62. Ibid.
63. As mentioned above, this 2000 Supreme Court case, *Rice v. Cayetano*, held that it was unconstitutional to limit voting for OHA trustees to Native Hawaiians, as limiting the vote according to "Hawaiian as a racial classification" violated the Fifteenth Amendment. See Judy Rohrer, "'Got Race?' The Production of Haole and the Distortion of Indigeneity in the Rice Decision," *The Contemporary Pacific* 18.1 (2005): 1–31.
64. Cited in Schoettle, *Day v. Apoliona*, 26.
65. *Day v. Apoliona*.
66. Ibid.
67. Mentioned by Robert Klein, the defendants' attorney, in ibid.
68. *Day v. Apoliona*.
69. Fisher, *Day v. Apolina*.
70. Ibid.
71. "Platform of Unity," *MANA Movement For Aloha No Ka Aina*, www.manainfo.com/platform-of-unity.html (accessed January 16, 2015).
72. Noelani Goodyear-Ka'ōpua, introduction to Goodyear-Kā'opua, Hussey, and Wright, *Nation Rising*.
73. Noelani Goodyear-Ka'ōpua, *The Seeds We Planted: Portraits of a Native Hawaiian Charter School* (Minneapolis: University of Minnesota Press, 2013); Goodyear-Kā'opua, Hussey, and Wright, *Nation Rising*.
74. Lyons, *X-Marks*, 47.
75. B. C. Ledward, "On Being Hawaiian Enough: Contesting American Racialization with Native Hybridity," *Hūlili: Multidisciplinary Research on Hawaiian Well-being* 4.1 (2007): 135–36.

76. Ibid., 137.
77. Ledward also opens his article with an anecdote about his own mistaken identity when a Native Hawaiian woman assumes he is white. Rather than explicitly correct her, Ledward offers to chant an *oli*, signaling to the woman that he is part of the Native Hawaiian community, and the woman later becomes a strong ally and friend ("On Being Hawaiian Enough").
78. Hall, "Navigating Our Own 'Sea of Islands,'" 15.
79. Alexandra Minna Stern, "Gender and Sexuality: A Global Tour and Compass," in *The Oxford Handbook of the History of Eugenics*, ed. Alison Bashford and Philippa Levine (New York: Oxford University Press, 2010), 181.
80. Ledward, "On Being Hawaiian Enough," 137.