ARTICLES

THE MEN WHO WOULD BE KING: FORGOTTEN CHALLENGES TO U.S. SOVEREIGNTY

Adam Clanton*

I. INTRODUCTION

If you wanted to start your own country, would you know where to begin? Is it better to secede from the country in which you live, to get on a boat and set sail for land as yet unclaimed, or to conquer what someone else regards as their country? This article is dedicated to the curiosity of the "micronation" – experiments in creating small nation-states in which individuals or small groups defy the traditional international community by declaring their own sovereignty. More specifically, this article examines micronation experiments that have occurred within the presently recognized borders of the United States. For example, in 1968, civil rights activists formed an independent "nation" consisting of the area that included the States of Mississippi, Alabama, Georgia, Louisiana, and South Carolina, declaring it the "Republic of New Afrika." Likewise, in 1962, two groups attempted to form the twin micronations of "Atlantis, Isle of Gold," and the "Grand Capri Republic" on coral reefs ten miles off of the coast of Miami.

This article attempts to shed light on America's geographical oddities, such as its claims over the remote Pacific outpost of Palmyra Island, and the former independent nations of the "Republic of Hawaii" and the "Republic of Texas," but at the same time attempts a serious look at how the Supreme Court and other federal courts have justified the valid acquisition of sovereign territory. In so doing, this article examines four ways in which the

* Adam Clanton is currently a law clerk for the U.S. Court of Appeals for the Ninth Circuit, and former law clerk for the Supreme Court of Israel and High Court of American Samoa.

United States has acknowledged that a "legitimate" nation may be born.

The first section explores the "discovery doctrine" – a "first-in-time, first-in-right" principle embraced by Justice John Marshall in *Johnson v. McIntosh*,[1] in which the first to discover land is the rightful sovereign. By contrasting Charles Evan Hughes' justification for the United States' claims over Swains Island in the South Pacific with the micronations of "Atlantis" and "Capri" off of Florida, the article concludes that the United States will recognize "discovery" as a basis for legitimate sovereignty only if it is in America's political interests to do so. That is, "discovery" is a political and not a judicial doctrine.

The second section examines when and how a "nation" may validly secede from the United States by examining the relatively unknown "Republic of New Afrika" under the guidance of *Texas v. White*.[2] This case demonstrates that the United States will refuse to recognize unilateral secession, and that any declaration of independence by a micronation will have no effect absent the consent of the United States government.

After analyzing the decision of *Kennett v. Chambers*,[3] which considers how the "Republic of Texas" became an independent country in 1837, the third section analyzes how a micronation can be formed by conquering a foreign country. Like the other two sections, *Kennett* reveals that military triumph alone is insufficient to form a nation under U.S. law, and that the political branches of the government must first acknowledge such independence before a micronation is legally recognized.

Exploring what can be termed the "private micronation," the last section discusses a politically viable method of creating a legitimate micronation where the other methods fail. By considering the achievements of the Hudson's Bay Company, a private company that reached more than ten times the size of the Holy Roman empire,[4] as well as examples of present and past island societies within the United States, this section shows how a micronation can be achieved through a simple real estate purchase.

---

1. 21 U.S. 543 (1823).

2. 74 U.S. 700 (1868).

3. 55 U.S. 38 (1852).

4. *See* PETER C. NEWMAN, EMPIRE OF THE BAY: AN ILLUSTRATED HISTORY OF THE HUDSON'S BAY COMPANY 13 (John Geiger ed., Madison Press Books 1989) (noting that at its height, the Hudson's Bay Company covered one-twelfth the earth's land surface).

II. JUSTIFICATIONS OF SOVEREIGNTY IN THE UNITED STATES

In order to understand the factors that determine whether an emerging micronation will be perceived as legitimate by the United States it is important to explore how U.S. courts have defined the legitimacy of domestic and international borders. Supreme Court decisions addressing territorial sovereignty indicate that the legal justifications for the acquisition or recognition of territory depend more on political interest and the exercise of force than principled legal theories.

A. ORIGINAL ACQUISITION

In devising judicial doctrines under which the United States may properly acquire territory, the Supreme Court has essentially endorsed two crude approaches: (1) might makes right, and (2) first-in-time, first-in-right.

Johnson v. McIntosh[5] is a primary illustration of how these approaches have shaped the law of original acquisition. In *Johnson*, the Supreme Court was asked to address "the power of Indians to give, and private individuals to receive, a title [to land] which can be sustained in the Courts of this country."[6] Writing for the court, Justice Marshall concluded that the United States would not recognize as legitimate any attempts by Native Americans to transfer title of the land they occupied to white settlers.[7] In so doing, he endeavored to explain how European nations could come to claim superior legal title to North American land.

Rather than endorsing any noble philosophical principles underlying original acquisition, Marshall reasoned, relatively bluntly, that the key to acquiring proper title to territory lies in the invading nation's military strength. He noted that "[a]n absolute title to lands cannot exist, at the same time, in different persons or in different governments."[8] According to Marshall, then, the method of resolving whether the Native Americans or the United States held superior title to land revolved around the relatively simple principle that "[c]onquest gives a title which the Courts of the conqueror cannot deny."[9] In turn, because "title

5. 21 U.S. 543 (1823).
6. *Id.* at 572.
7. *Id.* at 588.
8. *Id.*
9. *Id.* Marshall elaborates that "[t]he British government, which was then our government, and whose rights have been passed to the United States, asserted title to all the lands occupied by Indians, within the chartered limits of the British colonies. . . . These claims have been maintained and established . . . by the sword. The title to a vast portion of the lands we now hold originates in them. It is not for the

by conquest is acquired and maintained by force," the "conqueror prescribes its limits."[10]

Marshall did not end there, noting that where the possibility of successful conquest is in doubt, title to land may instead be acquired through consent and negotiation among competing military powers. That is, while title by conquest may have been the legal basis for the supremacy of European land claims over those of Native Americans, Marshall simultaneously endorsed a less violent alternative when military powers themselves were forced to compete with each other. Marshall observed that the nations of the Old World, such as England, Spain, or France, were all eager to conquer "so much of [North America] as they could respectively acquire."[11] Yet:

> As they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle, which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that *discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments.*[12]

The "discovery rule," then, served as an internationally recognized formula to establish title, but at the same time acted as a defense mechanism in which powerful nations could ensure their self-preservation by resolving disputes over title through a means other than all out war with each other. Consequently, under *Johnson* and its progeny, U.S. law allows original title to land through conquest, or alternatively, where nations of comparable military strength do not want to fight with each other, allows acquisition of territory under a customarily recognized "discovery rule." The rule is essentially a common law endorsement of the principle of first-in-time, first-in-right, in which conquering nations avoid war by accepting the position "that discovery gave exclusive title to those who made it."[13] The Supreme Court has

---

Courts of this country to question the validity of this title, or to sustain one which is incompatible with it." *Id.* at 588-89.

10. *Id.* at 589; *see also* Worcester v. Georgia, 31 U.S. 515, 543 (1832) (Marshall elaborated on the conquest principle noting that "power, war, conquest, give rights, which, after possession, are conceded by the world; and which can never be controverted by those on whom they descend.").

11. 21 U.S. at 572.

12. *Id.* at 573 (emphasis added); *see also* Worcester, 31 U.S. at 543.

13. 21 U.S. at 574. Marshall likewise states that "[t]he absolute ultimate title has been considered as acquired by discovery." *Id.* at 592. The idea that "discovery" can be rationalized where other peoples have already previously discovered and settled the area relates, as Marshall observes, to European "superiority" such as that espoused by England in 1496 "to discover countries then *unknown to Christian people*, and to take possession of them in the name of the king of England." *Id.* at

subsequently elaborated on the principles guiding *Johnson*, adding, for example, acquisition by "treaty" and "consent" to the existing list of "conquest" and "discovery."[14]

In *Jones v. United States*,[15] for example, the court rationalized the discovery doctrine on the basis that the first people who make economically productive use of land may justifiably claim that land as their own. The court concluded:

> [b]y the law of nations, recognized by all civilized States, dominion of new territory may be acquired by discovery and occupation, as well as by cession or conquest; and when citizens or subjects of one nation, in its name, and by authority or with its assent, take and hold actual, continuous and useful possession . . . of territory unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired.[16]

Thus, as the Ninth Circuit recently observed in *United States v. Corey*, it is through the principles underlying *Johnson* and *Jones* that the United States has come to recognize that, despite our relatively stable contemporary borders, territorial sovereignty is a fluid concept, and that through force, the United States can justifiably "gain exclusive jurisdiction over territory that other countries claimed as their own."[17] In turn, notes the *Corey* court, by embracing the legitimacy of conquest, discovery, and consent:

> The United States purchased Louisiana from France; won Florida from Spain; defeated numerous Indian nations; annexed the Republic of Texas; divided Oregon with the British; conquered Mexico's California possessions; purchased Alaska from Russia; and annexed Hawaii.[18]

---

576 (first emphasis added). "First discovery," therefore, historically refers to first discovery by a Christian nation. *See also* Martin v. Waddell's Lessee, 41 U.S. 367, 409 (1842) ("according to the principles of international law . . the absolute rights of property and dominion were held to belong to the European nation by which any particular portion of the country was first discovered. . . . [T]he territory [the aborigines] occupied was disposed of by the governments of Europe, at their pleasure, as if it had been found without inhabitants."). For a good historical background of the discovery doctrine in American jurisprudence, see Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 IDAHO L. REV. 1 (2005).

14. *See* American Ins. Co. v. 356 Bales of Cotton, 26 U.S. 511, 542 (1828) ("The Constitution confers absolutely on the government of the Union, the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty."); De Lima v. Bidwell, 182 U.S. 1 (1901) (acquisition is proper by "an act of Congress.").

15. 137 U.S. 202 (1890). I discuss the facts of *Jones* in much greater detail below.

16. *Id.* at 212. *See* Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States, 136 U.S. 1, 42 (1890) ("The power to make acquisitions of territory by conquest, by treaty and by cession is an incident of national sovereignty.").

17. 232 F. 3d 1166, 1173 (9th Cir. 2000).

18. *Id.*

B. Resolving Competing Territorial Claims

While the discovery rule and military conquest describe how one nation may first acquire or wrest land from a sovereign competitor under U.S. common law, what are courts to do when a competing sovereign chooses not to recognize these doctrines? How will a U.S. court resolve a land dispute where a "nation" refuses to submit or render allegiance to the United States' own claim of territorial dominion?

The courtroom has quite often replaced the battlefield as the arbiter of sovereignty. In 1870, for example, when a U.S. citizen was accused of murder on the island of San Juan in what was then the Washington Territory, the Supreme Court for the Territory of Washington questioned its own jurisdiction, noting that "[t]here has been for twenty-five years a dispute between the governments of the United States and Great Britain" over San Juan, and that "[s]ince 1859 the island has been held by both nations in joint military occupation."[19] Despite recognizing the existence of a competing British claim to the island, however, it reasoned that so long as the United States itself lays claim to territory, "[t]his court cannot recognize as of any validity the adverse claim of any foreign power."[20] It reasoned:

> Whether or not any tract of land is within the geographical limits belonging to the United States is a political and not a judicial question. And whatever the political department of the government shall recognize as within the limits of the United States, the judicial department is also bound to recognize . . . .[21]

The Washington Territory court's rationale, as elaborated by later Supreme Court decisions, is grounded in part on the position that "[t]he President is the sole organ of the nation and its external relations, and its sole representative with foreign nations."[22] Indeed, in *Jones v. United States*, in which both Haiti and the United States laid claim to the Caribbean island of Navassa, the Supreme Court dismissed Haiti's territorial claims, noting that "[w]ho is sovereign, de jure or de facto, of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges . . . ."[23] More recently, in

---

19. Watts v. United States, 1 Wash. Terr. 288, 292-93 (1870).

20. *Id.* at 295.

21. *Id.* at 295-96 (1870) (*citing* Scott v. Sandford, 60 U.S. 393 (1857); Foster v. Neilson, 27 U.S. 253 (1829)).

22. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1937) (stating that the President had power to declare arms sales to Bolivia illegal).

23. Jones v. United States, 137 U.S. at 202, 212 (1890). The *Jones* court provides a lengthy discussion relating to judicial deference towards executive foreign affairs

1972, the Supreme Court in *First National City Bank v. Banco Nacional de Cuba* reasoned:

> The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative–'the political'–Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.[24]

Consequently, the existence of a competing claim of sovereignty over a piece of land within the recognized borders of the United States will not give rise to judicial determination of the superiority of title, be it through an examination of which "nation" first discovered the territory under the "discovery rule," or any other common law test. Rather, courts will refuse to enter into the discussion of sovereign legitimacy at all, instead deferring entirely to the position taken by the executive branch.[25] Nevertheless, competing claims of sovereignty continue to arise with varying degrees of success. "Atlantis, Isle of Gold" and the "Republic of New Afrika" serve as examples of efforts to form autonomous micronations, with groups adopting various legal strategies in their efforts to gain independence from the U.S. government.

III. SOVEREIGNTY BY "DISCOVERY"

While the United States has been quite willing to justify its own dominion over territory based on the notion that it arrived "first," and has categorized the "discovery rule" as one "recognized by all civilized States," U.S. courts have been fickle to embrace discovery principles when they run *against* the interests of

---

decisions. *See also* Luther v. Borden, 48 U.S. 1, 44 (1849) (in the case of foreign nations, the government recognized by the President is always recognized in the courts of justice).

24. 406 U.S. 759, 766 (1972) (quoting Oetjen v. Central Leather Co., 246 U.S. 297, 302 (1918)). The Supreme Court has also held that recognition of Native American territory claims is subject to the whim of Congress. *See* Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 289 (1955) ("Indian occupancy, not specifically recognized as ownership by action authorized by Congress, may be extinguished by the Government without compensation."); *see also* Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

25. Jones, 137 U.S. at 213 ("This court has held that the executive department, on the question to whom the sovereignty of those islands belonged, was binding and conclusive upon the courts of the United States . . . ."). The *Jones* court relied heavily on the decision of Williams v. Suffolk Ins. Co, 38 U.S. 415 (1839), which evaluated the sovereignty of the Falkland Islands concluding that:

> Can there be any doubt that when the executive branch of the government, which is charged with our foreign relations, shall in its correspondence with a foreign nation assume a fact in regard to the sovereignty of any island or country, it is not conclusive on the judicial department? And in this view it is not material to inquire, *nor is it the province of the court to determine, whether the executive be right or wrong.*

Id. at 420(emphasis added).

the U.S. government.[26] When two competing businessmen sought to use the doctrine of discovery to establish their own "countries" ten miles off the south coast of Florida in 1962, the courts ignored the doctrine.[27] An analysis of the twin micronations of "Atlantis, Isle of Gold" and the "Grand Capri Republic," and the far different history of the Swains Island in the South Pacific, illustrate how the discovery rule has been used not as a uniformly applied judicial doctrine, but as a doctrine to enforce the territorial claims of the executive branch.

A. SWAINS ISLAND: ONE FAMILY'S KINGDOM FOUNDED ON "DISCOVERY"

Swains Island is a fitting example of twentieth-century embracement of Marshall's discovery doctrine. Formally declared a territory in 1925, the United States' claim to the remote Swains Island was based solely upon one man landing on this Pacific island in 1856 and raising an American flag on it.

Located just over 200 miles north of Samoa, Swains Island, geographically part of the Tokelau island group, is a 1¼ square mile island covered in coconut palms with a brackish central lagoon.[28] On March 2, 1606, Pedro Fernandez de Quiros of Spain became the first European to "discover" the island during a westward voyage from Peru, and named it "Isla de la Gente Hermosa" after the friendly Polynesian inhabitants he encountered there.[29] The island sat in indigenous Tokelauan hands for another 200 years when, in approximately 1840, Captain W.C. Swain, a whaler from Massachusetts, briefly visited the island, believing he was the first white man to set foot on its shores.[30]

---

26. Jones, 137 U.S. at 212.

27. Atlantis Dev. Corp. v. United States, 379 F.2d 818 (5th Cir. 1967); United States v. Ray, 294 F.Supp. 532 (S.D. Fla. 1969). For a discussion of Atlantis and Capri, and about island micronations worldwide, see Samuel P. Menefee, *Republics of the Reefs: Nation-Building on the Continental Shelf and in the World's Oceans*, 25 CAL. W. INT'L L.J. 81, 85-95 (Fall 1994).

28. US. Dep't of Interior, A Brief History of Swains Island in American Samoa (last visited Oct. 5, 2008), http://www.doi.gov/oia/Islandpages/swainsis.htm [hereinafter Swains History].

29. *Id.*; *see also* Jane Resture, Swains Island, http://www.janeresture.com/tokelau_islands/swains.htm (last visited Oct. 5, 2008).

30. *See* Swains History, *supra* note 28. At about the same time as Swain's visit, the island witnessed a brief stopover by three French coconut traders, who extracted a shipload's worth of coconut oil and sailed away. *Id.* Shortly thereafter, Swain encountered U.S. Navy Commodore Charles Wilkes and Captain William H. Hudson of the U.S. exploring expedition and told them about his "discovery." *Id.* In 1841 Hudson visited the island, and believing that it was not the same location described by de Quiros, concluded that Captain Swain was the first white visitor, "naming it Swain's Island, after the master of a whaler, who has informed him of its existence." CHARLES WILKES, NARRATIVE OF THE UNITED STATES EXPLORING EXPEDITION DURING THE YEARS 1839-1842, Vol. 5, 18 (1849); *see also* EDWIN H.

At about this same time, an Englishman known as "Captain Turnbull" arrived in Samoa and claimed that he had been the first white man to visit Swains Island.[31] Based on his self-proclaimed ownership by "discovery," Turnbull agreed to sell "his *title* to Swains Island for unknown consideration" to an American named Eli Hutchinson Jennings, Sr.[32] On October 13, 1856, Jennings and his wife landed on Swains Island and "raised an American flag to declare his nationality."[33]

Jennings and his wife bore six children and lived in isolated obscurity on Swains Island selling coconuts with Tokelauan labor. Swains Island soon contained a road, a church, a schoolhouse, and a wooden railway for laborers to push hand carts filled with coconuts to the sea.[34] After the death of Jennings, Sr. in 1878, and his wife in 1891, title to the island passed by will to Eli Hutchinson Jennings, Jr.[35] Described by Robert Louis Stevenson as "King Jennings,"[36] Jennings Jr. was regarded by many as a "cruel" master and was accused of mistreating the over seventy workers on his island by taking "all of the available food for himself" and punishing people "by flogging them and tying them to trees or by putting them in stocks."[37] In 1909, England col-

---

BRYAN, JR., AMERICAN POLYNESIA: CORAL ISLANDS OF THE CENTRAL PACIFIC 97 (Tongg Publishing Co. 1941).

31. *See* Swains History, *supra* note 28.

32. *Id.* (emphasis added). Jennings had soured on Samoa after his business attempt to sell paddle boats to Samoans had failed. *Id.*; *see also* BRYAN, *supra* note 30, at 97 (that Eli Jennings "claimed to have acquired title to the island from Captain Turnbull, and Englishman, who said he had discovered the island.").

33. *See* Swains History, *supra* note 28 (emphasis added); *see also* Gordon Y.K. Pang, *Most Tokelauans Here Trace Roots to Olohega,* THE HONOLULU ADVERTISER, Nov. 25, 2005, at 6B (criticizing the Jennings title to the island and noting simply that Tokelau's "Olohega was 'claimed' by American Eli Hutchinson Jennings in 1856."); *see also* CAPTAIN JOHN ALEXANDER CLINTON GRAY, M.C., U.S.N., AMERIKA SAMOA: A HISTORY OF AMERICAN SAMOA AND ITS UNITED STATES NAVAL ADMINISTRATION 213 (United States Naval Institute 1960).

34. *See* Swains History, *supra* note 28.

35. *Id.* (Both Mr. and Mrs. Jennings recorded their wills with the United States consul in Apia, Samoa).

36. *Id.* Stevenson and his wife visited Swains during their stay. The Stevensons noted that Jennings, Jr. had raised a new flag over the island resembling the U.S. flag, but "superimposed on the blue canton was a white dove." *Id.* An account of the Stevensons' visit to Swains is also at http://homepages.ihug.co.nz/~tonyf/CSL/chapter7.html.

37. *See* Swains History, *supra* note 28. The U.S. Ambassador to the United Kingdom notified the U.S. State Department of such accusations. U.S. Naval Commander L.W. Sturm in turn visited the island to investigate. Sturm decided that the accusations against Jennings, Jr. were overblown, but conceded that islanders did give a "tithe of their fish" to Jennings as their chief, and that acknowledged that "Mr. Jennings Jr. had tied three young men and three young women to trees," and that there had been "one episode of flogging." *Id.*; *see* Pang, *supra* note 33 ("The Jennings family ran a copra plantation on Olohega, but poor living conditions led many workers to leave. . . "); *see also* Jane Resture, Depopulating the Tokelaus,

lected $85 in taxes from Jennings.[38] Jennings protested the collection and claimed "his island belonged to the United States."[39] The British government, in turn, "conceded his American nationality and that Swains was an American island" and returned the money.[40]

Although Jennings, Jr. operated under the misapprehension that Swains Island had become an accepted American possession under his watch, the reality was that no one in the U.S. government had actually acknowledged that Swains was an American island.[41] Indeed, while the United Kingdom had recognized Jennings' claims in 1909, the U.S. State Department declined to do the same, declaring sovereignty over Swains Island was an "unsettled question."[42] The issue languished until 1920 when Jennings, Jr. died and his son Alexander Jennings attempted to probate his father's will transferring title to the island to him.[43] When Alexander Jennings approached the High Court of American Samoa, the judge "doubted that his court had jurisdiction" and refused to probate the will.[44] The Samoan government likewise determined that it lacked jurisdiction over the estate.[45]

When Alexander Jennings appealed to the U.S. government in 1924 for help with his father's will, the United States finally interjected by recognizing the legitimacy of the Jennings family's sixty-four year "discovery" based empire.[46] In a March 22, 1924

---

http://www.janeresture.com/tokelau/index.htm (last visited Oct. 5, 2008) ("[B]y the islanders he is described in a Fakaofo account as 'cruel' and 'exceedingly brutal.'").

38. *See Message from the President of the United States Transmitting a Report from the Secretary of State Regarding the Status of Swains Island*, S. MISC. DOC. No. 117, at 2 (1924).

39. *See* Swains History, *supra* note 28.

40. *Id.*

41. *Id.* Aside from British pressure, Jennings soon faced other challenges to his ownership. During World War I, Sarah Swain, the widow of "discoverer" W.C. Swain wrote to her congressman asserting that she owned Swains Island based on her late husband's rights under the discovery doctrine. *Id.* Investigating the matter, then Assistant Secretary of the Navy, Frankin D. Roosevelt, concluded that because "other shipmasters had visited de Quiros' Island more than once at or about the same [time] as Captain Swain," Mrs. Swain could not firmly establish any rights to title based on discovery. *Id.*

42. S. DOC. No. 117, at 2.

43. The Jennings, Jr. will gave the deceased's real property to his son, A.H. Jennings, and the residue of his estate to his daughter, Anna Eliza Jennings who lived in Apia, Western Samoa. Swains History, *supra* note 28.

44. *Id.*

45. *Id.*; *see also* BRYAN, *supra* note 30, at 98 (noting that Samoa would not resolve the case because "Apia no longer had an American Consul, and the British court would not handle the matter.").

46. *See* BRYAN, *supra* note 30, at 37 ("On Swains Island, the children and grandchildren of an American and his Samoan wife developed *a patriarchal little domain*, importing a hundred workmen from the Tokelau Islands and Samoa.") (emphasis added); *see also* http://www.worldstatesmen.org/AmSamoa.html (describing

letter from then Secretary of State Charles Evans Hughes to President Calvin Coolidge, Hughes observed that "[t]he status of Swains Island, so far as the jurisdiction of the United States is concerned can not accurately be defined."[47] Hughes explained to Coolidge that although, in 1909, the British government had returned Jennings' taxes and regarded Swains Island as an American possession, the U.S. State Department remained doubtful, reasoning in 1910 that:

> [i]t is not clear whether Swains Island was ever in fact discovered and occupied with the sanction of the United States . . . [and that] it is an unsettled question whether this Government could well maintain a claim to sovereignty over the island, based on the mere occupation thereof by a private citizen."[48]

In accordance with Justice Marshall's opinion in *Johnson v. McIntosh*, Hughes recommended that the President assert jurisdiction through a simple application of the discovery doctrine. Ignoring any indigenous rights of Tokelau over Swains Island, Hughes noted that "American jurisdiction over the island has been recognized by Great Britain" and that "no other country is in a position to assert a claim to the island."[49] Absent any claim by a European power, Hughes continued that:

> since 1856 [Swains has] been continuously in the possession of the Jennings family, who have always regarded themselves as American citizens . . . [it] would seem to place upon this Government the responsibility either of extending its sovereignty over Swains Island . . . or of disclaiming the exercise of any control or jurisdiction over the island and the inhabitants thereof.[50]

Recognizing the opportunity to seize "unclaimed" territory, Hughes recommended the former option.[51] On May 23, 1924 President Coolidge agreed, stating in a letter to Congress that "I recommend that Congress take the necessary action to regularize the status of the island in accordance with the recommendations of the Secretary of State."[52] Subsequently, in 1925, Congress declared under 48 U.S.C. § 1662 that:

> [t]he sovereignty of the United States over American Samoa is extended over Swains Island, which is made a part of American Samoa and placed under the jurisdiction of the administrative and judicial authorities of the government established therein by the United States.

Swains as a "Semi-independent proprietary settlement founded by the American Jennings family.").

47. S. MISC. DOC. No. 68-117, at 3.
48. *Id.* at 2.
49. *Id.* at 4.
50. *Id.*
51. *Id.*
52. *Id.* at 1.

With little more rationale than the fact that the one private family had long resided on the island, the United States justified transformation of the Jennings' private and tenuous claim of "discovery" into national sovereign legitimacy.[53] In May 1925, after nearly sixty-nine years of being managed as a one family private empire, U.S. Navy Lieutenant Commander C.D. Edgar traveled to Swains Island and formally hoisted the American flag.[54]

B. The Discovery of "Atlantis, Isle of Gold" and the "Grand Capri Republic"

While the U.S. government's approach to Swains Island would seem to welcome the position that a single individual's claims can serve as the foundation for national sovereignty, the United States was not so liberal in embracing the discovery doctrine when two competing businessmen sought to establish their own "countries" on islands ten miles off the south coast of Florida in 1962.[55]

In 1962, a man named William T. Anderson "discovered" a group of partially submerged "coral reefs or islands comprising Pacific Reef, Ajax Reef, Long Reef, an unnamed reef and Triumph Reef," ten miles off the coast of Miami, Florida and gave public notice of his discovery by advertising in U.S. and British newspapers his intent to construct hotel facilities and a casino on them.[56] Attracted by Anderson's plan to fill in and develop the reefs, Atlantis Development Corporation ("Atlantis"), a private Bahamian company, joined together with Anderson and sought to execute his plan.[57] As a first step, Atlantis contacted the Florida government and was told that the property was "outside the Constitutional Boundaries of the State of Florida and therefore, not within the jurisdiction" of the State.[58] Inquiries with the federal government yielded similar results. In September 1962, At-

53. *See* H.R. Rep. No. 1549, at 1-2 (1925) (in urging U.S. sovereignty, the House Committee on Foreign Affairs reasoned, quite simply, that because "the island has belonged continuously since 1856 to three generations of American citizens and is now the property of Alexander Jennings, an American citizen, who has no court in which to settle any dispute" the United States should extend its sovereignty over Swains).

54. *See* Swains History, *supra* note 28.

55. Atlantis Dev. Corp. v. United States, 379 F.2d 818 (5th Cir. 1967); United States v. Ray, 294 F.Supp. 532 (S.D. Fla. 1969). For a discussion of Atlantis and Capri, and about island micronations worldwide, see Samuel P. Menefee, *"Republics of the Reefs:" Nation-Building on the Continental Shelf and in the World's Oceans*, 25 Cal. W. Int'l L.J. 81, 85-95 (Fall 1994).

56. Atlantis Dev. Corp. v. United States, 379 F.2d 818, 820 (5th Cir. 1967).

57. *Id.*

58. *Id.*

lantis was told that "[t]he Department of Interior has no jurisdiction over land that is outside the territorial limits of the United States."[59] In November 1962, a legal advisor with the State Department informed Atlantis that "[t]he areas in question are outside of the jurisdiction of the United States and constitute a part of the high seas. The high seas are open to all nations and no state may validly subject any part of them to its sovereignty."[60]

Finding that neither the United States nor any other nation laid sovereign claim over the reefs, Atlantis and Anderson, much like the Jennings family, declared the reefs the independent country of "Atlantis, Isle of Gold."[61] Anderson took eighteen millionaires from Miami Beach to visit the reefs, and subsequently estimated it would take $250,000,000 in capital to build an island atop of the reefs, construct government buildings (including a legislature), an international bank and mint, a post office, stamp department, and foreign offices for printing Atlantis' national stamps.[62]

At approximately the same time as Anderson's ambitious plan, however, a man from Louisiana named Louis M. Ray had similar aspirations, declaring the reefs his own island nation of the "Grand Capri Republic."[63] Ray's plan was to spend several hundred thousand dollars to ship in hydraulic dredges and build an island on top of the reefs for resort and gambling purposes. According to Ray:

> I went out there and I sat on that Island and I built these cassions and a house and I was going to put a family in the house and I [was] going to make some semblance of a defense. And don't get me wrong by saying if I am going to attack the Coast Guard or Navy, but I was going to have some semblance of a defense and I was going to build it and claim it . . . and I was going to own it. Now, am I a nation? Me and four investors?[64]

Under *Jones v. United States*, when a nation "take[s] and hold[s] actual, continuous and useful possession . . . of territory

---

59. *Id.* at 821.

60. *Id.*

61. United States v. Ray, 294 F.Supp. 532, 535 (S.D. Fla. 1969). Anderson openly conceded his goal of creating a new country. At trial, he was asked, "[i]t was your intent, was it not, to establish what amounts so a new sovereign nation, is that correct?" To which Anderson replied, "[t]hat's correct, sir." *Id.*

62. *Id.* at 535-36.

63. *Id.* at 534; *see also* United States v. Ray, 281 F.Supp. 876 (S.D. Fla. 1965); *Homesteading at Sea*, TIME MAGAZINE, Jan. 24, 1969, *available at* http://www.time.com/time/magazine/article/0,9171,900580,00.html. (detailing the Grand Capri Republic).

64. *Ray*, 294 F.Supp. at 534-35; *see also* United States v. Ray, 423 F.2d 16, 17-18 (5th Cir. 1970).

unoccupied by any other government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired."[65] Here, to the extent that the United States was previously aware of the reefs, the reefs were both unclaimed and uninhabited. Anderson and Ray were the first to actively transform the reefs towards a productive purpose and to take useful possession of them. Under strict adherence to the rule, then, the act of dredging and construction could properly give birth to a new nation ten miles of the coast of Florida based on first productive use.

Despite any possible theoretical viability that the discovery rule was on their side, the United States was not pleased to have new "international" neighbors at its doorstep. In April 1965, after both Ray and Atlantis began active dredging operations, the U.S. government brought charges of trespass and construction without an Army Corp of Engineers permit against Ray in the Southern District of Florida, and sought a permanent injunction against any further island development.[66] Atlantis intervened in the case against Ray, claiming superior title to Ray's claim based on Anderson's own prior discovery.[67] Both Ray and Atlantis challenged the jurisdiction of the United States, maintaining that the reefs were outside United States' territorial control and therefore under the sovereignty of the discovering party.[68] Ignoring the applicability of the discovery rule, the courts were quick to find a way to reject the sovereign claims of either "Atlantis" or "Grand Capri."

First, the district court reasoned that any claims that the reefs constituted a newly discovered "island nation" could be dispelled by the fact that the reefs were not "islands" at all. Turning to the Supreme Court's decision in *United States v. California*, the district court observed that an "island" is defined as a "naturally formed area of land surrounded by water, which is above mean high water."[69] Noting that the term "mean high water" has been interpreted as "the average height of all high waters over a given location during a span of 18.6 years,"[70] the court determined that even if the artificial islands were now above the high water mark after recent dredging activities, they have long been

65. Jones v. United States, 137 U.S. 202, 212 (1890).

66. *Ray*, 294 F.Supp. at 534.

67. *Ray*, 423 F.2d at 18; *Atlantis Dev. Corp.*, 379 F.2d at 822.

68. *Ray*, 294 F.Supp. at 536, 542.

69. *Id.* at 538 (citing United States v. California, 382 U.S. 448 (1966).

70. *Id.* (citing Borax Consol., Ltd. v. Los Angeles, 296 U.S. 10 (1935)).

"completely submerged" at high tide, and therefore "cannot be islands."[71]

Because "Atlantis, Isle of Gold" and "Grand Capri Republic" were not technically "islands," the courts next determined the reefs were instead "subsoil and seabed" of the outer Continental Shelf as defined by the Outer Continental Shelf Lands Act and the Geneva Convention on the Continental Shelf.[72] Although the courts conceded that such seabed is not actually "owned" by the United States,[73] they observed under the Geneva Convention that "the coastal State [nation] exercises over the continental shelf *sovereign rights for the purpose of exploring it and exploiting its natural resources*" and that "no one may undertake these activities . . . *without the express consent of the Coastal State.*"[74] Likewise, the courts observed that under 43 U.S.C. § 1332(a) of the Lands Act, Congress stated that "the subsoil and seabed of the outer Continental Shelf . . . are subject to its [United States] jurisdiction, control, and power of disposition."[75] In turn, the courts concluded that although the United States has no sovereign ownership over the reefs claimed by Ray and Anderson, the men were interfering with the government's monopoly rights to control the environmental management of the international continental shelf.[76] Accordingly, the courts concluded that the United States had the authority under domestic and international law to halt construction of any artificial island on the reefs, and therefore rejected the legitimacy of any separate sovereign discovery claims of either "Atlantis, Isle of Gold" or the "Grand Capri Republic."[77]

---

71. *Id.* The court noted "[t]riumph and Long Reefs are completely submerged at all times, except when their highest projections are fleetingly visible while awash at mean low water." *Id.* at 539; *Ray*, 423 F.2d at 18.

72. *See* 43 U.S.C. § 1331(a)(2000). The Act is modeled after the Geneva Convention on the Continental Shelf. *Ray*, 294 F.Supp. at 539. The shelf consists of all submerged lands seaward of the United States extending at least 600 feet deep. *Id* at 538.

73. *See Ray*, 423 F.2d at 19 ("[T]he claimed interest of the United States is something less than a property right, consisting of neither ownership nor possession. . . .").

74. *Id.* at 21 (quoting Article 2 of the Geneva Convention on the Continental Shelf).

75. *Id.*

76. *Id.* at 22, 23; *Ray*, 294 F.Supp. at 542 ("The Government has not consented to private construction on these reefs.").

77. A similar dispute arose in the South Pacific in 1971 when Nevada businessman Michael Oliver "had several barges of sand poured on a reef just off Tonga" and created the libertarian "nation" of "Minerva" complete with its own declaration of independence and currency. JOHN RYAN ET AL., MICRONATIONS: THE LONELY PLANET GUIDE TO HOME-MADE NATIONS 14 (Lonely Planet Publications 2006) (containing amusing and interesting accounts of micronation efforts worldwide)

C. THE POLITICAL MOTIVATIONS BEHIND THE DISCOVERY DOCTRINE

The practical similarities but divergent outcomes between Swains Island and the Florida reefs cases indicate that recognition of the discovery doctrine is guided less by deference to precedent and more by political self-interest. Indeed, although the district court and Fifth Circuit opinions against "Atlantis" and "Capri" were legally grounded in the Lands Act, and shrouded in an overwhelming sense of environmental stewardship over the coastal ecosystem, a comparison of the *Ray* cases with Swains and *Johnson v. McIntosh* suggests that a court will either defend or disregard the discovery doctrine based on the United States' national interests in that particular case.[78] For example, despite a lengthy discussion on the importance of reefs as a "priceless and irreplaceable natural resource of this nation,"[79] the final paragraph of the *Ray* district court opinion makes clear it would have rejected the sovereignty of "Atlantis" or "Grand Capri" no matter what:

> The issues of this case are of a great public interest, involving not only the preservation of rare natural resources, but *the preservation of our very security as a nation.* If these reefs were available for private construction totally outside the control of the United States Government, they could conceivably support not only artificial islands and unpoliced gambling casinos, but even an alien missile base, all within a short distance of the Florida Coast. Congress has seen fit to claim this area so that it may be used for the Commonwealth rather than private gain.[80]

The political nature of the discovery doctrine speaks to the very intent of the rule. In *Johnson*, the court indicated that the purpose of endorsing the rule was to *protect* the national security of the U.S. government by using the discovery doctrine as a tool to avoid violent conflict with European powers fighting over a piece of the North American pie. Indeed, while Marshall justi-

---

[hereinafter MICRONATIONS]. Rather than taking legal action, as in *Ray*, the Tongan government instead sent troops to invade the new island. *Id.*

78. Indeed, it is noteworthy, that despite the courts' emphasis that "reefs" are not islands subject to sovereignty by discovery, from 1869 until 1973, the United States claimed sovereignty over reefs off the coast of Columbia. *See* President's Message to the Senate Transmitting the United States-Columbian Treaty Concerning Quita Sueño, Roncador, and Serrana., at 8-9 ((Jan. 9, 1973, S. EXEC. DOC. NO. A, 93-1 (1973) ("[T]he United States renounces all claims to sovereignty over three uninhabited outcroppings of coral reefs in the Caribbean. . . ").

79. *Ray*, 294 F.Supp. at 538.

80. *Id.* at 542 (emphasis added); *see also Ray*, 423 F.2d at 23 ("Obviously the United States has an important interest to protect in preventing the establishment of a new sovereign nation within four and one-half miles of the Florida Coast, whether it be Grand Capri Republic or Atlantis, Isle of Gold.").

fied sovereignty over Native American lands by "conquest," he proposed that when dealing with the more formidable French, Spanish, and English, the United States should embrace diplomatic resolution through the discovery doctrine "in order to avoid . . . consequent war with each other . . . ."[81] That the rule has been recognized internationally as a "conflict avoider" is demonstrated by the example of Swains Island where the the English government abandoned its claims over the island – not after protracted military conflict with the United States – but by simply acknowledging that Jennings, a U.S. citizen, had landed there first.

In *Ray*, on the other hand, recognition of the discovery rule would promote rather than quell potential conflict. If left uninhabited, "Atlantis" and "Grand Capri" could never pose any military threat to nearby Florida. If the courts were to legitimize private discovery claims over the reefs, however, the United States would be simultaneously endorsing foreign development, and possible military escalation just off U.S. shores, thereby serving to threaten, rather than protect, "our very security as a nation."[82] In brief, the discovery doctrine has proven itself a judicial doctrine susceptible to political influence. Any micronation attempting to use "discovery" as a basis for its legitimacy may fail if the United States perceives its self-interests are threatened by the new "nation" that seeks to invoke its application.

IV. SOVEREIGNTY BY SECESSION

While Eli Jennings, Louis Ray, and William Anderson may have been lucky enough to discover unclaimed territory, there remains today little, if any, land left unclaimed and undiscovered. Where "discovery" has not been an option, secession has served as an alternative theory under which some micronations have attempted to form on U.S. soil.

The secessionist movement of the Confederate States of America in 1861, and the brutal Civil War that followed is well known, but there have been several lesser known secessionist experiments within the borders of the United States. For example, in 1849, a mining company from Wisconsin known as the "Rough and Ready Company" settled a frontier town with the same name in present day Nevada County, California in honor of President Zachary "Old Rough and Ready" Taylor.[83] As the gold

81. Johnson v. McIntosh, 21 U.S. 543, 573 (1823).

82. *Ray*, 294 F.Supp. at 542.

83. Rough and Ready Chamber of Commerce, http://www.roughandready chamber.com/rough_and_ready_017.html [hereinafter ROUGH AND READY].

rush came and the population grew to over 3000, residents became increasingly dissatisfied with general lawlessness and federal mining taxes, prompting them to declare on April 7, 1850 that:

> [W]e cease to be reduced to seeing our property and lives being taken over by those not of us, but those against us. Therefore, we the people, of the township of Rough & Ready, deem it necessary and prudential to withdraw from the Territory of California and from the United States of America to form, peacefully if we can, forcibly if we must, the Great Republic of Rough and Ready.[84]

Citizens elected a president, formed a cabinet, and adopted a constitution modeled after that of the United States.[85] Yet, while the "Great Republic of Rough and Ready" would have been the world's smallest nation if recognized,[86] the experiment lasted only three months; the citizens decided to "rejoin" the Union on July 4, 1850 after Nevada County saloons refused to serve "foreigners" alcohol in the lead up to Fourth of July celebrations.[87]

Other historical examples of micronation secessionism include the Mormon War of 1857-58, in which President James Buchanan invaded the Utah Territory under the stated belief that it had actively attempted to separate from the United States and form an independently governed Mormon nation in the western desert.[88] While it appears that no such revolution had actually taken place, the United States' portrayal of Utah as a micronation allowed Buchanan to replace the Mormon territorial government with his own loyal handpicked successors.[89] In the

---

84. *See* MICRONATIONS, *supra* note 77, at 60.

85. Arthur W.Winfield Knight, *The Great Republic of Rough and Ready*, THE ANDERSON VALLEY ADVERTISER, Sept. 10, 2003, *available at* http://www.theava.com/03/0910-roughready.html.

86. *Id.*

87. *See* MICRONATIONS, *supra* note 77, at 60. Some versions of the story hold that "the new republic's secession papers were lost in the mail en-route to Washington." *Id.*

88. The House of Representatives issued a resolution asking President Buchanan for "the information which gave rise to the military expeditions ordered to Utah Territory. . ." to "throw [ ] light upon the question as to how far said Brigham Young and his followers are in a state of rebellion or resistance to the government of the United States." MORMON RESISTANCE: A DOCUMENTARY ACCOUNT OF THE UTAH EXPEDITION, 1857-1858 at 28, n.2 (Leroy R. Hafen & Ann W. Hafen, eds. Univ. of Neb. Press 2005). Orders to the Army read that "The community and, in part, the civil government of Utah Territory are in a substantial rebellion against the laws authority of the United States." *Id.* at 30.

89. Utah newspaper reports at the time suggest that any so-called "secession" was either a mistake or fabricated by the federal government to justify military intervention. Indeed, locals commented "if we will not yield to their meanness, they will say we have mutinied against the President of the United States." *Id.* at 184. The perception of secession may have been precipitated by a resignation letter of Justice W.W. Drummond of the Territorial Supreme Court to the U.S. Attorney General in

twentieth century, a number of micronations have "seceded" from United States territory including the "Republic of Molossia," founded in 1977 by President Kevin Baugh outside Reno, Nevada,[90] the "Kingdom of Talossa," a constitutional monarchy created by thirteen year old "King" Robert Madison in 1979 encompassing much of Milwaukee, Wisconsin,[91] the "Conch Republic," encompassing the Florida Keys in protest to U.S. Border Patrol blockades,[92] the "Kingdom of North Dumpling Island" off the coast of Suffolk County, New York founded by "Lord" Dean Kamen, inventor of the Segway human transporter,[93] and still other similarly bizarre micronation experiments.[94]

March 1857, exclaiming that Brigham Young was the sole source of law in the territory and that "no law of Congress is by them considered binding in any manner." *Id.* at 363.

90. Molossian independence is based on Article I of the United Nation's International Covenant on Civil and Political Rights, which recognizes that all people have the right to self determination. *See* MICRONATIONS, *supra* note 77, at 62. Molossia has a model rocket "space program," anti-discrimination legislation, the death penalty, and currency "pegged to the value of Pillsbury Cookie Dough." *Id.* at 5, 65.

91. The national cuisine of Talossa was Taco Bell. *Id.* at 101. King Robert closed down his kingdom in 2005. *Id.*

92. When in April 1982 the U.S. Border Patrol stopped all northbound traffic from the Florida Keys searching for illegal immigrants and drugs, businesses hurt by the roadblock "seceded" from the United States, declared war on the United States, "immediately surrendered and then lodged applications for a billion dollars in foreign aid." *Id.* at 130-31. Conch Republic passports are available to U.S. and Canadian citizens for US$200. *Id.* at 132.

93. *Id.* at 78. In 1992, Kamen supposedly "seceded from the USA and signed a non-aggression, mutual-defense pact with his friend," then President George H.W. Bush. *Id.* at 79. "Visas" to the island nation have been "stamped Dumpling Bozo or Dumpling Bimbo, depending on gender." *Id.*

94. These include the 1859 example of Emperor Norton I, Emperor of the United States and Protector of Mexico. Norton was an eccentric San Francisco man who wandered the streets dressed in full military regalia. He submitted a statement published in the *San Francisco Bulletin* on September 17, 1859 that "[I] declare and proclaim myself as Emperor of these U.S. . . . ." *Id.* at 69. In 1869 he decreed that a suspension bridge be built from San Francisco to Oakland, and today a plaque remains on the western end of the Bay Bridge says that "[p]ause traveler and be grateful to Norton 1st, Emperor of the United States . . whose prophetic wisdom conceived and decreed the bridging of San Francisco Bay. . . ." *Id.* Norton's 1880 funeral "attracted tens of thousands of people." *Id.* The "Dominion of British West Florida" claims certain portions of Louisiana, Mississippi, Alabama, and Florida as part of the British Commonwealth with Queen Elizabeth II as its head of state. *Id.* at 139-41. The "Republic of Cascadia" is a proposed secessionist micronation in the Pacific Northwest consisting of Oregon, Washington, and parts of Northern California derived in part from an apparent 1803 proposal by Thomas Jefferson to create the independent "Republic of the Pacific" in that region. *Id.* at 105. Perhaps in conflict with Cascadia is the "Principality of Trumania," a small "constitutional monarchy" founded in 2004 consisting of Vashon Island in the Puget Sound near Seattle, Washington. *Id.* at 106-07. The "Northern Forest Archipelago" (NFA) is an ecologically based "constitutional monarchy" founded in 1998 consisting of the northern portions of New York, Vermont, New Hampshire, and Maine, whose citizens consist of "all living and non-living things residing in land claimed by the NFA." *Id.* at 52-

Whether formed out of good humor, protest, or greed, this section examines how under United States law, a "nation" may legitimately secede from the United States, and then, by turning to the "Republic of New Afrika" as an example, explores the manner in which the courts have attempted to deal with, and not surprisingly reject, modern day separatist movements.

A. The Legitimacy of Secession Under United States Law

We have seen in in *Jones v. United States* and *National City Bank v. Banco Nacional de Cuba* that despite the doctrine of discovery, the Supreme Court regards sovereignty as a political question and defers to the executive. Although seemingly a domestic separatist struggle, secession is essentially a question of foreign relations, because it calls upon the U.S. government to recognize territory as belonging to a foreign sovereign. Not surprisingly, then, although couched in terms of domestic civil strife, U.S. courts evaluate cases involving secession under the same legal approach taken in the context of discovery or contestation by another powerful nation.[95]

Texas v. White is the principal Supreme Court case that illuminates the standards used to evaluate secessionist claims of sovereignty.[96] In *White*, the State of Texas received bonds from the federal government in 1850 that could become redeemable in 1864. Under Texas law at the time, no bond could become available to the public unless endorsed by the governor.[97] On March 4, 1861, after a public referendum in favor of secession, Texas declared it "had withdrawn from the union of the States under the Federal Constitution" and that it "also passed a resolution requiring the officers of the State government to take an oath to support the provisional government of the Confederate States."[98]

---

54. The "Maritime Republic of Eastport," was a "secessionist" experiment born out of similar events to the "Conch Republic" in 1998 when the city of Eastport, Maryland was severed from Annapolis, Maryland after the closure of a bridge linking the two cities. *Id.* at 116-21.

95. *See* Luther v. Borden, 48 U.S. 1, 42-44 (1849), noting, in the context of an armed insurrection in Rhode Island that a court will defer to Congress when deciding which state government is legitimate. *Luther* differs slightly from secession, however, because it involved a decision as to which government was the true government of the State of Rhode Island, but not whether Rhode Island could leave the Union and form a separate country.

96. Texas v. White, 74 U.S. 700 (1868).

97. *Id.* at 718.

98. *Id.* at 704. The court noted "[o]n the 1st of February, a convention, called without authority, but subsequently sanctioned by the legislature regularly elected, adopted an ordinance to dissolve the union between the State of Texas and the other States under the Constitution of the United States, whereby Texas was declared to be 'a separate and sovereign State,' and 'her people and citizens' to be 'absolved

Senators and representatives left Washington, D.C., and were instead "sent to the Congress of the so-called Confederate States."[99] In order to raise funds for war against the Union army, the "insurgent legislature of Texas"[100] repealed the endorsement requirement for issuing bonds in 1862, and in 1865 sold the bonds to the defendants George White and John Chiles.[101] Recognizing that the unsigned bonds were being used to aid the rebellion, the U.S. Secretary of the Treasury refused to honor them.[102] When the Civil War was over, and a provisional Texas state government loyal to the Union was reinstated, Texas sought to reclaim the bonds from defendants and brought suit on the grounds that the insurgent government had lacked the authority to sell them to defendants in the first place.[103]

Defendants argued, in part, that the Supreme Court did not have jurisdiction to hear a case brought on behalf of the "State of Texas," because Texas, upon seceding from the Union, "changed her status as to be disabled from prosecuting suits in the National courts."[104] The Supreme Court disagreed with defendants' assessment of Texas' attempted secession and found that it had authority to hear the case.[105] The court recognized that although a state may have a "distinct and individual existence"[106] from the federal government, it cannot *unilaterally* secede from the United States because:

> [t]he Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the

---

from all allegiance to the United States, or the government thereof.'" *Id.* at 721, 722.

99. *Id.* at 705. After the attempted secession, the Texas constitution remained the same, but "[t]he words 'United States,' were stricken out wherever they occurred, and the words 'Confederate States' substituted." *Id.* at 723.

100. *Id.* at 718.

101. *Id.*

102. *Id.* at 706.

103. *Id.* at 708-09. The Texas post-war government argued the revocation of the endorsement requirement was improper and characterized the bonds as having been "seized by a combination of persons in armed hostility to the government of the United States, sold by an organization styled the military board, to White & Chiles, for the purpose of aiding the overthrow of the Federal government." *Id.* at 709. Texas sought "an injunction against their asking, or receiving payment from the United States; that the bonds might be delivered to the State of Texas, and for other and further relief." *Id.*

104. *Id.* at 719, 732.

105. *Id.*

106. *Id.* at 725. Indeed, the *White* court points to the Tenth Amendment for this proposition that "all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people." *Id.*

> Union, attached at once to the State. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. *And it was final.* The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration, or revocation, *except through revolution, or through consent of the States.*[107]

The court further reasoned that having failed in both its revolution and in acquiring the necessary consent to become a separate sovereign, "the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her legislature . . . were absolutely null."[108] Texas had therefore remained a state of the Union throughout the Civil War, albeit "while relations [were] greatly changed,"[109] and because the post-war Texas government supported the lawsuit, the Supreme Court concluded it had jurisdiction to hear the case as one instituted on behalf of the State of Texas.[110]

Consequently, it seems U.S. law prohibiting unilateral secession will create the same roadblock to the creation of a new state as the discovery doctrine. Just as Congress and national security interests prevented the formation of the "Grand Capri" and "Atlantis," so too these factors proved unwilling to recognize a "Confederate Texas" absent approval from the federal government.

---

107. *Id.* at 725-26 (emphasis added).

108. *Id.* at 726. The court went on that "[t]he obligations of the State, as a member of the Union, and of every citizen of the State, as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the State did not cease to be a State, nor her citizens to be citizens of the Union. If this were otherwise, the State must have become foreign, and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation." *Id.*

109. *Id.* at 727. Justice Grier vigorously dissented, stating that the test of whether a state remained in the union was whether it continued to have representation in Congress. *Id.* at 737 (Grier, J., dissenting). Because Texas lacked federal representation during reconstruction, Grier reasoned Texas was not a "state," and therefore that the court did not have jurisdiction. *Id.*

110. *Id.* at 702 (The court observed that U.S. courts can hear "controversies between a State and citizens of another State; . . . and between a State, or the citizens thereof, and foreign States, citizens or subjects," and that it had original jurisdiction over cases in which 'a State' shall be a party). The court admitted that it was somewhat hazy as to how exactly the State of Texas brought the suit because "[a] provisional governor of the State was appointed by the President in 1865; in 1866 a governor was elected by the people under the constitution of that year; at a subsequent date a governor was appointed by the commander of the district." It noted, however, despite these three conflicting Reconstructionist governors, "each has given his sanction to the prosecution of the suit," and that therefore "the suit was instituted and is prosecuted by competent authority." *Id.* at 731-32.

B. THE "REPUBLIC OF NEW AFRIKA"

The precedent of *Texas v. White* has had a negative impact on subsequent secessionist movements, including the Republic of New Afrika ("RNA"). On March 31, 1968, in protest to a history of slavery and longstanding African-American second-class citizenship, nearly two hundred people met in Detroit, Michigan and "signed a Declaration of Independence, declaring Black people in the United States 'forever free and independent of the jurisdiction of the United States.'"[111] A self described sovereign "African nation in the western hemisphere struggling for complete independence,"[112] the RNA sought to "build a black independent nation" to "free black people in America from oppression."[113] The RNA claimed to have formed a "provisional government" governed by a constitution known as the "Code of Umoja," elaborately defining the political scope of its legislative, executive, and judicial branches.[114] The RNA further demanded reparations from the U.S. government in the amount of "$10,000 per black citizen" for past injustices,[115] and claimed as its sovereign territory the land comprised of the five southern states of Alabama, Georgia, Louisiana, Mississippi, and South Carolina.[116] To achieve political control over this territory, the RNA "advo-

111. *University of Maryland, Radical Information Project, at* http://www.bsos.umd.edu/gvpt/davenport/rna-lit-1.pdf, 17 [hereinafter RNA] (last visited Oct. 5, 2008).

112. *Id.* at 6.

113. *Id.* at 4, 6. In addition to its primary goal of black self-determination, the RNA had a broader social agenda, including a desire to "place the major means of production and trade in the trust of the State" and to "end exploitation of man by man or his environment." *Id.* at 4.

114. *Id.* at 6, 33-36. The Code of Umoja prescribes for a president, a vice-president, a legislative body known as the "People's Center Council," and a judicial branch consisting of "local tribunals" comprised of regional members of the People's Center Council, along with panels with appellate jurisdiction. *Id.* at 33-34. The voting age in the RNA is 16, and the president is elected, but can serve until "he resigns, becomes physically incapable of serving, or is voted out" by the council. *Id.* The Code can only be altered by a 2/3 majority vote of the council. *Id.* at 33. Polygamy became legal in the RNA under the Fourth Amendment to the Code of Umoja in 1971, and marijuana became illegal in the RNA under the Sixth Amendment that same year. *Id.* at 35-36.

115. *Id.* at 32.

116. United States v. Lumumba, 741 F.2d 12, 14 (2d Cir. 1984). The RNA has elaborated that "our land is the counties of the South where we have lived and worked the land and clung to it for 300 years despite the most brutal oppression the world has known." RNA, *supra* note 111, at 19. In addition to these southern states, the RNA also claims "scattered" territory in "sections of the Northern cities where our people now live and have lived, in some, for over two hundred years." *Id.* at 17. The RNA maintained that, "this land is illegally held in captivity, as a colony, by the United States government. *Id.*

cated the overthrow of the United States by force and violence."[117]

Although formally declared in 1968, the RNA asserted that this southern territory actually seceded from the United States nearly one hundred years earlier upon the enactment of the Emancipation Proclamation and the Thirteenth Amendment, after "the blacks occupying it took up arms against the authority of the United States and thus asserted their New African nation's claim to the land."[118] The RNA believed that "the citizenship of the slaves, upon being freed, reverted to that of their ancestors at the time they were brought to America."[119] Because, to the RNA, they resumed African citizenship and owed no allegiance to this country, the southern states in which they had lived ceased at the end of the Civil War to be part of the United States, and instead became the sovereign territory of the Republic of New Afrika.[120]

U.S. courts have, on quite a number of occasions, been compelled to address and reject various RNA claims of sovereignty following the principles of *Texas v. White*. In *United States v. Lumumba*, for example, Chokwe Lumumba, an RNA member, was convicted of criminal contempt in U.S. district court when, while acting as an attorney for an accused armed robber, he called the judge a "racist dog" and an "outstanding bigot."[121] Lumumba appealed his conviction, arguing that he was immune from district court prosecution "[s]ince Article III, Section 2 of the U.S. Constitution vests in the *Supreme Court* original jurisdiction over "cases affecting Ambassadors, other public Ministers and Consuls."[122] Lumumba argued that because his actions as defense counsel were "undertaken under color of his position as Minister of Justice of the Republic,"[123] the district court lacked jurisdiction to hold him in contempt since as a member of the "Provisional Government of the Republic of New Afrika, he is not subject to the jurisdiction of the United States District

117. United States v. Fort, 921 F.Supp. 523, 526 (N.D. Ill. 1996) (citing In re the Pro Hac Vice of Chokwe Lumumba, 526 F. Supp. 163, 164-65 (S.D.N.Y. 1981); *see also* United States v. James, 528 F.2d 999, 1006, 1010 (5th Cir. 1976) (noting that the RNA had threatened to "wipe out the National Guard of Mississippi" and that an RNA poster read "[o]ur most important gratuity is an intelligent underground army which, if the Republic is attacked will burn white America to the ground as mercilessly as a missile attack.").

118. United States v. Buck, 690 F.Supp. 1291, 1293-94 (S.D.N.Y. 1988). Other triggering events include the Confiscation Acts of 1861 and 1862. *Id.* at 1293; *see also James*, 528 F.2d at 1005 (same).

119. *Buck*, 690 F.Supp. at 1293-94.

120. *Id.* at 1293-94.

121. *Lumumba*, 741 F.2d at 14.

122. *Id.* at 15.

123. *Id.* at 14-15.

Courts."[124] The court rejected Lumumba's foreign status. Just as the sovereignty claims in *Texas v. White* were deemed "absolutely null" absent the consent of the United States, the *Lumumba* court observed that "neither Lumumba nor anyone else is able *unilaterally* to assert diplomatic immunity."[125] Accepting consent by the United States as a necessary precursor of secessionist legitimacy, the *Lumumba* court concluded that because "[t]he United States Department of State has not recognized the Republic of New Afrika or its Provisional Government. . . . Lumumba is precluded from asserting sovereign immunity."[126]

Similarly, in *United States v. Williams*, defendant Nathaniel Williams, a self-proclaimed citizen of the Republic of New Afrika, was found guilty of armed bank robbery and moved to dismiss the conviction for lack of jurisdiction.[127] Williams argued that RNA citizens were engaged in an international territorial battle with the United States and that he, as a foreign RNA citizen, was an enemy combatant entitled to the protection of the Geneva Convention as a prisoner of war, and therefore not subject to the jurisdiction of a civilian court.[128]

The court found Williams' claim of "foreign" citizenship to be frivolous. Whereas the *Texas v. White* Court observed that secession is only legitimate under U.S. law "through revolution, or through consent of the States,"[129] the *Williams* court likewise determined that "[w]hile persons in the United States are free to

---

124. *Id.* at 14.

125. *Id.* at 15 (emphasis added). The court did not rely on *Texas v. White* for this proposition, however, instead focusing on the Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. IV, 23 U.S.T. 3227, and 22 U.S.C. §§ 254a-254e, the corresponding statute.

126. *Lumumba*, 741 F.2d at 15. The RNA itself attempted to gain consent to secession from the State Department. In an article about the episode, writer Robert Sherrill states:

> "[o]ne day late in May, Brother Imari, Minster of Information for the Republic of New Africa, pulled up to the United States Department of State Building in a taxi. . . . Inside, [State Department security guards] James McDermott and Charles Skippon, who introduced themselves to Imari as 'special assistants to Secretary of State Dean Rusk' formally received Imari's note requesting the opening of negotiations between the United States and New Africa. The note's demands were simple but rather sizable; New Africa's officials wanted $200,000,000,000 in 'damages' and they also want the U.S.A. to give up five southern states—Louisiana, Mississippi, Alabama, Georgia, and South Carolina."

Robert Sherrill, *We Also Want Four Hundred Billion Dollars Back Pay*, ESQUIRE, Jan. 1969, at 72-75, 146-48, *available at* RNA, *supra* note 111, at 24, 26. Sherill notes that Skippon recalled the note "was turned over to the appropriate country desk . . ..What they did with it . . . I don't recall." The RNA later doubled its reparation demand. *Id.*

127. 532 F. Supp. 319 (D. N.J. 1981).

128. *Id.* at 320.

129. 74 U.S. 700, 725-26 (1868).

form or join a wide variety of organizations, including political organizations whose aim is separation, such groups are no more than organizations unless *recognized as nations* or *otherwise achieve their aims*."[130] Reasoning that the RNA had neither obtained consent to secede, nor successfully overthrown the governments of the five claimed southern states, the court ignored Williams' foreign citizenship claim, and concluded that "[t]he New Republic of Afrika, by whatever name, is not a sovereign nation recognized as such by the United States. At most, it is a black separatist organization or movement."[131]

Despite numerous other efforts to obtain court recognition of its sovereign status,[132] the RNA failed to convince the U.S. of legitimate secession, or gain international recognition of its national independence. The holding in *Texas v. White* has served as a hurdle to other micronations attempting to secede from the United States, including the "Kingdom of Enenkio"[133] and a re-

130. *Williams*, 532 F. Supp. at 320 (emphasis added).

131. *Id.* The court also rejected Williams' foreign citizenship status noting that he "was born in and has been domiciled in New Jersey his entire lifetime." *Id.* at 321.

132. *See, e.g.*, United States v. James, 528 F.2d 999, 1004, 1012-16 (5th Cir. 1976) (rejecting as frivolous sovereign immunity claims asserted by the RNA President, Vice-President, Interior Minister, and Minister of Finance, for criminal conspiracy after a well orchestrated 1971 shootout with police "at the 'capitol' of the Republic of New Africa (RNA) in Jackson, [Mississippi] resulting in the death of a Jackson policeman."); United States v. Shakur, 817 F.2d 189, 192, 199-200 (2d Cir. 1987) (rejecting as "frivolous" appellant's claim that "[a]s a captured freedom fighter of the New African Nation I am a prisoner of war" subject to the Geneva Convention); United States v. Fort, 921 F.Supp. 523, 525-26 (N.D. Ill. 1996) (stating that the United States does not recognize the RNA, and rejecting the claim that defendant was "a political prisoner in accordance with the Geneva Conventions of 1949 and Protocol 1."); United States v. Buck, 690 F. Supp. 1291, 1298 (S.D.N.Y. 1988) (Republic of New Afrika not a party to Geneva Convention).

133. Although disputed with the Marshall Islands, Wake Island is regarded as a U.S. possession. *See* Yandell v. Transocean Air Lines, 253 F.2d 622, 623 (9th Cir.1957). On September 30, 1994 a man by the name of Robert F. Moore, acting as "Minister Plenipotentiary" in the name of "traditional native and hereditary" King Murjel Hermios, announced that Wake Island had seceded from the United States to form the "Republic of Enenkio." *Declaration of Sovereignty*, at http://www.enenkio.org/adobe/sovereignty.pdf (last visited Oct. 8, 2008). According to the Securities and Exchange Commission, "Enenkio asserts ancestral tribunal rights to Wake Island and atolls in the Marshall Islands chain and claims an intention to develop its territories." U.S. SECURITIES AND EXCHANGE COMMISSION, Litigation Release No. 16758, Oct. 6, 2000 (discussing *SEC v. Robert F. Moore*, Case No. CV-0000651-SOM (D. Haw 2000)), *available at* www.sec.gov/litigation/litreleases/lr16758.htm. The SEC became concerned with Moore's micronation attempt, when, in an effort to fund a war against the United States, Enenkio proceeded to conduct "a $1 billion offering of 'Enenkio Gold War bonds'" on the internet, despite the fact that Moore had "no gold reserves and no security, real property or otherwise . . . for the bonds." *Id.* Although Moore insisted that Enenkio was now an independent nation, the SEC simply ignored his self-declared independence, and filed a complaint against Moore in the federal district court for the District of Hawaii, noting

vival of the "Republic of Texas."[134] In short, sovereignty by secession is a legal impossibility absent mutual recognition by the U.S. government.

V. SOVEREIGNTY BY CONQUEST

Another potential means for a micronation to achieve recognized sovereign status is to invade and overthrow a foreign government. The following section explores the short-lived, and largely unintentional nations of the "Republic of Hawaii" and "Republic of Texas," to examine how sovereign legitimacy can be obtained through conquest.

A. THE "REPUBLIC OF HAWAII"

As the Republic of Hawaii illustrates, a declaration of independence must be coupled with the United States' acknowledgement to gain independence. While most are aware that Hawaii was as an independent monarchy prior to becoming a state, few are aware that after the overthrow of Hawaii's queen in 1893, Hawaii was ruled as an independent republic by American sugar plantation owners from 1893 – 1898. On January 14, 1893, Queen Liliuokalani of Hawaii proposed a new Hawaiian constitution that would grant only native Hawaiians the right to vote.[135] In response, a group of influential American plantation owners known as the "Committee of Safety," used the announcement as an excuse to invade. They conspired with John L. Stevens, the American ambassador to the Kingdom of Hawaii, and sent in troops from an offshore warship under the guise of "secur[ing] the safety of American life."[136] In a 1993 Joint Reso-

---

that "the Kingdom of Enenkio is not recognized in any international forum as a sovereign state nor is it a corporate or statutory entity." *Id.* Moore later consented to the court's grant of injunctive relief for violating U.S. federal securities laws without admitting or denying the allegations. U.S. SECURITIES AND EXCHANGE COMMISSION, Litigation Release No. 16780, Oct. 26, 2000, at www.sec.gov/litigation/litreleases/lr16780.htm (last visited Oct. 8, 2008).

134. *See* McLaren v. United States, 2 F.Supp.2d 48, 49 (D.D.C. 1998) ("As purported residents of another country, plaintiffs Richard McLaren and his wife Evelyn McLaren, proceeding *pro se*, maintain that they are nonresident aliens of the United States and foreign diplomats of the Republic of Texas."); *see also* James W. Paulsen, *If at First You Don't Secede: Ten Reasons Why the "Republic of Texas" Movement Is Wrong*, 38 S. TEX. L. REV. 801 (May 1997) ("In the past couple of years, a small number of Texans have gained considerable notoriety through their claims that Texas is in reality an independent nation, not a constituent state of the United States.").

135. *See* STEPHEN KINZER, OVERTHROW: AMERICA'S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ 9-10 (Times Books 2006).

136. *Id.* at 16-20. On January 16, 1893, Stevens wrote to the Navy that "[i]n view of the existing critical circumstances in Honolulu, indicating inadequate legal force, I request you to land marines and sailors from the ship under your command for the

lution of Congress, now known as the "Apology Resolution," Congress admitted what happened next:

> [I]n pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government. . . . [O]n the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government. . . . *[T]he United States Minister thereupon extended diplomatic recognition to the Provisional Government* that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law.[137]

While the United States acknowledged the legitimacy of the Provisional Hawaiian government, the end goal of the Committee of Safety was not to create a long-term country, but rather to form a government that would actively negotiate with the United States in order to become annexed as a U.S. territory. Indeed, days after formation, the "new" Hawaiian government arrived in Washington with a draft annexation treaty asking for "full, complete, and perpetual political union between the United States of America and the Hawaiian Islands."[138] Before Congress could approve annexation, however, Grover Cleveland, who was opposed to the overthrow, was elected president and called the deal off.[139]

Left in legal limbo in which the United States recognized the legitimacy of the "provisional government," but refused to annex

---

protection of the United States delegation and the United States consulate, and to secure the safety of American life and property." *Id.* at 24.

137. Pub. L. No. 103-150, Cong. J. Res. 19, 103d Cong. (1993) (emphasis added) [Hereinafter Apology]. Stevens quickly proclaimed the legitimacy of the American led "[p]rovisional [g]overnment as the *de facto* [g]overnment of the Hawaiian Islands." KINZER, *supra* note 135, at 25-27, 29. Amidst failure of the ambassador to uphold her legitimacy, Queen Liliuokalani reluctantly stepped down, stating, "to avoid any collision of armed forces and perhaps the loss of life, I do under this protest, and impelled by said force, yield my authority until such time as the United States shall . . . undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands." *Id.* at 30.

138. KINZER, *supra* note 135, at 85.

139. *Id.* at 86; *see also* Apology, *supra* note 137 ("President Cleveland further concluded that a 'substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair' and called for the restoration of the Hawaiian monarchy.").

it,[140] on July 4, 1894, the foreign revolutionaries formally proclaimed their unintended nation as the "Republic of Hawaii.""[141] The Republic named Sanford Dole as President, and created a new national constitution in which legislators were appointed rather than elected and "only men with savings and property would be eligible for public office."[142] The Queen was imprisoned, where she formally abdicated under duress.[143] Despite Congress' 1993 joint resolution proclaiming that the overthrow was actually "illegal,"[144] the United States Supreme Court at the time, amidst contemporary Congressional embracement of the Dole government, acknowledged the Republic of Hawaii as an "independent nation, exercising all the powers and prerogatives of complete sovereignty."[145] In short, *with U.S. approval*, a handful of men started their own country

The "Republic of Hawaii" remained an independent country for over four years until expansionist President William McKinley was elected. On July 7, 1898, President McKinley signed an annexation treaty with President Dole, officially ending the republic and extending U.S. sovereignty over Hawaii.[146]

B. THE "REPUBLIC OF TEXAS"

The lesson from Hawaii is that the line between a failed revolution and a new micronation depends upon external recognition by nations such as the United States. This priniciple is further exemplified by the legal history of the "Republic or Texas," an independent country in North America that existed from 1837-1845 and was recognized by, and had treaties with the United States, Belgium, France, Great Britain, and the Netherlands.[147]

In the case of *Kennett v. Chambers*,[148] the U.S. Supreme Court, using Texas as an example, described when the United

140. The Apology Resolution recognized this strange position, noting that "although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation." *Id.* *See* Apology, *supra* note 137.

141. *Id.*

142. KINZER, *supra* note 135, at 86.

143. *Id.*; *see also* APOLOGY, *supra* note 137.

144. APOLOGY, *supra* note 137 (describing the revolution as "the illegal overthrow of the Hawaiian monarchy.").

145. Territory of Hawaii v. Mankichi, 190 U.S. 197, 216 (1903).

146. KINZER, *supra* note 135, at 87; *see also* APOLOGY, *supra* note 137 ("as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii"); Rice v. Cayetano, 528 U.S. 495, 504 (2000).

147. Paulsen, *supra* note 134, at 804, n.16.

148. Kennett v. Chambers, 55 U.S. 38 (1852).

States will recognize a revolutionary movement as an independent country. On September 16, 1836, General T. Jefferson Chambers of the Texan Army entered into a contract in Cincinnati, Ohio to sell his Ohio real estate for $12,000 to fund "raising, arming, and equipping volunteers for Texas . . . being extremely desirous to advance the cause of freedom and the independence of Texas."[149] After the buyers paid Chambers the money, Chambers refused to convey the real estate.[150] The Supreme Court was asked to decide whether the agreement was enforceable. The principle concern was that "contracts to furnish money to carry on war by revolted subjects, against a government with whom we are at peace are void."[151]

The appellants argued that the September 16, 1836 contract was valid because the Texas Republic was a legitimate sovereign government at that time, and not a revolutionary movement against a sovereign Mexican state.[152] They observed that "[t]he people of Texas, represented by delegates, met in general convention at Washington, in Texas, on the 2d day of March, 1836, and declared themselves a 'Free and Independent Republic.'"[153] Based on this declaration of independence, they argued the agreement was valid, because "the purpose of General Chambers, as declared, was, to *maintain her independence*; and not to make incursions from the United States, or even from Texas, into Mexico."[154] The appellants vigorously dismissed the notion that the United States' assent was necessary before the Republic of Texas could consider itself a nation:

> The recognition of the independence of Texas, by the United States, in no way determined the fact as to when she became independent, any more than did the acknowledgment of the independence of the United States by the British government, determine the fact as to when the United States became independent. If the time or date of the independence of revolting colonies depends on the decision of neutral nations, and not upon the fact whether the revolting colony has established a civil government which is continued in successful operation, performing all the functions of an independent power, then we are all mistaken in the date of our national existence; and instead of celebrating the anniversary of the 4th of July, 1776, we should ascertain the different days of the recognition of our independence by other nations, and celebrate them.[155]

149. *Id.* at 45.
150. *Id.*
151. *Id.* at 44.
152. *Id.* at 40.
153. *Id.*
154. *Id.* at 42 (emphasis added).
155. *Id.* at 43-44.

Despite this plea by the appellants, Chief Justice Taney found the contract void. Taney began by noting that "[t]he validity of this contract depends upon the relation in which this country then stood to Mexico and Texas."[156] He noted that "Texas had declared itself independent a few months previous to this agreement. But it had not been acknowledged by the United States."[157] He observed that at the time of the contract, a treaty was in force between the United States and Mexico declaring "that there should be a firm, inviolable, and universal peace, and a true and sincere friendship between the United States of America and the United Mexican States."[158] Pointing out that "the independence of Texas was not acknowledged by the Government of the United States until the beginning of March 1837,[159] Taney reasoned:

> It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent state, was a question for that department of our government exclusively which is charged with our foreign relations. And until the period when that department recognized it as an independent state, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory.[160]

Acknowledging that the Mexican treaty was still in place as of the September 16, 1836 contract date, Taney maintained that "[t]hese treaties, while they remained in force, were, by the Constitution of the United States, the supreme law, and binding not only upon the government, but upon every citizen. No contract could lawfully be made in violation of their provisions."[161] Con-

---

156. *Id.* at 46.

157. *Id.*

158. *Id.*

159. *Id.* at 47. Continuing that "[u]p to that time, it was regarded as a part of the territory of Mexico." *See also* Oklahoma v. Texas, 256 U.S. 70, 82 (1921) ("in the year 1837 Texas was recognized as an independent republic, no longer under the power and jurisdiction of Mexico, and on April 25, 1838, a treaty was concluded, and in the same year ratified and proclaimed, between the United States and the Republic of Texas."); United States v. Louisiana, 363 U.S. 1, 37 (1960) ("In March 1837 this country recognized the Republic of Texas.").

160. *Kennett*, 55 U.S. at 50-51.

161. *Id.* at 46. Taney noted that as late as August 1836, the president declared that:

> "[t]he obligations of our treaty with Mexico, as well as the general principles which govern our intercourse with foreign powers, require us to maintain a strict neutrality in the contest which now agitates a part of that republic. So long as Mexico fulfils her duties to us, as they are defined by the treaty, and violates none of the rights which are secured by it to our citizens, any act on the part of the Government of the United States, which would tend to foster a spirit of resistance to her government and laws, whatever may be their character or form,

sequently, Taney found the contract "illegal and void," concluding that although the United States recognized Texas as an independent nation in March 1837, "[t]he agreement being illegal and absolutely void at the time it was made, . . . can derive no force or validity from events which afterwards happened."[162]

Kennett informs us that military triumph in Texas, without international recognition, was insufficient in and of itself to create legally recognized sovereign status. This is borne out by other attempts to turn Texas into an independent country. In February 1819, Spain and the United States entered into the Adams-Onis Treaty, mutually recognizing a major portion of present day Texas as Spanish territory.[163] A man named James Long refused to acknowledge the agreement, because he believed that Texas should be wrested from Spain.[164] Long organized a private militia with the promise of "a league of Texas land to every soldier" and headed off to "claim" Texas.[165] On June 22, 1819, his conquest was in part successful – the town of Nacogdoches fell with no resistance.[166] His men declared a "provisional government" of Texas, electing Long as "president and commander in chief."[167] The next day, he issued a formal declaration of independence, and "promised that their new and independent Texas would protect religious freedom, an unfettered press, and free trade."[168] Unlike Hawaii or the later Republic of Texas, however, there was no U.S. government to back them up – the United States would not recognize a revolution months after signing the Adams-Onis Treaty. Long's "republic" was quickly routed and destroyed by Spanish forces in late 1819.[169]

The "Republic of Texas" emerged on the international scene only after President Andrew Jackson recognized its sovereignty. The nation of Texas evolved under remarkably similar, inadvertent circumstances as its counterpart in Hawaii. By 1835, over 35,000 Americans lived in what was then Mexican Texas.[170]

---

when administered within her own limits and jurisdiction, would be unauthorized and highly improper."

Id. at 47. Taney details further presidential speeches acknowledging unrest in Texas, but maintaining United States loyalty to Mexican government control. *Id.* at 47-48.

162. *Id.* at 51-52.

163. WILLIAM C. DAVIS, LONE STAR RISING: THE REVOLUTIONARY BIRTH OF THE TEXAS REPUBLIC 45 (Free Press 2004).

164. *See* ODIE B. FAULK, THE LAST YEARS OF SPANISH TEXAS: 1778-1821 138 (Mouton & Co. 1964).

165. *Id.* at 139.

166. *Id.*; *see also* Long Expedition, *at* http://www.tsha.utexas.edu/handbook/online/articles/LL/qyl1.html.

167. DAVIS, *supra* note 163, at 46.

168. *Id.*

169. FAULK, *supra* note 164, at 139-40.

170. A PEOPLE AND A NATION 390 (Mary Beth Norton et al. eds., 1994).

Amidst Mexican dictator General Antonio Lopez de Santa Anna's efforts to tighten control over Texas and its inhabitants, Texan-Americans rebelled, declaring independence on March 2, 1836.[171] Like the Republic of Hawaii, the Texas government did not desire its own long-term nation, but instead sought immediate annexation to the United States. In September of 1836, the republic elected General Sam Houston as its first president and Texas citizens "voted overwhelmingly for annexation to the United States."[172] In the meantime, however, the government, as *Kennett* illustrates, had not even recognized Texas as an independent country until March 1837.[173] Indeed, Andrew Jackson waited until his last day in office to recognize Texas independence.[174]

Although Jackson had legitimized Texan sovereignty, his successor, Martin Van Buren, was concerned with protests by Mexico and antislavery Northerners, and did not approve of annexing the new republic.[175] On October 12, 1838, Texas accordingly decided to withdraw its annexation proposition after the United States Congress failed to act.[176] As with Hawaii, Texas was left in legal limbo in which the United States recognized the Texas republic as an independent nation, but refused to annex it.

By 1844, President John Tyler, a man "decidedly in favor" of annexation, replaced President Van Buren.[177] On April 12, 1844, President Tyler entered into a "Treaty of Annexation" with the Republic of Texas, but this again failed after the Senate refused to ratify it.[178] However, on March 1, 1845, weeks before leaving office and still unable to garner the necessary two-thirds Senate vote for a treaty, Tyler instead "signed a Joint Resolution of Congress for the annexation of Texas."[179] The Republic became part of the United States on December 29, 1845.[180]

As with discovery and secession, unilateral declarations of national sovereignty based on military conquest alone seem to be insufficient to establish micronation soveriegnty. Both James

171. *Id.*

172. Ralph H. Brock, *"The Republic of Texas is No More:" An Answer to the Claim that Texas was Unconstitutionally Annexed to the United States*, 28 TEX. TECH L. REV. 679, 684 (1997).

173. Kennett v. Chambers, 55 U.S. 38, 47 (1852).

174. Brock, *supra* note 172, at 685.

175. *Id.*

176. *Id.*

177. *Id.* at 686.

178. United States v. Louisiana, 363 U.S. 1, 37 (1960). Sam Houston languished, "we must therefore regard ourselves as a nation to remain forever separate." Brock, *supra* note 172, at 689.

179. *Louisiana*, 363 U.S. at 37.

180. *Id.*; *see also* Brock, *supra* note 172, at 693.

Long and Sam Houston may have been able to conquer portions of Texas, but only after the United States recognized the claims of the latter could the Republic of Texas gain legitimacy in the international community. Therefore, no matter what approach an emerging state takes, judicial deference to the political branches, as discussed in *Texas v. White* or *Kennett v. Chambers* will render declarations of independence null and void unless recognized by the President or Congress.

VI. PRIVATE PROPERTY AS *DE FACTO* SOVEREIGNTY

Claiming land that has not yet been declared part of another sovereign nation, seceding from the United States, or invading the territory of another country are micronation strategies legally doomed to failure absent U.S. government support for the new state. Enterprising individuals, however, have come up with another less contentious strategy of establishing their own micronations inside the recognized borders of the United States – and one that has proven successful. Rather than declaring political independence by claiming to take away land from the United States, these individuals have instead purchased private swaths of land wholly within the United States, often islands geographically removed from law enforcement, and managed their real estate the way a leader would govern his country. This section is dedicated to what may be termed as "private micronations" – the most prolific form of micronation in the United States today.

A. WHAT IT MEANS TO BE A "PRIVATE MICRONATION"

Private domain over property does not by itself establish sovereignty.[181] The line, however, between state and mere real estate can at times be unclear. Take for example "Beaver Island" located in the northern end of Lake Michigan.[182] In 1847, James Strang established a personal religious following of over 250 members on his island, which he renamed "St. James," and the following year "was inaugurated king in a ceremony replete with throne, crown, and shouts of 'Long Live James, King of Zion!'"[183] Yet, while Strang had his own land, private system of

181. But see the backyard "nation" of "Lovely" established by British comedian Danny Wallace, a.k.a. "King Danny I" consisting solely of his apartment in Bow, a suburb of London, England. MICRONATIONS, *supra* note 77, at 28-33.

182. THURSTON CLARKE, SEARCHING FOR CRUSOE: A JOURNEY AMONG THE LAST REAL ISLANDS 197 (Ballantine Books 2001); Bil Gilbert, *America's Only King Made Beaver Island His Promised Land*, 25 SMITHSONIAN 6 (Aug. 1995).

183. CLARKE, *supra* note 182, at 197-98. In 1851, concerned with Strang's conduct, President Millard Fillmore ordered that Strang be arrested. Gilbert, *supra* note 182. Strang was placed on trial in federal court in Detroit for counterfeiting,

laws, and ruled over his people as an "absolute autocrat,"[184] rather than formally seceding from the United States he decided to stay within the national political framework. He convinced his "subjects," as Michigan voters, to elect him to the Michigan State legislature.[185] His micronation, however, was technically no more than a piece of real estate in a recognized state legislative district.[186]

The idea that private property maintained within an existing political regime can exist as a "quasi-sovereign" entity is not limited to the fringe micronation held by James Strang. A more credible example is the transcontinental swath of land controlled by the Hudson's Bay Company ("HBC") in North America for nearly three centuries.[187] In 1670, King Charles II granted a royal charter to the "Governor and Company of Adventurers of England trading into Hudson's Bay" and their successors the power of "sole trade and commerce" over all the sea and land that drained into Hudson's Bay in present day Canada and the Northern United States, making them "true and absolute lordes and proprietors of the same territory."[188] The charter was construed broadly, in effect granting monopoly rights over trade anywhere west of Hudson Bay, based on "discovery."[189] Far from establishing a separate sovereign country in the New World, however, the mission of the HBC was entirely economic – to scour North America for beaver pelts in order to satisfy European demand for fur hats.[190] Thus, as a technical matter, the

---

obstructing U.S. mail, trespassing, and cutting timber on federal lands, but was found innocent. *Id.* He returned to rule over his kingdom afterwards. *Id.*

184. On Beaver Island, Strang maintained that his "Book of the Law and the Lord," along within his own "royal edicts" superseded state and federal law. Strang apparently "regulated every aspect of his people's lives." Gilbert, *supra* note 182.

185. CLARKE, *supra* note 182, at 198. Gilbert, *supra* note 182.

186. In 1854 Strang was reelected by a vote of 695-0 in a district of 662 voters. Gilbert, *supra* note 182. His district consisted of 11 million acres and "represented about a quarter of the total area of Michigan." *Id.*

187. NEWMAN, *supra* note 4, at 25. Another global example of private hegemony can be found with the Dutch East India Company, a rival of the HBC that dominated much of Southeast Asia. Indeed, Henry Hudson, for whom Hudson's Bay is named after, was hired by the Dutch Company to ascend the Hudson River in 1609, later prompting the Dutch purchase of Manhattan Island in 1626 for $24 worth of trinkets. *Id.* at 25.

188. *Id.* at 14, 39, 43.

189. *Id.* at 39 (commenting that "if the North West Passage had actually existed where navigators of the day placed it, the HBC would have possessed control of trading rights, based on discovery, all the way to the shores of Cathay.").

190. Newman emphasizes this point noting that "[t]he Company's self –proclaimed gentleman adventurers virtually created Canada, but notions that the HBC might be destined for . . . colonizing the New World or 'converting the savages' were always summarily dismissed by its Governors. The HBC was much more interested in making profit than making history. . . . The single-minded drive for greater revenues coloured everything the company did." *Id.* at 15.

HBC was a private real estate lease recognized by the English Crown, and not a new nation. Practically speaking, however, the remoteness of this land from English civil society made this a distinction without a difference. As the beaver was hunted to near extinction around the bay, the HBC expanded further to the west and to the south, maintaining monopoly commercial control over new lands in its wake "fielding its own armies and navies, minting its own coins, issuing its own medals, even operating according to a calendar dating from its own creation."[191] According to historian Peter C. Newman:

> [t]he Hudson's Bay Company has indeed functioned as a kingdom for well over three hundred years. During the first two centuries of its existence, the span of this kingdom was outlined by a network of trading posts that reached from the Arctic Ocean to Hawaii, and as far south as San Francisco. . . . At the peak of its expansion, it controlled nearly three million square miles of territory – nearly a twelfth of the earth's land surface and an area ten times that of the Holy Roman Empire at its height.[192]

In short, actual political sovereignty is not necessary in order to have practical sovereign power.[193]

Following the model of Strang, and the Hudson's Bay Company, this section adopts an understanding of "private micronations" as lands in which neither the owner nor the United States dispute its status as within the territory of the United States, but nevertheless serve as *de facto* nations, in which the owners are essentially afforded free reign over their property and its residents. Although distinct from "traditional" sovereignty and self-determination movements where the group seeks to invoke itself as a separate, freestanding political identity, "private micronations" nevertheless establish the rules "governing" their land with little or no intervention by federal or state officials.

---

191. *Id.* at 16. Newman observes that the expansion of the HBC was much like the expansion of elephant poaching in Africa. Because beavers are non-migratory animals, the company was forced from the St. Lawrence to the Rocky Mountains and Pacific in search of new beavers to hunt and kill. *Id.* at 14.

192. *Id.* at 13. Newman observes, however, that despite the minting of coins and other aspects of empire, much of this conduct was an effort by the HBC to create a façade of dominance. *Id.* at 16. Indeed, although many believed that the HBC "employed about a million men" in its heyday, Newman points out that "at the height of its geographical presence, the HBC had fewer than three thousand employees." *Id.* at 16-17. In 1870, the company sold much of its private land to the new nation of Canada. *Id.* at 15.

193. *See* CLARKE, *supra* note 182, at 198 (observing that in 1927, "Princess Der Ling" leased an uninhabited Mexican island near southern California and populated it with 150 all-female residents and a "palace guard" of 20 ex-Marines, intending to recreate "the imperial court of Peking."); *see generally* MICRONATIONS, *supra* note 77.

As explored further below, the United States has tolerated numerous examples of "private micronations" within its recognized borders, including Navassa Island off the coast of Haiti, the Robinson family's Niihau island in Hawaii, the Fullard-Leo legacy over the U.S. territory of Palmyra Island, and the Jennings family's Swains Island.

B. Swains Island: From an "Independent" Nation to a Private Micronation

Just as Swains Island history serves as an example of the application of the discovery doctrine, its present day status embodies the definition of a private micronation. Although Swains has technically been a U.S. territory for the past 80 years, it remains firmly in the hands of the Jennings family as it did a century ago.

At the outset, the Jennings family's continued monopoly control has survived in large part as a result of United States actions defending the Jennings from foreign claims of sovereignty. In 1953, for example, after Swains Island "had become the undisputed, personal property of Alexander E. Jennings,"[194] the Tokelauans, who had long worked on their coconut plantation, decided to claim squatters' rights on the grounds that they lived on Swains Island year round.[195] Jennings reacted to this insurrection by simply firing and expelling all fifty-six Tokelauan workers and their families off the island.[196] The governor of American Samoa came to Jennings' aid, issuing an executive order affirming Jennings family proprietary rights over Swains and requiring that all future Swains Island employees be American Samoan instead of Tokelauan.[197] Likewise, when Tokelau, a New Zealand dependency, again asserted a claim of sovereignty over Swains in the 1980s, President Ronald Reagan upheld the Jennings' rights by entering into a treaty with New Zealand on March 25, 1981, stating that the treaty "protects United States interests by confirming United States sovereignty over Swains Island, which had been claimed by Tokelau, and by securing a maritime boundary in accordance with equitable principles."[198]

Not only has U.S. control protected the Jennings from challengers, but so too have American laws literally treated the Jen-

194. *See* Swains History, *supra* note 28. The Dept. of Interior observed that Swains "differed from a freehold farm in the United States mainland only in that A.E. Jennings' [island] was an island surrounded by the Pacific Ocean." *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. President's Message to the Senate Transmitting the United States-New Zealand Maritime Boundary Treaty, Mar. 25, 1981), S. Treaty Doc. No. 97-5 (1981).

nings family like Swains Island royalty. Indeed, under American Samoa Code section 37.0204(e):

> [t]he true children of the present record titleholder of Swains Island . . . and their lineal descendants born in American Samoa, shall . . . be deemed to have *heritable blood* with respect to said island or any part thereof . . . .[199]

In short, not only does Swains' geographical isolation afford the Jennings with complete autonomy over island affairs, but so too does the United States ensure that the Jennings family will have hereditary title to the island which allows them to rule without outside interference.[200]

C. NAVASSA: A KINGDOM BUILT ON MANURE

Nearly 200 years after King Charles II's royal charter to the HBC, the United States Congress formulated its own monopoly trade statute that paved the way for private micronations. In 1856 Congress passed the "Guano Islands Act,"[201] declaring that:

> [w]henever 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.

Although the terms of the Guano Act (still in effect today) do not confer the individual discoverer of the world's remaining rocky outposts with political sovereignty over them,[202] the Act does, similarly to the HBC charter, grant "[t]he discoverer, or his assigns . . . *the exclusive right of occupying such island, rocks, or keys*, for the purpose of obtaining guano, and of selling and delivering the same to citizens of the United States."[203] In turn, "pri-

---

199. (emphasis added). The leader of Swains Island is referred to as the "proprietor." AM. SAM. CODE § 5.0401. Under AM. SAM. CODE § 5.0401(a), "There shall be a local government for Swains Island, which shall consist of a government representative, a village council, a pulenuu, and village policeman."

200. *See also* AM. SAM. CODE § 5.0402 (that the duty of the Swains Island representative to the American Samoan legislature is "to insure that the proprietary rights of the proprietor are respected."). Today, although theoretically part of the United States, non-Swains residents can visit, but "[i]t is not possible to visit Swains Island without permission from the Jennings family." MICHELLE BENNETT ET AL., SAMOAN ISLANDS 150 (Lonely Planet Publications 2003).

201. 48 U.S.C. §§ 1411-19 (2002). Guano is the manure of seabirds and bats prized as a natural fertilizer for its high phosphate content and for making gunpowder.

202. *See* Duncan v. Navassa Phosphate Co., 137 U.S. 647, 651-52 (1890) (the Guano Islands Act does not convey fee ownership, but a license to mine guano terminable "at the pleasure of Congress.").

203. 48 U.S.C. § 1412 (2002) (emphasis added). Although still on the books today, the lure for the guano supplier may not be so great given that Section 1412

vate micronations" were born, and legal disputes followed. Not surprisingly, the general rule gleaned from the Guano Islands "nations" is the same as in other settings – these micronations survive when the U.S. government is willing to condone them, and fall apart when it is not.[204]

Navassa Island is an uninhabited, three square-mile tropical island in the Caribbean, one hundred miles south of Guantanamo Bay, Cuba, and about thirty miles west of Haiti.[205] In 1504, Christopher Columbus' men briefly visited (and named) Navassa Island, but it contained no freshwater, so the men moved on.[206] On July 1, 1857, Peter Duncan, an American sea captain, "discovered" Navassa Island, finding it uninhabited and covered in rich deposits of guano.[207] Duncan took possession of it in September of that year, and along with his assignee, Edward Cooper, applied for exclusive control over the island under the Guano Islands Act.[208] Eager for guano shipments, the U.S. government was all too willing to support the Duncan/Cooper monopoly. Indeed, when Cooper complained of military assaults by the Haitian government and claims of Haitian sovereignty in April and June of 1858, the U.S. Navy intervened to protect

---

offers "a sum not exceeding $8 per ton for the best quality, or $4 for every ton taken while in its native place of deposit." *Id.*

204. Examples of U.S. abandonment of so-called "guano islands" include President Richard Nixon renouncement of three reefs off the coast of Columbia in 1973 that were "discovered" by an American citizen in 1869 and possessed under the Guano Islands Act. S. EXEC. DOC. A, 93-1, *supra* note 78, at 8-9. The agreement was struck between the United States and Columbia in order to pacify claims asserted by Columbia since 1890 that Columbia had inherited sovereign title over them from Spain. *Id.*

205. U.S. Dep't of Interior, Navassa Island, at http://www.doi.gov/oia/Island pages/navassapage.htm (last visited Oct. 5, 2008) [hereinafter Navassa History]; Warren v. United States, 234 F.3d 1331, 1332 (D.C. Cir. 2000). An ongoing land dispute over Navassa continues to this day between the United States and Haiti. Although the United States asserts that Navassa was not under the jurisdiction of any other country within the meaning of the Guano Act, noting that the island was uninhabited when Peter Duncan sighted it, Haiti maintains that it controls Navassa under "the 1697 Treaty of Ryswick, which divided up the island of Hispaniola . and its dependencies between France and Spain." *Arguing Over an Island of Biological Treasures*, UNESCO COURIER, Dec. 1998, at 13. Haiti argues that "France subsequently gave up its rights to Haiti (and therefore to Navassa) in 1825 when it recognized Haiti's independence." *Id.*; *see also* Jones v. United States, 137 U.S. 212, 220 (1890) (A Haitian representative observed that "France, in 1825 . acknowledged the independence of Hayti, and thereby vested her with a perfect title to the 'French part' . . . and all its dependencies . . . ").

206. Wikipedia.org, Navassa Island, *at* http://en.wikipedia.org/wiki/Navassa_Island (last visited Oct. 5, 2008) [hereinafter Navassa].

207. *Jones*, 137 U.S. at 205. Duncan observed that the island "is covered with small shrubs upon the surface, beneath which is a deposit of phosphatic guano, varying in depth from one to six feet, and estimated in quantity at one million of tons." *Id.*

208. *Id.* at 205-06, 217.

Duncan and Cooper's monopoly control.[209] On December 8, 1859, Cooper was formally granted exclusive possession over Navassa, and soon after he transferred his rights to the "Navassa Phosphate Company" (NPC).[210]

Cooper and the NPC began active mining operations in 1865, in effect operating their own "private micronation" on Navassa complete with a social community governed under company rules and laws.[211] By 1889, thirty years after monopoly powers were granted, the NPC had a permanent labor force of 137 black laborers supervised by eleven white superintendents.[212] Navassa contained a blacksmith shop, warehouses, and a church; the workers, who hauled guano by rail car from the interior to the sea, lived in what was called "Lulu Town."[213] Under the contract the workers signed with the NPC, they "agree[d] to devote their whole time and services in such labor as they may be directed to do by said Navassa Phosphate Company or its agents."[214] They were also required "to obey and abide by all the rules, regulations and laws that may now be in operation or hereafter put in force on the island of Navassa," and "should they fail to obey the orders and instructions of said Navassa Phosphate Company . . . they shall forfeit all claims for wages and compensation which may be due them."[215]

On September 14, 1889, over thirty years after its birth, the micronation began to deteriorate. Disgruntled with working conditions and fierce tropical heat, the black workers led a rebellion against the NPC, killing five of the white superintendents.[216] Yet despite any potential political oppression on the island by the NPC, the Supreme Court in *Jones v. United States* upheld the

209. *Id.* at 218. A July 7, 1858 letter from the Secretary of State to the Secretary of the Navy reads that "[t]he President being of the opinion that any claim of the Haytian government to prevent citizens of the United States from removing guano from the Island of Navassa is unfounded . . . [and] directs that you will cause a competent force to repair to that island, and will order the officer in command thereof to protect citizens of the United States in removing guano therefrom against any interference from authorities of the government of Hayti." *Id.* at 218.

210. *Id.* at 206.

211. Navassa History, *supra* note 205.

212. *Jones*, 137 U.S. at 206-08.

213. Navassa History, *supra* note 205.

214. *Jones*, 137 U.S. at 208.

215. *Id.*

216. Navassa History, *supra* note 205; *Jones*, 137 U.S. at 204, 208 ("a riot took place there, in which a large number of laborers was engaged against the officers, and the defendant killed Thomas N. Foster, one of the officers, under circumstances which the jury found amounted to murder."). Three of the defendant workers were convicted and sentenced to death in 1891. Navassa, *supra* note 206. However, a national grass-roots petition led by black churches, and white jurors from the three trials, convinced President Benjamin Harrison to commute the sentences to imprisonment. *Id.*

NPC's continued monopoly rule, noting that because the President had recognized the Duncan/Cooper claim under the Guano Act and that "the action of the executive department, on the question to whom the sovereignty of those islands belonged, was binding and conclusive upon the courts of the United States . . . it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong."[217] Hopeful for more guano mining, the U.S. government continued to support NPC monopoly authority for another nine years, only terminating control in 1898, when President William McKinley evacuated all inhabitants of Navassa in preparation for the Spanish-American war.[218]

Navassa's rise and fall demonstrates once again that executive branch policy dictates sovereign legitimacy under U.S. law. Because Duncan was deemed the first to encounter Navassa by the State Department under the Guano Act, the courts could rationalize his control over it. As the McKinley evacuation shows, however, the survival of a "private micronation" depends entirely upon support from the hosting nation in order to prosper, and will collapse as soon as the hosting government withdraws its backing. Indeed, on September 11, 1996, nearly one hundred years after the demise of the NPC, William A. Warren, owner of the remaining rights and interests of the NPC, landed on Navassa, and the following day, "submitted a letter providing notice of his discovery occupation, and possession of Navassa Island."[219] Deferring to executive authority, the Court of Appeals for the District of Columbia rejected the claim.[220] Following the rationale of *Jones*, the court reasoned that courts must defer to the dictates of the President, and observed that in 1916, President Woodrow Wilson declared that the entire island of Navassa be reserved for lighthouse purposes, thereby denying any private claims to occupy the island for any other private use.[221] Today, Navassa is formally controlled by the United States Department of the Interior as a "Minor Outlying Island" but is managed by the United States Fish & Wildlife Service for its highly preserved

217. *Jones*, 137 U.S. at 213. The court concluded that "the President, exercising the discretionary power conferred upon him by the Constitution and laws, was satisfied that the Island of Navassa was not within the jurisdiction of Hayti, or of any foreign government," and that therefore the grant of authority to the NPC over Navassa under the Guano Islands Act was constitutional. *Id.* at 223.

218. Warren v. United States, 234 F.3d 1331, 1333 (D.C. Cir. 2000).

219. *Id.* at 1334.

220. *Id.* at 1335.

221. *Id.* at 1336. The court observed that "[i]n 1913, Congress sanctioned the termination of guano mining interests on Navassa island by appropriating $125,000 for the construction of a lighthouse." *Id.*

ecosystem.[222] Although the lighthouse was dismantled in 1996, the United States government has made clear to the Haitian government that the United States still asserts its sovereignty over the island despite Haiti's own ownership claims. Navassa is once again uninhabited, and visitation is restricted, with the exception of authorized visits by scientific researchers.[223]

D. PALMYRA ATOLL: DAVID V. GOLIATH

While "Atlantis," the "Republic of New Afrika," and Navassa have demonstrated the general rule that the United States government will not recognize a private party's claim of ownership if such ownership is against national interests, the "private micronation" of Palmyra Atoll has emerged as a unique exception and shows that a micronation can exist even against the wishes of the federal government.[224]

A remote scrub of land in the vast Pacific Ocean, Palmyra has ping-ponged through history between the competing sovereign claims of international powers. Palmyra Atoll is located about 1,000 miles south of Honolulu, between Hawaii and Samoa, and consists of a group of fifty small islets amounting to about 250 acres that surround two lagoons.[225] Palmyra was first observed from a distance in 1798 by Edmund Fanning, an American sea captain, while traveling en route to Asia, but not landed upon until November 7, 1802, when Captain Sawle of the U.S. Ship "Palmyra" sought shelter there from a storm.[226] In 1859, Dr. Gerrit P. Judd of the "American Guano Company," attempted to claim monopoly control over Palmyra through the Guano Islands Act.[227] Judd's efforts failed, however, because he

---

222. *Id.* at 1334; *see* U.S. Dep't of Interior, Secretary's Order No. 3210 (Dec. 3, 1999) (transferring administrative jurisdiction to the U.S. Fish & Wildlife Service, and superseding Secretary's Order No. 3205). 43 U.S.C. § 1458 (2000) grants the Interior Department civil administration authority.

223. *See* Navassa History, *supra* note 205.

224. *See* United States v. Fullard-Leo, 331 U.S. 256 (1947); United States v. Walker, 802 F.2d 1106 (1986) ("Palmyra Island is a possession of the United States"); *see* 48 U.S.C. § 644a (2006) (placing Palmyra and seven other American Pacific Islands under the jurisdiction of the District of Hawaii).

225. *See* Jane Resture, Palmyra Island, *at* http://www.janeresture.com/palmyra/index.htm (last visited Oct. 5, 2008); *Fullard-Leo*, 331 U.S. at 256, 259; U.S. DEP'T OF INTERIOR, PALMYRA ATOLL, www.doi.gov/oia/Islandpages/palmyrapage.htm (last visited Oct. 5, 2008) [hereinafter Palmyra].

226. Wikipedia.org, Palmyra Atoll, *at* http://en.wikipedia.org/wiki/Palmyra_Atoll (last visited Oct. 5, 2008) [hereinafter Palmyra Atoll]. Additionally, in 1816, a Spanish pirate ship, the "Esperanza," wrecked on Palmyra *See.* The Nature Conservancy, Palmyra's History, *at* http://www.nature.org/wherewework/asiapacific/palmyra/annual/ (last visited Oct. 5, 2008). Legend has it the Esperanza was loaded with plunder from Incan temples and its crew buried the treasure beneath a palm grove before setting out on rafts and drowning. *Id.*

227. 48 U.S.C. §§ 1411-1419 (2002).

could not find any guano on Palmyra to be mined.[228] By 1862, the Kingdom of Hawaii asserted sovereignty over Palmyra,[229] but in 1889 this claim was contested by Commander Nichols of the H.M.S Comorant who formally annexed Palmyra on behalf of the British government.[230] In 1898, Palmyra was in turn annexed by the United States in conjunction with the overall annexation of Hawaii, and formally became an incorporated territory of the United States in 1900.[231] In 1912, when word of conflicting British claims over the atoll reached Honolulu, the U.S. cruiser West Virginia, under the command of Rear Admiral W.H.H. Southerland, quietly visited the atoll, returning on February 28th and announced that they had "formally taken possession" of Palmyra in the name of the United States.[232]

Politically, Palmyra remains today a bit of an anomaly. After the annexation of Hawaii, Palmyra was specifically administered by the Hawaiian territorial government as part of the territory of Hawaii, but remained a federal territory, because Congress "expressly excluded" Palmyra from the State of Hawaii under the Hawaii Statehood act of 1959.[233] As such, the Hawaiian government no longer held authority over Palmyra, and control over the orphaned atoll shifted to Congress.[234] In 1961, President Kennedy issued an executive order vesting civil administration of Palmyra in the U.S. Secretary of Interior, which remains in effect today.[235] With the exception of the naval escalation for World War II, Palmyra has historically remained uninhabited. Palmyra gained international notoriety in 1974,

228. Resture, *supra* note 225 (noting that Judd's "claim never was recognized at Washington and no guano was dug."); Palmyra Atoll, *supra* note 226 ("Palmyra is located close to the Intertropical Convergence Zone; there is too much rain for guano to accumulate.").

229. *Fullard-Leo*, 331 U.S. at 280 (the Supreme Court noted that Palmyra was "claimed by no sovereignty until 1862.").

230. Resture, *supra* note 225; Palmyra Atoll, *supra* note 226; *see Fullard-Leo*, 331 U.S. at 283 (Rutledge, J. dissenting) ("[s]ome time between 1889 and 1897, a British vessel visited the island and finding it uninhabited, claimed it for that country.").

231. S. Doc. No. 16, at 4 (1898) (Palmyra was specified as one of the islands included in the Joint Resolution of the Congress); Palmyra Atoll, *supra* note 226; Palmyra, *supra* note 225.

232. Resture, *supra* note 225; *see also* Palmyra, *supra* note 225; *see Fullard-Leo*, 331 U.S. at 283 (Rutledge, J. dissenting) (noting that in 1912 "a vessel of the United States Navy visited the island in order to confirm this country's claim to it.").

233. Palmyra, *supra* note 225.

234. Because Palmyra was originally an "incorporated" territory by virtue of its affiliation with Hawaii, it remains today the only "incorporated" territory of the fourteen U.S. insular areas. *Id.* All other U.S. insular areas are "unincorporated." Incorporated territories are generally those intended for statehood, but Palmyra will presumably never achieve independent statehood status.

235. Exec. Order No. 10,967, 26 Fed. Reg. 9667 (1961); *see* 48 U.S.C. § 644a (Congress vesting civil administration of Palmyra in the Interior Secretary); *see also* U.S. Dep't of Interior, Secretary's Order No. 2862 (Mar. 16, 1962).

however, when an ex-convict fled from Honolulu to Palmyra hoping to find it deserted and ended up murdering a vacationing couple.[236]

The battle over Palmyra between the Fullard-Leo family and the federal government began in earnest in 1939 when Congress, in anticipation of World War II, authorized the Navy to construct aviation facilities on the atoll but was unable to secure a lease from the family to use the island.[237] After the United States sued, the U.S. Supreme Court concluded in 1947 that the Fullard-Leo family privately owned the atoll, and could therefore manage the affairs of Palmyra as it wished.

The court upheld the Fullard-Leo family's right to private control after examining the historic legitimacy of the family's private property claim. The court noted that on February 26, 1862, two Hawaiian citizens, Johnson Wilkinson and Zenas Bent, approached King Kamehameha IV of Hawaii about the then unclaimed Palmyra Atoll, "requesting that the Island should be considered a Hawaiian possession & be placed under the Hawaiian flag."[238] Kamehameha agreed to the request and ordered the men to sail to Palmyra "to take possession in our name of Palmyra Island."[239] The court noted, however, that in so ordering, no formal documents survived showing whether the King had intended to give the men title to Palmyra in fee simple, or had instead merely permitted them to use it, retaining title in the King.[240] Observing that in 1862, Hawaiian law was "adequate to establish titles and maintain a proper record thereof," and that the Hawaiian government "had power to convey the lands to private citizens," it recognized that either intent by the King was a possibility.[241]

Despite this lack of documentation, the Supreme Court concluded that the issue of title could nevertheless be safely resolved under the "lost grant" rule, in which a grant of fee simple title will be presumed upon proof of adverse possession for twenty

236. Charred skeletal remains were found on the island in 1981. Duane "Buck" Walker was convicted of murder for the incident. For an excellent account, see VINCENT BUGLIOSI, AND THE SEA WILL TELL (1991); *see also* United States v. Walker, 546 F.Supp. 805 (D. Haw. 1982); United States v. Stearns, 550 F.2d 1167 (9th Cir. 1977); United States v. Walker, 575 F.2d 209 (9th Cir. 1978); United States v. Walker 707 F.2d 391 (9th Cir. 1983); United States v. Walker, 802 F.2d 1106 (1986).

237. *Fullard-Leo*, 331 U.S. at 260.

238. *Id.*

239. *Id.* A similar annexation by Hawaii was attempted over Cornwallis Island, but "[t]he annexation of Cornwallis Island failed because of prior discovery by the United States." *Id.* at 262.

240. *Id.* at 263-69 ("No record appears of any conveyance from King or Minister to any land on Palmyra.").

241. *Id.* at 266.

years.[242] Under this adverse possession principle, the court observed that in 1862, Bent transferred by deed his "right, title and interest" in Palmyra to Wilkinson, and recorded the deed in 18685.[243] Wilkinson then died in 1866, leaving the island to his wife Kalama by probated will.[244] After a series of documented conveyances following Kalama's death, the court observed that a dispute arose over Palmyra in 1912, in which the Land Court of Hawaii declared that Henry Cooper of Honolulu owned Palmyra "in fee simple."[245] Cooper then sold all but two islets to the Fullard-Leo family in 1922 for $15,000.[246] From this unbroken and open chain of ownership, along with what was regarded as sufficient visitation in light of its remote location, the court determined the Fullard-Leo family had acquired "a claim of right to exclusive possession" to Palmyra Atoll.[247] In turn, because the Kingdom of Hawaii did not have title to Palmyra at the time of the 1898 annexation by the United States, title to the island did not pass to the federal government when the territory of Hawaii was taken and therefore remained with the Fullard-Leos.

Having defeated the federal government, and with ownership firmly established over their private island, the Fullard-Leos had emerged with isolated land that they could control without interference from the federal government. Essentially, like Navassa or Swains Island before it, the Fullard-Leos ruled a "*de facto* micronation."

With such exclusive control over American territory, the family had much different designs for Palmyra than the U.S. government, and sought instead to administer the atoll under principles of environmental stewardship. When the U.S. government approached the Fullard-Leos with an offer of money "to store spent nuclear fuel for a foreign government" on Palmyra, the

242. *Id.* at 271. The court was further comforted by the fact that the "lost grant" rule had been recognized as the "'law of the land' in Hawaii.'" *Id.* at 272-73 (citing *In re* Title of Kioloku, 25. Haw. 357 (1920)).

243. *Id.* at 277.

244. *Id.* at 277-78.

245. *Id.* at 278. Notably, Cooper was a judge in Honolulu who had developed the idea of the "Annexation Club" and served as the Chairman of the Committee of Safety during the Hawaiian Revolution and overthrow of Queen Liliuokalani in 1893. Palmyra, *supra* note 225. It was Judge Cooper who stood on the palace steps and read the proclamation abrogating the monarchy and establishing the Provisional Government of the Republic of Hawaii. *Id.*

246. *Fullard-Leo*, 331 U.S. at 279.

247. *Id.*; *see also* United States v. Fullard-Leo, 156 F.2d 756 (9th Cir. 1946) (accepting that the Kingdom of Hawaii acquired sovereignty over Palmyra and Bent and Wilkinson obtained the private ownership of the islets).

family refused.[248] The Fullard-Leo's likewise rejected plans for a commercial fish processing plant, offshore bank, missile launching site,[249] and a $36 million offer in the 1990s by a Honolulu developer to build "a major resort and casino development"[250] that included "residential areas and tourist spots which will emphasize a 'get-away-from-it-all' lifestyle."[251] Explaining their governing philosophy in 2000, the three brothers Leslie Vincent, and Dudley and Ainsley Fullard-Leo, stated that "[w]e protected Palmyra's wildlife and natural habitat for nearly 80 years. It gives one a sense of well-being." Not surprisingly, then, the Fullard-Leo family agreed that same year to sell its interest in Palmyra for less than the $47 million asking price to The Nature Conservancy so that it could "ensure the atoll's preservation" in the future.[252] Now in the hands of the Nature Conservancy, a scientific research station was built on Palmyra in November 2005.[253] Palmyra remains a privately owned and managed atoll restricted to outsiders in which limited numbers of scientists visit to study global climate change and coral reef habitats.[254] The Cooper family still retains control over the remaining two islets that were not sold to the Fullard-Leos in 1922.[255]

E. NIIHAU ISLAND: THE WORLD'S LARGEST PRIVATE ISLAND[256]

Lastly, the often called "forbidden island" Niihau is a 43,000 acre island off the coast of Kauai. The island is privately owned and regulated by Bruce and Keith Robinson, and the last Hawaiian island in which the principal language spoken is native Hawaiian.[257] Niihau had its first contact with Westerners when Captain James Cook and his shipmaster William Bligh landed on

248. Press Release, The Nature Conservancy, The Nature Conservancy Announces Intent to Purchase, Palmyra Atoll (May 4, 2000), *available at* http://www.nature.org/pressroom/press/press42.html [hereinafter Purchase].

249. *See* Resture, *supra* note 225 (noting that "[a]ll these were rejected as the Fullard-Leos chose to leave Palmyra exactly as it was.").

250. Purchase, *supra* note 248.

251. Palmyra, *supra* note 225 (Peter Savio of Honolulu formed the "Palmyra Development Company" in 1990 with such designs).

252. Purchase, *supra* note 248; *see also* Andy Shaughnessy, *Monroe & Friedlander Lists Palmyra Island in South Pacific*, NAT'L. REAL ESTATE INVESTOR (June 1998) *available at*, http://nreionline.com/mag/real_estate_international_news_29/.

253. Press Release, The Nature Conservancy, The Nature Conservancy Joins World's Top Scientists to Launch Climate Change Research Station on Pacific Atoll, (Nov. 16, 2005), *available at* http://www.nature.org/wherewework/asiapacific/palmyra/press/press2152.html.

254. *Id.*; *see also* Palmyra Atoll, *supra* note 226.

255. Palmyra, *supra* note 225.

256. CLARKE, *supra* note 183, at 201.

257. *Id.* at 201-04.

its shores in 1778.[258] The island was briefly a source of national notoriety in 1941 when islanders imprisoned a Japanese pilot who crashed there on his return flight to Japan from Pearl Harbor.[259] Its ringed white sand beaches and towering cliffs apparently made such an impression on Franklin Roosevelt during a visit to Hawaii, that he suggested the United Nations consider building its headquarters there.[260] Today, while undeniably part of the United States, the Robinson family has taken great steps to assert *de facto* sovereignty over the island by creating their own system of social rules for inhabitants, and restricting outsiders from visiting without express permission from the family.

Practically speaking, Niihau is little more than a privately owned ranch. In 1864, the Robinsons' Scottish relatives purchased the island from King Kamehameha V for $10,000 in gold coins, built a house and a church, and "offered jobs to every male resident."[261] In 1915, however, Aylmer Robinson took control over the ranch one step further. Concerned about the growing impact of western cultural influences on Hawaii's native residents, Aylmer sealed off the island from outside visitors.[262] From that day to the present, the island has remained a private "human preserve" removed from outside interference.[263] The island has only one unpaved road, no electricity, no automobiles, and no shops.[264] Its native speaking population of nearly 200 residents[265] is "the largest concentration of full-blooded Hawaiians in the islands," who engage in farming, ranching, and fishing on Niihau, and employment on the Robinsons' Kauai sugar plantation.[266] As with their predecessors, Keith and Bruce Robinson have "guaranteed a job to any working-age, Niihau-born male, and provided every resident with free housing, medical care, and meat."[267]

As somewhat of a parallel to Navassa, however, the enticement of guaranteed employment and welfare comes at the cost of being regulated by the Robinsons' system of rules and regula-

258. Eric P. Olsen, *Paradise Preserved*, WORLD & I, Vol. 16, Issue 10, Oct. 2001, at 108.

259. Ernest R. May, *They Never Leave This Real Shangri-La*, SATURDAY EVENING POST, Nov. 2, 1946, at 63.

260. CLARKE, *supra* note 183, at 204.

261. *Id.* at 201-02.

262. *Id.* at 202.

263. *Id.* at 218.

264. Catherine Enomoto, *On the Cusp*, HONOLULU STAR-BULLETIN, Jul. 14, 1997, *at* http://starbulletin.com/97/07/14/features/story2.html.

265. Mary Adamski, *Niihau Residents Have Concerns*, HONOLULU STAR-BULLETIN, Jun. 24, 1997, *at* http://starbulletin.com/97/06/24/news/story4.html.

266. Olsen, *supra* note 258.

267. CLARKE, *supra* note 183, at 217-18.

tions. Under Aylmer Robinson, for example, islanders were banned from consuming liquor, coffee, and tobacco, and were subject to a $5 fine if they spoke to outsiders.[268] Islanders were allowed to receive mail-order catalogues, but the Robinsons censored the pages to exclude "undesirable items."[269] According to a 1946 visitor, "[n]o government courts have ever been established. Justice is administered to the 200 residents through the pastor and elders of their church, selected among themselves. The [Robinson] family is always the final authority."[270]

Keith Robinson has carried on this system of family regulation to this day, justifying governance over the island and its residents based on simple private property rights.[271] The Honolulu Star-Bulletin noted, "[t]he Robinson family owns Niihau, much like you own your house and plot of land. And as you invite people to your home, so the Robinsons control access to the island."[272] As Keith Robinson puts it:

> The Niihau people who live there are, legally, our guests. Unlike tenants, they pay no rent and there are no formal contractual obligations. For private reasons of our own, we have for decades given those guests free but revocable privileges that are probably far greater than those allowed by any other landowner in America . . . Now, in exchange for those privileges and benefits, we do require certain things. First and foremost, we require that they [Niihau residents] shall not do or say anything that adversely affects our constitutional right to enjoy the security and privacy of our property and business affairs. . . . The second thing that we require of Niihau residents is that they maintain a reasonably honest, sober and moral lifestyle as long as they are living on our property. *Anybody who does not do so is subject to possible expulsion.*[273]

The Hawaii state Attorney General has in recent years threatened the Robinson stronghold over the island by insisting that Hawaii laws granting public access to all Hawaiian beaches allow outside visitors to enter onto the island without Robinson permission up to the vegetation line.[274] While the Robinsons dis-

---

268. May, *supra* note 259 at 29.

269. *Id.* at 62.

270. *Id.* at 60.

271. Robinson also justifies the exclusion of outside visitors based on the claim that Niihau is the only island in the world that has successfully recolonized the monk seal, a species protected by the Endangered Species Act. Catherine Enomoto, *A Taste of the Forbidden*, HONOLULU STAR-BULL., Jul. 14, 1997, *at* http://starbulletin.com/97/07/14/features/story3.html.

272. *Id.*

273. Keith Robinson, *Other Views*, HONOLULU STAR-BULL., Jul. 28, 1997, at http://starbulletin.com/97/07/28/editorial/otherviews.html; Olsen, *supra* note 258.

274. The State Attorney General's office has determined that the public may walk on Niihau up to the point of the "highest reach of waves during normal high tides." Enomoto, *supra* note 271. In support of the Attorney General's position, the

pute the validity of this law,[275] they also argue that it is preempted by the federal Endangered Species Act, because "Niihau is a federally registered endangered-species habitat for up to 90 Hawaiian monk seals which are shy of humans and easily scared off."[276]

While some have decried the Robinsons as "colonial masters," and "feudal overlords" who run an "island empire" and treat their Hawaiian workers like "serfs,"[277] others, including Niihauans themselves, regard the Robinson's relationship and preservation of Hawaiian culture with great reverence, describing it as a "guardianship" and a "stewardship."[278] Whatever light it may be painted in, the Robinsons' island is the embodiment of the private micronation.

VII. CONCLUSION

Although fascinating geographical curiosities, "microntation" movements that proclaim independence within territory claimed by the United States will fail so long as the executive branch chooses not to recognize them. This is true no matter what legal theory of sovereignty the micronation pursues. While the United States has long recognized the principle of discovery as a legitimate basis to acquire its own territory, the failure of "Atlantis" and success of Swains Island demonstrate that courts will only accept claims of discovery where those claims are simultaneously embraced by the political branches of the government. Likewise, the proclamation of a micronation like the "Republic of New Afrika" that it has seceded, or the unilateral claim by the "Republic of Texas" that it has conquered Mexico have also

---

"Kauai Police Department says it will arrest only trespassers who go above the vegetation line." *Id.* By 1997 "an average of one boat a day was entering their waters." CLARKE, *supra* note 183, at 226.

275. The Robinsons argue that Niihau is excluded from state public beach access laws because "his forebears bought Niihau in 1864 under the Hawaiian monarchy and . . . [s]uch private-property rights, granted during the monarchy, extend to submerged lands below the beach." Enomoto, *supra* note 271; *see also* CLARKE, *supra* note 183, at 225.

276. Niihau is apparently the only island habitat in the world that has successfully recolonized the monk seal. Robinson, *supra* note 273; *see also* United States of America v. Nuesca, 945 F.2d 254, 256 (9th Cir. 1991) ("The Hawaiian monk seal is an endangered species under the Act."); CLARKE, *supra* note 183, at 225.

277. CLARKE, *supra* note 183, at 202, 205 (also noting that some compare it to Alcatraz and speak of an "'iron curtain' of private ownership."); Enomoto, *supra* note 271 (The Robinsons "should stop being 19th century imperialists . . They're sort of like the lord of the manor; if you misbehave, you're off the island."); *see also* May, *supra* note 259, at 28 (stating that the purpose of the article is "[l]ifting the curtain of mystery on the island empire of Niihau.").

278. Olsen, *supra* note 259; *see also* Enomoto, *supra* note 271 (Locals observe that outsiders "misinterpret the people's decisions as those of the island's owners. . .").

failed, for the U.S. law of secession and conquest refuses to legitimate a claim of independence that the executive branch has not also endorsed. The exercise of private property rights may be an alternative technique in which an individual can regulate his land according to his own personal principles, but any assertions of political independence in the courtroom will lack a viable legal theory upon which to prevail.