Diaspora Jurisprudence:

The Politics of Native Entitlement

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Culture industries, such as tourism, are undergoing global restructuring through the proliferation of new legalities accompanied by new social relations. Some segments of the tourist industry have moved away from what was labeled “mass” tourism, in favor of “alternative” or “eco- tourism” (Butler, 1992:33). Eco-tourism, from the industry’s stand point, produces “forms of tourism that are consistent with natural, social, and community values and which allow both host and guest to enjoy positive and worthwhile interaction and shared experiences” (Smith and Eadington, 1992:3; also see Pearce, 1980:viii; Gonsalves, 1987). These forms of tourism are taking shape in industry and/or government sponsored development policies that re-present the topography and ethnography of potential tourist destinations in stereotyped ways: the romanticized “pre-modern” world, spared from commercial development and run by local people; the “native,” “authentic” and “indigenous” people and environments; and the opportunity for tourists to experience local life “without causing disruption to it.” However, this restructuring is not homogeneous, centralized or without its own contradictions to manage. Indeed, the politics of global preservation and indigenous identities have simultaneously produced fragmented development policies and a new plurality of regulatory practices in local contexts.

The South Pacific and Hawaii in particular, have been focal points for in depth and exhaustive critiques of mass tourism (Farrell, 1982; Trask, 1987b, Gross, 1993), as well as laboratories for experimenting with eco-tourism strategies. It is in this context of global and regional rethinking about tourist development that the island of Moloka‘i, and its internationally known peninsula of Kalaupapa, is a significant site for study. Moloka‘i is considered the least changed of the major islands; it is often called “the most Hawaiian of the Hawaiian islands,” in the travel literature (Yenchel, 1990). Contrasted often to Maui and other islands that have “intensive tourism development,” Moloka‘i is represented as more “natural” and “native” with about 60% of its residents of Hawaiian ancestry, and one-third of its adults speaking little or no English. With the closing of several multi-national pineapple plantations (e.g., Del Monte) in the mid-1970s, Moloka‘i’s unemployment rate has remained high for the region and its economy is stagnant. As in the surrounding islands, resort-style tourism (hotels, golf-courses and vacation condos) was proposed as an avenue for economic recovery in the 1980s. However, local groups successfully opposed water diversion plans for a proposed resort and were able to limit tourist development to the western end of the island. The Chamber of Commerce and its committee on tourism, known as “Destination Moloka‘i,” are now advertising and developing plans to draw local residents of Hawaii as well as expand into the international market by supporting and initiating projects that focus on local culture, history and ecology. Kalaupapa and its “leper
“colony” is a main attraction for Moloka‘i’s tourism, whether or not tourists fly, take the mule ride or hike down the steep pali leading to the settlement.

Eco-tourism is about making local places globally accessible. This access is not simply a matter of transportation, but requires making remote places conceptually accessible and desirable, as well as politically feasible. At Kalaupapa, “conceptual access” is shaped by the representation of the leprosarium in the media as a “piece de resistance” of local culture, “home to a historic colony,” a “special place” where “patients themselves guide tours” and where visitors can conquer the steep, once insurmountable barrier of the pali “by air or mule, as steeds with names like Primo and Paleface carry you 1,600 feet down to sea level, through the 26 switchbacks of the dramatic Jack London Trail” (NYT, October 8, 1991:26). In this way, Molokai and its colony of lepers become both exotic and known. It is the Molokai of Jack London's Tales of Hawaii, a “new frontier” for the adventurous tourist, but she is carried in on “Primo” and “Paleface,” stock caricatures of a western frontier with which readers are assumed to be familiar. At the same time, the “piece de resistance” is juxtaposed to the Molokai Ranch Wildlife Park, where “if you’ve ever wanted a giraffe or two to eat out of your hand, this is the place” (Ibid.) Kalaupapa, like the rest of Molokai, is wild but contained, no more dangerous than a visit to the zoo.

Familiarity and conceptual access are also created through the literature of NGOs, such as the Nature Conservancy, which promotes tours through the ahupua'a or steep valleys that run from the mountain ridges of the Kalaupapa peninsula out to the shore. Similarly, after the U.S. Congress passed legislation in 1980 designating Kalaupapa a National Historical Park, the National Park Service installed a wayside display at the top of the pali, presenting the leprosarium and its history in the context of a more extensive chronological, cultural, and archaeological representation of the Kalaupapa peninsula. The global restructuring of the tourist industry is also acquiring its material form at Kalaupapa through the political and legal actions of patients who led the effort to become a national historical park when they learned of state plans to remove patients from Kalaupapa under the guise of fiscal austerity and place them in a Honolulu hospital, thus enabling a Japanese resort to occupy what had been their home.

This is a complex tale, which, like the larger story it is part of-- the global restructuring of cultural capital-- raises questions about the reconfiguration of power relations during periods of transition in an era of post-colonial politics. The leprosarium at Kalaupapa has generated hundreds of interpretations during the 130 years of its existence.¹ Some of the most compelling, ¹ These include, to mention only a few of the most prominent, those of novelists such as Jack London (1984) or Robert Louis Stevenson ("Koolau the Leper," Father Damien); of social historians such as Gavan Daws, Anwei Skinsnes Law and Richard Wisniewski (Holy Man, Kalaupapa National Historical Park and the Legend of Father Damien); of medical doctors, such
and widely publicized, have presented patients at Kalaupapa speaking of their own experience (e.g. the film *Simple Courage*, first aired on PBS in 1992). Our account draws on ten years of field research focusing on the perspectives of patients, officials who work with them now or have done so in the past, and the interpretations of others connected to the leprosarium in some way. We do not presume to "speak for" any of these participants. Rather, we examine how representations emerge out of past and present struggles, how representations displace one another, and how new representations are nonetheless inscribed with traces of the old. Further, we are not interested in confining our interpretation to an assessment of the politics of rights most characteristic of the sociolegal debate about the utility of right strategies (e.g., Scheingold, 1976; Rosenberg, 199x; McCann, 1995; Handler, 197x and 199x ). Indeed, our conclusions suggest that we rethink the *politics* as well as the *forms* of legality we study in terms of the new centrality culture plays in the global mobilization of law. The questions we explore here concern why and how new legalities proliferate in local contexts where “native” or “indigenous” materialize as cultural resource in a global industry.

I. Diaspora on Display

The reconstitution of Kalaupapa as a tourist destination is embedded in its history as a site of legal banishment for “lepers,” a place where “the ultimate pariah” (Gussow, 1988:3) was sent to die. The category of leper is an example of a globally powerful symbol of defilement, and leprosy is widely feared as “the core odium” (Skinsnes, 1964). As a trope for the “unclean” and the “endangering,” leprosy and the practice of isolating lepers through quarantine has deep historical and cross-cultural roots in law. The Kalaupapa leprosarium, established on Moloka‘i in 1865 on the advice of a Board of Health dominated by Anglo-Americans, became the model for the legal banishment of leprous persons worldwide. People who had leprosary became “colonists” in a penal colony, rather than patients, and were condemned to a lifetime of exile where they were expected to care for themselves (Gussow, 1989:155). As late as 1932, in a report to the U.S. House of Representatives, the Surgeon General of the United States described the need for “the apprehension of [leprosy] suspects and surveillance of patients and contacts” as “essential measures for the protection of public health” in Hawaii (U.S. H.R. Document No. 470, 1932:1). Segregation by law continued to be “the chief measure of control of the disease” until 1968 (*Ibid.*:10).

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as Zachary Gussow (*Leprosy, Racism, and Public Health*); of sociologists, such as Ted Gugelyk and Milton Bloombaum (*Ma‘i Hoʻoka‘awale: The Separating Sickness*); of filmmakers, such as Stephanie Castillo (*Simple Courage*); and of the leprosy patients themselves (*Olivia: My Life of Exile in Kalaupapa*, by Olivia Breitha Robello).
The discovery of sulfone in the early 1940s revolutionized the control of leprosy, contributing to the transformation of lepers from criminals to patients, and eventually to the formation of a policy which provided that “even infectious patients could be treated on a domiciliary, ambulatory basis” (World Health Organization, 1988:9). This created the possibility for releasing leprosy patients into the community at large; it also opened the potential for reconstituting leprosaria as a different kind of “destination.” As a site selected because it was isolated and inaccessible, Kalaupapa begins to be reinterpreted and restructured for tourism in the late 1970s. However, “lepers” and leprosy remain central in its reconstruction. Leprosy is now interpreted as a “key scenic resource” on Molokai. By the 1990s, the remote northern peninsula of the island, where leprosy patients were confined to die for over 130 years, is advertised as a tourist “piece de resistance,” “home to a historic colony of Hansen's disease patients...who live at Kalaupapa...no longer out of exile, but out of a deep attachment to the land” and themselves “guide tours of this beautiful peninsula” (NYT, 10/6/91:26).

The reinterpretation of Kalaupapa as “historic” and lepers as “guides” is no doubt assisted by medical advances. The telling of this “historic” tale by the patients today, however, is a major cultural resource for eco-tourism which simultaneously empowers their subject position (Williams, 199 ). It is from the standpoint of their subject knowledge that the patients ground an entitlement claim they make today and have been making since the closing of the registry, the ending of a containment policy, in the early 1970s. That claim, simply put, that because they were exiled, removed from their families and homes against their will, by the Board of Health, and brought to Kalaupapa as children where they have lived their entire adult lives (the average age of the 83 remaining patients today is 68 years old), this is their “home” and they are entitled to live there for the rest of their lives. Their geographic displacement is at once their cultural capital in eco-tourism and the basis for an entitlement claim.

Another consequence of exile is, as Edward Said notes, the development of consciousness. “Exiles are aware of at least two [cultures], and this plurality of vision gives rise to an awareness of simultaneous dimensions, an awareness that-- to borrow a phrase from music- - is contrapuntal” (Said, 1990:336). Patient subjectivity at Kalaupapa is more than bilingual, it is inter-dimensional (see Kleman, 1996). In their accounts, patients link the establishment of the leprosarium in 1865 “for the purpose of taking care of patients” to the Department of Health’s existence at Kalaupapa today, and connect their pain as social outcasts and disfigured people to the suffering of “lepers” at Kalaupapa in the nineteenth century. Yet this seeming effort to create a coherent story, to locate themselves in a tradition, is informed by fragmentation. The “hell-hole,” which the name Kalaupapa is associated with, once provided the blueprint for global medico-legal policy on the management of leprosy by lifetime quarantine is turned into “home” in their accounts. What was once a pariah status, “leper,” without legal protections or rights
becomes a valued (commodified) resource for a culture industry because righting the wrong committed by the state (exiling and incarcerating people with leprosy until the late 1960s), through statutory entitlement of life tenancy necessarily retains the identity of “lepers,” however, it-- the law-- inverts their legal status by constituting a hybrid. The patients literally transverse and transgress, but can never escape, the social and cultural boarder that constitute their subjectivities-- according to one patient, “the fences are in my body” (Patient Interview, #X, 1992).

The fragmentation that informs exilic cultural production in the 1980 federal statute is replicated in another form of legality-- the 1992 negotiations to create a “cooperative agreement” between a state agency which asserts title to the property at Kalaupapa, the Hawaiian Home Lands Commission, and a federal agency, the National Park Service, which was authorized to establish a National Historical Park by the U.S. Congress and delegated the power to “acquire” the land at Kalaupapa for these purposes. Here too legality constitutes rights and identities for the patients, but the terms shift from establishing a historical park to preserve the legacy of people who were incarcerated because they had leprosy, to displacing “native,” a classification the Hawaiian Home Lands Commission must reconcile with its leasing practices, with “leper.”

II. Leasing a Leprosarium and Inverting Cultural Identities in Law

If a historical cultural interpretation informed aspects of the materialization of the park in the originating federal statute, leasing the leprosarium from the Hawaiian Home Lands Commission adds to this another dimension or layer of cultural interpretation. The intertextuality of the cooperative agreement negotiations reflects this in it simultaneous incorporation of two meanings as to what is “native:” ethnic or Hawaiian, as defined by the U.S. government (blood quantum); and persons who have had leprosy. Embedded in the negotiations is a temporal disjuncture between “native” Hawaiian and “native” patient. This inconsistency is essential to understanding the cultural materialization in one form of legality-- the cooperative agreement--invented by and in the local context of Kalaupapa. It is a form of legality we might call “diaspora jurisprudence,” in that the inter-dimensional subjectivities of a displaced people (people who the state marks as “lepers”) serves as the cultural terrain for inventing the regulatory regime of eco-tourism. Bounded by steep cliffs and rough seas, the topography of Kalaupapa provided the ideal conditions for enforced isolation. Today, its reconstitution as a tourist destination is influenced by this physical configuration, which allows the settlement to be represented as “remote” and “untouched.” These tropes emerge (paradoxically) from the complex intersection of local, regional, and international movements in tourism, preservation and indigenous rights.

The promotion of tourism by the National Park Service and by local organizations
(Damien's Tours and Destination Molokai) intersects with the preservation policies of several local and translocal institutions. These include one social movement (Hawaiian Sovereignty Movement), two state agencies (the Hawaiian Home Lands Commission and the Department of Health), and patients at Kalaupapa, as well as a federal agency (National Park Service). All assert entitlement to the settlement in order to preserve a local “way of life” (that is, what we are calling an “imagined community”: traditional Hawaiian culture, the lifestyle of the patients, the memory of the leprosarium). These entitlement claims emerged from the intersecting regulatory practices of the Hawaiian Department of Health, the National Park Service, the Hawaiian Home Lands Commission, and the patients. Identities are made in the intersections of regulatory practice, just as “native” and “patient” communities are invented in entitlement claims. These inventions suggest how the old laws of quarantine established in the 19th century leprosarium and the new policies of preservation connect, making quarantine newly meaningful to patients and to state and federal officials in the context of late 20th century eco-tourism.

**Sovereignty Movement**

The Sovereignty Movement in Hawaii maintains an interest in the land at Kalaupapa based on its claim that it constitutes part of the “ceded lands” which the Board of Health annexed in 1865 to establish the leprosarium (Mackenzie, 1991:40; also see Trask, 1987a; McGregor-Alegado, 1980; Dudley and Agard, 1990). According to the Sovereignty Movement, these ceded lands comprise a land trust made up of Government Lands set aside by Kamehameha III in 1848 for the chiefs and the people, and Crown Lands which were “reserved to the sovereign to provide a source of income and support for the crown and, pursuant to an 1865 act, were made inalienable” (Mackenzie, 1991:26). They describe these lands as encompassing two *ahupua’a*, which in traditional Hawaiian land policy constitute pie-shaped pieces of land that flow down from a mountain ridge and out along the shore line (*Ibid.*:3). An *ahupua’a* was also a political district under the authority of a chief, according to this account, which locates traditional legal and political practices within the topography of Kalaupapa (Somers, 1985). The Sovereignty Movement maintains that the ceded lands remained in trust for the benefit of all Hawaiian people.

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2 In addition, neighbors on the borders of the settlement (Nature Conservancy, Hawaiian Bureau of Land Management, Myers Ranch Co., the island of Moloka’i and the county of Maui) are participating in the development of tourism at Kalaupapa.

3 Even after the *Mahele* (meaning “division”) the land that was previously held in trust was divided between the king and chiefs (Linnekin, 1983) radically transforming the conception of property from a “trust” to a “private ownership” system in the nineteenth century (Cooper and Daws, 1985).
(Lam, 1985), in spite of their annexation by the Board of Health, and that they retained this status after U.S. annexation of Hawaii (1893) and statehood (1959) (Parker, 1989).

The contemporary Sovereignty Movement seeks the return of these lands, now possessed by the state and the federal government, to Native Hawaiians. The movement has not yet made a formal legal claim, however, in part (we were told), because the majority of patients, buried or currently living at Kalaupapa, are Native Hawaiians. If this site can be preserved and protected from resort-style tourism, the Sovereignty Movement may not come forward and make a legal claim to the property.

**Hawaiian Home Lands Commission**

In addition to the Sovereignty Movement, the Hawaiian Home Lands Commission (HHL), whose mission is to provide homesteading for Native Hawaiians, claims ownership of the land at Kalaupapa. In 1921, the U.S. Congress passed the Hawaiian Homes Commission Act as a result of pressures from local non-Hawaiian sugar growers who wanted to protect “their” land from homesteading by Native Hawaiians and from Hawaiian leaders who began to “encourage racial consciousness among the Hawaiian people” in the early twentieth century (Mackenzie, 1991:17). The Act withdrew approximately 188,000 acres of “ceded lands,” including Kalaupapa, and gave the Hawaiian Homes Commission authority to lease the land to Native Hawaiians (with 50% Hawaiian “blood”) at a nominal fee for 99 years. What was once condemned land, a “leper colony,” and unavailable for homesteading, is today viewed as a future location for development. This perspective on the potential use of ceded lands differs from that put forth by the Hawaiian Sovereignty Movement, and has brought the Commission into direct conflict with the National Park Service, as we discuss below.

**Department of Health**

Although Kalaupapa came under the jurisdiction of the federal Hawaiian Home Lands Commission (originally created as a federal agency and then turned into a state agency after statehood) in 1921, the Board of Health (which became the Department of Health [DOH] when Hawaii gained statehood in 1959) has governed the area since 1865. Originally this governance took the form of administration at a distance by the manager of a cattle and sheep ranch on upper Molokai, who visited the settlement on a quarterly basis. Organized as a penal colony rather than as a hospital, no doctor was willing to reside there and the settlement gained the reputation of a "living tomb" (Law and Wisniewski, 1988:16) in which patients were left to care for each other. Not until 1902, with the appointment of Dr. William Goodhue as resident physician, was a serious effort made to care for the victims of leprosy at Kalaupapa as patients, and only in 1908 did the Board of Health complete the construction of a general hospital there. Yet, the reality
that Kalaupapa was more than a hospital, and that patients were exiled in the settlement for life, was underscored by the efforts of its superintendent at this time to establish clubs, bands, baseball fields, and debating societies, and by the determination of Lucius Pinkham, president of the Board of Health, to represent the colony as “a cheerful appearing village, with as many happy inhabitants, as well cared for, as wholesomely employed, as rationally entertained as possible in any community of persons not in perfect health” (quoted in Law and Wisniewski, 1988:61).

From the perspective of patients and physicians who have lived and worked at the settlement during the past 50 or 60 years, however, the community at Kalaupapa was constituted not by its clubs and societies, nor by its cheerful appearance, but by the ideology and practice of quarantine, which was maintained and enforced by the Department of Health and pervasive in every aspect of daily life there throughout this period (a situation that to a considerable degree is still the case, as we will argue below). For example, Olivia Breitha, an eighty-four year old former-patient who was sent to Kalaupapa as a teenager and continues to live there, provides the following description of the experience of confinement:

The mental barriers that begin - those things begin when we first enter that place - because if they don't have a fence, they have a sign that says ‘You cannot enter here,’ ‘You can't walk where non-patient is,’ ‘You can't touch a non-patient.’ So those barriers, even now, after Mr. Judd [the DOH administrator from 1947-1949] came, and he took down fences and railings, but - the barriers that are in here [gesturing towards her own body], they're still there. They don't do away-- ever. (Olivia Breitha, Simple Courage, 1992).

Similarly, Dr. Robert Worth, a former DOH official who worked in the settlement in the 1950s, describes

all kinds of rigidities, like separation of staff from patients, gowns and masks.... And when people's families came to visit, putting up a glass partition; and these terrible discharge criteria that we're now going to change; the only thing they were going to do was do away with the fumigation [mail leaving the settlement was fumigated with formaldehyde; the clothes of patients permitted to leave the settlement were also fumigated]. (Interview, 1992).

Discharge criteria involved taking "snips" (biopsies) from different parts of a patient's body each month for twelve successive months. "If they found a single bacillus in any one of those specimens [the patient] failed the test and [they] started over" (Worth, 1992 interview).
Today, almost 130 years after the establishment of the leprosarium at Kalaupapa and 25 years after it was closed to new patients, compulsory hospitalization (and “colonization”) are no longer required for leprosy patients, who are free to leave. Yet, 83 patients, mostly elderly, remain at Kalaupapa, where the Department of Health continues to be responsible for more than medical care, maintaining an institution in a community setting. The current DOH administrator of the settlement, Bernard Schwind, speaks of his relationship to Kalaupapa as that of a “city manager in a small community.” Unlike “closed institutions,” such as prisons or mental health facilities, the leprosarium is still a “colony” with private houses, an airport, open fields, cemeteries, churches, a hospital, visitors’ center, fishing areas, bar, store, etc. And while officially the quarantine policy has been repealed, Kalaupapa continues to be dominated by visitation and housing policies that recall the rigid boundaries established in the nineteenth century between patients and others. Indeed, a nurse employed by the Department of Health at Kalaupapa in 1992 described the deepening division between “the patient population and the civil service population” at the settlement during the previous 10 years, and the proliferation of “rules and regulations” regarding lifestyle that continue to shape everyday life at Kalaupapa. These rules are tacitly supported by the Department of Health; but today, many of them are developed and elaborated by the patients themselves.

The Patients

The 83 patients remaining at Kalaupapa essentially live on subsistence or welfare, receiving an estimated monthly income of about $700.00 to $900.00, which includes food rations ($45.00 per week at the settlement store run by DOH), social security, pension, and Supplemental Security Income. Because some patients had or still have jobs working for DOH (e.g., grounds, maintenance, laundry, the store) they receive a pension and social security when they retire (Floum, 1984). Food supplies, building materials, cars and other provisions come to Kalaupapa twice a year on a barge.

While the relationship of patients to the DOH continues to be that of wards, the patients today (as in the past) is characterized by varying degrees of activism in governing their own lives. As we will argue below, this activism often takes the form of actions and positions that replicate, in somewhat altered form, the conditions of exile. But it also establishes the terms for control over what “exile” means for patients. We discuss this activism in two areas of patient life: In self-governance through the Patient Advisory Council; and in patient involvement in establishing a National Historical Park at the settlement.

In 1942, the Department of Health established a Patient Advisory Council, composed of 7 patients elected by “the community.” It is unclear exactly what was envisioned for this council
in the 1940s, and it appears that the Council may have served as a buttress for the policing function of the DOH within Kalaupapa. At the present time, however, the Council is extremely active in a number of issues (visitation, housing, children) having to do with maintenance or transformation of the way of life at the settlement. Its 7 members, who are typically re-elected in uncontested elections, are quite powerful in the interpretation and transformation of quarantine as a system for guaranteeing (and from the perspective of some patients, restricting) patient privilege. Indeed, while the “patient body” (a term frequently used by patients to refer to themselves as a group or community) is much larger than the Advisory Council, and much of it is inactive in the contests we describe below, the public visibility of the Council in contests that have provoked vocal opposition by certain prominent patients and media attention to struggles at the settlement, have made it a force to be reckoned with. One non-patient described it as “whipping out rules and regulations every day about everything” and as having the idea that it can “run the settlement.” This perception about the Council led some residents to file a complaint with the Attorney General’s office in Honolulu requesting information about their “legal rights” and “civil rights.” It also resulted in the DOH bringing in a team of mediators to negotiate conflicts among patients and between patients and other residents.

Patient activism has also been manifested in their involvement in laying the ground for developing Moloka‘i and Kalaupapa as a tourist attraction. It was their resistance to a DOH plan in the late 1960s to close Kalaupapa and move all patients to a Honolulu hospital, and their protests after hearing rumors about a “Japanese resort developer” interested in Kalaupapa, which formed the political base for reconstituting the settlement as a National Historical Park. Faced with the prospect of being “warehoused” in Honolulu (No. 20 Patient Interview, July 13, 1992), the patients mobilized under the leadership of the only local tour guide, Richard Marks, himself a patient at Kalaupapa, and turned to the federal government. In 1973, with considerable help from U.S. Representative Patsy Mink (D-Hawaii), a bill was introduced in Congress to establish Kalaupapa as a National Historical Park (U.S. H.R. 12012). A local organization, “Citizens for the Preservation of Kalaupapa,” then formed to generate public support for the legislation, and a National Advisory Commission was established by Congress in 1976 to study the desirability of making the area part of the National Park system.

National Park Service

The Kalaupapa National Historical Park was established in December 1980 by Public Law 96-565 (94 Stat. 3321) as a way of preserving and interpreting the Kalaupapa settlement for the education and inspiration of present and future generations; to provide a well maintained community in which the
Kalaupapa leprosy patients are guaranteed that they may remain at Kalaupapa as long as they wish; to protect the current lifestyle of these patients and their individual privacy; to research, preserve, and maintain important historic structures, traditional Hawaiian sites, cultural values, and natural features; and to provide for limited visitation by the general public. (Public Law 96-565, section 102, included as appendix in Imamura, 1990, V-5).

The federal statute creating Kalaupapa National Historical Park refers in particular to respecting “the special needs of the leprosy patients residing in the Kalaupapa settlement”:

visitation shall be limited to no more than one hundred persons per day; health care for the patients shall be provided by the State of Hawaii; patients shall be provided ‘a first right of refusal to provide revenue-producing visitor services’; patients will continue ‘to have the right to take and utilize fish and wildlife resources without regard to Federal fish and game laws and regulations’; and patients ‘shall continue to have the right to take and utilize plant and other natural resources for traditional purposes’. (Ibid., V-6)

In March of 1984, a “cooperative agreement” was signed by the National Park Service and the State of Hawaii’s Department of Health (Cooperative Agreement No. 80000-82-38,). Through a “cooperative” form of legality, this document elaborates the responsibilities of each agency in maintaining the leprosarium. The Department of Health formally transferred responsibility to “preserve, protect, maintain, construct, reconstruct, develop, improve, and interpret sites, facilities, and resources of historic, natural, architectural, and cultural significance” to the National Park Service, while retaining responsibility for health care programs. The National Park Service, however, agreed to incorporate patient health care needs in any planning and development of the Kalaupapa National Historical Park (State of Hawaii, Department of Health, Cooperative Agreement No. 8000-82-38, Executed March 7, 1984, appended to Imamura, 1990 as pages V-18, 19, 20).

The detailed specification of patient rights and overlapping responsibilities for patient care outlined in these documents suggests the delicate balance involved in developing a park that must share its regulatory authority not only with another agency (the DOH) but with a symbolically powerful and articulate patient population. As a recent publication describing the park notes, “the evolution of Kalaupapa into a completed National Historical Park will be a long, gradual process. Thus, as the National Park Service identifies and begins to preserve Kalaupapa’s precious resources, it is also committed to assisting the present community as the park develops” (Law and Wisnieski, 1988:66). This same document represents the complex topology of “preservation” with which the park must deal in its negotiation and accommodation with various constituencies (what we are terming sites of regulatory authority) in the following way:

Some of the more remote areas of the park include rare, native habitat for several
endangered, endemic Hawaiian plants and animals. In addition, stone structures and other features over the landscape represent occupational periods from pre-European contact through the early historic period in the first part of the nineteenth century. There are numerous stone walls and other agricultural features such as terraces, planting areas, and stone piles. House sites, living areas, and religious structures or shrines are also present. The sheer number and types of these resources, the possibility that there has been 900 to 1,000 years of occupation and use within the park, and the excellent state of preservation of the resources, all combine to make Kalaupapa National Historical Park one of the richest and most valuable archaeological preserves in Hawaii. (Law and Wisniewski, 1988:67).

This document goes on to add, however, that the “primary resource” of the park “is its history and its current residents.”

Peter Thompson, the park superintendent, keeps the enabling legislation for the park in his top drawer, and when asked what the park service is doing there, reads right from the text. Yet the complexity and inconsistency of this text means that Thompson’s project at Kalaupapa is to invent a park scenario that will work. He describes this process of invention, of tacking back and forth between text and circumstance, particularly under conditions (described below) of contention with the Hawaiian Home Lands Commission over jurisdiction, as “pretending its a national park,” and he notes that “people developing parks, they do it where they are,” not out of a home office.

In the next section we examine what “doing it where they are” involves for Peter Thompson and others making the transition at Kalaupapa. We discuss two struggles that have been central to this transition, one involving efforts by the National Park Service to officially lease the land at Kalaupapa from the Hawaiian Home Lands Commission; and a second dealing with conflicting notions about what is to be preserved by the National Park Service and what “ways of life” patients seek to preserve in their home within the park. These struggles involve conflicting interpretations about the legal status of old and emergent claims at Kalaupapa. In examining them, we seek to elaborate the ways that old laws of quarantine, established in the nineteenth century by the Board of Health, are reconfigured in border zones, materializing as parks, ceded lands, and leprosaria through processes of leasing and enclosure.

The struggles described below reveal a number of parallels to those involving Native Americans on the mainland United States with various state and federal agencies. Both involve contests over land that was made available to peoples defined as “native” by the federal government under political pressure; the land made available in this way (through legislative
enactments such as the Dawes Act [1887] on the mainland U.S. and the Hawaiian Homes Commission Act in 1921), was "throwaway" land, either agriculturally worthless (Jaimes, 1992:127) or spoiled by its history (as in Kalaupapa). In the 1920s on the mainland, and in the late 1960s at Kalaupapa, this "worthless" land suddenly became valuable as rich deposits of minerals (most notably uranium) were discovered on terrain left to Indians and the leprosarium was closed to new patients due to medical advances that made the disease curable. Both on the mainland and at Kalaupapa, the scientific advances that produced these discoveries (rich minerals, curable lepers) were in turn followed by what appeared to be liberalizing moves towards the populations occupying the land (and who complicated the potential of others to make more profitable use of it). On the mainland, the Indian Citizenship Act (1924) extended citizenship to Indians residing on these lands, so that henceforth "resource negotiations would...be conducted between 'American citizens' rather than between representatives of separate nations, a context in which federal and corporate arguments 'for the greater good' could be predicted to prevail" (Jaimes, 1992:128). In this way, the federal government set the stage for reclaiming "its" mineral rights; on Kalaupapa, the 1969 legislation that officially closed the leprosarium to new patients was heralded as a victory for patients, whose freedom to leave the settlement brought the promise of true citizenship and of "a new way of life" (Honolulu Star-Bulletin, front page headlines on March 21, 1969). Yet here, as on the mainland, citizenship rights provided at best a mixed message. Patients at the leprosarium were to be given their "freedom" in exchange for relinquishing claims to their homes and to the community they had established as wards of the Department of Health.

In both contexts, these "liberalizing" moves resulted in complex struggles over self-definition, struggles that have been shaped, in part, by federal and state interests in keeping to a minimum the number of "Indians" and "patients" with whom they must deal in negotiations over entitlement to land. On the mainland, these struggles have focused on "blood quotas" (Jaimes, 1992:128ff) a concept that also has structured claims by the Hawaiian Sovereignty Movement to ceded lands at Kalaupapa. Among patients, by contrast, the struggles take the form of increasingly rigid distinctions between patients and non-patients (elaborated by the patients themselves, in meetings of a "Patient Advisory Council" set up by the Department of Health). In addition, they emerge as a reassertion of "leper" status, an identity that gives patients a place in the exotic terrain of alternative tourism that are reconstituting Kalaupapa, but that at the same time secure their claim to continued care by the Department of Health, and more recently by the National Park Service.

Leasing a Leprosarium

Local newspaper reports of the lease agreement between the NPS and the HHL in
September of 1992, convey the view that the NPS had a tenuous "legal" foothold in Kalaupapa until the agreement was reached. For twelve years following the passage of the federal statute creating the park, the NPS operated out of its modest four-room clapboard building at the settlement without a lease or title to the property. NPS officials, HHL administrators, activists in the Sovereignty Movement and patients we spoke with, echoed local media sentiments: "the National Park Service needed a lease in order to have a legal presence" (*Honolulu Advertiser*, 9/23/92). Negotiations between NSP and HHL to establish a leasing agreement went on for almost two years, with both agencies in dispute over the impact of state and federal laws on the value of the property. The value of protecting "native" people and "their way of life" was at the heart of the disagreement, though many involved were reluctant to be so direct (with the exception of patients who spoke to us frequently about how their "rights" as "human beings" and "citizens" where devalued through out history). In the federal statute creating the park and in the cooperative agreement between the state DOH and the NPS, patients living at the leperarium are essentially given the status of an indigenous population. Preserving their way of life and maintaining their heath and housing needs are central. In HHL legislation, originally created by the federal government but since statehood administered by the state "native Hawaiians," defined as "50% or more blood-Hawaiian," are designated as "native." The pre-colonial political order on which the Sovereignty Movement bases its claim that Kalaupapa is part of the ceded lands, also designates Hawaiians as the native population whose property rights must be preserved.

Two months prior to the lease agreement, Ray Soon, an administrator at HHL in his mid-forties who described himself as a native Hawaiian, recounted to us the early phase of the negotiations. After spending a decade in Cambridge, Massachusetts where he worked in real estate development and did graduate work in urban economics at Harvard, he returned to Hawaii a few years ago for the specific purpose, he said, of helping "clean up and create leasing arrangements for HHL." He spoke of the transition at Kalaupapa in terms of untangling clashing legal claims-- straightening out the situation whereby federal law enabled the NPS to be an "uninvited guest" and established rights of life tenancy for patients, and state cooperative agreements delegated administrative responsibilities over the area and the patients to DOH and HHL. In Soon's view, all this "authorizing" by statutes and cooperative agreements involved HHL property but ignored the HHL Commission. As he said,

There was no disposition from the Department of Hawaiian Homelands back in 1980 to either the state or the federal government, nor previous to that either. So we in fact are landlords with uninvited guests sitting on our property, not unwelcome, just uninvited with no disposition...

As I go back and look at our records I do find a submittal that indicates support from the
then commission for a historical park. However, there was nothing in it as to how the settlement of the use of the land would be taken into account. I think that everyone here, both in the department and in the commission is supportive of long term care of the people of Kalaupapa. I think there is no doubt about that. We would not do anything that would endanger their lifestyle, their health, or their existence at Kalaupapa. We’re just concerned that up until now, there's been no formal disposition, there's been no formal agreement as to how the land would be paid for, and how the use of those lands would be paid for. That's the crux of today's issues, that it should not overshadow, however, the policy that we stand, that the department and the commission stands for in trying to care for the patients of Kalaupapa. (Interview, July 1992).

HHL, according to Soon, hired a firm to do the appraisal and the guidelines requested that they established the value based on highest and best use of the land which they did. So that we would know if the land was not in the national park what we could do with it or what the value would be to us. And therefore what opportunity loss there was by leasing it to the national park service and not to someone else. The second part of it was, however, to take into account not just the state laws but the federal as well. That impacted on that value; the word that's used often is discount, but I'm not sure that's appropriate. But anyway, the value was discounted because of the laws that impacted on that land.

The appraisal really came in November. The value was established as of July 15, 1991. It came to us around October, November, about that time. We took it to the commission for acceptance. They accepted the appraisal, however, they rejected the discount. They said the lease on the land would be $816,000. If the national park service disagreed with that, they should come back to us with some alternative price or we should work out the difference. I think the commission made it clear, preceding that meeting, that we were open to discussion or negotiation. That was our offer, was $816,000, and it was national park service's turn to come to the table and bring their number and let's see what we could work out. (Ibid.)

The "discount" Soon speaks about here refers to what assessors believe to be the "cost" of restrictions on the land, such as a limitation of the number of visitors to 100 per day and the existence of patients on the property. He further explains that

In 1980, Congress established the Kalaupapa Historical National Park with public law 96.565. Within the public law there are a number of items. The overlaps, having to do with patients rights, that level was also taken into account when the appraisal was done. So the discount was due to both state law and state regulations as established by the department of health as well as the federal government.... The reason being that, the state regulations that have been passed since 1980, whether explicit or implied, take into account the fact that the Historical National Park is there.
When you discount, you end up with a value, I don't have the value here right now, but it's 4 something, 400 some odd million, but it yields a lease of $325,000. That's nearly a $500,000 dollar difference per year. That's the big disagreement. The federal government, the national park service, has said that there really is no room for negotiation on that. That they have to pay the appraised value, appraised according to national standards.

Both the NPS and HHL told us that there was no disagreement over the process of appraisal, that is the selection of who would do the appraisal. For HHL, Soon said

The only disagreement comes to what are we getting paid. Do we get paid for highest and best use with low encumbrance, or are do we get paid for the land with the encumbrance. The differences are substantial. In one case, the higher case, the value of the land is 11 million, which yields an annual rent of $816,000.

The NPS rejected the higher rate. Soon said that

What the national park said at the time was, in fact, that there was no room for a relook at those numbers. Take it or leave it. We've been working with the national park since the vote back in February.

Soon says HHL does not normally get involved in policy questions about the "use" of the property they lease. How Kalaupapa had been "used" in the past should have little or no bearing on what its "best market value" is today. The separation of land "use" from the valuation process was, in Soon's view, how the "market operated." Further, he said that while HHL sometimes "tried" to place land use restrictions on their properties, they had few. With respect to imposing land use restrictions on Kalaupapa, he said

in this case, we're trying not to. If we adjust the land use we are going to have to do an appraisal. We don't want to do that. We want to live with the appraisal we have. We both want to. We want to settle this thing. Give some confidence to the patients that this is done and they have some security in this thing, Right now it's up in the air. They're afraid that national park service is going to walk away from this thing. We all are afraid that national park service is going to walk away. We don't want that to happen. They don't want to do that, they don't want them to leave. We all want to settle this quickly.

The director of the HHL office on Molokai, Gregory Helms, who also described himself as a native Hawaiian, said that the uncertainly about whether the NPS would accept HHL's appraisal "jeopardized the patients." Newspaper reports of the possible withdrawal of the NPS from Kalaupapa did indeed "upset" many of the patients we spoke with. Peter Thompson, the NPS supervisor at Kalaupapa, was cited in reports as implying that a withdrawal might result if
an agreement could not be reached. Though HHL administrators interpreted this possibility as a "threat" put forth in the heat of negotiations, they praised the NPS as the "good tenant." Soon said

They've done a good job down there. They've done an excellent job. The patients there appreciate what they've done for them. I've never been there except for this one trip, but people tell me what it was like. It's very... they have done a good job. I would say that, I don't want to put this in a bad light, but much of it is superficial. They've cut all the grass around the gravestones and cleaned all that up; they've rehabed a lot of the houses... They've done things that make everything look good. But that's real important to a sense of well being, and to confidence, and to a lifestyle that the patient there want. Those are not types of things that would have been done by the department of health or by us. But the national park service came in and did it. The one big, substantial change for me was that they put in a new water system. That was a big cost, and that was important.

The HHL's mission, according to Soon and Helms, as well as HHL documents, is to help "native Hawaiians" homestead HHL and lease HHL properties (e.g., to private business, municipalities, the military) so as to produce revenues for homesteading (i.e., building infrastructure such as roads, putting in water systems and sewage). In their view, leasing the leprosarium to the NPS will achieve two major goals--"clear" (make legal) "the current land use situation," and earn revenues. In addition, HHL's officials talked about the patients "of" Kalaupapa as if they were part of the land, the land HHL cares for. Hence HHL has another goal, if not duty to protect the patients of Kalaupapa. By evoking the phrase, "the patients of Kalaupapa," Soon drew reference to the symbolic meaning and power inscribed on the land and "its people"--the "suffering, courage and persistence" of the "patients of Kalaupapa," is itself culturally, politically and legally significant.

The agreement finally reached between NPS and HHL was for the "discounted" price, seemingly recognizing the "encumbrance" on the property--a leprosarium. The NPS agreed to pay an annual leasing fee of $325,000 for five years (dating back to 1991), citing federal law restricting use of the land by limiting the number of visitors and guaranteeing that all patients of Hansen's disease can remain there for the rest of their lives. HHL approved a 50-year lease with the provision that the rent for the first five years ($1.5 million) would be paid up front and new appraisals would be made every five years based on the "fair market value" as opposed to the "discounted rate."

Hoaliku Drake, chairwomen of the HHL Commission, adopting the language of the contemporary alternative dispute resolution movement, called the agreement a "win-win situation, that assures Kalaupapa residents the National Park Service will remain" (Honolulu Advertiser, 9/23/93). Drake further said that "negotiations are not always easy, but we always
had the interests of the beneficiaries [native Hawaiians] and the patients at heart, who will be able to live out the rest of their lives in Kalaupapa" (Ibid.). Peter Thompson, speaking for the NPS, said that the lease enables the NPS to develop a general management plan for the 10,000-acre park, which will determine what archaeological and historical sites will be restored and preserved. While HHL claims title to only 1,247 of those acres, the leprosarium is located on this acreage and is, for now, the main historic site Congress designated as a national park.

The agreement no doubt brought some relief for those patients who expressed concern over the possibility that the NPS might leave. Gloria Marks, a patient and chair of the Patient Advisory Council (as well as the wife of Richard Marks the only patient-tour guide) said that this is "what the patients want. They want the National Park to remain here," (Ibid.). Patients told us repeatedly that the federal government has more resources and more respect for the rights of patients at the leprosarium than do the state agencies who allege ownership of the land or manage the place.

While many patients worried that the NPS would pull out unless a lease was agreed to and that developers might then "move in," they also expressed some outrage over valuing "our home." Prior to the lease agreement, one patient we spoke with said,

to think that they [HHL] would try to make money off of us-- off of our suffering-- when caring of us is the reason they are here. (Patient Interview #13).

Another patient emphasized that in her view

this [Kalaupapa] is not their [HHL] land, it is ours. We were put here in the 1860s, this place was created for us. (Patient Interview #16).5

A relatively young patient, in his mid-sixties who was interviewed by a local newspaper, said he was pleased about the lease agreement

but I'm kinda taken aback by the low amount. I would say $500,000 a year is a fair amount (Star-Bulletin, 9/23/92).

Protecting the patients becomes the core reason to be pleased with the lease. The lease seems to affirm what Congress willed -- that the patients will be able to live the rest of their lives

5 When ask if she thought patients should have title to the land or receive reparation payments of some kind, she said no to both options. In her view, common among other patients as well, the land is to be used and not owned. Because the Board of Health rules prohibit patients from having children, patients do not have direct heirs who might inherit property. Some patients have relatives they regularly keep in touch with by mail and telephone.
at Kalaupapa. The lease gives order to what were before seen as mutually incompatible entitlement. This order however is constructed through a series of elisions in which native (plants), native (people), and native (patients) become the "same" natives. In this way, the leasing of "native" homelands to a park that contains patients in a leperosarium becomes plausible, and people whose "native" status is defined more by their history of banishment to a "homelands" in which they were, in effect, entombed (Kalaupapa is known historically as a "hellhole" and a "living tomb"[Law and Wisniewski, 1988:16, 61) are reinterpreted as its true heirs. This interpretation of Kalaupapa as "home" is put forth in a study of the settlement carried out shortly after its registry was closed in 1969. The study quotes numerous patients who explain their decision to stay at the settlement on grounds that it is their "home" or their "home town." The authors (Gugelyk and Bloombaum, 1979) suggest that the sense of the leperosarium as home is attributable in part to its history as the only "place of belonging" for patients, but also because

as with the American Indian, Kalaupapa may represent a type of reservation, a special place for maintaining alienation from the larger culture of Hawaii. The Hawaiian reservation of Kalaupapa...may represent the preservation of a 'last Hawaiian place.' (Ibid., 1979:12)

This language of preservation, in a study that is presented as "a people's narrative--a biographical recollection...about what it means to be a leprosy patient in Hawaii in the early 1900s and today" (ibid., vi) recalls the language of alternative tourism in advertisements about Moloka'i, which is described as the "most Hawaiian of the Hawaiian islands" (Yenckel, 1990) and Kalaupapa as its "piece de resistance." The "market value" of Kalaupapa (and, by association, of Moloka'i), is discounted in the mass tourism market because it is Kalaupapa, a term that for over a century has been synonymous with "horror." By contrast, alternative tourism (and thus a different kind of "market value") is materializing there for this very reason. As leperosarium, Kalaupapa has made possible the preservation of a "last Hawaiian place," "a culture of originality which existed before the coming of the Western discoverer, the trader, the missionary, administrator, and the coming of the "Mai Pake" [leprosy] itself" (ibid., 12). In this last Hawaiian place, the native is rediscovered in the patient,⁶ becoming a "resource" which the National Park Service can protect in the present and preserve for the future.

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⁶ Almost 60% of the resident patients at Kalaupapa were defined as Hawaiian or part-Hawaiian at the time of Gugelyk and Bloombaum's study (Gugelyk and Bloobaum, 1979:12).
Conclusion

The lease negotiated between HHL and NPS is the legal representation of a cultural "collapse" of patient into native, and of leprosarium into a "last Hawaiian place"; by this account, the homeland becomes "a type of reservation" (Gugelyk and Bloombaum, 1979:15), an interpretation that "discounts" the value of Kalaupapa, from the perspective of Hawaiian Home Lands Commission personnel. In this interpretation, Kalaupapa is not a place "to make money off of" but the preservation of "a special place," a "place of suffering" (in the words of one of the patients). The protracted struggle over terms for leasing the homelands to the park service, the intense interest this struggle generated at Kalaupapa and on Molokai more generally, and the loyalties it defined in the leprosarium, all emerge from the deeply embedded contradictions that were brought together in the transition of Kalaupapa to the global world of eco-tourism.

The stage was set for this transition in 1848, when Kamehameha III put aside what came to be known as "ceded lands" on the Kalaupapa peninsula, for the chiefs and people. The terms for the transition were established with the annexation of a portion of these lands by the Hawaiian Board of Health in 1865 to establish the leprosarium. With the passage of the Hawaiian Homes Commission Act in 1921, 188,000 acres of the ceded lands, including Kalaupapa, were designated as "homelands," an interpretation of the landscape that seems to have had relatively little import at the time, but that has surfaced as a key issue in present-day struggles. In 1969, with the "liberation" of the resident patients and the enactment of legislation that closed the patient registry, transition began in earnest at Kalaupapa. The most recent legal documents -- setting up the National Historical Park in 1980, establishing the cooperative relationship between DOH and NPS in 1984, and leasing the park from HHL in 1992 -- create a semblance of order and of stability out of the transformations that are shaping the leprosarium and its patients today. It is a precarious stability, however, an imagined community -- a fiction -- constructed at the intersection of local and national, regional and global forces that are constantly in movement, constantly subject to change, today as in the past. What is perpetuated throughout these transitions is the configuration of quarantine, inscribed in the virtually perpendicular pali (the steep cliff that separates the peninsula from the rest of the island) and reworked in the continuous mappings through which ceded lands, leprosarium, and now a park have materialized at Kalaupapa. Eco-tourism finds a friend in quarantine, which today, in a world where Kalaupapa is accessible by mule, on foot, and by plane, has facilitated the representation of the peninsula as "isolated," "remote," and "untouched." Similarly, its historical emergence as "home" to leprosy patients conflates with the interpretation of Moloka'i for tourists as a different kind of home - to "traditional Hawaiian values" and to "native Hawaiian ancestry" (Washington Post, January 28, 1990:E1).

These cultural materializations of native identity reconfigure and displace ethnic meanings of indigenous with a preservationist gloss to the meanings of quarantine. By reading entitlement struggles as produced through the reworkings of the workings of quarantine, we can see the actors in these struggles -- Peter Thompson of the National Park Service, Ray Soon of the

Indeed, one of the issues that has caused some degree of controversy with the NPS has involved expansion of the landing field at Kalaupapa. Some patients are in favor of the expansion; the park superintendent is opposed on grounds that it will destroy early Hawaiian cultural artifacts.
Hawaiian Homelands Commission, members of the Patient Advisory Committee-- not as instrumental strategists whose moves are determined by known "interests," nor as voluntaristic subjects who "choose" the positions they take on, but as subjects who are "newly constructed out of the residues of the past" (Greenhalgh and Li, 1993:4). This is a subject who is "enabled, if not produced, by" the regulatory norms she would resist (Butler, 1993:15), a process that Judith Butler terms "sedimentation" or "materialization" (Ibid.). The complex overlapping of places that are simultaneously familiar (for patients, the leprosarium; for Peter Thompson, the national park; for Ray Soon, the ceded lands) and strange (for patients, the park; for Peter Thompson, the leprosarium; for Ray Soon, the park) becomes a site for the construction of identity, the discovery of community, and the invention of law.
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