HAWAIIAN SOVEREIGNTY AND NATIONALISM:
HISTORY, PERSPECTIVES AND MOVEMENTS

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ABSTRACT

This thesis analyzes three divergent perspectives regarding the current status of the Hawaiian nation and aboriginal Hawaiians. The disparities over perspectives of the political and legal status of the Hawaiian nation and aboriginal Hawaiians are linked to the disparity over the root of legitimate control, influenced through significant legislation, international and domestic laws, and informs the actions of nationalist and anti-nationalist initiatives in Hawai'i. Some nationalists look to International Law and appeal to the International Court of Arbitration in the face of American occupation. Others follow the de-colonization process already laid out by international instruments. Yet others prescribe to a strategy that centers on aboriginal Hawaiian needs and efforts of reparation and reconciliation through U.S. domestic laws. Each avenue has positive and negative aspects, which will affect the future of aboriginal Hawaiian as well as everyone in Hawai'i.
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CHAPTER 1: INTRODUCTION

In early 1843, Lord George Paulet, prompted by British imperialist ambitions and erroneous claims of the British Consul, seized the Hawaiian Kingdom in the name of the British government.\(^1\) A few months later, Admiral Richard Thomas directed the removal of the British flag from the Hawaiian Kingdom’s government buildings and restored its rightful Head of State. At the formal ceremony, His Majesty Kamehameha III (Kauikeaouli) affirmed, "Ua mau ke ea o ka 'aina i ka pono," most often translated as "the life of the land is perpetuated in righteousness."\(^2\) His statement can also be translated as "the sovereignty of the nation is ensured through justice."

In 1893, Queen Lili’uokalani trusted in the actions of her predecessors and the good will of the U.S. Federal government to return her Kingdom after an unlawful invasion. Despite historical precedent, control of the Kingdom of Hawai‘i was never returned to its rightful Head of State. One hundred-ten years later, her faith in the American government has yet to be satisfied.

Today, Kamehameha III’s prodigious phrase is stamped on the seal of the State of Hawai‘i. Perhaps the greatest irony is that a proclamation of continued sovereignty through justice is now used by the entity that perpetrated the
injustice. As the American government has appropriated this phrase it has also appropriated the Hawaiian Kingdom. Will the true meaning behind this phrase ever be realized again?

This thesis will examine the strategies adopted by nationalist groups in Hawai‘i to address injuries accrued as a result of the dethroning of Queen Lili‘uokalani in 1893 and theorize which methodology may provide optimum results for the Hawaiian nation.

Hawaiian nationalists today can point to a considerable list of injuries incurred through the actions of the United States government, their agents and representatives. Even a cursory look at the history of U.S.-Hawai‘i relations reveal frequent violations of international laws as well as breaches of U.S. domestic laws which resulted in the seizure of the Hawaiian Islands. These grievances include, (1) deprivation of the right of sovereignty of the Hawaiian Kingdom, (2) direct and indirect demoralizing assaults on the Hawaiian culture, identity, language and spirituality, and (3) continued interference by the U.S. government with the Hawaiian nation and its people.

Different Hawaiian nationalist groups generally approach these grievances in three ways: (a) invoke the rights of an occupied nation-state under International law appealing to the International Court of Justice, (b) invoke the
rights of de-colonization through international human rights law, and (c) invoke internationally recognized human rights as indigenous peoples through both international laws and conventions as well as United States' domestic policies.

It is important to note a distinction between Native Hawaiians, the Hawaiian Kingdom and Hawaiian Nation. Native Hawaiians, alternately called aboriginal Hawaiians, are any descendent of those who lived in the Hawaiian Islands prior to 1778. I use the term "Hawaiian Nation" in broad reference to a political and legal identity in the Hawaiian Islands. The characteristics of this Hawaiian Nation may change in reference to the specific approach discussed in each chapter (i.e., it may include Native Hawaiians only in the indigenous rights approach, and in the nation-State approach include all descendents of Hawaiian Kingdom citizens regardless of genealogical background). I use the term "Hawaiian Kingdom" to refer specifically to the political entity that governed the islands from 1840 to 1893.

Grievances

The principal injury is the deprivation of the sovereignty of the Hawaiian Kingdom by the United States government as a result of the 1893 insurrection.
The first hint of American aspirations to control the Hawaiian Kingdom came in the form of a clause in the 1875 treaty of reciprocity between Hawai'i and the U.S. limiting the Hawaiian Kingdom's ability to freely engage in treaties with other nations. American influence in the Hawaiian Kingdom increased significantly when, in July 1887, a group of mostly American, non-Hawaiian naturalized citizens and foreign born citizens who formed their own political party promoting changes from modification of the existing monarchy to annexation to the United States, forced a constitution on King Kalākaua that rendered him a figurehead and disenfranchised most of the population save white, moneyed, denizens and citizens. As a result, by October 1887, Kalākaua could no longer protect against the cession of Hawaiian territory to the United States as a condition of renewal of the 1875 treaty.

In 1893, this same group, who alternately called themselves the "Committee of Safety", assisted by U.S. Minister John L. Stevens and American Marines forcibly dethroned Queen Lili'uokalani and set up their own "Provisional Government." Not only did the insurrection displace Hawai'i's Head of State but was also a violation of U.S.-Hawai'i treaties of friendship, amity and commerce of 1849, 1875, and 1884 thereby violating international laws governing the conduct of nation-states. In 1898, the U.S. accepted the
annexation of Hawai‘i as a territory despite petitions protesting annexation submitted by nearly 98% of the Native Hawaiian population.

When the U.S. seized Hawai‘i, it took control of Crown and Government lands and natural resources belonging to the Hawaiian government totaling 1.8 million acres. After passing the Statehood Act in 1959, the U.S. Federal government transferred these lands to the newly formed State of Hawai‘i to be held in trust for Native Hawaiians.

As outside forces gained control of the Kingdom, they were able to affect direct and indirect assaults on Hawaiian culture, identity, language, and spirituality through a "systematic process of assimilation." During the Kingdom period, between 1810 and 1893, Western ways slowly eroded and eventually replaced Hawaiian ways; a foreign governmental system was established in 1840, land tenure was changed from communal to fee simple system in 1848, hula and chant were banned in public performance, and finally in 1896 the Hawaiian language was banned by the oligarchic Republic of Hawai‘i. The loss of status for aboriginal Hawaiians as a result of political aggression also resulted in the loss of pride in culture. In his article, The Demise of the Hawaiian Kingdom: A Psycho-Cultural Analysis and Moral Legacy, Ramon Lopez-Reyes equates the cultural trauma induced by this process of assimilation to rape.
A people who suffer a post cultural trauma syndrome feel the humiliation and low sense of self-worth...particularly when the perpetrator of the trauma, who holds the dominating political and economic position is not receptive to the suffering of those with the post trauma syndrome.\(^{10}\)

As harsh as this comparison may seem, it is a reality for many Native Hawaiians today. Several lifetimes of being told, "There is no value in things Hawaiian; all value comes from things haole" can have resounding effects on native perceptions of the world.\(^{11}\)

These effects can also be seen statistically; among the current residents of the archipelago Native Hawaiians have the highest rate of infant death, youth arrests, dominate the inmate population, and have the lowest life expectancy.\(^{12}\)

The U.S. Congress has acknowledged these effects in Public Law 103-150 in which the United States apologized to Native Hawaiians for the U.S. participation in the overthrow.

Whereas, the long-range economic and social changes in Hawai‘i over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.\(^ {13}\)

The third set of grievances is grounded in continued American interference with the Hawaiian nation and its people. Since annexation to the United States, the U.S. government has continually interfered with both ethnic
and legal Hawaiian identities. In 1921, the U.S. Federal government enacted legislation that defined Native Hawaiians as those with 50% blood quantum or more effectively dividing the community in two. Since statehood in 1959, the State and Federal governments have further interfered with the Hawaiian nation by defining and redefining what a Native Hawaiian is, and using legislation and promises of reparations to coerce Hawaiian nationalists into formalizing this limiting definition.

The decline of the Native Hawaiian population because of introduced diseases continued through the Territorial period; the proposed solution was to return them to the land. In 1921, the U.S. Federal government set aside about 200,000 acres of the 1.8 million acres of land received by the U.S. in 1898 for Hawaiian homesteading. The 1921 Hawaiian Homes Commission Act imposed a blood-quantum requirement (50%+) seen by some as another manifestation of the "divide-and-conquer tactics of American colonialism."

In 1959, the U.S. Federal government passed the Admissions Act creating the State of Hawai'i to administer over the Hawaiian Islands. There was significant opposition to Statehood both within and outside Hawai'i. Although World War II ended fourteen years earlier, the large Japanese population, originally imported as labor for the sugar plantations, made Americans uneasy
and much of the anti-Statehood sentiment correlated with hostility towards the Japanese population in Hawai‘i. The remaining anti-Statehood constituencies were Native Hawaiians. In a privately sponsored public-opinion survey conducted in 1958, 27% of Hawaiians polled opposed Statehood. Mrs. Alice Kamokilaikawai Campbell, daughter of Abigail Maipinepine and James Campbell and heir to the prosperous Campbell estate, became a public spokesperson against Statehood.

The State of Hawai‘i took up its charge as trustee of lands and assets formerly controlled by the Kingdom of Hawai‘i by establishing the Office of Hawaiian Affairs (OHA) in 1978. Although OHA was established to serve as a liaison agency between the State and Native Hawaiians as its beneficiaries, some, like Haunani Trask, view the agency as "an extension of the State...powerless as a mechanism of self-government having no control over trust lands." The Office of Hawaiian Affairs experienced several fiscal problems and was highly criticized for corruptive practices in the years following its inception. Frustrated by the ineffectiveness of State agencies like OHA and the Department of Hawaiian Homelands (administering body of the Hawaiian Homes Commission), Hawaiian nationalist groups gained momentum and membership through the 1980's. Even as OHA's funding and fiscal management improved by
the early 1990's, Hawaiian nationalists and their supporters continued to push for reform through alternative means.

On January 17, 1993, Ka Lāhui Hawai‘i, a Native Hawaiian initiative born in 1987, organized the "Onipa’a" march where approximately 15,000 Hawaiians marched through Hawai‘i’s capital, Honolulu, to 'Iolani Palace on the centennial observation of the overthrow of the Hawaiian Kingdom. This mass demonstration signaled the beginning of a new phase of U.S.-Hawai‘i relations.

In November 1993, President Clinton signed Public Law 103-150, which apologizes to Native Hawaiians for the U.S.'s role in the 1893 insurrection and pledges to support reconciliation between the U.S. and Native Hawaiians. The "Apology" Law, as it was dubbed, was a significant confirmation of Hawaiian nationalist claims against the U.S.

In between the "Onipa’a" march and the U.S.'s apology, the State tried once again in July 1993 to address the needs of Native Hawaiians as well as its own needs by passing Act 359 to create the Hawaiian Sovereignty Advisory Commission as an advisory board to the Legislature on matters concerning Native Hawaiians. Later, in 1994, the Commission was renamed the Hawaiian Sovereignty Elections Council and charged with organizing a special vote to determine the wishes of Native Hawaiians towards sovereignty. Bolstered by
Public Law 103-150, the election was intended to help promote Hawaiian self-determination and self-governance, however, one of the most vocal critics, Haunani Trask of Ka Lāhui Hawai‘i, cited this "plebiscite" as another attempt to "blunt the nationalist front" because of State involvement. In recent years, the Office of Hawaiian Affairs has been granted increased funding from the Hawai‘i legislature but the fact remains that OHA is a state-sponsored agency, thus extremely limited as a form of self-government.

The 1921 Hawaiian Homes Commission Act and the establishment of the Office of Hawaiian Affairs in 1978 were efforts by the U.S. Federal and State governments respectively to address historical injustices perpetrated against the Hawaiian Kingdom and its people and at the same time undermine the Hawaiian nationalist movement by focusing only on the needs of a smaller segment of the national population, Native Hawaiians. The creation of the Hawaiian Sovereignty Elections Council was another attempt to restrain the Hawaiian nationalist movement. The "Onipa‘a" march, in January 1993, affected a shift in demeanor of the State and Federal governments towards Native Hawaiians. Public Law 103-150, also known as the "Apology" Law, was partly a result of this massive demonstration by Hawaiians. The "admission" of guilt by the U.S. for its involvement in the overthrow of the Hawaiian national
government in Public Law 103-150 brought with it increased funding for Native Hawaiian programs and agencies like the Office of Hawaiian Affairs. However, the "apology" is incomplete as the "apology" is limited to Native Hawaiians and does not include the Hawaiian nation as a political entity.

Public recognition of U.S. violations and the resultant increase in funding and exposure for Native Hawaiian programs and agencies created a backlash against such agencies and programs. In the 2000 *Rice v. Cayetano* ruling, the U.S. Federal government's judicial branch allowed non-Hawaiians to vote for trustees of the Office of Hawaiian Affairs. The key issue in the case: Are Native Hawaiians a race or nation of people? Rice argued that restricting votes to Native Hawaiians was racist; the State argued that Native Hawaiians are indigenous people entitled to special programs as a result of their colonial history. Neither argument is entirely correct, however; Native Hawaiians are a segment of the population of the Hawaiian nation seized by the United States, that injustice is the root of those special programs. Nevertheless, the U.S. government sees Native Hawaiians as a special population and has provided programs, although limited, to address the needs of Native Hawaiians today. The *Rice v. Cayetano* case opened the door for more lawsuits challenging all programs and agencies meant to assist Native Hawaiians.
In anticipation of the *Rice v. Cayetano* ruling, Hawai‘i’s Congressional delegation authored a bill to provide federal recognition of Native Hawaiians as indigenous people of the U.S. This bill, Senate Bill 344, is also known as the "Akaka" bill after its sponsor Senator Daniel Akaka. The main purpose of the bill is the protection of programs, agencies and assets currently in effect.

**Methodologies**

In response to the grievances described above, numerous native initiatives have organized around self-governance issues "represent[ing] a broad spectrum of ideas, structures and governing styles." The Hawaiian nationalist movement "is a radical response to American colonization...similar to the other indigenous movements in the Pacific." The following section summarizes the methods of approach used by Hawaiian nationalist initiatives to achieve self-governance.

In August 1988, a resolution adopted at the Native Hawaiian Rights Conference presented a five-step agenda towards resolution. The steps are as follows:

1. An apology by the US to Native Hawaiians and their government for their role in the 1893 overthrow
2. Substantial land and resource base including a “reformed Hawaiian Homes program, a fair share of the ceded lands trust, and the return of Kaho‘olawe and other appropriate lands
3. Recognition of the Native Hawaiian government with sovereign authority over the territory within the land base
4. Recognition and protection of the subsistence and commercial hunting, fishing, gathering (including beach access), cultural and religious rights of Native Hawaiians, and the legitimate exercise of sovereign powers over such rights.
5. An appropriate cash payment

In her article, *One Hundred Years of Illegitimacy: International Legal Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawai'i's Annexation, and Possible Reparations*, Jennifer Chock concurs that an “ideal reparations package” would include; restoration of pre-insurrection status quo of the Hawaiian Kingdom, return of lands seized by the insurrectionists and thereafter illegally transferred to the U.S. Federal government, and monetary compensation for unjust acquisition of lands, ecological damage to lands incurred and punitive damages.²⁶

Each of the three methods mentioned in the previous section approach the above grievances and injuries from different perspectives. The first method is to invoke the rights of an occupied nation-State under International Law mainly through the International Court of Justice. This method emphasizes the Hawaiian Kingdom's status as a recognized independent nation-state within the "Family of Nations." As an independent member of the "Family of Nations", it is entitled to the protection of accepted international laws against the use of force,
breach of treaties and violations of the national sovereignty of an independent nation.\(^27\) Thus, the U.S. violated international laws when it invaded the Hawaiian Kingdom in 1893 and occupied it in 1898. This perspective has since gained credibility through the *Lance Larsen v. Hawaiian Kingdom* case in 2001 held at the International Court of Arbitration at The Hague, which verified the status of the Hawaiian Kingdom as an independent nation-state. The most visible advocate for this perspective is Keanu Sai, Chairman of the Council of Regency and Acting Minister of Interior of the Acting Government of the Hawaiian Kingdom.\(^28\) Other advocate groups include the *Independent Nation of Hawai‘i* based in Waimānalo, the *Kingdom of Hawai‘i* based in Kāne‘ohe, and the *Kingdom of Hawai‘i* based in Wailuku, Maui.\(^29\)

The second method is to invoke rights of self-determination and decolonization through International law regarding non-self governing territories. This method relates closely to the first as it utilizes the same historical arguments regarding U.S. violations of International Law, but differs in its choice to pursue self-determination and decolonization through international conventions regarding non-self governing territories listed in the United Nations Charter.
S. James Anaya, Professor of Law at the University of Iowa, asserts that self-determination is...

...part of international law's expanding lexicon of human rights...[E]xtending from core values of human freedom and equality, expressly associated with peoples instead of states...the principle of self-determination is properly understood to benefit human beings as human beings and not sovereign entities...30

Any deviation from this norm of human rights, imperial colonialism for example, would generate a need for "remedial prescriptions and mechanisms."31 Decolonization corresponds with measures to remedy deviations or violations from the precept of self-determination. The procedures relating to the process of decolonization are grounded in the United Nations (U.N.) Charter, Chapter XI, in which members of the United Nations commit themselves to supporting the development of self-government in these colonial or "non-self governing" territories.

Article 73 of the United Nations Charter defines a non-self governing territory as "peoples under the administration of members of the U.N. who have not yet attained a full measure of self-government." Non-self-governing territories are subjects of a "sacred trust" and the trustees are charged with the obligation to promote the well-being of the territories, the political, economic, social and educational advancement, assist in the development of self-
government in due regard of the political aspirations of the peoples concerned and to encourage respect for human rights.\textsuperscript{32} Hawai‘i was placed on the U.N. list of non-self governing territories in 1946; the U.S. had Hawai‘i removed from the list after the 1959 Statehood vote citing that choosing incorporation was self-determination. To this end, the first step prescribed by this method would be the re-inscription of Hawai‘i onto the U.N. list of non-self governing territories.

Subsequently, there would be a plebiscite to determine the future status of the Hawaiian nation presenting three options: (a) independence, (b) free association, and (c) integration.\textsuperscript{33} Options (a) and (b) would require a national constitutional convention to determine the parameters of the new government relationship with the U.S. In Hawai‘i's case, option (c) would maintain the status quo. Nationalist groups advocating for re-inscription include Ka Pakaukau, a coalition of twelve organizations, the Kanaka Maoli Tribunal Komike, the Pro-Kanaka Maoli Independence Working Group, coordinated and convened by Kekuni Blaisdell and the Institute for the Advancement of Hawaiian Affairs based in Wai‘anae, O‘ahu.\textsuperscript{34}

The third method invokes the right of self-determination of indigenous peoples through international laws, conventions and U.S. domestic policies. Self-determination for both non-self governing territories and indigenous peoples
stem from the same principal; "All peoples have the right to self-determination." While the idea of self-determination was codified in the early 1900's, the general policy regarding the rights of indigenous peoples was not laid out until 1993 in the Draft Declaration of Rights of Indigenous Peoples; it has yet to gain international ratification. The Draft Declaration came out of a Working Group on Indigenous Populations (IWGIP), a collection of representatives of indigenous peoples from around the world. Established in 1982, the IWGIP completed work on the Draft by 1993. The document deals with the "rights of indigenous peoples in areas of self-determination, culture and language, education, health, housing, employment, land and resources, environment and development, intellectual and cultural property, indigenous law and treaties and agreements with governments." In July 2000, the United Nations Permanent Forum on Indigenous issues was established by the United Nations Economic and Social Council (ECOSOC) and marked a great breakthrough for indigenous peoples who do not fall under the trusteeship system for non-self governing territories.

In the context of the rights of indigenous peoples, in some ways, the U.S. is ahead of the International system in that it has recognized over five hundred indigenous nations within its borders. Advocates of this perspective seek to be included with other Native American Nations as domestic dependent nations.
There is a bill currently in the U.S. Congress that, if passed, would provide such recognition parallel to other native nations in the U.S. The controversial bill (currently Senate Bill 344-April 2004) is also known as the "Akaka" Bill.

Advocates of this avenue include Ka Lāhui Hawai'i, a native initiative based in Hilo, Hawai'i, as well as the State of Hawai'i's Office of Hawaiian Affairs.\(^{38}\)

The following diagram illustrates the subsequent steps in each of the three methodological perspectives discussed above.
AVENUES TOWARD NATIONHOOD FOR HAWAI'I

Figure 1: Avenues toward nationhood for Hawai'i
Organization

In order to discuss how grievances and injuries to the Hawaiian nation and its people perpetrated by the U.S. are addressed, I first provide a background of the historical/political relationship between Hawai‘i and the United States in Chapters 2 and 3. The following chapters discuss the above three methods with reference to the historical/political circumstances outlined in Chapters 2 and 3. Chapter 4 will look at Hawai‘i as an occupied nation-state seeking justice through the International Court of Arbitration. Chapter 5 will examine Hawai‘i as a colonized non-self-governing territory seeking the right of self-determination. Chapter 6 considers Native Hawaiians as indigenous peoples of the United States.

In Chapter 7, I will provide an analysis of the three methods and theorize as to which method would provide optimum results for the Hawaiian nation. Also, I will look at contemporary expressions of nationhood by and for Native Hawaiians outside the political context. These include initiatives, programs, cooperatives and agencies in areas of education, health, culture, economics and identity that seek to strengthen the lāhui (the people) regardless of political status.
CHAPTER 2: UNITED STATES-HAWAI'I

HISTORICAL/POLITICAL RELATIONSHIP,

1826 TO 1898

The grievances listed in the introduction originate from inconsistencies in the U.S.-Hawai'i historical/political relationship. The following section looks at treaty relations between 1826 and 1893, and the imposition of U.S. domestic legislation on the Hawaiian nation beginning in 1898. This section will seek to answer the questions: What circumstances have shaped the U.S.-Hawai'i relationship since the first informal agreements of 1826? And, how did the Kingdom of Hawai'i come to be incorporated into the American Union?

The U.S.-Hawai'i connection between 1826 and 1898 can be divided into three phases: (1) 1826 to 1875, (2) 1875 to 1893, and (3) 1893 to 1898. Each of these phases begin and end with a change in either international treaty relations between the U.S. and the Hawaiian Kingdom or direct intervention of the U.S. in the governance of the Hawaiian Kingdom.

Between 1826 and 1875, Hawai'i and the U.S. had a friendly commercial relationship. The 1875 treaty of reciprocity represents the first formal instance of American impingement on the sovereignty of the Hawaiian nation.
The 1875 treaty of reciprocity between the U.S. and Hawai'i marks the beginning of the second phase of U.S.-Hawai'i relations. A clause in the fourth article of the treaty curtailed the ability of the Hawaiian Kingdom to freely participate in agreements with other foreign nations. This phase lasted until 1893 when insurrectionists residing in the Kingdom used U.S. military forces to remove Hawai'i's Head of State, Queen Lili'uokalani, from power.

In the five years between 1893 and 1898, the insurrectionists who dethroned the Queen tried to secure a treaty of annexation with America. However, U.S. President Cleveland removed this treaty of annexation from consideration and ordered an investigation of the events leading to the Kingdom's overthrow. Cleveland appointed James Blount, a Congressman from Georgia, as Special Commissioner to Hawai'i. Blount's investigative report concluded that the overthrow of the Hawaiian government was illegal and recommended its restoration. Meanwhile, the insurgent government in Hawai'i authored their own constitution and declared themselves the Republic of Hawai'i in 1894. In the U.S. Congress, pro and anti-annexation factions in the U.S. squabbled about whether the U.S. should expand its precincts into the Pacific. However, the Spanish-America war of 1898 quieted arguments against annexing Hawai'i in light of its valuable position in the central north Pacific.
Phase I: 1826 to 1875 – Friendly Commerce

When Captain James Cook arrived in the Hawaiian Islands in 1778, the man who would unite all the islands of the archipelago under one ruler was a young warrior under the command of his uncle and ali‘i nui (high chief) of Hawai‘i Island, Kalaniopu‘u. By 1810, the famous warrior, Kamehameha, successfully secured under his rule the islands of Hawai‘i, O‘ahu, Maui (including the surrounding islands of Lāna‘i, Moloka‘i and Kaho‘olawe) through conquest and the island of Kaua‘i by diplomatic negotiations. All the while, Kamehameha deftly regulated political power and foreign interference establishing himself as an accomplished diplomat and notable leader. However, his reign as king of all the islands lasted only nine years. In 1819, Kamehameha died leaving the throne to his royal son, Liholiho. As Liholiho was young upon his ascendance to the throne, Ka‘ahumanu, favored wife of Kamehameha, was installed as Kuhina Nui (prime minister) of the Kingdom and together Liholiho and Ka‘ahumanu ruled.

Less than a year after the passing of Kamehameha, the long-established Kapu system that regulated and ordered Hawaiian society ended in December 1819. A few months later, missionaries from the east coast of the United States
auspiciously arrived in Hawai‘i. Seeing the end of the Kapu system as a blessing that paved the way for their own Christian teachings, they slowly established a church on the Island of Hawai‘i. At first, they were merely tolerated; over a decade later they were able to convince the ali‘i (chiefs) to convert in hopes that the general population would follow.

In the midst of this significant upheaval in societal structure and spiritual beliefs, foreign traders, merchants and vessels arrived sparking the beginning of commercial enterprise in the islands. 1826 through 1875 was a period of friendly commercial relations between the U.S. and the Hawaiian Kingdom in which sandalwood, whaling, fur and sugar industries were the focus of trade.

On December 23, 1826, Hawai‘i entered into its first informal "articles of arrangement" with U.S. Captain Thomas Catesby Jones intended to promote "commercial intercourse and friendship subsisting between the respective Nations." Article 1 of the treaty states,

The peace and friendship subsisting between the US, and their majesties, the Queen Regent, and Kauikeaouli, King of the Sandwich Islands, and their subjects and people are hereby confirmed, and declared to be perpetual

Two other concerns were addressed in the "articles": debts and deserters. During the height of the sandalwood trade Hawaiian chiefs unfamiliar with Western practices generated considerable debts and American
merchants complained bitterly about their non-payment. The second factor had more to do with the conduct of American crews in the whaling industry. Between 1824 and 1825 there were three petitions submitted by nearly 200 American merchants and traders operating in the islands calling for the "occasional presence of a national armed force...[as]...the only safe ground of reliance for the security of American property." The undesirable behavior of the visiting crewmen included desertion and mutiny; ship owners and other merchants felt that mutinies may be attempted and that "a ship from the Navy 'be ordered to visit those islands, for the protection, not only of their commerce, but of American commerce generally.'" The presence of deserters and pirates in the Hawaiians Islands greatly concerned law abiding merchants and traders in the area and in calling for action they asked: "Is there reason to believe that the Sandwich islands, if [the United States] government does not interfere, will soon become a nest of pirates and murderers?"

Articles three, four and seven of the 1826 "agreement" provide protection for all ships, vessels, and crews "so long as they behave themselves peacefully", reward for assistance in salvage operations and compensation for the return of deserters to their "master, owner or agent." Although the U.S. Congress never
officially ratified these "articles", they were notably cited by Americans to affect their appeals within the Hawaiian Kingdom.45

The presence of American warships in its harbors following the 1826 articles set the stage for more intrusive measures to influence commercial relations between Hawai‘i and the United States in the decades to come. Additionally, American ships were not the only military presence in the islands, both French and British ships anchored off the coasts of Hawai‘i and would prove an intimidating force to the little country. The imperial rivalry between these three countries would be played out in a tug-of-war for supreme influence over Hawai‘i.

In the late 1830's and early 1840's, there were two major international incidents. Both British and French delegations respectively threatened the sovereignty of the Kingdom of Hawai‘i using gunboat-style diplomacy. In 1839, the French Captain Laplace protested the expulsion of Catholic priests from the Kingdom by threatening war. To avoid French interference in the Hawaiian market, American and British merchants and businessmen raised the $20,000 demanded by Laplace. A land dispute in 1843 triggered British Lord Paulet to seize the islands in an unsanctioned act; the British government later
reprimanded him and the sovereignty of the Kingdom of Hawai‘i was ordered restored by Queen Victoria.

These events demonstrated the vulnerability of the Hawaiian Kingdom, strengthened arguments for the institution of fee simple land tenure in the Kingdom to avoid future disputes and initialized a pro-annexation movement, powered mainly by American merchants and resident citizens, to the United States in the 1850’s. 46

Kauikeaouli, Kamehameha III, established the first constitution of the Kingdom of Hawai‘i in 1840 ostensibly to prevent future foreign incursions on the sovereignty of the Kingdom; the argument was that if the Kingdom of Hawai‘i had a Western-style government with written laws and a constitution, then the other Western powers would respect it. The same argument was utilized to persuade the King to convert the land tenure system in Hawai‘i from communal to private property in the 1848 Māhele, which resulted in the loss of lands to foreigners to the detriment of Native Hawaiians. 47 At the same time, the Hawaiian population plummeted exacerbating the difficulties of maintaining a native government and fending off Western imperial ambitions.

Despite the roughshod bullying of the Kingdom of Hawai‘i by Western powers such as the United States, Great Britain and France, each of these powers
officially recognized its independence. U.S. President Tyler recognized the sovereignty of the Kingdom of Hawai‘i in December 1842.\textsuperscript{48} Seven years later in December 1849, a treaty of friendship, commerce and navigation between the U.S. and Hawai‘i was ratified. The 1849 treaty declared "perpetual peace and amity between the US and the King of the Hawaiian Islands, his heirs and his successors."\textsuperscript{49} Within this period, the Hawaiian Kingdom entered into two other treaties with the U.S. as well as all other major trading nations of the world.\textsuperscript{50}

The period between 1826 and 1875 was wrought with military and commercial rivalries between Western powers that directly affected the governmental, social and economic systems of the Kingdom of Hawai‘i. The U.S.-Hawai‘i relationship fostered a prosperous sugar industry through 1860s. The U.S. Civil War crippled America’s southern sugar plantations and opened the market for Hawaiian sugar whose profit margins skyrocketed. However, when the American south began to recover and reenter the U.S. domestic market, the Hawaiian sugar industry sustained significant losses. To bolster Hawaiian sugar interests, plantation factors sought a treaty of reciprocity with the United States.
Phase II: 1875 to 1893 – Initial Encroachment

The second phase of U.S.-Hawai‘i relations began with the 1875 reciprocity treaty. This turbulent period saw the first cession of Hawaiian territory to a foreign power, political unrest and agitation for annexation to the U.S., and an insurrection backed by U.S. Marines that unseated Queen Lili‘uokalani.

In the decades before 1875, Hawai‘i’s sugar industry matured and began to dominate the Kingdom’s economy. In the 1850’s, most sugar endeavors were small and experimental. The start of the U.S. Civil War in 1861 shut down sugar production in the South, which opened the U.S. market and created a financial boom for Hawai‘i’s plantations.

Three other factors contributed to the rise of the sugar industry in the Kingdom. The collapse of the whaling trade after 1860 left Honolulu merchants searching for new prospects and many turned to the sugar trade. Likewise, the closing of the Hawaiian Mission in 1860 left missionaries searching for new means of support. Last, the rapidly decreasing native population left the government with a limited income from taxes and sources of revenue. Noel Kent, author of Hawai‘i: Islands Under the Influence, states that "the origins of the
economic domination of Hawai‘i by the Big Five companies...lay in this period, as entrepreneurs moved into the vacuum created by the rapid expansion of the plantations...56 The Big Five (Amfac, C. Brewer & Co., Theo H. Davies Co., Castle and Cooke and Alexander and Baldwin) began as factors or agents for the sugar plantations that marketed sugar, supplied plantations with goods and machinery and advanced loans for payrolls and expansion.57 However, after the end of the U.S. Civil War in 1865, Hawaiian sugar companies experienced a decline in the market as southern sugar plantations recovered. A reciprocity treaty between the U.S. and Hawai‘i became necessary to sustain the Kingdom's sugar-reliant economy.

The 1875 reciprocity treaty was viewed as the solidification of economic relations between the U.S. and Hawai‘i, a promotion of American commercial interests and hinted at Hawai‘i's increasingly important strategic position in the north Pacific.58 It would guarantee the export of sugar and other goods to the U.S. and the import of American goods duty free.59

However, the Treaty was not without opposition on both sides of the Pacific. American opponents, particularly in the South, decried the loss of revenue generated by allowing Hawaiian sugar to compete in their domestic market. For native opponents it was an issue of loss of independence and the
"first step of annexation later on." Joseph Nāwahī, statesman of kaukau aliʻi (lesser chief) descent, declared that it was a "nation-snatching treaty, one that will take away the rights of the people causing the throne to be deprived of powers that it has always held as fundamental."

Such protestation on the native's part was focused on a clause in Article IV of the treaty. Article IV states,

> It is agreed, on the part of His Majesty, that, so long as this Treaty shall remain in force, he will not lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions, or grant so special privilege or right of use therein, to any other power, state, or government, nor make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty hereby secured to the United States.

This clause represented the first encroachment of Hawaiian sovereignty by the U.S. Although this was an agreement between nations it was lop-sided in that the United States placed considerable control on Hawaiian foreign relations. Not only did this Article restrict the Hawaiian government from leasing, selling or ceding any lands in the Kingdom to any other foreign power, but it also disallowed any treaties granting to other nations similar privileges as outlined in the agreement with the U.S.

Despite the objections of the Hawaiian people, King Kalākaua signed the decidedly unequal treaty and sugar plantations prospered as a result. The
number of sugar plantations tripled by 1880 and sugar lands spread into rice, taro, coffee and even small Hawaiian kuleana (property owned by residents of an ahupua'a) lands. Along with the sugar boom came increased political and economic influence of a small number of plantation owners and their agents on the Hawaiian government. The treaty itself was only intended to last seven years (Article V) and as the expiration date of the treaty neared, these, mostly haole (foreign; usually referring to those of Caucasian descent), businessmen pressed the government to find something to entice the U.S. to renew the agreement and keep the money flowing.

One thing of considerable value suggested to the government as an incentive for the U.S. was Pearl River lagoon. The U.S., having conquered most of the continent, now looked to the Pacific for new commercial opportunities as well as the means to defend those opportunities. Hawai‘i's advantageous position in the middle of the north Pacific rendered it extremely valuable in the protection of American coasts. If another nation was to seize the Hawaiian Islands, it was but a short hop to the west coast of North America. In light of this realization, it seemed the Kingdom had a valuable asset to offer the U.S. The prospect of Pearl River Lagoon was not a new development, since the 1840’s U.S. military men had been scouting the Islands for suitable sites and in 1866, the U.S.
Minister to Hawai‘i wrote to the U.S. secretary of State convinced that in the event of war with France or Britain, the control of Hawai‘i was "absolutely necessary."\(^{65}\)

While the plantation elites were willing to surrender the territorial integrity of the Hawaiian Kingdom, King Kalakaua refused to agree to the cession of any Hawaiian lands to any foreign country. His unwillingness to acquiesce to their demands renewed their dislike of the King and led to the birth of the Hawaiian League, a pro-annexation group of non-Hawaiian citizens and residents of the Kingdom, established in part to stave off opposition to the renewal of the treaty of reciprocity.\(^{66}\)

Despite his vehement opposition, King Kalakaua would be forced to agree to the cession after annexationists forced a new constitution on him that disempowered the monarch as well as the majority of the Hawaiian and non-white population. The 1887 constitution was partially authored by Lorrin Thurston, and backed by his group the Hawaiian League.\(^{67}\) This constitution, dubbed the "Bayonet" Constitution, reduced the King to a figurehead by mandating that the King seek the authority of the Legislature to organize any military forces and severely diminished the King’s ability to reject laws passed by the Legislature.\(^{68}\)
The constitution also allowed U.S. citizens the right to vote while excluding many Native Hawaiians and Asians. Under the new qualifications, one need only be a male resident of the Hawaiian Islands for three years and of Hawaiian, American or European descent. This excluded anyone of Asian descent and allowed non-citizens, still retaining their citizenship elsewhere, to vote. Additionally, an oath of allegiance to the 1887 constitution as well as literacy in Hawaiian, English or other European language was a prerequisite to vote. This was in fact, a reflection of U.S. domestic policy regarding Asians, more specifically Chinese at the time. Just two years before the expiration of the treaty in 1882, the U.S. passed the Chinese Exclusion Act.

The oath requirement mostly affected Native Hawaiians and others who objected to either the constitution or the methods used to place it in power. Neither would take the oath and compromise their loyalties. The literacy requirement restricted remaining non-Asian immigrants.

As a result of the new precepts of the imposed constitution, Kalākaua was virtually powerless to stop the cession of Pearl River lagoon to the United States. Despite the King's reluctance, in 1887, the convention renewing the treaty of reciprocity was signed with the clause that allowed the US exclusive rights to the harbor. Article 2 of the convention reads...
His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River in the Island of O'ahu, and to establish and maintain there a coaling and repair station for the use of vessels of the US, and to that end the US may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

In this clause, the U.S. was granted three things: exclusive right to (1) enter the harbor, (2) establish and maintain a coaling and repair station, and (3) to "improve the entrance...and do all other things needful." To Nawahī and other native opponents of the 1875 treaty, their predictions were realized in these new clauses. Nawahī was correct in his estimation that reciprocity would only compound U.S. meddling in the sovereignty of the Hawaiian Kingdom.

In the words of Jon Osorio, author of Dismembering Lāhui, "The Bayonet Constitution allowed whites political control without requiring that they swear allegiance to the king." Liliʻuokalani, in her book Hawaiʻiʻs Story by Hawaiʻiʻs Queen, remarked on the origins of the 1887 constitution, "[T]he right to grant a constitution to the nation has been, since the very first one granted, a prerogative of the Hawaiian sovereigns" each of the previous constitutions were initiated by the King and then by the Legislature. The lone exception is the 1887 "Bayonet" Constitution that "was never ratified by any deliberative assembly" nor the King except under severe duress. As to the amendments to suffrage in the Kingdom, Liliʻuokalani wrote...
...supposing I had thought it wise to limit the exercise of suffrage to those who owed allegiance to no other country; is that different from the usage in all other civilized nations on Earth? Is there another country where a man would be allowed to vote, seek for office, to hold the most responsible of positions, without becoming naturalized, and reserving to himself the privilege of protection under the guns of foreign man-of-war at any moment when he should quarrel with the government under which he lived? Yet this is exactly what the quasi Americans, who call themselves Hawaiians now and Americans when it suits them, claim the right to do at Honolulu.  

One of the key figures in Hawaiian resistance to foreign domination during this period was Robert Kalanihiapo Wilcox. The son of an American born Captain and a Maui chiefess, Wilcox was selected by King Kalâkaua to study in a military academy in Italy. Following the 1887 revolt that installed the injurious "Bayonet" constitution as it was dubbed, Wilcox was recalled and returned home to Hawai‘i. He was able to rally loyalists to the Kingdom and organized an armed insurrection, aptly named the "Wilcox Rebellion" to seize back control of the government for the Hawaiian people and their monarch on July 30, 1889. Although the rebellion failed, Wilcox continued to fight for Hawaiian independence and founded Hui Kālai ʻĀina, the Hawaiian Patriotic League. The manufacture of the "Bayonet" Constitution was not the end of political unrest in the Kingdom. Now that the haole elites were in control, they were threatened by the slightest hint of opposition to their dominance. After the death of her brother Kalâkaua in 1891, his younger sister Lili‘uokalani ascended to the
throne of the Hawaiian Kingdom. As the new sovereign she assumed the responsibilities of any Hawaiian chief and sought to give her people what they most ardently desired, a new constitution. Her actions jeopardized the hold the haole elites had on the government and their hostility would ultimately lead to an insurrection and the illegitimate dethroning of the Queen in 1893.

The insurrection of 1893 was the culmination of annexationist efforts both from within and outside the Kingdom. The effects of the U.S. Civil War effectively demonstrated Hawai’i’s dependence on the American market. This dependence grew throughout this period and was further reinforced through the 1875 treaty of reciprocity and its renewal in 1887, which included the cession of Hawaiian territory to the U.S. The 1887 "Bayonet" Constitution disenfranchised the King and his people save an elite few moneyed Americans and Europeans. The 1893 insurrection by haole residents backed by an invasion of U.S. troops was the tenuous bough on which all fates rested.

The first mention of annexation to the U.S. came in the 1850's after France and Britain respectively had threatened to take Hawai’i as a colony. Later, in 1882, near the expiration of the 1875 treaty of reciprocity an Annexation Club was formed and began inquiring in Washington D.C. as to the opinion of annexing Hawai’i. Later, the Club would form the Committee of Public Safety
as a device to convince others of perceived threats towards their lives and property as a result of the Queens attempt to promulgate a new constitution.  

The Committee of Safety was headed by Lorrin Thurston, American naturalized citizen of the Kingdom, who furnished the U.S. State Department with an "explicit statement of plans to uncrown the Queen and collaborated with the American Minister, John Stevens" himself writing continuously to the State Department and often directly to Secretary of State James Blaine regarding both official and unofficial issues.

James Blaine, Secretary of State in 1889 during the Harrison administration and expansionist, had no qualms about annexing other nations such as countries of Latin America to open up new markets for American goods. Hawai‘i was no different.

Upon Lili‘uokalani's installation, she took a tour of the Islands to ascertain the wishes of her people. In her book she remarks on the people's wishes,

Petitions poured in from every part of the Islands for a new constitution; these were addressed to myself as the reigning sovereign. They were supported by petitions addressed to the Hui Kalai 'Āina, who in turn indorsed and forwarded them to me. It was estimated by those in position to know, that out of a possible nine thousand five hundred registered voters, six thousand five hundred, or two-thirds, had signed these petitions. To have ignored or disregarded so general a request I must have been deaf to the voice of the people, which tradition tells us is the voice of God. No true Hawaiian chief would have done other than to promise a consideration of their wishes.
It is clear that the people of the Kingdom were unhappy with the current constitution. They had no control over their own government or who could have a say. Liliʻuokalani decided to act for her people.

Complicating the situation was the passage of the McKinley tariff act in 1890 that imposed high tariffs on foreign goods, eliminated duty on all imported sugar and gave American producers a bounty of two cents a pound. The act wiped out Hawaiʻi’s advantage gained through the 1875 reciprocity treaty and sent Hawaiʻi’s economy into a depression. Plantation owners and factors now joined annexationists believing that the only way to regain such prosperity brought by the reciprocity treaty was to become incorporated into the U.S.

Into this strained situation, Liliʻuokalani plunged with all the good intentions of a loving monarch. John Stevens, U.S. Minister to the Hawaiian Kingdom, relayed a less than subtle warning at his first presentation to the new Queen.

It is my official duty to offer to Your majesty congratulations on your accession to the throne in accordance with the provisions of the constitution of your Kingdom...[and] expresses his earnest gratification that Your Majesty has taken the firm resolution to aid in making your reign a strictly constitutional reign; to maintain the constitutional right of your ministers to administer the laws, and always to acknowledge their responsibility to the Legislature in the performance of their sworn obligations. In the wish thus to respect the supreme authority of the constitution and the laws Your Majesty places yourself in the exalted rank of the best sovereigns of the world, and thus will avoid those embarrassments and perplexities which have so often disturbed the peace and crippled the prosperity of countries not blessed with free and enlightened constitutions...In endeavoring
to make good these auspicious promises, your majesty will have the full
sympathy and the good wishes of the Government which I have the honor to
represent at this capital. 81

His speech hinted that he was aware, if not of her intentions then of the general
feelings of the populace towards the 1887 constitution and those who had forced
it onto her brother. The "Bayonet" Constitution had earned its name by not only
diminishing the King but also the citizens of the Kingdom in favor of an
oligarchic minority.

When word got out that the Queen intended to restore native
participation in government through a new constitution, the annexationist
factions, plantation owners and their agents became increasingly paranoid. They
had inauspiciously joined forces in a distinctly unholy union between greed,
racism and imperialism. As a result, the Queen lived under intense scrutiny, she
writes,

Words of harm towards my person had been openly spoken by the
revolutionists; spies were in my household, and surrounded my house by day
and by night; spies were also stationed at the steps of the Congregational church
opposite my residence, to take note of those who entered my gates, how long
they remained, and when they went out. 82

Interestingly, members of the Committee of Safety were likewise writing to
Minister Stevens describing the fear of discovery and harm they lived under. The
revolution to follow was spearheaded by the Committee of Safety, led by Thurston, and advised by Stevens.83

The Queen, with the aid of armed force and accompanied by threats of violence and bloodshed from those with whom she was acting, attempted to proclaim a new constitution...This conduct and action was upon an occasion and under circumstances which have created general alarm and terror. We are unable to protect ourselves without aid, and, therefore pray for the protection of the United States forces.

It is a matter of history that the fears of one party were unfounded as the fears of the other party proved true. On the afternoon of Saturday, January 14, 1893, the Queen attempted to fulfill the promise she had made to her people and give them a new constitution. On Monday, January 16, a mass meeting was called at 2 p.m. by the Committee of Safety to discuss the "situation." In their proclamation, they declared,

Upon the accession of Her Majesty Lili'uokalani, for a brief period the hope prevailed that a new policy would be adopted (referring to the reign of Kalākaua). This hope was soon blasted by her immediately entering into conflict with the existing cabinet...resulting in the triumph of the Queen...the removal of the cabinet...[and]...the appointment of a new cabinet subservient to her wishes...The recent history of that session (1892) has shown a stubborn determination on the part of Her Majesty to follow the tactics of her late brother and in all possible ways to secure an extension of the royal prerogatives and an abridgement of popular rights...During the later part of the session the Legislature was replete with corruption; bribery and other illegitimate influences were openly utilized to secure the desired end,...not content with her victory Her Majesty proceeded on the last day of session to arbitrarily arrogate to herself the right to promulgate a new constitution, which proposed...to disenfranchise over one-fourth of the voters and the owners of nine-tenths of the private property of the Kingdom, to abolish the elected upper house of the Legislature and to substitute in place thereof an appointive one.84

41
The members of the Committee of Safety named at the end of the proclamation then "arbitrarily" declared the abrogation of the entire monarchy and installed a Provisional Government consisting of themselves and their select supporters. Curiously, the promulgation of a new constitution called for by the people of the nation was treasonous, but the abrogation of the totality of that government by those who had disenfranchised most of the populous of government participation was not.

The Committee of Safety had a distinct advantage, a direct line to pro-annexation officials in the U.S. government. Stevens landed the troops on the USS Boston then stationed in Honolulu Harbor and detachments were placed around the legation and consulate. With the help of these troops the insurrectionists took possession of the Government buildings, archives, and treasury and installed its own leadership. Soon thereafter, Minister Stevens recognized the self-styled "provisional government" on behalf of the United States.

As a result of U.S. involvement in the insurrection of 1893, it violated its treaties of 1849 and 1884 with the Hawaiian Kingdom, and its legal obligations not to use force or conspire against the Hawaiian Kingdom. The 1849 and 1884 treaties were still in force in 1893 and the US "clearly violated its express promise
of 'peace and amity' when it landed 160 Marines in peaceful Honolulu "to provide military support for the overthrow of the legitimate sovereign." In addition, according to international law the U.S. is liable for the acts of its agents.

**Phase III: 1893 to 1898 – The Republic Years**

Immediately following the insurrection, the Provisional Government attempted to promulgate a treaty of annexation with the U.S. However, newly inaugurated President Cleveland replaced President Harrison and he removed the treaty from consideration and appointed Senator James S. Blount as Special Commissioner to Hawai’i to investigate the insurrection. Upon his arrival, Blount directed that the American flag be removed from atop the government building on April 1st, 1893. In his report, Blount declared the overthrow of the Hawaiian monarchy illegal and recommended the restoration of the Queen to the throne. He acknowledged that treaties between the Hawaiian Kingdom and the U.S. as well as other foreign nations were never cancelled, the U.S. government "violated international standards of good faith between sovereigns bound by their treaties, by allowing American citizens living in Hawai’i to increasingly interfere in Hawaiian politics, land ownership and culture."
Cleveland concurred with Blount's report pronouncing, "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."92

In February 1894, a few months after Cleveland's message, the U.S. Senate Foreign Relations Committee, chaired by pro-annexationist Senator John T. Morgan issued a report condoning Stevens' actions in Hawai'i and recognizing the provisional government. In his report, Morgan "classified U.S. relations with Hawai'i as unique and not to be judged by the normal precepts of conduct between nations."93 In his estimation, American officials "have the right to much larger liberty of action in respect to the internal affairs of that country [Hawai'i] than would be the case with any other country with which we have no peculiar or special relations."94 The Morgan Report was highly criticized by Blount as inaccurate; he had neither traveled to Hawai'i nor interviewed any of the opposition.95

In Hawai'i, the "provisional government" heard of Blount's conclusions and quickly declared themselves the "Republic of Hawai'i" in 1894. In the convening of a constitutional convention the new Republic made sure to retain control. Of the 37 members of the constitutional convention, 19 were automatically named; they were the President (Sanford B. Dole), and members of
the executive and advisory councils. The remaining 18 were carefully screened through the requirement of an oath of allegiance, and a certain amount of wealth; this left about 3,000, mostly newly arrived foreigners, to participate in the election.

Native opposition to the new "Republic" and its quasi-election was punctuated by the protests of Hui Aloha 'Āina and its sister organization Hui Aloha 'Āina o Nā Wahine. They sent statements of protest to the foreign ministers of England, France, Germany, Portugal and Japan, as well as the U.S.

The Provisional Government, without even the courtesy of waiting for America's final decision, had been straining every effort to transform themselves into a permanent government, based on the support of Alien bayonets, and are now preparing...to proclaim an assumed Republic, through a constitution which is acknowledged as the most illiberal and despotic ever published in civilized countries.

The constitution made use of the "Mississippi Laws" that kept African-Americans from voting by allowing any voter to be challenged to explain details about the constitution. It also restricted the freedom of the press through laws against any form of "sedition" against the new government.

Despite their protests, the provisional government auspiciously chose the fourth of July to announce the birth of the Republic of Hawai'i. Two days before, the Hui called a mass meeting to protest these actions; between 5,000 and 7,000
people (nearly twice the number who voted) arrived. At this protest, the Hui drafted a resolution stating their intentions.

The Hui Aloha 'Āina, and other patriotic leagues together with the loyal subjects of the Hawaiian Kingdom...do hereby most solemnly protests against the promulgation of a new Constitution formed without the consent and participation of the people

A counter-revolution, led by native royalist Robert Kalanihiapo Wilcox, was scheduled for January 7, 1895. But before they could put their plans into effect the "provisional government's" police were tipped off and they were able to intercept the royalist revolutionaries on January 6th. Subsequently, the Republic placed the Islands under Martial law and approximately 190 suspects were tracked down and detained in the Honolulu jail. Nine days later the Queen was taken into custody under suspicion of misprision of treason and imprisoned in the palace.

While the Republic strengthened its hold in Hawai'i, debates raged on the continental U.S. regarding the U.S. government's roll in the events surrounding the overthrow of the Hawaiian monarchy in January 1893 and any subsequent course of action in regard to the annexation of Hawai'i. Opponents of annexation included continental sugar interests, organized labor, and anti-expansionists. Sugar companies on the continent did not want competition
from Hawaiian sugar. Organized labor opposed the contract labor system in Hawai'i. And, anti-expansionists held that America should maintain its Republican tradition and "forgo a policy of imperialism." Many of these same opponents also cited the multi-racial make-up of the islands' population as a considerable reason not to annex Hawai'i.

In Hawai'i, anti-annexation efforts were led by the native patriotic leagues: Hui Aloha 'Āina for men and women, and Hui Kālai 'Āina, founded by Wilcox after the 1887 "Bayonet" constitution. Together, they organized mass petition drives protesting annexation and calling for the restoration of the Hawaiian government. Over 21,000 men and women signed Hui Aloha 'Āina's petition against annexation. Hui Kālai 'Āina's petition calling for the restoration of the government collected 17,000 signatures. Considering that the total native population in Hawai'i was about 40,000, these petitions were signed by a great majority of the people and over seven times the number of voters in the Republic.

In 1897, McKinley replaced Cleveland as President and a treaty of annexation was signed by Hawaiian annexation commissioners on June 16th but never made it through the U.S. Senate. Arguments against annexation in the U.S. were overridden, however, by the prospect of war with Spain in the spring
of 1898. A congressional report in 1898 confirmed Hawai‘i’s strategic
importance, "It is no longer a question of whether Hawai‘i shall be controlled by
the native Hawaiian or by some foreign people; but the question is, what foreign
people shall control Hawai‘i?" Mackenzie reiterates this sentiment, "Pearl
Harbor, whose military importance had long been recognized, became a primary
objective of annexation." Despite the failure of two treaties of annexation of the
Hawaiian Islands, the U.S. government hurriedly passed a joint resolution
introduced by Nevada Representative Francis G. Newlands annexing Hawai‘i to
the U.S.

The constitutionality of annexing a territory by joint resolution rather than
treaty was heavily debated in Congress. President McKinley feared that under
the circumstances of war with Spain and the possibility of losing a valuable
supply route in the Hawaiian Islands to another foreign nation, a joint resolution
should be adopted instead of a full treaty. Despite the unconstitutionality of
the action, McKinley signed the resolution on July 7, 1898. The abnormal
resolution provided for the cession of the control of the islands from the Republic
of Hawai‘i to the U.S., gave all lands under the Republic to the U.S., cancelled all
foreign treaties, and banned the immigration of Chinese to Hawai‘i and from
Hawai‘i to the U.S.
The U.S. finally solidified its dominion over the Hawaiian Islands. The initial reluctance of the American populace to seize the islands was well founded, as it was contradictory to one of the main tenets of American life: a government of the people, for the people and by the people. It was clear that the vast majority of the people of Hawai'i did not want annexation to the U.S. In fact, they looked to the U.S. for help against the insurrectionists who seized power.

In this period, the independence and sovereignty of the Hawaiian Kingdom was well established. Treaties between Hawai'i and the commercial nations of the world either stated directly or explicitly implied Hawai'i's independent-nation status and are "clear evidence that the U.S. recognized the sovereignty of the Hawaiian Kingdom."\textsuperscript{118} Jon Van Dyke, Professor of Law at the University of Hawa'i William Richardson School of Law, sustains that the Kingdom of Hawai'i was "recognized as an independent nation and a full member of the family of nations."\textsuperscript{119} Today, however, the continuation of Hawaiian independence in the face of U.S. occupation is one of the key issues debated in pro and anti-nationalist circles.
CHAPTER 3: UNITED STATES-HAWAI'I

HISTORICAL/POLITICAL RELATIONSHIP, 1898 TO PRESENT

The fourth phase of U.S.-Hawai'i relations resembles nothing less than a colony initiated by the U.S. joint resolution in 1898 and the imposition of a foreign government through the 1900 Organic Act. This latest phase of U.S.-Hawai'i relations, 1898 to present, was initiated by American involvement in insurrectionist activities against the Hawaiian monarchy and the subsequent seizure and occupation of the Kingdom in 1898. This phase can be divided into three sub-phases: (a) 1898 to 1959 – the Territorial years of occupation, benevolent oppression and direct wardship, (b) 1959 to 1993 – indirect wardship under the State of Hawai'i, and (c) 1993-present – partial acknowledgment of violations by the U.S., continued interference disguised as support towards self-determination for Native Hawaiians.

The sixty-one years between 1898 and 1959 were the territorial years of occupation by the U.S. during which the Federal government implemented a
system of direct wardship over Native Hawaiians typified by the *Hawaiian Homes Commission Act* of 1920.

The *Admissions Act* of 1959 marked the beginning of the second sub-phase distinguished from the first by a system of indirect wardship through the creation of the State of Hawai‘i as a secondary administration. Prompted by the rise of the Hawaiian nationalist movement in the 1960’s and 1970’s, the State and Federal administrations attempted other initiatives toward resolution of native Hawaiian claims such as the establishment of the *Office of Hawaiian Affairs* in 1978. The most influential development came in the form of a legislative apology to the Native Hawaiian people on behalf of the people of the United States in 1993.

The passage of Public Law 103-150, also known as the "Apology" Law, marks the beginning of the third and current sub-phase. However, the U.S. Federal government, and its subordinate derivative, the State of Hawai‘i, continue to interfere with the Hawaiian nation by persisting to impose U.S. domestic laws through Federal and State administrations, such as the bill pending in the U.S. Congress for federal recognition of Native Hawaiians as indigenous peoples of the United States, actively obscuring its violations of
domestic and international laws and acknowledging only a segment of the population (Native Hawaiians) instead of a Hawaiian national entity.

As of 2004, the U.S. Congress established the Office of Native Hawaiian Relations under the Department of the Interior. Comparable to the Bureau of Indian Affairs, the language creating the Office of Native Hawaiian Relations is identical to that in the bill for Federal recognition of Native Hawaiians. Native Hawaiian agencies like the Office of Hawaiian Affairs and the Department of Hawaiian Homelands support the bill for Federal recognition; it seems that the Federal government favors this legislation also evidenced by the establishment of the Office of Native Hawaiian Relations.

In the taking of Hawai'i, the U.S. could not escape responsibility for the detrimental effects of Westernization and subsequent Americanization efforts in Hawai'i on the Native Hawaiian population. Diseases devastated Native Hawaiians; those surviving were faced with landlessness and poverty in their own homeland. Recognizing the Native Hawaiian connection to land, the prescribed remedy was to return Native Hawaiians to the land and to establish a Federal wardship over Native Hawaiian people.120

The 1921 Hawaiian Homes Commission Act (HHCA) was a response to this deterioration of the Native Hawaiian population, culture, and health. Native,
Hawaiians of 50% or more blood quantum could qualify for 99-year leases for $1 a year for residential, pastoral, and agricultural lots. Despite its benevolent intent, HHCA was, in the words of Melody Mackenzie, "a vehicle to continue sugar and ranching leases" and preserve monopolies on prime agricultural lands in Hawai'i. The Act also pigeonholed Native Hawaiians, separating them from the general population and as well as dividing them into two categories: halves (50%+) and half-nots (<50%).

HHCA established a system of direct wardship; as proprietors of the trust, the U.S. Federal government acted as custodians towards Native Hawaiians. The Hawaiian nation, as a political entity was ignored. This direct wardship continued until Hawai'i became America's fiftieth state in 1959. As a condition of admittance into the American Union, the conventions of HHCA were upheld in the 1959 Admissions Act that created the State of Hawai'i. The 1.2 million acres of "public" lands held by the U.S. Federal government were turned over to the State of Hawai'i to be held in trust for Native Hawaiians. Since statehood, Native Hawaiians have lived under a system of indirect wardship administered by the State of Hawai'i as a subordinate to the U.S. Federal government. In the 1960's and 70's, Native Hawaiians began protesting the use and misuse of
Hawaiian lands in a series of engagements centered on land evictions in favor of
development and the island of Kaho'olawe.

In 1978, the State of Hawai'i established the Office of Hawaiian Affairs
(OHA) to act as a liaison agency in the administration of the land trust and an
"entity to receive and administer the share of the public land trust funds
designated for the betterment of the conditions of Native Hawaiians."124 Since its
inception, OHA has had a blotchy administrative record and is often at odds
with other offices in the State government as well as non-governmental
sovereignty initiatives.125 Nevertheless, OHA symbolizes a connection to those
public lands, a beginning to reparations between the United States and Native
Hawaiians, and a kind of forum for quasi-native self-government until the 2000
Rice v. Cayetano ruling, which opened voting for OHA to non-Hawaiians, and
amplified calls for Hawaiian sovereignty.

On January 17, 1993, approximately 15,000 Hawaiians marched through
downtown Honolulu to 'Iolani Palace in commemoration of the centennial
anniversary of the overthrow of the Hawaiian Kingdom. Although the "Onipa'a"

march, organized primarily by the native initiative group Ka Lahui Hawai'i, was
perhaps the largest seen in the history of the State of Hawai'i, it received little
media attention. Nevertheless, it contributed to general awareness of the historical wrongs endured by the Hawaiian nation.

Just a few months after the "Onipa'a" march in 1993, the State of Hawai'i created the Hawaiian Sovereignty Advisory Commission intended to support and promote Hawaiian self-determination by making proposals regarding a future plebiscite to determine Native Hawaiians' thoughts on sovereignty.\(^\text{126}\) Despite considerable opposition, the resultant "Native Hawaiian Vote" was an experiment in self-determination and a sign that the idea of "sovereignty" was more acceptable to the public in the 1990's than it was in the 1960's, 70's or 80's.

Critics of the "Native Hawaiian Vote", like Ka Pākaukau and Ka Lāhui Hawai'i, argued that the State's involvement "amounts to external interference into Hawaiian efforts to reassert their inherent sovereignty"; consequently Ka Lāhui Hawai'i organized a boycott of the vote.\(^\text{127}\) Despite the boycott and a one-year delay, the vote took place and the results were scheduled to be announced in September 1996.\(^\text{128}\) Of the ballots returned, there was a 70-30 split for continuing with the proposed process and electing delegates for a constitutional convention.

A few months after the inception of the Native Hawaiian Advisory Council in 1993, the United States finally acknowledged its involvement and
liability as a result of the overthrow of the Hawaiian government in 1893. On the centennial observation of the dethroning of Queen Lili‘uokalani, President Clinton signed Public Law 103-150, also known as the "Apology" Law. The "Apology" Law was a response to Native Hawaiian efforts both in Hawai‘i and international circles to press demands for redress from the United States. One criticism, especially from Kingdom of Hawai‘i supporters, is that the law is incomplete as it apologizes only to Native Hawaiians and not to the Hawaiian nation as a political entity.

Since 1993, there has been a substantial backlash against the Hawaiian nation as well as Native Hawaiian rights in Hawai‘i. Between 1993 and 2004, there have been two significant cases in the State and Federal courts and two major legislative measures. The 1995 PASH ruling confirmed the existence of dual interests in public and undeveloped private lands in Hawai‘i. The 2000 Rice v. Cayetano ruling allowed non-Hawaiians to vote and run for the Office of Hawaiian Affairs. In anticipation of the Rice v. Cayetano ruling, Hawai‘i’s congressional representatives proposed legislation that would provide recognition for Native Hawaiians as indigenous peoples of the United States on par with other Native American nations. Although this legislation is still mired
in Congress, a bill establishing the Office of Native Hawaiian Affairs at the Federal level passed in January 2004.

This latest phase of the U.S.-Hawai‘i relationship represents the beginning of the colonial relationship between the U.S. and Hawai‘i as well as the resurgence of the rights of the Hawaiian nation and its people. In response, the U.S. government erected a foreign governmental structure upon which it applied its own measures to control and curtail the momentum of the Hawaiian nationalist movement in Hawai‘i. From this point forward, I will deal with different Congressional and State acts that affect Native Hawaiians as well as the cases in the Federal and State courts.

1898 to 1959: The Territorial Years

After the passage of the Newland’s Resolution in July 1898, an interim government was set up until Congress could provide a territorial government. Then, in 1900, the U.S. Congress passed the Organic Act to provide a government for the territory "structurally similar to that of the most states in the union" but reserving the ultimate authority of the US Federal government. The organic Act outlined the conditions of Hawai‘i’s territoriality; U.S. domestic laws were
extended to the new "territory" of Hawai'i, the territorial governor and
supporting government leadership would be appointed by the U.S. President,
the territory may have a delegate in Congress who may debate but not vote, and
the Chinese Exclusion Act was applied in the islands. 131

Despite the problematic circumstances with which the U.S. gained control
of the Hawaiian Islands, the passage of the 1900 Organic Act imposed a foreign
governmental structure on the Hawaiian nation, thereby compounding U.S.
violations of International Law. The U.S., through the actions of its agents,
citizens and with the support of its military forces, seized the Hawaiian Islands.
Now, ignoring that violation, the U.S. fashioned its own colony.

As a result of the 1898 Newland's Resolution, the U.S. Federal government
obtained approximately 1.75 million acres of Government and Crown lands
formerly controlled by the Kingdom of Hawai'i. 132 The 1900 Organic Act
confirmed this cession of land and provided special regulations for the
administration of these lands. In both pieces of legislation, the U.S. Federal
government recognized that these lands were held in a special trust under the
Federal government. The Newland’s Resolution states,

The existing laws of the United States relative to public lands shall not apply to
such lands in the Hawaiian Islands; but the Congress of the United States shall
enact special laws for their management and disposition... (Joint Resolution of Annexation, July 7, 1898).

The Organic Act supplies these special regulations in section 73. These regulations include: the maximum government leasehold is sixty-five years, and all funds from sale or lease of land go to the government of the Territory of Hawai'i.

In the Newland's resolution and the Organic Act, there was established a special trust relationship under the Federal government's proprietorship. An amendment to the Organic Act in 1910 provided that any 25 persons may petition the Commissioner of Public Lands for the title to agricultural homesteads and that no tract of territorially leased government land could exceed 1,000 acres. As leases to most of the approximately 200,000 acres of public land were due to expire between 1917 and 1921 these amendments "threatened to end leasing to sugar and ranching interests and put these lands into public homesteading."

Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act was the culmination of all the "back to the land" programs designed to rehabilitate the dying Hawaiians.
Proponents of the "rehabilitation" of Native Hawaiians believed it was necessary because of the inability of the Hawaiian to succeed in the latter day society. In his testimony to the U.S. House Committee on Territories, Senator John Wise stated...

They [Hawaiians] had very little need for to-day. They knew nothing of competition. They lived and let live. Take these people and place them amongst a bunch of Eastern Yankees, and take the Chinese and Japanese, who are the Far Eastern Yankees. Place the Hawaiians among those people; can you wonder that the Hawaiians did not get more?

Linda Parker, in her book *Native American Estate*, concurred and added that they hoped to produce a "class of small, independent new England-type farmers"; then the Hawaiian race would prosper.¹³⁸

Measures such as these were also a response to the fears of territorial business leaders and plantation owners that Federal-homesteading laws could erase their advantage in leasing ceded lands. The "twinge of guilt" over native deterioration was not the only motivating factor; the Big Five promoted the program "largely because the bill exempted sugar producing lands from homesteading."¹³⁹ Melody MacKenzie, in *Native Hawaiian Rights Handbook*, contends that the 1921 Hawaiian Homes Commission Act "was used as a vehicle to continue the sugar and ranching leases" and "destined to disappoint both its proponents and Native Hawaiian beneficiaries."¹⁴⁰
There was an earlier attempt by the Republic of Hawai‘i in 1895 to provide Hawaiians with land under a general homesteading law. Although Hawaiians were able to obtain over half of these leases many lost their leases "because they could not meet the lease restrictions" or "sold their interests to more wealthy non-Hawaiians for nominal sums."\(^{141}\)

In 1920, the Territorial legislature sent a commission composed of Senators John H. Wise and Robert Shingle, and Representatives William T. Rawlins and Norman Lyman to Washington D.C. to lobby for various resolutions.\(^{142}\) House Concurrent Resolution number 28 (HCR 28) would empower the governor of Hawai‘i to "exempt one-fifth of the highly cultivated lands under general lease from any homesteading laws and continue those leases."\(^{143}\) Senate Concurrent Resolution number 2 (SCR 2) requested Congress to provide "suitable portions of the public land" to be set-aside for "individuals of Hawaiian blood."\(^{144}\) What resulted was one bill combining the two proposed, House Resolution 12683 (HR 12683).

HR 12683 allowed public auction leasing of all, rather than one-fifth of the "highly cultivate public lands", repealed the provision requiring homesteading upon demand by 25 persons and allowed leases to be executed without a withdrawal clause.\(^{145}\) This resolution was received not as a benevolent gesture,
but as an effort "to 'kill homesteading' under the cloak of Hawaiian rehabilitation." Another House Resolution, 13500, sought to extend the exemption to "all cultivated sugar lands", designated lands unsuitable for sugar cultivation as those for Hawaiian homesteading, deleted provisions for additional public lands to be added to the HHCA inventory, allowed homesteading for those of 1/32 blood quantum and shortened the term of lease from 999 years to 99 years.

In the Congressional debates that followed, opponents of the bill, like Representative William Jarrett, characterized the bill as a "joke" meant to cut out homesteading by giving the Hawaiians lands "that a goat couldn't live on" in favor of sugar and ranching interests. Jarrett understood the shortcomings of the bill from the beginning and how it compromised Hawaiian interests. Senate Concurrent Resolution Number 8 (SCR 8) was a compromise negotiated with the sugar and ranching interests: "Native Hawaiian" meant those of 1/2 or more blood quantum, a five-year experimental program was established on 37,900 acres on Hawai‘i and Moloka‘i, and repealed the 1,000 acre limit on corporation leases. Despite its dubious origins, the Hawaiian Homes Commission Act was signed on July 9, 1921.
Primary administrative responsibility over these lands was delegated to the Department of Hawaiian Homelands, headed by the Hawaiian Homes Commission. A Legislative survey done in 1953, the survey team cited administrative difficulties and limited funds as the primary problem areas. In a 1991 report by the Hawai'i Advisory Committee to the United States Commission on Civil Rights called "A Broken Trust: The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians", the Committee concluded that the "United States has failed to exercise its trust obligations to the beneficiaries of the Hawaiian Homes Commission Act." 

The failure on the part of the Federal Government includes the occupation of Hawaiian Homelands "for purposes unrelated to fulfillment of the trust" with "negligible compensation", lack of funding support and the inability of beneficiaries to sue for breach of trust. Administratively, there is no accurate inventory of Hawaiian Homelands and general administrative problems such as "lack of leadership, inadequate staff and bureaucratic inefficiencies" and a "willingness to lease land to non-beneficiaries for purposes of generating revenue." Beneficiaries of the trust have no access to leadership as the Governor of Hawai'i appoints the Commission.
All of these flaws have contributed to a waiting list of applicants over 20,000 names long as of 2002. Some have died waiting for their residential, ranching or farming lands.

As a result of the dichotomous origins of the Hawaiian Homes Commission Act, the act is appealing in its publicized compassion for its efforts in "rehabilitating a people severely weakened and impoverished by loss of land and resources, suppression of native culture, and western-introduced disease" but in reality has done little to fulfill that purpose. Marylyn Vause in her Master's thesis described the rehabilitation program as "the political accident, which enabled these [land] laws to be amended"; its humanitarian motives are a myth. The eighty three-year history of the Commission shows a lack of commitment and willingness to compromise with the beneficiaries, Native Hawaiians. The conflict of interest that governed the creation of the Hawaiian Homes Commission Act has continued throughout the program's history and continues to jeopardize its effectiveness.

Even though the program has achieved few of its objectives of returning Hawaiians to the land and improving social, economic and health status, Hawaiians favor the continuation the program. Despite its problematic origins and subsequent difficulties, the Hawaiian Homes program has provided "a
beginning for rebuilding the native peoples' land base...established a potential resource for a land base...[and] enable them to freely develop their land, offer guidance upon request...and extend capital for their improvements".162

The Statehood Debate

Like the question of annexation to the United States at the turn of the century, the question of statehood for Hawai'i intersected with several issues: racism, war, economics, anti-communist sentiments, and political power plays. Over Hawai'i's sixty years as a territory, factions in Hawai'i and on the continental U.S. debated the merits of admitting Hawai'i into the Union; some changed sides at their convenience. During this long period, between 1898 and 1959, sugar factors reversed their position on statehood when the Jones-Costigan Act labeled Hawaiian sugar foreign, World War II exacerbated already dubious American conceptions of Asians, and the Democratic revolution of 1954 unseated the Republican power monopoly over Hawai'i. Native Hawaiians were divided about statehood, some saw statehood as the end of any hopes of regaining political control, and others saw statehood as a means to topple the haole Republican oligarchy that controlled the Kingdom since 1887. In any case, like the Hawaiian Homes Commission Act, the core debate was never about
addressing Native Hawaiians and their concerns. In fact, this period witnessed massive shifts in power and influence in Hawai‘i and the continental U.S. that virtually ignored Native Hawaiian claims.

Statehood, in conjunction with annexation to the United States, was first discussed in the 1850’s following the French and British encroachments and the President John Tyler extended the Monroe doctrine to Hawai‘i in 1842 implying a special relationship and a warning to other foreign nations. However, Statehood was originally proposed as a means to defeat annexation as U.S. Congress was unlikely to allow Hawai‘i into the Union with a predominately non-white population.163

After annexation in 1898 and the passage of the Organic Act in 1900, the Territorial Legislature initiated a series of seven formal appeals to U.S. Congress to promote statehood in 1903, 1911, 1913, 1915, 1917, 1919 and 1920.164 The last two, in 1919 and 1920, were statehood bills introduced by Prince Jonah Kūhiō Kalaniana‘ole, Hawai‘i’s first royal delegate to Congress.165 Each proposal died in the Committee on Territories and mostly considered "token gestures."166 Sugar and ranching interests in the Territory meant to hold onto their political and economic dominance and, according to Roger Bell in Last Among Equals: Hawaiian Statehood American Politics, "as long as territorial government successfully
defended the interests of this group, statehood was never a realistic proposition.167

Until 1934, this elite class of sugar and ranching owners and factors were opposed to statehood because, as Baldwin advised, "territorial status was preferable to statehood...since the voters of the Islands were not mature enough to elect a safe-and-sane Governor."168 Clarence H. Cooke, another missionary descendent, Republican, President of Bank of Hawai'i and Vice President of Hawaiian Electric agreed that "through appointment of officers by the President of the United States...we have always had a better class of men in these positions (i.e., Governor, Secretary of the Territory and judges) than states enjoyed in their elective systems."169

As a result of the passage of the 1935 Jones-Costigan Act that classified Hawai'i as a non-domestic producer of sugar along with the Philippines and Puerto Rico, sugar planters reversed their position and favored statehood to gain domestic sugar status.170 Since the Organic Act in 1900, Hawai'i's sugar was afforded equal treatment with continental sugar and by 1934 comprised 70% of total exports to the continental U.S.171 Hawai'i had been lumped together with other foreign countries. In reaction to such "discrimination", support for Statehood developed quickly in the islands.172
In a September 1934 article, the Honolulu Star-Bulletin declared that "statehood was no longer solely a political aspiration...as a territory Hawai'i is open to attack...[and] has only one delegate in Congress...as a state, Hawai'i would have immediately a stronger delegation to uphold its rights..."\(^{173}\)

Accompanying these arguments was the old American rallying cry, "no taxation without representation."\(^{174}\) While the sugar factors rushed to Statehood in order to rectify their economic standing, other events tore their monopoly on power out of their hands and placed it into the burgeoning Democratic element in the islands.

The bombing of Pearl harbor on December 7\(^{th}\), 1941 set in motion a set of drastic changes in Hawai'i; the sugar based oligarchy that held control over the Islands was replaced by a military government, and the Nisei (second generation Japanese) generation who fought in the war to prove their loyalty to America would return to effect social reform resulting in the 1954 Democratic revolution that wrenched power away from Republicans.

Immediately following the events of December 7\(^{th}\), martial law was instituted in the Territory. Every facet of public activity was controlled or monitored by the military authorities; public health services, production, wages, prices, prostitution, military tribunal replaced civil courts and civilian authorities.
were consistently overridden.\textsuperscript{175} Martial law meant that the rights of all citizens were "assaulted by the actions of the military in Hawai'i.\textsuperscript{176}

While Japanese internment camps were also in operation on the west coast of America, Hawai'i's extended martial law experience (martial law did not end until 1945) prompted many to view statehood as the only vehicle "capable of averting a possible recurrence of arbitrary action" which included the internment of Japanese and the suspension of civil rights.\textsuperscript{177} While the Republicans retained their base in the business community, the Democratic Party had no real base to speak of except for a handful that met in Senator David Trask's office.\textsuperscript{178} That is until the return of the Nisei veterans. The Republicans were reluctant to absorb Japanese into their leadership, so the Democrats benefited from the Republican's tactical error.\textsuperscript{179}

In the 1954 Territorial elections, "the Republican party was pushed aside by a confident, disciplined Democratic party" and brought "broad demographic and social changes" giving strength to Hawai'i's American-Japanese population.\textsuperscript{180} The election of a predominantly non-Caucasian Legislature disturbed many mainlanders who held onto racist fears of the "Japanese menace."\textsuperscript{181}
Racial arguments against the admission of Hawai‘i as a state were revived by the 1954 elections. Although the newly elected Territorial Legislature was reflective of Hawai‘i’s multi-ethnic population, it was seen as evidence of Japanese control in Hawai‘i and some argued that Hawai‘i was not yet "ready" to become a state. Senator Guy Cordon, chairman of the Senate subcommittee on Territories and Insular Affairs, conducted an extensive investigation in Hawai‘i in January 1948 and appealed for written testimony for or against statehood. Almost one-half of those opposed to statehood cited the racial make-up of Hawai‘i’s population as the reason.

Another concern regarding Hawai‘i’s population combined anti-labor and anti-communist forces, which had more to do with economic concerns than political philosophies. Hawai‘i’s strong labor movement, spearheaded by the International Longshoreman's and Warehousemen's Union (ILWU), threatened the power structure that propped up the haole oligarchic elite to the detriment of Hawai‘i’s labor force. Like other labor unions on the continental U.S., the ILWU was suspected of communist ties. The cold war tensions that gave birth to anti-communism and McCarthyism on the continental U.S. overflowed to Hawai‘i.

Walter Dillingham, President of the Hawaiian Dredging and Construction
Company, linked his opposition to statehood to the political power and alleged "communist infiltration" of the ILWU.\textsuperscript{186}

Although Hawai'i's mixed population and alleged communist ties concerned many in Congress, Hawai'i was still seen as a strategic link in American commerce and Empire building. Locally, the business community continued the rally for "no taxation without representation." Hawai'i delegates to Congress Jonah Kūhiō and Victor Houston believed that "Hawai'i could not achieve optimum economic and social benefits...unless the Territory was transformed into a State."\textsuperscript{187}

For Native Hawaiians, the resentment of haole control seeded during the Kingdom years eventually sparked many Native Hawaiians to look to the future. Fuchs writes, "The coming of statehood which may have crushed lingering hopes to restore the past, also stirred Hawaiians to look to the future."\textsuperscript{188} That hope came from the potential of Statehood to wrest power away from the Big Five conglomerates that had ruled the islands since the 1880's.

Throughout the Territorial period, the citizens of Hawai'i had never been permitted to vote for a President or for their own Governor.\textsuperscript{189} During World War II, Hawai'i became the only American territory to be governed by the military and still, "Hawai'i remained under the constitutional control of
Congress, which could, at anytime abolish the Territorial legislature and local
government and place the Islands under a resident commissioner.\textsuperscript{190} Perhaps as
a State, Native Hawaiians could regain political control, or at least vote for their
choice of governor.

In the end, the question of statehood was put a vote: "Shall Hawai‘i be
immediately admitted to the Union as a State?"

1959 to 1993: Statehood-Indirect Wardship

The results of the 1959 plebiscite ushered in Hawai‘i's Statehood era. In
1959, after over sixty years as an American territory, the U.S. Congress passed
the Admissions Act admitting Hawai‘i into the American union. The act
provided for the transfer of crown and government lands of the Kingdom of
Hawai‘i to the newly formed State of Hawai‘i with the exception of land set aside
by Executive order, or other act of Congress.\textsuperscript{191} The administration of these lands
was transferred to the State of Hawai‘i to be held in trust for five purposes: (1)
support of public schools, (2) betterment of the conditions of native Hawaiians,
(3) development of farm and home ownership, (4) public improvements and (5)
provision of lands for public use.\textsuperscript{192} This sub-phase of the U.S.-Hawai‘i
relationship is characterized by a relationship of indirect wardship of Native Hawaiians, their lands and assets by the State of Hawai‘i as an agent of the U.S. Federal government.

**Office of Hawaiian Affairs**

Between 1959 and 1978, the State of Hawai‘i evidently believed that the Hawaiian Homes Commission satisfactorily fulfilled its trust obligations to native Hawaiians and funneled income and proceeds from these "ceded" lands into public schools and other purposes. The State of Hawai‘i acknowledged two classes of beneficiaries based on the five purposes in the Admissions Act: the general public and Native Hawaiians. The Office of Hawaiian Affairs (OHA) was established in 1978 to "receive and manage any funds or property designated for Native Hawaiians." Although section 5(f) of the Admissions Act defines native Hawaiians (small "n") as those of 50% or more blood quantum, the OHA amendment names two beneficiaries; "n"ative Hawaiians and "N"ative Hawaiians, those with any blood quantum. In this way, the Office of Hawaiian Affairs is another link in the tradition of quantifying and separating out Hawaiians initiated by the Hawaiian Homes Commission Act.
Like the HHCA, OHA was meant to give a measure of self-governance to Native Hawaiians through the creation of a strong, semi-autonomous, self-governing corporate body. The Hawaiian Affairs Committee, chaired by Adelaide "Frenchy" De Soto, was formed at the 1978 constitutional convention. The Committee proposed that, "the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency" and that the board of trustees of OHA should be elected by its beneficiaries, Native Hawaiians.

Davianna McGregor, writing just two years after the inception of the Office of Hawaiian Affairs, expresses the mixed opinions regarding OHA.

Some are suspicious of it becoming another way to channel Hawaiian political activism into the political bureaucracy with the promise of a few programs which will have a limited impact on the Hawaiian community. Others are hopeful that OHA will catapult Hawaiians toward economic well-being and the attainment of the political influence that they once enjoyed.

Since 1980, like the Hawaiian Homes Commission, the Office of Hawaiian Affairs has been a disappointment to Native Hawaiians. Both agencies had great potential to invigorate Native Hawaiian aspirations towards self-governance and political parity. However, perhaps because of the problematic origins of both agencies in Legislative measures making them prone to other influences, they have had only minimal progress towards their stated objectives. Haunani Kay
Trask, prominent scholar and professor at the University of Hawai‘i Center for Hawaiian Studies, views OHA as a powerless extension of the State government that, in fact, supports destructive developments like geothermal wells and a mega resort called West Beach.\textsuperscript{201}

In a similar vein, Jonathan Osorio, in his book \textit{Dismembering Lāhui}, writes,

...many Hawaiians, myself included, still find it difficult to wholeheartedly support the Office of Hawaiian Affairs, an agency that has not always behaved honorably and whose factions and intrigues have provided ammunition for those who oppose native self-government.\textsuperscript{202}

He goes on to say that despite the financial power that OHA and the Department of Hawaiian Homelands (DHHL), the administrative body of the Hawaiian Homes Commission, have come to yield (as of 2003, OHA controls over $340 million in assets and since June 2002, DHHL controls over $500 million in assets and administers approximately 200,000 acres of land) these agencies have never been catalysts for Native sovereignty.\textsuperscript{203} Like Trask and Osorio, Melody MacKenzie is dubious about the Office of Hawaiian Affairs and links its limited successes to problems incurred as a result of State funding.\textsuperscript{204} In fact, the State itself has criticized the agency. In a scathing report by the State of Hawai‘i auditor in March 2001, the State auditor found that OHA failed to "adequately plan to improve the conditions of native Hawaiians and Hawaiians", "uphold its
fiduciary duties”, and adequately oversee the management of the Native Hawaiian revolving loan fund leading to waste and misuse of those funds.205

The details behind OHA's financial sources, like its administrative problems, would haunt the agency in the decades to come. Native Hawaiians are demanding proper management of their lands and assets. And, in 1997, a Big Island rancher would bring OHA's fiduciary resources in the State Legislature to the attention of the U.S. Supreme Court.

Despite these criticisms, or perhaps because of them, OHA has become increasingly active in the pursuit of some form of self-government for Native Hawaiians. After the release of the report of the State auditor, OHA renewed its efforts to correct the errors cited in the report. In OHA's strategic plan for 2002-2007, their mission statement is as follows,

To mālama Hawai'i's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally.

Accordingly, OHA lists the implementation of strategies to protect Native Hawaiian rights and entitlements, advocacy of native rights and the creation of a unified nation as two of ten goals in support of this reinvigorated mission.206
1993 to 2004: Partial Acknowledgement and Political Backlash

The current phase of the U.S.-Hawai‘i relationship begins with the partial acknowledgement of U.S. involvement and liability to Native Hawaiians for the 1893 insurrection that dethroned Queen Lili‘uokalani. Public Law 103-150, also known as the "Apology" Law, apologizes to Native Hawaiians on behalf of the people of the United States for the illegal overthrow of the Hawaiian government. Its passage has incited both progress for Native Hawaiian nationalists as well as a considerable backlash from some in the non-Hawaiian community.

In July 1993, the Hawaiian Sovereignty Advisory Commission was formed by the Hawai‘i State Legislature to determine the will of the Native Hawaiian people regarding self-governance. In 1994, the Commission was transformed into an implementation agency to organize a "plebiscite" for Native Hawaiians. The vote was scheduled for 1995, however, the "Native Hawaiian Vote" was met with considerable opposition in both the Hawaiian and non-Hawaiian communities. Proponents like OHA and the Department of Hawaiian Homelands believed that the vote was the first step towards self-determination. Opponents of the vote, led by Ka Lāhui Hawai‘i, believed that participation in a
vote set up and financed by the State of Hawai‘i would compromise the Hawaiian nation's case for the restoration of sovereignty. The controversy built up to a boycott of the vote organized by *Ka Lāhui Hawai‘i*.

While the "Native Hawaiian Vote" was an experiment in political self-determination, the PASH ruling of 1995 reaffirmed land and access rights for Native Hawaiians codified in Kingdom of Hawai‘i law and upheld in the State of Hawai‘i constitution. In reaction, developers and real estate investors called for regulatory legislation. The Native Hawaiian community protested the bureaucratic regulation of their cultural practices and defeated the measure. ʻIlioʻulaokalani, a watchdog organization geared towards monitoring the Legislature for similar bills, was formed as a result of the community outcry.

The backlash against special rights for Native Hawaiians generated by the "Native Hawaiian Vote" and the PASH ruling was exemplified in the *Rice v. Cayetano* case. When Harold Rice was refused a ballot in the 1996 OHA election, he sued the State citing violations of the 14th and 15th amendments of the United States Constitution. Rice appealed his case through the judicial ranks to the U.S. Federal Supreme Court in 1999. In February 2000, the court ruled in Rice's favor and allowed non-Hawaiians to vote for the trustees of the Office of Hawaiian Affairs. The ruling set a dangerous precedent for future lawsuits challenging the
legality of OHA, DHHL and any other programs and agencies set up to assist
Native Hawaiians as part of the United States' trust responsibilities.

In anticipation of a detrimental ruling in the *Rice v. Cayetano* case, Hawai'i's legislative representatives authored a bill in 1999 to provide Federal recognition of Native Hawaiians as indigenous peoples of the United States. The bill, if passed, would place Native Hawaiian on par with other Native American peoples on the continental U.S. Like the "Native Hawaiian Vote", the bill for Federal recognition divided the Native Hawaiian community. Opponents, like *Ka Pākaukau*, and the *Independent Nation of Hawai'i*, contend that the bill may jeopardize future attempts to achieve self-governance through international avenues and forever stabilize the United States' occupation of Hawai'i.

Proponents, like OHA and DHHL contend that while the legislation may not provide perfect self-governance, it will protect current programs, agencies and legislation created to assist Native Hawaiians. This divisive debate continues as the bill has lingered in Congress in various versions since 1999. Despite the fact that the bill has yet to pass through the House of Representatives and the Senate, the U.S. Federal government established the Office of Native Hawaiian Relations in early 2004 from language identical to a section in the bill for federal recognition (currently S.B. 344). While the Native Hawaiian
community continues to have mixed feelings regarding the bill, the U.S. Federal government seems to be pushing Native Hawaiians along the recognition path.

Public Law 103-150

Public Law 103-150 was signed by then president Clinton in November 1993 approximately ten months after the “Onipa’a” march. Also known as the “Apology Bill" the joint resolution...

apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawai‘i...with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination...expresses its commitment to acknowledge the ramifications of the overthrow...and urges the President of the United States to...support reconciliation efforts.207

This apology was unprecedented in the United States’ history, never before had America admitted to wrongdoing in the incident.208

Furthermore, the legislation contains references to the "conspiracy" and the "active support and intervention by the United States diplomatic and military representatives" that led to the insurrection against the government of Queen Lili'uokalani, and refers to the actions of the United States as "illegal" and "an act of war." The language used clearly refers to the Hawaiian nation as an independent nation-state with a political relationship, but the apology and any
reference to reconciliation pertains only to Native Hawaiians. It is this inconsistency that muddles the true purpose and meaning of the legislation.

**Hawaiian Sovereignty Elections Council**

Prior to the ratification of Public Law 103-150, in 1993, Act 359 was passed in the State of Hawai‘i legislature in order to "facilitate the efforts of [the] native Hawaiian people to determine their own will to be governed by an indigenous sovereign nation of their own choosing...[and] seeks counsel from native Hawaiian people on the process." The Hawaiian Sovereignty Advisory Commission (HSAC) created by the bill was charged with providing a process for a "fair, impartial, and valid election[s]" to "determine the will of the native Hawaiian people" in a plebiscite.

Per the stipulations of Act 359, members of the commission were appointed by then Governor John Waihe‘e from a pool of nominees submitted by various Hawaiian nationalist organizations that included OHA, Ka Lāhui Hawai‘i, the Independent Nation of Hawai‘i, Hawaiian Civic Clubs and the State Council of Hawaiian Homestead Association, all of which were guaranteed a seat on the
Additionally, the commission held seats for at least one member from each of the seven major Hawaiian Islands.

Later in 1994, the Legislature passed Act 200, which changed the commission from an advisory body to an implementing agency and mandated that the newly christened body would be responsible for carrying out the “responsibilities necessary for the conduct of elections and convening delegates”, which included community workshops, advertisement, and voting policies. In addition, the act set 1995 as the date of the plebiscite. The Hawaiian Sovereignty Advisory Commission was now the Hawaiian Sovereignty Elections Council (HSEC).

The controversial plebiscite drew a myriad of criticisms from grass roots Hawaiian nationalist organizations and two lawsuits aimed at stopping the plebiscite because opponents believed that it interfered with Hawaiians' rights to petition the Federal government for sovereignty as a political entity. The main concern stemmed from the State's financial and administrative involvement in the process. The most vehement opposition included Ka Lāhui Hawai‘i and a group formed specifically to oppose the plebiscite, Coalition to Stop the State-Sponsored Plebiscite.
In addition to questioning the State's financial influence, detractors accused the council of attempting to mislead the people through the use of such an uncommon, "weird" word as "plebiscite." Additionally, they found fault with its usage on the grounds that the vote planned by the council and the State was not a true "plebiscite" according to International Law and the State's involvement at any point in the process of decolonization was a violation International Laws regarding decolonization. In a Coalition to Stop the State-Sponsored Plebiscite newsletter, the vote was compared to the 1959 Statehood plebiscite, which not only omitted the option of independence (incorporation or remaining a territory were the only options presented), but was also subject to controversial voting practices. Ideally, negotiations should be between the Hawaiian Nation and the U.S. Federal government, not the State of Hawai'i.

The Independent Nation of Hawai'i requested a legal opinion from Dr. Francis A. Boyle, a Professor of International Law from the University of Illinois at Urbana-Champaign, on the term "plebiscite." In his reply he stated that, "it does not appear that the process described therein would qualify as a genuine 'plebiscite' in accordance with the generally recognized standards of international law and practice." According to Boyle, the U.S. military would have had to withdraw its military forces prior to the vote, and the process would
have to be determinative, what ever the results may be. In addition, "a genuine plebiscite would be supervised by the United Nations", and take place after a period of time during which the people could "engage freely and without fear of threat or intimidation in the process of educating themselves and publicly debating among themselves." Since the *modus operandi* set down by the bills did not comply with any of these conditions, Kanahele requested that "plebiscite" be changed to "vote". Consequently, on February 12, 1996, HSEC announced that they would replace the word "plebiscite" with "Native Hawaiian Vote" to reflect its true purpose.

Critics also argued that "the Commission (and thus the Council) was State controlled and could not properly represent the Hawaiian people" because the State and the Office of Hawaiian Affairs split the bill for the establishment of the Commission and members were appointed by the Governor. The Legislature and the Office of Hawaiian Affairs supported the council financially; therefore the State government could potentially influence the Council. They contended that State money equals State control.

The same bill that changed the HSAC to the HSEC also contained controversial section that was interpreted by opponents to mean that any decision arising from the vote would be moot. Section 14 of Act 200 states,
Nothing arising out of the Hawaiian convention provided for in this Act, or any results of the ratification vote on proposals from the Hawaiian convention, shall be applied to supersede, conflict, waive, alter, or affect the constitution, charters, statutes, laws, regulations, or ordinances of the State of Hawai‘i or its political subdivisions, including its respective department, agencies, boards, and commissions.218

Challengers surmised that the vote was a sham calculated to give the semblance of due process without affecting the State’s control over land and capital. They went further and stressed that participation would play right into what they saw as the State’s predetermined plan to control the sovereignty movement and establish the Office of Hawaiian Affairs as the recognized government body of a newly formed “Nation of Hawai‘i.”

All of these concerns coalesced into two lawsuits filed by three Hawaiians and two non-Hawaiians. Clara Kakalia (a member of Ka Lahui Hawai‘i), Lela Hubbard, Billie Beamer (OHA Trustee), and Stephen Kubota (non-Hawaiian) filed a suit in mid-July 1996 arguing that the appointment of members to the council was unconstitutional, interfered with their right to petition the Federal government for sovereignty and was further proof of State control.219 Lela Hubbard is quoted in the Washington Post saying that the State is “usurping Federal powers by involving itself in a process that could lead to the creation of a sovereign entity.”220 Big Island rancher, Harold Rice (non-Hawaiian) filed his
own lawsuit in the 9th Circuit Court of Appeals in against the HSEC elections as well elections for OHA on the grounds that it used State tax dollars to sponsor a vote open only to Native Hawaiians. Judge Ezra of the Hawai‘i Supreme Court later consolidated these two cases since they both sought an injunction.

While the court cases did not stop the vote, the announcement of the results were delayed a few times. Originally scheduled on September 2, 1996, the anniversary of the birth of Queen Lili‘uokalani, they were delayed by Judge Ezra pending his decision. After he ruled that the vote did not violate the constitution, the results were released to the public.

In response to criticisms regarding the Council's financial ties to the State, the Council countered that, following the same logic, the University of Hawai‘i, the Center for Hawaiian Studies and Ka Lāhui Hawai‘i and others who receive funds from the State and / or Federal government should also be suspect. In an attempt to allay fears, the commission volunteered to step down in favor of an elected board in 1994. However, at a meeting in February 1994, "189 Hawaiian groups...voted overwhelmingly in favor of maintaining the present commission." To address the alarm raised over Section 14 of Act 200, the council argued that section 14 of Act 200 "only provides that actions taken as a result of the Act
do not automatically change the Hawai‘i Constitution, state laws, ordinances, rules or regulations. In effect, section 14 states only that there must be negotiations between the future "Nation of Hawai‘i" and the State before the governments can agree and subsequently change the State constitution to allow for such agreements. The council saw this clause as an effort to protect the vote and the resulting convention from court challenges and assume an incremental process.

In regards to International Law, the Council maintained, "the U.S. government is charged with accepting as a sacred trust 'the obligation to promote to the utmost...the well being of the inhabitants and to this end to promote constructive measures of development.'" In addition, the Council interpreted Chapter XI, Article 73 of the United Nations Charter and other resolutions pertinent to non self-governing territories to mean, "in both areas of decolonization and indigenous peoples' rights, governments are called upon to be active in the promotion of self-governance and the protection of rights, even to the extent of providing the necessary resources in order to achieve such results." The government that is at fault should be made to contribute to the process of restoration of and reconciliation with the "Nation of Hawai‘i."
Despite numerous debates the council began registering voters in early 1995. In the middle of the registration process, the new Governor, Benjamin Cayetano, citing economic hardship, withheld funding for the council, which consequently halted the process and set the vote back one year to 1996. Meanwhile, the *Ka Lāhui Hawai‘i* intensified their anti-"Native Hawaiian vote" campaign calling for a boycott. As the ballots were mailed out in July of 1996, *Ka Lāhui Hawai‘i* specifically called for the ballots not to be sent to the HSEC offices but to *Ka Lāhui Hawai‘i* main office in Hilo, Hawai‘i to show support for the boycott.

Of the ballots returned, approximately 73% voted "YES" and 27% vote "NO". A 70-30 split for continuing with the proposed process and electing delegates for a convention. In spite of the positive results announced, the outcome of the vote is highly questionable. Whether it was the work of the opposing campaign, complacency, or ignorance is not clear. What is clear is that of the estimated 200,000 Hawaiians both in Hawai‘i and elsewhere, 81,598 (40% of total) ballots were sent out and only 30,423 (15% of the total) valid ballots were returned. It could be argued that the initial low number of registered voters was due to the difficulty of reaching the Hawaiian population now residing on the continental U.S. and in other countries. Nevertheless, even when using 81,598 as
the total population only produces 37% participation, which is still not a
majority.

Given the low numbers, perhaps HSEC should have invalidated the vote
and halted the process for lack of participation, instead the council made two
crucial mistakes. First, by altering the language of the voting policy to base the
results on the "majority of votes cast" instead of the majority of the population.
Second, by continuing on and scheduling the elections of delegates for a
Hawaiian convention despite the disparaging numbers. Together, these actions
seemed to confirm the opposition’s suspicions. Furthermore, in 1995, an
independent non-profit organization called Hā Hawai’i was established to raise
one-third of the cost for the elections of delegates after the vote. This also led
skeptics of the vote to suspect that the vote was prearranged. Even after the
Council’s sunset in December 31, 1996, Hā Hawai’i continued and essentially
took over where the council left off carrying out the planning of the delegate
elections.

The Native Hawaiian Vote was an experiment in self-determination and a
sign that the idea of “sovereignty” was more acceptable to the public in the
1990’s than it was in the 1960’s, 70’s and 80’s. In the earlier decades of the
modern sovereignty movement, “sovereignty” was a daunting term, for many
the notion of Native Hawaiians running a country was the stuff of lu'au (party) lore. Since the passage of Public Law 103-150, the overthrow of Kingdom of Hawai'i and Native Hawaiian claims were valid, historical factors.

Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission

While the "Native Hawaiian Vote" controversy concerned the political rights of Native Hawaiians, the Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission ruling in 1995 reaffirmed Native Hawaiian access rights to land and natural resources in undeveloped areas. Developers, investors, large property owners and lenders were concerned that access rights for Native Hawaiians, upheld since before the establishment of the Kingdom of Hawai'i were encroaching on their rights as property owners. Subsequently, they called for legislative regulations on these rights. However, the Native Hawaiian community stood firm against the regulation of their access to natural resources and defeated the regulatory bills.

Even after the implementation of a Western-style private property system in 1848, land tenure in Hawai'i retained some of the basic rights of access and gathering of the native-communal system. Although the ali'i (chiefs) yielded to
the new system in the 1848 Mahele, they were able to insure that the rights of the people to access the necessities of life remained intact through the formalization of these rights within the new laws. In the early years after the change over, conflicts erupted mainly between plantation owners and homesteaders as the former jockeyed for agricultural land to plant cash crops and the later struggled to retain their lands. The discord continued through the rise of the sugar and pineapples industries and into the emergence of tourism as a major economic force in the 1960's and 1970's.

Often referred to as "access rights", these rights are rooted in the ahupua'a system of land management utilized in Hawai'i for centuries. Each resident of an ahupua'a (sub-division usually running from the mountains to the ocean) had the right to access the materials necessary for their lifestyle and well being of their family. When the laws of the Kingdom were codified in 1840, tenants of all ahupua'a continued to exercise their rights and utilize surrounding resources. Later, when the Kingdom chose to switch the land tenure system from communal to fee simple, the Board of Commissioners to Quiet Land Titles adopted a principle in 1846 stating:

But even when such lord shall have received an alodial title from the King by purchase or otherwise, the rights of the tenants and subtenants must still remain unaffected, for no purchase, even from the sovereign himself, can vitiate the
rights of third parties. The lord, therefore, who purchased the allodium, can no
more seize upon the rights of the tenants and dispossess them.\textsuperscript{277}

These same rights were reiterated on many of the Māhele land awards and Royal
Patents, as well as within the Kuleana Act of 1850. Section 7 of the Kuleana Act
maintains that:

\begin{quote}
When the landlords have taken allodial title to their lands, the people on each of
their lands shall not be deprived of the right to take firewood, house timber, aho
cord, thatch, or ti leaf, from the land on which they live...[and] also have a right
to drinking water, and running water, and the right of way.\textsuperscript{278}
\end{quote}

This same section of the Kuleana Act is presently part of the Hawai‘i Revised
Statutes.\textsuperscript{279}

Today, the right to access an undeveloped area for cultural, religious, or
subsistence purposes is guaranteed in the Hawai‘i State Constitution and the
Hawai‘i Revised Statutes. Article XII, section 7 of the State Constitution reads:

\begin{quote}
The State reaffirms and shall protect all rights, customarily and traditionally
exercised for subsistence, cultural and religious purposes and possessed by
ahupua‘a tenants who are descendents of native Hawaiians who inhabited the
Hawaiian Islands prior to 1778, subject to the right of the State to regulate such
rights.\textsuperscript{280}
\end{quote}

Throughout the history of Hawai‘i, these basic rights of access have been
upheld through adopted principles, legislation and laws. However, these rights,
rooted in Hawaiian culture and history, are antithetical to customs of the
American market economy and often conflict with the development and tourist industries.

In 1990, a development company, Nansay Hawai‘i, Inc., began plans to build a resort in Kohanaiki in Kona, Hawai‘i, which would have destroyed the fishponds in the area utilized by families that gathered opae ‘ula (red shrimp) within its walls.

One family in particular involved itself with the fight for access to and the integrity of the fishponds, the Pai ‘ohana (extended family) who acted as kahu (guardian, custodian) of the fishpond and nearby heiau (place of worship). The developer Nansay Hawai‘i Inc. applied for a Special Management Area (SMA) permit to begin building. The Pai ‘ohana joined with the community group, Public Access Shoreline Hawai‘i (PASH) and sought standing for a contested case hearing against Nansay challenging the issuance of the permit. The Hawai‘i County Planning Commission (HCPC) denied their request and granted Nansay a permit.

Undeterred, PASH appealed to the circuit court, which then instructed HCPC to hold the hearing and allow the group standing. Similarly, when Nansay and the HCPC appealed to the Intermediate Court they were again instructed to consent to the hearing. Finally, in May 1993, Nansay and HCPC
appealed to the Hawai‘i Supreme Court. Subsequently, in August 1995, the Hawai‘i Supreme Court reaffirmed the findings of the lower courts and found that "PASH sufficiently demonstrated standing to participate in a contested case", based on the assertion that its members included "native Hawaiian[s] who [have] exercised such rights for subsistence, cultural, and religious purposes in undeveloped lands." Subsequently, Nansay withdrew its application.

After five years of fighting with the HCPC and Nansay, during which the Pai ‘ohana was forcefully evicted from their home despite legislative resolutions passed in support of the family, the Pai ‘ohana (family) and PASH successfully retained their gathering rights.

The decision, referred to as the PASH decision (also the Pai decision and the Kohanaiki decision), created a backlash in the investment and development communities. Property owners, investors, developers and lenders were concerned that a wave of claimants could be granted standing and cause lengthy and costly delays in development projects, which in turn would deter the future development of businesses and housing. Additionally, there were concerns about a possible reduction in land values subject to traditional and customary rights, which would in turn affect insurance and fee title. Furthermore, the property owners and developers raised questions about liability and trespassing.
enforcement. In a summary of community workshops put together by the Kohanaiki Study Group, one of the speakers stated that financing for two west Hawai‘i projects (a HUD housing project and an ‘Ouli project) were rejected because the lands were subject to traditional and customary practices.  

The building industry communicated their concerns to the State Legislature and requested the implementation of regulations to ease their distress at the perceived negative impacts of the PASH decision. Hence, various proposals were submitted during the 1997 legislative session: Senate Bill 8 (S.B. 8), House Bill 1920 (H.B. 1920), and House Bill 1536 (H.B. 1536).  

Both S.B. 8 and H.B. 1920 proposed complex registration processes and methods for the regulation of permits issued to practice traditional and customary rights on undeveloped private property. At the same time, H.B. 1536 proposed to incorporate a Native Hawaiian cultural impact statement in the land use approval process. The twin bills S.B. 8 and H.B. 1920 were a direct result of the anxiety of the business community brought by the PASH decision.  

Among the requirements in this process was proof of Hawaiian ancestry and prior utilization of the particular resource for the same purposes, and a description of the land in question. Developers were seeking to protect their investments by asking potential users to spell out exactly what, when and how
they planned to harvest flora or fauna on a property. From the development community's point of view, Native Hawaiian access rights are an infringement on their property rights and civil liberties as prescribed in the American system. The fact that practitioners did not need permission from landowners to gather these resources worried them. Would there now be droves of Hawaiians roaming the hillsides and jumping fences to collect these items? Would hazy fee titles spook current investments and discourage future ventures? How would they know who is an authorized user and who is trespassing? All of these questions led to the creation of S.B. 8 and H.B. 1920.

Whereas access rights are guaranteed in the Hawai‘i State Constitution, previous cases have challenged the details and applicable situations and have set certain precedents. For example, in Kalipi v. Hawaiian Trust Co., Ltd., the court ruled that the "lawful occupants of an ahupua‘a may, for the purposes of practicing native Hawaiian customs and traditions, enter undeveloped lands within the ahupua‘a to gather those items enumerated in the statute."¹²³⁷ A decade later, in Pele Defense Fund v. Paty, the court ruled "native Hawaiian rights...may extend beyond the ahupua‘a in which a native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner."¹²³⁸
As compared to these cases, the PASH ruling expanded the application of access rights. It eliminated the ahupua'a residency requirement and modified the "undeveloped land" requirement established in both the Kalipi and the Pele case to read, "previously undeveloped or not yet fully developed" in regards to what lands can be accessed. It also broadened the definition of traditional and customary rights and provides that these rights are "not subject to abandonment on account of non-use." Perhaps the most troublesome assertion made by the court is that in light of the unique historical context of Hawai'i and relevant legal developments, the "western concept of exclusivity is not universally applicable in Hawai'i." Property owners, developers and investors who are accustomed to the classical patents of the western property, are sometimes surprised to learn that they have limited property interests in certain categories of lands. In addition to their concerns with the concept of limited property interests they also had concerns regarding the practical application of these rights, thus the birth of S.B. 8 and H.B. 1920. These bills were an attempt to regulate who could utilize access rights, how they were to proceed, where they could go as well as determine which practices were appropriate.

The Hawaiian community strongly opposed the regulation of traditional and customary practices. While the developers argued that Hawaiian
practitioners should have to prove not only their genealogy but also the
genealogical history of the practice to be engaged, the Hawaiian community
argued that these rights have always been in existence and submitting to a
registration and regulatory process would ultimately eliminate these rights. The
bill put the burden of proof on the Hawaiian people and criminalized any who
would not follow procedures to get a permit to practice rights that already
existed in State law.

With these concerns in mind the Hawaiian artisan community, primarily
led by kumu hula (hula masters), lobbied the Legislature to kill the bills. Their
efforts netted hundreds of participants who filled the halls of the Capitol
building with a cacophony of defiant chants. In the end, the Hawaiian
community was successful in their campaign and the bills never passed out of
committee.

As a result of the bills' defeat, the legislature called upon the Office of
Planning to study the unresolved questions stemming from the PASH decision;
House Resolution 197 was the result of that request. It directed the Office of
Planning to "facilitate discussions between all affected parties." In compliance
with H.R. 197, the Office of Planning designed a three-phase process that began
in the recruitment of knowledgeable individuals who would discuss and
document the issues raised by the community.\textsuperscript{242} They then organized ten workshops around the State from which they could report their findings to the legislature. Of the major themes discussed were, land rights and responsibilities, stewardship, the need for education on traditional and customary rights, ways to resolve disputes, land transactions, uncertainty of the number of claimants, liability, and illegal denial of access rights.\textsuperscript{243}

Through this process the Office of Planning hoped that more open communication and awareness of the situation could help to resolve the issue. The workshops were open to any who wanted to attend; the majority was Hawaiian. For the Hawaiian people, it seemed the discussion was moot. The laws existed and the landowners should be educated about these issues and respect the rules of the land. Another concern of the Hawaiian people was the preservation of a lifestyle in rural areas. Many communities still enjoy pristine environments and do not want their areas to become like the urban sprawl of Honolulu. They also expressed weariness about having to constantly explain and justify their existence. Since then, the Hawaiian community and the development community have watched each other carefully.

ʻIlioʻulaokalani is a watch-dog organization of kumu hula (hula masters) and others in the artisan community that grew out of this confrontation between
Native Hawaiian cultural practitioners and the development community. To date, ʻIlioʻulaokalani still actively supports Native Hawaiian rights in various areas.

*Rice v. Cayetano*

The "Native Hawaiian Vote" controversy was intersected by the most deleterious court case in recent history for Hawaiians and indigenous peoples everywhere, *Rice v. Cayetano*. In the course of the suit, many in the Hawaiian community feared that the U.S. Supreme Court, in siding with Rice, would dismantle the Office of Hawaiian Affairs, Alu Like, the Department of Hawaiian Homelands and any other State or Federal programs intended to assist Hawaiians in varying capacities. In this instance the court ruled narrowly, choosing to address only the issue of voting rights in the OHA elections. Hence, non-Hawaiians are now allowed to vote for trustees of OHA.

The plaintiff, Harold Rice, was familiar with the modern Hawaiian movement towards self-determination as he was one of the plaintiffs in the case seeking an injunction against the Hawaiian Sovereignty Elections Council to stop the "Native Hawaiian Vote" in 1996. This time, when he requested a ballot to
vote for trustees of the Office of Hawaiian Affairs, he was turned away because he was not of Hawaiian ancestry. Upon refusal, Rice, a non-Hawaiian Big Island rancher and 5th generation descendent of missionaries, filed a lawsuit against the State of Hawai‘i challenging the State’s Hawaiians-only voting policy for OHA.

In April 1996, citing the 14th and 15th amendments of the U.S. Constitution, Rice alleged that the Hawaiians-only voting policy of the Office of Hawaiian Affairs was racist and discriminatory because eligibility rested on whether or not one was a descendent of the peoples inhabiting the Hawaiian Islands in 1778. While his 1996 case against the HSEC was unsuccessful, this latest case against OHA became increasingly menacing to Native Hawaiians as it rose through the judicial ranks and finally reached the U.S. Supreme Court in March of 1999.

In its initial stage, the Federal District Court determined that "[the U.S.] Congress and Hawai‘i have recognized a guardian-ward relationship with the Native Hawaiians, which is analogous to the relationship between the United States and Indian tribes." Therefore, the court concurred with the State’s reasoning that the voting scheme was "rationally related to the State’s responsibility under its Admission Act to utilize a part of the proceeds from certain public lands for the Native Hawaiian benefit."
Having lost his bid at the local level, Rice petitioned the 9th Circuit Court of Appeals. However, the Circuit Court affirmed the decision of the lower court and ruled that the beneficiaries of the trust (Native Hawaiians) should be the one to decide who the trustees ought to be. Undeterred, and fostered by the Coalition for a Color-Blind America (an anti-affirmative action group that prescribes to a color-blind approach to constitutional law) Rice appealed to the U.S. Supreme Court and was granted a hearing. On February 23, 2000, four years after the original case was brought to suit, the U.S. Supreme Court ruled 7-2 in favor of Rice and held that the denial of Rice's right to vote in OHA trustee elections violated the 15th amendment of the U.S. Constitution.

This controversial ruling jarred the Hawaiian community, sparked debates over discrimination, native rights in the U.S., the status of Native Hawaiians today, and subsequently opened the door for other, more damaging, challenges to Hawaiian rights and remaining assets.

Rice asserted that the State’s practice of excluding non-Hawaiians from voting for the trustees of the Office of Hawaiian Affairs is "racist and discriminatory" based on the 14th amendment's "equal protection clause" and the 15th Amendment's prohibition against racial discrimination. His lawyers argued that his exclusion from the voting process based on his bloodline violated
his civil rights as a citizen of the United States and equated the Hawaiians-only policy with the nepotism practiced in the American South in the wake of the Civil War over a century earlier. And, since the Office of Hawaiian Affairs is essentially a State sponsored agency, all residents of the State of Hawai'i should be able to vote for its trustees. Seven of the nine justices of the United States Supreme Court concurred with Rice’s argument contended that "ancestry can be a proxy for race" and "using racial classifications is corruptive of the whole legal order democratic elections seek to preserve." In effect, they surmised that the State restriction is race based and therefore violates the Fifteenth Amendment.

In addition, his lawyers also argued that unlike Native Americans, Hawaiians are not a sovereign tribe but "ancestral residents" therefore, not subject to the same special privileges. While Native Americans are mentioned in the U.S. Constitution Hawaiians are not included in this distinction, thus they cannot be afforded the same special status and do not have a "trust" relationship with the United States. Even if there existed a "trust" relationship, they argue, the elections for the trustees of the Office of Hawaiian Affairs are "elections of the State, not of a separate quasi-sovereign, and they are elections to which the Fifteenth Amendment applies." They also questioned the alignment of interests between the fiduciaries and the beneficiaries citing that while the bulk of the
assets are earmarked for "native Hawaiians" (those of no less than 50% Hawaiian blood quantum), the State allows "Native Hawaiians" (those of less than 50% blood quantum) to vote for trustees. Finally, the justices remarked that the argument put forth by the State "rests on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters."

Some analysts are hopeful that the case will enable them to take a stronger stance against racial classifications and preferences and instead prescribe to a "color-blind" approach to constitutional law. They warn that such programs, if allowed to continue, would result in the "wholesale balkanization" of the U.S. and "undermine fundamental concepts of equality in America."

There is a consensus among all of the arguments against Rice's case that the Hawaiians-only voting policy cannot be understood without reference to Hawai'i's unique historical situation or the purposes of the voting policy that arose out of the United State's documented affiliation with the architects of the overthrow of the Kingdom of Hawai'i which continued through the establishment of the Office of Hawaiian Affairs into the present. While Hawaiians are not specifically mentioned in the U.S. Constitution, there is a
demonstrable historical precedence that parallels the relationship between Native Americans and the U.S. Federal government.

By the mid-1800's, the Kingdom of Hawai'i was an independent nation recognized by all the major powers of the world, including the United States. The Kingdom of Hawai'i also entered into treaties of friendship with several of the major powers, including the U.S. Hawai'i, by virtue of its ability to enter into treaties with other nations, fundamentally existed on the same political and legal plane as France or Spain, for example. In 1893, the lawful Queen of the Kingdom of Hawai'i was illegally overthrown by a small group of foreign and naturalized citizens (9 of the 13 were American) with the help of American troops violating U.S.-Hawai'i treaties of friendship as well as accepted International Law.

Then in 1898, the Republic of Hawai'i (so re-named after the insurrectionists were able to solidify control) expropriated 1.8 million acres of land and ceded it to the United States. In the same act that established the Territory of Hawai'i, the Congress placed those lands under control of the territorial government "until otherwise provided for by Congress." 256

Twenty years into territorial rule, confronted with the realities that Hawaiians had been "frozen out of their lands and driven into the cities" Congress provided an act to set aside 203,500 acres of land to provide farms and
residences for Hawaiians to be administered by the Hawaiian Homes Commission in order to fulfill the accepted responsibility of the United States to assist in the goal of rehabilitating the native peoples and culture. Thirty-nine years later, in 1959, Congress required the newly formed State of Hawaiʻi to adopt this act as a condition of statehood in §4 of the Admissions Act. In addition, §5 of the same act conveyed 1.2 million acres (known as ceded lands) to the State of Hawaiʻi to be held in trust "for the betterment of the conditions of native Hawaiians" and certain other public purposes.

In 1978, in a constitutional convention of the State of Hawaiʻi, the Office of Hawaiian Affairs was established as a "means of fulfilling its inherited obligation from the federal government" by a vote of the majority of the entire population of Hawaiʻi; most of which are non-Hawaiian. OHA administers the monetary assets held in trust by the state for Hawaiians and funds various support and aide programs providing supplemental health care, scholarships and lending for all Hawaiians. It is meant to serve as a liaison agency between the State government and the Hawaiian people and as such, the population of the State of Hawaiʻi not only saw fit to establish such an agency but also reasoned that the beneficiaries of the trust should be the ones to control it. In addition, the OHA statute provides that the agency be held "separate" and "independent of the
It is logical then that the trustees would reflect the interests of the trust beneficiaries, and likewise be beneficiaries themselves. Following this line of reasoning the OHA trustees should be Hawaiian.

The special relationship was surmised explicitly in 1993 by Congress in a joint resolution that contained a formal "apology to native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai‘i" and acknowledged that 1.8 million acres ceded to the Federal government was taken "without the consent of or compensation to the Native Hawaiian people of Hawai‘i of their sovereign government." Additionally, Public Law 103-150 (often referred to as the Apology Bill) urged the Federal government to reconcile with the Hawaiian people and acknowledged their part in the overthrow. Finally, there are more than 150 laws and statutes passed by the U.S. Congress that include Native Hawaiians as part of the class of Native Americans benefited.

The State argues that the Office of Hawaiian Affairs and other programs like it were created as a means to fulfill the trust obligation established by the historical record beginning in 1893 through the present. In his dissenting opinion, Justice Stevens addressed the contention that the elections for OHA are
elections of the State and not of a quasi-sovereign by quoting Judge Rymer from the 9th Circuit Court of Appeals:

The Special election for trustees is not equivalent to a general election, and the vote is not for officials who will perform general governmental functions in wither a representative of executive capacity.

In effect, the trustees are elected for a singular purpose, to administer the trust for Hawaiians and have no influence over other government functions. Given the restricted power of the trustees to that which concerns the trust and its beneficiaries it follows that the election process does not interfere directly with other offices.

In regards to the alignment of beneficiaries to trustees, Justice Stevens reasoned that the mismatch "only underscores the reality that it cannot be purely a racial interest that either the trust or the election provision seeks to secure; the political and cultural interests served are – unlike racial survival – shared by both native Hawaiians and Hawaiians."264

Lastly, Stevens summed up his stance; "the Court's holding today rests largely on the repetition of glittering generalities that have little, if any, application to the compelling history of the State of Hawai‘i."265 The plaintiff's case argues that it "rests on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters." Stevens and
other supporters of the State’s argument assert that this statement is a mismatched analogy irrelevant to the purpose of OHA and its voting procedures. For all intensive purposes, OHA was set up as a trust for Hawaiians. As Hawaiians are the beneficiaries it follows that they should be the ones to decide what happens to the trust as well as who to elect as a trustee. The State argues that Rice’s premise ignores the differences between the civil war measure and Hawai’i’s history and rests its case on the “glittering generalities” and sentiments of "reverse-racism".

The final determination of the court brought with it waves of aftershocks, both in the Hawaiian and other indigenous communities, that threatened OHA and other programs set up to assist Native Hawaiians by providing "grist for more legal challenges" against their very existence and "upend laws that also allow native Alaskans and native Americans to restrict participation in some of the elections they control." Theodore Olsen, Rice’s attorney, announced that he intends to file new suits to dismantle all federal and state sponsored native Hawaiian programs, including OHA. And, the new suits came almost immediately, riding the coat tails of Rice’s success. Following the Rice decision, another case was successful in allowing candidates of any race to run for
trustees. Charles Ota was the first non-Hawaiian elected to the board in the 20-year history of the agency.268

Federal Recognition of Native Hawaiians

The term "federal recognition" is used to "describe the government-to-government relationship between the federal government and Native American governing bodies in a political relationship with the United States."269 An Indian nation is deemed "recognized if...

1. Congress or the executive created a reservation for the group with by treaty, by statutorily expressed agreement, or by executive order or other valid administrative action; and
2. the United States has some continuing political relationship with the group, such as providing services through [federal agencies].270

Federal recognition of Native Hawaiians as indigenous people of the United States would afford Native Hawaiians rights and protections on par with other native nations on the continental United States. Recognized Native American nations have rights to self-government and control their own land bases on the continental U.S.

In anticipation of a detrimental ruling in the Rice v. Cayetano case, Hawai‘i’s Congressional delegation initiated the process for obtaining Federal
recognition of Native Hawaiians in 1999 on the basis of the legal and political relationship established through U.S. domestic legislation since 1893. Federal recognition under U.S. domestic laws would protect programs such as OHA that were established to address the needs of Native Hawaiians and afford some measure of autonomy to Native Hawaiians in the eventual establishment of a Native Hawaiian Governing Entity. After a series of community Reconciliation Hearings held in December 1999, Senate Bill 2899 was drafted. Le'a Malia Kanehe, author of "The Akaka bill: The Native Hawaiians' Race for Federal Recognition", characterized the bill as "an attempt to clarify the official policy of the Untied States with Native Hawaiian peoples as based on a special trust relationship" that "establishes a process for federal recognition of the Native Hawaiian government."

After the first "Akaka" bill, named for its initial sponsor Hawai'i's Senator Daniel Akaka, was introduced, it was met with both resistance and support in the Hawaiian and non-Hawaiian communities. Many nationalists in Hawai'i believe that Federal recognition is the most feasible option for Native Hawaiians given the precedent set by Native American nations on the continental U.S. Opponents of Federal recognition such as the group Ka Pakaukau, believe that Federal recognition in such a manner would constitute a violation of Hawaiian
sovereignty and not an exercise in self-determination as any Native Hawaiian Governing Entity would remain under the jurisdiction of the U.S. Department of Interior.

As the bill has evolved over the last five years, the main purpose and criticisms have generally remained the same. For some the "Akaka Bill", was too ambitious and for others it was insufficient to restore the rights of Native Hawaiians to self-determination and self-government.

Federal recognition for Native Hawaiians is built upon the acknowledgements and pledges in Public Law 103-150 and would, in effect, shield current programs and agencies from future detrimental cases as Native Hawaiians would then be afforded the same protections enjoyed by Native Americans and Native Alaskans. Proponents of a bill for Federal recognition, are optimistic that the bills’ passage would ensure the survival of various, recently challenged Native Hawaiian programs and agencies which include but are not limited to the Office of Hawaiian Affairs, Alu Like, Department of Hawaiian Homelands, The Kamehameha Schools and other private trusts. The Office of Hawaiian Affairs has taken the lead in the push for Federal recognition, and as a result, has been accused of pushing for Federal recognition in the interest of self-preservation. The Office of Hawaiian Affairs has stepped up its educational
campaign and sponsored a forum with educated members of the Hawaiian community both for and against the bill as well as produced a weekly show called "Ho'oulu Lāhui Aloha – Build a Beloved Nation." Its youth oriented division "Ke Au Hou – A New Generation", encourages the younger generation to learn about and participate in the governance process.

Hawaiian nationalist groups like Ka Pākaukau, and other detractors of the bill present numerous objections to either the idea of Federal recognition or specific points in each bill proposed. Among the criticisms leveled are; (1) a lack of detail regarding lands and monetary compensation, (2) the newly formed "Native Hawaiian Governing Entity" would be subordinate to the United States Department of Interior (DOI), thus cannot be congruent with the process of true self-determination or self-government, (3) the acceptance of such a bill by the Native Hawaiian people may be interpreted as a settlement and block other international avenues towards independence from the United States, and (5) it only protects the current programs and agencies. Although the bill for Federal recognition would indeed defend existing agencies and programs, the cost of this "protection" is too high.

In recent years, Native Hawaiian programs and agencies have come under increasing legal attacks citing racist preferences, bolstered by the Rice v. Cayetano
ruling that challenge the very existence of those programs. Federal recognition would afford a certain amount of protection from future lawsuits as well as more control over the lands and assets these programs currently administrate. It does not, however, guarantee self-government for Native Hawaiians. All organic laws made by the Native Hawaiian Governing Entity are subject to approval by the U.S. Department of Interior. And, like so many times in Native American history, the Federal government has altered the terms of such agreements without the assent of national tribes. Additionally, cases challenging the legitimacy of native rights continue to be filed despite Federal recognition of tribal nations.

The idea of Federal recognition continues to be a controversial subject for all in Hawai‘i, Hawaiian and non-Hawaiian, as its passage or failure would affect everyone in some way. Like the Hawaiian Homes Commission Act, could Federal recognition be perceived as another compromise of Hawaiian interests to preserve current legislative and programmatic agencies? Or, is Federal recognition the only feasible avenue to protect what Native Hawaiians have and secure a place for future negotiations? These questions, and many more, are continually debated within legal and scholarly circles. Nationalist organizations for and against federal recognitions do their part in informing the community
about the pros and cons of domestic dependent nationhood. Meanwhile, various versions of the "Akaka" Bill pass in and out of committee sessions but have yet to survive Senatorial hearings.

Conclusions

The U.S.-Hawai'i political, social and economic relationship over the two centuries is similar to other colonial experiences around the world. The Westernization of Hawai'i was accomplished mainly through military persuasion and political pressure from foreign governments in the first half of the nineteenth century. Westernization gave way to the Americanization of the Hawaiian Islands in the later half of the nineteenth century. Americanization finally gave way to seizure and occupation by the United States in 1898.

Although the Territory of Hawai'i has since been replaced by the State of Hawai'i, it seems colonial attitudes towards Hawai'i have not changed. Hawai'i continues to be treated as a colony by the United States through the imposition of American domestic law and the establishment of Federal and State agencies to facilitate incomplete forms of assistance for Native Hawaiians.
In the 1993 "Apology" Law, the United States admits to transgressions and the illegal actions perpetrated by its agents in 1893. However, the legislation falls short of acknowledging a Hawaiian national entity and limits its apology to Native Hawaiians. This is not to say that an apology is not appreciated, but that such a qualified apology does little to change the current situation.

Lawsuits like *PASH v. Hawai'i County Planning Commission* have shaped legal definitions and molded a plural legal system in the State that seems to combine traditional and modern rights. The *Rice v. Cayetano* case demonstrated the vulnerability of State sponsored agencies like the Office of Hawaiian Affairs to Constitutional precepts that bar special treatment by virtue of genealogy. The judicial weakness of the genealogical argument in today's legal climate may prove fatal one day. Nevertheless, this limitation is necessary to maintain current programs and agencies for Native Hawaiians as the most detrimentally affected segment of the population.

One option offered by the Federal government is Federal recognition of Native Hawaiians as indigenous peoples of the United States on par with other Native American Nations. This option would place these programs under Federal protection and prevent more damaging future cases. In this case, what is the price of such protection?
The future of Native Hawaiians and indeed the Hawaiian nation rests in varied interpretations of Hawaiian and American history as well as the development of an international community and subsequent normative precepts and principals governing relations between nations. In the following chapters, I will examine three different perspectives of the status of the Hawaiian nation and its people, the pro and cons and projected outcomes of each viewpoint and finally theorize as to which option would provide optimum results.
CHAPTER 4: THE KINGDOM OF HAWAI'I AS AN INDEPENDENT NATION-STATE

The Hawaiian Kingdom was a recognized independent nation-state by the mid 19th century, and therefore subject to the same rights and protections afforded other recognized nation-states like the United States, Great Britain or France. Any violations of these laws should incur sanctions against the guilty party. In this chapter, I will look at the concept of the Hawaiian Kingdom as an existing independent nation-state currently occupied by the United States as a result of multiple violations of International law.

This approach, although not new, has not received the same exposure as the indigenous rights or de-colonization approaches. Discussions of this nature have been confined mostly to legal reviews and political theorists. In recent years, this approach to Hawaiian sovereignty has emerged largely as a result of the efforts of Keanu Sai, Chairman of the Council of Regency and Acting Minister of Interior for the group Kingdom of Hawai‘i, and Henry Noa, Prime minister of the Reinstated Hawaiian Kingdom. Both Sai and Noa have spoken out about their views on the status of the Hawaiian nation at various rallies and
forums and their respective groups maintain websites.\textsuperscript{277} In 2000-2001, Sai was able to bring Hawai‘i’s grievances to the International Court of Arbitration at The Hague in the Netherlands in the \textit{Lance Larsen v. Hawaiian Kingdom} case.

Modern International Law can be defined as a set of rules and regulations governing relations between sovereign nation-states as (1) the principal subjects of International Law and, (2) laws between states within a legally organized society based on the common consent of the member states.\textsuperscript{278} In accepted International Law there are certain duties of independent nation-states in relation to one another.\textsuperscript{279} The three most fundamental duties are (1) jurisdiction of own territory; (2) non-intervention; and (3) the observation of treaties and intercourse.\textsuperscript{280} Nation-states who violate the national sovereignty of another nation-state through the breach of any one of the fundamental duties above are subject to sanctions appropriate to the infringement.

Jennifer M. L. Chock is one scholar who supports the restoration of the status quo of 1893 in Hawai‘i on account of U.S. violations of Hawaiian sovereignty. In her article, \textit{One Hundred Years of illegitimacy: International Legal Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawai‘i’s Annexation, and Possible Reparations}, she suggests significant monetary compensation, and the
return of lands to the Hawaiian Kingdom in addition to the restoration of control. 281

This is not to say that Sai, Noa and Chock are unique in acknowledging violations of Hawaiian sovereignty by the United States. In fact, many Hawaiian nationalist groups cite the same historical information surrounding the events of 1893 intervention. Professors of Law Jon Van Dyke and James Anaya are among the scholars who have written extensively regarding the loss of Hawaiian sovereignty as a result of U.S. actions. 282 While scholars like Van Dyke and Anaya agree with Sai, Noa and Chock on the source of Hawai‘i’s claims against the United States, they tend to associate these violations with abridgements of human rights.

This approach is based on two crucial points. 283 First, the United States violated the sovereignty of the Hawaiian Kingdom via, (a) the use of force and, (b) the complicity of its agents and citizens in, (c) the breach of treaties between the two nations, (d) the infringement of Hawaiian territorial integrity, (e) violations of the declared neutrality of the Hawaiian Kingdom, and subsequently (f) violations of International Laws of occupation. Second, as a result of these violations, all subsequent U.S. Federal and State of Hawai‘i legislations (i.e., the 1898 Newland’s Resolution, 1900 Organic Act, 1959 Admissions Act) are
illegitimate; the national sovereignty of the Hawaiian Kingdom was never extinguished.

This perspective of the political status of the Hawaiian Kingdom is based primarily in the precepts of International Law. In the following section, I will briefly trace the historical origins of modern International Law and the formation of its fundamental principles.

International Law

The Law of Nations, or International Law, is defined as a set of rules and principles, which are considered legally binding upon civilized nation-states in their intercourse with one another. What we think of as modern International Law did not become a definite branch of jurisprudence until the 16th and 17th centuries and were not formally codified until the 20th century in the establishment of the United Nations. It has its roots in early Messianic ideals, which demonstrated a "presentiment of a future when all nations of the world shall be united in peace." The Greek and Roman empires also made efforts to manage relations with other nations and conducted treaties, war and other State actions within a prescribed framework. The Greeks provided a working
example of independent and sovereign States living together in a "community which provides a law for the international relations of member-states." The Roman Empire contributed to the advancement of precise legal rules that governed war and peace and international relations in their dealings with nations outside the Empire. Thus, the beginnings of two major ideals of modern International Law had their genesis in the conduct of these early empires: (1) nation-States are the principal subject of International Law, and (2) International Law as a law between nation-states within a legally organized society is based on the common consent and mutual recognition of nation-states.

A nation-state generally embodies both social and political connections characterized and differentiated from other nations by legal and political recognition by other nation-states. Over the 16th, 17th, 18th and 19th centuries, this loose conglomerate of nation-states who mutually recognized "members", observed laws and principals created by treaties, usage and customary law.

Treaties are international contracts of agreement between states where each party agrees to be legally bound by the terms of the treaty. Law-making treaties "specify general rules of future international conduct, or [which] confirm, define, or abolish existing customary law"; these agreements can exist between two or more nation-states. One example of a law-making treaty agreed upon
by many nation-states is the United Nations Charter. Usage and customary law refer to practices or habits that are consistently repeated over a length of time and have thus achieved the force of law.\textsuperscript{292} The United Nations Charter is the formal codification of accepted customary law between nation-states.

**Violations of the sovereignty of the Kingdom of Hawai'i**

Key to this perspective is the political and legal status of the Hawaiian Kingdom as an independent nation-state, recognized by other member nation-states in the international arena. When the United States, Great Britain, France and Belgium recognized the Kingdom of Hawai'i in 1843, it became a member of the "Family of Nations" with all the rights and privileges.\textsuperscript{293} Subsequently, the Kingdom of Hawai'i entered into treaties and conventions with other nations around the world, maintained consulates and legations and was a member of the Universal Postal Union by 1886.\textsuperscript{294}

Treaty-making between the Hawaiian Kingdom and member nation-states, like the United States, Great Britain and France, indicate that the Hawaiian Kingdom was recognized legally as a co-equal amongst other nation-states. As an independent member of the "Family of Nations", it is entitled to the protection \textsuperscript{123}
of accepted international laws against the use of force, breach of treaties and violations of sovereignty of an independent nation-State and invokes the rights of a nation-state under accepted international law.\textsuperscript{295}

\section*{Use of force condemned in the International community}

Prohibition of the use of force evolved from custom to binding International law in the 19\textsuperscript{th} century.\textsuperscript{296} Lassa Oppenheim, said to be the founder of the study of International law, explains,

\begin{quote}
A State is not allowed to send its troops, its men-of-war, or its police forces into or through foreign territory, or to exercise an act of administration or jurisdiction on foreign territory, without permission.\textsuperscript{297}
\end{quote}

Such acts constitute a delinquency of action towards another nation-state. Treaties between American states in the nineteenth century characterized the use of force as "an act of evil" to be avoided.\textsuperscript{298} The United States acknowledged and supported this concept as evidenced by the convening of the International Conference of American States at which "participants adopted the idea of the mutual respect for territorial integrity between states."\textsuperscript{299} Furthermore, the United States condemned the actions of Chile in its annexation of Peruvian provinces during the Pacific War (1879-1883).\textsuperscript{300} It follows that; the landing of
U.S. troops on Hawaiian soil in January 1893 was a violation of international customary law against the use of force and infringed upon the territorial integrity of the Kingdom of Hawai'i.

United States is liable of for the actions of its agents and citizens

Under International Law, "States must bear vicarious responsibility for all internationally injurious acts of their organs." John L. Stevens, U.S. Minister to the Hawaiian Kingdom, played a central role in the U.S. intervention of the Hawaiian Kingdom in January 1893. He ordered the American marines of the USS Boston to land, directed the so-called Committee of Safety as to the proper buildings to seize, recognized the "provisional government" and placed it under U.S. protection.

In the 1983 Native Hawaiians Study Commission Majority Report, Stevens' actions were found to be unauthorized since neither the U.S. President nor Congress specifically sanctioned his actions. Public Law 103-150 reaffirms that the overthrow of the Hawaiian government was illegal and the actions of its agents constituted an "act of war" in violation of treaties between the two nations as well as international law. However, the United States also emphasizes that
these actions were undertaken "without authority of Congress." Even though Stevens was recalled from his post after the Blount investigation, the U.S. continues to deny direct liability for his actions.

In a formal dissent lodged by three Native Hawaiians against the Native Hawaiians Study Commission Majority Report, the authors assert that the first volume is "inaccurate and fatally-flawed." They stress that...

The United States Minister, acting on instructions and vested with the authority of his diplomatic office, requested a commissioned naval commander...to order and supervise the landing of the troops. Both the Secretary of State and the Secretary of the Navy were informed of these actions, and neither official...disavowed, rebuked or revoked the field of authority which represented the United States.

In addition, the authors of the Minority Report ask: "How could one company of Marines and two companies of sailors have landed and taken up positions in the city of Honolulu 'without authority for the United States government?'" It can be inferred that Stevens would interpret the silence of the Secretary of State and the Secretary of the Navy as consent.

Despite the argument made in the Majority Report refuting liability because of lack of official authorization, the United States is nevertheless responsible for the actions of its agents.
Breach of Treaties between the U.S. and the Hawaiian Kingdom

The observation of treaties and other official intercourse between nations is one of the fundamental sources of International law. The promulgation of a treaty between two or more nation-states is considered legally binding and any violation of such agreements are delinquencies of International law.

In the course of U.S.-Hawai‘i relations, the United States entered into a total of four agreements. The first, in 1826, while not ratified by the U.S. Congress, initiated a legal and political relationship between the two nations. In 1849, the United States concluded a treaty with the Hawaiian Kingdom promising "perpetual peace and amity." In 1875, the two nations concluded a treaty of reciprocity, which was renewed in 1884. Both the 1849 and 1884 treaties were in force in 1893.

Infringement of Hawaiian Territorial Integrity

One of the fundamental duties of a nation-state is to respect the territorial boundaries of other nation-states. When American troops were landed on Hawaiian soil, this was a violation of Hawai‘i’s territorial integrity.
Violation of Hawaiian Neutrality

On May 16, 1854, Kauikeaouli (Kamehameha III) officially proclaimed Hawai'i a neutral State initially in reaction to the Crimean War and the possibility of naval action in the Pacific. According to accepted International Law...

A neutralized State is a State whose independence and integrity are for all future time guaranteed by an international convention, under the condition that such State binds itself never to take up arms against any other State except for defense against attack, and never to enter into such international obligations as could directly involve it in war.

Like the Hawaiian Kingdom's sovereignty, its neutrality was not extinguished when the United States invaded and occupied the Hawaiian Kingdom. Therefore, the occupation and use of the Hawaiian Islands by the United States was a violation of not only Hawai'i's sovereignty but also its declared neutrality. The conventions on neutrality were codified in a series of conferences at The Hague in 1899 and 1907. Convention V (Respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land) affirms that the "first and fundamental effect of neutrality during war" is that the "territory of neutral Powers in inviolable." Article 2 further declares that, "Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power." Article 5 in the 1907 Hague
Convention XIII (Concerning the Rights and Duties of Neutral Powers in Naval War) states, "Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries." Article 12 of the same convention forbids belligerent warships to remain in the ports, roadsteads, or territorial waters of the neutral power for more than twenty-four hours. The United States used Hawai'i's harbors and ports to stage war with the Spanish in Guam and the Philippines. Thus, the United States ignored and violated the Hawaiian Kingdom's officially declared neutral status.

Acting Regent Keanu Sai maintains that, "Due to U.S. intervention and the creation of puppet regimes, the United States took complete advantage of its own fabricated government in the islands during the Spanish-American war and violated Hawaiian neutrality." He goes on to cite a secret session of the United States Senate on May 31, 1898 during which they admitted to violating Hawaiian neutrality more than a month before the Newland's Resolution was signed on July 6th.

...the McKinley Administration was compelled to violate the neutrality of those islands, that protests from foreign representatives had already been received and complications with other powers were threatened, that the annexation or some action in regard to those islands had become a military necessity.
Since the invasion, Hawai'i has been used in almost every armed conflict and serves as the headquarters for the U.S. Pacific Command.\textsuperscript{316}

\textit{Violation of International Laws of Occupation}

Article 43 of the 1907 Hague Convention IV (Respecting the Laws and Customs of War on Land) establishes that the laws of the occupied country must be upheld by the occupying force and that the "relationship established is similar to that of a trustee (occupying state) and beneficiary (occupant state) relationship."\textsuperscript{317} Total displacement of the national laws of the occupied nation and the "introduction at large of the national law of the occupant would violate Article 43 and also the rules on the maintenance of fundamental institutions".\textsuperscript{318}

The act of imposing U.S. domestic law on the Hawaiian Kingdom through "annexation" in 1898 and the 1900 Organic Act and subsequent treatment of the Hawaiian Kingdom and its citizens as a colony of the United States was in violation of International laws of war and occupation.

\textit{Illegitimacy of U.S. Domestic Laws in Hawai'i}

Utilization of this international law-centered perspective of the status of the Hawaiian Kingdom negates the validity of all U.S. imposed domestic
legislation beginning in 1893. Thus, the Newland's Resolution that provided for annexation, the 1900 Organic Act that provided a government for the Territory of Hawai'i, the Admissions Act of 1959 and all other legislation by the US Federal Government as well as the administration of the State of Hawai'i are U.S. domestic laws based in false assumptions of legitimate authority over the Hawaiian Kingdom and are thus illegitimate.

**Lance Larsen v. Hawaiian Kingdom**

The 2001 *Larsen v. Hawaiian Kingdom* case at the International Court of Arbitration at the Hague effectively corroborated this methodology when it verified that the Kingdom of Hawai'i is indeed an independent nation-state and subject to the same rights and protection as all other recognized nation-states in the United Nations. In November 1999, Lance Larsen, a Hawaiian citizen, was imprisoned for adhering to the laws of the Hawaiian Kingdom instead of U.S. laws, which require a driver's license and a license plate for all vehicles. After unsuccesssfully pursuing his case in the Hawai'i State courts, Larsen's case was taken to the International Court of Arbitration at The Hague. He charged the Hawaiian Kingdom with failing to protect him from the occupying government,
the United States. The arbitration tribunal was requested to determine whether Larsen's rights were violated, and if so, if he had redress against the Kingdom.

In March 2000, the United States refused to participate in the arbitration. Nevertheless, hearings were scheduled for December 2000. On February 5, 2001, the Tribunal verified the status of the Hawaiian Kingdom as an independent nation-state but concluded that nothing further could be done without U.S. participation as the occupying power.

Subsequently, representatives for the acting government of Hawai'i filed a complaint with the United Nations Security Council on July 5, 2001, with the intent to appraise the Security Council and ask for recommendations. The complaint affirms that "this case arises out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America since the Spanish-American war of 1898, and the failure on the part of the United States of America to establish a direct system of administering the laws of the Hawaiian Kingdom."

Although the case began as an inquiry of the failure of the Hawaiian Kingdom to protect its citizens, in the end Hawai'i's predicament as a result of US violations of International Law has now been placed on the record of the international judiciary system.
Conclusions

Modern International Law is a set of rules and regulations that have developed as a means to direct relations between two or more independent nation-states. Within this international community violations of these regulations result in sanctions against the perpetrating nation. Hawai'i was an independent nation-state by virtue of recognition of said status by other nation-states such as the United States, Great Britain and France. Thus, when agents of the United States supplied military support to insurrectionists within the Kingdom of Hawai'i in order to overthrow the lawful sovereign of the islands, this was a violation of the standards of conduct between two nation-states as well as treaties between Hawai'i and the United States. Subsequently, the United States has failed to rectify this violation and indeed has compounded it by violating international laws of occupation and ignoring Hawai'i's declared neutrality.

Despite the protests of Queen Lili'uokalani, both in Hawai'i and Washington D.C., as well as the protests of loyal Hawaiian citizens, the rightful government was not restored after the 1893 insurrection. Instead, Kingdom subjects and foreign residents with the support of the United States set a puppet
government in its place. In the wake of this "new order", the United States used the Hawaiian Islands as a staging ground for the Spanish-American war in 1898.

Subsequently, the U.S. Congress imposed a foreign governmental system on the Hawaiian nation through the 1900 Organic Act and all subsequent legislation originating from the U.S. Federal government, and/or its subordinate, the State of Hawai‘i.

Public Law 103-150 is an American domestic law and as a result has no legal jurisdiction over Hawai‘i. Nevertheless, it can be viewed as both supportive and contrary to this legal and political perspective of the status of the Hawaiian Kingdom. It confirms that the U.S. recognized the Hawaiian Kingdom as an independent nation-state.

...from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawai‘i, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

Furthermore, it acknowledges the role of the US military in the 1893 invasion and that "without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Lili‘uokalani would have failed."
At the same time, the apology is directed at Native Hawaiians only and not at the political body of the Hawaiian Kingdom. The subject of the apology is adjusted to verify violations of the rights of the indigenous people and ignore the rights of the nation-state. It is this inconsistency that weakens the premise of the "apology" and sustains the argument that the U.S. has deliberately attempted to hide the true status of the Hawaiian Kingdom.

For advocates of this perceptive, the primary goal is the restoration of and restitution for Hawaiian national sovereignty as a result of American intervention and violations of treaties and accepted international law. Such advocates like acting Regent Keanu Sai have succeeded in taking this issue to the international arena in the Larsen v. Hawaiian Kingdom case heard at the Permanent Court of Arbitration at The Hague in the Netherlands. Although the United States refused to participate in the arbitration as the occupying party, on February 5, 2001 the Tribunal affirmed the status of the Hawaiian Kingdom as an independent nation-state. This case brought international attention to Hawai‘i’s situation, garnered support for the Hawaiian Kingdom and lent credence to its claims.

Advocates of this perspective can be said to follow the legal positivist tradition led in the international arena by Oppenheim. Positivists believe that
law is a system of rules manufactured by human beings and independent of morality. In other words, International Law is normative in that a nation has a right to protection by such laws regardless of size or military, economic or political strength. Therefore, under International Law, the Hawaiian Kingdom retains its nation-state status and thus its privileges and protections. Thus, the United States is liable for its transgressions against another nation-State, is subject to reprimand by the international community and is responsible for appropriate reparations to the Hawaiian Kingdom.

The primary criticisms of this approach, discussed in greater detail below, are that it ignores (1) the existence of national sovereignty previous to the international recognition of the Hawaiian Kingdom, (2) the real effects of colonization on Hawai'i's people, and (3) the current political situation in which the United States is the most powerful nation in the world.

The aboriginal Hawaiians had an organized, sophisticated social and governmental system based in Hawaiian culture and traditions and exercised sovereignty over the Hawaiian Islands. According to this approach Hawaiian national sovereignty is dependent on the recognition of the Hawaiian Kingdom by existing nation-states. However, it can be argued that Hawaiian national
sovereignty existed prior to recognition by virtue of everyday practice by the Hawaiian people.

As to the second criticism, in a survey of Hawaiian history it seems that the 1893 invasion was merely the preverbal nail in the coffin. The actual experience of the Hawaiian people precedes military intervention by the United States. In terms of political influence, perhaps the creation of a western-style constitution in 1840 would be a more appropriate point of origin.

As to the current political situation, the pronouncement of Hawaiian independence by the International Court of Arbitration, for example, does not have force without the recognition and compliance of the United States. Without recognition, such a pronouncement cannot, in actuality, be applied.

In the following chapter, I look at the same events discussed in this chapter through a different lens: human rights, colonization and the normative processes of de-colonization.
CHAPTER 5: HAWAI'I AS A COLONIZED NATION OF PEOPLES

Modern International Law provides us with precepts other than the inherent sovereignty of the nation-state that can be applied to the Hawaiian national situation: human rights and self-determination. James Flood, author of *The Effectiveness of U.N. Human Rights Institutions* defines human rights as "rights of individuals in a society to various 'goods' and benefits" that are "rooted in the dignity (intrinsic value) of every human being to live and to have or to do certain things that are essential to live a life in keeping with his dignity" that include freedom and equality.325 Whereas national sovereignty is concerned with the collective political entity that is the nation-state, human rights are concerned with the rights of individuals regardless of citizenship. The concept of self-determination is an extension of the "core values of human freedom and equality."326

In the previous chapter, we looked at the *occupation* of Hawai‘i by the United States as a violation of the sovereign rights of an independent nation-state. In this chapter, we shift the focus of our examination to violations of
human rights and rights to self-determination as a result of the colonization of Hawai‘i by the United States. "Colonization" usually occurs between unequal states: a larger, more powerful nation-state takes a smaller, weaker state as a colony or territory; such territories are deemed non-self governing. International Law provides measures to address violations of human rights and loss of self-determination of a people as a result of colonization in its standards of de-colonization embedded in the United Nations Charter and other international instruments.

In this human-rights-based perception of the Hawaiian national situation, Hawai‘i was colonized by the United States and, as a non-self governing territory, has yet to be afforded self-determination under international principles of de-colonization. These principles dictate that to fulfill the right of self-determination, a non-self governing territory must be offered at least three options: (1) independence, (2) free association, and (3) incorporation. Only after a non-self governing territory has chosen from these three options can it be said that it has achieved self-governance and is no longer a non-self governing territory.

Advocates of this perspective include Ka Pākaukau, Ka Lahui Hawai‘i and scholars like James Anaya. Kekuni Blaisdell, a well-known doctor and advocate
of Hawaiian national rights, is the coordinator of *Ka Pakaukau*, a coalition of twelve organizations seeking independence. He is also the convener of the *Kanaka Maoli Tribunal Kōmike* and the *Pro-Kanaka Maoli Independence Working Group*. At the September 1997 3rd NGO Parallel Forum in Rarotonga, Cook Islands, these three groups submitted a resolution on Kanaka Maoli self-determination. The resolution outlines Hawaiian/U.S. history, loss of the sovereignty and the right to self-determination and recommends re-inscription on the United Nations list of non-self governing territories.

In *Ka Lāhui Hawai‘i*’s Mater Plan, the group states, "The United States never initiated a program for 'decolonization' in Hawai‘i under the United Nations process, nor did it allow the inhabitants of the territory their right to choose...[and therefore]...supports the re-inscription of Hawai‘i" on the U.N. list.

Scholars, like James Anaya, use established international human rights law as a foundation for claims against the United States as a result of systematic encroachments on the Hawaiian government and social structure and the overthrow of the legitimate ruler of the Hawaiian Islands in 1893.

In this chapter, I summarize the concept of human rights and self-determination as well as de-colonization as a policy of remedial measures as a
result of violations of these rights. In the next section, I present Hawai‘i as a colonized nation of people with a brief review of American colonial actions.

Human Rights

The concept of "human rights" grew out of the "natural law" tradition; Plato and Aristotle had "well developed notions of natural law that incorporated a conception of intrinsic human dignity."331 This idea of inherent human dignity lent power to the American and French Revolutions and ended the slave trade through most of the world. In the early twentieth century, the first true international codification of human rights, the 1926 Slavery Convention, developed out of the idea of humanitarian intervention.332

The legitimacy of humanitarian intervention in cases "where a State committed atrocities against its own subjects which 'shocked the conscience of mankind'", gave rise to an increased consciousness of human rights that spurred events such as the U.S. civil rights movement of the late 1960's and pressured South Africa to end its apartheid regime.333 This is not to say that the success of the idea of human rights in the past centuries has ended social or political inequality, only that specific aspects of that inequality have been addressed.334
The conception of human rights cuts into the doctrine of national sovereignty in that it limits the absolute sovereignty of the state. The doctrine of sovereignty of a state dictates that nation-states may not interfere in the internal affairs of another nation-state; this includes how individual citizens are treated within the nation-state, even in the event of maltreatment. The impetus of human rights is based in the assumption that all human beings, regardless of national citizenship, are entitled to fundamental freedoms. When those freedoms are violated the international community, that is other nation-states, take on the responsibility to promote "universal respect for, and observance of, human rights and fundamental freedoms for all."\textsuperscript{335}

Accepted norms for the humane treatment of all citizens of a state are contained in several international instruments such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social and Cultural Rights.\textsuperscript{336}

One of the primary purposes set forth in the 1945 U.N. Charter is "to achieve international cooperation...in promoting and encouraging respect for human rights and for fundamental freedoms for all."\textsuperscript{337} The Universal Declaration of Human Rights followed this in December 1948. By signing the
declaration, nation-states pledged their cooperation with the United Nations in the "promotion of universal respect for and observance of human rights and fundamental freedoms." The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were drafted simultaneously in 1947, adopted in 1966 and entered into force in January 1976. The covenants established a Human Rights Committee to comment on reports and investigate complaints by other States or victims and provide a reporting procedure through the U.N. Secretary-General.

These international instruments make up established norms of human rights and obligate all participating nation-states to promote these norms and incur penalties when they are ignored or violated. As such, human rights are accepted as superior to national sovereignty in that the international community holds nation-States accountable for their actions towards their respective citizens.

**Self-Determination and De-colonization**

The concept of self-determination is a fundamental component of human rights and an extension of the idea of "inherent human equality." The principle of self-determination, although a later development than the doctrine of human
rights, is integrated in many of the same international instruments as human rights policies such as the U.N. Charter and the International Covenants mentioned above.

De-colonization is a response to international concerns of the violations of human rights and self-determination of peoples as a result of pervasive colonization by Western powers in the 19th and early 20th centuries and corresponds with measures to remedy violations of these rights.341 This regime of de-colonization is rooted in Chapter XI of the U.N. Charter which assigns trust responsibilities to members of the U.N. that administer these colonial territories whose people have "not yet attained a full measure of self-government."342 These responsibilities include the promotion of self-government, and "political, economic, social and educational advancement."343

In January 1918, President Woodrow Wilson outlined his program for the restoration of peace after World War I in his "Fourteen Points" address to Congress. In his address, we see the beginnings of the principle of self-determination as a "principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak."344 Point five states,
[There should be] a free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government where title is to be determined.\textsuperscript{345}

To this end, Wilson proposed the formation of a "general association of nations for the purposes of affording [these] mutual guarantees...to great and small states alike." One year later, this basic premise of self-determination was affirmed at the establishment of the League of Nations, precursor to the United Nations.\textsuperscript{346}

One of the purposes of the United Nations as set by Article 1 Section 2 of the Charter is "to develop friendly relations among nations based in the respect for the principle of equal rights and self-determination of peoples." The U.N. Charter also addresses the responsibilities of UN member governments towards these "colonial" peoples. Article 73 explains,

[The] principal interest of the inhabitants of these territories are paramount, and [the UN member governments] accept as a sacred trust the obligation to promote to the utmost...the well-being of the inhabitants of these territories, and, to this end:

(a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(c) to further international peace and security;
(d) to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

(e) to transmit regularly to the Secretary General for information purposes, subject to such limitations as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible...

Section (b) affirms that respective peoples should determine the form of their political institutions. At the same time it also refers to the "varying stages of advancement" of the peoples presumably because these territories are assumed to be inferior culturally, technologically or legally. Despite the notably paternalistic attitudes common during the 1940's the Article is a forerunner to the framework for a modern concept of self-determination.

The interests of the inhabitants referred to in Article 73 are echoed in the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social and Cultural Rights. Common Article 1 of both covenants provides that:

(1) All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples, for their own ends, may freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefits, and
international law. In no case may a people be deprived of its own means of subsistence.

(3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The Covenants acknowledge and reaffirm the right to self-determination and enumerate on the rights provided by the Charter. For example, Section (1) expressly guarantees the right to self-determination. Access to and control of land and natural resources are guaranteed to all peoples by Section (2). Section (3) defines the responsibilities of those states that administer to non-self governing and trust territories.

The trusteeship system established in the U.N. Charter and international covenants is reaffirmed in the U.N. Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and People, which pronounces the "subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights" and U.N. Resolution 1541 (XV), which provides principles with which members may determine whether or not an obligation exists and provisions for the proper attainment of self-government. Chapter XI of the U.N. Charter is deemed applicable to
"territories which are known to be the colonial type" and have not yet attained a
measure of self-government. These territories can be said to have attained self-
government only by (1) its emergence as a sovereign independent state, (2) free
association with an independent state, or (3) integration with an independent
state.

Hawai'i as a colonized nation of people

In the opening pages of Jon Osorio's work, Dismembering Lāhui, he
describes the colonization of Hawai'i.

[C]olonialism worked in Hawai'i not through the naked seizure of lands and
governments but through a slow insinuation of people, ideas and
institutions...[it is] a story of violence in which that colonialism literally and
figuratively dismembered the lāhui (the people) from their traditions, their lands,
and ultimately their government. The mutilations were not physical only, but
also psychological and spiritual.

Osorio describes colonization not as the result of one specific event but as the
sum effect of various events beginning in the early 19th century. Likewise, James
Anaya, Professor of Law at the University of Iowa, characterizes the colonization
of Hawai'i as the result of a systematic series of "transformative
encroachments." These "transformative encroachments" began in the early 19th

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In 1820, the first missionaries arrived in Hawai‘i to find the state religion overthrown. Taking this as a sign of God's will, they pushed for the Christianization and Westernization of the Hawaiian people. William Richards, an American missionary who came to Hawai‘i in 1823 and became advisor and teacher to the King, maintained that the next step, after Christianity, "necessary to secure independence of any independent country was the proclamation of a constitution." Subsequently, the Kingdom of Hawai‘i was transformed into a constitutional monarchy based on Western democratic principles of representation with the adoption of the Rights of Law in 1839 and a constitution in 1840. The passage of the constitution was a reaction, in part, to the rash of incidents of "gunboat diplomacy" by foreign governments.

The 1848 Mahele constituted the next step in the Westernization of Hawai‘i. The Mahele changed land tenure from a communal to fee simple system resulting in the sale of large tracts of land to a burgeoning sugar industry. The argument for the change in land tenure mirrored that which was used in transforming Hawai‘i's governmental system in 1840, that is, gaining the respect
of foreign countries, and was reinforced by the needs of Hawai‘i’s growing capitalist community.

In the following decades, Hawai‘i’s economy became increasingly entangled with and dependent on the United States as Hawai‘i’s primary market. This dependency on the American market, Hawai‘i’s strategic position in the central north Pacific, and the growing influence of American born-Hawaiian citizens and residents of the Kingdom would make Hawai‘i’s people and leadership increasingly vulnerable to more drastic ideas.

In the previous chapter, I argued that treaties and convention between the U.S. and Hawai‘i, such as the 1875 treaty of reciprocity and its renewal in 1887, were legal agreements part of the legitimate function of recognition independent states, although unequal, between two nation-states.

These treaties and conventions can also be viewed as factors of American colonization of Hawai‘i. The 1875 treaty of reciprocity limited the Hawaiian Kingdom’s ability to freely engage in relations with nations other than the United States. Its renewal in 1887, with the clause to cede Pearl River Lagoon to the U.S., was only possible after a small group of citizens and non-citizens of the Kingdom-mostly of American descent, forced a constitution on Hawai‘i that
stripped the King of power and seriously impeded the ability of the Hawaiian populace to affect governmental decisions.

In conjunction with these treaties, Western military presence increased steadily through the mid to late 19th century. American, French and British ships frequented the islands, usually to replenish supplies or to trade. Sometimes captains and/or dignitaries had other motives and were not shy about bullying Hawai‘i into submission with military might (i.e., the French incident of 1839 and the British takeover in 1843). Furthermore, after the election of Kalākaua in 1874, American and British troops were used to quiet the rioting of Queen Emma supporters setting a dangerous precedent. The constant appearance of U.S. naval ships in Hawai‘i’s waters must have been intimidating to the government as well as Hawaiian citizens. In fact, the presence of American ships exacerbated desires to annex Hawai‘i to the United States.

In the formation of the Hawaiian League and its militia arm, the Honolulu Rifles, there is a consolidation of pro-American anti-monarchy individuals whose stated goal was the annexation of Hawai‘i to the United States. John Stevens, U.S. Minister to Hawai‘i, held the same ambitions for America and guided the members of the “Committee of Safety” to a successful takeover. In this way, John Stevens was a colonial agent of the United States, whether or not he had official
permission to do so, he handed Hawai‘i to his home administration. In 1898, the United States government "annexed" the Hawaiian Islands by violating policies of the U.S. constitution that allow annexation of a territory only after a national plebiscite and the conclusion of a treaty. Only a simple majority, unlike a treaty that must be passed with a two-thirds majority, passed the Newlands Resolution that "annexed" the islands.

The gradual Westernization and Americanization of Hawai‘i came to a head in the 1893 insurrection that dethroned Queen Lili‘uokalani. Between 1894 and 1898, the "Republic of Hawai‘i" redoubled Americanization efforts through the banning of the Hawaiian language. Finally, in 1898, the United States forcibly annexed the Hawaiian Islands, imposed U.S. domestic laws, and seized 1.8 million acres of lands formerly owned by the Kingdom of Hawai‘i.

During Hawai‘i's territorial years, between 1898 and 1959 colonial attitudes towards Hawai‘i became more pronounced. Perhaps the greatest demonstration of colonial domination in Hawai‘i was the institution of martial law during World War II. Immediately following the December 7, 1941 bombing, civil liberties of the population were restricted and Japanese internment camps sprung up both in Hawai‘i and California. Following the end of World War II, the new Democratic Party, made up mostly of Japanese-
American veterans, in the 1954 elections, defeated the white Republican elite that controlled Hawai'i.

The U.S. Congress did not fully ignore the needs of Native Hawaiians. They showed some concern for their plight by passing the 1921 Hawaiian Homes Commission Act. However, it had more to do with the capitalist interests of foreign residents of the Kingdom than the rehabilitation of the Hawaiian people. In fact, the Hawaiian Homes Commission Act could be said to have solidified the hold of large plantations, owned mainly by Americans, on Hawaiian lands thus maintaining America's colonial hold.\textsuperscript{354}

In 1946, Hawai'i was placed on the United Nations list of Non-Self Governing Territories. The U.N. removed the Islands from the list in 1959 at the request of the United States citing the statehood "plebiscite" as an exercise of self-determination, fulfilling its trust responsibilities to Hawai'i. Nevertheless, advocates such as James Anaya and the group \textit{Ka Pākaukau} cite the 1893 invasion and subsequent "annexation" of Hawai'i by the United States as the inauguration of an American colonial regime in Hawai'i that has continued to the present. Furthermore, they argue that Hawai'i was deprived of its right to self-determination and is subject to de-colonization under internationally recognized principles of human rights.
Since its inception in 1959, the State of Hawai‘i Legislature has created agencies and made policies to address the trust responsibilities passed from the U.S. Federal government over Native Hawaiians and 1.8 million acres of land formerly controlled by the Hawaiian Kingdom (now known as "ceded" lands). These measures have, in effect, promoted and maintained American colonial norms in Hawai‘i.

In 1978, the Office of Hawaiian Affairs was established for this purpose. In accordance with the reasoning behind the creation of the Hawaiian Homes Commission Act, trustees of the Office of Hawaiian Affairs were voted in by aboriginal Hawaiians residing in Hawai‘i. This Hawaiians-only voting policy established by the Hawai‘i State Legislature would be defeated in the 2000 Rice v Cayetano ruling.

In the passage of the 1993 Public Law 103-150, the United States admitted culpability in its involvement in the overthrow of the Hawaiian Kingdom, apologized to Native Hawaiians, and recognized John Stevens' conspiratorial role, the role of the U.S. military and "the deprivation of the rights of Native Hawaiians to self-determination. The admissions contained in Public Law 103-150 lend support to the argument for the fulfillment of Native Hawaiians rights to self-determination though decolonization.
In the end, the colonization of Hawai‘i was a process marked by three major steps, the Westernization of Hawai‘i through Christianization, the institution of Western law and the growth of capitalism. The process of Westernization of Hawai‘i gave way to the Americanization of Hawai‘i and culminated in the forced annexation of Hawai‘i to the United States in 1898. The Christianization of Hawai‘i gave influence to the missionaries over the ali‘i, which led to the change in governmental style through the proclamation of a constitution in 1840. Later, in 1848, the change of land tenure in Hawai‘i through the Māhele, instituted a new economic system antithetical to native concepts of land and lifestyle. Foreign residents of the Kingdom gained more influence as the economy became increasingly dependent on their industries and were finally able to corral the Kingdom into American arms.

Conclusions

The concept of human rights is concerned with individuals and not the collective political entity that is the nation-state. These rights reflect the belief in intrinsic human dignity to freedom and equality. The rampant colonization by western powers of the Pacific, Asia, Africa and other parts of the world that
crested in the 19th and early 20th century was in violation of these rights. The concept of de-colonization is an attempt to restore these rights to peoples overtaken by imperialistic and colonial forces. Under the United Nations, de-colonization is achieved through self-determination by offering three choices to the people concerned: independence, free association or incorporation. Meanwhile, "trustees", the colonial administrations, of these territories are to foster self-government, albeit in a Western style. In which case, does the creation of a Western-style democracy constitute self-determination if such governmental systems are dissimilar to those established by the population prior to colonization?

This perspective expands violations of human rights in Hawai'i to include not just one event, the overthrow of the Hawaiian nation, but also the preceding period during which foreign governments manipulated and coerced the Hawaiian Kingdom to alter its legal, social and economic systems. The forced annexation of Hawai'i by the United States is perhaps the most obvious confirmation of a colonial presence. However, it is but one event in a compounding series of encroachments that transformed Hawai'i from a native-ruled monarchy to an American colony. During the early 19th century, these encroachments were somewhat spread out and actively protested, in many
instances, by the native population. The 1893 insurrection, effectively silenced the native, and indeed non-white voices and supporters of annexation to America were able to impose their own laws and regulations in the Republic of Hawai'i.

Once the insurrectionists politically dominated Hawai'i they addressed the assimilation of the population to an American life-style. The most devastating action was the banning of Hawaiian language in the classroom in 1896 and subsequent anti-Hawaiian pro-American lifestyle campaigns.

In 1898, the United States seized Hawai'i and imposed its domestic laws over the territory and created a trustee-beneficiary relationship between the Federal government and Native Hawaiians. During Hawai'i's territorial years, the United States Federal government controlled 1.8 million acres of land formerly controlled by the Hawaiian Kingdom. A small portion of these lands were set aside by the 1921 Hawaiian Homes Commission Act ostensibly to rehabilitate the devastated Native Hawaiian population. This trustee-beneficiary relationship established by the HHCA was perpetuated by the creation of the Office of Hawaiian Affairs in 1978.

It is clear from the historical record that although Hawai'i is referred to as a "State of the Union", colonial policies and attitudes towards Native Hawaiians
persists. On one hand, these institutions were created to address the needs of Native Hawaiians. On the other hand, Native Hawaiians need such assistance as a result of American colonization. What could be more colonial than a trustee-beneficiary relationship based on the same colonial assumption of superiority that Native Hawaiians are incapable of running their own affairs?

Critics of this perspective, such as Keanu Sai of the Kingdom of Hawai‘i and the group Independent Nation of Hawai‘i, maintain that Hawai‘i was not colonized but occupied because of its status as a nation-state. Decolonization emphasizes (1) such non-self governing territories are inferior to other nation-States in their "inability" to govern themselves, and therefore (2) trustees promote "development" and "advancement" in the formation of Western style governments and policies. Hawai‘i was neither non-self governing nor unable to operate at the prescribed level of advancement, colonization was a function of militaristic strategy and economic gain.

The process of de-colonization as laid out in the U.N. Charter and other international instruments does leave room for negotiations following a plebiscite to determine specific reparations for Native Hawaiians. While a U.N. sponsored plebiscite would include non-Hawaiian residents of Hawai‘i, the acknowledged effects of colonization on the Native Hawaiian people cannot be ignored.\textsuperscript{358} The
U.S. Federal Government and the State of Hawai'i Legislature, in order to attend to lingering inequalities and detrimental effects, have already established programs, agencies and policies for Native Hawaiians and lands formerly controlled by the Hawaiian Kingdom.\textsuperscript{359}

Many see these programs as insufficient for the restoration of human rights for Native Hawaiians who are the primary victims of colonization by the United States. In the following chapter, I look at the argument concentrating on the rights of Native Hawaiians as indigenous peoples.
CHAPTER 6: NATIVE HAWAIIANS AS INDIGENOUS PEOPLES

Native Hawaiians are indigenous peoples that share a similar historical relationship and comparable legal status with Native Americans and Native Alaskans. There is a special, political and legal relationship between Native Hawaiians and the United States established through congressional acts such as the 1921 Hawaiian Homes Commission Act and the 1993 Apology Law as well as dozens of laws that classify Native Hawaiians alongside Native Americans. The State of Hawai'i Legislature supports this relationship through the creation of agencies such as the Office of Hawaiian Affairs and legislation establishing the Hawaiian Sovereignty Advisory Commission. Yet, Native Hawaiians are the only indigenous people in the United States who have "never been allowed to utilize a claims commission or other mechanism to seek redress from its losses from the federal government."360

In the previous chapters, Native Hawaiians and their traditional systems figured secondarily to the legal aspects of occupation and colonization. In the following chapter, I will focus on Native Hawaiians as those primarily impacted
by violations of their internationally accepted rights as human beings and indigenous peoples as well as within the scope of U.S. domestic laws and policies concerning other native peoples within the United States.

In both International Law and U.S. domestic law there is policies set up to address such violations and offer remedial measures. International law precepts of human rights and self-determination extend to indigenous peoples within the territories of nation-states. Such precepts specific to indigenous peoples are contained in international instruments such as the Draft Declaration on the Rights of indigenous Peoples, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Labour Organization Conventions and the United Nations Charter. United States domestic policy regarding native peoples in America is rooted in the U.S. Constitution, treaties and subsequent congressional actions regarding several hundred native nations on the continental U.S.

Concern over the Native Hawaiian people is an important element in all the perspectives thus far examined in this thesis. However, this perspective gives priority to the preservation of existing programs and agencies that assist Native Hawaiians and seeks to expand these entitlements through the concept of
indigenous rights as opposed to, for example, the international recognition of the Hawaiian nation-state.361

Advocates of this perspective, which include the native initiative group Ka Lahui Hawai'i and scholars like Jon Van Dyke and Karen Blondin, believe that the best way to address Native Hawaiian concerns and entitlements is the creation of a domestic-dependent nation under the plenary jurisdiction of the United States through Federal recognition of Native Hawaiians as Native Americans. Often, this idea is cited as a stepping-stone to greater native self-governance. This avenue to self-determination through U.S. Federal recognition has been well traveled by hundreds of other native nations on the continental U.S. making it attractive to many in the Hawaiian nationalist movement as a feasible next-step. The protection and expansion of native entitlements as well as access to monetary and land based settlements with the U.S. Federal government is another appealing feature of this perspective. In addition, after over one hundred years of colonization by the United States, there are least two generations of Native Hawaiians that have grown up as American citizens and are thus reluctant to relinquish their citizenship, once again making the Federal recognition option (which would allow dual citizenship) more appealing.
This perspective also has several limitations. For example, it only pertains to Native Hawaiians, that is those descendent from the aboriginal people of the islands. Non-Hawaiians would have a very limited role in the decision making process in the new nation, in fact in many other native nations, non-members have no say. The political status of such a Native Hawaiian nation would be that of a domestic-dependent nation subject to the jurisdiction of U.S. Congress and the Department of Interior. In this way, this avenue does not lead to complete independence from the United States. Critics of this option, which include Ka Pakaukau, believe this aspect is too much of a compromise and that it may in fact extinguish efforts in the international arena to recognize the Hawaiian nation.

Indigenous Rights

Indigenous rights are a developing body of international norms grounded in the international principle of self-determination and related to human rights precepts. There is "no universal and unambiguous definition", however, there are a number of criteria used globally to identify indigenous peoples, the most widely used approaches are those proposed in the International Labour Organization (ILO) Convention number 169 and in the 1986 Martinez Cobo
Report to the Sub-Commission on the prevention of Discrimination of
Minorities. Indigenous peoples are descendents of those who lived in the area
before colonization who …

a. have a historical continuity with pre-colonial and pre-invasion societies
   that developed on their territories,
b. maintained and preserved their own social, economic, cultural and
   political institutions as well as their language since colonization,
c. currently live under a State structure which incorporates national, social
   and cultural characteristics alien to theirs,
d. consider themselves distinct from other sectors of the dominant societies,
e. are determined to preserve, develop, and transmit to future generations
   their ancestral territories, and their ethnic identity,
f. occupy their ancestral lands or at least part of them,
g. are self-identified

International norms specifically concerning indigenous peoples can be
found in such international instruments as the International Covenant on Civil
and Political Rights, the United Nations Draft Declaration on the Rights of

Article 27 of the International Covenant on Civil and Political Rights
states…

In those States in which ethnic, religious or linguistic minorities exist, persons
belonging to such minorities shall not be denied the right, in community with the
other members of their group, to enjoy their own culture, to profess and practise
their own religion, or to use their own language.
This article affirms the norm of the guarantee of cultural integrity. This norm can be applied to all segments of humanity as a basic human right, but has also taken on remedial aspects particular to indigenous peoples.\textsuperscript{366}

In 1982, the U.N. Economic and Social Council established the U.N. Working Group on Indigenous Populations, which subsequently drafted a declaration on the rights of indigenous peoples. The draft declaration deals with the rights of indigenous peoples in the areas of self-determination, culture and language, education, health, housing, employment, land and resources, environment and development, intellectual and cultural property, indigenous law and treaties and agreements with governments.\textsuperscript{367} Although the declaration has yet to be fully ratified it is perhaps the most widely quoted by indigenous peoples as the only international instrument thus far written specifically for indigenous peoples. Article 1 firmly roots the declaration in human rights precepts.

\begin{quote}
Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law
\end{quote}

One of the fundamental rights of human beings is extended to indigenous peoples in Article 3:
Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Notice that in the declaration's elucidation of the rights of indigenous peoples that these rights are firmly entrenched in international precepts of human rights.

The International Labour Organization followed suit by adopting its Convention on Indigenous and Tribal Peoples (Number 169) in 1989. In relation to cultural integrity, Article 2 section 1 of the Convention states,

Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

In regard to lands and natural resources, Article thirteen section 1 states...

...governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the land...in particular the collective aspects of this relationship.

Furthermore, Article fourteen section 1 relates that...

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized...[and]...measures shall be taken...to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities...

In relation to aspects of self-government, Article 9 affirms, "methods customarily practiced...dealing with offences committed by
their members...[and]...in regard to penal matters shall be taken into consideration."

In a breakthrough achievement for indigenous peoples, in July 2000 the U.N. Economic and Social Council established the Permanent Forum on Indigenous Issues. For the first time non-state actors were afforded access to the international community. In May 2002, the United Nations Permanent Forum on Indigenous Issues held its first session in New York.

Other Indigenous Peoples in the United States

There are approximately 499 recognized and 136 unrecognized tribal entities on the United States none of which are exactly alike. However, they do share one common trait, the right to self-government. Native nations on the continental U.S. exercised self-government prior to the arrival of the first Europeans and continue, although in a protracted capacity, to exercise those rights.

American policy towards the various tribal nations centered on the status of land. In the late 18th and most of the 19th centuries, the United States made treaties with various tribal nations thereby accepting them as sovereign
independent nations. However, these same treaties were rarely upheld by the U.S. and sometimes resulted in the advancement of American frontiersmen and the alienation of land. Concepts such as the doctrine of discovery, right of conquest and the "correct" and "moral" usage of land according to Western mores contributed to U.S. policy toward native nations. Treaty making soon gave way to a policy of removal (west of the Mississippi River) ostensibly for preservation or punishment, the creation of land trusts, and subsequently the termination of these trusts and the creation of Federal agencies to administrate Federal policies.

Two clauses in the United States' Constitution reflect an understanding of Native Americans as separate and distinct people. Article 1(2) clause 3 states that Congress has the power to "regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes." Article 1(8) clause 3 affirms, "[r]epresentatives and state taxes shall be apportioned among the several states...excluding Indians not taxed..."

The first articulation of the right to self-governance for native peoples in the U.S. was in the 1832 ruling following the case of Worchester v. Georgia in the Supreme Court. Chief Justice John Marshall recognized that "Indian nations as distinct communities" and "domestic dependent nations" over which the United
States had assumed a protectorate that did not extinguish tribal sovereignty.\textsuperscript{376}

Despite these acknowledgements, the United States encroached upon the internal sovereignty of the native nations and established the Bureau of Indian Affairs in 1834 to receive payments for land ceded or sold.\textsuperscript{377} Instead of direct payment, Congress would hold the money in trust to be distributed for Indian benefit.\textsuperscript{378}

In Alaska, the native nations did not enter into treaties with the United States but instead the land was bought from under them when the United States bought Alaska from Russia in 1867.\textsuperscript{379} Furthermore, by the 1870's the United States no longer entered into treaties with native peoples. In 1971, the Alaska Native Claims Settlement Act (ANCSA) settled native claims to 40 million acres of aboriginal lands and compensation for the remaining Alaskan lands.\textsuperscript{380}

Today, native nations in the U.S. claim a wide variety of governmental powers which include the ability to establish a form of government, determine membership, legislate, administer justice, exclude persons from the reservation, charter business organizations and be free from state taxing authority.\textsuperscript{381}

Like aboriginal Native Americans, Native Hawaiians exercised self-governance and self-determination in their territory long before the first European settlers arrived.\textsuperscript{382} The Native American experience with the United States is longer than that of Native Hawaiians, nevertheless both peoples were
generally subjected to similar imperialistic methods that resulted in the loss of land, sovereignty and traditional rights.

**Native Hawaiians as Indigenous Peoples in the United States**

The Native Hawaiian people established highly organized, self-sufficient, social and governmental systems prior to the arrival of the first Europeans. These systems were based in the Hawaiian culture, language and religion. The Kingdom of Hawai‘i, formerly established by Kamehameha I, was a recognized sovereign nation by the 1840's. The United States engaged in several treaties with the Kingdom of Hawai‘i governing trade, commerce and navigation.

Throughout the 19th century, Native Hawaiians struggled to maintain the integrity of their government in the face of foreign political pressures. As Western concepts of government, land tenure and social norms gained prominence, native systems and societal norms were pushed to the side, and with them the native people. In 1840, the Kingdom of Hawai‘i became a Western-style constitutional monarchy with the enactment of its first constitution, which established a representative government. In 1848, the Hawaiian land tenure system was transformed from a communal to a fee simple
system. The change to private property was founded partly upon efforts to assimilate Hawaiians to Western norms and partly in pursuit of land in Hawai'i for commercial use. This was similar to the civilizing campaigns towards Native Americans in the continental U.S. It was thought that the creation of small farming plots for both Native Americans and Native Hawaiians would speed up the process.

After the 1898 forced annexation of the Hawaiian Islands to the United States, Congress utilized similar trust systems as those set up for Native American nations for Native Hawaiians in the 1921 Hawaiian Homes Commission Act which set aside approximately 200,000 acres of land for Hawaiian homesteading as a part of a rehabilitation program. The rhetoric used by promoters of the Act was similar to that espoused by supporters of the removal of Native American tribes to allotted areas on the continental U.S. 387

The United States reaffirmed the special relationship in the 1959 Admissions Act when it required compliance with the Hawaiian Homes Act as a condition of statehood. 388 Later in 1978, the State of Hawai'i created the Office of Hawaiian Affairs to receive and administer a share of the revenues from public lands.
In 1993, the United States further recognized native Hawaiian's rights to sovereignty and self-government in Public Law 103-150, also known as the "Apology" law. The "Apology" law acknowledges that the Kingdom of Hawai'i was an established nation seized by the United States through direct interference and in violation of treaties between the two countries. It also recognizes the illegality of the overthrow of the Hawaiian nation, as well as the subsequent effects on Native Hawaiians.389

Today, the aboriginal population of Hawai'i has the worst health, economic and educational statistics, and the highest rate of incarceration and heart disease. Lands formerly controlled by the Hawaiian government are now under the jurisdiction of the United States Federal government and the State of Hawai'i Legislature. All assets accrued from those lands are held by the State and Federal governments through established agencies, such as the Office of Hawaiian Affairs, set up to receive and distribute such funds.

Despite the historical similarities between the Native American and Native Hawaiian experiences and the dozens of statutes that categorize them together, Native Hawaiians continue to be the only indigenous people in the U.S. not yet recognized or presented options for compensation and restitution for lands taken and historical injustices.390

The unique aspects of the Hawaiian
Kingdom's history, namely international recognition as an independent nation, create an even stronger case for Hawaiian self-government. Supporters of this perspective like Van Dyke and Ka Lahui Hawai‘i feel that logical next step is the Federal recognition of Native Hawaiians as indigenous people of the Untied States, which would place Native Hawaiians on par with other native nations.

**Federal Recognition and The "Akaka" Bill**

In order to protect existing programs and agencies created to assist Native Hawaiians, like the Hawaiian Homes Commission and the Office of Hawaiian Affairs, an act of Congress must recognize Native Hawaiians as indigenous people of the U.S. Federal recognition would clarify and solidify a political and legal relationship between Native Hawaiians and the United States.

The following diagram illustrates the proposed position of the new Native Hawaiian Governing Entity according to the "Akaka" Bill.}\footnote{391}
The Office for Native Hawaiian Relations (ONHR) is comparable to the Bureau of Indian Affairs, the ONHR reports directly to the United States Department of Interior (DOI). It would be responsible for coordinating the efforts between the DOI (as the representative of the Federal government) and the Native Hawaiian Governing Entity (hereafter referred to as NHGE) as well as oversee the progress of the Native Hawaiian Interagency Coordinating Group in relation to the newly formed government and other Federal agencies.

The Native Hawaiian Interagency Coordinating Group would be appointed by the President of the United States from "each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact Native Hawaiian resources, or lands." Its purpose is to "coordinate Federal
programs and policies that affect Native Hawaiians...and ensure that each
Federal agency develops a policy on consultation with the Native Hawaiian
people...[and upon the reaffirmation of the political and legal
relationship]...with the Native Hawaiian governing entity and the United
States. 393

Simultaneous to the establishment of these agencies, the bill calls for the
preparation and certification of a registry of the names of eligible "adult
members of the Native Hawaiian community who elect to participate in the
reorganization of the native Hawaiian governing entity." 394 Upon completion,
the roll is submitted to the Secretary of the DOI and certified. This roll would
then be used to determine who are eligible to participate in the creation of the
Native Hawaiian Interim Governing Council who will be charged with
organizing referenda that establishes "proposed elements of the organic
governing documents...criteria for citizenship... the proposed powers and
authorities to be exercised by the Native Hawaiian governing entity...[and]
proposed privileges and immunities." 395 Once the Council has drafted the
organic governing documents, they would hold elections for officers of the
Native Hawaiian governing entity. 396 These documents will then be sent to the
Secretary of the Interior; upon approval the United States would extend federal
recognition to the Native Hawaiian governing entity "as the representative

governing body of the Native Hawaiian people."397

It is important to note that supporters of federal recognition for Native

Hawaiians do not necessarily support the "Akaka" Bill currently proposed to

Congress (Senate Bill 344 [April 2004]). The concept of federal recognition is part

of a long-standing precedent set by Native American nations. With federal

recognition comes programmatic and monetary assistance as well as some legal

protection. Critics, like Ka Pākaukau, say that the price for such protection is too

high and would not be self-determination or self-government because of the

involvement of the U.S. Department of Interior.

Conclusions

Native Hawaiians, as the aboriginal people of Hawai'i, have rights to self-
determination and self-government under U.S. domestic policy and international

principals. Prior to the arrival of Europeans, the Native Hawaiian people had a

sophisticated society and governmental structure based on the Hawaiian culture

and language. Today, Native Hawaiians continue to practice their culture and
traditions. Likewise, Native Hawaiians should be able to continue to practice
their inherent right to self-determination and self-government.

This perspective looks at colonization as a process that occurred over
decades as opposed to the result of one event, such as the 1893 overthrow of the
lawful government of Hawai'i. Colonization and de-colonization is not purely a
legal issue but involves social, economic and psychological aspects as well. And,
in the process of colonization Native Hawaiians have most keenly experienced
its effects. Therefore, Native Hawaiian sovereignty and dignity should be
reinstated through some form of reparations, compensation and restoration of a
Native Hawaiian governing body.

The concept of indigenous rights is a developing branch of the principal of
human rights and self-determination. Indigenous rights give standing to peoples
without nation-state status in the international community to voice their
concerns and demand respect for their rights as human beings. The fundamental
principals of indigenous rights appear in several human rights instruments as
well as the Draft Declaration for the Rights of Indigenous Peoples.

The Native Hawaiian colonial experience is similar to that of Native
Americans in that the United States entered into treaties subsequently violated
those treaties and encroached severely on the sovereignty of each native peoples.
The U.S. Federal government currently recognizes almost 500 Native American nations on the continental U.S. as sovereign entities within their own territories. There are also dozens of laws and statutes that treat Native Hawaiians as Native Americans such as the Native Hawaiian Health Care Improvement Act (1992). In addition, although the United States has yet to officially recognize Native Hawaiians as indigenous peoples of the United States on par with other native nations, the government has apologized (Public Law 103-150) for its involvement in the overthrow of the Kingdom and acknowledged the illegality of the act.

This political and legal association is not without its limitations. As domestic dependent nations, Native American nations are still subject to certain regulations and policies administered by the U.S. Department of Interior. Additionally, as domestic dependent nations, they cannot participate in trade or treaty making with other fully independent nations (i.e., Mexico, France, etc.).

Advocates of this perspective tend to be primarily concerned with Native Hawaiians needs, which include the preservation of current Native Hawaiian centered programs and agencies. The protection of these programs the main argument for federal recognition of Native Hawaiians. Many nationalists see Federal recognition as a stepping-stone to greater autonomy and the affirmation of the U.S.'s responsibility towards Native Hawaiians.
Opponents of Federal recognition see it as the extinguishment of other avenues towards self-government like the international court of arbitration. In effect, they say that Federal recognition can be perceived as an act of self-determination and would in fact forever tie Hawai'i to the United States. While preserving the current institutions assisting Native Hawaiians, critics say that the price for such protection is too high.
CHAPTER 7: CONCLUSION

The three main claims against the United States are the deprivation of the national sovereignty of the Hawaiian Kingdom, direct demoralizing assaults on Hawaiian culture, language, identity and spirituality, and continued interference by various arms of the U.S. government.

To address these injustices scholars, jurists and historians have posited three different but related strategies: (a) invoke the rights of a nation-states through the International Court of Arbitration, (b) invoke internationally recognized human rights precepts and de-colonization and (c) invoke internationally and domestically recognized concepts of indigenous rights. Each of these methods has distinctive advantages and obstacles.

In the invocation of the rights of a nation-state, the most important element is the status of the Hawaiian Kingdom as a recognized independent nation-state subject to rights and protection enjoyed by other nation-states. As such, the U.S. violated several precepts of International Law such as the breach of treaties between the two countries, invasion of Hawaiian national territory, breach of international laws of occupation and the violation of established Hawaiian neutrality. The only solution in this case is the restoration of Hawaiian
national sovereignty to the Hawaiian Kingdom or equivalent governmental entity.

Since this perspective is based in a legal definition of national sovereignty, citizenship is not limited to aboriginal Hawaiians and includes all descendants of the Hawaiian Kingdom's citizenry. The restoration of national sovereignty includes the return of all Hawaiian national lands, which include the Northwest Hawaiian Islands. In other words, what now constituted the State of Hawai'i would be under the Hawaiian national government. All taxes and fees usually paid to the State and Federal governments would instead go to one Hawaiian national government.

There are a few serious obstacles to this method of national transfer. First, the United States currently does not recognize the status of the Hawaiian Kingdom as an independent nation-state nor does it recognize the International Court of Arbitration. Additionally, while the United States would be subject to considerable restitution packages, the population of Hawai'i may not yet be ready to assume full responsibility of a national government after over one hundred years of occupation. Thus, this method represents a substantial shift in focus and significant demands on the population.
The de-colonization approach is centered on the colonization of Hawai‘i by the United States. This perspective emphasizes colonization as a process of transformation that led to detrimental effects to the Native Hawaiian population, government, culture, language and spirituality. Instead of invoking the rights of a nation-state, this perspective invokes principals of human rights violated through the actions of the United States. Several international instruments provide a process to restore self-determination and self-government through de-colonization. De-colonization would involve the re-inscription of Hawai‘i on the list of non-self governing territories and a national plebiscite regarding three options of the future U.S.-Hawai‘i relationship: independence, free association and incorporation (status quo). The precedent set by other countries that have participated in this process is that initial participants in a U.N. sponsored plebiscite may include all residents of Hawai‘i. The amount and type of land included is dependent on the outcome of the plebiscite as is citizenship.

One strong point of this approach is that it is a recognized and well-traveled path to self-government in international law. This is not to say that it is without weaknesses. In other areas that this process has been applied, there have been instances of corruption and coercive practices by the occupying nation.\textsuperscript{398}
There is also the possibility that the plebiscite may result in the option for incorporation, in Hawai'i's case to maintain the *status quo*. In which case, the matter of the deprivation of the right to self-determination would be closed. Another obstacle to this process is that the United States does not recognize that it has ever "colonized" Hawai'i, therefore why would Hawai'i need to be de-colonized?

The third method is to invoke internationally recognized rights of indigenous peoples. Indigenous rights are a subset of the precepts of human rights. Native Hawaiians are indigenous peoples whose rights were violated by colonization and the U.S. invasion of the Hawaiian Kingdom. Like the de-colonization approach, this approach emphasizes the process of colonization that preceded impingements of national sovereignty of the Hawaiian Kingdom.

The United States has developed processes to address the rights of its indigenous population. Native American policy is rooted in the U.S. Constitution, treaties between the U.S. and native nations, the creation of lands trusts and federal recognition of these nations. Native Hawaiians would seek to be included with other native nations as a domestic dependent nation under the U.S. Department of Interior.
Such an arrangement would provide protection for current programs and agencies set up to assist Native Hawaiians as the primary injured party. The United States government is already familiar with this process as there are currently nearly 500 federally recognized native nations on the continental U.S. It is also perceived as the easiest transition because it does not involve international intervention or the creation of a new independent governmental entity. Some see this approach as a stopgap measure until international intervention can occur.

The main criticism of this approach is that it is neither self-determination nor self-government and it is highly unlikely that it will lead to full independence. Although the Federal government would protect Native Hawaiian programs and agencies they remain under the Federal management through the U.S. Department of Interior. All decisions made by a Native Hawaiian governing entity are subject to approval by the Federal government.

Citizenship in a new Native Hawaiian governing entity would be limited to Native Hawaiians and exclude non-Hawaiians regardless of affiliation. Advocates of this perspective see this as a necessary stipulation, some opponents of this see this specification either irrelevant to legal definitions of citizenship or as an unnecessary divisive tactic.
Intertwined with these grievances are two sets of concerns: the political and legal status of the Hawaiian nation (aupuni) and the welfare of aboriginal Hawaiians (lāhui). All three approaches address the political and legal status of the aupuni. The nation-State approach would result in full independence and sovereignty of the Hawaiian nation. The de-colonization approach is dependent on the results of the national plebiscite in which all residents of the Hawaiian Islands would be able to participate. Finally, the indigenous rights approach limits all governmental participation to aboriginal Hawaiians however full independence is unlikely.

The welfare of aboriginal Hawaiians (lāhui) can be addressed in all approaches. Both the nation-State and de-colonization approach would establish a national entity first and then internally address Native Hawaiian concerns. The indigenous rights approach directly addresses Native Hawaiian needs and concerns but results in limited sovereignty.

All three perspectives have merit and span a spectrum of political and legal normative expressions. On one end is the legal positivist approach to International Law that condemns violations of national sovereignty regardless of a nation's size or military and economic power. On the other end is the indigenous rights approach, which draws from human rights precepts, that may
not provide full sovereignty but directly addresses the current needs of the people. In the center is the de-colonization approach, which overlaps the other two by addressing the political and legal status of the Hawaiian nation on the basis of human rights violations.

In my experience, individual choices are very often the result of a number of different factors such as overall goals, educational background, faith in the United States, International Law and the Hawaiian people, etc. I would like to see a Hawaiian national government, in the words of Lili‘uokalani, once again take its place amongst the family of Nations. Lili‘uokalani set a precedent when she appealed to the American sense of justice and freedom in the name of her people. However, political circumstances of the time rendered justice impractical to the United States government. Today, the political circumstances have changed; the question is have they changed enough to allow justice to prevail?

There is also the issue of the outnumbered Native Hawaiian people, of which I am proud to be a part. In Lili‘uokalani’s time, the majority of the population was aboriginal Hawaiian; the identity of the lahui as well as the interlopers was unquestioned. Today, that distinction is hardly clear leading to the confusion so many in the community experience regarding the “sovereignty” issue. Native Hawaiians as a people have suffered long under imposed dictates
and diseases, this much the United States government has acknowledged. Shall we then take what is offered us by Federal recognition? Or, is the price too high?

It is my contention that the de-colonization option has the most potential to provide both practical and legal results for aboriginal Hawaiians and a Hawaiian nation for five main reasons. First, the concept of de-colonization is based on violations of human rights, which are firmly established international principals. Second, indigenous rights fall under human rights and thus the United States would retain liability to the Native Hawaiian people. Third, the United States is familiar with the process. The former Trust Territories of the Pacific Islands were under U.S. administration and have since achieved independence. In addition, Hawai‘i was placed on the list of non-self governing territories in 1946; there is no reason, except U.S. interference, that Hawai‘i cannot be placed back on the list. Fourth, the fact that independence is a fixed option leads me to consider this approach over the indigenous rights method. Lastly, in a related aspect, an inclusive plebiscite to determine the status of a Hawaiian nation would place responsibility for justice on all citizens and eliminate racist suits.

Considerable work still needs to be done in the area of education and awareness of Hawaiian history and of the options presented in this process. This
is true in any approach; one of the main difficulties for Hawaiian nationalists is the lack of awareness of the general population. Today, there are a growing number of initiatives, programs, agencies and cooperatives that seek to strengthen the lahui (people) regardless of political status of the aupuni (government) in the areas of education, health, commerce, culture and identity.

These apolitical entities operate without federal or international recognition and form the backbone of the nationalist movement as a whole as they are the instruments of cultural, linguistic and traditional perpetuation while providing assistance for today's demands. In the area of education, New Century Charter Schools are pioneering community-based learning using Hawaiian techniques and resources. At the tertiary level, the Hawaiian faculty and staff of the University of Hawai'i system have formed an advisory council to the University's administration called Pūko'a. Health concerns are being addressed through programs like the Wai'anae Diet, in which participants return to a traditional diet and regain their health and vigor. Hale Ku'ai, a Hawaiian artisan cooperative, provides avenues to exhibit, market and sell their works. Hālau Hula and Lua Pā provide other outlets for cultural knowledge and the preservation of customs and language. There are many others not listed here.
who have but one overall goal, the perpetuation of the Hawaiian culture, language and social systems.

I have here presented three perspectives and their methods of approach to Hawaiian self-government. Each of these come in different shapes and forms, but even if there were 30, 40 or 100 ways to scrutinize, analyze and inspect the past, present and future of a Hawaiian nation all would point to one objective: justice for the Hawaiian nation and its people.

We return to the words of Kauikeaouli at the ceremony celebrating the return of Hawaiian national sovereignty in 1843: *Ua mau ka ea o ka ‘aina i ka pono-* the sovereignty of the land is perpetuated through justice. Just like Kauikeaouli’s words from one hundred sixty-one years ago, this thesis is not a plea nor a demand but a statement for justice.
ENDNOTES:

Chapter 1: Introduction


2 *Also found in* Mary Kawena Puku'i, *Ôlelo No'eau: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum Press, 1997) #2829.


Ibid, 5.
11 Trask (1999), 114.
13 United State Congress, Public Law 103-150, 103rd Congress, November 23, 1993 [Hereinafter Public Law 103-150].
14 MacKenzie, 45.
15 Meller and Lee, 172.
16 Fuchs, 412-413.
17 Ibid, 412.
19 Haunani Trask, "Kūpā'a ʻĀina." From a Native Daughter (Honolulu: University of Hawaiʻi Press, 1999) 69.
22 Trask (1999) 78.
23 MacKenzie, 90.
24 Meller and Lee, 175.
25 See also MacKenzie, 91 and Chock, 508.
26 Chock, 501-509.
27 See generally, Chock; Anaya: Kahanu and Van Dyke, 444-445.
30 Anaya, 321-322.
31 Anaya, 331.
32 United Nations Charter Chapter XII, articles 73-77.
33 United Nations Resolution 1541 (XV), Principal VI.
34 Articles and resolution relating to Ka Pākaukau, Kanaka Maoli Tribunal Komike, or the Pro-Kanaka Maoli Independence Working Group can be found in
Chapter 2: United States-Hawai'i Political/Historical Relationship, 1826 to 1898

39 1826 U.S.-Hawai'i Agreements, Article 3.
41 Ibid, 44-45.
42 Ibid, 44-45.
43 Ibid, 45.
44 *Article 3:* ...Their majesties bind themselves to receive into their Ports and Harbours all ships and vessels of the United States...so long as they shall behave themselves peacefully, and not infringe on the established laws of the land. *Article 4:* Their majesties...agree to extend the fullest protection, within their control, to all ships and vessels of the United States which may be wrecked on their shores...as a reward for the assistance and protection...they shall be entitled to a salvage, or a portion of the property so saved; but the salvage shall, in no case, exceed one third of the value saved. *Article 7:* Their majesties ...agree...to discountenance and use all practicable means to prevent desertion from all American ships which visit the Sandwich Islands...for the apprehension of every such deserter...


50 The Hawaiian Kingdom entered into three treaties with the United States (1826, 1850, and 1876). Denmark (1846), Hamburg (1848), Tahiti, (1853), Bremen (1854), Sweden and Norway (1855), Netherlands (1862), Italy (1863), Spain (1863), Swiss Confederation (1864), Russia (1869), Japan (1871 and convention in 1886), New South Wales (1874), German Empire (1879-80), Portugal (1882), Hong Kong (1884), Samoa (1887).


52 Ibid, 99.

53 Ibid, 100.

54 Ibid.

55 Ibid.


57 Kent, 37-38; Maclennan, 118.

58 Kuykendall, v. 3: 35.

59 The other goods exported to the U.S. are: arrow-root, castor, oil, bananas, nuts, vegetables, dried and undried, preserved and unpreserved; hides and skins, undressed; rice; pulu; seeds; plants, shrubs, or tree and tallow (Article 1, schedule).


61 Ibid, 159-160, 168.

62 *Treaty of Reciprocity between the United States of America and the Hawaiian Kingdom*, June 3, 1875; Article IV.

63 Fuchs, 21; Kent, 47.
64 Fuchs, 21.
65 Kent, 53.
67 Kent, 53.
68 This "constitution" was never submitted to a vote of the people either in the legislature or the general population.
69 Osorio, 197.
70 Lili'uokalani. *Hawai'i's Story by Hawai'i's Queen* (Japan: Charles E. Tuttle Co., Inc., 1964) 238-239.
71 Ibid, 237-238.
73 Ibid, 76.
75 Blondin, 22; see also Kuykendall, volume 3.
76 Fuchs, 31; see correspondences in the Blount Report since 1889.
78 Lili'uokalani, 230-231.
80 Kent, 60.
82 Lili'uokalani, 245.
83 Fuchs, 33.
84 Blount Report, 389.
85 Ibid, 387.
86 Ibid, 388.
87 Ibid, 388.
88 Jennifer Chock, "One-Hundred Years of Illegitimacy: International legal Analysis of the Illegal Overthrow of the Hawaiian Monarchy, Hawai'i's Annexation, and Possible Reparations." *University of Hawai'i Law Review* 17 (Fall


90 Robertson, 38.

91 Blondin, 21; see also I. Brownlie. Principals of Public International Law (Oxford: Oxford University Press1973), 595.

92 United State Congress, Public Law 103-150, 103rd Congress, November 23, 1993 [Hereinafter Public Law 103-150].


95 Blondin, 22-23.

96 Kuykendall, v. 3: 649.


98 Silva, 4.

99 As quoted by Silva, 4.

100 Ibid, 4.

101 Ibid.

102 Ibid.

103 Fuchs, 34.

104 Fuch, 34-35.

105 Mackenzie, 14.

106 Mackenzie, 14.


108 Ibid.

109 Ibid.

110 MacKenzie, 14.


112 MacKenzie, 14.

113 Ibid, 15.
Chapter 3: United States-Hawai‘i Historical/Political Relationship, 1898 to 2004


121 United States Congress, Act of July 9, 1921, c 42, 42 stat 108 [Hereinafter Hawaiian Homes Commission Act].

122 MacKenzie, 45.


129 Anaya, 311.

U.S. Congress, Act of April 30, 1900, Chapter 339 "An Act to provide a government for the Territory of Hawai'i" [Hereinafter the Organic Act].

Section 5: That the Constitution, and all the laws of the United States...shall have the same force and effect within the said Territory as elsewhere in the United States

Section 6: That the executive power of the government of the Territory of Hawai'i shall be vested in a governor, who shall be appointed by the President...

Section 80: The President shall nominate...appoint the chief justice and justices of the Supreme Court...the attorney general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of a public character that may be created by law...

Section 85: That a Delegate to the House of Representatives of the US...shall be elected...[and] every such delegate shall have a seat in the House of Representatives with the right of debate, but not of voting

Section 101: Upholds the 1892 United States act "An Act to prohibit the coming of the Chinese persons into the United States" with 1 year leeway.


Organic Act: Section 73, 4d: No lease of...public lands which is capable of being converted into agricultural land...shall be granted, sold or renewed by the Government of the Territory of Hawai'i for a longer period than sixty-five years

Section 73, 4e: All funds arising from the sale or lease or other disposal of public land shall be appropriated by the lased of the government of the Territory of Hawai'i and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawai'i and are consistent with the joint resolution of annexation...


Ibid, 154.
140 Ibid, 45, 48.
141 MacKenzie, 45.
142 Ibid, 45-46; See also Marylyn M. Vause, 33-36, 40.
143 Ibid, 45; House concurrent resolution number 28, 10th Legislature of the Territory of Hawai’i, 1920 Senate Journal, 1672-1673; see also Proposed amendments to the Organic Act, Legislative Commission of Hawai’i, 12.
144 MacKenzie, 46; Senate concurrent resolution number 2, 10th Legislature of the Territory of Hawai’i, 1920 Senate Journal, 25-26.
145 MacKenzie, 46.
146 Ibid.
147 Ibid, 46-47.
148 Ibid, 47.
149 Ibid.
150 Hawaiian Homes Commission Act §202; As of 2004, the nine members of the Commission are: Micah Kane (Chairman), Thomas Contrades (Kaua’i), Colin Ka’alele (O’ahu), Trish Morikawa (O’ahu), Milton Pa (Moloka’i), Mahina Martin (Maui), Herring Kalua, (East Hawai’i), and Henry Cho (West Hawai’i). For information on the Department of Hawaiian Homelands, see their website at http://www.mano.icsd.hawaii.gov/dhhl/.
152 A Broken Trust, 43.
153 Ibid, 44-45.
154 Ibid, 46, 48.
155 Ibid.
156 Ibid. 48.
157 Ibid.
159 Vause, iii.
160 A Broken Trust, 2.
161 Parker, 159.
162 Ibid, 163.
Jonah Kūhiō Kalaniana'ole was born in Koloa, Kaua‘i in 1871 and second son to high chief of Kaua‘i D. Kahalapouli and Princess Likelike. Jonah and his brother David were hānai to Queen Kapi‘olani and Kalākaua. Lili‘uokalani named them heirs to the throne. Kūhiō was 22 at the time of the overthrow and 24 when he assisted with the attempt to restore the Kingdom, but was captured and put in jail for his involvement (see also Fuchs, 159).

Fuchs, 407.

Fuchs, 408.

Fuchs, 409. Bell, 60.

Bell, 60.

Bell, 61.

Quoted by Bell, 61.

Bell, 267.

Bell, 77.

Fuchs, 300. But, none suffered more than the Japanese who were sent to internment camps and widely regarded with open suspicion. Between December 1941 and the end of the war in 1945, 534 citizens of Japanese ancestry were interned and publication of twelve Japanese newspapers and three magazines were stopped.

Perspectives on Hawaiian Statehood, interview with Robert McElrath, 118-119.

Ibid, 145.


Bell, 222. Fuchs, 82.

Bell, 222.

Ibid, 153.


Bell, 100. Whitehead, 45.

Whitehead, 44.
Fuchs, 407.
Ibid, 443.
Bell, 38.
Ibid.
MacKenzie, 18.
Parker, 163.
Parker, 163. see also MacKenzie, 19.
Parker, 137. MacKenzie, 19.
MacKenzie, 19.
Kahanu and Van Dyke, 451.
Ibid, 446.
Osorio, 254.
Ibid, 256.
MacKenzie, 88-89.
The other goals listed are: identify Native Hawaiian cultural traditions most endangered, monitoring of actions that affect native Hawaiian culture, create educational opportunities, establish an integrated network, provide effective administration of OHA, improve beneficiary access and information services, develop infrastructure, and develop strategies to address kūpuna health issues.

Whereas prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture and religion;
Whereas, a unified monarchial government...was established in 1810 under Kamehameha I...
Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawai'i, extended full and complete diplomatic recognition to the Hawaiian government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Ibid, § 2.


Ibid.


Johnston (July 1996) 12.

Act 200, §14.


Staton, (September 12, 1996).

Hawaiian Sovereignty Elections Council, “Setting the Record Straight”.

Ibid, 12.


United Nations Charter, Chapter XI, Article 73.

Hawaiian Sovereignty Elections Council. Setting the Record Straight, #3.

Kingdom of Hawai‘i, Principles Adopted by the Board of Commissioners to Quiet Land Titles, 1846.

Kingdom of Hawai‘i. Kuleana Act (1850).

State of Hawai‘i. Hawai‘i State Constitution, Article 12, section 7.

Ibid.

 synopsis of community workshops put together by the Planning Commission
and the PASH/Kohanaiki Study Group.

232 Ibid, 2.
233 Ibid, 23.
234 Ibid, 2.
236 State of Hawai'i. 19th Legislature, H.B. no 1536 (January 1997).
239 PASH/Kohanaiki Study Group, 9.
240 Ibid, 9.
242 PASH/Kohanaiki Study Group, 5.
243 Ibid, 7.
244 For more information about `Ilio'ulaokalani visit http://www.ilio.org .
246 Ibid.
247 Ibid.
248 Dwayne Wickham, "Native Hawaiians face another insult." USA Today 11
October 1999. See also, U.S. Constitution: Fifteenth Amendment, § 1: "The right
of citizens of the United States to vote shall not be denied or abridged by the
United States or by any State on account of race, color, or previous condition of
servitude".
249 Supreme Court of the United States, Rice v. Cayetano, case no. 98-818, February
23, 2000, Syllabus 2. The seven concurring justices were: Rehnquist, O’Conner,
Scalia, Thomas, Breyer Souter, and Kennedy.
250 Ibid, 3.
251 Ibid, 3. See also; Hawaiian Homes Commission Act (1921) for definitions of
"Hawaiian" and "native Hawaiian".
252 Ibid, 3.
253 Warren Richey, "New case may clarify court’s stand on race." Christian Science
Monitor 6 October 1999.
254 Ibid, in a quote by Linda Chavez, director of the U.S. Civil Rights Commission
in the Reagan administration and president of the conservative Center for Equal
Opportunity.
255 The two dissenting Justices in the case were Stevens and Ginsburg.

202
Stevens, J. Justice of the Supreme Court of the United States in a dissenting opinion in case 98-818 Rice v. Cayetano, February 23, 2000, pp. 5. See also, Newland’s Resolution.


Ibid, 6. See also; Admissions Act (1959).

Ibid, 6. The difference between the 1.8 million acres originally ceded to the U.S. Federal government in 1898 and the 1.2 million acres placed in trust as “ceded lands” in 1959 reflects the subtraction of the 203,500 acres for HHCA. The Federal government ostensibly used the remaining (approximately) 600,000 acres for various military installations throughout the archipelago.


Ibid. See also; United States, Public Law 103-150.


Ibid, 16.

Ibid, 1, emphasis added.


Kanehe, 861; as quoted from Hearing on S. 2899 before the Senate Commission on Indian Affairs, 106th Congress (2000).

See Public Law 103-150.

The US Department of Justice and Interior traveled to Hawai’i to conduct community workshops and hear testimony from the Hawaiian community in December 1999. From Mauka to Makai: The River of Justice Must Flow Freely, also known as the “Reconciliation Report”, was issued by the two departments on October 23, 2000.
Chapter 4: Hawai'i as an Independent Nation-State

Currently, Sai is in the University of Hawai'i's Political Science masters program. Henry Noa's manual, "Discover the Inherent Sovereignty of Hawai'i," (1998) presents his position, governmental structure and supporting documents.

Sai's Kingdom of Hawai'i website is http://www.hawaiiankingdom.org, Noa's Reinstated Hawaiian Kingdom website is http://www.pixl.com/~kingdom.


Oppenheim, 288-89, 305, 321. See also the United Nations Charter, article 2(1-4).

Jennifer M. L. Chock, "One hundred Years of illegitimacy: International legal analysis of the illegal overthrow of the Hawaiian monarchy, Hawai'i's annexation and possible reparations." University of Hawai'i Law Review 17 (Fall 1995).

Jon Van Dyke is a professor as the University of Hawai'i William S. Richardson School of Law; see his article "The Political Status of the Native Hawaiian People" in Yale Law and Policy Review 17: 1 (1998) and with Noelle Kahanu "Native Hawaiian Entitlement to Sovereignty: An Overview" in University of Hawai'i Law Review 17:2 (Fall 1995). James Anaya is a professor at the University of Iowa, "International Human Rights Law Toward a remedy for Past and Continuing Wrongs" in the Georgia Law Review 28:2, (Winter 1994).

This list was compiled by combining the works of Sai, Noa and Chock.


Brierly, 1. Oppenheim, 74.

Greeks, before the Macedonian conquest, lived in numerous small city States independent from each other and followed prescribed rules of conduct between States (Oppenheim, 74). Romans had a "special set of twenty priests called fetiales" who were "employed when war was declared, when treaties of friendship or of alliance were concluded, when the Romans had an international claim against a foreign State or vice-versa" (Oppenheim, 75-76).
According to the Montevideo Convention, Independent member nation-states of this "family" possessed the following qualities, (1) a permanent population, (2) a defined territory, (3) a defined government, and (4) a capacity to enter into relations with other states (i.e., treaties).

Universal Postal Union, November 9, 1886. The Hawaiian Kingdom entered into three treaties with the United States; 1826-unratified, 1849, and 1875 (renewed 1884). Denmark (1846), Hamburg (1848), Tahiti, (1853), Bremen (1854), Sweden and Norway (1855), Netherlands (1862), Italy (1863), Spain (1863), Swiss Confederation (1864), Russia (1869), Japan (1871 and convention in 1886), New South Wales (1874), German Empire (1879-80), Portugal (1882), Hong Kong (1884), Samoa (1887).

charged the Majority report with inaccuracies as a result of its particular reliance on one secondary source, Kuykendall's three volume *Hawaiian Kingdom*, "selective and often misleading presentation of the background of events", and a "fundamentally flawed legal analysis" (ix, x).

306 Chock, 485.
308 Oppenheim, 243.
310 Ibid, 533.
311 Ibid, 833.
312 Ibid, 834.
313 Sai, 24.
314 Ibid, 25.
316 Sai, 26.
317 Scott, 519; Sai, 30.
318 Sai, 29.
320 The complaint summarizes the historical facts of the events leading up to the 1893 intervention and subsequent violations of the US of International Law and treaties with the Hawaiian Kingdom (available at [http://www.hawaiiankingdom.org](http://www.hawaiiankingdom.org)).
321 See the Newland’s Resolution 1898 and 1900 Organic Act *Apology Law*.
322 Ibid.
323 Ibid.
324 Oppenheim, 96.

**Chapter 5: Hawai‘i as a Colonized Nation**

by Louis Henkin in *The Age of Rights* (New York: Columbia university Press, 1990) quoted by Flood as well as Flood's definition listed on the same page.


327 United Nations, International Covenant on Civil and Political Rights [Hereinafter the ICCPR].


329 Ibid.

330 Ka Lāhui Hawai'i, "Ho'okupu a Ka Lāhui Hawai'i: The Master Plan 1995." unpublished manuscript, also available in Haunani Trask. *From a Native Daughter: Colonialism and Sovereignty in Hawai'i (Revised Edition)* (Honolulu: University of Hawai'i Press, 1999).


333 Flood, 12, 14.

334 Flood, 12.

335 Oppenheim, 739.

336 Other international instruments of human rights are: the European Convention on Human Rights and Fundamental Freedoms, the European Social Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the Helsinki Final Act (Sieghart, 24-32).

337 United Nations, Charter (June 26, 1945), Article 1(3) [Hereinafter UN Charter].

338 United Nations, Universal Declaration of Human Rights (December 10, 1948), preamble [Hereinafter UNDHR].


340 Anaya, 321.

341 Anaya, 325, 331.

342 UN Charter, Chapter XI, Article 73.

343 Ibid, Article 73(a).
Chapter 6: Native Hawaiians as Indigenous Peoples


345 U.S. President Woodrow Wilson, January 8, 1918.


347 United Nations, Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples.

348 Ibid, Principle I.


350 Anaya, 328.


352 Osorio, 25.


354 See Hawaiian Homes Commission Act in Chapter 2.


356 See Rice v Cayetano in Chapter 2.

357 United State Congress, Public Law 103-150, 103rd Congress, November 23, 1993 Section 1(3) [Hereinafter Public Law 103-150].

358 Ibid; Whereas the long-range economic and social changes in Hawai‘i over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people.

359 Hawaiian Homes Commission Act/Department of Hawaiian Homelands, Admissions Act, Office of Hawaiian Affairs, etc.


361 See Chapter 3: Hawai‘i as an Independent Nation-State.

362 Native Hawaiians are defined in 1993 Public Law 103-150 as "any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constituted the State of Hawai‘i". The
Hawaiian Homes Commission Act also provides a definition for "native Hawaiians" as "any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778".


365 The International Labor Organization Convention no. 169 states that "people are considered indigenous either (a) because they are descendent of those who lived in the area before colonization; or (b) because they have maintained their own social, economic, cultural and political institutions since colonization and the establishment of new states". The Martinez Cobo Report to the UN Sub-Commission on the prevention of Discrimination of Minorities (1986), indigenous peoples may be identified as (a) indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the society now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existences as peoples, in accordance with their own cultural patterns, social institutions and legal systems. This historical continuity may consists of the continuation, for an extended period reaching into the present, of one or more of the following factors: (1) occupation of ancestral lands, or at least of part of them, (2) common ancestry with the original occupants of these lands, (3) cultural in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.), (4) Language (whether used as the only language, as mother-tongue, as the habitual means of communications at home are in the family, or as the main, preferred, habitual, general or normal language), (5) residence in certain parts of the country, or in certain regions of the world, or (6) other relevant factors". Mme. Erica-Irene Daes', Chairperson of the UN Working Group on Indigenous Populations designates certain peoples as indigenous "(1) because they are descendents of groups which were in the territory of the country at the time when other groups of different cultures or ethnic origins arrived there; (2) because of their isolation from other segments of the country's
population they have preserved almost in tact the customs and traditions of their ancestors which are similar to those characterized as indigenous; and (3) because they are, even if only formerly, placed under a State structure which incorporates national, social and cultural characteristics alien to theirs" (IWGIA website, available at http://www.iwgia.org/sw641.asp).

366 Anaya, 345. Anaya discusses these international instruments using four categories: Cultural integrity, land and natural resources, social welfare and development and self-government.

367 For more information see IWGIA website at http://www.iwgia.org/sw248.asp.


370 Ibid.


373 Ibid.

374 Ibid, 24-54.

375 Kahanu and Van Dyke, 428.

376 Ibid, 34, 429.

377 Parker, 24. Parker provides an in-depth examination of Native land and sovereignty claims and the history of U.S. interference.


379 Parker, 46.

380 Ibid, 47.

381 Kahanu and Van Dyke, 437.

382 Kahanu Van Dyke, 428.

383 Public Law 103-150.


385 For an examination of the change in land tenure in Hawai'i see Lilikalā Kame'elehiwa, Native Lands and Foreign Desires: Pehea Lā e Pono Ai? (supra note 351). For an in-depth discussion of the socio-political forces that led to the overthrow and occupation of the Hawaiian nation see Jonathan Osorio, Dismembering Lahui: A History of the Hawaiian Nation to 1887 (supra note 349).
also, Ralph Kuykendall, The Hawaiian Kingdom, Volumes 1-3 (Honolulu: University of Hawai'i Press, 1967).

386 Van Dyke, 101-103; See also Chapter 2: US-Hawai'i Relations

387 Parker, 153. Parker specifies similarities with the Five Civilized Tribes from the South in the 1830's and the General Allotment Act of 1887.

388 Parker, 159.

389 Van Dyke, 107.


391 The most recent version is Senate Bill 344(#3) April 2004.

392 S.B. 344(#3), §6b(1)

393 S.B. 344(#3), §6d(2).

394 S.B. 344(#3), §7c(A): "Adult member": as defined in section 3, "means a Native Hawaiian who has attained the age of eighteen and who elects to participate in the reorganization of the Native Hawaiian governing entity".

395 S.B. 344(#3), §7c(2iii)

396 S.B. 344(#3), §7ciii(IV).

397 S.B. 344(#3) §7(6).

Chapter 7: Conclusions

398 The Trust Territories of the Pacific Islands were under U.S. administration until the last nation, The Republic of Belau, finally achieved free association with the United States in 1994. During the process of creating a new constitution, two Presidents died and the people voted in ten national votes on a clause for a nuclear free Belau. In New Caledonia, the French were accused of importing French nationals to improve the plebiscite outcome in their favor.

399 In the case of TTPI, their historical and political situation was different from that of Hawai'i. But, Hawai'i's case for de-colonization is stronger than that of the former TTPI.
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