

# Land reform:

By Gerald Kato  
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Harvard law professor Laurence Tribe said yesterday that Hawaii's Land Reform Act — which he successfully defended before the U.S. Supreme Court — can trace its roots to America's most sacred constitutional traditions.

Tribe said showing that the act is an extension of those traditions was a key element in convincing justices of the court to uphold the constitutionality of the law branded by the 9th U.S. Circuit Court of Appeals as "majoritarian tyranny."

While Tribe was talking to a Hawaii Real Estate Commission seminar yesterday, the Council of Hawaii Organizations — a coalition of native Hawaiian groups — held a peaceful demonstration outside the Hawaiian Regent Hotel. The protesters said they believe the act is a "rip-off" to take property away from the Kamehameha Schools/Bishop Estate — the state's biggest private landowner and part of a legacy left to native Hawaiians by the Princess Bernice Pauahi Bishop.

The estate has been in the forefront of the fight against the act, which was passed by the Legislature in 1967 to provide a mechanism for residential leaseholders to buy the lots on which their houses are built. That mechanism uses the state's power of eminent domain to condemn large tracts of private property and transfer individual lots to lessees.

Tribe said the protesters were exercising their First Amendment rights and he defends their right to do so.

"I think many of them may be misinformed as to what the law means, but insofar as their protest to vent gut, emotional feelings, I don't know of any way to argue with that," Tribe said.

The protesters said they felt they should have been included on a

panel at the seminar which discussed the Land Reform Act's provisions. They said the seminar participants should have been exposed to an opposing viewpoint on the controversial measure.

Louis Agard, a spokesman for the Friends of Kamehameha Schools and the Bishop Estate, said the interpretation of the U.S. Supreme Court of the states' powers of eminent domain opened up a can of worms in which anyone's private property can be taken "for public purposes." Friends of Kamehameha Schools and the Bishop Estate was one of 12 Hawaiian organizations represented at the demonstration.

Agard held an impromptu press conference on the sidewalk and said that the seminar was "premature."

"The subject is not yet closed. The constitutionality of the act is being challenged in the state's high court, and the Legislature has the responsibility to re-examine it. We will be lobbying the Legislature in the next session with the goal of either amending the act to remove the dangerous provisions or of repealing it altogether," Agard said.

Speaking to some 600 persons gathered for the seminar, Tribe said he sees the Land Reform Act in the same tradition of what the 13

American colonies did to break up large landholdings from the English crown. It is, he said, consistent with the constitutional traditions of seeking to replace an oligarchy in which land is held in the hands of a few and replace it with a land market in which everyone has an equal opportunity to own property.

In this context, Tribe said there is nothing unique or un-American about the Land Reform Act. Tribe contends that the act bears a natural resemblance to the reform measures such as antitrust laws, divestiture laws and economic regulations that have grown up since the New Deal.

"The Supreme Court, in essence, concluded that the United States Constitution does not freeze our 50th state into a feudal past out of which an outmoded system of land tenure was encouraged, anymore than it froze the 13 colonies into a monarchical past," Tribe said.

University of Hawaii law professor David Callies expressed concern during the seminar that the court's ruling was on a "very, very broad basis." The ruling, he said, raises questions about whether there's any purpose for which the eminent domain power cannot be used.

Already there is talk on the Main-



Among yesterday's protesters was Louis Agard (left), spokesman for the Friends of Kamehameha Schools and the Bishop Estate. "The subject is not yet closed," Agard said. Above, Harvard law professor Laurence Tribe.

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land about condemnation of sports teams to prevent them from moving out of town. A prime example is the city of Oakland's effort to get the Raiders football team back from Los Angeles.

Tribe sees the court ruling as a clear precedent for government condemnation of all sorts of property.

Tribe said it is important to keep in mind that it is the job of the Legislature, not the courts, to decide when a "public purpose" is served in the use of the eminent domain power. An important factor limiting that power is the constitutional requirement that when property is taken, "just compensation" be paid, he said.

"It's important to recognize that we are not talking here about governmental power to restrict individual liberties — freedom of speech, freedom of worship, the right to vote," Tribe said. "Nor are we talking about the power of government to do what a number of foreign governments do, which is to just waltz in and confiscate property, expropriate without just compensation. The fact that just compensation must be paid is itself an important curb on any abuse of this power."