

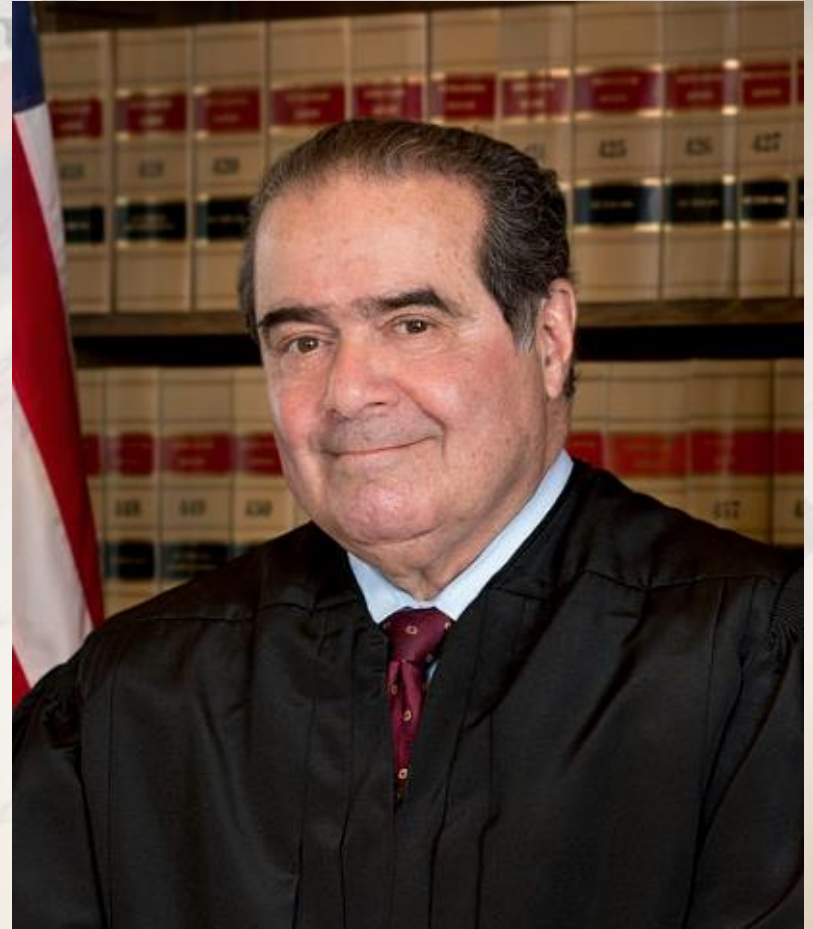
The Importance of Terminology and Why the Hawaiian Kingdom Continues to Exist

Dr. Keanu Sai



Importance of Terminology

- U.S. Supreme Court Justice Antonin Scalia once stated:
 - *“Words have meaning and their meaning doesn’t change”*
- This is an important point especially coming from a legal standpoint



Hawaiian Indigeneity

- There is an academic movement that I call *Hawaiian Indigeneity*, whose premise is that the Hawaiian Kingdom was controlled by the United States, through its American missionaries, and exploited and oppressed the native people of Hawai‘i
- On the 1848 Great Mahele or Land Division, Professor Lilikala Kame‘eleihiwa wrote:
 - “I refer to it simply as the ‘1848 Mahele’ because it proved to be such a terrible disaster for the Hawaiian People, and the word ‘great’ has a connotation of superior. It was a tragic historical event, a turning point that had catastrophic negative consequences for Hawaiians”



Hawaiian Indigeneity

- Professor Jon Osorio wrote that the Hawaiian Kingdom:
 - “never empowered the Natives to materially improve their lives, to protect or extend their cultural values, nor even, in the end, to protect that government from being discarded,” because the system itself was foreign and not Hawaiian”
- Professor Noenoe Silva concluded that the overthrow “was the culmination of seventy years of U.S. missionary presence”



Academic Research

- Dr. Robert Stauffer, in his book *Kahana: How the Land was Lost*, wrote:
 - “the government that was overthrown in 1893 had, for much of its fifty-year history, been little more than a de facto unincorporated territory of the United States and the kingdom’s government was often American-dominated if not American run”
- Counter-question:
 - If the Kingdom was controlled by the United States why did they have to overthrow it in 1893?
 - You don’t overthrow something that you are already in control of



Academic Research

- Countering these contemporary conclusions were the officers of the Hawaiian Patriotic League—*Hui Aloha 'Āina*, whose majority of its membership was comprised of the aboriginal Hawaiian commoner
- In a memorial to President Grover Cleveland dated December 27, 1893, addressing the illegality of the overthrow of the government of the Hawaiian Kingdom, the officers wrote:
 - “Last January, a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as a revenge for being a hopeless minority in the country, resolved to ‘rule or ruin’ through foreign help”



Academic Research

- Kame‘eleihiwa’s research findings:
 - By 1855, the commoner class only received a total of 28,658 acres of land in fee-simple, which is less than 1 percent of the total acreage of Hawai‘i (4 million acres)
- Actual findings:
 - Between 1850 and 1860, the commoner class acquired 111,448 acres of land through the Māhele, which is in addition to the 28,658 acres



Academic Research

- Kame‘eleihiwa’s conclusions that the Great Māhele oppressed the commoners is a cornerstone of the *Hawaiian Indigeneity* movement
- Subsequent academic researchers never bothered to authenticate her research to confirm or overturn her findings
- They all just *duplicated* her findings as the basis to push the fabricated story that the Hawaiian Kingdom, in collusion with American missionaries, oppressed the Hawaiian people



Academic Research

- In his 2002 book, *Dismembering Lāhui*, which is another cornerstone to *Hawaiian Indigeneity*, Professor Osorio wrote:
 - “As significant an event as the Māhele has proven to be, historians have seen it as a way of making specific indictments either of Ali‘i or of *colonialism*”
- 18 years later, he admitted:
 - “the Māhele was done to protect the hoā‘āina, the maka‘āinana and this was the most amazing things about the Māhele, and it was something that I didn’t really understand when I wrote my book. It was something that, really Professor Keanu Sai makes clear to all of us”



Importance of Terminology

- The terms *State*, *Colonialism*, *Colonization*, and *Indigenous Peoples* often is used in contemporary parlance when discussing Hawaiian history
- These terms have been used loosely and without true meaning and consequences by the *Hawaiian Indigeneity* movement that only confuses the situation
- Because Hawaiian history finds itself in a legal situation, it is imperative to know these terms and whether they apply or not



Importance of Terminology

- *Independent State*—is a country defined by international law: central government, citizenry, and borders that has exclusive authority of sovereignty over its territory, i.e., United States
- *State*—a political unit within an independent State called a federation, i.e., State of New York that exists within the United States
- *Nation*—a group of people that has a common ancestry, language and history, i.e., Navajo Nation that exists within the State of New Mexico



Importance of Terminology

- *Colony*—is a territory attached to the State with political and economic ties
- *Colonization*—is the extension of the State's laws and policies, through its citizens, over territory that does not belong to another State
- *Colonialism*—is the process by which colonies are established under what is called the *Doctrine of Discovery*



Importance of Terminology

- *Indigenous* (Latin *indigena*—native):
 - Produced, growing, living, or occurring natively or naturally in a particular region or environment
 - A native species is *indigenous* to a given region or ecosystem if its presence in that region is the result of only natural processes, with no human intervention
- Human intervention is a determining factor for a species to be *indigenous*



Humans are not *indigenous*

Importance of Terminology

- *Aboriginal*:
 - Relating to a people who have been in a region from the earliest time
 - *Aboriginal* applies to people not species
- *Example: 1883 Will of Bernice Pauahi Bishop*:
 - “I direct my trustees to invest the remainder of my estate...to devote a portion of each years income to the support and education of orphans...giving preference to Hawaiians of pure or part *aboriginal* blood”



Importance of Terminology

- From a political perspective the use of the term *indigenous* is applied to an entity “originating” in a particular region
- “Indigenous government” as distinguished from an imposed government from another country
- “Indigenous language” as distinguished from a language introduced later
- When you combine *indigenous* with *people* it is juxtaposed to a State that the *indigenous people* reside in



Importance of Terminology

- The term *indigenous peoples* was first introduced in the 1989 International Labor Organization (ILO) Convention No. 169:
 - “peoples *in independent nations* who are regarded as indigenous on account of their descent from populations which inhabited the country, or geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries”
- This distinction between *indigenous peoples* and the State is nuanced throughout the *United Nations Declaration on the Rights of Indigenous Peoples* that is pushed by the *Hawaiian Indigeneity Movement*



Beginning of Hawaiian Indigeneity

- In her 1999 book, *From a Native Daughter*, Professor Trask explained:
 - “some of us in the Hawaiian Nationalist community believe the *United Nations Declaration on the Rights of Indigenous Peoples* should become part of the framework within which future analyses, including legal discussions, regarding our special status should occur in Hawai‘i and in the United States”
- This ushered in academic research to be imbued with an indigenous rights discourse that applies critical race theory, colonial theory and indigeneity



• Academics have only *duplicated* the false findings of Kame‘eleihiwa and Osorio

The Hawaiian State



Anglo-French Proclamation, Nov. 28, 1843

Declaration.

Her Majesty The Queen of the United Kingdom of Great Britain and Ireland, and His Majesty The King of the French, taking into consideration the case of the Sandwich Islands of a Government capable of providing the regularity of its relations with foreign nations, have thought right to engage reciprocally to consider the Sandwich Islands as an independent State, and never to take possession, either directly, or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed..

The Undersigned, Her Britannick Majesty's Principal

Secretary

Secretary of State for Foreign Affairs,

foreign nations, have thought it right to engage reciprocally to consider the Sandwich Islands as an independent State, and never to take possession, either directly, or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed..

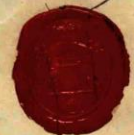
Strangères

Etrangères de Sa Majesté Britannique et Ambassadeur Extraordinaire de Sa Majesté Le Roi des Français près la Cour de Londres, munis des pouvoirs nécessaires, déclarent en conséquence, par les présentes, que leurs dites Majestés prennent réciproquement cet engagement.

En Foi de quoi les soussignés ont signé la présente Déclaration, et y ont fait apposer le sceau de leurs Armes.

Fait double à Londres, le Vingt-huit Novembre, l'An de Grace mil huit cent quarante trois.

P. Aulard's



U.S. Recognition on July 6, 1844



Department of State,
Washington, July 6th, 1844.

Subsequently appointed to reside on the
Sandwich Islands, were regarded

Sandwich Islands, were regarded
by the President as a full recognition
on the part of the United States, of
the Independence of the Hawaiian
Government. This opinion has undergone

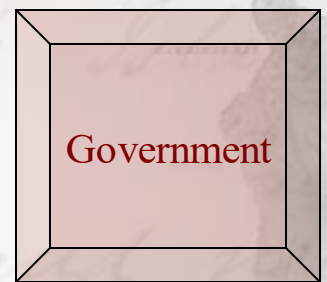
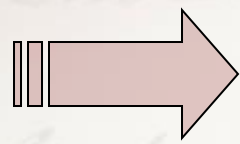
To Major J. Healy and W. Richards,
&c. &c. &c.



J. C. Calhoun

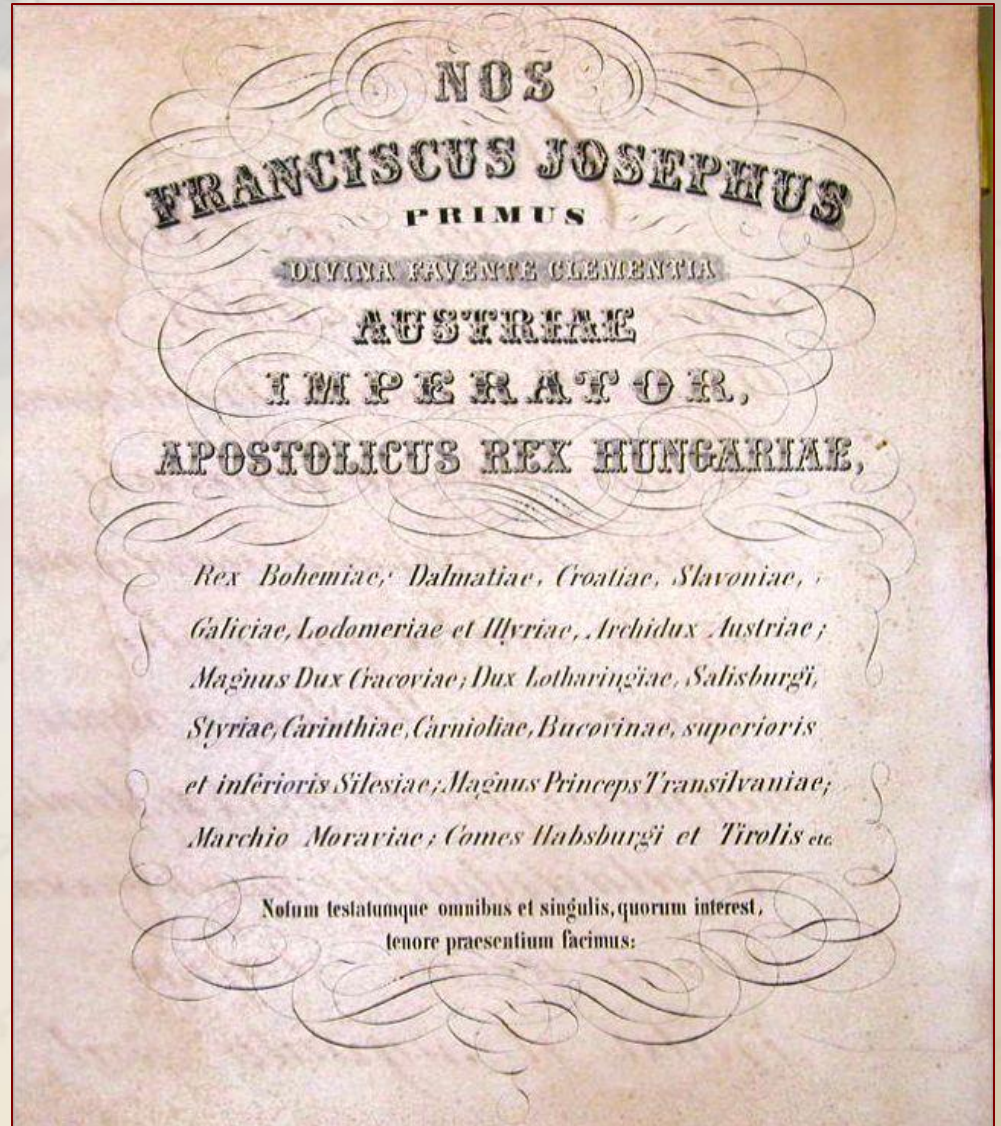


State & Government



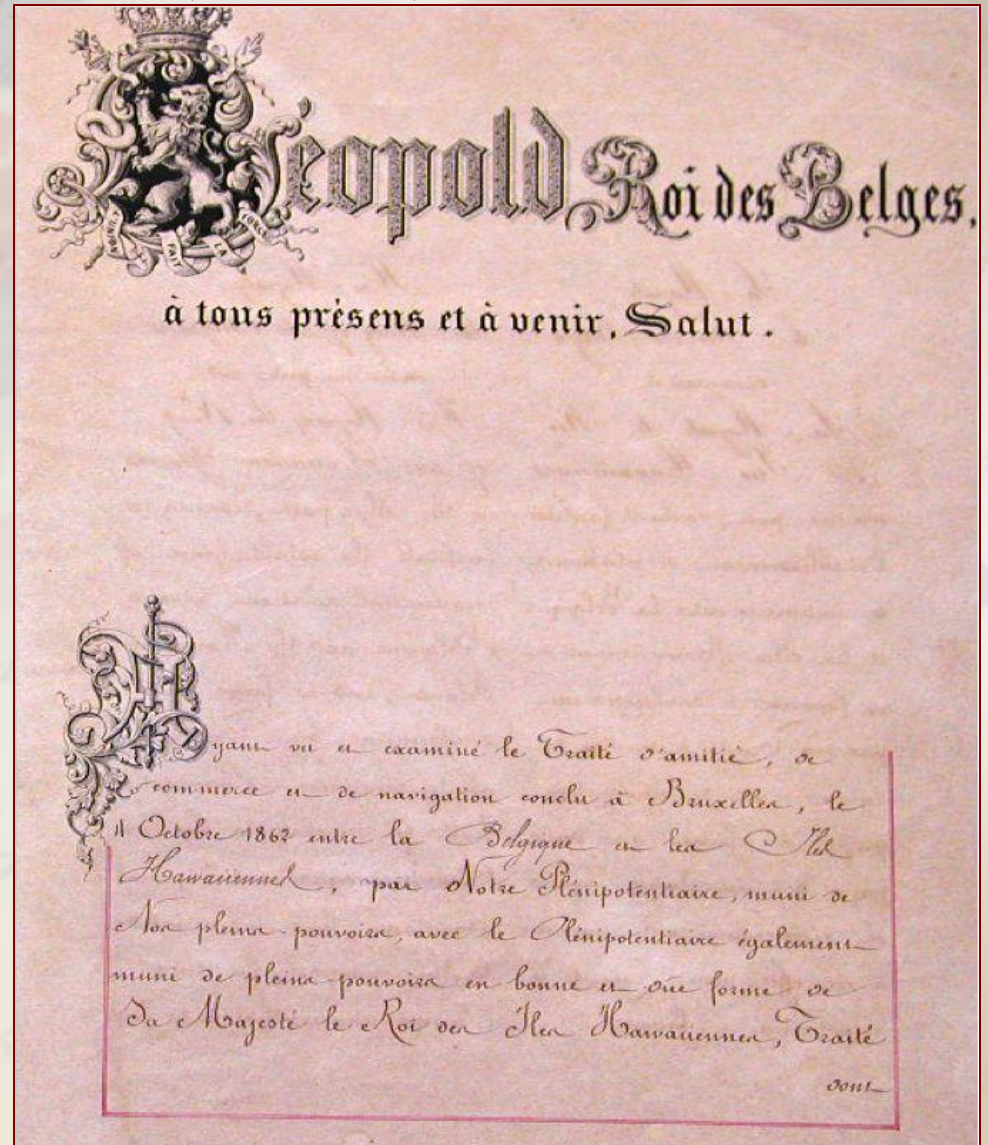
Treaty with Austria-Hungary (1875)

- Hawaiian Consulate in the city of Vienna



Treaty with Belgium (1862)

- Hawaiian Consulates in the cities of Antwerp, Ghent, Liege and Bruges



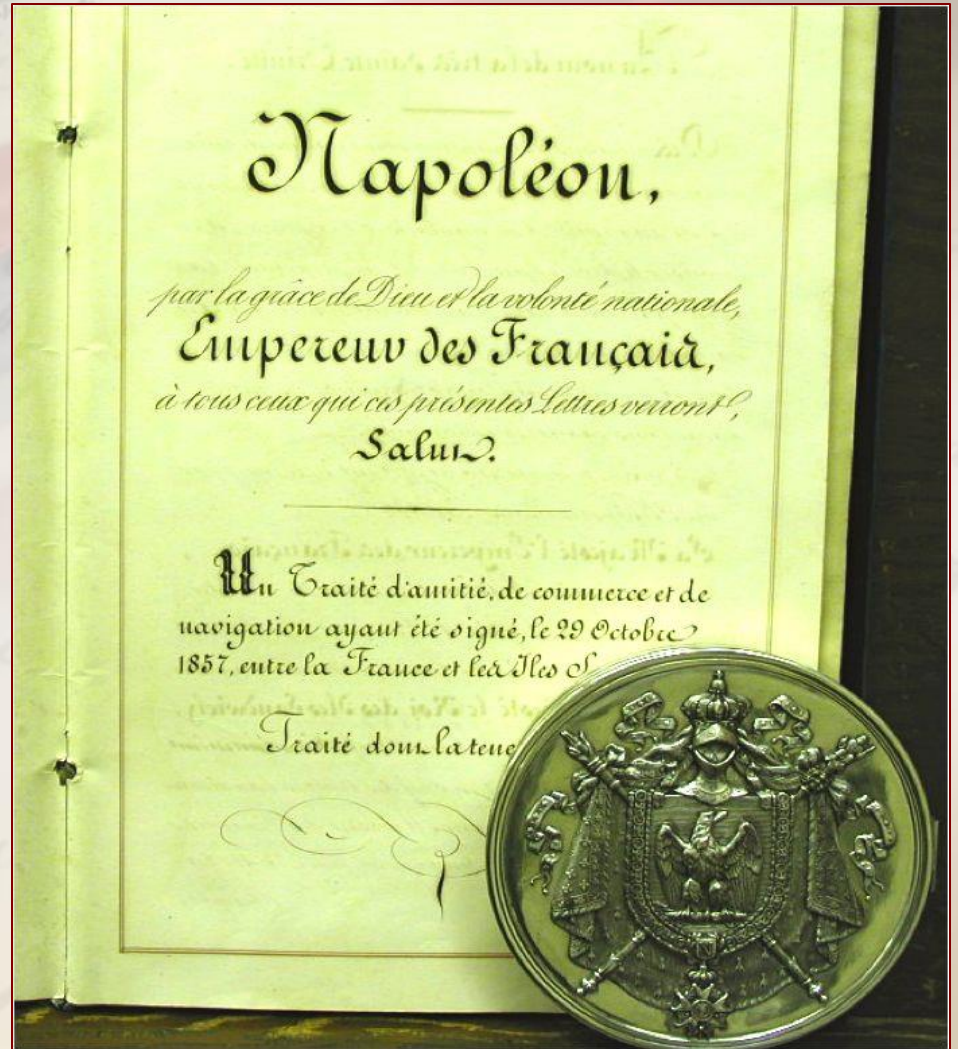
Treaty with Denmark (1846)

- Hawaiian Consulate in the city of Copenhagen



Treaty with France (1857)

- Hawaiian Legation in the city of Paris
- Hawaiian Consulates in the cities of Paris, Marseilles, Bordeaux, Dijon, Libourne and Tahiti



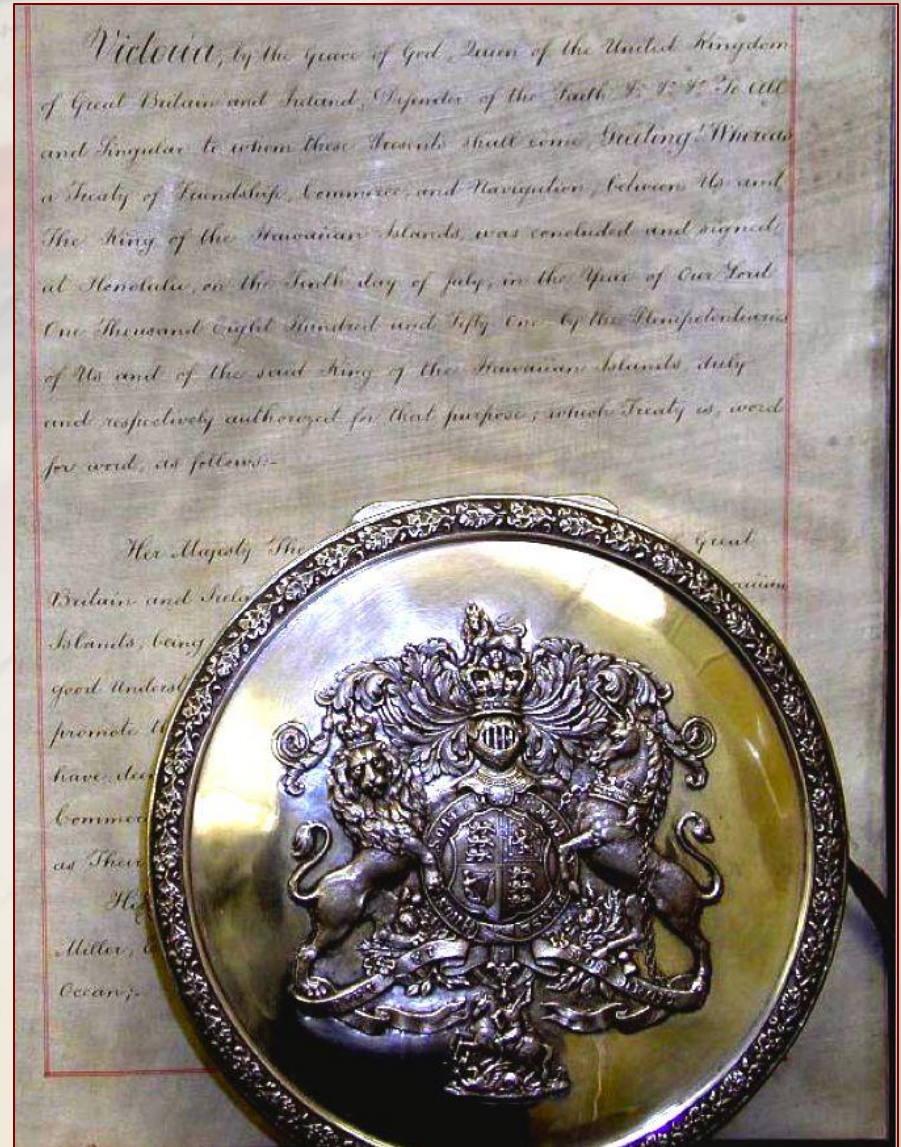
Treaty with Germany (1879)

- Hawaiian Consulates in the cities of Frankfurt, Dresden and Karlsruhe



Treaty with Great Britain (1851)

- Hawaiian Legation in the city of London
- Hawaiian Consulates in the cities of Liverpool, Bristol, Hull, Newcastle, Falmouth, Dover, Edinburgh, Glasgow, Dundee, Dublin, Queenstown, and Belfast
- Hawaiian Consulates in the cities of British Colonies



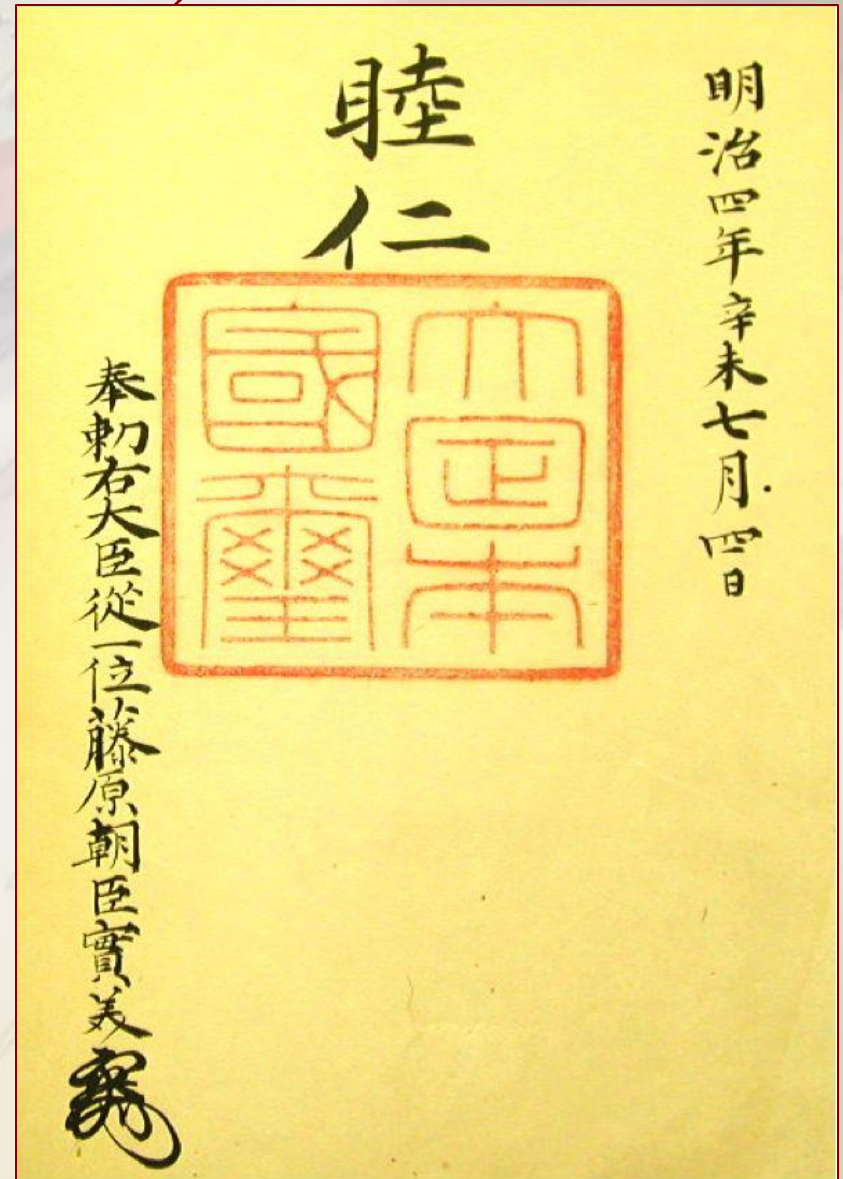
Treaty with Italy (1863)

- Hawaiian Consulates in the cities of Rome, Genoa, Naples, Venice, Palermo, and Turin



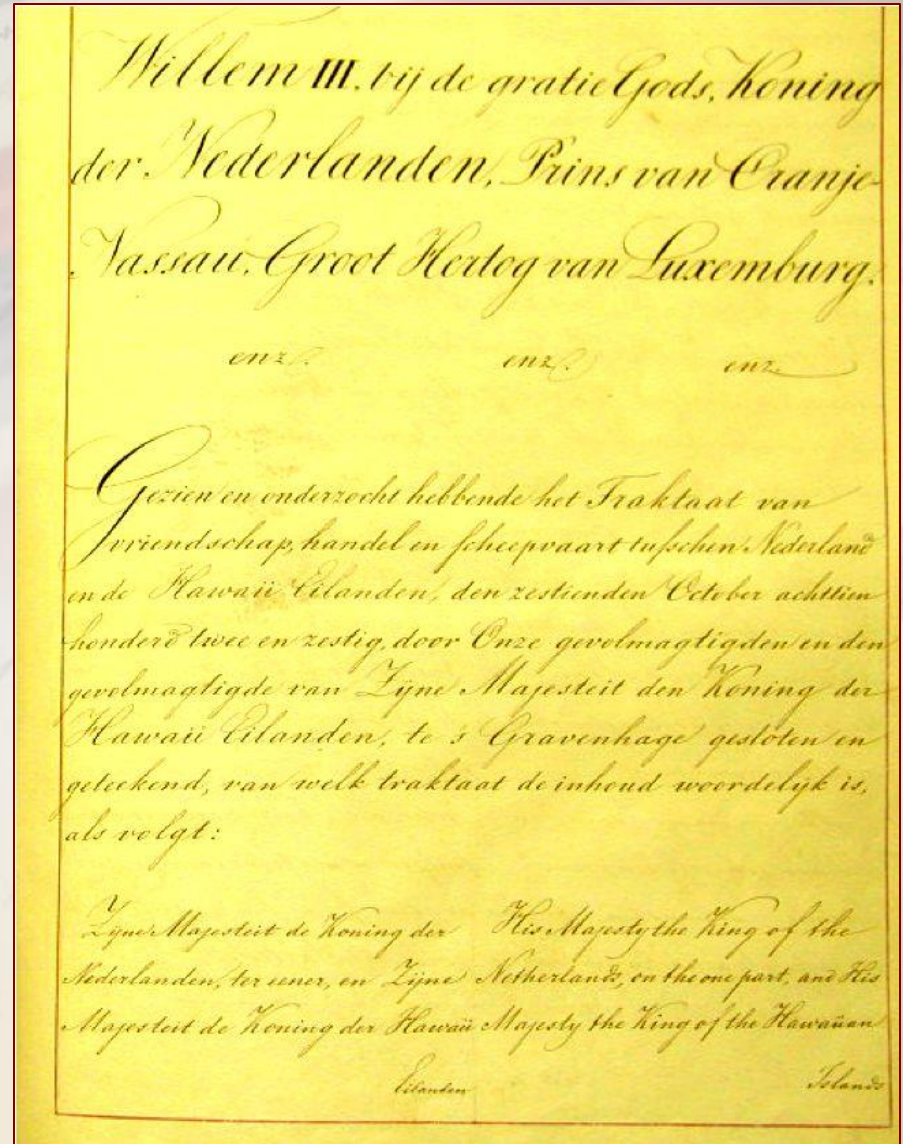
Treaty with Japan (1871)

- Hawaiian Legation in Tokyo
- Hawaiian Consulates in the cities of Hiogo and Osaka



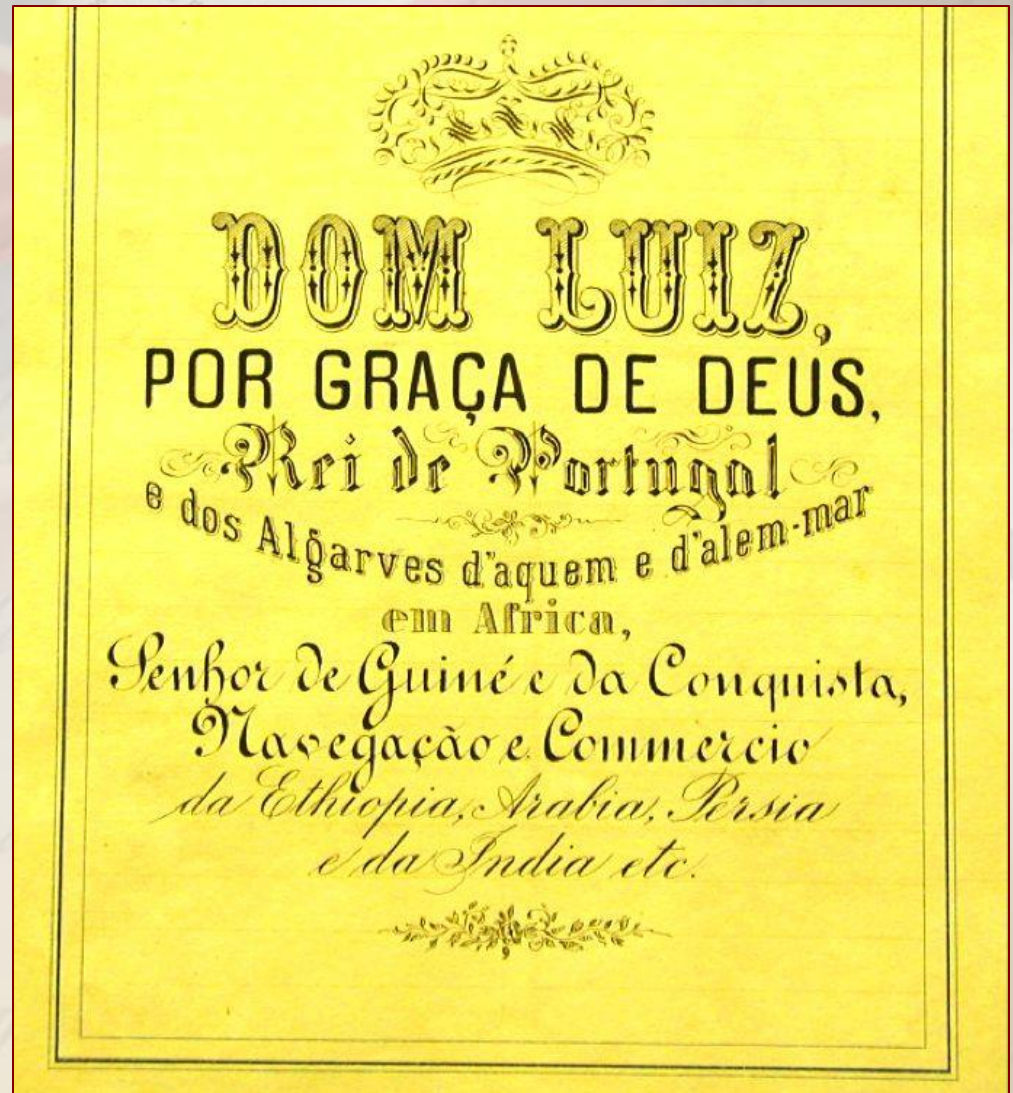
Treaty with Netherlands (1862)

- Hawaiian Legation in the city of Amsterdam
- Hawaiian Consulate in the cities of Amsterdam and Dordrecht



Treaty with Portugal (1852)

- Hawaiian Consulates in the cities of Lisbon, Oporto, Madeira, St. Michaels, and St. Vincent



Treaty with Russia (1869)

Sa Majesté l'Empereur
Alexandre II. mon Auguste Souve-
rain, ayant daigné autoriser le Comte
de Macaulberg, Son Ambassadeur Extraordi-
naire et Plénipotentiaire près Sa Majesté
l'Empereur des Français, à négocier une Con-
vention de Commerce et de navigation avec
Monsieur Crossnier de Surigny, Plénipoten-
tiaire de Sa Majesté le Roi des Alés-
Kavaiiennes, le dit acte international entre
les deux Etats respectifs a été conclu et
signé à Paris, le 29 Juin 1869. Son teneur est,
mot pour mot comme suit:

Les Soussignés, en vertu des instructions dont ils ont été munis, d'une part
The undersigned, in virtue of the instructions they have received: on the one
d'ordre du Gouvernement Impérial de Russie, de l'autre
part from the Imperial Government of Russia, and on



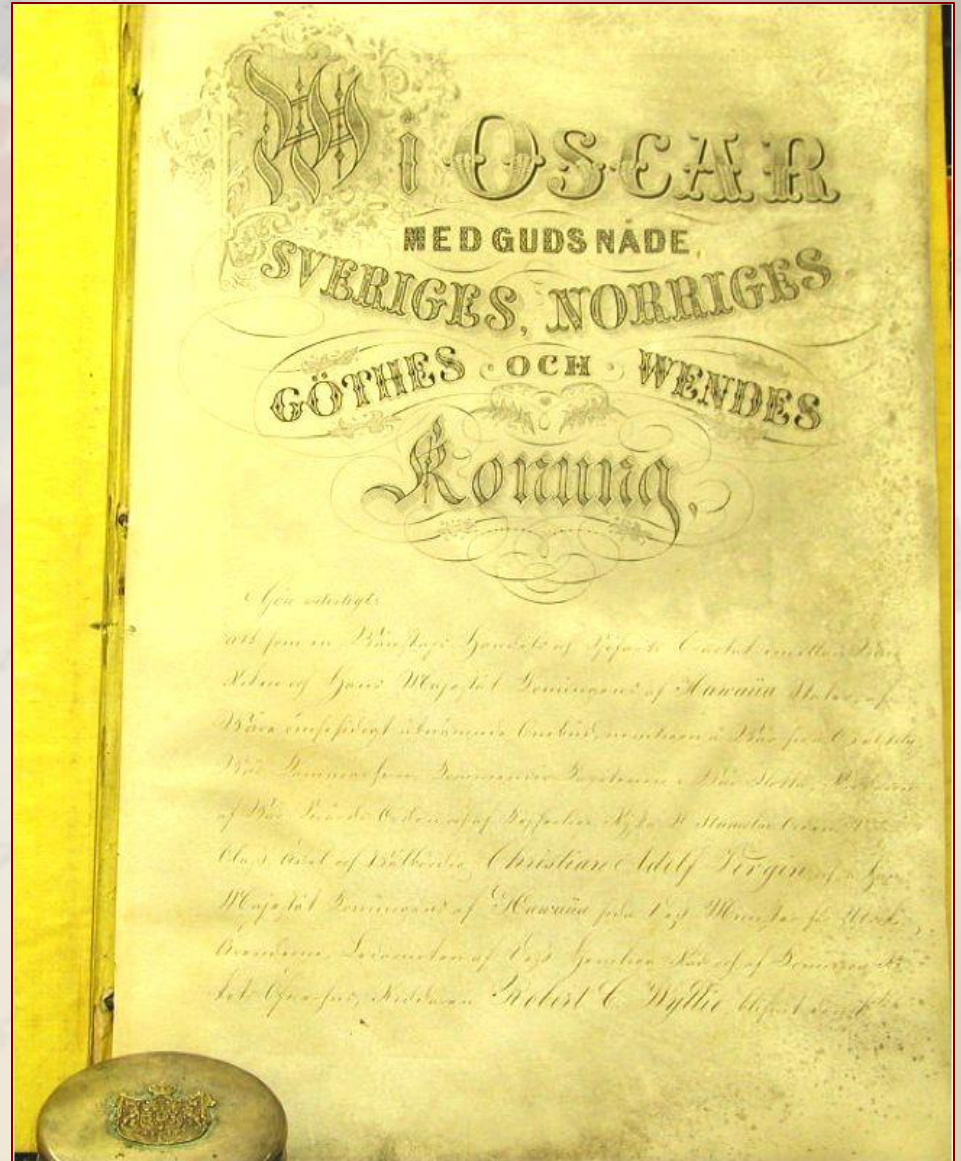
Treaty with Spain (1863)

- Hawaiian Consulates in the cities of Barcelona, Cadiz, Valencia, Malaga, Cartagena and Santa Cruz

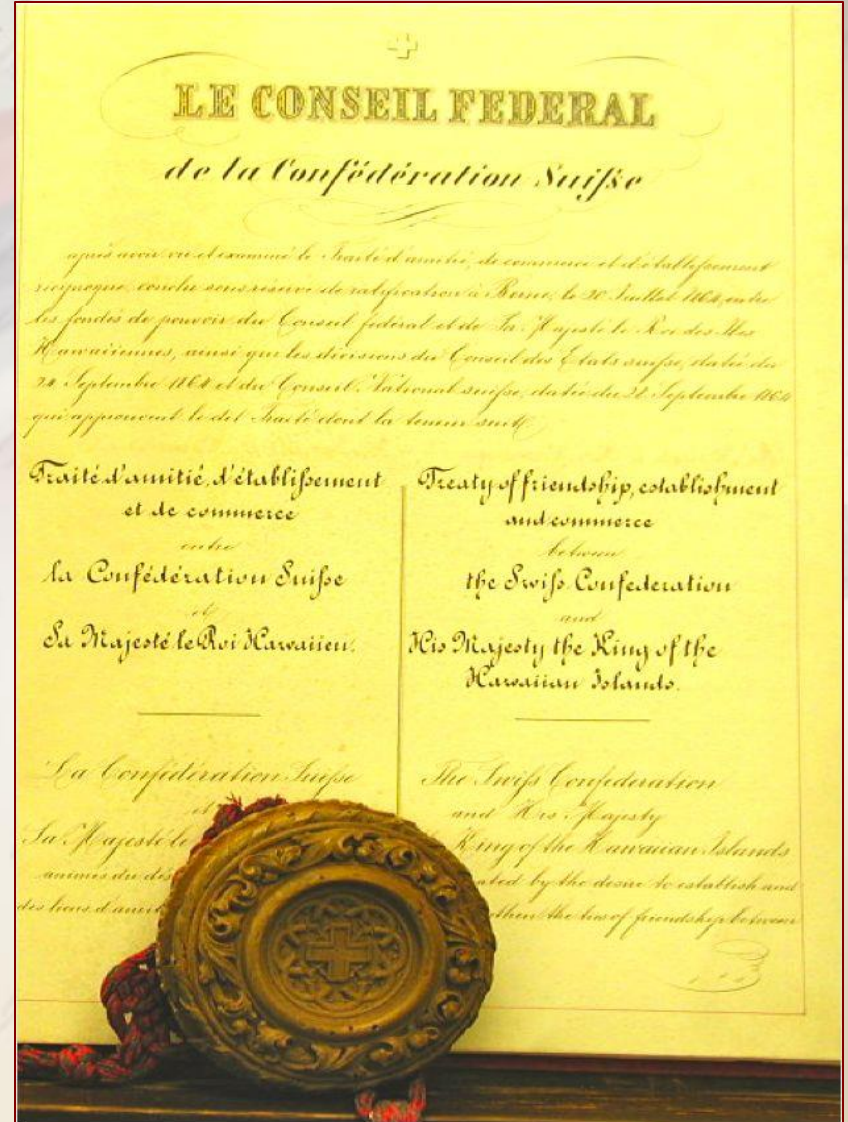


Treaty with Sweden-Norway (1852)

- Hawaiian Consulates in the cities of Stockholm, Christiania, Lyskil and Gothenburg

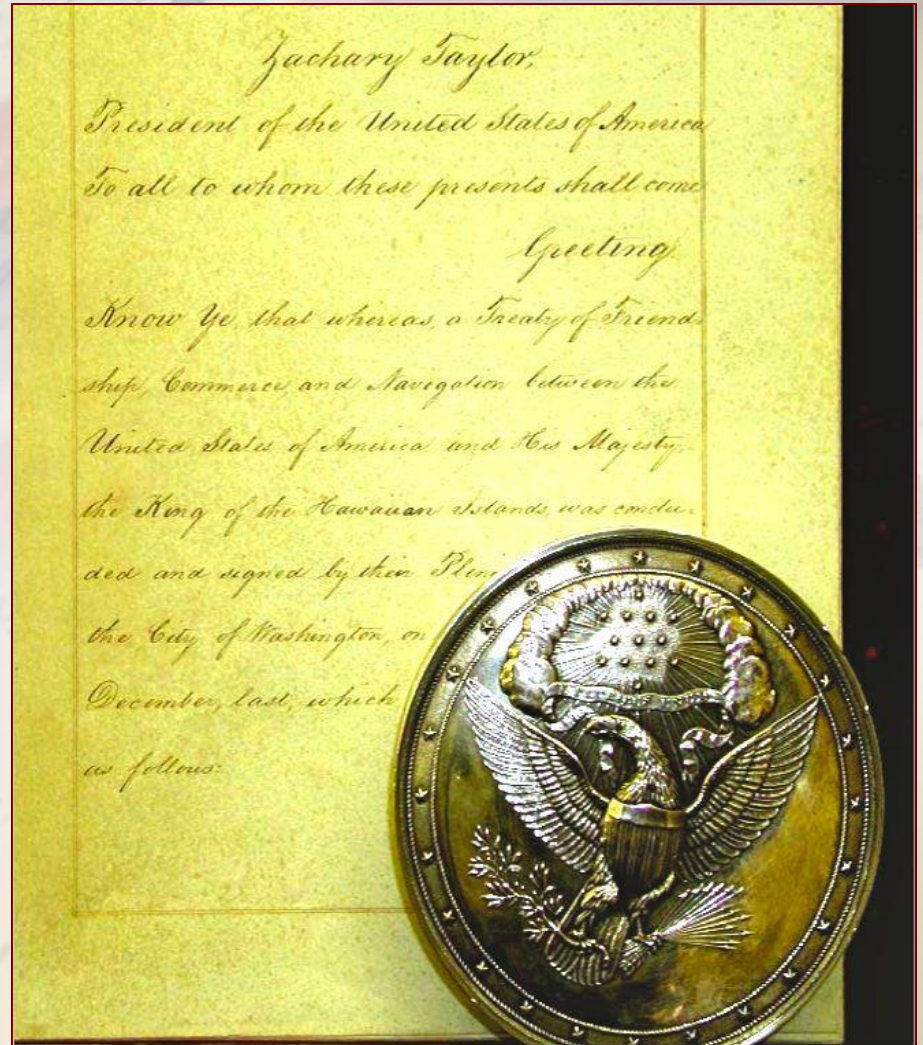


Treaty with Switzerland (1864)



Treaty with the United States (1849)

- Hawaiian Legation in the city of Washington, D.C.
- Hawaiian Consulates in the cities of New York, San Francisco, Philadelphia, San Diego, Boston, Portland, Port Townsend and Seattle



The Hawaiian Kingdom

- By 1893, the Hawaiian Kingdom maintained over 90 Legations and Consulates worldwide

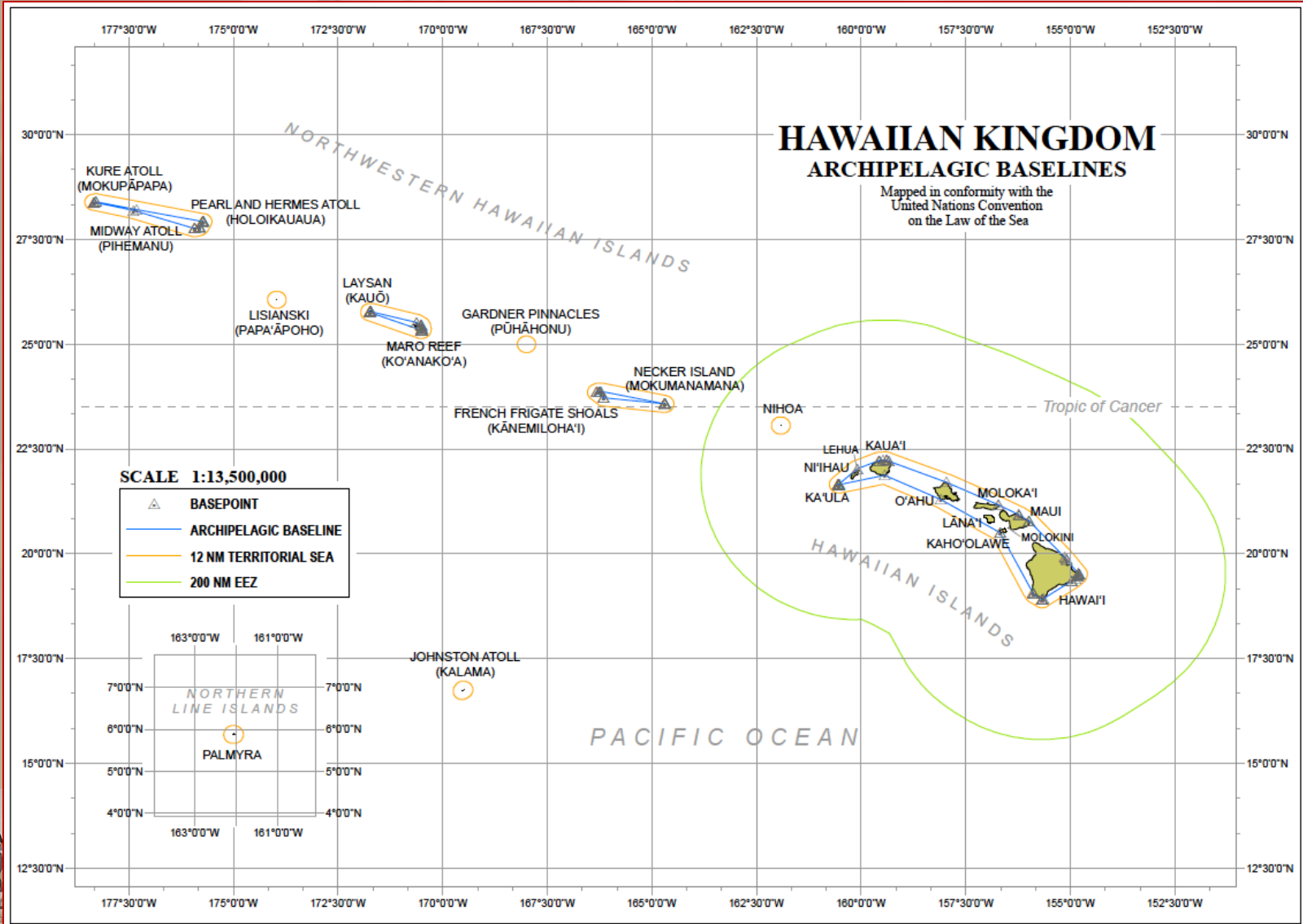


The Hawaiian Kingdom

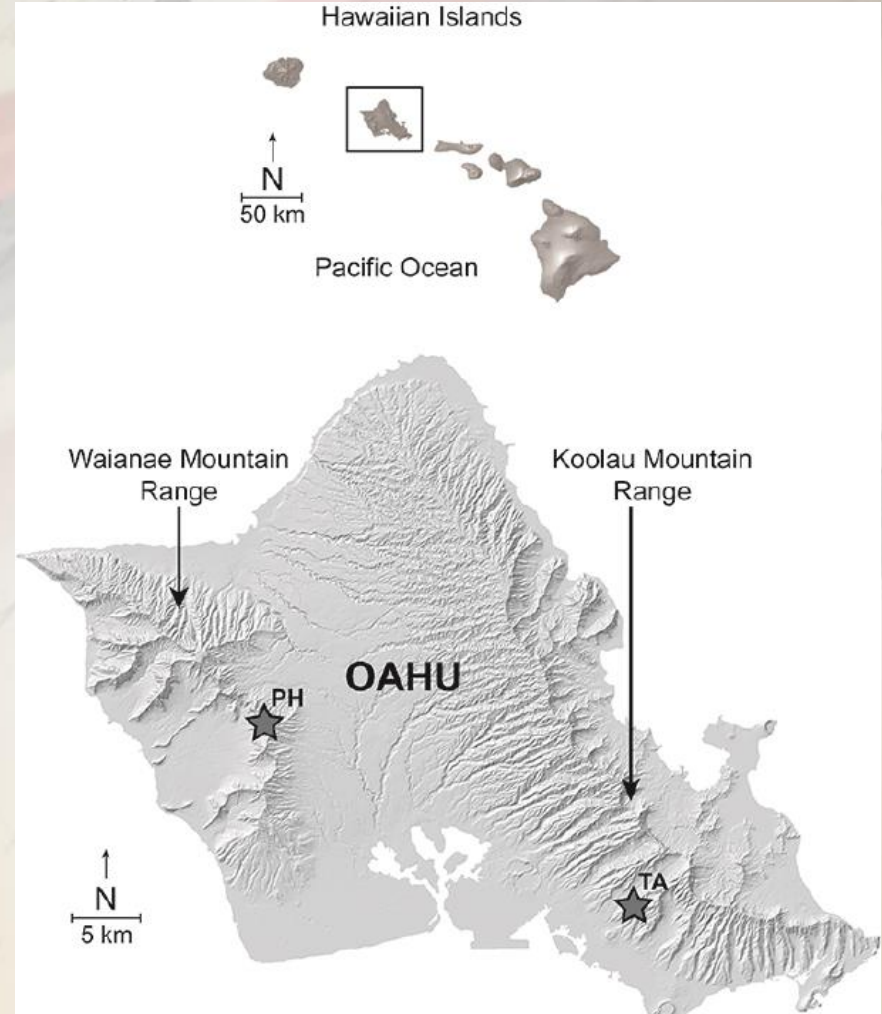
- The Hawaiian Kingdom was one of only forty-four Independent States in the 19th century
- The Hawaiian Kingdom was a recognized Neutral State, by treaty, along with Belgium, Luxemburg, and Switzerland
- The Hawaiian Kingdom's literacy was second to Scotland and aboriginal Hawaiians throughout the Islands received universal health care at no charge
- The Hawaiian Kingdom colonized the northwest islands under the *Doctrine of Discovery*



Hawaiian Territory



Hawaiian Territory



The Hawaiian Kingdom

- The nationality or citizenry of the Hawaiian Kingdom, called Hawaiian subjects, was multi-ethnic
- According to the 1890 Government census:
 - Hawaiian subjects – 48,107
 - Aboriginal Hawaiian (pure/part)– 40,612
 - Portuguese – 4,117
 - Chinese and Japanese – 1,701
 - White Foreigners – 1,617
 - Other Nationalities – 60



The Hawaiian Kingdom

- According to the 1890 Government census:
 - Resident Aliens– 41,873
 - American – 1,928
 - Chinese – 15,301
 - Japanese – 12,360
 - Portuguese – 8,602
 - British – 1,344
 - German – 1,034
 - French – 70
 - Norwegians – 227
 - Polynesians – 588
 - Other Nationalities - 419



The Hawaiian Kingdom

- The Hawaiian Kingdom was a very progressive secular constitutional monarchy since 1852
- Key provisions in the Hawaiian Constitution:
 - *Article 2*—All men are free to worship God according to the dictates of their own consciences
 - *Article 11*—Involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free
 - *Article 13*—The Monarch conducts Government for the common good; and not for the profit, honor, or private interest of any one man, family, or class of men among its subjects
 - *Article 25*—No person shall ever sit upon the Throne, who has been convicted of any infamous crime, or who is insane, or an idiot



Aboriginal Hawaiians are not
an *Indigenous People* but rather
comprise the majority of
Hawaiian subjects



Hawaiian Kingdom as an Independent State

- On November 8, 1999, international arbitral proceedings were instituted at the Permanent Court of Arbitration, The Hague, Netherlands—*Larsen v. Hawaiian Kingdom*
- In its 2001 Arbitral Award, the Tribunal stated:
 - “In the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties”



Permanent Court of Arbitration Website

Larsen v. Hawaiian Kingdom

Case information

NAME(S) OF CLAIMANT(S)	Lance Paul Larsen (Private entity)
NAME(S) OF RESPONDENT(S)	The Hawaiian Kingdom (State)
NAMES OF PARTIES	-
CASE NUMBER	1999-01
ADMINISTERING INSTITUTION	Permanent Court of Arbitration (PCA)

Kingdom.



Hawaiians Are Not An *Indigenous People*

- According to Professor Lenzerini, who serves on the International Law Association's *Committee on the Rights of Indigenous Peoples*:
 - “Indigenous Peoples have an international legal right to negotiate within their State, implying that indigenous peoples are not States of their own, but reside and are entitled to exercise their rights within an existing State. This characterization does not apply to Native Hawaiians as citizens of the Hawaiian Kingdom, who rather claim to be a national people under foreign occupation”



Other Polynesians That Are Not An *Indigenous* People

- Samoa

- Independent State on Jan. 1, 1962, United Nations Member State Dec. 15, 1976

- Tonga

- Independent State on June 4, 1970, United Nations Member State Sep. 14, 1999

- Tuvalu

- Independent State on Oct. 1, 1978, United Nations Member State Sep. 5, 2000



State of War between the Hawaiian Kingdom and the United States



State of Peace and State of War

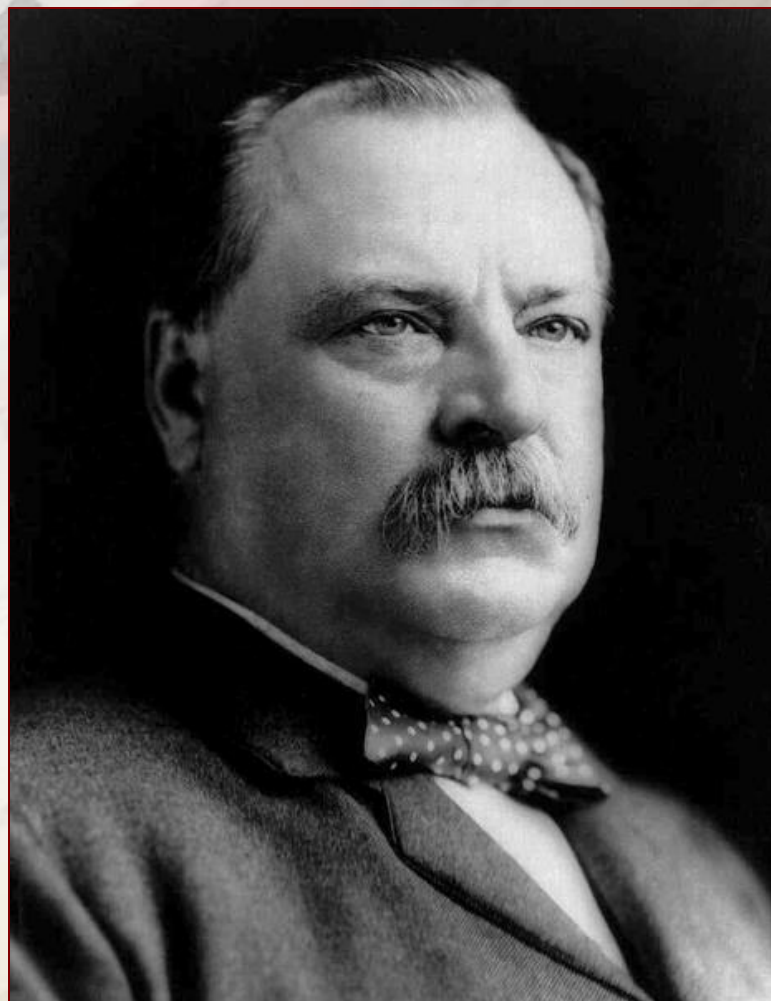
- Judge Greenwood states:
 - “Traditional international law was based upon a rigid distinction between *the state of peace* and the *state of war*”
 - “Countries were either in a *state of peace* or a *state of war*”
 - “There was no intermediate state”
- Acts of war triggers state of war



• State of war includes belligerent occupation

State of War

- By direction Queen Lili'uokalani, President Cleveland in March of 1893 initiated the investigation of the overthrow of the Hawaiian Kingdom government on January 17, 1893
- On December 18, 1893, the President reported to the Congress his findings and conclusions of the investigation



State of War

- President Cleveland's Message to Congress:
 - “On the 16th day of January 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu”
 - “The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies”
 - “This military demonstration upon the soil of Honolulu was of itself an *act of war*”



State of War

- President Cleveland's Message to Congress:
 - “By an *act of war* with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown”
 - “The provisional government owes its existence to an armed invasion by the United States”
- These “acts of war” committed by the United States triggered a “state of war” with the Hawaiian Kingdom

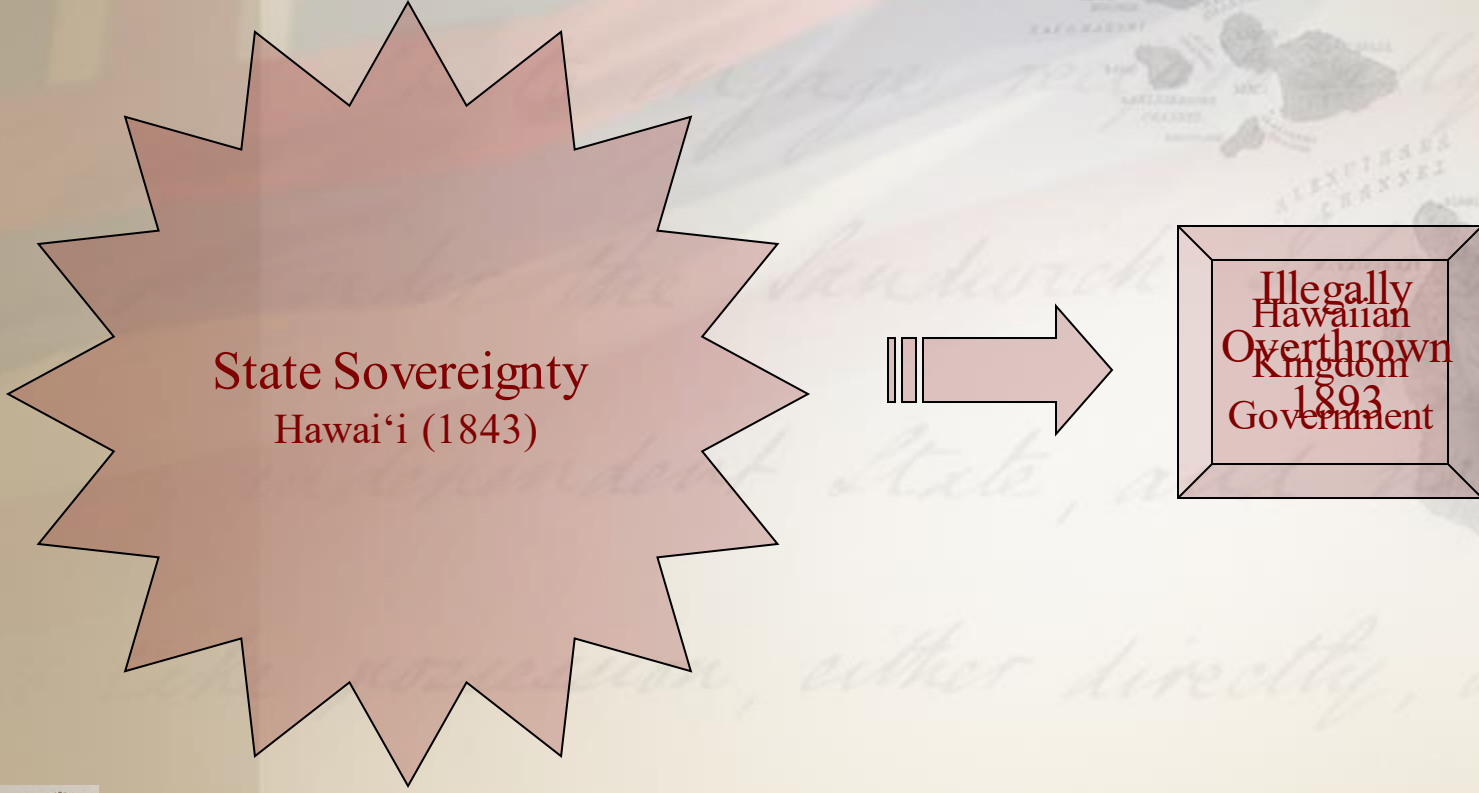


Hawaiian State & Government

- Under international law, the military overthrow of a country's government does not equate to an overthrow of the country called a "State"
- According to Judge Crawford:
 - "There is a presumption that the State continues to exist, with its rights and obligations despite a period in which there is no effective government"
 - "Belligerent occupation does not affect the continuity of the State, even when there exists no government claiming to represent the occupied State"



Hawaiian State & Government



State Sovereignty
Hawai'i (1843)

Illegally
Overthrown
Hawaiian
Kingdom
1893
Government



The Law of Occupation

- According to Professor Brownlie:
 - “After the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German State [its independence and sovereignty] did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its existence”



The Law of Occupation

- Customary international law in 1893 obligated the United States, as the Occupying State, to administer the laws of the Hawaiian Kingdom and not the laws of the United States when they are in effective control of the territory
 - This obligation is now codified under Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention
- The U.S. did not administer Hawaiian Kingdom law and unilaterally seized the Hawaiian Islands during the Spanish-American War in 1898



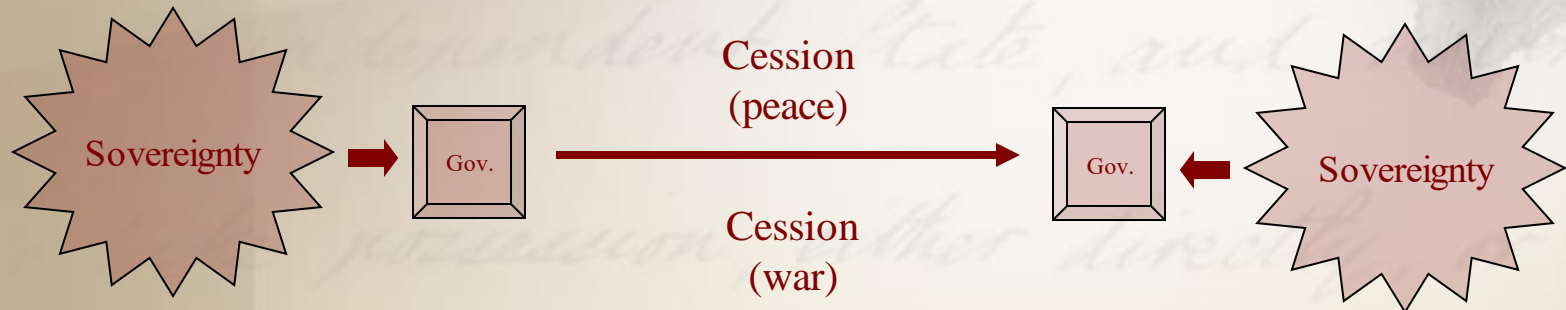
How Does a State Acquire the Territory of Another State under International Law?



Cession under International Law

According to Professor Oppenheim, a leading expert in international law:

“Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State” and the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State”



Territory Ceded to the United States



Authority of Hawai‘i’s Cession?

July 7, 1898.

[No. 55.] Joint Resolution To provide for annexing the Hawaiian Islands to the United States.

Annexation of the
Hawaiian Islands.
Preamble.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

- The 1898 *Joint Resolution of Annexation* is a municipal law of the United States enacted by the Congress
- A joint resolution is not a treaty of cession



Congressional Records

Public Law 86-3

~~United States, to overthrow the indigenous and lawful Govern-~~
ment of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendents of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by ~~people of Hawaii in the election held on November 7, 1890,~~ is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

~~Sec. 2. The State of Hawaii shall consist of all the islands together~~

void.”

Territory.



Limitation of U.S. Municipal Laws

- United States Supreme Court, *U.S. v. Curtiss-Wright Export*, 299 U.S. 304, 318 (1936):
 - “Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory...
 - and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law”

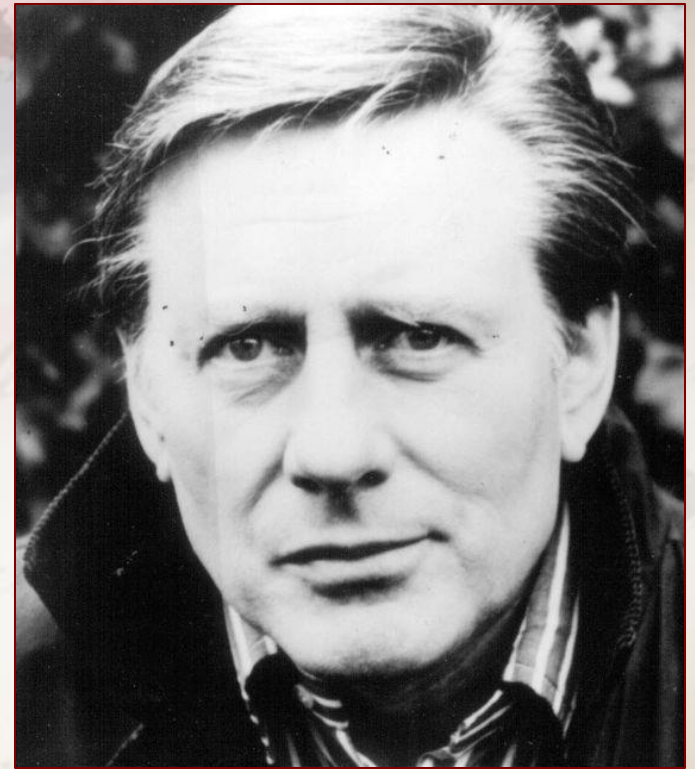


Annexation Called into Question

- In 1988, the U.S. Department of Justice's Office of Legal Counsel (OLC) questions Hawai'i's annexation
- The OLC concluded:
 - “It is unclear which constitutional power of Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea”



- “When a well packaged web of lies has been sold gradually to the masses over generations, the truth will seem utterly preposterous, and its speaker, a raving lunatic” —*Donald James Wheal aka Dresden James*



In the Queen's Own Words

- In her 1898 autobiography, *Hawai'i's Story by Hawai'i's Queen,* she ended her book with:
 - “Oh, honest Americans, as Christians, hear me for my down-trodden people! Their form of government is as dear to them as yours is precious to you. Quite as warmly as you love your country, so they love theirs. With all your goodly possessions, covering a territory so immense that there yet remain parts unexplored, possessing islands that, although near at hand, had to be neutral ground in time of war, do not covet the vineyard of Naboth's so far from your shores, lest the punishment of Ahab fall upon you, if not in your day in that of your children, for ‘be not deceived, God is not mocked.’”



Closing Statements

- Aboriginal Hawaiians are not an *indigenous people* that reside within the United States
- Aboriginal Hawaiians constitute the majority of Hawaiian subjects, which is multi-ethnic
- The United States never colonized the Hawaiian Islands
- The Hawaiian Kingdom has been under a belligerent occupation by the United States since January 17, 1893

