

TEACHING LAND AND SOVEREIGNTY - A REVISED VIEW

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I. INTRODUCTION

Two issues that continue to be of primary importance to Hawaiians are land and “sovereignty.”¹ There are two frameworks for viewing the relationship of native Hawaiians to land. The prevailing view of sovereignty and land assumes the legality of Hawai‘i’s annexation to the US in 1898. Some view this as a colonial relationship.² This essay presents the relationship between land and sovereignty during the Hawaiian Kingdom period, explores the legal status of Hawaiian sovereignty today, and recasts the relationship from this perspective. It presents an alternate view of the relationship between land and sovereignty that can be seen as an alternative to the prevailing view of Hawai‘i within a US-state context.

The strategy used by the Hawaiian Kingdom to attain sovereignty was to gain entry into the family of nations – the de facto international system of independent states, which are subjects of international law. On April 8 1842, Kamehameha III sent three envoys – William Richards, Timoteo Ha‘alilio, and Sir George Simpson – to Europe and the US to gain formal recognition from the US, France and Great Britain.³ It is such recognition that bestows on a nation the status of an

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¹ Editor’s Note: These issues of “sovereignty” and “autonomy” and the need to have a clear understanding of the terms is discussed in this issue in the reprinted article by Jeff J. Cornassel and Tomas Hopkins Primeau, Indigenous "Sovereignty" and International Law: Revised Strategies for Pursuing "Self-Determination.”

² Sally Engle Merry, *Colonizing Hawai‘i: The Cultural Power of Law*, (Princeton: Princeton University Press, 1999).

³ "History of the Provisional Cession of the Hawaiian Islands and Their Restoration," *Thrum's Hawaiian Annual* (1893).

independent state. International legal theorist Oppenheim (1920) holds that, “a state is, and becomes, an International Person [independent state] through recognition only and exclusively.”⁴

While the envoys were away, the British Naval Captain Lord George Paulet responded to complaints of unfair treatment from a British resident, forcing Kauikeaouli (King Kamehameha III) to conditionally cede sovereignty to Britain on February 25, 1843. This takeover was later determined to be illegal.⁵ British Admiral Thomas restored Hawaiian sovereignty on July 31, 1843. July 31st was thereafter a Hawaiian Kingdom national holiday: La Ho`iho`i Ea – Restoration Day.

In London on November 28, 1843, the British and French Governments jointly recognized Hawaiian Independence in the Anglo-Franco Proclamation.⁶ In 1849, a Treaty signed between the United States and the Hawaiian Kingdom in Washington, D.C. formalized the verbal recognition the U.S. had granted in 1842.⁷ The United States entered into four additional treaties with the Hawaiian Kingdom on May 4, 1870,⁸ January 30, 1875,⁹ September 11, 1883,¹⁰ and December 6, 1884.¹¹ The Hawaiian Kingdom’s independence was recognized by other independent states as well. Many had diplomatic representatives in the Hawaiian Kingdom in 1893, including Portugal, Japan and Italy.

Paulet’s intervention led Kauikeaouli to believe that a system of proprietary rights to land was a necessity. Not only would this system discourage would-be imperialists by showing Hawai`i to be a “civilized state,” it would provide for fee-simple title to land for aboriginal Hawaiians “separate and distinct from each other.”¹² In case of an

⁴ L. Oppenheim, *International Law: A Treatise*, (London: Longmans, Green and Co., 1920). 134.

⁵ Provisional Cession, *supra* note 3, 57.

⁶ *Id.*, 68.

⁷ 9 Stat. 178. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 115-122.

⁸ 16 Stat. 1113. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 123-125.

⁹ 19 Stat. 625. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 126-128.

¹⁰ 23 Stat. 736. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 129-133.

¹¹ 25 Stat. 1399. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 134-135.

¹² David Keanu Sai, (hereinafter “Sai”) review of *Kahana: How the Land was Lost*, by Robert Stauffer, *The Contemporary Pacific: A Journal of Island Affairs*, Vol. 15, No. 1

overthrow, the maka`ainana (native tenants) would have ownership of land under a land tenure system that the invading country would likely respect.

II. THE MAHELE AND KULEANA ACT

The Mahele of 1848 was an effort to modernize the land tenure system in the Kingdom. It was a division of all the lands of Hawai`i between the King and 252 chiefs.¹³ The 1850 Kuleana Act provided for maka`ainana to claim lands they cultivated from the lands divided in the Mahele. According to Alexander, the King and the Chiefs were “convinced that the ancient system was incompatible with their further progress in civilization, [and thus]... resolved to separate and define the undivided shares which each individual held in the lands of the Kingdom.”¹⁴

Dominium is the right of ownership of land separate from the exercise of sovereignty over the land—termed dominion. The dominium of the Hawaiian Kingdom consisted of a three-tiered system of interest in land: the King, all classes of chiefs in their capacity as konohiki (land lords), and the maka`ainana (native tenants). Each of these three classes held a one-third undivided interest in all the land in the Kingdom. The system of proprietary interests, consisting of fee-simple title, leaseholds and life estates existed on top of this dominium of vested rights in land.

The Land Commission was originally established to investigate land titles prior to 1845, and to confirm or reject claims to title.¹⁵ Its powers were expanded to include granting titles to the native tenants under the *Kuleana* process.¹⁶ Article IV of *an Act to Organize the Executive Departments* stated: “His majesty shall appoint through the minister of the interior...five commissioners, one of whom shall be the attorney general of this Kingdom, to be a board for the investigation and final ascertainment of or rejection of all claims of private individuals ... to any landed property acquired *anterior* [prior] to the passage of this act...”¹⁷

(2005). “Aboriginal” is the term used to distinguish Native Hawaiians from citizens of the Kingdom, who were referred to as “Hawaiians.”

¹³ Lilikala Kame`eleihiwa, *Native Land and Foreign Desires: Pehea La E Pono Ai?* (Honolulu: Bishop Museum Press, 1992). 227.

¹⁴ W.D. Alexander, *A Brief History of Land Titles in the Hawaiian Kingdom*, Thrum's Hawaiian Annual, vol. 1891 (Honolulu: Thos. Thrum, 1891), 109.

¹⁵ *Of the Board of Commissioners to Quiet Land Titles*, Act of December 10, 1845, Chapter 7, § 1, 2 [1847] Hawaiian Kingdom Laws, 107.

¹⁶ *Kuleana* is title to land in freehold. It referred to the transferring of title to those responsible for cultivating the land.

¹⁷ *An Act to Organize the Executive Departments*, Article IV—of the Board of Commissioners to Quiet Land Titles, 1845, 107.

Contrary to what has become the accepted view, the Land Commission was not originally involved in the Mahele process. The Commission's sole purpose was to investigate claims to private ownership to land, e.g. fee-simple, life estate or leasehold, between the reign of Kamehameha I to the year 1845 and to confirm or reject these claims based upon evidence provided by the claimants. According to the law, the land commissioners were "only authorized...to ascertain the claimant's kind and amount of title [and were] not authorized to grant leases or patents."¹⁸ In 1850 the Act establishing the Land Commission was amended to assist in the Mahele process by the granting titles to native tenants. Section 3 of the Kuleana Act stated "[t]hat the board of commissioners to quiet land titles be, and is hereby empowered to award fee-simple titles"¹⁹ to native tenants.

The results of the *Mahele* and *Kuleana Act* were as follows: Konohiki (chiefs) and some foreigners received 40% of the land, the King 23%, the Government 37%, and the Maka`ainana 0.8%.²⁰ Stauffer (2003) found that maka`ainana received the majority of land *value* (i.e., the most valuable lands) and that they held on to this land for a generation. Further, Stauffer determined that aboriginal Hawaiians lost land between 1888 and 1903 due to an 1874 non-judicial foreclosure law—a law that allowed foreclosures on mortgages without judicial oversight, a fact that explains the lack of written records.²¹

Sai, whose research is largely responsible for this revised view, found that maka`ainana (native tenants) received approximately 150,000 acres (approximately 5% of all land in Hawai`i) in government land sales through the minister of interior. This brings the total closer to 5% of the land in the Kingdom, and when combined with Stauffer's finding on value suggests that Hawaiians received the vast majority of land value in the Kingdom. Further, Sai clarified "layers" of rights to land distinguishing between the dominium of Hawaiian Kingdom and proprietary rights: fee-simple, leasehold, life estates. Dominium is the sovereign's right of ownership that exists *beneath* all "private" ownership.

¹⁸ *Principles Adopted by the Board of Commissioners to Quiet Land Titles, in Their Adjudication of Claims Presented to Them*, Act of October 26, 1846, 2 [1847], Hawaiian Kingdom Laws, 91.

¹⁹ *An Act Confirming Certain Resolutions of the King in Privy Council, passed on the 21st day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges*, Act of August 6, 1850 [1850] Hawaiian Kingdom Laws, 202.

²⁰ Kame`eleihiwa, *supra* note 13.

²¹ Robert Stauffer, *Kahana: How the Land Was Lost* (Honolulu: University of Hawai`i Press, 2003).

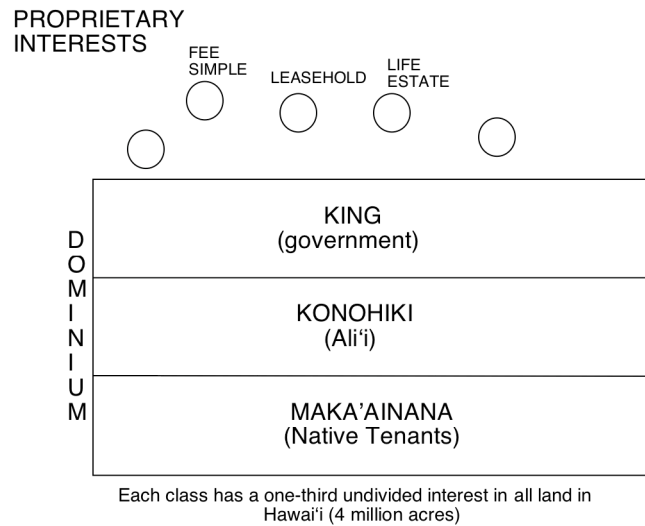
Proprietary rights – private property – are actually the right to use for a particular period, and rest “on top” of dominium. Sai also points out that the Constitution of 1840, prior to the Mahele, established vested rights in land for *maka`ainana* (native tenants), with the King owning the fee. This was a one-third undivided interest in all the land in Hawai`i.²²

This new assessment leads to a different understanding of the *Mahele & Kuleana* process. Under this revised view, the Government held an undivided right in both the domain and dominium of the kingdom that comprised roughly four million acres, until individual chiefs of the Konohiki class divided out their interests and acquired fee simple title in the domain. The Konohiki class included Kamehameha III in his private capacity, which has come to be known as Crown Lands. *Maka`ainana* also held vested rights in the dominium and could divide out their interests and gain fee-simple title in the domain, but could not divide out *as a class*. Thus, all lands held in the system of proprietary rights were subject to the rights of native tenants. Foreigners held land only as proprietary interests, and did not hold vested rights in the dominium of the Kingdom.

Kuykendall (1938) affirms this view quoting the Land Commission that: “a tract of land ... might be divided in three parts, and an allodial title to one then be given to the lord, and the same title be given to the tenants of one third, and the other third would remain in the hands of the King, as his proportional right.” Kuykendall continues: “[t]hese remarks by the Land Commission gave rise to the statement frequently made, but wholly erroneous, that all the lands of the kingdom were divided in three parts, one third to the king, one third to the chiefs, and one third to the tenants or common people. The division was effected on quite a different basis.”²³ Figure 1 illustrates the revised conception of the Hawaiian Kingdom’s view of land tenure:

²² W.D. Alexander, "A Brief History of Land Titles in the Hawaiian Kingdom: Surveyor General's Report," ed. Surveyor General (P.C. Advertiser Co., 1882).

²³ Ralph S. Kuykendall, *The Hawaiian Kingdom: 1778-1854, vol. 1* (Honolulu: University of Hawai`i Press, 1938), 281-282.



It is quite possible that maka'ainana (native tenants) did not file land claims under the Kuleana Act in larger numbers because there was an alternative method of acquiring land – purchase through the Minister of Interior. Land sales were the primary method for the acquisition of land by maka'ainana (native tenants) during the Kingdom period.

As stated in § 4 of the *Kuleana Act*, “a certain portion of the government lands in each island shall be set apart, and placed in the hands of special agents, to be disposed of in lots of from one to fifty acres, in fee-simple, to such natives as may not be otherwise furnished with sufficient land, at a minimum price of fifty cents per acre.”²⁴ This challenges not merely the notion that Hawaiians received only one percent of the land through the *Kuleana Act*, but also that aboriginal Hawaiians lacked money to pay for surveys.

The government had sold a “Grand Total” of 688,292.37 acres by 1893, and an additional 20,980.82 acres were sold after the 1893 overthrow, which suggests that government grants (land sales) were a more significant form of land distribution than the *Kuleana Act* process.²⁵ An increasing amount of evidence also suggests that aboriginal Hawaiians received much of this land. Alexander states that, “between the years 1850 and 1860, nearly all the desirable Government land was sold, generally to natives. The portions sold were surveyed at the expense of the purchaser... The total number of Grants issued before April 1st, 1890, was 3,475.”²⁶

²⁴ 1850 Act, *supra* note 19, 203.

²⁵ Thomas Thrum, *Hawaiian Annual* (Honolulu: Thomas Thrum, 1897), 40–41.

²⁶ W.D. Alexander, “A Brief History of Land Titles in the Hawaiian Kingdom,” *Thrum's Hawaiian Annual* (Honolulu: Thomas Thrum, 1891), 119.

Thus, there were two procedures for gaining title to land. The distinction between two types of Royal patents granting title was explained by Alexander: “the Royal patents issued to purchasers of Government land are styled ‘Grants,’ and are recorded in a distinct series of volumes from the Royal patents in confirmation of Land Commission Awards ... mistakes are often made by confounding the two series of patents.”²⁷

III. ANNEXATION

Contrary to popular belief, the annexation of Hawai`i was asserted via a joint resolution, not by treaty.²⁸ The result was a law that was internal to the US and did not apply to a foreign country. Oppenheim explains that “cession of state territory is the transfer of sovereignty over State territory by the owner state to another state.”²⁹ There must be a treaty to achieve a cession of state territory: “the only form in which a cession can be affected is an agreement embodied in a treaty between the ceding and acquiring state.”³⁰

Whether or not one considers the Republic of Hawai`i the legitimate government of Hawai`i, the joint resolution did not annex Hawai`i according to international law. Largely due to petitions from Hawaiians against annexation, the proposed treaty failed to get the constitutionally required two-thirds majority vote in the U.S. Senate required to ratify a treaty.³¹ The petitions against annexation show native Hawaiian opposition to annexation may have been as high as 95%.³² The failure of the United States to achieve a treaty of annexation is the basis of the argument that the Hawaiian state continues to exist under international law.³³ If this claim is valid, it follows that Hawai`i is an occupied state, and thus subject to the law of occupation. This set of international laws includes the provision that the occupying State *administer* the laws of the occupied State. The argument for Hawai`i’s status as an occupied state

²⁷ *Id.*, 118 – 119.

²⁸ See Resolution of July 7, 1898, known as the “Newlands Resolution,” No. 55, 30 Stat. 750 (1898).

²⁹ Oppenheim, *supra* note 4, 376.

³⁰ *Id.*, 378.

³¹ For a detailed account of the petitions against annexation, see Noenoe Silva, *Aloha Betrayed: American Colonialism in Hawaii* (Durham: Duke University Press, 2004).

³² Two petitions were circulated, one with 17,000 signatures, and one with 21,000, for a total of 38,000. 40,000 Native Hawaiians were living at the time.

³³ David Keanu Sai, “Occupation of the Hawaiian State: A Century Gone Unchecked,” *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 46-82; Matthew Craven, “Continuity of the Hawaiian Kingdom,” *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 453-489.

rests on the basis that its government was overthrown, but its “sovereignty” remains intact under international law.

United States law, early on, recognized and accepted the distinction between “annexation” and “occupation.” In 1828, Chief Justice John Marshall articulated this distinction, stating that “the holding of conquered territory [is] mere military occupation, until its fate shall be determined by a treaty of peace.”³⁴ In the *Lance Larsen vs. the Hawaiian Kingdom*, proceedings in the Permanent Court of Arbitration at The Hague, the court allowed the Acting Government of the Hawaiian Kingdom to enter proceedings, giving credence to the notion of the continued existence of the Hawaiian state.³⁵ Osorio also commented that “[t]he Court did not deny the legitimacy of either the Kingdom or the Council of Regency as its representatives.”³⁶

IV. THE SOCALLED “CEDED LANDS”

The “ceded lands” are the combined Government and Crown lands originally divided during the Mahele. In the conventional view, these lands were taken by the government of the Republic of Hawai‘i, and then assumed by the US government upon annexation. Webster’s Dictionary, however, defines the term “cede” as “to yield or grant *typically by treaty*.”³⁷ Because no treaty was ever ratified between the US and the Hawaiian government (neither the Hawaiian Kingdom nor the illegal Republic of Hawai‘i), the argument could be made that there are no “ceded” lands. Nevertheless, the conventional view of Hawai‘i, as a colony/US State holds that the “ceded lands” are held in trust as an entitlement for native Hawaiians.³⁸ In 1900, Hawai‘i’s territorial government was created by the Organic Act. The Organic Act contained the provision that “ceded” the lands to the territorial government, which was responsible for their maintenance and management. In 1959, effective authority over these lands was transferred to the newly created U.S. State of Hawai‘i government.

³⁴ Gerhard von Glahn, *Law among Nations: An Introduction to Public International Law* (New York: MacMillan, 1992), 681, citing *American Insurance Co. v. Canter*, 1 Pet. 511 (1828).

³⁵ For the full text of the arbitral award from the Permanent Court of Arbitration at The Hague, see *Larsen Case (Lance Larsen vs. Hawaiian Kingdom)*, 119 International Law Reports (5 February 2001) 581. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 244-283.

³⁶ Osorio, *supra* note 6, p. 237.

³⁷ *Merriam-Webster’s Collegiate Dictionary*, (Springfield: Merriam-Webster, 1996), 183.

³⁸ See Melody K. McKenzie, *Native Hawaiian Rights Handbook*, ed. Melody K. McKenzie (Honolulu: Native Hawaiian Legal Corporation and Office of Hawaiian Affairs, 1990).

Thus, the dual logics of native Hawaiians' relationship with land holds, on the one hand, that aboriginal Hawaiians retain – via the continued existence of the Hawaiian Kingdom and its laws under the law of occupation – a one-third undivided interest in the dominium of the Kingdom. On the other hand, native Hawaiians are entitled to a share of the revenue of the “ceded lands” in the US state context. An understanding of this dual context depends on an understanding of Hawai'i as an independent state.³⁹ This “understanding” meets Foucault's definition of a “subjugated knowledge”.⁴⁰ i.e., “the whole conception of ... benignly seeking the truth is a systematic concealment of the processes in which political powers establish and legitimate themselves through a violent exclusion of those whom they define as ... beyond the bounds of reason.”⁴¹

How is it that this legal history of Hawai'i has gone “unnoticed” for more than a century? Concerted propaganda campaigns were designed to obscure the legal history of the Hawaiian Kingdom. For example, the Historical Commission of the Territory of Hawai'i commissioned Ralph S. Kuykendall to write his extensive history *The Hawaiian Kingdom*. The history produced by this effort cleverly skirted the issue of the illegality of the overthrow and annexation. This was a concerted effort to distort Hawaiian history rather than an isolated incident. This can be seen in the erection of the statue in front of McKinley High School in Honolulu. According to one source, in 1901:

Sanford Dole [leader of the revolution against the Hawaiian Kingdom] led a fundraising campaign to commission a statue of President McKinley; and he personally unveiled that statue where it stands today on the campus of McKinley High School in Honolulu. President McKinley's statue is holding a book entitled: ‘Treaty of Annexation.’⁴²

Such a document did exist, but the treaty was never ratified by the U.S. Senate.

One outcome of this propaganda campaign is that many Hawaiians and other sympathizers have used a factually unsupportable historical

³⁹ The term “state” is used here to denote independent states under international law, rather than federated states such as the US State of Hawai'i.

⁴⁰ Michel Foucault, *Power/Knowledge - Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon (Brighton: Harvester Press, 1981).

⁴¹ J.O. Urmson. and Jonathan Ree, *The Concise Encyclopaedia of Western Philosophy and Philosophers* (London: Routledge, 1989), 133.

⁴² Kenneth Conklin, “Sanford Ballard Dole—His Political Biography, <http://www.angelfire.com/hi2/hawaiiansovereignty/dolebiog.html> (accessed July 13, 2005).

narrative to construct a path out of their dilemma. Using the precedents of other oppressed groups, Hawaiian scholars and activists have created a logic that casts Hawai`i as a colonized nation, and seek various routes toward self-determination including decolonization and autonomy within a U.S. wardship.⁴³ According to the international legal view, a country that gains recognition and membership in the family of nations cannot be “colonized.” Rather, by definition, such a takeover is termed an “occupation.” Figure 2 summarizes the two diverging logical threads: the first column summarizes the current situation for Hawaiians’ relationship to land if Hawaiian sovereignty still exists, the second is the prevailing view of Hawai`i as a US state or colony.

Fig. 2

Divergent Views of Hawaiian Land and Sovereignty	
Hawai`i as an Occupied Independent State	Hawai`i as a U.S. State
Sovereignty maintained	“Sovereignty” sought
Mahele preserved maka`ainana land rights	Mahele stripped maka`ainana land rights
Employs state/realist theory	Employs colonial/post-colonial theory
Operate in international arena	Operate in U.S. domestic arena
Hawaiian Kingdom law administered by U.S.	Hawai`i State law administered
Hawaiians retain one-third interest in all land	Hawaiians retain interest in ceded lands

Jonathan K. Osorio captured the distinction between these disparate approaches: “The [two approaches] require their own articles of faith. One side places faith in the rituals of law; the other believes in the importance of ancestry and ethnic distinction.”⁴⁴ The following sections of this essay address the challenges of teaching “around” this dual logic, and suggest strategies for incorporating this revised view into curricula.

V. TEACHING LAND AND SOVEREIGNTY

The issues and challenges that face teachers in the field of Hawaiian history include:

1. Objectivity
2. Politics

⁴³ The “Akaka Bill,” pending as of this writing, is a Congressional measure that would create a native Hawaiian government within the US. The status granted by this US Federal measure is often called sovereignty, but differs fundamentally from the sovereignty possessed by independent states in that it is subject to the plenary power of the US Congress. It could more accurately be termed domestic autonomy.

⁴⁴ John K. Osorio, “Ku’e and Ku’oko’a (Resistance and Independence): History Law and Other Faiths,” in *Law and Empire in the Pacific*, ed. Merry and Brenneis (eds.) (Santa Fe: School of American Research Press, 2004), 203.

3. Progression/Sequence
4. Intellectual level/ Methodology
5. Curriculum Development.

The incorporation of new and controversial material into an already politicized topic brings added layers of complexity to the task of teaching Hawaiian History.

The notion of objectivity is related to the debate in secondary schools over academic freedom. The National Education Association presented the debate over academic freedom in a recent issue of *NEA Today* by asking whether it is a first amendment violation to prohibit teachers from expressing personal views in the classroom. The fact that students are minors means that a teacher can be accused of exerting undue influence over the political opinions of students. But in the 1969 Tinker case the Supreme Court asserted that "[n]either students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."⁴⁵ On the other hand, "state courts in California and New Jersey...reason that, while engaged in teaching activities, teachers are speaking on behalf of the school district and can be prohibited from expressing personal viewpoints or otherwise straying from the prescribed curriculum."⁴⁶

But the notion of objectivity itself is suspect. In 1986, Robert Bazell of NBC stated "objectivity is a fallacy.... There are different opinions, but you don't have to give them equal weight."⁴⁷ Many teachers, however, believe they can maintain an objective position. In an environment where objectivity is seen as an attainable standard, strategies for teaching the issues of land and sovereignty must then include presenting multiple views on issues and verifying the validity of information. Teachers must effectively "protect" themselves from charges of politicizing historical content.

At an exclusively native Hawaiian school such as Kamehameha, the issue of Hawaiian perspective contributes an additional layer of complexity.⁴⁸ Hawaiian perspective is not a single monolithic viewpoint, but is rather an attempt to view things from a standpoint consistent with

⁴⁵ *Tinker v. Des Moines School District*, 393 U.S. 504 (1969).

⁴⁶ Michael D. Simpson, "Academic Freedom: Where Do Teachers Stand?" in *National Education Association*, <http://www.nea.org/neatoday/0309/rightswatch.html> (accessed July 13, 2005).

⁴⁷ Gary DeMar, "I Know It's True Because I Saw it on TV," in *American Vision*, <http://www.americanvision.org/articlearchive/12-02-04.asp> (accessed July 13, 2005).

⁴⁸ At the time of this writing, the Kamehameha Schools enrolled two non-aboriginal Hawaiians – one as the result of settlement of a lawsuit challenging its admissions policy, and one who gained admission through its existing policy, which gives preference to Native Hawaiians.

modern peoples' Hawaiian ancestors. What this standpoint is, how it functions, and what type of view it results in, are all subjects of debate *within* the Hawaiian community. These debates stand in contrast to debates between Hawaiians and non-Hawaiians.

Kame`eleihiwa makes a major contribution to this understanding with her contention that the Hawaiian phrase "*ka wa mahope*" (the future, but literally the time that lies *behind*) shows the Hawaiian orientation toward time, and a natural disposition toward the study of history.⁴⁹ Kame`eleihiwa organizes Hawaiian thought around four central metaphors or themes: *malama `aina*, *imi haku*, *`aikapu* and *ni`aupi`o*.⁵⁰ *Malama `aina* can be conceived as a conservationist ethic concerned with preserving land for present and future generations. *Imi haku* is a dynamic search for power, or *mana*, which consists of two paths: the path of *Ku*, violence, and the path of *Lono*, peace, i.e., mating, or stewardship of land. The path of *Lono* follows *Lono's* role: that of fertility and production, while the path of *Ku* follows the deity's concern for consolidation of *mana* for government.

The *`aikapu* is a central Hawaiian religious metaphor. It refers specifically to the separation of males and females while eating, but can be applied to Hawaiian religion in general. *`Aikapu* symbolizes balance – *pono*, – which requires separation. Kame`eleihiwa argues that the ending of the *`aikapu* in 1819 was the beginning of the end of the traditional Hawaiian worldview, as the central metaphors were "disfigured" due to Western contact. According to Kame`eleihiwa, "[a] lesson of the epic of *Wakea* is that incest is acceptable, even desirable. The brother-sister incest of *Wakea* and *Papa* captures the mana of the sacred female earth and creates the universe."⁵¹ Because *ni`aupi`o* is a behavior exhibited by Gods, it is therefore *pono*. It is also a means to gaining *mana*. This is seen in the marriages of Kamehameha I to Keopuolani and `Umi-a-liloa to Kapukini. Their purposeful marriages to these high-ranking and closely related women represents a deliberate strategy to gain *mana* (power).

Care is needed in preserving Hawaiian cultural understandings while remaining clear on the legal issues when dealing with topics that cross legal and cultural lines. An attempt to maintain this balance was made during the transition from traditional to western-style law. Kauikeaouli carefully led this transition, preserving the class system in the dominium of the Kingdom, while severing some of the economic ties between the classes and facilitating entry into a "Western-style" market economy. It

⁴⁹ Kame`eleihiwa, *supra* note 13, 22.

⁵⁰ *Id.*, 25 – 49.

⁵¹ *Id.*, 40.

is this careful approach that should be emulated in the teaching of this material.

Political issues also contribute to the sensitivity of this subject matter. These issues include the fact that students have direct connections or relations to Hawaiian politicians and academics who advocate particular views and teachers may have opposing views. A final political issue is that school administrations may not support the teaching of content outside of the accepted “mainstream”. This subtle defining of the parameters and boundaries of debate is a type of discursive formation – the shaping of an accepted set of narratives through constraints on discourse.

Despite the material’s political nature, curriculum is an appropriate venue for the transmission of this type of information, because of its progressive and sequential nature. Content needs to build on itself, and students need to understand the widely-accepted and standardized definitions of terms such as “sovereignty,” “independent state,” “family of nations,” “occupation,” and “colonization.” Incorporation into curriculum requires pedagogical strategies that take into account the intellectual level of students by utilizing appropriate teaching methodology, i.e., the intellectual level of students is directly related to methodology.

The “narrative”– the story that is told about history – must incorporate new material in a way that supplements existing curriculum materials, but also allows room for varying interpretations and understandings. For example, in the lecture notes used by most Hawaiian history teachers at Kamehameha, it states that the “annexation of Hawai`i asserted via a *joint resolution*.” It goes on: “Because of petitions, [the] treaty [of annexation] fails to get the constitutionally required two-thirds majority vote to pass. [And] under the U.S. constitution and international law a treaty is required to annex territories.” The PowerPoint presentation goes on to describe the law of belligerent occupation. By comparison, in the Hawai`i State Department of Education (DOE) textbook, used in virtually every public school in Hawai`i, annexation is covered in one sentence: “In August 1898, Hawai`i was officially annexed to the United States and became the Territory of Hawai`i.” As Kaulukukui and Silva point out in a recent article in *’Oiwī* there is no mention of the joint resolution of annexation.⁵²

Kinesthetic or “hands on” activities can be effective for imparting an understanding of complex material. For example, my students at Kamehameha engage in a simulation of the Mahele and Kuleana Act processes, giving them a real-world understanding of the process. They then debate the merits and pitfalls of the process. Debate allows students to directly engage with the material in a competitive situation, which

⁵²Guy Kakulukukui and Noenoe Silva, “Decolonizing the Classroom,” 3 *’Oiwī: A Native Hawaiian Journal* (2005): 95.

provides an incentive to delve beyond a superficial level of content understanding.

The use of multi-media such as film and computer technologies taps into school-age children's primary medium of perceiving the world. I often use films outside of Hawaiian history to demonstrate social processes that are not unique to Hawai'i. This is consistent with the revised approach in that it demonstrates that Hawai'i was a modern independent state with legal processes analogous to those of other states, and not entirely unique in its worldview during the Kingdom era.

Metaphor is an additional tool for imparting an intuitive understanding of topics that are often lost in legal analysis and interpretation. A metaphor that Sai uses when he speaks to my students is that Hawaiians have been kidnapped and led to believe they were adopted. A Hawaiian metaphor comes from *La Ho`iho`i Ea* (Restoration Day): The saying *ua mau ke ea o ka `aina i ka pono*, in the context that it was stated means the *sovereignty of the land is perpetuated in righteousness*. The irony of its use as the motto of the State of Hawai'i is apparent: the State motto is a sovereignty slogan affirming the preservation of the sovereignty of the Hawaiian Kingdom.

Primary sources are also an invaluable tool for developing a sense of history, both because their historical accuracy is difficult to question and they impart an understanding of the importance of documents. Further, primary source documents accustom students to drawing inferences and compensate for lack of texts.

Leeway exists for public school teachers required to adhere to Hawai'i Department of Education standards for Modern Hawaiian History to incorporate the above analysis into curricula. For example, in the DOE standard 5: Political Science and Civics, teachers have an entry point for the introduction of this material. One of the performance indicators requires students to "explain the basis of the government's authority: Constitution, Divine law, international law, military strength, other." The inclusion of international law in addition to law provides an opportunity to compare and contrast the prevailing and revised views of Hawaiian Kingdom history.

In the DOE standard 2: "History: Historical Empathy," a performance indicator that allows space for the introduction of the revised mahele analysis requires students to "identif[y] the historical period (Mahele) and relate it to a present-day issue (local land issues)." This is an ideal entry point to covering the current-day implications of the mahele process mentioned earlier.

VI. CONCLUSION: IMPLICATIONS FOR CURRICULUM DEVELOPMENT

Five factors are implicated in the need for curriculum development. The first is time. Because the people capable of creating this material are not professional curriculum developers, it will take time to continue the necessary research and production of resources. The second implication is teachers practicing scholarship. Teachers themselves will have the responsibility to conduct primary source research, publish and distribute their findings. They need to develop materials, write and engage in historical debates. The third implication is that students will need to contribute to research through critical inquiry - open-ended searches from archives that require the interpretation of the historical record. This method develops the skill of drawing inferences from documents, and encourages students to question their own texts. But teachers and students cannot be expected to conduct all research and create all the necessary resources. The fourth implication is that this task must fall on the university and publishing communities. A lack of texts is an issue in Hawaiian Studies in general. The publishing of a new Hawaiian history text is the fifth implication for curriculum development. This is even more pronounced with this revised approach. A primary reason for this need for curriculum materials is the distortion of Hawaiian history, and the orchestrated campaign to "cover up" annexation. There is also a general need for a Hawaiian history text.

In conclusion, the consideration of Hawai`i as an independent state leads to a different outcome regarding the relationship of Hawaiian sovereignty and land. This conception and its outcome—that Hawaiian sovereignty is maintained and Hawaiians retain a one-third interest in all land in Hawai`i—should be taught along side the prior colonial conception.