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The myth of ceded lands and the state's claim to perfect title

By Keanu Sai

In the recent ceded lands hearing at the Supreme Court in Washington, D.C., on Feb. 25, Attorney General Mark Bennett repeatedly asserted that the State of Hawai'i has perfect title to more than 1 million acres of land that were transferred to the United States government upon annexation in 1898 and then transferred to the State of Hawai'i in 1959. This is an incorrect statement. This falsehood, however, is not based on arguments for or against the highly charged Hawaiian sovereignty movement; rather, it is a simple question to answer since ownership of land is not a matter of rhetoric but dependent on a sequence of deeds in a chain of title between the party granting title and the party receiving title. In fact, the term "perfect title" in real-estate terms means "a title that is free of liens and legal questions as to ownership of the property. A requirement for the sale of real estate."



Keanu Sai

What determines a perfect title is a chain of title that doesn't have a missing link. Here in Hawai'i all titles originate from the Hawaiian Kingdom government, whether by Royal Patents or Land Commission Awards, and all subsequent conveyances between individuals are registered at the Bureau of Conveyances located at the corner of Punchbowl and Beretania Streets on the ground floor of the Kalanimoku Building. An example of a chain of title would be the Hawaiian Kingdom government to Joe Smith, Joe Smith to Alex White, Alex White to Alapa'i, Alapa'i to Yao Wong, Yao Wong to Jonathan Judd. If there is no record of the deed between Alapa'i and Yao Wong there is a break in the chain of title and therefore Jonathan Judd cannot claim to have a perfect title, which is a "requirement for the sale of real estate."

For so-called ceded lands, being the Hawaiian Kingdom government and crown lands, the chain of title is supposedly from the Hawaiian Kingdom government and Queen Lili'uokalani to the provisional government, the provisional government to the Republic of Hawai'i, the Republic of Hawai'i to the United States, the United States to the State of Hawai'i. In this chain, however, there are two missing links and not just one. On Jan. 17, 1893, the provisional government seized control of the government and crown lands without conveyance, but through revolt, and after investigating the revolt, President Cleveland reported to the Congress on Dec. 18, 1893, that the provisional government was neither de facto (a successful revolution), nor de jure (the lawful government), but self-proclaimed (committing the crime of high treason). On Nov. 13, 1893, U.S. Ambassador Albert Willis began to negotiate with the Queen, on behalf of President Cleveland, to grant amnesty for these criminals and an agreement to restore the Hawaiian Kingdom government was concluded with the condition that the Queen grant amnesty after the government was restored.

The other missing link is that there is no record of conveyance from the so-called Republic of Hawai'i to the United States when the Hawaiian Islands were supposedly annexed in 1898. According to the Merriam-Webster Dictionary, the term cede is "to yield or give up by treaty." In order for countries to cede territory to the United States it must be made by treaty, e.g. Louisiana Purchase from France in 1803, or the Alaska Purchase from Russia in 1867. For Hawai'i, there are two failed treaties of cession, the first in 1893 and the other in 1897, but the first was permanently withdrawn from the

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Senate by Cleveland in March of 1893, and the second was not able to be ratified by the Senate because of protests by the Queen and Hawaiian subjects. Instead, the United States enacted a congressional joint resolution proclaiming that the Hawaiian Islands had been annexed. The joint resolution of annexation is not a treaty or conveyance from the so-called Republic of Hawai'i, rather it is a unilateral declaration that was used to seize and occupy the Hawaiian Islands during the Spanish-American War. The United States today could no more annex Iraq by a joint resolution than it could annex the Hawaiian Islands by joint resolution in 1898. Congressional laws have no effect beyond the borders of the United States.

If there is no record of a deed from the Hawaiian Kingdom government and the Queen to the provisional government transferring government and crown lands, there is a break in the chain of title and therefore the State of Hawai'i cannot claim to have a perfect title, which is a "requirement for the sale of real estate." As far as the term "ceded lands," there is no such thing because the government and crown lands were never "yielded or given up by treaty" to the United States in the first place.

Confusing "cession" for "occupation" is tantamount to confusing "adoption" for "kidnapping." This is not a case of semantics, but ignorance of the legal and political history of Hawai'i.

Keanu Sai has a Ph.D. in political science from the University of Hawai'i at Mānoa specializing in international relations, public law and Hawaiian land tenure. The ceded lands issue was a part of his dissertation titled American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State, and a law journal article he wrote for the Journal of Law and Social Challenges, University of San Francisco School of Law. Both documents may be downloaded online at www2.hawaii.edu/~anu/publications.html. His dissertation will be published by UH Press.



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