

HAWAII DIVIDED AGAINST ITSELF CANNOT STAND



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INTRODUCTION

The following critiques of a misconceived 1993 Apology Resolution and sister legislation styled the “Akaka Bill” (S.147/H.R.309) aim to inform lawmakers and the public about the Bill’s deficiencies and ramifications.

It would summon into being an unprecedented race-based Native Hawaiian Government from the State of Hawaii with no constraints on its jurisdiction or immunities from federal or state law. The Bill’s defects are staggering. It rests on wildly erroneous accounts and characterizations of Hawaii’s political history. It flagrantly violates the equal protection component of the Fifth Amendment as expounded by the Supreme Court of the United States in Rice v. Cayetano, 528 U.S. 495 (2000). It would compel the Secretary of Interior to make race-based Commission appointments pursuant to Section 7(b). The section creates a federal commission whose only purpose is to prepare and maintain a race-based roll of eligibles to elect public officials and to vote in referenda to adopt organic governing documents for an unprecedented “representative governing body of the Native Hawaiian people”. The bill defines "Native Hawaiian" by ancestry substantially as the Supreme Court held to be a racial classification in Rice.

The legislation would stain the escutcheon of the United States by embracing race as opposed to merit as destiny. It would, *de facto*, carve a new sovereign from the State of Hawaii without its consent in violation of the spirit if not the letter of Article IV, section 3. The Akaka bill ambiguously insinuates that this new entity might be empowered to govern all people of Native Hawaiian ancestry, including those who repudiate its purposes. By diminishing the size and reach of the sovereignty of the State of Hawaii without a vote by all eligible voters of the State, it

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I. The 1993 Apology Resolution is Riddled with Falsehoods and Mischaracterizations

The Akaka Bill originated with the 1993 Apology Resolution (S.J.Res.19) which passed Congress in 1993. Virtually every paragraph is false or misleading.

1. The opening paragraph declares its purpose as to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii and to offer an apology to “Native Hawaiians” on behalf of the United States for the event that ushered in a republican form of government and popular sovereignty, in lieu of monarchy. The apology wrongly insinuates that the overthrown 1893 government was for Native Hawaiians alone; and, that they suffered unique injuries because of the substitution of republicanism for monarchy. There never had been a race-based government since the formation of the kingdom of Hawaii in 1810, and only trivial racial distinctions in the law (but for discrimination against Japanese and Chinese immigrants).¹ Native Hawaiians served side-by-side with non-Native Hawaiians in the Cabinet and legislature. The 1893 overthrow did not disturb even a square inch of land owned by Native Hawaiians. If the overthrow justified an apology, it should have been equally to Native Hawaiians and non-Native Hawaiians. Both were treated virtually the same under the law by the ousted Queen Liliuokalani. Moreover, it seems preposterous to apologize for deposing a monarch to move towards a republican form of government based on the consent of the governed.
2. Paragraph two notes that Native Hawaiians lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language and culture when the first Europeans arrived in 1778. It errantly insinuates that Native Hawaiians are not permitted under the United States Constitution to practice their ancient culture. They may do so every bit as much as the Amish or other groups. They may own land collectively as joint tenants. The paragraph also misleads by omitting the facts that Hawaiian Kings, not Europeans, abolished communal land tenure and religious taboos (kapu) by decree. [See Appendix page 3 paragraphs 2, 3, 4]
3. Paragraph three notes that a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii. It neglects to mention that the King established the government by conquest and force of arms in contrast to the bloodless overthrow of Queen Liliuokalani. In other words, if King Kamehameha’s government was legitimate, then so was the successful 1893 overthrow. [See Appendix page 2 paragraph 1]
4. Paragraph four notes that from 1826 until 1893, the United States recognized the Kingdom of Hawaii as an independent nation with which it concluded a

¹ Minor exceptions include jury trials, membership in the nobility, and land distribution. In addition, the 1864 Constitution mandated that if the monarch died or abdicated without naming a successor, the legislature should elect a native Ali’i (Chief) to the throne.

series of treaties and conventions. But the paragraph neglects to note that the United States extended recognition to the government that replaced Queen Liliuokalani in 1893. It treated both governments as equally legitimate under international law, as did other nations.

5. Paragraph five notes the more than 100 missionaries sent by the Congregational Church to the Kingdom of Hawaii between 1820 and 1850. But the missionaries did not cause mischief. They brought education, medicine, and civilization to Native Hawaiians for which no apology is due. [See Appendix page 2 paragraphs 2, 3]
6. Paragraph six falsely accuses United States Minister John L. Stevens as conspiring with non-Native Hawaiians to overthrow the indigenous and lawful Government of Hawaii. The Government, as previously explained, was not “indigenous,” but included non-Native Hawaiians. The latter were treated identically with Native Hawaiians and shared fully in the society and governance of the kingdom. Moreover, Minister Stevens, as a meticulous Senate Foreign Relations Committee report (the “Morgan” report) established, remained steadfastly neutral between the contesting political forces in Hawaii in 1893. [See Appendix page 4 paragraph 1]
7. Paragraph seven falsely indicts Minister Stevens and naval representatives of aiding and abetting the 1893 overthrow by invading the Kingdom of Hawaii and positioning themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government. The “Morgan” report convincingly discredits that indictment. It demonstrated that United States forces were deployed solely to protect American citizens and property. [See Appendix page 4 paragraph 1]
8. Paragraph eight falsely insinuates that the overthrow of the Queen was supported only by American and European sugar planters, descendants of missionaries, and financiers. The Queen was abandoned by the majority of Hawaiian residents, including Native Hawaiians, because of her squalid plan to alter the constitution by illegal means to make the government more monarchical and less democratic. At best, the Queen was able to rally but a feeble resistance to defend her anti-constitutional plans. A Provisional Government was readily established and maintained without the threat or use of overwhelming force, in contrast to the force Kamehameha brandished to establish the Kingdom of Hawaii. [See Appendix page 1 paragraphs 1, 2, 3, 4, 5]
9. Paragraph nine falsely asserts that the extension of diplomatic recognition to the Provisional Government by United States Minister Stevens without the consent of the Native Hawaiian people or the lawful Government of Hawaii violated treaties and international law. The international community in general extended diplomatic recognition to the Provisional Government. That was consistent

with international law, which acknowledges the right to overthrow a tyrannical government. The Provisional Government received the consent of Native Hawaiians every bit as much if not more than did King Kamehameha I in establishing the Kingdom of Hawaii by force in 1810. In addition, international law does not require the consent of an overthrown government before extending diplomatic recognition to its successor. Thus, the Dutch recognized the United States of America without the consent of Great Britain whose colonial regime had been overthrown. Similarly, the United States extended diplomatic recognition to the new government regime in the Philippines in 1986 headed by Cory Aquino without the consent of Ferdinand Marcos. Finally, sovereignty in Hawaii at the time of the 1893 overthrow resided in the Monarch, not the people. Native Hawaiians and non-Native Hawaiians alike possessed no legal right to withhold a transfer of sovereignty from Queen Liliuokalani to the Provisional Government. The Queen's own statement, reprinted in the Apology Resolution, confirms that sovereignty rested with the monarch, not the people. She neither asked nor received popular consent for yielding sovereignty to the United States. In any event, Native Hawaiians enjoyed no more popular sovereignty than did non-Native Hawaiians. Accordingly, if the diplomatic recognition was wrong, both groups were equally wronged.

10. Paragraph ten falsely suggests that Queen Liliuokalani yielded her power to avoid bloodshed. She did so because her anti-constitutional plans had provoked popular anger or antagonism. The Queen forfeited the legitimacy necessary to sustain power. Even Cabinet members she had appointed abandoned her and advised surrender. [See Appendix page 1 paragraph 5]
11. The Queen's statement itself is cynical and false in many respects. She condemns the Provisional Government for acts done against the Constitution, whereas she had provoked her overthrow by embracing anti-constitutional plans for a more monarchical and less democratic government. The Queen falsely asserts that Minister Stevens had declared that United States troops would support the Provisional Government. The Minister insisted on strict United States military neutrality between contending parties. And the Queen audaciously insists that the United States should reinstall her to reign as an anti-democratic Monarch in lieu of a step towards a republican form of government, akin to Slobodan Milosevic's requesting the United States to restore him to power in Serbia after his replacement by a democratic dispensation. [See Appendix page 4 paragraph 2, 3]
12. Paragraph ten falsely insists that the overthrow of Queen Liliuokalani would have failed for lack of arms and popular support but for the active support and intervention by the United States. The United States provided no arms to the insurgents. The United States did not encourage Hawaiians to join the insurrection. The United States remained strictly neutral throughout the time period and events that precipitated the end of Monarchy and the beginning of a republic in Hawaii. [See Appendix page 4 paragraph 2]

13. Paragraph eleven falsely insinuates that Minister Stevens proclaimed Hawaii to be a protectorate of the United States on February 1, 1893 as a coercive action. Minister Stevens had raised the American flag over government buildings at the request of the Provisional Government to deter threats to lives and property. The protectorate was requested, not imposed. The Harrison administration revoked the protectorate soon after, which refutes the Apology Resolution's assumption that the United States government conspired to annex Hawaii.
14. Paragraph twelve neglects to underscore that Democrat Congressman James Blount on behalf of Democrat President Grover Cleveland conducted an investigation of events that transpired under a Republican administration which both hoped to discredit for partisan political purposes. Blount's findings of abuse of diplomatic and military authority and United States responsibility for the overthrow of the Queen were meticulously discredited by the Morgan report the following year. [See Appendix page 4 paragraph 3]
15. Paragraph thirteen fails to note that the actions against the Minister and military commander were inspired by the partisan politics of Democrats casting aspersion on the predecessor Republican administration of Benjamin Harrison. [See Appendix page 4 paragraph 1]
16. Paragraph fourteen misleads by omitting President Grover Cleveland's partisan motivation for attacking the policies of his predecessor, President Benjamin Harrison, and the Morgan report that disproved President Cleveland's tendentious chronicling and characterizations of Queen Lilioukalani's overthrow. To trust in the impartiality of Democrat Cleveland to evaluate the policies and actions of Republican Harrison would be like trusting Democrat President William Jefferson Clinton to evaluate evenhandedly the presidency of Republican George H. W. Bush. [See Appendix page 4 paragraph 3]
17. Paragraph fifteen neglects that President Cleveland urged a restoration of the Hawaiian monarchy for partisan political reasons to discredit the Harrison administration and the Republican Party. [See Appendix page 4 paragraph 3]
18. Paragraph sixteen notes that the Provisional Government protested President Cleveland's celebration of the Hawaiian monarchy and remained in power. Both actions were morally and legally impeccable, and do not justify an apology.
19. Paragraph seventeen notes the hearings of the Senate Foreign Relations Committee into the 1893 overthrow; the Provisional Government's defense of Minister Stevens; and its recommendation of annexation. Neither the overthrow, nor Minister Stevens' actions, nor the Provisional Government's annexation recommendation was reproachable or justifies an apology. [See Appendix page 4 paragraphs 2, 3]

20. Paragraph eighteen notes that a treaty of annexation failed to command a two-thirds Senate majority, an event that does not justify an apology from the United States. The paragraph also falsely declares that the Provisional Government somehow duped the Committee over the role of the United States in the 1893 overthrow, as though the Senators could not think and evaluate for themselves. Finally, the paragraph wrongly condemns the overthrow as “illegal.” It was no more illegal in the eyes of domestic or international law than the overthrow of the British government in America by the United States in 1776. [See Appendix page 4 paragraphs 2, 3]
21. Paragraph nineteen notes that the Provisional Government proclaimed itself the Republic of Hawaii on July 4, 1894. The proclamation was legally and otherwise correct. The declaration did not justify an apology by the United States. [See Appendix page 4 paragraph 2, 3]
22. Paragraph twenty declares that on January 24, 1895, the Queen while imprisoned was forced by the Republic of Hawaii to abdicate her throne. The forced abdication was thoroughly defensible. The Queen had not accepted the new dispensation after her overthrow. Thus, she was the equivalent of a Fifth Columnist to the legitimate government of Hawaii until abdication was forthcoming.
23. Paragraph twenty-one notes that in 1896, President William McKinley replaced Grover Cleveland. That democratic event provided no excuse for an apology.
24. Paragraph twenty-two notes that on July 7, 1898, in the wake of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii. The annexation was perfectly legal and enlightened. It was no justification for an apology.
25. Paragraph twenty-three notes that the Newlands Resolution occasioned the cession of sovereignty over the Hawaiian Islands to the United States. That is no cause for an apology. The same occurred in 1845 when Texas was annexed to the United States by joint resolution. The cession in both cases was with the consent of the lawful governments of Hawaii and Texas, respectively.
26. Paragraph twenty-four notes that the cession included a transfer of crown, government, and public lands without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government. But there was no race-based Native Hawaiian government, either then or previously. The government was for Native Hawaiians and non-Native Hawaiians alike. Further, the Newlands Resolution specified that the revenues of the ceded lands generally “shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.” Compensation was not paid because nothing was taken from the inhabitants of Hawaii. Moreover, the United States assumed over 3.8 million dollars of Hawaii’s public debt, largely

incurred under the monarchy, after annexation. That debt burden amounts to twice the market value of the land the United States lawfully inherited. [See Appendix page 3 paragraph 4]

27. Paragraph twenty-five notes that Congress ratified the annexation and cession of Hawaii, which required no apology.
28. Paragraph twenty-six notes that treaties between Hawaii and foreign nations were replaced by treaties between the United States and foreign nations, which is customary under international law when one sovereign replaces another. For example, Russia replaced the Soviet Union in its international treaty obligations following the disintegration of the USSR.
29. Paragraph twenty-seven notes that the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government, an observation that required no apology.
30. Paragraph twenty-eight misleads by declaring that Native Hawaiians “never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.” But sovereignty in the Kingdom of Hawaii resided in the monarch, not in the people. Further, the Kingdom was a government for all the inhabitants of Hawaii, not only for Native Hawaiians. Non-Native Hawaiians enjoyed as much inherent sovereignty as Native Hawaiians, and enjoyed an equal claim to national lands. Further, Native Hawaiians overwhelmingly voted for statehood in 1959, which constituted a virtual referendum on United States sovereignty. Finally, neither domestic nor international law recognizes a right to a plebiscite before a transfer of sovereignty. In America, for example, sovereignty was transferred from Great Britain to the United States without a plebiscite or the consent of the British-controlled colonial governments. The Akaka Bill’s proponents themselves do not advocate a plebiscite to grant sovereignty to the Native Hawaiian people. [See Appendix page 3 paragraphs 2, 3, 4]
31. Paragraph twenty-nine notes that on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii. The Act created a representative system of government, a great credit to the United States and far superior to what the residents of Hawaii had previously enjoyed under the Monarchy. [See Appendix page 5 paragraph 1]
32. Paragraph thirty notes that on August 21, 1959, Hawaii became the 50th State of the United States. But it omits that 94 percent of voters in a plebiscite supported statehood, including an overwhelming majority of Native Hawaiians. In other words, in 1959 Native Hawaiians freely chose the sovereignty of the United States. The elections could have been boycotted if independence were desired. [See Appendix page 5 paragraph 2]

33. Paragraph thirty-one declares that the health and well-being of Native Hawaiians is intrinsically tied to their deep feelings and attachment to land. But the same can be said of every racial, ethnic, religious, or cultural group. Scarlet O'Hara in *Gone with the Wind* was passionately tied to Tara. Further, the observation does not deny that the United States Constitution scrupulously protects the rights of Native Hawaiians to honor their feelings and attachments to land short of theft or trespass.
34. Paragraph thirty-two counterfactually declares that long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people. The Native Hawaiian population declined throughout the years of the Kingdom, but, since annexation in 1898, the native population has achieved steady growth. Senator Daniel Inouye himself celebrated the health and prosperity of Hawaiians on the thirty-fifth anniversary of statehood in 1994: "Hawaii remains one of the greatest examples of multiethnic society living in relative peace." Indeed, no fair-minded observer would maintain that Native Hawaiians would have been more prosperous, free, and culturally advanced if foreigners had never appeared in Hawaii and its people remained isolated from the progress of knowledge. The Polynesian nation of Tonga, which had a society and economy striking similar to Hawaii's in the 1840s, chose to preserve its Polynesian customs over progress. Today, Hawaii boasts a per capita income twenty times that of Tonga. Moreover, Native Hawaiians would probably have been swallowed up in the wave of Japanese colonialism had they not become citizens of the United States along with non-Native Hawaiians after annexation. [See Appendix page 5 paragraph 2]
35. Paragraph thirty-three misleads by failing to underscore that the United States Constitution fully protects the determination of Native Hawaiians to practice and to pass on to future generations their cultural identity. The sole element of cultural identity that the United States cannot and will not tolerate is racial discrimination, whether practiced by whites against blacks during Jim Crow or by Native Hawaiians against non-Native Hawaiians today.
36. Paragraph thirty-four outlandishly asserts that the Apology Resolution is necessary to promote "racial harmony and cultural understanding." Indeed, the Resolution has yielded the opposite by giving birth to the race-based Akaka Bill. As Senator Inouye acknowledged in 1994, Hawaii stands as a shining example of racial harmony and the success of America's legendary "melting pot." [See Appendix page 5 paragraph 2]
37. Paragraph thirty-five notes an apology by the President of the United Church of Christ for the denomination's alleged complicity in the illegal overthrow of the Kingdom of Hawaii. But not a crumb of evidence in the Blount report or the Morgan report or Queen Lilioukalani's autobiography substantiates the

Church's complicity. Further, the overthrow was as legal as was King Kamehameha's creation of the Kingdom by conquest in 1810 or the overthrow of the British colonial government in America by the United States. Finally, the paragraph is silent on the substance of the "process of reconciliation" between the Church and Native Hawaiians. [See Appendix page 2 paragraphs 1, 2, 3]

38. Paragraph thirty-six repeats the false indictment of the overthrow of the Kingdom as "illegal." Congress absurdly expresses its "deep regret" to the Native Hawaiian people for bringing them unprecedented prosperity and freedom. As noted above, even Senator Inouye in 1994 conceded the spectacular Hawaiian success story after annexation and statehood. And since the State of Hawaii and Native Hawaiians have never been estranged—Native Hawaiians have invariably enjoyed equal or preferential rights under law—the idea of a need for reconciliation voiced in the paragraph is nonsense on stilts. [See Appendix page 2 paragraph 1]
39. Section 1, paragraph (1) of the Apology Resolution falsely characterizes the overthrow of the Kingdom of Hawaii as illegal, and falsely insinuates that sovereignty under the Kingdom rested with the Native Hawaiian people to the exclusion of non-Native Hawaiians. As elaborated above, sovereignty rested with the Monarch; and, Native Hawaiians and non-Native Hawaiians were equal in the eyes of the law and popular sovereignty.
40. Section 1, paragraph (2) ridiculously commends reconciliation where none is needed between the State of Hawaii and the United Church of Christ and Native Hawaiians. [See Appendix page 2 paragraphs 2, 3]
41. Section 1, paragraph (3) outlandishly apologizes to Native Hawaiians for bringing them the fruits of democracy and free enterprise. It also falsely suggests that Native Hawaiians to the exclusion of non-Natives enjoyed a right to self-determination when in fact all resident citizens of Hawaii were equal under the law.
42. Section 1, paragraphs (4) and (5) preposterously assert a need for reconciliation between the United States and the Native Hawaiian people when there has never been an estrangement. Indeed, a stunning majority of Native Hawaiians voters supported statehood in 1959 in a plebiscite. [See Appendix page 4 paragraph 3]

--S.J.Res. 19--

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*One Hundred Third Congress
of the
United States of America
AT THE FIRST SESSION*

Begun and held at the City of Washington on Tuesday,
the fifth day of January, one thousand nine hundred and ninety-three

Joint Resolution

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

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 monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, 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;

Whereas the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the 'United States Minister'), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government 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, descendants 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 the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

'I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

'That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

'Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.'

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress', and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further concluded that 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' and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the 'Committee') to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas the long-range economic and social changes in Hawaii 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;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to

offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

The Congress--

- (1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;
- (2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;
- (3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;
- (4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and
- (5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

SEC. 2. DEFINITIONS.

As used in this Joint Resolution, the term 'Native Hawaiian' means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

END

II. The Akaka Bill (S.147)

The Akaka Bill pivots generally on the same falsehoods and mischaracterizations as the Apology. It further celebrates a race-based government entity in flagrant violation of the non-discrimination mandates of the Fifth, Fourteenth and Fifteenth Amendments.

1. Section 1 misleads by naming the Act the “Native Hawaiian Government Reorganization Act of 2005.” As amplified above, there has never been a government in Hawaii for Native Hawaiians alone since Kamehameha established the Kingdom in 1810. Something that has never been cannot be reorganized.
2. Section 2 makes twenty-three findings that are either false or misleading.
 - A. Finding (1) asserts that Congress enjoys constitutional authority to address the conditions of the indigenous, native people of the United States. But the finding fails to identify the constitutional source of that power, or how it differs from the power of Congress to address the conditions of every American citizen. Congress does not find that Native Hawaiians were ever subjugated or victimized by racial discrimination or prevented from maintaining and celebrating a unique culture. Moreover, the United States Supreme Court explicitly repudiated congressional power to arbitrarily designate a body of people as an Indian tribe in United States v. Sandoval 231 U.S. 28, 45 (1913). As Alice Thurston unequivocally stated arguing for Interior Secretary Babbitt in Connecticut v. Babbitt 228 F.3d, 82 (2nd Cir. 2000) “When the Department of the Interior recognizes a tribe, it is not saying, ‘You are now a tribe.’ It is saying, ‘We recognize that your sovereignty exists.’ We don’t create tribes out of thin air.”²
 - B. Finding (2) asserts that Native Hawaiians are indigenous, native people of the United States. The finding is dubious. Native Hawaiians probably migrated to the Islands from other lands and remained as interlopers.
 - C. Finding (3) falsely asserts that the United States “has a special political and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians.” No such responsibility is imposed by the Constitution or laws of the United States. No decision of the United States Supreme Court has ever recognized such a responsibility. Indeed, Congress would be acting constitutionally if it abolished all tribal sovereignty that it has extended by unilateral legislation.
 - D. Finding (4) recites various treaties between the Kingdom of Hawaii and the United States from 1826 to 1893. The finding is as irrelevant to the proposed legislation as the heliocentric theory of the universe.

² Jeff Benedict, *Without Reservation* (New York: HarperCollins Publishers, 2000) 349.

- E. Finding (5) falsely declares that the Hawaiian Homes Commission Act (HHCA) set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the then federal territory. In fact, the HHCA established a homesteading program for only a small segment of a racially defined class of Hawaii's citizens. Its intended beneficiaries were not and are not now "Native Hawaiians" as defined in the Akaka bill (i.e., those with any degree of Hawaiian ancestry, no matter how attenuated), but exclusively those with 50% or more Hawaiian "blood" – a limitation which still applies with some exceptions for children of homesteaders who may inherit a homestead lease if the child has at least 25% Hawaiian "blood."

The HHCA was enacted by Congress in 1921 based on stereotyping of "native Hawaiians" (50% blood quantum) as characteristic of "peoples raised under a communist or feudal system" needing to "be protected against their own thriftlessness". The racism of Plessy v. Ferguson, 163 US 537, (1896) was then in its heyday. If that derogatory stereotyping were ever a legitimate basis for Federal legislation, Adarand Constructors v. Pena, 515 U.S. 200 (1995) and a simple regard for the truth deprive it of any validity today.

- F. Finding (6) asserts that the land set aside assists Native Hawaiians in maintaining distinct race-based settlements, an illicit constitutional objective under Buchanan and indistinguishable in principle from South Africa's execrated Bantustans.
- G. Finding (7) notes that approximately 6,800 Native Hawaiian families reside on the set aside Home Lands and an additional 18,000 are on the race-based waiting list. These racial preferences in housing are not remedial. They do not rest on proof of past discrimination (which does not exist). The preferences are thus flagrantly unconstitutional. *See* Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); Adarand Constructors, *supra*.
- H. Finding (8) notes that the statehood compact included a ceded lands trust for five purposes, one of which is the betterment of Native Hawaiians. As elaborated above, the 20% racial set aside enacted in the 1978 statute violates the general color-blindness mandate of the Constitution.
- I. Finding (9) asserts that Native Hawaiians have continuously sought access to the ceded lands to establish and maintain native settlements and distinct native communities throughout the State. Those objectives are constitutionally indistinguishable from the objectives of whites during the ugly decades of Jim Crow to promote an exclusive white culture exemplified in *Gone with the Wind* or *The Invisible Man*. The United States Constitution protects all cultures, except for those rooted in racial discrimination or hierarchies.

- J. Finding (10) asserts that the Home Lands and other ceded lands are instrumental in the ability of the Native Hawaiian community to celebrate Native Hawaiian culture and to survive. That finding is generally false. The United States Constitution fastidiously safeguards Native Hawaiians like all other groups in their cultural distinctiveness or otherwise. There is but one exception. A culture that demands racial discrimination against outsiders is unconstitutional and is not worth preserving. Further, as Senator Inouye himself has proclaimed, Native Hawaiians and other citizens are thriving in harmony as a model for other racially diverse communities under the banner of the United States Constitution.
- K. Finding (11) asserts that Native Hawaiians continue to maintain other distinctively native areas in Hawaii. Racial discrimination in housing, however, is illegal under the Fair Housing Act, the Civil Rights Act of 1871, and the Equal Protection Clause of the Fourteenth Amendment if state action is implicated.
- L. Finding (12) notes the enactment of the Apology Resolution, which is riddled with falsehoods and mischaracterizations as amplified above.
- M. Finding (13) repeats falsehoods in the Apology Resolution. Contrary to its assertions, the Monarchy was overthrown without the collusion of the United States or its agents; the Native Hawaiian people enjoyed no more inherent sovereignty under the kingdom than did non-Native Hawaiians; in any event, sovereignty at the time of the overthrow rested with Queen Lilioukalani, not the people; the public lands of Hawaii belonged no more to Native Hawaiians than to non-Native Hawaiians; and, there was never a legal or moral obligation of the United States or the Provisional Government after the overthrow to obtain the consent of Native Hawaiians to receive control over government or crown lands. No Native Hawaiian lost a square inch of land by the overthrow.
- N. Finding (14) repeats the Apology Resolution's nonsense of a need to reconcile with Native Hawaiians when there has never been an estrangement, as testified to by the 1994 remarks of Senator Inouye.
- O. Finding (15) corroborates the obvious: namely, that the United States Constitution fully protects Native Hawaiians in celebrating their culture, just as it does the Amish or any other group desiring to depart from the mainstream.
- P. Findings (16), (17), and (18) similarly corroborates that the United States Constitution guarantees religious or cultural freedom to Native Hawaiians as it does for any other distinctive group. On the other hand, the finding falsely asserts that Native Hawaiians enjoy a right to self-determination, i.e., a right to establish an independent race-based nation or sovereignty. The Civil War

definitively established that no individual or group in the United States enjoys a right to secede from the Union, including Native American Indian tribes.

- Q. Finding (19) falsely asserts that Native Hawaiians enjoy an “inherent right” to reorganize a Native Hawaiian governing entity to honor their right to self-determination. The Constitution denies such a right of self-determination. A Native Hawaiians lawsuit to enforce such a right would be dismissed as frivolous. Further, there has never been a race-based Native Hawaiian governing entity. An attempt to reorganize something that never existed would be an exercise in futility, or folly, or both.
- R. Finding (20) falsely insinuates that Congress is saddled with a greater responsibility for the welfare of Native Hawaiians than for non-Native Hawaiians. The Constitution imposes an equal responsibility on Congress. Race-based distinctions in the exercise of congressional power are flagrantly unconstitutional. *See Adarand Constructors, supra.*
- S. Finding (21) repeats the false insinuation that the United States is permitted under the Constitution to create a racial quota in the administration of public lands, contrary to Adarand Constructors, *supra*.
- T. Finding (22) also brims with falsehoods. Subsection (A) falsely asserts that sovereignty in the Hawaiian Islands rested with aboriginal peoples that predated Native Hawaiians, i.e. that the aboriginals were practicing and preaching government by the consent of the governed long before Thomas Jefferson’s Declaration of Independence. But there is not a crumb of evidence anywhere in the world that any aboriginals believed in popular sovereignty, no more so than King Kamehameha I who founded the Kingdom of Hawaii by force, not by plebiscite.
 - i. Subsection (B) falsely insinuates that Native Hawaiians as opposed to non-Native Hawaiians enjoyed sovereignty or possessed sovereign lands. The two were uniformly equal under the law. In any event, sovereignty until the 1893 overthrow rested with the Monarch. Sovereign lands were employed equally for the benefit of Native Hawaiians and non-Native Hawaiians. [See Appendix page 3 paragraphs 3, 4]
 - ii. Subsection (C) falsely asserts that the United States extends services to Native Hawaiians because of their unique status as an indigenous, native people. The services are extended because Native Hawaiians are United States citizens and entitled to the equal protection of the laws. The subsection also falsely insinuates that Hawaii previously featured a race-based government.
 - iii. Subsection (D) falsely asserts a special trust relationship of American Indians, Alaska Natives, and Native Hawaiians with the United States

arising out of their status as aboriginal, indigenous, native people of the United States. The United States has accorded American Indians and Alaska Natives a trust relation in recognition of existing sovereign entities and a past history of oppression and subjugation. The trust relationship, however, is voluntary and could be ended unilaterally by Congress at any time. Native Hawaiians, in contrast, have never featured a race-based government entity. They have never suffered discrimination. They voted overwhelmingly for statehood. And they have flourished since annexation in 1898, as Senator Inouye confirms. If Native Hawaiians alleged a constitutional right to a trust relationship, they would be laughed out of court.

- U. Finding (23) falsely insinuates that a majority of Hawaiians support the Akaka Bill based on politically correct stances of the state legislature and the governor. The best polling barometers indicate that Hawaiian citizens oppose creating a race-based governing entity with unknown powers. If the proponents of the Akaka Bill genuinely believed Finding (23), they would readily accede to holding hearings and a plebiscite in Hawaii as a condition of its effectiveness on the model of the statehood plebiscite. But they are adamantly opposed because they fear defeat
- 3. Section 3's definition of "Native Hawaiian" in subsection (8)(A) falsely insinuates that Native Hawaiians exercised popular sovereignty in Hawaii on or before 1893. Sovereignty rested with the Monarch; and, Native Hawaiians never operated a race-based government.
- 4. Section 4 is replete with falsehoods. Subsections (a) (1) and (2) falsely maintain that the United States has a special political and legal relationship with Native Hawaiians. No such special relationship is recognized in the United States Constitution, which requires equality among citizens. Subsection (a)(3) falsely maintains that the congressional power to regulate commerce "with the Indian Tribes" empowers Congress to create a race-based government for Native Hawaiians. Creating a race-based government is not a regulation of commerce; and, Native Hawaiians, unlike Indian Tribes, never organized a government exclusively for Native Hawaiians. No court has ever sanctioned the subsection's far-fetched interpretation of the Indian Commerce Clause. Article IV of the Constitution provided the congressional authority for the Hawaiian Homes Commission Act of 1920 and for Hawaiian statehood. The many several federal laws addressing the conditions of Native Hawaiians are not based on the Indian Commerce Clause. To the extent they embrace racial distinctions, they are unconstitutional.
- A. Subsection (a)(4) falsely asserts that Native Hawaiians sport an inherent right to autonomy in their internal affairs; an inherent right to self-determination and self-governance; the right to reorganize a Native Hawaiian governing entity; and, a right to become economically self-sufficient. None of these

asserted rights is recognized by the Constitution or federal statutes. All have been concocted by proponents of the Akaka Bill with no more legitimacy than the right of the Confederacy to secede from the Union.

- B. Subsection (b) falsely asserts that the purpose of the Akaka Bill is to provide a process for the “reorganization” of the Native Hawaiian governing entity. As explained above, there has never been a race-based Native Hawaiian governing entity. Something that has never been cannot be reorganized.
5. Section 7 is flagrantly unconstitutional in its erection of a race-based government in violation of the non-discrimination mandates of the Fifth, Fourteenth and Fifteenth Amendments. It directs the Secretary of Interior to appoint nine Native Hawaiian Commissioners to prepare and maintain a roll of Native Hawaiians to participate in the bogus “reorganization” of a Native Hawaiian government. The race-based appointments violate the equal protection component of the Fifth Amendment. Preparing and maintaining a race-based electoral roll violates the same equal protection command. *See Rice v. Cayetano, supra.* As Justice Anthony Kennedy explained in that case:

"The ancestral inquiry mandated by [Hawaii] is forbidden by the Fifteenth Amendment for the further reason that the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. 'Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.' *Hirabayashi v. United States*, 320 U.S. 81 (1943). Ancestral tracing of this sort achieves its purpose by creating a legal category which employs the same mechanisms, and causes the same injuries, as laws or statutes that use race by name." *Cayetano*, at 517.

Under Section 7, the enrolled race-based members are empowered to elect an Interim Governing Council from one of their own, another race-based voting distinction that violates the Fifteenth Amendment and equal protection. The Fifteenth Amendment (which promises the right to vote shall not be denied on account of race) includes any election in which public issues are decided or public officials selected. The Council establishes race-based criteria for citizenship in the Native Hawaiian governing entity, subject to a race-based plebiscite, and otherwise cobbles together an organic governing document. The Secretary of Interior then certifies the organic race-based charter under which race-based elections are held to the Native Hawaiian governing entity. That certification would violate the Secretary’s solemn oath to protect and defend the Constitution

without mental reservation. It seems highly improbable that the Native Hawaiian commissioners would allow an electoral role for non-native Hawaiians. The bill itself anticipates a “native Hawaiian governing entity” which would be a misnomer if non-native Hawaiians were included.

6. Section 8 establishes an open-ended negotiating agenda between the United States, the State of Hawaii, and the unconstitutional Native Hawaiian governing entity to fix the powers and immunities of the latter. Nothing is excluded. For example, the Native Hawaiian entity might exercise criminal and civil jurisdiction over non-Native Hawaiians. It might be exempt from all federal, state, and local taxes. It might be shielded from all federal, state, and local regulatory, health, welfare, labor, zoning, and environmental laws. It might be free of restraints imposed by the United States Constitution, and violate freedom of speech, press, religion, or association with impunity. It might be empowered to exercise eminent domain over land both within and without its geographical boundaries. It might be authorized to exempt Native Hawaiians from military service and to evict the United States Navy and Army from their current Hawaiian bases. Proponents of the Akaka Bill adamantly refuse to exclude these horrors by explicit language.

S 147 RS

Calendar No. 101
109th CONGRESS
1st Session
S. 147
[Report No. 109-68]

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

IN THE SENATE OF THE UNITED STATES

January 25, 2005

Mr. AKAKA (for himself, Mr. INOUE, Mr. SMITH, Ms. CANTWELL, Ms. MURKOWSKI, Mr. COLEMAN, Mr. DORGAN, Mr. STEVENS, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

May 16, 2005

Reported by Mr. MCCAIN, with an amendment

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Native Hawaiian Government Reorganization Act of 2005'.

SEC. 2. FINDINGS.

Congress finds that--

- (1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;
- (2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are indigenous, native people of the United States;
- (3) the United States has a special political and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians;
- (4) under the treaty making power of the United States, Congress exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States--
 - (A) recognized the sovereignty of the Kingdom of Hawaii;
 - (B) accorded full diplomatic recognition to the Kingdom of Hawaii; and
 - (C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;
- (5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;
- (6) by setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii;
- (7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;
- (8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the 'ceded lands trust'), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians;
- (B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and
- (C) the assets of this public trust have never been completely inventoried or segregated;
- (9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;
- (10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival and economic self-sufficiency of the Native Hawaiian people;

(11) Native Hawaiians continue to maintain other distinctly native areas in Hawaii;

(12) on November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the 'Apology Resolution') was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii;

(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;

(14) the Apology Resolution expresses the commitment of Congress and the President--

(A) to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii;

(B) to support reconciliation efforts between the United States and Native Hawaiians; and

(C) to consult with Native Hawaiians on the reconciliation process as called for in the Apology Resolution;

(15) despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a distinct native community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency;

(16) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency--

(A) through the provision of governmental services to Native Hawaiians, including the provision of--

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children's services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

(x) native language immersion schools from kindergarten through high school;

(xi) college and master's degree programs in native language immersion instruction; and

(xii) traditional justice programs, and

- (B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;
- (17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;
- (18) the Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;
- (19) this Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a Native Hawaiian governing entity for the purpose of giving expression to their rights as native people to self-determination and self-governance;
- (20) Congress--
- (A) has declared that the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;
 - (B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf ; and
 - (C) has delegated broad authority to the State of Hawaii to administer some of the United States' responsibilities as they relate to the Native Hawaiian people and their lands;
- (21) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), by--
- (A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and
 - (B) transferring the United States' responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands that comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

- (22) the United States has continually recognized and reaffirmed that--
- (A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;
 - (B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;
 - (C) the United States extends services to Native Hawaiians because of their unique status as the indigenous, native people of a once-sovereign nation with whom the United States has a political and legal relationship; and
 - (D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States; and
- (23) the State of Hawaii supports the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003, and March 1, 2005.

SEC. 3. DEFINITIONS.

In this Act:

- (1) **ABORIGINAL, INDIGENOUS, NATIVE PEOPLE-** The term `aboriginal, indigenous, native people' means people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.
- (2) **ADULT MEMBER-** The term `adult member' means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.
- (3) **APOLOGY RESOLUTION-** The term `Apology Resolution' means Public Law 103-150 (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.
- (4) **COMMISSION-** The term `commission' means the Commission established under section 7(b) to provide for the certification that those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in paragraph (10).
- (5) **COUNCIL-** The term `council' means the Native Hawaiian Interim Governing Council established under section 7(c)(2).
- (6) **INDIAN PROGRAM OR SERVICE-**

- (A) IN GENERAL- The term 'Indian program or service' means any federally funded or authorized program or service provided to an Indian tribe (or member of an Indian tribe) because of the status of the members of the Indian tribe as Indians.
- (B) INCLUSIONS- The term 'Indian program or service' includes a program or service provided by the Bureau of Indian Affairs, the Indian Health Service, or any other Federal agency.
- (7) INDIAN TRIBE- The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (8) INDIGENOUS, NATIVE PEOPLE- The term 'indigenous, native people' means the lineal descendants of the aboriginal, indigenous, native people of the United States.
- (9) INTERAGENCY COORDINATING GROUP- The term 'Interagency Coordinating Group' means the Native Hawaiian Interagency Coordinating Group established under section 6.
- (10) NATIVE HAWAIIAN-
- (A) IN GENERAL- Subject to subparagraph (B), for the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the term 'Native Hawaiian' means--
- (i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who--
- (I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and
- (II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or
- (ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.
- (B) NO EFFECT ON OTHER DEFINITIONS- Nothing in this paragraph affects the definition of the term 'Native Hawaiian' under any other Federal or State law (including a regulation).
- (11) NATIVE HAWAIIAN GOVERNING ENTITY- The term 'Native Hawaiian Governing Entity' means the governing entity organized by the Native Hawaiian people pursuant to this Act.
- (12) NATIVE HAWAIIAN PROGRAM OR SERVICE- The term 'Native Hawaiian program or service' means any program or service provided to Native Hawaiians because of their status as Native Hawaiians.
- (13) OFFICE- The term 'Office' means the United States Office for Native Hawaiian Relations established by section 5(a).

(14) SECRETARY- The term `Secretary' means the Secretary of the Interior.

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) POLICY- The United States reaffirms that--

(1) Native Hawaiians are a unique and distinct, indigenous, native people with whom the United States has a special political and legal relationship;

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of--

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled `An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (Public Law 86-3, 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have--

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;

(C) the right to reorganize a Native Hawaiian governing entity; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE- The purpose of this Act is to provide a process for the reorganization of the Native Hawaiian governing entity and the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) ESTABLISHMENT- There is established within the Office of the Secretary, the United States Office for Native Hawaiian Relations.

(b) DUTIES- The Office shall--

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, effectuate and coordinate the special political and legal relationship between the Native

Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with, the Native Hawaiian people and the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, the Governor of the State of Hawaii and relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

- (a) ESTABLISHMENT- In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the 'Native Hawaiian Interagency Coordinating Group'.
- (b) COMPOSITION- The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from--
- (1) 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, rights, or lands; and
 - (2) the Office.
- (c) LEAD AGENCY-
- (1) IN GENERAL- The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.
 - (2) MEETINGS- The Secretary shall convene meetings of the Interagency Coordinating Group.
- (d) DUTIES- The Interagency Coordinating Group shall--
- (1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

- (2) 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 between the Native Hawaiian governing entity and the United States, consultation with the Native Hawaiian governing entity; and
- (3) ensure the participation of each Federal agency in the development of the report to Congress authorized in section 5(b)(5).

SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY- The right of the Native Hawaiian people to reorganize the Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) COMMISSION-

(1) IN GENERAL- There is authorized to be established a Commission to be composed of nine members for the purposes of--

- (A) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and
- (B) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in section 3(10).

(2) MEMBERSHIP-

(A) APPOINTMENT- Within 180 days of the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subclause (B). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(B) REQUIREMENTS- The members of the Commission shall be Native Hawaiian, as defined in section 3(10), and shall have expertise in the determination of Native Hawaiian ancestry and lineal descendency.

(3) EXPENSES- Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(4) DUTIES- The Commission shall--

(A) prepare and maintain a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and

(B) certify that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).

(5) STAFF-

(A) IN GENERAL- The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) COMPENSATION-

(i) IN GENERAL- Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY- The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(6) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES-

(A) IN GENERAL- An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) CIVIL SERVICE STATUS- The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES- The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) EXPIRATION- The Secretary shall dissolve the Commission upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY-

(1) ROLL-

(A) CONTENTS- The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and are certified to be Native Hawaiian as defined in section 3(10) by the Commission.

(B) FORMATION OF ROLL- Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall submit to the Commission documentation in the form established

by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition of Native Hawaiian in section 3(10).

(C) DOCUMENTATION- The Commission shall--

- (i) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 3(10);
- (ii) establish a standard format for the submission of documentation; and
- (iii) publish information related to clauses (i) and (ii) in the Federal Register.

(D) CONSULTATION- In making determinations that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10), the Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendency.

(E) CERTIFICATION AND SUBMITTAL OF ROLL TO SECRETARY- The Commission shall--

- (i) submit the roll containing the names of the adult members of the Native Hawaiian community who meet the definition of Native Hawaiian in section 3(10) to the Secretary within two years from the date on which the Commission is fully composed; and
- (ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).

(F) PUBLICATION- Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(10), the Secretary shall publish the roll in the Federal Register.

(G) APPEAL- The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(10) and to be 18 years of age or older.

(H) PUBLICATION; UPDATE- The Secretary shall--

- (i) publish the roll regardless of whether appeals are pending;
- (ii) update the roll and the publication of the roll on the final disposition of any appeal; and

(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 3(10) after the initial publication of the roll or after any subsequent publications of the roll.

(I) FAILURE TO ACT- If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.

(J) EFFECT OF PUBLICATION- The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL-

(A) ORGANIZATION- The adult members of the Native Hawaiian community listed on the roll published under this section may--

- (i) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;
- (ii) determine the structure of the Council; and
- (iii) elect members from individuals listed on the roll published under this subsection to the Council.

(B) POWERS-

(i) IN GENERAL- The Council--

- (I) may represent those listed on the roll published under this section in the implementation of this Act; and
- (II) shall have no powers other than powers given to the Council under this Act.

(ii) FUNDING- The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (iii).

(iii) ACTIVITIES-

- (I) IN GENERAL- The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to--

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and

(dd) other issues determined appropriate by the Council.

(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS- Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.

(III) DISTRIBUTION- The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection--

(aa) a copy of the proposed organic governing documents, as drafted by the Council; and

(bb) a brief impartial description of the proposed organic governing documents;

(IV) ELECTIONS- The Council may hold elections for the purpose of ratifying the proposed organic governing documents, and on certification of the organic governing documents by the Secretary in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS- Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(4) CERTIFICATIONS-

(A) IN GENERAL- Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents--

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

- (ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;
- (iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;
- (iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;
- (v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;
- (vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity; and
- (vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.

(B) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (a)-

(i) **RESUBMISSION BY THE SECRETARY-** If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents to the Council, along with a justification for each of the Secretary's findings as to why the provisions are not in full compliance.

(ii) **AMENDMENT AND RESUBMISSION OF ORGANIC GOVERNING DOCUMENTS-** If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall--

- (I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) CERTIFICATIONS DEEMED MADE- The certifications under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(5) ELECTIONS- On completion of the certifications by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.

(6) REAFFIRMATION- Notwithstanding any other provision of law, upon the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS; CLAIMS.

(a) REAFFIRMATION- The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union' approved March 18, 1959 (Public Law 86-3, 73 Stat. 4), is reaffirmed.

(b) NEGOTIATIONS-

(1) IN GENERAL- Upon the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as--

(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;

(B) the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use;

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii; and

(E) any residual responsibilities of the United States and the State of Hawaii.

(2) AMENDMENTS TO EXISTING LAWS- Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii,

and the Native Hawaiian governing entity, the parties are authorized to submit--

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives, recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the 3 governments; and

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the 3 governments.

(c) CLAIMS-

(1) IN GENERAL- Nothing in this Act serves as a settlement of any claim against the United States.

(2) STATUTE OF LIMITATIONS- Any claim against the United States arising under Federal law that--

(A) is in existence on the date of enactment of this Act;

(B) is asserted by the Native Hawaiian governing entity on behalf of the Native Hawaiian people; and

(C) relates to the legal and political relationship between the United States and the Native Hawaiian people;

shall be brought in the court of jurisdiction over such claims not later than 20 years after the date on which Federal recognition is extended to the Native Hawaiian governing entity under section 7(c)(6).

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) INDIAN GAMING REGULATORY ACT- Nothing in this Act shall be construed to authorize the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) INDIAN PROGRAMS AND SERVICES- Notwithstanding section 7(c)(6), because of the eligibility of the Native Hawaiian governing entity and its citizens for Native Hawaiian programs and services in accordance with subsection (c), nothing in this Act provides an authorization for eligibility to participate in any Indian program or service to any individual or entity not otherwise eligible for the program or service under applicable Federal law.

(c) NATIVE HAWAIIAN PROGRAMS AND SERVICES- The Native Hawaiian governing entity and its citizens shall be eligible for Native Hawaiian programs and services to the extent and in the manner provided by other applicable laws.

SEC. 10. SEVERABILITY.

If any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Calendar No. 101

END

Appendix

The apology issued by the United States Congress in 1993 to the Native Hawaiians for the ‘illegal’ overthrow of the Hawaiian monarchy and its annexation to the United States is riddled with historical inaccuracies. The resolution alleges that the Committee of Safety, the political juggernaut that deposed Queen Lili’uokalani, “represented American and European sugar planters, descendants of missionaries, and financiers.” The language fails to disclose the Hawaiian monarchy’s deep and lasting ties with the most powerful sugar planters on the islands. Many of the wealthiest sugar barons steadfastly supported the monarchy in opposition to the Committee for Safety.

Chinese and Japanese immigrants provided an abundant source of cheap labor on the sugar plantations. They labored for wages below what was required on the American mainland. The sugar planters owed their impressive profit margins to these workers. Annexation to the United States would have eliminated the sugar planter’s labor cost advantage. Many sugar barons vigorously defended the monarchy to retain their access to cheap labor.

The sugar barons invested heavily in the monarchy. Claus Spreckels, the wealthiest sugar baron on the islands, established Claus Spreckels & Co. Bank in 1885. King Kalakaua borrowed heavily from Spreckels’ bank; the planter’s substantial influence garnered him the nickname ‘King Claus’. King Kalakaua unsuccessfully endeavored to secure a two million dollar loan from the British to settle his debts to Spreckels’ bank. Spreckels’ financial stake in the monarchy provided him with considerable political capital, which he spent securing his business interests. After the Committee of Safety deposed the Queen, Spreckels vigorously lobbied for her re-instatement.

Some planters and financiers did offer their support to the Committee of Safety due to economic concerns. Prior to 1890, the United States conferred the privilege of duty free sugar imports only on Hawaii. The McKinley Tariffs eliminated Hawaii’s advantage by allowing all foreign suppliers to export their sugar to the United States duty free and subsidizing domestic sugar production. Some businessmen favored establishing a free trade agreement with the United States; others contended that annexation would assure unfettered access to American markets for Hawaiian goods. However, the congressional resolution exaggerates the presence of sugar planters on the Committee of Safety. Two members did hold management positions at sugar companies, and the Honolulu Ironworks, a provider of equipment to the plantations, employed another member. No member held a controlling interest in a sugar company, nor would it be accurate to assert that any of the members were sugar barons.

Queen Lili’uokalani herself furnished the proximate cause of the revolt. Since its inception in 1810, the Hawaiian monarchy embraced increasingly democratic governance. Queen Lili’uokalani reversed that trend when she sought to unilaterally change the constitution to augment her own power and weaken the government’s system of checks and balances. The Hawaiian constitution, that the Queen had sworn to uphold, explicitly limited the power to revise the Constitution to the legislature, which

represented native and non-Native Hawaiians alike. Her proposed Constitution allowed the monarch to appoint nobles for life, reduced judges' tenure from life to six years, removed the prohibition against diminishing judge's compensation, and admonished Cabinet members that they would serve only "during the queen's pleasure." The Queen's own cabinet refused to legitimize her autocratic constitution. Her disregard for democracy provoked the 1893 revolution. The congressional resolution blatantly ignores the historical circumstances surrounding her overthrow.

While the apology expressly condemns the alleged military intervention by the United States, the Hawaiian monarchy itself established its primacy through a series of bloody conflicts with rival chieftains. King Kamehameha I succeeded in uniting the islands and establishing control over foreign immigration, which began with Captain Cook's arrival nearly thirty years earlier. He did not hold elections. He gained power through brute force and ruthless measures. During a battle in the Nuuanu Valley, Kamehameha's forces drove thousands of Oahuan warriors off steep cliffs to their death. According to the logic of the congressional Apology Resolution, King Kamehameha I's seizure of land by force amounts to a violation of international law. The Hawaiian monarchy, which the resolution holds in such high regard, is guilty of far more egregious 'illegal' actions than those supposedly perpetrated by the United States.

In 1819, shortly after the death of Kamehameha I, his widow, Kaahumanu, became the de facto ruler and installed the deceased King's 23 year old son by another wife, Liholiho, as the nominal ruler, thereafter known as Kamehameha II. Under pressure from Kaahumanu and Keopuolani, the young king's mother, Liholiho broke the kapu, ordered the destruction of heiaus (stone alters) and the burning of wooden idols. Anthropologists have long regarded pre-contact Hawaii as the most highly stratified of all Polynesian chiefdoms. The chiefly elite from Maui and Hawaii Island had exercised a cycle of territorial conquest, promulgating the kapu system, an ideology based on the cult of Ku, a human sacrifice-demanding god of war, to legitimize chiefly dominance over the common people. The chiefs typically imposed the death penalty for violating kapu; women and those of lower castes suffered disproportionately under the system. When Liholiho broke the kapu by sitting down to eat with the women Ali'i, Kaahumanu announced, "We intend to eat pork and bananas and coconuts and live as the white people do." The following year, 1820, the first American missionaries arrived in Hawaii. Soon after, Kaahumanu took charge of Christianity and made it the official religion of the Kingdom. These shattering changes in the religion, culture and governance of Hawaii were the work of the Native Hawaiians themselves.

All foreigners came under the purview of the Native Hawaiian monarchy. The Apology Resolution decries the imperialist tendencies of the missionaries, yet their access to Native Hawaiians remained contingent on the monarchy's good graces. Several attempts to inject the Ten Commandments into the civil code failed, and King Kamehameha III actually banned Catholic missionaries for a time.

The Hawaiian monarchy had gained international recognition by the reign of King Kamehameha III. The child king ceded power to his regent, Kaahumanu, who remained

the de facto ruler until her death in 1832. While the regency yielded significant changes in Hawaiian common law, including the introduction of jury trials, King Kamehameha III affected a seismic shift toward democracy when he produced the Constitution of 1840. The influx of foreign merchants and settlers had exposed the Native Hawaiians to new modes of jurisprudence and governance. These revolutionary ideas found expression in the new Hawaiian constitution. King Kamehameha III took a particular interest in studying political structures; he requested that an American missionary, William Richards, tutor him in political economy and law.

The king, the chiefs, and their advisors convened to draft a declaration of rights and laws in 1839. The declaration secured the rights of each Hawaiian citizen to “life, limb, liberty, the labor of his lands, and productions of his mind” and represented a critical concession to the king’s subjects. The language ensured that native and non-Native Hawaiian citizens enjoyed equal protection under the law.

The following year, the council of chiefs and King Kamehameha III drafted a formal constitution. The document provided for the creation of a “representative body” chosen by the people and a supreme court consisting of the king; the kuhina-nui, the premier or regent; and four judges appointed by the “representative body.” Moreover, the document specified that only the legislature could approve alterations to the constitution following a year’s notice of the proposed change. The government followed the mandated procedure and revised the constitution in 1852, which more explicitly outlined the powers accorded to the each branch of government. While the Hawaiians borrowed many of their political philosophies from Western civilization, they forged a government of their own accord.

The Apology Resolution contends that “the Indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States,” yet the land system remained virtually unchanged after the 1893 overthrow and subsequent annexation. King Kamehameha III embarked on an ambitious land reform program in 1848, termed the “Great Mahele.” The original spate of reforms, the Buke Mahele, divided the land amongst the King and the 245 chiefs. The King further divided his lands into the Crown Lands and the Government Lands, the latter was to be “managed, leased, or sold, in accordance with the will of said Nobles and Representatives...”³ Then, the Kuleana Grant program offered fee simple titles to the native tenants tilling each plot or kuleana. The commoners’ share of land constituted a small fraction of the total; however, the kuleana lands were the primary productive agricultural land of the Kingdom and were considered extremely valuable. The Kuleana Grants awarded land to approximately two out of every three Native Hawaiian families

The editor of the *Polynesian* newspaper extolled the grant as “the crowning fact that gives liberty to a nation of serfs.” Indeed, fifty years prior to annexation, the Hawaiian monarchy dismantled the “subsistent social system based on communal land tenure” that the Apology Resolution references. The government only extended the possibility of land ownership to foreign born residents two years after the Kuleana Grant. The provisional government of 1893 simply gained ownership of the crown lands and the

³ R. S. Kuykendall, *The Hawaiian Kingdom 1778-1854 Vol 1*, pg. 289.

government lands. The Apology Resolution faults the United States for acquiring those lands from the provisional government without providing compensation to Hawaii. Yet, the United States assumed over 3.8 million dollars of Hawaii's public debt, largely incurred under the monarchy, after annexation. That debt burden amounts to twice the market value of the land the United States inherited. Native Hawaiians did not forfeit one acre of land as a consequence of the overthrow or annexation.

King Kamehameha III's reign institutionalized a measure of representative democracy and property rights in Hawaii. King Kamehameha V's failure to designate a successor afforded native and non-native subjects alike the opportunity to elect the next two monarchs, King Lunalilo and King Kalakaua. The Hawaiian monarchy itself infused democracy, property rights, and a system of common law into Hawaiian society. The annexation did not alter those institutions.

The Constitution of 1887 extended democracy to the selection of nobility, reduced the arbitrary power of the King, stipulated that only the legislature could approve constitutional changes, and mandated that no cabinet minister could be dismissed without the legislature's consent. While the King signed the new constitution under pressure from a militia group, the Honolulu Rifles, the net effect of the revisions provided Hawaiian citizens with a more democratic government. Many natives expressed concern over the extension of suffrage to resident foreigners of western descent and the property qualifications to vote for or become nobles. A minority embarked on an ill-fated effort to depose King Kalakaua and install Lili'uokalani in his place. However, most native and non-native dissenters sought redress within the democratic system. Their opposition parties, the National Reform Party and the Liberal Party, garnered a substantial number of seats in the legislature. Queen Lili'uokalani's autocratic demands in 1893 appear even more egregious against the backdrop of liberalization that her predecessors championed.

The Apology Resolution also casts United States Minister to Hawaii, John Stevens, in a sinister light, charging that he "conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii...to overthrow the indigenous and lawful Government of Hawaii." Moreover, the resolution contends that the United States Navy invaded Hawaii and positioned themselves "near Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani." There is not a shred of hard evidence to support either of those claims. The Blount Report itself, cited by the Apology Resolution, contains statements from the leaders of the revolution and from John Stevens himself which directly refute those allegations. W.O. Smith recounted the Committee of Safety's contact with Minister Stevens in Blount's report:

"Mr. Stevens gave assurances of his earnest purpose to afford all the protection that was in his power to protect life and property; he emphasized that fact that while he would call for the United States troops to protect life and property, he could not recognize any government until actually established. He repeated that the troops when landed would not take sides with either Party, but would protect American life and property."

Minister Stevens consistently denied any involvement in the revolution. Any statement to the contrary amounts to little more than speculation.

The Blount Report was a partisan endeavor. The newly elected Democratic President Cleveland castigated the outgoing Republican administration of President Harrison for its 'interventionist' tactics in Hawaii prior to any investigation. Cleveland accused Minister Stevens of orchestrating virtually every aspect of the revolution in an address to Congress claiming that "But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed." In fact, King Kamehameha III first proposed annexation to the United States in 1851, despite strenuous objections from the French and the British. When Cleveland commissioned the Blount report, the ongoing effort to discredit the Harrison administration colored Blount's impartiality. He did not swear in his witnesses, nor did he interview all involved. Cleveland even attempted to re-instate Queen Liliuokalani, although he aborted those efforts after the Queen repeatedly insisted that all involved in the Committee of Safety be executed. The Senate's bipartisan Morgan Report found little evidence to support Queen Lilioukalani's fraudulent claims that United States pressure forced her to abdicate the crown.

The provisional government encountered little resistance. Just 800 Hawaiian royalists staged a short-lived counter-revolution in 1895. Under the leadership of President Sanford B. Dole, the new government convened a constitutional convention in the summer of 1894. The resulting document cemented civil liberties for all Hawaiian citizens, similar to the American Bill of Rights, and mandated that a Senate and House of Representative be elected by the people. Royalists continued to express their frustrations in opposition newspapers without censure. After the 1898 annexation, Native Hawaiians proved a dynamic force in island politics. While just one of the Washington-appointed Governors, Samuel Wilder King, possessed Hawaiian blood, five out of ten elected Delegates to Congress boasted Native Hawaiian ancestry. In 1903, a Native Hawaiian Delegate to Congress of royal ancestry, Prince Kuhio, delivered Hawaii's first petition for statehood to Washington.

August 21, 1959 remains a day of celebration for Hawaiians of all races and creeds. Hawaii's induction into the union as the fiftieth state marked the culmination of its protracted struggle for statehood. Native and non-Native Hawaiians voted overwhelming in favor of statehood in the plebiscite preceding the formal declaration. Native Hawaiians did not rally in opposition to statehood; just 6% of the voters opposed the measure whereas 94% resoundingly announced their support. As Senator Inouye of Hawaii so eloquently testified, "Hawaii remains one of the greatest examples of a multiethnic society living in relative peace." Congressional Record, 1994, Page S12249. He echoes the same sentiments Captain Ashford expressed in 1884 to King Kalakaua when he referred to the Hawaiian flag as, "this beautiful emblem of the unity of many peoples who, blended together on a benignant basis of political and race equality, combine to form the Kingdom of Hawaii..." The Akaka Bill would thus represent a wretched regression in race relations that would occasion equally wretched racial ills.

Sources

The Hawaiian Kingdom by R.S. Kuykendall

R.S. Kuykendall was a professor emeritus of history at the University of Hawaii and served as executive secretary of the Historical Commission of the Territory of Hawaii. *The Hawaiian Kingdom* is considered the authoritative text on Hawaii's early political and economic relations.

Kuykendall, R.S. *The Hawaiian Kingdom 1778-1854 Vol. 1*. Honolulu: University of Hawaii Press, 1938.

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The Blount Report

The information Senator Blount gathered in the Hawaii at President Cleveland's request cannot be deemed a complete account of the revolution. Aside from the political nature of the inquest, as detailed in the Appendix, Blount did not interview all involved, he did not swear in his witnesses, and they escaped cross-examination. Thus, the testimonials reported by Blount cannot be accorded the same weight as those presented by the Morgan Commission.

Blount Report, contained in House Ex. Doc. No. 48, 53rd Congress, second session, 1893.

The Morgan Report

The Senate Foreign Relations Committee's investigation produced the most complete account of the 1893 revolution. Democrat Senator John Tyler Morgan of Alabama supervised the proceedings as the chairman of the Senate Foreign Relations Committee. A comprehensive list of witnesses, including Blount himself, testified under oath before the Committee. While Morgan and others sided with the provisional government, the forum allowed anti-annexation Democrats to cross-examine every witness. The Morgan Report's more balanced and trustworthy approach is far more credible than Blount's one-sided and ill-conceived venture.

Morgan Report, Reports of Committee on Foreign Relations, United States Senate, 1789-1901, 1st Congress, First Session, to 56th Congress, Second Session, Diplomatic Relations with Foreign Nations-Hawaiian Islands, Vol. VI, (Government Printing Office, Washington 1901)

