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4:09 pm

DEFENDANT
Pro se

IN THE CIRUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2, Plaintiff, vs. DIANNE DEE GUMAPAC; KALE KEPEKAIO GUMAPAC; JOHN DOES 1-50; AND JANE DOES 1-50, Defendants. _____	CIVIL NO. 11-1-0590 DEFENDANT KALE KEPEKAIO GUMAPAC'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(B)(1); MEMORANDUM IN SUPPORT OF MOTION TO DISMISS; DECLARATION OF DEFENDANT; EXHIBITS "A-C"; NOTICE OF HEARING; CERTIFICATE OF SERVICE HEARING: DATE: Feb. 14, 2012 TIME: 8:00 am JUDGE: Greg K. Nakamura

DEFENDANT'S MOTION TO DISMISS COMPLAINT
PURSUANT TO HRCP 12(B)(1)

COMES NOW the Defendant KALE KEPEKAIO GUMAPAC, hereinafter DEFENDANT, in pro se, makes the following Motion to Dismiss Complaint for lack of subject matter jurisdiction, which can be raised at any time throughout the proceedings pursuant to *Tamashiro v. State of Hawai`i*, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006), and a request for judicial notice of the enclosed exhibits attached to Defendant's Declaration.

DEFENDANT moves pursuant to Rule 12(b)(1) of the Hawaii Rules of Civil Procedure to dismiss Complaint for want of subject matter jurisdiction in that the suit would manifestly require the Court to act outside the constitutional limitations of its

judicial power**,** and unlawfully intrude upon, and in effect seize political control over two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom. The first agreement is the *Lili`uokalani assignment* (January 17th 1893) that mandates the President to administer Hawaiian Kingdom law and the second is the *Agreement of restoration* (December 18th 1893) that mandates the President to restore the Hawaiian Kingdom government and the Queen thereafter to grant amnesty to the insurgents. As is more fully shown in Defendant's Brief in support of this dismissal motion, the Complaint attempts to have the Court act outside the confines of the judicial power and fails to give rise to any claim or issue over which the Court could constitutionally exercise subject matter jurisdiction without violating the *Supremacy clause*, in particular, the 1893 Executive Agreement and the precedence set in U.S. v. Belmont, 301 U.S. 324 (1937), U.S. v. Pink, 315 U.S. 203 (1942), and American Insurance Association v. Garamendi, 539 U.S. 396 (2003) regarding executive agreements that do not require Senate ratification to have the force and effect of a treaty.

WHEREFORE, Defendant respectfully prays that the foregoing motions to dismiss be inquired into and sustained, that the Complaint, to the extent that it is sought to be maintained against the Defendant, be dismissed for the reasons stated in these motions as well as in the more fully detailed statement of the facts, set forth with pertinent legal background and authority, in the simultaneously filed Brief of the DEFENDANT in support of the motion to dismiss.

DATED: Keaau, Hawai'i, January 13, 2012.

_____
KALE KEPEKAIO GUMAPAC
Defendant, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2, Plaintiff, vs. DIANNE DEE GUMAPAC; KALE KEPEKAIO GUMAPAC; JOHN DOES 1-50; AND JANE DOES 1-50, Defendants.	CIVIL NO. 11-1-0590 MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

MEMORANDUM IN SUPPORT OF MOTION

I. NATURE OF THE PROCEEDING

Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY (hereafter "PLAINTIFF") filed a complaint in the Circuit Court of the Third Circuit against Defendant KALE KEPEKAIO GUMAPAC (hereafter "DEFENDANT") for ejectment. DEFENDANT asserts that he is obligated to abide by the laws of the Hawaiian Kingdom, a sovereign and independent State, and so is PLAINTIFF. §6, Hawaiian Civil Code, Compiled Laws of the Hawaiian Kingdom (1884), provides:

> **The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom**, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws. (emphasis added)

The PLAINTIFF cannot claim relief from the Circuit Court of the Third Circuit of the State of Hawai'i because it lacks subject matter jurisdiction. An appropriate Court with subject matter jurisdiction are Courts of the Hawaiian Kingdom, not the State of Hawai'i. The Compiled Laws of the Hawaiian Kingdom (1884) provides:

> §870. The Kingdom shall be divided into four judicial circuits, as at present constituted, that is to say:… The third circuit shall consist of the Island of Hawaii, whose seat of justice shall be at Hilo and Waimea.
>
> §880. The respective Circuit Courts shall…**also have power to partition real estate; to grant writs of ejectment and of possession**.

However, in light of the illegal overthrow of the Hawaiian Kingdom government by the United States and its failure to administer Hawaiian Kingdom law and restore the Hawaiian Kingdom government pursuant to two sole executive agreements entered into between President Cleveland and Queen Lili'uokalani as are more fully explained hereafter, an Article II Court established under and by virtue of Article II of the U.S. Constitution in compliance with Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2277). Article II Courts are Military Courts established by authority of the President,[1] being Federal Courts, which were established as "the product of military occupation." *See Bederman*, "Article II Courts," *Mercer Law Review* 44 (1992-1993): 825-879, 826. According to *United States Law and Practice Concerning Trials of War Criminals by Military Commissions, Military Government Courts and Military Tribunals*, 3 United Nations War Crimes Commission, Law Reports of Trials of War Criminals 103, 114 (1948), military tribunals "are generally based upon the occupant's customary and conventional duty to govern occupied territory and to maintain law and order."[2]

II. BURDEN ESTABLISHING SUBJECT MATTER JURISDICTION RESTS WITH THE PLAINTIFF

In State of Hawai`i v. Lorenzo, 77 Haw. 219 (1994), the Defendant claimed to be a citizen of the Hawaiian Kingdom and that the State of Hawai`i courts did not have jurisdiction over him. In 1994, the case came before the Intermediate Court of Appeals (ICA) and Judge Heen delivered the decision. Judge Heen affirmed the lower court's decision denying Lorenzo's motion to dismiss, but explained that "Lorenzo [had] presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *Id*., 221. In other words, the reason Lorenzo's argument failed was because he "did not meet his burden of proving his defense of lack of jurisdiction." *Id*. In Nishitani v. Baker, 82 Haw. 281, 289 (1996), however, the Court shifted that burden of proof not upon the Defendant, but

[1] These types of courts were established during the Mexican-American War, Civil War, Spanish-American War, and the Second World War, while U.S. troops occupied foreign countries and administered the laws of the these States.
[2] See Jecker v. Montgomery, 54 U.S. 498 (1851); Leitensdorfer v. Webb, 61 U.S. 176 (1857); Cross v. Harrison, 57 U.S. 164 (1853); Mechanics' & Traders' Bank v. Union Bank, 89 U.S. 276 (1874); United States v. Reiter, 27 Federal Case 768 (1865); Burke v. Miltenberger, 86 U.S. 519 (1873); New Orleans v. Steamship Co., 87 U.S. 387 (1874); In re Vidal, 179 U.S. 126 (1900); Santiago v. Nogueras, 214 U.S. 260 (1909); Madsen v. Kinsella, 343 U.S. 341 (1952); Williamson v. Alldridge, 320 F. Supp. 840 (1970); Jacobs v. Froehlke, 334 F. Supp. 1107 (1971).

upon the Prosecution, whereby "proving jurisdiction thus clearly rests with the prosecution." The Court explained, "although the prosecution had the burden of proving beyond a reasonable fact establishing jurisdiction, the defendant has the burden of proving facts in support of any defense…which would have precluded the court from exercising jurisdiction over the defendant (emphasis added)." *Id*.

PLAINTIFF will be unable to meet such a burden of proving subject matter jurisdiction "beyond a reasonable fact" because of two executive agreements entered into between President Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom, called the *Lili`uokalani assignment* (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "1" of Defendant's Declaration) of executive power and the *Agreement of restoration* (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "1" of Defendant's Declaration). Congress was apprised of the *Lili'uokalani assignment* by Presidential Message, December 18, 1893, *See* United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95, 443-465 (1895). Presidential Message, January 13, 1894, apprised Congress of the *Agreement of restoration*. See Id., 1241-1284.

III. STANDARD OF REVIEW

Rule 12(b)(1) of the HRCP reads as follows:

> **(b) How presented**. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter.

Jurisdictional issues, whether personal or subject matter, can be raised at any time and that subject matter jurisdiction may not be waived. Wong v. Takushi, 83 Hawai`i 94, 98 (1996), see also State of Hawai`i v. Moniz, 69 Hawai`i 370, 372 (1987). In Tamashiro v. State of Hawai`i, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006), the Hawai`i Supreme Court stated, "The lack of jurisdiction over the subject matter cannot be waived by the parties. If the parties do not raise the issue, a court *sua sponte* will, for unless jurisdiction of the court over the subject matter exists, any judgment rendered is invalid."

The U.S. Constitution provides that treaties, like acts of Congress, are considered the "supreme law" of the land; see U.S. Constitution Article VI (2), and Maiorano v. Baltimore &

Ohio R.R. Co., 213 U.S. 268, 272-73 (1909). Also, Executive Agreements entered into by the President under his sole constitutional authority with foreign States are treaties that do not require ratification by the Senate or approval of Congress. *See* United States v. Belmont, 301 U.S. 324, 326 (1937). Given that valid executive agreements are binding treaties, this Court should grant Defendant's Motion to Dismiss in order to accomplish justice.

IV. SUMMARY OF ARGUMENT

DEFENDANT asserts that this Court lacks subject matter jurisdiction because of two executive agreements, the *Lili`uokalani assignment* (January 17, 1893) and the *Agreement of restoration* (December 18, 1893), that provides the legal and factual "basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *See* Lorenzo, at 221. The State of Hawai`i's claim to territorial jurisdiction under HRS 701-106(1)(a) is in conflict with the 1893 Executive Agreements and the precedence in Belmont, U.S. v. Pink, 315 U.S. 203 (1942), and American Insurance Association v. Garamendi, 539 U.S. 396, (2003), where sole executive agreements preempt State law.

Since the United States is a Federal government, States within the Federal Union are subject to the supremacy of Federal laws and treaties, in particular, executive agreements. U.S. constitution, article VI, clause 2, provides: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." The Supreme Court in Belmont stated that no state policy can be found to legally supersede an executive agreement between the federal government and a foreign country. The external powers of the U.S. government could be exercised without regard to State laws. The *Lili`uokalani assignment* and the *Agreement of restoration*, being executive agreements, remains binding today upon the current President as the successor in office to President Grover Cleveland. Should the Court exercise subject matter jurisdiction it would stand in direct violation of Federal law, in particular, the *Supremacy clause*.

V. ARGUMENT: CIRCUIT COURT OF THE THIRD CIRCUIT LACKS SUBJECT MATTER JURISDICTION

In State of Hawai`i v. Lee, 90 Haw. 130, 142; 976 P.2d 444, 456 (1999), the ICA stated, "**it is an open legal question whether the 'Kingdom of Hawai'i' still exists**." This open legal

question has since not been conclusively answered pursuant to the ICA's instructive exposition on determining whether or not the Hawaiian Kingdom continues to exist as a state. See Lorenzo and Baker. In Lorenzo, the ICA correctly cited attributes of a state's sovereign nature to be "an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities." See Lorenzo, at 221. The ICA restated Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 47 (2d Cir. 1991), which drew from §201, Restatement (Third) Foreign Relations Law of the United States. The Restatement (Third) drew its definition of a state from Article I, Montevideo Convention (1933), which provided, "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." (49 U.S. Stat. 3097, 3100).

The Hawaiian Kingdom had these attributes when Great Britain and France entered into a joint proclamation acknowledging and recognizing Hawai`i as an independent and sovereign State on November 28th 1843, and on July 6th 1844, United States Secretary of State John C. Calhoun notified the Hawaiian government of the United States formal recognition of the Hawaiian Kingdom as an independent and sovereign state since December 19th 1842 by President John Tyler. As a result of the United States' recognition, the Hawaiian Kingdom entered extensive treaty and diplomatic relations with other states, to include the United States of America.

In the 21st century, an international tribunal and the Ninth Circuit Court of Appeals acknowledged the Hawaiian Kingdom's status as an internationally recognized state in the 19th century. In Larsen v. Hawaiian Kingdom, 119 ILR 566, 581 (2001), the Permanent Court of Arbitration in The Hague stated, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States." The 9th Circuit Court, in Kahawaiola`a v. Norton, 386 F.3rd 1271 (2004), also acknowledged the Hawaiian Kingdom's status as "a co-equal sovereign alongside the United States;" and in Doe v. Kamehameha, 416 F.3d 1025, 1048 (2005), the Court stated that, "in 1866, the Hawaiian Islands were still a sovereign kingdom."

Having established the Hawaiian Kingdom's internationally recognized status as an independent state in the 19th century, which met the standard of a state's sovereign nature referred to in Lorenzo, the next question is whether or not the Hawaiian Kingdom status as a state was extinguished after its government was overthrown by U.S. troops on January 17th 1893. As a subject of international law, statehood of the Hawaiian Kingdom can only be measured and

determined by the rules of international law and not the domestic laws of any State to include the United States and the Hawaiian Kingdom. According to Professor Crawford, "A State is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three." *See* Crawford, The Creation of States in International Law 700 (2nd ed., 2006). In particular, military "occupation does not extinguish the State pending a final settlement of the conflict. And, generally, the presumption—in practice a strong presumption—favours the continuity and disfavors the extinction of a an established State." Id., 701. Professor Wright, a renowned scholar in U.S. foreign relations law, states that, "international law distinguishes between a government and the state it governs." *See* Wright, The Status of Germany and the Peace Proclamation, 46(2) American Journal of International Law 299-308, 307 (April 1952). And a "state may continue to be regarded as such even though, due to insurrection or other difficulties, its internal affairs become anarchic for an extended period of time;" (Restatement (Third) Foreign Relations Law of the United States, Reporter's Note 2, §201) and "Military occupation, whether during war or after an armistice, does not terminate statehood." Id., Reporter's Note 3. Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. Two contemporary examples illustrate this principle of international law, the overthrow of the Taliban (Afghanistan) in 2001 and of Saddam Hussein (Iraq) in 2003. The former has been a recognized sovereign State since 1919, *See* Hudson, Afghanistan, Equador, and the Soviet Union in the League of Nations, 29 American Journal of International Law 109-116, 110 (1935), and the latter since 1932, *See* Hudson, The Admission of Iraq to Membership in the League of Nations, 27 American Journal of International Law 133-138, 133 (1933). Professor Dixon explains:

> If an entity ceases to possess any of the qualities of statehood…this does not mean that it ceases to be a state under international law. For example, the absence of an effective government in Afghanistan and Iraq following the intervention of the USA did not mean that there were no such states, and the same is true of Sudan where there still appears to be no entity governing the country effectively. Likewise, if a state is allegedly 'extinguished' through the illegal action of another state, it will remain a state in international law. See Dixon, Textbook on International Law 119 (6th ed., 2007).

After the Hawaiian Kingdom government was illegally overthrown, two executive agreements were entered into between President Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom in 1893. The President entered into these executive agreements under his sole constitutional authority to represent the United States in foreign relations and the Congress cannot intervene without violating the separation of powers doctrine being an encroachment upon the executive power. The first agreement, called the *Lili`uokalani*

assignment, (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "3" of Dr. Sai's Declaration, attached as Exhibit "1" of Defendant's Declaration), assigned executive power to the United States President to administer Hawaiian Kingdom law and to investigate the overthrow of the Hawaiian government. The second agreement, called the *Restoration agreement*, (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "3" of Dr. Sai's Declaration, attached as Exhibit "1" of Defendant's Declaration), obligated the President of the United States to restore the Hawaiian government as it was prior to the landing of U.S. troops on January 16, 1893, and for the Queen, after the government was restored and the executive power returned, to grant full amnesty to those members and supporters of the provisional government who committed treason.

In Belmont, the U.S. Supreme Court affirmed that executive agreements entered into between the President and a sovereign nation does not require ratification from the U.S. Senate to have the force and effect of a treaty; and executive agreements bind successor Presidents for their faithful execution. In Garamendi, at 397, the Court stated, "Specifically, the President has authority to make 'executive agreements' with other countries, requiring no ratification by the Senate or approval by Congress." According to Justice Douglas, in Pink, at 241, executive agreements "must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy."

In Belmont, the Court concluded that under no circumstances could a state policy be found to legally supersede an agreement between the national government and a sovereign foreign power. The external powers of the U.S. government could be exercised without regard to state laws. The Court also stated, "Plainly, the external powers of the United States are to be exercised without regard to state laws or policies," see Belmont, at 330, and "[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes, the State of New York does not exist." Id. In Pink, at 230, the Court reiterated, "It is, of course, true that even treaties with foreign nations will be carefully construed so as not to derogate from the authority and jurisdiction of the States of this nation unless clearly necessary to effectuate the national policy.... But state law must yield when it is inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement.... Then, the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum . . . must give way before the superior Federal policy evidenced by a treaty or international compact or agreement."

Both Belmont and Pink were reinforced by Garamendi, at 396, where the Court reiterated, that "valid executive agreements are fit to preempt state law, just as treaties are," and that the preemptive power of an executive agreement derives from "the Constitution's allocation of the foreign relations power to the National Government." All three cases affirm that the *Lili`uokalani Assignment* and the *Agreement of restoration* preempts all laws and policies of the State of Hawai`i. In Edgar v. Mite Corporation, 457 U.S. 624, 631 (1982), Justice White ruled, "A state statute is void to the extent that it actually conflicts with a valid federal statute; and '[a] conflict will be found 'where compliance with both federal and state regulations is a physical impossibility.'"

Since 1893, the United States government has violated the terms of its obligations under these executive agreements and in 1898 unilaterally annexed the Hawaiian Kingdom by enacting a congressional joint resolution justified as a military necessity during the Spanish-American War, and thereafter occupied Hawai`i. After the President, by Presidential Message on January 13, 1894, apprised the Congress of the *Restoration agreement* with Queen Lili'uokalani, both the House of Representatives[3] and Senate[4] took deliberate steps "warning the President against the employment of forces to restore the monarchy of Hawaii." See Corwin, The President's Control of Foreign Relations, 45 (1917). Senator Kyle's resolution introduced on May 23, 1894 specifically addresses the *Agreement of restoration*. The resolution was later revised by Senator Turpie and passed by the Senate on May 31, 1894. Senator Kyle's resolution stated:

> *Resolved*, That it be the sense of the Senate that the Government of the United States shall not use force for the purpose of restoring to the throne the deposed Queen of the Sandwich Islands or for the purpose of destroying the existing Government: that, the Provisional having been duly recognized, the highest international interests require that it shall pursue its own line of polity,

[3] House Resolution on the Hawaiian Islands, February 7, 1894:

"*Resolved*, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be condemned. Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government is uncalled for and inexpedient; that the people of that country should have their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States." (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 2000 (1894)).

[4] Senate Resolution on the Hawaiian Islands, May 31, 1894:

"*Resolved*, That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic polity; that the United States ought in nowise to interfere therewith, and that any intervention in the political affairs of these islands by any other government will be regarded as an act unfriendly to the United States." (U.S. House Resolution on Hawai'i, 53 Cong., 2nd Sess., 5499 (1894)).

> and that intervention in the political affairs of these islands by other governments will be regarded as an act unfriendly to the Government of the United States. (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 5127 (1894))

Not only do these resolutions acknowledge the executive agreements between Queen Lili'uokalani and President Cleveland, but also these resolutions violate the separation of powers doctrine whereby the President is the sole representative of the United States in foreign relations. "[C]ongressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect." See Wright, The Control of American Foreign Relations 281 (1922).

On May 4, 1998, Representative Francis Newlands (D-Nevada) introduced House Resolution 259 to the House Committee on Foreign Affairs. Representative Robert Hitt (R-Illinois) reported the Newlands Resolution out of Committee, and entered the House of Representatives for debate on May 17, 1998. Representative Thomas H. Ball (D-Texas) stated on June 15, 1898:

> The annexation of Hawai'i by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. …Why, sir, the very presence of this measure here is the result of a deliberate attempt to do unlawfully that which can not be done lawfully. (55 Cong. 2nd Sess., 5975 (1898)) (Exhibit "C" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "3" of Dr. Sai's Declaration, attached as Exhibit "1" of Defendant's Declaration).

Over the constitutional objections, the House passed the measure and the Newlands Resolution entered the Senate on June 16, 1898. Senators as well objected to the measure on constitutional grounds. In particular, Senator Augustus Bacon (D-Georgia) stated on June 20, 1898:

> That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution. If Hawaiÿi was to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure.
>
> …Now, a statute is this: A Statute is a rule of conduct laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. A statute can not go outside the jurisdiction of the United States and be

> binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty.
>
> What is it that the House of Representatives has done? …The friends of annexation, seeing that it was impossible to make the treaty in the manner pointed out by the Constitution, attempted then to nullify the provision in the Constitution by putting that treaty in the form of a statute, and here we have embodied the provisions of the treaty in the joint resolution which comes to us from the House. (Exhibit "D" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "3" of Dr. Sai's Declaration, attached as Exhibit "1" of Defendant's Declaration).

Notwithstanding the constitutional objections, the Senate passed the resolution on July 6, 1898, and President McKinley signed the joint resolution into law on July 7, 1898. Since 1900, the United States Congress has enacted additional legislation establishing a government in 1900 for the Territory of Hawai`i (31 U.S. Stat. 141), and in 1959 transformed the Territory of Hawai`i into the State of Hawai`i (73 U.S. Stat. 4). According to Born, "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction." *See* Born, International Civil Litigation in United States Courts 493 (3rd ed. 1996). In Rose v. Himely, 8 U.S. 241, 279 (1807), the Court illustrated this view by asserting, "that the legislation of every country is territorial." In The Apollon, 22 U.S. 362, 370 (1824), the Court stated that the "laws of no nation can justly extend beyond its own territory" for it would be "at variance with the independence and sovereignty of foreign nations," Id., and in U.S. v. Belmont, 301 U.S. 324, 332 (1937), Justice Sutherland resounded, "our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens." Consistent with this view of non-extraterritoriality of legislation, *acting* Assistant Attorney General Douglas Kmiec opined: "It is…unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea." See Kmiec, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea, 12 Op. Off. Legal Counsel 238-263, 252 (1988).

Because U.S. legislation has no extraterritorial force and effect, except over U.S. citizens, it cannot be considered to have extinguished the Hawaiian Kingdom as a state, and the executive agreements are *prima facie* evidence that the United States recognizes the sovereignty and legal order of the Hawaiian Kingdom despite the overthrow of its government. §207(a), Restatement (Third) Foreign Relations Law of the United States, provides that "A state acts through its

government, but the state is responsible for carrying out its obligation under international law regardless of the manner in which its constitution and laws allocate the responsibilities and functions of government, or of any constitutional or other internal rules or limitations." And §115(b), Restatement (Third) Foreign Relations Law, provides that "although a subsequent act of Congress may supersede a rule of international law or an international agreement as domestic law, the United States remains bound by the rule or agreement internationally… Similarly, the United States remains bound internationally when a principle of international law or a provision in an agreement of the United States is not given effect because it is inconsistent with the Constitution."

By virtue of the temporary and conditional grant of Hawaiian executive power, the U.S. was obligated to restore the Hawaiian Kingdom government, but instead illegally occupied the Hawaiian Kingdom for military purposes on August 12, 1898 during the Spanish-American War, and has remained in the Hawaiian Islands ever since. See Sai, A Slippery Path Towards Hawaiian Indigeneity, 10 Journal of Law and Social Challenges 68-133 (Fall 2008). The failure to administer Hawaiian Kingdom law under the *Lili`uokalani Assignment* and then to reinstate the Hawaiian government under the *Restoration agreement* constitutes a breach of an international obligation, as defined by the *Responsibility of States for Internationally Wrongful Acts*, (see United Nations, Responsibility of States for International Wrongful Acts (2001), Article 12), and the breach of this international obligation by the U.S. has "a continuing character [that] extends over the entire period during which the act continues and remains not in conformity with the international obligation." Id., Article 14(2). The extended lapse of time has not affected in the least the international obligation of the U.S. under the both executive agreements; despite over a century of non-compliance and prolonged occupation, and according to Wright, the President binds "himself and his successors in office by executive agreements." *See* Wright, The Control of American Foreign Relations 235 (1922). More importantly, the U.S. "may not rely on the provisions of its internal law as justification for failure to comply with its obligation." See Responsibility of States, Article 31(1).

According to Professor Marek, "the legal order of the occupant is…strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness [e.g. no government]. …[Occupation] is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned." See Marek, Identity and Continuity of States in Public International Law (1968), 102. Referring to the United States' occupation of the Hawaiian Kingdom in his law journal article, Dumberry states:

> the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied. See Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law, 2(1) Chinese Journal of International Law 655-684 (2002).

In Belmont, Pink, and Garamendi, the Court gave effect to the express terms of an executive agreement that extinguishes all underlying claims of relief sought under State law. The *Lili`uokalani assignment* mandates the President to administer Hawaiian Kingdom law until the Hawaiian Kingdom government can be restored as mandated by the *Agreement of restoration*. Instead, the State of Hawai`i was established by an Act of Congress in 1959, which is an encroachment on the executive power of the President, and the recognized principle of the "exclusive power of the President as the sole organ of the federal government in the field of international relations," *See* United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

The *Lili`uokalani assignment* and the *Agreement of restoration* are Federal matters under the exclusive authority of the President by virtue of Article II of the U.S. Constitution. This court cannot exercise subject matter jurisdiction without violating *Supremacy clause*, notwithstanding the general principle that there is a presumption that State courts possess concurrent jurisdiction with Federal courts over Federal matters. In Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 478 (1981), the Court stated, "the presumption of concurrent jurisdiction can be rebutted by…a clear incompatibility between state court jurisdiction and federal interests." The *Lili`uokalani assignment* and the *Agreement of restoration* divests this Court from exercising subject matter jurisdiction over matters being exclusively Federal because the 1893 Executive Agreements binds the Federal government to administer Hawaiian Kingdom law and to restore the Hawaiian Kingdom government, notwithstanding a century long of non-compliance. Therefore, the *Lili`uokalani assignment* and the *Agreement of restoration*, being executive agreements, expressly precludes this Court from exercising subject matter jurisdiction within the territorial dominion of the Hawaiian Kingdom, and consequently the presumption of concurrent jurisdiction over Federal matters is rebuttable because of a "clear incompatibility between state court jurisdiction and federal interests." See Id.

Additional evidence of the Hawaiian Kingdom's continuity as a state in accordance with recognized attributes of a state's sovereign nature was the international arbitration case, Lance Larsen v. Hawaiian Kingdom, 119 International Law Reports 566 (2001), at the Permanent Court

of Arbitration, The Hague, Netherlands, whereby only states have access to international proceedings at the Permanent Court of Arbitration. See Bederman, David, & Hilbert, Kurt, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii" *American Journal of International Law* 95 (2001): 927; Dumberry, Patrick, "The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law," *Chinese Journal of International Law* 2(1)(2002): 65; Sai, David Keanu, "American Occupation of the Hawaiian State: A Century Gone Unchecked," Hawaiian Journal of Law and Politics 1 (Summer 2004): 46; and Sai, David Keanu, "A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai`i today," *Journal of Law and Social Challenges* 10 (Fall 2008): 165.

In the Twenty-sixth Legislature of the State of Hawai'i (2011), Representative Mele Carroll introduced House Concurrent Resolution 107 "Establishing a Joint Legislative Investigating Committee to Investigate the Status of Two Executive Agreements entered into in 1893 between the United States President Grover Cleveland and Queen Lili'uokalani of the Hawaiian Kingdom, called the *Lili'uokalani Assignment* and the *Agreement of Restoration*." Representative Carroll stated that the purpose of House Concurrent Resolution 107 is to:

> ensure that we, as Legislators, who took an oath to support and defend not only the Constitution of the State of Hawai'i, but also the Constitution of the United States, must be mindful of our fiduciary duty and obligation to conform to the *Supremacy Clause* of the United States Constitution. As Majority Whip for the House of Representatives of the State of Hawai'i, it is my duty to bring the executive agreements to the attention of the Hawai'i State Legislature and that the joint investigating committee have the powers necessary to receive all information for its final report to the Legislature. (See News Release—Office of Rep. Mele Carroll, March 14, 2011, http://MeleCarrol.wordpress.com)

VI. REQUEST FOR JUDICIAL NOTICE

Judicial notice is the act by which a court recognizes the existence and truth of certain facts that have a bearing on the case. "All courts are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government, and that extent and boundaries of the territory under which they can exercise jurisdiction." See 29 Am.Jur.2d Evidence, §83 (2008). "State and federal courts must judicially notice all treaties [executive agreements] of the United States." Id., §123. "When considering a treaty [executive agreement], courts must take judicial notice of all facts connected therewith which may be necessary for its interpretation or enforcement, such as the historical data leading up to the making of the treaty [executive agreement]." Id., §126. Rule 201(d) of the Hawai'i Rules of Evidence states that the Court is

mandated to "take judicial notice if requested by a party and supplied with the necessary information," provided the Defendant supplies the Court with data consistent with the requirement of Rule 201(b). See Rule 201 Commentary, Hawai'i Rules of Evidence, at 401.

Exhibits "A," "B," "C," and "D" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "1" to Declaration of Defendant herein, are copies of official government publications. Exhibits "A" and "B" are copies made under the seal of the United States Department of State's government printing office, 1895; and exhibits "C" and "D" are copies from the United States Congress government printing office, 1898. Exhibit "2" of Declaration of Defendant is a copy "A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress" from the United States government printing office, 2001. Exhibit "3" of Declaration of Defendant is a copy from the State of Hawai'i House of Representatives, Twenty-sixth Legislature, 2011, which is an official government publication. Rule 902 of the Hawai'i Rules of Evidence states that "**extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to …(5) Official publications**." According to 3 Wigmore (Evidence) §1684 (1904):

> In general, then, where an official printer is appointed, his printed copies of official documents are admissible. It is not necessary that the printer should be an officer in the strictest sense, nor that he should be exclusively concerned with official work; it is enough that he is appointed by the Executive to print official documents. **As for authentication of his copies, it is enough that the copy offered purports to be printed by authority of the government; its genuineness is assumed without further evidence**.

In Flagstar Bank v. Kuilipule, civil no. 11-1-0387, this Court has already taken judicial notice of the exhibits herein, and pursuant to Myers v. Cohen, 67 Haw. 389, 688 P.2d 1145 (1984), a circuit court can take judicial notice of pleadings, findings of fact and conclusions of law, and judgments contained in file in another case in the same circuit. DEFENDANT hereby formally requests this Court to take judicial notice pursuant to Rules 201(d) and 902(5), Hawai'i Rules of Evidence, of the following:

- *Lili'uokalani assignment*, January 17, 1893, (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "1" to Declaration of Defendant) comprising of an exchange of diplomatic notes acknowledging the assignment of executive power and conclusions of a Presidential investigation (United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 443-464, 1895);

- *Agreement of restoration*, December 18, 1893, (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "1" to Declaration of Defendant) comprising an exchange of diplomatic notes that acknowledged negotiations and settlement of the illegal overthrow of the Hawaiian Kingdom government and its

restoration (United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1269-1270; 1283-1284, 1895);

- Statements made on the floor of the House of Representatives by Representative Thomas Ball (Exhibit "C" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "1" to Declaration of Defendant) are copies from the 55th Cong. 2nd Sess., 5975-5976 (1898);

- Statements made on the floor of the Senate by Senator Augustus Bacon (Exhibit "D" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "1" to Declaration of Defendant) are copies from the 55th Cong., 2nd Sess., 6148-6150 (1898).

- "A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress" (Exhibit "2" to Declaration of Defendant) from the United States government printing office, 2001.

- House Concurrent Resolution no. 107 (Exhibit "3" to Declaration of Defendant) is a copy from the State of Hawai'i House of Representatives, Twenty-sixth Legislature, 2011.

VII. CONCLUSION

The *Lili`uokalani assignment* and the *Agreement of restoration*, being executive agreements entered into under the sole authority of the President in foreign relations provides the factual and legal basis "for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature," Lorenzo, 221. As treaties, these executive agreements continue to remain binding upon the office of the President, and present irrefutable evidence that "the Sovereign Kingdom of Hawaii is currently recognized by the federal government," as inquired by Judge O'Scannlain in United States v. Lorenzo (1992), and by Judge Heen in Lorenzo (1994). Therefore, this Court should dismiss this case because the Circuit Court of the Third Circuit of the State of Hawai'i lacks subject matter jurisdiction over matters exclusively Federal, in particular, under the exclusive authority of the current President to faithfully discharge his duties under the 1893 executive agreements, being the successor in office to President Grover Cleveland.

In event the Court grants or denies the instant Motion, DEFENDANT requests the Court to direct the prevailing party to draft proposed findings of fact and conclusions of law for the granting or denial of the DEFENDANT'S motion to dismiss under Rule 12(b)(1), Hawaii Rules of Civil Procedure. Pursuant to Rule 52, Hawaii Rules of Civil Procedure, the Court is requested

to direct the prevailing party to (a) submit proposed findings of fact and conclusions of laws and (b) a draft decision.

Prior to rendering its final order, the Court is requested to ask the prevailing party to draft findings of fact, conclusions of law and a draft decision. This will provide a clear record in the event an appeal is filed.

Dated: Keaau, Hawai‘i, January 13, 2012.

_____
KALE KEPEKAIO GUMAPAC
Defendant, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2, Plaintiff, vs. DIANNE DEE GUMAPAC; KALE KEPEKAIO GUMAPAC; JOHN DOES 1-50; AND JANE DOES 1-50, Defendants.	)	CIVIL NO. 11-1-0590 DECLARATION OF KALE KEPEKAIO GUMAPAC; EXHIBITS "1-3"

DECLARATION OF KALE KEPEKAIO GUMAPAC

I, KALE KEPEKAIO GUMAPAC, do hereby declare as follows:

1. Attached to this Declaration as Exhibit "1" is a true and correct copy of the Declaration of Dr. Keanu Sai and exhibits attached thereto.

2. Attached as Exhibit "2" is a true and correct copy of "A Study Prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service Library of Congress" (United States government printing office, 2001).

3. Attached as Exhibit "3" is a true and correct copy of House Concurrent Resolution no. 107 (House of Representatives, Twenty-Sixth Legislature, 2011, State of Hawai'i).

I, KALE KEPEKAIO GUMAPAC, DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: Keaau, Hawai'i, January 13, 2012.

_____

KALE KEPEKAIO GUMAPAC
Defendant, pro se

Exhibit “1”

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2, Plaintiff, vs. DIANNE DEE GUMAPAC; KALE KEPEKAIO GUMAPAC; JOHN DOES 1-50; AND JANE DOES 1-50, Defendants.	CIVIL NO. 11-1-0590 DECLARATION OF DAVID KEANU SAI, PH.D.; EXHIBITS "1-5"

DECLARATION OF DAVID KEANU SAI, PH.D

I, DAVID KEANU SAI, declare under penalty that the following is true and correct:

1. I have a Ph.D. in political science specializing in international relations, international law, U.S. constitutional law and Hawaiian constitutional law. My contact information is 47-605 Puapo'o Place, Kaneohe, Hawai'i, 96744, 808-383-6100 and e-mail address at keanu.sai@gmail.com.
2. Attached herein as Exhibit "1" is a true and correct copy of my Ph.D. degree in Political Science.
3. Attached herein as Exhibit "2" is a true and correct copy of my Curriculum Vitae verifying my qualifications to testify as an expert on such matters. I have previously been qualified and testified as an expert witness, on matters referred to hereinabove, in the District Court of the Third Circuit.
4. Attached herein as Exhibit "3" is a true and correct copy of my "Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State (November 28, 2010)."
5. Attached herein as Exhibit "A" of Exhibit "3" is a true and correct copy of the *Lili`uokalani assignment* through exchange of diplomatic notes, 53rd Congress, Executive Documents on Affairs in Hawaii: 1845-95, (Government Printing Office, U.S. State Department, 1895), p. 445-464.

6. Attached herein as Exhibit "B" of Exhibit "3" is a true and correct copy of the *Agreement of restoration* through exchange of diplomatic notes, 53rd Congress, Executive Documents on Affairs in Hawaii: 1845-95, (Government Printing Office, U.S. State Department, 1895), p. 1269-1284.

7. Attached herein as Exhibit "C" of Exhibit "3" is a true and correct copy of statements made on the floor of the House of Representatives by Representative Thomas Ball, 55th Cong. 2nd Sess., 5975-5976 (1898).

8. Attached herein as Exhibit "D" of Exhibit "3" is a true and correct copy of statements made on the floor of the Senate by Senator Augustus Bacon, 55th Cong. 2nd Sess., 6148-6150.

9. I am qualified and competent to testify as an expert witness in matters concerning my "Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State (November 28, 2010)" attached herein as Exhibit "3."

10. My doctoral dissertation and law reviewed article published in the *Journal of Law and Social Challenges*, (San Francisco School of Law), Vol. 10 (Fall 2008), p. 68-133, centers on two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom. The first executive agreement was a temporary and conditional assignment of executive power to the President of the United States by Queen Lili'uokalani under threat of war, and the second executive agreement was an agreement of restoration of the Hawaiian Kingdom government whereby the Queen thereafter would grant amnesty to the insurgents.

11. On January 17, 1893, Queen Lili'uokalani temporarily and conditionally assigned executive power she was constitutionally vested with under Article 31 of the Hawaiian constitution to the President of the United States under threat of war (attached herein as Exhibit "A" of Exhibit "3", at 461), to wit:

> 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 said provisional government.

Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the 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.

12. It wasn't until President Grover Cleveland was inaugurated on March 4, 1893, that the assignment was accepted and a Presidential investigation was initiated to investigate the overthrow of the Hawaiian Kingdom government. The acknowledgment of the assignment was noted in a dispatch of special instructions by Secretary of State Walter Gresham to newly commissioned Minister Plenipotentiary Albert Willis dated October 18, 1893, who was preparing to depart for the Hawaiian Kingdom after the investigation was completed (attached herein as Exhibit "A" of Exhibit "3", Document no. 4, at 463-64), to wit:

> The Provisional Government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the minister of the United States had recognized it as the *dc facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The Queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.

13. The Presidential investigation concluded that the Hawaiian government was to be restored, and in the same aforementioned dispatch to Minister Plenipotentiary Willis dated October 18, 1893, Secretary of State Gresham directed Willis (Id., at 464), to wit:

> On you arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.
>
> You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have

been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.

14. After nearly a month of negotiations with U.S. Minister Willis, Queen Lili'uokalani agreed to the President's conditions of restoration and on December 18, 1893, she signed the following declaration (attached herein as Exhibit "B" of Exhibit "3", Document no. 16, at 1269-70), to wit:

> I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government. I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown

15. On December 20, 1893, Minister Willis dispatched the signed declaration to the Secretary of State, and in a dispatch to Willis dated January 12, 1893, Gresham acknowledged the Queen's declaration of acceptance of the conditions (Id., 1283-84), to wit:

> Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision.
>
> …In the mean time, while keeping the Department fully informed of the course of events, you will, until further notice, consider that your special instructions upon this subject have been fully complied with.

16. These agreements between the President and the Queen are called sole-executive agreements, and according to the U.S. Supreme Court in *United States v. Belmont,* 301 U. S. 324 (1937), *United States v. Pink*, 315 U.S. 203 (1942), *American Insurance Association v. Garamendi,* 539 U.S. 396 (2003), sole executive agreements do not require ratification by the Senate or approval by Congress to have

the force and effect of a treaty. In *American Insurance Association v. Garamendi*, 539 U.S. 396, 398 (2003), the U.S. Supreme Court stated, "valid executive agreements are fit to preempt state law, just as treaties are."

17. In *U.S. v. Belmont*, U.S. Attorney Lamar Hardy for Southern District of New York relied on a 1933 sole-executive agreement between President Franklin D. Roosevelt and the Soviet Union's People's Commissar for Foreign Relations Maxim M. Litvinov, which is similar in form to the *Lili'uokalani assignment* and the *Agreement of restoration*. The purpose of the executive agreement was that it was an assignment that released and assigned to the United States all amounts to which the Soviet Government was entitled to within the United States as the successor to former governments of Russia.

18. Attached herein as Exhibit "4" is a true and correct copy of the amended Complaint (excepting Exhibits "1", "2", "4", "5" and "6"), filed by United States Attorney Lamar Hardy in the United States District Court for the Southern District of New York on April 3, 1936. The amended Complaint has a transcription of the sole-executive agreement identified as Exhibit "3." The transcription of the agreement is from the government publication of *Foreign Relations of the United States*, Diplomatic Papers, The Soviet Union: 1933-1939, (Government Printing Office, 1952), p. 35-36, published under the Seal of U.S. Department of State.

19. Attached herein as Exhibit "5" is a true and correct copy of the U.S.-Soviet sole-executive agreement from the government publication of *Foreign Relations of the United States*, Diplomatic Papers, The Soviet Union: 1933-1939, (Government Printing Office, 1952), p. 35-36.

20. In similar fashion, the *Lili'uokalani assignment* and the *Agreement of restoration*, being sole-executive agreements as well, are also from the government publication of *Foreign Relations of the United States*. In both cases, the Hawaiian and Soviet executive agreements are published under the Seal of U.S. Department of State, and as such these copies are self-authenticating pursuant to Rule 902(5) of the Hawai'i Rules of Evidence.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOLLOWING IS TRUE AND CORRECT.

DATED: Kane‘ohe, O‘ahu, Hawai‘i, January 13, 2012.

David Keanu Sai

Exhibit “1”

The Regents of

The University of Hawai'i

on the recommendation of the Faculty at

University of Hawai'i at Mānoa

have conferred upon

David Keanu Sai

the degree of

Doctor of Philosophy

Political Science

with all its privileges and obligations

Given at Honolulu, Hawai'i, this twentieth day of December,
two thousand eight

Virginia D. Hinshaw
Chancellor

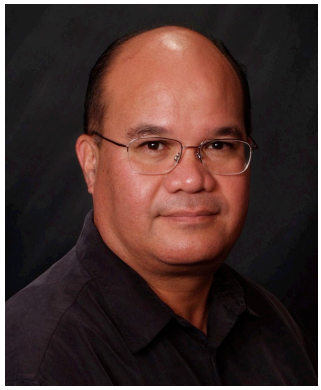
Allan R. Landon
Chairperson, Board of Regents

David McClain
President

Exhibit “2”

Curriculum Vitae

DR. DAVID KEANU SAI, Ph.D.



EXPERTISE:

International relations, state sovereignty, international laws of occupation, United States constitutional law, Hawaiian constitutional law, and Hawaiian land titles.

ACADEMIC QUALIFICATIONS:

Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai`i, Manoa, H.I.

- Doctoral dissertation titled, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State."

May 2004: M.A. in Political Science specializing in International Relations, University of Hawai'i, Manoa, H.I.

May 1987: B.A. in Sociology, University of Hawai'i, Manoa, H.I.

May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.

May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

TEACHING EXPERIENCE:

Graduate Assistant (Political Science), University of Hawai`i at Manoa

47-605 Puapo`o Place
Kane`ohe, HI 96744
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anu@hawaii.edu

- Fall 2004 – Spring 2005
- Fall 2005 – Spring 2006
- Fall 2006 – Spring 2007

Fall 2011
- Hawaiian Studies 107 (online course), *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 255 (online course), *Introduction to the Hawaiian Kingdom*, Windward Community College

Spring 2011
- Hawaiian Studies 107, *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 107, *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 107 (online course), *Introduction to the History of the Hawaiian People*, Windward Community College
- Hawaiian Studies 190-V, *Hawaiian Land Tenure*, University of Hawai`i Maui College

Fall 2010
- Hawaiian Studies 107, *Introduction to the History of the Hawaiian People*, Windward Community College

Spring 2010
- Hawaiian Studies 297(WI), *Introduction to the Hawaiian Kingdom*, Kapi`olani Community College

Fall 2009
- Hawaiian Studies 107 (online course), *Introduction to the History of the Hawaiian People*, Kapi`olani Community College

Spring 2009
- Political Science 110, *Introduction to Political Science*, Kapi`olani Community College

Spring 2007
- Political Science 110 (3), *Introduction to Political Science*, University of Hawai`i at Manoa

Fall 2006
- Political Science 110 (6), *Introduction to Political Science*, University of Hawai`i at Manoa

Spring 2006
- Political Science 130 (2), *Introduction to American Politics*, University of Hawai`i at Manoa

Fall 2005

- Anthropology, 699-399, *Hawaiian Land Titles*, co-taught with Ty Tengan, Assistant Professor, University of Hawai`i at Manoa
- Political Science 130 (1), *Introduction to American Politics*, University of Hawai`i at Manoa

Spring 2005

- Anthropology 699, *Introduction to the Hawaiian State*, co-taught with Ty Tengan, Assistant Professor, University of Hawai`i at Manoa
- Political Science 120 (1), *Introduction to World Politics—Hawai`i's View*, University of Hawai`i at Manoa

Fall 2004

- Anthropology 699, *Introduction to the Hawaiian State*, co-taught with Ty Tengan, Assistant Professor, University of Hawai`i at Manoa
- Political Science 120 (2), *Introduction to World Politics—Hawai`i's View*, University of Hawai`i at Manoa

Spring 2004

- Anthropology 750D, *Introduction to the Hawaiian State*, University of Hawai`i at Manoa
- Hawaiian Studies 301(2), *Introduction to the Hawaiian State*, co-taught with Kanalu Young, Associate Professor, University of Hawai`i at Manoa

Fall 2003

- Anthropology 699, *Directed Reading on the Hawaiian State*, co-taught with Ty Tengan, Assistant Professor, University of Hawai`i at Manoa

Spring 2000

- Ethnic Studies 221, *The Hawaiians: A Critical Analysis*, co-taught with Lynette Cruz, Ph.D. candidate, University of Hawai`i at Manoa

PANELS AND PRESENTATIONS:

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled "1893 Overthrow Settled by Executive Agreements," March 18, 2011.

- "1893 Overthrow Settled by Executive Agreements," *Native Hawaiian Education Association Conference*, Windward Community College, March 18, 2011.

- "The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State." *Sustainability for Biological Engineers Lecture Series*, University of Hawai`i at Manoa, Agricultural Science Bldg. 219, December 7, 2010.

- "1893 Cleveland-Lilu`uokalani Executive Agreements and their Impact Today." Presentation at the *Annual Convention of Hawaiian Civic Clubs*, Sheraton Keauhou Bay Resort & Spa, Island of Hawai`i, November 9, 2010.

- "The History of the Hawaiian Kingdom." Presentation at the annual convention of the *Victorian Society of Scholars*, Kana`ina Bldg., Honolulu, October 28, 2010.

- "Pu`a Foundation: E pu pa`akai kakou." Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Healing Our Spirit World, The Sixth Gathering*, Hawai`i Convention Center, September 7, 2010.
- "Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements." Sponsored by the County of Maui, Real Property Tax Division, HGEA Bldg, Kahului, June 28, 2010.

- "Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements." Sponsored by the City & County of Honolulu, Real Property Assessment Division, Mission Memorial Auditorium, June 9, 2010.

- "Hawai`i's Legal and Political History." Sponsored by *Kokua A Puni Hawaiian Student Services*, UH Manoa, Center for Hawaiian Studies, UHM, May 26, 2010.

- "Ua Mau Ke Ea: Sovereignty Endured." Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Native Hawaiian Education Association Conference*, Windward Community College, March 19, 2010.

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled "Evolution of Hawaiian Land Titles and its Impact Today," March 12, 2010.

- "1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement)." Sponsored by the Haloa Research Center, Baldwin High School Auditorium, February 20, 2010.

- "1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement)." Sponsored by Kamehameha Schools' Kula Hawai`i Teachers Professional Development, Kapalama Campus, Konia, January 4, 2010.

- "The Legal and Political History of Hawai`i." Sponsored by House Representative Karen Awana, National Conference of Native American State Legislators, State of Hawai`i Capital Bldg, November 16, 2009.

- "The Myth of Ceded Lands: A Legal Analysis." Sponsored by Hawaiian Studies, Ho`a and Ho`okahua (STEM), Maui Community College, Noi`i 12-A, November 2, 2009.

- "The Legal and Political History of Hawai`i." Presentation to the *Hui Aloha `Aina Tuahine*, Center for Hawaiian Studies, University of Hawai`i at Manoa, October 30, 2009.

- "The Legal and Political History of Hawai`i." Presentation to *Kahuewai Ola*, Queen Lili`uokalani Center for Student Services, University of Hawai`i at Manoa, October 23, 2009.

- "The Myth of Ceded Lands: A Legal Analysis." Sponsored by Kamehameha Schools Ka`iwakiloumoku Hawaiian Cultural Events Series, Ke`eliokalani Performing Arts Center, Kamehameha Schools Kapalama campus, October 21, 2009.
- "The Myth of Ceded Lands: A Legal Analysis." Sponsored by ASUH and Hawaiian Studies, Paliku Theatre, Windward Community College, September 10, 2009.

- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kohana Center/Kamehameha Investment Corporation, Keauhou II Convention Center, Kona, Hawai`i. A presentation entitled "The Myth of Ceded Lands: A Legal Analysis," March 13, 2009.

- "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State." Briefing for Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers, Wheeler AAF Courthouse, U.S. Army Pacific, Wahiawa, Hawai`i, February 25, 2009.

- *Ka Nalu: Towards a Hawaiian National Conciousness*, Symposium of the Hawaiian Society of Law and Politics, University of Hawai`i at Manoa, Imin Conference Bldg (East West Center). Presented a portion of my doctoral dissertation entitled "The Myth of Ceded Lands: A Legal Analysis," February 28, 2009.

- *Manifold Destiny: Disparate and Converging Forms of Political Analysis on Hawai`i Past and Present*, International Studies Association Annual Conference, San Francisco, California, March 26, 2008. Presented a paper entitled "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian Nationality and Hawaiian Indigeneity and its Use and Practice in Hawai`i today," March 26, 2008.

- *Mana Kupuna Lecture Series*, University of Waikato, New Zealand. A presentation entitled "Legal and Political History of the Hawaiian Kingdom," March 5, 2008.

- *Indigenous Politics Colloquium* speaker series, Department of Political Science, University of Hawai`i at Manoa. Presented an analysis and comparison between Hawaiian State sovereignty and Hawaiian indigeneity and its use and practice in Hawai`i today," January 30, 2007.

- Conference at Northeastern Illinois University entitled *Dialogue Under Occupation: The Discourse of Enactment, Transaction, Reaction and Resolution*. Presented a paper on a panel entitled "Prolonged Occupation of the Hawaiian Kingdom," Chicago, Illinois, November 10, 2006.

- The 14th Biennial Asian/Pacific American Midwest Student Conference, "Refocusing Our Lens: Confronting Contemporary Issues of Globalization and Transnationalism." Presented article "American Occupation of the Hawaiian State: A Century Unchecked" on Militarization Panel, Oberlin College, Ohio, February 18, 2006.

- 2005 American Studies Association Annual Conference. Panelist on a roundtable discussion entitled, "The Case for Hawai`i's Independence from the United States - A Scholarly and Activist Roundtable Discussion," with Keala Kelly and Professor Kehaulani Kauanui. Renaissance Hotel, Washington, D.C., November 4, 2005.

- Kamehameha Schools 2005 Research Conference on Hawaiian Well-being, sponsored by the Kamehameha Schools *Policy Analysis & Systems Evaluation* (PACE). Presented article "Employing Appropriate Theory when Researching Hawaiian Kingdom Governance" with two other presenters, Malcolm Naea Chun and Dr. Noelani Goodyear-Kaopua. Radisson Prince Kuhio Hotel, Waikiki, October 22, 2005.

- 1st Annual Symposium of the *Hawaiian Society of Law & Politics* showcasing the first edition of the *Hawaiian Journal of Law & Politics (summer 2004)*. Presented article "American Occupation of the Hawaiian State: A Century Gone Unchecked," with response panellists Professor John Wilson, Political Science, and Kanale Sadowski, 3rd year law student, Richardson School of Law. Imin International Conference Center, University of Hawai`i at Manoa, April 16, 2005.

- "A Symposium on Practical Pluralism." Sponsored by the *Office of the Dean*, William S. Richardson School of Law. Panelist with Professor Williamson Chang and Dr. Kekuni Blaisdell, University of Hawai`i at Manoa, Honolulu, April 16-17, 2004.

- "Mohala A`e: Blooming Forth," *Native Hawaiian Education Association's 5th Annual Conference.* Presented a workshop entitled "Hawaiian Epistemology." Windward Community College, Kane'ohe, March 23, 2004.

- "First Annual 'Ahahui o Hawai`i Kukakuka: Perspectives on Federal Recognition." Guest Speaker at a symposium concerning the Akaka Bill. Sponsored by the *'Ahahui o Hawai'i* (organization of native Hawaiian law students), University of Hawai`i at Manoa Richardson School of Law, Honolulu, March 12, 2004.

- "The Status of the Kingdom of Hawai`i." A debate with Professor Didrick Castberg, University of Hawai`i at Hilo (Political Science), and moderator Professor Todd Belt University of Hawai`i at Hilo (Political Science). Sponsored by the *Political Science Club*, University of Hawai`i at Hilo, Campus Center, March 11, 2004.

- "The Political History of the Hawaiian Kingdom: Past and Present." A presentation to the *Hawai`i Island Association of Hawaiian Organizations*, Queen Lili`uokalani Children's Center, Hilo, February 13, 2004.

- "Globalization and the Asia-Pacific Region." Panel with Dr. Noenoe Silva (Political Science). *East-West Center Spring 2004 Core Course*, Honolulu, February 4, 2004.

- Televised symposium entitled, "Ceded Lands." Other panelists included Professor Jon Van Dyke (Richardson School of Law) and Professor Lilikala Kame`eleihiwa (Center for Hawaiian Studies). Sponsored by the *Office of Hawaiian Affairs*, Wai'anae, August 2003.

- "Hawai`i's Road to International Recovery, II." Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 25, 2003.

- "An Analysis of Tenancy, Title, and Landholding in Old Hawai'i." Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 26, 2002.
- "The Hawaiian Kingdom in Arbitration Proceedings at the Permanent Court of Arbitration, The Hague, Nethelrands." A presentation at the 6th World Indigenous Peoples Conference on Education, Stoney Park, Morley, Alberta, Canada, August 6, 2002.

- "The Hawaiian Kingdom and the United States of America: A State to State Relationship." *Reclaiming the Legacy*, U.S. National Archives and Records Administration, University of San Francisco, May 4, 2002

- "Hawai`i's Road to International Recovery." Sponsored by *Kipuka*, University of Hawai`i at Hilo, April 11, 2002.

- "Hawai`i's Road to International Recovery," a presentation to the Officers Corps of the 25th Infantry Division, U.S. Army, Officer's Club, Schofield Barracks, Wahiawa, February 2001.

- "Lance Larsen vs. the Hawaiian Kingdom," presentation to the *Native Hawaiian Bar Association*, quarterly meeting, Kana`ina Building, Honolulu, 2001.

- "Hawaiian Political History," *Hawai`i Community College*, Hilo, March 5, 2001.

- "The History of the Hawaiian Kingdom," A guest speaker at the *Aloha March* rally in Washington, D.C., August 12, 1998.

- Symposium entitled*,* "Human Rights and the Hawaiian Kingdom on the occasion of the 50th anniversary of the Universal Declaration of Human Rights*."* Other panelist included Francis Boyle (Professor of International Law, University of Illinois), Mililani Trask (Trustee, Office of Hawaiian Affairs), Richard Grass (Lakota Sioux Nation), and Ron Barnes (Tununak Traditional Elders Council, Alaska). University of Hawai`i at Hilo, April 16, 1998.

- Symposium entitled*, "*Perfect Title Company: Scam or Restoration." Sponsored by the *Hawai`i Developers Council*, Hawai`i Prince Hotel, Honolulu, August 1997.

PUBLICATIONS:

Book, "Ua Mau Ke Ea—Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands," (Pu'a Foundation, Honolulu, 2011), online at http://www.puafoundation.org/products/.

Article, "1893 Cleveland-Lili`uokalani Executive Agreements." November 28, 2009, unpublished, online at http://www2.hawaii.edu/~anu/publications.html.

Article, "Establishing an Acting Regency: A Countermeasure Necessitated to Preserve the Hawaiian State." November 28, 2009, unpublished, online at http://www2.hawaii.edu/~anu/publications.html.

Book, "Land Titles in the Hawaiian Islands: From Origins to the Present (forthcoming)." Contract signed with University of Hawai`i Press, May 7, 2009.

Article, "The Myth of Ceded Lands and the State's Claim to Perfect Title." *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, April 2009.

Book, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State (forthcoming)." Contract signed with University of Hawai`i Press, February 13, 2009.

Dissertation, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State," University of Hawai`i at Manoa, Political Science, December 2008, online at http://www2.hawaii.edu/~anu/publications.html.

Article, "A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai`i Today," *Journal of Law and Social Challenges* (San Francisco School of Law), Vol. 10 (Fall 2008), online at http://www2.hawaii.edu/~anu/publications.html.

Book Review for "Kahana: How the Land was Lost," *The Contemporary Pacific: A Journal of Island Affairs*, Vol. 15, No. 1 (2005), online at http://www2.hawaii.edu/~anu/publications.html.

Article, "Experts Validate Legitimacy of International Law Case." *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, August 2004.

"American Occupation of the Hawaiian State: A Century Unchecked," *Hawaiian Journal of Law and Politics*, vol. 1 (Summer 2004), online journal at: http://www2.hawaii.edu/~hslp/journal.html.

Article, "The Indian Commerce Clause sheds Light on Question of Federal Authority over Hawaiians," *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, September 2003.

Article, "Before Annexation: Sleight of Hand—Illusion of the Century." *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, July 1998.

"Unpublished Short Essays" on line at http://hawaiiankingdom.org/info-nationals.shtml

- "The Hawaiian Kingdom: A Constitutional Monarchy"
- "The Relationship between the Hawaiian Kingdom and the United States"
- "Revisiting the Fake Revolution of January 17, 1893"
- "What does TWA Flight 800 and the Hawaiian Kingdom have in Common"
- "American Migration to the Hawaiian Kingdom and the Push for State into the American Union"
- "Hawaiian Nationality: Who Comprises the Hawaiian Citizenry?"
- "The Vision of the *acting* Council of Regency"

VIDEO/RADIO:

Video: "Hawai`i and the Law of Occupation." *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, March 11, 2009.

Video: "Title Insurance and Land Ownership in Hawai`i." *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, February 4, 2009.

Video: "What are Ceded Lands?" *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, December 22, 2009.

Video: "Hawaiian Kingdom Law and Succession." *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, November 16, 2008.

Video: "Kamehameha I: From Chiefly to British Governance." *Lecture Series of the Kaleimaileali`i Hawaiian Civic Club*, `Olelo Community Television, July 23, 2008.

Internet Radio: "The Gary Baumgarten Report News Talk Online: Hawai`i 'Kingdom' Proponent Makes Case For An Independent Hawai`i." Guest on a daily talk internet radio show, http://garybaumgarten.blogspot.com/2008/04/hawaii-kingdom-proponent-makes-case-for.html, April 11, 2008.

Radio: "Talk Story with Uncle Charlie." Guest on a weekly talk radio show. *KNUI AM 900*, Kahului, January 23, 2004.

Radio: "Perspective." Co-host with Keaumiki Akui for a weekly talk radio show concerning Hawaiian political history. *KCCN AM 1420*, Honolulu, 1999-2001.

Video: "Hawaiian Kingdom Law a Presentation." *Na Maka o ka Aina*, 1999.

Video: Segments of *Aloha Quest* (six-hour broadcast), KFVE television, Honolulu, December 19, 1999.

- "The Hawaiian Kingdom"
- "What is a Hawaiian subject"
- "Attempted Overthrow of 1893"

- "The Annexation that Never Was"
- "Internal Laws of the United States"
- "Supreme Courts and International Courts"
- "U.S. Senate debate: Apology resolution, Oct. 1993"

LEGAL EXPERIENCE:

- Expert consultant and witness for Defence, *Fukumitsu v. Fukumitsu* (case no. 08-1-0843 RAT)

- Expert consultant and witness for Defence, *Onewest Bank v. Tamanaha* (case no. 3RC 10-1-1306)

- *Pro se* litigant in Complaint filed with the U.S. District Court for the District of Columbia, *Sai v. Obama, Clinton, Gates, Willard and Lingle*, June 1, 2010. http://hawaiiankingdom.org/sai-obama.shtml

- Expert consultant for Petitioner Contested hearing, BLNR, *Kale Gumapac v. OTEC*, 2010.

- Expert consultant and witness for Defence, *State of Hawai`i v. Larsen* (case no. 3DTA 08-03139)

- Expert consultant for Defence, *State of Hawai`i v. Kaulia* (case no. 09-1-0352K)

- Expert consultant and witness for Defence, *State of Hawai`i v. Larsen* (case no. 3DTC 08-023156)

- Expert consultant for Plaintiff, *OHA vs. Housing and Community Development Corp. of Hawaii*, (a.k.a. Ceded Land Case), October-December 2001.

- Agent for the Hawaiian Kingdom in a *Complaint* filed with the United Nations Security Council concerning the U.S. illegal occupation of the Hawaiian Kingdom, July 5, 2001. http://hawaiiankingdom.org/united-nations.shtml

- Agent for the Hawaiian Kingdom in the *Lance Larsen vs. Hawaiian Kingdom* arbitration at the Permanent Court of Arbitration, The Hague, Netherlands, November 1999-September 2001, *International Law Reports*, Volume 119, pp. 566-598. http://www.AlohaQuest.com/arbitration/index.htm

- Plaintiff for the Hawaiian Kingdom in a *Complaint* filed at the U.S. Supreme Court, August 4, 1998, Case No. M-26.

- Plaintiff for the Hawaiian Kingdom in a *Petition for Writ of Mandamus* filed at the U.S. Supreme Court in November 17, 1997, Case No. 97-969.

MILITARY EXPERIENCE:

Aug. 1994:	Honourably Discharged
Dec. 1990:	Diploma, *U.S. Army Field Artillery Officer Advanced Course*, Fort Sill, OK
May 1990:	Promoted to Captain (O-3)
Apr. 1990:	Diploma, *U.S. Air Force Air Ground Operations School*, Hurlbert Field, FL
May 1987:	Promoted to 1st Lieutenant (O-2)
Sep. 1987:	Diploma, *U.S. Army Field Artillery Officer Basic Course*, Fort Sill, OK
Sep. 1984:	Assigned to *1st Battalion, 487th Field Artillery*, Hawai`i Army National Guard, Honolulu, H.I.
May 1984:	Army Reserve Commission, 2nd Lieutenant (O-1), Early Commissioning Program (ECP) from the New Mexico Military Institute, Roswell, NM

GENERAL DATA:

Nationality:	Hawaiian/United States
Born:	July 13, 1964, Honolulu, H.I.

Exhibit “3”

Dr. David Keanu Sai, Political Scientist

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Expert Memorandum on the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State

November 28th 2010

According to article I, Montevideo Convention (1933), "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[1]

Synopsis

The Hawaiian Kingdom had these attributes when Great Britain and France entered into a joint proclamation acknowledging and recognizing Hawai`i as an independent and sovereign State on November 28th 1843, and on July 6th 1844, United States Secretary of State John C. Calhoun notified the Hawaiian government of the United States formal recognition of the Hawaiian Kingdom as an independent and sovereign state since December 19th 1842 by President John Tyler.[2] As a result of the United States' recognition, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849;[3] Treaty of Commercial Reciprocity, Jan. 13th 1875;[4] Postal Convention Concerning Money Orders, Sep. 11th 1883;[5] and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884.[6] The Hawaiian Kingdom also entered into treaties with Austria-Hungary, June 18th 1875; Belgium, Oct. 4th 1862; Bremen, March 27th 1854; Denmark, Oct. 19th 1846; France, July 17th 1839, March 26th 1846, Sep. 8th 1858; French Tahiti, Nov. 24th 1853; Germany, March 25th 1879; Great Britain, Nov. 13th 1836 and March 26th 1846; Great Britain's New South Wales, March 10th

[1] 49 U.S. Stat. 3097, 3100.
[2] David Keanu Sai, *American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State*, Doctoral Dissertation, University of Hawai`i, Political Science (December 2008), 72; see also David Keanu Sai, *A Slippery Path Towards Hawaiian Indigeneity*, 10 Journal of Law and Social Challenges 74 (Fall 2008).
[3] 9 U.S. Stat. 977.
[4] 19 U.S. Stat. 625.
[5] 23 U.S. Stat. 736.
[6] 25 U.S. Stat. 1399.

1874; Hamburg, Jan. 8th 1848); Italy, July 22nd 1863; Japan, Aug. 19th 1871, Jan. 28th 1886; Netherlands, Oct. 16th 1862; Portugal, May 5th 1882; Russia, June 19th 1869; Samoa, March 20th 1887; Spain, Oct. 9th 1863; Sweden-Norway, April 5th 1855; and Switzerland, July 20th 1864.

In the 21st century, an international tribunal and the Ninth Circuit Court of Appeals acknowledged the Hawaiian Kingdom's status as an internationally recognized state in the 19th century. In *Larsen v. Hawaiian Kingdom* (2001), the Permanent Court of Arbitration in The Hague stated, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States."[7] The 9th Circuit Court, in *Kahawaiola`a v. Norton* (2004), also acknowledged the Hawaiian Kingdom's status as "a co-equal sovereign alongside the United States;"[8] and in *Doe v. Kamehameha* (2005), the Court stated that, "in 1866, the Hawaiian Islands were still a sovereign kingdom."[9]

Having established the Hawaiian Kingdom's internationally recognized status as an independent state in the 19th century, the next question is whether or not the Hawaiian Kingdom status as a state was extinguished after its government was overthrown by U.S. troops on January 17th 1893. As a subject of international law, statehood of the Hawaiian Kingdom can only be measured and determined by the rules of international law and not the domestic laws of any State to include the United States and the Hawaiian Kingdom. According to Professor Crawford, "A State is not necessarily extinguished by substantial changes in territory, population or government, or even, in some cases, by a combination of all three."[10] In particular, military "occupation does not extinguish the State pending a final settlement of the conflict. And, generally, the presumption—in practice a strong presumption—favours the continuity and disfavors the extinction of a an established State."[11] Professor Wright, a renowned scholar in U.S. foreign relations law, states that, "international law distinguishes between a government and

[7] *Larsen v. Hawaiian Kingdom*, 119 ILR 566, 581 (2001).
[8] *Kahawaiola`a v. Norton*, 386 F.3rd 1271 (2004).
[9] *Doe v. Kamehameha*, 416 F.3d 1025, 1048 (2005).
[10] James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford University Press, 2006), 700.
[11] *Id.*, 701.

the state it governs."[12] And according to §201, Restatement (Third) Foreign Relations Law of the United States, "A state may continue to be regarded as such even though, due to insurrection or other difficulties, its internal affairs become anarchic for an extended period of time;"[13] and "Military occupation, whether during war or after an armistice, does not terminate statehood."[14] Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. Two contemporary examples illustrate this principle of international law, the overthrow of the Taliban (Afghanistan) in 2001 and of Saddam Hussein (Iraq) in 2003. The former has been a recognized sovereign State since 1919,[15] and the latter since 1932.[16] Professor Dixon explains:

> If an entity ceases to possess any of the qualities of statehood…this does not mean that it ceases to be a state under international law. For example, the absence of an effective government in Afghanistan and Iraq following the intervention of the USA did not mean that there were no such states, and the same is true of Sudan where there still appears to be no entity governing the country effectively. Likewise, if a state is allegedly 'extinguished' through the illegal action of another state, it will remain a state in international law.[17]

After the Hawaiian Kingdom government was illegally overthrown, two executive agreements were entered into between President Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom in 1893. The President entered into these executive agreements under his sole constitutional authority to represent the United States in foreign relations and the Congress cannot intervene without violating the separation of powers doctrine being an encroachment upon the executive power. The first agreement, called the *Lili`uokalani assignment*, (Exhibit A), assigned executive power to the United States President to administer Hawaiian Kingdom law and to investigate the overthrow of the Hawaiian government. The second agreement, called the *Restoration agreement*, (Exhibit B), obligated the President of the United States to restore the Hawaiian government as it was prior to the landing of U.S. troops on

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[12] Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) American Journal of International Law 299-308, 307 (April 1952).
[13] *Restatement (Third) Foreign Relations Law of the United States*, Reporter's Note 2, §201.
[14] *Id*., Reporter's Note 3.
[15] Manley O. Hudson, *Afghanistan, Equador, and the Soviet Union in the League of Nations*, 29 American Journal of International Law 109-116, 110 (1935).
[16] Manley O. Hudson, *The Admission of Iraq to Membership in the League of Nations*, 27 American Journal of International Law 133-138, 133 (1933).
[17] Martin Dixon, *Textbook on International Law*, 6th ed. (Oxford University Press, 2007), 119.

January 16th 1893, and for the Queen, after the government was restored and the executive power returned to grant full amnesty to those members and supporters of the provisional government who committed treason.

First Executive Agreement—Lili`uokalani assignment

On January 17th 1893, Queen Lili`uokalani, by explicit grant, "yielded" her executive power to the President of the U.S. to do an investigation of their diplomat and military troops who illegally landed on Hawaiian territory in violation of Hawai`i's sovereignty. The Queen specifically stated,

> 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 said 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 representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.[18]

The quintessential question is what "authority" did the Queen yield as the "constitutional sovereign''? This authority is specifically stated in the Hawaiian constitution, which declares, "To the King [Queen] belongs the Executive power." In *Grieve v. Gulick* (1883),[19] Justice Austin of the Hawaiian Supreme Court stated that, "the Constitution declares [His Majesty] as the executive power of the Government," which, according to the Indiana Supreme Court, "is the power to 'execute' the laws, that is, carry them into effect, as distinguished from the power to make the laws and the power to judge them."[20]

[18] United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95, 461 [hereinafter *Executive Documents*.] (Exhibit A).
[19] 5 Hawai`i 73, 76 (1883)
[20] *Tucker v. State of Indiana*, 218 Ind. 614, 35 N.E. 2d 270, 291 (1941).

President Cleveland acknowledged receipt of this conditional grant in March when he received the protest from the Queen through her attorney in fact, Paul Neumann, in Washington, D.C. This acceptance of the conditional grant of Hawaiian executive power to investigate is called the *Lili`uokalani Assignment*. In a report to the President after the investigation was completed, Secretary of State Gresham acknowledged the temporary transfer of the Queen's executive power by stating, "The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign."[21] The President, in his message to Congress, also acknowledged the temporary transfer of executive power. Cleveland stated, the Queen "surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States."[22] This was the first of two international agreements to have taken place through an exchange of diplomatic notes committing the President to the administration of Hawaiian Kingdom law while he investigated the overthrow of the Hawaiian government. The investigation concluded that U.S. Minister John Stevens with the illegal presence of U.S. troops bore the responsibility for the overthrow of the Hawaiian government. As a result, negotiations would ensue whereby a second agreement was sought by the United States to restore the Hawaiian Kingdom government. On the responsibility of State actors, Oppenheim states that "according to special circumstances and conditions the home State may be obliged to disown an act of its envoy, to apologize or express its regret for his behaviour, or to pay damages."[23] Therefore, on October 18th 1893, U.S. Secretary of State Walter Gresham directed U.S. Minister Plenipotentiary Albert Willis to initiate negotiations with Queen Lili`uokalani for settlement and restoration of the Hawaiian Kingdom government. He stated to Willis,

> On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of…the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her

[21] Executive Documents, 462 (Exhibit A).
[22] *Id*., 457.
[23] Lassa Oppenheim, *International Law: A Treatise, 3rd ed*., ed. Ronald F. Roxburgh, Vol. II (London: Longmans Green and Co., 1921), 252.

sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.

Having secured the Queen's agreement to pursue this wise and humane policy, which it is believed you will speedily obtain, you will then advise the executive of the Provisional Government and his ministers of the President's determination of the question which their action and that of the Queen devolved upon him, and that they are expected to promptly relinquish to her constitutional authority.[24]

On November 13th 1893, Willis met with the Queen at the U.S. Legation in Honolulu, "who was informed that the President of the United States had important communications to make to her."[25] Willis explained to the Queen of the "President's sincere regret that, through the unauthorized intervention of the United States, she had been obliged to surrender her sovereignty, and his hope that, with her consent and cooperation, the wrong done to her and to her people might be redressed."[26] In his message to the Congress, the President concluded that the "members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government…by the indefensible encouragement and assistance of our diplomatic representative."[27] According to Wright, "statements of a decision on fact or policy, authorized by the President, must be accepted by foreign nations as the will of the United States."[28] Therefore, the Queen saw these conclusions by the President as representing the "will of the United States," and according Oppenheim, Willis, who was the U.S. envoy accredited to the Hawaiian Kingdom, represented "his home State in the totality of its international relations," and that he was "the mouthpiece of the head of

[24] *Executive Documents*, 464 (Exhibit A).
[25] *Executive Documents*, 1242.
[26] *Id*.
[27] *Executive Documents*, 457 (Exhibit A).
[28] Quincy Wright, *The Control of American Foreign Relations* (New York: The Macmillan Company, 1922), 22.

his home State and its Foreign Secretary, as regards communications to be made to the State to which he is accredited."[29]

The President's investigation also concluded that members of the provisional government and their supporters committed the crime of treason and therefore subject to the pains and penalties of treason under Hawaiian law. On this note, the Queen was then asked by Willis, "[s]hould you be restored to the throne, would you grant full amnesty as to life and property to all those persons who have been or who are now in the Provisional Government, or who have been instrumental in the overthrow of your government?"[30] The Queen refused to grant amnesty and referenced Chapter VI, section 9 of the Penal Code, which states, "[w]hoever shall commit the crime of treason shall suffer the punishment of death and all his property shall be confiscated to the Government." When asked again if she would reconsider, she responded, "[t]hese people were the cause of the revolution and the constitution of 1887. There will never be any peace while they are here. They must be sent out of the country, or punished, and their property confiscated."[31] In the government transcripts of this meeting, it states that the Queen called for beheading as punishment, but the Queen adamantly denied making such a statement. She later explained that beheading "is a form of punishment which has never been used in the Hawaiian Islands, either before or since the coming of foreigners."[32]

In a follow-up dispatch to Willis, Gresham adamantly stated, "You will insist upon amnesty and recognition of obligations of the Provisional Government as essential conditions of restoration."[33] In another communication on December 3rd 1893, Gresham directed Willis to continue to negotiate with the Queen, and should she "refuse assent to the written conditions you will at once inform her that the President will cease interposition in her behalf."[34] Gresham acknowledged that the President had a duty to restore the constitutional government of the Islands, but it was dependent upon an unqualified agreement of the Queen to assume all

[29] Oppenheim, *International Law (3rd ed)*, 556.
[30] *Executive Documents*, 1242.
[31] *Id*.
[32] Lili'uokalani, *Hawai`i's Story by Hawai`i's Queen* (Rutland: Charles E. Tuttle Co., Inc., 1964), 247.
[33] *Executive Documents*, 1191.
[34] *Id*.

administrative obligations incurred by the Provisional Government, and to grant full amnesty to those individuals instrumental in setting up or supporting the Provisional Government. He stated "The President feels that by our original interference and what followed we have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other."[35] Gresham also stated "Should the Queen ask whether, if she accedes to conditions, active steps will be taken by the United States to effect her restoration, or to maintain her authority thereafter, you will say that the President can not use force without the authority of Congress."[36]

Second Executive Agreement—Agreement of restoration

On December 18th 1893, Willis was notified by the Queen's assistant, Joseph Carter, that she was willing to spare their lives, not, however, their property, which, "should be confiscated to the Government, and they should not be permitted to remain in the Kingdom."[37] But later that day, the Queen sent a communication to Willis. She stated,

> Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions.
>
> I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of anyone, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land.
>
> Asking you to bear to the President and the Government he represents a message of gratitude from me and from my people, and promising, with God's grace, to prove worthy of the confidence and friendship of your people."[38]

An agreement between the two Heads of State had finally been made for settlement of the international dispute called the *Restoration Agreement*. Coincident with the agreement was the temporary and conditional assignment of executive power by the Queen to the President of the

[35] *Id.*
[36] *Id.*, 1192.
[37] *Id.*, 1267.
[38] *Id.*, 1269 (Exhibit B).

United States, and that the assignment and agreement to restore the Hawaiian government "did not, as in the case of treaties, as that term is used in the treaty-making clause of the Constitution (Art. II, § 2), require the advice and consent of the Senate."[39] Attached to the communication was the following pledge that was dispatched by Willis to Gresham on December 20th 1893.

> I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government. I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.[40]

On the same day the Queen accepted the President's conditions of restoration on December 18th 1893, the President delivered a message to Congress apprising them of the conclusion of his investigation and the pursuit of settlement with the Queen. He was not aware that the Queen accepted the conditions. This was clarified in a correspondence with Willis from Gresham on January 12th 1894, whereby the Queen's acceptance of the President's offer was acknowledged, and on the following day, these diplomatic correspondences were forwarded to the Congress by message of the President on January 13th 1893.

Gresham stated,

> On the 18th ultimo the President sent a special message to Congress communicating copies of the Mr. Blount's reports and the instructions given to

[39] *U.S. v. Belmont*, 301 U.S. 324, 330 (1937).
[40] *Executive Documents*, 1269 (Exhibit B).

him and you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.

Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision.

The matter now being in the hands of Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider your special instructions upon this subject have been fully complied with.[41]

Supremacy Clause, U.S. Constitution

Since the United States is a Federal government, States within the Federal Union are subject to the supremacy of Federal laws and treaties, in particular, executive agreements. Article VI, clause 2, of the U.S. constitution, provides: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." This provision of the U.S. constitution is known as the *Supremacy clause* that binds every State of the federal union to faithfully observe. In *United States v. Belmont* (1937),[42] the U.S. Supreme Court affirmed that executive agreements entered into between the President and a sovereign nation does not require ratification from the U.S. Senate to have the force and effect of a treaty; and executive agreements bind successor Presidents for

[41] *Executive Documents*, 1283-1284 (Exhibit B).
[42] *United States v. Belmont,* 301 U. S. 324 (1937).

their faithful execution. Other landmark cases on executive agreements are *United States v. Pink* (1942)[43] and *American Insurance Association v. Garamendi* (2003).[44] In *Garamendi*, the Court stated, "Specifically, the President has authority to make 'executive agreements' with other countries, requiring no ratification by the Senate or approval by Congress."[45] According to Justice Douglas, *U.S. v. Pink* (1942), executive agreements "must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy."[46]

The U.S. Supreme Court has held that under no circumstances could state law be found to legally supersede an agreement between the national government and a foreign country. The external powers of the federal government could be exercised without regard to the laws of any state within the union. In *Belmont*, the Court also stated, "Plainly, the external powers of the United States are to be exercised without regard to state laws or policies,"[47] and "[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear."[48] In *United States v. Pink* (1942), the Court reiterated, "It is, of course, true that even treaties with foreign nations will be carefully construed so as not to derogate from the authority and jurisdiction of the States of this nation unless clearly necessary to effectuate the national policy.... But state law must yield when it is inconsistent with, or impairs the policy or provisions of, a treaty or of an international compact or agreement.... Then, the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum . . . must give way before the superior Federal policy evidenced by a treaty or international compact or agreement."[49] Both *Belmont* and *Pink* were reinforced by *American Insurance Association v. Garamendi* (2003), where the Court reiterated, that "valid executive agreements are fit to preempt state law, just as treaties are,"[50] and that the preemptive power of an executive agreement derives from "the Constitution's allocation of the foreign relations power

[43] *United States v. Pink*, 315 U.S. 203 (1942).
[44] *American Insurance Association v. Garamendi,* 539 U.S. 396 (2003).
[45] *Id.*, 397.
[46] *U.S. v. Pink*, 315 U.S. 203, 241 (1942).
[47] *United States v. Belmont,* 301 U. S. 324, 330 (1937).
[48] *Id.*
[49] *United States v. Pink,* 315 U.S. 203, 230 (1942).
[50] *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003).

to the National Government."[51] All three cases affirm that the *Lili`uokalani assignment* preempts all laws and policies of the State of Hawai`i. In *Edgar v. Mite Corporation* (1982), Justice White ruled, "A state statute is void to the extent that it actually conflicts with a valid federal statute; and '[a] conflict will be found 'where compliance with both federal and state regulations is a physical impossibility.'"[52]

United States' Violation of the Executive Agreements

Since 1893, the United States government has violated the terms of its obligations under these executive agreements and in 1898 unilaterally annexed the Hawaiian Kingdom by enacting a congressional joint resolution justified as a military necessity during the Spanish-American War, and thereafter occupied Hawai`i. After the President, by Presidential Message on January 13th 1894, apprised the Congress of the *Restoration agreement* with Queen Lili'uokalani, both the House of Representatives[53] and Senate[54] took deliberate steps "warning the President against the employment of forces to restore the monarchy of Hawaii."[55] Senator Kyle's resolution introduced on May 23rd 1894 specifically addresses the *Agreement of restoration*. The resolution

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[51] *Id*.

[52] *Edgar v. Mite Corporation*, 457 U.S. 624, 631 (1982).

[53] House Resolution on the Hawaiian Islands, February 7, 1894:

> "*Resolved*, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be condemned. Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government is uncalled for and inexpedient; that the people of that country should have their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States." (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 2000 (1894)).

[54] Senate Resolution on the Hawaiian Islands, May 31, 1894:

> "*Resolved*, That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic polity; that the United States ought in nowise to interfere therewith, and that any intervention in the political affairs of these islands by any other government will be regarded as an act unfriendly to the United States." (U.S. House Resolution on Hawai'i, 53 Cong., 2nd Sess., 5499 (1894)).

[55] Edward Corwin, *The President's Control of Foreign Relations*, (Princeton: Princeton University Press, 1917), 45

was later revised by Senator Turpie and passed by the Senate on May 31st 1894. Senator Kyle's resolution stated:

> *Resolved*, That it be the sense of the Senate that the Government of the United States shall not use force for the purpose of restoring to the throne the deposed Queen of the Sandwich Islands or for the purpose of destroying the existing Government: that, the Provisional having been duly recognized, the highest international interests require that it shall pursue its own line of polity, and that intervention in the political affairs of these islands by other governments will be regarded as an act unfriendly to the Government of the United States. (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 5127 (1894))

Not only do these resolutions acknowledge the executive agreements between Queen Lili'uokalani and President Cleveland, but also these resolutions violate the separation of powers doctrine whereby the President is the sole representative of the United States in foreign relations. According to Professor Wright, "congressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect."[56]

On May 4th 1998, Representative Francis Newlands (D-Nevada) introduced House Resolution 259 to the House Committee on Foreign Affairs. Representative Robert Hitt (R-Illinois) reported the Newlands Resolution out of Committee, and entered the House of Representatives for debate on May 17th 1998. Representative Thomas H. Ball (D-Texas) stated on June 15th 1898:

> The annexation of Hawai'i by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. …Why, sir, the very presence of this measure here is the result of a

[56] Quincy Wright, *The Control of American Foreign Relations*, (New York: The Macmillan Company, 1922), 281.

> deliberate attempt to do unlawfully that which can not be done lawfully.[57]

Over the constitutional objections, the House passed the measure and the Newlands Resolution entered the Senate on June 16, 1898. Senators as well objected to the measure on constitutional grounds. In particular, Senator Augustus Bacon (D-Georgia) stated on June 20th 1898:

> That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution. If Hawaiÿi was to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure.[58]
>
> …Now, a statute is this: A Statute is a rule of conduct laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. A statute can not go outside the jurisdiction of the United States and be binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty.[59]
>
> What is it that the House of Representatives has done? …The friends of annexation, seeing that it was impossible to make the treaty in the manner pointed out by the Constitution, attempted then to nullify the provision in the Constitution by putting that treaty in the form of a statute, and here we have embodied the provisions of the treaty in the joint resolution which comes to us from the House.[60]

[57] United States Congress, 55th Cong., 2nd Session, 31 Congressional Record: 1898, 5975 (Exhibit C).
[58] *Id*., 6148 (Exhibit D).
[59] Id., 6150 (Exhibit D).
[60] *Id*. (Exhibit D).

Notwithstanding the constitutional objections, the Senate passed the resolution on July 6th 1898, and President McKinley signed the joint resolution into law on July 7th 1898. Since 1900, the United States Congress has enacted additional legislation establishing a government in 1900 for the Territory of Hawai`i,[61] and in 1959 transformed the Territory of Hawai`i into the State of Hawai`i.[62] According to Born, "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction."[63] In *Rose v. Himely* (1807),[64] the Court illustrated this view by asserting, "that the legislation of every country is territorial." In *The Apollon* (1824),[65] the Court stated that the "laws of no nation can justly extend beyond its own territory" for it would be "at variance with the independence and sovereignty of foreign nations,"[66] and in *Belmont*,[67] Justice Sutherland resounded, "our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens." Consistent with this view of non-extraterritoriality of legislation, *acting* Assistant Attorney General Douglas Kmiec opined "It is…unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[68]

Because U.S. legislation has no extraterritorial force and effect, except over U.S. citizens, it cannot be considered to have extinguished the Hawaiian Kingdom as a state, and the executive agreements are *prima facie* evidence that the United States recognizes the sovereignty and legal order of the Hawaiian Kingdom despite the overthrow of its government. In §207(a) of the *Restatement (Third) Foreign Relations Law of the United States*, provides that "A state acts through its government, but the state is responsible for carrying out its obligation under international law regardless of the manner in which its constitution and laws allocate the

[61] 31 U.S. Stat. 141
[62] 73 U.S. Stat. 4
[63] Gary Born, *International Civil Litigation in United States Courts*, 3rd ed. (Den Hague, The Netherlands: Kluwer Law International, 1996), 493.
[64] *Rose v. Himely,* 8 U.S. 241, 279 (1807).
[65] *The Apollon,* 22 U.S. 362, 370 (1824).
[66] *Id.*
[67] *U.S. v. Belmont,* 301 U.S. 324, 332 (1937).
[68] Douglas Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,* 12 Op. Off. Legal Counsel 238-263, 252 (1988).

responsibilities and functions of government, or of any constitutional or other internal rules or limitations." And §115(b), of the *Restatement (Third) Foreign Relations Law*, provides that "although a subsequent act of Congress may supersede a rule of international law or an international agreement as domestic law, the United States remains bound by the rule or agreement internationally… Similarly, the United States remains bound internationally when a principle of international law or a provision in an agreement of the United States is not given effect because it is inconsistent with the Constitution."

By virtue of the temporary and conditional grant of Hawaiian executive power, the U.S. was obligated to administer Hawaiian law and thereafter restore the Hawaiian Kingdom government, but instead illegally occupied the Hawaiian Kingdom for military purposes, and has remained in the Hawaiian Islands ever since. The failure to administer Hawaiian Kingdom law under the *Lili`uokalani Assignment* and then to reinstate the Hawaiian government under the *Restoration agreement* constitutes a breach of an international obligation, as defined by the *Responsibility of States for Internationally Wrongful Acts*,[69] and the breach of this international obligation by the U.S. has "a continuing character [that] extends over the entire period during which the act continues and remains not in conformity with the international obligation."[70] The extended lapse of time has not affected in the least the international obligation of the U.S. under the both executive agreements; despite over a century of non-compliance and prolonged occupation, and according to Wright, the President binds "himself and his successors in office by executive agreements."[71] More importantly, the U.S. "may not rely on the provisions of its internal law as justification for failure to comply with its obligation."[72]

According to Professor Marek, "the legal order of the occupant is…strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness [e.g. no government]. …[Occupation] is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order

[69] United Nations, "Responsibility of States for International Wrongful Acts" (2001), Article 12.
[70] *Id*., Article 14(2).
[71] Wright, 235.
[72] Responsibility of States, Article 31(1).

is abandoned."[73] Referring to the United States' occupation of the Hawaiian Kingdom in his law journal article, Professor Dumberry states:

> the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.[74]

Conclusion

As a result of the President's failure to establish a military government in the islands to administer Hawaiian law by virtue of the *Lili`uokalani assignment* (January 17th 1893) and the international laws of occupation, which was mandated under the 1863 Lieber Code, art. 6, G.O. 100, A.G.O. 1863, and then superseded by the 1907 Hague Convention, IV, art. 43, all acts performed by the provisional government, the Republic of Hawai`i, the Territory of Hawai`i and the State of Hawai`i, on behalf of or concerning the Hawaiian Islands cannot be considered lawful. The only exceptions, according to the seminal *Namibia* case, are the registration of births, deaths and marriages.[75] By estoppel, the United States cannot benefit from the violation of these executive agreements.

All persons who reside or temporarily reside within Hawaiian territory are subject to its laws. §6, Hawaiian Civil Code, Compiled Laws of the Hawaiian Kingdom (1884), provides:

> The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.

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[73] Krystyna Marek, *Identity and Continuity of State in Public International Law*, (Geneve: Librairie Droz, 1968), 102.
[74] Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, 2(1) Chinese Journal of International Law 655-684 (2002).
[75] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of June 21, 1971, ICJ Reports, 1971.

It is my professional opinion that there is clear and overwhelming evidence that the Hawaiian Kingdom continues to exist as a state in accordance with recognized attributes of a state's sovereign nature, and that the *Lili`uokalani assignment* and the *Agreement of restoration*, being sole executive agreements, are *prima facie* evidence of the United States' acknowledgment and continued recognition of the legal order of the Hawaiian Kingdom, being a recognized attribute of a state's sovereign nature, notwithstanding the United States violation of these sole executive agreements for the past 118 years.

David Keanu Sai, Ph.D.

Exhibit A

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

MESSAGE.

To the Senate and House of Representatives:

In my recent annual message to the Congress I briefly referred to our relations with Hawaii and expressed the intention of transmitting further information on the subject when additional advices permitted.

Though I am not able now to report a definite change in the actual situation, I am convinced that the difficulties lately created both here and in Hawaii and now standing in the way of a solution through Executive action of the problem presented, render it proper, and expedient, that the matter should be referred to the broader authority and discretion of Congress, with a full explanation of the endeavor thus far made to deal with the emergency and a statement of the considerations which have governed my action.

I suppose that right and justice should determine the path to be followed in treating this subject. If national honesty is to be disregarded and a desire for territorial extension, or dissatisfaction with a form of government not our own, ought to regulate our conduct, I have entirely misapprehended the mission and character of our Government and the behavior which the conscience of our people demands of their public servants.

When the present Administration entered upon its duties the Senate had under consideration a treaty providing for the annexation of the Hawaiian Islands to the territory of the United States. Surely under our Constitution and laws the enlargement of our limits is a manifestation of the highest attribute of sovereignty, and if entered upon as an Executive act, all things relating to the transaction should be clear and free from suspicion. Additional importance attached to this particular treaty of annexation, because it contemplated a departure from unbroken American tradition in providing for the addition to our territory of islands of the sea more than two thousand miles removed from our nearest coast.

These considerations might not of themselves call for interference with the completion of a treaty entered upon by a previous Administration. But it appeared from the documents accompanying the

treaty when submitted to the Senate, that the ownership of Hawaii was tendered to us by a provisional government set up to succeed the constitutional ruler of the islands, who had been dethroned, and it did not appear that such provisional government had the sanction of either popular revolution or suffrage. Two other remarkable features of the transaction naturally attracted attention. One was the extraordinary haste—not to say precipitancy—characterizing all the transactions connected with the treaty. It appeared that a so-called Committee of Safety, ostensibly the source of the revolt against the constitutional Government of Hawaii, was organized on Saturday, the 14th day of January; that on Monday, the 16th, the United States forces were landed at Honolulu from a naval vessel lying in its harbor; that on the 17th the scheme of a provisional government was perfected, and a proclamation naming its officers was on the same day prepared and read at the Government building; that immediately thereupon the United States Minister recognized the provisional government thus created; that two days afterwards, on the 19th day of January, commissioners representing such government sailed for this country in a steamer especially chartered for the occasion, arriving in San Francisco on the 28th day of January, and in Washington on the 3d day of February; that on the next day they had their first interview with the Secretary of State, and another on the 11th, when the treaty of annexation was practically agreed upon, and that on the 14th it was formally concluded and on the 15th transmitted to the Senate. Thus between the initiation of the scheme for a provisional government in Hawaii on the 14th day of January and the submission to the Senate of the treaty of annexation concluded with such government, the entire interval was thirty-two days, fifteen of which were spent by the Hawaiian Commissioners in their journey to Washington.

In the next place, upon the face of the papers submitted with the treaty, it clearly appeared that there was open and undetermined an issue of fact of the most vital importance. The message of the President accompanying the treaty declared that "the overthrow of the monarchy was not in any way promoted by this Government," and in a letter to the President from the Secretary of State, also submitted to the Senate with the treaty, the following passage occurs: "At the time the provisional government took possession of the Government buildings no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the provisional government by the United States Minister until after the Queen's abdication and when they were in effective possession of the Government buildings,

the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government." But a protest also accompanied said treaty, signed by the Queen and her ministers at the time she made way for the provisional government, which explicitly stated that she yielded to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support such provisional government.

The truth or falsity of this protest was surely of the first importance. If true, nothing but the concealment of its truth could induce our Government to negotiate with the semblance of a government thus created, nor could a treaty resulting from the acts stated in the protest have been knowingly deemed worthy of consideration by the Senate. Yet the truth or falsity of the protest had not been investigated.

I conceived it to be my duty therefore to withdraw the treaty from the Senate for examination, and meanwhile to cause an accurate, full, and impartial investigation to be made of the facts attending the subversion of the constitutional Government of Hawaii, and the installment in its place of the provisional government. I selected for the work of investigation the Hon. James H. Blount, of Georgia, whose service of eighteen years as a member of the House of Representatives, and whose experience as chairman of the Committee of Foreign Affairs in that body, and his consequent familiarity with international topics, joined with his high character and honorable reputation, seemed to render him peculiarly fitted for the duties entrusted to him. His report detailing his action under the instructions given to him and the conclusions derived from his investigation accompany this message.

These conclusions do not rest for their acceptance entirely upon Mr. Blount's honesty and ability as a man, nor upon his acumen and impartiality as an investigator. They are accompanied by the evidence upon which they are based, which evidence is also herewith transmitted, and from which it seems to me no other deductions could possibly be reached than those arrived at by the Commissioner.

The report with its accompanying proofs, and such other evidence as is now before the Congress or is herewith submitted, justifies in my opinion the statement that when the President was led to submit the treaty to the Senate with the declaration that "the overthrow of the monarchy was not in any way promoted by this Government", and when the Senate was induced to receive and discuss it on that basis, both President and Senate were misled.

The attempt will not be made in this communication to touch

upon all the facts which throw light upon the progress and consummation of this scheme of annexation. A very brief and imperfect reference to the facts and evidence at hand will exhibit its character and the incidents in which it had its birth.

It is unnecessary to set forth the reasons which in January, 1893, led a considerable proportion of American and other foreign merchants and traders residing at Honolulu to favor the annexation of Hawaii to the United States. It is sufficient to note the fact and to observe that the project was one which was zealously promoted by the Minister representing the United States in that country. He evidently had an ardent desire that it should become a fact accomplished by his agency and during his ministry, and was not inconveniently scrupulous as to the means employed to that end. On the 19th day of November, 1892, nearly two months before the first overt act tending towards the subversion of the Hawaiian Government and the attempted transfer of Hawaiian territory to the United States, he addressed a long letter to the Secretary of State in which the case for annexation was elaborately argued, on moral, political, and economical grounds. He refers to the loss to the Hawaiian sugar interests from the operation of the McKinley bill, and the tendency to still further depreciation of sugar property unless some positive measure of relief is granted. He strongly inveighs against the existing Hawaiian Government and emphatically declares for annexation. He says: "In truth the monarchy here is an absurd anachronism. It has nothing on which it logically or legitimately stands. The feudal basis on which it once stood no longer existing, the monarchy now is only an impediment to good government—an obstruction to the prosperity and progress of the islands."

He further says: "As a crown colony of Great Britain or a Territory of the United States the government modifications could be made readily and good administration of the law secured. Destiny and the vast future interests of the United States in the Pacific clearly indicate who at no distant day must be responsible for the government of these islands. Under a territorial government they could be as easily governed as any of the existing Territories of the United States." * * * "Hawaii has reached the parting of the ways. She must now take the road which leads to Asia, or the other which outlets her in America, gives her an American civilization, and binds her to the care of American destiny." He also declares: "One of two courses seems to me absolutely necessary to be followed, either bold and vigorous measures for annexation or a 'customs union,' an ocean cable from the Californian coast to Honolulu, Pearl Harbor perpetually ceded to the United States, with an implied but not ex-

pressly stipulated American protectorate over the islands. I believe the former to be the better, that which will prove much the more advantageous to the islands, and the cheapest and least embarrassing in the end to the United States. If it was wise for the United States through Secretary Marcy thirty-eight years ago to offer to expend $100,000 to secure a treaty of annexation, it certainly can not be chimerical or unwise to expend $100,000 to secure annexation in the near future. To-day the United States has five times the wealth she possessed in 1854, and the reasons now existing for annexation are much stronger than they were then. I can not refrain from expressing the opinion with emphasis that the golden hour is near at hand."

These declarations certainly show a disposition and condition of mind, which may be usefully recalled when interpreting the significance of the Minister's conceded acts or when considering the probabilities of such conduct on his part as may not be admitted.

In this view it seems proper to also quote from a letter written by the Minister to the Secretary of State on the 8th day of March, 1892, nearly a year prior to the first step taken toward annexation. After stating the possibility that the existing Government of Hawaii might be overturned by an orderly and peaceful revolution, Minister Stevens writes as follows: "Ordinarily in like circumstances, the rule seems to be to limit the landing and movement of United States forces in foreign waters and dominion exclusively to the protection of the United States legation and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present Minister and naval commander may deviate from established international rules and precedents in the contingencies indicated in the first part of this dispatch."

To a minister of this temper full of zeal for annexation there seemed to arise in January, 1893, the precise opportunity for which he was watchfully waiting—an opportunity which by timely "deviation from established international rules and precedents" might be improved to successfully accomplish the great object in view; and we are quite prepared for the exultant enthusiasm with which in a letter to the State Department dated February 1, 1893, he declares: "The Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it."

As a further illustration of the activity of this diplomatic representative, attention is called to the fact that on the day the above letter was written, apparently unable longer to restrain his ardor, he issued a proclamation whereby "in the name of the United

States" he assumed the protection of the Hawaiian Islands and declared that said action was "taken pending and subject to negotiations at Washington." Of course this assumption of a protectorate was promptly disavowed by our Government, but the American flag remained over the Government building at Honolulu and the forces remained on guard until April, and after Mr. Blount's arrival on the scene, when both were removed.

A brief statement of the occurrences that led to the subversion of the constitutional Government of Hawaii in the interests of annexation to the United States will exhibit the true complexion of that transaction.

On Saturday, January 14, 1893, the Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least. Taking this relinquished purpose as a basis of action, citizens of Honolulu numbering from fifty to one hundred, mostly resident aliens, met in a private office and selected a so-called Committee of Safety, composed of thirteen persons, seven of whom were foreign subjects, and consisted of five Americans, one Englishman, and one German. This committee, though its designs were not revealed, had in view nothing less than annexation to the United States, and between Saturday, the 14th, and the following Monday, the 16th of January—though exactly what action was taken may not be clearly disclosed—they were certainly in communication with the United States Minister. On Monday morning the Queen and her cabinet made public proclamation, with a notice which was specially served upon the representatives of all foreign governments, that any changes in the constitution would be sought only in the methods provided by that instrument. Nevertheless, at the call and under the auspices of the Committee of Safety, a mass meeting of citizens was held on that day to protest against the Queen's alleged illegal and unlawful proceedings and purposes. Even at this meeting the Committee of Safety continued to disguise their real purpose and contented themselves with procuring the passage of a resolution denouncing the Queen and empowering the committee to devise ways and means "to secure the permanent maintenance of law and order and the protection of life, liberty, and property in Hawaii." This meeting adjourned between three and four o'clock in the afternoon. On the same day, and immediately after such adjournment, the committee, unwilling to take further steps without the coöperation of the United States Minister, addressed him a note representing that the public safety was menaced and that lives and property were in danger, and concluded as follows:

"We are unable to protect ourselves without aid, and therefore pray for the protection of the United States forces." Whatever may be thought of the other contents of this note, the absolute truth of this latter statement is incontestable. When the note was written and delivered, the committee, so far as it appears, had neither a man nor a gun at their command, and after its delivery they became so panic-stricken at their position that they sent some of their number to interview the Minister and request him not to land the United States forces till the next morning. But he replied that the troops had been ordered, and whether the committee were ready or not the landing should take place. And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the *bona fide* purpose of protecting the imperilled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government. In point of fact the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for the protection of American citizens whose residences and places of business, as well as the legation and consulate, were in a distant part of the city, but the location selected was a wise one if the forces were landed for the purpose of supporting the provisional government. If any peril to life and property calling for any such martial array had existed, Great Britain and other foreign powers interested would not have been behind the United States in activity to protect their citizens. But they made no sign in that direction. When these armed men were landed, the city of Honolulu was in its customary orderly and peaceful condition. There was no

symptom of riot or disturbance in any quarter. Men, women, and children were about the streets as usual, and nothing varied the ordinary routine or disturbed the ordinary tranquillity, except the landing of the *Boston's* marines and their march through the town to the quarters assigned them. Indeed, the fact that after having called for the landing of the United States forces on the plea of danger to life and property the Committee of Safety themselves requested the Minister to postpone action, exposed the untruthfulness of their representations of present peril to life and property. The peril they saw was an anticipation growing out of guilty intentions on their part and something which, though not then existing, they knew would certainly follow their attempt to overthrow the Government of the Queen without the aid of the United States forces.

Thus it appears that Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister.

Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property. It must be accounted for in some other way and on some other ground, and its real motive and purpose are neither obscure nor far to seek.

The United States forces being now on the scene and favorably stationed, the committee proceeded to carry out their original scheme. They met the next morning, Tuesday, the 17th, perfected the plan of temporary government, and fixed upon its principal officers, ten of whom were drawn from the thirteen members of the Committee of Safety. Between one and two o'clock, by squads and by different routes to avoid notice, and having first taken the precaution of ascertaining whether there was any one there to oppose them, they proceeded to the Government building to proclaim the new government. No sign of opposition was manifest, and thereupon an American citizen began to read the proclamation from the steps of the Government building almost entirely without auditors. It is said that before the reading was finished quite a concourse of persons, variously estimated at from 50 to 100, some armed and some unarmed, gathered about the committee to give them aid and confidence. This statement is not important, since the one controlling factor in the whole affair was unquestionably the United States marines, who, drawn up under arms and with artillery in readiness only seventy-six yards distant, dominated the situation.

The provisional government thus proclaimed was by the terms of

the proclamation "to exist until terms of union with the United States had been negotiated and agreed upon". The United States Minister, pursuant to prior agreement, recognized this government within an hour after the reading of the proclamation, and before five o'clock, in answer to an inquiry on behalf of the Queen and her cabinet, announced that he had done so.

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she

yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for a sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusations in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves". This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fair-minded people with the evidence before them will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the provisional government had ever existed with their consent. I do not understand that any member of this government claims that the

people would uphold it by their suffrages if they were allowed to vote on the question.

While naturally sympathizing with every effort to establish a republican form of government, it has been the settled policy of the United States to concede to people of foreign countries the same freedom and independence in the management of their domestic affairs that we have always claimed for ourselves; and it has been our practice to recognize revolutionary governments as soon as it became apparent that they were supported by the people. For illustration of this rule I need only to refer to the revolution in Brazil in 1889, when our Minister was instructed to recognize the Republic "so soon as a majority of the people of Brazil should have signified their assent to its establishment and maintenance"; to the revolution in Chile in 1891, when our Minister was directed to recognize the new government "if it was accepted by the people"; and to the revolution in Venezuela in 1892, when our recognition was accorded on condition that the new government was "fully established, in possession of the power of the nation, and accepted by the people."

As I apprehend the situation, we are brought face to face with the following conditions:

The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

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.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the

sole purpose of submitting her case to the enlightened justice of the United States.

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy of which accompanies this message, I have directed him to so inform the provisional government.

But in the present instance our duty does not, in my opinion, end with refusing to consummate this questionable transaction. It has been the boast of our Government that it seeks to do justice in all things without regard to the strength or weakness of those with whom it deals. I mistake the American people if they favor the odious doctrine that there is no such thing as international morality, that there is one law for a strong nation and another for a weak one, and that even by indirection a strong power may with impunity despoil a weak one of its territory.

By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. 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. The provisional government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power.

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to

legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

These principles apply to the present case with irresistible force when the special conditions of the Queen's surrender of her sovereignty are recalled. She surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States. Furthermore, the provisional government acquiesced in her surrender in that manner and on those terms, not only by tacit consent, but through the positive acts of some members of that government who urged her peaceable submission, not merely to avoid bloodshed, but because she could place implicit reliance upon the justice of the United States, and that the whole subject would be finally considered at Washington.

I have not, however, overlooked an incident of this unfortunate affair which remains to be mentioned. The members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government of the Queen by the indefensible encouragement and assistance of our diplomatic representative. This fact may entitle them to claim that in our effort to rectify the wrong committed some regard should be had for their safety. This sentiment is strongly seconded by my anxiety to do nothing which would invite either harsh retaliation on the part of the Queen or violence and bloodshed in any quarter. In the belief that the Queen, as well as her enemies, would be willing to adopt such a course as would meet these conditions, and in view of the fact that both the Queen and the provisional government had at one time apparently acquiesced in a reference of the entire case to the United States Government, and considering the further fact that in any event the provisional

government by its own declared limitation was only "to exist until terms of union with the United States of America have been negotiated and agreed upon," I hoped that after the assurance to the members of that government that such union could not be consummated I might compass a peaceful adjustment of the difficulty.

Actuated by these desires and purposes, and not unmindful of the inherent perplexities of the situation nor of the limitations upon my power, I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government and a recognition of all its *bona fide* acts and obligations. In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted. These conditions have not proved acceptable to the Queen, and though she has been informed that they will be insisted upon, and that, unless acceded to, the efforts of the President to aid in the restoration of her Government will cease, I have not thus far learned that she is willing to yield them her acquiescence. The check which my plans have thus encountered has prevented their presentation to the members of the provisional government, while unfortunate public misrepresentations of the situation and exaggerated statements of the sentiments of our people have obviously injured the prospects of successful Executive mediation.

I therefore submit this communication with its accompanying exhibits, embracing Mr. Blount's report, the evidence and statements taken by him at Honolulu, the instructions given to both Mr. Blount and Minister Willis, and correspondence connected with the affair in hand.

In commending this subject to the extended powers and wide discretion of the Congress, I desire to add the assurance that I shall be much gratified to coöperate in any legislative plan which may be devised for the solution of the problem before us which is consistent with American honor, integrity, and morality.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, December 18, 1893.

DEPARTMENT OF STATE,
Washington, October 18, 1893.

The PRESIDENT:

The full and impartial reports submitted by the Hon. James H. Blount, your special commissioner to the Hawaiian Islands, established the following facts:

Queen Liliuokalani announced her intention on Saturday, January 14, 1893, to proclaim a new constitution, but the opposition of her ministers and others induced her to speedily change her purpose and make public announcement of that fact.

At a meeting in Honolulu, late on the afternoon of that day, a so-called committee of public safety, consisting of thirteen men, being all or nearly all who were present, was appointed "to consider the situation and devise ways and means for the maintenance of the public peace and the protection of life and property," and at a meeting of this committee on the 15th, or the forenoon of the 16th of January, it was resolved amongst other things that a provisional government be created "to exist until terms of union with the United States of America have been negotiated and agreed upon." At a mass meeting which assembled at 2 p. m. on the last-named day, the Queen and her supporters were condemned and denounced, and the committee was continued and all its acts approved.

Later the same afternoon the committee addressed a letter to John L. Stevens, the American minister at Honolulu, stating that the lives and property of the people were in peril and appealing to him and the United States forces at his command for assistance. This communication concluded "we are unable to protect ourselves without aid, and therefore hope for the protection of the United States forces." On receipt of this letter Mr. Stevens requested Capt. Wiltse, commander of the U. S. S. *Boston*, to land a force "for the protection of the United States legation, United States consulate, and to secure the safety of American life and property." The well armed troops, accompanied by two gatling guns, were promptly landed and marched through the quiet streets of Honolulu to a public hall, previously secured by Mr. Stevens for their accommodation. This hall was just across the street from the Government building, and in plain view of the Queen's palace. The reason for thus locating the military will presently appear. The governor of the Island immediately addressed to Mr. Stevens a communication protesting against the act as an unwarranted invasion of Hawaiian soil and reminding him that the proper authorities had never denied permission to the naval forces of the United States to land for drill or any other proper purpose.

About the same time the Queen's minister of foreign affairs sent a note to Mr. Stevens asking why the troops had been landed and informing him that the proper authorities were able and willing to afford full protection to the American legation and all American interests in Honolulu. Only evasive replies were sent to these communications.

While there were no manifestations of excitement or alarm in the city, and the people were ignorant of the contemplated movement, the committee entered the Government building, after first ascertaining that it was unguarded, and read a proclamation declaring that the existing Government was overthrown and a Provisional Government established in its place, "to exist until terms of union with the United States of America have been negotiated and agreed upon." No audience was present when the proclamation was read, but during the reading 40 or 50 men, some of them indifferently armed, entered the room. The executive and advisory councils mentioned in the proclamation at once addressed a communication to Mr. Stevens, informing him that the monarchy had been abrogated and a provisional government established. This communication concluded:

Such Provisional Government has been proclaimed, is now in possession of the Government departmental buildings, the archives, and the treasury, and is in control of the city. We hereby request that you will, on behalf of the United States, recognize it as the existing *de facto* Government of the Hawaiian Islands and afford to it the moral support of your Government, and, if necessary, the support of American troops to assist in preserving the public peace.

On receipt of this communication, Mr. Stevens immediately recognized the new Government, and, in a letter addressed to Sanford B. Dole, its President, informed him that he had done so. Mr. Dole replied:

GOVERNMENT BUILDING,
Honolulu, January 17, 1893.

SIR: I acknowledge receipt of your valued communication of this day, recognizing the Hawaiian Provisional Government, and express deep appreciation of the same.

We have conferred with the ministers of the late Government, and have made demand upon the marshal to surrender the station house. We are not actually yet in posession of the station house, but as night is approaching and our forces may be insufficient to maintain order, we request the immediate support of the United States forces, and would request that the commander of the United States forces take command of our military forces, so that they may act together for the protection of the city.

Respectfully, yours,

SANFORD B. DOLE,
Chairman Executive Council.

His Excellency JOHN L. STEVENS,
United States Minister Resident.

Note of Mr. Stevens at the end of the above communication.

The above request not complied with.

STEVENS.

The station house was occupied by a well-armed force, under the command of a resolute capable, officer. The same afternoon the Queen, her ministers, representatives of the Provisional Government, and others held a conference at the palace. Refusing to recognize the new authority or surrender to it, she was informed that the Provisional Government had the support of the American minister, and, if necessary, would be maintained by the military force of the United States then present; that any demonstration on her part would precipitate a conflict with that force; that she could not, with hope of success, engage

in war with the United States, and that resistance would result in a useless sacrifice of life. Mr. Damon, one of the chief leaders of the movement, and afterwards vice-president of the Provisional Government, informed the Queen that she could surrender under protest and her case would be considered later at Washington. Believing that, under the circumstances, submission was a duty, and that her case would be fairly considered by the President of the United States, the Queen finally yielded and sent to the Provisional Government the paper, which reads:

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, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representative and reinstate me and the authority which I claim as the constitutional sovereign of the Hawaiian Islands.

When this paper was prepared at the conclusion of the conference, and signed by the Queen and her ministers, a number of persons, including one or more representatives of the Provisional Government, who were still present and understood its contents, by their silence, at least, acquiesced in its statements, and, when it was carried to President Dole, he indorsed upon it, "Received from the hands of the late cabinet this 17th day of January, 1893," without challenging the truth of any of its assertions. Indeed, it was not claimed on the 17th day of January, or for some time thereafter, by any of the designated officers of the Provisional Government or any annexationist that the Queen surrendered otherwise than as stated in her protest.

In his dispatch to Mr. Foster of January 18, describing the so-called revolution, Mr. Stevens says:

The committee of public safety forthwith took possession of the Government building, archives, and treasury, and installed the Provisional Government at the head of the respective departments. This being an accomplished fact, I promptly recognized the Provisional Government as the *de facto* government of the Hawaiian Islands.

In Secretary Foster's communication of February 15 to the President, laying before him the treaty of annexation, with the view to obtaining the advice and consent of the Senate thereto, he says:

At the time the Provisional Government took possession of the Government building no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the Provisional Government by the United States minister until after the Queen's abdication, and when they were in effective possession of the Government building, the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government.

Similar language is found in an official letter addressed to Secretary Foster on February 3 by the special commissioners sent to Washington by the Provisional Government to negotiate a treaty of annexation.

These statements are utterly at variance with the evidence, documentary and oral, contained in Mr. Blount's reports. They are contradicted by declarations and letters of President Dole and other annexationists and by Mr. Stevens's own verbal admissions to Mr. Blount.

The Provisional Government was recognized when it had little other than a paper existence, and when the legitimate government was in full possession and control of the palace, the barracks, and the police station. Mr. Stevens's well-known hostility and the threatening presence of the force landed from the *Boston* was all that could then have excited serious apprehension in the minds of the Queen, her officers, and loyal supporters.

It is fair to say that Secretary Foster's statements were based upon information which he had received from Mr. Stevens and the special commissioners, but I am unable to see that they were deceived. The troops were landed, not to protect American life and property, but to aid in overthrowing the existing government. Their very presence implied coercive measures against it.

In a statement given to Mr. Blount, by Admiral Skerrett, the ranking naval officer at Honolulu, he says:

> If the troops were landed simply to protect American citizens and interests, they were badly stationed in Arion Hall, but if the intention was to aid the Provisional Government they were wisely stationed.

This hall was so situated that the troops in it easily commanded the Government building, and the proclamation was read under the protection of American guns. At an early stage of the movement, if not at the beginning, Mr. Stevens promised the annexationists that as soon as they obtained possession of the Government building and there read a proclamation of the character above referred to, he would at once recognize them as a *de facto* government, and support them by landing a force from our war ship then in the harbor, and he kept that promise. This assurance was the inspiration of the movement, and without it the annexationists would not have exposed themselves to the consequences of failure. They relied upon no military force of their own, for they had none worthy of the name. The Provisional Government was established by the action of the American minister and the presence of the troops landed from the *Boston*, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.

The earnest appeals to the American minister for military protection by the officers of that Government, after it had been recognized, show the utter absurdity of the claim that it was established by a successful revolution of the people of the Islands. Those appeals were a confession by the men who made them of their weakness and timidity. Courageous men, conscious of their strength and the justice of their cause, do not thus act. It is not now claimed that a majority of the people, having the right to vote under the constitution of 1887, ever favored the existing authority or annexation to this or any other country. They earnestly desire that the government of their choice shall be restored and its independence respected.

Mr. Blount states that while at Honolulu he did not meet a single annexationist who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give complete control to foreigners or whites. Representative annexationists have repeatedly made similar statements to the undersigned.

The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional

sovereign, and the Provisional Government was created "to exist until terms of union with the United States of America have been negotiated and agreed upon." A careful consideration of the facts will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.

Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.

Respectfully submitted.

W. Q. GRESHAM.

[Confidential.]

Mr. Gresham to Mr. Willis.

No. 4.] DEPARTMENT OF STATE,
Washington, October 18, 1893.

SIR: Supplementing the general instructions which you have received with regard to your official duties, it is necessary to communicate to you, in confidence, special instructions for your guidance in so far as concerns the relation of the Government of the United States towards the *de facto* Government of the Hawaiian Islands.

The President deemed it his duty to withdraw from the Senate the treaty of annexation which has been signed by the Secretary of State and the agents of the Provisional Government, and to dispatch a trusted representative to Hawaii to impartially investigate the causes of the so-called revolution and ascertain and report the true situation in those Islands. This information was needed the better to enable the President to discharge a delicate and important public duty.

The instructions given to Mr. Blount, of which you are furnished with a copy, point out a line of conduct to be observed by him in his official and personal relations on the Islands, by which you will be guided so far as they are applicable and not inconsistent with what is herein contained.

It remains to acquaint you with the President's conclusions upon the facts embodied in Mr. Blount's reports and to direct your course in accordance therewith.

The Provisional Government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existsd with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the minister of the United States had recognized it as the *de facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The Queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed

of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.

After a patient examination of Mr. Blount's reports the President is satisfied that the movement against the Queen, if not instigated, was encouraged and supported by the representative of this Government at Honolulu; that he promised in advance to aid her enemies in an effort to overthrow the Hawaiian Government and set up by force a new government in its place; and that he kept this promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, and by recognizing the Provisional Government the next day when it was too feeble to defend itself and the constitutional government was able to successfully maintain its authority against any threatening force other than that of the United States already landed.

The President has therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last.

On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.

Having secured the Queen's agreement to pursue this wise and humane policy, which it is believed you will speedily obtain, you will then advise the executive of the Provisional Government and his ministers of the President's determination of the question which their action and that of the Queen devolved upon him, and that they are expected to promptly relinquish to her her constitutional authority.

Should the Queen decline to pursue the liberal course suggested, or should the Provisional Government refuse to abide by the President's decision, you will report the facts and await further directions.

In carrying out these general instructions you will be guided largely by your own good judgment in dealing with the delicate situation.

I am, sir, your obedient servant,

W. Q. GRESHAM.

Mr. Gresham to Mr. Willis.

[Telegram sent through dispatch agent at San Francisco.]

DEPARTMENT OF STATE,
Washington, November 24, 1893.

The brevity and uncertainty of your telegrams are embarrassing. You will insist upon amnesty and recognition of obligations of the Provisional Government as essential conditions of restoration. All interests will be promoted by prompt action.

W. Q. GRESHAM.

Exhibit B

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 16.] LEGATION OF THE UNITED STATES,
Honolulu, Hawaiian Islands, December 20, 1893.

SIR: On Monday afternoon at 6 p. m., before the report of the Washington Place interview, referred to in my dispatch, No. 15, of December 19, had been written from the stenographic notes, Mr. Carter called at the legation and read to me a note to him, just received from the Queen, in which she unreservedly consented, when restored as the constitutional sovereign, to grant amnesty and assume all obligations of the Provisional Government.

On yesterday (Tuesday) morning at 9 o'clock Mr. Carter brought a letter from the Queen, a copy of which I inclose, and an agreement signed by her, binding herself, if restored, to grant full amnesty, a copy of which I inclose.

Very respectfully,

ALBERT S. WILLIS.

[Inclosure 1 with No 16.]

WASHINGTON PLACE,
Honolulu, December 18, 1893

His Excellency ALBERT WILLIS,
Envoy Extraordinary and Minister Plenipotentiary, U. S. A.:

SIR: Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions.

I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of any one, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land.

Asking you to bear to the President and to the Government he represents a message of gratitude from me and from my people, and promising, with God's grace, to prove worthy of the confidence and friendship of your people,

I am, etc.,

LILIUOKALANI.

[Inclosure 2 with No. 16.]

I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government.

I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained.

I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of

administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.

Witness my hand this 18th of December, 1893.

LILIUOKALANI.

Attest:
J. O. CARTER.

Mr. Willis to Mr. Gresham.

[Confidential.]

No. 17.] LEGATION OF THE UNITED STATES,
Honolulu, December 20, 1893.

SIR: On Monday, December 18, the interview with the Queen at her residence, Washington Place, was held, lasting until 1 p. m.

At 5:30 p. m. of the same day I received a communication from the Provisional Government, through the Hon. S. B. Dole, minister of foreign affairs, referring to my visit to the Queen. He asked to be informed whether I was "acting in any way hostile to this (his) Government," and pressed for "an immediate answer." I inclose a copy of the communication.

As I had two days before notified a member of the cabinet, Hon. W. O. Smith, attorney-general, that I would be ready in forty-eight hours to make known to the Provisional Government the President's decision, and as the tone of the communication—doubtless without intention—was somewhat mandatory, I thought it best not to make any reply to it. Moreover, at that hour I had not received the written pledge and agreement of the Queen, without which I could take no step.

This morning at 9:30 o'clock I received the letter and agreement of the Queen, as set forth in my No. 16 of this date. I immediately addressed a note to the minister of foreign affairs, Mr. Dole, informing him that I had a communication from my Government, which I desired to submit in person to the president and ministers of his Government at any hour during the day that it might please him to designate. I inclose a copy of my letter. This note was delivered to the minister of foreign affairs by Mr. Mills, and the hour of 1:30 p. m. was verbally designated for the interview.

At the hour appointed I went to the executive building and met the President and his associate ministers, to whom I submitted the decision of the President of the United States.

A memorandum of what I said upon the occasion was left with them after delivery, a copy of which I inclose.

It may be proper at this time briefly to state my course of action since arriving here on Saturday the 4th day of November last. My baggage containing credentials did not come to hand until 4 o'clock, before which time the offices of the Provisional Government were closed.

On Monday morning following, Mr. Mills, our consul-general, bore a note to the minister of foreign affairs asking that he designate a time for the presentation of Mr. Blount's letter of recall and my letter of credence. Mr. Mills was authorized to say, and did say to him, that I was ready on that day (Monday) to present my credentials. The Provisional Government, however, appointed the following day (Tuesday) at 11 o'clock, at which time I was formally presented.

As our Government had for fifty years held the friendliest relations with the people of these islands—native as well as foreign born—in

WILLIS, WASHINGTON, *January 12, 1894.*
Minister, Honolulu:

Your numbers 14 to 18, inclusive, show that you have rightly comprehended the scope of your instructions, and have, as far as was in your power, discharged the onerous task confided to you.

The President sincerely regrets that the Provisional Government refuses to acquiesce in the conclusion which his sense of right and duty and a due regard for our national honor constrained him to reach and submit as a measure of justice to the people of the Hawaiian Islands and their deposed sovereign. While it is true that the Provisional Government was created to exist only until the islands were annexed to the United States, that the Queen finally, but reluctantly, surrendered to an armed force of this Government illegally quartered in Honolulu, and representatives of the Provisional Government (which realized its impotency and was anxious to get control of the Queen's means of defense) assured her that, if she would surrender, her case would be subsequently considered by the United States, the President has never claimed that such action constituted him an arbitrator in the technical sense, or authorized him to act in that capacity between the Constitutional Government and the Provisional Government. You made no such claim when you acquainted that Government with the President's decision.

The solemn assurance given to the Queen has been referred to, not as authority for the President to act as arbitrator, but as a fact material to a just determination of the President's duty in the premises.

In the note which the minister of foreign affairs addressed to you on the 23d ultimo it is stated in effect that even if the Constitutional Government was subverted by the action of the American minister and an invasion by a military force of the United States, the President's authority is limited to dealing with our own unfaithful officials, and that he can take no steps looking to the correction of the wrong done. The President entertains a different view of his responsibility and duty. The subversion of the Hawaiian Government by an abuse of the authority of the United States was in plain violation of international law and required the President to disavow and condemn the act of our offending officials, and, within the limits of his constitutional power, to endeavor to restore the lawful authority.

On the 18th ultimo the President sent a special message to Congress communicating copies of Mr. Blount's reports and the instructions given to him and to you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.

Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the

Provisional Government refuses to acquiesce in the President's decision.

The matter now being in the hands of Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider that your special instructions upon this subject have been fully complied with.

GRESHAM.

Exhibit C

CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FIFTY-FIFTH CONGRESS, SECOND SESSION.

VOLUME XXXI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

war ships would beset our path and we would be compelled to send with every coal barge a full complement of our own war ships, and we would, indeed, realize that we must win our way through "bloody seas." Again, it is declared to be a defensive necessity from a war standpoint.

We are told that we need the islands as a kind of military breakwater against attack on our western coast. Eminent military authority is offered for this statement. Both land and naval officers are produced to justify this claim. All honor, Mr. Speaker, to our soldiers on land and sea. I glory in their just fame. Their deeds of valor are known wherever civilized man is found. They have carried our glorious flag to victory in every land, on every sea where they have fought, from the day they wrested from Great Britain the power to longer enslave us to that May day just gone when they sent to the bottom of Manila Harbor a Spanish fleet with every man on board.

But, Mr. Speaker, the calm judgment of a free people who believe, aye, know, that "eternal vigilance is the price of liberty" realizes, and in the years to come, if not now, will so declare, that the military arm of the Government can not safely be intrusted with the duty of controlling and shaping its civil policy. The profession, the training, and tendency of military life forbids it. The tendency of the military, whether on land or sea, is toward aggression and ever toward imperialism. And, again, we are to be made believe that if the United States does not annex the Hawaiian Islands some other power will, either with the consent of the islands or without it, and by the force of its own army and navy.

Does anybody really believe this? Has not this country many times declared that it would view with alarm and treat as an hostile act any such attempt? It could never be done and would not be attempted by any government of the Old World, unless it was predetermined and known that it could only be done by conquering the resistance of the United States. If such a determination is ever reached, our present annexation and possession of the islands would not stay the government that so lusts for territory, for the same power that could overcome our resistance in the first instance could wrest our occupation and possession in the last, and neither would or could ever be accomplished.

What do we fear, Mr. Speaker, and whom? Certainly not the ghost of dead and forgotten Spain. The throes of internal discord and colonial revolutions have rendered this effete Kingdom powerless for harm. Does Germany threaten us? No. Her good sense will restrain any ambition she otherwise might indulge for conquest. Does France? Most assuredly not. Nor Russsia, nor Prussia, nor Italy. No Eastern power threatens our Western supremacy. In the meantime the British lion licks the hand that twice smote him, and England's Queen sends greeting and begs us believe she is willing to join hands with us and march forth on a mission of conquest and plunder.

No, Mr. Speaker; no cloud flicks the horizon in token of the brewing storm. None will appear unless we, "forgetful, stray after little lures;" unless we forget that Jefferson told us to have friendly relations with all nations, entangling alliances with none; unless we mix up in the politics of the East, none will appear. Finally, Mr. Speaker, we are urged to take Hawaii anyhow; the islands are offered, and let us take them. Suppose we take them, what form of government under our system by our Constitution will we give them? Is it proposed, does anyone believe, would any member of this House consent, to go 2,200 miles from our shores into the Pacific Ocean and erect a State in the American Union? No one contemplates, none would consent to such a proposition. Conditions will not warrant the making of a Territory of these islands, for the Constitution would control in this case as in that of the State.

What, then, remains to be done? Nothing is left except a military government for them; and surely no American who is not forgetful of the teachings of our fathers, unmindful of the traditions of the past, and, I hope, our welfare in the future, will ever consent to have any portion of this country in such condition. To do it we must write a new policy, tear down every safeguard of a free people—a democratic form of government—and declare our Republic a sham and a delusion. We must affirm our faith to be: The military is of right and ought to be superior to the civil arm of the Government. When this time comes, farewell, my country; thy honor and thy glory have departed forever; thy strength proved thy weakness.

This land has been dedicated to freedom. Here and under our system no chains of class or prejudice can fetter the wings of aspiring, ambitious genius. Here in free America true worth, whether it comes heralded from the palaces of the rich or springs of its own unaided strength from the hovels of the poor, may hope to find its just reward. In the twinkling of an eye things have changed—a military satrapy is set up, a ruling class is constituted.

Mr. Speaker, by every memory of the past, by every hope for the future; in the name of my country, whose institutions and people I love and whose greatness and glory I share, I appeal to its Representatives on this floor not to enter upon this policy of aggression, fraught, as so many believe, with danger at every step. Have regard for the promise given the world but recently, and hedged about with all the binding force and obligation that official utterance could lend it, when you said in your declaration of war against Spain that war was to be waged for freedom's sake, in the cause of humanity, that no purpose of conquest or gain animated the purposes of the United States. On this declaration we won the world's respect and confidence and the approving smile of Him who holds in the hollow of His hand the destiny of nations as He does of individuals. It seems, however, the die is cast, the determination is entered upon, and take these islands we will.

Mr. Speaker, what do we need them for and what will we do with them? I suppose we might fit them up in royal style as a sort of national vaudeville theater or up-to-date "Midway Plaisance," and by Congressional enactment interdict any cheap and mere vulgar imitations that shall take place, but that only the original and genuine Hulas may appear in all the glory and splendor of nakedness unadorned, and give to the denizens of this benighted country daily and nightly exhibitions of their innocent divertisement. Or rather, shall we throw off the mask, come into the open, and join in the cry, but feebly heard now, On to Manila, to Puerto Rico, to the Carolinas, to the Canaries; down with the people; on with the empire? Mr. Speaker, what sound is it I hear? Is it the coming of the "Man on Horseback"?

Mr. DINSMORE. I yield fifteen minutes to the gentleman from Texas [Mr. BALL].

Mr. BALL. Mr. Speaker, in the limited time allotted me I can not attempt a full or satisfactory discussion of the pending resolution. I would not speak at all did I not in my heart believe that the question under consideration involves the most crucial period in our national history, not excepting the fratricidal conflict between the States.

The glowing picture presented by those who would lightly set aside the traditional policy of this Government and enter upon a career of colonial aggrandizement supported by a great army and navy, is certainly no more alluring than was Napoleon's dream of universal empire. Let us hope that, once entered upon, the result may not prove equally disastrous.

Mr. Speaker, in opposing this measure I shall present for the consideration of the House three propositions only. The annexation of Hawaii by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. I know, as was said by the gentleman from Arkansas [Mr. DINSMORE], that the mention of the Constitution in this body often invokes a smile, and yet it can not be that a majority of this body agree with the insignificant few "that there is a higher law than the Constitution;" or with that former member of this House who, in his good fellowship, "did not think the Constitution should come between friends."

Why, sir, the very presence of this measure here is the result of a deliberate attempt to do unlawfully that which can not be lawfully done. The gentleman from Minnesota [Mr. TAWNEY], in a very able argument in support of annexation on March 15 last, rested his case upon the general power in our Constitution and the express power in the constitution of Hawaii, conferred upon the Presidents and Senates of the two countries, to conclude a treaty of annexation. Now that, in pursuance of those powers, the President has submitted the treaty to the United States Senate and has been unable to obtain the consent of two-thirds of that body, we are called upon to override the constitutions of both parties to the proposed contract in order that we may do this thing.

When Louisiana was acquired, when Florida was received, when Alaska came to us, no statesman connected with the executive or legislative branch of the Government dreamed the territory sought to be added to our possessions could be received, except by treaty duly ratified. In their desperation, grasping at shadows for substance, those who now resort to this subterfuge cite the admission of the imperial State from which I hail—Texas—as warrant and authority for their purpose.

Mr. Speaker, no one familiar with the history of that transaction should make such claim. Advocates of the annexation of Texas rested their case upon the express power conferred upon Congress in the Constitution to admit new States. Opponents of the annexation of Texas contended that even that express power did not confer the right to admit States not carved from territory already belonging to the United States or some one of the States forming the Federal Union. Whether, therefore, we subscribe to the one or the other school of thought in that matter, we can find no precedent to sustain the method here proposed for admitting foreign territory.

Members need only refer to the extended debates in Senate and House of Representatives while the annexation of Texas was being considered to be assured of the correctness of this conclusion. The original proposition as offered comtemplated the formation of a State from certain prescribed limits within the territory embraced in the Republic of Texas, while the balance of the area of the Republic was to be ceded as territory to the United States. The treaty having failed of ratification by the Senate, annexation by joint resolution was resorted to, and the outcome of the whole matter was that the entire Republic of Texas was admitted as one State, with the right to carve therefrom four additional States, this being done for the purpose alone of coming within the constitutional power to admit new States and in recognition of the fact that territory could only be constitutionally acquired by treaty.

I have not time to review much that was interestingly said about the matter. I shall quote only a few of the opinions advanced during the discussion of that matter. The Senate committee on Foreign Affairs consisted of five members, four of whom questioned the right to admit new States out of foreign territory, claiming it could only be done by treaty, the other member of the committee admitting that foreign territory could only be acquired by treaty, but contending that Texas could be admitted as a State.

Mr. Walker, of Mississippi, claiming to be the author of the idea to have Texas admitted under the clause of the Constitution authorizing Congress to admit new States, said—

That he was rejoiced that the great American question of the reannexation of Texas was being presented on all hands on the grounds on which it was placed originally by him [Mr. Walker] in his Texas letter of the 8th of January, 1844.

He [Mr. Walker] then proposed, more than a year since, to admit Texas as a State of the Union by the action of Congress under that clause of the Constitution which authorizes Congress to admit new States into the Union. That clause was not confined to our then existing territory, but was without limitation, and the framers of the Constitution had expressly refused to limit the general power contained in this clause to the territory then embraced within the Union. The general power was in express words, and no man had a right to interpolate restrictions, especially restrictions which the framers of the Constitution had rejected.

Mr. Buchanan, of Pennsylvania, the dissenting member of the Foreign Affairs Committee, advocating the resolution, said:

All the reasoning and ingenuity in the world could not abolish the plain language of the Constitution, which declared that new States might be admitted by Congress into the Union.

Mr. Henderson, of Mississippi, Mr. Benton, of Missouri, and other able advocates of the annexation of Texas urged the same arguments in support of the measure.

In the House of Representatives Mr. Yancey, of Alabama, supporting the resolution, advanced the same line of argument. On the other hand, the opposition, insisting that the power to admit new States was confined to territory already belonging to the United States, put forward many able advocates.

Mr. Morehead, of Kentucky, speaking for the Foreign Affairs Committee of the Senate, contended—

In the case now under consideration it was not proposed by the joint resolution before the Senate that Texas should be acquired according to what he considered the constitutional mode of proceeding, by the treaty-making power. The proposition is for Congress to admit her as a State. Now—

He asked—

when this Government was about to add a foreign domain to ours, was there any other mode of accomplishing that object except by the interposition of the treaty-making power, composed of the President of the United States in conjunction with the Senate? Was it constitutional to annex Texas by the treaty which was submitted to the Senate last session?

He believed there were few, if any, constitutional objections made. If, then, the power to annex foreign territory by treaty does appertain to the treaty-making power, he should like to see upon what ground it could be held that the Congress of the United States possesses concurrent legislative power upon this subject. If that which it is competent for the treaty-making power alone to accomplish, the majority of a quorum of both Houses of Congress could accomplish. The argument, he apprehended, would be this, that as a constitutional mode of proceeding we do not deny that foreign territory can be admitted into this Union by the treaty-making power. But there is another clause in the Constitution which gives Congress the power to admit new States into the Union. He proposed now to consider what was the character of that article and upon what conditions it rests. [Mr. Buchanan: That is the true ground.] His friend from Pennsylvania said that was the question, and to it he proposed to call particular attention.

Mr. Choate for three hours reviewed the whole question, bringing to bear his knowledge of the Constitution and its formation and the history of the country, clothed in redundant adjectives. He denied that the clause in the fourth article in the Constitution giving the power to Congress of admitting new States into the Union was given with the most remote idea of its being ever applied to anything but domestic territory. Said he:

No man could believe that by that provision it was intended to confer the tremendous power of admitting new States in any part of the world without limitation as to habits, customs, language, principles, or anything but the semblance of republicanism. Until it was found the treaty of last session had no chance of passing the Senate, no human being save one, no man, woman, or child in the Union or out of the Union, wise or foolish, drunk or sober, was ever heard to breathe one syllable about this power in the Constitution of admitting new States being applicable to the admission of foreign nations, governments, or states. It was a new and monstrous heresy on the Constitution, got up not from any well-founded faith in its orthodoxy, but for the mere purpose of carrying a measure by a bare majority of Congress that could not be carried by a two-thirds majority of the Senate in accordance with the treaty-making power.

Mr. Speaker, I will not further quote from this discussion. The language used by Mr. Choate certainly applies with peculiar force to the proposition now pending, and the entire debate upon both sides of that proposition shows conclusively that the advocates of this measure have no ground to stand upon so far as the annexation of Texas is concerned.

The gentleman from North Carolina [Mr. PEARSON] and the gentleman from Ohio [Mr. GROSVENOR] seek to aid their contentions in favor of this measure by the decision of Chief Justice Marshall. Let us see if they are sustained thereby:

The course—

Said Judge Marshall—

which the argument has taken will require that in deciding this question the court should take into view the relation in which Florida stands to the United States. The Constitution confers absolutely upon the Government the powers of making war and of making treaties; consequently that Government possesses the power of acquiring territory either by conquest or by treaty.

Thus it will be seen, Mr. Speaker, that Chief Justice Marshall not only fails to sustain these gentlemen, but bases the acquisition of territory, either by conquest or treaty, upon the war-making and treaty-making powers conferred by the Constitution upon the Government. Certainly, the treaty having failed to pass, no gentleman will contend that we are attempting to take Hawaii by conquest or by the power to admit States. They must therefore stand with the chairman of the Foreign Affairs Committee [Mr. HITT], who insists, in substance, that the National Government has the inherent right to acquire territory in this manner. The Constitution having pointed out the several ways in which territory may be lawfully acquired, I for one decline to accept this new doctrine by which territory can eventually come into partnership with the States and have equal rights and representation on the floor of Congress and elsewhere without first running the gantlet of every constitutional safeguard.

Mr. Speaker, I shall even venture to differ with those who declare this measure to be a military necessity. Even the array of expert testimony they bring to their support is not conclusive. A leading member of the bar once defined unreliable testimony as of three classes: "Ordinary liars, accomplished liars, and expert witnesses." [Laughter.] While I do not accede to this classification, I do know that great military and naval authority is not agreed at all times. It is also true that only witnesses in the matter were called who favored annexation. Even then, as stated by the gentleman from Missouri [Mr. CLARK], General Schofield, upon cross-examination, admitted that Pearl Harbor, now possessed by this country, was the only harbor that could be successfully fortified and defended. I will say in passing that we possess this harbor by treaty that can not be abrogated except by the consent of this Government. Again, we should bear in mind that, by professional instinct, Army and Navy officers are naturally predisposed toward that policy which would make this country a great military and naval power.

Mr. CLARK of Missouri. Will the gentleman allow me an interruption?

Mr. BALL. Yes; certainly.

Mr. CLARK of Missouri. I want to make one statement, and it is the gospel truth, that every one of these statements in favor of annexation was an ex parte statement, and I believe that any ordinary lawyer, just a plain, ordinary, average lawyer, can take every one of these men and on cross-examination make him swear to the same thing that General Schofield swore to, that that is the only harbor that can be fortified.

Mr. BALL. All right, put that in my speech. Now, against their judgment we have the safest of all guides—experience. For more than fifty years the Atlantic Ocean has bounded our eastern, the Gulf and Republic of Mexico our southern, the Pacific our western, and the British possessions our northern borders. During this period we have made marvelous strides in progress, the development of our resources, and increase of population. We have waged the greatest of all wars in our own borders, placing in hostile conflict two armies either of which could have whipped the combined legions of Napoleon or Wellington.

Since then we have nearly doubled our resources and population, and even now we are demonstrating to the world that the foreign power which breaks our peace must whip every man within our borders from Maine to Texas, from New York to California, before they can successfully give us battle. Why, then, extend our borders more than 2,000 miles in the Pacific Ocean? To do so will be a breach of public and national faith.

December 19, 1840, Mr. Webster announced that—

The Government of the Sandwich Islands ought to be respected; that no power ought to take possession of the islands, either as a conquest or for purposes of colonization.

President Tyler, two years afterwards, reiterated the same doctrine.

In 1843 Secretary of State Legaré notified our minister to England—

That we had no wish to acquire or plant colonies abroad, but would, if necessary, feel justified in using force to prevent their acquisition by one of the great powers of Europe.

Exhibit D

CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FIFTY-FIFTH CONGRESS, SECOND SESSION.

VOLUME XXXI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

No Senator would ever think of interrupting another under those conditions; but yet, strictly speaking, according to parliamentary rule, the Senator yielding the floor had lost it. No Senator can call for the regular order when a Senator is on the floor discussing any question in the Senate, because he is not required under the laws of the Senate to speak germanely to the subject under consideration, and he can not be interrupted unless he is speaking out of order, as suggested, or is committing some impropriety or some violation of parliamentary ethics or parliamentary rule; but the fact that he is speaking about something else than the bill under consideration does not entitle any Senator to call him to order. Every Senator is supposed to have judgment himself upon all such questions and to discuss whatever he thinks is proper. The great liberty of debate which here exists has been one of the things which has also made service in this body pleasant.

Mr. President, I only mention this for fear there will grow up a feeling here that a Senator who gets the floor and does not proceed to make a speech has any claim to the floor, or that he is under any obligation to go on and make a speech. He may decline to make a speech after having given notice that he intended to make it. It may embarrass others, who are not prepared to go on, and all that, and sometimes retard the business of the body; but that is one of the rights of a Senator. No one can say, "I insist now that the Senator from Georgia go on," if he does not wish to go on.

I have said this because I thought it was a good time to do so. If the Senator from Georgia had been himself pressing, I would not have said this at all.

I believe we can go through this debate in a Senatorial way. The question is one of a good deal of importance, about which some of us have a great deal of feeling. I myself have. I am so decidedly in favor of this joint resolution, and so thoroughly impressed that the interests of this country require its adoption, that I should be willing to vote right now, without a word of explanation or any defense of my vote, which I have not had an opportunity to make, except in executive session; and yet I would not deny, upon a great question like this, to every Senator who does not agree with me the right to present his views. There can be no such haste in coming to a conclusion in this case as to justify the American Senate in taking any unusual course and departing from the well-established and well-regulated rules of this Senate—not all of which are in a book, but rules which are well understood by members of this body who have served here for a good many years and which, I can say, are universally obeyed in the Senate.

One of the cardinal rules here has been that every Senator's convenience, even though it may lead to delay, shall be consulted. Of course if the request for delay is for the purpose of postponement, for the purpose of preventing a vote, then the Senate has the right to insist upon speedy and prompt action; but it has always been the custom since I have been a member of the Senate, when a Senator rose in his seat and said he was not prepared to go on, to give him time, especially when there is no constitutional limit as to the length of the session, as is the case now.

I should be delighted, Mr. President, to have a vote this week on this proposition; but I should not be willing to vote on this proposition this week if the members of the Senate who desire to discuss it have not had a fair opportunity to do so.

The PRESIDING OFFICER. The Chair will state that, under strict parliamentary law, he understands when a Senator yields the floor to another for a speech, of course the Senator originally having the floor loses his right to the floor. The custom, however, has grown up that when a Senator begins a long speech and yields for collateral matters, he retains the floor, and the Chair has simply respected that custom. The Senator from Washington [Mr. WILSON] was taken from the floor not by any order of the Chair, but by his own consent.

Mr. WHITE. Under duress, as I understand.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia [Mr. BACON].

Mr. WILSON. The Senator thought I was through. Perhaps I should have finished a little bit earlier, but it was no fault of the Chair or of anybody else that I lost the floor, and I do not care anything about it.

Mr. BACON. All this very pleasant episode was occasioned by an act of courtesy on my part, which I did not anticipate would consume so much time. I simply yielded to the Senator from Arkansas [Mr. JONES] in order to make the statement that he had not called for a quorum for the purpose of delay, and I thought that would be the end of it.

Mr. President, the Senator from Colorado [Mr. TELLER] says that he would be very glad to vote on this question to-day; that his mind is made up. The Senator from Colorado is one of the Senators whom I am anxious to speak to to-day, not because I believe I can change his mind or his opinion on the general merits of this question, but because I desire to ask him and all Senators, especially those who are lawyers, to consider the question whether or not they have the right, under their constitutional obligations, to vote for this resolution, however much they may favor the annexation of Hawaii.

Mr. TELLER. Will the Senator permit me to answer that now?

Mr. BACON. I beg that the Senator will hear me before he answers.

Mr. TELLER. I want to say that I will hear the Senator, but the Senator is not to understand that I have not myself considered this question very carefully. I will hear the Senator, of course.

Mr. BACON. Mr. President, of course I do not presume that the Senator from Colorado had not considered this question, but we are here for the purpose of interchanging views. I have great confidence in the Senator from Colorado, and am gratified by the fact that I seldom differ from him, and I shall be more than gratified if we can get together upon this question.

I assume that Senators will not vote for a resolution if they can be satisfied that it is unconstitutional. I assume that they will not vote for an unconstitutional resolution which directly impairs and strikes down one of the highest prerogatives of the Senate; and it is to that question that I propose to address myself to-day and upon which I am extremely anxious to have the hearing of Senators who favor the annexation of Hawaii.

The proposition which I had stated before the interruption was this: That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject-matter of a treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution. If Hawaii is to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure.

I trust, Mr. President, that the time has not come when a Senator can not appeal with confidence to his fellow-Senators in opposition to a measure on the ground that it is unconstitutional. It matters not how important it may be that Hawaii should be annexed, it matters not how valuable it may be, it will be too costly if its price is the violation of a great fundamental provision of the Constitution of the United States.

Mr. President, it is a painful fact that not only people at large, but officials are losing to some extent the reverence which they ought to have for constitutional obligations. It is a matter of a smile with some when you oppose a measure on the ground that it is unconstitutional, and I confess that I have been pained when I have heard, as I have heard in this Chamber, learned and distinguished Senators say that they would approve and applaud the action of the President of the United States if he would seize Hawaii and run up upon it the flag of the United States, and take possession of it as the property of the United States as a war measure.

I say I have been pained when I have heard that, as I have heard it in this Chamber from very learned and very distinguished Senators, and I have been more than gratified that the President of the United States has not suffered himself to be guided by such foolish and such unwise counsels. If he had done so, every lover of his country must have been grieved that such a blow had been stricken at the integrity of the Constitution.

Mr. President, it surprises me that I even have to mention such a proposition; but if the President of the United States can in time of war, or at any other time, without the action of Congress in the performance of its constitutional functions, take possession of the territory of a friendly power, proclaim it as the territory of the United States, run the flag of the United States up over it as the insignia of its power and its dominion—if he can do so in one case, he can do so in any.

If the President of the United States can do it in the case of Hawaii, he can with equal propriety and legality do it in the case of Jamaica, and I repeat that I am more than gratified, although my apprehensions were aroused by the source from which those intimations came, that the President of the United States has not seen proper to listen to their unwise counsels.

And yet, Mr. President, if my view of this question is correct, the President of the United States would have as much power to take possession of the Island of Hawaii by a proclamation as would the Congress of the United States have the power to gain possession of it by a joint resolution of the two Houses. The powers of the executive department and the legislative department are as distinctly divided the one from the other as are the powers of the judicial department and the legislative department.

There are two kinds of law which are recognized by the Constitution of the United States and which are provided for by the Constitution of the United States, and each of these kinds of law is termed in the Constitution of the United States the supreme law of the land. One class of these laws is statute law, and it is provided that statute law shall be enacted by Congress; that statute law shall be made by a majority vote of the House of Representatives and of the Senate, with the approval of the President, or

that it may be made, in case of the disapproval of the President, by the two-thirds vote of the House of Representatives and the two-thirds vote of the Senate, overriding his veto, and that law, when made, is declared by the Constitution of the United States to be the supreme law of the land. In the same way the Constitution of the United States declares that there are other laws which are also supreme, and those laws are made as treaties. The Constitution of the United States in the same section declares both of these as the supreme law of the land.

The Supreme Court of the United States in construing the question of supremacy has ruled that each is supreme. It has ruled that a treaty may be nullified by a statute and that a statute may be nullified by a treaty, and that where they come in conflict the question of the later is the one invoked to determine which shall prevail. As to those two classes of law, each one of them supreme, there is provided in the Constitution an entirely distinct method by which they may be enacted or made. I have stated the manner in which the statute law is made. Now, in an entirely different manner, the Constitution of the United States declares how a treaty, which is also a supreme law, shall be made. It declares that a treaty must be made by the President of the United States, by and with the advice and consent of two-thirds of the Senate present. I am not quoting literally, but stating it substantially.

I ask the attention of Senators to this most marked provision in the Constitution of the United States and the two distinct classes of law, each of them declared by the Constitution to be supreme, each of them declared by the Supreme Court of the United States in construing that provision to be equally supreme with the other, which are made and enacted in specific ways in the manner pointed out in the Constitution, one totally different from the other. Is that provision of the Constitution a vital principle? Does it mean anything? Is it possible that the power which is clothed by the Constitution with the authority to make one class of laws can make the other class of laws?

Is it possible that the power which is conferred upon the Congress of the United States, the lawmaking power, the Senate and the House, with the approval of the President, can be used to make that other supreme law which the Constitution says shall be made in a different way, to wit, by the President, with the advice and consent of the Senate? If it is possible for the House of Representatives and the Senate and the President, acting in the lawmaking capacity, and known generally in the Constitution as Congress, can make a treaty, and in so making it make it the supreme law of the land, then this joint resolution is constitutional. But if it be true that when the Constitution devolved upon the President and the Senate the power to make treaties it denied to the Congress of the United States the right to make treaties, then the joint resolution is necessarily unconstitutional, as I shall endeavor to show.

Mr. President, the Constitution gives to the President the power to appoint all officers of the United States by and with the advice and consent of the Senate. If Congress can by statute make a treaty, why may it not by a statute make an ambassador or a chief justice or a general of the Army?

Mr. President, there are two ways in which the provision in the Constitution conferring upon the President of the United States and the Senate the power to make treaties can be absolutely nullified. One is the manner I have suggested, by Congress openly and boldly assuming to make a treaty; and if constitutional restrictions are not to be respected, if no man is bound by the Constitution, if a Senator or a Representative, because forsooth he may be in the majority can effect his purpose by overriding the Constitution and disregarding it, then that is the simplest way to do it. There is still another way in which this provision in the Constitution can be nullified, and that is by undertaking to put into the form of a statute that which in reality is a treaty. Now, one method is just as effective as the other, and either method is as absolutely illegal as the other.

Before going further in that line of argument, in order that I may have the attention of Senators and that they may not think there is an answer which I do not recognize, I desire to say that I of course fully understand the argument which is made in reply that the State of Texas was admitted in this way. I can not stop to interrupt the thread of the argument at the present point to show that that reply is not a good one. Not to elaborate it further, I will merely state that it is the distinction between the authority of Congress to admit a State, to do which it is given the power in words in the Constitution, and the power to acquire foreign territory not for the purpose of making it a State, which, as I shall endeavor to show, is essentially and necessarily the subject-matter of treaty between two governments.

Mr. President, when the framers of the Constitution put the word "treaties" into the Constitution without any other defining words or without any limitation, is it to be supposed for a moment that they did not recognize the fact that the term "treaties" had a distinct, legitimate, necessary, well-understood meaning? Is it to be supposed that they for one moment contemplated that when the question came up whether a certain measure which involved a negotiation and agreement between this country and another should be accomplished in the way it provided, through a treaty by the President and the Senate, or whether it should be remitted to Congress, that the question of the form of the measure would control?

Is it to be supposed for a moment that they supposed that that which is essentially a treaty, and which they had provided should be made only by the President and the Senate, would be by any species of legislative legerdemain converted into the form of a statute, and another power or department of the Government, which had had distinct powers conferred upon it and which had been denied this power, would usurp it and that its usurpation would be recognized?

Mr. ELKINS. Will the Senator from Georgia allow me to interrupt him?

Mr. BACON. Certainly.

Mr. ELKINS. Does the Senator admit now that Congress can admit a State into the Union?

Mr. BACON. Undoubtedly.

Mr. ELKINS. And it admitted Texas?

Mr. BACON. Yes; but I will say to the Senator that I am coming to the distinct discussion of that branch of the case.

Mr. ELKINS. I merely want to put this question——

Mr. BACON. And I would be very glad if the Senator would pretermit the question until I reach that point, and I shall be very happy at that time to take it up. I am now discussing another line. I am coming to the question of the power to admit States, and that will be the time for the question.

Mr. ELKINS. Having it in mind now, I should like to ask why, if it can admit a State, it can not admit anything less than a State; something that is not a State?

Mr. BACON. I am coming to that, and would be very glad if the Senator would repeat his question if I do not answer it before I get through, because I do the Senator the justice to say that I believe if I can possibly satisfy him of the unconstitutionality of the joint resolution he will not vote for it, however much he may desire the annexation of Hawaii. It is true I am very much discouraged by the fact that the Senator said to me, in private conversation, when I asked him if he was bound by the Constitution, yes, as he interpreted it.

Mr. ELKINS. No; now tell the whole of it. I beg the Senator's pardon. I said as the Supreme Court of the United States interpreted it and as I interpreted it.

Mr. BACON. Very well.

Mr. ELKINS. And not as the Senator interpreted it.

Mr. TELLER. Will the Senator from Georgia allow me?

Mr. BACON. Let me answer the Senator from West Virginia first. If the Senator from West Virginia will stand to that proposition, I will promise to show him a decision of the Supreme Court of the United States which says that the United States Government has no right—I do not go so far as the Supreme Court go in this particular, and I am merely stating this for the benefit of the Senator from West Virginia—to annex territory which it does not intend to make into a State, and Senators themselves say they do not intend to make a State of Hawaii.

Mr. ELKINS. You can not state what will be the intention of the Government a hundred years from now?

Mr. BACON. I am not putting it on that ground at all. Now I yield to the Senator from Colorado.

Mr. TELLER. The position of the Senator from West Virginia is good Democratic doctrine, a doctrine which old Jackson pressed on the country with great force, that every Senator and every Representative could construe the Constitution as he understood it.

Mr. BACON. Of course.

Mr. TELLER. And it was his duty not to look to the Supreme Court of the United States, but to his own judgment and conscience in these matters.

Mr. BACON. I am perfectly satisfied if that shall be the rule. I was discouraged by the fact that the manner of the reply of the Senator from West Virginia indicated that he would not be controlled by what some of the more distinctive lawyer members of the Senate might consider to be the law. He was going to take it into his own hands.

But to return, I am coming to a discussion of the question, to which I ask the attention of Senators, as to what the framers of the Constitution meant when they said "treaties" and what they must necessarily have meant. I asked the question whether it was possible that the framers of the Constitution when they put the word "treaties" into the Constitution in this connection understood that it simply meant an agreement or a negotiation put in a certain form, and that if it were not put in that certain form, it could be refined away and the exercise of the function could be usurped by Congress which had been denied the right to make a treaty. I had asked that question when the Senator from West Virginia interrupted me.

Now, Mr. President, has the word "treaty" a definite, well-fixed meaning? Is a treaty only that which is put in the form of a treaty as we usually see it when submitted to the Senate on the part of the President, or does a treaty mean a certain thing regardless of the form? I say the latter. The distinction between a statute and a treaty does not depend on the form. A statute may be in various forms. It may be in the ordinary form of a statute or in the form of a joint resolution. One has the same effect as the other. A treaty depends for the fact that it is a treaty according to the substance of it and what it proposes to accomplish.

Now, a statute is this: A statute is a rule of conduct laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. A statute can not go outside the jurisdiction of the United States and be binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty.

A treaty is that which is binding upon the people of two countries by mutual agreement that it shall be binding upon the two countries. A treaty is binding on two countries because the authority in each country undertakes that it shall be binding in its particular country, and that is the essential element and feature of a treaty, that it is binding on two countries because the authority which makes it binding is the particular authority in each country, not having a general authority over both.

If it were practicable for a statute to be made obligatory upon the citizens of another country, there would be no need of a treaty. We could simply enact what we wanted, and the people in the other country would have to obey. But as we can not do it, we have to invoke the consent of the people or the authority in that other country that they will also be bound by the same law, and that makes a treaty.

Now, Mr. President, I repeat possibly, but I desire to state it in another shape, that the distinction between a treaty and a statute is this: The statute affects only the people within the jurisdiction of the authority by which it is enacted. There is no consent required on the part of those who are subject to such a statute. It is made obligatory upon them by the authority of those who enact it.

A treaty, on the other hand, is something which involves negotiation with another country. It requires the consent of the duly authorized department in this Government, and it also requires that they shall negotiate and obtain the consent of the power in the other Government. This is stated with very great clearness in a report made by the Senate Committee on Foreign Relations in 1844—I have forgotten the number of the Congress—when it had under consideration the Texas resolutions. I will read it. This is a definition of a treaty. I read from Senate Documents, volume 3, 1844 and 1845. It is broken up so that the pages can not be told, as the documents are bound together, but it is Document No. 79, page 5 thereof; not the page of the volume.

But let it be remembered——

And I ask the attention of Senators now to this definition of a treaty—

on the other hand, that although this treaty only acts for other powers and in the singular sphere of exterior concerns, within this sphere no other power has privilege to intrude; the domain is all its own; in a property exclusive. If the affair to be accomplished be exterior and require the intervention of compact to accomplish it, here with the treaty-making power is the office, and sole office, to accomplish it. No other power has privilege to touch.

I do not know whether or not I make my distinction clear, but the framers of the Constitution had in view certain actions by this Government when they set up a distinct and separate department of Government for the making of treaties and when they conferred upon that department exclusive power to make treaties; and I suggest and urge as the crucial feature in this consideration that the framers of the Constitution necessarily, when they said that the President should have the power to make treaties, with the consent of the Senate, meant to put within that department the power to conduct all negotiations between this country and another country, and to come to any agreement with that other country as to what should be a rule of conduct between them.

If that be true, necessarily everything which is of that nature, everything which can be that and nothing else, must be the subject-matter of a treaty. If not, as I have said before, the framers of the Constitution made a great mistake when they unnecessarily put into the Constitution this machinery by which the power was conferred upon the President of the United States, by and with the advice and consent of the Senate, to make treaties.

Mr. President, I said that it was within the power of Congress to nullify this provision of the Constitution in two ways, either by directly making a treaty with another foreign Government or by putting into the shape of a statute that which in reality is a treaty. Let me illustrate as to the latter, because that is what is attempted to be done here now. The attempt here is to make a treaty by statute. The treaty, as I understand it, which was proposed and negotiated by the President of the United States with the authority of Hawaii, and all the reports in connection with it have been made public, so that I can with propriety speak of them here.

A treaty was negotiated between the President of the United States and the Hawaiian Government. Why did the President of the United States and the Hawaiian Government negotiate a treaty for the annexation of those islands? I hope Senators who are considering this question and who propose to answer it will consider this particular feature of it. Why did the President of the United States negotiate with the Hawaiian Government by means of a treaty for the annexation of those islands except that the President of the United States and the authorities of the Hawaiian Islands recognized that it was the proper subject-matter of a treaty?

Why did the Senate of the United States, when the President submitted the treaty here, undertake to consider it and to give its consent to the treaty which had been negotiated between the President of the United States and the Hawaiian authorities? Why was it that it did not return it to the President and say "This is not the subject-matter of a treaty, and we should not be asked for our advice or consent?" Simply because of the fact that the Senate of the United States, without exception, regardless of what the opinion of any Senator might be on the merits, recognized that it was the proper subject-matter of a treaty.

Aside from this direct recognition it comes within the general definition of that which must be a treaty. It is to accomplish something which can not be accomplished by the unaided act of the United States. It is to accomplish something which requires not only the consent of the United States, but the consent of Hawaii, and therefore must be in its essence and in its character a treaty. And yet, Mr. President, as I have said, in the joint resolution now before the Senate there is an effort made to nullify this provision in the Constitution in the second of the methods which I suggested, to wit, in the method of putting in the form of a statute that which of necessity can be nothing else but the subject-matter of a treaty.

Mr. WHITE. If the Senator from Georgia will permit me, in line with the point he is making, it may be that the treaty was suggested because of the provision of the Hawaiian constitution, found in the thirty-second article of that instrument, which provides specifically for annexation to the United States by treaty, which treaty, of course, has never been made.

Mr. BACON. I understand that. I have no doubt that point will be fully brought out by the Senators who discuss the merits of the question.

What is it that the House of Representatives has done? And I say the House of Representatives, not in any spirit of criticism of it particularly, because the Senate, through its Foreign Relations Committee, had previously proposed the same thing. Here was the case of a treaty, which was not only recognized by both parties as a treaty and acted upon by both parties as a treaty, but which, in its essence, must of necessity be a treaty, which was practically abandoned in the Senate for the reason that in the manner and the method pointed out by the Constitution it could not be made law. The framers of the Constitution, in their wisdom, had provided that the President of the United States should make a treaty if two-thirds of the Senators present concurred in it.

Now, whether wise or unwise, that is the law. If only a majority concur, the treaty can not be made. Therefore the effect of the failure in the Senate to ratify that treaty was the same as the failure of an attempted passage of a statute law. The friends of annexation, seeing that it was impossible to make this treaty in the manner pointed out by the Constitution, attempted then to nullify the provision in the Constitution by putting that treaty in the form of a statute, and here we have embodied the provisions of the treaty in the joint resolution which comes to us from the House.

I will state the object I have in calling attention to this point. It is perfectly within the power of Congress—and when I speak of Congress in this discussion I mean the lawmaking power—if it has a majority in each House, if it can pursue the method legally which is sought to be pursued here, it is perfectly within the power of Congress not only to nullify and destroy that provision in the Federal Constitution, but to effect by statute any treaty that can not command a two-thirds vote in the Senate.

Mr. TELLER. I should like to ask the Senator if he thinks there is any treaty that we can not annul by a direct act of Congress?

Mr. BACON. I do not. I have so stated already. But I ask the learned Senator——

Mr. TELLER. Then the legislative power can not be inferior to the treaty-making power.

Exhibit “4”

Sir:

You will please take notice that a ..... *of which the within is a copy, was this day duly entered in the within-entitled action, in the office of the Clerk of the* .....

.....

Dated, N. Y., ..., *193*

Yours, etc.,

.....

U. S. Attorney,
Attorney for Defendant.

To

.....

Attorney for .....

Form No. 336

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

versus

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, deceased,

Defendants.

AMENDED COMPLAINT

LAMAR HARDY,

United States Attorney,
Attorney for Plaintiff.

~~*Due*~~ *Service of a copy of the within is hereby admitted.*

New York, April 2, *193*6

CADWALADER, WICKERSHAM & TAFT

Attorneys for defendants

U.S. DISTRICT COURT FILED APR 3 1936 S.D. OF N.Y.

Attorney for

GBS:GR*TL-c
4-8-36

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Plaintiff, -against- MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, deceased, Defendants	AMENDED COMPLAINT Law 63/274

The plaintiff, United States of America, by its attorney, LAMAR HARDY, United States Attorney for the Southern District of New York, for its complaint herein, alleges on information and belief:

I. The United States of America, hereinafter called the plaintiff, is a corporation sovereign and body politic.

II. Morgan Belmont and Eleanor R. Belmont, the executors of the last will and testament of August Belmont, deceased, hereinafter called the defendants, are residents of the State of New York and of the Southern District of New York.

III. Kompania Petrogradskago Metallicheskago Zavoda, sometimes styled in the German language "Petrograder Metal Fabrik" and sometimes styled in the English language "Petrograd Metal Works", hereinafter called the Metal Company, was prior to 1918 a corporation organized and existing under the laws of Russia with a fixed capital in excess of 1,000,000 rubles, which conducted a metallurgical and metal manufacturing business enterprise in Russia.

GBS:GR

IV. Prior to 1918 and up to the date of his death, on or about December 10, 1924, August Belmont was a general partner in a partnership conducting a private banking and investment business in the City of New York under the firm name and style of August Belmont & Co., hereinafter called the Belmont firm.

V. Prior to 1918, the Metal Company had on deposit with the Belmont firm certain sums of money which remained on deposit with the Belmont firm thereafter and the amount of such sums on deposit on December 10, 1924 was $25,438.48, for the repayment of which no demand had been made prior to that date. The defendants' testator was jointly liable together with the other partners of the Belmont firm for the repayment of these sums.

VI. In 1918 or thereabouts, duly enacted laws, decrees, enactments and orders of the Russian State, including the decree of June 28, 1918, on the nationalization of the largest industrial enterprises, a certified photostatic copy of which is annexed hereto, marked Exhibit 1 and made a part hereof as if set forth in full herein, and a certified copy of a translation of which is annexed hereto, marked Exhibit 2 and made a part hereof as if set forth in full herein, dissolved, terminated and liquidated certain Russian corporations and organizations and nationalized and appropriated the assets of such corporations.

VII. The Metal Company which prior to 1918,as hereinbefore alleged, was a corporation organized and existing under the laws of the State of Russia, with a fixed capital in excess of 1,000,000 rubles, by said duly enacted laws, decrees, enactments and orders of the Russian state, including the said decree of June 28, 1918

alleged in paragraph VI of this amended complaint, was dissolved, terminated and liquidated, and all of its property and assets of every kind and wherever situated, including the aforesaid cash deposit account with the Belmont firm in New York were nationalized and appropriated.

VIII. As a result of said duly enacted laws, decrees, enactments, and orders of the Russian State, the cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm became the property of the Russian State, and remained the property of the Russian State at all times up to November 16, 1933.

IX. After the death of the aforesaid August Belmont, and on or about December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to Morgan Belmont and Eleanor R. Belmont, the defendants herein, as executors of the last will and testament of August Belmont, deceased. Said defendants duly entered upon the performance of their duties as such executors, and have continued in the performance of such duties up to the present time.

X. On or about November 16, 1933, by an executive agreement contained in an exchange of diplomatic correspondence, a copy of which is annexed hereto as Exhibit 3 and made a part hereof as if set forth in full herein, the Union of Soviet Socialist Republics released and assigned to the plaintiff herein all amounts admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals. The said executive agreement released and assigned to the plaintiff the aforementioned cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm and since November 16, 1933 plaintiff has been and now is the sole and exclusive owner entitled to

immediate possession of the aforesaid cash deposit account. A letter from the Attorney General of the United States, dated September 17, 1934, a reply thereto by the Secretary of State, and a letter from the Acting Secretary of State to the Attorney General, dated October 27, 1934, all of which are annexed as Exhibits 4, 5 and 6, and made a part hereof as if set forth in full herein, disclose the purpose of the executive agreement and assignment of November 16, 1933 to assign and release to the plaintiff all amounts and assets in the United States formerly owned by the Union of Soviet Socialist Republics, including the aforesaid cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm.

XI. On or about June 18, 1935, the plaintiff demanded from the defendants the payment to the plaintiff of the sum of $25,438.48, formerly standing to the credit of the Metal Company with the Belmont firm. The defendants have failed to comply with this demand up to the present time.

WHEREFORE, the plaintiff demands judgment against the defendants herein for the sum of $25,438.48, with interest at 6% from June 18, 1935 to the date of judgment, together with the costs and disbursements of this action.

Lamar Hardy

LAMAR HARDY,
United States Attorney,
Southern District of New York,
Attorney for Plaintiff,
Office and Post Office Address:
United States Court House,
Foley Square,
Borough of Manhattan,
City of New York.

LSc.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

EDWARD J. ENNIS, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true; that the reason this verification is made by him and not by the plaintiff is that the plaintiff is a corporation sovereign; that the sources of his information and the grounds of his belief are records of this case on file in the office of the United States Attorney for the Southern District of New York.

Sworn to before me this
31st day of March, 1936.

A Chamberlain

Edward J. Ennis

Edward J. Ennis

EJE:gd c.
3-28-36

EXHIBIT 3

(Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

Washington,
November 16, 1933.

My dear Mr. President:

Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs
Union of Soviet Socialist Republics

Mr. Franklin D. Roosevelt,
President of the United States of America,
The White House.

EXHIBIT 3 Annexed to Complaint

EJE-y-c
3-28-36

(copied from photostat certified by Department of State, on file in office of the United States Attorney).

THE WHITE HOUSE
Washington

November 16, 1933.

My dear Mr. Litvinov:

I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics."

EXHIBIT 3 Annexed to Complaint.

Exhibit “5”

81st Congress, 2d Session - - - - - - - - - - House Document No.

Foreign Relations of the United States

Diplomatic Papers

The Soviet Union

1933–1939

United States
Government Printing Office
Washington : 1952

countries, only in the case of business and production secrets and in the case of the employment of forbidden methods (bribery, theft, fraud, etc.) to obtain such information. The category of business and production secrets naturally includes the official economic plans, in so far as they have not been made public, but not individual reports concerning the production conditions and the general conditions of individual enterprises.

"The Union of Soviet Socialist Republics has also no reason to complicate or hinder the critical examination of its economic organization. It naturally follows from this that every one has the right to talk about economic matters or to receive information about such matters in the Union, in so far as the information for which he has asked or which has been imparted to him is not such as may not, on the basis of special regulations issued by responsible officials or by the appropriate state enterprises, be made known to outsiders. (This principle applies primarily to information concerning economic trends and tendencies.)"

711.61/343½

The Soviet Commissar for Foreign Affairs (Litvinov) to President Roosevelt

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

(*a*) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Re-

publics or its nationals may have had or may claim to have an interest; or,

(*b*) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am [etc.] MAXIM LITVINOFF

711.61/343⅝

President Roosevelt to the Soviet Commissar for Foreign Affairs (Litvinov)

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

[Here follows quotation of statement made by Mr. Litvinov in his note printed *supra*.]

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am [etc.] FRANKLIN D. ROOSEVELT

711.61/343⅞

The Soviet Commissar for Foreign Affairs (Litvinov) to President Roosevelt

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: I have the honor to inform you that, following our conversations and following my examination of certain documents of the years 1918 to 1921 relating to the attitude of the American Government toward the expedition into Siberia, the operations there of foreign military forces and the inviolability of the territory of the Union of Soviet Socialist Republics, the Government of the Union of Soviet Socialist Republics agrees that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

I am [etc.] MAXIM LITVINOFF

Exhibit “2”

106TH CONGRESS
2d Session

COMMITTEE PRINT

S. PRT.
106–71

TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE

A S T U D Y

PREPARED FOR THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

BY THE

CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS

JANUARY 2001

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While the President's authority to conclude such agreements seems well-established, the constitutional doctrine underlying his power is seldom detailed by legal commentators or by the courts. It has been suggested that sufficient authority may be found in the President's duty under Article II, Section 3, of the Constitution to "take care that the laws [i.e., treaty law] be faithfully executed."[118] If the making of such agreements is indeed sustainable on this ground, then the instruments technically would seem more properly characterized as Presidential or sole executive agreements in view of the reliance upon one of the Executive's independent powers under Article II of the Constitution.

On the other hand, an alternate legal basis is suggested by *Wilson* v. *Girard*,[119] where the Supreme Court seemed to find sufficient authorization in the Senate's consent to the underlying treaty. The Court's decision was predicated on the following factual chronology. Pursuant to a 1951 bilateral security treaty,[120] Japan and the United States signed an administrative agreement[121] which became effective on the same date as the security treaty and which was considered by the Senate before consenting to the treaty. The administrative agreement provided that once a NATO Status of Forces Agreement concerning criminal jurisdiction came into effect, the United States and Japan would conclude an agreement with provisions corresponding to those of the NATO Arrangements. Accordingly, subsequent to the entry into force of the NATO Agreement,[122] the United States and Japan effected a protocol agreement[123] containing provisions at issue in the case at bar. In sustaining both the administrative agreement and the protocol agreement, the Court stated that:

> In the light of the Senate's ratification of the Security Treaty after consideration of the Administrative Agreement, which had already been signed, and its subsequent ratification of the NATO Agreement, with knowledge of the commitment to Japan under Administrative Agreement, we are satisfied that the approval of Article III of the Security Treaty authorized the making of the Administrative Agreement and the subsequent Protocol embodying the NATO Agreement provisions governing jurisdiction to try criminal offenses.[124]

PRESIDENTIAL OR SOLE EXECUTIVE AGREEMENTS

Agreements concluded exclusively pursuant to the President's independent authority under Article II of the Constitution may be denominated Presidential or sole executive agreements. Unlike congressional-executive agreements or agreements pursuant to

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porting authority for 1971 agreement with Portugal under which the United States agreed to provide some $435 million in credits and assistance to Portugal in exchange for the right to station American forces at Lajes Airbase in the Azores).

[118] Henkin, pp. 219–220.

[119] 354 U.S. 524 (1957).

[120] Security Treaty Between the United States and Japan, Sept. 8, 1951, 3 U.S.T. 3329, TIAS 2491.

[121] Administrative Agreement under the United States-Japan Security Treaty, Feb. 28, 1952, 3 U.S.T. 3341, TIAS 2492.

[122] Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, TIAS 2846.

[123] Protocol Amending the Administrative Agreement under the United States-Japan Security Treaty, Sept. 29, 1953, 4 U.S.T. 1846, TIAS 2848.

[124] 354 U.S. at 528–29.

treaties, Presidential agreements lack an underlying legal basis in the form of a statute or treaty.

Numerous Presidential agreements have been concluded over the years on the basis of the President's independent constitutional authority. Agreements of this type deal with a variety of subjects and reflect varying degrees of formality. Many Presidential agreements, of course, pertain to relatively minor matters and are the subject of little concern. Other agreements, however, have provoked substantial interbranch controversy, notably between the Executive and the Senate.

Some idea of both the modern scope and contentious nature of Presidential agreements may be gained by noting that such agreements were responsible for the open door policy toward China at the beginning of the 20th century,[125] the effective acknowledgment of Japan's political hegemony in the Far East pursuant to the Taft-Katsura Agreement of 1905 and the Lansing-Ishii Agreement of 1917,[126] American recognition of the Soviet Union in the Litvinov Agreement of 1933,[127] the Destroyers-for-Bases Exchange with Great Britain prior to American entry into World War II,[128] the Yalta Agreement of 1945, a secret portion of which made far-reaching concessions to the Soviet Union to gain Russia's entry into the war against Japan,[129] the 1973 Vietnam Peace Agreement,[130] and, more recently, the Iranian Hostage Agreement of 1981.[131]

As previously indicated, legal authority supporting the conclusion of Presidential agreements may be found in the various foreign affairs powers of the President under Article II of the Constitution.

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[125] The open door policy in China as initiated during the administration of President McKinley in the form of notes from Secretary of State John Hay to the Governments of France, Germany, Great Britain, Italy, Japan, and Russia. The text of the Hay notes may be found in Malloy, William. Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers, v. 1, 1910, pp. 244–260 (hereafter cited as Malloy). Concerning the significance of these agreements, see McClure, p. 98, and Bemis, Samuel Flagg. A Diplomatic History of the United States. 1965, pp. 486 and 504 (hereafter cited as Bemis).

[126] The Taft-Katsura Agreement of 1905 may be found in Dennett, Tyler. Roosevelt and the Russo-Japanese War. 1925, pp. 112–114. The Lansing-Ishii Agreement of 1917 may be found in Malloy, v. 3, pp. 2720–2722. Concerning the latter agreement, see Bemis, pp. 690–693.

[127] The correspondence establishing the agreement may be found in U.S. Department of State, Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, Eastern European Series No. 1 (1933) [No. 528]. Concerning President Roosevelt's failure to give the Senate formal notification of the agreement, see the remarks of Senator Vandenberg in Congressional Record, January 11, 1934, pp. 460–461.

[128] See the Agreement Respecting Naval and Air Bases (Hull-Lothian Agreement), United States-Great Britain, Sept. 2, 1940, 54 Stat. 2405, and the Opinion of Attorney General Robert Jackson supporting the constitutionality of the arrangement, 39 Op. Atty. Gen. 484 (1940). See also Wright, Q. The Transfer of Destroyers to Great Britain. American Journal of International Law, v. 34, 1940, p. 680; Borchard, E. The Attorney General's Opinion on the Exchange of Destroyers for Naval Bases. Id., p. 690; and Bemis, p. 858.

[129] For the text of the Yalta Agreement, see 59 Stat. 1823. Seven years after the Yalta Conference, the agreement was still being denounced in the Senate as "shameful," "infamous," and a usurpation of power by the President. Congressional Record, February 7, 1952, p. 900 (remarks of Senator Ives). See also Bemis, p. 904. Although there were statements made by President Roosevelt and Secretary of State James Byrnes which seemed to imply that Senate consent to the agreement would be necessary, the treaty mode was not utilized. In this connection, see Pan, Legal Aspects of the Yalta Agreement. American Journal of International Law, v. 46, 1952, p. 40, and Briggs, The Leaders' Agreement at Yalta. American Journal of International Law, v. 40, 1946, p. 380.

[130] See the Agreement on Ending the War and Restoring Peace in Vietnam, January 27, 1973, 24 U.S.T. 1, TIAS 7542, and the supporting case offered by the State Department in Rovine, Arthur. Digest of United States Practice in International Law 1973. 1974, p. 188.

[131] See the Declarations of the Government of the Democratic and Popular Republic of Algeria Concerning Commitments and Settlement of Claims by the United States and Iran with Respect to Resolution of the Crisis Arising Out of the Detention of 52 United States Nationals in Iran, with Undertakings and Escrow Agreement, Jan. 19, 1981, TIAS ____, Department of State Bulletin, v. 81, February 1981, p. 1.

In a given instance, a specific agreement may be supportable on the basis of one or more of these independent executive powers.

One possible basis for sole executive agreements seem to lie in the President's general "executive power" under Article II, Section 1, of the Constitution. Early judicial recognition of this power in the context of Presidential agreements, and perhaps the earliest judicial enforcement of this mode of agreement-making as well, was accorded by the Supreme Court of the Territory of Washington in *Watts* v. *United States*.[132] The agreement at issue was concluded between the United States and Great Britain in 1859 and provided for the joint occupation of San Juan Island pending a final adjustment of the international boundary by the parties.[133] The court stated that "[t]he power to make and enforce such a temporary convention respecting its own territory is a necessary incident to every national government, and adheres where the executive power is vested." [134]

The President's executive power was later acknowledged in broad terms in *United States* v. *Curtiss-Wright Export Corporation* [135] where the U.S. Supreme Court referred to the "very delicate, plenary, and exclusive power of the President as the sole organ of the federal government in the field of international relations." [136] Although no agreement was at issue in *Curtiss-Wright*, the quoted language was subsequently applied by the Court in *United States* v. *Belmont* [137] to validate the Litvinov Agreement of 1993, supra, wherein the parties settled mutually outstanding claims incident to formal American recognition of the Soviet Union. Concerning this agreement, the Court declared that:

> *** [I]n respect of what was done here, the Executive had authority to speak as the sole organ of the government. The assignment and the agreements in connection therewith did not as in the case of treaties, as that term is used in the treaty-making clause of the Constitution (Art. II, § 2), require the advice and consent of the Senate.[138]

Similarly, in *United States* v. *Pink*,[139] the Court again approved the Litvinov Agreement on the ground that "[p]ower to remove such obstacles to full recognition as settlement of claims *** certainly is a modest implied power of the President who is the 'sole organ of the federal government in the field of international relations.' " [140] More recently, in *Dames & Moore* v. *Regan*,[141] the Court relied upon, inter alia, the *Pink* case to sustain President Carter's suspension of claims pending in American courts against Iran as

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[132] 1 Wash. Terr. 288 (1870).
[133] Joint Occupation of San Juan Island, Exchanges of Notes of Oct. 25 and 29 and Nov. 2, 3, 5, 7, and 9, 1859, and Mar. 20 and 23, 1860, reprinted in Bevans, Charles. Treaties and Other International Agreements of the United States of America 1776–1949, v. 12, 1974, p. 123 (hereafter cited as Bevans, Treaties).
[134] 1 Wash. Terr. at 294. As the American correspondence establishing the agreement for the joint occupation of the island was conducted by military officials, the agreement may owe much for its authority to the Commander in Chief Power of the Executive (Article II Section 2 Clause 1). The *Watts* case is further discussed in the text accompanying note 160 infra.
[135] 299 U.S. 304 (1936).
[136] Ibid. at 320.
[137] 301 U.S. 324 (1937).
[138] Ibid. at 330.
[139] 315 U.S. 203 (1942).
[140] Ibid. at 229, citing *Curtiss-Wright*, 299 U.S. at 320.
[141] 453 U.S. 654 (1981).

required by the Hostage Release Agreement of 1981, supra, and, more directly, by Executive order.[142] In light of *Pink*, the Court indicated that "prior cases *** have recognized that the President does have some measure of power to enter into executive agreements without obtaining the advice and consent of the Senate." [143] Moreover, the Court's decision was heavily influenced by a finding the general tenor of existing statutes reflected Congress' acceptance of a broad scope for independent executive action in the area of international claims settlement agreements.[144]

A second Article II power potentially available to the President for purposes for concluding sole executive agreements appears to lie in Article II, Section 2, Clause 1, of the Constitution which provides that the President shall be "Commander-in-Chief of the Army and Navy." Cautious acceptance of the President's power to conclude agreements pursuant to this power is reflected in dictum of the Supreme Court in *Tucker* v. *Alexandroff*[145] where the Court, after noting previous instances in which the Executive unilaterally had granted permission for foreign troops to enter the United States, declared that "[w]hile no act of Congress authorized the Executive Department to permit the introduction of foreign troops, the power to give such permission without legislative assent was probably assumed to exist from the authority of the President as commander in chief of the military and naval forces of the United States." [146]

The treaty clause of the Constitution (Article II, Section 2, Clause 2), in empowering the President to make treaties with the consent of the Senate, may itself be viewed as supporting authority for some types of sole executive agreements. The President's power under this clause, together with his constitutional role as sole international negotiator for the United States[147] suggest the existence of ancillary authority to make agreements necessary for the conclusion of treaties. Intermediate stages of negotiations or temporary measures pending conclusion of a treaty may, for example, be reflected in protocols or modus vivendi.[148] Although there appear to be no cases explicitly recognizing the treaty clause as authority for sole executive agreements, the Court's opinion in *Bel-*

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[142] Executive Order No. 12294, 46 Fed. Reg. 14111 (1981).

[143] 453 U.S. at 682.

[144] The Court found that related statutes, though not authorizing the President's action, might be viewed as inviting independent Presidential measures in a situation such as the one at issue "at least *** where there is no contrary indication of legislative intent and when, as here, there is a history of congressional acquiescence of the sort engaged in by the President," namely, claims settlement by executive agreement. Ibid. at 677–682. In *Barquero* v. *United States*, 18 F. 3d 1311 (5th Cir. 1994), *Dames & Moore* criteria were used by a Federal Circuit Court of Appeals to find an alternative constitutional basis for the President's entry into tax information exchange agreements with countries that were not "beneficiary countries" under the Caribbean Basin Economic Recovery Act. The court primarily held, however, that the agreements were authorized under the 1986 Tax Reform Act.

[145] 183 U.S. 424 (1902).

[146] Ibid. at 435. Four dissenters felt that such exceptions from a nation's territorial jurisdiction must rest on either a treaty or a statute, but noted that it was not necessary, in this case, to consider the full extent of the President's powers in this regard. Ibid. at 456 and 459. Wright states, however, that "in spite of this dissent the power has been exercised by the President on many occasions. ***" Wright, Q. The Control of American Foreign Relations. 1922, p. 242 (hereafter cited as Wright, Control of Foreign Relations). See also Moore, John Bassett, A Digest of International Law, v. II, 1906, p. 389.

[147] The Supreme Court indicated in the *Curtiss-Wright* case that the "[President] alone negotiates. Into the field of negotiations the Senate cannot intrude; and Congress itself is powerless to invade it.": 299 U.S. at 319.

[148] Constitution—Analysis and Interpretation, p. 500.

mont seems suggestive in acknowledging that there are many international compacts not always requiring Senate consent "of which a protocol [and] a modus vivendi are illustrations."[149]

A fourth power of the President under Article II which is relevant to the conclusion of sole executive agreements lies in his authority to "receive Ambassadors and other public Ministers" (Article II, Section 3). To the extent that the receive clause is viewed as supporting the President's authority to "recognize" foreign governments,[150] it is arguable that sole executive agreements may be concluded incident to such recognition. Although the *Belmont* and *Pink* cases appear to sustain the Litvinov Agreement principally on the basis of the President's general foreign affairs powers as Chief Executive or "sole organ" of the government in the field of international relations, the Court also seemed to emphasize that the agreement accorded American "recognition" to the Soviet Union. Thus, in *Belmont* the Court stated that:

> We take judicial notice of the fact that coincident with the assignment [of Soviet claims against American nationals to the United States government], the President recognized the Soviet Government, and normal diplomatic relations were established between that government and the government of the United States, followed by an exchange of ambassadors *** The recognition, establishment of diplomatic relations, the assignment, and agreements with respect thereto, were all parts of one transaction, resulting in an international compact between the two governments. That the negotiations, acceptance of the assignment and agreements and understandings in respect thereof were within the competence of the President may not be doubted *** [I]n respect of what was done here, the Executive had authority to speak as the sole organ of [the] government.[151]

Similarly, in *Pink* the Court declared that:

> "What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government" *** That authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition *** Recognition is not always absolute; it is sometimes conditional *** Power to remove such obstacles to full recognition as settlement of claims of our nationals *** Unless such a power exists, the power of recognition might be thwarted or seriously impaired. No such obstacles can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of

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[149] 301 U.S. at 330–331.

[150] See *Goldwater* v. *Carter*, 617 F. 2d 697, 707–708 (D.C. Cir. 1979), *jud. vac. and rem. with directions to dismiss complaint*, 444 U.S. 996 (1979). Professor Henkin observes that "[r]ecognition is indisputably the President's sole responsibility, and for many it is an 'enumerated' power implied in the President's express authority to appoint and receive ambassadors." Henkin 1996, p. 220. See also Wright, Control of Foreign Relations, p. 133; Mathews, pp. 365–366; and McDougal and Lans, pp. 247–248.

[151] 301 U.S. at 330.

> the powers and responsibilities of the president in the conduct of foreign affairs *** is to be drastically revised.[152]

A fifth source of Presidential power under Article II possibly supporting the conclusion of sole executive agreements is the President's duty to "take care that the laws be faithfully executed" (Article II, Section 3). Although there appear to be no cases holding that the take care clause is specific authority for such agreements, legal commentators have asserted that the clause sanctions the conclusion of agreements in implementation of treaties.[153] Moreover, it was early opined by Attorney General Wirt in 1822 that the President's duty under this constitutional provision extends not only to the Constitution, statutes, and treaties of the United States but also to "those general laws of nations which govern the intercourse between the United States and foreign nations."[154] This view appears to have been accepted subsequently by the Supreme Court in *In re Neagle*,[155] where it was suggested in dictum that the President's responsibility under the clause includes the enforcement of "rights, duties, and obligations growing out of *** our international relations ***"[156] Accordingly, it has been argued that the clause "sanctions agreements which are necessary to fulfill [nontreaty] international obligations of the United States."[157]

Sole executive agreements validly concluded pursuant to one or more of the President's independent powers under Article II of the Constitution may be accorded status as Supreme Law of the Land for purposes of superseding any conflicting provisions of state law. As explained by the Supreme Court in *Belmont*:

> Plainly, the external powers of the United States are to be exercised without regard to the state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning *** And while this rule in respect of treaties is established by the express language of cl. 2, Art. VI, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states.[158]

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[152] 315 U.S. at 229–230. See also *Dole* v. *Carter*, 444 F. Supp. 1065 (D. Kan. 1977), *motion for injunction pending appeal denied*, 569 F. 2d 1108 (10th Cir. 1977), where the district court relied on the President's recognition power and his general "sole organ" executive authority to validate a Presidential agreement transferring Hungarian coronation regalia to the Republic of Hungary. On appeal, however, the Court of Appeals "decline[d] to enter into any controversy relating to distinctions which may be drawn between executive agreements and treaties" and adjudged the issue a nonjusticiable political question.

[153] See McDougal and Lans, p. 248, and Mathews, p. 367. See also Henkin 1996, pp. 219–220.

[154] 1 Op. Atty. Gen. 566, 570 (1822).

[155] 135 U.S. 1 (1890).

[156] Ibid. at 64.

[157] McDougal and Lans, p. 248. McDougal and Lans state that the "take care" clause provides an alternatie source of authority for the Boxer Indemnity Protocol of 1901 following cessation of the Boxer Rebellion in China. Ibid., p. 248, n. 150. The text of the protocol may be found in Malloy, Treaties, v. 2, p. 2006. Concerning the use of the "take care" clause as authority for executive implementation of international law, Professor Henkin notes that— *** Writers have not distinguished between (a) authority to carry out the obligations of the United States under treaty or customary law (which can plausibly be found in the 'take care' clause); (b) authority to exercise rights reserved to the United States by international law or given it by treaty; and (c) authority to compel other states to carry out their international obligations to the United States. Henkin 1996, p. 347, n. 54.

[158] 301 U.S. at 331. See also *Pink*, 315 U.S. at 230–234.

However, notwithstanding that treaties and Federal statutes are treated equally by the Constitution with legal primacy accorded the measure which is later in time,[159] the courts have been reluctant to enforce Presidential agreements in the face of prior congressional enactments. Judicial uncertainty was early evidenced in *Watts* v. *United States*, supra, where the Supreme Court of the Territory of Washington, after affirming on the basis of the President's "executive power" the validity of an agreement with Great Britain providing for the joint occupation of San Juan Island, tentatively enforced the agreement against a prior Federal law defining the government of the territory. According to the court:

> Such conventions are not treaties within the meaning of the Constitution, and, as treaties supreme law of the land, conclusive on the court, but they are provisional arrangements, rendered necessary by national differences involving the faith of the nation and entitled to the respect of the courts. They are not a casting of the national will into the firm and permanent condition of law, and yet in some sort they are for the occasion an expression of the will of the people through their political organ, touching the matters affected; and to avoid unhappy collision between the political and judicial branches of the government, both which are in theory inseparably all one, such an expression to a reasonable limit should be followed by the courts and not opposed, though extending to the temporary restraint or modification of the operation of existing statutes. Just as here, we think, this particular convention respecting San Juan should be allowed to modify for the time being the operation of the organic act of this Territory (Washington) so far forth as to exclude to the extent demanded by the political branch of the government of the United States, in the interest of peace, all territorial interference for the government of that island.[160]

Decisions by lower Federal courts of more recent date, however, have voided sole executive agreements which were incompatible with pre-existing Federal laws. Thus, in *United States* v. *Guy W. Capps, Inc.*,[161] a U.S. Circuit Court of Appeals refused to enforce a Presidential agreement concerning the importation of Canadian potatoes into the United States inasmuch as the agreement contravened the requirements of the Agricultural Act of 1948.[162] According to the court, "* * * whatever the power of the executive with respect to making executive trade agreements regulating foreign commerce in the absence of action by Congress, it is clear that the executive may not through entering into such an agreement avoid complying with a regulation prescribed by Congress."[163] The court's rationale for this conclusion was grounded upon Congress' expressly delegated authority under Article I, Section 8, Clause 3, of the Constitution to regulate foreign commerce (as reflected in the statute in the present case) and upon the following statement

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[159] *Whitney* v. *Robertson*, 124 U.S. 190 (1888).

[160] 1 Wash. Terr. at 294. Elsewhere the court "presumed" that Congress had been "fully apprised" of the situation by the President and noted tacit congressional acquiescence for a long term of years. Ibid., p. 293.

[161] 204 F. 2d 655 (4th Cir. 1953), aff'd on other grounds, 348 U.S. 296 (1955).

[162] Agricultural Act of 1948, § 3, 62 Stat. 1247, 1248–1250.

[163] 204 F. 2d at 659–660.

from Justice Jackson's frequently quoted concurring opinion in *Youngstown Sheet & Tube Co.* v. *Sawyer*:[164]

> When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.[165]

Similar holdings have occurred in subsequent cases on the authority of *Guy Capps*. In *Seery* v. *United States*,[166] for example, the U.S. Court of Claims denied enforcement of a Presidential agreement settling post-World War II claims with Austria[167] in the face of prior Federal law authorizing suit against the United States on constitutional claims.[168] The court declared that:

> *** It would indeed be incongruous if the Executive Department alone, without even the limited participation by Congress which is present when a treaty is ratified, could not only nullify the Act of Congress consenting to suit on Constitutional claims, but, by nullifying that Act of Congress, destroy the constitutional right of a citizen. In *United States* v. *Guy W. Capps* *** the court held that an executive agreement which conflicted with an Act of Congress was invalid.[169]

Reference may also be made to *Swearingen* v. *United States*[170] where a Federal District Court treated the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977[171] as a sole executive agreement, and, as such, void for purposes of conferring an income tax exemption on American employees of the Panama Canal Commission in derogation of Section 61(a) of the Internal Revenue Code.[172] The rule of the *Guy Capps* case is also reflected in the Department of State's Circular 175 procedure governing the making of international agreements,[173] as well as in the American Law Institute's current Restatement (Third) of the Foreign Relations Law of the United States.[174]

Notwithstanding that the rule of the *Guy Capps* case appears to enjoy general acceptance, contrary arguments have been advanced by other authorities, including the just cited Restatement (Third).[175] The latter thus states that:

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[164] 343 U.S. 579 (1952).
[165] Ibid. at 659, quoting Justice Jackson's concurring opinion in *Youngstown*, 343 U.S. at 637–638.
[166] 127 F. Supp. 601 (Ct. Cl. 1955).
[167] Agreement Respecting the Settlement of Certain War Accounts and Claims, United States-Austria, June 21, 1947, 61 Stat. 4168.
[168] 28 U.S.C. §1491.
[169] 127 F. Supp. at 607.
[170] 565 F. Supp. 1019 (D. Colo. 1983).
[171] Agreement in Implementation of Article III of the Panama Canal Treaty, with Annexes, Agreed Minute and Related Notes, signed Sept. 7, 1977, 33 U.S.T. 141, TIAS 10031.
[172] 26 U.S.C. §61(a). Compare *Corliss* v. *United States*, 567 F. Supp. 162 (1983), holding, on the basis of the legislative history of the agreement in the U.S. Senate, that the agreement was not intended to exempt American employees from Federal income tax liability.
[173] 11 For. Aff. Man. §721.2b(3).
[174] Rest. 3d, §115, Reporters' Note 5.
[175] Ibid.

> *** it has been argued that a sole executive agreement within the President's constitutional authority is federal law, and United States jurisprudence has not known federal law of different constitutional status. "All Constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature." The Federalist No. 64 (Jay), cited in *United States* v. *Pink*, supra, 315 U.S. at 230 *** See Henkin, Foreign Affairs and the Constitution 186, 432–33 (1972). Of course, even if a sole executive agreement were held to supersede a statute, Congress could reenact the statute and thereby supersede the intervening executive agreement as domestic law.[176]

The precedential effect of the *Guy Capps* rule may also be somewhat eroded by judicial dicta suggesting that the circuit court's opinion in the case was "neutralized" by the Supreme Court's affirmance on other grounds[177] and that the question as to the effect of a Presidential agreement upon a prior conflicting act of Congress has "apparently not yet been completely settled."[178] Moreover, in the two cases which have specifically adhered to the *Guy Capps* rule—*Seery* and *Swearingen*—the courts, respectively, were either strongly influenced by Bill of Rights considerations or failed to consider the possibility that the agreement in issue may have effectively received the sanction of the Senate as an agreement pursuant to an existing treaty. It appears, therefore, that the law on this point may yet be in the course of further development.

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[176] Ibid.

[177] *South Puerto Rico Sugar Co. Trading Corp.* v. *United States*, 334 F. 2d 622, 634, n. 16 (Ct. Cl. 1964).

[178] *American Bitumils & Asphalt Co.* v. *United States*, 146 F. Supp. 703, 708 (Ct. Cl. 1956), citing both *Guy Caps* and *Seery*.

Exhibit “3”

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.C.R. NO. 107

HOUSE CONCURRENT RESOLUTION

ESTABLISHING A JOINT LEGISLATIVE INVESTIGATING COMMITTEE TO INVESTIGATE THE STATUS OF TWO EXECUTIVE AGREEMENTS ENTERED INTO IN 1893 BETWEEN UNITED STATES PRESIDENT GROVER CLEVELAND AND QUEEN LILI'UOKALANI OF THE HAWAIIAN KINGDOM, CALLED THE LILI'UOKALANI ASSIGNMENT AND THE AGREEMENT OF RESTORATION.

WHEREAS, on December 19, 1842, United States President John Tyler recognized the Hawaiian Kingdom as an independent and sovereign State, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian government in 1849, 1875, and 1887; and

WHEREAS, on January 14, 1893, John L. Stevens (hereinafter referred to as the "United States minister"), the United States minister plenipotentiary assigned to the Hawaiian Kingdom government, conspired with a small group of insurgents of diverse nationalities to overthrow the Hawaiian Kingdom government; and

WHEREAS, in pursuance of the conspiracy, the United States Minister and naval representatives of the United States caused armed naval forces to invade the Hawaiian Kingdom on January 16, 1893, and to position themselves near government buildings and Iolani Palace in order to provide protection to the insurgents; and

WHEREAS, on the afternoon of January 17, 1893, this small group of insurgents declared themselves to be a Provisional Government; and

WHEREAS, the United States minister thereupon extended diplomatic recognition to the insurgents in violation of

treaties between the United States and the Hawaiian Kingdom and in violation of international law; and

WHEREAS, because the police force was unable to apprehend the insurgents for violating the law of treason without the risk of bloodshed between the police and the United States troops, Queen Lili'uokalani issued the following protest temporarily, conditionally yielding her executive power to the United States 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"; and

WHEREAS, under Article 31 of the Constitution of the Kingdom of Hawaii, as the constitutional monarch of the Hawaiian islands, the Queen was vested with the executive power to faithfully execute and administer Hawaiian law: "To the King belongs the Executive power"; and

WHEREAS, on March 9, 1893, President Grover Cleveland accepted the temporary and conditional assignment of executive

power from the Queen and investigated the circumstances of the overthrow of the Hawaiian Kingdom government; and

WHEREAS, on October 18, 1893, the investigation concluded that the United States violated international law and the Hawaiian Kingdom government must be restored to its status before the landing of United States troops; and

WHEREAS, negotiations for settlement and restoration took place between Queen Lili'uokalani and United States minister plenipotentiary, Albert Willis, between November 13, 1893, and December 18, 1893, at the United States Embassy in Honolulu; and

WHEREAS, a settlement was reached on December 18, 1893, whereby Queen Lili'uokalani signed the following declaration that was dispatched to the United States State Department by the United States minister on December 20, 1893:

> "I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government.
>
> I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained.

I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.

Witness my hand this 18th of December, 1893"; and

WHEREAS, there exist two agreements:

(1) The Lili'uokalani Assignment, whereby President Grover Cleveland accepted the obligation of administering Hawaiian Law in an assignment of executive power; and

(2) The Agreement of Restoration, whereby the Queen agreed to grant amnesty after return of executive power and restoration of the government; and

WHEREAS, President Cleveland and his successors in office have violated these agreements by not administering Hawaiian Kingdom Law and not restoring the Hawaiian Kingdom government; and

WHEREAS, for the past one hundred eighteen years the Office of President has retained the temporary and conditional assignment of Hawaiian executive power from the Queen; and

WHEREAS, these agreements are called sole executive agreements under United States constitutional law and the basis of a federal lawsuit in Washington, D.C., filed by Dr. David Keanu Sai against President Barack Obama, Secretary of State Hillary Clinton, Secretary of Defense Robert Gates, Admiral Robert Willard, and Governor Linda Lingle (case no. 1:10-CV-00899CKK) on June 1, 2010; and

WHEREAS, on November 13, 2010, the Association of Hawaiian Civic Clubs at its 51st Convention at Keauhou, Island of Hawaii, unanimously passed Resolution No. 10-15, "Acknowledging Queen Lili'uokalani's Agreements with President Grover Cleveland to Execute Hawaiian Law and to Restore the Hawaiian Government"; and

WHEREAS, under the Supremacy Clause of the United States Constitution, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding"; and

WHEREAS, the United States Supreme Court declared in United States v. Belmont, 301 U.S. 324 (1937), that executive agreements arising out of the President's sole authority over foreign relations does not require ratification by the Senate or the approval of Congress, and has the force and effect of a treaty; and

WHEREAS, statutes enacted by the Legislature of the State of Hawaii that conflict with valid executive agreements would be considered void under the Supremacy Clause; and

WHEREAS, a joint legislative investigating committee would settle the issue of whether certain statutes enacted by the Hawaii State Legislature violate the United States Constitution; and

WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes the establishment of a legislative investigating committee by resolution, and Rule 14 of the Rules of the House of Representatives and Rule 14(3) of the Rules of the Senate allow for the establishment of special committees; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, the Senate concurring, that:

(1) The Legislature hereby establishes a joint legislative investigating committee to investigate the status of two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom in 1893, called the Lili'uokalani Assignment and the Agreement of Restoration;

(2) The purpose and duties of the joint investigating committee shall be to inquire into the status of the

executive agreements by holding meetings and hearings as necessary, receiving all information from the inquiry, and submitting a final report to the Legislature;

(3) The joint investigating committee shall have every power and function allowed to an investigating committee under the law, including without limitation the power to:

(A) Adopt rules for the conduct of its proceedings;

(B) Issue subpoenas requiring the attendance and testimony of the witnesses and subpoenas duces tecum requiring the production of books, documents, records, papers, or other evidence in any matter pending before the joint investigating committee;

(C) Hold hearings appropriate for the performance of its duties, at times and places as the joint investigating committee determines;

(D) Administer oaths and affirmations to witnesses at hearings of the joint investigating committee;

(E) Report or certify instances of contempt as provided in section 21-14, Hawaii Revised Statutes;

(F) Determine the means by which a record shall be made of its proceedings in which testimony or other evidence is demanded or adduced;

(G) Provide for the submission, by a witness's own counsel and counsel for another individual or entity about whom the witness has devoted substantial or important portions of the witness's testimony, of written questions to be asked of the witness by the chair; and

(H) Exercise all other powers specified under chapter 21, Hawaii Revised Statutes, with respect to a joint investigating committee; and

BE IT FURTHER RESOLVED that the joint investigating committee shall consist of the following ten members:

(1) The Chairperson of the House Committee on Finance;

(2) The Chairperson of the House Committee on Water, Land, and Ocean Resources;

(3) The Chairperson of the House Committee on Hawaiian Affairs;

(4) One member of the majority leadership from the House of Representatives who shall be appointed by the Speaker of the House of Representatives;

(5) One member of the minority leadership from the House of Representatives who shall be appointed by the House Minority Leader;

(6) The Chairperson of the Senate Ways and Means Committee;

(7) The Chairperson of the Senate Committee on Water, Land, and Agriculture;

(8) The Chairperson of the Senate Hawaiian Affairs Committee;

(9) One member of the majority leadership from the Senate who shall be appointed by the President of the Senate; and

(10) One member of the minority leadership from the Senate who shall be appointed by the Senate Minority Leader; and

BE IT FURTHER RESOLVED that the joint investigating committee shall submit its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012 and shall dissolve upon submission of its report; and

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BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the President of the United States, members of Hawaii's congressional delegation, the Governor, the President of the Hawaii State Senate, the Speaker of the Hawaii State House of Representatives, the Director of Finance, the Attorney General, and the Auditor.

OFFERED BY: Mele Carroll

MAR 11 2011

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATE HOLDERS FOR ARGENT SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-W2, Plaintiff, vs. DIANNE DEE GUMAPAC; KALE KEPEKAIO GUMAPAC; JOHN DOES 1-50; AND JANE DOES 1-50, Defendants.	)	CIVIL NO. 11-1-0590 NOTICE OF HEARING MOTION

NOTICE OF HEARING MOTION

NOTICE IS HEREBY GIVEN that Defendant KALE KEPEKAIO GUMAPAC'S Motion to Dismiss Complaint, shall come on for hearing before the Honorable Presiding Judge of the above-entitled Court, in his/her courtroom at _____, Courtroom _____, Hilo, Hawai'i, on _____ or as soon thereafter as Defendant can be heard.

Dated: Hilo, Hawai'i, January 13, 2012.

Respectfully presented,

_____
KALE KEPEKAIO GUMAPAC
Defendant, pro se

CERTIFICATE OF SERVICE

The undersigned hereby certify that the foregoing document were duly served upon the following by mailing a copy of same via hand delivery or U.S. Postal Service, postage prepaid or electronic delivery to the last known address to:

RCO Hawaii, LLLC
Charles Prather, Sofia Hirosane
900 Fort Street Mall, Suite 800
Honolulu, HI 96813

Attorneys for Plaintiff
DEUTSCHE BANK NATIONAL TRUST COMPANY

Dated: Keaau, Hawai‘i, January 13, 2012.

Respectfully presented,

_____
KALE KEPEKAIO GUMAPAC
Defendant, pro se