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Every Man Has a Right to Decide His Own Destiny: The Development of Native Hawaiian Self-Determination Compared to Self-Determination of Native Alaskans and the People of Puerto Rico

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EVERY MAN HAS A RIGHT TO DECIDE HIS OWN DESTINY: 1 THE DEVELOPMENT OF NATIVE HAWAIIAN SELF-DETERMINATION COMPARED TO SELF-DETERMINATION OF NATIVE ALASKANS AND THE PEOPLE OF PUERTO RICO

MICHAEL CARROLL*

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness-That to secure these rights, Governments are instituted among Men, deriving their just Powers from the consent of the governed, that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. 2

INTRODUCTION

On July 4th, 1776, the American people declared that they would no longer submit to the oppressive forces of a foreign power. 3 Americans declared that "all men are created equal," and that governments "derive their just powers from the consent of the governed." 4 For seven long years, American men, 5 undernourished and dressed in rags, fought against the superior forces of the British army to affirm this proposition. 6 The proposition was "self-determination." 7

* J.D. Candidate, June 2001. Thank you Mom, Dad, Sara, Chris, Lori, Tina and Cathy for all your love and support.
1. BOB MARLEY, ZIMBABWE ON SURVIVAL (Tuff Gong 1979). The original lyric to this song was "every man gotta right to decide his own destiny." Id.
2. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).
3. Id.
4. Id.
6. Id. at 109.
7. Id. at 93-101 (discussing the American attitude toward British control and the desire to "control their own destiny").
While the United States based its existence on the principles of self-determination,\(^8\) it routinely failed to carry out this principle with respect to indigenous people.\(^9\) The United States faltered in recognizing native Americans' self-determination\(^10\) and once again failed with regard to the indigenous people of Alaska,\(^11\) Puerto Rico\(^12\) and Hawai'i.\(^13\) While recently the United States recognized native Alaskan\(^14\) and Puerto Rican\(^15\) rights to self-determination,\(^16\)

\(^8\) Id.
\(^9\) See generally Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831) (holding that native American Tribes are not foreign nations within the definition of the Constitution, but rather a "domestic dependent nation," and therefore not entitled to Supreme Court original jurisdiction).
\(^10\) Id.
\(^11\) THEODORE W. TAYLOR, AMERICAN INDIAN POLICY 20 (1983) (quoting ROBERT D. ARNOLD ET AL., ALASKA NATIVE LAND CLAIMS 279 (rev. ed. 1978)). Sam Kito, Executive Vice President of Doyon, Ltd., and a native Alaskan stated:

The Native people of Alaska have long been victims of an archaic bureaucratic philosophy that they are unable to regulate their own affairs. Yet the Government who 'sees all, knows all' and 'knows what is best for its Indian people' has been the progenitor of a trustee system of stewardship over American Native peoples, which has succeeded only in robbing them of their heritage, divorcing them from their culture, made them outcasts in their own land, and left them naught but apathy, alcohol and forgotten graves.

\(^12\) See generally Jose Trias Monge, Plenary Power and the Principle of Liberty: An Alternative View of the Political Condition of Puerto Rico, 68 REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO 1, 1 (1999) (discussing the political status of Puerto Rico).
\(^14\) See Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-28 (West 1986) (providing for the establishment of villages and regional corporations in which native Alaskans would receive corporate stock). [hereinafter ANCSA]. ANCSA defines native Alaskans as a person of one-fourth degree or more Alaskan Indian (including Eskimo, Aleut or Metlakatla). Id. at § 1602(b). The term "Native Alaskan" also includes any person regarded as a native Alaskan by the native village or group with which he claims membership. Id. Contrast this with the Reindeer Industry Act that defines "Natives of Alaska" as:

[N]ative Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

\(^15\) See Monge, supra note 12, at 9-10 (discussing how Puerto Rico freely
U.S. policy has failed to give equal recognition to "native Hawaiians." The purpose of this Comment is to discuss how the United States' treatment of native Hawaiians, and Hawai'i's integration into the United States is inconsistent with the United States treatment of its former territories and their respective people. Specifically, this Comment compares the development of Hawai'i with Puerto Rico and Alaska. Part I details the history of Hawai'i, and explains the recent Hawaiian sovereignty movement. Part II discusses how Hawaiian statehood violated international law. Part III.A compares Puerto Rico's right to consent freely to a

16. Id. Under the leadership of Luiz Muñoz Marin, the first elected Governor of Puerto Rico, Puerto Rico sought a new relationship with the United States. Id. Marin sought to achieve a relationship with the United States, with the principle of consent as the premise. Id. Second, he felt that Puerto Rico should have a full measure of self-government with its own Constitution. Id. The result was Public Law 600 of 1950. 48 U.S.C. § 731b (West 1987). This Act recognized "the principles of government by consent," and entitled Puerto Rico to organize its own government and adopt its own Constitution. Id. The result was the creation of the Commonwealth of Puerto Rico. Monge, supra note 12, at 10.

17. See Millilani B. Trask, Historical and Contemporary Hawaiian Self-determination: A Native Hawaiian Perspective, 8 ARIZ. J. INT'L & COMP. L. 77, 91-94 (1991) (discussing that the annexation of Hawai'i violated international human rights norms, which include the right to self-determination and territorial integrity for indigenous people).

18. The Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993). The Apology Resolution is a chronological admission by the United States of its involvement in the Overthrow of the Hawaiian Monarch. Id. This Resolution contains factual findings of what occurred in Hawai'i from 1776 to 1993. Id. This joint resolution was passed by both houses of Congress, and signed by President Clinton. The Resolution apologizes for the United States involvement in the overthrow of the Hawaiian Monarch, and pledges to support reparation efforts. Id. The Apology Resolution defines native Hawaiians as "any individual who is a descendent of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i." Id.

19. The majority of this Comment will focus on Acts of Congress which address the territorial status of Hawai'i, and its integration into the United States. The reason for this emphasis is that Congress has the authority under the Constitution "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. CONST. art. IV, § 3, cl. 2.
relationship with the United States with the failure of the United States to allow the Hawaiian people an equivalent right. Part III.B contrasts the United States' recognition of native Alaskan self-determination with the United States' failure to recognize native Hawaiian self-determination. Part IV concludes the United States did not legally admit Hawai'i into the Union, and proposes that native Hawaiians be given a right to self-determination in the form of a "state within a state."

I. THE OPPRESSION OF A PEOPLE

A. A History of Hawai'i

When Westerners first arrived in the Hawaiian Islands in 1776, they discovered an indigenous people with a population estimated at more than 800,000. The Hawaiian people possessed a sophisticated language, religion and culture that fascinated Western visitors. The native Hawaiian people lived in a highly organized, self-sufficient land tenure system that adequately provided for Hawai'i's large population. Shortly after Hawai'i came into contact with the western world, Kamehameha I unified the Hawaiian Islands in 1810. A few years later, during the reign of Kamehameha III, foreign countries, including the United

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21. See DAVID E. STANNARD, BEFORE THE HORROR: THE POPULATION OF HAWAI'I ON THE EVE OF WESTERN CONTACT 79-80 (1989) (relying on archaeological findings, the demographics of Hawai'i and other factors, Stannard concluded "that a population of about 800,000 at the time of western contact seems a restrained and modest figure.").
23. Id.
24. Id.
States, recognized Hawai'i as an independent nation, and Hawai'i


grants to the Government of the United States the exclusive right to enter the harbor of the Pearl River in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid. Id. King Kalakaua, with regards to this treaty stated before the opening session of the 1887 Hawaiian legislature:

I take great pleasure in informing you that the Treaty of Reciprocity with the United States of America has been definitely extended for seven years upon the same terms as those in the original treaty, with the addition of a clause granting to national vessels of the United States the exclusive privilege of entering Pearl River Harbor and establishing there a coaling and repair station. This has been done after mature deliberation and the interchange between my Government and that of the United States of an interpretation of the said clause whereby it is agreed and understood that it does not cede any territory or part with or impair any right of sovereignty or jurisdiction on the part of the Hawaiian Kingdom and that such privilege is coterminous with the treaty.
adopted its own constitution.\textsuperscript{27}

From 1810 to 1887, Hawai'i remained an internationally recognized Kingdom governed by a Hawaiian Monarch.\textsuperscript{28} The governmental structure remained stable until western businessmen and planters forced King Kalakaua to sign the "Bayonet Constitution" in 1887.\textsuperscript{29} This constitution reduced the King's authority to a "ceremonial figurehead," and extended voting rights to Westerners, regardless of citizenship.\textsuperscript{30} The constitution

\begin{quote}
\textsuperscript{27} KINGDOM OF HAWAI'I CONST. of 1840, reprinted on Kingdom of Hawai'i Constitution of 1840 (visited Mar. 28, 2000) <http://www.hawaii-nation.org/constitution-1840.html>. Article I of this Constitution states:

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God hath made of one blood all nations of men to dwell on the earth,' in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands. These are some of the rights which He has given alike to every man and every chief of correct deportment; life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of laws. God has also established government, and rule for the purpose of peace; but in making laws for the nation it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also, and hereafter there shall by no means be any laws enacted which at variance with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man, in a manner which is at variance with the above sentiments.
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\textsuperscript{28} See generally GAVAN DAWS, SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS 29-240 (1974) (discussing the reigns of Hawai'i's several Kings).

\textsuperscript{29} Pat Pitzer, The Overthrow of the Monarchy (visited Dec. 1, 1999) <http://www.hawaii-nation.org/soa.html>. A group of predominately American planters formed a secret organization named the "Hawaiian League." \textsuperscript{Id.} This group was composed of approximately 400 members, as compared to the native Hawaiian population, that was estimated to be 40,000. \textsuperscript{Id.} The Hawaiian League forced Kalakaua to sign the "Bayonet Constitution," creating a new cabinet composed of league members. \textsuperscript{Id.} Some historians say that King Kalakaua was forced at sword point to sign this Constitution. Melody K. MacKenzie, 1893-1993: Overthrow, Annexation, and Sovereignty, HAW. B. J., Jan. 1993, at 8.

\textsuperscript{30} Pitzer, supra note 29. This new Constitution provided that "[n]o act of
further restricted three out of four Hawaiians from voting, due to certain property requirements.\footnote{31}

During the remainder of King Kalakaua’s reign, Native Hawaiians, Japanese and Chinese residents made an effort to revoke or repeal the “Bayonet Constitution.”\footnote{32} These efforts proved fruitless.\footnote{33} On January 20, 1891, King Kalakaua died, and the responsibility of restoring the monarch went to his successor, Queen Lili‘uokalani.\footnote{34}

On January 14, 1893, international diplomats, legislators, and Hawaiian petitioners gathered in the throne room of ‘Iolani Palace,\footnote{35} awaiting Queen Lili‘uokalani’s announcement of a new constitution.\footnote{36} This constitution was intended to restore the monarchy and the rights of the Hawaiian people.\footnote{37} Pressure from the Cabinet convinced Queen Lili‘uokalani to hold off ratifying the constitution until a later date.\footnote{38} Unbeknownst to the Queen, the Cabinet immediately took this information to the Annexationists.\footnote{39}

The Annexationists formed a thirteen-member “Committee of Safety” that plotted to overthrow the monarchy and establish a
provisional government. On January 16, 1893, while secretly plotting a revolution, the committee held a mass meeting. During this meeting, the committee accused the Queen of committing a "revolutionary act." The committee sought a resolution that would denounce the Queen and empower itself to devise a means "to secure the permanent maintenance of law and order and the protection of life, liberty, and property in Hawai'i."

Immediately after this meeting, the committee sent a note to the United States Minister, John L. Stevens, requesting military aid, allegedly in order to protect "lives and property." The United States Minister, along with naval representatives of the United States, immediately positioned armed naval forces near Hawaiian government buildings and the 'Iolani Palace to intimidate Queen Lili'uokalani into surrendering her throne. The following day, Queen Lili'uokalani, believing that the United States would denounce this insurrection and restore her rightfully to her throne, reluctantly surrendered under protest to the superior forces of the United States military.

40. President Grover Cleveland, Message to Congress (Dec. 18, 1893), reprinted in MICHAEL KIONI DUDLEY & KEONI KEALOHA AGARD, A CALL FOR HAWAIIAN SOVEREIGNTY 25, 33 (1990) [hereinafter Cleveland]. Five Americans, one Englishman, and one German belonged to the committee. Id.

41. Pitzer, supra note 29.

42. Id.

43. Cleveland, supra note 40, at 34.

44. Id.

45. Id. Over 160 "fully armed troops" from the United States Steamer Boston marched into downtown Honolulu past the Iolani Palace. Id. Grover Cleveland, in regards to this military demonstration stated in his message to Congress:

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 Hawai'i or for the bona fide purpose of protecting the imperiled [sic] 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 the time was undisputed and was both the de facto and the de jure government.

Id. at 35 (emphasis added). But see TWIGG-SMITH, supra note 13, at 7 (arguing that the revolution would have succeeded even if United States troops were not involved).

46. Pub. L. No. 103-150, 107 Stat. 1510 (1993). Queen Lili'uokalani surrendered her Monarchy, under protest with these words:

I, Lili'uokalani, 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 loss of life, I do, under this protest and
On February 1, 1893, the United States Minister raised the United States flag at 'Iolani Palace, and declared Hawai'i a protectorate. On July 7, 1898, President McKinley signed the Newlands Resolution that annexed Hawai'i into the Union. In 1920, Congress passed the Hawaiian Homes Commission Act that purported to grant 193,000 acres of land to Native Hawaiians for agriculture and homesteading purposes.

For the next twenty-six years, the United States ignored the
status of native Hawaiians, until 1946, when the United Nations listed Hawai‘i as a non-self-governing territory. In response, the United States held a highly controversial vote to admit Hawai‘i into the United States as a state. Western voters saturated this election, and effectively nullified the Hawaiian vote. Finally, on August 21, 1959, Hawai‘i became a state.

B. Hawaiian Self-Determination

Native Hawaiians define the right to self-determination as “the ability of people to determine for themselves what their land base is and how they will use it.” The recent Hawaiian movement for self-determination began in the 1970s with a resurgence of Hawaiian culture and art. Through studies of their genealogies and family traditions, many Hawaiians learned

50. 1995 U.N.Y.B. 182-84, U.N. Sales No. E.95.I.50 [hereinafter United Nations Yearbook]. In February of 1946, the United Nations General Assembly unanimously passed Resolution 9(I) entitled “Non-Self-Governing Peoples.” Id. This resolution was passed to promote self-determination of those territories that had not yet attained a full degree of self-determination. Id. The territories that were under the control of the United States and fell within the scope of a “Non-self-Governing Territory” were Hawai‘i, Puerto Rico, Alaska, American Samoa, Guam, Panama Canal Zone, and the Virgin Islands. Id.

51. See Hayden Burgess, Hawaii Independence: Voters Weren’t Offered this Option, THE HONOLULU ADVERTISER, Dec. 27, 1992, at B3 (criticizing the vote as being a “fraud” on the Hawaiian people). The first complaint was that the vote was too limited in its options. Id. The United Nations has described territorial self-governance as permitting the territory to have the option of integration, free association, or independence. Id. The 1959 vote did not give the people the option of independence or free association. Id. The question presented was merely: Whether Hawai‘i should be immediately admitted into the Union as a State? Id. A “yes” vote provided for immediate “integration into the U.S. as a state.” Id. A “no” vote would result in Hawai‘i maintaining its territorial status. Id. Moreover, there was no education on these alternative options, nor was there a public debate to discuss the issue. Id.

Another complaint was that the people who were permitted to vote did not fairly represent native Hawaiian sentiment. Id. Voting only required United States citizenship and Hawai‘i residence for one year. Id. Since the overthrow, Hawai‘i experienced a large influx of foreign migrants. Id. Many of Hawai‘i’s new migrants were associated with the United States military presence, and therefore partial to admission into the union as a state. Id. All of these new residents were permitted to vote. Id. The native Hawaiian vote was further limited because those who declared themselves Hawaiian citizens and refused to accept U.S. citizenship could not vote. Id.

52. See Id. (criticizing the legitimacy of the vote to integrate Hawai‘i into the United States).


54. Trask, supra note 17, at 89. Native Hawaiians choose to define self-determination in accord with their cultural identity, and do not follow the definition of jurists. Id.

how their ancestors were deprived of their lands by Westerners, under the doctrine of adverse possession.  

Further research revealed that Hawaiian history books did not accurately represent the 1893 overthrow of the Hawaiian Monarch. Hawaiians began to actively question the influence that Westerners had in Hawai‘i. The first incident that awoke the movement for native Hawaiian rights was the eviction of Hawaiian pig farmers from Kalama Valley in order to make way for the development of high-priced homes for Westerners. This incident marked the beginning of the modern Hawaiian sovereignty movement.

Over the next few years, Hawaiians formed several groups to “stand up for Hawaiian rights.” In 1972, Aboriginal Lands of Hawaiian Ancestry (ALOHA), became the first organization to address the overthrow and seek reparations. ALOHA had two driving factors. The first was the overthrow of the Hawaiian monarch as depicted by Queen Lili‘uokalani in her autobiography. The second factor was the U.S. Senate’s passage of the Alaska Native Claims Settlement Act of 1971. This Act authorized the return of forty million acres of land to native Alaskans, and compensated them one billion dollars cash for land not returned. ALOHA sought similar treatment to Hawaiians for their deprivation of their land and rights to self-determination. A year and a half later, approximately 9,000 members across the state belonged to ALOHA. Currently, 30,000 people are recognized members.

Today, approximately 180,000 native Hawaiians live in the State of Hawai‘i comprising 20% of the state’s population. These residents represent the least fortunate social and economic class of

56. Id. at 107-08. But see TWIGG-SMITH, supra note 13, at 316 (arguing that land was never stolen from Hawaiians and that the overthrow simply transferred control of lands to the new government).
57. DUDLEY & AGARD, supra note 55, at 108.
58. Id.
59. Id. at 109.
60. Id.
61. Id.
62. DUDLEY & AGARD, supra note 55, at 108.
63. Id.
64. Id. ANCSA was enacted for the benefit of Native Alaskans, and therefore this Act is “liberally construed” with ambiguous phrases interpreted in favor of Native Alaskans. Wisenak, Inc. v. Andrus, 471 F. Supp. 1004, 1010 n.14 (D. Alaska 1979) (citing Alaska Pac. Fisheries v. United States, 248 U.S. 78, 89 (1918)).
65. DUDLEY, supra note 55, at 109.
66. Id.
67. Id.
68. Id.
69. Trask, supra note 17, at 82.
the state. For example, native Hawaiians have the highest incidence of disease, unemployment, poverty, illiteracy, homelessness and substance abuse. In 1993, the United States ended its "official silence" on the illegal overthrow of the Hawaiian monarchy when President Clinton signed the Apology Resolution. The Apology Resolution is a joint resolution passed by Congress that acknowledged and apologized for the United States' involvement in the overthrow of the Hawaiian monarch. With the passage of this resolution, and the current status of native Hawaiians, their right to self-determination is an entitlement.

Drastic increases in the membership of sovereignty organizations illustrates this sentiment. In 1996, 73% of native Hawaiians voted for a plan to elect delegates to propose a native Hawaiian government. Due to the current socio-economic status of native Hawaiians and native Hawaiian sentiment, an apology is an insufficient act by the United States to address this issue.

C. The United Nations and Self-Determination

One of the purposes of the United Nations is to "develop friendly relations among nations based on respect for the
principles of equal rights and self-determination of peoples.\textsuperscript{76} In furtherance of this purpose, the United Nations has established a policy to support the development of self-determination in territories that do not have a full degree of self-governance.\textsuperscript{77} The United Nations established a trusteeship system where the dominant nation was required to supply the international organization with regular reports about the status of its non-self-governing territory.\textsuperscript{78}

\textsuperscript{76} U.N. CHARTER art. 1, para. 2.

\textsuperscript{77} MICHLA POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE 9-10 (1982). Article 73 of the United Nations Charter states:

\begin{quote}
[m]embers of the United Nations which have or assume responsibilities for the administration of territories whose people have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

(a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protecting against abuses;

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(c) to further international peace and security;

(d) to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

(e) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.
\end{quote}

U.N. CHARTER art. 73, para 1-5.

\textsuperscript{78} POMERANCE, supra note 77, at 11. Article 76 of the United Nations Charter provides:

The basic objectives of the trusteeship system, in accordance with the purpose of the United Nations laid down in Article I of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each
In 1946, the United Nations General Assembly recognized the importance of addressing the development of self-determination of territories that do not have "self-government or independence." While the General Assembly refrained from defining non-self-governing territories, it provided a list of territories that fit this profile. Non-self-governing territories under U.S control included Hawai‘i, Puerto Rico and Alaska.

In the 1960's, the United Nations supplemented its policy on self-determination and clarified how a territory could attain "full self-government." Principle VI of the United Nations General Assembly Resolution 1541 provides that “[a] Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.” The United Nations considered integration and free association to be less reliable than independence, and required greater scrutiny.

trusteeship agreement;

(c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

(d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

U.N. CHARTER art. 76, para 1-4.

79. UNITED NATIONS YEARBOOKS, supra note 50, at 182-84.

80. Id.

81. Id. at 183.

82. POMERANCE, supra note 77, at 10. This amendment is an example of a transition in United Nations policy from considering independence as only one possible alternative, to a policy of complete "external self-determination" with a preference for independence.

83. Id. at 124-26 (citing to G.A. Res. 1541, U.N. GAOR, 15th Sess., Supp. No. 16, at 153, U.N. Doc. A/4684 (1960)). While this Resolution was not available when Hawai‘i and Puerto Rico were removed from the United Nations' list of non-self-governing territories, the principles enumerated in this Resolution provide a framework to determine if these territories sufficiently became self-governing under international law.

84. POMERANCE, supra note 77, at 10. Principle VII of the General Assembly Resolution states:

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its
II. THE CURRENT LEGAL STATUS OF HAWAI’I

Under United Nations standards, statehood did not nullify Hawai‘i’s status as a non-self-governing territory. A “full measure of self-government” includes the “emergence” of a “sovereign independent State,” “free association with an independent State,” or “integration with an independent State.”\(^{85}\) Under the guise of integration with the United States, Hawai‘i lost its non-self-governing status.

The United Nations has insisted on a preference for independence over integration.\(^{86}\) The vote for Hawai‘i’s admission is clearly against United Nations policy because it did not provide for Hawaiian independence.\(^{87}\) The United Nations provides that integration “should be the result of the freely expressed wishes of the territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted, and based on universal adult suffrage.”\(^{88}\)

Hawai‘i’s admission into the United States by a plebiscite vote failed to meet this standard. The conditions to vote only required United States citizenship and residence in Hawai‘i for one year.\(^{89}\) Therefore, the voters were not an expression of the “territory’s people,” because the voting base included transient residents, specifically military personnel who did not represent the territorial people.\(^{90}\) Moreover, Congress did not allow the right to vote to native Hawaiians who refused to accept United States internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

\(\text{Id. at 125.}\) Principle VIII of this resolution also provides that:

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

\(\text{Id.}\)

85. \(\text{Id. at 10.}\)
86. \(\text{Id. at 25.}\)
87. POMERANCE, supra note 77, at 25. “[I]t is often asserted that in determining their future political status, a people must be allowed the option of independence, and that, moreover, any decision to merge with an already existing political unit must follow independence.” \(\text{Id.}\) (Emphasis added).
88. \(\text{Id. at 32.}\)
89. Burgess, supra note 51, at B3.
90. \(\text{Id.}\)
citizenship and who pledged allegiance to the monarch.\textsuperscript{91} This classification had no justification except to ensure that the majority of votes would support an immediate integration. The refusal to allow native Hawaiians to vote based on their political beliefs and to saturate the vote with military personnel who were loyal to the United States government does not satisfy this condition.

The lack of an "informed and democratic process" further invalidated the vote for statehood.\textsuperscript{92} The United States government did not provide a forum in which residents could voice their views, nor did it provide information to the people regarding the effects of statehood. Therefore, scholars have concluded that the vote to integrate Hawai'i into the United States was ineffective, and should be regarded as null and void.\textsuperscript{93}

III. UNITED STATES TREATMENT OF OTHER TERRITORIES AS COMPARED TO HAWAI'I

A. The Case of Puerto Rico

As compared to native Hawaiians, Congress has provided greater deference to the people of Puerto Rico by recognizing their right to self-determination. In 1946, the United Nations classified Puerto Rico and Hawai'i as territories of the United States that have not attained a full degree of self-governance.\textsuperscript{94} The 1950s marked a turning point for United States' attempts at settling the status of its non-self-governing territories.

In 1950, Congress specifically granted Puerto Rico the right to consent to its relationship with the United States and to draft its own constitution.\textsuperscript{95} In contrast to the election held in Hawai'i in 1959, Puerto Rico was given the opportunity to secede from the

\textsuperscript{91} Id.

\textsuperscript{92} POMERANCE, supra note 77, at 10.

\textsuperscript{93} See Francis A. Boyle, Interpretation of U.S. Public Law 103-150 Under International Law, and its Implications for the Restoration of the Independent and Sovereign Nation State of Hawai'i (visited Sept. 1, 1999) <http://www.hawaii-nation.org/boylesum.html>. But see TWIGG-SMITH, supra note 13, at 239 (arguing that the vote for annexation will not be validated because "[t]he vast majority of Hawai'i's residents obviously are happy with the end result").

\textsuperscript{94} See supra note 49 for an explanation of Resolution 9(I) and the list of original territories under the control of the United States that were listed as non-self-governing.

\textsuperscript{95} Act of July 3, 1950, Pub. L. No. 81-600, 64 Stat. 319 (1950) (codified at 48 U.S.C. §§ 731-916 (1994)). This Act "fully recognizes the principles of government by consent, sections 731b to 731e of this title are now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." Id. at § 731b.
United States and establish an independent nation.\textsuperscript{96} Puerto Rican voters declined, deciding instead to establish an unprecedented relationship with the United States.\textsuperscript{97} The result was the Commonwealth of Puerto Rico.\textsuperscript{98} Under the terms of the compact, Puerto Rico is "sovereign over matters not ruled by the Constitution of the United States."\textsuperscript{99}

The Puerto Rico situation meets the United Nations standard for methods by which a non-self-governing territory can achieve a full degree of self-government.\textsuperscript{100} Under United Nations principles, consent of the territory's people is a prerequisite for attaining a full degree of self-determination.\textsuperscript{101} As noted in 48 U.S.C. 731b, the consent of the Puerto Rican people was the basis for establishing a new relationship with Puerto Rico.\textsuperscript{102} Contrasting this situation with Hawai'i's admission nine years later, the Hawaiian vote for admission did not contain a preference for consent of the Hawaiian people.\textsuperscript{103} Moreover, the election in Puerto Rico also provided the option of independence,\textsuperscript{104} whereas this option was not given to Hawaiian voters.\textsuperscript{105}

Prior to the Puerto Rican election, a referendum was held where citizens were given an opportunity to voice their views and to learn about the effects of a new relationship with the United States.\textsuperscript{106} The referendum provided Puerto Ricans with a forum in which they could freely express their political wishes and develop

\textsuperscript{96} Monge, \textit{supra} note 12, at 9.
\textsuperscript{97} Id.
\textsuperscript{98} Id. at 10.
\textsuperscript{99} Mora v. Mejias, 115 F. Supp. 610, 612 (D.P.R. 1953). On January 19, 1953, the United States communicated to the United Nations that it would cease providing them with information regarding Puerto Rico's status under United Nations Charter article 73. \textit{Id.} The United States, in its accompanying memorandum, stated:

\begin{quote}
[by the various actions taken by the Congress and the people of Puerto Rico, Congress has agreed that Puerto Rico shall have, under that Constitution, freedom from control or interference by the Congress in respect of internal government and administration, subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorized and approving the Constitution, as may be interpreted by Judicial decision. Those laws which directed or authorized interference with matters of local government by the Federal Government have been repealed.]
\end{quote}

\textit{Id.}
\textsuperscript{100} See POMERANCE, \textit{supra} note 77, at 9-10 for the exact wording of Principle VI of the United Nations General Assembly.
\textsuperscript{101} Id. at 10.
\textsuperscript{102} 48 U.S.C. § 731(b) (1976).
\textsuperscript{103} See \textit{supra} note 51 for a discussion of the controversies surrounding Hawaiian independence.
\textsuperscript{104} Monge, \textit{supra} note 12, at 6.
\textsuperscript{105} Burgess, \textit{supra} note 51, at B3.
\textsuperscript{106} Monge, \textit{supra} note 12, at 6.
full knowledge of their new status.\textsuperscript{107} This referendum was in accord with United Nations Charter article 73(e), whereas, Hawaiian citizens did not receive an equivalent opportunity.\textsuperscript{108}

This dichotomy demonstrates that the United States has treated the issue of self-determination differently with respect to Hawai'i and Puerto Rico. These differences demonstrate Congress' inconsistent policy in recognizing the right to self-determination. When Hawai'i was admitted into the union, Congress was aware of the proper method of allowing territories to attain a full degree of self-determination.\textsuperscript{109} Therefore, the United States should have applied the same standard in integrating Hawai'i, as was applied to Puerto Rico.

\textbf{B. The Case of Alaska}

The plight of native Alaskans is very similar to that of native Hawaiians. The United States purchased Alaska from Russia in 1867.\textsuperscript{110} In 1946, the United Nations listed Alaska, along with Hawai'i as a non-self-governing territory under Resolution 9(I).\textsuperscript{111} With the passage of the Alaska Statehood Act of 1958 that annexed Alaska to the United States, Alaska was removed from this list.\textsuperscript{112}

In contrast to native Hawaiians, native Alaskans have received considerably greater federal recognition. Many have considered the status of native Alaskans to be equivalent to that of the native Americans of the contiguous United States.\textsuperscript{113} While the

\textsuperscript{107} See \textit{supra} text accompanying note 88 for a statement of the United Nations' preference for "freely expressed wishes of the territory's people" in establishing its political status.

\textsuperscript{108} Burgess, \textit{supra} note 51, at B3.

\textsuperscript{109} It is clear that since the vote in Hawai'i was nine years after the Puerto Rican vote, Congress should have used Puerto Rico as a framework for settling the status of Hawai'i.

\textsuperscript{110} In re Naturalization of John Minook, 2 Alaska 200, 202 (D. Alaska 1904) (quoting the Treaty Concerning the Cession of Russian Possessions in North America, March 30, 1867, U.S.-Russia, 15 Stat. 539). This treaty provided that the "inhabitants of [Alaska]," except "native tribes" would be entitled to United States citizenship. \textit{Id.} The Treaty of Cessation provided that "[t]he uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country." \textit{Id.} Under this treaty, native Alaskans are "under the guardianship of the federal government and entitled to the benefits of the special relationship." Alaska Chapter, Associated Gen. Contractors of Am., Inc. v. Pierce, 694 F.2d 1162, 1169 n.10 (1981).

\textsuperscript{111} See \textit{supra} note 50 for a discussion of United Nations General Assembly Resolution 9(I).


\textsuperscript{113} \textit{Alaska Chapter}, 694 F.2d at 1168 n.10. "Alaskan Natives, including Eskimos and Aleuts, have been considered to have the same status as other federally recognized American Indians, through the treaty powers of the President and the Senate pursuant to Article II, Section 2, Cl. 2 of the
status of native Alaskans is analogous to native Americans, they have not received equivalent benefits. Primarily, this lack of benefits is because native Alaskans are not organized in tribal units, and, therefore, are not entitled to certain federal benefits.

This situation places native Alaskans in a position similar to the position of native Hawaiians. Both native Hawaiians and native Alaskans represent indigenous people of America whose rights to self-determination have not been adequately redressed.

In contrast to the failure of the United States to acknowledge native Hawaiians' special status, two congressional acts have acknowledged native Alaskans' special status and have attempted to address the issue of native Alaskan self-determination. First, the Alaska Indian Reorganization Act (AIRA) adds native Alaskan tribes to the list of officially established tribes. The second congressional act was the Alaska Native Claims and Settlement Act (ANCSA), which provided compensation for the relinquishment of aboriginal claims. The congressional acts that recognize native Alaskans' self-determination are inconsistent with the United States' failure to equally redress native Hawaiians' self-determination.

AIRA entitles native Alaskans to the same benefits that the native Americans receive under the Indian Reorganization Act (IRA). AIRA gives native Alaskans the right to establish tribes, to adopt a constitution and by-laws, and to receive federal loans and charters of incorporation.

As a result of AIRA, native Alaskans...
have established a number of “IRA village councils” and have obtained federal recognition.120

In contrast, the United States has not implemented similar acts to encourage native Hawaiian self-determination.121 If a native Hawaiian group desired to form a “tribal government,” they would not be entitled to benefits under IRA or AIRA. This classification that separates native Hawaiians into an inferior class is arbitrary, and has no justification, except to exclude native Hawaiians from benefits to which every other indigenous group in the United States is entitled.

The second congressional act to recognize native Alaskan special status is ANCSA. ANCSA, in compensation for relinquishing all claims based on aboriginal title, granted $962,500,000 and 40,000,000 acres of land to native Alaskans.122 ANCSA established thirteen regional native corporations and a large number of village corporations representing native villages.123

In contrast to ANCSA, the only apparent grant given to native Hawaiians is through the Hawaiian Homes Commission Act (HHCA).124 Unlike ANCSA, the HHCA grants no monetary compensation and establishes no marketable corporations for native Hawaiians.125 Additionally, the HHCA does not receive federal support and relies solely on the State of Hawai‘i.126 This

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conduct the business and economic affairs of the tribe.” Native Village of Stevens, 757 P.2d at 39 (quoting Mescalero Apache Tribe v. Jones, 411 U.S. 145, 151 (1973)). The AIRA made native Alaskans beneficiaries of this act by providing that native Alaskan tribes that have a “common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district, may organize to adopt constitutions and by-laws and to receive charters of incorporation and federal loans.” Id.

120. Alaska Chapter, Ass’n. Gen. Contractors of Am., Inc. v. Pierce, 694 F.2d 1162, 1168 n.10 (9th Cir. 1982).
121. Trask, supra note 17, at 91-94. (criticizing the Apology Resolution as an inadequate remedy to address native Hawaiian self-determination). Seven years have passed since this resolution was ratified, and there has been no support from the federal government to grant restitution to native Hawaiians. Id.
123. Id.
125. Id. See also Trask, supra note 17, at 81 (discussing the limitations on the HHCA).
126. HAWAIIAN HOME COMMISSION ACT, §§ 101-226. When the HHCA was first enacted the United States assumed the role of trustee until 1959, when Hawai‘i became a state. Martin, supra note 13, at 277. The United States also transferred administrative control to the state of Hawai‘i, and vested title to the home lands as a condition of statehood. Id. The federal government does reserve some supervisory responsibility over limited aspects of the Act, and is required to approve any modifications. Id.
lack of federal support in both legislation and financing limits the effectiveness of the Act.

IV. ADDRESSING NATIVE HAWAIIAN SELF-DETERMINATION

The United States government has stated that its policy is to support self-determination.\textsuperscript{127} The United States based this policy on the fact that the Founders established the country on principles of self-determination when they declared themselves independent from Britain.\textsuperscript{128} If self-determination is truly the United States' policy, the federal government should apply it uniformly. This uniformity requires that the integration of one state be consistent with the integration of another state. This consistency also demands that the recognition of indigenous rights be equally applied to all indigenous people. The United States integrated the state of Hawai'i improperly, and treated native Hawaiians inconsistently with other indigenous people. To remain consistent, the United States has an obligation to reevaluate the integration of the State of Hawai'i, as well as its treatment of native Hawaiians.

Three positions exist regarding how to redress the deprivation of native Hawaiian self-determination.\textsuperscript{129} The first position advocates Hawai'i's independence from the United States.\textsuperscript{130} This involves a severance of any ties Hawai'i may have with the United States.\textsuperscript{131} The second view is for Hawai'i to maintain the status quo.\textsuperscript{132} Supporters of this view believe that Hawai'i should remain a state, and native Hawaiians receive financial compensation. The third alternative is to establish a "nation within a nation" form of self-government.\textsuperscript{133} This position resembles Native Americans' relations with the United States.\textsuperscript{134}

\textsuperscript{127}. See W. OFUATEY-KODJOE, THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW 134 (1977) (stating that the United States has "advocated the principle of trusteeship - that dependent peoples should exercise their right when they have . . . the capacity to exercise it").

\textsuperscript{128}. Id. The United States Government has stated: "We surely cannot deny to any nation that right whereon our own is founded - that everyone may govern itself according to whatever form it pleases and change these forms at its own will." Id. (quoting Watson W. Wise, \textit{The Right of Peoples and Nations to Self-Determination}, U.S. DEPT. OF STATE BULL., Feb. 2, 1959, at 172). Ofuatey-Kodjoe later asserts that "the United States recognized the . . . right of its colonial peoples to choose freely among many modes of self-determination, including independence." OFUATEY-KODJOE, supra note 127, at 135.


\textsuperscript{130}. Id. at 179-80.

\textsuperscript{131}. Id. at 180-81.

\textsuperscript{132}. Id. at 178-79.

\textsuperscript{133}. Id. at 178.

\textsuperscript{134}. Meller, supra note 129, at 178.
A. Hawaiian Independence

The leading advocates for Hawaiian Independence are Hayden Burgess (Poka Laenui),135 Kekuni Blaisdell,136 and Michael Kioni Dudley.137 Burgess argues that the United States' involvement in Hawai'i is illegal and that, "the way for the United States to right that wrong is to withdraw from the Islands and restore them to the rule of a Hawaiian nation."138 He demands that Congress order an immediate withdrawal of the United States and allow the native Hawaiians to independently establish their own government.139

Blaisdell agrees with Burgess on the characterization of the United States' involvement in Hawai'i as illegal.140 However, Blaisdell advocates a gradual progression to independence rather than an immediate withdrawal from the United States.141 Blaisdell wants Hawai'i to be recognized as a non-self-governing territory and seeks redress through international means.142 Blaisdell further argues that independence should be achieved through treaties between the United States and Hawai'i as equal nations.143

Finally, Dudley promotes a temporary jurisdictional division of the Hawaiian Islands.144 His position is that Hawai'i should be separated into an independent nation of Hawai'i, a jurisdiction under the control of the United States, and a "cooperative zone in the Honolulu area."145 He believes that the development of these zones will ultimately lead to "full decolonization."146

While these positions adequately provide for self-determination, they will be very difficult to achieve and will not serve the best interest of both native Hawaiians and other residents in the state. The United States' withdrawal from Hawai'i is highly unlikely, and most native Hawaiians would not support complete independence from the United States.147

135. Id. at 179. Hayden Burgess is the spokesperson for The Institute for the Advancement of Hawaiian Affairs. Id. Burgess also uses his Hawaiian name, Poka Laenui. Id.
136. Id. Kekuni Blaisdell represents the organization Ka Pakaukau. Id.
137. Id. at 180. Michael Kioni Dudley represents the group Na Kane O Ka Malo. Id.
138. Id. at 179.
139. Meller, supra note 129, at 179.Id.
140. Id.
141. Id.
142. Id.
143. Id.
144. Meller, supra note 129, at 180.
145. Id. at 181.
146. Id.
147. Id. at 180. A 1995 survey of Hawaiian homes found that 54% of native Hawaiians were opposed to a "completely sovereign nation," and only 27% were in favor of complete sovereignty. Id.
Hawaiians receive benefits as United States citizens, and they would lose these benefits if the United States completely withdrew.

B. Maintaining the Status Quo

Unlike the advocates of Hawaiian Independence, some native Hawaiians wish to maintain the status quo. This position developed in response to the recent sovereignty movement, and out of fear that Hawaiian independence would result in a loss of rights and privileges that native Hawaiians currently possess. These advocates believe that redress should be limited to monetary compensation, an increase in native Hawaiian control over Hawai'i's land base, and more access rights to land and ocean for traditional purposes.

While this solution provides compensation for wrongs committed by the United States, it will not establish a form of native Hawaiian self-determination. Although maintaining the status quo will satisfy the self-determination rights of those native Hawaiians who agree with United States domination over Hawai'i, it will not satisfy the rights of native Hawaiians who want to establish their own government. Moreover, this position is the result of a false belief that native Hawaiians will not be able to take advantage of the benefits received from the United States and have the right to self-determination at the same time.

C. "Nation within a Nation"

The leading position for redressing native Hawaiian self-determination is to establish a "nation within a nation." This plan resembles native American and native Alaskan relations with the United States. The predominant organization that supports this position is Ka Lahui Hawai'i (Ka Lahui). Ka Lahui claims 21,000 citizens and has a constitution that provides a framework for a "democratically elected nation of Hawai'i within the American federal and state system." Ka Lahui also seeks congressional recognition of a sovereign Hawaiian government, control over 200,000 acres of Hawaiian home lands, and additional

148. Id. Status Quo advocates have been criticized as lacking the "religious fervor" and dedication to support Hawaiian self-determination. Id.
149. Meller, supra note 129, at 181. A 1995 survey found that 80% of native Hawaiians "expressed concern with existing federal and state benefits being lost by sovereignty." Id.
150. Id.
151. Id. at 178.
152. Id. at 180.
153. Id.
155. Id. at 178.
lands to provide for the nation’s land base. Ka Lahui desires further reparations to be determined through negotiations.

Of the three positions addressing native Hawaiian self-determination, a “nation within a nation” is the most feasible resolution. Most native Hawaiians support this position, and it will not detrimentally affect those native Hawaiians who are opposed to native Hawaiian self-governance. Those native Hawaiians who are opposed to this arrangement are free to disassociate themselves with this new government.

CONCLUSION

Native Hawaiians have had a turbulent history in dealing with the United States. Since Americans first arrived on the Hawaiian Islands, they interfered in the governmental process of this peaceful nation. The 1993 Apology Resolution was the first step in redressing the wrongs committed upon the native Hawaiians. However, this resolution does not close the book on the issue. Native Hawaiians, like all people, are entitled to government by consent and choice of their form of government. Many native Hawaiians have stated that it is their desire to form a nation within the federal system. If this desire is the will of the people, the United States must make efforts to aid in establishing this self-determining government.

156. Id. at 179.
157. Id.
158. Id. at 178.
159. See supra Part I for a discussion of the history of Hawai‘i.
162. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).
163. See supra Part IV.C (discussing the different theories developed for native Hawaiians to reach independence).