

The Illegal Overthrow of the Government of the Hawaiian Kingdom

Dr. Keanu Sai



Reciprocity Treaty of 1875

- In 1875, King Kalākaua negotiated a reciprocity trade agreement with the United States
- One of the provisions was that Hawaiian sugar would enter the American market duty free
- Up to 1884, Hawaiian sugar production was a lucrative business



Reciprocity Treaty of 1875

- American sugar producers, who could not compete against Hawaiian sugar, as a result of the aftermath of the Civil War that outlawed slavery, protested the continuation of the treaty which would last until 1885 unless an agreement was made to extend it
- 1884, the United States offered extending the treaty on condition of a lease to Pearl Harbor to be used for re-coaling American ships



Reciprocity Treaty of 1875

- Kalākaua, under Hawaiian law, needed the approval of the Hawaiian Legislature in order to extend the commercial treaty
- In both the 1884 and 1886 legislative sessions, the Legislature blocked it because it did not like the condition of exclusively leasing Pearl Harbor to the United States
- This emboldened the sugar industry to walk down the path of treason driven by greed



Revolt

- During the summer of 1887, while the Legislature was out of session, a minority of subjects of the kingdom and foreign nationals met to organize a revolution and take over the government
- The driving motivation was sugar and began to justify their actions by stating the “native was unfit for government and his power must be curtailed”



Revolt

- The group made demands on Kalākaua, including an immediate change of the King's cabinet ministers
- Under threat of violence on July 1, 1887, the King reluctantly agreed to form a new Cabinet Ministry made up of members of the group



Revolt

- On that day each member of the new Cabinet took “an oath to support the constitution and laws, and faithfully and impartially to discharge the duties of his office”
- Unbeknownst to the King, the new ministry made a request to have Chief Justice Judd and Associate Justice Preston “assist in the preparation of a new constitution” on July 5, 1887,” which implicated the two highest ranking judicial officials with treason



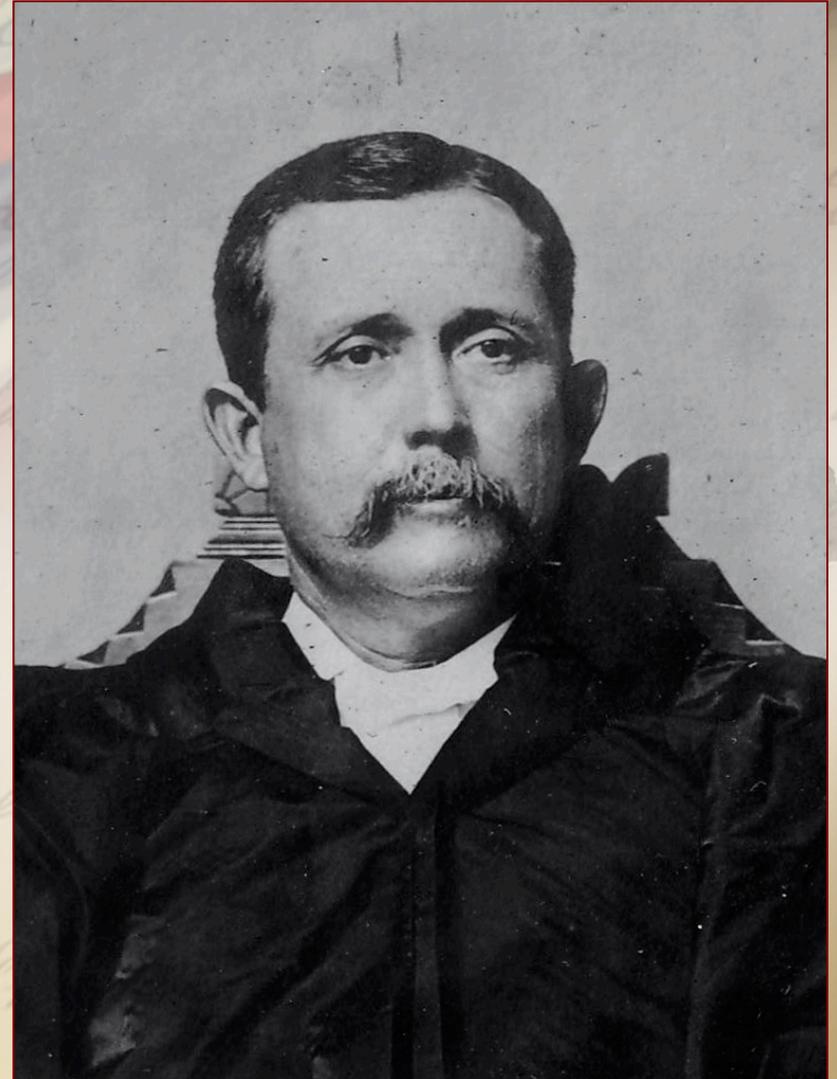
Revolt

- Hawaiian constitutional law provided that any change to the constitution would have to be approved by the Legislative Assembly, which was still out of session and would not convene until 1888 unless called into special session
- Because the separation of powers doctrine was fully enshrined in the constitution since 1864, the King, as the chief executive, was limited to faithfully executing the law and could not enact law on its own without the legislature's involvement



Revolt

- On July 5, 1887, Chief Justice Albert F. Judd and Associate Justice Edward Preston joined the insurgents and assisted in drafting the bayonet constitution



Revolt

- By 12 noon on July 5, 1887, a so-called constitution was drafted by the insurgents and laid before the King
- Unbeknownst to Kalākaua that the Supreme Court was involved, he asked Chief Justice Judd, who was present, for his opinion
- Judd stated,
 - “You must follow the advice of your responsible ministers”



Revolt

- On October 20, 1887, the Cabinet Council ratified the 1884 Supplementary Convention extending the commercial treaty another seven years and giving the United States an exclusive lease to Pearl Harbor
- This exclusive lease was a violation of international law's *most favored nation* clause in the treaties with other countries and a source of growing tension



Revolt

- Charles Gulick, the former Minister of the Interior from 1883-1886, concluded:
 - “The ready acquiescence of the King to their demands seriously disconcerted the conspirators, as they had hoped that his refusal would have given them an excuse for deposing him, and a show of resistance a justification for assassinating him. Then everything would have been plain sailing for their little oligarchy, with a sham republican constitution”



Revolt

- The so-called 1887 constitution came to be known as the Bayonet constitution and was never submitted to the Legislative Assembly for approval
- It was drafted by a select group of twenty individuals and effectively placed control of the Legislature and Cabinet in the hands of individuals who held foreign allegiances



Revolt

- Unlike Kamehameha V, Kalākaua, as the chief executive, did not have the constitutional authority to abrogate and then subsequently promulgate a new constitution without legislative approval
- The constitution of 1864 no longer had the sovereign prerogative of Article 45, thus the Crown was limited to faithfully executing Hawaiian law as the country's chief executive



Circumstances of the 1864 Constitution

- In his speech at the opening of the Legislative Assembly of 1864, Kamehameha V explained and justified his action under Article 45 of the 1852 Constitution
 - The “forty-fifth article [that] reserved to the Sovereign the right to conduct personally, in cooperation with the Kuhina Nui (Premier), but without the intervention of a Ministry or the approval of the Legislature, such portions of the public business as he might choose to undertake”



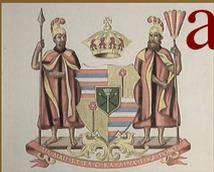
Circumstances of the 1864 Constitution

- The 1864 Legislative Assembly appointed a special committee to respond to Kamehameha V's opening speech of the new Legislature
- The committee recognized the constitutionality of his actions and stated this
 - “prerogative converted into a right by the terms of the [1852] Constitution, Your Majesty has now parted with, both for Yourself and Successors, and this Assembly thoroughly recognizes the sound judgment by which Your Majesty was actuated to the abandonment of a privilege, which, at some future time might have been productive of untold evil to the nation”



1890 McKinley Tariff Act

- In 1890, the Congress enacted the McKinley Tariff Act that provided that all foreign sugar entering the American market would be duty free
- This forced the Hawaiian sugar to compete with foreign sugar in the American market
- A seed was planted in the minds of the insurgents to find an opportunity to be annexed to the United States



Revolt

- On November 25, 1890, King Kalākaua departed for San Francisco
- On January 20, 1891, the King died and his body returned to Honolulu on the 29th
- That same day Lili‘uokalani was sworn in as Queen

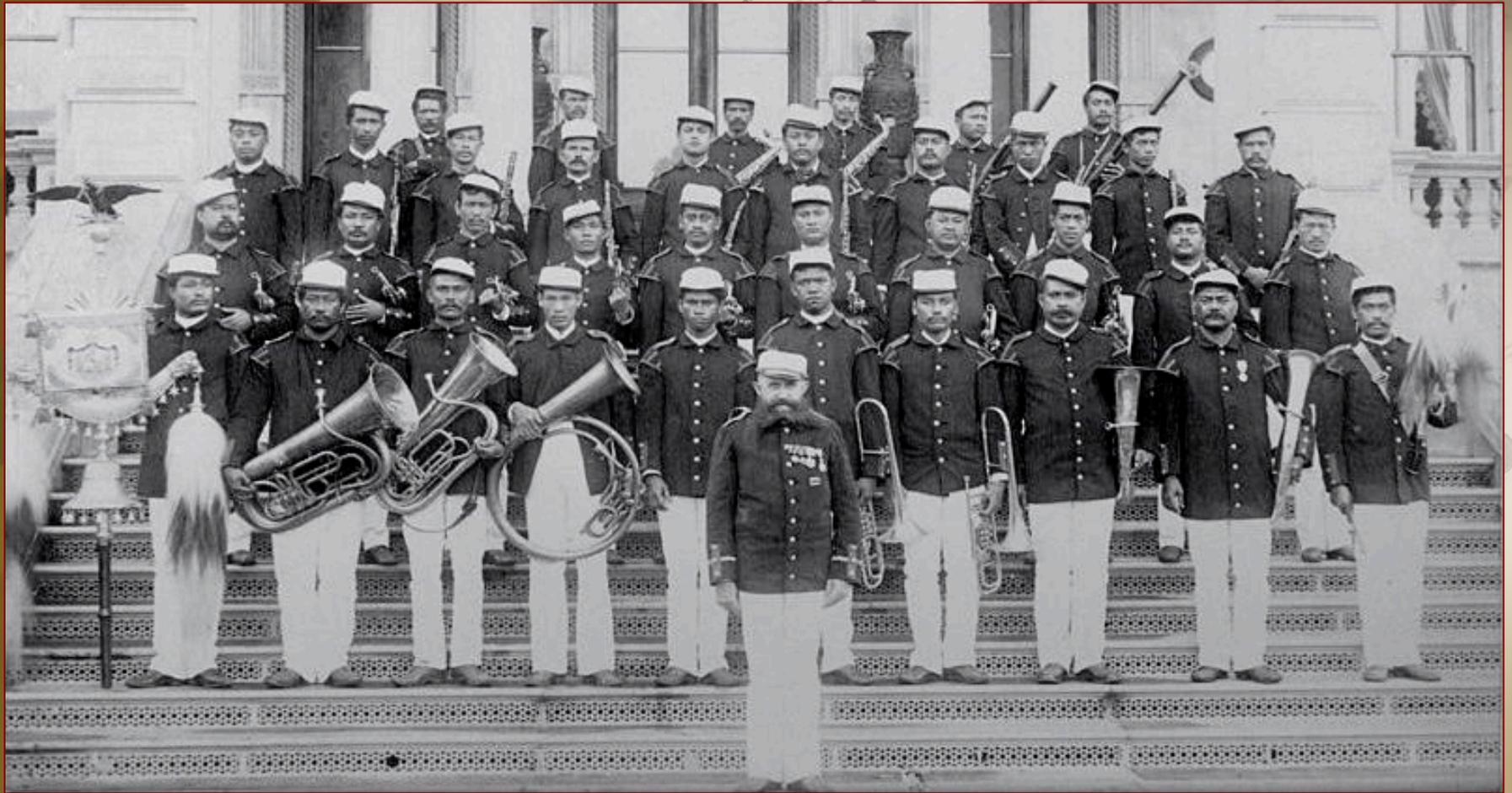


Revolt

- President Harrison sent John Stevens to the Hawaiian Kingdom as U.S. Minister
- In 1892, the Annexation Club was formed by the insurgents with the support of U.S. Minister Stevens
- After the government was overthrown on January 17, 1893, Stevens sent a dispatch to the State Department on February 1st
 - “The Hawaiian pear is now fully ripe, and this is the golden hour for the United States to pluck it”



Mele Aloha 'Aina (Patriot's Song)



the title of Protectorate, or

Mele Aloha 'Aina (Patriot's Song)

No. 33.

HAWAIIAN ISLANDS,

Island of Oahu

ss.

District of Honolulu.

I, William Larsen, aged
35, a native of Denmark, residing
at Honolulu, in said District, do solemnly
swear in the presence of Almighty God, that I will support the Provisional Gov-
ernment of the Hawaiian Islands, promulgated and proclaimed on the 17th day
of January, 1893. Not hereby renouncing, but expressly reserving all allegiance
to any foreign country now owing by me.

Subscribed and Sworn to before me
this 7th day of March
A. D. 1893.

Antonio Perry
Notary Public.

W. Larsen



State of Peace and State of War

- Judge Greenwood states:
 - “Traditional international law was based upon a rigid distinction between *the state of peace* and the *state of war*”
 - “Countries were either in a *state of peace* or a *state of war*”
 - “There was no intermediate state”
- Acts of war triggers a state of war
- State of war includes belligerent occupation



State of Peace and State of War

INTERNATIONAL LAW

A TREATISE

BY

L. OPPENHEIM, LL.D.

LECTURER IN PUBLIC INTERNATIONAL LAW AT THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE (UNIVERSITY OF LONDON) AND MEMBER OF THE FACULTY OF ECONOMICS AND POLITICAL SCIENCE OF THE UNIVERSITY OF LONDON; FORMERLY PROFESSOR ORDINARIUS OF LAW IN THE UNIVERSITY OF BASLE (SWITZERLAND)

VOL. I.

PEACE



LONGMANS, GREEN, AND CO.

39 PATERNOSTER ROW, LONDON

NEW YORK AND BOMBAY

1905

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VOL. II.

WAR AND NEUTRALITY



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1906

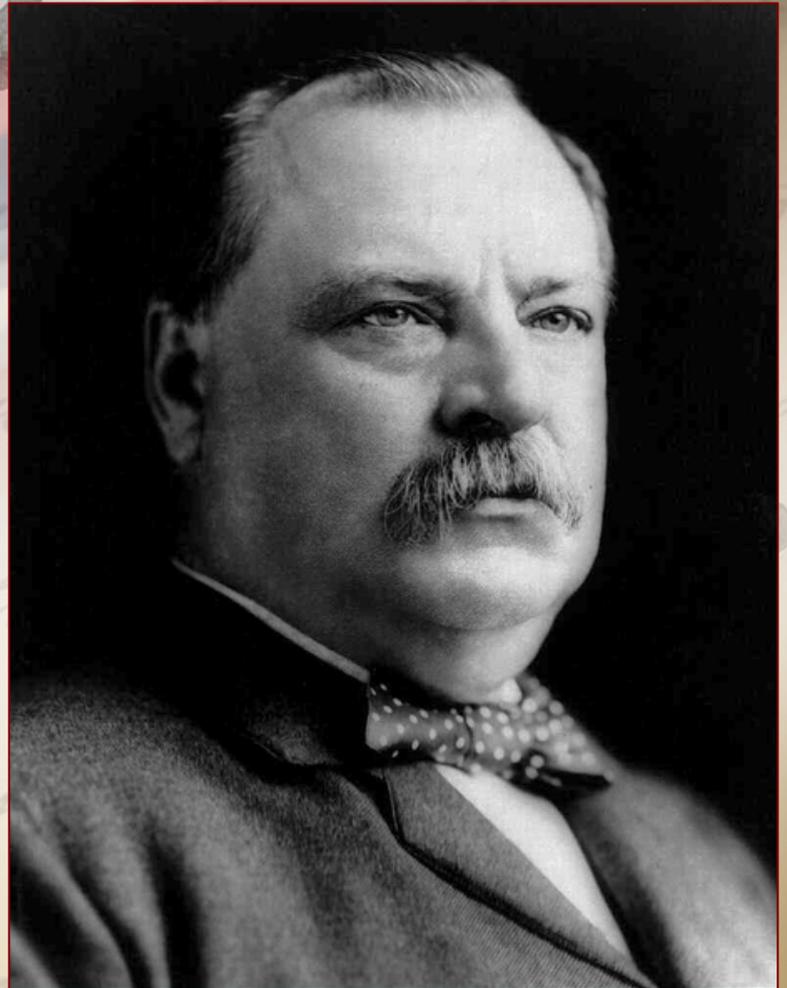
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State of War



- By direction of Hawai‘i’s Queen Lili‘uokalani, President Cleveland in March of 1893 initiated the investigation of the overthrow of the Hawaiian Kingdom government on January 17, 1893
- On December 18, 1893, the President reported to the Congress his findings and conclusions of the investigation



State of War

- President Cleveland's Message to Congress:
 - “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*”



State of War

- Once in a state of war “the law of peace ceased to apply between [the two States] and their relations with one another became subject to the laws of war, while their relations with other States not party to the conflict became governed by neutrality” – *Professor Christopher Greenwood*
- “If an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect” – *Professor Gabriela Venturini*



State of War

- Queen Lili‘uokalani’s Conditional Surrender:
 - “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 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”



State of War

- Queen Lili‘uokalani’s Conditional Surrender:
 - “Now to avoid any collision of armed forces and perhaps the loss of life, I do this under protest and imperiled 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”



State of War

- President Cleveland's Message to Congress:
 - “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 the 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... 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”



State of War

- President Cleveland's Message to Congress:
 - “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”
 - “The provisional government owes its existence to an armed invasion by the United States”

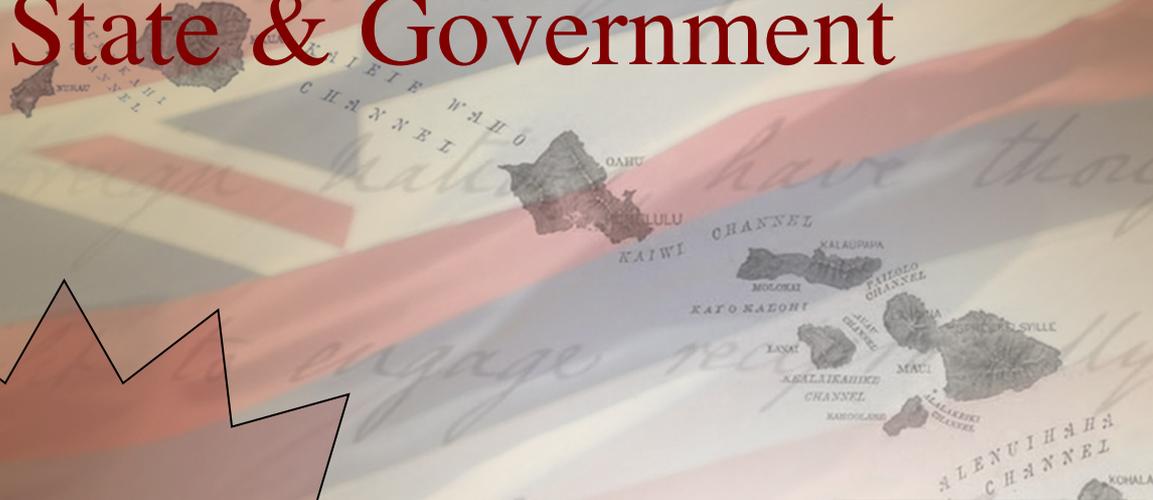


State of War

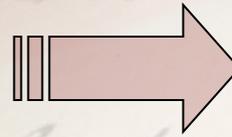
- President Cleveland told Congress:
 - “By an *act of war* ... the Government of a ... friendly and confiding people has been overthrown”
- International law requires a treaty of peace in order to transform the *state of war* to a *state of peace*
- There is no such treaty of peace



Hawaiian State & Government



State Sovereignty
Hawai'i (1843)



Illegally
Overthrown
Kingdom
Government
1893



The Law of Occupation

- The laws of war in 1893 obligated the United States, as the Occupying State, to administer the laws of the Hawaiian Kingdom and not the laws of the United States when they are in effective control of the territory
 - This obligation is now codified under Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention
- The U.S. did not administer Hawaiian Kingdom law and unilaterally annexed the Hawaiian Islands in 1898



The Law of Occupation

- Under international law, the military overthrow of a country's government does not equate to an overthrow of the country called a "state"
- According to Professor Brownlie:
 - "After the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German State [its independence and sovereignty] did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its existence"



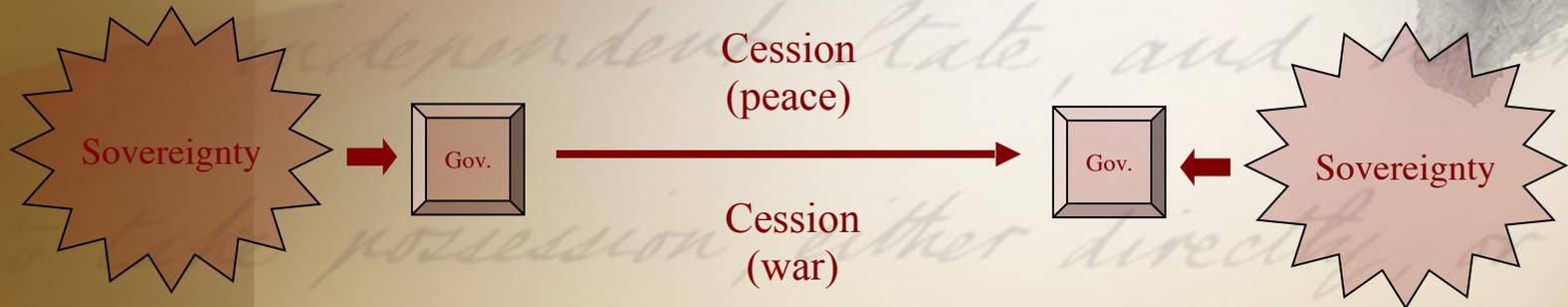
How Does a State Acquire the Territory of Another State under International Law?



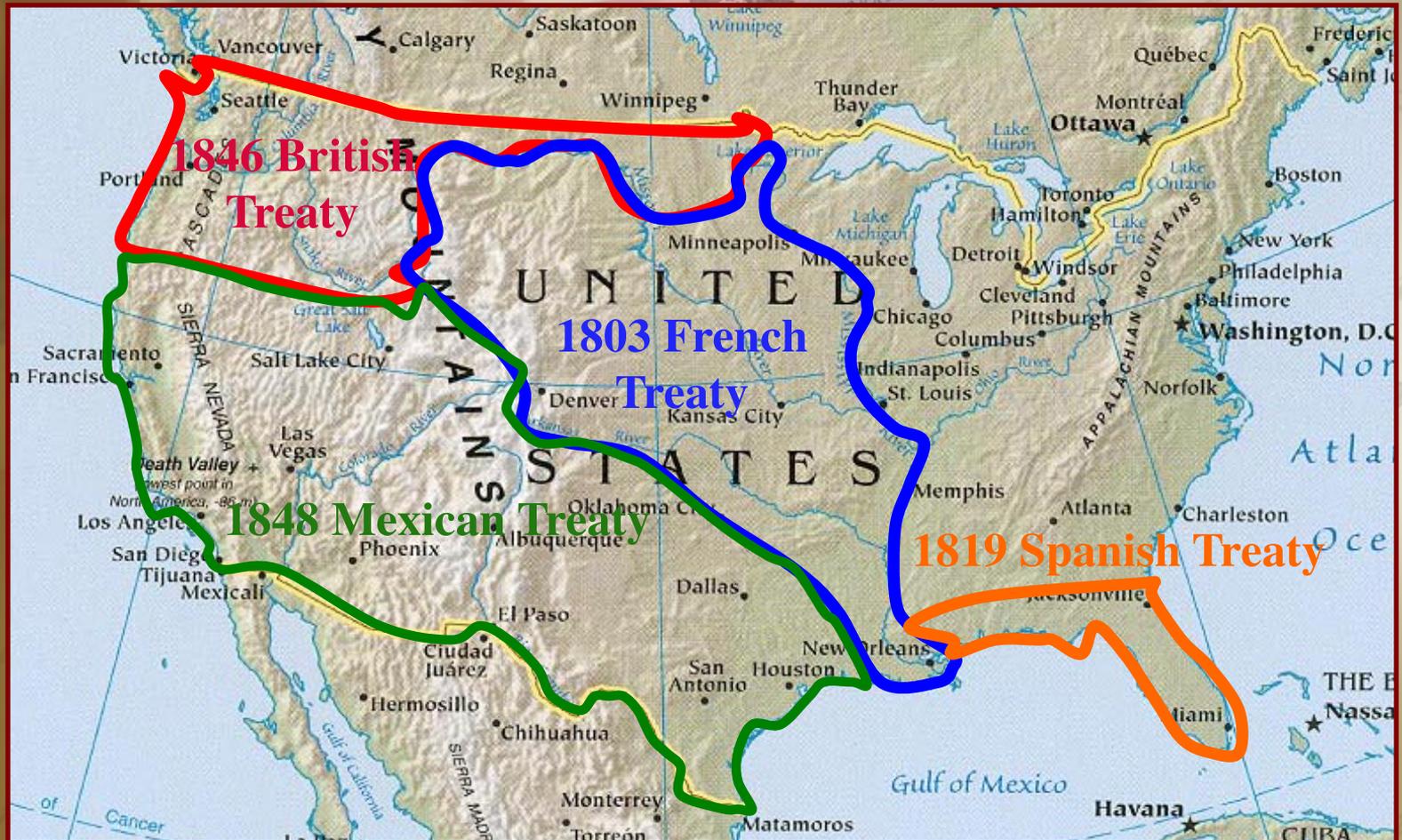
Cession under International Law

According to Professor Oppenheim, a leading expert in international law:

“Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State” and the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State”



Territory Ceded to the United States



Authority of Hawai‘i’s Cession?

July 7, 1898.

[No. 55.] Joint Resolution To provide for annexing the Hawaiian Islands to the United States.

Annexation of the
Hawaiian Islands.
Preamble.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

- The 1898 *Joint Resolution of Annexation* is a municipal law of the United States enacted by the Congress
- A joint resolution is not a treaty of cession



Congressional Records

Public Law 86-3

United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendents of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by people of Hawaii in the election held on November 7, 1893, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

SEC. 2. The State of Hawaii shall consist of all the islands together

Territory.

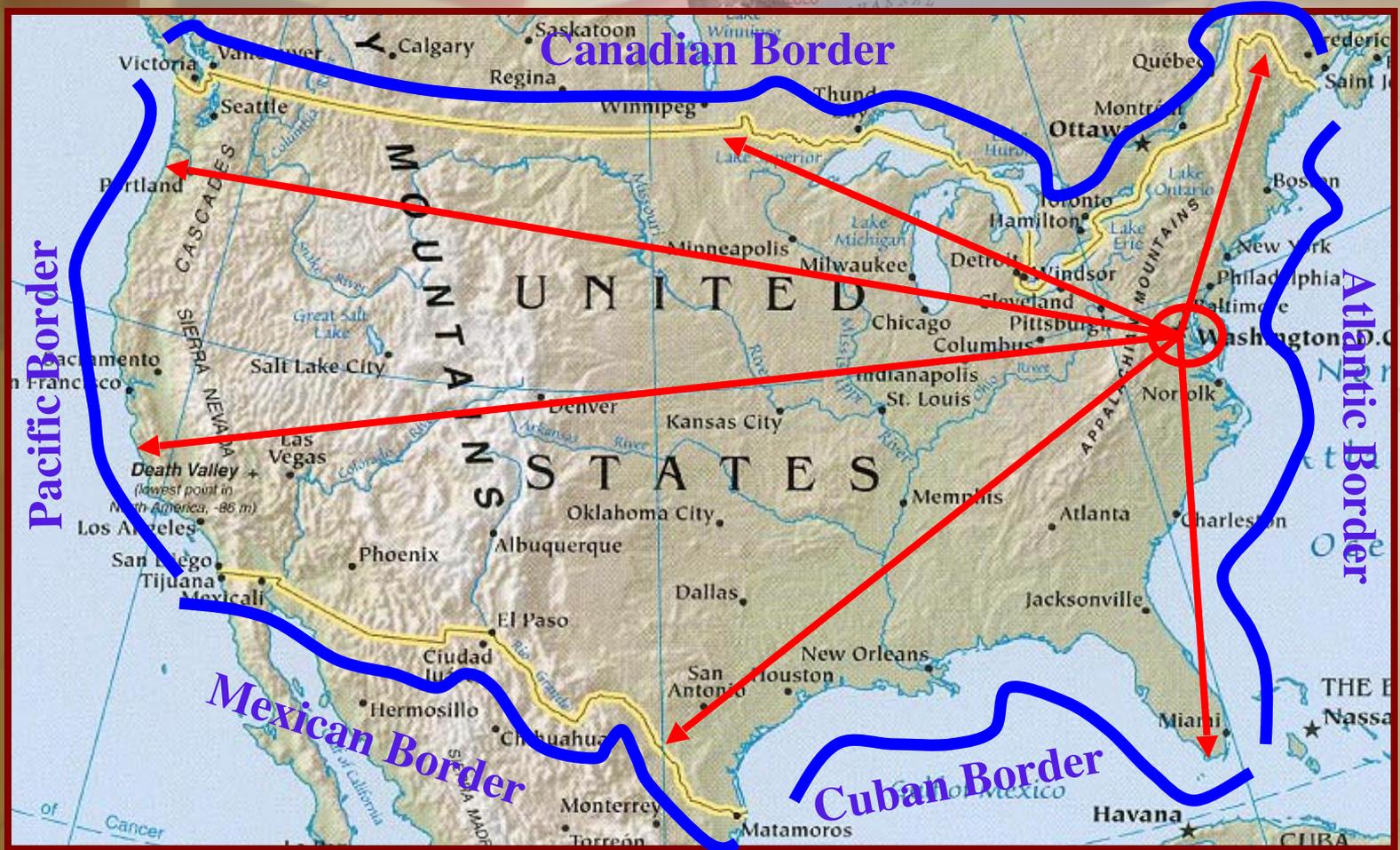


Limitation of United States Laws

- United States Supreme Court, *U.S. v. Curtiss-Wright Export*, 299 U.S. 304, 318 (1936):
 - “Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory...
 - and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law”



Limitation of United States Laws



Maui Newspaper, Oct. 20th 1900

PALAPALA HOOPII KUE HOOHUIAINA.

I ka Mea Mahaloia WILLIAM MCKINLEY, Peresidena,
a me ka Aha Senate, o Amerika Huipuia.

ME KA MAHALO:—

NO KA MEA, ua waihoia aku imua o ka Aha Senate
o Amerika Huipuia he Kuikalii no ka Hoohui aku ia
Hawaii nei ia Amerika Huipuia i oleloia, no ka noonooia
ma kona kau mau iloko o Dekeinaba, M. H. 1897; nolaila,

O MAKOU, na poe no lakou na inoa malalo iho, he
poe makaainana a poe noho oiwi Hawaii hoi no ka
Apana o Waialua, Moku-puni o
Maui, he poe lala no ka
AHAIHI HAWAII ALOHA AINA O KO HAWAII PAE-
AINA, a me na poe e ae i like ka manao makee me ko
ka Ahahui i oleloia, ke kua aku nei me ka manao ikaika
loa i ka hoohuiia aku o ko Hawaii Paeaina i oleloia ia
Amerika Huipuia i oleloia ma kekahi auo a loina paha.

IKKA-ATTEST:

Sept. 11, 1897.
Enoch Johnson
Kakaulelo. Secretary.

PETITION AGAINST ANNEXATION. ¹⁴⁰

To His Excellency WILLIAM MCKINLEY, President,
and the Senate, of the United States of America.

GREETING:—

WHEREAS, there has been submitted to the Senate of
the United States of America a Treaty for the Annexation
of the Hawaiian Islands to the said United States of
America, for consideration at its regular session in Decem-
ber, A. D. 1897; therefore,

WE, the undersigned, native Hawaiian citizens and
residents of the District of _____
Island of _____, who are members
of the HAWAIIAN PATRIOTIC LEAGUE OF THE HAWAII-
AN ISLANDS, and others who are in sympathy with the
said League, earnestly protest against the annexation of
the said Hawaiian Islands to the said United States of
America in any form or shape.

James Keamihuna Kaulia
President - President.

INOA—NAME.	AGE.	INOA—NAME.	AGE.
<i>Thomas Edward Haami</i>	<i>42</i>	<i>Kapimama Haami</i>	<i>33</i>

knows no law, and it was absolutely necessary to annex the islands
at the time it was done. And further, Thomas, if it becomes
necessary to annex Cuba, it will be done quicker than a wink. It
is but fair to give you credit for being honest in your views.
Thomas, but you don't quite understand the American people just
yet, hence you are very misleading.



Annexation Called into Question

- In 1988, the U.S. Department of Justice's Office of Legal Counsel (OLC) questions Hawai'i's annexation
- The OLC cited Constitutional Scholar Professor Willoughby:
 - “The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press”



Annexation Called into Question

- “The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act”
- “Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State whose legislature enacted it”
- The OLC concluded:
 - “It is unclear which constitutional power of 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”



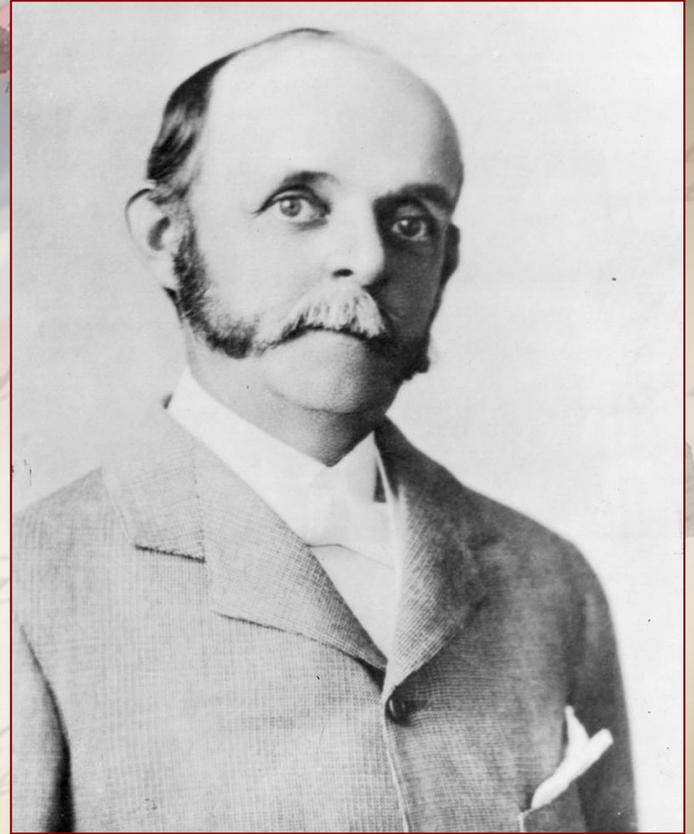
Annexation is Unlawful

- Under international law, annexation of a State without its consent is unlawful
- According to *The Handbook of Humanitarian Law in Armed Conflicts* (1995):
 - “The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty. International law does not permit annexation of territory of another state”



Denationalization

- “If we are ever to have peace and annexation the first thing to do is to obliterate the past”
—Samuel Damon, insurgent (1895)
 - Trustee of the Kamehameha Schools (1884-1909)
- *Denationalization* is to obliterate the national consciousness of the occupied State



Denationalization—War Crime

- In 1919, denationalization was listed as a war crime
 - “Attempts to Denationalize the Inhabitants of Occupied territory”
- Stemming from Italy’s occupation in the Second World War, Yugoslav charge no. 1434 stated:
 - “Apart from killing, deporting and interning innocent persons, the Italians started a policy, on a vast scale, of denationalization”
 - “As part of such policy, they started a system of ‘re-education’ of Yugoslav children”
 - “This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way”



INDICTMENT *

COUNT THREE—WAR CRIMES

(Charter, Article 6, especially 6 (b))

(J) GERMANIZATION OF OCCUPIED TERRITORIES

In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists.

This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces.

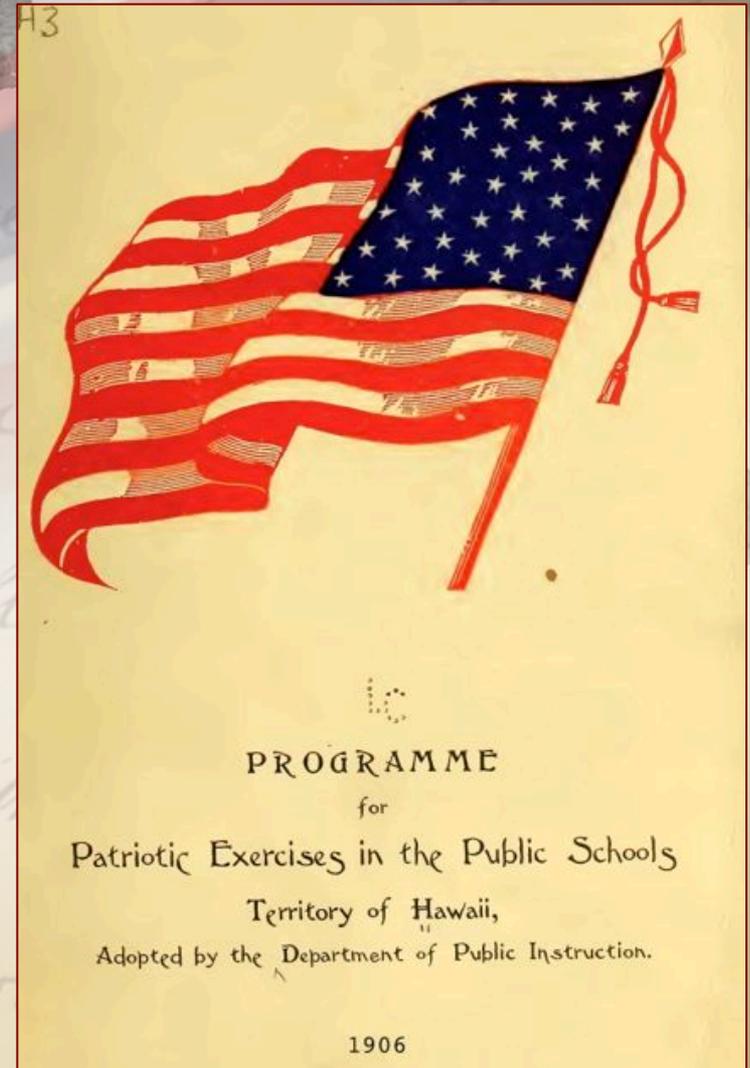
This was carried out in most of the occupied countries including: Norway, France (particularly in the Departments of Upper Rhine, Lower Rhine, Moselle, Ardennes, Aisne, Nord, Meurthe and Moselle), Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.

Defendants.

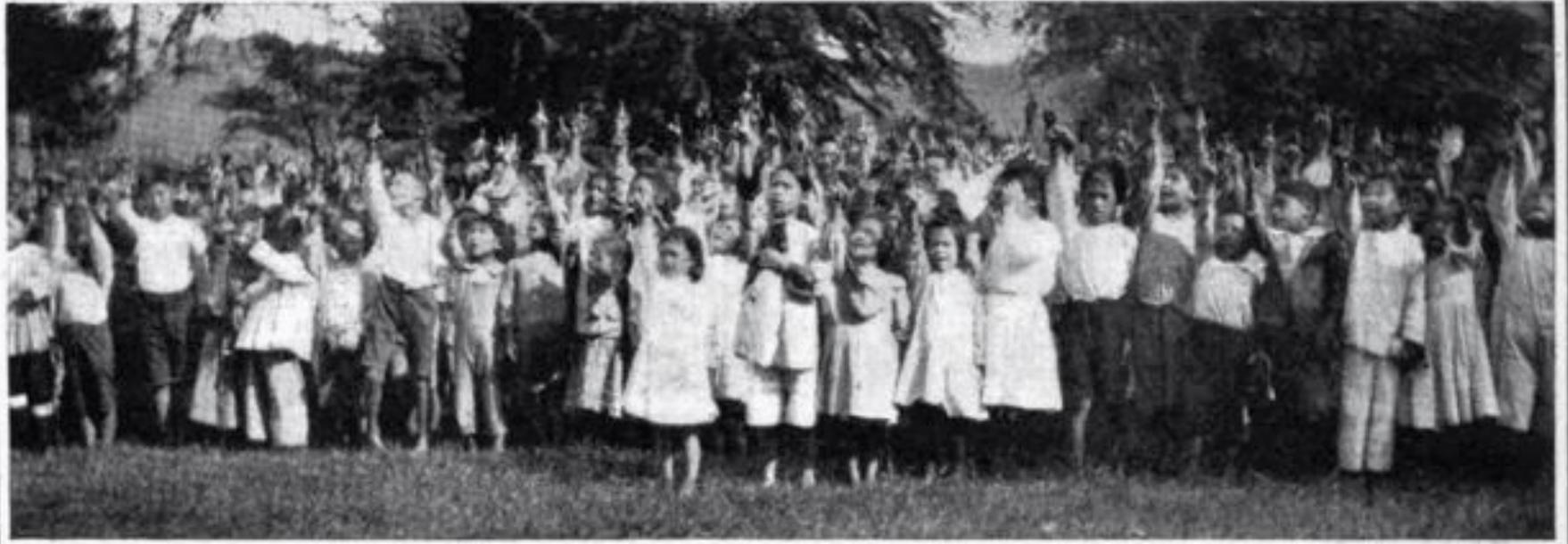


Denationalization through Americanization

- In 1906, a pamphlet titled “Programme for Patriotic Exercises in the Public Schools” was published by the government of the Territory of Hawai‘i
- The theme of the program was to indoctrinate the children of the Hawaiian Islands to be “American” and to speak “English”



Denationalization through Americanization



"We give our heads and our hearts to God and our country! One country, one language, one flag!"

THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAIUALANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN



*Article in Harper's Weekly Magazine, Hawaii's Lesson to
Headstrong California, February 16, 1907*

Denationalization

- Within two generations the national consciousness of the Hawaiian Kingdom was obliterated and replaced through *Americanization*
 - Interfered with the methods of education
 - Compelled education in the English language
 - Only taught American and not Hawaiian Kingdom history
 - Migrated thousands of American citizens to the Hawaiian Islands
 - Drafted Hawaiian subjects for U.S. wars
 - Imposed American laws
 - Imposed American administrative and judicial systems
 - Imposed American financial and economic administration



Propaganda of a Treaty of Cession

HAWAIIAN
AMERICA
NOT

President McKinley, June 16, 1897, signed another annexation treaty, which was submitted to the Senate and ratified July 6, 1898—after Dewey's victory at Manila had made ratification imperative.

TRUE

NEW YORK AND LONDON
HARPER & BROTHERS PUBLISHERS

1899



Propaganda of a Treaty of Cession

HISTORY
OF THE
Not

A treaty was negotiated by Secretary Foster, agreed upon by both parties, and sent to the Senate by President Harrison February 14, 1893. The treaty was withdrawn by President Cleveland. President McKinley revived the question, and a treaty was ratified by both parties, and annexation consummated September 16, 1898, which effected the absorption of the Sandwich Islands into the domain of the United States.

True

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1901.



Propaganda of a Treaty

A foreign mission board maintaining a school in Hawaii in 1849 turned the school over to the government under an agreement, expressed in correspondence that the government should maintain it as an institution for the cultivation of sound literature and solid science; that no religious tenet or doctrine contrary to those inculcated by the mission, a summary of which was transmitted in the correspondence, should be taught, and

Upon these facts, it is alleged, that appellants have become entitled to a return of the property conveyed or to the payment of \$15,000; that the Territory has refused to do either, but has elected to retain the property which election is evi-

Extrinsic evidence, as to what the parties did and the nature of the course of instruction when the agreement was made, and thereafter as continued by the government, was admissible to prove the intent of the parties as to what was meant by sound literature and solid science, and that under all the circumstances the agreement was that religious instruction was to be continued and on the failure of the government to continue such



Propaganda of a Treaty of Cession



- “When a well packaged web of lies has been sold gradually to the masses over generations, the truth will seem utterly preposterous, and its speaker, a raving lunatic”

— *Donald James Wheal aka Dresden James*



Closing Statements

- According to Professor Cohen:
 - “The State must be distinguished from the government. The State, not the government, is the major player, the legal person, in international law
- According to Judge Crawford:
 - “There is a presumption that the State continues to exist, with its rights and obligations despite a period in which there is no effective government. And belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State”
- While under belligerent occupation, the United States is still in a *State of War* with the Hawaiian Kingdom