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AKAKA BILL


Explores the potential effect of the Akaka Bill on Kamehameha Schools and analyzes the potential interaction between a Native Hawaiian government and Kamehameha Schools.


Asserts that the Akaka Bill must pass for Native Hawaiians to be sovereign and self-governing. Addresses the fears of those who oppose the Akaka Bill because its passage would lead to gaming in Hawaii. Describes the rise of Indian gaming operations and analyzes how sovereign status provides a loophole, which Indians have used to institute gaming and which Native Hawaiians could likely make use of as well.


Supports the extension of federal policies of self-determination and self-governance for America’s native and indigenous people to include Native Hawaiians.


Provides a basic contextual background of Hawaiian history, legislation and case law leading to the Akaka Bill. Examines public controversy in Hawaii surrounding federal recognition of a Native Hawaiian government.


Explains the legal justifications for including Hawaiians in federal Native American policy and responds to activists who prefer that Hawaiians seek complete independence from the United States.


Argues that a government-to-government relationship with the United States will benefit the Native Hawaiians but will not settle their international claims against the U.S.

Examines constitutional issues of the Akaka Bill and concludes that it would be unlikely to survive a constitutional challenge.


Outlines the background of the Akaka Bill and summarizes the three most important points made by the Report in support of the bill.
CULTURAL KNOWLEDGE AND PROPERTY


“Expresses a non-Hawaiian’s observation that protection of Hawaiian traditional knowledge and cultural heritage has to emanate from a sui generis system originating with Native Hawaiians, not from Western intellectual property laws that promote the ‘commodification of culture,’ one of many remnants of colonization” (p. 739).


Examines the legal status of indigenous language in New Zealand and Hawai‘i and the courts’ perception of language as an individual right. Justifies judicial enforcement of the Hawaiian language to make it truly official and fulfill Hawai‘i’s duty to encourage use of the language.


Maps cases of misappropriation of Kanaka Maoli traditional knowledge. Examines the significance of the Paoakalani Declaration and the role it occupies in engaging in the issue and articulating the rights surrounding the protection and use of Kanaka Maoli traditional knowledge.


Examines the legal debate over repatriation of Native “cultural property” through the *ki‘i la‘au* dispute.


Examines the proposed patenting of the Native Hawaiian genome for the purpose of economic and health related benefits for the Native Hawaiian people.
**LAND AND NATURAL RESOURCES**


Argues that the Mahele was an intelligent response on the part of the Hawaiian elite to the prospect that Hawaii would soon be colonized. Examines the concept of private property as a way to prevent lands from being dispossessed.


Discusses the Public Trust Doctrine in Hawaii and the Waiahole decision.


Identifies the legal rights of kuleana holders and considers how these rights interact with the general priorities of Hawaii based land trusts.


Uses case law to catalog and anticipate legal issues as they may arise in relation to the restoration of the ancient Hawaiian fishpond.


Examines the development of land use law that governs the rights of native Hawaiians to access private and public lands to carry on traditional practices.


Demonstrates that bioprospecting in Hawaii will continue to increase and asserts that the State of Hawaii has a legal duty to regulate the bioprospecting of public natural resources. Addresses key issues that the Hawaii State Legislature must consider in creating a viable solution.

Examines Hawaii’s current regulatory scheme for managing fisheries. Identifies factors that contribute to Hawaii’s declining fish population. Examines native Hawaiian practices and principles along with the State’s jurisdiction and constitutional duties.


Argues that Hawaiian Home Land beneficiaries have a constitutional right to a water reservation for current and foreseeable needs. Also asserts that a failure to ensure a water reservation breaches the State of Hawaii’s fiduciary duty to native Hawaiian homesteaders.


Examines the background of the trust and defines the trust lands and revenue. Also analyzes OHA’s revenue entitlement and the alienation of ceded lands.


Examines the fundamental differences in Western and Native Hawaiian property concepts and laws in Hawaii as it relates to certain legislative proposals introduced in reaction to PASH. Traces the legal developments of Native Hawaiian rights from the Kingdom of Hawaii to current law.


Reviews the place of custom and usage in U.S. and Hawaii law. Examines customary access and gathering rights through the PASH case.


Examines the meaning of ‘environmental justice’, focusing on the interplay between race and environment. Includes a case study on the Waiahole Water controversy.
NATIVE RIGHTS AND CLAIMS


Examines the resignation of the Kamehameha Schools Bishop Estate Trustees and provides fictitious court opinions that consider the management of Kamehameha Schools Bishop Estate.


Examines Native Hawaiian rights to access property and statutory and constitutional provisions that run alongside Hawaiian case law. Discusses legislative restrictions on property rights that illuminate the popular conception of the community’s interest in property rights.


Evaluates *OHA v. State* and illustrates OHA’s profound economic and other consequences for the State of Hawaii, its public schools, and its citizens.


Explores the gathering rights jurisprudence of Justices Richardson and Klein, and considers the degree to which their ethnicity enhanced their perspectives on the matter. Analyzes later cases that have implications on gathering rights.


Outlines the history and practice of NAGPRA and examines the history of traditional Hawaiian burial practices. Identifies problems with NAGPRA and its implementation in Hawaii. Discusses the Kawaihae Caves case and proposes possible solutions.


Analyzes the historical framework and key cases surrounding traditional gathering rights of native Hawaiians.

Petrich, Matthew J. “Litigating NAGPRA in Hawai‘i: Dignity or Debacle?” *University of Hawai‘i Law Review* 22 (Summer 2000): 545.
Explains the role of burials in Hawaiian culture along with struggles that Native Hawaiians face. Discusses the intent and goals of NAGPRA in the context of Hawaii.


Examines the accountability of trustees and testator intent using Kamehameha Schools as an example.


Argues that both the Kamehameha Schools admissions policy and the Native Hawaiian Education Act's Hawaiian-only limitation do not violate the equal protection component of the Fifth Amendment's Due Process Clause.


Focuses on the contemporary debate surrounding the status of Native Hawaiians to show how race is being used to construct the civil and political rights of Native Hawaiian people. Identifies the foundation for Critical Race Theory as the need to achieve social justice for groups that have suffered a history of oppression, and engages what it means to heal injustice which is embedded in society at the level of both structure and consciousness.


Exposes the errors in Stuart Minor Benjamin’s Yale Law Journal article. Also argues that preferential or separate programs for the Native Hawaiian people must be evaluated under the same “rational basis” standard of judicial review applicable to programs applied to other native groups and that such programs are rational and constitutional if they are designed to protect or promote self-governance, self-sufficiency, or native culture.


Examines the nature of the political community in the Kingdom of Hawai‘i in the years before the 1893 overthrow.


Outlines the background to the overthrow and annexation of the indigenous government of Hawaii. Also analyzes current struggles with Native Hawaiian rights and sovereignty.

Examines the background of civil rights jurisprudence under § 1981 and the history of the U.S. relationship with Hawaiians. Concludes that “Hawaiian” is not an impermissible racial classification under § 1981.
**RICE v. CAYETANO**


Argues that the Court’s failure to resolve the trust relationship issue in *Rice v. Cayetano* leaves many federal and state programs for Hawaiians and native Hawaiians under a Constitutional cloud vulnerable to equal protection challenges.


Focuses on congressional policies regarding Indians and how those policies often treat Indian tribes as political entities rather than ethnic communities. Analyzes the *Rice* case and concludes that constitutionally permissible alternative methodologies exist for accomplishing the same objective of self-determination for Native Hawaiians.


Discusses the background of *Rice v. Cayetano* and the current state of affairs for OHA. Analyzes the impact of recent initiatives intended to settle questions raised by *Rice*.


Argues that the U.S. Supreme Court’s reversal of the Ninth Circuit decision was correct as a matter of law and policy.


Asserts that there is a fundamental relationship between the notion of racial categories and the legal argument that indigenous peoples, such as Hawaiians, have a special political status and relationship with the United States.


Discusses the background to *Rice v. Cayetano*, address the Court’s decision, and explores the Court’s reasoning.

Critiques the *Rice* decision with emphasis on the competing interests involved in the case. Discusses the impact of the *Rice* decision on future challenges to laws designed to benefit Native Hawaiians specifically, and Native Americans generally.


Evaluates two cases with potentially large impacts on indigenous people who live within the United States. *Rice v. Cayetano* focuses on Native Hawaiians and self-determination and *Arizona v. California* discusses allocating water rights for three western tribes.


Speaks to legal advocates not about crafting doctrinal arguments but about some of the problems and possibilities of shifting the cultural frameworks of decisionmakers to understand hard evidence and social context in cases. Provides an examination of *Rice v. Cayetano* as it was still being decided in court.


Discusses *Rice v. Cayetano* and considers the distinction between members of federally recognized tribes and individual natives who lack federal recognition. Critiques the Court’s view of the Fifteenth Amendment and suggests ideas for reconsidering the holding in *Rice*. 
SOVEREIGNTY AND SELF DETERMINATION


Argues that by accepting limited sovereignty, Hawaiians limit the scope of their rights and do not gain much in return. By submitting to U.S. government control as a federally recognized tribe, Native Hawaiians will face serious bureaucratic and ideological conflicts with the United States and be subject to the whims of a regularly contradictory federal Indian policy.


Shows that theories of narrative in the law suggest that the forms of legal discourse that predominate the American legal system silence the native voice. Points to three strategies of resistance: reclaiming the native voice, critical analysis of “the law is colorblind,” and pursuit of Native Hawaiians’ self-determination through the mechanisms of international law.


Discusses how U.S. treatment of native Hawaiians, and Hawaii’s integration into the United States is inconsistent with the United States treatment of its former territories and their respective people.


Seeks to persuade federal lawmakers that Congress should pass the Akaka Bill. Also argues that if Native Hawaiians want self-government over their own territory, the Akaka Bill is the best method to achieve it.


Examines the possibility that by redefining tribes that are recognized by the federal government, the conflict between absorption and resistance can be assuaged.


Analyzes the legal reasoning of Rice v. Cayetano and asserts that only with an awareness of international law can courts balance the Hawaiians’ international and domestic interests with those of the parent sovereign, the United States.

Examines economic independence as a strategy for managing and controlling native Hawaiian assets and gaining political independence.


Explains the background and current issues of the Hawaiian sovereignty movement.


Analyzes Hawaiian arguments for autonomy under the U.S. Constitution and international law, while accounting for certain political and economic realities.


Analyzes the debate about whether governmental assistance should be given to Native Hawaiians in order to regain and restore their culture, lands, and sovereign status.


Asserts that Kanaka Maoli should strive for the use of either the process of decolonization or indigenous people's rights to achieve decolonization and exercise their right to self-determination.


Attempts to answer the question of whether the right to vote in an election concerning Native Hawaiian sovereignty can or should be limited to individuals of Hawaiian ancestry.