

Article

Ēwe Hānau o ka 'Āina: A Policy Review Focused on Hawai'i's Public Land Trust

J. Kawika Riley ¹, Cade Akamu ² and Lorinda Riley ^{2,*}¹ Independent Researcher, Honolulu, HI 96816, USA² Office of Public Health Studies, Thompson School of Social Work and Public Health, University of Hawai'i Mānoa, Honolulu, HI 96822, USA

* Correspondence: lorindar@hawaii.edu

Abstract: 'Āina (land) is central to Native Hawaiian culture and ways of life. The illegal overthrow of the Hawaiian Kingdom and annexation to the US resulted in the loss of Hawaiian crown and government land, which was placed in trust for the benefit of the Hawaiian people. These lands, now managed by the State of Hawai'i, were reconstituted as the Public Land Trust (PLT) with one of the articulated uses being the betterment of Native Hawaiians. While the Hawai'i State Constitution restored Native control over a proportional share of revenue generated from PLT lands, the US Supreme Court removed Native self-determination over the trust by opening its selection of trustees to non-Native Hawaiians. Applying a critical policy lens, this paper explores the rise and end of Native Hawaiian control over their own PLT share. Using the policy surveillance methodology, this study explores the recent expansion of Native Hawaiian consultation law and whether this has restored some self-determination over the Native Hawaiian PLT share, with the study finding that it has not. Thus, while Hawai'i's laws clearly articulate a desire for Hawaiians to control the use of their share of the PLT, Hawaiian control of these resources has eroded, suggesting a need to adopt policies that realign with the original purpose of the PLT.

Keywords: native Hawaiian; public land; land policy



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1. Introduction

'Āina (land) is central to Native Hawaiian culture and ways of life. The illegal overthrow of the Hawaiian Kingdom and annexation by the US resulted in the loss of Hawaiian crown and government lands, which the monarch placed in trust for the benefit of the Hawaiian people. 1959 brought statehood and these lands, now managed by the State of Hawai'i, were reconstituted as the Public Land Trust (PLT), whose trust purposes include the betterment of Native Hawaiians. Native Hawaiians have had an explicit constitutional right to a share of the revenue generated on PLT lands for nearly half a century, but the state provides insufficient mechanisms for Native Hawaiians to manage these resources.

This study explores the rise and end of collective Native Hawaiian control over the Office of Hawaiian Affairs (OHA), a state agency, and the public trust responsible for managing the Native Hawaiian people's share of PLT revenue. We then describe the previously under-researched system of Hawai'i state Indigenous consultation law, which has grown as a means by which Native Hawaiians influence public land management, especially in the years since Native Hawaiians lost the ability to collectively control OHA through Native Hawaiian-only elections. While the expansion of the state-level Native Hawaiian consultation law has increased Native Hawaiian rights, these laws do not directly apply to the community's influence over OHA. Lastly, we offer a critical analysis as to why OHA should embrace a robust, binding Native Hawaiian consultation policy for itself, as a mechanism to better reflect the purpose of the organization and to position it to remain a strong voice on Native Hawaiian land issues, including but not limited to the PLT itself.

On 7 November 1978, the voters of Hawai‘i approved substantial changes to the state constitution, including reforms concerning Hawai‘i’s Indigenous people and their rights to former Hawaiian Kingdom lands now known as the PLT [1]. This included the affirmation of Native Hawaiian rights to a pro rata share of the revenue generated by the state on PLT lands. To receive and manage the Native Hawaiian share of such revenue, and otherwise better Native Hawaiian conditions, the constitution also created OHA. As intended by the Constitution, OHA was not meant to merely act on behalf of Native Hawaiians; it was meant to be a mechanism through which Native Hawaiians took collective action. Native Hawaiians would select OHA trustees—from among themselves—through Native-only elections, and those chosen by participating Native Hawaiians would manage the trust until the next election.

Through a three-part structure—affirming the Native Hawaiian right to PLT revenue, creating OHA to receive and manage this revenue, and placing OHA under Native Hawaiian control (See Figure 1)—the constitution created a system through which Native Hawaiians managed their share of PLT revenue through OHA.

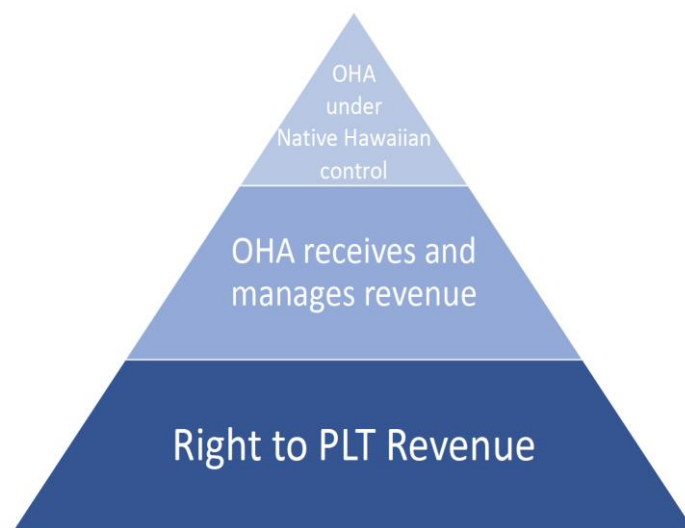


Figure 1. PLT three-part structure.

As reflected in the illustration above, the constitutionally affirmed Native Hawaiian right to a pro rata share of PLT revenue forms the foundation of this policy regime. Secondly, OHA sits in the middle of the structure, initially serving as an institution through which Native Hawaiians collectively determine how their revenue will be utilized. Finally, to assure the ability of Native Hawaiians to collectively manage OHA, the constitution determined that OHA’s leaders would be chosen by Native Hawaiians and would themselves be Native Hawaiians.

Currently, the revenues from the PLT amount to at least 394 million USD annually [2]. The Native Hawaiian share of the PLT has been the subject of significant litigation, in part because the State of Hawai‘i has failed to provide accurate accounting of the revenues derived from these lands, which include revenues generated at state airports and other lucrative lands. As a result, much of the political discussions around the PLT revolve around the amount of revenues rather than the process of utilizing the revenue. Our research decreases this imbalance by focusing not as much on what is included in the Native Hawaiian share, but on who manages that share and how Native Hawaiian voices are included.

Collective Native Hawaiian control over their share of PLT revenue ended in February 2000, when the US Supreme Court determined that OHA’s elections were unconstitutional [3]. The Supreme Court held that because the OHA was a state agency, its elections could not be limited to state residents with Native Hawaiian ancestry, and that all of

the state's voters must be allowed to determine OHA's trustees. Thus, OHA is currently managed by trustees who are chosen by all of Hawai'i's residents eligible to vote, nearly four out of five of whom are not Native Hawaiians [4]. In addition to opening up the electoral process, *Rice v. Cayetano* also allowed non-Hawaiian trustees to run for the first time. While nearly all of the OHA's trustees have continued to be Native Hawaiian since *Rice*, their re-election depends largely on the choices of non-Hawaiians [5]. In contrast, because federally recognized Native American tribes have governing systems outside of the state system and are understood to be political entities, their elected officials are—as OHA was for its first twenty years—only accountable to their own community for re-election. For what has now been more than half of the agency's history, OHA has continued to manage the Native share of PLT revenue and has remained responsible for acting in the best interest of Native Hawaiians, but without providing elections to keep the agency primarily accountable to its beneficiaries.

This article weaves together the story of how this disconnect came to be and how the current lack of direction has created an agency with a structural incentive that is inconsistent with its original purpose. Through a review of historical and legal documents, this paper surveys the development of the Native Hawaiians' right to PLT revenue, before conducting a policy review of the state of Hawai'i's Indigenous consultation policy. Interestingly, OHA championed many of the existing policies concerning Native Hawaiian consultation but has yet to apply them to itself.

The legal framework of the Native Hawaiian share of PLT revenue envisioned that the Native Hawaiian share of the PLT was intended to be utilized in accordance with the desires of Native Hawaiians. We also found that subsequent case law has diminished the ability of OHA to be represented by solely Native Hawaiian interests. Thus, the current implementation of Hawai'i's PLT laws does not account for the voices of Native Hawaiians as was intended during its inception. Interestingly, in the years that have followed the end of collective Native Hawaiian control over OHA, Native Hawaiian consultation law has expanded as a mechanism of Native Hawaiian rights. As policymakers consider options to fully restore Native Hawaiian control over their own trust, we suggest, in the interim, adoption of a robust consultation policy between OHA and Native Hawaiians.

2. Literature Review

2.1. Conceptual Framework

Native Hawaiians are a distinct community of Indigenous people who have occupied what is now considered the State of Hawai'i since time immemorial. As the US Congress has recognized, prior to documented Western contact Native Hawaiians "... lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion ... " [6]. Native Hawaiian scholars, such as Lilikalā Kame'eleihiwa and Jonathan Kamakawiwo'ole Osorio, have argued that 'āina (land, or more literally, "land which feeds us") is critically important to Native Hawaiians [7,8]. This is reinforced by an 'ōlelo no'eau, "he ali'i ka 'āina, he kauwā ke kanaka" translating to "the land is a chief; man is its servant" [9]. This conceptualization reiterates the importance of land to Native Hawaiians.

Kame'eleihiwa explains that in Hawaiian worldviews the land and ocean are genealogically linked to the Native Hawaiian people, through a common ancestry that traces back to the gods themselves [7]. Native Hawaiians were created last in this order, and fill the role of the youngest child, respecting, revering, and caring for their older siblings. Meanwhile the land and ocean ('āina, literally "that which feeds") feeds and otherwise provides for its youngest sibling, setting the basis for reciprocity that characterizes Native Hawaiian land management and economic models historically and in the present [10]. This worldview rejects the idea of 'āina as a commodity, and instead embraces a genealogical, familial relationship with the natural elements in and surrounding the Hawaiian archipelago [11].

Recent scholarship by Native Hawaiians has emphasized the importance of centering analysis in the exploration of how Native Hawaiians exercise agency in various circum-

stances. Kamanamaikalani Beamer explains that while previous research has focused on what good things have been *done for* Native Hawaiians or what bad things have been *done to* Native Hawaiians, it is equally if not more important to focus on what Native Hawaiians have *done for themselves* [12]. Following Beamer's example this project explores the role of Native Hawaiians vis-à-vis the PLT, including their critical role in ideating, proposing, and advocating for the adoption of the constitutional amendments that created the Native Hawaiian share of PLT and the agency (OHA) that manages it today.

Furthermore, the application of critical policy analysis allows for the inclusion of "a number of different perspectives and developments that aim to critique and offer alternative strategies" from which to explore policy issues [13]. Critical policy analysis "exposes inconsistencies between what a policy says and what a policy does, particularly in terms of power relationships in society" [14]. This emphasis positions critical policy analysis to expose dimensions of policy outcomes that may be under-examined through other policy analysis frameworks, such as stage heuristic frameworks or other stage-specific research models [15]. While much of its application is within education policy, critical policy analysis is broadly applicable in other areas, including this study.

Various types of systematic analyses of laws exist [16]. Legal mapping allows researchers to identify patterns in the distribution of laws, define important research questions, and provide introductory legal analysis. Policy surveillance, on the other hand, moves beyond legal mapping and combines the systematic, scientific collection of laws with a rigorous analysis of laws [17]. Policy surveillance applies methodology akin to systematic literature reviews such as redundant coding by independent researchers to buttress the validity of the legal analysis. Utilizing a critical policy analysis along with policy surveillance methodology provides a robust picture of a policy area with a clear vision of potential gaps and areas in need to refinement.

2.2. Self-Determination

Today, although Native Hawaiians do not have a government-to-government relationship akin to the 574 federally recognized Native American tribes, Congress continues to acknowledge their "special relationship" with Native Hawaiians [18]. The US Congress has established many programs that support Native Hawaiians, such as providing for Native Hawaiian healthcare. Since 1900 over 250 federal statutes have been passed that acknowledge Native Hawaiians, including the Native Hawaiian Health Care Improvement Act, Native Hawaiian Education Act, Native American Graves Protection and Repatriation Act, and others [19].

Many federal statutes that support American Indian programs have a counterpart for Native Hawaiians, such as the American Indian Education Act and the Native Hawaiian Education Act. Justice Stevens pointed to these statutes in his dissent to *Rice v. Cayetano* to explain that Native Hawaiians also retain a separate political status similar to federally recognized American Indians [3]. Because of this distinction, several programs that provide benefits to Native Hawaiians as a distinct group have been challenged as violating the 14th Amendment, though none of these challenges have been successful. In sum, Native Hawaiian self-determination is currently best understood in the domestic system as having been politically, though not culturally, diminished.

Native Hawaiian issues have received attention at the international level. Because the Kingdom of Hawai'i, a constitutional monarchy, entered into numerous treaties with several nations prior to its illegal overthrow, the issue of Native Hawaiian sovereignty has been explored. Prior to the overthrow in 1893, the Hawaiian Kingdom was recognized by the US and other Western nations as a co-equal sovereign and member of the family of nations [12]. In a report analyzing the international law options for Native Hawaiian self-determination, international and Indigenous law experts, James Anaya and Robert Williams, articulated three distinct international law arguments to support and further self-determination, including: (1) de-occupation, (2) de-colonization, and (3) international human rights [20].

Native Hawaiians are frequently present at the United Nations (UN) Permanent Forum on Indigenous Issues raising awareness of Native Hawaiian self-determination.

The UN Declaration on the Rights of Indigenous Peoples Article Four recognizes Indigenous people's right to self-governance in internal and local matters along with the ways and means to finance these actions [21]. This study provides a case study of the legal barriers to self-determination—and funding mechanisms for such rights—for Native Hawaiians and their share of PLT revenue. Indigenous people beyond Hawai'i have struggled for centuries to rectify their land rights with various systemic barriers to overcome. Some consider the coexistence model of land governance, the dominant model in Hawai'i, Sweden, and Australia, as one that considers Indigenous peoples special interest groups; thereby, eroding these Indigenous communities' ability to effectively govern by placing restrictions on the planning, regulation, conservation, and management of these lands [22,23]. Moreover, international Indigenous rights standards decisions related to land must include the free, prior, informed consent of the Indigenous people who are tied to that land [24]. Reviewing the current policies related to the PLT as well as the state's Indigenous consultation legal framework will elucidate any needed policy changes.

3. Materials and Methods

In this mixed methods study, we first conducted a critical policy analysis of PLT policy from its origins in the Hawaiian Kingdom through active colonization and into the modern era [25]. Using document analysis, we applied an interpretive orientation drawing on compilations of newspaper articles, legal databases, and historical analyses [26]. Newspaper articles were related to the 1978 Hawai'i constitutional convention as well as search terms related to the constitutional convention, PLT, and Native Hawaiians descriptions of the Native share of PLT revenue obtained from [newspaper.com](https://www.newspaper.com) (accessed on 29 October 2022).

We then used policy surveillance methodology to map Hawai'i's laws related to state consultation with the Native Hawaiian community. Using Westlaw, we searched various terms ("Native Hawaiian"/s consult!; "Native Hawaiian"/s comm!; Indigenous/s consult!; Indigenous/s comm!; Kanaka/s consult!; Kanaka/s comm!), excluding laws that were no longer in effect. After notating the citation, we pulled the full text of the laws from the Hawai'i Legislature. We excluded documents that were not legally binding, where the term(s) were found in the notes section, where terms referenced alternative meanings (e.g., native as in native species of plants), where definitions defined only part of the search term, where a governing body was created that listed Indigenous membership on a governing body, but only as one option in a list of potential members, and laws related to the Indian Child Welfare Act (ICWA) or foster care regulations that implemented the ICWA. We elected to remove laws related to the ICWA because while foster care falls under state jurisdiction, the ICWA is a federal law that mandates states consult with tribes on removals and foster care placements for all minors who are eligible to be enrolled in a tribe. Thus, all states, even those that do not have tribes located within their geographical boundaries must already engage in tribal consultation on this matter. Additionally, ICWA does not, at this time, include Native Hawaiians. Finally, we removed duplicate laws that were identified under another search term.

After obtaining the full text of relevant laws, we uploaded all laws that met our inclusion criteria into MonQcle, an online software system designed to code legal documents. Two researchers independently coded the laws to determine the content and purpose of the laws. The two coders had an initial divergence rate of 14.5 percent, which is considered good. Divergences were discussed and agreed upon by consensus. Finally, we categorized the laws into three overarching themes based on the purpose of the law.

Once the dataset of Native Hawaiian consultation laws was finalized, we conducted a policy analysis of Native Hawaiian rights to PLT revenue using the conceptual framework for policy implementation put forth by Van Meter and Van Horn [27]. Under this conceptual framework, two items form the basis of implementation: (1) performance indicators to assess the extent that a policy meets the standards; and (2) policy resources, which

are needed to effectuate the policy implementation process. These two items influence a multiplicity of issues including interagency communication for enforcement, the characteristics of the implementing agencies, and socio-political conditions, which all ultimately influence policy implementation. We applied this conceptual framework in our analysis of the current implementation of Native Hawaiian PLT rights to identify barriers and areas of discordance.

4. Policy Ideation and Legislative History

4.1. *Traditional Native Hawaiian Land Management and Governance*

In order to understand the intent of the PLT, it is important to trace its ideation, development, and implementation. Native Hawaiians have independently ruled the islands through an evolving number of political units that shared a common culture and language while exercising power independent of each other for hundreds of, perhaps over a thousand, years prior to documented Western contact [28]. The islands were managed under a number of island or inter-island kingdoms, which were generally divided into three classes: the aliʻi (royalty), of whom the mōʻī (king or queen) was the head; kahuna (priests and scholars); and makaʻāinana (the people of the land) [29]. While this governance system shares some stereotypical European feudal qualities, important distinctions existed. For example, makaʻāinana had rights of usage and transit across ahupuaʻa (a traditional land division and economic unit) and were able to “vote with their feet” by moving from one area to another. Moreover, the people were not considered the property of the aliʻi and, therefore, not obligated to military service [29].

Under the ahupuaʻa system, a unique public trust concept was maintained. The aliʻi, their kingdoms, and their administration managed the land and other natural resources for the benefit of the Native Hawaiian people [30]. Kamehameha I, son of Kamehameha I and the longest-serving monarch of the Hawaiian Kingdom, elaborated on his father’s domain over all of the Kingdom stating that the kingdom “... was not his private property. It belonged to the chiefs and the people in common, of whom Kamehameha was the head, and had the management of the landed property” [31]. Sproat explains that this system, and not the traditional Roman public trust system, serves as the precedent for modern Hawaiʻi public trust law and policy [31].

4.2. *Early Contact: Colonization and Resistance*

At the time of documented Western contact in 1778, the island kingdoms were in a state of increased conflict with one another [32]. In 1810, the Hawaiʻi Island chief Kamehameha I unified the archipelago under his rule, establishing the Hawaiian Kingdom. Decades later Kamehameha’s son Kamehameha III (Kamehameha III) restructured the Kingdom in a manner that incorporated certain aspects of Western private property while retaining elements of pre-existing Native Hawaiian law and custom [12]. After proclaiming a kumukānāwai (fundamental law) known in English as the Declaration of Rights, Kamehameha III affirmed the property rights of all Hawaiians, promising to protect the weak and respect their property rights and freedom to live in peace. Several years later a set of land laws commonly referred to as the Great Māhele, replaced common ownership with a modified hybrid land regime that maintained certain Indigenous land rights while incorporating foreign private property concepts [33].

During the Māhele, the Kingdom’s lands were divided into three categories: (1) government lands, which were “set apart as the lands of the Hawaiian government,”; (2) crown lands, which were set aside for the mōʻī and his successors; and (3) modified fee-simple ownership, which was available to the chiefs and common people [33]. All of these lands were “subject to the rights of native tenants [33]. The crown and government lands were a substantial portion of the Kingdom, constituting 60.3 percent of all Hawaiian land [33]. By holding these lands in trust, subject to the rights of native tenants, this ensured that the mōʻī and Native government could utilize these lands for the benefit of Native Hawaiians.

The Indigenous-founded and -led Hawaiian Kingdom welcomed the participation of foreigners from its inception and established a process for them to become subjects in 1846 [34]. By the 1880s, a small group of White foreigners and subjects held a significant portion of the Kingdom's land and wealth [35] and in 1887, a Whites-led militia forced King David Kalākaua to sign a new constitution reducing his power. A two-tier voter qualification system was instituted, restricting suffrage for some offices to those with sufficient income or wealth, which disenfranchised many Native Hawaiians [36]. Known as the 'Bayonet Constitution,' this new form of government was vociferously objected to by Native Hawaiians and other non-White subjects, who formed new political organizations dedicated to its repeal [36]. When Kalākaua passed away in 1891 and was succeeded by Queen Lili'uokalani, thousands of her subjects pleaded for her to proclaim a new constitution that removed wealth-related voting restrictions and restored the sovereign's power as the traditional and constitutional leader of the Hawaiian Kingdom [37]. The Queen's stated intention to respond to these pleas concerned those who were benefitting from the Bayonet Constitution's redistribution of political power.

In 1893, a small group of White annexationists resorted to an armed insurrection to overthrow the government. "Using the queen's proposed constitution as an excuse, annexationists plotted to overthrow the monarchy. In their efforts, they sought and received the help of the U.S. Minister to Hawai'i, John L. Stevens, an advocate of annexation" [33]. Minister Stevens, on 16 January 1893, ordered the US marines to land in Honolulu. He justified this action by arguing that troops were needed to protect American lives and property while the insurrectionists took control over the Hawaiian Kingdom. The next day, Queen Lili'uokalani yielded, under protest, to the United States—not the White annexationists [38]. A Provisional Government was instituted, and Minister Stevens immediately recognized the Provisional Government on behalf of the United States [33]. This Provisional Government seized control of the crown and government lands without consent or compensation to Native Hawaiians.

Queen Lili'uokalani and countless Native Hawaiians opposed annexation and sought to restore the Kingdom for the next several years. Native Hawaiian political campaigns against annexation succeeded in 1894 and 1897, when efforts to secure US Senate approval of a treaty of annexation failed [39]. However, annexationists continued to hold power over the islands, which they reorganized as the "Republic of Hawaii." Following the declaration of the Spanish American War in 1898, annexationists capitalized on wartime arguments and proposed annexation through a joint resolution (requiring a simple majority) rather than the supermajority-requiring treaty. Upon annexation, which occurred without the support or consent of the Native Hawaiian people, practical control of the former Hawaiian trust lands was "ceded" by the Republic of Hawaii to the United States. Soon thereafter, Native Hawaiian political leaders urged the United States to remedy this injustice, but their calls went unanswered [40].

Once elections were held in the newly formed Territory of Hawai'i, Native Hawaiians were able to mobilize as a political group and win many elected offices because the Organic Act eliminated wealth-based voting restrictions that had been in place since the Bayonet Constitution. Native Hawaiians worked through policy making systems to reconnect the Indigenous population with former Kingdom trust lands. Hawai'i's first Territorial Congressional Delegates, who were Native Hawaiian, introduced legislation to restore Native Hawaiian access to the so-called "Ceded Lands". Congressional Delegate Jonah Kūhiō Kalaniana'ole secured passage of the Hawaiian Homes Commission Act (HHCA) of 1920 [41,42], a bill seeking to resolve the public health crisis facing Native Hawaiians by restoring access to a portion of the so-called Ceded Lands, providing gratis leases for the purpose of housing, farming, ranching, and other uses of their "birthright lands" [43,44]. In the years that followed, administration and expansion of the HHCA was one of the major areas of Congressional policymaking concerning Hawai'i.

By the mid-1930s, many Hawai'i residents preferred statehood to remaining a territory. The US House Committee on Public Lands turned to the US Department of the Interior

to give expert advice on how to handle the administration of the so-called Ceded Lands vis-à-vis statehood [45]. US Assistant Secretary of Interior Girard Davidson urged the Committee to set aside a portion of the Territory's public land, formerly Kingdom trust lands, as a public trust to be used for specific trust purposes, including the "protection" of the Native Hawaiian population and for the administration of the HHCA [45]. The subsequent statehood bill largely adopted the recommendations of the Department of the Interior. One major departure was the decision to drastically increase the size of the Public Land Trust to include nearly all of the "Ceded Lands" corpus, not just the 180,000 acres initially recommended [46]. When the statehood bill finally passed in 1959, it largely maintained these characteristics, especially with respect to the Public Land Trust, which was placed under the management of the newly formed State of Hawai'i [46].

4.3. *The 1978 Constitutional Convention: PLT*

Between 1959 and the late 1970s, the requirement that the PLT be used to better the conditions of Hawai'i's Indigenous people was largely ignored. Instead, PLT revenue was used exclusively to fund public education, with none of its funds being exclusively set aside for Native Hawaiians [47]. The cultural renaissance among Native Hawaiians in the 1960s–1970s developed into a political resistance movement culminating in an effort by Native Hawaiians and their allies to amend the state constitution through a constitutional convention. On 20 May 1978, Hawai'i's voters elected 102 delegates to propose changes to the state's highest law [48]. Numerous Native Hawaiians, who had engaged in protests, demonstrations, civil disobedience, and litigation to protect Native Hawaiian cultural resources and wellbeing, successfully ran as delegates.

Through several gatherings prior to the constitutional convention, Native Hawaiians developed policy ideas that would be brought to the constitutional convention [49]. Native Hawaiian community leaders and convention delegates such as Frenchy DeSoto (future chair of OHA) and John Waihe'e (future governor of the state) worked to make those ideas a reality. Key among them was the idea of a "Native trust" to be controlled by Native Hawaiians and operating for the explicit purpose of bettering their conditions. Prior to decision-making at the constitutional convention, advocates traveled the islands and held meetings with fellow Native Hawaiians, including one in Waimanālo where they discussed the idea that the Native Hawaiian trust would receive and manage PLT funds "earmarked for" Native Hawaiians [50]. Media coverage reflects the idea that the trust, which would come to be named the Office of Hawaiian Affairs, may manage a variety of funds or resources held on behalf of Native Hawaiians [51].

The Office of Hawaiian Affairs would hold title to various funds and assets set aside for the betterment of Native Hawaiians. Several constitutional amendments related to the Native Hawaiian share of Public Land Trust revenue emerged. First, Article 12, Sect 4 clarified the nature of the PLT, stating that there were two classes of beneficiaries: Native Hawaiians and the general public. Secondly, Art 12 Sec 6 stated that Native Hawaiians were legally entitled to a pro rata share of the revenues generated on these lands. Third, Art 12 Sect 5 created the Office of Hawaiian Affairs, to hold in trust those revenues that legally belonged to the Native Hawaiian people. Fourth, and of great importance, Art 12 Sect 5 placed OHA under the control of Native Hawaiians, through elections limited to Native Hawaiians, reflecting the view expressed by the constitutional convention's Hawaiian Affairs Committee that "people to whom assets belong should have control over them" [52]. Together, this package of changes restored Native Hawaiian rights to receive and manage, for themselves, their share of PLT revenue.

After the Native Hawaiian rights amendments from the Constitutional Convention were passed by the Convention, they, like all other amendments, were placed before the voters of Hawai'i for approval. Advocating for the adoption of the Hawaiian Affairs package, Frenchy Desoto framed OHA as a means for both Native Hawaiian self-determination and integration of Hawai'i's Indigenous people into the larger American community: "... native Hawaiians are more suited to control their own programs, and to prioritize their

own problem areas. It was felt that viable participation in our society can only be achieved through self-responsibility and self-determination” [53].

The voters of Hawai‘i approved all of the Native Hawaiian rights provisions, which were thereby incorporated into the state constitution. In 1980 OHA held its first election, and the Native Hawaiian people chose the trustees who would manage their resources and lead the agency that existed to support them. The separate sections of the constitution worked together to fulfill the vision of their framers: that a reasonable measure of Native Hawaiian self-determination would be restored. Legally, the control of those resources would rest with OHA, but from a policy perspective, they rested with the Native Hawaiian people, because they (the voting Native electorate) controlled OHA.

4.4. Changes in the Native Hawaiian Share of PLT Revenue

From 1980 until the late 1990s, Native Hawaiian control over OHA was generally (though not unanimously) accepted. Greater attention went to what resources OHA would control, rather than who would control OHA. OHA won a major policy victory in 1980 when the state legislature set the Native Hawaiian share of PLT at 20 percent [54]. However, the law did not clearly resolve what revenues were or were not included in the 20 percent share to be provided to Native Hawaiians via OHA. The board of trustees elected by a Native-only electorate fought for their interpretation of the Native Hawaiian share of PLT revenue, in conflict with the other arms of the state of Hawai‘i.

Since efforts to secure federal reparations or a land claim settlement (similar to Alaska Natives and certain American Indian nations) did not succeed, the pro rata share of Public Land Trust revenue emerged as the most viable resource through which OHA sought to grow the Native Hawaiian Trust. A major breakthrough occurred in 1990, when the state, under the leadership of its first Native Hawaiian governor, John Waihe‘e, reached a settlement with OHA. The terms of the settlement were disputed for several years, but upon agreement between OHA and the state, OHA received 135 million USD in past due funds in 1993 [55]. Following this settlement, OHA gained a substantial corpus.

In March of 1996, just 3 years after the Waihe‘e settlement, a major legal challenge to Native Hawaiian voting rights occurred when non-Native Hawaiian Freddy Rice sued the state over his exclusion from OHA elections [56]. Despite the fact that OHA largely existed to determine the use of legally protected Native Hawaiian resources and not taxpayer funds, Rice argued that the Native-only elections violated his constitutional rights under the 14th and 15th amendments [56]. The 9th Circuit Court of Appeals rejected this argument, explaining that the Native Hawaiian-only elections were consistent with federal policy towards Indigenous people and that Hawai‘i “may rationally conclude that Hawaiians, being the group to whom trust obligations run and to whom OHA trustees owe a duty of loyalty, should be the group to decide who the trustees ought to be” [56].

Rice appealed to the US Supreme Court who reversed the decision of the 9th Circuit. Writing for a 7-2 majority, Justice Kennedy said that the state elections constituted a violation of the 15th amendment. The US Supreme Court demanded OHA open its elections to non-Native Hawaiians, which resulted in the loss of political control [3]. Native Hawaiians seeking to influence the management of their share of PLT revenue would now have to do so without the main mechanisms of self-determination intended by those who created OHA. In the next section, we explore the expansion of Native Hawaiian consultation law, to determine its extent and whether these laws have returned some degree of Native Hawaiian control over the PLT revenue managed by OHA.

5. Results: Review of Native Hawaiian Consultation Law

Consultation exists between two entities, and in the context of Indigenous consultation, it exists between a state or federal government and an Indigenous community. After OHA’s formation, there was little need to create laws mandating that OHA consult with Native Hawaiians because the Office of Hawaiian Affairs was created with the intent of serving as the political entity that would make decisions regarding Native Hawaiians. Under the

original language of the Constitutional Convention, OHA's Board of Trustees had to be Native Hawaiian and only Native Hawaiians were able to vote for the Board of Trustees.

In OHA's early years, a body of federal law concerning the consultation rights of Indigenous peoples was formed. Tribal consultation law traces its origins in the historic government-to-government relationships between the United States and sovereign tribal nations and has more recently been articulated in various federal laws such as the Native American Graves Protection and Repatriation Act (NAGPRA) and the National Historic Preservation Act (NHPA). Both NAGPRA and the NHPA explicitly extend consultation rights to Native Hawaiian Organizations and name OHA in statutory language as a recognized NHO. In both cases, these laws were passed at a time when OHA elections were still limited to its Native Hawaiian beneficiaries. Alongside these federal laws, which began to include Native Hawaiians in 1990, the State of Hawai'i also began to pass its own Native Hawaiian consultation policies. Many of these laws recognize OHA as a body through which state agencies or third parties may consult with Native Hawaiians.

At the state level, the majority of Native Hawaiian state consultation laws ($n = 11$) were passed following the *Rice v. Cayetano* decision. This aligns with significant changes brought on by the *Rice v. Cayetano* ruling in 2000 limiting Native Hawaiian self-determination. In order for a law to meet our criteria: (1) our search terms must have identified the statute, regulation, or executive order and (2) the law had to relate to the state–Indigenous relationship or describe Indigenous membership on a state governing body. Additional, inclusion/exclusion criteria were applied as discussed in the Methods section.

5.1. Hawai'i Consultation Laws

Out of 42 laws that our search terms identified, 15 met our criteria for Indigenous consultation; however, none of these laws were specific to the Native Hawaiian share of PLT revenue. All of the 15 laws mandated consultation with a Native Hawaiian organization, most often the Office of Hawaiian Affairs, or required consultation on membership of state commissions or other state sponsored groups. In only one instance did a law require consultation with individual native Hawaiians, in this case beneficiaries under the NHCA. See Table 1.

Table 1. Summary of Laws.

Title	Citation	Summary
Historic Preservation		
Historic preservation program	HRS § 6E-3	Creates a historical, architectural, and archaeological preservation program. Mandated to develop rules with the native historic preservation council, an entity attached to the OHA, governing permits for access by Hawaiians to cultural, historic, and pre-contact sites.
Prehistoric and historic burial sites	HRS § 6E-43	Requires that human skeletal remains over 50 years old be maintained in place unless the Department approves removal. Mandates that the island burial council determine whether preservation or relocation of native Hawaiian burial sites be required. Criteria shall be developed in consultation with the island burial councils, the OHA, large property owners, and Native Hawaiian Organizations.
Island burial councils; creation; appointment; composition; duties	HRS § 6E-43.5	Mandates that five island burial councils be established that each consist of nine members, except Moloka'i, which consists of five members. No more than three large property owners will be represented, except in Moloka'i where there shall be no more than one representative. The governor shall appoint members from a list submitted by the OHA. The councils shall determine the preservation or relocation of identified native Hawaiian burial sites, assist in the inventory of burial sites, make recommendations on proper treatment of remains and sites, elect a chairperson, and maintain a list of appropriate Hawaiian organizations to notify regarding the discovery of remains.

Table 1. Cont.

Title	Citation	Summary
Adopt, amend, repeal rules	HRS § 13-300-11	A petitioner may petition to adopt, amend, or repeal rules related to burials and upon receipt of a petition, the department shall consult with the OHA, Hui Malama I Na Kupuna ‘O Hawai‘i Nei, other Hawaiian organizations, and larger landowner interests when involving Hawaiian skeletal remains.
Evaluation of significance	HRS § 13-275-6	Outlines a set of criteria to be used when a historic property is identified in order to assess its significance. The SHPD will survey the site and issue a written report. Prior to the submission of significance evaluations, the agency must consult with ethnic organizations for whom the site may have significance, including native Hawaiians due to cultural practices once or still carried out or traditional beliefs or oral accounts. Evidence of consultation, including the process, must be submitted with the assessment, including a list of individuals or organizations contacted, and a summary of the views and concerns. Significant properties require mitigation commitments.
Mitigation	HRS § 13-275-8	Prior to initiating a project that is significant and that has an effect on the historic property, a mitigation commitment shall be undertaken and submitted for SHPD approval. Mitigation can occur in several forms, which are discussed and if the significance relates to cultural issues, then the agency shall consult with ethic members or organizations, including the OHA (if Hawaiian). The commitment must include a table of significant properties along with text justifying the treatments and description of the consultation process and views expressed. The decision of the SHPD is appealable by the project.
Evaluation of significance	HRS § 13-284-6	Outlines a set of criteria to be used when a historic property is identified in order to assess its significance. The SHPD will survey the site and issue a written report. Prior to the submission of significance evaluations, the agency must consult with ethnic organizations for whom the site may have significance, including native Hawaiians due to cultural practices once or still carried out or traditional beliefs or oral accounts. Evidence of consultation, including the process, must be submitted with the assessment, including a list of individuals or organizations contacted, and a summary of the views and concerns. Significant properties require mitigation commitments.
Mitigation	HRS § 13-284-8	Prior to initiating a project that is significant and that has an effect on the historic property, a mitigation commitment shall be undertaken and submitted for SHPD approval. Mitigation can occur in several forms, which are discussed and if the significance relates to cultural issues, then the agency shall consult with ethic members or organizations, including the OHA (if Hawaiian). The commitment must include a table of significant properties along with text justifying the treatments and description of consultation process and views expressed. The decision of the SHPD is appealable by the project.
Environment and Planning		
Mauna Kea lands[;] rules	HRS § 304A-1903	Requires the University of Hawai‘i to enter into consultation on rules that may impact the subsistence, cultural, and religious rights of NHs who are ahupua‘a tenants or who are descendants of NHs exercising those rights.
State Plan	HRS § 17-400.1-3	Provides that the State plan must be submitted to the Secretary of Education for approval and that the State plan must assure that the department actively consulted the Client Assistance Program, State Rehabilitation Council, and Indian tribes and native Hawaiian organizations, as appropriate.

Table 1. Cont.

Title	Citation	Summary
DHHL Planning System	HRS § 10-4-51 et seq.	Sets out the process for planning and management of DHHL homelands. Defines beneficiary consultation as direct outreach to lessees, applicants, and impacted Native Hawaiians. Amendments to plans must include beneficiary consultation, including proposed amendments by third parties. Moreover, this articulates three types of consultation: comprehensive, which is state-wide; place-based, which is geographically specific; and ad hoc, which consists of the formation of an advisory body to provide input on the preparation and amendment of any plan or implementation action.
Governance		
Training relating to native Hawaiian and Hawaiian traditional and customary rights, natural resources and access rights, and the public trust	HRS § 10-42	Requires that certain council, board, and commission members complete a training course administered by the OHA within 12 months of the date of their initial appointment. The course will cover historical information related to key state laws, constitutional provisions, and court ruling related to Hawaiian rights, including traditional and customary rights, natural resource protection and access rights, and the public trust. The OHA is mandated to hold the training at its expense twice a year.
Native Hawaiian recognition	HRS § 10H-1 et seq	Explicitly states that Native Hawaiians are recognized as the only Indigenous people of Hawai'i. The purpose of this law is to implement means of Hawaiian self-governance. In addition, a five-member roll commission was administratively attached to the OHA who shall prepare and maintain a roll of qualified Native Hawaiians (descendant of aboriginal people who occupied Hawai'i prior to 1778; eligible for programs authorized by the HHCA or who meet the ancestry requirements of Kamehameha Schools) by certifying that they meet the criteria. The roll commission membership shall represent geographic areas and dissolve upon completion of the roll.
Salary commission; established	HRS § 10-9.5	Creates a commission made up from nominees from Native Hawaiian organizations. The commission will determine the salaries for the OHA trustees. The commission will be created every four years and dissolve after determining the trustee salaries.
Hui 'Imi advisory council	HRS § 10-18	Creates an advisory council within the Office of Hawaiian Affairs that will serve as a liaison between public and private entities serving the Hawaiian community in public and private endeavors; investigate the issues in the Hui 'Imi task force report; and report findings and recommendations to the Governor and Legislature. The advisory council will consist of representatives of several entities, including the Office of Hawaiian Affairs, several state agencies, and several Native Hawaiian Organizations.

While the topics of the laws are varied, they all tie back to the rights of Native Hawaiians as the Indigenous peoples of Hawai'i. After an analysis of the content of the laws, we categorized the laws into three main themes in this dataset of consultation laws: (1) historic preservation, (2) environment and planning, and (3) Native Hawaiian governance. Moreover, the laws provided for consultation with one or more out of three separate Native Hawaiian entities: (1) the Office of Hawaiian Affairs, (2) Native Hawaiian organizations (which would include the OHA), and/or (3) individual Native Hawaiians. The issue of whom to consult with is unique to Native Hawaiians because there is no federally recognized Native Hawaiian governing entity.

Environment and planning laws were largely in the form of regulations and related to development and land use. In particular, several regulations mandated environmental studies, inclusive of anthropology and culture, before the approval of large-scale development [57–61]. In one instance, a law was passed that related to a specific area that Native Hawaiians consider sacred and that holds significant scientific value. These lands were held by the University of Hawai'i, who issued regulations requiring consultation with OHA in

the development of rules governing Mauna Kea. However, the rules limited the application of consultation calling into question the value of this right of consultation [61,62]. Finally, laws related to planning fall under this category, including a law mandating that the State actively consults with Native Hawaiian organizations in developing the Hawai'i State Plan [63] and a law that sets out a process to consult with native Hawaiian beneficiaries under the HHCA [64]. The HHCA consultation scheme sets up three types of consultation, including comprehensive, place-based, and ad hoc. While the law articulates that the type of consultation should match the type of plan or implementation action proposed, it does not provide additional details on what is required in the consultation process other than who should be notified [64].

Three laws fall under the historic preservation theme. In fact, Hawai'i's very first consultation law, concerning prehistoric and historic burial sites, falls under this category [65,66]. This law provided for consultation in the development of criteria to determine whether Hawaiian burials should be preserved in place or relocated. Finally, these laws created an Island Burial Council composed of landowners as well as geographical representatives nominated by OHA.

The final category of laws is Hawaiian governance, which includes the recognition of Native Hawaiians as the Indigenous people of Hawai'i and the creation of a roll commission to identify citizens [67]. The roll commission as well as the Hui 'Imi Advisory Council were both designed to be administratively attached to OHA. The Hui 'Imi Advisory Council, currently defunct, has its membership set by statute and includes representatives from various state agencies and private and public Hawaiian organizations and agencies [68]. This entity was meant to serve as a liaison between the Hawaiian community and development as well as investigate issues affecting Native Hawaiians. In addition, a law mandating that all representatives on certain councils, commissions, and boards take part in Native Hawaiian rights training funded and provided by the OHA twice a year [69].

Thus, while Hawai'i's laws provide Indigenous consultation for historic preservation, environment and planning, and governance, none of these categories provide for consultation on the Native Hawaiian share of PLT revenue or other aspects of the Native Hawaiian Trust. As a result, while post-Rice v. Cayetano consultation laws have expanded Native Hawaiian voices in a number of areas, none of these laws have extended to OHA's management of the Native Hawaiian people's share of PLT revenue.

5.2. Analysis of Hawai'i Consultation Laws

In its external advocacy, OHA has continued to champion the importance of Native Hawaiian self-determination, including the need for increased Native Hawaiian consultation rights at various levels. OHA has achieved this on at least two levels: first, as a federally recognized Native Hawaiian Organization, OHA has used its standing and expertise to engage in federal consultation. This has included facilitating the return of ancestral remains under NAGPRA in over 125 instances since the law's passage in 1990 [70]. OHA has utilized the National Historic Preservation Act since the law was amended in 1992 to recognize the consultation rights of Native Hawaiian organizations and assisted smaller Native Hawaiian Organizations in receiving training on the NHPA [71,72]. OHA recently testified before the U.S. Senate Committee on Indian Affairs that the agency participates in roughly 240 NAGPRA and NHPA consultations each year [72].

Secondly, OHA has advocated for the expansion of consultation rights, including its work with the Department of Defense (DOD) on its Native Hawaiian consultation policy, and in its testimony to Congress [72]. Working with the DOD, OHA advocated for and helped increase engagement with the Native Hawaiian community as the DOD formed its policy in consultation with Native Hawaiian Organizations. In a 2019 report to Congress, the DOD stated that OHA organized DOD events and assisted in the drafting of the policy, along with other major Native Hawaiians [73]. In its 2021 testimony before the Senate Committee on Indian Affairs, OHA called for the passage of "legislation requiring

meaningful federal consultation across the entire federal government and to extend these rights to all Native Americans, including Native Hawaiians” [72].

In addition, OHA has in several cases voluntarily consulted with Native Hawaiian individuals and organizations when carrying out its work. OHA’s meeting agendas customarily include a slot for beneficiaries to speak to the trustees in open session. In cases such as its testimony before the Senate Committee on Indian Affairs, OHA consults with other Native Hawaiian organizations [72]. Third, it is worth noting that while OHA’s elections are open to Native and non-Native voters alike, the current board of trustees are all Native Hawaiians themselves. Given these and other instances in which OHA voluntarily consults with its beneficiaries, adoption of a formal consultation policy would be consistent with the spirit of many of its practices, while ensuring a stronger, clearer process for Native Hawaiians to weigh in on OHA’s use of their assets.

OHA has also continued to advocate for the expansion of Native Hawaiian consultation rights at the state level and played a key role in passage of some of these laws. While its external advocacy for consultation has been clear and consistent, in the 22-years since the Rice decision, at a policy level, OHA has not established a binding consultation policy for itself. To the contrary, litigation has largely affirmed the broad discretion of its trustees to determine the use of the Native Hawaiian trust, so long as that its use is consistent with OHA’s trust purposes [52]. Certainly, OHA has numerous practices through which it engages with Native Hawaiian individuals and Native Hawaiian organizations, but it does so on its own terms and without the kind of binding policies it advocates for other government agencies to adopt. Federal consultation requirements, which bind federal agencies in a variety of ways, do not apply to OHA, a state agency that was originally intended to be the mechanism of Native Hawaiian self-determination [74]. Paradoxically, at the policy level, Native Hawaiians can utilize processes to be heard by federal agencies that are not available to them when engaging with the OHA, which exists to better their conditions and hold their resources in trust.

Meanwhile, the trust resources held by OHA have grown, fueled largely by PLT revenue in the form of annual payments and large settlements or other substantial sums. In 2012, OHA settled with the Abercrombie Administration to receive 200 million USD in land in lieu of past due PLT revenue from 1978 to 30 June 2012 [55]. At the close of the 2022 State Legislative Session, Governor Ige signed Act 226, providing an additional 64 million USD in back due revenue for OHA and increasing the annual share of PLT going to the trust, from 15.1 million USD (set in 2006) to 21.5 million USD [2]. These additional resources, won by OHA thanks in part to the advocacy of Native Hawaiians outside of the agency, make it timely to revisit how the agency can take some steps towards returning a greater measure of Native Hawaiian self-determination over the Native Hawaiian resources held by the agency.

6. Discussion

The Native Hawaiian share of PLT revenue was created to not only provide Native Hawaiian beneficiaries with revenue from public lands, but also to ensure that Native Hawaiians were engaged in the decision-making process on how these funds should be utilized. Unfortunately, due to changes in the juridical landscape, the restriction on voting for OHA Trustees to only Native Hawaiians was successfully challenged. Because Native Hawaiians make up slightly over one-fifth of the state’s population, the move to open the OHA elections to non-Hawaiians diluted the ability of Native Hawaiians to select OHA’s leadership and, in so doing, their ability to manage their own resources. This lack of a strong voice fails to align with what was originally envisioned. In order to rebalance this power structure and align with international Indigenous rights standards of free, prior, informed consent, OHA should adopt a Native Hawaiian consultation policy.

The U.S. Department of the Interior recently shared that it would be entering into discussions with stakeholders to develop a Native Hawaiian consultation policy. This news is truly groundbreaking because of the willingness to voluntarily engage an Indigenous

community in dialogue before taking action. OHA applauded this decision, calling it a victory in the fight for Native Hawaiian sovereignty and self-determination [75]. We agree. However, it should be noted that the proposed consultation policy with Native Hawaiians only applies to the Department of the Interior (DOI) and lacks the force of law. Tribal consultation at the federal level is effectuated by Executive Order 13175. Executive Orders, like federal regulations, operate under the full force and effect of the law. In other words, if an agency were to violate the Executive Order, the wronged party, in this case the Indigenous community, could seek recourse in the federal court system.

In contrast, the Native Hawaiian consultation policy is proposed as two chapters in the DOI Department Manual. Thus, the proposed consultation policy operates at the departmental level and works to support organizational and practice focused changes. A department manual revision, while potentially important, is both easier to finalize and easier to reverse, leaving the Native Hawaiian people with less certainty about the long-term viability of this expansion in consultation policy. Given the dramatic shifts in political leadership in recent times, it is entirely possible that the next administration could abolish whatever consultation advances this administration makes through its departmental manual revisions.

Suffice to say, the proposed Native Hawaiian consultation policy does not place Native Hawaiians on equal footing with federally recognized American Indian governments. Just as important, this consultation policy does not impact how OHA manages the Native Hawaiian share of PLT revenue. Native Hawaiian beneficiaries must rely on the discretion of the agency that manages their trust resources, which chooses when or whether to consult with them. Because state, federal, and even international consultation policy has existed for some time, OHA has a great deal of examples to draw from in considering its own policy. In order to ensure that Native Hawaiian voices are heard, OHA should engage in consultation with the Native Hawaiian community in formulating this policy.

Our study is unique in that the majority of work carried out on the Native Hawaiian share of PLT revenue focuses on the failures of the State of Hawai'i to adequately account for the revenues generated from PLT lands and thus adequately compensate Native Hawaiians. While we agree that this is a significant problem, we also believe that Native Hawaiians deserve an increased voice in terms of what is done with the funds that are accounted for. Moreover, while consultation with Native Hawaiians has been discussed, the literature focuses on consultation at the state and federal level rather than at the NHO level. Consultation at the state and federal levels is complicated by the fact that there is no recognized Native Hawaiian governing body, which limits the ability of state and federal officials from engaging in the nation-to-nation model of consultation that is standard within the US. Because we are proposing consultation by OHA among individual Native Hawaiians, no governing body is required.

Nonetheless, this study has some important limitations. First, we limited our analysis of the Native Hawaiian share of PLT revenue to documents that were available in English. While the Native Hawaiian share of PLT revenue was conceptualized in the modern era, it must be placed on the backdrop of early colonization to be fully understood. Much of the materials during the Kingdom era were published in Hawaiian and, unless translated, they were not included in this study. Second, we limited our analysis to published documents and did not engage in any interviews. This may have increased our ability to contextualize the Native Hawaiian share of PLT revenue as many individuals who were present at the 1978 Constitutional Convention are still alive. Third, we limited our search of consultation laws to legal documents that had the full force and effect of the law. Thus, non-binding agency policies were not searched for, except to verify that OHA does not currently have an existing consultation policy.

In addition, it is not our intent to cast a dark shadow on OHA by recommending that it adopt a consultation policy. OHA's very existence and its original commitment to self-determination paved the way for the federal government to more fully integrate Native Hawaiians into the era of self-determination. As we have shown in this article, OHA

has championed consultation policy in its external advocacy throughout its history, both before and after the loss of Native Hawaiian control over OHA elections. OHA leaders have also engaged in consultation and collaboration with Native Hawaiian organizations and individuals voluntarily in many cases, as we have described. Even after the loss of collective control over OHA, numerous Native Hawaiian individuals have worked through OHA in an effort to better the conditions of Native Hawaiians. In other words, OHA and the Native Hawaiians who have worked through “their part of the state” deserve credit for how far consultation law has come at the state and federal levels. Finally, future research should explore the efficacy of certain types of consultation policies.

7. Conclusions

The framers of the 1978 Constitutional Convention intended for Native Hawaiians to play a decision-making role in the use of PLT revenues. In 2000, *Rice v. Cayetano* changed in the legal landscape removing Native Hawaiian control over OHA elections and thus diminishing the ability of Native Hawaiians to effectively control the use of the PLT revenues. Nevertheless, since then, the state and federal government has begun to expand Native Hawaiian consultation. We suggest that the OHA should proactively adopt a robust consultation policy for itself. Doing so will more closely align the current PLT process with the intent of the framers. Moreover, it will not only provide a clearer process for Native Hawaiians to influence the agency which holds their assets on their behalf, but it will also put OHA in a stronger position to call on other state agencies, federal agencies, and Congress to improve Native Hawaiian consultation rights. Re-incorporating Native Hawaiian voices in the use of PLT revenues reinforces the initial purpose as Native Hawaiians will have a greater say in their future and the use of their resources.

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