

## Missionary Lands

“Kamehameha I was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property.” (Constitution 1840)

“When the Islands were conquered by Kamehameha I, he followed the example of his predecessors, and divided out the lands among his principal warrior chiefs, retaining, however, a portion in his hands, to be cultivated or managed by his own immediate servants or attendants.”

“Each principal chief divided his lands anew, and gave them out to an inferior order of chiefs, or persons of rank, by whom they were subdivided again and again; after passing through the hands of four, five or six person; from the King down to the lowest class of tenants.”

“All these persons were considered to have rights in the lands, or the productions of them. The proportions of these rights were not very clearly defined, but were nevertheless universally acknowledged.”

“The tenures were in one sense feudal, but they were not military, for the claims of the superior on the inferior were mainly either for produce of the land or for labor, military service being rarely or never required of the lower orders.”

“All persons possessing landed property, whether superior landlords, tenants or sub-tenants, owed and paid to the King not only a land tax, which he assessed at pleasure, but also, service which was called for at discretion, on all the grades, from the highest down.”

“They also owed and paid some portion of the productions of the land, in addition to the yearly taxes. They owed obedience at all times. All these were rendered not only by natives, but also by foreigners who received lands from Kamehameha I and Kamehameha II, and by multitudes still alive ...”

“... of this there are multitudes of living witnesses, and a failure to render any of these has always been considered a just cause for which to forfeit the lands.”

“It being therefore fully established, that there are but three classes of persons having vested rights in the lands—1st, the Government, 2nd, the landlord (Chiefs and Konohiki,) and 3rd, the tenant (Maka‘āinana,) it next becomes necessary to ascertain the proportional rights of each.”

“Happily, evidence on this point is not wanting, though it may be the most difficult one to settle satisfactorily of any connected with land claims. The testimony elicited is of the best and highest kind.”

“It has been given immediately by a large number of persons, of a great variety of character, many of them old men, perfectly acquainted with the ancient usages of the country; some were landlords, and some were tenants.” (Land Commission Principles, adopted by Legislature October 26, 1846)

“The title of the Hawaiian government in the lands so acquired and so bona fide owned, as in the preceding sections set forth, shall be deemed in law to be allodial, subject to the previous vested rights of

tenants and others, which shall not have been divested by their own acts, or by operation of law.” (Laws adopted 1846)

“Wherefore, there was not formerly, and is not now any person who could or can convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom. These are the persons who have had the direction of it from that time down, Kamehameha II Kaahumanu I and at the present time Kamehameha III.”

“These persons have had the direction of the kingdom down to the present time, and all documents written by them, and no others are the documents of the kingdom.”

“The kingdom is permanently confirmed to Kamehameha III and his heirs, and his heir shall be the person whom he and the chiefs shall appoint, during his lifetime, but should there be no appointment, then the decision shall rest with the chiefs and House of Representatives.” (Constitution 1840)

“‘God hath made of one blood all nations of men to dwell on the earth,’ in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands.”

“These are some of the rights which he has given alike to every man and every chief of correct deportment; life, limb, liberty, freedom from oppression, the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws.”

“Protection for the People declared. The above sentiments are hereby published for the purpose of protecting alike, both the people and the chiefs of all these islands, while they maintain a correct deportment, that no chief may be able to oppress any subject, but that the chiefs and people may enjoy the same protection, under one and the same law.”

“Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws.”

“Whatever chief shall act perseveringly in violation of this constitution, shall no longer remain a chief of the Hawaiian Islands, and the same shall be true of the governors, officers, and all land agents.”

“But if any one who is deposed should change his course, and regulate his conduct by law, it shall then be in the power of the chiefs to reinstate him in the place he occupied, previous to his being deposed.” (Declaration of Rights, 1839)

## Great Māhele

In 1848, King Kamehameha III responded to increasing economic pressure from foreigners who sought to control land by fundamentally changing the land tenure system to a westernized paper title system.

The lands were formally divided among the king and the chiefs, and the fee titles were recorded in the Māhele book. Lands granted in the Māhele were granted “subject to the rights of native tenants,” usually tenant farmers who already worked and resided on portions of those lands.

More than 240 of the highest-ranking Chiefs and Konohiki in the Kingdom joined Kamehameha III in this task. The first māhele, or division, of lands was signed on January 27, 1848; the last māhele was signed on March 7, 1848.

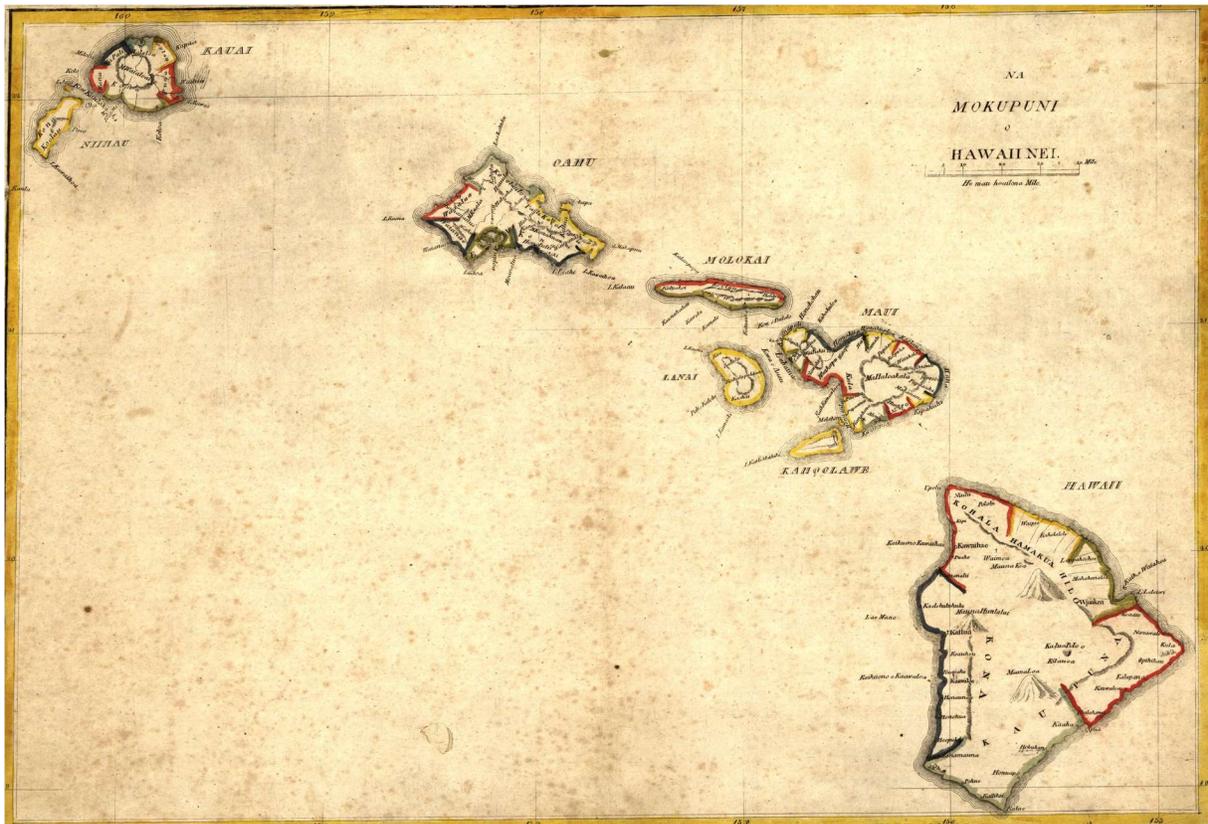
Each māhele was in effect a quitclaim agreement between the King and a Chief or Konohiki with reference to the lands in which they both claimed interests.

In each māhele for lands for the King, the Chief or the Konohiki signed an agreement: “I hereby agree that this division is good. The lands above written are for the King. I have no more rights therein.”

The remaining lands were set aside for the Chief or Konohiki and the King signed an agreement: “I hereby agree that this division is good. The lands above written are for (name of Chief or Konohiki); consent is given to take it before the Board of Commissioners to Quiet Land Titles.”

Following the Great Māhele, by 1855, the lands in Hawaii had been distributed: the Konohiki were granted 1.5 million acres (Konohiki Lands;) King Kamehameha was granted approximately 1 million acres (Crown Lands;) and the Hawaiian government was granted 1.5 million acres (Government Lands.)

Deeds executed during the Māhele conveying land contained the phrase “ua koe ke kuleana o na kānaka,” or “reserving the rights of all native tenants,” in continuation of the reserved tenancies which characterized the traditional Hawaiian land tenure system. (Garavoy)



## Kuleana Act

In 1850, a law was passed allowing maka'ainana (the "native tenants") to claim fee simple title to the lands they worked. "The maka'ainana were the planters and fishers who lived on (ma) the (ka) lands ('aina;) the final na is a plural substantive." (Handy) Or, they may be viewed as maka (eye) 'aina (land) – 'the eyes of the land.' Pukui notes the name literally translates to 'people that attend the land.'

"They were the commoners who were a class distinct and apart from the ali'i, or class of chiefs, the temple kahuna or priests, koa or warriors, and konohiki or overseers." (Handy) The rulers were set apart from the general populace, the maka'ainana, by an elaborate, strictly enforced series of kapu or restrictions. (Mitchell)

Those who claimed their parcel(s) successfully acquired what is known as a kuleana. Of the 29,221 adult males in Hawaii in 1850 eligible to make land claims, only 8,205 maka'ainana actually received kuleana awards. Their awards account for a combined 28,600 acres of kuleana lands—less than one percent of the Kingdom's lands. (Garovoy)



In the years that have passed since the Māhele, many of the large parcels initially granted to chiefs have changed hands through formal legal transfers of title.

Contemporary sources of law, including the Hawaii Revised Statutes, the Hawaii State Constitution, and case law interpreting these laws protect six distinct rights attached to the kuleana and/or native Hawaiians with ancestral connections to the kuleana.

These rights are:

- (1) reasonable access to the land-locked kuleana from major thoroughfares;
- (2) agricultural uses, such as taro cultivation;
- (3) traditional gathering rights in and around the ahupua'a;
- (4) a house lot not larger than 1/4 acre;
- (5) sufficient water for drinking and irrigation from nearby streams, including traditionally established waterways such as 'auwai; and
- (6) fishing rights in the kunalu (the coastal region extending from beach to reef).

The 1850 Kuleana Act also protected the rights of tenants to gain access to the mountains and the sea and to gather certain materials.

The Kuleana Act did not allow the maka'ainana to exercise other traditional rights, such as the right to grow crops and pasture animals on unoccupied portions of the ahupua'a. The court's interpretation of the act prevented tenants from making traditional use of commonly cultivated land. (MacKenzie)

## Missionary Applications for Land

At the same time that the Kingdom was addressing distribution of lands to the King, Chiefs and Maka'āinana, they were also looking at land for the missionaries. "Some conversation then took place on the expediency and policy of granting lands to Missionaries at a price cheaper than lands are disposed of to other parties." (Privy Council Minutes, November 23, 1849)

Non-Hawaiians were not permitted to own lands until 1850. In that year certain missionaries made application to the Hawaiian Government for permission to purchase lands.

With respect to missionary applications to purchase lands, in its April 29, 1850 Privy Council meeting, the Council "Resolved; that the several applications of Missionaries to purchase government lands presented by the Minister of the Interior be referred to Messrs Young, Wyllie & Lee as a special committee to report upon at their earliest convenience." (Privy Council Minutes, April 29, 1850)

Then, at its June 24, 1850 meeting, the Privy Council, "Resolved; That the Committee to whom was referred the applications of Missionaries for lands, be requested to take into consideration the whole subject of granting lands to Missionaries, and report to this council the course that, in their view should be pursued hereafter in regard to them." (Privy Council Minutes, June 24, 1850)

At its August 19, 1850 Privy Council meeting, "Mr Wyllie brought forward & read a report of a committee appointed on the 29th April & powers enlarged on the 24th June to report respecting lands applied for by Missionaries." The report was received and it was Resolved that it be left by the cabinet to publish when they see fit. The 'Report on Missionary Lands' was published in the Polynesian on May 7, 1852.

In part, that report notes, "The missionaries who have received and applied for lands have neither received and applied for them, without offering what they conceived to be a fair consideration for them."

"So far as their applications have been granted, your Majesty's government have dealt with them precisely as they have dealt with other applicants for land, that is, they have accepted the price where they considered it fair, and they have raised it where they considered it unfair."

"It will not be contended that missionaries, because they are missionaries, have not the same right to buy land in the same quantities and at the same price as those who are not missionaries."

"The question occurs, have greater rights been allowed to the missionary applicants than to the non-missionary applicants. To solve this question satisfactorily, requires that the undersigned should give some statistics."

After review of some comparative sales it was concluded "that the missionaries generally have had their lands on somewhat easier terms than those who are not missionaries, but the undersigned, allowing for probable difference of quality, would hesitate to say that they have had their lands as much as 50 cents per acre under the price that non-missionary applicants have had theirs. ..."

"But, besides what is strictly due to them, in justice and in gratitude for large benefits conferred by them on your people, every consideration of sound policy, under the rapid decrease of the native population, is in favor of holding out inducements for them not to withdraw their children from these islands. "

“One of the undersigned strongly urged that consideration upon your majesty in Privy Council so far back as the 28th of May, 1847, recommending that a formal resolution should be passed, declaring the gratitude of the nation to the missionaries for the services they had performed, and making some provision for their children.”

"Your majesty's late greatly lamented Minister of Public Instruction (and former missionary). Mr. Richards, with that disinterestedness which characterized him personally in all his worldly interests, was fearful that to moot such a question would throw obloquy upon the reverend body to which he had belonged, and hence to the day of his death, he abstained from moving it."

“Neither has any missionary, or any one who had been connected with the mission, ever taken it up to this day; but the undersigned, who are neither missionaries, nor have ever been connected with them, hesitate not to declare to your majesty that it will remain, in all future history ...”

“... a stain upon this Christian nation if the important services of the missionaries be not acknowledged in some unequivocal and substantial manner. This acknowledgment should not be a thing implied or secretly understood, but openly and publicly declared.” (Signed by RC Wyllie and Keoni Ana)



### Privy Council Resolution for Discounted Price to Missionaries

"The undersigned would recommend that the following, or some similar resolutions, should be submitted to the Legislature.

"1. Resolved, That all Christian missionaries who have labored in the cause of religion and education in these islands, are eminently benefactors of the Hawaiian nation."

"2. Resolved, That, as a bare acknowledgment of these services, every individual missionary who may have served eight years on the Islands, whether Protestant or Catholic, who does not already hold five hundred and sixty acres of land, shall be allowed to purchase land to that extent at a deduction of fifty cents on every acre from the price that could be obtained from lay purchasers ..."

“... but that for all land beyond that quantity, he must pay the same price as the latter would pay; and that those who have served less than eight years be allowed to purchase land on the same terms as laymen, until the completion of the eight years, after which they are to be allowed the same favor as the others.”

"3. Resolved, That all Christian missionaries serving on these islands shall be exempt from the payment of duties on goods imported for their use in the proportion following, for every year, viz: on goods to the invoice value of one hundred dollars for every active member of the mission, excluding servants."

"On goods to the value of thirty dollars for every child above two years of age. (Signed,) R.C Wyllie, Keoni Ana." (Privy Council Chamber, August 19th, 1850.; Report on Missionary Lands; Polynesian, May 7, 1852)

## Viewpoint of a Bishop

"It is a common thing even in this day to hear from people words to the effect that the missionaries were land grabbers. It is intimated that they obtained lands from the Hawaiians by methods which merit censure."

You often hear words like "The missionaries had enriched themselves and their descendants by dispossessing the native of his land" and "What a shame it is that the missionaries took all the land from the Hawaiians."

"Let us have the facts. ... Some of the errors into which strangers fall are due to the fact that they are unaware that the term 'missionary' as generally used now by Hawaiians and others does not mean the men sent out by the American Board nor their descendants."

"The term as used by them includes all who were concerned in the overthrow of the monarchy and the annexation of Hawaii to the United States, and those who were or are in sympathy with the ideals of the missionaries. This misunderstanding has led many, not correctly informed, to have erroneous views in regard to those who possess lands in Hawai'i today (time context of 1925) or who are largely interested in plantations."

"In 1863 the American Board of Missions, in withdrawing from the Islands, cooperated with the Government in securing fee simple titles to the property held by the Board which consisted of house lots and some land." (Bishop Restarick in 'Hawai'i, 1778-1920, From the Viewpoint of a Bishop', 1925)

## Missionary Period

Over the course of a little over 40-years (1820-1863 - the "Missionary Period"), about 180-men and women in twelve Companies served in Hawai'i to carry out the mission of the American Board of Commissioners for Foreign Missions (ABCFM) in the Hawaiian Islands.

Collaboration between Native Hawaiians and American Protestant missionaries resulted in, among other things, the

- Introduction of Christianity;
- Development of a written Hawaiian language and establishment of schools that resulted in widespread literacy;
- Promulgation of the concept of constitutional government;
- Combination of Hawaiian with Western medicine; and
- Evolution of a new and distinctive musical tradition (with harmony and choral singing)