

## Preparing a Constitution

Over the centuries, the islands weren't unified under single rule. Leadership sometimes covered portions of an island, sometimes covered a whole island or groups of islands. Island rulers, Ali'i or Mō'i, typically ascended to power through warfare and familial succession.

At the period of Captain Cook's arrival (1778-1779), the Hawaiian Islands were divided into four kingdoms: (1) the island of Hawai'i under the rule of Kalani'ōpu'u, who also had possession of the Hāna district of east Maui; (2) Maui (except the Hāna district,) Molokai, Lāna'i and Kaho'olawe, ruled by Kahekili; (3) O'ahu, under the rule of Kahahana; and at (4) Kauai and Ni'ihau, Kamakahahei was ruler.

There were family connections of these four to Kamehameha; the death of Kiwala'o; the "Four Kona Uncles" (Ke'eaumoku, Keaweaheulu, Kame'eiamoku and Kamanawa (the last two are twins and are depicted on the Hawaiian Coat of Arms;)) permission from Kalola to marry her granddaughter (after the defeat of Maui) and how Kamehameha secured his "unification" by "sharing the spoils" of the conquests and "braided the bloodlines;" eventually leading to the agreement with Kaumuali'i. (Yardley)

The kapu system was the common structure, the rule of order, and religious and political code. This social and political structure gave leaders absolute rule and authority.

"Position in old Hawai'i, both social and political, depended in the first instance upon rank, and rank upon blood descent-hence the importance of genealogy as proof of high ancestry."

"Grades of rank were distinguished and divine honors paid to those chiefs alone who could show such an accumulation of inherited sacredness as to class with the gods among men. Since a child inherited from both parents, he might claim higher rank than either one." (Beckwith)

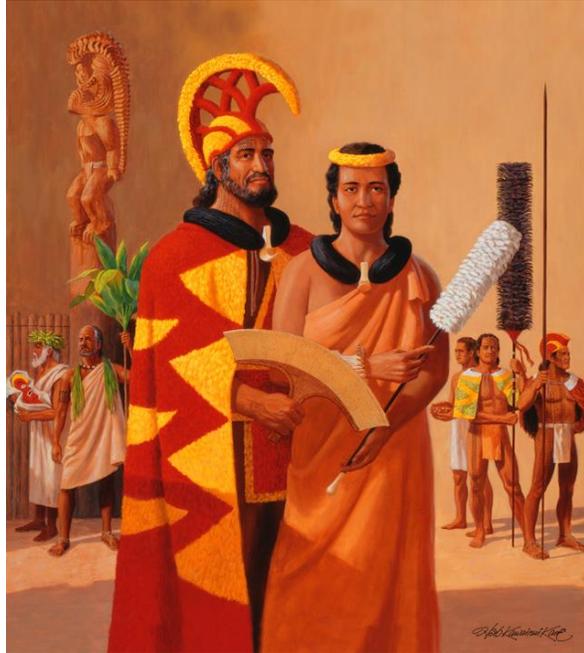
There were nine traditions that emphasized chiefly rank:

1. a family genealogy tracing back to the gods through one of the two sons of Ki'i, Ulu and Nana'ulu, and by as many branches (lala) as family relationship could be stretched to cover
2. a name chant, composed at birth or given in afterlife, glorifying the family history not only of persons concerned but also of places made sacred by particular events or association
3. signs in the heavens by which 'aumakua of the day recognized their offspring on earth
4. a special place set aside as sacred to the birth of high-ranking chiefs (i.e. Kūkaniloko)
5. the sacred cord (aha) stretched at the entrance of a chief's dwelling, under which all of lower rank must pass but which fell "of itself" before the approach of anyone of equal or higher position
6. wealth, especially in lands, labor and specialized objects such as foods, ornaments, colors belonging to ranking chiefs alone
7. the power of the kapu, which gave the ranking chief immense personal privilege, although the ruling chief might have actually more power over lands and wealth (before certain captive chiefesses of Maui of incredible sanctity, according to Kamakau, Kamehameha himself was of lower rank)
8. the right to officiate in the heiau as both chief and priest
9. at death, the final deification of the bones and their laying away in a sacred and secret place difficult of access (one of the most important such place in ancient times being the 'Āo valley on the island of Maui)

Rank depended primarily upon blood; but of great importance was the conduct of life by which one could, by carelessness in preserving the kapu and in making proper marriages, lose caste and prerogatives under the severe discipline of the Aha-ali'i (Council of Chiefs,) or could, through a royal marriage, raise the rank of one's descendants upon the family line. (Beckwith)

"The maka'āinana were the planters and fishers who lived on (ma) the (ka) lands ('āina;) the final na is a plural substantive." (Handy) Or, they may be viewed as maka (eye) 'āina (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'āinana, by an elaborate, strictly enforced series of kapu or restrictions. (Mitchell)



"(T)he reason for this division being that men in the pursuit of their own gratification and pleasure wandered off in one direction and another until they were lost sight of and forgotten." The maka'āinana are said to have fallen to their common status because they lost their genealogies. (Malo)

The maka'āinana made up the largest segment of the population. In addition to their work as the planters and the fishermen they were the craftsmen and the soldiers. They were the major source of manpower. (Mitchell)

The maka'āinana lived on the lands assigned to them by the chiefs as long as they worked acceptably and paid adequate taxes. They could be removed from their lands by the konohiki or any chief with authority in the ahupua'a. If they were unhappy under a chief they were free to move to another ahupua'a. (Mitchell)

As long as sufficient tribute was offered and kapu (restrictions) were observed, the maka'āinana who lived in a given ahupua'a had access to most of the resources from mountain slopes to the ocean. These access rights were almost uniformly tied to residency on a particular land, and earned as a result of taking responsibility for stewardship of the natural environment and supplying the needs of ones' ali'i. (Maly)

The maka'āinana were allotted a plot of ground by their chief. Here they planted, irrigated, nurtured and harvested taro, sweet potatoes and other crops. They raised pigs, dogs and chickens to supplement their diet, and they had the right to fish in the sea or in protected fish ponds.

The maka'āinana worked for the chief 6 days each month, fought in the chief's wars, and paid taxes in the form of goods produced. Order and discipline were maintained through a strict code of laws, known as the kapu system. (UH-CLEAR)

## Council of Chiefs

“(T)he king (was) lord paramount, the chiefs as mesne lords and the common man as tenant paravail - sometimes as many as seven degrees in all. Each held of his immediate superior in return for military and other services, and each exercised all the functions of government indiscriminately, subject to his own superiors.”

“The laws were mostly customary, many doubtless having their origin in the edicts of early kings, the majority of whom had been forgotten as law givers, but the names of the most, famous of whom were handed down with the laws, - as in the case of Mā’ilikūkahi, king of O’ahu”.

“General laws were thus enacted by the king, and subordinate laws in the nature of local ordinances for their respective jurisdictions by the successive grades of chiefs.”

“The king consulted his counsellors, the high chiefs, a sort of witenagemot or embryo legislative body, to a greater or less extent according to the importance of the law contemplated, as he did also on other important matters, such as a question of declaring war.”



“A council of chiefs was also usually held upon the death of a king to determine whether to approve the successor, if any, named in his will or elect another at the risk of war. The deliberations of the king in council were generally conducted in great secrecy and those who spoke did so in language that was highly figurative, beautiful and expressive.

“The result was proclaimed by the king and published by heralds and messengers - hereditary and honorable officers - who took the messages to the chiefs of districts, by whom in turn they were passed on to inferior chiefs and by them to the masses. They were preserved in living statute books, namely, by a class whose business it was to memorize and teach them and hand them down to succeeding generations.”

“Although there was considerable law it was largely of an indefinite nature and all subject to much arbitrariness in its administration; and although there was an organized system of government it was aristocratic and the welfare of the lower orders was little considered. The largest and most oppressive body of laws consisted of the taboos, which were imposed partly for religious and partly for political purposes, the religious and political systems being closely interwoven.”

“Most important were the laws of real property, upon which the political system was based, including the laws of tenure, taxation, fishing rights and water rights, the last named being so important as to give their name, kānāwai, to law in general.” (Frear)

“In the time of Kamehameha the government was a feudal autocracy. The power of the king was nearly absolute, with only the limitations imposed by immemorial custom and the necessity of having subordinate executive officers. But even Kamehameha had his council of chiefs, which he consulted on important questions.”

“In view of the weakness of his son and successor, Kamehameha instituted the office of kuhina-nui, and after his death this weakness of Kamehameha II and the long minority of Kamehameha III not only enhanced the importance of that office but also enabled the chiefs to encroach upon the authority of the king. From being a mere advisory council, whose advice could be totally disregarded by the king, they came to have actual legislative power.”

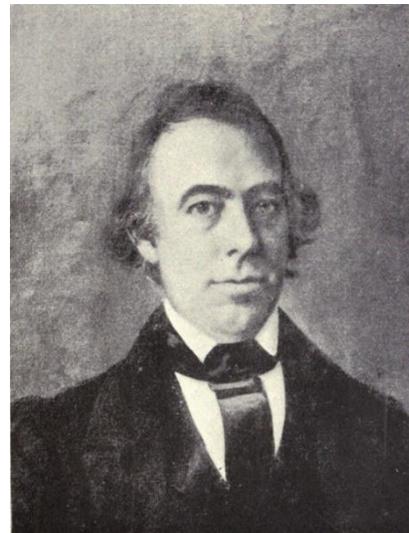
“The council of chiefs thus evolved, rather rapidly, into a legislative council, of which the king and kuhina-nui were also members. In 1825 the council of chiefs settled the succession to the throne and provided for the continuance of the regency. After 1835 we find various laws enacted by the king in council with his chiefs, though they were not yet technically called a ‘legislative council.’” (Kuykendall)

## The Move to Constitution Governance

Collaboration between Ali‘i and the American Protestant missionaries resulted in, among other things, the introduction of Christianity, the creation of the Hawaiian written language, widespread literacy, making Western medicine available, and the evolution of a new and distinctive musical tradition with harmony and choral singing.

The missionaries collaborated with the Chiefs on the promulgation of a constitutional government. Reverend William Richards came to Hawai‘i in 1823 as a member of the Second Company of missionaries sent to the Islands by the American Board of Commissioners for Foreign Missions; he was instrumental in transforming Hawaiian governance, through a constitution with individual rights.

It was a time of transition, when the Hawaiian people were faced with the difficult task of adjusting themselves to changing conditions. They turned to their teachers, the American missionaries, for guidance along this intricate path. The king and chiefs, acknowledging their own inexperience, had sought for a man of probity and some legal training who could act as their advisor in matters dealing with other nations and with foreigners within the Islands. (Judd)



Richards “accepted the invitation of the Chiefs to become their teacher, and entered into engagements with them which were signed on the 3d of July (1838). According to those engagements, (he) was to devote (his) time at (his) discretion to the instruction of the King and chiefs, as far as (he) could and remain at Lahaina, and do the public preaching.”

“(He) was also to accompany the King to O’ahu if important public business called him there. (He) engaged to act as interpreter and translator in government business of a public nature when called to it, and was to receive for (his) services 600 dollars a year, to be paid in quarterly instalments of 150 dollars each.”

“As soon as the arrangements were completed, (he) commenced the compilation and translation of a work on political economy, following the general plan of Wayland, but consulting Lay, Newman and others, and translating considerable portions from the 1st mentioned work.”

“(He) also met king & chiefs daily when other public business did not prevent, and as fast as (he) could prepare matter read it to them in the form of lectures. (He) endeavored to make the lectures as familiar as possible, by repeating them, and drawing the chiefs into free conversation on the subject of the Lecture.”

“They uniformly manifested a becoming interest in the school thus conducted, and took an active part in the discussion of the various topics introduced in the Lectures. The Lectures themselves were mere outlines of general principles of political economy, which of course could not have been understood except by full illustration drawn from Hawaiian custom and Hawaiian circumstances.”

“In these illustrations (he) endeavored as much as possible to draw their minds to the defects in the Hawaiian government, and Hawaiian practices, and often contrasted them with the government and practices of enlightened nations.”

“The conversation frequently took so wide a range that there was abundant opportunity to refer to any and to every fault of the present system of government. But when the faults of the present system were pointed out & the chiefs felt them & then pressed me with the question, ‘Pehea la e pono ai,’ (How will it be better?)”

“During the year (Richards had) been called on to translate various documents and laws, some of which were transmitted to the USA & some were for promulgation at the Islands. (He had) said scarcely nothing to the king and chiefs respecting the existing evils or defects in the government, except as the subject has come up naturally and almost necessarily while discussing established principles of Political Economy.”

“A system of laws has been written out by (Boaz) Mahune, a graduate of the (Lahainaluna) high school, and he was directed by the King to conform them to the principles of Political Economy which they had learned. Those laws are some what extensive and protect all private property.”

“According to this code, no chief has any authority over any man, any farther than it is given him by specific enactment, and no tax can be levied, other than that which is specified in the printed law, and no chief can act as a judge in a case where he is personally interested, and no man can be dispossessed of land which he has put under cultivation except for crimes specified in the law.” (Richards Report to the Sandwich Islands Mission, May 1, 1839)

## No Ke Kālai'āina

Classes in political economy were taught by Mr. Richards for the chiefs; these laid the foundation for the political reforms started soon after. Indeed, it can be said that Mr. Richards exercised a profound, though somewhat intangible, influence on Hawaii's evolution towards a constitution form of government.

William Richards prepared a report to the mission following his first year in government service (1838-1839). Portions of the report follows: "According to those engagements, I was to devote my time at my discretion to the instruction of the King & chiefs, as far as I could and remain at Lahaina, and do the public preaching. I was also to accompany the King to Oahu if important public business called him there."

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"The conversation frequently took so wide a range that there was abundant opportunity to refer to any and to every fault of the present system of government. But when the faults of the present system were pointed out & the chiefs felt them & then pressed me with the question, 'Pehea la e pono ai.' ((How will it be bettered?))"

"I have often felt that it is much easier to point out the defects of an old system than it is to devise a new one, suitable to take its place. The Chiefs proposed themselves to publish the work which I have compiled, & they are to have the Copy Right & defray the expense of the publication." (The book was known as No ke Kalaiaina.)

"All my intercourse with the king and chiefs has been of the most pleasant character, at least, I have found them uniformly ready to listen to instructions, and they have manifested a becoming wish to reform the government in those particulars where it is inconsistent with true Political Economy. I have far greater fears at present that there is not sufficient skill to devise a truly wise policy than I have that the chiefs will not sanction it when devised."

## Declaration of Rights of 1839

Mahune (with others from Lahainaluna) drafted the 1839 Hawaiian Bill of Rights, also known as the 1839 Constitution of Hawai'i. This document was an attempt by King Kamehameha III and his chiefs to guarantee that the Hawaiian people would not lose their tenured land, and provided the groundwork for a free enterprise system. Many refer to that document as Hawai'i's Magna Charta (describing certain liberties, putting actions within a rule of law and served as the foundation for future laws.) It served as a preamble to the subsequent Hawai'i Constitution (1840.)

It was a great and significant concession voluntarily granted by the king to his people. It defined and secured the rights of the people, but it did not furnish a plan or framework of the government. (Kuykendall) After several iterations of the document back and forth with the Council of Chiefs, it was approved and signed by Kamehameha III on June 7, 1839 – it was a significant departure from ancient ways.

The Declaration of Rights of 1839 was influenced by Christian fundamentals, as well as rights noted in the US Declaration of Independence; it recognized three classes of persons having vested rights in the lands; 1st, the Government; 2nd, the Chiefs; and 3rd, the native Tenants. It declared protection of these rights to both the Chiefly and native Tenant classes.

## Constitution of 1840

Then, Kamehameha III initiated and implemented Hawai'i's first constitution (1840) (one of five constitutions governing the Islands – and then, later, governance as part of the United States.) Of his own free will he granted the Constitution of 1840, as a boon to his country and people, establishing his Government upon a declared plan. (Rex v. Booth - Hanifin)

That constitution introduced the innovation of representatives chosen by the people (rather than as previously solely selected by the Ali'i.) This gave the common people a share in the government's actual political power for the first time.

In addition, the 1840 Constitution recognized rights of the people; its preamble read, "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."

"Absolute monarchy had come to an end in 1840. Since that time the kingdom had been governed under no less than four constitutions: the original one freely granted by Kamehameha III in 1840; one adopted by the legislature with the concurrence of the same King in 1852; one promulgated by Kamehameha V in 1864 on his own authority; and one granted in 1887 by Kalākaua as the result of a popular uprising (the Bayonet Constitution)." (Spaulding – Kosaki)

For two centuries, the trend in Hawai'i has been toward expanding the numbers of people who have a say in all parts of their government: from Kamehameha I's near-absolute monarchy to a hereditary oligarchy, to an oligarchy open to men with money, to American republic. (Hanifin)

## Voter Qualifications – Participation

"Although the Constitution of 1840 provided for a "representative body" of legislators, more than ten years passed before a formal election was held. An 1842 law specified that representatives were to be chosen by public petitions sent to the King, and this procedure was followed for the rest of the decade." (Schmitt)

"Then, on July 30, 1850, two new election laws were approved. The first provided for annual elections, to be held the first Monday of January, and set the qualifications of voters. Under this act, a voter had to be

a male subject (either native or naturalized) or denizen, at least 20 years of age, who had lived at least one year in Hawaii, and was not insane or an unpardoned felon.” (Schmitt)

“The second law set the size of the House of Representatives at twenty-four, including two to be elected from Honolulu and one each from twenty-two single-member districts in rural Oahu and on the neighbor islands. Elective offices included representatives and road supervisors but not, of course, members of the House of Nobles or the King. These two laws were the basis for the first general election in the islands, held the following January.”

“Both frequency of elections and legislative apportionment were changed over the years. The Constitution of 1852 provided for reapportionment every six years, to be based on official census results. The 1853 Legislature increased the number of Representatives from Honolulu to four and from Hilo, Lahaina, and Molokai-Lanai to two each. Elections were put on a biennial basis after 1856. The Constitution of 1894 revised district boundaries and moved the biennial elections to the last Wednesday of September.”

“Voter qualifications also were changed from time to time. The 1864 Constitution added a property or income requirement: voters had to have either real property valued (over and above encumbrances) at \$150 or more, or a leasehold paying rent of \$25 or more annually, or a yearly income not less than \$75. Moreover, if born since 1840, they had to be able to read and write.”

“The real property/income requirement was repealed in 1874 but was reinstated, in modified form, by the Constitution of 1887.”

“The latter document (Constitution of 1887) made the House of Nobles an elective body for the first time in Hawaiian history, but with considerably more restrictive voter requirements than for voters for Representatives. Property worth \$3,000 or an annual income of \$600 or more were necessary to vote for Nobles, but no property or income minimums were set for voters for Representatives. The residence requirement was one year to vote for members of the lower house but three years for those of the upper house.”

“All voters had to be able to read Hawaiian, English, or another European language (although this requirement was waived for voters for representative born in 1840 or before) and had to be of Hawaiian, American, or European birth or descent. Similar requirements were set by the Constitution of 1894, which in addition changed the name of the upper house to Senate and provided for fractional votes.” (Schmitt)

## Missionary Period

Over the course of a little over 40-years (1820-1863 - the “Missionary Period”), about 184-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)