

# Foundations of Kuleana

Davianna Pōmaika'i McGregor  
Professor of Ethnic Studies  
University of Hawai'i, Mānoa

E 'auamo i ke kuleana  
Kūkūlu waiwai



Aloha 'Āina . . . Love the Land



# The Traditional Land System Provided Stewardship of Natural Resources of the Land





... and the Ocean

# Ahupua'a System



Drawing by Dr. Jonathan Ching

A.D. 1500  
Ali'i Nui of 4  
Island Chiefdoms

Set the Moku Boundaries on Their Islands

Līloa - Hawai'i

Pi'ilani - Maui

Ma'ilikūkahi – O'ahu

Manokalanipō – Kaula'i

# King Kamehameha III and the Council of Chiefs Established a Unique Hawaiian System of Private Ownership of Land



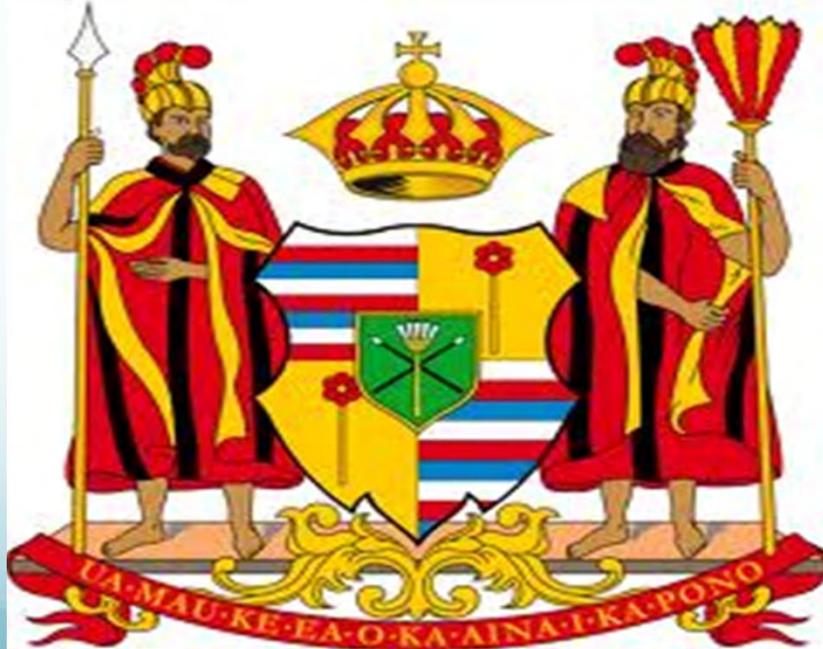
They Reserved  
Traditional and  
Customary Rights  
Of The  
Maka'āinana  
In The Land



## Step 1: 1839 Bill of Rights

Ua hoomaluia ke kino o na Kanaka a pau, a me lo lakou aina, a me ko lakou mau pa hale, a me ko lakou waiwai a pau;

Protection is hereby secured to the persons of all the people, together with their lands, their building lots and all their property



## Step 2: 1840 Constitution:

Kamehameha I, o ia ke poo o keia aupuni, a nona no na aina a pau mai Hawaii a Niihau, aole nae nona pono

Kamehameha I, was the founder of the kingdom, and to him belonged the land from Hawai'i to Ni'ihau, though it was not his own private property



## 1840 Constitution (cont)

no na kanaka no, a ma na alii, a o Kamehameha no ko lakou poo nana e olelo i ka aina.



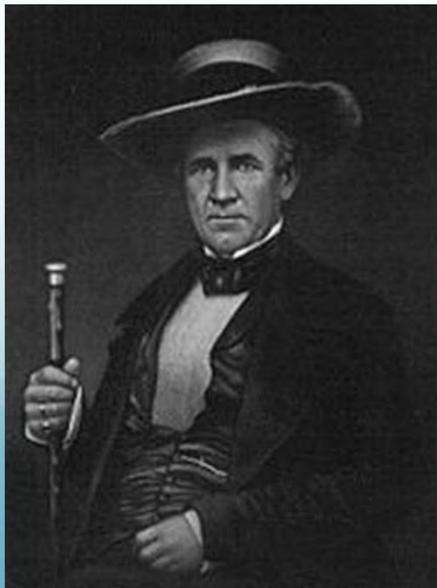
It belonged to the people, and the chiefs in common, of whom Kamehameha I was the head, and had the management of the landed property.

Step 3: Board of  
Commissioners  
to Quiet  
Land Titles  
[Zorababella  
Ka'auwai]

*John Papa 'i'i*

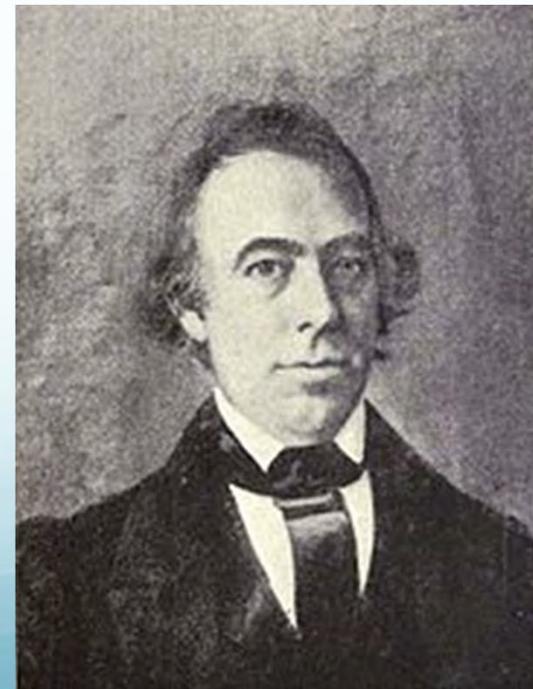


*James  
Young  
Kanehoa*



*John  
Ricord*

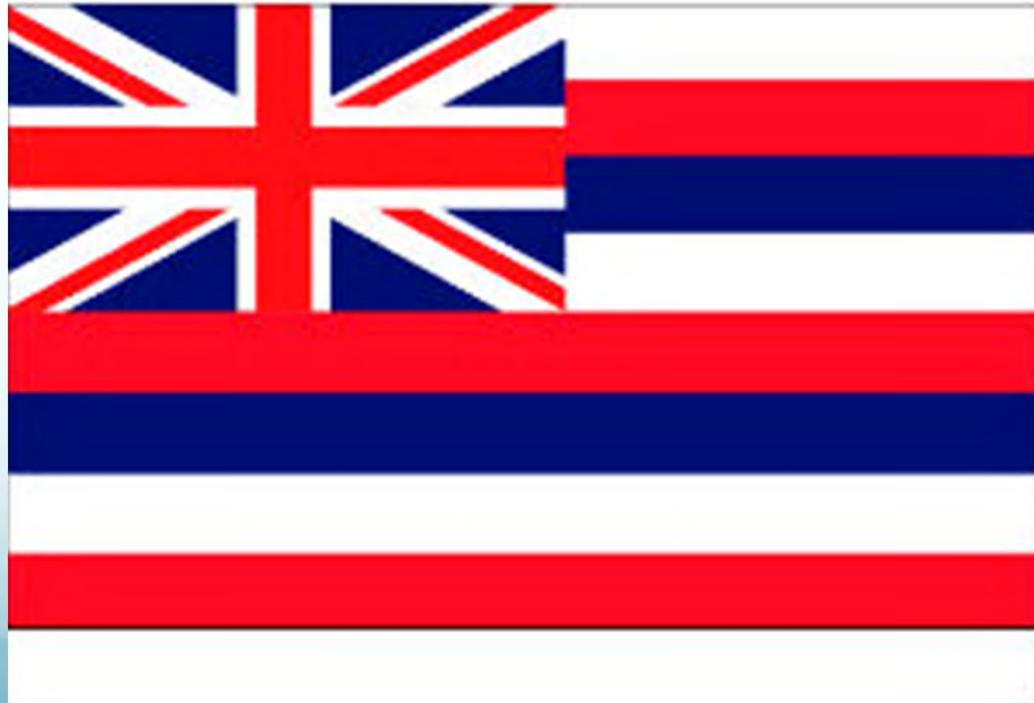
- *William  
Richards*



**Step 4: On February 14, 1846 the  
Commissioners Issued a notice in the  
Polynesian newspaper**

**Deadline for  
Native Claims to be Filed  
February 14, 1848**

**Step 5: October 26, 1846**  
**Principles Adopted by the Board**  
**Of Commissioners to Quiet Land Titles**  
**In Their Adjudication of Claims**



It being therefore fully established, that there are but three classes of persons having vested rights in the land:

1<sup>st</sup>, the government,  
2<sup>nd</sup>, the landlord, and  
3<sup>rd</sup>, the tenant,

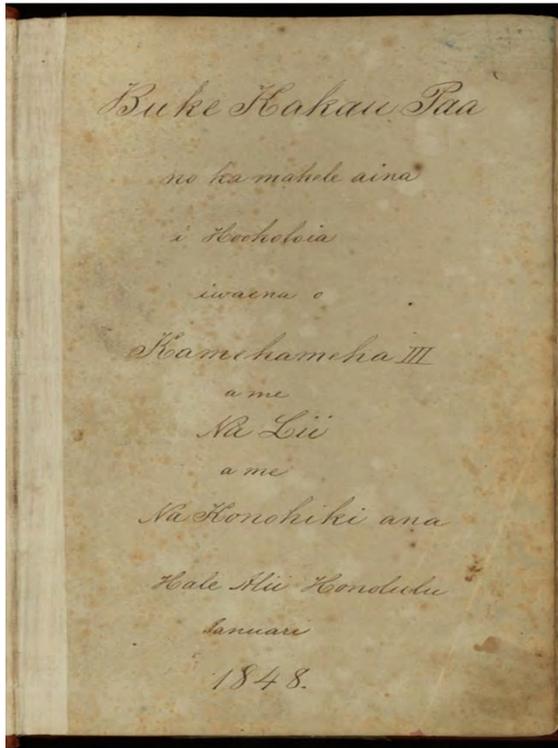


It next becomes necessary to ascertain the proportional rights of each.

According to this principle, a tract of land now in the hands of a landlord

and occupied by tenants, if all parts of it were equally valuable, might be divided into **three equal parts**, and an allodial title to one then be given to the lord, and the same title be given to the tenants of one third, and the other one third would remain in the hands of the Kings, as his proportional right





## Step 6: 1848 Ka Māhele

Crown lands (King)	984,000 acres	(23.8%)
245 chiefs	1,619,000 acres	(39.2%)
Government lands, distinct from Crown	1,523,000 acres	(37%)
<hr/>		
	4,126,000 acres	(100. %)

**“Koe wale no na kuleana o na kanaka  
e noho ana ma ua mau aina la”**



***“reserving only the right of the people  
who live on the aforementioned lands”***

**Step 7:** Filing of Claims by February 14, 1848  
awarded under the 1850 Kuleana Act  
Extended to May 1, 1854

8,205 Hoa'āina  
or 29% of the  
adult males  
got less than  
1 % of the lands



The Hoa 'āina never separated their share out of the  
Crown, Government, or private lands  
THESE RIGHTS ARE RESERVED



Basis of Claim by

Prince Jonah Kūhiō Kalanianaʻole

To Reserve Crown Lands for

The Native Hawaiian People

To Homestead

1921 Hawaiian Homestead

Act



## Step 8: 1850 Foreigners Land Law

Act to Abolish  
the Disabilities of  
Aliens to Acquire  
and Convey Lands  
in Fee Simple



## Step 9: 1850 - 1860 Auction of Government Lands

144,000 acres sold

- 64% to foreigners 92,160 acres
- 36% to Kānaka 'Ōiwi 51,840 acres

**“Koe wale no na kuleana o na kanaka  
e noho ana ma ua mau aina la”**



***“reserving only the right of the people  
who live on the aforementioned lands”***

Reserved Rights: Access through private and public lands for subsistence, cultural and religious purposes



UNIQUE System of Private Land  
NOT Completely Western

1850

Privy Council Record:

The king was concerned that a "little bit of land even with an allodial title, if they [the people] be cut off from all other privileges would be of very little value."



1850

[The] proposition of the King, which he inserted as the seventh clause of the law, as a rule for the claims of common people to go to the mountains, and the seas attached to their own particular lands exclusively, is agreed .

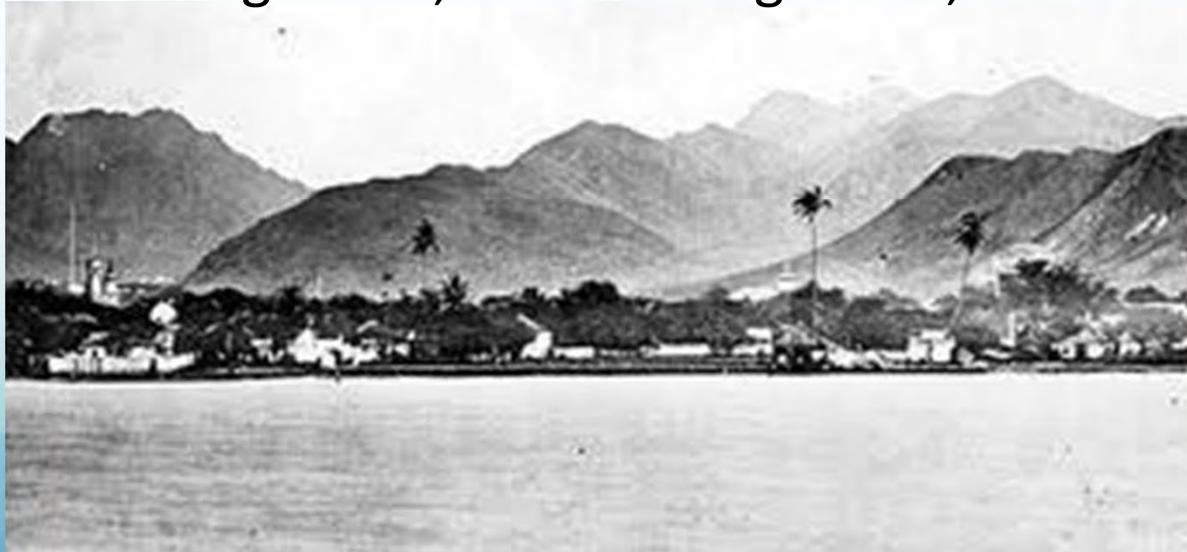
• •



1850

## Kuleana Act - Section 7

When the landlords have taken allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house timber, aho cord, thatch, or ti leaf, from the land on which they live, for their own private use, should they need them but they shall not have a right to take such articles to sell for profit. They shall also inform the landlord or his agent, and proceed with his consent. The people shall also have a right to drinking water, and running water, and the right of way.



Petition of 54 makaainana  
in Kaneohe:



We are in trouble because we have no firewood and no la'i, and no timber for houses . . . we, who live on lands which have no forest, we are in trouble. The children are eating raw potato because of no firewood, the mouths of the children are swollen from having eaten raw taro. We have been in this trouble for three months, the Konohikis with wooded lands here in Kaneohe have absolutely withheld the firewood and la'i and the timber for houses.

1851

Section 7 of the Kuleana Act Was Amended and is now HRS 7-1

The requirement for tenants to obtain the permission of the landlords was deleted.





Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their land shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple;

## Ka Pa'akai O Ka 'Āina v Land Use Commission

The Supreme Court outlined specific findings that a cultural assessment should provide:

(1) the identity and scope of 'valued cultural, historical, or natural resources in the petition area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area;'



(2) the extent to which those resources, including traditional and customary native Hawaiian rights will be affected or impaired by the proposed action; and



(3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.



# Coastal Natural and Cultural Resources



native plants and their habitat, native fauna and their habitat, native marine species, native aquatic species, spawning areas, fish spotting sites, turtle nesting areas, hunting areas, surfing sites, sandy shorelines, reefs, fishing areas, gathering areas, anchialine ponds, fishponds, salt pans, salt ponds, steam baths,



*Resources (cont)*

streams, ponds, springs, muliwai, taro irrigation networks, cultivation areas, caves, trails, sacred places, dunes, bridges, trails, historic walls, fishing shrines, other kinds of shrines, heiau, pu'uhonua, house sites, seasonal residential sites, fishermen's shelters, birthing stones, historic sites, burials and burial grounds, po kane routes, cultural use areas, places to experience spiritual visions and messages,

## *Resources (cont)*

cliff jumping spots, holua slides, petroglyphs, places where souls wander or cross into the next world, domains of ancestral deities, bathing pools, lava tubes, landings for canoes and boats, basalt veins and adze making workshops, alae veins,



## Guidelines for Responsibilities

1. Only take what is needed.
2. Don't waste natural resources.
3. Gather according to the life cycle of the resources. Allow the resources to reproduce. Don't fish during their spawning seasons.
4. Alternate areas to gather, fish and hunt. Don't keep going back to the same place. Allow the resource to replenish itself.





5. If an area has a declining resource, observe a kapu on harvesting until it comes back. Replant if appropriate.

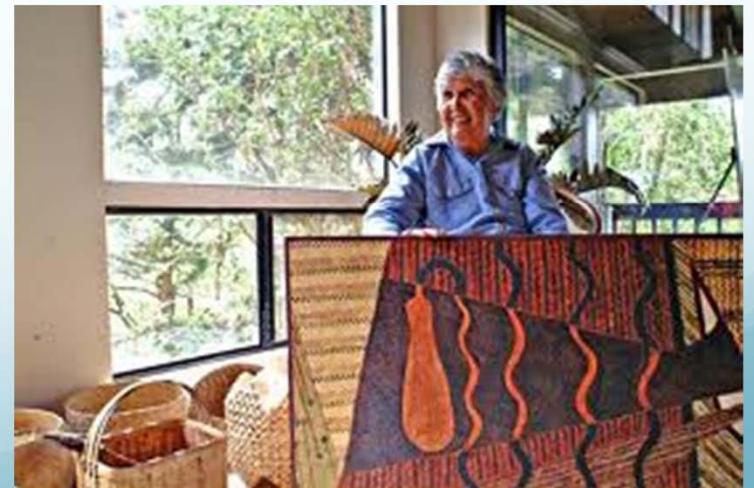
6. Resources are always abundant and accessible to those who possess the knowledge about their location and have the skill to obtain them. There is no need to overuse a more accessible area.

7. Respect and protect the knowledge which has been passed down intergenerationally, from one generation to the next. Do not carelessly give it away to outsiders.

10. Be aware of the natural elements and stay alert to natural signs, e.g. falling boulders as a sign of flash flooding.

11. Share what is gathered with family and neighbors.

12. Take care of the kupuna who passed on the knowledge and experience of what to do and are now too old to go out on their own.



13. Don't talk openly about plans for going out to subsistence hunt, gather, or fish
14. Respect the resources.
15. Respect the spirits of the land, forest, ocean.
16. Don't get loud and boisterous.
17. Respect family 'aumakua.
18. Don't gather the resources sacred to them.



# Aloha and Mahalo

## II.1.4 Identified Coastal Cultural and Subsistence Resources

- alae veins,
- anchaline ponds
- basalt veins and adze making workshops
- bathing pools
- birthing stones
- bridges
- burials and burial grounds
- caves
- cliff jumping spots
- cultivation areas
- cultural use areas
- domains of ancestral deities
- dunes
- fish spotting sites
- fishermen's shelters
- fishing areas
- fishing shrines (ko'a)
- fishponds
- gathering areas
- heiau, pu'uhonua
- historic sites
- historic walls
- holua slides
- house sites
- hunting areas
- landings for canoes and boats
- lava tubes
- leina where souls wander or cross into the next world
- muliwai
- native aquatic species
- native fauna and their habitat
- native marine species
- native plants and their habitat
- shrines (ahu)
- petroglyphs
- places to experience spiritual visions and messages
- po kane routes
- ponds
- reefs
- sacred places
- salt pans
- salt ponds
- sandy shorelines
- seasonal residential sites
- spawning areas
- springs
- steam baths
- streams
- surfing sites
- taro irrigation networks
- trails
- turtle nesting areas

## II.1.5 Fresh Water Aquifer Connection to Subsistence Resources

