The Māhele Did *What*? Native Interest Remains

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The Māhele of 1848 divided nearly all the lands in the Hawaiian Kingdom among the mō'ī, the chiefs, and the government. Very little scholarship has looked at ali'i and konohiki management strategies on the lands awarded to them after the Māhele. This paper examines the Māhele, the vested rights of kānaka in 'āina, and the stewardship of several ali'i on their landholdings after the Māhele. In select instances, ali'i continued to use their landholdings in ways consistent with traditional practice, providing rights to the kupa 'āina, or native inhabitants, and maintaining a trust relationship between the 'āina and the Hawaiian people. If ali'i recognized special rights for Native Hawaiians on their lands as consistent with the clause "koe nae ke kuleana o na kanaka," this suggests that the original intent of the Māhele was to preserve the land rights of Hawaiians in perpetuity.

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ʻĀina Ownership and Justice

In 1899, the constitutional sovereign of the recently overthrown Hawaiian Kingdom government, Queen Liliʻuokalani, wrote, "[S]trangers are flocking in to Honolulu from all parts of the world and strangers seem to look at the kamaainas [Native Hawaiians] as much as to say, 'who are you' and are starting enterprises of their own... I fear we will feel like strangers in our own land."[1]

Her thoughts seem prophetic. Hawaiians' lands have been commoditized and developed to support a thriving tourist economy as well as highly profitable real estate markets that are usually far beyond the reach of what most native residents can afford. The queen's native people, *Native Hawaiians*, make up a large percentage of the homeless population in the islands, though many call themselves "houseless" and assert that Hawaiʻi is their home. Film productions and television shows often highlight the American presence and remarkable natural beauty of the islands, inviting the world to own a piece of manufactured paradise. Perhaps all paradise is constructed, but it's hard to imagine anything more crafted than land ownership in Hawaiʻi.

This paper examines Native Hawaiian interest in the lands of Hawaiʻi as first established in the 1840s, through the Māhele of 1848, and through the land management practices of several aliʻi (native rulers) after receiving Hawaiian-hybrid allodial (fee-simple) title to their lands. The history and legal evolution of the interests of Native Hawaiians in the lands of Hawaiʻi can help clarify legal perspectives on Native Hawaiian rights to Hawaiian lands.

Introduction

On February 22, 1858, nearly 10 years after the Māhele, Victoria Kamāmalu deeded *entirely free of monetary compensation* to Kaopua and Nahua and their heirs the right to live on her lands in Kānewai as long as they lived. Perhaps even more astonishing, she saw her relationships to her people and land as in accord with ancient custom and traditional practice: "E like no me ka noho ana o [kou] mau makua malalo o koʻu [mau] Kupuna, pela no hoi kakou e noho ai"[2] (In the same manner in which your parents lived under my grandparents, we shall continue to maintain their forms of land tenure). Two years earlier, in 1856, Kamehameha IV gave a

portion of Crown Land that could not be sold otherwise[3] to a native tenant who had cared for the place, stating that though Crown Land could not be legally sold, "however my *Aloha* (love) for your cultivation of the soil enables me to give this land to you."[4] Decades later, on October 28, 1895, Native Hawaiians of Ke'anae would submit a claim to the Republic of Hawai'i to ho'okuleana, divide out, interest in the Crown Lands they had occupied in Ke'anae, Maui. These examples along with the historical and legal context offered in this article suggest that present understandings of the phrase "koe nae ke kuleana o na kanaka" have perhaps overlooked the broader context in which this system of rights was developed. Hawaiian customary law allowed Native Hawaiians to occupy, steward, and retain interest in hybridized forms of Hawaiian private property held by the chiefs, government, and crown. The ramifications of this conclusion are significant for Native Hawaiian land claims to former Konohiki, Hawaiian Kingdom Government, and Crown Lands.

Vested Rights and the Māhele of 1848

Early scholarship on the status of the vested rights of Native Hawaiians in the lands of Hawai'i have generally relied on the notion that the Māhele alienated Hawaiian interests in land. Some scholars have characterized the Māhele as an event that stole the land from majority of the Hawaiian people by passing laws that "nullified the traditional land use rights" (Kelly, 1980). Research has long operated on the belief that if native tenants were not awarded or did not obtain a fee-simple title to land via the Kuleana Act, they were forever alienated from any future interests.

Case studies of particular ahupua'a have also come to the conclusion that the Māhele had a negative effect on the rights of native tenants. Such scholarship has maintained that kānaka had become alienated from their interest in 'āina because of the change in land tenure and that if they were not awarded land via a Land Commission Award (LCA), then they had either forever lost their claim to land or that their interest, in accordance with the phrase "koe nae ke kuleana o na kanaka i loko," was largely undefined at the time (Stover, 1997; Stauffer, 2004).

The interpretation of the rights of Native Hawaiians through the United States legal system has affected the way we view the nature of these rights. According to this strain of legal scholarship, current Native Hawaiian claims of interest in "Ceded Lands" are based on the fact that Kauikeaouli specifically set aside those

lands for the use and benefit of the people, and that because Lili'uokalani was wrongfully forced to cede the Crown Lands to the United States, Native Hawaiians still have an interest in these lands today (Friedman, 1992). The federal government also undermines Native Hawaiians as beneficiaries of these trusts by naming the general public as a co-beneficiary and through the mismanagement of these lands (Friedman, 1992, p. 524). Much legal scholarship has assumed that Native Hawaiians have some sort of interest under US law in the "public lands" of the State of Hawai'i, while these rights have been categorized as subject to the State of Hawai'i.

More recent legal scholarship has attempted to define the vested rights of kānaka in the context of Hawai'i-based land trusts. Other research has highlighted how the US courts have defined vested rights, citing such cases as *Pai 'Ohana v. United States*, in which the courts held that "the Kuleana Act had provided the plaintiffs' ancestors their opportunity to lay claim to the land and that their ancestors' failure to claim the kuleana foreclosed plaintiffs' claims to adverse possessory rights to the parcel under Hawai'i state law" (Friedman, 1992, p. 534). Other cases have attempted to relinquish the interest of kānaka to 'āina, such as *Dowsett v. Maukeala*, in which native tenants argued that "by continuing their occupancy of their old tenancy in the ahupua'a after the Māhele and after title to the ahupua'a and other kuleanas claimed therein had been awarded by the Land Commission, they had adversely possessed their parcel." The Hawai'i Supreme Court rejected this theory and ruled it unlawful (Garovoy, 2005).

Arguably the Kuleana Act did not abrogate traditional commoner rights in land, and these rights remain essentially intact and are available to descendants of commoners today (Lâm, 1989). Since the maka'āinana did not receive one-third of the total lands to which they were entitled in the Māhele, an interest still remains. Lâm states that the 1839 Declaration of Rights protected these rights because the king could not "convey away the rights of the people without their consent," nor could the konohiki, because they had extinguished the rights of the king but not those of the people, and these rights were only taken away when the courts got involved (*Oni v. Meek*, *Dowsett v. Maukeala*). The analysis of court outcomes highlights the remaining land rights held by the people. Lâm discusses *Oni v. Meek*, in which the court held that the Kuleana Act extinguished customary rights in land, but what about those who were not awarded a kuleana?

Current scholarship on the vested rights of Native Hawaiians has reframed the analysis of the Māhele, the emergence of the Hawaiian constitutional monarchy,

and the development of Hawaiian Kingdom law to reflect the hybrid nature of these structures and the aliʻi agency that created them (Beamer, 2014). Beamer has argued that the emergence of Hawaiian Kingdom law was in fact a modified codification of the long-established Hawaiian nation-state, and the Māhele was a hybrid of kālaiʻāina and Western notions of private property. Donovan Preza has also reframed the dispossession of kānaka as a result of the Māhele by investigating the option hoaʻāina had to purchase Government Lands, which greatly increased the 28,000-acre figure of total lands awarded to natives to about 195,000 acres (Preza, 2010). Research into the current legal status of the Hawaiian Kingdom by Keanu Sai (2008) suggests that scholars need to consider the ramifications of the prolonged US occupation in the Hawaiian Islands and unlawful annexation of Hawaiʻi. This included the vested rights of hoaʻāina in the Hawaiian Kingdom Crown and Government Lands (Perkins, 2006).

The Māhele Wasn't Necessarily Bad?

The Māhele of 1848 was a division of nearly all the lands in the Hawaiian Kingdom. There had been a very few select cases of private ownership of land prior to the Māhele, where an individual had received title through deed, oral or written, granted by either the mōʻī or kuhina nui.

In reference to the principles adopted in the Māhele process, Hawaiian Kingdom surveyor Lyons noted, "The theory which was adopted, in effect, was this: that the King, the chiefs, and the common people held each undivided shares, so to say, in the whole landed estate" (Lyons, 1875).[5] The Māhele was the process that attempted to settle the constitutionally vested rights of three groups in the dominium (Walker, 1980, p. 373; Black & Nolan, 1990, p. 486) of the kingdom—mōʻī, aliʻi, and makaʻāinana. These rights needed to be distinguished because the Declaration of Rights and Laws of 1839 and the Constitution of 1840 codified the concept that these three groups jointly owned the lands of the kingdom, though with differing degrees of interest.

A Privy Council meeting held on December 18, 1847,[6] discussed the purpose of the Māhele and the process by which the divisions would occur. The council resolved that "it has become necessary to the prosperity of our kingdom and the proper physical, mental and moral improvement of our People that the undivided rights,

at present existing in the lands of our kingdom, shall be separated and distinctly defined" (Privy Council, 1847). The Māhele—which established distinct land bases for the mōʻī, the government, and the chiefs—was nevertheless still subject to the rights of makaʻāinana to make their claims for land. A metaphor that I use to describe this principle to my students is that of a layered cake. Imagine Hawaiian ʻāina as a cake with three distinct layers, where each slice of cake produces layers of haupia, guava, and chocolate. The Māhele was the instrument to remove the layers of the king and chiefs, leaving the makaʻāinana layer in perpetuity.

As Davianna McGregor wrote, "[T]he establishment of a private property system in Hawaiʻi was a process of dividing out the multiple layers of interest in each piece of land, each ahupuaʻa, and each island" (McGregor, 2007, p. 36). Following the Māhele of 1848, the only people whose interest in the lands remained undefined were the hoaʻāina. This would be addressed in the Kuleana Act of 1850. It can be argued that those of the hoaʻāina class who did not divide out their interests continued to possess, in perpetuity, an undivided right in the dominium until they divided their interest and acquired a freehold title, whenever they desired a division.[7]

Professor Jon Kamakawiwoʻole Osorio viewed the Māhele as the "single most critical dismemberment of Hawaiian society" (Osorio, 2002). Many of his generation of scholars concluded that the Māhele was the mechanism that caused Hawaiians to lose ownership of their lands while imposing Western property law on the chiefs (Kameʻeleihiwa, 1992). Until recently scholars believed that makaʻāinana were awarded only 28,000 acres as a result of the Māhele.[8]

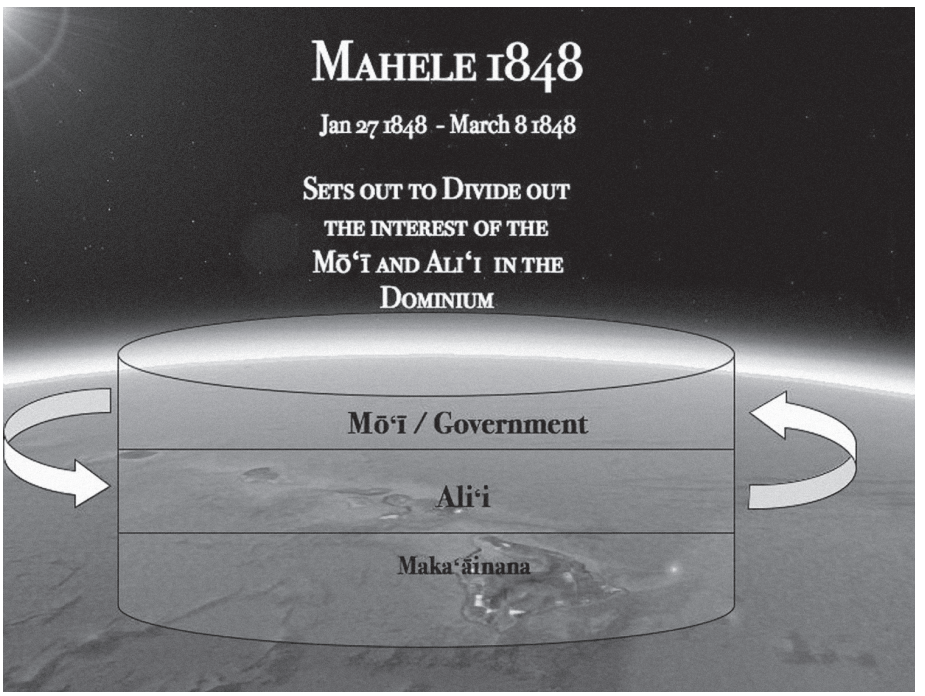
In *Aloha Betrayed*, professor Noenoe Silva suggested that previously accepted understandings of the Māhele could use another look: "Keanu Sai...has noted more recently that makaʻāinana were allowed to file claims after the official deadlines....Further, the government lands were offered to the makaʻāinana at low prices, at first fifty cents per acre, then later one dollar per acre" (Silva, 2004, p. 42). *The Hawaiian Annual of 1896* reported that 667,317.41 acres of government grants had been awarded by 1893. The index of those land sales reveals the predictable names of large landowners who used the lands for sugar. But the names of many native subjects who purchased lands at reduced rates under the Kuleana Act also appear.[9] Work on the Māhele has estimated that 167,290 acres were purchased by makaʻāinana between 1850 and 1893 (Preza, 2010). Coupled with the 28,658 acres of ʻāina also acquired as a result of the Kuleana Act, we now know that makaʻāinana acquired as much as 195,948 acres of ʻāina as a result of the Māhele process. These

numbers, along with the theory that the vested rights of ʻŌiwi in ʻāina were meant to exist in perpetuity, should be grounds to rethink the results of the Māhele. In fact, the Māhele process may have secured ʻŌiwi rights as well as title to lands rather than being a means of severing traditional relationships to ʻāina.

Preservation of Kanaka-ʻĀina Relationships after the Māhele

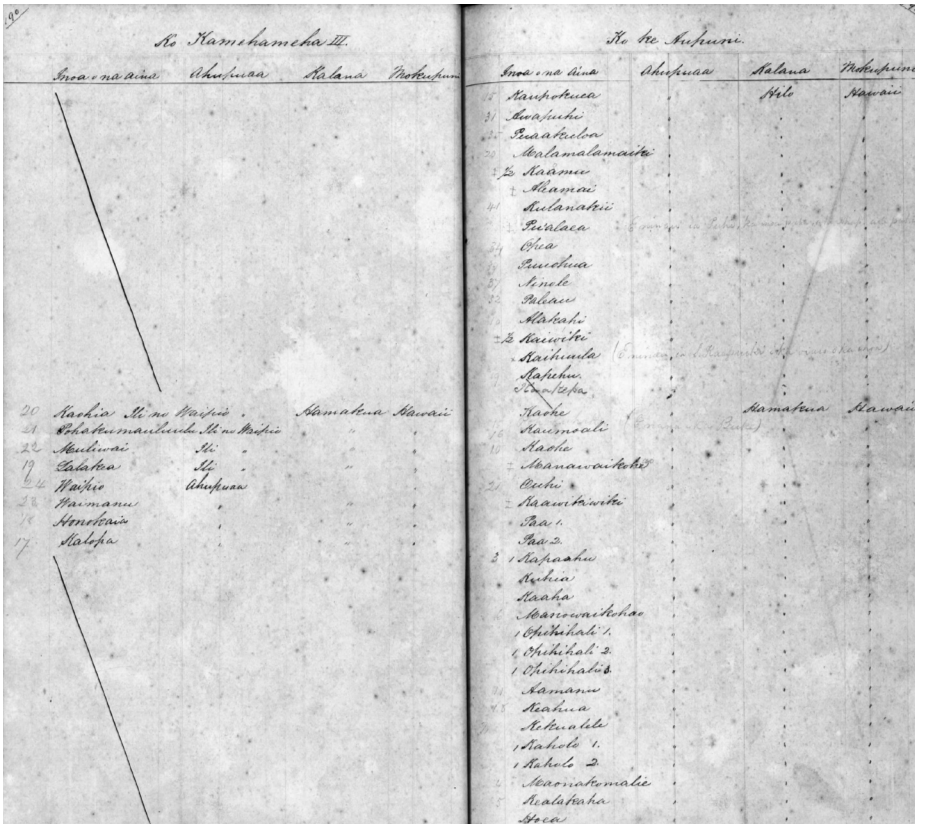
Since the Constitution of 1840 formally codified the *vested rights* of kānaka to ʻāina, the Māhele actually resulted in the establishment of a hybrid system of private property in which individuals held private title while also being subject to an entire class of interest, that of the Native Hawaiian people. The Māhele then was both the formal establishment of private property and the establishment of a hybrid trust and socialistic kind of land tenure that offered special habitation, access, and resource rights to Native Hawaiian subjects.

FIGURE 1 The Māhele divided out the interests of the mōʻī and aliʻi in the territory of the Hawaiian Kingdom.



The Māhele also created a land base for the government and the mōʻī. Pages 178–225 of the Buke Mahele list the divisions between the government and the mōʻi. On the left side of the image, titled *Ko Kamehameha III*, are the lands that Kauikeaouli held for himself and his heirs. The right side of the image, titled *Ko Ke Aupuni*, lists the lands retained for the government.

FIGURE 2 Pages 190–191 of the Buke Mahele, showing the lands Kamehameha III reserved for himself and those he gave to the government.



At the close of the Māhele, Kauikeaouli placed his signature and thoughts on what he had intended to accomplish in the Māhele of 1848 (Hawaii State Archives, 1848, p. 224). He wrote:

E ike auanei na kanaka a pau ma keia palapala, owau o Kamehameha III no ka lokomaikai o ke Akua, ke Lii o ko Hawaii nei Pae Aina; ua haawi au i keia la no koʻu makemake maoli no, a ua hoolilo a me ka hookaawale mau loa aku i na ʻlii a me na kanaka, ka nui o koʻu aina alii, e pono ai a e pomaikai ai ke Aupuni Hawaii, no laila ma keia palapala, ke hookoe nei au noʻu iho a no koʻu poe hooilina a me koʻu poʻe hope a mau loa aku na aina oʻu i kakau ia ma na aoao 178, 182, 184, 186, 190, 200, 204, 206, 210, 212, 214, 216, 218, 220, 222, o keia Buke: ua hookaawale ia ua poe aina la noʻu a no koʻu poe hooilina a me na hope oʻu a mau loa, he waiwai ponoi noʻu aole mea e ae.

Kauia koʻu inoa a me kuu Sila ma ka Hale Alii i keia la 8 o Maraki 1848

Kamehameha

May it be known to all by this document, that I am Kamehameha III, who because of the grace of God am King of the Hawaiian Archipelago; I give on this day my honest wishes, I hereby give entirely and forever separating the rights of the chiefs and the people of my Kingdom, the majority of my lands so that justice and blessing may come to the Hawaiian Kingdom government. Therefore, with this document I am reserving for myself, my heirs, and my descendants for eternity the lands of mine written on pages 178, 182, 184, 186, 190, 200, 204, 206, 210, 212, 214, 216, 218, 220, 222, of this Book: these lands shall be reserved for myself, my heirs, and my descendants and those who come after me for eternity, I reserve the wealth of these lands and nothing else.

My name has been given and my royal Seal in the Palace on this the 8th of March 1848.

Kamehameha

Government, Crown Lands, and Kanaka

Kamehameha III, or Kauikeaouli, was the original titleholder to what we refer to today as the "Crown Lands." These lands were his personal property as distinguished in the Buke Mahele as well as the Buke Hoakaka. The Buke Hoakaka was created after the Māhele, organizing all the lands claimed by Kauikeaouli from the various sections of the Buke Mahele into one concise book. Kauikeaouli used his personal lands to raise income; he leased and occasionally sold lands. Most importantly, however, he also managed these lands to include the special relationship defined in the phrase "koe nae ke kuleana o na kanaka," *reserving the rights of Native Hawaiians*. Following his passing as heir to the throne, Alexander Liholiho inherited all of Kauikeaouli's lands that had not been sold since the Māhele. Because Kauikeaouli had stated that these would belong to himself and his heirs in perpetuity, it was clear that Alexander Liholiho was the rightful heir.[10] The management of these lands supplied the new mōʻī with his personal wealth, since his office did not come with a salary. These lands later came to be called the "Crown Lands." They were the exclusive property of the mōʻī, *subject to the rights of Native Hawaiians*, and during the reign of Lot Kapuāiwa these lands were made inalienable through legislation passed on January 3, 1865.

Following the illegal overthrow of the constitutional Hawaiian Kingdom government, the Crown Lands were claimed by the Provisional Government and Republic of Hawaiʻi, which claimed to cede them to the United States government not through treaty but rather through a domestic joint resolution titled the "Newlands Resolution." When the United States government claimed Hawaiʻi to be a state in 1959, it transferred the administration of these lands to the Hawaiʻi state government. The Crown Lands make up a portion of the lands often referred to as "Ceded Lands." The remaining portions of the so-called "Ceded Lands" are the former Government Lands of the Hawaiian Kingdom.

The Hawaiian Kingdom Government Lands were created as a result of the Māhele of 1848. Kauikeaouli had set aside the greater portion of the lands he had received in the Māhele and gave them to the "Aupuni," or government. The Buke Mahele includes most of these lands, but there was also land that had been not accounted for in the Māhele, later identified and claimed by the government. These lands are often referred to as the "unassigned lands." The Hawaiian Kingdom Government Lands were managed under the direction of the minister of the interior, who had

the power to lease and sell these lands. The sale of Government Lands was done under the template of Palapala Sila Nui, or "Royal Patent Grants." Many hoa'āina purchased government lands for themselves (Preza, 2010).

Konohiki Awards

The phrase "Konohiki awards" describes Land Commission Awards that were awarded to ali'i and konohiki as a result of the Māhele. After Kauikeaouli and the ali'i agreed to the terms of the Māhele, the ali'i were allowed to file a claim with the Land Commission to receive title to their lands. One can see the beginnings of title for Konohiki awards in the Māhele prior to formal issuance of title by the Land Commission. The texts of the Konohiki awards state that particular ali'i received their lands in the Buke Mahele, have filed a claim for their awards, and are therefore granted title to their lands "ma lalo o ke ano alodial" (that is less than allodial), meaning less than fee-simple, or in other words a life estate. These ma lalo o ke ano allodial awards could be made allodial (fee-simple) through the payment of commutation (the government's one-third interest in the particular land or one-fourth interest in an urban house lot) culminating in the issuance of a Palapala Sila Nui, or Royal Patent Grant, upon the receipt of a Land Commission Award. Even when one received a Royal Patent and fee-simple title, these titles were still "koe nae ke kuleana o na kanaka," or subject to the rights of Native Hawaiians. These awards usually include the phrasing "ua loaa iaia keia aina no ka Moi Kamehameha III mai i ka Māhele Aina ana i ka M.H. 1848" near the beginning of the award.

Ali'i-Kanaka Relationships to 'Āina after the Māhele

"E nana mai ke kanaka i ke 'lii, e nana aku ke 'lii o ke kanaka" (The people look to the chief, and the chief of the people's care is reciprocal), said Victoria Kamāmalu in 1858 upon granting kānaka the rights to live for free on her lands.[11] After the Māhele of 1848, many ali'i used their lands to creatively maintain kanaka connections to 'āina. Ali'i such as Ke'elikōlani, Pākī, Kamehameha IV, Kana'ina,

Moehonua, Leleiōhoku, Liliʻuokalani, and others used portions of their lands to create land hui with hybrid collective land ownership for their members; recognized in some fashion the special rights kānaka had to their lands; and maintained the semblance of a trust relationship between their kuleana, ʻāina, and kānaka. In preparation for this article, over three hundred distinct land transactions between aliʻi or their estates and kānaka were analyzed, and the results show that the changes instituted in the Māhele did not sever ancient ties and kuleana fostered between kanaka, aliʻi, and ʻāina. On the whole, aliʻi used their landholdings to provide cultural, natural, and economic resources. In addition, they recognized the special relationship of kānaka to their ʻāina consistent with the clause "koe nae ke kuleana o na kanaka."

Aliʻi sought to secure kānaka traditional rights to ʻāina through the conveyance of ʻāina to "hui," or organizations formed by kānaka who were living in a particular area and who came together to secure a large parcel of land to be equally divided among them through shares. Some hui were grants of Government Land, and others were from the aliʻi. In some cases is it hard to discern how formal these hui were. Some were formally organized with meetings and representatives, and some just appear to have been a group of kānaka who came together to secure ʻāina. Hui could range from as few as four kānaka, who on August 15, 1854, received a lease from Kamehameha IV for the ahupuaʻa of Kēōkea and Waiohuli in Kula, Maui,[12] or the hui of three who leased Kamoʻoloa in Hulēʻia, Kauaʻi, from Kamāmalu and Kekūanāoʻa in January of 1864.[13] Some hui had many more members, such as a group of 47 kānaka who purchased 1,572 acres of the ahupuaʻa of Māhāʻulepū in Kona, Kauaʻi, from Princess Ruth Keʻelikōlani in 1882.[14] Another example is the hui of 69 kānaka from Makaweli and Waimea, Kauaʻi, who leased the land of Makaweli in 1857 for 10 years from Kekūanāoʻa and John ʻĪʻī, who were acting in their capacity as kahu mālama waiwai of Victoria Kamāmalu.[15]

In some cases, aliʻi leased large tracts of land to kānaka. In 1858, Keohokalole and Kapaʻakea, parents of Kalākaua and Liliʻuokalani, sold 110 acres in Kawela, Kaʻū, Hawaiʻi, for just $27.50 to a kanaka named Kamanuwai.[16] After their deaths, Charles Reed Bishop, as agent to their estate, sold the ahupuaʻa of Mūʻolea to 30 kānaka.[17] On June 10, 1858, Bernice Pauahi Bishop leased the entire ahupuaʻa of Heʻeia, including Heʻeia fishpond, to 109 kānaka: 93 were from Heʻeia, two from Kāneʻohe, and one from Kahaluʻu, for 10 years at a rate of $500 a year.[18] In 1860 Pauahi also sold multiple ahupuaʻa in Kāʻanapali, Maui, to a group of 107 kānaka for $2500.[19] On January 29, 1884, Ke Aliʻi Pauahi leased 1,034 acres of Kanahena in

Honua‘ula, Maui, to a hui of 14 kānaka from Kanahena for 10 years at an annual rate of $75.[20] Even after Pauahi’s death, her husband Charles Reed Bishop leased a life estate to a parcel in Kapālama Kai to eight kānaka “no ko lakou manawa ola wale no, ola hui a ola pakahi hoi a i ko lakou pau loa ana i ka make,” for the price of just one dollar.[21] Through her trustees Charles Kana‘ina, who was also her uncle, and Levi Ha‘alelea, Ke Ali‘i Wahine Hakaleleponi Kalama Kapakuhaili leased the ahupua‘a of Waipi‘o in Hāmākua, Hawai‘i, to 266 kānaka for the term of 10 years at an annual rate of $600.[22] Kapakuhaili would later become the wife of Kauikeaouli.

Princess Ruth Ke‘elikōlani leased land to five kānaka in Kaukahōkū, Nu‘uanu,[23] and 23 kānaka leased land in Waikīkī Kai from her estate after her death.[24] These conveyances were executed by her agent, Simona Kaloa Kaai. He further leased in 1878 the princess’ parcel of Halelena in Waiawa, O‘ahu, to nine kānaka for 15 years[25] and the ahupua‘a of Kaluanui, O‘ahu, to 31 Kaluanui kupa ‘āina for 15 years.[26]

In other cases, instead of conveying large parcels to a hui of kānaka, ali‘i subdivided their land and sold smaller lots. Kekūanāo‘a sold six lots in Kapālama, O‘ahu, and five lots in Kapu‘ukolo, Waikīkī.[27] In some of the deeds between Kekūanāo‘a and the recipients of the Kapu‘ukolo lots, the phrase “he kanaka Hawai‘i” was included after the awardee’s name, as if Kekūanāo‘a was making special acknowledgment that these lands were being given back to Hawaiians.[28]

One aspect of the ali‘i-kanaka relationship was the appointing of konohiki by ali‘i to manage certain ‘āina. Although the Māhele had evolved land tenure through palapala, transactions between ali‘i and maka‘āinana continued to take place that were similar to the appointment of konohiki. On December 10, 1858, David Kalākaua, as land agent for Keohokalole, placed Kapoohiwilani, Helea, Kaipokane, Kamaka, and Kihi, “he poe kanaka kupa no luna o ka aina e hana i ka hana a ke Konohiki,” over the lands of Pauoa and Kāpīwai in Kona, O‘ahu.[29] Only this time instead of kō‘ele workdays or taxes paid by the konohiki to the ali‘i, the konohiki agreed to pay $60 a year in exchange for their benefit from said lands.[30] William Pitt Leleiōhoku, as luna mālama waiwai for Ruth Ke‘elikōlani, appointed W. K. Moilii of Ka‘ū, Hawai‘i, as luna nānā, or inspector of the two South Kona ahupua‘a of Honomalino and Kapu‘a, and the Ka‘ū ahupua‘a of Pākini nui, Kamā‘oa, Pu‘u‘eo, Kawela, Kahilipoli, Hilia, Mohokea, and Hi‘onamoa.[31] His duties were described in the conveyance as follows:

> E hoomalu aku oia ina mea a mau mea paha e hana ana e hoao ana a e imi ana i kekahi mea e hoopilikea [sic] e hoohaiki, a e hoopoino mai ana i kapono a me ka pomaikai o na aina ahupuaa malalo o kana hooponopono ana no ka pono o ka mea Kiekie Ruta Keelikolani.[32]

The above passage empowers Moilii to make peace regarding the things that are taking place, causing trouble, restriction, or distress to the pono of these ahupuaʻa. Moilii was also encouraged to make these lands abundant again, similar to the traditional role of the konohiki, as he was granted the power to allow people he trusted to come upon the land to plant and grow plants of all sorts.[33] Leleiōhoku similarly appointed Kaupena Halulu to manage the ʻEwa lands of Hālawa, Waiau, Waimano, Mānana Iki, Mānana Nui, and Waiawa,[34] and John Hooikaika to manage Kapālama Kai on Oʻahu.[35]

In some cases, fishing and harvest rights were also leased by aliʻi. In many cases aliʻi who received Konohiki awards in the Māhele were not the actual konohiki on the ground who physically managed the ahupuaʻa. The leasing of these fishing rights could have been one way the aliʻi were trying to fill the konohiki role and allow kānaka rights to natural resources in the ahupuaʻa. An example of this is Charles Kanaʻina, as trustee to the lands of Ke Aliʻi Wahine Hakaleleponi Kalama, who leased the lāʻau hoʻomalu, iʻa hoʻomalu, and kula land of Hakipuʻu to 32 kānaka for 30 years.[36] In this case, it was because of the specific desire of the people "no ka makemake o ka poe nona na inoa malalo nei," to seek out the resources of the aliʻi, that the conveyance was executed.[37] Kanaʻina also realized that trouble could arise with regard to paying rent and included the clause, "ke pilikia e hookaa no ma ka pau ana o ka makahiki," which meant that if any trouble should arise, it was okay to pay at the end of the year.[38] In 1879 Liliʻuokalani leased the lands of Hamohamo and Kāneloa to 15 kānaka, which included the loʻi and loko of Hamohamo, the muliwai and kula lands, and the hale pili and loʻi at Kāneloa.[39] Kāneloa is the area that comprises Kapiʻolani Park today in Waikīkī. Later in 1881 Liliʻuokalani leased to another 16 kupa of Waikīkī, some of whom were a part of the group that leased the Kāneloa loʻi grounds, the right to fish in the kai lawaiʻa of Kāneloa and Hamohamo for five years.[40] Also, the Molokaʻi parcels in Kawela and Waialua from the estate of Lunalilo were almost always awarded with fishing rights to the adjoining sea.[41] Moehonua also leased the fishing rights at Mokauea, Kalihi, Oʻahu.[42]

Ali‘i also continued to mālama their retainers, as did Princess Ruth in 1871 when she gave the ahupua‘a of Kaumalumalu and the house named Pu‘uloa in Kona, Hawai‘i, and two parcels in Ka‘akopua, Honolulu, to her retainer Kalaikuaiwa for just one dollar, as was the usual amount when a conveyance was made out of aloha for each other.[43] Another example of this aloha shared between ali‘i and kānaka is seen in a lease between Moehonua and a hui who leased the Waikīkī lands of Kamo‘olea, Hueu, and the muliwai of Pi‘inaio.[44] Moehonua gave them the option at the expiration of their lease, so long as they continued to pay their rent, to continue leasing these lands for as long as they desired.[45]

It is clear from the above examples that the changes brought about from the Māhele did not completely alter the relationships kānaka continued to maintain with their ali‘i. Ali‘i allowed land use by the people who occupied those lands. It is also important to note that in the majority of the cases that mention where the grantees were from, the kānaka were from the lands that were being awarded. In other words, they were not strangers to these lands, but perhaps kupa who were seeking their kuleana. After ali‘i received title to their lands, they continued to lease and sell their holdings/‘āina/resources to kānaka through the conveyance of large tracts of land, establishing land hui arrangements, conveying smaller individual parcels, leasing fishing and gathering rights, appointing konohiki and luna nānā, and otherwise showing aloha for their people.

Ua Mau Ke Kuleana—Rights and Responsibility Remain

When one researches the Māhele of 1848, original source documents uncover how the phrase “koe nae ke kuleana o na kanaka” was implemented across the ali‘i, Government, and Crown Lands. The Māhele was a complex process that changed Hawai‘i. Scholars will continue to debate its outcomes, since changes in Hawaiian land tenure proved to be both positive and negative for Native Hawaiians under differing circumstances. This article does not intend to settle that debate, but it does document the intentions of ali‘i like Kamehameha III to preserve Hawaiian lands for future generations. It is evident that once ali‘i gained title within the hybrid land ownership system instituted after the Māhele, many of them did continued to be ‘ōpū ali‘i and used their lands to benefit their people.

Many things have changed in Hawai‘i since the Māhele of 1848, but Hawaiians' connection to ‘āina is not one of them. It is remarkable to consider that all land titles today trace their origin to the Māhele of 1848, and thus the vast majority of the lands in Hawai‘i today include within the chain of title the provision "koe nae ke kuleana o na kanaka," reserving the vested rights of Native Hawaiians. And yet the Hawai‘i we live in today is a place where most Native Hawaiians cannot afford to purchase a home, and much of the population remains uninformed of Hawai‘i's complex political history and the fact that land titles in Hawai‘i include a special clause for Native Hawaiians.

Hawaiian ali‘i did not lose sight of kanaka connections to ‘āina even in the midst of substantial changes such as the Māhele. These same connections and kuleana led many of the ali‘i to create the legacy trusts that continue to serve kānaka today. One important ali‘i legacy that did not continue was the Hawaiian Kingdom and its management of the Government and Crown Lands of Hawai‘i. Ali‘i trusts like Kamehameha, Queen's, Lunalilo, and the Lili‘uokalani trusts were focused on some form of social services for Native Hawaiian people. The kingdom managed the Crown and Government Lands in trust with special rights for Native Hawaiians, which we believe would include the right for kānaka to live and reside in homes on their ancestral lands. In the midst of the American occupation of our islands, these vested rights are difficult to exercise. However, the origin of land titles and the palapala document the collective kuleana of Native Hawaiians in our ‘āina. As the understanding of our land tenure system and the intentions of Hawaiian ali‘i to maintain Native Hawaiian kuleana to ‘āina in perpetuity become common knowledge, perhaps this will foster the collective kuleana to remember that our interest in the ‘āina remains.

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Notes

1 Lili'uokalani to Emily, May 26, 1899. Private collection.

2 Mahalo nui to my research assistant Natashja Wahine'aipohaku Tong and her diligent work with me in combing through the archives and uncovering rarely seen documents.

3 See Hawai'i State Archives, Public Lands Commission Records # 352 1898, Kahakauila, where Kamehameha IV states, "Aole hiki ke kuai ia kekahi hapa

kapuai a kapuai okoa o ka aina Lei Alii, ua [paa] loa ke kanawai, aka ua Aloha au ia oe i ko noho i loko o ka lepo. A no laila ke haawi nei au i keia wahi ia oe" (Crown lands cannot be sold, this has been made clear in law, however my *Aloha* (love) for your cultivation of the soil enables me to give this land to you).

4 Ibid.

5 Also see Thurston, *The Fundamental Law of Hawaii*, 140. This is a compiled list of constitutions and important laws in the kingdom. The relevant section is "Principles Adopted by the Board of Commissioners to Quiet Land Titles, in Their Adjudication of Claims Presented to Them," which states, "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, and 3rd, the tenant, it next becomes necessary to ascertain the proportional rights of each" (142).

6 The Privy Council was an advisory circle to the mōʻī that assisted in determining policy for the Hawaiian Kingdom.

7 See Alexander (1882, pp. 13–14). This section explains the principles agreed to in the Privy Council on December 18, 1847. It notes, "The division between the Chiefs or the Konohikis and their Tenants, prescribed by Rule 2d shall take place, whenever any Chief, Konohiki or Tenant shall desire such division." See also Privy Council (1847).

8 This statistic is for kuleana awards only; it does not include government grants acquired as a result of section 4 of the Kuleana Act of 1850, nor does it take into account that native tenants continued to possess the right to divide out their interest in the dominium. Also see Hawaiian Kingdom Supreme Court, *Kekiekie v. Edward Dennis*, 1 Haw. 68, 69 (1851), wherein Chief Justice William Lee stated: "The peoples [native tenants] were secured to them by the Constitution and laws of the Kingdom, and no power can convey them away, not even that of royalty itself. The King cannot convey a greater title than he has, and if he grants lands without reserving the claims of tenants, the grantee must seek his remedy against the grantor, and not dispossess the people of their kalo lands."

9 *An Act Confirming Certain Resolutions of the King and Privy Council Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles For Their Own Lands and House Lots, and Certain Other Privileges:* "That a certain portion of the government lands in each island shall be set apart, and placed in the hands of special agents, to be disposed of in lots of from one to fifty acres, in

fee-simple, to such natives as may not be otherwise furnished with sufficient land, at a minimum price of fifty cents per acre" (202).

10 Alexander Liholiho would inherit these lands subject to the dower of Queen Kalama, as became the precedent. See 2 Haw. 715; 1864, *In re Estate of Kamehameha IV*.

11 All conveyances cited in this paper are in reference to the Libers located at the Bureau of Conveyances in the Kalanimoku Building in Honolulu, which houses all of the land transactions of Hawai'i. Liber 11, 94.

12 Liber 10, 4–5.

13 Liber 18, 166–167.

14 Liber 76, 425–427.

15 Liber 9, 384–389.

16 Liber 11, 10–11.

17 Liber 17, 24–25.

18 Liber 10, 504–506.

19 Liber 13, 84–86.

20 Liber 95, 155–158.

21 Liber 117, 476–478.

22 Liber 14, 28–33.

23 Liber 51, 152–153.

24 Liber 52, 80–82.

25 Liber 55, 122–124.

26 Liber 57, 165–167.

27 Liber 8, 528–529. Liber 10, 345–346; 387–388; 428–429. Liber 90, 92–93. Liber 14, 318–319; 397. Liber 15, 144. Liber 16, 82–83; 289–291. Liber 17, 132–133.

28 Liber 8, 528–529. Liber 7, 117. Liber 10, 433; 345–346; 429–430.

29 Liber 11, 170–171.

30 Liber 11, 170.

31 Liber 44, 200–202.

32 Liber 44, 201.

33 "Ke hoomana ia aku nei oia ma keia e ae aku i ka poe kupono ana i hilinai ai e hana e kanu a e houlu [sic] ina mea kanu o kela a me keia ano." Liber 44, 201.

34 Liber 44, 236–238.

35 Liber 44, 307–309.

36 Liber 6, 295–296.

37 Liber 6, 295.

38 Liber 6, 295.

39 Liber 58, 38–39.

40 Liber 71, 280–281.

41 "A ua lilo loa na apana aina i hooliloia maluna me na pono apau i pili ana a me ke kuleana lawaia ana ma ke kai o Kawela me he la he pono ia no keia aina." Liber 64, 296.

42 Liber 19, 415–416.

43 Liber 35, 405–406.

44 Liber 74, 268–270.

45 "Aka hoi, ina e makemake ana ka aoao elua, e hoomau aku i ka hoolimalima ana, ua aina no ka manawa a lakou i makemake ai, alaila, ua pono no ke noho lakou me ka hoomau aku, e like me ko lakou makemake me ka hooko pono ana no hoi e like me ka hoolimalima mua." Liber 74, 268.