

## Public Policy of Land and Homesteading in Hawai'i

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Today, a small group of large landowners, together with the state and the federal governments, control the majority of the lands of Hawai'i (Juvik and Juvik 1998:227). This situation repeats a pattern that developed more than 150 years ago from the privatization of land during the Māhele, or land division, which rendered 70 percent of the original inhabitants of the Hawaiian Islands landless. Under different forms of governments, some based on ideologies in opposition to this practical reality, the pattern persisted, throughout the years of increasing involvement in global social and economic processes. Even today, where several of the largest landowners are incorporated within transnational companies, this picture persists.

Attempts to break up the large estates have come through legislation supporting homesteading, perhaps the most localized form of land public policy. In spite of the celebrated importance of small-scale farming and residential home ownership to the process of creating of a democratic society, those attempts have not been successful.

This article gives a brief history of land use and control in Hawai'i in a global context, while focusing on various homesteading attempts as examples of public policies of land use. Because of Hawai'i's colonial history and the close association of the fate of the land and the fate of its indigenous people, this approach naturally leads to a discussion of Kanaka Maoli (Native Hawaiian) land issues today.

### The Fish of Piliwale Are Stranded<sup>1</sup>

From ancient times, Kanaka Maoli culture supported a belief in the power of environmental gods. It was generally believed that all the resources on the land of these islands and in the sea around them were gifts to the Kānaka Maoli from their gods. These gifts carried responsibilities; the people had to care for them. The gods would thus be satisfied that their resources were respected; otherwise, disaster would strike, droughts parch the land, and there would be nothing to eat.

These natural resources were gifts for *all* the people to use; they were not "owned" by individuals, not even *ali'i* (chiefs). The *ali'i nui* (high chief), in a sense, held the lands in trust for the gods and had the responsibility to create conditions under which the *maka'āinana*, who were the fishers, the cultivators, and the artisans, took proper care of the land and the sea, which provided food and other resources for everyone, generation after generation. The guiding policy for land and sea usage was enhancement of these resources through the creation of gardens on the land and fishponds on the shore, all of which increased the productivity of the land and the sea, to become a source of nourishment for all people. Thus, the phrase "*mālama 'āina, mālama kai*" (care for the land, care for the sea) reflects a basic social commitment of life in Kanaka Maoli culture.

This system of land tenure characterized by a general use right was changed in the mid-19th century. Pressures from people who came to the islands from North America and Europe (first as traders and later as settlers) resulted in changes in Kanaka Maoli land laws, designed to accommodate the demands of a culture of exploitation of resources for private profit.

Difficulties in dealing with foreigners made the Kanaka Maoli leaders aware that they needed help in dealing with them and their governments. The monarch of Hawai'i at that time, Kamehameha III, had been raised by American missionaries since childhood. When threats came from the foreign community, he and others understandably sought advice from their missionary "parents." Several missionaries had by then left the mission and taken government positions, without changing their ethnocentric understanding of Kanaka Maoli culture. Reverend William Richards, who had come to Hawai'i from Massachusetts in 1823, became the "Chaplain, Teacher and Translator" for the king and the ali'i. He translated into Hawaiian and taught political economy from the textbook *Elements of Political Economy* by Francis Wayland (1837), who was a strong supporter of free trade and capitalism. These studies resulted in the "democratic, liberal" *Declaration of Rights and Laws of 1839* and the Constitution of 1840, which transformed Hawai'i into a constitutional monarchy, but at the same time emphasized the need to protect the maka'āinana. It declared that the land belonged to the chiefs and the people in common, with the king as trustee. It could not be sold, or in other ways disposed of.

Another former missionary, Dr. Gerrit P. Judd, who had much power in the government, also taught political economy. Both Richards and Judd were influential in changing land laws, and Judd had a fellow American, John Ricord, appointed attorney general in 1844 after only ten days in the islands. Ricord wrote a series of organic acts which completely revised the government. His work was completed by another American lawyer, William Little Lee, who, still an American citizen, was given the right of a Hawaiian subject. Lee was made Supreme Justice and became author of the land laws and various other laws securing laborers for the prospective sugar industry which he himself had interests in.<sup>2</sup>

Missionaries and other Westerners – some of them themselves the source of difficulties – stressed the need for "adopted foreigners" to administer the kingdom in its involvement with the world system. Rev. Armstrong considered that the "native chiefs are far from being competent to manage the complicated affairs," resulting from Hawai'i "being shoved in among the great family of civilized nations" (letter, 9/18/1844; quoted in Kuykendall 1938:238). Many Kānaka Maoli, on the contrary, had a clear idea of the sources of trouble and petitioned their government to not allow foreigners in the government and also not allow them to own land (petitions of 1845 reprinted in Kame'eleihiwa 1992:331-38).

Primary among the problems with which the King and chiefs were concerned was that of land, and in particular, land that had been permitted to be occupied by foreigners. When foreigners began to establish themselves more firmly in the islands, growing food crops and trading provisions, they started pushing for private ownership of the lands that the ali'i had given them permission to use. At times these foreigners "sold" a parcel of land to other foreigners without permission of the chief who was its designated manager.

In spite of demonstrations of power supported by foreign warships anchored in Honolulu Harbor, foreigners did not immediately succeed in changing the official Hawaiian land policy. In 1841, a proclamation allowed foreigners to secure leases for a maximum of 50 years, but still "the soil [...]"

belong[ed] to the king," (quoted in Kelly 1956:128). In 1843, the Privy Council passed a law unanimously declaring that until the state of relations with "Foreign Powers" had been settled "we will neither give away or sell any lands in the future to foreigners, nor shall such gift or sale by any native be valid" (quoted from Kuykendall 1938:277). By 1846, at the beginning of the Māhele, the traditional system of land tenure was still basically intact.

During the 1840s, problems with foreigners intensified. The presence of warships from foreign countries in Hawaiian waters threatened takeover of the Islands, just as the French had taken over the Marquesas and Tahiti as French Protectorates in 1842 (Kuykendall 1938:198n.33), and England had annexed New Zealand by 1840 (ibid.:187). Furthermore, the Hawaiian Kingdom itself experienced a five-month forced cession to the British in 1843 initiated by problems with the British consul, Richard Charlton, who insisted that he had been given land in Honolulu in 1827, even though he should have known that this was not possible. Kauikeaouli feared that his people would find themselves without land if a foreign government occupied and took control over the Islands. The missionaries suggested that the way to protect the land from being taken over by a military invasion was to privatize ownership of the land. The Kānaka Maoli chiefs and the king were assured by their missionary advisors that land parcels "owned" by individuals would not be confiscated by a foreign power, and they offered to develop a plan that would protect the Kānaka Maoli against loss of their land.

Their plan, however, accomplished the exact opposite. The Māhele did not give people land, but concentrated ownership in a few hands. By the end of the division process, a small group of approximately 250 chiefs had control over 1.6 million acres, the King's lands (later crown lands) comprised one million acres, and the government had 1.5 million acres. The lesser chiefs and the maka'āinana ended up with less than 1 percent of the land, leaving the majority of the Kānaka Maoli landless.

Private ownership of land by foreigners living in the Hawaiian Islands was legalized by a law passed in July 1850. However, the maka'āinana, had to wait until the Kuleana Act of August 1850 before rules and procedures were established to allow the government to start dealing with their land claims under the Māhele. The Kuleana Act (*kuleana* has the double meaning of plot of land and responsibility) specified that the native "tenants" had the rights to their "cultivated grounds, or kalo lands, [but only] what they really cultivated, and which lie in the form of cultivated lands" (Territory of Hawaii 1925 :2142). They also had the rights to be granted their house lots in fee simple.

The Kuleana Act has been called the first homestead effort of the Hawaiian government, equating homesteads with agricultural enterprises. The homesteading feature of the act was section 4, which opened for sale of government lands to "natives" "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" (Territory of Hawai'i 1925:2141).

The alleged attempt to secure the maka'āinana "a small bit of good land" (Armstrong in Wyllie 1848:92) however resulted in their loss of land while missionaries and other foreigners secured land for themselves and their capitalist development of sugar plantations. The former were about to lose their support from the American Board of Commissioners for Foreign Missions that had decided that it was time for them to move on to new, less attractive "fields" in Micronesia and Melanesia. But most missionaries wanted to stay in Hawai'i and they found new ways to support their large families comfortably.

The majority of the lands that the maka'āinana did receive has since then passed out of the hands of the families of the original kuleana holders (Lind 1938; see also Lām 1994) in several ways. Some were forced to leave the countryside and go to town to work for money in order to pay their money taxes (on the land!) to the government, and in the meantime others took possession of their lands. There are stories of how people would come back and not be able to locate their lands; natural landmarks would have disappeared, absorbed in waving fields of sugarcane (Lydgate 1915). From 1871 it was legal to “adverse possess” lands by fulfilling the requirement of occupying the lands for ten or twenty years in an “visible, notorious, continuous, exclusive and hostile manner” (Lee 1991:119).

Samuel Kamakau wrote in 1869 that

Very few of the people living in the country were educated and knew how to apply for their titles. Others wanted to remain on the lands under their chiefs, and when the trading days came, and the chiefs leased their lands to the foreigners, they learned their mistake and were left to wander in tears on the highway. The fish of Piliwale are stranded; the sea has left them high and dry. [...] the foreigners who had waited a long time to take the land for themselves were all ready, and when the door was thrown open for natives and strangers alike they could well laugh; land was what they wanted. It would have been better moreover if, when the law made the sale of government lands available, these could have been sold so reasonably, to the descendants of Kamehameha alone, that his toil and blood might not have been spent in vain. His children do not get the milk; his adopted children have grasped the nipples and sucked the breasts dry (Kamakau 1992:407, originally printed in *Ke Au 'Oko'a*, 7/29/1869).

In order to survive Kānaka Maoli had to become “contract laborers and serve people like slaves” (Kamakau 1992:403). And this was precisely what the planters needed. They were anxious to obtain cheap labor to transform thousands of acres of land into sugarcane fields to secure their profits, and a landless Hawaiian population were driven to labor for the plantations. A law against “vagrancy,” imposition of money taxes and a system of punishment which included forced plantation labor also created laborers. These and similar laws were part of the Penal Code (Kingdom of Hawai'i 1850) which also created a slave-like contract labor system for imported foreign labor.<sup>3</sup>

The pattern of land concentration on a few hands instituted after the Māhele persisted even though land quickly shifted out of indigenous hands. Already in 1862, three-fourths of O'ahu was under control of the “foreign element,” according to Blackman (1899:161). Even the large Kanaka Maoli trusts set up by some of the ali'i nui have to a wide degree been controlled by the *haole* (foreigners, primarily Caucasians).

## The Ideology of Homesteading

Several researchers consider the changes in the land laws of the 1840s and 1850s the first homesteading attempts (Luter 1961; Spitz 1964; Horwitz et al. 1969; Hasager 1997b). The idea of “homesteading” as a means to resolve social problems has been present in Hawai'i for as long as there have been Americans and other Westerners in the Islands. The principle of rights to the land you live on and cultivate (“squatters’ rights” in American law) was present in traditional law and acknowledged from the first written laws (Hasager 1999).

Around the time of the Māhele, a frequently heard argument for the introduction of private ownership to land was that the common people needed

the fee-simple relationship to land in order to prosper. Influential foreigners generally believed that the makaʻāinana had lost their will to prosper and live, because of their ancient “oppressive feudal system” where they were exploited by multiple layers of aliʻi and *konohiki* (land managers) who extracted services and taxes from them (Dole 1892:10; Wyllie 1848, see also Alexander 1891). This, in combination with certain characteristics supposedly inherent in “primitive people,” according to haole understanding, led to a catastrophic situation where Kānaka Maoli were dying off rapidly.

For more than 70 years, Kānaka Maoli had witnessed how their family and friends were dying around them and how the demands on their labor were increasing daily. No wonder that few cared to make plans for the future. However, only a few missionaries conceded that the foreign influence had a major impact on this disastrous situation for the people (Wyllie 1848:*passim*), the majority attributed the depopulation to the lifestyle of Kānaka Maoli and the suppression by their own chiefs. The missionaries openly encouraged a consumer culture to curb the “twin vices of idleness and indifference.” They felt that a change in lifestyle and small plots of privately owned land would save the Kānaka Maoli and make “respectable” citizens out of them.

The makaʻāinana *were* oppressed and exploited, to a degree they never had been before, but this situation was closely related to the integration into the global market economy and ensuing conspicuous consumption on behalf of the aliʻi (Sahlins 1985; Friedman 1994; Kelly 1994; Kameʻeleihiwa 1992,1994).

According to Dr. Spitz, the missionaries and their descendants embraced the ideology which had developed in the United States during the 19th century (1964:12) based on Jefferson’s idea that a democratic society must be rely on a “hardy, intelligent, peaceful agricultural population” (Dole 1892:2). Of American descent, influential political leaders looked to their homeland, the United States, for political models for the new society, they were trying to establish and control. In Hawaiʻi, the missionary community, thus, established American democratic institutions, including homesteading (Spitz 1964:45). The haole advisors to the aliʻi argued that the people needed to own small bits of land in fee simple, which they could live on according to Christian virtues of industry and humility (cf. Weber 1958) to raise themselves out of poverty and degradation.

Homesteading continued to be of central concern for the missionaries from the first push in the 1840s. However, the homesteading policies at the same time secured the best agricultural lands for planters and big corporations, and very little land actually ended under the control of the Kānaka Maoli. Under the implementation of the Hawaiian Homes Commission Act (HHCA) 70 years later, the same scheme was repeated.

## **Land Policy of the Late 1800s**

Following the American homestead policy, the government of Hawaiʻi made plans to offer ownership of land in relatively small parcels for merely occupying and farming it for a given number of years, starting in 1884. Most of these lands were in relatively small parcels with nearby flowing streams.

Homesteading had been practiced in the United States to occupy land seized from Native Americans and to fulfill the political ambitions of invaders from Europe. Similarly, it was hoped that by following the US homesteading plan, Hawaiʻi would increase its Caucasian population, thus giving the foreigners greater control in the legislature and as a result, more economic power. In 1887, the homestead act of 1884 was one of the first things (neglected

under the previous government) to which the new government representing the sugar planters paid special attention (Kuykendall 1953:423) after they had forced the “Bayonet Constitution” upon king Kalākaua. The new constitution disenfranchised most Kānaka Maoli and transferred political power to a small group of haole. Dole was a leading figure in the coup.

Again due in no small part to his own intervention, Dole in 1894 became president of the “Republic of Hawaii” resulting from the forcible takeover of the Hawaiian government in 1893. He and his legislature combined crown and government lands into a “public land” domain and introduced new general land laws that supported homesteading of these lands (Horwitz et al. 1969:5). The 1895 Land Act also centralized the power over the lands in a three-member board which was given wide jurisdiction to lease and sell the public lands, including, for the first time since 1865, the crown lands which Dole had coveted since his youth.

Agricultural development and productive use of public lands seem to have been a major concern to the leaders of the “republic.” The Civil Code of 1897 opened for disposal of public lands by the commissioners “in such a manner they may deem best for the *protection of agriculture* and the general welfare of the Republic” (Horwitz et al. 1969:6). Also the classification of lands focused on agriculture: first-to-third class agricultural land, first and second class pastoral land, pastoral-agricultural land, forest land, and waste land (Luter 1961:7).

When the haole economic and political leaders finally succeeded in having Hawai‘i annexed to the United States in 1898 (ceding all 1.8 million acres of public land to the United States government), they discovered that the democratic ideology of the union did not go very well with the economic and political centralization of land and power in the hands of the missionary/planter oligarchy of Hawai‘i. Ironically, American democratic and liberal ideals, which they had called upon in their takeover of the Hawaiian government, threatened their businesses and position of power. Congress was not pleased with the situation of concentrated land ownership in Hawai‘i, and put restrictions on the maximum size of private land holdings and the size and length of public leases. According to section 55 of the Organic Act, which made Hawai‘i a US territory in 1900, no corporation could acquire and hold real estate in Hawai‘i in excess of one thousand acres – subject to existing vested rights. Furthermore, the length of the general leases of government lands was reduced from 21 to five years (Horwitz et al. 1969:21).

Of the efforts to carry out the variety of land settlement experiments that were tried during the days of the “provisional government” and “the republic” (1893-1898) and of the early territorial times (1898-1920), nearly all failed. Governor Carter (territorial governor, 1903-07), who openly disfavored homesteading, concluded in 1911 that “much of the 90,000 acres of public land which had been distributed for homesteading under the 1895 law ‘might as well have been cast into the ocean as far as real homesteading is concerned,’” (quoted in Lind 1938:86).

## Homesteading for Kānaka Maoli

The territorial governors after Dole did not promote homesteading. Neither did they prosecute the planters and sugar factors that worked their way around the thousand-acre limit in a variety of ways, so this provision completely

failed to prevent further concentration of land. From 1900 to 1920, the total acreage in sugar expanded from 128,000 acres to 236,500 acres (Lind 1938) and the average size of the plantations almost doubled from 2,462 to 4,548 acres (McGregor 1989:44). However, the plantation managers were less inclined to make improvements on lands they might lose at any time (Horwitz et al. 1969:21-22), and the planters could no longer take out private loans with collateral in the land in order to run the plantations. Therefore, there were recurrent attempts to change the land laws from 1900 to 1918, but none were successful until 1921, when the planters secured their leases to the major part of the prime agricultural lands of Hawai'i through a homesteading program seemingly meant to rehabilitate Kānaka Maoli. This final major attempt of homesteading in Hawai'i was limited to the indigenous people of the Islands and part of an omnibus bill that secured the best agricultural lands under the control of the planters and the Big Five.

There was no doubt that by 1920, many Kānaka Maoli were destitute and needed "rehabilitation." From 1914 to 1920 the purchasing value of the dollar was cut in half (Tamura 1994:213), and after the United States became involved in WWI, shipping was interrupted which created shortages of food and doubled the prices of especially poi and fish, the staples of the Kānaka Maoli. This crisis were amplified by the fact that the Japanese immigrants largely monopolized the fishing industry, and the Chinese the poi industry, feeding the people of Honolulu (McGregor 1990:9-12).

Many Kānaka Maoli were without homes or land to cultivate and feed themselves. Unable to care for themselves, they were dying at a greater rate than other peoples in the Islands. After land ownership and access had been denied to the majority of the population in the mid-19th century, many Kānaka Maoli were unable to adapt their sharing/subsistence culture, which depended on access to the resources of the land and sea, to the Western culture based on a foreign money economy and the privatization of land and resources. As Blackman wrote on the basis of the 1896 Hawaiian Islands census:

[T]he full-blood Hawaiians own in severalty only .06 of the soil of the islands. Within three generations they have alienated substantially the whole of their domain, or -- if one choose to put it so -- have been dispossessed by those whom they have welcomed to their ancestral home (1899:161).

By the early 1900s, a group of concerned Kānaka Maoli proposed that perhaps, if Kānaka Maoli were provided with a piece of land on which to re-create their traditional culture, their numbers would increase and the people would revive and develop a feeling of self-worth in the changing community. Could Kānaka Maoli live as had their ancestors, they might again flourish in their homeland. It was also suggested that the former crown lands, which had originally been the private lands of King Kamehameha III, and long were precluded from being sold, could be made available for time-limited homesteads. However, proponents of homestead land for Kānaka Maoli faced an ominous battle with sugar plantation interests – an increasingly powerful, tight-knit elite, who controlled most of the only 10-20% of the lands of the kingdom suitable for agriculture. Since the 1880s, some plantations had leased large parcels of former crown lands at extremely low prices. They foresaw in this homestead movement opposition to the renewal of their cheap leases, which were due to end in the late 1910s.

As members of the US Congress seemed to respond favorably toward the leasehold plan, and as plantation interests realized they could not completely

defeat the act, they moved to a second contingency plan. They made sure that a blood quantum requirement limited the number of eligible beneficiaries and that the lands selected for homesteading were only lands not already under cultivation. This effectively eliminated sugarcane lands and also excluded lands with available irrigation water. This fact limited the success of any agricultural lands given to homesteaders.

Thus, there were three sets of ideologies and interests behind the passage of the HHCA (Hasager 1997a). (1) Delegate to Congress, Prince Kūhiʻō, and other Kanaka Maoli members of the community, wanted to “rehabilitate” those Kānaka Maoli whose lands had been alienated. (2) The US Congress generally supported taking care of Kānaka Maoli as wards and other efforts to Americanize (democratize) them, such as through homesteading. (3) The haole elite, who feared that the fertile lands they were leasing from the government would be withdrawn and divided up for homesteading, used the HHCA to keep a firm grip on their 85,000 acres of leased public lands, 26,000 acres of which were crown lands (Vause 1962:115).<sup>\*</sup> At the same time, their support of the act might make a good impression on Kānaka Maoli who under US jurisdiction again were the voting majority.

In 1921, the HHCA was passed by Congress intended to make approximately 200,000 acres of public land available for people with a Hawaiian blood quantum of 50% or more. Some of the lands were specifically designated by section 203 of the act, and the rest was to be chosen by the Hawaiian Homes Commission (HHC) from lands designated “available lands.”<sup>4</sup> The original selection of “available lands” were by *ahupuaʻa* or *ʻili* (traditional land divisions) name only (according to Kanaka Maoli tradition, in fact), but from each area thus selected were withdrawn lands in sugarcane cultivation, forest reserves, and under public uses including previous homestead agreements (OSP 1992:20). Only about ten percent of the lands selected for future homesteading could at best be classified as first-class pastoral land. The rest was either pastoral land requiring irrigation, or “waste land.” None of the land could rightfully be labeled prime agricultural lands (*Ka Mana o ka ʻĀina* 1989:4).<sup>5</sup> According to the present administrators, this explains that only one-fifth of the lands are homesteaded after 78 years (DHHL n.d.:1-2).<sup>6</sup>

The limited homestead bill created strong protests and demonstrations in Hawaiʻi as well as in Washington. It was easy to unveil the true purpose of the exemption of the “highly cultivated” sugar lands, but the sugar interests were powerful, and the rehabilitation proponents gave in to their demands to secure their own goal.

### ***The Ideology of Rehabilitation and Homesteading:***

***“We don’t want to make the Hawaiians rich, we want to make them work.”***

In 1914, two hundred Kanaka Maoli leaders formed the Ahahui Puuhonua o na Hawaii, the Hawaiian Protective Association (McGregor 1989:327ff). They wanted to “uplift[...] the Hawaiian people through education, steady work, sobriety, and commercial enterprise” (McGregor 1990:1-2). As a political organization dedicated to social and educational work, the *ʻahahui* (association) appealed for advice, funds, and political support from wealthy and educated Kānaka Maoli, but also from the haole in power: The wording of their appeal, brings the 1850 Penal Code’s “spirit of capitalism” to mind.



IT IS THE PLAN [...] to bring to the attention of Hawaiians the following: That he must wake up and fully realize that he is 'nobody' and that he has "nothing"; that he must start a new life, by going back to the soil and by fishing, as his ancestors did; [...] That he must work hard, and work hard every day, or else he will be a thief, stealing, to keep his lazy body alive; [...] That he must save and think of his future, or else he will slowly starve to death, a burden to his fellow-men; [...] That he must be a student and a thinker, or else he will be a simpleton unfit to receive the attention of this neighbors; [...] That it is a thousand times better for him to be a laborer on the plantation where he will have good and sanitary quarters, than to be a street-walker looking for jobs, dying in a filthy tenement room; [...] That his best friends are the Athertons, Baldwins, Castles, Cookes, Dillinghams, Joneses and the Rices;<sup>7</sup> that said "old families" and their children will always help him when he proves himself deserving and that it is to his advantage to "look up" to them, for they will always have kindly feelings for him; [...] That his is a subservient Race and it is only by bettering his condition, pulling himself up to the standard of the other more enlightened and earlier civilized races that he can ever expect to be their equal, and [...] That in Christian living and in Christian honesty, is his hope (Ahahui Puuhonua o na Hawaii n.d.).

The 'ahahui wanted to teach "the Hawaiian" to live in a capitalist economy and would even actively promote and oversee employment with the sugar factors. In a continuation of the Congregational missionaries' ideas from the 1840s, they purported to

remind him to respect his superiors and to know his place and station in life; [...] to teach the Hawaiians the worth of money and to educate them to understand the worth of time; [...] to impress upon them the necessity of being prompt and diligent – of saving now, while they are earning, for their old age – of buying their own homes – and of setting the good example; and [...] make the Hawaiians understand the many other things they should do, or should not do. [...] THERE IS NO SUCH THING AS "DRAWING THE COLOR LINE" WITH THE Business Houses, for a Hawaiian who is sincere and conscientious will always receive work from them. We venture to say that it is economy on the part of the merchants to employ good and capable Hawaiians; therefore, we shall beg the Plantations, Railroad Companies, the Honolulu Iron Works, the Rapid Transit Company, the Inter-Island Steamship Company and other Business Houses to consider Hawaiians recommended by us [...]. THERE IS MUCH GOOD IN THE HAWAIIAN. Come, then, let us beg or knock it out of him for his own benefit and for the benefit of the country (Ahahui Puuhonua o na Hawaii n.d.)

Such paternalistic attitudes were indeed reflected in the reality of the political and economic distribution of power in the territory of Hawai'i (Fuchs 1961; Kent 1993). The "old families" were by now not only the Kānaka Maoli's spiritual and educational leaders, they were in complete political and economic control of the Islands and the owners and managers of the prospective new work places.

Eventually, the 'ahahui decided to seek federal funding. In December 1918, they drafted the "rehabilitation solution" which became the HHCA. The draft stressed the fact the Kānaka Maoli had lost their lands and were threatened with extinction if they were not given land to subsist on. "Rehabilitation," which might have been accomplished in various other ways, became synonymous with having plots of land to work in an outdoor lifestyle to provide a healthy life.

The especially severe conditions for Kānaka Maoli by the end of WWI led the territorial administration and the American Congress to consider the 'Ahahui's rehabilitation plan favorably. The committees of Congress dealing with Hawaiian matters were already very supportive of the idea of homesteading (Vause 1962:20. Like Dole, they viewed the legislation as a means of "Americanizing" the Islands in line with the prevalent ideology prescribing a community of

small-scale independent farmers as the best basis for a healthy democracy (Tamura 1994:45-69).

While the debate in Congress before the passage of the bill focused on the moral consideration of the need to take care of Kānaka Maoli,<sup>9</sup> it also purported to solve the question of the “oriental peril” (Vause 1962:45-47), because the American Congress and the ruling business elite in Hawai‘i feared that the second-generation Japanese would soon become the voting majority and thereby assume political control of the Islands.

That in the final act, the prime sugar lands were excluded from the lands set aside as “available” for homesteading, leaving only marginal lands to be homesteaded, was conveniently rationalized as an educational tool. On March 8, 1920, Territorial Governor McCarthy wrote to the Secretary of the Interior:

Those who contend that [...] Hawaiians [...] ought to have first choice of the highly cultivated lands, completely misunderstood the purpose of rehabilitation. We don't want to make the Hawaiians rich, we want to make them work. [...]. Give these same squatters rich cane land and they would sit on the lanai and strum a guitar or tickle a ukulele, while some Japanese did the *hoehana* in the fields. That isn't what we want, that isn't rehabilitation (Executive Files, Charles McCarthy; quoted in Vause 1962:72).

High quality lands would destroy the work ethic, and therefore, according to McCarthy, “the main object of the measure would be defeated” (quoted in Vause 1962:103-04). Kūhi‘ō officially agreed. “What made the American people great was the work of its pioneers in developing that which was worth nothing,” he said, in an address before the Hawaiian Civic Club in 1920 (quoted from McGregor 1990:25).

The bill, in its humanitarian disguise of promoting rehabilitation, actually managed to circumvent the general federal policy. Had the act *not* passed, Kānaka Maoli would in effect – as the crown lands leases expired – have had access to some of the most productive lands in the territory (*Ka Mana o ka ‘Āina* 1989:11).

### *The Hawaiian Homes Commission Act*<sup>10</sup>

The act set aside 203,500 acres of public lands in trust for the benefit of qualified “native Hawaiian beneficiaries” (OSP 1992:21,24). “Native Hawaiians” were defined as “any descendant of not less than one-half part of the blood of the race inhabiting the Hawaiian Islands previous to 1778” (201). The burden of proof rested with the would-be beneficiaries.

Under the Hawaiian Homes Commission Act, “Native Hawaiians” were entitled to apply for 99-year leases of land at a dollar a year, for residential, pastoral, or agricultural purposes (208). This has recently been changed to 199-year leases due to growing concerns by the early homesteaders for the future of their families (US Congress 1990; DHHL 1995:2). The leases can neither be transferred without the Hawaiian Homes Commission’s permission, nor sold (208). The homestead lots were to be either 20-80 acres of agricultural land, 100-500 acres of first-class pastoral land, or 250-1,000 acres of second-class pastoral land (207). What became the most sought-after form of homesteading, namely the residential lease form, was soon added to the options.

The selected homesteaders (208, 209) had to occupy and use the land awarded them within a year and keep doing so in accordance with whatever rules and regulations the commission set up (208). After a period of five years

(later seven), the lessee was required to pay all taxes (208, 210, 216, 222). Successors had to fulfill the same requirements as the original lessees (209). Eligible relatives were later specified (spouses, children, grandchildren, brothers, sisters, widows or widowers, nieces or nephews), and the 50 percent blood quantum criteria was recently changed to 25 percent eligible successors.

Lands not used for homesteading could be turned over to the Commissioner of Public Lands (now Department of Land and Natural Resources, DLNR) for general leases in order to generate income for the commission (212). The two sources of income – 30 percent of the revenue from the sugar lands (213) and the general leases – were the primary sources of income for the commission's administrative expenses and a revolving fund with a ceiling of one million dollars (the Hawaiian Homes Loan Fund), established to provide loans to homesteaders, who according to the act are entitled to financial aid. Section 213 of the original act also provided for the Hawaiian Home Loan Fund (DHHL 1995:22-25). The homesteaders had problems financing their homes and agricultural enterprises because of the structure of the program. Since they did not own the land, they did not have collateral to obtain loans and had to rely on the administrators of the program for loans or, later when the loan possibilities opened up, to put up equity for them. Over the last 60 years, several other funds were created (DHHL 1995:26-36; Kelly 2000).<sup>11</sup>

Even though general leases of the public lands tended to be underpaid, they generated the major part of the commission's funds for many years (Loudat et al. 1994:xiv,41,45ff). In 1964, the HHC became authorized to lease land and issue revocable permits, licenses, and rights-of entry for lands not in homestead use, and DHHL took over the leases as the agreements with the DLNR gradually expired.

### *Probation and Irrigation*

The coastal Kalaniana'ole Settlement in Kalama'ula (1922) and the Ho'olehua plains (1924), both on Moloka'i, were the first areas in the territory to be opened up for agricultural homesteading. They were chosen for a five-year probation period (204)<sup>13</sup> and two were to become the only settlements ever opened by the commission as wholly farming communities.

The Kalaniana'ole homesteaders soon learned the same lesson as the American Sugar Company had done some 20 years before them. The water for irrigation turned saline – an outcome that could surely have been foreseen.<sup>14</sup> The unfortunate homesteaders, after the hard work of clearing their land, were offered new agricultural land in the Ho'olehua area.

The dry, windy plains of Ho'olehua were without water for irrigation of crops. The relatively large size of the lots in the Ho'olehua area – 40 acres – originally had been decided upon, because it was expected that there would be sufficient rainfall for dry-land agriculture. The commission was well aware that that might not be the case, however (Vause 1962:118).<sup>15</sup> Selected, skillful Kānaka Maoli were encouraged to apply for homesteads to secure its success (HHC 1925:8; Keesing 1936:36-41). Some of the first families to settle in Ho'olehua came from Waikapu'u on the island of Maui. They were members (and leaders) of a congregation of the Church of Jesus Christ of Latter Day Saints and expert farmers and fishermen who brought with them their own tools and supplies.

At first it looked promising. In 1925, the Hawaiian Homes Commission celebrated the "Moloka'i Miracle" as the rational result of the homesteaders' willingness to work. By the end of the probation period, an investigator from the

US Department of the Interior was going to come to Moloka'i to judge whether the program was a success or failure. However, the celebrated hard work of the homesteaders growing a diversity of crops was not enough to overcome the water problem, and a serious drought threatened to jeopardize the whole program. Eventually, the continuation of the Hawaiian Homes program was secured because at the last minute, the rain came – perhaps, as some suggested, because the Mormon elders had assembled and prayed for three days (Brigham Young University 1981:12-13). The problem of water, nevertheless persists to this day.

The “Moloka'i Miracle” prepared the way for amending the act in 1928, extending the program to the rest of the “available lands” identified in the original act.<sup>17</sup> Notwithstanding the declared success at this time, the early hope for a thriving program of diversified subsistence agriculture and ranching had faded.

### *Plantation Style Homesteading*

Even though Prince Kūhi'ō felt the lands chosen were satisfactory, the “rehabilitation” on those lands met with a series of obstacles: (1) poor quality of the land available, no development of water resources and no money available for it; (2) poor access to markets; (3) no money available for construction; and (4) funds available could settle only a small number of people on the homesteads.

Well aware of these conditions, the commission early on planned to overcome them. Reports of the HHC to the legislature disclose that the administrators had pineapple production and not diversified agriculture on their minds for the homesteaders from the beginning. They were discussing agreements with the pineapple companies and involving them in the planning even before the homesteaders started moving on the land.

The lands of Molokai [...] are well adapted for pineapple culture [...]. Letters have been sent to every pineapple corporation in the Territory, requesting that each submit a statement outlining a method by which to undertake to assist the homesteaders, financially and otherwise, in the cultivation of their lands [...]. According to present plans, the best scheme would be adopted and put into effect (HHC 1925:15-16).

It was suggested that the homesteaders would work their holdings themselves, and receive a daily compensation for their labor. The plans were already very specific concerning “devoting” 30 to 35 acres of each 40-acres lot for growing pineapples (HHC 1925:16), leaving the house lot and the surrounding area to the homesteader for horticulture to feed the family. These plans were presumably not known to the homesteaders, many of whom tried other crops under great hardship.

Difficulties with marketing, the climate, and pests caused homesteaders to give up diversified agriculture, and pineapple cultivation provided a welcome alternative for some. In 1927, the pineapple companies started leasing land from the homesteaders on agreements similar to the ones suggested by the Hawaiian Homes Commission in 1925.

Within a decade after the first settlement of Ho'olehua, Libby, McNeill, and Libby and California Packing Corporation were controlling most of the land. After a few years, it became obvious that the system of planting small areas in rotation was ineffective and made it very difficult to control pests. A new system was invented, and large blocks were created consisting of several homestead lots.

The farmers were no longer responsible for weeding and taking care of their own specific lots (Keesing 1936:71-84). After 1931, the homesteaders hired Korean and Filipino workers to take care of their portion of the crop, or they paid plantation work gangs to do it (ibid.:76). Strongly encouraged by the commission, all but seven out of the 184 Ho'olehua homesteader families eventually leased their lands to one or the other of the two pineapple corporations (Spitz 1964:33-35). The commission was well aware that if the lands were not used for pineapple production, the problem of irrigating the fertile but dry soil would have to be solved (HHC 1937:19).

All over Hawai'i, the sugar and pineapple industries in general seriously inhibited the use of land for other purposes, as pointed out by Coulter as early as 1933 (1933:124). On Moloka'i, as indicated above, the option of growing pineapple from the beginning killed attempts of diversified farming. Pineapple production introduced a system of subleasing of the homelands, even though the original act states, that the "lessee shall not sublet his interest in the tract or improvements thereon" (208). Nevertheless, so-called third party agreements in many instances allowed non-Kānaka Maoli to operate large-scale agricultural businesses on Hawaiian homelands, out-competing the homesteaders trying to farm individual lots. In 1991, the DHHL stated as its policy that subleases of homesteads was not permitted, but the practice of "allowing another party to grow crops on the lessee's land" was not illegal (DHHL 1991:8). A 1996 court ruling went against this interpretation.

## **Under Scrutiny**

During the territorial period, the Hawaiian homelands existed in relative neglect, supposedly self-financed, located on marginal lands so that homesteading no longer threatened the sugar lands, and to a large degree used for pineapple production – thereby securing the two crops which were the basis for the economy and the ruling elite's position of power. Over the years, presidential and gubernatorial executive orders illegally transferred homelands to other state and federal agencies, and homelands were used for airports, high schools, county dumps, some of the lands even sold in fee simple. Homesteading was restricted to a people (and therefore a group of voters) who quickly became a minority, perhaps intentionally (Lâm 1993).

With the Democratic Party's take over of government in 1954 and with the growing importance of tourism and the US military in Hawai'i from the 1940s and 1950s, this picture changed. New areas became contested. The below history documented in a series of hearings, investigations and reports produced over the statehood years, reveals continuing wrongs, problems, mismanagement, and efforts to improve the program and its administration. Many reports naturally focus on placing responsibility for neglect of trust obligations inherent in the HHCA.

## ***Land Reforms and Assimilation***

When Hawai'i became the 50th state in the United States of America in 1959, the Admission Act as a requirement for statehood created the Department of Hawaiian Home Lands as an executive agency to manage the program (Murakami 1991:49; DHHL 1995:5).<sup>20</sup> It transferred all Hawaiian homelands to

the state, but the federal government retained its oversight responsibility.<sup>21</sup> Land exchanges had to be approved by the Secretary of the Interior, and the act could not be amended without congressional action – unless the proposed amendments increased the benefits for Kānaka Maoli or only related to administration (ibid.). Any right to sue for mismanagement of the administration was kept with the federal government (OSP 1992:33). The department was headed by the HHC which functioned as an executive board. The nine board members were appointed by the governor (DHHL 1995:1).

At that time the department had jurisdiction over a little less than 185,000 acres. Less than 15% was allocated to Kānaka Maoli. Most of the rest was leased to others. Sixty-nine families lived on ranch size parcels, 365 families lived on farms of around 40 acres, and 2,000 families lived on house lots, some as small as 7,500 square feet. Thus, from 1921 to 1959, a total of 2,434 families were situated on homestead lands.

In connection with the new state's urge to reform the government's administrative departments and promised land reforms, the 1960s witnessed a wealth of investigations and reports about the Hawaiian homelands program. According to DHHL's 1964 report to the legislature, the homesteader fell below the national and state median income, and also below the average Kānaka Maoli non-homesteader in most social aspects. Since it appeared that the homesteader had not made appreciable changes in one generation, the question arose about the effectiveness of the Hawaiian homestead program and whether or not it stimulated individual improvement and rehabilitation (DHHL 1964).

The overall conclusions from the various investigations in the 1960s were that the program had failed to homestead people, especially on agricultural lands; that it had failed to “modernize” or “Americanize” the Kānaka Maoli; that much of the land was rented out for compensations way below their market value; and that no accurate land inventory existed. Innumerable stories and testimonies attest to fraud, favoritism, and disappearing waiting lists. Many Kānaka Maoli died without ever catching an award. The sheer length of the list is pointing to a major problem in the administration of the program. In effect, agricultural rehabilitation had been supplanted by a residential housing program. The original rationale for the HHC was thus, over time, reversed. Hawaiian “rehabilitation” came to be seen as an urban problem to be met primarily by aiding home building. Some of the investigators suggested to take this fact to its logical consequence: if the department wanted to rehabilitate (that is, at this time, Americanize) Kānaka Maoli, it should exchange or sell its lands and use the funding to settle the beneficiaries in houses “pepperpotted” among “regular people” following experiences from New Zealand (Dinell et al. 1964; Spitz 1963).<sup>22</sup>

### *Mobilization*

A qualitatively different, but also intensive, period of studies of the Hawaiian Homes administration occurred from the 1970s through the early 1990s, initiated by growing awareness concerning Kānaka Maoli rights inspired by the civil rights movement and global shift away from taking “modernization” for granted and inevitable. Friedman (1994, n.d.) has documented how global economic and social processes were accompanied by an increasing fragmentation in the modernist identity. This identity fragmentation is paralleled by a strengthening of immigrant, indigenous, and other regional identities (ibid.).

The 1970s were characterized by unique political and economic factors, the most important of which were “the mobilization of native Hawaiians” (Loudat et al. 1994:58). Kānaka Maoli were taking an organized, active interest in the management and disposition of public trust lands including Hawaiian homelands, as well as in “native Hawaiians rehabilitation as elaborated in the HHCA” (Loudat et al. 1994:59; see also DHHL 1971:16). The rapidly increasing residential home costs was another factor that stimulated the interest in the Hawaiian Homes program and that mobilized the Kānaka Maoli (Aoudé 1994). One-third of the 14,604 families on the DHHL’s waiting list in 1975 wanted house lots primarily on O’ahu (*Hawaii Observer* 1975). Of the almost 30,000 applications in 1998, more than half were for residential lots, half of these for O’ahu, but also many for Hawai’i Island (DHHL 1998:11). Billie Beamer, chair of DHHL in 1975, called the situation “a problem which is unequivocal [...] our waiting lists – for housing on Oahu [...] are in the end the only clear-cut indication we have of what eligible Hawaiians want, and the most urgent demand is for residential leases on our Oahu land” (*Hawaii Observer* 1975).

The administration of the Hawaiian Homes program underwent major changes. DHHL used professional consultants; it created the first complete “Hawaiian Homes Commission rules and regulations manual” in 1972 and its first land use plan in 1974, as well as a ten-year plan (Loudat et al. 1994:61). Constitutional amendments following the 1978 Constitutional Convention furthermore resolved that adequate funding for administration and operation of DHHL and for rehabilitation projects should be provided by the state government, but not until the 1988-89 fiscal year did the department and program receive financing from the state’s general funds (DHHL 1995:1). Also beginning in 1978, DHHL could allocate money from a Native Hawaiian Rehabilitation Fund to support “programs and projects for the educational, economic, political, social and cultural advancement of native Hawaiians” (DHHL 1995:2).

In 1979, the Hawaii Advisory Committee to the United States Commission on Civil Rights (HAC) began receiving complaints regarding administration, management, and enforcement of the homelands trust. People were complaining that Kānaka Maoli had been on the waiting list for homesteads for more than 30 years and that lands were illegally confiscated by the state. HAC therefore held a public consultation on the administration of the HHCA in August 1979, focusing on “the historical relationship of aboriginal Hawaiians to the land and to the state and federal governments under the HHCA” which resulted in the report, *Breach of Trust? Native Hawaiian Homelands* (HAC 1980).

As of July 1979, a total of 2,997 leases had been awarded to Kānaka Maoli, covering only one-eighth of the available lands, whereas 6,310 were on the waiting list for residential lots (90%), agricultural lots (6%) and pastoral lots (4%) (DHHL 1979). The HAC found that 20,000 acres were “lost” or unaccounted for, and 24-26,000 acres had illegally been transferred out of the DHHL trust by state and federal executive orders (HAC 1980:12). The average rent paid per acre of land in use by government agencies were in 1976-77, 45 cents for the federal government, 12 cents for the state of Hawai’i, and 3.10 cents for the counties (HAC 1980:16).

A privately funded Native Hawaiian Land Trust Task Force was formed in 1981 to research and make known Kanaka Maoli perspectives on trust issues, especially the breach of trust by the State of Hawai’i. This task force presented a report to the US President and Congress in 1983, demonstrating the state’s breach of trust with the intent of convincing the federal government to sue the

state on behalf of the homesteaders, since they could not do it themselves (HAC 1991b:5).

In 1982, the federal administration conducted a *Review of Hawaiian Homes Commission Programs* (US Department of the Interior 1982) to determine whether the DHHL fulfilled its obligations under the HHCA. They found, among other things, that the accounting system was inauditable and that the land inventory records were not maintained.

In the same year, the Hawai'i Supreme Court held that the HHC and the DHHL were required to meet the same standards as private trustees (*Ahuna v. Department of Hawaiian Home Lands*, 64 Haw. 327, 1982; see Loudat et al 1994:xi). In the case of the Hawaiian Homes program, the purpose of the trust was determined to be to rehabilitate Kānaka Maoli, and therefore, to fulfill this purpose, the primary operational should be to develop homesteads (Loudat et al. 1994:xi).

The most extensive, detailed, and well-documented examination of the HHC and the program were done by the joint Federal-State Task Force, also established in 1982 (*Federal-State Task Force Report on the Hawaiian Homes Commission Act. Report to United States Secretary of Interior and the Governor of the State of Hawaii*. The Federal-State Task Force 1983). The report lists 134 specific recommendations. The DHHL through the 1980s tried to follow some of the According to the consultants who in 1994 did a "historical performance recommendations of the Federal-State Task Force. However, the creation of the Office of Hawaiian Affairs in 1980 diverted legislative funding and attention away from the DHHL (Loudat et al. 1994:62-63) and thereby weakened the DHHL's efforts. In 1984-87, for instance, the DHHL conducted the so-called acceleration program, awarding unimproved lots in order to reduce the waiting list, which at this time contained about 8,000 entries (DHHL 1991:5-6). Due to lack of funding and planning, this program was highly unsuccessful, but it took almost ten years before DHHL declared its commitment "to provide improvements for the existing 3,000 lots awarded under the Acceleration Program" (DHHL 1995:4). This has not yet happened on any substantial scale.

The pressure to evaluate and improve the administration of the homelands was mounting. The state legislature in 1988 passed Act 395 which required the development of a Governor's action plan (OSP 1991) and gave beneficiaries the right to sue in the state courts for actions occurring after July 1, 1988.

Also in 1988, eight years after its initial report, *Breach of Trust?*, the Hawaiian Advisory Committee reexamined the issues raised in it – and concluded that indeed, the trust was broken (*A Broken Trust; the Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians*; HAC 1991b). The examination took place without much cooperation from federal and state authorities. The federal government refused any trust obligations, and the state government felt that the timing of the investigation was wrong, because "corrective measures [already were] underway" (Governor Waihee, statement to Hawaii Advisory Committee, Aug. 2, 1990, in: HAC 1991a:7). The report was released December 12, 1991 and filed with the United Nations Commission of Human Rights in February 1992 (Hasager and Prejean 1992).

HAC concluded that after 70 years, in 1991, only 17.5 percent of the trust lands had been homesteaded, while over 62 percent of the lands were being used by non-Kānaka Maoli, often for minimal compensation (1991b:1). Some of the most suitable lands for development of homes were still used for military and



other public purposes, with virtually no compensation paid to the trust (HAC 1991a; Hasager and Prejean 1992).

In the meantime, joint hearings before representatives from the US Senate Select Committee on Indian Affairs, and the House Committee on Interior and Insular Affairs were undertaken on each of the major islands in August 1989, on the subject of the *Administration of Native Hawaiian Home Lands*. This resulted in voluminous testimony from state officials, homesteaders, and community advocates. The extensive transcripts (*Administration of Native Hawaiian Home Lands*, US Congress 1990) provide a valuable record of problems relating to the HHCA. As a result of the conclusions in this report, the so-called "Purpose Bill" (SB 3236) was proposed in May 1990, aiming at inserting the wording of rehabilitation in the HHCA. This was strongly opposed by some Kanaka Maoli groups, because it had wide implications for other native Hawaiian rights (HAC 1991b:5,13).

Even though the federal administration in 1979 had acknowledged trust responsibilities for "native Hawaiians [...] and their direct descendants" (OSP 1992:21), these responsibilities were denied in the late 1980s and early 1990s. Such changing opinions (amplified by general disagreement among federal government agencies as to which department was responsible for the Hawaiian Homes program, if any) played a major role in preventing trust "beneficiaries" from pursuing their rights (HAC 1991b, Appendices; OSP 1992:*passim*).

### *Righting the Wrongs*

All the above reports agree that there has been considerable mismanagement of the program through the years. But they disagree as to where to place the responsibility and what actions are needed to better the program and compensate the wrongs. The trust responsibilities have especially received much attention, and asserting these responsibilities is the precondition for placing claims of reparations. Poor financing provisions through most of the program's existence, combined with major administrative irregularities and deficits, seriously impeded the actual implementation of the act. This was about to change. During the early 1990s, both state and federal legislative actions considerably improved DHHL's performance.

In 1991 came the *Governor's Action Plan*, required by Act 395 of 1988 to resolve controversies occurring prior to July 1, 1988. The legislature accepted the plan which primarily focused on making "the trust whole and stronger" (OSP 1991; DHHL 1992:3) through land claims and compensation for public uses of lands set aside by executive orders and proclamations. Building on most of the above-mentioned reports and hearings, it discussed boundary issues and title disputes, some dating from 1921. An interagency Land Claims Task Force<sup>25</sup> was created to "resolve the land claims in creative ways" by accelerating "the process of clearing title and compensating the Hawaiian Home Lands Trust for illegal and improper withdrawals, transfers, takings and usings" (Governor Waihee, 1991 State of State address, quoted from OSP 1992:38). The work of the task force has resulted in Hawaiian Home Lands Trust Resolution proposals to the legislature, the first of which (SB 2855), signed by the governor on July 1, 1992, included a \$12 million back rent compensation from 1959 (DHHL 1992:3; Trask 1994).<sup>26</sup> At this time fewer than 3,800 families actually resided, farmed, or ranched on Hawaiian homelands (Murakami 1991:43).

The right to sue for actions occurring from statehood (August 21, 1959) to the enactment of Act 395 (June 30, 1988) was laid out in Act 323 of 1991. It

established a “claims panel” (Hawaiian Home Lands Trust Individual Claims Review Panel) and a process to resolve *individual* claims from beneficiaries for actual damages arising out of alleged breaches of trust. Findings of the panel, which received and reviewed claims and suggested corrective actions, were to be reported to the legislature which then were to take action to correct them.<sup>27</sup> Once the panel had finished its work and the cases raised had been settled, all future rights to raise claims concerning this period were supposed to be extinguished. The majority of the claims received by the panel concerned failing to homestead people on the waiting list. This type of claim has recently been rejected by the legislature. The department explained the exploding waiting lists of the 1970s and 1980s with the Hawaiian rights movement and the acceleration program.

21,000 names [1991] on the waiting list do not represent 21,000 different individuals. There are many duplications because applicants are allowed to apply for more than one type of homestead lease. Also, many individuals from the same household apply for homestead leases (DHHL 1991:5).

However, that many applicants have the same address, does not necessarily mean that they belong to the same family. The hidden homelessness in Hawai‘i is very high (Aoudé 1994). A combination of increased awareness of civil rights and a tremendous increase in land prices were the main reasons for the growing interest in Hawaiian homeland (Loudat et al. 1994).

The claims also included complaints from persons who had received raw lands in the mid-1980s acceleration program.<sup>28</sup> The panel initiated an investigation to answer the question as to whether the state could have provided more homesteads. The hired consultants concluded, after their *Historical Performance Review of the Hawaiian Home Lands Trust*, that with the level of resources actually available to it the trust had performed “less than optimal” in the period from August 21, 1959, to June 30, 1988 (Loudat et al. 1994:112).

Another major area of claims received by the panel were based on complaints over poor quality of housing. The fact that home construction on Hawaiian homelands has been closely supervised by the HHC has until recently limited the choices of the homesteaders considerably. It was supposedly a matter that the administrators felt that they had to be in control of, even though the homesteaders financed the homes. This reflects DHHL’s paternalistic preoccupation with creating “decent citizens” out of the homesteaders (Hasager 1997b) and has a precedence in the concerns of the missionaries in 1846 for minute details in the private lives of the Kānaka Maoli. The centralized control of home building was misused by some contractors who built substandard houses.<sup>19</sup> A 1991 statement by the DHHL denied this, but the great number of claims received by a claims panel belies this assertion (personal communication).

In February, 1992, a congressional hearing (conducted before the US Senate Committee on Energy and Natural Resources) denied trust responsibility on the ground of statutory violations of racial classification of beneficiaries, even though the HHCA is a federal act. As a consequence, funds under the Department of Housing and Urban Development were delayed because of the Bush administration’s assertions that money could not be used to benefit a “racial class” unless the group in question could be recognized as a tribe with a sovereign government acknowledged by the federal government (OSP 1992:19-20).<sup>24</sup>

This was not a new issue. The question of “racial preferences” has repeatedly been raised in debates concerning the Hawaiian Homes program. Again, here at the beginning of the 21st century, it is threatening the very existence of the program through the *Barrett v. Cayetano* law suit (see below).

Already in 1920, Congress had considered “the pitfall of racism,” but determined that it was not unconstitutional to legislate for Kānaka Maoli as a group. An opinion of the solicitor for the Department of the Interior stated that Kānaka Maoli could be treated as other “aboriginal groups” and that there was “no constitutional difficulty whatever involved in setting aside and developing lands of the territory for native Hawaiians only” by referring to “numerous congressional precedents for such legislation in previous enactments granting Indians [...] special privileges in obtaining and using the public lands” (quoted from NHSC 1983:88).

The State of Hawai‘i, in 1992 already in the process of rectifying some of the wrongs, felt, according to the governor and his Office of State Planning (OSP), that the federal government should take on its trust responsibility as well, and it published *Federal Breaches of the Hawaiian Home Lands Trust* (OSP 1992), in which it disclosed a series of alleged federal breaches of trust<sup>29</sup> based on the report of the Federal-State Task Force (1983) and OSP’s own more recent findings (OSP 1992:12-34, Exhibits A-E). The breaches include the issues of permanent reservation of trust lands without compensation and land exchange for federal purposes (ibid.:13ff). The most well-known example is 1,356 acres of land at Lualualei, one-fifth of the “available” lands on O‘ahu (DHHL 1995:41) which were set aside for military purposes in 1930 and 1933.<sup>30</sup> It is illegal to set Hawaiian homelands aside by executive orders or proclamations, according to both the attorney general and the courts: “there was and is no authorization under the [HHC] Act for lands to be set aside for public purposes” (OSP 1992:13). Nearly all known (!) orders and proclamations were canceled or withdrawn by the end of 1984 (ibid.). Recently, land exchanges have begun to take place to compensate for loss of the lands of Lualualei, which however is ideally situated for residential and agricultural housing and could have accommodated the majority of the applications on the waiting list for O‘ahu. Federally controlled land at Barber’s Point Naval Air Station on O‘ahu was made eligible for selection by the DHHL in April 1996 under the Recovery Act of 1995 (see below).

Other federal breaches of trust listed by the state are public use of trust lands without compensation, which has occurred repeatedly throughout the years,<sup>31</sup> for airports, roads, forest and game reserves, reservoirs, school sites, beach parks, public parks, and other purposes (OSP 1992:Exhibit A-C); long-term nominal leases of one dollar each for the terms of 65 years, used for military training grounds and ammunition storage (ibid.:16, Exhibit D); and frequent violations of the non-alienation intent of the act, as testified by the 130 parcels sold or given to private parties by the territory and the 16 parcels alienated after statehood (ibid.:16-17, Exhibit E and F).<sup>32</sup> In addition to these breaches, the report mentions “questionable actions” such as: lack of funding;<sup>33</sup> limitations on revenues derived from trust assets through imposed ceilings; lack of due diligence, survey and inventory of lands leading to loss of lands;<sup>34</sup> and “discriminatory denial of federal dollars on the basis of race” (ibid:ii-iii,7-20).

During the period of Ho‘aliku Drake’s chairmanship in the early 1990s, the department changed its work methods, target group, and way of selection. It contracted with developers to establish the fashionable “Kahanu Estate” on 53.6 acres of Lualualei on O‘ahu, with boat parking facilities and a Kamehameha Schools’ education center (DHHL 1995:17). To qualify as a lessee in the estate, certain financial requirements have to be met, not of need, but of endowments to pay for the houses (personal communication with administrator and prospective beneficiaries).

In 1993, the state legislature passed Act 352 authorizing land exchanges for previously alienated lands. Also, two new forms of home financing were

created for homesteaders. To accelerate awards, the DHHL tried new programs, involving the beneficiaries (for instance the Kuleana and Laulima programs; DHHL 1995:17). In November 1994 began the land transfers to “make the trust whole”: 203,500 acres (1995:15).

A Memorandum of Understanding, signed on December 1, 1994, settled all DHHL’s land claims against the state for the period from 1959 to 1988. The ensuing Act 14, signed by Governor Cayetano in 1995, provided for \$30 million per year for 20 years to the DHHL and settled a range of other issues (DHHL 1997:8).

By 1995, the DHHL professed, in a telling confirmation of ongoing problems with the beneficiaries and the community, to better the “relationship with the native Hawaiian community, governmental agencies, individual homestead communities and the community at large” (DHHL 1995:3). Plans for finally updating the 1976 general plan therefore, as a new thing, included beneficiary participation (ibid.). In the meantime, the still-growing waiting list had reached 16,000 names according to the DHHL’s estimate (over 27,000 entries) (DHHL 1995:4). In 1999, these figures are 30,383 applications corresponding to estimated 18,662 applicants (DHHL 1999:1).

In November 1995, US President Clinton signed the “Hawaiian Home Lands Recovery Act” which “resolves the long-standing claim that withdrawal of lands from the Hawaiian homelands trust during the territorial period violated the Hawaiian Homes Commission Act” through establishing “a process whereby the federal government will convey surplus lands to DHHL that are equal in value to Hawaiian homelands illegally taken by the federal government” (DHHL 1997:9). The DHHL in 1999 publicized that it now managed a statewide total of 199,256.752 acres on five different islands. This figure includes lands from an agreed transfer from the “Public Land Trust” to “available lands” (DHHL 1995:2).

The political climate of the early 1990s apparently supported the betterment of the situation of Kānaka Maoli, and the DHHL. The latter embarked on cooperation with a range of organizations, instituted new ways of using the lands, and was suggested by some as the basis for a government for a sovereign Kanaka Maoli nation-within-a-nation in cooperation with the OHA – on a land base consisting of the “available” Hawaiian homelands (Morín 1997).

A 1995 report again, after many years, stresses that the “intent of the homesteading program is to provide for the economic self-sufficiency of Kānaka Maoli through the provision of land” (DHHL 1995:2). As in 1920, rehabilitation (understood as “returning people to the land”) was in focus, after the 1960s’ assimilation efforts and suggestions of “pepper potting” which disregarded the importance of land and community to Kānaka Maoli.

## **Homesteading and Indigenous Rights**

The conditions surrounding the establishment of the Hawaiian Homes program, its 70 years of relative neglect from the changing governments in charge of it, the improvements spurred by an indigenous rights movement, and recent attacks threatening its very existence all reflect changes in global economic and social processes.

Since the latter half of the 1990s, the DHHL and other indigenous programs, institutions, and rights have been under attack. This situation is most likely a reaction to the success of the Kanaka Maoli social movement and the ensuing visibility of Kanaka Maoli rights. It has become increasingly clear – and

the media frequently exaggerates the point – that Kānaka Maoli were entitled to large sums of money and extensive land areas.

The Hawaiian homelands settlements with the state and federal governments conveyed both land and money to the DHHL. To this comes the ceded lands claims. Circuit Court ruling in 1996 supported the OHA's claim that it is owed money from the state for 20% of the proceeds from ceded lands over the years, including revenues from airport-maintained lands (Omandam 1999a). Different sums have been mentioned, because of political reasons and because no complete inventory to base calculations on existed of the ceded lands. By April 1999, the OHA's claim was \$304.6 million (ibid.). Already in 1996, OHA's claim was considered a serious threat to the state economy and there was talk about increasing "landing fees, very probably resulting [...] in a reduction of flights with connectivity treacherous effect on tourism and the overall economy," as one source put it (National Press Photographers Association 1996). Governor Cayetano at that time was quoted in the *Honolulu Star-Bulletin* as saying "Heeley's ruling would absolutely plunge the state into a fiscal crisis much worse than the islands have endured during the past two years" (ibid.). Attempts at negotiations and settlements have followed, but the issue has proved difficult to settle (Omandam 1999b).

The PASH/Kohanaiki Supreme Court ruling of 1995, among other things, confirmed Kanaka Maoli access and gathering rights on privately owned, "less than fully developed" lands (Hasager 1999:162 *et passim*). It also added to the general impression of overwhelming and expensive indigenous claims and to the pressure on the government to control and contain Kanaka Maoli rights. The ruling essentially meant that the "bundle of rights" of private property in Hawai'i do not include the right to exclude others from accessing privately owned property. Judging from the publicity around the case and reactions from lawmakers, lawyers, and realtors, the PASH/Kohanaiki ruling is a serious threat to the real estate market. It was the most far-reaching of a series of rulings in court cases, beginning with the 1982 Kalipi case, which confirmed Kanaka Maoli access and gathering rights (ibid.). These rights have been, almost verbatim, in the written laws of Hawai'i since the 1850 Kuleana Act (Lâm 1994).

The PASH/Kohanaiki ruling initiated a series of attempts from public and private parties to limit Kanaka Maoli rights. An example is Senate Bill 8 from 1997, which had provisions going against the Supreme Court ruling. A strong community reaction against the bill, politicizing a large portion of the Kanaka Maoli, eventually led to its withdrawal (Hasager 1999:164). However, this bill was just one of many attempts to circumvent the Supreme Court ruling.

In February 2000, the US Supreme Court ruled in the *Rice v. Cayetano* case that to restrict voting for Office of Hawaiian Affairs Trustees to Kānaka Maoli was a violation of the 15th Amendment of the US Constitution, section 1 of which states that the rights of citizens of the United States to vote "shall not be denied or abridged by the United States or by any state on account of race, color" (LII n.d.; Anwar 2000).<sup>35</sup> The case was filed by Hawai'i Island rancher Harold "Freddy" Rice, of the missionary Rice family, backed in part by the "Campaign for a Color-Blind America Legal Defense and Educational Foundation" which is opposed to affirmative action (Donnelly 2000). Rice was represented by lawyer, John Goemans, who claims that racial tensions in Hawai'i have been escalating during the last 20 years because of "race-conscious state policies" (Campaign for a Color-Blind America 1999). After the ruling, Goemans stated that it "left other publicly funded programs earmarked for Kānaka Maoli vulnerable to constitutional challenges," and that the

Rice decision is the supreme law of the land [...]. The court has held explicitly that "Native Hawaiians" is a racial category, not a political one. And because it is racial, all governmental actions specific for Native Hawaiians are presumptively unconstitutional (Anwar 2000a).

Kānaka Maoli present at the court hearings have criticized the quality of the State of Hawai'i's defense (personal communication; see also Anwar 1999). This ruling reversed Judge Ezra's 1996 Federal District Court ruling that stated that "while Native Hawaiians are not now a federally recognized tribe they nevertheless have a special relationship that removes the question of voter eligibility in a special election from heightened constitutional scrutiny" (quoted from OHA n.d.). The Ninth Circuit Court of Appeals agreed with Judge Ezra and maintained that the OHA's voting restrictions were "not primarily racial, but legal and political" (ibid.).

Attorney John Goemans, who seems to be the driving force behind these lawsuits, also represents Honolulu resident Patrick Barrett (a "shy, middle-aged, of modest means and [...] disabled," non-Hawaiian 'taxpayer'" (Anwar 2000a,b)), who in October 2000 filed a federal lawsuit against the State of Hawai'i, challenging Article XII of the State Constitution.

Article XII, which was added to the State Constitution after the 1978 constitutional convention, contains provisions securing key rights of Kānaka Maoli: rights to homesteads, to revenues from ceded lands, and to practice access and gathering. It includes the HHCA, and section 7 states that "the state reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the state to regulate such rights" (quoted from Lucas 1991:216). Furthermore, Article XII was the basis for creation of the OHA in 1980 as a state agency and public trust ("a semi-autonomous 'self-governing body'" "with a mandate to better the conditions of both Native Hawaiians and the Hawaiian community in general," the former ("Hawaiians of at least 50% blood quantum") with funds obtained from revenues from the public lands designated as "ceded," and the latter with funds provided annually by the legislature (OHA n.d.).

Mr. Goemans contends that Article XII violates the 14th Amendment of the US Constitution, section 1 of which secures "equal protection of the laws" for all (Anwar 2000a). The lawsuit contains a motion for a preliminary injunction to stop operations of the OHA and the DHHL. The suit states that the US Supreme Court held in the *Rice v. Cayetano* that

the definitions of "Hawaiian" and "Native Hawaiian," as used in Article XII of the Hawaii Constitution, are racial classifications. Accordingly, this Article, in that it provides for governmental benefits, services, entitlements and other emoluments to a limited number of Hawaiian citizens, based solely upon their race, violates the Equal Protection Clause to the United States Constitution (*Barrett v. State of Hawaii* 2000:Sect. 8).

Each of the three types of Hawaiian rights is addressed individually. Below is quoted part of the section attacking the Hawaiian homelands.

THIRD CLAIM FOR RELIEF – HHC is Unconstitutional [...]

22. The Hawaiian Homes Commission ("HHC") [...] is a state agency that controls approximately 12% of the public lands of Hawaii and receives millions of dollars from activities conducted on those lands.

23. HHC uses such public lands and funds for the exclusive benefit of two racially defined classes of Hawaiian citizens: "Native Hawaiians," defined as those descendants of the "races inhabiting the Hawaiian Islands previous to 1778" of not less than 50 percent of "Hawaiian blood" and "Hawaiians," defined as those with any "Hawaiian blood." Such use of race to provide Hawaiian citizens based solely upon their race violates the Equal Protection Clause, unless the state proves a compelling governmental interest in such racial preferences and, as well, a narrowly tailored program for implementing such defined interest.

24. Even though HHC may have been created and maintained by Defendants pursuant to an agreement with, or requirement by, the United States, there was, even at the time of adoption of the Hawaiian Homes Commission Act, no compelling governmental interest for the patent racial preferences which the Act provides and requires. Moreover, even if such a compelling governmental interest existed at the time, the Act and resulting practices are now narrowly tailored and, accordingly, violative of the Equal Protection Clause of the United States Constitution.

25. Because Defendants' use of race in this manner cannot survive strict scrutiny, even if Article XII of the Hawaii Constitution is not void in its entirety, those provisions of Article XII, and all state laws, regulations and governmental rules creating and implementing HHC are void, as a matter of law.

26. Pursuant to 42 U.S.C. Secs. 1981 and 1983, Plaintiff is entitled to a declaration that Article XII of the Hawaii Constitution and all State laws, regulations and governmental rules creating and implementing HHC are void as violative of the Fourteenth Amendment to the United States Constitution.

27. Plaintiff is further entitled to an injunction barring Defendants, or any other agent of the State of Hawaii, from creating, maintaining, implementing or otherwise granting preference to any person or class under the authority of HHC (*Barrett v. State of Hawaii* 2000:Sect. 22-27).

The Kanaka Maoli community considers the lawsuit a dangerous attack on its existence, and several organizations and groups are taking actions to prevent a repetition of the *Rice v. Cayetano* ruling.<sup>36</sup> The Barrett case once more challenges the existence of the Hawaiian Homes program based on claims of racial preferential treatment, which has been refuted several times through the history of the program as mentioned above. However, the precedence of the Rice ruling makes the present lawsuit a serious threat to the protection of the indigenous rights of the Kānaka Maoli. Under the US Constitution, the only option to save Native Hawaiian programs seems to be to follow federal policy and have the Kanaka Maoli people recognized as a Native American tribe for whom the constitution allows special laws and a domestic government status (Morin 1998). The Federal Recognition or Akaka Bill (SB 2899/HB4704), which already was before Congress when the Barrett suit was filed, is primarily trying to create such a status for Kānaka Maoli (US Congress 2000). The majority of the Kanaka Maoli community is therefore supporting the bill – many with regrets – as the only way to protect Kanaka Maoli rights within the current system (CHS 2001). Others stress the importance of preserving the status of Kānaka Maoli as a separate people and nation, and not relinquish their inherent right to self-determination which was confirmed in the Apology Resolution of 1993 (US Congress 1993).<sup>37</sup>

As the rights and claims of Kānaka Maoli over the years were acknowledged, they also seem to have become increasingly problematic from a governmental points of view. Huge sums of money and land areas are involved. Not only are Kānaka Maoli entitled to special programs, their rights also often have been, if not prohibiting, then at least obstructing development projects, as documented by the great number of land struggles over the last 30 years (Minerbi 1994; Cooper and Daws 1985).

In the end, the economy of the State of Hawai'i and the state's designated role in the global economy as a tourist destination are the issues at stake, being threatened by political activity and land and economic claims by the Kānaka Maoli. It is paramount for the continuation of the tourism/land development complex to control this situation (see Kent 1999 and several articles in this volume), and it makes one wonder if it would at all be an advantage for the state to win in the Barrett lawsuit.

As the local Hawai'i elite has become strengthened through involvement with transnational corporations, so was the Kanaka Maoli movement for indigenous rights strengthened by becoming increasingly involved with transnational indigenous organizations and institutions (such as the United Nations and its Working Group for Indigenous Peoples; Prejean 1994), forming alliances with other indigenous peoples and using the modern electronic means of communication in their struggle. And so is the recent onslaught on established indigenous rights also an integrated part of the pattern of global politics (Friedman n.d.:5).

The involvement of powerful national organizations, such as Campaign for a Color-Blind America, in the public policy of homesteading in Hawai'i is akin to the politics of the transnational elite (see Aoudé this issue and Friedman n.d.). Are we witnessing the elite's struggle to keep its grip on Hawai'i's resources and politics, and to protect its economic interest under the guise of protecting democracy and equal rights under the law – which this elite at the same time according to recent research (Friedman n.d.) is trying to do away with on the level of the working people?

In an increasingly globalized world, local survival strategies might be unwanted, from the point of view of the national leaders and transnational corporations. A population dependent on importation of food and other necessities is easier to control than a self-sufficient population. Furthermore, indigenous peoples worldwide, as remnants of colonial politics, often have control over or claim rights to vast land areas (Kempf 1993:5) such as Hawai'i's homelands and ceded lands. These lands, which typically were left to the original inhabitants by the colonizing settler governments because they were "useless," are now coveted by the national governments and their transnational partners because modern technology has made it possible to exploit their resources. Indigenous peoples (and environmentalists) who claim rights to these lands and waters, and who claim responsibility and compassion for the lands, are in the way of such exploitation. Consequently, after the initial success of the global indigenous rights movement, indigenous peoples are now in many places forced to fend off recurrent attempts to contain or take away their human rights (Hasager 1999), as witnessed in the case of the Kānaka Maoli through the 1990s.

## Conclusion

As amply documented by several of the authors in this issue of *Social Process in Hawai'i*, the public policies of the recent governments have been to promote the tourism industry. As multinational corporations are increasingly displaced by transnational corporations, Hawai'i's role in the international division of labor and production is still that of a tourist destination. And the role of the Hawai'i state government is still to facilitate this business. Seemingly diversified agriculture and other efforts to diversify the economy as a whole do not change this fact. The implication for administration of the land in Hawai'i is a continued



focus on the tourism/land development complex which means continued competition and conflict over prime agricultural land and beachfront property.

The actual implementation of the Hawai'i state government's politics have neither encouraged homesteading nor small-scale farming, and the government does not seem to have any particular interest in maintaining either at the present. On the contrary, because the Hawaiian Homes program, now virtually the only forum for allotment of homesteads in Hawai'i, constitutes a special form of homesteading closely associated with Kanaka Maoli rights, the tourism industry, and therefore the government, might benefit by limiting (or ending future) Kanaka Maoli claims for land and other rights – as the Akaka Bill might do – or by dismantling the institution of Hawaiian homelands altogether to free up resources – as the Barrett lawsuit threatens to do.

## Notes

1. This section is based on Marion Kelly's research of Kanaka Maoli culture and land history, begun more than 50 years ago. It summarizes findings extensively documented elsewhere (see for instance, Kelly 1956,1980,1994,1997,n.d.; Hasager 1997b).
2. Lee had interests in a sugar plantation on Kaua'i and was the first president of the Royal Hawaiian Agricultural Society, established in 1850. He was also a close friend of Charles Reed Bishop, banker and future husband of Bernice Pauahi whose land possessions became the Bishop Estate, now comprising 368,000 acres or 9% of the lands of Hawai'i (Juvik and Juvik 1998:227). He arrived in Hawai'i in 1846 and was almost immediately put to work in the government by Judd. He was the consultant when the United States and the Hawaiian governments discussed annexation in 1854 – two years after a major crisis in the sugar market. Almost forty years later, deterioration of the sugar market actually led to annexation (Kuykendall 1938:327-28).
3. The comparison with slave conditions is no coincidence. The Penal Code was written by lawyer and planter William Little Lee, who looked to Southern slave states for inspiration: "I am greatly indebted to the labors of the commissioners appointed to prepare a penal code for Massachusetts, [...] and also to those of Mr. Livingstone in the penal code for Louisiana. From both of these able works I have borrowed largely (Kingdom of Hawai'i 1850:iii-iv).
4. In 1920 only about 20 percent of the lands of the territory was mapped. The original lands set aside were not inventoried for many years (Vause 1962:116).
5. A strong argument for not setting aside first class agricultural lands for homesteading was the fiasco of the Waiākea homesteading project which became the only experiment of turning a major sugar operation over to homesteaders. Its failure made it a crucial victory for the planters, "proving" that homesteading on prime sugar lands was too costly for the government and would not do the homesteaders any good. However, the Waiākea project did not fail because the concept of homesteading was wrong or the homesteaders despondent, as it was assumed. In 1925, the legislature's Waiakea Homestead Commission investigated the project and concluded that it had failed because of the government's lack of oversight, and planning and the Mill's bad management and lack of cooperation (McGregor 1989:265).
6. "More than 28,000 acres in Maui are undeveloped, and without adequate water; more than 9,000 acres on Molokai are in the Conservation District, suitable only for such use as a game reserve; about 49,000 acres are in the remote Humuula area in Hawaii. These three areas alone account for nearly half of the department's total land holdings" (DHHL n.d.:1-2).
7. Influential families, most of them originally missionary families, and in this second decade of the 20th century members of the Big Five oligarchy. The latter family today includes Freddy Rice, whose "interest" in Kanaka Maoli affairs has had serious consequences for them today (see below).

8. "The natives of the islands [...] are our wards, [...] for whom in a sense we are trustees," said Secretary of Interior, Lane, quoted from McGregor (1990:22).
9. The information in the following sections is from the original act (HHCA 1921 as amended), unless otherwise noted. Numbers in parentheses refer to sections of the act.
10. The five-year probation period, during which time only land on Moloka'i and a few spots on Hawai'i were to be homesteaded, gave the ranchers time to negotiate new general leases on lands which were in "danger" of being homesteaded in this period. Much of the ranch land of Hawai'i Island is still under lease (Faludi 1991; DHHL 1998:35), even though it can be withdrawn and homesteaded "whenever [...] the commission is of the opinion that the lands are required [for homesteading]" (212).
11. There is no doubt that the administrators knew about the dangers of salination of the Kalaniana'ole Settlement irrigation water. Some of them were involved in both ventures (Cooke 1949:2,76ff). However, this did not stop the commissioners from including this area as the first to be opened up for farming by Hawaiian homesteaders. It was a complete failure.
12. Under section 221 of the HHCA, the homesteaders are entitled to first right to water from government lands for domestic and livestock water uses, free of charge (221(b)) and for "the additional purpose of adequately irrigating any tract, to use, free of all charge, Government-owned water upon the island of Molokai" and a few other places. From 1990, water for agricultural purposes was included in section 221, which gave the DHHL first priority to water. Act 325 from 1991, furthermore, requires that the DLNR consults with the DHHL before any water licenses are given. State and county agencies must respect present as well as future needs of the homesteaders (Kamau'u 1993:3).
13. "It is not true that many homes built by contractors hired through the department are 'falling apart or deemed substandard'," writes the department in a comment responding to a *Wall Street Journal* article which created nationwide awareness of the situation of the Hawaiian Homes program (Faludi 1991). In 1995 Anahola homesteader Kahale Smith who was protesting the quality of his home killed himself under a forced eviction (Nation of Hawai'i n.d.).
14. Murakami (1991:49) finds the Admission Act consistent with the US termination policy in the 1950s, in effect denying American Indian peoples their rights as peoples.
15. Such a status was for a while considered promising by some Kānaka Maoli, but after closer affiliation with the American Indians and the indigenous rights movement, supplemented with an explosion of research into their own history, in the mid-1990s, many no longer were in favor of "tribal status" (Morín 1998).
16. OSP 1992:37-38; Act 323, "Individual Claims Resolution under the Hawaiian Home Lands Trust," (reprinted in OSP 1992:Exhibit I; DHHL 1995).
17. The 130 parcels granted or sold before statehood comprised 744 acres, many in Lualualei and Waimānalo. The state continued this practice and granted or sold off 15 acres in 16 parcels in Lualualei (O'ahu) and Anahola (Kaua'i) (OSP 1992:Exhibit F).
18. William Burgess, Thurston Twigg-Smith, and 11 other Hawai'i residents followed this with a federal court case challenging the constitutionality of barring non-Kānaka Maoli from serving as OHA trustees (Anwar 2000a). They won summary judgment and the 2000 election brought the first elected non-Kānaka Maoli, Charles Ota, in as a trustee.
19. The Akaka Bill proposes a Native Hawaiian Government under the US Department of Interior.

## References

Ahahui Puuhonua o na Hawaii. n.d. Circular c. 1917. Kalaniana'ole Collection, State Archives.

- Alexander, William DeWitt. 1891. "A Brief History of Land Titles in the Hawaiian Kingdom." *Thrum's Hawaiian Annual for 1891*:105-34.
- Anwar. 1999. "Great Day for Plaintiff Is Worrisome for Others." *Honolulu Advertiser*. October 7.
- \_\_\_\_\_. 2000a. "Rice Attorney Goes After Law Creating OHA." *Honolulu Advertiser*.  
<http://the.honoluluadvertiser.com/2000/Oct/02/102localnews12.html>
- \_\_\_\_\_. 2000b. "Quiet man Takes on OHA Challenge Alone." *Honolulu Advertiser*.  
<http://the.honoluluadvertiser.com/2000/Oct/04/104localnews15.html>
- Aoudé, Ibrahim. 1994. "The Housing Crisis and the State's Development Strategy." *Social Process in Hawai'i* 35:71-84..
- Barrett v. State of Hawaii*. 2000. Case filed before the US District Court for the District of Hawaii. October.
- Blackman, William F. 1899. *The Making of Hawaii: A Study in Social Evolution*. New York: Macmillan Company.
- Campaign for a Color-Blind America. 1999. "News Release: Supreme Court to Hear Hawaiian Voting Case." <http://www.equalrights.com/release032799.html>
- CHS, Center for Hawaiian Studies and 'Ilio'ulaokalani. 2001. Educational Forum on *Barrett v. Cayetano*. Center for Hawaiian Studies, University of Hawai'i at Mānoa. January 10.
- Cooke, George P. 1949. *Moololo o Molokai. A Ranch Story of Molokai*. Honolulu: Honolulu Star-Bulletin.
- Cooper, George, and Gavan Daws. 1985. *Land and Power in Hawaii*. Honolulu: Benchmark Books.
- Coulter, John. W. 1933. *Land Utilization in the Hawaiian Islands*. University of Hawaii Research Publication 8. Honolulu: The Printshop Co.
- DHHL, State of Hawai'i, Department of Hawaiian Home Lands. 1971, 1979, 1998. *Annual Reports*. Honolulu: Department of Hawaiian Home Lands.
- \_\_\_\_\_. 1991. "Comments on the Wall Street Journal Article of September 9." Ms. 9 pp.
- \_\_\_\_\_. 1992. "Historical Overview of the Hawaiian Homes Commission Act." December 7. 3 pp.
- \_\_\_\_\_. 1995. Untitled report. 47 pp. August 29.
- \_\_\_\_\_. 1997. *Department of Hawaiian Home Lands: An Overview*. Honolulu: Department of Hawaiian Home Lands. May.
- \_\_\_\_\_. 1999. "Fact Sheet of the Department of Hawaiian Home Lands." June 30. 8 pp.
- \_\_\_\_\_. n.d. Presentation flyer, approximately 1992.
- Dinell, Tom, Herman S. Doi, Robert H. Horwitz, Michael A. Meriwether and Allan A. Spitz. 1964. *The Hawaiian Homes Program, 1920-1963, a Concluding Report*. State of Hawai'i, Legislative Reference Bureau Report No. 1. Honolulu: University of Hawaii.
- Dole, Sanford B. 1892. "Evolution of Hawaiian Land Tenure." *Hawaiian Historical Society Papers* 1892 (3):1-18.
- Donnelly, Christine. 2000. "Rice: It's About protecting the Constitution, not 'racist'." *Star-Bulletin*.  
<http://starbulletin.com/2000/02/23/news/story3.html>
- Faludi, Susan C. 1991. "Broken Promise. How Everyone Got Hawaiians' Homelands Except the Hawaiians." *The Wall Street Journal*. September 21.

- Federal-State Task Force. 1983. *On the Hawaiian Homes Commission Act. Report to United States Secretary of the Interior and the Governor of the State of Hawaii*. August 15. Honolulu: The Task Force.
- Friedman, Jonathan. 1994. *Cultural Identity and Global Process*. London: Sage Publications.
- \_\_\_\_\_. n.d. "The Paradoxes of 'Real-Existing Globalization.' Elite Discourses and the Grassroots." Ms, 14 pp.
- Fuchs, Lawrence. 1961. *Hawaii Pono. A Social History*. New York: Harcourt, Brace and World.
- HAC, The Hawaii Advisory Committee to the United States Commission on Civil Rights. 1980. *Breach of Trust? Native Hawaiian Homelands*. Washington DC: US Government Printing Office.
- \_\_\_\_\_. 1991a. "Federal Government Accused of Failing Native Hawaiians." Press release, December 12.
- \_\_\_\_\_. 1991b. *A Broken Trust. The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians*. John F. Dulles II (ed.). December. Washington DC: US Government Printing Office.
- Hasager, Ulla. 1997a. "Localizing the American Dream: Constructing Hawaiian Homelands." Pp. 165-92, in K. F. Olwig and K. Hastrup (eds.): *Siting Culture. The Shifting Anthropological Object*. London and New York: Routledge.
- \_\_\_\_\_. 1997b. "Understanding People and Land; Constructing Homelands on Moloka'i Hawai'i." Ph.D. Dissertation. Copenhagen: Institute of Anthropology.
- \_\_\_\_\_. 1999. "Indigenous Rights, Praxis, and Social Institutions." *Social Process in Hawai'i* 39:155-80.
- Hasager, Ulla, and Kawaipuna Prejean. 1992. "Hawai'i: Administering Hawaiian Homelands: A Trust Broken - Civil Rights Denied." *IWGIA Newsletter* 2:. Copenhagen: The International Work Group for Indigenous Affairs.
- Hawaii Observer*. 1975. October 28.
- HHC, Hawaiian Homes Commission. 1925. 1937. *Annual Reports to the Legislature of Hawaii*. Honolulu: Office of the Hawaiian Homes Commission, Territory of Hawaii.
- HHCA, *Hawaiian Homes Commission Act*. 1921. Act of July 9, 1921, Pub.L. No 34, ch. 42, 42 Stat. 108 and amendments.
- Horwitz, Robert, Judith B. Finn, Louis A. Vargha and James W. Ceaser. 1969. *Public Land Policy in Hawaii: An Historical Analysis*. Legislative Reference Bureau. Report No. 5. Honolulu: University of Hawai'i.
- Juvik, Sonia P., and James O. Juvik. 1998. *Atlas of Hawai'i*. Third edition. Department of Geograh, University of Hawai'i at Hilo. Honolulu: University of Hawai'i Press.
- Kamakau, Samuel Manaiakalani. 1992[1961]. *Ruling Chiefs of Hawaii*. Honolulu: Kamehameha Schools Press.
- Ka Mana o Ka 'Āina*. 1989. "The Hawaiian Homes Program." Bulletin of the Pro-Hawaiian Sovereignty Working Group. May/June.
- Kamau'u, Māhealani, 1993. Testimony before the Peoples' International Tribunal Hawai'i 1993, Ka Ho'okolokolonui Kanaka Maoli. August 14.
- Kame'eleihiwa, Lilikalā. 1992. *Native Lands and Foreign Desires – Pehea Lā E Pono Ai?* Honolulu: Bishop Museum Press.

- \_\_\_\_\_. 1994. "The Role of American Missionaries in the 1893 Overthrow of the Hawaiian Government." Pp. 106-19, in: U. Hasager and J. Friedman (eds.): *Hawai'i – Return to Nationhood*. Document 75. Copenhagen: International Work Group for Indigenous Affairs.
- Keesing, Felix M. 1936. *Hawaiian Homesteading on Molokai*. University of Hawaii Research Publications 12. Honolulu: University of Hawaii Publications.
- Kelly, Marion. 1956. "Changes in Land Tenure in Hawaii, 1778-1850." Thesis. University of Hawai'i at Mānoa.
- \_\_\_\_\_. 1980. "Land Tenure in Hawaii." *Amerasia* 7(2):57-73.
- \_\_\_\_\_. 1994. "Foreign Investment in Hawai'i." *Social Process in Hawai'i* 35:15-39.
- \_\_\_\_\_. 1997. "Ahupua'a: A Kanaka Maoli System of Natural Resource Enhancement, Utilization and Preservation." Paper presented at Save Our Seas Conference, Kaua'i, June 12-14. 12 pp.
- \_\_\_\_\_. 2000. Interview with Kali Watson, former Chairman of DHHL. August.
- \_\_\_\_\_. n.d. "The Crown Lands." 2 pp.
- Kempf, Elizabeth (ed.). 1993 *Indigenous Peoples and Protected Areas. The Law of Mother Earth*. London: Earthscan Publications.
- Kent, Noel J. 1993. *Hawaii. Islands Under the Influence*. Honolulu: University of Hawaii Press.
- \_\_\_\_\_. 1999. "Notes on Globalization as Salvation: The Myth That Never Dies." *Social Process in Hawai'i* 39:275-83.
- Kingdom of Hawai'i. 1850. *Penal Code of the Hawaiian Islands, Passed by the House of Nobles and Representatives on the 21<sup>st</sup> of June, A. D. 1850*. Honolulu: Government Press.
- Kuykendall, Ralph S. 1938. *The Hawaiian Kingdom, Volume 1, 1778-1854: Foundation and Transformation*. Honolulu: University of Hawai'i Press.
- \_\_\_\_\_. 1953. *The Hawaiian Kingdom, Volume 2, 1854-1874: Twenty Critical Years*. Honolulu: University of Hawai'i Press.
- Lâm, Maivan Clêch. 1993. Prosecutor Advocate's Speech before the Peoples' International Tribunal Hawai'i 1993, Ka Ho'okolokolonui Kanaka Maoli. August 14.
- \_\_\_\_\_. 1994. "The Land Rights of *Maka'āinana*." Pp. 152-62, in: U. Hasager and J. Friedman (eds.): *Hawai'i – Return to Nationhood*. IWGIA Document 75. Copenhagen: International Work Group for Indigenous Affairs.
- Lee, Cynthia. 1991. "The Doctrine of Adverse Possession." Pp. 119-46, in: M. K. MacKenzie (ed.): *Native Hawaiian Rights Handbook*. Honolulu: Native Hawaiian Legal Corporation and Office of Hawaiian Affairs.
- LII. Legal Information Institute. n.d. "Supreme Court of the United States. *Rice v. Cayetano*, Governor of Hawaii." <http://supct.lw.cornell.edu/supct/html/98-818.25.tml>
- Lind, Andrew W. 1938. *An Island Community: Ecological Succession in Hawai'i*. Chicago: University of Chicago Press.
- Loudat, Thomas A., A Roy Horn, and Robert Lucas. 1994. *An Historical Performance Review of the Hawaiian Home Lands Trust (August 21, 1959, to June 30, 1988)*. Prepared for Hawaiian Home Lands Trust Individual Claims Review Panel, State of Hawai'i.
- Lucas, Paul. 1991. "Access Rights." Pp. 211-22, in: M. K. MacKenzie (ed.): *Native Hawaiian Rights Handbook*. Honolulu: Native Hawaiian Legal Corporation and Office of Hawaiian Affairs.

- Luter, George W. 1961. *Report on Homesteading in Hawaii, 1839-1961*. Honolulu: Department of Land and Natural Resources.
- Lydgate, J. M. 1915. "The Vanishing Kuleana." *The Hawaiian Annual*. Honolulu: Thomas G. Thrum.
- McGregor, Davianna Pōmaika'i. 1989. "Kupa'a I ka 'Aina: Persistence on the Land." Ph.D. Dissertation, University of Hawai'i.
- Minerbi, Luciano. 1994. "Native Hawaiian Struggles and Events: A Partial List 1973-1993." *Social Process in Hawai'i* 35:1-14.
- Morín, José L. 1997. "Self-determination and Decolonization." Flyer. 8 pp.
- \_\_\_\_\_. 1998. "Indigenous Peoples Rights, Kanaka Maoli Self-Determination." *Indigenous Affairs* 1:36-45.
- Murakami, Alan. 1991. "The Hawaiian Homes Commission Act." Pp. 43-76, in: M. K. MacKenzie (ed.): *Native Hawaiian Rights Handbook*. Honolulu: Native Hawaiian Legal Corporation and Office of Hawaiian Affairs.
- Nation of Hawai'i. n.d. "E Ho'omana'o Kakou Ia Kahale. Remember Kahale Smith." <http://www.hawaii-nation.org/kahale.html>
- National Press Photographers Association. 1996. "The Electronic Photojournalism Workshop." <http://www.kcc.hawaii.edu/news/kapio/hawnssov/ceded-state.html>
- NHSC, Native Hawaiian Studies Commission. 1983. *Claims of Conscience: A Dissenting Study of the Culture, Needs, and Concerns of Native Hawaiians*. Volume 2 (Minority Report). [Honolulu].
- OHA, State of Hawai'i, Office of Hawaiian Affairs. n.d. "About OHA." <http://www.oha.org>
- Omandam, Pat. 1999a. "State, OHA \$53.3 million Apart on Ceded Lands." *Star-Bulletin*. <http://starbulletin.com/1999/04/27/news/story2.html>
- \_\_\_\_\_. 1999b. "State Would Pay OHA \$16 Million Next Year." *Star-Bulletin*. <http://starbulletin.com/1999/05/01/news/story7.html>
- OSP, State of Hawai'i, Office of the Governor, Office of State Planning. 1991. *Governor's Action Plan*. Honolulu: Office of the Governor.
- \_\_\_\_\_. 1992. *Federal Breaches of the Hawaiian Home Lands Trust*. Part 1. Honolulu: Office of the Governor.
- Prejean, Nākoa. 1994. "Kānaka Maoli and the United Nations." Pp. 276-85, in: U. Hasager and J. Friedman (eds.): *Hawai'i – Return to Nationhood*. IWGIA Document 75. Copenhagen: International Work Group for Indigenous Affairs.
- Sahlins, Marshall. 1985. *Islands of History*. Chicago: University of Chicago Press.
- Spitz, Allan A. 1963. *Organization and Administration of the Hawaiian Homes Program*. Working Paper. State of Hawai'i, Legislative Reference Bureau Report 1c. Honolulu: University of Hawai'i.
- \_\_\_\_\_. 1964. "The Hawaiian Homes Program: A Study in Ideological Transplantation." Thesis. Department of Political Science, Michigan State University.
- Tamura, Eileen. 1994. *Americanization, Acculturation, and Ethnic Identity. The Nisei Generation in Hawaii*. Urbana and Chicago: University of Illinois Press.
- Territory of Hawaii. 1925. *Revised Laws of Hawaii*. Honolulu: Honolulu Star-Bulletin Ltd.

- Trask, Mililani. 1994. "The Politics of Oppression." Pp. 71-87, in: U. Hasager and J. Friedman (eds.): *Hawai'i – Return to Nationhood*. IWGIA Document 75. Copenhagen: International Work Group for Indigenous Affairs.
- US Congress. 1990. *Administration of Native Hawaiian Home Lands*. Joint Hearings before the State Committee on Indian Affairs, United States Senate and the Committee on Interior and Insular Affairs. House of Representatives, 101st Congress, 1st Session. 5 volumes. Washington DC: US Government Printing Office.
- \_\_\_\_\_. 1993. Public Law 103-150, S. J. RES. 19, signed by President Clinton, November 23, 1993, 103rd Congress, 107 STAT. 1510-14 ("Apology Resolution").
- \_\_\_\_\_. 2000. "A bill to express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes." S2899, 106th Congress. <http://thomas.loc.gov/> ("Akaka Bill").
- US Department of the Interior. 1982. *Review of Hawaiian Homes Commission Programs*. Washington, DC: Department of the Interior.
- Vause, Marylyn M. 1962. "The Hawaiian Homes Commission Act, 1920. History and Analysis." MA Thesis, University of Hawaii at Mānoa
- Weber, Max. 1958[1930]. *The Protestant Ethic and the Spirit of Capitalism*. London: G. Allen and Unwin.
- Wyllie, Robert C. 1848. *Answers to Questions Proposed by His Excellency R. C. Wyllie, His Hawaiian Majesty's Minister of Foreign relations, and Addressed to All the Missionaries in the Hawaiian Islands, May 1846*. Honolulu: Department of Foreign Affairs.