Introduction

How the Land Was Taken, How the Land Was Lost

The Hawaiians lost their land in the nineteenth century. About that there can be no argument. In the roughly fifty years prior to the 1893 overthrow of the Hawaiian monarchy, 90 percent of all land in the Islands passed into the control or ownership of non-Hawaiians.

Common wisdom has been that the loss—or the taking—of the land began with the Great Māhele (Division), 1846–1855, and that it was quickly accomplished. This is only partly true. What the Great Māhele did was to create, for the first time, land titles to kuleana—homestead lots of the people—and to ahupua’a—land districts of the ali‘i, the rulers.

In traditional Hawaiian society there were no land titles, and, strictly speaking, no ownership of land. But there were use rights. Before the Great Māhele, a large number of land-use rights existed for all Hawaiians, the people as well as the ali‘i. With land titles came the concept of land ownership. With that came the possibility of buying, selling, mortgaging, and foreclosing land, and with that came the reality of taking and losing land.

With the conversion of traditional land-use rights into private property through the Great Māhele, land became a commodity; thus, land became alienable (able to be taken or lost). This concept of land alienation, a foreign-controlled government not sympathetic to Hawaiian land-use rights, and a period of population decline proved disastrous for Hawaiians.

So the land was lost. But exactly how and exactly when? The conventional wisdom has been that the people lost their kuleana rapidly—indeed almost immediately—through ignorance of Western law and the
sharp practices of Haole (whites). By looking in detail at what happened in the land division of Kahana on O‘ahu, however, we see a picture that challenges and supplants conventional wisdom.

One surprising finding is that, although the *ahu`a* of the *ali`i* were rapidly lost, the people’s *kuleana* homesteads awarded during the Māhele remained largely unalienated for a generation. In fact, a generation after the Māhele in Kahana, not a single part of any *kuleana* had been taken. Loss of homesteads did not occur until the passing of a particular mortgage and foreclosure law in 1874, and most taking of *kuleana* through that law date from the late 1880s.

A related finding is that the concept that the monarchy’s government was being “Hawaiian” during the half-century prior to its fall warrants reassessment. The 1874 act that played the central role in the loss of the people’s land was introduced by Haole. The unicameral legislature was presided over by the leading banker of the day, an American, who incidentally would be expecting increases in both his own business and his profits through an opening of a market for these lands.

The bill was referred to a special committee, headed by a Haole, and the bill’s progress was recorded in the Legislature’s minute book by its two secretaries, both Haole. Once passed, the bill was approved by the executive cabinet, with three Haole among its four members. The law’s constitutionality, if it had been questioned, would have been ruled on by the exclusively Haole Supreme Court. In this fifty-year period prior to 1893, wherein the bulk of the land was lost, 94 percent of Supreme Court justices were Haole, as were 82 percent of the extremely powerful executive cabinet members and a great many of the legislative leaders.

Another finding is that the people were not naive victims, as is popularly assumed. They quickly learned the ropes of the Western legal system and tenaciously used legal maneuvers to hold on to their lands. They resisted strongly in many innovative ways.

The most significant manifestation of this was the quintessentially Hawaiian Hui Movement of the 1870s and onward. A *hui* was a native cooperative, established to buy and manage *ahu`a* (land divisions), using a modicum of Western legal structure to establish a very Hawaiian cooperative land-tenure social system. A *hui* was established in Kahana as were others in land divisions throughout the Islands—a well-thought-out and organized attempt to restore a traditional system of living on the land.
Within the bylaws, bookkeeping records, and other surviving documents of the Kahana Hui is a story of the lives of Hawaiian men and women who had been born before private property existed in the Islands. The system established by them gave each family exclusive use rights to a homestead and an undivided use-right to the remainder of the land division and its off-shore fishery. This system was similar to traditional Hawaiian land-use rights and attempted to provide an alternative to the Western market economy. As with the Great Māhele homesteads, however, the “shares” in a hui could be alienated. The Hui Movement, 1875–1920, is little known. In the end it did not prevail, in Kahana or elsewhere. It was brought down by population decline, the right of land alienation, and a Western legal system biased against it.

Another example of legal sophistication occurred earlier, in 1865, when the Western-dominated government had passed a law saying that if a kuleana owner died without known heirs, his or her land would go to the (often Haole) owner of the surrounding land division. This created a burden on the people’s continued ownership of land and an incentive to the ahupua’a landowner to see the people die without finding heirs.

The people quickly reacted to this threat by establishing innovative and very Hawaiian legal defenses, including, before their deaths, reserving life-interests in the land to themselves, but deeding their kuleana homesteads to beloved heirs, usually for a nominal price and aloha.

Thus the people did indeed resist, be it by land deed or hui document. The conventional understanding that the people were treated badly and lost land is true enough. But the common view, even by well-meaning people, of almost immediate loss without resistance—of victimhood—needs to be reassessed. There was instead a widespread, intelligent resistance, often notable by the Hawaiianness of its response.

The primary lesson here is that a policy that permitted land alienation of kuleana or hui homesteads was anathema to continued Hawaiian use of land. Had alienation not been an option, the homesteads and resources of Kahana and elsewhere in Hawai‘i would have been preserved as a base on which to continue a cooperative Hawaiian system of land-use rights. All it would have taken was a relatively simple change in the law, one that is a common rule today for native homesteads internationally. With such a change, Hawaiians would have remained ultimately in control of their land and evolved their social system, vis-à-vis Western culture, as they saw fit.
In Kahana, as elsewhere, the Great Māhele divided each valley-sized ahupua’a between an absentee landlord, who got the largely undeveloped land, and some families—three dozen or so in Kahana—who received kuleana homesteads. This sundered the two classes of land, heretofore united, and deeply undermined the traditional interconnected social system.

About a third of the undeveloped acres in the Islands went to absentee landlords who were high ali‘i. The Māhele had cut off their traditional claim on the people’s labor. This cut off their cash flow in the new market economy, while forcing them to use their dwindling cash reserves to pay for servants and retainers. And so these ali‘i often found themselves land rich and cash poor, facing the financial demands of a world-class aristocratic lifestyle. In Kahana, for example, the absentee ali‘i was one of the great winners in the Māhele, with an estate of undeveloped lands worth perhaps $60 million in today’s dollars. Leasing of this land might have brought in $1.5 million a year. But this absentee ali‘i had a lifestyle that required the equivalent of $14 million annually. The solution was to operate with a negative cash flow, borrowing money and putting up her land as collateral. When no more loans could be gotten, the mortgaged pieces of the estate were sold off until eventually her family was left with almost nothing. Her Kahana holding was first mortgaged in 1851 and was sold off in 1857, just two years after the Māhele was completed. Thus much of the ali‘i land—in Kahana and elsewhere—went to those who had capital or could get it. The buyers enjoyed a positive cash flow from developing these lands and creating revenue or by speculative profits in buying and selling these parcels. Incidentally, the conventional view of these capitalist investor/speculators deserves reassessment—not all of them were Haole. A good number, as was the case in Kahana, were Pākē (Chinese).

A second third of the undeveloped lands went to the king (Kauikeoauli, Kamehameha III) as an absentee landowner. He and his nephew, who succeeded him on the throne, treated these private lands much as did many of the other high ali‘i—they mortgaged or sold them. By 1865 all the remaining lands in this huge estate were so heavily mortgaged that they were about to be lost. The Haole-dominated government took these lands at that time, eventually paid off their mortgages, and set aside a government allowance, from their revenue, for the throne.

The final third of the undeveloped lands of Hawai‘i were held by the Haole-dominated government. Much of its most attractive land—90
percent of it, said one observer at the time—was sold off to speculators or homesteaders by 1860. With the addition of what had been the King’s Lands in 1865, the government’s landholdings were ultimately managed by the government’s consecutive interior ministers, 80 percent of whom were Haole, through 1893.

These undeveloped lands—originally awarded to high alii, the king, and the foreign-dominated government in the Māhele—thus nearly all passed to non-Hawaiian ownership and control prior to 1893. The Hui Movement regained Hawaiian control of some of these lands. In Kahana’s case, the ahupua’a had been lost to Pākē speculators in 1857; twenty years later it was returned to Hawaiian control through purchase by the Kahana Hui, a hui made up of Kahana kuleana owners and their allies. Haole speculators—including such notable family names as Castle, Wilcox, and McCandless—used sharp Western legal practices (many of which would be illegal today) or purchases from a dwindling number of Hawaiian heirs to acquire Kahana kuleana homesteads or hui shares. A final phase witnessed a consolidation among these speculators. This resulted in a single investor, Mary E. Foster, having near total ownership and control of Kahana by 1920.

Another conventional premise worthy of reassessment deals with the value of land awards in the Māhele. That the people got an aggregate of less than 1 percent of the land while absentee landlords got more than 99 percent has often been stressed. Yet, when the estimated value of these acreages is examined, a different view emerges. The people’s kuleana homesteads were fully developed and productive and came with water rights through existing irrigation systems as well as certain gathering rights outside the kuleana. Their aggregate value across the Islands came to about $2.7 billion (in 2000 dollars), or almost half of all the land values. In short, it was the people’s lands that were the prize, being worth twice as much as the lands of any of the three classes of absentee landlords.

How the land was taken is really the story of how these developed kuleana homesteads were lost, harking back to the hitherto little studied, nonjudicial mortgage act of 1874 and its sad story.

A final topic deserving review is the degree to which the United States and its citizens benefitted from this alienation of the land over the fifty years prior to 1893. Whatever else can be said about American dealings with native peoples, today an area a dozen times larger than all of Hawai’i
makes up “Indian Territory” where native nations exert their own limited sovereignty with their own laws, government, taxes, and land—and are exempt from most other laws and taxes. They thus control great areas of natural resources and such powers as the right to run gambling establishments and other sources of revenue. Tens of millions of additional acres, outside of Indian Territory, is also owned by native nations. Their lands are often inalienable, and it has been the fixed law of the United States since its founding that no non-native may purchase native land—be it a land district or a homestead—without the express authorization of Congress.

When the Hawaiian monarchy fell in 1893 and the Haole-dominated government was transformed into an even more Haole-dominated government, critics charged that the United States had improperly conspired to the change in governments. Not so, was the majority U.S. governmental response. The United States had been the de facto sovereign over the Islands for fifty years, it was said—a claim at least partially supported by the facts and makeup of the Hawai‘i government during that half century—and so the changing of that government was simply an internal police action not covered by international or U.S. constitutional law.

But if this were the case, then all the sales to and the confiscations and takings of land by non-Hawaiians during that fifty-year period are illegal because none was sanctioned by the U.S. Congress. Thus Hawaiians got the worst of both worlds—the exploitation and loss brought about by the West, primarily Americans, and none of the relatively limited protections afforded to other native peoples by the United States.

In the decades from the Great Māhele until 1920, Kahana witnessed some twenty-five hundred conveyances, or transfers, of land, mainly recorded in the Hawaiian language. Many of these were not filed with the government and would not normally be available for study.

Land-tenure documents in Hawai‘i through 1920 that were recorded with the government number perhaps five hundred thousand to a million. Such a number, coupled with the general lack of complete records (although records for Kahana are fairly complete) and the lack of any kind of electronic filing or searching mechanisms for this massive amount of material, explain why no one before has undertaken the task of determining how the land was taken.

This book was made possible, first, by the recent availability of the
Foster Collection at the Archives of Hawai‘i. This previously private and unavailable asset equals a shelf of mostly loose documents 14 feet wide. More significant is the fact that it contains essential basic data—unrecorded conveyances and informants’ private testimonies. Foster’s collection is perhaps unique in Hawai‘i in its completeness. By 1920, she and her agents had documented and acquired nearly all the land parcels in Kahana and had kept careful notes of all their activities.

The second factor behind this book was the advent of the computer as a research tool. I was able to set up a database of electronic note cards that included the twenty-five hundred conveyances and another two thousand items of importance. I could then sort things by date, name of parcel, number of parcel, conveyor and receiver, and so forth. This uncovered patterns that led to such discoveries as the role played by the 1874 mortgage act.

Beyond the unique resource of the previously unstudied Foster Collection, Kahana ranks as an excellent focus of study in its own right. It has a well-defined bay and fishery, a large valley, and a perennial river. It is located on the Ko‘olau (Windward)—that is, the northeast—coast of O‘ahu about 25 miles by car from urban Honolulu. It annually records upwards of 250 inches of rain at its higher elevations, but the relatively small coastal plain is sunny and well suited for agriculture and habitation. Kahana is a representative wet ahupua‘a that apparently had a significant traditional population. It went through the classic stages after Western contact of taro to rice to ranching to sugar, and traditional paths to roads, bridges, and a railroad.

Kahana was a favorite area of the renowned scholarly team of E. S. Craighill Handy and Elizabeth Green Handy. Their work with Kawena Pukui, *Native Planters of Old Hawai‘i* (1972), has a great amount of information on Kahana and surrounding ahupua‘a.

In the late 1960s, all of Kahana was purchased by the State of Hawai‘i for development as a Hawaiian cultural park. The state undertook archaeological, botanical, zoological, and other studies of the area. This rare extensive collection of secondary sources, amounting to another stack of documents, help in understanding the Foster Collection and the ahupua‘a in general.  

This book is laid out in roughly two parts. Chapter 1 through the first half of Chapter 3 forms the story of how most Hawaiians lost their land.
The remainder of Chapter 3 through Chapter 5 gives the history of the Kahana Hui, its initial success and its decline and denouement. By the end, approximately 97 percent of Kahana—including the kuleana homessteads and the hui shares—was owned by a single wealthy individual, Mary E. Foster. Similar stories were repeated across the Islands.

Along the way, this book presents two discussions on how the traditional Hawaiian social system functioned. The first discussion, within the latter part of Chapter 1, analyzes the wealth of evidence from the claims, hearings, and land surveys of the Great Māhele to see how farming and daily life were carried out. The second, within the last half of Chapter 3, analyzes how hui functioned and how this reflected the traditional social system of Hawai‘i.

How the land was taken is important—certainly there can be no argument about that. To answer that question is to explain a key part of the past that shaped the Islands’ present, and contains a lesson for the future as Hawaiians debate how any land-claim settlement will be structured. Should awarded land be kept inalienable, for example? This book exposes new facts, uncovers forgotten answers, gives a different view of history, provides a different methodology in its work, and forces a reappraisal of old information and conventional wisdom.

The large amount of material and modern electronic techniques underlying this book, however, exist simply to isolate the events making up the lives and land struggles of real human beings. The accepted wisdom has been that they were simple people, victims perhaps, but nothing more than “commoners” who played no role in the events of the high and mighty.

Their names and lives, and the names and histories of their lands, have not been forgotten. Indeed, it is their stories, uncovered as the work was done on this book, that tell the story of the taking of the land and answer the question that has plagued researchers for decades: how was the land lost, how was the land taken.