

# Hawaii Land Claims, 1908 - 1989: Reaction to Frank Midkiff's Essay on Hawaiian Land Claims

Senator Daniel K. Inouye Papers

Native Hawaiian Issues, Box NH6, Folder 11

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FILE  
HAWAIIAN LAND  
CLAIM

MEMO FOR: Senator  
FROM: Linda  
DATE: March 28  
RE: Reaction to Frank Midkiff's essay on Hawaiian  
land claims

Frank Midkiff has forwarded the attached essay  
entitled: "Lands of Aborigines: Hawaiians and Alaskans"  
which I have summarized for your review.

He has requested your reaction and comments  
as soon as possible as he is planning to present this essay  
to the Social Science Association on April 1, 1974.

If at all possible, could you call him collect (he  
says) at 808-531-1684 to relay your recommendations  
on the attached essay.

BRIEF OUTLINE OF MAJOR HEADING OF MIDKIFF'S ESSAY

Ancient Hawaiian Land Ownership

Senator Inouye's Solicitous Concern

Hawaiian Lands Still Ceded to the Federal Government

Ceding of Government Lands to the U. S. Without Hawaiian Peoples' Consent

Hawaiian Government Land Created Through Chiefs' Donations

Possible Receding of Some Government Land to Hawaiians

The Great Alaskan Precedent

English Common Law Land Customs Violated Hawaiian Customs and Law

Further Land Readjustments Required to Meet Serious Hawaiian Needs

What was Done for the Alaskan Aborigines

Hawaiians' Rights Equal Rights of Alaskans

Further Hawaiian Restitution Called for

Hawaiian Homes Act A Precedent for More Adequate Action

Chief Features of the Land Readjustment Plan for Hawaiians

SUMMARY OF FRANK E. MIDKIFF'S DRAFT ESSAY

Entitled: "Lands of Aborigines: Hawaiians and Ala skans"

1. Ancient Hawaiian Land Ownership

A. Land ownership amongst residents of the Pacific Islands was very clearly worked out

2. DKI Concern

CRS Study

3. Hawaiian Lands Still Ceded to the Federal Government

A. Annexation: Provisional government of Hawaii ceded the "government lands" to the U.S. Federal Government

B. Statehood Act of 1959 retroceded these lands to the State of Hawaii-but 400,000 acres of Federal land that originally belonged to the Hawaiian chiefs and people are still being held by the U.S. government.

4. Ceding of government lands to U.S. was without the consent (and possibly against the will) of the great majority of the native and aboriginal people.

5. Hawaiian Government land was created through chiefs' donations Mahele required that each land owner (except for the small kuleana owners) would create land to support the government by having each owner transfer title of 1/3 of his great Mahele acquisition to "government lands."

6. Possible Receding of Some Government Land to Hawaiians

- A. CRS Study concludes that it would be impracticable to redistribute all this government land amongst Hawaiians.
- B. However, certain portions of both present Federal government and State lands could be redistributed amongst aboriginal land owners and a fair and substantial cash compensation could be in the form of a Federally-funded Foundation.

7. Great Alaskan Precedent

- A. Hawaiians alone originally owned all the land of these islands.

8. English Common Law Land Customs Violated Hawaiian Customs and Law

Only under the full force and application of the land customs and rights of the English Common Law, as extended to and covering the vast, thinly populated land of America, could the Hawaiians have been inevitably deprived of their birthright by due process of law.

- A. Cites American Samoa example as throughout Polynesia, land titles were held and ownership passed down thru the female side of the family.

- B. Trust Territory of the Pacific Islands - land of the people  
of the Trust Territory - shall be held in fee only by  
aboriginal residents decreed by the administering authority

9. Further Land Readjustment Required to Meet Serious Hawaiian Needs

Cites causes for great and special needs of the Hawaiian people, eg.

- A. Decimation of population due to imported diseases
- B. Changeover to a money economy
- C. Contrast below rapidly dwindling value of unproducing land  
and apparently assured income for Triple A Bonds
- D. General lack of assets and income

10. What was done for the Alaskan Aborigines

- A. Settlement

Title to 40 million acres of land

Cash totaling nearly one billion dollars as payment for

extinguishments of aboriginal title to the rest of the land in Alaska

- B. Oil in Alaska

further inducement for Congress

- C. Modern diplomacy, good politics and even the growing influence of the U.S. and its concern for underprivileged people
- D. Hawaii Organic Act of 1900-like the Alaska Organic Act of 1884 - left open the possibility for some future legislative settlement of native land claims

11. Hawaiians' Rights Equal Rights of Alaskans

Midkiff refers to your statement: "The Hawaiians have as much right as the Alaskans to some form of compensation for the loss of their lands.....the basis lies in Hawaii's history."

12. Further Hawaiian Restitution Called For

Midkiff discusses

- A. Your proposal for a special corporation

Hawaiians of at least 1/4 Hawaiian blood (suggests use of flexible formula as was done in the case of Kam School)

Corporation would pay its expenses and draw profits by owning and administering all present and future Hawaiian homes lands.

The membership, through the elected Board of Directors, could lease or develop the lands for recreational, residential, or commercial use-however it saw fit.

B. Inouye proposal and plan which includes the corporation would encompass the following as the corporation's lands:

(i) Lands currently owned by the government but which are being leased to private concerns and are not being used for governmental purposes;

(ii) Lands now administered by the Hawaiian Homes Commission

13. Hawaiian Homes Act A Precedent for More Adequate Action

A. Act established a precedent by recognizing the needs of the Hawaiian people for land that they could use and enjoy but not "alienate", sell or dispose of.

B. Great problem with the Act is that the lands made available had not been capable of being put to any substantial economic use. HHC lands were not to include any land in use for growing sugar cane, pineapples, or industrialized agriculture, ranches, or other established economic purpose.

C. Thus the HHC lands were comprised largely of "low-use" lands often without reliable water or irrigation.

14. Chief Features of the Land Readjustment Plan for Hawaiians

Midkiff details the major points of the Inouye proposal

A. Inouye would add to the land owned by the corporation

"lands presently owned by the Federal government, to be turned over to the corporation as they become surplus, to Federal government needs. "

B. Ownership of stock by members of this corporation

(i) Perhaps 100 shares per person

(ii) Profits to be apportioned among members through dividends

(iii) Such stock would not be alienable for the first 20 years

(iv) In the event of death or divorce, stock could be transferred to qualified beneficiaries

(v) Corporate membership would elect its Board of Directors for staggered 4-year terms

(vi) Present lessees may continue to reside on HHC lands, but dividends to these lessees would be less the amount of the annual appraised value of their leased property

(vii) Board could sell land parcels only if stockholders approved by a 2/3 referendum vote

(viii) Corporate profits would be subject to applicable Federal, State, and local taxes, and shareholders would pay applicable income taxes on dividends

LINDA LUKE  
DRAFT  
PA GE 7

C. Inouye proposal also includes seeking a Federal government appropriation of \$500 million

15. Midkiff ends with a brief statement on the justification for the Inouye proposal

FRANK E. MIDKIFF  
P. O. BOX 3466  
B. P. BISHOP ESTATE OFFICE  
519 HALEKAUWILA STREET  
HONOLULU, HAWAII 96801  
CABLE ADDRESS—FEMTRUST

March 15, 1974

RECEIVED

MAR 19 1974

The Honorable Daniel K. Inouye  
U. S. Senator from Hawaii  
Senate Office Building  
Washington, D. C. 20510

Dear Dan:

Aloha nui.

For my turn in preparing an "essay" for the Social Science Association meeting of April 1, 1974, I have chosen to write on your project to provide fair settlement to the Hawaiians for the loss of their lands. You espouse a really great concept. It is righteous.

The essay is entitled "Lands of Aborigines: Hawaiians vs Alaskans." A draft copy is enclosed.

I should greatly appreciate your reading it and providing any changes you may care to suggest. I really wish to back you up as fully as possible in this endeavor.

Incidentally, I hope my lines will provide a practical answer to my son Bob's response to certain of your items. Main thing, I wish him to appear as a strong supporter of your project to provide a fair settlement for a highly disadvantage and needy group of aboriginal people.

Continued best wishes for you, Danny.

Yours fraternally,

Frank

Frank E. Midkiff

*Denny  
Call me at  
(808) 531-1684 reversing  
charges if you can cover  
your thoughts over the  
phone. Aloha.*

*Frank*

ROUGH DRAFT

LANDS OF ABORIGINES: HAWAIIANS VS. ALASKANS

Social Science Association Essay, April 1, 1974

by

Frank E. Midkiff

Ancient Hawaiian Land Ownership.

Land ownership amongst residents of the Pacific Islands was very clearly worked out. Details had to be known well and boundaries and ownership rights had to be established carefully and passed on in matriarchic fashion from generation to generation.

Such system was necessary on relatively small islands where population had increased to land crowding. Transgressions on neighbors' land could and often did lead to warfare.

On the other hand, in areas where land is very extensive and population still scarce, as in Alaska, much less attention had been paid by the aborigines to boundaries of the land areas they lived on and used. The land available was never crowded and there was much less cause for clashing over or trespassing among tribes and ethnic groups.

Senator Inouye's Solicitous Concern.

United States Senator Daniel K. Inouye, in a recent "Report from Washington" tells of a research he caused to be made by the Library of Congress Research Division. This gives us a comparison of the similarity between the land rights and the bases for land claims of the Hawaiians as compared with claims of Aleuts, Eskimos, and Alaskan Indians. Long standing claims of these Alaskans recently have been honored by the Federal Government.

Hawaiian Lands Still Ceded to the Federal Government.

This study disclosed that the Provisional Government in Hawaii, at the time Hawaii joined the United States, ceded the "Government Lands" to the United States Federal Government. The Statehood Act of 1959 retroceded these lands to the State of Hawaii, but there still are 400,000 acres of Federal land that ~~previously~~ <sup>originally</sup> belonged to the Hawaiian chiefs and people, but ~~is~~ still held by the United States Government.

Ceding of Government Lands to United States without Hawaiian Peoples Consent.

It could be argued that Hawaii joined the United States and ceded the Hawaii Government land to the United States but that this was without the consent (and possibly against the will) of by far the great majority of the native and aboriginal people.

Hawaiian Government Land Created Through Chiefs' Donations.

All this land originally had belonged to the King of Hawaii and, after the Great Mahele of 1848, to the king and his chiefs, lesser chiefs, and commoners. The Mahele had required that each land owner (except the small Kuleana owners) would create land to support the Government by having each owner transfer title of one-third of his Great Mahele acquisition to "Government Lands."

Possible Receding of Some Government Land to Hawaiians.

The Library of Congress report concludes that it would be impracticable to redistribute all this Government land amongst Hawaiians. It now mainly is assigned to

(a) Interior Department for national park and federal building sites use, and to

(b) Defense Department for military use.

However, certain portions of both present Federal Government and State lands could be redistributed amongst aboriginal land owners and a fair and substantial cash compensation could be in the form of a Federally-funded Foundation.

The Great Alaskan Precedent.

This is the precedent recently set in dealing with the aboriginal people in Alaska.

In our Sandwich Islands, in the Kingdom of Hawaii, the Hawaiians alone originally owned all the land of these islands. This fact is basic and must be given grave and inherent respect when we talk about aboriginal land rights.

It is hoped that the many other ethnic groups who so greatly *acquisition* have benefitted from their ~~ownership~~ of practically all of the original aboriginal Hawaiians' land, will see fit to deal fairly and justly with the Hawaiians. This is an exceedingly important and righteous opportunity to secure treatment for the Hawaiians at least comparable to that now afforded the Alaskans.

English Common Law Land Customs Violated Hawaiian Customs and Law.

Only under the full force and application of the land customs

and rights of the English Common Law, as extended to and covering the vast, thinly populated land of America, could the Hawaiians have been inevitably deprived of their birthright by due process of law.

In American Samoa, the English Common Law insofar as land condemnation, mortgaging the land, real property taxes in cash, etc. - none of these things were adopted by the aborigines. As throughout Polynesia, land titles were held and ownership passed down through the female side of <sup>the</sup> family. As a result the American Samoans still own over 96% of their land. Since 1932, <sup>we</sup> I have repeatedly urged them not to permit land alienation. Their Territorial statutes now prohibit land alienation.

In the Trust Territory of the Pacific Islands, we have succeeded in getting them to convert their land customs into Territorial statutes. Consequently within the past few months the United States, the Administering Authority, has decreed that the land of the people of the Trust Territory always shall be held in fee only by aboriginal residents. It is a great pity that Guam did not take this action. The United States Government <sup>to the Micronesians of the Trust Territory</sup> is returning the government land taken by the Japanese. Land

needed for United States Government defense and other governmental purposes is leased, so the Micronesians are still owners of <sup>This</sup> ~~the~~ land.

Further Land Readjustments Required to Meet Serious Hawaiian Needs.

There are concomitant causes for the great and special needs of our Hawaiian people. These include:

- (1) Decimation of population due to imported diseases for which they had no immunity;
  - (2) Change to a money economy that caused the dwindling rural ahupuaa owners to desert their lands and flock into the seaport towns. This left the land owners without revenues or useful supportive issue from their lands;
  - (3) Contrast between rapidly dwindling value of unproducing land and apparently assured income from Triple A. Bonds, preferred shares of local and Mainland corporation stock;
  - (4) The general lack of assets and income as well as of the lives of their loved ones that resulted in loss of morale, hope and capability to cope with a new competitive economy and society.
- All these made the epidemic of mortgage foreclosures and sales of

real property almost universal amongst the Hawaiians.

What was Done for the Alaskan Aborigines?

The Alaska settlement vests title to 40 million acres of land in the aboriginal natives and provides a cash settlement totaling nearly one billion dollars as payment for extinguishment of aboriginal title to the rest of the land in Alaska.

Senator Inouye points out that "The Library of Congress report cites two other important arguments in support of native Hawaiian claims. For one thing, according to the study, the U. S. Government paid no compensation to the aboriginal native population for Federal lands in either Hawaii or Alaska before the Alaska settlement."

It could be noted that the need for Alaska oil may have spurred the settlement in Alaska. Also possibly modern diplomacy, good politics and even the slowly but surely growing influence of *concern for underprivileged people* the United Nations<sup>1</sup> may have aided in the agreements made by our Federal Government with the aboriginal residents of Alaska.<sup>11</sup> For another thing, the study reports that, as written, the Hawaii Organic Act of 1900, like the Alaska Organic Act of 1884, left open the possibility for some future legislative settlement of

native land claims."

Hawaiians' Rights Equal Rights of Alaskans.

The efforts of Senator Inouye lead him to conclude that "The Hawaiians have as much right as the Alaskans to some form of compensation for the loss of their lands." He says that "the basis lies in Hawaii's history. Though the Western leaders of Hawaiian government and business had the best interests of the Hawaiians at heart, the Hawaiians lost much acreage without having received fair financial reparation or the benefits of due process under the law."

Further Hawaiian Restitution Called For.

Senator Inouye proposes to provide some further restitution for lands taken from and lost by the Hawaiians. These land losses occurred through the operation of English Common Law and its provisions for alienation of title, mortgaging of title, requirement to pay real property taxes in cash rather than "in kind" in produce or labor as was the ancient custom of Hawaii.

He would have the U. S. Congress establish a special corporation for Hawaiians of at least one-fourth Hawaiian blood. (By the way, this use of a percentage of Hawaiian blood may have

to be changed as we did for admission to the Kamehameha Schools and have it read "who have some percentage of Hawaiian blood and who established themselves as part-Hawaiians.")

66 This corporation would pay its expenses and draw profits by owning and administering all present and future Hawaiian Homes Lands. The membership, through the elected Board of Directors, could lease or develop the lands for recreational, residential, or commercial use - however it saw fit."

Under Senator Inouye's proposal and plan including the establishment of a corporation to take over present and future Hawaiian Homes Commission lands, "the corporation's lands would include the following:

"Lands currently owned by the State Government but which are being leased to private concerns and are not being used for governmental purposes;

"Lands now administered by the Hawaiian Homes Commission."

Hawaiian Homes Act a Precedent for More Adequate Action.

My comment here is that the Federal Government under the Hawaiian Homes Commission Act itself established a signal precedent. It did recognize the needs of the Hawaiian people

for land that they could use and enjoy but not "alienate", sell, or dispose of. Thus some 190,000 acres of land already have been devoted to covering a small part of the needs of the Hawaiians.

The great trouble is that in this Hawaiian Homes Act the lands made <sup>mostly</sup> available <sup>^</sup> were ~~only~~ lands that up to the recent year of 1921 had not been capable of being put to any substantial economic use.

The HHC lands were not to include any land in use for growing sugar cane, pineapples, or industrialized agriculture, ranches or other established economic purpose. This left very little choice land to comprize the Hawaiian Homes Lands. There was unused desert land, high altitude lands, land with inadequate rainfall or <sup>while there were some ~~land~~ ~~ranch~~ and agriculture plots, most of the HHC areas were</sup> water resources, lava covered land, etc. In short, lands that <sup>neither the aboriginal Hawaiians nor the capable later arriving</sup> neither the aboriginal Hawaiians nor the capable later <sup>had</sup> businessmen of Europe, America, and Asia have been able to develop and use economically.

It was these theretofore largely <sup>low use</sup> <sup>often with out reliable water or irrigation</sup> "useless" lands <sup>^</sup> that

were assembled and designated as Hawaiian Homes Lands. <sup>Should not another say 190000 acres of better and more usable Federal or State Government land be made available to the greatly increased number of aboriginal Hawaiians?</sup>  
Chief Features of the Land Readjustment Plan for Hawaiians.

Senator Inouye would add to the land to be owned by the corporation "Lands presently owned by the Federal Government, to

be turned over to the corporation as they become surplus to Federal Government needs.

"Members would hold shares of stock - initially perhaps 100 shares per person - and profits would be apportioned among members through dividends. To provide a measure of stability, shareholders would not be able to sell, transfer, or alienate their stock for the first twenty years. In event of death or divorce, stock could be transferred to qualified beneficiaries."

It seems that Senator Inouye has given great thought and discussion to this program to treat the aboriginal Hawaiians in some such fair manner as the aboriginal Alaskans recently were treated in the Alaska Native Claims Settlement of 1971. *Representative Matsunaga also now is espousing the cause and Senator Tong has said he is for it. I am told that New York favors the idea.*

It is hoped that there will be a strong and just reaction among all citizens of Hawaii to back Senator Inouye's program and objectives, so that minor or even major disagreements and alternatives may *improve the practicability but not defeat* not defeat this really worthy and long overdue program to deal fairly with our aboriginal Hawaiians in land matters.

Senator Inouye would have the Federal Government "appropriate about \$500 million for the Hawaiian corporation. Corporate membership would elect its board of directors for staggered four-year

terms. This board would report annually to stockholders, would have to make full public disclosure of its activities."

He would provide that "present lessees may continue to reside on Home Commission lands, but dividends to these lessees would be less the amount of the annual appraised value of their leased property.

"The board could sell land parcels only if stockholders approved <sup>by</sup> a two-thirds referendum vote.

"Corporate profits would be subject to applicable Federal, State, and local taxes, and stockholders would pay applicable income taxes on dividends."

The loss of good and economically usable land has been almost complete amongst aboriginal Hawaiians. Our Hawaiian people should take heart because of the Alaska precedent ~~and~~ and this resulting present effort to provide a fair settlement and restore adequate land ownership to our Hawaiian basic ethnic group. Their great needs for the program are only too well documented. <sup>P</sup> From the enactment of the proposed fair settlement for the Hawaiians should continue to flow the spirit of Aloha. Fairly ~~is~~ treated, the Hawaiians may be relied upon to do their noble share in making Hawaii the best place in the world to live.