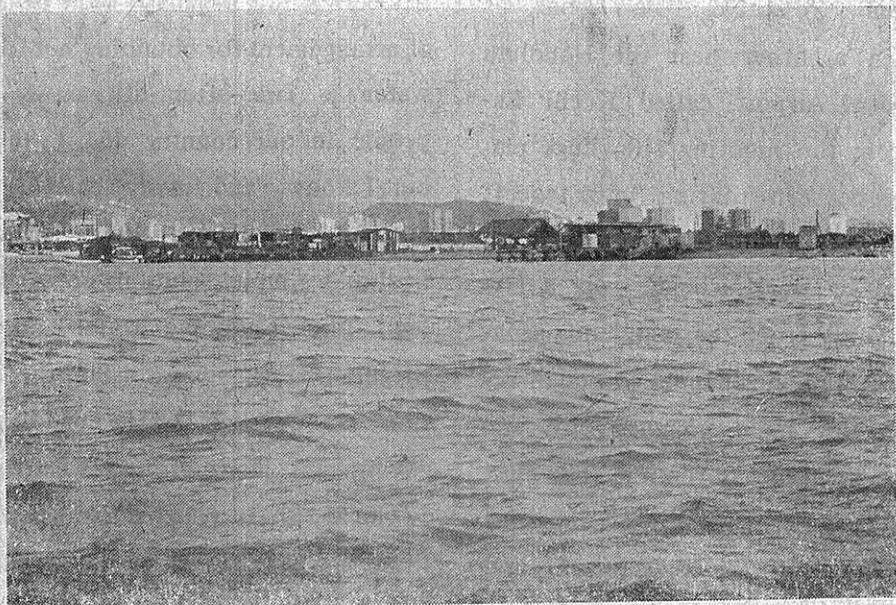


MOKAUEA ISLAND HAWAII: CASE STUDY IN NATIVE AMERICAN RIGHTS.

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MOKAUEA ISLAND

This article deals with Hawaiian-Americans following a basically traditional Hawaiian life-style in the middle of 20th century, urban, Honolulu; and with the larger issues of ethnic consciousness, equal rights, and government by law rather than men. It is Presented here in two parts. Part I describes how Hawaiian-Americans

came to be living on mokauaea Island, the kind of life-style they pursue, and their chances of continuing it. Part II describes the American system of government by Constitution and other laws, and how the rise of ethnic awareness and pride, and the issue of equal rights for minority groups, have risen from this system.

Part I

While visiting friends in Honolulu, Hawaii, I had occasion to go boating with them on their sailboat, the 27-foot "Kolohe," and to conduct some firsthand sociological research. Their boat is moored in a harbor near the Honolulu International Airport, called Keehi Lagoon. From the mooring site, huge planes could be seen roaring into takeoff overhead. The lagoon is surrounded on three sides by small islands, only a few hundred yards from the mainland, separated by a seaplane channel in one direction and the main channel into the harbor in the other direction. The first picture shows the lagoon with the new reef runway in the foreground, and Mokaua Island in the background close to shore.

The first day we sailed, I noticed some tiny islands just past the slip at the dock. These islands were occupied—inhabited but not with the usual high-rise type of dwelling one sees a mile or two away in downtown Honolulu. Instead, what I saw were shacks—ramshackle assortments of planks and boards somehow attached together as shelters. Most of these wigacies had docks attached, or were built out over the waer,

and there were several rowboats moored off them. I saw some people walking along the beach near the houses, and others sunning themselves on the roofs. Also on two roofs were water-catching devices. Now, we may think this kind of arrangement for obtaining our drinking water is fine—after all, most of the people in our country do it this way but I know, and many of you know, that in the United States such practical and simple solutions to basic problems—like obtaining water are often illegal—that is, against established sanitation or building codes of the local government jurisdictions, whether state or local. So it puzzled me when I saw these shacks, most of them on Mokaua Island, not just fisherman's shelters, but actual living quarters, otherwise why the corrugated iron drainpipe and tanks for catching water in an area where this kind of thing is illegal.

So my curiosity piqued by my observations, I started to ask questions and do some research into the matter. Because when a small Honolulu apartment costs \$400 a month, without ocean and shore views, not to mention fishing privileges, you know that if free rentals were available, even off shore,

there ought to be hundreds, thousands, of all kinds of people setting up house-keeping there; there would **not** be just a few isolated shacks, which was the case.

It turns out—can you guess?—that those privileged few living rent free in complete violation of city housing and sanitation code laws, state property laws, and in violation of state eviction notices are Hawaiians. No, they don't speak Hawaiian, their names aren't Hawaiian, they may not look Hawaiian, but they claim at least part Hawaiian ancestry, enough to partake in all the ethnic pride and privileges that accompany that status today.

How did this come about? The story goes something like this. On June 6, 1875, a contractor hired by the State of Hawaii Department of Transportation, burned down several apparently abandoned unoccupied shacks on Mokaua Island in Keehi Lagoon, supposedly to conform to a federally required Environmental Impact Statement that states that no communities exist in the area immediately adjacent to the new reef runway. This runway was paid for

primarily with \$473 million in federal funds, and the idea was that the money might be jeopardized because of habitation in the runway area. There was an immediate cry of outrage from a group calling itself the "Mokaua Fisherman's Association" who claimed residency and legal rights to the land they occupied, and also damages from the State of Hawaii for illegally destroying their homes. Their claim was that descendants of early Hawaiians had been in continuous residence on the Island since before annexation, and that old Hawaiian laws governing land rights made this land legally theirs.

The Director of the Department of Transportation of the State of Hawaii was reported to have charged that Mokaua Island was not of ancient Hawaiian lands, but rather that it was only a man-made island, the result of the dredging operation that created the seaplane runway perpendicular to Keehi Channel. Additionally, he charged that the land was public land destined to become a park in the near future. "Squatters," he said, would be prosecu-

*Note: The term "squatters" denotes people who occupy an area without any legal claim to it. "Squat" means to sit in a crouched position.

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ted and removed from the area. Three squatters were arrested.

The squatters claimed, their lawyer, that under the feudal Hawaiian system of land use and tenure, there was no concept of land ownership. According to the traditional Hawaiian view, the land belonged to the people if they used it. The island, according to the Mokaua Fisherman's Association, belonged to the residents because they have used the land and offshore territory for fishing as far back as the "Great Mahele," that is, a division of land among various groups in 1848 marking the end of the old feudal system of land tenure.

The State, on the other hand, felt that the squatters were violating land ownership laws, City building codes, City and State health requirements, and Federal navigable waters acts. The squatters were staying on public land illegally, they were not paying rent or property taxes to the City or to the State.

Now, in the City and County of Honolulu, where Keehi Lagoon is situated, the City has jurisdiction in some areas, as in enforcing a uniform building code, for example, and the

State has jurisdiction in other areas, such as jurisdiction over certain areas zoned for State parks, such as the Keehi Lagoon area.

The City, plaintiff in the case against the squatters, decided to reduce the charges to simple trespassing, and not to pursue the numerous other violations the squatters could have been accused of, such as violating the sanitation and building codes, because the City felt that the land came under State jurisdiction. The political situation in the State of Hawaii is characterized by extreme rivalry and mutual distrust between the City and the State. When the City decided not to pursue the prosecution of the squatters, it probably was meant to embarrass the State, just as much as it was intended to eliminate working on a difficult and potentially unsolvable problem on the part of the City.

Shortly after the City came out with a "hands off" position, the State Director of Transportation, Mr. Alvey Wright, changed his mind about his approach, perhaps partially for the same reason the City decided to abandon the issue—it had become a popular ethnic issue which probably could not

be resolved at the State or City level. Mr. Wright, the Director, decided that instead of prosecuting the squatters, he would let them stay on in their homes as part of a "living park." This change of opinion on his part was probably due in part to the strong public reaction toward the squatters whose homes were burned and whose "Hawaiian life-style" was being threatened. The Mokaua Fisherman's Association solicited oral history accounts of continuous occupation of Mokaua Island by people of Hawaiian ancestry for many decades. Also an ancient adz-carved koa outrigger canoe was found on the island and offered as evidence of the long occupation of the island by Hawaiians. Public opinion in favor of the occupants was swayed by residents and friends enacting ancient Hawaiian ceremonials and demonstrations for the public of the Hawaiian style fishing life being lived on Mokaua. The newspapers gave full-page coverage to these demon-strations and have thoroughly covered the Hawaiians' plight since the State planned to eliminate the shacks from the reef runway area. This coverage was probably enough to sway a lot of people in

favor of the squatters. The State senator representing the area occupied by the squatters, Mr. T. C. Yim, 5th District (West Honolulu), proposed a bill to the State legislature to pipe water to Mokaua Island at a cost of \$35,000.

At this point in time, the status of the squatters, now perhaps more aptly called "Hawaiian aborigines" or "native Americans", is rather ambiguous. Since possession of the land under Hawaiian law may be something that has Constitutional implications and relate to legal precedents set by other native Americans in their successful claims to ancestral lands in other States, the issue is a political football at the State and local levels, and probably can only best be settled at the federal Level, when the proper time comes. Bills for Hawaiian reparations are pending before Congress at this time. Once the Hawaiian issue is settled at the federal level, Hawaiian native rights and claims at the state and local levels will become clearly defined for once and for all—once reparations are made to the Hawaiians as a whole, presumably Hawaiian special interest groups like the Mokaua spuatters will

be able to be dealt with in a more straight forward manner according to the existing laws of the United States of America, its states and localities. Reparations will have been made formally, guilt assuaged and wrongdoings paid for. From that point on we will have started from ground zero; every citizen will be treated equally before the law, not with special claims and privileges.

This is what I thought as I observed the shacks rimming Mokaua Island, only a few row boat strokes from shore, only a mile or two from downtown Honolulu. Very valuable real estate indeed, to be occupied totally rent free, in an area where comparable living space would cost upwards of \$400 a month. A very picturesque and romantic setting as well, if a little rickety, right on the water, with a panoramic view of the downtown and Waikiki shorelines to Diamond Head. A rare opportunity for people who happen to be at the right place at the right time.

Part II.

The United States is a democracy.

As such, it is dedicated to the ideals

of liberty, equality, and fraternity as expressed in its Constitution of 1776, and to the twenty-seven amendments to that Constitution voted into law since that time by the people of the United States.

The Constitution, including its amendments, are the laws of the land of the United States. Since any law is subject to interpretation, there is a body of legal precedents, known as "constitutional law" which comprise judgements handed down over time by the Supreme Court, the highest court in the United States.

Once an interpretation of the Constitution is handed down, it is the law of the land and supercedes the laws of the various States.

Thus when the Supreme Court under Chairman William O. Douglas decided in 1954 that segregation (separating white people from black people) in the schools in the Southern part of the United States was unconstitutional, Negroes all over the United States were protected from that practice.

This decision supporting the equal rights guaranteed every American by the Constitution gave a start to the ethnic movement we see in the United States and other countries today.

Although from 1776 on, the law of the land stated that all men are created equal, it had been assumed by many people that this did not apply to Negroes, or for that matter, to members of other minority groups. It was not until 1954 that the Supreme Court expressly stated that it did apply. Naturally this was a great triumph for the black people. However, even though the law was now on their side, their struggle for true equality was only just beginning, and they knew it. Many white people to this day still do not believe that whites and blacks are equal, and many behave accordingly.

The next big step for the blacks and for all minority group members, was the Civil Rights Act of 1965, this time an act of Congress that is also part of the law of the land. This law, and another one like it, passed in 1974, goes further in defining areas in which minority groups and women cannot be discriminated against, such as employment, housing, etc., and provides federal funds to enforce the law.

All of these further explications of the constitutional rights of United States citizens have raised the consciousness of minority group members and

women. Of course, the laws did not just happen by themselves; there were leaders, catalysts of the movement for equal rights; the first black woman to sit down in the "whites only" section of a public bus in Atlanta, Georgia; Dr. Martin Luther King who led thousands in marches to demonstrate his people's cause; suffragettes who won women the right to vote in 1919; and modern feminists like Bella Abzug, the female member of the House of Representatives from New York who is an example to all of what powerful leaders women can be.

It was people like these who generated the publicity and sense of urgency that brought law-makers to understand that equal rights laws had to be made explicit. The wording in the Constitution was not clear enough to protect the equality of United States citizens who belonged to minority groups and of women who deserve equal pay for equal work, and equal treatment in all areas.

Now, with the full force of the law behind them, members of minority groups and women can express a new pride in themselves that they never had before, since until now they

have always been considered "second class citizens".

In the United States as a whole, the largest minority group is the Negro group, now known as the "blacks"** in the new language of ethnic pride. Along with this new sense of pride among the blacks, there has emerged a whole flowering of "black culture": the Afro has become a popular hair style for blacks and whites alike, and black "soul food," clothing styles, and music have also become popular.

The great success of the blacks has been a model in consciousness raising for other ethnic minority group as well. Among these are the American Indians, the American Esquimos, and the American Hawaiians.

However, each of these groups has an additional legal complexity added to the sense of outrage and injustices they feel and have recently adamantly expressed due to their unjust and unlawful treatment in the past. The legal complexity is due to the fact that ancestors of all three of these

groups owned land before the United States seized it either by stealing it, purchasing it from a country that had stolen it previously, or by "annexing" it, as in the case of Hawaii.

Now, the very basis of the United States, despite the ugliness and illegalities that were aired over the issues of Vietnam, Watergate, Mr. Nixon's income tax fraud, and Spiro Agnew's illegal kickbacks among others,* is the law of the Constitution, its amendments and interpretations, as well as Congressional laws.

Claims on the law or laws on which this country is based can be made by any citizen.

Now, the Esquimos and the Indians also represent a fairly large minority in the United States today, (although their populations have dwindled since United States takeover) and they both lay claim to many hundreds of thousands of acres of land which, they say, the United States took from them illegally in the past. To right this

* Some consider women to be the largest group but since many women do not feel concerned about the equal rights movement I will leave this category out.

** The fact that the United States has survived and is still strong despite these conspiracies and indeed has gotten rid of the perpetrators confirms the fact that it is first the law that governs this country, not the leaders.

wrong, they claimed and were recently awarded by Acts of Congress several million dollars in "reparations" money. This money was awarded by the United States Congress in several ways, dependent on the nature and size of the claim and the size of the group involved. Basically what happened is that after careful historical and legal research, Congress awarded a cash figure to every person descended from certain Indian tribes or Esquimo groups that had been taken advantage of, as a percentage of the individual group member's ethnic ancestry.

For example, a school teacher in California who claims 1/4 Indian blood has been awarded \$7000 a year tax free for the next ten years, and each of her two children, who are 1/8 Indian, \$3500 a year for the same period.

Twenty years ago, before the rise of ethnic rights, the development of ethnic pride, ethnic assertion, and aggressiveness, and before the super-legal consciousness that rose along with these other developments, such reparations claims would have been laughed at. The idea would have seemed absurd. But during the 1960's the United States was a very wealthy, very idealistic

country. In the days of President Kennedy nothing seemed impossible for the United States, no just cause was unworthy, no goal unobtainable. It was during this period that Indian and Esquimo groups got legislation passed providing settlement of their reparations claims. Today the spirit of ethnic pride is still on the upsurge among most minority groups, almost like a fad, but the condition of the United States economy is not the same as it was ten years ago. And it is now that another group is being heard from the American Hawaiians.

It was in 1898 that the United States "annexed" the Hawaiian Islands as a United States Territory, imposing a modern legal and governmental system on a traditional Hawaiian system. Many of the methods by which the land of Hawaii gradually changed hands from Hawaiian ownership to United States ownership are now claimed illegal by several Hawaiian reparations organizations. One Hawaiian group called the Aloha Association has several bills before Congress to commit funds for reparations to the Hawaiian descendants who suffered losses similar to those suffered by the United States Esquimos and Indians.

In old Hawaii, both commoners and royalty owned large portions of land. Land in Hawaii today is more expensive than land in most other states because there is relatively little of it and demand is extraordinarily great because of the attractiveness of the climate and the possibilities for investment. Therefore, any reparations settlement for the land Hawaiians lost to the United States will be very costly to the government, and ultimately to the people, of the United States. Specifically, the Aloha Association is seeking \$1 billion dollars in cash, plus 2.5 million acres of land and other reparations. Ten million dollars each would go to 28 royal descendants; \$13 million would go for establishing an educational trust, \$200 million would fund the Hawaiian Homes Commission to provide land and houses for needy ethnically Hawaiian people, and \$500 million in cash would be divided up among Hawaiian descendants.

This may sound like an unbelievably large claim, but it is being taken seriously by everyone involved, because of the precedents set by the success of the Indians and the Esquimos in winning their reparations claims.

The seriousness with which such matters are taken in the United States today is due to the concern with "constitutionality" (that is, that no act be done that violates the Constitution of the United States), fairness, righting past wrong and to a certain extent with guilt feelings on the part of the white majority of Americans who are not completely proud of the means used by their ancestors to build up their large and powerful country.

But sometimes this liberal turn of the times and the liberal law of the times can be taken advantage of. Although the "Hawaiians" have been rather late and disorganized in publicizing their reparations demands, nevertheless they have benefitted from the outfall of the other Native Americans, successes in that their movement and claims drive is respected and legitimatized by precedents won by other groups.

There is sympathy with the Hawaiians, at least when it is a question of the Hawaiians versus the United States over the issues of lands lost and culture destroyed due to United States domination. But if it is an issue of the Hawaiians versus the State of

Hawaii, or the Hawaiians versus the City and County of Honolulu, such as I see in the Mokaua story, then, it seems, it is a different matter, with different reactions and feelings aroused among state and local residents. It seems that people can be very liberal about a cause as long as it has no direct effect or comparison with their own lives. But as soon as comparisons close to home are apparent, and favoritism close to home is observed, liberalism on the part of the disfavored majority starts to fade.

This is a Machiavellian observation indeed, and the inspiration of this article, but it seems to be borne out by firsthand observations. The Mokaua issue, and the cause of ethnic equality and women's rights in the United States will bear close watching.

POST-SCRIPT

In the five months since I investigated this story in May 1976 which really centered around three people accused of trespassing and a supposed six families in residence on Mokaua Island, my friends report that the entire area is now bustling with activity literally dozens of new huts, shacks,

ramshackle dwellings are being slapped together on the beaches all around Keehi Lagoon. Progress on the proposed state park is at a standstill while the issue of native American squatters goes unresolved.

Squatting is a way of life that is expanding at Keehi Lagoon. Neither the City and County of Honolulu nor the State of Hawaii wants to get bad publicity as the "badguy", the first jurisdiction to start enforcing the law against illegal squatting since the would be tantamount to declaring against the "Hawaiian life style" which is touted by the tourist industry and other critically important economic and political groups in this state. The rights of Hawaiian descendants to their ancestral lands is still an unresolved issue at all levels of United States government and will probably remain so for some time, since the economic situation in the United States today is such that Congress is not now and probably will not for some time be in the mood to place reparations to additional groups of native Americans high in its budgetary priorities.

The Keehi Lagoon area should be watched closely in the near future

as a test case of liberal ideas versus practical realities. As more and more squatters get away with moving in to the area, due to inaction in enforcing the law on the part of both the city and County of Honolulu and the State of Hawaii, problems will surely begin to occur, both within the "squatterstown" itself and between the squatters and the community at large. The area is already a high crime area. As it gets more and more crowded, sanitary problems will

arise and arguments over land rights are inevitable. Residents of the Honolulu community who must pay dearly for their housing, in locations not as convenient or charming as the beaches of Keehi Lagoon, will begin to resent the privilege of free rent for prime real estate, regardless of the appeal of preserving the "Hawaiian life style."

I hope in a year's time to do a follow-up of this story and see whether my predictions for this area don't come true.

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