

# Aia i Wai‘oli ke Aloha ‘Āina: Re-centering ‘Āina and Indigenous Knowledge for Restorative Environmental Justice

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## ABSTRACT

This Article explores Kānaka Maoli’s (Native Hawaiians’) work to re-center principles of Indigenous biocultural resource management in decisionmaking to more fully realize restorative environmental justice. To do so, it contextualizes ‘āina (land and natural resources) as Kānaka Maoli’s natural counterpart. Deploying a contextual inquiry framework to preserve and advance self-determination for Hawai‘i’s Indigenous People, this practical approach begins with cultural context as a foundation, articulates the historical injustices and impacts of colonialism, and in particular, examines the work of the Wai‘oli Valley Taro Hui in the wake of devastating climate impacts, including flooding, to design a roadmap for future decisionmaking. In partnership with the William S. Richardson School of Law’s clinical courses, the Hui’s diligent advocacy gives life to constitutionally protected traditional and customary rights in Hawai‘i that have been exercised since time immemorial. Their work not only empowered decisionmakers with Indigenous place-based practices for a more comprehensive and adaptive approach to natural resource management, but they also successfully preserved the practice of kalo cultivation in Wai‘oli a mau loa aku—forever.

## ABOUT THE AUTHOR

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## I. INTRODUCTION<sup>1</sup>

“*Auheha wale ana ‘oe, e ka ua loku o Wai‘oli?*”<sup>2</sup>

Where are you, torrential rains of Wai‘oli?

Wai‘oli, an ahupua‘a<sup>3</sup> in Kaua‘i’s Halele‘a Moku, is famed for its torrential rains. Captured in a mele<sup>4</sup> written in the seventeenth century, the ‘āina<sup>5</sup> of Wai‘oli is described as a “manawa pehu,” or time of swelling. Similar epithets associated with Wai‘oli describe the downpouring of rain in Halele‘a.<sup>6</sup>

1. Portions of this article written by the author will appear in the Traditional and Customary Practices chapter of the second edition of *NATIVE HAWAIIAN LAW: A TREATISE* (forthcoming 2024), with express permission and co-authored by Ka Huli Ao Center for Excellence in Native Hawaiian Law faculty Susan K. Serrano and David M. Forman.

2. A mele inoa (name chant) for Queen Kapi‘olani.

3. “Ahupua‘a” translates as: a “land division usually extending from the uplands to the sea, so called because the boundary was marked by an ahu (heap) of stones surmounted by an image of a pig (pua‘a), or because a pig or other tribute was laid on the altar as a tax to the chief; name of one of the smaller divisions of a country, made up of several ‘ili, and under the care of a head man.” WEHEWEHE WIKIWIKI, <https://hilo.hawaii.edu/wehe> [hereinafter WEHEWEHE WIKIWIKI]. Once considered “self sustaining,” and “equated with watersheds, and described as being in alignment with Western scientific management approaches such as ‘ridge to reef,’ and ecosystem-based management,” recent scholarship is beginning to expand traditional land management beyond ahupa‘a to “the *moku* system,” to describe the Hawaiian biocultural resource management system, which divided large islands into social-ecological zones and further into interrelated social-ecological communities.” Kawika B. Winter et al., *The Moku System: Managing Biocultural Resources for Abundance within Social-Ecological Regions in Hawai‘i*, SUSTAINABILITY, Oct. 2018, at 3554 [hereinafter Winter et al., *The Moku System*].

4. “Mele” translates as “song, anthem, or chant of any kind; poem, poetry.” WEHEWEHE WIKIWIKI, *supra* note 3. Unlike regular “music,” mele are repositories of knowledge, are “fundamentally based in language, as cultural transmission, and as a cultural practice,” and emphasize text as “logogenic,” in which “words/lyrics are paramount.” This “emphasis on text allows Hawaiians to use mele as vantage points to catch a glimpse of ancestral excellence and the fundamental essence of a Hawaiian identity.” Zachary Alaka‘i Lum, *Nā Hīmeni Hawai‘i: Transcending Kū‘ē*, Promoting Kūpa‘a 2, 19 (December 2017) (M.A. Thesis, University of Hawai‘i at Manoa).

5. “‘Āina” translates as “land, earth.” WEHEWEHE WIKIWIKI, *supra* note 3; *see also* Melody Kapilialoha MacKenzie, *Historical Background*, in *NATIVE HAWAIIAN LAW: A TREATISE* 6 (Melody Kapilialoha MacKenzie, Susan K. Serrano & D. Kapua‘ala Sproat eds., 2015) (highlighting that “Kānaka Maoli trace their ancestry to the ‘āina (land), to the natural forces of the world, and to kalo (taro), the staple food of the Hawaiian people”); Davianna Pōmaika‘i McGregor, *The Cultural and Political History of Hawaiian Native People*, in *OUR HISTORY, OUR WAY: AN ETHNIC STUDIES ANTHOLOGY* 335–36 (Gregory Yee Mark, Davianna Pōmaika‘i McGregor & Linda A. Revilla eds., 1996) (noting that the “Hawaiian people are the living descendants of Papa, the earth mother, and Wakea, the sky father . . . This unity of humans, nature and the gods formed the core of the Hawaiian people’s philosophy, world view and spiritual belief system.”); KEKUEWA KILILOI, *REBIRTH OF AN ARCHIPELAGO* 75 (2010) (asserting that “‘āina sustains our identity, continuity, and wellbeing as a people”) *See* Section II.A. *infra* for an in-depth discussion on ‘āina.

6. “Kaulana wale e ka ua o Hanalei” “the rains of Hanalei are simply famed”; “Kani ‘u‘ina lā ka wai a‘o NāmoloKama, nākolo e oeoe nei i ke alo o nā pali” translates as “the water of NāmoloKama rumbles and roars before the face of the cliffs.” *See also* I MANO KA WAI‘OLI,

While these mele are a detailed repository of Wai‘oli’s natural characteristics, the kupa<sup>7</sup> of this place are intimately familiar with the sheer magnitude of this water. In April 2018, the north shore of Kaua‘i received an enormous 53.57 inches of rain in just 48 hours, and a record-breaking 49.69 inches during a 24-hour period.<sup>8</sup> These rains not only triggered massive landslides and flooding, but destroyed homes and businesses, making the area famed for its expansive lo‘i kalo<sup>9</sup> unrecognizable. As a part of disaster recovery relief efforts, the small ‘ohana<sup>10</sup> farmers of the Wai‘oli Valley Taro Hui (Hui) were informed that parts of their lo‘i kalo irrigation system were located on what was now state conservation land. Though they had been stewarding this ‘āina since before the state of Hawai‘i existed, the conservation district designation triggered a maze of legal requirements. Over the following three years, the Hui’s work, resiliency, advocacy, and place-based knowledge would serve as a guiding beacon for re-centering ‘āina in decisionmaking for a more just Hawai‘i pae ‘āina.<sup>11</sup>

This Article explores Kānaka Maoli’s<sup>12</sup> work to re-center principles of Indigenous biocultural resource management in decisionmaking to more fully realize restorative environmental justice. Deploying a contextual inquiry framework<sup>13</sup> to preserve and advance self-determination for Hawai‘i’s Indige-

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SUSTAINING THE JOYOUS WATERS, A CULTURAL IMPACT ASSESSMENT OF THE WAI‘OLI LO‘I KALO IRRIGATION SYSTEM (2020) [hereinafter WAI‘OLI CULTURAL IMPACT ASSESSMENT].

7. “Kupa” translates as “citizen, native, well-acquainted; One native-born in a place; to be at home, to enjoy one’s place of residence.” WEHEWEHE WIKIWIKI, *supra* note 3.

8. ARNDT ET AL., NAT’L CLIMATE EXTREMES COMM., NATIONAL RECORD 24-HOUR PRECIPITATION AT WAIPĀ GARDEN, HAWAI‘I (2018), <https://www.ncdc.noaa.gov/monitoring-content/extremes/ncec/reports/precip-24hr-kauai-2018.pdf> [<https://perma.cc/95DD-696W>].

9. “Lo‘i kalo” translates as “irrigated terrace for kalo” (taro).

10. “‘Ohana” translates as “family, relative, kin group, related.” WEHEWEHE WIKIWIKI, *supra* note 3.

11. “Hawai‘i pae ‘āina” translates as the “islands of Hawai‘i.”

12. This Article utilizes the term “Kānaka Maoli” in reference to the population inhabiting Hawai‘i at the time of first western contact. This term is interchangeable with Native Hawaiian, native Hawaiian, Kānaka Ōiwi, etc. without regard to arbitrary notions of blood quantum. MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY 127 (1986).

13. Building on Critical Race Theory, including the important work integrating Indigenous Peoples’ claims by leading scholars like Mari Matsuda and Eric Yamamoto, for example, contextual inquiry involves interrogating contextual factors and individual perspectives to not only articulate the historical and/or ongoing harms, but also to imagine what the law is and what it should be. As D. Kapua‘ala Sproat also highlighted, contextual legal analysis is particularly important in “highly complex and controversial cases” like those implicating Native Hawaiian laws and concepts where decisionmakers justify maintaining status quo by utilizing formalist language as well as their own individual implicit biases, despite the effort to appear neutral and legitimate. Importantly, this framework “does not focus on ‘equal treatment,’ but instead encompasses a restorative justice approach informed by principles of self-determination that are particularly apt in light of the ravages of colonization.” D. Kapua‘ala Sproat, *Wai Through Kānāwai: Water for Hawai‘i’s Streams and Justice for Hawaiian Communities*, 95 MARQ. L. REV. 127, 172 (2011) [hereinafter Sproat, *Wai Through Kānāwai*].

nous People in the context of historical and ongoing impacts of colonization,<sup>14</sup> this practical approach examines the Hui’s work in the aftermath of devastating flooding to articulate a roadmap for future decisionmaking. The Hui’s diligent advocacy not only empowered decisionmakers with Indigenous place-based knowledge for a more comprehensive and adaptive approach to resource management, but they also successfully preserved the traditional and customary practice of kalo cultivation in Wai‘oli *a mau loa aku*— forever.

Contrary to western notions of land as property, Kānaka Maoli view ‘āina, or the environment, as a collection of ancestors and their natural counterpart. In fact, for Kānaka Maoli, humans were defined by their relationship with land.<sup>15</sup> The word for commoners, or people in general, is *maka‘āinana*, or literally, “people that attend to the land.”<sup>16</sup> Tenants, or *hoa‘āina*, literally translated as “friend of the land,” were those who had *kuleana*, or responsibility, to a particular ‘āina. And perhaps most familiar in present-day conceptualizations of one’s positionality, *kama‘āina*, literally translated as a “child of the land,” is someone who is Native-born and alludes to one’s intimate knowledge of that particular place. For Kānaka Maoli, ‘āina is at the center of and defines Hawaiian society. Aside from the many extensive *mo‘okū‘auhau*,<sup>17</sup> or genealogies, connecting humans to ‘āina both spiritually and physically, general notions of relationality, *pilina*,<sup>18</sup> and *kuleana*<sup>19</sup> serve as a practical guide for natural resource management now and into the future— especially in the context of the impending climate crises.<sup>20</sup>

Governmental agencies will continue to grapple with the management of ‘āina as well as the recovery from devastating weather events in the throes of the climate crisis. Responding to these impacts must necessarily include the communities and people that will bear disproportionate impacts. Decisionmakers can and will benefit from the wealth of knowledge embedded within

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14. See generally S. James Anaya, *The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs*, 28 GA. L. REV. 309 (1994) [hereinafter Anaya] (examining international human rights norms of self-determination for Indigenous people and Native Hawaiians in particular).

15. Consider also “*kua‘āina*” as people of the country who resided in the *kua*, or the backs, of the land and “*kupa‘ai*,” or native-born people who were attached to a place. Literally translated, *kupa‘ai* means “native eat long time.” WEHEWEHE WIKIWIKI, *supra* note 3.

16. WEHEWEHE WIKIWIKI, *supra* note 3.

17. “*Mo‘okū‘auhau*” translates as “genealogies”; see e.g., *kumulipo*.

18. “*Pilina*” translates as “relationship, association, connection” and more. WEHEWEHE WIKIWIKI, *supra* note 3

19. “*Kuleana*” translates as “right, privilege, concern, responsibility, reason, cause, function, justification, small piece of property as within an *ahupua‘a*; blood relative through whom a relationship to close relatives is traced, as to in-laws.” WEHEWEHE WIKIWIKI, *supra* note 3.

20. See e.g., U.S. Global Change Research Program, 2018: IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II (Reidmiller, D.R. et al., eds.) (2018) [hereinafter USGCRP, *Fourth National Climate Assessment*].

kama‘āina: in community members, practitioners, and ‘āina stewards. Deploying a contextual inquiry framework<sup>21</sup> is both a strategic tool to integrate traditional notions of biocultural resource management that has sustained Hawai‘i for generations, as well as a way to envision not only “what the law is, but what it should be.”<sup>22</sup> This approach is particularly important in Indigenous communities such as Hawai‘i where its first people are still navigating the legacies of colonialism and where Kānaka Maoli customs and traditions form the foundation for Hawai‘i’s unique legal framework.<sup>23</sup>

Like many Indigenous communities throughout the world, community-based practitioners in Hawai‘i have developed and honed precise knowledge over millennia. Viewing themselves as a part of the whole, Kānaka Maoli have nurtured biocultural resources through specific place-based practices to maintain pono<sup>24</sup> and sustain life on these islands.<sup>25</sup> To put it simply, Kānaka Maoli practitioners are the foremost experts of their respective ‘āina. By centering Indigenous Peoples’ biocultural knowledge and practices in law, policy, and decisionmaking, decisionmakers can advance human rights principles of self-determination, and ultimately, restorative justice for Hawai‘i’s people and ‘āina. Articulating the benefits of re-centering this knowledge through a contextual inquiry framework acknowledges the possibilities of actualizing restorative justice with Hawai‘i’s community and offers a practical roadmap for other Indigenous Peoples and governing entities throughout the world.

To more fully realize restorative environmental justice for Indigenous Peoples, decisionmakers and lawmakers must deploy a framework that not only considers the unique context of each place, but one that advances self-determination.<sup>26</sup> Part II of this Article articulates Kānaka Maoli’s deep-seated and unique relationship to ‘āina—one that differs greatly from and was significantly altered by Western notions of property and the introduction of a capitalistic economy. It is because of this relationship, and the kuleana that arises from it, that issues pertaining to the environment are more appropriately

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21. See WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6.

22. Mahina Tuteur, *Reframing Kānāwai: Towards a Restorative Justice Framework for Indigenous Peoples*, 7 INDIGENOUS PEOPLES’ J. L. CULTURE & RESISTANCE 59, 60 (2022) [hereinafter Tuteur, *Reframing Kānāwai*].

23. See, e.g., HAW. REV. STAT. § 1–1 (2013), adopting English common law except as modified by Hawaiian usage. See also David M. Forman & Susan K. Serrano, *Traditional and Customary Access and Gathering Rights*, in NATIVE HAWAIIAN LAW: A TREATISE 779, 786 (Melody Kapilialoha MacKenzie et al., eds., 2015) [hereinafter Forman & Serrano, *Traditional and Customary Access and Gathering Rights*] (noting that “Hawai‘i has recognized ancient custom and usage as integral parts of its statutory scheme since the inception of written laws.”).

24. “Pono” translates as “correct, necessary, in perfect order, moral, excellence, wellbeing,” and more. WEHEWEHE WIKIWIKI, *supra* note 3.

25. See, e.g., Winter et al., *The Moku System*, *supra* note 3.

26. See, e.g., Rebecca Tsosie, *Indigenous People and Environmental Justice: The Impact of Climate Change*, 78 U. COLO. L. REV. 1625 (2007); Anaya, *supra* note 14 (outlining the indigenous right to environmental self-determination).

framed as “‘environmental justice’ issues.”<sup>27</sup> This Article incorporates the Four Values of Restorative Justice<sup>28</sup> developed by James Anaya as a framework for operationalizing restorative justice as grounded in the international human rights principle of self-determination. This contextual legal analysis requires attention to four realms or values: (1) mo‘omeheu (cultural integrity); (2) ‘āina (lands and natural resources); (3) maui ola (social determinants of health and well-being); and (4) ea (self-determination). This framework seeks to both identify and begin to seek redress for the harms of colonization in order to effectuate restorative justice.

Part III shares the Hui’s mo‘olelo (story), the record-breaking devastation as a result of a 2018 rain bomb, and its partnership with the William S. Richardson School of Law’s Native Hawaiian Rights and Environmental Law Clinics (the Clinics).<sup>29</sup> Together, the Hui and the Clinics engaged a number of governmental agencies to ensure the community’s way of life and biocultural resource management continued to benefit their ‘āina hānau.<sup>30</sup> Finally, Part IV deploys the developing framework and unpacks the Hui’s advocacy to advance notions of self-determination within the realms of mo‘omeheu, ‘āina, maui ola, and ea. The Hui’s proactive work with various governmental bodies is an extension of their centuries-old practice of aloha ‘āina.<sup>31</sup> Over the course of three years, the Hui engaged with the Department of Land and Natural Resources (DLNR), the Commission on Water Resource Management (Water Commission), the Department of Hawaiian Home Lands (DHHL), the Hawai‘i State Legislature, and more. Their work fulfilled a number of legal and administrative requirements, and ultimately, the Hui secured an exemption for kalo cultivation from the water licensing statute. Venturing outside of their lo‘i kalo, the Hui thoughtfully re-centered Indigenous biocultural knowledge in the statewide decisionmaking bodies that now governed their practices, ‘āina, and resources. Together, these collaborations and advocacy not only advance self-determination via the four values, but also operationalize important and

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27. D. Kapua‘ala Sproat, *An Indigenous People’s Right to Environmental Self-Determination: Native Hawaiians and the Struggle Against Climate Change Devastation*, 35 STAN. ENV’T L.J. 159 (2016) (citations omitted) [hereinafter Sproat, *Environmental Self-Determination*].

28. Anaya, *supra* note 14 (outlining the Indigenous right to environmental self-determination for Native Hawaiians). “This Article seeks to demonstrate how the official response to Native Hawaiian claims is a matter of international law, particularly human rights law, and not just a matter subject to whatever domestic law or policy considerations might apply.” *Id.* at 312.

29. I first participated in a legal clinic as a third-year law student in 2019. As a part of my responsibilities as a Post-J.D. Legal Fellow with Ka Huli Ao Center for Excellence in Native Hawaiian Law, I then co-taught the clinical course from 2020–2022.

30. “‘Āina hānau” translates as “birth lands.” WEHEWEHE WIKIWIKI, *supra* note 3.

31. “Aloha ‘āina” translates as a “deep love for one’s land, patriotism,” and more. *Id.* See Section II. A. *infra* for more information on aloha ‘āina.

existing legal protections<sup>32</sup> and offer a path forward for future sites of restorative environmental justice in Hawai‘i and beyond.

Operationalizing principles of restorative justice will prove to be a crucial tool into the future—not just for Indigenous People and their practices, but for all humans impacted by the climate crisis. This series of interactions around restorative environmental justice highlights both the practical benefits as well as the real possibilities when community members and decisionmakers partner to envision the fullest potential of Hawai‘i’s legal regime.<sup>33</sup> Ultimately, this example marries theory with practice and provides a roadmap to actualize environmental self-determination and restorative justice for other Indigenous communities, especially in the throes of the climate crisis.

## II. RESTORATIVE ENVIRONMENTAL JUSTICE: A NECESSARY STARTING POINT FOR KĀNAKA MAOLI

### A. *Re-contextualizing ‘Āina as Kānaka Maoli’s Natural Counterpart*

Innately intertwined with ‘āina, the survival of Kānaka Maoli culture stems, in large part, from their familial and reciprocal relationship with ‘āina. David Malo, an esteemed ‘Ōiwi scholar, noted two hua‘ōlelo<sup>34</sup> (words) for an island: “moku” and “‘āina.”<sup>35</sup> While “moku” can be translated as “cut off,” it was once kānaka (humans) inhabited land that it became “‘āina.”<sup>36</sup> Like many other Indigenous Peoples, this defining interaction is emblematic of the innate and reciprocal relationship between humans and lands.<sup>37</sup> It is through these interactions with ‘āina that Kānaka Maoli produce themselves and their identity.<sup>38</sup>

On a practical level, ‘āina has sustained “an abundance of resources for more than a millenium.”<sup>39</sup> Taken apart, ‘āina means “that which feeds” and

32. HAW. CONST. art. XII, § 7.

33. Sproat, *Environmental Self-Determination*, *supra* note 27.

34. “Hua‘ōlelo” translates as “word, term.” WEHEWEHE WIKIWIKI, *supra* note 3. Because ‘ōlelo Hawai‘i, as one of Hawai‘i’s two official languages, hosts a plethora of nuances and references in a single word, a direct translation may not be sufficient. HAW. REV. STAT. § 1–13 (2022). When possible, I use the ‘ōlelo Hawai‘i term to support the multiplicity of meanings as well as further research into its context.

35. DAVID MALO, HAWAIIAN ANTIQUITIES (MO‘OLELO HAWAI‘I) 36–37 (Nathaniel B. Emerson trans., 1898).

36. *Id.*; see also Kamanamaikalani Beamer, *Tūtū’s Aloha ‘Āina Grace*, in THE VALUE OF HAWAI‘I 2 11, 13 (Aiko Yamashiro & Noelani Goodyear-Ka‘ōpua eds., 2014).

37. See, e.g., KIKILOI, *supra* note 119, at 75 (asserting that “‘āina sustains our identity, continuity, and well-being as a people.”).

38. This phenomenon is also described in Section I above. See, *supra* note 15 (detailing how Kānaka Maoli are defined in relation to āina); see also NOELANI GOODYEAR-KA‘ŌPUA, THE SEEDS WE PLANTED: PORTRAITS OF A NATIVE HAWAIIAN CHARTER SCHOOL 33 (2004) [hereinafter GOODYEAR-KA‘ŌPUA, THE SEEDS WE PLANTED] (“It is through action, through practicing aloha ‘āina, that we produce ourselves in relation to and as a part of ‘āina.”).

39. Winter et al., *The Moku System*, *supra* note 3, at 2 (citations omitted).

speaks to humans’ reliance on ‘āina to sustain life. Through proper resource management practices refined over generations, Hawai‘i’s land and natural resources have produced famed ‘āina momona, or abundant land, that sustains its human counterpart.<sup>40</sup>

Hawai‘i’s traditional and customary practices exemplify Kānaka Maoli’s identity, and in particular, their dependence on and familial relationship with ‘āina. As an essential practice within a predominantly oral society, mele are perpetual repositories of knowledge. Crafting mele requires expert proficiency in ‘ōlelo Hawai‘i (Hawaiian language), cultural literacy, and expertise in methods related to haku mele (composition). As a tool to engage in ceremonies, evoke specific akua (gods), honor ‘āina, and more, mele are “vantage points to catch a glimpse of ancestral excellence and the fundamental essence of a Hawaiian identity.”<sup>41</sup> Mele are a resource to understand how Kānaka Maoli interacted with and understood ‘āina. Various mele utilize similar epithets describing ‘āina’s presence: “‘elua wale iho nō kāua, ‘ekolu i ke aka o ka mahina.”<sup>42</sup> Roughly translated: there were just two of us, but there were then three with the moon. While these poetic lines express the fact that two individuals were alone, their positionalities were defined by that which is at the top of kānaka awareness: ‘āina and the natural environment. This example also emphasizes that Kānaka Maoli see the presence of their natural world as another entity and a distinct, natural counterpart.<sup>43</sup> In fact, Kānaka Maoli not only define themselves in relation to ‘āina,<sup>44</sup> but understand ‘āina as an ancestor.

The Kumulipo,<sup>45</sup> a two-thousand line chant and just one cosmogonic articulation of our origins as a people and world, further elucidates that ‘āina and kānaka share the same mo‘okū‘auhau.<sup>46</sup> In this mo‘olelo<sup>47</sup> Wākea and Ho‘ohōkūlani have two children: Hāloanakalaukapalili and Hāloa. The first born child, Hāloanakalaukapalili, was stillborn. He was buried in and became ‘āina. From that grave, the first kalo (taro) plant appeared. The second born child, Hāloa, became the first human from which all Kānaka Maoli were born. Within this familial relationship between Hāloanakalaukapalili and Hāloa, and more importantly their hierarchy, Kānaka Maoli recognize a responsibility to ‘āina as our elder sibling.

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40. “‘Āina momona” translates as “fat land, or abundant land.” WEHEWEHE WIKIWIKI, *supra* note 3; Winter et al., *The Moku System*, *supra* note 3, at 2.

41. Lum, *supra* note 4, at 2.

42. From the mele, “Pō Mahina” by Charles E. King (1942) [https://www.huapala.org/Po/Po\\_Mahina.html](https://www.huapala.org/Po/Po_Mahina.html) [<https://perma.cc/27A9-4Q7U>].

43. See *supra* Part I.

44. See *supra* Part I.

45. MARTHA WARREN BECKWITH, *THE KUMULIPO: A HAWAIIAN CREATION CHANT* (1972).

46. “Mo‘okū‘auhau” translates as “genealogy.” WEHEWEHE WIKIWIKI, *supra* note 3. Taken apart, “mo‘o” and “kū‘auhau” can be translated to “a tax,” or a “story or history or genealogy of the ancestors.” *Id.*

47. “Mo‘olelo” translates as “literature, tradition, story, record, chronicle.” *Id.*

This genealogy gives rise to kuleana, or a distinct duty, to aloha ‘āina. As a staunch duty and active practice<sup>48</sup> that has enabled life on these islands for generations,<sup>49</sup> aloha ‘āina encompasses a breadth of guiding philosophies and ethics for Kānaka Maoli, including a “deep love for the land,”<sup>50</sup> “internal love for place and community,”<sup>51</sup> “resistance to imperialism,”<sup>52</sup> “staunch commitment to political autonomy”<sup>53</sup> and an “essential and foundational epistemology from which our mo‘olelo and practices emerge.”<sup>54</sup> Aloha ‘āina is a “central and orienting framework for any attempt to understand what it means to be Kānaka Maoli.”<sup>55</sup> As part of ‘āina themselves, Kānaka Maoli engage in practices of aloha ‘āina not only as a means to fulfill a duty, but as a means to foster “connections to the land and sea as sources of life” itself.<sup>56</sup>

At the root of aloha ‘āina is “aloha.” Contemporary notions of aloha, in large part because of the commodification of Hawai‘i’s culture and ‘āina to serve the tourism industry,<sup>57</sup> are often reduced to to the “aloha spirit,” which touts meanings of absolute love—reciprocated or not—and greetings of hello and goodbye. It is when we inquire into the deeper context of this value that aloha is revealed as much more to Kānaka Maoli: it gives rise to an obligation. The story of Manono and Kekuakalani in the Battle of Kuamo‘o offers a poignant example of the duties of aloha.<sup>58</sup> In aloha for and defense of an ancient

48. GOODYEAR-KA‘ŌPUA, THE SEEDS WE PLANTED, *supra* note 38, at 32 (noting that “the aloha part of this phrase is an active verb, not just a sentiment. As such, it is important to think of aloha ‘āina as a practice rather than as merely a feeling or belief.”).

49. Winter et al., *The Moku System*, *supra* note 3, at 2 (citations omitted).

50. GOODYEAR-KA‘ŌPUA, THE SEEDS WE PLANTED, *supra* note 38, at 32 (citing PUKUI & ELBERT, *supra* note 12, at 21).

51. JAMAICA HEOLIMELEIKALANI OSORIO, REMEMBERING OUR INTIMACIES: MO‘OLELO, ALOHA ‘ĀINA, AND EA 13 (2021).

52. GOODYEAR-KA‘ŌPUA, THE SEEDS WE PLANTED, *supra* note 38, at 31.

53. *Id.* at 32; *see also* NOENOE K. SILVA, THE POWER OF THE STEEL-TIPPED PEN: RECONSTRUCTION NATIVE HAWAIIAN INTELLECTUAL 4 (2017) (highlighting that “aloha ‘āina is a complex concept that includes recognizing that we are an integral part of the ‘āina and the ‘āina is an integral part of us.”).

54. OSORIO, *supra* note 51, at 11 (describing aloha ‘āina not just as an “important Kanaka Maoli political ideology but as the essential and foundational epistemology from which our mo‘olelo and practices emerge.”).

55. *Id.* at 9.

56. GOODYEAR-KA‘ŌPUA, THE SEEDS WE PLANTED, *supra* note 38, at 32.

57. *See, e.g.*, HAUNANI-KAY TRASK, FROM A NATIVE DAUGHTER 17 (Univ. of Haw. Press 1999) (1993) (discussing the degradation and marketing of hula and culture in tourism as “cultural prostitution” to portray Hawai‘i as “paradise.”).

58. After the death of Kamehameha I, the ali‘i who conquered Hawai‘i pae ‘āina, Hawaiian society was in a time of tumultuous transition. The Battle of Kuamo‘o was in large part about upholding old Hawaiian religious values and Akua. *See, e.g.*, Kamakau, Samuel Mānaiakalani. “Ke Kumu Aupuni: Ka mo‘olelo Hawai‘i no Kamehameha Ka Na‘i Aupuni o ke kāna aupuni i ho‘okumu ai” ‘Ahaui ‘Ōlelo Hawai‘i: Honolulu, 1996; <https://www.kuamoo.org/e-manono-recounting-the-story-of-kuamoo/> [<https://perma.cc/X6PG-4JXL>]. The mele, “E Manono,” underscores this deep kuleana of aloha: “kō aloha lā ‘ea, mālama kō aloha.”

religion and their akua, both Manono and Kekuaokalani fought to their death. This mo‘olelo is emblematic of the serious obligations that arise from aloha. While countless mele emphasize the idea of aloha, from mele aloha for a loved one and mele that honor an ali‘i (chief/chiefess), to mele lāhui (national or patriotic songs) that express unyielding love for Hawai‘i, aloha—and thus, aloha ‘āina—underscores Kānaka Maoli’s profound love for and kuleana to ‘āina and the life it sustains.

While the duty to aloha ‘āina<sup>59</sup> has steered Hawai‘i’s people since time immemorial, Hawai‘i is just beginning to re-center this cultural value in the context of land and resource management. Esteemed Kānaka Maoli scholar<sup>60</sup> Kapua Sproat and MJ Palau-MacDonald as well as Hawai‘i’s courts, for example, are beginning to embrace the obligation of aloha ‘āina as a “basic tenet of Hawai‘i’s Public Trust” and a “legal requirement.”<sup>61</sup> In *Ching v. Case*, the courts recognized a duty to “m[ā]lama ‘[ā]ina,” or to care for the land—a core practice of the larger philosophy of aloha ‘āina.<sup>62</sup>

For practical, cultural, and spiritual reasons, ‘āina is the center of life for Kānaka Maoli. Because of this, conversations around Hawaiian identity, self-determination, and ultimately justice, *must* consider ‘āina as an integral part of Kānaka Maoli themselves—including human wellbeing, culture, and more—and not a resource separate and apart from human beings. Beyond that, however, work to effectuate justice must also consider the ongoing and historical trauma and injustices that disenfranchise Kānaka Maoli in their kulāiwi.<sup>63</sup> Because of this important and layered history, notions of restorative justice are a crucial tool for both Kānaka Maoli and our elder sibling, ‘āina, alike.

#### B. *Hawai‘i’s Legal Regime Embraces Restorative Justice Principles*

*Regardless of the fact that law has changed the Native and may have created a being that is not entirely like his ancestors, law has also been made a part of our being, adopted and adapted to our view of ourselves and the world.*<sup>64</sup>

Throughout the evolution of Hawai‘i’s legal regime, ali‘i—and Kānaka Maoli—actively exercised ‘Ōiwi agency to strategically incorporate foreign systems of governance to fit their needs—including law.<sup>65</sup> Because of this,

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59. D. Kapua‘ala Sproat & MJ Palau-McDonald, *The Duty to Aloha ‘Āina: Indigenous Values as a Legal Foundation for Hawai‘i’s Public Trust*, 57 HARV. C.R.-C.L. L. REV. 525, 538 (2022).

60. *Id.* at 525.

61. *Id.* at 528.

62. *Ching v. Case*, 449 P.3d 1146, 1160 n. 26 (Haw. 2019).

63. “Kulāiwi” translates as “homeland.” “Iwi” translates as bones. This word alludes to the fact that Kānaka Maoli’s homelands were literally lands of his/her ancestors’ bones. WEHEWEHE WIKIWIKI, *supra* note 3.

64. Jonathan Kay Kamakawiwo‘ole Osorio, *Kū‘ē and Kū‘oko‘a: History, Law, and Other Faiths*, in LAW AND EMPIRE IN THE PACIFIC: FIJI AND HAWAI‘I 213, 215 (Sally E. Merry & Donald Brenneis eds., 2004).

65. KAMANAMAIKALANI BEAMER, NO MĀKOU KA MANA: LIBERATING THE NATION 15

and because of Hawai‘i’s distinct culture and history, Hawai‘i’s legal regime is unique. It is uniquely Hawaiian. And while Hawai‘i’s legal regime has evolved throughout the years, it also maintains and traces its mo‘okū‘auhau to foundational guiding philosophies, like aloha ‘āina, that are central to a functioning Kānaka Maoli society. In Hawai‘i, Maoli custom and traditions continue to inform our unique legal regime today.<sup>66</sup> More importantly, in the context of ongoing struggles for Kānaka Maoli, Hawai‘i’s legal regime also embraces and commits to principles of restorative justice.

Given Hawai‘i’s rich history as well as its history of injustice—such as, for example, the illegal overthrow of the sovereign Hawaiian Kingdom<sup>67</sup>—federal and state governments have pledged to reconcile with Kānaka Maoli.<sup>68</sup> On the state level or example, the Office of Hawaiian Affairs was specifically established in the 1978 Constitutional Convention<sup>69</sup> “out of the state’s efforts to address earlier wrongs and as an attempt to promote Hawaiian self-government and self-determination.”<sup>70</sup> Larger commitments to restorative justice are also particularly instructive in light of the intentional removal of Kānaka Maoli from ‘āina as well as the cultural and environmental destruction that followed.<sup>71</sup> As a result of the Constitutional Convention, and out of concern for Hawai‘i’s natural and cultural resources,<sup>72</sup> Hawai‘i’s people carved

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(2014) [hereinafter *No Mākou Ka Mana*] (explaining that the Hawaiian Kingdom was a unique “Hawaiian creation” in which Ali‘i excersized ‘Ōiwi agency and “were strategic in their adaptations and were active agents in appropriating laws, protocols, and technologies.”).

66. See, e.g., HAW. REV. STAT. § 1–1 (2022) (adopting English common law, except as “established by Hawaiian usage”).

67. Pub. L. No. 103–150, 107 Stat. 1510 (1993) [hereinafter *Apology Resolution*] (“Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii.”); see also Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. COLO. L. REV. 311, 354 (2001).

68. See e.g., *Apology Resolution*, *supra* note 67, at 1; 1997 Haw. Sess. Laws 956, § 1; 1993 Haw. Sess. Laws 1009, § 1(9); 2011 Haw. Sess. Laws 646–51; H.R. Con. Res. 179, 17th Leg. (Haw. 1993). As an important example, the *Apology Resolution* acknowledged the significance of the illegal overthrow of the Kingdom of Hawai‘i, apologized for its role, and agreed to support reconciliation efforts through Congressional efforts. See *Apology Resolution*, *supra* note 67, at 8–9. Similarly, in 2011, the Hawai‘i State Legislature reaffirmed its commitment to Kānaka Maoli by passing a law that acknowledges the special trust relationship between the United States and Kānaka Maoli. 2011 Haw. Sess. Laws 646–51. On the State level, constitutional amendments that grew out of the 1978 Constitutional Convention acknowledged State’s kuleana and commitment to restorative justice, including for example, the establishment of the Office of Hawaiian affairs, protections around traditional and customary practices, and the public trust doctrine. See e.g., HAW. CONST. art. XII § 5 (1978).

69. HAW. CONST. art. XII § 5 (1978).

70. Introduction in *NATIVE HAWAIIAN LAW: A TREATISE* xi, xii (Melody Kapilialoha MacKenzie, Susan K. Serrano, & D. Kapua‘ala Sproat eds., 2015).

71. See, e.g., Sproat, *Environmental Self-Determination*, *supra* note 27; Sproat, *Wai Through Kānāwai*, *supra* note 13; Anaya, *supra* note 14; Forman & Serrano, *Traditional and Customary Access and Gathering Rights*, *supra* note 23; Tuteur, *Reframing Kānāwai*, *supra* note 22.

72. See, e.g., Comm. Whole Rep. No. 12, in *Debates in the Committee of the Whole*

out protections for ‘āina and traditional and customary practices as constitutional principles.<sup>73</sup> These constitutional protections elevate and protect the *public’s* interest in Hawai‘i’s natural resources and include specific provisions for Kānaka Maoli rights and interests. Importantly, Article XI, section 1 of Hawai‘i’s Constitution provides that “[a]ll public natural resources are held in trust by the State for the benefit of the people.”<sup>74</sup> Together with Article XI, section 7 of the Constitution, these provisions “adopt the public trust doctrine as a fundamental principle of constitutional law in Hawai‘i.”<sup>75</sup> Hawai‘i’s Public Trust Doctrine traces its mo‘okū‘auhau to Hawaiian Kingdom cases and laws as well as Kānaka Maoli custom and tradition that “firmly established the principle that natural resources (including water) were not private property, but were held in trust by the government for the benefit of the people.”<sup>76</sup> Like Kānaka Maoli’s familial relationship to ‘āina, Hawai‘i’s constitution recognizes the collective kuleana to maintain these resources for present and future generations.

Against the backdrop of a rising cultural and political consciousness referred to as the “Hawaiian Renaissance,” the 1978 Constitutional Convention also centered Kānaka Maoli and their practices as “integral part[s] of the ancient Hawaiian civilization,” and as central tools to restore a model of abundance in modern times.<sup>77</sup> Both constitutional and statutory protections safeguard and promote traditional and customary rights.<sup>78</sup> The Hawai‘i

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on Hawaiian Affairs in 1 CONVENTION PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAII OF 1978, at 1016 (1980).

73. Sproat & Palau-McDonald, *supra* note 59, at 11.

74. HAW. CONST. art. XI, § 1.

75. *In re Water Use Permit Applications*, 9 P.3d 409, 444 (Haw. 2000).

76. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 148; *see also* HAW. CONST. OF 1840, translated in TRANSLATION OF THE CONSTITUTION AND LAWS OF THE HAWAIIAN ISLANDS, ESTABLISHED IN THE REIGN OF KAMEHAMEHA III 10–11 (photo. Reprint 1994) (1842) (acknowledging the public trust nature of Hawai‘i’s water resources); E.S. CRAIGHILL HANDY & ELIZABETH GREEN HANDY WITH THE COLLABORATION OF MARY KAWENA PUKU‘I, NATIVE PLANTERS IN OLD HAWAI‘I: THEIR LIFE, LORE, & ENVIRONMENT 496–97 (1972) (conceptualizing water as a public trust resources; MELODY KAPILIALOHA MACKENZIE, KA LAMA KŪ O KA NO‘EAU: THE STANDING TORCH OF WISDOM vi–vii (2009) (discussing how William S. Richardson, the former chief justice of the Hawai‘i Supreme Court, helped to reincorporate Native Hawaiian tradition and custom into state law).

77. Comm. on Hawaiian Affs., Standing Comm. Rep. No. 57, *reprinted in* 1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAII OF 1978, at 637, 640 (1980). In emphasizing the importance of these rights, the delegates of the 1978 Constitutional Convention highlighted the vast scope of these rights and practices:

The proposed new section reaffirms all rights customarily and traditionally held by ancient Hawaiians . . . [B]esides fishing rights, other rights for sustenance, cultural and religious purposes exist. Hunting, gathering, access and water rights, while not provided for in the State Constitution, were nevertheless an integral part of the ancient Hawaiian civilization and are retained by its descendants.

78. *See, e.g.*, HAW. CONST. art. XI, § 1; HAW. CONST. art. XII, § 7 (1978); HAW. REV. STAT. § 1–1 (2013); and HAW. REV. STAT. § 7–1 (2018).

Water Code, for example, includes specific protections and prioritization of Native Hawaiian rights, such as the restoration of cultural connections to ‘āina and kalo.<sup>79</sup>

Hawai‘i’s constitutional framers acknowledged the grave wrongs committed against Hawai‘i’s Indigenous People and sought to restore, at least in part, some of what was wrongly taken, imposed, and destroyed as a part of the long history of colonization. The constitution does so by promoting values and practices that both guided and sustained Hawai‘i’s society. ‘Ike ku‘una<sup>80</sup> is not only a foundation for Hawai‘i’s laws, but a guiding tool to effectuate justice, as well. For these reasons, as outlined below, deploying a restorative justice framework to address the unique positionality of Kānaka Maoli is the most fitting approach to shape the continued evolution of Hawai‘i’s legal regime and to actualize the state’s commitment to restoring the damages to Hawai‘i’s ‘āina, mo‘omeheu, ‘āina, and ea.<sup>81</sup>

Given Hawai‘i’s strong embrace of restorative justice principles and the social and political upheaval currently sweeping the United States, identifying and articulating the historical and ongoing harms of colonization is an appropriate starting point for discussions around justice. A central matter of injustice emanates from the United States’ role in the overthrow of the Hawaiian Kingdom, the subsequent “annexation,” and its continued presence in Hawai‘i. Though the status quo generally recognizes Hawai‘i as a state of the United States, leading international law scholar and architect of the Four Values of Restorative Justice James Anaya, contends that a “percieved statehood remedy” is inadequate both from the “framework of the decolonialization regime” and “from the standpoint of [I]ndigenous Hawaiians.”<sup>82</sup> Kānaka Maoli widely protested Hawai‘i’s incorporation into the United States. Indeed, Kānaka Maoli explicitly denounced both the overthrow and the “annexation” of the Kingdom of Hawai‘i. This opposition is evidenced in broad public discourse found in nūpepa (newspaper) Hawai‘i, over 21,000 signatures on the Kū‘ē Petitions protesting annexation submitted to the United States Congress,<sup>83</sup> and in countless mele, some of which are compiled in the “Buke Mele Lāhui,” a Book of National Songs.<sup>84</sup>

These mele lāhui, utilizing the heightened literary skills of haku mele, unequivocally express support for Mō‘ī Wahine ‘o Lili‘uokalani, Hawai‘i’s last

79. See, e.g., HAW. REV. STAT. § 174C-101 (reaffirming traditional and customary rights of Kānaka Maoli in the Water Code).

80. “‘Ike ku‘una” translates as “traditional knowledge.” WEHEWEHE WIKIWIKI, *supra* note 3.

81. Sproat, *Environmental Self-Determination*, *supra* note 27, at 66; see also Rebecca Tsosie, *Indigenous People and Environmental Justice: The Impact of Climate Change*, 78 U. COLO. L. REV. 1625 (2007); Anaya, *supra* note 14.

82. Anaya, *supra* note 14, at 361.

83. See, e.g., JONATHAN KAY KAMAKAWIWO‘OLE OSORIO ET AL., KŪ‘Ē PETITIONS: A MAU LOA AKU NŌ (2020).

84. FRANCISCO JOSE TESTA, BUKE MELE LĀHUI (1895) [hereinafter BUKE MELE LĀHUI].



justice.”<sup>93</sup> This human rights-based approach is particularly applicable for Kānaka Maoli as a distinct people with a unique political status living with the consequences of colonization and dispossession. This approach is even more crucial where, for example, state-centered models attempting to restore self-governance and self-determination such as the Office of Hawaiian Affairs have been significantly undermined by ongoing remnants of colonization and disenfranchisement.<sup>94</sup>

For Indigenous Peoples, and Kānaka Maoli in particular, constructs of restorative justice are crucial tools because they connect environmental justice and principles of self-determination to address the ongoing harms of colonization. Just as all aspects of Kānaka Maoli life overlap with one another, this model addresses the intersection of ‘āina and human beings. For this reason, notions of restorative justice for Kānaka Maoli must necessarily include ‘āina. Given ‘āina’s central role in Kānaka Maoli life and wellbeing, efforts around restorative justice must start with ‘āina. Like many other Indigenous Peoples throughout the world, environmental justice for Kānaka Maoli “is thus largely about cultural and economic self-determination as well as about belief systems that connect their history, spirituality, and livelihood to the natural environment.”<sup>95</sup> Because of the innate relationship between kānaka and ‘āina, however, environmental issues are more appropriately understood holistically: as restorative environmental justice issues.<sup>96</sup>

A developing model of restorative environmental justice, then, considers the unique worldviews and practices of Indigenous Peoples as well as the

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93. Rebecca Tsosie, *Indigenous Peoples and the Ethics of Remediation: Redressing the Legacy of Radioactive Contamination for Native People and Native Lands*, 13 SANTA CLARA J. INT’L L. 203, 245 (2015).

94. See e.g., *Rice v. Cayetano*, 528 U.S. 495, 517, 524 (2000). In *Rice*, the United States Supreme Court’s formalist approach supplanted the contextual analysis of the District Court for the District of Hawai‘i, redefining the Office of Hawaiian Affairs election process and holding that elections could not be limited solely to Native Hawaiians. Plaintiff, Freddy Rice, whose ancestors came to Hawai‘i during the height of missionary conquest and who directly benefitted from the colonization of Hawai‘i (e.g., removing Native Hawaiian from their ‘āina to establish ranching), sued the State of Hawai‘i for not allowing him to vote in the Office of Hawaiian Affairs elections. Utilizing the Fourteenth and Fifteenth Amendments to the United States Constitution, “Rice turned the laws on their heads, wielding them against a historically disadvantaged group to challenge the group’s ability to elect trustees for an agency designed to manage Indigenous resources in partial redress for the devastation imposed by American colonialism.” Sproat, *Wai Through Kānāwai*, *supra* note 13, at 158–60. For a more detailed review of the *Rice* case, see Eric K. Yamamoto & Catherine Corpus Betts, *Disfiguring Civil Rights to Deny Indigenous Hawaiian Self-Determination: The Story of Rice v. Cayetano*, in RACE LAW STORIES 541 (Rachel F. Moran & Devon W. Carbado eds., 2008).

95. Melody Kapilialoha MacKenzie, Susan K. Serrano, & Koalani Laura Kaulukukui, *Environmental Justice for Indigenous Hawaiians: Reclaiming Land and Resources*, 21 NAT. RES. & ENV’T 37, 38 (2007) [hereinafter MacKenzie et al., *Environmental Justice for Indigenous Hawaiians*].

96. See, e.g., *id.*

specific harms of and context around colonization.<sup>97</sup> This Article utilizes this model to expand traditional notions of environmental justice beyond the disproportionate impacts of environmental hazards on and unequal treatment of marginalized communities to, first, articulate the foundational beliefs and practices of Kānaka Maoli; second, identify the harms of colonization; and, most importantly, to seek redress by co-powering Kānaka Maoli communities.<sup>98</sup> In contrast to “empowering” communities, where one party holds power or authority to give to another, the idea of “co-power” acknowledges that each party holds power that can support one another and that learning is relational and reciprocal. Deploying a restorative justice framework is also useful to other Indigenous Peoples throughout the world. It acknowledges the way Indigenous Peoples are integrated with and dependent on their natural counterparts in the world. It also seeks to remedy a history of “the loss of land, culture, health, and self-governance.”<sup>99</sup> And, unlike traditional notions of environmental justice, restorative environmental justice recognizes self-determination as a “fundamental expression of restorative justice,”<sup>100</sup> including “cultural and economic self-determination” as well as the lifeways of Indigenous Peoples.<sup>101</sup>

While advocacy and claims for restorative environmental justice often seek to redress specific harms as a result of colonization, the case of the Hui

97. *Id.* at 37.

98. *Id.*; see also Yamamoto & Lyman, *supra* note 67, at 311 (“[Racial c]ommunities are not all created equal.’ Yet, the established environmental justice framework tends to treat racial minorities as interchangeable and to assume for all communities of color that health and distribution of environmental burdens are the main concerns. For some racialized communities, however, environmental justice is not only, or even primarily, about immediate health concerns or burden distribution. Rather, for them, and particularly for some Indigenous Peoples, environmental justice is mainly about cultural and economic self-determination and belief systems that connect their history, spirituality, and livelihood to the natural environment.”); Sproat, *Environmental Self-Determination*, *supra* note 27, 157-58 (“Responses to climate change must be driven by native peoples’ choices. But those choices will inevitably entail interaction with state, local, or tribal agencies, private businesses, and nonindigenous residents. In large part, the local legal regime’s handling of natural resources and indigenous peoples’ claims will frame these interactions, particularly when such claims clash with western-imposed values and practices. That clash, even today, is nearly always about more than competing land or water uses. It is steeped in a history of conquest, confiscation, cultural suppression, betrayal, and halting reparative initiatives. For this reason, native peoples’ claims to land, water, and other resources are most appropriately framed not simply as “environmental” issues, but, more aptly, as “environmental justice” issues.”)

99. Sproat, *Environmental Self-Determination*, *supra* note 27, at 160.

100. Sproat, *Environmental Self-Determination*, *supra* note 27, at 160.

101. MacKenzie et al., *Environmental Justice for Indigenous Hawaiians*, *supra* note 95, at 38; see also Robert A. Williams Jr., *Large Binocular Telescopes, Red Squirrel Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World*, 96 W. VA. L. REV. 1133 (1994); Rebecca A. Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225 (1996).

differs slightly. While the Hui's work naturally redresses harms suffered from colonization, it also largely *preserves* and articulates its ongoing expressions of health and self-determination within the context of the existing governmental structure. As fourth-to-fifth generation mahi'ai (farmers) on their specific 'āina, the Hui's small 'ohana (family) farmers have upheld land and resource management in essentially the same way for over five centuries. Unlike other 'āina throughout Hawai'i that were permanently altered to accommodate large-scale sugar operations or tourism, Wai'oli's social fabric has been directly preserved by a tight-knit community of kalo farmers—their work seeks to continue this legacy.

The Hui still tackles distinct harms of colonization—the loss of traditional governance systems and management practices—as well as the impacts of climate change. These losses have disrupted, and will continue to disrupt, Indigenous biocultural resource management systems that have enabled life in these islands for generations.<sup>102</sup> The displacement of traditional resource governance and management practices by the capitalistic economy has led to a decline of biocultural resources throughout our islands and imposes distinct harms on Kānaka Maoli.<sup>103</sup> The right to environmental self-determination necessarily centers the Hui's knowledge, practices, and benefits in decisionmaking and actualizes the deep constitutional roots of restorative justice for Kānaka Maoli. Through this model, the Hui's diligent advocacy actualizes Hawai'i's unique legal regime and brings restorative environmental justice to life for the larger Halele'a Moku and its people.

C. *Operationalizing Restorative Environmental Justice in Hawai'i through the Four Values of Restorative Justice*

Despite Hawai'i's strong embrace of restorative justice principles as well as growing discourse regarding the need to realize self-determination for Kānaka Maoli, decisionmakers struggle to actualize restorative justice on the ground and in our communities. These difficulties are exacerbated by heightened conflicts around what pono management of 'āina entails and what values can and should guide decisionmaking.<sup>104</sup> In the coming years, decisionmakers will continue to face mounting challenges in their kuleana to steward Hawai'i's 'āina. Impacts of climate change will disproportionately affect Hawai'i pae 'āina as a whole and Kānaka Maoli in particular.<sup>105</sup> Charting a future in these

102. Winter et al., *The Moku System*, *supra* note 253, at 4.

103. *Id.* at 19.

104. See, e.g., the ongoing conflict atop Maunakea, and community efforts to more effectively manage 'āina and natural resources, as well as cultural and spiritual practices on the mountain. Tuteur, *Reframing Kānāwai*, *supra* note 22, at 68; Terina Kamailelauli'i Fa'agau, *Reclaiming the Past for Mauna a Wākea's Future: The Battle Over Collective Memory and Hawai'i's Most Sacred Mountain*, *ASIAN-PAC. L. & POL'Y J.*, 2021, at 1, 39.

105. See, e.g., USGCRP, *Fourth National Climate Assessment*, *supra* note 20 at 28 (explaining that “climate change increasingly threatens Indigenous communities' livelihoods, economies, health, and cultural identities by disrupting interconnected social, physical, and

islands will require strategic planning and a comprehensive understanding of both historical, ongoing, and future injustice issues. Hawai‘i’s leaders cannot do this alone. They can and must rely practitioners’ and community’s wealth of knowledge. Given these challenges—and the opportunities they pose—this Article offers the Four Values of Restorative Justice as a practical analytical framework to actualize restorative justice for Hawai‘i and its people.

The framework grows out of international norms of self-determination and requires consideration of four values: (1) mo‘omeheu (cultural integrity); (2) ‘āina (lands and natural resources); (3) maui ola (social determinants of health and well-being); and (4) ea (self-determination).<sup>106</sup> Like Kānaka Maoli’s relationship to ‘āina and the natural world, the dimensions of the framework are “inextricably intertwined.”<sup>107</sup>

### 1. Mo‘omeheu: Cultural Integrity

Despite strong protections for traditional and customary practices in Hawai‘i’s legal regime, Kānaka Maoli continue to argue for mo‘omeheu, or cultural integrity, in Hawai‘i. At the same time, cultural practitioners also work to restore cultural practices and institutions in the twenty-first century. For Kānaka Maoli, mo‘omeheu includes “all aspects of an [I]ndigenous group’s survival as a distinct culture” including “economic or political institutions, land use patterns, as well as language and religious practices.”<sup>108</sup> As a “central aspect of self-determination,” the realm of mo‘omeheu includes a group’s ability “to maintain and freely develop their cultural identities.”<sup>109</sup>

After decades of being forcibly removed from cultural practices, Kānaka Maoli continue to successfully re-engage and evolve in their culture. As a poignant example, hula, perhaps the most visible cultural practice in present-day Hawai‘i, was banned from public performance in the Hawaiian Kingdom in 1859.<sup>110</sup> Staunch practitioners quietly continued the practice underground, but its absence from everyday society undoubtedly affected its role and recognition in Hawaiian culture. Despite now widespread progress, disagreements over

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ecological systems”); Susan K. Serrano & Ian Falefuafua Tapu, *Reparative Justice in the U.S. Territories: Reckoning with America’s Colonial Climate Crisis*, 110 CAL. L. REV. 1281 (2022). As oceanic people inhabiting islands in the middle of the ocean, the U.S. territories are geographically similar to Hawai‘i and suffer disproportionate impacts of climate change: “America’s five island colonies experience crushing climate change impacts despite contributing very little to greenhouse gas emissions. They disproportionately experience sea level rise, extreme temperatures, intense tropical storms, and the resulting damage to ecosystems, health, culture, and infrastructure—but grapple with limited power to combat these climate disasters.” *Id.* at 1282.

106. See Anaya, *supra* note 14, at 361; Tuteur, *Reframing Kānāwai*, *supra* note 22, at 61. Mahina Tuteur re-framed these categories in ‘ōlelo Hawai‘i.

107. Tuteur, *Reframing Kānāwai*, *supra* note 22, at 68.

108. Anaya, *supra* note 14, at 343–44.

109. *Id.* at 342–43.

110. See, e.g., Noenoe K. Silva, *He Kānāwai E Ho‘opau I Na Hula Kuolo Hawai‘i: The Political Economy of Banning the Hula*, 34 HAWAIIAN J. HIST. 29, 29 (2000).

what are “traditional” and “modern” articulations of cultural practices continue to stifle mo‘omeheu.<sup>111</sup> Hawai‘i’s shift to and reliance on a tourism-based economy presents another level of difficulty for cultural practitioners. As a “source of economic prosperity,” tourism has also become a “threat to cultural and community identity.”<sup>112</sup> Sacred Hawaiian cultural practices like hula are continually misrepresented and misappropriated for the benefit of marketing and accessibility. Tourists view hula as amusement that can be used by all for entertainment. Venues that cater to visitors’ learning and consumption of hula stand in contrast to the traditional institutions that facilitate the transmission of revered cultural knowledge. Broader public perception about what hula is and the integral role it plays in shaping Kānaka Maoli identity and society directly inform the way we approach efforts to regain these practices. Since “framing injustice is about social memory,”<sup>113</sup> these impressions impede Kānaka Maoli rights and efforts towards a full, living culture. Further, arbitrary binaries between “traditional” and “modern,” incomplete context, and continued misappropriation stifle cultural integrity and its ability to inform public discourse about the integral role of traditional and customary practices in a thriving Hawaiian society.<sup>114</sup>

The United Nations’ Declaration on the Rights of Indigenous Peoples (UNDRIP) explicitly recognizes Indigenous Peoples’ right to practice “and revitalize their cultural traditions and customs,” including “the right to maintain, protect and develop the past, present and future manifestations of their cultures.”<sup>115</sup> This realm, therefore, looks to both the past and present context. A contextual analysis of mo‘omeheu is particularly applicable to Kānaka

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111. See, e.g., Tuteur, *Reframing Kānāwai*, *supra* note 22, at 83-86 (discussing the Court’s overly narrow interpretation of cultural practices); see also HUAMAKAHIKINA DECLARATION ON THE INTEGRITY, STEWARDSHIP, AND PROTECTION OF HULA (Aug. 21-22, 2021); Wendy Osher, *Historic “Huamakahikina Declaration” Ratified on the Integrity, Stewardship, and Protection of Hula*, MAUI NOW (Sept. 23, 2021, 7:41 AM) <https://maui.now.com/2021/09/23/historic-huamakahikina-declaration-ratified-on-the-integrity-stewardship-and-protection-of-hula/> [<https://perma.cc/C7VQ-5KA5>] contrasted with Carlyn L. Tani, *What is Hula and What is Not?*, HONOLULU MAGAZINE (Aug. 23, 2022) <https://www.honolulumagazine.com/what-is-hula-and-what-is-not/> [<https://perma.cc/G69T-UAPR>].

112. Ramsay Remigius Mahealani Taum, “Tourism.” *The Value of Hawaii Knowing the Past, Shaping the Future* (2010), 31.

113. Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1756 (2000).

114. Fa‘agau, *supra* note 104, at 8-9 (“To achieve mass mobilization and collective action, social justice groups must ‘expand the law’s narrow framing of injustice and focus on historical facts to more fully portray what happened and why it was wrong.’”) (quoting Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1757 (2000)).

115. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, at 3 (Sept. 13, 2007) [hereinafter UNDRIP]. Article 8(2) also prohibits any action “which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.” *Id.*

Maoli “in light of their historical and continuing vulnerability.”<sup>116</sup> Because of this, mo‘omeheu considers whether an action supports “cultural integrity as a partial remedy for past harms, or perpetuate[s] conditions that continue to undermine cultural survival.”<sup>117</sup>

## 2. ‘Āina: Land and Natural Resources

For Kānaka Maoli, ‘āina is not only the physical environment and “land and natural resources”<sup>118</sup> but an ancestor that sustained spirituality, “identity, continuity, and well-being as a people.”<sup>119</sup> ‘Āina refers to the various ways that land and its resources sustain its people.<sup>120</sup> In the context of restorative justice efforts, Anaya highlights ‘āina as being “widely acknowledged,” as crucial “to the survival of [I]ndigenous cultures.”<sup>121</sup> International law also acknowledges that “notions of cultural integrity and self-determination join property precepts in the affirmation of [I]ndigenous land and resource rights” for Indigenous Peoples.<sup>122</sup>

Hawai‘i’s ‘āina, as a famed tourist destination and an ideal spot for military operations, has been continually seized for foreign interests—interests that do not accommodate Kānaka Maoli’s unique relationship to ‘āina. Today, after transitioning to a hybridized notion of private property, ‘āina continues to enable life. As foreign influences continue to move Hawai‘i’s land away from traditional notions of ‘āina and resource management, Kānaka Maoli identity and culture suffer.<sup>123</sup> Given the increasing costs of living and housing, Kānaka Maoli struggle to survive in their homelands. A land base is essential to self-determination because, on a practical level, it provides a place to live. As an important aspect of restorative justice, “[p]roperty has been affirmed as an international human right”<sup>124</sup> in which Kānaka may pursue their cultural and political sovereignty.<sup>125</sup>

Considering Kānaka Maoli’s familial and cultural relationship to ‘āina, analyses of restorative environmental justice must consider ‘āina’s unique value to Kānaka as well as the historical and ongoing struggle to maintain traditional familial, cultural, and spiritual connections. In the context of this framework, an analysis in the realm of ‘āina must examine whether a decision

116. Anaya, *supra* note 14, at 345.

117. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 179.

118. Anaya, *supra* note 14, at 346.

119. Kekuewa Kikiloī, *Rebirth of an Archipelago*, in 6 HŪLILI: MULTIDISCIPLINARY RSCH. ON HAWAIIAN WELL-BEING 73, 75 (2010).

120. *See, e.g., supra* Subpart II.A.

121. Anaya, *supra* note 14, at 346.

122. *Id.* at 347.

123. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 181.

124. Anaya, *supra* note 14, at 347 (citing, for example, the Universal Declaration of Human Rights, art. 17, GA. Res. 217A (III), U.N. GAOR, 3rd Sess., pt. 1, 138th plen. mtg. at 135, U.N. Doc. A/810, at 71 (1948); the American Convention on Human Rights, art. 21, Nov. 22, 1969, O.A.S. Official Records, OEA/ser.K/XVL/1.1, Dec. 65, rev. 1, Corr. 1 (1970), 1144 U.N.T.S. 123).

125. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 181.

or action “perpetuates the subjugation of ancestral lands, resources, and rights, or attempts to redress historical injustices in a significant way.”<sup>126</sup> Kānaka Maoli’s duty to aloha ‘āina further elevates ‘āina as a crucial realm because practicing aloha ‘āina “reinforce[s] familial ties, links to the past, and connections to the land and sea as sources of life.”<sup>127</sup>

### 3. Maui Ola: Social Determinants of Health

An inquiry into the realm of maui ola considers values of and impacts upon social welfare and development as they relate to Kānaka Maoli. While Kānaka Maoli have actively exercised their agency in the decades since foreign contact, colonization dramatically altered a “highly complex and sophisticated” Hawaiian society and economy.<sup>128</sup> This shift, as well as the historical and institutional practices that followed have “result[ed] in most [I]ndigenous communities living in an economically disadvantaged condition.”<sup>129</sup> Anaya contends that two distinct phenomena have contributed to these conditions: the “progressive plundering of [I]ndigenous peoples’ lands and resources . . . [that] devastated [I]ndigenous economies and subsistence life” and “patterns of discrimination that have tended to exclude members of [I]ndigenous communities” from social welfare benefits.<sup>130</sup> These trends have isolated Kānaka Maoli and negatively impacted mental, physical, and spiritual health.

Given this history, as well as Kānaka Maoli’s inextricable tie to ‘āina, maui ola includes an expansive and holistic view of social welfare and development. It includes an understanding of “mental, physical, and spiritual health and well-being”<sup>131</sup> by also understanding that Kānaka Maoli identity is innately tied to their ‘āina hānau (land of one’s birth).<sup>132</sup> This value also considers socio-economic indicators such as health, education, and living standards.<sup>133</sup>

Following the arrival of malihini, or foreigners, to Hawai‘i, Kānaka Maoli wellbeing suffered, with more than 60 percent of the population lost due to introduced disease.<sup>134</sup> Some Kānaka Maoli, who were not immediately familiar with the western system of title and private property, did not obtain title to their ancestral ‘āina.<sup>135</sup> To this day, Kānaka Maoli are overrepresented

126. *Id.*

127. GOODYEAR-KA‘ŌPUA, *THE SEEDS WE PLANTED*, *supra* note 38, at 32.

128. Kamanamaikalani Beamer et al., *Reflections on Sustainability Concepts: Aloha ‘Āina and the Circular Economy*, SUSTAINABILITY, Mar. 9, 2021, at 1, 5.

129. Anaya, *supra* note 14, at 352.

130. *Id.*

131. Tuteur, *Reframing Kānāwai*, *supra* note 22, at 76.

132. Kikiloi, *supra* note 119, at 75.

133. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 183.

134. See O.A. BUSHNELL, *THE GIFTS OF CIVILIZATION: GERMS AND GENOCIDE IN HAWAI‘I* (1993).

135. See, e.g., Sproat, *Wai Through Kānāwai*, *supra* note 13, at 182; Anaya, *supra* note 14, at 315 (quoting NATIVE HAWAIIAN RIGHTS HANDBOOK 44 (Melody Kapilialoha MacKenzie ed., 1991)).

within negative socio-economic indicators such as incarceration,<sup>136</sup> and poverty and welfare rates,<sup>137</sup> and are underrepresented among college graduates, professionals, and political officials.<sup>138</sup> Kānaka Maoli struggle to live on their own ‘āina, with Kānaka Maoli ranking low in homeownership.<sup>139</sup> And with respect to Kānaka Maoli’s Native tongue, once outlawed in Hawaiian society, just 5.7 percent of Hawai‘i’s population now speak ‘ōlelo Hawai‘i.<sup>140</sup>

Given this historical trauma and context, examining maui ola is particularly key to effectuating justice for Kānaka Maoli. This value takes a holistic approach to consider the well-being through socio-economic indicators. An analysis considers whether an action or decision has “the potential to improve health, education, [ ] living standards,” “improves social welfare conditions or perpetuates the status quo.”<sup>141</sup>

#### 4. Ea: Self-Governance

As an “overarching political dimension of ongoing self-determination,”<sup>142</sup> ea, or self-governance, considers whether an action or decision empowers, or as a baseline, involves, Kānaka Maoli in all decisions that affect them, namely political and cultural sovereignty.<sup>143</sup> Much like the larger inquiry regarding the Four Values of Restorative Justice, for Kānaka Maoli, notions of ea encompass all aspects of life. Ea is not only a political philosophy and driving ethic, but

136. Leah Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, PRISON POLICY INITIATIVE (May 28, 2014) <https://www.prisonpolicy.org/reports/rates.html> [<https://perma.cc/7L45-LVG4>]. Further, Native Hawaiians are physically detached from ‘āina and disproportionately sent to out-of-state prisons. OFF. OF HAWAIIAN AFFS., *THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM* (2010).

137. According to a 2018 report based on recent census data, of the five largest racial groups in Hawai‘i, Native Hawaiians have the highest poverty rates for individuals and families. HAW. DEP’T OF BUS., ECON. DEV. & TOURISM, *DEMOGRAPHIC, SOCIAL, ECONOMIC, AND HOUSING CHARACTERISTICS FOR SELECTED RACE GROUPS IN HAWAII 13* (2018); OFF. OF HAWAIIAN AFFS., *KĀNEHŌ‘ĀLANI: TRANSFORMING THE HEALTH OF NATIVE HAWAIIAN MEN* (2017); OFF. OF HAWAIIAN AFFS., *HAUMEA: TRANSFORMING THE HEALTH OF NATIVE HAWAIIAN WOMEN AND EMPOWERING WĀHINE WELL-BEING* (2018); Anaya, *supra* note 14, at 317.

138. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 182; Anaya, *supra* note 14, at 317 (quoting NATIVE HAWAIIAN RIGHTS HANDBOOK 44 (Melody Kapilialoha MacKenzie ed., 1991)).

139. While Hawai‘i ranks 47th in homeownership rates, Kānaka Maoli have some of the lowest home ownership rates across racial groups. HAW. DEP’T OF BUS., ECON. DEV. & TOURISM, *DEMOGRAPHIC, SOCIAL, ECONOMIC, AND HOUSING CHARACTERISTICS FOR SELECTED RACE GROUPS IN HAWAII 14* (2018).

140. HAW. DEP’T OF BUS., ECON. DEV. & TOURISM, *DETAILED LANGUAGES SPOKEN AT HOME IN THE STATE OF HAWAII 19* (2016) [hereinafter *DETAILED LANGUAGES SPOKEN AT HOME*].

141. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 182–83.

142. Anaya, *supra* note 14, at 354.

143. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 183.

it also translates to “life,” “breath,” and to “emerge.”<sup>144</sup> Ea is often referred to and associated with “sovereignty” in large part because of the Hawaiian Kingdom’s initial constitution in 1840.<sup>145</sup> The term, however, encompasses much more when examined in context.

Hawai‘i’s famed state motto, “ua mau ke ea o ka ‘āina i ka pono,” roughly translated as “the sovereignty of the land continues through justice and proper acts,”<sup>146</sup> was proclaimed by King Kamehameha III, Kauikeaouli, in the mid-1800s. He made this declaration after the formal return of Hawai‘i’s sovereign government shortly after a British captain temporarily claimed Hawai‘i for Great Britain. Esteemed Kānaka Maoli scholars such as Kaleikoa Ka‘eo and Leilani Bashman highlight the weight of this saying and accentuate the role of ‘āina in ea. In declaring “ua mau ke ea o ka ‘āina i ka pono,” Hawai‘i’s Mō‘ī did not confirm the sovereignty of the *government* (aupuni) for which he ruled, he instead affirmed that that sovereignty was returned to “the *land* itself (ke ea o ka ‘āina) to which Kanaka are inextricably connected.”<sup>147</sup> In this, Kamehameha III articulated ‘āina as the center of ea—‘āina as the center of life for kānaka, and ultimately, ‘āina at the center of justice.

Kānaka Maoli have emerged through decades of systematic oppression, dispossession of ‘āina and resources, and ultimately, the loss of political autonomy. Because of a myriad of factors—some of which are outlined in the preceding values above—Kānaka Maoli, like many other Indigenous Peoples, have been “denied full and equal participation in the political processes that have sought to govern them” which leave them “political[ly] vulnerable.”<sup>148</sup>

As applicable to the larger analysis here, international human rights law recognizes and seeks to enhance Indigenous Peoples’ distinct relationship to their lands and natural resources.<sup>149</sup> To do so, international law articulates

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144. A NATION RISING: HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY, , 3–4 (Goodyear-Ka‘ōpua & Erin Kahunawaika‘ala Wright, eds., 2014).

145. *Id.* at 4.

146. *Id.* at 4.

147. *Id.* at 4.

148. Anaya, *supra* note 14, at 356.

149. *See e.g.*, UNDRIP, *supra* note 115. Article 25, for example, proclaiming:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Id.* At 25; *see also* José Martínez Cobo (Special Rapporteur on Prevention of Discrimination and Protection of Minorities), *Final Report on Study of the Problem of Discrimination Against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1986/7 & Add. 4, at 39, (July 30, 1981) :

It must be understood that, for indigenous populations, land does not represent simply a possession or means of production . . . . It is also essential to understand the special and profoundly spiritual relationship of indigenous peoples with Mother Earth as basic to their existence and to all their beliefs, customs, traditions and culture.

rights of self-government and cultural integrity<sup>150</sup> even against the pushback of colonizing nations that seek continued control over the political existence of Kānaka Maoli.<sup>151</sup> This control and unchecked power has given birth to a “story of violence, in which that colonialism literally and figuratively dismembered lāhui (the people) from their traditions, their lands, and ultimately their government.”<sup>152</sup>

Given this history, this final realm of restorative justice examines whether a decision involves, at minimum, Kānaka Maoli in decisionmaking and lawmaking around self-governance, ‘āina, culture, and more. It considers the particular vulnerabilities of Kānaka Maoli as well as a violent past of systematic discrimination. Ultimately, beyond Western notions of sovereignty, for Kānaka Maoli, ideas of ea are grounded in kānaka, ‘āina, the pilina (relationships) “forged through the process of remembering” and caring for ancestral places,<sup>153</sup> and the ‘ike ku‘una (traditional knowledge) that guide these interactions.

Considering these four salient realms for restorative justice, this Article deploys the developing framework centered around Indigenous knowledge to preserve—and more fully realize—the Indigenous right to environmental self-determination generally, but in the context of climate change particularly. Contextualizing the work of the Hui in the wake of a disaster, the Four Values of Restorative Justice illustrate the potential of thoughtfully re-centering Indigenous knowledge as a tool to cultivate ‘āina momona, restorative justice, and aloha ‘āina in the 21st century.

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*See also* Wallace Coffey & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL’Y REV. 191, 197 (2001) [hereinafter Coffey & Tsosie, *Rethinking the Tribal Sovereignty Doctrine*] (“[T]he central challenge of cultural sovereignty is to reach an understanding of sovereignty that is generated from *within* tribal societies and carries a cultural meaning consistent with those traditions.”).

150. *See e.g.*, G.A. Res. 2200A (XXI), Int’l Covenant on Civ. and Pol. Rts. (ICCPR), art. 1, ¶ 1, (Dec. 16, 1966) [hereinafter ICCPR]. The covenant affirms self-determination for all: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 27 also affirms cultural integrity and the rights of persons belonging to “ethnic, religious or linguistic minorities . . . to enjoy their own culture, to profess and practice their own religion, [and] to use their own language.” *Id.* art. 27. *See also* UNDRIP, *supra* note 115; Anaya, *supra* note 14, at 342–46; Coffey & Tsosie, *Rethinking the Tribal Sovereignty Doctrine*, *supra* note 149, at 197.

151. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 183; *see also* Coffey & Tsosie, *Rethinking the Tribal Sovereignty Doctrine*, *supra* note 149, at 198.

152. JONATHAN KAY KAMAKAWIWO‘OLE OSORIO, *DISMEMBERING LĀHUI: A HISTORY OF THE HAWAIIAN NATION TO 1887*, 3, (2002).

153. GOODYEAR-KA‘ŌPUA, *THE SEEDS WE PLANTED*, *supra* note 38, at 4.

### III. AIA I WAI‘OLI KE ALOHA ‘ĀINA: ALOHA ‘ĀINA LIVES IN WAI‘OLI

“*Aia i Wai‘oli ke aloha ‘āina, ia ‘āina momona no ka hui kalo*”<sup>154</sup>

There at Wai‘oli is aloha ‘āina, a rich and fertile land for kalo collective.

Literally translated as “joyous waters,” Wai‘oli’s waters have long sustained ‘āina momona in Wai‘oli.<sup>155</sup> A measure of wellness and a historical indicator of a ruling ali‘i’s success, ‘āina momona speak to ‘āina’s ability to feed—especially in the context of food. For centuries, Wai‘oli has embodied this concept, in large part due to highly structured biocultural resource management.<sup>156</sup> Mid-1800 nūpepa (newspaper) articles describe the immense fertility of the place and people. These articles describe the pure water and the lush and fertile area that sustained crops for food production.<sup>157</sup> Today, unlike many other places throughout Hawai‘i nei, Wai‘oli continues to thrive as an ‘āina momona—fertile soil for both kalo and aloha ‘āina.

#### A. *Biocultural Resource Mangement and Lo‘i Kalo Irrigation Systems*

Grounded in the reciprocal relationship between ‘āina and kānaka, Hawai‘i’s social-ecological systems have been an important focus for researchers around the world.<sup>158</sup> As remote islands in the middle of a vast ocean, intricate systems of biocultural resource management incorporated social-ecological relationships to “sustain[] an abundance of resources for more than a millennium.”<sup>159</sup> This context is important, not only when discussing the resilience of the tight-knit community of Wai‘oli, but especially when unpacking the ramifications of the global climate crisis and the promise of Indigenous biocultural resource management as a viable example for our global home.

Biocultural resource management weaves the needs of the community with ‘āina and supported culturally significant and nutrient rich foods like kalo. In pre-contact times, ‘auwai (irrigation ditches) allowed Kānaka Maoli to transform ‘āina into vast lo‘i kalo to sustain its population.<sup>160</sup> As a result,

154. U‘ILANI TANIGAWA LUM, *Aia i Wai‘oli ke Aloha ‘Āina* (2019). See also <https://law.hawaii.edu/aia-i-wai%CA%BBoli-ke-aloha-%CA%BBaina-ka-huli-ao-and-clinics-secure-wai-for-kalo-farming-in-wai%CA%BBoli/> [<https://perma.cc/EQK2-6JDB>].

155. See, e.g., Winter et al., *The Moku System*, *supra* note 3, at 2 (noting that “‘Āina momona was achieved and maintained through careful management on a landscape scale, which extended from the mountains to the sea.”)

156. See, e.g., *id.*

157. See, e.g., N. Keoahu, *Waioli Kauai Ian 23, 1835*, KE KUMU HAWAII, 15 April 1835.

158. See, e.g., Winter et al., *The Moku System*, *supra* note 3. “The small size of many Pacific Islands, coupled with the frequency of catastrophic natural events (i.e., hurricanes, tsunami, drought, flooding, lava flows, etc.) resulted in the development of social-ecological systems around the anticipation of and rapid recovery from environmental change. For this reason, Pacific Islands have been a focus of research into social-ecological system resilience, especially in light of global climate change.” *Id.* at 2.

159. *Id.*

160. A. U‘ILANI TANIGAWA LUM ET AL., FINAL ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACTS FOR THE WAI‘OLI VALLEY TARO HUI LONG-TERM WATER LEASE FOR TRADITIONAL LO‘I KALO CULTIVATION PROJECT IN THE HANAIEI DISTRICT ON THE ISLAND OF

kalo “nourished the bodies of the earliest Hawaiian people” and was foundational to ‘ai pono,<sup>161</sup> or the practice of eating traditional and customary Native Hawaiian foods.<sup>162</sup>

While each system is uniquely place-based and varies slightly, lo‘i kalo are generally designed to cultivate kalo and sustain the surrounding community. Lo‘i kalo irrigation systems, which include the lo‘i kalo and the structures within a particular stream, are complex and engineered to nourish crops while also maintaining the integrity of the ‘āina that supports it. Starting at the top of the stream, a mānowai, or a traditional breakaway dam, is designed to direct water off of the stream and towards lo‘i kalo. As an impermanent structure, the mānowai, which included dry-stacked rocks, is designed to break apart during heavy rain to prevent flooding in the area.<sup>163</sup> The second structure, the po‘owai, or head water, directs water into the ‘auwai or back to the stream. The po‘owai further acts as a spillway to regulate both the “speed and intensity” at which the water flows into the ‘auwai and lo‘i kalo.<sup>164</sup> The main ‘auwai directs the water to plains where many smaller ‘auwai direct fresh, cool water to the individual lo‘i kalo and then back out again through outflows. Most importantly, perhaps, to the larger irrigation system and the health of the resource, are the ho‘i, or the returns. After flowing through the lo‘i kalo, the water returns to the watershed of origin, either back to the stream, or to the muliwai (stream/river mouth), where wai, fresh water from the streams, meet with kai, salt water of the ocean.<sup>165</sup>

The ingenuity of the lo‘i kalo irrigation systems as a whole, and the Wai‘oli system in particular, is that it centers and prioritizes the health of both the resource and ‘āina. Whereas large-scale western agricultural systems that significantly altered Hawai‘i’s landscape are typically designed to take as much water as possible for the benefit of the commercial crop, lo‘i kalo irrigation systems are integrated with and use ‘āina.<sup>166</sup> For these reasons, lo‘i kalo

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KAUA‘I, at 13 (2021) [hereinafter FINAL EA] [<https://perma.cc/B2ZY-PYFZ>].

161. *Id.*

162. WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6, at 13.

163. FINAL EA, *supra* note 160, at 39–40. The EA also notes the significance of the mānowai: “The significance of the mānowai is found in ‘ōlelo Hawai‘i. A mānowai is the origin of any ‘auwai or traditional Lo‘i Kalo Irrigation System. In ‘ōlelo Hawai‘i, mānowai is also the word used to describe the human heart and circulatory system that pumps blood through the body’s veins. This dual meaning is an appropriate analogy for the way that the Lo‘i Kalo Irrigation System’s mānowai.” *Id.* at 40.

164. *Id.* at 40.

165. *See id.* at 39–42 for a detailed overview of the Wai‘oli Lo‘i Kalo Irrigation System.

166. *See, e.g.,* Sproat, *Wai Through Kānāwai*, *supra* note 13, at 143–45 (discussing the construction of irrigation ditches for commercial plantation interests that “took the lion’s share” of Nā Wai ‘Ehā’s stream flow and left streams “bone-dry” at great expense to “Maoli people, culture, and resources.”).

irrigation systems are “critical for the sustainability and resilience of the watershed as a whole.”<sup>167</sup>

The Hui and their kūpuna (ancestors and elders) have been cultivating this specific area since time immemorial.<sup>168</sup> The ingenious lo‘i kalo irrigation system itself has existed prior to the arrival of westerners in Hawai‘i.<sup>169</sup> In fact, the Office of Hawaiian Affairs (OHA) documented this system, confirming that it has been utilized in largely the same place in the same manner and by the same people since the 16th century.<sup>170</sup> The Hui, like many other practitioners throughout Hawai‘i nei, rely on Wai‘oli-specific intergenerational knowledge and the practice of kilo.<sup>171</sup> Practitioners rely on the kilo, or the practice of keen observation, to adjust and optimize their management practices and ensure health of the system.<sup>172</sup> The kupa (residents, Natives) know and intimately understand how to steward the ‘āina and its resources for the benefit of present and future generations.

Importantly, as a part of the Chapter 343 environmental review process, the Final Environmental Assessment evaluating the environmental impacts of the lo‘i kalo cultivation system confirmed what Kānaka Maoli knew for generations: lo‘i kalo cultivation in a traditional manner has significant environmental benefits to the watershed and the community as a whole.<sup>173</sup> The systematic integrated management of wai, ‘āina, and kānaka is an important point as we consider Wai‘oli as a roadmap to and shining example of ‘āina momona.

167. FINAL EA, *supra* note 160, at 79.

168. COMM’N ON WATER RES. MGMT., STAFF SUBMITTAL, DRAFT AMENDED INTERIM INSTREAM FLOW STANDARDS FOR THE SURFACE WATER HYDROLOGIC UNIT OF WAI‘OLI, 3 (April 2021) [hereinafter CWRM, APRIL 2021 STAFF SUBMITTAL].

169. Mo‘olelo of Pīkoi and Lonoikamakahiki confirm that a Native population was living in the Wai‘oli area before the arrival of westerners in Hawai‘i. *No Lonoikamakahiki, KE AU OKOA*, Jan. 19, 1871. According to Abraham Fornander, Kākūhihewa, who was a main character in these mo‘olelo, was born around 1540 and was the fifteenth Ali‘i‘aimoku of O‘ahu. ABRAHAM FORNANDER, AN ACCOUNT OF THE POLYNESIAN RACE : ITS ORIGIN AND MIGRATIONS AND THE ANCIENT HISTORY OF THE HAWAIIAN PEOPLE TO THE TIMES OF KAMEHAMEHA I, 272–73, (1880). Esther Mookini puts Keawe’s birth, another main character in these mo‘olelo, sometime in the 16th century. *Translation Makes Hawaiian Treasure Accessible*, Honolulu Advertiser & Star Bulletin, 20 January 1991.

170. CWRM, APRIL 2021 STAFF SUBMITTAL, *supra* note 168 at 3. Noting that “Mo‘olelo, genealogical scholarship, Māhele documentation, and Native Testimony in support of Land Commission Awards in particular, establishes lo‘i use in Wai‘oli from the 1500s.” *Id.*

171. *See, e.g.*, FINAL EA, *supra* note 160 at 14.

172. The practice of kilo includes an intimate understanding of the characteristics and features of ‘āina, including in this instance, the water resources in the stream. This practice is refined by continued observation and adaptation over many many years. Indigenous biocultural resource management integrates these understandings into management practices to benefit both environmental and human populations.

173. *See* FINAL EA, *supra* note 160; *see also* Act 27 (2022).

B. *Ka Ua Loku o Wai‘oli: Historic 2018 Flooding and the Wai‘oli Valley Taro Hui’s Recovery*

Though the families of Wai‘oli, Halele‘a, Kaua‘i practiced cooperative comprehensive management of this ‘āina and lo‘i kalo irrigation system for generations, it was not until they suffered the impacts of historic rain and flooding in 2018<sup>174</sup> that they formally organized as a legal entity, the Wai‘oli Valley Taro Hui. In April 2018, the North Shore of Kaua‘i experienced the famed ua loku, or torrential rains, that are widely sung in mele about the area. The National Climatic Extremes Committee (NCEC), certified that the Waipā rain gauge within Hanalei Kalana measured a record-breaking 49.69 inches during a 24-hour period—the existing record for the maximum amount of rain during a 24-hour period.<sup>175</sup> To put this into perspective, the average *annual* precipitation rate for the contiguous U.S. in 2020 was just over 30 inches.<sup>176</sup> The storm not only generated massive landslides and flooding, but shut down major highways and destroyed homes and businesses.<sup>177</sup> The 2018 catastrophic storm was the “worst natural disaster” to hit Kaua‘i in over 25 years.<sup>178</sup>

The area famed for its expansive lo‘i kalo became unrecognizable. The farmers of the Wai‘oli Valley Taro Hui not only suffered personally from the floods, but their farms and requisite equipment were completely destroyed. The sharp increase of water in Wai‘oli Stream significantly altered the natural course of the stream, mobilized debris, and incised streambanks. Portions of the historic lo‘i kalo irrigation system were devastated or simply gone. ‘Auwai banks and the system’s mānowai were completely washed away and boulders and other debris blocked the natural flow of water. As a result, the water that normally flowed to the lo‘i kalo was entirely halted and the majority of the Hui’s crop was destroyed.<sup>179</sup> Given the carefully planned farming cycles, spanning nearly two years from preparation to harvest,<sup>180</sup> the floods altered future plans and capacity to return to full-scale kalo cultivation.<sup>181</sup>

174. See, e.g., FINAL EA, *supra* note 160 at 27–30.

175. NAT’L CLIMATE EXTREMES COMM., *supra* note 8.

176. *Annual 2020 National Climate Report*, 2020 NAT’L CTRS. FOR ENV’T INFO, <https://www.ncei.noaa.gov/access/monitoring/monthly-report/national/202013#:~:text=The%20contiguous%20U.S.%20average%20annual,third%20of%20the%20historical%20record> [https://perma.cc/87JG-WCJ9].

177. *Record Kauai and Oahu Rainfall and Flooding – April 2018*, NATIONAL WEATHER SERVICE, <https://www.weather.gov/hfo/RecordKauaiandOahuRainfallAndFlooding-April2018> [https://perma.cc/63KD-CHQA].

178. Carla Herreria Russo, *Historic Floods, Landslides Devastate the Hawaiian Island of Kauai*, HUFFPOST (Apr. 19, 2018), (quoting Sarah Blane, Chief of Staff to Kauai’s mayor), ([https://www.huffpost.com/entry/kauai-flooding-landslides\\_n\\_5ad14167e4b077c89ce8b616](https://www.huffpost.com/entry/kauai-flooding-landslides_n_5ad14167e4b077c89ce8b616)) [https://perma.cc/5HJS-NKHD].

179. FINAL EA, *supra* note 160, 27–30.

180. *Id.* at 52.

181. See, e.g., *id.*

In a matter emblematic of this tight-knit community, over sixty community members from across the island came together to help the farmers begin to recover just one week after the storm. Together, they manually removed debris and other blockages, re-dug portions of the historic ‘auwai, and accomplished the monumental task of getting water into the lo‘i kalo once again. These efforts of laulima as collaborative work are pillars of a thriving community in which ‘āina lies at the center.

As the Hui undertook recovery efforts to restore their lo‘i kalo and salvage their small town, the farmers were informed that parts of their lo‘i kalo irrigation system were zoned as state conservation land. Because these farmers and their ‘ohana had been tending the same lo‘i kalo irrigation system that had been feeding this place since time immemorial, they were not aware of the zoning now imposed by the state. And, despite the state’s duty to manage this land, they had not consulted with the kama‘āina of that place. Put another way: the farmers’ management of the land and resources both pre-dated the State of Hawai‘i and continued regardless. The new state zoning classification now presented a slew of legal hurdles. The farmers needed to first understand what these requirements were, and second, navigate and complete them. Without successful completion of these new legal requirements, the farmers were facing potential fines, loss of access to their water, ‘āina, traditional and customary practices, lifeways, and, for some, a source of income. Recognizing the incredible feat ahead of them, the farmers formally organized to establish themselves as the Wai‘oli Valley Taro Hui. As a 501(c)(3) domestic non-profit corporation with federal tax-exempt status, the Hui’s mission is to empower future generations with traditional knowledge for education and community engagement.<sup>182</sup>

In 2019, the Hui partnered with the William S. Richardson School of Law’s Environmental Law and Native Hawaiian Rights Clinics to ensure a future for the traditional and customary practice of kalo cultivation in Wai‘oli. Over the course of three years, four attorneys, over thirty students, and countless supporters helped the Hui navigate the complicated legal requirements intended to protect ‘āina and its resources. During that time, the Hui secured a right of entry, first a term and later a perpetual easement, and a temporary revocable permit for its water use from the Board of Land and Natural Resources (BLNR). While those accomplishments ensured immediate access to the irrigation system and use of water from Wai‘oli Stream, the Hui’s long-term goal was to ensure the integrity of this ‘āina momona into the future. With this in mind, the Hui began the complicated and highly contentious long-term water

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182. The mission of the Wai‘oli Valley Taro Hui is “[t]o support and enhance the ma uka to ma kai [mountain to ocean] biocultural resources in the Wai‘oli Stream and Hanalei Valley watersheds, to protect the natural and cultural resources that enable traditional and customary Native Hawaiian practices, to maintain habitat for endangered Hawaiian waterbirds, and to engage the greater Kaua‘i community through educational outreach programs and initiatives relating to the farming of taro and community-based stewardship of water resources.” Wai‘oli Valley Taro Hui Articles of Incorporation (2019).

leasing process.<sup>183</sup> This process necessitated a number of tasks, including undertaking Hawai‘i Revised Statutes Chapter 343 environmental review process,<sup>184</sup> establishing a numeric interim instream flow standard (IIFS) with the Commission on Water Resource Management (Water Commission) for Wai‘oli Stream, and completing consultation with both the Office of Conservation and Coastal Lands (OCCL) and the Department of Hawaiian Home Lands (DHHL). All of which the Hui diligently completed. The Clinics also partnered with contractors to complete a draft watershed management plan,<sup>185</sup> a comprehensive cultural impact statement (CIA), and a Final Environmental Assessment (Final EA) with a finding of no significant impact.<sup>186</sup>

Against the backdrop of a growing consciousness of the injustices and harms of appropriating wai for private commercial benefit throughout Hawai‘i,<sup>187</sup> the water leasing process had become a highly-politicized debate—one in which these farmers were now a part. As the last industrial sugar cane plantation closed in 2016, the future of massive plantation diversion systems—some of which local counties relied upon to deliver water to residents—were in question. Though these private for-profit companies and their irrigation systems had dewatered critical kahawai<sup>188</sup> for over 150 years, and impact litigation confirmed water as a public trust resource,<sup>189</sup> Hawai‘i’s modern-day societies now claimed to be reliant upon some of these systems. This partial reliance became cover for large corporations’ continued use of water.<sup>190</sup> Exercising con-

183. HAW. REV. STAT. § 171–58 (2022).

184. HAW. REV. STAT. § 343–5 (2022).

185. HAW. REV. STAT. § 171–58(e) requires that:

Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

HAW. REV. STAT. § 171–58(e) (2022).

186. See HAW. REV. STAT. § 343–5 (2022).

187. See, e.g., Sproat, *Wai Through Kānāwai*, *supra* note 13; Lu‘ukia Nakanelua, *Nā Mo‘o o Ko‘olau: The Water Guardians of Ko‘olau Weaving and Wielding Collective Memory in the War for East Maui Water*, 41 U. HAW. L. REV. 189 (2018).

188. “Kahawai” translates as “stream and watercourse.” WEHEWEHE WIKIWIKI, *supra* note 3.

189. See, e.g., *In re Waiāhole Combined Contested Case Hearing (Waiāhole I)*, 9 P3d 409, 443–44 (2000) (reaffirming that the public trust doctrine held water in trust for the benefit of present and future generations.); see also D. Kapua‘ala Sproat, *From Wai to Kānāwai: Water Law in Hawai‘i*, in NATIVE HAWAIIAN LAW: A TREATISE 522, 529 (Melody Kapilialoha MacKenzie et al., eds., 2015) [hereinafter Sproat, *From Wai to Kānāwai: Water Law in Hawai‘i*].

190. In East Maui, for example, despite concluding industrial sugar operations, Alexander and Baldwin (“A&B”) continued to pull 160 million gallons of water per day

tinued colonial dominance throughout Hawai‘i, these corporations continued to demand the most advantageous terms in the Hawai‘i State Legislature and Hawai‘i’s highest courts to both defend and justify their use of wai.

In large part due to confusion around as well as the highly-politicized nature of the water leasing statute, a long-term water lease has not been issued in Hawai‘i in decades. Attempts by the state Department of Land and Natural Resources (DLNR) to clarify and amend the process were often contentious and vigorously opposed by those who directly benefitted from the status quo.<sup>191</sup> Unfortunately—and ironically—the Hui, who had maintained pono use of wai and ‘āina momona since time immemorial, was subject to the same set of rigorous requirements that large corporations had yet to fulfill. As a hot-button issue with immense community pressure, the long-term water leasing process made its way through the State Legislature in 2021 and 2022. Recognizing the dire need to ensure water in Wai‘oli for future generations, the Hui participated in both legislative sessions to the best of their ability.

In 2021, mindful of both the Hui’s limited ability to compete at a public auction as required by statute as well as overwhelming support for the Hui’s work, the Hawai‘i State Legislature passed a concurrent resolution urging DLNR to enter into a long-term water lease with the Hui by direct negotiation.<sup>192</sup> In doing so, both houses of the Hawai‘i State Legislature, and the broader public agreed that as a “traditional cultural practice,” the Hui’s collaboration maintained the area’s natural resources, “cultural lifeways, and community identity” for centuries.<sup>193</sup> Despite this monumental achievement of political and popular consensus, a water lease was still elusive in large part because of outstanding requirements by and negotiations with the respective agencies.

In 2022, the Hui went beyond securing wai for Wai‘oli’s lo‘i kalo; they guaranteed access to wai for traditional and customary kalo cultivation for ko Hawai‘i pae ‘āina—for all of Hawai‘i. After various hearings and six versions of the measure, House Bill 1768 exempted the instream use of water for traditional and customary kalo cultivation from the controversial water leasing statute.<sup>194</sup> In May 2022, against the backdrop of Waipā Foundation—a kīpuka aloha ‘āina<sup>195</sup> in the neighboring ahupua‘a—Governor David Ige signed Act 27,

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– more than the entire island of O‘ahu consumes – to its “primarily empty” fields on the opposite end of the island until as recent as 2017. Nakanelua, *Nā Mo‘o o Ko‘olau*, *supra* note 187, at 222.

191. HAW. DEP’T OF LAND AND NAT. RES., REPORT AND RECOMMENDATIONS FROM THE DEPARTMENT OF LAND AND NATURAL RESOURCES REVOCABLE PERMITS TASK FORCE (2016); *Land Board Delays Action on Plan to Move Forward with Water Permits*, ENV’T HAWAII (May 1, 2019).

192. H.C.R. 163, 31st Leg. Reg. Sess., (Haw. 2021).

193. *Id.*

194. H.B. 1768, 31st Leg. Reg. Sess., (Haw. 2022).

195. Kīpuka aloha ‘āina can be directly translated as an oasis where aloha ‘āina thrives. A kīpuka is defined as a “variation or change of form (puka, hole), as a calm place in a high

closing the recovery chapter for the farmers of the Hui and ensuring the traditional and customary practice of lo‘i kalo cultivation was elevated forever.<sup>196</sup>

Each of these tasks alone was no small feat, especially for small family farmers who were still in basic recovery mode. The farmers of this Hui offer a unique example of both the commitment to and necessity of the ongoing protection of traditional and customary practices. At each decisionmaking body, the farmers engaged decisionmakers to ensure the fabric of their community was preserved, telling stories of steadfast and humble aloha ‘āina. But, despite clear and convincing evidence that their work was of overwhelming benefit to the ‘āina and kānaka, it still took countless hours of work by volunteers and legal counsel to secure this accomplishment—something that is out of reach for many communities in Hawai‘i and around the world. By removing burdensome barriers, like the water leasing statute, from small farmers in line with the intent of the statute, traditional kalo cultivation will continue to champion Indigenous biocultural resource management. Ultimately, while the Hui is a shining example of the promise of our people, practices, and ‘āina, this instance also underscores the need to explicitly incorporate and more fully realize restorative justice in decisionmaking for Kānaka Maoli in modern Hawai‘i.

#### IV. DEPLOYING THE FOUR VALUES OF RESTORATIVE JUSTICE IN WAI‘OLI

The following analysis focuses on select aspects of the Hui’s work and advocacy to unpack the power of thoughtfully re-centering ‘āina, history, and cultural precepts in decisionmaking. Specifically, this analysis centers the multi-generational practice of kalo cultivation and comprehensive biocultural resource management driven by the community in Wai‘oli. Deploying a contextual legal framework, described above,<sup>197</sup> this analysis considers cultural, social, and historical context, as well as the role of politics to carve out a space to address historical and ongoing harms and to more fully realize restorative environmental justice for Kānaka Maoli. This contextual inquiry framework, grounded in restorative justice, examines four salient realms: mo‘omeheu, ‘āina, maui ola, and ea. These distinct yet intertwined dimensions not only articulate the risks of failing to consider context, but more importantly, the promise of what can be realized when we work together to co-power our communities and experts of ‘āina and aloha ‘āina.

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sea, deep place in a shoal, opening in a forest, openings in cloud formations, and especially a clear place or oasis within a lava bed where there may be vegetation.” For more on aloha ‘āina, *see e.g.*, section II.A.

196. 2022 HAW. SESS. LAWS 31-35. Act 27 codified the exemption in a new section under 171–58(h): “This section shall not apply to the disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices.” *Id.* at 33.

197. *See supra* Subpart II.C.

A. *Kanu ‘ia Hāloa Ulu Hahāloa*:<sup>198</sup> *Sustaining and Advancing Culture in the Realm of Mo‘omeheu*

The center of many international instruments, including this framework, the realm of mo‘omeheu considers Kānaka Maoli’s ability to sustain and advance their culture and asks whether an action endeavors to remedy past harms, or maintains circumstances that undercut cultural integrity.<sup>199</sup> As perhaps one of the most fundamental practices of mo‘omeheu, or Native Hawaiian culture, kalo cultivation is a “crucial part of the fabric of [the] small town[] identity” in Wai‘oli.<sup>200</sup> The realm of mo‘omeheu is an appropriate starting point for centering ‘āina and the traditional and customary practices that comprise the foundations of Kānaka Maoli society. This realm is of particular importance as the multi-generational Hui continues to assert its cultural identity as the core of this North Shore community—especially in the face of increased tourism and malihini<sup>201</sup> settlers. A 2020 Cultural Impact Assessment (CIA) evaluating the traditional and customary practices in Wai‘oli identifies “ensuring the community’s cultural identity perserveres” as a prominent issue. Ethnographic research in the CIA revealed a number of concerns, particularly “about the rapidly changing landscape in the surrounding area, including stresses due to tourism and overdevelopment.”<sup>202</sup> Several participants shared worries about these changes and subsequent negative effects on traditional ways of life, including kalo farming.<sup>203</sup> These concerns around the social identity of the community, albeit heightened in the age of social media and geotagging, were also prominent throughout Wai‘oli’s history. After western contact and increased missionary presence in the area, the kalo lands also withstood substantial societal changes.<sup>204</sup> The Hui’s work, and the BLNR’s issuance of a *perpetual* easement at *gratis* in particular, not only ensures that the cultural identity of the community endures, but also brings to life important constitutional protections around traditional and customary practices. This is in line with advancing mo‘omeheu and the Indigenous Peoples’ right to “maintain and freely develop their cultural identities.”<sup>205</sup>

While the CIA provided an overview of the many cultural practices in this specific area, difficulties around defining and “authenticating” traditional and customary practices in general continue to plague decisionmakers charged

198. BECKWITH, *supra* note 45 (diacriticals added by author). Translated as “Haloa was buried [there], a long taro stalk grew.”

199. *See e.g.*, Anaya, *supra* note 14, at 361; Sproat, *Wai Through Kānāwai*, *supra* note 13, at 179.

200. FINAL EA, *supra* note 160, at 36.

201. “Malihini” translates as “stranger, foreigner, tourist, guest, one unfamiliar with a place or custom.” WEHEWEHE WIKIWIKI, *supra* note 3.

202. WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6, at 71.

203. *Id.* at 69.

204. *See e.g., id.* at 8-39.

205. Anaya, *supra* note 14, at 342-43.

with specific restorative justice-based duties and place an unfair burden on small practitioners like the Hui.<sup>206</sup> The Hui’s work raised a worthy and emerging issue in the realm of mo‘omeheu: the survival and evolution of traditional and customary practices in modern times.<sup>207</sup> And in particular, the incorporation of money is a necessary component to surviving in what is now a capitalist economy. The Department of Land and Natural Resources raised issues with some of the farmers selling kalo, positing that the incorporation of a limited commercial element disqualified the practice from traditional and customary protections. In reflecting on the DLNR’s duty and challenges to implementing *PASH*, a landmark decision that reaffirmed traditional and customary rights in Hawai‘i, Chair Suzanne Case highlighted the “key challenge” of evaluating “claims of traditional and customary practices in the context of the modern world.”<sup>208</sup> As a “classic dilemma,” the then agency chair highlighted that selling or bartering kalo for money is “not a traditional and customary right.”<sup>209</sup> Cognizant of the widespread implications of its advocacy, the Hui began to shape discourse around what it means to protect and sustain traditional and customary practices in a modern world as a part of its right to protect, revitalize, and develop facets of their culture.<sup>210</sup>

In ‘ōlelo Hawai‘i, one word for the English idea of custom is “ma‘a.”<sup>211</sup> It can also be defined as experienced, accustomed, and familiar and alludes to one’s mastery and skill. Interestingly, ma‘a is also related to the word “adapt.” This concept, uncovered by fluency in ‘ōlelo Hawai‘i, accepts that custom is not “absolutely” fixed, but that it necessarily adapts and evolves as the needs of the individual and/or society changes.

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206. See e.g., Univ. of Haw. L. Rev., *Law Review Spring 2021 Symposium – 25 Years of PASH*, UNIV. OF HAW. L. REV., (Feb. 5, 2021), at 53:11–2:00:00, <https://vimeo.com/519658393/7233498d4b> [<https://perma.cc/Y57T-YCLT>] (discussing *PASH* and its progeny and DLNR’s ability to adequately protect Native Hawaiian rights).

207. Suzanne Case, *Implementing PASH and Its Progeny within DLNR*, 43 U. HAW. L. REV. 420, 429 (2021) (highlighting a “number of unsettled issues relation to the application of *PASH*” including “continuously evolving traditional Hawaiian cultural practices.”).

208. *Id.* at 428–29. See also *Pub. Access Shoreline Haw. v. Haw. Cnty. Planning Comm’n (PASH)*, 79 Hawai‘i 425, 903 P.2d 1246 (1995). The court in *PASH* reaffirmed traditional and customary rights in Hawai‘i and highlighted that although the state had the authority to regulate the rights, “the State does not have the unfettered discretion to regulate the[se] rights . . . out of existence.” *Id.* at 442, 903 P.2d at 1263 (emphasis omitted).

209. *Id.* at 429.

210. See e.g., UNDRIP, *supra* note 115, art. 11 (“Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.”). Article 8(2) also prohibits any action “which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.” *Id.* art 8.

211. WEHEWEHE WIKIWIKI, *supra* note 3.

Article XII, section 7 of Hawai‘i’s State Constitution protects rights “customarily and traditionally exercised for subsistence, cultural and religious purposes.”<sup>212</sup> While widely acknowledged as a cultural practice, the CIA further confirmed that kalo cultivation and “making and eating poi is a cultural practice.”<sup>213</sup> With documentation tracing back to the mid-1800s, kalo cultivation has always been an integral part of Wai‘oli’s community.<sup>214</sup> Nearly 200 years since the kalo was first documented in Wai‘oli, the practice has “undoubtedly shifted” because of broad “transitions in government and new economic systems,” and the “rapid dwindling of the Native Hawaiian population,” for example.<sup>215</sup> Following the influx of immigrants due to Hawai‘i’s favorable climate for sugar plantation, “poi was soon commercialized”<sup>216</sup> and kalo cultivation in Hawai‘i decreased from over 20,000 acres, to less than a thousand acres.<sup>217</sup> Today, lo‘i kalo occupy less than 300 acres throughout Hawai‘i pae ‘āina.<sup>218</sup>

In the context of the challenges facing the cultural integrity of kalo cultivation, the Hui continues to promote important values of aloha ‘āina while also adapting to create a sustainable practice in modern Hawai‘i. For the Hui, and the larger moku (district) of Halele‘a of which Wai‘oli is a part, community members “measure[] their wealth in ho‘olako—having enough to share with others.”<sup>219</sup> Collectively, the Hui generally participates in small-scale, ‘ohana-based, partially-subsistence or non-monetary kalo cultivation.

The Hui’s Final EA and finding of no significant impact (FONSI), over-viewed the Hui’s extensive work to mālama (care for) the area, the plethora of environmental and community benefits, as well as its efforts to continue kalo cultivation as their ancestors did—oftentimes at a monetary loss.<sup>220</sup> The Hui argued that “[a]s a traditional practice, in order to survive . . . a certain degree of commercial aspect(s)”<sup>221</sup> is necessary and should not preclude protections for traditional and customary practices. This argument considered context: the

212. HAW. CONST. art. XII, § 7.

213. WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6, at 63. Poi is Hawaiian staple that is made from cooked taro that is pounded into a paste and thinned with water. *See e.g., id.* at 13.

214. *See, e.g., id.* at 63–64.

215. FINAL EA, *supra* note 160, at 125.

216. Leo D. Whitney et al., *Taro Varieties in Hawai‘i*, HAW. AGRIC. EXPERIMENT STATION BULL. 84, Dec. 1939, at 1, 7 [<https://perma.cc/CQ7X-3P8B>].

217. Yoohyun Jung, *Fewer Farmers are Growing Hawai‘i’s ‘Miracle Food’ Taro Despite Growing Demand*, HONOLULU CIV. BEAT (Mar. 7, 2021), <https://www.civilbeat.org/2021/03/fewer-farmers-are-growing-hawaiis-miracle-food-taro-despite-growing-demand> [<https://perma.cc/7TFM-GWCJ>].

218. State of Hawai‘i Department of Agriculture, *Taro Statistics* (2021), [https://hdoa.hawaii.gov/wp-content/uploads/2022/11/Taro-Stats-2021\\_SOH\\_10.31.2022R.pdf](https://hdoa.hawaii.gov/wp-content/uploads/2022/11/Taro-Stats-2021_SOH_10.31.2022R.pdf) [<https://perma.cc/M4WY-4M38>].

219. FINAL EA, *supra* note 160, at 125.

220. *E.g., Id.*

221. *Id.* at 13.

changing society in which Kānaka Maoli continue to live. I ka wā kahiko, a traditional Hawaiian society, did not revolve around commercial exchanges:

A highly complex and sophisticated society emerged in Hawai‘i that centered around an abundant agricultural economy, without a market and the need for surplus production . . . [the] economy of traditional Hawai‘i was dependent on the balanced use of products from land and sea, accounting for an ingenious land division system . . . Mary Kawena Pukui identifies ‘ohana, or extended families, as the core economic unit in Hawaiian society. “It was the ‘ohana that constituted the community within which the economic life moved.”<sup>222</sup>

Whereas traditional and customary practices and subsistence-based lifestyles were foundational to Hawai‘i’s society as outlined by the delegates to the 1978 Constitutional Convention, the farmers of the Hui exist within very different circumstances. Despite kalo cultivation’s central role in Hawaiian society, kalo farmers across Hawai‘i struggled to uphold its prominence in the face of this changing society. In response to increased pressure as a result of an economic shift, kalo farmers began exploring new cash crops including rice.<sup>223</sup> It wasn’t until nearly a century later that those lo‘i that were converted to rice returned to kalo cultivation.

These changes in circumstances were also due in large part to transitions in governance, population decimation, and new capital-based economic systems as a result of colonization. As the Final EA underscores: “[t]he social character has shifted from the largely subsistence and trade of skills and resources, to individual wealth.”<sup>224</sup> Farmers can no longer pay their taxes in kalo or community labor,<sup>225</sup> but need cash to sustain their operations.<sup>226</sup> While it varies by farmer, the Hui generally uses any potential revenue from the sale of kalo “to cover operating expenses, including property taxes, farming equipment (e.g., gas, tabis, buckets, etc.), and supply costs.”<sup>227</sup> Because the Hui’s work is tied to the health of the stream and watershed, these expenses also benefit the larger Hanalei Kalana<sup>228</sup> and its resources. These funds—if any—are spent on ongoing stream and watershed maintenance, including removing debris and invasive plants and revegetating any cleared areas; all of which mit-

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222. Beamer et al., *supra* note 128, at 5.

223. WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6, at 38; *see also* Karol Haraguchi. RICE IN HAWAII, A GUIDE TO HISTORICAL RESOURCES, xii, State Foundation on Culture and the Arts & Hawaiian Historical Society (1987).

224. FINAL EA, *supra* note 160, at 124.

225. “Pō‘alima” refers to “work days in which the community would work on the chief’s plantation as part of their contribution to the larger governance system.” WEHEWEHE WIKIWIKI, *supra* note 3.

226. *See, e.g.*, FINAL EA, *supra* note 160, at 122-28.

227. *Id.* at 126.

228. A Kalana is “a land division that is smaller than a moku, but contained several smaller ahupua‘a or was a “distinct area within a large ahupua‘a.” Winter et al., *The Moku System*, *supra* note 3, at 4.

igate flood risks for the lo‘i and town. To put it simply, any potential monetary gain goes back into kalo farming or maintaining the watershed.

The realm of mo‘omeheu contemplates an important remedial aspect that is particularly applicable to Indigenous Peoples given the history of colonization and vulnerability.<sup>229</sup> The traditional and customary practice of kalo farming persisted in Wai‘oli, surviving the societal shift to a capital-based economy as well as the pressure to cultivate cash crops like rice. With this context in mind, disqualifying kalo cultivation with a limited commercial element as a traditional and customary practice is deeply problematic and would perpetuate circumstances that have historically undermined Kānaka Maoli’s cultural integrity.<sup>230</sup> As evidenced by ongoing debates among Hawai‘i’s administrative agencies, this is an ongoing issue and must be adequately addressed.<sup>231</sup> Considering the effects of the economic shift as a result of colonization presents an appropriate opportunity to advance restorative justice within the realm of mo‘omeheu.

When delegates to the 1978 Hawai‘i Constitutional Convention elevated traditional and customary practices to a constitutional right, they emphasized the breadth of those rights and their importance to Kānaka Maoli. Delegates also recognized these practices as an *integral part* of and a *continuum* of Hawaiian civilization. Considering the right to practice *within* this context necessitates an inquiry into the society in which these rights exist. To effectuate the intent and spirit of Article XII, section 7, and to sustain a living culture, practices must be allowed to evolve.<sup>232</sup> The legislative history further cautions such an overly narrow interpretation of this provision.<sup>233</sup> Article XII, section 7 of Hawai‘i’s Constitution urges an ongoing restorative justice approach to not only effectuate the intent of this provision while being mindful of the vulnerabilities of mo‘omeheu as a result of colonization, but to also embody a modern Hawaiian society in which Kānaka Maoli’s integral practices thrive at the core. Restorative justice requires an examination into the history and context of Indigenous practices; here, the context has changed and spirit of protection must be advanced. The Hui does not make a profit off their cultural practices. Rather, foundational values of aloha ‘āina and Indigenous biocultural resource management steer their back-breaking work to maintain mo‘omeheu. While each circumstance should be evaluated on a case-by-case basis, decisionmakers must consider this important context and the evolution of these practices to survive into the 21st century.

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229. Anaya, *supra* note 14, at 345.

230. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 179. UNDRIP, *supra* note 115, art. 11. Article 8(2) also prohibits any action “which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.” *Id.* art 8.

231. Case, *supra* note 207, at 429.

232. See UNDRIP, *supra* note 115, art. 11.

233. Comm. on Hawaiian Affs., Standing Comm. Rep. No. 57, *reprinted in* 1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAII OF 1978, at 637,640 (1980).

B. *‘Āina Momona no ka Hui Kalo: Re-Centering Traditional Practices to Cultivate Healthy Land in the Realm of ‘Āina*

Marketed as a destination paradise and designated as prime land for military interests, lands throughout Hawai‘i nei have been subjugated for foreign benefit at the expense of its Native peoples. Unlike other ‘āina that have been alienated from the kama‘āina of the place, Wai‘oli has remained an abundant ‘āina momona since time immemorial—even through colonization, including the transition to the State of Hawai‘i. This exception is not a coincidence—it is a result of systematic and consistent land and resource management at the community level. The kupa ‘āina (long-standing Native) families in Wai‘oli have fulfilled enduring kuleana that ultimately continues to benefit the ‘āina, its resources, as well as its people. This is no small feat, especially given the visitor population’s impact on the natural resources; in 2019, 30–50 percent of all Kaua‘i visitors visited the North Shore of Kaua‘i.<sup>234</sup>

The Hui’s work, and the Water Commission and BLNR’s decisions in particular, significantly *preserve* land and its resources in Wai‘oli from potential subjugation and formally memorialize the traditional biocultural resource management model that nourishes ‘āina momona.<sup>235</sup> Two aspects of the Hui’s work are particularly apt when discussing and advancing notions of restorative justice in the realm of ‘āina. First, the Hui’s efforts to obtain legal entitlements at BLNR and amend the Interim Instream Flow Standard at the Water Commission explicitly articulated the socio-environmental benefits of lo‘i kalo cultivation practiced in a traditional manner. Further, their advocacy elevated broader perceptions of systematic Indigenous biocultural resource management as an important tool to manage finite resources—especially in the face of climate change. This traditional approach situates Indigenous Peoples—the experts of the place—in positions to make decisions about their ‘āina, regardless of the formal governing entity exercising dominion over Hawai‘i’s lands and natural resources (e.g., the State of Hawai‘i or the United States).

Similarly, the second aspect of particular interest in the realm of ‘āina includes promoting ‘āina-based resource management in traditional terms and practices. While working to establish a numeric IIFS, the Hui advanced the idea of Wai‘oli as a part of the larger “kalana,” a traditional term and practice that managed resources based on the distinct needs of the community. Together, the Hui’s work informed decisive action by two agencies that analyzed socio-environmental conditions in a meaningful way for ‘āina defined by its relation with kānaka. Further, the Hui’s work prioritized the health of the resource and increased broader understanding about the significant environmental benefits of the traditional and customary practice of kalo cultivation

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234. FINAL EA, *supra* note 160, at 123.

235. See Sproat, *Wai through Kānāwai*, *supra* note 13, at 181.

that can be used as a roadmap for future efforts to effectively manage ‘āina and return it to kama‘āina.<sup>236</sup>

### 1. Returning ‘Āina-Based Biocultural Resource Management to Kupa‘āina for Significant Environmental Benefits

Traditional and customary Native Hawaiian practices played a central role in supporting a self-sustaining Hawai‘i in the middle of Moananuiākea—the vast Pacific Ocean. This ingenuity and utility is being articulated in terms that Kānaka Maoli have known since time immemorial. Contemporary research, the re-establishment of agro-ecological sites, and a profound cultural awareness has led to a “growing recognition of the ingenuity of the Hawaiian biocultural resource management system.”<sup>237</sup> These complex biocultural resource management systems, more appropriately characterized as “the moku system”<sup>238</sup> rather than earlier understandings as the “ahupua‘a system,”<sup>239</sup> are based on a holistic notion of social-ecological divisions of the island.<sup>240</sup> Smaller “interrelated social-ecological communities” supported relations that contained distinct and varying landscapes, all of which “synergistically harnessed a diversity of ecosystem services to facilitate an abundance of biocultural resources” and kānaka wellbeing.<sup>241</sup>

The nineteenth century, and Western contact in particular, ushered in profound changes to this traditional Hawaiian society. These changes significantly undermined the comprehensive resource management structures that sustained abundance in Hawai‘i. They “shifted resource management authority from the ahupua‘a level to centralized bureaucracies under the territorial and then state governments.”<sup>242</sup> This shift removed decisionmaking from the kupa‘āina of the place.<sup>243</sup> This was a substantial change—it meant that those who were making decisions about and for a specific ‘āina and resources were not necessarily from or did not have generational kuleana or pilina to the place, and were not on the ground witnessing the day-to-day changes and

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236. See FINAL EA, *supra* note 160,.

237. Winter et al., *The Moku System*, *supra* note 3, at 1.

238. The “moku system” is the “Hawaiian biocultural resource management system[] which divided large islands into social-ecological regions and further into interrelated social-ecological communities.” *Id.*

239. Ahupua‘a are a distinct land division that have long been viewed and defined as “self-sustaining units,” “equated with watersheds, and described as being in alignment with [w]estern scientific management approaches such as ‘ridge to reef,’ and ecosystem-based management.” Research pertaining to Hawaiian biocultural resource management by leading Hawai‘i scholars and scientists, however, reveal that this narrow understanding of “ahupua‘a systems” “does not accurately convey the nuances of system function, and it inhibits an understanding about the complexity of the system’s management.” *Id.* at 2.

240. *Id.*

241. *Id.*

242. *Id.* at 15.

243. This system of agency-based land management also “decoupled nearshore resource management from land-based resource management.” *Id.*

needs. This is certainly the case with both administrative decisionmaking bodies at play here: the State of Hawai‘i BLNR and the Water Commission. Both bureaucratic bodies are comprised of political appointees selected by the governor. Physically detached from the places for which they make decisions, the uncompensated volunteer boards rely heavily on staff recommendations and have significant duties to manage Hawai‘i’s ‘āina and resources.

The Hui’s work as a community-driven collective organized specifically around caring for ‘āina, makes meaningful strides to return to a community-centered model of abundance and ‘āina-based biocultural resource management. In fact, the Final EA evaluating the environmental impacts of the Hui’s lo‘i kalo cultivation revealed that kalo cultivation has broad and substantial benefits—impacts not normally evaluated in traditional environmental assessments.<sup>244</sup> As a whole, the work of the Hui and the irrigation system itself was found to have either beneficial or *significant* beneficial impacts on water, cultural, agricultural, and socio-economic resources and more in the area.<sup>245</sup> This finding is quite exceptional, given that the majority of the projects subject to the Chapter 343 assessment process often have adverse impacts on the environment. In this case, the lo‘i kalo irrigation system, and the Hui’s work in particular, was actually quite difficult to measure utilizing standard Chapter 343 processes. This is because the proposed action—a 65-year water lease for

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244. FINAL EA, *supra* note 160, at 62. As required by the water licensing statute, HAW. REV. STAT. § 171–58, the Hui was required to undertake Chapter 343 assessment. The Proposed Action, a 65-year water lease, was found to have no significant [adverse] impacts on the environment. Importantly, the Final EA highlighted:

The *Proposed Action* will secure the legal entitlement for the ongoing use of water from the Wai‘oli Stream for kalo cultivation practiced in a traditional manner. Under the Proposed Action, lo‘i kalo cultivation will continue to support community-based cultural and agricultural education, reinforce community identity, and provide vital environmental benefits such as local food security, flood mitigation, ground water recharge, Native habitat preservation, and watershed stewardship. The Proposed Action will also ensure reliable access to the water resources intrinsically tied to traditional and customary cultivation practices that have been documented as an integral part of Wai‘oli’s rich history and bountiful ‘āina.

The *Proposed Action*, allows for and supports: the perpetuation of constitutionally-protected Native Hawaiian traditional and customary practices; the continued stewardship of biocultural watershed resources that are closely intertwined with stream flow and the maintenance of waters in their natural state; appurtenant and riparian rights; and local food production. The *Proposed Action* also allows for the continuation of an ancient land management system to survive the transition into Hawai‘i’s modern legal paradigm.

FINAL EA, *supra* note 160, at 62.

245. See generally FINAL EA, *supra* note 160 at 150 (“In accordance with the provisions of HRS chapter 343, this Draft EA concludes that the Proposed Action will not have adverse impacts on the environmental quality of the area. Rather, the long-term practice is beneficial to the overall environment and its affected natural and human communities.”).

lo‘i kalo cultivation—had the opposite impact and boasted significant *beneficial* impacts to ‘āina in Wai‘oli and its people.

Socio-environmental benefits are increasingly valuable in the context of our climate crisis and offer a crucial guidance in navigating catastrophic weather events. As Hawai‘i’s communities continue to adjust and respond to additional occurrences and the growing severity of weather events, lo‘i kalo irrigation systems and the acknowledgement of Indigenous biocultural resource management can help communities both prepare for and mitigate effects of impending natural disasters. Because the lo‘i kalo irrigation system is closely intertwined with the health of the water, the stream, and stream flow, the Hui regularly maintains the area, which not only “mitigat[es] flood impacts,” but also “tempers and distributes overflow” to reduce the extremity of the floods on the neighboring town.<sup>246</sup>

Community-based Indigenous biocultural resource management has long informed Pacific communities’ resilience in response to catastrophic weather events.<sup>247</sup> In less than a week, the Hui mobilized the community to restore streamflow after the initial floods. Community-based management importantly seats kupa‘āina at the helm of decisionmaking and quickly activates caretakers on the ground. With perpetual legal entitlements, the Hui has the formal kuleana—responsibility and authority—to access the area for operation, repair and maintenance of the system.<sup>248</sup>

The Hui is the most appropriately situated to manage the resource in both a traditional and beneficial manner, and to make decisions and take action, especially following natural disasters.<sup>249</sup> Biocultural resource management is also based on the specific needs of a certain place. As generational caretakers, Hui members have developed place-based expertise refined through kilo,<sup>250</sup> or skilled observation. It is worth noting that like many Indigenous Peoples throughout the world, the Hui upholds a traditional biocultural

246. FINAL EA, *supra* note 160, at 90.

247. Winter et al., *The Moku System*, *supra* note 3, at 2 (“The small size of many Pacific Islands, coupled with the frequency of catastrophic natural events (i.e., hurricanes, tsunami, drought, flooding, lava flows, etc.) resulted in the development of social-ecological systems around the anticipation of and rapid recovery from environmental change. For this reason, Pacific Islands have been a focus of research into social-ecological system resilience, especially in light of global climate change [1–3]. Understanding traditional approaches to resource management has been a key component of such research”).

248. BOARD OF LAND AND NAT’L RES., STAFF SUBMITTAL, (Feb. 28, 2020) [hereinafter BLNR, FEB. 2020 STAFF SUBMITTAL] [<https://perma.cc/S7YJ-BLMN>].

249. FINAL EA, *supra* note 160, at 30.

250. “The Hui relies and acts upon intergenerational knowledge passed down throughout Kaua‘i generally, and Wai‘oli Valley specifically. By sharing experiences, adapting to natural changes, and stewarding this ‘āina for decades, the farmers of the Hui have practiced kilo and have learned through ma ka hana ka ‘ike (Pukui, 1983). They intimately understand the ‘āina in Wai‘oli, the movement of the earth, and the rhythm and patterns found in the natural environment. This informs and guides their place-based practices and processes of kalo cultivation in Wai‘oli” (citations omitted). *Id.* at 14.

resource management system and exercises its duty to mālama (care for) the place—practices that stem from the guiding philosophies outlined above. The administrative bodies’ actions, coupled with the Hui’s advocacy for formal recognition illustrate the profound power of advancing notions of restorative justice for ‘āina and in Hawai‘i’s case, its human counterpart, kānaka.

## 2. Recognizing “Kalana” as a Traditional and Customary Practice and Management System

The Hui’s practical and cultural knowledge played a key role in recognizing “kalana” as a traditional and customary practice and a land and water management regime in Wai‘oli. Its work also successfully established a meaningful numeric IIFS, the minimum amount of water required to be in Wai‘oli Stream. Although required as a part of the Hui’s effort to secure a long-term water lease to continue kalo cultivation, the Hui recognized that establishing a numeric IIFS based on real-world data and history would formally protect the stream they had independently maintained for generations. After extensive historical and hydrological research, considering water needs, and conducting public outreach, the Commission, based on a comprehensive staff recommendation, approved an amended IIFS for Wai‘oli Stream. The previous IIFS was established by administrative rule in 1988 when the Water Commission adopted the status quo, or the amount of water, if any, that was flowing in the given stream at the time without regard to other information.<sup>251</sup> By centering Kānaka Maoli traditional and customary practices in resource management approaches and decisionmaking, the Hui not only ensured the continuity of their long-standing customs and practices, but also equipped the Water Commission with knowledge to fulfill its legal duty to establish IIFS “to protect and promote the entire range of public trust purposes dependent upon instream flow,”<sup>252</sup> to analyze a particular action’s impacts on traditional and customary practices,<sup>253</sup> and to prioritize the health of this invaluable resource.<sup>254</sup>

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251. HAW. CODE R. § 13–169–45 (2018) reads in part:

Interim instream flow standard for Kaua‘i. The Interim Instream Flow Standard for all streams on Kauai, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted off stream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard[.]

252. *In re Water Use Permit Applications*, 9 P.3d 409, 444 (Haw. 2000).

253. The Water Commission, as a governmental agency, is required to undertake the *Ka Pa‘akai* analysis to evaluate impacts on traditional and customary practices. In 2000, the Hawai‘i Supreme Court “introduced an analytical framework that governmental agencies must specifically consider when balancing their obligations to protect traditional and customary practices against private property (as well as competing public) interests.” *Ka Pa‘akai O Ka ‘Āina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000).

254. *See e.g.*, CWRM, APRIL 2021 STAFF SUBMITTAL, *supra* note 168, at 2.

To understand the broad benefits of recognizing the area as a kalana to manage water resources, it is helpful to understand the background that generally colors these types of decisions. The Commission generally manages water in two primary ways: by delineating boundaries (1) between surface and ground water, and (2) along hydrologic lines. For Kānaka Maoli who understand water as one of the kinolau (bodily forms) of Kāne (the God Kāne) and the interconnectedness of water systems,<sup>255</sup> these boundaries are artificial and contrary to comprehensive water resource management.

As the Commission's primary mechanism for managing surface water, Instream Flow Standards (IFSs) and IIFSs dictate the minimum amount of stream flow "necessary to protect the public interest in the particular stream."<sup>256</sup> These IFSs and IIFSs are to include the flow "necessary to protect adequately fishery, wildlife, recreational, aesthetic, scenic, or other beneficial instream uses in the stream."<sup>257</sup> Designed in large part to benefit the stream while also balancing instream and noninstream uses,<sup>258</sup> establishing permanent IFS require "rigorous biological, hydrological, cultural, and other data and information."<sup>259</sup> Despite the Water Code's passage in 1987, the Commission has largely struggled to fulfill this kuleana.<sup>260</sup> It has also failed to establish meaningful and

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255. E.g., *He Mele no Kāne*, <https://kawaikini.com/wp-content/uploads/2018/10/He-Mele-No-Kane.pdf> [<https://perma.cc/52KR-A3F6>]. This traditional mele oli, "He Mele no Kāne," articulates Hawaiian understanding of the origins and pathways of water in the natural world. A portion of the mele describes the hydrologic cycle and the governing gods and natural characteristics:

E ui aku ana au ia oe	<i>One question I put to you:</i>
Aia i hea ka Wai a Kane?	<i>Where, where is the water of Kane?</i>
Aia i luna ka Wai a Kane.	<i>Up on high is the water of Kane,</i>
I ke ouli, i ke ao eleele,	<i>In the heavenly blue, in the black piled cloud,</i>
I ke ao panopano	<i>In the black black cloud,</i>
I ke ao popolo hua mea	<i>In the black mottled sacred cloud of</i>
a Kane la, e!	<i>Kane</i>
Aia i laila ka wai a Kane	<i>There is the water of Kane.</i>
E ui aku ana au ia oe,	<i>One question I ask of you:</i>
Aia i hea ka Wai a Kane?	<i>Where flows the water of Kane?</i>
Aia i lalo, i ka honua,	<i>Deep in the ground,</i>
i ka Wai hu,	<i>in the gushing spring,</i>
I ka wai kau a Kane	<i>In the ducts of Kane</i>
me Kanaloa-	<i>Kanaloa</i>
He waipuna, he wai e inu,	<i>A well spring of water, to quaff,</i>
He wai e mana,	<i>A water of magic power</i>
he wai e ola,	<i>The water of life!</i>
E ola no, ea!	<i>Life! O give us this life!</i>

256. HAW. REV. STAT. § 174C-71(1)(C) (2013). IFSs and IIFSs can be established for a stream or even multiple reaches of a given stream as necessary to protect the public interest in instream flows.

257. *Id.*

258. *Id.* § 174C-71(1)(E) (2013).

259. See Sproat, *From Wai to Kānāwai: Water Law in Hawai'i*, *supra* note 189.

260. *Id.* at 553.

numeric IFS and IIFS particularly as a baseline for protecting streams before issuing offstream permits.<sup>261</sup>

In April 2021, after months of site visits, dedicated coordination, and stream data collection, staff briefed the Commission on a proposal to amend the IIFS for Wai‘oli Stream. Kānaka Maoli customs and traditions generally, and in Wai‘oli in particular, played a central role in establishing this meaningful IIFS for Wai‘oli Stream. The staff recommendation for the amended IIFS was based on the Native Hawaiian custom of keeping at least half the stream’s flow in the stream at any given time.<sup>262</sup> This custom was passed down and noted by Emma Nakuina, an esteemed nineteenth-century Kanaka Maoli intellectual and Commissioner for Private Ways and Water Rights.

The Water Commission also contemplated the idea of “kalana” as both a traditional and customary practice as well as a principle of biocultural resource management in Wai‘oli. As a “traditional land and water management system,”<sup>263</sup> a kalana is also a land division that is smaller than a moku, but contains several smaller ahupua‘a or is a “distinct area within a large ahupua‘a.”<sup>264</sup> Importantly, kalana are “associated more with systematic biocultural resource management and community identity rather than governance.”<sup>265</sup> Contrary to broader understandings of ahupua‘a as the distinct and independent resource management system operating from ma uka to ma kai (from land to sea), kalana operated “as a single integrated system to maximize the cultivation of traditional crops and lifeways and to distribute water resources.”<sup>266</sup>

As a region within Hanalei Kalana, Wai‘oli is a principal part of the larger kalana because the Wai‘oli Watershed “shares stream resources with the ahupua‘a of Waipā and Hanalei.”<sup>267</sup> The Wai‘oli muliwai (river mouth), for example, is located in the neighboring ahupua‘a of Waipā, and portions of the lo‘i kalo irrigation system—sections of the ‘auwai (irrigation ditch) and two ho‘i (out takes or returns)<sup>268</sup>—are located within the Hanalei Ahupua‘a.<sup>269</sup> This is in line with scientific and historical research that characterize Hanalei

261. *Id.* at 555.

262. Dr. Lilikalā Kame‘eleihiwa testimony in Waiāhole CCH-OA95-1, Commissions FOF No. 976 (Dec. 24, 1997); Emma Metcalf Nakuina, *Ancient Hawaiian Water Rights: And Some of the Customs Pertaining to Them*, in HAWAIIAN ALMANAC & ANNUAL FOR 1894, 79, 79. (Honolulu, Press Publishing Co. 1893).

263. *Id.* .

264. Winter et al., *The Moku System*, *supra* note 3, at 4.

265. COMM’N ON WATER RES. MGMT., BRIEFING, WAI‘OLI VALLEY TARO HUI – AIA I WAI‘OLI KE ALOHA ‘ĀINA: PERPETUATING ALOHA ‘ĀINA IN WAI‘OLI VALLEY, KAUA‘I 4 (2021).

266. COMM’N ON WATER RES. MGMT., PR-2021-01, DRAFT OF INSTREAM FLOW STANDARD ASSESSMENT REPORT: WAIOLI (2021) [hereinafter CWRM IFSAR].

267. FINAL EA, *supra* note 160, at 79.

268. The place where the water leaves the lo‘i and returns to the stream. FINAL EA, *supra* note 160, at 5.

269. *Id.*

Kalana as the collective lands that discharge water into Hanalei Bay, and one of a handful of examples of kalana in Hawai‘i nei.<sup>270</sup>

The integrated management of water resources across watersheds stands in contrast to the way in which the Water Commission typically manages resources according to strict Western watershed and hydrologic units. Because the Hui’s lo‘i kalo irrigation system traverses the Commission’s watershed boundary lines on a map, the agency was not inclined to classify the Hui’s use as an instream use. The protection of traditional and customary rights, including kalo cultivation, is one of nine beneficial instream uses as defined by the Water Code.<sup>271</sup> Classifying the Hui’s traditional and customary use of water as a non-instream use would not only be inaccurate, but would also have significant legal implications, especially given the Water Commission’s duty to manage the resource and to establish IFSs and IIFSs that benefit the particular stream<sup>272</sup> before offstream uses. A determination that the Hui’s practices were a non-instream use would also have severe consequences on the practice of kalo cultivation on the ground and in the community of Wai‘oli. Given these implications, and with a firm grasp on the law, the Hui and the Clinics advocated for the proper recognition of this use of water, as well as the management regime upon which it relied.

The Water Commission ultimately recognized the wide range of constitutionally protected traditional and customary practices in the area, including, in a significant and unprecedented action, “the traditional land and water management system of kalana” in Wai‘oli as well as the larger Hanalei Kalana.<sup>273</sup> The Commission recognized the historical management regime that was built to be “self-sufficient and allow for continuous stream flow,” and importantly, that the Hui’s use of water for kalo cultivation is “non-consumptive, *instream* [use]...consistent with the Indigenous tradition of this kalana.”<sup>274</sup> To put it simply, without centering traditional land management techniques and Kānaka Maoli customs, the Commission may have inadvertently and significantly stifled traditional and customary practices of the Hui, ultimately to the detriment of the resource. Instead, this recognition also enabled the Water

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270. Winter et al., *The Moku System*, *supra* note 3, at 5. “The term kalana has been applied to the Hanalei region of northern Kaua‘i, which includes the ahupua‘a of Hanalei, Wai‘oli, Waipā, and Waikoko. This appears to reference lands that collectively release wai (fresh water) into Hanalei Bay.” *Id.*

271. HAW. REV. STAT. § 174C-3.

272. HAW. REV. STAT. §§ 174C-71(1), -71(1)(c).

273. COMM’N ON WATER RES. MGMT., STAFF SUBMITTAL, AMENDED INTERIM INSTREAM FLOW STANDARDS FOR THE SURFACE WATER HYDROLOGIC UNIT OF WAI‘OLI AT 7 (May 2021) [hereinafter CWRM, MAY 2021 STAFF SUBMITTAL]. Pursuant to HRS 174C-101 the Commission: “recognizes the range of Traditional and Customary practices that exist in this watershed including but not limited to lo‘i kalo, gathering in and around the stream and ‘auwai, spiritual practices, and the traditional land and water management system of kalana.” *Id.*

274. CWRM IFSAR, *supra* note 266, at 74 (emphasis added).

Commission to take a holistic view of the health of the resources and the needs of the ‘āina and the community, in order to support the practices that facilitate ‘āina momona and to effectively manage Hawai‘i’s finite resources into the future. By working with and incorporating Kānaka Maoli customs, the Commission was empowered to fulfill, in part, its duty to establish IIFS under the Water Code in Hanalei Kalana as well as its duty to protect traditional and customary practices in Wai‘oli.

Evidence of traditional and customary practices that sustain biocultural resources provides key context, especially when contemplating how to best manage the water resources through an IIFS. As a part of documenting the Hui’s use and characterizing instream needs and offstream uses, the Hui and the Commission staff recorded the intricate flow of the water throughout the kalana.<sup>275</sup> This larger system of interdependence and systematic management may not have been uncovered if not for the Hui’s multi-generational knowledge and its complex lo‘i kalo irrigation system operations. Without this historical context and the traditional understanding of a kalana, the Commission may have made decisions solely based on western hydrologic units — without regard to and inevitably disrupting the larger kalana.

In its decision adopting the amended IIFS, the Commission embraced an adaptive management model, recognizing the shifting needs of this community as well as potential impacts from the effects of climate change. Addressing disproportionate effects of climate change will inevitably raise issues of environmental justice. Traditional practices of a particular place can offer important context to crafting appropriate place-based solutions. Systematic biocultural resource management that sustained life in Hawai‘i for millenia was “not standardized in a cookie cutter approach, but rather depended on biophysical aspects of the land- and sea-scape.”<sup>276</sup> As a practical approach, “land divisions varied over time, being shaped by the dynamic and varied needs of each island’s human population.”<sup>277</sup> This understanding embraced the fact that management approaches required close monitoring of the day-to-day health of the stream — something the Hui has been doing as a part of its operations for decades.<sup>278</sup> As a part of the Hui’s water allocation, the Commission required evaluation of the “progress of implementing the interim IFS and the application of the adaptive management strategies.”<sup>279</sup> This ensured that the Commission and the Hui would continue to partner for the pono management of Wai‘oli Stream. In the context of the realm of ‘āina and the restorative justice framework, the partnership between the Water Commission and the Hui uplifted the kupa of the place in agency decisions about their ‘āina — particularly in anticipation of the impacts of the climate crisis.

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275. See e.g., Figures 10-2 and 10-6. CWRM IFSAR, *supra* note 266, at 75, 83.

276. *Id.* at 4.

277. *Id.*

278. See, e.g., FINAL EA, *supra* note 160, § 3.2.2.

279. CWRM, MAY 2021 STAFF SUBMITTAL, *supra* note 273, at 6.

In the realm of ‘āina, managing ‘āina based on traditional practices further addresses historical injustices by formally re-centering kupa as the decisionmakers and caretakers of an ‘āina and its resources. These formal recognitions provide kama‘āina with the authority and flexibility to maintain day-to-day management while also precluding the subjugation of lands for foreign benefit. In the context of climate change, consistent and regular management also prevents and mitigates impacts from extreme weather events. An adaptive approach, based on the Hui’s on-the-ground observations also sets the Water Commission up for success. Finally, by re-centering principles of Indigenous biocultural resource management by appropriately recognizing Wai‘oli as a part of the larger Hanalei Kalana, the Hui empowered the Water Commission to make appropriate place-based decisions to the benefit of the resource and its people while also fulfilling the Water Commission’s broad kuleana. Reliance on western models of resource management without regard to the practices of the area would have perpetuated the subjugation of this ‘āina, significantly altered the environment and its resources, and impaired the traditional and customary practices therein. The Hui’s work paves the way for future decisionmaking, research and collaborative partnerships, and for imagining the possibilities of restorative environmental justice in Native communities throughout the world.

C. *I Ola iā Maui Ola.*<sup>280</sup> *Cultivating Physical and Mental Health through the Realm of Maui Ola*

Community is made up of people connected to and by their relationships with a particular place, as well as the place itself. Community encompasses people who live in, maintain family ties to, advocate over long periods of time for, eat from, or regularly use natural resources in a specific place . . . . communities of kupa ‘āina families [are] those who have become kupa (familiar) with ‘āina through generations of living in and eating from a particular place.<sup>281</sup>

The kupa‘āina ‘ohana of Wai‘oli carry deep connections and kuleana to one another and the ‘āina to which they are tied. Kānaka Maoli wellbeing, for Wai‘oli in particular, is sustained by pilina (relationships and connection) that nourish ‘āina, the physical body, as well as one’s mind. The realm of maui ola includes a holistic view of wellness, that includes “mental, physical, and spiritual health and well-being”<sup>282</sup> while also understanding that Kānaka Maoli identity is innately tied to their ‘āina hānau (birth lands).<sup>283</sup> This value also considers socio-economic indicators such as health, education, and living

280. “I Ola iā Maui Ola” translates as “Life through Maui Ola.” MALO, *supra* 35, at 147.

281. MEHANA BLAICH VAUGHAN, *‘Āina That Which Feeds, in KAIĀULU: GATHERING TIDES* 4 (2018).

282. Tutuer, *Reframing Kānāwai*, *supra* note 22, at 76.

283. Kikiloī, *supra* note 119, at 75.

standards, and asks whether a decision has the potential to improve these and other societal circumstances.<sup>284</sup>

As a whole, supporting kalo cultivation in Wai‘oli advances notions of maui ola, of holistic wellbeing, for Kānaka Maoli both across the pae ‘āina and in Wai‘oli specifically by providing locally sourced ‘ai pono that nourishes the physical body as well as by facilitating pilina that benefits spiritual and mental wellbeing. While not specific to any one aspect of the Hui’s advocacy, this Section focuses generally on the overall importance of continued kalo cultivation in Wai‘oli—which has been secured by the Hui’s advocacy before various decisionmaking bodies—including the perpetual easement from BLNR<sup>285</sup> and the exemption from the long-term water leasing statute through Act 27.<sup>286</sup> Further, this Section focuses on just two of the many aspects of life and wellbeing advanced by the Hui: physical health along with mental and spiritual health. With respect to physical health, kalo provides an important traditional staple for Kānaka Maoli that is the foundation for ‘ai pono, or the practice of eating nourishing foods.<sup>287</sup> Kalo cultivation also supports mental and spiritual wellbeing by maintaining Kānaka Maoli’s familial relationship with ‘āina while also fulfilling Kānaka Maoli’s duty to aloha ‘āina. For many of these families, kalo cultivation is a family tradition, transcending time and connecting generations. Overall, kalo cultivation in Wai‘oli nourishes pilina and is an integral thread in the fabric of this tight-knit community.

### 1. Access to ‘Ai Pono and Physical Health

As a “bedrock of health in Native Hawaiian communities,” local kalo production directly contributes to the physical health and wellbeing of Kānaka Maoli.<sup>288</sup> Kalo can produce a number of foods, including poi, pa‘i‘ai, kūlolo, laulau, lū‘au and more.<sup>289</sup> The Hui’s work supports local food production, access and distribution as a crucial measure to restoring food security in Hawai‘i. Working towards food independence for Hawai‘i is particularly important where one in four Kānaka Maoli experience food insecurity.<sup>290</sup>

284. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 182.

285. *See supra* Subpart IV.A for more information on the perpetual easement at a gratis rate.

286. *See infra* Subpart IV.D for more information regarding Act 27.

287. FINAL EA, *supra* note 160, at 13.

288. *Id.*

289. *Id.*; *see also* WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6, at 13 (“Although kalo is cultivated across the Pacific, Hawai‘i is the only place where kalo achieved agricultural dominance and became the primary staple crop of a people. In Hawai‘i, kalo is pounded (ku‘i) into pa‘i ‘ai (pounded but undiluted taro) using a papa ku‘i ‘ai (poi board) and a pōhaku ku‘i ‘ai (poi pounder). Kalo nourished the bodies of the earliest Kānaka Maoli, and it became a traditional cultural food source. The practice of ‘ai pono, the preparing and eating of Native Hawaiian traditional and customary foods, continues today. These foods include many made with kalo: poi, pa‘i ‘ai, kūlolo, laulau, and lū‘au. Of the kalo plant, one can eat the lau (leaf), the ‘i‘o (corm), and even the stem (hā).”).

290. KAMEHAMEHA SCHOOLS’ STRATEGY & TRANSFORMATION GROUP ET AL., IMI PONO

Though the Hui's Final EA largely evaluated environmental impacts, it also illuminated important aspects of maui ola, including the crucial role kalo plays in the physical wellbeing of the larger Kaua'i community.<sup>291</sup> Studies are increasingly underscoring the "unique value of local food on individual" and the larger community itself.<sup>292</sup> Kalo is an important source of physical and spiritual nourishment and was "consumed by all k naka throughout time beginning with fundamental principles of Hawaiian ancestry."<sup>293</sup> With numerous nutritional benefits, the consumption of kalo is "vital to the healthy connections made when nourished by our first foods."<sup>294</sup> Recognizing the value of this 'ai pono (nutritious food), the Hui is a major supplier of kalo for Wai'oli's community and Hawai'i pae ' ina as a whole. For JoAnne Kaona, a young K naka Maoli farmer, she sees her "kuleana as helping to sustain a healthy lifestyle for our entire community, from keiki [child] to k puna [elders]."<sup>295</sup> She emphasizes that "the 'ohana who have been farming, like my own, for multiple generations, have taken on this kuleana to ensure that accessibility to our l hui's [nation's] most basic and essential food is met. This heavy kuleana is a burden to carry."<sup>296</sup> Many in the community underscore the value of poi for k puna, those sick with dietary restrictions, and babies, who all benefit from poi's smooth texture and high nutrients.

In Wai'oli, where rice briefly supplanted kalo as the primary crop during a period of missionary influence in the mid-1800s, the Hui's work ensures the Native Hawaiian staple is available to the surrounding community in perpetuity.<sup>297</sup> Hui members trade with and/or gift kalo to members within their community at or below-cost. In the neighboring ahupua'a of Waip , an ' ina-based non-profit organization processes poi for the community. Waip  Foundation uses its certified kitchen along with the help of volunteer labor, to produce poi.<sup>298</sup> As a central and esteemed hub in the community, Waip  Foundation often provides the poi to the local community, below cost and often free to k puna. One member of the Hui testified that providing kalo for the community is a "heartfelt honor."<sup>299</sup> In the realm of restorative justice, ensur-

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HAWAII WELLBEING SURVEY 2022: ATTITUDES AND BEHAVIORS ABOUT LOCAL FOOD IN HAWAII (2022). [www.ksbe.edu/research/imi\\_pono\\_hawaii\\_wellbeing\\_survey](http://www.ksbe.edu/research/imi_pono_hawaii_wellbeing_survey) [https://perma.cc/MJV5-P3F3].

291. See, e.g., FINAL EA, *supra* note 160,  5.8.

292. STEVE MARTINEZ ET AL., ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES (2010).

293. OFF. OF HAWAIIAN AFFS., HAUMEA—TRANSFORMING THE HEALTH OF NATIVE HAWAIIAN WOMEN AND EMPOWERING W HINE WELL-BEING 32 (2018) [hereinafter OFF. OF HAWAIIAN AFFS., HAUMEA]. Further, "Kalo is spiritually nourishing because of the origin of our people through H loa." *Id.*

294. *Id.*

295. WAI'OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6 at 65.

296. *Id.*

297. *Id.* at 38.

298. FINAL EA, *supra* note 160, at 126.

299. *Relating to the Disposition of Water Rights: Hearing on H.B. 1768 H.D. 2 Before the S. Comms. on Water & Land and Agric. & Env't*, 2022 Leg., Reg. Sess. (Haw. 2022) (statement

ing that kalo cultivation continues in Wai‘oli advances measures of health and wellbeing for the Hui and the larger Kaua‘i community.

## 2. He Hale ke Kino no ka Mana‘o:<sup>300</sup> Mental and Spiritual Wellbeing

Kalo facilitates pilina with ‘āina, fulfills kuleana to Akua (gods), and reinforces community ties that all lead to mental and spiritual health for kānaka. Aloha ‘āina, and kalo cultivation as a practice of aloha ‘āina, “creates and maintains two relationships: to the land itself, to that which feeds; and, through that ‘upena [web] of pilina, to one’s community.”<sup>301</sup> Creating and maintaining these pilina are important threads for cultivating overall spiritual and mental wellbeing for Kānaka Maoli and the community and ‘āina to which they are responsible.

For many, tending to kalo is a spiritual tether to ‘āina and a practice through which they maintain a relationship to their place. For Kānaka Maoli, who view land as a part of their mo‘okū‘auhau, tending to land is step towards fulfilling kuleana and the duty to aloha ‘āina. Recognizing the value of this pilina ‘āina,<sup>302</sup> the Hui’s educational efforts encourage others to establish their own pilina with place. As an important part of the Hui’s work, its educational and community outreach programs seek to raise awareness about Indigenous biocultural resource management and kalo cultivation and inspire a better understanding and support for water resource management in Wai‘oli.<sup>303</sup> Supporting others’ sense of responsibility to the Wai‘oli Watershed further uplifts the next generation of farmers and stewards.

Kalo cultivation also facilitates pilina between other Kānaka—an “important cornerstone in the social well-being of Hawaiian society.”<sup>304</sup> As a result, these pilina with one another build and strengthen the surrounding community. With just a few hundred acres dedicated to lo‘i kalo across Hawai‘i, and against the backdrop of rising cost of living and continued development, lo‘i kalo are kīpuka that “provide a safe and nurturing environment.”<sup>305</sup> These kīpuka provide a “place to build community and enact kuleana by regularly gathering to care for their home together” and maintain the essential “character of surrounding areas.”<sup>306</sup>

Building a community with common characteristics is an essential part of belonging and thus, mental wellbeing. As a result of Hawai‘i’s plantation era and the influx of immigrants to meet the demands for labor, Hawai‘i became a “melting pot” of cultures, of which Kānaka Maoli are minority. With just 5.7

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of Chris Kobayashi).

300. MARY KAWENA PUKUI, ‘ŌLELO NO ‘EAU, HAWAIIAN PROVERBS & POETICAL SAYINGS 158 (1983) (“He hale ke kino no ka mana‘o” can be translated as the body is a house for the thoughts).

301. OSORIO, *supra* note 51, at 13.

302. “Pilina ‘āina” translates as “relationships to land.”

303. FINAL EA, *supra* note 160, at 93.

304. OFF. OF HAWAIIAN AFFS., HAUMEA, *supra* note 293, at 11.

305. FINAL EA, *supra* note 160, at 123.

306. VAUGHAN, *supra* note 281, at 120–23.

percent of Hawai‘i’s population able to speak ‘ōlelo Hawai‘i,<sup>307</sup> venues to build and maintain pilina through language are vital. The Hui has found that kalo distribution has become an opportunity to converse in ‘ōlelo Hawai‘i. For Kānaka Maoli, ‘o ka ‘ōlelo ke ka‘ā o ka maui: ‘ōlelo Hawai‘i is the fiber that binds us to our cultural identity. On the west side of Kaua‘i, where many ‘ōlelo Hawai‘i Ni‘ihau speakers reside, these sites provide the opportunity to practice and engage in ‘ōlelo Hawai‘i.

For a community whose identity is grounded in kalo cultivation and measure their wealth in ho‘olako, or having enough to share with others, providing community with kalo is fulfilling and a source of pride. The farmers work to ho‘olako their community as a means to sustain and maintain a relationship-based economy with shared values of aloha ‘āina. As the Hui cultivates kalo and provides ‘ai pono for its community, they also share aloha for each other and aloha for the land—as a kahua (foundation) for Halele‘a Moku and Wai‘oli in particular.

Furthering notions of maui ola (social determinants of health and wellbeing), kalo farming is a source of pride, brings joy to, and strengthens connections and relationships within the tight-knit community.<sup>308</sup> Their practices also provide educational opportunities, a venue for ‘ōlelo Hawai‘i, and encourage ‘ai pono of Kānaka Maoli’s first food. For so many of the farmers and community members, these pilina nourish and provide much needed respite from the every day hustle of life and comprise the very identity of the community as a whole.<sup>309</sup> These important pilina and collective actions as a community “do not negate ongoing loss and injustice,” but “these stories do offer possibilities: to restore lost connections, grow new ones, and build models that emphasize responsibility and caretaking of lands and resources, rather than ownership.”<sup>310</sup>

D. *E Mau Ana ke Ea:*<sup>311</sup> *Cultivating Self-Governance and Returning Decisionmaking Power to Communities through the Realm of Ea*

Restoring measures of ea, or self-governance, to address the loss of political governance can happen on both big and small scales. These efforts can

307. DETAILED LANGUAGES SPOKEN AT HOME, *supra* note 140, at 19.

308. *E.g.*, WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6 at 70. Lillian Watari says “[w]e are proud of who we are and what we do, and hope to continue to pass down this tradition to future generations.” *Id.*

309. *E.g.*, WAI‘OLI CULTURAL IMPACT ASSESSMENT, *supra* note 6 at 70. Lillian Watari says “what holds together the identity of our community is the kalo farming that has been here since the beginning of time in these islands.” *Id.*

310. VAUGHAN, *supra* note 281, at 88.

311. “E Mau Ana ke Ea” can be translated as “sovereignty will persist” and pays homage to King Kamehameha III’s 1843 proclamation, “Ua mau ke ea o ka ‘āina i ka pono,” or “the sovereignty of the land continues through justice” upon restoration of the Hawaiian Kingdom following a five-month occupation by the British. Scholars like Dr. Noelani Goodyear Ka‘ōpua highlight that the King exclaims sovereignty has returned to ‘āina rather than the government. Noelani Goodyear-Ka‘ōpua, *Introduction, in A NATION*

occur in a top-down approach, where, for example, governmental bodies consult or return decisionmaking about ‘āina to Indigenous Peoples, to a bottom-up approach, where Indigenous Peoples engage in governing systems to promote more pono decisionmaking, for example. Given the violent history of dispossession and injustice in Hawai‘i, each method is important, if not absolutely crucial, to righting wrongs and restoring semblances of self-determination for Indigenous Peoples. All of these interactions are sites for and require healing, connection, and empowerment. For Kānaka Maoli, self-determination turns on pilina.

As a baseline, this realm requires us to analyze whether an action or decision *involves* Kānaka Maoli in “decisions that affect them.”<sup>312</sup> For the Hui, engagement with existing governmental bodies with “legal” kuleana to steward the land and resources originated with the Hui and at the community level. The Hui both initiated *and* informed the decisions being made about Wai‘oli and its resources. The Hui worked closely with the Water Commission to establish a meaningful numeric IIFS — ensuring that what they had long stewarded on the ground was memorialized on paper for the governing body. They engaged with DLNR to secure an easement and right of entry in perpetuity—ensuring access to their ‘āina and resources. And finally, they engaged with the Hawai‘i State Legislature to pass an exemption to the water leasing statute—guaranteeing that kalo farmers would never be subject to the same circumstances. Albeit in response to the catastrophic flooding, and despite the loss of political autonomy, the Hui made a conscious decision to dilligently undertake the slew of legal hurdles thrust upon them and ultimately restored measures of self-governance in momentous ways.

Throughout their work to secure legal entitlements, the Hui galvanized the network of relationships, skills, and traditional knowledge to shine light on the broad benefits of Indigenous biocultural resource management and to integrate their voices into decisionmaking about their ‘āina. The Hui articulated the centuries-old management practices in the area as well as the ingenuity of the lo‘i kalo irrigation system itself. During this process, the Hui not only cultivated relationships with students from the Clinics, teaching them valuable lessons as future attorneys, but importantly, with members of DLNR staff, the individuals who compile information and issue recommendations to decisionmakers. It also activated the network of supporters throughout Hawai‘i pae ‘āina to support the completion of its application and passage of the water lease exemption.

DLNR worked closely with the Hui to complete the requisite application(s), building trust and capacity with the Hui and the Clinics. For many Native communities, engaging with governmental bodies is foreign and can be intimidating. The initial BLNR hearing in May 2019 on O‘ahu was

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RIISING: HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY 4 (Goodyear-Ka‘ōpua et al. eds., 2014).

312. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 177; *see also* Anaya, *supra* note 14, at 355.

nerve-wracking for many of the farmers. One kūpuna farmer had not left the island of Kaua‘i in over a decade. On the drive over to the Kalanimoku building where agency folks would make decisions that could impact their livelihood and traditional and customary practices, he marveled at the skyscrapers and vast changes that O‘ahu had undergone. Humble and feeling out of place, the farmers of the newly-formed Wai‘oli Valley Taro Hui quietly articulated to BLNR what the decision would mean for them. One eighty-year-old farmer said: “All we want to do is continue farming so that the traditional and customary knowledge, lessons, and values can be passed down to future generations. Like my ‘ohana has practiced for decades on this land, these are lessons and relationships that can only be gained through countless hours in the lo‘i.”<sup>313</sup>

A little over a year after the initial flooding, the BLNR unanimously granted the easement and right of entry to the Hui *gratis*—free of charge. And, given the clear support of the community, as well as the certain benefit to the land and resource, several members of BLNR asked staff to return to the Board and grant a *perpetual* easement rather than a limited term easement as initially proposed.

Putting Native community voices at the center of decisionmaking is a significant step towards restoring measures of self-governance while also fulfilling the agency’s duty under the law. In reflecting on the twenty-five years since the *PASH* decision<sup>314</sup> and the DLNR’s efforts to implement protections for Native Hawaiian traditional and customary practices, BLNR Chair Suzanne Case said, “in practice, what works best is when the aha moku network and others can connect BLNR staff on the ground with genuine generational descendants of an area to ground truth T&C [traditional and customary] practices in advance to mitigate impacts of actions and to support pono practices.”<sup>315</sup> This is precisely what the Hui embodied. The Hui was not the only “entity” making decisions about the area, but rather in conversation and partnership with the community—a characteristic of the social structure of the small town.

Beyond a minimum baseline of involvement, the realm of *ea* further asks us to consider whether a decision *empowers* Kānaka Maoli in “decisions that affect them.”<sup>316</sup> BLNR’s decision to provide perpetual access free of charge to the Hui went beyond mere consultation and made self-governance for the Hui a crucial component of the agency’s management approach for Wai‘oli. Both

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313. *Grant of Term, Non-Exclusive Easement to Wai‘oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation Purposes, Wai‘oli, Hanalei, Kauai*, Dept. of Land and Nat. Res., Meeting of the Board of Land and Nat. Res. (May 24, 2019) (Statement by Clarence “Shorty” Kaona).

314. *Pub. Access Shoreline Haw. v. Haw. Cnty. Plan. Comm’n*, 79 Hawai‘i 425 (1995).

315. See e.g., Univ. of Haw. L. Rev., *Law Review Spring 2021 Symposium – 25 Years of PASH*, UNIV. OF HAW. L. REV., (Feb. 5, 2021), at 53:11–2:00:00, <https://vimeo.com/519658393/7233498d4b> [<https://perma.cc/A8T3-7RC6>] (discussing *PASH* and its progeny and DLNR’s ability to adequately implement Kānaka Maoli rights).

316. Sproat, *Wai Through Kānāwai*, *supra* note 13, at 183; see also Anaya, *supra* note 14, at 35–60.

Hui and BLNR members eloquently highlighted the significance of the action as a model for future partnerships that centers principles of Indigenous biocultural resource management in the community. Member Sam Gon noted that this action was the first terrestrial co-management partnership with DLNR. The proposed action was a partnership of co-powerment. This is notably different than that of “empowerment,” where one party inherently has more power to bestow on the other. Instead, in this partnership of co-powerment, BLNR made decisions guided by the party with the most familiarity with the ‘āina and stream at issue: the Hui.

The Hui’s work to pass H.B. 1768 at the Hawai‘i State Legislature, which would later become Act 27, is a prominent measure of self-governance on a statewide level. Act 27 exempted instream kalo cultivation—done in a traditional and customary manner—from the cumbersome water leasing statute that the Hui had been diligently pursuing.<sup>317</sup> Because of the widespread implications of water leases in Hawai‘i, previous attempts to amend this statute at the legislature resulted in highly politicized debates that included large corporations and foreign interests. But, because the Hui laid the groundwork by illuminating the extensive benefits of kalo cultivation together with biocultural resource management, it was uniquely positioned to advance an important protection for kalo cultivation at the Hawai‘i State Legislature. In other words, the Hui was appropriately seen as an esteemed expert with respect to the burdens of the water leasing statute at the state’s legislative body. With the farmers’ voices centered prominently in the debate, the exemption for traditional and customary kalo cultivation passed. Where Indigenous communities have historically been excluded from the “political processes that sought to govern them,”<sup>318</sup> changing the law to support Indigenous biocultural resource management and traditional and customary practices in a manner advanced by the community and that still honored the purpose of the statute was a crucial achievement to return a degree of self-governance to Kānaka Maoli.

It is worth noting, however, that the determined mahi‘ai of Wai‘oli may not be the norm for other Indigenous communities throughout Hawai‘i nei and the world. Without the dire need to engage in the process as a result of the flooding, the farmers may have continued to practice that which sustained them for generations: their own ‘āina and community—without regard to regulators in downtown Honolulu. The Hui’s partnership with the Clinic co-powered collective efforts and uplifted ancestral knowledge and practical expertise. Governing bodies must be mindful of this dynamic when initiating and pursuing decisions related to a specific community. As detached agencies

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317. H.B. 1768, 31st Leg. (Haw. 2022) (“This section shall not apply to the disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices.”). Although the state is entitled to regulate traditional and customary practices protected by HAW. CONST. art. XII, § 7, Act 27 sought to remove an artificial barrier to realizing this protection while also adhering to the intent and purpose of HAW. REV. STAT. § 171–58.

318. Anaya, *supra* note 14 at 356.

make decisions about communities of which they are not a part, there *must* be ties to ‘āina so that Indigenous Peoples are informing the decisions being made about their own land and natural resources. Whether this means regular and consistent contributions in the community by the organizational staff, appointing practitioners to the governing boards and commissions, or creating positions specifically to build pilina, the power of relationships in the realm of ea cannot be understated. Efforts to cultivate meaningful pilina and trust is undoubtedly beneficial to overall decisionmaking, and importantly, building communities of practice and self-governance. After all, “because of this history of dispossession, interpersonal intimacy—how we practice pilina—must be restored as a central component of Kanaka Maoli nation building.”<sup>319</sup> And in Wai‘oli, ea persists in pono and in ‘āina.

## V. UA AO HAWAI‘I: HAWAI‘I IS ENLIGHTENED THROUGH RESTORATIVE JUSTICE

Ua Ao Hawai‘i: Hawai‘i is enlightened! In ‘ōlelo Hawai‘i, ao signifies light, day, and enlightenment. When an ‘okina (glottal stop) is added, ‘ao, refers to a new shoot, leaf, or bud of taro. Both terms seem particularly appropriate when discussing the work of the humble mahi‘ai of Wai‘oli. In the wake of incredible devastation, the Wai‘oli Valley Taro Hui emerged as cultivators of kalo and aloha ‘āina—something they have done quietly for generations. This example underscores the growing need to support and protect traditional lifeways in decisionmaking and the law in modern contexts. As BLNR Chair Case said best, “what we’re trying to do here is fit an old system into a new legal system.”<sup>320</sup> Integrating traditional systems of practice is not only a matter of actualizing existing legal protections, but a crucial matter of restorative environmental justice for Hawai‘i’s people.

Hawai‘i’s cultural practices and ingenious methods of biocultural resource management are not simply relegated to the past; they are increasingly relevant as we come to terms with and seek to repair the tremendous harms of colonization. These harms are evident in and appropriately addressed in four salient realms: mo‘omeheu, ‘āina, maui ola, and ea. These Four Values of Restorative Justice offer a systematic tool to assess the interconnectedness of life for Kānaka Maoli and other similarly situated Indigenous Peoples. The methods and values embedded in Indigenous Peoples’ practices offer an important tool for combatting impending impacts of climate change. For the farmers of the Hui, and for so many of Hawai‘i’s communities, cultural values—like the kuleana to aloha ‘āina, pilina, ‘āina, and more—continue to guide decisionmaking and everyday life. The Fourth National Climate Assessment underscores the importance of pilina in the context of climate change: “[w]hile economic,

319. OSORIO, *supra* note 51, at 10.

320. DEP’T OF LAND AND NAT’L RES., MINUTES OF THE BOARD OF LAND AND NAT’L RES. (Feb. 28, 2020).

political, and infrastructure limitations may affect these communities’ ability to adapt, tightly knit social and cultural networks present opportunities to build community capacity and increase resilience.”<sup>321</sup>

This work only begins to tell the puana (summary refrain) of the Hui’s back-breaking work in and out of the lo‘i kalo. In honor of the Hui’s leadership and advocacy, this Article articulated select aspects of its work to unpack the power of re-centering ‘āina, history, and cultural precepts in decisionmaking. By centering the multi-generational practice of kalo cultivation and comprehensive biocultural resource management in Wai‘oli, the Four Values of Restorative Justice articulate the immense need for and potential of a contextual analysis. Importantly, this approach brings to life the important legal protections for traditional and customary practices and advances Hawai‘i’s commitment to restorative justice. As Hawai‘i’s unique legal regime continues to evolve, examples such as this help us to return to principles of restorative justice that ground Hawai‘i’s mo‘okū‘auhau (genealogy) of law, culture, and justice.

In traditional Hawaiian society, the lines between life, law, land, and sovereignty were blurred.<sup>322</sup> In other words, Kānaka Maoli recognized the interconnectedness of life to cultivate a successful, more just society. Cultural precepts, some of which described herein, can, and are beginning to transform formalistic notions of law that have historically disenfranchised marginalized people. As practitioners become scholars and scholars dig deeper into cultural context, Hawai‘i’s culture breathes life—once again—into its unique legal protections. While these cultural values have long informed Hawai‘i’s legal regime, decisionmakers must begin to explicitly articulate their value while also incorporating them into decisionmaking—especially in difficult cases. Even better, decisionmakers and leaders must re-center ‘āina as the guiding force. Hawai‘i’s guiding philosophies serve not only as a roadmap for reparations, but as beacons for justice for Kānaka Maoli. This is important as we continue to fulfill Hawai‘i’s commitments to restoring the harms of colonization and realize the potential of Hawai‘i’s unique legal regime. Beyond Hawai‘i’s ‘āina momona, these cultural values, notions of restorative justice, and the developing framework for actualizing justice offer an avenue to both mitigate and adapt to larger crises and to emerge as a global community.

## VI. KA PUANA: EPILOGUE

“*Ha‘ina ka puana a i lohe ‘ia, aia i Wai‘oli ke aloha ‘āina*”<sup>323</sup>

The refrain is told to be heard, here at Wai‘oli is aloha ‘āina.

I had the privilege of first being a student in the Environmental Law Clinic and then later, co-teaching the course as a Post-J.D. Legal Fellow at Ka Huli

321. USGCRP, *FOURTH NATIONAL CLIMATE ASSESSMENT*, *supra* note 20 at 28.

322. *See, e.g.*, Noelani Goodyear-Ka‘ōpua, *Introduction*, in *A NATION RISING: HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY*, *supra* note 144, at 4, 4.

323. U‘ILANI TANIGAWA LUM, *Aia i Wai‘oli ke Aloha ‘Āina* (2019).

Ao Center for Excellence in Native Hawaiian Law. This Article endeavors to encapsulate the accomplishments of the farmers of the Wai‘oli Valley Taro Hui as well as the power of thoughtful partnership and relationships. Their work is emblematic of the potential of advancing restorative justice for Indigenous communities. Aside from that, the Hui’s work also had a profound impact on me as a student, young attorney, and now as a Professor of Law.

As a student in the clinic, we went on a site visit to Kaua‘i to meet the farmers, experience the devastation of the floods first hand, and understand the ‘āina and lo‘i kalo irrigation system. Esteemed professor, kupa of the place, and my mentor, Kapua Sproat, underscored the importance of visiting the place. If we were going to give effective representation, we would need to know the place as the kupa did. Almost immediately, I was taken aback by the overwhelming aloha and gratitude the farmers had for our small class of aspiring lawyers. As we ventured to the upper reaches of the stream and discussed where they would rebuild the mānowai, the farmers met with a handful of experts in each of their respective fields: engineers, hydrologists, planners, lawmakers, and more. Visibly overwhelmed at the information being handed to them, Professor Sproat interjected. As a part of the community herself,<sup>324</sup> she took off her proverbial attorney hat and said to the farmers: “you know this place the best! You have been farming here for generations. Don’t be confused by these folks with palapala [certifications]. You are the experts of this stream. Do what you think is best.” With silent nods and sighs of relief, they proceeded to make a decision about what they knew to be best for the stream, the surrounding ‘āina, and for their community. I realized that it did not take a law degree or a boardroom to co-power a community and to return notions of self-determination to the community.

As a young, soon-to-be-attorney, this pilina and thoughtful expression of co-powerment forever changed my view of the role and potential of attorneys. So often, in formal sites of decisionmaking, boardrooms, and courtrooms, the true experts of the place are sitting there quietly. Sometimes, they know they are the experts; other times, they need to be reminded. This deference is important in the context of formal decisionmaking because narratives peddled by non-Native voices unabashedly dominate discourse and history and continue to “justify the colonial conquest and dipossession of [N]ative People.”<sup>325</sup> Decisionmakers just need to provide a safe space and build pilina enough to listen.

As a student and as an instructor of the Native Hawaiian Rights and Environmental Law Clinics, this experience taught me valuable lessons about the power of lawyering as well as the expertise of cultural practitioners. It also underscored the value of having Kānaka Maoli attorneys return to the communities that reared them. Moved by the hard work, humility, and aloha of the

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324. Professor Sproat is a part of the community herself and could utilize language with which the Hui members were familiar, made the Hui feel comfortable, and reinforced their unmatched knowledge.

325. Coffey & Tsosie, *supra* note 149, at 201.

farmers of the Wai‘oli Valley Taro Hui, I wrote “Aia i Wai‘oli ke Aloha ‘Āina,”<sup>326</sup> a mele that expresses my gratitude and pays homage to the work at Wai‘oli:

Aia i Wai‘oli ke aloha ‘āina Ia ‘āina momona no ka hui kalo	<i>There at Wai‘oli is aloha ‘āina That fertile land for the hui kalo</i>
Hui ‘ia a kūpa‘a, a lawa pono ‘Ili‘ili leo honehone i ka poli	<i>United and steadfast to satisfaction Gathered as small pebbles soft in sound, but together, strong and held close</i>
Pumehana Waipā uluwehiwehi Hoapili no ka wai ‘olu o Wai‘oli	<i>Waipā is cherished, lush and verdant A companion for the refreshing waters of Wai‘oli</i>
‘Oli‘oli Keanolani no ka mahi‘ai I laila nō wau me ku‘u mahalo	<i>Keanolani is delightful for the farmers It is there that I am filled with gratitude</i>
Hanohano Kalihiwai i ka pua ‘ala Kui ‘ia i lei no ka lāhui	<i>Famous is Kalihiwai for its fragrant flower Strung into a lei for the lāhui</i>
Ha‘ina ka puana a i lohe ‘ia Aia i Wai‘oli ke aloha ‘āina	<i>Told is the refrain and it is heard There at Wai‘oli is aloha ‘āina</i>

To listen to the mele, or more information about the mele, “Aia i Wai‘oli ke Aloha ‘Āina,” please visit <https://go.hawaii.edu/Xe5> or scan the QR code below:




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326. U‘ILANI TANIGAWA LUM, *Aia i Wai‘oli ke Aloha ‘Āina* (2019).