Ola i ka Malu ʻUlu o Lele: An Emerging Collective Memory of Injustice in Maui Komohana as a Foundation for Recovery from Lahaina's Wildfires and Restorative Justice for Hawaiʻi

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I. HĀLOA KA WAI:[1] PROLOGUE

Prior to water diversion by sugar interests, the only other time the water of Kahoma went dry was through an act of war.[2]

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[1] Hāloa ka wai can be translated as "far-reaching waters," paying homage to the 2019 mele *Hāloa ka Wai o Kahoma*. CODY PUEO PATA, *Hāloa ka Wai o Kahoma, on* LEI NĀHONOAPIʻILANI: SONGS OF WEST MAUI (North Beach-West Maui Benefit Fund 2019). The song's lyrics and strategic use of the word "Hāloa," alludes to kalo, Kānaka Maoli's natural counter part and elder brother and a staple of the Hawaiian diet. It also honors the traditional and customary practice of wetland kalo that was recently restored in Kahoma Valley and other places in Maui Komohana. Cody Pueo Pata, Hāloa ka Wai o Kahoma (2019) (unpublished manuscript) (on file with author) [hereinafter Pata, Liner Notes].

[2] Pata, Liner Notes, *supra* note 1 ("Prior to water diversion by sugar interests, the only other time the water of Kahoma went dry was through an act of war . . . To starve Kauhiʻaimoku's warriors and people, Alapaʻi and Kamehamehanui dried up the streams of Kauaʻula, Kanahā, and Kahoma. The families suffering in recent times were guilty of no insurrection. To Hawaiian people, to dry up a stream is a tactic of war.").

Hawai'i's society was intricately structured to sustain life.[3] Kānaka Maoli[4] deeply understood and sought to achieve and maintain pono—a great balance of what was moral, just, and proper.[5] This balance relied heavily upon Kānaka Maoli's reciprocal relationship with 'āina, Hawai'i's lands and natural resources.[6] For this and many other reasons, water was the center of life. Cutting off streamflow was thus a deliberate act of war.

In recounting the formation of the nation of Hawai'i, historian Samuel Mānaiakalani Kamakau[7] penned mo'olelo[8] that detailed relationships and warfare in Hawai'i pae 'āina.[9] The 18th century conquest that eventually resulted in Kamehameha I's singular rule was published in Ka Nūpepa

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[3] *See, e.g.*, Kawika B. Winter et al., *The* Moku *System: Managing Biocultural Resources for Abundance Within Social-Ecological Regions in Hawai'i*, 10 SUSTAINABILITY 1, 1–2 (2018) [hereinafter Winter et al., *The* Moku *System*] (describing "the *moku* system" as a system of biocultural resource management which "divided large islands into social-ecological regions and further into interrelated social-ecological communities" that provided "an abundance of resources for more than a millennium").

[4] This Article utilizes the term "Kānaka Maoli" in reference to Hawai'i's first people and the population inhabiting the Hawaiian islands prior to the first arrival of westerners. This term is interchangeable with Native Hawaiian, native Hawaiian, Kānaka 'Ōiwi, etc. without regard to arbitrary notions of blood quantum. *See* MARY KAWENA PUKUI & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY 127 (1986). For more context around blood quantum and the Hawaiian Homes Commission Act, *see* Melody Kapilialoha MacKenzie, *Historical Background*, *in* NATIVE HAWAIIAN LAW: A TREATISE 5, 31 (Melody Kapilialoha MacKenzie et al. eds., 2015) [hereinafter NATIVE HAWAIIAN LAW: A TREATISE]; J. KĒHAULANI KAUANUI, HAWAIIAN BLOOD: COLONIALISM AND THE POLITICS OF SOVEREIGNTY AND INDIGENEITY 145–70 (2008) (analyzing and discussing the blood quantum requirement of the HHCA).

[5] "Pono" translates as "correct," "necessary," "in perfect order," "moral," "excellence," "wellbeing," and more. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=pono (last visited Mar. 31, 2024).

[6] "'Āina" translates as "land" or "earth." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=%CA%BB%C4%81ina (last visited Aug. 22, 2024).

[7] Samuel Mānaiakalani Kamakau was a "composer, historical writer, a teacher, a principal, a government official, a judge, and a respresentative in the legislature of the [K]ingdom [of Hawai'i]." SAMUEL MĀNAIAKALANI KAMAKAU, KE KUMU AUPUNI: THE FOUNDATION OF HAWAIIAN NATIONHOOD lxiii (M. Puakea Nogelmeier trans., 2022).

[8] "Mo'olelo" is a "story, tale, myth, history, tradition, literature, legend," and more. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=mo'olelo (last visited Mar. 31, 2024).

[9] "Hawai'i pae 'āina" refers to the Hawaiian archipelago. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=pae+%CA%BB%C4%81ina (last visited Aug. 22, 2024). *See generally* SAMUEL M. KAMAKAU, RULING CHIEFS OF HAWAII (rev. ed. 1992) [hereinafter RULING CHIEFS OF HAWAII] (focusing on the political history of the Hawaiian people from the time of 'Umi until the time of Kamehameha III in the 1840s and illuminating the role of ali'i in shaping Hawai'i pae 'āina).

Kūʻokoʻa, one of nearly 100 newspaper outlets that operated throughout the century.[10] This particular moʻolelo was published weekly and spanned two years.[11] The length and depth of these documented moʻolelo illustrate the skillful tactics by which Hawaiʻi's rulers engaged in warfare to solidify power in Hawaiʻi.[12] The strategic management of resources, including water, as a means to wield power could be used for good, or for bad. Hawaiʻi's aliʻi[13] intentionally stewarded resources and relationships to secure mana[14] and maintain pono. For Kānaka Maoli, fostering this balance was paramount since humans and ʻāina shared the same moʻokūʻauhau, or geneaology.[15] With this familial and practical equilibrium, Hawaiʻi's lands and resources flourished because of the reciprocal relationship between kānaka and ʻāina.[16]

Moʻolelo teach us about the consequenses of disrupting pono and manipulating natural resources. As early as the 1800's, Kānaka Maoli took

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[10] M. PUAKEA NOGELMEIER, MAI PAʻA I KA LEO: HISTORICAL VOICE IN HAWAIIAN PRIMARY MATERIALS, LOOKING FORWARD AND LISTENING BACK 93, 148, 151–52 (2003) (highlighting that from 1834 to 1948, Hawaiian writers filled 125,000 pages in nearly 100 different newspapers with their writings).

[11] *Id.* at 151.

[12] *E.g.*, RULING CHIEFS OF HAWAII, *supra* note 9, at 142–58 (recounting the moʻolelo of Keoua Kuahuʻula's death at the heiau of Puʻukoholā as the pivotal movement where Kamehameha I united Hawaiʻi pae ʻāina).

[13] "Aliʻi" can be translated as "ruler," "chiefs," "chiefesses," or royalty. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=ali%CA%BBi (last visited Aug. 22, 2024).

[14] "Mana" translates to "power" and "authority." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=mana (last visited Aug. 22, 2024).

[15] *See, e.g.*, D. Kapuaʻala Sproat & MJ Palau-McDonald, *The Duty to Aloha ʻĀina: Indigenous Values as a Foundation for Hawaiʻi's Public Trust*, 56 HARV. C.R.-C.L. L. REV., 525–76 (2022).

> For Kānaka, our biocultural resources are our ancestors, part of the extended family, and the physical embodiment of different akua (gods or ancestors). Understanding the genealogical connection between people, natural systems, and resources "enabled the development of philosophies such as aloha ʻāina, which focused on the relationships humans must maintain to live in balance with the natural world."

Id. (citing Kamanamaikalani Beamer, Axel Tuma, Andrea Thorenz, Sandra Boldoczki, Keliʻiahonui Kotubety, Kaneoka Kuke-Shultz, & Kawena Elkington, *Reflections on Sustainability Concepts: Aloha ʻĀina and the Circular Economy*, 13 SUSTAINABILITY 2984, Mar. 9, 2021, at 2).

[16] *See, e.g.*, Winter et al., *The* Moku *System*, *supra* note 3, at 2.

to nūpepa Hawai'i to publish their mo'olelo of the impact of foreign systems on traditional resources.[17] Resource usurpation nonetheless continues in the present day. In great contrast to Hawai'i's ali'i, however, foreign businesses now maneuver to secure individual profit and political gain, cementing a legacy of plantation capitalism[18] in Hawai'i. Plantations exploited Hawai'i's optimal weather and abundant 'āina momona[19] for commercial agriculture.[20] They designed complex irrigation systems to hoard and direct water out of its streams of origin to feed water-thirsty *commercial* crops, such as sugar cane and pineapples.[21] These practices decimated the intricate balance of pono and radically transformed Hawai'i's landscape by sapping the land of water and life.[22]

Colonial forces have long deployed plantation capitalism to extract resources from settled lands. In Hawai'i, "plantation capitalism" involves the widespread confiscation of public natural and cultural resources by "multinational corporate-controlled 'big business'" through direct political

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[17] *See, e.g.*, D. Kapua'ala Sproat, *Wai Through Kānāwai: Water for Hawai'i's Streams and Justice for Hawaiian Communities*, 95 MARQ. L. REV. 127, 144 (2011) [hereinafter Sproat, *Wai Through Kānāwai*] (introducing an 1866 'ōlelo Hawai'i article from S.D. Haku'ole that detailed the effects of sugar plantations in Nā Wai Ehā, Maui).

[18] *See infra* note 23 and accompanying text regarding plantation capitalism and commercial agriculture in Hawai'i; *see also, e.g.*, Naomi Klein & Kapua'ala Sproat, *Why Was There No Water to Fight the Fire in Maui?*, THE GUARDIAN (Aug. 17, 2023, 4:02 PM EDT), https://www.theguardian.com/commentisfree/2023/aug/17/hawaii-fires-maui-water-rights-disaster-capitalism (describing "Plantation Disaster Capitalism," as a contemporary form of disaster capitalism. Plantation Disaster Capitalism, in part, speaks to neocolonialism and the "long and ongoing history of settler colonial resource theft and trickery," a "tactic that Native Hawaiians have a great deal of experience resisting"); Claire Wang, *How 19th-Century Pineapple Plantations Turned Maui into a Tinderbox*, THE GUARDIAN (Aug. 27, 2023, 7:00 AM EDT), https://www.theguardian.com/environment/2023/aug/27/maui-wildfire-water-plantations-ecology.

[19] "'Āina momona" translates to "fat land" or "abundant land." *See also* Winter et al., *The* Moku *System*, *supra* note 3, at 2.

[20] *See* EDWARD W. GLAZIER, TRADITION-BASED NATURAL RESOURCE MANAGEMENT: PRACTICE AND APPLICATION IN THE HAWAIIAN ISLANDS 110–13 (2019) (describing the development of myriad traditional resource management techniques sufficient to sustain and "evolve [ocean voyagers] into a complex and burgeoning island society"); Sproat, *Wai Through Kānāwai*, *supra* note 17, at 141 ("Hawai'i's favorable climate and year-round growing season were perfect for cane; all the sugar barons needed was water to irrigate their fields."); *infra* Section IV.A.

[21] *See infra* Section IV.A (discussing the extensive ditch construction and groundwater pumping in Maui Komohana to sustain the sugar industry in the mid-19th century); Sproat, *Wai Through Kānāwai*, *supra* note 17, at 141.

[22] *See* Klein & Sproat, *supra* note 18.

and social influence.[23] Plantation capitalism ravaged Hawaiʻi's ʻāina and the people who depended on it.[24] Today, plantation capitalism takes on a new form. The plantation barons of the 19th century are now the giants of the tourism and luxury development industries, seeking water not for sugar, but for swimming pools, hotels, luxury homes, and golf courses.[25] As described later,[26] modern strategies of extraction reflect historical moʻolelo of strategic manipulation of resources—resulting in devastating harm to ʻāina and its human counterpart.

Decades of dewatering wrought by plantation agriculture, modern tourism, and luxury housing development would eventually set the stage for regular fires throughout Maui Komohana.[27] And on August 8, 2023, a devastating fire storm would ravage Maui Komohana,[28] leveling the historic Lahaina

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[23] Susan K. Serrano, *Collective Memory and the Persistence of Injustice: From Hawai'i's Plantations to Congress—Puerto Ricans' Claims to Membership in the Polity*, 20 S. CAL. REV. L. & SOC. JUST. 353, 358–59 (2011) [hereinafter Serrano, *Collective Memory*] (emphasizing that decision-making and commercial agriculture is deeply intertwined with politics: "Hawaiʻi's sugar barons exerted considerable direct influence over the growth of agribusiness in the United States, helping to transform agriculture from small farms into multi-national corporate-controlled 'big business.' In doing so, Hawaiʻi's plantation owners intertwined their influence with political interests in Washington D.C., enabling U.S. militarization and indeed imperialism in the Pacific"). *See also* CAROL WILCOX, SUGAR WATER: HAWAII'S PLANTATION DITCHES 5 (1996) [hereinafter WILCOX, SUGAR WATER] ("By 1920, the sugar industry was diverting in excess of 800 MGD of surface water and, in addition, pumping almost 400 MGD of groundwater.").

[24] *See infra* Section IV.A; *see generally* University of Hawaiʻi Law Review, *Panel III—Plantation Disaster Capitalism: The Legacy of Settler Colonialism in Maui Komohana*, YOUTUBE (Apr. 7, 2024), https://www.youtube.com/watch?v=7lMFcy_xdZ8 (discussing the historical and ongoing impacts of plantation disaster capitalism and colonial forces in Maui Komohana).

[25] *See* Noelani Goodyear-Kaʻōpua, *Introduction*, *in* A NATION RISING: HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY 7 (Noelani Goodyear-Kaʻōpua, Ikaika Hussey & Erin Kahunawaikaʻala Wright, eds., 2014) ("In post-1959 Hawaiʻi, hotels and resorts were becoming the new plantations."); Anita Hofschneider & Jake Bittle, *The Libertarian Developer Looming Over West Maui's Water Conflict*, GRIST (Nov. 27, 2023), https://grist.org/indigenous/developer-peter-martin-west-maui-water-wildfire.

[26] *See infra* Part IV.

[27] Klein & Sproat, *supra* note 18; Wang, *supra* note 18.

[28] This Article utilizes the term "Maui Komohana" to describe the western side of Maui, often colloquially referred to as "Lahaina." Maui Komohana includes Ukumehame, Olowalu, Launiupoko, Kauaʻula, Lahaina, Kahoma, Wahikuli, Honokōwai, Kahana, Kāʻanapali,

town, killing over 100 individuals, and underscoring systemic injustices in Hawai'i.[29]

Our history is instructive. Mo'olelo and mele like "Hāloa ka Wai o Kahoma" frame this Article on the collective memory of injustice. In Hawai'i, mo'olelo animate our present-day understandings of the world. By actively engaging in historical and cultural repositories, we know that de-watering streams have grave consequences. For Kānaka Maoli, utilizing mo'olelo is a crucial part of emerging from devastation, seeking redress, and creating a more just Hawai'i nei.

II. HE ALOHA NŌ, HE ALOHA LĀ, ALOHA E NĀ HAWAI'I:[30] AN INTRODUCTION

In the wake of the deadliest fire in the United States in over a century,[31] foreign businesses actively engaged in "plantation disaster capitalism"[32]—they seized the opportunity to bolster their economic stronghold by resurrecting historic injustices. These actors doubled down on centuries of plantation capitalism. Yet, even more insidiously, these actions dovetailed with "disaster capitalism"—the process identified by Naomi Klein, of rapid-fire corporate reengineering of communities "still reeling from the shock."[33]

Honokahua, Honolua, Honokōhau. COMM'N ON WATER RES. MGMT., STATE OF HAW. DEP'T OF LAND & NAT. RES., *Lahaina Aquifer Sector Area*, https://dlnr.hawaii.gov/cwrm/groundwater/gwma/lahaina (last visited Sept. 13, 2024).

[29] Molly Cook Escobar et al., *Mapping the Damage from the Maui Wildfires*, N.Y. TIMES (Aug. 12, 2023), https://www.nytimes.com/interactive/2023/08/10/us/maui-wildfire-map-hawaii.html; Cammy Clark, *Lahaina Fire Death Toll Rises to 101 After Police Identify Remains of Missing Person*, HONOLULU CIV. BEAT (Feb. 13, 2024), https://www.civilbeat.org/2024/02/lahaina-fire-death-toll-rises-to-101-after-police-identify-remains-of-missing-person/.

[30] Lyrics from "He Mele no Lele," an oli written by Kumu Hula Keali'i Reichel. Translated as: "A composition of affection, greetings to all of Hawai'i." Hālau Nā Lei Kaumaka O Uka: Merrie Monarch 2024 Fact Sheets (2024) (unpublished document) (on file with author).

[31] Rachel Treisman, *Maui's Wildfires Are Among the Deadliest on Record in the U.S.*, NAT'L PUB. RADIO (Aug. 15, 2023, 10:31 PM ET), https://www.npr.org/2023/08/15/1193710165/maui-wildfires-deadliest-us-history.

[32] *See* Klein & Sproat, *supra* note 18.

[33] NAOMI KLEIN, THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM 7 (2007) [hereinafter KLEIN, THE SHOCK DOCTRINE]. The Oxford English Dictionary defines disaster capitalism as "[t]he exploitation of natural or man-made disasters (such as catastrophic weather events, war, epidemics, etc.) in service of capitalist interests; the practice of using unstable social, political, and economic situations to impose or benefit from deregulation, the privatization of public assets, etc." *Disaster Capitalism*, OXFORD ENG. DICTIONARY,

In exploiting the shock and horror of the August 8 fires, development giants sought to undo hard-fought water protections for Kānaka Maoli to further advance their commercial interests[34]—escalating modern-day plantation capitalism to plantation *disaster* capitalism.[35]

The success of such bold efforts turn on controlling "colonial-influenced narratives."[36] These are narratives advanced by colonizers that suppress Native ways of knowing, "erase[] [N]ative resistance, legitimize[] land seizure, and situate[] power with non-[N]atives."[37] During this community's most vulnerable time, powerful business leaders sought to control the public discourse to justify an opportunistic roll back of decades of community-driven advocacy.[38] Communities fought hard for those protections, and in doing so, brought to life laws and policy—a legal regime deeply rooted in restorative justice.[39]

In stark contrast to the community's moʻolelo, mele,[40] and cultural practices that attest to Maui Komohana's abundance,[41] colonial-influenced

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https://www.oed.com/dictionary/disaster-capitalism_n (last updated Jul. 2023). *See also* Uʻilani Tanigawa Lum & Kaulu Luʻuwai, *Plantation Capitalism's Legacy Produced the Maui Wildfires*, L. & POL. ECON. PROJECT, (Apr. 18, 2024) https://lpeproject.org/blog/plantation-capitalisms-legacy-produced-the-maui-wildfires/.

[34] *See* Wayne Tanaka, *State-Aided Disaster Capitalism?*, KA WAI OLA (Oct. 1, 2023), https://kawaiola.news/aina/state-aided-disaster-capitalism/; Elena Chang, *Wai Ea: Restoring Hawai'i's Public Trust and Reclaiming Lahaina's Water Future*, 46 U. HAW. L. REV. 366, 370 (2024).

[35] *See* Klein & Sproat, *supra* note 18.

[36] Troy J.H. Andrade, *Hawai'i '78: Collective Memory and the Untold Legal History of Reparative Action for Kānaka Maoli*, 24 U. PA. J. L. & SOC. CHANGE 85, 96 (2021) [hereinafter Andrade, *Hawai'i '78*].

[37] *Id.*

[38] Tanaka, *supra* note 34.

[39] *See infra* Part V; *see also* A. Uʻilani Tanigawa Lum, *Aia i Waiʻoli ke Aloha ʻĀina: Re-centering ʻĀina and Indigenous Knowledge for Restorative Environmental Justice*, 41 UCLA J. ENVT'L L. & POL'Y 301 (2023).

[40] "Mele" are "Hawaiian musical/poetic expression[s]," or layered songs. Zachary Alakaʻi Lum, Nā Hīmeni Hawaiʻi: Transcending Kūʻē, Promoting Kūpaʻa 2 (Dec. 2017) (M.A. Thesis, University of Hawaiʻi at Mānoa) (ProQuest) [hereinafter Lum, *Nā Hīmeni Hawai'i: Transcending Kū'ē, Promoting Kūpa'a*]. "Mele" also translates as "song, anthem, or chant of any kind; poem, poetry." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=mele (last visited Apr. 5, 2024)*; see infra* Part VII.

[41] Lei Nāhonoapiʻilani, for example, compiles over 80 mele situated in Maui Komohana. *See* LEI NĀHONOAPIʻILANI: SONGS OF WEST MAUI (Nicholas Kealiʻi Lum & Zachary Alakaʻi

narratives framed plantation systems as a "benefit" to all. This narrative conveniently masked the destruction of resources and culture. What results is two competing narratives driven by conflicting worldviews. The dominant narrative, however, will ultimately control the path for recovery from and redress for this disaster and Hawai'i's future.[42] By framing the history of water diversion as one of positive "industry" and "beneficial development," luxury developers naturally envision Maui Komohana's "recovery" as the expansion of their interests in the name of economic development. But by exposing the consequences of plantation capitalism, recovery can finally take the shape of actual restoration aligned with Kānaka Maoli ways of knowing that support abundance.

An 'ōlelo no'eau, a proverb or traditional saying, encapsulating Kānaka Maoli understandings of history, "i ka wā ma mua, ka wā ma hope," [43] anchors this Article. It is a reminder that navigating the future requires an intimate understanding of the past.[44] For practical and spiritual reasons, this 'ōlelo no'eau frames a Hawaiian worldview, hierarchy, and power. How we *perceive* the past today inevitably informs how we move forward in the future.[45]

A. *Defining the Injustice to Secure Present-Day Justice: Collective Memory Theory in Maui Komohana*

From a legal theoretical perspective, our conceptualization of the past constructs what Professors Eric Yamamoto and Sharon Hom coined as a "collective memory of injustice."[46] The dynamics of a collective memory of injustice is a crucial "prelude to reparatory justice."[47] That is, the contemporary struggle over defining the historical injustice is vital to current

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Lum eds., 2019). "From the fabled 'ulu shade of Lele, to the gray cliffs of Kā'anapali, and the icy waters of 'Īao, you have arrived (at least metaphorically) in West Maui." *Id.* at back cover.

[42] *See infra* Part VII.

[43] *See, e.g.*, LILIKALĀ KAME'ELEIHIWA, NATIVE LAND AND FOREIGN DESIRES: PEHEA LĀ E PONO AI? 22 (1992).

[44] 'Ōiwi scholar Lilikalā Kame'eleihiwa notes the past is referred to as "ka wā mamua," or "the time in front or before," while the future is "ka wā ma hope," or "the time which comes after or behind." *Id.* She explains, "[i]t is as if the Hawaiian stands firmly in the present, with his back to the future, and his eyes fixed upon the past, seeking historical answers for present-day dilemmas." *Id.*

[45] Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1762 (2000).

[46] *Id.* at 1765; *see id.* at 1757–60.

[47] Serrano, *Collective Memory*, *supra* note 23, at 359 (describing collective memory of injustice as a prelude to reparatory justice initiatives).

efforts to repair the continuing damage flowing from the injustice. The task is not about disagreements over broadly depicting the history of particular events. Rather, the task today is to accurately depict the long-standing *injustice*. The fight over collective memory is thus the "threshold step" in the far-reaching effort to secure present-day justice.

This Article builds on recent scholarly inquiries into the impacts of plantation disaster capitalism in Hawaiʻi while also situating it within a larger narrative of injustice in Maui Komohana.[48] Importantly, it begins to add to the expanding literature on the "collective memory of injustice,"[49] as an

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[48] *See, e.g.*, Holly K. Doyle, *E Hoʻi ka Nani i Mokuʻula Lā: The Commission on Water Resource Management's Public Trust Duty to Fully Restore Mokuʻula and Mokuhinia*, 46 U. HAW. L. REV. 314 (2024); Chang, *supra* note 34, at 367.

[49] *See generally* Hom & Yamamoto, *supra* note 45 (analyzing the dynamics of collective memory in framing justice grievances and claims); Rachel López, *The (Re)Collection of Memory After Mass Atrocity and the Dilemma for Transitional Justice*, 47 N.Y.U. J. INT'L L. & POL. 799 (2015) (setting forth a taxonomy of collective memory theory, examining the tension between justice and collective memory, and considering how collective memory would further certain transitional justice goals if group memories are incorporated in judicial proceedings seeking to address mass atrocities); Jody Lyneé Madeira, *When It's So Hard to Relate: Can Legal Systems Mitigate the Trauma of Victim-Offender Relationships?*, 46 HOUS. L. REV. 401, 418–30 (2009) (analyzing how understandings of dramatic, tragic deaths are formed collectively through interpersonal discussion and media coverage); MARK OSIEL, MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW 13–23 (1999) (exploring how collective memory is formed and shaped after mass atrocities, including through criminal prosecutions). Many legal scholars have since articulated and expanded the collective memory of injustice framework into the Maoli realm. *See, e.g.*, Miyoko T. Pettit-Toledo, *Collective Memory and Intersectional Identities: Healing Unique Sexual Violence Harms Against Women of Color Past, Present and Future*, 45 U. HAW. L. REV. 346 (2023); Andrade, *Hawaiʻi '78*, *supra* note 36, at 85, 131–45 (examining the constant negotiation of history, mobilization and power of collective memory that lawmakers wield to advance or stall justice initiatives for Native Hawaiians); Terina Kamailelauliʻi Faʻagau, *Reclaiming the Past for Mauna a Wākea's Future: The Battle Over Collective Memory and Hawaiʻi's Most Sacred Mountain*, 22 ASIAN-PAC. L. & POL'Y J. 1 (2021); Luʻukia Nakanelua, *Nā Moʻo o Koʻolau: The Water Guardians of Koʻolau Weaving and Wielding Collective Memory in the War for East Maui Water*, 41 U. HAW. L. REV. 189, 197–212 (2018); Melody Kapilialoha MacKenzie & D. Kapuaʻala Sproat, *A Collective Memory of Injustice: Reclaiming Hawaiʻi's Crown Lands Trust in Response to Judge James S. Burns*, 39 U. HAW. L. REV. 481, 487–98 (2017); Serrano, *Collective Memory*, *supra* note 23, at 359 (discussing how Hawaiian sugar cane plantation owners furthered a collective memory of racialization of Puerto Ricans, erecting a threshold barrier for Puerto Rican justice advocates).

important "social construct" [50] for movements for justice. Significantly, this Article integrates and emphasizes Kānaka Maoli perspectives and approaches to knowledge—like mo'olelo, mele, and hula—as an important part of the emerging dominant narrative in Hawai'i. Further, it unpacks how Indigenous repositories of knowledge provide crucial framing for "present-day struggles over collective memory" of injustice by contributing to a more resonant understanding of the injustice.[51]

In Maui Komohana, where a vibrant Kānaka Maoli community cultivated abundant 'āina in the early 18th century, what was the memory of the injustice created and controlled by plantation owners? With what impacts? How did Kānaka Maoli communities struggle over decades to change that narrative of injustice—that is, the wrongful taking of land and natural resources—requiring present-day rectification? How did current agribusiness then attempt to exploit the fire disaster to alter the collective memory of injustice? And how are Kānaka Maoli communities fighting back to challenge the agribusiness narrative and reclaim a more recently established memory of the injustice?

As developed in this Article, the injustice reverberates in the devastating and continuing impacts of these narratives. These impacts include, for example, of the unlawful taking of 'āina and resources, destruction of Hawaiian culture, and denial of self-determination—all of which justify actions for restorative justice today and into the future.[52] The collective memory of that injustice has evolved and shifted over time; often in the face of intense political, legal and cultural struggles over the proper framing of the injustice and its consequences.[53] Consistent with collective memory theory, described below in Part III, the dynamics of the struggle over the collective memory of the injustice relating to Maui Komohana developed in three phases.

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[50] MacKenzie & Sproat, *supra* note 49, at 48. Yamamoto and Hom posit that "[d]irect experiences, cultural forms, institutional practices, and political ideology generate [] underlying, or structural, narratives" that are constructed "to form a lens through which group history is viewed and contemporaneous stories of the past are developed." Hom & Yamamoto, *supra* note 45, at 1762.

[51] Hom & Yamamoto, *supra* note 45, at 1771; MacKenzie & Sproat, *supra* note 49, at 491.

[52] *See infra* Part VII.

[53] *See infra* Part V (describing historic battles over collective memory in Maui Komohana).

B. *Three Developing Phases of Collective Memory in Maui Komohana*

First, the prevailing memory of the injustice—which is sometimes referred to as colonial-influenced memory or the master narrative—is that *there was no injustice at all*. Constructed largely by western plantation economic interests, this narrative explained the loss of Hawaiian lands and the diversion of stream water away from Kānaka Maoli communities for use by agribusinesses as a natural and beneficial occurrence, consistent with concepts of western property rights and maximization of profit for corporate businesses. It misleadingly attributed any loss of ʻāina to ineffectual Kānaka Maoli leadership and savvy American business practices that grew Hawaiʻi's economy and wealth.[54] Hence there was *no* injustice at all; it was a natural and inevitable consequence of western superiority. This is the story advanced by those in control of plantation capitalism, including politicians, government officials, and courts in the late-1800s through the mid-1900s.

The second phase foregrounds the Kānaka Maoli struggle to alter this colonial narrative and to generate a *new* collective memory of the injustice. Supported by other justice allies, this movement occurred over several decades of cultural awakening and political and legal advocacy. This collective memory emerged in bits and pieces, and then strengthened alongside the Hawaiian sovereignty movement of the 1960s and 1970s. This grounded narrative reveals that plantation capitalists (like Hawaiʻi's big five companies),[55] backed by American politicians, financiers, and armed forces,[56] orchestrated the illegal overthrow of Hawaiʻi's government and ruling aliʻi. Plantation capitalists then commandeered ʻāina and destroyed Hawaiian culture—a part of a larger plan to deploy western notions of property and economic development. By succeeding in those efforts, a handful of elite and essentially American-run businesses and their owners became empowered and financially enriched, while simultaneously securing a stronghold for U.S. military operations in the Pacific. These efforts, however, occured at the expense of Native communities and Kānaka Maoli

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[54] *See infra* notes 255–57 and accompanying text (describing dominant narratives surrounding construction of ditches diverting water from Kānaka Maoli).

[55] "The Big Five" referred to five powerful multinational corporations that were once foreign missionary families. *See, e.g.*, GEORGE COOPER & GAVAN DAWS, LAND AND POWER IN HAWAII: THE DEMOCRATIC YEARS 3 (1990).

[56] *See, e.g.*, MAILE ARVIN, POSSESSING POLYNESIANS: THE SCIENCE OF SETTLER COLONIAL WHITENESS IN HAWAIʻI AND OCEANIA 43–45 (2019).

self-determination—an awareness that was perhaps not a part of broader public discourse until the Hawaiian sovereignty movement.

An evolved and compellingly supported narrative emerged from this hard-fought Hawaiian sovereignty movement[57]—a movement that included legal advocacy,[58] the resurrection of Hawaiian culture and language,[59] the creation

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[57] Goodyear-Ka'ōpua, *supra* note 25.

> A constellation of land struggles, peoples' initiatives, and grassroots organizations gave rise to what has become known as the Hawaiian movement or the Hawaiian sovereignty movement. These Hawaiian movements for life, land, and sovereignty changed the face of contemporary Hawai'i. Through battles waged in courtrooms, on the streets, at the capitol building, in front of landowners' and developers' homes and offices, on bombed-out sacred lands, in classrooms and from tents on the beaches, Kanaka Maoli pushed against the ongoing forces of U.S. occupation and settler colonialism that still work to eliminate or assimilate us.

Id. at 1.

[58] *See, e.g.*, Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai'i (Apology Resolution), Pub. L. No. 103–150, 107 Stat. 1510 (1993) (apologizing to Native Hawaiians for American involvement in the overthrow of the Kingdom of Hawai'i and committing the federal government to reconciliation efforts); NATIVE HAWAIIAN LAW: A TREATISE, *supra* note 4 (overviewing the origins of Hawai'i's customs, values, and traditions and the subsequent cases that reaffirmed these rights). McBryde Sugar Co. v. Robinson, 54 Haw. 174, 192, 504 P.2d 1330, 1341–42 (1973); Pub. Access Shoreline Haw. v. Haw. Cnty. Plan. Comm'n (PASH), 79 Hawai'i 425, 903 P.2d 1246 (1995) (reaffirming traditional and customary rights); *In re* Water Use Permit Applications (*Waiāhole I*), 94 Hawai'i 97, 131–32, 9 P.3d 409, 443–44 (2000) (adopting the public trust doctrine as a "fundamental principle of constitutional law in Hawai'i"); Ka Pa'akai O Ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31, 46–47, 7 P.3d 1068, 1083–84 (2000) (introducing required analytical framework for governmental agencies and decision-making bodies now known as the "Ka Pa'akai Analysis" that protects traditional and customary rights).

[59] HAW. CONST. art. XV, § 4 establishes Hawaiian Language as an official language of Hawai'i. HAW. CONST. art. X, § 4 requires the state to "promote the study of Hawaiian culture, history and language." Consider also, for example, 'Aha Pūnana Leo, a Native Hawaiian nonprofit established in 1983 with a mission to revitalize the Hawaiian language as a living language, reverse the then-existing ban on Hawaiian Language medium education, and cultivate Hawaiian language speakers. *History*, 'AHA PŪNANA LEO, https://www.ahapunanaleo.org/history-hl-1 (last visited Oct. 4, 2024). Today, there are dozens of 'Ōlelo Hawai'i schools across Hawai'i. Also consider the Merrie Monarch Festival, established in 1971, "to replicate the ideals of King Kalākaua who sought to revitalize the Hawaiian people and culture" and is now the commonly regarded as the "Olympics of hula," as a premiere hula competition where the practice of hula now thrives. *History of the Festival*,

of powerful Native Hawaiian institutions,[60] and the pioneering work of researchers and scholars, and the actions of formal government bodies.[61] Kānaka Maoli and broader justice allies collectively advanced this reframed memory of injustice. They underscored and embraced the incremental shifts to rectify long-standing harms, despite continuing agribusiness and some political opposition. Especially important, this new and emergent collective memory—grounded in restorative justice and Kānaka Maoli customs and traditions—uplifted Native values. Many of these values promoted pono stewardship of land and natural resources to cultivate abundant ʻāina for Kānaka Maoli and other communities in Hawaiʻi. These very values and the

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MERRIE MONARCH, https://www.merriemonarch.com/history-of-the-festival (last visited Sept. 18, 2024).

[60] Kamehameha Schools, whose mission is to "fulfill Pauahi's desire to create educational opportunities in perpetuity to improve the capability and well-being of people of Hawaiian ancestry" is one of Hawaiʻi's largest landowners, and provides world-class Hawaiian-culture based education. *About us*, KAMEHAMEHA SCHOOLS, https://www.ksbe.edu/about-us (last visited Sept. 18, 2024). The University of Hawaiʻi at Mānoa now provides degrees in Hawaiian Language and Hawaiian Studies through the Hawaiʻinuiākea School of Hawaiian Knowledge and has committed to becoming a Native Hawaiian Place of Learning. *About*, HAWAIʻINUIĀKEA SCH. OF HAWAIIAN KNOWLEDGE, https://manoa.hawaii.edu/hshk/welcome (last visited Oct. 17, 2024). Ka Huli Ao Center for Excellence in Native Hawaiian Law is a well-established academic institution at the William S. Richardson School of Law with over 160 Native Hawaiian Law certificate graduates. *Ka Huli Ao Center for Excellence in Native Hawaiian Law*, UNIV. OF HAW. AT MĀNOA WILLIAM S. RICHARDSON SCH. OF L., https://law.hawaii.edu/academics/ka-huli-ao (last visited Sept. 18, 2024).

[61] Despite the Commission on Water Resource Management's historical challenges to fulfill its duty and to establish numeric instream flow standards for streams across Hawaiʻi, the agency has recently made significant progress to evaluate the minimum amount of water that is required to be a stream at any given time. During the last meeting of his eight-year tenure on the Commission, Professor of Hawaiian Studies and mahiʻai (farmer), Dr. Kamanamaikalani Beamer, highlighted:

> Since the establishment of the Commission in roughly 30 years of work from the 1980s to 2012, the commission's set numeric instream flow standards sixteen (16) times in a total of ten (10) streams. Between 2013 and today's meeting in June 2021, our commission has set updated numeric flow standards 49 times as we did one today, for a total of 45 streams across the islands.

COMM'N WATER RES. MGMT., MINUTES FOR THE MEETING OF THE COMMISSION ON WATER RESOURCE MANAGEMENT 36 (June 15, 2021), https://files.hawaii.gov/dlnr/cwrm/minute/2021/mn20210615.pdf.

commitment to repair past harms and achieve restorative justice are enshrined in Hawai'i's progressive legal regime.[62]

Finally, the third phase of the struggle over collective memory of the injustice in Maui Komohana emerged in the wake of the August 2023 wildfires. In tandem with the erasure of developing narratives of injustice successfully established in phase two, plantation agribusinesses initially attempted to exploit the Maui Komohana disaster to reverse course—to create a pro-agribusiness narrative that framed Kānaka Maoli's use of water for traditional and customary practices enshrined in law as not only wrong, but horribly impractical. That narrative sought to push Kānaka Maoli practices as at odds with the storage and usage of reservoir water to fight the deadly wildfire, and thus, contributors to the fire's harms. In conversation with the press just days after the fires, certain state actors bolstered this erasure of the injustice, placing Native Hawaiian rights and communities in the perpetrator role and reversing the emergent collective memory of the injustice related to 'āina and water for Native Hawaiian communities.[63]

But Kānaka Maoli communities, supported by broader justice allies, fought back to reclaim and reinforce the emergent Hawaiian narrative of the injustice. Following the staggering removal of the Water Commission's first Native Hawaiian Deputy Director Kaleo Manuel just one week after the fire, the community directly confronted attempts to double down on plantation

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[62] Various amendments born out of Hawai'i's 1978 Constitutional Convention both acknowledged past harms and crafted tools of restorative justice. Melody Kapilialoha MacKenzie, *Historical Background*, *in* NATIVE HAWAIIAN LAW: A TREATISE, *supra* note 4, at 63–64 nn.265, 267–69 (discussing the 1978 constitutional amendments, including the creation of the Office of Hawaiian Affairs in HAW. CONST. art. XII, § 5, the protection of traditional and customary rights in HAW. CONST. art. XII, § 7, the declaration of 'ōlelo Hawai'i as an official language of the state in HAW. CONST. art. XV, § 4, and the establishment of a state-promoted Hawaiian education program in HAW. CONST. art. X, § 4). In affirming traditional and customary rights in Hawai'i, delegates to the Constitutional Convention also acknowledged that "past and present actions by private landowners, large corporations, ranches, large estates, hotels and government entities . . . preclude native Hawaiians from following subsistence practices traditionally used by their ancestors." Standing Comm. Rep. No. 57, *in* PROC. OF THE CONST. CONVENTION OF HAW. OF 1978, at 639 (1980); *see also* Susan K. Serrano, *A Social Healing Approach to Native Hawaiian Claims: Law and Resistance at Maunakea*, 52 S.W. L. REV. 50, 51–52 (2023) [hereinafter Serrano, *Social Healing*].

[63] *See e.g.*, Honolulu Civ. Beat, *A Conversation with Governor Josh Green*, FACEBOOK (Aug. 17, 2023), https://www.facebook.com/civilbeat/videos/304452395404176 [hereinafter *A Conversation with Governor Josh Green*].

disaster capitalism.[64] This explicit challenge to the prevailing narrative was important because it not only immediately countered Kānaka Maoli practices as the cause of the disaster with specific facts,[65] but it also informed how the public viewed the harm and likewise, the most appropriate path for recovery. The public memory, or framing, of the August 2023 injustice, had real consequences and is crucial to realize the full potential of government protections and actions, court and administrative directives, journalists' story-telling, and more.

Through an examination of the history of injustice in Maui Komohana as well as present-day justice struggles over land and natural resources in the wake of the devastating wildfires—and, importantly, from the vantage point of kamaʻāina of Maui Komohana and Kānaka Maoli more broadly—this Article begins to lift the veil of plantation capitalism to expose how it is a symptom of centuries of systematic injustice facilitated by colonial-influenced narratives. It reveals how colonial-influenced narratives cloaked and continue to silence Kānaka Maoli perspectives to advance commercial interests. In present-day justice initiatives, cultural practices like moʻolelo, mele, and hula, are key to collective community advocacy. With the ability to reach into the essence of a people, Kānaka Maoli narratives and lifeways must be situated prominently in the ongoing struggle over the collective memory of injustice. Indeed, Kānaka Maoli voices—in cultural exhibitions,

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[64] COMM'N WATER RES. MGMT., MINUTES FOR THE MEETING OF THE COMMISSION ON WATER RESOURCE MANAGEMENT (Sept. 19, 2023), https://files.hawaii.gov/dlnr/cwrm/minute/2023/mn20230919.pdf [hereinafter CWRM SEPT. 19, 2023 MEETING]; *State Water Commission Outlines Actions and Alternatives for West Maui Water Management*, MAUINOW (Sept. 23, 2023, 7:00 AM HST), https://mauinow.com/2023/09/23/state-water-commission-outlines-actions-and-alternatives-for-west-maui-water-management/.

[65] Countless testimony at the September 19, 2023 Commission on Water Resource Management meeting directly countered skewed media coverage that sought to blame Deputy Director Manuel for the rapid spread of the fire. CWRM SEPT. 19, 2023 MEETING, *supra* note 64 *passim*. Kekai Keahi, for example, encouraged the Commission on Water Resource Management to reinstate Kaleo Manuel and highlighted that the "[t]he narrative[s] in the [colonial-influenced news] articles were used as leverage to oust Kaleo Manuel." *Id.* at 32. Keʻeaumoku Kapu stated "The community has gone through legal routes to ensure water rights." *Id.* at 33. Karyn Kanekoa testified that it was "[c]orporate interests, tourism, and mismanagement have led Lahaina to where it is now." *Id.*

legal proceedings, legislative advocacy, and public education—are at the center of the ongoing fight for Maui Komohana and the "soul of Hawai'i."[66]

The intersection of centuries' old Indigenous ways of knowing with a collective memory framework reveal unique, evolving dynamics of group memory for Native Peoples. This Article builds upon Yamamoto and Hom's collective memory framework and suggests that Indigenous values, histories, and stories ground cultural dimensions of collective memory as the primary means of transmitting knowledge across the larger populace, including Indigenous communities. It highlights specific instances of community advocacy that have not only brought to light generations of plantation capitalism, but also brought the spirit of existing law to life. Further, recognizing the role that cultural practices play in facilitating redress for Kānaka Maoli, this Article also centers community engagement in and performance of Indigenous practices as a means of uplifting Kānaka Maoli narratives and reconstructing broader knowledge of place. Constructing collective memory in this manner is vital because "framing injustice," that is, "shameful past acts," wrongdoings, or harms, is ultimately "about social memory," or how the larger society *remembers* the past as a foundation for repairing continuing damage.[67] Through this process, "history becomes a catalyst for mass mobilization and collective action aimed at policymakers, bureaucrats, and the American conscience," ultimately eliciting meaningful change.[68]

Part III explores the power of collective memory for movements of justice for Indigenous Peoples and for Kānaka Maoli in Hawai'i in particular.[69] It briefly outlines Hawai'i's legal regime governing water and traditional and customary practices—both of which are rooted in restorative justice precepts and can be traced to Kānaka Maoli values.[70] Part IV overviews the first phase in the battle over collective memory, exploring the colonial-influenced narratives that justified plantation capitalism and the destruction of Kānaka Maoli 'āina and resources.[71] It traces the ways in which colonial-influenced narratives were carefully constructed to enable and justify systems for private

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[66] Isaac Moriwake & Kekai Keahi, Guest Speakers, Maoli Thursday, Ka Huli Ao Center for Excellence in Native Hawaiian Law at the University of Hawai'i at Mānoa William S. Richardson School: Maui Ola: E Ho'i ka Nani: Pondering Maui Komohana's Water Future (Nov. 2, 2023).

[67] Hom & Yamamoto, *supra* note 45 at 1756–58.

[68] *Id.* at 1757.

[69] *See infra* Part III.

[70] *See infra* Section III.B.

[71] *See infra* Part IV.

gain as beneficial and natural occurrences where no such injustice occurred.[72] Part V highlights Kānaka Maoli's successful efforts to reframe the actions outlined in the preceding section as injustices, laying the foundation for restorative justice. Part VI then turns to phase three of the developing narrative to unpack plantation disaster capitalism and the state-aided narratives that sought to reframe Kānaka Maoli restorative justice measures as a waste, and attempting to roll back meaningful progress.

Finally, Part VII reaffirms the emergent Hawaiian narratives of collective memory of injustice, efforts to restore glory, and to realize the full potential of Hawaiʻi's restorative justice-based legal protections in Maui Komohana.[73] It does so by first, featuring the community's successful advocacy before governmental bodies, and second, showcasing Kānaka Maolis' active engagement in Indigenous practices through mele and hula. By directly contrasting the extractive plantation narratives and practices with Maoli ways of knowing, this Article uplifts Kānaka Maoli voices. These voices operationalize Hawaiʻi's laws, brings history to the forefront of the modern justice conversation, and reconstructs the broader collective memory of Maui Komohana through advocacy, traditional knowledge and cultural practices.[74] Beyond the traditional, formal, and often narrow notions of justice, this approach necessarily integrates social, cultural, and spiritual precepts at the nexus of law and politics in order to situate present day claims of justice for Kānaka Maoli.[75]

Struggles over the collective memory of the injustice in Maui Komohana will inevitably persist. To ward against the continued usurpation of redress-centered narratives, community advocates, political and business leaders, and scholars might proactively bolster and advance the most historically accurate and culturally resonant collective memory of the injustice. Such an endeavor would be the most apt and productive to meaningfully redress harms inflicted on marginalized communities across generations. Ultimately, this Article aims to reconstruct Hawaiʻi's collective memory of injustice in Maui Komohana by centering Kānaka Maoli's incremental successes in the fight

[72] *See id.*; *infra* Part IV.
[73] *See infra* Part VII.
[74] *See infra* Part VII.
[75] *See infra* Part VII.

to counter injustice, open pathways towards redress, and return Maui Komohana to abundance. Ola ka wai i ka malu ʻulu o Lele!

III. A COLLECTIVE MEMORY OF INJUSTICE AND FOUNDATIONS FOR WAI IN HAWAIʻI

> "It is as if the Hawaiian stands firmly in the present, with his back to the future, and his eyes fixed on the past, seeking historical answers for present-day dilemmas."[76]

Kānaka Maoli's regard for the past is illustrated in the ʻōlelo noʻeau (historical proverb), "i ka wā ma mua, ka wā ma hope."[77] This guiding value recognizes the importance of understanding the past, as well as our present, to navigate the future. For Kānaka Maoli, and many other Indigenous Peoples throughout the world, we understand our past through moʻolelo: our stories, histories, and traditions.[78] They "deliver[] lessons from the past that are intended to guide our present behavior" in restoring what was once taken and repairing what was damaged.[79] Kānaka Maoli have long recognized moʻolelo as an essential repository of knowledge and prioritized its role in shaping the very fabric of Hawaiian society.

Moʻolelo take many forms and comprise the foundation for Kānaka Maoli cultural practices like mele and hula. These practices provide a venue for practical and active engagement with our history, guiding values, traditions, and the natural world.[80] Mele, for example, expertly weave words into song, encapsulating data for easy transmission.[81] Mele thereby become venues for

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[76] KAMEʻELEIHIWA, NATIVE LANDS AND FOREIGN DESIRES, *supra* note 43, at 22.

[77] *Id.*, at 22; *see also* Faʻagau, *supra* note 49 at 2 ("The ʻōlelo noʻeau (proverb) 'I ka wā ma mua, ka wā ma hope' illustrates how Kānaka Maoli (Native Hawaiians) orient themselves temporally. 'Ka wā ma mua,' literally translated as 'the time in front,' describes the time that precedes the present (i.e., the past). Likewise, 'ka wā ma hope' means 'the time in back,' the time coming after the present (i.e., the future).").

[78] *See* C. M. Kaliko Baker & Tammy Hailiʻōpua Baker, *Kūkulu Kumuhana*, *in* MOʻOLELO: THE FOUNDATION OF HAWAIIAN KNOWLEDGE 1, 2 (C. M. Kaliko Baker & Tammy Hailiʻōpua Baker eds., 2023) ("*Moʻolelo*, loosely translated as stories and histories, are the *kūkulu* 'pillars' that shoulder and chronicle Kanaka Maoli narratives and beliefs.").

[79] Jonathan Kamakawiwoʻole Osorio, *"What Kine Hawaiian Are You?": A Moʻolelo About Nationhood, Race, History, and the Contemporary Sovereignty Movement in Hawai'i*, 13 CONTEMP. PAC. 359, 372 (2001).

[80] *See infra* Part V.

[81] Unlike regular "music," mele are repositories of knowledge, and are "fundamentally based in language, as cultural transmission, and as a cultural practice," that emphasizes text as "logogenic," in which "words/lyrics are paramount." Lum, *Nā Hīmeni Hawai'i: Transcending Kūʻē, Promoting Kūpaʻa*, *supra* note 40, at 2.

"cultural transmission"[82] and can be accessed as "vantage points to catch a glimpse of ancestral excellence and the fundamental essence of a Hawaiian identity."[83] Thus, mele and moʻolelo transmit ancestral memory from the past to the present.[84] This shared generational understanding facilitates relationships, defines power dynamics and structures, informs how humans interact in the world, and distinguishes right from wrong. Moʻolelo, as the medium for Kānaka Maoli understandings of human existence, are thus critical to the construction of the collective memory of injustice as a foundation for present-day reparative justice in Hawaiʻi. This section unpacks collective memory and connects it to Kānaka Maoli practices, Hawaiʻi law, and the unprecedented wildfires in Maui Komohana.

A. *Moʻolelo: Understanding The Power of Collective Memory in the Struggle for Justice in Hawaiʻi*

Collective memory, that is, how a society or particular group constructs, deconstructs, and identifies with its shared moʻolelo—like shared memories, history, narratives, and one another[85]—is a valuable tool in shaping claims of

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[82] *Id.* at 19.

[83] *Id.* at 2.

[84] *See* Hom & Yamamoto, *supra* note 45, at 1759 (highlighting that for Native Hawaiians, "collective memory is ancestral—genealogy preserved orally over generations through chants[;]" these ancestral practices also include, for example, dances, mele (songs), histories, and more); *see also* MacKenzie & Sproat, *supra* note 49, at 491 n.51 (defining ancestral memory as "oral traditions passed down through generations via various means of communication, including genealogies, places names, and chants"). As esteemed activist, scholar, and professor Jonathan Osorio frames it, moʻolelo literally "means a fragment of a story, as though the teller recognizes that he is not saying everything there is to say about the subject." Osorio, *supra* note 79, at 369.

[85] *See, e.g.*, Erika Apfelbaum, *Halbwachs and the Social Properties of Memory*, *in* MEMORY: HISTORIES, THEORIES, DEBATES 77, 86 (Susannah Radstone & Bill Schwarz eds., 2010) (explaining that memories are "linked to ideas we share with many others, to people, groups, places, dates, words and linguistic forms, theories and ideas, that is, with the whole material and moral framework of the society of which we are part[.]") (citations omitted); López, *supra* note 49, at 807–11 (2015) (outlining the three ways collective memory often manifests: (1) between members of a group who share a common experience or culture, but were not all present at the same historical event, (2) a nation or society's collective understanding of its own history, and (3) between individuals who were present at the same, often traumatic, historical event).

right and progressive social justice efforts.[86] It acknowledges that effectuating justice starts with how we perceive *injustice*.[87] What happened? Why was it wrong? What steps need to be taken to remedy these wrongs? And although these inquiries are seemingly retrospective, social perceptions of "historical injustice are largely constructed in the present."[88] In an age of information and social media, these constructions play a crucial role in social, political, and legal contexts.[89]

Multidisciplinary studies illuminate how memory operates and in turn, how memories shape perceptions of injustice.[90] Memory is complex and constantly evolving. As data, memories are not simply retrieved from a stagnant storehouse,[91] but rather involve the release of neurochemicals in the brain during interactions.[92] Cognitive science studies suggest that humans

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[86] *See, e.g.*, Serrano, *Collective Memory*, *supra* note 23 (providing that collective memory is at the core of many judicial decisions and that collective memory of injustices are often the prelude to reparatory justice); Andrade, *Hawai'i '78*, *supra* note 36 (linking collective memory with policy making and legislation); Fa'agau, *supra* note 49 (discussing the importance of collective memory in the movement for justice for Kānaka Maoli); Pettit-Toledo, *supra* note 49 (calling for transitional justice initiatives to recognize women's unique sexual violence harms during the redress process of larger mass atrocities and to promote enduring social healing and collective memory construction through storytelling).

[87] Hom & Yamamoto, *supra* note 45, at 1765 (articulating the necessity for progressive social justice advocates to work within the legal process with dual goals to not only achieve a specific legal result, but also to utilize the legal process to reframe the collective memory of the injustice).

[88] *Id.* at 1757.

[89] *E.g.*, Taha Yasseri et al., *Collective Memory in the Digital Age*, *in* 274 PROGRESS IN BRAIN RSCH. 203 (Shane M. O'Mara ed. 2022) (outlining the latest research landscape on how the digital era is shaping and being shaped by existing memories and how digital technologies influence collective memory); *cf.* Thomas Birkner & André Donk, *Collective Memory and Social Media: Fostering a New Historical Consciousness in the Digital Age?*, 13 MEMORY STUD. 367 (2020) (analyzing the role of social media in reshaping the collective memory of Nazi Germany through a case study on the debate and discourse surrounding the removal of a Nazi government official's name from a German public square).

[90] Hom & Yamamoto, *supra* note 45, at 1760–63 (discussing multidisciplinary insights from cognitive science, biology, philosophy, and psychology that influence the collective memory legal framework).

[91] *Id.* at 1760.

[92] *See id.* at 1760. (citing John H. Krystal et al., *Post Traumatic Stress Disorder: Psychobiological Mechanisms of Traumatic Remembrance*, *in* MEMORY DISTORTION: HOW MINDS, BRAINS, AND SOCIETIES RECONSTRUCT THE PAST 150, 154–55 (Daniel L. Schacter ed., 1995) (highlighting that the release of neurochemicals in the brain during trauma has a physical effect on brain tissue and contributes to the powerful recollections of traumatic events); Cathy Treadaway, *Materiality, Memory and Imagination: Using Empathy to*

"subconsciously choose what to remember in ways that reflect their desires, hopes, and the cultural norms of their social environment."[93] As life goes on, individuals' opinions change, as do their memories. Thus, memories are continually constructed. In the social justice context, "[i]ndividuals, social groups, institutions, and nations filter and twist, recall and forget 'information' in reframing shameful past acts (thereby lessening responsibility) as well as enhancing victim status (thereby increasing power)."[94]

A "prelude to reparative justice initiatives,"[95] Professor Eric K. Yamamoto first uplifted the notion of collective memory to expand upon the narrow notions of "legal justice" and to broaden "progressive justice strategies."[96] His analysis elucidates that agents of change cannot assume justice can be reached through a "two-step dance," which involves "first, dig[ging] historically to find out 'what really happened,' and second, describ[ing] how those 'facts' show a violation of established rights norms."[97] Rather, individuals must dig "into the archives of mind, spirit, and culture—then and now" to form the foundations for redress.[98] Reaching into the archives of ancestral memory also has the potential to catalyze and reawaken crucial cultural practices. In Hawaiʻi, where cultural practices once formed the backbone of Hawaiian society, expressions of culture also become sites for reclaiming collective ancestral memory and reinvigorating "the psyche of a people."[99]

Conflicting collective memories of injustice are expected, however, because interrogating inaccurate framings of injustice[100] implicates and often

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Research Creativity, 42 LEONARDO 231, 231 (2009) ("Emotional responses to sensory stimulation have been found to enhance the strength of memories due to the release of neurochemicals in the brain.").

[93] Hom & Yamamoto, *supra* note 45, at 1761 (citing Gerald D. Fischbach & Joseph T. Coyle, *Preface* to MEMORY DISTORTION: HOW MINDS, BRAINS, AND SOCIETIES RECONSTRUCT THE PAST ix (Daniel L. Schacter ed., 1995).

[94] *Id.* at 1758.

[95] Serrano, *Collective Memory*, *supra* note 23, at 359.

[96] Hom & Yamamoto, *supra* note 45, at 1757–60.

[97] *Id.* at 1764.

[98] *Id.*

[99] *Id.*

[100] *Id.* at 1758 ("Collective memory not only vivifies a group's past, it also reconstructs it and thereby situates a group in relation to others in a power hierarchy.").

challenges notions of power.[101] In Hawai'i, where its Native People continue to contend with historic and ongoing impacts of western influence and colonization,[102] disagreements over narratives of past injustices are particularly difficult because they directly challenge long-standing power imbalances.

1. *The Five Strategic Points of Collective Memory*

Yamamoto distills five strategic points to underscore the dynamics of collective memory in progressive social justice movements.[103] First, "[j]ustice claims of 'right' start with struggles over memory."[104] This point calls on seekers of justice and agents of change to "critically engage the dynamics of group memory of injustice."[105]

Second, "[g]roup memory of injustice is characterized by the active, collective construction of the past."[106] Because memory is not fixed and is constantly evolving, it is continually constructed and reconstructed.[107] In Hawai'i, this *active* construction of a group's memories also turns on pilina[108] with one another, with 'āina, and with other cultural mediums (e.g., cultural practices, language, media coverage, and more).[109] Concepts of relationality

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[101] By challenging the status quo and existing notions of power, justice claims often "begin with back-and-forth struggles over the creation of public or collective memory." 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, 563 (Rachel F. Moran & Devon W. Carbado eds., 2008). As Professor Yamamoto further explains, "[these] struggles are a fight over who will tell the dominant story of injustice (or absence thereof) and how that story will be shaped." *Id.*

[102] *See* Doe v. Kamehameha Schools, 295 F. Supp. 2d 1141 (D. Haw. 2003) (holding that non-Native Hawaiian minor John Doe was properly denied admission to Kamehameha Schools under an admissions policy preference for children of Native Hawaiian ancestry).

[103] Hom & Yamamoto, *supra* note 45, at 1764–65.

[104] *Id.* at 1764.

[105] *Id.*

[106] *Id.*

[107] *Id.* at 1761 (citing MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS 64 (1998) ("People change, and the meanings of their past experiences change as their ways of interpreting the world shift.")).

[108] "Pilina" refers to associations, relationships, or connections. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=pilina81ina (last visited Aug. 22, 2024).

[109] *See* Hom & Yamamoto, *supra* note 45, at 1764 ("[Collective memory] emerges from interactions among people, institutions, media, and other cultural forms."). In the Maoli context, construction of collective memories depends on intimate and reciprocal pilina, for example, intimacy/relationships with 'āina and one another. *See* Jamaica Heolimeleikalani Osorio, *Kū Kia'i Aloha: How Maunakea and the Battle to Protect Her Birthed a Decolonial*

urge contemporary justice seekers to thoughtfully consider and engage with Kānaka Maoli communities and the larger public in their active interpretation of the world.

Third, the "[t]he construction of collective memory implicates power and culture."[110] Yamamoto observes that "struggles over memory are often struggles between colliding ideologies, or vastly differing world views."[111] The kupa[112] of Maui Komohana continue to reclaim cultural practices and moʻolelo that were forcefully suppressed to clear the way for private enterprises. These acts of reclamation are anchored in cultural precepts and challenge the values underlying plantation disaster capitalism. Thus, the struggle over these colliding world views frames today's justice movement.

Fourth, "contests over historical memory regularly take place on the terrain of culture—of which legal process, and particularly civil rights adjudication, is one, but only one, significant aspect."[113] As this and many other scholarly articles explore, culture is a difficult landscape to navigate, especially in the context of colonization, trauma, and ongoing reclamation.[114] In examining how legal processes and other justice avenues might further justice initiatives, however, culture remains a critical component.

In Hawaiʻi, moʻolelo, mele, and hula are essential components of culture. These practices embody fundamental values that directly form the backbone

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Pilina in an Emerging Generation of Aloha ʻĀina, *in* THE ROUTLEDGE INTERNATIONAL HANDBOOK OF INDIGENOUS RESILIENCE 300, 305 (Hilary N. Weaver ed., 2022).

[110] Hom & Yamamoto, *supra* note 45, at 1765.

[111] *Id.*

[112] "Kupa" means "citizen" or "native." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=kupa (last visited Aug. 22, 2024).

[113] Hom & Yamamoto, *supra* note 45, at 1765.

[114] In the Maoli context, settler colonialism and land dispossession have ravaged and traumatized the lāhui. Activist and Kanaka ʻŌiwi scholar Haunani-Kay Trask noted that beyond the physical transformation of the pae ʻāina, "grotesque commercialization of everything Hawaiian has damaged our people psychologically, reducing [Hawaiians'] ability to control their lands and waters, their daily lives and the expression and integrity of their culture." Haunani-Kay Trask, *Lovely Hula Hands: Corporate Tourism and the Prostitution of Hawaiian Culture*, 23 BORDER/LINES 22, 23 (1992). Today, despite widespread progress in recognizing traditional and customary Native Hawaiian practices and rights in the law, "disagreements over what are 'traditional' and 'modern' articulations of cultural practices continue to stifle moʻomeheu," or cultural integrity. Tanigawa Lum, *supra* note 39, at 319–20.

of the lāhui, or Nation.[115] As knowledge systems, these practices fortify Kānaka Maoli identity and operate as an economic and political mechanism; which can—and must—influence how we tell the stories of Kānaka Maoli.[116] Intentionally engaging in and leveraging Native practices can have profound implications for informing and shifting broad public discourse.

How the general public perceives and understands culture plays a key role in how society assesses what is right and wrong.[117] How a particular cultural practice is portrayed, for example, can shape public perception.[118] Once prevailing colonial narratives characterized Hawai'i's first people as "lazy, lewd, and childish"[119] as well as "savage,"[120] thus justifying the suppression

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[115] Aloha 'āina is a core Kānaka Maoli value encapsulated in mele. Mele are "kuamo'o [backbones that] provide ways for contemporary Kānaka Maoli to reconnect with the pathways of consciousness traveled by our ancestors, rehabilitate the relationships between land, people, and practices that have been severed or transformed by colonization, and recreate our political world in a way that is true to the needs and Ea of our land and people." Kahikina K. de Silva, Iwikuamo'o o ka Lāhui: Nā Mana'o Aloha 'Āina i Nā Mele Nahenahe o ka Lāhui Hawai'i viii (Aug. 2018) (Ph.D. Dissertation, University of Hawai'i at Mānoa) (ScholarSpace) [hereinafter de Silva, *Iwikuamo'o o ka Lāhui*].

[116] A. U'ilani Tanigawa, The Hula Industry: Understanding the Commodification of Hula in Japan and Culturally Grounded Hula (May 2016) (M.A. Thesis, University of Hawai'i at Mānoa) (ScholarSpace) (analyzing and discussing the "impacts and influence of the commodification of hula in Japan as it serves as a cultural practice, epistemological storehouse, political expression, and social structure").

[117] Hom & Yamamoto, *supra* note 45, at 1765 ("Who decides determines which cultural practices, images, and narratives formally frame the memories. And those memories in turn legitimate future understanding of and action on justice claims.").

[118] *See, e.g.*, Adria L. Imada, ALOHA AMERICA: HULA CIRCUITS THROUGH THE U.S. EMPIRE 60 (2012) (examining "hula circuits" as a "major translocal, if not global, tour of hula"). Hula became a tool to solidify the United States' imperial interests in a colonial relationship with Hawai'i. Through this representation, Hawaiians suddenly became "legible and largely desirable," *id.* at 5, to various Euro-American audiences. *Id.* at 60.

> Cultural forms that result from the creative use of human bodies in time and space are often glossed as dance, but the word itself carries with it preconceptions that mask the importance and usefulness of analyzing the movement dimensions of human action and interaction. Dance is a multifaceted phenomenon. It includes, in addition to what we see and hear, the 'invisible,' underlying system, the processes that produce the system and the product, and the sociopolitical context.

Adrienne L. Kaeppler, *Understanding Dance, in* 9 GARLAND ENCYCLOPEDIA OF WORLD MUSIC 311, 311 (Adrienne L. Kaeppler & J.W. Love eds. 1998); *see also* Megan Medeiros, *Western-Constructed Narratives of Hawai'i*, 11 HISTORY IN THE MAKING 214, 216 (2018).

[119] Andrade, *Hawai'i '78*, *supra* note 36, at 97.

[120] GAVAN DAWS, SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS 62 (1974).

of cultural norms and practices as well as land disposition in the name of development. These stereotypes were harmful and had direct "crucial consequence[s]" on self-determination.[121] On the other hand, as explained later in the Article, engaging and promoting resonant cultural practices as the dominant narrative, can have profound impacts on advancing broader justice initiatives in Hawaiʻi and for other Indigenous communities.

In his final strategic point, Yamamoto underscores that it is "always important for [social] outsiders to conceive of law and legal process as contributors to—rather than as the essence of—larger social justice strategies."[122] While it is important to grasp injustice within legal confines, it is also important not to limit justice issues too narrowly. Rather, effective justice advocates often balance "satisfy[ing] legal norms," in order to "achieve the specific legal result," while also "contribut[ing] to the construction of social memory as a political tool."[123]

The concept of collective memory is a particularly powerful tool for Kānaka Maoli—and residents in Hawaiʻi as a whole—who are learning of, confronting, and navigating the historical consequences of colonialism in Hawaiʻi:[124] from the early decimation of more than half the population following western contact,[125] barefaced efforts to "civilize" Kānaka Maoli

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[121] For Puerto Ricans in Hawaiʻi, for example, "persistent negative cultural images" and stereotypes would have direct "crucial consequence[s]," resulting in Puerto Ricans' exclusion from U.S. polity—another byproduct of plantation capitalism in Hawaiʻi. Serrano, *Collective Memory*, *supra* note 23, at 354–55.

[122] Hom & Yamamoto, *supra* note 45, at 1765. Yamamoto defines "societal outsiders" as those outside positions of power seeking to reconstruct narratives of historic injustice. *Id.*

[123] *Id.*

[124] MacKenzie & Sproat, *supra* note 49, at 491 (underscoring the importance of collective memory in Hawaiʻi by recognizing the consequences of the 1893 illegal overthrow of the Hawaiian Kingdom and suppression of Hawaiian culture and language that catalyzed generations of Kānaka Maoli seeking justice); *see* NOENOE K. SILVA, ALOHA BETRAYED: NATIVE HAWAIIAN RESISTANCE TO AMERICAN COLONIALISM 202 (Gilbert M. Joseph & Emily S. Rosenberg eds., 2004).

[125] Conservative numbers estimate that Hawaiʻi's pre-contact population was about 300,000 before plummeting to less than 60,000 within a year of western contact. *See, e.g.*, 152 CONG. REC. S5558 (daily ed. June 7, 2006) (statement of Sen. Daniel Kahikina Akaka) ("By 1866, only 57,000 Native Hawaiians remained from the basically stable pre-1778 population of at least 300,000."); DAVID E. STANNARD, BEFORE THE HORROR: THE POPULATION OF HAWAIʻI ON THE EVE OF WESTERN CONTACT xvi, 3–5 (1989); Sara Kehaulani Goo, *After 200 Years, Native Hawaiians Make a Comeback*, PEW RSCH. CTR. (Apr. 6, 2015),

away from their traditions and practices,[126] the aftermath and trauma of the illegal overthrow of the sovereign Hawaiian Nation in 1893,[127] to the influx of immigrants as cheap labor for sugar plantations that rendered Kānaka Maoli a minority in Hawai‘i,[128] for example. Kānaka Maoli were also "excluded systematically from the writing of the history of [their] own lands,"[129] and continue to construct their "own new understandings of 'what happened' and 'who [they] were' partly in order to claim what is rightfully [theirs]."[130] The loss of governance further accelerated the loss of culture, language, and lifeways[131]—the ultimate "cultural bomb."[132] Linking events

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https://www.pewresearch.org/short-reads/2015/04/06/native-hawaiian-population (describing the recent Native Hawaiian population growth and noting that part or full Native Hawaiians make up approximately 21% of Hawai‘i's current population).

[126] Early missionaries "sought to teach Hawaiians to abandon religious beliefs and customs that were contrary to Christian teachings and practices." Rice v. Cayetano, 528 U.S. 495, 501 (2000).

[127] SILVA, *supra* note 124, at 202. ‘Ōiwi scholar Noenoe K. Silva notes:

> We Kanaka Maoli have now suffered more than one hundred years of nearly total U.S. hegemony: of being made into a minority without voting power in our own land; of being excluded and marginalized in important institutions, such as higher education; of being drafted to fight the U.S. wars in foreign lands; of fighting for scraps of entitlements to housing, education, and health care funding; of watching our language nearly become extinct; of watching the poorest be evicted from their tents on the sand; and of experiencing the psychic confusion of being raised ignorant of the moʻolelo, ʻōlelo, and culture of our own grandparents. But as the poʻe aloha ʻāina said on August 13, 1898—he oia mau nō kākou: we endure.

Id.

[128] *See* Ronald Takaki, *"An Entering Wedge": The Origins of the Sugar Plantation and a Multi-Ethnic Working Class in Hawaii*, 23 LAB. HIST. 32, 46 (1982) (discussing the multiethnic and transnational plantation labor system that drew into the sugar plantation workforce laborers from China, Japan, Portugal, Norway, Germany, Korea, Puerto Rico, the Philippines, and Russia).

[129] LINDA TUHIWAI SMITH, DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES 33 (1999).

[130] Hom & Yamamoto, *supra* note 45, at 1760.

[131] *See* SILVA, *supra* note 124, at 202.

[132] According to Ngũgĩ wa Thiong'o, "the biggest weapon wielded . . . by imperialism . . . is the cultural bomb. The effect of a cultural bomb is to annihilate a people's belief in their names, in their languages, in their environment, in their heritage of struggle, in their unity, in their capacities and ultimately in themselves." SILVA, *supra* note 124, at 202 (citing NGŨGĨ WA THIONG'O, DECOLONISING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE 3 (1986)).

like the overthrow of the Hawaiian Kingdom to rights "implicates contemporary notions of group and nationhood"[133] and thus, justice.

Collective memory also helps to frame the continuing harms flowing from colonization as well as subsequent—often unfulfilled—attempts to repair harm. These harms include, for example, the wresting of freshwater from Maoli communities for plantation agriculture,[134] the Department of Hawaiian Home Lands' blood quantum requirements and inability to fulfill its trust obligations,[135] and court decisions like *Rice v. Cayetano*[136] that sanitized the history of colonization in Hawaiʻi. Judicial decisions like *Rice* offer a poignant illustration of an ongoing battle over collective memory that

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[133] Hom & Yamamoto, *supra* note 45, at 1760.

[134] Sproat, *Wai Through Kānāwai*, *supra* note 17, at 128, 141–45 (describing community efforts to restore the four great waters of Nā Wai ʻEhā after plantation agriculture constructed massive irrigation systems that "devastat[ed] the natural ecosystems and cultures that relied upon freeflowing streams").

[135] *See, e.g.*, Troy J.H. Andrade, *Belated Justice: The Failures and Promise of the Hawaiian Homes Commission Act*, 46 AM. INDIAN L. REV. 1 (2022) (highlighting the injustices of the Hawaiian Homes Commission Act's creation and execution). The Hawaiian Homes Commission Act "codified a divisive racial scheme that fractured Hawaiians by imposing a new identity based on an arbitrary fifty percent blood quantum, which ensured that stolen Kingdom lands would eventually return to the United States." *Id.* at 5. The United States and the State of Hawaiʻi also failed to fulfill its obligations under the Act: "the government's failure to address decades-long breaches of trust related to addressing the inordinately long waiting period to obtain a lease and the abysmal record of adequately funding DHHL." *Id.*; *see also* J. KĒHAULANI KAUANUI, HAWAIIAN BLOOD: COLONIALISM AND THE POLITICS OF SOVEREIGNTY AND INDIGENEITY 65 (K. Tsianina Lomawaima, Florencia E. Mallon, Alcida Rita Ramos, & Joanne Rappaport eds., 2008) (describing how "race emerged as a means of corroding Kanaka Maoli claims to [land under the Hawaiian Homes Commission Act]").

[136] Rice v. Cayetano, 528 U.S. 495, 518 (2000); *see, e.g.*, Hom & Yamamoto, *supra* note 45, at 1766–77 (unpacking the *Rice* decision, which Hom & Yamamoto note is the "most important Hawaiian rights case[,]" with "far-reaching effects on civil rights, human rights, and native sovereignty"). Agreeing with a haole (foreign) rancher challenging voting practices for the Office of Hawaiian Affairs, the U.S. Supreme Court "invalidated a limitation by which only Native Hawaiians were allowed to vote for trustees." *Id.* at 1766. *Rice* not only put the Office of Hawaiian Affairs—a specific entity created to restore a measure of self-governance—at risk, "but all federal and state programs designed to repair continuing harms to the Hawaiian people resulting from the now acknowledged illegal overthrow of the sovereign nation of Hawaiʻi in 1893." *Id.*; *see generally* Judy Rohrer, *Got Race?* Rice v. Cayetano *and the Racialization of Kanaka Maoli*, *in* STAKING CLAIM: SETTLER COLONIALISM AND RACIALIZATION IN HAWAIʻI 106 (Jeffrey P. Shepherd & Myla Vicenti Carpio eds., 2016) (deploying a collective memory framework to analyze *Rice v. Cayetano*).

permeates throughout Hawai'i and the United States, ultimately undermining restorative justice-based efforts to secure redress for Hawai'i's Indigenous People.[137]

2. Rice v. Cayetano*: A Case Study of Collective Memory*

The power—and consequences—of leveraging storytelling through a collective memory framework is illustrated in Professor Yamamoto's analysis of *Rice v. Cayetano*.[138] In that case, Freddy Rice, a descendant of mid-19th century settlers to Hawai'i, challenged the "Hawaiians-only voting limitation" for the Office of Hawaiian Affairs ("OHA"), a state agency specifically designed as a "'receptacle' for government reparations payments."[139] Seen by many Kānaka as a "transitional entity towards Hawaiian sovereignty,"[140] OHA was created by a 1978 constitutional amendment[141] that was brought to life by Hawai'i's multi-racial populace.[142] Creation of this entity signaled, in part, the general Hawai'i polity's recognition of the State of Hawai'i's failure to meet its "land trust obligations" to Kānaka Maoli.[143] Rice argued that the Hawaiians-only

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[137] *See infra* Section III.A.2.

[138] *See* Hom & Yamamoto, *supra* note 45, at 1766–71. A significant body of scholarship analyzes the harms of *Rice*. *See, e.g.*, Kathryn Nalani Setsuko Hong, *Understanding Native Hawaiian Rights: Mistakes and Consequences of* Rice v. Cayetano, 15 ASIAN AM. L.J. 9 (2008); Mililani B. Trask, Rice v. Cayetano*: Reaffirming the Racism of Hawaii's Colonial Past*, 3 ASIAN-PAC. L & POL'Y J. 352 (2002); J. Kehaulani Kauanui, *The Politics of Blood and Sovereignty in* Rice v. Cayetano, 25 POL. & LEGAL ANTHROPOLOGY REV. 110 (2002).

[139] Hom & Yamamoto, *supra* note 45, at 1767.

[140] *Id.*

[141] *See* HAW. CONST. art. XII, §§ 5–6 (establishing the Board of Trustees for the Office of Hawaiian Affairs and defining their powers).

[142] Eric K. Yamamoto & Sarah D. Ayabe, *Courts in the Age of Reconciliation:* Office of Hawaiian Affairs v. HCDCH, 33 U. HAW. L. REV. 503, 527 (2011).

[143] Hom & Yamamoto, *supra* note 45, at 1767–68 (describing "ceded lands" as the "former Hawaiian government lands and royal lands taken by the United States upon annexation of Hawai'i as a territory following the 1893 overthrow"). In 1959, the U.S. transferred these lands to the newly created State of Hawai'i to be "held in trust partially to benefit" Kānaka Maoli. *Id.* The state subsequently failed to meet its obligations around ceded lands and to Kānaka Maoli. *Id.*; *see also* Melody Kapilialoha MacKenzie, *Public Land Trust*, *in* NATIVE HAWAIIAN LAW: A TREATISE, *supra* note 4, at 79:

> In 1898, based on a Joint Resolution of Annexation (Joint Resolution) enacted by the U.S. Congress, the Republic of Hawai'i transferred approximately 1.8 million acres of Hawaiian Government and Crown Lands to the United States. Kamehameha III had set aside the Government Lands in the 1848 Māhele for the benefit of the chiefs and people. The

limitation was not a political designation, but rather, an unconstitutional voting restriction based on race.[144] Ultimately, the U.S. Supreme Court sided with Rice and overturned the lower courts' decisions, which viewed Kānaka Maoli as "analogous[] to Native Americans" who have "a special fiduciary relationship with the government."[145] The majority at the U.S. Supreme Court held that the voting restriction violated race-neutrality requirements of the Fifteenth Amendment—a holding that generated far-reaching consequences for Kānaka Maoli, civil and human rights, and Native sovereignty claims in the United States.[146]

Rice incited a "fierce battle over conflicting histories" within the context of the reparative justice-based protections of the Fourteenth and Fifteenth Amendments.[147] On one hand, a "neutral" recitation of history, void of injustice, suggests the Fifteenth Amendment does not protect "unequal" voting restrictions for "unharmed" racial groups.[148] On the other hand, because history is wrought with "the destruction of Hawaiian culture through the banning of Hawaiian language[,]" dispossession of homelands, "poor levels of education and health, and high levels of homelessness and incarceration,"[149] equity principles of the Fourteenth and Fifteenth

> Crown Lands, reserved to the sovereign, provided a source of income and support for the crown and, in turn, were a resource for the Hawaiian people. Although the fee-simple ownership system instituted by the Māhele and the laws that followed drastically changed Hawaiian land tenure, the Government and Crown Lands were held for the benefit of all the Hawaiian people. They marked a continuation of the trust concept that the sovereign held the lands on behalf of the gods and for the benefit of all.

Id.

[144] Hom & Yamamoto, *supra* note 45, at 1768.

[145] *Id.* at 1769. The five-person majority noted that the "race neutrality command of the Fifteenth Amendment" prevents a state from abridging "the right to vote on account of race, and [the OHA voting restriction] law does so." Rice v. Cayetano, 528 U.S 495, 522–23 (2000).

[146] *Rice*, 528 U.S. at 524; *see* Hom & Yamamoto, *supra* note 45, at 1766 ("In February 2000, the Supreme Court decided a case with far-reaching effects on civil rights, human rights, and native sovereignty–the most important Hawaiian rights case.").

[147] Hom & Yamamoto, *supra* note 45, at 1771.

[148] *See id.* at 1775 ("According to the majority's construction of Hawaiʻi's history, because there are no effects of U.S. colonization, 'privileges' for Hawaiians are not only undemocratic, they are illegal.").

[149] *Id.* at 1772.

Amendment should support giving Native Hawaiians the sole power to vote for OHA as a reparative measure.[150] The majority, in this profoundly damaging case, chose the former and more problematic recitation of history; erasing the colonial oppression of Kānaka Maoli and treating them not as Indigenous people harmed by the United States' acknowledged wrongdoing,[151] but simply another immigrant ethnic group, resulting in sweeping implications for marginalized groups throughout the United States.[152]

The majority told a sanitized "collective story" characterized as "neutral [and] uncontroversial."[153] This approach omitted key facts, presenting Hawai‘i's checkered history as one without harm, without injustice, and thus, without need for redress.[154] Recognizing this shortcoming, Justice Stevens issued a dissent that criticized the majority's approach as boasting "glittering generalities that have little, if any, application to the compelling history of . . . Hawai[‘]i."[155] To Justice Stevens' point, Yamamoto characterizes the Court's reasoning as selective amnesia[156] that erases the United States' own admission of wrongdoing in the 1993 Apology Resolution. The resolution itself was the United States' "public acknowledgement" of its role as a

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[150] *Id.* at 1770–72.

[151] Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1983 Overthrow of the Kingdom of Hawai‘i (Apology Resolution), Pub. L. No. 103–150, 107 Stat. 1510 (1993).

[152] *See, e.g.*, Hom & Yamamoto, *supra* note 45, at 1766 n.85 ("Who has a stake in this "Hawaiian" case? Certainly the indigenous Hawaiian communities, particularly those struggling to deal politically and socially with the consequences of U.S. colonialism, including the Hawaiians' highest rates of poverty, unemployment, incarceration, serious illness, and homelessness. Also Native Americans, who perceive that conservatives such as Robert Bork and Abigail Thernstrom supporting plaintiff Freddy Rice are endeavoring to fry even bigger fish, including all nontribal American Indians who benefit from government programs. And Latinas/os—those linking contemporary legal strategies concerning immigration, language, citizenship, and political participation with earlier anticolonial, Chicano self-determination movements in the United States. And finally, African Americans, Asian Americans, women, gays and lesbians, and the disabled who are combating America's conservative 'retreat from justice' in law and politics."(citation omitted)).

[153] *Id.* at 1772–73.

[154] *See id.* at 1773.

[155] Rice v. Cayetano, 528 U.S. 495, 527 (2000) (Stevens, J., dissenting).

[156] Hom & Yamamoto, *supra* note 45, at 1776 ("Journalist Edwin M. Yoder warns of America's recent 'amnesia' about slavery in attempting to justify, or at least live with, racial inequity while proclaiming a commitment to equality."). Edwin Yoder asserts: "When the history fails to fit the myths, we bend the history." EDWIN M. YODER, THE HISTORIC PRESENT: USES AND ABUSES OF THE PAST 56 (1997).

colonial power and also took responsibility for its attempts to erase it from public consciousness.[157] Ultimately, Yamamoto posits that the Court in *Rice* bent history under the guise of equality.[158] Such an approach erases the Kānaka Maoli narrative of struggle and resistance to dismantle attempts at meaningful reparations.[159]

At the same time, the State of Hawaiʻi failed to tell a compelling story of injustice. The State, on behalf of OHA, narrowly focused its narrative on the legal requirements of the case offering a "sanitized, passive, historical account" of Kānaka Maoli history[160] "[w]ithout clearly connecting those arguments to the larger Hawaiian justice movement."[161] These omissions failed to set forth the full context of the injustice that *should* have justified the OHA voting restriction as a reparative justice mechanism. Here, the State's presentation of the collective memory of injustice fell short. The consequences of a partially-told story, or failing to connect histories of injustices to present-day issues, like that within *Rice*, not only had practical affects on all aspects of Kānaka Maoli existence in contemporary Hawaiʻi, but it also had far-reaching implications across Native and marginalized communities in the struggle for social justice.[162]

Reclaiming the narrative of injustice is challenging, especially within the image of Hawaiʻi as a "melting pot" of other cultures and ethnicities—another byproduct of colonization.[163] Collective memory thus is a critical tool

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[157] Hom & Yamamoto, *supra* note 45, at 1776.

[158] *See id.*

[159] *See id.* at 1775.

[160] *Id.* at 1769 n.105 (citing Brief for Respondent at 3–4, Rice v. Cayetano, 528 U.S. 495, 527 (2000) (No. 98-818) and other Amici Curiae).

[161] *Id.* at 1769.

[162] *See* Hom & Yamamoto, *supra* note 45, at 1766 n.85.

[163] *See* Andrade, *Hawai'i '78*, *supra* note 36, at 99 (citing Laura Edles, *Rethinking 'Race', 'Ethnicity' and 'Culture': Is Hawai'i the 'Model Minority' State?*, 27 ETHNIC & RACIAL STUD. 37, 40 (2010)). Edles' work has critiqued the "melting pot" trope as a myth:

> In short, 'Hawai'i' has become our 'model minority' state — the state that 'epitomizes' what a multiracial, multiethnic, multicultural 'melting pot' should look like. . . . The two most important (albeit interrelated) problems are (1) that the myth of Hawai'i as a 'model minority' state is grossly, historically, inaccurate; and (2) that the myth of Hawai'i as a 'model minority' state grossly misconstrues the complex workings of racialization.

to interrogate the narratives of injustice through the eyes of two overlapping, but distinct groups of people: 1) Kānaka Maoli, and 2) Hawai'i's larger population. With these groups in mind, how does Hawai'i as a polity conceptualize past harms to Kānaka Maoli? Uplifting a narrative of illegal theft of governance and land has had profound impacts on securing redress for Kānaka Maoli.[164] After all, "[h]ow a community frames past events and connects them to current conditions often determines the power of justice claims or of opposition to them."[165]

Collective memory leverages mo'olelo and present-day multidisciplinary studies to catalyze social justice movements. How do we, as a collective Hawai'i and as Kānaka Maoli in particular, define the injustices that led to the 2023 disaster in Maui Komohana? What values and mo'olelo will guide recovery and a future Maui Komohana? What role can our mo'olelo and its related practices play in educating Hawai'i's "melting pot," guide a more just future, *and* in reawakening "the psyche" of Kānaka Maoli?[166]

The question of reparative justice—and the legal claims and process for a "just" restoration in Maui Komohana—is a threshold struggle over the collective memory of plantation capitalism and the injustices that ensued. This inquiry has broader relevance for other Native and marginalized communities while also providing timely solutions for navigating centuries-long injustices. In Hawai'i, situating Kānaka Maoli narratives—and the guiding cultural values upon which they are built—are a crucial part of a quest for justice.

Edles, *supra*, at 40 (emphasis omitted).

[164] While Kānaka continue to assert justice claims and demand redress for past harms, there have been many great strides toward restorative justice in the last fifty years, both on the national and local scale. *See, e.g.*, Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1983 Overthrow of the Kingdom of Hawai'i (Apology Resolution), Pub. L. No. 103–150, 107 Stat. 1510, 1510, 1513 (1993) (United States federal government's "apology to Native Hawaiians . . . for the overthrow of the Kingdom of Hawai'i" and commitment "to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people"); PROC. OF THE CONST. CONVENTION OF HAW. OF 1978 (1980) [hereinafter CON CON PROCEEDINGS 1978] (committee reports and other proceedings related to the 1978 ConCon, which produced state constitutional amendments that secured Native Hawaiian reparative action); *see also* Ian Falefuafua Tapu, *How to Say Sorry: Fulfilling the United States' Trust Obligation to Native Hawaiians by Using the Canons of Construction to Interpret the Apology Resolution*, 44 N.Y.U. REV. L. & SOC. CHANGE 445, 475–78 (2020); Andrade, *Hawai'i '78*, *supra* note 36, at 117–31.

[165] Hom & Yamamoto, *supra* note 45, at 1771.

[166] *Id.* at 1764.

B. *Foundations for Water and Wealth in Hawaiʻi*

Kānaka Maoli intimately understand water's vital role in life. "Aia i hea ka wai a Kāne[167] a traditional oli,[168] recounts the specific places in which freshwater dwells. From underground springs, to clouds, various types of rainbows, various types of rains, and more, Kānaka Maoli intimately knew and revered freshwater in their natural world.[169] While a reciprocal relationship between humans and ʻāina facilitated abundance, these values were viewed as a significant barrier to plantation culture that thrived on extractive agricultural practices as illustrated in Part V below.[170]

The lāhui rose to reclaim and revitalize Kānaka Maoli culture, identity, and practices during the 1970 Hawaiian Renaissance.[171] This movement catalyzed a rediscovery of traditional practices, including practices of water management for the benefit of present and future generations.[172] This time also marked a parallel shift in Hawaiʻi's courts.[173] After statehood, Hawaiʻi judges were appointed locally rather than being chosen by the federal

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[167] NATHANIEL B. EMERSON, UNWRITTEN LITERATURE OF HAWAIʻI: THE SACRED SONGS OF THE HULA 257 (1909).

[168] "Oli" means chant. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=oli (last visited Aug. 23, 2024).

[169] *See* Sproat, *Wai Through Kānāwai*, *supra* note 17, at 139–41 (emphasizing the importance of freshwater and highlighting its wealth in Kānaka Maoli society).

[170] D. Kapuaʻala Sproat, *From Wai to Kānāwai: Water Law in Hawaiʻi*, *in* NATIVE HAWAIIAN LAW: A TREATISE, *supra* note 4, at 525 [hereinafter Sproat, *Water Law in Hawaiʻi*] ("Despite Native Hawaiians' clear understanding that fresh water is the foundation of all life, others in Hawaiʻi have lost sight of this fundamental truth. The evolution of water law in these islands, therefore, has been wrought with conflict, as indigenous values and management practices have clashed with foreign notions of entitlement and ownership, often to the detriment of Kānaka Maoli culture and lifestyles.").

[171] *See* DAVIANNA PŌMAIKAʻI MCGREGOR & MELODY KAPILIALOHA MACKENZIE, OFF. OF HAWAIIAN AFFS., MOʻOLELO EA O NĀ HAWAIʻI: HISTORY OF NATIVE HAWAIIAN GOVERNANCE IN HAWAIʻI 75 (2015).

[172] *See* WILCOX, SUGAR WATER, *supra* note 23, at 36 (citing Jon Van Dyke et al., Water Rights in Hawaii 2–3 (unpublished paper) (ScholarSpace) https://scholarspace.manoa.hawaii.edu/server/api/core/bitstreams/05ec3917-6621-42f7-b6e9-b683daf1aa05/content (last visited Apr. 5, 2024)).

[173] *See* D. KAPUAʻALA SPROAT, KA HULI AO CTR. FOR EXCELLENCE IN NATIVE HAWAIIAN L., OLA I KA WAI: A LEGAL PRIMER FOR WATER USE AND MANAGEMENT IN HAWAIʻI 6 (2009) [hereinafter SPROAT, OLA I KA WAI PRIMER], https://drive.google.com/file/d/14Q--3AXiiQPpMFBAud-T1GjRl0EvOVDn/view?pli=1.

government, which resulted in a change in the political makeup of the court.[174] Lawyers with business interests who were sympathetic to the sugar industry no longer dominated the courts.[175] Instead, the new judges were better versed in local issues, more familiar with the history of Hawai'i, and had a deeper understanding of Native Hawaiian culture and tradition.[176] By 1973, most justices on the Hawai'i Supreme Court recognized the incongruity between traditional Native Hawaiian values and the business-oriented jurisprudence of the preceding territorial courts.[177] The shifting times set the stage for a court under Chief Justice Richardson to reintegrate Maoli customs and traditions, like the public trust doctrine, into Hawai'i common law.

Considered Hawai'i's "most significant water decision in the twentieth century," *McBryde Sugar Co. v. Robinson* reaffirmed water as a public trust resource.[178] In adjudicating a dispute between two Kaua'i sugar plantations and their right to water from the Hanapēpē River,[179] the court acknowledged the historic abuse of resources to reaffirm traditional Native Hawaiian water management practices.[180] In subsequent cases, the court, under Chief Justice

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[174] *Id.*

[175] *See id.*

[176] *Id*. at 7. ("[C]ases and laws from the Kingdom of Hawai'i, along with Hawaiian custom and tradition, 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.").

[177] Jon Van Dyke et al., Water Rights in Hawaii 36 (unpublished paper) (ScholarSpace) https://scholarspace.manoa.hawaii.edu/server/api/core/bitstreams/05ec3917-6621-42f7-b6e9-b683daf1aa05/content (last visited Apr. 5, 2024) ("During Hawaii's territorial period, the law applied by the Supreme Court tended to be an amalgam of the Anglo-American common law and the Hawaiian statutes and traditions—as seen through the eyes of Western-trained, business-oriented, federally-appointed judges.").

[178] WILCOX, SUGAR WATER, *supra* note 23, at 34; *see* McBryde Sugar Co. v. Robinson, 54 Haw. 174, 186, 504 P.2d 1330, 1338 (1973).

[179] *McBryde*, 54 Haw. at 177, 504 P.2d at 1334; SPROAT, OLA I KA WAI PRIMER, *supra* note 173, at 6–7.

[180] Notably, the *McBryde* court held that: (1) individuals can have a right to use water, but no property right in the water itself; (2) neither appurtenant nor riparian rights permit a landowner to transport water to another watershed; (3) there is no such thing as a surplus of water under the doctrine of riparian rights; and (4) water and any storm or freshet water is owned by the state, so no individual may claim title. *McBryde*, 54 Haw. at 199, 504 P.2d at 1345–46.

Richardson's leadership, solidified Hawaiʻi's legal foundation, of which Hawaiian custom and tradition is an integral part.[181]

The emergence of public trust principles "return[ed] water use to public management and control."[182] Today, water use and management in Hawaiʻi is governed by specific constitutional mandates, key statutory provisions, and pathbreaking cases interpreting these mandates.[183] Alongside the broader renaissance movement, Kānaka Maoli advocacy also brought to life crucial protections around water in Hawaiʻi and reaffirmed its traditional origins. At this time, Hawaiʻi was grappling with disputes over water resources amidst foreign influence. In 1978, Hawaiʻi's people prioritized water resource management by uplifting constitutional amendments that would protect both Hawaiʻi's unique culture and the natural resources upon which it relied. Article XI, section 1 of the Hawaiʻi State Constitution, for example, dictates that "all public natural resources are held in trust by the State for the benefit of the people."[184] Together with Article XII section 7, these constitutional mandates "adopt the public trust doctrine as a fundamental principle of constitutional law in Hawaiʻi."[185] The use and preservation of Hawaiʻi's

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[181] Sproat, *Water Law in Hawaiʻi*, *supra* note 170, at 534–37 (summarizing the reemergence of public trust principles in Hawaiʻi's law); *see* Robinson v. Ariyoshi, 65 Haw. 641, 658 P.2d 287 (1982); Reppun v. Bd. of Water Supply, 65 Haw. 531, 656 P.2d 57 (1982).

[182] Sproat, *Water Law in Hawaiʻi*, *supra* note 170, at 534.

[183] *See, e.g.*, HAW. CONST. art. XI, § 1 ("All public natural resources are held in trust by the State for the benefit of the people."); HAW. CONST. art. XI, § 7 ("The legislature shall provide for a water resources agency . . ."); HAW. CONST. art. XII, § 7; HAW. REV. STAT. § 174C ("It is recognized that the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are beneficiaries and have a right to have the waters protected for their use."); *In re* Waiāhole Ditch Combined Contested Case Hearing (*Waiāhole I*), 94 Hawaiʻi 97, 9 P.3d 409 (2000); *In re* Waiāhole Ditch Combined Contested Case Hearing (*Waiāhole II*), 105 Hawaiʻi 1, 93 P.3d 643 (2004); Reppun v. Bd. of Water Supply, 65 Haw. 531, 656 P.2d 57 (1982); Robinson v. Ariyoshi, 65 Haw. 641, 658 P.2d 287 (1982); McBryde Sugar Co. v. Robinson, 54 Haw. 174, 504 P.2d 1330 (1973); *see also* Sproat, *Water Law in Hawaiʻi*, *supra* note 170, at 538–74.

[184] HAW. CONST. art. XI, § 1.

[185] *In re* Waiāhole Combine Contested Case Hearing (*Waiāhole I*), 94 Hawaiʻi 97, 132, 9 P.3d 409, 444 (2000) (footnote omitted). The court in *Waiāhole I* recognized that this doctrine was so important that even the legislature could not abolish it. *Id.* at 130–31, 9 P.3d at 442–43. The court further clarified that the Water Code "does not supplant the protections of the public trust doctrine." *Id.* at 331, 9 P.3d at 445.

water resources are also governed by the State Water Code.[186] The Code also created the Commission on Water Resource Management and gave it the kuleana (rights and responsibilities) and jurisdiction to administer the Code itself.[187]

Kānaka Maoli have played a crucial part in realizing the full protections of Hawai'i's legal regime, especially with respect to water resources. They have skillfully navigated the political gamesmanship around water management. They have taken on corporations on dirt roads and in the courtroom to preserve and reclaim 'āina. And as a result, Kānaka Maoli advocacy has secured incremental shifts to return water to its streams and communities of origin.[188]

This cultural and legal history lies at the crux of Hawai'i's contemporary struggle for a resonant collective memory of injustice. A blatant disrespect for and ignorance of Kānaka Maoli values and practices have fueled injustices for over a century. These contentious disputes catalyze a fierce battle over the dominant narrative in Hawai'i—a struggle with devastating consequences.

C. *Convergence of Injustice: The August 2023 Fires in Maui Komohana*

Each year, two million people visit the historic town of Lahaina.[189] Malihini[190] memories of the "tourist destination" and former whaling village might include the charming coastal restaurants and shops along Front Street; the 150-year-old banyan tree sprawled across the shoreline; the hot sun and cool ocean waters; and festive commercial lū'au with flowing mai tais and beautiful hula dancers.[191] But below the surface of the tourist façade lie larger

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[186] HAW. REV. STAT. § 174C.

[187] HAW. REV. STAT. § 174C–7.

[188] *See, e.g.*, Sproat, *Water Law in Hawai'i, supra* note 170, at 574–76 (summarizing the key cases that have reaffirmed fundamental principles of water law in Hawai'i, clarified public trust purposes, and underscored the state and county agencies' kuleana to protect water resources and traditional and customary practices in Hawai'i).

[189] *Pray for Maui*, LAHAINATOWN.COM, https://lahainatown.com/#:~:text=Lahaina%20is%20a%20location%20that,of%20Maui%20tourism%2C%20per%20year (last visited Mar. 24, 2024).

[190] Malihini refer to a "tourist, guest" or "one unfamiliar with a place or custom." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=malihini (last visited Apr. 5, 2024).

[191] Kevin Allen, *Top Things to Do in Lahaina, Maui*, HAW. MAG. (July 26, 2023), https://web.archive.org/web/20230924050646/https://www.hawaiimagazine.com/top-things-to-do-in-lahaina-maui/.

struggles over ʻāina and resources that supported Lahaina's perceived destination paradise.[192]

Shortly after midnight, on August 8, 2023, a brushfire fueled by strong gusts of wind burned through 1,000 acres of the slopes of Haleakalā, known as Upcountry, Maui.[193] Unlike a nightmare that subsides with the rising sun, the flames of the Maui wildfires grew stronger.[194] By sunup, the Upcountry fire continued to rage, and in Maui Komohana, on the opposite side of the island, another fire began.[195]

While many know Maui to be the "Valley Isle,"[196] the inoa maoli[197] of specific winds, rains, and historic names have been forgotten by many. On August 8th in Maui Komohana, Kauaʻula Valley funneled the famed Kauaʻula wind from ma uka to ma kai.[198] The grove of ʻulu trees and lush

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[192] *See* Jennifer Sinco Kelleher & Jae C. Hong, *Maui Fires Renew Centuries-Old Tensions Over Water Rights. The Streams Are Sacred to Hawaiians*, AP NEWS (Aug. 24, 2023, 8:31 AM HST), https://apnews.com/article/hawaii-maui-fires-water-streams-531263684bf5106d635f29aec91115e4.

[193] Ashley R. Williams et al., *'Everything Was on Fire': The Hours That Brought Lahaina to Ruins*, CNN (Aug. 18, 2023), https://www.cnn.com/interactive/2023/08/hawaii-wildfires-timeline-maui-lahaina-dg/index.html.

[194] *See* Kiara Alfonseca, *Timeline: How the Deadly Wildfires Took Over Maui Day by Day*, ABC NEWS (Aug. 18, 2023, 2:06 PM), https://abcnews.go.com/US/timeline-deadly-wildfires-maui-day-day/story?id=102253075#:~:text=6%20a.m.%20In%20the%20early,according%20to%20Maui%20County%20officials.

[195] *Id*.

[196] Kevin Allen, *The Hawaiian Islands and Their Nicknames, Explained*, HAW. MAG. (Mar. 10, 2021), https://www.hawaiimagazine.com/the-hawaiian-islands-and-their-nicknames-explained/ ("[O]ftentimes driving through central Maui feels as though you're commuting through one massive valley.").

[197] "Inoa" translates to "name" while "maoli" translates to "native, indigenous." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=inoa (last visited Aug. 26, 2024); WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=maoli (last visited Aug. 26, 2024). Together, "inoa maoli" refers to a traditional name.

[198] Video Recording: Cody Pueo Pata, Maui Ola: I ka ʻŌlelo nō ke Ola—Maui Komohana, held by Ka Huli Ao Center for Excellence in Native Hawaiian Law (Feb. 1, 2023) (on file with author). In an 1867 nūpepa article, the Kauaʻula wind was described as "something truly terrifying—houses topple, coconut trees snap, all the breadfruit trees are hewn into pieces, and banana stalks are all pushed down by this angry wind." *Kauaʻula, the Powerful Wind of Lahaina*, BISHOP MUSEUM,

vegetation that once stood in the face of the Kaua‘ula wind hundreds of years ago, was largely stripped away for sugar cane.[199] Though the sugar plantations were gone, they left behind a completely altered landscape void of water that would fuel dry invasive grass.[200] Together with the Kaua‘ula wind, the dry vegetation kindled a fire.[201] Maui Komohana's valleys doubled and tripled the winds up to sixty mph.[202] By the late afternoon, the crushing winds and dry nonnative grass fed a small fire allegedly sparked by fallen power lines[203] until it became a ravenous wildfire consuming the entire town and claiming the lives of ninety-nine adults and three children.[204]

The August 2023 fire ravaged 2,170 acres,[205] destroyed more than 2,200 structures, and caused approximately $5.5 billion in damage.[206] Maui Komohana has just one major access point, Honoapi‘ilani Highway,[207] whose name pays homage to the famed bays of Pi‘ilani in Maui Komohana. This singular exit, much of which traverses steep cliff terrain, would make

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https://blog.bishopmuseum.org/nupepa/kaua%CA%BBula-the-powerful-wind-of-lahaina/ (last visited Mar. 24, 2024).

[199] *See* Rick Quan, *'Treecovery' Initiative Aims to Rescue Centuries-Old Ulu Trees Burned in Lahaina Wildfire*, KITV4 ISLAND NEWS (Nov. 14, 2023), https://www.kitv.com/news/lahaina/treecovery-initiative-aims-to-rescue-centuries-old-ulu-trees-burned-in-lahaina-wildfire/article_c9df9370-8357-11ee-8974-db7f30a901a9.html; Zoya Teirstein, *Invasive Species Have Created a Cycle of Wildfire in Hawai‘i. Can Maui Break it?*, GRIST (Aug. 30, 2023), https://grist.org/wildfires/invasive-species-have-created-a-cycle-of-wildfire-in-hawai%ca%bbi-can-maui-break-it/.

[200] Teirstein, *supra* note 199.

[201] *See id.*

[202] Gary Partyka & Bennett Erdman, *Meteorologic Analysis of the August 2023 Maui Wildfires*, NASA (Oct. 5, 2023), https://gmao.gsfc.nasa.gov/research/science_snapshots/2023/meterologic-analysis-maui-wildfires.php.

[203] *What Caused the Lahaina Inferno? An Overgrown Gully Could Hold the Answers*, THE GUARDIAN (Sept. 27, 2023, 4:36PM EDT), https://www.theguardian.com/us-news/2023/sep/27/what-caused-maui-fire-hawaii-power-line.

[204] Matthew Nuttle, *Lives Lost in Lahaina: All of the People who Perished in the Maui Fire*, KITV4 ISLAND NEWS (July 31, 2024), https://www.kitv.com/news/lahaina/lives-lost-in-lahaina-all-of-the-people-who-perished-in-the-maui-fire/article_3b8e91ba-4122-11ee-a3f2-b73625af4d58.html.

[205] MAUI POLICE DEP'T, MAUI WILDFIRES OF AUGUST 8, 2023: MAUI POLICE DEPARTMENT PRELIMINARY AFTER-ACTION REPORT 9 (Jan. 23, 2024), https://www.mauipolice.com/uploads/1/3/1/2/131209824/pre_aar_master_copy_final_draft_1.23.24.pdf [hereinafter *MPD Preliminary After-Action Report*].

[206] *Preliminary After-Action Report: 2023 Maui Wildfire*, U.S. FIRE ADMIN. (Feb. 8, 2024), https://www.usfa.fema.gov/blog/preliminary-after-action-report-2023-maui-wildfire/.

[207] *See MPD Preliminary After-Action Report*, *supra* note 205, at 8.

evacuation difficult and turn Maui Komohana into a death trap.[208] In a matter of hours, Lahaina went from being the home to over 13,000 residents[209] to the site of the deadliest fire in modern-American history.[210]

The devastation of the Maui Komohana fire, however, was matched with steadfast support and aloha for peoples' island home and one another as the tight-knit community tried to piece everything together.[211] As the highly respected Kānaka Maoli leader and cultural practitioner Archie Kalepa put it, "the depth of our grief and the warmth of our aloha is overwhelming."[212] This sobering tragedy brought the colonial-influenced narrative, that is, a history of mismanagement and disenfranchisement at the expense of Kānaka Maoli, into sharp focus. The emerging Kānaka Maoli narrative, empowered by community voices and moʻolelo, called it as it was: an injustice. A combat over competing collective memories ensued.[213] The fires begged Hawaiʻi to reflect on what happened and also galvanized broader support for reclamation of the collective memory of this specific place.[214] For many kamaʻāina and Hawaiʻi residents alike, this catastrophe marked "a different kind of point in the history of this place"[215] and ushered in a difficult reflection on the dominant narratives that long justified colonial stronghold in Maui Komohana.

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[208] Nicholas Bogel-Burroughs et al., *How Fire Turned Lahaina Into a Death Trap*, N.Y. TIMES (Aug. 15, 2023), https://www.nytimes.com/2023/08/15/us/hawaii-maui-lahaina-fire.html.

[209] *MPD Preliminary After-Action Report*, *supra* note 205, at 8.

[210] Max Graham, *How Maui's Wildfires Became the Country's Deadliest in More Than a Century*, GRIST (Aug. 14, 2023), https://grist.org/extreme-weather/maui-wildfires-countrys-deadliest-century-hawaii/.

[211] *Id.* at 27.

[212] Wendy Osher, *Navigating Change: Lele Aloha Organizers Call for Unity in Shaping the Future of Lahaina*, MAUI NOW (Jan. 20, 2024, 7:47 PM HST), https://mauinow.com/2024/01/20/navigating-change-lele-aloha-organizers-call-for-unity-in-shaping-the-future-of-lahaina/ [hereinafter Osher, *Navigating Change*].

[213] Hom & Yamamoto, *supra* note 45, at 1764 (noting that the "struggle over recognition of competing collective memories is therefore often a struggle over the supremacy of world views, of colliding ideologies").

[214] *See* Osher, *Navigating Change*, *supra* note 212.

[215] *Id.*

IV. PHASE I: COLONIAL CONSTRUCTS OF COLLECTIVE MEMORY IN MAUI KOMOHANA

> In the wake of the 1893 overthrow, non-native historians developed and promoted a narrative that what happened in Hawai'i was not an injustice. Instead of acknowledging those actions as a hostile takeover of an indigenous sovereign, myopic historians crafted a narrative around sugar planters, the economy, and land and power in Hawai'i that prevailed as the collective memory and, thus, "history" for nearly a century.[216]

Since the 1800s, colonial narratives have supplanted Kānaka Maoli mo'olelo to enable and justify the pillage of Hawai'i's 'āina, resources, and people. The same tactics are also true in Maui Komohana.[217] Non-Native narratives advanced the notion that what happened in Maui Komohana was "not an injustice,"[218] but rather, necessary development to progress as a society. This Section first recounts the initial phase of the battle over collective memory: the colonial constructs and sugar operations at the heart of plantation capitalism. It unpacks the early extractive schemes and network of systems as a "hostile takeover" of Maui Komohana. It then moves on to highlight specific examples that replaced narratives of abundance and transformed 'āina momona to a tinderbox drained of its lifeblood. By engaging in this exercise of historical interrogation, we uncover "what really happened," as a necessary first step to articulate a resonate understanding of the injustice.

A. *A Hostile Takeover: What Really Happened in Maui Komohana*

The 17th century brought profound transformations to Hawai'i. Just a few short decades after first western contact, Kamehameha I united Hawai'i pae

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[216] MacKenzie & Sproat, *supra* note 49, at 483–84.

[217] *See* Klein & Sproat, *supra* note 18; *Panel III—Plantation Disaster Capitalism: The Legacy of Settler Colonialism in Maui Komohana*, *supra* note 24 (describing the historic mismanagement of 'āina in Maui Komohana and the extraction of resources from 'āina).

[218] MacKenzie & Sproat, *supra* note 49, at 483–84 ("In the wake of the 1893 overthrow, non-native historians developed and promoted a narrative that what happened in Hawai'i was not an injustice."); *see, e.g.*, Carolyn Kormann, *Why Maui Burned*, NEW YORKER (Oct. 30, 2023), https://www.newyorker.com/magazine/2023/11/06/maui-wildfire-response-recovery (reporting that West Maui land owner and developer Peter Martin suggested the August 2023 fires occurred because Maui's lands "weren't being used as God intended"); *see also infra* Section III.B.

ʻāina, and Hawaiʻi's ruling aliʻi embraced Christianity and foreign systems of governance.[219] By the end of the century, the United States illegally overthrew the Kingdom of Hawaiʻi.[220] Western values and structures, by design, deeply influenced Hawaiʻi's post-colonial evolution: "In Hawaiʻi modern institutions of law and economics did not evolve either naturally or spontaneously. These were already existent structures carried here by white settlers, erected as a framework for conversion, embellished by the accumulated wealth of agribusiness, and fortified by a nascent racism."[221]

Despite vigorous western attempts to erase moʻolelo to facilitate conversion, Kānaka Maoli continued to center Native ways of knowing through changing times.[222] Maoli knowledge systems guided the evolution of Hawaiʻi's systems of governance. And while aliʻi began to embrace foreign systems of governance and adopted certain facets to fit their governance needs,[223] their foundational cultural beliefs remained largely intact.[224] Laws in 1839, for example, continued to uphold traditional values, such as revering water as a kinolau of a god, [225] that held water in trust for the benefit of all while adapting to rapidly changing circumstances.[226] An 1842 Hawaiian Kingdom law, "Respecting Water for Irrigation," for example, aligned with traditional moʻolelo around water management but allowed the government to "ensure the just distribution of water for the good of the larger community" as a means to correct "abuses that arose during the

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[219] *See* MCGREGOR & MACKENZIE, *supra* note 171, at 133, 219. Aliʻi also strategically utilized foreign systems of governance to fit their needs. *See* KAMANAMAIKALANI BEAMER, NO MĀKOU KA MANA: LIBERATING THE NATION 3 (2014).

[220] *See* MCGREGOR & MACKENZIE, *supra* note 171, at 27.

[221] JONATHAN KAY KAMAKAWIWOʻOLE OSORIO, DISMEMBERING LĀHUI: A HISTORY OF THE HAWAIIAN NATION TO 1887 252 (2002) [hereinafter, OSORIO, DISMEMBERING LĀHUI].

[222] *See* Sproat, *Water Law in Hawai'i*, *supra* note 170, at 530–31.

[223] *See* BEAMER, *supra* note 219, at 3 (arguing that Hawaiʻi's aliʻi "selectively appropriated" foreign systems of governance "while modifying existing indigenous structures to create a hybrid nation-state").

[224] *See* Sproat, *Water Law in Hawai'i*, *supra* note 170, at 535.

[225] "Kinolau" "refers to the forms that akua . . . assume or with which they are symbolically associated." MARIE ALOHALANI BROWN, KA POʻE MOʻO AKUA: HAWAIIAN REPTILIAN WATER DEITIES 65 (2022). "Akua" means "god" or "goddess." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=akua81ina (last visited Aug. 25, 2024).

[226] Sproat, *Water Law in Hawai'i*, *supra* note 170, at 530–31.

transition from a traditional subsistence economy to a Western mercantile economy."[227]

In Maui Komohana, the historical abundance and former seat of governmental power became an attraction for commercial agriculture[228] when white settlers established sugar plantations in the early 1860s, starting with Lahaina Sugar Company and Pioneer Sugar Mill.[229] Hawai'i began to transition from a traditional subsistence economy based on pono to a cash-centered economy.[230] Hawai'i also began exporting goods outside of its island chain.[231] Maui Komohana's reputation for superb sugar production[232] coincided with a decline in production in the continental United States because of the Civil War, ultimately generating a surge in foreign sugar plantations in Hawai'i.[233]

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[227] *Id*. at 535; *see* Act of June 7, 1839, ch. 3, § 15, 1842 KING. HAW. LAWS, (amended Nov. 9, 1840), *available in* Ka Huli Ao Digital Archives, http://punawaiola.org/es6/index.html?path=/Collections/Statutes/Statutes1842001.pdf.

[228] *See generally* RULING CHIEFS OF HAWAI'I, *supra* note 9; E.S. CRAIGHILL HANDY ET AL., NATIVE PLANTERS IN OLD HAWAI'I: THEIR LIFE, LORE, AND ENVIRONMENT 272 (1972) (noting that Lahaina was "the primary seat of the chiefs of West Maui"); Kepā Maly & Onaona Maly, *Lāhainā: An Overview of Native History*, KUMO PONO ASSOCS, LLC, https://www.kumupono.com/lahaina (last visited Sept. 14, 2024) (describing Mokuhinia and Moku'ula as sacred wahi pana and the royal seat of the kingdom throughout centuries); Kim Bellware, *Destroyed Lahaina Was Once Hawaiian Kingdom's Capital, Global Trade Hub*, WASH. POST (Aug. 10, 2023, 10:24 PM EDT), https://www.washingtonpost.com/history/2023/08/10/lahaina-hawaii-history-capital (describing Lahaina as the seat of power in 1802, after King Kamehameha united the islands).

[229] KEPĀ MALY & ONAONA MALY, HE WAHI MO'OLELO NO KAUA'ULA A ME KEKAHI 'ĀINA O LAHAINA I MAUI: A COLLECTION OF TRADITIONS AND HISTORICAL ACCOUNTS OF KAUA'ULA AND OTHER LANDS OF LAHAINA, MAUI 6 (2007) [hereinafter MALY & MALY]; JONATHAN L. SCHEUER & BIANCA K. ISAKI, WATER AND POWER IN WEST MAUI 54 (2021) [hereinafter WATER AND POWER IN WEST MAUI].

[230] CAROL A. MACLENNAN, SOVEREIGN SUGAR: INDUSTRY AND ENVIRONMENT IN HAWAI'I 136–37 (2014) [hereinafter SOVEREIGN SUGAR]; *see also* MacKenzie, *supra* note 4, at 15 ("[An] increasing number[] of Hawaiians [were] unable to support themselves in a cash economy system, [and would leave] the land to find jobs in the cities.").

[231] Carol A. MacLennan, *Hawai'i Turns to Sugar: The Rise of Plantation Centers 1860–1880*, 31 HAW. J. HIST. 97, 97 (1997) [hereinafter MacLennan, *Hawai'i Turns to Sugar*] (describing how "Hawai'i's government committed extensive resources to the success of sugar export" between 1860 and 1880).

[232] MALY & MALY, *supra* note 229, at 6.

[233] SOVEREIGN SUGAR, *supra* note 230, at 24.

While kō, or sugar cane, was a traditional food source brought by waʻa[234] to Hawaiʻi by our earliest voyagers, commercial sugarcane cultivation grew from principles in deep conflict with Hawaiʻi's intricate systems of biocultural resource management.[235] As plantations sought to maximize profits and capitalize on sugar's demand in the global economy, sugarcane required much more water.[236] Producing a single pound of sugar, for example, required about 500 gallons of water.[237]

Plantations extracted both surface and ground water to take full advantage of the abundance of Maui Komohana.[238] To meet the increasing demands, plantations constructed extensive networks of irrigation systems included surface water diversions, ditches, wells, pumps and other transportation and storage systems.[239] These systems were in direct contravention of Maoli custom, traditions, and law[240] and were used as a literal "framework for conversion" to "accumulate[] wealth."[241] A mere two decades later, these for-profit corporations had already amassed artesian wells, eight reservoirs, and over twenty-five miles of ditches to transport water for their crops and manual labor.[242] At peak capacity, these plantation ditches could carry over 200 million gallons of water per day across Maui Komohana.[243] Pioneer

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[234] "Waʻa" translates to canoe. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=wa%CA%BBa (last visited Aug. 23, 2024).

[235] *See generally* Carol MacLennan, *The Mark of Sugar: Hawaiʻi's Eco-Industrial Heritage*, 29 HIST. SOC. RSCH. 37–41 (2004) (discussing the ecological changes to Hawaiʻi pae ʻāina by both Hawaiian settlers in wā kahiko and malihini agribusiness in the 19th century and noting that only through the industrial sugar ecology did Hawaiʻi transform to an extractive "industrialized environment").

[236] WILCOX, SUGAR WATER, *supra* note 23, at 1.

[237] *Id.*

[238] *See id.* at 126, 135 n.178.

[239] *Id.* at 135–38 (noting that by 1920, the sugar industry was diverting surface water from its natural course in excess of 800 MGD and pumping an additional 400 MGD of groundwater).

[240] *See, e.g.*, Summer Sylva, *Indigenizing Water Law in the 21st Century: Na Moku Aupuni O Ko 'Olau Hui, a Native Hawaiian Case Study*, 16 CORNELL J. L. & POL'Y 563, 566–68 (2007); Sproat, *Wai Through Kānāwai*, *supra* note 17, at 139–41.

[241] OSORIO, DISMEMBERING LĀHUI, *supra* note 221, at 252.

[242] WATER AND POWER IN WEST MAUI, *supra* note 229, at 54.

[243] *Id.* at 56.

Mill's eight diversion systems alone utilized over 50 million gallons of water per day by the 1930s.[244]

This swift and unrestrained development capitalized on Maui Komohana's abundant resources, fueled by an unabashed desire to extract ʻāina momona for economic gain.[245] To mask the consequences of this extraction, colonial-influenced narratives framed the construction of these systems as a domineering innovation by ingenious developers; thus shaping the broader perception of "development" throughout Hawai'i.[246] These colonial-influenced narratives supplanted the vast moʻolelo that portrayed Hawai'i's ʻāina as an intricate and reciprocal system of abundance.[247] For plantation capitalism to succeed, there could be no injustice.

B. *Replacing Maoli Narratives of Abundance*

Honokōhau Valley is one poignant example of a justified colonial narrative. The valley once held thousands of loʻi kalo that both relied on the traditional systems of biocultural resource management and provided food.[248] The Commission on Water Resource Management's 1993 Report on Appurtenant Water Rights notes that Honokōhau Valley hosted "extensive" loʻi and ʻauwai[249] throughout the valley, with early 20th century maps documenting over fifty acres of historic loʻi.[250] At the turn of the 20th century, H.P. Baldwin and S.T. Alexander constructed Honokōhau ditch, which now comprises the larger Maui Land and Pineapple Company/Pioneer Mill Irrigation System ("MLP/PMIS"), Maui Komohana's "dominant irrigation system."[251] At the time it was constructed, the ditch was nearly

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[244] *Id.*

[245] *See* WILCOX, SUGAR WATER, *supra* note 23, at 15–23 (discussing the outsized and transformative role of the sugar industry on Hawai'i's economy, politics, and people).

[246] *See* WATER AND POWER IN WEST MAUI, *supra* note 229, at 58.

[247] *See infra* note 256 and accompanying text (describing narratives of "indomitable energy and business foresight" of ditch developers and settlers in relation to water diversions from Honokōhau Stream).

[248] WATER AND POWER IN WEST MAUI, *supra* note 229, at 67.

[249] "'Auwai" refers to traditional ditches or canals. WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=%CA%BBauwai (last visited Aug. 25, 2024).

[250] COMM'N ON WATER RES. MGMT., STATE OF HAW. DEP'T OF LAND & NAT. RES., APPURTENANT WATER RIGHTS SURVEY PHASE 1 6–11 (1993). It is important to note that the report highlights that the estimated acreage of loʻi did not include all historic loʻi. *Id.* at 6–12.

[251] WATER AND POWER IN WEST MAUI, *supra* note 229, at 56–57; *see also* DEP'T LAND & NAT. RES. COMM'N WATER RES. MGMT., INSTREAM FLOW STANDARD ASSESSMENT REPORT: ISLAND OF MAUI HYDROLOGIC UNIT 6014 HONOKOHAU 91 (2019), https://files.hawaii.gov/dlnr/cwrm/ifsar/PR201903-6014-Honokohau.pdf ("The Honokohau

fourteen miles long and had the capacity to accommodate thirty million gallons per day ("mgd") of water.[252] To justify the construction of a massive ditch system and the de-watering of Honokōhau Stream, the stream was framed as a "waste stream[]."[253] Media described the Honokōhau ditch as "another enterprise . . . whereby waste streams of Honokōhau valley" are able to supply land in Kāʻanapali—land that plantation company Pioneer Mill, would later develop into a "tourist resort destination."[254]

To promote the colonial influenced narrative, and to suppress the collective memory of abundant ʻāina momona in Honokōhau, media further rejoiced the settlers at the helm of such developments. English-language media praised the "indomitable energy and business foresight" of individuals like H.P. Baldwin[255] who constructed these enormous ditches to make use of "waste streams."[256] Said another way: the only "beneficial" use of Maui Komohana's freshwater resources was to remove it from watersheds and Native communities to expand plantation enterprises. These patronizing narratives erased what Kānaka Maoli long knew and redefined what waiwai, or wealth, was in Maui Komohana: that "[t]he Lahaina people are fortunate

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Ditch was designed to remove water from the Honokohau Stream without returning it to any of the streams in order to supply irrigation water for pineapple and sugarcane land."). Honokōhau Stream is one of three streams referenced in the 1867 report on famine as being drained of water by plantations. D. Kahaulelio, *No Ka Wi*, KA NUPEPA KUOKOA, Apr. 13, 1867, at 4 [hereinafter Kahaulelio, *No Ka Wi*], *translated in* MALY & MALY, *supra* note 229, at 931 ("1. O ka nui o na hale wili ko ma Hawaii nei, oia he 33, aole o lakou mahiai, aka, kuai lakou i ka ai o na aina kalo. Honokohau, Halawa, Waipio, &c.—.").

[252] WATER AND POWER IN WEST MAUI, *supra* note 229, at 57. Pioneer Mill later increased ditch capacity in 1911–1915. *Id.* at 58.

[253] *Id.* at 57.

[254] *Id.* at 57, 59.

[255] *Id.* at 57 ("English-language media focused on the intrepid settler men who initiated the diversion project. 'Through the indomitable energy and business foresight of the Hon. H. P. Baldwin, three new ditches will be finished on Maui in 1904.'" (citation omitted)).

[256] WATER AND POWER IN WEST MAUI, *supra* note 229, at 57. In recounting the origins of the earliest development of the Pioneer Mill Irrigation System (PMIS) in Maui Komohana, the *Pacific Commercial Advertiser* noted that the "Honokōhau ditch is another enterprise brought to completion . . . whereby waste streams of Honokōhau valley are brought out on to the Kaanapali lands, and in to Lahaina for extending cane fields of the Pioneer plantation." *Id.* (citation omitted); *see also* H.A. Wadsworth, *A Historical Summary of Irrigation in Hawaii*, XXXVII HAW. PLANTERS' RECORD 124, 144–45 (1933).

in obtaining such an abundant supply of fresh water. It will prove a good investment."[257]

Plantation capitalists transformed both ʻāina and the socio-ecological relationships upon it.[258] This conversion also disrupted the makeup and the nohona[259] of the Maui Komohana community, taking full advantage of the changing times in Hawai'i.[260] Just a few years before sugar cultivation exploded, Kānaka Maoli were grappling with Hawai'i's transition to a new system of governance and relationship to land: a conversion to fee simple ownership following the Māhele of 1848.[261] While Kānaka Maoli simultaneously navigated and embraced the Māhele, the process also resulted in land dispossession and loss of water access crucial "for traditional

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[257] WATER AND POWER IN WEST MAUI, *supra* note 229, at 58 (quoting *Big Ditch Completed*, PAC. COM. ADVERTISER, June 6, 1904, at 8, https://chroniclingamerica.loc.gov/lccn/sn85047084/1904-06-06/ed-1/seq-8/).

[258] *See* Sproat, *Water Law in Hawai'i, supra* note 170. "Traditional systems of land tenure and water management began to change with the arrival of foreigners, particularly Western merchants, in the Hawaiian archipelago." *Id.* at 533. "Instead of revering water as a life form of Kāne, plantation interests diverted and sold it with no regard for natural or cultural resources or for Kānaka Maoli or other affected communities." *Id.* at 537; Sproat, *Wai Through Kānāwai*, *supra* note 17, at 191 (describing the "cultural significance of mauka to makai flow, the negative impacts of diversions on Maoli culture, and the need for restoration"); Elizabeth Ann Hoʻoipo Kālaʻenaʻauao Pa Martin et al., *Cultures in Conflict in Hawai'i: The Law and Politics of Native Hawaiian Water Rights*, 18 U. HAW. L. REV. 71, 72–73 (1996) ("Just as a plant wilts and loses strength in the absence of water, Hawaiian life has suffered as access to water diminished through the dominance of foreign beliefs, values, practices and concepts of private property.").

[259] "Nohona" translates in this context to lifestyle or "mode of life." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=nohona (last visited Aug. 25, 2024).

[260] *Panel III—Plantation Disaster Capitalism: The Legacy of Settler Colonialism in Maui Komohana*, *supra* note 24; *see* Melissa Tanji, *Sugar Industry Had Hand in Creating Hawaii's Melting Pot*, MAUI NEWS (Jan. 10, 2016), https://www.mauinews.com/news/local-news/2016/01/sugar-industry-had-hand-in-creating-hawaii-s-melting-pot/ (reporting on the impact of sugar plantations in shaping Maui's community); Carol A. MacLennan, *Foundations of Sugar's Power: Early Maui Plantations, 1840–1860*, 29 HAWAIIAN J. HIST. 33, 54 (1995) (discussing how the western influence on the Kingdom government promoted sugar plantations through immigration policies, enforcement of labor contracts, building infrastructure, and reshaping land and water laws to benefit western agriculture over traditional Hawaiian subsistence practices).

[261] *See* MacKenzie, *supra* note 4, at 15 (discussing the various reasons why more ʻāina was not secured by makaʻāinana following the Māhele period); *see also* JON M. VAN DYKE, WHO OWNS THE CROWN LANDS OF HAWAIʻI? 40–42, 45–46 (2008) (discussing the division of lands and impacts on the makaʻāinana, or commoner population following the Māhele of 1848).

subsistence agriculture practices."[262] Starting in 1860 and through the early 1900s, "many native residents or their heirs, sold portions, if not all their personal lands to the forerunners of the Pioneer Mill Company," perhaps failing to fully appreciate what this meant for the lifestyle and practices that sustained them.[263] As plantation capitalism continued to increase in Maui Komohana, plantations also began transferring land, resulting in controversies "over water rights associated with the affected lands."[264]

Plantation ditch systems robbed each respective watershed of its lifeblood and unapologetically altered Maui Komohana's landscape without regard to its communities. In many cases, the plantations' network of irrigation systems usurped traditional ditches built by Kānaka Maoli. Lahainaluna Ditch, for example, appropriated a traditional ʻauwai, ʻAuwai o ʻAwaiawao, to service its water-thirsty sugar crop.[265] This particular ʻauwai is credited as the "earliest in [its] vicinity," and could be traced to the 1300s as a means, in part, to honor the aliʻi of a specific place.[266] ʻAuwai, or traditional irrigation ditches, are often a part of a larger and interconnected traditional irrigation system designed to support the overall health of the resource and watershed.[267] As a key part of the traditional resource management systems of the early 1800s, ʻAuwai o ʻAwaiawao was stewarded by the aliʻi of the place for the benefit of all.[268] When the school, Lahainaluna, was established in 1831, the high-ranking Queen Kaʻahumanu and other aliʻi gifted ʻāina and resources to support the school's creation; including ʻAuwai o ʻAwaiawao.[269]

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[262] MALY & MALY, *supra* note 229, at 13.

[263] *Id.*

[264] Sproat, *Water Law in Hawai'i*, *supra* note 170, at 533.

[265] MALY & MALY, *supra* note 229, at 47.

[266] *Id.* at 4, 16 ("The earliest ʻauwai in the Lahainaluna vicinity, is known as ʻAuwaiawao, and is reportedly named for the Chiefess Wao, sister of Kaululāʻau, who ruled a portion of Maui in ca. 1390.").

[267] *See, e.g.*, A. UʻILANI TANIGAWA LUM ET AL., DEP'T OF LAND AND NAT. RES., WAIʻOLI VALLEY TARO HUI LONG-TERM WATER LEASE FOR TRADITIONAL LOʻI KALO CULTIVATION, FINAL ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT 79 (2021) (discussing how the health of loʻi kalo irrigation systems, which include ʻauwai, "is critical for the sustainability and resilience of the watershed as a whole").

[268] MALY & MALY, *supra* note 229, at ii (finding that ʻauwai were a crucial means of "dispersing the wealth and resources of the land among the large chiefly and commoner populations of the Kauaʻula-Lahaina region").

[269] *Id.* at 41 (quoting esteemed Hawaiian historian John Papa ʻĪʻī (citation omitted)).

At some point, Pioneer Mill assumed control of the ‘auwai, erased the name and mo‘olelo of this ‘auwai, and adopted it into its own privatized system.[270]

During this colonial-influenced plantation era, powerful sugar planters pervaded political life throughout the larger island chain. Plantation capitalists became powerful landowners, businessmen, and politicians.[271] Plantation politics mirrored the "legacy of the tight and overlapping relationships among white settler landowning businesses"[272]—colonial practices that influence agribusiness political operations today.[273] In time, plantation capitalism's exploitative practices shifted to meet the tourism demand,[274] resulting in profound impacts on kama‘āina[275] and the lifestyles that sustained this particular ‘āina for generations.[276]

Against the backdrop of the highly contested 1898 Joint Resolution of Annexation,[277] Hawai‘i, and Maui Komohana in particular, was in a battle with dominant narrators over the collective memory of place. By centering the narratives of settler plantations and by suppressing Kānaka Maoli

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[270] *See, e.g.*, *id.* at 47 ("From field visits, and a review of histocial [sic] maps, it appears that the alignment of the Lahainaluna Ditch was later modified as a part of the Pioneer Mill Company operations.").

[271] SOVEREIGN SUGAR, *supra* note 230, at 47 ("Land quickly passed into the hands of sugar planters and foreign investors through either sale or lease. Once the sale of large land tracts slowed after the 1860s boom, leased government lands became the primary means for starting new sugar plantations—especially after reciprocity in 1876.").

[272] WATER AND POWER IN WEST MAUI, *supra* note 229, at 53.

[273] *Cf.* Hofschneider & Bittle, *supra* note 25.

[274] *See* WATER AND POWER IN WEST MAUI, *supra* note 229, at 59–61 (describing Pioneer Mill Company's transition from sugar operations and active agriculture to developing Kā‘anapali as a tourist resort destination).

[275] "Kama‘āina" translates to "native-born" or "one belonging to a land." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=kama%CA%BBaina (last visited Aug. 26, 2024).

[276] *See generally* MacLennan, *Hawai‘i Turns to Sugar*, *supra* note 231, at 98 (describing the rapid growth of plantations on Maui during the Civil War boom period); Katie Rodriguez, *How Centuries of Extractive Agriculture Helped Set the Stage for the Maui Fires*, CIVIL EATS (Aug. 23, 2023), https://civileats.com/2023/08/23/how-two-centuries-of-extractive-agriculture-helped-set-the-stage-for-the-maui-fires/ (interviewing Indigenous agriculture Professor Noa Lincoln on the impacts of extractive sugarcane plantation practices in Maui Komohana); Kanaeokana, *Ke‘eaumoku Kapu Keynote: 22nd Annual Native Hawaiian Convention*, YOUTUBE (Nov. 22, 2023), https://www.youtube.com/watch?v=0I5E8T9FBcs (sharing some of the inoa maoli of Lahaina and outlining the traumatic impacts of the plantation economy and August wildfires on the lifeways of Maui Komohana kupa).

[277] Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, H.R.J. Res. 259, 55th Cong., 30 Stat. 750 (1898) (enacted).

histories and protests, sugar plantations in Hawaiʻi wielded significant power over justice and injustice in 20th century Hawaiʻi.

This colonial-influenced and once dominant memory of the injustice, outlined briefly above, is that there was no injustice at all. It was justified and necessary. Constructed largely by western plantation economic interests, that memory, or narrative, explained the loss of ʻāina and the diversion of stream water away from Kānaka Maoli communities for use by agribusiness as a natural and beneficial occurrence, consistent with concepts of western property rights and capitalism's concept of maximization of profit for corporate businesses. According to this colonial narrative, American confiscation of land and water merely supplanted ineffectual Maoli stewardship and benefited Hawaiʻi's economy and wealth. These colonial-influenced narratives, partially outlined above, spun the destruction of Kānaka Maoli ʻāina and practices as natural and right, meaning there was no injustice at all. At various points throughout Hawaiʻi's history, however, Kānaka Maoli have directly challenged this once-dominant narrative to reframe the injustice and lay the foundation for measures of restorative justice grounded in cultural knowledge and legal advocacy.

V. PHASE II: KĀNAKA MAOLI'S SUCCESSFUL ADVOCACY TO REFRAME SUGAR PLANTATIONS' (DE)CONSTRUCTION OF COLLECTIVE MEMORY IN MAUI KOMOHANA

A constellation of struggles,[278] tireless advocacy and courage, and triumphs have meaningfully imbued the Native-centered emergent collective memory of injustice in Maui Komohana with truth, aloha, and renewed abundance.[279] Across Maui Komohana, kamaʻāina—people tied to the land—have rallied to encourage decisionmakers to restore water to Maui

[278] Reminiscent of Noelani Goodyear-Kaʻōpua's Introduction to A NATION RISING HAWAIIAN MOVEMENTS FOR LIFE, LAND, AND SOVEREIGNTY: "A constellation of land struggles, peoples' initiatives, and grassroots organizations gave rise to what has become known as the Hawaiian movement or the Hawaiian sovereignty movement. These Hawaiian movements for life, land, and sovereignty changed the face of contemporary Hawaiʻi." Goodyear-Kaʻōpua', *supra* note 25, at 1.

[279] *See* Hom & Yamamoto, *supra* note 45, at 1764 (describing how "group members, lawyers, politicians, justice workers, and scholars possess often unacknowledged power at the very foundational stages of every redress movement").

Komohana's streams as a measure of belated restorative justice.[280] Community activism and steadfast 'ohana restored ancient lo'i kalo despite plantation capitalism's deep entrenchment in this place.[281] Community advocacy specifically confronted plantation capitalism's years of appropriation that drained Maui Komohana of wai. In the last few decades—both before and after the fires—Kānaka Maoli communities fought to reveal the falsity of the plantations' narrative and the insidious moves behind it.[282] These incremental steps towards justice recalled mo'olelo and leveraged cultural practices like mele and hula to tell a compelling story of resistance and reach into the archives of mind[283] to triumph in the ongoing battle over collective memory.

Kama'āina directly challenged foreign plantation schemes. They utilized traditional mo'olelo to underscore and denounce the drastic changes transforming their 'āina. In 1867, D. Kahā'ulelio wrote in Ka Nūpepa Kū'oko'a, a prominent Hawaiian language newspaper, to share his recollection of Lahaina when it hosted numerous lo'i and plains with food like 'uala (sweet potato), but that those 'āina changed to kō (sugar).[284] Kahā'ulelio further noted that by 1867, previously plentiful water used by farmers was completely lost to kō.[285] In 2022, kupa of Maui Komohana, scholar, advocate, and kumu 'ōlelo Hawai'i (Hawaiian Language teacher), Kanoelani Steward, examined Maui Komohana's history of wai with an

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[280] COMM'N WATER RES. MGMT., MINUTES FOR THE MEETING OF THE COMMISSION ON WATER RESOURCE MANAGEMENT (June 14, 2022), https://files.hawaii.gov/dlnr/cwrm/minute/2022/mn20220614.pdf.

[281] In 2017, over a decade since kalo had been grown in Kahoma Valley, Ka Malu o Kahālāwai, a non-profit organization of Maui Komohana kupa, restored streamflow and lo'i kalo in the valley. *See* WATER AND POWER IN WEST MAUI, *supra* note 229, at 172–75.

[282] *See, e.g.*, *supra* Parts III and V.

[283] *See* Hom & Yamamoto, *supra* note 45, at 1764. ("The digging we must do is not only into the documentary archives, but also into the archives of mind, spirit, and culture-then and now. In digging, we need to acknowledge that we are not merely retrieving group memories. We are helping construct them as we go, within a context of not only rights norms but also larger societal understandings of injustice and reparation. These memories are shaped by, and in turn share, daily cultural practices as well as major events."). *Id*.

[284] Kahaulelio, *No Ka Wi*, *supra* note 251, at 4 ("Ma Lahaina, nui na loi a me na kula uala i piha i ka ai mamua, a i keia wa, lilo i ke kanu ko. . . . Nui ka wai i loaa i ka poe mahiai mamua, a i keia wa ua lilo loa ka wai i ke ko . . . ." translated as: "in Lahaina, there were lots of taro patches and sweet potato fields previously filled with food, and now, it turned to sugar cane. Farmers had lots of access to water before, and now it is lost to the sugar cane.").

[285] *Id.*

emphasis on the effects stemming from sugar production.[286] Her research reflected on and leveraged 17th-century moʻolelo as a means to contextualize the destructive impacts of plantation-era practices on "water usage and distribution" and to re-invigorate the Native narrative that leads to "further mitigation and rectification."[287] Utilizing Nūpepa Hawaiʻi (Hawaiian Language Newspapers) to uplift language-based history, Steward highlighted that "lilo koke ʻana akula o nā ʻāina momona i ka ʻoihana wili kō," that ʻāina momona were quickly lost to sugar cane production.[288] Relying on Native accounts in nūpepa Hawaiʻi, she also underscored that it was during the peak of the sugar mill industries that this community saw the *complete* diversion of water from Lahaina.[289]

Native accounts, and Kahāʻulelio in particular, illuminated the early impacts of plantation capitalism in Lahaina's 1867 famine.[290] A four-person investigative committee researched and identified the "causes of diminishing food supplies in Lahaina."[291] Tracing the increase of sugar mills in Hawaiʻi,[292] the report "attribute[d] the food problem," among others of great importance, "to the growing development of sugar plantations."[293] It detailed

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[286] Kanoelani Steward, "He Wai E Inu, He Wai E Mana, He Wai E Ola": He Noiʻina no ka Wai o Maui Komohana (2022) (M.A. Thesis, University of Hawaiʻi at Hilo) (on file with author) [hereinafter Steward, *He Wai e Inu, He Wai e Mana*].

[287] *Id.* at *ii*.

[288] *Id.* at 10.

[289] *Id.* at 11 ("Ma ia wā i hiki nui ai ka ʻoihana wili kō i ʻike pū ʻia ai ka lawe piha ʻia o ka wai i wai kō ma Lahaina . . ." translates to "During the peak of the sugar mill industries arrival was the same time that we saw the complete diversion of water from Lahaina . . . ."); *see also* Lilia Davis et al., *Hālau Lahaina, Malu I Ka ʻUlu: An Educational Resource Honoring Lahaina*, ARCGIS STORYMAPS (Nov. 22, 2023), https://storymaps.arcgis.com/stories/a0d44378864b484ba4011d297a19ad03 (sharing various English translations of poke mōʻaukala of nūpepa Hawaiʻi during the mid to late 1800s that "provide a glimpse into life in Lahaina" during the pivotal transformation from traditional agriculture to sugar agribusiness).

[290] Adam Keawe Manalo-Camp, *How the Verdant Lands of Lele Became Arid Lahaina*, KA WAI OLA (Oct. 1, 2023), https://kawaiola.news/moomeheu/moolelo/o-ka-malu-ulu-o-lele/#:~:text=By%201867%2C%20large%2Dscale%20sugar,first%20time%20in%20its%20history.

[291] MALY & MALY, *supra* note 229, at 930.

[292] At the time of the 1867 article's publication, there were 33 sugar mills throughout Hawaiʻi. *Id.* at 931.

[293] *Id.* at 930.

the extensive impact that sugar plantations had on ‘āina, causing Kānaka to abandon “traditional subsistence practices” and the land upon which these practices were sustained.[294] In Maui Komohana, plantations were not only seizing water once available to mahi‘ai,[295] but also supplanting kama‘āina who stewarded food-growing ‘āina.[296] Rather than farming kalo lands, plantations were purchasing and “burn[ing] up *kalo* lands.”[297] Reflecting on these historical accounts in the context of present-day advocacy for wai, Steward notes: “‘O ia nō paha ka wā i ho‘omaka ai ka hemo ‘ana o ka pilina o ka ‘āina me ke kanaka ma Lahaina,”[298] (“This is perhaps the time that the relationship between ‘āina and kanaka was severed, one of the many consequences of sugar plantations’ exploitation and disruption for foreign gain”).[299] Despite these mounting challenges, Kānaka Maoli would continue to fight to restore this relationship with water, directly confronting plantation agriculture.

In the 1890s, Kānaka Maoli advocacy achieved victory at the Hawai‘i Supreme Court in *Horner v. Kumuli‘ili‘i*.[300] Amidst plantations’ rapid expansion in Maui Komohana, Pioneer Mill sued small family kalo farmers and challenged the traditional system of water management in the area.[301] Hawai‘i’s highest court disagreed with the plantation and reaffirmed maka‘āinana’s right to use water using a traditional and “ingenious ‘eleven day’ system”[302] that had long supplied water in the area. *Horner v. Kumuli‘ili‘i* remains a beacon of success for this community and continues to resonate in Kānaka Maoli’s present-day advocacy.

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[294] *Id.*

[295] “Mahi‘ai” translates to “cultivator of soil” or “farmer.” WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=mahi%CA%BBai (last visited Apr. 5, 2024).

[296] MALY & MALY, *supra* note 229, at 931.

[297] Kahaulelio, *No Ka Wi*, *supra* note 251, at 4, *translated in* MALY & MALY, *supra* note 229, at 931 (“1. O ka nui o na hale wili ko ma Hawaii nei, oia he 33, aole o lakou mahiai, aka, kuai lakou i ka ai o na aina kalo. Honokohau, Halawa, Waipio, &c.—.”).

[298] Steward, *He Wai e Inu, He Wai e Mana*, *supra* note 286, at 5.

[299] *Id.* (translation by Author).

[300] 10 Haw. 174 (Haw. Rep. 1895). “While the system [of irrigation] must be preserved . . . and the rotation of the water supply as above set forth must continue, the system must continue to have the other features which it had under the old konohikis.” *Id.* at 181. *See also* Chang, *supra* note 34, at 384–85.

[301] WATER AND POWER IN WEST MAUI, *supra* note 229, at 6–12.

[302] *Kumuli‘ili‘i*, 10 Haw. at 180. The opinion also went on to say that this traditional irrigation system “elaborated from long experience by men whose aim was to secure equal rights to all and to avoid quarrels, [and] was to give the mauka lands in rotation sufficient water for the successful growing of kalo.” *Id.* at 180–81.

Mirroring the foundation of successful advocacy in *Kumuliʻiliʻi*, Kānaka Maoli intentionally engaged in state-centered processes to challenge the plantation capitalist status-quo in recent years. Their work sought to restore pono and the lifeblood of Maui Komohana's streams. In Honokōhau, for example, the State Commission on Water Resource Management proposed an Interim Instream Flow Standard ("IIFS"),[303] the primary mechanism for managing surface water that dictates the minimum amount of stream flow "necessary to protect the public interest in the particular stream."[304] In May 2021, after conducting scientific studies and collaborating with the community and various stakeholders—including plantation companies that continued to operate diversions on the stream—the Commission's staff submittal leveled the playing field for kamaʻāina and once again prioritized public trust uses as required by the law.[305]

In the first phase, the IIFS, or the minimum amount of water in the stream at any given time after years of instability, restored "64% of median base flow" plus additional flow for groundwater gains.[306] The new IIFS was to be "in excess of the water needs to support the existing needs of loʻi as well as future acreage while protecting aquatic biota, recreation, and domestic uses at all elevations, and ensuring sufficient water to meet traditional and customary practices *100%* of the time in Honokōhau Valley."[307]

Kamaʻāina testimony in support of the Commission's action centered on the traditional moʻolelo of abundance and their staunch commitment to continue their traditional and customary practices regardless of the difficulties imposed by plantation practices.[308] Their voices also revealed

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[303] HAW. REV. STAT. § 174C-71(1) (2013). The commission has the duty to "[e]stablish instream flow standards on a stream-by-stream basis whenever necessary to protect the public interest in waters of the State[.]" *Id.* The commission also has the duty to establish interim instream flow standards, or IIFSs. *See id.* § 174C-71(2). Interim instream flow standards are "a temporary instream flow standard of immediate applicability, adopted by the commission without the necessity of a public hearing, and terminating upon the establishment of an instream flow standard." HAW. REV. STAT. § 174C-3.

[304] *Id.*

[305] COMM'N WATER RES. MGMT., STAFF SUBMITTAL 3 (May 18, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20210518B2.pdf.

[306] *Id.* at 5.

[307] *Id.* at 5–6 (emphasis added).

[308] COMM'N WATER RES. MGMT., MINUTES FOR THE MEETING OF THE COMMISSION ON WATER RESOURCE MANAGEMENT 5-15 (May 18, 2021),

their generational ties, deep seated kuleana to the place, and committment to traditional practices. Kalei Ka'uhane, a mahi'ai kalo and kama'āina of Niu'ula, Honokōhau, spoke of his kūpuna's ingenuity to engineer the ancient lo'i system that historically fed "four 'ili and used to irrigate two-hundred [and] nine (209) lo'i [kalo]."[309]

Returning wai to Honokōhau was a significant step in redirecting the collective memory of injustice for Maui Komohana's water resources. Haunani Yamada, a young woman being raised in Honokōhau shared: "Ko'iko'i ka ho'i 'ana i ka wai i Honokōhau no nā i'a ma ke kahawai, nā lo'i kalo, a me nā kānaka a me nā mea ola a pau ma Honokōhau" ("It's important to restore the water for fish in the river, the lo'i kalo, and the people of Honokōhau").[310] Kalama'ehu Takahashi, in support of the proposed action said it best: "The return of wai is a[n] integral and powerful metaphor for the cultural resurge[nce] within Honokōhau Valley" through a plethora of traditional and customary practices including lo'i kalo cultivation, place-based and 'ōlelo Hawai'i education that is "rooted in a multi-generational 'ike, of this community and these 'ohana."[311] This action was a meaningful first step for redress and resurgence representative of the community's success in the constant battle over collective memory.

The chorus of support and of reclamation also directly confronted the long dominant colonial narrative, some of which is highlighted in Section IV above, in Honokōhau Valley. Their testimonies urged a return of a more resonate narrative to kama'āina, the true experts of the place. Kalei Ka'uhane recalled a time in which farmers had kuleana over their 'āina and were "severely punished for a violation."[312] The community spoke of the plantations' inability to properly steward the resource and system, an inability that was often to the detriment of public trust purposes.[313] Karyn Kanekoa, kumu 'ōlelo Hawai'i, kupa, and alaka'i in the non-profit

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https://files.hawaii.gov/dlnr/cwrm/minute/2021/mn20210518.pdf [hereinafter CWRM MAY 18, 2021 MEETING].

[309] *Id.* at 9.

[310] *Id.* at 7 (translation by Author).

[311] *Id.* at 8.

[312] *Id.* at 10.

[313] *Id.* at 9. Wili Wood shared that "[t]here have been many occasions where our entire crop has been destroyed due to lack of water in the stream which could've been avoided with proper maintenance of Taro Gate by MLP." *Id.* Kalei Ka'uhane shared that "(MLP) can't clean Taro Gate within the three (3) day response time. It goes to show MLP are not good stewards of the water." *Id.* at 9–10. Kanoelani Steward shared that "MLP has still failed to intake their intake system since the 2019 water complaint." *Id.* at 14.

organization Nā Mamo Aloha ʻĀina o Honokōhau,[314] urged the Commission to bring the law to life and ensure that the "stream life and kalo takes precedence over gentlemen estates, resorts and golf courses," and begin redress for over a century of suffering "due to the plantation diversions, water mis-management neglect and abuse."[315] She encouraged the Commission to acknowledge the insidious motivations behind the colonial-influenced narratives and embrace the emergent Maoli narrative.

The emerging Maoli narrative of injustice also underscored the urgent need to repair harms done. Kalei Kaʻuhane centered the plantations' historic and ongoing mismanagement alongside the laws and policies that protect water as a resource for all: "By the laws [and policies] set by th[is] Commission, let's hold [plantations like] MLP [Maui Land and Pineapple Company] accountable for the neglect of these ditches to make repairs and adjustments at intake . . . ."[316] Uncle Archie Kalepa also bolstered broader community support by sharing that the ʻohana in Honokōhau had kuleana to this specific place as "their home and they understand it better than anyone else."[317] As a measure of redress, and as an important step towards pono, Uncle Archie emphasized the Commission's need to "believe in and support the community for it to thrive."[318] Said another way, Uncle Archie, a kamaʻāina tied to this place, asked the decisionmaking body to prioritize the community voice and perspective. By doing so, his words implied a promise of abundance not just for the resource, but for the people who have historically relied on its life-giving waters. In a small step towards redressing injustices in Honokōhau, the Commission empowered the emerging Hawaiian narrative by approving the action.[319] This action restored water to

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[314] Nā Mamo Aloha ʻĀina o Honokōhau's mission, in part, is to preserve "the cultural history of Honokōhau valley . . . [and] to care and protect the natual [sic] and cultural resources of Honokōhau Valley." *General Info: Nā Mamo Aloha ʻĀina o Honokōhau*, HAWAIʻI BUSINESS EXPRESS, https://hbe.ehawaii.gov/documents/business.html?fileNumber=310614D2 (last visited Aug. 3, 2024).

[315] CWRM MAY 18, 2021 MEETING, *supra* note 308, at 10.

[316] *Id.*

[317] *Id.* at 11.

[318] *Id.*

[319] *Id.* at 2; *Water Panel Sets Flow Standards for West Maui Streams*, MAUI NEWS (May 20, 2021), https://www.mauinews.com/news/local-news/2021/05/water-panel-sets-flow-standards-for-west-maui-streams.

Honokōhau Stream and took meaningful steps to prioritize public trust purposes—just one instance of Kānaka Maoli's successful advocacy to reframe and address the injustices of plantation capitalism.

VI. PHASE III: PLANTATION DISASTER CAPITALISM: A MODERN-DAY BATTLE OVER THE COLLECTIVE MEMORY OF INJUSTICE

> "We as a people have been voyaging for thousands of years. We understand voyaging. We understand storms. In Lahaina, we've been sailing in a different kind of storm for the past 150 years. This has been the storm of westernization, industrialization and colonialism. This is the storm that reached a peak on August 8."[320]

The kama'āina of Maui Komohana have long resisted the storms of colonialism and the trail of injustice that followed.[321] As revered leader and waterman, Uncle Archie Kalepa puts it, Kānaka Maoli *deeply understand* the challenges that come with living on an island in the middle of the ocean[322]—in large part due to the mo'olelo and Maoli values that supported a reciprocal relationship between 'āina and kanaka.[323] This relationship also facilitated and managed resources for the benefit of all.[324] But, in the last few decades

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[320] Osher, *Navigating Change*, *supra* note 212 (quoting community leader and kupa of Maui Komohana, Archie Kalepa).

[321] *Supra* Part V.

[322] *See id.*; CWRM MAY 18, 2021 MEETING, *supra* note 308.

[323] Tanigawa Lum, *supra* note 39, at 308 ("Innately intertwined with 'āina, the survival of Kānaka Maoli culture stems, in large part, from their familial and reciprocal relationship with 'āina."); *see also* Jamaica Heolimeleikalani Osorio, *Kū Kia'i Aloha: How Maunakea and the Battle to Protect Her Birthed a Decolonial Pilina in an Emerging Generation of Aloha 'Āina*, *in* THE ROUTLEDGE INTERNATIONAL HANDBOOK OF INDIGENOUS RESILIENCE 300, 305 (Hilary N. Weaver ed., 2022); Kamanamaikalani Beamer, *Tūtū's Aloha 'Āina Grace*, *in* THE VALUE OF HAWAI'I 2 11, 13 (Aiko Yamashiro & Noelani Goodyear-Ka'ōpua eds., 2014); Shawn Malia Kana'iaupuni & Nolan Malone, *This Land Is My Land: The Role of Place in Native Hawaiian Identity*, 3 HŪLILI: MULTIDISCIPLINARY RSCH. HAWAIIAN WELL-BEING 281, 299 (2006) ("Hawaiians to this day see a dynamic, intimate relationship in the reciprocal nature of caring for the land (mālama 'āina) as it cares for the people, much like a family bond.").

[324] Due to water's significance in Maoli culture, "water was not a commodity that could be reduced to physical ownership. Instead, it was a resource that ali'i (chiefs) managed for the benefit of the community as a whole." Sproat, *Water Law in Hawai'i*, *supra* note 170, at 530; *see also* HAW. CONST. art. XI § 1 ("all public natural resources are held in trust by the State for the benefit of the people") and art. XI § 7 ("to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people"). Together, those provisions adopt the public trust doctrine "as a fundamental principle of constitutional law in Hawai'i." *In re*

especially, kamaʻāina have made incremental shifts and profound progress towards righting this injustice both by restoring wai in Maui Komohana and by overcoming the emerging dominant colonial narrative.[325] Settlers who have benefitted from the status quo employ the same dominant narrative—whether consciously or sub-consciously—to ardently push back against Kānaka Maoli success.[326] Colonial-influenced narratives continue to echo in the 21st century as resistance to Native-centered emerging narratives. As a result, plantation capitalism has evolved into plantation *disaster* capitalism, revealing a modern-day battle over the collective memory of injustice.[327]

In the wake of the 2023 fires, settlers embracing plantation disaster capitalism and the constructs of settler history it relies on—doubled down on the colonial narrative, revealing their blatant misunderstanding of and deep seated bias against Hawaiʻi's people and culture.[328] That culture, particularly Kānaka Maoli traditions and customs governing water and natural resources, support ʻāina momona, maintain pono, and are protected in Hawaiʻi's constitution and statutes.[329]

Professor Yamamoto's work highlights that the present-day reconstruction of collective memory importantly implicates power and culture, like Hawaiʻi's traditions and customs governing water and natural resources that are an important part of both Kānaka Maoli life and the law.[330] Traditional and customary practices support and facilitate ʻāina momona and human relationships with land. These customs and traditions are also specifically protected in Hawaiʻi's constitution and statutes.[331] These provisions are

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Waiāhole Combined Contested Case Hearing (*Waiāhole I*), 94 Hawaiʻi 97, 132, 9 P.3d 409, 444 (2000) (footnote omitted).

[325] *See supra* Part V; *see, e.g.*, *infra* Section IV.B.

[326] *See supra* Section IV.A; MacKenzie & Sproat, *supra* note 49, at 486 (describing the "reactionary forces" and colonizer memory raised in pushback to Jon Van Dyke's contextual analysis of the Crown Lands Trust).

[327] *See* Klein & Sproat, *supra* note 18.

[328] *See supra* Section IV.A.

[329] Klein & Sproat, *supra* note 18.

[330] Hom & Yamamoto, *supra* note 45, at 1765.

[331] *See, e.g.*, HAW. REV. STAT. § 1–1 (2022) (adopting English common law, except as "established by Hawaiian usage"); §§ 7-1, 174C-101 (reaffirming traditional and customary rights of Kānaka Maoli in the Water Code); *see also* David M. Forman & Susan K. Serrano, *Traditional and Customary Access and Gathering Rights*, *in* NATIVE HAWAIIAN LAW: A TREATISE, *supra* note 4, at 787 (providing context around HAW. REV. STAT. § 1–1, and noting

grounded in restorative justice—they acknowledge harms and commit the state to repair them.[332] Constitutional protections around traditional and customary practices are enshrined in article XII, section 7.[333] When contemplating this historic amendment, delegates to the Constitutional Convention acknowledged the significant role that culture—through traditional and customary practices—played in "Hawaiian civilization."[334] Importantly, the amendment was to "encompass all rights of native Hawaiians" and was not to be "narrowly construed or ignored by the court."[335]

As Hawai‘i quickly mobilized to help the Maui Komohana community in the wake of the fires, power dynamics and Hawai‘i's culture became the crux of the contemporary struggle over the injustice. The public desperately tried to piece together what happened, who was at fault, and what the damage was. What version of history led us here? Was it the lack of water available to fight fires? Or was it a much more nuanced history riddled with radical transformations that took place over centuries?

In these "malleable moments,"[336] political officials gave plantation disaster capitalism momentum.[337] In an effort to shift blame towards traditional and customary practices, kalo cultivation was conveniently framed as at odds with larger beneficial uses, like fighting fires.[338] The

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that "the arrival of Westerners in 1778 radically altered Hawaiian society. In spite of these dramatic changes, Hawai‘i has recognized ancient custom and usage as integral parts of its statutory scheme since the inception of written laws").

[332] *See* Serrano, *Social Healing*, *supra* note 62, at 51–52.

[333] HAW. CONST. art. XII, § 7 ("The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.").

[334] Stand. Comm. Rep. No. 57, *in* CON PROCEEDINGS 1978, *supra* note 164, at 637, 640.

[335] *Id.*

[336] "It is in these malleable moments, when we are psychologically unmoored and physically uprooted, that these artists [or believers in the shock doctrine] of the real plunge in their hands and begin their work of remaking the world." *See* KLEIN, THE SHOCK DOCTRINE, *supra* note 33, at 25.

[337] *See, e.g.*, Tanaka, *supra* note 34 ("As people throughout Hawai‘i and the world came together to support the survivors of the devastating Lahaina wildfires, government and corporate actions quickly gave rise to deep concerns regarding their apparent exploitation of the disaster to roll back water protections long opposed by the landowner and developer community."); MALY & MALY, *supra* note 229, at 930.

[338] Michael Corkery et al., *Lahaina Fire Prompts a Shift in Maui's Long-Running Water Fights*, N.Y. TIMES (Aug. 20, 2023), https://www.nytimes.com/2023/08/20/us/maui-hawaii-water-supply.html; Bill Weir, *'Disaster Capitalism at Its Finest': Fights over Water Amid*

immediate reaction to the fires from Hawaiʻi's Governor, Josh Green, a malihini to Hawaiʻi himself, illustrated his lack of understanding of the full depth of Hawaiʻi's traditional and customary practices.[339] Instead, harnessing his power as Hawaiʻi's contemporary leader, in a livestreamed interview immediately following the fires, he characterized restorative justice protections and Hawaiʻi's cultural practices as a roadblock that has created an "impasse" over water on Maui.[340] This impasse, in the Governor's opinion, was the result of "people . . . fighting against the release of water to fight fires."[341] Rather than a source of abundance that sustained rich ʻāina, Green contended that traditional and customary practices locked up water.[342] He conceded that "we have to have water for the magnificent cultural things that we do with water across Maui," but quickly disparaged these practices as creating a "stalemate over and over and over again on how water will be used."[343]

This characterization also resonated with developer and major Maui landowner Peter Martin,[344] who continues to benefit from settler legacies of the plantation,[345] and who, in a shameless interview with national media, pronounced that water for traditional and customary practices as protected by our state constitution and statutes—was "a crock of shit."[346]

Hawaiʻi's Governor and Peter Martin "filter[ed] and twist[ed], recall[ed] and forg[o]t 'information'" to reframe "shameful past acts" that conveniently

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West Maui's Charred Ruins Ignite New Fears, CNN (Aug. 21, 2023), https://www.cnn.com/2023/08/21/us/hawaii-lahaina-water-wildfire/index.html; Elahe Izadi & Zoeann Murphy, *Lahaina's Deadly Fire Has Intensified Maui's Fight Over Water Rights*, WASH. POST, (Aug. 23, 2023), https://www.washingtonpost.com/climate-environment/2023/08/23/maui-water-rights-fires-lahaina.

[339] Weir, *supra* note 338.

[340] Corkery et al., *supra* note 338.

[341] Izadi & Murphy, *supra* note 338.

[342] *Id.*

[343] *A Conversation with Governor Josh Green*, *supra* note 63, at 20:03–:10.

[344] Hofschneider & Bittle, *supra* note 25.

[345] Peter Martin owns the West Maui Land Company, which has vast amounts of land that used to be used for sugar plantations. Kuʻuwehi Hiraishi, *Lawsuit Claims West Maui Developer's Misuse of Water Contributed to Destructive Fires*, HAW. PUB. RADIO (Oct. 2, 2023), https://www.hawaiipublicradio.org/local-news/2023-10-02/lawsuit-claims-west-maui-developers-misuse-of-water-contributed-to-destructive-fires. This land also includes a large irrigation system. *Id.*

[346] Kormann, *supra* note 218; *see also* Doyle, *supra* note 48, at 318–19.

lessened the respective responsibilities of state leaders and large corporate landowners.[347] By positioning themselves to the public as victims, they strategically increased their power at an important turning point in the disaster.[348] In an apparent disregard for the State Water Code, or perhaps as an illustration of his lack of understanding of the progressive legal regime, Hawai'i's governor argued that "we just lost lives because we don't have a water policy or a statewide plan that protects the land from burning."[349] His public comments vilified Kānaka Maoli as a means to justify overturning the community's incremental gains and Hawai'i's strong legal framework.[350]

Despite the Governor's hostility, and in direct conflict with his assertions, Hawai'i has had a comprehensive water plan for decades.[351] The Hawai'i Water Plan, adopted by the Hawai'i Commission on Water Resource Management in 1990, thirty-three years before the fires, is "the heart of the Water Commission's management framework."[352] The plan intended to "develop comprehensive long-range plans for the protection, conservation, and management of Hawai'i's water resources."[353] Executing this statewide plan to its fullest potential, however, has been stymied by existing power dynamics, political interference and a lack of resources[354]—not because it did not exist as the Governor argued. And, in deep contrast to his statements, Governor Green's response was actually to *suspend* the Water Code by emergency proclamation, effectively undercutting his own argument that the public trust and protections for traditional and customary practices were to blame for the fires. Plantation disaster capitalists, aided in part by governmental officials, deployed the fire to reframe significant restorative justice measures and attempt to roll back decades of Kānaka Maoli's hard-fought progress.

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[347] *See* Hom & Yamamoto, *supra* note 45, at 1758.

[348] *See id.*

[349] *A Conversation with Governor Josh Green*, *supra* note 63, at 23:56.

[350] *See id.* at 20:03–:10.

[351] HAW. ADMIN. R. § 13-170-2 (effective May 27, 1988) (requiring the Commission on Water Resource Management to "formulate an integrated program for the protection, conservation, and management of the waters of the state").

[352] Sproat, *Water Law in Hawai'i*, *supra* note 170, at 548.

[353] *Id.*

[354] *Id.* (detailing issues regarding funding restraints, lack of sufficient funding from the legislature, and the Hawai'i Water Plan's failure to adequately protect Native Hawaiian traditional and customary practices).

VII. E HOʻI KA NANI: A NEW PHASE TO REAFFIRM THE EMERGING COLLECTIVE MEMORY OF WAI AND JUSTICE IN MAUI KOMOHANA

Maui Komohana's kupa have successfully advanced the emerging collective memory of injustice to "hoʻi ka nani," to return glory and to restore pono.[355] This Article has traced ways in which a colonial-constructed narrative justified plantation capitalism and an ongoing disenfranchisement of Maui Komohana's ʻāina, natural resources, and people. This once dominant narrative runs afoul of restorative justice inspired protections for Hawaiʻi's unique customs and traditions and also underscores the need to bring the law to life in Maui Komohana's recovery and beyond.[356]

How the history of a place is told "determine[s] social understandings of justice" and how justice is achieved.[357] And because "[t]he construction of collective memory implicates power and culture,"[358] actively deploying cultural practices like moʻolelo, mele, and hula, to challenge colonial-constructs and reaffirm the emergent narrative—that is, a narrative grounded in restorative justice and Kānaka Maoli customs and traditions—is particularly powerful for Kānaka Maoli and other Native Peoples. Done in this manner, a compelling story places Native voices at the center and "situates a group in relation to others in a power hierarchy."[359] This approach uplifts traditional moʻolelo and practices that promote the historic abundance—an abundance that endures today in line with the public trust. By utilizing Indigenous ways of knowing to dig into and reclaim history, moʻolelo and mele vivifies Kānaka Maoli's past,[360] reinforces Hawaiian identity,[361] and imagines the possibilities of a just path forward for Maui Komohana and Hawaiʻi nei.

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[355] *See supra* Part V.

[356] *See supra* Section II.B.

[357] Faʻagau, *supra* note 49, at 4.

[358] Hom & Yamamoto, *supra* note 45, at 1765.

[359] *Id.* at 1758.

[360] *See id.* at 1758.

[361] Zachary Alakaʻi Lum noted that:

> In a time of cultural reconstruction and restoration, every little pebble of who we once were, especially those found in mele, is paramount. Pebble by pebble, we continue [to] rebuild and redefine intellectual structures of

Community advocacy swelled in the aftermath of the August 2023 fires. In response to colonial narratives[362] attacking Kānaka Maoli, the community quickly mobilized to confront mistruths. They realized the importance of public discourse around wai and traditional and customary practices, and despite their own personal and collective loss, kama'āina showed up to specifically confront plantation disaster capitalism's active construction of the broader collective memory.[363] In September 2023, just a few weeks after the fires, kama'āina responded to the chicanery of Deputy Director Manuel's "redeployment" and suspension of the Water Code at the Commission on Water Resource Management's meeting.[364] Over the span of twelve hours, the community directly confronted the State-aided plantation disaster capitalism.[365] After working for years to achieve incremental successes to restore water to their streams, they implored the Commission: "Don't let us down now after we have worked so diligently to help establish these critical layers of protection."[366] Water Commissioners were compelled by the heartfelt stories and staunch commitment that the community shared. At the end of the monthly meeting, Commissioner Neil Hannahs revealed "how impressed and appreciated we were by the community engagement today and of their testimonies and seeing young faces also engaged in this process."[367]

As generations of injustices came to a head on August 8, 2023, Kānaka Maoli—both in Maui Komohana and beyond—have since stood on their cultural practices to weave songs and dances of support, aloha, and mana for

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> our ancestors, not only for scholarship's sake, but for the future and well-being of Hawaiians.

Lum, *Nā Hīmeni Hawai'i: Transcending Kū'ē, Promoting Kūpa'a*, *supra* note 40, at 3–4.

[362] *See, e.g.*, *A Conversation with Governor Josh Green*, *supra* note 63.

[363] CWRM SEPT. 19, 2023 MEETING, *supra* note 64; *1st Meeting of Commission Water Resource Management (CWRM) Since Maui Wildfires*, NATIVE HAWAIIAN LEGAL CORP. (Sept. 22, 2023), https://nativehawaiianlegalcorp.org/1st-meeting-of-commission-on-water-resource-management-cwrm-since-maui-wildfires/#:~:text=On%20September%2019%2C%202023%2C%20the,West%20Maui%20Land%20Co.%20to [hereinafter *1st Meeting of CWRM Since Maui Wildfires*].

[364] *1st Meeting of CWRM Since Maui Wildfires*, *supra* note 363.

[365] CWRM SEPT. 19, 2023 MEETING, *supra* note 64; *State Water Commission Outlines Actions and Alternatives for West Maui Water Management*, MAUINOW (Sept. 23, 2023, 7:00 AM HST), https://mauinow.com/2023/09/23/state-water-commission-outlines-actions-and-alternatives-for-west-maui-water-management.

[366] Hawai'i DLNR, *CWRM Maui Meeting, Oct. 24, 2023, Pt. 2-Ke Kula Kaiapuni Lahaina Luna Intermediate School Students*, VIMEO (Oct. 24, 2023, 9:36 PM), https://vimeo.com/877717618.

[367] CWRM MAY 18, 2021 MEETING, *supra* note 308, at 17.

Maui Komohana's ʻāina, resources, and people. Since time immemorial, cultural practices like mele and hula have housed and enlivened the histories of our people; stimulating emotions and intentions and thereby resulting in specific functions in Hawaiian society.[368]

In the last year, Kānaka Maoli practitioners have employed cultural practices on significant public platforms to bolster the Native-centered emerging narrative, contribute to broader public education, and importantly, to direct mana to ʻāina and kānaka in Maui Komohana.[369] Mele, or song, are oral traditions that house an expansive repository of knowledge and culture.[370] Engaging and activating the perspectives in mele allow Kānaka Maoli to tap into ancestral memory and build a present-day understanding of operating in the world. In this way, "[d]ay-to-day cultural practices" like mele and hula play a valuable role in framing the broader public's collective memory and in turn, "action on justice claims."[371]

The performance of these practices can be deeply moving for devastated Hawaiian communities mourning the loss of their town, families, and belongings. Importantly, these practices also serve to reinforce the importance and validity of the Hawaiian narrative: that cultural practices can guide Hawaiʻi into the future; and that today's struggles are most appropriately framed as ongoing exercises and impacts of historical harms that justify restorative justice measures. In this way, mele and hula "become[]

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[368] "The ʻōlapa perform mele hula recounting the histories of our people with the gesturing of their hands, the careful placements of their feet, and the unique expressions on their faces . . . . The ʻōlapa provide the visual presentation to the lyrics and together with the hoʻopaʻa, they stimulate various emotions." Robert Keawe Lopes Jr., Ka Waihona a ke Aloha: Ka Papahana Hoʻoheno Mele an Interactive Resource Center for the Promotion, Preservation and Perpetuation of Mele and Mele Practitioners 5 (December 2010) (Ph.D Dissertation, University of Hawaiʻi at Mānoa) [hereinafter Lopes, *Ka Waihona a ke Aloha*].

[369] *See, e.g.*, Wendy Osher, *Maui Hālau Share Ancient Hula on Kahiko Night of 2024 Merrie Monarch, Paying Tribute to Lahaina, Wailuku, Waikapū and ʻĪao*, MAUI NOW (Apr. 6, 2024), https://mauinow.com/2024/04/06/maui-halau-share-ancient-hula-on-kahiko-night-of-2024-merrie-monarch-paying-tribute-to-lahaina-wailuku-waikapu-and-%CA%BBiao [hereinafter Osher, *Hula Tributes for Maui*].

[370] *Supra* note 81. 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." *Id.* at 2.

[371] *See* Hom & Yamamoto, *supra* note 45, at 1759, 1765 (highlighting that for Native Hawaiians, "collective memory is ancestral—genealogy preserved orally over generations through chants.")

a catalyst for mass mobilization and collective action aimed at policymakers, bureaucrats" and perhaps most importantly, for the Hawaiian conscience; ultimately eliciting meaningful change.[372]

Amidst the devastation of the August 2023 fires, communities across Hawai'i pae 'āina quickly assembled to provide aid. Community organizations organized supply drives to ship to emergency shelters. In one instance, a traditional sailing wa'a "sailed ancestral pathways to deliver relief for Maui and inspiration for our Lāhui."[373] In less than two weeks, hula and mele practitioners organized a benefit concert, "Maui Ola,"[374] that featured old and new mele and over 100 hula practitioners and Kumu Hula.

Practitioners also used the platform to publicly confront the plantation disaster capitalism narrative that framed traditional and customary uses of water—and those who implement its protections—as the offender. Maui practitioner, Kumu Hula, and entertainer, Nāpua Silva, thanked Deputy Director Kaleo Manuel for being kūpa'a (steadfast) and "standing for what is pono . . . for water resource management on Maui."[375] She continued: "We look forward to the day that many things return to how they once were and how they should be."[376] Utilizing her reputation as an esteemed practitioner

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[372] *Id.* at 1757.

[373] Keli'i Grace (@keliigrace), INSTAGRAM, https://instagram.com/p/CwOOrrIpvsM/ (last visited Sept. 21, 2024) ("Our LOVE of home will bring us together. #mauiola From the crew of Hikianalia to the ILWU longshoremen, donated resources sailed ancestral pathways to deliver relief for Maui and inspiration for our Lāhui.").

[374] *See* MAUI OLA, https://www.mauiola.org (last visited Sept. 21, 2024). In less than 24 hours, practitioners raised over one million dollars. KĀHULI LEO LE'A, 2023 IN REVIEW 3, https://www.kahulileolea.org/2023-in-review.html.

[375] *Maui Ola Broadcast*: *Nāpua Silva, Kamaka Kukona, Po'okela Wood, & Dane Fujiwara*, MELE, https://stream.mele.com/videos/maui-ola-napua-silva-kamaka-kukona-po-okela-wood-dane-fujiwara (last visited Jan. 22, 2025).

> Through tragedy there always comes blessings. And the blessing of this is that we have so many heroes to thank. We want to thank our first responders, we want to thank the community of Maui that pulled together immediately to come to the kōkua of our families, and we want to thank each and every one of you from all over the world . . . and tonight especially, I lift up my leo mahalo [voice of gratitude] to Kaleo Manuel of the Water Commission and just mahalo you Kaleo for being kūpa'a, for being firm, and standing for what is pono, for what is right, for water resource management on Maui. We look forward to the day that many things return to how they once were and how they should be.

Id.

[376] *Id.*

and entertainer, she not only directly confronted the harmful statements about Kānaka Maoli and Deputy Director Manuel, but also envisioned a future in which water resources were restored to the abundance encapsulated in mele. In devastation there was collective aloha and resolve to provide support and semblances of healing for the Maui Komohana community.

Kānaka Maoli practitioners also found relevance in "old" mele and spoke new life to renew the perspectives housed within. In 1862, a series of mele written by a collective of haku mele (composers) were published in Ka Nūpepa Kūʻokoʻa.[377] These mele honored "Mānoanoa," and all included the line "e hoʻi ka nani," translated loosely as "let the glory return!"[378] Each of these mele begins with the refrain, "Mānoanoa nō he inoa lā," followed by recognizing a "makua," a parent, and then a specific place in Maui Komohana. The individual mele are heavily associated with Maui Komohana and include distinct political undertones. Based on these undertones, the mele's specific references and meanings, and understandings of the larger context of the rise of sugar plantations in Maui Komohana in the 1860s, some surmise that these honorific mele were "mele aloha ʻāina, a political statement to 'return the splendor' back to the wahi [places] showcased in these mele" in direct response to sugar plantation operations.[379]

"E Hoʻi ka Nani" has become a rallying cry for justice in Maui Komohana. One of the mele in the series in particular, "E Hoʻi ka Nani i Mokuʻula," has also risen to prominence for the kupa of Lahaina and for the restoration of Mokuʻula and Loko ʻo Mokuhinia.[380] As Kānaka Maoli quickly assembled to advance emergent Kānaka Maoli narratives around the fire, "e hoʻi ka nani" not only invoked a traditional mele written nearly 200 years earlier for this specific place, but also captured the community's commitment to return

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[377] *He Inoa no Manoanoa*, KA NUPEPA KUOKOA, June 14, 1862, at 4; *see also* MALU ʻULU O LELE: MAUI KOMOHANA IN NUPEPA KUOKOA (A. Uʻilani Tanigawa Lum & Keely S. Kauʻilani Rivera eds., 2020).

[378] *Id.* "Pua kōmela" also alludes to political undertones. "As Kīhei DeSilva explains it, the pua kōmela was a symbol used by Hawaiian nationalists in the mid-19th century, right around the time our mele was published. It was also during the 1860s that a huge increase in sugar mills occurred throughout Hawaiʻi." Hālau Nā Lei Kaumaka O Uka: Merrie Monarch 2024 Fact Sheets 39 (2024) (unpublished document) (on file with author) [hereinafter Hālau Nā Lei Kaumaka O Uka].

[379] Hālau Nā Lei Kaumaka O Uka, *supra* note 378, at 39.

[380] *See, e.g.*, Doyle, *supra* note 48.

and restore what once was. In this, individuals actively constructed their understanding of "what went wrong" and what led us to this tragedy, while also elevating traditional and customary practices to reclaim collective memory.

Kānaka Maoli also activated these particular mele—and the the lyrical content embedded within—through the practice of hula.[381] In April 2024, just seven months following the devastating fires, hula practitioners across the pae ʻāina gathered in Hilo, Hawaiʻi for the 61st annual Merrie Monarch Hula Festival. The internationally renowned festival has come to be known as the "Olympics of Hula" where invited hālau from Hawaiʻi and the U.S. showcase the very best of the practice of hula.[382] Numerous hālau, embodying their role as practitioners, focused on and dedicated their performances to Maui Komohana.[383] This task provided internal and external opportunities for hālau. Internally, each individual dancer did significant research into the mele's lyrics, history, and context, culminating not only in the hula on the Merrie Monarch stage, but also distilled within extended reports known as "Fact Sheets."[384] This task cultivated an intimate understanding of the mele and the places and characteristics within for each of the mele's dancers.

Externally, the performances powerfully situated Kānaka Maoli practices and narratives for the larger world to see and understand. Reflecting on the purpose and impact of the hula, Kumu Hula Nāpua Silva of Hālau Nā Lei Kaumaka O Uka shared: "It's important to us that the people from our island can relate to us. There is no purpose in us going to Merrie Monarch and having the rest of the world see what we do and think it's beautiful if our own

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[381] As esteemed Kumu Hula and Professor of Hawaiian Language, Dr. R. Keawe Lopes explains: "'[ō]lapa perform mele hula recounting the histories of our people with the gesturing of their hands, the careful placements of their feet, and the unique expressions on their faces. The hoʻopaʻa provides the audible presentation evoking mana into the lyrics, recalling relationships that are memorialized therein. The ʻōlapa provide the visual presentation to the lyrics and together with the hoʻopaʻa, they stimulate various emotions." Lopes, *Ka Waihona a ke Aloha*, *supra* note 368, at 5.

[382] CBS Sunday Morning, *The "Olympics of Hula,"* YOUTUBE (Aug. 4, 2024), https://www.youtube.com/watch?v=H_JVjj-heVg.

[383] *See* Osher, *Hula Tributes for Maui*, *supra* note 369.

[384] Hālau Nā Lei Kaumaka O Uka, *supra* note 378, at 39.

island [and people] cannot relate."[385] This mindset motivated the ʻōlapa[386] with a shared purpose, directed mana to the Maui Komohana community, drew attention to the ongoing Kānaka Maoli struggle, and educated a global audience about the abundance of this place—all from a Hawaiian way of knowing.

Hālau Nā Lei Kaumaka O Uka,[387] a returning hālau from Waiohuli, Maui, chose to honor Maui Komohana with both their hula kahiko (ancient hula) and hula auana (contemporary hula) performances. One of those mele, "E Hoʻi ka Nani i Paʻupaʻu," is a part of the 1862 nūpepa series and brought attention and mana to Paʻupaʻu, the hill immediately upland of Lahaina town. As a mele aloha ʻāina, "E Hoʻi ka Nani i Paʻupaʻu" boasts of the lush, vibrant beauty that was once associated with Lahaina. In contrast to the dominant, and more contemporary perspective that views this place as a dry and parched land, this 19th century mele encourages the listener to envision what Lahaina once was and what it again could be. Given this context, the hālau set out to share this mele as a means to "praise, honor, and call for the return of the lasting legacy of our kupuna as passed down through mele and moʻolelo."[388]

Hālau Nā Lei Kaumaka o Uka's modern performance, or hula ʻauana, also paid tribute to Maui Komohana. "Malu ʻUlu," is a 17th-century mele[389] that speaks of the famed beauty and protection of Lele and Maui Komohana. Hālau Nā Lei Kaumaka O Uka shared: "We offer this mele and its accompanying hula for our beloved island home, our community, and so

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[385] Chelsea Davis, *Halau hopes to offer hope, healing with Merrie Monarch performances dedicated to Lahaina*, HAW. NEWS NOW (Mar. 29, 2024, 12:02 PM HST), https://www.hawaiinewsnow.com/2024/03/29/maui-halau-will-honor-lahaina-this-years-merrie-monarch-festival/.

[386] "ʻŌlapa" translates to "dancer." WEHEWEHE WIKIWIKI, https://hilo.hawaii.edu/wehe/?q=%CA%BB%C5%8Dlapa (last visited Aug. 26, 2024).

[387] Author is a hoʻopaʻa (chanter) and alakaʻi (leader) of Hālau Nā Lei Kaumaka O Uka, and thus, able to share context and experiences from the hālau's participation in the Merrie Monarch Festival.

[388] Hālau Nā Lei Kaumaka O Uka, *supra* note 378, at 30.

[389] LEI NĀHONOAPIʻILANI: SONGS OF WEST MAUI, *supra* note 41. Epithets, like "malu ʻulu," embedded within mele are a testament to the ability to manage water in a manner that sustained the larger collective. Other ʻōlelo noʻeau associated with Maui Komohana are also a testament to this historical abundance. "Hālau Lahaina, malu i ka ʻulu," Lahaina is like a large hale shaded by breadfruit trees. MARY KAWENA PUKUI, ʻOLELO NOʻEAU: HAWAIIAN PROVERBS AND POETICAL SAYINGS 53 (1983).

many of our ʻohana in the malu of Lele. As we look to cast a new vision for our future, may *Malu ʻUlu*, and the ʻike that comes from our kūpuna, guide our efforts for a future of abundance for our ʻāina." Two of the six award-winning kahiko presentations at the 2024 Merrie Monarch Festival featured mele from 1862 nūpepa Hawaiʻi for Maui Komohana—an indication of the panel of judging Kumu Hula's approval and appreciation and an indication to the global audience as well. The serendipity of two centuries' old mele taking top honors on an internationally renowned stage was not lost on its grateful practitioners.

Utilizing mele as powerful moʻolelo to catalyze collective memory for and by Kānaka Maoli reinvigorates "the psyche of a people"[390] and galvanizes movements for justice. Through the cultural practice of hula, practitioners recalled lyrics of resistance from 1862 and deployed them as a cultural practice, strengthening its relevance in 2024. The historical abundance of Maui Komohana—sustained by a shared stewardship over water for the benefit of all—is evident throughout these specific moʻolelo and in countless practices. Mele's heightened use of language and skillful crafting of words present a meaningful tool to restore the damage of the cultural bomb[391] of colonization. We must not relegate the cultural practice of mele to mere performance and entertainment, especially in terms of distilling cultural values from particular moments in history.[392] Mele, in fact, compose a larger, collective narrative that aims to capture the experience of the haku mele, the composer,[393] and can reinforce the larger Maoli narrative of justice.

Positioning Kānaka Maoli moʻolelo at the forefront of modern discourse, and within the context of disaster recovery in particular, directly informs meaningful justice claims and sets the foundation for restorative justice measures.[394] Both before and after the fires, Maui Komohana's kupa strategically levied moʻolelo to confront the falsity of plantation colonial

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[390] Hom & Yamamoto, *supra* note 45, at 1757–60.

[391] NGŨGĨ WA THIONG'O, DECOLONISING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE 3 (1986).

[392] *See* de Silva, *Iwikuamoʻo o ka Lāhui*, *supra* note 115, at 70 ("Since the advent of the print media starting in 1834, mele also became a genre of resistance to cultural imperialism.").

[393] *See* Kainani Kahaunaele, *The Value of Mele*, *in* 3 THE VALUE OF HAWAIʻI: HULIHIA, THE TURNING 127, 127 (Noelani Goodyear-Kaʻōpua, Craig Howes, Jonathan Kay Kamakawiwoʻole Osorio, & Aiko Yamashiro eds., 2020) ("The carefully woven lyrics are primary, holding Hawaiian language knowledge and worldview, pearls of wisdom from our ancestors, and experiences of the haku mele, or composer.").

[394] *See* Hom & Yamamoto, *supra* note 45, at 1757; CWRM MAY 18, 2021 MEETING, *supra* note 308.

narratives, reinforce the Native-centered narrative, and positioned the emerging narrative as "a catalyst for mass mobilization and collective action," towards a more just future.[395] In this way, Kānaka Maoli utilized their practices—moʻolelo, mele, and hula—to "recount[] the histories of our people," embedded within and to "evok[e] mana into the lyrics."[396] This engagement reinforces Hawaiian identity,[397] and catalyzes values and "relationships that are memorialized" within the mele and moʻolelo themselves.[398]

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[395] Hom & Yamamoto, *supra* note 45, at 1757.

[396] "The hoʻopaʻa [chanter] provides the audible presentation evoking mana into the lyrics, recalling relationships that are memorialized therein. The ʻōlapa [dancer] provide the visual presentation to the lyrics and together with the hoʻopaʻa, they stimulate various emotions." Lopes, *Ka Waihona a ke Aloha*, *supra* note 368, at 5.

[397] Present-day engagement with mele and hula can have profound impacts on Kānaka Maoli identity: "In a time of cultural reconstruction and restoration, every little pebble of who we once were, especially those found in mele, is paramount. Pebble by pebble, we continue rebuild [sic] and redefine intellectual structures of our ancestors, not only for scholarship's sake, but for the future and well-being of Hawaiians." Lum, *Nā Hīmeni Hawaiʻi: Transcending Kūʻē, Promoting Kūpaʻa*, *supra* note 40, at 3–4.

[398] Lopes, *Ka Waihona a ke Aloha*, *supra* note 368, at 5. Mele's "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. At the center of this essence is aloha ʻāina. It is a love extolling the relationship between Hawaiians and their land, Hawaiʻi." Lum, *Nā Hīmeni Hawaiʻi: Transcending Kūʻē, Promoting Kūpaʻa*, *supra* note 40, at 2–3; *see also* de Silva, *Iwikuamoʻo o ka Lāhui*, *supra* note 115, at viii. Mele are

> kuamoʻo [backbones that] provide ways for contemporary Kānaka Maoli to reconnect with the pathways of consciousness traveled by our ancestors, rehabilitate the relationships between land, people, and practices that have been severed or transformed by colonization, and recreate our political world in a way that is true to the needs and Ea of our land and people.

Id.

VIII. UA NANI O LELE, UA KAULANA: RESTORING MAUI KOMOHANA AS A PATHWAY TO JUSTICE

"E ho'i ka nani!"

Let the glory return!

The famed 'āina momona of Maui Komohana are being restored to their glory through the leadership and courage of its kama'āina—those who are fed by and tied to this 'āina. As an important part of storytelling, I also acknowledge my positionality; and although I am a kupa of Maui and Kanaka Maoli deeply committed to effectuating justice for our people and home, I am *not* a kupa of Maui Komohana. In fact, growing up on the opposite side of the island at the foot of Haleakalā, I fell victim to many colonial constructs of collective memory that framed Maui Komohana as a dry, barren place, that was a resort area free to escape. But on August 8th, like much of our island home, I watched in horror and heartbreak as we received news of the devastation roaring through Lahaina. I worried about our first responders, like my childhood friends and nephews just a few months into their careers, who not only put their lives at risk to go into fight the fire storm, but who also watched their island home perish, as well. I checked in on friends and 'ohana (family) who lived in Maui Komohana and would struggle to comprehend the devastation they faced.

The injustices within Maui Komohana go beyond the theoretical framework I analyze in this Article. They touch real lives and plead with us to seek redress and to right these wrongs. I say this with much humility, acknowledging the need to construct a narrative of injustice, but with complete deference to the kama'āina of that specific place. They are the true experts of Maui Komohana. They have lived through and within these profound transformations and continue to work towards pono.

This Article has traced the ways Maui Komohana was transformed from 'āina momona to support plantation agriculture and tourism, ultimately converging in deadly wildfires. Recognizing the central role that colonial-influenced narratives played in justifying plantation capitalism and displacing Kānaka Maoli narratives, it utilized collective memory as a powerful tool to "dig historically to find out 'what really happened,' and [] describe how those 'facts' show a violation of established rights norms"[399] as an important "prelude to reparat[ive] justice initiatives."[400]

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[399] Hom & Yamamoto, *supra* note 45, at 1764.

[400] Serrano, *Collective Memory*, *supra* note 23, at 359.

To engage in a meaningful interrogation towards reparative measures, this Article unpacked the three phases in a struggle for collective memory of injustice. It began by illustrating the prevailing memory advanced by early settler plantation capitalists, media, and politicians and government officials in the late-1800s through the mid-1900s. This particular narrative justified the loss of ʻāina and the diversion of stream water away from Kānaka Maoli communities for use by agribusinesses. These settlers framed their work as a beneficial occurrence, consistent with concepts of western property rights and capitalism's concept of maximization of profit for corporate businesses.[401] According to this recitation of history, *there was no injustice at all*.

Second, the Kānaka Maoli struggle—advanced over decades through cultural awakening and political and legal advocacy—specifically challenged this once dominant colonial narrative to generate a *new* emergent memory of the injustice. It became collectively embraced over time, but with continuing agribusiness and some political opposition. Especially important, this new and emergent collective memory—grounded in restorative justice and Kānaka Maoli customs and traditions—uplifted Native values regarding stewardship of the land and natural resources, like water, to forge a path to an abundant ʻāina for Kānaka Maoli and other communities in Hawaiʻi. These very values and the commitment to repair past harms and achieve restorative justice are enshrined in Hawaiʻi's laws.[402]

Finally, this Article then outlined the contemporary struggle over collective memory of injustice further advanced by plantation *disaster* capitalism in the wake of the August 2023 wildfires. A pro-agribusiness narrative again emerged—one that framed Kānaka Maoli's use of water for traditional and customary practices enshrined in law as not only wrong, but impractical and dangerous. Partially aided by governmental officials, this narrative situated Native Hawaiian rights and communities in the perpetrator role and sought to "discredit the developing memory" of Kānaka Maoli.[403]

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[401] *See supra* Part IV.

[402] *See supra* note 62.

[403] Hom & Yamamoto, *supra* note 45, at 1765 ("Indeed, struggles over memory are often struggles between colliding ideologies, or vastly differing world views. When outsiders begin to persuasively reconstruct historical injustice they usually face fierce opposition by those in power. That opposition seeks totally to discredit the developing memory proffered by outsiders. Or, alternatively, it seeks to partially transform the old memory (slavery benefited

But Kānaka Maoli communities, supported by others, fought back to reclaim and reinforce the emergent narrative of the injustice, challenging the cause of the fire with compelling facts and context.[404] Kānaka Maoli leveraged their traditional ways of knowing to inform public perception of the injustice and likewise, the most appropriate path for recovery. Community members uplifted their present-day mo‘olelo of struggles in direct advocacy and engagement with decisionmakers. Practitioners successfully deployed historical mele and hula that dug "into the archives of mind, spirit, and culture—then and now" to counter colonial-influenced narratives and bolster the emergent Kānaka Maoli narrative. This last phase of collective memory offers a powerful foundation for redress and pathway to recovery for Maui Komohana.[405]

In recalling Dr. Kame‘eleihiwa's passage encapsulating Kānaka Maoli perceptions of time, in ka wā ma hope, and in commemoration of the 50th anniversary of Hawai‘i's only law school, we fix our gaze upon the past to honor the legacy of our beloved Chief Justice William S. Richardson on Hawai‘i water law as a part of the ongoing mo‘olelo that informs our present today. This piece builds upon Kānaka Maoli narratives like the meaningful pieces that contemplate the legacy of our beloved Chief Justice William S. Richardson on water law in the University of Hawai‘i Law Review's Spring 2024 symposium.[406] This symposium constructs the collective memory of justice as a roadmap to righting past wrongs, rebuilding from devastation, and envisioning a more just future in Hawai‘i nei. How Hawai‘i moves forward from this catastrophe *must begin* from the same starting point: with an inquiry into and construction of the collective memory of injustices in order to understand what happened, why it was wrong,[407] and how to provide

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the slaves) into a new memory (freed slaves could not handle freedom) that justifies continued hierarchy (segregation).").

[404] *See, e.g.*, CWRM MAY 18, 2021 MEETING, *supra* note 308.

[405] Hom & Yamamoto, *supra* note 45, at 1764. ("Group memory of injustice is characterized by the active, collective construction of the past. It is 'active' because it requires present-day activity; it is not about simply recalling past events. That memory is 'collective,' because it emerges from interactions among people, institutions, media, and other cultural forms. It involves 'construction' because those collective memories are not found, but rather are built and continually altered.").

[406] *See* Melody Kapilialoha MacKenzie, *The Vision of Chief Justice William S. Richardson*, 46 U. HAW. L. REV. 286 (2024) [hereinafter MacKenzie, *The Vision of Chief Justice William S. Richardson*]; Doyle, *supra* note 48; Chang, *supra* note 34.

[407] *See* Hom & Yamamoto, *supra* note 45, at 1757 (noting that "groups seeking social justice tend to define injustice more broadly. To fuel political movements, they expand the law's narrow framing of injustice and focus on historical facts to more fully portray what

meaningful redress. At the same time, Hawaiʻi's only law school reflects on and celebrates fifty years of the legacy of Chief Justice William S. Richardson.[408] His foresight solidified the foundations for water law in Hawaiʻi nei and ensured that people "with deep roots in and profound love for Hawaiʻi"[409] continue to "shape its laws and policies."[410]

Despite generations of Kānaka Maoli advocacy, Kānaka Maoli continue to endure the legacies of injustice. Luckily, for poʻe aloha ʻāina, we have fellow hoa aloha ʻāina, with whom we can lock arms in the larger struggles for justice and collective memory. These aloha ʻāina take many shapes: from the kupa of a particular ʻāina speaking truth to power even amidst their own devastation and recovery, to the hula practitioners that hoʻomana ʻāina alongside their hula sisters who narrowly escaped the fire, to students and authors of the University of Hawaiʻi Law Review, who are uplifting these larger conversations in the context of law and justice in Hawaiʻi. May this narrative be a humble contribution to the larger collective memory of aloha ʻāina, of pono and restoration, and to e hoʻi ka nani—to return the glory, abundance, and justice to Maui Komohana now and into the future. Ola ka wai i ka malu ʻulu o Lele!

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happened and why it was wrong. In this way, history becomes a catalyst for mass mobilization and collective action aimed at policymakers, bureaucrats, and the American conscience.").

[408] *See* MacKenzie, *The Vision of Chief Justice William S. Richardson*, *supra* note 406, at 286.

[409] Melody Kapilialoha MacKenzie, *Ka Lama Kū O Ka Noʻeau: The Standing Torch of Wisdom*, 33 U. HAW. L. REV. 3, 6 (2009) ("Hawaiʻi has a unique legal system, a system of laws that was originally built on an ancient and traditional culture . . . [The court] set about returning control of interpreting the law to those with deep roots in and profound love for Hawaiʻi.") (quoting William S. Richardson, Spirit of Excellence Award Acceptance Speech at the ABA Spirit of Excellence Awards Luncheon (Miami, Fla., Feb.10, 2007)).

[410] MacKenzie, *supra* note 406, at 301–02; University of Hawaiʻi Law Review, *Panel I—Fifty Years of* McBryde v. Robinson: *Chief Justice Richardson's Legacy in Water Rights*, YOUTUBE (Apr. 8, 2024), https://www.youtube.com/watch?v=AGaBGzwmDJM&list=PLzHOTI_rIVKvaYpqXWL-g8-UQn8W63bwU&index=2; *see* McBryde Sugar Co. v. Robinson, 54 Haw. 174, 504 P.2d 1330 (1973); Robinson v. Ariyoshi, 65 Haw. 641, 658 P.2d 287 (1982).

"Waiwai mau ia i ka'u 'ike la, i ka wai kāhuli o ke au hou.
Puana 'ia me ke aloha pau'ole la, ua nani o Lele, ua
kaulana e!"

Forever treasured in my mind are the renewed waters of the land-snails. Let the unending refrain of love be heard, Lele is magnificent and famed![411]

[411] Hālau Nā Lei Kaumaka O Uka, *supra* note 378, at 3 (translation by Keely Kau'ilani Rivera).