

**Kala: Disentangling Kamehameha Schools
From the 2022 Federal Indian Boarding
School Initiative Investigative Report While
Actualizing *Social Healing Through Justice*
For its Kanaka Maoli Students**

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“*Ke kala aku nei au iā ‘oe a pēlā nō ho ‘i ai e kala ia mai
ai, or, I unbind you from the fault, and thus may I also be
unbound from it.*”¹

— Mary Kawena Pukui

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¹ I MARY KAWENA PUKUI, E.W. HAERTIG & CATHERINE A. LEE, NĀNĀ I KE KUMU (LOOK TO THE SOURCE) 75 (1972) [hereinafter I NĀNĀ I KE KUMU] (modern orthography inserted by author).

I. INTRODUCTION: A TIME OF HULIHIA²

Kanaka Maoli artist, activist, and scholar Dr. Jamaica Heolimeleikalani Osorio describes the current time as one of huluhia.³ A time of overturning, of “chaos and creation, and abundance and fear.”⁴ She thinks of the global COVID-19 pandemic (which leaves over seven million people dead at the

² Some text from this Article appears in Holly K. Doyle, *Unbound: Actualizing Social Healing Through Justice for Native Survivors of Federal Indian Boarding Schools*, 48 N.Y.U. Rev. L. & Soc. Change (forthcoming Winter 2024) (on file with author) (setting the contextual, historical, and analytical foundation for this Article). *Unbound* is a comparative law piece that first recounts and examines Canada’s extensive reparative justice initiative for the harms of its residential schools. *Id.* It then evaluates the United States’ nascent reconciliation initiative through the *social healing through justice* framework, first giving credit where due and then identifying lacunae in the report’s recommendations. *Id.* *Kala* particularizes research from *Unbound*, by focusing on Hawai‘i and Kamehameha Schools.

³ Finding Our Way with Prentis Hemphill, *Aloha ‘Āina with Dr. Jamaica Heolimeleikalani Osorio*, (Aug. 1, 2022) <https://www.findingourwaypodcast.com/individual-episodes/s3e4>. See generally Noelani Goodyear-Ka‘ōpua, *Kūoko‘a: Independence*, in THE VALUE OF HAWAI‘I 3: HULIHIA, THE TURNING (Noelani Goodyear-Ka‘ōpua et al. eds., 2020). I follow certain style conventions articulated by Dr. Goodyear-Ka‘ōpua and Dr. Osorio respectively:

I use a number of terms interchangeably to refer to the indigenous people of Hawai‘i, people who are genealogically connected to Ka Pae ‘Āina ‘o Hawai‘i (the Hawaiian archipelago) since time immemorial: Kānaka Maoli, . . . ‘Ōiwi, . . . Hawaiian, and Native Hawaiian. Kānaka Maoli . . . refer[s] to the whole group as a singular class. [Kanaka Maoli or Kanaka is a descriptor.] In my usage of these terms, I refer to all Kānaka Maoli, without any blood quantum restriction. I do not italicize [‘ōlelo Hawai‘i or] Hawaiian terms in this essay. When terms are italicized, it is to emphasize their importance to my argument and analysis.

Noelani Goodyear-Ka‘ōpua, *Domesticating Hawaiians: Kamehameha Schools and the “Tender Violence” of Marriage*, in INDIAN SUBJECTS: HEMISPHERIC PERSPECTIVES ON THE HISTORY OF INDIGENOUS EDUCATION 16, 38 n.1 (Brenda J. Child & Brian Klopotek eds., 2014) [hereinafter Goodyear-Ka‘ōpua, *Domesticating Hawaiians*].

Although ‘ōlelo Hawai‘i appears frequently throughout the course of this [Article], this [Article] does not include [translations]. The terms I [use] have many meanings and to reduce them to a single English gloss would be counterproductive Wehewehe.org is an appropriate source for the reader to consult for definitions of Hawaiian terms across multiple dictionaries.

JAMAICA HEOLIMELEIKALANI OSORIO, REMEMBERING OUR INTIMACIES: MO‘OLELO, ALOHA ‘ĀINA, AND EA xv (2021) [hereinafter OSORIO, REMEMBERING OUR INTIMACIES].

⁴ Finding Our Way with Prentis Hemphill, *supra* note 3, at 03:05.

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time of this writing)⁵ and the attempted insurrectionist coup following President Biden’s inauguration.⁶ But, she notes, part of huluhia is also “all of the beautiful uprising” by Indigenous groups asserting their right to self-determination and by the Black Lives Matter movement to end white supremacist violence against Black people globally.⁷ She observes that times of transformation are difficult and painful.⁸ They always have been.⁹ But she finds resolve in knowing “[t]his is what it feels like to tear down violent systems” and “create the world we deserve.”¹⁰

Secretary of the Interior Deb Haaland also knows that “work[ing] toward a future we are all proud to embrace”¹¹ means experiencing the difficulty and pain of acknowledging historic injustice and its persisting wounds.¹² A member of the Pueblo of Laguna and the first Native American cabinet secretary,¹³ Secretary Haaland lives with the intergenerational trauma caused by centuries of state-sanctioned physical and cultural genocide against

⁵ WORLD HEALTH ORG., *WHO Coronavirus (COVID-19) Dashboard*, <https://covid19.who.int/> (last visited Feb. 8, 2024).

⁶ *From ‘An Attempted Coup’ to Chaos, Searing Moments of Jan. 6*, ASSOCIATED PRESS (July 23, 2022), <https://apnews.com/article/Jan-6-hearings-key-moments-b374e48ab5a1a0a597fd5b6ec69048c2>; Finding Our Way with Prentis Hemphill, *supra* note 3, at 04:14.

⁷ Finding Our Way with Prentis Hemphill, *supra* note 3, at 04:33. *See generally* ABOUT, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/> (last visited Nov. 5, 2023).

⁸ Finding Our Way with Prentis Hemphill, *supra* note 3, at 04:57.

⁹ *Id.* at 05:08.

¹⁰ *Id.* at 05:10.

¹¹ Memorandum from Deb Haaland, Sec’y of the Interior, to the Assistant Secretaries, Principal Deputy Assistant Secretaries, & Heads of Bureaus & Offs. 2 (June 22, 2021) [hereinafter DOI Memo], <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf>.

¹² *See id.* *See generally* ERIC K. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY (2021) [hereinafter YAMAMOTO, HEALING THE PERSISTING WOUNDS].

¹³ *Secretary Deb Haaland*, U.S. DEP’T OF INTERIOR, <https://www.doi.gov/secretary-deb-haaland> (last visited Oct. 30, 2023). Secretary Haaland is one of the first two Native American women to serve in Congress, alongside Representative Sharice Davids of Kansas. Eli Watkins, *First Native American Women Elected to Congress: Sharice Davids and Deb Haaland*, CNN (Nov. 7, 2018, 12:01 AM EST), <https://www.cnn.com/2018/11/06/politics/sharice-davids-and-deb-haaland-native-american-women>. Both Secretary Haaland and Representative Davids were elected to office in 2018. *Id.*

Indigenous peoples.¹⁴ She is the granddaughter of two generations of United States Federal Indian Boarding School survivors.¹⁵

“From the earliest days of the Republic,”¹⁶ the United States conspired to take Native land for the benefit of the emerging country’s white inhabitants by kettling Indigenous peoples into sedentary lifestyles, pushing them into debt and eagerly accepting repayment in land.¹⁷ Boarding schools advanced this effort by separating Native children from their families, severing their cultural, physical, and economic connection to the land, and destroying Native identity.¹⁸ Canada’s residential schools did something similar.¹⁹ So when Secretary Haaland heard the news that the Tk’emlúps te Secwepemc First Nation discovered the remains of 215 children at Kamloops Indian Residential School in Canada,²⁰ she immediately thought of her

¹⁴ Deb Haaland, *My Grandparents Were Stolen from Their Families as Children. We Must Learn About This History.*, WASH. POST (June 11, 2021, 9:00 AM EDT) [hereinafter Haaland, *My Grandparents Were Stolen*], <https://www.washingtonpost.com/opinions/2021/06/11/deb-haaland-indigenous-boarding-schools/>. Canada’s Truth and Reconciliation Commission defined physical and cultural genocide in its report on Canadian residential schools:

Physical genocide is the mass killing of the members of a targeted group *Cultural genocide* is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.

TRUTH & RECONCILIATION COMM’N CAN., HONOURING THE TRUTH, RECONCILING FOR THE FUTURE: SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA I (2015).

¹⁵ Haaland, *My Grandparents Were Stolen*, *supra* note 14.

¹⁶ BRYAN NEWLAND, BUREAU INDIAN AFFS., FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT 21–22, 93 (2022) [hereinafter NEWLAND REPORT].

¹⁷ *Id.*

¹⁸ *Id.* at 21, 37.

¹⁹ See generally TRUTH & RECONCILIATION COMM’N CAN., *supra* note 14.

²⁰ Amanda Coletta, *Remains of 215 Indigenous Children Discovered at Former Canadian Residential School Site*, WASH. POST (May 28, 2021, 1:19 PM EDT), <https://www.washingtonpost.com/world/2021/05/28/canada-mass-grave-residential-school/>.

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grandparents.²¹ That they too could have been buried in unmarked graves at United States boarding schools impelled her to launch an investigation on “[this] side of the border.”²²

Of the 408 boarding schools identified in the Department of the Interior’s investigative report, Hawai‘i hosted seven.²³ Four broad criteria employed by the department to compile the first official list of Federal Indian Boarding Schools²⁴ cast a wide net, ensnaring even those schools established by ali‘i “to train future monarchs” of the Kingdom of Hawai‘i²⁵ and for the

²¹ DOI Memo, *supra* note 11, at 1; Haaland, *My Grandparents Were Stolen*, *supra* note 14.

²² DOI Memo, *supra* note 11, at 1; Haaland, *My Grandparents Were Stolen*, *supra* note 14.

²³ NEWLAND REPORT, *supra* note 16, at 6, 69. The seven Federal Indian Boarding Schools the United States supported in Hawai‘i between 1819 and 1969 are as follows: Hilo Boarding School, Industrial and Reformatory School (Kawailoa), Industrial and Reformatory School (Keone‘ula, Kapalama), Industrial and Reformatory School (Waiale‘e, Waialua), Industrial and Reformatory School for Girls (Keone‘ula, Kapalama), Industrial and Reformatory School for Girls (Maunawili, Ko‘olaupoko), Industrial and Reformatory School for Girls (Mō‘ili‘ili, Honolulu), Kamehameha Schools, Lahainaluna Seminary, Mauna Loa Forestry Camp School, and Moloka‘i Forestry Camp School. *Id.* at 78. However, Dr. Maile Arvin notes that the report “makes some significant errors in reference to Hawaii – such as designating one school as located at ‘Kawailou.’ There is no such place as ‘Kawailou.’ This is likely a misrecognition of an actual place, Kawailoa.” Maile Arvin, *Native Hawaiians Are Confronting the Legacies of “Indian Boarding Schools”*, TRUTHOUT (May 26, 2022), <https://truthout.org/articles/native-hawaiians-are-confronting-the-legacies-of-indian-boarding-schools/>.

²⁴ NEWLAND REPORT, *supra* note 16, at 17–18. The Department of the Interior classified institutions as Federal Indian boarding schools if they provided (1) housing and (2) education, and (3) received Federal funds and/or support during its (4) pre-1969 operations. *Id.*

²⁵ Linda K. Menton, *A Christian and “Civilized” Education: The Hawaiian Chiefs’ Children’s School, 1839-50*, 32 HIST. EDUC. Q. 213, 213 (1992); Newland Report, *supra* note 16, at 74 (“King Kamehameha III also created the Chiefs’ Children’s School, also known as the Royal School, to train future monarchs of the Kingdom of Hawai‘i. Maintained by missionaries, Native Hawaiian children were segregated by gender in the School, which was a change from Native Hawaiian culture and practices, and disciplinary practices included food denial and corporal punishment.”).

“enlightenment and elevation of the Hawaiian race[.]”²⁶ Kamehameha Schools is among those implicated.²⁷

Ke Ali‘i Bernice Pauahi Bishop established the perpetual charitable trust that is Kamehameha Schools in her 1883 will.²⁸ Intending to safeguard keiki ‘Ōiwi—and, thus, Kānaka Maoli—futures against the “rapid social changes occurring at the time, Pauahi considered education the means toward future advancement of Hawaiian children.”²⁹ In this way, Kamehameha Schools is distinctive.³⁰ Nearly all other Federal Indian Boarding Schools were created by the federal government itself—or by religious institutions and organizations backed by the federal government³¹—with the express dual purpose of Native land dispossession and forced assimilation.³²

But several assimilative tactics wielded against Native children in continental Federal Indian Boarding Schools were also brought to bear against Kanaka children by Kamehameha Schools’ five original trustees.³³ Kanaka Maoli scholar and current Kamehameha Schools Trustee Dr. Noelani Goodyear-Ka‘ōpua exposes the similarities.³⁴ Both Kamehameha Schools and Federal Indian Boarding Schools shared a white supremacist, cis-heteropatriarchal and imperialist curricula of cultural suppression and assimilation resulting in persisting “racialized and gendered violence”³⁵ and

²⁶ MARY H. KROUT, THE MEMOIRS OF HON. BERNICE PAUAHI BISHOP 238 (1908, reprinted in 1958). It must be noted that Krout’s MEMOIRS is a biography authorized by Kamehameha Schools and is one of three biographies – all Kamehameha Schools-approved – about Ke Ali‘i Pauahi. Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 46 n.91.

²⁷ NEWLAND REPORT, *supra* note 16, at 75, 78.

²⁸ Will of Bernice Pauahi Bishop (Oct. 31, 1883), in *In re Estate of Bishop*, Probate No. 2425 (Haw. Sup. Ct. 1884) (filed in Certificate of Proof of Will); Avis Kuipoleialoha Poai & Susan K. Serrano, *Ali‘i Trusts: Native Hawaiian Charitable Trusts*, in NATIVE HAWAIIAN LAW: A TREATISE 1168, 1172 (Melody Kapilialoha MacKenzie et al. eds., 2015) [hereinafter Poai & Serrano]; see *infra* Section IV.B for greater discussion of Kamehameha Schools’ establishment.

²⁹ Poai & Serrano, *supra* note 28, at 1172.

³⁰ See *infra* Section IV.C for an analysis of key factors distinguishing Kamehameha Schools from other Federal Indian Boarding Schools.

³¹ NEWLAND REPORT, *supra* note 16, at 46–50.

³² *Id.* at 37–46.

³³ See generally Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3 (analyzing the consequences of “white male control” over Kamehameha Schools that began in the 1880s). Charles R. Bishop, Samuel M. Damon, Charles M. Hyde, Charles M. Cooke and William O. Smith were the five original trustees of Kamehameha Schools/Bishop Estate. See *infra* notes 349–56 and accompanying text.

³⁴ See Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 25.

³⁵ *Id.* at 18, 25.

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economic pigeonholing.³⁶ The five original trustees were the white sons of Protestant missionaries (though one was a missionary himself), staunch annexationists, capitalists, sugar investors, and Committee of Safety³⁷ members.³⁸ For actions like theirs, President Clinton—on behalf of the United States—formally apologized to Kānaka Maoli and committed to reconciliation efforts in 1993.³⁹

Dispiritingly, promises of reconciliation to American Indians, Alaska Natives, and Native Hawaiians made by United States officials remain largely unfulfilled.⁴⁰ In 2000, for example, then-Assistant Secretary of the Interior Kevin Gover, a citizen of the Pawnee Tribe of Oklahoma, apologized

³⁶ See *id.*; NEWLAND REPORT, *supra* note 16, at 81.

³⁷ Thirteen white men—mostly businessmen and lawyers—formed the “Committee of Safety” as part of a larger scheme to overthrow the Hawaiian monarchy and advance annexation. Melody Kapilialoha MacKenzie & N. Mahina Tuteur, *Historical Background*, in NATIVE HAWAIIAN LAW: A TREATISE (forthcoming 2025) (manuscript at 31) (on file with author); Ralph Thomas Kam & Jeffrey K. Lyons, *Remembering the Committee of Safety: Identifying the Citizenship, Descent, and Occupations of the Men Who Overthrew the Monarchy*, 53 HAWAIIAN J. HIST. 31–54 (2019). “On January 14, 1893, Lili‘uokalani was on the verge of declaring a new constitution limiting voting to Hawaiian-born or naturalized citizens” and restoring power to the monarchy. MacKenzie & Tuteur, *supra*, at 30. These changes threatened the business interests of haole capitalists across Ka Pae ‘Āina. See *id.* at 30–31. Two days later on January 16, 1893, Cristel Bolte, Andrew Brown, William Richards Castle, Henry Ernest Cooper, John Emmeluth, Theodore F. Lansing, John Andrew McCandless, Frederick W. McChesney, William Owen Smith, Edward Suhr, Lorrin Andrews Thurston, Henry Waterhouse, and William Chauncey Wilder held a citizen meeting in which they passed a resolution creating the Committee of Safety ostensibly for the “maintenance of the public peace and the protection of life and property.” Kam & Lyons, *supra*, at 32. They sought help from United States Minister to Hawai‘i John L. Stevens who landed marines in Honolulu to “protect American lives and property” that very same day. MacKenzie & Tuteur, *supra*, at 31. The insurrectionists captured the “government building, declared the monarchy abolished, and proclaimed the existence of a Provisional Government until annexation by the United States could be negotiated.” *Id.*

³⁸ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 44 n.70; SAMUEL P. KING & RANDALL W. ROTH, *BROKEN TRUST: GREED, MISMANAGEMENT & POLITICAL MANIPULATION AT AMERICA’S LARGEST CHARITABLE TRUST* 34–35 (2006).

³⁹ Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993) (“Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii”); see *infra* note 523.

⁴⁰ See, e.g., Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

on behalf of the Bureau of Indian Affairs.⁴¹ He expressed his “profound sorrow for what [the] agency ha[d] done in the past.”⁴² For the “ethnic cleansing and cultural annihilation the [Bureau of Indian Affairs] . . . wrought against American Indian and Alaska Native people[.]”⁴³ “Worst of all,” Gover lamented, “the Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually.”⁴⁴ But Gover could only apologize on behalf of the agency⁴⁵ and did so arguably without the staunch support of President Clinton’s administration.⁴⁶ As for Kānaka Maoli, “despite several efforts, the issue of reconciliation for [] past injustices has, thus far, eluded Native Hawaiians.”⁴⁷

Now, over twenty years later, the Department of the Interior is at last investigating the boarding schools with an eye toward social healing through reparative justice.⁴⁸ With Secretary Haaland at the agency’s helm and a seemingly sympathetic presidential administration in office, efforts to revive

⁴¹ *Gover Apologizes for BIA’s Misdeeds*, U.S. DEP’T INTERIOR INDIAN AFFS. (Sept. 8, 2000), <https://www.bia.gov/as-ia/opa/online-press-release/gover-apologizes-bias-misdeeds>. The Bureau of Indian Affairs (“BIA”), housed within the Department of the Interior, is the principal intermediary between the federal government and federally recognized tribes. *Bureau of Indian Affairs (BIA)*, U.S. DEP’T INTERIOR INDIAN AFFS., <https://www.bia.gov/bia> (last visited Oct. 1, 2023). The agency’s mission has evolved over time in correlation with the federal government’s shifting approaches to Federal Indian law and policy. *Id.* Today, most BIA employees are “American Indian or Alaska Native, representing a number larger than at any time in its history.” *Id.* Various offices within the BIA provide a range of services including health care, disaster relief, reservation roads programs, law enforcement funding, and trust land management. *Id.* The agency partners with all 574 federally recognized tribes to “help them achieve their goals for self-determination while also maintaining its responsibilities under the Federal-Tribal trust and government-to-government relationships.” *Id.*

⁴² Kevin Gover, *Remarks at the Ceremony Acknowledging the 175th Anniversary of the Establishment of the Bureau of Indian Affairs*, 25 AM. INDIAN L. REV. 161, 162 (2000).

⁴³ *Gover Apologizes for BIA’s Misdeeds*, *supra* note 41.

⁴⁴ Gover, *supra* note 42, at 162.

⁴⁵ *Id.*

⁴⁶ Christopher Buck, “Never Again:” *Kevin Gover’s Apology for the Bureau of Indian Affairs*, 21 WICAZO SA REV. 98 (2006) (“The irony is this: while the administration did not oppose [Gover], neither did it back him. The moment was golden, but the silence was deafening.”).

⁴⁷ Troy J.H. Andrade, *Legacy in Paradise: Analyzing the Obama Administration’s Effort of Reconciliation with Native Hawaiians*, 22 MICH. J. RACE & L. 273, 276 (2017) [hereinafter Andrade, *Legacy in Paradise*].

⁴⁸ NEWLAND REPORT, *supra* note 16, *passim*; see *infra* Part II (describing the *social healing through justice* framework).

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the stalled initiative are underway.⁴⁹ After the department published the Federal Indian Boarding School Initiative Investigative Report in May 2022,⁵⁰ Secretary Haaland embarked on a country-wide “Road to Healing” listening tour.⁵¹ Though she was scheduled to stop in Hawai‘i in 2022, Secretary Haaland’s visit was postponed and alternative dates are yet to be released at the time of this writing.⁵²

What happens next at the federal and state level in the hotly divided present-day political milieu will determine whether “our country is to heal from [the] tragic [boarding school] era.”⁵³ After passing through the Senate

⁴⁹ Please, Go On with James Hohman, *Interior Secretary Deb Haaland on the Dark History of Indigenous Boarding Schools*, WASH. POST (June 25, 2021), https://www.washingtonpost.com/podcasts/please-go-on/interior-secretary-deb-haaland-on-the-dark-history-of-indigenous-boarding-schools/?itid=lk_interstitial_manual_3. Secretary Haaland described President Biden’s support of Indigenous tribes in conversation with James Hohman:

[W]ith respect to the leadership we have in The White House now, President Biden is wholeheartedly – he wants robust consultation with Indian tribes. He wants Indian tribes to have a seat at the table. He believes in us, you know, having an all-of-government approach, that we all need to work together to move our country forward. And I feel very strongly that his courageous leadership is something that we’ve needed, and I’m grateful for that.

Id. at 13:30.

⁵⁰ NEWLAND REPORT, *supra* note 16.

⁵¹ Press Release, U.S. Dep’t Interior, Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative (May 11, 2022) [hereinafter DOI Next Steps], <https://www.doi.gov/pressreleases/department-interior-releases-investigative-report-outlines-next-steps-federal-indian/>. The tour responds to the report’s third recommendation to “[d]ocument Federal Indian boarding school attendee experiences. . . . [and d]evelop a platform for now-adult Federal Indian boarding school attendees and their descendants to formally document their historical accounts and experiences, and understand current impacts such as health status, including substance abuse and violence.” NEWLAND REPORT, *supra* note 16, at 97; see DOI Next Steps, *supra*.

⁵² See Mary Annette Pember, *Road to Healing: Deb Haaland Pledges Boarding School Truths Will Be Uncovered*, INDIAN COUNTRY TODAY (July 9, 2022), <https://indiancountrytoday.com/news/we-all-carry-the-trauma-in-our-hearts>. I contacted the Department of the Interior, the Bureau of Indian Affairs, and the offices of Hawai‘i Governor Josh Green and Senator Maizie Hirono, but did not receive answers regarding rescheduled “Road to Healing” tour dates for Hawai‘i.

⁵³ Haaland, *My Grandparents Were Stolen*, *supra* note 14.

Indian Affairs Committee, the *Truth and Healing Commission on Indian Boarding School Policies Act* hangs in the balance, awaiting action by the full Senate.⁵⁴ And though the Supreme Court's decision upholding the 1978 Indian Child Welfare Act ("ICWA") in *Haaland v. Brackeen*⁵⁵ stunned many,⁵⁶ the case remains part of "a terrifying pattern[] in which attacks on Native children are a prelude to broader attacks on tribal sovereignty."⁵⁷

⁵⁴ Truth and Healing Commission on Indian Boarding School Policies in the United States Act, S. 1723 118th Cong. (2023) (proposing a formal Truth and Reconciliation Commission to investigate, document and acknowledge past injustices caused by the Federal Indian Boarding School System); Kalle Benallie, *Senate Bill Calls for Investigation into Indian Boarding Schools*, TRUTHOUT (June 10, 2023), <https://truthout.org/articles/senate-bill-calls-for-investigation-into-indian-boarding-schools/>.

⁵⁵ 599 U.S. 255 (2023).

⁵⁶ See Strict Scrutiny, *Good News for the Indian Child Welfare Act*, CROOKED MEDIA, at 06:44 (June 19, 2023), <https://crooked.com/podcast/good-news-for-the-indian-child-welfare-act/>. Many legal scholars were surprised by the Court's decision given that the "conservative majority [] is . . . moving the goal posts . . . on every conceivable issue that you can imagine." Nina Totenberg, *The Supreme Court Is the Most Conservative in 90 Years*, NAT'L PUB. RADIO (July 5, 2022, 7:04 AM EST), <https://www.npr.org/2022/07/05/1109444617/the-supreme-court-conservative>. "The court produced more conservative decisions this term than at any time since 1931 . . ." *Id.* "In an astounding 62% of the decisions, conservatives prevailed, and more importantly, often prevailed in dramatic ways." *Id.* Of course, political ideology does not guarantee a specific outcome – take Justice Gorsuch's concurrence in *Brackeen*, for example – but this Court's pattern of overturning fifty years' worth of precedent worried many as *Brackeen* climbed the appellate ladder. See *id.*; Amy Howe, *Closely Divided Court Scrutinizes Various Provisions of Indian Child Welfare Act*, SCOTUSBLOG (Nov. 9, 2022, 6:02 PM), <https://www.scotusblog.com/2022/11/closely-divided-court-scrutinizes-various-provisions-of-indian-child-welfare-act/>. Congress enacted ICWA in direct response to the damage caused by the Federal Indian Boarding School Program and, later, the Indian Adoption Project:

Congress enacted the Indian Child Welfare Act as a response to a long and tragic history of separating Native American children from their families. The law establishes minimum standards for the removal of Native American children from their families and establishes a preference that when Native American children are taken from their homes, they be placed with extended family members or with other Native families, even if the families are not relatives. Opponents of the law say it exceeds Congress' power, violates states' rights, and imposes unconstitutional race-based classifications.

Howe, *supra*.

⁵⁷ Rebecca Nagle, *The Supreme Court Case that Could Break Native American Sovereignty*, ATLANTIC (Nov. 8, 2022), <https://www.theatlantic.com/ideas/archive/2022/11/>

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Right-wing special interests⁵⁸ will likely continue their campaign against ICWA,⁵⁹ and “[t]he fear is that this case is like the first upright domino in a long row. If they can topple ICWA, they can topple everything else.”⁶⁰

In Hawai‘i, some worry about what further investigation into Kamehameha Schools will unearth.⁶¹ What is clear is the deliberate policy of cultural suppression, militarization, assimilation, and domestication shared by Kamehameha Schools and continental Federal Indian Boarding Schools.⁶² And clear are the calls by Kanaka Maoli cultural practitioners, scholars, and political leaders for the United States to follow through on its 1993 promise to make ““amends with that specific part of history and the legacy of [the boarding schools].’ Hawaiians, too, need reconciliation[.]”⁶³

What remains unclear is whether Kamehameha Schools is rightfully included in the Department of the Interior’s investigative report given its unique genesis.⁶⁴ Even more uncertain is Kamehameha Schools’

scotus-native-american-sovereignty-brackeen-v-haaland/672038/. In *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), for example, the Court attacked tribal sovereignty by granting the states “unprecedented power to prosecute crimes in Indian country at the expense of Indigenous people and tribal sovereignty.” Theodora Simon, *Tribal Sovereignty Under Attack in Recent Supreme Court Ruling*, AM. CIV. LIB. UNION (July 12, 2022), <https://www.aclunc.org/blog/tribal-sovereignty-under-attack-recent-supreme-court-ruling>.

⁵⁸ This Land, 9. *Update: Supreme Court Decision*, CROOKED MEDIA, at 06:40 (June 23, 2023), <https://www.crooked.com/podcast/9-update-supreme-court-decision/> (“An odd group of special interests, including adoption attorneys, corporate lawyers, and right-wing groups decided they wanted to strike ICWA down.”).

⁵⁹ *Id.* at 27:07 (“If they think that the concurring opinion from Justice Kavanaugh is a signal to them that there is an audience for the equal protection argument, then they’ll keep going.”).

⁶⁰ *Id.* at 09:59.

⁶¹ Mahealani Richardson, *In Wake of New Report, Native Hawaiians March to Raise Awareness About Dark History of Boarding Schools*, HAW. NEWS NOW (June 7, 2022, 8:37 PM HST), <https://www.hawaiinewsnow.com/2022/06/08/hawaiians-march-after-federal-report-details-dark-history-boarding-schools/>.

⁶² See *infra* Part IV for an analysis of the undeniable similarities and pivotal differences between Kamehameha Schools and the other Federal Indian Boarding Schools identified in the Department of the Interior’s report.

⁶³ Nick Grube, *Report Cites Mistreatment of Students at Native Hawaiian Boarding Schools*, HONOLULU CIV. BEAT (May 15, 2022), <https://www.civilbeat.org/2022/05/report-cites-mistreatment-of-students-at-native-hawaiian-boarding-schools/>.

⁶⁴ See *infra* Section IV.B.1.

*responsibility*⁶⁵ in redressing the persisting wounds of United States imperialism that the trust's early leaders helped inflict.⁶⁶ A final unknown is what enduring and comprehensive reconciliation for Native Hawaiian Kamehameha Schools graduates – and Kānaka Maoli more broadly – might look like.

Kamehameha Schools issued a (difficult to find) statement on May 13, 2022, following the investigative report's publication.⁶⁷ The statement did

⁶⁵ See *infra* Parts II and V for a description of *responsibility*'s role in effective reconciliation efforts.

⁶⁶ See *infra* Section IV.B.2.

⁶⁷ I could not find Kamehameha Schools' statement through online research. I could not find it on Kamehameha Schools' website, social media or in local newspapers. This may reveal my own shortcomings as a budding researcher, but I am copying and pasting the statement's text shared with me by Trustee Noelani Goodyear-Ka'ōpua below:

Earlier this week, the U.S. Department of the Interior (DOI) issued a report detailing its investigation into the troubled history and legacy of the Federal Indian boarding school system, which goes back more than 200 years.

The DOI's *Federal Indian Boarding School Initiative Investigative Report* begins to scratch the surface of profound traumas inflicted on Native Hawaiian, American Indian and Alaska Native families for generations by federally-supported boarding schools. The initial findings are an appalling and sobering testimony to the imperialistic history of the United States, its treatment of Native people, and the need for redress.

For Indigenous communities around the world, the legacies of oppression, forced assimilation and foreign greed are all too familiar. The diminishing of Native language, culture, and identity, the usurping of governance, and confiscation of land are textbook strategies of imperialism; they are intended to debilitate and dominate.

Kamehameha Schools, the living legacy of Ke Ali'i Bernice Pauahi Bishop, has devoted itself to improving the capability and well-being of Native Hawaiians through education. Grappling with the contradictions and internal conflicts of our own colonial history, we continue a process of transforming over time to serve and uplift our communities through Hawaiian culture-based education. Critical to this transformation is our own examination of the historical issues so we can better know our truths, engage in healing processes, and empower our communities.

We proudly stand with all Native Hawaiian, American Indian, and Alaska Native peoples who have persevered through systematic violence over centuries, holding onto the strengths of our ancestors and innovating

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not explicitly acknowledge that Kamehameha Schools is one of seven Federal Indian Boarding Schools that operated in Hawai‘i.⁶⁸ Nor did it take a position on its inclusion.⁶⁹ Instead, the statement spoke to Native peoples’ shared realities under western imperialism and racial capitalism.⁷⁰ It acknowledged the “contradictions and internal conflicts of [Kamehameha Schools’] own colonial history,” and affirmed the institution’s commitment to “transforming over time to serve and uplift our communities through Hawaiian culture-based education.”⁷¹ Investigating Kamehameha Schools’ history is central to this transformation, the statement asserted, and to “better know[ing] our truths, *engag[ing] in healing processes*, and empower[ing] our communities.”⁷²

For those who believe in “transparency and accountability, at least in the abstract, and [] see value in recording and remembering history[,]”⁷³ this statement of *recognition*⁷⁴ may be all that is needed. Others believe Kamehameha Schools has not done enough to “address the actual substance of what occurred in its boarding schools”⁷⁵ since the Department of the Interior released its report. And for some legal formalists, examining past issues “through lenses that have developed in the interim” and making

Native ways of life that nurture vibrant communities now and for generations.

“Times will come when you will feel you are being pushed into the background. Never allow this to happen—stand always on your own foundation. But you will have to make that foundation. There will come a time when to make this stand will be difficult, especially to you of Hawaiian Birth; but conquer you can—if you will.” – Ke Ali‘i Bernice Pauahi Bishop

Email from Noelani Goodyear-Ka‘ōpua, Trustee, Kamehameha Schools, to author (Apr. 6, 2023, 8:21 AM HST) [hereinafter Goodyear-Ka‘ōpua Email] (on file with author).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* (emphasis added).

⁷³ Interview with Randall W. Roth, Co-author, BROKEN TRUST: GREED, MISMANAGEMENT & POLITICAL MANIPULATION AT AMERICA’S LARGEST CHARITABLE TRUST, in Kāhala, Haw. (Jan. 31, 2023) [hereinafter Roth Interview].

⁷⁴ See *infra* Part II for a description of the role *recognition* plays in social healing efforts.

⁷⁵ Grube, *supra* note 6363.

reconstructive or reparative “adjustments now to address those sorts of things that have happened in the past” is a “path that leads off a cliff.”⁷⁶ What should Kamehameha Schools do, and what guidance exists for practically shaping and strategically charting Kamehameha Schools’ next steps and overall aims?

Relying on Kanaka voices, this Article endeavors to shape, guide and, where needed, recalibrate Kamehameha Schools’ response to the department’s report. It assesses the concepts and particulars of the above questions through law professor and scholar Eric K. Yamamoto’s multidisciplinary *social healing through justice* analytical framework⁷⁷ to suggest that while Kamehameha Schools should not have been included in the department’s report, the trust should engage in a pragmatic, dynamic and strategic process to foster comprehensive and enduring healing for its students, itself as an organization and Kānaka Maoli generally.⁷⁸ “The kind of ‘justice’ that activates social healing . . . cannot be merely an idea or words on paper. It must be experienced.”⁷⁹ This Article seeks to actualize that experience.

Actualizing social healing for Indigenous peoples demands a “contextual legal inquiry [that] start[s] with Native Peoples’ unique history and cultural values, explicitly integrating them into a larger analytical framework that accounts for restorative justice and the key dimensions of self-determination.”⁸⁰ *Social healing through justice* is the larger analytical framework guiding this Article’s analysis, but it needs altering to properly

⁷⁶ Roth Interview, *supra* note 73.

⁷⁷ See discussion *infra* Part II (describing the six multidisciplinary working principles and four inquiries forming the *social healing through justice* praxis). See generally YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 46–71 (drawing upon commonalities across numerous disciplines including theology, social psychology, and Indigenous conflict resolution to anchor the *social healing through justice* framework).

⁷⁸ See discussion *infra* Part II (illustrating that reparative justice efforts are often iterative and must adapt to ever-shifting political, social, economic, and legal landscapes). See generally YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 72–93 (distilling six multidisciplinary working principles into the *social healing through justice* framework’s “language of the 4Rs”—*recognition, responsibility, reconstruction, and reparation*).

⁷⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 48.

⁸⁰ Melody K. MacKenzie, D. Kapua‘ala Sproat & Susan K. Serrano, *Framing Chapter*, in NATIVE HAWAIIAN LAW: A TREATISE (forthcoming 2025) (manuscript at 7) (on file with author).

account for Native Hawaiians’ unique history and cultural values.⁸¹ Kanaka Maoli scholar D. Kapua‘ala Sproat⁸² articulates a bespoke framework for her community that calls attention to “four realms (or ‘values’) of restorative justice embodied in the human rights principle of self-determination: (1) mo‘omeheu (cultural integrity); (2) ‘āina (lands and natural resources); (3) maui ola (social determinants of health and well-being); and (4) ea (self-government).”⁸³ These four distinctly ‘Ōiwi restorative justice values helps the *social healing through justice* framework home in on the precise medicine that may salve the historical and persisting wounds suffered by Kānaka Maoli.

Part II describes the six working principles and four main inquiries composing Professor Yamamoto’s *social healing through justice* praxis. It then infuses the framework with Kumu Sproat’s four Indigenous restorative justice values. Part III recounts how unfolding events in Canada catalyzed the United States’ first-ever Federal Indian Boarding School investigation. It details the investigation’s origins, key findings, and conclusions. Part IV explores Kamehameha Schools’ inclusion in the report as one of Hawai‘i’s seven Federal Indian Boarding Schools by first situating the trust’s creation in time and place. It then compares Kamehameha Schools’ beginnings, reality, and legacy with that of continental Federal Indian Boarding Schools and embraces their damning similarities in operation and impact. Echoing critical distinctions drawn by Kanaka Maoli scholars, however, it concludes that the department likely should not have included Kamehameha Schools in its report. But Part V argues that—rather than attempting to remove itself from the list—Kamehameha Schools should accept its moral *responsibility* to finally, and fully, reckon with its history. Part VI concludes by affirming Kamehameha Schools’ interest in releasing the ties that bind.

⁸¹ Professor Yamamoto’s *social healing through justice* framework embraces Indigenous healing practices and concepts – notably the Native Hawaiian restorative justice practice of ho‘oponopono – but D. Kapua‘ala Sproat’s uniquely Maoli restorative justice framework more fully infuses Kanaka ‘Ōiwi values into the inquiry. *See infra* Section II.C.

⁸² I refer to D. Kapua‘ala Sproat as Kumu Sproat (rather than Professor Sproat) throughout this Article because, as a Kanaka ‘Ōiwi scholar, educator, and cultural practitioner, “kumu” seems to be the most kūpono title.

⁸³ MacKenzie et al., *supra* note 80, at 13.

Braided throughout this piece are linkages to ho‘oponopono, an ancient familial restorative justice practice for Kānaka Maoli.⁸⁴ The epigraph is one expression of kala, or release, that ho‘oponopono participants invoke after the transgression has been forgiven so that both harmer and harmed are no longer bound together by the wrongdoing.⁸⁵ Kānaka Maoli—and other Indigenous groups—are not yet in a place to speak this prayer of release. The United States does not yet deserve it. Maybe Kamehameha Schools does not either. I hope this Article will help change that.

II. SOCIAL HEALING THROUGH JUSTICE: A MULTIDISCIPLINARY RECONCILIATION PRAXIS⁸⁶

We are entangled. Caught in a net of our own making. A net fashioned by this country’s first settlers, first presidents, and first departments with each unhealed transgression against this land’s first peoples. In family conflict contexts Kānaka Maoli call this state of entanglement “hihia.”⁸⁷ What begins “as a cord that binds culprit, offense and victim[.]” soon transforms into a “larger[.] yet tighter network of many cords tied in numerous stubborn knots” as unhealed wounds fester.⁸⁸

For Kānaka Maoli, ho‘oponopono empowers individuals and their families to loosen the ties that bind and, from that release, heal.⁸⁹ How can reconciliation initiatives seeking to heal the persisting wounds of mass historic injustice unbind not just individuals and families, but communities and societies?⁹⁰ Professor Yamamoto’s *social healing through justice* framework distills the “integral parts of a larger, complex process of

⁸⁴ Interview with Kamana‘opono M. Crabbe, Ka Pouhana-CEO, Pouhana Consultation Services, in Mililani, Haw. (July 18, 2022) [hereinafter Crabbe Interview].

⁸⁵ 1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

⁸⁶ I originally drafted Part II for my 2024 piece, *Unbound*, *supra* note 2. I have adapted this part by adding Section II.C to tailor Professor Yamamoto’s framework to this uniquely Maoli issue.

⁸⁷ 1 NĀNĀ I KE KUMU, *supra* note 1, at 71–72.

⁸⁸ *Id.* at 71.

⁸⁹ Crabbe Interview, *supra* note 84. See generally Lynette K. Paglinawan, HO‘OPONOPONO PROJECT NUMBER II: DEVELOPMENT AND IMPLEMENTATION OF HO‘OPONOPONO PRACTICE IN A SOCIAL WORK AGENCY (1972) [hereinafter HO‘OPONOPONO PROJECT NUMBER II]; Manu Meyer, *To Set Right—Ho‘oponopono: A Native Hawaiian Way of Peacemaking*, 12 COMPLEAT LAW. 30 (1995).

⁹⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 46; HARLON L. DALTON, RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES 96–97 (1995); see ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA (1999) [hereinafter YAMAMOTO, INTERRACIAL JUSTICE].

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unlocking painful bondage, of mutual liberation”⁹¹ into points of inquiry that can shape, implement, evaluate and retool healing initiatives “to repair the persisting damage to people, communities and society itself.”⁹²

The quest for liberatory social healing is one of “pure, unadulterated struggle.”⁹³ By incorporating this hard truth—and others—into its

⁹¹ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 49; YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 90, at 174; *see also* ELAZAR BARKAN, THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES (2000) (examining how restitution processes amplify and legitimize claims of past wrongs by studying struggles for restitution following World War II and western nations’ colonization of Africa, Latin America, and Oceania); VAMIK. D. VOLKAN, THE NEED TO HAVE ENEMIES AND ALLIES: FROM CLINICAL PRACTICE TO INTERNATIONAL RELATIONSHIPS (1988) (viewing the intricacies of international diplomacy following acts of terrorism and violence through a developmental psychology lens, and explaining humanity’s developmental need to identify enemies and allies); DAVID W. AUGSBURGER, CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS (1st ed., 1992) (exploring intercultural conflict processes, differences, styles, and patterns, and mediation’s potential to “transform”); NICHOLAS TAVUCHIS, MEA CULPA: A SOCIOLOGY OF APOLOGY AND RECONCILIATION (1998) (analyzing the form and function of intergroup and interpersonal apologies through an inter-cultural and interdisciplinary lens); MICHAEL A. HOGG AND DOMINIC ABRAMS, SOCIAL IDENTIFICATIONS: A SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS AND GROUP PROCESSES (1988) (unpacking intragroup dynamics and exploring how a collection of individuals coalesce and form a cohesive group “to the degree that they have needs capable of mutual satisfaction”); GEIKO MÜLLER-FAHRENHOLZ, THE ART OF FORGIVENESS: THEOLOGICAL REFLECTIONS ON HEALING AND RECONCILIATION (1997) (discussing forgiveness as a process of mutual liberation that attempts to unbind the future from dark legacies of the past); LARISSA BEHRENDT, ABORIGINAL DISPUTE RESOLUTION: A STEP TOWARDS SELF-DETERMINATION AND COMMUNITY AUTONOMY (1995) (proposing that reconciliation between Australian Aboriginal peoples and the non-Aboriginal community should use traditional Aboriginal methods to balance inequalities); BRANDON HAMBER, TRANSFORMING SOCIETIES AFTER POLITICAL VIOLENCE: TRUTH, RECONCILIATION, AND MENTAL HEALTH (Daniel J. Christie ed., 2009) (focusing on the South African Truth and Reconciliation Commission and the beneficial role mental health workers played in actualizing transitional justice for victims of profound political trauma following the end of apartheid); Harold Wells, *Theology for Reconciliation*, in THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES 1, 1–14 (Gregory Baum & Harold Wells eds., 1997) (charting a Christian theological framework for reconciliation); Hiroshi Wagamatsu & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 L. & SOC’Y REV. 461 (1986) (comparing the role of apologies in dispute resolution in the United States and Japan).

⁹² YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 46–47, 49, 61.

⁹³ *Id.* at 46 (citing DALTON, *supra* note 90, at 97).

scaffolding, the *social healing through justice* framework “productively advances that pure, unadulterated struggle.”⁹⁴ It recognizes that genuine social healing is not easy.⁹⁵ It takes time.⁹⁶ And reparative actions that “may be ideal theoretically may not be fully achievable practically (at least in the short-run).”⁹⁷ Navigating the liminal “space [Professor] Martha Minow identifies as ‘Between Vengeance and Forgiveness’”⁹⁸ thus requires “messy, shifting, continual and often combined national and local efforts at reparative justice.”⁹⁹ *Social healing through justice* embraces the mess and meets initiatives where they are at by “illuminating both salutary prospects and limitations.”¹⁰⁰ Then it “[d]raw[s] on multidisciplinary insights” into “some of the dynamics of social healing” to unbind people, communities, and society from past (yet persisting) harm.¹⁰¹

A. Six Social Healing Through Justice Multidisciplinary Working Principles

Professor Yamamoto’s *social healing through justice* framework distills six working principles from commonalities shared by human rights law, theology, social psychology, political theory, economics, and Indigenous conflict resolution methodologies (like ho‘oponopono) that assess whether a

⁹⁴ *Id.*; see YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 90, *passim*.

⁹⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 55, 57; Linda Hasan-Stein & Valmaine Toki, *Reflections from the Roundtable – Access to Justice: How Do We Heal Historical Trauma*, 15 Y.B. N.Z. JURIS 183, 187–89, 199–200 (2017).

⁹⁶ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 55, 57.

⁹⁷ *Id.* at 70; see YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 90, at 133–34.

⁹⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 47 (citing MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE (1998) (describing attempts to effectively redress mass injustice that walk the path between the book’s eponymous extremes)). Professor Minow is a prolific scholar and expert in the areas of human rights, disability justice, gender equity, and ethnic and religious conflict. Martha L. Minow, HARV. L. SCH., <https://hls.harvard.edu/faculty/martha-l-minow/> (last visited Oct. 29, 2023). After clerking for Supreme Court Justice Thurgood Marshall, she “joined the Harvard Law faculty as an assistant professor in 1981[.]” *Id.* Professor Minow served as Dean of Harvard Law School for just under a decade. *Id.* During her tenure, she “strengthened public interest and clinical programs; diversity among faculty, staff, and students; [and] interdisciplinary studies[.]” *Id.*

⁹⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 47.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Notably, Professor Yamamoto leaves room for the *social healing through justice* framework to grow, acknowledging that the six working principles “offer a rough, incomplete, yet nevertheless compelling picture of some of the dynamics of social healing.” *Id.* See generally *id.* at 46–71 for a complete explanation of the framework’s working principles.

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particular initiative is likely to foster the kind of justice that heals.¹⁰² Mutual engagement, the first principle, sits both harmer and harmed down at the proverbial roundtable to collaboratively shape the healing effort.¹⁰³ Solutions

¹⁰² *Id.* at 46–47. Multidisciplinary praxes can often produce results valuable to the legal process. See Jeremy Rinker, *Narrative Reconciliation as Rights Based Peace Praxis: Custodial Torture, Testimonial Therapy, and Overcoming Marginalization*, 48 PEACE RSCH.: CAN. J. PEACE & CONFLICT STUD. 121, 121 (2016) (“The testimonial therapy process is aimed at producing both legal testimony and cathartic release of suffering among torture survivors.”).

¹⁰³ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 62–64. Not unlike a roundtable, Indigenous groups across the globe seek justice for harmed, harmer and communities through healing circles:

A better description of the horizontal [justice] model, and one often used by Indians to portray their thought, is a circle. In a circle, there is no right or left, nor is there a beginning or an end; every point (or person) on the line of a circle looks to the same center as the focus. The circle is the symbol of Navajo justice because it is perfect, unbroken, and a simile of unity and oneness. It conveys the image of people gathering together for discussion.

Robert Yazzie, *Life Comes from It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 180 (1994). Healing circles are used to address a range of harms from theft to child sexual assault.

[T]he Community Holistic Circle Healing (‘CHCH’) model of Hollow Water, Canada, . . . was formed in 1987 as the community began to learn that sexual victimization and intergenerational sexual abuse was at the core of the poor wellbeing of many individuals and families. From their experience, the non-Indigenous adversarial legal system could not understand the complexity of this issue and what was needed for a community to break the cycle of abuse that impacted . . . so many of its members. They developed the model in an effort to take responsibility for what was happening in their community, to work to restore balance and make their community a safe place for future generations.

Hannah McGlade, *Justice as Healing: Developing Aboriginal Justice Models to Address Child Sexual Assault*, 7 INDIGENOUS L. BULL. 10, 11–12 (2007). Similar principles regarding participation of all those impacted by the injustice undergird the strength of truth and healing commissions. Professor Kim D. Ricardo (née Chanbonpin) writes, “The conciliatory power of a truth commission comes from the participation of all affected parties: those who were directly victimized, those who perpetrated the abuses, and even those who continue to be affected by the enduring legacy of the abuses.” Kim D. Chanbonpin, *We Don’t Want Dollars, Just Change: Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth About Torture Commission*, 6 NW. J. L. & SOC. POL’Y 1, 31 (2011).

must center those harmed, and responsible parties must realize they have “a broad interest in healing the wounds of those suffering by reallocating some important degree of power.”¹⁰⁴

Secondly, healing initiatives must aim to repair damage to individuals and communities simultaneously by helping both to recover emotionally and rebuild economically.¹⁰⁵ Because subsequent generations are harmed by inherited trauma, the third principle rejects formalistic notions of legal justice and mends transgenerational wounds by preventing their continued transmission.¹⁰⁶ The fourth principle recognizes that healing “systemic discrimination, denials of self-determination, widespread past violence and culture suppression” requires economic justice measures to rebuild the capacity of those harmed so they can once again thrive.¹⁰⁷ Next, initiatives

¹⁰⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 63; see *id.* at 232–50 for a cogent discussion of Professor Derrick Bell’s interest-convergence thesis; see also Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (observing that those with entrenched power usually recognize the rights of vulnerable groups only when doing so serves their interests); Huma Haider, *Breaking the Cycle of Violence: Applying Conflict Sensitivity to Transitional Justice*, SWISSPEACE (2017) (articulating a conflict-sensitive transitional justice praxis that promotes widespread participation, resonance with local actors, social cohesion, public outreach, cross-sector collaboration, and appropriate sequencing); Verlyn F. Francis, *Designing Emotional and Psychological Support into Truth and Reconciliation Commissions*, 23 WILLAMETTE J. INT’L L. & DISP. RESOL. 2, 273–96 (2016) (describing the South Africa Truth and Reconciliation Commission’s failure to include the communities harmed by apartheid at the process design table and the ensuing re-traumatization).

¹⁰⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 64–66.

¹⁰⁶ *Id.* at 66–67. See generally Eduardo Duran, Bonnie Duran, Maria Yellow Horse Brave Heart & Susan Yellow Horse-Davis, *Healing the American Indian Soul Wound*, in INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES OF TRAUMA 341 (Yael Danieli ed., 1998) (discussing the “survivor’s child complex” and historical trauma suffered by generations of Native children following the American Indian holocaust); Natan P.F. Kellermann, *Transmission of Holocaust Trauma – An Integrative View*, 64 PSYCHIATRY 256 (2001); John H. Ehrenreich, *Understanding PTSD: Forgetting “Trauma”*, 3 ANALYSES SOC. ISSUES & PUB. POL’Y 15 (2003) (arguing the importance of using different terms to distinguish between circumscribed traumatic events versus collectively experienced mass violence).

¹⁰⁷ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 68–69; see Eric K. Yamamoto & Brian Mackintosh, *Redress and the Salience of Economic Justice*, 4 F. ON PUB. POL’Y 1 (2010) [hereinafter Yamamoto & Mackintosh, *Salience of Economic Justice*]; Martha Nussbaum, *Human Rights and Human Capabilities*, 20 HARV. HUM. RTS. J. 21, 23–24 (2007). Nussbaum defines the “Human Development Approach” or “Capability Approach” as a type of human rights approach that seeks to help people function in ten key areas: life; bodily health; bodily integrity; development and expression of senses, imagination, and thought;

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that genuinely heal the wounds of people and communities are marathons, not sprints, with achievable goals and workable processes tailored to ever-shifting political landscapes.¹⁰⁸

The final working principle cautions against the *darkside* of the reparative process—internal and external threats that, if ignored, derail restorative justice initiatives.¹⁰⁹ It anticipates (1) the ways in which healing efforts become lip service; (2) the danger of adopting formalistic framings of the injustice often deployed by opponents; and (3) the political backlash reconciliation initiatives inevitably face.¹¹⁰ Acknowledging these potential pitfalls “counsels strategic framing of debate and action[,]” *not* the abandonment of healing efforts altogether.¹¹¹

emotional health; practical reason; personal and political affiliation; interacting with the environment and other species; play; and material and social control over one’s environment. Nussbaum, *supra*, at 23–24; *see also* Koushik Ghosh, *Culture, Government and Markets*, 2 F. ON PUB. POL’Y 1 (2009). *See generally* EMMA COLEMAN JORDAN & ANGELA P. HARRIS, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS* (2005) [hereinafter JORDAN & HARRIS, *ECONOMIC JUSTICE*] (compiling case law and other materials that explore the nexus between race, gender, and class and the importance of economic and critical analyses to “unraveling the knot of racial and gender inequality”).

¹⁰⁸ *See* YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 69–70; YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 90, at 133–34 (approaching an initiative pragmatically means taking stock of specific and contextual influencing factors); Colette Rausch, *Reconciliation and Transitional Justice in Nepal: A Slow Peace*, 227 PEACEBRIEF 1 (2017) (explaining that incremental, piecemeal transitional justice steps can foster peace).

¹⁰⁹ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 70–71; *see* Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 483 (1998) [hereinafter Yamamoto, *Racial Reparations*] (drawing out three darksides (formerly the “underside, the risks”) of reparations efforts: the distorted legal framing of reparations claims; the dilemma of reparations process; and the ideology of reparations).

¹¹⁰ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 70–71; *see* Yamamoto, *Racial Reparations*, *supra* note 109, at 487–88, 494; *see also* JOHN DAWSON, *HEALING AMERICA’S WOUNDS: DISCOVERING OUR DESTINY* 164–65 (1995); Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 23–26 (2007).

¹¹¹ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 71; Yamamoto, *Racial Reparations*, *supra* note 109, at 487 (explaining that reparations’ attendant darksides should not lessen their significance when achieved nor preclude future redress efforts, but instead illuminate an effort’s potential pitfalls requiring careful navigation).

Each of these working principles is further coalesced into four points of inquiry comprising the *social healing through justice* analytical framework.¹¹²

B. *Four Social Healing Through Justice Analytical Inquiries: Recognition, Responsibility, Reconstruction, and Reparation*

Social healing through justice offers four guideposts—*recognition, responsibility, reconstruction, and reparation*—that “aim[] to shape, assess and recalibrate social healing initiatives to foster the kind of reparative justice that heals.”¹¹³

Recognition asks harmer and harmed to “see into the woundedness of self and others (then and now).”¹¹⁴ Participants who empathize with and humanize each other are better positioned to critically and “fairly assess the specific circumstances and larger historical context of the justice grievances undergirding present-day tensions.”¹¹⁵ All with the goal of developing a “newly framed collective memory of the injustice [to serve] as a foundation for collaborative efforts to repair the damage.”¹¹⁶

¹¹² YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 71.

¹¹³ *Id.* at 72. Initially called “interracial justice,” the first iteration of Professor Yamamoto’s framework “mainly targeted grievances and reconciliation efforts among communities of color in the United States.” *Id.* at 72 n.1; see YAMAMOTO, INTERRACIAL JUSTICE, *supra* 90note 90, at 175–85. “The framework and its 4Rs, though, were broadly cast, drawing from a range o[f] international initiatives and related theorizing. [Professor Yamamoto’s] subsequent works expanded and refined the framework to expressly encompass a wide range of reparative justice initiatives, renaming the approach ‘social healing through justice.’” YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* 12note 12, at 72 n.1; see Eric K. Yamamoto, Miyoko Pettit-Toledo & Sarah Sheffield, *Bridging the Chasm: Reconciliation’s Needed Implementation Fourth Step*, 15 SEATTLE J. SOC. JUST. 109 (2016); Eric K. Yamamoto, Miyoko Pettit & Sara Lee, *Unfinished Business: A Joint South Korea and United States Jeju 4.3 Tragedy Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*, 15 ASIAN-PAC. L. & POL’Y J. 1, 57, 58 (2014); Eric K. Yamamoto & Sara Lee, *Korean “Comfort Women” Redress 2012 Through the Lens of U.S. Civil and Human Rights Reparatory Justice Experiences*, 11 KOREAN L. J. 123, 138–39 (2012); Eric K. Yamamoto & Ashley Kaiao Obrey, *Reframing Redress: A “Social Healing Through Justice” Approach to United States-Native Hawaiian and Japan Aimu Reconciliation Initiatives*, 16 ASIAN AM. L.J. 5, 33 (2009).

¹¹⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 78; see Rachel López, *The (Re)collection of Memory After Mass Atrocity and the Dilemma for Transitional Justice*, 47 N.Y. U. INT’L L. & POL. 799 (2015); Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747 (2000).

¹¹⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 74, 78.

¹¹⁶ *Id.* at 78.

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Responsibility invites those involved in the healing effort to acknowledge the injustice’s attendant harms and accept responsibility for healing persisting individual and collective wounds.¹¹⁷ Guilt, shame, remorselessness, threats of punishment or retribution, and western cultural and legal norms obstruct efforts to take responsibility.¹¹⁸ But we all benefit from “facing history, facing ourselves”¹¹⁹ and disentangling each other from the net of historic injustice. Ho‘oponopono principles, for example, recognize that “[e]ven the ‘innocent bystander’ is part of *hihia*,” meaning everyone in the group “must find ways to *kala* (free) themselves[.]”¹²⁰ Discussed further in Section V(A), *responsibility* is tiered; “[o]verlapping legal and ethical norms provide analytical structure.”¹²¹ Domestic or international law may hold a party legally responsible, and varying degrees of participation in the harm may implicate ethical (or moral) *responsibility*.¹²² Democratic governments are interested in “reclaiming legitimacy as a society actually committed to civil and human rights.”¹²³ Members of democratic

¹¹⁷ *Id.* at 79–82; see Joseph V. Montville, *The Healing Function in Political Conflict Resolution*, in CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION 112 (Dennis J.D. Sandole & Hugo van der Merwe eds., 1993); see also Sovann Mam, *Beyond the Khmer Rouge Tribunal: Addressing a Lack of Reconciliation at the Community Level* 26, (Swisspeace, Working Paper 7/2019), <https://www.swisspeace.ch/assets/publications/downloads/Working-Papers/a7e5743d3e/WP-5-Cambodia-Series-v2.pdf> (identifying the Khmer Rouge perpetrators’ failure to confess wrongdoing or to accept responsibility as key hindrance to reconciliation efforts in Cambodia); YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 90, at 185; Yamamoto, Pettit & Lee, *supra* note 113113, at 20.

¹¹⁸ See YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 81–82.

¹¹⁹ *Id.* at 48.

¹²⁰ I NĀNĀ I KE KUMU, *supra* note 1, at 72.

¹²¹ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 119. See *infra* Section V.A for an articulation of *responsibility*’s myriad tiers.

¹²² YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 119–35.

¹²³ *Id.* at 48. Canada’s Truth and Reconciliation Commission articulated the country’s stake in restoring its legitimacy and stature within the global community in its 2015 report on Canadian residential boarding schools:

In 2015, as the Truth and Reconciliation Commission of Canada wraps up its work, the country has a rare second chance to seize a lost opportunity for reconciliation. We live in a twenty-first-century global world. At stake is Canada’s place as a prosperous, just, and inclusive democracy within that global world.

TRUTH & RECONCILIATION COMM’N CAN., *supra* note 14, at 7.

societies who did not directly participate in the injustice are obligated to help repair damage to the community because “[a]n injury to anyone in the polity also damages the community itself.”¹²⁴ Often, we are all responsible.

Reconstruction is where the rubber meets the road. Where talk becomes walk. Apologies must be made and accepted.¹²⁵ In ho‘oponopono processes “[t]he culprit must confess, repent and make restitution. The one who was wronged must forgive.”¹²⁶ Places for people to learn about the injustice must be built, and messages sharing the new, collaboratively framed collective memory of the harm must be crafted and disseminated.¹²⁷ A final and crucial facet of *reconstruction* is restructuring institutions to “prevent ‘it’ – the injustice and the social, economic and political conditions giving rise to it – from happening again.”¹²⁸ Institutional restructuring must transform the legal system, political and governmental apparatuses, education, economics, and health care.¹²⁹

¹²⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 80; YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 90, at 125; *see also* Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC, June 2014, at 54, 54–71, <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (chronicling four centuries of racial terror and injustice suffered by enslaved Africans, their descendants and Black people generally to cogently articulate the need for reparations).

¹²⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 82. Different cultures shape steps of *recognition* and *reconstruction* differently. *See, e.g.*, Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 L. & SOC. REV. 461 (1986) (exploring an apology’s significance and role in dispute resolution in Japan and the United States).

¹²⁶ I NĀNĀ I KE KUMU, *supra* note 1, at 75.

¹²⁷ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 83–84; Hom & Yamamoto, *supra* note 114, at 1756 (drawing upon multidisciplinary insights to illustrate how collective memory and perceptions of injustice each shape the other); *see also* Joshua F.J. Inwood & Derek Alderman, *Taking Down the Flag Is Just a Start: Toward the Memory-Work of Racial Reconciliation in White Supremacist America*, 56 SE. GEOGRAPHER 9, 10–12 (2016) (devalorizing and delegitimizing white supremacist symbols should accompany a broader call for a Truth and Reconciliation Commission tasked with critically examining white supremacy’s historical and current impacts).

¹²⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 84; *see* Nicole Summers, *Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?*, 25 HARV. HUM. RTS. J. 219, 221–34 (2012) (assessing both salutary provisions and gaps in Colombia’s 2011 Victims’ Law and exploring legislation as an effective transitional justice tool).

¹²⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 84.

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Reparation is, at base, about rebuilding the capacity of harmed individuals and communities to once again “function productively and peaceably.”¹³⁰ While this may include individual payments to “partially compensate for property or financial loss or psychological trauma,” *reparation* digs deeper.¹³¹ It uproots disabling structural conditions, making the necessary shifts to build out educational opportunities, job skills training, government and community support, and access to capital and health care.¹³² But calls for *reparation*—and particularly for reparations (with an “s”)¹³³—are routinely met with vitriolic backlash.¹³⁴ As the *darkside* working principle counsels,

¹³⁰ *Id.* at 89. Ho‘oponopono, too, emphasizes the importance of reparation:

The requirement of reparation is especially wise. For until stolen property, for example, is restored or replaced, the thief remains burdened with guilt and social discomfort. The victim, though he forgives, continues to feel the loss of possessions. Neither is free of the hala or wrong, and the attitudes and emotions the wrong engendered.

I NĀNĀ I KE KUMU, *supra* note 1, at 75.

¹³¹ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 87.

¹³² *Id.* at 86–88; see Coates, *supra* note 124, at 70; AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); Martha C. Nussbaum, *Capabilities and Human Rights*, 66 *FORDHAM L. REV.* 273 (1997); Martha C. Nussbaum, *Human Capabilities, Female Human Beings*, in *WOMEN, CULTURE AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES* 61 (Martha C. Nussbaum & Jonathan Glover eds., 1996).

¹³³ “Reparation” can include “reparations” in the form of individual monetary compensation for “property or financial loss or psychological trauma, or to symbolize acceptance of responsibility for serious wrongdoing[.]” but the two terms differ in important ways. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 87. “Reparation as economic justice (repairing material harms of injustice) cuts deeper than monetary or property recompense.” *Id.* Reparation is more about changing socioeconomic conditions and facilitating capacity-building for entire groups and communities. *Id.* at 87–88; see also SEN, *supra* note 132; Nussbaum, *Capabilities and Human Rights*, *supra* note 132.

¹³⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 89. See generally ALFRED BROPHY, REPARATIONS PRO AND CON (2006). Reparations receive much backlash because polling research suggests that two-thirds of people in the United States with an “even higher share among white people” do not believe that descendants of those who were enslaved deserve reparations. Consider This From NPR, *How Do You Put a Price on America’s Original Sin?*, NAT’L PUB. RADIO, at 11:29 (Mar. 27, 2023, 5:10 PM ET), <https://www.npr.org/2023/03/27/1166353772/how-do-you-put-a-price-on-americas-original-sin>. “This is not a question of logistics or economics. It’s a question of deservedness.” *Id.* at

those at the healing initiative’s helm must strategically anticipate and proactively respond to the obstacles that claims for economic justice face.¹³⁵

Together these four starting points of inquiry—*recognition*, *responsibility*, *reconstruction*, and *reparation*—endeavor to shape or reconfigure reconciliation initiatives to “bridge the justice chasm between aspiration and realization.”¹³⁶ But, as Professor Yamamoto notes, the *social healing through justice* framework “offer[s] a rough, incomplete, yet nevertheless compelling picture of some of the dynamics of social healing.”¹³⁷ He crafts the framework with room to grow.¹³⁸ Though *social healing through justice* is grounded in Indigenous healing concepts, Kumu Sproat’s uniquely ‘Ōiwi restorative justice values further tailor the framework to fit Native Hawaiians’ justice grievances.¹³⁹

C. *Kanaka Alterations: Indigenizing Social Healing Through Justice*

Indigenous peoples rightfully distrust western laws and legal systems.¹⁴⁰ Colonizing (or imperializing) nations foisted English common law and

12:00. It is also an issue of “collective, willful ignorance” by (white) people who are “not just unaware, but somehow avoiding information on how Black people still face discrimination in the labor market, housing and banking.” *Id.* at 12:39. Most people who participated in a racial wealth gap survey believe that for “every \$100 white families have, Black families have about \$90[.]” when in reality, the wealth gap is much larger and continues to grow. *Id.* at 13:20. But the prevailing core narrative in the United States is that everyone can pick themselves up by their bootstraps if they just work hard enough. *Id.* at 12:50. This is out of touch with the realities of the global majority. *Id.* at 13:25.

¹³⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 89–90.

¹³⁶ *Id.* at 73–91. See *supra* Section II.A for a refresher on the framework’s working principles and how they inform the four points of inquiry.

¹³⁷ *Id.* at 47.

¹³⁸ See *id.*

¹³⁹ MacKenzie et al., *supra* note 80, at 12–13.

¹⁴⁰ See, e.g., Kimbra Cutlip, *In 1868, Two Nations Made a Treaty, the U.S. Broke It and Plains Indian Tribes Are Still Seeking Justice*, SMITHSONIAN MAG. (Nov. 7, 2018), <https://www.smithsonianmag.com/smithsonian-institution/1868-two-nations-made-treaty-us-broke-it-and-plains-indian-tribes-are-still-seeking-justice-180970741/> (detailing provisions in the 1868 Fort Laramie Treaty designating the Black Hills as unceded Indian Territory until gold was discovered and the United States reneged on the agreement and redrew the treaty’s boundaries); Hansi Lo Wang, *Broken Promises on Display at Native American Treaties Exhibit*, NAT’L PUB. RADIO (Jan. 18, 2015, 4:57 PM ET), <https://www.npr.org/sections/codeswitch/2015/01/18/368559990/broken-promises-on-display-at-native-american-treaties-exhibit>.

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process on Native groups¹⁴¹ and then reneged on treaties,¹⁴² legislated cultural destruction,¹⁴³ and thwarted Indigenous economic advancement.¹⁴⁴ For this reason, “[a]rticulating how Indigenous understandings and conceptualizations underpin [restorative justice-based analytical frameworks] is especially important where law has historically been wielded as a tool of oppression and dispossession.”¹⁴⁵ In other words, Native groups involved in reconciliation processes must be the ones who define the attendant social healing’s contours to ensure reconciliation is genuine, enduring, and comprehensive.¹⁴⁶

Kanaka ‘Ōiwi lawyer and scholar D. Kapua‘ala Sproat offers a uniquely Maoli framework that reconciliation efforts can use to “actualize[]

¹⁴¹ Peter d’Errico, *Native Americans in America: A Theoretical and Historical Overview*, 14 WICAZO SA REV. 7, 15 (1999) (“Chief Justice John Marshall borrowed from [] papal bulls the essential legalisms needed to affirm American power over indigenous peoples. He encased Christian religious premises within the rhetoric of ‘European’ expansion in deciding *Johnson v. McIntosh* . . .”).

¹⁴² Cutlip, *supra* note 140; Wang, *supra* note 140.

¹⁴³ See, e.g., NEWLAND REPORT, *supra* note 16, at 35–36 & nn.88–89.

¹⁴⁴ See Randall Akee, *Sovereignty and Improved Economic Outcomes for American Indians: Building on the Gains Made Since 1990*, in BOOSTING WAGES FOR U.S. WORKERS IN THE NEW ECONOMY: TEN ESSAYS ON WORKER POWER, WORKER WELL-BEING, AND EQUITABLE WAGES 147–64 (2021) (reducing barriers to economic development for American Indians on reservation lands includes increasing access to capital, investing and expanding infrastructure, and boosting educational attainment and access).

¹⁴⁵ MacKenzie et al., *supra* note 80, at 7. Kumu Sproat cites various scholars for their differing perspectives on western imperialism’s shaping of Hawai‘i law and governance. *Id.* at 7 n.40. More recent scholarship suggests that law was not “simply a colonial imposition[,]” but “an extension of the continued exercise of chiefly governance[.]” *Id.* See generally NOELANI ARISTA, *THE KINGDOM AND THE REPUBLIC: SOVEREIGN HAWAI‘I AND THE EARLY UNITED STATES* (2019) (using Native Hawaiian historical paradigms to provide an accurate accounting of ‘Ōiwi history, beyond and against the dominant narrative of American colonization); KAMANAMAİKALANI BEAMER, *NO MĀKOU KA MANA: LIBERATING THE NATION* (2014) (explaining how ruling ali‘i used western ideas and Indigenous customs to innovate a hybridized system of governance); SALLY ENGLE MERRY, *COLONIZING HAWAI‘I: THE CULTURAL POWER OF LAW* (2000) (explaining how Anglo-American law colonized and displaced Indigenous law); JONATHAN KAY KAMAKAWIWO‘OLE OSORIO, *DISMEMBERING LĀHUI: A HISTORY OF THE HAWAIIAN NATION TO 1887* (2002) (articulating “a new mo‘olelo” of colonialism’s violence).

¹⁴⁶ See MacKenzie et al., *supra* note 80, at 7.

[restorative justice] on the ground in Kanaka Maoli communities[.]”¹⁴⁷ Four restorative justice “realms . . . embodied in the human rights principle of self-determination”¹⁴⁸ constitute the framework: “(1) mo‘omeheu (cultural integrity); (2) ‘āina (lands and natural resources); (3) maui ola (social determinants of health and well-being); and (4) ea (self-government).”¹⁴⁹ The realms are not siloed.¹⁵⁰ Indigenous groups’ holistic (physical, spiritual, and emotional) well-being is indivisible from their ability to access their ancestral lands and exercise self-determination.¹⁵¹ Cultural practices are often place-based and thus depend on—and are shaped by—the land.¹⁵²

[C]ulture cannot exist in a vacuum, and its integrity is bound to land and other resources upon which Indigenous Peoples depend for physical and spiritual survival. In turn, Native communities’ well-being is defined by cultural veracity and access to, and the health of, natural resources. Finally, cultural and political self-determination influence who will control Indigenous Peoples’ destinies—including the resources that define cultural integrity and well-being—and whether that fate will be shaped internally or by outside forces, including colonial powers.¹⁵³

Mo‘omeheu, ‘āina, maui ola, and ea are the framework’s touchpoints.¹⁵⁴ They are also four areas of Kanaka life devastated by western imperialism.¹⁵⁵

¹⁴⁷ *Id.* at 12.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* Kumu Sproat explains how she drew upon James Anaya’s framework for inspiration and guidance:

James Anaya coalesced international human rights principles of self-determination to identify the four analytical categories utilized in this developing framework. . . . To make these values relevant to the Native Hawaiian community and this specific body of law, we have elected to use ‘ōlelo Hawai‘i knowing that these terms are embedded with meanings and significance beyond their mere definitions.

MacKenzie et al., *supra* note 80, at 12 n.70. *See generally* James Anaya, *The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs*, 28 GA. L. REV. 309, 342–60 (1994).

¹⁵⁰ *Id.* at 12–13.

¹⁵¹ *See id.*

¹⁵² *See id.*

¹⁵³ *Id.* (citations omitted).

¹⁵⁴ *Id.* at 13.

¹⁵⁵ *Id.*; *see* Anaya, *supra* note 149, at 342–60; United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

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Persisting struggles to revitalize language and culture,¹⁵⁶ centuries-long conflicts over land and water access,¹⁵⁷ enduring poor health outcomes,¹⁵⁸ and scant opportunities to exercise self-determination¹⁵⁹ evince western imperialism's destructive legacy. Because *social healing through justice* means “restoring what was taken or repairing what was broken[,]”¹⁶⁰ effective reconciliation initiatives should seek to advance each of these four realms (or values).¹⁶¹

Whether a reconciliation initiative repairs the damage to mo‘omeheu hinges on if it “appropriately supports and restores ‘cultural integrity as a partial remedy for past harms, or [if it] perpetuate[s] conditions that continue to undermine cultural survival.”¹⁶² Similarly, the ‘āina touchpoint asks whether an initiative “perpetuates the subjugation of ancestral lands, resources, and rights, or attempts to redress historical injustices in a significant way.”¹⁶³ Inquiry into maui ola examines whether an initiative improves social determinants of health and well-being like education, health care, “‘living standards,’ and other social conditions,”¹⁶⁴ or if it “perpetuates

¹⁵⁶ See generally David M. Forman & Susan K. Serrano, *Traditional and Customary Access and Gathering Rights*, in NATIVE HAWAIIAN LAW: A TREATISE 784–806 (Melody Kapilialoha MacKenzie, Susan K. Serrano & D. Kapua‘ala Sproat eds., 2015) (describing the constitutional, statutory, and judicial bases for traditional and customary Native Hawaiian rights and practices).

¹⁵⁷ E.g., *Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000); *In re Waiāhole Ditch Combined Contested Case Hearing (Waiāhole I)*, 94 Hawai‘i 97, 9 P.3d 409, 455 (2000). See generally Forman & Serrano, *supra* note 155, at 790–801 (providing an overview of Hawai‘i cases interpreting traditional and customary gathering rights); *Background on Na Wai ‘Eha*, EARTHJUSTICE, <https://earthjustice.org/feature/background-on-na-wai-eha> (last visited Apr. 21, 2023) (describing the ongoing diversion of freshwater streams on Maui to private development projects).

¹⁵⁸ E.g., OFF. HAWAIIAN AFFS., *Native Hawaiian Data Book 2021*, Chapter 7 Health & Vital Statistics, https://www.ohadatabook.com/go_chap07.21.html (last updated July 2023).

¹⁵⁹ Andrade, *Legacy in Paradise*, *supra* note 47, at 276.

¹⁶⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 68 (citing Thomas M. Antkowiak, *A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples*, 25 DUKE J. COMP. & INT’L L. 1, 1–80 (2014)).

¹⁶¹ MacKenzie et al., *supra* note 80, at 13.

¹⁶² *Id.* at 14 (citing D. Kapua‘ala Sproat, *Wai Through Kānāwai: Water for Hawai‘i’s Streams and Justice for Hawaiian Communities*, 95 MARQ. L. REV. 127, 179 (2011)).

¹⁶³ *Id.* at 15 (citing Sproat, *Wai Through Kānāwai*, *supra* note 162, at 181).

¹⁶⁴ *Id.* at 17 (citing Sproat, *Wai Through Kānāwai*, *supra* note 162, at 182–83).

the status quo.”¹⁶⁵ And ea asks reconciliation initiatives to “consider ‘whether a decision perpetuates historical conditions imposed by colonizers or [if it] will attempt to redress the loss of self-governance.’”¹⁶⁶

“[W]eaving these four values into a cohesive framework has tremendous transformative potential to heal the wounds of injustice and begin to produce real results”¹⁶⁷ for Kānaka Maoli. But healing cannot begin until the harm is recognized.¹⁶⁸ As with other sovereign nations around the globe¹⁶⁹ that are caught in the net of white supremacy’s imperialist projects, “the recent history of Hawai‘i ‘is a story of violence, in which that colonialism literally and figuratively dismembered the lāhui (the people) from their traditions, their lands, and ultimately their government.’”¹⁷⁰ Federal Indian Boarding Schools facilitated Euro-American imperialism¹⁷¹ in Hawai‘i and the overthrow of the sovereign Hawaiian Kingdom’s last monarch.¹⁷² On Turtle Island (the continental United States), the violence of Federal Indian Boarding Schools was unmatched¹⁷³—except by Canada.¹⁷⁴ What follows is an overview of the Federal Indian Boarding School Initiative’s investigative report findings and conclusions which expose the harms perpetrated by the federal government against Native groups on the continent and in Hawai‘i

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 19 (citing Sproat, *Wai Through Kānāwai*, *supra* note 162, at 185).

¹⁶⁷ *Id.* at 13. Conceptualizing the four values as an ‘aho can help illustrate their interconnectedness:

In a similar vein, Political Science Professor Noelani Goodyear-Ka‘ōpua encourages Hawaiian Studies practitioners to look at four values or principles that can be seen as ‘aho, single cords, that when braided together form what political scholar and poet Haunani Kay-Trask describes as a “rope of resistance”: ea (life, breath, sovereignty), lāhui (collective identity and self-determination), kuleana (positionality and obligations), and pono (justice and healing).

Id. at 13 n.72 (citations omitted).

¹⁶⁸ See discussion *infra* Section II.B for a thorough exploration of *recognition* as one *social healing through justice* touchpoint guiding reparative justice initiatives.

¹⁶⁹ MacKenzie et al., *supra* note 80, at 19.

¹⁷⁰ *Id.* (citing OSORIO, DISMEMBERING LĀHUI, *supra* note 145, at 3).

¹⁷¹ BEAMER, *supra* note 145, at 12 (explaining that “Euro-American imperialism” is a better fit to describe what Kānaka Maoli faced during the nineteenth-century and beyond because of Hawai‘i’s internationally recognized sovereign statehood).

¹⁷² See discussion *infra* Section IV.A.

¹⁷³ See discussion *infra* Section III.B.

¹⁷⁴ See generally TRUTH & RECONCILIATION COMM’N CAN., *supra* note 14; Doyle, *supra* note 2.

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during its centuries-long twin policy of land acquisition and cultural genocide.

III. THE UNITED STATES DEPARTMENT OF THE INTERIOR'S FEDERAL
INDIAN BOARDING SCHOOL INITIATIVE¹⁷⁵

Yaqui scholar Rebecca Tsosie describes the histories of the United States and Canada as closely linked.¹⁷⁶ Both are settler colonial nations born of British colonization and Euro-American imperialism.¹⁷⁷ Both alienated Indigenous nations from the whole of their ancestral territories when drawing the international border now dividing them.¹⁷⁸ And both devised policies for the “forcible acculturation of Indigenous peoples . . . which included displacement from their traditional territories . . . as well as the removal of Indigenous children to government-sponsored boarding schools.”¹⁷⁹ Reconciliation is the point at which Canada and the United States diverge.¹⁸⁰

Prompted by Canada's Tk'emlúps te Secwepemc First Nation's unearthing of the remains of 215 Indigenous children at Kamloops Indian Residential School,¹⁸¹ United States Department of the Interior Secretary

¹⁷⁵ I originally drafted Part III for my *Unbound* piece, *supra* note 2. The descriptions of the Department of the Interior's investigative report findings provide critical historical information to effectively compare and contrast Kamehameha Schools with other Federal Indian Boarding Schools named in the report. NEWLAND REPORT, *supra* note 16, at 69–79.

¹⁷⁶ Rebecca Tsosie, *Accountability for the Harms of Indigenous Boarding Schools: The Challenge of “Healing Persisting Wounds” of “Historic Injustice”*, 52 SW. L. REV. 20, 20 (2023).

¹⁷⁷ *Id.*; see BEAMER, *supra* note 145, at 12.

¹⁷⁸ Tsosie, *supra* note 176.

¹⁷⁹ *Id.*

¹⁸⁰ Doyle, *supra* note 2, at 174 (examining governmental responses to ninety-four calls to action issued by Canada's Truth and Reconciliation Commission and contrasting that progress with the United States' fledgling boarding school initiative). Where a 2006 class action settlement established Canada's Truth and Reconciliation Commission, and where that commission fulfilled its mandate in 2015, the United States struggles to get a bill proposing a similar Truth and Reconciliation Commission for United States Federal Indian Boarding Schools out of committee. *Id.*; TRUTH & RECONCILIATION COMM'N CAN., *supra* note 14, at 130; see Truth and Healing Commission on Indian Boarding School Policies in the United States Act, S. 1723 118th Cong. (2023); *Cloud v. Can.* (2004) 192 O.A.C 239 (Can.)14.

¹⁸¹ DOI Memo, *supra* note 11, at 1; Coletta, *supra* note 20.

Deb Haaland launched the Federal Indian Boarding School Initiative on June 22, 2021.¹⁸²

A. *The Initiative's Origins: Harbinger Priests*

The granddaughter of Federal Indian boarding school survivors and the United States' first Native American cabinet secretary, Secretary Haaland lives with the intergenerational harm caused by the schools.¹⁸³ Two generations of her grandparents were taken from their families and forcibly enrolled in federally supported programs designed to strip them of their Native identities.¹⁸⁴ In a *Washington Post* editorial (published two weeks before announcing the initiative), Secretary Haaland wrote of a conversation she had with her grandmother about the schools.¹⁸⁵ "It was the first time I heard her speak candidly about how hard it was — about how a priest gathered the children from the village and put them on a train, and how she missed her family. She spoke of the loneliness she endured. We wept together."¹⁸⁶

Secretary Haaland now leads the department "responsible for operating or overseeing Indian boarding schools across the United States and its territories," and believes the agency is therefore "uniquely positioned to assist in the effort to recover the histories of these institutions."¹⁸⁷ The primary goal of the ten-month-long initiative was to "identify all boarding schools that participated in the Program and the students enrolled in each, along with each student's Tribal affiliation" with a "particular emphasis . . . on any records relating to cemeteries or potential burial sites associated with" the residential facilities.¹⁸⁸ By bringing to light what has been buried for so long, Secretary Haaland seeks to scale up the healing her grandmother experienced after she reclaimed her truth and spoke openly about what she survived.¹⁸⁹ "It was an exercise in healing for her and a profound lesson for me . . . about how important it is to reclaim what those schools tried to take from our people."¹⁹⁰

¹⁸² DOI Memo, *supra* note 11, at 1.

¹⁸³ See Haaland, *My Grandparents Were Stolen*, *supra* note 14.

¹⁸⁴ See *id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ DOI Memo, *supra* note 11, at 1–2.

¹⁸⁸ *Id.* at 2.

¹⁸⁹ Haaland, *My Grandparents Were Stolen*, *supra* note 14.

¹⁹⁰ *Id.*

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B. *Call Him Hanödaga:nyas, “Town Destroyer.”*¹⁹¹ *Select Investigative
Report Findings*

With further investigation to come, the report’s preliminary findings demonstrate that the expansive Federal Indian Boarding School system traumatized multiple generations of American Indian, Alaska Native, and Native Hawaiian children who “the United States coerced, induced, or compelled” to attend the schools as part of its “twin Federal policy of Indian

¹⁹¹ In a 1779 letter to Major General John Sullivan, George Washington directed him to destroy Native American settlements and food systems. Letter from George Washington to John Sullivan (May 31, 1779), in 20 THE PAPERS OF GEORGE WASHINGTON: REVOLUTIONARY WAR SERIES, 8 APRIL TO 31 MAY 1779, at 716, 716–19 (Edward G. Lengel ed., 2010). He ordered him to capture every Native American in sight, regardless of age or gender:

The expedition you are appointed to command is to be directed against the hostile tribes of the six nations of Indians, with their associates and adherents. The immediate objects are the *total destruction and devastation of their settlements* and the *capture of as many prisoners of every age and sex* as possible. It will be *essential to ruin their crops now in the ground and prevent their planting more.*

. . . .

But you will not by any means listen to (any) overture of peace before the total ruin of their settlements is effected Our future security will be in their inability to injure us the distance to which they are driven and in the terror with which the severity of the chastisement they receive will inspire (them.)

Id. (emphasis added). George Washington earned the moniker Hanödaga:nyas, the Seneca word for “Town Destroyer.” Letter from the Seneca Chiefs to George Washington (Dec. 1, 1790), in 7 THE PAPERS OF GEORGE WASHINGTON: PRESIDENTIAL SERIES, 1 DECEMBER 1790 TO 21 MARCH 1791, 7, 7–16 (Jack D. Warren, Jr. ed., 1998); see WALLACE CHAFE, SENECA WORDS 127, <https://senecalanguage.com/wp-content/uploads/Seneca-Words-Chafe.pdf>. The Susquehannahs gave George Washington’s great-grandfather, John Washington, a similar moniker meaning “devourer of villages” following a “massacre when five chiefs who had come out to negotiate under a flag of truce were murdered by colonists.” *Conotocarious*, GEORGE WASHINGTON’S MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/conotocarious/> (last visited Nov. 7, 2023).

territorial dispossession and Indian assimilation through Indian education.”¹⁹²

As the United States emerged in the latter half of the eighteenth century, the country’s founding fathers and first presidents were particularly concerned with acquiring land for the growing nation and its white inhabitants.¹⁹³ They set their sights on the “extensive forests” Native groups cared for and controlled.¹⁹⁴ But how could they wrest these territories from Native populations as cheaply as possible while preserving (white) life?¹⁹⁵ In part by “advanc[ing] an assimilation policy directed at Indian children[.]”¹⁹⁶

From the beginning, Federal policy toward the Indian was based on the desire to dispossess him of his land. . . .

Beginning with President Washington, [known as Hanödaga:nyas, or “Town Destroyer,” by certain Native groups], the stated policy of the Federal Government was to replace the Indian’s culture with our own. This was considered “advisable” as the cheapest and safest way of subduing the Indians, of providing a safe habitat for the country’s white inhabitants, of helping the whites acquire desirable land, and of changing the Indian’s economy so that he would be content with less land. Education was a weapon by which these goals were to be accomplished.¹⁹⁷

The United States weaponized education by focusing boarding school instruction on manual labor and vocational skills with limited value to the

¹⁹² NEWLAND REPORT, *supra* note 16, at 36, 91. “[T]he Department operated or supported 408 Federal Indian Boarding Schools across 37 states or then-territories, including 21 schools in Alaska and 7 schools in Hawaii. Given that an individual Federal Indian Boarding School may account for multiple sites, the 408 Federal Indian Boarding Schools comprised 431 specific sites.” *Id.* at 82. The investigation documented over 1,000 institutions that did not meet the Federal Indian boarding school criteria, but that “may have involved education of Indian people, mainly Indian children[.]” including day schools, sanitariums, asylums and orphanages. *Id.* at 87.

¹⁹³ *Id.* at 21; SENATE SPECIAL SUBCOMM. ON INDIAN EDUC., COMM. ON LAB. & PUB. WELFARE, INDIAN EDUCATION: A NATIONAL TRAGEDY—A NATIONAL CHALLENGE, S. REP. NO. 91-501, Appendix I, at 142–43 (1969) [hereinafter KENNEDY REPORT].

¹⁹⁴ Letter from Thomas Jefferson to William Henry Harrison (Feb. 27, 1803), in 39 THE PAPERS OF THOMAS JEFFERSON, 13 NOVEMBER 1802 TO 3 MARCH 1803, at 589, 589–93 (Barbara B. Oberg ed., 2018); NEWLAND REPORT, *supra* note 16, at 21–22.

¹⁹⁵ See KENNEDY REPORT, *supra* note 193, at 142.

¹⁹⁶ NEWLAND REPORT, *supra* note 16, at 21.

¹⁹⁷ KENNEDY REPORT, *supra* note 193, at 142.

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developing industrial economy.¹⁹⁸ Deemphasizing textbook instruction foreclosed many relevant employment opportunities to Native groups, further hampering their economic capacity-building ability.¹⁹⁹ Centering agricultural, domestic, and vocational training enabled the federal government to more easily pen Native groups into ever-diminishing territories by “discourag[ing] nomadic practices and [encouraging] . . . sedentary practices dominated by western agriculture development.”²⁰⁰ Concomitantly, the United States pushed Native groups to “purchase goods on credit so as to likely fall into debt,” knowing they would have to pay the debt through land concessions.²⁰¹

Not only were boarding schools weaponized to disrupt Tribal economies and sever the physical connection Native groups had with their ancestral lands, they also destroyed familial and cultural connections within Native

¹⁹⁸ NEWLAND REPORT, *supra* note 16, at 7–8.

¹⁹⁹ *See id.* at 8, 59–60. “Training for jobs that didn’t exist left many young adults with an inability to gain employment in the newly industrialized American society. . . . The resulting poverty of American Indian families was used as a justification for removing native children from their homes.” KATHRYN E. FORT, AMERICAN INDIAN CHILDREN AND THE LAW: CASES AND MATERIALS 8 (2019).

²⁰⁰ NEWLAND REPORT, *supra* note 16, at 21–22, 59–60.

²⁰¹ *Id.* at 22. In a confidential letter to Congress, President Jefferson wrote:

[W]e wish to draw them to agriculture, to spinning & weaving . . . when [sic] they withdraw themselves to the culture of a small piece of land, they will percieve [sic] how useless to them are their extensive forests, and will be willing to pare them off from time to time in exchange for necessaries for their farms & families. to [sic] promote this disposition to exchange lands which they have to spare & we want, for necessaries, which we have to spare & they want, *we shall . . . be glad to see the good & influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop th[em off] by a cession of lands.*

Letter from Thomas Jefferson to William Henry Harrison, *supra* note 194, at 589–93 (emphasis added). “In 1803 Harrison also became a special commissioner charged with negotiating with Native Americans ‘on the subject of boundary or lands.’ Succumbing to the demands of land-hungry whites, he negotiated a number of treaties between 1802 and 1809 that stripped Indians of millions of acres of land” The Editors of Encyclopaedia Britannica, *William Henry Harrison*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/William-Henry-Harrison> (last updated Nov. 10, 2022).

communities.²⁰² “Federal records indicate that the United States viewed official disruption to the Indian family unit as part of Federal Indian policy to assimilate Indian children.”²⁰³ Early and modern reports reveal how the boarding school system “produced intergenerational trauma by disrupting family ties in Indian Tribes, Alaska Native Villages, and the Native Hawaiian Community.”²⁰⁴ Young children were prided from their parents’ arms, shipped off to schools in unfamiliar places sometimes hundreds of miles away from home, and then deliberately grouped with children from different tribes to “disrupt Tribal relations and discourage or prevent Indian language use[.]”²⁰⁵ Upon arrival, “systematic militarized and identity-alteration methodologies”

²⁰² NEWLAND REPORT, *supra* note 16, at 37–39. The first Federal Indian Boarding School opened in 1801 and the last in 1969. *Id.* at 6. Schools were financed through congressional appropriations and, most insidiously, through funds “from Tribal trust accounts for the benefit of Indians[.]” *Id.* at 92.

²⁰³ *Id.* at 38.

²⁰⁴ *Id.* at 38–39. In 1928 the Brookings Institution published what is colloquially known as the Meriam Report upon the Department of the Interior’s request. LEWIS MERIAM, INSTITUTE FOR GOV’T RSCH., THE PROBLEM OF INDIAN ADMINISTRATION (1928) [hereinafter MERIAM REPORT]. The study investigated and documented the economic and social conditions of Native groups, and determined that the Federal Indian boarding school system was the primary culprit in the disruption of family and Tribal relations:

[O]n the whole government practices may be said to have operated against the development of wholesome [Indian] family life.

Chief of these is the long continued policy of educating the [Indian] children in boarding schools far from their homes, taking them from their parents when small and keeping them away until parents and children become strangers to each other. The theory was once held that the *problem of the [Indian] could be solved by educating the children, not to return to the reservation, but to be absorbed one by one into the white population.* This plan involved the *permanent breaking of family ties*, but provided for the children a *substitute for their own family life by placing them in good homes of whites* for vacations and sometimes longer, the so-called “outing system.” . . . Nevertheless, this worst of its features still persists, and *many children today have not seen their parents or brothers and sisters in years.*

NEWLAND REPORT, *supra* note 16, at 38–39 (alterations in original) (emphasis added) (quoting MERIAM REPORT, *supra*, at 573–74).

²⁰⁵ NEWLAND REPORT, *supra* note 16, at 40. “The Department acknowledged that “[i]nter-marriage by the young graduates of different nations would necessitate the use of the English language, which their offspring would learn as their mother tongue.” *Id.* (alteration in original).

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deployed by the school system stripped children of their names, hair, clothing, language, cultural practices, and religions.²⁰⁶

Many children never saw their families while at the schools, driving the wedge between them even further.²⁰⁷ Many children never returned home because they were placed with or adopted by non-Native (often white) families as part of the Indian Adoption Project.²⁰⁸ And many never saw their families again because they died while in the schools. At least 500 children perished.²⁰⁹ That number is expected to grow.²¹⁰ The initial investigation also identified fifty-three marked and unmarked burial sites.²¹¹ That number is expected to grow, too.²¹²

The children who survived the schools carried the trauma of physical, sexual, and emotional abuse into their adulthoods.²¹³ They carried the memories of public humiliation, beatings, starvation, and isolation in solitary confinement for failing to follow puritanical boarding school rules.²¹⁴

²⁰⁶ *Id.* at 7, 51, 53, 92.

²⁰⁷ Haaland, *My Grandparents Were Stolen*, *supra* note 14.

²⁰⁸ NEWLAND REPORT, *supra* note 16, at 97; Frances Madeson, *My Childhood Was Stolen*, *Says Linda Raye Cobe, Indian Boarding School Survivor*, TRUTHOUT (Oct. 10, 2022), <https://truthout.org/articles/my-childhood-was-stolen-says-linda-raye-cobe-indian-boarding-school-survivor/?eType=EmailBlastContent&eId=4ed73fbc-1174-4571-b8d6-206a199e1805>. The Indian Adoption Project was not “repudiated by Congress until the enactment of the Indian Child Welfare Act of 1978.” NEWLAND REPORT, *supra* note 16, at 97. The Supreme Court of the United States heard oral arguments on November 9, 2022, challenging the constitutionality of the seminal Indian Child Welfare Act. Nina Totenberg, *Supreme Court Considers Fate of Landmark Indian Adoption Law*, NAT’L PUB. RADIO (Nov. 8, 2022), <https://www.npr.org/2022/11/08/1134668931/supreme-court-icwa>.

²⁰⁹ NEWLAND REPORT, *supra* note 16, at 9.

²¹⁰ *Id.*; Dana Hedgpeth (Haliwa-Saponi) & Emmanuel Martinez, *More Schools that Forced American Indian Children to Assimilate Revealed*, WASH. POST (Aug. 30, 2023, 5:00 AM EDT), <https://www.washingtonpost.com/nation/2023/08/30/indian-boarding-schools/> (“Thousands are believed to have died, the [National Native American Boarding School Healing Coalition] said.”).

²¹¹ NEWLAND REPORT, *supra* note 16, at 86.

²¹² *Id.*

²¹³ *Id.* at 56.

²¹⁴ *Id.* at 54. Dora Brought Plenty refused to hit her friend, Lucy, who was being punished for running away, with a hand towel soaked in hot water and studded with open safety pins. Dana Hedgpeth (Haliwa-Saponi), *‘12 Years of Hell’: Indian Boarding School Survivors Share Their Stories*, WASH. POST (Aug. 7, 2023, 7:00 AM EDT), <https://www.washingtonpost.com/>

Sometimes older children were ordered to punish younger children by court-martial.²¹⁵ Some worked backbreaking jobs because insufficient federal funding meant the exploitation of child manual labor—disguised as vocational training—kept the schools operational.²¹⁶

C. *Thieving Indigenous Life, Land, Wealth, and Children: Investigative Report Conclusions*

From the above findings, the report developed the following conclusions about the Federal Indian Boarding School system.²¹⁷ “From the earliest days of the Republic, the United States’ official objective . . . was to sever the cultural and economic connection” Native groups had with the land.²¹⁸ The federal government weaponized the schools to pilfer American Indian, Alaska Native, and Native Hawaiian territories.²¹⁹ At first Federal Indian Boarding Schools forcibly assimilated Native children to facilitate the United States’ broader objective of Indian territorial dispossession.²²⁰ Cultural assimilation quickly became its own federal policy objective, however, and boarding schools remained integral to that effort.²²¹

Being intentionally targeted and removed from their communities traumatized the children who survived the boarding school system.²²²

history/2023/08/07/indian-boarding-school-survivors-abuse-trauma/. “A matron grabbed Brought Plenty, ripped off her nightgown and pushed her into the gauntlet. The other girls hit her.” *Id.*

²¹⁵ NEWLAND REPORT, *supra* note 16, at 54–55. Denise Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)) recounts her father’s horrific memories with discipline via court-martial at Chemawa Industrial School: “Following Pratt’s model, the military atmosphere of schools was reinforced by a strict discipline policy; corporal punishment was incorporated along with a court of older students to maintain adherence to the rules.” Denise Lajimodiere, *A Healing Journey*, 27 WICAZO SA REV. 5, 10 (2012). Lajimodiere describes “the gauntlet,” in which a boy lay face down on a bed while his classmates pinned his arms and feet and whipped him with a “leather belt embedded with studs.” *Id.* Her father remembered a child who “died from the gauntlet—‘his kidneys had ruptured.’” *Id.*

²¹⁶ NEWLAND REPORT, *supra* note 16, at 63. “[The schools] could not possibly be maintained on the amounts appropriated by Congress for their support were it not for the fact that students are required to do . . . an amount of labor that has in the aggregate a very appreciable monetary value.” *Id.* (quoting MERIAM REPORT, *supra* note 204, at 376).

²¹⁷ *Id.* at 93–94.

²¹⁸ *Id.* at 93.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

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Hundreds—likely thousands or tens of thousands—of Native children died.²²³ This trauma and death destabilized individual family units and entire communities for almost two centuries as multiple generations of children suffered at the schools.²²⁴

According to Secretary Haaland, “[s]urvivors of the traumas of boarding school policies carried their memories into adulthood as they became the aunts and uncles, parents, and grandparents to subsequent generations.”²²⁵ Their experiences impacted the way they parented,²²⁶ and the stress of unrelenting trauma seeped into their bodies, creating chronic physical and mental health conditions.²²⁷ The science of epigenetic inheritance suggests that their children’s biological systems are likely altered, too.²²⁸ At base, “the legacy of Indian boarding schools remains, manifesting itself in Indigenous communities through intergenerational trauma, cycles of violence and abuse, disappearance, premature deaths, and other undocumented bodily and mental impacts.”²²⁹

Additional investigation is required to uncover the full extent of the harm inflicted by the boarding school system, but the report’s preliminary findings

²²³ *Id.*; Hedgpeth (Haliwa-Saponi) & Martinez, *supra* note 210.

²²⁴ NEWLAND REPORT, *supra* note 16, at 93–94.

²²⁵ DOI Memo, *supra* note 1114, at 1.

²²⁶ FORT, *supra* note 199, at 7. Fort elaborates on how one’s boarding school experience might affect future parenting ability:

Children taken from their parents and raised in non-Native environments were unable to learn the parenting techniques practiced in their communities since time immemorial. Instead, these children only had experience with the western style of abusive discipline that was practiced in the boarding schools. When these boarding school children in turn had their own children, they lacked the necessary parenting skills to raise their own children into mentally and physically healthy adults.

Id.

²²⁷ NEWLAND REPORT, *supra* note 16, at 88–89. Boarding school survivors are more likely to have cancer, tuberculosis, high cholesterol, diabetes, anemia, arthritis, gall bladder disease, PTSD, depression, and unresolved grief than those who did not attend the schools. *Id.*; Ursula Running Bear et al., *The Impact of Individual and Parental American Indian Boarding School Attendance on Chronic Physical Health of Northern Plains Tribes*, 42 FAM. CMTY. HEALTH 1, 3–5 (2019).

²²⁸ NEWLAND REPORT, *supra* note 16, at 89.

²²⁹ DOI Memo, *supra* note 11, at 114.

and conclusions make plain that the United States expressly pursued the boarding school policy to destroy Native groups’ cultural connection to the land to render those lands ripe for the taking.²³⁰ As illuminated below, American missionaries and capitalists brought to bear many of these same tactics in Hawai‘i as part of the western settler imperialist project to obtain and exploit ‘āina.²³¹

IV. PIVOTAL CONGRUITIES AND DISCREPANCIES: DISENTANGLING
KAMEHAMEHA SCHOOLS FROM THE 2022 FEDERAL INDIAN BOARDING
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The United States ensnared Native Hawaiians in its imperialist and racial capitalist net just as it did American Indians and Alaska Natives.²³² Pre-western contact, Kānaka Maoli numbered at least 800,000 strong.²³³ Within seventy years following western contact, rampant spread of foreign disease and extremely low birth rates contributed to the population’s collapse.²³⁴ Roughly nine out of ten people died.²³⁵ Faith in the old ways wavered.²³⁶ Missionaries found easy footholds in the fear.²³⁷

In the 1820s, Protestant missionaries deployed by the Calvinist American Board of Commissioners for Foreign Missions (“ABCFM”) introduced both

²³⁰ NEWLAND REPORT, *supra* note 16, at 20–22; KENNEDY REPORT, *supra* note 193, *passim*.

²³¹ See HAUNANI-KAY TRASK, FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAI‘I 12 (Univ. Haw. Press rev. ed. 1999) (“The United States, in collusion with white settlers in Hawai‘i, moved inexorably to fulfill the prophecy of Manifest Destiny.”).

²³² See generally NOENOE K. SILVA, ALOHA BETRAYED: NATIVE HAWAIIAN RESISTANCE TO AMERICAN COLONIALISM (2004) (drawing on Hawaiian-language primary source documents to demonstrate Native Hawaiians’ resistance to the annexation of Hawai‘i to the United States, a plan which ninety-five percent of the Indigenous population opposed); QUEEN LILIUOKALANI, HAWAII’S STORY BY HAWAII’S QUEEN (1898) (chronicling events leading up to and including the overthrow of the Hawaiian monarchy, Queen Lili‘uokalani’s imprisonment and forced abdication, and her opposition to annexation).

²³³ David E. Stannard, *Disease and Infertility: A New Look at the Demographic Collapse of Native Populations in the Wake of Western Contact*, J. AM. STUD. 325, 336 (1990).

²³⁴ See *id.* at 334–36.

²³⁵ *Id.* at 336; TRASK, *supra* note 231, at 6; see *infra* note 289.

²³⁶ LILIKALĀ KAME‘ELEIHIWA, NATIVE LAND AND FOREIGN DESIRES: PEHEA LĀ E PONO AI? 142–45 (1992).

²³⁷ See JON M. VAN DYKE, WHO OWNS THE CROWN LANDS OF HAWAI‘I? 21–22 (2008).

Christianity and manual and industrial education to Hawai‘i.²³⁸ As scholar, professor, and Kamehameha Schools graduate C. Kalani Beyer observes, “[i]n many ways, the use of manual and industrial education in Hawai‘i paralleled the way it was used for Blacks and Native Americans in the United States.”²³⁹ It “set in motion an educational system that resulted in Hawaiians becoming second-class citizens in their own land.”²⁴⁰ Today, Euro-American imperialism’s fallout is manifest in “contemporary Native Hawaiians representing a disproportionate share of Hawai‘i’s school dropouts, [incarcerated individuals], welfare recipients, . . . unemployed[,]”²⁴¹ and nearly half of the children touched by the child welfare system.²⁴²

Kamehameha Schools’ history—as well as the Department of the Interior’s report—implicates it in the “broader white supremacist project of subordinating and domesticating Kānaka[,]”²⁴³ Native Americans, Alaska Natives, and Black Americans.²⁴⁴ Grounding an analysis of Ke Ali‘i Pauahi’s creation of the trust and the schools’ formative years in nineteenth-century historical, sociopolitical, and economic context reveals that while Kamehameha Schools likely should not have been included in the Department of the Interior’s report, the trust should use its inclusion as an opportunity to genuinely reckon with the “contradictions and internal conflicts of [its] own colonial history.”²⁴⁵ I ka wā mamua. We must first look to the past.²⁴⁶

²³⁸ C. Kalani Beyer, *Manual and Industrial Education for Hawaiians During the 19th Century*, 38 HAWAIIAN J. HIST., 2004, at 1, 7–8 [hereinafter Beyer, *Manual and Industrial Education*].

²³⁹ C. Kalani Beyer, *Manual and Industrial Education During Hawaiian Sovereignty: Curriculum in the Transculturation of Hawai‘i* 268 (2004) [hereinafter Beyer, *Dissertation*] (Ph.D., dissertation, University of Illinois at Chicago) (ProQuest).

²⁴⁰ *Id.* at 274–75.

²⁴¹ *Id.* at 275.

²⁴² OFF. HAWAIIAN AFFS., *Native Hawaiian Data Book 2021*, Chapter 8 Human Services tbl.8.05, https://www.ohadatabook.com/go_chap08.21.html (last updated July 2023).

²⁴³ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 17.

²⁴⁴ See NEWLAND REPORT, *supra* note 16, at 79–81.

²⁴⁵ Goodyear-Ka‘ōpua Email, *supra* note 67.

²⁴⁶ KAME‘ELEIHIWA, *supra* note 236, at 2.

A. *A Truncated History of a Nation Overthrown*

Kānaka Maoli are related by birth to ‘āina, akua, and “all the myriad aspects of the universe.”²⁴⁷ So says the “Kumulipo, the great cosmogonic genealogy.”²⁴⁸ This lineal and familial relationship with the land and its natural resources explains why “Hawaiian spiritual beliefs, customs, and practices focus[] on maintaining harmonious and nurturing relationships to the various life forces, elements, and beings of nature as ancestral spirits[.]”²⁴⁹ Native Hawaiians did not privately own water, ‘āina, or the

²⁴⁷ *Id.* Dr. Kame‘eleihiwa describes the Kanaka Maoli orientation to past, present, and future.

It is interesting to note that in Hawaiian, the past is referred to as *Ka wā mamua*, or “the time in front or before.” Whereas the future, when thought of at all, is *Ka wā mahope*, or “the time which comes after or behind.” It 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. Such an orientation is to the Hawaiian an eminently practical one, for the future is always unknown, whereas the past is rich in glory and knowledge.

Id. at 22–23.

²⁴⁸ *Id.* at 2.

²⁴⁹ Davianna Pōmaika‘i McGregor, *An Introduction to the Hoa‘āina and Their Rights*, 30 HAWAIIAN J. HIST. 3–4 (1996), VAN DYKE, *supra* note 237, at 12 (“The ‘Āina was not a commodity to be owned or traded, because such actions would disgrace and debase one’s family and oneself.”). Haunani-Kay Trask succinctly summarized Native Hawaiians’ familial relationship with ‘āina as follows:

We are the children of Papa—earth mother—and Wākea—sky father—who created the sacred lands of Hawai‘i Nei. From these lands came the taro, and from the taro, the Hawaiian people. As in all of Polynesia, so in Hawai‘i: younger sibling must care for and honor elder sibling who, in return, will protect and provide for younger sibling. Thus, Hawaiians must nourish the land from whence we come. The relationship is more than reciprocal, however. It is familial. The land is our mother and we are her children. This is the lesson of our genealogy.

TRASK, *supra* note 231, at vi. Dr. Jamaica Heolimeleikalani Osorio reminds us that it is ‘āina that teaches us how to love.

To love someone, to be intimate with someone, is to share your ‘āina with them Aloha ‘āina is not patriotism . . . aloha ‘āina is the pull of a magnet that draws you completely and flush to your ‘āina When I say aloha is not straight, I’m not just saying aloha makes room for people

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resources living within the sea or on the land before western contact.²⁵⁰ Rather, a tiered land management system ensured productive land use that fed a “tremendously peopled”²⁵¹ archipelago.²⁵²

In the traditional system, a hierarchy of *Ali‘i*, *konohiki*, and *maka‘āinana* (Chiefs, Land stewards, and commoners) administered and cultivated any given piece of *‘Āina*. The *Ali‘i* and his *konohiki* in this hierarchy were appointed by the *Mō‘ī* (paramount Chief) upon his coming to power. This arrangement ensured coordinated cultivation by the *maka‘āinana*, with each level of people having overlapping rights to, and interests in, the products of that *‘Āina*.²⁵³

If *mō‘ī*, *ali‘i*, or *konohiki* abused their power or otherwise failed to properly utilize *‘āina*, they could be “rejected and even killed.”²⁵⁴ But “so long . . . as he did right” and “govern[ed] with honesty,” a *mō‘ī* or *ali‘i* would “prolong his reign and cause his dynasty to be perpetuated, so that his government . . . [would] not be overthrown.”²⁵⁵ Ruling with empathy and

like me who aloha other women, I’m saying that if I love you, I have to love the *‘āina* to love you.

Puuhonua Puuhuluhulu, *Hi‘iakaikapoliopole & Loving Like ‘Āina Jamaica Heoli Osorio*, YOUTUBE (Sept. 21, 2020), https://www.youtube.com/watch?v=YybeHg68U_4&feature=youtu.be.

²⁵⁰ McGregor, *supra* note 249, at 4.

²⁵¹ BEAMER, *supra* note 145, at 33 (quoting CURTIS J. LYONS, LAND MATTERS IN HAWAII 103 (1875)).

²⁵² See VAN DYKE, *supra* note 237, at 13.

²⁵³ KAME‘ELEIHIWA, *supra* note 236, at 9.

²⁵⁴ E.S. CRAIGHILL HANDY & ELIZABETH GREEN HANDY, NATIVE PLANTERS IN OLD HAWAII: THEIR LIFE, LORE AND ENVIRONMENT 63 (1972). Though *ali‘i* were viewed as *akua* (or at least closer in proximity to *akua* given their genealogies), “this was not equivalent to . . . [the] European concept of ‘divine right.’ The *ali‘i nui*, in old Hawaiian thinking and practice, did not exercise personal dominion, but channeled dominion. In other words, he was a trustee.” *Id.*

²⁵⁵ DAVID MALO, MO‘OLELO HAWAI‘I 54 (Nathaniel B. Emerson, trans., 1898).

kindness²⁵⁶ thus benefitted everyone as “Ali‘i relied upon the skill and labor of maka‘āinana for sustenance . . . [and their] basic needs”²⁵⁷ Unlike medieval Europe’s serfs, maka‘āinana might band together to depose abusive konohiki or relocate to another ahupua‘a where they would be treated fairly.²⁵⁸ Resultingly, mō‘ī and ali‘i trained Hawai‘i nei’s future chiefs and chiefesses to “care for the people with gentleness and patience, with a feeling of sympathy for the common people, . . . to live temperately, . . . conducting the government kindly to all.”²⁵⁹

²⁵⁶ See *infra* note 259; Melody Kapilialoha MacKenzie, *Historical Background*, in NATIVE HAWAIIAN LAW: A TREATISE 22, 30 (Melody Kapilialoha MacKenzie, Susan K. Serrano & D. Kapua‘ala Sproat eds., 2015).

Since the responsibility of an ahupua‘a chief was to make the ahupua‘a productive, and a stable workforce was necessary to achieve that end, abuses by ahupua‘a chiefs were minimized. Hence the chiefs’ powers were checked and balanced by their reliance on the mutual cooperation of the maka‘āinana. If the people of an ahupua‘a were ill-treated and moved to another district, it was likely that the high chief would replace the ahupua‘a chief for failing to make the land productive.

MacKenzie, *supra*.

²⁵⁷ VAN DYKE, *supra* note 237, at 14–15 (citing MALO, *supra* note 255, at 87–88).

²⁵⁸ See HANDY & HANDY, *supra* note 254, at 41.

²⁵⁹ MALO, *supra* note 255, at 80. Malo illustrates the instruction future chiefs received to prepare them for their station.

It was the policy of the government to place the chiefs who were destined to rule, while they were still young, with wise persons, that they might be instructed by skilled teachers in the principles of government, be taught the art of war, and be made to acquire personal skill and bravery.

The young man had first to be subject to another chief, that he might be disciplined and have experience of poverty, hunger, want and hardship, and by reflecting on these things learn to care for the people with gentleness and patience, with a feeling of sympathy for the common people, and at the same time to pay due respect to the ceremonies of religion and the worship of the gods, to live temperately, not violating virgins (*aole lima koko kohe*), conducting the government kindly to all.

Id. at 79–80. Both Malo and Samuel M. Kamakau offer nuanced understandings of the ali‘i and maka‘āinana relationship. See *id.* at 83; SAMUEL M. KAMAKAU, RULING CHIEFS OF HAWAII 230 (1961). Malo writes that “[s]ome [chiefs] were given to robbery, spoliation, murder, extortion, ravishing. There were few kings who conducted themselves properly as Kamehameha I did. He looked well after the peace of the land.” MALO, *supra* note 255, at 85. Kamakau writes, “The chiefs did not rule alike on all the islands. It is said that on Oahu and

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When Spain’s Juan Gaetano²⁶⁰ and later Britain’s Captain James Cook stumbled upon Ka Pae ‘Āina’s shores in the mid-sixteenth and mid-eighteenth centuries respectively, they encountered this highly ordered and complex matrilineal²⁶¹ society.²⁶² Though the hierarchical land tenure system²⁶³ and “comparatively modern” kapu system²⁶⁴ structuring ali‘i and

Kauai the chiefs did not oppress the common people. They did not tax them heavily and they gave the people land where they could live at peace and in a settled fashion.” KAMAKAU, *supra*, at 230. Some chiefs, however, “such as Alapa‘i-malo-iki and Ka-uhi-wawae-ono, were murdering chiefs who did not keep the law against killing men, but went out with their men to catch people for shark bait.” *Id.* at 232. This suggests that Hawai‘i’s history, like the histories of arguably every society, is pockmarked with good and bad actors, good and bad systems, and good and bad practices.

²⁶⁰ EDMUND JANES CARPENTER, AMERICA IN HAWAII: A HISTORY OF UNITED STATES INFLUENCE IN THE HAWAIIAN ISLANDS 3 (1899) (“It is . . . believed that in the year 1555 Juan Gaetano was the first true discoverer of the [Hawaiian] Islands. . . . Gaetano apparently made no effort to reap any benefit from his discovery; and the natives remained in undisturbed possession of their country until the arrival of Captain Cook. . . .”).

²⁶¹ See J. KĒHAULANI KAUANUI, PARADOXES OF HAWAIIAN SOVEREIGNTY: LAND, SEX, AND THE COLONIAL POLITICS OF STATE NATIONALISM 120 (2018). Native Hawaiian society was not strictly patriarchal or matriarchal:

Hawaiian kinship was (and still is) reckoned bilaterally, through both the maternal and the paternal lines. . . . Kanaka Maoli traditionally practiced matrilineal (uxorilineal) residence patterns in which women drew in extra manpower in the form of ‘husbands,’ so that offspring were likely to be closely affiliated with the mother’s kin. Childcare was not seen as specifically the mother’s responsibility or even as a generally female concern.

Id.

²⁶² See BEAMER, *supra* note 145, at 34; VAN DYKE, *supra* note 237, at 11–18.

²⁶³ VAN DYKE, *supra* note 237, at 12–13.

²⁶⁴ David Malo, a nineteenth century Native Hawaiian historian, described the strict kapu system delineating appropriate kinds of conduct between the classes as a newer cultural development. MALO, *supra* note 255, at 83 (“In my opinion the establishment of the tabu-system is not of very ancient date, but comparatively modern in origin.”). Kapu was a “system of sacred law.” TRASK, *supra* note 231, at 5.

Moral order, or the code upon which determinations of “right” and “wrong” were based, inhered in the *kapu* It was the *kapu* that

maka‘āinana relationships characterized daily life, the “essential nature of precontact society was collective and cooperative through the ‘ohana structure.”²⁶⁵ A flourishing population numbered in the hundreds of thousands, with estimates ranging from “at least 800,000”²⁶⁶ to one million people.²⁶⁷

Native Hawaiians generally enjoyed productive, pleasurable lives. Highly efficient and systematized agricultural and fishing practices ensured a steady “supply [of food] was kept up for a long time.”²⁶⁸ Intimate relationships did not know the puritanical bounds later imposed by monogamous cisheteropatriarchy.²⁶⁹ Cook’s crew observed a culture that “attached no stigma or prohibition to same-sex relationships and indeed accepted and celebrated them, particularly when such relationships were chiefly, i.e., associated with the *ali‘i*. . . .”²⁷⁰ *Ali‘i* and *maka‘āinana* alike recreated by

determined everything from the time for farming and war-making to correct mating behavior among *ali‘i* and *maka‘āinana* alike.

Id.

²⁶⁵ VAN DYKE, *supra* note 237, at 13.

²⁶⁶ Stannard, *supra* note 233.

²⁶⁷ TRASK, *supra* note 231, at 6 (citing Stannard, *supra* note 233).

²⁶⁸ MALO, *supra* note 255, at 269–73.

²⁶⁹ See generally OSORIO, REMEMBERING OUR INTIMACIES, *supra* note 3, *passim* (presenting the mo‘olelo of Hi‘iakaikapoliopole and her aikāne, Hōpoe, as representation and refuge for queer Kānaka Maoli). Dr. Osorio clearly articulates how queer people and relationships—defined as “all our peoples and practices that do not fit into the heteronormative standards cast before us”—have always been part of our traditional lifeways as Kānaka Maoli:

Rather, I am calling attention to the fact that the need to mark myself as queer today is a direct result of the way I have been erased systematically from my own history. For fellow Kānaka, it is our resistance and refusal of heteropaternalism and heteronormativity that is essential to what makes us ‘Ōiwi. When we embody our beautiful, complex, and overflowing expressions of aloha that desecrate heteropatriarchy, we step into the footprints of our ancestors.

Id. at 6.

²⁷⁰ Robert J. Morris, ‘Aikāne: Accounts of Hawaiian Same-Sex Relationships in the Journals of Captain Cook’s Third Voyage (1776–80), 19 J. HOMOSEXUALITY 22 (1990).

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playing games and sports including ume,²⁷¹ he‘e nalu,²⁷² holua²⁷³ and noa.²⁷⁴ Diseases were “relatively mild or had their main impact late in life and none of them were epidemic ‘crowd-type’ ecopathogenic diseases such as smallpox, typhoid, yellow fever, measles or malaria.”²⁷⁵ Nor were there “treponemic infections (such as syphilis)”²⁷⁶ Then Cook arrived.²⁷⁷ Ua huluhia ka Honua.²⁷⁸ The world turned upside down.

Within twenty-five years of Cook’s landfall,²⁷⁹ the “host of bacteria, viruses, and diseases” he brought with him “ravaged the population, culture, and society of ka po‘e Hawai‘i.”²⁸⁰ “[T]he majority (ka pau nui ana) of the people from Hawaii to Niihau, died.”²⁸¹ Kānaka Maoli, loyal to akua and observant of the kapu (traditional religious and spiritual codes of conduct), lay dead in the streets, their “bodies [] stacked like kindling wood, red as

²⁷¹ MALO, *supra* note 255, at 281–306. Malo writes disparagingly of ume, a game in which couples were paired together regardless of marital status to enjoy a night together. *Id.* at 281–82.

A husband would not be jealous of or offended at his own wife, if she went out with another man, nor would a wife be angry with her own husband because he went out to enjoy another woman, because each of them would have done the same thing if they had been touched with the *ume-stick*.

Id. at 282.

²⁷² Kānaka of all genders, ages and ranks enjoyed he‘e nalu, or surfriding. *Id.* at 293–94. “Surf-riding was one of the most exciting and noble sports known to the Hawaiians, practiced equally by king, chief, and commoner.” *Id.* at 294 n.5.

²⁷³ Like he‘e nalu, Kānaka of all ranks enjoyed hōlua, or sledding. *Id.* at 294–95. Players sledged down steep, grassy courses engineered specifically for the sport. *Id.*

²⁷⁴ Noa resembles the modern-day shell game but seemingly without the element of fraud. *Id.* at 295–96.

²⁷⁵ Stannard, *supra* note 233, at 328–29.

²⁷⁶ *Id.* at 329.

²⁷⁷ *Id.* at 328–30.

²⁷⁸ Mahalo piha to my classmate, Palakiko Chandler IV, for helping me find the words.

²⁷⁹ Stannard, *supra* note 233, at 330.

²⁸⁰ VAN DYKE, *supra* note 237249, at 19.

²⁸¹ David Malo, *On the Decrease of Population on the Hawaiian Islands*, 2 HAWAIIAN SPECTATOR 121, 125 (L. Andrews trans., 1839). David Stannard estimates the death toll at 400,000. Stannard, *supra* note 233, at 330.

singed hogs.”²⁸² Ali‘i noticed haole settlers who flouted the kapu survived unscathed,²⁸³ and subsequently abolished the kapu they believed failed to protect them and their people.²⁸⁴ Missionaries “sailed into the heart of this spiritual vacuum” mere months later.²⁸⁵ Christianity’s “promise of everlasting life” appeared a panacea to “a nation whose numbers were dwindling at such an alarming rate[.]”²⁸⁶

As ali‘i converted to Christianity believing it the “way to the salvation of the Hawaiian race,”²⁸⁷ it “became an acceptable religion for Hawaiians, and the seed of self-doubt about the worth of Hawaiian culture was planted in the Hawaiian breast.”²⁸⁸ Twenty years after missionary arrival, “[Native] Hawaiians numbered less than 100,000, a population collapse of nearly 90 percent in less than seventy years.”²⁸⁹ When white businessmen and lawyers conspired with Minister John L. Stevens to illegally overthrow Queen Lili‘uokalani in 1893,²⁹⁰ the Native Hawaiian population numbered “less than 40,000.”²⁹¹ Dr. Jamaica Heolimeleikalani Osorio names this for what it is: an apocalypse.²⁹² This is the catastrophic historical context in which Ke Ali‘i Pauahi created the Kamehameha Schools charitable trust.²⁹³

²⁸² Kamakau describes small pox’s horrors after foreign doctors and ministers pressured the ruling chiefs to allow an infected ship passenger to leave the vessel and quarantine in Waikīkī. KAMAKAU, *supra* note 259, at 416. “Three months later the disease broke out like a volcanic eruption.” *Id.*

²⁸³ VAN DYKE, *supra* note 237, at 21–22.

²⁸⁴ *See id.*

²⁸⁵ *Id.* at 22. The first missionaries arrived on March 30, 1820. *Id.*; C. Kalani Beyer, *Comparing Native Hawaiian Education with Native American and African American Education During the Nineteenth Century*, 41 AM. EDUC. HIST. J. 59, 61 (2014) [hereinafter Beyer, *Comparing Native Hawaiian and Native American Education*].

²⁸⁶ KAME‘ELEIHIWA, *supra* note 236, at 142.

²⁸⁷ *Id.* at 145.

²⁸⁸ *Id.* at 144.

²⁸⁹ TRASK, *supra* note 231, at 6; Stannard, *supra* note 233 (identifying high death rates from epidemics that became endemic and an extremely low birth rate as the causes of Native Hawaiian population collapse).

²⁹⁰ *See supra* note 37.

²⁹¹ Stannard, *supra* note 233.

²⁹² *American Masters, Jamaica Heolimeleikalani Osorio: This Is the Way We Rise*, PBS (Oct. 14, 2020), <https://www.pbs.org/video/jamaica-heolimeleikalani-osorio-this-is-the-way-we-rise-ndwixe/>.

²⁹³ Professor Derek Kauanoe shares his understanding of this historical context, informed in part by his cultural teachers prior to attending law school:

B. *Ke Ali‘i Pauahi’s Life and Legacy*

Ke Ali‘i Bernice Pauahi was born in December 1831 to parents Konia—“a chiefess of the highest rank” who descended directly from Kamehameha I²⁹⁴—and Abner Paki, “a chief of high rank who [also] descended from the Kamehameha and Kiwalo families of Maui and Hawaii.”²⁹⁵ Ali‘i custom²⁹⁶ meant Ke Ali‘i Bernice Pauahi became the hānai

Before I went to law school, my cultural teachers recognized that as chiefs intermingled with ship captains and westerners, and saw how they did things differently without negative impacts, you start to see this eroded loyalty to a belief system. And then we have a new belief system that is brought here that likely fills an important gap. Horrible things happened as a result; there was an impact on culture and a battle over this new religion. With Ke Ali‘i Pauahi, in a general sense, if I were in her position at that time without any type of hindsight, I think she tried to do what she thought was best.

Interview with Derek Kauanoë, Assistant Professor, Univ. of Haw. at Mānoa William S. Richardson Sch. L., in Mānoa, Haw. (Feb. 3, 2023) [hereinafter Kauanoë Interview] (cleaned up).

²⁹⁴ KROUT, *supra* note 26, at 2; Loring G. Hudson, *The History of the Kamehameha Schools 22 (1935)* (M.A. thesis, University of Hawai‘i) (on file with The Hamilton Library, University of Hawai‘i).

²⁹⁵ KROUT, *supra* note 26, at 6; Hudson, *supra* note 294, at 23. Both Konia and Paki were trusted advisers to Kamehameha III, and Paki “held various posts of importance” in the Hawaiian Kingdom. KROUT, *supra* note 26, at 6, 11. Paki served as “one of the judges of the Supreme Court, Acting Governor of Oahu, Privy Councillor, Member of the House of Nobles, and Chamberlain to the King.” Hudson, *supra* note 294, at 23. “Konia in her own right was highly thought of, having been chosen as adviser by Kamehameha III when he formed his first body of high chiefs into a council of the government.” *Id.*

²⁹⁶ Queen Lili‘uokalani offers her hānai experience to illustrate the traditional custom practiced by both ali‘i and maka‘āinana:

I was destined to grow up away from the house of my parents. Immediately after my birth I was wrapped in the finest soft tapa cloth, and taken to the house of another chief, by whom I was adopted. Konia, my foster-mother, was a granddaughter of Kamehameha I., and was married to Paki, also a high chief; their only daughter, Bernice Pauahi, afterwards Mrs. Charles R. Bishop, was therefore my foster-sister. I have adopted the term customarily used in the English language, but there was no such modification recognized in my native land. . . . My own father and mother

daughter of Kīna‘u, the Kuhina Nui of the Hawaiian Kingdom and “one of the foremost patrons of the Royal School [also known as the Chiefs’ Children’s School].”²⁹⁷ “Keenly aware of the changes sweeping over his kingdom, Kamehameha III believed that knowledge of the ways of the foreigners who had begun to settle in the islands was necessary for the kingdom’s survival.”²⁹⁸ He established the Royal School in 1840, and charged “newly arrived American Congregationalist missionaries, Amos Starr Cooke and his wife, Juliette Montague Cooke,”²⁹⁹ with “educating the

had other children, ten in all, the most of them being adopted into other chiefs’ families . . . This was, and indeed is, in accordance with Hawaiian customs. . . . As intelligible a reason as can be given is that this alliance by adoption cemented the ties of friendship between the chiefs. It spread to the common people, and it has doubtless fostered a community of interest and harmony.

QUEEN LILIUOKALANI, *supra* note 232, at 4. Mary Kawena Pukui defines hānai and explains how the practice differed between ali‘i and maka‘āinana:

Hānai as it is most often used means a child who is taken permanently to be reared, educated and loved by someone other than natural parents. This was traditionally a grandparent or other relative.

. . . .

Hānai had a slightly different meaning among *ali‘i* (persons of royal blood) who served, and were usually related to, a ruling chief. The idea was that the ruler “cared for” these members of the court and therefore became their *hānai*.

I NĀNĀ I KE KUMU, *supra* note 1, at 49.

²⁹⁷ KROUT, *supra* note 26, at 14, 16, 18–20.

²⁹⁸ Julie Kaomea, *Education for Elimination in Nineteenth-Century Hawai‘i: Settler Colonialism and the Native Hawaiian Chiefs’ Children’s Boarding School*, 54 HIST. EDUC. Q. 123, 124 (2014). Kamehameha III and other ali‘i specifically sought out teachers and advisers who could educate “them on the foreign world as early as 1836.” BEAMER, *supra* note 145, at 131. “[T]hey were gaining knowledge of how other countries were governed as part of a larger plan to conduct politics on the international level so that Hawai‘i would be respected by foreign nations.” *Id.* But those teachers and advisers often served their own self-interests while also serving the Kingdom in hugely beneficial ways. *See id.* at 131–38 (chronicling how William Richards came to Hawai‘i as a missionary intent on “mold[ing] ‘Ōiwi into ‘noble savages,” but later served as an assistant to Hawaiian Kingdom Ambassador Timoteo Ha‘alilio and helped free Hawai‘i from British occupation in 1843).

²⁹⁹ Kaomea, *supra* note 298, at 124.

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next generation of Hawaiian *ali'i*, the children of the chiefs.”³⁰⁰ “For the Cookes, civilization and proper education meant Christian living. And Christian living meant quarantining the young chiefs against Hawaiian living.”³⁰¹ Eight-year-old Bernice left Kīna‘u’s care to attend the Chiefs’

³⁰⁰ Menton, *supra* note 25, at 222. Though outside the scope of this Article, research suggests that the Chiefs’ Children’s School was not designed to adequately prepare the young *ali'i* in its charge for a rapidly transforming world. *Id.* at 242. Rather, the school served western economic interests. *Id.*

The Chiefs’ Children’s School did not, and, given its teachers’ worldview, could not, produce men and women equipped to rule in the unfamiliar world of a constitutional monarchy, men and women prepared to cope with a society in transition, pressed from all sides by ever more encroaching Western ways. Ill-prepared to deal with the limiting effects of constitutional restraints, the complexities of capitalism, the critical issue of land tenure, or the economic and political demands of the outside world, Hawai‘i’s last rulers found themselves pitted against those who understood these issues very well, all too often missionary sons, who could turn them to their own advantage, particularly their economic advantage.

Id. Julie Kaomea studied the Chiefs’ Children’s School through the settler colonialism theoretical framework and contended that the school became part of a larger project to eliminate Native Hawaiian culture and society. Kaomea, *supra* note 298, at 125.

Using settler colonialism as an analytical lens, this paper . . . argues that, beyond being woefully inadequate in preparing the Hawaiian kingdom’s future *ali'i* for ruling in an era of foreign attacks on their sovereignty, the Chief’s [sic] Children’s School functioned as a crucial node in a larger, settler-colonial “elimination project” in which American settlers sought to eliminate and replace our Native Hawaiian society and these Native Hawaiian sovereigns in our native land.

Id. But see BEAMER, *supra* note 145, at 157–63 (critiquing Menton’s narrative of the Chiefs’ Children’s School by noting that the school’s mission was to internationalize (not Americanize) *ali'i* children). Dr. Kamanamaikalani Beamer offers a contrasting perspective of the Chiefs’ Children’s School and, through the ‘Ōiwi optics lens, *see id.* at 12, proposes that “*keiki ali'i* selectively appropriated what was offered to them at the school.” *Id.* at 161. This selective appropriation is evidenced by the nominal conversion, rather than genuine conversion, of *keiki ali'i* to Christianity, as lamented by the Cookes. *Id.* at 161–62.

³⁰¹ KING & ROTH, *supra* note 38, at 15.

Children’s School³⁰² where she and other keiki ali‘i were soon “introduced to missionary discipline.”³⁰³

Thirty-five lashes for leaving the school at night.³⁰⁴ A month-long confinement in a school room closet.³⁰⁵ Physical “beatings, verbal berating, and/or isolation”³⁰⁶ for “improper conduct.”³⁰⁷ Food deprivation if children arrived late to meals.³⁰⁸ This was the environment in which Bernice Pauahi was reared.³⁰⁹ An environment in which Native Hawaiian worldviews were disregarded³¹⁰ and traditional practices punished.³¹¹ An environment in which she was praised for her proximity to whiteness (her svelte figure and fair skin)³¹² and her aptitude for all things western (the pianoforte, English language, and bible study).³¹³

Juliette Cooke held Bernice Pauahi in high regard as the young student “helped with housework, child care, washing clothes, and scrubbing floors”³¹⁴ and demonstrated “great diligence and proficiency”³¹⁵ in her studies. “Bernice being the only pupil to be so favored[,]” enjoyed the

³⁰² Kaomea, *supra* note 298, at 124; *see* KROUT, *supra* note 26, at 36.

³⁰³ BEAMER, *supra* note 145, at 159.

³⁰⁴ Kaomea, *supra* note 298, at 133.

³⁰⁵ *Id.*

³⁰⁶ *Id.* (citing JOHN PAPA ‘Ī‘Ī, FRAGMENTS OF HAWAIIAN HISTORY 53–55 (Dorothy B. Barrère ed., Mary Kawena Pukui trans., Bishop Museum Press 1959)).

³⁰⁷ Kaomea, *supra* note 298, at 133 (quoting Cooke’s reasoning behind the punishments).

³⁰⁸ Menton, *supra* note 25, at 227.

³⁰⁹ *See* Kaomea, *supra* note 298, at 133; Menton, *supra* note 25, at 227.

³¹⁰ KING & ROTH, *supra* note 38, at 16 (“When an eclipse of the sun occurred, the phenomenon was not taken as an omen of the inevitable death of a chief—it was explained scientifically, using a model planetarium.”).

³¹¹ Kaomea, *supra* note 298, at 131. To illustrate, Kaomea discusses how “[i]n traditional Hawaiian society, sexual expression and sexual encounters between biologically mature individuals was an acceptable and healthy way of growing the nation and, in the case of sexual encounters between ali‘i, ensuring the survival of the monarchy.” *Id.* But at the “Chiefs’ Children’s School[,] [the Cookes] imbued [the future ali‘i] with new and negative ideas about sex as they learned to connect sexuality with anxiety, sin, and shame.” *Id.* at 132.

³¹² *See* KROUT, *supra* note 26, at 41–42. *See generally* SABRINA STRINGS, FEARING THE BLACK BODY: THE RACIAL ORIGINS OF FAT PHOBIA (2019) (revealing that the modern obsession with thinness is rooted in misogynoir).

³¹³ KROUT, *supra* note 26, at 36–37 (“From the first, Mrs. Cooke perceived [Bernice’s] superior intelligence, and felt for her the affection of a mother for a loving and dutiful child. The pupil returned this interest with confidence, respect, and affection. The friendship between them never altered; it endured as long as Bernice lived.”); KING & ROTH, *supra* note 38, at 17.

³¹⁴ KING & ROTH, *supra* note 38, at 17.

³¹⁵ KROUT, *supra* note 26, at 33–34.

“freedom of the *tabu* yard, reserved for the Cooke children.”³¹⁶ Dr. Kamanamaikalani Beamer³¹⁷ writes that Ke Ali‘i Pauahi “clearly saw value in the Christian and secular teachings of the Cookes.”³¹⁸ She was not the first—nor the last—Native Hawaiian to believe replacing the old ways with westernization and Christianity would save her people.³¹⁹ It is little wonder, then, that Ke Ali‘i Pauahi anchored her charitable trust in the Christian teachings of her missionary mentors.³²⁰

1. *Kamehameha Schools’ Nuanced Origins: Contextualizing Ke Ali‘i Pauahi’s Exercise of ‘Ōiwi Agency*

Considering Ke Ali‘i Pauahi’s loyalties to both the Cookes and the lāhui, Kamehameha Schools’ genesis is undoubtedly and uniquely complex. Instilled in Hawai‘i Nei’s mō‘ī and ali‘i was an ancient kuleana to care for

³¹⁶ Hudson, *supra* note 294, at 25.

³¹⁷ “Dr. Beamer is an ‘Ōiwi, Aloha ‘Āina, farmer, author, [and] songwriter.” *A Few Words About Me.*, DR. KAMANAMAIKALANI BEAMER, <https://www.kamanabeamer.com/about> (last visited Nov. 24, 2023). He is a professor at the Center for Hawaiian Studies at the University of Hawai‘i at Mānoa, and teaches courses at the William S. Richardson School of Law and the Hawai‘i inuiākea School of Hawaiian Knowledge. *Id.* Dr. Beamer studies ‘Ōiwi governance, land tenure, and resource management. *Id.*

³¹⁸ BEAMER, *supra* note 145, at 246 n.16.

³¹⁹ See KAME‘ELEIHIWA, *supra* note 236, at 144 (“In her last *kauoha*, Keōpūolani urged Kalanimōkū and all the other *Ali‘i Nui* to renounce the old ways and embrace Christianity.”).

³²⁰ See BEAMER, *supra* note 145, at 246 n.16. Queen Lili‘uokalani seemingly wrote somewhat critically of the “Protestant-only” provision of Ke Ali‘i Pauahi’s will. See QUEEN LILIUOKALANI, *supra* note 232, at 111.

The privileges of this commendable charity were likewise restricted by the benefactor [Pauahi] to those of the Protestant faith. The Presbyterian churches in Hawaii may profit by this devise; but those of the English Catholic or Roman Catholic Missions are excluded because of their religion, which scarcely makes the institution a national benefit.

Id.

their people.³²¹ Living through population collapse³²² and the “multifold threats of European and American imperialism[] [and] land alienation,”³²³ ali‘i selectively appropriated western law³²⁴ to creatively fulfill their traditional obligations to maka‘āinana.³²⁵ Ke Ali‘i Pauahi, for example, preserved and dedicated her substantial assets through western charitable trust law³²⁶ to ensure keiki ‘Ōiwi received an education that would enable them to survive a rapidly changing world.³²⁷

Ke Ali‘i Pauahi endowed the trust with all her personal and real property—approximately 378,506 acres at the time she passed—for the construction of

³²¹ Nicholas A. Mirkay, Ashley Kaiāo Obrey & Susan K. Serrano, *Ali‘i Trusts: Native Hawaiian Charitable Trusts*, in NATIVE HAWAIIAN LAW: A TREATISE (forthcoming 2025) (manuscript at 2) (on file with author); Interview with Troy Andrade, Assistant Professor, University of Hawai‘i at Mānoa William S. Richardson School of Law, in Mānoa, Haw. (Feb. 21, 2023) [hereinafter Andrade Interview]; Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 16. The symbiotic relationship between maka‘āinana and ali‘i is well documented.

Notwithstanding their legal implications, [*the ali‘i*] trusts reflect the reciprocal duties of the ali‘i and the maka‘āinana (common people). Traditionally, the maka‘āinana had the duty to care for the land, and wise management of the people and land enhanced the right of the ali‘i to rule. Productive use of the land and mutual cooperation ensured the right of the maka‘āinana to live off the land and use its resources. Although the traditional social structure was dramatically altered through the creation of private property rights in the mid-nineteenth century and the transition from a subsistence to a market economy, the creation of these trusts suggests that the ali‘i understood and attempted to fulfill their obligation to provide for the needs of their people.

Mirkay et al., *supra*, at 2 (emphasis added); see *supra* Section IV.A for additional detail regarding the ali‘i-maka‘āinana relationship.

³²² TRASK, *supra* note 231, at 6; Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 16.

³²³ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 16.

³²⁴ BEAMER, *supra* note 145, at 104.

³²⁵ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 16; Mirkay et al., *supra* note 321, at 3 (citing GEORGE HU‘EU SANFORD KANAHELE, PAUHI: THE KAMEHAMEHA LEGACY 176 (2002)). “Each of the ali‘i trusts was intended to address a specific social need: Kamehameha Schools/Bernice Pauahi Bishop Estate, education; the Queen Lili‘uokalani Trust, care for orphans and indigent children; the King William Charles Lunalilo Trust, care for indigent and elderly Hawaiians; and the Queen Emma Trust, medical care.” *Id.* at 2.

³²⁶ *Id.*

³²⁷ See Will of Bernice Pauahi Bishop, *supra* note 28, at cl. 13; Mirkay et al., *supra* note 321. Ke Ali‘i embraced “education as the primary means of restorative justice by furthering the advancement of [Native] Hawaiian children.” Mirkay et al., *supra* note 321, at 5.

two schools (one for boys and the other for girls).³²⁸ In the five-member board she housed the “power to determine to what extent said school shall be industrial, mechanical, or agricultural,”³²⁹ but instructed them to “provide first and chiefly a good education in the common English branches, . . . and also instruction in morals and in such useful knowledge as may tend to make good and industrious men and women”³³⁰

While Ke Ali‘i Pauahi intended for the schools to provide manual and industrial education and training, so too did she intend the schools to “train the future leaders among the Hawaiian people.”³³¹ Given her deep aloha for her people, it stretches credulity to think that Ke Ali‘i Pauahi wanted to permanently pigeonhole generations of Kānaka Maoli into servitil lifetimes as “industrial and domestic laborers for a growing plantation capitalist economy[.]”³³² Yet that was precisely the pedagogical vision perpetuated by “white members of the business elite”³³³ who exclusively controlled Ke Ali‘i Pauahi’s trust and the schools’ operations from their inception through “well past the mid-twentieth century.”³³⁴

And while the trust’s establishment undoubtedly endures as an exercise of ali‘i agency³³⁵ and proof of Ke Ali‘i Pauahi’s “absorbing interest in the welfare of her race[.]”³³⁶ it is also irrefutably entangled with the “broader white supremacist project of subordinating and domesticating Kānaka[.]”³³⁷

³²⁸ Will of Bernice Pauahi Bishop, *supra* note 28, at cl. 13; Mirkay et al., *supra* note 321, at 7.

³²⁹ Will of Bernice Pauahi Bishop Codicil 2 cl. 4 (Oct. 9, 1884), in *In re Estate of Bishop*, Probate No. 2425 (Haw. Sup. Ct. 1884) (filed in Certificate of Proof of Codicil); KING & ROTH, *supra* note 38, at 302.

³³⁰ Will of Bernice Pauahi Bishop, *supra* note 28, at cl. 13 (emphasis added); KING & ROTH, *supra* note 38, at 302.

³³¹ C. Kalani Beyer, *The Connection of Samuel Chapman Armstrong as Both Borrower and Architect of Education in Hawai‘i*, 47 HIST. EDUC. Q. 23, 38–39 (2007) [hereinafter Beyer, *Connection of Samuel Armstrong*].

³³² Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 25.

³³³ *Id.* at 17.

³³⁴ *Id.* at 17–18.

³³⁵ See generally Kamanamaikalani Beamer, *Emergence of the Hawaiian State*, in NO MAKOU KA MANA, *supra* note 145 (demonstrating that ali‘i selectively appropriated western legal tools to further ‘Ōiwi interests).

³³⁶ KROUT, *supra* note 26, at 232 (quoting Letter from James B. Williams to Charles Reed Bishop (July 10, 1907)).

³³⁷ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 17.

Native Americans, Alaska Natives, and Black Americans.³³⁸ Indeed, it was Samuel Chapman Armstrong, the Hawai‘i-born son of American Protestant missionaries,³³⁹ who spoke at length with Ke Ali‘i Pauahi and her husband, Charles Reed Bishop, then the Kingdom’s Board of Education president,³⁴⁰ about the “establishment of the Kamehameha Schools.”³⁴¹

Armstrong was the architect of Virginia’s Hampton Institute, a teacher-training school for formerly enslaved Black people established in 1865.³⁴² Armstrong drew upon the pedagogical formula he observed at Hilo Boarding School to “moral[ly] reform” Hampton’s Black (and, later, Native American) students through “hard labor, Christian training, and military order.”³⁴³ The infamous and archetypal Carlisle Indian Industrial School—“the first

³³⁸ See NEWLAND REPORT, *supra* note 16, at 79–81.

³³⁹ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 27; Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 59, 63.

³⁴⁰ Goodyear-Ka‘ōpua illuminates Charles Reed Bishop’s damning history as president of the Board of Education:

In 1883, Kalākaua’s privy council compelled Charles Bishop to resign from his position as president of the Board of Education. Pauahi’s will establishing Kamehameha Schools was written that same year. He addressed the Hawaiian League—a segregated organization of white businessmen and missionary descendants—when they met on the eve of their action forcing Kalākaua to approve the illegitimate “Bayonet Constitution” of 1887. This faction re-appointed Bishop to the BOE presidency shortly after their grab for power. The Kamehameha School for Boys, also known as the “Manual Department,” was designed and built during the four-year interim between Bishop’s first and second stint as head of the BOE.

Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 43 n.57.

³⁴¹ Beyer, *Connection of Samuel Armstrong*, *supra* note 331, at 36; Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 66. Uldrick Thompson provides a differing account, however, writing that William Brewster Oleson (the soon-to-be first principal of Kamehameha Schools) contacted “Mrs. Bishop[] before her last illness, calling her attention to the need of Industrial training for Hawaiian youth; and urging her, as she had no direct heirs, to use her vast estates for founding two Industrial schools[.]” ULDRIK THOMPSON, *REMINESENCES OF KAMEHAMEHA SCHOOLS* 78 (1922).

³⁴² Beyer, *Connection of Samuel Armstrong*, *supra* note 331, at 30; Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 63; Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 27; NEWLAND REPORT, *supra* note 16, at 81.

³⁴³ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 27.

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government-run boarding school for Native Americans”³⁴⁴—was in turn modeled after the Hampton Institute.³⁴⁵

Current Kamehameha Schools Trustee Noelani Goodyear-Ka‘ōpua cogently articulates the white supremacist and racial capitalist bedrock of Armstrong’s educational philosophy that later bolstered Kamehameha Schools’ curriculum³⁴⁶ during the early years of its operation.³⁴⁷

While seen as “progressive” in the context of the post-slavery US South, Hampton’s assimilationist approach still operated within a white supremacist frame, in which black and brown students could be educated to fit into their place within the social hierarchy. . . .

. . . Armstrong described the “Hampton method” as his invention that “only boosted darkies a bit, and so to speak, lassoed wild Indians all to be cleaned and tamed.”³⁴⁸

But Armstrong was not the only white haole who critically shaped Kamehameha Schools’ trajectory for generations. The five original estate trustees Ke Ali‘i Pauahi named in her will—Charles R. Bishop,³⁴⁹ Samuel

³⁴⁴ *Past*, CARLISLE INDIAN SCH. PROJECT, <https://carlisleindianschoolproject.com/past/> (last visited Nov. 24, 2023).

³⁴⁵ Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 70 (“After Carlisle School proved to be successful with the industrial education model borrowed from Hampton Institute, industrial training joined manual labor in the curriculum of most schools involved with the education of Native Americans and African Americans.”).

³⁴⁶ Beyer, *Connection of Samuel Armstrong*, *supra* note 331, at 36 (citing THOMPSON, *supra* note 341) (“According to Uldrich [sic] Thompson, a longtime staff member [and vice principal] of the [Kamehameha] Boys’ School, once it was agreed to begin the schools, Armstrong had a great deal of influence in determining the curriculum at the school.”).

³⁴⁷ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 27.

³⁴⁸ *Id.*

³⁴⁹ “Charles R. Bishop, who served as president of the Board of Education throughout the 1870s and early 1880s, significantly increased funding for English-language schools while cutting from Hawaiian-language common schools.” *Id.* at 24.

M. Damon,³⁵⁰ Charles M. Hyde,³⁵¹ Charles M. Cooke³⁵² and William O. Smith³⁵³—“were all *haole*, Protestant, and very much in favor of annexation to America as the best thing for Hawai‘i.”³⁵⁴ Bankers; businessmen; sugar investors; a trust lawyer who joined the “armed anti-Kalākaua militia and then in 1893 was part of the Committee of Safety, the driving force in the overthrow of the monarchy[;]”³⁵⁵ missionary sons or missionaries themselves—these were Kamehameha Schools’ original trustees.³⁵⁶ And “[they] hired someone very like themselves as the first principal of the boys’ school at Kamehameha: William Brewster Oleson.”³⁵⁷

Oleson, a New England Protestant pastor, settled in Hawai‘i to direct Hilo Boarding School, one of the seven named Federal Indian Boarding Schools in the Department of the Interior’s report.³⁵⁸ “Hilo Boarding School proved to be unique, not only in Hawai‘i, but worldwide; it was an early innovator in preparing students for a trade [and] in making training of the hands as important as the training of the mind[.]”³⁵⁹ As celebrated in a 1908 issue of *Handicraft*, a Kamehameha Schools’ student publication, Hawai‘i played host to “a manual training school before one existed in what is now the United States mainland[.]”³⁶⁰

When Oleson transferred to Kamehameha Schools from Hilo Boarding School, he packed his teaching philosophy and select students already familiar with the manual and industrial training program.³⁶¹ Before he could

³⁵⁰ “Damon was a banker to his core and, thanks to Pauahi’s generosity, also a large landowner; in a codicil to her will, Pauahi gave Damon the *ahupua’a* (district) of Moanalua.” KING & ROTH, *supra* note 38, at 34.

³⁵¹ “Hyde was a strong-minded clergyman who saw little value in Hawaiian culture. . . . Hyde, himself a missionary, had come to Hawai‘i to train Hawaiians to be missionaries.” *Id.* at 35.

³⁵² “Cooke, whom Pauahi had looked after at the Royal School, had become a successful businessman, a major investor in sugar and shipping.” *Id.* at 34–35.

³⁵³ “And Smith, a lawyer with a specialty in trusts, had been a member of an armed anti-Kalākaua militia and then in 1893 was part of the Committee of Safety, the driving force in the overthrow of the monarchy.” *Id.* at 35.

³⁵⁴ *Id.* at 34; Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 36–37, 44 n.70.

³⁵⁵ KING & ROTH, *supra* note 38, at 34–35.

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 35.

³⁵⁸ *Id.*; Beyer, *Connection of Samuel Armstrong*, *supra* note 331, at 29; NEWLAND REPORT, *supra* note 16, at 78.

³⁵⁹ Beyer, *Manual and Industrial Education*, *supra* note 238, at 12–13.

³⁶⁰ XIV *Handicraft* 3 (1908).

³⁶¹ Beyer, *Connection of Samuel Armstrong*, *supra* note 331, at 37.

get his feet wet, the board shipped him off “immediately . . . to the United States to study methods in vogue in schools, particularly those in Hampton Institute.”³⁶² Consequently, “Kamehameha was modelled considerably after Hampton[,]”³⁶³ and its early curricula were cast from the same mold as other federally recognized Indian boarding schools.³⁶⁴

2. *Racist Curricula and Repressive Conditions at Kamehameha Schools*³⁶⁵

A review of Kamehameha Schools course catalogues and registers from 1903, 1913, and 1922 makes plain the disquieting congruities between Kamehameha Schools and its continental analogs.³⁶⁶ Boys began their days with reveille at 5:45 in the morning.³⁶⁷ For over a decade after the school’s inception, students labored for an hour and a half “before breakfast” on the “grounds; help[ed] about the kitchen and dining room; cut[] wood for the school fires and for the teachers; and [] clear[ed] the Campus of rocks and

³⁶² Hudson, *supra* note 294, at 50. See Beyer, *Connection of Samuel Armstrong, supra* note 331, at 37. “The Trustees sent Mr. Oleson to the State to visit schools and report.” THOMPSON, *supra* note 341, at 79.

³⁶³ Hudson, *supra* note 294, at 48–49.

³⁶⁴ Beyer, *Connection of Samuel Armstrong, supra* note 331, at 37.

³⁶⁵ This Article focuses on the Kamehameha School for Boys and does not discuss the curricula or conditions at the Kamehameha School for Girls. The Kamehameha School for Girls was similarly highly regimented. *Catalogue of The Kamehameha Schools 1922–1923*, at 44 (on file with The Hamilton Library, University of Hawai‘i). The School for Girls sought to prepare students “to be good wives, mothers and wage earners,” as “[h]ousehold management, weaving, dietetics, cooking, sewing, millinery and nursing were but a few of the domestic arts offered.” SHARLENE CHUN-LUM & LESLEY AGARD, *LEGACY: A PORTRAIT OF THE YOUNG MEN AND WOMEN OF KAMEHAMEHA SCHOOLS 1887–1987*, at 32 (1987). See Goodyear-Ka‘ōpua, *Domesticating Hawaiians, supra* note 3, at 28–38, for a critical and thorough examination of the Kamehameha School for Girls curriculum and her compelling argument that it “aimed to put Native women in their place—the home.” *Id.* at 29.

³⁶⁶ Compare The Kamehameha Schools, *Register of The Kamehameha Schools 1903–1904*, THE KAMEHAMEHA Q. 12–13 (1904) (on file with The Hamilton Library, University of Hawai‘i) [hereinafter *Register 1903–1904*], The Kamehameha Schools, *Register 1913–1914* 17–25 (1913) (on file with The Hamilton Library, University of Hawai‘i) [hereinafter *Register 1913–1914*], and *Catalogue of The Kamehameha Schools 1922–1923, supra* note 365, with NEWLAND REPORT, *supra* note 16, *passim*.

³⁶⁷ *Catalogue of The Kamehameha Schools 1922–1923, supra* note 365, at 20.

weeds.”³⁶⁸ In 1899, former principal Uldrick Thompson justified a policy change to serve students breakfast *before* morning work because of an uptick in colds “attributed to exposure to rain and to severe exercise without food.”³⁶⁹

Students donned gray military suits modeled after the “United States Military Academy at West Point.”³⁷⁰ Kamehameha School for Boys added a military training program in 1888³⁷¹ that the United States’ War Department later recognized as a military school in 1908.³⁷² It stationed a War Department officer on campus shortly after.³⁷³ Every boy joined the school battalion where they were trained in “military drill by an expert tactician.”³⁷⁴ From 1916 to 2002, Kamehameha Schools participated in the “Junior Division of the Reserve Officers’ Training Corps [JROTC]”³⁷⁵ for which it received federal funding under the National Defense Act.³⁷⁶

³⁶⁸ THOMPSON, *supra* note 341, at 42–43. Moreover, ostensibly “[a]s part of the manual labor philosophy, the boys maintained the school buildings and grounds, built and repaired machinery, and sewed the uniforms, sheets, napkins, tablecloths and mattresses that were used at the school. Students [also] staffed the school’s dairy and prepared meals.” Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 27.

³⁶⁹ THOMPSON, *supra* note 341, at 43.

³⁷⁰ *Register 1903–1904*, *supra* note 366, at 12.

³⁷¹ NEWLAND REPORT, *supra* note 16, at 75.

³⁷² *Catalogue of The Kamehameha Schools 1922–1923*, *supra* note 365366, at 18. Other sources list 1910 as the year that the War Department recognized Kamehameha Schools for Boys as a military school. NEWLAND REPORT, *supra* note 16, at 75 (citing *Doe v. Kamehameha Schs./Bernice Pauahi Bishop Estate*, 295 F. Supp. 2d 1141 (D. Haw. 2003), *aff’d in part, rev’d in part*, 416 F.3d 1025 (9th Cir. 2005), *reh’g en banc granted*, 441 F.3d 1029 (9th Cir. 2006)).

³⁷³ *Catalogue of The Kamehameha Schools 1922–1923*, *supra* note 365, at 18.

³⁷⁴ *Register 1903–1904*, *supra* note 366, at 13.

³⁷⁵ *Catalogue of The Kamehameha Schools*, *supra* note 365, at 18; NEWLAND REPORT, *supra* note 16, at 75.

³⁷⁶ See NEWLAND REPORT, *supra* note 16, at 75; KAMEHAMEHA SCHOOLS KAPĀLAMA MUSEUM ARCHIVE R.O.T.C., J.R.O.T.C. AND MILITARY TRAINING COLLECTION: FINDING AID 7 (rev. 2015), <https://www.ksbe.edu/assets/archives/ROTC-finding-aid-revised-2015.pdf> (“The program participated in many military oriented programs and competitions earning several distinctions including Honor Unit with Distinction in 2001—the highest U.S. Army ranking.”). This federal funding partly explains Kamehameha Schools’ inclusion in the Department of the Interior report, as federal support is one of the four criteria used to identify Federal Indian Boarding Schools. NEWLAND REPORT, *supra* note 16, at 17–18. Kamehameha Schools withdrew itself from the JROTC program and all federal funding because of lawsuits in the early 2000s challenging its admissions policy which prioritizes Native Hawaiian applications. See *Kamehameha Schs.*, 295 F. Supp. 2d 1141.

“Every student [was] expected to take the complete curriculum: academic, vocational, and military[.]”³⁷⁷ and their days were divided between the classroom and the workroom.³⁷⁸ Academic classes instructed students in English, arithmetic, geography, history, music, hygiene, civics, social science, general science, and military science.³⁷⁹ Certain course offerings were explicitly racist. “Beginning with 1912–1913,” for example, “Eugenics was introduced as a regular subject. . . . While waiting for something better, the pamphlet, *Eugenics for Young People* [was] used, as a text-book.”³⁸⁰ Teachers reiterated main points from the eugenics readings and subsequent class discussions during monthly Sunday-evening review sessions.³⁸¹ One main point, for example, affirmed the purpose behind teaching eugenics: “We study Agriculture to learn how to produce a better crop of cane. We should study Eugenics to learn how to produce a better class of children.’ ‘There is no Wealth but Life.’”³⁸² The academic subjects were admittedly “‘elementary.’”³⁸³ But Kamehameha Schools “‘[did] not aim to make scholars.’”³⁸⁴ It aimed to make laborers.³⁸⁵ It provided just enough education in English and arithmetic so as to make students “‘quick and accurate in everyday problems.’”³⁸⁶

John L. Stevens, United States Minister to Hawai‘i and conspirator in the 1893 coup d’état that toppled the monarchy,³⁸⁷ penned a propagandist love letter to labor’s virtues that Kamehameha Schools printed and circulated throughout the student body.³⁸⁸ “You are to learn that labor is something good to be desired, to be sought and not to be shunned. . . . The noblest beings

³⁷⁷ *Catalogue of The Kamehameha Schools 1922–1923*, *supra* note 365, at 19.

³⁷⁸ *See id.*

³⁷⁹ *Id.* at 21.

³⁸⁰ *Register 1913-1914*, *supra* note 366, at 23.

³⁸¹ *Id.*

³⁸² *Id.* at 23–24.

³⁸³ *Id.*

³⁸⁴ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 28 (quoting an unpublished document, on file with the Kamehameha Schools Archives, Kapālama, O‘ahu).

³⁸⁵ *Id.* at 25–26.

³⁸⁶ *Id.* at 28 (quoting an unpublished document, on file with the Kamehameha Schools Archives, Kapālama, O‘ahu).

³⁸⁷ TRASK, *supra* note 231, at 12–15; MacKenzie & Tuteur, *supra* note 37, at 31.

³⁸⁸ *See His Ex. John L. Stevens, Advice To Young Hawaiians 1–12 (1892)* (on file with author).

the world has ever known have loved work.”³⁸⁹ Comparing pre-contact Indigenous groups to animals, Stevens decried a life without extractive labor as “laziness . . . one of the meanest things in all the universe.”³⁹⁰

In savage life, in a barbarian condition of things, when there were no good schools, no skilled teachers, no finely made tools and machinery, the boy or man could accomplish but little. . . . His state of life was low and brutal. His enjoyments were much like those of the animals around him.³⁹¹

He spoke of ‘āina—innate to Native Hawaiian identity and spirituality³⁹²—as a mere commodity to be exploited.³⁹³ “These beautiful islands in mid-ocean need the industry of your hands[,]” Stevens urged.³⁹⁴ “They are only partially developed. The riches on their plains, mountain sides, in their valleys, in their bays and around their shores are yet to be unlocked and improved by the busy hands of labor.”³⁹⁵ Stevens simply echoed existing sentiment among American missionaries, foreign sugar planters, and profit-driven businessmen regarding the moral and economic value of vocational education.³⁹⁶

Resultingly, students received extensive vocational training with “one quarter year each in forge, carpentry, electricity, [and] machine”³⁹⁷ until grade nine.³⁹⁸ Kamehameha Schools required its pupils to spend the majority

³⁸⁹ *Id.* at 2.

³⁹⁰ *Id.*

³⁹¹ *Id.* at 3.

³⁹² All My Relations Podcast, *For The Love of The Mauna, Part 1*, at 04:07 (Dec. 9, 2020), <https://www.allmyrelationspodcast.com/podcast/episode/4bab2c15/for-the-love-of-the-mauna-part-1>. Dr. Noe Noe Wong-Wilson explains that ‘āina is an inseparable part of Native Hawaiian identity and spirituality because “with the land comes . . . these inanimate things that cannot be produced by a human, [so they] are what we call the gods. So, we revere the very rocks we walk on . . .” *Id.*

³⁹³ See Stevens, *supra* note 388, at 7.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ See generally Beyer, *Connection of Samuel Armstrong*, *supra* note 331, *passim*. “I think it my right and my duty to commend to you, now in the early morning of life—WORK, WORK, WORK, as a divine agency, by which you can secure the most valuable acquisitions this earth can afford you—those alone which render manhood worth having.” Stevens, *supra* note 388, at 11.

³⁹⁷ *Catalogue of The Kamehameha Schools 1922–1923*, *supra* note 365366, at 21.

³⁹⁸ *Id.*

of their time in vocational or military classes.³⁹⁹ Once in grade nine, students could select a focus trade,⁴⁰⁰ and were “expected to master . . . or specialize in practical Agriculture[,] Carpentry, Forging, Machine Work, Painting, or Electrical Work.”⁴⁰¹ They earned “trade certificates upon graduation” if they sufficiently mastered the trade.⁴⁰²

Kamehameha Schools evaluated student performance in the above curricula using report cards geared toward the school’s patrons rather than the students’ parents.⁴⁰³ Moreover, the institution “crafted [its report cards] to demonstrate that [Kamehameha School] boys [were] desirable for hire by white businessmen”⁴⁰⁴ Uldrick Thompson attested that “[n]early every business man and every professional man of these islands was pleased when the Kamehameha Schools was organized. They believed young Hawaiians would be trained to do all kinds of mechanical and office work”⁴⁰⁵ Tellingly, “[t]he trustees did not see Hawaiians as becoming anything more than workers—certainly not leaders. . . . None of the trustees ever hired a single Kamehameha graduate or, for that matter, any other Hawaiian to work in a supervisory position.”⁴⁰⁶ The institution’s curricula and culturally repressive policies worked in tandem to permanently Americanize and subordinate Kanaka students.⁴⁰⁷

Repressive conditions at Kamehameha Schools drove some students away after attending for mere weeks.⁴⁰⁸ “A founding principle at Kamehameha had been that the further from Hawaiian ways students could be kept, the better they would be, and the better Hawai‘i would be.”⁴⁰⁹ Oleson, the school’s first principal, banned ‘ōlelo Hawai‘i in every facet of student life.⁴¹⁰

³⁹⁹ *Id.* Students were required to enroll in Agriculture and Military Drill. *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Register 1903–1904*, *supra* note 366, at 14.

⁴⁰² *Id.*

⁴⁰³ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 28.

⁴⁰⁴ *Id.*

⁴⁰⁵ CHUN-LUM & AGARD, *supra* note 365, at 3.

⁴⁰⁶ KING & ROTH, *supra* note 38, at 41–42.

⁴⁰⁷ *See* Grube, *supra* note 63.

⁴⁰⁸ Andrade Interview, *supra* note 321 (describing how Professor Andrade’s grandmother went to Kamehameha Schools for two weeks never to return due to the school’s policy of cultural suppression).

⁴⁰⁹ KING & ROTH, *supra* note 38, at 40.

⁴¹⁰ *Id.* at 40–41.

Kamehameha School for Girls expelled a student for dancing a standing hula in the 1930s.⁴¹¹ It did not stamp out every trace of “Hawaiianness,” however, because having “a certain amount of culture [was] seen as desirable and charming.”⁴¹² Exotification depends on differences that charm and excite.⁴¹³ “At Kamehameha certain aspects of Kanaka Maoli culture were forbidden, but a certain kind of Hawaiianness—shorn of political resistance and linked with new gendered and classed sensibilities—was encouraged.”⁴¹⁴ What remained through the mid-twentieth century was the “‘veneer of [Native Hawaiian] culture[.]’”⁴¹⁵

Beyond an explicit policy of cultural suppression, Kamehameha School for Boys pitted student against student in meting out discipline.⁴¹⁶ Depending on the rule broken, students could be whipped with rawhide or rulers.⁴¹⁷ They might be ordered to perform asinine, Sisyphean tasks like “transferring piles of rock from one place to another and back again, cutting wood for school purposes, . . . pulling weeds from the campus grounds[] . . . [or] walking or running the circle around the area in front of Bishop Hall.”⁴¹⁸ Or they might lose certain privileges or be “led to solitary confinement.”⁴¹⁹

In these ways, Kamehameha Schools mirrored the Federal Indian Boarding Schools listed alongside it in the Department of the Interior’s report. For the better part of its history, the institution operated to “prop a plantation economy with semi-skilled tradesmen who could be ‘civilized’ and subordinated, thus protecting and increasing white capitalist investment and political power.”⁴²⁰ Generations of Kanaka Maoli students experienced

⁴¹¹ Grube, *supra* note 63.

⁴¹² Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 35 (citing KROUT, *supra* note 26, at 116) (“For some years [Ke Ali‘i Pauahi] adhered to many picturesque Hawaiian customs, which added, in the eyes of the stranger, to the charm and novelty of her entertainments.”).

⁴¹³ Exotification and commodification of Native Hawaiian people and culture has and continues to fuel the tourism industry. See MAILE ARVIN, *POSSESSING POLYNESIANS: THE SCIENCE OF SETTLER COLONIAL WHITENESS IN HAWA‘I AND OCEANIA 195–97* (2019).

⁴¹⁴ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 19.

⁴¹⁵ Grube, *supra* note 63.

⁴¹⁶ *Register 1913–1914*, *supra* note 366, at 16 (“The student council deals with all cases of discipline reported by the [student] officers or by members of the faculty.”).

⁴¹⁷ Beyer, Dissertation, *supra* note 239, at 224.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 27.

a Kamehameha Schools that set bounds around what they could do, who they could be and how high they could rise.⁴²¹ Then it evolved.⁴²²

3. *Kamehameha Schools' Evolution: Centering College, Community, and Culture*

Roughly eighty years passed before Kamehameha Schools pivoted toward foregrounding higher education, college preparation, and Native Hawaiian culture-based programming.⁴²³ Current Kamehameha Schools Trustee Noelani Goodyear-Ka'ōpua notes that despite the introduction of “[h]igher academic subjects and college preparation” in the 1930s, it took another forty to fifty years before they became Kamehameha Schools’ “main focus.”⁴²⁴ “Statehood accelerated those changes during the sixties as Hawai‘i’s population expanded and tourism became the foremost industry.”⁴²⁵ The trustees hired a malihini consulting firm to reenvision how Kamehameha Schools might operationalize its “mission to develop ‘the minds, bodies and Protestant Christian values of young people, especially those of Hawaiian ancestry[.]’”⁴²⁶ A three-pronged approach emerged.⁴²⁷

First, Kamehameha Schools revamped its existing campus instruction to provide “[s]tudents who were college-bound” with a “solid academic background, [and] vocational students [with] high quality training for gainful

⁴²¹ See *id.* at 27–28.

⁴²² Ku‘uwehi Hiraishi, *Trustee Noelani Goodyear-Ka'ōpua on Kamehameha Schools' 140-year Cultural Evolution*, HAW. PUB. RADIO (Mar. 30, 2023, 9:04 AM HST), <https://www.hawaiipublicradio.org/local-news/2023-03-30/trustee-noelani-goodyear-kaopua-on-kamehameha-schools-140-year-cultural-evolution>.

⁴²³ See CHUN-LUM & AGARD, *supra* note 365, at 113–18; Neil J. Hannahs, *Indigenizing Management of Kamehameha Schools' Land Legacy*, in I ULU I KA 'ĀINA: LAND 62, 64 (Jonathan Osorio ed., 2014). It was not until the 1970s and 1980s that Kamehameha Schools required students to enroll in Hawaiian language and culture classes as a prerequisite for graduation. CHUN-LUM & AGARD, *supra* note 365, at 118.

⁴²⁴ Goodyear-Ka'ōpua, *Domesticating Hawaiians*, *supra* note 3, at 30 n.67.

⁴²⁵ CHUN-LUM & AGARD, *supra* note 365, at 86. Dr. Haunani-Kay Trask offered critical insights regarding statehood, including that the “statehood vote was taken when Hawaiians were a minority in our own country.” TRASK, *supra* note 231, at 30. She highlighted how “settlers voted overwhelmingly for statehood, while Hawaiians did not, a fact conveniently overlooked by statehood promoters.” See *id.*

⁴²⁶ CHUN-LUM & AGARD, *supra* note 365, at 87; KING & ROTH, *supra* note 38, at 53–54.

⁴²⁷ CHUN-LUM & AGARD, *supra* note 365, at 87.

employment.”⁴²⁸ The second prong involved developing extension, or outreach, programs to offer a variety of classes (reading, writing, Hawaiian culture studies) and other services (counseling, special education assistance) to predominantly Native Hawaiian communities.⁴²⁹ The final prong—a robust scholarship program—targeted “outstanding Hawaiian youth” who, through scholarship support, “would be encouraged to continue their post-high school education.”⁴³⁰ Young people with potential were to be placed in positions of leadership, supported in their college goals or encouraged in useful employment at technical and lower management levels.⁴³¹

In the early 1960s, Kamehameha Schools scrapped an eighty-year-old standing hula ban and incorporated the ancient, spiritual practice into its Native Hawaiian culture-based education programming.⁴³² Hawaiian Movements (known also as Hawaiian Renaissances) of the 1970s and 1990s brought sweeping sociopolitical, legal, and cultural change that touched nearly every state and private institution in Hawai‘i.⁴³³ Kamehameha Schools grew its community outreach efforts and sought input from “a community advisory committee [that] recommended . . . the Schools’ administration ‘do more for more of Hawai‘i’s youth, particularly Hawaiian young people with

⁴²⁸ *Id.*

⁴²⁹ *Id.*; KING & ROTH, *supra* note 38, at 54. Explorations and Nā Pono Hawai‘i were two of the first and most successful extension programs, emphasizing the “sharing of Hawaiian cultural materials in an educational setting. Explorations is a week-long summer program open to fifth grade Hawaiian children.” CHUN-LUM & AGARD, *supra* note 365, at 120.

⁴³⁰ CHUN-LUM & AGARD, *supra* note 365, at 87.

⁴³¹ *Id.*

⁴³² See KING & ROTH, *supra* note 38, at 55–59. Kamehameha Schools retained its military training program, however, and students learned the “three ways to kill somebody in military science [class] and all the knife maneuvers without them making noise. And they used to teach us what a battleground smell like.” FIGHT FOR THE LAND – THE WALTER RITTE STORY (Quazifilms forthcoming). “I learned how to calibrate 180 millimeter mortar and how to field strip an M-1 in sixty seconds and military strategy and all that and I didn’t know how to count in Hawaiian from one to five.” *Id.* (cleaned up). Walter Ritte describes his experience at Kamehameha Schools as one of acculturation: “It almost separated us from being Hawaiians. I think that was on purpose because I remember my parents telling me that you have to learn the American way in order to survive and everybody bought into that. We didn’t know nothing about ourselves, our generation.” *Id.* (cleaned up).

⁴³³ See Yamamoto & Obrey, *Reframing Redress*, *supra* note 113, at 44 (placing the 1993 Congressional Apology Resolution in the Hawaiian cultural renaissance and sovereignty movement context); TRASK, *supra* note 231, at 66 (“Beginning in 1970, the Hawaiian Movement evolved from a series of protests against land abuses, through various demonstrations and occupations to dramatize the exploitative conditions of Hawaiians, to assertions of Native forms of sovereignty based on indigenous birthrights to land and sea.”).

special educational needs; help them to integrate into the mainstream of American society, yet retain a sense of their own identity, an awareness of their culture.”⁴³⁴ “From admission to graduation” Kamehameha aimed to provide students with personalized, holistic support including financial aid, housing, healthcare, and counseling.⁴³⁵

Today, Kamehameha Schools is a vast institution with a \$14.6 billion endowment supporting ninety-seven percent of its operations.⁴³⁶ Three K–12 campuses and thirty preschools serve just over 7,000 students.⁴³⁷ In Fiscal Year 2022–2023, it awarded \$31.4 million in scholarships and invested \$64.4 million in communities across the state.⁴³⁸ Given the institution’s 140-year trajectory, Dr. Noelani Goodyear-Ka’ōpua is excited to be a trustee at this particular moment in time.⁴³⁹ She says Kamehameha is where it is today because of external community movements to revitalize language and re-envision Hawai‘i’s economic future, as well as internal movements to shift toward providing Hawaiian culture-based education.⁴⁴⁰

Kamehameha Schools’ amazing campus leadership at every level is rethinking how to do Hawaiian culture-based education in ways that center students and connect them to the lands and waters, fishponds, lo‘i, winds, rains—all the elements of this place that we are blessed to be in—while also reaching high- and low-achieving students and supporting their mental health.⁴⁴¹

Agreeing that there is always more to do, Dr. Goodyear-Ka’ōpua uplifts Kamehameha Schools’ recent community-based cultural revitalization effort

⁴³⁴ CHUN-LUM & AGARD, *supra* note 365, at 115.

⁴³⁵ *Id.* at 116.

⁴³⁶ KAMEHAMEHA SCHOOLS, REPORT ON FINANCIAL ACTIVITIES: JULY 1, 2022 – JUNE 30, 2023 (2024), https://www.ksbe.edu/assets/annual_report/Financial_Activities_2023.pdf.

⁴³⁷ *Id.* Maui, O‘ahu, and Hawai‘i Island each have a K–12 campus. *Id.*

⁴³⁸ *Id.*

⁴³⁹ Telephone Interview with Noelani Goodyear-Ka’ōpua, Professor, Univ. of Haw. at Mānoa (Apr. 8, 2023) [hereinafter Goodyear-Ka’ōpua Interview].

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

at Kahalu‘u Ma Kai.⁴⁴² The effort involves “lands that were incredibly significant to Kamehameha Pai‘ea and his political power and nation-building. A whole complex of heiau exist in the area, two of which were devastated by hotel development in the post-statehood era.”⁴⁴³ For more than a decade, Kamehameha Schools worked with Kona community members to physically dismantle the old hotels, restore the heiau, and reopen the area as a community gathering place.⁴⁴⁴ Lineal descendants toured the property at the community launch, and emotions overflowed as they began to recognize the ‘āina again.⁴⁴⁵

Beyond its community outreach and cultural revitalization work, Kamehameha Schools made possible the careers of several prominent Kanaka Maoli scholars, legal practitioners, and activists, many of whom were interviewed for or referenced in this Article.⁴⁴⁶ Legal scholar and law professor Dr. Troy Andrade,⁴⁴⁷ for example, shared that he would not be a law professor, let alone a college graduate, had it not been for Kamehameha Schools.⁴⁴⁸

I will tell you right now that I would not be here as a law professor was it not for Kamehameha Schools. The Kamehameha Schools I had wasn’t perfect, but it provided opportunities for me, my brother, and most of my classmates

⁴⁴² Crystal Kua, *Final Phase Underway to Transform Kahalu‘u Ma Kai into World-Class Educational Site*, KAMEHAMEHA SCHOOLS (Sept. 21, 2020), <https://www.ksbe.edu/article/final-phase-underway-to-transform-kahaluu-ma-kai-into-world-class-education>.

⁴⁴³ Goodyear-Ka‘ōpua Interview, *supra* note 439; *see* Kua, *supra* note 442.

⁴⁴⁴ Goodyear-Ka‘ōpua Interview, *supra* note 439.

⁴⁴⁵ *Id.*

⁴⁴⁶ *E.g.*, Andrade Interview, *supra* note 321.

⁴⁴⁷ Dr. Andrade is Native Hawaiian and a first-generation college graduate. *Troy J.H. Andrade ‘11*, UNIV. HAW. MĀNOA WILLIAM S. RICHARDSON SCH. L., <http://hoku.law.hawaii.edu/person/troy-jh-andrade-11> (last visited Nov. 24, 2023). His research focuses on the “intersection of American jurisprudence and history, particularly in the context of the pursuit of Native Hawaiian political and social justice.” *Id.* *See generally* Troy Andrade, *Hawai‘i ‘78: Collective Memory and the Untold Legal History of Reparative Action for Kānaka Maoli*, 24 U. PENN. J. L. & SOC. CHANGE 85 (2021) (discussing Native Hawaiians who, in 1978, “capitalized on an indigenous cultural and political revival to change the law and secure reparative action”); Andrade, *Legacy in Paradise*, *supra* note 47 (critiquing President Barack Obama’s administrative rule that created a process to reestablish a government-to-government relationship with Native Hawaiians as not going far enough to achieve genuine reconciliation and social healing).

⁴⁴⁸ Andrade Interview, *supra* note 321.

to change our lives. It broke the cycle for my family. . . . I adamantly believe that if it wasn't for Kamehameha, I would not have gone to college. So, I have a lot of aloha for the school and the mission and vision that Pauahi had for Native Hawaiian children.⁴⁴⁹

Kamehameha Schools educated some of the lāhui's most notable activists and thought-leaders including Hinaleimoana Wong-Kalu,⁴⁵⁰ Walter Ritte,⁴⁵¹ Dr. Haunani-Kay Trask,⁴⁵² Dr. Jonathan Kamakawiwo'ole Osorio,⁴⁵³ Dr. Jamaica Heolimeleikalani Osorio,⁴⁵⁴ Dr. Noelani Goodyear-

⁴⁴⁹ *Id.* Professor Andrade explains what he means by saying Kamehameha Schools “broke the cycle for [his] family:” “Paying very little for a high-quality pre-college education was invaluable because it allowed my parents to work long hours and save for a home knowing I was safe on campus and involved in extracurricular activities.” *Id.*

⁴⁵⁰ *A Conversation with Hinaleimoana Wong-Kalu*, 'ĀINA MOMONA (Feb. 3, 2021), <https://www.kaainamomona.org/post/hinaleimoana-kwai-kong-wong-kalu>. Hinaleimoana Wong-Kalu, or Kumu Hina, is a transgender woman and mähū, a third gender in 'Ōiwi tradition who possesses both masculine and feminine energies. *Id.* She is a filmmaker, kumu hula, and community leader. *Id.* She has helped unearth the mo'olelo of the healer stones of Kapaemahu. *About*, THE HEALER STONES OF KAPAEMAHU, <https://kapaemahu.com/about/> (last visited Nov. 24, 2023); *Legend*, THE HEALER STONES OF KAPAEMAHU, <https://kapaemahu.com/legend/> (last visited Oct. 30, 2023).

⁴⁵¹ *Leadership*, 'ĀINA MOMONA, <https://www.kaainamomona.org/leadership> (last visited Dec. 22, 2023). Uncle Walter Ritte has been advocating for Native Hawaiian rights and resource protection for over forty years. *Id.* Uncle Walter was one of the “Kaho'olawe Nine,” a group of activists who landed on the island off of Maui to bring attention to its destruction by the U.S. Navy, which used Kaho'olawe as target practice for decades. *Id.*; Ian Lind, *Ian Lind: Kahoolawe 40 Years Later*, HONOLULU CIV. BEAT (Dec. 30, 2015), <https://www.civilbeat.org/2015/12/ian-lind-kahoolawe-40-years-later/>.

⁴⁵² *Haunani-Kay Trask*, 'ĀINA MOMONA, <https://www.kaainamomona.org/haunani-kay-trask> (last visited Nov. 24, 2023). Haunani-Kay Trask was an activist, educator, author, 'Ōiwi sovereignty movement leader, and poet. *Id.* A key figure in the Hawaiian Renaissance of the 1990s, her aloha for ka lāhui fueled her sovereignty praxis. Annabelle Williams, *Haunani-Kay Trask, Champion of Native Rights in Hawai'i, Dies at 71*, N.Y. TIMES (July 12, 2021), <https://www.nytimes.com/2021/07/09/us/haunani-kay-trask-dead.html>.

⁴⁵³ *Leadership*, 'ĀINA MOMONA, <https://www.kaainamomona.org/leadership> (last visited Dec. 22, 2023); Kyle Galdeira, *Lāhui Rising: Alumni Share Perspectives on 'Ōiwi Agency*, KAMEHAMEHA SCHS. (Nov. 18, 2019), <https://www.ksbe.edu/article/lahui-rising-alumni-share-perspectives-on-oiwi-agency>.

⁴⁵⁴ *A Conversation with Jamaica Heolimeleikalani Osorio*, 'ĀINA MOMONA (Nov. 24, 2023), <https://www.kaainamomona.org/post/jamaica-heolimeleikalani-osorio>.

Ka‘ōpua,⁴⁵⁵ and D. Kapua‘ala Sproat,⁴⁵⁶ to name a few. Many of them hold the institution’s nuance with an aloha resonant of Ke Ali‘i Pauahi’s aloha for her people.⁴⁵⁷ A number of them are outspoken in their criticism of Kamehameha Schools’ assimilationist pedagogy and legacy.⁴⁵⁸ But they also draw critical distinctions differentiating Kamehameha Schools from the other Federal Indian boarding schools.⁴⁵⁹

C. Distinguishing Kamehameha Schools.

Discerning difference first necessitates understanding sameness. Native Hawaiian researchers of education in nineteenth century Hawai‘i illuminate the “many similarities between the education provided Native Americans . . . and Native Hawaiians.”⁴⁶⁰ Hilo Boarding School influenced Hampton Institute which influenced Kamehameha Schools and Carlisle Industrial Indian School.⁴⁶¹ “[B]oth Native Americans and Native Hawaiians were subjected to a training that was meant for them to assume secondary roles in their society’s respective economies[.]”⁴⁶² Illustratively, Native Hawaiian graduates of “Kamehameha Schools, Hilo Boys’ Boarding School, Lāhaināluna Technical High School, or the female seminaries were not trained for leadership positions. Instead, they were educated to perform in industrial or service positions.”⁴⁶³

Kanaka Maoli scholars Maenette K. P. Benham and C. Kalani Beyer reveal the extent to which schools founded and/or operated by white missionaries—and later supported by the federal government—

⁴⁵⁵ Goodyear-Ka‘ōpua Interview, *supra* note 439.

⁴⁵⁶ Interview with D. Kapua‘ala Sproat, Professor, Univ. of Hawai‘i at Mānoa William S. Richardson Sch. L., in Honolulu, Haw. (Jan. 18, 2023).

⁴⁵⁷ *E.g.*, Andrade Interview, *supra* note 321.

⁴⁵⁸ Hiraishi, *supra* note 422 (“It’s not at all a stretch to say that Kamehameha was an assimilationist institution for a majority of its history.”). In a forthcoming documentary, Walter Ritte describes his struggles with “Kamehameha being a military school. I couldn’t follow all those crazy rules they had at that school. They don’t allow you to think for yourself.” FIGHT FOR THE LAND – THE WALTER RITTE STORY, *supra* note 431. *See generally* *Fight for the Land – The Walter Ritte Story*, QUAZIFILMS, <https://www.quazifilms.com/ritte-documentary> (last visited Nov. 27, 2023).

⁴⁵⁹ *E.g.*, Andrade Interview, *supra* note 321; Kauanoie Interview, *supra* note 293.

⁴⁶⁰ Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 69.

⁴⁶¹ *Id.* at 63–70.

⁴⁶² *Id.* at 70.

⁴⁶³ Beyer, Dissertation, *supra* note 239, at 271.

resembled and fit into the broader Federal Indian Boarding School context.⁴⁶⁴ Benham situates the “Hawaiian experience . . . [in the] larger, dominant cultural ideology that shaped educational policy toward native cultures and immigrants, as the country expanded westward across open frontier lands and the Pacific.”⁴⁶⁵ Moreover, Benham argues education in Hawai‘i “served Western interests, [and] was a disservice to Hawaiians, who like the Native Americans, lost their culture and land.”⁴⁶⁶ Beyer acknowledges that “[l]earning by the hands and the mind was and still is a worthwhile form of education[,]”⁴⁶⁷ and that many people, haole and Kanaka ‘Ōiwi alike, genuinely believed the “manual training form of manual and industrial education served their interest.”⁴⁶⁸ Ke Ali‘i Pauahi might be rightfully placed within this group. Maybe Kamehameha Schools’ first trustees, first principals, and first staff members can be, too. Crucially, however, Beyer demonstrates how the school’s white supremacist ideological underpinnings irrevocably altered Kanaka Maoli potential for generations.⁴⁶⁹

It was the low level of the academic curriculum that was joined with manual training and the transition to teaching in English that was a disservice to Hawaiians. *Because the missionaries wished to remain superior to Hawaiians, the elementary level of the academic course work taught in English [sic] provided the means to deny Hawaiians from reaching their full potential. Eventually, with fewer leaders to emulate and a curriculum, that did not include their language, history, and culture, Hawaiians would become secondary members in their own society.*⁴⁷⁰

⁴⁶⁴ *Id.* at 271–72; see also MAENETTE K. P. BENHAM & RONALD H. HECK, CULTURE AND EDUCATIONAL POLICY IN HAWAI‘I: THE SILENCING OF NATIVE VOICES 32–35 (1998).

⁴⁶⁵ BENHAM & HECK, *supra* note 464, at xii.

⁴⁶⁶ Beyer, Dissertation, *supra* note 239, at 271 (citing BENHAM & HECK, *supra* note 465).

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.* at 271–72.

⁴⁷⁰ *Id.* (emphasis added).

Additionally, Samuel Armstrong, the pedagogical mastermind behind Hampton Institute and Kamehameha Schools,⁴⁷¹ believed the “duty of the superior race [was] to rule over the weaker dark-skinned races until they were appropriately civilized[,] [and that] [t]he civilization process would require several generations of moral and religious development.”⁴⁷² Armstrong’s philosophy shaped the way Hawai‘i’s federally supported boarding schools taught and treated the children entrusted to their care for generations.⁴⁷³ “No doubt, this had an impact on the self-efficacy of Hawaiians, leading directly to contemporary Native Hawaiians representing a disproportionate share of Hawai‘i’s school drop outs, prison inmates, welfare recipients, and unemployed.”⁴⁷⁴ Kamehameha Schools is thus indisputably entangled in the harmful history of Federal Indian Boarding Schools.

But what distinguishes Kamehameha Schools (in part) is the fact that Ke Ali‘i Pauahi established the institution through an act of ali‘i agency for the benefit of her people.⁴⁷⁵ Though likely influenced by American missionaries Samuel Armstrong and William Oleson, Ke Ali‘i Pauahi’s exercise of agency fits into a broader pattern of Native Hawaiian ali‘i collaborating with westerners in myriad areas, including education.⁴⁷⁶

[T]he dominant class of *whites worked with the Hawaiian rulers to accomplish most of the educational practices serving Hawaiian students*. This was also true for Native Americans during the colonial era; however,

⁴⁷¹ See generally Beyer, *Connection of Samuel Armstrong*, *supra* note 331 (documenting Samuel Chapman Armstrong’s establishment of the Hampton Institute and his—and the institute’s—connection to Hawai‘i’s missionary boarding schools).

⁴⁷² Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 67.

⁴⁷³ *Id.* (“Once the concept of [Kamehameha Schools] was agreed upon, Armstrong had a great deal of influence in determining the curriculum and the staffing of the schools Besides his involvement with several schools in Hawai‘i, Armstrong was also quite influential in providing a philosophy of education for other members of the missionary his [sic] family to follow.”).

⁴⁷⁴ Beyer, *Dissertation*, *supra* note 239, at 275.

⁴⁷⁵ See *supra* Section IV.B.1 for a discussion of Ke Ali‘i Pauahi’s agency in establishing the perpetual charitable trust that is Kamehameha Schools for the education of Native Hawaiian children.

⁴⁷⁶ Beyer, *Comparing Native Hawaiian and Native American Education*, *supra* note 285, at 70.

after the United States embarked on its removal and reservation policies, education decisions were made without the consent of Native American leaders.⁴⁷⁷

Some might scorn this collaboration, condemning it as a lack of foresightedness. Others might view it as ali‘i adapting to the inevitable. Either way, “the Hawaiian Kingdom . . . was not a perfect institution[,]” though “[u]ndoubtedly progressive in many ways[.]”⁴⁷⁸

At times, for example, “[l]ike other nation-states, [the Kingdom] facilitated the spread of capitalism, depleted natural resources and taxed its subjects. Tragic events occurred throughout its existence. It imported immigrants to make up the laboring class, at times privileged [men] over [women], and imprisoned innocent people.”⁴⁷⁹ We might add to this list of tragic events the permission given to missionaries seeking to establish the first boarding schools.⁴⁸⁰ But Dr. Kamanamaikalani Beamer’s ‘Ōiwi optics lens reveals that those were still ali‘i decisions.⁴⁸¹ And Hawai‘i is still the “only country that ‘Ōiwi have ever had, . . . remain[ing] a symbol of Hawaiian nationalism for many Hawaiians today.”⁴⁸²

Who created the schools—and why—matters. *How* colonizing “ideas are introduced” matters.⁴⁸³ Intention and impact are both essential restorative justice inquiries.⁴⁸⁴ Dr. Beamer traces the “[o]ften narrow path [that] lies between negotiating and adopting a new technology or ideal, and acknowledging how that technology, concept,

⁴⁷⁷ *Id.* (emphasis added). Beyer also notes, though, that the 1893 overthrow of the Hawaiian Kingdom’s last reigning monarch, Queen Lili‘uokalani, placed “educational decision-making . . . entirely in the hands of the white dominant class[.]” *Id.*

⁴⁷⁸ BEAMER, *supra* note 145, at 16.

⁴⁷⁹ *Id.*

⁴⁸⁰ See Beyer, *Connection of Samuel Armstrong*, *supra* note 331, *passim*.

⁴⁸¹ BEAMER, *supra* note 145, at 12–13.

⁴⁸² *Id.* at 16.

⁴⁸³ *Id.* at 12.

⁴⁸⁴ See generally Mia Mingus, *The Four Parts of Accountability & How to Give a Genuine Apology*, LEAVING EVIDENCE (Dec. 18, 2019, 7:48 AM), <https://leavingevidence.wordpress.com/2019/12/18/how-to-give-a-good-apology-part-1-the-four-parts-of-accountability/> (articulating the role intention and impact play in transformative justice processes).

or tool may have changed the individual.”⁴⁸⁵ For Ke Ali‘i Pauahi, someone who “clearly saw value in the Christian and secular teachings of the Cookes[,]”⁴⁸⁶ and whose relationship with her Indigeneity was likely complicated,⁴⁸⁷ this path is especially thin. How much sway did the Cookes, Charles Bishop, Samuel Armstrong, William Oleson, Samuel Damon, Charles Hyde, Charles Cooke, and William Smith exert over Ke Ali‘i Pauahi and the trust’s establishment?⁴⁸⁸ Does assessing the level of haole influence strip Ke Ali‘i Pauahi of her agency? Does it paint her a victim of white supremacist indoctrination rather than a Native agent whose “choices and actions were proactive and were asserted from a position of power—not reactive and endured from a subjugated role[?]”⁴⁸⁹

These are worthwhile investigations, but, at base, Ke Ali‘i Pauahi did something uniquely ‘Ōiwi when she established the trust. She possessed a particularly ‘Ōiwi obligation to her people, and she carried out this kuleana—shared by mō‘ī and ali‘i since time immemorial—in a uniquely ‘Ōiwi way.⁴⁹⁰ Where missionaries established the other boarding schools to exert “continuous influence” over their pupils “away from the bad influences of . . . Hawaiian culture,” Ke Ali‘i Pauahi founded the schools for the “general betterment of [Native

⁴⁸⁵ BEAMER, *supra* note 145, at 12.

⁴⁸⁶ *Id.* at 246 n.16.

⁴⁸⁷ See KING & ROTH, *supra* note 38, at 55 (“Although many members of the royal families converted to Christianity, most of them saved a privileged place in their lives for *hula*, making it part of their royal observances. Pauahi was different. In all her years of entertaining, no *hula* was danced at Haleakalā.”).

⁴⁸⁸ Outside this Article’s scope is an exploration of the “interesting dynamic” between the ali‘i and members of the business elite. Andrade Interview, *supra* note 321. Charles Reed Bishop made strategic decisions that preserved and grew Pauahi’s estate. *Id.* He bequeathed the real property he accumulated during his lifetime to the trust when he passed. *Id.* Ke Ali‘i Pauahi reportedly maintained “warm and trust[ing] friends[hips]” with each of the trustees she named in her will. KROUT, *supra* note 26, at 239. As for Queen Lili‘uokalani, William Smith served as her personal attorney at the end of her life. Andrade Interview, *supra* note 321. And her husband, John Dominis, may have played a mediating role between her and the racist and sexist business community. *Id.* For example, John Dominis died the year Queen Lili‘uokalani assumed the throne. *Id.* Rhetoric regarding the overflow amplified immediately upon his death, ultimately culminating in the 1893 coup d’état that ousted Queen Lili‘uokalani. *Id.*

⁴⁸⁹ BEAMER, *supra* note 145, at 12.

⁴⁹⁰ See Section IV.B.1 for additional discussion regarding traditional ali‘i obligations to maka‘āinana. See generally Mirkay et al., *supra* note 321; Andrade Interview, *supra* note 321; Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 16.

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Hawaiians’] material conditions and their mode of living.”⁴⁹¹ Bequeathing all her ‘āina to Hawai‘i’s children—Hawai‘i’s future—to ensure their survival is thus an enduring act of ‘Ōiwi agency.⁴⁹²

A second critical distinction is the degree of violence Kamehameha Schools students suffered.⁴⁹³ All—American Indians, Alaska Natives, and Native Hawaiians alike—endured the violence of land dispossession, physical genocide (whether by war or disease),⁴⁹⁴ cultural genocide, sexual abuse,⁴⁹⁵ and near (or total) language death.⁴⁹⁶ All were subjected to largely futile assimilationist attempts to eradicate every trace of Indigenous identity.⁴⁹⁷ All were disciplined with physically, psychologically, and emotionally abusive methods.⁴⁹⁸

⁴⁹¹ KROUT, *supra* note 26, at 238. Witnessing a precipitous population decline presumptively orphaning countless keiki ‘Ōiwi, she dedicated a portion of her trust’s annual “income to the support and education of orphans, and others in indigent circumstances, giving the preference to Hawaiians of pure or part aboriginal blood” Will of Bernice Pauahi Bishop (Oct. 31, 1883), in *In re Estate of Bishop*, Probate No. 2425 (Haw. Sup. Ct. 1884) (filed in Certificate of Proof of Will).

⁴⁹² The Kamehameha Schools, An Official Prospectus 1 (Dec. 23, 1885, mimeo. Sept. 1, 1963) (on file with author).

⁴⁹³ See Grube, *supra* note 63.

⁴⁹⁴ See generally JARED M. DIAMOND, GUNS, GERMS AND STEEL: THE FATES OF HUMAN SOCIETIES (1997).

⁴⁹⁵ Reported instances of sexual abuse at Kamehameha Schools occurred largely in the 1970s and 1980s. Yoohyun Jung, *Kamehameha Schools Faces a Spate of Sex Abuse Claims*, HONOLULU CIV. BEAT (Apr. 24, 2020), <https://www.civilbeat.org/2020/04/kamehameha-schools-faces-a-spate-of-sex-abuse-claims/>.

⁴⁹⁶ See NEWLAND REPORT, *supra* note 16, at 40; Grube, *supra* note 63. See generally DAVID CRYSTAL, LANGUAGE DEATH 70, 77, 89 (2002) (contributing factors to language death include the death of its speakers, cultural assimilation, and the incorporation of outsiders into the minority language community).

⁴⁹⁷ See Richard Henry Pratt, Speech at the National Conference of Charities and Correction: The Advantages of Mingling Indians with Whites (1892).

A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man.

Id.

⁴⁹⁸ NEWLAND REPORT, *supra* note 16, at 56.

All suffered the enactment of these harms in federally supported boarding schools.⁴⁹⁹ Yet Kamehameha Schools students were not forced to attend the institution.⁵⁰⁰ No knock on the door signaled the arrival of a priest or Indian agent come to forcibly remove keiki ‘Ōiwi from their homes.⁵⁰¹ And crucially, records do not indicate—thus far—that Native Hawaiian children died while at Kamehameha Schools.⁵⁰²

In contrast, one hundred and ninety children died while attending Carlisle Boarding School.⁵⁰³ Native Hawaiians tend to embrace this critical distinction.⁵⁰⁴ Dr. Jonathan Kay Kamakawiwo‘ole Osorio acknowledges the ““historical reality”” that ““what happened in Hawai‘i . . . [is] something fundamentally different from what happened on the mainland. . . . It doesn’t make what happened here better. It just makes it less physically violent.””⁵⁰⁵ Honolulu City Council Vice Chair Esther Kia‘āina reiterated that:

[It is] important to distinguish between the trauma suffered by her people and those who were on the mainland. “What happened to our brothers and sisters on the mainland was atrocious and our hearts break for them,” Kiaaina said. “The federal government needs to

⁴⁹⁹ *See id.*

⁵⁰⁰ *See Catalogue of The Kamehameha Schools 1922–1923, supra* note 365, at 56 (describing requirements that applicants for admission must meet).

⁵⁰¹ *See generally* TRUTH AND RECONCILIATION COMMISSION OF CANADA, A KNOCK ON THE DOOR: THE ESSENTIAL HISTORY OF RESIDENTIAL SCHOOLS (2015) (explaining the traumatic ways government agents, priests, and even Indian agents took children from their homes to place them in residential schools)

⁵⁰² *See* Grube, *supra* note 63 (“Hawaii’s Native children were spared much of the systemic brutality and bloodshed that occurred on the U.S. mainland . . .”).

⁵⁰³ *Cemetery Information*, CARLISLE INDIAN SCH. DIGIT. RES. CTR., https://carlisleindian.dickinson.edu/cemetery-information?field_cemetery_admin_title_value=&sort_by=field_cemetery_name_value&sort_order=ASC&page=0.

⁵⁰⁴ Kauanoē Interview, *supra* note 293 (“I think the issue with the Indian boarding schools is the extent of physical harm and potential murders. And I have not heard stories of deaths at Kamehameha. I have heard informal recollections of being punished for certain things in general. I don’t know how much of that is attributable to assimilation efforts as opposed to [previous corporal punishment norms].”).

⁵⁰⁵ Grube, *supra* note 63.

make amends with that specific part of history and the legacy of that.”⁵⁰⁶

Because Kānaka Maoli were “forced to give up their land, their language and their culture to outsiders seeking to profit from the islands[,]”⁵⁰⁷ Vice Chair Kia‘āina⁵⁰⁸ is “glad Hawaiians were included in the latest investigation.”⁵⁰⁹ But given how Kamehameha Students were “spared much of the systemic brutality and bloodshed that occurred on the U.S. [continent],”⁵¹⁰ an arguably fine line separates Kamehameha Schools from schools like Carlisle.

In interviewing graduates of Kamehameha Schools who attended in the 1990s and early 2000s,⁵¹¹ a common response emerged. Kamehameha Schools can and should be distinguished from the remaining 407 Federal Indian Boarding Schools identified in the Department of the Interior’s report.⁵¹² Its inclusion gave nearly everyone pause.⁵¹³ In deferring to Kanaka voices, considering Ke Ali‘i Pauahi’s intentions and agency in establishing the trust, and honoring the differences in the degree of violence suffered by Native students, Kamehameha Schools likely should not have been included in the final report. For some, its inclusion begs the question of whether any Native Hawaiians were involved in the development of the report.⁵¹⁴ The Department of the Interior might have consulted with the Native

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* Esther Kia‘āina served in an appointed Interior Department position during the Obama administration. *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *See id.*

⁵¹¹ *See, e.g.,* Andrade Interview, *supra* note 321; Goodyear-Ka‘ōpua Interview, *supra* note 439. Given this Article’s time constraints, I could not feasibly interview Kamehameha Schools alumni outside the law school setting other than Trustee Noelani Goodyear-Ka‘ōpua. I believe centering the voices of those pushed to the margins is essential. I hope to build on this Article and incorporate those voices in this Article’s future iterations.

⁵¹² *See* NEWLAND REPORT, *supra* note 16. This conclusion is specific to Kamehameha Schools as an examination of the other Hawai‘i Federal Indian boarding schools exceeds the scope of this Article.

⁵¹³ *E.g.,* Andrade Interview, *supra* note 321; Kauanoe Interview, *supra* note 293; Roth Interview, *supra* note 73.

⁵¹⁴ Goodyear-Ka‘ōpua Interview, *supra* note 439.

Hawaiian community or employed additional criteria including who (or what) established each school to filter out institutions like Kamehameha that were created by a Native Hawaiian for the benefit of Native Hawaiians. That said, Kamehameha Schools’ inclusion in the report is an opportunity for the trust to fully reckon with its history in a way it has failed to do thus far.

V. I KA WĀ MAMUA, I KA WĀ MAHOPE: ASSESSING KAMEHAMEHA SCHOOLS’ *RESPONSIBILITY* AND RECKONING WITH ITS PAST TO CHART ITS FUTURE

Social healing through justice’s second inquiry invites participants implicated in causing group-based injustices to assess their varying degrees of *responsibility*.⁵¹⁵ Accepting *responsibility* for interpersonal harm can be humbling at best and terrifying at worst.⁵¹⁶ Accepting *responsibility* for mass harm spanning generations is an even more formidable challenge.⁵¹⁷ It is a challenge that those who directly caused the harm often cannot accept and one that those indirectly responsible for the harm are often reluctant or unwilling to accept.⁵¹⁸

So, what does Kamehameha Schools’ acceptance of *responsibility* look like? What does reconciliation grounded in Indigenous restorative justice principles and values look like for its students who attended prior to its evolution? What does it look like for their descendants, current students and future generations of Kamehameha scholars? Assessing Kamehameha Schools’ *responsibility* first requires an

⁵¹⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 79.

⁵¹⁶ Mia Mingus, *Dreaming Accountability*, LEAVING EVIDENCE (May 5, 2019, 10:00 AM), <https://leavingevidence.wordpress.com/2019/05/05/dreaming-accountability-dreaming-a-returning-to-ourselves-and-each-other/>. Certain Indigenous restorative justice processes—like ho‘oponopono—teach us that reconciliation is possible only when all parties (harmed and harmer), or their representatives, sit with each other at the proverbial roundtable genuinely intending to set things right. I NĀNĀ I KE KUMU, *supra* note 1, at 71–72; Crabbe Interview, *supra* note 84. If the harmer is honestly repentant and makes restitution, those harmed are obligated to forgive. I NĀNĀ I KE KUMU, *supra* note 1, at 71–72. Only then are the ties binding them loosened. *Id.*

⁵¹⁷ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 136.

⁵¹⁸ *Id.* at 81–82, 136. Often, perpetrators of mass harm cannot accept *responsibility* because they have passed away before reconciliation efforts are initiated or completed. United States Holocaust Memorial Museum, *Robert Ley*, HOLOCAUST ENCYC., <https://encyclopedia.ushmm.org/content/en/article/robert-ley> (last visited Dec. 22, 2023).

expanded discussion of the imbricated norms and tiers composing this *social healing through justice inquiry*.⁵¹⁹

A. *Not “If,” But “How:” Responsibility’s Four Tiers*

One group has harmed another. Some people created the damaging policies. Others implemented them. Still others suspected the negative ramifications and ignored them. And some did nothing but benefit from the harmed group’s subjugation. Each bears some level of responsibility for repairing the damage. In instances of group-based harm, then, the question is often “*how* am I responsible?” rather than “*am I* responsible?”⁵²⁰ *Responsibility* stems from certain legal and/or ethical norms derived from the level of participation in the wrongdoing.⁵²¹

Relevant legal norms implicated in this inquiry apply to the state and federal government through their respective restorative justice commitments to Kānaka Maoli enshrined in the state constitution and various federal laws.⁵²² While legal frameworks holding Kamehameha

⁵¹⁹ See generally YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 119–43 (exploring overlapping legal and ethical norms giving rise to varying levels of responsibility).

⁵²⁰ I first heard this “not if, but how” concept articulated by Sonya Renee Taylor. Sonya is a “renowned activist and thought leader on racial justice, body liberation and transformational change, international award winning artist, and founder of The Body Is Not an Apology, a global digital media and education company exploring the intersections of identity, healing, and social justice through the framework of radical self-love.” *About*, SONYA RENEE TAYLOR, <https://www.sonyareneetaylor.com/about> (last visited Oct. 30, 2023).

⁵²¹ See, e.g., YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 119–36.

⁵²² The State of Hawai‘i committed to restorative justice for Kānaka Maoli in its state constitution and myriad statutes protecting traditional and customary rights and practices. See HAW. CONST. art. XII, § 7 (amended 1978); HAW. REV. STAT. § 7-1 (2013); HAW. REV. STAT. § 1-1 (2013). The federal government committed to acknowledging the “ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.” Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993) (“Joint Resolution to [A]cknowledge the 100th [A]nniversary of the January 17, 1893 [O]verthrow of the Kingdom of Hawaii”); see also Hawaiian Homes Commission Act, 42 Stat. 108 (1921). Though outside the scope of this Article, the state and federal government are legally and ethically responsible for repairing

Schools accountable may not apply, the trust is ethically responsible for repairing the damage done by the first several generations of its trustees, principals and faculty members, and the school policies they devised and enforced.⁵²³ Ethical responsibility can “arise in several related ways”⁵²⁴ depending on a party’s direct participation,⁵²⁵ complicity,⁵²⁶ receipt of benefits,⁵²⁷ or polity membership.⁵²⁸

Direct participation in the harm is *responsibility*’s most easily understood tier as it often overlies legal responsibility.⁵²⁹ Those who developed and implemented damaging policies are directly responsible for the harm, “generat[ing] an obligation to officially acknowledge the victims’ suffering and participate in repairing the damage.”⁵³⁰ Complicit individuals or groups are responsible when they “(1) know[] of the abusive actions by others, [and possess] (2) some degree of power or authority over the others and [had] (3) an opportunity to prevent or intervene,” but failed to do so.⁵³¹ Receipt of benefits is the first *responsibility* tier that is less readily accepted, especially by those who “receive benefits by virtue of membership in or affiliation with the dominant group. . . . [and who may be] unaware of other group members’ past or current transgressions.”⁵³² But the hardest tier to accept is the *responsibility* born simply from “membership in a democratic polity committed to civil and human rights[.]”⁵³³

the damage inflicted by the Federal Indian Boarding Schools that operated in Hawai’i. *See, e.g.*, HAW. CONST. art. XII, § 7 (amended 1978); Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

⁵²³ *See* YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 126–36.

⁵²⁴ *Id.* at 126.

⁵²⁵ *Id.* at 126–27.

⁵²⁶ *Id.* at 127–32.

⁵²⁷ *Id.* at 132–34.

⁵²⁸ *Id.* at 134–36.

⁵²⁹ *Id.* at 126.

⁵³⁰ *Id.* at 127.

⁵³¹ *Id.*

⁵³² *Id.* at 133.

⁵³³ *Id.* at 134.

Individuals and groups alike avoid taking *responsibility* for myriad reasons.⁵³⁴ Certain groups with much power to lose may worry about the reallocation of group power once they accept responsibility.⁵³⁵ “[E]ven when group members desire some form of healing, ‘each side comes to . . . fear . . . that if they were to ‘admit’ mistakes and wrongdoing, this would weaken [the] position’ of their group or would ‘likely be misused for propaganda or political purpose.’”⁵³⁶

Still another impediment is the unconscious (or deliberate) refusal to acknowledge the wrongdoing⁵³⁷ as the “human mind defends itself against the discomfort of guilt by denying or refusing to recognize those ideas, wishes, and beliefs that conflict with what the individual has learned is good or right.”⁵³⁸ And a final obstacle is the “pull of [American] legal culture . . . [which] tends to focus on individual, not group, rights and duties.”⁵³⁹ Each of the foregoing tiers of legal or ethical *responsibility*, however, “generates a corresponding responsibility to act.”⁵⁴⁰

⁵³⁴ *Id.* at 136–37. The United States is a punitive and carceral nation with the largest prison population in the world. *See generally* ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE? passim* (2003) (revealing how private corporations seeking to exploit prison labor to increase their profits partner with government, correctional communities, and the media to fill prisons by targeting communities of color). Little about the criminal punishment or civil adjudication systems incentivize those who have caused harm to come forward for fear of retribution. *See* YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 136–37.

⁵³⁵ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 136.

⁵³⁶ *Id.* (quoting Rafael Moses, *Acknowledgment: The Balm of Narcissistic Hurts*, in 3 AUSTIN RIGGS CTR. REV. 5–6 (1990)).

⁵³⁷ *See id.*

⁵³⁸ Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987).

⁵³⁹ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 136. For example, a formalist tort law framing of wrongdoing typically seeks (1) an identifiable and present perpetrator, and (2) a distinct harm to (3) a specific victim. *See* ANDREAS KUERSTEN, CONG. RSCH. SERV., IF11291, *INTRODUCTION TO TORT LAW* (2023). The law is reluctant to extend responsibility or a right to recover much further. *See id.*

⁵⁴⁰ YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 12, at 136.

B. *Kamehameha Schools' Ethical Responsibility to Heal the Persisting Wounds of Its Early Curricula and Conditions*

While Kamehameha Schools is sufficiently distinguishable from the other Federal Indian Boarding Schools, its inclusion in the department's report is an opportunity for the trust to reckon with its past and chart its future by accepting ethical *responsibility* for the harmful actions of its progenitors.⁵⁴¹ It can follow in the footsteps of former Interior Assistant Secretary Kevin Gover and current Interior Secretary Deb Haaland who accepted direct *responsibility* on their institution's behalf and rejected "traditional notion[s] of causality"⁵⁴² and formalist tort law paradigms that so often suffocate reparations claims.⁵⁴³ Each acknowledged, assumed *responsibility* and apologized for the agency's misdeeds despite not personally heading those institutions at the time the boarding school programs were in effect.⁵⁴⁴

And so today I stand before you as the leader of an institution that in the past has committed acts so terrible that they infect, diminish, and destroy the lives of Indian people decades later, generations later.

....

And while the BIA employees of today did not commit these wrongs, we acknowledge that the institution that we serve did. *We accept this inheritance, this legacy, of racism and inhumanity. And by accepting this legacy we accept also the moral responsibility of putting things right.*⁵⁴⁵

Secretary Haaland took up Gover's mantle in her memorandum launching the initiative.

The Department of the Interior . . . must address the intergenerational impact of Indian boarding schools to shed light on the traumas of the past. For more than a century, the Department was responsible for operating or overseeing Indian boarding schools across the

⁵⁴¹ *Id.* at 126–36.

⁵⁴² *Id.* at 134.

⁵⁴³ *Id.*

⁵⁴⁴ Gover, *supra* note 42, at 162.

⁵⁴⁵ *Id.* (emphasis added).

United States and its territories. The Department is therefore uniquely positioned to assist in the effort to recover the histories of these institutions.⁵⁴⁶

Kamehameha Schools as an institution is similarly directly responsible for healing the persisting wounds of Kānaka Maoli because it inherited the racist and paternalistic legacy of its first seventy-five years of operation.⁵⁴⁷ This is an undertaking rife with potential *darkside* threats.⁵⁴⁸ The first might be invoked by individuals currently involved in the institution who did not directly cause the harm: “why should I be punished for something I did not do?”⁵⁴⁹ *Social healing through justice* scholars argue that the “wrongful systemic exclusion of others”⁵⁵⁰ and the attendant “benefits or privileges accrued over generations . . . gives rise to an important degree of responsibility for participating in efforts to repair the damage through generations.”⁵⁵¹ Expanding upon this slightly, *responsibility* to redress

⁵⁴⁶ DOI Memo, *supra* note 11, at 1–2.

⁵⁴⁷ See generally Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, *passim* (discussing “the consequences of white male control” over Kamehameha Schools).

⁵⁴⁸ See *supra* Section II.A for a more detailed explanation of the *darkside* of reparative justice initiatives.

⁵⁴⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 134. In the context of slavery, for example, most white people do not believe they have an obligation to engage in reparative action—particularly action that asks them to relinquish unearned privileges—because they did not personally enslave Black people. For some, neither did their ancestors. But “[w]hites need not have been slaveowners or proponents of Jim Crow segregation to have benefitted from systemic white supremacy – in the form of better schools and healthcare, expanded job prospects, increased homeownership, business financing and more.” *Id.* at 133. Moreover, homeownership and income level are two key contributors to wealth creation and generation. Benjamin Harris & Sydney Schreiner Wertz, *Racial Differences in Economic Security: The Racial Wealth Gap*, U.S. DEP’T TREASURY (Sept. 15, 2022), <https://home.treasury.gov/news/featured-stories/racial-differences-economic-security-racial-wealth-gap>; Tami Luhby, *White Americans Have Far More Wealth Than Black Americans. Here’s How Big the Gap Is*, CNN (Oct. 23, 2023), <https://www.cnn.com/2023/10/31/us/racial-wealth-gap-reaj/index.html>. With lower incomes and rates of homeownership, “Black family wealth, on average, is less than one tenth that of white families. And long-standing discrimination shuts Black [people] out of housing, job and business finance opportunities available to whites.” YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 133.

⁵⁵⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 133–34.

⁵⁵¹ *Id.*

harm exists not only because members of a privileged group receive manifold benefits from mass injustice, but because they too are harmed by policy-making rooted in white supremacy.⁵⁵² Take, for example, the community pool that permanently closes rather than desegregate.⁵⁵³ Every child and every family loses out.⁵⁵⁴ The interests of harmer and harmed converge.⁵⁵⁵

Kamehameha Schools must recognize its interest in extricating itself from the “broader white supremacist project of subordinating and domesticating Kānaka”⁵⁵⁶ that continues to harm Native Hawaiians today.⁵⁵⁷ Though its current leaders did not create repressive school curricula or ban ‘ōlelo Hawai‘i, Kamehameha Schools can begin to set things right by “work[ing] to actively question . . . pedagogies [that] continue to support settler colonialism and racism[.]”⁵⁵⁸ Dr. Goodyear-Ka‘ōpua delivers a powerful critique of “Kamehameha’s curriculum” for “obscur[ing] the clear historical facts of the overthrow, in which its own trustees were implicated and from which they benefited, while school leaders claimed the school was strictly apolitical and told tales about the Bishops’ love instead.”⁵⁵⁹ Kamehameha Schools’ modern Hawaiian-culture based curriculum is necessarily incomplete if it does not adequately educate Kamehameha students as to its *raison d’être*.

⁵⁵² Heather C. McGhee, *Racism Has a Cost for Everyone*, TED (Dec. 2019), https://www.ted.com/talks/heather_c_mcghee_racism_has_a_cost_for_everyone [hereinafter McGhee, *Racism Has a Cost*] (“This zero-sum thinking that what’s good for one group has to come at the expense of another, it’s what has gotten us into this mess. I believe it’s time to reject that old paradigm and realize that our fates are linked. An injury to one is an injury to all.”). Take Gary, for example, a white man whose self-admitted “prejudice has caused him to suffer fear, anxiety, isolation. . . . Is it possible that our society’s racism has likewise been backfiring on the very same people set up to benefit from privilege?” *Id.*

⁵⁵³ *Id.* See generally HEATHER MCGHEE, *THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER* (2021). McGhee provides an example of Montgomery, Alabama’s city council that closed a community pool rather than desegregate. McGhee, *Racism Has a Cost*, *supra* note 552. “This destruction of public goods was replicated across the country. Towns closed their public parks, pools, and schools all in response to desegregation orders all throughout the 1960s. In Montgomery, they shut down the entire parks department for a decade. . . . Racism has a cost for everyone.” *Id.*

⁵⁵⁴ See McGhee, *Racism Has a Cost*, *supra* note 552.

⁵⁵⁵ See *id.*

⁵⁵⁶ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 17.

⁵⁵⁷ E.g., Beyer, Dissertation, *supra* note 239239, at 275.

⁵⁵⁸ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 38.

⁵⁵⁹ *Id.*

In an official statement issued on May 13, 2022, responding to the Department of the Interior’s investigative report, Kamehameha Schools ostensibly recognized that it must confront its colonial entanglements to better empower Native Hawaiian children and the lāhui.⁵⁶⁰

Grappling with the contradictions and internal conflicts of our own colonial history, we continue a process of transforming over time to serve and uplift our communities through Hawaiian culture-based education. Critical to this transformation is our own examination of the historical issues so we can better know our truths, engage in healing processes, and empower our communities.⁵⁶¹

Some criticized Kamehameha Schools for doing “little [else] to address the actual substance of what occurred in its boarding schools.”⁵⁶² Others may believe this statement of *recognition* sufficient, valuing its “transparency and accountability” and commitment to “recording and remembering history.”⁵⁶³ *Recognition* is usually referred to as the “first step” or starting point, however.⁵⁶⁴ And *social healing through justice*’s cautionary *darkside* principle observes the “danger of incomplete, insincere acknowledgments and ameliorative efforts – how words of recognition without economic justice and institutional restructuring can mask continuing oppression.”⁵⁶⁵ This is why we must remember that reconciliation takes time.⁵⁶⁶ As Trustee Noelani Goodyear-Ka’ōpua recognizes, no

⁵⁶⁰ Grube, *supra* note 63; Goodyear-Ka’ōpua Email, *supra* note 67.

⁵⁶¹ Grube, *supra* note 63; Goodyear-Ka’ōpua Email, *supra* note 67.

⁵⁶² Grube, *supra* note 63.

⁵⁶³ Roth Interview, *supra* note 73. Yet Kamehameha Schools does not make the original board of trustees meeting minutes available to researchers. For Kamehameha Schools to genuinely increase transparency and accountability and fully reckon with its past likely means making these primary source documents available to researchers.

⁵⁶⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 73.

⁵⁶⁵ *Id.* at 70 (citing DAWSON, *supra* note 110110, at 164–65.)

⁵⁶⁶ *See id.* at 55, 57; *supra* Part II.

single moment of reckoning will adequately address the issues raised in the report.⁵⁶⁷

And what shape should this reckoning take? An Indigenized *social healing through justice* framework lends guidance.⁵⁶⁸ For Kamehameha Schools to adequately address the persisting wounds it inflicted by “occlud[ing] the political struggles of K[ā]naka Maoli for land, sovereignty, and control of education futures, . . . [and for] naturaliz[ing] . . . white male control of the lands and resources of Pauahi’s estate, and US imperial rule over the islands[,]”⁵⁶⁹ the institution must “tailor[] the reparative acts so that they correlate with the kind and degree of harms suffered[.]”⁵⁷⁰ For Native Hawaiians, salving these wounds means advancing the four Maoli restorative justice realms articulated by Kumu D. Kapua‘ala Sproat: mo‘omeheu, ‘āina, maui ola, and ea.⁵⁷¹

To a degree, Kamehameha Schools (1) strengthens mo‘omeheu and ‘āina through its cultural revitalization work and ‘Ōiwi-based culture education; (2) benefits maui ola by providing essential services for children in need; and is (3) ea embodied as the “living legacy” of Ke Ali‘i Pauahi’s agency.⁵⁷² But Kamehameha Schools is also a massive Native Hawaiian institution with a \$14.6 billion endowment and substantial landholdings⁵⁷³ that often opposes Native Hawaiian cultural practitioners in land development and water disputes.⁵⁷⁴

Reparative acts tailored to mo‘omeheu, ‘āina, maui ola, and ea means, for example, that Kamehameha Schools must stop being the “primary culprit of water diversion” for kuleana families and kalo

⁵⁶⁷ Goodyear-Ka‘ōpua Interview, *supra* note 439.

⁵⁶⁸ See *supra* Section II.C for a full description of this framework.

⁵⁶⁹ Goodyear-Ka‘ōpua, *Domesticating Hawaiians*, *supra* note 3, at 30.

⁵⁷⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 68.

⁵⁷¹ MacKenzie et al., *supra* note 80, at 13.

⁵⁷² See Goodyear-Ka‘ōpua Interview, *supra* note 439; Andrade Interview, *supra* note 321; Goodyear-Ka‘ōpua Email, *supra* note 67.

⁵⁷³ KAMEHAMEHA SCHOOLS, REPORT ON FINANCIAL ACTIVITIES: JULY 1, 2022 – JUNE 30, 2023 (2024), https://www.ksbe.edu/assets/annual_report/Financial_Activities_2023.pdf.

⁵⁷⁴ See, e.g., *Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000); *In re Waiāhole Ditch Combined Contested Case Hearing (Waiāhole I)*, 94 Hawai‘i 97, 9 P.3d 409 (2000).

farmers in rural Hawai‘i.⁵⁷⁵ It must work with Kanaka Maoli cultural practitioners to perpetuate traditional and customary Native Hawaiian rights and practices rather than hindering them.⁵⁷⁶ It must throw its full institutional weight behind advancing ea—self-determination and sovereignty efforts—so that Native Hawaiians are no longer “secondary members in their own society.”⁵⁷⁷ This could mean, in part, that Kamehameha does *not* “object to being on the boarding school list because it provides an additional layer of legitimacy to Native Hawaiians’ claims concerning political independence, sovereignty and equal protection arguments. It’s the federal government again reasserting that Native Hawaiians occupy a special place as an Indigenous community, though not federally recognized.”⁵⁷⁸ These are

⁵⁷⁵ Kamehameha Schools owns approximately 2,673 acres of land in Lahaina, the majority of which is agricultural. *Kamehameha Schools Expands ‘Āina Stewardship with Acquisitions on Maui that Include Kaupō Ranch Lands*, KAMEHAMEHA SCHS. (July 6, 2023), <https://www.ksbe.edu/article/kamehameha-schools-expands-aina-stewardship-with-acquisitions-on-maui-that-include-kaupo-ranch-lands>. That Kamehameha Schools is the primary culprit of stream water diversion for lineal descendants of various ahupua‘a in West Maui was shared with me by an unnamed member of one of these ‘ohana. *Id.*; see also Comm’n on Water Res. Mgmt., Update on Water Resources in the Lahaina Aquifer Sector Area, Agenda Item C-1(b) Interim Instream Flow Standards, Sept. 19, 2023, at 31, 39, 62, 74, <https://files.hawaii.gov/dlnr/cwrmsubmittal/2023/sb20230919C1.pdf>. Recently, Kamehameha Schools’ land management practices have come under fire following the devastating August 2023 inferno that engulfed Lahaina. Imogen Piper, Joyce Lee, Elahe Izadi & Brianna Sacks, *Maui’s Neglected Grasslands Caused Lahaina Fire To Grow With Deadly Speed*, WASH. Post (Sept. 2, 2023), <https://www.washingtonpost.com/investigations/interactive/2023/lahaina-wildfires-invasive-grass-destruction/> (“The fields where the fires started and spread are primarily owned by three parties: Kamehameha Schools . . . ; the state of Hawaii; and Peter Martin, a prominent local developer.”).

⁵⁷⁶ See, e.g., *Ka Pa‘akai O Ka ‘Āina*, 94 Hawai‘i 31, 7 P.3d 1068; *Waiāhole I*, 94 Hawai‘i 97, 9 P.3d 409.

⁵⁷⁷ See generally Beyer, *Connection of Samuel Armstrong*, *supra* note 331 (explaining that in the 1880s, second-generation missionaries assumed control over Hawai‘i’s public and private schools to “Americanize” ‘Ōiwi and solidify their status as secondary members of an American dominated society).

⁵⁷⁸ Andrade Interview, *supra* note 321; Roth Interview, *supra* note 73 (“It just seems to me that Hawaiians are not a good fit for [the boarding school report], you know, and obviously there is a lot of resistance within the Hawaiian community to the whole idea of portraying them as a tribe. That doesn’t strike me as a good fit or as helpful. But there are some people

a sampling of ideas proposed by Kānaka Maoli Kamehameha Schools graduates and cultural practitioners—those most impacted.⁵⁷⁹

The above is not an exhaustive list; reparative justice can mean many things and look many ways.⁵⁸⁰ It entails much trial and error.⁵⁸¹ What appears most important at this stage is that Kamehameha Schools take additional concrete action to heal the persisting wounds of its colonial legacy so that its initial response not become a “tepid or partial effort[] . . . to acquire ‘cheap grace’ or to deflect or even subvert organizing efforts for substantial changes in systemic power structures.”⁵⁸² If it does not, it will remain ensnared in the “contradictions and internal conflicts of [its] own colonial history[.]”⁵⁸³ It will not speak the epigraph’s pule kala.⁵⁸⁴

VI. CONCLUDING THOUGHTS

We are in a time of huluhia—a time of reckoning and transformation.⁵⁸⁵ Interior Secretary Deb Haaland pursued this reckoning with the spirit of ‘oia‘i‘o, “unvarnished truth,”⁵⁸⁶ when she launched the Department of the Interior’s Federal Indian Boarding School Initiative.⁵⁸⁷ ‘Oia‘i‘o “is the spirit of truth specified in *ho‘oponopono*.”⁵⁸⁸

Ho‘oponopono teaches us that only when the “telling of all the essential material, no matter how painful,”⁵⁸⁹ is complete, can harmer and harmed reach remedy and release.⁵⁹⁰ Hard truths about

who feel that, at a minimum, it can be helpful on the sovereignty issue. And that’s a big, big deal. It’s hard to imagine the state of Hawai‘i becoming the independent nation of Hawai‘i at some future point in time, but I’m not sure that would be a bad thing for the people who are here, regardless of race.”).

⁵⁷⁹ See, e.g., Andrade Interview, *supra* note 321321.

⁵⁸⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 25 (“[A]chievable goals and workable processes likely will need to embody considerable flex.”).

⁵⁸¹ *Id.* at 53 (sharing observations by Indigenous scholars that healing processes require an average of ten years with substantial collaboration).

⁵⁸² *Id.* at 25.

⁵⁸³ See Goodyear-Ka‘ōpua Email, *supra* note 67.

⁵⁸⁴ 1 NĀNĀ I KE KUMU, *supra* note 1, at 74–75.

⁵⁸⁵ See Finding Our Way with Prentis Hemphill, *supra* note 3.

⁵⁸⁶ 1 NĀNĀ I KE KUMU, *supra* note 1, at 72–73.

⁵⁸⁷ See DOI Memo, *supra* note 11.

⁵⁸⁸ 1 NĀNĀ I KE KUMU, *supra* note 1, at 73.

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

Kamehameha Schools emerged from Secretary Haaland’s initiative.⁵⁹¹ Further investigation by the Department of the Interior or Kamehameha Schools itself may unearth even more.⁵⁹² Whether the department appropriately included Kamehameha Schools’ in the report—alongside Carlisle Indian Industrial School and other infamous institutions—is a worthwhile inquiry and part of this Article’s focus.⁵⁹³ But for all its pivotal differences, Kamehameha Schools’ unvarnished truth comprises its legacy of cultural repression.⁵⁹⁴ It comprises its existing contentious relationships with ‘ohana across Ka Pae ‘Āina seeking to exercise their constitutionally protected traditional and customary rights and practices.⁵⁹⁵

Ho‘oponopono principles suggest that Kamehameha Schools is “burdened with [the] guilt and social discomfort”⁵⁹⁶ flowing from its western imperialist entanglements (past and present).⁵⁹⁷ This Article seeks to facilitate *kala*, the “mutual process in which both the instigator and recipient of an offense are released from the [attendant] emotional bondage.”⁵⁹⁸ It does so by urging Kamehameha Schools to engage in an Indigenized *social healing through justice* reparative process to dress western imperialism’s persisting wounds through strengthening mo‘omeheu, ‘āina, maui ola, and ea.⁵⁹⁹

Only then can “[b]oth [Kamehameha Schools and Kānaka Maoli] ‘let go of the cord,’ freeing each other completely, mutually and permanently.”⁶⁰⁰ Only then can they speak the words. “*Ke kala aku nei au iā ‘oe a pēlā nō ho ‘i ai e kala ia mai ai,*’ or, ‘I unbind you from the

⁵⁹¹ See Newland Report, *supra* note 16, at 75.

⁵⁹² See Goodyear-Ka‘ōpua Email, *supra* note 67.

⁵⁹³ See *supra* Section IV.C.

⁵⁹⁴ See *supra* Section IV.B.2.

⁵⁹⁵ E.g., HAW. CONST. art. XII, § 7 (amended 1978); HAW. REV. STAT. § 7-1 (2013); HAW. REV. STAT. § 1-1 (2013); Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n, 94 Hawai‘i 31, 7 P.3d 1068 (2000); *In re* Water Use Permit Applications (*Waiāhole I*), 94 Hawai‘i 97, 9 P.3d 409, 455 (2000).

⁵⁹⁶ 1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

⁵⁹⁷ See Goodyear-Ka‘ōpua Email, *supra* note 67.

⁵⁹⁸ 1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

⁵⁹⁹ See *supra* Section V.B.

⁶⁰⁰ 1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

fault, and thus may I also be unbound from it.”⁶⁰¹ That is the collective prayer of release.⁶⁰² And this is mine: “Ua pau ka hana. Ku‘ua nā ‘ōlelo. The work is complete. Release the words.”⁶⁰³

⁶⁰¹ *Id.* (modern orthography inserted by author).

⁶⁰² Goodyear-Ka‘ōpua Email, *supra* note 67.

⁶⁰³ 2 MARY KAWENA PUKUI, E.W. HAERTIG & CATHERINE A. LEE, *NĀNĀ I KE KUMU: LOOK TO THE SOURCE* ix (1979).