

# **Holistic Law Approach to Indigenous Incarceration: Cultural Cognitive Restructuring and Restorative Justice Practices**

Written by Michelle Brenner with acknowledgment to Carmen Hetaraka for insights and correct use of Maori language. Acknowledgment and gratitude to Kauila Clark and all the active bearers of Hawaii for their service and practice in traditional Ho'oponopono.

*“Conflict Resolution seeks to deal with problems of conflict and conflict prevention by bringing together both behavioural and institutional influences and each of these areas must be treated in a comprehensive way. In this sense it is introducing Holism into political thinking. It becomes, as a consequence, a challenge to traditional disciplines. Holism is not necessarily less scientific or reliable, though it may not be as statistical in its approach, its analysis of a total situation may be more reliable.”<sup>1</sup>*

## Introduction

This paper highlights the journey of peace building in the context of prison rehabilitation. In July 2010 the Hawaiian legislature passed the Cultural Cognitive Restructuring House Bill No. 1818 HD2 SD2 CD1, linking prisoner intervention programs to traditional cultural knowledge.

The legacy left by the last Hawaiian monarch, Queen Lili'uokalani who died in 1917, emphasized forgiveness and non violence and reminded her indigenous Hawaiian people of their duty to pass on their sacred heritage to future generations. Today, there are many indigenous Hawaiians who have spent the most part of their lives, tuning into and responding to this legacy. The intention of this paper is to attempt to align the cultural, spiritual, psychological and physical aspects of indigenous conflict resolution with a practical peace building application in what is presently one of the growing industries in the world, the prison system. I believe that holistic law offers a justice paradigm for resolving conflict which makes room for a spiritual renaissance both in an individual and family context, thus offering an opportunity for a cultural shift in the way systems and decisions can be made. Holistic law, conflict resolution cognitive restructuring and restorative justice together provide a map for thoughtful consideration upon this significant cultural shift taking place in our present world. The crest of the wave that is on our horizon is the spiritual renaissance, one that much of the legal world is now embracing and endorsing.

## Holistic Law

Holistic law is now a recognised field within the international legal world. For example, a whole chapter is devoted to holistic law in *Non-Adversarial Justice*<sup>2</sup>, an academic analysis that reviews the current world view on the justice system that is being, taught, practised and developed in the first decade of the 21<sup>st</sup> century. The authors, King, Freiberg, Batagol and Hyams, members of the Law Faculty at Monash University in Melbourne Australia, recently co-hosted, together with The Australasian Institute of Judicial Administration, a conference with the title *Non-Adversarial Justice: Implications for the Legal System and Society*<sup>3</sup> in which 2 sessions were devoted to Holistic Law.

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<sup>1</sup> John Burton *Conflict Resolution Its Language and Processes* p29 The Scarecrow Press London 1996

<sup>2</sup> Michael King, Arie Freiberg, Becky Batagol and Ross Hyams *Non-Adversarial Justice* Federation Press 2009 pp80 -87

<sup>3</sup> Melbourne Australia in May 2010

The word “holistic” in holistic law<sup>4</sup> refers to justice that comes with healing, justice that resonates with well-being, justice that includes transcending the matter of the law so that it includes the spirit of the law, and justice that restores people into a peaceful society. This shift impacts not only upon the intentional shift on the outcome of legal studies and case management, it also impacts on the practitioners themselves. For example, in the United States, the legal profession has been found to have the highest degree of recognised depression amongst professional groups.<sup>5</sup>

Holistic practice gives acceptance and respect to what is known as self-transcending emotions,<sup>6</sup> Self-transcending emotions are distinct in that they lack noticeable behavioural outcomes. They include the feelings of rapture, beauty, gratitude and forgiveness. They appear to be in the realm of ‘spiritual’, not in themselves producing effects that fit with what is measurable, reliable and obviously outcome-evident. Since the later half of the 20<sup>th</sup> century with the aid of technology and the field of cardio-neurology, there was a growing interest in the esoteric or transcendent nature of being human. Many academics pursued lines of enquiry that now in the 21<sup>st</sup> century we are adding to the validated research pool of knowledge. In *The Psychology of Gratitude*, Edward Harpham refers to gratitude as ‘the most neglected of emotions.’<sup>7</sup> There is now evidence which places play<sup>8</sup> gratitude<sup>9</sup>, forgiveness<sup>10</sup> and beauty<sup>11</sup> as critical factors for well-being, critical factors for social peace and vital factors for non-violence<sup>12</sup> This evidence is now filtering into professional fields and being taken up by those who have the courage to change the professional lens that has been governing the conventional practice.

### Conflict Resolution

Conflict resolution relates to skills, processes, approaches, theory and practices that respond to the question: What hinders or supports human beings to live in peace? Conflict resolution is a multidisciplinary field of inquiry. In 1991 The Centre for

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<sup>4</sup> *The IAHL envisions a world where lawyers are valued as healers, helpers, counsellors, problem-solvers, and peacemakers. Conflicts are seen as opportunities for growth. Lawyers model balanced lives and are respected for their contributions to the greater good.* International Alliance of Holistic Lawyers (IAHL), and John McShane Passionate Practitioner *American Bar Association Journal* June 2000

<sup>5</sup> Karen Sloan / Staff reporter Depression stalks the legal profession *The National Law Journal* May 4 2009 and

<sup>6</sup> Jack Barbalet a sociologist, points out that although transcendent emotions do not have a direct link to behaviour they have a huge role in decision making, Consciousness, Emotions and Science Jack Barbalet in *Theory and Research on Human Emotions Advances in Group Processes*, Volume 21,245–272 2004 by Elsevier Ltd.

<sup>7</sup> in The Psychology of Gratitude edited by Emmons and Mc Cullough Oxford University Press 2004 inside cover jacket

<sup>8</sup> Tfuture.org

<sup>9</sup> “Gratitude in the History of Ideas” Edward Harpham p31 in The Psychology of Gratitude edited by Emmons and Mc Cullough 2004

<sup>10</sup> Dr Lusk Fred Forgive For Good -holding a grudge is hazardous for your health pp 38-45 Harper Collins 2002; Rein, G., Atkinson, M., Mc Craty, R The physiological and psychological effects of compassion and anger, *Journal of Advancement in Medicine* 1995 -8 (2): 87 -105; Chris Wheeler Sydney Legal Counsel Conference Sydney Hilton 15<sup>th</sup> May 2008 Apologies and the Law.; Gerald Jampolsky MD Forgiveness- the greatest healer of all Beyond Books Pub. 1999 and founder of Centre for Attitudinal Healing

<sup>11</sup> Empirical Relationships Between Beauty and Justice: Rhett Diessner, Lisa Davis, and Brett Toney *Psychology of Aesthetics, Creativity, and the Arts* © 2009 American Psychological Association 2009, Vol. 3, No. 4, 249–258

<sup>12</sup> Touch The Future foundation tfuture.org

Conflict Resolution under the director of Dr Greg Tillett<sup>13</sup>, located within the faculty of history, politics and philosophy in Sydney's Macquarie University provided a study into the analysis of conflict and what works towards resolution. This was a pioneer study in holistic decision making within Australia.<sup>14</sup>

John Burton's human needs theory<sup>15</sup> underpins the analysis of conflict and conflict resolution practice and introduced theories that aligns the human condition to systems, institutions, pedagogy, and practices that either work towards increasing frustration or satisfying the human condition, as individuals and as groups. Being human is what we are, the structural make up that comes with life. The more we understand what frustrates and what satisfies being at peace, the more we work towards resolving conflict. By appreciating inherent human needs we can come closer to creating systems and processes that support living in peace.

We then begin our problem solving with curiosity around two themes: one relating to what is the underlying need that is being frustrated or in conflict, and the other relating to what will work for mutual satisfaction for all the parties involved.

With this framework, we can create opportunities that work towards widening perspectives and broadening reflective thinking in order to satisfy the underlying needs of all involved. Conflict resolution in the widest possible sense aims at prevention and promotion of environmental conditions that are conducive for collaborative relationships, and hence peaceful living.<sup>16</sup> This engages people in thinking beyond the known, beyond the conventional towards the imaginative spectrum of investigation, innovation and possibilities. Here the focus is on creating an environment which mitigates conflict. Conflict resolution, as a field of enquiry, is concerned with what works, and thus is not limited to a specific discipline but rather open to all "knowledges" that contribute to moving from conflict towards resolution.

### Cognitive restructuring

Cognitive restructuring is a term used to describe a structural change in thinking. *"The goal is to help people overcome faulty thinking errors by bringing them to a level of conscious awareness of their incorrect programming."*<sup>17</sup> It has developed from cognitive behavioural therapy, an accepted practice for changing actions and behaviour. For more than 30 years, programs based on cognitive restructuring have been used in American prisons to prevent recidivism<sup>18</sup>, such as anger management. In 2010 the Hawaiian legislature passed the Cultural Cognitive Restructuring Bill. To provide a context for this bill, let us look at some of the surrounding non-adversarial pathways which Hawaiian prison inmates may experience.

*'In Hawai'i, the Community Alliance on Prisons (CAP) came together a decade ago to advocate for more effective ways of dealing with crime in Hawai'i. CAP's mission is to develop effective research-based interventions for Hawai'i's incarcerated people and to educate the*

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<sup>13</sup> Dr Greg Tillett is currently the Associate Professor of Conflict Resolution in the Law Faculty in Western Sydney University

<sup>14</sup> John Burton Conflict: Resolution and Prevention and John Burton ed. Conflict Series: Human Needs Theory, St Martins Press 1990

<sup>15</sup> John Burton Conflict Series St Martins Press 1990

<sup>16</sup> I am drawing on the work of John Burton in this section

<sup>17</sup> <http://www.offendercorrections.com/#>

<sup>18</sup> <http://www.offendercorrections.com/#> American Community Corrections Institute

community on criminal justice issues. *The Hawaii Community Safety Act 2007 says,*

*'The law states, "The legislature finds that 'restorative circles' is a pilot program that has been in place at the Waiawa correctional facility since March 2005. The program is based on the methodological tool known as "restorative justice," which aims to address the unresolved issues faced by victims, offenders, and their families. The program brings together victims, offenders, and their personal supporters in a carefully managed, safe environment.*

*The process is both a powerful healing tool and a way to empower victims to make decisions about how to repair the harm caused by offences. . . . Considering that approximately ninety eight per cent of all inmates will eventually be released back into the community, a program such as this one is vital because it helps an offender take responsibility for past behaviour and plan for release."*<sup>19</sup>

### Restorative Justice

John Braithwaite states that restorative justice "**was** the dominant mode of resolving conflict between people"<sup>20</sup>.

*"Along with earlier forms of justice, proponents have aligned restorative justice with indigenous forms of justice, perceiving the emergence of family group conferencing, victim-offender mediation, and circle sentencing as the justice systems use of indigenous restorative practices."*<sup>21</sup>

Actually according to Daly,

*"Conferencing is really a "spliced" form of justice, where indigenous elements have been combined with bureaucratic elements of the justice system with the awareness of the need to be culturally appropriate."*<sup>22</sup>

Restorative justice is being adopted throughout the world as a system, process and philosophical design for restoring relationships to create mutually caring communities. Terry O'Connell, one of the world leaders in taking the concept of restorative justice into practice within the NSW Police Force, the Australian public education system and the world community<sup>23</sup> states:

*"The greatest challenge is to move restorative justice*

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<sup>19</sup> Connections, Issue 6, Summer 2008

<sup>20</sup> King, Freiberg Batagol and Hyams, Non Adversarial Justice 2009 p45.

<sup>21</sup> Weitekamp HGM The History of Restorative Justice in G. Bazemore and L Walgrave (eds) Restorative Juvenile Justice: Repairing the Harm of Youth Crime, Criminal Justice Press New York 1999

<sup>22</sup> Daly K Restorative Justice The Real Story 4 Punishment and Society 55 2002

<sup>23</sup> Terry O'Connell Director of Australian Real Justice Australia@realjustice.org

*thinking and practice from a narrow programmatic focus to a set of broader philosophical insights and normative practices.*

*This requires moving to a set of explicit practices so there is a clear rationale for why we do what we do, and importantly, so we are certain of making a difference.*

*For example, around family violence, restorative justice is seen only in terms of a discrete conference. Yet my own practice very often does not involve a conference, but rather a restorative journey in which I engage all stakeholders so they are able to tell their story.*

*In schools, there is a need to promote restorative practices in a 'normative way' to ensure that the emphasis is on modelling healthy behaviours to promote stronger relationships, not a fixation about problematic behaviours.*

***We cannot be effective as practitioners unless we are able to integrate restorative justice principles and practice into our own lives and professional practices.***<sup>24</sup>

Terry O'Connell is not alone. In the English city of Hull, social commentators are asking whether Hull will become a restorative city.

*"The goal is for everyone who works with children and youth in Hull, one of England's most economically and socially deprived cities, to employ restorative practices."*<sup>24</sup>

*"Nigel Richardson, Hull's director of Children and Young People's Services, is leading the restorative initiative. Hull — population 250,000, with 57,000 children — had a thriving fishing industry that disappeared several generations ago, and the city failed to regenerate itself economically, said Richardson, resulting in "low aspirations and self-esteem, and a high proportion of people living below the poverty line." Hull invested heavily to rebuild housing, the city centre and secondary schools. But, said Richardson, "**There's no point in physical regeneration without social regeneration.**" His strategy is to "invest disproportionately in children and young people now," with restorative practices (RP) at the core. Hull's RP scheme officially began in August 2007. Participants are committed to implementing "an explicit means of managing relationships and building social connection and responsibility while providing a forum for repairing harm when relationships break down."*

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<sup>24</sup> Mar 05, 2009 Laura Mirsky, writing in the IIRP eForum: Hull, UK, led by the Hull Centre for Restorative Practices (HCRP) and the International Institute for Restorative Practices (IIRP), is endeavouring to become a "restorative city."

Restorative justice is derived from the traditional conflict resolution process practiced by the Kanaka Maori people in *Aotearoa* New Zealand.<sup>25</sup> It was and still remains the indigenous cultural way to seek community peace, to seek family unity. It is understood that conflict is a part of life. In indigenous cultures, generations had passed down ways and knowledges for keeping, making and building peace as they did for keeping, making and building the physical environments they lived in. The idea of sustainability may be new to the modern world but, for indigenous people, sustainability meant keeping sacred knowledge sacred.

### Cultural Shift

What we see here is a leap in world views, a leap from individual self responsibility that lies at the heart of cognitive restructuring “*helping people overcome faulty thinking errors by bringing them to a level of conscious awareness of their incorrect programming*” to emphasising the role of structures, institutions and how those with governance responsibilities engage each with the other in this journey of life. This emphasis puts a focus upon providing forums that build and repair relationships. This cultural shift is valuing the relational or connections that link people, the social bonding that is the glue for a peaceful society. The cultural shift is not replacing one world view for another; rather it recognises that to privilege one above the other is not supporting a peaceful society.

Valuing sacredness in community is not uncharacteristic of Western or modern civilization. In 1975, the Alternatives To Violence Project arose from the requests of inmates in Greenhaven New York prison to visiting Quakers. The aim was

*“ to reduce violence by encouraging and training people in the use of creative nonviolent strategies for handling situations in which people often resort to violence. ...the strategies are non-manipulative because they require, knowingly or unknowingly, relying on that Transformative Power which is present in all people.”*<sup>26</sup>

In the conclusion of their book about the underpinnings of Alternatives To Violence Project, Newton Garner and Eric Reitan, who are teachers of philosophy, make this statement about the challenge of “cultivating a community with all those with whom one interacts in the course of ordinary human living,”

*“There are different kinds of teaching, and different kinds of learning. Nonviolence surely cannot be taught in the way one can teach geology or calculus, since it does not consist of just facts and doctrines. Nor can it be taught like swimming or speaking French, since it cannot be reproduced to rote patterns of behaviour. Nonviolence consists partly of patterns of behaviour and patterns of response, and often depends on doctrines and rules and partly on discipline, but in the long run rote response and rigid rules will do no better than doctrines in capturing what is distinctive about Gandhi and King. **Nonviolence is an affair of the spirit**, and although it can be modelled and*

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<sup>25</sup> May Leung The Origins of Restorative Justice 1999

<sup>26</sup> Newton Garver and Eric Reitan Nonviolence and Community – Reflections on the Alternatives Violence Project 1995 Pendle Hill Publication p3

*no doubt learned, it is doubtful whether there is any way it can be regularly taught and tested, or set out as curriculum. **Nonviolence requires a spirit that comes from within.** That spirit cannot be dictated by a curriculum. No curriculum can create or implant it. But there are ways in which the seeds of non-violence can be nourished.”<sup>27</sup>*

This sense of nourishing the spirit is where we now turn our attention. This is the spiritual renaissance that is capturing the hearts and minds of academics all over the world. As Nigel Richardson, Director of Children and Young People’s Services in Hull, observes:

*“There’s no point in physical regeneration without social regeneration.”*

### A Spiritual Renaissance Approach to Indigenous Incarceration

In a position statement put forward by RaeDeen Keahiolalo-Karasuda in her doctoral thesis on the subject of a prisoner re-entry curriculum to advance community access and civic participation, she notes:

*“Hawaiians are imprisoned at rates twice their representation in the general population (see Department of Public Safety Annual Report, 2007). Yet little is known about the overrepresentation of Hawaiians aside from this statistical detail. In my doctoral research, I found that the disparate surveillance, criminalization, and confinement of Hawaiians is traceable to a historical pattern in Hawai‘i that dates as far back to the early nineteenth century. Responding to this finding, I developed a prisoner re-entry curriculum to advance community access and civic participation, as well as to increase cultural and political literacy among prisoners and former prisoners in Hawai‘i. .... Increasing knowledge of place and cultural politics literacy opens possibilities for community participation and leadership, factors important for decreasing stigma and recidivism among prisoners.”<sup>28</sup>*

A major part of her program is repositioning the Hawaiian people to their linkages, the significance of where they come from. In her acknowledgment, Karasuda says “*Mahalo* (thank you) also to Carmen Hetaraka from Aotearoa for teaching the class on sacred Maori knowledge”. Carmen Hetaraka is one of the active bearers of Kaitiakitanga, “responsibility or stewardship” to maintain the balance and order of all things created by Io The Supreme Creator”.<sup>29</sup>

*“Guardianship, care and protection, known in Maori Aotearoa N.Z as Kaitiakitanga, has two domains of sacred responsibility; **the temporal domain**, all living things above the earth on the earth and in the earth, this includes the*

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<sup>27</sup> Ibid Garver and Reitan 1995 p 41

<sup>28</sup> [www.pfi.org/cot/ex-offender/re-entry/re\\_entry-curriculum-for-indigenous-minority...E](http://www.pfi.org/cot/ex-offender/re-entry/re_entry-curriculum-for-indigenous-minority...E) Holomua Me Ka ‘ike pono (Go forward with the correct knowledge) RaeDeen Keahiolalo Karasuda 2008

<sup>29</sup> Kauila Clark Kahuna and Board Member of Comprehensive Healing Centre Waianae Coast – personal communication

*knowledge of preserving and keeping the balance of ecology, the mountains, rivers, forests, land and sea. The most important domain that supports this balance, is **the spiritual guardianship domain**, full genealogical account of progenitors right back to the creation of our first parents, their roles and accountability. This is known in Maori as Taonga Tuku Iho. [‘great gifts passed down’ ]<sup>30</sup>*

As an active bearer, Carmen is a keeper of the oral traditions of his ancestors and he has the responsibility of maintaining cultural integrity so as to ensure that, when this knowledge and wisdom is passed on and shared, it’s sacredness is intact [Tapu nui]. Kaitiakitanga is to understand the sacred power of procreation.

In Hawaii there is a Comprehensive Healing Centre at Waianae Coast. It offers Hawaiian people an integrated healing service that includes western and indigenous healing knowledges and practices. *Ho’oponopono* is Hawaiian conflict resolution. In Aotearoa, New Zealand it is called *Ho’hourongo* which means “to enter into the g-d of peace”. This is the practice that restorative justice was based on. Here is a setting that brings together the shattered pieces that conflict inevitably brings, whether it is the body, the mind, the spirit or the family, and in this facility the opportunity for healing can be provided.

#### Holistic Framework for Indigenous Incarceration

There is a program (O’Lono/O’Rongo)<sup>31</sup> that has been running in the Hawaiian and New Zealand prisons that is holistic in its content and approach fitting well into the cultural cognitive restructuring intention. This framework addresses the human needs of identity, recognition, meaning, and social bonding. It recognises the destruction of these needs can reveal themselves in domestic and family violence, addictions, gang culture and community disharmony.

The focus of this framework is to realign the participants to their ancestral linkages and responsibility, to protect sacred knowledge’s and wisdom as part of their cultural inheritance. To ignore the cultural element is to ignore *Atua/Akua*, the supreme creator’s laws and statutes which provide balance, happiness and peace of mind. This is the adult development that has been lost or hidden due to the cultural disconnection that is so prevalent for so many people.

This holistic framework<sup>32</sup> for indigenous people realigns them to their spiritual and ethical heritage by reconnecting participants to these central values:

- *Hekemokoroa*, rights of succession,
- *Mana Tane/Wahine*, roles and responsibilities – paying heed to the dignity of women and man,
- *Pa Tuwatawata*, ancestral values and principles, and
- *Te Ara Poutama*, moral development.

#### The Next Generation

Valuing procreation is mirrored in cultural parenting practices. We are finding evidence based practice is reflecting the traditional indigenous attachment parenting<sup>33</sup> as being a

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<sup>30</sup> Carmen Hetaraka, personal communication

<sup>31</sup> Endorsement Holistic Law and Conflict Resolution: Cultural Cognitive Restructuring Program; O Lono/O Rongo © Michelle Brenner 2010 on behalf of Holistic Practices Beyond Borders Inc.

<sup>32</sup> Carmen Hetaraka and Michelle Brenner *Holistic Law Approach to Indigenous Incarceration* found in Michelle Brenner Conscious Connectivity : Creating Dignity in Conversation

<sup>33</sup> Jean Liedloff The Continuum Concept Arkana Books 1975, Dr William Sears NIghttime Parenting How to Get your Baby and Child to Sleep Dove Communication 1985



critical way forward to a non violent future. Extensive research by Michael Mendizza and Joseph Chilton Pearce<sup>34</sup> suggest that whilst modern society values the growth of a child by providing education for all children, there is a neglect for recognising the need for the growth of the adult at the same time.

*“What’s missing is not a class or standardized curriculum, but rather regular, practical, mentored practice and experience for today’s parents. The truth is, providers and educators haven’t been trained nor do they have inspired up-to-date resources or the support to mentor parents”<sup>35</sup>*

Identity, meaning, recognition and dignity are all human needs. It is clear that we are on a journey in life, individually and collectively. It is not by chance that the word ship is used to describe ‘friendship, courtship, citizenship.’ The ship is an analogy for all being aboard the same vessel. The ship is on the sea. If there is a hole in the ship, we all go down. Individuality is not isolated on a ship. A hole under one’s seat is a hole in the ship.<sup>36</sup>

Providing role models that can sincerely reflect the values and attitudes being espoused is critical. It is in role modelling and the lived experience that inspires a response to distress. There is an action chain in life, a link that sometimes is hidden from view. In order to create a generation directed towards constructive responses to distress, there needs to be a coherent pathway of linkages that resonate deep within.

### Conclusion

We began with Queen Liliuokalani’s wish to keep sacred knowledge alive. The valuing of; self-transcending emotions, praising the creator, appreciating the beauty in life and in existence, acknowledging wrong doing, slow meaningful practices for forgiveness and healing, are all prominent in many indigenous cultures. Some cultures cultivated sophisticated practices that are in the wider world only barely being noticed, however their value is beginning to be surfaced. The modern world has constructed much in the way of technology and information and system development. Holistic law like holistic health recognises that without the spirit of the healing, the spirit of justice and love, our world is not whole, complete, satisfying. We have here a pearl of great price in the Pacific. The legacy of the indigenous peoples of the Pacific and the world is a gift for all of us. My hope is that the non-adversarial justice movement that is impacting on institutions all over the world will be able to draw on the living example of *Kanaka Maoli*, (Hawaiian nation) and *Tangata Whenua* (people of the land) who are the bearers of Hawaiian traditional conflict resolution.

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<sup>34</sup> Research done by Touch the Future Foundation, have as their vision; ‘Child Development is Dependent on Adult Development’

<sup>35</sup> Social Ventures That Touch the Future 1685 Copenhagen Drive, Solvang, CA michael@tffuture.org

<sup>36</sup> A Jewish Hassidic metaphor