

AFTERWORD

INTERNATIONAL REPARATIONS: WHAT JUSTICE AMENDS CAN AND SHOULD THERE BE?

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In Professor Martha Minow's Preface to the Southwestern Law Review symposium on *Healing the Persisting Wounds of Historic Injustice*,¹ she poses pressing questions for civil societies struggling with historical injustices.² Speaking of the Jeju 4.3 Tragedy and many others, Professor Minow, a renowned restorative justice scholar,³ asks:

When the killings, torture, and rapes were at the hands of the national government itself, the losses and the suffering are immeasurably compounded by betrayal and enduring distrust. And, when one of the most powerful nations in the world was also involved and partially responsible for deploying organizations to terrorize civilians and train counterinsurgent

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1. ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY* (2021).

2. Martha Minow, *Foreword: Begin with Admitting Inhumanity*, 52 SW. L. REV. 1 (2023).

3. See generally MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998); see also MARTHA MINOW, *WHEN SHOULD LAW FORGIVE?* (2019); Martha Minow, *The Hope for Healing: What Can Truth Commissions Do?*, in *TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS* (Robert I. Rotberg & Dennis Thompson eds., 2000). In addition to her acclaimed scholarship on restorative justice and equality jurisprudence, Professor Minow has worked internationally to secure peace through justice, having served on the Center for Strategic and International Studies Commission on Countering Violent Extremism and the Independent International Commission Kosovo, and having helped launch the United Nations High Commissioner for Refugees' program "Imagine Co-existence" designed to promote peaceful development in post-conflict societies.

forces, and for providing military support and supplies, what justice, what amends can there be?⁴

Indeed, what justice amends can and *should* there be? By whom and when? Cast in this light, I especially appreciate Professor Minow's description of my book *Healing the Persisting Wounds of Historic Injustice* as "itself an act of acknowledgment and commemoration [that] addresses the terrible human suffering" of the Jeju 4.3 Tragedy in South Korea and offers a "powerful and detailed framework [generally] for assessing and strengthening justice initiatives while attending to personal healing and societal repair."⁵ For that is my book's aim "at the intersection of conflict resolution, peace-building, and social justice [to] synthesize[] and advance[] work under the rubric of restorative and transformative justice."⁶ This embodies an approach I have termed as "social healing through justice" that draws upon multiple disciplines' perspectives on group healing to enliven the healing of people and communities not through words alone but also through reconstructive and reparative actions.⁷

This kind of multifaceted approach proves important, again in Professor Minow's words, "because the tools of civil and criminal courts and peace negotiators seem mismatched to the harms suffered and the goal of changing patterns of life for the future."⁸ Frequently, "even a seemingly discrete conflict is embedded in chains of events and structures that embody longstanding mistreatment and injustices that persist even after a court case or peace treaty."⁹ The limitations of more traditional approaches to justice "hold[] immediate relevance in the United States and many other parts of the world."¹⁰

Hence, the challenging search by communities, officials, advocates, scholars, and justice facilitators for more encompassing, and potentially more effective means of healing the lasting wounds of people and societies. This challenge forms the book's subject, with Jeju 4.3 serving as its primary illustration, further accentuated by mounting calls for social healing across the United States as the book went to press in 2021. I observed then that "[d]espite myriad challenges, reparative justice initiatives retained

4. Minow, *supra* note 2, at 1.

5. *Id.* at 2.

6. *Id.*

7. The *social healing through justice* framework advanced in the book is based on group healing commonalities among various disciplines, particularly law (including human rights), social psychology, theology, political theory (including peace studies), economics, and indigenous conflict resolution practices. See YAMAMOTO, *supra* note 1, at 48-71.

8. See Minow, *supra* note 2, at 2.

9. *Id.*

10. *Id.* at 2-3.

considerable political value as a sometimes promising, oftentimes perilous pathway toward healing peoples' wounds and repairing the damage to society."¹¹ As the book observes:

Talk of “reparations” re-emerged prominently in the wake of the wave of George Floyd public protests systemic Black American oppression. Much of the reparations discourse, however, downplayed monetary payments and more broadly focused on historical reckoning and present-day social healing. Congressperson Barbara Lee’s 2020 proposal for a Racial Healing Commission was emblematic. One reason for the [healing] commission proposal and others like it . . . may have been the rubble strewn path of past [monetary] reparations initiatives and the absence of brightly marked pathways forward beyond protest, public education and political organizing.¹²

I also observed that “ragged linguistic and conceptual road from ‘reparations’ to ‘reconciliation’ to ‘social healing’ now appears to bear more prominent signposts.”¹³ Congressperson Lee’s proposal embraced the language of “racial healing.”¹⁴ Employing similar language and concepts, “California Governor Gavin Newsom apologized to Native Americans and established a ‘Truth and Healing Council’ to construct a clarified historical record of the state’s systemic oppression of native peoples and to foster tribal self-governance and management of trust resources ‘in the spirit of truth and healing.’”¹⁵

Whether termed *restorative justice*, *reparation*, *reconciliation*, or *social healing*, initiatives “in the spirit of truth and healing”¹⁶ aim beyond individual monetary payments to more broadly repair the damage done to people and society by collectively generating the kind of justice that actually heals across generations. Informed by human rights principles of reparative justice, it is an approach that endeavors—as best as possible in the political and social environment—to repair the damage to peoples’ lives rooted in harms to physical and emotional health, community belonging, education, employment, culture, political governance, and the environment. And the approach aims simultaneously to erect institutional constraints to prevent “it” from happening again.

This far-reaching effort will often miss the mark. Yet it sometimes arrives home, or close to it.¹⁷ And for many, that makes it worth the candle.

11. YAMAMOTO, *supra* note 1, at 42.

12. *Id.* at 42-43.

13. *Id.* at 43.

14. H.R. Con. Res. 19, 117th Cong. (2021).

15. YAMAMOTO, *supra* note 1, at 43.

16. *Id.*

17. *See id.* at 34-42 (describing salutary and troubled reconciliation initiatives).

The promise and challenge of this kind of approach to social healing “by doing justice” conceptually and practically is illuminated broadly by ten insightful essays published in this symposium. These essays touch on a range of subjects. What unites them, drawing on the book’s themes, is their conceptual and practical assessments of what works and what is missing in the on-the-ground reparative justice initiatives.

Professor Natsu Taylor Saito’s essay encompasses American human rights injustices in the Philippines, Southeast Asia, and Central America. It also sharpens Jeju 4.3 (4.3 signaling the tragedy’s start on April 3, 1948) as “another example of the very concrete (and often very devastating) effects of U.S. policy—foreign and domestic—on a wide range of individuals, communities, lands, and cultures.”¹⁸ Professor Saito underscores the challenge for present-day reparative initiatives, characterizing the setting as “a time of concerted efforts to ban critical thinking and heightened pressure to limit public discourse to a narrowly tailored master narrative of American exceptionalism.”¹⁹ Nonetheless, her essay uplifts the significance of social healing initiatives for Jeju and elsewhere, describing the book’s theory-into-practice “intervention” as “much needed.”²⁰

Based on her extensive scholarship on government accountability for human rights violations, Professor Saito observes that my book “not only provides information critical to reinvigorating the Jeju Islanders’ longstanding struggle for justice but insists on holding the United States accountable for its role in this ‘tragedy,’ thereby sticking [its] foot in a door the U.S. has long been determined to close.”²¹ Professor Saito’s essay then succinctly chronicles not only the original Jeju 4.3 transgression, but also “how the failure to acknowledge significant injustices leads to long-lasting, transgenerational harm.”²² This theme of how unacknowledged injustice transmits trauma to subsequent generations surfaces in nearly all civil and human rights controversies. And it is often the impetus for reparative efforts that extend beyond one-time individual payments and into the realm of institutional reordering (to prevent recurrence) and forward-looking economic capacity-building (for communities as well as individuals).²³ And this is especially true for colonized Indigenous peoples.

18. Natsu Taylor Saito, *Truth, Healing, Empowerment: Eric Yamamoto on Reparative Justice for the People of Jeju*, 52 SW. L. REV. 9, 12 (2023).

19. *Id.*

20. *Id.*

21. *Id.* at 9.

22. *Id.*

23. YAMAMOTO, *supra* note 1, at 62, 69, 180.

Illuminating this realm, Professor Rebecca Tsosie's essay starts with the broad observation that "[a]s the settler colonial nations that emerged from British colonization, the United States, Canada, and Australia share a dark history of forcible acculturation of Indigenous peoples."²⁴ The essay then turns to the "complex and painful topic" of what "long overdue . . . 'social healing through justice' might look like for the [Native American] survivors of residential boarding schools and their families, as well as the families who lost loved ones to the abuses of this system."²⁵ Highlighting Pope Francis' July 2022 apology for the Catholic Church's role in the "deplorable evil" of Canadian Indigenous Boarding Schools,²⁶ Professor Tsosie's essay compares Canada's extensive truth and reconciliation commission process (resulting in over 100 recommendations, many of which were implemented) to the incipient American government efforts to unearth the genesis and insidious impacts over generations of its pervasive U.S. Indian boarding school "acculturation" programs.²⁷

More specifically, Professor Tsosie employs the lens of reparative justice to assess the efforts spurred by current U.S. Secretary of the Interior Deb Haaland.²⁸ The detailed investigative report by Assistant Secretary for Indian Affairs, Bryan Newland, bolstered Haaland's acknowledgment and acceptance of responsibility for the Board of Indian Affairs' role in the boarding school system and the "intergenerational trauma caused by family separation and cultural eradication inflicted upon generations of children . . . heartbreaking and undeniable."²⁹ Newland's findings are leading to "next steps" in the reparative process, with Interior Secretary Haaland launching a "Road to Healing" project that encompasses storytelling, oral histories collection, trauma support for survivors and descendants and the location of burial sites.³⁰

Professor Tsosie's essay concludes on both optimistic and skeptical notes. The road outlined by the executive branch "seems like a positive step because it is a collaborative effort between an institution [or agency] representing the government and an organization representing the survivors"³¹—an effort guided by the social healing tenet of mutual

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

25. *Id.* at 21.

26. *Id.*

27. *Id.* at 21-26.

28. *Id.* at 24.

29. *Id.* at 34.

30. *Id.* at 35.

31. *Id.* at 35-36.

engagement and inquiries into *recognition* and *responsibility*.³² This collaborative effort elevates the healing project to a stage “set to identify the ‘conflicts’ and introduce a ‘confrontation’ between the ‘perpetrators’ and the ‘victims.’”³³ Professor Tsosie cautions, however, that “the next steps of the [social healing] process will be telling.”³⁴ Whether actual *recognition* and demonstrated acceptance of *responsibility* will occur, as precursors to bona fide acts of *reconstruction* and *reparation*, is yet to be determined.

What kind of acts of reconstruction and reparation might begin to heal the wounds of “genocide” in the United States? Professor Margaret Russell’s essay powerfully interrogates the prospects for social healing through justice for California’s indigenous people. Her essay tracks California Governor Gavin Newsom’s personal and government apologies for the state’s “horrific actions against Native Americans,”— “[t]hat’s what it was, a genocide.”³⁵ Employing the 4Rs of the social healing through justice framework, and picking up on themes articulated by Professor Tsosie, Professor Russell unravels Newsom’s landmark executive order recognizing the state’s role in the “violence, exploitation, dispossession and the attempted destruction of tribal communities” to “clarify the historical record of this relationship in the spirit of truth and healing.”³⁶ The California Executive Order N-15-19 established the California Truth & Healing Council to deepen the process of recognition through mutual engagement, as a precondition to subsequent reparative actions.

With the Truth & Healing Council in mind, Professor Russell deploys the first R of the framework, *recognition*, to look “at people and social structures, at historical causes and present-day consequences, at the roles of culture, economics and politics and at past and persisting human suffering.”³⁷

Perhaps, in the early twenty-first century, we can finally acknowledge the mass obliteration of Indians as a necessary condition for “pioneers” to “discover” California. Righting the record requires significantly more than a few statements from a few public officials on a few ceremonial occasions.

32. YAMAMOTO, *supra* note 1, at 217-18.

33. Tsosie, *supra* note 24, at 36.

34. *Id.* Another key part of potential next steps Professor Tsosie identifies rests with Congress. Congressperson Elizabeth Warren introduced a proposed “Truth and Healing Commission on Indian Boarding Schools Policies Act” that signals a broader commitment to accountability. If enacted, which is an open question, the Act would extend accountability “from the government to its agencies, and to all religious organizations that were complicit in these harms.” *Id.*

35. See Margaret M. Russell, *Bringing to Light: Reflections on Professor Yamamoto’s “Social Healing Through Justice” and The Potential of the California Truth & Healing Council*, 52 SW. L. REV. 40 (2023).

36. *Id.* at 45 (citing Cal. Exec. Order N-15-19).

37. *Id.* at 44 (quoting YAMAMOTO, *supra* note 1, at 73).

Social healing through justice means that *recognition* of California's historic erasure of Native Americans must be an ongoing community and institutional process.³⁸

Moving from poignant observation to apt prescription, Professor Russell continues:

Native American history should be taught in the same way as American history. There should be a critical deconstruction of romantic myths about the heroes of the "Wild West" and the "Gold Rush," falsehoods that Professor Yamamoto refers to as "[s]tock stories . . . narratives shaped and told by groups (especially governments) to justify abuse of others ('they deserved what they got')."³⁹

And this is merely the foundation for reconstructive and reparative action that targets people and institutions. This kind of extensive inquiry is needed because, rather than merely scratching the surface, it "provides a lens for understanding *what* these harms are and *why* they must be rectified to achieve a just world."⁴⁰

Professor Russell concludes by drawing connections between California's Truth & Healing initiative and Jeju 4.3 reparative justice. She observes the complexities of promoting "individual and community healing by rebuilding relationships and remaking institutions."⁴¹ From "experience with the Jeju 4.3 tragedy, [Yamamoto and others] know[] that progress can be fast *and* slow, successful *and* stalled."⁴² She adds that "[t]he endpoint envisioned in social healing through justice may be quite different from what was expected at the beginning of the process. Patience, compassion, and determination are the hallmarks of a successful and truly transformative effort."⁴³

Professors Susan K. Serrano and Troy Andrade also address reparative initiatives for Indigenous people that are both progressing and regressing. Their separate essays employ a reparative justice framework to critique the State of Hawai'i's handling (and mishandling) of Kanaka Maoli (Native Hawaiians) claims to land reclamation, restoration of culture, and forms of self-governance.⁴⁴

38. *Id.*

39. *Id.*

40. *Id.* at 41.

41. *Id.* at 47 (quoting YAMAMOTO, *supra* note 1, at 82).

42. *Id.*

43. *Id.*

44. Susan K. Serrano, *A Social Healing Approach to Native Hawaiian Claims: Law and Resistance at Maunakea*, 52 SW. L. REV. 50 (2023); Troy J.H. Andrade, *Pūpūkahiki I Holomua: Critical Lessons of Social Healing Through Justice for Native Hawaiians*, 52 SW. L. REV. 67 (2023).

Professor Serrano's essay examines state agency decisions and court rulings about *Mauna a Wākea* as the mountain "site of lasting struggle against the construction of the massive Thirty Meter Telescope . . . atop its sacred summit."⁴⁵ That inquiry, Professor Serrano demonstrates, sheds "bright light on the 'contested meanings of land, scientific progress, and meaningful "consultation" with Indigenous communities."⁴⁶ And the political-legal struggle is "emblematic of the longstanding damage of U.S. colonization and unrealized reparative justice for Kānaka Maoli."⁴⁷

Professor Serrano turns a critical eye on decisions by the Board of Land and Natural Resources and Hawai'i Supreme Court that "misemploy [established] legal frameworks as perfunctory administrative procedures without attention to relevant context," and in doing so, "hinder [the] reparative justice [process] for Native Hawaiians."⁴⁸ Professor Serrano's social healing inquiries into recognition and responsibility reveal how "mechanistic [legal] approaches to Native Peoples' claims often fail to recognize lived group experiences and, as a result, fall far short of repairing the group harms and restoring communities."⁴⁹ At bottom, the "agency's and court's 'recognition' of harms [regarding *Mauna a Wākea*] was incomplete: it failed to 'undertake critical interrogation to fully and fairly assess the specific circumstances and larger historical context of the justice grievances undergirding present-day tensions."⁵⁰ And this undercut the restorative justice underpinnings of applicable state laws, "vastly heighten[ing] the sense of injustice," in ways that "could constrain the scope of Native Hawaiian rights in future controversies."⁵¹

Professor Andrade's essay acknowledges that "American history is rife with examples of atrocious injustice . . . [and] continued failure [of the United States] to provide true healing" for Indigenous peoples.⁵² It then aptly questions how can "communities heal when American political spaces are so polarized that there is mistrust and deception running rampant,"⁵³ deploying insights into the "darkside" of the reparative process detailed in *Healing the*

45. Serrano, *supra* note 44, at 50-51.

46. *Id.* at 51 (quoting N. Mahina Tuteur, *Reframing Kānāwai: Towards a Restorative Justice Framework for Indigenous Peoples*, 7 *INDIGENOUS PEOPLES' J. OF L., CULTURE & RESISTANCE* 59, 81 (2022)).

47. *Id.*

48. *Id.* at 52.

49. *Id.*

50. *Id.* at 61 (quoting YAMAMOTO, *supra* note 1, at 78).

51. *Id.* (quoting YAMAMOTO, *supra* note 1, at 75 and Tuteur, *supra* note 46, at 83-84).

52. Andrade, *supra* note 44, at 67.

53. *Id.* at 68.

Persisting Wounds of Historic Injustice.⁵⁴ Professor Andrade begins to tackle this vexing question by examining the Hawai'i populace's monumental 1978 establishment of the Office of Hawaiian Affairs (OHA), which it enshrined in the state constitution. With self-determination and restorative justice for Kanaka Maoli or Native Hawaiians at its core, OHA was conceived in part as a "receptacle for reparations" and as "independent from the [the state] executive branch and all other branches."⁵⁵ Uplifted by the emerging Hawaiian cultural and political renaissance, OHA appeared poised to help usher Native Hawaiians into a new era.

Yet, as Professor Andrade demonstrates through invocation of social healing working principles, despite words recognizing injustice and accepting responsibility to right historic wrongs, "backlash and resistance" later erupted on numerous fronts, substantially scuttling OHA's funding, undermining its self-determination mandate, and fracturing Native Hawaiian and broader multi-ethnic community support. OHA at times appeared blindsided by Hawaiian community criticism and policymakers' refusal to acknowledge its reparative justice mission.⁵⁶ Through continual education, organization, lobbying, and litigating, OHA managed to build what is today a well-funded institutional edifice, with more work to be done to address operational challenges and to define and advance its evolving mission.

As Professor Andrade's essay points out, viewed through the lens of social healing through justice, OHA's rough journey might "help[] organizers, scholars and policymakers understand what went [right and what went] wrong and what needs to change to ensure true healing"⁵⁷—the kind of transformative justice Professor Russell envisions. Building on core tenets of self-determination and restorative justice, a collective focus on reconstructive and reparative action might help construct a "roadmap for helping communities solve their long-festered injustices, but also pragmatically suggests those instances where stakeholders are not yet ready to move forward."⁵⁸

Professor Greg Robinson's redress essay illuminates this kind of roadmap in comparative Canadian and United States settings. It sheds light on the genesis and impacts of the near simultaneous Japanese Canadian Internment redress (Canada) and the redress for Japanese Americans

54. YAMAMOTO, *supra* note 1, at 70-71.

55. Andrade, *supra* note 44, at 75.

56. *Id.* at 76-77.

57. *Id.* at 80.

58. *Id.*

incarcerated during World War II (United States).⁵⁹ Professor Robinson, a historian who has published on both “internments” (or forced “confinements”), observes that “redress movements in North America, and especially Canada, and their success in catalyzing reparative legislation, make them an important part of an ongoing international conversation about ‘race, rights and reparation.’”⁶⁰ From there, Professor Robinson identifies a central tension between what he describes as “multiracialism and exceptionalism, universalism, and narrow political interests.”⁶¹ Initially in the United States, those most responsible for “pushing the idea of reparations for Japanese Americans were loosely associated more with a larger multigroup movement against white supremacy. In keeping with their overall vision, activists frequently referred to their wartime confinement as an episode in a larger history of racial discrimination, especially that against Black Americans.”⁶² As the redress movement achieved its goals, though, “it grew less connected with other minority groups, though it remained interested in the principle of reparations.”⁶³ It pivoted to “underlining the exceptional nature of the wartime ‘internment’” and Japanese American responses to it, apparently easing “fears by conservative legislators that any posthumous act of reparative justice would set a precedent for demands by African American groups for slavery reparations.”⁶⁴

According to Professor Robinson, the Japanese Canadian experience represents a leading “historical example of the importance of preserving the fundamental rights of minorities from oppression by hostile majorities and their elected representatives,” and thereby it serves as a reference point for “Native peoples defending their historic rights or immigrants needing protection from arbitrary treatment,” or same-sex couples seeking “equal access to marriage rights.”⁶⁵ This expanding justice-inducing impact or societal healing effect is significant. Indeed, with an insightful focus on same-sex marriage, Professor Robinson observes that by “preserving the fundamental rights of minorities from oppression by hostile majorities,” Canadians have gradually absorbed from their redress movement the basic point that the Charter of Rights and Freedoms exists to offer avenues for people in a diverse society to negotiate their disagreements and come

59. Greg Robinson, *Redress in Canada and Its Human Rights Legacy*, 52 SW. L. REV. 81, 82-89 (2023).

60. *Id.* at 94 (citing ERIC K. YAMAMOTO ET AL., RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT (2001)).

61. *Id.* at 90.

62. *Id.* at 84.

63. *Id.* at 94.

64. *Id.* at 85.

65. *Id.* at 94.

together.⁶⁶ This infusion of social healing principles into public consciousness through the rhetoric, politics, and law of the Japanese Canadian initiative offers a pathway forward for Canada and perhaps other nations as they wrestle with healing the persisting wounds of historic injustice. It shapes a path for truth-telling and acceptance of responsibility and then for multifaceted reparations tailored to the sustained harms of the targeted group, while expanding the reach of justice principles for the benefit of many. As Professor Robinson elucidates, Japanese Canadian redress responds to the two framing questions of his essay: “Can we ever heal the resulting wounds [of historic injustice],” and “how can it benefit the non-members of the afflicted group?”⁶⁷

These queries also frame contentious struggles in the United States about “reparations” for Black Americans.⁶⁸ Black Lives Matter rose to the forefront of American consciousness in 2019.⁶⁹ Soon after the murder of George Floyd, Congressperson Barbara Lee introduced House Concurrent Resolution 100: “Urging the establishment of a United States Commission on Truth, Racial Healing, and Transformation.”⁷⁰ With an emphasis on repairing the continuing damage of slavery and systemic discrimination, the proposed Commission would “properly acknowledge, memorialize, and be a catalyst for progress toward jettisoning the belief in a hierarchy of human value, embracing our common humanity, and permanently eliminating

66. *Id.* at 90-91.

67. *Id.* at 81.

68. As originally conceived, this law review symposium was to include a separate contributor essay on the subject.

69. See David Smith, *DeRay Mckesson on Black Lives Matter: ‘It Changed the Country’*, THE GUARDIAN (Dec. 30, 2019), <https://www.theguardian.com/us-news/2019/dec/30/deray-mckesson-black-lives-matter-interview> [<https://perma.cc/V97K-K7VD>].

70. H.R. Con. Res. 100, 116th Cong. (2020). Congressperson Lee, emphasizing the critical importance of repair beyond traditional notions of redress for past harms, remarked that “[t]he commission is called the Truth, Racial Healing and Transformation—not Reconciliation like most commissions, because here in America, there’s not much to reconcile, so we say transformation We can’t just say all of this damage has been done, when unequal education of Black kids or inequities in the health care system for African Americans still exist; you have to repair this damage.” Rachel Ramirez, “*No Healing Without the Truth*”: *How a Federal Commission Could Help America Understand Systemic Racism*, VOX (Mar. 4, 2021), <https://www.vox.com/22308043/truth-healing-commission-systemic-racism-barbara-lee> [<https://perma.cc/E7GT-C73N>].

persistent racial inequities.”⁷¹ Despite pockets of strong public support, HCR 100’s nationwide initiative failed to gain traction in Congress.⁷²

In contrast, the California legislature and governor established the California Task Force to Study and Develop Reparation Proposals for African Americans in 2020, a historic first step.⁷³ A year later, the Task Force issued its Interim Report.⁷⁴ Beginning with the dark history of slavery in California and other states, the Interim Report identified modern vestiges of “slavery,” including forms of racial discrimination embedded in America’s legal, economic, social and political systems.⁷⁵ The Task Force acknowledged the many ongoing harms, and proposed a “reparations” scheme for implementation by the political branches. That scheme offered a wide range of specific measures based on recognition of California’s history of state-sanctioned white supremacist terror and political disenfranchisement. Many of the recommendations focused on institutional changes to address racialized prison incarceration, economic inequities, skewed educational access, culture suppression, and more.⁷⁶

Upon the release of the Interim Report, some Task Force members narrowly characterized the broad recommendations as calling for extensive monetary “reparations,”⁷⁷ engendering vehement pushback. Shortly after the Interim Report’s publication, conservative legal scholar Richard Epstein penned a scathing critique.⁷⁸ He portrayed the Task Force’s work as an effort

71. The Resolution emphasizes U.S. government action against peoples of color, including eradication of Native American “cultures, traditions, and languages” through the Federal Indian Boarding School policy, mass incarceration of Japanese Americans during World War II and the overthrow of the Hawaiian Kingdom. H.R. Con. Res. 100, *supra* note 70.

72. H. Con. Res. 19 - *Urging the Establishment of a United States Commission on Truth, Racial Healing, and Transformation*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-concurrent-resolution/19/actions> (last visited Feb. 5, 2023).

73. *See generally* Cal. Task Force to Study & Dev. Reparation Proposals for Afr. Am., Interim Report (2022) [hereinafter Interim Report].

74. *Id.* at 6 (illustrating how the American government “allowed or participate[d] in exploiting, abusing, terrorizing, and murdering people of African descent so that mostly white Americans could profit from their enslavement”).

75. *See id.* at 5-24.

76. *Id.* at 5-24.

77. During interviews some Task Force members emphasized monetary reparations. For example, prior to the release of the Report, Task Force Member Dr. Jovan Scott Lewis stated, “Reparations are compensation, and from day one, my position has been cash-based reparations.” Antonio Ray Harvey, *Reparations Task Force’s Anchor Orgs Are Holding Public “Listening Sessions,”* THE OBSERVER (May 25, 2022), <https://sacobserver.com/2022/05/reparations-task-forces-anchor-orgs-are-holding-public-listening-sessions/> [https://perma.cc/G5A3-2N7C].

78. *See* Richard A. Epstein, *California’s Reparations Overreach*, HOOVER INST. (Jun. 22, 2022) <https://www.hoover.org/research/californias-reparations-overreach> [https://perma.cc/QM4M-BZ79] (asserting that “our nation’s wealth is far better spent on innovation and technology than on reparations”).

to generate sweeping monetary reparations and characterized this as “unfair” and “divisive”—effectively the payment by innocent Whites (and others) to undeserving Blacks. In doing so, Epstein dusted off the familiar formalist conservative playbook, asserting that Black Americans’ claims were too broad (compensating Blacks who were not enslaved or the direct targets of intentional discrimination) and too narrow (because it failed to account for other groups’ historical suffering).⁷⁹

The extensive work of the California Task Force signals promising initial steps for the state, and perhaps the nation, in reckoning with the persisting wounds of America’s racist history. Its Interim Report reflects both significant progress and unfinished business. The final report is not due until June 2023, after public comment and revision. The politics of implementation will follow. The Interim Report’s far-reaching recommendations evince a serious effort to meaningfully engage with intensifying demands for reparative justice for Black Americans. Yet the impact of orchestrated opposition will only play out in coming months or longer.⁸⁰ Given the tensions, the Task Force’s Final Report might benefit from a clearer articulation of its reparative justice framework to strategically integrate, publicly justify, and politically bolster its ultimate findings and recommendations.

Against the backdrop of these and other social healing struggles addressed in the symposium’s essays, the three closing essays revisit the dynamics of reparative justice and the prospects for American engagement in the final stages of the Jeju 4.3 initiative. Professor Sang-soo Hur, a deeply knowledgeable scholar of Korean history and politics, enriches the 4.3 Tragedy’s historical setting and extends my book’s brief treatment of the United States’ strategic approach to Korea. Professor Hur’s essay cuts a sharp edge on the United States’ role as post-World War II “trustee[]” in South Korea—a role as occupier it assumed without consulting the Korean people, in denial of their right of self-determination.⁸¹ As Professor Hur stresses: “[a]fter World Wars I and II, U.S. strategists argued that forces

79. *Id.* (“Had the task force proceeded in a more responsible manner, it would have started with the proposition that many groups—racial and otherwise—have been mistreated and can make, and have made, claims for reparations. And it also should have explicitly acknowledged that at no point in our nation’s history have any such expansive reparations programs been enacted.”).

80. For an in-depth analysis of the rhetoric and politics of opposition to past Black American reparations initiatives, see generally ALFRED L. BROPHY, *REPARATIONS PRO AND CON* (2006); Rhonda Magee, *The Master’s Tools, From the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863 (1993).

81. Sang-Soo Hur, *Human Rights Law and Social Healing Through Justice for Cheju Massacres (1947-1954): The United States’ Unlawful Acts and Omissions*, 52 SW. L. REV. 95, 95-105 (2023).

seeking to control Eurasia should be regarded as potential adversaries of the U.S. While experiencing the war in Korea, the U.S. became concerned about the rise of another hegemon[] in Northeast Asia rather than Europe.”⁸²

This strategic concern morphed into overarching on-the-ground oppression. In 1945, without provocation from South Korean people, the U.S. General in charge of the American occupation of South Korea instructed his subordinates that the entirety of the “Korean Peninsula is an ‘enemy of the United States’” and “[i]n one day, Koreans came to be regarded as hostile forces by the U.S. military.”⁸³ Professor Hur observes that a crucial aim of security forces under the U.S. Military government was “suppressing Koreans who opposed the U.S. policies and its military government in Korea.”⁸⁴ This meant forcefully oppressing citizens who protested against harsh U.S. food distribution policies, widespread official corruption, and police brutality. It also meant intimidating those choosing to vote for a unified Korea in a forthcoming democratic election.

According to Professor Hur, when some Jeju residents protested abusive government policies and practices, with a relatively small number of aggressive resisters, the U.S. Military government appointed a U.S. colonel in charge and “sent him into the field to carry out the [4.3] scorched earth operation.”⁸⁵ Significantly, the “U.S. military did not comply with any international human rights law during any of the multiple processes that comprised the Cheju Massacres.”⁸⁶

With this in mind, Professor Hur poses key questions now facing the United States, questions emanating from human rights platforms generally and from Jeju 4.3 justice scholarship specifically, including *Healing the Persisting Wounds of Historic Injustice*:

What is needed to cure serious and grave human rights violations, such as a massacre? I believe that social healing through justice proposed by Yamamoto is a victim-centered solution to gross human rights violations on a large scale, such as the massacre of civilians, as well as an effective approach to reparation and reconciliation in theory and in practice. Above all, civilized members of society must participate and approach these violations from a new perspective Does a civilized country [especially the United States] mean a democracy that values human life, operates through the rule of law, and guarantees the right to justice for crimes?⁸⁷

82. *Id.* at 96.

83. *Id.* at 102-03.

84. *Id.* at 104.

85. *Id.* at 108.

86. *Id.*

87. *Id.* at 96.

Professor Hur's essay thus urges the United States, as a leading democracy and ally of South Korea, to engage with the human rights regime's demands for reparative justice while there is still time for the remaining survivors.

In his essay, Professor Kunihiko Yoshida, a highly regarded international reparations scholar, deepens the democratic legitimacy theme Sur outlined.⁸⁸ Professor Yoshida notes: “[a]s Professor Yamamoto emphasized, reparations and reconciliation will serve as core principles on which the legitimacy for a democratic society . . . [could] persuade the United States to improve the stagnant situation regarding American responsibility. He is correct on this crucial point.”⁸⁹ With the global stature of the United States as a democracy at issue, Professor Yoshida eloquently observes, through a rhetorical question and answer, “will United States government officials ignore serious human rights violations on the Jeju Island? If so, the United States’ position would be self-contradictory, and the international community would lose faith in it.”⁹⁰

Turning to the Jeju 4.3 survivors, Professor Yoshida quotes Ms. Wansoon Koh, an eighty-three-year-old Jeju survivor, who testified at the United Nations about 4.3: “there has been no change even since I went to New York in 2019 . . . [many] survivors died last year.”⁹¹ According to Professor Yoshida, “[w]e must make haste by all means, especially considering the age of many survivors,” which can be done by “international consciousness-raising” and possibly litigation to press the Biden administration for, as Ms. Koh emphasized, “a sincere apology, not monetary compensation.”⁹²

Acknowledging that “it is difficult to achieve the social healing goals,” Professor Yoshida participates, along with justice organizer Professor Chang-Hoon Ko, in a variety of international education and consciousness raising initiatives.⁹³ They continue to work with others to build some of the needed political foundation for compelling United States engagement. Professor Yoshida’s essay draws inspiration from his multi-year summer school Jeju education project at Jeju National University (this year primarily attended by students from China), as well as his collaboration with Professor Ko on his “Peace Island Network Organization.”⁹⁴ With regard to the true

88. Kunihiko Yoshida, *Jeju Peace, Education, and Reconciliation: Continued Challenges Relating to the Jeju 4.3 Tragedy*, 52 SW. L. REV. 111 (2023).

89. *Id.* at 118-19.

90. *Id.* at 119.

91. *Id.*

92. *Id.* at 118-19.

93. *Id.* at 122.

94. *Id.* at 111-12.

historical education about the Jeju tragedy, they are also working on UNESCO World Heritage Programs' acceptance of the 4.3 Tragedy into the Memory of the World program. More broadly, Professor Yoshida acknowledges the many challenges but implores proponent of reparative justice advocates to persevere so that "our joint efforts for reparations and reconciliation in many tragic cases of the past [particularly 4.3] must be meaningful and must continue, especially in light of vicious cycles of hatred exemplified by the Ukraine War."⁹⁵

Ruben Carranza of the International Center for Transitional Justice (ICTJ) poignantly shows in his essay how "[i]n the field of transitional justice, South Korea stands out as a helpful paradox," particularly for those seeking truth from the American empire.⁹⁶ Carranza observes that South Korea is a "good example of how political will and public pressure have made possible a transitional justice process [reaching well beyond 4.3] that includes 'at least ten truth commissions,' the prosecution of two former military dictators, and the offer of apologies and some forms of reparation."⁹⁷ Nevertheless that "same Korean society . . . also . . . maintains a military alliance with the imperial power that armed and backed Korea's ex-dictators and took part in war-time massacres of Koreans while casting itself as their ally."⁹⁸ Carranza then highlights the reparative justice "question that matters most to the survivors of Jeju 4.3" and that is addressed in my book: "will the American empire that regards itself as above accountability, acknowledge and repair the harms caused by its role in the atrocities committed against the victims of this episode in Korean history?"⁹⁹ From there he teases out broad transitional justice insights in part "guided by what the survivors, victims' families, and advocates of Jeju 4.3 reparations have taught those who work in the field of transitional justice."¹⁰⁰

Carranza's far-reaching essay canvasses additional situations where the "U.S. has not acknowledged, apologized, or offered reparations for the millions of civilian deaths, injuries, and the immeasurable harms and damage it caused" in Vietnam, Iraq, and Afghanistan.¹⁰¹ He also observes that "[d]omestically, the United States 'has no general program of reparations for

95. *Id.* at 111.

96. Ruben Carranza, *What Jeju 4.3 Survivors and Families Can Learn from the Global South in Seeking Justice from an Empire*, 52 SW. L. REV. 126, 126 (2023).

97. *Id.*

98. *Id.* at 127.

99. *Id.*

100. *Id.*

101. *Id.*

Native Americans” or for Black Americans.¹⁰² What makes an affirmative American response to reparative justice claims “extremely difficult, is [a belief in] American exceptionalism”—reparations, or forms of it, are “not the American way” because the United States did not, indeed cannot, do anything wrong. Mainstream perception of American exceptionalism “impairs [America’s] capacity to do the truth-telling.”¹⁰³

From the perspective of realpolitik, which animates ICTJ operations, Carranza observes that to bring the United States to the 4.3 reconciliation table “the South Korean government must use all of the security and political leverage it has with American policymakers.”¹⁰⁴ Yet, he visualizes a possible route through the thicket:

In his book, Yamamoto quotes me making a similar [interest-convergence] point: “Carranza further posited that the United States would not participate in [a joint U.S.-South Korea] truth-seeking process unless South Korea links that participation to U.S. national security interests or the American populace pressures its government to acknowledge its enabling of human rights violations abroad.”¹⁰⁵

Carranza finds that “[i]mplicating America’s national security interests . . . [is] clearly not the most ideal basis for a reparations-seeking strategy. But it may be the most realistic one. . . . The U.S. could see acknowledging its role in Jeju 4.3 as a strategy to maintain Korean public support.”¹⁰⁶ This “will not challenge American exceptionalism directly [but] can yield intermediate gains—possible assistance for old survivors, the opening of U.S. archives, and even support for more meaningful historic[ally aware] tourism on Jeju.”¹⁰⁷

Healing the Persisting Wounds of Historic Injustice devotes two chapters to teasing out the benefits, risks, and challenges of the idealist-versus-realpolitik strategic approaches that Carranza wrestles with.¹⁰⁸ The chapters also flush out an additional aspect of the interest-convergence calculus. Through meaningful participation in the 4.3 initiative, my book

102. *Id.* at 130 (quoting David Williams, *Don’t Worry, Be Guilty*, CULTURAL SURVIVAL (Sept. 2007), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/dont-worry-be-guilty> [<https://perma.cc/8Z99-GZLL>]).

103. *Id.* at 136.

104. *Id.* at 134.

105. *Id.* at 137 (quoting YAMAMOTO, *supra* note 1 at 190-91 n.45).

106. *Id.*

107. *Id.* at 137-38 (acknowledging that these gains do not mean forthcoming apologies and reparations).

108. YAMAMOTO, *supra* note 1 at 232-87. Carranza closes with a broader observation about how the “liberal and progressive part of the U.S. ruling elite might even see the gesture [of 4.3 engagement] as a helpful argument for pressing domestic slavery reparations forward.” Carranza, *supra* note 96, at 137-38.

maintains, the United States might further its global security interest and strengthen its crucial alliance with South Korea, while committing the country and its allies to upholding human rights as symbolic and practical checks on abusive government security actions to prevent the destruction of civilian populations from happening again.¹⁰⁹

Indeed, two complementary articles I am authoring¹¹⁰ elevate those themes and tie back to the realpolitik challenge of compelling United States 4.3 engagement. The articles pick up where the book leaves off—with President Biden’s 2021 inauguration and the United States’ explicit recommitment to international human rights as constraints against abusive government power. As a part of that commitment, the Biden administration promised to repair the damage of America’s own human rights transgressions—a key tenet of the human rights reparative justice regime.¹¹¹

The forthcoming articles focus on the Jeju 4.3 Tragedy and the ongoing, twenty-year started-stalled-rejuvenated South Korea 4.3 reconciliation initiative. Additionally, they enfold the United States into that initiative in two related ways. First, they highlight the Jeju court’s consideration of the American courts’ 1980s coram nobis reopening of the World War II Japanese American incarceration cases as global precedent for retrying in 2018 the Jeju 4.3’s mass military convictions—with each court righting historic wrongs and serving as a catalyst for apologies and legislative reparations. Second, they uplift the imperative of United States participation in the latter stages of the 4.3 social healing initiative in light of the United States’ partial military responsibility for the tragedy.¹¹²

More specifically, the articles first unravel the remarkable Jeju court retrials of eighteen survivors of the 4.3 mass military tribunal convictions—touched upon in the book.¹¹³ Jeju District Judge Jegal Chang contemplated the U.S. courts Japanese American incarceration coram nobis cases as a kind

109. See U.N.G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, (Dec. 16, 2005) (specifying “[g]uarantees of non-repetition” as a key component of the international human rights reparative justice edifice).

110. See generally Eric K. Yamamoto & Suhyeon Burns, *Apologies & Reparation: The Jeju Tragedy Retrials and the Japanese American Coram Nobis Cases as Catalysts for Reparative Justice*, 45 U. HAW. L. REV. 5 (2022) [hereinafter *Apologies & Reparation I*]; Eric K. Yamamoto, Suhyeon Burns & Taylor Takeuchi, *Apologies & Reparation II: United States Engagement with Final Stages of Jeju 4.3 Social Healing*, 45 U. HAW. L. REV. 77 (2022) [hereinafter *Apologies & Reparation II*].

111. See YAMAMOTO, *supra* note 1, at 288-89

112. See *Apologies & Reparation I*, *supra* note 110, at 29-41, 73-75; see also *Apologies & Reparation II*, *supra* note 110, at 92 (for a comprehensive discussion on the collective call of South Korean and U.S. scholars for United States participation in the social healing process).

113. See *Apologies & Reparation I*, *supra* note 110, at 29-41.

of global precedent.¹¹⁴ He then heard the preliminary testimony of the eighteen survivors-petitioners, and found himself deeply moved by the villagers' accounts of seventy years of suffering from their false labeling as threats to the nation, their sham convictions for rebellion (mass conviction of 100 at a time without charges or evidence), and their harsh penal treatment (torture and sentences ranging from immediate execution to 15 years hard labor). Judge Chang, with the national prosecutor's assent and with the nation watching, dismissed the indictments as a miscarriage of justice. His ruling effectively cleared the petitioners' records, as well as those of all 2,500 villagers similarly convicted.¹¹⁵

Judge Chang then granted each petitioner-survivor an award of substantial monetary damages, ranging from tens of thousands to over a million dollars—the first 4.3 compensation-reparations of any kind. Then, after twenty years of contentious political struggle over reparations, and with Judge Chang's rulings as a backdrop, the National Assembly in 2021 authorized several hundred million dollars in broadscale reparations for over 10,000 identified 4.3 victims and families.¹¹⁶ Remarkable.

Nevertheless, significant gaps remained. The reparative legislation imposed unnecessarily rigid eligibility requirements—a remaining impediment to economic support for potentially thousands of other suffering family members. Moreover, it ignored the voices and suffering of women sexual violence survivors and did not uplift tailored “capacity-building” as a form of community-based economic justice.¹¹⁷

Perhaps most significant, the 2021-2022 South Korea legislation avoided acknowledging a main missing piece in the 4.3 reparative initiative—United States participation. Two questions continued to reverberate. Would the United States mutually engage with next—and potentially final—reparative steps toward *comprehensive* and *enduring* 4.3 social healing through justice? More specifically, would the United States expressly acknowledge its partial, though crucial, role in the tragedy and, at a minimum, offer a sincere American culturally-tailored apology?

Pressing geopolitical challenges pose barriers to engagement, let alone a formal United States apology.¹¹⁸ Yet, the United States' renewed commitment to human rights highlights a strong interest in engaging in the

114. *Id.* at 38-40.

115. *Id.* at 9, 32-36.

116. *Id.* at 12-13.

117. *Id.* at 13 (noting the lack of reparative justice for women sexual violence survivors).

118. YAMAMOTO, *supra* note 1, at 206 (envisioning that “U.S. 4.3 engagement will depend in part on the domestic political climate, geopolitical dynamics in Asia and American’s global stature on matters of international security”).

final stages of the 4.3 reparative justice initiative— not only in doing what is morally “right,” but also in rebuilding its damaged legitimacy as a democracy actually committed to the rule of law and in re-instilling national and global confidence in the United States as a leading democracy.¹¹⁹ The essays by Professors Saito, Hur, Yoshida, and Carranza, as well as my book, highlight this ragged though possibly viable realpolitik path.

Initiated by words of acknowledgement, a meaningful 4.3 apology would likely entail corresponding “promises of actions to repair the damage” and strong assurances against future recurrence—a key piece of the international human rights reparative justice regime and assurances crucial to many among Jeju communities.¹²⁰ To the extent appropriate—and while reflecting on social healing principles of mutual engagement, acceptance of responsibility and healing the individual and the collective—a United States apology might feature the country’s acknowledgment of its role in the tragedy and convey empathy for the persisting suffering of Jeju people through generations—cast culturally in term of *han*. It might also link words of contrition to an appropriate promise of future restraint.¹²¹

As I observed earlier, if the United States and South Korea engage forthrightly and transparently with the Jeju 4.3 social healing process, they will “stand to benefit by enhancing democratic legitimacy at home and abroad.”¹²² By participating in “enduringly righting the wrongs of the Jeju 4.3 tragedy, the United States would send a powerful message to the international community that the Trump-era of U.S. unilateralism, isolationism and xenophobic populism has ended.”¹²³ This would offer a poignant partial response to Professor Minow’s framing question: “What justice amends can and should there be?”

119. *Id.* at 232-50.

120. See Trudy Govier & Willhelm Verwoerd, *The Promise and Pitfalls of Apology*, 33 J. SOC. PHIL. 67, 72-74 (2002); see also Eric K. Yamamoto et al., *Reconciliation Revitalized Through an Official Apology for the Wrongful Jeju 4.3 Mass Convictions: A Key Next Step Toward Comprehensively and Enduringly Healing Persisting Wounds of Injustice*, 8 WORLD ENV'T & ISLAND STUD. 181, 185 (2018).

121. See Yamamoto et al., *supra* note 120, at 183-84 (describing how a genuine apology might be guided by the recognition, responsibility and reconstruction dimensions and working principles of social healing through justice); see also Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement (with Japan and the United States in Mind)*, 27 MICH. J. INT'L L. 1, 35 (2005) (addressing the apology on civil dispute settlement in Korea).

122. YAMAMOTO, *supra* note 1, at 287; *Apologies and Reparations II*, *supra* note 110, at 122.

123. *Apologies and Reparations II*, *supra* note 110, at 122.