

Apology & Reparation: The Jeju Tragedy Retrials and the Japanese American Coram Nobis Cases as Catalysts for Reparative Justice

Eric K. Yamamoto¹ and Suhyeon Burns²

I.	INTRODUCTION.....	6
II.	THE JEJU 4.3 “INCIDENT” AND INITIAL REPARATIVE STEPS	14
	A. Mischaracterization of Jeju as an “Island of Reds”	16
	B. “Scorched Earth” Violence and Mass 4.3 Convictions.....	18
	C. The Democracy Movement and Growing Acknowledgment of the 4.3 Tragedy.....	20
	D. National 4.3 Committee Investigation, Partial Government Implementation and Backsliding	22
	E. Political and Legal Efforts to Rejuvenate 4.3 Reparative Justice ...	26
III.	JEJU DISTRICT COURT’S REOPENING OF THE EIGHTEEN SURVIVORS’ 4.3 CONVICTIONS – RETRIALS, NEW JUDGMENT, IMPACTS.....	27
	A. 2017 Petition to Reopen 70-Year-Old 4.3 Mass Military Commission Convictions – a Comparative Reference to the Japanese American Incarceration Coram Nobis Cases.....	27
	1. 1980s United States Coram Nobis Cases as “International Precedent”	29
	B. The Jeju District Court’s 2018 Reopening Order	32
	1. Survivor Accounts of 4.3 Mass Military Commission Convictions.....	32
	2. Judge Chang’s Retrials Order.....	36
	C. Jeju District Court’s Retrials.....	37
	1. Startling Prosecutor Request to Dismiss the Indictments.....	37
	2. Order Dismissing Indictments and Declaring Mass Military Convictions Unlawful.....	38
	3. First-Ever Apologies by the Korean Military and Police.....	40
IV.	THE JEJU DISTRICT COURT’S REPARATIONS-COMPENSATION ORDER 41	
	A. Monetary Compensation for the Eighteen Petitioners-Survivors ...	42
	B. The “Nation’s Largest-Ever Trial” for 335 New Petitioners	43

V. THE TWENTY-YEAR REPARATIONS STRUGGLE FOR ECONOMIC JUSTICE	45
A. Revisions to the Seminal 2000 4.3 Special Act: May 2016 and February 2021	45
1. 2000 Special Act	45
2. The Politically Divided 2016 Special Act Revision and Continued In-Fighting	46
3. The Limited February 2021 Special Act Revision	48
B. The Urgent Need for Broadscale Reparations: Continuing Economic Justice Gap in 4.3 Social Healing	51
1. Limits of Traditional Legal Process Remedies	51
2. Economic Justice as a Key Aspect of Reparation	52
C. A Significant, Albeit Still Limited, Step Toward 'Just Resolution': The December 2021-2022 Special Act and Economic Justice	53
VI. NEXT, AND POTENTIALLY FINAL, STEPS TOWARD COMPREHENSIVE AND ENDURING JEJU 4.3 SOCIAL HEALING THROUGH JUSTICE	58
A. Social Healing Through Justice	59
B. Needed Amendments to the 2021-2022 Special Act	64
1. An Amendment to Remove Restrictive Eligibility Barriers for Intergenerational Survivors	64
2. Community Capacity-Building to Repair Intergenerational Economic and Emotional Health Damage	65
3. Reparative Measures Tailored to Women Survivors of Widespread 4.3 Sexual Violence	70
4. Potential United States Acceptance of Partial 4.3 Responsibility and Participation in Next Reparative Steps	73
VII. CONCLUSION	75

* * *

I. INTRODUCTION

In a rare intersecting moment of law and history, Judge Jegal Chang of the Jeju District Court in South Korea rendered an extraordinary ruling sweeping away seventy years of injustice.¹ In January 2019 Judge Chang expunged the

¹ Fred T. Korematsu Professor of Law and Social Justice, William S. Richardson School of Law, University of Hawai'i. The authors express their sincere appreciation to Taylor Takeuchi, Abigail Lazo, Siena Schaar, and Micah Miyasato for their valuable research and editing assistance.

² William S. Richardson School of Law, Class of 2023, University of Hawai'i.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 7
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

decades-old criminal records of the eighteen wrongfully convicted survivors of the Jeju April Third (4.3) Tragedy.² Euphemistically called “an incident,”³ and marked by widespread violence and immense suffering, the 4.3 Tragedy swept across an entire island of villagers during the supposed “peacetime” between World War II and the Korean War.⁴ Initiated by the U.S. Military Government and then overseen by U.S. Military officials, South Korean armed forces killed an estimated 30,000 island villagers, detained and tortured thousands more and burned down nearly all seaside villages.⁵ All fueled by the mischaracterization of Jeju as an “island of reds.”⁶

Government military tribunals also summarily “convicted” over 2,500 residents en masse in 1948-1949, leading to many executions and harsh indefinite imprisonment for alleged “rebellion,” “aiding and contacting the [Communist] enemy” and “espionage.”⁷ Seventy years passed without rectification of the injustice. Finally, in 2017, eighteen of those convicted petitioned the Jeju court to vacate their military convictions and remove the groundless stain of disloyalty from their family records. The survivors’ petition served as an integral part of South Korea’s started-stalled-rejuvenated twenty-year initiative to heal the Tragedy’s persisting wounds.⁸

Recognizing the national significance of the petitions, Judge Chang asked

² See Jaegal Chang et al., *Korea Jeju District Court Second Criminal Department: The Decision*, 9 WORLD ENV’T & ISLAND STUD. 97 (Jin ju Moon, Chang hoen Ko & Michael Saxton trans., 2019) [hereinafter 2019 *Order Dismissing Indictments*].

³ See *id.*; Chang Hoon Ko & Yuri Cho, *Some Insights on 18 Jeju 4.3 Survivors’ Retrial Cases in 2018 from Consequences of 1984 Korematsu Coram Nobis Case Decisions and Civil Liberties Act of 1988*, 8 WORLD ENV’T & ISLAND STUD. 31 (2018) [hereinafter Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors’ Retrial Cases*].

⁴ While “The Jeju April 3 Incident” is the official name of the series of related events, other descriptors include “Jeju 4.3 Tragedy” or “Grand Massacre.” See generally THE NAT’L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, THE JEJU APRIL 3 INCIDENT INVESTIGATION REPORT (Jeju Apr. 4.3 Peace Found. trans., 2014) (2003) [hereinafter 4.3 INVESTIGATION REPORT].

⁵ ERIC K. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY 9–10 (2021) [hereinafter YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE].

⁶ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 469–70, 647–52.

⁷ See *id.* at 274–79; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 111–17.

⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 185; see 4.3 INVESTIGATION REPORT, *supra* note 3, at 529–64 (detailing the 1948–1949 military tribunals summarily convicting over 2,500 Jeju residents).

⁹ See discussion *infra* Part III.A.

petitioners' supporters to search for global precedent for reopening decades-old manifestly unjust criminal convictions – all as a part of a larger societal reparative justice effort.⁹ Supporters provided a translated legal-historical account¹⁰ of the U.S. courts' *coram nobis* cases from the mid-1980s.¹¹ Those American cases reopened the U.S. Supreme Court's World War II rulings upholding the presidential and military orders precipitating the curfew for and forced removal of West Coast Japanese Americans.¹² More specifically, the federal courts' *coram nobis* rulings wiped away the forty-year-old convictions of resisters Fred Korematsu, Gordon Hirabayashi and Minoru Yasui and effectively cleared the names of all 120,000 Japanese Americans forcefully removed and incarcerated on the basis of falsified government claims of group threats to national security.¹³ The courts' rulings in those *coram nobis* proceedings, along with the Supreme Court's earlier *Endo* decision,¹⁴ laid the judicial cornerstone for the 1988 U.S. Civil Liberties Act's presidential apology, government reparations and public education projects – an acceptance of American responsibility for its past civil and

⁹ Ko & Cho, *Some Insights on 18 Jeju 43 Survivors' Retrial Cases*, *supra* note 2, at 32–33; see also Min-kyung Kim, *Court Weighs Question of Granting Retrials for Those Imprisoned During 1948 Jeju Uprising*, HANKYOREH (Mar. 25, 2018, 8:21 AM), https://english.hani.co.kr/arti/english_edition/e_national/837522.html (describing legal complications in reopening the survivor-petitioners' seventy-year-old convictions).

¹⁰ See ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG & FRANK H. WU, *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE-AMERICAN INTERNMENT* (2nd ed. 2013) [hereinafter YAMAMOTO, CHON, IZUMI, KANG & WU, *LAW AND THE JAPANESE-AMERICAN INTERNMENT*], for the original version.

¹¹ See generally *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984) (vacating Fred Korematsu's conviction); *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987) (vacating Gordon Hirabayashi's conviction); *Yasui v. United States*, 772 F.2d 1496 (9th Cir. 1985) (vacating Minoru Yasui's conviction).

¹² See generally *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the United States mass racial exclusion of mostly American citizens during World War II pursuant to Executive Order 9066 and implementing military orders); *Hirabayashi v. United States*, 320 U.S. 81 (1943) (upholding the racial curfew); *Yasui v. United States*, 320 U.S. 115 (1943) (upholding the racial curfew).

¹³ See *Korematsu*, 584 F. Supp. at 1420; *Hirabayashi*, 828 F.2d at 628; *Yasui*, 772 F.2d at 1498–500; Ko & Cho, *Some Insights on 18 Jeju 43 Survivors' Retrial Cases*, *supra* note 2, at 32–33.

¹⁴ Mitsuye Endo challenged the World War II mass racial incarceration and, unlike Korematsu, Hirabayashi and Yasui, succeeded at the War's end. *Ex parte Endo*, 323 U.S. 283, 297–304 (1944) (invalidating continuing detention of a concededly loyal citizen because the governing statute did not authorize the War Relocation authority to do so – notably implying that Executive Order 9066 and its initial implementing military orders were constitutionally acceptable).

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 9
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

human rights transgressions.¹⁵

After accepting the translated account of the coram nobis reopenings and taking preliminary testimony by the eighteen 4.3 survivors-petitioners, Judge Chang issued a startling order setting aside the convictions and initiating new trials.¹⁶ The retrials quickly commenced in late 2018, with the Korean nation watching. In a moment worthy of the best Netflix drama, the prosecution itself upheld the petitioners' contention that their military convictions were a sham, an integral part of the Jeju 4.3 injustice marked by the deaths and horrible suffering of tens of thousands of ordinary villagers. The government prosecutor asked the court to dismiss the indictments and clear the petitioners' names.¹⁷ He hoped that this judicial ruling would help heal the persisting wounds by, in his words, recognizing and "sharing in some small way in the bitter suffering of these people, and in the suffering of history and [of] the Korean nation, and to bring the truth of what happened then to light" now.¹⁸ The national government prosecutor spoke the language not of criminal procedure but of *social healing through justice*.

In an eloquent order-opinion, Judge Chang then formally dismissed the indictments in January 2019, clearing away the convictions and also effectively absolving the 2,500 other Jeju residents wrongly convicted en masse by the military tribunals.¹⁹ A landmark criminal procedure and human

¹⁵ ERIC K. YAMAMOTO, LORRAINE J. BANNAI & MARGARET CHON, *RACE, RIGHTS, AND NATIONAL SECURITY: LAW AND THE JAPANESE AMERICAN INCARCERATION* 339-47 (3rd ed. 2021) [hereinafter YAMAMOTO, BANNAI & CHON, *LAW AND THE JAPANESE AMERICAN INCARCERATION*].

¹⁶ Je-gal Chang, *Each Retrial Shall be Initiated for the Decision to be Re-judged: Decision About Case: 2017 Inventory Hab-I*, 8 *WORLD ENV'T & ISLAND STUD.* 117, 118 (Chang Hoon Ko & Michael Saxton trans., 2018) [hereinafter *2018 Order Reopening 4.3 Mass Convictions*]; see also Eric K. Yamamoto, Katya Katano, Rachel Oyama & William N. K. Crowell, *Human Rights and Reparative Justice: The 2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases*, 8 *WORLD ENV'T & ISLAND STUD.* 167, 177 (2018) [hereinafter Yamamoto, Katano, Oyama & Crowell, *2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases*].

¹⁷ Min-Kyoung Kim, *Prosecutors Request Dismissal of Indictments Against Defendants Connected with Jeju Uprising*, HANKYOREH (Dec. 18, 2018, 5:09 PM) [hereinafter Kim, *Prosecutors Request Dismissal of Indictments Against Defendants Connected with Jeju Uprising*], https://english.hani.co.kr/arti/english_edition/e_national/874894.html.

¹⁸ *Id.*

¹⁹ See *2019 Order Dismissing Indictments*, *supra* note 1, at 97, 100; Suh-yoon Lee, *Jeju Massacre Victims Get Their Names Cleared in Court*, KOREA TIMES (Jan. 18, 2019, 11:13 AM) [hereinafter Lee, *Jeju Massacre Victims Get Their Names Cleared in Court*],

rights ruling for South Korean courts.²⁰ In one survivor's words, "The red mark [of April 3rd] has been erased from our names, and all the stigma of having been in prison has been lifted."²¹ For decades, survivors and their families lived ostracized as second-class citizens and untouchables.²² "I endured life in prison without the kind of trial we saw today. That left me with bitterness in my heart, and now I have been acquitted. I don't [know] what else to say."²³

As developed in Part III, the Jeju court's ruling exonerated those eighteen 4.3 survivors persecuted seventy years earlier, declaring their convictions "invalid in violation of legal regulations."²⁴ Technically, the court found the mass convictions unlawful because the government failed to properly charge the survivors with crimes or present any evidence of guilt.²⁵ More broadly, the court situated the mass convictions amidst the carnage of the Jeju 4.3 Tragedy²⁶ – later crafting a compensation award in light of the case's

https://www.koreatimes.co.kr/www/nation/201901/251_262242.html#:~:text=The%20Jeju%20District%20Court%20overturned,April%203%20Uprising%20and%20Massacre.

²⁰ See, e.g., Sang-Soo Hur, *Historical Significances of Opening Decision for Retrial by Jeju District Court of Jeju April 3rd Events: Survivors Under Illegal Martial Law Court (1948-1949)*, 9 WORLD ENV'T & ISLAND ST.D. 127, 129 (2019) [hereinafter Hur, *Historical Significances of Opening Decision for Retrial*] (observing how the decision "surprised and shocked" South Korean lawmakers and "will serve as a major leverage" for Jeju 4.3 reparations).

²¹ Han-sol Ko, *Jeju Court Rules to Erase Red Mark on Jeju Uprising Prisoners*, HANKYOREH (Jan. 18, 2019, 4:58 PM) [hereinafter Ko, *Jeju Court Rules to Erase Red Mark on Jeju Uprising Prisoners*], http://english.hani.co.kr/arti/english_edition/e_national/878973.html.

²² Dong-choon Kim & Mark Selden, *South Korea's Embattled Truth and Reconciliation Commission*, 8 ASIA-PAC. J. 1, 5 (2010) [hereinafter Kim & Selden, *South Korea's Embattled Truth and Reconciliation Commission*]; Darryl Coote, *Exonerated Jeju Massacre Prisoners Fight to Right Korean History*, UNITED PRESS INT'L (Oct. 15, 2019, 3:00 AM) [hereinafter Coote, *Exonerated Jeju Massacre Prisoners Fight to Right Korean History*], https://www.upi.com/Top_News/World-News/2019/10/15/Exonerated-Jeju-Massacre-prisoners-fight-to-right-korean-history/9431569816973/ (survivors describing how life after prison was worse due to the social stigma).

²³ Ko, *Jeju Court Rules to Erase Red Mark on Jeju Uprising Prisoners*, *supra* note 21.

²⁴ 2019 Order Dismissing Indictments, *supra* note 1, at 100.

²⁵ *Id.*

²⁶ Survivor testimonies revealed that even for those who received something vaguely resembling a "trial" in 1948 or 1949, the military tribunals convicted them in groups of 50 to 300 people without individual charges or presenting evidence. 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 124. One survivor recalled a man in plain clothes casually stating, "If you're getting three years in prison because you're guilty of espionage," unaware of the charges or any wrongdoing during sentencing. *Id.* The Jeju court thus declared it "impossible to conclude that preliminary investigations and indictment delivery procedures were properly observed" when the military commissions summarily convicted over 2,500 Jeju residents in such a "short time frame." Ko, *Jeju Court Rules to Erase Red Mark on Jeju*

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 11
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

“historical significance.”²⁷

Yet, as described in Part IV, even building upon the national government’s earlier apology, 4.3 Museum and 4.3 Memorial and Gravesite,²⁸ the Jeju court’s monumental rulings did not bring full closure to the protracted reconciliation initiative. These rulings did not generate a resonant sense of 4.3 justice finally and fully done. In 2021, while acknowledging significant recent progress toward 4.3 reparative justice, including the Jeju court’s rulings, Professor Eric K. Yamamoto spotlighted continuing “notable gaps and shortfalls” in economic justice for 4.3 survivors, families and communities – collectively impeding “comprehensive and enduring Jeju 4.3 social healing through justice.”²⁹ For over seventy years, survivors and their families across generations suffered far more than the trauma of killings, torture and wrongful imprisonment. They sustained enormous financial losses – the destruction of homes and personal property and the devastation of village economic life.³⁰ They also suffered from the guilt-by-association system that deprived survivors and extended family members of access to government jobs, business opportunities, top universities and full participation in the island economy.³¹ Past legislative and executive efforts to close the economic justice gap failed in the face of continuing political resistance.

The Jeju court’s 2019 landmark decisions expunging the convictions of

Uprising Prisoners, *supra* note 21; see Min-Kyung Kim, *Former Prisoners Request Retrial in Jeju Uprising Cases*, HANKYŎHŬ (Mar. 25, 2018, 8:18 AM) [hereinafter Kim, *Former Prisoners Request Retrial*], http://english.hani.co.kr/arti/english_edition/e_national/837521.html.

²⁷ Elizabeth Shim, *South Korea Jeju Massacre Victims Awarded \$4M in Damages*, UNITED PRESS INT’L (Aug. 21, 2019, 9:38 AM) [hereinafter Shim, *South Korea Jeju Massacre Victims Awarded \$4M in Damages*], https://www.upi.com/Top_News/World-News/2019/08/21/South-Korea-Jeju-Massacre-victims-awarded-4M-in-damages/5291566394271/?upi_ss=Jeju.

²⁸ Following the National 4.3 Committee’s 2003 recommendations, the South Korean government issued a presidential apology and constructed an impressive government-sponsored museum and an extensive public memorial and gravesite in Jeju. The government also created the Jeju 4.3 Peace Foundation to support additional fact clarification on Jeju 4.3 to restore the honor of victims and families. Many initially viewed these steps as salutary. See *infra* Part II.D.

²⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 180.

³⁰ See *infra* notes 166–99, 410–20 and accompanying text; 4.3 INVESTIGATION REPORT, *supra* note 3, at 622–24.

³¹ 4.3 INVESTIGATION REPORT, *supra* note 3, at 607–21.

the eighteen survivors and awarding substantial monetary damages were significant practically and symbolically. Yet, the decisions ironically underscored the glaring void in the larger 4.3 reparative initiative. The enduring *han* ("deepest pain") of the tens of thousands of other Jeju 4.3 survivors, families and communities persisted in the face of continuing political opposition to broadscale reparations and other forms of economic justice.³²

In February 2021, the Korean National Assembly again excluded economic justice from its much-anticipated revision of the Jeju 4.3 Special Act.³³ Originally passed in 1999,³⁴ the Special Act marked South Korea's path-forging acknowledgment of the historic injustice and efforts to repair the damage to its own citizens. Twenty years of political infighting, though, continually obstructed economic redress for 4.3 survivors and families. The Special Act's February 2021 revision established a Jeju 4.3 Trauma Healing Center and authorized minimal medical support and welfare for a limited number of survivors.³⁵ But it declined to confer general reparations.³⁶ For thousands who suffered directly and indirectly from the 4.3 "scorched earth" carnage, reconciliation efforts remained starkly incomplete.³⁷

In response to mounting political pressure and public education – including follow-up research, journalists' stories and scholars' assessments – the National Assembly finally approved a ground-breaking amendment to the Special Act in December 2021. It authorized government payment of S76,000 (90 million won) to each of the 10,101 designated victims of the 4.3 Tragedy for a collective sum of S767,676,000 (909 billion won).³⁸ That legislative commitment to reparative action commencing in 2022, backed by President Moon's outgoing administration, amounted to the largest

³² See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 189–90.

³³ Special Act on Discovering the Truth on the Jeju 4.3 Incident and the Restoration of Honor of Victims, Act. No. 17963, Mar. 23, 2021, *amended by* Act. No. 18745, Jan. 11, 2022 (S. Kor.) [hereinafter 2021 Jeju 4.3 Special Act], <https://www.law.go.kr> (search required).

³⁴ See *infra* Part V.A. for more discussion on the Jeju 4.3 Special Act.

³⁵ See 2021 Jeju 4.3 Special Act, *supra* note 33, art. 23.

³⁶ See, e.g., Ho-joon Huh, [Interview] Family Members of Jeju April 3 Victims Demand Amendment of Special Act in Nat. Assembly, HANGYOREH (Oct. 29, 2019, 5:04 PM) [hereinafter Huh, Family Members of Jeju April 3 Victims Demand Amendment of Special Act], http://english.hani.co.kr/arti/english_edition/e_national/915026.html.

³⁷ Ho-joon Heo, Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?, JEJU 4.3 PEACE FOUND. (Oct. 5, 2021) [hereinafter Heo, Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?], <http://jeju43peace.org/revised-jeju-43c2%b73-special-act-now-effective-but-with-what-improvements/>.

³⁸ The amendment authorized payments over the following five years. See *infra* Part V.C. for a discussion on the December 2021–2022 Special Act Revision.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 13
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

compensation³⁹ award by the Korean government to victims of a singular past injustice.⁴⁰ And it promised to overcome a major impediment to comprehensive and enduring 4.3 social healing – filling the gap in long delayed economic justice.

Still more remained. The 2021-2022 Special Act's approval of individual monetary payments erected technical eligibility barriers for thousands of family members.⁴¹ It also overlooked "capacity-building" or other forms of community-based economic justice for the survivors and communities harshly impacted through generations.⁴² And the voices of women survivors of widespread 4.3 sexual violence remained largely absent – both from the reparative discourse as well as tailored remedial measures.⁴³ Finally, and potentially most important, the South Korean government again refrained from calling on the United States to acknowledge and accept responsibility for its partial yet pivotal role in the 4.3 Tragedy and to participate in next – and perhaps final – reparative steps.⁴⁴

This article first examines the eighteen survivors' monumental Jeju court petitions to clear away their wrongful 4.3 mass military convictions, linking them to the Japanese American resisters' *coram nobis* challenges to the Supreme Court's World War II rulings. In making that linkage, it teases out similarities and differences, tracking the impacts of those judicial rulings in galvanizing key aspects of the political push for legislative reparations in South Korea and the United States, respectively.

Drawing upon human rights precepts of reparative justice⁴⁵ and

³⁹ The National Assembly uses the term "compensation" to characterize this reparative measure.

⁴⁰ See *infra* notes 336–48 and accompanying text.

⁴¹ See discussion *infra* Parts V.C, VI.B.1.

⁴² See discussion *infra* Part VI.B.2.

⁴³ See discussion *infra* Part VI.B.3.

⁴⁴ See discussion *infra* Part VI.B.4.

⁴⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 237–40 (describing international human rights norms of reparative justice, particularly the International Covenant on Civil and Political Rights mandating effective remedy for human rights violations, and the 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); see G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966); Commission on Human Rights Res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (Apr. 19, 2005).

multidisciplinary insights into social healing,⁴⁶ the article then uplifts remarkable recent progress in the Jeju 4.3 social healing initiative, highlighting the Jeju court's rulings⁴⁷ and the National Assembly's 2021-2022 Special Act revisions.⁴⁸ It also identifies critical gaps in the 2021-2022 Act's eligibility requirements;⁴⁹ underscores the continuing need for economic justice in the form of tailored group capacity-building to empower Jeju communities;⁵⁰ and uplifts the importance of further reparative action to address the unique suffering of Jeju women subjected to widespread 4.3 sexual violence.⁵¹

In the concluding section, through the lens of reparative justice, this article synthesizes assessments about what recently advanced and what still impedes comprehensive and enduring Jeju 4.3 social healing, acknowledging the prolonged absence of the United States from reparative initiative. A companion article – titled “*Apology & Reparation II: United States Engagement with Final Stages of Jeju 4.3 Social Healing*” – then evaluates the propriety and impact of America's refusal to engage along with intensifying calls by 4.3 justice advocates, scholars and human rights organizations for the United States to step up and take its place at the 4.3 reconciliation table.⁵² Linking the two articles together, the companion piece suggests a reparative path forward that may well benefit the United States, South Korea and, most important, the people of Jeju.

II. THE JEJU 4.3 “INCIDENT” AND INITIAL REPARATIVE STEPS

After World War II, emerging Cold War tensions between the United States and the Soviet Union set the stage for the “peacetime” U.S. military occupation of South Korea, including Jeju Island.⁵³ Some Jeju residents protested restrictive U.S. food policies, police brutality and extortion.⁵⁴ Police killed several at one protest, triggering community work stoppages and one group's attack on the police station.⁵⁵ In reaction, the U.S. Military

⁴⁶ See *infra* Part VI. For a more robust discussion on human rights precepts of reparative justice, see Chapters 3, 4 and 12 in YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4.

⁴⁷ See *infra* Parts III and IV.

⁴⁸ See *infra* Part V.C.

⁴⁹ See discussion *infra* Parts V.C. V1.B.1.

⁵⁰ See discussion *infra* Parts V.B. V1.B.2.

⁵¹ See discussion *infra* Part V1.B.3.

⁵² Eric K. Yamamoto, Sahyeon Burns & Taylor Takenuchi, *Apology & Reparation II: United States Engagement with Final Stages of Jeju 4.3 Social Healing*, 45 U. HAW. L. REV. 81 (2022) [hereinafter Yamamoto, Burns & Takenuchi, *Apology & Reparation II*].

⁵³ 4.3 INVESTIGATION REPORT, *supra* note 3, at 363–64.

⁵⁴ *Id.* at 119–22.

⁵⁵ *Id.* at 132–34, 139–44, 213–19.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 15
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

Government (as United Nations designated Trustee) and later the Republic of Korea (under United States oversight) carried out a “scorched earth” Jeju 4.3 “suppression operation,” indefinitely detaining and torturing thousands of Jeju residents, then summarily trying and executing many wrongly presumed to be communists or communist supporters.⁵⁶ More far-reaching, government forces killed and maimed thousands of others in villages, fields and mountain hideouts, even though the villagers lacked unlawful links to communism or resistance activities.⁵⁷ By 1949, the violence of the Tragedy left “one in every five or six islanders” dead and “more than half the villages . . . destroyed.”⁵⁸

Government-sponsored violence continued through the following decades.⁵⁹ Authoritarian regimes shrouded 4.3 events in silence, detaining and torturing those who spoke or wrote about it.⁶⁰ The 1980s’ fierce nationwide Democracy Movement pressured government leaders to sanction South Korea’s first democratic election in 1987. With a new President and revelations of recent government oppression, Jeju 4.3 justice advocates launched the Tragedy into public consciousness.⁶¹

⁵⁶ See *id.* at 144, 469, 549–64, 620–45. After Japan surrendered, the United States occupied Korea, south of the 38th parallel. It established the United States Army Military Government in Korea (USAMGIK) in September 1945, which functioned as the sole legal authority and gave the United States more control than a simple trusteeship. See *id.* at 92–97; see also OFF. OF THE HISTORIAN, U.S. DEPT. OF STATE, FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS, 1945, THE BRITISH COMMONWEALTH, THE FAR EAST, VOLUME VI (Oct. 1945), <https://history.state.gov/historicaldocuments/frus1945v06/d802> (noting the United Nations’ formal designation of the United States as trustee).

⁵⁷ See YAMAMOTO, *The Historical Setting: The Jeju 4.3 Tragedy and the United States’ Role, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4.

⁵⁸ BRUCE CUMINGS, *THE KOREAN WAR: A HISTORY* 130 (2010) [hereinafter CUMINGS, *THE KOREAN WAR*]; see also 4.3 INVESTIGATION REPORT, *supra* note 3, at 451–55, 466–68.

⁵⁹ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 421–49. The Korean War started in June 1950. *Id.* at 421. In 1951, the Korean Army also established a secret special operations force as part of their anti-guerrilla expeditions – the unit was “specially trained for five months in Hawaii.” *Id.* at 441. A labor and student-led “April Revolution” in 1960 sought regime change in South Korea, but anticommunist military dictatorship rose to power in 1961. Dong-Choon Kim, *The Long Road Toward Truth and Reconciliation: Unwavering Attempts to Achieve Justice in South Korea*, 42 *CRITICAL ASIAN STUD.* 525, 531–33 (2010) [hereinafter Kim, *The Long Road Toward Truth and Reconciliation*]. Subsequent authoritarian regimes continued to detain and torture those protesting government repression. See discussion *infra* Part II.C.

⁶⁰ See Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 532–33.

⁶¹ HunJoon Kim, *Seeking Truth After 50 Years: The National Committee for Investigation of the Truth About the Jeju 4.3 Events*, 3 *INT’L J. TRANSITIONAL JUST.* 406, 412–15 (2009)

In the wake of South Africa's 1990s Truth and Reconciliation process, intense public education and political lobbying culminated in the Special Act of 2000.⁶² Through the Act, the Korean National Assembly established a nationwide investigative committee, akin to a truth and reconciliation commission, to ascertain 4.3 historical facts and causes and to recommend appropriate reparative measures.⁶³ The 2003 report of that National 4.3 Investigative Committee initially led to substantial government reparative actions. With the ascension of conservative political leaders in 2007 and an economic downturn, however, progress halted and then regressed. From around 2010, grassroots justice advocates, educators, artists, politicians, journalists and scholars coalesced to rejuvenate and sustain 4.3 justice advocacy. The petitions of the eighteen survivors filed in the Jeju court in 2017 and the ensuing 2021-2022 revisions to the Special Act were integral to this revival.

A. Mischaracterization of Jeju as an "Island of Reds"

After World War II's end, like many throughout South Korea, Jeju residents organized peoples' committees to promote stability and peace, fearing continuation of oppressive Japanese colonial policies.⁶⁴ According to

[hereinafter Kim, *Seeking Truth After 50 Years*]; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 143-46.

⁶² See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 4, 38-40. Following South Korea's transition to democracy, global reparative justice initiatives in the 1990s spurred South Korea to embark on a truth and reconciliation process to investigate its past human rights violations. South Africa's Truth and Reconciliation Commission, in particular, served as a monumental reconciliation model for countries seeking to heal the wounds of historic injustice. See *id.* at 38-40 (comparing South Africa's Truth and Reconciliation Commission's success and limitations to South Korea's Truth and Reconciliation Commission). See generally Dong-Choon Kim, *Korea's Truth and Reconciliation Commission: An Overview and Assessment*, 19 BUFF. HUM. RTS. L. REV. 97, 102 (2012); Hye Jeon Kim, *Trial and Error in Transitional Justice: Learning from South Korea's Truth Commissions*, 19 BUFF. HUM. RTS. L. REV. 125, 163 (2012).

⁶³ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 4, 17-18. The "National Committee for Investigation of the Truth About the Jeju April 3 Incident" (National 4.3 Committee) "ascertained historical facts, examined responsibility and made recommendations." *Id.* at 4. Immediately after the release of the 2003 investigative report, "President Roh Moo-Hyun visited Jeju and apologized to survivors and their families. The national government also took active steps toward social healing." *Id.* The democracy movement, 2000 Special Act and the steps taken during that time toward (and resistance to) 4.3 reconciliation are discussed in depth in subsections C, D and E.

⁶⁴ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 83-85, 96-101. Cold War concerns gave rise to U.S. containment policies meant to prevent the spread of communism. Those policies also raised fears among South Koreans of a possible continuation of oppressive Japanese policies and diminished hopes for a future independent Korean peninsula. See *id.* at 96-101. In efforts to build political, education and cultural stability, Jeju islanders

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 17
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

the National 4.3 Investigative Committee's 2003 report, these diverse groups included a Labor Party led by a small number of communist members from mainland South Korea.⁶⁵ Those members of the Labor Party sought to eliminate oppressive practices. They also sought to gather support for communism in the South.⁶⁶ At a 1947 gathering organized in part by the Labor Party and in part by organizations unconnected with communism, Jeju residents gathered to commemorate Independence Movement Day and to demonstrate against harsh government policies and abusive officials' practices.⁶⁷ Police, "under the control of the US military, opened fire . . . killing . . . six" and severely injuring others.⁶⁸ This provoked general strikes and work stoppages by many Jeju groups.⁶⁹

U.S. military intelligence determined that the main cause of the Jeju resident strikes was opposition to police brutality and extortion, not an incitement to communism.⁷⁰ Military investigators found relatively few communists among Jeju residents and ascertained many of the active resisters to be, at most, "moderate leftists."⁷¹ The U.S. military commander

"systematized the building of the Autonomous People's Council." Chaag-Hoon Ko, *US Government Responsibility in the Jeju April Third Uprising and Grand Massacre: Islanders' Perspective*, 8 LOC. GOV'T STUD. 123, 126 (2004) [hereinafter Ko, *US Government Responsibility in the Jeju April Third Uprising and Grand Massacre*].

⁶⁵ 4.3 INVESTIGATION REPORT, *supra* note 3, at 258. The committee quoted a 1948 news article from the *Daejeong Shinmun*, reporting that "the riot was caused by a few communists who came from outside of Jeju . . . and Jeju was peaceful in general." *Id.*

⁶⁶ *See id.* at 111–14 (describing the activities of the Labor Party and attempts to gather new members to become a "mass party").

⁶⁷ *Id.* at 123–30. Independence Movement Day ("Samil Jeol" for "March 1st") is a South Korean national holiday to commemorate March 1, 1919, which marks one of the earliest public displays of Korean resistance against Japan's occupancy and the people's persistent struggles to regain independence. Korean leaders announced the Declaration of Independence in March 1919, and the independence movement "spread to the Koreans resisting in Manchuria, the Maritime Provinces of Siberia, the United States, Europe, and even to Japan." *Independence Movement*, KOREA.NET, <https://www.korea.net/AboutKorea/History/Independence-Movement> (last visited Oct. 16, 2022).

⁶⁸ Kim, *Seeking Truth After 50 Years*, *supra* note 61, at 409–10; *see* 4.3 INVESTIGATION REPORT, *supra* note 3, at 132–33.

⁶⁹ 4.3 INVESTIGATION REPORT, *supra* note 3, at 139–44.

⁷⁰ *Id.* at 271–72.

⁷¹ *Id.* at 169–72. Findings from U.S. investigators' extensive audit in 1947–1948 show that Jeju residents were not communists and described U.S.-supported Jeju Provincial Governor Yoo as an "ultra rightist" and "any intelligent person would reject" his government administration. *Id.* at 169–70. These investigations concluded that Yoo was "very dictatorial"

nevertheless described the strikes and resistance as a broadscale communist uprising.⁷² The U.S. military leaders on Jeju and the Korean national police – the main security force along with the constabulary – began to characterize Jeju as an “island of Reds.”⁷³

B. “Scorched Earth” Violence and Mass 4.3 Convictions

On April 3, 1948, approximately 300 Jeju residents armed with bamboo spears, farm tools and a few guns confronted police and government officials in efforts to stop police brutality and protest upcoming elections.⁷⁴ Those armed “rebel fighters” attacked police stations and later election officials and some uninvolved families.⁷⁵ According to the 4.3 National Committee’s report, the U.S. Military Government then sent in substantial national police and right-wing paramilitary forces.⁷⁶ It also deployed U.S. warships and designated a U.S. military officer as commander in charge of the “suppression” operations.⁷⁷ U.S. military leaders also emphasized that “the

and branded anyone who did not completely agree with him as a communist. *Id.* at 170. The investigation recommended that “Governor Yoo be replaced” but U.S. Military Governor Dean disapproved. *Id.* at 172. The Jeju 4.3 Tragedy occurred against this backdrop. *Id.*

⁷² *Id.* at 272 (citing a letter from Rothwell H. Brown, Commander of the 20th Infantry Regiment, to Orlando Ward, Commander of the 6th Infantry Division (July 2, 1948) (on file with The Rothwell H. Brown Papers, Box 3, US Army Military History Institute, Pennsylvania, U.S.A.)). Colonel Brown described Jeju people as “Communist sympathizers” and “Communist agitators.” *Id.*

⁷³ *Id.* at 272, 274–79; see CUMINGS, THE KOREAN WAR, *supra* note 58, at 123. See generally YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 111–17 (discussing Jeju’s branding as an “island of Reds”).

⁷⁴ 4.3 INVESTIGATION REPORT, *supra* note 3, at 203, 211; see Tae-Ung Baik, *Justice Incomplete: The Remedies for the Victims of the Jeju April Third Incidents*, in *RETHINKING HISTORICAL INJUSTICE AND RECONCILIATION IN NORTHEAST ASIA: THE KOREAN EXPERIENCE* 94, 96 (Gi-Wook Shin, Sooy-Won Park & Daqing Yang eds., 2007) [hereinafter Baik, *Justice Incomplete*]. Other accounts indicated that the Worker’s Party leaders trained a limited number of islanders. See Baik, *Justice Incomplete*, *supra* note 74, at 96.

⁷⁵ See ASS’N OF BEREAVED FAMILIES OF VICTIMS OF THE JEJU APR. 3RD UPRISING FOR HIST. TRUTH, WHO ARE THE TRUE VICTIMS OF THE JEJU APRIL 3RD UPRISING? 1–53 (2013) (reporting that the Worker’s Party trained a modest number of islanders as armed “rebel fighters”).

⁷⁶ 4.3 INVESTIGATION REPORT, *supra* note 3, at 327–33, 335–47. President Syng-man Rhee and the U.S. Military, at varying times, deployed outside private organizations as de facto police security forces to brutalize Jeju residents. *Id.* U.S. military intelligence reported that the government mobilized and sent approximately 8,200 civilian men from the mainland through “secret induction” – most of whom “did not know about the actual circumstances of Jeju,” received only days of training, and were illiterate. *Id.* at 336–38. For example, the Northwest Youth Corps, later classified by the U.S. as a terror organization, was recruited as paramilitary to “control and reorient leftists.” CUMINGS, THE KOREAN WAR, *supra* note 58, at 123.

⁷⁷ 4.3 INVESTIGATION REPORT, *supra* note 3, at 269–73.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 19
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

only way to settle the Jeju 4.3 Incident quickly was a scorched earth strategy.⁷⁸

Amid “suppression operations,” the Republic of Korea emerged in August 1948, with U.S. military officials, through a formal advisory group, continuing to exert operational control over the actions of South Korean armed forces.⁷⁹ The U.S. military government, which initially authorized the forceful actions against protesters by the South Korean constabulary and police, later oversaw scorched earth operational orders to clear the island of guerillas.⁸⁰ The new Rhee government, supported by the United States, declared martial law in November 1948.⁸¹

Briefly recounted, the security forces killed and maimed many residents in their seaside villages. Many villagers quickly relocated away from the shore. Security forces were then ordered to kill all residents found to be more than five kilometers from shore.⁸² Later, to lure villagers out of mountain hideouts, security forces promised amnesty.⁸³ That promise was quickly broken. The forces killed many innocent villagers en route, arrested thousands of others and sent them to overcrowded jails,⁸⁴ wrongly characterizing them as “communists or enemy sympathizers.”⁸⁵ For those who survived, military tribunal trials en masse followed.⁸⁶

These military tribunals summarily convicted several thousand Jeju residents in December 1948 and June and July 1949 “without legitimate justification, proper hearings, or trial.”⁸⁷ The harsh sentences for those 2,530

⁷⁸ *Id.* at 333.

⁷⁹ *Id.* at 314–15. The U.S. military held operational control over the “Security Forces of the Republic of Korea” following the “Executive Agreement between Korea and U.S. Concerning Interim Military and Security Matters” signed between the South Korean president and the U.S. Military commander. *Id.* (citing Article I of the “Executive Agreement” setting forth this provision).

⁸⁰ *See id.* at 386–400 (detailing the three-stage military operation in Jeju to “annihilate the enemy”).

⁸¹ *Id.* at 347. Martial law created military tribunals that operated at times without individual charges, evidence, trial or impartial decisionmakers. *Id.* at 529–54 (distinguishing the tribunals from “courts”).

⁸² *Id.* at 649 (citing the directive that “any pedestrians through the mountainous area more than 5km inward from the coastal line would be assumed to be a mob and would be shot to death”).

⁸³ *Id.* at 564 (security forces promising residents “you can live if you come down”).

⁸⁴ *Id.*

⁸⁵ Balk, *Justice Incomplete*, *supra* note 74, at 97.

⁸⁶ *See* 4.3 INVESTIGATION REPORT, *supra* note 3, at 549–65.

⁸⁷ Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors’ Retrial Cases*, *supra* note 2, at 33.

civilian villagers ranged from one year, to five years, to fifteen years, to life imprisonment, to execution.⁸⁸ One news report described these military tribunals as having been “carried out by brute force and with a disregard to legal protocol . . . pinning responsibility for the uprising on civilian residents.”⁸⁹

C. *The Democracy Movement and Growing Acknowledgment of the 4.3 Tragedy*

The 4.3 carnage left “one in every five or six islanders” dead and “more than half the villages” destroyed.⁹⁰ Even after the killing stopped, the trauma and material damage persisted.⁹¹ New authoritarian governing regimes suppressed all efforts to speak or write about the mass killings, widespread torture and military convictions. They detained and tortured those who sought to portray what really happened.⁹² The dictatorships continued to characterize 4.3 as a broadscale communist uprising and a threat to national security.⁹³ The message: the villagers thus got the violence they deserved. Government agents tortured a novelist writing a story about the Tragedy and banned his purportedly subversive book’s publication.⁹⁴

⁸⁸ 4.3 INVESTIGATION REPORT, *supra* note 3, at 553–54, 561–62.

⁸⁹ Kim, *Former Prisoners Request Retrial*, *supra* note 26.

⁹⁰ CUMINGS, *THE KOREAN WAR*, *supra* note 58, at 130.

⁹¹ Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 535–39.

⁹² *See id.* at 533 (“Soon after the military government came to power, it moved to disrupt the bereaved families’ activities, arresting and prosecuting the leaders of the bereaved families’ association and demolishing the cemetery in which they had all buried their dead.”); Kunihiko Yoshida, *Reparations and Reconciliation in East Asia: Some Comparison of Jeju April 3rd Tragedy with Other Related Asian Reparations Cases*, 2 *WORLD ENV’T & ISLAND STUD.* 79, 80 (2012) (explaining that it was “taboo” to discuss the “Jeju mass killing” under the dictatorship government); George Katsiaficas, *Remembering the Kwangju Uprising*, 14 *SOCIALISM & DEMOCRACY* 85, 86 (2000) [hereinafter Katsiaficas, *Remembering the Kwangju Uprising*]. *See generally* Kim, *US Government Responsibility in the Jeju April Third Uprising and Grand Massacre*, *supra* note 64.

⁹³ YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 144; *see* TRUTH & RECONCILIATION COMM’N, REPUBLIC OF KOREA, *TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS* 6 (2009) [hereinafter *TRUTH & RECONCILIATION COMM’N 2009 INTERIM REPORT*] (“Influenced by the extreme rightist ideology of Japanese nationalism and the sophisticated manipulation skills of the U.S. military, the Park military junta introduced an extreme right-wing Fascist regime into Korean society during a time when the nation lacked thought, values, and awareness of democracy.”).

⁹⁴ Kim, *Seeking Truth After 50 Years*, *supra* note 61, at 412–14 (“Almost all activists and scholars agree that [the novel *Aunt Suni*] was the key moment in South Korea’s transitional justice history The time between 1978 and 1987 became a period of preparation [for] [underground activists and scholars.]; *see also* “*Sun-i Samsch’on*” by Hyun Ki-young: An Iconic Novel That Captures the Essence of Jeju 4.3, JEJU 4.3 PEACE FOUND., <http://jeju43peace.org/portfolio/hyun-ki-young/> (last visited Oct. 17, 2022).

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 21
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

In 1979, the Korean Central Intelligence Agency director assassinated President Jung-Hee Park, and military general Doo-Hwan Chun seized power by an internal coup d'état.⁹⁵ Under the Chun regime's martial law in 1980, violence erupted on mainland Korea.⁹⁶ Many students in Gwangju protested military government repression, and the ensuing violence mobilized the populace.⁹⁷ Government armed forces detained and tortured student leaders.⁹⁸ Demonstrations spread across the country.⁹⁹ The Gwangju conflict escalated over several days, leaving as many as 2,000 civilians dead.¹⁰⁰ With international communities watching, under fierce pressure, government leaders agreed to open elections.¹⁰¹ And in 1987, South Korea elected President Tae-woo Roh, a former military leader.¹⁰²

In the aftermath, student activists and members of democracy movements identified the Gwangju uprising as the start of the "Democracy Movement."¹⁰³ And they pressed for a fair investigation of government violence against the protestors.¹⁰⁴ The push for nationwide democratization encompassed, as one linchpin, the acknowledgment of and redress for grave government injustice.¹⁰⁵

In this setting, 4.3 advocates lay the political foundations for reparative justice. Student groups at the Jeju National University launched the Tragedy into the public consciousness with the first Jeju 4.3 memorial service in 1989.¹⁰⁶ This public memorial served as "an arena where activists could discuss the 4.3 events and share information, expertise and strategies . . . accompanied by a month-long cultural festival that included local artists and

⁹⁵ Samuel Songhoon Lee, *U.S. Half-heartedly Accepted 1979 Military Coup*, KOREA HERALD (Dec. 11, 2012), <http://www.koreaherald.com/view.php?ud=201212110006801>; Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 536.

⁹⁶ Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 536.

⁹⁷ *Id.* at 536–39.

⁹⁸ Katsiaficas, *Remembering the Kwangju Uprising*, *supra* note 92, at 87–88.

⁹⁹ *Id.* at 88–94.

¹⁰⁰ *See id.* at 85, 87–94.

¹⁰¹ Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 537.

¹⁰² *Id.*; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 145.

¹⁰³ Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 537.

¹⁰⁴ *Id.*

¹⁰⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 145.

¹⁰⁶ Kim, *Seeking Truth After 50 Years*, *supra* note 61, at 414.

cultural activists."¹⁰⁷ In response to elevated public awareness and growing demands for a full and truthful public record, scholars and activists established the Jeju 4.3 Research Institute in 1989.¹⁰⁸

With intense lobbying and support from political and grassroots organizations and journalists, in December 1999, the National Assembly passed the "Special Act for Investigation of the Jeju April 3 Incident and Recovering the Honor of Victims" (Special Act).¹⁰⁹ Most significant, the Special Act established the National 4.3 Committee to investigate the "Incident" – the compromise term describing the 4.3 Tragedy – to create an accurate account of events and causes and identify victims to restore their honor.¹¹⁰

D. National 4.3 Committee Investigation, Partial Government Implementation and Backsliding

After extensive analysis of documents and officials' and eyewitness testimony, the National 4.3 Committee's 2003 report concluded that "the ultimate responsibility goes to President Rhee Syng-man" for the carnage.¹¹¹ It also summarily identified partial United States responsibility.¹¹² As redress, the National 4.3 Committee recommended that the national government:

- * issue an apology to Jeju islanders, the victims and their families;
- * declare the date of April 3 as a memorial day;
- * utilize the final report as educational material;

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* Its research purpose was to "find evidence of the massacres and disseminate information." *Id.*

¹⁰⁹ Special Act on Discovering the Truth on the Jeju 4.3 Incident and the Restoration of Honor of Victims, Act. No. 6117, Jan. 12, 2000, *amended by* Act. No. 18745, Jan. 11, 2022 (S. Kor.) [hereinafter 2000 Jeju 4.3 Special Act], translated in Korea Legislation Research Institute's [outline database](https://elaw.klri.re.kr/eng_service/law-View.do?hseq=42501&lang=ENG), https://elaw.klri.re.kr/eng_service/law-View.do?hseq=42501&lang=ENG; see also 4.3 INVESTIGATION REPORT, *supra* note 3, at 688–92.

¹¹⁰ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 688–89, *Legal Basis and Functions of the Committee*, THE NAT'L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, <http://www.jeju43.go.kr/eng/ishsub.html> (last visited Mar. 21, 2016).

¹¹¹ 4.3 INVESTIGATION REPORT, *supra* note 3, at 654.

¹¹² *Id.* at 654–55 ("The US Military Government and the Provisional Military Advisory Group (PNAG) are not free from being responsible for the . . . 4.3 Incident. Such incidents occurred under the US Military Government regime and the US Army Colonel in Jeju directly commanded the Suppression Operation. The US Army . . . supplied weapons and observation aircrafts for the Suppression Operation.").

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 23
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

- * actively support the establishment of Jeju April 3 Peace Memorial Park;
- * provide essential living expenses to bereaved families suffering from poverty;
- * support excavations of mass graves and historical sites; and
- * continuously support further investigations and memorial affairs.¹¹³

The South Korean government forthrightly implemented many of the recommendations.¹¹⁴ The Jeju 4.3 Peace Park and Museum “brought to life a compelling memorial and vast gravesite of nearly 15,000 graves where

¹¹³ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 150 (quoting *Truth-finding Efforts & Recommendations*, THE NAT’L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, <http://www.jeu43.go.kr/english/sab05.html> (last visited Nov. 12, 2021)). President Roh Moo-hyun visited Jeju immediately after the report’s publication and officially apologized to the 4,3 victims, survivors and families:

In response to the recommendations from the Jeju Commission, I, in my capacity as President, would like to apologize for the wrongdoings of the previous government and express my sincere condolences to the victims and the bereaved. May their innocent souls rest in peace. The government will actively support the implementation of the commission’s recommendations such as building a memorial park and honoring the victims at the earliest time By applying the valuable lessons that we have learned from the Jeju 4.3 Incident, we should try to promote universal values such as peace and human rights. We should cease the confrontation and division in this land and open a new era where everyone in Northeast Asia and the world lives in peace.

HUN JOON KIM, THE MASSACRES AT MT. HALLA: SIXTY YEARS OF TRUTH SEEKING IN SOUTH KOREA 153 (2014) [hereinafter KIM, THE MASSACRES AT MT. HALLA] (alteration in original).

¹¹⁴ KIM, THE MASSACRES AT MT. HALLA, *supra* note 113, at 155. The National 4.3 Committee’s report, however, met fierce legislative opposition. *See, e.g., id.* at 153–54. “Over six months, 376 objections from twenty individuals and organizations, mostly representing the police and military, were submitted” before publication. *Id.* at 141. “[C]onservative organizations—for example, retired veterans and retired police—also submitted 143 objections. However, most of the revision requests from the military and police came from committee insiders.” *Id.* at 141.

families could pay respects and visitors could sense the enormity of 4.3 events and consequences for people and communities."¹¹⁵ The government established the Jeju 4.3 Peace Foundation to promote "human rights, democracy and national reconciliation" and to restore the honor of the victims and their families.¹¹⁶ In addition, the government supported major efforts to locate and excavate mass 4.3 burial grounds.¹¹⁷

The National 4.3 Committee's recommendations and initial government follow-through gave voice to the Jeju people and advanced the reconciliation initiative. It acknowledged the fear, violence and suffering. "It also glimpsed communities' halting efforts to rebuild after the cataclysm."¹¹⁸ But then 4.3 healing regressed. After 9/11, geopolitical and domestic influences appeared to largely shield the United States from the 4.3 investigative and public glare.¹¹⁹ Conservative South Korean politicians and the military also lobbied to limit the National 4.3 Committee's inquiry and recommendations.¹²⁰

Some conservative South Korean politicians and Ministry of Defense personnel strongly opposed truth and reconciliation processes.¹²¹ That opposition targeted the National 4.3 Committee's investigation and the separate inquiry of the 2005 Truth and Reconciliation Commission of Korea (TRCK) that investigated human rights violations from Japan's early 1900s colonial rule through the Democracy Movement.¹²² The TRCK was undercut

¹¹⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 157; see also Jeju 4.3 Peace Park, JEJU 4.3 PEACE FOUND., https://jeju43peace.org/jeju-4-3-peace-park/jeju-4-3-peace-park_-_memorial-site/ (last visited Oct. 16, 2022).

¹¹⁶ Vision & Objective, JEJU 4.3 PEACE FOUND., <http://jeju43peace.org/foundation/vision-objective-2/> (last visited Oct. 17, 2022).

¹¹⁷ Hon Joon Kim, *International Research on the Jeju 4.3 Events and Suggestions for Internationalization*, in JEJU 4.3 GRAND TRAGEDY DURING "PEACETIME" KOREA: THE ASIA PACIFIC CONTEXT (1947-2016) 207, 214 (Chang Hoon Ko, Eric K. Yamamoto, Kunihiko Yoshida et al. eds., 2016) [hereinafter Kim, *International Research on the Jeju 4.3 Events*].

¹¹⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 150.

¹¹⁹ *Id.* at 162.

¹²⁰ See, e.g., KIM, THE MASSACRES AT MT. HALLA, *supra* note 113, at 153-54; Baik, *Justice Incomplete*, *supra* note 74, at 96, 110-11.

¹²¹ See Jae-Jung Suh, *Truth and Reconciliation in South Korea: Confronting War, Colonialism, and Intervention in the Asia Pacific*, 42 CRITICAL ASIAN STUD. 503, 519-20 (2010); Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 99, at 543-45; Kim & Selder, *South Korea's Embattled Truth and Reconciliation Commission*, *supra* note 22, at 1, 5.

¹²² The National Assembly charged the TRCK with "investiga[ing] incidents regarding human rights abuses, violence, and massacres occurring since the period of Japanese rule to the present time, specifically during the authoritarian regimes." *Truth Commission: South Korea 2005*, U.S. INST. OF PEACE (Apr. 18, 2012), <https://www.usip.org/publications/2012/04/truth-commission-south-korea-2005>. See generally TRUTH & RECONCILIATION COMM'N, 2009 INTERIM REPORT, *supra* note 93.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 25
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

by a lack of cooperation from the “police and the National Intelligence Service under the . . . Lee Myung-bak administration.”¹²³ The “most responsible subject, the Ministry of Defense, . . . steadfastly refused to recognize their misdeeds,”¹²⁴ and the TRCK lacked the power to compel testimony, obtain sensitive state documents, or sanction those refusing to cooperate or even name officials involved.¹²⁵ As a result, politically significant and costly recommendations tended to be delayed and ultimately abandoned.¹²⁶ TRCK’s truncated investigative powers and limited remedial reach¹²⁷ reflected the clashing interests between justice advocates’ push for accountability for prior regimes’ human rights violations and conservatives’ strong support for the military and anticommunist policies.¹²⁸

The global economic crisis emboldened the conservative party to push aside concerns for justice and human rights. The new 2007 presidential administration vowed to facilitate rapid economic recovery and improve relations with the United States.¹²⁹ In backing away from reconciliation initiatives generally, it recharacterized 4.3 as a communist uprising and stalled initial reparative momentum.¹³⁰ Attempts to scuttle the initiative,

¹²³ Kim & Selden, *South Korea’s Embattled Truth and Reconciliation Commission*, *supra* note 22, at 3.

¹²⁴ *Id.* at 5.

¹²⁵ Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 544–47.

¹²⁶ Government Bodies Stall in Implementation of Truth and Reconciliation Recommendations, HANKYOSHE (Apr. 15, 2009, 10:06 AM), http://english.hani.co.kr/art/english_edit/ov_national/349865.html (“The ‘success’ of the TRCK is measured by how properly their recommendations to the government are carried out. In that sense, the current situation shows that a long and perilous road lies ahead in voicing the truth of history and leading the way towards reconciliation.”).

¹²⁷ See Kim, *The Long Road Toward Truth and Reconciliation*, *supra* note 59, at 543–47; Kim & Selden, *South Korea’s Embattled Truth and Reconciliation Commission*, *supra* note 22, at 3. See generally TRUTH & RECONCILIATION COMMISSION 2009 INTERIM REPORT, *supra* note 93.

¹²⁸ See Baik, *Justice Incomplete*, *supra* note 74, at 110–11 (noting conservative party opposition to the Commission); Kim & Selden, *South Korea’s Embattled Truth and Reconciliation Commission*, *supra* note 22, at 5 (“The Commission was to reveal the processes and unearth the incidents, but not create a case for prosecution of individuals whose crimes were, for the most part, committed more than half a century earlier.”).

¹²⁹ See Tara J. Melish, *Implementing Truth and Reconciliation: Comparative Lessons for the Republic of Korea*, 39 BUFF. HUM. RTS. L. REV. 1, 8 n.23, 25 (2012) [hereinafter Melish, *Implementing Truth and Reconciliation*]; YAMAMOTO, *What’s Impeded Jeju 4.3 Social Healing?*, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4.

¹³⁰ See Melish, *Implementing Truth and Reconciliation*, *supra* note 129, at 25; Eric K. Yamamoto, Miyoko Pettit & Sara Lee, *Unfinished Business: A Joint South Korea and United*

however, met growing resistance. Jeju families and grassroots justice advocates launched multifaceted political and educational efforts to rejuvenate the social healing movement.¹³¹

E. Political and Legal Efforts to Rejuvenate 4.3 Reparative Justice

Victims' associations worked with documentary filmmakers, teachers, journalists and community advocates to poignantly portray the persisting harms of the Jeju 4.3 Tragedy and rejuvenate the social healing movement.¹³² Their works emphasized themes of hardship, resolve, yearning, sorrow, survival, preservation and resilience. Scholars, too, weighed in with assessments of the halting progress of the reparative initiative and with intensified calls for United States engagement.¹³³ With building momentum for further redress, the National Assembly and President Geun-Hye Park established an annual National Day of 4.3 Remembrance in 2014.¹³⁴

The justice movement also reached the United States and beyond. Jeju survivors, justice advocates and Korean and American scholars traveled to the U.S. Congress in 2015, 2016 and 2017 to deliver the translated National 4.3 Committee's Report and present a Petition for a Joint United States and South Korea 4.3 Task Force.¹³⁵ A Smithsonian affiliate museum showcased a Jeju artist's 4.3 artwork collection,¹³⁶ the Sundance Film Festival showed a

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, 65 (2014) [hereinafter Yamamoto, Pettit & Lee, *Unfinished Business*].

¹³¹ YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 181–83.

¹³² See YAMAMOTO, *What's Revitalized Jeju 4.3 Social Healing?*, in *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4.

¹³³ See, e.g., Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 130; Tag-ung Baik, *Social Healing Through Justice-Jeju 4.3 Case*, in *JEJU 4.3 GRAND TRAGEDY DURING "PEACETIME": KOREA: THE ASIA PACIFIC CONTEXT* ('947-2016) 283 (Chang Hoon Ko, Eric K. Yamamoto, Kunitiko Yoshida et al. eds., 2016).

¹³⁴ See Darren Southcott, *Jeju Massacre Finally 'Out of the Shade': 4.3 Peace Foundation Director Buoyed by National Memorial Day Designation and Potential Presidential Visit*, *JEJU WKLY.* (Mar. 26, 2014, 3:38 PM), <http://www.jejuweekly.com/news/articleView.html?idxno=3930>; YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 183–85 (discussing grassroots 4.3 justice advocates' efforts to raise national consciousness).

¹³⁵ YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 185 ("Scholars, journalists and community advocates, too, publicized 4.3 history and crafted beginning recommendations for next steps through popular and academic publications and through convenings in Jeju, Hawai'i, North Carolina, New York, Chicago and Washington, D.C. almost every year from 2013 through 2019.")

¹³⁶ Anne Hilly, *Sharing Trauma and Healing*, *JEJU WKLY.* (Feb. 3, 2014, 12:46 PM), <http://m.jejuweekly.com/news/articleView.html?idxno=3845>.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 27
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

4.3 documentary¹³⁷ and justice advocates' and environmentalists' promotion of "dark tourism" challenged tourists to discover the hidden history of atrocities on the island.¹³⁸ All of these efforts laid a "ground-level foundation for elevated international awareness."¹³⁹

III. JEJU DISTRICT COURT'S REOPENING OF THE EIGHTEEN
SURVIVORS' 4.3 CONVICTIONS – RETRIALS, NEW JUDGMENT, IMPACTS

The Jeju court's reopening of the mass military convictions of eighteen 4.3 survivor-petitioners emerged in this partially stalled, partially rejuvenated juncture in the Jeju 4.3 social healing process. The eighteen survivor-petitioners, summarily convicted and harshly imprisoned seventy years earlier, displayed immense courage and determination to remove the stain of disloyalty from their family records and the records of thousands of others. And in a rare coalescing moment, the prosecution and defense united in a desire to impel the Jeju court to right a historic injustice for the benefit of both individual claimants and Korean society at large – decades after the convictions of 2,530 Jeju residents.

A. 2017 *Petition to Reopen 70-Year-Old 4.3 Mass Military
Commission Convictions – a Comparative Reference to the
Japanese American Incarceration Coram Nobis Cases*

In April 2017, in the glare of the national media, the eighteen survivors petitioned the Jeju District court to expunge their unlawful mass military convictions for ostensible disloyalty.¹⁴⁰ Earlier Korean criminal cases, however, had not addressed the propriety of a Korean court's reopening of decades-old mass convictions as part of a present-day reconciliation initiative.¹⁴¹ During a preliminary hearing to consider whether to reopen the eighteen survivors' cases, Jeju District Judge Jegal Chang asked Professor Chang Hoon Ko of Jeju National University, an advocate for the petitioners,

¹³⁷ Jinmi Kim, "Jiscent" Selected for Sundance Film Festival's World Cinema Dramatic Competition, JEJU WKLY. (Dec. 3, 2012, 3:05 PM), <http://www.jejuweekly.com/news/articleView.html?idxno=2871>.

¹³⁸ Ean Jung Kang, *Experience and Benefit Derived From a Dark Tourism Site Visit: The Effect of Demographics and Enduring Involvement* (Ph.D. dissertation, University of Queensland 2010) (Academia.edu).

¹³⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 182.

¹⁴⁰ See Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 33.

¹⁴¹ *Id.* at 32.

for assistance in identifying international precedents for reopening mass incarceration cases decades later as part of a larger reparative justice initiative. According to Ko, "even though [the judge] ha[d] tried to find some similar cases . . . from both Jeju 4.3 Research Institute and professors from Law School of Jeju National University for [the past] year, it was so difficult for [him] to do it."¹⁴²

Professor Ko then facilitated the translation and submission to the court¹⁴³ of three chapters from Professor Yamamoto's 2013 book *Law and the Japanese American Internment*.¹⁴⁴ Those chapters detailed the mid-1980s *Korematsu*, *Hirabayashi* and *Yasui* coram nobis petitions filed in U.S. courts to reopen and vacate World War II-era convictions for resisting the United States incarceration of 120,000 Japanese Americans on falsified grounds of military necessity.¹⁴⁵ Specifically, those extraordinary coram nobis cases in

¹⁴² *Id.*; see also YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 186.

¹⁴³ Judge Chang asked Professor Ko "to submit one of [the] similar world case[s] for reference [to the] retrial of Jeju 4.3 Survivors" because he had thus far "failed to find meaningful world cases . . . to compare Jeju 4.3 survivors with other cases." Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 32. Ko believed it would be helpful to compare U.S. coram nobis cases reopening the WWII convictions of the Japanese American incarceration resistors that contributed to the U.S. Civil Liberties Act of 1988. Ko asked Professor Yamamoto for permission to translate and submit chapters from *Race, Rights and Reparation: Law and the Japanese American Internment*. Yamamoto granted permission to submit to the Jeju court the translation of the context and particulars of the 1940s U.S. mass Japanese American incarceration and the 1980s coram nobis case reopenings. See *id.* at 32–33.

¹⁴⁴ YAMAMOTO, CHON, IZUMI, KANG & WU, LAW AND THE JAPANESE AMERICAN INTERNMENT, *supra* note 10; see YAMAMOTO, BANNAI & CHON, LAW AND THE JAPANESE AMERICAN INCARCERATION, *supra* note 15.

¹⁴⁵ See *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984); *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); *Yasui v. United States*, 772 F.2d 1496 (9th Cir. 1985). A coram nobis writ is a rarely employed ancient writ of error.

The writ aims to eliminate the continuing stigma of a "manifestly unjust" conviction arising out of egregious governmental (usually prosecutorial) misconduct with continuing adverse consequences. See *United States v. Morgan*, 346 U.S. 502 (1954). To obtain coram nobis relief for manifest injustice, a petitioner must prove: "(1) a more usual remedy is not available [the claimant is no longer in custody, foreclosing habeas corpus relief]; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character." *Hirabayashi v. United States*, 627 F. Supp. 1445, 1454–55 (W.D. Wash. 1986).

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 29
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

U.S. courts undercut the Supreme Court's 1943 and 1944 rulings upholding the convictions of the three resisters of the U.S. government's forced removal and mass racial incarceration.¹⁴⁶ According to Ko, submitting the translated account to the Jeju court in 2018 enabled the petitioners' lawyer to "argue to the judge the relevance of the Korematsu coram nobis case based on his comparison with the [eighteen] cases filed in the Jeju court."¹⁴⁷

1. *1980s United States Coram Nobis Cases as "International Precedent"*

Based on newly discovered World War II government documents showing officials' fabrication of key aspects of the government's national security justification and deliberate misrepresentations to the Supreme Court, the federal courts in the mid-1980s granted the coram nobis petitions and vacated Korematsu's, Hirabayashi's and Yasui's convictions.¹⁴⁸ Overturning these resisters' convictions forty years later effectively cleared the names of the thousands of innocent Japanese Americans wrongly removed and incarcerated on false claims of disloyalty.¹⁴⁹ The federal courts' findings –

ERIC K. YAMAMOTO, IN THE SHADOW OF KOREMATSU: DEMOCRATIC LIBERTIES AND NATIONAL SECURITY 37 n.3 (2018) [hereinafter YAMAMOTO, SHADOW OF KOREMATSU] (alteration in original).

¹⁴⁶ See *Korematsu v. United States*, 323 U.S. 214, 223–24 (1944); *Hirabayashi v. United States*, 320 U.S. 81, 105 (1943); *Yasui v. United States*, 320 U.S. 115, 117 (1943); see also LORRAINE K. BAKKAI, ENDING CONVICTION: FRED KOREMATSU AND HIS QUEST FOR JUSTICE 180–89 (2015); JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES (Peter Irons ed., 1989).

¹⁴⁷ Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 32.

¹⁴⁸ Finding "manifest injustice," Judge Patel vacated Korematsu's decades-old conviction to cleanse the judicial record infected by egregious government misconduct in falsifying the record on military necessity and making deliberate misrepresentations to the Supreme Court. See *Korematsu*, 584 F. Supp. at 1417. Other courts did the same for Hirabayashi and Yasui. Those courts vacated these resisters' convictions for violating the military orders, and, by extension, cleared the names of all who had been incarcerated en masse. *Hirabayashi*, 828 F.2d at 608; *Yasui*, 772 F.2d at 1499–500; see YAMAMOTO, SHADOW OF KOREMATSU, *supra* note 145, at 37–50.

¹⁴⁹ The 1980s U.S. coram nobis litigation proved that "the government had deliberately misled the courts and the American public about the ostensible threat posed by Japanese Americans, effectively deploying them as scapegoats." Eric K. Yamamoto & Rachel Oyama, *Masquerading Behind a Facade of National Security*, 128 YALE L.J.F. 688, 694 (2019). It also revealed that World War II executive branch leaders "had helped distort and fabricate pivotal facts." *Id.* at 695. In granting Korematsu's coram nobis petition, U.S. District Judge Patel affirmed a congressional investigative commission's finding that "race prejudice, war hysteria

bolstering the 1983 findings of the Congressional investigative commission¹⁵⁰ – laid the judicial cornerstone for the U.S. Civil Liberties Act of 1988.¹⁵¹ The Act mandated a Presidential Apology, \$20,000 reparations payment to each survivor and the creation of a Public Education Fund¹⁵² – all as part of an initiative to heal the long-standing wounds of grave injustice and to prevent “it” from happening again.

Through the translated scholarship on the Japanese American incarceration *coram nobis* cases, the 4.3 petitioners offered Judge Chang an international precedent¹⁵³ – a type of template – for reopening manifestly unjust criminal convictions, decades after-the-fact, as an integral element of an ongoing reparative justice initiative.¹⁵⁴ In a fashion similar to the *coram nobis* litigation, the Jeju survivor-petitioners more broadly sought to vindicate all 2,500 villagers wrongly mass convicted and punished. And, in important ways, they sought to uplift the justice claims of the 30,000 killed

and a failure of political leadership” were the underlying causes of this manifest injustice. *Id.* at 698.

¹⁵⁰ Japanese American incarceration redress advocates determined that extensive public education would be needed to advance the broader legislative campaign for reparations. Rather than continuing to pursue direct redress legislation in Congress, despite disagreements, redress leaders opted to raise public consciousness and to galvanize the political redress movement nationwide. They supported the 1981 establishment of the Congressional Commission on Wartime Relocation and Internment of Civilians. The Commission heard testimony from hundreds who had been incarcerated and analyzed reams of documents. It concluded in 1983 that the forced removal and mass incarceration of Japanese Americans during World War II was not based on military necessity but rather on war hysteria, race prejudice and a failure of political leadership. See PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (1982-83). The *coram nobis* litigation overlapped with the Commission’s investigation, with each bolstering the other and with the combination generating far-reaching publicity. The resulting evolution of public consciousness helped change judges,’ legislators’ and the public’s view of the injustice of the mass racial incarceration and laid a foundation for public support for the Civil Liberties Act of 1988. See generally MITCHELL T. MAKI, HARRY H. L. KITANO & S. MEGAN BERTHOLD, *ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS OBTAINED REDRESS* (1999); YAMAMOTO, BANNAI & CHON, LAW AND THE JAPANESE AMERICAN INCARCERATION, *supra* note 15, at 337–47.

¹⁵¹ YAMAMOTO, BANNAI & CHON, LAW AND THE JAPANESE AMERICAN INCARCERATION, *supra* note 15, at 337–47. According to lobbyist John Tateishi, former President of the Japanese American Citizens League, middle ground congresspersons had rejected redress legislation because of the 1944 Korematsu Supreme Court ruling. But after the *coram nobis* cases, “I actually had some members of Congress say to me well, you know, [given the recent *coram nobis* decisions] if that’s the way the country is going, then, I guess I” can support redress. *Id.* at 343.

¹⁵² Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903.

¹⁵³ Ko & Cho, *Some Insights on 18 Jeju 4.2 Survivors’ Retrial Cases*, *supra* note 2, at 32.

¹⁵⁴ See *id.* at 35–36.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 31
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

and thousands of others tortured or forcibly removed from their villages.¹⁵⁵

In some respects, the comparison was apt. The forced removal and mass incarceration of Japanese Americans in U.S. concentration camps and the 4.3 Tragedy on Jeju island both began in the violence of the 1940s.¹⁵⁶ Both involved grave legal system injustices as key components of a government's mass civil liberties and human rights transgressions, with devastating damage to the survivors, families and communities.¹⁵⁷ Followed by decades of government silence.¹⁵⁸ Both involved the United States and belatedly maturing demands for healing persisting wounds of individuals and communities.¹⁵⁹ Both eventually turned to investigative commissions, and then the judicial and legislative branches, citing newly uncovered evidence of grave injustice and invoking democracy's tenets of the rule of law and reparative justice.

In other respects, the situations differed notably. "The scale, locale, military involvement and impact upon civilians, communities and societal institutions contrast[ed] significantly [T]he breadth and intensity of political support for U.S.-engaged redress likely differ[ed] as well."¹⁶⁰ Equally important, the United States role in each controversy differed, too. The World War II Japanese American incarceration occurred on U.S. soil and involved mostly American citizens, implicating American constitutional violations, while 4.3 occurred in South Korea and was orchestrated and overseen by the U.S. and South Korean governments, implicating international human rights abuses.¹⁶¹ The U.S. government incarcerated well over 120,000 Japanese Americans while 30,000 Jeju residents were killed and many more were tortured and injured, with thousands more detained by South Korean security forces under the initial direction, and later operational supervision, of the U.S. Military authorities.¹⁶²

¹⁵⁵ See *id.* at 32–36.

¹⁵⁶ Yamamoto, Katano, Oyama & Crowell, 2018 *Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases*, *supra* note 16, at 178.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See *id.*

¹⁶⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 205.

¹⁶¹ See *id.*

¹⁶² See generally YAMAMOTO, BANNAI & CEON, LAW AND THE JAPANESE AMERICAN INCARCERATION, *supra* note 15; Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 32–36.

Advocates for the eighteen 4.3 petitioners presented this calibrated comparative account of the U.S. *coram nobis* reopening litigation¹⁶³ amid the intensifying political push for far-reaching 4.3 social healing. And Jeju District Judge Chang responded in extraordinary fashion.

B. *The Jeju District Court's 2018 Reopening Order*

In September 2018, Judge Chang set aside the seven-decades-old convictions.¹⁶⁴ After hearing the survivors' preliminary testimonies, the Jeju Judge ordered retrials to ascertain whether the military tribunals acted as little more than kangaroo courts, summarily convicting over 2,500 villagers en masse of "espionage" and "rebellion" without charges, evidence or fair hearings.¹⁶⁵

1. *Survivor Accounts of 4.3 Mass Military Commission Convictions*

For the first time in nearly seventy years, the survivor-petitioners spoke openly in court about their suffering.¹⁶⁶ Survivors' testimonies revealed that security forces arbitrarily arrested them and often coerced confessions through torture "without legitimate justification, proper hearings, or trial."¹⁶⁷

One account recited the experience of a young boy tortured by soldiers and then imprisoned without charges.¹⁶⁸ Soldiers broke into the home of survivor-petitioner Won-Hyu Boo, then a fifth-grader, tied him to a cot and tortured him through electric shock.¹⁶⁹ Mr. Boo testified in the Jeju District Court in 2018, "I was tortured many times by military men. During the investigation, they asked me 'why did you cooperate with the guerilla of Mt. Halla?' and 'why did you put [the] flyer on the wall?' I responded negatively to those accusations. They beat me with a stick."¹⁷⁰

Mr. Boo lamented that neither the tribunal nor police informed him of the charges against him. Or what he had done wrong.¹⁷¹ At the time, Mr. Boo

¹⁶³ Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 32–33, 36–38.

¹⁶⁴ 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 118.

¹⁶⁵ *See id.* at 119, 122.

¹⁶⁶ Min-kyoung Kim, [Interview] *Retrials to Begin for 18 Former Inmates Incarcerated After Jeju Uprising in 1948*, HANKYOREH (Oct. 29, 2018, 5:56 PM) [hereinafter Kim, *Retrials to Begin for 18 Former Inmates*], https://english.hani.co.kr/arti/english_edition/e_national/867861.html.

¹⁶⁷ Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 33.

¹⁶⁸ *Id.* at 33–34.

¹⁶⁹ *Id.* at 34.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

was a student at Jeju Agricultural School¹⁷² with dreams of becoming a veterinarian.¹⁷³ Mr. Boo testified that the military commission convicted forty to fifty defendants at the same trial.¹⁷⁴ The military judge called his name but did not ask him any questions. Later "[w]e assembled in the yard of the prison and one policeman . . . gave us sentences like 'A is one year, B is five years, C is seven years.'"¹⁷⁵ His conviction and imprisonment destroyed his life prospects and forever shattered his dreams.¹⁷⁶

Another survivor-petitioner spoke of a boy – his family murdered by military police – harshly imprisoned for seven years.¹⁷⁷ Mr. Dong-Su Park recounted desperately trying to survive in his rural mountain village as a sixteen-year-old:

There was an evacuation order. We were told to move to coastal villages. However, my father delayed moving to coastal villages because he thought he needed to bring some grains to feed his family. But when he was ready, he couldn't move because of the curfew. He had no choice but had to hide in the mountains. My father was killed by the army, and my older brother was killed, too. I was left alone in the mountain. I became an orphan overnight. I was caught by the police while wandering around the mountainous area.¹⁷⁸

The police who caught him with his long hair proclaimed they "caught the worst of the armed guerrillas" and severely tortured him.¹⁷⁹

Mr. Park testified that the military tribunals not only tried over a hundred people on the same day as him, but also did not sentence him until he arrived at Incheon Prison.¹⁸⁰ "They called each of us and gave sentences ranging from [fifteen] years to [five] years . . . Now I think that it was really unfair to prosecute a person who didn't know anything on a charge of violating the national security law and given a [seven]-year sentence. I don't know how to

¹⁷² Jeju Agricultural School is where the headquarters of the 11th Regiment was located. 4.3 INVESTIGATION REPORT, *supra* note 3, at 18.

¹⁷³ Ko & Cho, *Some Insights on 18 Jeju 4.2 Survivors' Retrial Cases*, *supra* note 2, at 34.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *See id.*

¹⁷⁷ *Id.* at 34–35.

¹⁷⁸ *Id.* at 35.

¹⁷⁹ *Id.* at 34.

¹⁸⁰ *Id.* at 35.

describe my feeling.”¹⁸¹

All eighteen survivor-petitioners were either forcefully captured by armed forces, many while desperately searching for shelter, or arrested after turning themselves in in exchange for a false promise of amnesty (for crimes not actually committed).¹⁸² Military personnel then detained all survivors for extended periods, interrogating them under cruel conditions.¹⁸³

The survivors’ testimonies also revealed the 1948-49 military tribunals’ “brute force and disregard[] [for] legal protocol.”¹⁸⁴ Many survivors did not receive any trial, and those who did later attested that their trials were held in large groups of up to 300 people in places including “a big lecture hall” and “a yard near the police station and Gwandeokjeong Pavilion.”¹⁸⁵ For many petitioners, a soldier merely called their name, asked a few questions and concluded without informing them of their sentence – or even if they were actually being tried.¹⁸⁶ None received legal representation, nor were any allowed to present a defense.¹⁸⁷

Mr. Oh testified that he learned in Daegu Prison that the military tribunal sentenced him to fifteen years for “violating the ‘National Defense and Security Law.’”¹⁸⁸ Mr. Park did not hear about his seven-year sentence until the Incheon Prison warden announced the sentences for all.¹⁸⁹ Mr. Jeong testified that upon arriving at Mapo Prison, “the warden told him of his indefinite sentence.”¹⁹⁰ Many inmates needed to talk with each other or ask prison guards to learn their sentences.¹⁹¹

The survivors’ compelling stories, recited at a preliminary Jeju court

¹⁸¹ *Id.*

¹⁸² 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 122–24. Ms. Han testified that she was trying to shelter herself as her village was being burned down when the military police apprehended her. *Id.* at 123. For Mr. Yang, he decided to leave his mountain village and turn himself in once the military police killed his brother and sister-in-law. *Id.* at 124.

¹⁸³ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 586–606.

¹⁸⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 185.

¹⁸⁵ 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 123–24.

¹⁸⁶ *Id.* Mr. Jo testified that the military tribunals sentenced him with “about 105 people . . . without knowing whether it was a trial or not.” *Id.* at 125. During Mr. Park’s “trial” in a police yard with fifty others, a man in plain clothes casually stated, “you get a few years, and you get a few years You’re getting three years in prison because you’re guilty of espionage.” *Id.* at 124.

¹⁸⁷ See *id.* at 122–24.

¹⁸⁸ *Id.* at 124.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

convening, weighed heavily on Judge Chang.¹⁹² After hearing their testimony, Judge Chang acknowledged the continuing suffering, recognizing that “some [of the petitioners] were incarcerated [and] suffered harsh treatment such as physical abuse and torture during their question[ing].”¹⁹³ Judge Chang also observed that “[t]heir testimony was candid and natural, with no sense of embellishment or exaggeration.”¹⁹⁴ Accordingly, he cited all eighteen petitioners’ testimonies in his preliminary order, conveying the survivors’ own words and painting a compelling picture of their injuries and emotional trauma.¹⁹⁵

The accounts of Dong-Su Park, Won-Hyu Boo and others, reflected the stories of all eighteen survivors-petitioners.¹⁹⁶ Moreover, those accounts gave an empowering voice to the other 2,500 convicted villagers who could not speak for themselves, including numerous women who suffered sexual violence.¹⁹⁷ Many were executed at the time or simply disappeared, and others who survived passed away before they could petition to clear their

¹⁹² See *id.* at 122; Kim, *Retrials to Begin for 18 Former Inmates*, *supra* note 166.

¹⁹³ Min-kyoung Kim, *Retrials to Be Held for Victims of Illegal Detention and Torture During Jeju Uprising*, HANKYOREH (Sept. 4, 2018, 5:50 PM), https://english.hani.co.kr/arti/english_edition/e_national/860653.html. “Many more were tortured (including horrific sexual violence) and detained in awful conditions (at times 100 persons in a jail cell).” YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 110.

¹⁹⁴ Kim, *Retrials to Begin for 18 Former Inmates*, *supra* note 166; see 2018 *Order Reopening 4.3 Mass Convictions*, *supra* note 16, at 122.

¹⁹⁵ 2018 *Order Reopening 4.3 Mass Convictions*, *supra* note 16, at 122–24.

¹⁹⁶ See *id.*; see also Ho-joon Huh, *An Elderly Woman’s Terrifying Memories of Being Tortured by Soldiers at 12 Years Old*, HANKYOREH (Oct. 28, 2018, 1:21 PM) [hereinafter Huh, *An Elderly Woman’s Terrifying Memories of Being Tortured by Soldiers at 12 Years Old*], http://english.hani.co.kr/arti/english_edition/e_national/867670.html (“When my stomach began to fill up with the water, they would push down on my stomach and knock the wind out of me. Then they would fill a bucket with water and splash it over me to bring me back to consciousness They prodded my legs with a bamboo stick with a buzzing piece of metal on the end that sent pus streaming down my legs. They would jab my breasts and shoulders, too, which made them swell.”); Ho-joon Huh, *Yong Gyeong-sook Lost Her Vision Due to Brutal Torture During the Apr. 3 Jeju Massacre*, HANKYOREH (Jan. 6, 2019, 6:58 PM) [hereinafter Huh, *Yong Gyeong-sook Lost Her Vision Due to Brutal Torture*], http://english.hani.co.kr/arti/english_edition/e_national/877213.html (story of 26-year-old woman who stayed silent through five days of brutal torture to save her fellow villagers).

¹⁹⁷ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 603–05.

criminal records.¹⁹⁸

2. Judge Chang's Retrials Order

According to retired professor and observer Sang-Soo Hur, Judge Chang's September 2018 decision to order retrials surprised many in South Korea, especially lawmakers.¹⁹⁹ Reopening the seventy-year-old convictions for retrials confirmed the illegality of the military tribunals' actions in 1948-1949,²⁰⁰ and it served as significant political leverage for legislatively revising the 4.3 Special Act to address reparations.²⁰¹

In his retrial order, Judge Chang determined that the military tribunals violated the survivors' rights to a fair trial.²⁰² He observed survivors who "didn't have a trial in Jeju Island at the time, and . . . learned about the sentence after . . . transferr[ing] to the main[land] . . ."²⁰³ Judge Chang also noted that nearly half of the testifying survivors "had never received anything to call a trial."²⁰⁴

Discovered records confirmed many of the survivors' 4.3-era convictions – reciting names, age, occupation, residence, plea and verdict, adjudication date, sentence and confinement in prison.²⁰⁵ The government, however, could not find other crucial documents – "indictments, records of trial and ruling, prison transfers and other prison records."²⁰⁶ That loss, Judge Chang determined, was the government's responsibility. The survivors "[could not] be held responsible" for the loss of the government's historical records at this stage of the litigation.²⁰⁷

Judge Chang ordered the retrials bearing in mind that retrials could facilitate the discovery of documents that might, or might not, directly

¹⁹⁸ See *id.* at 541–42, 583–86; Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 128; 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 122–24.

¹⁹⁹ Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 129.

²⁰⁰ *Id.*; see 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 121–22.

²⁰¹ Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 129.

²⁰² 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 118 ("[I]t is sufficient to recognize that the actual justification or procedural legitimacy of the claimants were violated, and that there was a 'judgment by the judicial authorities' concerning their treatment, and that the petitioners were transported to the mainland and were detained in respective prisons.")

²⁰³ *Id.*

²⁰⁴ *Id.* at 119.

²⁰⁵ *Id.* at 117. "The documents are from the Registry of Convicted Persons from the 12th month of the year 4281 (1948) and the 7th month of the year 4282 (1949) & the criminal records of Claimants. Park, Park, Bu, Yang, Bang, Olt, Olt, Jeong, Jo, and Han." *Id.* at 118.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 119.

confirm the original convictions.²⁰⁸ Acknowledging the risks for the petitioners and families, he noted, “descendants of those who were killed by the armed forces . . . are also present, in some cases the restoration of their identity through the retrial could be another wound to them.”²⁰⁹ Nevertheless, with further inquiry and fact-finding in mind, Judge Chang even-handedly determined that retrials were necessary to investigate the military tribunals’ espionage and rebellion convictions and assure just treatment of the petitioners in a present-day court.²¹⁰

C. Jeju District Court’s Retrials

After the Jeju District Court ordered retrials, the petitioners-survivors’ pro bono lawyer expressed how the new trials deeply affected him.²¹¹ Attorney Jac-Seong Im admitted that he had initially “figured a retrial of these former inmates would be impractical, given [they are] in their 80s and 90s.”²¹² The survivors’ determination to clear their names before they passed away, however, made clear the petitions were about “restoring reputations.”²¹³ For Attorney Im, the survivors’ opportunity to speak openly to the Jeju court about their prolonged suffering “was itself a kind of healing.”²¹⁴

1. Startling Prosecutor Request to Dismiss the Indictments

The Jeju District Prosecutor’s Office decided not to appeal the Court’s retrials order, and retrials quickly commenced in late 2018.²¹⁵ The petitioners presented the evidence described in Part III. In her statement to the court – and to the press – one survivor conveyed both the angst and the strength of the petitioners. She asked Judge Chang, “help ensure for my grandchildren that there is no record stating that their grandmother has a criminal history

²⁰⁸ See *id.* at 117.

²⁰⁹ *Id.* at 120.

²¹⁰ See *id.* at 119–20, 122.

²¹¹ Kim, *Retrials to Begin for 18 Former Inmates*, *supra* note 166.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Han-sol Ko, *Former Inmates Unjustly Incarcerated During Jeju Massacre to Sue S. Korean Government*, HANKYORH (Feb. 24, 2019, 8:33 AM) [hereinafter Ko, *Former Inmates Unjustly Incarcerated During Jeju Massacre to Sue S. Korean Government*], http://english.hani.co.kr/arti/english_edition/e_national/883320.html; Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 128 (“We have decided not to appeal to the court immediately, respecting the court’s decision to reopen the retrial case on Jeju April 3rd Events.”)

and spent time in prison."²¹⁶ The "path we have traveled to this point has been a tremendously perilous and difficult [one]," another survivor added.²¹⁷ "What the [eighteen] of us want is to be acquitted."²¹⁸

In December 2018 the retrials took a surprising turn.²¹⁹ In closing arguments, Prosecutor Gwang-Byeong Jeong made a startling request.²²⁰ Instead of asking for a guilty verdict, he asked the court to dismiss the indictments against all eighteen defendants.²²¹ Prosecutor Jeong voiced his wish that rather than produce renewed convictions, the retrials could help heal the survivors' persisting wounds, and the wounds of Korean society itself, by "sharing in some small way in the bitter suffering of these people, and in the suffering of history and the Korean nation, and to bring the truth of what happened then to light as much as possible" now.²²²

2. *Order Dismissing Indictments and Declaring Mass Military Convictions Unlawful*

In January 2019 the Jeju District Court formally dismissed the indictments of all eighteen survivors.²²³ Judge Chang's dismissal of all charges against the survivor-petitioners served as a landmark human rights ruling for South Korean courts.²²⁴ He found the actions of the 1948-1949 military tribunals violated criminal procedures for a fair trial,²²⁵ and, most significant, he invalidated the survivors' 4.3-era convictions for "Crime of Rebellion" and violation of the "Criminal and Defense Security Act."²²⁶ Judge Chang's ruling marked the "first decision by the judiciary that recognizes the injustice" of those convicted en masse amid the Jeju 4.3 Tragedy.²²⁷

More particularly, Judge Chang formally addressed two aspects of the arraignments: 1) whether the charges were specific and 2) whether the necessary procedural provisions were complied with in bringing the

²¹⁶ Kim, *Prosecutors Request Dismissal of Indictments Against Defendants Connected with Jeju Uprising*, *supra* note 17.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ See 2019 *Order Dismissing Indictments*, *supra* note 1, at 100; Lee, *Jeju Massacre Victims Get Their Names Cleared in Court*, *supra* note 19; Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 130.

²²⁴ Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 128; see 2019 *Order Dismissing Indictments*, *supra* note 1, at 100.

²²⁵ 2019 *Order Dismissing Indictments*, *supra* note 1, at 99–100.

²²⁶ *Id.* at 98, 100.

²²⁷ Hur, *Historical Significances of Opening Decision for Retrial*, *supra* note 20, at 128.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 39
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

defendants to court.²²⁸ First, Judge Chang straightforwardly concluded that the government did not bring specific charges against the defendants given the absence of evidence “confirm[ing] exactly what charges the defendants have led to the court-martial.”²²⁹ Second, Judge Chang concluded that the military tribunals failed to comply with procedural requirements in charging and convicting the defendants.²³⁰ He ascertained that 871 civilians suffered through trials “in the course of [twenty-five] days and [twelve] court sessions” in the first tribunal and 1,659 civilians “in the course of [fifteen] days and [ten] court sessions” during the second tribunal.²³¹

Most significant, Judge Chang found it likely that biased military tribunals “accepted the opinion of the police without a preliminary hearing and arranged the decision[s] in advance.”²³² He then concluded that the sheer number of individuals summarily convicted in such a “short time frame” made it “impossible to conclude that preliminary investigations and indictment delivery procedures were properly observed.”²³³ The Jeju judge thus declared that all eighteen survivors-petitioners’ military commission convictions were unlawful, and he dismissed the seventy-year-old indictments.²³⁴

Judge Chang employed largely formalist legal language in his orders. Yet, he also revealed a jurisprudential reliance on critical legal precepts.²³⁵ The survivors’ compelling personal narratives significantly impacted his decision-making – Judge Chang incorporated all eighteen testimonies into his initial order, noting the survivors’ powerful stories.²³⁶ He also considered the surviving family members of those killed by the armed forces.

²²⁸ 2019 Order Dismissing Indictments, *supra* note 1, at 98–100.

²²⁹ *Id.* at 99.

²³⁰ *Id.* at 99–100.

²³¹ *Id.* at 100 (“[I]t is difficult to estimate that the procedures of preliminary investigation and delivery of the bill of indictment were followed, with the collective court-martialing of such a large number of people in a short period of time”).

²³² *Id.*

²³³ *Ko, Jeju Court Rules to Erase Red Mark on Jeju Uprising Prisoners*, *supra* note 21; see 2019 Order Dismissing Indictments, *supra* note 1, at 100.

²³⁴ 2019 Order Dismissing Indictments, *supra* note 1, at 100. According to Article 327 section 2 of the Criminal Procedure Act, “the indictment against the accused is applicable when ‘the procedure for filing an appeal is invalid in violation of legal regulations.’” *Id.*

²³⁵ See D. Kapua’ala Sprout, *Wai Through Kāhūwāi: Water for Hawai’i’s Streams and Justice for Hawaiian Communities*, 95 MARQ. L. REV. 127 (2011) (discussing courts and critical legal analysis).

²³⁶ 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 122–24.

acknowledging their attendance at trial and highlighting the restoration of their reputations.²³⁷ Finally, Judge Chang contemplated the larger justice implications of his ruling within the context of social, legal and political efforts to heal the continuing wounds of Jeju 4.3.²³⁸

In doing so, the Jeju court effectively cleared the names of all 2,530 villagers wrongfully convicted en masse by the 4.3 military tribunals.²³⁹ One survivor-petitioner spoke for herself but also for all. "The red mark has been erased from our names, and all the stigma of having been in prison has been lifted."²⁴⁰ For decades, these survivors and family members lived ostracized as "second-class citizens" and "untouchables."²⁴¹ "I endured life in prison without the kind of trial we saw today. That left me with bitterness in my heart, and now I have been acquitted. I don't [know] what else to say."²⁴²

3. *First-Ever Apologies by the Korean Military and Police*

Shortly after the Jeju court's extraordinary ruling, another historic turn of events followed. The Korean military and police – those most directly responsible – offered their first-ever apologies to the survivors and victim families on the 71st Anniversary of the 4.3 Jeju Tragedy.²⁴³

In 2019 the National Police Agency Commissioner General Gap-Ryong Min attended the memorial ceremony and offered a dedication of flowers, the first head of police in Korean history to participate in the memorial.²⁴⁴ In a widely-viewed guest book, General Min invoked the language of healing and reconciliation:

I humbly share my condolences before the spirits of all those innocent people killed during Jeju April 3, and I respectfully share my wishes that they rest in peace. I wish that the wounds of the tragic history will be healed soon according

²³⁷ *Id.* at 120.

²³⁸ See generally *id.* at 118–24 (considering, among others, intergenerational wounds; 2019 Order Dismissing Indictments, *supra* note 1, at 100; Ko & Cho, *Some Insights on 18 Jeju 4.3 Survivors' Retrial Cases*, *supra* note 2, at 36–38 (stressing international public attention as one crucial piece of the healing effort).

²³⁹ See 2019 Order Dismissing Indictments, *supra* note 1, at 98, 100.

²⁴⁰ Ko, *Jeju Court Rules to Erase Red Mark on Jeju Uprising Prisoners*, *supra* note 21.

²⁴¹ YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 169.

²⁴² Ko, *Jeju Court Rules to Erase Red Mark on Jeju Uprising Prisoners*, *supra* note 21.

²⁴³ Ho-joon Huh & Ji-won Noh, *Military and Police Offer First-Ever Apology to Victims of Apr. 3 Jeju Massacre*, HANKYOREH (Apr. 4, 2019, 3:58 PM) [hereinafter Huh & Noh, *Military and Police Offer First-Ever Apology to Victims of Apr. 3 Jeju Massacre*], http://english.hani.co.kr/arti/english_edition/e_national/888713.html.

²⁴⁴ *Id.*

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 41
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

to the truth and sincerely hope for reconciliation. I am deeply grateful to all who are committed to this effort, and we will strive to be an organization that further reflects upon past history for a democratic, human rights, and civil police force for the people of South Korea.²⁴⁵

In a formal public statement, the Ministry of Defense expressed “deep regret.”²⁴⁶ “We respect the spirit of the Special Jeju April 3 Act, and we express our deep dismay and condolences concerning the deaths of Jeju residents during the suppression process.”²⁴⁷ Later that day, Vice Defense Minister Choo-Suk Suh attended the memorial to meet with family members of 4.3 victims and conveyed that the Defense Ministry “feel[s] really sorry.”²⁴⁸ In the language of social healing, Vice Minister Suh pledged, “[f]rom now onward, we will do our best to actively join government efforts to verify the truth, restore the honor of those sacrificed and heal the scars and sorrow of the bereaved families.”²⁴⁹

Finally, Prime Minister Nak-Yon Lee vowed to restore the dignity of those affected by 4.3.²⁵⁰ In his commemorative address at the 2019 memorial, he promised, “[t]he Moon Jae-In administration has taken it as its historical mission to uncover the truth of Jeju April 3 and restore the dignity [of the victims] We will supply the truth of Jeju April 3 until the residents of Jeju say, ‘[t]hat’s enough,’ and we will restore [the victims’] honor.”²⁵¹

IV. THE JEJU DISTRICT COURT’S REPARATIONS-COMPENSATION
ORDER

A month after the Jeju District Court exonerated the eighteen survivors-

²⁴⁵ Police Commissioner Min Gap-Ryong Attends the 4.3 Memorial Service . . . “Bow Your Head and Mourn,” ASS’N FOR THE BEREAVED FAMILIES 4.3 VICTIMS (Apr. 3, 2019, 3:35 PM), http://www.jeu43.com/sbs/board.php?bo_table=article&wr_id=1314&ekattempt=2 (trans. by Suhyeon Burns).

²⁴⁶ (L.F.11) Defense Ministry Expresses ‘Deep Regret’ Over Jeju Incident, YONHAP NEWS AGENCY (Apr. 3, 2019, 7:33 PM) [hereinafter *Defense Ministry Expresses ‘Deep Regret’ Over Jeju Incident*], <https://en.yon.co.kr/view/AEN20190403004551315?section=search>.

²⁴⁷ Huh & Noh, *Military and Police Offer First-Ever Apology to Victims of Apr. 3 Jeju Massacre*, *supra* note 243.

²⁴⁸ *Defense Ministry Expresses ‘Deep Regret’ Over Jeju Incident*, *supra* note 246.

²⁴⁹ *Id.* The Vice Minister visited on behalf of Defense Minister Kyeong-Doo Jeong, who was visiting the U.S. at the time. *Id.*

²⁵⁰ Huh & Noh, *Military and Police Offer First-Ever Apology to Victims of Apr. 3 Jeju Massacre*, *supra* note 243.

²⁵¹ *Id.* (second and last alteration in original).

petitioners, the survivors sought compensation for their unlawful incarceration and psychological trauma.²⁵² In a follow-up filing with the court, the survivors based their claims on the Act on Criminal Compensation and Restoration of Impairment of Reputation, which authorizes acquitted defendants to request compensation for wrongful detention.²⁵³ The survivors' overturned convictions, together with Judge Chang's follow-up reparations-compensation order, bolstered hundreds of 4.3 families to come forward and request the same – exonerate their missing family members from their illegal military convictions.

A. Monetary Compensation for the Eighteen Petitioners-Survivors

In August 2019, Judge Chang awarded the eighteen survivors reparative damages collectively totaling \$4.4 million.²⁵⁴ He styled the monetary award as a form of "compensation." The award, although authorized by the Act,²⁵⁵ more broadly implicated reparative justice in its aim of restoring honor and reviving reputations in the context of the 4.3 events. Judge Chang crafted the award while considering the "historical significance" of the Jeju 4.3 Tragedy as well as the guidelines of the Act.²⁵⁶

The court apportioned the monetary award among the eighteen petitioners, with some receiving more than others.²⁵⁷ Individual compensation ranged from \$66,000 to \$1.2 million.²⁵⁸ Judge Chang considered the kind and length of detention; property loss sustained; loss of wages; mental suffering and

²⁵² Ko, *Former Inmates Unjustly Incarcerated During Jeju Massacre to Sue S. Korean Government*, *supra* note 215. The survivors' attorneys and advocates also submitted a request to the Jeju Prosecutors Office to "post the Jeju District Court's ruling exonerating the former inmates on the website of the Ministry of Justice." *Id.*

²⁵³ Act on Criminal Compensation and Restoration of Impaired Reputation, art. 26 (S. Kor.), translated in Korea Legislation Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=48260&lang=ENG.

²⁵⁴ Shim, *South Korea Jeju Massacre Victims Awarded \$4M in Damages*, *supra* note 27; Coote, *Exonerated Jeju Massacre Prisoners Fight to Right Korean History*, *supra* note 22.

²⁵⁵ See Act on Criminal Compensation and Restoration of Impaired Reputation, art. 26 (S. Kor.), translated in Korea Legislation Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=48260&lang=ENG.

²⁵⁶ Shim, *South Korea Jeju Massacre Victims Awarded \$4M in Damages*, *supra* note 27.

²⁵⁷ See *Court Orders S. Korea to Compensate Victim of Jeju Uprising*, KBS WORLD (Aug. 17, 2021), https://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=163625. Du-Hwang Kim's award is illustrative. The police coerced Du-Hwang Kim in 1948 into making a false confession that he joined the Workers' Party of South Korea. Consequently, the military tribunals convicted Kim on trumped-up charges of aiding rioters and served his prison term for fifteen months. In calculating Kim's award, the court multiplied the daily wage of \$58 (68,720 won) by five, and then by 450, the number of days Kim spent in prison.

²⁵⁸ Shim, *South Korea Jeju Massacre Victims Awarded \$4M in Damages*, *supra* note 27.

physical injuries during detention; intentions or errors of the police, prosecutor's offices and courts; and circumstances that constituted actual grounds for a not-guilty verdict.²⁵⁹

Viewed collectively, Judge Chang's compensation order reflected an acknowledgment of the imperative of economic justice for the eighteen survivors. It also intensified calls for 4.3 economic justice for all – particularly other survivors, bereaved families and Jeju communities as an integral part of the larger 4.3 social healing initiative.

B. The "Nation's Largest-Ever Trial" for 335 New Petitioners

The Jeju court's compensation awards catalyzed new filings. The Association of Surviving Family Members of Victims and Missing Persons from Jeju April 3 requested retrials of missing 4.3 victims who had been wrongly imprisoned.²⁶⁰ In June 2019, the Jeju District Court held an initial hearing on the petitions on behalf of fourteen now-missing people convicted of charges of rebellion and communications to aid the enemy and espionage.²⁶¹ More family members of missing prisoners petitioned for retrials until the number exceeded 330.²⁶²

Hundreds of bereaved family members waited two years.²⁶³ One family

²⁵⁹ Act on Criminal Compensation and Restoration of Impaired Reputation, art. 5 (S. Kor.), translated in Korea Legislation Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=48260&lang=ENG. Courts calculate the compensation by "apportioning a daily amount determined to be not less than the minimum daily wage under the Minimum Wage Act of the year in which the grounds for claiming the compensation have taken place but not more than the amount determined by Presidential Decree to the number of days of such detention" *Id.*

²⁶⁰ Ho-joon Huh, *Several Victims of Jeju Massacre Still Remain Unaccounted For*, HANGYOREH (June 5, 2019, 5:05 PM) [hereinafter Huh, *Several Victims of Jeju Massacre Still Remain Unaccounted For*], http://english.hani.co.kr/arti/english_edition/e_national/896776.html.

²⁶¹ *Id.*; see 2018 Order Reopening 4.3 Mass Convictions, *supra* note 16, at 100, 119, 122; 4.3 INVESTIGATION REPORT, *supra* note 3, at 549–64; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 185.

²⁶² See Ho-joon Huh, *Request for Retrial by Families of Jeju Massacre Victims Goes Unheard for Over 10 Months*, HANGYOREH (Apr. 6, 2020, 4:54 PM) [hereinafter Huh, *Request for Retrial by Families of Jeju Massacre Victims Goes Unheard for Over 10 Months*], https://www.hani.co.kr/arti/english_edition/e_national/925846.html.

²⁶³ See *id.* One of the petitioners, Pil-mun Kim, was only three years old when the military tribunal summarily convicted and sentenced his father to fifteen years in prison. According to his mother, the police captured his father without any reason, tortured him with electric shocks, then sent him to prison before he fell completely off the radar. Kim opined, "The people who

member described his reason for petitioning, “[t]he government released its Jeju April 3 investigation report, and the president apologized. It seemed like things would be resolved when the Special Jeju April 3 Act was enacted, but they haven’t been, which is why I requested the retrial [of my brother who was shot dead].”²⁶⁴ In light of the delay, Jeju Assemblyman Chang-II Kang insisted that “compensation must be provided by the National Assembly through legislation in the interest of social justice.”²⁶⁵

In March 2021, the Jeju court held a subsequent retrial for 335 missing former prisoners, marking “the nation’s largest-ever trial, involving the largest number of defendants in a single case.”²⁶⁶ At the time of trial, 333 remained missing (represented by family members). Two survivors were alive and attended the trial.²⁶⁷ Replicating the retrials of the eighteen survivors, the Jeju prosecutor sought not-guilty verdicts for all.²⁶⁸

After hearings divided into twenty-one sessions, the Jeju court acquitted all 335 petitioners on all charges.²⁶⁹ Family members of those deceased or missing expressed deep relief for “justice” finally done.²⁷⁰ “I sincerely appreciate the court and the prosecutors [for the ruling].” Young-su Park, a son of the late victim Se-won Park, told the court.²⁷¹ Wiping tears away, he continued, “I am too nervous to utter a word.”²⁷² Im-ja Lee, age 79, who lost her father, shed tears of joy upon hearing the verdict. “My mom had gone through a lot since my father went missing. We have longed for his return. Even faint sounds of wind made us wonder if he had come home.”²⁷³ In a faltering voice, Ms. Lee continued, “I am so grateful for the acquittal, albeit belated, for my father . . . I wish my mom were still alive.”²⁷⁴

The Jeju court’s decisions were significant. Judge Chang’s rulings laid the foundation for both restoring family reputations and later conferring tailored

came back alive from prison were exonerated last year and even received compensation from the state. What about the people like me, whose fathers never returned?” *Id.*

²⁶⁴ Huh, *Several Victims of Jeju Massacre Still Remain Unaccounted For*, *supra* note 260.

²⁶⁵ Huh, *Request for Retrial by Families of Jeju Massacre Victims Goes Unheard for Over 10 Months*, *supra* note 262.

²⁶⁶ Jae-yeon Woo, (3rd LD) *After 70 Years, Hundreds of Victims Acquired in Retrials Over Civilian Massacre on Jeju*, YONHAP NEWS AGENCY (Mar. 16, 2021, 9:41 PM), <https://en.yonhap.co.kr/view/AEN20210316006053315>.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 45
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

compensation for the petitioners and their families. What the court's rulings did not do, however, was formally reach the 4.3 survivors and families who had not filed court petitions. The rulings also did not – and could not – judicially confer general reparations for all persons killed, tortured, injured or wrongfully detained during 4.3 events. Nor did those rulings address sustained economic damage to village communities.

Nevertheless, just as the 1980s U.S. *coram nobis* court rulings laid the legal cornerstone for the 1988 Congressional Civil Liberties Act authorizing broadscale reparations,²⁷⁵ Judge Chang's ruling laid the judicial foundation for 4.3 justice advocates' intensified call for the National Assembly to revise the Special Act to encompass broadscale economic justice.

V. THE TWENTY-YEAR REPARATIONS STRUGGLE FOR ECONOMIC JUSTICE

The Jeju court's rulings, just described, marked significant political-legal progress in the Jeju 4.3 social healing initiative. Yet, the rulings reflected only one piece of the larger, and still incomplete, 4.3 reparative justice mosaic.

A. *Revisions to the Seminal 2000 4.3 Special Act: May 2016 and February 2021*

As described in Part II, the seminal 2000 Special Act established the National 4.3 Committee to investigate and create an accurate account of the 4.3 events and causes to restore the honor of affected Jeju residents and to recommend follow-up actions for legislative and executive implementation. The National 4.3 Committee's 2003 recommendations catalyzed rapid government action – presidential apologies, a 4.3 educational museum, a dignified memorial and commemorative gravesite and the Jeju 4.3 Foundation. After initial reparative measures, though, years of political backsliding and infighting halted progress, with glimmers of remaining hope for reparations. The run-up to the Special Act's 2016 revision and the much-anticipated February 2021 amendment reflected those hopes.

1. *2000 Special Act*

From the outset, reparations negotiations in crafting the 2000 Special Act

²⁷⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 205. See generally YAMAMOTO, BANNAI & CUON, *Executive and Congressional Action, in LAW AND THE JAPANESE AMERICAN INCARCERATION*, *supra* note 15 (describing the impact of the Civil Liberties Act-created "Public Education Fund").

faced stern opposition to any kind of individual payments. The “opposition party . . . rejected any retributive or restorative measures beyond the investigation and objected to including the term ‘reparations’ in the law.”²⁷⁶ Advocates and victims, who viewed reparations as a secondary matter, remained “confident that reparations could be achieved through later advocacy once the official investigation revealed the gruesome nature of the state violence.”²⁷⁷ Ultimately, the Special Act reflected a bipartisan compromise that excluded even the mention of reparations, although it encompassed meager medical subsidies and financial assistance for limited numbers of 4.3 victims.²⁷⁸

The originating legislation’s omission of reparations, the National 4.3 Committee’s minimal economic justice recommendations and the legislative and executive branches’ backsliding, in combination, left a yawning gap in the social healing process. Moreover, despite the 2000 Special Act and the National 4.3 Committee’s 2003 report, the government denied medical subsidies and financial assistance to thousands of impoverished applicants.²⁷⁹ It deemed only 132 eligible after its “strict investigation” into the causes of their specific injuries.²⁸⁰ Further, the Special Act’s administrative ordinance made it practically impossible to support those suffering financial hardship because it prohibited “duplicate payments” for those already receiving living allowances (limited general welfare) – the majority of otherwise eligible victims.²⁸¹

2. *The Politically Divided 2016 Special Act Revision and Continued In-Fighting*

A later revision to the Special Act in May 2016²⁸² failed to cure the economic ills of those in need.²⁸³ Thereafter, President Moon vigorously sought amendments to the Act to authorize broadscale monetary reparations

²⁷⁶ KIM, THE MASSACRES AT MT. HALLA, *supra* note 113, at 121.

²⁷⁷ *Id.*

²⁷⁸ *Id.* at 122.

²⁷⁹ *See id.* at 155–67.

²⁸⁰ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 176 (“Government administrators constricted eligibility determinations . . . excluding those who lacked definite proof that wrongful government actions caused their provable injuries.”).

²⁸¹ *Id.*

²⁸² Special Act on Discovering the Truth on the Jeju 4.3 Incident and the Restoration of Honor of Victims, Act. No. 14189, May 29, 2016, *amended by* Act. No. 18745, Jan. 11, 2022 (S. Kor.) [hereinafter 2016 Jeju 4.3 Special Act], *translated in* Korea Legislation Research Institute’s online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=42501&lang=ENG.

²⁸³ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 176.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 47
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

for 4.3 survivors and families.²⁸⁴ Political infighting, though – over who was entitled to redress, who was not and for what ideological reasons – stalled National Assembly efforts to advance 4.3 economic justice.²⁸⁵ Moon noted that Korea “still suffers from hatred and hostility,” referring to “ideological disputes over the massacres and some people refus[ing] to recognize the dark side of history.”²⁸⁶

In a 2018 major address, President Moon spoke about the implications of the politically limited 2016 Special Act amendments and apparent backsliding on acknowledgments about the 4.3 Tragedy.²⁸⁷ Moon highlighted the “pain[ful]” history of Jeju 4.3 and extended his “deepest sympathy and gratitude to the surviving victims, bereaved families and the citizens of Jeju Province who have revealed their sense of resentment and pain.”²⁸⁸ He also committed the national government to further reveal the facts behind the violence in order to address grievances, restore honor, retrieve remains, provide compensation and deal with persisting effects of the 4.3 trauma.²⁸⁹ President Moon invoked the social goals of “reconciliation and unity, peace and human rights,” which, he said, “residents of Jeju . . . and all Korean people hope for.”²⁹⁰

After the Jeju District Court expunged the criminal records of the eighteen 4.3 survivors wrongly convicted en masse in 2019, described in Part III,

²⁸⁴ See President Moon Jae-in Addresses Mourners at the 70th Anniversary Memorial Service for Victims of Jeju 4.3, JEU, 4.3 PEACE FORUM (Apr. 3, 2018) [hereinafter *President Moon Jae-in Addresses Mourners at the 70th Anniversary Memorial Service*], <http://jeju43peace.org/history/truth/jeju-4-3-the-70th-anniversary/president-moon-jae-in-speech/>.

²⁸⁵ See Tae-young Kim, *Scars of Jeju Island: The 4.3 Uprising and Massacre*, ARGUS (Apr. 8, 2019, 11:44 AM), <http://www.theargus.org/news/articleView.html?idxno=1535>. Jeju Assemblyman Young-Hun Oh emphasized the importance of awarding reparations as a next step towards social healing – describing it as “national obligation.” *Id.* He explained that he has been trying to pass the proposed amendment since 2017 to “provide a legal basis for the compensation” for survivors and their families. *Id.* The opposition parties, however, have been on the “ideological offensive.” *Id.*

²⁸⁶ Rahn Kim, *Moon Vows Fact-Finding for Jeju Massacres*, KOREA TIMES (Apr. 3, 2018, 6:05 PM) [hereinafter *Kim, Moon Vows Fact-Finding for Jeju Massacres*], http://www.koreatimes.co.kr/www/nation/2018/04/356_246662.html.

²⁸⁷ See President Moon Jae-in Addresses Mourners at the 70th Anniversary Memorial Service, *supra* note 284.

²⁸⁸ *Id.*

²⁸⁹ *Id.*; Kim, *Moon Vows Fact-Finding for Jeju Massacres*, *supra* note 286.

²⁹⁰ President Moon Jae-in Addresses Mourners at the 70th Anniversary Memorial Service, *supra* note 284.

President Moon upped the ante. He strongly supported revising the Special Act to authorize reparations for 4.3 survivors and families, framing it as “basic justice.”²⁹¹ Despite Moon’s support, legislative reparations efforts to further 4.3 social healing ran aground on political shoals – with party polarization the culprit.²⁹² Both the liberal Democratic Party and the conservative United Future Party proclaimed support for a revised Special Act, but each blamed the other for obstructing its passage.²⁹⁴

3. *The Limited February 2021 Special Act Revision*

In February 2021, the National Assembly revised the Special Act again after several years of political struggle.²⁹⁴ The National Assembly’s action, though, still did not authorize general reparations for victims and families – the main source of the infighting. Despite President Moon’s backing,²⁹⁵ Judge Chang’s highly publicized 2019 compensation order for the eighteen survivors-petitioners²⁹⁶ and 133 lawmakers’ expressed support for broadscale reparations,²⁹⁷ the amendments again omitted reparative payments to 4.3 survivors and families.²⁹⁸

The February 2021 Special Act revisions authorized basic medical,

²⁹¹ See Chi-dong Lee, *Moon Vows Support for Proposed Legislation on April 3 Jeju Incident*, YONHAP NEWS AGENCY (Apr. 3, 2020, 10:30 AM) [hereinafter Lee, *Moon Vows Support for Proposed Legislation on April 3 Jeju Incident*], <https://en.yna.co.kr/view/AEN20200403002300315>.

²⁹² *Id.*; see Kyu-Seok Shim, *20th National Assembly Dabbled Least Productive in History*, JOONGANG (May 20, 2020), <https://koreajoongangdaily.joins.com/2020/05/20/politics/National-Assembly-20th-%EA%B5%AD%E5%9A%8C/20200520183200191.html>.

²⁹³ Following the 20th National Assembly, 133 lawmakers from across the political spectrum expressed support for a new bill that could provide over \$1 billion in compensation to 4.3 survivors. Passage of the bill remained uncertain because of the National Assembly’s partisan political environment. Elizabeth Shim, *South Korea Lawmakers Back Compensation for All Jeju Massacre Victims*, UNITED PRESS INT’L (July 27, 2020, 2:02 PM) [hereinafter Shim, *South Korea Lawmakers Back Compensation for All Jeju Massacre Victims*], https://www.upi.com/Top_News/World-News/2020/07/27/South-Korea-lawmakers-back-compensation-for-all-jeju-massacre-victims/6511595871949/.

²⁹⁴ See 2021 Jeju 4.3 Special Act, *supra* note 33.

²⁹⁵ See Lee, *Moon Vows Support for Proposed Legislation on April 3 Jeju Incident*, *supra* note 291.

²⁹⁶ Shim, *South Korea Jeju Massacre Victims Awarded \$4M in Damages*, *supra* note 27.

²⁹⁷ Shim, *South Korea Lawmakers Back Compensation for All Jeju Massacre Victims*, *supra* note 293.

²⁹⁸ Compare 2021 Jeju 4.3 Special Act, *supra* note 33, with 2000 Jeju 4.3 Special Act, *supra* note 169, and 2016 Jeju 4.3 Special Act, *supra* note 282.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 49
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

caregiving and living expenses to direct victims meeting stringent criteria.³⁹⁹ In practice, these provisions again excluded those who would benefit most; those struggling and already receiving general welfare assistance remained ineligible.⁴⁰⁰ The criteria still barred many bereaved family members from any benefits – thousands of those born to missing or deceased 4.3 victims who had been re-registered on other family relations rosters.⁴⁰¹

Seung-Moon Song, Chairman of the Association for the Bereaved Families of April 3 Victims, stressed the urgent need for broader government reparations through a further revised Special Act.⁴⁰² “The family members are desperate. The people who lived through the hardship . . . are now in their 90s and suffering from the aftereffects. Their family members are insistent that . . . restoration of their reputation and government compensation need to take place while they are still alive.”⁴⁰³ Song’s statement reflected the glaring economic justice gap the National Assembly failed to address.⁴⁰⁴ Song also despaired at the continuing obstructionist ideology: “I was astonished by the National Assembly members who seem to look at Jeju April 3 through ideologically colored lenses to this day.”⁴⁰⁵

The February 2021 revisions, like the prior Acts, did not redress the persisting pain and loss for most – 30,000 deaths, thousands seriously injured, many tortured, women sexually assaulted, 40,000 homes destroyed along with entire villages and nearly all forms of economic livelihood. The violence killed ten percent of the island’s population and devastated most of the working village population.⁴⁰⁶ The widespread physical violence, property damage and emotional trauma left Jeju communities and families

³⁹⁹ See 2021 Jeju 4.3 Special Act, *supra* note 33, art. 5. The provisions authorized eligible survivors to receive around \$457 per month if they show difficulty living without a caregiver due to physical disability. See *id.*

⁴⁰⁰ See *id.*

⁴⁰¹ Heo, *Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?*, *supra* note 37. Under the February 2021 revision, only those recognized as “Jeju 4.3 victims” by the Central Jeju 4.3 Committee were able to apply for the correction of their family relations register. *Id.*

⁴⁰² Huh, *Family Members of Jeju April 3 Victims Demand Amendment of Special Act*, *supra* note 36.

⁴⁰³ *Id.*

⁴⁰⁴ See *id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ Kim, *International Research on the Jeju 4.3 Events*, *supra* note 117, at 207; see 4.3 INVESTIGATION REPORT, *supra* note 3, at 622–24; see also KIM, THE MASSACRES AT MT. HALLA, *supra* note 113.

barely able to survive.³⁰⁷ Those that survived, including many orphans, lived impoverished without access to quality education, jobs or community support. The damage from violence, systemic discrimination, denials of self-determination and cultural suppression were – and continued to be – cross-generational and far-reaching.³⁰⁸

Despite progress,³⁰⁹ the February 2021 revision aggravated the frustration of some survivors and families.³¹⁰ They criticized the revision for “only allow[ing] the correction of the date or place of the victim’s death” in their family registry, not offering tangible assistance.³¹¹ Expressing palpable frustration, a local Jeju official observed that “[t]hey have lived with pain already for [seventy-three] years and the issue needs to be settled.”³¹²

The February 2021 Special Act established a 4.3 Jeju Trauma Healing Center for survivors and families³¹³ – a laudable step towards healing Jeju communities. The Act also contemplated potential future individual awards by contracting with a research institute to assess and recommend methodology for calculating and implementing compensation payments.³¹⁴ These legislative actions reflected important foundational economic justice steps and signaled potential gap-filling measures aimed at healing the persisting wounds of 4.3 survivors, families and communities.

Yet, skepticism continued. Past unfulfilled political promises littered the 4.3 reparative justice terrain. More than twenty years passed since the South Korean government’s promise to “restore the honor” of affected Jeju residents.³¹⁵ A journalist lamented the uncertainty of any “just resolution of the unresolved historical issues.”³¹⁶ As discussed below, the government’s

³⁰⁷ See generally 4.3 INVESTIGATION REPORT, *supra* note 3, at 586–645 (describing physical, property, and generational trauma).

³⁰⁸ See discussion *infra* Parts V.B, V.C.

³⁰⁹ See *The Long-Awaited First Step of the 4.3 Trauma Center*, JEJU 4.3 PEACE FOUND. (June 9, 2020), <http://jeju43peace.org/the-long-awaited-first-step-of-the-4%2%b73-trauma-center/>.

³¹⁰ Heo, *Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?*, *supra* note 37.

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Moon Vows Continued Push to Honor Jeju April 3 ‘Incident’ Victims*, KOREA TIMES (Apr. 3, 2021, 3:55 PM), https://www.koreatimes.co.kr/www/nation/2022/05/356_306554.html (“An April 3 Incident Trauma Center has already been in trial operation since May, and the Moon administration is pushing for the elevation of its legal status to that of a national organization.”).

³¹⁴ Heo, *Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?*, *supra* note 37.

³¹⁵ *Vision & Objective*, *supra* note 116.

³¹⁶ Heo, *Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?*, *supra* note 37.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 51
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

continuing reluctance to squarely face the need – and demands – for economic justice remained a glaring gap in the reparative justice process.

B. *The Urgent Need for Broadscale Reparations: Continuing
Economic Justice Gap in 4.3 Social Healing*

After the February 2021 Special Act and buttressing community advocacy and political lobbying, in September 2021, Professor Yamamoto's book *Healing the Persisting Wounds of Historic Injustice* offered an analytical framework for assessing "what's missing" in the 4.3 reparative initiative and other stalled-rejuvenated reconciliation initiatives.³¹⁷ Rooted in earlier academic and public presentations,³¹⁸ the approach uplifted many of the measures undertaken, particularly the survivors' successful reopening of their mass criminal convictions. The book also spotlighted the significant continuing absence of economic justice both in terms of individual payments and community capacity-building – highlighting that absence as a principal impediment to comprehensive and enduring Jeju 4.3 social healing.³¹⁹

1. *Limits of Traditional Legal Process Remedies*

A glimpse at the promise and limits of the traditional legal process reveals why something more was needed. As demonstrated by the Jeju court's compensatory damage ruling, the legal process can award individual compensation for an individual's proven actual damages.³²⁰ Those awards can be significant both for recipients practically and for society

³¹⁷ See discussion *infra* Part VI.

³¹⁸ See Eric K. Yamamoto, Miyeko Pettit-Toledo & Sarah Sheffield, *Bridging the Chasm: Reconciliation's Needed Implementation Fourth Step*, 15 SEATTLE J. SEX. JUST. 109 (2016); Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 130, at 57–60; Eric K. Yamamoto & Sara Lee, *Korean "Comfort Women" Redress 2012 Through the Lens of U.S. Civil and Human Rights Reparatory Justice Experiences*, 11 J. KOREAN L. 123, 138–39 (2012); Eric K. Yamamoto & Ashley Kaiao O'rey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 ASIAN AM. L.J. 5, 32–36 (2009). The *social healing through justice* framework was originally termed "interacial justice," addressing conflict and conciliation among communities of color. See ERIC K. YAMAMOTO, *INTERACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 174–209 (2000) [hereinafter YAMAMOTO, *INTERACIAL JUSTICE*].

³¹⁹ The book also identified the absence of the United States from the reconciliation table as another key impediment. See generally YAMAMOTO, *What's Impeded Jeju 4.3 Social Healing?*, in *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4.

³²⁰ See *supra* Part IV.

symbolically.³²¹ But traditional legal remedies are often slow in coming and limited in reach. Although significant as the first authorized award of individual compensation for 4.3 survivors, the judicial remedy revealed the fundamental limits of the legal system – its constricted framing of reparative justice acting as essentially “tort law [notions of] monetary compensation requiring legal proof of identified perpetrators causing direct [compensable] harm to specific victims.”³²²

The court’s compensation award for the eighteen survivors, authorized by statute, effectively embraced that narrow tort-law remedial model.³²³ It excluded many other survivors and bereaved families who suffered through generations. It excluded those without access to proof of actual damages. It also excluded the communities whose social and economic structures were devastated.

Systemic discrimination, denials of self-determination, widespread past violence and culture suppression fell outside the purview of the judicial legal process.³²⁴ The formal legal process thus stopped well short in the face of pervasive damage to culture, education, healthcare and job and entrepreneurial opportunities as well as community belonging and spiritual well-being – far-reaching harms that traumatized Jeju people for generations.³²⁵

2. *Economic Justice as a Key Aspect of Reparation*

But, reparation, as repair, reaches far more broadly and cuts more incisively.³²⁶ Economic justice – as an integral part of social healing – emphasizes reparation, in the sense of repairing multifaceted economic

³²¹ See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 34–38 (outlining various national and international reconciliation initiatives).

³²² *Id.* at 46–47.

³²³ See Act on Criminal Compensation and Restoration of Impaired Reputation (S. Kor.), translated in Korea Legislation Research Institute’s online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=48260&lang=ENG.

³²⁴ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 68; see also Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 21–27 (2007) (critiquing the limits of traditional tort law framework); Eric K. Yamamoto, Susan K. Serrano & Michelle Natividad Rodríguez, *American Racial Justice on Trial – Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269, 1302–03 (2003) (describing tort law barriers for reparation claims, including statute of limitations, absence of directly harmed individuals, absence of individual perpetrators, lack of direct causation, indeterminacy of compensation amounts and sovereign immunity).

³²⁵ See generally Chapters 3 and 4 in YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4; *id.* at 25 (“Psychological and financial wounds may persist through generations, particularly in the form of community or institutional maladies.”).

³²⁶ See *infra* Part VI.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 53
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

damage to individuals and communities.³²⁷ Reparation (without the “s,” meaning “to repair”) may well incorporate reparations (with an “s” at the end) – individual payments – either to partially compensate for property or financial loss or psychological trauma, or to symbolize acceptance of responsibility for serious wrongdoing.³²⁸

As discussed above, the final language of the original 2000 Special Act³²⁹ and the following two revisions made it practically impossible to provide meaningful support for those suffering economic hardship since the Act prohibited those already collecting limited government assistance from receiving “duplicate” payments.³³⁰ And neither of the revised Special Acts addressed direct payments or capacity-building for the affected Jeju families and communities.³³¹ After over twenty years of advocacy, the February 2021 Special Act still left painful gaps in reconstruction or reparation for Jeju people and communities.

C. *A Significant, Albeit Still Limited, Step Toward ‘Just Resolution’:
The December 2021–2022 Special Act and Economic Justice*

The February 2021 Special Act revision initiated steps toward individual compensation but left the door open for political backsliding. Public education and political lobbying intensified. Many reparations questions remained – especially the amount and method of compensation and expanding recipient eligibility and, indeed, whether any payments would be forthcoming at all.³³²

The government contracted with an external institute to research issues on family relations eligibility.³³³ 4.3 justice advocates continued to apply

³²⁷ See *infra* Part VI; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 220.

³²⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 87.

³²⁹ See *supra* Part V.A.1.

³³⁰ See *supra* Part V.A.

³³¹ Yamamoto’s writing and speaking highlighted the need for broadly framed economic justice as a critical element of enduring Jeju 4.3 reparative justice. See Chapters 4 (reparation), 9 (absence of economic justice) and 11 (task force proposal to address economic justice) in YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, for an elaboration on economic justice in reparative justice initiatives; see also Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 130.

³³² See Ileo, *Revised Jeju 4.3 Special Act Now Effective, But With What Improvements?*, *supra* note 37.

³³³ *Id.*

political pressure to the National Assembly. The annual 4.3 Remembrance Day also spotlighted the need for general reparations. Scholars, too, continued to advocate for next reparative justice steps, including economic reparation.³³⁴ In response, the National Assembly momentarily revised the Special Act.³³⁵

The December 2021-2022 Special Act,³³⁶ differed markedly from prior versions. It broadly and directly addressed economic justice. With near unanimous support,³³⁷ the Act appropriated \$767,676,000 (909 billion won) for 4.3 survivors and bereaved family members – by far the South Korean government's largest monetary reparations award to any group suffering from a single historical tragedy.³³⁸ The legislation authorized payment of \$76,000 (90 million won) to each of the recognized³³⁹ 10,101 4.3 survivors

³³⁴ Professor Yamamoto's book *Healing the Persisting Wounds of Historic Injustice* emphasized, among other things, the continuing need for broadscale financial reparations and community capacity-building as forms of economic justice. See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 68–69. Professor Sang-Soo Hur highlighted an international convening to chart next steps, including economic justice, which "[brought together] social healing measures" through justice "through . . . a video conference with Professor Eric Yamamoto" making it a "very meaningful general meeting." Chaeg-joon Lee, *The 2021 Global Aging Network (G.A.N.) Jeju World Congress 'Successful'*, *THE ADLINE JEJU* (Sept. 9, 2021, 6:11 PM), <http://www.headlinejeju.co.kr/news/articleView.html?dxno=462082> (translation from Google Translate) (title trans. by Suhyeon Burns).

³³⁵ See *Revised Jeju 4.3 Special Act Passed at the National Assembly Plenary Session, Taking One Step Closer to the Resolution of Jeju 4.3*, *JEJU 4.3 PEACE FOUND.* (Jan. 18, 2022) [hereinafter *Revised Jeju 4.3 Special Act Passed at the National Assembly Plenary Session*], <http://jeju43peace.org/revised-jeju-4%20b73-special-act-passed-at-the-national-assembly-plenary-session-taking-one-step-closer-to-the-resolution-of-jeju-4%20b73/>.

³³⁶ Special Act on Discovering the Truth on the Jeju 4.3 Incident and the Restoration of Honor of Victims, Act. No. 18745, Jan. 11, 2022 (S. Kor.) [hereinafter 2022 Jeju 4.3 Special Act], <https://www.law.go.kr> (search required).

³³⁷ Changbin Hong, *Jeju 4.3 Special Law Passes Plenary Session of the National Assembly: 'Payment of Compensation from Next Year'*, *HEADLINE JEJU* (Dec. 9, 2021, 3:50 PM) [hereinafter Hong, *Payment of Compensation from Next Year*], <http://www.headlinejeju.co.kr/news/articleView.html?dxno=470661> (translation from Google Translate) (title trans. by Suhyeon Burns) (169 out of 177 voted to approve).

³³⁸ *Assembly Passes Bill on Record State Compensation for Jeju April 3 Incident Victims*, *YONHAP NEWS AGENCY* (Dec. 9, 2021, 5:03 PM) [hereinafter *Assembly Passes Bill on Record State Compensation for Jeju April 3 Incident Victims*], <https://en.yna.co.kr/view/AEN20211209009000315>; see generally 2022 Jeju 4.3 Special Act, *supra* note 336.

³³⁹ *Revised Jeju 4.3 Special Act Passed at the National Assembly Plenary Session*, *supra* note 335. The Act authorized compensation for inferiors in the order of lineal descendants, recognizing up to fifth-degree blood relatives with certain conditions. The National 4.3 Committee "will establish a deliberation subcommittee to pay the compensation money." *Id.*

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 55
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

and family members.³⁴⁰ In addition, unlike the previous Special Acts' meager and limited monetary support, the new revision also accounted for lost earnings and emotional damage and opened eligibility for those receiving general welfare.³⁴¹

In light of the Jeju District Court's 2019 and 2021 rulings, the National Assembly's 2021-2022 Special Act amendment also authorized new petitions for the "exoneration of 2,530 victims who were unlawfully convicted during the two courts-martial in 1948 and 1949 by entitling the prosecutor to request ex officio retrials for their collective cases."³⁴² Additionally, the Act stipulated that those survivors-petitioners "shall not be prohibited from claiming criminal compensation . . . even after receiving the [Special Act's monetary] compensation [award]"³⁴³ The 2021-2022 revisions thus aimed to comprehensively restore the honor of survivors, families and communities not only through words but also through material recompense.

Jeju legislators, government officials and 4.3 advocates welcomed the passage of the compensation legislation, claiming a major victory.³⁴⁴ They

³⁴⁰ Assembly Passes Bill on Record State Compensation for Jeju April 3 Incident Victims, *supra* note 338.

³⁴¹ Revised Jeju 4.3 Special Act Passed at the National Assembly Plenary Session, *supra* note 335.

³⁴² *Id.*

³⁴³ *Id.*; see 2022 Jeju 4.3 Special Act, *supra* note 336; see generally Act on Criminal Compensation and Restoration of Impaired Reputation (S. Kor.), translated in Korea Legislation Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=48260&lang=ENG.

³⁴⁴ Changbin Hong, *President Moon "Jeju 4.3 Amendment of Special Law, Realization of Justice in 70 Years,"* HEADLINE JEJU (Jan. 4, 2022, 3:48 PM) [hereinafter Hong, *President Moon "Jeju 4.3 Amendment of Special Law, Realization of Justice in 70 Years"*], <http://www.headlinejeju.co.kr/news/articleView.html?dxno=473069> (translation from Google Translate) (title trans. by Suhyeon Burns); Hong, *Payment of Compensation from Next Year,* *supra* note 337; Changbin Hong, *Senator Oh Young-hoon "4.3 Amendment of Special Law, First Step to 'Just Resolution,'"* HEADLINE JEJU (Dec. 9, 2021, 5:30 PM) [hereinafter Hong, *Senator Oh Young-hoon "4.3 Amendment of Special Law, First Step to 'Just Resolution'"*], <http://www.headlinejeju.co.kr/news/articleView.html?dxno=470702> (translation from Google Translate) (title trans. by Suhyeon Burns); Changbin Hong, *Jeju Island Justice Party: "We Welcome the Passage of the Revised 4.3 Special Act by the Plenary Session of the National Assembly,"* HEADLINE JEJU (Dec. 9, 2021, 5:41 PM) [hereinafter Hong, *Jeju Island Justice Party: "We Welcome the Passage of the Revised 4.3 Special Act"*], <http://www.headlinejeju.co.kr/news/articleView.html?dxno=470704> (translation from Google Translate) (title trans. by Suhyeon Burns); Changbin Hong, *Jeju 4.3 Bereaved Families "Welcomes the Passage of Revised Special Act... Thank You,"* HEADLINE JEJU (Dec.

characterized the 2021-2022 revision as “the first step [in the] recovery of [real] damage[s].”³⁴⁵ and marked its passage as “the journey [towards] a just resolution of Jeju 4.3.”³⁴⁶ President Moon praised it as “the first legislative [action] among civilian sacrifice[s] . . . that occurred [around] the Korean War.”³⁴⁷ He declared that the revised Act’s emphasis on economic justice will serve as a lesson in solving past history issues and a legislative standard for similar civilian victimizations, and demonstrates internationally “the value of reconciliation” for “peaceful investigation, restoration of honor, and payment of compensation . . .”³⁴⁸

Still, some leaders cautioned about potential shortfalls, calling for immediate “follow-up measures,”³⁴⁹ including acknowledgment of government power abuses and the United States’ pivotal role. Jeju Assemblyman Young-Hoon Oh expressed disappointment over the language targeting payments for specific injuries “rather than [reparations] for the . . . exercise of [unjust] public power.”³⁵⁰ The Justice Party stressed the need for “additional fact-finding for a complete resolution of [4.3],” including ascertaining the role and responsibility of the U.S.³⁵¹

While expressing gratitude, the Association of Bereaved Families of the 4.3 Victims urged the National Assembly to take further steps to fill in the legislation’s missing pieces. The Association sought a final resolution relating to family relations that the final version of the December 2021-2022 Act ultimately excluded.³⁵² Draft provisions sought to expand family beneficiaries eligible for payments, curing defects in prior Special Act

9. 2021, 3:56 PM) [hereinafter Hong, *Jeju 4.3 Bereaved Families “Welcomes the Passage of Revised Special Act... Thank You”*], <http://www.headlinejeju.co.kr/news/articleView.html?dxno=470670> (translation from Google Translate) (title trans. by Suhyeon Burns).

³⁴⁵ Hong, *Payment of Compensation from Next Year*, *supra* note 337.

³⁴⁶ Hong, *Senator Oh Young-hoon “4.3 Amendment of Special Law, First Step to ‘Just Resolution.’”* *supra* note 344.

³⁴⁷ Hong, *President Moon “Jeju 4.3 Amendment of Special Law, Realization of Justice in 70 Years.”* *supra* note 344.

³⁴⁸ *Id.*

³⁴⁹ Cheol-su Yoon, *The Justice Party “Welcomes the Passage of the 4.3 Special Law Amendment Bill . . . Excluded Family Relationship Special Cases Should be Supplemented.”* HEADLINE JEJU (Dec. 10, 2021, 11:50 AM), <http://www.headlinejeju.co.kr/news/articleView.html?dxno=470754> (translation from Google Translate) (title trans. by Suhyeon Burns).

³⁵⁰ Hong, *Jeju Island Justice Party: “We Welcome the Passage of the Revised 4.3 Special Act.”* *supra* note 344.

³⁵¹ *Id.*

³⁵² Hong, *Jeju 4.3 Bereaved Families “Welcomes the Passage of Revised Special Act... Thank You,”* *supra* note 344.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 57
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

revisions.³⁵³ For instance, the draft provisions recognized marriages reported after the spouse's death, and granted an exception for those who did not have biological parents listed in their family register because they were orphaned.³⁵⁴

In the final hours before the legislation's passage, however, the National Assembly removed those and other salutary draft provisions, citing potential legal ramifications.³⁵⁵ Instead of adopting the revisions supported by 4.3 justice advocates, the National Assembly punted, authorizing further fact-finding and research.³⁵⁶

From one perspective, the apparent last-minute legal maneuvering by the National Court Administration, resulting in removal of desired eligibility language from the legislation, reflected continuing roadblocks to economic justice.³⁵⁷ From another perspective, the Court Administration's call for further research and fact-finding reflected a genuine need for fact-based analysis.³⁵⁸ At bottom, the December 2021 compromise left in place some of the catch-22 constraints that thousands of bereaved family members faced for decades. With the cumbersome, lengthy process for revising family registers and its seemingly paradoxical requirements for appropriate individual compensation, many cross-generational claimants continued to face nearly insurmountable administrative barriers.³⁵⁹

In sum, spurred by decades of public education, scholarly research, community advocacy, journalist reporting and political lobbying, and

³⁵³ See Hong, 'Payment of Compensation from Next Year,' *supra* note 337.

³⁵⁴ See *id.*

³⁵⁵ See *id.*; Revised Jeju 4-3 Special Act Passed at the National Assembly Plenary Session, *supra* note 335.

³⁵⁶ Hong, 'Payment of Compensation from Next Year,' *supra* note 337. The Assembly deleted the proposed language because, in a last-minute written opinion, the National Court Administration raised the need for further review of the special provisions on family relations. The Court Administration asserted that the proposal's language could cause confusion throughout the legal system. Because marriage reports impact kinship and inheritance laws, the Court Administration cautioned against recognizing existing marriage relationships without confirmation procedures. As for claimants with non-biological parents in their family register, the Court Administration maintained that it is possible to request recognition against the parents under existing law if it is "objectively clear" that they are different from the biological parents. *Id.* Thus, it was "questionable whether there [would be] any . . . benefit" in enacting the proposed amendment. *Id.*

³⁵⁷ See *id.*

³⁵⁸ See Ileo, Revised Jeju 4-3 Special Act Now Effective, But With What Improvements?, *supra* note 37.

³⁵⁹ See *id.*

galvanized by the Jeju court's rulings, the National Assembly's December 2021-2022 Special Act amendments reflected a major step toward the key economic justice reparation component of *comprehensive and enduring 4.3 social healing through justice*. The revisions incorporated important aspects of what 4.3 advocates struggled for since the 2000 Special Act's inception and through subsequent iterations. But with significant limitations. With South Korea's new president in 2022,³⁶⁰ the prospects for implementation of the Assembly's 2021-2022 dictates, let alone final revisions to the Special Act, remain uncertain.³⁶¹

VI. NEXT, AND POTENTIALLY FINAL, STEPS TOWARD COMPREHENSIVE AND ENDURING JEJU 4.3 SOCIAL HEALING THROUGH JUSTICE

To productively assess the Jeju 4.3 retrials and the December 2021-2022 Special Act revisions and help chart next – and perhaps final – steps in the Jeju 4.3 reparative justice process, this article and its companion article employ the analytical framework for *social healing through justice*.³⁶² That framework, which shaped the analysis in the preceding sections of this article, guides, evaluates and reconfigures reconciliation initiatives endeavoring to heal the persisting wounds of injustice suffered by individuals, communities and the larger society itself. Drawing from commonalities among several scholarly disciplines,³⁶³ as well as the United

³⁶⁰ See Sang-Hun Choe, *Yoon Suk-yeol, South Korean Conservative Leader, Wins Presidency*, N.Y. TIMES (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/world/asia/south-korea-election-yoon-suk-yeol.html>.

³⁶¹ Compare Duk-kun Byun, *(News Focus) With Yoon, S. Korea, U.S. to Strengthen Alliance, Deterrence Against N. Korea: Experts*, YONHAP NEWS AGENCY (May 10, 2022, 7:00 AM), <https://en.yna.co.kr/view/AEN20220510000500325?section=ek/rk> (reporting that U.S. foreign policy experts forecast South Korea-U.S. alliance under the Yoon administration will emphasize strong military and defense readiness, similar to South Korea's former conservative administrations under Myung-bak Lee and Geun-hye Park), and Jae-hoon Lee, *Yoon's Policy Initiatives Forewarn Full-Fledged Return to Neoliberalism for S. Korea*, HANKYOREH (May 6, 2022, 6:07 PM), http://english.hani.co.kr/arti/english_edition/e_national/1041864.html (predicting the Yoon administration will prioritize promoting privatization of public institutions such as health care and social welfare), with *supra* notes 119–31 and accompanying text (discussing political backsliding under the earlier conservative Lee administration because of its focus on strengthening ties with U.S. military and the recharacterization of Jeju residents as “communists” amidst the global economic crisis).

³⁶² See generally YAMAMOTO, *A Framework for Social Healing Through Justice*, in *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4.

³⁶³ The *social healing through justice* framework draws insights from commonalities among disciplines of law (including human rights), social psychology, theology, political theory, economics and indigenous healing. See generally YAMAMOTO, *Working Principles of Social Healing Commonalities Among Disciplines*, in *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4 (discussing multidisciplinary approaches to social healing, including works by Ronald J. Fisher, John Dawson, Joseph V. Montville, Donald W. Shriver,

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 59
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

Nations' Basic Principles for Reparations.³⁶² *social healing through justice* coalesces six working principles³⁶³ into the concepts and language of the 4Rs: *recognition, responsibility, reconstruction and reparation*.³⁶⁴

A. *Social Healing Through Justice*

The working principles and 4Rs offer a framework for productively assessing what is impeding ongoing reparative initiatives and what is needed to rejuvenate them, all with an emphasis on self-determination for those suffering. The first R, *recognition*,³⁶⁵ prompts two collaborative

Jr., David Phillips Hansen, Linda Hasan-Stein, Valmaine Toki, Peter Crutchley and Alexander Keller Hirsch).

³⁶² See Yamamoto, Burns & Takeuchi, *Apology & Reparation II*, *supra* note 52, at 92, for a discussion of the international human rights reparative justice regime established in the United Nations' "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."

³⁶³ Six working principles of social healing suggest that individual and societal healing engages people, communities, justice organizations, educators, students, lawyers, businesses, therapists, clergy, scholars, journalists, policymakers and government officials in a dynamic process involving recognition, responsibility, reconstruction and reparation. See generally YAMAMOTO, *Working Principles of Social Healing Commonalities Among Disciplines*, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4. The first principle is *mutual engagement* – cooperative participation by all with some degree of responsibility. *Id.* at 62–64. The second is that social healing needs to coincide on two levels – *the personal and the societal* – with attention to the reverberations of both individual and collective trauma. *Id.* at 64–66. The third principle embraces *reparative justice across generations* – moving beyond restrictive notions of legal justice and reaching into the next generations by restructuring social, economic and political relationships to prevent recurrence of the injustice. *Id.* at 66–67. The fourth principle is that *financial assistance and capacity-building* are integral in shaping economic justice. *Id.* at 68–69. The fifth principle is practical. It reflects the social healing imperative of generating a "real world" collective sense of "justice done" by infusing real world *pragmatism*. *Id.* at 69–70. As an extension of the pragmatism principle, the final working principle is cautionary – anticipating the *darkside* of the reparative justice process. *Id.* at 70–71. It anticipates opponents' pushback and even recriminations, whether for ideological, financial, political or other reasons. *Id.*

³⁶⁴ An analytical framework for *social healing through justice* is developed in YAMAMOTO, *A Framework for Social Healing Through Justice*, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4. See generally YAMAMOTO, *Working Principles of Social Healing Commonalities Among Disciplines*, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4 (articulating the six working principles).

³⁶⁵ *Recognition*, a primary stage in social healing, acknowledges the particulars and context of the injustice. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 73. All stakeholders must "first culpatalize, not sympathize; listen,

stakeholders' inquiries.³⁶⁸ It asks each participant to come to the social healing table and to "see into the woundedness of self and others."³⁶⁹ It then undertakes critical interrogation to "fully and fairly assess the specific circumstances and [the] larger historical context of the justice grievances undergirding present-day tensions."³⁷⁰ With these inquiries in mind, *recognition* focuses on identifying the justice grievance and, while acknowledging discordant voices,³⁷¹ aims for a newly framed collective memory of the injustice as a foundation for collaborative efforts to repair the continuing damage.³⁷²

The social healing framework also embraces acceptance of appropriate *responsibility*³⁷³ for the injustice and the attendant human suffering and damage to communities. A calibrated understanding of *responsibility*³⁷⁴ also generates commitments to repair the damage through words and actions tailored to specific individual and community needs.³⁷⁵

not analyze, acknowledge, not blame" to foster the deepened understanding that makes social healing possible. *Id.* at 75; see GEIKO MÜLLER-FAURENOLZ, THE ART OF FORGIVENESS: THEOLOGICAL REFLECTIONS ON HEALING AND RECONCILIATION 5, 25–26 (1997). It also aims to identify oppressive social and political structures that denigrate and exclude vulnerable "others" and to expose the faulty justifications advanced especially by governments and powerful institutions. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 75–78.

³⁶⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 78.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.* Those harms may include intergenerational trauma from the killings, torture and wrongful imprisonment, as well as the sustained financial losses from the guilt-by-association system, the destruction of homes and personal property and the devastation of long-term medical care and village economic life. See *id.* at 110–17. See generally 4.3 INVESTIGATION REPORT, *supra* note 3, at 469–645.

³⁷³ *Responsibility* encompasses both: acknowledging the harms generated by the misuse of "power over others" and accepting responsibility for repairing the inflicted damage. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 79.

³⁷⁴ *Responsibility* can arise through four related ways: 1) direct participation in the abuse, 2) complicity in the abuse, 3) receipt of benefits from the transgressions of others' rights and 4) membership in a damaged democratic polity by its overriding mistreatment of communities within it. See *id.* at 126–34. The third level of responsibility is distinct because even where there is no direct participation, complicity, or awareness of the past or present transgressions, responsibility for social healing may accrue through the receipt of benefits from the oppressive actions of others. See *id.* at 80, 132–34. "When benefits or privileges derived from the oppression of others remain unacknowledged, the system is 'allowed to perpetuate, regenerate, and re-create itself.'" *Id.* at 133 (quoting STEPHANIE M. WILDMAN, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA 8 (1996)).

³⁷⁵ See *id.* at 90. Acceptance of group, or government, responsibility for widespread hurts historically inflicted often faces complex social psychological, political and cultural barriers.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 61
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

The final two Rs provide significant insight into the Jeju 4.3 social healing initiative. Acts of *reconstruction* and *reparation* aim to symbolically and practically repair the long-standing damage through apologies, institutional restructuring, monetary payments, promotion of health, education and welfare, along with community economic capacity-building. *Reconstruction*,³⁷⁶ in particular, seeks to build a new relationship through performative exchanges (for instance, an apology and forgiveness). It also aims to reform the disabling institutional constraints contributing to the injustice (for instance, the absence of checks on government security abuses; media scapegoating of vulnerable groups) in order to prevent “it” from happening again.³⁷⁷ Reconstructive action thus often facilitates changes in laws and institutional practices and assists in reframing underlying cultural understandings. It might encompass:

- * performative interactions among participants (apologies and forgiveness),
- * targeted remedial programs (health, education, welfare),
- * substantive messaging (crafting a new collective memory of the injustice and its impacts) and, most important,

Id. at 81–82. Political leaders, in particular, attuned to immediate public criticism about expenditure of taxpayer dollars and tarnished national reputations, oftentimes retreat from reparative initiatives, despite potential long-term and far-reaching benefits. Framing notions of responsibility in nuanced fashion at times helps overcome these barriers and encourages the broader populace’s recognition of its interest in healing the specific wounds to lessen general societal ill-will, recriminations, social divisions and impaired productivity. *Id.*

³⁷⁶ *Reconstruction* entails acting on the words of *recognition and responsibility* – rebuilding relationships and institutions. *Id.* at 82 (citing Amalise Buti & Lynn Cohn, *Looking at Justice Through a Lens of Healing and Reconnection*, Nw. J.L. Soc. Pol’y 1, 3–4 (2017). “While the processes and forms of restorative practices vary, the unifying theme is the restoration of relationships.” *Id.* at 82 n.49.

³⁷⁷ *Id.* at 84. *Reconstruction* is closely linked to the fourth working principle – the salience of *changes in social structures* to prevent recurrence of the injustice. *See id.* at 25, 84. Institutional changes in laws and politics need to occur over time – otherwise, “the root problems of misuse of power remain, particularly the maintenance of oppressive systemic structures, including discriminatory courts, legislators, bureaucracies and businesses.” *Id.* at 84.

* institutional restructuring of power to prevent recurrence of abuses (changes in the legal system, political participation, public education).³⁷⁸

The fourth R, *reparation*, is closely linked to *reconstruction* but with a distinct emphasis on repairing the prolonged emotional and financial damage.³⁷⁹ While incorporating appropriate monetary or property recompense, *reparation* (without an "s") cuts deeper.³⁸⁰ In addition to those surface exchanges, *reparation* also speaks to promoting economic justice in the form of socio-economic repair for individuals and communities.³⁸¹ *Reparation* in this sense refers to repairing the deeper damage to the edifice of well-being and productivity (jobs, education, health and culture) as well as to promoting economic capacity-building to address the cumulative damage to the financial livelihoods of individuals and communities.³⁸²

In sum, the final two Rs of the *social healing through justice* framework offer two integrated insights. One is normative: acts of *reconstruction* and *reparation* by governments or groups must result over time in restructuring the institutions and relationships that generated the disabling constraints

³⁷⁸ *Id.* at 82–84. Only when reconstructive action tackles political institutions as well as specific policies and practices can a reparative initiative begin to integrate the moral and the pragmatic dimensions of *social healing through justice*. *Id.* at 84.

³⁷⁹ *Id.* at 86. Drawing from its root word "repair," *reparation* speaks to transformation. *Id.* It also means tailoring the reparative acts, so they correlate with the kind and degree of harms suffered – restoring what was taken or repairing what was broken. See *id.* at 86–87.

³⁸⁰ *Id.*

³⁸¹ *Id.*; see Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (observing that reparation is more than compensation for past injustices but is a national reckoning leading to spiritual renewal).

³⁸² YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 87–88. See generally AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); Martha C. Nussbaum, *Capabilities and Human Rights*, 66 FORDHAM L. REV. 273 (1997) [hereinafter Nussbaum, *Capabilities and Human Rights*]; 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., 1995). Capacity-building aims to transform "the material conditions of . . . group life – transferring money and land, building schools and medical clinics, allowing unfettered voting – and of restoring injured human psyches – enabling those harmed to live with, but not in, history." YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 318, at 203. This embraces a victim-centered self-determination that "empowers [those injured] to define [for themselves] the restoration that matters to them." YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 68 (alteration in original) (quoting Thomas M. Anikowiak, *A Dark Side of Virtue: The Interamerican Court And Reparations for Indigenous Peoples*, 25 DUKE J. COMP. & INT'L L. 1, 4 (2014)).

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 63
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

contributing to the underlying justice grievances.³⁸³ Otherwise, the reparative initiative cannot effectively address the root problems of power abuses, particularly oppressive systemic structures.

A second insight is *prescriptive*: restructuring those institutions and changing societal attitudes will not flow naturally and inevitably from words of apology or the formal bestowal of reparations.³⁸⁴ Instead, governments or private groups will likely oppose or at least twist reparative efforts and “cast reparations in ways that tend to perpetuate existing power structures and relationships.”³⁸⁵ Therefore, those driving social healing initiatives need to collaborate with civic organizations, journalists, educators, artists, officials, lawyers, businesses, scholars and community advocates to continue to push for systemic changes so that “this will not happen again . . . to anyone.”³⁸⁶

In recounting the Jeju survivors’ mass convictions retrials and their catalyzing impact on broadscale – albeit belated – 4,3 reparations, this article’s earlier sections tacitly drew upon some of the framework’s insights into *reconstruction* and *reparation*. The remainder of this section deploys the framework and its working principles to more fully to assess the next – and

³⁸³ The fifth working principle recognizes that part of the real-world practical reality – or ground-level *pragmatism* – is understanding that what may be ideal theoretically may not be entirely achievable practically. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 70. As competing interests may dictate what is possible at a given moment, reparative justice goals and processes will likely need to “embody some degree of flex, with an eye on long-term strategic aims.” *Id.*

³⁸⁴ As the sixth working principle cautions, the *darkside* of the reparative justice framework “recognizes the danger of incomplete, insincere acknowledgments and ameliorative efforts – how words of recognition [or symbolic monetary payments] without economic justice and institutional restructuring can mask continuing oppression.” *Id.* at 70. Inadequate acknowledgment, meager acceptance of responsibility or a failure of institutional restructuring renders a reconciliation initiative as “just talk.” *Id.* at 70.

³⁸⁵ Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. THIRD WORLD L.J. 477, 518 (1998) [hereinafter Yamamoto, *Racial Reparations*]. The *darkside* principle also warns against entanglement with a *distorted legal framing* of justice claims and anticipates political *backlash*. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 71. Acknowledging the *darkside* risks counsels caution and preparedness for strategic framing of the initiative, complementing the other affirmative working principles for social healing. *Id.*; see also Yamamoto, *Racial Reparations*, *supra*, at 482–83 (articulating three *darkside* of reparations efforts: the distorted legal framing of reparations claims; the dilemma of reparations process; and the ideology of reparations).

³⁸⁶ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 90.

potentially final steps – in the prolonged 4.3 reparative justice initiative.

B. Needed Amendments to the 2021-2022 Special Act

1. An Amendment to Remove Restrictive Eligibility Barriers for Intergenerational Survivors

The National Assembly's exclusion of special provisions on family relations from the December 2021-2022 Special Act prevented 4.3 reparations from taking full flight. As detailed in Part V.C., at the last moment, the Assembly substituted a fact-finding study for draft provisions that would have removed eligibility barriers for intergenerational survivors. A Korean research institute contracted by the government advanced the proposed language to remove the obstacle to family relations eligibility, but political lobbying pushed the Assembly to opt for more "careful consideration."³⁸⁷

The *darkside* principle informing the *social healing through justice* cautions that words of recognition or symbolic payments without broader economic justice and institutional restructuring tend to mask continuing oppression.³⁸⁸ Inadequate acknowledgment, meager acceptance of responsibility or a failure of institutional restructuring renders reconciliation efforts to "just talk."³⁸⁹ Likewise, with hidden eligibility requirements or without robust administrative implementation, monetary commitments to some can hide continuing economic oppression of others, tainting the overall reparative initiative with a patina of cheap grace.

Jeju politicians assured survivors and families that extensive payments would be forthcoming without delay.³⁹⁰ To actualize those assessments, a further amendment to the Special Act is needed to remove the substantial

³⁸⁷ See Hong, "Payment of Compensation from Next Year," *supra* note 337.

³⁸⁸ See *supra* notes 384–85 and accompanying text.

³⁸⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 70; see YAMAMOTO, IN TERRACIAL JUSTICE, *supra* note 318, at 194–95; U.S. INST. OF PEACE, RECONCILIATION AND TRANSITIONAL JUSTICE IN NEPAL: A SLOW PATH 3 (2017) (describing the lack of "political will" to address survivors' desire for truth and accountability); Kai Schultz, *A Decade After Nepal's Maoist Rebellion, Little Justice for Victims*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/world/asia/a-decade-after-nepals-maoist-rebellion-little-justice-for-victims.html>. The chairman of Bereaved Families of April 3 Victims worried that "the ruling and opposition party leaders speak as though they will be passing a Jeju April 3 Special Act any day now, but once they return to Seoul they don't say anything more about it." Iluh, *Family Members of Jeju April 3 Victims Demand Amendment of Special Act*, *supra* note 36.

³⁹⁰ See, e.g., Hong, *Jeju Island Justice Party: "We Welcome the Passage of the Revised 4.3 Special Act*, *supra* note 344; Ilhng, "Payment of Compensation from Next Year," *supra* note 337.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 65
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

intergenerational reparations barrier for numerous 4.3 families.³⁹¹ What remains uncertain is whether the National Assembly and the newly-installed Yoon administration will make those charges.³⁹²

2. *Community Capacity-Building to Repair Intergenerational
Economic and Emotional Health Damage*

Economic justice, as a key aspect of *reparation* – and related to *reconstruction* – often involves direct individual payments, whether symbolic or compensatory. Beyond individual payments, it also facilitates needed community economic capacity-building aimed at transforming the structural conditions affecting 4.3 survivors' and descendants' life opportunities – education, healthcare, job skills training, access to capital and government and community support.³⁹³ Support for developing those life-empowering capabilities – individually and collectively – links economic capacity-building to reparative justice.³⁹⁴

Capacity-building fosters financial advancement and also enhances autonomy, self-determination and participation in the polity.³⁹⁵ Its premise is that an individual's "human capabilities," encompassing material and psychological well-being, are linked foremost not to a nation's overall wealth, but rather to that individual's economic capacity and opportunities in her community setting.³⁹⁶ Individual payments and economic capacity-

³⁹¹ See discussion *supra* Part V.C.

³⁹² See *supra* notes 360–61.

³⁹³ Capacity-building points to the *reparation* dimension of social healing by empowering those at the bottom to participate in mopping the full range of harms and the possibilities for economic repair. See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 68–69.

³⁹⁴ Capacity-building as a reparative goal reaches beyond ordinary economic development programs designed to benefit all. *Id.* at 69. It addresses the social structural conditions for building the harmed person's capacity to productively survive, or even thrive in the community. *Id.* It also aims to benefit the larger society by diminishing social divisions, ill will, dampened productivity and tarnished legitimacy. *Id.*

³⁹⁵ See *id.*

³⁹⁶ See Nussbaum, *Capabilities and Human Rights*, *supra* note 382, at 280–81. Economic stability facilitates the development of what Professor Martha Nussbaum calls "human capabilities." See generally Martha Nussbaum, *Human Rights and Human Capabilities*, 20 HARV. HUM. RTS. J. 21 (2007). Nussbaum identifies ten central human capacities that individuals need to fully develop: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; interacting with the environment and other species; play; and political and material control over one's environment. See *id.* at 23–24; Nussbaum, *Capabilities and Human Rights*, *supra* note 382, at 287–88.

building, buttressed by community development opportunities, bear the potential for becoming integral aspects of a sense of "reconciliation achieved."³⁹⁷

More specifically, capacity-building might inform 4.3 economic justice through targeted small business support, government jobs, business partnerships, loans and advising, expedited government permits and licenses, sustainable tourism planning, media and technology training, community networking and educational scholarships. Economic justice for 4.3 families and Jeju communities thus would endeavor to *repair or reconstruct* the foundations for enhanced individual financial advancement and strengthened community-driven economic development. It would aim to foster a measure of self-determination for Jeju's people in their interplay with government, business, culture, environment and social justice.³⁹⁸

The need exists. For instance, Jeju residents' resistance against central government-led development initiatives driven by outside ownership and money highlighted Jeju people's continuing post-war struggle for self-determination.³⁹⁹ Jeju groups in collaboration with others sharply criticized the national government and its 1990 Jeju Special Development Act and subsequent revisions.⁴⁰⁰ They criticized both the policy and implementation of the Development Act as "an empty promise to develop people[s] well-being" that instead aimed to benefit outside development companies, large landowners and government officials.⁴⁰¹ Critics also charged that the Act enabled outsiders to extract tourism development profits while excluding locals from meaningful economic opportunities and decision-making

³⁹⁷ Peru's Plan Integral de Reparaciones ("Integral Reparations Plan") truth commission reparations recommendations embraced individual capacity-building for direct and indirect victims of the prolonged violent conflict. See, e.g., Lisa J. LaPlante, *On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development*, 10 YALE HUM. RTS. & DEV. L. J. 141 (2007); Lisa J. LaPlante, *The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition*, 23 AM. U. INT'L L. REV. 51 (2007).

³⁹⁸ See YAMANOTO, *A Framework for Social Healing Through Justice*, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, for a discussion of capacity-building as an integral aspect of economic justice.

³⁹⁹ See Sangcheol Kwon, *Alternating Development Strategies in Jeju Island, Korea*, 43 J. KOREAN GEOGRAPHICAL SOC'Y 171, 179-80 (2008).

⁴⁰⁰ See *id.* at 175, 180-82. As tourism elevated its role in the island economy, the question arose: who is benefiting? *Id.* at 177. Apparent answers tended to exclude many Jeju people, with a "we-they" division of tourism beneficiaries becoming brightly discernible. *Id.* Since then, residents' worries about the threat of outsider dominance signaled a recurrent theme in Jeju. *Id.* (describing confrontations between outside interests and local residents related to the Jeju Special Development Act).

⁴⁰¹ *Id.* at 180-81.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 67
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

processes, exploiting Jeju's people, land and natural resources.⁴⁰²

Jeju 4.3 justice advocates joined in the broader quest for community empowerment and self-determination, leveling criticisms of Jeju's exceeding "touristification,"⁴⁰³ environmental degradation⁴⁰⁴ and desecration of sites of 4.3 atrocities, along with protests against the national government's construction of a Jeju naval base (for apparent partial United States usage without U.S. acknowledgment of its responsibility for 4.3).⁴⁰⁵

Another aspect of capacity-building aims to heal psychological trauma transmitted over generations.⁴⁰⁶ Survivors often "unintentionally influence future generations by transmitting dysfunctional fears and beliefs associated with traumatic memories."⁴⁰⁷ That trauma is often disabling, undercutting a

⁴⁰² See *id.* at 175–81. See generally Ben Jackson, *Pretty and Polluted: Jeju Overfilling With Tourists*, KOREA EXPOSE (Dec. 5, 2017) [hereinafter Jackson, *Pretty and Polluted: Jeju Overfilling With Tourists*], <https://koreanexpose.com/jeju-pretty-polluted-overfilling-tourists/>.

⁴⁰³ See Mincheol Kim et al., *Overtourism in Jeju Island: The Influencing Factors and Mediating Role of Quality of Life*, 7 J. ASIAN FIN. ECON. & BUS. 145, 147 (2020); Jackson, *Pretty and Polluted: Jeju Overfilling With Tourists*, *supra* note 402; Kevin Lee, "Too Many Tourists!" *Jeju Residents Say Quality of Life is Dropping*, KOREA BizWIRE (Nov. 21, 2017), <http://koreabizwire.com/too-many-tourists-jeju-residents-say-quality-of-life-is-dropping/101917>.

⁴⁰⁴ See generally Governor Won Hee-ryong Expresses Objection to Jeju Animal Theme Park Development Project, JEJU WKLY. (Dec. 23, 2020, 11:56 AM), <http://m.jejuweekly.com/news/articleView.html?idxno=6239> (describing Governor Won Hee-ryong's objection to the harmful recreational facilities out and around the geographically rare double volcanic craters on Mt. Songak).

⁴⁰⁵ See Elizabeth Shim, *South Korea Arrests Protester for Infiltrating Jeju Naval Base*, UNITED PRESS INT'L. (Mar. 30, 2020, 12:46 PM), https://www.upi.com/Top_News/World-News/2020/03/30/South-Korea-arrests-protester-for-infiltrating-Jeju-Naval-Base/2991585585755/; Bo-hyeop Kim, *Moon Addresses Residents of Gangjeong Village Opposed to Jeju Naval Base*, HANKYOREH (Oct. 12, 2018, 6:00 PM) [hereinafter Kim, *Moon Addresses Residents of Gangjeong Village Opposed to Jeju Naval Base*], https://english.hani.co.kr/arti/english_edu/ior/e_national/865618.html; Byong-su Park, Ji-won Noh & Min-kyung Kim, *Government Drops Lawsuit Against Gangjeong Village Residents*, HANKYOREH (Dec. 13, 2017, 6:01 PM), https://english.hani.co.kr/arti/english_edition/e_national/823363.html; Jon Rubioff & Yoo Kyong Chang, *Plans for South Korean Naval Bases Moving Forward*, STARS & STRIPS (July 6, 2012), https://www.strips.com/theaters/asia_pacific/plans-for-south-korean-naval-bases-moving-forward-1.182252.

⁴⁰⁶ See 4.3 INVESTIGATION REPORT, *supra* note 3, at 607–21 (describing the persisting damage by the guilt-by-association system).

⁴⁰⁷ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 67. Children often endure psychological harm through their parents' reactions and inability to reconstruct their own lives after the experience of mass injustice. As a result, children of

parent and child's capacity for participating productively in community economic life. "Trauma transmission potentially gives rise to hatred, mistrust and fear that span generations and percolate throughout entire communities."⁴⁰⁸ Intergenerational effects of mass traumas on capacity-building are far-reaching and require more than individual therapy.⁴⁰⁹

As detailed in Part V, for Jeju communities, the intergenerational effects of the 4.3 mass trauma persist. South Korean people speak of *han* – the indescribable deep pain, sorrow, grief and resentment emerging from past injustices shared among Korean people across generations.⁴¹⁰ *Han* from Jeju 4.3 runs deep.⁴¹¹

Far from subsiding, collective memories of the injustice intensify. While apologizing to Jeju residents about the earlier-planned construction of the controversial military base on lands marked by 4.3 atrocities, President Moon acknowledged "how much bitterness and pain has built up in [their]

traumatized parents can exhibit transgenerational transmission of trauma. See Michelle R. Ancharoff, James F. Munroe & Lisa M. Fisher, *The Legacy of Combat Trauma: Clinical Implications of Intergenerational Transmission*, in INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES OF TRAUMA 257 (Yael Danieli ed., 1998).

⁴⁰⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 67. Transgenerational social wounds may require engagement less across generations than within a subsequent generation that experiences inherited trauma differently from previous generations. *Id.* at 58 n.54.

⁴⁰⁹ See *id.* at 67; Ruth Pat-Horenczyk et al., *Posttraumatic Symptoms, Functional Impairment, and Coping Among Adolescents on Both Sides of the Israeli-Palestinian Conflict: A Cross-Cultural Approach*, 58 APPLIED PSYCHOLOGY 688 (2009); Laurie Leydie Harkness, *Transgenerational Transmission of War-Related Trauma*, in INTERNATIONAL HANDBOOK OF TRAUMATIC STRESS SYNDROMES 635 (John P. Wilson & Beverley Raphael eds., 1993) (describing the intergenerational trauma transmission by assessing the impact of a father's combat-related PTSD on family life); see also BREAKING INTERGENERATIONAL CYCLES OF REPETITION: A GLOBAL DIALOGUE ON HISTORICAL TRAUMA AND MEMORY (Pumla Gobodo-Madikizela ed., 2016) (exploring intergenerational trauma and its repercussions through case studies involving South Africans, Holocaust survivors and Aboriginal Australians). Recent research also shows that children may inherit genes that increase the likelihood of stress disorders from parents who themselves endured trauma as children. Linda Hasan-Stein & Valmaite Toki, *Reflections from the Roundtable: Access to Justice – How Do We Heal Historical Trauma?*, 15 Y.B. N.Z. JURIS. 183, 194 (2017); Natan P. F. Kellermann, *Transmission of Holocaust Trauma – An Integrative View*, 64 PSYCHIATRY 256 (2001).

⁴¹⁰ The *minjung* (ordinary Korean people) theologian Nan-dong Suh describes *han* as a feeling of unresolved resentment against injustices suffered, a sense of helplessness because of the overwhelming odds against one, a feeling of total abandonment, a feeling of acute pain in one's guts and bowels making the whole body writhe and squirm, and an obstinate urge to take revenge and to right the wrong – all these combined.

BOO-WOONG YOO, KOREAN PENTECOSTALISM: ITS HISTORY AND THEOLOGY 221 (1988).

⁴¹¹ YAMAMOTO, *Prologue: The Han (Persisting Pain) of the Jeju 4.3 Tragedy*, in HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 69
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

hearts."⁴¹² Moon also recognized the government's aggravation of unreconciled hurts by its exclusion of 4,3 community voices from decision-making on the naval base. "Even in matters that are intended to support national security, it's necessary to maintain procedural and democratic legitimacy, and we failed to do that."⁴¹³

As recounted in a story in *Healing the Persisting Wounds of Historic Injustice*, a father of a young girl (now an adult) was distraught to see her play with dolls hanging by strings on her bedroom wall in Jeju.⁴¹⁴ Although she did not understand her father's strange angry reaction at the time, she internalized his deep anxiety.⁴¹⁵ Her father later reluctantly revealed his traumatic 4,3 childhood memories – witnessing soldiers invade his town and hang his neighbors from trees.⁴¹⁶ The image of men and boys he knew hanging from ropes lastingly occupied his memory.⁴¹⁷ *Han* grew in the father's heart, and it passed on to his daughter.⁴¹⁸

The story concluded by observing that *han* "reflects the reality that Koreans despair over past injustice, and painfully realize it as a seemingly inevitable part of Korean life. Indeed, the pain of injustice lasts forever . . . unless it is acknowledged and the lasting damage is repaired." unless there is comprehensive and enduring social healing across generations.⁴¹⁹ As a key aspect of *reparation*, economic justice – particularly a mix of individual payments and capacity-building – is essential to repairing the economic damage and dissipating the emotional pain as predicates to enduring social healing.

Full government funding and support of the recently established Jeju 4,3 Mental Health Center would contribute significantly to capacity-building for 4,3 families and communities.

⁴¹² Kim, *Moon Addresses Residents of Gangjeong Village Opposed to Jeju Naval Base*, *supra* note 405.

⁴¹³ *Id.*

⁴¹⁴ YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 3 (recounting the story by Yea Jin Lee).

⁴¹⁵ *Id.*

⁴¹⁶ *Id.* at 3, 290.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

3. *Reparative Measures Tailored to Women Survivors of Widespread 4.3 Sexual Violence*

Pervasive sexual violence against Jeju women remains a largely overlooked horror of the Tragedy.⁴²⁰ The National 4.3 Committee's investigative report mentioned but did not highlight the special suffering of Jeju women. It did not systematically assess widespread sexual violence, or the unique economic and psychological harms suffered by women targets of that violence.⁴²¹ Nor did the Special Act or its revisions. While the most recent revision authorizes payment for officially recognized "victims," it fails to reach tens of thousands of others, many of whom were tortured, subject to sexual violence and dispossessed of homes.⁴²²

Police, soldiers and paramilitary forces horrifically sexually assaulted many Jeju women. Regardless of age, pregnancy, marriage or family relationship,⁴²³ Jeju women suffered "violent sex, rape or sexual torture."⁴²⁴

⁴²⁰ See *id.* at 154–55, 219–20; Miyoko T. Pettit, *Who Is Worthy of Redress?: Recognizing Sexual Violence Injustice against Women of Color as Uniquely Redress-Worthy*, *Illuminated by a Case Study on Kenya's Mau Mau Women and Their Unique Harms*, 30 BERKELEY J. GENDER L. & JUST. 268 (2015) [hereinafter Pettit, *Who Is Worthy of Redress*] (highlighting Mau Mau women and their economic justice claims arising out of sexual-political violence); Ruth Elizabeth Velázquez Estrada, *Grassroots Peacemaking: The Paradox of Reconciliation in El Salvador*, 41 SOC. JUST. 69, 81–82 (2015) (noting grassroots peacemaking in a bottom-up approach to reconciliation could lead to deeper understanding of root causes of conflict and reparations to both victims and perpetrators).

⁴²¹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF [HISTORIC] INJUSTICE, *supra* note 4, at 219. See generally Eric K. Yamamoto & Michele Park Sonen, *Reparations Law: Redress Bias?*, in IMPLICIT RACIAL BIAS ACROSS THE LAW 244 (Justin D. Levinson & Robert J. Smith eds., 2012) [hereinafter Yamamoto & Sonen, *Reparations Law*] (exploring implicit bias among reparations advocates in overlooking the particularized harms of women's sexual violence trauma); Pettit, *Who Is Worthy of Redress*, *supra* note 420, at 305–08 (comparing omission of gender violence in the reparations process for Jeju 4.3 reparations and Mau Mau reparations).

⁴²² See *supra* Parts V.C, VLB.1 (discussing the limitations of the reparative package).

⁴²³ Rimwha Han, *Cases of Sexual Assault Committed to Local Women During Jeju 4.3 Incident*, 5 WORLD ENV'T & ISLAND STUD. 185, 194–96; Ae-Duck Im trans., 2015 [hereinafter Han, *Cases of Sexual Assault Committed to Local Women During Jeju 4.3 Incident*] (describing cases where a Special Investigative Team forced a daughter-in-law and father-in-law to have sex, dissected a pregnant woman's belly with a dagger then shot the fetus and inserted a sweet potato or hand grenade into young women); One survivor "testified that a police officer inserted the heated muzzle of his gun into a pregnant woman['] . . . and then burned her with oil to death." Tac-Ung Baik, *Social Healing Through Justice: Jeju 4.3 Case*, 2 WORLD ENV'T & ISLAND STUD. 59, 64 (2012).

⁴²⁴ Rimwha Han, *The Sexual Assault Horrors on Jeju's Women: Testimonies*, in JEJU 4.3 GRAND TRAGEDY DURING 'PEACETIME': KOREA: THE ASIA PACIFIC CONTEXT (1947–2016) 79, 84 (Chang Hoon Ko, Eric K. Yamamoto, Xunhiko Yoshida et al. eds., 2016) [hereinafter Han, *The Sexual Assault Horrors on Jeju's Women: Testimonies*].

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 71
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

Some attackers treated women as sex slaves.⁴²⁵ According to the National 4.3 Committee's investigation, the "Seochong" police tortured women with a special whip called "[s]oejonmae" after stripping them naked.⁴²⁶ The police then took turns raping women in front of the entire force, as well as the local people imprisoned.⁴²⁷ Security forces also sexually coerced women "in trade for their family members' lives."⁴²⁸ The trauma devastated. "At that time, I wanted to kill myself – but I lived, for the sake of my family."⁴²⁹ And the trauma – often unspoken – passed from mothers to daughters.

For these reasons, international law now condemns this kind of sexual violence attendant to military action as crime against humanity. The United Nations recognizes conflict-related sexual violence as a peace and security issue, and "rape and other forms of sexual violence [as] war crimes, crimes against humanity or a constitutive act with respect to genocide."⁴³⁰

⁴²⁵ *Id.*

⁴²⁶ *Id.* at 92–93; see 4.3 INVESTIGATION REPORT, *supra* note 3, at 603–07. Survivors attested that the head police officer "was notorious as a master of [sexual] torture." Han, *Cases of Sexual Assault Committed to Local Women During Jeju 4.3 Incident*, *supra* note 423, at 196.

⁴²⁷ Han, *The Sexual Assault Horrors on Jeju's Women: Testimonies*, *supra* note 424, at 92–93.

⁴²⁸ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 219; see Anne Hilly, *A Look at Jeju Women's Lives Throughout Time: The History of Jeju Women's Culture*, JEJU WKLY. (Dec. 9, 2017, 1:26 PM) [hereinafter Hilly, *A Look at Jeju Women's Lives Throughout Time*], <http://www.jejuweekly.com/news/articleView.html?idxno=2242>.

⁴²⁹ Hilly, *A Look at Jeju Women's Lives Throughout Time*, *supra* note 428.

⁴³⁰ Press Release, Security Council, Security Council Demands Immediate and Complete Halt to Acts of Sexual Violence Against Civilians in Conflict Zones, Unanimously Adopting Resolution 1820 (2008), U.N. Press Release SC/9364 (June 19, 2008). In 2009, the mandate of the Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC) was "established through the adoption of Security Council resolution (SCR) 1888 . . . to tackle conflict-related sexual violence (CRSV) as a peace and security issue, while also bearing in mind other serious violations of human rights that occur during armed conflict" and are condemned as crimes against humanity under international law. *Our Mandate*, OFF. OF THE SPECIAL REPRESENTATIVE OF THE SEC'Y-GEN. ON SEXUAL VIOLENCE IN CONFLICT, <https://www.un.org/sexualviolenceinconflictour-work/our-mandate/#:~:text=The%20mandate%20of%20the%20Special,bearing%20a%20mind%20other%20serious> (last visited Oct. 17, 2022). More recently, the Security Council adopted Resolution 2467 (2019) to implement "concrete commitments to fight sexual violence during conflict and demand for the complete cessation of all acts of sexual violence by all parties to armed conflict." Press Release, Security Council, Security Council Adopts Resolution Calling

Moreover, with thousands of men and boys killed along with many women, the Jeju 4.3 Tragedy left numerous women alone to support families and reconstruct destroyed villages in a culture heavily influenced by male-centered Confucian teachings.⁴³¹ Jeju women had to "bear not only the terror and hardship of that time but the loss of their husbands[.] . . . sons [and daughters] as well."⁴³² Some organized "widows' networks" to support each other, entered previously male work realms like farming, and continued arduous deep-sea diving as "Haenyeo" women divers.⁴³³ Others committed suicide, unable to "forget the images" of death of loved ones.⁴³⁴ Despite exceedingly harsh conditions, the women's networks proved a vital force for communal problem-solving and gradual Jeju community revival.⁴³⁵

The 4.3 women's special suffering and resilience live in Jeju's *samda* – the three Jeju abundances of winds, stones and women.⁴³⁶ What Jeju women's abundance means today is an evolving question. Soonie Kim, a historian, mythologist and Jeju representative to the Cultural Heritage Administration, speaks of "soul healing."⁴³⁷ She observes that, with historical roots in 4.3, "Jeju women need enlightenment in order to improve Jeju [now] We are

upon Belligerents Worldwide to Adopt Concrete Commitments on Ending Sexual Violence in Conflict, U.N. Press Release SC/13790 (Apr. 23, 2019).

⁴³¹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 219–20; see JEONG-SIM YANG, JEJU 4.3 UPRISING: RESISTANCE AND PAIN HISTORY (2008) (title trans. by authors); JEJU APRIL 3 PEACE FOUNDATION, WIND OF PEACE: JEJU APRIL 3 PEACE PARK (2008) [hereinafter JEJU APRIL 3 PEACE PARK] (on file with authors); see also Huh, *Yang Gyeong-sook Lost Her Vision Due to Brutal Torture*, *supra* note 196 ("Thinking about my [dead] younger brothers makes me want to lie down and cry. I would gladly die if only one of them could have lived.").

⁴³² YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 219; see also Huh, *Yang Gyeong-sook Lost Her Vision Due to Brutal Torture*, *supra* note 196.

⁴³³ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 219–20; Huh, *An Elderly Woman's Terrifying Memories of Being Tortured by Soldiers at 12 Years Old*, *supra* note 196 ("[S]he wasn't able to keep up the diving for long because of the lingering effects of the torture she'd suffered. Whenever she got into the water, her whole body would ache, and when she came out again she would suffer awful spasms."); see also Emily Cutaneo, *The Female Free Divers of Jeju*, RDS & KINGDOMS (Apr. 5, 2017), <https://roadsandkingdoms.com/2017/the-female-free-divers-of-jeju/>.

⁴³⁴ Hilly, *A Look at Jeju Women's Lives Throughout Time*, *supra* note 428; see also Huh, *Yang Gyeong-sook Lost Her Vision Due to Brutal Torture*, *supra* note 196 ("The loss of her two sons and the torture of her daughter was too much for Yang's mother to bear, and she died of a broken heart at the age of 55").

⁴³⁵ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 220 (citing JEJU APRIL 3 PEACE PARK, *supra* note 431).

⁴³⁶ *Id.* "In 1952, Jeju's population of women over 20 years old was nearly double that of men." *Id.* at 220 n.21.

⁴³⁷ Hilly, *A Look at Jeju Women's Lives Throughout Time*, *supra* note 428.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 73
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

selling our souls for tourism and money – but there’s more than this. We need soul healing.”⁴³⁸ What that soul healing might mean for Jeju women today? Scholar Rimhwa Han offers: “We have a new identity now – but we don’t know what it is. We need to rebuild Jeju women’s society – and take care of each other.”⁴³⁹

Moving forward, then, the third and fourth Rs of Jeju 4.3 social healing (*reconstruction and reparation*) might aim to help rebuild Jeju women’s society. Encompassing women’s soul healing. To date, neither the National 4.3 Committee’s Report nor the National Assembly’s handling of 4.3 redress – or the larger political discourse on 4.3 harms – grapples meaningfully with this. The East Timor Truth and Reconciliation Commission highlighted women’s unique emotional trauma and financial devastation resulting from occupying soldiers’ sexual violence, all as a key tenet of the reparative process.⁴⁴⁰ Deepening the justice discourse in this fashion and tailoring National Assembly remedies to promote Jeju women’s self-defined soul healing would mark a significant advance in the reparative initiative.

4. *Potential United States Acceptance of Partial 4.3 Responsibility and Participation in Next Reparative Steps*

Enlivening the social healing working principle of “mutual engagement,” calling forward all responsible for the Jeju 4.3 Tragedy – and particularly the United States – would stand as a symbolic refusal to shield anyone from

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ See *Sexual Violence, in FINAL REPORT OF THE COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION IN EAST TIMOR (CAVR) (2006)*. Many survivors of sexual violence and slavery develop long-term mental illnesses as a result of “the continued lack of security, the lack of mental health services to deal with the trauma, and their sense of rage, shame, isolation and guilt.” *Id.* at 96. Even with support from their family, many women were not able to recover from their trauma. *Id.* One woman remains “mentally unstable, has fainting spells and . . . [remains] unmarried.” *Id.* at 97. “I do not want to get married, because he destroyed me like an animal. I am too embarrassed to get married. Better I just sit tight and work in my garden for my livelihood.” *Id.* at 98. “Women who became pregnant and bore children from non-consensual sexual relationships faced multiple layers of discrimination Their children were often discriminated against . . . as illegitimate children born out of wedlock.” *Id.* at 100. The stigma from sexual slavery “resulted in isolation from her family, ridicule from the community and discrimination against the woman and her children, including in some cases by church officials.” *Id.* at 46; see also Yamamoto & Soner, *Reparations Law*, *supra* note 421.

accountability.⁴⁴¹ It would also demonstrate the South Korean government's resolve to *comprehensively* heal the persisting wounds of the Tragedy.⁴⁴²

As detailed in the companion article, South Korean and U.S. scholars recently intensified their calls for United States engagement.⁴⁴³ International human rights organizations and the Association of Bereaved Families of Victims of the Jeju April 3rd Uprising of Historical Truth, joined the chorus.⁴⁴⁴

Perhaps most significant, advocacy groups intensified their demand for United States participation in the reparative initiative, observing that *comprehensive* and *enduring* Jeju 4.3 social healing will be impossible without it.⁴⁴⁵ In 2018, on the seventieth anniversary commemoration of Jeju 4.3, prominent justice advocacy organizations called for

an “apology and acceptance of responsibility” by the United States. In a joint letter to the U.S. Embassy in Seoul – authored by the Association of Bereaved Families of the 4/3 Victims, the Memorial Committee of the 70th Anniversary of the Jeju April 3rd Uprising and Massacre and the Pan-National Committee for the 70th Anniversary of Jeju April 3rd – the groups observed that the U.S. military administration was “sent as a commander of the U.S. forces in the Jeju area just after April 3, 1948, to command and direct all suppression operations in Jeju and provided active support with weapons and equipment for the punitive forces while the scorched earth operation was taking place.”⁴⁴⁶

The groups also highlighted the absence of U.S. participation in the 4.3

⁴⁴¹ See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 215.

⁴⁴² *Id.* at 215–16.

⁴⁴³ See Yamamoto, Burns & Takeuchi, *Apology & Reparation II*, *supra* note 52, at 92, for a fuller discussion on the South Korean and U.S. scholars collectively calling for United States participation in the social healing initiative.

⁴⁴⁴ See *id.* for a discussion on the calls from human rights groups including the East Asian Network for Democracy, Peace and Human Rights.

⁴⁴⁵ See, e.g., Anthony Kuhn, *Survivors of a Massacre in South Korea are Still Seeking an Apology from the U.S.*, NPR (Sept. 7, 2022, 5:10 AM), <https://www.npr.org/2022/09/07/1123427407/survivors-of-a-massacre-in-south-korea-are-still-seeking-an-apology-from-the-u-s>. See generally Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 130, at 57–59.

⁴⁴⁶ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 5; Keum-hi Hwang, *Jeju Citizens Demand US Apology for Apr. 3 Massacre*, HANKYOREH (Apr. 9, 2018, 6:04 PM) [hereinafter Hwang, *Jeju Citizens Demand US Apology for Apr. 3 Massacre*], https://english.hani.co.kr/art/english_edition/e_national/839789.html.

2022 / APOLOGY & REPARATION: THE JEJU TRAGEDY RETRIALS 75
AND THE JAPANESE AMERICAN CORAM NOBIS CASES AS
CATALYSTS FOR REPARATIVE JUSTICE

reconciliation process, declaring that the “US administrations that should have taken responsibility have remained ‘bystanders’ and not said a word for 70 long years.”⁴⁴⁷

The joint letter by the Bereaved Families also rejected the conservative opposition political party’s attempt to reframe the “incident” as a broadscale armed revolt by communists “stag[ing] guerrilla warfare” that compelled government forces to carry “out a strong crackdown in response, which caused damage to Jeju civilians.”⁴⁴⁸ Most significant, the Bereaved Families demanded that the United States now “actively investigat[e] the role of the U.S. military administration and U.S. military advisory group.”⁴⁴⁹

VII. CONCLUSION

Amid a revitalized Jeju 4.3 justice movement – marked by family storytelling, artist portrayals, teacher lessons, journalist reports, scholarly assessments and political lobbying – eighteen survivors of the 4.3 mass military tribunal convictions petitioned the Jeju court in 2017 to reopen their seventy-year-old cases and clear from their records the false stain of guilt for espionage and unlawful rebellion. This article examined the monumental pleas by those survivors – for themselves and 2,500 others tortured during detention and wrongly convicted en masse without proper charges or trials. It explored the explicit linkage of those Jeju retrial petitions to the Japanese American resisters’ successful 1980s coram nobis challenges to the U.S. Supreme Court’s rulings during World War II upholding the forced removal and mass incarceration of Japanese Americans – laying the judicial cornerstone for the 1988 U.S. Civil Liberties Act’s government apology and reparations.

The article then uplifted Jeju District Judge Chang’s extraordinary 2019 rulings, with the nation watching, vindicating not only the eighteen survivors but also sweeping away the manifest injustice suffered by all. And it tracked Judge Chang’s remarkable ensuing “compensation” order for the petitioners that more broadly helped galvanize – after prolonged political struggle – the

⁴⁴⁷ Hwang, *Jeju Citizens Demand US Apology for Apr. 3 Massacre*, *supra* note 446.

⁴⁴⁸ *Parties Mark 70th Anniv. of Jeju April 3 Incident With Varied Interpretations*, KOREA HERALD (Apr. 3, 2018, 1:04 PM), <http://m.koreaherald.com/view.php?ud=20180403000545> (reporting on both the Bereaved Families joint letter and the opposition Liberty Korea Party’s characterization).

⁴⁴⁹ YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 5 (alteration in original). See generally *id.* at chapters 10, 11, 12 and 13 for an in-depth discussion of U.S. participation.

National Assembly's broadscale reparations/compensation program for many 4.3 survivors and families.

Drawing upon human rights precepts of reparative justice and multidisciplinary insights into social healing, the article then assessed the remarkable recent progress in the twenty-year Jeju 4.3 social healing initiative, highlighting the Jeju court's rulings and the National Assembly's 2021-2022 Special Act revisions. It also identified critical gaps in the 2021-2022 Act's eligibility requirements; underscored the continuing need for economic justice in the form of tailored group capacity-building to empower Jeju communities; and uplifted the importance of further reparative action to address the unique suffering of Jeju women subjected to widespread 4.3 sexual violence.

In the closing parts, through the lens of reparative justice developed in the 2021 book *Healing the Persisting Wounds of Historic Injustice*,⁴⁵⁰ this article synthesized assessments about what recently advanced and what still impedes *comprehensive and enduring Jeju 4.3 social healing*, acknowledging the prolonged absence of the United States from the reparative initiative. The Jeju 4.3 Special Act, as reflected in its title, sought to "Discover[] the Truth" and "Restor[e] of Honor of Victims." Jeju people, human rights advocates and scholars maintain that without the United States at the reconciliation table, aging survivors and their families, Jeju communities and South Korea as a nation cannot fully grapple with the "truth" of the Tragedy or "restore the honor" of those suffering the seared earth violence.

A companion article to this work – titled "*Apology & Reparation II: United States Engagement with Final Stages of Jeju 4.3 Social Healing*" – evaluates the propriety and impact of America's refusal to engage along with intensifying calls by 4.3 justice advocates, scholars and human rights organizations for the United States to step up and take its place at the 4.3 reconciliation table. Linking the two articles together, the companion piece suggests a path forward that may well benefit the United States, South Korea and, most important, the people of Jeju. *Comprehensive and enduring Jeju 4.3 social healing through justice awaits.*

⁴⁵⁰ See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4.