

UNFINISHED BUSINESS:

A Joint South Korea and United States *Jeju 4.3 Tragedy* Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring *Social Healing Through Justice*

*Eric K. Yamamoto, * Miyoko Pettit* and Sara Lee**

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* Fred T. Korematsu Professor of Law and Social Justice, William S. Richardson School of Law, University of Hawai'i. Copyright Eric K. Yamamoto 2014. We are especially grateful to Professors Ko Chang-hoon, Kunihiko Yoshida, Jongseok Park, Tae-Ung Baik and Susan Serrano for their insights, to Sarah Sheffield, Randall Wat, Joy Neely and Yea Jin Lee for their valuable assistance and to Dean Avi Soifer for guidance and support.

* Fred T. Korematsu Scholar Advocate; Juris Doctor (expected 2015), William S. Richardson School of Law, University of Hawai'i.

* Juris Doctor 2013, William S. Richardson School of Law, University of Hawai'i.

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PROLOGUE

The April 3rd [1948] Uprising and the Grand Massacre [known as Jeju 4.3] is the leading Korean [redress] case . . . 30,000 islanders were killed . . . The Jeju mass killing [by South Korean military, paramilitary and police under United States authority and oversight] had long been a taboo [subject] under the dictator governments since 1961.

However, [South Korea] President Roh Moo-Myun paid a visit to Jeju for the first time to make a sincere apology in October 2003 after [creation of a] special statute for the truth finding and [for the reconciliation for] . . . the victims [and their families] The [National Committee] report of the truth finding was publicized [in 2003 in Korean and in 2013 translated into English]

[Even though t]he beautiful peace park, the inspiring memorial as well as the informative April 3rd museum have been established afterwards as . . . reparations, the problems still exist: (a) the monetary compensations are very limited; (b) the left-wing victims still can't get any reparations because of their [wrongful] status as the core group of 'communist guerillas', how miserably they were slaughtered[, tortured, and summarily detained]; (c) the

U.S. secondary responsibility has not been discussed legally at depth yet, despite [the fact that the U.S.] also played an important role for this genocide!

- Professor Kunihiko Yoshida, 2012¹

I. INTRODUCTION

Summer 2013 marked the publication of the English translation of the National Committee's 2003 Investigative Report on the Jeju 4.3 Tragedy ("Translated Report").² The translated version is momentous. For the Korean populace, it exposes to vast new audiences a startling and horrific "peacetime" chapter of South Korean history—the mass killing of some 30,000 Jeju residents, the torture, rape and detention of many more, the destruction of 40,000 homes and the burning of numerous villages. For English readers, in entirety, the over 700-page, 1,300-footnote Translated Report reveals fresh insights into salient facets of the Tragedy and its consequences—far beyond those recited in the earlier translated "Conclusion" section of the Report.³ In particular the Translated Report as a whole sheds brighter light on the extent of United States responsibility both for past individual and communal harms and for present-day social healing.

Initially acting on the 4.3 National Committee's recommendations, the South Korea government began a healing process that included a concise presidential apology, government-sponsored museum and extensive public memorial and gravesite and limited financial payments to a few. But there remains a palpable sense among many that Jeju 4.3 social healing is starkly incomplete. The wounds persist. After the 2007 South Korea presidential inauguration, reconciliation efforts in some respects regressed.

In recent years grassroots 4.3 justice organizing, galvanized by Jeju's emergence as a "Peace Island" and model of environmental sustainability, attracted international scrutiny and ignited a resurgence of

¹ Kunihiko Yoshida, *Reparations and Reconciliation in East Asia: Some Comparison of Jeju April 3rd Tragedy with Other Related Asian Reparations Cases*, 2 WORLD ENVIRON. & ISLAND STUD. 79, 80–81 (2012).

² See generally NAT'L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, THE JEJU APRIL 3 INCIDENT INVESTIGATION REPORT (Jeju Apr. 3 Peace Found. Trans., 2013) [hereinafter TRANSLATED REPORT]. "The Jeju April 3 Incident" is the officially recognized description. Other descriptions include "Tragedy" or "Grand Massacre."

³ See The National Committee for Investigation of the Truth About the Jeju April 3 Incident, *Truth-Finding Efforts and Recommendations: Summary of the Report's Conclusion*, NAT'L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, <http://www.jeju43.go.kr/english/sub05.html> (last visited Oct. 25, 2013).

4.3 social healing advocacy. Jeju people, journalists, local government officials and supporters advanced those initial grassroots efforts. Scholars and community advocates also publicized 4.3 history and crafted beginning recommendations for next steps through convenings in Jeju and Hawai'i and through popular and academic publications. A renewed 4.3 Special Committee of the Jeju Self-Governing Council, which laid a foundation for truth-finding from 1993 to 2003, appears poised again to play an important role. The 2013 Translated Report integrated these forces into a 4.3 social healing movement.

In light of the new English translation and an abiding sense among many that Jeju 4.3 social healing is “unfinished business,”⁴ this article responds to the pressing socio-legal question, “What’s next?” Its responses, and especially the recommendation for a *Joint South Korea and United States Jeju 4.3 Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice* (described below), are grounded in three related ways.

First, they are grounded in Professor Yamamoto’s exposure (as a reviewer of the near-final draft of the Translated Report) to voluminous details and careful assessments of the researchers and analysts crafting the Report⁵—supported by prior research of others and by extensive updated independent research and analysis, some of which was conducted in Korean by a member of the research team.⁶

Second, the responses are grounded in research on Jeju Island and continuing documentary inspection and conversations with island residents about history, current conditions and future aspirations.⁷ And

⁴ 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 (Gi-Wook Shin, Soon-Won Park & Daqing Yang eds., 2007) (characterizing reconciliation efforts as “incomplete justice”). See also *infra* Part IV.

⁵ See TRANSLATED REPORT, *supra* note 2, at 752.

⁶ Research in Korean was conducted by Yea Jin Lee (a former Seoul resident and university graduate, and now American law school graduate).

⁷ Professor Chang Hoon Ko of Jeju National University, Hokkaido University Law Professor Kunihiro Yoshida, Hawai'i legal researcher Sara Lee and Professor Yamamoto spent part of April 2012 on Jeju Island. They talked with the Jeju 4.3 Victims Survivors Family Association and community leaders, visited the moving Jeju 4.3 museum, memorial, and vast honorary cemetery, and they met with the Director of the Jeju Peace Foundation and the researchers of the Jeju 4.3 Institute. Through the Victims Survivors Family Association, they also visited the small village home of a woman who survived what has been called “the April Third (4.3) Grand Massacre”—she had her lower jaw shot off by police, and her iconic image with shawl wrapped around her dignified yet disfigured face became a symbol of the mass killing of 30,000 island residents. See Yoshida, *supra* note 1, at 80. In Fall 2013, legal researcher Miyoko Pettit and Professor Yamamoto furthered the assessment of social healing efforts to date through participation in the 4.3 Peace Education Forum at Jeju National University, “Towards Island Civilization Model of Social Healing of Mass Killing of Jeju Islanders

third, and related, this article's responses, and especially the proposal for a Joint Task Force, are grounded in collaborations with Jeju 4.3 scholars and interactions with institutes at Jeju National University, local officials and community justice advocates.⁸

The interactions with the people and places of Jeju Island made poignantly real some of the human suffering and realpolitik forces at play. Viewed through the analytical lens of *social healing through justice*,⁹ they also underscored the importance of South Korean reconciliation efforts in the past decade—both salutary and unfinished—and the significance of continuing justice advocacy by the Jeju people and their supporters. And they highlighted that we in the United States know almost nothing about the Tragedy and the apparently significant role of the United States as the post-World War II peacetime military force in South Korea with control over the Korean military and national police.¹⁰ Most important, they illuminated potential next steps toward genuine reconciliation that could mutually benefit the Jeju people, South Korea and the United States.¹¹

Indeed, joint participation by the United States, South Korea and the Jeju government and people is crucial. It is even more important now because of the construction of a naval base on Jeju (according to some,

of South Korea During and After U.S. Peacetime Occupation (1947–1954).”

⁸ For instance, a 2012 colloquium in Hawai'i addressed “Social Healing Through Justice: The Mass Killing of Korea Jeju Islanders During U.S. Peacetime Occupation” and included participation by Professors Ko Chang-hoon and Eric Yamamoto, international human rights scholar Tae-Ung Baik, reparations scholar Kunihiro Yoshida, along with Yong-Beom Kim (Chair of the Autonomous Administration Committee of the Jeju Provincial Council), Jihee Kim (researcher for the World Association for Island Studies), Dong-Yun Yang (Chair of the Jeju April 3rd Citizens' Solidarity) and Ho-Chun Kim (Jeju journalist and Chair of the Tamna Photo Association), and with support from the World Environment and Island Institute of Jeju National University.

A major conference at Jeju National University in 2013, at which Professor Yamamoto and Miyoko Pettit were lead presenters, addressed “Towards Island Civilization Model of Social Healing of Mass Killing of Jeju Islanders of South Korea During and After U.S. Peacetime Occupation (1947–1954)” and included interactions with Professor Ko, Ho Sung Koh (Dean of Jeju National University Law School), Kunihiro Yoshida (reparations scholar), Moon Hyun Chung and Du-Yun Kim (4.3 Victims Survivors Family Association), Eun-Jeong Kang (PhD. candidate focusing on “dark tourism”), Kenneth McLeod (President of Scholar's Choice International), Hey-Gyeong Ahn (Director of Art Space projects), Dong-Yun Kim (Professor at Jeju National University), Yong-Beom Kim (Chair of the Autonomous Administration Committee of the Jeju Provincial Council), Lim-Hwa Han (novelist), Gyeonog-Sik Kang (representative of the local Jeju government) and Hyeok-Jin Ko (Jeju 4.3 documentary filmmaker and President of the Association of Jeju Independent Film and Video).

⁹ See *infra* Part II.

¹⁰ See *infra* Part V.

¹¹ See *infra* Parts IV & V.

partially for United States use) in the face of visible resident and global opposition (as well as some support)¹² and because of the call of many to uplift Jeju as an island of environmental sustainability and peace.¹³ Potential U.S. participation in further Jeju 4.3 social healing is an issue that is live, real and uncertain.

What might compel the United States (as well as the South Korea government) to perceive a strong interest in social healing? And, related, if there is to be joint future participation, in what form might this mutual engagement materialize? Many possibilities emerge. All entail strategic planning, realistic assessments and careful framing in fashioning incremental steps forward. The proposal advanced in this article is a *Joint South Korea and United States Jeju 4.3 Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*. That Joint Task Force would likely serve as a crucial next step toward genuine reconciliation—helping implement unfinished recommendations, assessing the effectiveness of actions to date and recommending further concrete actions aimed at the kind of justice that fosters *comprehensive, systemic* and *enduring* social healing.

This proposal for an assessment, implementation and oversight Task Force reflects the new next phase for long-standing, unfinished reconciliation initiatives. Described in depth in Section V, it also emerges from the multi-disciplinary framework of *social healing through justice* Professor Yamamoto has been developing for guiding and assessing practical reconciliation initiatives.¹⁴ A brief description will be helpful.

¹² See *infra* Part V.C.5.c.

¹³ See *infra* Part V.C.5.d.

¹⁴ See *infra* Part II. The *social healing through justice* framework for shaping, implementing and assessing reconciliation initiatives is developed and refined in ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (2000) [hereinafter YAMAMOTO, *INTERRACIAL*]; ERIC K. YAMAMOTO, MARGARET CHON, CAROL IZUMI, JERRY KANG & FRANK WU, *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* (2d ed., 2013) [hereinafter YAMAMOTO ET AL.]; Eric K. Yamamoto, Sara Lee & Yea Jin Lee, *The United States' Role in the Korea Jeju April 3rd Tragedy and Its Responsibility for "Social Healing Through Justice,"* 2 *WORLD ENVIRON. & ISLAND STUD.* 49 (2012); 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.* 123–49 (2012); Eric K. Yamamoto & Brian MacKintosh, *Redress and the Salience of Economic Justice,* *FORUM ON PUB. POL'Y* (Dec. 2010), <http://forumonpublicpolicy.com/vol2010.no4/archive.vol2010.no4/yamamoto.pdf>; Eric K. Yamamoto & Ashley Kaiao Obrey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives,* 16 *ASIAN AM. L. J.* 5 (2009); Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads,* 44 *CAL. W. L. REV.* 1, 61 (2007).

The framework, and many aspects of this article, also draw generally from redress/reparations scholarship in Eric K. Yamamoto & Michele Park Sonen, *Redress*

II. SOCIAL HEALING THROUGH JUSTICE: A FRAMEWORK FOR SHAPING, IMPLEMENTING AND ASSESSING SOCIAL HEALING (OR RECONCILIATION) INITIATIVES

Those concerned about healing the wounds of historic injustice need a multi-disciplinary analytical framework grounded in theory and workable in practice to help shape, implement and assess social healing, or reconciliation, initiatives.¹⁵ The once powerful idea of reparations—that is, multi-faceted forms of repair—has been largely eviscerated by redress opponents in the United States.¹⁶ Those opponents have managed to narrowly recast reparations to mean monetary compensation, thus requiring legal proof of an individual perpetrator who caused direct harm to a specific victim, and the filing of legal claims before the expiration of short statutes of limitation.¹⁷ By singularly focusing on legal requirements, this framing both undercuts most reparations claims and distorts public understandings of broadscale group-based injustice.¹⁸

Something else is needed.¹⁹ A praxis approach—connecting the conceptual to the practical—suggests a pragmatic search for healing understandings that resonate both with policymakers and on-the-ground communities.²⁰ These understandings emerge from the disciplines of law,

Bias?, in *IMPLICIT BIAS ACROSS THE LAW* (Justin D. Levinson & Robert J. Smith eds., 2012); Eric K. Yamamoto, Susan K. Serrano & Michelle Natividad Rodriguez, *American Racial Justice on Trial—Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269 (2003); Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477 (1998); Eric K. Yamamoto, *Reluctant Redress: The U.S. Kidnapping and Internment of Japanese Latin Americans*, in *BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR* 132–39 (Martha Minow ed., 2002); Eric K. Yamamoto, *Friend, Foe or Something Else: Social Meanings of Redress and Reparations*, 20 DEN. J. INT’L L. & POL’Y 223 (1992).

¹⁵ See generally Yamamoto, Kim & Holden, *supra* note 14.

¹⁶ See Kim D. Chanbonpin, *We Don’t Want Dollars, Just Change: Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth about Torture Commission*, 6 NW. J. L. & SOC. POL’Y 1, 27 (2011) (describing practical limits of the litigation-compensation model for reparations).

¹⁷ See ALFRED L. BROPHY, *REPARATIONS PRO & CON* 98–99 (2006).

¹⁸ Yamamoto, Kim & Holden, *supra* note 14, at 61.

¹⁹ See generally Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 381 (1987) (arguing for a paradigm shift for reparations from a traditionally narrow individual-based legal mechanism to a group-based “critical legalism”); Eric K. Yamamoto & Susan K. Serrano, *Reparations Theory and Practice: Then and Now*, UCLA ASIAN PAC. AM. L. J. (forthcoming 2014) (expanding approach to reparative justice).

²⁰ See Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 4 (1997) (characterizing a praxis approach to justice inquiry that is rooted in pragmatist thought). See also RICHARD RORTY, *CONTINGENCY, IRONY, AND SOLIDARITY* (1989); CORNEL WEST, *THE AMERICAN EVASION OF PHILOSOPHY* (1989); Martha Minow & Elizabeth V.

theology, social psychology, political theory, human rights, economics and indigenous healing practices.²¹ Each of these disciplines, often in widely varying ways, addresses specific processes for healing the wounds of injustice, illuminating both salutary prospects and limitations.

Indeed, each of the disciplines frames group healing according to its component parts and then, sensing something missing, while acknowledging limitations, reaches for an enlivening idea, or term, to better capture the tumultuous, energized feel of the actual social healing experience. In transcending categories, law speaks of equality and dreams of truly “egalitarian” relations—a law-inspired leveling of social and economic hierarchies.²² Yet law also acknowledges that claims to reparations, with recent exceptions, have fallen short in the courts.²³

Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1990); Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699 (1990); Joseph Singer, *Property and Coercion in Federal Indian Law: The Conflict Between Critical and Complacent Pragmatism*, 63 S. CAL. L. REV. 1821 (1990); Richard A. Posner, *Legislation and Its Interpretation: A Primer*, 68 NEB. L. REV. 431 (1989); Richard A. Posner, *What Has Pragmatism to Offer Law?*, 63 S. CAL. L. REV. 1653 (1990); Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763 (1990).

²¹ See YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 153–71 ; Yamamoto & Obrey, *supra* note 14, at 31–32; *see also* Chanbonpin, *supra* note 16, at 8.

²² Law grounds understandings of justice and provides a beginning point for approaching social healing. Notions of rights and duties, remedies and open process encompass ideals of equal opportunity, due process, and freedom of speech and association. *See generally* Yamamoto & MacKintosh, *supra* note 14, at 1, 2, 5; YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 154–59.

²³ Courts possess limited power to remedy many injustices. They can award individual compensation for actual damages and order property restitution. But the injustices inflicted through systemic discrimination, denials of self-determination, violence or culture suppression have no direct remedy (besides money) in the standard legal system. And traditional legal remedies are slow in coming and limited in reach. Moreover, the formal legal process falls far short of addressing the damage to culture, communities, education and economic and spiritual well-being—damage that persists over generations. *See generally* Yamamoto & MacKintosh, *supra* note 14, at 1, 2, 5; YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 154–59; *see also* Chanbonpin, *supra* note 16, at 27.

Nevertheless, the legal process at times provides openings toward reparative justice. For instance, following the 2011 and 2012 historic British High Court rulings, the British government decided to settle and pay over twenty million pounds to over 5,000 Mau Mau survivors in summer 2013. *See* Miyoko T. Pettit & Pōhai Nu‘uhiwa, *Sparkling and Re-Invigorating a Global Reparations Movement: Seeking Reparative Justice After the British Government’s Historic Settlement of Kenyan Mau Mau Reparations Claims* (in progress) [on file with author]; Yamamoto & Serrano, *supra* note 19. Through its rulings, the British High Court recognized the Mau Mau’s controversial claims for group-based torture and abuse, and it declined to dismiss the reparations claims for government-related atrocities on the grounds of an expired statute of limitations and a failure to state a legal claim. *See* *Mutua v. Foreign and Commonwealth Office*, [2011] E.W.H.C. 1913 (Q.B.) [14], available at

Theologians highlight the “spiritual” rush of reconciliation—the reunification of people according to religious tenets of acknowledgment and atonement.²⁴ Yet religious conflict often seems to spur rather than

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutual-v-ors-judgment.pdf>; *Mutua v. Foreign and Commonwealth Office*, [2012] E.W.H.C. 2678 (Q.B.), available at <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutual-fco-judgment-05102012.pdf>. The High Court allowed the Mau Mau’s claims to proceed based on sufficient preliminary evidence, which ultimately encouraged the British government to settle the case and provide long-delayed justice for the Mau Mau survivors. See Pettit & Nu’uhiwa, *supra*. For the first time, the High Court acknowledged the colonial setting, group-based harms and forward-looking human rights norms of reparatory justice, with an apparent eye on social healing in addition to compensation. See Yamamoto & Serrano, *supra* note 19.

²⁴ See generally YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 159–62. Theology offers a developed conception of group healing. A Judeo Christian theology of reconciliation grounds healing in stories of freedom from bondage, care for the abandoned and compassion for the outcast and biblical notions of love, peace and justice. For prophetic theology, justice is a precondition to peaceable relations. The Christian clergy authors of the 1985 Kairos Document rejected the white South African government’s mollifying calls for unity and peace in the face of intensifying black agitation, stating that “there can be no genuine reconciliation and no genuine peace without justice.” See Harold Wells, *Theology of Reconciliation*, in *THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES* 2, 3–14 (Greg Baum & Harold Wells, eds., 1997); *THE KAIROS COVENANT: STANDING WITH SOUTH AFRICAN CHRISTIANS* 16 (Willis H. Logan ed., 1988).

One theological concept is atonement—to sacrifice to make up for wrongs perpetrated and thereby seek forgiveness. Another concept, advanced by Reverend Martin Luther King, Jr. as well as liberation theologians, is reparation. To repair harm to individuals and groups and thereby rebuild the polity, theological acts of reparation must extend beyond monetary payments. See JAMES CONE, *MARTIN AND MALCOLM AND AMERICA: A DREAM OR A NIGHTMARE* 78 (1991); DONALD W. SHRIVER, *AN ETHIC FOR ENEMIES* 182 (1995) (quoting Martin Luther King Jr.’s *Strength of Love* at 49 (1963)); see also CORNEL WEST, *PROPHECY AND DELIVERANCE* (1982).

Zen Buddhism also locates reunification in reconciliation, although in a different fashion. The ultimate state of being is *satori*, or the state of enlightenment in which people and nature are experienced as one and in which conflicts are acknowledged and released. Conflicts are released and a state of Zen emptiness is attained through understandings reached in the process of mutual listening and empathy. See Joseph V. Montville, *The Healing Function in Political Conflict Resolution*, in *CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION* 115 (Dennis J. D. Sandole & Hugo van der Merwe, eds., 1993) (discussing the teachings on reconciliation of Vietnamese Zen Buddhist master Thich Nhat Hanh); see also Sivio E. Rillipaldi, *Zen Mind, Christian-Mind, Empty Mind*, *J. ECUMEN. STUD.* 69–84 (1982); DAISSETZ T. SUZUKI, *ZEN AND JAPANESE CULTURE* (1969).

The Torah and Kairos Document warn against false words or unity because words alone are unlikely to heal deep intergroup wounds. Genuine reconciliation occurs in a kind of continuing justice practice: sincere repentance by the oppressor, forgiveness by the oppressed and the dismantling of oppressive societal structures. See Gregory Baum, *A Theological Afterword*, in *THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES*, *supra*, at 188 (describing the Kairos Document’s charges of complicity in apartheid by liberal Christian churches); John W. de Gruchy, *The Dialectic of*

quell conflict.

Psychology aims for individual patient catharsis—the entering of places of pain and its deep emotional release.²⁵ But healing for social groups—people harmed because of their group status, for instance Holocaust survivors—is more complicated.²⁶ Serious damage to an entire community—collective trauma²⁷—poses myriad challenges to social

Reconciliation, in THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES, *supra*, at 16, 21; THE KAIROS COVENANT, *supra*, at 16.

²⁵ When unresolved anger and loss are internalized, deep psychic injuries cause those suffering to withdraw into passivity and depression. *See generally* YAMAMOTO, *INTERRACIAL*, <http://www.etan.org/etanpdf/2006/CAVR/11-Recommendations.pdf> note 14, 162–64 (2000); JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* (1992). Western psychologists therefore seek to create a new reality for their patients by guiding them through stages of healing: denial, anger, self-blame, guilt, acceptance and forgiveness. *Id.* These stages are described collectively as mourning or grieving. *Id.*

²⁶ Social psychologists and others wrestle with the translation of personal psychological concepts of acknowledgement and forgiveness into group concepts to guide intergroup (as distinguished from interpersonal) healing. *See generally* Vamik D. Volkan, *An Overview of Psychological Concepts*, in THE PSYCHODYNAMICS OF INTERNATIONAL RELATIONSHIPS 43 (Vamik D. Volkan, Demetrios A. Julius & Joseph V. Montville, eds., 1990); DAVID M. NOER, *HEALING THE WOUNDS: OVERCOMING THE TRAUMA OF LAYOFFS AND REVITALIZING DOWNSIZED ORGANIZATIONS* 5 (1993); ROBERT JAY LIFTON, *THE PROTEAN SELF: HUMAN RESILIENCE IN AN AGE OF FRAGMENTATION* (1993). The phenomenon of collective memory is central to this difficulty of translation. *See generally* John E. Mack, *The Psychodynamics of Victimization*, in THE PSYCHODYNAMICS OF INTERNATIONAL RELATIONSHIPS, *supra*. This difficulty arises because a primary phase of social healing is contested. That phase involves the struggle by differing people over the collective definition of injustice. *See* Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1757–58 (2000).

²⁷ Trauma is sometimes experienced simultaneously on two levels, the individual and the collective. Individual trauma usually emerges from immediate shock, described as a “blow to the psyche that breaks through one’s defenses so suddenly and with such force that one cannot respond effectively to it.” GERALD M. STERN, *THE BUFFALO CREEK DISASTER* 235 (1998) (recounting the West Virginia Buffalo Creek mining town disaster and discussing Dr. Kai Erikson’s study of the psychological and sociological aspects of the disaster). Individual healing often occurs most effectively at an intimate group-level in a microcosm—a group of otherwise unrelated individuals who are psychologically bound together by a common traumatic experience and who share generally similar psychological wounds. *See generally* KAI T. ERIKSON, *EVERYTHING IN ITS PATH: DESTRUCTION OF COMMUNITY IN THE BUFFALO CREEK FLOOD* (1978) (describing the individual and collective trauma faced by the survivors of the Buffalo Creek flood).

That bonding through shared trauma has powerful effects. Healing through the microcosm has been shown to decrease depressive symptoms and psychological distress and increase self-esteem. The microcosm also works to lower barriers to victims’ engagement with others—that is, former out groups—in the healing process. *See generally* Sophie Gaudet et al., *Daily Hassles, Ethnic Identity and Psychological Well-Being Among Lebanese-Canadians*, 40 INT’L J. PSYCHOL. 157–68 (2005) (investigating the relationships among ethnic identity, personal and collective discrimination and self-

healing,²⁸ including the transmission of psychological harms to following generations.²⁹ So social psychology works toward transformations in

esteem and depression); Robert M. Sellers et al., *Racial Identity, Racial Discrimination, Perceived Stress, and Psychological Distress Among African American Young Adults*, 43 J. HEALTH & SOC. BEHAVIOR 302–17 (2003) (discussing racial centrality as both a risk factor for experiencing discrimination and as a protective factor in buffering the negative impact of discrimination on psychological distress); Jean S. Phinney, *Ethnic Identity in Adolescents and Adults: Review of Research*, 108 PSYCHOL. BULL. 499–514 (1990) (discussing the idea of group identity promoting self-esteem).

When many individuals experience mass injustice simultaneously, collective trauma results. Broadly conceptualized, collective trauma is a “blow to the tissues of social life that damages the bonds linking people to each other and impairs the prevailing sense of community.” STERN, *supra*, at 235 (1998) (quoting Dr. Kai Erikson’s study on the sociological aspects of the Buffalo Creek Disaster).

²⁸ The mass trauma of a broadscale injustice usually generates multifaceted injuries. Personal suffering is often more visible and, therefore, most often identified and addressed by reparatory group initiatives. But injuries to communities and society itself are at times more extensive. *See generally* Michael Berenbaum, *Confronting History: Restitution and the Historians*, in HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 43 (Michael Bazyler & Roger P. Alford eds., 2006) (discussing the far-reaching effects of the Holocaust and examining the Holocaust restitution efforts). There resides tarnished collective memories, shattered conceptions of cultural meaning, imbalances of institutional power and ill will and mistrust between microcosms and authorities.

Because injustices suffered by groups are often rooted in institutional policies and social structures, members of targeted social groups experience prolonged detrimental impacts in various spheres of daily life, including housing, education, employment and criminal justice. *See generally* LEE SIGELMAN & SUSAN WELCH, BLACK AMERICANS’ VIEWS OF RACIAL INEQUALITY: THE DREAM DEFERRED (1991) (examining the sources of inequality in American society and the appropriate means of redressing this imbalance). Psychological wounds result from individual loss of family members, friends and neighbors. But the collective loss of traditions, social structure, ways of life and cultural lynchpins adds to the breadth of psychological distress. *See generally* John H. Ehrenreich, *Understanding PTSD: Forgetting “Trauma,”* 3 J. SOC. ISSUES 15–28 (2003) (describing the concept of “psychological trauma” as it applies to individual and collective traumatic experiences).

²⁹ Collective trauma of mass injustice often leaves victims with psychological wounds that endure for months and years. And survivors sometimes unintentionally influence future generations by transmitting dysfunctional values, emotions and beliefs associated with the traumatic memory—and hence the need for collective, or social, healing. *See generally* Michelle R. Anchoroff et al., *The Legacy of Combat Trauma*, in INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES OF TRAUMA 257 (Yael Danieli ed., 1998) (describing how children of traumatized parents can exhibit transgenerational transmission of trauma); James Gallagher, *‘Memories’ Pass Between Generations*, BBC NEWS (Dec. 1, 2013), available at <http://www.bbc.co.uk/news/health-25156510> (describing preliminary neuroscience studies tending to show that traumatic events could be passed on to future generations through a form of genetic memory).

Commonly, children endure psychological harm as a result of their parents’ reactions and inability to reconstruct their own lives after the experience of mass injustice. *See generally* Nathan P. F. Kellermann, *Transmission of Holocaust Trauma*, 2001 NAT’L ISRAELI CTR. FOR PSYCHOSOCIAL SUPPORT OF SURVIVORS OF THE HOLOCAUST AND THE SECOND GENERATION 256, available at

group consciousness and behavior in an effort to address present-day and future generational wounds.³⁰

Political theorists speak of “reconstituting community”—reshaping the polity by breaking old barriers and reincorporating people at the margins.³¹ Mainstream communitarian theories³² support reconciliation initiatives.³³ But realist critiques about the benefits and

<http://www.yadvashem.org/yv/en/education/languages/dutch/pdf/kellermann.pdf> (discussing parental transmission of Holocaust trauma); 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 PSYCHOL. 688–708 (2009) (discussing the effects of the ongoing violence on the mental health of successive generations of Palestinian and Israeli youth).

For example, children of Holocaust survivors and Vietnam veterans with Post Traumatic Stress Disorder (PTSD) developed PTSD symptoms themselves. *See generally* Laurie Leydic Harkness, *Transgenerational Transmission of War Related Trauma*, in INTERNATIONAL HANDBOOK OF TRAUMATIC STRESS SYNDROMES 635–43 (John P. Wilson & Beverley Raphael eds., 1993) (describing the intergenerational transmission of combat-related trauma by assessing the impact of a father’s combat-related PTSD on family life); Kellermann, *supra*, at 256; ANNA FREUD & DOROTHY T. BURLINGHAM, *WAR AND CHILDREN* (1943) (describing studies of children who had survived the bombings of WWII England). Similarly, children whose parents had been exposed to prolonged political violence during the Israeli-Palestinian conflict experienced high rates of psychological distress. Ruth Pat-Horenczyk et al., *supra*, at 688–708.

³⁰ For instance, the transgenerational effects of mass traumas are far-reaching. Trauma transmission potentially gives rise to hatred, mistrust, fear and agony that span generations and percolate throughout entire communities. Only by acknowledging transgenerational wounds (and their roots) and altering public consciousness about the persisting effects of the injustice can victims, perpetrators, the community and future generations work to remake social structures and achieve full individual and communal healing. Pat-Horenczyk et al., *supra* note 29, at 688–708 (describing a cross-cultural and intergenerational approach to healing social wounds).

³¹ Political theory offers polity-building concepts of reparation and reconciliation—to repair societal harm by one entity, usually a government, inflicted directly on another, usually a marginalized social group, in order to fashion a new (or renewed) functioning community. *See* VAMIK D. VOLKAN, *THE NEED TO HAVE ENEMIES AND ALLIES: FROM CLINICAL PRACTICE TO INTERNATIONAL RELATIONSHIPS* 155 (1988); ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* XL–XLI (2000); YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 164–66.

³² The prevailing mainstream view of reconciliation generally embraces communitarianism; social harmony is created through confronting the wrongs of past conflicts and agreeing to leave the painful past behind for a peaceful future. *See* Alexander Keller Hirsch, *Theorizing Post-Conflict Reconciliation*, in *THEORIZING POST CONFLICT RECONCILIATION: AGONISM, RESTITUTION AND REPAIR* i (Alexander Keller Hirsch ed., 2012). Communitarian theory maintains that public spaces, where citizens can gather and interpret their condition to “cultivate solidarity and civic engagement,” unify a community and create a stronger society. Michael Sandel, *DEMOCRACY’S DISCONTENT* 349 (1996) (describing communitarian theory). Reconciliation initiatives aim to reconstitute a shared sense of belonging, thereby achieving social harmony in a society marred by deep unresolved conflict. Hirsch, *supra*, at i.

³³ Once a society recognizes the social wounds and resolves to heal those

limitations³⁴ speak to the growing yet uncertain political significance of

wounds through cooperative and peaceful measures, the mainstream communitarian approach generally encompasses four dimensions to reconciliation: (1) mutual engagement; (2) recognition of multiple narratives of the conflict; (3) a commitment by rival groups to pursue peaceable relations; and (4) mutual acceptance of structural mechanisms to achieve peace and stability. *See generally* Daniel Bar-Tal & Gemma H. Bennink, *The Nature of Reconciliation as an Outcome and as a Process*, in FROM CONFLICT RESOLUTION TO RECONCILIATION 21 (Yaacov Bar-Siman-Tov ed., 2004); Eric K. Yamamoto, *Race Apologies*, 1 J. GENDER RACE AND JUST. 47, 53 (1997) [hereinafter Yamamoto, *Race Apologies*].

Mutual engagement, as a predicate for mutual respect, is crucial. Perpetrators and victims, as well as institutional actors and the populace, must engage one another in the reconciliation process for mutual respect to emerge. *See* Bar-Tal & Bennink, *supra*, at 21.

The acknowledgement of the past through recognition of at least two narratives for every conflict necessitates the admission of past misdeeds and acceptance of responsibility for maintaining the conflict. This critically revises the collective memory, leading to the formation of a new narrative about the past and prospects for the future. Bar-Tal & Bennink, *supra*, at 19. *See also* Bashir Bashir, *Accommodating Historically Oppressed Social Groups: Deliberative Democracy and the Politics of Reconciliation*, in THE POLITICS OF RECONCILIATION IN MULTICULTURAL SOCIETIES 57 (Will Kymlicka & Bashir Bashir eds., 2008); Mark Howard Ross, *Ritual and the Politics of Reconciliation*, in FROM CONFLICT RESOLUTION TO RECONCILIATION, *supra*, at 208.

The mainstream approach also requires a commitment by rival groups to pursue the common goal of peaceable relations. *Id.* at 15–16; *see also id.* at 22 (“This caring comes from a response to interdependence and common goals, not altruism.”); Yaacov Bar-Siman-Tov, *Dialectics Between Stable Peace and Reconciliation*, in FROM CONFLICT RESOLUTION TO RECONCILIATION, *supra*, at 62. Additionally, mutually accepted structural mechanisms must be in place to achieve goals of peace and stability. Material change in the socioeconomic conditions underlying reconstructed group relationships is essential; otherwise victims perceive reconciliation efforts as “all words and no action” and a “failure of reconciliation.” Yamamoto & Obrey, *supra* note 14, at 32; YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 194–95.

³⁴ Two critiques of communitarian views of reconciliation have emerged from current debates: agonism and rhetorical criticism. Communitarian approaches presuppose that cooperation can and will occur because rival parties sufficiently desire peace and stability to engage one another in a respectful manner that can effectively end violence and improve social-economic structures. *See generally* Bar-Siman-Tov, *supra* note 33, at 61–80. Agonism sees the impossibility of that kind of consensus in a complex society. It therefore views as dangerous and exclusionary the goal of societal harmony and its precondition of forgoing group conflict. The requirement of consensus can drown out minority voices and perpetuate repression—not as part of the original oppression but later in the process of trying to rectify it. Assertive minorities can be categorized as uncooperative and detrimental to the social healing and thereby excluded from the process. Agonism therefore seeks to reconceive reconciliation not along communitarian lines but as a deliberate accommodation of perpetual conflict in a multi-dimensional society. It aims to enable groups to exist more or less peaceably in the same polity amid tensions and conflict rather than compelling groups to try, often without prospects of success, to leave the painful past behind. *See generally* Alexander Keller Hirsch, *Introduction: The Agony of Reconciliation*, in THEORIZING POST CONFLICT RECONCILIATION: AGONISM, RESTITUTION AND REPAIR, *supra* note 32, at 1–6.

Rhetorical criticism also rejects communitarian precepts, positing that

social healing undertakings.³⁵

Human rights advocates seek to change “legal consciousness” and institutional behavior about what is right and just³⁶—generating “cultural performances” through claims to reparative justice.³⁷ These claims

reconciliation initiatives are best at establishing a rhetorical space where groups attempt to address differences through perpetual discussion and negotiation. The rhetorical approach closely considers the power of language that frames and pushes reconciliation dynamics into play. *Id.* at 5.

The agonist and rhetorical critiques focus on the idea of continuing conflictual group interactions in a complex society—a valuable contribution. But both theories tend toward high abstraction, and generally do not provide deeper guidance for consideration and implementation of the imperatives of actual social healing through justice—the delineation and acceptance of responsibility, the reconstruction of attitudes and institutions and reparation for the persisting material and emotional harms.

³⁵ Other political theory critiques are even more pointed. The South Africa reconciliation process generated sharp criticism about the difficulties of applying abstract concepts to complex, evolving political situations, including Northern Ireland. See Adrian Little, *Disjunctured Narratives: Rethinking Reconciliation and Conflict Transformation*, 33(I) INT’L POL. SCI. REV. 82, 86 (2011). Some critics expressed concern that vague concepts of reconciliation harbor neocolonial agendas, foster unrealistic expectations of change and undermine redistribution efforts in historically unequal societies. See Erik Doxtader, *Reconciliation—A Rhetorical Concept/ion*, 89 Q. J. OF SPEECH 267, 268 (2003). Others suspected that reconciliation initiatives are often a power ruse—another tool of subjugation and conquest disguised in justice garb. See Paul Muldoon, *The Very Basis of Civility: On Agonism, Conquest, and Reconciliation*, in *THE POLITICS OF RECONCILIATION IN MULTICULTURAL SOCIETIES*, *supra* note 33, at 114.

³⁶ See *infra* notes 66–74 and accompanying text. Human rights norms remain largely aspirational. EMILE M. HAFNER-BURTON, *MAKING HUMAN RIGHTS A REALITY* 12 (2013) (the “legal system . . . has been tremendously successful at declaring universal values, yet has fallen short in practical implementation . . . because the international legal system’s enforcement structures are weak”). Yet, what emerges from recent history of reparations claims is a dialectic. Aspirational human rights norms asserted legally have been, and can be, integral to sparking and shaping domestic political processes. See generally Christof Heyns & Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, 23 HUM. RTS. Q. 483 (2001). Research on legal consciousness suggests that “over time, international law norms may alter what both governmental actors and larger populations view as ‘right’, ‘natural’, ‘just’, or ‘in their interest.’” See Yamamoto, Kim & Holden, *supra* note 14, at 55–56. Even unsuccessful litigation of redress claims can help generate new understandings of history (recognition), sources of group harm (responsibility) and repair (reconstruction). *Id.*

³⁷ See *infra* notes 66–74 and accompanying text. Globally evolving ideas about justice and morality are integral to what socio-legal scholars call legal consciousness—a combined sense of what the law is and, equally important, what the law should be. HAFNER-BURTON, *supra* note 36, at 64 (“human rights law was designed to improve state practice partly through a transnational process that spreads information about the global norms . . . , stirs up debate and interpretation . . . , shames violators, and eventually teaches people to value those ideas as part of the legitimate social order . . . while embedding those values in society’s institutions”). This legal consciousness is “expressed by the act of going to court as well as by talk about rights and entitlements.” SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* 5 (1990). When formally asserted, courts or tribunals

implicate governmental redress³⁸ and democratic legitimacy.³⁹ But human rights norms are largely unenforceable absent collective political will.⁴⁰

Engaging economics, democracy studies and human rights, economists embrace the reparative concept of “economic justice”—“capacity-building” for those injured by injustice to remove social structural impediments to societal advancement.⁴¹ Yet economic

become sites of “cultural performance” in which contested narratives about injustice and appropriate redress are publically debated and continually reshaped. See Eric K. Yamamoto, Moses Haia, & Donna Kalama, *Courts and the Cultural Performance: Native Hawaiians’ Uncertain Federal and State Law Rights to Sue*, 16 U. HAW. L. REV. 1 (1994) (describing courts as sites of cultural performances among competing justice histories and understandings). It is this public framing of injustice and reparation that at time influences the policy “contest among various bureaucratic power centers, all of which are themselves influenced by outside pressure groups, lobbyists, [and] NGOs” Paul Schiff Berman, *Seeing Beyond the Limits of International Law*, 84 TEX. L. REV. 1265, 1280 (2006).

For instance, the justice litigation of the Mau Mau reparations claims, pursued interactively with the grassroots Mau Mau Veterans’ Association, reparations advocates, and the media, served as a “site of cultural performance.” See Pettit & Nu’uhiwa, *supra* note 23. The litigation and subsequent settlement transformed the five litigants’ reparations claims into a greater social controversy about repairing damage wrought by historic injustices. *Id.* It reshaped public consciousness about the atrocities endured, previously hidden from the public, and about the appropriate reconciliation and redress necessary to heal the persisting wounds. *Id.* The litigation, though it ended in settlement, spurred heightened political organizing and advocacy both in Kenya as well as in the Caribbean among former colonies. *Id.* This effect is further shaping action on the controversy and legal consciousness concerning reconciliation initiatives for historic injustices across the globe, including reparations for Native Hawaiians and African Americans in the United States. *Id.*

³⁸ See Richard Falk, *Reparations, International Law, and Global Justice: A New Frontier*, in THE HANDBOOK OF REPARATIONS 623 (Pablo de Greiff ed., 2007); Elizabeth Lira, *Reparations Policy for Human Rights Violations in Chile*, *Reparations, International Law, and Global Justice: A New Frontier*, in THE HANDBOOK OF REPARATIONS, *supra*, at 55; Colloquy, *Into the 21st Century: Reconstruction and Reparations in International Law*, 2000-2003 THIRD WORLD LEGAL STUD. (2003).

³⁹ See *infra* notes 66–74 and accompanying text. The process of remaking collective memory of injustice and undertaking restorative measures in light of human rights norms of reparative justice, see *infra*, enhances the legitimacy of a democracy professedly committed to democratic governance and human rights. Yamamoto, Kim & Holden, <http://www.etan.org/etanpdf/2006/CAVR/11-Recommendations.pdf> note 14, at 55, 64–65 (“Globally, governments and advocacy groups are increasingly embracing reparations for historic harms inflicted by governments and business as a lynchpin for legitimizing present-day democratic governance.”).

⁴⁰ See *infra* notes 66–74 and accompanying text.

⁴¹ Capacity-building is experienced as enhanced autonomy, self-determination or dignity and participation in the polity. Capacity-building embraces economic justice as an aspirational human right integral to social healing. It goes beyond repair to individuals and addresses structural conditions that determine individual opportunities and damage to the polity itself (the resulting social divisions, ill will, dampened productivity and

reparations are often quickly sacrificed on the altar of government fiscal restraints.⁴²

Indigenous healing practitioners, Native Hawaiians for example, search for *pono*—communally making right, or righteous, the broken relationship.⁴³ But practical indigenous healing initiatives often tend to be

diminished legitimacy). Public coffer payments to individuals alone do not embody a sufficient societal commitment to reparative justice or social healing. Attention is therefore essential to fair distribution and community impact. Only through decent work opportunities, health care, education, infant and foster care, political liberties, freedom from violence, ethnic and gender equality, among other things, results in repairing damage to individuals and the polity. *See generally* AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); Martha C. Nussbaum, *Human Rights and Human Capabilities*, 20 HARV. HUM. RTS. J. 21 (2007) [hereinafter Nussbaum, *Human Rights*]; Martha C. Nussbaum, *Capabilities and Human Rights*, 66 FORDHAM L. REV. 273 (1997) [hereinafter Nussbaum, *Capabilities*]; Yamamoto & MacKintosh, *supra* note 14, at 5, 9, 13; EMMA COLEMAN JORDAN & ANGELA P. HARRIS, ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS (2005); Carlton Waterhouse, *The Good, the Bad, and the Ugly: Moral Agency and the Role of Victims in Reparations Programs*, 31 U. PA. J. INT'L L. 257 (2009).

⁴² Yamamoto & MacKintosh, *supra* note 14, at 5, 9, 13.

⁴³ Recent intense indigenous healing practices provide new possibilities for reconciliation where inadequate criminal justice systems and ineffective United Nations sanctions fail to produce swift and affordable justice that is meaningful to group members. With limited funds for western-style justice systems, communities within countries sometimes turn to indigenous healing practices as tailored responses—though not always perfect solutions—to the challenging task of rebuilding communities and expediently administering justice. *See* Erin Daly, *Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda*, 34 N.Y.U. J. INT'L L. & POL. 355, 358–67 (2002) (discussing genocide in Rwanda); Rebecca Tsosie, *Sacred Obligations: Intercultural Justice and the Discourse of Treaty Rights*, 47 UCLA L. REV. 1615, 1662–63 (comparing the genocide of native peoples to slavery and the Holocaust).

For example, some indigenous Hawaiian communities continue to engage in a process of *ho'oponopono* (literally “to make right”) to heal physical and psychological wounds arising out of interpersonal or intergroup conflicts. The process is “complex and potentially lengthy . . . [and] includes prayer, statement of the problem, discussion, confession of wrongdoing, restitution when necessary, forgiveness and release.” It is a therapeutic process that examines the past and uncovers thoughts and feelings leading to conflict, in order to loosen and then cut the negative entanglements of those involved and their communities. In doing so, a mutual understanding of what actually happened arises between both groups. Those responsible liberate deep psychological and spiritual wounds by confessing wrongdoing. Those harmed release negative emotions by granting forgiveness—or “strip the incident of its pain-causing attributes.” *See* Stephen T. Boggs & Malcolm Naea Chun, *Ho'oponopono: A Hawaiian Method of Solving Interpersonal Problems*, in CONFLICT DISCOURSE IN PACIFIC SOCIETIES 123 (Karen-Ann Watson-Gedeo & Geoffrey M. White eds., 1990); E. VICTORIA SHOOK, HO'OPONOPONO: CONTEMPORARY USES OF A HAWAIIAN PROBLEM-SOLVING PROCESS 11, 46 (1985); Karen Ito, *Ho'oponopono, to Make Right: Hawaiian Conflict Resolution and Metaphor in the Construction of a Family Therapy, Culture, Medicine & Psychiatry* 9, 201 (1989); *See also* Marg Huber, *Mediation around the Medicine Wheel*, MEDIATION Q. 10, 355 (1993) (describing the Native American medicine wheel as a model for contemporary group healing).

experienced as incomplete or misguided.

In bringing social healing—and reconciliation—to life, these concepts and their challenges touch the heart of South Africa's notion of restorative justice, *ubuntu*—"we are people only through other people"⁴⁴ and therefore an unhealed wound to one tear at the fabric of the entire community.

Six commonalities among these diverse disciplines, distilled into working principles,⁴⁵ offer a rough, incomplete, yet nevertheless compelling, portrait of the dynamics of group on group healing.⁴⁶ They

Other examples include the Navajo peacemaking process called *hozhooji naat'aanii* and the Rwandan community tribunals that draw upon indigenous Gacaca practices. See generally Philmer Bluehouse & James W. Zion, *Hozhooji Naat'aanii: The Navajo Justice and Harmony Ceremony*, MEDIATION Q. 10, 327–34 (1993); SHERRILYN IFILL, ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY 121 (2007) ("Traditionally, a dispute would be presented to an elder and a coterie of community members, who together would propose solutions. The procedure would end with the disputing parties sharing a drink of banana beer from a common vessel.").

⁴⁴ The African concept of *ubuntu*—the notion of interconnectedness, that people are people through other people—emphasizes healing through restoration of the polity. The focal point is the community, whether defined by tribe, locale or nation. *Ubuntu* thus shapes healing efforts through notions of co-responsibility, interdependence and enjoyment of rights by all. See DESMOND TUTU, NO FUTURE WITHOUT FORGIVENESS 31–32 (2000).

⁴⁵ Six Working Principles:

(1) Mutual engagement by all partly responsible is a necessary precondition to social healing efforts endeavoring to repair damage to individuals, communities and society itself.

(2) Social healing is a messy interdependent undertaking that entails healing on two levels—the individual and the collective.

(3) Equality and fair treatment—expressed through a combination of law and aspirational human rights norms—are a bedrock for (driving) all involved to heal emotional, cultural and economic injuries.

(4) <http://www.etan.org/etanpdf/2006/CAVR/11-Recommendations.pdf> (5) The Four Rs—Recognition, Responsibility, Reconstruction and Reparation—provide an analytical structure for shaping and assessing social healing initiatives.

(6) The "dark sides" of reconciliation process counsel caution and preparedness.

See ERIC K. YAMAMOTO, SARA LEE & MIYOKO PETTIT, "SOCIAL HEALING THROUGH JUSTICE": A MULTIDISCIPLINARY APPROACH TO SHAPING AND ASSESSING RECONCILIATION AND REPARATIONS INITIATIVES—ILLUMINATED BY A CASE STUDY OF UNITED STATES AND SOUTH KOREA RESPONSIBILITY FOR THE JEJU APRIL 3RD PEACETIME TRAGEDY (in progress); see also YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 170–71 (drawing out four commonalities from the disciplines).

⁴⁶ Those dynamics reflect some combination of acknowledgement of the humanity of the other and the sources of the conflict (including joint historical and contemporary analyses of mutual grievances underlying present conflicts); acceptance of appropriate responsibility for group harms (by recognizing the extent of group agency);

provide the conceptual foundation for approaches to repairing the damage of collective trauma linked to group-based injustice. The six social healing working principles are: (1) mutual engagement by those responsible in some fashion and a convergence of their interests in social healing;⁴⁷ (2) equality and fair treatment and at least a partial leveling of one group's power over the other;⁴⁸ (3) reparative measures addressing both the individual and the communal (or societal);⁴⁹ (4) economic capacity-building and financial assistance for those harmed in ways that foster autonomy and self-determination;⁵⁰ (5) a blend of words and actions that

reconstruction of relationships (including acts of apology, the bestowal of forgiveness and the refashioning of stories about self, other and the relationship; and reparation (repairing material harms to individuals and their communities). See Yamamoto, Kim & Holden, *supra* note 14; Yamamoto & Obrey, *supra* note 14.

⁴⁷ The first principle emerging from the disciplines is *mutuality of engagement*. Healing of wounds is an interactive enterprise and, by virtue of its mutuality of effort, provides the foundation for future communal, or at least cooperative, action. Individuals involved, surrounding communities and the larger society (including government, business and social institutions) play an essential part. Integral to that collaborative engagement is a strategic need to frame the healing effort in terms of a convergence of interests—that all, and particularly those denoted perpetrators or at least with decisional power, see a broad interest in healing the wounds of those suffering by reallocating some degree of power. See Chanbonpin, *supra* note 16, at 31 (the “conciliatory power of a truth commission comes from the participation of all affected parties: those who were directly victimized, those who perpetrated the abuses, and even those who continue to be affected by the enduring legacy of the abuses”). See also ERIC K. YAMAMOTO, SARA LEE & MIYOKO PETTIT, “SOCIAL HEALING THROUGH JUSTICE”: A MULTIDISCIPLINARY APPROACH TO SHAPING AND ASSESSING RECONCILIATION AND REPARATIONS INITIATIVES—ILLUMINATED BY A CASE STUDY OF UNITED STATES AND SOUTH KOREA RESPONSIBILITY FOR THE JEJU APRIL 3RD PEACETIME TRAGEDY (in progress).

⁴⁸ The second, and related, principle is that social healing occurs *simultaneously on two levels*. One is the *personal* (or individual), where people suffering the psychological and material damage rebuild (or build anew) their lives. A second level is the *communal* (or societal), where communities and even societies address the institutional policies and practices along with the dominant cultural imagery that contributed to the injustice. The two levels overlap. And social healing is messy interactive process that addresses both. See YAMAMOTO, LEE & PETTIT, *supra* note 47.

⁴⁹ The third principle is that these approaches to intergroup healing incorporate legal concepts of *equality and fair treatment* in some fashion but also move beyond formal notions of legal justice to embrace the necessity of repairing the emotional, cultural and economic damage. Law grounds understandings of justice and provides a beginning point for approaching social healing. Moving beyond formal legal approaches also suggests a more comprehensive and sustained regime of healing. International human rights claims present newly codified—yet largely aspirational—norms of reparative justice. They offer a way around procedural limitations of traditional domestic law and sometimes spark domestic political processes. Thus despite the shortcomings of formal law's potential to effect social healing, international human rights importantly engender the assertion of claims to reparative justice and expand notions of social healing. See YAMAMOTO, LEE & PETTIT, *supra* note 47.

⁵⁰ The fourth, in terms of reconstructed relationships and repair of material harms

encompass acknowledgments of harms and causes, acceptance of responsibility and reconstruction of relationships in order to fully repair the damage;⁵¹ and (6) anticipation and handling of the risks of backlash and incompleteness.⁵²

These principles provide the multi-disciplinary foundation for understanding—and guiding, assessing and revitalizing (where needed)—reconciliation initiatives. More particularly, they support the emerging *social healing through justice* framework—an evolving approach to reconciliation. That framework aims: (1) to provide an analytical structure grounded in common points among respected academic disciplines, (2)

at both levels, is economic justice through capacity-building of those injured. Capacity-building is experienced as enhanced autonomy, self-determination or dignity and participation in the polity. Capacity-building enhances the capability of individuals to actualize their potential in ways that they find satisfying. Qualitative aspects of an individual's life, not a nation's overall wealth, serve as direct links to economic stability and repairing damage. Capacity-building goes beyond repair to individuals and addresses structural conditions that determine individual opportunities and damage to the polity itself (the resulting social divisions, ill will, dampened productivity and diminished legitimacy). See YAMAMOTO, LEE & PETTIT, *supra* note 47.

⁵¹ The fifth principle moves social healing beyond words and ideas into the realm of practical action. In broad sweep it entails structured assessment of the sources of the conflict (including joint historical and contemporary analyses of mutual grievances underlying present conflicts); acceptance of appropriate responsibility for group harms (by recognizing the extent of group agency or receipt of group benefits); reconstruction of the relationship (including acts of apology, the bestowal of forgiveness, and the refashioning of stories about self, other and the relationship); and reparation (repairing cultural and economic damage). See YAMAMOTO, LEE & PETTIT, *supra* note 47.

⁵² The final principle is cautionary. It first recognizes the danger of incomplete insincere acknowledgments and ameliorative efforts—how “empty apologies” and words without institutional restructuring and attitudinal changes can mask continuing oppression. Related to the danger of incomplete apologies, the cautionary principle underscores the dark sides to the reconciliation process. See YAMAMOTO, LEE & PETTIT, *supra* note 47. History reveals distorted legal framing, backlash and problems of exclusivity. See Yamamoto, *supra* note 14, at 487–501 (characterizing the underside of the reparations process).

Reparations claims, as a key piece of most reconciliation initiatives, illustrate these three dark sides. See *id.* First, reparations claims are often cast aside as moot because those opposed claim that sufficient existing laws nullify any need for reparations claims or raise narrow legal concerns, such as a lack of standing, an expired statute of limitations or lack of legal causation. *Id.* at 487–88. Second, the administration of thoughtful and well-conceived reparations may cause possible backlash. *Id.* at 494. Reparations have the power to stimulate material and social change, but they also trigger regressive actions. *Id.* The final “dark side” of reparations is the problem of exclusivity. *Id.* at 497–501. Reparations may become a tool for strategically positioning a government's political interests. *Id.* at 498. While no one ideology controls all situations, underlying systems of beliefs and values which serve particular interests tend to shape whether, when and how reparations will be awarded. *Id.* This final principles, then, does not argue against moving forward but rather counsels proper anticipation and handling.

For strong specific political theory critiques of reconciliation, see Ross, *supra* note 33, at 61–80; Hirsch, *supra* note 34, at 1–6; Little, *supra* note 35, at 86; Doxtader, *supra* note 35, at— 268; Muldoon, *supra* note 33, at 114.

which draws insights from the processes and outcomes of actual reconciliation initiatives, (3) and employs a common language that attempts to speak to the hearts and minds of communities in conflict, (4) while serving as a strategic guide for shaping, implementing and then assessing reparative justice initiatives.⁵³

The social healing principles also shape the conceptual meaning and practical operation of the framework's four points of inquiry—*recognition, responsibility, reconstruction and reparation*—as they grapple with the kind of justice that fosters healing both for those suffering and for society itself.⁵⁴ These 4Rs at the heart of *social healing through justice*, summarized below, “assist groups and governments first in shaping a particular redress initiative and then in assessing whether the effort is on the path toward genuine social healing”⁵⁵ in order to make appropriate implementation adjustments in light of changing conditions.

Recognition addresses the social psychological by examining the historical, cultural and structural context of past and continuing suffering.⁵⁶ By investigating the ways in which individuals “suffer pain, fear, shame and anger” and communities sustain lasting tears in their social fabric, by decoding “cultural stereotypes that seemingly legitimize” injustice and by scrutinizing “the ways that organizational structures” empower and embolden leaders and ordinary people to harm others, participants in the social healing process grapple with acknowledgment of the full range of harms and underlying causes.⁵⁷

Responsibility includes both “assessment of power over others” and “acceptance of responsibility of repairing the damage . . . imposed on others through power abuses.”⁵⁸ All responsible in some fashion for collective injustice—whether through direct action, complicity or receipt of benefits—need to engage in the interactive enterprise of social

⁵³ *Social healing through justice* entails a hard acknowledgement of ways in which groups harm one another, along with affirmative efforts to redress grievances with present-day effects. Often set in a larger context of “transitional justice,” it encompasses messy, shifting, continual and often localized efforts at reconciliation. See Yamamoto & Lee, *supra* note 14, at 123, 138 n.49.

⁵⁴ See generally YAMAMOTO, INTERRACIAL, *supra* note 14, at 173–209. See also Yamamoto & Obrey, *supra* note 14, at 32–39.

⁵⁵ For an elaboration of the 4Rs, with detailed descriptions and illustrations, see YAMAMOTO, INTERRACIAL, *supra* note 14, at 173–209. See also Yamamoto & Obrey, *supra* note 14, at 32–39.

⁵⁶ See YAMAMOTO, INTERRACIAL, *supra* note 14, at 175–85; see also Yamamoto & Obrey, *supra* note 14, at 33.

⁵⁷ See YAMAMOTO, INTERRACIAL, *supra* note 14, at 175–85; see also Yamamoto & Obrey, *supra* note 14, at 33; Yamamoto & Lee, *supra* note 14, at 123, 139 n.50.

⁵⁸ YAMAMOTO, INTERRACIAL, *supra* note 14, at 185.

healing.⁵⁹ By focusing on not only assessing responsibility for “disabling constraints”⁶⁰ but also on accepting responsibility for reparative actions, the mutual engagement of participants maximizes the prospects for enduring social healing.

Reconstruction is performative. It aims to build new productive relationships. Effectively building the kind of relationships needed for genuine healing and a sense of justice restored might include “apologies and forgiveness,” reframing the “history of interaction” and the “reallocation of political economic power.”⁶¹ Reallocation of power, through changes in a “state’s social, legal or political institutions and policies” and through empowering those harmed, aims to prevent repetition of the underlying abuses by addressing root causes.⁶²

Reparation, which may include restitution, compensation and “medical, legal, or educational and financial support for individuals and communities in need,” entail more than money.⁶³ Reparation may also encompass rehabilitation, “restoration of property, rebuilding of culture, economic development” (including individual capacity-building and community development) and public education.⁶⁴ In particular, public education serves to “commemorate, impart lessons learned, and . . . generate a new justice narrative about a democracy’s commitment to civil and human rights.”⁶⁵

Emerging international human rights norms of reparative justice⁶⁶—repairing the damage wrought by injustice—further ground the

⁵⁹ Yamamoto & Obrey, *supra* note 14, at 27–28, 34–35, 59.

⁶⁰ YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 185; *see also* Yamamoto & Obrey, *supra* note 14, at 34.

⁶¹ YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 161–62; *see also* Yamamoto & Obrey, *supra* note 14, at 34.

⁶² *See* Yamamoto & Obrey, *supra* note 14, at 34. *See also* Arturo Carillo, *Justice in Context: The Relevance of Inter-American Human Rights Law and Practice to Repairing the Past*, in *HANDBOOK OF REPARATIONS*, *supra* note 38, at 526–27 (the “first duty of the infringing state is to put an end to the illicit act, if it persists, and then to guarantee that it will not reoccur”).

⁶³ *See* Yamamoto & Obrey, *supra* note 14, at 35; Yamamoto & Lee, *supra* note 14, at 123, 139 n.50.

⁶⁴ *See* Yamamoto & Obrey, *supra* note 14, at 35; Yamamoto & Lee, *supra* note 14, at 123, 139 n.50.

⁶⁵ Yamamoto & Obrey, *supra* note 14, at 35; Yamamoto & Lee, *supra* note 14, at 123, 139 n.50. *See generally* BROPHY, *supra* note 17; Waterhouse, *supra* note 41, at 267.

⁶⁶ Human rights norms are shaped by conventions, covenants and treaties agreed upon by international bodies and by judicial declarations of customary international law norms. *See, e.g.*, Universal Declaration of Human Rights, Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102–23, 999 U.N.T.S. 171; International

reconstruction and reparation dimensions of social healing *by doing justice*.⁶⁷ Those norms speak to reconstruction through public apologies, public memorials, guarantees of non-repetition and changes to relevant laws and practices.⁶⁸ They also speak to reparation through restitution, compensation and rehabilitation.⁶⁹ Although rarely enforceable in formal tribunals,⁷⁰ yet regularly uplifted by claimants, policymakers and media, those international norms at times help shape global consciousness about what is “right” and “just.”⁷¹ And by teaching values and “changing

Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 260 (III) (Dec. 21, 1965).

Reparative justice norms are codified in the 2005 United Nations Human Rights Commission’s “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law,” C.H.R. Res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (Apr. 19, 2005). *See also Into the 21st Century*, *supra* note 38 (broadly addressing approaches to reparative justice emphasizing reconstruction and reparation); HAFNER-BURTON, *supra* note 36 (critiquing the theory and practical preventive and remedial impact of human rights legal systems); DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 1–37 (1999) (discussing the development of human rights law and the victim’s right to a remedy); Oscar Schachter, *The Obligation to Implement the Covenant in Domestic Law*, in INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 325 (Louis Henkin ed., 1981) (describing the range of potentially “effective remedies” for human rights violations); Francisco Quintana, *Reparations in the Inter-American System: A Comparative Approach*, 56 AM. U. L. REV. 1375, 1386 (2007) (describing a wide range of non-monetary reparations measures for serious human rights violations); Ruth Rubio-Marín, *Introduction*, in WHAT HAPPENED TO THE WOMEN?: GENDER AND REPARATIONS FOR HUMAN RIGHTS VIOLATIONS 24–25 (Ruth Rubio-Marín ed., 2006) (repairing gender-specific harms).

⁶⁷ *See generally* BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (2009); THE HANDBOOK OF REPARATIONS, *supra* note 38.

⁶⁸ *See supra* note 66 and accompanying text.

⁶⁹ *See supra* note 66 and accompanying text.

⁷⁰ *See* Harold Koh, *How Is International Law Enforced?*, 41 IND. L.J. 1409 (1999) (despite codified laws and principles, international politics and institutional resistance make “the overall picture of this standard enforcement story . . . one of impotence and ineffectiveness”); HAFNER-BURTON, *supra* note 36, at 12 (the human rights legal system has “fallen short in implementation” partly because the “international legal system’s enforcement structures are weak”).

⁷¹ *See supra* notes 36–37 for a discussion about human rights and evolving public consciousness. *See also* HAFNER-BURTON, *supra* note 36, at 64 (the “active teaching and [human rights norms] internalization process is time consuming because it works by changing peoples’ minds about what they are doing . . . [and] because they learn the proper way to act, and come to believe in the values of the human rights system along with the legitimate authority of law”); MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY (1996); JUTTA BRUNNEE & STEPHEN J. TOOPE, LEGITIMACY AND LEGALITY IN INTERNATIONAL LAW (2010).

peoples' minds about what they are doing,"⁷² those norms illuminate how historic harms demand present-day repairs.⁷³ Human rights claims and wide-ranging global redress efforts thus shed light on how *reconstruction* and *reparation* shape the kind of internationally-conceived justice that promotes social healing.⁷⁴

The 4Rs are buttressed—and the framework completed—by a strategic interest-convergence analysis.⁷⁵ Grounded in political-legal theory, this analysis highlights the interests in social healing of not only those injured but also those responsible for the injustice.⁷⁶ Interest-convergence theory predicts that a society's (and its government's) interest in repairing the persisting damage to its communities⁷⁷ converges with the interest of those harmed when the reparative acknowledgements and actions restore or enhance the society's legitimacy as a democracy actually (not just professedly) committed to civil and human rights.⁷⁸ That

⁷² See HAFNER-BURTON, *supra* note 36, at 64; see also Berman, *supra* note 37, at 1281.

⁷³ See *supra* notes 36–37 and accompanying text. See also Yamamoto, Haia & Kalama, *supra* note 37 (characterizing courts as sites of “cultural performances” where contested narratives are publicly articulated and remade).

⁷⁴ Yamamoto & Obrey, *supra* note 14, at 38–39. See generally Thomas M. Antkowiak, *An Emerging Mandate for International Courts: Victim-Centered Remedies and Restorative Justice*, 47 STAN. J. INT'L L. 279 (2011); Thomas M. Antkowiak, Note, *Truth as Right and Remedy in International Human Rights Experience*, 23 MICH. J. INT'L L. 977 (2002).

⁷⁵ See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (first articulating interest-convergence theory); Yamamoto, Kim & Holden, *supra* note 14, at 4, 84 (infusing interest-convergence analysis into the social healing calculus so that reparative justice initiatives appeal to both those harmed and those responsible); Yamamoto & Lee, *supra* note 14, at 123–49 (applying interest-convergence theory to Korea “military sex slaves” reparative justice claims against Japan); MARY L. DUZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2011) (applying interest-convergence theory to *Brown v. Board of Education*).

⁷⁶ See HAFNER-BURTON, *supra* note 36, at 178 (“national interest must be put at the center, for only when [governments] see policies broadly in their interests is it possible to mobilize as well as sustain the needed resources . . . to advance human rights”).

⁷⁷ See Yamamoto, Kim & Holden, *supra* note 14, at 67–74 (articulating strategic relevance of interest-convergence theory for bringing government actors to the social healing table). Emile M. Hafner-Burton observes that particularly for democracies acting in concert with human rights norms “partly reflects self-interest given that some don’t want to be found in violation of international law” and that compliance “is an essential feature of a liberal democracy.” HAFNER-BURTON, *supra* note 36, at 72. For democratizing countries in flux, human rights norms asserted strategically can spark political mobilization. SIMMONS, *supra* note 67.

⁷⁸ For detailed examples of democratic legitimacy as a key aspect of interested-convergence analysis in the reparative justice context, see Yamamoto & Obrey, *supra*

democratic legitimacy affects the country's capacity for participation in matters of security and responsible economic development.⁷⁹

The *social healing through justice* framework is not appropriate for all conflictual situations. It resonates where all linked to the injustice perceive an interest in healing the wounds of those suffering and in repairing the damage to the wider community. Indeed the multi-disciplinary commonalities underpinning the framework's 4Rs highlight the significance of mutual engagement by all involved. To identify those involved and their participatory roles and to better set the stage for the Joint Task Force proposal, a brief historical account of Jeju 4.3 is in order.

III. JEJU 4.3 HISTORICAL BACKDROP

At the end of World War II, after Japan's harsh often brutal colonial rule, South Korea entered peacetime under American trusteeship—a form of control that resembled military occupation.⁸⁰ The emerging Cold War between the United States and Russia provided the setting for exercise of that control on Jeju.⁸¹ Jeju residents, like many

note 14 (analyzing strategic deployment of democratic legitimacy in persuading Japan politically to recognize the colonized Ainu as an indigenous people for purposes of reconciliation and restorative justice).

⁷⁹ See generally James Lebovic & Erik Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR*, 50 INT'L STUD. Q. 861 (2006). Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANNUAL REV. OF PSYCH. 375 (2006).

⁸⁰ After Japan surrendered, the United States occupied Korea, south of the 38th parallel. It established the United States Army Military Government in Korea, which functioned as the sole legal authority and gave the United States more control than a simple trusteeship. See Sung Song Kwang, *The Impact of the U.S. Military Occupation (1945–1949) on Korean Liberation, Democratization, and Unification* 42, 62 (1989) (Ph.D. dissertation, Univ. Cal. L.A.); William Stueck, *The Coming of the Cold War for Korea*, in KOREA UNDER THE AMERICAN MILITARY GOVERNMENT, 1945–1948 41, 48 (2002); Bong-jin Kim, *Paramilitary Politics under the USAMGIK and the Establishment of the Republic of Korea*, KOREA J. at 289, 290 (2003); Bruce Cumings, *The Question of American Responsibility for the Suppression of the Chejudo Uprising*, Korea International War Crimes Tribunal: Report and Final Judgment on US Crimes in Korea 1945-2001, INT'L ACTION CTR. (June 23, 2001), <http://www.iacenter.org/Koreafiles/ktc-cumings.htm>.

⁸¹ According to the Translated Report, “[t]he media in those days agreed that the Cold War between the US and the Soviet Union brought about the tragedy of the Jeju 4.3 Incident.” TRANSLATED REPORT, *supra* note 2, at 363–64 (citing *Chosun Joongang Ilbo*, Sept. 1, 1949). Scholars observe that the United States used this extended control to further its own goals of resisting Russian communism. As the United States negotiated as part of the Joint Soviet–U.S. Commission, a high ranking U.S. official documented that “[i]n the American view, freedom from Russian domination is more important than complete independence . . . it is not believed to be in the U.S. interest to form a Korean Government which could be granted complete independence in the next few years.” GEORGE KATSIAFICAS, *ASIA’S UNKNOWN UPRISINGS, VOLUME 1: SOUTH KOREAN SOCIAL MOVEMENTS IN THE 20TH CENTURY* 66 (2012) (citing History of the U.S. Armed Forces

throughout South Korea, organized people's committees to rebuild economic and cultural institutions.⁸² Some groups also resisted what they considered to be harsh government food policies and violent police practices.⁸³ Both U.S. military leaders and South Korea officials broadly categorized these diverse groups as "organizations of the left."⁸⁴

In March 1947, in response to resident dissatisfaction with the U.S. military government and the police in Jeju and in light of perceptions of the impending election as "a unilateral attempt of the U.S. ruling government . . . to separate a southern regime," many Jeju residents demonstrated against government policies and commemorated National Liberation Day.⁸⁵ The police, "under control of the US military, opened fire severely injuring six and killing six."⁸⁶

This police violence led to general strikes in Jeju.⁸⁷ Under U.S. supervision, the police arrested, tried, convicted and imprisoned strike

in Korea (HUSAFIK), vol. 2 (Seoul and Tokyo: U.S. Office of the Chief of Military History: 1947, 1948), 154–55, 238–39).

⁸² In efforts to build political, educational, and cultural stability, Jeju islanders "systematized the building of the Autonomous People's Council." Chang Hoon Ko, *US Government Responsibility on the Jeju April Third Uprising and Grand Massacre: Islanders' Perspective*, 8 LOCAL GOV'T STUD. 123, 123–40 (2004) (citing "the Island's only newspaper at that time, Jejusinbo"). See also Kwang, *supra* note 80 (discussing people's committees formed to provide social services and keep the peace across Korea).

⁸³ See BRUCE CUMINGS, *THE KOREAN WAR* 123 (2010) (describing the effect of increased unauthorized grain collection). See 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. OF TRANSITIONAL JUST. 406, 409 (2009) (describing recent scholarly views arguing the March 1 demonstration was a response to the "oppression and misrule of the US military government"); MARTIN HART-LANDSBERG, *KOREA: DIVISION, REUNIFICATION, AND U.S. FOREIGN POLICY* 71–81 (1998) (noting popular Korean discontent with US actions such as collaborating with Japanese officials, appointing Korean officials who had worked for the Japanese colonial government, passing restrictive labor laws and removing existing governing people's committees).

⁸⁴ Kwang, *supra* note 80 (noting the United States reaction to people's committees). Despite characterizations as leftist or communist, the U.S. Military initially assessed the People's Committee of Jeju Island to be peaceful and moderate. U.S. Commander Hodge reiterated this assessment in 1947, stating that Jeju was "a truly communal area that is peacefully controlled by the People's Committee without much Comintern influence." KATSIAFICAS, *supra* note 81, at 91 (citing Chang Hoon Ko, *The International Context of the Jeju Sasam Uprising*, THE ISLANDER (2003)) (quoting Bruce Cumings, *The Question of American Responsibility for the Suppression of the Jejudo Uprising*, in *FOR THE TRUTH AND REPARATIONS: JEJU APRIL 3RD OF 1948 MASSACRE NOT FORGOTTEN* 17–18 (Hur Sang Soo, ed., 2001)).

⁸⁵ Song Jung Hee, *Islanders Still Mourn April 3 Massacre*, JEJU WEEKLY (Mar. 31, 2010) <http://www.jejuweekly.com/news/articleView.html?idxno=657>.

⁸⁶ Kim, *supra* note 83, at 410.

⁸⁷ Kim, *supra* note 83.

organizers.⁸⁸ Significantly, despite advice by American military officials that the main cause of the uprising was opposition to police brutality and not an incitement to communism,⁸⁹ the U.S. military commander falsely characterized the strikes and resistance as a broadscale communist uprising.

One thing is absolutely certain—that the Island was organized as a Communist base. The evidence was irrefutable once we really began to dig into the matter. Police brutality and inefficient government were but incidental to the Communist designs on this Island. It is so obvious that Jeju has become a base for communists.⁹⁰

The police then began to characterize Jeju as an “island of Reds”⁹¹ even though U.S. investigators found few communists among Jeju residents and most residents to be at most “moderate leftists.”⁹² Once labeled an “island of Reds,” however, the U.S. anticommunist policy unleashed far-reaching repression.⁹³

Amidst increasing tensions, on April 3, 1948, some residents confronted police and government officials in an effort to stop police violence, to protest the upcoming election and to support “the establishment of a unified Korean government.”⁹⁴ The United States military government sent in additional police, military troops and “anticommunist paramilitary groups” who used “violence in favor of the right-wing leaders and the U.S. military government”⁹⁵ to “ruthlessly

⁸⁸ Ko, *supra* note 82, at 123–40.

⁸⁹ TRANSLATED REPORT, *supra* note 2, at 271–72. See also Hee, *supra* note 85 (quoting Yang Jo Hoon, “a leading 4.3 researcher and now vice-governor of the Jeju provincial government,” the “U.S. military rule administration concluded that Jeju was a red island on which most Jeju residents had leftist tendencies Under U.S. military rule, Jeju Island, which protested against the government, was a thorn in the side.”).

⁹⁰ TRANSLATED REPORT, *supra* note 2, at 272 (“Letter from Brown to Ward,” July 2, 1948, The Rothwell H. Brown Papers, Box 3, US Army Military History Institute, Pennsylvania, U.S.A.).

⁹¹ TRANSLATED REPORT, *supra* note 2, at 150.

⁹² Cumings, *supra* note 80; see also CUMINGS, *supra* note 83, at 126 (“Interrogators also found evidence that the SKWP had infiltrated not more than six trained agitators and organizers from the mainland, and none had come from North Korea”).

⁹³ TRANSLATED REPORT, *supra* note 2, at 272 (concluding that “Colonel Brown’s personality and his impression of the Jeju 4.3 Incident [as arising out of Jeju Island organized as a Communist base] resulted in the strong repression operation”).

⁹⁴ Baik, *supra* note 4, at 96.

⁹⁵ Kim, *supra* note 83, at 409.

suppress the rebellion.”⁹⁶ High-level U.S. military officials “gave the South Korean army and police authority to act” forcefully against South Korea’s own citizens.⁹⁷

After the Republic of Korea was established in August 1948 under Syng-man Rhee, with American military leadership supervising and overseeing South Korean military and national police actions, and with American military forces still in place to support the new government, suppression of the Jeju people accelerated with a “scorched earth operation.”⁹⁸ A “cycle of terror” ensued.⁹⁹ Complete “villages were massacred and burned down” and “thousands of islanders fled.”¹⁰⁰ The Rhee regime declared martial law in November 1948, and, supported by the U.S. military, indefinitely detained many and summarily tried and executed thousands of others presumed to be “communists or enemy sympathizers.”¹⁰¹ Many were killed in the field without evidence of links to communism or resistance actions.¹⁰²

By 1949 the violence left “one in every five or six islanders” dead and “more than half the villages” destroyed.¹⁰³ These and ensuing attacks devastated the Jeju populace.¹⁰⁴ American military leaders nevertheless

⁹⁶ George Katsiaficas, *Why Many South Koreans Fear the U.S.*, EROSEFFECT.COM (2003), <http://www.eroseffect.com/articles/Why%20South%20Koreans.pdf>.

⁹⁷ Hans van der Lugt, *Silence on the Drama of Cheju Is Over: South Korea Takes a More Honest Look At Its Post War History*, NRC HANDELSBLAD (Aug. 24, 2004).

⁹⁸ Moo Yong Kim, *The Strategy of Civilian Victimization and Massacre in Jeju 4.3 Subjugation Operation*, TRUTH & RECONCILIATION COMM., REPUBLIC OF KOREA (Apr. 10, 2008), <http://jinsil.go.kr/English/Information/notice/read.asp?num=135>.

⁹⁹ Hee, *supra* note 85.

¹⁰⁰ Lugt, *supra* note 97.

¹⁰¹ Baik, *supra* note 4, at 97. See also Korea Herald, *Truth Commission Confirms Civilian Killings During War*, TRUTH & RECONCILIATION COMM., REPUBLIC OF KOREA (Mar. 2, 2009), <http://jinsil.go.kr/English/Information/notice/read.asp?num=343> (describing that “[a]t least 20,000 people jailed for taking part in the popular uprisings in Jeju, Yeosu and Suncheon, or accused of being communists, were massacred in some 20 prisons across the country”).

¹⁰² With initial authorization from the U.S. military, the South Korean military, national police and paramilitary groups attacked thousands of villagers, killing many and detaining many more, most of whom had little or no direct role in the uprising. See Hee, *supra* note 85 (quoting Yang Jo Hoon that the “U.S. military rule administration concluded that Jeju was a red island on which most Jeju residents had leftist tendencies”); Kwang, *supra* note 80 (quoting Commander Brown as saying, “I am not interested in the causes of the uprisings. My mission is to suppress them.”) (citing Tok-song Cho, *Yuhyolu Chejudo* [Bloody Chejudo], 3 SINCHONJI 94 (July 1948)).

¹⁰³ Cumings, *supra* note 80.

¹⁰⁴ See TRANSLATED REPORT, *supra* note 2, at 451–647 (citing the damage report).

continued to portray Jeju as a threat, and the violent suppression continued.¹⁰⁵ Then the history of the Tragedy was covered up for decades.¹⁰⁶ Those speaking or writing of the tragedy were imprisoned.¹⁰⁷

With this backdrop two American scholars painted a picture of United States' involvement in and partial responsibility for Jeju 4.3. Professor Bruce Cumings at the University of Chicago concluded that the American government actively participated in the Jeju 4.3 destruction.¹⁰⁸ Cumings cited "formerly classified American materials [that] document a wholesale assault on the Jeju people."¹⁰⁹ Cumings' documentary research also revealed direct United States involvement in "the daily training of counterinsurgent forces, [the] interrogation of prisoners, and the use of American spotter planes."¹¹⁰ Cumings maintained that the role of the United States in Jeju 4.3 is clear and "[i]f it should come to pass that any Koreans succeed in gaining compensation from the American Government for the events of 1945 to 1953, certainly the people of [Jeju] should come first."¹¹¹

Professor George Katsiaficas¹¹² at Wentworth Institute of

¹⁰⁵ Baik, *supra* note 4, at 97.

¹⁰⁶ For years, Korean military regimes "systematically destroyed evidence and intimidated victims and witnesses[.] . . . Korean society itself had been built on the grounds of forced oblivion." Kim, *supra* note 83, at 422. The Korean people, including Jeju islanders, were afraid of speaking out in the face of these hostile governments.

The people responsible for the massacres maintained their control of Korean society and justified the killings according to their own reasoning. The families of the victims, afraid of being stigmatized as communists, remained quiet.

TRUTH AND RECONCILIATION COMM'N, REPUBLIC OF KOREA, TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS 7 (2009), *available at* <http://www.japanfocus.org/data/TRC2009Report.pdf> [hereinafter TRC INTERIM REPORT]. Reporter Hans van der Lugt writes of Mun Ae-suk, a recent university graduate and Jeju resident, learning of the Jeju 4.3 Tragedy for the first time after government enforced silence.

An uncle of Mun Ae-suk died during the uprising, but her parents never discussed this. Also, schoolteachers were silent about the uprising. "When I started going to university in the nineties seniors told me about the uprising for the first time," says Mun.

Lugt, *supra* note 97.

¹⁰⁷ Ko, *supra* note 82, at 123–40.

¹⁰⁸ Cumings, *supra* note 80. Cumings is the Gustavus F. and Ann M. Swift Distinguished Service Professor in History at the University of Chicago.

¹⁰⁹ CUMINGS, *supra* note 83, at 121.

¹¹⁰ CUMINGS, *supra* note 83, at 127.

¹¹¹ Cumings, *supra* note 80.

¹¹² Katsiaficas is a professor of Humanities and Social Sciences at Wentworth

Technology concluded that the United States played an active role in Jeju 4.3¹¹³ when “US commanders imported hundred[s] of North Korean refugees who, organized as armed militias, ruthlessly suppressed the rebellion along with former Japanese-trained soldiers and police.”¹¹⁴ The United States exacerbated the human suffering by supporting the repressive South Korea government that made it “illegal to discuss [the Jeju 4.3] events in public.”¹¹⁵ According to Katsiaficas, Jeju is “the worst single massacre [that occurred] under the post-war U.S. military government . . . and has yet to be acknowledged by the United States,”¹¹⁶ and “[u]ntil Americans acknowledge and accept responsibility for the tragic actions of our government [like the massacre at Jeju], many Koreans will regard us with fear, hostility and suspicion.”¹¹⁷

South Korean scholars also pointed to the United States’ partial responsibility for Jeju 4.3 and its lack of participation in redress efforts. Professor Chang Hoon Ko at Jeju National University observed that,

[At a minimum, Jeju islanders] strongly [desire] help from the U.S. government to tell the truth about [the] US government role [in the] Jeju Uprising and Grand Massacre. If [the U.S. helps uncover the truth], we [will]

Institute of Technology in Boston who is currently writing about historical East Asian uprisings. While acknowledging Cumings’ substantial contributions to research on Korean history, Katsiaficas critiques Cumings for failing to adequately mention “U.S. troops in his assessment of the balance of forces” that contributed to the violence in the struggles of the existing government groups in Korea after World War II. KATSIAFICAS, *supra* note 81, at 79. Katsiaficas further critiques Cumings for failing to fully “portray continuity in the Korean patriotic movement,” thereby minimizing the central role that patriotism and a desire for independence played in later movements and uprisings. *Id.*, at 79–80 (citing Hae-Gu Jung). According to Katsiaficas, Cumings’ limited portrayal misses the political character of those movements that connects the many local uprisings at that time, including the Jeju 4.3 Tragedy. *Id.*

¹¹³ Katsiaficas illustrates U.S. involvement in Jeju 4.3 with examples. He cites to “at least one American judge helping to convict 158 [Jeju islanders] on charges ranging from unlawful meetings, violating American military laws, and planning strikes.” KATSIAFICAS, *supra* note 112, at 92. Katsiaficas also documents U.S. orders imposing a “scorched earth” policy on Jeju—a “fabricated report [by] the United States blam[ing] police instigated killings on Jeju] on insurgents” and U.S. warships patrolling and blockading the waters around Jeju Island. *Id.* at 94–97. *See also* Yang Han Kwon, *The Truth About the Jeju April 3rd Insurrection*, in *FOR THE TRUTH AND REPARATIONS: JEJU APRIL 3RD OF 1948 MASSACRE NOT FORGOTTEN 4*, (Hur Sang Soo ed., 2001). Katsiaficas also cites, as an opposing viewpoint, the pre-National Committee Investigation writing in John Merrill, *The Jeju-do Rebellion*, 2 J. KOREAN STUD. 174–75 (1980).

¹¹⁴ Katsiaficas, *supra* note 96.

¹¹⁵ Katsiaficas, *supra* note 96.

¹¹⁶ Katsiaficas, *supra* note 96.

¹¹⁷ Katsiaficas, *supra* note 96.

know whether the U.S. government [has] something to apologize [for] to Jeju islanders or not.¹¹⁸

According to Professor Ko, many Jeju residents believe that the United States systematically violated the rights of Jeju islanders under the guise of anticommunism by “intentional[ly] and illegal[ly]” labeling Jeju Island and its people a “Red Island and People.”¹¹⁹ Ko suggested that Jeju residents were instead part of a “civil rights movement concerned with peace, individual rights and little people who went up against another big powerful country like the United States.”¹²⁰

Professor Tae-Ung Baik of the University of Hawai‘i William S. Richardson School of Law is an expert in international human rights and Korean law. Professor Baik observed that the U.S. military government’s “accountability for [Jeju 4.3, which included crimes against humanity and war crimes,] requires further examination.”¹²¹ Baik surmised that the United States in South Korea “used its power to strengthen the rightist political factions while cracking down on leftist groups.”¹²² In Jeju specifically the “United States declared the People’s Committee and other similar organizations to be illegal, while the rightist police and private military groups employed by the U.S. military government were granted the power to crack down on the activities of people.”¹²³

The damage of Jeju 4.3 continued even after the killing stopped.¹²⁴ New governing regimes suppressed all efforts to raise the issue of state-sponsored civilian killings¹²⁵ and imprisoned those who spoke out about the Jeju 4.3 Tragedy.¹²⁶

On the mainland, unrest erupted with the Gwangju democracy uprising in May 1980, leaving many dead.¹²⁷ In reaction to the prior

¹¹⁸ Ko, *supra* note 82, at 123–40.

¹¹⁹ Ko, *supra* note 82.

¹²⁰ Ko, *supra* note 82.

¹²¹ Baik, *supra* note 4, at 99–100.

¹²² Baik, *supra* note 4, at 100.

¹²³ Baik, *supra* note 4.

¹²⁴ Dong Choon Kim, *The Long Road Toward Truth and Reconciliation: Unwavering Attempts to Achieve Justice in South Korea*, 42 CRITICAL ASIAN STUD. 525, 533 (2010). (“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.”).

¹²⁵ *Id.* See also Yoshida, *supra* note 1, at 80–81.

¹²⁶ Ko, *supra* note 82, at 123–40. See also Yoshida, *supra* note 1, at 80 (explaining that it was “taboo” to discuss the “Jeju mass killing” under the dictatorship government).

¹²⁷ Kim, *supra* note 124, at 536–39.

silencing of Jeju 4.3 stories, democracy movement activists¹²⁸ publicly exposed the Jeju 4.3 Tragedy and pushed for investigations of government abuses.¹²⁹

Under pressure from the democracy movement, then-President Roh Tae-Woo allowed a popular election in 1987.¹³⁰ Student groups at Jeju National University, prompted by the upcoming democratic election, brought the Jeju 4.3 Tragedy into the political arena with a commemoration ceremony.¹³¹ Raising awareness about Jeju 4.3 continued with the 1992 discovery by the 4.3 Research Institute of “skeletal remains of 11 [murdered] corpses” in the Darangshi cave in Jeju.¹³² This “changed the nature of the advocacy [for investigation into the Jeju 4.3 Tragedy] from an activity limited to activists and victims to a public movement, by revealing evidence of real, gruesome state violence.”¹³³

Responding to the public call for an investigation into the 4.3 Tragedy, the National Assembly passed the “Special Act for Investigation of the Jeju April 3 Incident and Recovering the Honor of Victims in late 1999.”¹³⁴ The Special Act initiated transitional justice for the emerging

¹²⁸ Kim, *supra* note 124.

¹²⁹ Kim, *supra* note 124.

¹³⁰ KATSIAFICAS, *supra* note 81, at 298 (explaining that “Roh Tae-woo issued a sweeping declaration on behalf of the government [and . . .] announced the ruling party’s endorsement of amending the presidential election law to allow for direct elections”).

¹³¹ This ceremony opened the door to a lecture in 1988 and to the first public memorial service in 1989. The service was “an arena where activists could discuss the 4.3 events and share information, expertise and strategies . . . [and was] accompanied by a month-long cultural festival that included local artists and cultural activists.” Kim, *supra* note 83, at 414. *See also* Ko, *supra* note 82, at 123–40.

¹³² Kim, *supra* note 83, at 415.

¹³³ The Provincial 4.3 Committee later conducted interviews and reviewed documentary evidence, publishing a 585-page final report in 1995 with a list of 14,504 victims. This official government report provided concrete evidence of state-perpetrated violence against many innocent civilians and countered the common view of the government’s suppression of communist insurgents. Armed with the provincial report, local council members created a petition signed by the victims and members of the general public and submitted it to the National Assembly hoping to get investigation of the Jeju 4.3 Tragedy onto the national agenda. However, the investigation of Jeju 4.3 languished. Kim, *supra* note 83, at 415–22.

By contrast, 700,000 people signed a petition demanding a special law for prosecuting those responsible for the killings in the Gwangju Democracy Movement. In 1995, President Kim signed the Gwangju Special Law to identify the responsible parties and provide compensation for the victims. Kim, *supra* note 124, at 536–39.

¹³⁴ Ko, *supra* note 82, at 123–40; *see also* *Legal Basis for the Committee*, NAT’L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, <http://www.jeju43.go.kr/english/sub.html> (last visited Oct. 25, 2011).

democracy: it purposefully dropped inaccurate references to Jeju 4.3 as a communist insurgency; acknowledged Jeju residents' resistance to perceived unfair or abusive government policies and practices; and authorized commemoration projects, including a cemetery, museum, park and limited financial and medical subsidies for victims.¹³⁵

The Special Act also established the 4.3 National Committee to investigate the truth, identify the victims and restore victims' honor.¹³⁶ Starting in 2000 the National Committee conducted a thorough three-year investigation, interviewing many witnesses, consulting experts and reviewing thousands of documents—in Korean and English—culminating in a detailed report in 2003 (translated into English in 2013).¹³⁷ In 2004, acting on the Committee's recommendations, the South Korea government began a healing process that included a concise presidential apology, government-sponsored museum and extensive public memorial and gravesite and limited financial and medical subsidies for victims.¹³⁸

Responding to the democracy movement's concern about historic injustice, in 2005, the National Assembly passed the "Framework Act for the Truth and Reconciliation Commission" primarily to address abuses during the Korean War.¹³⁹ This Act only lightly touched upon the Jeju 4.3 Tragedy. The Commission produced an interim report in Korean in March 2009, recommending memorials, official apologies, education, additional legislation and the correction of official historical records—but not specifically for Jeju 4.3.¹⁴⁰

IV. MUTUAL ENGAGEMENT: UNITED STATES, SOUTH KOREA AND JEJU RESIDENTS

Healing for Jeju 4.3 survivors and families progressed after the

¹³⁵ See NAT'L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, *supra* note 134.

¹³⁶ Kim, *supra* note 83, at 420–21.

¹³⁷ Kim, *supra* note 83, at 421; *Chronology*, NAT'L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, <http://www.jeju43.go.kr/english/sub01.html> (last visited Oct. 25, 2013).

¹³⁸ See Yoshida, *supra* note 1, at 80–81.

¹³⁹ Kim, *supra* note 124, at 544. See also Framework Act on Clearing up Past Incidents for Truth and Reconciliation, Act No. 7542, May 31, 2005 (S. Kor.), *translated in* TRUTH & RECONCILIATION COMM'N, REPUBLIC OF KOREA, <http://jinsil.go.kr/English/Information/legal/read.asp?num=76>; Enforcement Decree on Clearing up Past Incidents for Truth and Reconciliation, Presidential Decree No. 19161, Dec. 1, 2005, *translated in* TRUTH & RECONCILIATION COMM'N, REPUBLIC OF KOREA <http://jinsil.go.kr/English/Information/legal/read.asp?num=77>.

¹⁴⁰ The Commission produced an interim report March 20, 2009, recommending a memorial, official apologies, education, additional legislation and the correction of official historical records. TRC INTERIM REPORT, *supra* note 106, at 143.

work of the 2000 National Committee, recognizing extensive harms and assessing responsibility.¹⁴¹ Acting on the Committee's recommendations and many Jeju residents' expressed desires, the South Korea government began a healing process that included a succinct presidential apology, a government-sponsored museum and an extensive public memorial and gravesite and limited financial payments to a few.¹⁴² Why, then, the perception that social healing is starkly incomplete—that much more needs to be done?

A. South Korea's Partial Steps Toward Reconciliation

In recent years, particularly after former-President Lee's inauguration in 2007, reconciliation efforts seemingly stalled and in some respects regressed.¹⁴³ Individuals suffering physical, psychological and financial harms still await some form of reparations. For many families the unresolved trauma persists over generations. And high officials have begun to broadly and wrongly re-characterize the Jeju people of 1948 as communist insurgents.¹⁴⁴ Those residents improperly tainted by that label have been largely excluded from the reconciliation process.¹⁴⁵ Children too have been tainted by the false labels; some have been black-balled from desired government jobs and university admissions.¹⁴⁶ Many still await genuine reconstruction and repair. And, for some, the construction of a naval base for possible United States use salts the persisting personal and environmental wounds. A number of victim families, supporters and Jeju

¹⁴¹ See Yoshida, *supra* note 1, at 80–81.

¹⁴² See Tae-Ung Baik, *Social Healing Through Justice: Jeju 4.3 Case*, 2 WORLD ENVIRON. & ISLAND STUD. 59, 75–76 (2012) [hereinafter Baik, *Justice*] (describing the efforts of the South Korea government to take transitional justice measures); see also Tae-Ung Baik, *Fairness in Transitional Justice Initiatives: The Case of South Korea*, 19 BUFF. HUM. RTS. L. REV. 169, 178–79 (2012) [hereinafter Baik, *Fairness*] (describing the South Korea government's limited reparations and disparate treatment of Jeju 4.3 survivors compared to those of the democracy movements); Yoshida, *supra* note 1, at 80–81, 106–07 (describing President Roh's apology as “impressive” but calling for individual reparations).

¹⁴³ See Yoshida, *supra* note 1, at 81, 105 (stating that the “problems [and lack of continued reconciliation efforts] still exist”).

¹⁴⁴ See Ji Sook Bae, *Conservatives Downgrade Jeju Uprising in 1948*, KOREA TIMES (Jan. 25, 2008), http://www.koreatimes.co.kr/www/news/nation/2008/01/117_17945.html (citing a conservative politician who characterized 4.3 as “communists orchestrating an uprising to dominate Korea”).

¹⁴⁵ See Kim, *supra* note 83, at 409 (suggesting that “[b]y defining the key event as a communist rebellion, civilian massacres and human rights abuses were easily justified as collateral to, and a necessary part of, the efforts to prevent communization”).

¹⁴⁶ See TRANSLATED REPORT, *supra* note 2, at 607–21 (describing the guilt-by-association system).

residents, as well as scholars and human rights observers, now therefore view the South Korea government's overall reparative efforts to be incomplete—a stalled work in progress.¹⁴⁷ Unfinished business.

B. United States' *Need to Engage* in Jeju 4.3 Social Healing

In addition to the limitations of the national government's efforts, a crucial piece of the strong sense of stalled social healing is this: the United States thus far has been uncooperative or absent at all stages of the reparative justice process.¹⁴⁸ As highlighted by the first and second Rs, *recognition* and *responsibility*, and as developed in Parts III and V, Jeju residents,¹⁴⁹ South Korean¹⁵⁰ and American scholars¹⁵¹ and even a knowledgeable former U.S. Army Colonel¹⁵² express the strong conviction that the United States played an integral role in the injustice and bears some responsibility for healing past and persisting wounds.

¹⁴⁷ See Yoshida, *supra* note 1, at 81, 105 (pointing out that while “Koreans are moving toward historical reconciliation in the right way, . . . the present stage is still imperfect and unfinished”).

¹⁴⁸ The Translated Report describes non-cooperation by the United States.

Despite multilateral efforts, we cannot be sure if the report succeeded in revealing a clear picture of the 4.3 Incident. We felt the most inconvenience regarding the wasted documents from involved agencies including the Police. Military commanders refused to testify and there were failures in securing confidential documents from the U.S.

TRANSLATED REPORT, *supra* note 2, at 656.

¹⁴⁹ For instance, Donald Kirk described how Kim Kwan-ho of the Association of Bereaved Families “is convinced the U.S. occupation forces were behind the massacre.” DONALD KIRK, OKINAWA AND JEJU: BASES OF DISCONTENT 123 (2013).

¹⁵⁰ Korean scholars on Jeju 4.3 include Professors Chang Hoon Ko, Tae-Ung Baik, Hunjoon Kim, Dong Choon Kim and June-Ho Kim. See Ko, *supra* note 82; Chang-Hoon Ko & June-Ho Kim, *Jeju Island as the Center for Human Rights and Peace in the 21st Century*, 6 PEACE ISLAND 79 (2012); Baik, *Justice*, *supra* note 142; Kim, *supra* note 124; Kim, *supra* note 83. See also Sang-hun Choe, *South Korea Reviews Its Dark Past But the Pace is Slow*, N.Y. TIMES (Mar. 11, 2007), <http://www.nytimes.com/2007/03/11/world/asia/11korea.html>.

¹⁵¹ American scholars making these assessments include Professors Bruce Cumings and George Katsiaficas. See Cumings, *supra* note 80; Katsiaficas, *supra* note 96. See also HART-LANDSBERG, *supra* note 83.

¹⁵² Former U.S. Army Colonel Ann Wright is now a peace advocate who has participated in protests against naval base construction and operation on Jeju Island. See Ann Wright, *Jeju Island-Tragic Destruction of Pristine Marine Area for Another Naval Base for the US Missile Defense System*, WAR IS A CRIME.ORG (Oct. 14, 2013), <http://warisacrime.org/content/jeju-island-tragic-destruction-pristine-marine-area-another-naval-base-us-missile-defense-sy>; Video Interview with Ann Wright, *No Naval Base! Save Jeju Island!*, SAVE JEJU NOW (Sept. 6, 2011), <http://savejejunow.org/portfolio/no-naval-base-ann-wright>.

Moreover, South Korea's political leaders have yet to demand U.S. participation in the reconciliation process—seemingly giving the United States a free pass from accountability.¹⁵³ Unlike the South Korea government's demand that Japan participate in reparative justice for the Korean Comfort Women (Japanese military sex slaves),¹⁵⁴ there has been no demand or even formal request that the United States engage in the extended Jeju 4.3 social healing process. Realpolitik considerations about

¹⁵³ The Translated Report reveals direct United States involvement in and partial responsibility for Jeju 4.3. The government's 2005 Truth and Reconciliation Commission identified the United States as a perpetrator in other atrocities during the Korean War but not a participant in Jeju 4.3. The No Gun Ri massacre of 1950 aptly demonstrates this. In particular, it shows that the U.S. and Korean militaries jointly engaged in human rights atrocities during the end of Jeju 4.3. According to Professor Yoshida, during the massacre of No Gun Ri "around 300 civilians and another 1000 political prisoners were killed by the joint U.S.-Korean Army in central Korea." Yoshida, *supra* note 1, at 105. See also CHARLES J. HANLEY ET AL., *THE BRIDGE OF NO GUN RI* (2002); Tae-Ung Baik, *A War Crime Against an Ally's Civilians: The No Gun Ri Massacre*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 2 (2001).

The Korean government later approved investigations and compensation for No Gun Ri victims, but not Jeju 4.3 survivors or victims of other atrocities. "[T]he hundreds of thousands of innocent civilians massacred by South Korea and the USAMG during the Korean War—acts justified by labeling the victims as communist sympathizers—have not been compensated, with the exception of [compensation by Korea for] victims of the well-known No Gun Ri incident." Baik, *supra* note 4, at 100. According to Professor Baik, No Gun Ri victims received remedies in 2004 under the Special Act on the Investigation and Reinstatement of Impaired Reputation of No Gun Ri Victims. See Baik, *Justice*, *supra* note 142, at 76 n.54.

U.S. participation in such redress efforts was lacking. According to Professor Yoshida, "Although the American government promised to build a memorial and scholarship program to build a memorial and scholarship program to honor the Korean War's civilian victims in 2001 under the Statement for Mutual Understanding of the U.S.-Korea governments and by the expression of sorrow of President Clinton, the apology and damages were rejected." Yoshida, *supra* note 1, at 105. Thus, while No Gun Ri victims were the only group to receive reparations by the Korean government and some limited recognition from the U.S., other groups, including Jeju 4.3 survivors, received neither an apology nor reparations.

U.S. involvement in redress efforts may have been lacking for several reasons. According to Professor Baik, although the United States participated in Jeju 4.3, the South Korea government did not request U.S. engagement in reconciliation efforts, apparently hoping to avoid strained political relationships. See Baik, *supra* note 4, at 106. Baik observes that "to avoid any awkwardness in its relationship with the US or with Japan, the [Korean] government did not pursue a brand of transitional justice that traced back to Japanese colonial rule and the presence of the US in Korea." *Id.* The South Korea Truth and Reconciliation Commission interim report was critical of the lack of U.S. accountability for incidents like No Gun Ri. TRC INTERIM REPORT, *supra* note 106, at 7. This has left the Jeju people with a feeling of incompleteness in reconciliation and social healing.

¹⁵⁴ See Yamamoto & Lee, *supra* note 14, at 123, 146–47.

continued U.S. military support may be a motivating factor.¹⁵⁵ Yet as the United States “pivots toward Asia” for international security while expressly reiterating its commitment to human rights,¹⁵⁶ and as the South Korea government builds a naval base on Jeju despite protests,¹⁵⁷ the time may be now for re-charting a fresh strategic approach to Jeju 4.3 reconciliation involving South Korea, the United States and the Jeju people.

Strategically re-charting a social healing approach for Jeju 4.3 was the focal point for a 2012 colloquium, a 2013 Peace Education Forum in Jeju and recent essay for the *World Environment and Island Studies* journal.¹⁵⁸ More specifically, the essay highlighted the “two instances the United States acknowledged its gross civil and human rights abuses through an apology and steps toward reconciliation—the World War II Japanese American internment of 120,000 innocent Americans in concentration camps [on U.S. soil], and the 1893 illegal overthrow of the sovereign Hawaiian nation.”¹⁵⁹ It then focused broadly on the United States’ partial though apparently significant role in the 4.3 Tragedy and, consistent with the multi-disciplinary commonality of mutual engagement, on the United States’ present-day responsibility for active participation in further reconciliation initiatives.¹⁶⁰

The United States grounds its global moral authority as a democracy in its stated commitment to human rights. But a genuine commitment entails acknowledging and actively repairing the damage caused by its participation in human rights atrocities—even decades ago. Its legitimacy as a democracy depends upon doing so—after two damaging wars the United States needs to bolster its moral authority internationally. If America under President Obama, with its security pivot toward Asia, is to reclaim full legitimacy as a democracy committed to human rights, if there is to be complete social healing for the Jeju 4.3 survivors and

¹⁵⁵ See *infra* Part V.C.5.c.

¹⁵⁶ See Hiroko Tabuchi, *Japan Warns of China and North Korea as Security Threats*, N.Y. TIMES (July 10, 2013), A5 (opining that the United States’ “pivot to Asia” is a “strategic reorienting of American interests from Europe and the Middle East toward East Asia”).

¹⁵⁷ See *infra* Part V.C.5.c.

¹⁵⁸ “Social Healing Through Justice: The Mass Killing of Korea Jeju Islanders During U.S. Peacetime Occupation” October 2012 colloquium, Honolulu, HI; Yamamoto, Lee & Lee, *supra* note 14.

¹⁵⁹ Yamamoto, Lee & Lee, *supra* note 14, at 56; see also YAMAMOTO ET AL., *supra* note 14, at 3, 17, 223; Yamamoto & Obrey, *supra* note 14, at 16–17, 44.

¹⁶⁰ Yamamoto, Lee & Lee, *supra* note 14, at 52–56.

families and for the Korean government and people—if the “han,” the deep sense of suffering from injustice, is to be lightened—then the United States needs to mutually and actively engage in the reconciliation process. *The time is now.*¹⁶¹

C. Next Steps: Engaging South Korea and U.S. Governments and Jeju Residents in a Focused Initiative That Builds on Past Efforts and Fosters Forward-Looking Social Healing for All

This article builds on colloquium and conference presentations, the journal essay, continuing research and interactions on Jeju Island.¹⁶² With an eye first on *recognition* and *responsibility* and then on *reconstruction* and *reparation*, it focuses on potential next steps in view of past assessments and recommendations, in light of current social, economic and environmental conditions and in consideration of the sense of many that 4.3 reconciliation is “unfinished business.”¹⁶³ More specifically, the article proposes a *Joint South Korea and United States Jeju 4.3 Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*—a creative yet practical way for South Korea, the United States and Jeju people to mutually engage in an initiative aimed at more fully implementing past recommendations and overseeing future steps toward *comprehensive*, *systemic* and *enduring* social healing.

The proposed Joint South Korea and United States Task Force would not duplicate the investigative work of the 2000 National Committee. Nor would it be simply an administrative body. The proposal (detailed below) addresses both the form and substance of the Task Force, including its goals, its source of authority, its creation and composition and its specific aims and operation.¹⁶⁴ With the 4Rs of *social healing through justice* in mind, this article also identifies potential substantive areas of focus for the Joint Task Force and, with older and new research at hand, suggests possible ways that the Task Force might grapple with specific issues in order to facilitate genuine social healing.¹⁶⁵

V. A JOINT SOUTH KOREA AND UNITED STATES JEJU 4.3 TASK FORCE TO FURTHER IMPLEMENT PAST RECOMMENDATIONS AND TO FOSTER COMPREHENSIVE AND ENDURING SOCIAL HEALING THROUGH JUSTICE

The 2000 National Committee’s work, although significant, has not

¹⁶¹ Yamamoto, Lee & Lee, *supra* note 14, at 56.

¹⁶² See *supra* notes 7–8 and accompanying text.

¹⁶³ Yamamoto, Lee & Lee, *supra* note 14, at 52–54.

¹⁶⁴ See *infra* Part V.B.

¹⁶⁵ See *infra* Part V.C.

yielded widespread and sustained Jeju 4.3 social healing.¹⁶⁶ Something more is needed.

A. The Need for a Fourth Step Mechanism to Further the Reconciliation Process

As the *social healing through justice* framework anticipates, reconciliation is a long-term multi-faceted social process that brings the possibility of significant benefits for many but that is also fraught with potential for incompleteness or even regression.¹⁶⁷ There is an emerging sense that the prevailing transitional justice model of reconciliation is incomplete and that more is needed to make social healing efforts lasting and comprehensive.¹⁶⁸

Generally a reconciliation initiative has three dimensions: truth telling, criminal prosecutions or amnesty and economic justice. The first dimension—truth telling—often takes the form of truth commissions and initially involves the collection of personal stories of those harmed and an assessment of responsibility for the harms. The second dimension seeks acknowledgment of harm by wrongdoers. In some instances this results in the prosecution and punishment of wrongdoers. In others wrongdoers are promised amnesty in exchange for their confession of political crimes. The final dimension is reconstruction to repair the damage, including economic justice for those harmed. The *social healing through justice* framework provides conceptual underpinnings for this tripartite structure of a reconciliation initiative.

Truth commissions play a crucial role in at least one part of the reconciliation initiative and possibly more. For those physically and emotionally scarred by human rights abuses, truth commissions often have a therapeutic effect, allowing victims and their families to tell their stories to formal sympathetic tribunals. Beyond providing catharsis for those harmed, truth commissions also publicly expose aspects of injustice sometimes unknown to the larger populace. Based on the stories and information gathered, truth commissions typically report on these findings and make recommendations for further reparative actions.

These recommendations often include prosecution/amnesty of

¹⁶⁶ See Baik, *supra* note 4, at 94–113 (adjudging Jeju 4.3 reparative efforts to be “incomplete”).

¹⁶⁷ See generally Yamamoto & Obrey, *supra* note 14. See, e.g., Cristián Correa, *Reparations in Peru: From Recommendations to Implementation*, INT’L CTR. FOR TRANSITIONAL JUSTICE 1 (June 2013), http://www.ictj.org/sites/default/files/ICTJ_Report_Peru_Reparations_2013.pdf.

¹⁶⁸ See *Security Council Stresses Reconciliation During Debate on “War and the Search for Lasting Peace,”* UN NEWS CTR. (Jan. 29, 2014), <https://www.un.org/apps/news/story.asp?NewsID=47035&Cr=security+council&Cr1=>.

individual wrongdoers as well as economic justice for those harmed. Prosecution/amnesty usually requires judiciary or tribunal adjudication. Prosecution seeks formal criminal punishment. Amnesty is only conferred upon confession of political crimes and as part of a negotiated peaceful relinquishment of power. Economic justice, characterized by monetary reparations, capacity-building and community development, is realized through legislative or executive action. In theory, government entities and non-governmental organizations implement the reconstruction and reparation recommendations of a truth commission as part of the broader reconciliation initiative.¹⁶⁹

The proliferation of truth commissions, particularly with inadequate recommendation implementation and follow-up, has tended to diminish both their effectiveness and reputation. Many reconciliation efforts are now being judged as stalled or incomplete, and this threatens entire undertakings.¹⁷⁰ Genuine social healing, it appears, requires a new mechanism for first assessing the effectiveness of reparative actions to date and for then recommending and shepherding next steps.

More specifically, the end of armed conflict or widespread abuse does not necessarily signal the beginning of the healing process. Recently the United Nations Security Council recognized that its efforts in “maintaining international peace and security has been mainly physical,” and that there is a strong need for “deeper reconciliation among ex-combatants and their peoples based on an agreed or shared narrative, a shared memory, of a troubled past.”¹⁷¹ As discussed, and consistent with the first two Rs of *social healing through justice* (recognition and responsibility), reconciliation efforts often initially take the form of truth commissions. Those commissions are investigative bodies that “determine the facts, causes and consequences of past human rights violations,” assess responsibility and make recommendations to repair the damage.¹⁷² Truth

¹⁶⁹ For a broad discussion of reconciliation initiatives and truth commissions, see generally Yamamoto, *Race Apologies*, *supra* note 33. See also *infra* notes 170–76 and accompanying text.

¹⁷⁰ See *Overburdened Truth Commissions Risk Becoming “Victims of Their Own Success,”* UN NEWS CTR. (Sept. 13, 2013), <http://www.un.org/apps/news/story.asp?NewsID=45845&Cr=truth+commission&Cr1#.UyDuwfldUYM> (citing UN Special Rapporteur on transitional justice Pablo de Greiff who cautions about overlooking the limits and risks of truth commission work).

¹⁷¹ See *Security Council Stresses Reconciliation During Debate on “War and the Search for Lasting Peace,”* *supra* note 168. Jeffrey Feltman, the Under-Secretary-General for Political Affairs for the United Nations told the Security Council that “while the UN has time-tested formulas for separating armies, tending to the needy, enacting political roadmaps and rebuilding actual roads and ministries, ‘we have reflected less on our ability to repair trust in societies and foster genuine reconciliation.’” *Id.*

¹⁷² *Truth Seeking: Elements of Creating an Effective Truth Commission*, INT’L CTR. FOR TRANSITIONAL JUSTICE 9, 52–53 (Eduardo González & Howard Varney eds., 2013), <http://ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>.

commissions serve an important role in shedding light on past injustices. But, as mentioned, a truth commission's recommendations and initial government responses do not signal "reconciliation done." The International Center for Transitional Justice aptly observes that truth commissions are only a first step toward reconciliation.¹⁷³ Implementation, assessment and follow-through, consistent with the last two Rs (reconstruction and reparation), are essential.

Yet the prevailing reconciliation model to date does not fully acknowledge this reality. It generally encompasses three practical steps: (1) a country creates a truth commission to address a past or ongoing injustice;¹⁷⁴ (2) the truth commission investigates, reports and makes recommendations for reparative actions;¹⁷⁵ and (3) the judiciary or tribunal sometimes considers criminal procedures or amnesty and the executive or legislative branch undertakes implementation actions on some or all of the recommendations.¹⁷⁶

Ground level reconciliation work reveals that truth commissions tend to function well in two respects—in recognizing harms and causes and in assessing responsibility. But that frontline work at times also reveals vastly inconsistent, incomplete or even regressive implementation actions as politics and economics influence the process. For this reason, the prevailing transitional justice model needs a new fourth step: an independent evaluative body, or mechanism, to assess implementation actions to date, to configure new plans of action in light of evolving conditions and to oversee further concrete implementation efforts.

The International Center for Transitional Justice's assessment of Peruvian reconciliation illustrates one kind of fourth step of an expanded model.¹⁷⁷ Peruvian reconciliation efforts were initiated in response to decades of bloody conflict between the Peruvian government and rebel groups.¹⁷⁸ In 1980 the Shining Path violently clashed with the Peruvian government.¹⁷⁹ Armed conflict continued through the mid-1990s.¹⁸⁰

¹⁷³ Professor Chanbonpin reaffirms the need to implement truth commission recommendations. "Truth commissions are simply a first step. Other reparative acts that might accompany or follow truth commissions include financial compensation . . . ; public memorials; . . . and public education campaigns to teach the public about the past injustice with a view toward preventing a similar occurrence." See Chanbonpin, *supra* note 16, at 38.

¹⁷⁴ See generally, Int'l Inst. for Democracy and Electoral Assistance, *Reconciliation After Violent Conflict: A Handbook*, U.N. (David Bloomfield, Teresa Barnes & Luc Huyse eds., 2003).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* (defining and describing the goals and process of reconciliation).

¹⁷⁷ See generally Correa, *supra* note 167.

¹⁷⁸ See Correa, *supra* note 167, at 3–4.

¹⁷⁹ See Correa, *supra* note 167, at 3–4.

Widespread human rights violations by both sides included decimation of uninvolved rural communities.¹⁸¹ The government and Shining Path forcibly displaced 600,000 people and killed and disappeared over 70,000 more.¹⁸² Many of the victims were indigenous people living in rural areas.¹⁸³ The conflict disproportionately harmed these people and intensified a painful history of subordinating indigenous peasant communities.¹⁸⁴

In 1993 the Peruvian government declared victory over the Shining Path and initiated reconciliation efforts.¹⁸⁵ The legislature provided limited compensation to a few.¹⁸⁶ Responding in 2001 to demands for further reconciliation efforts, the Peruvian president and legislature established the Truth and Reconciliation Commission and the Plan Integral de Reparaciones (PIR).¹⁸⁷ The PIR investigated specific acts and resulting harms and also examined deeper socio-economic causes.¹⁸⁸ It recommended individual economic capacity-building through both individual payments for those directly injured and institutional reconstruction to address the root of the conflict, including economic initiatives to generate an infrastructure for education, health and jobs.¹⁸⁹ To some the PIR's inclusive approach demonstrated the new government's commitment to social healing.¹⁹⁰

Despite initial efforts, criticism emerged about the incompleteness of government implementation actions. Critics maintained that, because enduring damage had been broadly inflicted over time, the reconciliation initiative needed to be comprehensive, sustained and systemic, with a

¹⁸⁰ Lisa J. Laplante, *On the Indivisibility of Rights: Truth Commissions, Reparations, and the Rights to Development*, 10 YALE HUM. RTS. & DEV. L.J. 141, 143 (2007).

¹⁸¹ *Id.*

¹⁸² See Jemima Garcia-Godos, *Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation*, 2 INT'L J. TRANSITIONAL JUSTICE 63, 68 (2008).

¹⁸³ *See id.*

¹⁸⁴ *See id.*

¹⁸⁵ *See id.*, at 70.

¹⁸⁶ *See id.*, at 71.

¹⁸⁷ Laplante, *supra* note 180, at 143–44.

¹⁸⁸ See Yamamoto & Mackintosh, *supra* note 14, at 8; Laplante, *supra* note 180, at 160 (The PIR's "components include symbolic reparations, attention to physical and mental health, educational opportunities, restitution and rehabilitation of citizen rights, collective reparations and individual economic reparations. Beneficiaries of these measures include both direct and indirect victims.").

¹⁸⁹ Laplante, *supra* note 180, at 160.

¹⁹⁰ See Yamamoto & Mackintosh, *supra* note 14, at 8.

particular emphasis on economic redress.¹⁹¹ The government then established a fund for education, health and economic projects associated with the PIR.¹⁹² These projects, however, were open to only a few.¹⁹³

In response to continued criticism of minimal economic benefit for the direct victims of abuses, the Peruvian government announced a plan to pay individual reparations beginning in 2011.¹⁹⁴ The money allocated (less than \$100 per person), however, seemed to many to be “too little, too late.”¹⁹⁵ Despite claims by some that the government had fulfilled its reconciliation obligations, for many in indigenous communities the minimalist individual reparations and the lack of real economic capacity-building for those harmed signaled the likely overall failure of the reconciliation initiative.¹⁹⁶

At this juncture the International Center for Transitional Justice stepped in. Its work illustrated a kind of fourth step mechanism that is needed and offered a glimpse of how such a mechanism might operate, particularly in the realms of *reconstruction* and *reparation*.¹⁹⁷ The International Center conducted an extensive assessment of implementing reconciliation actions to date.¹⁹⁸ Focusing on reconstructive actions and reparation (in the broader sense of “repair”) the International Center’s assessment evaluated implementation of the truth commission’s existing recommendations, including a victims registry, economic reparations (individual and collective), political changes (including recognition of civil and political rights) and the implementation of other reparative measures (relating to education, physical and mental health, housing, memorials, the search for victim remains and the prospects for opening the courts to justice claims).¹⁹⁹

¹⁹¹ Pablo de Greiff, *Justice and Reparations*, in THE HANDBOOK OF REPARATIONS, *supra* note 38, at 451, 470–71; *see also* Yamamoto & Mackintosh, *supra* note 14, at 8.

¹⁹² *See* Yamamoto & Mackintosh, *supra* note 14, at 8.

¹⁹³ Yamamoto & Mackintosh, *supra* note 14, at 8.

¹⁹⁴ Ángel Páez, *Rights-Peru: No Reparations Yet for Families of Civil War Victims*, INTERPRESS SERVICE (July 26, 2010), <http://ipsnews.net/news.asp?idnews=52284>.

¹⁹⁵ *Id.*

¹⁹⁶ *See* Mattia Cabitza, *Slow Justice for Peru’s “Disappeared” 20 Years on*, BBC NEWS (Nov. 14, 2011), <http://www.bbc.co.uk/news/world-latin-america-15718695>.

¹⁹⁷ *See generally* Correa, *supra* note 167.

¹⁹⁸ Correa, *supra* note 167.

¹⁹⁹ Correa, *supra* note 167. (By 2012, the victims’ registry had registered 160,429 individual victims, 7,678 communities and thirty-two organizations of displaced people. *Id.* at 10. The International Center’s assessment group commended the victims’ registry for its “flexible guidelines for evaluating different types of violations eligible for reparations,” and for its efforts to make its services accessible to people in rural areas. *Id.*

As one kind of fourth step mechanism of an expanded transitional justice model, the International Center's assessment, first and foremost, called for full implementation of original truth commission recommendations.²⁰⁰ It also pointed toward additional actions needed to further the reconciliation process, including better accommodating the voices and needs of the harmed indigenous communities in the reparative process.²⁰¹

B. Convening a Joint South Korea and United States Jeju 4.3 Task Force on Social Healing Through Justice

The publicly created Joint South Korea and United States Jeju 4.3 Task Force proposed here would differ in structure from the International Center's private post-TRC assessment of the implementation of Peruvian reconciliation initiatives. In important respects, however, as described below, the Joint Task Force might track the goals and emphasis of the International Center.²⁰²

Executive or legislative action could generate the mandate for the Joint Task Force.²⁰³ The Task Force's membership would include all significant participants in Jeju 4.3: the South Korea and U.S. national governments, the Jeju local government and Jeju 4.3 survivors and descendants (for instance, the Jeju 4.3 Victim Survivors Family Association), bolstered by South Korean and American researchers and community supporters (for example, the private Jeju 4.3 Institute and the institutes at Jeju National University).²⁰⁴ It could also be administered by

at 9. But, the assessment group also noted that not all of the people registered would qualify for compensation, leaving the "unqualified" feeling left out and ignored. *Id.*)

²⁰⁰ See generally Correa, *supra* note 167.

²⁰¹ Correa, *supra* note 167.

²⁰² See generally Correa, *supra* note 167.

²⁰³ Typically, the executive or legislative branch establishes a truth commission, but the institutional and political context determines the process. *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 9–10. (Although presidential decrees often have less strength than formal legislation, executive decisions can sometimes be as "strong and legitimate as parliamentary [or congressional] legislation" and "faster and less contrived than legislative processes." *Id.* The legislative process sometimes is problematic because it can be slow and "subject to unpredictable negotiations that could affect the integrity of a commission's mandate." *Id.*)

²⁰⁴ Participation by women's representatives on the Task Force would be critical to inclusive social healing for Jeju women and to enhancing the Task Force's overall legitimacy. See *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 49; see also Vasuki Nesiah et al., *Truth Commissions and Gender: Principles, Policies, and Procedures*, INT'L CTR. FOR TRANSITIONAL JUSTICE 46 (July 2006), <http://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006->

an existing institute or organization and observed by selected scholars and human rights organizations. The Joint Task Force would be jointly funded and staffed. It would not be a backward-looking truth commission-like investigative body.²⁰⁵ Rather it would be what proponents of genuine reconciliation are increasingly calling for: a grounded, expertly staffed participatory vehicle for implementing viable commission/committee recommendations and for charting forward-looking reconstructive and reparative next steps toward social healing in light of evolving social, political and economic conditions.²⁰⁶

More particularly, the Joint Task Force would foster reparative justice (words and actions that repair) and thereby enhance the democratic legitimacy of both South Korea and the United States. The Joint Task Force would not replicate the work of the 2000 National Committee. Rather the Joint Task Force's five main goals²⁰⁷ would be:

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²⁰⁵ Although the Joint Task Force would be an official, nonjudicial body of a limited duration, it would not operate as a formal truth commission. Truth commissions are investigative bodies that “determine the facts, causes and consequences of past human rights violations.” See *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 9, 52–53 (describing principles of inclusivity). See also PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS. (2nd ed., 2010); Ruti G. Teitel, *Human Rights in Transition: Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 78–81 (2003) (defining truth commissions). The proliferation of new truth commissions, particularly with inadequate recommendation implementation and follow-up, has tended to diminish both their effectiveness and reputation. See *Overburdened Truth Commissions Risk Becoming “Victims of Their Own Success,” supra* note 170 (citing UN Special Rapporteur on transitional justice Pablo de Greiff who cautions about overlooking the limits and risks of truth commission work).

²⁰⁶ In addition, the Joint Task Force could also serve a similar role to that of civil society organizations after a prior investigative commission is dissolved. For example, the Joint Task Force might also supervise translation of the final investigative report and recommendations into major international languages; immediately summarize and publicize key findings and recommendations; monitor implementation of recommendations; integrate the report's historical findings into school curricula; and ensure distribution of materials to educational institutions, media and interested citizens. See *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 12–70; Chanbonpin, *supra* note 16, at 35 (crafting an “inclusive model for social healing”). See also *Overburdened Truth Commissions Risk Becoming “Victims of Their Own Success,” supra* note 170 (citing UN Special Rapporteur on transition justice Pablo de Greiff who cautioned the risks of truth commissions).

²⁰⁷ “[E]ffective mandates have a clear architecture, answering the need [for] guidance in its inquiry and sufficiently empowering it to carry out its task.” Eduardo González, *Drafting a Truth Commission Mandate: A Practical Tool*, INT’L CTR. FOR TRANSITIONAL JUSTICE 1 (June 2013), http://ictj.org/sites/default/files/ICTJ-Report-DraftingMandate-Truth-Commission-2013_0.pdf.

- 1) to build upon the National Committee's inquiry (which was completed several years ago and without United States cooperation) by updating and by filling any gaps²⁰⁸;
- 2) to assess the completeness of the National Committee's recommendations particularly in light of new and updated information;
- 3) to assess the effectiveness of actions already taken and determine what more is needed to repair the persisting damage (both individual and communal);
- 4) in light of #1, 2 and 3, to recommend further concrete next steps for implementing the National Committee's recommendations²⁰⁹ and to oversee follow-up steps as part of a larger integrated justice plan to engender comprehensive, systemic and enduring social healing; and
- 5) to do these things to foster reparative justice in ways that benefit the Jeju people and also assure accountability and enhance the democratic legitimacy of both South Korea and the United States.

The proposal for a Joint Task Force, then, would not be a criticism. Rather it would be a realistic reparative justice response to past actions. Grounded in the foundational principle of mutual engagement, it would also create a forward-looking path towards enhancing the democratic legitimacy of the United States and South Korea and furthering mutual interests in security and responsible economic development in the Asia Pacific arena.²¹⁰

²⁰⁸ A possible gap to address is gender and race, or an intersectional analysis of harms, as well as ensuring sensitivity towards children's needs. See Nesiah et al., *supra* note 204, at 8, 46–47. "An inclusive approach to these often marginalized and vulnerable populations is an important factor in . . . creating better condition for the implementation of [. . .] recommendations," *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 57. See also Chanbonpin, *supra* note 16, at 35 (crafting an "inclusive model for social healing"); Yamamoto & Sonen, *supra* note 14, at 244–64; Michele Park Sonen, *Healing Multidimensional Wounds of Injustice Intersectionality and the Korean "Comfort Women,"* 22 BERKELEY LA RAZA L.J. 269 (2012).

²⁰⁹ The Task Force might rigorously monitor the national and local governments' and private groups' progress towards fully implementing existing National Committee recommendations. It could also regularly publish objective summary progress reports that "include discussions of what the government has failed to accomplish and any suggestions for implementing recommendations." *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 68–69.

²¹⁰ The recent United Nations special commission report on the inquiry of human rights violations in the Democratic People's Republic of North Korea reflects rising security concerns in the Asia Pacific arena. See generally Human Rights Council, Rep. of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, 25th Sess., U.N. Doc. A/HRC/25/63 (Feb. 7, 2014), available at <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>; see also Nick Cumming-Bruce, *U.N. Panel Finds Crimes Against*

C. Potential Considerations

With a *process* commitment to mutual engagement, the key question then emerges: What kinds of *substantive* undertakings are likely to engender genuine reconciliation? The 4Rs of *social healing through justice* offer an approach to the kind of reparative justice that fosters social healing.²¹¹ Inquiries into *recognition, responsibility, reconstruction and reparation* provide a grounded multi-disciplinary framework that may assist a Joint Task Force in its substantive assessments, recommendations and oversight.²¹² Moreover, *social healing through justice* identifies the larger stakes, even beyond healing for the Jeju people: until South Korea and the United States take affirmative steps to further redress the injustice of the Jeju 4.3 Tragedy, neither country can claim “justice done,” nor can either country claim legitimacy globally as a democracy actually committed to human rights.²¹³

In working with government groups and private organizations, the Joint Task Force might recommend, guide and oversee an array of reparative actions.²¹⁴ Below are some possible actions. These suggestions are based on our and others’ historical and contemporary assessments.²¹⁵ These suggestions are not meant to pre-empt, or direct, the Joint Task Force’s work. Rather these suggestions are to initiate discussions about a range of significant possibilities.

1. Bringing International Actors to the Reconciliation Table

Mutual engagement, a key social healing principle, does not come easily in practice. It emerges from strategic efforts to expand government and public consciousness through scholarship, journalism, art and

Humanity in North Korea, N.Y. TIMES (Feb. 15, 2014), http://www.nytimes.com/2014/02/16/world/asia/un-panel-finds-crimes-against-humanity-in-north-korea.html?_r=0 (summarizing the report and special investigation).

²¹¹ See YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 173–209 (explaining the initial iteration of the 4Rs in detail); *see also* Yamamoto & Obrey, *supra* note 14, at 32–39.

²¹² *See supra* Part II for a description of the multi-disciplinary underpinnings of the framework.

²¹³ *See* Yamamoto & Lee, *supra* note 14, 123, 140–48 (linking reparative justice to democratic legitimacy).

²¹⁴ *See* Correa, *supra* note 167. A perception of legitimacy is essential for the Task Force, as it is for a truth commission. “Legitimacy can also protect the commission from political opponents invested in maintaining silence or denial about past abuse.” *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 15.

²¹⁵ *See supra* notes 150–51 and accompanying text.

sometimes litigation; to coalesce disparate supportive groups (so that they work together rather than against one another); to address the concerns of opposing groups; to harness media and financial resources; to generate international support from other governments, human rights and other advocacy groups; and to thereby build political constituencies with policy-formation or decisionmaking authority. These efforts, occurring simultaneously yet over time, advance a singular message: *all responsible in some fashion for Jeju 4.3—whether through direct action, complicity or receipt of benefits—must engage in the interactive enterprise of social healing “by doing justice.”*²¹⁶ That message is crucial at two stages: first, at the threshold, in compelling those with some degree of responsibility to participate in the Task Force; and second, in buttressing later Task Force directives for more specific engagement and action.

In this latter stage, the Joint Task Force might urge that the South Korea government request, even demand, specific actions by the United States to further social healing.²¹⁷ The Commission for Reception, Truth and Reconciliation in Timor-Leste did exactly that in strongly requesting that the Indonesian government engage in Commission proceedings because of its partial responsibility for occupation violence against the Timorese people.²¹⁸ As part of Peru’s reconciliation process, its Truth and Reconciliation Commission likewise recommended that Portugal, France, the United States and the United Kingdom participate and contribute to economic redress because of their past complicity in human rights transgressions.²¹⁹ Indeed South Korea’s recent-past President Lee did something similar in 2012, demanding Japan’s engagement in the reparative justice process for World War II military sex slaves.²²⁰ The South Korea government could similarly and forthrightly request both Task Force participation by the United States for its role in Jeju 4.3 and action by the United States to implement later Task Force recommendations.

²¹⁶ It is only through mutuality of effort that communities lay the foundation for healing the wounds of those suffering and repair the damage to the involved societies’ legitimacy as democracies professedly committed to human rights. See Yamamoto & Obrey, *supra* note 14, at 7.

²¹⁷ See *supra* Part IV.B.

²¹⁸ See *Recommendations*, in FINAL REPORT OF THE COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION IN EAST TIMOR (CAVR), at 31–34, available at <http://www.etan.org/etanpdf/2006/CAVR/11-Recommendations.pdf>.

²¹⁹ See generally Truth & Reconciliation Comm’n, Final Report of the Truth and Reconciliation Commission of Peru, U.S. INST. OF PEACE (Aug. 28, 2003), <http://www.usip.org/publications/truth-commission-peru-01>.

²²⁰ See Justin McCury, *Anger of Wartime Sex Slaves Haunts Japan and South Korea*, GUARDIAN (Oct. 18, 2012, 8:57 AM), <http://www.theguardian.com/world/2012/oct/18/forced-prostitution-wartime-japan-korea>.

Calling all apparently responsible for the Jeju 4.3 Tragedy to the social healing table—and thereby refusing to shield anyone from accountability—would demonstrate the South Korea government’s firm resolve to enduringly heal the wounds of peacetime military and national police transgressions against its own citizens. This is especially important at a time when the national government faces pressing regional security issues with international implications.²²¹ Also, assenting to the call for engagement in the 4.3 healing process would bolster the United States’ legitimacy as a democracy not only professedly but *actually* committed to human rights and reparative justice.²²² And it would also solidify South Korea and U.S. linkages on complex issues of international trade and security.²²³

2. Recognizing and Preserving the Voices of the Jeju People

The Joint Task Force would be well suited to promote more complete understandings of the breadth and depth of the harm to the Jeju people. Crucial to this effort would be broad dissemination of the detailed summaries of the National Committee’s 2003 final report along with the testimonial transcripts upon which the report was based.²²⁴

The Task Force might also create a new forum for survivors and their descendants to record personalized stories of loss and later rejuvenation. Other creative methods of *recognition*, such as photography exhibits, child-friendly books, radio programs, film documentaries, public museums and libraries,²²⁵ might also effectively and memorably convey

²²¹ See Jae-Ho Chung, *The New South Korean Administration’s Security Challenges: Back to the Future, Again?*, COUNCIL ON FOREIGN RELATIONS (Mar. 2013), <http://www.cfr.org/south-korea/new-south-korean-administrations-security-challenges-back-future-again/p30314#> (describing present challenges South Korea faces regarding China, Japan and North Korea); see also *infra* Part V.C.5.c.

²²² See *supra* Part IV.B.

²²³ See Chung, *supra* note 221 (analyzing current issues in U.S.-South Korea relations); see *infra* Part V.C.5.c.

²²⁴ See *Truth-finding Efforts & Recommendations*, NAT’L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, <http://www.jeju43.go.kr/english/sub05.html> (last visited Oct. 25, 2013).

²²⁵ Peru’s National Museum hosted a photography exhibit to coincide with the release of Peru’s Truth and Reconciliation Commission’s final report. See Truth & Reconciliation Comm’n, *supra* note 219. In Sierra Leone, the commission developed child-friendly copies of its final report for schools. See SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION, TRUTH AND RECONCILIATION COMMISSION REPORT OF THE CHILDREN OF SIERRA LEONE (child friendly version), 2004. The Timor-Leste Commission for Reception, Truth and Reconciliation created a radio program and maintains a public museum and library to memorialize the findings and recommendations of its final report. TIMOR-LESTE COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION, *Dalan ba Dame* (Road to Peace) Video, 2005. For more information on this video, see CAVR COMISSÃO DE ACOLHIMENTO, VERDADE E RECONCILIAÇÃO DE

residents' stories.²²⁶

Compiling old and new testimony into a comprehensive formal record²²⁷ would target an audience of all participants in the Jeju 4.3 Tragedy—the Jeju people and local government; the South Korea populace and national government, including the military and police; and the U.S. government, military and citizenry.²²⁸ It would also target international communities concerned about human rights. These kinds of collected public records of personal stories, often belatedly elicited by investigative bodies and newspapers, fueled movements for Japanese American internment redress²²⁹ and for Timorese reconciliation.²³⁰

Coalescing Jeju 4.3 stories over generations into an encompassing updated and widely publicized public record would serve as a corrective to the efforts of some South Korea government officials apparently to re-inscribe false narratives about Jeju residents as communists and the 4.3 Tragedy as the government suppression of a communist insurgency (discussed below).²³¹ And it would proffer a broad account for history books (both in Korean and English).

In addition the Joint Task Force might encourage the U.S. and South Korea governments to devote resources for wide-scale public education and specifically for curriculum development and documentary film and artistic presentations.²³² A Joint Task Force media campaign highlighting these educational endeavors would promote government

TIMOR-LESTE, http://www.cavr-timorleste.org/en/Dalan_ba_dame.htm (last visited Feb. 26, 2014). See also *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 68.

²²⁶ Also, in Guatemala, the commission report was broadly presented to the government and civil society leaders (including those in the National Theater). See *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 66.

²²⁷ Critics asserting the incompleteness of the 2011 final report of the Lessons Learnt and Reconciliation Commission in Sri Lanka advocated for formal recording and preservation of victim testimony as an important facet of healing. *Release of the Lessons Learnt and Reconciliation Commission (LLRC) Report*, CENTER FOR POLICY ALTERNATIVES (Jan. 3, 2012), <http://cpalanka.org/release-of-the-lessons-learnt-and-reconciliation-commission-llrc-report/> (“We strongly urge that the testimonies and record of the proceedings of the LLRC be preserved for posterity.”).

²²⁸ See also Correa, *supra* note 167.

²²⁹ See YAMAMOTO ET AL., *supra* note 14, at 324–25 (describing the political-legal media campaign undergirding the internment redress process).

²³⁰ See Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste (CAVR), RECONCILIATION, <http://www.cavr-timorleste.org/en/reconciliation.htm> (last visited Sept. 7, 2013) (presenting the official site and findings of the Timor-Leste Truth and Reconciliation Commission).

²³¹ See *infra* Part V.C.5.a.

²³² See, e.g., Yamamoto & Obrey, *supra* note 14, at 16–18 (describing projects sponsored by the internment redress public education fund).

accountability while simultaneously bolstering the Task Force's legitimacy.²³³

3. Promoting Research on and Illumination of Responsibility for the Jeju 4.3 Tragedy and Its Impacts

In related fashion, mutual engagement lays the foundation for a credible Joint Task Force request for continued and expanded government support for research and publications (scholarly and popular) and public presentations (conferences, documentaries, artwork). That research, writing and presenting would not only coalesce the events, actors and harms into an accurate narrative about 4.3 *responsibility*, it would also systematically and fairly address the social, economic and political consequences of the 4.3 Tragedy for Jeju residents and the South Korea and U.S. governments and populaces. In doing so it would assess immediate, delayed and continuing impacts in terms of socio-economic indicators of well-being (health, wealth, education, housing), personal life consequences (for people and communities) and the larger reputations of the countries as democracies.

An amalgam of historians, psychologists, sociologists, peace studies scholars, legal scholars, teachers, journalists, filmmakers and others could undertake the research and writing. The Japanese American Internment redress legislation created a multi-million dollar public education fund that sponsored these kinds of scholarly and popular endeavors.²³⁴ Their impact on public understanding has been far-reaching.²³⁵

Mutual engagement in these kinds of multi-media illumination projects, recommended and fostered by the Joint Task Force, could serve as a bridge from past suffering to future societal healing.²³⁶

²³³ Disseminating information about past injustices would both acknowledge that past harm and lay the foundation for preventing future injustices. The existing peace museum with its education center is a starting point. Stand-alone lesson plans and materials would further spread the stories and the impact of Jeju 4.3 into classrooms worldwide. See Nesiah et al., *supra* note 204, at 16–17.

²³⁴ See Yamamoto & Obrey, *supra* note 14, at 16–18.

²³⁵ See YAMAMOTO ET AL., *supra* note 14, Preface (describing the impact of the Civil Liberties Act-created “Public Education Fund”).

²³⁶ “The media often helps define the tenor and content of truth commission processes in the public sphere.” Nesiah et al., *supra* note 204, at 16–17. The Task Force might consider launching a media campaign to emphasize its commitment to including the experiences of Jeju residents. See *id.*

4. Recognizing Long-Term Consequences and Accepting Responsibility for Social Healing

Also significant might be full *recognition* of the collective trauma and persisting long-term damage to communities, along with acceptance of *responsibility* for the human suffering and disabling social structural constraints and for the United States' participatory role.

a. Recognizing the Collective Trauma

The South Korea government partially recognized the damage to the Jeju people and its role in the Jeju 4.3 Tragedy. The government made admirable efforts through a presidential apology, participation in annual public memorial services, sponsorship for a museum and support for local commemorative and scholarly work.²³⁷ The government also provided limited payments to a few survivors.²³⁸

Yet, it appears, neither the national government nor the general populace (nor the United States) through actions and words has fully gained an appreciation for the struggles and hopes²³⁹ of the Jeju people.²⁴⁰ The 2013 English translation of the National Committee's report underscores the extent of the past and continuing harms.²⁴¹ Its specific findings paint a wide-ranging and compelling picture of disabling collective trauma.²⁴²

The Translated Report depicts the destruction of many of the island's villages and numerous executions over several years. An estimated 30,000 Jeju citizens died (the government's official figure is 14,028).²⁴³ Tens of thousands were injured, with hundreds tortured,²⁴⁴ and many more summarily detained.²⁴⁵ The violence also generated far more

²³⁷ "It would be unfair to denounce all the efforts and progress . . . for the Jeju 4.3 Incidents victims. Even if the Jeju Special Act and final report of the National Commission . . . are problematic, they are important cornerstones in achieving transitional justice in Korea." Baik, *Justice*, *supra* note 142, at 76.

²³⁸ See Baik, *Justice*, *supra* note 142, at 75.

²³⁹ "One task of recognition is empathy. Members of each group work to understand the woundedness of the other groups' members." YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 176.

²⁴⁰ See *infra* Part V.C.

²⁴¹ See TRANSLATED REPORT, *supra* note 2, 451–645 (broadly describing the damage and destruction).

²⁴² More specifically, the English translation features both a humanized description and a statistical breakdown of the violence suffered. See TRANSLATED REPORT, *supra* note 2, at 451–645.

²⁴³ See TRANSLATED REPORT, *supra* note 2, at 651.

²⁴⁴ See TRANSLATED REPORT, *supra* note 2, at 589–607.

²⁴⁵ See TRANSLATED REPORT, *supra* note 2, at 522.

than individual harms. It left approximately 300 villages, 20,000 households and 40,000 home destroyed, razed by fire.²⁴⁶ The Translated Report points to the dissolution of communal bonds and social structures—the extended family networks, the indigenous cultural and spiritual practices and the village and ocean-based economic systems.²⁴⁷

In addition to the horrific individual loss of life and property, Jeju residents suffered “collective trauma”—the psychological terror of “scorched earth” destruction of communal structures, including villages, schools and family networks (particularly with the loss of many male workers²⁴⁸). According to social psychologists, acknowledgments of individual injuries and even individual compensation are insufficient to heal the wounds of collective trauma.²⁴⁹ Only restoring communal social structures and rebuilding a group identity begins to repair the otherwise lasting communal damage.²⁵⁰

Moreover, and more starkly, despite research indicating at least complicity and likely direct involvement, the United States has not acknowledged the human and environmental devastation or the Jeju survivors’ suffering then and over time.²⁵¹ Expressly recognizing the collective trauma would be a foundational step for the Joint Task Force on behalf of the South Korea and U.S. governments.

b. Acknowledging Devastating Long-Term Consequences

In addition to a clear Joint Task Force acknowledgement of the collective trauma, *recognition* would entail an acknowledgement of the persisting damage.²⁵² The Jeju people suffered government-sponsored and U.S.-supported scorched earth operations that destroyed over half of the island’s villages and killed many residents.²⁵³ Many Jeju islanders were

²⁴⁶ See TRANSLATED REPORT, *supra* note 2, at 466–68, 634–36.

²⁴⁷ See TRANSLATED REPORT, *supra* note 2, at 451–645 (broadly describing the harms).

²⁴⁸ The loss of male workers resulted in harms to Jeju women, who probably became primary breadwinners or suffered as the wives, sisters and daughters of suspected communists. See generally Nesiah et al., *supra* note 204, at 7, 9 (describing how social and structural inequalities tend to adversely affect women disproportionately); see also *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 57.

²⁴⁹ See VOKAN, *supra* note 31, at 155; HERMAN, *supra* note 25; LIFTON, *supra* note 26; YAMAMOTO, *INTERRACIAL*, *supra* note 14, at 162 (describing stages of group healing).

²⁵⁰ See generally HERMAN, *supra* note 25; LIFTON, *supra* note 26.

²⁵¹ See TRANSLATED REPORT, *supra* note 2, at 654–55.

²⁵² See *supra* Part II (describing the elements of *recognition*).

²⁵³ See TRANSLATED REPORT, *supra* note 2, at 653 (summarizing pervasive damage).

wrongly detained and tortured or executed.²⁵⁴ The 2013 English translation of the Committee's report affirms this.²⁵⁵

The harms from this violence were far-reaching. Traumatic psychological pain persists across generations of families.²⁵⁶ Moreover, with many men killed and injured and a number of women sexually assaulted, the working population was destroyed, leaving many communities and families barely able to survive.²⁵⁷ Those that survived, including many orphans, were often impoverished. The long-term individual financial impact continues into the present.

For many families losing loved ones, homes and villages, the unresolved psychological trauma persists over generations.²⁵⁸ Even after some Jeju islanders were able to rebuild, many residents still suffered from the stigma of being falsely branded "communists or communist sympathizers"—their families named on a list of those killed and assumed to be "communists."²⁵⁹ This "guilt-by-association" system, in place before the current modern criminal justice system, extended penal responsibility of any assumed communist to parents, spouses, children, sisters and brothers.²⁶⁰ Family members were forced to endure "disadvantages on

²⁵⁴ See TRANSLATED REPORT, *supra* note 2, at 469–606 (detailing the human death toll, including the massacre, execution of prisoners and actual conditions of torture).

²⁵⁵ See TRANSLATED REPORT, *supra* note 2, at 469–606 (detailing the human death toll, including the massacre, execution of prisoners and actual conditions of torture).

²⁵⁶ See TRANSLATED REPORT, *supra* note 2, at 607–21 (describing the persisting damage by the guilt-by-association system).

²⁵⁷ Critics of the Lessons Learnt and Reconciliation Commission recommended special attention to the harms particular to the loss of the male population. "Many households are now headed by women, who are extremely vulnerable under military rule." *Reconciliation in Sri Lanka: Harder than Ever*, Asia Report No. 209: Executive Summary and Recommendations, INT'L CRISIS GRP. (July 18, 2011), <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/209-reconciliation-in-sri-lanka-harder-than-ever.aspx>.

²⁵⁸ "The slaughter remains embedded in the memory of those who were living on the island at the time and in the consciousness of their children and grandchildren." KIRK, *supra* note 149, at 104.

²⁵⁹ Families "suffered through a social phenomenon called [the] Red Complex caused by the Guilt-by-association System with no legal grounds." TRANSLATED REPORT, *supra* note 2, at 608 (describing the guilt-by-association system). The Korean guilt-by-association system "was abolished systemically during the Kabo Reform 1894 process." *Id.* However, it continued to be "practiced as a folkway." *Id.* The system originated from "surveillance on the Blacklist during the Japanese colonial period then changed into the filtering process of odd ones through background checks during the inter-Korean confrontation period." *Id.*

²⁶⁰ See TRANSLATED REPORT, *supra* note 2, at 608 (citing Yeong-Beom Kim, *Guilt by Association System—Its Historic Meaning and Process in the Joseon Dynasty*,

status” and “constant surveillance.”²⁶¹ Some faced blatant or subtle persecution—prevented from obtaining jobs or government benefits.²⁶² Some later born children falsely tainted by “communist” family associations were denied admissions to desired universities and government employment.²⁶³ Harmful effects of the Jeju 4.3 Tragedy apparently continue despite governmental calls for the immediate discontinuation of the guilt-by-association system, which itself is misleading because it incorrectly assumes in most instances that one family member was “communist.”²⁶⁴

The Joint Task Force’s acknowledgement of harms to Jeju women would also be crucial.²⁶⁵ In nearly every regime of violent suppression sexual violence is a tool of oppression.²⁶⁶ Indeed 4.3 sexual violence

Collection of Dissertations of Korea Society History Research Association, Vol. 24, 1990, at 324).

²⁶¹ During the Jeju 4.3 Tragedy, a separate inspection unit managed a “blacklist” under the guilt-by-association system. “With the 4/3 Incident case, 27,000 reporting federation members and 50,000 related family members as of August 1950 were reported [. . .] Police and the administrative departments of Jeju province referenced the separate list for various background check ups.” TRANSLATED REPORT, *supra* note 2, at 608.

²⁶² Some common family experiences under the guilt-by-association system included a public servant recruitment test, various tests including attending the military academy, difficulty obtaining employment or promotions in the national or public industry, disadvantages in promotion for the army or police, difficulty traveling internationally or in the immigration process, surveillance in daily life and repeated background checks. See TRANSLATED REPORT, *supra* note 2, at 609.

²⁶³ Hong Munpyung believes that the guilt-by-association system still exists.

My son . . . wanted to join the Reserve Officers’ Training Corps (ROTC) but was held for a background check under the Guilt-by-association system. Three generations of my family suffered overall. My father was killed, I had to quit my pilot position and my son failed to join the ROTC . . . In addition, I had to stop my oldest nephew’s dream to enroll in the Naval Academy.

TRANSLATED REPORT, *supra* note 2, at 610–11.

²⁶⁴ On March 24, 1981 the Ministry of Home Affairs announced the official discontinuation of the guilt-by-association system. “Jeju police announced that all related documents on the 4/3 Incident were disposed of, following the announcement.” TRANSLATED REPORT, *supra* note 2, at 610. “The public worker recruiting procedure [nevertheless] still required [a] back ground [sic] check, and Jeju people among victims of the 4/3 Incident still doubts [sic] if the Guilt-by-association system has truly been demolished.” *Id.* Although the system was revoked in 1981, “freeing people from its restrictions,” “psychological damage of the bereaved still continues.” *Id.* at 655.

²⁶⁵ See Yamamoto, Kim & Holden, *supra* note 14, at 78–79 (providing the invisibility and suffering of African American women during the Tuskegee experiment reparations as an example of unique harms to women).

²⁶⁶ See Colleen Duggan & Ruth Jacobson, *Reparations of Sexual and Reproductive Violence*, in THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS 125–61 (Ruth Rubio-

apparently was extensive. According to research for the Jeju 4.3 museum—a museum created and funded by the national government as part of 4.3 reconciliation measures²⁶⁷—“[w]omen suffered severe sexual abuse. In December 1948, soldiers stormed into Tosan-ri, taking away its young women. They never returned home alive.”²⁶⁸ In another instance, “[p]olice stripped a pregnant woman naked and bayoneted her after hanging her from a tree.”²⁶⁹ Overall, “33 percent [of 15,000 reported deaths] were the elderly, women and children.”²⁷⁰ It seems noteworthy that the National Committee did not fully investigate and report on this sexual violence.²⁷¹

Beyond sexual violence, women often become refugees or sole family workers because of deaths or disappearances of spouses.²⁷² Preliminary investigations did not focus on direct harms to Jeju women and recommend reparative measures.²⁷³ The Joint Task Force thus might inquire into Jeju women’s unique harms.²⁷⁴

Marín ed., 2009); *see also* Yamamoto, Kim & Holden, *supra* note 14, at 74 (calling for gender and race-gender sensitive reparations).

²⁶⁷ JEJU APRIL 3 PEACE FOUNDATION, WIND OF PEACE: JEJU APRIL 3 PEACE PARK 3 (2008) [museum brochure on file with author].

²⁶⁸ *Destruction and Massacre*, Jeju April 3 Peace Park (March 28, 2008) (last visited Oct. 19, 2013) [notes on file with author].

²⁶⁹ *Destruction and Massacre*, *supra* note 268.

²⁷⁰ *See generally* TRANSLATED REPORT, *supra* note 2 (lacking a comprehensive report on sexual violence to Jeju women). Research for the museum, however, detailed that “[p]olice dragged people from a cave where they were hiding and killed them, including children. A woman and her daughter who escaped further into the cave lost their way, and starved to death.” *Destruction and Massacre*, *supra* note 268. In another instance, “[f]ollowing the attempted rape of a village girl, police shouted in front of residents, ‘As she’s female, a female member of the Great Korean Youth Association come out, and spear her!’” *Id.*

²⁷¹ *See generally* TRANSLATED REPORT, *supra* note 2.

²⁷² *See generally* Nesiah et al., *supra* note 204, at 7, 9 (urging truth commissions to contest the dominant truth and highlight previously suppressed truths by including histories that better address women’s experiences and priorities).

²⁷³ *See generally* TRANSLATED REPORT, *supra* note 2 (lacking tailored recommendations to address harms to Jeju women).

²⁷⁴ Examining gender alongside race—or more broadly intersectional identities—in redress efforts is a new frontier in scholarship and practice that crosses conceptual borders and opens new coalitional possibilities. Those with intersectional identities—through gender, ethnicity, race, religion, political affiliation, ideology, class, marital status, nationality, disability and sexual orientation—experience unique harms. This type of analysis does not displace race in reparations theory; rather it complements and expands reparations analysis as a whole. *See* Sonen, *supra* note 208.

Intersectionality, or cross-axes discrimination, illuminates unique harms to women of color. For example, women are frequently targets for rape and sexual torture.

The Task Force's recognition of harms to Jeju children would also be important. In nearly every situation of violent suppression, damage to children persists over decades, and even generations.²⁷⁵ Some become orphans; others are left with single parents and heavy responsibility for tending to younger siblings.²⁷⁶ All suffer post-traumatic distress.²⁷⁷ The 4.3 museum provides an apt illustration. Government "forces killed a woman as her husband and son escaped. Her remaining children were orphaned as their father and brother were later captured and killed. They struggled to survive, [and] under the [guilt-by-association] system, the future was closed to them."²⁷⁸ The Task Force therefore might recommend further investigation sensitive to children's enduring 4.3 harms.²⁷⁹

More broadly, as Professor Tae-Ung Baik observes, the Jeju 4.3 atrocities likely constituted violations of international human rights norms.²⁸⁰ Another principal task of the Joint Task Force, then, would be to assess the extent to which the 4.3 transgressions trigger the application of forward-looking human rights norms of reparative justice to address long-term and systemic damage. Those norms, though largely aspirational, would assist in shaping further Task Force recommendations about the kind of justice likely to more fully engender social healing.

By redefining the scope of Jeju 4.3 harms to encompass past and persisting injuries—not just the violent suppression but also its destructive

During war or within oppressive regimes, women of color are often specially targeted because of perceived racial inferiority. See Sonen, *supra* note 208. The Joint Task Force might acknowledge specific gender-based harms of Jeju islanders and carefully attend to ensuring that the historical record contains the stories of Jeju wives, sisters and daughters. Without this acknowledgement, the historical record is likely incomplete. Providing gender and race-specific redress importantly engenders genuine healing and might rebuild island life for Jeju women after the widespread injustice of Jeju 4.3. See generally Yamamoto, Kim & Holden, *supra* note 14, at 78–80; Yamamoto & Sonen, *supra* note 14, at 244–64.

²⁷⁵ See *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 58–60 (advocating truth commission investigations sensitive to abuses to children even if those children are now adults).

²⁷⁶ See Nesiah et al., *supra* note 204, at 44 (noting that "children [are] left behind" in instances of widespread violence).

²⁷⁷ See Nesiah et al., *supra* note 204, at 44 (acknowledging that children "are also victims suffering ongoing emotional, psychological, and financial impact").

²⁷⁸ *Destruction and Massacre*, *supra* note 268.

²⁷⁹ See generally *Truth Seeking: Elements of Creating an Effective Truth Commission*, *supra* note 172, at 58–60 (detailing methods to ensuring compliance with the rights of children in truth commission investigations).

²⁸⁰ In particular, the systematic murder and inhumane treatment of civilians likely qualified as crimes against humanity. They also constituted war crimes for which victims have the right to redress and the state has an affirmative duty to provide justice and remedies for victims. See Baik, *Justice*, *supra* note 142.

consequences over time—and to embrace all people harmed, the Joint Task Force might significantly advance the prospects of more complete and enduring social healing.

c. Acknowledging the Extent of United States Responsibility

The Joint Task Force might consider coalescing several of the Translated Report's findings and other research into an express determination that the trigger for the military and police violence and the long-term disabling constraints was not a Jeju communist insurgency. According to the Translated Report and other records cited, the U.S. military observed few Jeju residents with communist ties (discussed below).²⁸¹ Rather the Report indicates that U.S. and South Korean military leaders overreacted to Jeju residents' understandable acts of dissatisfaction with and resistance to perceived unfair government practices and policies that led to widespread food shortages, police brutality and outside groups' extortion of local residents.²⁸²

As developed in Part III on "Jeju 4.3 History" and Part V(C)(5)(a) on "Fairly Characterizing Jeju People,"²⁸³ and as several American and Korean scholars have concluded,²⁸⁴ research to date reveals significant U.S. involvement in the Jeju 4.3 Tragedy. The records show that the United States, in light of serious concerns about communist influences,²⁸⁵ sought to promote democracy domestically and worldwide. Yet U.S. actions abroad, in response to often legitimate risks, sometimes extended beyond acceptable boundaries into the realm of abuse of power.²⁸⁶

²⁸¹ See *infra* Part V.C.5.a. See generally TRANSLATED REPORT, *supra* note 2.

²⁸² See *infra* Part V.C.5.a. "Major General Ward indirectly advised not to consider the Jeju 4/3 Incident a matter of incitement to communism. He also advised to settle the situation by stopping tyranny of the police to handle the public sentiment, pointing out that tyranny of the police is the main cause of the uprising." TRANSLATED REPORT, *supra* note 2, at 271–72. Despite this advice and initial efforts to stop police brutality, Colonel Brown carried out a strong violent repression operation on Jeju. See *also id.*, at 118, 171 (describing the food shortage and unequal grain rationing system).

²⁸³ See *supra* Part III and *infra* Part V.C.5.a.

²⁸⁴ See *supra* notes 150–51 and accompanying text. See *also* Yoshida, *supra* note 1, at 80–81. "'Foreign correspondents described Jeju as a testing ground of Marshall and Molotov, the arena of competition between the US and the Soviet Union' . . . Jeju has become a new testing ground as the bastion of anti-communism in the Far East.'" TRANSLATED REPORT, *supra* note 2, at 363–64 (citing *Chosun Joongang Ilbo*, Sept. 1, 1949). See *also id.*, at 402 (President Rhee emphasized that the U.S. was "strongly supportive of his government and its mission in creating a strongly anti-communist Korean state") (citing *Dong-A Ilbo*, June 22, 1949).

²⁸⁵ See TRANSLATED REPORT, *supra* note 2, at 402 (citing the historical context for the United States' support of an "anti-communist Korean state").

²⁸⁶ This is similar in some respects to the United States' scapegoating of Japanese Americans as a disloyal race during World War II. See generally Mari J. Matsuda, *Foreword: McCarthyism, the Internment and the Contradictions of Power*, 19

According to the main body of the Translated Report, United States military leaders gave direct orders that initiated early 4.3 events.²⁸⁷ This was followed by close U.S. oversight over the Rhee regime's "scorched earth" operations.²⁸⁸ More specifically, in August 1948, the U.S. military "came to continuously hold operational control over the Korean [police] following the 'Executive Agreement on Interim Military and Security Matters during the Transitional Period'" signed between the South Korean president and the U.S. military commander.²⁸⁹ Shortly thereafter in 1948, the Ninth Regiment of the Korean police, under U.S. military operational control, followed an express directive that "anyone 5km in from the coastline would be unconditionally shot to death."²⁹⁰

According to the Report, the U.S. Army "continued Operational Control on Korea" after the establishment of the new Republic of Korea and "supplied weapons and observation aircrafts for Suppression Operations" in Jeju.²⁹¹ The Report also indicates that, during the most

B.C. THIRD WORLD L.J. 9 (1998).

²⁸⁷ See TRANSLATED REPORT, *supra* note 2, at 238–50 (describing the direct U.S. role in operations on Jeju, specifically under the command of Military Governor Dean, General Hodge, Lieutenant Colonel Schewe and Lieutenant Colonel Mansfield). "On May 3, the [peace] negotiation broke down when [the] U.S. Army ordered an all-out attack by the Korea Constabulary. The Jeju 4/3 Incident had reached an uncontrollable bloody clash." See also *id.*, at 251–52. Jo Deok-song described U.S. direction at the frontlines of the Jeju suppression: "In Jeju, the American reconnaissance planes are flying in the sky, the American cruisers are on guard, turning searchlights on the sea, and the American officers are directing at the front line, riding a horse or a jeep." See also *id.*, at 271 (citing Jo Deok-song, *Bloodshedding Jeju Island*, the July issue of *Sincheonji* in 1948, p. 96).

²⁸⁸ See generally TRANSLATED REPORT, *supra* note 2, at 333, 341 (describing the U.S. role in the "scorched-earth" operations).

²⁸⁹ TRANSLATED REPORT, *supra* note 2, at 314–15 (citing Article 1 of the "Executive Agreement" setting forth this provision). See also *Destruction and Massacre*, *supra* note 268.

²⁹⁰ TRANSLATED REPORT, *supra* note 2, at 649 (citing the directive); *Destruction and Massacre*, *supra* note 268.

²⁹¹ TRANSLATED REPORT, *supra* note 2, at 654–55.

The US Military Government and the Provisional Military Advisory Group (PMAG) are not free from being responsible for the occurrence and the suppression of 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 continued Operational Control on Korea after the establishment of the Republic of Korea under the US/Korea Military Convention and supplied weapons and observation aircrafts for the Suppression Operation. Also the US praised the 9th Regiment's Operation, burning down the mountainous villages as a 'Successful Operation'. . . .

Id.

devastating moments of the Tragedy, with the largest number killings, “Rhee Syng-man, then president, was the Commander in chief of South Korea’s forces [and] the US Army had operational control of South Korea’s armed forces.”²⁹² U.S. Army Reports, cited in the main body of the Translated Report, “prove that the US Army executives agreed either with carrying out a massacre on Jeju or at least [in] overlooking it.”²⁹³

The United States, thus far, however, has not acknowledged the extent of its role as trainer, initiator, initial director and later overseer. Nor has the South Korea government called on the United States to do so.²⁹⁴ In contrast with the body of the Report, the “Conclusion” section of the National Committee’s 2013 Translated Report only broadly mentions U.S. responsibility as the peacetime military force. And it does so employing weak, passive language—the United States is “not free from being responsible for the occurrence and suppression of the 4.3 Incident.”²⁹⁵ The 2005 Truth Commission’s report entirely avoids mention of any U.S. linkage to Jeju 4.3.²⁹⁶

²⁹² TRANSLATED REPORT, *supra* note 2, at 303.

²⁹³ TRANSLATED REPORT, *supra* note 2, at 341.

The PMAG [Provisional Military Advisory Group] witnessed that 76 people including five women and a middle school boy were killed by the Corps for Protection of People under direction of the military and the police in Dodu-ri, Jeju-eup on February 20th. The PMAG reported that four members of KMAG witnessed, by chance, the execution of 38 of the rebels and counted 38 already dead when they arrived. It is, however, unconvincing that the US Army, that had the authority to direct operations of the South Korean Army, just stood by and witnessed the scene. This shows the US Army cannot avoid responsibility for the massacre of civilians.

Id. at 394 (citing Hq. USAFIK, G-2 Periodic Report, NO. 1077, Mar. 3, 1949). The Report indicates that the U.S. Army removed scenes from a silent film titled *May Day on Cheju-Do*, the only documentary to show the early events of the 4.3 Tragedy located in the U.S. National Archives and Records Administration (NARA). The Report concludes that “it seems that the US Army produced the film to justify its hard repression. It also implies that the US Army had determined to push forward a hard-line policy.” *Id.*, at 254.

²⁹⁴ The 1966 Status of Forces Agreement (SOFA) between South Korea and the United States for Korean War atrocities provides that both governments shall take responsibility equally in the case of joint responsibility or that the U.S. government shall take seventy-five percent responsibility when it is alone responsible for damage. *See* Facilities and Areas and the Status of United States Armed Forces in Korea, U.S.-Republic of Korea, at 29, July 9, 1966, T.I.A.S. No. 6127. SOFA, however, it appears, is treated as inapplicable to Jeju 4.3 which occurred largely prior to the Korean War.

²⁹⁵ TRANSLATED REPORT, *supra* note 2, at 654.

²⁹⁶ The TRC interim report did not offer remedies for claims supposedly addressed by other acts, such as the claims processed under the 4.3 Special Act that created the 2003 4.3 National Committee. *See* TRC INTERIM REPORT, *supra* note 106, at 34.

In light of the main body of the Translated Report's extensive findings,²⁹⁷ a principal role of the Task Force could be to carefully summarize and accurately portray the U.S. role in the Jeju 4.3 Tragedy.

5. Reconstructing and Repairing

Reconstruction and *reparation* efforts often overlap with acceptance of responsibility.²⁹⁸ The South Korea government's reconstruction and reparation efforts, like its acceptance of responsibility, have reflected significant partial steps. But those steps overall have been limited, and in some instances they have regressed. And the United States has made no apparent effort at all. Neither government has yet to actualize the kind of reconstructive action that builds productive enduring relationships.

a. Fairly Characterizing the Jeju People

At the heart of the South Korea government's wavering acknowledgment of collective trauma—and what is needed to address it—is high officials' at times continuing mischaracterization of the Jeju people killed, maimed, tortured and displaced. To justify the atrocities, some United States and South Korea government leaders directing peacetime operations wrongly labeled the entirety of Jeju people “communist or communist sympathizers.”²⁹⁹ The Translated Report indicates that the actual communist force actively involved amounted to about 500 “guerillas” from outside Jeju.³⁰⁰ Most residents lived arduous simple lives in villages and were focused on rebuilding their communities after the war and former harsh rule by Japan.³⁰¹ At bottom, most Jeju islanders were insisting on fair treatment by the U.S. military and the re-emerging South Korea government.³⁰²

²⁹⁷ See generally TRANSLATED REPORT, *supra* note 2.

²⁹⁸ See *supra* notes 61–65 and accompanying text (describing “reconstruction” and “reparation”).

²⁹⁹ See TRANSLATED REPORT, *supra* note 2, at 272 (Colonel Brown described Jeju people as “Communist sympathizers” and “Communist agitators”). See also TRANSLATED REPORT, *supra* note 2, at 274–75 (a member of the Korea Regiment explained that he was told that “all Jeju people are the Reds”); TRANSLATED REPORT, *supra* note 2, at 144 (citing a U.S. intelligence report referring to “Communist-incited disturbances on the island”).

³⁰⁰ TRANSLATED REPORT, *supra* note 2, at 651 (highlighting that fewer than 500 guerrillas acted and only about 350 people mobilized). See also TRANSLATED REPORT, *supra* note 2, at 111 (regarding limited active membership in the South Korean Labor Party).

³⁰¹ See TRANSLATED REPORT, *supra* note 2, at 120, 164 (indicating that most Jeju people were concerned about the barley and rice delivery system to the government, which resembled the restrictive grain delivery system under Japanese rule).

³⁰² See TRANSLATED REPORT, *supra* note 2, at 140 (setting forth the practical

More specifically, according to the 2013 Translated Report, a small number of Jeju residents were affiliated with communist organizations.³⁰³ The Jeju Chapter of the South Korean Labor Party, which was comprised of the small Jeju Committee of the Korean Communist Party along with two other non-communist resistance organizations, mainly “dealt with economic issues, social issues, and local issues comprehensively as well as political issues such as establishing an independent nation through the resumption of the Joint American-Soviet Commission.”³⁰⁴ While the South Korean Labor Party had vocal leaders, U.S. military officials recognized that communist participation was small.³⁰⁵ According to U.S. Army General Dean, the April 3, 1948 events involved “a few communists who came from outside of Jeju” and instigated a small number of Jeju people to “go into a mountain and kill supporters of the current administration.”³⁰⁶ He explained that, even then “only a small number of rebellious elements [from Jeju] went into [the] mountain and [that] Jeju was peaceful in general.”³⁰⁷

Even though the Jeju populace’s communist affiliations were very limited, crucial rhetorical maneuvers by U.S. military leaders and the national police wrongly swept large segments of the Jeju people under the umbrella of “communist.”³⁰⁸ The key was the transformed usage of the

demands of the Jeju people on strike).

³⁰³ See TRANSLATED REPORT, *supra* note 2, at 182 (a U.S. report opining that most “leftists” in Jeju are not “communists”).

³⁰⁴ According to documents cited in the Translated Report, the South Korean Labor Party did not advance what appeared to be a communist agenda. Its slogans rhetorically addressed democracy, national unity and freedom of speech and association: “Free democratic and patriotic activists,” “Free all persons concerned with the people’s protest,” “Support the establishment of the democratic provisional government!” and “Guarantee absolute freedom of speech, press, association, strike, demonstration and religion!” TRANSLATED REPORT, *supra* note 2, at 127 (citing slogans in the Jeju Committee of the South Korean Labor Party Guidelines of the 3.1 Independence Movement Protest, 1947, as quoted in the Jeju 4.3 Research Institute, *Jeju Uprising*, 1st Issue, (Silcheonmunhaksa, 1991), at 161–63).

³⁰⁵ According to the Translated Report, in 1946, the South Korean Labor Party had fewer than a hundred members. In preparation for the 1947 commemoration of the Independence Movement Day, the South Korean Labor Party’s membership increased to 3,000, but it appears that active membership was far less. See TRANSLATED REPORT, *supra* note 2, at 111–13 (citing Kim Saeng-min (age 77, Jeju City, former member of the South Korean Labor Party), Testimony recorded on July 13, 2001).

³⁰⁶ TRANSLATED REPORT, *supra* note 2, at 258 (citing *Daedong Shinmun*, May 7, 1948).

³⁰⁷ TRANSLATED REPORT, *supra* note 2, at 258.

³⁰⁸ See TRANSLATED REPORT, *supra* note 2, at 150 (indicating that the police hinted that Jeju was an “island of reds”); TRANSLATED REPORT, *supra* note 2, at 272 (citing Colonel Brown’s reference to Jeju people as “Communist sympathizers” and “Communist agitators”).

term “leftist.”³⁰⁹ Through the mid-1940s, “leftist” encompassed a wide-range of Jeju groups and individuals who opposed and at times resisted the policies of the South Korea government as well as the U.S. military.³¹⁰ Most of these people and groups had no communist affiliations or connections to socialist ideology.³¹¹ Their concerns largely focused on unfair government responses to the widespread food shortages,³¹² police brutality³¹³ and outside groups’ extortion practices.³¹⁴ Others were concerned about democratic elections and representation in government.³¹⁵

South Korea government officials and U.S. military leaders lumped together all Jeju islanders and groups who resisted any aspect of the often harsh government policies and practices.³¹⁶ These Jeju residents were branded “leftist,” mainly to denote resisters.³¹⁷

More particularly, a U.S. intelligence report entitled “Current communist activities in South Korea”³¹⁸ indicated that “most so-called

³⁰⁹ See TRANSLATED REPORT, *supra* note 2, at 182 (citing a U.S. intelligence report titled “Current communist activities in South Korea”).

³¹⁰ See TRANSLATED REPORT, *supra* note 2, at 124 (referring to the escalating tension between “leftist forces” and the South Korea government and U.S. military).

³¹¹ See TRANSLATED REPORT, *supra* note 2, at 182 (citing a U.S. intelligence report stating that Jeju “leftists are not communists”); TRANSLATED REPORT, *supra* note 2, at 126–27 (slogans supporting democracy and national unity indicate that the “leftists” did not embrace a revolutionary communist agenda).

³¹² See TRANSLATED REPORT, *supra* note 2, at 118–19 (describing the socio-economic situation in Jeju and the widespread food shortage).

³¹³ See TRANSLATED REPORT, *supra* note 2, at 140 (citing the reasonable demands of Jeju strikers to end torture and brutality by the police).

³¹⁴ See TRANSLATED REPORT, *supra* note 2, at 179 (“Terrorism had been resorted to by the rightists on their campaign to collect money for the [ir] association”).

³¹⁵ See TRANSLATED REPORT, *supra* note 2, at 127 (slogans reflect support for the “establishment of a democratic provisional government”).

³¹⁶ See generally TRANSLATED REPORT, *supra* note 2, at 274–75 (“We were told that all Jeju people were the Reds.”).

³¹⁷ Judge Advocate Captain Samuel J. Stevenson’s opined, “The Provincial Governor has adopted the slogan of the ultra rightist in that all people who disagree even on minor points . . . are automatically leftists.” He further explained that he feared potential violence and growing “sympathy for leftist parties” because the governor did not permit any meeting of any “leftist” parties, which forced them to meet underground. TRANSLATED REPORT, *supra* note 2, at 169 (citing “Opinion of Political Situation in Cheju Do as of Nov. 15, 1947,” Nov. 21, 1947, Report of Special Investigation by Lt. Colonel Lawrence A. Nelson, USAMGIK). Henry C. Merritt, an official of the Counter Intelligence Corps, echoed these views: “Governor Yoo is in my estimation very dictatorial and if any person does not agree with him one hundred percent he is very apt to be automatically classed as a strong leftist.” TRANSLATED REPORT, *supra* note 2, at 170 (citing “Governor Ryu, Hai Chin, Activities of” Nov. 21, 1947, Report of Special Investigation by Lt. Colonel Lawrence A. Nelson, USAMGIK).

³¹⁸ See TRANSLATED REPORT, *supra* note 2, at 182 (citing a U.S. intelligence

leftists [were] not communists” and were “not anti-American.”³¹⁹ Like most Jeju islanders described above, the intelligence report pointed out that designated “leftists” were “primarily concerned with their inherent poverty and eviden[ced] a lesser interest in politics.”³²⁰ These residents were interested in stopping the “terroristic acts . . . caused by the police under the Governor Yoo regime”³²¹ and in protesting the “mishandling of the summer [rice and barley] grain program [which] led to an unequal rationing system.”³²²

report stating that Jeju “leftists are not communists”).

³¹⁹ TRANSLATED REPORT, *supra* note 2, at 182 (citing Hq. USAFIK, G-2 Weekly Summary, No. 123, Jan. 23, 1948).

³²⁰ TRANSLATED REPORT, *supra* note 2, at 182.

³²¹ TRANSLATED REPORT, *supra* note 2, at 171 (citing “Report of Special Investigation – Governor You, Hae-jin of Cheju-do Island,” Mar. 11, 1948, Report of Special Investigation by Lt. Colonel Lawrence A. Nelson, USAMGIK). Many “terroristic acts” included police brutality marked by arrests, torture and death. “In Jeju, under the guise of eradication leftists, many cases of violence by the [paramilitary] Seobuk Youth Association took place.” A U.S. intelligence report stated that “[t]errorism had been resorted to by the rightists in their campaign to collect money for the association.” TRANSLATED REPORT, *supra* note 2, at 179 (citing Hq. USAFIK, G-2 Periodic Report, No. 692, Nov. 24, 1947).

Kim Hui-ju, the public prosecutor of Gwangju District Prosecutor’s Office, inspected Jeju in May 1948 and indicated that the “uprising was indirectly caused by the resistance of Jeju people who were outraged at the excessive use of force by police officers from the Seobuk Young Men’s Association.” TRANSLATED REPORT, *supra* note 2, at 240 (citing *Hanseong Ilbo*, May 22, 1947). *See also* TRANSLATED REPORT, *supra* note 2, at 195 (“[I]t is true that the police had a strong will to punish people only if they were members of the South Korean Labor Party.”).

The following excerpt is a vivid example of police brutality and torture.

In March 1948, three young men in succession died after being arrested and tortured by the police and this shocked the Jeju people. Kim Yong-cheol (age 21), who was a second-year student at Jocheon School, died suddenly at Jocheon police box on 14 March, two days after his arrest. The autopsy revealed that he had died of torture. Yang Eun-ha (age 27) from Yeongrak Village, Daejeong-eup, was in custody at Moseolpo police box and also died from police torture on 14 March. In late March, Park Haeng-gu (age 22) was shot dead by a police unit made up of the members of the Seobuk Young Men’s Association. Before he was killed, Park had been beaten and hacked by club and stone [. . .]

TRANSLATED REPORT, *supra* note 2, at 186.

U.S. Commander Brown initially confirmed Prosecutor Kim’s assessment of the situation and later stated in a press conference that there were efforts to end police brutality. Yet the torture and deaths continued when police officers arrested a disabled boy, an old man and seven women and shot five of them to death on the way to the police station. *See* TRANSLATED REPORT, *supra* note 2, at 280 (citing *Jayu Shinmun*, June 18, 1948).

³²² *See also* TRANSLATED REPORT, *supra* note 2, at 118–20 (describing the food

According to the Translated Report, despite the acknowledged limited communist influence in Jeju, after the 1947 residents' strike,³²³ U.S. military and South Korea government leaders began to label all "leftist" groups as "communists."³²⁴ This rhetorical shift in the meaning of "leftist," which already covered all Jeju people resisting government policies and practices, enabled the national police, local government and U.S. military leaders to treat Jeju as an "island of Reds."³²⁵ U.S. officials then were able to characterize all *resistance* to government policies or practices as a communist insurgency.³²⁶ As mentioned in the Translated Report, rather than address the residents' grievances,³²⁷ and in light of Cold War struggles with North Korea and Russia,³²⁸ U.S. and South Korean leaders justified a pervasive violent "repression operation" as an anti-communist effort.³²⁹

shortage and opposition to the rice collection system under U.S. military command); TRANSLATED REPORT, *supra* note 2, at 171 (citing Report of Special Investigation, — Governor Ryu, Hai Chin of Cheju-do Island (Mar. 11, 1948), which describes the probable causes of Jeju 4.3).

³²³ See TRANSLATED REPORT, *supra* note 2, at 271 (citing the hard-line policy of Colonel Brown leading the "repression operation").

³²⁴ See TRANSLATED REPORT, *supra* note 2, at 271 (quoting Colonel Brown that "It is so obvious that [Jeju] has become a base for communists."). Seoul central headquarters of the South Korean Labor Party, however, did not direct the uprising in Jeju. "[T]here is no concrete evidence that the events were directed by the instructions of the headquarters of the South Labor Party. There is little to link the Seoul headquarters [. . .]" TRANSLATED REPORT, *supra* note 2, at 206.

³²⁵ TRANSLATED REPORT, *supra* note 2, at 150 (indicating that the national Police hinted that Jeju was an "island of reds"); see also TRANSLATED REPORT, *supra* note 2, at 272 (citing Colonel Brown's reference to Jeju people as "Communist sympathizers" and "Communist agitators").

³²⁶ See TRANSLATED REPORT, *supra* note 2, at 272 (citing Colonel Brown's reference to Jeju people as "Communist sympathizers" and "Communist agitators").

³²⁷ See TRANSLATED REPORT, *supra* note 2, at 271 (interpreting a short statement by Colonel Brown to reveal that "the US Army Military Government took a hard-line policy without considering the solution by finding the cause").

³²⁸ See TRANSLATED REPORT, *supra* note 2, at 364, 402 (elaborating on the international and political atmosphere of the Cold War).

³²⁹ Colonel Brown, leading the strong repression operation, justified his intention to continue the scorched-earth operation. He reported, "One thing is absolutely certain—that the Island was organized as a Communist base . . . Police brutality and inefficient government were but incidental to the Communist designs on this Island. It is so obvious that Jeju has become a base for communists." TRANSLATED REPORT, *supra* note 2, at 272 (citing "Letter from Brown to Ward," July 2, 1948, The Rothwell H. Brown Papers, Box 3, US Army Military History Institute, Pennsylvania, U.S.A.).

The reason for President Rhee stressing 'the United State's concern regarding the 4.3 Incident' was to emphasize that the United States was strongly supportive of his government and its mission in creating a

The mischaracterization not only ostensibly justified the carnage, it also lastingly stigmatized most island residents with the taint of ties to North Korean communists and disloyalty to South Korea, as discussed above.³³⁰ This later impeded comprehensive and enduring reconstruction and reparation.³³¹

The 2000 legislation authorizing the national investigative committee avoided this mischaracterization.³³² Its purposeful elimination of references to “communists” in the initial legislation represented a major rhetorical advance with many significant implications—that few Jeju people were communists.³³³ But that salutary initial recognition by the 4.3 Special Act and by government officials in the early 2000s eroded with the ascendancy of conservative national politicians.³³⁴ Those politicians, who generally promoted stronger ties with the U.S. military, resurrected the communist insurgency descriptor for Jeju residents.³³⁵ This rhetorical move transformed the residents, again, from victims of military and national police atrocities into “enemies” who got what they deserved.³³⁶

Definitively rejecting this re-labeling that is now re-inflicting harms might be a high priority for the Joint Task Force. This would be especially important because of the continuing popular 4.3 narrative of the

strongly anti-communist Korean state. Such strong will and attention is clearly expressed in the provisory clause of the ‘Mutual Defense Assistance Control Act.’ At that time, President Truman enhanced the significance of Korea as a bastion of democracy in the Far East, and requested the House of Representatives pass the Mutual Defense Assistance Control Act for Korea, which was estimated at approximately 150 billion US dollars.

TRANSLATED REPORT, *supra* note 2, at 402 (citing *Dong-A Ilbo*, June 22, 1949).

³³⁰ See *supra* Part V.C.4.b. (describing the devastating long-term consequences of the guilt-by-association system).

³³¹ See TRANSLATED REPORT, *supra* note 2, at 447–48 (describing initial reconstruction and reparation efforts).

³³² See The Special Law for Truth Investigation About the Jeju April 3 Incident and Honoring Victims, Act No. 6117, Jan. 12, 2000 (S. Kor.), *translated in* TRANSLATED REPORT, *supra* note 2, at 688–92.

³³³ Baik, *Justice*, *supra* note 142, at 60 (citing for example, Kim Jeom-Gon views the Jeju 4.3 Incidents as a rebellion led by the Jeju Workers’ party). See Yang Jeongsim, Chudoseryōkūl Tonghaesōbon Jeju 4.3 Hangjaengūi Pagyōng (describing the backgrounds of Jeju 4.3 uprising from the perspective of leading groups), JEJU 4.3 YONGU [A RESEARCH ON JEJU 4.3] 52–53 (1999) (S. Kor.). See also NAT’L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, *supra* note 134.

³³⁴ See Bae, *supra* note 144; Baik, *supra* note 4, at 103.

³³⁵ Bae, *supra* note 144 (citing a conservative politician who characterized 4.3 as “communists orchestrating an uprising to dominate Korea”).

³³⁶ Bae, *supra* note 144.

government quelling a communist uprising. For instance, the widely-read 2012 Michelin Travel Guide to South Korea, in its “History of the Black Island,” describes Jeju 4.3 as the “[c]ommunist uprisings after independence (1946-1953) [that] were quashed by a pro-government militia (allegedly with the help of America).”³³⁷

b. Rebuilding Through Detailed Sincere Apologies

Another important and related way to productively reconstruct relationships is to demonstrate the sincerity and completeness of formal apologies.³³⁸ The 2003 presidential apology for the South Korea government’s role in the Tragedy was significant because the national government’s highest leader expressed deep regret.³³⁹ At the same time, as described below, the apology statement was incomplete because it only vaguely acknowledged undefined harm to Jeju islanders and accepted only some unclear government role in causing that harm. It also did not reflect meaningful change in the government’s original “communist insurgency” account of Jeju 4.3.³⁴⁰

President Roh’s 2003 apology, while conciliatory, left an opening for a more complete apology. He stated, “I, as the President, holding responsibility of government accept the Committee’s suggestion and truly extend my official apology for the wrong doings of those national authorities in the past. I also cherish the sacrificed spirits and pray for the repose of the innocent victims.”³⁴¹ While the apology described the Jeju 4.3 Tragedy as a “wrong doing” by the “national authorities,” it did not acknowledge the nature of the wrongs (including apparent human rights violations) or the extensive trauma suffered by the Jeju people (both individual and collective).³⁴² Nor did it address the sources of governmental culpability (on its own and at the direction and oversight of the U.S. military).³⁴³ The apology also ambiguously framed the history of interactions involved in the Tragedy, allowing for continued later re-

³³⁷ MICHELIN, SOUTH KOREA—THE GREEN GUIDE 363 (2012).

³³⁸ See *supra* note 61 and accompanying text (describing apologies as essential to “reconstruction”).

³³⁹ See TRANSLATED REPORT, *supra* note 2, at 659–60 (citing President Roh’s apology regarding the 4.3 Incident).

³⁴⁰ See TRANSLATED REPORT, *supra* note 2, at 659–60.

³⁴¹ See TRANSLATED REPORT, *supra* note 2, at 659–60.

³⁴² See TRANSLATED REPORT, *supra* note 2, at 659–60 (citing President Roh’s apology which broadly acknowledges that “Jeju people experienced enormous loss of life and property caused by debris of the historic situation being caught in between the international cold era and national division of Korea”).

³⁴³ See TRANSLATED REPORT, *supra* note 2, at 659–60 (citing President Roh’s apology regarding the 4.3 Incident).

mischaracterization of the events as a “communist uprising.”³⁴⁴

A sincere apology from current President Park Geun-Hye might clearly acknowledge the military’s and police’s wrongful roles in Jeju 4.3 (including the unleashing of non-government groups’ scorched-earth violence). It might also delineate the devastating harm to the Jeju people and retract the recent return to justifying the government’s actions as suppressing an organized communist insurgency. This type of genuine detailed apology, recommended by the Joint Task Force, would affirm the national government’s stated commitment to redress past injustices and would be a key step toward demonstrating the South Korea government’s commitment to human rights norms of reparative justice. It would also further South Korea’s efforts to bolster democratic legitimacy.³⁴⁵

Similarly, after accepting its role and responsibility for healing, a sincere detailed apology by the United States would meaningfully demonstrate a commitment to social healing. The United States has issued apologies to its own citizens for American civil and human rights transgressions. Indeed the United States might use as a general template the congressionally-authorized and presidentially-delivered apologies to Japanese American World War II internment survivors³⁴⁶ and to Native Hawaiians for loss of nationhood.³⁴⁷

By offering its own apology that describes the history of the Jeju 4.3 Tragedy and its devastation; acknowledges the wrongful actions;

³⁴⁴ See TRANSLATED REPORT, *supra* note 2, at 659–60 (citing President Roh’s apology which framed Jeju 4.3 as a “historic tragedy that occurred between our Independence from the Japanese colonial [*sic*] regime, to the establishment of Korea”).

³⁴⁵ See Yamamoto & Obrey, *supra* note 14, at 39–42.

³⁴⁶ See Civil Liberties Act of 1988, 50 App. U.S.C.A. §§ 1989b to b-9 (West, Westlaw through P.L. 113–57 (excluding P.L. 113–54 and 113–56)); YAMAMOTO ET AL., *supra* note 14, at 3, 17, 223 (describing the internment redress process culminating in the congressional Civil Liberties Act of 1988 that authorized a presidential apology to each surviving internee along with individual reparations payments and creation of a substantial public education fund).

³⁴⁷ See Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii (“Apology Resolution”), Pub.L. 103–50, 107 Stat. 1513 (1993); Yamamoto & Obrey, *supra* note 14, at 22 (assessing the efficacy of United States and Native Hawaiian reconciliation words and actions (and inaction)). See also Ken Kobayashi, *Apology Still Weighs on Activists—Congress Has Not Offered Reconciliation After Admitting Fault in Overthrowing Isles, Advocates Say*, HONOLULU STAR-ADVERTISER., Nov. 23, 2013, at A1 (“It has been 20 years since Congress apologized on behalf of the United States for the 1893 overthrow of the Hawaiian kingdom, but some Native Hawaiian activists are still waiting for the reconciliation promised along with the conciliatory words.”); *‘Reconciliation’ Eludes Hawaiians*, HONOLULU STAR-ADVERTISER., Nov. 27, 2013, at A11 (“The resolution explicitly expresses a commitment to acknowledging the ramifications of the overthrow ‘in order to provide a proper foundation for reconciliation’ . . . [but] [s]adly, concrete action tied to this stated commitment has been sorely lacking for the past two decades.”).

commits to at least symbolically compensating Jeju islanders for the human carnage and economic damage; pledges to refrain from similar future abuses in the name of national security; and demonstrates a desire to build a productive and peaceful relationship with the Jeju people—the United States would begin its own reconstruction efforts. This would benefit Jeju 4.3 survivors and families and Korean society as well as strengthen the United States as a democracy.

With the influence of Confucian cultural values—including harmony and conciliation—as well as a regard for interpersonal relations and hierarchy, scholars observe that South Korea is a nation that is both passionate about politics and respects deliberate and conscientious responses to historical injustice.³⁴⁸ The apology is a frequent and crucial form of dispute settlement and “a staple of Korean domestic politics.”³⁴⁹ In a survey conducted by Ilhyung Lee, Korean participants described what constituted a meaningful apology—admission of fault, promise of forbearance and offer of compensation going beyond mere words.³⁵⁰ In addition “sincerity [was] a core presentational requirement for an effective apology.”³⁵¹ Similarly, Asian apology scholars Wagatsuma and Rosett observe that a genuine apology must include acknowledgment that “1) the hurtful act happened, caused injury, and was wrongful; 2) the apologizer was at fault and regrets participating in the act; 3) the apologizer will [provide financial recompense to] the injured party; 4) the act will not happen again, and 5) the apologizer intends to work for good relations in the future.”³⁵²

To bolster further reconstruction efforts, the Joint Task Force thus might determine that the South Korea and U.S. governments need to better attend to these characteristics of a sincere apology and demonstrate sincerity through additional reconstructive actions (discussed below).

c. Supporting Jeju as an “Island of Peace” by Institutionally Empowering Jeju Communities to Deal with Naval Base Impacts

Another potential step toward reconstructing relationships may be meaningful support of Jeju as an “Island of Peace.” Jeju holds yearly peace forums, operates a new peace education center and portrays itself as a base for international peace relations.³⁵³ And the South Korea

³⁴⁸ See Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement with Japan and the United States in Mind*, 27 MICH. J. INT'L L. 1, 21–22 (2005).

³⁴⁹ *Id.*, at 3.

³⁵⁰ *Id.*, at 35.

³⁵¹ *Id.*, at 37.

³⁵² Hiroshi Wagatsuma & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 LAW & SOC'Y REV. 461, 469–70 (1986).

³⁵³ See *About Jeju*, FAR EAST AND OCEANIC FRACTURE SOCIETY,

government already designated Jeju the “Island of World Peace” in 2005.³⁵⁴ Yet, with a naval base under construction, peace on the island appears to be illusive.³⁵⁵ “[D]eep trauma in the minds of the people” persists, says one resident.³⁵⁶

A Joint Task Force might encourage the U.S. and South Korea governments to more directly engage Jeju islanders’ “grassroots interest in peace.”³⁵⁷ More specifically, the Task Force might recommend legislative or executive action creating and funding a Jeju Citizens Council with a formal voice in shaping and responding to economic and cultural naval base impacts on the island and beyond. More generally, the United States and South Korea could also markedly support establishing Jeju as a non-violent peace island for human rights and social healing education.

When the U.S. military originally established Jeju Island as a South Korean province, some Jeju residents suspected that the government intended to transition the island into a military base.³⁵⁸ Indeed, in the late 1940s, then-President Rhee discussed prospects for a naval base on Jeju Island.³⁵⁹ And the United Nations Temporary Commission on Korea in 1949 noted Jeju’s militarily strategic location.³⁶⁰ Discussion about the naval base resurfaced in the 1990s, and the Roh Moo-Hyun administration

http://www.feofs2013.org/html/info/about_jeju.html (last visit Sept. 20, 2013).

³⁵⁴ See *id.* (Jeju is the “Island of World Peace” based on Article 12 of the Special Act for the Jeju Free International City).

³⁵⁵ See Anne Hilty, *Island of Peace? The Peace Culture of Jeju*, JEJU WEEKLY (Apr. 4, 2011), <http://www.jejuweekly.com/news/articleView.html?idxno=1437>. Kim Chang-hoo of the Jeju 4.3 Institute predicts that as a result of the coming naval base “[t]he image of Jeju will change from a peace island. . . . [to] be the focus of military power” because “China will increasingly take an interest in Jeju because of the base.” KIRK, *supra* note 149, at 118.

³⁵⁶ Hilty, *supra* note 355.

³⁵⁷ *Island of World Peace*, JEJU, http://peace.jeju.kr/eng/html/sub1/sub1_3.htm (last visited Oct. 25, 2013).

³⁵⁸ A local newspaper reported in 1946 that “Jeju people glance suspiciously at the birth of Jeju Province as the foundation for making Jeju a military base.” TRANSLATED REPORT, *supra* note 2, at 99 (citing *Jayu Shinmun*, Dec. 19, 1946).

³⁵⁹ On March 28, 1947, President Rhee Syng-man stated that the “USA might have an intention to build a naval base on Jeju Island” and that he was confident that “the Korean people will willingly let the USA construct a permanent base on Jeju Island.” TRANSLATED REPORT, *supra* note 2, at 66 (citing “Conference between Under Secretary Draper and Mr. Syngman Rhee, Mar. 28 1948,” Memorandum for Record, Department of the Army).

³⁶⁰ See TRANSLATED REPORT, *supra* note 2, at 66 (describing Jeju’s strategic location to the south of the Strait of Korea, to the south of Japan and to the north of the coast of China) (citing to “Report on Trips to the Provinces Affected by Recent Disturbances,” Enclosure to Dispatch No. 358, dated June 17, 1949, from American Embassy, Seoul, Korea).

approved official plans.³⁶¹

The current national government characterizes the military base under construction as a vehicle for preserving peace and security. It views the naval base as solidifying a “more self-reliant defense force” that is less dependent on the United States.³⁶² This is consistent with understandable concerns about the security of the nation and its people³⁶³ and with plans to modernize South Korea’s military by 2020.³⁶⁴

Moreover, given South Korea’s reliance on exports and imports, particularly imported oil, the government expects that the naval base will protect South Korean shipping lanes “amid China’s growing maritime ambitions.”³⁶⁵ Other military specialists see the naval base as a necessary defense against possible future missile attacks in the region.³⁶⁶

The South Korea government also maintains that the naval base is “not intended for [use by] a certain country,”³⁶⁷ but is a “civil-military port for tourists and aesthetic beauty . . . [to] accommodate a naval base and

³⁶¹ Andrew Yeo, *Will S. Korea’s New Naval Base Provoke China?*, DIPLOMAT (July 10, 2013), <http://thediplomat.com/flashpoints-blog/2013/07/10/will-s-koreas-new-naval-base-provoke-china>.

³⁶² *Id.*; see also Wash. Post, *U.S. Modernizing Bases in S. Korea: Most Troops Will Move South, Giving Ally Top Role Along DMZ*, RICHMOND TIMES-DISPATCH (Oct. 20, 2013), http://www.timesdispatch.com/news/national-world/u-s-modernizing-bases-in-s-korea/article_ba960351-cc4f-57fa-93df-90d32ffdc6d.html (emphasizing that the U.S. is downsizing its military presence from one hundred base installations to fifty locations with the partial financial support from the South Korea government and that the Korean military is planning to assume greater security responsibilities).

³⁶³ See, e.g., *supra* note 210 and accompanying text; Associated Press, *Lawmaker Accused of Plotting to Revolt in Case Koreans Came to Blows*, HONOLULU STAR-ADVERTISER (Sept. 5, 2013), A4 (describing “mass local media interest” in national security threats to South Korea); Foster King, *Execution Points to Volatile Power in North Korea*, HONOLULU STAR-ADVERTISER (Dec. 17, 2013) (analyzing instability in North Korea revealed by recent political executions).

³⁶⁴ Richard Weitz, *Why US Needs South Korea Base*, DIPLOMAT (Aug. 21, 2011), <http://thediplomat.com/2011/08/why-us-needs-south-korea-base/?allpages=yes>; Yeo, *supra* note 361.

³⁶⁵ Yeo, *supra* note 361.

³⁶⁶ Choe Sang-Hun, *Island’s Naval Base Stirs Opposition in South Korea*, N.Y. TIMES (Aug. 18, 2011), <http://www.nytimes.com/2011/08/19/world/asia/19base.html?pagewanted=all>. Jeffrey Lewis, an arms control specialist, defends this view but notes that the Jeju Naval Base would not be an ideal defense for South Korea against North Korean missiles.” *Id.* See also Weitz, *supra* note 364 (describing a different view of the technicalities of military defense systems for the Jeju naval base but supporting its construction).

³⁶⁷ Jon Rabirotff, *S. Korea: Jeju Island Naval Base Not Built for the U.S.*, STARS & STRIPES (Oct. 5, 2011), <http://www.stripes.com/news/pacific/korea/s-korea-jeju-island-naval-base-not-built-for-u-s-1.156943?localLinksEnabled=false>.

cruise liners.”³⁶⁸ For current President Park Geun-Hye, the dual-use port would transform Jeju Island into a global tourism destination that, like Hawai‘i’s military harbor, attracts both tourism and military-related income, contributing to the national economy and economic growth in Jeju.³⁶⁹

Construction of the naval base proceeds today despite regular local and occasional global protests.³⁷⁰ For reasons mentioned below, the national government’s plan to build a naval base on the island³⁷¹ appears to thwart at least some Jeju residents’ goal to “create, spread and build an active peace”³⁷² island that promotes environmental sustainability.³⁷³ Critics cite potential adverse consequences, including environmental threats to biodiversity,³⁷⁴ the internal displacement of native peoples and communities,³⁷⁵ an artificial military economy dependent on imports and

³⁶⁸ See Chang Hoon Ko et al., *Jeju Global Governance of World Heritage*, 2 WORLD ENVIRON. & ISLAND STUD. 25, 44 (2012).

³⁶⁹ Park Geun-Hye, *Stop Absurd Remark on Hawai‘i: Kyle Kajihiro’s Letter*, SAVE JEJU NOW (May 2, 2012), <http://savejejunow.org/park-geun-hye-stop-absurd-remark-on-hawaii-kyle-kajihiros-letter/>; see also Sang-Hun, *supra* note 366.

³⁷⁰ See *infra* 374–87 and accompanying text. See also Clifford Coonan, *Busan: Oliver Stone Among Protesters Against U.S. Naval Base in Korea’s Jeju Island*, HOLLYWOOD REPORTER (Oct. 5, 2013), <http://www.hollywoodreporter.com/news/oliver-stone-protesters-us-naval-643736>.

³⁷¹ Critics of the 2011 Final Report by the Lessons Learnt and Reconciliation Commission of Sri Lanka have noted that demilitarization is an important part of reconstruction.

The Government must demilitarize the North and East so that civil society in those areas can rebuild. A sizable military presence currently encroaches on key aspects of civilian life, such as education and trade. The Government must directly address a climate of fear and political culture of violence. Its actions on the ground must match public commitments

Lanka Solidarity, *The Final Report of the Lessons Learnt and Reconciliation Commission—A Response*, LANKA STANDARD (Jan. 13, 2012), <http://www.lankastandard.com/2012/01/the-final-report-of-the-lessons-learnt-and-reconciliation-commission-a-response/>.

³⁷² *Meaning of Peace*, ISLAND OF WORLD PEACE, JEJU, http://peace.jeju.kr/eng/html/sub1/sub1_1.htm (last visited Sept. 20, 2013).

³⁷³ See Sang-Hun, *supra* note 366 (describing opposition to construction of the naval base).

³⁷⁴ Additional concerns surround the potential of the naval base “to be a threat to both the biodiversity and the culture, economy and general welfare of Gangjeong Village, one of the last living remnants of traditional Jeju culture, including destruction of sacred natural sites in and near Gangjeong Village.” Ko et al., *supra* note 368, at 44.

³⁷⁵ In addition to concerns about threats to environmental biodiversity, there is a controversy over the Environmental Impact Assessment for the naval base and “its compliance with principles of international law concerning EIAs including Indigenous

government spending,³⁷⁶ cultural destruction and a false sense of security.³⁷⁷ Others fear that construction of the naval base may trigger a regional naval arms race and that Jeju would become a prime target during times of war.³⁷⁸

Some observe at most a tenuous linkage between the U.S. military and construction of the naval base.³⁷⁹ But grassroots peace advocates criticize the base construction as driven by the United States' desire to strengthen its military operations in Asia and the Pacific. Other critics even suggest that the United States is compelling South Korea to build the naval base.³⁸⁰ This not only "create[s] a conflict for [South] Koreans who

participation, right to know, and free, prior and informed consent." Ko et al., *supra* note 368, at 44.

³⁷⁶ Kyle Kajihiro, director for the American Friends Service Committee in Hawai'i, wrote an open letter to the new President Geun-Hye Park in response to her remarks in support of building the naval base. He discussed all of the problems that Hawai'i has faced due to the militarization of the islands. See *Geun-Hye*, *supra* note 369.

³⁷⁷ Chistine Ahn, the executive director of the Korea Policy Institute and member of the global Campaign to Save Jeju Island commented, "We must not allow an unneeded military base to destroy Gangjeong's rich marine ecology and the livelihoods of farmers, fishermen and haenyo—people who provide us with human security—certainly not in the name of 'national security'." Christine Ahn, *Unwanted Missiles for a Korean Island*, N.Y. TIMES (Aug. 5, 2011), <http://www.nytimes.com/2011/08/06/opinion/06-ihedahn06.html>.

³⁷⁸ See Yeo, *supra* note 361; Ahn, *supra* note 377. Reverend Lee Young-chan notes that construction of the naval base is "making more tension. . . . This is a result of the confrontation of the Cold War, the Cold War mentality." KIRK, *supra* note 149, at 106 (quoting Reverend Lee).

³⁷⁹ According to noted conflict-and-crises scholar Donald Kirk, some protestors question "what if the navy base on Jeju really were built for the American, not the South Korean, navy?" KIRK, *supra* note 149, at 115. But, he suggests, "[t]hat claim is [just] a mantra of all the protestors" and that it "appears abstract [and] theoretical, since there is really nothing to prove it." *Id.*

³⁸⁰ According to peace activist, Bruce Gagnon, "The US is forcing South Korea to build this base so to harbor Aegis destroyers. The base is a key part of Obama's 'Forward Base' strategy for missile defense. This is a very provocative act." See John Lasker, *US Seeks to Establish Naval Base on Jeju Island in Spite of Protests*, TOWARD FREEDOM: A PROGRESSIVE PERSPECTIVE ON WORLD EVENTS SINCE 1952 (Oct. 17, 2011), <http://www.towardfreedom.com/asia/2590-us-seeks-to-establish-naval-base-on-jeju-island-in-spite-of-protests>. See also Andrew Salmon, *S. Korean Base Tests U.S., Chinese Interests*, WASH. TIMES (Oct. 5, 2011), <http://www.washingtontimes.com/news/2011/oct/5/us-base-tests-dueling-interests-in-s-korea/> (observing that "[d]emonstrators say that the base is part of a clandestine anti-China strategy in Washington, rather than a strategic bulwark for South Korea, and that it will pollute the island's environment").

Kim Chang-hoo of the 4.3 Institute agrees with these sentiments and suggests that there may be a "hidden agenda." KIRK, *supra* note 149, at 118. "There is U.S. power behind these issues, and the U.S. is confronting China. We have noticed U.S. influence behind these activities." *Id.* (quoting Kim).

view the U.S. as their main security partner and China as their top trade partner”³⁸¹ but also evokes the painful history of Jeju 4.3.³⁸²

According to Gyung-Lang Jung, Chairperson of South Korea’s Women Making Peace Commission that represents thirty-four women’s groups, the national government’s building of the naval base partially for use by the U.S. military inflames at least some Jeju islanders’ sense of 4.3 injustice.

Jeju still has the memory of the massive state violence of 4.3. Despite losing their parents and siblings, every day the people had to hold their breath and hide their tears. Furthermore, through the “guilty-by-association” restrictions, innocent people had to live as if guilty. Even now 60 years on, the people of Jeju Island who lost members of their families and have been living with grief for years are not able to raise their voices, and their bitterness cannot be brushed away.

However, the new form of massive state violence in the form of the naval base is threatening our lives and peace.³⁸³

³⁸¹ Justin Ahn, Jeju Island Naval Base Construction Facing Strong Resistance, KOREAN BEACON: INSIGHTS INTO KOREAN-AMERICAN LIFE (Oct. 11, 2011), <http://www.koreanbeacon.com/2011/10/11/jeju-island-naval-base-construction-facing-strong-resistance/>.

³⁸² Kim Kwan-ho “draws an easy connection” between Jeju 4.3 and construction of the naval base. KIRK, *supra* note 149, at 125. Kim explains that “[i]t’s not the right thing to do” which is why many residents call construction of the naval base the “Second 4/3 massacre.” *Id.* (quoting Kim).

Jeju City Mayor Kim Sang-oh explains that “People still hurt,” and “the government is continuously working on healing people.” *Id.* at 115 (quoting Kim). He did not lose any family members from Jeju 4.3. *Id.* Yet he reasons, “people are against the military, and this government is constantly dealing with this issue, trying to relieve their pain.” *Id.* at 116 (quoting Kim).

Kim Chang-hoo similarly explains the concern of many and the sense of continuing 4.3 injustice.

There is great impact on the lives of the Jeju people, 30,000 people killed out of 280,000 on the island. . . . The reasons have not been clarified yet. The years have passed. On the outside, there appears to be no influence, but inside their hearts Jeju people still have memories. The results of elections can be totally different depending how the candidates describe the 4/3 massacre. . . . Depending on who is president, the reaction is very different. People are very upset. Ultimately the reaction at Gangjeong [naval base] is related to the 4/3 massacre.

Id. at 118 (citations omitted) (quoting Kim).

³⁸³ Gyung-Lan Jung, *Korea Women Want Nature Instead of Naval Base on Jeju Island*, WOMEN NEWS NETWORK (June 14, 2011),

The new military base on Jeju thus also raises the issue of government attention to the voices of people³⁸⁴ who previously suffered government-inflicted abuses under the mantle of “national security.”³⁸⁵ One key international human rights norm of reparative justice is preventing repetition of the initial debacle at the same locale and beyond.³⁸⁶

The new base on Jeju is located in Gangjeong, a farming and fishing village that has reluctantly become the site of an epic battle for peace. The resistance is a grassroots movement that goes well beyond the issue of the island’s militarization. Human rights, the environment and free speech are also at stake. Though small and remote, Gangjeong is an important battleground for all who believe in social justice worldwide.³⁸⁷

Given the apparent reality of the South Korea government’s construction of the deep water naval base on Jeju, the crucial question is this: *Will the government reconstruct relationships with Jeju communities and organizations to empower them in dealing with naval base authorities and national policymakers on cultural, environmental and peace-related impacts, so that residents’ interests, values and desires are influential?* This is an issue of participation and self-governance.³⁸⁸ An officially

<http://womennewsnetwork.net/2011/06/14/korea-women-naval-base-jeju/>.

³⁸⁴ On August 20, 2007, a referendum showed that ninety-four percent of 725 villagers who participated oppose construction of the naval base in Gangjeong. Ko et al., *supra* note 368, at 44.

Hong Dong-ryo, a Jeju farmer, calls for talks between the local villagers and the government. Referring to the government’s naval power, he says,

We are fighting against it. We have been doing it for six years. Unless there are talks, we will go on fighting. The real truth has not been delivered. There was no notification, no hearing. There was no procedure for the environment to see whether it’s the proper place to have a base. This is an island of peace. I am a village person. We have no rights left. There is no right or reason to have a base here.

KIRK, *supra* note 149, at 107 (citations omitted) (quoting Hong).

³⁸⁵ See generally Geun-Hye, *supra* note 369.

³⁸⁶ See Rubio-Marín, *supra* note 66, at 24–25 (explaining that guarantees of non-repetition are measures of reparation for victims of gross human rights violations).

³⁸⁷ Noam Chomsky, *US Military Base in South Korea Threatens China: The Threat of Warships on an “Island of World Peace,”* GLOBAL RESEARCH (Oct. 8, 2011), <http://www.globalresearch.ca/index.php?context=va&aid=26986>.

³⁸⁸ According to Jeju University law professor Shin Yong-in, “[t]here was no preliminary hearing [for construction of the naval base]” and therefore “[t]he real truth, what is going on, is not known [to Jeju residents].” KIRK, *supra* note 149, at 107 (quoting Shin).

recognized Jeju Citizens Council with a direct formal role in shaping responses to social and economic impacts might provide many Jeju residents the opportunity for a meaningful degree of self-expression and self-governance.³⁸⁹

The Joint Task Force might also urge the United States to address its role in the naval base and support viable peace initiatives on Jeju. This would entail acknowledging history and current conditions and accommodating both U.S. interests in its “pivot toward Asia”³⁹⁰ and Jeju residents’ interests.³⁹¹

By attending to Jeju islanders’ concerns in light of the harm they suffered—and doing so through laws, institutional structures and resident participation—the South Korea and U.S. governments might enduringly strengthen 4.3 reconstruction efforts.

d. Supporting Jeju as an Island of Environmental Sustainability

Social healing also involves rebuilding the relationship between the people of Jeju and the island’s environment. The 4.3 Tragedy devastated both Jeju’s people and the island’s environment and resources.³⁹² Although Jeju has come a long way towards its communities’ collective goal of becoming an environmental hub for sustainability practices,³⁹³ the Joint Task Force would be primed to make reconstructive

³⁸⁹ In addition to the local government’s Autonomous Administration Committee of the Jeju Provincial Council, several Jeju citizens’ groups already exist, including the Jeju April 3rd Citizens’ Solidarity that participated in the Fall 2012 colloquium in Hawai‘i. See *supra* Part I. The proposed Jeju Citizens’ Council, which would receive formal governmental recognition, would specifically focus on continuing Jeju 4.3 reconciliation and social healing efforts in connection with the social, cultural and economic impacts of the construction and operation of the naval base.

³⁹⁰ See Andrew Browne, *China’s World: The U.S. ‘Pivot’ Toward Asia Takes Another Turn*, WALL ST. J. (Sept. 10, 2013), <http://online.wsj.com/article/SB10001424127887323595004579064980509607984.html> (analyzing the U.S. foreign-policy initiative in Asia).

³⁹¹ Some Gangjeong villagers explain that protests against the naval base have divided the villagers. “In some families the father is for the base, the son is against the base. Neighbors used to be very close, and now they don’t talk to each other. They’re enemies.” KIRK, *supra* note 149, at 105 (quoting villagers).

³⁹² See TRANSLATED REPORT, *supra* note 2, at 451–645 (reporting on the devastating damage).

³⁹³ “A survey of 500 Jeju residents . . . found that the people of Jeju possess high levels of commitment to environmentalism and environmentally friendly behavior in their everyday life. Promoting sustainability seems to come naturally for the people of Jeju . . . in their day-to-day lives.” Muthusami Kumaran & Dai-Yeun Jeong, *The Rise of Jeju as a Global Model Environmental Hub: The Confluence of Nature, People, Government, Corporations and the NGO Sector*, 2 WORLD ENVIRON. & ISLAND STUD.13, 18 (2012). See also Anne Hilty, *Jeju, an Island of Villages*, JEJU WEEKLY (Aug. 1, 2011), <http://www.jejuweekly.com/news/articleView.html?idxno=1808>. See also Marcie Miller, *Harsh Environment Shapes the Land and People*, JEJU WEEKLY (May 1, 2009),

recommendations that the South Korea and U.S. governments assist in the process through funding, research and education on eco-development and stewardship.

Historically, Jeju was comprised of largely self-governed and economically self-sustaining villages “with agriculture and marine harvesting—fishing and diving—as mainstays.”³⁹⁴ While no longer economically self-sustaining in these ways, the people of Jeju and its local government have been proactive in promoting the island as a model of environmental sustainability.³⁹⁵ Professors Muthusami Kumaran and Dai-Yeun Jeong describe how the concerted efforts of Jeju’s people and the Jeju Special Self-Governing Province combined to promote policies that emphasized conservation-before-development, shaping Jeju into a world-class “eco-island.”

During the past decades, the island city of Jeju, through considerable multi-sectoral efforts, has grown to be a shining example of an environmental hub model. The origin of Jeju’s growth as a global environmental hub can be traced primarily to two major characteristics: 1. The willingness of the people of Jeju to share their island’s vibrant cultural heritage and unique natural beauty with the rest of the world, and 2. The tireless endeavors of Jeju Special Self-Governing Province to manage Jeju’s environment, and share its environmental best practices to urban centers across the world. These endeavors are expressed as the principal of policy that conservation is

<http://www.jejuweekly.com/news/articleView.html?idxno=67>.

³⁹⁴ The challenges of daily life required cooperation among village members . . . and labor was typically collective as a result. Cooperative economics, a trend in the modern global market, was the norm, and remnants can be found in the current eocheongye, or diving collectives, which are distinct to each village.

Hilty, *supra* note 393.

³⁹⁵ See Kumaran & Jeong, *supra* note 393, at 18.

[Some cities] have taken upon themselves the responsibilities and arduous tasks of balancing present needs for energy & natural resources consumption while considering future requirements for them. These cities have set good examples of environmental sustainability for other cities to learn/emulate from. They continue to define various models of best practices in sustainable urban development and have become to be known as sustainable cities, eco cities, green cities, etc

In the very recent years, a small group of cities [including Jeju] have emerged to be known as ‘environmental hubs’.

Id. at 14–16.

prior to development.³⁹⁶

Moreover, Jeju's leadership for "environmental conservation around the world" has emerged in the international spotlight:

In addition to its ground breaking environmental management efforts, Jeju has also consistently claimed its legitimate environmental leadership by hosting major international environmental conventions that have resulted in resolutions, agreements, policy initiatives and program implementation for environmental conservation around the world.³⁹⁷

The Joint Task Force might encourage the South Korea and U.S. governments, political institutions and social organizations to help Jeju sustain its growth as an environmental hub to foster creative conservation and economic strategies—in ways consistent with its designation as an "Island of Peace." One strategy raised at the 2012 World Conservation Congress was to create a "Jeju Green Growth and Trave[l]ism Agreement," a framework that focuses on "(Re)connection . . . to systematically help communities tackle problems of biodiversity loss, raise awareness for sustainable solutions, generate significant economic benefits, and create extra jobs."³⁹⁸

³⁹⁶ Kumaran & Jeong, *supra* note 393, at 17.

³⁹⁷ Kumaran & Jeong, *supra* note 393, at 17. The United Nations Educational, Scientific and Cultural Organization (UNESCO) officially recognized Jeju as a Biosphere Reserve in 2002, for its Volcanic Island Lava Tubes in 2007 and as a Global Geopark in 2010. *Id.* at 18. Jeju is sometimes referred to as the "UNESCO Triple Crown Island," because it was the first place to obtain UNESCO designations in three natural sciences. *See First Place in the World to Obtain UNESCO Designations in all 3 Natural Sciences, JEJU SPECIAL SELF-GOVERNING PROVINCE*, http://english.jeju.go.kr/index.php/contents/AboutJeju/Beauty/unesco_triple_crown/introduction (last visited Sept. 20, 2013). Jeju was also recently selected as one of the New Seven Wonders of Nature in 2012. International recognition has benefitted Jeju residents.

[M]ost Jeju islanders recognized the registration of UNESCO World Heritages, paving the way for the opportunity of not only promoting an increase of Jeju Global Governance of World Heritage tourism to Jeju Island, but also improving the interest of residents living in those natural heritage areas. Jeju Islanders cooperate with each other to invite tourists into their villages through activities, such as guiding them into World Heritages sites.

Ko et al., *supra* note 368, at 28.

³⁹⁸ The World Environment and Island Studies Institute and the World Association for Island Studies of Jeju National University initiated this strategy. Chang Hoon Ko, *Editorial Notes: An Introduction to WEIS*, 2 *WORLD ENVIRON. & ISLAND STUD.* 4 (2012). This strategy appears to combine Jeju's traditional village focus on agriculture and marine industry with the growth of its small business and tourism industries through sustainability, while maintaining respect for Jeju's unique culture and

In doing so the Joint Task Force might address how to reconcile significant 4.3-related environmental concerns with the building of a naval base on Jeju (described in the prior section). The selected site of the naval base is Gangjeong, which the South Korea government has recognized environmentally as an “Ecological Excellent Village.”³⁹⁹ In addition to controversy regarding the accuracy and completeness of the Environment Impact Assessment, the construction of the naval base appears to pose some threats to Gangjeong’s biodiversity and culture, including the destruction of sacred natural sites.⁴⁰⁰ A Joint Task Force could begin by creating formal and informal processes, possibly through a formally-recognized Jeju Citizens Council, so that regular representative input from Jeju 4.3 survivors and descendants and other residents about environmental and cultural impacts will be seriously considered during each phase of the construction and operation of the base.

e. Promoting Economic Justice for the Jeju People

To promote reconstruction and reparation and demonstrate their stated commitments to democracy and human rights, South Korea and the United States need to better advance economic justice for 4.3 survivors and families.⁴⁰¹ Economic justice, as a key aspect of social healing, entails

environment. See Ko et al., *supra* note 368, at 39–40 (describing the relationship between Haenyeo women and Jeju).

Jeju’s women divers, or “Haenyeo,” are remarkable in their physical skills, environmental knowledge and personal fortitude. Historically their extensive ocean diving has been integral to linking village economic and cultural life to the surrounding environment. Although diminishing in numbers, the divers and their reconstructed communities would benefit from a Joint Task Force emphasis on responsible ways of maintaining the region’s marine ecology. The Haenyeo may be seen as a broad reminder of the Jeju women’s suffering as well as a symbol of strength and resilience. The Haenyeo thus illuminate the importance of the relationship of Jeju’s people to their environment. The Joint Task force could help rebuild this relationship by emphasizing economic and cultural support for the Haenyo and recommending new curriculum, selective eco-tourism and conservation studies.

³⁹⁹ [Gangjeong is] home to thousands of species of plants and animals, lava rock freshwater tide pools (‘Gureombi’), soft coral reefs which have globally unique features and that support 50 species of corals, [27 of which are endemic,] 16 of which are legally protected, freshwater springs, sacred natural sites, historic burial grounds, and nearly 2,000 indigenous villagers, including farmers, fishermen, and Haenyo women divers, who have lived sustainably with the surrounding marine and terrestrial environment for nearly 4,000 years.

Ko et al., *supra* note 368, at 44.

⁴⁰⁰ Ko et al., *supra* note 368, at 44.

⁴⁰¹ Economic justice itself is newly becoming a sub-field of economic theory. Recently, some in the field of law and economics have started to blend economics with theories of social justice and look closely at questions of fair distribution and community impact. See JORDAN & HARRIS, *supra* note 41. In concert with behavioral economists,

redressing the material wounds of historic wrongs—the livelihoods of individuals and communities in terms of funds for daily survival and the economic wherewithal for promoting education, entrepreneurship, small business, health and spiritual well-being.⁴⁰² The material wounds inflicted through systemic discrimination, denials of self-determination, violence and culture suppression persist over generations.⁴⁰³ Economic justice thus encompasses empowering survivors and their families through access to basic financial resources and work and business opportunities.⁴⁰⁴

In general, to promote the kind of economic justice that fosters sustained 4.3 social healing, the Joint Task Force might strongly suggest that the South Korea and U.S. governments confer moderate or symbolic monetary reparations to those harmed (including survivor families), undertake and fund economic capacity-building training for residents and promote community economic development.

More specifically, part of the economic dimension to social healing embraces monetary reparations for harmed individuals to partially compensate for material and psychological damage.⁴⁰⁵ The South Korea government offered very limited financial support to a select few Jeju residents living in poverty or with serious disabilities.⁴⁰⁶ It did not provide comprehensive or substantial reparations for those harmed.⁴⁰⁷ Moreover,

legal scholars have begun to examine the once cast-in-stone assumption that people act privately as perfect rational wealth maximizers and that this individualistic action, if government stays out of the way, ultimately benefits all of society. At the same time, some democracy theorists have begun to engage what economic analysis can tell us about justice in light of institutional and group reactions to market incentives and government initiatives. *See id.*; *see also* Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476 (1998); DANIEL KAHNEMAN, THINKING FAST AND SLOW 14 (2011); Koushik Ghosh, *Culture, Government and Markets*, FORUM ON PUB. POL’Y 8 (Summer 2009), <http://forumonpublicpolicy.com/summer09/archivesummer09/ghosh.pdf>.

⁴⁰² *See* A GRAND DESIGN FOR PEACE AND RECONCILIATION (Yoichiro Murakami & Thomas J. Schoenbaum eds., 2008).

⁴⁰³ Yamamoto & MacKintosh, *supra* note 14, at 1, 3.

⁴⁰⁴ Economic progress is increasingly seen as an integral aspect of the “experience of justice” for those suffering from injustice. *See generally* AMARTYA SEN, THE IDEA OF JUSTICE (2009).

⁴⁰⁵ *See* PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS 165 (2010) (“The classic notion of reparations today is focused on direct benefits, usually through specific financial support (or direct services) to individuals.”).

⁴⁰⁶ *See* Baik, *Justice*, *supra* note 142, at 75.

⁴⁰⁷ Based on the Korean government’s narrow qualifications for reparations beneficiaries, only seventy-eight survivors have been eligible to receive compensation. *See id.*, at 75. Disparate treatment for Jeju victims “owed to long-standing ideological positions and the association of Jeju victims with pro-guerilla activities” are evident in the two South Korea government-approved reparation schemes. Baik, *Fairness*, *supra* note 142, at 178–79.

by effectively limiting redress to “innocent” victims (thereby apparently excluding many wrongfully associated with communism),⁴⁰⁸ the reparative process bypassed many in need and deserving of redress. The Joint Task Force might recommend re-defining the class of those eligible for individual reparations payments, ensuring that those most harmed are included in the process.⁴⁰⁹

Supplementing meaningful individual reparations with economic capacity-building training is needed to help reconstruct relationships and repair material harms.⁴¹⁰ Capacity-building addresses the structural conditions that determine injured individuals’ life opportunities, including education, job skills training and access to capital.⁴¹¹ It is based on the premise that an individual’s material and psychological well-being are linked⁴¹² foremost not to a nation’s overall wealth⁴¹³ but rather to that individual’s economic capability in his or her community setting. Those injured who receive capacity-building training and support tend to experience not only financial advancement but also enhanced autonomy, self-determination and participation in the polity.⁴¹⁴ The Joint Task Force might therefore call for and oversee economic capacity-building for the Jeju populace in light of evolving social and economic conditions.

Individual payments and economic capacity-building buttressed by community development are essential to a personal and public sense of “reconciliation achieved.”⁴¹⁵ Community development aims to repair

⁴⁰⁸ See *supra* Part V.C.5.a. See also Baik, *Fairness*, *supra* note 142, at 178–79 (underscoring that compensation packages related to deaths associated with the democracy movement were “more generous than those awarded to Jeju victims [due to] . . . the continuing negativity associated with the label of enemy collaborators”).

⁴⁰⁹ This may include conferring monetary and symbolic reparations uniquely tailored to Jeju women. See Nesiah et al., *supra* note 204, at 35. It may also include providing intergenerational reparations. See NAHSHON PEREZ, *FREEDOM FROM PAST INJUSTICES: A CRITICAL EVALUATION OF CLAIMS FOR INTERGENERATIONAL REPARATIONS* (2012) (discussing traumatic harms across generations).

⁴¹⁰ See generally SEN, *supra* note 41, at 6; Nussbaum, *Human Rights*, *supra* note 41, at 21; Nussbaum, *Capabilities*, *supra* note 41, at 282–83.

⁴¹¹ See A GRAND DESIGN FOR PEACE AND RECONCILIATION, *supra* note 402.

⁴¹² Nussbaum identifies ten central human capacities that individuals need to fully develop, listing life; 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 Nussbaum, *Human Rights*, *supra* note 41, at 23–24.

⁴¹³ See Nussbaum, *Capabilities*, *supra* note 41, at 285; see also Yamamoto & MacKintosh, *supra* note 14, at 1, 5.

⁴¹⁴ See Yamamoto & MacKintosh, *supra* note 14, at 1, 5; see also SEN, *supra* note 41, at 6.

⁴¹⁵ See generally Yamamoto & MacKintosh, *supra* note 14.

economic damage to the polity itself (diminished opportunities and dampened productivity).⁴¹⁶ A key to comprehensive and sustained social healing,⁴¹⁷ then, is the creation of community financial infrastructure.⁴¹⁸ The Joint Task Force thus might facilitate community development for long-time Jeju residents through support for small business, loans, start-up advising and eased local government permits and regulations.

In these ways, through the Joint Task Force, the South Korea and U.S. governments (national and local) might further promote the kind of repair that fosters comprehensive and sustained social healing. Indeed U.S. engagement in promoting economic justice through individual reparations, capacity-building and community development would demonstrate its commitment to forward-looking human rights precepts of reparative justice.

VI. CONCLUSION

The South Korea government has taken some important steps toward Jeju 4.3 social healing: raising public awareness through memorial services, museum exhibits, educational programs and scholarship; creating

⁴¹⁶ See generally A GRAND DESIGN FOR PEACE AND RECONCILIATION, *supra* note 402.

⁴¹⁷ Redress efforts in Peru highlight the importance of economic justice to social healing, including both individual payments and broader political reconstruction and economic development programs. Peru initially considered both individual compensation and spending to reconstruct the structures underlying the conflict. As the process continued, however, the government narrowed its efforts to economic programs aimed at certain individuals. In response to strong criticism it later broadened its economic development programs but continued to omit individual payments.

The resulting 2007 program, while it committed \$14.2 million for broad restructuring and economic development, failed to include individual payments that would meaningfully show commitment to healing for those injured. After external political pressure, Peru finally included individual payments as part of its redress. Payments, however, were limited to only \$100 per person. This nominal amount left many feeling the government's commitment to healing was insincere at best and duplicitous at worst. See Yamamoto & MacKintosh, *supra* note 14, at 7–9. See also Laplante, *supra* note 180, at 159–60; 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, 69–70 (2007) (citation omitted).

Fulfilling and expanding the support for Jeju islanders harmed in the Jeju 4.3 Tragedy, along with economic justice that includes “individual payments and broader community economic development,” would address the shortcomings of Peruvian redress efforts and combat perceptions of failing or stalled reconciliation. See Laplante, *supra*, at 69–70; Nesiah et al., *supra* note 204, at 34–35.

⁴¹⁸ The Joint Task Force might account for the intergenerational socioeconomic impact of the Jeju 4.3 Tragedy by implementing recommendations for education and employment opportunities. Specific measures addressing health care and child support as well as psychosocial services would also facilitate healing at both individual and collective levels. See Nesiah et al., *supra* note 204, at 35.

governmental organizations to investigate and report; and offering some governmental acknowledgement through presidential apologies. As revealed by *social healing through justice* inquiries, however, without all participants engaged—particularly the United States—without full recognition of historical grievances, a thorough unraveling of the stock stories that justified the “Grand Massacre” and without remaking institutional structures, reconstructive and reparative efforts are destined to be experienced as incomplete. As unfinished business.

The *Joint South Korea and United States Jeju 4.3 Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*, proposed here, focuses on potential next steps in view of past assessments and recommendations, in light of evolving social, economic and environmental conditions and in consideration of the palpable sense of many that 4.3 reconciliation is indeed unfinished business. More specifically, it proposes a creative yet practical way for the United States, South Korea and Jeju people and institutions to mutually engage in an initiative to more fully implement past recommendations and to oversee future steps toward comprehensive and enduring social healing through justice.

Some of the *process* benefits of the Joint Task Force might include bringing international actors to the reconciliation table, hearing and preserving the voice of the Jeju people and promoting research on and the illumination of the Jeju 4.3 Tragedy and its impacts. According to the *social healing through justice* framework, the *substantive* issues related to *recognition* and *responsibility* might include recognizing the collective trauma; acknowledging devastating long-term consequences; acknowledging roots of and responsibility for disabling constraints; and acknowledging the extent of United States responsibility for Jeju 4.3. Other *substantive* issues concerning *reconstruction* and *reparation* might include fairly characterizing the Jeju people; rebuilding through detailed sincere apologies; supporting Jeju as an “Island of Peace” by institutionally empowering Jeju communities to deal with naval base impacts; supporting Jeju as an island of environmental sustainability; and promoting economic justice for Jeju 4.3 survivors and their families.

The Joint Task Force, then, might be an integral part of a potential four-stage process for Jeju 4.3 social healing. The first stage is submitting a petition to South Korea and the United States calling for the Joint Task Force. The second overlapping stage encompasses generating broad-based support for creation of the Joint Task Force among South Korea national and local government officials, institutions and people as well as among U.S. officials and international scholars, advocates and human rights observers. The third stage is creation of the Joint Task Force along with supporting a Social Healing Center on Jeju Island. The final stage consists of balanced Task Force operations that are mindful of social healing’s pillars—*recognition*, *responsibility*, *reconstruction* and *reparation*.

Grassroots advocates, including victims survivors' families, teachers, students, artists, filmmakers, journalists and local business people, as well as Jeju and international scholars, are already contributing to fashioning next steps.

The Joint Task Force's work in assessing words and actions thus far and in further recommending and overseeing future social healing steps would benefit Jeju survivors and families as well as support efforts to uplift Jeju globally as an environmentally sustainable "Peace Island." It would help create a new complete comprehensive history that gives voice to the people. It would embrace concerns about dignity and autonomy. It would address important economic, cultural, security and environmental matters. And it would likely foster more comprehensive, systemic and enduring *social healing through justice*.

At bottom, a *Joint South Korea and United States Jeju 4.3 Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice* might potentially serve as a practical fourth-step reconciliation initiative vehicle for coalescing acknowledgments and responsibilities and for charting and pursuing reconstructive and reparative acts that foster comprehensive and sustained healing—for the Jeju people and South Korean people in ways that benefit the interests of South Korea and the United States.

In the prescient words of Professor Cumings in 1998, echoed by Professor Yoshida's sentiments recited in this article's prologue,

[Redress for] the people of [Jeju] should come first. For it was on the hauntingly beautiful island that the postwar world first witnessed the American capacity for unrestrained violence against indigenous peoples fighting for self-determination and social justice.⁴¹⁹

⁴¹⁹ Cumings, *supra* note 80.