

Jeju's Past, Present and Future: Peace-Building for Co-Prosperity

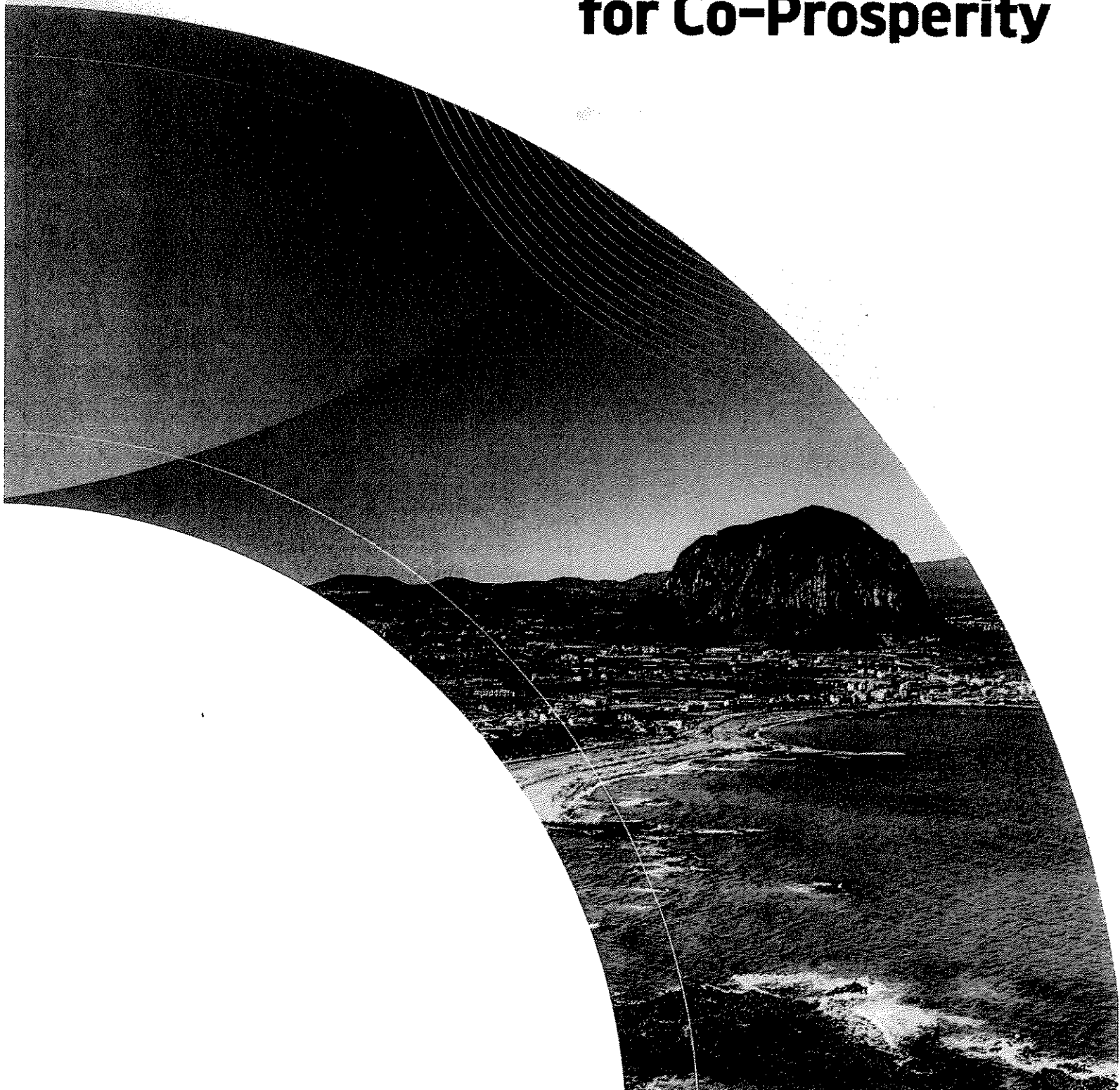


Table of Contents

Jeju's Past, Present and Future : Peace-Building for Co-Prosperity

Part 1

Preface: Jeju: Peace-Building for Co-Prosperity

- Chapter 1.** Anthropologist Grant Edwin McCall (1944–2023) by Max Quanchi (Professor, University of Queensland) and Eddie McCall (Journalist, Australia) P7
- Chapter 2.** Preface: Jeju's Past, Present and Future: Establishment of UN World Environment University (2017) and United Nations Tolerance Programme (2022) as a Korean Politics of Tolerance for 3.5 Billion Asian People beyond Jeju's Tragedy by Chang Hoon Ko (Professor Emeritus, Jeju National University, Korea), Douglas Yates (Professor, American Graduate School in Paris, France), Carlton Waterhouse (Professor, Howard University, USA) and Sachio Nakato (Professor, Ritsumeikan University, Japan) P11
- Chapter 3.** United Nations Tolerance Programme (UNTP) for Co-Prosperity of 3.5 Billion Asian People by Chang Hoon Ko (Professor Emeritus, Jeju National University, Korea) and Roy Tamashiro (Professor Emeritus, Webster University, USA) P21

Part 2

Jeju Subnational Diplomacy and Korea Cherry Trees Diplomacy from the Island of Peace

- Chapter 4.** Subnational Diplomacy of Jeju Provincial Government by Yunju Ko (International Relations Ambassador for Jeju Special Self-Governing Province, Republic of Korea) P29
- Chapter 5.** The Diplomacy of the First Korean Congress of 1919 by Yung Chul Lee (Professor Chonnam National University, Korea) P35
- Chapter 6.** Korean Cherry Trees and World Peace by Peter Kuznick, (Professor, American University, USA) P41
- Chapter 7.** Family, the Original "Collaborative Leadership" Model and Jeju Cherry Trees: Force for Peace by Grant McCall (Professor, University of Sydney, Australia) and Donald Kirk (American Journalist and Author) P45

Table of Contents

Part 3

Eco Systems for Peace, Climate Change Adaptation, Emile Taquet's Environmental Sustainability Diplomacy and Marine Resilience

- Chapter 8.** Environmental Sustainability Diplomacy of Emile Joseph Taquet (1908–2023): His Childhood Hometown, Hecq, France, the Importance of Hallasan Jeju King Cherry Tree Forests Villages and their Documentary Developments by Chan Rahn Huh (The Committee for Ecology & Environment, Diocese of Jeju, Korea), Chang Hoon Ko (Professor Emeritus, Jeju National University, Korea), Kenneth McLeod (Scholar's Choice International, Canada), Jihee Kim (World Association for Environment, Social, Governance, Korea), Janna Monges Cergy Paris University, France) P53
- Chapter 9.** Eco Systems for Peace by Ignace Schops (EUROPARC Federation, Belgium) P61
- Chapter 10.** Key Issues and Suggestions for Government R&D Investment Directions in Climate Change Adaptation R&D in the Era of the New Climate Regime by Myung Cho (Researcher, KISTEP, Korea), Chang-Dae Park (Researcher, KISTEP, Korea), Min-Gyu Sung (Researcher, KISTEP, Korea), and Martin Kang (Professor, Loyola Marymount University, USA) P69
- Chapter 11.** The Role of NGOs in Addressing Marine Plastic Pollution by Mutsami Kumaran (Professor, University of Florida, USA) P77

Part 4

Jeju 4·3: Tragedy, Reparations, Apology, and Autonomy

- Chapter 12.** Legacy of Tragedy: In Search of Answers for Jeju 4·3 by Donald Kirk (Journalist and Author, USA) P89
- Chapter 13.** US Apology and Reparations for the Jeju 4·3 Tragedy by Eric Yamamoto (Professor, Hawaii Law School, USA) and Miyako Pettit (Professor, Hawaii Law School, USA) P95
- Chapter 14.** Independence or Autonomy: The Jeju Model for Corsica by Douglas Yates, (Professor, American Graduate School in Paris, France) P103

UNITED STATES APOLOGY AND REPARATIONS FOR ITS ROLE IN THE Jeju 4·3 TRAGEDY: HEALING THE PERSISTING WOUNDS ACROSS GENERATIONS

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PROLOGUE

We dedicate this essay to the memory of inspirational colleague and fellow justice traveler Grant McCall. We write at the request of another inspirational justice organizer, Professor Emeritus Chang-hoon Ko, who asked for an essay centering on Professor Emeritus Eric Yamamoto's 2021 book, *Healing the Persisting Wounds of Historic Injustice: United States, South Korea and the Jeju 4·3 Tragedy*. This co-authored essay draws upon and extends Yamamoto's earlier article "International Reparations: What Justice Amends Can and Should There Be?"¹⁾ and highlights other essays—all of which were published in the *Southwestern Law Review's* special symposium issue on the book.

I. REPARATIVE JUSTICE: THE UNITED STATES AND THE Jeju 4 3 TRAGEDY

In her Preface to the special symposium issue,²¹ Professor Martha Minow posed pressing questions for civil societies struggling with historical injustices.²² Speaking of the Jeju 4 3 Tragedy and many others, Professor Minow, a renowned restorative justice scholar, asked:

When the killings, torture, and rapes were at the hands of the national government itself, the losses and the suffering are immeasurably compounded by betrayal and enduring distrust. And when one of the most powerful nations in the world [the United States] was also involved and partially responsible for deploying organizations to terrorize civilians and train counterinsurgent forces, and for providing military support and supplies, what justice, what amends can there be?²³

Indeed, what justice amends can and should there be? By the United States? And when? Cast in this light, Professor Minow described Professor Yamamoto's book as "itself an act of acknowledgment and commemoration [that] addresses the terrible human suffering" of the Jeju 4 3 Tragedy in South Korea and offers a "powerful and detailed framework [generally] for assessing and strengthening justice initiatives while attending to personal healing and societal repair."²⁴ A framework for social healing through justice, "at the intersection of conflict resolution, peace-building, and social justice[,] . . . synthesizes and advances work under the rubric of restorative and transformative justice."²⁵ It embodies an analytical approach that draws upon group healing commonalities among multiple disciplines—law (including human rights), social psychology, theology, political theory (including peace studies), economics, and indigenous conflict resolution practices. It aims to shape and invigorate initiatives to repair the damage to people and communities not through words alone but also through reconstructive and reparative actions.

This kind of multifaceted approach proves important, again in Minow's words, "because the tools of civil and criminal courts and peace negotiators seem mismatched to the harms suffered and the goal of changing patterns of life for the future."²⁶ Even "a seemingly discrete conflict is embedded in chains of events and structures that embody longstanding mistreatment and injustices that so often persist even after a court case or peace treaty."²⁷ The limitations of more traditional legal approaches to justice "hold[] immediate relevance in the United States and many other parts of the world."²⁸

Hence, the challenging search by communities, officials, advocates, scholars, and justice facilitators for more encompassing, and potentially more effective, means of healing the lasting wounds of people and societies. This challenge forms the book's subject, illuminated by the Jeju 4 3 Tragedy.

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

simultaneously to erect institutional constraints to prevent "it" from happening again.

This effort will often miss the mark. Yet it sometimes arrives home, or close to it. And for many, that makes it worth the candle.¹⁰⁹

Former Professor Sang-soo Hur, a scholar of Korean history and politics and (as of November 2023) Commissioner of the Korean National Assembly's Truth and Reconciliation Commission, enriched the Jeju 4-3 Tragedy's historical setting. Hur's symposium essay identified the United States actions as post-World War II "trustee in South Korea."¹¹¹ After "World Wars I and II, United States strategists argued that forces seeking to control Eurasia should be regarded as potential adversaries of the United States. While experiencing the war in Korea, the U.S. became concerned about the rise of another hegemon[] in Northeast Asia rather than Europe."¹²

This strategic concern transformed into overarching on-the-ground oppression. Hur observed that, in 1945, a crucial aim of security forces under the U.S. Military government was "suppressing Koreans who opposed the U.S. policies and its military government in Korea."¹³ This meant forcefully oppressing citizens who protested against harsh U.S. food distribution policies, widespread official corruption, and police brutality. It also meant intimidating those choosing to vote for a unified Korea in a forthcoming democratic election. According to Hur, when some Jeju residents protested abusive government policies and practices, with a relatively small number of aggressive resisters, the U.S. Military government appointed a U.S. colonel in charge and "sent him into the field to carry out the [4-3] scorched earth operation" by the South Korean security forces and U.S.-recruited militia. Significantly, the "U.S. military did not comply with any international human rights law during any of the multiple processes that comprised the Jeju Massacres."¹⁴ 30,000 island villagers were killed, tens of thousands of homes burned down, many tortured, women raped. Several thousand others were corruptly convicted of insurrection by "kangaroo" military commissions and executed or imprisoned for up to 15 years.

With this in mind, Hur posed key questions now facing the United States:

What is needed to cure serious and grave human rights violations, such as a massacre? . . . [S]ocial healing through justice . . . is a victim-centered solution to gross human rights violations on a large scale, such as the massacre of civilians, as well as an effective approach to reparation and reconciliation in theory and in practice. Above all, civilized members of society must participate and approach these violations from a new perspective . . . Does a civilized country [especially the United States] mean a democracy that values human life, operates society through the rule of law, and guarantees the right to justice for crimes?¹⁵

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

Professor Natsu Taylor Saito's essay encompassed United States human rights transgressions in the Philippines, Southeast Asia and Central America. It also sharpened Jeju 4-3 (Jeju 4-3 signaling the tragedy's start on April 3, 1948) as "another example of the very concrete (and often very devastating) effects of U.S. policy – foreign and domestic – on a wide range of individuals,

communities, lands, and cultures."¹⁶⁾ Saito underscored the challenge for present-day reparative initiatives, characterizing the setting as "a time of concerted efforts to ban critical thinking and heightened pressure to limit public discourse to a narrowly tailored master narrative of American exceptionalism."¹⁷⁾

Based on her extensive scholarship on government accountability for human rights violations, Professor Saito observed that Yamamoto's book "not only provides information critical to reinvigorating the Jeju Islanders' longstanding struggle for justice but [it] insists on holding the United States accountable for its role in this 'tragedy,' thereby sticking [its] foot in a door the U.S. has long been determined to close." Saito's essay then succinctly chronicled not only the original Jeju 4-3 transgressions, but also "how the failure to acknowledge significant injustices leads to long-lasting, transgenerational harm[s]."¹⁸⁾

This theme of how unacknowledged injustice transmits trauma to subsequent generations surfaces in nearly all civil and human rights controversies. And it is often the impetus for reparative efforts that extend beyond one-time individual payments and into the realm of institutional reordering (to prevent recurrence) and forward-looking economic capacity-building (for communities as well as individuals). (More on this later).

In his essay, Professor Kunihiro Yoshida, an international reparations scholar, deepened the democratic legitimacy theme Sur and Saito outlined.¹⁹⁾ Yoshida agreed with Yamamoto on a "crucial point": "[R]eparations and reconciliation will serve as core principles on which the legitimacy for a democratic society . . . [could] persuade the United States to improve the stagnant situation regarding American responsibility."²⁰⁾ With the global stature of the United States as a democracy at issue, Yoshida pointedly asked, "[W]ill United States government officials ignore serious human rights violations on Jeju Island? If so, the United States' position would be self-contradictory, and the international community would lose faith in it."²¹⁾

Acknowledging that "it is difficult to achieve the social healing goals," Professor Yoshida participates, along with justice organizer Professor Chang-hoon Ko, in a variety of Jeju 4-3 international education and consciousness raising initiatives. They continue to work with others to build some of the needed political foundation for compelling United States engagement.²²⁾

The essay of Ruben Carranza of the International Center for Transitional Justice poignantly showed how "in the field of transitional justice, South Korea stands out as a helpful paradox," particularly for those "seeking truth from the American empire."²³⁾ Carranza observed that South Korea is a "good example of how political will and public pressure have made possible a transitional justice process [reaching well beyond 4-3] that includes 'at least ten truth commissions,' prosecution of two former military dictators, and the offer of apologies and some forms of reparation."²⁴⁾ Nevertheless that "same Korean society also maintains a military alliance with the [U.S.] imperial power that armed and backed Korea's ex-dictators and took part in war-time massacres of Koreans while casting itself as their ally."²⁵⁾

Carranza then highlighted the reparative justice "question that matters most to the survivors of Jeju 4-3": "[W]ill the American empire that regards itself as above accountability, acknowledge and repair the harms caused by its role in the atrocities committed against the victims of this episode in Korean history?" From there he teased out transitional justice insights in part "guided by what the survivors, victims' families, and advocates of Jeju 4-3 reparations have taught those who work in

the field of transitional justice.”

From the perspective of *realpolitik*, Carranza observed that to bring the United States to the Jeju 4·3 reconciliation table “the South Korean government must use all of the security and political leverage it has with American policymakers.” Yet, he visualized a possible route through the thicket: “. . . [T]he United States would not participate in [a joint U.S.-South Korea] truth-seeking process unless South Korea links that participation to U.S. national security interests or the American populace pressures its government to acknowledge its enabling of human rights violations abroad.”²⁶⁾ Carranza recognized that “implicating America’s national security interests . . . [is] clearly not the most ideal basis for a reparations-seeking strategy. But it may be one of the more realistic one[s] . . . The U.S. could see acknowledging its role in Jeju 4·3 as a strategy to maintain Korean public support.” This “will not challenge American exceptionalism directly [but] can yield intermediate gains—possible assistance for old survivors, the opening of U.S. archives.”

II. HEALING THE PERSISTING WOUNDS: WHAT’S NEXT FOR SECURING UNITED STATES ENGAGEMENT

The book *Healing the Persisting Wounds of Historic Injustice* devoted two chapters to teasing out the benefits, risks and challenges of the idealist-versus-*realpolitik* strategic approaches that Carranza wrestled with.²⁷⁾ The chapters also identified an additional aspect of the interest-convergence calculus. Through meaningful participation in the Jeju 4·3 initiative, the book maintained, the United States might further its global security interest and strengthen its crucial alliance with South Korea, while committing to the country and its allies to uphold human rights as symbolic and practical checks on abusive government security actions to prevent the destruction of civilian populations from happening again.²⁸⁾

Indeed, two complementary articles co-authored by Professor Yamamoto shortly after the book’s publication²⁹⁾ elaborated upon the challenges of compelling United States Jeju 4·3 engagement. The articles picked up where the book left off—with President Biden’s 2021 inauguration and the United States’ recommitment to international human rights as constraints against government power abuses. Integral to that commitment, Biden promised to repair the damage of America’s own human rights transgressions—a key tenet of the human rights reparative justice regime.

The articles folded the United States into that started-stalled-rejuvenated initiative in two related ways. The articles first unraveled the remarkable Jeju court retrials of eighteen survivors of the Jeju 4·3 mass military tribunal convictions – touched upon in the book. Jeju District Judge Jegal Chang contemplated the U.S. courts Japanese American incarceration *coram nobis* cases as a kind of global precedent. He then heard the preliminary testimony of the eighteen Jeju survivors-petitioners, and found himself deeply moved by the villagers’ accounts of seventy years of suffering from their false labeling as threats to the nation, their sham convictions for rebellion (mass conviction of 100s at a time without charges or evidence), and their harsh penal treatment (torture and sentences ranging from immediate execution to 15 years hard labor). In 2019, with the national prosecutor’s assent and with the nation watching, Judge Chang dismissed the indictments as a miscarriage of justice. His ruling effectively cleared the petitioners’ records, as well as those of all 2,500 villagers similarly convicted.

Judge Chang then granted each petitioner-survivor an award of substantial monetary damages, ranging from tens of thousands to over a million dollars—the first substantial Jeju 4·3 compensation-reparations awarded by the Korean courts or by the national government. Then, after twenty years of contentious political struggle over reparations, and with Judge Chang’s rulings as a backdrop, the National Assembly in 2021 authorized several hundred million dollars in broad-scale reparations for over 10,000 identified Jeju 4·3 victims and families. Remarkable.

Yet, reparative gaps remained. The psychological harms across generations awaited full recognition. More specifically, harms to Jeju women suffering horrific sexual and gender-based violence awaited full study along with tailored forms of redress.³⁰⁾ And intergenerational harms—the legacy of collective trauma—to the Jeju populace continued to have lasting effects without full recognition or comprehensive and enduring present-day redress.³¹⁾

The Apologies and Reparations articles also highlighted the 2021-2022 South Korea legislation that avoided acknowledging a main missing piece in the Jeju 4·3 reparative initiative—United States participation. Two questions continued to reverberate. Would the United States mutually engage with the next—and potentially final—reparative steps toward comprehensive and enduring Jeju 4·3 social healing through justice? More specifically, would the United States expressly acknowledge its partial, though crucial, role in the tragedy and, at a minimum, offer a sincere American culturally-tailored apology?

Pressing domestic and geopolitical challenges pose obstacles to engagement, let alone a formal United States apology and possible reparations.³²⁾ In earlier works, we identified possible practical mechanisms for that engagement. They include a Joint U.S. and South Korea Jeju 4·3 Task Force; a presidential committee for investigating the U.S. role and making recommendations; or congressional inquiry.³³⁾ Any of these mechanisms would be politically challenging and would come to fruition only with insider lobbying, political support, backing by human rights and civil liberties groups, and with the assent of South Korean officials, along with expanded U.S. public awareness of the Jeju 4·3 tragedy. That foundational work has been set in motion in Washington, D.C. by Korean and American justice advocates and scholars, with more on the horizon.³⁴⁾

What, then, might be the incentive for the United States to engage: The United States’ renewed commitment to human rights underscores a strong interest in engaging in the final stages of the Jeju 4·3 reparative justice initiative—not only in doing what is morally “right,” but also in rebuilding its damaged legitimacy as a democracy actually committed to the rule of law and in re-instilling national and global confidence in the United States as a leading democracy. The essays by Saito, Hur, Yoshida, and Carranza, as well as the *Healing the Persisting Wounds* book itself, highlight this ragged though possibly viable realpolitik path.

Initiated by words of acknowledgement, a meaningful Jeju 4·3 apology would likely entail corresponding “promises of actions to repair the damage” and strong assurances against future recurrence—a key piece of the international human rights reparative justice regime and assurances crucial to many among Jeju communities. To the extent appropriate . . . a United States apology might feature the country’s acknowledgment of its role in the tragedy and convey empathy for the persisting suffering of Jeju people through generations—cast culturally in term of *han*. It might also link words of contrition to an appropriate promise of future restraint.³⁵⁾

As observed earlier, if the United States and South Korea engage forthrightly and transparently with the Jeju 4·3 social healing process, they will “stand to benefit by enhancing democratic legitimacy at home and abroad.” By participating in “enduringly righting the wrongs of the Jeju 4·3 Tragedy, the United States would send a powerful message to the international community that the Trump-era of U.S. unilateralism, isolationism and xenophobic populism has ended.” This would offer a poignant response to Professor Minow’s framing question: “What justice amends can and should there be?”

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1) Eric K. Yamamoto, Afterword -- International Reparations: What Justice Amends Can and Should There Be?, 52 SW. L. REV. 141 (2022) (closing article in Southwestern Law Review special issue on “Healing the Persisting Wounds of Historic Injustice”).

2) ERIC K. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE Jeju 4·3 TRAGEDY (2021) [hereinafter YAMAMOTO, HEALING THE PERSISTING WOUNDS].

3) Martha Minow, Foreword: Begin with Admitting Inhumanity, 52 SW. L. REV. 1 (2022).

4) *Id.* at 1.

5) *Id.* at 2.

6) *Id.*

7) *Id.*

8) *Id.*

9) *Id.* at 3.

10) Eric K. Yamamoto, Miyoko Pettit & Sarah Sheffield, Bridging the Chasm: Reconciliation’s Needed Implementation Fourth Step, 15 SEATTLE J. SOC. JUST. 1 (2017) (charting salutary and troubled reconciliation initiatives worldwide).

11) Sang-Soo Hur, Human Rights Law and Social Healing Through Justice for Cheju Massacres (1947–1954): The United States’ Unlawful Acts and Omissions, 52 SW. L. REV. 95, 96, 102–08 (2022).

12) *Id.* at 96.

13) *Id.* at 104.

14) *Id.* at 108.

15) *Id.* at 96.

16) Natsu Taylor Saito, Truth, Healing, Empowerment: Eric Yamamoto on Reparative Justice for the People of Jeju, 52 SW. L. REV. 9 (2022).

17) *Id.* at 12–13.

18) *Id.* at 9.

19) Kunihiro Yoshida, Jeju Peace, Education, and Reconciliation: Continued Challenges Relating to the Jeju 4·3 Tragedy, 52 SW. L. REV. 111 (2022).

20) *Id.* at 118–19.

21) *Id.* at 119.

- 22) *Id.* at 122. Yoshida, an educator for the Hokkaido National University Law School, drew inspiration from his multi-year summer school Jeju education project at Jeju National University, as well as his collaboration with Professor Ko Changhoon on his "Peace Island Network Organization." *Id.* With "regard to the true historical education about the Jeju tragedy," they also have been working on UNESCO World Heritage Programs' acceptance of the Jeju 4-3 Tragedy into the Memory of the World Program. *Id.* at 111.
- 23) Ruben Carranza, *What Jeju 4-3 Survivors and Families Can Learn from the Global South in Seeking Justice from an Empire*, 52 *SW. L. REV.* 126, 127, 140 (2022) [hereinafter Carranza, *What Jeju 4-3 Survivors and Families Can Learn*].
- 24) *Id.* at 126.
- 25) *Id.* at 127.
- 26) *Id.* at 137 (quoting YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 2, at 190-91 n.45).
- 27) YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 2, at 232-87. Carranza closes with a broader observation about how the "liberal and progressive part of the U.S. ruling elite might even see the gesture [of Jeju 4-3 engagement] as a helpful argument for pressing domestic slavery reparations forward." Carranza, *What Jeju 4-3 Survivors and Families Can Learn*, *supra* note 23, at 137-38.
- 28) See G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, (Dec. 16, 2005) (specifying "[g]uarantees of non-repetition" as a key component of the international human rights reparative justice edifice).
- 29) Eric K. Yamamoto & Suhyeon Burns, *Apologies & Reparation: The Jeju Tragedy Retrials and the Japanese American Coram Nobis Cases as Catalysts for Reparative Justice*, 45 *U. HAW. L. REV.* 5 (2022); Eric K. Yamamoto, Suhyeon Burns & Taylor Takeuchi, *Apologies & Reparation II: United States Engagement with Final Stages of Jeju 4-3 Social Healing*, 45 *U. HAW. L. REV.* 77 (2022) [hereinafter Yamamoto et al., *Apologies and Reparation II*].
- 30) See Miyoko T. Pettit, *Who Is Worthy of Redress?: Recognizing Sexual Violence Injustice Against Women of Color as Uniquely Redress-Worthy—Illuminated by a Case Study on Kenya's Mau Mau Women and Their Unique Harms*, 30 *BERKELEY J. GENDER, L. & JUST.* 268 (2015) (employing a particularized intersectional race-gender redress analysis and noting the lack of recognition to Jeju women's unique sexual violence harms); Miyoko T. Pettit-Toledo, *Collective Memory and Intersectional Identities: Healing Unique Sexual Violence Harms Against Women of Color Past, Present and Future*, 45 *U. HAW. L. REV.* 346 (2023) (employing an intersectionality framework to suggest that women of color who suffered from sexual violence should be remembered as victims, survivors, political activists, fighters and much more as part of present-day collective memories).
- 31) See Miyoko T. Pettit-Toledo, *Collective Memory, Intersectional Identities & The Temporality of Justice: Exploring the Contours of Intergenerational Trauma in Present-Day Jeju 4-3 Redress* (forthcoming) (analyzing intergenerational harms with a focus on Jeju 4-3 survivors and their families).
- 32) YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 2, at 206, 232-50 (envisioning that "U.S. Jeju 4-3 engagement will depend in part on the domestic political climate, geopolitical dynamics in Asia and America's global stature on matters of international security").
- 33) See generally Eric K. Yamamoto, Miyoko Pettit & Sara Lee, *Unfinished Business: A Joint South Korea and United States Jeju 4-3 Tragedy Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*, 15 *ASIAN-PAC. L. & POLY J.* 1 (2014); YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 2, at 198-212.
- 34) YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 2, at 181-97.
- 35) See Eric K. Yamamoto et al., *Reconciliation Revitalized Through an Official Apology for the Wrongful Jeju 4-3 Mass Convictions: A Key Next Step Toward Comprehensively and Enduringly Healing Persisting Wounds of Injustice*, 8 *WORLD ENV'T & ISLAND STUD.* 181, 185 (2018). See generally Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement (with Japan and the United States in Mind)*, 27 *MICH. J. INT'L L.* 1, 35 (2005).
- 36) Yamamoto et al., *Apologies and Reparations II*, *supra* note 29, at 122 (quoting YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 2, at 287).

