

# 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

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## Abstract

What's the point of feeling angry about what happened? You just have to make sure we never see that kind of world again—that this [Jeju 4.3 tragedy and the hardships that befell three generations of family members] never happens again.

– Moon Soon-seon, Jeju 4.3 Tragedy survivor, who lost her husband at 19 years old and gave natural birth to her son in prison.<sup>1</sup>

“For my grandchildren, [please help ensure] that there is no record stating that their grandmother has a criminal history and spent time in prison.”

–Kim Pyeong-guk, Jeju 4.3 Tragedy survivor and one of the eighteen petitioners seeking to vacate their wrongful convictions.<sup>2</sup>

“The path we have traveled to this point has been a tremendously perilous and difficult [one]. What the 18 of us want is to be acquitted [and to receive an official apology].”

–Yang Geun-bang, Jeju 4.3 Tragedy survivor and one of the eighteen petitioners seeking to vacate their wrongful convictions.<sup>3</sup>

1) Huh Ho-joon, A Three-Generation Tragedy in the Chaos of the Jeju Uprising, HANKYOREH (Nov. 25, 2018), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/871671.html](http://english.hani.co.kr/arti/english_edition/e_national/871671.html) (quoting Moon Soon-seon).

2) Kim Min-kyoung, Prosecutors Request Dismissal of Indictments Against Defendants Connected with Jeju Uprising, HANKYOREH (Dec. 18, 2018), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/874894.html](http://english.hani.co.kr/arti/english_edition/e_national/874894.html) (quoting petitioner-survivor Kim Pyeong-guk).

3) Id. (quoting petitioner-survivor Yang Geun-bang).

## Introduction

2018 marked the 70th anniversary of the Jeju 4.3 “Grand Tragedy.” In years since, one question remains startlingly significant: how do the survivors, their families, Jeju Island and South Korea as a nation heal from the decades-old injuries that still ache in the present? This essay offers insights into an important potential next step towards Jeju 4.3 reconciliation. That is, comprehensive and enduring social healing through justice—healing for Jeju people who suffered from the 4.3 events, as well as for Korean society itself. One key justice piece of that social healing process highlights the significance of formal apologies for those still suffering from the wrongful mass military tribunal convictions and imprisonment during 4.3 events, particularly the eighteen survivors who recently reopened their convictions, seventy years later, in Jeju District Court.

## SOCIAL HEALING THROUGH JUSTICE: AN ANALYTICAL FRAMEWORK FOR RECONCILIATION

“Social healing through justice” is an analytical framework deployed to shape, evaluate and reconfigure reconciliation initiatives aimed at engendering healing for individuals and communities still suffering deep wounds of injustice.<sup>4</sup> Developed by Professor Eric K. Yamamoto and others,<sup>5</sup> the framework is theoretically grounded in commonalities among several disciplines: law, social psychology, theology, political theory, economic justice, human rights and indigenous practices.<sup>6</sup>

### A. The Working Principles

Six commonalities among these diverse disciplines, distilled into working principles, offer an incomplete, yet nevertheless compelling, portrait of the dynamics of group healing.<sup>7</sup> Those

4) See Eric K. Yamamoto, Miyoko Pettit-Toledo & Sarah Sheffield, *Bridging the Chasm: Reconciliation’s Needed Implementation Fourth Step*, 15 SEATTLE J. FOR SOC. JUST. 109, 113 (2016) [hereinafter Yamamoto et al., *Bridging the Chasm*].

5) ERIC YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (2000) [hereinafter YAMAMOTO, *INTERRACIAL JUSTICE*].

6) See id. at 153–71 (2000).

7) Those dynamics reflect some combination of acknowledgement of the humanity of the other sources of 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); 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 Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 67–74 (2007); 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, 33 (2009) [hereinafter Yamamoto & Obrey, *Reframing Redress*].

commonalities provide a conceptual foundation for practical approaches to repairing the collective trauma of group-based injustice—like the persisting harms of Jeju 4.3.

**Mutuality of Engagement.** The first working principle is mutuality of engagement—cooperative participation by all with some degree of responsibility for the harms in an effort to generate reparative words and actions. Cooperative participation can then foster a new collective memory of the injustice and remediation.

**The Individual and the Collective.** The second principle emphasizes how social healing must occur simultaneously on both the individual (personal) and the collective (societal) levels.

**Emotional and Material Repair.** Meaningful group healing needs to address and repair both the emotional and the material harm. The third principle entails storytelling and acknowledgements along with economic capacity-building and reparative financial assistance as integral parts of that process.

**Restructuring and Reconstructing.** The fourth principle is the salience of changes in institutional structures—moving beyond individual repair to reconstructing social, economic and political relationships to prevent the recurrence of injustice. The focus is on institutional reordering through legal and political changes that build democratic checks and balances into exercises of government power.

**Sense of “justice done.”** The fifth principle integrates the others. It is the social healing imperative of generating a collective sense of “justice done”—not through words alone, but also through actions.

**Recrimination and Persistence.** The final working principle is cautionary. In anticipating opponents’ pushback and even recriminations, it highlights the importance of struggle and persistence. It also informs the societal costs of inaction, potentially exacerbated by continuing mistrust or enmity, social divisions and failure of social ideals.

These working principles, together, suggest that social healing necessarily engages individuals, communities, courts, justice advocacy groups, businesses, clergy, media, policymakers and government officials in a dynamic process of recognition, responsibility, reconstruction, and reparation.<sup>8</sup> These are the “Four Rs” of social healing through justice. Taken together the Four

8) For an elaboration, see YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5; Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 33. See generally ALFRED BROPHY, *REPARATIONS PRO AND CON* (2006); 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, 267 (2009).

Rs characterize a process—a framework—aimed at fostering the kind of reparative justice that heals.<sup>9</sup>

#### B. The “Four Rs”

Briefly stated, recognition addresses the context and particulars of an injustice. It looks at people and social structures, at historical causes and present-day consequences, at the roles of culture, economics and politics, and at past and persisting human suffering.<sup>10</sup> Participants in social healing strive to achieve mutual recognition of the harms and their sources as a foundation for future healing by: 1) investigating the ways in which individuals and communities “continue to suffer pain, fear, shame and anger;” 2) decoding “cultural stereotypes and political representations that seemingly legitimized” the injustice; and 3) scrutinizing “the ways that organizational structures” fostered the damage.<sup>11</sup>

Responsibility encompasses both an acknowledgment of the harms generated by “power over others” and an “acceptance of responsibility [for] repairing the damage ... imposed on others through power abuses.”<sup>12</sup> Responsibility can arise in four related ways. First, through direct participation in the abuse.<sup>13</sup> Second, through knowledge of and complicity in the abuse, even without direct participation.<sup>14</sup> Third, from the receipt of benefits from the abuse of others, even without direct participation or knowing complicity.<sup>15</sup> And fourth,

through membership in a polity damaged by its mistreatment of communities within it (healing the larger society by repairing the damage to those it has harmed).<sup>16</sup> Grounded in the diverse disciplines mentioned earlier, each source of responsibility, though differing in intensity and moral culpability, generates a corresponding responsibility to act. The acceptance of accountability—to repair damage done to individuals and communities—commits participants to a collective process of reconstruction and reparation.<sup>17</sup>

Reconstruction strives to build and sustain new productive relationships, generating over time a grounded sense of justice achieved.<sup>18</sup> Reconstructive acts might include genuine apologies engendering a measure of forgiveness, an official reframing of the historical narrative, memorial sites and public events and, most significant, the structural reallocation of political and economic power.<sup>19</sup> Changes in social, legal, educational and political institutions (laws, policies and practices) aimed at preventing repetition of the abuses are integral to reconstruction.<sup>20</sup>

Reparation draws from its root word “repair.”<sup>21</sup> While it may include individual monetary compensation and “medical, legal, or educational and financial support for individuals and communities in need,” reparation encompasses more than money.<sup>22</sup> It also encompasses specific reparative actions, and includes the invalidation of wrongful criminal convictions and the clearing of tainted court records, the rehabilitation of people harmed, the “restoration of property, rebuilding of culture, and the promotion of economic development,” as well as long-term community capacity-building.<sup>23</sup> Public education—through traditional means as well as innovative multi-media expressions—is crucial to reparation. It heightens awareness of recognition, responsibility and reconstruction as predicates to reparative action. Political and cultural forms of education

9) The framework, originally termed “interracial justice,” was initially developed in YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5. See also DAVID HANSEN, *NATIVE AMERICANS, THE MAINLINE CHURCH, AND THE QUEST FOR INTERRACIAL JUSTICE* (2016) (interpreting and employing the “Four Rs” reconciliation framework to assess reconciliation efforts with Native Americans).

10) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 175–84. See generally HARLON DALTON, *RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES*, 65 (1995).

11) Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 33. See Jonathan R. Cohen, *Coping With Lasting Social Injustice*, 13 *WASH. & LEE J. CIV. RTS. AND SOC. JUST.* 259, 253 (2007) (identifying the “pain, fear, shame and anger” as typical harms of social subordination); M. Brinton Lykes and Marcie Mersky, *Reparations and Mental Health: Psychosocial Interventions Toward Healing*, Human Agency, and Rethreading Social Realities, in *THE HANDBOOK OF REPARATIONS*, 589 (Pablo de Greif ed., 2007) (discussing healing approaches to group-based psychological harm).

12) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 185 (“Only by understanding the extent of a group’s agency, constrained by context, can a rough evaluation be made of the extension of its responsibility for harm to others”).

13) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 185–90; 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-PACIFIC L. & POL’Y J.* 1, 65 [hereinafter Yamamoto et al., *Unfinished Business*]. See Paul Muldoon, *The Very Basis of Civility: On Agonism, Conquest, and Reconciliation, in THE POLITICS OF RECONCILIATION IN MULTICULTURAL SOCIETIES* 114 (Will Kymlicka & Bashir Bashir eds., 2008); Penelope Andrews, *INTRODUCTION TO THIRD WORLD LEGAL STUDIES 2000–2003: INTO THE 21ST CENTURY: RECONSTRUCTION AND REPARATIONS IN INTERNATIONAL LAW* 1 (2003).

14) See Yamamoto et al., *Unfinished Business*, supra note 13.

15) *Id.*

16) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 185–90.

17) *Id.* at 153–71, 185–90.

18) *Id.* at 190–203 (“Reconstruction means acting on acknowledgements of disabling group constraints and commitments born from recognizing constrained yet extant group agency and responsibility. It means reaching out in concrete ways to heal.”). See JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE FROM DOMESTIC ABUSE TO POLITICAL TERROR*, 133–34 (1992) (stating that one important harm of trauma is disconnection, and recovery depends in part on building new productive relationships).

19) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 190–203.

20) Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 33.

21) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 203.

22) Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 35; YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 204–05.

23) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 208; Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 35.

“commemorate, impart lessons learned, and ... [can] generate a new justice narrative about a democracy’s commitment to civil and human rights.”<sup>24</sup>

These “Four Rs” coalesce into the kind of justice that fosters social healing. Social healing through justice is thus most viable when those linked to the injustice have an interest in healing past and continuing harms. It can take different forms. For example, when past legal rulings have caused or contributed to the injustice, social healing may call upon the courts to reopen and rectify previous harmful decisions. And when the perpetrator is a government actor, social healing may involve truth commissions or official investigations and acknowledgements. It may also involve official apologies accompanied by reparations—an important next step towards comprehensive and enduring social healing. For instance, in 1993, the U.S. Congress apologized to the Native Hawaiian people for America’s illegal take-over of the sovereign Hawaiian nation in 1893.<sup>25</sup> In another instance, in 2009, the U.S. Congress further committed itself to reconciliation by apologizing to Native Americans for taking native lands and destroying native culture.<sup>26</sup>

And across the Atlantic Ocean, employing the language of reconciliation, former Prime Minister Tony Blair apologized for the British Empire’s sponsorship and profiteering of slavery in its many colonies.<sup>27</sup> Britain’s Foreign Secretary as well as the High Commissioner in Nairobi similarly expressed the government’s “sincere regret” for human rights abuses in colonial Kenya.<sup>28</sup> These apologies, though unofficial, to Kenyan indigenous Kikuyu (politically known as Mau Mau), were coupled with the political settlement of the partially successful Mau Mau reparations suit before the British High Court in 2013.<sup>29</sup>

24) Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 35.

25) 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). 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.

26) See S.J. Res. 14, 111th Congress (2009); Sean McCollum, *An American Apology, Long Overdue*, *TEACHING TOLERANCE* (Jan. 6, 2010), <http://www.tolerance.org/blog/american-apology-long-overdue>.

27) Patrick Wintour, *Blair Fights Shy of Full Apology For Slave Trade*, *THE GUARDIAN* (Nov. 27, 2006), <https://www.theguardian.com/politics/2006/nov/27/uk.race>.

28) See Ian Cobain & Jessica Hatcher, *UK to Expect More Colonial-Era Compensation Claims*, *THE GUARDIAN* (June 6, 2013), <http://www.theguardian.com/politics/2013/jun/06/uk-more-colonial-era-compensation-claims> (detailing British high officials’ statements of regret and acknowledgment of wrongs in colonial Kenya).

29) See Miyoko 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*,

## SOME JEJU 4.3 STORIES OF ABUSE AND SUFFERING

Perhaps most powerfully, social healing through justice, in its broadest sense, embraces the foundational human rights concept of “repair.” That is, to comprehensively and enduringly repair the damage of historic injustice<sup>30</sup>—to fix all significant aspects of what was broken.

Consider the stories of the victims of Jeju 4.3 who suffered at the hands of security forces. Their accounts of wrongful conviction and incarceration paint a vivid picture of the widespread trauma, loss and persisting Jeju 4.3 pain. For instance, Park Chun-ok was twenty-two years old when she was wrongfully imprisoned with her baby. She was falsely labeled a communist, strung up in ropes and repeatedly beaten.<sup>31</sup> And Hyun Chang-yong, who was only sixteen years old at the time, was falsely accused of aiding armed resisters. “No matter how many times I was beaten,” he recalled, “I kept denying doing anything wrong.”<sup>32</sup> Ultimately, Mr. Hyun was mercilessly beaten over forty times into a fake admission, leading to his wrongful conviction. He was sentenced to many years in prison under awful conditions.<sup>33</sup>

Despite important initial reconciliation steps, the victims’ suffering persists. Based on those and other strikingly similar present-day 4.3 stories, “reparative justice” may pave a path toward achieving comprehensive and enduring social healing on Jeju Island. To repair the persisting damage of injustice, words and actions are needed to heal the long-standing physical, emotional and socio-economic wounds caused by Jeju 4.3 events. Wounds that have continued for generations of families. That enduring pain—what has been described to us as “han”<sup>34</sup>—can last forever if the injustice suffered is left unaddressed. And one salient aspect of addressing, or salving, that suffering is through genuine apologies.

30) See Yamamoto et al., *Bridging the Chasm*, supra note 4, at 109.

31) Yang Dong-yun et al., *Testimonies of Jeju 4.3: Regaining Honor* (May 30, 2105 in Seoul), in *JEJU 4.3 GRAND TRAGEDY DURING ‘PEACETIME’ KOREA: THE ASIA PACIFIC CONTEXT (1947–2016)*, 61–2 (2016).

32) *Id.*

33) *Id.*

34) YOO, BOO-WOONG, *KOREAN PENTECOSTALISM: ITS HISTORY AND THEOLOGY* 221 (1988). The minjung (ordinary Korean people) theologian, Suh Nam-dong, describes Han as a “feeling of unresolved resentment against injustices suffered, a sense of helplessness because of the overwhelming odds against one, a feeling of acute pain in one’s guts and bowels, making the whole body writhe and squirm, and an obstinate urge to take revenge and to right the wrong—all these combined.” *Id.*

## SIGNIFICANCE OF APOLOGIES: MORE THAN SIMPLY FORGIVING AND FORGETTING

When people continue to suffer from pain, sorrow, fear and shame from grave injustice, others sometimes encourage them to simply “move on.” Just forget and let go. This is similar to a Christian concept of turning the other cheek and forgiving one’s enemy.<sup>35</sup> For some Christian believers, as part of their faith, choosing to forgive those who have sinned against them despite suffering personal tragedy can be an important step towards peace and conflict resolution.

Additionally, at least one branch of Buddhism broadly parallels that Christian concept. Buddhists are often taught that, when we suffer, it is likely because of karma—past actions resulting in present-day consequences.<sup>36</sup> It is better to accept the workings of karma, forgive the offender and forget the harm ever happened.<sup>37</sup> However, as His Holiness the 14th Dalai Lama observed, people sometimes say “this is my karma” as an excuse for inaction in the face of injustice.<sup>38</sup> Accepting one’s karma in this passive way might excuse or approve of others’ harmful behavior.<sup>39</sup> It might also fail to deter further misconduct and potentially block the social healing of individuals or communities.

Our research on Jeju 4.3 and other injustices in the United States shows that, first, an individual—especially one who has suffered—can never simply forget. Why? Because wounds of injustice do not simply vanish. Remembrance is needed to initiate the healing process. And to forget would relieve offenders of any duty to demonstrate atonement (to make up for wrongs they committed before asking for forgiveness).<sup>40</sup> Furthermore, our research shows that forgiveness involves more than simply forgiving and forgetting. Forgiveness is most powerful when it responds first to a complete apology for a wrong committed, and second, when the apology is followed by some form of reparation.<sup>41</sup>

In both Western and Eastern cultures, a genuine

apology can have enormous value.<sup>42</sup> An apology may be genuine if it contains: 1) an admission of fault; 2) a promise of future restraint; and 3) an offer to repair the emotional, physical, social and financial damage.<sup>43</sup> It needs to describe reasons for the apology as well as acknowledge the wrongdoing. It also recognizes the human suffering and the dignity of those harmed.<sup>44</sup> In these ways, a genuine apology is reflected in the recognition, responsibility and reconstruction dimensions of social healing through justice.

Equally important, an official apology—one that is sincere and complete—can initiate that first step toward reparative justice: words with promises of actions to repair the damage.<sup>45</sup> This type of apology is important because it accepts responsibility for the injustice, and it lays the foundation for forgiveness and for building a productive new relationship.<sup>46</sup>

4.3 Reconciliation Started and Stalled. Official Jeju 4.3 public apologies to date illustrate the significance—and limitation—of apologies as a significant step toward reparative justice. In 2003, following the release of the National 4.3 Investigative Committee’s Korean language report and recommendations, the South Korea government began a healing process that also involved a government-sponsored museum, an extensive public memorial and gravesite and limited financial payments to a few.<sup>47</sup> Additionally, President Roh Moo-hyun issued a short and general apology for South Korea’s role in Jeju 4.3.<sup>48</sup> All of this has been important. But after the 2007 inauguration of a conservative South Korea president, reconciliation efforts regressed. Many apparently perceived political back-sliding in the social healing process.<sup>49</sup> Some government officials sweepingly re-

35) Forgiveness, BBC NEWS (accessed Jun. 18, 2018) <https://www.bbc.com/education/guides/z2b36yc/revision/3> (citing Matthew 5:39, “If anyone strikes you on the right cheek, turn to him the other also”).

36) Karma, BBC NEWS (Nov. 17, 2017) <http://www.bbc.co.uk/religion/religions/buddhism/beliefs/karma.shtml>.

37) Rebecca French and Joe Schneider, Law, Buddhism and Social Change: A Conversation with the 14TH Dalai Lama September 20–21, 2006: Appendix B: Transcript, 55 BUFFALO L. REV. 719, 732 (2007).

38) *Id.* at 733.

39) *Id.*

40) ROY BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS (2004).

41) YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 5, at 191–98.

42) See Trudy Govier & Wilhelm Verwoerd, The promise and Pitfalls of Apology, 33. J. SOC. PHIL. 67 (2002); YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 5, at 191–98; 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).

43) 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).

44) Trudy Govier & Wilhelm Verwoerd, The promise and Pitfalls of Apology, 33. J. SOC. PHIL. 67 (2002).

45) *Id.* at 35.

46) YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 5, at 191–98.

47) See Kim Yeong-jung, Reexamination of the Casualties of the Jeju April 3rd Incident, in WHO ARE THE TRUE VICTIMS OF THE JEJU APRIL 3RD UPRISING?, at 4–5 (2013).

48) See NAT’L COMM. FOR INVESTIGATION OF THE TRUTH ABOUT THE JEJU APR. 3 INCIDENT, THE JEJU APRIL 3 INCIDENT INVESTIGATION REPORT, 659–60 (Jeju Apr. 3 Peace Found. Trans., 2013) [hereinafter TRANSLATED REPORT] (citing President Roh’s apology regarding the 4.3 Incident).

49) See Hahm Chaibong, South Korea’s Miraculous Democracy, 19 J. DEMOCRACY 128 (2008).

mischaracterized Jeju residents of 1948 as part of a pervasive communist insurgency, reviving the “it’s their own fault” narrative. Yet this re-mischaracterization inaccurately “justifies” the 4.3 government violence against thousands of village residents. It sweepingly brands Jeju residents at the time as communists or communist supporters—implying wrongly that they were therefore legitimate targets of violence. In reality, very few of the villagers were communists. As the 4.3 Committee found, they were not inciting communism but were instead protesting the deteriorating economy, unfair elections and police brutality.<sup>50</sup> Additionally, the false sweeping linkage to communism continued to harm many who suffered (and still suffer) from “political discrimination” and guilt-by-association.<sup>51</sup> Indeed, “86% of the families have experienced damages from the Guilt-by-Association System.”<sup>52</sup>

The government’s 2007–2015 planning and construction of a major naval base on Jeju, partly for United States use, exacerbated decades-old wounds. South Korea’s military build-up alarmed Jeju residents and 4.3 survivors in particular. Under the former President Lee administration, villagers of Gangjeon were forcibly removed and their ancestral lands seized—all against “the villagers’ democratically expressed ... choice.”<sup>53</sup> Resident protestors viewed this government action, taken without resident participation, as a resurrection of “undemocratic, militaristic practices of South Korea’s postwar dictatorship.”<sup>54</sup> The Park Geun-Hye presidential administration in 2016 sued demonstrators, including 4.3 justice advocates, seeking over three million dollars in damages from Jeju residents and organizations for construction delays and added construction costs.<sup>55</sup>

Moreover, economic justice for 4.3 victims stalled. According to Professor Tae-ung Baik, only 6,396 of the 14,373 persons registered as 4.3 victims were identified as eligible for compensation.<sup>56</sup> And of those eligible, very few received any financial assistance.<sup>57</sup>

Government officials claimed that reparative payments and subsidies for medical treatment were limited because of budgetary constraints. Survivors and their families continue to suffer. Finally, according to Professor Baik, even for those who were properly identified as victims, the Jeju Special Act denied compensation for economic damage and wrongful death claims. It only countenanced limited monetary assistance “when the government [found] it appropriate” to those victims “living in extreme poverty or with serious disability.”<sup>58</sup>

To date, there has been no official redress for the victims of wrongful convictions, no compensation for survivors and no state-run trauma center for victims. Thus, for many, it appeared that reconciliation remained starkly incomplete—unfinished business.<sup>59</sup>

4.3 Reconciliation Rejuvenated. Despite stalled reconciliation efforts, advocates responded by commencing multifaceted political and educational efforts to rejuvenate the reconciliation movement. Victims’ associations worked with documentary filmmakers and community advocates to poignantly portray both historical events and continuing harms. Educators and artists created compelling 4.3 exhibits in both the United States and South Korea.<sup>60</sup>

Domestic and foreign writers, artists and filmmakers emphasized themes of hardship, resolve, yearning, sorrow, survival, preservation and resilience. Jeju journalists and the national broadcast media ran in-depth stories about the future of Jeju 4.3 social healing.<sup>61</sup>

50) Hun J. Kim, *MASSACRES AT MT. HALLA 127–30* (Cornell University Press eds., 2014).

51) Tae-Ung Baik, *Justice Incomplete: The Remedies for the Victims of the Jeju April Thirds Incidents*, in *RETHINKING HISTORICAL INJUSTICE AND RECONCILIATION IN NORTHEAST ASIA: THE KOREAN EXPERIENCE* 94, 106 (Gi-Wook Shin, Soon-Won Park & Daqing Yang eds., 2007) [hereinafter Baik, *Justice Incomplete*].

52) *TRANSLATED REPORT*, supra note 48, at 613 (English Translation). This “guilt-by-association” system, in place before South Korea’s current modern criminal justice system, extended penal responsibility of any assumed communist to parents, spouses, children, sisters and brothers. Family members were forced to endure “disadvantages on status” and “constant surveillance.” Some faced blatant or subtle persecution and were prevented from obtaining jobs or government benefits. Later born children falsely tainted by “communist” family associations were denied admissions to desired universities and government employment. *Id.* at 608–09.

53) *Ten Thousand Things*, 4.3 Jeju Island: 1948 & Now, available at <http://tenthousandthingsfromkyoto.blogspot.com/2011/04/43-jeju-island-1948-now.html> (Apr. 3, 2011).

54) See *id.*

55) *S. Korea Drops Lawsuit Against Jeju Island Residents for Delayed Naval Base Construction*, XINHUA (Dec. 12, 2017), [http://www.xinhuanet.com/english/2017-12/12/c\\_136819948.htm](http://www.xinhuanet.com/english/2017-12/12/c_136819948.htm).

56) Tae-Ung Baik, *Social Healing Through Justice: Jeju 4.3 Case*, 2 *WORLD ENVIRONMENT AND ISLAND STUD.* 59, 59–60 (2012) (citing the National Commission on the Jeju 4.3 Incidents at <http://www.jeju43.go.kr/dec/index03.html>). See also Hong Jung-Pyo, *Jeju 4.3 Hüisaengja Chugasango 343 Myöng* (343 Additional Persons Registered as Jeju 4.3 Victims), *YONHAP NEWS AGENCY* (Apr. 8, 2004) (“Under the Jeju Special Act, 14,373 persons have registered as victims of the incidents, and 6,396 of them have been officially identified as victims eligible for compensation as of March 9th, 2004.”).

57) Yamamoto et al., *Unfinished Business*, supra note 13.

58) Baik, *Justice Incomplete*, supra note 51, at 94, 109–10.

59) See generally Yamamoto et al., *Unfinished Business*, supra note 13, at 57.

60) Anne Hilty, *Sharing Trauma and Healing*, *JEJU WEEKLY* (Feb. 3, 2014), <http://www.jejuweekly.com/news/articleView.html?idxno=3845>. This is the first group art exhibition about Jeju 4.3 that took place outside of Korea. The museum is a Smithsonian Affiliate, and Santa Rosa maintains a “sister city” relationship with Jeju. The exhibition included twenty-six works by eighteen artists. *Id.*

61) See *Healing Through Art and Culture*, in *JEJU 4.3 FROM TRUTH TO PEACE: GLOBAL PERSPECTIVES ON A KOREAN TRAGEDY VOL. 1*, 159–91 (2018); Darryl Coote, *When Terminology and Tragedy Collide*, *JEJU WEEKLY* (Dec. 16, 2010), <http://www.jejuweekly.com/news/articleView.html?idxno=1114>.

Researchers and scholars, too, began to closely evaluate 4.3 social healing efforts—and their limitations—through scholarly publications.<sup>62</sup> In 2013 a team of scholars finished translating the National 4.3 Committee’s Report into English.<sup>63</sup> That translation opened a new path to healing 4.3 wounds by expanding the Report’s reach to international English-speaking audiences. Its revelation of apparent partial United States responsibility for 4.3 atrocities, along with the compelling sense among many Jeju residents that 4.3 healing remained incomplete, coalesced these rejuvenating forces into a renewed 4.3 social healing movement.

## PRESIDENT MOON’S 2018 APOLOGY

In April 2018, as part of efforts to resume (or continue) steps toward enduring social healing, President Moon Jae-in delivered a strong, more detailed apology at a memorial ceremony honoring the 70th anniversary of Jeju 4.3 and its victims. President Moon offered a “profound apology” and “deepest sympathy” to the surviving victims, bereaved families and following generations stigmatized by guilt-by-association for their continued suffering.<sup>64</sup>

In the official translation, President Moon apologized on behalf of the South Korea people and government for the killings of innocent civilians, in his words, “massacred without knowing what was going on.”<sup>65</sup> President Moon also acknowledged the military and police’s harsh abuse of people and communities. He described the tragedy as an “operation of annihilation” with an anti-communist ideology serving as “nothing more than a cause that justified the massacre.”<sup>66</sup>

President Moon declared that the truth of Jeju 4.3 has become a “historic fact that cannot be denied by any group.” This countered what many viewed as lingering false characterizations of 4.3—that is, the security forces’ suppression of an organized widespread communist insurgency. In looking to the

future, President Moon pledged further reparative steps to “address the grievances of the victims and restore their honor, continue to work to retrieve the remains of the missing, provide compensation to survivors and set up a state-run trauma center.”<sup>67</sup>

Our perception of President Moon’s 2018 apology is that it did three significant things: 1) it addressed and further apologized for the 4.3 tragedy; 2) it acknowledged the Korea government’s significant role in 4.3; and 3) it suggested several ways in which the government would continue to repair the damage of the deep injustice.

But as the president’s words indicated, and as journalists, artists and community advocates have demonstrated, comprehensive and enduring 4.3 social healing still remains “unfinished business.” Indeed, President Moon’s apology itself may be viewed as not fully complete for purposes of fostering comprehensive and enduring social healing. Eighteen survivors of Jeju 4.3 imprisonment have turned to the Jeju district court to vacate their wrongful convictions, thereby seeking justice for the wrongs committed against them decades earlier. Based on the National 4.3 Investigative Committee’s Report and other accounts,<sup>68</sup> over 2,500 Jeju residents during 4.3 were arrested and convicted, supposedly for “rebellion.” They suffered harsh prison sentences. Many were tortured. (Others were executed). But there appeared to be no written criminal charges, no bona fide evidence of unlawful behavior, no opportunity to defend and no formal judicial records.<sup>69</sup>

Today, for many, those wrongful convictions remain a dark stain on the survivors’ individual and family records. And seventy years after the fact, eighteen 4.3 survivors now seek to have their wrongful convictions vacated, thereby seeking justice for the wrongs committed against them through the supposed “legal system” decades earlier.<sup>70</sup>

62) See, e.g., Hun-Joon Kim, *The Massacres at Mt Halla: Sixty Years of Truth Seeking in South Korea* (2014); Yamamoto et al., *Unfinished Business*, supra note 13; Tae-Ung Baik, *Fairness in Transitional Justice Initiatives: The Case of South Korea*, 19 *BUFF. HUM. RTS. L. REV.* 169,176–180 (2012).

63) See TRANSLATED REPORT, supra note 48.

64) Kim Rahn, *Moon Vows Fact-Finding for Jeju Massacres*, *KOREA TIMES* (Apr. 03, 2018), [https://www.koreatimes.co.kr/www/opinion/2018/04/197\\_246662.html](https://www.koreatimes.co.kr/www/opinion/2018/04/197_246662.html).

65) *Id.*

66) *Id.*

67) *Id.*

68) See TRANSLATED REPORT, supra note 48; John Merrill, *The Cheju-do Rebellion*, 2 *J. OF KOREAN STUD.*, 157–58 (1980); Kim Min-kyung, *Former Prisoners Request Retrial in Jeju Uprising Cases*, *HANKYOREH* (Mar. 25, 2018) [http://english.hani.co.kr/arti/english\\_edition/e\\_national/837521.html](http://english.hani.co.kr/arti/english_edition/e_national/837521.html) [hereinafter Kim, *Former Prisoners Request Retrial*].

69) See Kim, *Former Prisoners Request Retrial*, supra note 68; TRUTH AND RECONCILIATION COMM’N, REPUBLIC OF KOREA, *TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS 7*, at 48, 67, 70, 81, 104 (2009), <http://www.japanfocus.org/data/TRC2009Report.pdf> [hereinafter TRC INTERIM REPORT].

70) See companion article in this journal, *Human Rights and Reparative Justice: The 2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases*.

## U.S. CORAM NOBIS REOPENINGS AND THE U.S. APOLOGY FOR WORLD WAR II JAPANESE AMERICAN INCARCERATION

To illuminate the significance of the 4.3 survivors' efforts to clear their records of egregiously wrongful convictions, we turn to the U.S. courts in the mid-1980s. As discussed more fully in a companion essay, "Human Rights and Reparative Justice: The 2018 Reopenings of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American Incarceration Cases,"<sup>71</sup> from 1983–1986, amid a movement for "internment redress and reparations,"<sup>72</sup> U.S. courts reopened the criminal convictions of American citizens who forty years earlier had challenged the constitutional validity of the World War II government's mass incarceration of Japanese Americans.<sup>73</sup> And those courts, in extraordinary and rare coram nobis case reopenings, reviewed the broad findings of the congressional truth-finding commission and listened to compelling evidence of the wrongful incarceration of mostly American citizens of Japanese ancestry. The writ of coram nobis is a rarely employed common law vehicle for reopening a "manifestly unjust" criminal conviction—usually on grounds of egregious governmental misconduct—where the petitioner has served his or her sentence and is suffering continuing prejudice from the conviction.<sup>74</sup>

Researchers found and presented to the courts in the 1980s a cache of wartime documents showing that highest government officials during World War II knew there had been no security justification for the mass racial imprisonment of mainly U.S. citizens.<sup>75</sup> The coram nobis reopenings revealed that the government had deliberately misled the Supreme Court and the American public about the ostensible threat Japanese Americans posed,

effectively deploying them as scapegoats.<sup>76</sup> Officials from the U.S. War and Justice Departments first wrongly intimated that Japanese Americans had committed espionage in support of Japan's Navy, then falsely asserted that there had been insufficient time to identify and detain the disloyal—and thus that the entire racial group had to be locked up. All this crucial exculpatory intelligence was deliberately covered up.<sup>77</sup> And as the congressional commission later found, the mass incarceration was based on war hysteria, racial prejudice and lack of political leadership.<sup>78</sup>

Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui resisted the government's mass Japanese American incarceration. The government prosecuted and convicted them in 1942 for their resistance. And the World War II Supreme Court affirmed their convictions on grounds of "military necessity." In the extraordinary coram nobis<sup>79</sup> case reopenings, the courts in the 1980s ascertained "manifest injustice" and invalidated the World War II convictions of Korematsu, Hirabayashi and Yasui. And although the rulings may be viewed narrowly as a belated effort to correct a badly tainted judicial record, they may also be seen more broadly as characterizing Korematsu, Hirabayashi, and Yasui as cautionary tales of grave injustice arising out of popular fears, opportunistic politicians, dissembling officials, and deferential courts.<sup>80</sup>

For these reasons, in the 1980s, U.S. courts vacated the convictions of the three internment resisters, effectively clearing the names of all 120,000 who had been wrongfully incarcerated in American concentration camps.<sup>81</sup> Yet having U.S. courts vacate those wrongful convictions from personal records, although highly significant for the individuals and their families, was not enough.

71) See companion article in this journal, Human Rights and Reparative Justice: The 2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases.

72) See MITCHELL MAKI, HARRY KITANO AND MEGAN BERTHOLD, *ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS ACHIEVED REDRESS* (2004) (describing the political and legal process of the Japanese American redress movement).

73) *Korematsu v. United States*, 584 F. Supp. 1406, 1417 (N.D. Cal. 1984); *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); *Yasui v. United States*, No. 83-151 BE (D. Or. Jan. 26, 1984), remanded, 772 F.2d 1496 (9th Cir. 1985).

74) *Id.*

75) See KENNETH RINGLE, *RINGLE REPORT ON JAPANESE INTERNMENT* (1941); Memorandum from FBI Director J. Edgar Hoover to Attorney General Francis Biddle (Feb. 2, 1942), reprinted in *PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS* at 73 (1997); Memorandum from FCC Director Fly to Attorney General Biddle (Apr. 4, 1944), reprinted in PETER H. IRONS, *JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES* at 159 (1989).

76) *Korematsu*, 584 F. Supp. at 1417. For similar reasons, after a full trial, the Ninth Circuit vacated Hirabayashi's dual convictions for the curfew and exclusion violations. See *Hirabayashi*, 828 F.2d at 608. The lower court vacated Yasui's curfew conviction without a hearing on the merits. *Yasui v. United States*, No. 83-151-BE, at \*2 (D. Or. Jan 26, 1984), reprinted in Peggy Nagae, *Yasui v. United States: From 1941 to Today—Making the Case for the Constitution*, OR. STATE BAR 5-41 to 5-42 (2016); see PETER IRONS, *JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES* (1989).

77) See PETER H. IRONS, *JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES*, at 205-12 (1993) (detailing the "behind-the-scenes" maneuverings to suppress critical evidence disproving Japanese American disloyalty or espionage).

78) *Korematsu*, 584 F. Supp. at 1416-17 (quoting *PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS* 18 (1997).

79) See ERIC K. YAMAMOTO, *IN THE SHADOW OF KOREMATSU: DEMOCRATIC LIBERTIES AND NATIONAL SECURITY*, 37 n.3 (2018).

80) See generally Eric K. Yamamoto & Rachel Oyama, *Masquerading Behind a Facade of National Security*, 128 *YALE L.J.F.* \_\_\_ (forthcoming 2019) (describing the impact of *Trump v. Hawaii* on *Korematsu v. United States*).

81) *Korematsu*, 584 F. Supp. at 1410, 1420.

More was required to generate the kind of justice that fosters social healing. This brings us back to the second part of the essay: the significance of genuine apologies.

The American government's World War II betrayal cut deep.<sup>82</sup> In the words of one Japanese American woman who was incarcerated as a child, "the truth was that the government we trusted, the country we loved, the nation to which we had pledged loyalty had betrayed us, had turned against us."<sup>83</sup> Because of the enduring pain of the Japanese American community, in 1988, the U.S. Congress recognized that vacating the convictions of those who resisted was important, but not enough. Based in part on the public education around the 1980s reopening of those criminal convictions and the courts invalidating them, and based on the deeply moving stories of those wrongfully incarcerated,<sup>84</sup> the U.S. Congress passed into law the Civil Liberties Act of 1988.<sup>85</sup> In addition to authorizing monetary reparations to survivors of the mass incarceration, the Act committed the President to delivering formal apologies.<sup>86</sup> For many of the survivors and their families, what was most significant—even more than the payment of reparations<sup>87</sup>—was President George H.W. Bush's individual apology to every survivor on behalf of the United States. In a letter addressed specifically to each person, the President wrote:

A monetary sum and words alone cannot restore lost years or erase painful memories ... We can never fully right the wrongs of the past. But we

can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II. In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice. You and your family have our best wishes for the future.<sup>88</sup>

The President's apology officially recognized the injustice suffered by Japanese Americans during World War II, particularly those who resisted and were wrongly convicted and branded as criminals. For many survivors, the presidential apology was essential to any kind of over-arching "reparative justice."<sup>89</sup> Those words signified acceptance of responsibility and expressed contrition, along with a commitment to reparative action. They began to further repair the damage, healing persisting emotional and cultural wounds, and, significantly, restoring a measure of honor and dignity.<sup>90</sup>

As the U.S. President's apology to each surviving individual revealed, and as the discussion in Section II developed, an apology can demonstrate recognition of wrongdoing, acceptance of responsibility for the harms and a commitment to reconstruction and reparation—casting both the person or institution apologizing and the person receiving it in a commendable light.<sup>91</sup>

Apology for Jeju 4.3 Wrongful Convictions? The significance of these kinds of apologies ties back to our earlier discussion about the eighteen survivors' petition to vacate their wrongful convictions in the companion essay, "Human Rights and Reparative Justice: The 2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases."<sup>92</sup> In September 2018, Judge Chang of the second criminal division of the Jeju District Court ordered "retrials for the petitioners claiming they were illegally convicted."<sup>93</sup> A "first-ever decision to legally re-examine incidents connected with Jeju 4.3,"<sup>94</sup> Judge Chang's ruling followed the

82) See generally LORRAINE BANNAI, *ENDURING CONVICTION* 186 (2015); GREG ROBINSON, *BY ORDER OF THE PRESIDENT: FDR AND THE INTERNMENT OF JAPANESE AMERICANS* (2001); ROGER DANIELS, *THE JAPANESE AMERICAN CASES XV* (2013). See also IRONS, *JUSTICE AT WAR*, supra note 77.

83) Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 17.

84) See Commission on Wartime Relocation and Internment of Civilians Act, Pub. L. No. 96-317, 94 Stat. 964 (1980); COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (1982-83)* at PART 2: RECOMMENDATIONS 9; Unpublished interview by Lorraine Bannai with Norman Mineta, former Congressperson, in Fresno, Cal. (Feb. 16, 2009); ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATIONS: LAW AND THE JAPANESE AMERICAN INTERNMENT*, 318-20, 323-24 (2013).

85) 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)).

86) See id. ("The purposes of this Act are to ... apologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens ... The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.")

87) Id. The Act not only committed the President to a formal apology but also authorized reparations in the amount of \$20,000 for each surviving internee of Japanese ancestry at the time of the internment. The apologies were delivered by three successive presidents. Id.

88) Letter from U.S. President H.W. Bush to surviving internees (Oct. 9, 1991)

89) See Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 17; Eric K. Yamamoto, *Friend, Foe or Something Else: Social Meanings of Redress and Reparations*, 20 *DENV. J. INT'L. L. & POL'Y* 223 (1992).

90) See ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATIONS: LAW AND THE JAPANESE AMERICAN INTERNMENT*, 323-24 (2013).

91) See supra notes 25 and 26.

92) See companion article in this journal, *Human Rights and Reparative Justice: The 2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the Coram Nobis Japanese American WWII Incarceration Cases*.

93) Kim Min-kyoung, *Retrials To Be Held For Victims Of Illegal Detention and Torture During Jeju Uprising*, HANKYOREH (Sept. 4, 2018), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/860653.html](http://english.hani.co.kr/arti/english_edition/e_national/860653.html).

94) Id.

survivors' oral testimonies and submission of the two translated chapters of Professor Yamamoto's book on the 1983 U.S. *coram nobis* reopenings of the WWII convictions of Japanese Americans mass incarceration resistors as international precedent.<sup>95</sup> The factual circumstances of Jeju 4.3 differ from the World War II Japanese American incarceration. Additionally, South Korea and the United States have different legal systems.<sup>96</sup> Yet as in the U.S. *coram nobis* reopenings, the Jeju court conducted retrials of the eighteen survivors' criminal charges in late 2018.<sup>97</sup> Should the Jeju District Court decide to vacate those wrongful convictions from personal and family records—a decision based on the law and highly compelling evidence—4.3 survivors could be brought far closer to sustained social healing. Especially if that important judicial act is then accompanied by something especially significant: a genuine, official apology.

For Im Jae-song, one of the attorneys representing the eighteen survivors, the “important thing [is not about] money but restoring reputations, [as] asking for damages can create misunderstandings.”<sup>98</sup> For the survivors, “former inmates themselves who are mostly in their 80s and 90s” and are “living witnesses of the [4.3] truth,”<sup>99</sup> the “process of speaking about the injustice [they] suffered and convincing the court to launch a retrial [using] their own voice was itself a kind of healing.”<sup>100</sup> During the first retrials in late October 2018 to “clear their names before they die,” survivors testified that it was “not too late [for the court] to make things right.”<sup>101</sup> Yet even then, attorney Im seemed to acknowledge that the retrials alone would not be enough. Im stressed the significance of continued efforts to “provide a remedy for all [] former inmates,” not just the eighteen petitioners.<sup>102</sup>

Delivering a sincere, official apology to the individual petitioners and to all others similarly convicted, as well as to families of those who are no longer alive, would be a vital piece of this remedy—the continuing reparative justice effort. And although it would need to be determined who

would most appropriately make this official apology, that apology might have its intended impact if it is informed by social healing through justice principles. That type of apology would encompass aspects of each of the Four Rs—recognition, responsibility and reconstruction, with a promise of reparation. It may first address the historical causes and present-day consequences stemming from the injustice. It might then acknowledge and accept responsibility for the harms, even without direct participation or knowing complicity, to repair damage to individuals and communities. It could also commit participants to reconstructive acts, including official apologies, changes in laws, policies and practices and reframing the historical narrative. Finally, it might promise reparative actions, such as monetary compensation for individuals and communities in need, rehabilitation for survivors and invalidation of wrongful convictions.<sup>103</sup>

A tailored 4.3 apology therefore could: 1) specifically acknowledge the wrongful convictions and the suffering of people wrongfully convicted; 2) identify the people wrongfully convicted; 3) offer to repair the emotional, physical, social and possibly financial damage traceable to the wrongful convictions; and 4) affirm the legal system's commitment to the rule of law for future cases.<sup>104</sup> Most important, it would reaffirm that remembrance is needed to further the healing process because wounds of injustice do not simply vanish. Individuals who have suffered can never simply “forgive and forget.”

This kind of apology, then, would be significant for comprehensive and enduring social healing for Jeju people and for South Korea as a democracy. It would potentially provide an opportunity for redemption for past wrongs. And it would demonstrate that its government, as a democracy, is self-correcting, thereby bolstering its moral foundation for international commitments to civil and human rights.<sup>105</sup>

It might also present a joint opportunity for South Korea and the United States to substantially advance Jeju 4.3 social healing through justice. An official apology would send a global message that all responsible in some fashion for Jeju 4.3—whether through direct action, complicity or receipt of benefits—must engage even belatedly in the interactive enterprise of social healing “by doing justice.” This encompasses the United

95) Interview with Ko Chang-hoon, Professor, Jeju National University (Feb. 7, 2018).

96) See companion article in this journal, Human Rights and Reparative Justice: The 2018 Reopening of the Jeju 4.3 Mass Convictions Through the Lens of the *Coram Nobis* Japanese American WWII Incarceration Cases (containing a fuller description of U.S. responsibility).

97) At the time of this article's writing, Judge Chang had yet to render a final decision on the retrials.

98) Kim Min-kyoung, Retrials to begin for 18 former inmates incarcerated after Jeju Uprising in 1948, HANKYOREH (Oct. 29, 2018), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/867861.html](http://english.hani.co.kr/arti/english_edition/e_national/867861.html).

99) *Id.* (quoting Reporter Kim Min-kyoung).

100) *Id.* (quoting Attorney Im Jae-song).

101) *Id.* (quoting Reporter Kim Min-kyoung).

102) *Id.* (quoting Attorney Im Jae-song).

103) See *supra* notes 4–70 and accompanying text (Sections II–IV).

104) See *supra* notes 42–46 and accompanying text.

105) See Yamamoto & Obrey, Reframing Redress, *supra* note 7, at 39–42. A genuine and more complete apology could further South Korea's efforts to bolster democratic legitimacy. *Id.*

States. And that kind of joint venture or mutual engagement (a key social healing principle) would likely be significant because the 2003 National 4.3 Committee's Report indicated that the United States apparently bore partial responsibility for Jeju 4.3 events. According to the Report, "United States military leaders gave direct orders that initiated early 4.3 events."<sup>106</sup> This was followed by close U.S. oversight."<sup>107</sup> The full and appropriate extent of U.S. responsibility, however, remains to be determined. The United States did not participate in the National 4.3 Committee's investigation or in the reconciliation initiative that followed.<sup>108</sup> For these reasons, determining the extent of U.S. participation in next steps toward 4.3 social healing—whether an acknowledgement, a tailored apology or something else—will be significant for the 4.3 healing process.<sup>109</sup>

An apology incorporating social healing through justice principles could potentially foster comprehensive and enduring Jeju 4.3 social healing—as the U.S. presidential apology for World War II mass incarceration similarly did for Japanese Americans. After the 1980s U.S. *coram nobis* reopenings invalidated the resisters' 40-year-old convictions, one Japanese American woman said that she had "always felt the interment was wrong, but that, after being told by the military, the President and the courts that it was a necessity, she had come seriously to doubt herself. The president's apology, accompanied by reparations, she said, had now "freed my soul."<sup>110</sup>

For survivors of the 4.3 tragedy generally and the 4.3 wrongful convictions specifically, to "restore [their] reputations,"<sup>111</sup> it is "not too late [for the Jeju

district court to clear their names before they die and] make things right."<sup>112</sup> In petitioner-survivor Kim Pyeong-guk's words, "I need to say this. If I don't, I will regret it bitterly. I was taken and beaten severely during the 4.3 Incident. I thought I would be forgotten, but your [collective] efforts [make] people like me known to the world."<sup>113</sup>

To advance next steps toward comprehensive and enduring social healing through justice, the time may be ripe for all involved not only to clear the survivors' records, but also the taint on all the victims of the grand tragedy. The time is ripe to apologize and "free their souls."

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## POSTSCRIPT

As this essay headed for publication in December 2018, the Jeju District Court concluded the retrials of the eighteen Jeju 4.3 survivors. Following five pre-trial questioning sessions and four hearings, Judge Chang reviewed the survivors' testimony and allowed the prosecution to present new evidence. Judge Chang then heard the defense and prosecution's closing arguments. The survivors' attorney Im Jae-seong urged the court to dismiss the indictments against all eighteen defendants.

The military courts-martial of 1948 and 1949 were trials in violation of the law, based on torture and illegal detention without any evidence whatsoever. The guilty rulings at the time was a case of civilians during Jeju April 3 being framed as 'the enemy' and of trials being used as a way of 'handling the enemy,' without upholding even the minimum standards that should be observed in judicial proceedings in a civilized country. [The unfair incarceration of the eighteen defendants were] death sentences executed by means of the law rather than guns ... [T]he people convicted should be found not guilty or have their indictments dismissed.<sup>114</sup>

And in a rare moment of history and law, the defense and prosecution were united in their desire

106) See TRANSLATED REPORT, supra note 48, at 238–52 (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). See also Yamamoto et al., *Unfinished Business*, supra note 13, at 58.

107) See TRANSLATED REPORT, supra note 48, at 333, 341 (describing the U.S. role in the "scorched-earth" operations). See also GEORGE KATSIAFICAS, *ASIA'S UNKNOWN UPRISINGS, VOL. 1: SOUTH KOREAN SOCIAL MOVEMENTS IN THE 20TH CENTURY* 66 (2012); 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> (considering the role of the U.S. in Jeju 4.3 events).

108) See Yamamoto et al., *Unfinished Business*, supra note 13.

109) See Sang-Soo Hur, *Truth and Reconciliation of National Committee Report Comparing Critical Points of Jeju April 3rd Grand Tragedy* (May 30, 2105 in Seoul), in *JEJU 4.3 GRAND TRAGEDY DURING 'PEACETIME' KOREA: THE ASIA PACIFIC CONTEXT (1947–2016)*, 177–89 (2018); Chang Hoon Ko, *A New Look at Jeju 4.3 Grand Tragedy during 'Peacetime' Korea: A Journey From Tragedy to World Peace Island*, in *JEJU 4.3 GRAND TRAGEDY DURING 'PEACETIME' KOREA: THE ASIA PACIFIC CONTEXT (1947–2016)*, 11–147 (2018).

110) Eric K. Yamamoto, *Friend, Foe or Something Else: Social Meanings of Redress and Reparations*, 20 *DENV. J. INTL. L. & POL'Y* 223 (1992).

111) Kim Min-kyung, *Former Prisoners Request Retrial in Jeju Uprising cases*, HANKYOREH (Mar. 25, 2018), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/837521.html](http://english.hani.co.kr/arti/english_edition/e_national/837521.html).

112) *Id.* (quoting Reporter Kim Min-kyoung).

113) Yang Dong-yun et al., supra note 31, at 74.

114) Kim Min-kyoung, *Prosecutors Request Dismissal of Indictments Against Defendants Connected with Jeju Uprising*, HANKYOREH (Dec. 18, 2018), [http://english.hani.co.kr/arti/english\\_edition/e\\_national/874894.html](http://english.hani.co.kr/arti/english_edition/e_national/874894.html) (quoting attorney Im Jae-seong).

to see the court right a historic wrong on behalf of both individual victims and society at large. Prosecutor Jeong Gwang-byeong, on behalf of the Jeju District Prosecutor's Office, asked the court to dismiss the indictments. The stories of the eighteen survivors moved the prosecution to confront the injustice of the 4.3 events in both an official and personal capacity. Jeong used his closing argument to deliver powerful words of recognition to the judge, the Jeju 4.3 survivors and the South Korea populace:

I have heard about the defendants' experience throughout the trial and examined records and literature from the time, and this has forced me personally to give deep consideration to the historical significance of the April 3 incidents and its effects on all Jeju residents, of which I was previously unaware ... What I realized in that process was a different version of the truth from what I had known and learned before. I learned that this place Jeju is mixed with the tears and spirits of countless family members who have wept in unspeakable pain for decades since losing their parents and children[.]<sup>115</sup>

Jeong also spoke of how the retrials had taken on another layer of meaning beyond procedure, becoming a "process of preserving [the survivors'] experience and memories for history while duly guaranteeing them their right to a trial according to the Constitution." Jeong concluded by voicing his wish that the retrials be used to further heal the persisting wounds of and repair the lingering damage to all who suffered "inerasable wounds to their bodies and minds and who have endured lives of frustration and tears."<sup>116</sup>

During oral testimonies, petitioner-survivor Kim Pyeong-guk, from her wheelchair, described how she was "beaten like a dog by the police" for three days.<sup>117</sup> After she was falsely convicted for "rebellion" and imprisoned for a year, Kim endured a life of tears and frustration, choosing "to marry far away out of 'shame over having been in prison'" despite her innocence.<sup>118</sup> As described in the epigraph, in her final statement to the court, Kim asked Judge Chang to "help ensure for my grandchildren that there is no record stating that their grandmother has a criminal history and spent time in prison."<sup>119</sup> Petitioner-survivor Yang Geun-bang, on behalf of all the defendants, added that "the path we have traveled to this point has been a tremendously perilous and difficult [one]. What the

18 of us want is to be acquitted [and to receive an official apology]."<sup>120</sup>

Judge Chang is scheduled to make his final ruling in January 2019. A salutary—and just—outcome would be the dismissal of the survivors' indictments or an acquittal on the merits, clearing their criminal records and symbolically clearing the records of all victims of the Jeju 4.3 violence. As a crucial aspect of reparative justice, this ruling would mark a significant step forward in the Jeju 4.3 social healing process, just as the *coram nobis* rulings similarly did for Japanese Americans incarcerated en masse during World War II.<sup>121</sup>

But, as defense attorney Im acknowledged by emphasizing the need to pass a special law, Judge Chang's ruling would not mark the end of the Jeju 4.3 social healing initiative. It would advance the healing process, but also uplift the importance of another needed next step: a forthcoming, official tailored apology to the surviving victims and their families. The defense and prosecution's mutual recognition of past and continuing harms, and the prosecution's acceptance of responsibility to act, commits both parties to a collective process of reconstruction and specific reparative acts.<sup>122</sup> A genuine, official apology could thus be the catalyst for further healing.<sup>123</sup>

Should Judge Chang decide to dismiss the indictments, that decision would generate a new justice narrative about South Korea and highlight its government as a constitutional checks-and-balances democracy committed to civil and human rights.<sup>124</sup> Accompanied by genuine apologies engendering a measure of forgiveness, it would also bring 4.3 survivors another step closer to comprehensive and enduring social healing through justice.

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115) Id. (quoting prosecutor Jeong Gwang-byeong).

116) Id.

117) See Kim Min-kyung, Former Prisoners Request Retrial in Jeju Uprising Cases, HANKYOREH (Mar. 25, 2018) [http://english.hani.co.kr/arti/english\\_edition/e\\_national/837521.html](http://english.hani.co.kr/arti/english_edition/e_national/837521.html).

118) Id.

119) Kim, supra note 114 (quoting petitioner-survivor Kim Pyeong-guk).

120) Id. (quoting petitioner-survivor Yang Geun-bang).

121) *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984) (granting *Korematsu's* writ of *coram nobis* petition).

122) YAMAMOTO, *INTERRACIAL JUSTICE*, supra note 5, at 153–71, 185–90.

123) See Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 33. See Jonathan R. Cohen, *Coping With Lasting Social Injustice*, 13 WASH. & LEE J. CIV. RTS. AND SOC. JUST. 259, 253 (2007); M. Brinton Lykes and Marcie Mersky, *Reparations and Mental Health: Psychosocial Interventions Toward Healing, Human Agency, and Rethreading Social Realities*, in *THE HANDBOOK OF REPARATIONS*, 589 (Pablo de Greif ed., 2007).

124) See Yamamoto & Obrey, *Reframing Redress*, supra note 7, at 35.