

## FOREWORD

### BEGIN WITH ADMITTING INHUMANITY

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Martha Minow\*

*Humanity begins with admitting inhumanity.*  
– Abhijit Naskar<sup>1</sup>

What does it take to survive and move forward after your community has lost one out of every six people?<sup>2</sup> Terrible questions like this confront communities that have suffered massive natural disasters and wars.<sup>3</sup> When the killings, torture, and rapes are at the hands of the national government itself, the losses and the suffering are immeasurably compounded by betrayal and enduring distrust. And, when one of the most powerful nations in the world was also involved and partially responsible for deploying organizations to terrorize civilians and train counterinsurgent forces, and for providing military support and supplies, what justice, what amends can there be? These questions are at the center of Professor Eric K. Yamamoto's outstanding book, *Healing the Persisting Wounds of Historic Injustice*:

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1. ABHIJIT NASKAR, *HOMETOWN HUMAN: TO LIVE FOR SOIL AND SOCIETY* 83 (2021).

2. See ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY* 12 (2021) (“By 1949, the violence [known as the Jeju 4.3 Incident/Tragedy] left ‘one in every five or six islanders’ dead and ‘more than half the villages’ destroyed”) (quoting BRUCE CUMINGS, *THE KOREAN WAR: A HISTORY* 130 (2010)).

3. On community destruction, see generally KAI T. ERIKSON, *EVERYTHING IN ITS PATH: DESTRUCTION OF COMMUNITY IN THE BUFFALO CREEK FLOOD* (1978); GERALD M. STERN, *THE BUFFALO CREEK DISASTER: THE STORY OF THE SURVIVORS’ UNPRECEDENTED LAWSUIT* (1976). On mental health and other issues following natural disasters, see generally DEBORAH J. DEWOLFE, *TRAINING MANUAL FOR MENTAL HEALTH AND HUMAN SERVICE WORKERS IN MAJOR DISASTERS* (Diana Nordboe ed., 2nd ed. 2000).

*United States, South Korea and the Jeju 4.3 Tragedy*.<sup>4</sup> Indeed, questions along these lines inspire the vital writings and decades of hands-on work of its author, Professor Yamamoto.

With its detailed accounts and analyses of events and responses, the book is itself an act of acknowledgment and commemoration. It specifically addresses the terrible human suffering stemming from a series of armed conflicts on Jeju Island following the political division of Korea. Grounded in this history, the book constructs a powerful and detailed framework for assessing and strengthening justice initiatives while attending to personal healing and societal repair. The book integrates vivid resources from history, law, theology, social psychology, political theory, economics, and varied cultural traditions. It is a major scholarly and practical contribution at the intersection of conflict resolution, peace-building, and social justice that synthesizes and advances work under the rubric of restorative and transformative justice.<sup>5</sup>

The search for restorative and transformative justice in settings ranging from local schools, criminal courts, and intimate sexual abuse contexts to national and global conflicts reflects growing recognition of human suffering and trauma in relationships persisting over long periods of time.<sup>6</sup> Some seek restorative justice to make visible and palpable the wrongs that have been denied or neglected by government leaders and others in power. People pursue restorative approaches 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. Very often, even a seemingly discrete conflict is embedded in chains of events and structures that embody longstanding mistreatment and injustices that persist even after a court case or a peace treaty. The task of finding ways to respond to longstanding

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4. *See generally* YAMAMOTO, *supra* note 2.

5. *See generally* FANIA E. DAVIS, *THE LITTLE BOOK OF RACE AND RESTORATIVE JUSTICE: BLACK LIVES, HEALING, AND US SOCIAL TRANSFORMATION* (2019) (discussing subjects of pervasive racial inequity and the healing offered by restorative justice practices); *RESTORING JUSTICE AFTER LARGE-SCALE VIOLENT CONFLICTS: KOSOVO, DR CONGO AND THE ISRAELI-PALESTINIAN CASE* (Ivo Aertsen et al. eds., 2008) (providing a comprehensive analysis of various approaches to restorative justice and mass victimization).

6. *See, e.g.*, JOHN BRAITHWAITE, *RESTORATIVE JUSTICE AND RESPONSIVE REGULATION* (2002) (summarizing the evidence on the effectiveness of restorative justice); SHERRILYN A. IFILL, *ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY* (2007) (examining how racial trauma from the 1890-1960 lynching of nearly 5,000 black Americans still persists in the United States); MARTHA MINOW, *WHEN SHOULD LAW FORGIVE?* (2019) (discussing the thorny complexities of forgiveness under the law); Samuel Y. Song et. al., *Restorative Consultation in Schools: A Systematic Review and Call for Restorative Justice Science to Promote Anti-Racism and Social Justice*, 30 J. EDUC. AND PSYCH. CONSULTATION (2020) (noting the importance of restorative consultation, anti-racism, and advocacy in the pursuit of restorative justice).

injustices holds immediate relevance in the United States and many other parts of the world. This symposium is one of the many concentric circles of meaningful theoretical and practical influences the book can and should generate.

Professor Yamamoto's book and the essays responding to it examine the crucial roles of personal and societal confrontation with the facts of particular atrocities, governmental acknowledgments and apologies, and continuing commemoration projects. Also, the book and responding essays examine materials and political initiatives of redress, including structural changes to prevent the recurrence of massive human rights violations. No less important are the discussions of meaning-making by individuals and groups that offer some basis for individuals and the community to move forward.

South Korea's 2000 Jeju 4.3 Special Law launched many of these elements, and that is one reason observers give for its greater success when compared with other truth and reconciliation initiatives.<sup>7</sup> Professor Yamamoto emphasizes that reparative work cannot, and should not, supplant political and legal reorganization and reforms to alter the governance institutions that enable oppression.<sup>8</sup> With steady attention to the contribution of social structures, as well as the emotional journeys of individuals, Professor Yamamoto emphasizes how both words and actions must be elements of social healing work to demonstrate that justice is actually being done, and how it is being carried out. He argues that genuine social healing requires addressing actual inequities.<sup>9</sup>

By warning about the risk of incomplete or failed reconstructive efforts, Professor Yamamoto calls attention to "tepid or partial efforts [acting] as attempts to acquire 'cheap grace' or to deflect or even subvert" efforts for structural, systemic changes. With this warning, his work underscores how reparative work must anticipate and plan for pushback, mistrust, and failures, including falsified grievances and narratives by people who resist repair and social change.<sup>10</sup> Professor Yamamoto offers insights into the difficulties many people have in accepting responsibility for past injustices that they did

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7. See Hun Joon Kim, *Truth Commissions in South Korea: Lessons Learned*, MIDDLE EAST INST. (Dec. 20, 2013), <https://www.mei.edu/publications/truth-commissions-south-korea-lessons-learned> [<https://perma.cc/3F5B-E3XH>]; see also Myung-Lim Park, *Towards a Universal Model of Reconciliation: The Case of the Jeju 4.3 Incident*, 9 J. KOREAN RELIGIONS 105, 105 (2018).

8. See YAMAMOTO, *supra* note 2, at 24, 46.

9. *Id.* at 24, 72. Empirical research in commercial contexts indicates that apologies coupled with a material benefit—such as a gift certificate—generate greater consumer loyalty “because a gesture of remorse paired with a small material sacrifice demonstrated to customers that they are worth fighting for.” JOHN A. LIST, *THE VOLTAGE EFFECT: HOW TO MAKE GOOD IDEAS GREAT AND GREAT IDEAS SCALE* 225 (2022).

10. YAMAMOTO, *supra* note 2, at 25, 77-78.

not personally cause.<sup>11</sup> Summoning a society's positive commitments—such as commitments to human rights and decency—can help. It can also be helpful for individuals and groups to acknowledge the benefits they experience from unjust practices that can extend over time and extend even to people who had no involvement at the start.<sup>12</sup> On these points, and indeed in many portions of the book, Professor Yamamoto offers advice that feels both immediately helpful and visionary.

The dual levels of practicality and vision are amplified and developed in the thoughtful contributions gathered by the symposium authors here. Natsu Taylor Saito draws on deep knowledge of Jeju's history. She underscores the suppression of local social justice movements by the governments of South Korea and the United States. Even while examining reparative efforts both governments can take, she stresses that “community-based empowerment does not require governmental approval.”<sup>13</sup>

Rebecca Tsosie examines how the framework offered in *Healing the Persisting Wounds of Historic Injustice* could apply to Canadian survivors of residential boarding schools and their families as Canada grapples with its treatment of Indigenous peoples. Professor Tsosie also considers implications for the United States, which has made less progress in addressing the legacies of American Indian boarding schools.<sup>14</sup> Her analysis underscores a predicate for social healing work: members of groups across society must share an interest in establishing peaceful and productive relationships in a reconstructed society. She also emphasizes that to be effective, restorative work should focus not only on past injustice but also on human rights notions of accountability in the past, present, and future.

Professor Margaret Russell finds resources in the work of Professor Yamamoto to confront the extermination of Indians in California by state-sponsored genocide.<sup>15</sup> She exposes the conflict between the truth of the past and the misinformed narratives still taught in schools about the origins of the Golden State. Examining steps already taken and others to come, her essay highlights the work of the California Truth and Healing Council in

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11. *Id.* at 82-84.

12. *Id.* at 13.

13. Natsu Taylor Saito, *Truth, Healing, Empowerment: Eric Yamamoto on Reparative Justice for the People of Jeju*, 52 SW. L. REV. 9, 10 (2023).

14. Rebecca Tsosie, *Accountability for the Harms of Indigenous Boarding Schools: The Challenge of “Healing the Persisting Wounds” of “Historic Injustice,”* 52 SW. L. REV. 20, 21 (2023).

15. Margaret M. Russell, *Bringing to Light: Reflections on Professor Yamamoto’s “Social Healing Through Justice” and The Potential of the California Truth & Healing Council*, 52 SW. L. REV. 40, 44-47 (2023).

addressing the persisting wounds of historical injustice and amplifying Native American voices and experiences.

In her essay, Susan Serrano examines the control and use of Hawai‘i’s tallest mountain, Kānaka Maoli.<sup>16</sup> For decades, scientists have sought the use of the mountain for astrophysics research, while Native Hawaiians have opposed the creation of observatories and the telescope project on the grounds that they would create religious and cultural desecration. A divided Hawai‘i Supreme Court decided to allow the construction of a \$1.4 billion segmented mirror-reflecting telescope.<sup>17</sup> Professor Serrano distinguishes the narrowness of conventional legal reasoning from the breadth of social healing work as elaborated by Professor Yamamoto.<sup>18</sup> This social healing work requires recognition, responsibility, reconstruction, reparation, and remaking institutions and relationships to repair the material harms of injustice while rebuilding the capacities of those harmed. Attentive to ongoing claims of cultural interference, Professor Serrano identifies potentially promising but still unproven paths forward.

Also attending to issues in Hawai‘i, Professor Andrade draws upon the framework for social healing through justice in confronting the illegal overthrow of the Kingdom of Hawai‘i, the loss of self-determination, land, culture, and language, and the advances and limitations represented by the State of Hawai‘i’s efforts in the late 1970s to reconcile with Native Hawaiians.<sup>19</sup> As he notes, “the victory of Hawaiian advancement in state governance was quickly dampened by a swift backlash—not by the public, but by politicians.”<sup>20</sup> His analysis demonstrates the importance of steady focus on political organizing and pressure as well as cultural and spiritual work. It also illuminates how important it is to anticipate backlash. Further, it calls for ensuring that survivors of injustice have seats “at the table” and participate as key stakeholders in shaping responses and policies going forward.

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16. Susan K. Serrano, *A Social Healing Approach to Native Hawaiian Claims: Law and Resistance at Maunkea*, 52 SW. L. REV. 50, 50-54 (2023).

17. Ruben Kimmelman, *Hawaii’s Supreme Court OKs Construction of Giant Telescope Despite Native Objections*, NPR (Nov. 1, 2018), <https://www.npr.org/2018/11/01/662603605/hawaii-supreme-court-oks-construction-of-giant-telescope-despite-native-objecti> [<https://perma.cc/JQ88-L944>] (discussing court permission for the Thirty Meter Telescope project).

18. See generally YAMAMOTO, *supra* note 2; Serrano, *supra* note 16, at 54-56 (contrasting Professor Yamamoto’s social healing framework against conventional legal reasoning).

19. Troy J.H. Andrade, *Pūpūka‘i I Holomua: Critical Lessons of Social Healing Through Justice for Native Hawaiians*, 52 SW. L. REV. 67 (2023).

20. *Id.* at 76.

Greg Robinson provides rich comparisons of the struggles for redress and reparations in Canada and the United States. His work presents a striking contrast in seemingly similar reparative efforts. The post-World War II movement for reparations by Japanese Canadians started small and grew more universalistic—informing same-sex marriage laws, for example. In contrast, the movement for redress by Japanese Americans over time did not expand to connect with other issues and groups.<sup>21</sup>

Zeroing in on the role of the United States in the massacres, Sang-Soo Hur provides a detailed historical account and an analysis of the violations of international law at stake.<sup>22</sup> This contribution also asks whether the United States can redeem its claims to be a democratic, human rights protecting, and civilized nation. The potential path forward available to the United States is to engage in the kinds of truth-telling and reparative work framed by Professor Yamamoto.

Professor Kunihiko Yoshida's contribution reflects on a decade of joint efforts connecting Jeju University, Hokkaido University, and the peace islands' network organization.<sup>23</sup> Noting the connections between past and current violent conflicts, this reflection urges continuing engagement by Japanese scholars in both the Jeju tragedy and the challenges of restorative work. It also underscores the importance of involvement and acknowledgment by the United States in that work, even as it urges students, scholars, communities, and governments to "take seriously the war and environmental crisis and confront it together."<sup>24</sup>

Ruben Carranza urges attention to the ideological assumptions built into transitional justice efforts, either by funders or by political contexts.<sup>25</sup> Even the process of healing can be weaponized as part of political projects: Carranza observes how Peru's reparations law for victims of Maoist rebels excluded "members of subversive organizations' from being defined as victims and receiving benefits, even if they had been tortured or suffered other serious crimes."<sup>26</sup> The political context constraints the scope and timing of restorative efforts. Carranza quotes Ford Foundation president

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

22. 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 (2023).

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

24. *Id.* at 119.

25. 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 (2023).

26. *Id.* at 138.

Darren Walker: ““Our exceptionalism impairs our capacity to do the truth-telling.””<sup>27</sup> Lastly, Carranza offers insights from relevant comparative transitional justice examples in which the United States (or some other empire or colonizer implicated in atrocities during conflict or under authoritarian rule) was asked to address victims’ demands for acknowledgement and reparations.<sup>28</sup> These insights are not only possible because of lessons from experiences elsewhere, but also because of lessons shared by the survivors, victims’ families, and advocates of Jeju 4.3 reparations to those who work in the field of transitional justice.

So many human cruelties defy comprehension. So many terrible events resist resolution. Individual survivors and their descendants live with unacknowledged and unremedied harms. Consider the residential schools designed to assimilate Indigenous youth in North America. The schools used government power to brutally rip children from their families, communities, languages, and cultures. In Canadian schools, thousands of children died, and innumerable students endured physical and sexual abuse at the hands of their supposed teachers and caregivers. Their communities remain scarred and injured by the forcible removal of the children from their families and planned decimation of languages and cultures. As part of a settlement for the largest class-action suit in Canadian history, the national government created a Truth and Reconciliation Commission to address these issues, interviewed approximately 6,500 witnesses, produced a written record of its findings, and presented ninety-four recommendations for action in pursuit of reconciliation between Native and other Canadian communities.<sup>29</sup> This is hard work for individuals and communities, be it survivors, their descendants, or others. This is also hard work for families and government actors. Much work is to be done.<sup>30</sup>

Pope Francis traveled to Canada in July of 2022, where he apologized to Indigenous communities for the Catholic Church’s role in the residential school system.<sup>31</sup> After the Pope’s apology, Si Pih Ko, a Cree singer, sang a

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27. *Id.* at 136.

28. *Id.* at 127-28.

29. Government of Canada, *Truth and Reconciliation Commission of Canada* (last modified Sept. 29, 2022), <https://www.rcaanc-cirmac.gc.ca/eng/1450124405592/1529106060525> [<https://perma.cc/UP4C-SA8D>].

30. *See Adoption and Return with Sandy White Hawk*, SAFE SPACE RADIO (Oct. 9, 2016), <https://safespaceradio.com/adoption-and-return/> [<https://perma.cc/GN8S-M5FE>] (interview with a member of the Rosebud Sioux Tribe who was removed from her family and heritage and adopted at 18 months by a white family and addresses resulting trauma and efforts to reclaim her identity).

31. Ian Austen & Elisabetta Povoledo, *Pope Francis is Expected to Deliver an Apology Long Demanded by Canada’s Indigenous Communities*, N.Y. TIMES (July 25, 2022), <https://www.nytimes.com/2022/07/25/world/canada/pope-francis-to-deliver-an-apology-long-demanded-by-canadas-indigenous-communities.html> [<https://perma.cc/NE9E-W37Q>]; *see also*

powerful song in a language that would have been forbidden in residential schools.<sup>32</sup> Later, she smiled and said: “I’m on my healing journey.”<sup>33</sup> Individuals find strength not only to go forward but to thrive, but what is possible for groups and whole societies? Will reconciliation be truly possible—and will there be steps to prevent future atrocities?<sup>34</sup> Will the Church’s “doctrine of discovery,” which provides the mantle for such efforts, be repudiated?<sup>35</sup> Returning to the Jeju atrocities at the center of Professor Yamamoto’s book, will the United States participate in further steps toward reparative justice in South Korea?<sup>36</sup> This symposium and the book it addresses offer instructive, detailed guidance and probing questions critical to creating human futures following inhuman atrocities.

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Ryan Patrick Jones, *Ottawa Archbishop Apologizes for Catholic Church’s Role in Residential School System*, CBC NEWS (June 21, 2021, 2:15 PM), <https://www.cbc.ca/news/canada/ottawa/archbishop-apology-residential-schools-1.6073733> [<https://perma.cc/6VLF-MQQR>].

32. Miles Morrisseau, *Papal Visit: Singer at Peace After Captivating World with Protest Song ‘For the Love of the Children,’ She Sang in Cree, After the Pope’s Apology*, INDIAN COUNTRY TODAY (July 28, 2022), <https://indiancountrytoday.com/news/papal-visit-singer-at-peace-after-captivating-world-with-protest-song> [<https://perma.cc/3LU8-XT4J>].

33. *Id.*

34. Religious conceptions suggest that many more steps, many beyond human power, are necessary. See Kevin P. Considine, Opinion, *Pope Francis’ Apology to Indigenous Canadians Opened Door to Reconciliation*, NAT. CATH. REP. (Aug. 2, 2022), <https://www.ncronline.org/news/opinion/pope-francis-apology-indigenous-canadians-opened-door-reconciliation> [<https://perma.cc/26HL-YZXR>].

35. Aleem Maqbool, *Pope Francis: Did the Pontiff’s Apology Go Far Enough?*, BBC NEWS (July 30, 2022), <https://www.bbc.com/news/world-us-canada-62353811> [<https://perma.cc/LGC5-7LQL>]. The Catholic Church blessed the European explorers who “discovered,” and exploited lands already inhabited by non-Christians. See Tim Perron, *Explainer: ‘The Doctrine of Discovery’ and how the Catholic Church May Officially Reject It*, AMERICA: THE JESUIT REV. (Oct. 24, 2022), <https://www.americamagazine.org/faith/2022/10/24/doctrine-discovery-pope-francis-244009> [<https://perma.cc/4D85-3XVA>].

36. See generally YAMAMOTO, *supra* note 2 (examining conditions of domestic and international legitimacy, politics, financial, and legal dimensions that would make participation in a healing process beneficial for both the United States and South Korea).