

Korean “Comfort Women” Redress 2012 Through the Lens of U.S. Civil and Human Rights Reparatory Justice Experiences

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Abstract

In light of international scrutiny, what might be next steps toward redress for the Korean and other World War II Military Sex Slaves, in terms of strategic framing of their claims to reparatory justice? More particularly, viewed through a lens of American redress experiences, and particularly the U.S. apology and reparations for the Japanese American World War II internment, what might human rights tenets of reparatory justice offer established governments faced with challenges to their legitimacy as democracies in the face of unredressed human rights transgressions?

Redressing the wounds of injustice has become a matter central to the future of civil societies. Whether a country heals persisting wounds is increasingly viewed as integral, (1) domestically, to enabling it to deal with pain, guilt and division linked to its past in order to now live peaceably and work productively, and (2) globally, to claiming legitimacy as a democracy genuinely committed to human rights (which affects a country's standing on international security and responsible economic development.) People and governments – especially democracies with histories of human rights abuses– all have a stake in justice that repairs.

This larger stake in democratic legitimacy that a country like Japan has – especially as it seeks to expand its influence in international security – lies at the heart of this assessment of strategic future paths toward “Comfort Women” redress.

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** I have changed the form of the first two footnotes from numbering to asterisks.

I. Prologue

“I can no longer tolerate the lies of the Japanese government”

-Kim Hak-Sun¹⁾

Kim Hak-Sun’s words ring in the ears of many Americans of Asian ancestry. As we understand it, during World War II the Japanese military coerced 200,000 mainly Asian women into sexual slavery. For decades Japan’s leaders denied this reality. The mostly Korean former sex slaves (euphemistically referred to as “comfort women”) lived in purgatory, with their horrific suffering masked by official government denial of their very existence.²⁾

1) ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG, & FRANK H. WU, *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 435 (2001) [hereinafter *RACE, RIGHTS AND REPARATION*] (2nd ed. forthcoming 2013); Cheah Wui Ling, *Walking the Long Road in Solidarity and Hope: A Case Study of the “Comfort Women” Movement’s Deployment of Human Rights Discourse*, 22 HARV. HUM. RTS. J. 63 (2009) (“Angry over the Japanese government’s denial, then 69-year-old Kim Hak Sun from South Korea became the first former “comfort woman” to publicly speak about her experiences, testifying to the Japanese military’s involvement in the “comfort women” system”).

2) See generally Harry N. Scheiber, *Stefan A. Riesenfeld Symposium 2001: Taking Responsibility: Moral and Historical Perspectives on the Japanese War-Reparations Issues*, 20 BERKELEY J. INT’L L. 233, 235 (2002) (“successive Japanese governments engaged in systematic denial of . . . the existence of the sex-slave “comfort-women” program”); James Ladino, *Ianfu: No Comfort Yet For Korean Comfort Women And The Impact Of House Resolution 121*, 15 CARDOZO J.L. & GENDER 333, 337 (2009) (“Japan continued to misrepresent its history by excluding any mention of comfort women in textbooks”); Maki Arakawa, *A New Forum for Comfort Women: Fighting Japan in United States Federal Court*, 16 BERKELEY WOMEN’S L.J. 174, 181 (2001) (“The Japanese government initially denied any military or state involvement in the comfort stations Despite demands made by a Diet member and non-governmental organizations in 1990 to make disclosures regarding and appropriate reparations to the comfort women, the Japanese government continued to deny responsibility”); Susan Jenkins Vanderweert, *Seeking Justice for “Comfort” Women: Without an International Criminal Court, Suits Brought by World War II Sex Slaves of the Japanese Army May Find Their Best Hope of Success in U.S. Federal Courts*, 27 N.C.J. INT’L L. & COM. REG. 141, 152 (2001) (“After World War II, the Japanese military systematically destroyed all records relating to the abduction, housing, and use of sex slaves”); Kunihiro Yoshida, *Reparations and Reconciliation in East Asia as a Hot Issue of Tort Law in the 21st Century: Case Studies, Legal Issues, and Theoretical Framework*, 11 J. KOREAN L. 101, 112 (2011) (“former Premier Abe and other cabinet members denied the facts of coercion, and even the existence of the notorious institution itself in spite of numerous testimonies by

Amid the emergence of reparations movements worldwide in the 1990s, the former sex slaves brought their justice claims in Japan’s courts and then to the Japanese government and to international human rights communities.³⁾ Although Japan has denied their claims and has offered only limited apologies, the Comfort Women’s struggle for reparatory justice has been a key to changing worldwide consciousness about mass sexual violence against women during war.⁴⁾ Even as the surviving Comfort Women become fewer in number, their justice claims persist. They continue to garner support from Korea’s justice advocates and Constitutional Court and from countries and human rights groups worldwide, including the U.S. House of Representatives and Asian Americans involved in Japanese American internment redress.

In light of international scrutiny, progress and backsliding, what might be the next steps for the Comfort Women and their supporters, particularly in terms of strategic framing? More particularly, viewed through the lens of American redress experiences, what might human rights tenets of reparatory justice offer established governments faced with challenges to their legitimacy as genuine democracies in the face of unredressed historic human and civil rights transgressions?

comfort women. Against this backdrop, you can imagine how empty Abe’s expression of apology to George Bush sounded to the victims.”).

3) Kristl K. Ishikane, *Korean Sex Slaves’ Unfinished Journey for Justice: Reparations from the Japanese Government for the Institutionalized Enslavement and Mass Military Rapes of Korean Women During World War II*, 29 U. HAW. L. REV. 123, 127-128 (2006); Byoungwook Park, *Comfort Women During WWII: Are U.S. Courts a Final Resort for Justice?*, 17 AM. U. INT’L L. REV. 403, 408-13 (2002); Dana R. Gotfredsen, *Seeking Comfort In America: Why An Amendment To The Foreign Sovereign Immunities Act Is The Most Effective Means Of Holding Foreign Governments Accountable For Gender-Based Crimes*, 15 EMORY INT’L L. REV. 647 (2001); Afreen R. Ahmed, *The Shame of Hwang v. Japan: How the International Community Has Failed Asia’s “Comfort Women”*, 14 TEX. J. WOMEN & L. 121 (2004).

4) Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 Cal. W. L. Rev. 1, 61 (2007) [hereinafter *Crossroads*] (citing Joseph P. Nearey, *Seeking Reparations in the New Millenium: Will Japan Compensate the “Comfort Women” of World War II?*, 15 TEMP. INT’L & COMP. L.J. 121, 128 (2001)).

II. Introduction

This essay⁵⁾ addresses one piece of an analytical framework I have been developing for guiding and assessing reparatory justice initiatives generally. That framework is called “Social Healing Through Justice.”⁶⁾ It draws upon common tenets among several academic disciplines, including social psychology, theology, economics and political theory as well as law in order to help actualize the kind of justice that fosters social healing. That “healing” focuses on the psychological and financial wounds of those injured, their families and their immediate communities. At the same time it also targets repairing the damage to the larger society in terms of social divisions, guilt and diminished legitimacy as a democratic nation professedly but not actually committed to human rights.

With the “democratic legitimacy” piece of the framework in mind, and through a lens of U.S. redress experiences, this essay offers conceptual and strategic insights to assist scholars and advocates planning urgent next redress steps for the surviving Comfort Women and their families.

5) This article is based on a presentation at Seoul National University Law School—Reparations and Reconciliation between Korea and Japan Focusing on Comfort Women Issues, March 27, 2012. The presentation responded to organizers’ request for an assessment of the future paths toward Comfort Women’s redress particularly from a U.S. perspective. The article draws generally from the redress/reconciliation scholarship in ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (2000); ERIC K. Yamamoto & Michele Park Sonen, *Redress Bias?*, *IMPLICIT BIAS ACROSS THE LAW* 244 (Levinson & Smith eds., 2012) (hereinafter “Redress Bias?”); ERIC K. Yamamoto & Brian Mackintosh, *Redress and the Salience of Economic Justice*, Oxford F. Pub. Pol’y, Dec. 2010; ERIC K. Yamamoto & Ashley Kaiao Obrey, *Reframing Redress: A “Social Healing Through Justice” Approach to U. S.-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 *Asian Am. L.J.* 5 (2009) [hereinafter *Reframing Redress*]; *Crossroads*, *supra* note 4; ERIC K. Yamamoto & Liann Ebesugawa, *Report on Redress: The Japanese American Internment*, in *THE HANDBOOK OF REPARATIONS* 257 (Pablo de Greiff ed., 2006); ERIC K. Yamamoto, *Reluctant Redress: The U.S. Kidnapping and Internment of Japanese Latin Americans*, in *BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR* 132 (Martha Minow ed., 2002); ERIC K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 19 *B.C. L. Rev.* 477 (1997); ERIC K. Yamamoto, *Friend, Or Foe or Something Else: Social Meanings of Redress and Reparations*, 20 *DENV. J. INT’L L. & POL’Y* 223, 231 (1991) (hereinafter “Social Meanings of Redress”).

6) See generally *Reframing Redress*, *supra* note 5, at 28-42.

This essay draws upon both theory and practical experience⁷⁾—a praxis—to develop concepts and grounded insights not for their own sake but for scholars and advocates engaged in justice efforts.⁸⁾ With this as backdrop, the article assesses a future path toward Comfort Women’s redress as seen through the lens of both productive and flawed U.S. reparations and reconciliation initiatives and their linkage to democratic legitimacy.

III. U.S. Redress For Incarcerated Americans of Japanese Ancestry

As a prelude to the Korean Comfort Women redress movement, Japanese Americans struggled in courts and Congress for redress to hold the U.S. accountable for its World War II mass racial incarceration of 120,000 innocent Japanese Americans in harsh internment prisons based on the false, indeed fabricated, government claim of “military necessity.” This 1980s redress movement effectively announced, “We can no longer tolerate the lies of the American government.” In 1988 the U.S. committed to

7) In addition to the academic disciplines just mentioned, this assessment concerning Comfort Women redress, and the framework itself, are also informed by my work as scholar and lawyer on several reparatory justice initiatives, including litigating the reopening the World War II Japanese American internment case, *Korematsu v. U.S.* – which laid the legal cornerstone for legislative reparations; consulting on reconciliation initiatives between the United States and Native Hawaiians seeking self-governance and restoration of culture and homelands taken illegally by the U.S. as part of its late 19th century and 20th century colonization efforts; consulting on the indigenous Ainu claims for cultural resurrection, land return and fair treatment by Japan as result of Japan’s colonization of Hokkaido; serving as procedural specialist on the Filipino human rights reparations class action lawsuit against the former Ferdinand Marcos regime for political torture and murder and on the African American reparations suit for the 1921 Tulsa race riot resulting in death of many African Americans; and recently interacting with the family members, academics, officials and advocates on incomplete reconciliation/redress efforts concerning the late 1940s and early 1950s death and destruction on Jeju Island in part during U.S. occupation and later supervision.

8) Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997) (calling for serious scholars to engage with ground level justice initiatives to better inform progressive scholarship and create foundations for practical action).

comprehensive internment redress—a detailed acknowledgment of the violation of fundamental liberties, a presidential apology, individual reparations and far-reaching public education.⁹⁾

The 1988 U.S. Civil Liberties Act¹⁰⁾ drew upon on a revealing 500-page “truth commission” investigation recognizing that the United States wrongfully incarcerated 120,000 innocent Americans of Japanese ancestry in harsh prisons on a deliberately falsified claim of military necessity—destroying businesses, homes and families.¹¹⁾ Based on renewed litigation of the World War II internment cases in the 1980s and a finding that the race-based incarceration was caused by “wartime hysteria, race prejudice and a failure of political leadership,” the Congressional Act mandated a president’s letter of apology to each survivor, 1.4 billion dollars in symbolic payments to individuals and millions in financing for public education projects (including school books)¹²⁾ on the history and lessons of the mass racial incarceration.¹³⁾ The Civil Liberties Act was the first such comprehensive government redress initiative since Germany’s World War II Holocaust reparations¹⁴⁾—and the first ever by the United States.

On an individual level, redress was cathartic – a measure of dignity restored. Long-stigmatized with the taint of racial disloyalty, internment survivors for the first time could talk about their trauma, even with their children. One woman said she felt so much hurt, anger and loss that for forty years she could not speak of the imprisonment of her entire community by her own government—to anyone. But now, she said, the successful fight for redress in courts of both law and public opinion has “freed my soul.”¹⁵⁾

On a societal level, the internment redress process provided insights

9) See generally RACE, RIGHTS AND REPARATION, *supra* note 1.

10) Civil Liberties Act of 1988, 50 U.S.C. app. §§ 1989b-1-9 (2006).

11) COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED (1982).

12) RACE, RIGHTS AND REPARATION, *supra* note 1 (one such book for legal scholars and law students).

13) Yamamoto, *Reframing Redress*, *supra* note 5, at 17-18, 35.

14) (author?), HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY (Michael J. Bazylar & Roger P. Alford eds., 2006).

15) Yamamoto, *Racial Reparations*, *supra* note 5, at 517.

into the breakdown of democratic checks and balances during national distress. It revealed the extraordinary social cost of near-total court deference to executive branch and military curtailment of fundamental liberties under the false mantle of national security¹⁶⁾—of continuing importance after the September 11th attacks in America. And, as developed later, it opened the eyes of government and its populace to the political value of redress through its strategic linkage to a country’s claim to legitimacy as a democracy committed to civil and human rights—a claim often integral to a national government’s geopolitical influence.

Present-day reconciliation movements in the United States and beyond often cite internment redress as catalyst or guide. Yet America’s overall social healing efforts are unfinished business.

IV. Global Reach Of Redress Initiatives For Historic Injustice

The passage of the 1988 Civil Liberties Act spurred Japanese American support for Native Hawaiian and U.S. reconciliation. Urging public support for more than words of apology, the President of the Japanese American Citizens League Hawai’i observed, “[W]e recognize that while Japanese Americans have received redress and reparations for the injustice of the... internment, Native Hawaiians [who had their sovereign nation illegally overthrown by the United States and lands taken and culture “devastated”] have received only an apology for the denial of their sovereign rights and the deprivations they have suffered.”¹⁷⁾

In 1993 the U.S. Congress passed formal apology legislation and committed the United States to “reconciliation” with Native Hawaiians to begin to heal the 100-year old wounds.¹⁸⁾ In part to bolster U.S. stature as a

16) Yamamoto, *Reframing Redress*, *supra* note 5, at 6.

17) S.B. 475: *A Bill Relating to Lands Controlled by the State: Hearing Before the S. Comm. on Water, Land, Agriculture, and Hawaiian Affairs*, 2009 Hawaii Leg. Session (2009) (statement of Shawn L.M. Benton, President, JAACL Hawai’i, Honolulu Chapter) available at http://www.capitol.hawaii.gov/session2009/Testimony/SB475_TESTIMONY_WTL_02-04-09.pdf.

18) Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

democracy professedly committed to human rights, President Clinton apologized to the Native Hawaiian people and his Department of Interior advanced a comprehensive reconciliation program targeting Hawaiian self-governance and land and culture restoration.¹⁹⁾ But under President Bush, particularly after initiation of the war on terror, and after a U.S. Supreme Court ruling,²⁰⁾ the initiative stalled far short of completion.²¹⁾

The U.S.'s unilateral prosecution of the Iraq War and its publicized stark human rights violations damaged American moral authority in its effort, in part, to foster democracy. In this light, the spotlight brightened on other still pending reparations claims against the United States—encompassing African Americans (slavery), Native American tribes (restoration of land and water), Japanese Latin Americans (interned in the U.S. during World War II), Latino “Bracero” farm workers (stolen wages), Mexican Americans (coercive deportation of Americans citizens to Mexico during the depression), Guatemalans (medical tests subjects) and Filipino war veterans (promised benefits). And globally, reconciliation/reparations initiatives marked other countries endeavoring to legitimate their transition from repressive regimes to bona fide democracies—for example South Africa, Sierra Leone, Peru, Argentina, Columbia, Chile, East Timor as well as Sri Lanka, Cambodia and Korea.²²⁾ The Comfort Women’s struggle for

19) See Department of the Interior and the Department of Justice, *Report on the Reconciliation Process Between the Federal Government and Native Hawaiians: From Mauka to Makai: The River of Justice Must Flow Freely (Draft Report)* (August 23, 2000). The JRR employed language of social healing: The “time has come for the [U.S.] Government and Native Hawaiians to join hands to repair the past and build a better future, based upon righteousness and justice, and guided by the spirit of healing and aloha to fulfill the goal of reconciliation.” Similar in important respects to the CWRIC report, the JRR emphasized the importance of governmental apology and need to repair the damage of U.S. wrongdoing.

20) *Rice v. Cayetano*, 528 U.S. 495 (2000).

21) In the face of strong continuing Republican Party opposition, President Obama has expressed support for reconciliation, but with uncertain results. *S. 1011, The Native Hawaiian Government Reorganization Act of 2009: Hearing Before the S. Comm. on Indian Affairs, 111th Cong.* (2009) (statement of Sam Hirsch, Deputy Assoc. Att’y Gen. of the United States).

22) See generally Yamamoto, *Reframing Redress*, *supra* note 5; In-Sup Han, Kwangju and Beyond: Principles for Coping with State Atrocities, *International Conference Proceedings: Reparations and Reconciliation between Korea and Japan Focusing on Comfort Women Issues* 75, 83 (Mar. 27, 2012) (please insert “unpublished manuscript” if it isn’t published) (on file with author).

reparatory justice—justice that repairs the persisting damage—is a central part of this global phenomenon.

Indeed, looking broadly, redressing the deep wounds of injustice has become a matter central to the future of civil societies. Whether a country heals persisting wounds is increasingly viewed as integral, (1) domestically, to enabling its communities to deal with pain, guilt and division linked to its past in order to live peaceably and work productively together in the present, and (2) globally, to claiming legitimacy as a democracy truly committed to civil and human rights (which affects a country’s standing on international security and responsible economic development.)²³⁾ People, communities and governments—especially democracies claiming allegiance to human rights principles—all have a stake in justice that repairs.

This larger stake that democracies have in repairing the persisting damage of their injustices lies at the heart of the assessment here of a potential future path for Comfort Women redress. To get a better sense of how U.S. experiences affect that assessment and strategic framing, consider some U.S. connections to the Comfort Women’s redress struggles, with a special eye on linkages to U.S. internment redress and its geopolitical implications.

V. The United States And Comfort Women’s Redress Movement

1. U.S. Courts

The United States was directly tied to the Comfort Women’s redress movement when Comfort Women survivors sought justice in U.S. courts. In 2000, after redress efforts in Japan stalled, 15 former Comfort Women sued Japan in a United States district court. The women brought a class action lawsuit²⁴⁾ on behalf of all sex slaves and their heirs for multiple rapes

²³⁾ See generally Yamamoto, *Reframing Redress*, *supra* note 5.

²⁴⁾ Hwang Geum Joo v. Japan, 172 F. Supp. 2d 52 (D.C. Cir. 2001). For more analysis see Sue R. Lee, *Comforting the Comfort Women: Who can Make Japan Pay?*, 24 U. PA. J. INT’L ECON. L.

by soldiers, confinement in squalid conditions and physical and mental abuse. The class action lawsuit relied on the Alien Torts Claims Act,²⁵⁾ which enables foreign individuals to sue other foreigners in U.S. courts for certain human rights violations. Ultimately, the federal court dismissed the claims, holding that Japan had not waived its sovereign immunity. The court also stated that the courts were not the right forum for action, recommending instead that survivors' claims be addressed "government to government."²⁶⁾ The U.S. Supreme Court allowed the dismissal to stand.

The Comfort Women's U.S. suit, even though unsuccessful in the court of law, became part of international advocacy in the court of public opinion. In 2000 the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, held in Tokyo, adjudicated Japan's legal responsibility. The Tribunal found Emperor Hirohito and the Japanese government guilty of war crimes and urged Japan to provide compensation.²⁷⁾ A year later, the Tribunal's published decision formalized its findings.²⁸⁾ Public testimony before and pronouncements by the tribunal helped shape a growing international consciousness about the still unredressed injustice.

2. U.S. Congress

The United States continued its ties to the Comfort Women's redress movement in 2007 when the U.S. House of Representatives passed

509 (2003); David L. Nefouse, *The Rights of the Korean Comfort Women and the Wrongful Dismissal of the Joo Case by the District of Columbia Federal Courts*, 33 KOREAN J. INT'L & COMP. L. 20 (2005).

25) Alien Tort Claims Act, 28 U.S.C. § 1350 (2006).

26) *Hwang Geum Joo*, 172 F. Supp. 2d 52.

27) Prosecutor v. Japan, Case No. PT-2000-1-T, Preliminary Judgment (Women's Int'l War Crimes Trib. for the Trial of Japan's Military Sexual Slavery Dec. 12, 2000); Hyunah Yang, A Reflection on the "2000 Tribunal" in Tokyo, International Conference Proceedings: Reparations and Reconciliation between Korea and Japan Focusing on Comfort Women Issues 25 (Mar. 27, 2012) (please insert "unpublished manuscript" if it isn't published) (on file with author).

28) Prosecutor v. Japan, Case No. PT-2000-1-T, Judgment (Women's Int'l War Crimes Trib. for the Trial of Japan's Military Sexual Slavery Dec. 4, 2001). See also Brooke Say, *Ripe for Justice: A New UN Tool to Strengthen the Position of the "Comfort Women" and to Corner Japan into its Reparation Responsibility*, 23 PENN ST. INT'L L. REV. 931 (2005).

Resolution 121.²⁹⁾ With the earlier unsuccessful U.S. litigation in mind, the legislative resolution called for Japan:

1. to clearly and publicly refute any claims that the sexual enslavement and trafficking of the Comfort Women hadn’t occurred;
2. to clearly and unequivocally offer formal acknowledgement, apology, and acceptance of historical responsibility for coercion of young women into slavery;
3. to have Japan’s Prime Minister publically and officially apologize to resolve recurring questions about the sincerity and status of prior government statements; and
4. to educate current and future generations about Japan’s crime against humanity while also implementing the international community’s recommendations.

Congressional Representative Michael M. Honda—a third-generation Japanese American and former World War II internment camp detainee—introduced Resolution 121. He is known in the United States for supporting internment redress and in Japan for advocating on behalf of the Comfort Women. When Honda introduced the Resolution, he also introduced a second resolution commemorating the anniversary of the presidential decree authorizing the U.S. World War II racial internment of Americans.³⁰⁾ The internment resolution passed almost immediately, but Resolution 121, concerning the Comfort Women, triggered a backlash from Japan’s political conservatives that stalled congressional consideration.

Japan’s Prime Minister at the time, Shinzo Abe, publicly contradicted the 1993 confession of direct involvement by the Japanese military and retracted earlier apologies by Japanese officials. He argued there was no evidence establishing that the Japanese military forcibly recruited women into sexual slavery. He dismissed the women’s personal accounts and warned that Japan would ignore Resolution 121 if passed. Despite a private

29) H.R. Res. 121, 110th Cong. (2007).

30) H.R. Res. 122, 110th Cong. (2007).

conversation with President Bush,³¹⁾ Abe's denials triggered outrage in parts of Asia and the United States and drew official protests from China, Taiwan, South Korea, and the Philippines.³²⁾

3. Political Linkage to Internment Redress

In the United States, Asian American supporters of the Comfort Women formed a national coalition to support Resolution 121.³³⁾ Named the 121 Coalition, the supporters comprised more than 200 civic organizations (including prominent human rights advocates like Amnesty International.) The coalition was led mainly by Korean American and Japanese American groups³⁴⁾ and rallied participants through contemporary grassroots campaigning in the U.S. like street demonstrations and publishing via the internet.

31) Kunihiro Yoshida, The Comfort Women Reparations' Agenda: Reasons Why They Are Unsuccessful and Ways to Overcome the Obstacles—with Reference to Reparations and Reconciliation in East Asia, in *International Conference Proceedings: Reparations and Reconciliation between Korea and Japan Focusing on Comfort Women Issues 1* (Mar. 27, 2012) (please insert “unpublished manuscript” if it isn't published) (on file with author).

32) Norimitsu Onishi, *Denial Reopens Wounds of Japan's Ex-Sex Slaves*, N.Y. TIMES, March 8, 2007, (please also insert page number of the newspaper if possible) available at <http://www.nytimes.com/2007/03/08/world/asia/08japan.html>.

33) Parts of the following description are drawn from RACE, RIGHTS AND REPARATIONS, *supra* note 1. Coalition 121 represented nearly 200 civic organizations that supported the passage of House Resolution 121. During the coalition's lobbying day, activists and volunteers visited over a hundred offices on Capitol Hill to urge legislators to support the resolution. Kinue Tokudome, *Passage of H.Res. 121 on "Comfort Women", the US Congress and Historical Memory in Japan*, THE ASIA-PACIFIC JOURNAL: JAPAN FOCUS, August 30, 2007, available at http://www.japanfocus.org/-Kinue_TOKUDOME/2510.

34) See generally *House Resolution 121*, NATIONAL ASSOCIATION OF KOREAN AMERICANS (Mar. 16, 2007), <http://www.naka.org/news/whatsnew.asp?prmno=61> (encouraging support for grassroots support of Resolution 121); *Bio & Contact*, SPARK SENSE, <http://www.annabelpark.com/pages/bio> (“born in Seoul, South Korea and immigrated to Houston, TX when she was nine years old,” Annabel Park “was the national coordinator for the 121 Coalition”) (last visited Apr. 10, 2012); Shogo Kawakita & Miwa Murphy, *Some JAs Fear “Comfort Women” Resolution Fall Out*, NICHU BEI TIMES WEEKLY, June 28, 2007, available at <http://www.jaclchicago.org/ne-aoi.asp> (“the Japanese American Citizens League Chicago Chapter adopted a resolution in April formalizing its support for the House resolution” that can be found at http://www.jiaponline.org/documents/ChicagoJACL_Comfort_Women_Resolution_04_11_2007.pdf).

This campaign was “an outgrowth of this strongly legalistic post-internment [redress] Asian American ethos”³⁵⁾ that a genuine democracy rectifies its gross civil and human rights transgressions. Korean American groups reached out to and received support from Asian American organizations that had been integral to the passage of the 1988 Civil Liberties Act – for instance, the Japanese American Citizens League. Diverse Comfort Women supporters asserted that House Resolution 121 made a compelling public statement to Japan on behalf of Asian American women concerned about human rights, democracy and reparatory justice.

Despite heavy Japanese lobbying against the resolution,³⁶⁾ the U.S. House unanimously passed it in July 2007. Congressperson Honda declared that its passage with bipartisan support “sent a clear message to our good friend, the government of Japan, that historical reconciliation is not just a concept to be championed, but has very real consequences in the lives of the many women institutionally victimized during World War II.” The resolution “marks an important step forward in the healing process for these women, and brings us closer to demanding accountability and justice for present-day crimes against women and young girls.”³⁷⁾

4. Linkage to International Pressure

In November 2007, following in the U.S. congressional resolution, the Dutch House of Representatives urged the Japanese government to provide

35) Christine J. Hung, *For Those Who Had No Voice: The Multifaceted Fight For Redress By And For The “Comfort Women,”* 15 *ASIAN AM. L. J.* 177, 196 (2008).

36) See generally *Japanese Media on Resolution 121*, ZERO (June 28, 2007), <http://zeroempty000.blogspot.com/2007/06/japanese-media-on-resolution-121.html> (excerpting Japanese media editorials responding to Resolution 121); *Opinions from Our Society*, Society for the Dissemination of Historical Fact, http://www.sdh-fact.com/CL02_3/result.php?startview=10&endview=20 (linking to letters responding to Resolution 121 written by an organization of Japanese citizens) (last visited Apr. 10, 2012); The Facts, <http://www.occidentalism.org/wp-content/uploads/2007/06/thefact.jpg> (a copy of an advertisement originally published in the Washington Post that disputed the facts described by Resolution 121 and was endorsed by various Japanese politicians and academics) (last visited Apr. 10, 2012).

37) U.S. House of Representatives, *House Passes Comfort Resolution*, July 30, 2007, http://www.house.gov/apps/list/press/ca15_honda/comfort_women.html.

moral and financial support for the surviving Comfort Women and to publish the truth in school textbooks.³⁸⁾ The Canadian House of Commons and the European Parliament adopted similar resolutions.³⁹⁾ In 2008 the U.N. Human Rights Council on behalf of France, the Netherlands, North Korea, South Korea, China and the Philippines urged Japan to redress the suffering of the wartime sex slaves.⁴⁰⁾ The U.N. Human Rights Committee also recommended that Japan apologize and accept legal responsibility.⁴¹⁾ Parliaments in Taiwan and South Korea also demanded justice for survivors.⁴²⁾ And Japan's city councils of Takarazuka, Kiyose and Sapporo responded by calling on the national government to heal the Comfort Women's persisting wounds.⁴³⁾

And in late 2011, in a judicial pronouncement seen as extraordinary in

38) *Netherlands Adopts Resolution on 'Comfort Women'*, KOREA TIMES, Nov. 11, 2007, <http://www.koreatimes.co.kr/www/news/include/print.asp?newsIdx=13505>.

39) *House of Commons passes motion recognizing Japanese 'comfort women'*, CBC, Nov. 29, 2007, <http://www.cbc.ca/news/canada/story/2007/11/29/comfort-women-motion.html?ref=rss>; *Canada MPs demand Japan apologize to WWII 'comfort women'*, AFP, Nov. 28, 2007, <http://afp.google.com/article/ALeqM5g2W6b2AKn18yWn-ZEnS9YdknaDBg>; Notice Paper No. 123 (Mar. 19, 2007), available at <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2763480&File=11&Mode=1&Parl=39&Ses=1&Language=E>; Minutes of Proceedings Meeting No. 12 (Mar. 27, 2007), available at <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2805595&Mode=1&Parl=39&Ses=1&Language=E>; Resolution on Comfort Women, Eur. Parl. Doc. RC-B6-0525/2007 (Dec. 12, 2007), available at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P6-RC-2007-0525&language=EN>.

40) Northeast Asian History Foundation, *Historical Controversy: Comfort Women* (2007), <http://english.historyfoundation.or.kr/?sidx=209&stype=2>; NGO Shadow Report to CEDAW, 44th Sess. (2009), available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ComfortWomen_Japan_cedaw44.pdf.

41) Human Rights Committee Concludes Ninety-Fourth Session, UNITED NATIONS HUMAN RIGHTS (Oct. 31, 2008), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9344&LangID=E>; Concluding Observations of the Human Rights Committee, 94th Sess., Oct. 13-31, 2008, U.N. Doc. CCPR/C/JPN/CO/5 (Dec. 18, 2008).

42) *Taiwan OK's bill seeking Japan "comfort women" apology*, REUTERS, Nov. 11, 2008, <http://in.reuters.com/article/2008/11/11/idINIndia-36440120081111>; *Taiwan and South Korea call for 'comfort women' apology*, AMNESTY INTERNATIONAL (Nov. 18, 2008), <http://www.amnesty.org/en/news-and-updates/news/taiwan-and-south-korea-call-comfort-women-apology-20081118>.

43) Amnesty International, *Amnesty International Report 2009 - Japan*, May 28, 2009, <http://www.unhcr.org/refworld/docid/4a1fade073.html>; see also NGO Shadow Report to CEDAW, *supra* note 40.

the United States, Korea’s Constitutional Court called upon the Korean government to demand that Japan’s government and people confer redress for the still-suffering Comfort Women survivors.⁴⁴⁾ As discussed in the concluding section, Korea’s president and the South Korean Ambassador to Japan followed up with executive branch demands for redress for the human rights violations.

The United States’ ties to the Comfort Women’s redress movement also continued in 2011. The Korean American Voters’ Council together with the Kupferberg Holocaust Resource Center and Archives hosted a summit in New York that highlighted the redress efforts of Comfort Women survivors.⁴⁵⁾ The summit brought two Korean Comfort Women to New York to meet and share with Holocaust survivors. And it concluded with collective requests for an official apology and compensation from the Japanese government, a Comfort Women memorial in the U.S., an art exhibition, and an Asian history internship program. It was “the first step to a full-fledged [American-based] . . . lobby to promote the issues related to comfort women.”⁴⁶⁾

5. Calling into Question Japan’s Legitimacy as a Democracy Committed to Human Rights

Reflecting on Japan’s past atrocities, a commentator recently observed, “With [Japan’s] political and economic leaders evidently reassessing the costs of endless stonewalling, and the potential benefits of smoother foreign relations [on matters of security] and enhanced business prospects, Japan now appears to be” feeling the international pressure to right its historical injustices.⁴⁷⁾ As developed later, the international outcry over Japan’s failure

44) Korean Constitutional Court (헌법재판소): Decision of Aug. 31, 2011, 2006Hun-ma788 (Constitutional Court of Korea).

45) KOREAN AMERICAN VOTERS’ COUNCIL, <http://kavc.org/xs/eng> (last visited Apr. 12, 2012).

46) Dongchan Shin, *Korean “Comfort Women” Demand Apology*, KOREA DAILY, Dec. 21, 2011, available at <http://voicesofny.org/2011/12/korean-comfort-women-meet-with-holocaust-survivors/>.

47) William Underwood, *Redress Crossroads in Japan*, August 2, 2010, THE ASIA-PACIFIC JOURNAL, reprinted in History News Network, <http://www.hnn.us/articles/129714>.

to provide redress for the Comfort Women, along with Asian countries' continuing charges of unredressed World War II Japanese military atrocities, have publicly called into question Japan's legitimacy as a democracy professedly committed to human rights.

A genuine democracy abides by the rule of law and human rights principles. If that democracy violates the human rights of others and then refuses to acknowledge and repair the damage, then that country's democratic legitimacy can rightfully be challenged by judges, scholars, advocates and political leaders.⁴⁸⁾

As discussed later, the apparent damage to Japan's democratic legitimacy has geopolitical consequences, and it generates strategic openings. It diminishes U.S. and other political leaders' ability to support Japan's efforts to expand its military and extend its international influence through the United Nations. One key route back toward restored legitimacy for Japan is demonstrated compliance with international human rights principles of reparatory justice, particularly for the Comfort Women.

VI. Democratic Legitimacy And International Human Rights Principles Of Reparatory Justice

1. "Social Healing Through Justice": Shaping and Evaluating Redress Initiatives

The "Social Healing Through Justice framework"⁴⁹⁾ mentioned earlier draws from several academic disciplines and practical redress experiences, including Japanese American redress, to offer an approach for shaping and evaluating redress or reconciliation initiatives aimed at engendering

48) See Yamamoto, *Crossroads*, *supra* note 4 (linking democratic legitimacy to strategic demands for reparations).

49) In short, the *Social Healing Through Justice* framework aims: 1) to provide an analytical structure grounded in common points among respected academic disciplines, 2) which draws insights from the successes and failures of actual redress initiatives, 3) and employs a common language that attempts to speak to the hearts and minds of communities in conflict, 4) while serving as a strategic guide for shaping, and then assessing, reparatory justice initiatives.

genuine healing for those still suffering and for society itself. The framework engages individuals, communities, justice organizations, businesses and governments in a dynamic process of *recognition, responsibility, reconstruction and reparation*—the “Four Rs”⁵⁰—with the goal of shaping and implementing redress or reconciliation initiatives to foster the kind of justice that heals. In doing so, the framework seeks to generate a convergence of interests among participants so that all see a stake in the initiative.

50) Diverse disciplines highlight four aspects about the kind of justice that fosters social healing: *recognition, responsibility, reconstruction, and reparation*. These four points of inquiry “assist groups and governments first in shaping a particular redress initiative and then in assessing whether the effort is on the path toward genuine social healing.”

Recognition “addresses the psychological” by examining the historical, cultural, and structural context for past and continuing suffering. By investigating the ways in which individuals “continue to suffer pain, fear, shame and anger,” by decoding “cultural stereotypes that seemingly legitimize” injustice, and by scrutinizing “the ways that organizational structures” contribute to the injustice, participants can arrive at a recognition of the harm that paves the way for future healing.

Responsibility includes both “assessment of power over others” and “acceptance of responsibility of repairing the damage . . . imposed on others through power abuses.” By focusing not only on the assessment of responsibility, but also on acceptance of the responsibility to act, the mutual engagement of participants that leads to successful healing is ensured.

Reconstruction aims to build “new productive relationship[s].” Effectively building the kind of relationships needed for successful healing and a sense of justice restored might include of “apologies and forgiveness,” reframing the “history of interaction,” and the “reallocation of political and economic power.” Reallocation of power, through change in a “state’s social, legal or political institutions and policies” is an important part of reconstruction as it can assure underlying abuses will not be repeated.

Reparations, while it may include restitution, monetary payments, and “medical, legal, or educational and financial support for individuals and communities in need,” encompasses more than money. Reparations may also include rehabilitation, “restoration of property, rebuilding of culture, economic development” and public education. Public education particularly can serve to “commemorate, impart lessons learned, and . . . generate a new justice narrative about a democracy’s commitment to civil and human rights.” Yamamoto, *Reframing Redress*, *supra* note 5. See generally Alfred Brophy, *Reparations Pro and Con* (2007); 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).

2. A Country's Legitimacy As a Democracy Committed to Human Rights

For national polities, a key stake is restoring democratic legitimacy through redress for the government's human rights transgressions, including unjust military actions, authoritarian political suppression or past colonial land confiscation and culture destruction.

International human rights principles prohibit slavery, torture, political murder, mass rape and systemic racial discrimination. In addition, the 1966 *International Covenant on Civil and Political Rights* mandates that victims of these and other gross human rights violations "shall have an effective remedy."⁵¹⁾ That remedy includes but extends well beyond monetary payments.⁵²⁾ It encompasses measures aimed at social healing, including acknowledgements of wrongdoing, public apologies, economic capacity building, property restoration, memorials, education and legal changes.⁵³⁾ In 2006 the United Nations General Assembly embraced broad reparatory remedies by adopting the "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."⁵⁴⁾ These principles specify forms of repair for victims of serious

51) Oscar Schachter, *The Obligation to Implement the Covenant in Domestic Law*, in *INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 325 (Louise Henkin ed., 1981). It is noteworthy that the human rights edifice has both supporters and critics. "The overall international human rights regime has appropriately been extolled for its articulation of progressive values and aspirational norms that transcend national borders.... Critics charge [however, that the three-tier hierarchical structure of human rights instruments] perpetuates the hegemony of powerful countries, particularly the United States. They contend that by recognizing only-first-generation human rights, which mirror domestic rights already in place, the United States is authorized to intervene in recalcitrant countries' political affairs under the banner of human rights without risking 'reverse intervention' in U.S. affairs." Eric K. Yamamoto, Carrie Ann Y. Shirota & Jayna Kanani Kim, *Indigenous Peoples' Human Rights in U.S. Courts*, in *MORAL IMPERIALISM: A CRITICAL ANTHOLOGY* 300, 310 (Berta Esperanza Hernandez-Truyol ed., 2002) (describing support and criticism).

52) Han, *supra* note 22, at 91 (encompassing honor, restoration and commemoration).

53) See Yamamoto, *Crossroads*, *supra* note 4.

54) Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of

violations, including restitution, compensation, rehabilitation and guarantees of non-repetition.

These remedial norms broadly shape reparatory justice for systemically inflicted group-based harms, and they bear on how “legitimacy as a democracy” accrues. That legitimacy has two different yet related layers: internal and external.⁵⁵⁾ Internal legitimacy accrues when a country’s citizens believe that overall their government abides by democratic values – it supports fair elections, majority rule and an independent judiciary – and that it protects the basic rights and liberties of its people.

But democratic legitimacy also has an external, or geopolitical, layer that is strategically relevant to Comfort Women redress. Theologian Reinhold Niebuhr aptly explains the accrual of this kind of legitimacy. When a government and its people systematically violate the human rights of others, “[d]emocracy requires the correction of oppression or consequences of oppression.”⁵⁶⁾ And, in the eyes of international communities, “the correction of oppression” entails repairing the damage inflicted according to the human rights norms of reparatory justice just described. Policymakers and justice advocates from democracies thus coalesce around this precept: redress for injuries of past injustice is foundational to legitimacy of a democracy committed to civil and human rights.⁵⁷⁾

International Humanitarian Law, C.H.R. Res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (Apr. 19, 2005).

55) Eric K. Yamamoto, Sara Lee & Yea Jin Lee, *Redress and the U.S. Role in the Jeju 4.3 Incident* (forthcoming 2012); see also Han, *supra* note 22, at 85.

56) Adjoa A. Aiyetoro, *Race, Gender, And Class At A Crossroads: A Survey Of Their Intersection In Employment, Economics, And The Law: Third National People Of Color Conference Article: Why Reparations to African Descendants in the United States Are Essential to Democracy*, 14 J. GENDER RACE & JUST. 633, 634 (2011) (citing numerous additional scholars). See Kyeyoung Park, *Japan, U.S. And World War II: The Search For Justice: The Unspeakable Experiences of Korean Women under Japanese Rule*, 21 WHITTIER L. REV. 567 (2000) (discussing the systemic oppression and the broader context of which the Korean Comfort Women experience was part); Etsura Totsuka, *Commentary On A Victory For “Comfort Women”: Japan’s Judicial Recognition Of Military Sexual Slavery*, 8 PAC. RIM L. & POL’Y J. 47, 48 (1999) (“the “Comfort Women” system was a manifestation of sexism and racism of the time which severely violated the dignity of women and profoundly damaged racial pride; and that it is not the past issue but the ongoing human rights issue”).

57) Yamamoto, *Crossroads*, *supra* note 4, at 6; Thomas Antkowiak, *Remedy Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond* 46 COLUM. J. TRANSNAT’L L. 351, 357 (2008).

A country's perceived external democratic legitimacy becomes especially important when it needs the support of other democratic countries. When a country wears a cloak of legitimacy, the other more established countries are better able to persuade their own sometimes reluctant citizenry that they must provide that support in order to promote global democracy, security and responsible economic development. In this way, geopolitical pressure for (and interest in) recognition and acceptance of responsibility for historic harms is increasingly linked to the legitimacy of present-day democratic governance.

One historic illustration is Germany's Holocaust redress. West Germany established the post-World War II German state as a bona fide democracy in part through its program of comprehensive and sustained redress for Holocaust victims. In addition to payments and some property restoration, redress encompassed extensive education about the atrocity and acceptance of responsibility for repairing (as best possible) the horrific human damage.⁵⁸⁾ These efforts not only demonstrated contrition and accountability, they showed serious commitment to emerging international human rights principles of rehabilitation, restitution, reparation and non-recurrence as the foundation for reparatory justice. And they have been part of the foundation of external legitimacy that facilitated democratic countries' strong support for Germany and contributed to its sustained rise in Europe as a peaceable and productive democracy.⁵⁹⁾

A second illustration is Japanese American internment redress. Initially, in the early 1980s, President Reagan's administration opposed redress. Indeed, it fought hard against the 1984 *Korematsu* litigation that successfully reopened the original World War II internment legal challenge.⁶⁰⁾ Why then

58) HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY, *supra* note 14.

59) Celestine Bohlen, *Euro Unity? It's Germany That Matters*, N.Y. TIMES, Mar. 9, 2010, <http://www.nytimes.com/2010/03/10/world/europe/10iht-letter.html> (discussing Germany's economic importance in the European Union); Stephen Brown, *Analysis: Germany in two minds over leadership role*, REUTERS, Feb. 8, 2012, <http://www.reuters.com/article/2012/02/08/us-germany-leadership-idUSTRE8171F220120208> (discussing Germany's global role).

60) *Korematsu v. U.S.*, 584 F.Supp. 1406 (N.D. Cal. 1984) (*coram nobis* proceeding vacating Fred Korematsu's 1944 conviction for refusing the World War II race-based military exclusion orders based on findings of "manifest injustice", undercutting the factual underpinnings of the Supreme Court's earlier decision affirming the exclusion (*Korematsu v.*

did President Reagan support the Civil Liberties Act redress in 1988 with seeming enthusiasm? One *realpolitik* explanation for that turn around was the United States’ push to win the end stage of the Cold War, which had been framed as a political struggle of American democracy against Soviet communism. Highly publicized internment redress enabled the United States to portray democracy as bolstering (if belatedly) human rights principles of reparatory justice (“we correct our mistakes”) and therefore as standing as morally superior to communism.⁶¹⁾

VII. Strategically Framing Redress Advocacy In Terms Of Japan’s Questionable Legitimacy As A Democracy Professedly But Not Actually Committed To Human Rights

In many respects, Japan’s minimalist, even regressive, path toward redress appears to have salted rather than healed the wounds of the Comfort Women and their survivors and rightly provoked international condemnation.

The Japanese government has conferred no direct reparations,⁶²⁾ has not fully acknowledged its role and has not undertaken educational programs. Instead, it attempted to dilute its responsibility by creating the non-governmental Asian Women’s Fund and encouraging privately paid reparations. The government’s refusal to contribute to the fund rendered it practically meaningless to most surviving Comfort Women.⁶³⁾ With the 2007 termination of the Fund, what meaningful measures, if any, is Japan taking to heal the persisting wounds of the surviving Comfort Women⁶⁴⁾

U.S., 323 U.S. 214 (1944)).

61) See Yamamoto, *Social Meanings of Redress*, supra note 7, at 231; Yamamoto, *Crossroads*, supra note 4.

62) Yoshida, supra note 31, at 4.

63) Shellie K. Park, *Broken Silence: Redressing The Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum*, 3 ASIAN-PACIFIC. & POL’Y J. 2, 44-46 (2002); Christine J. Hung, *For Those Who Had No Voice: The Multifaceted Fight For Redress By And For The “Comfort Women,”* 15 ASIAN AM. L. J. 177, 191-192 (2008).

64) Christina Lope Yl. Rosello, *Psychotherapeutic Approaches for Traumatized War Victims:*

and restore the damage to Japan's reputation as a democracy professedly but not actually committed to human rights principles? And more particularly, what strategic framing of future possibilities might help generate the kind of interest-convergence⁶⁵ that compels Japan to seriously re-invest in Comfort Women redress?

The conceptual and experiential insights described in the preceding sections provide a possible strategic framing path for future next steps as the Comfort Women redress campaign enters what may be a decisive phase. The final part of this essay does not attempt to chart a detailed blueprint or analyze all of the complex pieces. Rather, it endeavors to coalesce the aforementioned concepts and specific language in a way that may prove theoretically sound and practically useful in moving Japan toward genuine redress for the Comfort Women.

What follows is one such strategic framing. It matters to Japan how other countries view its stated commitment to human rights. For many politicians, human rights organizations, media watchdogs and voters in established democracies, including the United States, an expanded Japanese military role in regional and global security is cause for concern unless Japan renounces its past military atrocities through a demonstrated (as distinguished from merely verbal) commitment to human rights.⁶⁶ That concern is exacerbated by the United States support for Japan's planned military expansion in light of Japan's unredressed human rights violations.

Might Japan's need for democratic legitimacy in the face of strong international criticism of its unredressed human rights abuses trigger important advances in Comfort Women redress? Possibly not. Geopolitical pressure points often change rapidly. And Japan's politics are complex. Yet, possibly so—particularly when international human rights criticisms align with and are intensified by specific events that in turn intensify Japan's need for geopolitical support.⁶⁷

Filipino Comfort Women, in INTERNATIONAL CONFERENCE PROCEEDINGS: REPARATIONS AND RECONCILIATION BETWEEN KOREA AND JAPAN FOCUSING ON COMFORT WOMEN ISSUES 61, 61 (Mar. 27, 2012) (on file with author).

65) Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (conceiving the interest-convergence thesis for civil rights progress).

66) See Yamamoto, *Crossroads*, *supra* note 4.

67) The suggestions here and the account of possible geopolitical influences are

Consider the dynamics of Japan’s recognition of the Ainu as a formerly colonized indigenous people entitled to rights to restorative justice.⁶⁸⁾ Japan devastated the life and culture and took lands of the Ainu of Hokkaido through late-19th century colonization and 20th century harsh discrimination.⁶⁹⁾ But Japan staunchly resisted for decades recognizing the rights of the Ainu as an indigenous people. Human rights organizing from many directions in the summer of 2008 pushed the Ainu back into governmental consciousness and compelled Japan to reverse course. As Japan sought to temper China’s growing economic and military power and to regularize relations with North and South Korea and as Japan lobbied for a seat on the UN Security Council and an expanded military presence in the Asia region, it faced criticism from neighboring countries and international human rights groups about its dismal record of past human rights abuses and its continuing refusal to redress the persisting harms. Amid this human rights clamor, and with Japanese leaders’ rhetoric of healing as a backdrop, Ainu calls for justice gained political traction. In May 2008 thousands of Ainu and supporters demonstrated in Tokyo, demanding recognition of the Ainu as an indigenous people entitled to restorative justice.⁷⁰⁾

Building on years of organizing and several proposed plans for remediation, the protest preceded by two months the internationally-scrutinized 2008 Group of Eight Summit (the world’s eight economic powers) on the Ainu’s former homelands in Hokkaido.⁷¹⁾ The Summit

necessarily brief and incomplete. They are offered not as comprehensive analysis but rather as indicators of strategic framing possibilities. They are offered to spur further research and advocacy.

68) Mark Levin, *Essential Commodities and Racial Justice: Using Constitutional Protection of Japan’s Indigenous Ainu People to Inform Understandings of the United States and Japan*, 33 NYU J. INT’L L. & POL. 419 (2001).

69) Kunihiko Yoshida, *Ainu Minzoku no Hoshou Mondai---Minpougaku karano Kinji no Yuushikisha Kondankai Houkokusho no Hihanteki Kousatu [The Reparations for the Ainu people: A Critical Analysis of the Recent Commission’s Report from the Civil Law Perspective]*, 28 NOMOS (KANSAI UNIV.) 19, 33-35, 39-41 (2011).

70) See Catherine Makino, *Indigenous People: Japan Officially Recognises Ainu*, INTER PRESS SERVICE NEWS AGENCY, June 11, 2007, <http://ipsnews.net/news.aspidnows=42738>; Masami Ito, *Ainu Press Case for Official Recognition*, JAPANTIMES, May 23, 2008, <http://search.japantimes.co.jp/cgi-bin/nn20080523a4.html>; Interview with Kenichi Ochiai, University of Hokkaido School of Law, at Honolulu, Haw. (Sept. 29, 2008).

71) *Overview of the Summit, G8 HOKKAIDO TOYAKO SUMMIT*, <http://g8-summit.town.toyako>.

planned to focus not only on economic policy but also on issues integral to Ainu lands and culture, including climate change and environmental sustainability. A new generation of Ainu advocates and international groups stepped up criticism of Japan's human rights record with an emphasis on its treatment of the Ainu.

In a startling but now understandable pre-emptive maneuver one month before the Summit, Japan's parliament unanimously recognized the Ainu as an indigenous people. The Chief Cabinet Secretary then stated that "the government would like to solemnly accept the historical fact that many Ainu people were discriminated against and forced into poverty with the advancement of modernization." Some criticized the words of recognition as "not enough."⁷²⁾ Others saw it as a significant next step. The Parliament then created the "Advisory Panel of Eminent Persons on Policies for the Ainu People" to formulate national and local government Ainu restoration policies "by referring to the U.N. Declaration on the Rights of Indigenous Peoples." The "most important starting point [was the Ainu people's requests along with ensuring] the public accurately understand the history and grasp the situation of the Ainu." Redress progress in 2008 emerged from a confluence of events and coordinated human rights challenges to Japan's governmental legitimacy.⁷³⁾

Today Japan continues to profess a commitment to human rights in an effort to bolster its stature as a credible democracy entitled to full participation in global security and development. It reaffirmed its assent to human rights instruments and is now asserting that it was ready to "play a responsible role for world peace and stability." It seeks a non-permanent seat on the UN Security Council for 2016-17, while attempting to expand permanent membership to include Japan, Brazil, Germany and India.⁷⁴⁾

hokkaido.jp/eng/summit/about/index.html (last visited Apr. 12, 2012).

72) Masami Ito, *Diet Officially Declares Ainu Indigenous*, JAPAN TIMES, June 7, 2008, <http://search.japantimes.co.jp/print/nn20080607a1.html>.

73) Yamamoto, *Reframing Redress*, *supra* note 5, at 64-66. Some proactive steps followed. As international pressure lessened over ensuing years, however, both the national and local governments appear to have quietly retreated.

74) See *Japan to Seek Nonpermanent UN Security Council Seat for 2016-2017*, BBC MONITORING INT'L REPORTS, Jan. 11, 2011, available at <http://www.accessmylibrary.com/article-1G1-246245563/japan-seek-nonpermanent-un.html> (quoting Japan's foreign minister); *India, Brazil*,

But, on the international stage, countries and organizations concerned about Japan’s past atrocities publicly question Japan’s commitment to human rights. In this setting the Japanese government and private companies resolved reparations claims by World War II slave laborers.⁷⁵⁾

And during December 2011 summit talks, South Korean President Lee Myung-bak pressed Japanese Prime Minister Yoshihiko Noda to become “true partners for peace and stability” and settle the Comfort Women justice claims.⁷⁶⁾ South Korean Ambassador to Japan Shin Kak-Soo stepped up the pressure, conveying that the “issue of comfort women was raised during the 1990s and, over the past 20 years, it has become the largest remaining symbolic issue (to be resolved) in [our] two countries’ history.”⁷⁷⁾ He added, “From our standpoint, we will work [with Japan] to find a solution that is acceptable to the victims. But if that fails, we have no option but to undertake the process for an arbitration panel [under the 1965 treaty] In order to avoid such a step, (we) plan to urge the Japanese government for a swift and smooth solution.”

The forthrightness and firmness of these directives not only took Japan’s leaders by surprise, they also reverberated through Japan’s populace. And the human rights pressure for redress continues to build. During a February 2012 meeting with former special rapporteur on the UN Human Rights Council, Gay McDougall, South Korean Foreign Minister Kim Sung-Hwan announced that, “When [the Comfort Women] all pass away, the Japanese government will be left with a debt that can never be redeemed. . . . As such, my government is determined to do everything it can.”⁷⁸⁾ McDougall added that “[t]he Japanese government’s argument that Japan

Germany, *Japan Demand Security Council Reform This Year*, MERCO PRESS, Feb. 12, 2011, <http://en.mercopress.com/2011/02/12/india-brazil-germany-japan-demand-security-council-reform-this-year>.

75) See Yamamoto, *Redress Bias?*, *supra* note 7, at 244.

76) *S. Korean Envoy Vows to Press Japan Over Wartime Sex Slaves*, YONHAP NEWS AGENCY, Feb. 21, 2012, <http://english.yonhapnews.co.kr/national/2012/02/21/44/030100000AEN20120221008800315F.HTML>; Lee Tae-hoon, *Lee press Japan on ‘comfort women’*, KOREATIMES, Dec. 18, 2011, <http://www.koreatimes.co.kr/www/news/include/print.asp?newsIdx=101053>.

77) *S. Korean Envoy*, *supra* note 76.

78) *See Japan Liable for Wartime Sex Slaves, Crimes Against Humanity: Ex-UN Envoy*, THE KOREA TIMES, Feb. 17, 2012, http://www.koreatimes.co.kr/www/news/nation/2012/02/120_105104.html.

has already settled all claims from the Second World War through peace treaties and reparations agreements following the war are unpersuasive.”⁷⁹⁾ She concluded, “If the government of Japan is non-responsive to... arbitration, the government of Korea should consider initiating a proceeding against Japan before the International Court of Justice” for human rights violations.

What additional geopolitical events might coalesce at a given time to finally compel Japan to seek to enhance or preserve its democratic legitimacy by taking concrete enduring redress actions? Maybe nothing will.

But consider additional recent developments implicating Japan’s damaged legitimacy as a democracy. In 2011 the Korean Constitutional Court directed the national government to take affirmative steps to engage Japan in moving the human rights redress process forward,⁸⁰⁾ and the Korean government worked on a proposal for a Japan-involved Comfort Women human rights arbitration panel. Japan continued to resist, relying on its old 1965 treaty settlement argument.⁸¹⁾ International law scholars and human rights advocates reacted harshly. Comfort Women redress is a humanitarian matter left unaddressed by the treaty they said.⁸²⁾ And, they might have strategically added, it is a matter *central to Japan’s global stature as a democracy actually committed to human rights as it seeks to rebuild its economy and expand its power and influence.*

79) *Id.* See also S. Korean FM to Meet with UN Rapporteur Over Wartime Sex Slaves, CRIENGLISH.COM, Feb. 14, 2012, <http://english.cri.cn/6966/2012/02/14/3123s680980.htm>; *Fmr. UN Human Rights Rapporteur Says 1965 Korea-Japan ‘Comfort Women’ Deal Didn’t Cover Human Rights Issue*, ARIRANG, Feb. 17, 2012, http://www.arirang.co.kr/News/News_View.asp?nseq=126148&code=Ne2&category=2.

80) S. Korean Envoy, *supra* note 76.

81) Human Rights Council Universal Periodic Review, *Japan: Submitted by Japan Fellowship of Reconciliation (JFOR), a non-governmental organization in special consultative status Postwar responsibilities of Japan: “Comfort Women”, military sexual slavery – non_fulfillment of obligations for apology, compensation, and punishment and the criticism of the treaty defense by Japan* (Feb. 8, 2008), available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/JP/JFOR_JPN_UPR_S2_2008_JapanFellowshipofReconciliation_uprsubmission.pdf

82) *Id.*

VIII. CONCLUSION

This suggested reframing of Comfort Women redress claims, for the reasons developed in this article, responds to the urgent questions posed at the outset: In light of international scrutiny, progress and backsliding, what might be the next steps for the Comfort Women and their supporters, particularly in terms of strategic framing? More particularly, viewed through the lens of American redress experiences, and particularly the U.S. apology and reparations for the Japanese American World War II internment, what might human rights tenets of reparatory justice offer established governments faced with challenges to their legitimacy as genuine democracies in the face of unredressed historic human and civil rights transgressions?

IX. Epilogue

Amid recent events two aging Korean Comfort Women visited the Permanent Mission of Japan to the United Nations in New York. In late 2011 they traveled to the United States to intensify awareness about the Comfort Women redress struggle.⁸³⁾ In doing so they shared stories with women who had survived the Holocaust. And the women demanded that Japan’s government issue an issue apology to and provide reparations for the Comfort Women and their families and to thereby begin to redeem Japan’s damaged reputation as a democracy in the modern world.⁸⁴⁾ We can, they effectively said, “no longer tolerate the lies of the Japanese government.” The time for “social healing through justice” is now.

KEY WORDS: redress, reparatory justice, human rights, democratic legitimacy, reparations, apology, reconciliation, social healing, comfort women, u.s. congress, japanese american internmen

83) KOREAN AMERICAN VOTERS’ COUNCIL, <http://kavc.org/xen/eng> (last visited Apr. 12, 2012).

84) Kisu Park, *Comfort Women Take Case to Japan’s UN Mission*, KOREA DAILY, Dec. 28, 2011, available at <http://voicesofny.org/2011/12/comfort-women-japan-un/>; Shin, *supra* note 46.

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