

Reparations Delayed: Japanese Latin Americans and the United States’ WWII Human Rights Transgressions

Eric K. Yamamoto[†] & Hanna Wong Taum^{††}

On the basis of determinations of fact and law, the Inter-American Commission concluded that the [United States] is responsible for the violation of articles II (equality before the law) and XVII (fair trial and effective remedy) of the American Declaration of the Rights and Duties of Man

— The Inter-American Commission on Human Rights¹
April 2020

We . . . acknowledge the painful reality that Japanese Latin Americans, who were taken from their Central and South American homes and incarcerated by the United States Government during World War II, were excluded from the Civil Liberties Act of 1988.

— United States President Joseph Biden²
February 2022

The universal nature of human rights also means that we have to hold ourselves accountable to the same standards. We take seriously our responsibility to address [our human rights] shortcomings, and we know that the way to do it matters.

— United States Secretary of State Antony Blinken³
April 2022

PROLOGUE

How does a government—and its populace—repair the damage of a prolonged mass human rights atrocity on its own soil? When traditional legal remedies fail, what theoretically sound and practically grounded approach productively guides that reparative initiative? These queries form the heart

DOI: <https://doi.org/10.15779/Z38HD7NV07>

[†]. Fred T. Korematsu Professor of Law and Social Justice (Emeritus), William S. Richardson School of Law, University of Hawai‘i. Copyright of Eric K. Yamamoto 2024.

^{††}. William S. Richardson School of Law, University of Hawai‘i, Class of 2024.

1. *Shibayama v. United States*, Case 12.545, Inter-Am Comm’n H.R., Report No. 26/20, OEA/Ser.L/V/II, doc. 36, ¶ 5 (2020) [hereinafter *Shibayama Report*].

2. Proclamation No. 10341, 87 Fed. Reg. 10677, 10678 (Feb. 18, 2022).

3. Antony J. Blinken, U.S. Sec’y of State, Remarks on the Release of the 2021 Country Reports on Human Rights Practices (Apr. 12, 2022), <https://www.state.gov/secretary-antony-j-blinken-on-the-release-of-the-2021-country-reports-on-human-rights-practices/> [<https://perma.cc/QA79-235B>].

of this Article, with the United States and Japanese Latin Americans at its center.

No child, no family, should suffer the trauma and economic devastation of mass incarceration solely because of race. Yet the United States kidnapped and internationally transported thousands of ordinary Latin American citizens of Japanese ancestry from their home countries and incarcerated them alongside Japanese Americans in U.S. concentration camps during World War II, holding them as racial hostages for trading with Japan. After the war, the American government labeled the Japanese Latin Americans (JLAs) “illegal aliens” and treated them as outcasts. It later rejected their calls for reparations, excluding the JLAs from the 1988 Civil Liberties Act’s (CLA) apology to and reparations for Japanese Americans. Legislative lobbying and civil litigation met staunch government resistance. And the JLA justice initiative stalled.

Two recent developments reignited JLA reparations advocacy. In 2020, the Inter-American Commission on Human Rights (Commission) found stark U.S. violations of JLAs’ human rights and strongly recommended JLA reparations. Then, in 2022, President Biden’s address on the Day of Remembrance acknowledged the JLAs’ wrongful exclusion from the 1988 CLA. Together, the developments opened the door for a fresh political examination of the government’s moral and legal responsibility to the JLAs. Yet, the United States still refuses to fully engage. Reparations delayed.

This Article examines why the United States ought to act now upon the Commission’s reparative recommendations. Employing a multidisciplinary framework of Social Healing Through Justice, the Article assesses the United States’ moral and legal responsibility for politically healing the persisting wounds of JLAs and repairing the damage to American society.⁴

The Article also charts strategic paths for public consciousness-raising and interest-convergence advocacy, while later analyzing *darkside* *realpolitik*⁵ obstacles to U.S. participation in the JLA reparative justice initiatives—for the benefit of JLA families and for the United States itself as a democracy struggling to rebuild its international stature as a leading democracy *demonstrably* committed to the rule of law and human rights.

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4. See generally ERIC K. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY (2021) [hereinafter HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE] (recounting the history of the Jeju 4.3 Tragedy, assessing the United States’ role, and suggesting potential reparative actions).

5. See *id.* at 70; *Realpolitik*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/realpolitik> [https://perma.cc/4T2D-PKW8] (defining *realpolitik* as “politics based on practical and material factors rather than on theoretical or ethical objectives”).

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I. OVERVIEW

The Japanese Latin American reparations initiative has faced stiff U.S. government opposition through the years.⁶ Congressional leaders rejected the JLAs' claims for inclusion in the 1988 Civil Liberties Act's redress for World War II Japanese Americans—the presidential apology, individual reparations, and public education fund.⁷ Government officials stonewalled further JLA legislative lobbying and, later, federal court litigation for JLA inclusion under the Act.⁸ The JLA justice initiative thus stalled in the headwinds of government recalcitrance.

As mentioned in the Prologue, in 2020, after a lengthy inquiry, the Inter-American Commission on Human Rights found clear U.S. violations of JLAs' human rights.⁹ Then, in 2022, President Biden's address on the Day of Remembrance acknowledged the JLAs' wrongful exclusion from the 1988 CLA.¹⁰ "We . . . acknowledge the painful reality that Japanese Latin Americans, who were taken from their Central and South American homes and incarcerated by the United States Government during World War II, were excluded from the Civil Liberties Act of 1988."¹¹

The Commission's findings and President Biden's acknowledgment of the CLA's exclusion of JLAs drew international attention to the United States' little-known World War II human rights debacle on American soil. Together, they sparked renewed prospects for JLA redress.¹² Yet, key questions emerged. How, in the words of Secretary of State Antony Blinken, would the United States now "hold ourselves accountable" and proactively "tak[e] seriously [our] responsibility to address [America's human rights] shortcomings"?¹³ More specifically, how would the United States finally begin to rectify what President Biden effectively acknowledged was a sweeping U.S. violation of the JLAs' human rights?

The multidisciplinary framework of Social Healing Through Justice, described in Part IV, provides a lens for productively making those assessments. That analytical framework illuminates key tenets of reparative justice and offers tools for shaping, evaluating, and reconfiguring reconciliation/social healing initiatives that grapple with the persisting

6. See, e.g., *AALDEF Calls on Biden Administration to Support Redress for Japanese Latin Americans Interned During WWII in Accordance with International Law*, ASIAN AM. LEGAL DEF. & EDUC. FUND (Feb. 10, 2022), <https://www.aaldef.org/press-release/aaldef-calls-on-biden-administration-to-support-redress-for-japanese-latin-americans-interned-during-wwii-in-accordance-with-international-law/> [<https://perma.cc/HW9B-62C4>].

7. See Natsu Taylor Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians—A Case Study*, 40 B.C. L. REV. 275, 277 (1998).

8. See, e.g., *Mochizuki v. United States*, 43 Fed. Cl. 97 (1999).

9. See *infra* Part IV.

10. Proclamation No. 10341, 87 Fed. Reg. 10677, 10678 (Feb. 18, 2022).

11. *Id.*

12. *What You Can Do*, CAMPAIGN FOR JUST., <https://jlacampaignforjustice.org/what-you-can-do/> [<https://perma.cc/3GKP-Z2KY>].

13. Blinken, *supra* note 3.

wounds of historic injustice.¹⁴ In application, it also highlights converging JLA and American interests in U.S. human rights accountability.¹⁵

As backdrop, Part II of this Article concisely describes the JLAs' decades-long pursuit of justice.¹⁶ It starts with the Shibayama brothers' reparations claims with the U.S. Office of Redress Administration, the *Mochizuki* JLA class action lawsuit for inclusion in the Civil Liberties Act, and the Shibayamas' separate federal court lawsuit—all rejected.

Part III then recounts the Shibayamas' last-resort petition to the Inter-American Commission on Human Rights.¹⁷ It charts the Commission's 2020 findings of U.S. human rights violations for repeatedly denying the Shibayamas' CLA redress claims. It then separately outlines the Commission's reasoning for its findings of and recommended remedies for the United States' violation of the JLAs' right to equality before the law and right to an effective remedy.¹⁸

With the Commission's findings and recommendations in mind, Parts IV and V step onto the realpolitik terrain of the reparations process. Part IV offers an overview of the Social Healing Through Justice framework, and how its principles and analytical inquiries highlight the contemporary political push for proactive U.S. measures for redressing human rights transgressions. It then unravels the Commission's recommendations for "integral reparation"¹⁹ and the international human rights norms that undergird the Commission's findings and recommendations.²⁰

Through the analytical lens of Social Healing Through Justice and the principles of the international reparations regime described in Part IV, Part V engages in a layered assessment of the United States' moral and legal responsibility for healing the JLAs' persisting wounds.²¹ The Commission's findings generate a *legal responsibility* by identifying the United States' breach of international human rights law: the violation of the Shibayamas' right to both equality before the law and an effective remedy through

14. Eric K. Yamamoto, Rachel Oyama & Katya Katano, *Reconciliation Revitalized Through an Official Apology for the Wrongful Jeju 4.3 Mass Convictions: A Key Next Step Toward Comprehensively and Enduringly Healing Persisting Wounds of Injustice*, 8 WORLD ENV'T & ISLAND STUD. 181, 182 (2018).

"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. . . . the framework is theoretically grounded in commonalities among several disciplines: law, social psychology, theology, political theory, economic justice, human rights and indigenous practices.

Id.

15. See *infra* Part VI. See generally Proclamation No. 10341, 87 Fed. Reg. 10677 (Feb. 18, 2022) (describing strengthening democracy and advancing human rights as "the right thing to do").

16. See *infra* Part II.

17. See *infra* Part III.

18. See *infra* Part III.A–B.

19. See *infra* Part IV.C.

20. See *infra* Part IV.D.

21. See *infra* Part V.

exclusion of the JLAs from the 1988 CLA's redress for Japanese Americans.²² Part V then analyzes the Commission's concomitant reference to the United States' *moral responsibility*, setting the groundwork for the ensuing discussion about the *why*—why is reparative justice important, and why now?²³ Part VI then assesses U.S. geopolitical interests in accepting that responsibility, particularly the partial revitalization of its tarnished legitimacy as a democracy that espouses fealty to human rights but refuses to repair the damage of its own human rights violations.²⁴

Part VII synthesizes the Article's themes by identifying the converging interests of the United States and JLAs in the present-day JLA reparations initiative.²⁵ It also acknowledges *darkside* realpolitik obstacles to U.S. engagement, including myriad pressing domestic and geopolitical challenges and political backlash from those generally opposed to reparations and those worried about unveiling past U.S. national security abuses.²⁶ The reality of this “dilemma of reparations” also uplifts the importance of real-world pragmatism in charting next strategic steps.²⁷ The conclusion describes how that pragmatism urges reparations proponents to anticipate strident pushback and operational pitfalls, while simultaneously opening new paths for public consciousness-raising and social healing advocacy.

II. U.S. DENIAL OF JAPANESE LATIN AMERICAN REDRESS CLAIMS

A. The Shibayama Family Story

Isamu “Art” Shibayama was twelve years old when his father, Yuzo Shibayama, was kidnapped by Peruvian officials at the behest of the United States.²⁸ Officials forced him and his family to board a U.S. military transport ship at gunpoint, then confined them in filthy conditions below deck for a harsh 21-day journey to America²⁹—the “land of the free.” The United States then incarcerated the Shibayamas, along with nearly 2,500 other Japanese Latin Americans, at an internment camp in Crystal City, Texas.³⁰ The

22. See *infra* Part V.A.

23. See *infra* Part V.B.

24. See *infra* Part VI.

25. See *infra* Part VII.

26. See *infra* Part VII.B.

27. See *id.* (describing traditional pragmatism and pragmatism modified).

28. After the U.S. government abducted the first group of Japanese Peruvian hostages, “placed [them] on a U.S. Army transport and shipped [them] to an unknown destination,” some of the Japanese Peruvian men, including the Shibayamas’ father, went into hiding whenever U.S. ships arrived in the harbor. Shibayama Report, *supra* note 1, ¶ 24. After Isamu’s mother, Tatsue Shibayama, was jailed for refusing to disclose her spouse’s whereabouts, Mr. Shibayama turned himself in, and the entire family was seized by U.S. personnel. *Id.*

29. *Id.* ¶ 26.

30. *Id.* ¶¶ 20, 28. The United States also incarcerated Japanese Americans (American citizens and permanent residents) at the Crystal City center. The incarcerated Japanese Americans had been removed from the West Coast pursuant to President Franklin D. Roosevelt’s Executive Order 9066. *Id.*

incarcerated were held under harsh conditions and as potential hostages for trade with Japan solely because of their Japanese ancestry.³¹

The Shibayamas were Peruvian citizens with no connection to Japan other than racial ancestry.³² According to historian Michi Weglyn, racial antagonism in Peru, “fed by resentment of the foreign element [Peruvian citizens of Japanese ancestry] as being exceedingly successful economic competition,” drove the Peruvian government’s cooperation with the United States-led abduction and removal program.³³ The Japanese government refused to trade its American prisoners of war for the Shibayamas (and for most other JLAs).³⁴ Although none of the imprisoned JLAs had committed any crime or posed a security threat,³⁵ the United States continued the incarceration of the Shibayamas and other JLAs along with Japanese Americans until the war’s end in 1945.³⁶

Following the war, the Shibayama family members struggled to rebuild their shattered lives.³⁷ During the abduction, the U.S. government permanently seized the family’s identity documents.³⁸ Peru then denied the “undocumented” family’s reentry after the war.³⁹ The grand irony was that the United States had kidnapped thousands of JLAs, bringing the JLAs against their will to the United States, and then categorizing the JLAs as unlawful immigrants because they lacked proper entry papers. As Isamu Shibayama’s sister, Rose Nishimura, poignantly expressed, “We did not want to come to this land. We were forcibly brought here by the [U.S.] government [via U.S. military transport] and put in a barbed wire enclosed camp administered by the [government]. So how can it be said we were

31. See Saito, *supra* note 7, at 293–95. See generally SEIICHI HIGASHIDE, C. HARVEY GARDINER, ELSA H. KUDO & JULIE SMALL, ADIOS TO TEARS: THE MEMOIRS OF A JAPANESE-PERUVIAN INTERNEE IN U.S. CONCENTRATION CAMPS (2000) (describing United States’ intent to hold the JLAs as hostages in hopes of trading them for American prisoners of war held by Japan).

32. See Shibayama Report, *supra* note 1, ¶¶ 22–23.

33. MICHIE WEGLYN, YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA’S CONCENTRATION CAMPS 59, 60 (1976); see also HARVEY C. GARDINER, PAWNS IN A TRIANGLE OF HATE: THE PERUVIAN JAPANESE AND THE UNITED STATES vii–ix (1981) (concluding that, even with Peruvian and other Latin American countries’ cooperation, the overall program was initiated by the U.S. State Department and aided by the U.S. Departments of War, Navy, and Justice).

34. See COMM’N ON WARTIME RELOCATION & INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 309–10 (1982) [hereinafter PERSONAL JUSTICE DENIED] (describing why U.S. “repatriation” of Japanese Latin Americans to Japan during the war stalled).

35. Shibayama Report, *supra* note 1, ¶¶ 7, 29 (describing horrific conditions at Crystal City Internment Camp).

36. See JAN JARBOE RUSSEL, THE TRAIN TO CRYSTAL CITY 246 (2015). By the war’s end, over 1,300 JLAs remained incarcerated. GARDINER, *supra* note 33, at 112.

37. With the assistance of an American Civil Liberties Union lawyer, who helped a limited number of JLAs, the U.S. government eventually allowed the Shibayama family to move to Seabrook Farms, New Jersey. Shibayama Report, *supra* note 1, ¶ 29. Still, the government denied the Shibayamas the benefits of legal permanent residence. *Id.*

38. See PERSONAL JUSTICE DENIED, *supra* note 34, at 308.

39. See Shibayama Report, *supra* note 1, ¶ 29.

illegal aliens?”⁴⁰ Without a home country, without permission to remain in the United States, and in the face of the U.S. government’s partly successful efforts after the war to forcibly “deport” many of the JLAs to Japan—a country with which they had no connection⁴¹—the Shibayamas raggedly forged their way in the United States as “illegal aliens” of Japanese ancestry in a racially hostile post-war milieu.⁴²

Like most JLAs, the Shibayamas suffered not only the loss of their home, family businesses (a successful textile import and manufacturing operation),⁴³ financial resources, and community ties, they also endured the stigma of having been “prisoners” in a U.S. concentration camp for supposedly disloyal, dangerous people.⁴⁴ Yuzo’s granddaughter and Isamu’s daughter, Bekki Shibayama, recalled the U.S. government’s decimation of her grandfather’s life and spirit.

To this day, my family and I believe that the US government killed my grandfather’s spirit. After his capitulation, and from then on, he was never the same man again. Gradually he became silently entombed in a world of pain and isolation. I only knew him as a shell of his original self.⁴⁵

The Shibayamas’ story is emblematic: a deliberate U.S. policy of race-based international kidnapping, transport, and prolonged incarceration on American soil, directly tearing families apart, shattering lives, imposing stark human rights violations, and resulting in trauma passed through succeeding generations.

B. U.S. Civil Liberties Act of 1988 and *Mochizuki* Class Action

The Shibayamas initially petitioned administratively for inclusion in the Civil Liberties Act of 1988—the primary redress mechanism for groups wrongly incarcerated by the United States during World War II.⁴⁶ In the

40. *Id.* ¶ 32 (quoting the Shibayamas’ sister, Rose Nishimura).

41. After the war’s end, the United States forcibly deported over 800 JLAs to Japan because of their “enemy alien” and “illegal alien” status. Ayako Hagihara & Grace Shimizu, *The Japanese Latin American Wartime and Redress Experience*, 28 *AMERASIA J.* 203, 212 (2002).

42. See ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG & FRANK H. WU, *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 345 (2nd ed. 2013) [hereinafter *RACE, RIGHTS AND REPARATION*] (“Most Peruvian JLAs wanted to return home, but the Peruvian government remained resentful and suspicious, refusing JLAs reentry because they were without their passports”); *PERSONAL JUSTICE DENIED*, *supra* note 34, at 308 (describing how “[i]n most cases passports had been confiscated before landing [in the United States], and the State Department ordered American consuls in Peru and elsewhere to issue no visas prior to departure.”).

43. See Shibayama Report, *supra* note 1, ¶ 22 (describing how Yuzo and Tatsue Shibayama owned a successful textile import and dress shirt manufacturing business before the U.S. government abducted their family, shuttering their business).

44. See *PERSONAL JUSTICE DENIED*, *supra* note 34, at 314 (describing American diplomat John Emerson’s statement 30 years after WWII that “[the embassy found] no reliable evidence of planned or contemplated acts of sabotage, subversion, or espionage [in Peru]”).

45. Bekki Shibayama, Oral Testimony at the Inter-American Commission on Human Rights Merits Hearing, *Shibayama v. United States* (Mar. 21, 2017).

46. See Shibayama Report, *supra* note 1, ¶ 36 (specifying that the Shibayamas applied for redress under the CLA, but that the government denied their redress claims as early as 1992); see also Lisa J. Laplante, *Bringing Effective Remedies Home: The Inter-American Human Rights System, Reparations*,

1980s, political organizing and the report of the Congressional Commission on Wartime Relocation and Internment of Civilians,⁴⁷ along with federal court rulings in the *Korematsu*,⁴⁸ *Hirabayashi*,⁴⁹ and *Yasui*⁵⁰ coram nobis cases, compelled congressional passage of the 1988 CLA.⁵¹ Viewed officially, the legislation aimed to redress the suffering of nearly 100,000 Japanese American survivors of America’s wartime mass racial incarceration and to “make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations.”⁵² Viewed geopolitically, with a critical eye, Japanese American redress was “produced at the end of the cold war as a fundamental condition of U.S. empire.”⁵³ It was a “crucial component in the restoration of the ‘Good War’ narrative of WWII and the reproduction of the [United States] as a mighty and moral superpower.”⁵⁴ From this critical vantage point, the “CLA works to not only resolve the ‘internment’ in the national imaginary but also to provide a mandate for the [United States] to intervene across the globe in the name of ‘human rights’ as the world’s leading adjudicator of ‘justice.’”⁵⁵

and the Duty of Prevention, 22 NETH. Q. HUM. RTS. 347, 361–62 (2004) (noting that the exhaustion of domestic remedies protects the priority jurisdiction of national courts) (citing American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 673, 693 (entered into force July 18, 1978)). The Japanese American Evacuation Claims Act of 1948 provided minimal property compensation for Japanese American citizens (excluding permanent residents) removed from the West Coast during World War II. Japanese American Evacuation Claims Act, 50 U.S.C. §§ 1981–1987 (1948). The legislation “proved largely ineffectual in practical terms due to onerous burdens for proving losses and red tape that slowed the process to a crawl.” *Japanese American Evacuation Claims Act*, DENSHO ENCYC. (2023), https://encyclopedia.densho.org/Japanese_American_Evacuation_Claims_Act [HTTPS://PERMA.CC/T4K4-JS5P].

47. Congress passed the Civil Liberties Act of 1988 partly in response to the findings and recommendations of a congressional commission. See 1982 *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians*; 1983 *Personal Justice Denied Part 2: Recommendations*; Shibayama Report, *supra* note 1, ¶ 33; Timothy P. Maga, *Ronald Reagan and Redress for Japanese-American Internment, 1983–88*, 28 PRESIDENTIAL STUD. Q. 606, 610 (1998).

48. *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984).

49. *Hirabayashi v. United States*, 828 F.2d 591, 608 (9th Cir. 1987).

50. *Yasui v. United States*, 772 F.2d 1496, 1498 (9th Cir. 1985).

51. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (codified at 50 U.S.C. § 1989(b)); see also ERIC K. YAMAMOTO, IN THE SHADOW OF KOREMATSU: DEMOCRATIC LIBERTIES AND NATIONAL SECURITY 38 (2018) [hereinafter IN THE SHADOW OF KOREMATSU]. See generally Leslie Hatamiya, *Righting a Wrong: The Passage of the Civil Liberties Act of 1988*, 2 U.S.-JAPAN WOMEN’S J. 63, 63–76 (1992) (engaging in an in-depth examination of the influences resulting in the passage of the Civil Liberties Act of 1988).

52. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903; see 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, 134 (Martha Minow ed., 2002) [hereinafter *Reluctant Redress*].

53. Cathleen Kiyomi Kozen, *Justice and Its Others: On the Politics of Redress for Japanese Latin Americans* 111 (2016) (Ph.D. dissertation, University of California, San Diego) (on file with authors).

54. *Id.*

55. *Id.* The Civil Liberties Act of 1988 was also historic because it garnered bipartisan support at the time. See also Jesus A. Rodriguez, *America’s Forgotten Internment*, POLITICO (Dec. 5, 2021), <https://www.politico.com/news/magazine/2021/12/05/japanese-latino-us-war-hostages-history-523711>

Whether characterized as salutary or politically self-interested, one fact stands out: the CLA excluded the JLAs.⁵⁶ The Act applied only to U.S. citizens and legally present noncitizens at the time of incarceration.⁵⁷ Negotiators initially included the JLAs.⁵⁸ They later stripped the JLAs from the redress legislation, likely to avoid admitting recent-past U.S. human rights violations amid pivotal late 1980s American efforts to tear down the “Iron Curtain.”⁵⁹ Both the redress claims administrator and the appellate division⁶⁰ denied the Shibayamas’ CLA claims because the brothers, like other JLAs, were designated illegal aliens, not citizens or lawful permanent residents at the time of incarceration.⁶¹

For this reason, Carmen Mochizuki sued the United States on behalf of the JLAs as a class, claiming discriminatory exclusion from the CLA.⁶² Following the Department of Justice’s motion to dismiss in late 1997, a delegation of 26 JLA advocates (including Grace Shimizu and Art Shibayama) and ACLU attorneys traveled to Washington, D.C. to lobby

[https://perma.cc/V7G2-5XVU]. “[T]he Civil Liberties Act was possible because Democrats saw internment as a civil liberties issue, while Republicans saw it as an unjust taking of property.” *Id.*

56. See Proclamation No. 10341, 87 Fed. Reg. 10677, 10678 (Feb. 18, 2022) (acknowledging Congress’s exclusion of Japanese Latin Americans from the Civil Liberties Act of 1988). Professor Natsu Taylor Saito surmises that because JLAs were “few in number and scattered across the globe, [they] had little political clout” during the passage of the CLA. See Saito, *supra* note 7, at 321–22. JLAs such as Seiichi Higashide, who had been incarcerated during the war, testified at the Commission on Wartime Relocation and Internment of Civilians and encouraged others to testify before Congress. CLA redress, however, was limited to citizens or permanent residents of Japanese descent. See *id.* at 322.

57. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903.

58. RACE, RIGHTS AND REPARATION, *supra* note 42, at 345.

59. See 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 (1992); see also RACE, RIGHTS AND REPARATION, *supra* note 42, at 345 (describing the geopolitical rationale for President Reagan’s initial opposition to Japanese American redress and his eventual public embrace of the CLA as his administration worked to bring down the Iron Curtain). According to Professor Cathleen Kozen’s in-depth historical account and assessment:

[R]edress for Japanese American internment [was] itself a crucial form of remembering, [and it] took place at a pivotal national and international moment when, on the eve of its Cold War victory, the US faced a crucial crossroads in its path toward leadership of the free world. The crossroads was marked by a certain degree of apprehension as the nation continued to struggle to rehabilitate itself, not only with regards to the persistent legacy of the Vietnam War as the lost war, but also in terms of severe economic uncertainty... the [expansive] federal budget deficit, and the looming threat of Japan as a rising economic model and superpower. . . . [For the US to reemerge] as the world’s leading military and moral authority, [what was needed] was the rehabilitation and reassertion of a particular brand of American exceptionalism—one that rested on the production of the US as a mighty, just, and, specifically, racially inclusive nation.

Kozen, *supra* note 53, at 151–52.

60. See Shibayama Report, *supra* note 1, ¶ 36 (specifying that after the United States denied his initial redress application under the CLA, Isamu Shibayama appealed to the Department of Justice Civil Rights Division, arguing that during the war, he was “permanently residing under color of law”). The Chief of the Appellate Section of the Department of Justice Civil Rights Division rejected Mr. Shibayama’s argument and affirmed the denial of his claim because “permanently residing under color of law” does not apply to immigration status determinations. *Id.*

61. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (2012).

62. Rodriguez, *supra* note 55.

Congressional members.⁶³ Rather than dismiss the federal suit outright on sovereign immunity grounds, the sympathetic district judge acknowledged the grave injustice and brokered a weak settlement.⁶⁴ Settlement discussions dragged on for months. Justice Loren Smith continued to emphasize the importance of settlement for the United States by framing the case as a moral one, stating, “[t]he compensation system adopted by the United States [with the CLA] was an action of deep moral significance. It reaffirmed that this is a moral nation and recognizes that when we act in an immoral way we must apologize and make restitution to the extent possible. This [settlement] would do great credit to the moral integrity of our nation.”⁶⁵ Following multiple procedural delays, the parties filed a settlement agreement on June 10, 1998.⁶⁶

The *Mochizuki* class settlement offered a nominal \$5,000 per class member (but only if funds remained) and a form apology unconnected to the JLAs’ specific experience and suffering.⁶⁷ Some advocates celebrated the settlement, asserting that while the settlement “wasn’t what everyone wanted,” the White House press release that accompanied the settlement represented an acknowledgment and apology from the United States for its actions.⁶⁸ The Shibayamas and others objected, opting out of what they perceived to be a wholly inadequate settlement.⁶⁹ Just as skeptics of the settlement feared, the United States exhausted all CLA funds before most of the JLAs who remained in the class were paid.⁷⁰

On their own, the Shibayamas then turned to the U.S. courts.⁷¹ However, the federal district court dismissed the brothers’ claims for U.S. violations of international humanitarian law during World War II.⁷² The court announced that it “understood [the Shibayamas] case to be about

63. Kozen, *supra* note 53, at 198, 206.

64. See RACE, RIGHTS AND REPARATION, *supra* note 42, at 345; Yamamoto, *Reluctant Redress*, *supra* note 52, at 132, 135; Manjusha Kukami, *Application of Civil Liberties Act to Japanese Peruvians: Redress for Deportation and Internment Conducted by the United States Government During World War II*, 5 B.U. PUB. INT. L.J. 5 (1995).

65. Kozen, *supra* note 53, at 207.

66. *Id.*

67. See Saito, *supra* note 7, at 278; see also Rodriguez, *supra* note 55.

68. Kozen, *supra* note 53, at 212 (citing author’s interview with Campaign for Justice co-Chair Julie Small).

69. See Shibayama Report, *supra* note 1, ¶ 37; see also Yamamoto, *Reluctant Redress*, *supra* note 52, at 134–36 (exploring, from Isamu Shibayama’s perspective, why the Shibayama brothers chose to opt out of the *Mochizuki* class action settlement and noting the minimal \$5,000 individual payments awarded to participating *Mochizuki* class members); Shibayama Report, *supra* note 1, ¶ 38 (describing how just 189 JLAs possessed the required immigration status during their wartime incarceration to receive the \$20,000 CLA payments, and how only 145 JLAs were paid the \$5,000 granted by the *Mochizuki* settlement). The settlement required the United States to pay a total of five million dollars, but pro-rated to the \$20,000 per person granted to Japanese Americans through the CLA, this settlement amount would have quadrupled to over \$24 million. See Saito, *supra* note 7, at 337.

70. Yamamoto, *Reluctant Redress*, *supra* note 52, at 136.

71. Shibayama Report, *supra* note 1, ¶¶ 39–46.

72. See *id.* ¶ 39.

reparation under the [already finished] CLA, not about the morality or legality of the [United States'] actions during WWII.”⁷³

The federal court’s decision exposed a deep disconnect between U.S. pronouncements and practices. As U.S. policymakers and President Ronald Reagan ramped up their fight against Soviet communism, they simultaneously used their support of the CLA for Japanese Americans to project to international communities an image of American democracy’s commitment to civil and human rights.⁷⁴ The government, however, continued to turn a blind eye to its even more horrific JLA human rights transgressions—leaving the Shibayamas and other JLAs without official acknowledgement of *their* injustice, without redress, and without any domestic pathways to reparative justice.

III. THE HUMAN RIGHTS COMMISSION’S FINDING OF U.S. VIOLATIONS OF JAPANESE LATIN AMERICAN HUMAN RIGHTS

The Shibayamas then entered the international human rights arena—the last viable avenue for reparation.⁷⁵ Spurred by the political movement for Japanese Latin American redress headed by the Campaign for Justice,⁷⁶ brothers Isamu Carlos Shibayama, Kenichi Javier Shibayama, and Takeshi Jorge Shibayama filed a petition with the Inter-American Commission on

73. *Id.* ¶ 44.

74. See Maga, *supra* note 47, at 610–11 (contrasting President Reagan’s initial fiscal opposition to the Act with his later political support for it); see also Daniel Joseph Natalie, *No Longer Secret: Overcoming the State Secrets Doctrine to Explore Meaningful Remedies for Victims of Extraordinary Rendition*, 62 CASE W. RESV. L. REV. 1237, 1277 (2012) (describing how New Jersey Republican governor Thomas Kean in part convinced President Reagan to sign the Act by reminding the President that he had once given a speech to the family of a young Japanese American staff sergeant killed during World War II).

75. See Shibayama Report, *supra* note 1, ¶ 3–4; *About the IACHR: Mandate and Functions*, INTER-AM. COMM’N ON HUM. RTS., <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/functions.asp> [<https://perma.cc/UH3E-TJQY>]; Dinah Shelton, *The Rules and the Reality of Petition Procedures in the Inter-American Human Rights System*, 5 NOTRE DAME J. INT’L & COMPAR. L. 1, 5 (2015). See generally Natsu Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians—A Case Study*, 40 B.C. L. REV. 275 (1998) (describing the JLAs’ entry into the international human rights arena).

76. Karen Parker and the Peruvian Oral History Project presented the petition. Shibayama Report, *supra* note 1, ¶ 1. Grace Shimizu, director of the Japanese Peruvian Oral Project and the Campaign for Justice: Redress NOW for Japanese Latin Americans has advocated on behalf of the JLAs for decades. See *The Overlapping Stories of Reparatory Justice*, PAC. CITIZEN (Dec. 16, 2020), <https://www.pacificcitizen.org/the-overlapping-stories-of-reparatory-justice/> [<https://perma.cc/J4PD-NEF2>]. The Campaign for Justice’s involvement in litigation, media action, and public education displayed JLA agency in organizing for a genuine remedy for past U.S. injustice. See *What We Do*, CAMPAIGN FOR JUST., <https://jlacampaignforjustice.org/what-we-do/> [<https://perma.cc/4T43-GFPL>]; see also YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 75 (describing how the recognition stage of reparative justice involves examination of the agency of those affected by social structures of oppression). It bears mentioning that like advocates involved in other reparative justice movements, JLAs consistently advocated for justice on their own behalf. See Kozen, *supra* note 53, at 201 (describing public JLA demands in the late 1990s for treatment that honored their personhood and dignity).

Human Rights in 2003,⁷⁷ calling global attention to the JLAs' human rights claims.⁷⁸ The Commission is an autonomous arm of the Organization of American States (OAS)⁷⁹ and serves as the primary international human rights investigative and reporting authority for North, South, and Central American countries.⁸⁰ It is tasked with verifying human rights violations and recommending appropriate remedies.⁸¹ The Commission's mission is to "promote the observance and protection of human rights in the Americas,"⁸² and it thus appeared optimally positioned to interrogate the United States' legal and moral responsibility for its grossly abusive treatment of the JLAs during and after World War II.⁸³

As a member of the OAS, the United States is subject to the jurisdiction of the Commission.⁸⁴ Moreover, the United States sanctioned the Commission's authority and nominally committed itself to the

77. Individuals seeking to petition the Commission must first exhaust domestic remedies. *See* INTER-AM. COMM'N ON HUM. RTS., DIGEST OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON ITS ADMISSIBILITY AND COMPETENCE CRITERIA 1, 31 (2020). Petitioners must exhaust "adequate" and "effective" remedies as defined by the Commission. *Id.* at 33. For example, a remedy is not effective when the State has not ensured its due application by the judicial authorities. *Id.*; *see also* Shibayama Report, *supra* note 1, ¶ 56 (emphasizing how the United States' "lack of tailored response" led to "wild inequities in the way that reparation was later dispersed under the CLA," under which the Shibayama brothers' mother and sister received CLA reparation, but the Shibayama brothers did not).

78. *See, e.g.,* Evelyn Iritani, *Op-Ed: His Family's Internment Earned Apologies from a Human Rights Commission. Will the U.S. Government Respond?*, L.A. TIMES (Mar. 24, 2017), <https://www.latimes.com/opinion/op-ed/la-oe-iritani-update-shibayama-internment-20170323-story.html> [<https://perma.cc/45DR-KQ2Z>]; Natasha Varner, *The US Imprisoned Japanese Peruvians in Texas, Then Said They Entered "Illegally,"* WORLD (Oct. 1, 2018), <https://theworld.org/stories/2018-10-01/us-imprisoned-japanese-peruvians-texas-then-said-they-entered-illegally> [<https://perma.cc/QM97-HEKJ>].

79. *See* David Forsythe, *Human Rights, the United States and the Organization of American States*, 13 HUM. RTS. Q. 66, 67 (1991) (describing the OAS as the "central institution" of "[t]he inter-American system for hemispheric cooperation"); *see also* Justin M. Loveland, *40 Years Later: It's Time for U.S. Ratification of the American Convention on Human Rights*, 18 SEATTLE J. SOC. JUST. 129, 131 (2020) ("The American Declaration and the American Convention on Human Rights . . . together with the OAS Charter, may be said to comprise an 'Inter-American Bill of Human Rights.'").

80. Forsythe, *supra* note 79, at 68; Kimberly D. King-Hopkins, *Inter-American Commission on Human Rights: Is Its Bark Worse Than Its Bite in Resolving Human Rights Disputes?*, 35 TULSA L.J. 421, 425 (2000).

81. INTER-AM. COMM'N OF HUM. RTS., RULES OF PROCEDURE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ARTICLE 31: EXHAUSTION OF DOMESTIC REMEDIES (2013) (requiring the Commission to verify "whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law").

82. INTER-AM. COMM'N ON HUM. RTS., *supra* note 75.

83. Sam Roberts, *Isamu Shibayama Dies at 88, His Quest for Reparations Unfulfilled*, N.Y. TIMES (Aug. 17, 2018), <https://www.nytimes.com/2018/08/17/obituaries/isamu-shibayama-dies-at-88-his-quest-for-reparations-unfulfilled.html> [<https://perma.cc/XT73-N5FF>] (describing how Isamu Shibayama "had given up on getting satisfaction in United States courts," and so appealed to the Inter-American Commission on Human Rights).

84. ANNELEN MICUS, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AS A SAFEGUARD FOR JUSTICE IN NATIONAL TRANSITIONS: FROM AMNESTY LAWS TO ACCOUNTABILITY IN ARGENTINA, CHILE AND PERU 48 (2015) ("While initially regarded as an aspirational document, the American Declaration has since been recognized by the Inter-American Commission and Court as a source of international obligation for all [Organization of American States] member states.").

Commission's processes.⁸⁵ The Commission applies the American Declaration of Rights and Duties of Man to inquiries related to the United States.⁸⁶

Because the US was part of the Ninth International Conference of American States, which adopted the American Declaration, but has not ratified or acceded to the [American Convention on Human Rights], the Commission applies the principles of the American Declaration in deciding cases with regard to the [United States]. Indeed, the Commission has scrutinized the [United States] with respect to its practices in such areas as the death penalty, immigration, racial justice, and conditions at the Guatánamo Bay Detention Center.⁸⁷

Although subject to the Commission's jurisdiction, the United States rarely forthrightly implements the Commission's recommendations, "considering them to be mere recommendations or suggestions."⁸⁸

[D]espite holdings that contemplate the American Declaration as a source of legal obligations, the [United States] considers the American Declaration to be a non-binding instrument "that does not itself create legal rights or impose legal obligations on signatory [sic] states' and that . . . does not constitute a source of affirmative obligations . . ."⁸⁹

The United States nevertheless "has historically been a vocal supporter" of the Commission⁹⁰ as an important part of the international human rights edifice.

With a hopeful but skeptical mindset, the Shibayamas filed their petition with the Commission. In doing so, JLA justice advocates advanced a retooled understanding of the CLA's narrow civil rights focus by framing the CLA's exclusion of the JLAs as itself an international human rights violation for ignoring "'war crimes against humanity,' [and] 'the violations of international law,' which continue[d] to go unresolved." This human rights framing generated a new understanding that erased "the national

85. *Id.* at 49 ("In 1978, the ACHR entered into force and the General Assembly subsequently approved the IACHR's new statute; both largely preserved the Commission's existing powers and practices, strengthening its authority through a truly hemispheric human rights treaty. By approving the 1979 Statute of the IACHR, the member states of the [Organization of American States] in fact sanctioned the Commission's authority to examine communications and make recommendations with regard to possible violations of the American Declaration by member states that have not ratified the [American Convention on Human Rights]."); *see also* Forsythe, *supra* note 79, at 69, 76; *History*, U.S. MISSION TO THE ORG. OF AM. STATES, <https://usoas.usmission.gov/our-relationship/about-oas/history/> [<https://perma.cc/628X-7Q6T>].

86. American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82, doc. 6, rev. 1, at 17.

87. Loveland, *supra* note 79, at 132.

88. *Id.*

89. *Id.* at 132–33; *see also* Inter-Am. Comm'n on Hum. Rts., Considerations Related to the Universal Ratification of the American Convention and other Inter-American Human Rights Treaties 30, OAS/Ser.L/V/II.152 Doc. 21 (2014).

90. Loveland, *supra* note 79, at 133.

narrative of [CLA] redress as justice done.”⁹¹ Grace Shimizu, a leader of the JLA Campaign for Justice, and others powerfully articulated this strategic and rhetorical transition in their statement on “Our Developing Analysis of Redress.”

The Japanese American internment experience has become more widely recognized as a violation of US Constitutional rights by the US government. It is little known that the US government also violated the rights of 2264 persons of Japanese ancestry from 12 Latin American countries. It is only just becoming understood that both these internment experiences were also violations of human rights, of human rights law. Under pre-WWII customary international law and post-war treaties, the deportation, forced relocation and internment of civilians are violations of human rights. They are war crimes for which compensation is mandatory.⁹²

This transitional embrace of an explicit human rights frame reflected the fourth stage of the redress proponents’ long-term strategy. The first three stages—justice through administrative policy changes, legislation, and litigation⁹³—failed to achieve desired outcomes. The fourth stage targeted “international exposure” and aimed “to increase pressure on the administration and Congress to investigate redress opportunities [in the U.S.] and the international arena (e.g. United Nations, Organization of American States, World Court).”⁹⁴ In building this foundation, human rights attorney Karen Parker submitted an informational packet and statement to the 1994 session of the United Nations Commission on Human Rights in Switzerland. Speaking on behalf of the JLAs at a meeting titled “Former Japanese Latin American Internees and Their Families Seek Redress,”⁹⁵ Parker requested international “support for efforts ‘to obtain full disclosure of the facts, an apology and appropriate monetary compensation.’”⁹⁶

Indeed, Parker’s later filing of the Shibayamas’ petition with the Inter-American Commission on Human Rights bolstered the strategic human rights fourth-stage by working to forge international opinion to put pressure on the U.S. government to authorize domestic JLA redress—garnering “‘international attention’ on their ‘issue’ and developing ‘contacts and relationships with other groups around the world seeking compensation on

91. Kozen, *supra* note 53, at 169; see also Cathleen K. Kozen, *Redress as American-Style Justice: Congressional Narratives of Japanese American Redress at the End of the Cold War*, 21 *TIME & SOCIETY* 104 (2012) (describing the new human rights narrative advanced by JLA justice advocates).

92. Kozen, *supra* note 53, at 190 (citing JPHOP UPDATE #4, at 2 (on file with Grace Shimizu Archive)).

93. *Id.* at 183–85.

94. *Id.* at 185 (quoting JPHOP UPDATE #4, at 6 (on file with Grace Shimizu Archive)).

95. *Id.* at 191 (citing STATEMENT ON “UNFINISHED BUSINESS JAPANESE AMERICAN INTERNMENT: A CASE FOR REDRESS FOR VIOLATIONS OF HUMAN RIGHTS DURING WWII” (on file with Grace Shimizu Archive) (distributed at the United Nations Commission on Human Rights, Geneva, Switzerland)).

96. *Id.*

similar issues.”⁹⁷ But then the Shibayamas waited for well over a decade for the initiation of a formal inquiry.⁹⁸

Finally, after careful investigation, the Commission validated significant parts of the brothers’ petition.⁹⁹ In a momentous victory for all JLAs, detailed below, the Commission concluded that the United States violated the American Declaration of the Rights and Duties of Man—a human rights instrument endorsed by the United States.¹⁰⁰

Still, despite requests for active U.S. participation, the United States’ glaring absence marred the proceedings.¹⁰¹ The United States declined to participate in the Commission’s merits hearing despite the Shibayamas’ long-awaited “day in court” and the hearing’s international visibility.¹⁰² Instead, the U.S. government submitted terse written denials of responsibility, offering little more than an empty acknowledgment of the “suffering experienced by the Shibayama family and those similarly situated.”¹⁰³

Ultimately, the Commission found that the United States violated the Shibayamas’ human right to equality by repeatedly denying the brothers’ Civil Liberties Act claims on the basis of nationality.¹⁰⁴ The Commission also determined that the United States violated the brothers’ human right to an effective remedy by rejecting the Shibayamas’ claims and appeals in U.S. courts¹⁰⁵ and by failing to provide a viable alternative redress mechanism.¹⁰⁶ The Commission concluded that in violating these fundamental human rights, the United States transgressed the *jus cogens* norms governing “all rights and freedoms,” upon which the “whole legal structure of national and

97. *Id.*

98. The IACHR received the Shibayamas’ petition on June 11, 2003, and the IACHR held the merits hearing on March 21, 2017. Shibayama Report, *supra* note 1, ¶ 2.

99. *See, e.g., id.* ¶¶ 60–61; *see also* Fernando Basch, Leonardo Filippini, Ana Laya, Mariano Nino, Felicitas Rossi & Bárbara Schreiber, *The Effectiveness of the Inter-American System of Human Rights Protection: A Quantitative Approach to its Functioning and Compliance With its Decision*, 7 INT’L J. ON HUM. RTS. 9, 28 (2010) (finding that the Inter-American system often “does not offer an effective and timely answer for those affected” because the surveyed proceedings typically require more than seven years to receive a final decision and “states delay in complying totally or partially with the required remedies (when they do so) is approximately 2 and a half years for final reports”).

100. *See supra* Part III; Bogdan Ghidirmic, *The American Declaration of the Rights and Duties of Man: An Underrated Gem of International Human Rights Law*, 4 J.L. & PUB. ADMIN. 50, 56 (2018); *see also* Forsythe, *supra* note 81, at 69.

101. Shibayama Report, *supra* note 1, ¶ 2.

102. *Id.*

103. *Id.* ¶ 14.

104. *Id.* ¶¶ 33–35 (quoting key language of the Civil Liberties Act of 1988 and specifying that the Act provides compensation and apology for U.S. citizens and permanent residents of Japanese ancestry who the U.S. incarcerated under the February 1942 Executive Order 9066).

105. *Id.* ¶¶ 58–59 (specifying that the legal decisions at the Office of Reparations Administration and in the federal courts were both violations of the right to equality before the law and right to an effective remedy).

106. *Id.* ¶ 52.

international order rests.”¹⁰⁷ The rest of this Part discusses these specific findings of the Commission’s Report.

A. The United States Violated the Japanese Latin Americans’ Right to Equality Before the Law

The Commission sharply rejected the United States’ legal defenses. It declared that the United States’ exclusion of the Shibayamas from CLA redress for JLAs constituted a “clear violation of [the Shibayamas’] right to equality before the law.”¹⁰⁸ This right to equality, codified by Article II of the American Declaration of the Rights and Duties of Persons (“American Declaration”), commands that “all persons are equal before the law...without distinction as to race, sex, language, creed or any other factor.”¹⁰⁹ The preamble of the American Declaration also emphasizes that “the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality.”¹¹⁰

The Commission first observed that the CLA’s exclusion of noncitizen JLAs warranted strict scrutiny review and the presumption of invalidity.¹¹¹ It then determined that the United States failed to “[meet] its burden of demonstrating its compelling interest in making the [national origin] distinction, the lack of less restrictive alternatives, and the strict proportionality of the measure.”¹¹² The Commission thus rejected the U.S. justification for its exclusionary policy.¹¹³ The United States had argued that restricting CLA redress to citizens and permanent residents was an exercise of its sovereign prerogatives that “limite[d] its economic liability.”¹¹⁴ The Commission, however, determined that Peruvian nationality bore “no rational relationship to the nature or form of suffering caused by [World War II abduction and] internment.”¹¹⁵ Moreover, the Commission emphasized the vacuousness of the United States’ economic burden argument by highlighting the United States’ sheer spending power as a wealthy nation in contrast to the minimal number of remaining potential beneficiaries.¹¹⁶

Notably, the Commission’s assessments illuminated the glaring injustice of the United States’ nationality-based denial of JLA redress. For

107. *Id.* ¶ 50.

108. *Id.* ¶ 55.

109. American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82, doc. 6, rev. 1, at 17.

110. *Id.* at pmb1.

111. Shibayama Report, *supra* note 1, ¶ 54.

112. *Id.* ¶ 55.

113. *Id.* (rejecting the U.S.’s arguments regarding economic liability and highlighting the disproportionality of the \$20,000 per person Civil Liberties Act redress in comparison to the harm inflicted on the JLAs).

114. *Id.*

115. *Id.*

116. *Id.*

example, after the Shibayamas' imprisonment and release, U.S. officials labeled them "illegal aliens."¹¹⁷ In doing so, the officials refused to acknowledge the sole reason for the JLAs "unlawful presence"—the United States' kidnapping, international transport, and mass incarceration of the JLAs in a U.S. concentration camp, without charges or trial, solely on account of their race.¹¹⁸ The JLAs had no connection with Japan or the United States—Peru itself was not involved in the war.¹¹⁹ The Commission strongly implied that the JLAs only ended up in the United States "without lawful permission" because the American government violated the JLAs' human rights in forcibly bringing them as racial hostages.¹²⁰ The three branches of the U.S. government later compounded the original travesty of justice by blocking all domestic pathways to redress.

B. The United States Violated the Japanese Latin Americans' Right to an Effective Remedy

The Commission also determined that the United States' repeated denial of the Shibayamas' CLA claims violated the JLAs' human right to an effective remedy.¹²¹ Article XVIII of the American Declaration establishes that "[e]very person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."¹²² The Commission pointedly emphasized that "the formal existence of remedy in law is not sufficient."¹²³ Legal remedies instead must be "adequate and effective in practice"¹²⁴ to repair the damage of human rights violations.¹²⁵ A remedy is effective if it is non-illusory and *effet utile*¹²⁶ in producing the result for which it was designed.¹²⁷

117. See *id.* ¶ 27; see also RUSSEL, *supra* note 36, at 39 (describing how Latin Americans arrested and brought to the United States were then arrested by the INS for "illegal entry").

118. See RUSSEL, *supra* note 36, at 39.

119. See PERSONAL JUSTICE DENIED, *supra* note 34, at 307–08.

120. See *supra* Part I (describing the abduction and incarceration of the Shibayamas and other JLAs during World War II); Shibayama Report, *supra* note 1, ¶¶ 19, 27, 60.

121. Shibayama Report, *supra* note 1, ¶ 52.

122. American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82, doc. 6, rev. 1, at 17.

123. Shibayama Report, *supra* note 1, ¶ 52.

124. *Id.*

125. *Id.*

126. *Id.* (defining "*effet utile*" as "useful effect").

127. *Id.* (emphasizing the American Declaration's mandate for an "effective remedy" serves a key human rights tenet of reparative justice); see also Velásquez Rodríguez v. Honduras, Merits, Inter-Am. Comm'n H.R. (ser. C) No. 4, ¶ 167 (July 29, 1988) (describing how the "obligation to ensure the free and full exercise of human rights is not only fulfilled by the existence of a legal system designed to make it possible to comply with this obligation—it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights").

The Commission concluded that the United States engaged in multi-layered violations of the Shibayamas' right to effective remedy.¹²⁸ First, the United States failed to afford the Shibayamas a remedy "substantively different from the [exclusionary] CLA."¹²⁹ The United States had declined to offer any mechanism aside from the CLA (which by design excluded the JLAs).¹³⁰ The Commission also found that the United States continued to deny the Shibayamas an effective remedy because its Office of Redress Administration and the federal courts repeatedly rejected the brothers' claims—compounding the injustice of Congress's nationality-based exclusion of JLAs.¹³¹ At bottom, the Commission observed, the government repeatedly deployed the same unfounded and discriminatory national origin justification for its denial of the Shibayamas' claims.¹³²

Exacerbating the root injustice, the Commission observed that the United States perniciously attempted to rebrand the JLA abductions and incarceration as "voluntary internment."¹³³ The Immigration and Naturalization Service, for instance, stated that the Shibayamas' mother was brought for "voluntary internment in [the United States] because of the war with Japan" while neglecting to mention that the Shibayama family was held at gunpoint during their transport to the United States and incarcerated as unwilling racial hostages for trading with Japan.¹³⁴ Moreover, the government later refused to recategorize the Shibayamas as legal residents, obstructing a straightforward reparative path.¹³⁵ Not only did the government stymie all attempts to obtain an effective domestic remedy for the United States' human rights violations, it also attempted to foreclose the Shibayamas' access to the Commission.¹³⁶ The government misleadingly asserted that the Shibayamas were using "the IACHR as a prohibited 'fourth instance' review."¹³⁷ The Commission flatly rejected this contention.

Broader healing and genuine reparative justice require far more than a state-limited echo chamber.¹³⁸ The Commission thus urged the United States to self-reflect and effectively asked: was the repeated denial of the

128. Shibayama Report, *supra* note 1, ¶¶ 52, 59.

129. *Id.* ¶ 59 (emphasizing that "in this way, the petitioners were not afforded a remedy to consider the merits of their claims that were substantively different from the CLA").

130. *Id.*

131. *Id.* ¶¶ 36–46.

132. See, e.g., *id.* ¶¶ 36, 41; PERSONAL JUSTICE DENIED, *supra* note 34, at 305; Varner, *supra* note 78 (describing individuals who had no choice but to follow their detained family members as "voluntary internees").

133. Shibayama Report, *supra* note 1, ¶ 27; PERSONAL JUSTICE DENIED, *supra* note 34, at 305.

134. Shibayama Report, *supra* note 1, ¶¶ 27–28.

135. See *id.* ¶ 27; see also Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (awarding redress solely to "eligible individuals" who were United States citizens or "permanent resident aliens" at the time of their incarceration).

136. See Shibayama Report, *supra* note 1, ¶ 13.

137. See *id.*

138. See Laplante, *supra* note 46, at 353 (emphasizing the importance of remedy, redress and reparation).

Shibayamas' claims for relief under the Civil Liberties Act, without other viable pathways for redress, in any way human rights justice done?

IV. ASSESSING THE COMMISSION'S REPARATIONS RECOMMENDATIONS
AND PRESIDENT BIDEN'S PARTIAL ACKNOWLEDGMENT OF U.S.
HUMAN RIGHTS TRANSGRESSIONS

After finding the United States responsible for violations of the American Declaration, the Commission recommended U.S. redress for Japanese Latin Americans.¹³⁹ It directed the government to “provide integral reparations for the human rights violations . . . including both the material and moral dimensions, and adopt measures for economic compensation and measures of satisfaction.”¹⁴⁰ In light of the depth and breadth of the harms, the Commission suggested U.S. remedies extend well beyond limited payments and other token performative gestures.¹⁴¹ More recently, President Biden's subsequent acknowledgment of the JLA injustice and Secretary Blinken's reiterated commitment to U.S. human rights accountability shed bright, if momentary, light on the JLA justice initiative. Social Healing Through Justice provides a lens for assessing the import of Biden's acknowledgment and the Commission's recommendations for the JLA justice initiative.¹⁴²

A. The Social Healing Through Justice Framework

The Commission's findings and recommendations are compelling. Both infuriating (in chronicling what had occurred) and encouraging (for what lies ahead). Yet in the afterglow of the Commission's Report and President Biden's recent acknowledgment of U.S. wrongdoing, American government participation in JLA redress looks increasingly like a fleeting prospect. This raises pressing questions—in light of the Commission's revelations and directives, what reparative steps lie ahead for surviving JLAs and their families? And for the United States as a democracy avowedly committed to human rights?

Social Healing Through Justice offers an analytical framework for shaping, assessing, and recalibrating reparative justice initiatives. Its concepts, and the working principles undergirding them, are drawn from group healing commonalities among diverse disciplines of law, social psychology, theology, political science, economics, and Indigenous practices.¹⁴³ It offers a multidisciplinary, pragmatically grounded approach

139. Shibayama Report, *supra* note 1, ¶¶ 64–65 (emphasizing the United States' failure to respond to the June 2019 Final Merits Report No. 99/19 and prominently reiterating the recommendations that the United States take to “provide integral reparation” for violations of the American Declaration).

140. *Id.* ¶ 65.

141. *See id.* ¶¶ 52, 57, 65.

142. *See infra* Part IV.

143. *See* YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 46–71.

for guiding original initiatives and for rethinking and remaking often stalled reparations and reconciliation efforts.¹⁴⁴ Rather than a formula for justice, the framework guides a systematic interrogation of the context and specifics of long-standing injustices, including the underlying causes of the injustice and the psychological¹⁴⁵ and economic harms through generations.¹⁴⁶ It then shapes a pragmatic search for integrated reparative measures likely to produce the kind of justice that actually heals the wounds of individuals, communities and society itself.¹⁴⁷

Other scholars have employed the Social Healing Through Justice framework to analyze and support revitalized reparative justice efforts in a number of different settings. They have critiqued and enlivened reparations initiatives for the oppression of Indigenous peoples in Canada,¹⁴⁸ California,¹⁴⁹ and the continental United States;¹⁵⁰ Native Hawaiian claims to sovereignty and self-determination rooted in the concededly illegal U.S. overthrow of the Sovereign Hawaiian nation in 1893 and the theft of two-thirds of Hawaiian lands upon annexation in 1898;¹⁵¹ reparations recommendations of the California Task Force on African American

144. Co-author Yamamoto coalesced these disciplinary commonalities into the analytical framework he describes as Social Healing Through Justice—an approach to reparative justice that emphasizes the healing of traumatic wounds suffered by individuals and communities and the repairing the damage to people, institutions, and societal relationships. It thus addresses the individual and the communal, the psychological/physical and the material/economic, and the remaking of institutions to prevent “it” (the same type of injustice) from recurring. Yamamoto has continually developed and refined this framework. *See generally* YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4; ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND CONCILIATION IN POST-CIVIL RIGHTS AMERICA 133 (2000); Natsu Taylor Saito, *Truth, Healing, Empowerment: Eric Yamamoto on Reparative Justice for the People of Jeju*, 53 SW. L. REV. 9 (2023); Eric K. Yamamoto & Suhyeon Burns, *Apology & Reparation: The Jeju Tragedy Retrials and the Japanese American Coram Nobis Cases as Catalysts for Reparative Justice*, 45 U. HAW. L. REV. 5 (2022); Eric K. Yamamoto, Suhyeon Burns & Taylor Takeuchi, *Apology & Reparation II: United States Engagement with Near-Final Stages of Jeju 4.3 Social Healing*, 45 U. HAW. L. REV. 77 (2022).

145. *See* YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 47. The framework also emphasizes a convergence of both conceptual and practical approaches to “coalesce interdisciplinary insights for deployment by scholars, policymakers, and on-the-ground communities.” *Id.*

See Laurie Leydic Harkness, *Transgenerational Transmission of War-Related Trauma*, in INTERNATIONAL HANDBOOK OF TRAUMATIC STRESS SYNDROMES 635, 635–43 (John P. Wilson & Beverley Raphael eds., 1993).

146. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 68.

147. *Id.* at 71.

148. 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 (2023).

149. 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 (2023).

150. Holly K. Doyle, *Kala: Disentangling Kamehameha Schools From the 2022 Federal Indian Boarding School Initiative Investigative Report While Actualizing Social Healing Through Justice for its Kānaka Maoli Students*, 46 U. HAW. L. REV. 2 (2023).

151. Susan K. Serrano, *A Social Healing Approach to Native Hawaiian Claims: Law and Resistance at Maunakea*, 52 SW. L. REV. 50 (2023); Troy J.H. Andrade, *Pūpūkahiki I Holomua: Critical Lessons of Social Healing Through Justice for Native Hawaiians*, 52 SW. L. REV. 67 (2023).

Reparations;¹⁵² and the South Korea Jeju 4.3 Tragedy’s 25-year reparative initiative with significant, yet unacknowledged, U.S. responsibility for mass carnage during supposed peacetime between the end of World War II and the start of the Korean War.¹⁵³

A reparative justice initiative is fraught with starts and stalls. Its manifold stages evolve simultaneously or seriatim, encompassing *recognition* of harms and disabling constraints,¹⁵⁴ acceptance of *responsibility* for healing the wounds of people and societies, and *reconstruction* of institutions to prevent “it” from recurring, and *reparation* as social and economic justice for individuals and communities.¹⁵⁵ Viewed through this reparative justice lens, the Commission’s recommendations emerge as a powerful, albeit limited, vehicle for reinvigorating social healing next steps for Japanese Latin Americans.¹⁵⁶ The 4R guideposts of the Social Healing Through Justice framework—*recognition*, *responsibility*, *reconstruction*, and *reparation*—assess the Commission’s effort to shepherd the United States toward meaningful JLA redress according to international human rights norms.¹⁵⁷

In application, these 4R guideposts stand as shorthand “for the analytical inquiries generated by a Social Healing Through Justice framework that aim to shape, assess and recalibrate social healing initiatives to foster the kind of reparative justice that heals.”¹⁵⁸ Those inquiries

engender responses to pivotal questions about a social healing initiative. What needs to be done and by whom to shape and launch it? How can stakeholders assess and reinvigorate the initiative along the way so that it meaningfully addresses the harms to people, communities and society itself? In the face of what challenges? With what impacts on people and institutions? Now and for the future.¹⁵⁹

These inquiries into a “contemplated or ongoing social healing initiative,” like Jeju 4.3, thus “speak to how we, as members of civil societies, might practically struggle to bridge the justice chasm between aspiration and realization.”¹⁶⁰

152. CAL. DEP’T OF JUST., CAL. TASK FORCE TO STUDY AND DEV. REPARATION PROPOSALS FOR AFR. AMS., INTERIM REPORT (2022).

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

154. See *infra* Part IV.B (defining disabling constraints as “the social structures of oppression and their justifications”).

155. For a more detailed discussion of the framework’s 4Rs, see *infra* Part VII.A.

156. See generally YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 251–91; Shibayama Report, *supra* note 1, ¶¶ 61–65 (listing both the Commission’s initial and reiterated recommendations).

157. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 72.

158. *Id.* (emphasis in original).

159. *Id.*

160. *Id.* at 72–73.

B. President Biden's Partial Acknowledgment

The Human Rights Commission Merits Report, followed by President Biden's acknowledgment of the JLA injustice, rekindled a reparations initiative slowed by years of bureaucratic ennui¹⁶¹ and human rights myopia.¹⁶² Biden's statement at the 2020 Day of Remembrance of the Japanese American incarceration *recognized* important aspects of the JLA injustice—a first by an American president.¹⁶³ It acknowledged the “painful reality” that JLAs were “taken” from their homes, incarcerated and later excluded from the Civil Liberties Act.¹⁶⁴

While a sound start, the statement fell well short of acknowledging the human rights atrocity orchestrated by the United States or the Commission's strong finding of U.S. human rights violations. Nor did it acknowledge the “disabling constraints”—the social, economic, and political structures¹⁶⁵—forcibly imposed upon foreign citizens kidnapped and transported to the United States solely on account of race under the false flag of national security.¹⁶⁶ And it ignored the protracted JLA efforts for redress that met with continual U.S. rejection. Equally important, it failed to retract the patently false stock story that the JLAs were simply “illegal aliens” in the United States who should not expect favorable treatment by the government, ignoring historical facts and tapping into the present-day hostility of some Americans toward border migrants.¹⁶⁷

The president's statement also lay silent about the ways the government exacerbated the original sin—the wartime atrocity—through the falsely constructed and damning narratives of “illegal aliens” that ultimately justified the JLAs' exclusion from the CLA's redress, thus redoubling the oppression. Perhaps most significantly, the statement avoided even a hint of a promise of U.S. engagement with the JLA justice initiative, and it completely ignored the pressing question of reparations. Indeed, in arguing

161. It took seventeen years from the time the Shibayamas filed their petition to the Inter-American Commission on Human Rights' publication of the Merits Report. *See* Shibayama Report, *supra* note 1, ¶¶ 1–2.

162. *See generally* Saito, *supra* note 7.

163. *See* Proclamation No. 10341, 87 Fed. Reg. 10677 (Feb. 18, 2022).

164. *See id.* at 10678; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 75.

165. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 75 (“Recognition also aims to identify disabling constraints—the social structures of oppression and their justifications—imposed by one group upon another.”).

166. *See* Shibayama Report, *supra* note 1, ¶ 19.

167. *See, e.g., id.* ¶ 12 (describing the United States' explanation as to why “citizenship and legal permanent residency are legitimate factors for States to take into account when determining how to divide their limited resources”); Joel Rose, *A Majority of Americans See an “Invasion” at the Southern Border*, *NPR Poll Finds*, NPR (Aug. 18, 2022), <https://www.npr.org/2022/08/18/1117953720/a-majority-of-americans-see-an-invasion-at-the-southern-border-npr-poll-finds> [<https://perma.cc/7DXD-HNPR>] (describing proliferation of misleading anti-immigrant sentiment, particularly regarding how likely migrants are to use public benefits).

to the Commission, U.S. representatives headed in the other direction, advancing a new disturbing narrative—that the JLAs have had their bite at the apple, and that therefore, there is nothing more to do here.

As elaborated upon below, the social healing framework’s *recognition* and *reparation* assessments of the president’s statement reveal only a partial first step in the social healing process. This begs the question: what more is needed to compel the United States now to engage fully? In offering a response to that query, the next section employs nuanced notions of *responsibility* for healing the wounds of historic injustice—the framework’s second R—to uplift the Commission’s integral reparation recommendation and illuminate why the United States bears a moral and ethical, if not legal, obligation to assume a place at the JLA reparative justice table.¹⁶⁸ The following section addresses multifaceted American interests in doing so.

C. The Commission’s Recommended “Integral Reparation”

The framework’s inquiry into *recognition* and *responsibility* “asks participants in the social healing endeavor to carefully assess the dynamics of group power.”¹⁶⁹ It also encompasses both “acknowledgment of the harms generated by the misuse of ‘power over others’ and an acceptance of responsibility for repairing the damage inflicted.”¹⁷⁰ In essence, *responsibility* ascribes perpetrator and conspirator obligations to jointly acknowledge the damage and commit to rectifying the injustice, opening the door to accountability and the initiation of concrete reparative measures.

This accountability inquiry illuminates both U.S. legal and moral responsibility for healing the wounds of its human rights abuses. Legal norms generally draw from existing, applicable sources of formal legal

168. See Ghidirmic, *supra* note 100, at 57 (“[In a 1989 advisory opinion,] the Inter-American Court seem[ed] to indicate that the [1948 American] Declaration, as an authoritative interpretation of the Charter [of the Organization of American States], creates a legally binding standard for all member states of the Organization.”). The Commission in *Shibayama* acknowledged that the provisions of the 1969 American Convention on Human Rights, “which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration,” do not apply to non-ratifying states (the United States assented to it but did not congressionally ratify Convention). *Shibayama* Report, *supra* note 1, ¶ 49; see also Loveland, *supra* note 79, at 133 (“The United States signed the American Convention in 1977 but has neither ratified it nor accepted the contentious jurisdiction of the Inter-American Court.”). The Commission thus emphasized that the American Convention’s provisions are still relevant in interpreting the 1948 American Declaration of the Rights and Duties of Persons. *Id.* For a concise overview of fundamental Organization of American States documents like the American Declaration of Rights and Duties of Persons and the American Convention on Human Rights, see *Basic Documents in the Inter-American System*, ORG. OF AM. STATES INTER-AM. COMM’N ON HUM. RTS., https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basic_documents.asp [<https://perma.cc/8K9R-VMJQ>]; see also *Shibayama* Report, *supra* note 1, ¶ 65 (reiterating its recommendations to the United States and emphasizing that [as of April 27, 2020, the date of the published merits report] “the United States has not complied with the recommendations set forth in the merits report”).

169. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 79.

170. *Id.* at 79 (citing Joseph v. Montville, *The Healing Function in Political Conflict Resolution*, in CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION 112 (Dennis J.D. Sandole & Hugo van der Merwe eds., 1993)).

duties.¹⁷¹ Moral or ethical norms more broadly “overlie [these] forms of legal accountability.”¹⁷² As mentioned, the Commission found U.S. violations of the applicable international human rights instrument, ascribing U.S. legal responsibility for excluding the JLAs from the 1988 CLA and for failing to offer an effective alternative remedy.¹⁷³

Legal responsibility alone, however, substantially limited the scope of JLA remedies by focusing solely on the United States’ exclusion of the JLAs from the CLA.¹⁷⁴ By also examining moral responsibility, the scope of redress expands to encompass all abusive U.S. actions informing the JLA injustice. This encompasses the underlying humanitarian abuses during World War II, even those beyond the formal reach of the American Declaration.¹⁷⁵

As described further in the concluding Parts, this inquiry deepens and expands U.S. *responsibility* for the Commission’s recommended “integral reparation,” and it opens new pathways—and challenges—for U.S. engagement. These pathways and its challenges spotlight the at times shaky edifice of U.S. legitimacy as a democracy. They also frame the question elaborated upon in the following section: *If the United States is responsible for grave human rights abuses, yet ignores Commission-recommended redress, how can the U.S. continue to uplift its global stature as a leading democracy committed to the rule of law and particularly human rights as constraints on others’ abusive behavior?*

Finally, in assessing the Commission’s integral reparation recommendation, the social healing framework casts an analytically wider net beyond the focus of many on monetary payments, gathering in other key facets of reparative justice.¹⁷⁶ As developed in the next Part, the framework brings into play the social healing working principle of *mutual engagement*, highlighting the United States’ responsibility to participate interactively with an eye on genuine healing rather than simply issuing tepid statements in an attempt to “put this behind us.”¹⁷⁷ It also invokes *recognition*—ensuring that layers of damage are meaningfully identified and that disabling institutional constraints are aptly excavated as the bedrock for appropriate reparative measures. And it uplifts the Commission’s “compensation” and “satisfaction” directives as major, though not sole, aspects of *reparation*. Moreover, it underscores the *reconstruction* dimension of the Commission’s

171. *See id.*

172. *See id.* at 126.

173. *See supra* Part III.

174. Shibayama Report, *supra* note 1, ¶ 65 (recommending reparations “for the human rights violations established in this report”).

175. *Id.* ¶ 48–49.

176. *See infra* Part V.

177. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 62–63.

recommendations—restructuring institutions and policies to deter future human rights abuses under the mantle of national security.¹⁷⁸

D. The Foundation for the Commission’s Recommendations: International Human Rights Norms of Reparative Justice

The social healing framework’s analysis of the Commission’s reparation recommendation is further illuminated by the United Nations’ primary remedial vehicle, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law (Basic Principles). The Commission’s recommendations¹⁷⁹ amplified calls for U.S. reparation by incorporating bedrock international human rights norms.¹⁸⁰ Partially grounded in the language of the American Declaration, the Commission’s integral reparation recommendation also flowed from a broader foundational international instrument, the United Nations’ Basic Principles.¹⁸¹ Those principles target *restitution*,¹⁸² *compensation*,¹⁸³ *rehabilitation*,¹⁸⁴ *satisfaction*,¹⁸⁵ and *guarantees of non-repetition*.¹⁸⁶ Collectively, the principles comprise an internationally-

178. See Laplante, *supra* note 46, at 356–57 (describing the deterrent function of reparations and emphasizing how the prevention of injustices is “no doubt the very essence of the work of the human rights movement”).

179. Shibayama Report, *supra* note 1, ¶ 65.

180. See *id.* ¶ 61 (recommending that the United States adopt “measures of satisfaction”). See generally G.A. Res. 60/147 (Dec. 16, 2005) (charting foundational reparative justice norms).

181. G.A. Res. 60/147 (Dec. 16, 2005); see also Robin Adèle Greeley, Michael R. Orwicz, José Luis Falconi, Ana Maria Reyes, Fernando J. Rosenberg & Lisa J. Laplante, *Repairing Symbolic Reparations: Assessing the Effectiveness of Memorialization in the Inter-American System of Human Rights*, 14 INT’L J. TRANSITIONAL JUST. 165, 166–67 (2020) (describing the United Nations’ five categories of reparation collectively as “integral reparation”).

182. *Restitution* “restore[s] the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred” and includes affirmative acts such as “restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.” G.A. Res. 60/147, at ¶ 19 (Dec. 16, 2005).

183. *Compensation* recommends “economically assessable damage, as appropriate and proportional to the gravity of the violation,” which may include “physical or mental harm,” “moral damage,” or material damages and loss of earnings or earning potential.” *Id.* at ¶ 20.

184. *Rehabilitation* “include[s] medical and psychological care as well as legal and social services.” *Id.* at ¶ 21.

185. *Satisfaction* entails “verification of the facts and full and public disclosure of the truth,” public apology, and sanctions against those liable for the violations. *Id.* at ¶ 22. *Satisfaction*, invoked by the Commission in its recommendations, also highlights the importance of “effective measures” aimed at cessation of continuing violations, commemoration or tribute to the victims, and restoration of the dignity, reputation and rights of the victims. See *id.*; see also Margaret Urban Walker, *Transformative Reparations? A Critical Look at a Current Trend in Thinking About Gender-Just Reparations*, 10 INT’L J. TRANSITIONAL JUST. 108, 117 (2016) (describing *satisfaction* as the “[m]ost varied of all” the five categories of the Basic Principles of Reparation because it is comprised of “diverse measures that address victims’ needs for protection and public recognition as well as relief of suffering”).

186. *Guarantees of non-repetition* involve “promoting the observance of codes of conduct and ethical norms, in particular international standards,” “promoting mechanisms for preventing and monitoring social conflicts and their resolution,” “reviewing and reforming laws contributing to or allowing” human rights violations, and “ensuring that all civilian and military proceedings abide

established reparative justice regime for serious human rights violations.¹⁸⁷ They are also features of the broader Social Healing Through Justice framework for reparative justice that grapples with myriad types of historical injustices.

The Commission did not expressly cite the Basic Principles in its recommendations for JLA reparation.¹⁸⁸ Its reference to victim-based *compensation* and *satisfaction*, though, mirrored the tenets of the Basic Principles.¹⁸⁹ The “material dimensions” suggested by the Commission reflected the “material damages and loss of earnings” contemplated by the Basic Principles precept of *compensation*.¹⁹⁰ And the Commission’s recommendation that “the State should take into account the reparations requested by the petitioners”¹⁹¹ suggested a measure of self-determination reflected in the *satisfaction* principle’s mandate of “effective remedies” tailored to the needs of those harmed.¹⁹² Reparative measures contemplated by this international reparations edifice thus extend well beyond nominal monetary payments,¹⁹³ although meaningful monetary compensation is an important aspect of repair.¹⁹⁴

The Commission’s readily apparent infusion of the Basic Principles signaled to the United States the salience of international precepts of reparative justice.¹⁹⁵ It did so, at least indirectly, by calling upon the United

by international standards of due process, fairness and impartiality.” G.A. Res. 60/147, ¶ 23 (Dec. 16, 2005).

187. See Walker, *supra* note 185, at 116–17 (“The UN’s Basic Principles distills 25 years of evolving deliberation rooted in practical experience.”).

188. See Shibayama Report, *supra* note 1, ¶ 65.

189. See *id.*

190. *Id.*; see G.A. Res. 60/147, ¶ 20 (Dec. 16, 2005).

191. Shibayama Report, *supra* note 1, ¶ 65.

192. See *id.*; Walker, *supra* note 185, at 117.

193. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 239–40 (emphasizing how the Basic Principles for Reparations as a codification of reparative justice norms impelled the Canadian government to “actively under[take] several sustained truth-seeking and reparations initiatives in response to its long-standing, harsh, discriminatory treatment of Canada’s indigenous children”); Walker, *supra* note 185, at 118 (“Reparations are seen as one facet of a transitional project that signals and models a break with a past political order and a commitment to a different schedule of moral and political values, including respect for individuals’ rights and equality as citizens, institutionalized transparency and accountability and the rule of law.”).

194. See *infra* Part VII.A (describing the Commission’s emphasizing reparation as more than monetary payments); see also G.A. Res. 60/147, ¶ 18 (Dec. 16, 2005) (describing how compensation should be “appropriate and proportional to the gravity of the violation and the circumstances of each case”).

195. The Commission’s recommendation that the United States deliver “measures of satisfaction” also alluded to the importance of *reconstruction* to analysis of reparative justice regimes. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 82–84. Within the social healing framework, *reconstruction* proceeds through and is measured by four primary milestones. See *id.* at 82. The process begins with performative interactions, activating sincere perpetrator apology and survivor acceptance. See *id.* Next, the offending party initiates concrete reparative action such as the construction of memorials or educational facilities. See *id.* at 83–84. The perpetrator then generates substantive messaging and unravels harmful narratives surrounding the injustice. See *id.* at 84.

States to acknowledge its assent not only to the American Declaration but also to the more far-reaching international reparations regime embodied in the Basic Principles. The Commission thereby pressed the United States as a democracy to follow through on its international human rights commitments.

In this setting, a pivotal pragmatic question emerged. How, if at all, might the Commission's 2020 Report and President Biden's 2022 acknowledgment of the Japanese Latin American injustice serve as moral or legal *catalysts* for U.S. political engagement with JLA redress? The following two Parts address this question.

V. THE UNITED STATES' RESPONSIBILITY TO POLITICALLY REDRESS ITS JAPANESE LATIN AMERICAN WARTIME TRANSGRESSIONS

Parts III and IV examined the Inter-American Commission on Human Rights' findings of U.S. violations of Japanese Latin Americans' human rights in excluding them from the 1988 Civil Liberties Act's redress. The United States' legal responsibility for repairing the damage of those violations emanated from the American Declaration on the Rights and Duties of Man acceded to by the United States in 1951.¹⁹⁶ Tenets of moral or ethical responsibility also call more broadly for United States political engagement to repair the damage of America's *wartime* transgression of international human rights norms.

A. The Limits of Legal Responsibility and the Salience of Moral Responsibility

The Commission found that the United States breached its international human rights law obligations when it denied the Shibayamas both equality before the law and an effective remedy by excluding the JLAs from the 1988 CLA's redress for Japanese Americans.¹⁹⁷ This finding of *legal*

And finally, the parties collaboratively evaluate institutional pillars, intentionally restructuring key societal systems such to prevent reoccurrence of the injustice. *See id.*

The international reparative norms invoked by the Commission also embody key *reconstruction* guideposts illuminated by Social Healing Through Justice. *See id.* at 82–84. *See generally* G.A. Res. 60/147 (Dec. 16, 2005) (directing participants towards performative measures of “satisfaction”). The “cessation of continuing violations” and “apology” suggested in the Commission's recommendations for “measures of satisfaction” reflect the necessity of performative interactions among participants highlighted by the framework. The “full and public disclosure of the truth” is particularized by the framework's emphasis on the construction of memorials, museums, and educational facilities on the one hand, and the collaborative development of thoughtful, accurate development of new narratives about the injustice and rectification on the other.

Finally, the “effective” cessation of continuing violations and restoration of dignity sought by the Basic Principles for Reparations speaks to the framework's *reconstruction* emphasis on institutional restructuring. This recommendation encourages the government to dismantle harmful social, political, and economic structures that fostered the underlying injustice.

196. Shibayama Report, *supra* note 1, ¶ 47; *see also* Loveland, *supra* note 79, at 132.

197. *See supra* Part III.A–B.

responsibility based on a human rights instrument effective from 1951,¹⁹⁸ while significant, remained critically limited.¹⁹⁹ Notably absent was an explicit statement from the Commission finding that the United States violated the JLAs' human rights during World War II, with the Commission declining to rule on this issue because the JLA abduction and incarceration predated U.S. ratification of the American Declaration.²⁰⁰

The Commission's circumscribed 2020 finding of U.S. violations of the JLAs' human rights nevertheless sparked an inquiry into the United States' broader moral (as a human polity) and political (as a democracy) obligations to also redress the country's wartime transgressions on American soil.²⁰¹

198. The term "legal responsibility" is employed here to denote an obligation to rectify a legal wrong defined by an international or bilateral instrument assented to by the perpetrator government. This usage does not require the existence of structural enforcement mechanisms. See HELMUT PHILIP AUST, *COMPLICITY AND THE LAW OF STATE RESPONSIBILITY* 3 (2011) (describing the difficulty of interpreting state responsibility in terms of tribunal enforcement); Stanley A. Halpin, *Looking Over a Crowd and Picking Your Friends: Civil Rights and the Debate Over the Influence of Foreign and International Human Rights Law on the Interpretation of the U.S. Constitution*, 30 HASTINGS INT'L & COMPAR. L. REV. 1, 40 (2006) (describing cornerstone principles of customary international law).

199. Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 54 n.259 (2007). According to Stanley Halpin, United States courts invoke four human rights enforcement models conservatively in ways that operate largely to prevent enforcement. Halpin, *supra* note 198, at 3–12.

First, the international enforcement model "asserts that international norms are directly binding on the United States and can be enforced through an international tribunal." *Id.* at 4. Historically, this model achieved little success because of "the United States' strong influence over international organizations." *Id.* These unsuccessful efforts "set the tone that prevails today" in a world where the U.S. often views itself as exempt from international norms. *Id.* at 6. Second, the domestic enforcement model rests upon two mechanisms: treaties and customary international law. *Id.* Neither, however, operates in practice to assure enforcement. Human rights "treaties signed and ratified by the United States may not necessarily be enforced domestically by U.S. courts because of the non-self execution rule [that requires congressional approval before enforcement], and because the United States insists on extensive" reservations. *Id.* at 10.

Customary international law is not generally viable because courts define it narrowly and apply it only in the most extreme situations like state-sanctioned torture or genocide. *Id.* at 10–11. Third, the interpretive mandate model provides that the U.S. Constitution "must be interpreted consistently with international law." *Id.* at 11. However, this "model does not necessarily establish that the United States is bound by an international norm in the absence of a constitutional basis." *Id.* at 11. Finally, the persuasive model views international human rights as influential or "persuasive." *Id.* at 4. While the persuasive model does not promise actual enforcement, it provides a sometimes useful tool for raising legal consciousness and increasing public awareness about injustice and redress. *Id.* See generally DINAH SHELTON, *COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM* (2000) (describing the reach and limits of human rights enforcement mechanisms); JANUSZ SYMONIDES, *HUMAN RIGHTS INTERNATIONAL PROTECTION, MONITORING, ENFORCEMENT* (2003) (describing the impact of non-binding human rights norms); Harold Koh, Lecture, *How is International Human Rights Law Enforced?*, 74 IND. L.J. 1397 (1998) (describing the operational reach and limits of human rights).

200. See Shibayama Report, *supra* note 1, ¶ 47; Saito, *supra* note 7, at 312 ("The right to redress an international wrong is recognized by scholars as a fundamental principle of customary law. Recognition of this right clearly predates World War II, and it has been incorporated into both treaties and international legal opinions.") (citing Karen Parker & Jennifer F. Chew, *Compensation for Japan's World War II Rape Victims*, 17 HASTINGS INT'L & COMP. L. REV. 497, 511–21 (1994)).

201. See Shibayama Report, *supra* note 1, ¶ 55 (describing the "[United States'] recognition of the 'fundamental injustice' of internment and the need to compensate and apologize to the people who

More specifically, the Commission's recommendations identified the United States need to account for the "moral dimensions" of its wartime atrocity.²⁰²

Grounded in a calibrated multidisciplinary understanding of *responsibility* for group-based injustices,²⁰³ a Social Healing Through Justice analysis uplifts the moral dimension of the United States' redress responsibility to JLAs. Responsibility for healing the wounds of serious injustice emerges in four ways: direct participation in the abuse; complicity in the abuse; the receipt of benefits from the oppression of others; and membership in a democratic polity itself damaged by its mistreatment of its vulnerable communities.²⁰⁴

This Section offers an assessment not directly undertaken by the Commission. It hones in on (a) the United States' direct responsibility for the kidnapping, international transport, and mass incarceration of JLAs as racial hostages during World War II and its derogatory mislabeling of the JLAs as "illegal aliens" upon their release from the internment prison, and (b) the U.S. polity's broader obligation to mend the tear in its communal fabric from the wrongful exclusion of vulnerable members targeted because of their race and country of origin. This assessment of U.S. wartime responsibility, coupled with U.S. responsibility for the exclusion of JLAs from the 1988 CLA, entreats the United States to politically engage now in the initiative to repair some of the damage triggered in the 1940s and exacerbated in the late 1980s through the early 2000s.²⁰⁵

B. The American Government's and Populace's Moral Responsibility for WWII Human Rights Transgressions

In the opening of its investigative report, the Commission alluded to the United States' *moral* responsibility for politically redressing the harms of its World War II humanitarian abuses by detailing an account of the Japanese Latin American families' lasting hardships.²⁰⁶ The Report meticulously

suffered that regime"); YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 127 (describing ethical and moral responsibility that arises from direct participation, complicity, receipt of benefits and membership in the polity).

202. See Shibayama Report, *supra* note 1, ¶¶ 61(1), 65(1).

203. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 119 (drawing from disciplines of law, social psychology, political theory, theology, and others to frame layered notions of *responsibility* as an integral facet of reparative justice).

204. *Id.*

205. See Peter Baker, *Biden Warns That "Big Lie" Republicans Imperil American Democracy*, N.Y. TIMES (Nov. 3, 2022), <https://www.nytimes.com/2022/11/02/us/politics/biden-speech-democracy-election.html> [<https://perma.cc/L945-W5Z4>] (describing President Biden's characterization of the 2022 elections as "a pivotal test of American Democracy").

206. See, e.g., Shibayama Report, *supra* note 1, ¶ 47. Because the Commission lacked the legal authority to examine the United States' actions before 1951, the Commission could have limited its historical recitation to facts sufficient to establish the JLAs discriminatory exclusion from the 1988 Civil Liberties Act. See *id.* ¶ 53. Instead, the Commission employed its Merits Report to tell the Shibayamas' poignant World War II story of terror-filled abduction, horrific transport and mass incarceration, and their severe psychological and financial trauma. See *id.* ¶¶ 17–46. This narrative choice emphasized America's malfeasance during wartime and made the implicit point that had the American Declaration been in force

recounted the United States' wartime abduction, transport, and harsh incarceration of JLAs as possible racial hostages, along with the post-war abuse of the Shibayama family and many others.²⁰⁷ For instance, regarding the U.S. military transport ship, the Commission described how U.S. military personnel forced the Shibayama family to strip naked in order to spray them with the toxic insecticide DDT.²⁰⁸ The Report also detailed how the family was separated on the ship to America and held below deck in putrid conditions (e.g., amid human excrement), and how 13-year-old Isamu Shibayama was only allowed above deck for 20 minutes a day.²⁰⁹ The Commission Report also described government JLA discrimination and other mistreatment after discharge from the internment center, including that Isamu Shibayama's taxation was 30 percent higher than that of U.S. citizens because of his "illegal alien" status.²¹⁰

The Commission stated that these and numerous other gross humanitarian abuses occurred before the United States ratified the American Declaration in 1951.²¹¹ Thus, the JLA claims for *wartime* "arbitrary detention, right to residence and freedom of movement and education, among others" fell beyond the Commission's jurisdictional reach.²¹² The 1948 United Nations Universal Declaration of Human Rights (UDHR), assented to by the United States, codified existing human rights norms.²¹³ The American Declaration of the Rights and Duties of Man served in important aspects as a foundation for the UDHR, preceding the UDHR by eight months.²¹⁴ Before the adoption of both the UDHR and the American Declaration, "[a]ttempts were made to enshrine human rights in the Covenant of the League of Nations[,]” spearheaded in part by U.S. President Woodrow Wilson.²¹⁵ These preliminary efforts reflected then-existing human rights norms embodied in various treaties, agreements, covenants, and declarations.²¹⁶

during the war, the United States' actions would have violated the Shibayamas' human rights under the Declaration. *See id.*

207. *See id.* ¶¶ 23, 26–29; *see also* Stacy Chen, *Coalition of WWII Japanese American Internment Camp Survivors Stage Peaceful Protest at Immigrant Detention Facility on Texas Border*, ABC NEWS (Mar. 30, 2019), <https://abcnews.go.com/US/coalition-wwii-japanese-american-internment-camp-survivors-stage/story?id=62039367> [<https://perma.cc/B5X7-DMWM>].

208. Shibayama Report, *supra* note 1, ¶ 27.

209. *Id.* at ¶ 26.

210. *Id.*

211. *See supra* note 200 and accompanying text.

212. Shibayama Report, *supra* note 1, ¶ 15.

213. ERIC POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* 17 (2014) (describing how the Universal Declaration was "not ratified by nations but approved by the [United Nations] General Assembly").

214. *See Ghidirmic, supra* note 100, at 53.

215. John Humphrey, *The International Law of Human Rights in the Middle Twentieth Century*, in *THE PRESENT STATE OF INTERNATIONAL LAW AND OTHER ESSAYS WRITTEN IN HONOR OF THE CENTENARY CELEBRATION OF THE INTERNATIONAL LAW ASSOCIATION* 1, 1 (1973).

216. *See, e.g.,* STEPHEN ANDREW JAMES, *UNIVERSAL HUMAN RIGHTS: ORIGINS AND DEVELOPMENT* 16 (2007) (describing the human rights enumerated in the 1789 French Declaration of the

Indeed, in 1941, shortly before the beginning of the JLA debacle, President Roosevelt recognized the importance of human rights encapsulated in the so-called “Four Freedoms: freedom of speech and religion, and freedom from want and fear.”²¹⁷ According to Roosevelt, “[f]reedom . . . means the supremacy of human rights everywhere.”²¹⁸ Ironically, in light of the subsequent U.S. abduction and mass incarceration of JLAs that decimated their “Four Freedoms” at the outset of the war, “Roosevelt had successfully promoted wartime mobilization under the guise of protecting human rights as a crucial national interest.”²¹⁹

With this backdrop, the Commission spotlighted the United States’ wartime abuses both to show why the later JLA exclusion from the 1988 CLA violated their right to equal treatment under the American Declaration of Rights and Duties of Man and to make clear that those earlier wartime abuses also constituted horrific violations of international humanitarian norms at the time. The Commission plainly did this so the U.S. government would acknowledge²²⁰ its JLA human rights transgressions during the war, as well as in 1988 and beyond, and accept moral responsibility now for politically healing the JLAs’ wounds from the 1940s through the present.²²¹

In recommending that the “United States make integral reparation for the human rights violations,” the Commission specified redress for “both the material and *moral* dimensions”²²² The recommendation for “material”

Rights of Man and the Citizen, which mirrored American and English principles of liberty—namely “free speech, freedom of association, religious freedom, freedom to hold opinions and freedom from arbitrary arrest and confinement” and equality); ROWLAND BRUCKEN, A MOST UNCERTAIN CRUSADE : THE UNITED STATES, THE UNITED NATIONS, AND HUMAN RIGHTS, 1941–1953, at 15 (2013) (“The Atlantic Charter and the Declaration by the United Nations, whose contents Roosevelt did much to shape, proclaimed that the Allies were fighting to guarantee religious liberty, freedom of speech, self-government, and economic security to peoples worldwide.”).

217. BRUCKEN, *supra* note 216, at 14.

218. *Id.*

219. *Id.* at 19 (“without generating a crippling political backlash”). Also ironically, an ideological belief in American exceptionalism has prompted leaderships’ claimed protection of human rights to justify assertive actions alongside its refusal to formally adopt instruments embodying those rights. As human rights commentator Louis Henkin observed:

[T]here is resistance to accepting international standards and scrutiny on matters that have been ours to decide. A deep isolationism continues to motivate many Americans, even some who are eager to judge others and to intercede on behalf of human rights in other countries. Human rights in the United States, they believe, are alive and well. We have nothing to learn, and do not need scrutiny from others, surely not from the many countries where human rights fare so badly.

Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 422–23 (1979); Loveland, *supra* note 79, at 135. “Unsurprisingly,” Professor Loveland observes, the “phenomenon of US exceptionalism has opened the United States to global criticism.” *See id.* at 136.

220. In its written arguments to the Commission, the United States did not formally “acknowledge” the harms it inflicted on the JLAs, instead arguing that the harms “experienced by” the Shibayamas fall outside the boundaries of the American Declaration. *See* Shibayama Report, *supra* note 1, ¶ 14.

221. *See id.* ¶ 28 (describing the “bad effects” of internment, including “lack of privacy, family breakdown, listlessness and uncertainty about the future”) (citing PERSONAL JUSTICE DENIED, *supra* note 34, at 311).

222. *Id.* ¶ 65 (setting forth the Commission’s recommendations to the United States government) (emphasis added).

recompense pointed to the United States' *legal* responsibility for violating the JLAs' right to equality before the law and right to an effective remedy in excluding the JLAs from the 1988 CLA's redress, including the \$20,000 individual reparations payments.²²³ The recommendation's wording, with some ambiguous phrases, also implicated the United States' moral responsibility for the World War II abduction and incarceration of and continued discrimination against JLAs that occurred before the U.S. accession to the American Declaration on the Duties and Rights of Persons, but which violated the preexisting international norms prohibiting abductions, involuntary servitude, mass imprisonment, the invasion of families' privacy, and the stripping of nationality.²²⁴ Through its detailed factual recitation and its analysis,²²⁵ the Commission ascribed broader United States' moral responsibility to in some measure repair the damage of these horrendous wartime abuses.²²⁶

Social Healing Through Justice suggests that in addition to a government's responsibility for directly-inflicted harms, a polity damaged by tears in its communal fabric bears moral responsibility for repairing damage to its members.²²⁷ Members of the U.S. polity—citizens, legal permanent residents, and those contributing to American economic and cultural life—all of whom benefit from the protection afforded by civil and human rights,²²⁸ belong to the polity's moral community.²²⁹ Communitarian precepts incorporated into the social healing framework observe that the wrongful “denial of any community member's rights to full participation in the polity also damages the community itself.”²³⁰ The polity's responsibility for repairing the damage is “[r]ooted both in group self-interest and in moral

223. *See id.*

224. *See id.* ¶¶ 22–32; *see, e.g.*, Nuremberg Charter of the International Military Tribunal Article 6(c) of the Constitution for the international military tribunal (listing crimes against humanity, to include, “deportation, and other inhumane acts committed against any civilian population, before or during war, or persecutions on political, racial or religious grounds . . .”); *see also supra* notes 213–19 (regarding international human rights norms existing before adoption of the American Declaration).

225. Shibayama Report, *supra* note 1, ¶¶ 22–32.

226. *Id.* ¶¶ 22–32, 61 (recommending the United States “[m]ake integral reparation for the human rights violations established in this report, including both the material and moral dimensions”).

227. *See* YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 119 (offering an overview of communitarian theory, including how “[t]he denial of any community member's rights to full participation in the polity . . . engenders in all an obligation to participate in healing the member's wounds through inclusive measures repairing the communal damage”).

228. The United States is a self-declared and internationally-recognized democratic polity outwardly committed to civil and human rights. *See id.* at 135.

229. *Id.* at 134–35.

230. *Id.* at 135; *see* MICHAEL J. SANDEL, DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY 349, 350 (1996) (describing communitarian theory). “Agonism” poses a critique of communitarian theory. *See* Alexander Keller Hirsch, *Introduction: The Agon of Reconciliation, in* THEORIZING POST-CONFLICT RECONCILIATION: AGONISM, RESTITUTION AND REPAIR 1, 1–16 (Alexander Keller Hirsch ed., 2012) (describing agonism as seeing the impossibility of the consensus contemplated by communitarian theory in a complex society because the requirement of consensus can drown out minority voices and perpetuate regression).

notions of right-behavior.”²³¹ A government perpetrator possesses a heightened moral obligation to accept responsibility for redressing civil rights and human rights injustices.²³² Even if government actors rather than the polity’s members themselves inflicted the harms, the responsibility falls on *all* in the polity, as the constituency of government, to pro-actively reintegrate those harmed and to reconstitute the body politic.²³³

Moreover, when the government fails to discharge its reparative obligations, the moral community is empowered to both act on its own²³⁴ and to pressure the government to repair the damage to its people and communities.²³⁵ The United States’ abduction and mass incarceration of JLAs during World War II decimated the lives of the JLAs. It also damaged America as a moral community and as a body politic in the eyes of global communities.²³⁶ The CLA’s later deliberate exclusion of JLAs from redress for the government’s wartime mass incarceration debacle compounded the harms, implicating the polity’s moral obligation now to take the hard road²³⁷ toward political “restoration of the polity by integrating those excluded,”²³⁸ or integral reparations.

231. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 135.

232. *Id.* (describing “moral communities” as proverbial and physical “public spaces” where citizens can “cultivate solidarity and civic engagement,” engage feelings of connectedness and belonging, and build a stronger, more unified society).

233. *Id.*

234. Drawing upon the Commission’s dictates, the United States populace as its “moral community” bears the moral gravitas to politically impel the U.S. government to heal the persisting wounds of the JLA survivors, and thus heal the nation from within. *See id.* at 134.

235. *See* Paul Schiff Berman, *Seeing Beyond the Limits of International Law*, 84 TEX. L. REV. 1265, 1266 (2006) (describing how “international legal norms may well empower constituencies within a domestic polity and provide them with a language for influencing state policy, thereby affording them leverage that they would not otherwise have had at their disposal”).

236. *See* YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 135 (emphasizing that “denial of any community member’s rights to full participation in the polity also damages the community itself...engender[ing] in all an obligation to participate in healing the excluded member’s wounds through inclusive measures repairing the communal damage”).

237. *Id.* (emphasizing how notions of ethical or moral responsibility for mass violence “overlie forms of legal accountability”). The power of group moral responsibility to impel the government to engage in reparative justice faces considerable challenges. As the *darkside* principle of Social Healing Through Justice cautions, entities committed to maintaining harmful power structures may continue to deny the harms committed, thereby avoiding actual or moral consequences. *See id.* at 136. Group members may also lack conscious knowledge of the government’s wrongdoing, allowing those seeking to maintain societal inequities to exploit gaps in the polity’s understanding. *See id.*

238. *Id.* at 135 (exploring the South African concept of *ubuntu*, or interconnectedness, to illustrate that social healing may be achieved within the community through “restoration of the polity through integrating those excluded”); *see* DESMOND TUTU, NO FUTURE WITHOUT FORGIVENESS 31–32 (2000).

VI. WHY *RESPONSIBILITY* MATTERS NOW: HUMAN RIGHTS, REPARATIVE JUSTICE, AND THE REVITALIZATION OF U.S. LEGITIMACY AS A DEMOCRACY

As discussed above, the Inter-American Commission on Human Rights ascribed legal responsibility to the United States for the exclusion of the Japanese Latin Americans from the 1988 Civil Liberties Act's redress. The Social Healing Through Justice praxis assessment—fusing nuanced notions of group responsibility with the Commission's detailed factual findings—further attributed moral responsibility to the United States and its populous for its wartime humanitarian atrocity.²³⁹ Together, they enliven for the United States an opportunity to engage with the JLA reparative justice initiative for the benefit of JLAs and for American democracy.²⁴⁰ But the terrain for political action is continually shifting. Why should the United States take notice now, and what would compel it to take action?²⁴¹

The United States' primary interest is straightforward. JLA redress is still the right thing to do, even though the United States historically has often exempted itself from legal human rights obligations as discussed, morally and ethically.²⁴² The United States' second interest is layered, yet potentially compelling. It lies in what the United States stands to gain politically as a democracy amid tensions with autocratic and abusive governments: demonstrating its commitment to the fundamental precepts of democracy, particularly the rule of law and fealty to human rights and civil liberties.²⁴³ Together, these dual interests generate the foundational moral-political impetus for present-day U.S. engagement in the JLA reparative initiative.

The United States' global and domestic legitimacy as a democracy is grounded in part in its commitment to the rule of law, and particularly in its commitment to human rights and civil liberties as checks on abusive government actions.²⁴⁴ Advocates thus comment on the hypocrisy of, for example, the United States' critique of China's human right abuses at the

239. See *supra* Part V.

240. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980); see also MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000) (describing the imperative of interest-convergence for civil and human rights advances).

241. See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 69–70 (describing the importance of real-world pragmatism as imperative to “generating a ‘real world’ collective sense of ‘justice done’”).

242. See, e.g., *infra* Part VI.B.

243. See Bell, *supra* note 240, at 523.

244. See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 24; Eric K. Yamamoto, Susan K. Serrano & Michelle N. Rodriguez, *American Racial Justice on Trial—Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269, 1326 (2003). While outside the scope of this article, further examination of domestic democratic legitimacy may reveal how the U.S. government's stance on the issue of JLA reparations affects perceptions of marginalized communities on contemporary issues such as racial justice, criminal incarceration, and immigration.

same time “[the United States] has some unfinished business to be redressed.”²⁴⁵ The United States’ continued failure to address its past human rights transgressions mars America’s wavering democratic legitimacy in the eyes of international allies.²⁴⁶ Former President Trump’s curtailment of civil liberties and apparent disdain for international agreements eroded global confidence in American democracy.²⁴⁷ Newly-elected President Biden swept in to repair the damage by reaffirming the United States’ international commitments.²⁴⁸ These reaffirmations, however, only serve to bolster the United States’ international stature as a functioning democracy if the executive and legislative branches follow through on foundational government human rights promises.²⁴⁹ Those promises specifically enfold an acknowledgment of past human rights transgressions, actions to repair the damage, and a commitment to institutional restructuring to avoid future recurrence.²⁵⁰

A. Reparative Justice and U.S. Legitimacy as a Democracy

The Commission’s determination that the United States violated the American Declaration spotlighted the United States’ decades-long apathy toward JLA redress,²⁵¹ with the United States hiding from, or at least dismissing as inconsequential, its national security abuses. The Commission’s 2020 findings also exposed the underbelly of the United States’ coveted exceptionalist status as a leading democratic power committed to the rule of law.²⁵²

As developed below, international human rights and civil liberties are integral to the United States’ legitimacy as a democracy.²⁵³ Civil liberties are

245. Kozen, *supra* note 53, at 205.

246. See Blinken, *supra* note 3 (recognizing that “respect for human rights is a fundamental part of upholding the international rules-based order, which is crucial to America’s enduring security and prosperity”); Shibayama Report, *supra* note 1, ¶ 13.

247. See *infra* Part VI.B.

248. See *infra* Part VI.C; ILIA XYPOLIA, HUMAN RIGHTS, IMPERIALISM, AND CORRUPTION IN US FOREIGN POLICY 45 (2022).

249. See, e.g., E.J. Dionne Jr., Opinion, *Advancing Democracy Abroad Requires Defending It at Home*, WASH. POST (June 9, 2021), <https://www.washingtonpost.com/opinions/2021/06/09/advancing-democracy-abroad-requires-defending-it-home/> [<https://perma.cc/ZSG8-VJL6>]; DAVID COLE, ENEMY ALIENS: DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOMS IN THE WAR ON TERRORISM 189–90 (2003) (describing how U.S. decisions to “impose burdens selectively on the fundamental rights of foreign nationals” in the wake of 9/11 “has costly implications for security at home and abroad”).

250. See Proclamation No. 10341, 87 Fed. Reg. 10677 (Feb. 18, 2022); Blinken, *supra* note 3.

251. See Shibayama Report, *supra* note 1, ¶ 64. The report highlighted the right to equality, violated by the U.S. in its denial of the Shibayamas’ CLA claims, as “among the most basic human rights.” *Id.* ¶ 50. Crucially, it highlighted how the right to equality is so fundamental that other broadly recognized international human rights norms suffer when it is violated. *Id.*

252. See also Simon Tisdall, *US’s Global Reputation Hits Rock-Bottom over Trump’s Coronavirus Response*, GUARDIAN (Apr. 12, 2020), <https://www.theguardian.com/us-news/2020/apr/12/us-global-reputation-rock-bottom-donald-trump-coronavirus> [<https://perma.cc/8DQB-UGZ3>] (asserting democracy “is a title the US appears on course to lose—a fall from grace may prove irreversible”).

253. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 226 (highlighting the Joint 4.3 Task Force’s potential to affirm the significance of civil liberties and

a core tenet of functioning democracies.²⁵⁴ International human rights, along with nationally recognized civil liberties, protect peoples’ “freedom from coercive or otherwise intrusive governmental actions designed to secure the nation against real or, sometimes, imagined internal and external enemies.”²⁵⁵ Together, they operate as a bridle on unfettered government power.²⁵⁶ Moreover, both international human rights and domestic civil liberties establish recourse pathways for survivors of government abuse, delineating a regime of reparative justice.²⁵⁷

For the United States, guarding the nation’s “security” in an ever-changing geopolitical climate without denigrating its peoples’ civil liberties entails a precarious balancing act.²⁵⁸ On one hand, the United States promotes its strong commitment to civil liberties as the bedrock of its democracy, vigorously denouncing foreign autocratic regimes’ abuses. On the other hand, the United States at times justifies undercutting civil liberties for citizens and immigrants²⁵⁹ by raising factually unsupported claims of national security about impending threats to American people and institutions.²⁶⁰

This volatile mix of national security and fundamental freedoms teeters at the edge of the nation’s purported commitment to the rule of law.²⁶¹ Other nations are watching. A former U.S. Ambassador to the United Nations had earlier observed allies’ perceptions of the United States’ failure to vigorously join in the “international endeavor to enforce human rights.”

human rights as a belated, yet recognized and enforced, “check” on abusive military or government security actions).

254. Protection of civil liberties and human rights often prevents harmful “actions that may get out of hand, creating a climate of fear, oppressing the innocent, stifling independent thought, and endangering democracy.” RICHARD A. POSNER, NOT A SUICIDE PACT: THE CONSTITUTION IN A TIME OF NATIONAL EMERGENCY 4–5 (2006); see YAMAMOTO, IN THE SHADOW OF KOREMATSU, *supra* note 51, at 14.

255. POSNER, *supra* note 254, at 4.

256. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 234 (suggesting that nations are at times incentivized by geopolitical forces to conform to human rights norms because global perceptions of legitimacy empower other governments to persuade their citizenry to support global stability).

257. *Id.*

258. See generally Eric K. Yamamoto & Rachel Oyama, *Masquerading Behind a Façade of National Security*, 128 YALE L.J. F. 688, 721–22 (2019) (describing how blind judicial deference to national security-based executive actions, generates a “shadow side’ of American law . . . damag[ing] communities, the rule of law, and America’s moral stature”) (citing Natsu Taylor Saito, *Will Force Trump Legality After September 11? American Jurisprudence Confronts the Rule of Law*, 17 GEO. IMMIGR. L.J. 1, 49 (2002)).

259. See *id.* at 721–22. See generally COLE, *supra* note 249 (describing social and political costs of curtailing rights of non-citizens on grounds of national security).

260. See Yamamoto & Oyama, *supra* note 258, at 699–700 (describing the post-9/11 immigration “registration and tracking program” and curtailment of civil liberties, and highlighting the “clash of security concerns and constitutional liberties [that] also enmeshed policymakers [post-9/11.]”); YAMAMOTO, IN THE SHADOW OF KOREMATSU, *supra* note 51, at 14 (emphasizing the importance of courts’ careful scrutinization of the government’s claims of “pressing public necessity as justification for curtailing peoples’ fundamental liberties”); see generally COLE, *supra* note 249.

261. See YAMAMOTO, IN THE SHADOW OF KOREMATSU, *supra* note 51, at 14.

Our refusal to join in the international implementation of the principles we so loudly and frequently proclaim cannot help but give the impression that we do not practice what we preach, that we have something to hide, that we are afraid to allow outsiders even to inquire whether we . . . violate other basic human rights. Yet we constantly take it upon ourselves to denounce the Soviet Union, Cuba, Vietnam, Argentina, Chile, and many other states for violating these rights. We are in most instances quite right to do so, but we seriously undermine our own case when we resist joining in the international endeavor to enforce these rights, which we ourselves had so much to do with launching.²⁶²

With this in mind, some critics charge that “the nations most interested in maintaining dominant global economic positions helped construct and perpetuate a hegemonic three-tier hierarchy of human rights.”²⁶³

The United States, for instance, recognizes first-generation rights, but only reluctantly, as revealed in its reservations to the [International Covenant on Civil and Political Rights]. By accepting these rights (in limited fashion) and then rejecting second- and third-generation “socialist” rights, the United States can assert its commitment to human rights and legitimate its intervention in other nations’ domestic affairs without the practical risk of reverse intervention or of “legitimate” demands for restructuring Western capitalism and redistributing wealth globally.²⁶⁴

The United States’ perceived fealty to human rights and civil liberties as a check on abusive government power thus emerges as a strategic, and possibly essential, component of its effort to rebuild its domestic and international legitimacy as a democracy.²⁶⁵ Underscoring this point, President Biden recently stressed the linkage of human rights to American democracy, the “United States’ national security interest,” and a “more peaceful, prosperous, and stable” society:

262. *International Human Rights Treaties: Hearings Before the S. Comm. On Foreign Relations*, 96th Cong. 4 (1979) (statement of Charles Yost, Former U.S. Ambassador to the United Nations).

263. Eric K. Yamamoto, Carrie Ann Y. Shiota & Jayna Kanani Kim, *Indigenous Peoples’ Human Rights in U.S. Courts*, in *MORAL IMPERIALISM: A CRITICAL ANTHOLOGY* 300, 312 (Berta Hernandez-Esperanza Truyol ed., 2002). The United States signed onto the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, but with reservations. This “first-generation human rights recognized peoples’ rights to life, liberty, security, privacy, freedom from torture and degrading treatment or punishment; immunity for arbitrary arrest; freedom from slavery; to a fair trial; freedom of thought and religion and expression; liberty of movement and peaceable assembly; and freedom of association.

The United States never ratified the second- and third-generations of international human rights, sometimes called “socialist rights.” Briefly and incompletely summarized, the second-generation reflected in the International Covenant on Economic, Social and Cultural Rights, included the right to work and equal payment; to form trade unions; to food, clothing, and medical care; to social security, education, participation in cultural life; and to scientific, literary and artist protection. *Id.* at 308–10. The third-generation thus addresses group rights, encompassing the rights of self-determination. By virtue of that right, they freely determine their political status and freely pursue economic, social, and cultural development. *Id.*

264. *Id.*

265. See Blinken, *supra* note 3 (emphasizing that “respect for human rights is a fundamental part of upholding the international rules-based order, which is crucial to America’s enduring security and prosperity”).

The United States has long worked to strengthen democracy and advance respect for human rights. Not only is this the right thing to do, it is in the United States' national security interest, because strong, rights-respecting democracies are more peaceful, prosperous, and stable.²⁶⁶

Near-blind judicial deference to the executive branch and its unsubstantiated contentions that national security, at times validates government civil and human rights violations²⁶⁷ and undermines the checks-and-balances structure of American democracy.²⁶⁸ The United States' reluctance to redress those human rights violations heightens the damage. As a democracy that condemns other nations' human rights abuses,²⁶⁹ the United States reveals its progress and shortfalls as a democracy in its own respect for human rights and civil liberties—particularly, how it actually addresses its own transgressions.²⁷⁰ As Secretary Blinken recently announced, “we have to hold ourselves accountable” and take “responsibility to address [our human rights] shortcomings.” Global communities “know that how we do it matters.”²⁷¹

Indeed, “it matters” because the United States' failure to repair the damage of its gross humanitarian abuses undercuts its ability to deploy the international human rights regime as a firewall against other countries' transgressions and as leverage on disputed matters of security, trade, health

266. Press Release, White House, Fact Sheet: Announcing the Presidential Initiative for Democratic Renewal (Dec. 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/09/fact-sheet-announcing-the-presidential-initiative-for-democratic-renewal/> [<https://perma.cc/X3UA-PGRF>].

267. YAMAMOTO, IN THE SHADOW OF KOREMATSU, *supra* note 51, at 13–14. *See generally* Yamamoto & Oyama, *supra* note 258 (charting how blind judicial deference at times validates grossly abusive government “security” actions).

268. *See* YAMAMOTO, IN THE SHADOW OF KOREMATSU, *supra* note 51, at 13 (describing Chief Justice Rehnquist's embracing of “the extremely deferential judicial approach that legally validated” the political branches' “blank check on all national security matters.”); *see also* Eric K. Yamamoto & Sara Lee, *Korean “Comfort Women” Redress 2012 Through the Lens of U.S. Civil and Human Rights Reparatory Justice Experiences*, 11 J. KOREAN L. 123, 138 (2012) (emphasizing that “[a] genuine democracy abides by the rule of law”).

269. Kevin Liptak, *Snubs from Key Leaders at Summit of the Americas Reveal Biden's Struggle to Assert US Leadership in Its Neighborhood*, CNN (June 8, 2022), <https://www.cnn.com/2022/06/07/politics/summit-of-the-americas-joe-biden/index.html> [<https://perma.cc/JXR8-ZR48>]. Liptak highlights multiple Central American national leaders' boycott of the Summit of the Americas over President Biden's refusal to invite the autocratic leaders of Cuba, Nicaragua, and Venezuela, “expos[ing] the difficulties and contradictions in Biden's vow to restore democratic values to American foreign policy.” *See id.* Liptak emphasizes the United States' disparate positions on leaders accused of human rights violations. For example, the United States prohibited autocratic Central American leaders from attending the summit on U.S. soil, yet will engage with Saudi Arabia—also accused of human rights violations—because of the current energy crisis. *See id.*; *see also* Blinken, *supra* note 3 (citing the importance of the Summit of the Americas in “strengthen[ing] democracy, human rights, and the fight against corruption,” “encouraging countries to make concrete commitments to advance human rights and democracy” and “holding one another to our pledges”).

270. With each unacknowledged, unrepaired human rights or civil liberties transgression, the precedent for future infringement builds. *See* Yamamoto & Oyama, *supra* note 258, at 699–700; Saito, *supra* note 7, at 340.

271. Blinken, *supra* note 3.

and the environment.²⁷² The Commission's effective incorporation of the Basic Principles on Reparation's assurance of non-repetition aims to deter repeated human rights violations.²⁷³ The Social Healing Through Justice framework's *reconstruction* facet frames the geopolitical question about this deterrence: how can the United States assuage other countries' fears of harmful unilateral U.S. action abroad and deter other nations from violating human rights if it has not yet redressed, or even adequately recognized, its own human rights abuses?²⁷⁴

The social healing framework's and the Commission's ascription of U.S. moral as well as legal culpability thus call into question the United States' authority to criticize other nations for human rights abuses. And it signals weakened U.S. influence abroad.²⁷⁵ As developed below, by acting upon internationally recognized principles of reparative justice embodied in the integrated framework for social healing, the United States stands to enhance or rebuild in some measure its democratic legitimacy in the eyes of international communities.

B. Trump Administration's Erosion of America's Protections of Human Rights and the Biden Administration's Renewed Commitment to Human Rights

Today, the United States stands at democracy's crossroads.²⁷⁶ How the United States responds to the Commission's 2020 Report, on the heels of President Biden's 2022 acknowledgment of the JLA injustice, will offer a window into the administration's human rights policies and practices. It also presents an opportunity for American leadership to begin to repair the United States' diminished human rights stature.

Global perceptions of the United States' commitment to human rights severely deteriorated during the Trump administration's retreat into self-serving, and potentially self-destructive, "America First" nationalism.²⁷⁷ In

272. See POSNER, *supra* note 254, at 4–5; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 226–27.

273. See G.A. Res. 60/147, ¶ 23 (Dec. 16, 2005).

274. See Saito, *supra* note 7, at 340 (“The effectiveness of international law rests on the recognition it receives from the governments of the world. When a nation as powerful as the United States refuses to abide by its norms, the stage is set for other governments and non-governmental groups including the ‘terrorist’ organizations frequently denounced by the United States—to ignore international law when it suits them.”).

275. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 240–41.

276. *Id.* (highlighting mounting international disbelief in America's “professed commitment to human rights as an integral part of democratic governance,” and illuminating examples such as the former-Bush administration's hostility to international agreements on the environment, nuclear testing, human rights, and the International Criminal Court).

277. Kyle Dodson & Clem Brooks, *All by Himself? Trump, Isolationism, and the American Electorate*, 63 SOCIO. Q. 780, 780 (2021) (describing how “Trump's isolationism and his foreign policy directives were of considerable consequence during his term in office and as a policy baseline confronting the Biden administration after 2020”). Concerning the impact on the Inter-American Commission on Human Rights, Professor Loveland aptly observes,

2019, at the urging of then-Secretary of State Michael Pompeo, the Trump-led U.S. State Department formed the “Commission on Unalienable Rights.”²⁷⁸ At its inception, Pompeo’s commission advertised its seemingly innocuous purpose as “understanding the roots of our foreign policy, though [sic] the lens of our Founders’ intent.”²⁷⁹ In actuality, the Commission on Unalienable Rights aimed solely to promote property and “religious freedom” rights in the U.S.²⁸⁰ Contrary to the program’s title encompassing “unalienable rights,” this initiative excluded consideration or advancement of any other human rights.²⁸¹ Instead, it narrowed the scope of U.S. human rights to support religious institutions and oppose abortion, undermine women’s right to choose,²⁸² and threaten LGBTQIA²⁸³ rights to equality.²⁸⁴ International organizations rose in condemnation.²⁸⁵ Then-President Trump then withdrew the United States from critical international agreements, including the Paris Accord and the Iran Nuclear Deal, and befriended controversial dictators, deliberately inflaming political fissures.²⁸⁶ These domestically self-serving maneuvers damaged U.S. credibility as a dependable global ally dedicated to both security and human rights.²⁸⁷ And

[t]he administration of the self-proclaimed nationalist Donald Trump seems to have catalyzed another change in relations between the US and the Inter-American System—this time for the worse. Amidst a widely-reported culture of skepticism, isolationism, and xenophobia, the foreign policy actions and agenda of the Trump Administration have resulted in and may cause as of yet unknown repercussions to US relations around the world—and the Inter-American System has not gone untouched.

Loveland, *supra* note 79, at 156–57.

278. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 241.

279. Michael R. Pompeo, Opinion, *American Diplomacy Must Again Ground Itself in the Nation’s Founding Principles*, WASH. POST (July 16, 2020), <https://www.washingtonpost.com/opinions/2020/07/16/pompeo-oped-commission-unalienable-rights/> [<https://perma.cc/24V5-ELWP>].

280. See Pranshu Verma, *Pompeo’s Quest to Redefine Human Rights Draws Concern at U.N.*, N.Y. TIMES (Sept. 22, 2020), <https://www.nytimes.com/2020/09/22/us/politics/pompeo-human-rights-un.html> [<https://perma.cc/3BHH-SKP3>].

281. Nahal Toosi, *Pompeo Rolls Out a Selective Vision of Human Rights*, POLITICO (July 16, 2020), <https://www.politico.com/news/2020/07/16/mike-pompeo-human-rights-hierarchy-366627> [<https://perma.cc/HF3E-AWTS>].

282. See Risa E. Kaufman, *Commission on Unalienable Rights and the Effort to Erase Reproductive Rights as Human Rights*, COLUM. HUM. RTS. ONLINE, 1, 6 (2019).

283. *LGBTQIA*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/LGBTQIA> [<https://perma.cc/5YV8-LHQ5>] (defining LGBTQIA as “lesbian, gay, bisexual, transgender, queer/questioning (one’s sexual or gender identity), intersex, and asexual/aromantic/agender”).

284. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 24.

285. *Id.* at 242 (citing, for example, U.N. High Commissioner on Human Rights Zeid Ra’ad Al Hussein’s critique that the Pompeo Commission reflected “. . . a [backwards] era when racists and xenophobes deliberately inflamed hatred and discrimination among the public, while carefully cloaking themselves in the guise of democracy and the rule of law.”); see Toosi, *supra* note 281.

286. See Domenico Montanaro, *6 Strongmen Trump Has Praised—And the Conflicts It Presents*, NPR (May 2, 2017), <https://www.npr.org/2017/05/02/526520042/6-strongmen-trumps-praised-and-the-conflicts-it-presents> [<https://perma.cc/RD56-9BJ7>].

287. See Ishaan Tharoor, *Analysis: Biden Walks in Trump’s Footsteps in the Middle East*, WASH. POST (July 14, 2022), <https://www.washingtonpost.com/world/2022/07/14/biden-trump-policies-middle->

they contributed to fractiousness in global relations among leading international powers.

The Trump administration also weakened international and domestic confidence in the United States' protections of civil liberties at home. Then-President Trump's "Muslim ban" during his first week in office, his militarized reaction to the largely peaceful Black Lives Matter protests, and his punitive separation of children from parents at the border cast a dark pall over American democracy's institutions and values.²⁸⁸

Moreover, Trump's ongoing denial of the 2020 election results and the violent January 6th insurrection at the U.S. Capitol further degraded domestic and international perceptions of the United States' legitimacy as a democracy.²⁸⁹ After failing to overturn the 2020 election, Trump-led efforts by state lawmakers and administrators aimed to restrict voting rights, particularly for non-white voters.²⁹⁰ These overt attempts to curtail civil liberties for personal political gain further challenged the foundations of the United States' democracy and longstanding commitment to the rule of law.²⁹¹ That a notable segment of the U.S. populace vigorously supports Trump's

east/ [https://perma.cc/8WKD-2VDA] (suggesting that Biden's administration has not really rectified Trump's U.S. hypocrisy when it comes to its foreign policy in the middle east, particularly related to the Iran nuclear deals, and Saudi Arabia and the killing of Jamal Khashoggi).

288. See Thomas Gibbons-Neff, Helene Cooper, Eric Schmitt & Jennifer Steinhauer, *Former Commanders Fault Trump's Use of Troops Against Protesters*, N.Y. TIMES (July 9, 2020), <https://www.nytimes.com/2020/06/02/us/politics/military-national-guard-trump-protests.html> [https://perma.cc/CA7W-6QQN]; Thomas Gibbons-Neff, Eric Schmitt & Helene Cooper, *Aggressive Tactics by National Guard, Ordered to Appear Trump, Wounded the Military, Too*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/2020/06/10/us/politics/national-guard-protests.html> [https://perma.cc/8WJC-CZSB]. Concerning human rights and the Trump "travel ban" and family separation border policy, Professor Loveland observes that:

The infamous travel ban itself—deemed by many a "Muslim ban"—has drawn widespread criticism and outraged condemnation as not only adverse to the US Constitution and the values it embodies, but as a manifestation of another failure: a deeper abrogation of human rights by the US. Human rights experts have even determined that the January 27, 2017 [Muslim ban] order breached the US's existing international human rights obligations of non-refoulement and protection from discrimination based on race, nationality, or religion. And the ban is not the end, nor the worst, of the administration's immigration policies: in the wake of [its] May 2018 "zero tolerance" policy of prosecuting each person caught crossing the border illegally, thousands of families were forcibly separated, often with children being detained in the US and their parents deported.

Loveland, *supra* note 79, at 157–58.

289. See, e.g., Francis Fukuyama, Opinion, *One Single Day. That's All It Took for the World to Look Away from Us*, N.Y. TIMES (Jan. 5, 2022), <https://www.nytimes.com/2022/01/05/opinion/jan-6-global-democracy.html> [https://perma.cc/2DF9-MNP9] (describing the impact of the January 6th insurrection on American global power and influence).

290. Edward Helmore, *Trump and His Allies Push New Republican Effort to Restrict Voting Laws*, GUARDIAN (Mar. 27, 2021), <https://www.theguardian.com/us-news/2021/mar/27/key-republican-voter-restriction-effort-advised-trump-overturn-2020-results> [https://perma.cc/5TAA-YTPP]; Andy Sullivan, Joseph Ax & Sarah N. Lynch, *Georgia Charges Trump, Former Advisers in 2020 Election Case*, REUTERS (Aug. 14, 2023), <https://www.reuters.com/legal/us-state-georgia-appears-set-file-charges-against-donald-trump-court-document-2023-08-14/> [https://perma.cc/3R2W-TYKB]; Carrie Johnson, Ryan Lucas, & Jaclyn Diaz, *Trump Charged with 4 Felony Counts for Attempt to Overturn the 2020 Election*, NPR (Aug. 1, 2023), <https://www.npr.org/2023/08/01/1190459957/trump-indictment-jan-6-2020-election> [https://perma.cc/YN8J-HUGY].

291. See, e.g., Gibbons-Neff, Schmitt & Cooper, *supra* note 288.

reelection campaign continues to raise cautionary flags for other countries worried about the United States as a leading democracy.

Faced with harsh post-Trump international backlash, the Biden administration swiftly took an ameliorative tone in reaffirming the United States' commitment to democratic principles and practices, at home and abroad.²⁹² As part of that reaffirmation, the administration vigorously renewed the United States' promise to deter human rights violations and redress human rights abuses when they occur. In October 2021, after ensuring U.S. readmittance to the United Nations Human Rights Council,²⁹³ Biden emphasized that for the United States to demonstrate global "moral leadership," it must "lead by example" by "putting human rights back at the center of our foreign policy," by acknowledging America's imperfect human rights history and by upholding "the truth" and striving "to improve."

That's why, from day one of my administration, I've taken concrete steps to put human rights back at the center of our foreign policy and reassert our moral leadership on the global stage Leading by example means not pretending that our history has been perfect, but demonstrating how strong nations speak honestly about the past and uphold the truth and strive to improve.²⁹⁴

In May 2022, Secretary Blinken emphasized the United States' recommitment to human rights accountability, particularly in addressing its own historic failings.²⁹⁵ Referencing U.S. domestic human rights violations, particularly the horrific injustices of slavery on American soil,²⁹⁶ Secretary Blinken declared:

We take seriously our responsibility to address [our own human rights] shortcomings, and we know that the way to do it matters: together with citizens and communities, out in the open, transparently—not trying to pretend problems don't exist or sweeping them under a rug.²⁹⁷

Sarah Yager, Washington director at the Human Rights Watch, highlighted a key omission from Secretary Blinken's acknowledgment: the

292. XYPOLIA, *supra* note 248, at 45; YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 242–43 (describing "intense criticism of the Pompeo Commission's work in 2019 and 2020, in the eyes of domestic and international observers").

293. Richard Roth & Meghan Velasquez, *US Officially Rejoins Controversial UN Human Rights Council*, CNN (Oct. 14, 2022), <https://www.cnn.com/2021/10/14/politics/us-united-nations-human-rights-council/index.html> [<https://perma.cc/8DEN-79GW>] ("The [United States'] reelection to the Human Rights Council is the latest effort to restore US standing on the global stage through involvement in multilateral organizations and treaties spurned by the Trump administration.").

294. *Remarks by President Biden at the Dedication of the Dodd Center for Human Rights*, WHITE HOUSE (Oct. 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/15/remarks-by-president-biden-at-the-dedication-of-the-dodd-center-for-human-rights/> [<https://perma.cc/3RFX-TKL6>].

295. Blinken, *supra* note 3.

296. *Id.*

297. *Id.*

United States' role in human rights violations overseas.²⁹⁸ She implied heavy the hypocrisy emanating from the United States' human rights rhetoric—in particular, the irony of the U.S. government criticizing “other’s human rights abuses as if [the United States] had nothing to do with them, [with] no mention of [the United States] in Afghanistan or civilian harm caused in Kabul.”²⁹⁹ Yager’s assessment identified why the United States’ professed commitment to human rights, without acknowledgment of its own abuses abroad and concrete reparative action, at times rings hollow.³⁰⁰

C. President Biden’s Bittersweet Acknowledgment of the Japanese Latin American Injustice

Against this backdrop, JLA justice advocacy groups called upon the Biden Administration to support redress for JLAs. In early 2022, two years after publication of the Commission Report, the Asian American Legal Defense and Education Fund wrote to the Biden Administration, “calling on the U.S. government to honor a decision by the [Commission].”³⁰¹ Its letter emphasized:

While the Biden administration has recently opened the door for discussions, over 22 months passed by while both the Trump and Biden administrations refused to meet with Japanese Latin American (JLA) community leaders, despite the clear intent of the IACHR decision and the negative impacts on the standing of the United States in the global human rights community.³⁰²

The Campaign for Justice, advocates for JLAs from the start,³⁰³ also called upon the public to “urge President Biden and his Administration to comply with international law and secure reparations for WWII human rights violations against JLAs.”³⁰⁴ Nevertheless, the Biden Administration and Congress continued to fend off repeated requests to actively engage, leaving empty, at this stage, the most important seat at the JLA justice table.³⁰⁵

298. See Missy Ryan, *Human Rights and Democracy Eroding Worldwide, U.S. Finds*, WASH. POST (Apr. 12, 2022), <https://www.washingtonpost.com/national-security/2022/04/12/state-global-human-rights-report/> [<https://perma.cc/3Y8U-86CH>].

299. See *id.*; see also John Ramming Chappell, *The Rise and Fall of Section 502B*, 21 NW. J. HUM. RTS. 1, 11 (2023) (citing Phelim Kine, *China Activists Call for Reboot of State Dept. Annual Human Rights Report*, POLITICO (Apr. 13, 2022), <https://www.politico.com/news/2022/04/13/china-activists-state-dept-humanrights-00024876> [<https://perma.cc/GT6U-PUKW>] (describing the Chinese government’s scathing response to the 2021 Country Human Rights report “[urging the United States to] ‘face up to and reflect on its own human rights problems, give up politicizing human rights, do something concrete to promote Americans’ human rights and stop undermining human rights in other countries.’”).

300. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 82–84.

301. ASIAN AM. LEGAL DEF. & EDUC. FUND, *supra* note 6.

302. *Id.*

303. See *supra* note 76 and accompanying text.

304. CAMPAIGN FOR JUST., *supra* note 12.

305. See Eric K. Yamamoto, Suhyeon Burns & Taylor Takeuchi, *Apology & Reparation II: United States Engagement with Near-Final Stages of Jeju 4.3 Social Healing*, 45 U. HAW. L. REV. 77, 109–10

Shortly after receiving the letter of support, the Biden administration did acknowledge the United States' role in the JLAs' abduction and incarceration.³⁰⁶ As mentioned, during his remarks at the February 19, 2022 Day of Remembrance of the Japanese American incarceration, with a tone of compassion and regret, President Biden acknowledged the United States' "painful" and "shameful chapter" of World War II mass imprisonment of Japanese Americans and JLAs on U.S. soil.³⁰⁷ For the first time, Biden also publicly admitted to the U.S. government's abduction of the JLAs "from their Central and South American homes," the JLAs' incarceration in the United States, and their subsequent exclusion from the 1988 CLA.³⁰⁸

Yet, as explained earlier, President Biden's words were bittersweet. On one hand, Biden became the first American president to bring the JLA debacle to the global stage. On the other hand, as mentioned, Biden failed to address the Commission's findings of the United States' human rights violations or its recommendations for U.S. reparative measures.³⁰⁹ Brief acknowledgment of the events and harms, it seems, was as far as the President was prepared to venture at that moment. His words, though welcomed in one respect, served to exacerbate the wound of injustice when met with subsequent silence about "what's next."³¹⁰

Indeed, for some, the Shibayamas' prolonged search for justice in U.S. courts and at the Commission cast a dark shadow over the United States' promise to face its own human rights abuses. Instead, the United States appeared to continue to do what Secretary of State Blinken said it would not do, "sweep[]" transgressions "under the rug."³¹¹ During World War II, the United States perpetrated later globally condemned JLA human rights abuses on its own terrain.³¹² It declined to retrospectively address its grave abuses through the CLA.³¹³ Then it continued to shirk responsibility for healing the persisting wounds, offering only a threadbare, ultimately illusory litigation settlement and vacant apology.³¹⁴ The United States' acceptance of responsibility for repairing the damage of its human rights violations

(2022) (describing apology by perpetrators as the first step towards social healing); *see, e.g.*, NICHOLAS TAVUCHIS, *MEA CULPA: A SOCIOLOGY OF APOLOGY AND RECONCILIATION* 8 (1991).

306. Proclamation No. 10341, 87 Fed. Reg. 10677 (Feb. 18, 2022).

307. *Id.*

308. *Id.*

309. *See* Shibayama Report, *supra* note 1, ¶ 65 (2020).

310. *See, e.g.*, Shibayama Report, *supra* note 1, ¶ 62 (stating that the Commission failed to receive a response from the United States).

311. Blinken, *supra* note 3.

312. *See supra* note 104–107 and accompanying text.

313. *See, e.g., supra* note 89 and accompanying text.

314. *See supra* notes 67–70 and accompanying text (describing the insufficiency and repeated discriminatory effects of the minimal *Mochizuki* Settlement); *see* Shibayama Report, *supra* note 1, ¶¶ 39, 41 (emphasizing that while the federal judge apologized for the United States' World War II actions, the judge still denied the Shibayamas' claims in federal court).

matters.³¹⁵ And as Secretary Blinken aptly proclaimed in another setting, “human rights are interdependent, and the deprivation of one right can cause the broader fabric of a [democratic] society to fray.”³¹⁶ Nevertheless, if this administrative posture holds today, then the President’s 2022 acknowledgment remains merely more words of promise awaiting consequential action.

VII. REPARATION SYNTHESIS: WHY JAPANESE LATIN AMERICAN REPARATION MATTERS

This Article assessed what might bring the United States to the proverbial justice table: its moral and legal responsibility to Japanese Latin Americans and the opportunity to partly revitalize the United States’ wavering democratic legitimacy. This closing section employs the principles of reparative justice to synthesize the concepts, particulars, and insights from the preceding sections. It also suggests how justice advocates might anticipate potential *darksides* opposition to already long-delayed JLA reparations, while raising public consciousness about the JLA justice imperative and charting next steps for interest-convergence advocacy.³¹⁷

A. Principles of Reparative Justice: Illuminating Next Steps

The Inter-American Commission on Human Rights’ overarching recommendation that the United States provide the Shibayamas integral reparation implicates the *social healing* working principle of *mutual engagement*.³¹⁸ As discussed above, *reparation* as repair calls for interactive U.S. engagement in the reparative justice process. It beckons all “parties” to the injustice to participate and collaboratively identify the justice grievances, recognize the harms, and craft potential remedial paths.³¹⁹ This kind of

315. See *supra* Part IV.

316. Antony Blinken, *Announcement: Release of Addendum on Reproductive Rights to 2020 Country Reports on Human Rights Practice* (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/> [<https://perma.cc/367B-TVV7>]. Blinken’s statement emphasizes the communitarian notion of a polity’s moral responsibility to those it has harmed. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 134–35.

317. See *infra* Part VII.B.

318. See Shibayama Report, *supra* note 1, ¶ 65.

319. The Commission also recommended that the U.S. incorporate the Shibayamas’ reparations requests in fashioning U.S. “integral reparations.” *Id.* Moreover, the principle of real-world pragmatism operates by eliciting a sense of “justice done.” See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 62–63. If the petitioners’ requests are recognized, considered, and honored through *mutual engagement*, the resulting redress possesses greater potential to create a sense of closure, finality, and satisfaction. See *id.*

The principle of cross-generational justice follows closely behind that of *mutual engagement*. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 62–63. By respecting the Shibayama petitioners’ requests for truth-seeking, disclosure and public apology, the U.S. government may begin to address and redress persisting transgenerational trauma. See *id.*; Shibayama Report, *supra* note 1, ¶ 65. For the Shibayamas, the importance of meaningful redress—repairing the “broken spirit” Bekki Shibayama movingly described in her testimony, and healing deep, generational trauma—cannot be overstated. See Shibayama, *supra* note 45. The Commission’s

reciprocal engagement is essential for providing redress to traumatized individuals and families and for repairing damaged communities—another social healing working principle that targets repair of the multifaceted damage to people, communities, and the polity.³²⁰

While broadly acknowledging the JLA injustice,³²¹ the Biden administration failed to recognize or respond to the Commission’s express finding of human rights violations or reparations recommendations.³²² The United States needs to extend its effort to live up to its human rights commitment well beyond making isolated, factually light statements of remorse.³²³ Robust *recognition* as a principal dimension of social healing also calls for “[acknowledgment of] the particulars and context of the injustice” and interrogation of the “people, social structures, historical causes, and present-day consequences.”³²⁴

Nuanced notions of *responsibility*, described earlier, also condition integral reparation on the United States’ acceptance of responsibility for the “disabling constraints” imposed by the powerful upon the vulnerable. Here, that would require the U.S. government to accept its leadership’s racist, hairbrained, and ultimately doomed scheme to kidnap citizens from Latin American countries to hold on U.S. soil as racial hostages for trading with Japan, and to acknowledge its horrendous treatment of JLAs after their release because of their “illegal alien” status.³²⁵ *Responsibility* together with *recognition* also encompass long-term consequences,³²⁶ including the devastating harms to the Shibayamas and JLA families branded “illegal aliens” in a racially hostile post-war United States, as well as the damage to American democracy for promoting grave civil and human rights abuses within its own territory.

recommendations, consistent with Social Healing Through Justice tenets, offer the United States government a unique opportunity to productively establish genuine reparative justice. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 66.

320. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 64–65 (describing “healing the individual and the collective” as a social healing working principle that “occurs simultaneously on two levels”).

321. Blinken, *supra* note 3.

322. Shibayama Report, *supra* note 1, ¶ 62.

323. See *id.* ¶ 61 (recommending that the United States “[a]dopt the necessary measures to ensure full disclosure of government information relating to the program of deportation and internment of Japanese Latin Americans during World War II, as well as relating to the fates of the individuals subject to this program”).

324. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 73. Recognition also calls for participants to “acknowledge and empathize with the anger, suffering and hopes of those harmed,” identify disabling constraints, identify justice grievances and unravel “stock stories” previously used to legitimize past injustices. *Id.*

325. See PERSONAL JUSTICE DENIED, *supra* note 34, at 312 (describing “hastily written wartime agreements” that led to the JLA “deportation program”).

326. *Id.* at 314 (describing the emotional trauma suffered by Japanese Latin Americans as “endless”).

President Biden’s acknowledgment of the abduction of JLA families from their homes and subsequent exclusion from the CLA, while a step forward, barely scratched the surface of *recognition*.³²⁷ And it only hinted at acceptance of *responsibility*. To date, the United States has yet to engage JLA representatives to acknowledge the depth and breadth of the injustice and to envision next steps.³²⁸

Finally, the salutary impact of the Commission’s recommendations is illuminated by the Social Healing Through Justice facet of *reparation*. Reparation—without an “s”³²⁹—emphasizes “repair” as the root of reparative justice, “invoking the transformative nature of genuine Reparation for survivors of human rights violations.”³³⁰ Reparations, plural, often referencing purely monetary compensation, is widely viewed as the predominant and presumed method of victim recompense.³³¹ But genuine *reparation* as a crucial facet of reparative justice more broadly entails repairing psychological, physical, cultural, and economic damage to people and communities now and for future generations.³³²

The Commission highlighted the importance of broader, comprehensive redress by pairing “measures of satisfaction” with its pecuniary recommendations.³³³ It thus supported the Shibayamas’ monetary claims under the 1988 CLA, while uplifting the family’s other requested reconstructive remedies targeting the underlying wartime abuses, including a full apology, commemorative tributes to victims, and removal of the label “illegal alien” from the petitioners’ government files. Moving forward, with *reparation* in mind, the Commission’s recommendations bear the potential for catalyzing multiple facets of social healing, including economic justice and a new justice narrative for surviving JLAs and descendants.

327. See Proclamation No. 10341, 87 Fed. Reg. 10677, 10678 (Feb. 18, 2022).

328. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 74–78.

329. *Id.* at 87. According to co-author Yamamoto, typically understood “reparations” oftentimes suggest a monetary remedy that fails to encompass the broader harms of social injustices:

For many, reparations (with an “s” at the end) nevertheless means individual monetary payments. And, certainly, reparation (without the “s,” meaning “to repair”) may well incorporate individual payments—either to partially compensate for property or financial loss or psychological trauma, or to symbolize acceptance of responsibility for serious wrongdoing.

Id.

330. *Id.* at 86 (highlighting the root word “repair” as a key foundation of *reparation* and invoking the transformative nature of *reparation* to survivors of human rights violations).

331. *Id.* at 87 (defining the predominant understanding of reparations with an “s” as “individual monetary payments”).

332. Sustained community-wide human rights violations often trigger deeply rooted economic injustice. That injustice reflects not only material losses but also the suppression of peoples’ human right to self-determination to “freely pursue their economic, social and cultural development.” See Common Article I of International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Jan. 3, 1976). See generally NATSU TAYLOR SAITO, SETTLER COLONIALISM, RACE, AND THE LAW: WHY STRUCTURAL RACISM PERSISTS (2020) (addressing the repair of the multifaceted harms of colonization).

333. See Shibayama Report, *supra* note 1, ¶ 65 (recommending “economic compensation and measures of satisfaction”).

Viewed through the lens of Social Healing Through Justice, the Commission’s integrated recommendations and the Biden administration’s promise to assert global “moral leadership” on human rights open a pathway for U.S. participation in the revived JLA reparative justice initiative. Whether through a congressional resolution, executive order, or ceremonial pronouncement, tenets of moral and legal responsibility for politically healing the wounds of historic injustice call upon the United States to reject American unbridled exceptionalism.³³⁴ The United States should meaningfully engage in a social healing process marked in varying ways by *recognition*, *responsibility*, *reconstruction*, and *reparation*, for the benefit of multiple generations of JLA families and to partially rebuild United States legitimacy as a democracy demonstrably (not merely professedly) committed to the rule of law and human rights.

B. Countering the Darkside: Redress for Japanese Latin Americans and Rejuvenating American Democracy

The Shibayama family’s ongoing efforts to engage the United States in the JLA initiative, despite government recalcitrance, also illustrate the *darkside* principle of Social Healing Through Justice. A cautionary working principle describing the “dilemma of [the] reparations process,” the *darkside* first acknowledges that delayed implementation, failure to restructure institutions, or empty payment promises can “[infect] the wounds of injustice”³³⁵ and relegate social healing initiatives to “just talk.”³³⁶ The *darkside* also warns against entanglement with a distorted legal framing of justice claims, where opponents narrowly employ legalisms to constrict reparations claims.³³⁷ The *darkside* of the reparations process highlights, too, how advances in the struggle for reparative justice oftentimes elicit intense political backlash.³³⁸

The reality of this dilemma—the yin and yang of the struggle for reparative justice—calls for the need for real-world pragmatism.³³⁹ This

334. See *supra* note 221 (describing the critique of American exceptionalism).

335. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 70 (citing Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 42–43 (2007)).

336. *Id.*

337. Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 488 (1998) [hereinafter *Racial Reparations*]. The United States’ response to the Shibayamas’ claims reflects one of the more insidious aspects of the *darkside* facing JLA redress efforts: the distorted legal framing of social justice claims. See *id.*

338. See YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 70–71.

339. See *id.* at 69–70 (“infusing real world pragmatism in generating a collective sense of justice done” as a first principle of Social Healing Through Justice). We understand the terms real-world pragmatism and pragmatic realism in the following way, acknowledging that there are varying views. Pragmatism first developed in the early twentieth century “as a challenge to philosophical notions of universal truth [and justice] There are no grand narratives [W]hat we call truth at any time

pragmatic realism urges advocates for JLA justice to anticipate strident pushback and operational pitfalls, while simultaneously charting strategic responses and opening new paths for political organizing and interest-convergence advocacy.³⁴⁰ The *darkside* principle cautions JLA justice advocates to continue anticipating strident pro-military pushback along with more general opposition from those asking “why does this matter,” both from inside and outside the walls of government.³⁴¹ Middle group skeptics, particularly policymakers, also may argue that the United States’ many national and international challenges preclude it from participating in redress for the JLAs.

The strategic recognition of myriad *darkside* obstacles, though, does not counsel abandonment of the project.³⁴² Instead, it encourages persistent efforts to reframe and advance the JLA reparative initiative in two ways: first, as built on the solid historical-factual foundation constructed by the Commission, so that there is no room for doubt about the grave abuses and their inhumane consequences; and second, as implicating converging interests of those suffering and the United States as a democracy committed to the rule of law and particularly human rights. This reframing would enable JLA reparations advocates to characterize the Commission’s ventilation of U.S. human rights violations, along with the Biden administration’s renewed commitment to human rights and its acknowledgment of the JLA injustice, as a collective message that reparation as repair—even if delayed—matters. For JLA justice advocates, this reframing of “what’s really going on” in new terms and concepts could be a crucial next step that challenges the traditional notion of reparations as singular monetary payments and recognizes that multidimensional repair, even for later generations, matters.³⁴³

emerges from interactions of people in particular situations, the values they hold, and the experiences they bring to bear.” See ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND CONCILIATION IN POST-CIVIL RIGHTS AMERICA* 133 (2000). After a period of dormancy, the pragmatic method reemerged and evolved in the 1980s. Professor Mari Matsuda in 1989 called for a “pragmatism modified [that] suggests plural, provisional, and emergent truths...[and] is skeptical of universalized experience and absolute description.” *Id.* at 134. Matsuda then modified this more traditional view by offering a “critical pragmatism,” what we also refer to as realistic pragmatism, that “emphasizes multiple consciousness, experience, flexibility, and context; that engages the experiences and stories of those habitually on society’s margins...and that enhances the ‘rectification of past injustice and elimination of present forms of subordination’ as first principles.” *Id.* (citing Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 635 CALIF. L. REV. 1763, 1768 (1990)).

340. See YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 70.

341. Yamamoto, *Racial Reparations*, *supra* note 337, at 492 (highlighting that the “baggage” of distorted narrow legal claims “does not counsel abandonment of legal claims and court battles,” instead counseling a dual strategy of “bite-sized” legal claims and the reconceptualization of law and litigation as “cultural performances” integral to larger political movements).

342. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE*, *supra* note 4, at 70–71.

343. *Id.* at 66 (describing how one key working principle of the Social Healing Through Justice framework is that “social healing efforts look beyond notions of legal justice (limited to past actors) and to reach into next generations,” and highlighting the importance of addressing transgenerational harms).

JLA survivors are a dwindling group.³⁴⁴ Some critics thus mischaracterize the JLAs' search for reparative justice as insignificant.³⁴⁵ Others minimize thorny initiatives like the JLAs', placing them far lower on the U.S. priority list for government time, political discourse, and resource expenditure.³⁴⁶ Aspects of these oppositionists' arguments will likely resonate, at least initially, with segments of the general public and some policymakers. Indeed, in an increasingly divided United States, reflected in harsh political divisions in Congress, many may be unmoved by the Commission's findings and recommendations and the ensuing JLA justice advocacy. But in doing so, these detractors will undercut the broader importance of the United States righting its human rights wrongs.

CONCLUSION

Rebuilding the United States' stature as a leading democracy—influencing security, trade, and geopolitical relationships—is a multidimensional, long-term challenge.³⁴⁷ As discussed above, starting with the Bush administration after 9/11 and extending through the Trump administration, the United States damaged its global stature by undermining human rights for perceived self-interested political and economic gains.³⁴⁸

In endeavoring to repair some of the damage to the United States as a democracy,³⁴⁹ U.S. leadership is constrained by unyielding economic,

344. As the *darkside* cautions, opponents to redress claims in courts or legislative arenas often times deploy legalisms to raise inordinately high barriers to justice—tightly narrowing or eviscerating justice claims through procedural mechanisms like standing or statute of limitations. *Id.* at 70; Yamamoto, *Racial Reparations*, *supra* note 337, at 487–88.

345. For example, one of the conflicts at the forefront of American political consciousness is funding related to the Ukraine War. See Andy Cerda, *More Than Four-in-Ten Republicans Now Say the U.S. Is Providing Too Much Aid to Ukraine*, PEW RSCH. CTR. (June 15, 2023), <https://www.pewresearch.org/short-reads/2023/06/15/more-than-four-in-ten-republicans-now-say-the-us-is-providing-too-much-aid-to-ukraine/> [<https://perma.cc/5SHA-AQBP>].

346. For example, for decades, activists sought redress for Filipino World War II veterans—with renewed calls for reparations. Antonio Raimundo, *The Filipino Veterans Equity Movement: A Case Study in Reparations Theory*, 98 CALIF. L. REV. 575, 576, 589 (2010); *Fairness Act Seeks to Restore Benefits to WWII Filipino Veterans*, MAUI NEWS (Feb. 15, 2018), <https://mauinow.com/2018/02/15/fairness-act-seeks-to-restore-benefits-to-wwii-filipino-veterans/> [<https://perma.cc/5VSH-L72K>]. As author Antonio Raimundo describes, the post-WWII Recission Acts blocked pathways for citizenship, and thus, compensation for over one hundred thousand Filipino soldiers' participation in the war on behalf of the United States. *Id.* Filipino veterans who voluntarily fought for the United States then faced a decades-long struggle for the citizenship benefits they had been promised. *Id.* at 574. In 2009, the American Reinvestment and Recovery Act included provisions awarding one-time payments to Filipino veterans who served during WWII. Yet further discrepancies in veterans benefits remain. *Id.* at 606. Since 1991, Congressional members introduced versions of the Filipino Veterans Equity Act to “revise[] the Recission Acts to recognize the veterans’ World War II service as ‘active military service’ for the purposes of military benefits.” *Id.* at 604. To date, Congress has failed to pass comparable measures. See H.R. 6121, 118th Cong. (2023).

347. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE, *supra* note 4, at 279.

348. See *supra* Part VI.B.

349. See Daniel Immerwahr, *Should America Still Police the World?*, NEW YORKER (Nov. 18, 2020), <https://www.newyorker.com/books/under-review/should-america-still-police-the-world/>

cultural, and political pressures.³⁵⁰ American leadership juggles simultaneous domestic upheavals—a nation divided on issues of race, gender and reproductive rights, LGBTQIA rights, voter disenfranchisement, education, gun violence, immigration (including border control), police abuse, houselessness, climate change, and more. Evolving foreign policy, too, demands constant attention. Hot controversies and Cold War struggles range from Russia’s unprovoked attack on Ukraine, to China’s aggressive military presence in Asia, to the carnage in and around the Gaza strip in Israel.³⁵¹ These challenges, and more, are all key priorities for the United States.

Although apt in certain respects, the critique that JLA redress lacks contemporary political purchase misconstrues the significance of U.S. engagement in JLA reparative justice. This article does not advocate for JLA redress to ascend above other critical U.S. national and foreign policy priorities. Instead, it observes that dedicated, concerted, yet proportionate U.S. engagement with JLA reparative justice presents a valuable interest-convergence opportunity for America’s partial rejuvenation as a vibrant, functioning democracy.

The Commission’s detailed findings of JLA human rights violations—centered around the Shibayama family’s experience—offer a crucial rebuttal to potential political backlash questioning “whether it really happened.” By aligning with international norms of reparation cited by the Commission along with other social healing precepts, and by endeavoring to repair some of the prolonged damage, the United States would demonstrate its commitment not only to its own domestic civil liberties laws,³⁵² but also to the international human rights norms ostensibly guiding democracies worldwide.³⁵³ And it might do so, then, without simply cynically replicating

[<https://perma.cc/N4GP-6DWJ>] (“Just as George Floyd’s killing sharpened a crisis of legitimacy for police departments, Trump’s reign sharpened one for Washington’s foreign policy.”).

350. See Katherine Schaeffer, *State of the Union 2022: How Americans View Major National Issues*, PEW RSCH. CTR. (Feb. 25, 2022), <https://www.pewresearch.org/fact-tank/2022/02/25/state-of-the-union-2022-how-americans-view-major-national-issues/> [<https://perma.cc/DX4A-ZRWT>] (describing how 71% of Americans say “strengthening [the] economy” should be the top priority for the president and Congress in 2022); Tisdall, *supra* note 252 (describing the United States declining global reputation and declaring that “a parallel disaster is unfolding across the world: the ruination of America’s reputation as a safe, trustworthy, competent international leader and partner”).

351. Antony J. Blinken, *Speech: The Administration’s Approach to the People’s Republic of China*, U.S. DEPT. OF STATE (May 26, 2022), <https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china/> [<https://perma.cc/2WCW-7MMR>]; UNITED NATIONS, *Israel-Gaza Crisis*, <https://www.un.org/en/situation-in-occupied-palestine-and-israel> [<https://perma.cc/2XZZ-L594>] (describing the casualties from the Hamas attack on Israeli settlements and the Palestinian casualties resulting from Israel’s response).

352. See *supra* Part III.B (describing the shortfalls of existing U.S. “remedies” for the JLAs highlighted by the Commission).

353. As a member of the United Nations General Assembly, the United States participated in the UN General Assembly’s adoption of the Basic Principles of Reparation. See G.A. Res. 60/147, ¶ 1 (Dec. 16, 2005); M. Cherif Bassiouni, *International Recognition of Victims’ Rights*, 6 HUM. RTS. L. REV. 203, 250 (2006). The United States abstained from voting. Ellen Desmet, *The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation: A Landmark or Window-Dressing: An Analysis*

what critics call first-world hegemony—vacuously speaking of human rights without substantively activating them in practice for vulnerable communities and societies at large.³⁵⁴

Many among the vast array of ongoing reconciliation initiatives worldwide are struggling through fits and starts, gains and backsliding.³⁵⁵ Their aim—to heal the persisting wounds of historic injustice—and effort attest to what is at stake for democracies working to survive in an increasingly hostile, autocratic world.

With reparative words and actions, the United States would likely bolster President Biden’s and Secretary Blinken’s otherwise loose assurances of the non-repetition of human rights abuses by linking America’s next steps for JLA redress to the international human rights principles infused into the Commission’s recommendations.³⁵⁶ By acting upon those recommendations for *compensation* and “measures of *satisfaction*,”³⁵⁷ rooted in notions of legal and moral responsibility, the United States would demonstrate its commitment to integral reparation, as contemplated by the reparative justice regime embodied in the Basic Principles on Reparation and incorporated into the framework of Social Healing Through Justice.³⁵⁸ And, as a matter of *reconstruction*, it would assure its international allies that even as the United States maintains a robust global presence on matters of security, trade, health, and the environment, human rights abuses under the mantle of national security or military necessity, like those suffered by the JLAs and the Shibayama family, will be sharply constrained from reoccurring.³⁵⁹

By redressing its Japanese Latin American human rights transgressions *today*, the United States would finally, in President Biden’s words, take an affirmative step toward “demonstrat[ing] how strong nations speak honestly about the past and uphold the truth and strive to improve.”³⁶⁰ It would uplift the global “moral leadership” on human rights the Biden administration

with Special Attention to the Situation of Indigenous Peoples, 24 S. AFR. J. ON HUM. RTS. 71, 75 n.26 (2008).

354. See *supra* notes 219, 263–264, and 295–300 and accompanying text.

355. Eric K. Yamamoto, Miyoko Pettit & Sarah Sheffield, *Bridging the Chasm: Reconciliation’s Needed Implementation Fourth Step*, 15 SEATTLE J. SOC. JUST. 1 (2016) (analyzing numerous started-stalled-rejuvenated reconciliation initiatives worldwide).

356. See G.A. Res. 60/147 (Dec. 16, 2005).

357. Shibayama Report, *supra* note 1, ¶ 65 (recommending “measures of satisfaction” (emphasis added); see G.A. Res. 60/147 (Dec. 16, 2005).

358. See *supra* Part V.C.

359. See Laplante, *supra* note 46, at 347 (describing prevention and reassurances of non-repetition as the primary goals of the Inter-American Court of Human Rights); Maja Davidovic, *The Law of “Never Again”: Transitional Justice and the Transformation of the Norm of Non-Recurrence*, 15 INT’L J. TRANSITIONAL JUST. 386, 392 (2021) (suggesting that including “guarantees of non-repetition” within the Basic Principles of Reparation suggests that reparations benefit the *entire* affected community, not just individual victims) (citing DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 89 (2nd ed. 2005)).

360. WHITE HOUSE, *supra* note 294.

promised. In defending human rights, civil liberties, and the rule of law, a rubble-strewn, yet salutary pathway towards renewed U.S. democratic legitimacy lies ahead for the benefit of Japanese Latin American families, the American populace, and global communities committed to the rule of law as an important, albeit imperfect, constraint on abusive governments everywhere. No longer reparations delayed.