Bridging the Chasm: Reconciliation’s Needed Implementation Four th Step

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I. INTRODUCTION

In South Korea, after extensive national Truth and Reconciliation Commission fact-finding and recommendations on a range of atrocities, survivor-participants confronted minimal government implementation efforts.\(^1\) They saw in 2010 “institutionalize[d] attempts to frustrate the goals and functionality of [the] truth commission.”\(^2\)

\(^1\) See infra Sections III.A, IV.B and V.C & D (describing the South Korea Truth and Reconciliation Commission process and impacts).

In Peru, despite initial progress, those suffering from the government’s prolonged fight with insurgents called loudly for follow through on truth commission recommendations. They demanded in 2013 badly-needed, long-delayed economic justice.

In South Africa, the widely praised post-apartheid reconciliation initiative faced charges of having “fallen tragically short.” The former chair of the Truth and Reconciliation Commission lamented in 2014 that by “choosing not to follow through on the commission’s recommendations, [the] government not only compromised the commission’s contribution to the process, but the very process itself.”

And in the United States, after apologizing to Native Hawaiians for the illegal overthrow of the sovereign Hawaiian nation and committing to reconciliation, shifting American political leadership and conservative justices halted steps in 2015 toward indigenous self-governance. “For too long,” implored a Native Hawaiian leader, “[we] have waited for the United States . . . to make right the wrong . . . only to see the small steps taken for

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3 See infra Section V.D (describing Peru Truth and Reconciliation Commission recommendations and impacts).
4 See infra Section V.D (describing the need for economic justice in Peru).
5 See infra notes 6 and 238 and accompanying text.
7 See Chloe Fox, Supreme Court Blocks Native Hawaiians’ Attempt to Form Own Government, HUFFINGTON POST (Dec. 2, 2015), http://www.huffingtonpost.com/entry/supreme-court-hawaii-election_us_56f6849e4b079b2818d1767 (discussing how the Supreme Court of the United States granted an injunction, requested by a group of Native Hawaiians and non-Hawaiians, challenging an election that Native Hawaiians hoped to use to form their own government and therefore “indefinitely stopped” Native Hawaiians from moving forward “until at least the 9th U.S. Circuit Court of Appeals issues its ruling on the election”).
our benefit persistently attacked . . . Reconciliation has been an option thus far denied.8

In recent years, governments and populaces embarked on major reconciliation initiatives to heal the persisting wounds of historic injustices. With an emphasis on personal and societal benefits of victim storytelling, perpetrator apologies, compensatory or symbolic payments, institutional reordering, and public education, reconciliation initiatives emerged on the political agendas of both established and transitioning democracies.9 Acknowledging and repairing the damage of grievous transgressions signaled government and populace commitments to human rights and reparative justice.10 And it illuminated the high aspirations and moral tenor of civil societies.11

Despite those aspirations and commitments and notwithstanding major reconciliation undertakings in South Korea, Peru, South Africa, the United States, and beyond, reconciliation initiatives stall.12 Genuine social healing awaits. As eloquently recited by the National Survivors Network in its 2015 petition to the Kenyan National Assembly, the “lack of a framework for implementing the recommendations of the Truth, Justice and Reconciliation Commission” has “huge repercussions on the lives of hundreds of victims

8 Statement by Trustee Haunani Apoliona, Chairperson, Board of Trustees, Office of Hawaiian Affairs; Testimony offered to the Committee on Senate Indian Affairs, February 25, 2003; see also infra note 39 and accompanying text (describing partial United States and Native Hawaiian reconciliation efforts).
9 See, e.g., TRUTH & RECONCILIATION COMM’N OF CAN., http://www.trc.ca/websites/trcinstitution/index.php?p=3 (last visited July 15, 2016); Hun Joon Kim, Truth Commissions in South Korea: Lessons Learned, MIDDLE EAST INST. (2013), http://www.mei.edu/content/truth-commissions-south-korea-lessons-learned (describing South Korea’s transitional justice measures since the democratic transition in 1987); see also infra Sections II & IV.B.
10 See infra Section II.A (referencing various global reconciliation initiatives).
11 See infra Section II.A (describing an “Age of Reconciliation”).
12 See infra Section II.B (analyzing stalled global reconciliation initiatives).
who bear the scars of past serious human rights abuses."\textsuperscript{13} The systemic failure to follow through on the commission’s reparative directives “under[cuts] victims’ ability to obtain closure and restart their lives.”\textsuperscript{14}

Why, then, despite substantial investments of time, energy, and money, are there often failures to follow through on truth commission reparative recommendations? And after considerable global truth commission experience, why are participants left without a workable framework for implementing crucial recommendations?

More practically, in light of the persisting wounds of injustice, what needs to be done and by who to recalibrate and reinvigorate reconciliation stalled? In concept and in practice. Now and in the future. At bottom, how do we, as members of civil societies, bridge the chasm between aspiration and realization?\textsuperscript{15}

These questions lie at the heart of our inquiry into the implementation of truth commissions’ reconciliation recommendations. That specific inquiry is guided more broadly by \textit{social healing through justice}—an analytical approach for shaping, evaluating, and reconfiguring reconciliation initiatives aimed at engendering healing for those still suffering deep wounds of injustice and for society itself.\textsuperscript{16} This approach is grounded


\textsuperscript{14} Id. (quoting Christopher Gitari, Head of the Kenya Office of the International Center for Transitional Justice, who commented on the impact of legislative inaction of reparations recommendations).

\textsuperscript{15} See infra Section III.B (describing the “enormous chasm”).

\textsuperscript{16} Briefly stated, the \textit{social healing through justice} framework aims (1) to provide an analytical structure grounded in common points among respected academic disciplines, (2) which draws insights from the successes and failures of actual redress initiatives, (3) and employs a common language that attempts to speak to the hearts and minds of communities in conflict, (4) while serving as a strategic guide for shaping, and then assessing, reparatory justice initiatives. See Eric K. Yamamoto and Sara Lee, \textit{Korean...}
theoretically—it draws from commonalities among several disciplines (particularly social psychology, political theory, economics, and human rights law). It is also pragmatic—it acknowledges practical redress experiences and the strategic significance of a convergence of interests and is attentive to words, actions, and realpolitik influences. And this approach to social healing engages individuals, communities, justice organizations, businesses, and governments in a dynamic process of recognition, responsibility, reconstruction, and reparation—the “Four Rs”—with the larger aim of fostering the kind of reparative justice that heals.


Commonalities among diverse disciplines (social psychology, theology, economics, law—including international human rights—political theory, and indigenous healing) highlight four aspects of the kind of justice that fosters social healing: recognition, responsibility, reconstruction, and reparation. See id. These four points of inquiry assist groups and governments first in shaping a particular redress initiative and then in assessing whether the effort is on the path toward genuine social healing. See id. For elaboration upon the 4Rs (summarized below) in operation, see id. See also Eric K. Yamamoto & Ashley Kaiao Obrey, Reframing Redress: A “Social Healing Through Justice” Approach to United States-Native Hawaiian and Japan Ainu Reconciliation Initiatives, 16 ASIAN AM. L.J. 5, 33 (2009) [hereinafter Yamamoto & Obrey, Reframing Redress]. See generally ALFRED BROPHY, REPARATIONS PRO AND CON (2006); Carlton Waterhouse, The Good, the Bad, and the Ugly: Moral Agency and the Role of Victims in Reparations Programs, 31 U. PA. J. INT’L L. 257, 267 (2009).

Recognition “addresses the psychological” by examining the historical, cultural, and structural context for past and continuing suffering. See ERIC YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA 175-85 (2000) [hereinafter YAMAMOTO, INTERRACIAL JUSTICE]. By investigating the ways in which individuals “continue to suffer pain, fear, shame and anger,” by decoding “cultural stereotypes that seemingly legitimize” injustice, and by scrutinizing “the ways that organizational structures” contribute to the injustice, participants can arrive at a recognition of the harm that paves the way for future healing. Id.

Responsibility includes both “assessment of power over others” and “acceptance of responsibility of repairing the damage . . . imposed on others through power abuses.” Id. at 185. By focusing not only on the assessment of responsibility, but also on acceptance of the responsibility to act, the mutual engagement of participants that leads to successful healing is ensured. Id.
According to David Tolbert, president of the International Center for Transitional Justice, 40 national truth commissions, along with reparations programs and prosecutions, have initiated paths toward social healing through justice.\(^21\) They “have given victims a voice and recognized their

_Resolution_ aims to build “new productive relationships.” Id. at 161-62. Effectively building the kind of relationships needed for successful healing and a sense of justice restored might include “apologies and forgiveness,” reframing the “history of interaction,” and the “reallocation of political and economic power.” Id. Reallocation of power, through change in a “state’s social, legal or political institutions and policies,” is an important part of reconstruction as it can assure underlying abuses will not be repeated. See Yamamoto & Obrey, _Reframing Redress_, supra, at 34.

_Reparation_ draws from its root word “repair.” See YAMAMOTO, INTERRACIAL JUSTICE, supra, at 35. While it may include restitution, monetary payments, and “medical, legal, or educational and financial support for individuals and communities in need,” reparation encompasses more than money. Id. Reparation as repair, and reparations as specific reparative actions, also encompasses rehabilitation, “restoration of property, rebuilding of culture, economic development” and public education. Id. Public education particularly can serve to “commemorate, impart lessons learned, and... generate a new justice narrative about a democracy’s commitment to civil and human rights.” Id.

\(^20\) The framework, originally termed “interracial justice,” was initially developed in YAMAMOTO, INTERRACIAL JUSTICE, supra note 19. See also DAVID HANSEN, NATIVE AMERICANS, THE MAINLINE CHURCH, AND THE QUEST FOR INTERRACIAL JUSTICE (2016) (interpreting and employing the 4Rs reconciliation framework to assess reconciliation efforts with Native Americans).


The International Center for Transitional Justice is an international non-profit organization that “works to help societies in transition address legacies of massive human rights violations and build civic trust in state institutions as protectors of human rights.” _About Us_, INT’L CTR. TRANSITIONAL JUST., https://www.icj.org/about (last visited July 15, 2016). The International Center assists institutions and civil society groups “in considering measures to provide truth, accountability, and redress for past abuses.” Id. In particular, the International Center provides technical expertise and knowledge in the following ways: advising government institutions and policymakers at all levels with a
suffering, while signaling to culprits that their crimes will not be forgotten.”

Yet, as briefly recounted at the outset, reconciliation initiated does not signal social healing achieved. Reconciliation is a long-term, multi-faceted political, social, and economic process. It bears potential not only for significant legal and social benefits, but also for incompleteness and even regression. Recognizing injustice and accepting responsibility (words) do not themselves assure reconstruction and reparation (actions). Many now see even well-structured reconciliation initiatives as stalled works in progress.

Writing for the International Center for Transitional Justice, Eduardo González aptly observes that a truth commission’s findings and recommendations are a key piece, but only a piece, of the reconciliation process. Implementation requires a convergence of factors, particularly political will; it is illusory to assume that government and private actors will automatically follow through. Executive and legislative implementing

focus on government responsibility for past human rights violations; working with victims’ and women’s groups, human rights activists, and civil society with a justice agenda; and researching, analyzing, and reporting on transitional justice developments worldwide through publications, policy recommendations, working sessions, and international convenings. Id.

22 Tolbert, supra note 21; see generally MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS (1998) (exploring various struggles globally to find meaningful responses to historic injustices that fall between stark vengeance and unilateral forgiveness).

23 See infra Section IV.B (discussing the prevailing reconciliation template).


actions often proceed slowly. Political organizing raises public consciousness and applies pressure for implementation. Experience shows, however, that sporadic public scrutiny and political pressure are not enough after a commission makes recommendations to compel long-term follow-through.

Reconciliation policymakers, scholars, and advocates now search for a cogent next-step framework for assessing and refashioning troubled reconciliation initiatives. That search is both conceptual and practical. Implementation (like creation and operation) functions in an intensely legal and political environment. Participation by a range of stakeholders—bolstered by local, national, and international scrutiny—is essential to effectiveness and accountability.

With realpolitik influences in mind, to facilitate recalibration and rejuvenation, we suggest remaking a key part of the prevailing reconciliation template rather than scrapping reconciliation initiatives

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27 See generally DONATELLA DELLA PORTA & MARIO DIANI, SOCIAL MOVEMENTS: AN INTRODUCTION (2d ed. 2009) (focusing on political movements and their impact on society and politics); MEGAN MING FRANCIS, CIVIL RIGHTS AND THE MAKING OF THE MODERN AMERICAN STATE (2014) (examining the importance and consequences of the civil rights movement on the process of state building in American political and constitutional development); JOSEPH F. HEALEY & EILEEN O’BRIEN, RACE, ETHNICITY, GENDER, AND CLASS: THE SOCIOLOGY OF GROUP CONFLICT AND CHANGE (2014) (describing how the civil rights movement raised awareness about injustice against minorities and led to political changes for other minority groups).

28 See infra Sections III, IV.C & V.A (describing unimplemented truth commission recommendations). Reasons may vary for lesser-sustained post-commission collective efforts for implementation—people have already been given a recognized voice through public hearings, causes have been investigated, some recommendations have been acted upon, and collective political energy is directed elsewhere. This subject warrants further inquiry.

29 See generally id. at 2 (urging drafters and other stakeholders pay less attention to general standards and more "to realities on the ground"); see also infra Section V.

30 See infra Section V.

31 See infra Section V.B.
altogether without viable alternatives for social healing. This remaking entails a new, formalized fourth step in the truth and reconciliation process. This proposed fourth step—an Assessment, Implementation, and Oversight Task Force—is an independent yet politically attuned stakeholder-comprised follow-up body to assess and update existing recommendations, to facilitate the implementation of outstanding recommendations, and to refashion and oversee future reconstructive and reparative actions to further comprehensive and enduring social healing.\(^3^{2}\)

The Assessment, Implementation, and Oversight Task Force would undertake (1) integrated convenings of survivor groups, government officials, businesses, policymakers, and justice advocates, with oversight from journalists and civil society organizations; (2) an assessment of original truth commission findings and recommendations, particularly an evaluation of fairness and completeness;\(^3^{3}\) (3) a grounded critique of government, business, and community implementation of truth commission recommendations to date, particularly those aimed at institutional restructuring, economic justice, and public education;\(^3^{4}\) and (4) the recalibration and oversight of paths toward further reparative justice in light of evolving social, political, and economic conditions.

To lay the foundation, this article’s Section II describes the global reconciliation setting by canvassing salutary and troubled initiatives. Section III addresses the implementation challenge in bridging the chasm

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\(^3^{2}\) See Yamamoto et al., supra note 24, at 37-81 (acknowledging the need for a fourth step mechanism to further the reconciliation process and describing a potential Joint Task Force to further social healing efforts in South Korea).


\(^3^{4}\) See Melish, supra note 2, at 29 (observing that comparative lessons from Cambodia, Peru, and South Africa focus on these aspects of implementation, including “community-level reconciliation, economic reparation packages, and memorialization initiatives”).
between reconciliation aspiration and realization. Section IV starts with a glimpse of reconciliation theory. It then describes the three-step basic structure of the prevailing reconciliation template: truth revelation, criminal prosecutions or amnesty, and executive or legislative action on reconstruction and reparation. The section concludes by painting a recurring picture of unfulfilled promises and identifies what is missing.

Section V shapes these insights, along with principles of \textit{social healing through justice},\footnote{See infra Section IV.A for a discussion of the \textit{social healing through justice} framework.} into a more fully delineated new fourth step for better implementing truth commission social healing recommendations—an approach embodied pragmatically in the suggested Assessment, Implementation, and Oversight Task Force (“Task Force”). The section then describes comparative case study snapshots of two beneficial—though still limited—implementation efforts arising out of Peru’s (no government participation) and South Korea’s (too much government control) follow-up efforts. It concludes with observations about the potential and limitations of an integrated government-community-civil society task force.

The aim of this article is not to fashion a cure-all for reconciliation ills. Rather its aim is to advance a crucial next step, in concept and practical structure, for channeling often fractious political and social interests further down a mutually beneficial path toward social healing through justice.

II. THE SETTING: RECONCILIATION UPLIFTED, RECONCILIATION CRITICIZED

\textit{A. An “Age of Reconciliation”}

Reconciliation initiatives proliferate. In the United States, a congressional truth commission investigated the mass incarceration of Japanese
Americans during World War II. The national government adopted the commission’s recommendations and, in 1988, authorized a groundbreaking congressional and presidential apology, provided symbolic individual reparations, and funded public education projects. These words and actions aimed to heal the wounds of 100,000 mostly American citizens wrongly incarcerated because of their race and to repair the damage to America’s ethos of equal justice under law. Soon after, the US Congress and President formally apologized to Native Hawaiians for the 1893 illegal overthrow of the sovereign Hawaiian nation and promised, and later approved, initial actions toward reconciliation.

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38 See COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, supra note 36; YAMAMOTO ET AL., supra note 37.
39 See Apology Resolution, Pub. L. No. 103-150 (1993). In November 1993, 100 years after the overthrow of the Hawaiian Kingdom, President William Clinton signed the Apology Resolution into law. See id. In addition, the Hawai‘i Supreme Court and state legislature partially addressed the state’s commitment to reconciliation with Native Hawaiians over self-governance and claims to homelands taken more than a hundred years ago in the illegal, US-aided overthrow of the Hawaiian nation. See Jesse Greenspan, Hawaii’s Monarchy Overthrown with U.S. Support, 120 Years Ago, HISTORY (Jan. 17, 2013), http://www.history.com/news/hawaiis-monarchy-overthrown-with-u-s-support-120-years-ago. The Hawai‘i Supreme Court reinforced the state’s legislative commitment to reconciliation by commanding that the governor stop selling formerly native-owned lands (now held in trust by the State of Hawai‘i partially for the benefit of Native Hawaiians) until indigenous Hawaiian reparations claims to these lands resolved politically. Office of Hawaiian Affairs v. Hous. & Cty. Dev. Corp., 177 P.3d 884, 902 (Haw. 2008) (ruling on the basis of state law while incorporating aspects of federal law). But see Hawai‘i v. Office of Hawaiian Affairs, 129 S. Ct. 1436 (2009) (vacating state supreme court decision on federal law grounds and remanding to state court to determine whether state law alone provided independent grounds for its ruling). In recent years, both federal and state governments have taken steps—met with support as well as vehement opposition—to act upon commitments to fully reconcile with Native Hawaiians either through recognition of Hawaiian independence or through some other form of

Private institutions in the United States also employed the language of reconciliation. In 2015, University of Missouri’s president resigned after
failing to address student grievances about racism, and Georgetown University’s president convened a Working Group on Slavery and Reconciliation to respond to the university’s roots in the slave trade. Brown University undertook a year-long public educational dialogue about its slavery history with an eye toward racial healing. And business giants Wachovia, Aetna, and J.P. Morgan Chase apologized for their historical roles in the slave industry.


48 See generally Pam Belluck, Panel Suggests Brown U. Atone for Ties to Slavery, N.Y. TIMES (Oct. 19, 2006), http://www.nytimes.com/2006/10/19/education/19brown.html?fta=y (noting that the issue of reparations for slavery was controversial); BROPHY, supra note 19.

Globally, countries energetically embarked down formal reconciliation paths to repair the damage of historic injustice. Among established democracies, New Zealand’s Waitangi Tribunal, with an eye on reconciliation, made favorable determinations on indigenous Maori land claims. And after years of debate about reconciliation, Australia’s new prime minister apologized to its stolen generations—thousands of aboriginal children forcibly taken by the government en masse from their homes and homelands.

In the teeth of class action lawsuits and mounting political agitation, the Canadian government and churches embarked on a far more extensive program of reconciliation with Canada’s stolen generations. From the late
1800s, in the name of educational assimilation, Canada’s government forcibly removed aboriginal children from families and placed them in native residential schools that banned their mother tongue and inflicted rampant physical and sexual abuse.\textsuperscript{55} In 2015, the Canadian government formalized its reconciliation commitment.\textsuperscript{56} Its initiative encompassed apologies, monetary payments, and creation of a healing foundation.\textsuperscript{57} And, after the official publication of the Truth and Reconciliation report, newly elected Prime Minister Justin Trudeau promised to seek a formal apology from the Catholic Church for its pivotal role in operating and benefitting from the grossly abusive schools.\textsuperscript{58}

Across the Atlantic Ocean, in the language of reconciliation, then-Prime Minister Tony Blair apologized for the British Empire’s sponsorship of and profiting from slavery in its many colonies.\textsuperscript{59} Later, Foreign Secretary

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\item 1800s, in the name of educational assimilation, Canada’s government forcibly removed aboriginal children from families and placed them in native residential schools that banned their mother tongue and inflicted rampant physical and sexual abuse.\textsuperscript{55} In 2015, the Canadian government formalized its reconciliation commitment.\textsuperscript{56} Its initiative encompassed apologies, monetary payments, and creation of a healing foundation.\textsuperscript{57} And, after the official publication of the Truth and Reconciliation report, newly elected Prime Minister Justin Trudeau promised to seek a formal apology from the Catholic Church for its pivotal role in operating and benefitting from the grossly abusive schools.\textsuperscript{58}

Across the Atlantic Ocean, in the language of reconciliation, then-Prime Minister Tony Blair apologized for the British Empire’s sponsorship of and profiting from slavery in its many colonies.\textsuperscript{59} Later, Foreign Secretary
William Hague and British High Commissioner of Nairobi Christian Turner similarly expressed the government’s “sincere regret” for human rights abuses in colonial Kenya. These apologies to Kenya’s indigenous Kikuyu, also known as Mau Mau, complemented a political settlement of a partially successful Mau Mau reparations suit before the British High Court in 2013. In the settlement’s wake, Caribbean nations demanded reparative actions through suits against Britain and other European colonizers (France, the Netherlands, Portugal, Spain, and Sweden). In France, political leaders deployed the language of reconciliation following eruptions over human rights abuses. The communal and individual testimonies of claimants, who recount torture, extreme violence, and sexual assault, demand reparations. Some will be adjudicated in domestic courts; others will come before the International Court of Justice in The Hague, Netherlands. See Don D. Marshall, *Capitalism, Slavery and Reparations Battle*, STABROEK NEWS (Sept. 1, 2014), http://www.stabroeknews.com/2014/features/09/01/capitalism-slavery-reparations-battle/.
discrimination against mainly African immigrants. And Spain’s National Court opened the reconciliation door to victims of the Franco dictatorship.

Spotlighting South Africa’s transition from apartheid, social healing initiatives also encompassed democracies emerging from despotic rule. Those initiatives spanned South and Central America (Chile, Peru, Colombia, Guatemala, and Argentina), Africa (Morocco, Rwanda, Sierra Leone, Kenya), and Asia (Timor-Leste, Indonesia, Nepal, Cambodia, and South Korea). Most nations established investigative truth commissions as a breakthrough public step toward recognizing and redressing historic and


65 This is also known as “transitional justice” and refers to the “set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses,” including criminal prosecutions, truth commissions, reparations programs, and institutional reforms. What Is Transitional Justice?, INT’L CTR. TRANSITIONAL JUST., http://www.ictj.org/about/transitional-justice (last visited July 15, 2016). Transitional justice specifically focuses on “achieving justice in times of transition from conflict and/or state repression” through accountability and redress. Id. It “provides recognition of the rights of victims, promotes civic trust and strengthens the democratic rule of law.” Id.

66 See Pettit, supra note 61, at 278-79 (describing a wide array of reconciliation initiatives globally).
continuing harms. For instance, Kenya’s Truth, Justice and Reconciliation Commission heard testimonies from thousands of victims (or family members) about murder, torture, sexual assault, and forced displacement, mainly surrounding the country’s controversial 2007 presidential election. The commission documented atrocities, assessed responsibility, and, in 2013, recommended extensive reparations for survivors.

According to the International Center for Transitional Justice, 40 truth and reconciliation commissions have given victims a voice and recognized their suffering. We are amid an “Age of Reconciliation.”

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69 See THE FINAL REPORT OF THE TRUTH JUSTICE AND RECONCILIATION COMMISSION OF KENYA, supra note 68 (presenting the commission’s work, findings, and recommendations). See also Kenyan Victims Demand, supra note 13 (discussing victims’ calls for the implementation of recommendations set forth in the Truth,Justice and Reconciliation Commission’s report).

70 Tolbert, supra note 21.

71 See generally THE POLITICS OF RECONCILIATION IN MULTICULTURAL SOCIETIES, supra note 21, at 58 (addressing the salutary and regressive potential of reconciliation initiatives); Little, supra note 21, at 86 (rethinking the idea of reconciliation as a key aspect of transitional justice); Yamamoto & Obrey, Reframing Redress, supra note 19, at 21 (describing social benefits and problems of incompleteness of reconciliation initiatives); Roy L. Brooks, The Age of Apology, in WHEN SORRY ISN’T ENOUGH 3 (Roy L. Brooks ed., 1999) (describing an “Age of Apology”).
B. Reconciliation Stalled

Yet, reconciliation initiated does not signal social healing achieved. Reconciliation is a long-term multi-faceted political, social, and economic process. It bears potential not only for significant benefits but also for incompleteness and regression.72 Some characterize as a “soft option” those initiatives granting amnesty to perpetrators as part of the reconciliation bargain.73 Others observe many even well-structured reconciliation initiatives whither at the end stages.74 For them, the “Age of Reconciliation” is experiencing a “mid-life crisis.”75 What is clear is that reconciliation in concept has disparate meanings and that reconciliation in practice has a mottled record.

Reconciliation can mean a highly organized formal process of truth telling and reparation76 or an apparently insincere smokescreen77 to hide

72 See Yamamoto et al., supra note 24, at 38.
73 See Mahmood Mamdani, Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC), 32 DIACRITICS 33, 33 (2002) (characterizing South Africa’s TRC as the “fruit of a political compromise whose terms both made possible the Commission and set the limits within which it would work”); J. Duffy & D. Ross, Bargaining for Truth and Reconciliation in South Africa: A Game-Theoretic Analysis, 20 S. AFRICAN J. OF PHILOSOPHY 66, 66-89 (2001) (examining how policies creating truth and reconciliation commissions that “trade civil and criminal amnesty with applicants in exchange for information” is an “imperfect information game, where the commission attempts to maximize information (truth) while the applicant seeks amnesty for the lowest possible price”).
74 See Kim, supra note 25, at 11-13, 166-67 (discussing South Korea’s unfinished truth and reconciliation process).
75 See Yamamoto & Obrey, Reframing Redress, supra note 19, at 24.
76 See generally Brooks, supra note 71, at 10-11 (describing South Africa’s structured, publicly transparent truth and reconciliation commission process); Penelope E. Andrews, Reparations for Apartheid’s Victims: The Path to Reconciliation?, 53 DEPAUL L. REV. 1155 (2004); Lyn S. Graybil, Truth and Reconciliation in South Africa: Miracle or Model (2002); Desmond Tutu, Without Forgiveness There is No Future 35 (1999).
77 Nepal’s controversial effort to legislatively establish a Truth and Reconciliation Commission to address the decade-long violence between the former royal government and communist insurgents has been sharply criticized for, among other things, its failure to embrace international human rights standards. See Amnesty International, Nepal:
behind-the-scenes political maneuvering. Indeed, aboriginal groups, angry about the government’s refusal to consider reparations, sharply criticized Australia’s apology to its stolen generations, and Canadian indigenous groups characterized as insincere Canada’s comprehensive reconciliation initiative because of delayed implementation.

Similarly, reparations proponents rebuked Britain’s words of apology for slavery because Britain failed to embrace reparative acts toward reconciliation. The Crown government’s long delay, likely for political reasons, in finally acknowledging awards undercut the New Zealand Waitangi Tribunal’s aboriginal land claims process. Native Hawaiians too

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79 See Johnston, supra note 52; THE AUSTRALIAN PRIME MINISTER’S WEBSITE, supra note 52 (text of Prime Minister’s apology speech). See generally Cunneen, supra note 52, at 183; O’Connor, supra note 52, at 219.

80 See TRUTH HEALING RECONCILIATION (2008), available at http://www.trecvr.ca/pdfs/20080818eng.pdf. Some who suffered find the overall efforts less than sincere, orchestrated by government for its own benefit, and lacking the kind of mutual engagement necessary for genuine healing. Id. Following Canada, the Tasmanian government committed to reconciliation, apologizing, and authorizing individual reparations payments to its stolen generation of aboriginal children. Barbara McMahon, Tasmania to Pay ‘Stolen Generation’ of Aborigines £2.2m in Reparations, THE GUARDIAN (Jan. 23, 2008), http://www.guardian.co.uk/world/2008/jan/23/australia.international. Yet, the social and economic impacts of its promises are uncertain.

81 See Petre, supra note 59. See also Stanford, supra note 59, at 8 (describing a Pan-African movement for slavery reparations from Britain and other European countries).

82 See generally Williams, supra note 51, at 234.
criticized the United States for failing to follow through on its reconciliation promises. 83

Developing Latin American countries also experienced halting steps toward reconciliation. For instance, despite Peru’s initial efforts, 84 victims of the government’s fight with insurgents called for disciplined follow-through on truth commission recommendations, emphasizing still badly needed economic programs. 85 For many, the delayed minimal economic payments and the lack of real economic capacity-building signaled a potential failure of the overall initiative. 86

In Asia well-intentioned reconciliation initiatives inspired by the South Korea democracy movement foundered at the implementation stages. 87 The absence of meaningful apologies and the lack of economic justice erected at least partial roadblocks to social healing. 88

83 See Grass, supra note 39 (describing the tension between US government actions and Native Hawaiian sovereignty movements).
84 See Lisa J. Laplante, Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru, 29 HUM. RTS. Q. 228, 241 (2007) (explaining that victims and survivors are highly disappointed by the government’s failure to implement recommendations).
86 See Laplante, supra note 85, at 231 (pointing out that delays in implementing reparatory measures left victims in Peru disillusioned with the work of the truth commission). See also Mattia Cabitza, Slow Justice for Peru’s ‘Disappeared’ 20 Years On, BBC NEWS (Nov. 14, 2011), http://www.bbc.co.uk/news/world-latin-america-15718695 (noting that some victims have been waiting for over thirty years to find out what happened to their disappeared loved ones).
87 See generally Jae-Jung Suh, Truth and Reconciliation in South Korea, 42-4 CRITICAL ASIAN STUD. 503-24 (2010) (describing the Truth and Reconciliation Commission of the Republic of South Korea (TRCK) and noting its success in “bringing back the voices of the silenced” but also pointing out the TRCK’s challenges and limitations).
Japan faced international opprobrium after backsliding on its earlier acknowledgments of imperialist and World War II atrocities cast in the language of desired reconciliation. In 2015, Prime Minister Shinzo Abe’s special historical review panel praised the country’s postwar economic growth and commitment to pacification but also cited “lack of

(printing an interview with Kim Dong-choon, the former Standing Commissioner of the TRCK, in which he describes the achievements and challenges of the TRCK).

89 At the 2005 Asia-African Summit in Jakarta, which addressed multilateral efforts in solving conflicts, then-Prime Minister Koizumi, in the general language of reconciliation, acknowledged Japan’s imperial transgressions:

Japan, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations. Japan squarely faces these facts of history in a spirit of humility and with a feeling of deep remorse and heartfelt apology always engraved in mind, Japan has resolutely maintained, consistently since the end of World War II, never turning into a military power but an economic power, its principle of resolving all matters by peaceful means, without recourse to the use of force. Japan once again states its resolve to contribute to the peace and prosperity of the world in the future as well, prizing the relationship of trust it enjoys with nations of the world.

Excerpts from Japan PM’s Apology, BBC NEWS (Apr. 22, 2005), http://news.bbc.co.uk/2/hi/asia-pacific/4471961.stm. See generally Jamie Sheu, Clash of Asia’s Titans: China and Japan’s Struggle for “Reconciliation,” May 1, 2006 (unpublished seminar paper, University of Hawai‘i) (on file with author) (analyzing former Prime Minister Koizumi’s rhetoric of reconciliation in addressing charges of human rights violations by China).

90 See Japan’s Apologies for World War II, N. Y. TIMES (Aug. 14, 2015), http://www.nytimes.com/interactive/2015/08/13/world/asia/japan-ww2-shinzo-abe.html?_r=0 (noting that Prime Minister Shinzo Abe failed to offer an apology in a 2015 speech, visited a shrine for Japan’s war criminals in 2014, and did not express remorse as Japan’s leaders traditionally did in a 2013 speech). In 2007, the US House of Representatives called upon Japan’s leaders to apologize to World War II Korean military sex slaves and to offer them meaningful reparations. H.R. Res. 121, 110th Cong. (2007) (calling on government to reverse policy against reparations for women forced into sexual slavery for Japanese soldiers). Japan’s indigenous Ainu also demanded redress for the longstanding but less well-known colonization of Ainu lands and suppression of Ainu culture. See Yamamoto & Obrey, Reframing Redress, supra note 19, at 21.
reconciliation with China and South Korea” as a fount of escalating criticism by those countries.91

Sometimes political instability disrupts implementation of even carefully organized initiatives. In 2005, the new East Timor government established a truth and reconciliation process to address the violence of 20 years of Indonesian military rule.92 One of its pathbreaking tenets was gender redress to heal East Timor women’s wounds of sexual violence.93 The truth commission embarked on a remarkable program of psychological healing94 and economic support as a foundation for rebuilding the nation.95 But political instability slowed, if not scuttled, the healing process.96

As this snapshot of troubled reconciliation initiatives reveals, the reconciliation concept’s elasticity and shifting political underpinnings provide little firm guidance to policymakers and justice advocates.97 They

91 Report on Japan’s History Meant to Ease Skepticism, HONOLULU STAR-ADVERTISER, Aug. 8, 2015, at A4.
93 One of the Commission’s recommendations was that “at least 50% of resources in this program shall be earmarked for female beneficiaries.” Id. at 308.
94 The Commission proposed the following:

[A] reparations program with five guiding principles—feasibility, accessibility, empowerment, gender, and prioritization [sic] based on need—with the aim to repair, as far as possible, the damage to their [victims’] lives caused by the violations, through the delivery of social services to vulnerable victims and symbolic and collective measures to acknowledge and honor victims of past violations. Id.
95 See id. at 290.
97 See, e.g., Kim & Seldon, supra note 88 (noting that the TRCK’s current leadership is unwilling to hold the United States accountable for its “indiscriminate bombing” practices and other atrocities during the Korean War).
render stated commitments to reconciliation susceptible to political mischief as insincere cover for continuing hostilities or power grabs. And reconciliation politics, by demanding agreement and consensus, at times marginalizes or even silences discordant voices. Equally important, even solidly conceived and operated truth commissions stumble at the stages of implementation and follow through. Critics of varying aspects of transitional justice abound, at times offering sharp and insightful critiques, although often without advancing realpolitik alternatives for social healing.

98 See, e.g., id. (pointing out that the TRCK does not currently have the support of certain key government institutions, including the police, the military, and the National Intelligence Service).
101 See generally *THE POLITICS OF RECONCILIATION IN MULTICULTURAL SOCIETIES*, supra note 21, at 58; Hirsch, supra note 100, at i.
Reconciliation policymakers, scholars, and advocates thus search for a cogent framework for guiding, assessing, and refashioning troubled reconciliation initiatives.

III. THE CHALLENGE: BRIDGING THE RECONCILIATION CHASM

Despite important steps forward, a society’s failure to implement reconciliation recommendations, often for needed reconstruction and reparation, means that the pain, blame, guilt, and economic dislocation persist.103 Reconciliation stalled generates real, on-the-ground consequences for people, communities, and societies. A momentous challenge, then, for both established and developing democracies is this: how to follow through on truth commission recommendations and recalibrate and rejuvenate halting reconciliation initiatives.

A. Unfinished Business—Illustrations

An illuminating example of the reconciliation’s unfinished business is South Africa’s TRC. Despite initial salutary efforts, South Africa’s government stopped individual reparations payments and community economic capacity-building.104 Additionally, South Africa’s businesses reacted with notable indifference to the TRC recommendations that businesses profiting from the racial caste system contribute to repairing the damage.105 No South African companies operating during apartheid

103 See supra Section II.A & B.
104 See Phillip De Wet, Reparations Still on the Back Foot, MAIL & GUARDIAN (Nov. 16, 2012), http://mg.co.za/article/2012-11-16-00-reparations-still-on-the-back-foot (explaining why the President’s Fund—which was “created with the sole purpose of making reparations for apartheid as part of the broader reconciliation drive”—has not fulfilled its purpose); see also Eric K. Yamamoto & Brian Mackintosh, Redress and the Salience of Economic Justice, FORUM ON PUBLIC POL’Y 11 (2010), http://forumonpublicpolicy.com/vol2010.no4/archive.vol2010.no4/yamamoto.pdf.
105 Yamamoto & Mackintosh, supra note 104, at 12; see Xolani Mbanjwa, R525m Paid Out Since TRC Started, PRETORIA NEWS (July 16, 2008),
contributed to the reparations fund.\textsuperscript{106} For Archbishop Tutu, this deliberate corporate absence tears at the heart of the reconciliation initiative—business payments “as a vehicle for those who had benefited from the past to contribute to the future was stillborn.”\textsuperscript{107}

More broadly, South Africa’s government and apartheid businesses fell far short of implementing the TRC’s economic recommendations “to advance economic transformation and enhance the economic participation of black people in the South African economy.”\textsuperscript{108} Observers characterized economic capacity-building programs as “poorly implemented” and “wrought with corruption, fraud and misrepresentation.”\textsuperscript{109} For Archbishop Tutu, genuine reconstruction and reparation for those harmed by apartheid remain unfinished business.\textsuperscript{110}

Similarly, in South Korea, some now view its TRCK recommended reconstructive and reparative work for historic atrocities as starkly incomplete. The South Korea government initially implemented several TRCK recommendations from a partial list.\textsuperscript{111} But, as a media watchdog


\textsuperscript{106} See Mbanjwa, supra note 105.
\textsuperscript{107} Tutu, supra note 6.
\textsuperscript{110} Tutu, supra note 6.
\textsuperscript{111} See generally Suh, supra note 87; Kim, supra note 9, at 158. South Korea leaders had launched myriad reconciliation initiatives following the country’s transition to democracy. See Tae-Ung Baik, Fairness in Transitional Justice Initiatives: The Case of South Korea, 19 BUFF. HUM. RTS. L. REV. 169, 170 (2012). Since 1996, over 18 formal truth and reconciliation commissions sought to repair the damage of historic injustice. Id. Most commissions focused on singular events, including the 1980 Gwangju massacre, the 1951 Guchang massacre, and the pre-Korean War Jeju April 3rd Grand Massacre. See Kim Dong-Choon, Korea’s Truth and Reconciliation Commission: An Overview and
observed, this entailed minimal effort because the implemented recommendations reflected the “least expensive or least controversial measures.” And changes in political leadership at times frustrated the goals and functionality of the truth commission. Whatever the specific reasons, the TRCK’s three key recommendations—individual payments, a permanent research and oversight foundation, and acknowledgement of and proper burial for mass murder victims—still await implementation.

Assessment, 19 BUFF. HUM. RTS. L. REV. 97, 98-99 (2012) (reviewing “a number of special laws between 1995 and 2000 to settle certain unresolved historical cases”). By contrast, the 2005 TRCK provided a comprehensive approach to investigate human rights violations during the twentieth century, including atrocities during Japan’s colonial rule, the Korean War, military authoritarian regimes, and the 1980s democracy movements. See id. at 97 (describing TRCK investigation of “massacres, incidents of death, injury or disappearance, politically fabricated trials, and the killing of unarmed civilians and political prisoner before and during the Korean War”). The TRCK investigated individual cases of human rights violations, at the request of victims and their families, and recommended reparative actions to the appropriate government branches and agencies. See id. Despite initial promising investigative findings and reparative recommendations, many victims, survivors and families now express frustration at the truncated array of TRCK recommendations and inadequate implementation of even express reparations recommendations. See Kim, supra note 88, at 158.

112 Yun Hyeong Kil & O Seong Kwon, Government Bodies Stall in Implementation of Truth and Reconciliation Recommendations, HANKOREH (S. KOREA) (Apr. 15, 2009); see Kim, supra note 88, at 158 (citing the newspaper’s opinion on the implementation of TRCK recommendations). Out of 179 apologies recommended, the government has issued only 52 as of 2010. Kim, supra note 88, at 158. And most of those apologies were seen as inadequate. Id. According to Professor Hun Joon Kim, they were mere expressions of “regret” or “condolences” by local police chiefs and low-profile military commanders, rather than presidential or formal acceptances of responsibility for the historic injustices. See id. at 157 (noting that the one exception was President Roh Moo Hyun’s apology to the victims of civilian massacres during the Korean War, including the Jeju 4.3 Tragedy). Regarding retrials, as of 2010, out of 42 cases recommended for a retrial, only 18 victims were able to show they had been falsely convicted. Id.

113 Melish, supra note 2, at 42.

114 Kim, supra note 88, at 158-59 (noting that the “conservative wing of Korean society vehemently attacked the commission” for its plan to create a permanent research foundation). “Major conservative newspapers criticized [the TRCK] for ‘trying to extend [its] work under [a] new title’ and impugned commissioners and staff as ‘people who are trying to benefit from the research foundation with taxpayer money worth 800 billion won.” Id. at 159.
Colombia’s extensive reconciliation initiative, too, remains partially stuck in the implementation phase. Following truth commission recommendations, in 2005, Colombia’s legislature enacted the Justice and Peace Law to facilitate demobilization of paramilitary groups and to redress 50 years of massacres, forced disappearances, executions, torture, sexual violence, kidnappings, and community displacements. The legislature passed a follow-up 2011 Victims’ Law and other measures to facilitate reparations for victims and to prevent repetition of human rights violations. But its comprehensive 10-year reconciliation plan faced mounting criticism. The inadequately financed and implemented reparations program and the release of former paramilitary leaders after reduced prison sentences, exacerbated victims’ impressions of reconciliation backsliding. Many worried about the government’s capacity to ensure safety in pockets of continuing armed resistance.

115 See Maria Camila Moreno, Uncovering Colombia’s System of Macro-criminality, INT’L CTR. TRANSITIONAL JUST (Aug. 12, 2014), http://www.ictj.org/news/uncovering-colombia-systems-macro-criminality; see also L. 975 D.O. (covering the legislation passed to address victims’ reparations and demobilization). Of the paramilitary groups in Colombia, the Fuerzas Armadas Revolucionarias de Colombia or Revolutionary Armed Forces of Colombia (FARC) is the largest and oldest. See FARC, INSIGHTCRIME.ORG, http://www.insightcrime.org/colombia-organized-crime-news/farc-profile (last visited Nov. 10, 2014). The group is estimated to have 8,000 guerillas in its ranks. Id. In 2014, FARC commenced peace talks with the Colombia government. Id. 116 See Nicole Summers, Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict? 25 HARR. HUM. RTS J. 221, 225; L. 1448 D.O. arts. 1, 8. 117 See Summers, supra note 116, at 234 (explaining how an important aspect of the Victims Law, the “decentralization” of the institutions responsible for victims support, “is likely to become an extensive barrier to victims”). 118 Moreno, supra note 115. Moreno describes the basic premise of the Justice and Peace Law as a balance between demobilization of armed groups and their offer to guarantee victims’ rights. See id. The current critique of Colombia’s reconciliation effort is the lack of balance. See id. Armed conflict continues, and many of the combatants who agreed to take part in the reconciliation process are reaping the benefits of a reduced prison sentence but have failed to contribute to the Victims’ Reparation Fund. Id.; see also Nicolas Bedoya, Criminal Politicians Fail to Repair Colombia’s Victims of Paramilitary Violence, COLOMBIA REPORTS (Oct. 1, 2014), http://colombiareports.co/parapoliticians-handing-money-colombias-victims-reparation-fund/ (concluding that victimizers
Implementation of Kenya’s truth commission’s reparations recommendations stalled in the National Assembly. Because the “National Assembly’s inaction has had huge repercussions on the lives of hundreds of victims who bear the scar of past serious human rights abuse,” the National Victims Survivors Network petitioned the National Assembly in 2015 for implementing action. The petition highlighted the “lack of a framework for implementing the recommendations of the Truth, Justice and Reconciliation Commission” and recited how the failure of follow-up “undermined victim’s ability to obtain closure and restart their lives.”

B. The Chasm

Victims and families anxiously await promised reparative action. Their deep disappointment with unfulfilled promises, particularly for economic justice, threatens entire initiatives. Initial optimism over commission investigations and victim story-telling morphs into bitterness about the process itself.

Currently owe $650 million to the Victims’ Reparation Fund, but so far, only $1.5 million has been paid; Victoria McKenzie, \textit{FARC Victims Form Federation to Defend Interests During Peace Talks}, \textit{COLOMBIA REPORTS}, http://colombiareports.co/farc-victims-form-national-federation (last visited Aug. 10, 2016) (describing the recent formation of a national federation of Colombian victims developed to promote 33 fundamental demands and concerns related to the ongoing peace talks with FARC); \textit{Hope for Colombia’s Peace Process}, \textit{N.Y. TIMES} (Mar. 9, 2015), http://nyti.ms/1HptV98 (describing recent negotiations between the Colombian government and FARC and noting that “[a]fter five decades of war, the prospect of a negotiated deal, not surprisingly, has many critics particularly among those whose family members have been killed or maimed in the conflict . . . Some worry that guerrilla leaders who have committed atrocities could escape punishment”).

\textsuperscript{119} See Summers, supra note 116, at 233 (detailing the difficulties imposed by the continuing armed conflict and the issues related to the law’s guarantee of “security of the returned victims and the prevention of re-victimization”).

\textsuperscript{120} \textit{Kenyan Victims Demand}, supra note 13.

\textsuperscript{121} Id.

\textsuperscript{122} See supra Part II.B.
Taken together, this disillusionment signals a deep chasm between extensive truth commission mandates to develop detailed recommendations, including individual assistance and major societal reforms, and the dismissal or only limited implementation of these recommendations by governments and businesses.\textsuperscript{123} The reasons for this chasm vary from economic vagaries to leadership turnover to evolving geopolitical relationships.\textsuperscript{124} Whatever the reasons, for some and perhaps many reconciliation initiatives the enormity of the chasm threatens prospects for genuine social healing.

This clouded picture of the reparative justice process is coming sharply into view. According to Tolbert, president of the International Center for Transitional Justice, even with the global growth of truth and reconciliation initiatives, “the international community appears to be backsliding on its human-rights commitments. The world’s powers lack any sense of urgency in addressing abuses, preferring the pursuit of narrower, short-term interests to investing in long-term peace and justice.”\textsuperscript{125} Tolbert acknowledges that some countries are pursuing genuine redress as a cornerstone of democracy.\textsuperscript{126} But the recalcitrance of others, “especially the emerging powers, threatens to end the world’s all-too-brief era of accountability.”\textsuperscript{127}

Yet, countries and communities persist down the reconciliation path—possibly because of still-envisioned societal benefits, or because of the absence of alternative comprehensive approaches to badly needed social healing. What, then, is needed to bridge the chasm separating aspiration and

\textsuperscript{124} \textit{See infra} Section V (discussing limiting forces). \textit{See generally Kim & Seldon, supra} note 88; \textit{Kim, supra} note 88, at 158-59.
\textsuperscript{125} Tolbert, \textit{supra} note 21.
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} \textit{Id.}
realization? What is needed to recalibrate and rejuvenate reconciliation in concept and in practice?

South Africa’s approach to reconciliation through its truth commission generated the template for later reconciliation initiatives. It coalesced moral imperatives. It structured initiatives. And it deployed language and imagery that highlighted possible common ground for initial political action.

Although giving public voice to numerous victims of apartheid violence and initially garnering widespread praise, the South Africa reconciliation initiative failed to generate a pervasive sense of real social healing over time—the chasm unbridged. The South Africa reconciliation process thus embodied reparative action that was both bright—uplifting and illuminating—and dark—quarrelous and possibly illusory.

Policymakers and the public tend to focus on the salutary, to believe that once a truth commission’s work is finished, the country will be reconciled and the victims will naturally bestow forgiveness. But truth commissions in operation are only a “part of a larger transitional justice process rather than integral, one-time solutions in themselves.” Closely related, criminal

128 See Kritz, supra note 123, at 13-14.
129 Id.
130 Id.
131 Id.
132 See supra notes 104-110 and accompanying text.
133 Yamamoto & Mackintosh, supra note 104, at 9 (exploring reconciliation initiatives, and specifically the unfulfilled economic justice programs, of Peru and South Africa).
135 González et al., supra note 26.
136 Id. For Professor Hun Joon Kim, “[t]he work of any truth commission does not end with the mere completion of its mandate. Rather, that end is simply another beginning, as we have seen in many international and domestic examples.” Kim, supra note 88, at 167.
prosecutions or amnesty along with piecemeal legislative or executive actions, though important, do not and cannot fully repair the damage of injustice. Those kinds of actions, like truth commissions inquiries, serve at best as a starting point for a much broader societal effort toward social healing.

Reparative justice scholars and advocates thus are beginning to extend the theoretical framework for reconciliation to better account for practical on-the-ground post-commission realities. Section V shapes this work into a more fully delineated, new fourth step follow-up in the reconciliation process—an Assessment, Implementation, and Oversight Task Force. As the foundation for that fourth step, Section IV describes and critiques the prevailing reconciliation template’s three steps.

IV. THE PREVAILING TEMPLATE

Post-World War II Holocaust reparations by Germany and private businesses profiting from Jewish slave labor laid the early foundation for reconciliation initiatives. In 1988, US redress for the internment of Japanese Americans offered a multi-faceted process for healing wounds of mass civil liberties violations and repairing damage to those incarcerated and American society itself—a congressional truth finding investigation, a presidential apology, individual reparations payments, and a public

138 See generally Kim, supra note 111, at 97; Melish, supra note 2, at 1.
139 See infra Section V; see generally González et al., supra note 26, at 2 (urging drafters and other stakeholders to pay more attention “to realities on the ground”).
140 See generally Ariel Colonomos, German Reparations to the Jews after World War II: A Turning Point in the History of Reparations, in THE HANDBOOK OF REPARATIONS, (Pablo de Grieff ed., 2006) (explaining that the German-Israeli reparations program after World War II was “the largest, most comprehensive reparations program ever implemented”).
education fund. These and other reconciliation experiences, particularly South Africa’s, shape a prevailing reconciliation template. This section briefly articulates the template’s theoretical foundation, describes and critiques its basic structure, and charts benefits and troubling limitations.

A. Reconciliation Theory

A selective description of reconciliation theory sheds light on the philosophical grounding for the prevailing template’s integrated structural components. The description surfaces discordant theoretical debates that at times mirror volatile reconciliation experiences on the ground.

In theory, social healing embraces democratic notions of participation in the social, economic, and political life of a polity. A breach in the polity by wrongly excluding some from the community is repaired by fostering reintegration and full participation. In practice, repairing the breach—or reconciling—means salving psychological and economic wounds by lifting barriers to liberty and equality in education, housing, medical care, employment, cultural preservation, and political governance.

The South African concept of ubuntu reflects those social healing precepts. Ubuntu is the notion of interconnectedness—“people are people through other people”—and emphasizes healing through reconfiguring the

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141 See YAMAMOTO, INTERRACIAL JUSTICE, supra note 19, at 311-75 (describing the multi-step process of redress and reparations).
142 The descriptions here are truncated. They do not cover the field and are not attentive to nuance or variation. Nevertheless, they provide a basic understanding of the theoretical underpinnings of many on-the-ground reconciliation efforts.
143 See YAMAMOTO, INTERRACIAL JUSTICE, supra note 19, at 9-13 (describing the complex areas of social healing and reconciliation, especially as they relate to interracial justice).
144 See id.
damaged polity.\textsuperscript{147} People suffering are not healed solely as individuals but through incorporation into a collective body.\textsuperscript{148} Ubuntu “is far more restorative [than retributive]—not so much to punish as to redress or restore a balance . . . [it is] restorative of the dignity of the people” as part of a common humanity.\textsuperscript{149} For this reason, Archbishop Desmond Tutu, former chair of South Africa’s TRC, emphasized that his country could not be built anew without repairing the individual and communal damage of apartheid.\textsuperscript{150} Drawing upon theological and human rights precepts, reparative justice meant reintegration of the community, and reintegration meant “affirming the legitimacy of victims’ claims [along with reparations] to bring back into the polity those who had concluded that this government has nothing to offer them.”\textsuperscript{151} Reintegration also meant bringing back those who atoned for heinous crimes—those who confessed, expressed contrition, and offered restitution.\textsuperscript{152} The aim was a functioning, new or restored community.\textsuperscript{153}

\textsuperscript{147} Id. (noting that ubuntu is the “Xhosa phrase ‘ubuntu ungamntu ngabanye abantu,’ which means ‘people are people through other people’”).
\textsuperscript{148} See id. (explaining that “unlike rugged individualism, the centerpiece of Western culture, ubuntu values relations between humans: the spirit of sharing, of collectivism, of mutuality”).
\textsuperscript{149} Tina Rosenberg, Recovering from Apartheid, NEW YORKER, November 18, 1996, at 90 (quoting Tutu); see also Mark Gevisser, Profile: Tutu’s Test of Faith, AFRICA NEWS SERVICE, April 12, 1996 (quoting Tutu’s description of ubuntu: “you must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for vengeance. That’s why African jurisprudence is restorative rather than retributive”).
\textsuperscript{150} Harold Wells, Theology of Reconciliation, in THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES 30, 38 (Greg Baum & Harold Wells eds., 1997); Gevisser, supra note 149 (quoting Tutu’s description of ubuntu).
\textsuperscript{152} Guided by ubuntu and political pragmatism, South African President Nelson Mandela both exhorted and cautioned that the survival of many South African groups was dependent on, to an important extent, reconciliation with the others. See generally YAMAMOTO, INTERRUCCIAL JUSTICE, supra note 19, at 165-66. The transitional South African constitution, entitled “National Unity and Reconciliation,” reflected this perspective. Id. The interim constitution’s post-amble envisioned healing among racial groups as a key to the peaceful coexistence of South Africans: “There is a need for understanding but not for vengeance, a need for reparation
1. Communitarian Ethos

Ubuntu thus shaped South Africa’s reparative efforts through notions of co-responsibility, interdependence, and enjoyment of rights by all. More broadly, those notions generally embrace communitarian theory that envisions citizens gathering to assess their condition and “cultivate solidarity and civic engagement”. A communitarian approach through law and politics strives to build or rebuild communities, both physically and through a sense of connectedness and belonging. Cast in this aspirational but not for retaliation, a need for ubuntu but not victimization.” Id. In light of apartheid-inflicted social wounds, the post-amble stressed that “national unity, the well-being of all South Africans and peace required reconciliation between the people of South Africa.” Id. Taking a cue from the post-amble, South Africa’s judiciary embraced ubuntu and reconciliation as part of South African constitutional jurisprudence. Id. Linking social inclusion to healing, the South Africa Supreme Court highlighted South Africa’s need in the rebuilding process to integrate into the polity those marginalized by apartheid. Id. See supra note 152 and accompanying text.

154 See generally YAMAMOTO, INTERRACIAL JUSTICE, supra note 19, at 165-66.

155 Michael Sandel, a leading exponent of communitarian theory, maintains that public spaces, where citizens can gather and interpret their condition to “cultivate solidarity and civic engagement,” unify a community and create a stronger society. See MICHAEL SANDEL, DEMOCRACY’S DISCONTENT 349-50 (1996) (describing communitarian theory). Creating public spaces, like the TRC did in South Africa, allows parties to “weave the various strands of their identity to a coherent whole.” Id. These narratives allow people to “make sense of their condition and interpret the common life they share” and to move forward collectively. Id.; see also AMITAI ETZONI, THE SPIRIT OF COMMUNITY 254-55 (1993).

156 The communitarian framework for reconciliation identifies several characteristics of a complex society in conflict.

(1) historical wrongs committed by one group, (2) which harmed, and continue to harm, both the material living conditions and psychological outlook of another group, (3) which, in turn, has damaged present-day relations between the groups, and (4) which ultimately has damaged the larger community, resulting in divisiveness, distrust, social disease—a breach in the polity. Within this framework, reparations by the polity and for the polity are justified on moral and political grounds—healing social wounds by bringing back into the community those wrongly excluded.

Eric K. Yamamoto, Racial Reparations, 19 B.C. THIRD WORLD L.J. 477, 522 (1998-99); see also ETZONI, supra note 155, at 247 ("[Communitarianism is a] social movement
fashion, reconciliation initiatives aim to achieve social harmony in societies marred by painful past conflict. Through “collective acts of public apology and forgiveness, reparation and restoration are imparted and the writhing conflict of the past is substituted for by the ‘overlapping consensus’ of community.”

Generally stated, the communitarian ethos links to human rights norms of reparative justice. This ethos shapes reconciliation initiatives through

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157 See supra Section II (describing various global reconciliation initiatives).


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engagement by all with some role in human rights transgressions in fashioning a more inclusive community.\textsuperscript{160} It also encourages joint construction of a new, unifying justice narrative—from multiple, often-dissonant narratives—about the causes and consequences of the conflict.\textsuperscript{161} Finally, it uplifts the significance of conflicting groups’ commitment to peaceable and possibly productive future relations.\textsuperscript{162}

2. A Critique of Reconciliation’s Communitarian Ethos

A primary critique of reconciliation’s communitarian underpinnings emerges from recent academic debates. That critique, \textit{agonism}, finds that communitarian values tend to serve majoritarian interests by skewing characterization of the injustice and remedial needs in ways that most non-repetition. See Cunneen, \textit{supra} note 52 (broadly addressing approaches to reparative justice emphasizing reconstruction and reparation).

Restitution means restoring a victim to the original situation, such as return of property, while rehabilitation includes medical and psychological care as well as legal and social services. Satisfaction compromises several possible measures: from apologies, full and public disclosure of the truth, and victim commemoration, to judicial and administrative sanctions. Guarantees of non-repetition are equally varied, including legal reform and human rights training programs.


\textsuperscript{160} See generally Bar-Tal & Bennink, \textit{supra} note 145, at 21.

\textsuperscript{161} Id.

benefit those with the largest places at the reconciliation table.\textsuperscript{163} And the call for communitarian social harmony tends to obscure, or even erase, the conflict’s still-contested history and consequences.\textsuperscript{164}

Agonist theory posits the impossibility of genuine consensus in a complex society and views a reconciliation mandate of societal harmony as dangerously exclusionary.\textsuperscript{165} An overriding goal of harmony drowns out dissenting voices and perpetuates repression of those of lesser power, not as part of the original transgression, but later in attempting to rectify it.\textsuperscript{166} When assertive minorities are labeled uncooperative and, therefore, detrimental to harmony, they are quickly dismissed, or even excluded, from reparative processes.\textsuperscript{167}

Agonist theory thus seeks to reconceive reconciliation not along purely communitarian lines but as a deliberate accommodation of perpetual conflict in a multidimensional society.\textsuperscript{168} The theory aims to enable groups

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\textsuperscript{163} See generally Hirsch, supra note 100, at 1-6; Muldoon, supra note 102. Other branches of political theory critique are rhetorical and narrative. See, e.g., Doxtader, supra note 102, at 268; Ross, supra note 102, at 210. \\
\textsuperscript{164} See Hirsch, supra note 100, at 3; accord Bashir, supra note 100, at 48-49 ("[T]he task of accommodation is made even more difficult when there are not only diversities of values, languages, cultures, and identities, but also persistent and unresolved issues of historical injustice."). But see Philip Selznick, Communitarian Jurisprudence, in To Promote the General Welfare: A Communitarian Reader 3 (David E. Carney ed., 1999) ("A communitarian ethos calls for integration, but also demands protection of diversity and reconciliation of interests . . . The most important expression of civility is the virtue we call justice. Justice speaks civilly to the inevitable diversity of passions and interest. Differences are adjudicated, not erased."); James A. Gardner, Federalism and the Problem of Political Subcommunities, in To Promote the General Welfare: A Communitarian Reader 295 (David E. Carney ed., 1999) ("Communitarianism . . . sees the self as situated in . . . the social conditions which it finds itself, yet capable through personal reflection and dialogic engagement with others of thinking critically, if not transcendentally, about its goals, its moral views, and ultimately its own identity."). \\
\textsuperscript{166} See id. \\
\textsuperscript{167} See id. at 268-69. \\
\textsuperscript{168} See Little, supra note 99, at 198.
\end{flushright}
to exist peaceably in the same polity amid tensions and conflict, rather than to compel groups to try unsuccessfully to leave behind the painful past. It endorses differences “that cannot simply be managed, forgotten, or transcended and a commitment to equality that resists the kinds of seamless narratives of national belonging that have been so effective at silencing [minority] claims.” At bottom, it promotes conflictual engagement in hopes of producing a new society born and sustained amid discord.

B. Basic Structure

In light of marked differences among initiatives, a singular, universally accepted reconciliation structure does not exist. Nevertheless, a basic, generally recognized reconciliation structure emerges. That structure—the prevailing template—tracks South Africa’s truth and reconciliation process. Its path-forging Truth and Reconciliation Commission (TRC) anchored the negotiated peaceful transition from apartheid to democracy. Inspired by Nelson Mandela and chaired by Archbishop Tutu, South Africa’s legislatively created TRC significantly advanced social healing by

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170 Balfour, supra note 99, at 96. See also Little, supra note 99, at 198.
171 See Cohen, supra note 165, at 268-69.
172 See generally Bashir & Kymlicka, supra note 169.
173 See Yehudith Auerbach, The Role of Forgiveness in Reconciliation, in FROM CONFLICT RESOLUTION TO RECONCILIATION 149 (Yaacov Bar-Siman-Tov ed., 2004) (describing attempts to “redress past injustice and bring about peace within torn societies” and citing the “best known example of . . . a truth commission is in South Africa initiated by Nelson Mandela with the blessing of Desmond Tutu”).
174 See generally Yamamoto & Mackintosh, supra note 104. The National Party—composed exclusively of white South Africans—only agreed to give up military power if there was a process that granted whites amnesty and allowed them to keep their property. See id.
acknowledging historic and persistent suffering and initiating reparative programs.\textsuperscript{175}

Three overlapping committees opened paths toward social healing.\textsuperscript{176} One committee focused on truth telling by investigating the gross human rights violations and by hearing the stories of those harmed.\textsuperscript{177} Another committee considered amnesty for those who confessed to political crimes.\textsuperscript{178} A third recommended forms of economic justice.\textsuperscript{179} Together they set the stage for the tripartite structure of reconciliation initiatives globally.\textsuperscript{180}

Significantly, South Africa’s TRC signaled to the world that, in response to historic injustices, there “is a need for understanding, but not for


\textsuperscript{177} See John Battersby, \textit{South Africans Weigh Exposing Apartheid Crimes,} \textit{CHRISTIAN SCI. MONITOR,} May 18, 1994, at 1 (describing how the TRC aims to foster healing through storytelling and amnesty).

\textsuperscript{178} See id. (describing how the TRC aims to foster healing through storytelling and amnesty); Rosenberg, supra note 149, at 87.


\textsuperscript{180} See Desmond Tutu, \textit{Truth and Reconciliation Commission, South Africa (TRC),} \textit{ENCYCLOPEDIA BRITANNICA,} http://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa (describing how South Africa’s TRC “attracted global attention, as it was the first commission to hold public hearings in which both victims and perpetrators were heard.” Additionally, because South Africa’s TRC took a different approach from the Nuremberg Trials, the TRC was “hailed as an innovative model for building peace and justice and for holding accountable those guilty of human rights violations.” Id. Since the South Africa TRC, “[m]any other countries dealing with postconflict issues have instituted similar methodologies for such commissions.” Id. See also South Africa: Impunity, supra note 134 (describing South Africa’s TRC as “something of a poster child for transitional justice”). Cf. Luciana Bertoia, \textit{The Model Is Argentina, Not South Africa,} \textit{BUENOS AIRES HERALD} (Oct. 19, 2014), http://www.buenosairesherald.com/article/172513/’the-model-is-argentina-not-south-africa’ (positing that Argentina’s TRC is the prevailing model, not South Africa’s).
vengeance, a need for reparation, but not for retaliation. 181 For the TRC, healing individuals, communities, and society 182 entailed both truth-telling and material changes in social, economic, and political institutions. 183

More broadly, the TRC focused on ways to repair the persisting damage to people (physical, psychological, and financial), communities (schools, businesses, housing, infrastructure, and healthcare), and society (divisions, guilt, shame, and lack of moral standing). 184 Drawing from communitarian philosophy, many supporters of South Africa’s TRC believed that its investigation and recommendations would lead to institutional changes and eventually to new communities marked by racial equality. 185

In sum, the prevailing reconciliation template featured three practical steps: (1) the country creates a truth-seeking commission to address past or ongoing injustice 186 —investigating atrocities and hearing victim stories—and to make findings of responsibility and recommendations for reparative action; 187 (2) the judiciary or a tribunal rules on either criminal prosecution or amnesty; 188 and (3) the executive and legislative branches undertake

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182 See supra Sections II & IV.A.

183 See supra Sections II, III & IV.A.

184 See supra Sections II & IV.A.


187 See id. at 125.

188 See id. at 97-111 (noting that “reconciliation processes are ineffective as long as the vicious circle of impunity is not broken”); Yaacov Bar-Siman-Tov, Dialectics Between Stable Peace and Reconciliation, in FROM CONFLICT RESOLUTION TO RECONCILIATION 65, 74 (Yaacov Bar-Siman-Tov ed., 2004) (observing that “new beliefs should refer to
reconstructive and reparative implementing actions\textsuperscript{189} based on the commission’s recommendations.\textsuperscript{190}

1. Truth Seeking

The reconciliation template’s first step, and the heart of a truth commission’s hands-on work, is “to seek the truth about past abuses in order to recognize the dignity of victims, uphold human rights, and contribute to social change.”\textsuperscript{191} The commission’s truth seeking serves multiple aims, and truth itself has several meanings: a forensic or factual truth, a personal or narrative truth, and a healing and restorative truth.\textsuperscript{192}

The key to this first step is public testimony to commissioners and, through media, to local and global audiences. South Africa’s truth-telling the conflict with more objective attitudes, and even with self-criticism that includes recognition of one’s responsibility for the misdeeds throughout the conflict and acceptance that both sides are victims of the conflict”).

\textsuperscript{189} See supra Section II (detailing the last two of the 4Rs in the social healing through justice framework).

\textsuperscript{190} See INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, supra note 186, at 145-61. The International Center for Transitional Justice acknowledges that an “idealized, legalistic model” would place these three steps (truth telling, prosecution/amnesty, and reconstruction/reparation) “in parallel, because reparations, truth seeking, and criminal justice respond to specific victims’ rights that are demanded immediately.” González et al., supra note 26, at 90. The reality, however, reflects that accountability, and more broadly social healing, is a “long-term process in which each transitional justice measure will have stages of different intensity and where different institutions will establish sequences with one another, sometimes causally.” See id. The prevailing model, then, accounts for this reality where truth telling is more of a first step followed by prosecutions/amnesty and reparation/reconstruction.


committee enabled victims to recount stories of horrific politically motivated violence, including imprisonment, torture, rape, and neighborhood destruction. By creating a receptive forum and documenting and disseminating victim accounts, the TRC helped generate “a new global ‘truth’ about the personal horrors of apartheid through cathartic victim storytelling.”

South Korea’s TRCK also encouraged truth telling, although through a more staid process in which victims submitted individual applications, investigators examined claims, and commissioners made determinations about the “truth.” The TRCK received 11,174 applications, confirmed the facts of 8,468 claims, and published seven interim reports and a 1,100 page final report. The TRCK extended its investigation into causes, reviewing

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195 Kim, supra note 88, at 125, 142-44, 163 (noting that the TRCK announced “state responsibility” for 1,340 civil deaths from the Yeosu-Suncheon Revolt in 2010 and confirmed cases from the Korean War in 2009). According to Professor Kim, however, the TRCK focused on factual or forensic truth, rather than “personal or narrative truth, social or ‘dialogue’ truth, and healing and restorative truth.” Id. at 163. Because of this, it failed to construct a single overarching historical narrative. Id. For Kim, this is the fundamental reason why the TRCK recommendations and implementation of those recommendations were insufficient. Id. See also TRUTH AND RECONCILIATION IN SOUTH KOREA: BETWEEN THE PRESENT AND FUTURE OF THE KOREAN WARS (Jae-Jung Suh ed., 2013) (describing the truth and reconciliation efforts in South Korea after the Korean War).
196 See Kim, supra note 88, at 152 (detailing that out of the applications received, “290 cases were related to the independence movement, 8,175 to civilian massacres, and 2,709 to human rights abuses” by either South Korea or South Korea’s enemies); see also Truth
confidential government files and conducting interviews with officials and witnesses to generate a forensic truth.\textsuperscript{197}

Some perceive the truth-revealing component of a reconciliation initiative to be of paramount importance.\textsuperscript{198} The International Center for Transitional Justice observes, “more and more commissions are being created with the expectation that their foremost task” is truth revelation.\textsuperscript{199} Others are more cautious, even critical. Human rights scholar Tara Melish cites unrealistic assumptions about the effect of victim testimonies.\textsuperscript{200} She notes that some “presuppose a direct causal connection between truth-telling and the broader goals of transitional justice, uncritically concluding that the public airing of truths about the past will in fact bring about institutional learning, official acknowledgement, and social healing, causing victims and perpetrators to come together in reconciliation and forgiveness.”\textsuperscript{201} Instead, Melish posits that broader civil society and institutional actors must actively and persistently pursue reconciliation beyond initial testimonies to engender real transformation.\textsuperscript{202} From this vantage point, truth telling is a crucial first step, but only one step, toward genuine reconciliation.


\textsuperscript{197} See Kim, supra note 88, at 152 (noting that the TRCK could “issue a warrant to call witnesses for an interview and investigation” but that a warrant lacked “strong enforcement mechanisms, with only a fine not exceeding 10 million won for noncompliance (8,800 USD)”).

\textsuperscript{198} See INT’L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, supra note 186, at 122-40 (noting that “historical accounting via truth-telling is one of the most important steps in the reconciliation process”). \textit{See also} Bar-Tal & Bennink, supra note 145, at 208.

\textsuperscript{199} González et al., supra note 26, at xii.


\textsuperscript{201} \textit{Id.} As discussed later, Melish’s assessment calling for more active civil society engagement as the answer to truth commission shortcomings is itself narrow and, in important ways, shortsighted. \textit{See infra} notes 371-72 and accompanying text.

\textsuperscript{202} Melish, supra note 200, at 279.
2. Criminal Prosecution or Amnesty

The reconciliation template’s second step seeks acknowledgement of malfeasance through either prosecution and punishment or amnesty in exchange for confessions of political crimes. After the Cold War, many governments and international organizations created new justice frameworks to deal with the consequences of violence. Colombia’s national courts, for instance, developed new criminal law standards that were more stringent than international human rights norms. By contrast, the United Nations-backed international and hybrid criminal tribunals adjudicated, albeit slowly, accountability for atrocities in the Balkans, Rwanda, Sierra Leone, Cambodia, Lebanon, and beyond.

203 Some truth and reconciliation processes, however, skip this step because the truth commissions lack legal authority from constricted mandates. See, e.g., Kim, supra note 111, at 106 (discussing South Korea’s TRCK structure). South Korea’s TRCK, for instance, “had no authority to punish perpetrators, even when they were positively identified and their wrongdoing plainly established.” See id. It also did not have authority “to offer immunity to alleged perpetrators in exchange for their testimony or confessions, as had been done in the case of South Africa’s TRC.” Id.

204 Tolbert, supra note 21.

205 See Annan, supra note 191, at xi. Colombia’s “human rights defenders [therefore] make extensive use of litigation.” Id. The Colombia government also recently acknowledged that negotiations with opposition forces almost certainly contemplate “the prosecution of those most responsible for international crimes.” Id.

206 Most of these international courts, including the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the Special Tribunal for Lebanon, and the Appeals Chambers of International Criminal Tribunal for Rwanda, are located in The Hague, Netherlands. See About the Court, INT’L CRIMINAL COURT, http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx (last visited Nov. 15, 2016); About the ICTY, UNITED NATIONS INT’L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, http://www.icty.org/en/about (last visited Nov. 15, 2016); The ICTR in Brief, UNITED NATIONS MECHANISM FOR INT’L CRIMINAL TRIBUNALS, http://unictr.unmict.org/en/tribunal (last visited Nov. 15, 2016); About the STL, SPECIAL TRIBUNAL FOR LEBANON, https://www.stl-tsl.org/en/about-the-stl (last visited Nov. 15, 2016). Other hybrid tribunals, including the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, are located within the countries where the atrocities occurred. See SPECIAL COURT FOR SIERRA LEONE: RESIDUAL SPECIAL COURT FOR SIERRA LEONE, http://www.rscsl.org/index.html (last visited Nov. 15, 2016); About ECCC, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA,
Special prosecutor investigations sometimes adequately address significant issues for a post-conflict society, including political violence, economic exploitation, and corruption.\textsuperscript{207} Negotiated peaceful transitions, however, sometimes require the political compromise of amnesty—an effective pardon for political crimes publically confessed.\textsuperscript{208} African National Congress’ leaders finally agreed to amnesty as part of the future South Africa TRC process when they realized that amnesty was a key sticking point in the negotiated peaceful transition to democracy.\textsuperscript{209} The only other option envisioned by those leaders: ramped up violent confrontations with the White National Party controlling the military.\textsuperscript{210}

The South Africa TRC’s amnesty committee administered the amnesty compromise by insisting on perpetrators’ full, detailed political confessions on the public record.\textsuperscript{211} The amnesty committee created a highly structured public forum for truth knowing that might not have otherwise

\textsuperscript{207} Annan, supra note 191.
\textsuperscript{208} See \textsc{Int’l Inst. For Democracy & Electoral Assistance}, supra note 186, at 97-111.
\textsuperscript{209} See Yamamoto & Mackintosh, supra note 104, at 10.
\textsuperscript{210} See id.
\textsuperscript{211} True and Reconciliation Commission, SOUTH AFRICA HIST. ONLINE, http://www.sahistory.org.za/topic/truth-and-reconciliation-commission-trc (last visited Feb. 11, 2015). The amnesty committee “was empowered to grant amnesty to those charged with atrocities during Apartheid as long as two conditions were met: The crimes were politically motivated and the entire and whole truth was told by the person seeking amnesty.” Id.; see Truth Seeking: Elements of Creating an Effective Truth Commission, \textsc{Int’l Ctr. Transitional Just.} 12 (Eduardo González & Howard Varney eds., 2013), http://ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf (noting that South Africa’s TRC “allowed victims to participate in amnesty proceedings where perpetrators confessed their crimes” and “encouraged several instances of direct contact between victims’ groups and offenders in an attempt to foster dialogue and understanding”).
materialized.\textsuperscript{212} And it compelled wrongdoers to assume an important degree of moral responsibility\textsuperscript{213}—but at the expense of criminal law accountability.\textsuperscript{214}

For this latter reason, some point to amnesty as an anathema to victim healing,\textsuperscript{215} saying it neglects victims’ need for criminal justice.\textsuperscript{216} Moreover, they warn that amnesty proponents mistakenly “try to legitimize [amnesty] by pointing to the [South Africa TRC] experience . . . as a so-called ‘tradeoff of rights’” but with a “warped and partial understanding of the complex mechanism used in that context and its consequences.”\textsuperscript{217}

Others cast a skeptical eye on criminal prosecutions. The International Center for Transitional Justice, for instance, challenges those who assume that criminal prosecutions could happen regularly, let alone generate just outcomes. International Center President Tolbert observes that international criminal courts are “losing their momentum”\textsuperscript{218} and that national criminal courts struggle to “address adequately troubled pasts without the support of international institutions,” rendering the fight for human rights systematically through criminal law “virtually impossible.”\textsuperscript{219}

\textsuperscript{212} Truth Seeking, supra note 211, at 12.
\textsuperscript{213} See supra Sections II & IV.A (detailing the conceptual underpinnings of moral responsibility).
\textsuperscript{214} See González et al., supra note 26, at 91.
\textsuperscript{215} In the “absence of a firm commitment to human rights, powerful spoilers may pressure the parties to cheat victims of their rights by, for example, immunizing perpetrators through blanket amnesties or proposing a truth commission[] in order to impede criminal investigations.” Id.
\textsuperscript{216} See id. at xii.
\textsuperscript{217} Id.
\textsuperscript{218} David Tolbert highlighted the lack of international community support, mounting pressure, and slowing momentum stems partly from the reality that “[s]everal countries have attacked the ICC; [and] African Union members want heads of state to be immune from prosecution, thus undermining a fundamental principle of the court.” Tolbert, supra note 21.
\textsuperscript{219} Id.
For some, a rigorous truth-confession requirement as a precondition to selectively conferred amnesty for political crimes reflects a path between ineffectual large-scale criminal prosecutions on the one hand and blanket amnesty on the other. South Africa’s TRC walked that path.\textsuperscript{220} Another hybrid path, negotiated in Colombia in 2015 between the rebels and government, pursued prosecutions of higher-level leaders and orchestrators of crimes against humanity while bestowing amnesty to qualifying frontline fighters.\textsuperscript{221} In these ways, criminal prosecution or selectively conferred amnesty, or some hybrid, is a second step in the reconciliation template.

3. Reconstruction and Reparation (Including Economic Justice)

The prevailing reconciliation template’s third step is reconstruction and reparation. While recognition and responsibility mainly entail words and understandings, reconstruction (recasting institutions and formal relationships partly to prevent recurrence of transgressions) and reparation (repairing the damage to people and communities) require executive and legislative (and often business) actions. Combined with words and understandings, those reparative actions aim to generate material changes in institutional structures and living conditions.\textsuperscript{222}

Reconstructive and reparative actions might encompass presidential or legislative apologies and commemoration projects; changes in laws to require security force transparency and accountability in preventing abuse repetition; changes in institutional control over public resources that affect daily living conditions; broad-based public education and continuing human

\textsuperscript{220} See generally Yamamoto, supra note 181.
\textsuperscript{221} See A Big Leap Toward Peace in Colombia, ECONOMIST, Sept. 26, 2015, at 37 (describing three-year negotiated peace agreement between FARC and the government, emphasizing the hybrid amnesty-prosecution provision).
\textsuperscript{222} See generally INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, supra note 186, at 145–48.
rights research; and individual payments, economic capacity-building, and community development.223

As part of reconstruction and reparation efforts, South Africa’s economic justice committee, aiming to empower black South Africans, generated a plan for immediate, long-term individual and community reparations to address apartheid’s widespread economic damage.224 The plan responded to “the widening gap between the rich and poor to the ‘historic benefit’ enjoyed by apartheid businesses.”225 Central to its plan were recommendations that private businesses, many of which profited greatly from apartheid, contribute to reparations funds and broader economic development.226

South Africa’s government initially responded proactively—it delivered urgent interim reparations to those in dire need227 and partially improved the

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223 See id.
224 Yamamoto & Mackintosh, supra note 104, at 9; see also INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, supra note 186, at 154. The plan consisted of five components:

(a) urgent interim reparation payments for people in urgent need, to enable them to access services and facilities; (b) individual reparation grants for each victim of a gross human rights violation paid over a period of six years; (c) symbolic, legal and administrative reparation measures; (d) community rehabilitation programmes; and (e) institutional reforms.

INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, supra note 186, at 154.
225 Yamamoto & Mackintosh, supra note 104, at 10.
226 Id.

More than 16,000 individuals—those who appeared before the TRC or were named in TRC reports—were given a one-off payment of R30,000 each, beginning in 2003. Although this is far below the amount recommended by the TRC (which averaged out to R21,000 per person annually for six years) this money has at least been disbursed. According to the justice department, there
nation’s infrastructure by building roads, water works, and schools in black communities.\textsuperscript{228} The government also enacted the Black Economic Empowerment (BEE) legislation.\textsuperscript{229} This legislation and other post-apartheid legislative economic measures sought to employ “direct intervention in the distribution of assets and opportunities” to lessen economic disparities.\textsuperscript{230} The BEE aimed for capacity building to “ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity.”\textsuperscript{231} And, related, the department can’t find them.

\begin{itemize}
  \item \textsuperscript{229} BEE has been defined as:
    \begin{quote}
    [A]n integrated and coherent socio-economic process. It is located within the context of the country’s national transformation programme, namely the RDP (Reconstruction and Development Programme). It is aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa’s financial and economic resources to the majority of the citizens. It seeks to ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity.
    \end{quote}
  \item \textsuperscript{230} BEE was designed to “[r]edress [] the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa’s financial and economic resources to the majority of the citizens”—the previously disenfranchised black population. See id.
  \item \textsuperscript{231} See id.
\end{itemize}
executive branch established a President’s Fund to emphasize the importance of monetary payments to apartheid victims.232

South Korea’s TRCK, too, made important—albeit limited—recommendations for reconstructive and reparative actions. These recommendations included publicly apologizing, correcting government records, revising history textbooks and government publications, amending health laws, educating about human rights, supporting memorial projects, compensating selected individuals, and retrying those wrongly convicted.233 Especially important for victims and their families, the TRCK made three notable policy recommendations: (1) the enactment of a special law to provide individual reparations to victims of civilian massacres during the Korean War;234 (2) the establishment of a permanent research foundation to further investigations and reconciliation; and (3) the proper burial of victims’ remains after unearthing mass murder sites.235 The national government’s elective branches undertook initial implementing actions.

C. Unfulfilled Promises

In some situations, however, including the TRCK’s, external political influences limit the breadth and depth of truth commission

232 See Allison, supra note 227 (referencing the establishment of the “President’s Fund” in 2005).

233 Kim, supra note 88, at 157 (explaining the recommendations were divided into four categories, including “(1) measures to restore the honor of victims; (2) measures to prevent the recurrence of human rights violations; (3) measures to achieve reconciliation and to promote democracy; and (4) measures to educate about and publicize the past.”); see also TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS 33 (2009) [hereinafter THREE YEAR REPORT]; REPUBLIC OF KOREA TRUTH AND RECONCILIATION COMMISSION, REPUBLIC OF KOREA, COMPREHENSIVE REPORT, VOL.1, PT. 1, 199-200 (2010) [hereinafter Final TRCK Report 2010].

234 The recommendations for reparations did not cover all atrocities, an example being Japan’s occupation of South Korea. See Kim, supra note 88.

recommendations. Moreover, as previously noted, even strong commission recommendations sometimes remain largely unimplemented by political branches and private businesses.237

Indeed, as South Africa approached 20 years post-apartheid in 2014, former TRC chair Archbishop Tutu characterized its reconciliation process as having "fallen tragically short."238 Despite South Africa’s salutary initial efforts, its entire reconciliation initiative teetered on the edge of failure.239 Tutu cited the lack of government follow-through on TRC recommendations as a major shortcoming.240 He lamented, “[b]y choosing not to follow through on the commission’s recommendations, [the] government not only compromised the commission’s contribution to the process, but the very process itself.”241 Most important, the government’s failure to implement TRC reparations recommendations forestalled the sense of reconciliation achieved.242

Unfulfilled truth commission promises, particularly for economic justice, are key indicators of incomplete, stalled, or backsliding reconciliation initiatives.243 In Colombia, for example, the government made many reparatory promises to the victims.

236 See infra Section V.D.2 (discussing South Korea’s TRCK).
237 See supra Sections II.B & III.
238 Tutu, supra note 6.
239 See id.
240 See id.
241 Id.
242 See id. (describing how the TRC’s accomplishments must be seen against “a backdrop of a hopelessly inequitable country in which most of the rich have hung on to their wealth, while the ‘freedom dividend’ for most of the poor has been to continue surviving on scraps”).
243 See, e.g., Moreno, supra note 115. Importantly, this sense of “unfulfilled promises” often stems from the overall sense of a stagnant or regressing reconciliation initiative. Nevertheless, this sense may also come from “unrealistic expectations that are often set for truth commissions.” González et al., supra note 26, at ix. “Raising expectations among victims that a truth commission will solve all of their urgent demands can create frustration and mistrust, compounding an already difficult situation. Similarly, any
The country told [victims] that each individual crime could and would be clarified through the justice and peace process, promised them that the reparations process would be rapid and effective, and also led society to believe that the criminal process would be able to clarify the deep-rooted causes of the paramilitary phenomenon.244

But the promises remained pending indefinitely.245 Those suffering felt betrayed by government recalcitrance.246

For black South Africans, the combined lack of government follow-through on reparation recommendations and the private sector’s harsh refusal to contribute to reparations funds heightened their sense of betrayal.247 Those most damaged by apartheid continue to live in poverty while those profiting from the decades-long oppression flourish.248 Racial divisions remain in a newly insidious form—with whites and a sliver of suggestion that such a body could solve all of a country’s ills only sets up the public for disappointment.” Id.

244 Moreno, supra note 115.
245 Id.
247 See supra notes 223-32 and accompanying text.
248 SA United, Despite Divisions: Report, SOUTH AFRICA.INFO (June 26, 2006), http://www.southafrica.info/about/people/nation-making-260606.html#.U2Q8oflDvqU (detailing a government report released in 2006, which “stresses that economic divisions within the country remain set along the racial fault-lines created by apartheid”); see also Yamamoto, supra note 181, at 205 (“The fight for reparations has also had the unfortunate consequence of sidelining the responsibility of other role players besides the government. The complicity of foreign corporations and governments in supporting the apartheid regime has only recently entered the discussion.”); Id. at 199 (“Jubilee South Africa has pointed out that the multinational corporations that helped to finance the apartheid government in its final, most repressive years removed roughly R3 billion (US$375,000,000) a year between 1985 and 1993 from the country. Jubilee argues that if 1.5 percent of those profits was returned each year for six years, financial reparations at the level of the original TRC recommendations could be paid.”).
elite blacks prospering and the vast majority of blacks remaining impoverished.  

South Africa President Jacob Zuma recognized that recommended legislation for black economic capacity building failed to narrow the racial divide—whites continue to earn nearly 10 times more than blacks, and blacks are unemployed at rates five times higher than whites. He also acknowledged, “instead of redistributing wealth and positions to the Black majority, [the legislation has] resulted mainly in a few [black] individuals benefitting a lot . . . while the leadership of most big companies [remain] in white hands. The Black masses, the intended beneficiaries, have hardly gained.” Furthermore, more than a decade after creation of the President’s Fund, most of the funds have yet to be dispersed, and a group representing apartheid victims has observed that new spending plans will not necessarily benefit traumatized communities. According to Tutu,

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250 Alford, supra note 109.
251 Id.
252 Allison, supra note 227. The justice department is now turning toward community reparations, specifically providing health care, mental health care, education and housing. Id. But critics point out shortcomings of the new TRC purportedly in line with previous TRC recommendations:

[T]he limited scope of the proposal excludes the vast majority of affected communities; that victims of Apartheid, as envisaged by the TRC, were not consulted properly in the process of drafting the new regulations and will not benefit directly from them; and that the type of infrastructure-heavy projects envisaged are simply to make up for shortfall’s in the government’s own municipal infrastructure grants (in other words, the President’s Fund should not be used to do things that the government should be doing anyways).

Id. (citing the opinion of the Khulumani Support Group, which represents over 90,000 victims of Apartheid). Allison also notes that the justice department, in its plan for community reparations risks, “fail[ed] to adhere to the spirit of the TRC’s
“most of the rich have hung on to their wealth, while the ‘freedom dividend’ for most of the poor has been to continue surviving on scraps.”

With lurching economic advances for a few, but not economic justice for all, some now feel that the new democratic South Africa government has forgotten its promises to the people.

Being forgotten and overlooked is very painful. The government here has not followed through on its promise to look after the soldiers and activists who sacrificed their youth, their education and often their lives for the struggle. [The government and private businesses] make promise after promise, but never deliver and I and my fellow forgotten soldiers are still left in poverty.

Myriad obstacles plague “a[an apparently] hopelessly inequitable country.” Indeed, many now view the entire reconciliation initiative as “falling well short of the goal of national unity through social healing.” For Archbishop Tutu, what is needed is something that might “offer South

recommendations, and is in danger of abusing [the] mandate to manage the President’s Fund.”

Tutu describes the current situation in South Africa as follows:

But, today, as we reflect on the commission’s contribution to re-weaving the fabric of our society, we do so against a backdrop of appalling violence being perpetrated, especially against women and children across our country. We do so against a backdrop of a hopelessly inequitable country in which most of the rich have hung on to their wealth, while the “freedom dividend” for most of the poor has been to continue surviving on scraps. We do so against the backdrop of an education system that is failing to prepare our youth adequately to contribute to their own and our nation’s development. We do so against the backdrop of the Marikana massacre and of the public protector’s report into the obscene spending on our president’s property in Nkandla. We do so against the backdrop of a dearth of magnanimity and accountability and ethical incorruptibility.

Id. Yamamoto & Mackintosh, supra note 104, at 11 (quoting a former African National Congress soldier).

Tutu, supra note 6 (quoting Tutu’s description of the current state of South Africa).

Id. Yamamoto & Mackintosh, supra note 104, at 12.
Africa society as a whole a systematic way of re-visiting [what is yet to be accomplished] and dealing with [repairing the damage] of the apartheid years and of entrenching a human rights culture.”

As developed earlier, these kinds of unfulfilled promises mark nearly all truth and reconciliation efforts throughout the world—from the United States to Canada, South Korea, Columbia, Peru, Kenya, and beyond. What is needed, we submit, is a conceptually sound and practically and politically grounded new implementation fourth step in the reconciliation process.

V. THE PROPOSAL: A NEW FOURTH STEP FOR ASSESSMENT, IMPLEMENTATION, AND OVERSIGHT

As mentioned, none of the prevailing reconciliation template’s three steps directly addresses mechanisms for guiding and overseeing the implementation of truth commission recommendations. This missing piece is significant because at times politics and economics generate vastly inconsistent, incomplete, or even regressive implementing actions. The prevailing template also does not account for the reality that truth commission recommendations themselves sometimes are truncated, missing meaningful recommendations for needed economic justice and institutional restructuring.

A. The Need for a Structured Follow-up

The prevailing reconciliation template, then, provides structurally incomplete guidance for ongoing social healing controversies. Some, therefore, are beginning to urge the retooling of the theoretical reconciliation framework to better account for practical on-the-ground realities.

257 Yamamoto & Serrano, supra note 31, at 496.
258 González et al., supra note 26, at 2. (questioning “is it possible that in spite of the caveats against the automatic application of best practices, drafters and other stakeholders
What is needed to help bridge the chasm between aspiration and realization is this: a structured implementation fourth step in the expanded reconciliation template. Described more fully below, this envisioned fourth step would be an independent yet politically attuned follow-up body to assess and update existing recommendations, implement outstanding recommendations, and refashion and oversee future reconstructive and reparative actions to further comprehensive and enduring social healing.259

This envisioned new fourth step is in its incipient stages of development. Scholars and human rights observers are starting to explore it in depth. In 2014, Professor Eric K. Yamamoto and Miyoko Pettit laid a conceptual foundation for fourth step implementing and oversight bodies generally and supported a concrete proposal for these types of bodies to foster a path forward in the partially stalled South Korea “Jeju Tragedy” reconciliation initiative.260

In 2011, the Buffalo Human Rights Law Review convened scholars to examine the need for reconciliation implementation mechanisms specifically for South Korea.261 Human rights scholar Tara Melish highlighted the global need for a “permanent-follow up and orchestration mechanism” to “oversee and independently report on follow-up initiatives, both by government and broader civil society groups.”262 In assessing significant shortcomings of South Korea’s 2005 TRCK, Professor Hun Joon Kim concluded that the reconciliation initiative considered but failed to fully operationalize mechanisms for implementing the commission’s

259 See Yamamoto et al., supra note 24, at 43-46.
260 See id. at 43-80.
261 See Melish, supra note 2, at 1 (introducing the law review’s symposium on the implementation of truth and reconciliation commission findings and recommendations for South Korea).
262 Id. at 65-66.
recommendations. For Kim, a permanent research foundation would have been a needed next step. Melish characterized this research foundation as “a permanent follow-up body to the TRCK to take forward its work and to focus on implementation of its recommendations.” The TRCK’s Framework Act contemplated a similar body that never became fully operational.

Kim’s permanent research foundation and Melish’s “permanent follow-up and orchestration mechanism” were generally cast more as ideas than conceptually developed proposals. They did, nevertheless, signal an incipient call for a fourth step mechanism, highlighting the need for something more than truth commission recommendations and initial government responses.

Others, too, perceive the limitations of the prevailing reconciliation model and call for something more. The ICTJ acknowledged that “truth commissions can contribute toward the implementation of victims’ rights, but the full implementation . . . is beyond the reach of most truth commissions.” Other follow up means are needed for governments and TRC participants to respond to unfulfilled promises.

These broad suggestions, along with the principles underlying social healing through justice, inform the suggested new structured fourth step in the reconciliation process, first in concept and then in operation. None of this would come easily in practice. A follow-through fourth step in the reconciliation process would be fraught with challenge. What is suggested

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263 Kim, supra note 88, at 162-63.
264 Id.
265 Melish, supra note 2, at 22.
266 Id. at 22.
267 Id. at 65.
268 Id.
269 González et al., supra note 26, at 91.
270 Moreno, supra note 115.
here is not a polished model for post-commission implementation but rather an initially grounded salvo to accelerate its development.

**B. A New Fourth Step in Concept**

Drawn from the work of justice practitioners and scholars, the needed fourth step is an independent Assessment, Implementation, and Oversight Task Force with four main functions: (1) convening stakeholders in a collaborative ongoing follow-up process; (2) assessing truth commission report findings and recommendations and updating existing recommendations; (3) shepherding implementation of original or newly updated recommendations; and (4) extending or refashioning and then overseeing next reparative steps in light of evolving political, social, and economic conditions.

This follow-up body would be best “taken into explicit account at the [initiative’s] design stage.”\(^{271}\) It could also be fashioned after a truth commission completes its work, while the legislative and executive branches undertake implementing actions. In concept, the body would operate with a significant degree of independence. Inevitable realpolitik influences, however, mean that the extent of the body’s actual independence would likely turn on its originating structure (composition and balance of decision-making power), its transparency (observer scrutiny), and the convergence of interests (among stakeholders) in the social healing enterprise.

1. An Assessment, Implementation, and Oversight Body

With this in mind, a fourth step follow-up Assessment, Implementation, and Oversight Task Force would entail mutual engagement by all major actors—government and private organization representatives, victim survivors and families, local community representatives, businesses, and

\(^{271}\) See Melish, *supra* note 2, at 19.
researchers. Journalists, scholars, and civil rights and human rights organizations might productively participate as observers and commentators. The Task Force would “include spaces for broad stakeholder participation, ensuring that multiple spaces of leverage and information collection are available to local actors involved in implementation and follow-up work.” More broadly, the Task Force would address the critical importance of active government and civil society engagement and entrepreneurship in following up on unimplemented recommendations. These follow-ups would include collecting and disseminating data and generating and employing assessment indicators for perpetual monitoring, all with an eye toward bolstering accountability.

In light of these considerations, executive or legislative action would legitimize government participation in the Task Force. Additionally, national and local governments along with businesses and foundations could jointly fund Task Force operations, potentially through lump sum grants to a non-profit organization that houses and administers operations. As discussed below, formal government approval of the fourth step body, along with participation by victim representatives working with officials, businesses, and community groups, would be essential.

272 Id. at 66.
273 Id. at 63.
274 See Yamamoto et al., supra note 24, at 43 n.203.
Control by a government agency, however, by locating the Task Force under a bureaucratic agency, would tend to impede proper functioning. Government officials need to participate in, but not control, Task Force endeavors. Achieving the delicate balance of public and private support and participation while ensuring a key measure of Task Force independence would be crucial to effective follow-up operations.\textsuperscript{276}

2. Goals

The Task Force’s five main goals would be:

(1) building upon the truth commission’s inquiry (which would likely have been completed earlier and possibly without all responsible parties’ full participation) by updating and by filling any gaps in commission findings;

(2) assessing the completeness, fairness, and efficacy of the truth commission’s recommendations, particularly considering new and updated information and thoughtful discordant voices;

(3) assessing the effectiveness of implementing actions already taken to determine what more is needed to repair the persisting damage (both individual and communal);

(4) in view of (1), (2), and (3), recommending and overseeing concrete follow-up steps as part of a larger integrated reparative justice plan in light of evolving political, social, and economic conditions; and

(5) fostering reparative justice in ways that benefit the survivors and descendants of the historic injustice, including their communities; that assure accountability; and that enhance the

\textsuperscript{276} There are a number of possible organization structures for an “independent” entity. One that integrates government support without undue government control could be a non-profit organization that has operation expenses funded for a defined period by a government block grant—with specific additional programs supported by private funding.
democratic legitimacy of the participating governments and private organizations.277

These broad goals would help a Task Force envision and guide further needed reparative actions in light of the “Four Rs” of social healing through justice—recognition, responsibility, reconstruction, and reparation.

C. A Fourth Step in Operation

1. Assessing Truth Commission Findings and Recommendations and Implementing Actions Taken

Assessing the efficacy of truth commission recommendations is integral to a sense of justice done. Truth commission recommendations, usually set forth in a formal commission report, are the foundation for reconciliation initiatives.278 But, as predicted by critiques of reconciliation’s communitarian philosophy, victims or perpetrators sometimes challenge the legitimacy of truth commission inquiries because they view them as either politically motivated or insufficiently backed by evidence.279 While

277 See Yamamoto et al., supra note 24, at 45.
279 See, e.g., Truth Seeking, supra note 211, at 15 (citing the Truth and Reconciliation Commission of the Democratic Republic of Congo as a truth commission perceived as politically motivated because the appointments to the commission occurred before the commission was governed by a legal statute and were dependent on political affiliations to the parties represented at the peace negotiations in 2002).
affording appropriate deference to the commission, a Task Force would assess the completeness of the commission’s findings and recommendations. Input from scholars, human rights groups, businesses, nonprofit community organizations, and government officials would bolster the legitimacy of this work.\footnote{See id. (emphasizing the importance of “meaningful consultation with all interested parties and their involvement,” particularly the participation of “government, civil society, victims groups, and others who may be impacted by the work of the commission”).}

Reconciliation initiatives stall, sometimes abruptly, because of weak or incomplete truth commission recommendations.\footnote{See supra Section II.B.} According to the International Center for Transitional Justice, “recommendations that are too general, not based on the actual inquiry, or lacking the support of authoritative technical expertise [do] not have the credibility to garner the support needed for implementation.”\footnote{González et al., supra note 26, at xii.} At other times, salutary interim recommendations are omitted from final commission recommendations.\footnote{For example, South Korea’s 2005 TRCK made both interim and final recommendations that “appear[ed] to be in tension in many important respects,” and many of its recommendations were inconsistent with those issued by other specialized South Korea truth commissions. Melish, supra note 2, at 16.} At still other times, clearly appropriate recommendations—for instance, individual reparations for those still suffering—are missing altogether, undercutting the legitimacy of the overall initiative.\footnote{See supra Section II.B.} Thus, a primary objective of a fourth step Task Force would be to assess the efficacy and completeness of original recommendations (and supporting findings) and fill gaps in light of new information.\footnote{See supra Section II.B.}

Especially important, the fourth step follow-up Task Force would then evaluate implemented actions to date. In particular, it might discern the
appropriateness of reconstructive and reparative actions taken—for instance, apologies issued, memorials erected, educational institutions established, and community economic capacity-building initiated. It would do this assessment with an eye on actual consequences for victims, communities, and the larger society. And it would approach this task with fairness and balance—by commending salutary efforts, constructively critiquing shortcomings, and suggesting further grounded actions.

2. Shepherding Further Implementation

As part of that task, the fourth step Task Force could sponsor social science studies on cultural and economic impacts. It could monitor national and local governments’ and private groups’ participation in the implementation process. And it might regularly publish summary progress reports on what the government and others have and have not accomplished, along with suggestions for new or revised measures. In short, the Task Force might operate as a review and reporting service to track implementation.

The Task Force might also create working groups to interact with businesses, local officials, and community organizations to address politically challenging recommendations. Perhaps most important, those working groups would work with, lobby, or pressure executive and legislative branches of local and national governments to shepherd policy prescriptions into programs, particularly those addressing economic justice. More broadly, the Task Force might encourage governments and private organizations to devote resources for public education campaigns, coalesce survivors’ stories into widely publicized public records, and facilitate

286 See Waterhouse, supra note 19, at 267-70 (emphasizing the need to design and implement reparative programs from the victims’ perspectives).
287 See Yamamoto et al., supra note 24, at 45 n.209.
288 See Truth Seeking, supra note 211, at 67-69.
research on law and policy initiatives aimed at preventing future repetition of past abuses.

3. Refashioning and Overseeing New Paths Forward in Light of Evolving Conditions

Politics, economics, and social norms often influence the implementation of truth commission recommendations. These often-shifting realpolitik influences regularly reshape government policies, transform economic prospects, and alter public consciousness about what is right and just.

The political backdrop affects the operations and perceived legitimacy of the implementation process. Changing presidential or legislative leadership sometimes undermines reparative actions. Conflicts at home

289 See, e.g., id. (recognizing that “key recommendations on justice, reparations and archives have not yet been implemented[,] . . . [which] is due principally to problems within the parliamentary system and the politics of Timor-Leste’s relationship with Indonesia” and that the greatest challenge to implementing the truth commission report’s recommendations today is that the implementation of the most important recommendations related to human rights committed by Indonesia is “subject to the politics of the relationship between Dili and Jakarta”).

290 See generally THE HANDBOOK OF REPARATIONS (Pablo de Grieff ed., 2008) (addressing the importance of politics in shaping a wide range of reparations initiatives).

291 For human rights scholar Tara Melish, “whether a truth commission is effective depends to a large extent upon two critical factors: (1) whether it is able to attract the attention of its constituents, and (2) whether the commission is perceived as legitimate among members of the mass public.” Melish, supra note 2, at 24. See also Marteh, supra note 275 (addressing the politics in Liberia behind the implementation of truth and reconciliation report recommendations and the danger of quantifying, rather than providing qualitatively analyzing, implementation efforts by the government).

292 See, e.g., San Yamin Aung, Outgoing Parliament Approves Presidential Protection, Immunity Bill, IRRAWADDY (Jan. 28, 2016), http://www.irrawaddy.com/burma/outgoing-parliament-approves-presidential-protection-immunity-bill.html (noting that on the last sitting day of the outgoing Burma Parliament, lawmakers approved the controversial Presidential Security Bill, which “guarantees lifetime personal security and legal immunity for former heads of state” and which was apparently expedited for the benefit of the outgoing President Thein Sein); Marteh, supra note 275 (noting that the path to reconciliation shifted upon the election of President Ellen Johnson-Sirleaf, who has championed national reconciliation for Liberia).
and abroad stall sensitive recommendations. Unstable administrations, especially those partly responsible for historic injustices, at times halt implementing actions. Excessive control by government officials potentially dampens meaningful—and legitimizing—public participation. With ebbing and flowing political and economic tides, the impediments to social healing are numerous and varied.

For instance, according to transitional justice advocate Kim Dong-Choon, political constraints curtailed the implementation of the recommendations of South Korea’s 2005 TRCK. Those constraints encompassed politicians deploying Cold War anti-communist rhetoric to justify human rights violations, former government officials refusing to cooperate because of involvement in past abuses, and military officials opposing the entire reconciliation undertaking.

Economic upheavals also weigh heavily on policymakers. Governments sometimes cite recessions, fluctuating markets, or pressing military expenditures as reasons to postpone individual payments, economic capacity-building, and institutional restructuring. Careful Task Force

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294 See, e.g., After 10 Years, supra note 278 (noting that Timor-Leste, “for pragmatic reasons,” prefers to both ignore the CAVR truth commission report’s recommendations and “argue that its duty of care is being met through its social security, health, and other services”).

295 See, e.g., Kim, supra note 111, at 112-22 (indicating that the implementation of TRCK recommendations mainly rested in the hands of the national government with little public participation).

296 See id.

297 See id.; see also Melish, supra note 2, at 18.

298 For example, the International Center for Transitional Justice highlighted how the political and economic relationship between Timor-Leste and Indonesia has impacted implementation efforts as follows:
evaluation of those delay claims, with an assessment of priorities, would be important for fashioning steps forward.

Finally, evolving social norms also shape implementation. Increasing attention to gender, sexual orientation, race, and indigeneity encourages marginalized groups to advocate for heightened recognition and tailored remedies.\textsuperscript{299} Similarly, evolving concerns about environmental preservation, peace, and responsible economic development sometimes reshape the tenor and specifics of social healing.\textsuperscript{300} For instance, notions of gender redress now spur reparations advocacy for mass sexual violence, and environmental justice tenets bolster opposition to military base construction where past injustice awaits remediation.\textsuperscript{301}

\begin{flushleft}
[I]t is important to remind ourselves that Timor-Leste has land and sea borders with its large neighbor [Indonesia] and, as it emerges from deep poverty and trauma and oil prices head south, now depends on Indonesia heavily for investment, educational opportunity, communications, and affordable goods and services. This economic relationship is being extended to military and other forms of cooperation. This leaves little if any wriggle room for justice and reparations for past crimes; both in fact are opposed by Timor-Leste’s leaders, even though a number of high-ranking Indonesian military officers have been indicted by the UN-supported serious crimes process. Timor-Leste’s policy is also a convenient fig-leaf for the international community, which also prioritizes good relations with Jakarta and has a vested interest in letting bygones be bygones.
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\textit{After 10 Years, supra} note 278.


\textsuperscript{300} \textit{See, e.g.,} Yamamoto et al., supra note 24, at 75-81 (discussing the devastating damage to Jeju Island’s natural environment and calling for attention to economic justice).

\textsuperscript{301} \textit{See generally id.} at 68-78.
Because political, social, and economic conditions sometimes evolve rapidly during implementation, an expanded reconciliation template needs to anticipate and account for realpolitik shifts. Therefore, a fourth step Task Force would not focus solely on assessing and implementing existing recommendations. It would also evaluate evolving conditions, refashion recommendations as needed, and oversee new social healing paths forward—all toward the goal of recalibrating and reinvigorating the original reconciliation commitment.

To assist in that process, a fourth step Task Force might establish a formal Citizens’ Council to better integrate local voices. That Citizens’ Council could advise the Task Force about emerging environmental, cultural, and peace-related conditions.

A fourth step Task Force might also facilitate accords or settlements, assuring broad stakeholder input into the tenor and substance of reparative agreements. Active Task Force engagement with political decision-makers might obviate problems of legitimacy by preventing politically expedient words of redress without accompanying reconstruction and reparation—for instance, Japan’s initial apology to South Korea’s World War II military sex slaves.

The latest Japanese apology, which some have seen as part of a strategic geopolitical deal struck between Japan and South Korea, has led to protests among the 46 surviving South Korean victims as well as the victims in other countries occupied by Japan during the war. After working for 15 years on reparations for victims in over 50 countries, the International Center for Transitional Justice found that many victims feel that an apology unaccompanied by other forms of reparation does not constitute justice, even as

302 See supra Section II.
303 See, e.g., Yamamoto et al., supra note 24, at 68-78 (suggesting a similar sort of Citizens’ Council in the context of Jeju 4.3 reconciliation).
material reparations, such as compensation, without a meaningful acknowledgement of responsibility also falls short.304

In sum, an Assessment, Implementation, and Oversight Task Force would serve as a practical fourth step for coalescing recognition and responsibility and for recalibrating and overseeing reconstructive and reparative actions. This implementation fourth step thus would aim to foster comprehensive and sustained social healing—for those harmed and their families in ways that also benefit communities and the larger society.305

D. Two Partial Archetypes

How might a fourth step Assessment, Implementation, and Oversight Task Force look and operate in practice? Two follow-up initiatives offer distinct partial archetypes. They may be viewed as distinct archetypes because their structures reflect two vastly differing foundational approaches. The first involves privately sponsored assessment and recalibration efforts to evaluate post-truth commission reconstruction and reparation. The second reflects a multifaceted initiative mainly under government bureaucratic control to facilitate implementation of specific commission recommendations. The two initiatives are partial because they embody practical follow-up limitations. Both initiatives are concisely described here not as fourth step models but as comparative bases for evaluating and refining the Task Force proposal.

1. The International Center for Transitional Justice’s Assessment of Peru’s Truth and Reconciliation Process

The International Center for Transitional Justice pioneered the assessment and implementation functions of a fourth step follow-up when it


305 See Yamamoto et al., supra note 24, at 80-81.
assessed Peruvian reconciliation efforts in 2013. After Peru’s violent conflict from 1980 to the mid-1990s, the Peruvian government initiated a reconciliation process that encompassed the government and armed opposition groups. Both sides committed widespread human rights violations, with over 60,000 disappeared or murdered and with disproportionate harms to indigenous rural peasant communities. Reconciliation efforts aimed to surface this truth to facilitate economic justice for victims and to rebuild communities. The truth commission thus investigated socioeconomic causes of the conflict, designated limited initial funds for victim capacity-building, and recommended institutional restructuring. For some, this broad approach demonstrated the government’s commitment to social healing.

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307 Correa, supra note 306, at 3.

308 From 1980 to the mid-1990s, the Shining Path—one of the major opposition groups—engaged in a violent armed conflict with the government. Id. at 3-4. Throughout this period, the government and Shining Path forcibly displaced 600,000 people and killed and disappeared 70,000 more. See Garcia-Godos, supra note 306, at 68. Widespread human rights violations by both sides included decimation of unininvolved rural communities, which held many indigenous inhabitants. Laplante, supra note 306, at 143; see Garcia-Godos, supra note 306, at 68. The conflict disproportionately harmed these groups and intensified Peru’s painful history of subordinating indigenous peasant communities. See Garcia-Godos, supra note 306, at 68.

309 The PIR investigated specific acts and resulting harms and also examined deeper socioeconomic causes. See Yamamoto & Mackintosh, supra note 104, at 8. See also Laplante, supra note 306, at 160 (noting the PIR’s “components include symbolic reparations, attention to physical and mental health, educational opportunities, restitution
Despite these broad initial efforts, criticism emerged about the incompleteness of government implementation. Critics maintained that because the conflict inflicted enduring damage, the reconciliation initiative needed a stronger emphasis on economic redress. In 2011, in response to continued criticism, the Peruvian government announced a plan to pay individual reparations. The money allocated (less than $100 per person), however, seemed to “many to be too little, too late.” The government then acknowledged that no one had been fully compensated and promised to complete the reparations process within ten years. Yet, especially for indigenous communities, the minimal individual reparations and the lack of real economic capacity-building signaled the reconciliation initiative’s overall failure.

At this juncture, the private International Center for Transitional Justice stepped in and conducted an extensive, independent assessment. Focusing on reconstruction and reparation (in the broader sense of “repair”), the International Center’s assessment evaluated the implementation of the truth commission’s existing recommendations. That assessment covered the rehabilitation of citizen rights, collective reparations and individual economic reparations. Beneficiaries of these measures include both direct and indirect victims.”. It recommended economic justice initiatives, including individual economic capacity-building and payments for those directly injured and institutional reconstruction.

Laplante, supra note 306, at 160. Part of the plan sought to address the root of the conflict by generating infrastructure for education, health, and jobs. Id. See Yamamoto & Mackintosh, supra note 104, at 8.

The government then established a fund for education, health, and economic projects associated with the PIR. See Yamamoto & Mackintosh, supra note 104, at 8. These projects, however, were open to only a few. Id. See Greiff, supra note 85, at 470–71.


Id. See Cabitza, supra note 86.

Id. See id.

Id. See Correa, supra note 306.

See id.
recommended victims’ registry, economic reparations (individual and collective), political changes (including recognition of civil and political rights), and other reparative measures (relating to education, physical and mental health, housing, memorials, the search for victim remains, and the court access for victims’ civil claims).  

Overall, the International Center’s follow-up work, although not broadly participatory and without formal government approval or participation, illustrated a key aspect of the envisioned assessment and implementation roles of a fourth step follow-up Task Force.  

As part of its assessment, the International Center worked toward an objective evaluation—detailing both productive steps forward and backsliding—of each major truth commission recommendation.  

It commended the Peruvian reconciliation initiative for taking “significant steps to address the severe and massive human rights violations committed during the country’s internal conflict.”  

And it recognized that the reconciliation measures “strengthen[ed] democracy and human rights protections and prevent[ed] the recurrence of violence.”  

The assessment, as mentioned, also constructively critiqued constrained Peruvian government reparative actions, revealing salutary steps as well as salient omissions. 

The International Center’s assessment thereby illuminated gaps in the Peruvian government’s efforts. Notably, the assessment shed light on the

319 See generally id. By 2012, the victims’ registry had registered 160,429 individual victims, 7,678 communities, and 32 organizations of displaced people. Id. at 10. The International Center’s assessment group commended the victims’ registry for its “flexible guidelines for evaluating different types of violations eligible for reparations” and for its efforts to make its services accessible to people in rural areas. Id. at 9. But the assessment group also noted that not all of the people registered would qualify for compensation, leaving the “unqualified” feeling left out and ignored. Id.

320 See generally id.

321 See id.

322 See id.

323 See id.
government’s “trend of providing isolated measures” to address systematic abuses.\(^{324}\) It observed that as a result of the government’s piecemeal efforts, “reparations will lack the comprehensiveness that the Truth Commission recommended and that the Reparations Law and its implementing decree envisioned.”\(^{325}\) Most important, in uplifting perspectives of those suffering, the International Center identified a glaring reparations gap between victim expectations and government actions.\(^{326}\) “Victims must still continue to wait – even after having suffered a serious violation sometimes twenty or more years ago and having navigated the long victim-registration process to finally achieve some recognition as right bearers. . . . [t]his process is inconsistent with the message that a reparations policy should carry.”\(^{327}\) Overall, the International Center called for full implementation of original truth commission recommendations.\(^{328}\) It also pointed toward additional actions needed to further reconciliation efforts, including better accommodation of indigenous communities’ voices and needs.\(^{329}\)

The International Center thus articulated compelling critiques of the social healing process, both salutary dimensions and failings.\(^{330}\) In doing so, it highlighted the assessment and implementation functions of a fourth step mechanism, spelling out what governments, independent researchers, scholars, advocates, human rights organizations, businesses, and community advocates might undertake as primary follow-up steps.

Yet, the International Center stated some of its recommendations subtly.\(^{331}\) Political realities may have counseled caution in proactively generating pointed directives. The International Center, without active

\(^{324}\) See id.

\(^{325}\) See id.

\(^{326}\) See id.

\(^{327}\) See id.

\(^{328}\) See generally id.

\(^{329}\) Id.

\(^{330}\) Id.

\(^{331}\) Id.
government participation and formal oversight authority, lacked the power to guide follow-through prescriptions for needed reconstruction and reparation.\textsuperscript{332}

2. South Korea TRCK’s Follow-up Board

In contrast with the International Center’s assessment, the South Korea TRCK’s follow-up mechanism entailed substantial government involvement. But extensive government agency control and changes in national political leadership likely dampened or even undermined follow-up efforts.

South Korea’s TRCK policymakers and administrators contemplated two follow-up bodies for implementing specific recommendations.\textsuperscript{333} First, within the TRCK, policymakers created a “Reconciliation Committee . . . to administer reconciliation and memorial efforts, establish a road-map for settling the past, investigate psychological damages and development of review programs for reconciliation, and to search for methods to improve recommendations for each individual case.”\textsuperscript{334} Second, the TRCK’s Framework Act contemplated a government administrative Recommendations Follow-up Board.\textsuperscript{335} The Act, however, did not bestow upon the follow-up board the authority to implement commission

\textsuperscript{332} Id.

\textsuperscript{333} Melish, supra note 2, at 24 (citing the Framework Act for the 2005 TRCK and its Three Year Plan).

\textsuperscript{334} See generally THREE YEAR REPORT, supra note 233.

\textsuperscript{335} The Framework Act provided that “any case approved for investigation must be reported to the Recommendation Follow-up Board on measures for restoration of the victims’ honor, reconciliation of the victims and offenders, the prevention of incident repetition, the revision, abolishment, or creation of related laws, policies, and practices, and the education and promotion for building historical consciousness.” Framework Act on Clearing up Past Incidents for Truth and Reconciliation, Law No. 7542, Article 34, paragraph 4, May 31, 2005 [hereinafter Framework Act], reprinted in THREE YEAR REPORT, supra note 233, translation available at http://www.jinsil.go.kr/English/Information/legal/read.asp?num=76\&pageno=1\&stype=&sval=&data_years=2012\&data_month=.
recommendations. South Korea’s legislative and executive branches retained control. And supervisory agencies lacked any legal and systemic duty to implement recommendations.

To activate the Framework Act’s plan for implementation, South Korea’s president issued a presidential decree for “Regulations on the Establishment and Operation of the Recommendations Follow-Up Board.” The decree officially created the Recommendations Follow-up Board—a high-level interagency system for implementing specific TRCK recommendations. This envisioned follow-up administrative body was placed initially under the Office of the Prime Minister and later under the Ministry of Public Administration and Security. The body was comprised of several committees tasked with managing the implementation of TRCK recommendations, including drafting implementation agenda, reviewing progress, and announcing results.

The board would adhere to a firm timeline for specific action. In response to TRCK recommended measures, the board would interact with the heads of government agencies. These political administrators would generate implementation plans and submit them to the board.

The board would transmit the implementation plans to a working committee, led by the Vice Minister of Public Administration and

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336 THREE YEAR REPORT, supra note 233, at 32.
337 Id. at 32.
339 Melish, supra note 2, at 24 (citing the Framework Act for the 2005 TRCK and its Three Year Plan).
340 THREE YEAR REPORT, supra note 233, at 107.
341 Id. at 32.
342 Id.
343 Id. at 33.
344 Id.
345 Id.
Security and comprised of high-ranking officials of related ministries. 346 This working committee would further refine the implementation agenda. 347 During preliminary deliberations, TRCK members could provide input. 348 The working committee would then pass the implementation agenda to a “Deliberation Council,” led by the Minister of Public Administration and Security and comprised of vice ministers of related ministries. 349 The Council would hold quarterly meetings to update government actors of implementation tasks. 350

The Recommendations Follow-Up Board thus would work with government leaders and specific government agencies to facilitate implementation of specific TRCK recommendations. It would notify the TRCK about progress. 351 Overall, the board and TRCK would collaborate to “regularly examine and analyze the planning and implementation processes of recommendations in order to revise inefficiencies in the relevant policies, systems, or procedures.” 352

Despite the carefully calibrated structure and timeline, the board’s implementing operations stalled. The Recommendations Follow-Up Board initially received 49 findings and recommendations from the TRCK for implementation. 353 According to former TRCK Standing Commissioner Kim Dong-Choon, “despite the creation of these new [follow-up] institutions, implementation of the TRCK’s recommendations has been slow and highly uneven.” 354 He noted that the government implemented “relatively easy measures—those not politically sensitive or financially

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346 Id.
347 Id.
348 Id.
349 Id.
350 Id.
351 Id.
352 Id. at 112.
353 Kim, supra note 111, at 113.
354 Id.
burdensome.”355 Other and more significant recommendations—the revision of historical records, compensation of damages, and peace and human rights education—remained untouched.356

Although promising in theory, with its multi-tiered bureaucratic structure, the Follow-up Board apparently proved ineffective in practice. The interagency implementation system, operated entirely by government actors, largely avoided difficult, important recommendations and failed at “directly involving petitioners or other concerned stakeholders in the monitoring and implementation process.”357 The ebbs and flows of the national government’s political will and government officials’ control over the Follow-up Board and its committees undermined active victim and community participation. In short, the follow-up mechanism lacked sufficient independence to function as a collaborative body that included government participation in, but not full control over, the process.

Indeed, when President Lee Myung-bak’s conservative party assumed power in 2008, the TRCK and the Follow-up Board faced increasing roadblocks.358 TRCK supporters blamed this shift in political power for the Follow-up Board’s ineffectiveness and eventual dissolution, 359 asserting that President Lee’s administration was “uncomfortable with the scrutiny of the country’s past” and wanted the TRCK “shut down.”360 The TRCK dissolved in 2010.361 The Follow-Up Board also significantly scaled back its work and apparently later disbanded, leaving many important

355 Id.
356 Id.
357 Melish, supra note 2, at 46.
359 Id.
360 Id.
361 Id. Rising tensions with North Korea may have also shifted the South Korea government’s attention away from addressing past government injustices. Id.
recommendations, especially those politically or financially sensitive, as “unfinished business.”

E. Structurally Integrating Government and Civil Society

Just as too much, or sole, government control over implementation bodes ill for genuine social healing, so too does too little government involvement. Public participation is crucial, but as integral component, not as sole mover.

With the government-controlled TRCK follow-up experience partly in mind, some scholars focus on public participation as the primary component of an implementation fourth step. Justice scholars John Ciociaiari and Jaya Ramji-Nogales view civil society as “unofficial implementing agencies” of truth commission recommendations. Professor Tara Melish predicts that organizations comprising “civil society” could find ways to “construct, monitor, and police an accountability framework in which concrete responsibilities can be distributed among stakeholders, who can then be held answerable for following through on their commitments.”

In essence, rather than a formal implementation body, Ciociaiari, Nogales, and Melish suggest that unofficial civil society “agencies” might serve as the critical follow-up fourth step in the reconciliation process, apparently through lobbying, consciousness raising, and strategic pressuring of government decision-makers. Without this kind of engagement, “political resistance and entrenched interests will ensure that reforms are superficial if

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362 There appears to be no English paper trail for the Recommendations Follow-Up Board. The current Ministry of Public Administration and Security’s website does not mention or have any archival material on the Recommendations Follow-Up Board or its involvement in the TRCK implementation process. There appears to be no mention of the Recommendations Follow-Up Board in English beyond the last TRCK report published in 2007. Much of the account in this article about the Follow-Up board is drawn from Kim, supra note 111, at 113.


364 Melish, supra note 2, at 63.
undertaken at all.”365 By contrast, active civil society control would shape reparative actions according to real community needs and priorities.366 In this way, civil society would help translate high expectations into concrete implementation plans and actions.367

The civil society approach aptly highlights the essential participation of non-governmental organizations, community advocates, journalists, and the general populace. And political organizing is critical for raising public consciousness and applying pressure for official responses.368 But experience shows public engagement is not enough after a commission makes recommendations to compel needed implementation.369

A generally stated civil society approach to implementation appears to leave unaddressed four realities about post-commission follow-up. First, it assumes that civil society would find ways to coalesce around implementation without an overarching organizing authority.371 Second, it

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365 See id. at 23.
366 See id. at 64.
367 For example, public organizations and community groups would have a pivotal role in providing continued “effective support to victims who may find the truth-seeking process an onerous and challenging journey.” González et al., supra note 26, at x.
368 See generally González et al., supra note 26 and accompanying text.
369 See supra Sections II.B. & III.A (describing unimplemented truth commission recommendations). Reasons may vary for lesser sustained post-commission collective efforts for implementation—people have already been given a recognized voice through public hearings; causes have been investigated; some recommendations have been acted upon; collective political energy is directed elsewhere. This subject warrants further inquiry.
370 That lack of specificity may simply reflect a primary focus on the idea of the need for an implementing mechanism.
371 Melish suggests generally that implementation of recommendations by a “permanent follow-up body” is “fundamentally a responsibility of all social stakeholders, responsibly supported by the international community and other human rights actors across the globe.” Melish, supra note 200, at 315. Melish’s suggestion delegates the bulk of responsibility for implementation to civil society (although undefined, this apparently means mainly non-governmental organizations, media watch-dogs and community activists) without fully accounting for the important role of government officials and private businesses. See id. More specifically, Melish anticipates that individuals and non-governmental organizations that comprise civil society will unite on their own to
downplays the need for structure—effective monitoring and policing require organization, coordination, and regular funding, both for operations and for oversight, including some form of government participation.\footnote{Government representatives, as well as scholars and private business and public institutional representatives, would need to collaborate with civil society representatives in creating, operating, and partially funding a fourth-step mechanism. Their participation would also be essential to devising and carrying out implementation and oversight activities and ensuring that each stakeholder assumes appropriate financial and substantive responsibility. A crucial structural piece of the implementing and oversight body would be shared power so that government participation contributes to but does not control agendas and tasks.} Third, it looks past the need for stature—recognition or even legal standing with policymakers, bureaucrats, businesses, and community groups helps transform plans into actions, particularly those tapping the public fisc.\footnote{Melish’s approach overlooks the need for formal recognition and some degree of legal standing of a follow-up body with policymakers, administrators, and the public, which would be essential to prospects of actualizing responsibility for assessment, implementation, refashioning and oversight actions. The potential for civil society programs, protests, and journalist exposés would be an important part of the mix. But experiences in many venues show that they might be effective in challenging illegitimate authority but are not, alone, nearly enough to fashion and administer concrete steps toward reconstruction and reparation. See, e.g., Matthew Vadum, George Soros Funds Occupy Wall Street, HUMAN EVENTS (Oct. 21, 2011), http://humanevents.com/2011/10/21/george-soros-funds-occupy-wall-street/ (referencing the organizational and funding problems with the social movement, Occupy Wall Street). Government and private sector representatives would also contribute to tempering the political and economic forces that otherwise, at times, impede reconciliation efforts. Victims and community advocates would play a central collaborative role. And responsibility, essential to social healing through justice, would be appropriately attributed to key stakeholders in ways that enhance democratic legitimacy.} And fourth, it assumes that a loosely organized civil society, without a strong organizational structure, can function effectively as a follow-up implementation body that is accountable for its actions (and inactions).\footnote{The idea that civil society would function as a follow-up mechanism imbues “civil society” with a structure that does not exist. A fourth step follow-up would likely be a mutual engagement by all, especially by those governments formerly complicit in or directly responsible for historic injustices, would be essential to a achieving a sense of “justice done.”}
The envisioned fourth step Assessment, Implementation, and Oversight Task Force would embrace active civil society participation but not rely primarily upon it. Rather, a Task Force would aim to integrate participation by civil society organizations at all stages of its implementation work and look to those organizations for generating public input and support. Moreover, the Task Force’s operating structure would not replicate the TRCK follow-up board’s near-full control by political leaders and bureaucrats. But it also would not jettison government participation, instead favoring active involvement without overriding control. The Task Force would build in a crucial mix of interested participants not only to uplift varying perspectives but also to provide checks and balances. That balance of power would need to be carefully calibrated at the outset in the Task Force’s originating structure.

The Task Force, then, would be informed less by a pure communitarian ethos than by a realpolitik sense that social healing is a multi-faceted, often conflictual struggle that entails continual recalibration and reinvigoration—but a struggle nevertheless worth the candle for those still suffering, their communities, and the larger society.

VI. CONCLUSION

The aim of this article’s proposed integrated Assessment, Implementation, and Oversight Task Force is not to fashion a cure-all for reconciliation ills. Rather, its aim is to squarely address what is currently missing from stalled or incomplete reconciliation initiatives almost everywhere: a fourth step implementation bridge over the chasm between aspiration and realization.

specific, cognizable body that not only “speaks and acts” with authority but would also be accountable for its actions and inactions. The diverse and diffuse aspects of “civil society” would therefore participate through this fourth-step assessment, implementation, and oversight body, but primary or sole reliance on civil society would not be pragmatically effective.
It might be a pathway over the “institutionalized attempts to frustrate the goals and functionality of the truth commission” of South Korea.\textsuperscript{375} Or a route forward for sorely disappointed indigenous Peruvians demanding “badly needed and long-delayed economic justice” after minimalist follow through on truth commission reparations recommendations.\textsuperscript{376} Or a spotlight on South Africa government’s and businesses’ choice not to “follow through on commission recommendations,” compromising not only the “commission’s contributions but the very process [or reconciliation] itself.”\textsuperscript{377} Or a portal to self-determination for the United States to “make right the wrong” to Native Hawaiians by fulfilling its long-standing commitment to reconciliation that “has been thus far denied.”\textsuperscript{378}

In these and other ways reconciliation’s needed assessment, implementation, and oversight fourth step, in concept and in practice, potentially channels often-fractious political and social interests further down a mutually beneficial path toward social healing through justice.

\textsuperscript{375} See supra Sections III.A, IV.B and V.C & D (describing the South Korea Truth and Reconciliation Commission process and impacts).
\textsuperscript{376} See Melish, supra note 2.
\textsuperscript{377} See supra notes 5 and 6 and accompanying text.
\textsuperscript{378} See supra notes 7, 8, and 39 and accompanying text.