

**FINAL REPORT FROM THE ASIL AD HOC COMMITTEE
INVESTIGATING POSSIBLE EXCLUSION OR DISCOURAGEMENT OF
MINORITY MEMBERSHIP OR PARTICIPATION BY THE SOCIETY
DURING ITS FIRST SIX DECADES**

SUBMITTED TO THE PRESIDENT FOR THE EXECUTIVE COUNCIL OF
THE SOCIETY

January 2020

I. Introduction

The Ad Hoc Committee (hereafter “Committee”) was appointed by Sean Murphy, President of the Society, pursuant to the reparations resolution of the Executive Council, of 4_April, 2018. That resolution reflected the Society’s recent determination of its early constitutive policy to exclude women from membership, directed the Society to provide a reparational remedy of posthumous admission of excluded women, and further directed that additional research be conducted “to determine whether members from other groups were excluded from membership in the course of the Society’s history and merit similar redress.” In that connection and soon thereafter, President Murphy constituted this Committee to implement the Council’s directive to investigate early minority membership exclusion and recommend any appropriate redress.

As appointed by the President, the Members of the Committee are: Professor Eleanor Brown, Pennsylvania State University Law School; Professor Tiyanjana Maluwa, Pennsylvania State University Law School; Professor Janie Chuang, American University Law School; Professor Rafael Porrata-Doria, Temple University Law School; and Professor Henry Richardson, Temple University Law School (Chair). The Ad Hoc Committee formally began its work, as charged by President Murphy, in early November, 2018.

The Committee was charged to investigate whether from the origins of the Society through approximately the following six decades of Society growth and development, from 1906 to approximately 1960, the Society discriminated against or discouraged minority membership and participation in its proceedings and in the Organization. The Committee in this regard was charged to research and evaluate

the historical official records and minutes, plus related historical material, of Society meetings and proceedings for that period, all of which were stored at Tillar House. The Committee might also research any other credible material relevant to its charge which would come to its Members' attention. It was quickly decided that the Committee would arrange over the course of its work to meet collectively at Tillar House for a two-day session to examine, assess, and discuss preliminary findings from the Tillar House historical documents; it later became necessary for an additional such two-day session of collective research and evaluation to be convened. The Committee successfully held these two research meetings in the Spring and late Summer, respectively, of 2019.

Here, the Committee wishes to recognize the timely, entirely cooperative, and able assistance of Executive Director Mark Agrast and the Tillar House staff. They made the necessary logistical arrangements and facilitated the ready availability of the relevant Society historical documents. In addition, they assisted with the coordination, scheduling, and general hospitality for the Committee's two collective research meetings at Tillar House, plus ancillary e-mail coordination on this endeavor. This assistance was essential to the work procedures of the Committee and thus provided invaluable support for whatever value this Committee Report may have. The Committee extends its sincere thanks to Mark Agrast and the Tillar House staff. Likewise, the Committee is greatly appreciative of the consistent support and encouragement of President Sean Murphy throughout this project, which necessarily must include, owing to the importance of the central question facing the Committee and the Society here, his moving to timely create the Committee and identify its charge shortly following the Executive Council's directive resolution.

II. Working Procedure of the Committee

The Committee organized itself through email communications among the Members, the Chair, and where necessary President Murphy and Executive Director Agrast. It initially worked towards clarifying its charge, including identifying pertinent parallels to the recently concluded Society reparational apology and remedy for its past exclusion of women from membership. In this process, the Committee decided, with the President's approval, that in the American context of possible discrimination, its charge must by implication include the investigation of whether the Society during its first six decades also discriminatorily discouraged domestic persons of color and others, based on their ethnicity, religious or sexual orientation, from membership and participation in its activities, as well as excluded

them from membership. Concurrently the Committee looked towards, and began to sort out arrangements and coordination of Members' work calendars to settle on a date and arrangements for the entire Committee to convene at Tillar House for research on those historical documents. Such a date was initially scheduled, but due to unforeseen conflicts and inclement weather, the Committee consulted with Executive Director Agrast to reconfigure the arrangements and set a second date. The Committee convened for its first Tillar House research meeting in mid-Spring, 2019, on May 21 and 22.

At the end of that meeting, the Committee had only been able to assess approximately half of the pertinent Society historical documents, and so the Committee decided that a second Tillar House research meeting was required some time during the forthcoming summer. With the coordinating help of Mark Agrast and the Tillar House staff, the follow-on meeting was arranged among the Committee on a date workable for Tillar House. Here the staff was instrumental in helping the Committee to ensure order among the historical documents already examined, and identifying and then producing for the ensuing meeting the correct documents remaining to be researched. That collective Committee research meeting was held at Tillar House in late summer, on September 9 and 10, 2019, during which the Committee concluded its research of the remaining documents.

Each of the two collective Committee meetings comprised research in the historical documents and preliminary discussion of findings among the Committee Members alone. Subsequently, Committee members shared suggestions and drafts based on Members' findings by e-mail. Through this process, a Committee Draft Report evolved, to the Executive Council through the President. The Draft Report, adopted unanimously by the Committee, was submitted to President Murphy in early January 2020. Further discussion aimed at clarifying the Draft Report with the President ensued, leading to the adoption of the Final Committee Report by March 2020.

III. Committee's Research Findings

Throughout the summer and early fall, the Committee reviewed all correspondence, records and minutes of the Executive Council and Executive Committee, conference programs, and other documentation from 1905 through the 1970's available at the Tillar House archives. We note that annual Society membership registries apparently do not exist in the historical record, so we lacked that documentary source, for whatever benefit it would have served, as part of our research.

In our examination of this documentation, consistent with the Committee's charge, we were concerned with questions relating to the Society's exclusion of and discouragement from membership of racial and ethnic minorities from 1906 through 1960. We also considered questions regarding exclusion of religious or sexual minorities.

Our research revealed several trends relating to the Society's membership and admission processes during this period. First, it is clear that, during the Society's early years, there was substantial receptivity and efforts to invite and admit prominent foreign officials and scholars into the Society—particularly from Latin America and Asia¹—and a number of these individuals appear to have been admitted to the Society.² The rationale for this effort was to encourage the study and authority of international law throughout the world by encouraging these foreign members to form their own societies in their home countries.³ This effort seemed to be highly concentrated in Latin America,⁴ and included the publication of a Spanish-language version of AJIL.⁵ and the distribution of ASIL proceedings (translated into Spanish)

¹ Minutes from a 1906 meeting indicated a desire to facilitate closer relations with Spanish American states and with Asia.

² See, e.g. Letter from Charles Lobinger to Scott (January 5, 1908) (proposing several prominent Filipinos for membership in the Society); Letter from Consul General in Constantinople (May 8, 1908) (suggesting the election of a jurist in Salonika to membership in the Society); Letter from M Matsuda to HR Bailey, Chair Committee on Membership (February 23, 1927) (enclosing a list of proposed Japanese jurists for membership. A handwritten notation indicates that "invitations, etc., sent 4/13/27).; Letter from ASIL to Dr. Miyaoka, Institute of Pacific Relations (March 6, 1928) (extending invitation to ASIL membership). See also, Letter to from Scott to Hon. Robert Lansing (July 16, 11915) (discussing the importance of national societies of International Law and the rationale for cooperating with them) (hereinafter "Lansing Letter).

³ As JB Scott recounted to William Taft in 1915, ASIL helped create "National Societies of International Law in each of the American Republics, successfully so in seventeen "of the American countries" and with ongoing efforts in four additional countries. ASIL also formed an American Institute of International Law, composed of five members from each of the National Societies. See Letter from JB Scott to Hon. William H. Taft (November 6, 1915). In an effort to cooperate with "the various societies formed and to be formed in the various countries of the Western Hemisphere", ASIL President Elihu Root sought to select a group of five ASIL members with experience in Latin American countries to form "the nucleus of a [ASIL] representation in the American Institute of International Law." Letter from JB Scott to Hon. Robert Lansing (July 16, 1915) discussing the importance of national societies of international law and the rationale for cooperating with them (hereinafter "Lansing Letter"). The proposal to establish local societies in Latin American countries as the nuclei for the American Institute of International Law had been adopted by the Executive Council at its sixth session on April 25, 1914.

⁴ See, e.g. Letter from GG Ronee to Hon. Oscar Straus (December 19, 1905) (proposing the Mexican Ambassador to the US for membership. The document has a marginal note stating "Query do we want foreign officials?"); Letter from LL Rowe to J.B. Scott *January 7, 1909) (suggesting cooperation with Latin America); Letter from JB Scott to Gen. Porter (March 27, 1912) (regarding Latin American participation in the annual meeting): Lansing Letter, *supra* Note 2); Letter Brown to WH Taft (November 6, 1915) (discussing approaches to Latin American scholars and societies); Letter from G. Henrique Carvajal, Dominican Nationalist Commission (April 28 19240 (enclosing dues payment); Letter from Luis Machado (Havana) (July 7, 1923) (acknowledging his acceptance to the Society and enclosing a dues payment); Letter from Antonio S. de Bustamante (Havana) (April 29, 1929) (acknowledging election to the Society); Undated list apparently enclosing suggestion for members from several Latin American countries).

⁵ See, e.g. Letter from AJIL Editor to EE Valentini (January 2, 1906) (enclosing draft agreement for a Spanish language edition of AJIL).

to Latin American foreign offices, universities, law schools, and Latin American members of the Permanent Court at the Hague.⁶ There is, however, no mention in the records (with one exception)⁷ of any mention, encouragement, or attempts to recruit *domestic* (from within the United States or Puerto Rico), African-descendant, Latino, or Asian prominent lawyers, judges or scholars. There was one invitation by an American judge in the Philippines (which was an American colony at the time) to a Filipino scholar.

Secondly, the archives reveal the Executive Council's concern throughout this period about the low numbers of the Society's members, and frequent attempts to increase membership numbers.⁸ These efforts included creating student memberships, recruiting members from the ABA International Section and teachers of international law, organizing regional meetings, and similar initiatives. Indeed, an undated report from the "Committee to Increase Membership," notes that 2947 invitations to join the Society were sent to, *inter alia*, members of several United Nations committees and the Security Council, to all of the member associations of the Inter-American Bar Association, diplomats, members of the Council of Foreign Relations, and teachers of international law and related subjects. In this long-term push to recruit new members, based on the Council's recognition of the need to do so in order to ensure the welfare and vitality of the Society, there is no mention, implication or evidence that the question of recruiting and admitting domestic Black, Latino, Asian, or other minority members of color ever arose. Indeed, there is some evidence that, in spite of the dire need for new members, attempts were being made to limit the solicitation of new members to those deemed "appropriate."⁹

⁶ Letter to Joseph Choate (February 28, 1912).

⁷ The archives contain a letter dated February 7, 1927 from Horace Towner, then Governor of Puerto Rico, to George Finch, Recording Secretary. In the letter, the Governor notes that he is responding to a request from the Chairman of the Committee on Membership for the names of individuals who might be potential candidates for membership. The Governor attached a list of two dozen prominent Puerto Rican jurists and scholars. There is no evidence in the archives to indicate whether or not these individuals were invited to apply for membership in the Society, applied for membership, or were elected.

⁸ *See, e.g.*, Letter from Professor Bessie Randolph (April 1, 1922) (referring to the Society's recent decision to admit women.).

⁹ In a letter dated December 8, 1926 to Frank Hinckley from the Society's Recording Secretary, for example, the author states that "As you have no doubt noted the copy of my letter to Mr. Bailey which I sent you, I do not believe it advisable to send out invitations by the wholesale to members of the Bar Associations, but if you can send me the names of selected members of such organization, particularly their officers and members of any committees which may be international law, I think it would be useful to send them invitation." *See also*, Letter from Bailey to Finch (November 9, 1932) where, as part of a debate on the wording of a membership solicitation, the author noted that "We do not I think wish to suggest too directly that the Society is in need of more members. I think it would be better to make it appear that the Society is flourishing and that membership is desirable." The final circular, dated December 1, 1932, contains the following language: "The Committee figures that it is not, however, an appropriate time to engage in extensive circularization of many names, in order to obtain members and that better results are likely to be

Thirdly, through and beyond 1947, the Society's membership/admissions process called for new members to be admitted only on the recommendation of two current members of the Society and after approval by the Executive Council. This process was recognized as being cumbersome and creating difficulties for individuals seeking membership.¹⁰ This original process of personal recommendations raised definite elitist, racial, ethnic, religious, sexual orientation, class and professional networking issues, and presumptively worked to exclude Black professionals, other people of color and ethnic, cultural, religious and sexual minorities from being able to be presented for admission, and passing through such a process. It was only in 1968 that the Executive Council amended the regulation regarding membership application to remove the requirement that new members be endorsed by a member of the Society.¹¹

Fourth, the experience of white women who sought admission to the Society has been different. Women were expressly excluded from membership in the Society until about 1920. At that point, the Executive Council formally decided to not exclude women from membership. Subsequent to this, women (none of whom are known to have been women of color) first in small numbers, but then in greater numbers, did pass through the Society's admission process and gained leadership positions in the Society and Executive Council. It became clear that the Society's ethos regarding the participation of women in its work evolved over time. Thus, in 1972 Professor Alona Evans, chair of the Ad Hoc Commission on the Professional Interest and Status of Women in International Law presented a report to the Executive Council. The Report contained data on the role and involvement of women in the Society, but it did not specify whether these included women of color.¹² Subsequently another report was presented to the Executive Council on April 26, 1974, on a positive program of recruitment and placement undertaken by women members of the Society (again the report does not specify if these recruits included women of color). Further, also in 1974, the Executive Council resolved that, because it was wholly committed to the principles of human dignity and non-discrimination, and that it practiced non-discrimination as to its membership, it would no longer conduct official business at any facility or organization that

obtain if each member of the Society will consider himself or herself a committee of one to secure from among friends and associates one person who will be interested to join the Society and participate in its work.

¹⁰ See Minutes of Joint Meeting of the Executive Council and the Board of Editors (October 4, 1947) p.5

¹¹ See Minutes of the fifty-second session of the Executive Council (April 25, 1968); the Executive Council unanimously agreed to delete Sect. 1, Subsection 6 of the Regulations, which provided that "Each application [for membership of the Society] must be endorsed by a member of the Society."

¹² See Minutes of the sixty-fourth meeting of the Executive Council (April 27, 1972)

discriminated against admission to its membership solely on the basis of sex.¹³

Based on the documentation reviewed by this Committee, this was the first time that the Society officially articulated its commitment to the principles of human dignity and nondiscrimination in relation to its membership. It is significant that the formal expression of this policy was made on the eve of 1975, designated by the United Nations as International Women's Year, which the Executive Council acknowledged in the resolution.¹⁴ It is notable that no equivalent Society documentation regarding a formal policy of human dignity and nondiscrimination, including relative to international norms, was found regarding domestic minority persons of color or other minorities.

IV. Conclusions of the Committee

A. The Central Question

The Committee's Conclusions presented below are based on its Findings, set out in Part III above.

The Committee recalls here the 2018 directive to the Society from the Executive Council to determine whether the Society, in its early decades, excluded racial, ethnic, cultural, religious or sexual minorities from membership and participation, and the subsequent Charge to this Committee by President Murphy to research and provide recommendations for the Society's implementation of the Council's directive. The Committee agrees that both the Council directive and the Committee's Charge must be placed, briefly, in their surrounding context on the central issues.

The central question for this Committee Report is whether, during its first six decades, the Society acted wrongly and in a discriminatory manner towards minorities and people of color, and therefore whether the Society owes a reparational remedy to the persons and groups subjected to any such wrongs and discrimination. The Society's investigation, public apology and remedy in 2018 for women historically excluded from its membership by official policy is now a matter of recent record. The inquiry into past exclusion of women and the remedy were not only entirely warranted, but also perhaps even overdue. The Society's reparational obligation here was not diminished by the subsequent history and practice of the Society to accept women as full members and full participants in all Society offices,

¹³ Minutes of Executive Council (Nov. 2, 1974), p.22.

¹⁴ See first paragraph of the preamble to the "Resolution on Use by the Society of Organizations Discriminating against Women."

benefits and responsibilities. Rather, such inclusion confirms the wrongfulness of their previous exclusion. This Committee has incorporated by reference the Society's reparational obligation, apology and remedy regarding the past exclusion of women, both as a precedent of justice, and for whatever insights it can give to carrying out the Committee's present Charge.

The claim in a national context that reparations are owed for past collective wrongs to members of minority groups, women, groups wrongly treated by the governments, and by private groups, states and other international actors, has a history antedating and immediately following the Civil War through the Reconstruction period. That history stretches through constitutional doctrine, the deprivations of Native Americans, the national apology and payment of reparations to Japanese internees, to its incorporation into international human rights law including its erasure of public/private distinctions in obligations owed. Notwithstanding constant fierce counter- pressures to marginalize these obligations, today that history sees the re-entry of the question of reparations owed to people of African heritage and other minorities into open American public discourse, including planks of electoral platforms for Presidential candidates and revived Congressional proposed legislation to establish a federal reparations study commission.

It is, therefore, most timely and appropriate for the Society, as the world's pre-eminent international law society, to help push forward this public American revival of the Reparations Question, by fully enquiring into its own history about past discrimination against minorities, and against women. It is within this context that this Committee fully asserts the importance of its Tillar House research of Society historical documents. And it is in this context that the Committee draws critical conclusions from that research regarding this central question in the history of the Society, and presents its conclusions below.

B. Conclusions from the Findings

Following diligent documentary research and based on its findings, the Committee unanimously agrees that:

1. From the absence of documentary evidence of either minority membership or participation during the first six decades of the existence and growth of the Society, and the lack of documentary evidence in official minutes and related records of any presence of discussion or consideration of the issue of minorities' membership or exclusion (including as compared to the

documented treatment of the analogous issue regarding women (not of color)), the Society did silently but effectively exclude domestic persons of color and others, based on their ethnicity, culture, religion or sexual orientation .¹⁵

2. Officially recorded Society policies and long threads of discussion among Society leaders to grow and foster Society membership were seen as necessary to the Society's welfare during this period. Such proposals and policies were energetically applied during this period to grow Society membership, but there is no mention of any domestic people of color being proposed or invited nor any mention of a goal or aim or desirability of seeking their membership. Rather, there was a system of invited membership which facially worked against minorities being invited and accepted. This provides necessary findings and context to support a conclusion of silent and effective exclusion of domestic persons of color and other minorities.
3. The historical American presence during this period of strong and even deadly national, official, legal, and professional trends of racism and racial discrimination, as opposed by the first stages of the modern American civil rights movement, in which context the Society was founded and grew in prestige and influence in its first sixty years, provide needed context to explain why the issue of minorities' exclusion could not have been unknown among Society leadership and membership. This conclusion must necessarily relate to the documented total absence of evidence of that issue being addressed, considered, discussed, or acted on, during the same period of intensifying Society growth and activities, including a documented continuing policy program towards the best ways of increasing Society membership. This supports the Committee's conclusion of the Society's silent and effective exclusion of domestic minorities of color during this period of its history.
4. The documented Society outreach to foreign dignitaries, scholars, practitioners, and officials, especially in Latin America, with invitations and

¹⁵ This Conclusion, and the Findings on which it rests, are supported by Professor Frederic L. Kirgis, in his excellent history, *THE AMERICAN SOCIETY OF INTERNATIONAL LAW'S FIRST CENTURY, 1906-2006*, (Martinus/Nijhoff, 2006): "Diversity in the 1930's did not mean what it does in 2006. Only a few women and no persons of color, so far as can be determined, were sought out for membership in the inner circles of the Society. Diversity focused on different professional experiences and, to some extent, geographic distribution." At p. 124. And, as Kirgis further notes, progress occurred during the Depression years in taking account of interests of women and young members, "though not yet persons of color", at p. 155. Finally, it is noted that Kirgis makes no mention of people of color in the Society until the 1960's, p. 279, confirming their previous absence and lack of recruitment.

facilitation of membership, cooperation abroad, a policy to spread Society influence abroad, including an early Spanish-language publication period of AJIL, provides evidence of a Society policy perspective which accepted overseas Latino (but not African) dignitaries as not only eligible but desirable Society members, all people of color from outside the United States. However, that same policy perspective effectively and silently shunned and excluded invitations to analogous professional persons within communities of color domestic to the United States. This dividing line of discrimination was clear, and historically recalls similar disparate treatment regarding race and privileges extended, even in the segregated Southern states, to persons of color identified (at least as their presence was temporary) as from overseas, compared to the continuing racial walls barring domestic black residents of the same location. The Committee concludes that such a distinction by the Society, which it found extended to potential but excluded invitations to membership from Puerto Rico, itself comprised a process of discrimination and exclusion against domestic potential Society members of color.

5. During its first half century, the Society leadership demonstrably avoided addressing minority membership and participation, as a prominent question presented in a surrounding context of racial public and private American narratives. This points to a devotion of both conscious and unconscious energy and silent, internal common understanding within Society leadership and influential membership, that the question was neither to be raised in any recorded fashion, nor incorporated in any Society policy goals or decisions during that period. This produced silent and effective exclusion of domestic minorities of color from Society membership and participation.
6. The Society, through its leadership and officials and cooperating membership during that half-century period of its growth into national and global prominence, wrongfully with continuing purpose, silently and effectively excluded domestic minorities of color from membership and participation in the Society.

V. Clarifying the historical wrong of the Society in excluding domestic minority persons of color from membership and participation in its first half century.

The Society's exclusion practices in a continuous half century of internal decisions and policy aims constitute a continuing racially discriminatory policy during that period, for which the Society is responsible. Such exclusion comprises a wrongful history within the Society on this question, in its violation of fundamental norms of racial equity, its violation of the emerging promise of those norms being more effectively incorporated into American law during that period, its violation of the emerging promise of those norms being more effectively incorporated into international law during that period and the present, and its violation of the demands for non—governmental racial equity which were present in public narratives even during that historical period. This Society wrong must be framed by the standards of the time in which the question of Society accountability is raised, and cannot be excused by pleading to past American community racially exclusionary practices, presumptions, and legal interpretations. Thus, the Society's reparational liability for this pattern of wrongful past policy and practice is a question for today and today's obligations of accountability.

A. *Recommendation of Reparational Remedies*

In Sections I-IV above, this Committee has established and defined the reparational Wrong of the Society through our Findings in Section III, and our Conclusions in Section IV. That is, the historical Wrong of silent and effective minority exclusion, and the liability of the Society for that Wrong have been identified and established through our Committee findings and conclusions. On this basis, we here recommend a process of Remedies, which the Society is obligated to implement to atone for its historical Wrong. We state in this connection that establishing the historical Wrong of the Society in excluding domestic minorities of color during its first six decades, and especially the Society *owning* that Wrong as an organization, are as equally important as the determination and fashioning of an appropriate process of Remedies. The former is not normatively diminished by any analytical difficulties in determining and implementing a program for the latter.

The Committee here refers to an “appropriate process of remedies” because we believe it is beyond our capacity to devise an entire Society program of obligated remedies into the future. This Report establishes the premise that just and effective remedies for the historical silent and effective exclusion of domestic minorities of color are owed by the Society. It thus recommends a few initial remedies, and then sketches a pathway into the foreseeable future for additional remedies, with a few suggestive examples.

An important question in any reparational narrative is the identity of the victims who were harmed by the historical Wrong, and their connection to the substance of the remedies for that wrong, which necessarily are defined and implemented in the present day. This Committee, based on its work in this Report, can say that the victims of the Society's reparational Wrong comprised collectively all of the domestic minority persons of color, who were potentially members of the Society but for their exclusion and discouragement by the Society during its first six decades: Blacks, Latinas/os, Asian heritage, other underrepresented minorities. The problem is that beyond these collective group identities, we do not know of particular persons or members of particular organizations who were impacted by the Society's silent effective exclusion policy. Such individualized persons or helpful indications might be discovered with further more widely organized and funded research, for example, among Black, Latino, and Asian law societies. Therefore, we recommend that such research be undertaken through the Society as part of its future remedial obligations.

Thus, the Committee is presently unable to establish hereditary connections between those domestic minority persons historically excluded by the Society and any of their heirs or descendants, professional or familial, living today. However, the Committee finds that the present inability to establish a hereditary connection, or the apparent lack of such a connection, does not exhaust the question of identifying the persons of color harmed by the Society's historical Wrong. Those six decades of minority exclusion established a tradition of discriminatory exclusion against domestic people of color in the Society, a tradition that the Society had to begin to overcome once its leaders and its membership finally and initially decided, as they were obligated, to admit and facilitate the participation of domestic people of color.

That tradition guaranteed that the initial and subsequent domestic Society members of color, in being formally admitted and seeking to equally enjoy their full opportunities of participation, had to fight through and endure an intensity of nuanced and more direct struggle, beyond a reasonably expected level of Society politics, towards equal and fulfilling Society participation. The tradition also meant that members of color had to overcome the Society's implicit barriers to organizational respect for the scholarly inquiries, issues, doctrines and discourse that were important to them relative to international law (e.g. respect for their personal expressed perspectives, relevant panels being approved for the Annual Meeting, membership on the AJIL Board of Editors), all of which were necessary for the achievement of equal and fulfilling Society participation. The necessity of such struggle by domestic Society members of color, notwithstanding a few relatively

early favorable results (e.g. the Society Presidency of C. Clyde Ferguson), has abated in the last decade, but vestiges remain. However, the necessity of that struggle within the Society and its continuing impacts are part of the “wages and badges” of the Society’s policies of silent and effective exclusion of domestic minorities of color in its first six decades. It can well be counted as a process of harmful impacts on present persons from that historical Wrong of exclusion.

B. General Recommendations:

- (i) Accordingly, the first Recommendation of the Committee is that the Society publicly admit its responsibility for its historical Wrong of silently and effectively excluding domestic minorities in its first six decades, issue a public official apology on that basis to all domestic people of color who could have been excluded, discouraged from Society membership or from seeking membership, or formed an opinion that the Society was a racially discriminatory organization, and admit the Society’s obligation, as an organization, to now fashion and implement just and effective Society remedies, within the Society and in the wider international law community.
- (ii) The Committee’s second Recommendation is that the Society redouble its targeted policies, e.g. to professional organizations, to attract domestic persons of color, including students, to membership, to establish arrangements beyond those currently existing in the Society to ensure their welcomed participation and recognition of their contributions in all areas of the Society, and in this connection, to provide transparent evidence of a new priority in budgetary allocations, fundraising, staff and official responsibilities, and other key Society resources and replenishment of resources to carry out this Recommendation.
- (iii) The Committee’s third Recommendation is that the Society open new fronts of membership recruitment and interchanges in the Historically Black Colleges and University (faculty and students), likewise in the Southwest and elsewhere for heavily Latino/a-concentrated law students, practitioners, and faculty, and law societies, and likewise for Asian-concentrated law societies, academics, and practitioners.

The Committee considers that the foregoing Recommendations should be part of the process of implementing the reparational remedies for the historical Wrong identified in this Report in the immediate future. It should also include further research to identify domestic minority individual persons of color who were indeed

excluded or discouraged from Society membership and participation during its first six decades, as noted above. Further, this path must include effective steps and goals in the Society's public communications, domestically and globally, to communicate that, in continuing and growing its programs and achievements of global excellence as the world's premier international law society, it will do so in defining its excellence as integrally being an equitable organization regarding people of color and be governed by principles of diversity in this regard.

Finally, that path of Society reparational remedies into the immediate future should include at least one further body of follow-up research. In line with the inclusive aims of the Committee's charge to investigate historical wrongs by the Society against people of color, the Committee conducted an initial body of research additional to that in the Tillar House historical documents. This latter research concerned the original chain of bequests, which began shortly after the Emancipation Proclamation, that ultimately resulted in the Society acquiring Tillar House. The question was whether the monies, in whole or in part, in that history of bequests were derived, in their nineteenth and twentieth century origins and devises, in whole or in part, from the work or sale of American slaves, or from the racially exploitative labor of Black people from the post -Reconstruction era- forward ensnared in the institution of discriminatory sharecropping arrangements to subordinate and enforce low-wage black labor.

The Committee found no direct connection between the historical chain of those bequests and the labor or sale of American slaves, nor to the labor of blacks in exploitative sharecropping arrangements. Thus, the Committee, in this initial research, did not find an historical wrong devolving to the Society through its acquisition of Tillar House. However, the Committee did find that the history of the chain of bequests arose during the time and surrounding context where rural blacks were harshly ensnared in exploitative sharecropping land tenancy and labor obligations. The Committee thus recommends that part of the Society's Remedies pathway into the foreseeable future include further research to clarify whether any of the monies of Tillar House bequests devolved from profits derived from the exploitation of black labor. The Committee believes that it will be in the Society's best interests to establish a more complete historical basis for clarifying this question, and therefore at the proper time, to fashion the most just response.

VI. Concluding Statement

The Committee is pleased to present this Report and its Recommendations to the Executive Council, through President Murphy. We do so in the great hope that the Society, as an organization dedicated to supporting and enhancing human dignity, justice, and other best principles of international law, will recognize and own the historical Wrong identified here, and move without delay to take the valuable leadership opportunity of instituting timely, just, and effective reparational remedies.