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LATCRIT XVI SYMPOSIUM - GLOBAL JUSTICE: THEORIES, HISTORIES, FUTURES

FOREWORD: GLOBAL JUSTICE, HISTORY, AND LAW: BETWEEN FELA'S TEACHERS TEACHING "NONSENSE" AND BOB MARLEY'S "SMALL AXE" FOR A BIG TREE

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Within sight of the political border with Mexico while engulfed by the view of the Pacific Ocean to its west, LatCrit XVI met on Harbor Island in San Diego, California from October 7 to 9, 2011. This dual imagery of immediate exclusion created by an international boundary and a vast ocean of opportunity acted as the thematic backdrop for this sixteenth reunion of critical scholars. With the theme of "Global Justice: Theories, Histories, Futures," LatCrit XVI operated with a backstage of a known wall that excludes, and a colossal open space, yet to be appreciated. LatCrit met during myriad global and local contexts, screaming injustice and seeking justice, including an unfolding multinational Arab Spring, a European financial crisis, a decade-long War on Terror, ever-increasing anti-immigrant sentiment worldwide, and consequential material and spiritual impacts for subordinated populations—all as close as a deadly border with Mexico and as far as local protests spreading from

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Tunisia to Syria. A year after its *quinceañera*, LatCrit considered a simple but heavy question: what are the global links between the operation of power and strategies of resistance?

Following the lead of LatCrit XVI's panels, discussions, and essays, this symposium foreword argues two points about these linkages: (1) that Global Justice is only achieved after interrogating the law and history that facilitate injustice; and (2) that law operates as both a mask to hide injustice and as a tool of resistance to promote justice. This symposium brings together the essays produced from LatCrit, nine of which are included in this issue of the *California Western International Law Journal*. This symposium issue provides two points of departure for critical legal theory.

First, building on essay clusters on global history, Puerto Rico, and Indigenous Peoples, this foreword argues that Global Justice requires asking what contexts and what legal rules facilitate, if not produce, injustice. These relevant contexts may be cultural, political, economic, or historic. Often, interrogating a context that creates, feeds, and hides law's exclusionary pressures may be more difficult than the doctrinal analysis in which legal scholars often engage. With these contributions, the essays provide methodological suggestions to use law in the quest for Global Justice and to interrogate injustice. Put simply, the essays show that law is vital to reach justice and that law is key to identifying injustice.

Second, the foreword employs lyrics from musicians and activists Fela Ankulipalo Kuti ("Fela") and Robert Nesta Marley ("Bob Marley") to convey the dual sentiments of disillusion and hope, created by cloaked injustice and hidden resistance strategies respectively. Fela, the 1970s and '80s Nigerian Afro-beat artist, poignantly sang "Teacher Don't Teach Me Nonsense," referring to the history taught in Africa about post-colonial injustices felt globally and locally.[1] LatCrit scholarship should take this lyrical call of "teacher don't teach me nonsense" to question law's history and context. We should not "teach nonsense" and facilitate masks of law's facial neutrality. These assumptions of neutral law create exclusions based on race, gender, class, nationalities, and sexual orientation. When teaching about injustice and striving for justice, it is nonsense to take

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1. FELA, *Teacher Don't Teach Me Nonsense, on* TEACHER DON'T TEACH ME NONSENSE (MCA Records 2001) (1986).

history and law at their face value. Similarly, Bob Marley predicted that if the global powers of oppression were a "big tree," resistance operates as a sharp "small axe" that is "ready to cut [this] down."[2] Various symposium essays show how resistance employs legal strategies and breathes hope in the search for Global Justice.

As LatCrit XVI convened, public discourse continued in a hopeful, yet uncertain state, particularly following a tumultuous Arab Spring, three years of leadership by a black president in the United States, and slow progress toward legalizing same-sex marriage. Simultaneously, known injustices shaped this juncture in American politics, finding its nativist and exclusionary voices again. The country politically shielded private capital with bail-outs and non-prosecutions, while foreclosures and unemployment remain a daily blight for populations of color and the less economic and politically affluent. Wall Street's financial crisis spread to Europe, where the European Union is increasingly tested. This foreword urges critical scholars to search for effective and strategic resistance, even if they are only "small," but sharp axes to "big tree" problems.

Before presenting the three essay clusters (Part II) and their role in furthering LatCrit theory (Part III), this foreword provides a brief description of the specifics of the LatCrit XVI. The annual meeting included five plenary panels and twenty-one concurrent panels, which amounted to over 140 speakers. Two concurrent works-in-progress sessions were also held, each with over ten papers. Finally, the SALT/LatCrit "Faculty Development Workshop" meeting was held on October 6 & 7, which included over thirty-five speakers in over a dozen sessions.[3]

LatCrit XVI's panel program began with the realistic and on-the-ground perspectives from San Diego and Tijuana speakers in the plenary roundtable, "Border Justice: Identities, Sustainability, and Power." This started face-first, with vivid insights from activists and community leaders, examining the global and historic forces of

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2. BOB MARLEY, *Small Axe*, *on* SONGS OF FREEDOM, disc 1 (Island Records 1999). The song is included in many releases by Bob Marley, but it was originally released on the album, *Burnin'*, by The Wailers, and Bob Marley was one of the Wailers. THE WAILERS, *Small Axe*, *on* BURNIN' (Tuff Gong/Island, 1973, orig.).

3. *See* LatCrit XVI Program Schedule, LATCRIT.ORG, http://www.latcrit.org/media/page_files/2011/11/03/lcxvi_program_9_12_2011_2.pdf (last visited Mar. 29, 2012).

injustice between San Diego and Tijuana; the United States and Mexico; and citizen, alien, and native populations.

The meeting ended with the plenary panel, "Legal Education, Social Justice, and the Law School Dean: Latinas at the Center," which included guarded optimism and real world examples of hope from three Latina law deans: Maria Pabon Lopez from Loyola University New Orleans College of Law, Rachel F. Moran of UCLA School of Law, and Jennifer L. Rosato of Northern Illinois University College of Law. This exciting and forward-looking panel inspired essay contributions from *Decana* invitees who could not attend—Helena Alviar Garcia of La Universidad de los Andes in Santa Fe de Bogota, Colombia, and Leticia Diaz of Barry University Dwayne O. Andreas School of Law. After celebrating its sixteenth birthday, LatCrit called on Latina leaders in legal education to inspire a search for social justice.

The essays in this symposium convey important messages on history and justice. History is a tricky thing; it is often presented as the all-encompassing deterministic cause and the "x-factor" that is unappreciated by those who error. Yet it inevitably eludes our analytical lens or reflective thoughts. LatCrit XVI was no different. It convened ten years after the start of the War on Terror in 2001, which still continues. Much of the LatCrit panels spoke on legal exclusions concerning race, gender, and class, and new exclusions regarding the financial meltdown, Arab Spring, and recessionary economic impacts on populations of color, migrants, and others. While we reflected, discussed, and built community, ten years had passed to the date from events such as President Bush announcing attacks on Afghanistan,[4] anthrax letters sent to Democratic Senators,[5] and the creation of the Department of Homeland Security.[6] With the War on Terror

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4. President George W. Bush, The President's Radio Address (Oct. 6, 2001), *available at* http://www.presidency.ucsb.edu/ws/?pid=24998 (updating Americans on "our global campaign against terror" and presenting a "clear choice to every nation: Stand with the civilized world, or stand with the terrorists. And for those nations that stand with the terrorists, there will be a heavy price.").

5. *See Timeline: How the Anthrax Terror Unfolded*, NPR (Feb. 15, 2011), http://www.npr.org/2011/02/15/93170200/timeline-how-the-anthrax-terror-unfolded.

6. Exec. Order No. 13228, 66 Fed. Reg. 51,812 (Oct. 8, 2001), *available at* http://www.fas.org/irp/offdocs/eo/eo-13228.htm.

operations in Afghanistan still continuing and its consequent anti-immigrant policies, border insecurities, culture wars, and financial costs spreading worldwide, it remains hard to fully grasp what has happened in ten years, much less interrogate its global links and law's influence in Global Justice. By focusing on both the immediate unfolding of history and the benefit of examining history's long-term influence in resistance, the symposium essays greatly aid in interrogating the global and local links that produce Global Justice.

I. INTERROGATING GLOBAL JUSTICE: EXAMINING THE ROLES OF LAW AND HISTORY IN INJUSTICE

The essays in this volume suggest how Global Justice can be achieved only after examining the role that law and history play in creating injustice. Building on this critical inquiry, the essays show how law and injustice build on assumptions, which exclude subordinated populations. These assumptions are invariably masked in doctrinal narratives of equality, universality, and gender and color blindness. Noting how law and history operate, the essays begin to point to paths towards Global Justice. Significant contributions concern the specific resistance law plays in countering injustice and promoting justice. With particular and (at times) local examples, the essays chart how law counters what is wrong, as well as when law moves away from assumptions on neutrality and universality. Building on these two contributions, these essays inspire future scholarship to "not teach nonsense" (regarding law and history's benign role in injustice), and to identify "small axes" (ready to counter big trees of injustice). Organized into three clusters, the essays examine themes regarding global history and law, Puerto Rico's place in American law, and the negotiated borders facing Indigenous Peoples .

The first cluster of essays is titled "Global Injustice Past and Future: Examples from Arab Uprisings, International Law, and Torture." The cluster poignantly shows how injustice—felt locally and responded to on the ground—is the product of macro forces. These forces are not limited to violent power or material actors, but also include exclusionary legal doctrine, transnational economic concepts and actors, and ideologies of racial, gendered, and cultural superiority. These essays describe international and local events to

interrogate the global links that produce injustice. From a macro level, they address the role international law (as a discipline) plays in global racism and continued colonial exclusions (Antony Anghie's *LatCrit and TWAIL*),[7] and the implicit ignorance of liberal theories on justice to the suffering of material and economic injustices (José María Monzón's *Where Has Theory Gone? Some Questions About Global Justice*).[8] These examples highlight how history and the discipline of law play crucial roles in continuing empires and myopic views of justice. With more localized foci, other essays build on the personal narratives of torture survivors from Chile's Pinochet dictatorship (Hugo Rojas-Corral's *Torture in Chile (1973-1900): Analysis of One Hundred Survivors' Testimonies*),[9] and the developing stories from the 2011 Arab Spring in Egypt, Libya, Syria, and Bahrain (Asli Bâli and Aziz Rana's Pax Arabica*?: Provisional Sovereignty and Intervention in the Arab Uprisings*).[10] These stories present claims of injustice with larger global and legal assumptions on national and international security and sovereignty and violence.

This essay cluster continues LatCrit traditions of inter-disciplinarity, anti-subordination, and anti-essentialism in their analysis of injustice. For instance, in *LatCrit and TWAIL*, Antony Anghie illustrates how international law was born out of European conquest and empire, beginning in the fifteenth century. The discipline continues to promote injustice by facilitating its exclusions based on notions of cultural difference for subordinated populations and the myth of international law's universality and equality. Anghie critically reflects on how international law (which aims to promote cooperation between states) perpetuates economic, cultural, and violent harms. He highlights how TWAIL[11] has much in common with LatCrit cross-border, inter-disciplinary, and anti-essentialist

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7. Antony Anghie, *LatCrit and TWAIL*, 42 CAL. W. INT'L L.J. 311 (2012).

8. José María Monzón, *Where Has Theory Gone? Some Questions About Global Justice*, 42 CAL. W. INT'L L.J. 293 (2012).

9. Hugo Rojas-Corral, *Torture in Chile (1973-1990): Analysis of One Hundred Survivors' Testimonies*, 42 CAL. W. INT'L L.J. 353 (2012).

10. Asli Bâli & Aziz Rana, *Pax Arabica?: Provisional Sovereignty and Intervention in the Arab Uprisings*, 42 CAL. W. INT'L L.J. 321 (2012).

11. TWAIL is the acronym for the international law school, "Third World Approaches to International Law," which focuses on experiences of the Global South and post-colonial states.

examinations. Following Anghie's call to interrogate the assumptions of the international law discipline, which produce injustice for subordinated populations, we gain insight into how to "not teach nonsense."

In Pax Arabica*?: Provisional Sovereignty and Intervention in the Arab Uprisings*, Bâli and Rana apply similar inquiries to contemporary events in Egypt, Libya, Syria, and Bahrain. Like Anghie, they interrogate the history of colonialism and foreign relations in the region, with European and American influence having underappreciated roles by international legal analysis. They highlight how the notion of "provisional sovereignty," limiting the autonomy and equality of states in the region, characterizes much of the injustice felt by both these states and their protestors. These legal exclusions are inherited from foreign relations histories. Comparing how Western states have reacted to demonstrations in Egypt, Libya, Syria, and Bahrain, they illustrate the power and normative force of popular resistance. Demonstrators are both supported or criticized by the foreign policies of Western states because these policies are aimed at protecting the states' own political and economic interests. Bâli and Rana urge scholars and policymakers to decouple these interests from future foreign policies. For this and to build on the organic nature of protests in the region, they suggest that policies should incorporate the economic and corruption claims of demonstrators. With cautionary optimism, wherein self-determination is protected in the region, Bâli and Rana suggest what legal understandings offer a "small axe" to the endemic problems of provisional sovereignty.

Also building on grounded-stories—in this case the extremely painful experiences of torture survivors, Hugo Rojas-Corral, in *Torture in Chile (1973-1990): Analysis of One Hundred Survivors' Testimonies*, develops valuable lessons to interrogate injustice and identify resistance. Rojas-Corral examines the personal stories of one hundred torture survivors published in the book *Cien Voces Rompen el Silencio* (A Hundred Voices Break the Silence) edited by Wally Kuntsman and Victoria Torres.[12] Rojas-Corral uses "grounded-theory" to abstract concepts and lessons from these subjective

12. CIEN VOCES ROMPEN EL SILENCIO: TESTIMONIOS DE EX PRESOS POLÍTICOS DE LA DICTADURA MILITAR EN CHILE (1973-1990) (Wally Kuntsman & Victoria Torres eds., 2008).

narratives by conceptually codifying their content. The narratives describe acts of torture suffered, the victims' motivations to tell these painful stories, their detention conditions, and how these experiences influence their lives after freedom or release from detention.

Rojas-Corral shows how even though the individual stories of torture survivors are varied in content, purpose, recollections, experiences, and motives, lessons on injustice and resistance develop. Most significant, survivors provide their stories to avoid the worst injustice, which would be silence and adding fifty-years of non-disclosure. While stories recall painful memories and reflect the emotional and political challenges still felt decades later, these stories counter the injustice of silencing. Reading them one is forced to interrogate injustice and ask: how did this happen? why did this happen? can we avoid repeating this? and are remedies possible? From these rich and often dark histories, Rojas-Corral reminds us that while injustice may be known (in this case, mass torture and political incarcerations), discussing them avoids silencing them from history, which would be an even larger and more permanent injustice. Reporting personal stories both interrogates past injustice and resists later injustice. While other essays highlight how history begets injustice, Rojas-Corral powerfully reminds us we create history and in that we possess a "small axe" to avoid the injustice of silence.

José María Monzón takes critical and material interrogations to ponder Global Justice in *Where Has Theory Gone? Some Questions About Global Justice.* He emphasizes how liberal legal theory only employs the idea of justice to further its economic and material objectives. Notions of judicial reform and open markets frame how Global Justice enters these discussions. This divorces questions of justice from concerns about human rights, governance, and distribution. With this separation, justice acts not only as something sterile to the concerns of subordinated populations, but it actually promotes exclusion. Importantly, this essay exposes how injustice forms on a conceptual level. To resist this, Monzón urges scholars to think in theoretical terms about how justice is used in legal discourse. By doing this, law may serve as a tool to limit economic exclusion and support Global Justice.

The essays in the second cluster, titled "Puerto Rico: Interrogating Political and Linguistic Injustice," raise issues central to Latino/a populations in the United States. Here, essays from Charles R.

Venator-Santiago[13] and Cynthia M. Costas-Centivany[14] focus on the transnational aspects of injustice for Puerto Rico. They add to the LatCrit theory on how the subordination of populations in the United States is closely related to events overseas. For both essays foreign relations, history, and current international developments are intimately linked to local injustice in Puerto Rico. Importantly, both essays illustrate how legal doctrine—in this case constitutional and civil rights for Puerto Ricans—must confront global contexts and how U.S. foreign relations address this. The cluster demonstrates that justice for Puerto Ricans requires interrogating an unjust historical context and identifying law's role in facilitating and remedying this injustice.

In *Cold War Civil Rights: the Puerto Rican Dimension*, Venator-Santiago employs critical race legal theory to interrogate how American foreign relation interests and racist assumptions frame legal injustice in Puerto Rico. He shows how only when it benefits American foreign policy interests (concerning the United States' international image fighting a Cold War) does American law extend protections to Puerto Rico. In this sense, injustice is remedied with law, but it only happens because it suits perceived global necessities. A product of American cultural assumptions, i.e. Latinos/as in Puerto Rico are inferior to continental U.S. citizens, injustice manifests itself in checked legal rights. Since the United States "acquired" Puerto Rico after the Spanish-American War of 1898, these checks include extending only limited constitutional protections to the island, no Congressional representation for Puerto Ricans, limited forms of U.S. citizenship, and plenary authority for the U.S. President to appoint a local governor and govern the island. Venator-Santiago shows with Derrick Bell's convergence theory how some of these rights are extended to Puerto Rico only when it suits the interests of white and elite domestic populations. For example, during the Cold War, the United States permitted Puerto Ricans to draft their own constitution. By doing this in 1952, the United States offset independence

13. Charles R. Venator-Santiago, *Cold War Civil Rights: The Puerto Rican Dimension*, 42 CAL. W. INT'L L.J. 423 (2012).

14. Cynthia M. Costas-Centivany, *Language Rights in Criminal and Civil Court Proceedings: Their Constitutional Protection in Spain vs. Puerto Rico*, 42 CAL. W. INT'L L.J. 407 (2012).

movements on the island and avoided losing credibility in the face of communist states and decolonization movements across the globe. Importantly, the essay shows that law remedies injustice suffered in Puerto Rico since 1898, but that this "small axe" is tempered by American interests.

While Venator-Santiago shows how cultural assumptions influence law, Costas-Centivany illustrates how law facilitates cultural exclusion in Puerto Rico. In *Language Rights in Criminal and Civil Court Proceedings: Their Constitutional Protection in Spain vs. Puerto Rico*, she highlights how important language and culture are to court proceedings. The basic argument is that in U.S. courts in Puerto Rico, Spanish-speaking jurors are not included and this severely limits justice for defendants. Importantly, Spanish is the most common language for Puerto Ricans. Prohibiting its usage in courts has significant substantive legal impacts. Noting how this breaches constitutional rights central to U.S. law, Costas-Centivany compares this to how language rights are protected in Spain. Using this comparative and transnational approach, the essay describes how law creates injustice and how law has the power to remedy it. Importantly, the essay illustrates how facially neutral or colorblind law—in this case, language rights in jury selection—creates injustice. This is a product of ignoring the context in which the law is applied, i.e. Puerto Rico where Spanish is the common language. Venator-Santiago and Costas-Centivany both show how, looking at Puerto Rico, Global Injustice is a direct but ignored result of a history of colonialism. Law may operate as a "small axe" to this, even with substantive shortcomings and delayed application, in the form of political negotiation for civil rights and procedural protections for language rights in courts.

Continuing critical cultural analysis of the law, the third cluster is titled "Indigenous Populations and Injustice's Global Borders." Its three essays force us not only to interrogate how history influences injustice for Indigenous Peoples, but also how cultural assumptions may be the most powerful agents of these exclusions. Commenting on transgender identity, international legal history, and Arizona's anti-immigrant policies, injustice appears to be most influenced by cultural assumptions regarding Indigenous Peoples. Law and policy are significant, but they facilitate injustice because they are grounded on racist assumptions regarding European or American superiority and

the inferiority of native peoples. The three essays in this clusters are Alfredo *The* Muxes *of Juchitán: A Preliminary Look at Transgender Identity and Acceptance*,[15] Kim Benita Vera's *From Papal Bull to Racial Rule: Indians of the Americas, Race, and the Foundations of International Law*,[16] and Jessica A. Solyom and Bryan McKinley Jones Brayboy's Memento Mori*: Policing the Minds and Bodies of Indigenous Latinas/os in Arizona.*[17] Moving from discussions on limited tolerance, to historic exclusion, to the impact of current exclusions, the essays highlight how varied cultural assumptions are both exclusive and inclusive. For native peoples, interrogating Global Justice means identifying culture's role in facilitating unjust laws and policies.

Mirandé's essay, *The* Muxes *of Juchitán: A Preliminary Look at Transgender Identity and Acceptance*, provides the most hopeful essay of this volume, by describing his firsthand and recent experience in researching transgender populations in Juchitán, Oaxaca, Mexico. This essay reports on tolerance and inclusion for a population often seen as subordinated—transgender and homosexual men in Mexico. Mirandé provides vivid details and suggest a series of inquiries for future research on the indigenous *muxes* (pronounced "moo-shay"), men who dress in female Zapotec attire and take on roles traditionally reserved for women. *Muxes* are widely accepted in the Zapotec community and at times considered a "third sex." Mirandé describes the legal and historic exclusions that homosexual and transgenders have suffered in pre-Columbian, colonial, modern, and current Mexican society. Even though homosexual relations existed during all these periods, religious or public law severely restricted if not banned these relations. Mirandé explains how Juchitán's political context includes active and successful indigenous movements. Learning from his interviews with *muxes*, their openness and communal toleration appears to be separate from any legal right. As

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15. Alfredo Mirandé, *The* Muxes *of Juchitán: A Preliminary Look at Transgender Identity and Acceptance*, 42 CAL. W. INT'L L.J. 509 (2012).

16. Kim Benita Vera, *From Papal Bull to Racial Rule: Indians of the Americas, Race, and the Foundations of International Law*, 42 CAL. W. INT'L L.J. 453 (2012).

17. Jessica A. Solyom & Bryan McKinley Jones Brayboy, Memento Mori*: Policing the Minds and Bodies of Indigenous Latinas/os in Arizona*, 42 CAL. W. INT'L L.J. 473 (2012).

such, Mirandé's fieldwork and scholarly analysis inspire us to think about how law and policy may not be the only tools of resistance and inclusion. This suggests that "small axes" of resistance may operate in non-legal arenas.

In *From Papal Bull to Racial Rule: Indians of the Americas, Race, and the Foundations of International Law*, Vera takes us back to the age of European "discovery" in the fifteenth century to uncover how conquest and empire over Indigenous Peoples established international law. From this, a racist objective in international law was born and continues to reproduce itself. The essay highlights how pronouncements by the Pope regarding Spanish and Portuguese expansion justified not only the creation of empire, but also establishing law to govern globally. Religion justified occupying foreign lands and subjecting their populations. This doctrine cemented exclusionary practices for centuries. These papal bulls written as early as 1455, and the writings of international legal theorists Francisco Vitoria and Hugo Grotius in the sixteenth and seventieth centuries provide a line of exclusionary legal theory. At first, they concerned justifications regarding who was Christian or not and then proceed to elaborately justify empire with legal understandings on territorial occupation, property, and legal title. Vera traces the "fixity and fluidity" of these legal exclusions. She directly stresses how history and a context of legal exclusion bolster Global Injustice. Vera ends by describing how U.S. constitutional law reflects these exclusions in *Johnson v. M'Intosh*.[18] Like Anghie's call to point out the nonsense of global equality for the Global South in international legal doctrine, Vera asks us to look into how native populations in the Americas were treated. Historic injustice and legal exclusion work in tandem with notions of cultural superiority and inferiority.

In Memento Mori*: Policing the Minds and Bodies of Indigenous Latinas/os in Arizona*, Solyom and Brayboy predict similar cultural impacts of anti-immigrant policies currently at play in Arizona. They directly interrogate the injustice of these policies by examining the state's history of anti-Latino/a and anti-indigenous treatment. They focus on Arizona House Bill 2281, which severely limits ethnic

18. Johnson v. M'Intosh, 21 U.S. 543 (1823).

studies courses.[19] These efforts are promoted to counter recent migration, but importantly, they build on prior exclusions for Indigenous Peoples, which make up a significant portion of Arizona's population. Ethnic studies programs present the state's multicultural (and at times repressive) history for Native Americans and Latinos/as. The unjust forces of federal immigration enforcement and elimination of ethnic studies programs operate in tandem. As the essay describes, eliminating ethnic studies erases state histories of white supremacy and the contributions made by Latinos/as and Native Americans to Arizona. Importantly, the material and political goals of state restrictionist objectives feed off of and contribute to cultural exclusion. In this light, Solyom and Brayboy offer a powerful interrogation of this injustice. They predict and map how the historical events Anghie and Vera describe will unfold from Arizona's policies. Solyom and Brayboy illuminate the situation where teachers are forced to "teach nonsense"—by muzzling important histories.

II. CONTRIBUTING TO LATCRIT THEORY BY INTERROGATING GLOBAL JUSTICE

The essays included in this LatCrit XVI symposium build on the international and economic themes previously suggested by LatCrit X as future avenues of inquiry.[20] When interrogating how Global Justice, history, and law are linked with myriad local and multi-level actors, LatCrit scholars actively examine material and class subjects and the influence of international law in these struggles. The potential applicability of these lessons is limitless, given the increasingly transnational, regional, and global scope of anti-subordination struggles.[21] Importantly, these global and economic aspects of critical legal theory, build on LatCrit's four theoretical contributions from its first decade, including examining the diversity of Latino/a identities,

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19. H.B. 2281, 49th Leg., 2d Reg. Sess. (Ariz. 2010).

20. *See* Berta Hernandez-Truyol, Angela Harris & Francisco Valdes, *Afterword: Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 26 CHICANO-LATINO L. REV. 237, 282-96 (2006) (suggesting internationalist and economic inquiry).

21. *Id.* at 258-59.

intra/inter-group frameworks, internationalism and critical comparativism, counter-disciplinarity, and class and identity.[22]

In order to categorize how these essays contribute to LatCrit theory, this foreword provides a preliminary analysis of how they address themes in the "LatCrit Theme Index."[23] Created in 2010 as part of the "LatCrit Research ToolKit," this index "focuses on 25 substantive themes of LatCrit scholarship derived from the actual themes of the essay "clusters" in the 30-some symposia that LatCrit scholars have produced and published since 1995."[24] The Research ToolKit tracks the efforts of LatCrit scholars. This examination illuminates some schematic and conceptual sense to the present efforts of the nine authors in this LatCrit XVI symposium issue.

The themes of "International Law, Human Rights" and "Conquests, Migrations & Diasporas, Immigration" attract the most attention of these essays, with five essays focusing on these themes. We see that international law and human rights figure centrally in the interrogations by Anghie and Vera on the international law doctrine's foundation and development, Bâli and Rana regarding the Arab Spring, and Rojas-Corral for the stories of Chilean torture survivors. Said generally, these essays find these legal instruments as facilitating injustice, but also with potential if not actual ability to resist these forces. Similarly, the theme of "Conquests, Migrations & Diasporas, Immigration" is central to these interrogations by Bâli and Rana, Anghie, and Vera, discussing colonial legacies, but also from Venator-Santiago's analysis of civil rights in Puerto Rico and Solyam and Brayboy predictions about Arizona's immigration policy. This elucidates when LatCrit theory interrogates what facilitate injustices and what linkages promote justice, it finds that cross-border migrations and cross-border conquest are extremely relevant.

In a simple sense, from these essays we can abstract that Global Justice and Injustice are often framed by legal norms regarding state-actors and human rights. Likewise, justice and injustice develop when law responds to the effect of conquest and populations moving across

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22. *Id.* at 260-68.

23. *LatCrit Thematic Index*, LATCRIT.ORG, http://latcrit.org/latcrit/theme_index.php (last visited Mar. 9, 2012) (follow "Theme Chart" hyperlink).

24. *LatCrit Scholarship Research Toolkit*, LATCRIT.ORG, http://www.latcrit.org/latcrit/researchtoolkit.php (last visited Mar. 9, 2012).

borders. Noting these basic notions—one theme is about legal rules and the other theme is about the effects of exercised power—we begin to identify how to interrogate Global Justice. The LatCrit XVI essays show that it is "nonsense" to see law and history as independent from justice and injustice. Likewise, we see that resistance, in the form of "small axes," operates both within and apart from law. These two contributions add to the extensive LatCrit theory efforts to explore the effect of law's claimed neutrality and how to promote anti-subordination efforts.

Next is the theme of "Education & Legal Knowledge," addressed by four essays. These essays look to this theme to begin formulating remedies. Anghie and Vera are both critical of the international law discipline, but note it is a possible path for justice. Monzón does the same with a more robust and materially-inclusive notion of Global Justice. Solyom and Brayboy build on these examples of exclusion to explain why ethnic studies should not be eliminated.

This issue of legal knowledge works along side with the theme of "Race, Ethnicities, & Colors," which three essays address. Race and how law feeds off determinations on race is treated by Anghie and Vera in how assumptions on indigenous populations for international law, and Solyom and Brayboy for Latinas/os and Indigenous Peoples in Arizona.

While "Race, Ethnicities, & Colors" examines the anti-essentialism and anti-subordination of groups characterized by race, cultural identity, and discrimination, the other, "Education & Legal Knowledge," focuses on the normative power of educators and lawyers. This suggests that LatCrit scholars find identity politics to be quite relevant, even now when examining worldwide or multi-focal struggles for Global Justice. Examinations of economics and class by this symposium do not replace race and ethnicity, but instead compliment it. Likewise, these examinations remain self-critical by stressing the influence educators and lawyers exercise in these struggles. The neutrality or autonomy from social justice does not exist for law and educators. Clearly, LatCrit XVI essays embrace the call to "not teach nonsense," i.e. continue myths about lawyers and educators incapable of seeking justice and checking injustice. These hallmark race and self-reflective inquires continue with recent subjects

such as the spreading Arab Spring, financial meltdown, the stability of a War on Terror, and anti-immigrant sentiment.

Next, the essays address LatCrit themes of "Critical Coalitions & Social Transformations," "Indigenous Peoples & LatCrit Theory," "Asians & Latinas/os," "Democracy, Governance & Self-Determination," and "Security, Terror & Borders." Here we have three essays touching on each of these themes. This suggests that in interrogating Global Justice we should delve into the particular plight of populations of color, for instance, for indigenous peoples and Latinas/os. Venator-Santiago, and Solyam and Brayboy do this by describing historical and current exclusions for indigenous peoples and how legal doctrine is applied to Puerto Ricans in American Constitutional law, and Latinos/as and Indigenous Peoples in Arizona. Moreover, these inquiries into Global Justice also highlight the LatCrit goal of potential optimism for coalitions between subordinated groups. These essays include Bâli and Rana's proposals for cross-border support for and amongst demonstrators in the Middle East, Venator-Santiago's analysis of Puerto Rican legal reforms influenced by a global Cold War and a decolonization process, and Mirandé's examination of transgender and homosexual populations in the context of Zapotec and politically progressive communities. From these three themes, we are reminded that Global Justice includes not only interrogating law's assumptions, but also seeking coalitions between groups.

Importantly, these essays describe how the competing notions of legal rights protections and protecting security frame quests for Global Justice and identifying Global Injustice. Legal rights refer to the theme of "Democracy, Governance & Self-Determination," where law provides individuals rights protections and/or limits on state power. Bâli and Rana emphasize an Arab Spring seeks more than just political rights. They explain that protestor objectives are framed by concerns for economic justice and legitimacy. Venator-Santiago provides historic analysis of similar political challenges for civil rights for Puerto Ricans during the first fifty-years of U.S. rule over the island. Rojas-Corral shows that the stories of torture survivors in Chile illustrate a political and personal message far more powerful than rights discourse. Importantly, the harms described in these stories are the product of claims of security and combating terror. The Pinochet dictatorship (with its allies—including the United States)

painted the democratically-elected socialist presidency of Salvador Allende and its supporters as its "terror." Rojas-Corral illustrates that injustice suffered is intimately linked to these claims of security. Moreover, deep motivations to show this and promote democracy fuel these stories. In this light, the historical lessons Rojas-Corral presents help make sense of what is evolving and presently at stake in the Arab Spring and in Arizona. Bâli and Rana and Solyom and Brayboy artfully describe how self-determination and democracy must combat notions of security and terror.

Similarly, two essays address the LatCrit themes of "Critical Outsider Jurisprudence," "Comparativism in & through LatCrit theory," "Class and Identity," and "Globalization and Economic Integration." The first two of these themes seek new ways to progress critical legal thinking. Here, Monzón notes that international law may be more inclusive of subordinated populations and how legal notions of Global Justice should incorporate both material and economic concerns. This helps further reform proposals concerning legal remedies in international law and defining justice. Rojas-Corral and Costas-Centivany comment on the scholarly value of comparing examples between the legal systems of countries. From this, Rojas-Corral emphasizes active resistance to justice denied and procedural silencing of torture. Costas-Centivany shows how more inclusive legal approaches to Spanish law may be when considering language diversity.

Next, the essay by Monzón continues LatCrit's inquiry into material and economic aspects of injustice. This helps LatCrit theory by casting a wide and long-term net of analysis to make sense of local injustices. Monzón employs similar examinations into the philosophical underpinnings of law's definition of justice. His suggestions help identify where the material and economic exclusion should be identified with legal reforms, which aim to liberalize markets.

In sum, we note that the symposium essays contribute to various LatCrit themes. The symposium essays add to LatCrit's inquires into these issues during the past fifteen years, including the search for Global Justice and fight against Global Injustice,[25] legal inquiry into

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25. *See generally* Carmen G. Gonzalez, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. U. L. REV. 979 (2001);

economic injustice,[26] legal theory and justice movements,[27] race and immigration and borders,[28] narratives and legal theory,[29] legal theory and indigenous communities,[30] and law and language rights.[31]

Denise Ferreira da Silva, *An Outline of a Global Political Subject: Reading Evo Morales's Election as a (Post-)Colonial Event*, 8 SEATTLE J. SOC. JUST. 25 (2009); Celina Romany, *Claiming A Global Identity: Latino/a Critical Scholarship And International Human Rights*, 28 U. MIAMI INTER-AM. L. REV. 215 (1997); Max J. Castro, *Democracy in Anti-Subordination Perspective: Local/Global Intersections An Introduction*, 53 U. MIAMI L. REV. 863 (1999); Sylvia R. Lazos Vargas, *Globalization or Global Subordination?: How LatCrit Links the Local to Global and the Global to the Local*, 33 U.C. DAVIS L. REV. 1429 (2000); Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000); Gil Gott, *Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class*, 33 U.C. DAVIS L. REV. 1503 (2000); Patricia Fernández-Kelly, Afterword, *Legal Language in The Age Of Globalization: Prospects And Dilemmas*, 33 U. MICH. J.L. REFORM 443 (2000); Berta Esperanza Hernández-Truyol, *Globalized Citizenship: Sovereignty, Security and Soul*, 50 VILL. L. REV. 1009 (2005); Denise Ferreira da Silva, Introduction, *The Global Matrix and the Predicament of 'Postmodernisms': An Introduction to the Critique of Kulturkampf*, 35 SETON HALL L. REV. 1281 (2005); Kevin R. Johnson, *LatCrit Goes International*, 16 FLA. J. INT'L L., at x (2004); Berta Esperanza Hernandez-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 LA RAZA L.J. 69 (1996); Elizabeth M. Iglesias, *Human Rights In International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361 (1997); Ediberto Roman, *A Race Approach to International Law (RAIL): Is There a Need for Yet Another Critique of International Law?*, 33 U.C. DAVIS L. REV. 1519 (2000).

26. *See generally* Alice G. Abreu, *Tax Counts: Bringing Money-Law to LatCrit*, 78 DENV. U. L. REV. 575 (2001); Francine J. Lipman, *Bearing Witness to Economic Injustices of Undocumented Immigrant Families: A New Class of "Undeserving" Poor*, 7 NEV. L.J. 736 (2007); Enrique R. Carrasco, *Opposition, Justice, Structuralism, and Particularity: Intersections Between Latcrit Theory and Law and Development Studies*, 28 U. MIAMI INTER-AM. L. REV. 313 (1997); Larry Catá Backer, *Economic Globalization Ascendant and the Crisis of the State: Four Perspectives on the Emerging Ideology of the State in the New Global Order*, 17 BERKELEY LA RAZA L.J. 141 (2006).

27. *See generally* Steven W. Bender & Keith Aoki, *Seekin' the Cause: Social Justice Movements and LatCrit Community*, 81 OR. L. REV. 595 (2002); Elizabeth M. Iglesias, *The Inter-Subjectivity of Objective Justice: A Theory and Praxis for Constructing LatCrit Coalitions*, 2 HARV. LATINO L. REV. 467 (1997); Francisco Valdes, *Legal Reform and Social Justice: An Introduction to LatCrit Theory, Praxis and Community*, 14 GRIFFITH L. REV. 148 (2005); John O. Calmore, *Social Justice Advocacy in the Third Dimension: Addressing the Problem of "Preservation-Through-Transformation,"* 16 FLA. J. INT'L L. 615 (2004).

III. CONCLUSION

In summation, the essays in this symposium answer questions about the global links between the operation of power and strategies of resistance. LatCrit XVI raised this inquiry, as it met a little over ten months after Tunisian protests initiated an Arab Spring in 2011, and ten years after the War on Terror began in 2001. Neither this Spring nor this War has reached a conclusion as this foreword is written in the spring of 2012. LatCrit XVI's situational imagery suggesting disillusion and hope—caught between a deadly and close international border and a large and unknown ocean of opportunities—inspires this foreword's answer to these questions.

It argues two points concerning how power and resistance are linked: (1) that Global Justice is only achieved after interrogating the law and history that facilitate injustice, and (2) that law operates as both a mask to hide injustice and as a tool of resistance to promote justice. Inspired by the musicians Fela and Bob Marley, who dedicated their careers to preaching about Global Justice and identifying Global Injustice, this foreword presents these two points as

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28. *See generally* Charles R. Venator-Santiago, *Countering Kulturkampf Politics Through Critique and Justice Pedagogy, Race, Kulturkampf, and Immigration*, 35 SETON HALL L. REV. 1155 (2005); Fran Ansley, *Borders*, 78 DENV. U. L. REV. 965 (2001); Pedro A. Malavet, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 CLEV. ST. L. REV. 321 (2005); Elvia R. Arriola, *Accountability for Murder in the Maquiladoras: Linking Corporate Indifference to Gender Violence at the U.S.-Mexico Border*, 5 SEATTLE J. SOC. JUST. 603 (2007); Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and LatCrit Theory*, 55 FLA. L. REV. 511 (2003).

29. *See generally* Alfredo Mirandé Gonzalez, *Alfredo's Jungle Cruise: Chronicles on Law, Lawyering, and Love*, 33 U.C. DAVIS L. REV. 1347 (2000); Peggy Nagae, *Justice and Equity for Whom? A Personal Journey and Local Perspective on Community Justice and Struggles for Dignity*, 81 OR. L. REV. 1133 (2002).

30. *See generally* Ronald Niezen, *The Indigenous Claim for Recognition in the International Public Sphere*, 17 FLA. J. INT'L L. 583 (2005); José María Monzón, *Let There Be Justice: The Double Standard of Application of Legal Norms*, 16 FLA. J. INT'L L. 639 (2004).

31. *See generally* Maria Pabon Lopez, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms a Latino/a Border Cultural Citizenship Through its Language and Safe Haven Ordinances*, 78 DENV. U. L. REV. 1017 (2001).

"teachers not teaching nonsense" and "small axes" of resistance. The essays contained in this issue illustrate the significance of critical teaching and small axes of resistance by focusing on Indigenous Peoples throughout history and the present, an Arab Spring, the injustice of silencing torture stories, economic and legal notions of justice, delayed civil rights in Puerto Rico, and how cross-group coalitions aid justice. They add to LatCrit theory by building on its central themes and adding to methodological and conceptual objectives set in LatCrit X. Taking these lessons about future hope with law's role in resistance and the interplay between history and law for injustice, critical scholars can take significant steps beyond the U.S.-Mexico border and Pacific Ocean to contribute to later meetings, identifying injustice, and quests for Global Justice.