

CLUSTER INTRODUCTION:

**GLOBAL INJUSTICE, PAST AND FUTURE:
EXAMPLES FROM ARAB UPRISINGS,
INTERNATIONAL LAW, AND TORTURE**

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The following set of essays grew out of a question not often asked in legal studies: how can we make sense of the international order in terms of resistance and racialized forms of difference?¹ The essays in this cluster point out the ways in which law and normativity construct the politics and concepts of a rigidly hierarchical and imperial order, while simultaneously channeling resistance, political subjectivity, and affect, even toward forms we might call “counter-law” or “counter-normativity.” The latter—reconstitutive politics—often confronts law as oppression, even while activating law’s generative potential as a locus of political and moral capital. This cluster critiques constituted forms of power in the international order, such as the international system of imperial international law (including its offer of “provisional sovereignty” to states of the global south), the “rules of the global economy,” and “global justice.” Against these structures, the authors pose the possibilities of a Third World-oriented re-visioning of international law—a post-empire *pax Arabica*, a post-crisis politics of democratic rectification and repair, and a community-based ethic (or *koinōnia*) to countervail the cold comfort of global justice under global capitalism.

The LatCrit XVI theme of global justice confronts questions arising at the frontier of law and politics. Moreover, each of the four

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1. *But see generally* BALAKRISHNAN RAJAGHOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE (2003).

essays in this cluster speaks to contemporary processes of transition that have been set in motion around us. These processes appear with abrupt effect (as in the case of the Arab revolts), but also in the form of longer term, creeping changes, as in the positioning of human rights as global capitalism's moral cover story, while the great public-minded, middle class-driven economic system of twentieth century America is dismantled. The essays trace a spirit of solidarity through various transition contexts. Each author thus presents a story of political domination that occurs through the mechanisms of law and empire, and importantly, a sense of how international solidarity might look moving forward through historic changes and challenges.

The framing of the international (legal) order through a global justice lens occurs in these essays through a number of related moves. First, globalized "structures of dependency" are spotlighted, with special emphasis on the role of global capital, U.S. hegemony, and the ongoing effects and institutions of past colonizations and imperial authority. Second, the notions of "political resistance and solidarity" are tied to these structural dynamics. Third, classic concepts of "politics-becoming-law"—self-determination and sovereignty—are clarified in relation to the politics of struggle called forth by structures of dependency. These global power structures are framed generally as a Euro-American-dominated, political economy of globalization, rationalized by the very core concepts of sovereignty, "global justice," and human rights.

José María Monzón's article, *Where Has Theory Gone? Some Questions About Global Justice*, considers the discourse of global justice itself as constitutive of the "capitalist power-building process."² Monzón sees present-day rationalizations of capitalism, such as democracy, human rights, and global justice, as forms through which neoliberal capitalism's survival is defended and strengthened. Monzón's work is a reflection on this particularly culturalist dimension of capitalism (and resistance to it) with his update to the classic concept of *koinōnia*. Monzón's goal is to analyze the apparatus of global justice—now integrally bound up with the discourse of human rights—as expressive of "the capitalist mind," that

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

is, how global justice relates to “the transnational ruling class ideology” as described by Monzón.

The problem Monzón identifies is how a hierarchical and creative-destructive social system (such as global capitalism) that survives across ages (despite a long record of depredation) manages to win the consent of those it may damage? This classic tension at the heart of the critical social theory of hegemony is resolved as capitalism becomes “recycled” through its instrumentalization of socially-derived values under a global justice rubric. As examples, Monzón cites the judicial reforms in Latin America that are primarily responsive to the narrow imperatives of the global economic system. Monzón sees these and other examples as instances of a broader cultural project of capitalism, to reify consumptive, egoistical individualism as a natural state. Similarly, on a macro-sociological scale, Monzón identifies a dynamic by which national societies become conditionally incorporated into the global capitalist order. At both levels, a common culture establishes conditional incorporation into the system. Monzón writes that “globalization,” which is both a violent and a “soft” imperial-colonial regime, “needs a common culture whose elements are provided by capitalist ideals, attitudes and values.” A rhetorically counter-poised but system-enhancing notion of “global justice” arises from this context.

Monzón sees the resulting culture of a capitalist community (*koinōnia*) to be at once Anglo-American and Eurocentric, effectively nullifying local or national cultural communal alternatives as it spreads. Moreover, the Third World state itself becomes infused with such capitalist cultural formations, with the resulting international order functioning like an “informal commonwealth.” In the end, Monzón tries to envision the politics of global justice under such a cultural construct. The dilemma for capitalism is to overcome the socially destructive “externalities” it creates through a kind of decadence-fighting culture, without jeopardizing the systems of exploitation and accumulation that create those destructive externalities. For Monzón, the possibilities for transformative justice and solidarity lie in a praxis-oriented democratizing and redistributive conception, albeit one that capitalism may find antithetical to its core purposes.

Antony Anghie’s essay entitled *LatCrit and TWAIL* discusses the historical and structural reality behind the normative/legal framework

of international order as provided by the relations of colonialism (with globalization understood as a kind of subgenus).³ Anghie seeks to gain leverage on the structural violence of colonialism by grasping the legal ontologies it generates, such as those of sovereignty, which today obscure and sustain the international order's ongoing exclusions and hierarchy. Anghie sees a common commitment between TWAIL and LatCrit to construct oppositional knowledge. He approaches the sovereignty doctrine in international law through the perspective of those it has historically excluded and disempowered. In this way, Anghie offers a crucial restatement of sovereignty: it is primarily a doctrine of exclusion, not equality and empowerment, which emerged in the colonial encounter and was used to rob non-European people of their political independence and substitute in its place subaltern legal standing.

Anghie's essay alludes to the ways the sovereignty doctrine has built into it "mechanisms of exclusion" that develop with every new encounter with "others." He develops his critique by looking at the exclusions inherent in abstract framings regarding the fundamental question of international law's bindingness as law. Anghie argues that this discussion is simply irrelevant to the experience of Third World peoples who see international law as synonymous with exclusion and subjugation—all too non-abstract realities in the colonial encounter. Mainstream thinking cannot square with the realization that law does not transcend, but rather grows from the colonial encounter. Sovereignty cannot create equality because it perpetually reinscribes colonial relations.

Anghie's almost satirical invocation and dissection of that early international law promoter, Christopher Columbus, should probably vie for primacy in introductory international law texts with the Austinian "is international law *law*?" debate. Anghie rhetorically asks about what law could exist between the incommensurable societies of the Columbus-Indigene encounter. In the end, perhaps the critical project Anghie envisions as a shared commitment of LatCrit and TWAIL is a kind of programmatic answer to this question, as elaborated through a critical intellectual framework and a methodology of "looking to the bottom." Anghie closes with a brief reflection on the possibility of contestation and reconstruction that

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

grows from centering the experiences of those who have been subjected to the international order's structures and narratives of exclusion. Finally, following Keith Aoki, Anghie calls for understanding the local and global levels of analysis of race and economic structures at linked.

Next, Asli Bâli and Aziz Rana, informed by Anghie's critical framework, analyze the meaning and context of the Arab Spring uprisings and the international order's response, in their essay, *Pax Arabica?: Provisional Sovereignty and Intervention in the Arab Uprisings*.⁴ They shed light on an underlying imperial framework whose legal rationalization of "provisional sovereignty" is imposed upon groups such as the Arab publics who nonetheless have risen up to assert democratic control over national and regional political systems. Bâli and Rana show how the U.S. response to the various Arab uprisings, while seemingly ad hoc, follows a "realist" pattern that both results from and further inscribes the principle of peripheral/provisional sovereignty. Arab publics, like other subordinated groups in the international order, are not treated as fully "sovereign" unless they support a state that functions to maintain the desired regional and international order. The needs and apparatus of the global or regional order truncate these groups' political autonomy. Like Anghie, Bâli and Rana see provisional sovereignty as a fundamental feature of the global order that prevents "weak" states from shaping domestic decisions.

Bâli and Rana outline the apparent contradictions in U.S./Western approaches in five of the Arab countries experiencing mass uprisings—contradictions "resolved" through the indeterminate, moralizing discourse of the *pax Americana*. Sometimes considerations of security and orderly transition mandate counterrevolutionary non-intervention, such as in Egypt, Yemen, and Bahrain. Yet at other times, a righteous call is made to unconditional and decisive regime change through force of arms such as in Libya and Syria. These seemingly contradictory outcomes correspond directly to the geopolitical map and preferences of *pax Americana* in the region. Bâli and Rana understand the (non)interventions not as isolated cases, but rather as part of ongoing statist/clientelist political

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

oligarchic formations, often synonymous with *pax Americana*. These are, of course, precisely the formations that *all* such revolts must eventually confront, whether validated and forcefully supported by the West or not.

For Bâli and Rana, the revolutionary agendas of the Arab uprisings raise questions of political subjectivity formation that are too seldom brought into analyses of social movements. The particular effects of regional/transnational solidarity formations are important aspects of how Bâli and Rana come to understand the significance of the uprisings. The role of social media in the various uprisings, particularly in Egypt's Tahrir Square movement, has been the subject of much discussion and debate. But Bâli and Rana turn the discussion toward the ways social media have generally enabled a network of transnational solidarity and regional political subjectivity that is overlaid by national formations. Pan-Arab and other Third World internationalisms stand as important historical precedents for Bâli and Rana. In the same ways that these earlier political formations fundamentally challenged the international order by rejecting the political imaginary and structure of colonial sovereignty, today's uprisings frame a challenge that may not acquiesce in the indefinite deferral of real political contract and sovereignty (effective political autonomy and control of politics in the hands of the public) through state-client ventriloquisms. *Pax Arabica* is the transnational, regionally-rooted, popularly-led political formation that may promise a more just and secure future for people in the region and beyond.

In the final essay in this cluster, *Torture in Chile (1973-1990): Analysis of One Hundred Survivors' Testimonies*, Hugo Rojas-Corral explores the formation of resistant political subjectivity through analysis of the published testimonies of Chilean torture survivors of the Allende era.⁵ Rojas-Corral painstakingly analyzes one hundred testimonials of survivors first published in 2008, and identifies the four main themes in these survivors' statements that he feels most help to facilitate understanding of their stories.

Rojas-Corral's work opens an important window into the broader questions of how local struggles for progress and inclusion, which may necessarily come into conflict with powerful global interests and

5. Hugo Rojas-Corral, *Torture in Chile (1973-1990): Analysis of One Hundred Survivors' Testimonies*, 42 CAL. W. INT'L L.J. 253 (2012).

the forces of *pax Americana*, may remain rooted to national forms of political subjectivity and affect. The culture of torture is a political subject-killing machine, hollowing out the possibility of resistance. For example, Judith Butler argues that the U.S. military's use of torture "seeks to expose the status of the tortured as the permanent, abased, and aberrant outside to subject-formation as such. If these are subjects of some kind, they are outside the civilizational trajectory that secures the human, which gives the defenders of civilization the 'right' to exclude them more violently."⁶ A discernible political function of torture is to destroy or hollow out the possibility of resistant political subject formation. Such radically democratic subjectivities refuse dissolution into the grand subject of the imperial state or god-like global capital and thus may threaten constituted powers. The destruction and categorical "erasure" of such subjectivities is an attempt to put the proverbial genie back in the bottle: to reverse the social and psychological conditions of possibility for resistant political subject/affect. The reassertion of such subjectivity through the public testimonies Rojas-Corral analyzes is anything but a turning back and does not function like a human rights report. It is the performance of that which was to have been permanently erased from national political life: the possibility of a militantly anti-imperial, democratic, political subjectivity.

Rojas-Corral's work bears on the questions of political resistance and international solidarity that I would like to explore briefly in closing. In some sense, the goals and nature of international solidarity should be measured in accordance with the standards of political contract democracy and non-conditional, non-exclusionary sovereignty that are sketched by these writers. One central dimension of anti-systemic struggle for oppressed groups—many of whom experience various forms of racialization in their political and social contexts—is the formation of a kind of resistant identity that is often bound up with local tradition, even as it arises in direct response to macro-level forces. These are political subjectivities or affective positions that tend to be decidedly group-based in their political ontology and social effects. If we recognize in such a description the rudiments of what we might see as the "modern human rights

6. Judith Butler, *Sexual Politics, Torture, and Secular Time*, 59 *BRIT. J. SOCIOLOGY* 1, 23 (2008).

subject,” then we may find the work of international law’s human rights project to be important in solidarity work. But generally, Anghie’s question regarding Columbus remains: how do we fashion law in the context of such incommensurability? For Columbus, that incommensurability was created by the immediate facts of conquest. For us, a similar impediment to finding a place for “universal” international law in solidarity with oppressed groups inheres in the incommensurable interests that animate and grow from the ongoing duality of empowerment/disempowerment that characterize attempts under globalization to rationalize the imperial through rule of law and normativity.