

CRITICAL REMEMBERING: AMPLIFYING, ANALYZING, AND UNDERSTANDING THE LEGACY OF ANTI-MEXICAN VIOLENCE IN THE UNITED STATES

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ABSTRACT

Violence against BIPOC individuals and communities has been part of American life since the arrival of the first European colonizers over four hundred years ago. Yet as longstanding and pervasive as anti-BIPOC violence has been throughout American history, many instances of such violence remain strikingly underexamined—largely because their narratives have been suppressed or erased. Systematic violence against ethnic Mexicans in Texas and the American Southwest is a paradigmatic example. Between 1910 and 1920 alone, as many as several thousand ethnic Mexicans were killed by vigilantes, state and local police, and military personnel. But rather than acknowledging and confronting this reign of terror for what it was, the curators of official public memory have instead transformed it and subsumed it within a narrative of heroism and progress.

*One of the aims of this Article is to challenge that narrative by highlighting the extent of Anti-Mexican violence in the early twentieth century through the lens of Monica Muñoz Martinez’s recent book, *The Injustice Never Leaves You: Anti-Mexican Violence in Texas*. Another aim is to explore the implications of that violence for the twenty-first century through the lens of the current legal and political climate. The Article pursues these goals by examining some of the main episodes of violence discussed in Professor Martinez’s book along with their connections to a broader regime of white supremacy, and by placing them in conversation with another episode of anti-BIPOC violence that took place during the same time period—namely, the Tulsa Race Massacre of 1921. All of these episodes have long been suppressed in American historical memory and offer mutually-reinforcing lessons about the shared experiences of racialized groups. The Article concludes by drawing upon these shared experiences to argue for greater solidarity among Black, Brown, and other BIPOC communities amidst ongoing attempts to otherize and divide those communities from one another.*

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INTRODUCTION

Violence against BIPOC¹ individuals and communities has been part of American life since the arrival of the first Europeans over four hundred years ago.² Invoking the doctrines of “discovery” and “conquest,” European colonizers systematically dispossessed and displaced Native peoples in the name of spreading “civilization and Christianity.”³ The institution of racialized human slavery took hold in tandem with the colonization of Indigenous tribes and the expansion of the British colonies.⁴ After the colonists secured their independence from Britain, they enshrined protections for slavery and the rights of slaveholders into the United States Constitution.⁵ *De jure* slavery endured for nearly a hundred years until the ratification of the Thirteenth Amendment in 1865, only to be followed for the next hundred years by the substitute legal system of racial segregation and oppression commonly known as Jim Crow.⁶ More recently, the Black Lives Matter movement has focused attention on ongoing acts of violence that continue to be directed against BIPOC by police officers and on racial inequalities that

¹ “BIPOC” is an acronym for Black, Indigenous, and People of Color. *See, e.g.*, Sandra E. Garcia, *Where Did BIPOC Come From?*, N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/article/what-is-bipoc.html>, archived at <https://perma.cc/QT5R-8Z9U>. For further discussion of the term, *see infra* Part III.

² *See, e.g.*, *The 1619 Project*, N.Y. TIMES (Aug. 8, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>, archived at <https://perma.cc/MJW5-5CAT> (“In August of 1619, a ship appeared . . . in the English colony of Virginia. It carried more than 20 enslaved Africans, who were sold to the colonists. No aspect of the country that would be formed here has been untouched by the years of slavery that followed.”); Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 51 (2019) (“The constitutional government of the United States was founded on the colonization of Native tribes and the enslavement of Africans.”).

³ *See, e.g.*, *Johnson v. M’Intosh*, 21 U.S. 543 (1823) (analyzing and applying doctrines of discovery and conquest); *Cherokee Nation v. Georgia*, 30 U.S. 1, 15 (1831) (“A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms . . .”); *see also* Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787, 1806 (2019) (“Colonialism, like slavery, was an original sin in the ‘New World Garden.’ The garden, it turns out, was not at all ‘new,’ and the colonists inherited both an empire and a slave state along with their independence.”); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1727 (1990) (“Indian custom was obliterated by force and replaced with the regimes of common law that embodied the customs of the conquerors Indians experienced the property laws of the colonizers and the emergent American nation as acts of violence perpetuated by the exercise of power and ratified through the rule of law.”).

⁴ *See* Harris, *supra* note 3, at 1718 (“By the 1660s, the especially degraded status of Blacks as chattel slaves was recognized by law. Between 1680 and 1682, the first slave codes appeared, codifying the extreme deprivations of liberty already existing in social practice.”).

⁵ *See, e.g.*, U.S. CONST. art. I, § 2, cl. 3 (three-fifths clause); U.S. CONST. art. IV, § 2, cl. 3 (fugitive slave clause); U.S. CONST. art. I, § 9, cl. 1 (importation clause); *see also* René Reyes, *Religious Liberty, Racial Justice, and Discriminatory Impacts: Why the Equal Protection Clause Should be Applied at Least as Strictly as the Free Exercise Clause*, 55 IND. L. REV. 275, 296 (2022) (discussing slavery clauses); Roberts, *supra* note 2, at 52–53 (discussing same).

⁶ *See* Reyes, *supra* note 5, at 297–98; Roberts, *supra* note 2, at 8–9; Harris, *supra* note 3, at 1746. *See generally* C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1955).

exist throughout the criminal legal system.⁷ In sum, racialized violence and inequality has been “woven into the warp and woof of the American constitutional fabric from the very beginning.”⁸

Yet as longstanding and pervasive as anti-BIPOC violence has been throughout American history, many instances of such violence remain strikingly underexamined—largely because their narratives have been actively suppressed or erased. Systematic violence against ethnic Mexicans in Texas and the American Southwest during the early twentieth century is a paradigmatic example. Between 1910 and 1920 alone, historians estimate that as many as several thousand ethnic Mexicans—many of them U.S. citizens—were killed by vigilantes, state and local police, and military personnel.⁹ These killings took various forms: some victims were shot, some were hanged, and some were burned alive.¹⁰ But rather than acknowledging and confronting this reign of terror for what it was, the curators of official public memory have transformed it and subsumed it within a narrative of heroism and progress. For instance, while members of the Texas Rangers were involved in some of the most gruesome acts of anti-Mexican violence that took place during this period, perpetrators were rarely held accountable. Instead, the force has been venerated for its role in “pacifying” the region: thanks to the efforts of early historians and public officials, the “Texas Rangers and their acts of violence . . . were mythologized as icons that defeated treachery and secured Anglo civilization.”¹¹

While efforts to challenge the conventional narrative have long been resisted, the historical reality of anti-Mexican violence is finally receiving greater attention. Much of the credit for this attention should be given to University of Texas Professor Monica Muñoz Martínez.¹² In *The Injustice Never Leaves You: Anti-Mexican Violence in Texas*,¹³ Professor Martínez analyzes several discrete instances of extra-judicial killings and situates them in a context of “linked practices of racial violence that created a long-

⁷ See, e.g., BLACK LIVES MATTER, <https://blacklivesmatter.com/about/>, archived at <https://perma.cc/L8WN-HHGB>; Reyes, *supra* note 5, at 304–05; Mitchell F. Crusto, *Black Lives Matter: Banning Police Lynchings*, 48 HASTINGS CONST. L.Q. 3 (2020); Paul Butler, *The System is Working the Way it is Supposed To: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419 (2016).

⁸ Reyes, *supra* note 5, at 296; see also Blackhawk, *supra* note 3, at 1800 (“The word ‘slavery,’ like the word ‘colonialism,’ appears nowhere in the Constitution. Yet, like America’s other original sin, traces of America’s history with colonialism are woven in like threads to the fabric of the document.”).

⁹ See MONICA MUÑOZ MARTÍNEZ, *THE INJUSTICE NEVER LEAVES YOU: ANTI-MEXICAN VIOLENCE IN TEXAS* 7 (2018).

¹⁰ See *id.* passim; see also Simon Romero, *Lynch Mobs Killed Latinos Across the West. The Fight to Remember These Atrocities is Just Starting.*, N.Y. TIMES (Mar. 2, 2019), <https://www.nytimes.com/2019/03/02/us/porvenir-massacre-texas-mexicans.html>, archived at <https://perma.cc/96R8-XH2F>.

¹¹ MARTÍNEZ, *supra* note 9, at 243.

¹² See, e.g., Romero, *supra* note 10 (citing Martínez); Carlos Kevin Blanton, *The Secret History of Anti-Mexican Violence in Texas*, TEX. MONTHLY (October 2018) <https://www.texasmonthly.com/arts-entertainment/anti-mexican-violence-in-texas/>, archived at <https://perma.cc/47NJ-84NY> (reviewing Martínez’s book).

¹³ MARTÍNEZ, *supra* note 9.

lasting, pervasive atmosphere of terror.”¹⁴ Her book is an important contribution to the vital process of critical remembering—i.e., of amplifying the voices and memories of survivors of violence, and of “refus[ing] the impulse of official state history to create one monolithic interpretation of the past.”¹⁵ Thus, rather than accepting the conventional interpretation of Texas and American history, Martinez challenges her readers to “reckon with the fact that the southern border of our country was created—and policed—violently, and not valiantly, and that we have continually suppressed this truer, more accurate past. It is a past that bleeds into the present a suppression that continues to shape our future.”¹⁶

Despite the significance of Martinez’s book and its potential to deepen understandings of liberty and equality under the American constitutional order, it has received surprisingly little notice in the legal academic literature. Indeed, as of this writing, *The Injustice Never Leaves You* has been cited a mere six times and has not been the subject of a single review in Westlaw’s Secondary Sources database.¹⁷ This is itself a form of injustice. One of the goals of this Article is to remedy that injustice by emphasizing the extent of anti-Mexican violence in the early twentieth century through the lens of Professor Martinez’s work. Another goal is to analyze and explore the implications of that violence for the twenty-first century through the lens of the current legal and political climate. The Article pursues these goals in the following manner. Part I examines some of the main episodes of violence discussed in Professor Martinez’s book along with their connections to a broader legal and cultural regime of white supremacy. This Part also discusses Martinez’s methodology and sources, with particular attention to the importance of memory, erasure, narrative, and counter-narrative. Part II places an especially gruesome episode of anti-Mexican violence analyzed by Professor Martinez in conversation with another episode of anti-BIPOC violence that took place during the same time period—namely, the Tulsa Race Massacre of 1921. Both episodes have long been suppressed and under-examined in American historical memory, and both offer mutually-reinforcing lessons about white supremacy and the shared experiences of racialized groups. Finally, Part III draws upon these shared experiences to argue for greater solidarity among Black, Brown, and other BIPOC communities amidst ongoing attempts to otherize and divide those communities from one another.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 26.

¹⁶ *Id.* at 10.

¹⁷ WESTLAW search, July 20, 2022.

I. LYNCHING, MURDER, AND MEMORY

In the public mind, lynching is a form of violence perhaps most commonly associated with white perpetrators and Black victims.¹⁸ There are ample reasons to justify this association. Professor Barbara Holden-Smith has argued that while lynching has had a long and varied history in the United States, by the Progressive Era the practice “had taken on a decidedly racial character,” and “was inflicted almost exclusively by white Southerners upon black Southerners.”¹⁹ The National Memorial for Peace and Justice has documented more than 4,400 lynchings of Black Americans in an effort to confront this legacy of racial terrorism.²⁰

But as staggering as these numbers are, they do not come close to telling the full story of racialized violence in early twentieth century America. Anti-Mexican and Latinx violence is an important and frequently overlooked element of this narrative. More than a decade ago, Professor Richard Delgado commented upon the scholarly gap in documenting and analyzing hundreds of Latinx lynchings that occurred in Texas and other southwestern states.²¹ *The Injustice Never Leaves You* helps to fill that gap and to bring that history into stark relief. Chapter One of Martinez’s book focuses in particular on the lynching of Antonio Rodríguez that took place in Rocksprings, Texas in 1910.²² Rodríguez was apprehended by a posse of police officers and civilians after a white woman was found shot to death on her porch.²³ He was placed in the Edwards County Jail, but was taken from his cell by a mob later that same afternoon.²⁴ The mob “bound him to a barbed mesquite tree and encircled him with limbs of dry cedar. They saturated the heap with kerosene, set it on fire, and burned Rodríguez alive.”²⁵

Like her book as a whole, Martinez’s account of the Rodríguez lynching illustrates both the distinctive elements of anti-Mexican violence as well as its commonalities with contemporaneous anti-Black violence. Whereas many lynchings of Black Americans took place in areas of the American south where white supremacy was well established,²⁶ the lynching of Rodrí-

¹⁸ See, e.g., Romero, *supra* note 10 (noting that “[l]ynchings have long been associated with violence against African-Americans in the American South . . .”).

¹⁹ Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 *YALE J.L. & FEMINISM* 31, 36 (1996). Professor Holden-Smith defines the Progressive Era as running from approximately 1900 to the early 1920s. See *id.* at 31.

²⁰ The National Memorial for Peace and Justice, EQUAL JUSTICE INITIATIVE, <https://museumandmemorial.eji.org/memorial>, archived at <https://perma.cc/YE5A-TMZZ>; see also Campbell Robertson, *A Lynching Memorial Is Opening. The Country Has Never Seen Anything Like It.*, *N.Y. TIMES* (Apr. 25, 2018), <https://www.nytimes.com/2018/04/25/us/lynching-memorial-alabama.html>, archived at <https://perma.cc/U4XZ-XV62>.

²¹ Richard Delgado, *The Law of the Noose: A History of Latino Lynching Symposium: The Jenna Six, The Prosecutorial Conscience, and the Dead Hand of History*, 44 *HARV. C.R.-C.L. L. REV.* 297, 304–06 (2009).

²² MARTINEZ, *supra* note 9, at 30–75.

²³ *Id.* at 31.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Holden-Smith, *supra* note 19, at 35–37.

guez and other ethnic Mexicans occurred in regions where white economic and agricultural colonization was still taking hold.²⁷ White Americans were a numerical minority in areas along the Texas border with Mexico in the early 1900s,²⁸ but their numbers were rising rapidly in response to “media coverage that portrayed south Texas as having infinite economic potential that was wasted in the hands of inferior ethnic Mexicans incapable of developing the land.”²⁹ These capitalist incentives to displace, exploit, and terrorize the existing ethnic Mexican population in places like Texas intersected with many of the broader racist attitudes and structures that prevailed throughout the Jim Crow south. Martinez vividly describes the parallel system of “Juan Crow” that soon emerged:

Anglo farm settlers transformed the social and political landscape as well as the physical one. They ushered in Juan Crow laws of segregation and prohibited interracial marriages, formerly a part of the social fabric in mixed Anglo and Mexican communities. They insisted on the new code of social relations, which in turn initiated a new racial hierarchy They charged Mexican ranchers with using political machines to fill voting booths with droves of Mexicans seen as ignorant and unfit for participation in elections. According to Anglo settlers, ethnic Mexican residents did not merit the rights and privileges of Americans, despite their status as legal citizens and their long history in the region.³⁰

Nor did the parallels between white treatment of Black and Brown communities end at the systemic level. There were also gruesome similarities that existed in the individualized context of the Rodríguez lynching in particular. Many of the mob lynchings of Black victims in states like Georgia and Virginia “were open affairs in which scores, and sometimes thousands, of whites participated,”³¹ and were covered prominently by local newspapers.³² A similar public spectacle surrounded the mob lynching of Rodríguez: “[n]ewspapers later reported that thousands of local residents attended the lynching. The crowd that gathered to marvel at the sight of a live man burning to death went to great lengths to be there.”³³ Martinez makes the connection explicit, noting that “the decision to burn Antonio Rodríguez alive, in a slow, deliberate, and ritualized death, was more like the lynchings suffered by African American victims, which took place in public squares in broad daylight.”³⁴

²⁷ See MARTINEZ, *supra* note 9, at 10–22.

²⁸ *Id.* at 17.

²⁹ *Id.* at 15.

³⁰ *Id.* at 16.

³¹ Holden-Smith, *supra* note 19, at 36.

³² See *id.* at 37.

³³ MARTINEZ, *supra* note 9, at 31.

³⁴ *Id.*

In a further parallel to the lynchings of Black Americans, which frequently went unpunished,³⁵ the lynching of Antonio Rodríguez likewise did not result in any indictments of the local police who failed to keep Rodríguez safe or members of the mob that set him alight.³⁶ Mexican diplomats began to pressure the United States for financial reparations for the murders of Mexican nationals like Rodríguez, leading some U.S. officials to advocate for federal jurisdiction over cases involving assaults on foreign citizens—but not necessarily out of concern for the victims of those assaults. Instead, the motivation appears to have been analogous to Derrick Bell’s principle of “interests convergence.”³⁷ This principle holds that the interests of racialized minorities will only be advanced when those interests converge with the interests of the white majority.³⁸ Martínez specifically cites the arguments advanced by U.S. Attorney W.H. Atwell, who “did not describe the victims of lynchings, the survivors, or the tormented witnesses as his primary concern. In his eyes, the abuse of foreigners in the United States threatened American citizens abroad but also American colonial and commercial holdings.”³⁹ Even these self-interested calls for reform went unheeded.⁴⁰ Instead, the narrative surrounding Rodríguez’s life and citizenship simply shifted. While initial newspaper coverage described Rodríguez as a Mexican—“an isolated and menacing foreigner”⁴¹—later accounts alleged that he was actually an American citizen whose lynching was not a proper subject of concern for Mexican diplomats.⁴² Justice would thus once again be denied. Other lynchings followed—some involving teenage boys as victims—and would also go unpunished.⁴³

The struggle for justice for Rodríguez and other lynching victims would extend beyond the legal system and into the realm of public memory. As well-publicized as the Rodríguez lynching was, American media accounts often sought to justify his murder. Such attempted justifications once again paralleled some of the most oft-invoked defenses for the lynching of Black men in the South: the supposed need to protect white women from rape and sexual predation.⁴⁴ Martínez gives the example of an editorial from the *New York Times* opining that “the action of the mob was justified as the

³⁵ Holden-Smith, *supra* note 19, at 39 (“Throughout the Progressive Era, lynching remained a brutal crime that went largely uninvestigated, unprosecuted, unpunished, and undeterred by the agents of law at every level of government.”).

³⁶ See MARTÍNEZ, *supra* note 9, at 41.

³⁷ See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (explaining that the interest convergence principle provides that “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”).

³⁸ See *id.*

³⁹ MARTÍNEZ, *supra* note 9, at 42.

⁴⁰ See *id.*

⁴¹ *Id.* at 43.

⁴² *Id.*

⁴³ See *id.* at 48.

⁴⁴ See *id.* at 35; see also Holden-Smith, *supra* note 19 at 37–38 (“[T]he most persistent defense of lynching articulated by Southerners involved blacks’ supposed inclination to commit one particular, serious violation of the criminal law: White men murdered black men by

lives of ranchers' wives had been unsafe because of the attempted ravages of Mexican settlers along the Rio Grande."⁴⁵ A version of this narrative remains entrenched among many white residents of Rocksprings to this day.⁴⁶ But a counter-narrative also lives on—one that has been sustained not by accounts published in American newspapers of record, but by oral histories and critical memories passed down among families, field workers, and other members of the Mexican community across generations.⁴⁷ This narrative expresses moral outrage at the fact that a white mob burned Rodríguez alive without a trial or evidence of his guilt, and that those who committed this atrocity were never punished, leaving local ethnic Mexicans to live in a state of fear.⁴⁸ Obtaining official recognition of this narrative has proven to be an elusive goal. In response to a request from some Rocksprings residents who "saw a need for official state acknowledgement of the history of racial violence and condemnation of mob brutality," Martínez herself submitted an application to the Texas State Historical Association for a marker to commemorate the Rodríguez lynching.⁴⁹ Her application was repeatedly denied.⁵⁰

The disconnect between official history and critical memory is further illustrated by a second major episode of anti-Mexican violence discussed in Martínez's book. Chapter Two is situated in the midst of an especially violent time in south Texas known as *la matanza*—"a period of indiscriminate murder of ethnic Mexicans without fear of prosecution."⁵¹ During the single year between the summers of 1915 and 1916, up to 300 ethnic Mexicans are estimated to have been killed.⁵² Martínez notes that tabulating exact numbers of victims and identifying them by name is challenging, in part because of official acts of erasure. "When police shootings were recorded in the 1910s, the dead were generally not named; instead they were categorized—as bandit, thief, or other labels that criminalize the deceased."⁵³ Identification was made more difficult still by "[t]he common practice of leaving dead bodies to decompose beyond recognition and failing to write death certificates."⁵⁴ One of Martínez's goals "is to disrupt those long-held patterns of erasure by naming the known victims."⁵⁵

Two such victims were Jesus Bazán and his son-in-law, Antonio Longoria. Both men were members of prominent local families; Bazán was an American citizen and longtime property owner in the community, while

gun, rope, and burning, Southerners argued, because of the black man's propensity for raping white women.").

⁴⁵ MARTÍNEZ, *supra* note 9, at 35.

⁴⁶ *See id.* at 55–56.

⁴⁷ *See id.* at 52–55.

⁴⁸ *Id.* at 56.

⁴⁹ *Id.* at 75.

⁵⁰ *See id.*

⁵¹ *Id.* at 77.

⁵² *Id.*

⁵³ *Id.* at 79.

⁵⁴ *Id.*

⁵⁵ *Id.*

Longoria was a well-respected Hidalgo County Commissioner.⁵⁶ Yet as Martinez emphasizes, “[c]itizenship, political positions, and social prominence did not offer ethnic Mexicans protections from violence.”⁵⁷ The murders of Bazán and Longoria graphically prove the point. In 1915, the two men visited a Texas Ranger camp to report a robbery that had taken place on their ranch.⁵⁸ Witnesses recalled that after Bazán and Longoria left on horseback, Ranger Captain Henry Ransom and two civilians followed them in a car. One of the passengers reached outside the car and shot Bazán and Longoria in the back, leaving them dead on the side of the road.⁵⁹ Martinez recounts Ransom’s actions after the shooting chillingly:

Captain Ransom . . . had a reputation for violence and for abusing his power. When he returned to the camp, he warned witnesses not to bury or move the bodies. He intended for the corpses to be left to decay in the hot summer air, to intimidate all who encountered them. Ransom forced the victims’ neighbors and friends to endure an extreme act of disrespect by denying Bazán and Longoria a proper burial. As the appalling news swirled through the ranch, witnesses reported that Captain Ransom, seemingly unfazed, returned to his campsite to take a nap.⁶⁰

This double-murder in broad daylight resulted in no investigation, arrests, or prosecutions.⁶¹ Local authorities did not even visit the bodies or issue death certificates.⁶² None of this is surprising in light of the racist and oppressive climate in south Texas that Martinez describes. In the context of regional turbulence linked to the ongoing Mexican Revolution and in response to requests from white landowners concerned about raids to local ranches and infrastructure, the U.S. government increased the number of federal troops along the border to over 100,000 by 1916.⁶³ When this proved insufficient to allay white fear of “the menacing Mexican revolutionary and bandit,”⁶⁴ the state dramatically increased the number of Texas Rangers stationed on ranches and in towns. Many of these Rangers were untrained: “[m]en who received special Ranger appointments did not need prior experience in the military or in law enforcement,”⁶⁵ and even sympathetic historians admit that some were “incompetent.”⁶⁶ Notwithstanding their lack of training, Rangers “received wide support from the governor’s office to use any means necessary to exert control over the border region.”⁶⁷ The result

⁵⁶ *See id.* at 80.

⁵⁷ *Id.*

⁵⁸ *See id.* at 78.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *See id.* at 83–84.

⁶⁴ *Id.* at 18.

⁶⁵ *Id.* at 88.

⁶⁶ *Id.*

⁶⁷ *Id.*

was racial profiling of a most violent and deadly sort. “Rangers initiated a revenge-by-proxy technique, killing ethnic Mexicans, regardless of evidence of guilt, merely for being in the approximate location of a crime. They profiled any ethnic Mexican as a Mexican bandit and made arrests and then left prisoners vulnerable to mob violence.”⁶⁸ The scope of the violence bears repeating: hundreds of ethnic Mexicans were killed in this manner. Many victims remained nameless, and justice for their families remained elusive.⁶⁹

Indeed, Martínez is able to identify Bazán and Longoria themselves by name not because their killers were prosecuted or because their deaths were documented in official records—to the contrary, no such records appear to exist.⁷⁰ Instead, their names and their story can be told because of critical remembering and vernacular history.⁷¹ As Martínez explains, “[w]e know of this act of extralegal violence because of the friends and neighbors who were left to pick up the remains of Bazán and Longoria. After they buried the dead, these people preserved the details of the event and . . . shared that loss with the next generation.”⁷²

This legacy of remembrance is carried on today by descendants of those who experienced the loss first hand. One such descendant is Norma Longoria Rodríguez, the granddaughter of Antonio Longoria and great-granddaughter of Jesus Bazán. Rodríguez has spent decades filling the lacunae in official records by interviewing relatives, assembling family papers, and publishing narratives of death and survival online and in local newspapers.⁷³ Another such descendant is Kirby Warnock, the grandson of a ranch hand who helped to bury the bodies of Bazán and Longoria in 1915.⁷⁴ In 2004, Warnock completed a documentary film that amplified his grandfather’s account of the Texas Ranger’s role in shooting these two unarmed men in the back.⁷⁵ The film challenged viewers to critically re-examine the twin myths that Rangers who participated in racial violence were heroes while the ethnic Mexicans who suffered from such violence were bandits.⁷⁶ The filmmaker also challenged the public to confront the ways in which extrajudicial violence against anyone suspected of being a “bandit” was often used in an attempt to dispossess and displace ethnic Mexican landowners like Bazán and Longoria.⁷⁷ The acts of critical remembering by people like Rodríguez and Warnock help give voice to the often unspoken trauma of those for whom “the state’s icons are not heroes but painful reminders of past violence,”⁷⁸ and whose pain is “exacerbated by the disavowal of this period of

⁶⁸ *Id.* at 89.

⁶⁹ *See id.* at 96.

⁷⁰ *Id.* at 98.

⁷¹ *See id.* at 82–83, 98.

⁷² *Id.* at 98.

⁷³ *See id.* at 110–18.

⁷⁴ *See id.* at 105.

⁷⁵ *See id.* at 104–10.

⁷⁶ *See id.* at 108–09.

⁷⁷ *See id.* at 110.

⁷⁸ *Id.*

state terror in public history exhibits, popular culture, and public school textbooks.”⁷⁹

Predictably, such narratives that run counter to the established cultural framework have been resisted and rejected by defenders of the Texas Rangers and their iconic status. After the release of Warnock’s film, a spokesperson for the Texas Department of Public Safety maintained that the events of 1915 had no current relevance, and argued that the documentary unfairly tarnished the Rangers’ reputation.⁸⁰ Another defender claimed that Warnock merely had “a vendetta against the Rangers.”⁸¹ These responses suggest both the potential power of counter-narratives and the obstacles that they invariably face. Critical Race Theory has long recognized the importance of narrative as a means to challenge the status quo and “subvert the dominant discourse.”⁸² Opponents may charge that such reliance on narrative amounts to an unscholarly abandonment of rational analysis and the search for truth.⁸³ But Martinez’s work demonstrates that the myth of the Texas Ranger as noble hero and the ethnic Mexican as sinister bandit is itself neither the product of rational analysis nor an objective “truth”; it is merely a white narrative constructed and maintained by erasing and suppressing Brown counternarratives. In Part II below, this point is illustrated more powerfully still by an examination of one of the most gruesome acts of Ranger violence in Texas history: the Porvenir Massacre of 1918. This episode is then put in conversation with the Tulsa Race Massacre of 1921 to emphasize some of the commonalities in the experiences of Black and Brown communities in early twentieth century America, and to highlight the struggle to commemorate and reckon with those experiences today.

II. MASSACRE AND ERASURE

As the events described in Part I make clear, ethnic Mexicans in Texas lived under a reign of terror during the early 1900s. The extra-judicial killings of Antonio Rodríguez, Jesus Bazán, and Antonio Longoria are illustrative examples of the kind of violence many other ethnic Mexicans suffered. Literally hundreds of victims met a similar fate—some after being ethnically profiled and suspected of sexual offenses or banditry, others after being accused of practicing witchcraft or refusing to play the fiddle.⁸⁴ But perhaps

⁷⁹ *Id.*

⁸⁰ *See id.* at 108–09.

⁸¹ *Id.* at 109.

⁸² Margaret E. Montoya, *Mascaras, Trenzas, y Grednas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHICANO-LATINO L. REV. 1, 2 (1994); *see also, e.g.*, Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988); RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 44–57 (3d ed. 2017).

⁸³ *See* Richard A. Posner, *The Skin Trade*, in THE NEW REPUBLIC 40, 42 (October 13, 1997).

⁸⁴ *See, e.g.*, Romero, *supra* note 10 (“Reasons for these lynchings varied wildly, including accusations of cattle theft, murder, cheating at card, refusing to play the fiddle, shouting ‘Viva

the most egregious single episode of anti-Mexican violence during this period took place in the town of Porvenir in 1918. The community was largely comprised of ethnic Mexican landowners and farmers.⁸⁵ In the small hours of January 28, a company of Texas Rangers and a group of white ranchers roused the sleeping residents and rounded up fifteen men and boys.⁸⁶ The prisoners ranged in age from sixteen to sixty-four years old.⁸⁷ They were taken to a nearby bluff and summarily shot at close range.⁸⁸ A U.S. Cavalry private who had been ordered to assist the Rangers in waking and assembling the residents described what he saw:

At the foot of the bluff we could see a mass of bodies, but not a single movement. The bodies lay in every conceivable position As soon as we were close, we smelled the nauseating sweetish smell of blood, and when we could see, we saw the most hellish sight that any of us had ever witnessed. It reminded me of a slaughterhouse. A hospital corpsman who was with us went over the bodies, but not a breath of life was left in a single one. The professionals had done their work well.⁸⁹

The aftermath of the massacre followed a familiar pattern. The Rangers involved in the atrocity filed reports claiming they had come under fire while questioning the Porvenir residents about their collusion with local bandits, and that they had simply fired back in self-defense.⁹⁰ The white ranchers who had participated backed this account, and characterized the dead as propertyless peons who relied on theft to support themselves rather than as the landowners and farmers that they actually were.⁹¹ Sympathetic newspapers likewise described the victims as suspected bandits.⁹² Once again, none of the men who committed this massacre were ever indicted or prosecuted.⁹³

Having been denied justice by the Texas government, some survivors of Porvenir turned to the Mexican government for redress.⁹⁴ The need to file such an appeal is itself a striking demonstration of the limits of U.S. law as a guarantor of basic rights for racial and ethnic minorities.⁹⁵ As early as 1886, the Supreme Court had held that the Fourteenth Amendment's Due Process and Equal Protection Clauses were "not confined to the protection of citizens. [Its] provisions are universal in their application, to all persons within

Diaz!"—even witchcraft."); Delgado, *supra* note 21, at 299 (listing reasons for lynchings as "acting 'uppity,' taking away jobs, making advances toward a white woman, cheating at cards, practicing 'witchcraft,' and refusing to leave land that Anglos coveted").

⁸⁵ MARTINEZ, *supra* note 9, at 126–28.

⁸⁶ *Id.* at 121–22.

⁸⁷ *Id.* at 122.

⁸⁸ *Id.* at 123.

⁸⁹ *Id.*

⁹⁰ *See id.* at 132–33.

⁹¹ *Id.*

⁹² *Id.* at 124.

⁹³ *Id.* at 133.

⁹⁴ *See id.* at 125.

⁹⁵ *See id.*

the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.”⁹⁶ Yet ethnic Mexicans living in Texas—citizens and noncitizens alike—were repeatedly deprived of both due process and equal protection under color of law throughout this period. For those who could avail themselves of the option, invoking the protections of Mexican citizenship may thus have been the only potential pathway to obtain some measure of justice.

The Mexican embassy conducted preliminary interviews and investigations that cleared the victims of involvement with local raids, and wrote to the U.S. Secretary of State demanding that he take action to punish the perpetrators of the massacre.⁹⁷ Mexican attorneys would also subsequently file suit on behalf of several Porvenir families against the United States through the U.S.-Mexico General Claims Commission.⁹⁸ These suits sought damages based on the government’s failure both to protect those who had been arrested by the Rangers and to prosecute those who had committed the mass murder.⁹⁹ In response, attorneys for the United States contested the Mexican nationality of the dead and their surviving relatives, maintained that the killings were justified, and insisted that an adequate governmental investigation had taken place.¹⁰⁰ No decision was ever reached on the merits of the Porvenir survivors’ claims. Instead, the cases were consolidated into a block settlement of all outstanding claims within the Commission’s remit—i.e., not only claims brought by Mexican citizens against the United States, but also claims brought by U.S. citizens against Mexico.¹⁰¹ The balance of this settlement was dramatically one-sided: \$40,000,000 was to be paid to the United States, while approximately \$500,000 was to be paid to Mexico.¹⁰² The settlement thus bore a striking resemblance to many consent decrees that emerge after “pattern and practice” investigations into civil rights violations by local police departments today: it provided a veneer of reform, but did not address the underlying injustice.¹⁰³ Indeed, as summarized by Martínez, “the commission masqueraded as a mechanism for justice, [and] it may have appeased some claimants with indemnities, but it simultaneously left violent systems of policing in place.”¹⁰⁴

While the international commission did not bring justice to the victims and survivors of Porvenir, diplomatic pressure did at least provide some impetus for further investigation by the Texas government. After receiving the initial demand for action from the Mexican embassy, the U.S. Secretary of State in turn wrote to the Governor of Texas and directed him to commence

⁹⁶ *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

⁹⁷ MARTÍNEZ, *supra* note 9, at 135.

⁹⁸ *See id.* at 147–59.

⁹⁹ *Id.* at 149.

¹⁰⁰ *Id.* at 150.

¹⁰¹ *See id.* at 153–54.

¹⁰² *Id.* at 153.

¹⁰³ *See, e.g., Butler, supra* note 7, at 1466–67.

¹⁰⁴ MARTÍNEZ, *supra* note 9, at 158.

an inquiry.¹⁰⁵ Additional pressure resulted from reports made by members of the U.S. Cavalry who had been present at Porvenir. One cavalry captain wrote to the Governor and described the events of January 28 as a “midnight murder” during which the Rangers “took out the owner of the ranch and fourteen others—all farmers and small stock owners and shot them to death. *There was not a single bandit in the fifteen men slain.*”¹⁰⁶ The captain declared the object of his letter to be “to call your attention to this unprovoked and wholesale murder by Texas Rangers in conjunction with ranchmen . . . and to request Your Excellency to have these Rangers removed at once.”¹⁰⁷ He added that “[n]o matter what *white-washed report* may have been made to you or to the Adjutant General, the facts herein are true and can be proven.”¹⁰⁸

In response to these developments, the Governor disbanded the Ranger Company that had been involved in the Porvenir massacre and pressured its captain, James Fox, to resign.¹⁰⁹ The state’s Adjutant General accepted the resignation and issued a public reply, in which he noted that the victims “were killed when they were under the custody of your men and after they had been arrested and unarmed. This was proven by all kinds of evidence, even by the confession of those who took part and by reports collected by this office.”¹¹⁰ The Adjutant General added that Fox’s compelled resignation was “in the interest of humanity, decency, law and order,”¹¹¹ and that “the laws of the constitution of this state must be superior to the autocratic will of any peace officer.”¹¹² Yet even this small measure of accountability proved to be short-lived. Fox was allowed to rejoin the Rangers as captain of another company just a few years later.¹¹³ Nor was Fox’s brief hiatus followed by any broader reckoning with the connection between Porvenir and systemic patterns of racialized violence committed by the Texas Rangers. To the contrary, when the Texas legislature convened a committee in 1919 to investigate abuses of power by state agents, the committee declined to consider the voluminous evidence of the Rangers’ role in the massacre.¹¹⁴

Anti-Mexican violence would consequently remain a largely unfronted and unpunished part of the Texas Rangers’ legacy. Importantly, anti-Black violence has also been an underexamined part of the Rangers’ legacy. Martinez notes that “[d]uring the state’s long history of chattel slavery, the Rangers tracked and punished enslaved people trying to cross the Rio Grande into Mexico to freedom They also terrorized ethnic Mexicans

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 135–36.

¹⁰⁷ *Id.* at 136.

¹⁰⁸ *Id.*

¹⁰⁹ *See id.*

¹¹⁰ *Id.* at 137.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.* at 139.

¹¹⁴ *See id.* at 138, 169.

accused of harboring runaway slaves.”¹¹⁵ Later, during the 1910s, the Rangers were involved in investigating local branches of the NAACP for suspected ties to communism and pressuring those groups to disband.¹¹⁶ In sum, “[a]lthough histories of anti-black and anti-Mexican violence have been segregated in popular memories of this period, the ideologies that condoned violence in Texas against those communities mutually informed and justified one another.”¹¹⁷

However, one of the worst episodes of anti-Black violence in the early twentieth century was committed not by Rangers in Texas but rather by white mobs in Oklahoma. The Tulsa Race Massacre took place from May 31 to June 1, 1921.¹¹⁸ White hordes devastated the Greenwood district, a Black community so prosperous that it was known as “Black Wall Street.”¹¹⁹ The emergence of this thriving Black residential and commercial district was itself a remarkable accomplishment in the context of Jim Crow. While the Supreme Court had declared the enforcement of racially restrictive zoning ordinances to be unconstitutional a few years earlier, it did so in the name of protecting the rights of a white owner to dispose of his property as he saw fit—not in the name of racial equality.¹²⁰ Moreover, the decision did nothing to disturb the doctrine of “separate but equal” set forth in *Plessy v. Ferguson*,¹²¹ and the enforcement of private restrictive covenants would not be invalidated for decades to come.¹²² Black entrepreneurs thus decided to purchase land in what was known as Oklahoma’s Indian Territory and create their own communities.¹²³ Greenwood flourished as a district “Built for Black People, by Black People.”¹²⁴ The Tulsa Race Massacre burned all of that to the ground. Hundreds of Black lives were extinguished, and millions of dollars of Black property was destroyed.¹²⁵

The origins of the massacre have much in common with the episodes of anti-Mexican violence described throughout *The Injustice Never Leaves You*. Some of the motivations may have been economic. For example, André

¹¹⁵ *Id.* at 11.

¹¹⁶ *See id.* at 219–20.

¹¹⁷ *Id.* at 174.

¹¹⁸ *See* TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RACE RIOT OF 1921 (2001), at iv.

¹¹⁹ *See, e.g.,* André Douglas Pond Cummings & Kalvin Graham, *Racial Capitalism and Race Massacres: Tulsa’s Black Wall Street and Elaine’s Sharecroppers*, 57 TULSA L. REV. 39, 43 (2021); Yulia Parshina-Kottas, Anjali Singhvi, Audra D.S. Burch, Troy Griggs, Mika Gröndahl, Lingdong Huang, Tim Wallace, Jeremy White & Josh Williams, *What the Tulsa Race Massacre Destroyed*, N.Y. TIMES (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html>, archived at <https://perma.cc/JTV3-S7BF>.

¹²⁰ *Buchanan v. Warley*, 245 U.S. 60, 75 (1917) (“The question now presented makes it pertinent to inquire into the constitutional right of the white man to sell his property to a colored man, having in view the legal status of the purchaser and occupant.”).

¹²¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896); *see also* *Buchanan*, 245 U.S. at 79 (distinguishing *Plessy*).

¹²² *See* *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).

¹²³ Cummings & Graham, *supra* note 119 at 43–44.

¹²⁴ *Id.* at 43.

¹²⁵ *See* Keeva Terry, *Black Assets Matter*, 57 TULSA L. REV. 197, 198 (2021); Parshina-Kottas, Singhvi, Burch, Gröndahl, Huang, Wallace, White & Williams, *supra* note 119.

Douglas Pond Cummings and Calvin Graham have argued that “[w]ith the enormous success of Black Wall Street and Greenwood’s Black citizenry, Tulsa’s white residents . . . began taking offen[s]e noting the upscale lifestyle of their fellow African American city dwellers that they deemed inferior.”¹²⁶ Similarly, Professor Martinez has noted that the success of ranchers like Jesus Bazán and Antonio Longoria served as a reminder to “newly arrived Anglo settlers that, in Texas, Mexicans had until recently been the colonizers of the region, the group that wielded the most political, economic, and social influence. Eliminating them, and other residents like them, helped Anglos secure supremacy in the region.”¹²⁷

But the immediate impetus to the Tulsa Race Massacre most closely resembles the backdrop to the lynchings of Antonio Rodríguez and so many other Black and Brown victims in the early twentieth century. A Black teenager named Dick Rowland entered a government building in search of a bathroom available for use by nonwhites, and was accused of sexually assaulting a young white woman in the elevator.¹²⁸ Rowland was arrested and taken to the county jail on May 31, 1921.¹²⁹ Local newspapers publicized the arrest the same day, and a crowd of hundreds of white people gathered outside the jail that night.¹³⁰ A group of Black military veterans reported to the courthouse and offered to help protect Rowland from the growing mob but were repeatedly turned away.¹³¹ A shot went off during a confrontation between one of the Black veterans and a white man, and the massacre began in earnest.¹³² As the Black men fled, members of the mob gathered outside police headquarters and were sworn in as “Special Deputies.”¹³³ Professor Suzette Malveaux summarizes what ensued:

[W]ithin a short period of time, less than twenty-four hours, the entire Greenwood District was destroyed by this white mob deputized by the City of Tulsa and the State of Oklahoma. The government literally armed its white citizens and deputized them, and gave them the authority to kill Black citizens This mob was unleashed on innocent men, women, and children. About three hundred African Americans were killed, that have been confirmed Ten thousand people were left homeless and the entire community burnt to the ground—destroying schools, dozens of churches, businesses, hospitals, and libraries. Everything was set on fire and the community was razed. We also know that machine

¹²⁶ Cummings & Graham, *supra* note 119, at 45–46.

¹²⁷ MARTINEZ, *supra* note 9, at 97.

¹²⁸ See TULSA RACE RIOT, *supra* note 118, at 57; see also Suzette Malveaux, *Tulsa Race Massacre Symposium Keynote Speech*, 57 TULSA L. REV. 19, 26 (2021).

¹²⁹ TULSA RACE RIOT, *supra* note 118, at 58–59.

¹³⁰ *Id.* at 59–60.

¹³¹ *Id.* at 61–63.

¹³² *Id.* at 63.

¹³³ *Id.* at 64.

guns were mounted on a hill and explosives were dropped from above.¹³⁴

Just as the prologue to the anti-Black massacre in Tulsa bore similarities to contemporaneous episodes of anti-Mexican violence in Texas, so too did the aftermath. Recall that no one was ever indicted or prosecuted for the murders of Antonio Rodríguez, Jesus Bazán, and Antonio Longoria, or the residents of Porvenir. Likewise, while a grand jury was convened in Tulsa to investigate the events of May 31 to June 1, not a single member of the white mob was even sent to prison for their role in the massacre.¹³⁵ Instead, the grand jury placed the blame for the rampage of death and destruction on those who were its targets. Its report concluded that “the recent race riot was the direct result of an effort on the part of a certain group of colored men who appeared at the courthouse . . . for the purpose of protecting one Dick Rowland.”¹³⁶ The report attributed further blame to “[c]ertain propaganda . . . which was accumulative in the minds of the Negro which led them as a people to believe in equal rights, social equality, and their ability to demand the same.”¹³⁷ Much like the survivors of the Porvenir massacre who never had their claims for damages adjudicated, none of the victims of the Tulsa Race Massacre have ever received compensation for their losses.¹³⁸

Another important similarity between the anti-Black violence of the Tulsa Race Massacre and contemporaneous anti-Mexican violence in places like Porvenir is to be found in the struggle to critically remember these episodes. Part of this struggle involves overcoming efforts to suppress and erase these massacres from public memory. As noted above,¹³⁹ the Texas Legislature refused to hear evidence of the Texas Rangers’ actions at Porvenir during its investigation into state law enforcement practices in 1919. Some Rangers and their supporters also made things difficult for those seeking to challenge their methods. State Representative José Canales, who introduced nineteen charges against the Rangers for the legislative committee’s consideration, faced intimidation by members of the force¹⁴⁰ and accusations from its defenders that his ethnic heritage made him “a foreign other with unconscious sympathies for Mexican bandits.”¹⁴¹ In the end, the committee issued a report that “thanked the Rangers force for its service and declared that the agents could not receive credit enough for the discharge of duties under dangerous and trying conditions.”¹⁴² And while the committee did find some

¹³⁴ Malveaux, *supra* note 128, at 28.

¹³⁵ See TULSA RACE RIOT, *supra* note 118, at 89; see also Tamara R. Piety, *Introduction—The Remains of the Day: Tulsa 1921:2021*, 57 TULSA L. REV. 3, 4 (2021).

¹³⁶ TULSA RACE RIOT, *supra* note 118, at 89.

¹³⁷ *Id.* at 167.

¹³⁸ See Lynne Marie Kohm, Katrina Sumner & Peyton Farley, *Empowering Black Wealth in the Shadow of the Tulsa Race Massacre*, 57 TULSA L. REV. 243, 249, 255 (2021); Parshina-Kottas, Singhvi, Burch, Griggs, Gröndahl, Huang, Wallace, White & Williams, *supra* note 119.

¹³⁹ See *supra* note 114 and accompanying text.

¹⁴⁰ See MARTINEZ, *supra* note 9, at 187–88.

¹⁴¹ *Id.* at 191.

¹⁴² *Id.* at 214 (internal quotation marks omitted).

charges of “unwarranted disregard of the rights of citizenship to be established by sufficient and competent evidence,”¹⁴³ it declined to recommend any prosecutions or even any changes in agency procedures.¹⁴⁴ In a final act of erasure, the state would archive the investigation and keep it from public view.¹⁴⁵

The absence of a public reckoning with the Porvenir massacre and numerous other acts of anti-Mexican violence has left private narratives as some of the most important sources of inter-generational memory. Martinez notes that “[f]or some who learned the history of the massacre, remembering became a political act of resistance that contained the possibility of shifting public dialogues and historical narratives.”¹⁴⁶ But survivors also want and deserve answers to fundamental questions of justice. “They want answers as to why, given all the evidence of this case, the assailants were never prosecuted. They want a judicial court to hear evidence and to rule that the United States was liable for the wrongful death of fifteen men in Porvenir in 1918.”¹⁴⁷ Even obtaining a marker from the Texas Historical Commission documenting the massacre proved to be an arduous, century-long process. Such a marker was finally installed in late 2018, but only after objections from a member of the commission who argued that it would be used “by militant Hispanics looking for reparations.”¹⁴⁸

Analogous obstacles and acts of erasure confronted the survivors of the Tulsa Race Massacre. Professor Malveaux, who represented Tulsa victims for several years in a pro bono capacity,¹⁴⁹ has written that “city and state officials buried evidence and discouraged litigation, making it impossible for the victims to produce the record needed to prevail.”¹⁵⁰ Many victims were buried in unmarked graves, history books excluded the massacre from their pages, and children were not taught about it in schools.¹⁵¹ Indeed, the truth had been so deeply buried that as recently as 1997, the mayor of Tulsa reportedly did not even know that the massacre had ever taken place.¹⁵² Memories were thus left to be guarded and passed on by word of mouth and personal narratives for generations.¹⁵³ As with Porvenir, official acknowledgement did not begin to arrive until many decades after the massacre itself. In the case of Tulsa, this acknowledgement came in the form of a report commissioned by the State of Oklahoma that was released in 2001.¹⁵⁴ The

¹⁴³ *Id.* at 215 (internal quotation marks omitted).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 223.

¹⁴⁶ *Id.* at 170.

¹⁴⁷ *Id.*

¹⁴⁸ Romero, *supra* note 10 (internal quotation marks omitted).

¹⁴⁹ Malveaux, *supra* note 128, at 23.

¹⁵⁰ *Id.* at 29.

¹⁵¹ *See id.* at 29–30; *see also* Campbell Robertson, *A Search for Hallowed Ground*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/interactive/2020/07/17/us/tulsa-massacre-mass-graves.html>, archived at <https://perma.cc/3Y2A-4X6J>.

¹⁵² Malveaux, *supra* note 128, at 30.

¹⁵³ *See* Robertson, *supra* note 151.

¹⁵⁴ TULSA RACE RIOT, *supra* note 118.

city only started excavating possible mass graves more recently still, in 2020.¹⁵⁵

There are thus numerous parallels between Porvenir and Tulsa, and the broader contexts in which they occurred. To be sure, there are significant differences between the two massacres in terms of the scope and scale of devastation that each wrought. But while these differences should not be ignored, neither should they obscure the commonalities between the two events nor the similarities in the experiences of Black and Brown communities in the early twentieth century. The two massacres occurred contemporaneously in climates of legalized racial segregation and white supremacy: Jim Crow for Black Americans, Juan Crow for ethnic Mexicans. Despite the publicity surrounding each massacre and the official investigations that followed, neither resulted in justice for its victims. To the contrary, the targets of white violence would be blamed for bringing it upon themselves and vilified as bandits and agitators. And both massacres would be erased from public narratives for generations, leaving the victims and their descendants to carry on the task of critical remembering for themselves in the face of entrenched opposition from official custodians of history. Now that these long-suppressed counter narratives are finally beginning to receive greater public attention, what implications do they have for racial justice and solidarity today? Part III takes up that question below.

III. RECLAIMING HISTORY AND EMBRACING SOLIDARITY

Building and maintaining solidarity among BIPOC communities has not been a simple project. Even the term “BIPOC” itself has fostered occasional division: while it aspires to be inclusive and unifying, it has sometimes been criticized for conflating the experiences of different racialized groups or for creating hierarchies among communities of color.¹⁵⁶ Advocates for racial justice and solidarity have also faced efforts from opponents who are keen to otherize and divide people of color from one another. The ongoing lawsuit against Harvard University’s race-conscious admissions program is in keeping with this strategy.¹⁵⁷ The named plaintiff is an organization led by a white legal strategist who recruited unsuccessful applicants for admission to allege that the universities’ use of race discriminates against Asian Americans.¹⁵⁸ The racially divisive nature of the suit is evident: eliminating an admission program to remove an alleged disadvantage on Asian appli-

¹⁵⁵ See Robertson, *supra* note 151.

¹⁵⁶ See, e.g., Meera E. Deo, *Why BIPOC Fails*, 107 VA. L. REV. ONLINE 115 (2021); Garcia, *supra* note 1; see also Reyes, *supra* note 5, at 278 n. 25.

¹⁵⁷ See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157, 188 (1st Cir. 2020) (holding that admissions program did not violate Title VI of the Civil Rights Act of 1964), *cert. granted*, 142 S. Ct. 895 (2022).

¹⁵⁸ See *id.* at 163–65; see also Philip Lee, *Rejecting Honorary Whiteness: Asian Americans and the Attack on Race-Conscious Admissions*, 70 EMORY L.J. 1475, 1475 (2021) (“SFFA, led by a white conservative crusader against affirmative action, recruited Asian Americans to serve as plaintiffs in a case designed to end race-conscious admissions.”).

cants would concomitantly impose a disadvantage on Black and Latinx applicants by prohibiting admissions officers from giving weight to the realities of racial inequality and educational opportunity.¹⁵⁹ It further fosters division by exploiting the “model minority” stereotype that casts Asians as invariably hard-working and successful.¹⁶⁰ The implication is that if other minority applicants would work equally hard, there would be no need for affirmative action or related governmental programs.¹⁶¹ Scholars have argued that this kind of “racial triangulation” otherizes Asian Americans from Black Americans with particular force,¹⁶² and functions as an invitation for Asians to partake in “honorary whiteness.”¹⁶³

The practice of claiming affinity with white Americans by defining oneself in contrast to Black Americans has a long history. As Professor Cheryl Harris has argued, “[w]hiteness was . . . central to national identity and to the republican project. The amalgamation of various European strains into an American identity was facilitated by an oppositional definition of Black as ‘other.’”¹⁶⁴ Nor has the inclination to self-identify as white been limited to those of European ancestry. Professor Ian Haney López has noted that even among those who took pride in their ethnicity and advocated for greater equality for minorities, many Mexican-American leaders in the mid-twentieth century identified as racially white—an assertion that “reflected the cultural premium American society placed on being white,”¹⁶⁵ and which was “at root an attempt to locate oneself at or near the top of the racial hierarchy that forms an intrinsic part of U.S. society.”¹⁶⁶ Again, a corollary to this act of self-identification was self-distancing from Black people. López explains that this “racial antipathy . . . rang[ed] from a widespread unwillingness to find common cause with African Americans to the expression of white supremacist ideas regarding black inferiority.”¹⁶⁷

The racial distinction between Mexican Americans and Black Americans has also been reinforced by several important civil rights cases that might otherwise be regarded as racially “progressive.” Take the example of *Mendez v. Westminster School District of Orange County*.¹⁶⁸ There, in a case that preceded *Brown v. Board of Education*¹⁶⁹ by several years, the plaintiffs brought suit to enjoin the practice of segregating children of Mexican ancestry into schools separate from those attended by white children. The district court upheld the plaintiffs’ claim under the Equal Protection Clause of the

¹⁵⁹ See Lee, *supra* note 158, at 1490–94.

¹⁶⁰ See *id.* at 1494–98; see also Vinay Harpalani, *Asian Americans, Racial Stereotypes, and Elite University Admissions*, 102 B.U. L. REV. 233, 310–12 (2022).

¹⁶¹ See Harpalani, *supra* note 160, at 310.

¹⁶² See *id.* at 309.

¹⁶³ See Lee, *supra* note 158, at 1498–506.

¹⁶⁴ Harris, *supra* note 3, at 1742.

¹⁶⁵ Ian Haney López, *White Latinos*, 6 HARV. LATINO L. REV. 1, 3 (2003).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ 64 F. Supp. 544 (S.D. Cal. 1946), *aff’d*, 161 F.2d 774 (9th Cir. 1947).

¹⁶⁹ 347 U.S. 483, 495 (1954) (holding that in the context of public education, segregated schools are inherently unequal under the Fourteenth Amendment).

Fourteenth Amendment. In language that would anticipate the holding of *Brown*, the court wrote that the constitutional command of equal protection was not satisfied merely “by furnishing in separate schools the same technical facilities, text books and courses of instruction A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage.”¹⁷⁰ However, the court also expressly noted that there was “no question of race discrimination in this action.”¹⁷¹ The implication was that the outcome might have been different had the case involved the segregation of children who *were* of a different race—such as Black children. This implication featured even more prominently when the case was reviewed on appeal. The Ninth Circuit upheld the district court’s judgment, but not with reference to fundamental principles of equality. Indeed, the appellate court declared that it would not be “tempted by the siren who calls to us” to opine on the constitutional viability of racial segregation as such.¹⁷² Instead, the court ruled more narrowly on the basis of California statutory law, which only provided for segregation between “the great races of mankind”—not within those races.¹⁷³ Because children of Mexican ancestry were not of a separate “race” from white children, they could not be sent to separate schools. Yet by framing the issue as primarily one of statutory construction rather than fundamental justice, the court left the rights of Black schoolchildren in a much more uncertain state than the rights of Mexican schoolchildren.¹⁷⁴

Another important example is *Hernandez v. Texas*.¹⁷⁵ The case presented a Fourteenth Amendment challenge to a conviction based on the systematic exclusion of persons of Mexican descent from jury service. The U.S. Supreme Court upheld the petitioner’s claim, emphasizing that people of Mexican ancestry constituted a “separate class” from whites in the local jurisdiction and had been subject to discrimination.¹⁷⁶ The Court cited the following illustrative facts:

The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing ‘No Mexicans Served.’ On the courthouse grounds at the time of the hearing, there were

¹⁷⁰ 64 F. Supp. at 549.

¹⁷¹ *Id.* at 546.

¹⁷² 161 F.2d at 780.

¹⁷³ *Id.*

¹⁷⁴ Despite the limitations of its holding for Black schoolchildren, the *Mendez* decision may have provided an impetus for the repeal of California’s school segregation statutes and helped to lay a foundation for the U.S. Supreme Court’s eventual holding in *Brown*. See Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CAL. L. REV. 1213, 1243–47 (1997).

¹⁷⁵ 347 U.S. 475 (1954).

¹⁷⁶ *Id.* at 479.

two men's toilets, one unmarked, and the other marked 'Colored Men' and 'Hombres Aqui' ('Men Here').¹⁷⁷

These details bear obvious similarities to the kind of racial discrimination suffered by Black people under Jim Crow, to the point where both Mexican Americans and Black Americans are jointly relegated to the same segregated toilet facilities used by non-whites. But notwithstanding this evidence that ethnic Mexicans were being treated as a racialized group,¹⁷⁸ the Court explicitly framed the case as one involving discrimination "on grounds other than race or color."¹⁷⁹ This framing appears to have been much in keeping with how LULAC, a Mexican-American civil rights organization representing Hernandez, preferred it.¹⁸⁰ According to Professor López, in both the *Hernandez* litigation and other civil rights cases, LULAC consistently argued that Mexican Americans were members of the white race.¹⁸¹ This has been labelled the "other white" strategy—i.e., advocates maintained that Mexican Americans were "other whites" rather than an "other race," and "consequently, no basis existed for subjecting [them] to racial segregation of the sort imposed on blacks."¹⁸²

Other forms of distancing engaged in by Mexican Americans relative to Black Americans continue to this day. For instance, voting patterns in recent elections suggest an emerging political division between Black and Brown communities. Both Black and Latinx voters have traditionally identified as Democratic by large margins,¹⁸³ and both demographic groups overwhelmingly supported Joe Biden over Donald Trump in the most recent presidential campaign.¹⁸⁴ However, these overall results may mask the significant increase in Latinx support for Trump in the 2020 election relative to the 2016 election.¹⁸⁵ One of the most dramatic shifts in the country occurred among

¹⁷⁷ *Id.* at 479–80.

¹⁷⁸ For further analysis of the ways in which the facts of *Hernandez* are indicative of the racialization of Mexican Americans, see Ian Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CAL. L. REV. 1143 (1997).

¹⁷⁹ *Hernandez*, 347 U.S. at 477.

¹⁸⁰ See López, *supra* note 178, at 1164–66.

¹⁸¹ *Id.*

¹⁸² See López, *supra* note 165, at 2.

¹⁸³ See Pew Research Center, *In Changing U.S. Electorate, Race and Education Remain Stark Dividing Lines*, (June 2, 2020), <https://www.pewresearch.org/politics/2020/06/02/democratic-edge-in-party-identification-narrows-slightly/>, archived at <https://perma.cc/8X5K-TDQM> (finding that 83% of Black voters and 63% of Hispanic voters identify with or lean toward the Democratic Party).

¹⁸⁴ Michael Andre, Aliza Aufrichtig, Gray Beltran, Matthew Bloch, Larry Buchanan, Andrew Chavez, Nate Cohn, Matthew Conlen, Annie Daniel, Asmaa Elkeurti, Andrew Fischer, Josh Holder, Will Houp, Jonathan Huang, Josh Katz, Aaron Krolik, Jasmine C. Lee, Rebecca Lieberman, Llana Marcus, Jaymin Patel, Charlie Smart, Ben Smithgall, Umi Syam, Rumsey Taylor, Miles Watkins & Isaac White, *National Exit Polls: How Different Groups Voted*, N.Y. TIMES (Nov. 3, 2020), <https://www.nytimes.com/interactive/2020/11/03/us/elections/exit-polls-president.html>, archived at <https://perma.cc/C7JT-FE2L> (showing that 87% of Black voters and 65% of Latinx voters cast their ballots for Biden in 2020).

¹⁸⁵ See, e.g., Jennifer Medina & Lisa Lerer, *Latino Voters Moved Toward Republicans. Now Biden Wants Them Back*, N.Y. TIMES (July 27, 2021), <https://www.nytimes.com/2021/07/27/us/politics/latino-voters-biden-democrats.html>, archived at <https://perma.cc/X4LW-6NJR>;

Mexican American voters in South Texas¹⁸⁶—the very region where so many of the acts of violence described in this Article took place. While the reasons for this shift are complex and defy simple explanation,¹⁸⁷ issues of racial and ethnic identity appear to be playing at least some role.¹⁸⁸ Vast majorities of Mexican Americans in South Texas self-identify as white for purposes of the U.S. Census, and many do not see themselves as people of color at all.¹⁸⁹ Conservative Latinx voters in the region expressed much less enthusiasm for reform measures related to law enforcement and immigration that were supported by some other BIPOC communities, and instead were more likely to support issues like “border security.”¹⁹⁰

All of these divisions are enabled by suppressing critical narratives and erasing common histories of racialized violence. As Professor Martinez emphasizes, “[d]ominant groups have the potential to utilize collective memories to assert both cultural and social power over entire populations through the politics of memory.”¹⁹¹ The architects and curators of official history in Texas have used this power to build a “Texas creation myth, which instill[s] ideological principles of freedom and democracy into a simplistic racial narrative: Anglos are superior to racial and ethnic minorities.”¹⁹² Given the enduring power of this established narrative framework, it is hardly surprising that many Mexican Americans would wish to associate themselves with whiteness and enjoy its superior privileges.¹⁹³ It is therefore all the more essential to destabilize this false narrative by confronting it with counternarratives that are informed by a fuller reckoning with the past. For if “[h]istorical memory shapes affinities of belonging and claims of citizen-

Giovanni Russonello & Patricia Mazzei, *Trump’s Latino Support Was More Widespread Than Thought, Report Finds*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2021/04/02/us/politics/trump-latino-voters-2020.html>, archived at <https://perma.cc/BZV8-NNJT>.

¹⁸⁶ See Keith Collins, Ford Fessenden, Lazaro Gamio, Rich Harris, John Keefe, Denise Lu, Eleanor Lutz, Amy Schoenfeld Walker, Derek Watkins & Karen Yourish, *Hispanic Voters Deliver a Texas Win for Trump*, N.Y. TIMES (Nov. 10, 2020), <https://www.nytimes.com/interactive/2020/11/05/us/texas-election-results.html>, archived at <https://perma.cc/8R55-G6QT>; Jack Herrera, *Why Democrats Are Losing Texas Latinos*, TEX. MONTHLY (October 2021), <https://www.texasmonthly.com/news-politics/democrats-losing-texas-latinos-trump/>, archived at <https://perma.cc/3RVR-RF6F>.

¹⁸⁷ See, e.g., Jennifer Medina, *In South Texas, Hispanic Republicans Try to Cement the Party’s Gains*, N.Y. TIMES (May 2, 2021), <https://www.nytimes.com/2021/05/02/us/politics/hispanic-republicans-texas.html>, archived at <https://perma.cc/99BQ-L27J>; Russonello & Mazzei, *supra* note 185.

¹⁸⁸ See Herrera, *supra* note 186.

¹⁸⁹ See *id.*

¹⁹⁰ See *id.*; see also Jennifer Medina, *The Rise of the Far-Right Latina*, N.Y. TIMES (July 6, 2022), <https://www.nytimes.com/2022/07/06/us/politics/mayra-flores-latina-republicans.html>, archived at <https://perma.cc/5ZQ8-CCEB>; Jennifer Medina, *A Vexing Question for Democrats: What Drives Latino Men to Republicans?*, N.Y. TIMES (Mar. 5, 2021), <https://www.nytimes.com/2021/03/05/us/politics/latino-voters-democrats.html>, archived at <https://perma.cc/3TAK-KQBK>.

¹⁹¹ MARTINEZ, *supra* note 9, at 230.

¹⁹² *Id.*

¹⁹³ See Harris, *supra* note 3, at 1741 (citing and discussing W.E.B. Du Bois and his idea of the “public and psychological wage” of whiteness).

ship,”¹⁹⁴ then the absence of memory impedes the formation of affinities of belonging and claims of solidarity where they might otherwise exist. Recovering memories of anti-Mexican violence and placing them in conversation with parallel patterns of anti-Black violence helps to break down those barriers to solidarity among Black and Brown communities.

Consider the myriad ways in which the experiences of ethnic Mexicans in the early twentieth century mirror the experiences of many Black and Brown Americans today. Recall that during the 1910s, “the figure of the menacing Mexican revolutionary bandit was cemented in popular imagery,”¹⁹⁵ to the point that “[a]ny local resident that looked Mexican, regardless of citizenship, social status, or evidence of guilt, could be profiled as a ‘bandit’ or ‘bandit sympathizer’”¹⁹⁶ More than a hundred years later, similar racial profiling continues to be a defining feature of policing in the United States. Paul Butler has forcefully argued that “black men are the prototypical criminals in the eyes of the law,”¹⁹⁷ and that much of modern criminal procedure jurisprudence “evidence[s] a racial project by the U.S. Supreme Court to allow the police to control African-American men.”¹⁹⁸ There is no shortage of statistical evidence to support these claims. Studies show that Black and Latinx suspects face disparate impacts at every stage of the criminal process,¹⁹⁹ and staggering numbers of unarmed Black people continue to be shot and killed by the police.²⁰⁰ Like most of the acts of violence described in *The Injustice Never Leaves You* and discussed in this Article, the majority of these shootings by the police never result in criminal convictions.²⁰¹ And just as Martinez writes that the systemic nature of anti-Mexican violence in twentieth century Texas “was not the work of a few unrestrained or rogue agents”²⁰² but rather “a key characteristic of state policing,”²⁰³ Butler concludes that patterns of racial bias in law enforcement

¹⁹⁴ MARTINEZ, *supra* note 9, at 296 (internal quotation marks omitted).

¹⁹⁵ *Id.* at 18.

¹⁹⁶ *Id.* at 22.

¹⁹⁷ Butler, *supra* note 7, at 1426.

¹⁹⁸ *Id.* at 1450.

¹⁹⁹ See *id.* at 1427; see also René Reyes, *Abolition Constitutionalism and Non-Reformist Reform: The Case for Ending Pretrial Detention*, 53 CONN. L. REV. 667, 670–71 (2021) (citing and discussing studies).

²⁰⁰ See, e.g., Aidan Gardiner & Rebecca Halleck, *Few Charges, Fewer Convictions: The Chauvin Trial and the History of Police Violence*, N.Y. TIMES (Apr. 19, 2021), <https://www.nytimes.com/interactive/2021/04/19/us/derek-chauvin-police-killings.html>, archived at <https://perma.cc/FWU5-BHPN>; Cheryl W. Thompson, *Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns*, NPR (Jan. 25, 2021), <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>, archived at <https://perma.cc/G464-Z83K>; Julie Tate, Jennifer Jenkins & Steven Rich, *Fatal Force*, WASH. POST (July 28, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>, archived at <https://perma.cc/2VU3-FKWG>.

²⁰¹ See Gardiner & Halleck, *supra* note 200.

²⁰² MARTINEZ, *supra* note 9, at 175.

²⁰³ *Id.*

today are “integral features of policing and punishment in the United States. They are how the system is supposed to work.”²⁰⁴

A key takeaway from this analysis is that the past isn’t simply prologue; it isn’t even the past. Rather, it is merely the starting point in a long pattern of systemic white supremacy and anti-BIPOC violence. For example, Dorothy Roberts has expounded upon the links between slavery and the modern carceral state, highlighting the fact that “[t]he first police forces in the United States were slave patrols,”²⁰⁵ and arguing that “criminal procedure and punishment in the United States still function to maintain forms of racial subordination that originated in the institution of slavery—despite the dominant constitutional narrative that those forms of subordination were abolished.”²⁰⁶ Martinez draws similar links between anti-Mexican violence of the early twentieth century and law enforcement practices of the twenty-first century, arguing that “[c]urrent federal and state policing regimes have deep roots in the violence of the borderlands—the regime of terror practiced a century ago on the Texas-Mexico border is crucial to ongoing conversations about police brutality and the carceral state.”²⁰⁷ Much of this ongoing anti-Latinx bias occurs at the intersection of immigration and criminal law.²⁰⁸ Once again, the erasure of the historical background to these policies makes it far more difficult to understand them as modern iterations of longstanding patterns of racialized violence, and “helps obstruct possible critiques of the nation for past and ongoing crimes against minorities in the name of protecting national borders.”²⁰⁹ Recovering and reclaiming that background is vital to promoting greater solidarity not only between Mexican American citizens and undocumented immigrants,²¹⁰ but also between Black and Brown communities whose histories intersect and overlap in so many ways.

This is not to say that experiences of Black and Brown people in America have been identical. To the contrary, the experience of Black Americans has been unique in important respects.²¹¹ Slavery is the paradigmatic example. As highlighted by Cheryl Harris, the construction of race in America proceeded in such a way that “[i]t was their racial otherness that

²⁰⁴ Butler, *supra* note 7, at 1425.

²⁰⁵ Roberts, *supra* note 2, at 20.

²⁰⁶ *Id.* at 4.

²⁰⁷ MARTINEZ, *supra* note 9, at 296.

²⁰⁸ See, e.g., Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 OHIO ST. L.J. 599 (2015); Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE W. RES. L. REV. 993 (2016); César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245 (2017).

²⁰⁹ MARTINEZ, *supra* note 9, at 231.

²¹⁰ Cf. Medina, *supra* note 190.

²¹¹ See Roy L. Brooks & Kirsten Widner, *In Defense of the Black/White Binary: Reclaiming a Tradition of Civil Rights Scholarship*, 12 BERKELEY J. AFR.-AM. L. & POL’Y 107, 131 (2010) (arguing that “there is substantial empirical evidence strongly suggesting that African Americans *are* unique and, hence, warrant separate (but not necessarily dominant) attention” in civil rights scholarship).

came to justify the subordinated status of Blacks. The result was a classification system that keyed official rules of descent to national origin so that membership in the new social category of ‘Negro’ became itself sufficient justification for enslavability.”²¹² But the experiences of different racialized groups need not be identical in order to provide entry points into shared spaces of anti-racism, abolition, and solidarity. One of the main goals of this Part has been to demonstrate that the experiences of ethnic Mexicans living under Juan Crow are sufficiently similar to the experiences of Black Americans living under Jim Crow to bring both groups into those shared spaces. In the same time period, both groups were subjected to racialized terrorism that manifested itself in the form of lynchings, murders, and massacres. Both groups have struggled to critically remember and pass on elements of this history in the face of official acts of suppression and erasure. The legacy of this history lives on in the form of continuing acts of violence and racism against Black, Brown, and other BIPOC communities. While American law and culture have long operated to divide and otherize these communities from one another, reclaiming and amplifying these long suppressed narratives has the potential to help bridge that divide and bring racialized groups together in the shared struggle for racial justice.

CONCLUSION

As documented and discussed throughout *The Injustice Never Leaves You*, the state of Texas has a long history of anti-Mexican bias. This history has included discrimination in education. Until the 1940s, many ethnic Mexican children were sent to segregated schools.²¹³ For several decades after that, undocumented Mexican children could be denied a public education altogether under state law.²¹⁴ The U.S. Supreme Court declared this practice unconstitutional in the 1982 case of *Plyler v. Doe*²¹⁵—but in light of the Court’s changing composition and the emergence of its new conservative majority, the Texas Governor has declared his intention to “resurrect” the issue anew.²¹⁶ In the meanwhile, even those who are permitted to attend public schools are denied access to a full reckoning with state history. Martinez notes that “[w]hereas in the early twentieth century Mexican students in Texas were denied the right to public education, in the twenty-first century they are still often denied the opportunity . . . to learn alternative histories of

²¹² Harris, *supra* note 3, at 1717 (quoting Neil Gotanda, *A Critique of “Our Constitution is Colorblind”*, 44 STAN. L. REV. 1, 34 (1991)).

²¹³ See, e.g., López, *supra* note 178, at 1197–98; Ariela J. Gross, “*The Caucasian Cloak*”: *Mexican Americans and the Politics of Whiteness in the Twentieth Century Southwest*, 95 GEO. L.J. 337, 378–81 (2007).

²¹⁴ See *Plyler v. Doe*, 457 U.S. 202, 205 (1982).

²¹⁵ *Id.*

²¹⁶ J. David Goodman, *Texas Governor Ready to Challenge Schooling of Migrant Children*, N.Y. TIMES (May 5, 2022), <https://www.nytimes.com/2022/05/05/us/texas-schools-undocumented-immigrants-supreme-court.html>, archived at <https://perma.cc/54GV-8KL3>.

conquest, colonization, and slavery.”²¹⁷ This kind of denial is now mandated by state law. In 2021, the Texas Legislature passed a statute designed to prohibit the teaching of Critical Race Theory in public schools.²¹⁸ The law specifically prohibits educators from teaching that “with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality.”²¹⁹ It further prohibits teachers from “requir[ing] an understanding of the 1619 Project,”²²⁰ an initiative first published by the *New York Times* that “aims to reframe the country’s history by placing the consequences of slavery and the contributions of black Americans at the very center of our national narrative.”²²¹

One wonders if *The Injustice Never Leaves You* will be the next publication added to the list. For Professor Martinez’s book epitomizes both the power of critical narratives and the threats they pose to the complacent and self-congratulatory myths that are typically told in schools, history books, and museums.²²² This Article has endeavored to amplify some of those critical narratives and acts of critical remembering, both to deepen public understanding of the history of anti-Mexican violence and to highlight its commonalities with contemporaneous systems of anti-Black violence. Opponents will surely continue to try to suppress these counternarratives—indeed, the Texas Lieutenant Governor has indicated that he will take the fight to the university level by making the teaching of Critical Race Theory grounds for revocation of tenure at state institutions.²²³ It is therefore all the more vital to give voice to these narratives in as many fora as possible in solidarity with those whose stories have been erased for far too long. As Martinez herself writes, telling these stories is part of the search “for lost humanity.”²²⁴ By bringing those stories into conversation with one another, we can also discover and honor our shared humanity.

²¹⁷ MARTINEZ, *supra* note 9, at 231.

²¹⁸ See Brian Lopez, *Republican Bill That Limits How Race, Slavery and History are Taught in Texas Schools Becomes Law*, THE TEX. TRIB. (Dec. 2, 2021), <https://www.texastribune.org/2021/12/02/texas-critical-race-theory-law/>, archived at <https://perma.cc/SR8C-U8LP>.

²¹⁹ Tex. Educ. Code Ann. § 28.0022(a)(4)(A)(viii).

²²⁰ *Id.* § 28.0022(a)(4)(C).

²²¹ Jake Silverstein, *Why We Published The 1619 Project*, N.Y. TIMES (Dec. 20, 2019), <https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html>, archived at <https://perma.cc/PWU5-6TSG>.

²²² See MARTINEZ, *supra* note 9, at 230.

²²³ See Kate McGee, *Lt. Gov. Dan Patrick Proposes Ending University Tenure to Combat Critical Race Theory Teachings*, THE TEX. TRIB. (Feb. 18, 2022), <https://www.texastribune.org/2022/02/18/dan-patrick-texas-tenure-critical-race-theory/>, archived at <https://perma.cc/W3UD-48B5>.

²²⁴ MARTINEZ, *supra* note 9, at 23.

