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NATURAL LAW AND LATINX SOCIAL ETHICS
A NARRATIVE APPROACH

A Dissertation

Submitted to McAnulty College and Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for
the degree of Doctor of Philosophy

By

Mathew D. Garcia Scruggs

May 2021

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2021

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By

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ABSTRACT

NATURAL LAW AND LATINX SOCIAL ETHICS

A NARRATIVE APPROACH

By

Mathew D. Garcia Scruggs

May 2021

Dissertation supervised by James Bailey, Ph.D.

This dissertation will argue concepts rooted in Latinx social ethics provides a corrective to acontextual and ahistorical, Euroamerican natural law frameworks by positing natural law as a type of moral reasoning rooted in the contexts, histories, and narratives of particular communities. Rooting natural law in the narrative practices of Latinx communities not only reveals the need for justice for oppression against Latinx bodies from the wider community, but also offers a corrective to ahistorical and acontextual Euroamerican natural law frameworks. A Latinx natural law functions as a radical and prophetic critique against systems of oppression that destroy the lives of Latinx communities as well as provides an epistemological framework to be able to discern the universal. Latinx social ethics is a privileged place for discerning natural law not just for the Latinx community, but for dominant Anglo-communities as well. This dissertation will derive a natural law framework from Latinx narratives, histories, and social

practices. This dissertation also argues that natural law is not only corrected by Latinx social ethics but it is also realized in the liberation of the Latinx community from oppression. In light of the marginalization of the Latinx community and the need for the Latinx community to be able to make normative claims against their marginalization, this dissertation posits that natural law is judged and revealed through the social, cultural, ethical and narrative practices of the Latinx community.

DEDICATION

To my mother

You shaped my life and will never be forgotten

Te Quiero Mucho

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Introduction

Latinx identity is a complex, multidimensional, and pluralistic conception of identity. One of the crucial questions for anyone who self-identifies as Latinx is what constitutes Latinx identity. For some, Latinx identity is rooted in a person's connection to the Spanish language. Ada María Isasi-Díaz argues that her use of the term 'Hispanic' is rooted in the connection that Hispanics have with Spanish. She argues that "Spanish has become 'the incarnation and symbol of our whole culture, making us feel that here in the U.S.A. we are one people, no matter what our country of origin is.'" ¹ For Díaz, Spanish is so important that many, "who understand a little Spanish and can speak only a few words insist on saying that they do know Spanish." ² The use of Spanish also functions to "resist the empire building of the U.S.A. at the expense of many of our countries of origin..." ³ Although Spanish is certainly an important aspect of Latinx identity, it is not the only element. For many in the Latinx community, the use of Spanish is too exclusionary to form an identity that spans across multiple communities of origin in the United States. This is seen in the critique of the word 'Hispanic'. The term 'Hispanic' refers to those countries that speak Spanish or were colonized by Spain, but immigrants from Portuguese speaking countries such as Brazil who are grouped together with the Spanish speaking

¹ Ada María Isasi-Díaz *En La Lucha/In the Struggle: Elaborating a Mujerista*. (Minneapolis, MN: Fortress Press, 2004), 66.

² Díaz, *En La Lucha*, 67.

³ Díaz, *En La Lucha* 67.

community, do not identify as Hispanic. Thus, the use of ‘Latinx’ incorporates Portuguese speaking countries.⁴

For others, Latinx identity is rooted in racial and ethnic categories. For many, how they identify, whether it be Mexican-American, Boricua, Puertorriqueño, white, or Black, will determine how they are, “considered how authorized to speak on a given topic, or worthy of recognition for a specific award...denied entry into a local social organization, or questioned about their citizenship, or monitored closely while walking through a convenience store.”⁵ Thus some have argued that Latinx identity is a racial category because there are morphological features that have been used, “as the basis of systematic patterns of discrimination, marginalization, and violence that Latinx experiences in the United States.”⁶ However, Latinx identity as a racial category is problematic because there are no single, monolithic racialized patterns that group all Latinx persons together. As Andrea Pitts argues,

“Given that persons who descend from various parts of Latin America do not share any such racialized, biological features, this description of race will not work for this group. That is, Latinxs can have a number of racialized identities

⁴ For this dissertation we will use the term Latinx in order to incorporate as many of the communities who identify with a country or community of origin in Latin America. We will use Latinx overusing Latino or Latina, unless we are speaking directly about a person who identifies as male or female. We will use the ‘x’ ending in order to be inclusive of the LGBTQIA+ community as well as to bring attention to the use of ‘x’ in many of the indigenous communities in Latin America. We will use the term “Hispanic” if an author uses it in the way they identify those in the Latinx community.

⁵ Andrea J. Pitts, “Latinx Identity” in *Latin American and Latinx Philosophy: A Collaborative Introduction*, ed. Robert Eli Sanchez, Jr. (New York, NY: Routledge Press, 2020), 221.

⁶ Pitts, “Latinx Identity, 222.

that include Black, white, Asian, Indigenous, or any mixture of these racial categories. Even within a given national boundary there is no racial unity that picks out one specific racialized set of features that distinguishes the dominate race in one country from another.”⁷

Because no two groups in the Latinx community are always the same, to racialize Latinx identity is to try to homogenize the Latinx community as a whole. Thus, Latinx as an ethnic category has appeal.

Latinx identity as an ethnic category has become a standard way to understand the Latinx community. Because those who identify Latinx share cultural, linguistic, and political features, “ethnicity defines the lived concrete experiences of U.S. Latinxs.”⁸ Some scholars understand Latinx ethnicity through a family resemblance model because Latinx identity is rooted in situated relationships of varying kinds including legal, genetic, and financial relationships.⁹ For the family resemblance model of discussing Latinx identity, “no one feature unites all and only members of a family or Hispanic identity, and their borders are often shifting and flexible.”¹⁰

The U.S. Census Bureau and many applications for U.S. institutions understand Latinx or Hispanic identity in the terms of ethnic categories. Filling out college applications, young people in the Latinx community always have the existential question of having to pick an ethnicity and a race (i.e., Hispanic/Latino or White/Non-Hispanic). The problem with viewing Latinx identity as

⁷ Pitts, “Latinx Identity”, 226.

⁸ Pitts, “Latinx Identity”, 221.

⁹ See Jorge J.E. Gracia’s *Hispanic/Latino Identity: A Philosophical Perspective* (Malden MA: Blackwell, 2000).

¹⁰ Pitts, “Latinx Identity”, 226.

solely an ethnic category is that it ignores how white communities in the United States racialize the Latinx community to both enact racial violence on them and for them to be complicit in racial violence on others.

To emphasize ethnicity over racial constructions of Latinx identity is to ignore the anti-Latinx racism that occurs every day in the United States. For Laura Gómez, race for the Latinx community engages two vectors, “on the one hand, one can assert and so essentially choose a racial identity; but on the other, racial identities are given to us by others.”¹¹ One can identify as one race but the next moment someone can disregard that choice. Such is the case with the systematic violence that the United States has treated the Latinx community in its history. At some points, the U.S. considered the Latinx community to be white. At other points, they consider the Latinx community, “as a racial group that is other and inferior to whites.”¹² Certainly when Patrick Crusius attacked an El Paso Walmart targeting Latinx Americans and killing 23 people, he did not consider the Latinx community to be white or equal. Bathrooms and schools were segregated for the Latinx community until *Hernández v. Texas*, where the Fourteenth Amendment’s equal protection was applied to the Latinx community. Yet, even within that court case, “the Hernández brief does not concede Mexican Americans are *not* white but, rather, that they are a different kind of White.”¹³ Whiteness, for many of the Latinx community has been used as a tool for survival at the expense of being complicit with anti-Black racist structures. Thus, Latinx identity should be seen not as either an ethnicity or a racialized

¹¹ Laura Gómez, *Inventing Latinos: A New History of American Racism* (New York, NY: The New Press, 2020), 3.

¹² Gómez, *Inventing Latinos*, 4.

¹³ Gómez, *Inventing Latinos*, 125.

construction but as an ethnicity that is racialized. That is to say that Latinx identity is a multi-faceted and complex reality that is often saturated with ambiguity and paradox. Both ethnic and racial logics are applied at different times for different reasons and are always historically situated in relation to other racial and ethnic categories. Yet, even through varying racial and ethnic categories, Miguel De La Torre and Edwin Aponte provide an excellent summary of Latinx/Hispanic identity. They state:

there [was] no such thing as a 'typical' Hispanic. They are white with blond hair and blue eyes, they are black with curly hair, and they are everything in between. They have Native American features and/or Asian features. They are Catholics, Protestants, worshipers of the Orishas (African quasi-deities), Jewish, atheists, spiritualists, and followers of Amerindian religious traditions. Some speak "pure" Spanish, others speak Spanglish, while others only speak English. Still others converse in Cholo, Mayan, Náhuatl or Pocho. Some have recently arrived in this country, while the ancestors of others were here centuries before the formation of the United States. They live in the blank despair of the barrio and in the comfortable illusions of the suburbs. Some pick apples and grapes, others pick stocks and bonds.¹⁴

What De La Torre and Aponte illustrate is that Latinx identity cannot be situated into a single monolithic narrative but is constituted by a multiplicity of interlocking and interrelational narratives. Latinx identity is both a narrative that we tell ourselves and narratives told about us

¹⁴ Miguel A. De La Torre and Edwin David Aponte, *Introducing Latino/a Theologies*, (Maryknoll, NY, Orbis Books, 2001), 14.

either to be accepted or rejected. Latinx identity consists in fluid and flexible narratives that are passed down to us and that we choose to continue.

For me, Latinx identity is rooted in the narratives, traditions, and histories of struggle and hope, oppression and resistance, and love passed on to me from my grandmother and mother. My grandmother grew up as an orphan in Juárez, Mexico. Her father was murdered and her mother died shortly after. She got married and crossed the U.S./Mexico border to El Paso, TX in the 1950's. In El Paso she worked for Comet dry cleaning service. Because of her undocumented status her job stability was precarious at best. She soon lost her job and had to move to a small town in New Mexico named Alamogordo.¹⁵ While in Alamogordo, she worked at a Presto deep fryer factory and cleaned single-airmen and temporary housing at Holloman Airforce Base. She had six children, four of whom would die before they reached the age of twenty. Her marriage was abusive. My grandfather beat my grandmother and also my mom when she was a child. My grandmother ended up divorcing my grandfather and raised her remaining children on her own. It was not until 1996, after forty years, that my grandmother was able to become a United States citizen. In the face of deep struggles, working multiple jobs, raising her children, and facing many instances of discrimination, my grandmother was able to fight, have hope, and enjoy her life. She taught Mexican dance at the local Church for the yearly fiesta and helped prepare the over 5,000 pounds of food that fed the community during the fiesta.¹⁶ She was a staple at the local senior center where she danced every Saturday night. She saved and was

¹⁵ If the name Alamogordo sounds familiar the town was primarily known as being where the first Atomic bomb was detonated at White Sands Missile Range.

¹⁶ For a history of the fiesta see "History of our Fiesta de La Familia" at [iccalamogordo.org https://www.iccalamogordo.org/history-about-our-fiesta-de-la-fami](https://www.iccalamogordo.org/history-about-our-fiesta-de-la-fami) accessed January 4, 2021.

able to pay cash for every vehicle she owned. She fought, struggled, laughed, and loved until she died in 2003. She never was able to get health insurance and was not able to have access to preventative care to diagnose her liver cirrhosis until it was too developed. She died a week after she was diagnosed.

My mother similarly struggled. Being a first generation Mexican-American, Spanish was her first language. Even in a state with 48% Hispanic population, my mother faced incredible discrimination. As a child she was made fun of because she spoke Spanish, she was called *indio* (because of her dark complexion), and she was called a number of other racial slurs. She grew up in extreme poverty and her early years were marked by abuse and violence from my grandfather. When my grandmother divorced him, her family's poverty increased and they had to go on welfare and receive food assistance. Because my grandmother was constantly working my mother cooked for her little brother when she was young. My mom told me it was a treat to get a candy bar with food stamps once a month to split between the two siblings. People would drop used, ill-fitting clothes on their doorsteps and she would face ostracism because of wearing them. I recall my mom telling me a story about how an orthodontist would not let her get braces because she was too poor and too Mexican.

As an adult my mother also faced discrimination. She continually felt what she called, "the weight of whiteness", the continual gaze of suspicion from white Americans wherever she went.¹⁷ This "weight of whiteness" had effects on her children. While walking through a mall one day, my sister was approached by a white woman and asked if that "Mexican woman had

¹⁷ Coincidentally, this was also how Karen Teel of San Diego University titled a talk she gave at Duquesne University in October 2016. See Karen Teel, "The Unbearable Weight of Whiteness: Christian Faith and Racial Justice." Lecture. The Center for Interpretive and Qualitative Research, Duquesne University. Pittsburgh PA. October 16, 2016.
<https://edtech.msl.duq.edu/Mediasite/Play/0746c5a946844a6696c89d09451ed1841d>

kidnapped her.” Whether in Texas or in South Carolina, my mother felt the weight of the white gaze on her. She once took my Grandmother out for her birthday and they were refused to be seated because of the name “Garcia” on the reservation.

She also believed the weight of whiteness affected the way she was seen professionally. As a medical professional, my mother struggled to find work in South Carolina. She was able to get through phone interviews with the married name of Scruggs, but when she showed up for in-person interviews, her skin screamed Garcia and she was passed over. Despite being a medical professional, her medical conditions such as liver cirrhosis and diabetes were never taken seriously. A medical doctor was surprised at her medical expertise stating, “Mexicans are never really good at going to the doctor, all they do is ask for things.” Racial stereotypes affected her at the end of her life as well. When her liver disease worsened, doctors would not believe her family that her deteriorating mental state was a result of encephalitis rather than being “cultural noncompliance.”¹⁸ She died in April 2020.

Despite the hard lives that my grandmother and mother lived, they always found joy in what they were doing and always had a sense of humor. Their traditions and the stories they have shared with me constitute not only a familial history but a way to look at the world. Their lives and their narratives have constituted my identity as a Latino and has shaped the values and lenses through which I look at the world. Some of those values are the importance of *la lucha* (the

¹⁸ A recent study among medical students and nursing students illustrated that, “the majority of both nursing and medical students surveyed associated Hispanic and American Indian patients with noncompliance, risky health behavior, and barriers to effectively communicating health-related information.” Bean, M. G., Focella, E. S., Covarrubias, R., Stone, J., Moskowitz, G. B., & Badger, T. A. (2014). Documenting Nursing and Medical Students' Stereotypes about Hispanic and American Indian Patients. *Journal of health disparities research and practice*, 7(4), 14.

struggle for survival), the need for liberation from all oppressive structures that they faced and that other Latinxs face, and most importantly, as Ada María Isasi-Díaz says, “*Un Poquito de Justicia.*”¹⁹

It is this quest for justice that has led me to write this dissertation and to frame it within a quest for an ethic that can help bring justice to the Latinx community and to continue the narratives of both my grandmother and mother. In writing this dissertation I seek to provide a type of ethical analysis that can form a way of viewing the world that provides a normative frame of ethics that is both rooted in the Latinx community, revealed through Latinx cultural and religious practices, and judged by the economic, cultural, and political liberation of the Latinx community in the United States. This dissertation will argue concepts rooted in Latinx social ethics provides a corrective to acontextual and ahistorical, Euroamerican natural law frameworks by positing natural law as a type of moral reasoning rooted in the contexts, histories, and narratives of particular communities. Rooting natural law in the narrative practices of Latinx communities not only reveals the need for justice for oppression against Latinx bodies from the wider community, but also offers a corrective to ahistorical and acontextual Euroamerican natural law frameworks. A natural law rooted in Latinx social ethics provides a prophetic critique against systems of oppression that destroy the lives of Latinx communities. Latinx social ethics is a privileged place for discerning the natural law not just for the Latinx community, but for dominant Anglo-communities as well.

¹⁹ See Ada María Isasi-Díaz, *Mujerista Theology: A Theology for the Twenty-first Century*. (Maryknoll, NY: Orbis Press, 1996).

Why Natural Law?

Natural law is essentially a moral construction of reality. Through positing a representation of reality, natural law seeks to establish a moral realism that makes moral claims that are verifiable as an honest representation of reality. It is well known that the natural law tradition has been used to oppress the Latinx community and is a framework complicit in the Empire building of European and American colonialization. While natural law has been used to justify colonialism and Euroamerican oppressive structures, this dissertation argues that what is operative in this use of natural law is one particular construction of the natural that seeks to establish monolithic moral precepts that dominant groups have used, “to suit their needs and protect their privilege.”²⁰ In establishing such a natural law (which we will call Euroamerican natural law), its proponents provide a moral construction of reality that is based on acontextual, ahistorical, and autonomous moral precepts. Drawing from Hispanic and Latinx resources we will argue that there is an alternative understanding of natural law that contests Euroamerican natural law frameworks. A natural law that is rooted in Latinx epistemologies, contexts, and narrative structures that leads to an understanding of natural law as a type of contextually contingent moral reasoning. Through the incorporation of categories found in Latinx social ethics, we will offer a correction of natural law frameworks based on acontextual moral precepts by illustrating that such constructions are not only inaccurate representations of Thomistic natural law but also that such constructions of natural law exclude perspectives of wider humanity, negating its supposedly universal claims. Rather by incorporating concepts of Latinx

²⁰ Miguel De La Torre, *Latino/a Social Ethics: Moving Beyond Eurocentric Moral Thinking*. (Waco, TX: Baylor University Press, 2010), xi.

social ethics, we will present a natural law that takes seriously the contexts, histories, and narratives of particular communities as the sites of moral reasoning. Thus we will make the claim that discerning natural law through the contexts of Latinx narratives constructs a truer representation of moral reality.

One might ask that if natural law has been used by Euroamerican frameworks to engage in Empire building and colonialization, why still use it as an ethical framework and why engage the ‘natural’ at all? There are three reasons why natural law is still a viable framework for Latinx ethics. First, a Latinx natural law, presents a way to view the world that is truer to reality than Euroamerican natural law frameworks. While Euroamerican natural law frameworks present natural law as prescribing specific moral principles that result in intransigent, incommensurable, ahistorical, and acontextual binaries such as the universal versus the particular and the natural world versus human nature, a Latinx natural law is, rather, open, dynamic, accommodating to ambiguity, and rooted in history and narrative. While Euroamerican natural law sees the good as primarily a thing to be grasped through immediate contemplative apprehension, Latinx natural law sees the good as the action of journeying through life. While Euroamerican natural law sees morality as the establishment of unchangeable moral precepts, Latinx natural law is a type of moral reasoning that is context dependent and historically situated. While Latinx natural law provides an alternative view of reality, humanity, and the natural world, it is still a view of the world that has a claim toward realism. That is, Latinx natural law will claim to be a truer sense of reality and the world than the constructions of nature provided by Euroamerican natural law.

The second reason to still use natural law is that it is, regardless of how one might wish it to be, the narrative of natural law is integral to Latinx history and reality. Central to Latinx theology is the understanding that the world is filled with intermixture, *mestizaje*. Latinx identity

is rooted in the physical, epistemological, and existential *mestizaje* as the result of the first encounter between Latin American Indigenous communities and Spain. The violence of the Spanish against the Indigenous community resulted in a clash of worldviews that, despite Spain's best efforts, resulted in a new community that has both European and Indigenous roots. Thus, as Miguel De La Torre argues,

the best of *mestizaje*, our cultural mixture, recognizes the European part of our identity and the ambiguity and irony this creates when we deal with Eurocentric ethical paradigms. Hispanics recognize that even what we should reject in our identity is part of who we are as a people. This challenge is how to delineate and reject those parts of Eurocentric ethics with which there can be no compromise or reconciliation (e.g., complicity with the U.S. Empire) and move beyond those segments of Eurocentric analysis with which we can converse.”²¹

I argue that the Spanish natural law framework is a type of ethics that not only makes part of the Latinx ethical *mestizaje*, but is also a type of natural law thinking that can be used to work for justice in the Latinx community. As we will see, the type of natural law employed by the Spanish school of Salamanca which included Francisco de Vitoria, Domingo de Soto, and Bartolomé de Las Casas, was a type of natural law thinking that subverted the imperial efforts of Spanish colonization for the sake of the Indigenous community. Such natural law thinking that is part of Latinx history can and should be negotiated for current Latinx natural thinking.

²¹ Miguel De La Torre, *Latino/a Social Ethics*, xii.

The third reason that natural law is still a possibility for a Latinx social ethic is that it is able, once done from a Latinx perspective, to make normative claims of morality that is not only inclusive of marginalized communities but binding on dominant Euroamerican communities. Since a Latinx natural law is a mixture that is rooted in not only its new reality but also the natural law traditions of Aquinas, natural lawyers who work from a lineage of Aquinas should acknowledge the interpretation of Latinx natural law as consistent with Aquinas and other scholastic natural lawyers' thought. In the same way that Latinx popular Catholicism is closer to Aquinas' daily practice than the post-tridentine Catholicism of Northern Western Europe and the North Eastern United States, a Latinx natural law theory is more akin to Aquinas thought than the Euroamerican natural law theories presented by both the American legal tradition and the proponents of the "New Natural Law."²² Such a theory of natural law that has its roots both in the European, scholastic, and Thomistic traditions *and* the new reality of Latinx identity should be able to make a normative claim on both.

While we will be making a claim that natural law is useful for a Latinx social ethic, we will also draw from the other side of the *mestizaje*, the Latinx cultural reality to discuss ways in which such a reality not only contributes to natural law in general but better it by including a voice of moral reasoning that further completes its efforts to make normative claims. Namely, we will be drawing from Latinx narratives to discern the frame in which natural law theory can better include all people through incorporating a *mestizaje* epistemology, a methodology of *cuentos* as casuistry, and a historically situated restorative framework of justice. By including

²² For an understanding of how Latinx popular Catholicism is more consistent with the Catholicism of Aquinas see, Orlando Espín, "Popular Catholicism Among Latinos" in *The Faith of The People: Theological Reflection on Popular Catholicism*. (Maryknoll, NY: Orbis Press, 1997).

these cultural elements of Latinx social ethics, natural law can provide helpful contributions for liberative ethics.

The Way Forward

This dissertation will take the form of two conceptual parts. Chapters one and two will establish the context of Latinx history in relationship to natural law and its various constructions of moral reality. We will discuss natural law in its Euroamerican frameworks and its Spanish iterations as having effected Latinx political realities in the United States. Because Latinx reality is rooted in *mestizaje*, a natural law reflection requires understanding the multifaceted and pluricentric spaces where Latinx natural law developed. Chapters three through five will focus on drawing from Latinx culture, traditions, and narratives to frame a specifically Latinx iteration of natural law. Through focusing on both the history of the Latinx community's relationship to natural law and the unique contributions to natural law from Latinx social ethics, we hope to establish a uniquely Latinx natural law that will lead toward liberative practices of justice in the face of anti-Latinx racism and systematic oppression of the Latinx community.

Chapter one will discuss the distinctly Euroamerican framework of natural law. First, we establish that the 'natural' is not a neutral state of being but rather a construction. Noting that the 'natural' is a construction we illustrate that it has been used by Euroamerican natural law tradition to posit a particular community's experience (white, Northern European, and American) as normative over all other communities. In other words, the Euroamerican natural law tradition tries to universalize its particular position over and against all other frames of thought. In particular, we will focus on how the American legal understanding of natural law is rooted in the thought of Grotius, Locke, and Kant and how each of their natural law positions are uniquely

oriented to preserving white privilege, land, and reason over and against Indigenous communities, Latinx communities, and people of color in general. Grotius, Locke, and Kant present a construction of nature that separates nature from culture bringing about a global, extractivist capitalism that seeks to acquire private property by taking land from Indigenous communities. They also present a natural law that universalize their particular social location as normative for all people enacting an epistemic imperialism. Finally, they presume an autonomous reason that is a construction of the self that is rooted in racist constructions of reason. Following the enlightenment construction of autonomous reason, we will discuss the ways new natural law follows the same trajectories as enlightenment reason in that they seek to construct an autonomous frame of morality ignoring the contextual roots of practical reason and the need for speculative reason. In so doing, they provide a list of basic goods that ignore the goods rooted in contexts that include the Latinx community. In describing these basic goods, new natural lawyers try to establish moral precepts deriving from acontextual moral goods. The end of the chapter will look at revisionist and contextual natural law that seeks to root natural law in a context dependent moral reasoning rather than specific moral precepts. This context dependent moral reasoning is rooted in the contribution from feminist, Black, and queer natural law that seeks to establish a natural law that is open, dynamic, and rooted in history.

While revisionist and contextual natural law seeks to establish a framework to discuss natural law that is open, dynamic, and contextually conscious, there is an absence of a discussion of Hispanic discussions of natural law. There are few discussions of natural law that discuss the natural law theories of Spanish thinkers such as Francisco de Vitoria, Domingo de Soto, and Bartolomé de La Casas. These theologians offer a frame of natural law that often subverted the aims of imperial colonialism from Spain. They root their natural law on the right of Indigenous

communities to determine their own frame of governance. Natural law, rather than rooted in individual property, is rooted in the sociality of humanity and is derived from the commonwealth. These thoughts led to the only reflection by a colonial power on whether or not colonialism was ethical within the 15th and 16th centuries. These reflections in Valladolid, Spain between Las Casas and Juan Ginés de Sepúlveda present two types of natural law, one that subverts imperial power for the sake of the Indigenous communities in South America and the other that justifies Spanish imperialism. This chapter is a chapter of *ressourcement*, that seeks to resource the subversive natural law that sought to protect and empower the indigenous communities of South America from imperial Spanish power. In resourcing this subversive natural law we illustrate how natural law can work even within the frame of imperial power for its own subversion by emphasizing the communal nature of natural law's understanding of dominion, natural law being part of the *imago dei*, and natural law standing alongside and including the perspectives of the Indigenous community.

Chapter three focuses on the development of a particularly Latinx understanding of natural law and its frame of moral epistemology, synderesis. We discuss how for scholastic natural law, synderesis was understood in a variety of different frames but ultimately resulted in an understanding that a natural law moral epistemology ended with the immediate and infallible apprehension of the good as the first principle of practical reason. It is only in the application in the first principle of practical reason that context allows for nuanced understanding and flexibility in natural law. While Latinx social ethics appreciates the nuance for the application of the first principle of practical reason, a Latinx synderesis would understand the apprehension of the good through the frame of *mestizaje*. While *mestizaje* has been traditionally understood as the mixture biological and cultural mixture resulting from Spanish violence on indigenous

communities, Latinx theologians have taken *mestizaje* to be an epistemological starting point to understand the world. While Eurocentric natural law often understands the good through stark, intransigent binaries, a *mestizaje* moral epistemology understands the notions of good and evil through a more nuanced and context dependent lens that not only subverts the binaries of the universal and particular but posits that it is through the particular experiences of the Latinx community that the universal can be understood. We will argue that by adopting a *mestizaje* moral epistemology one can include more voices in moral decision making, understand moral reasoning as a journey rather than an immediate apprehension of the good, and privilege narratives that have traditionally been marginalized. By adopting *mestizaje* as a type of synderesis one can contest the notion that the universal must be univocal. The end of the chapter will see how *mestizaje* is employed through Latinx literature as a test case. To theorize about *mestizaje* without seeing it employed in a specific context would be to perpetuate a type of epistemology that posits the abstract universality that *mestizaje* seeks to combat. Thus, we will look at the work by Junot Diaz, *The Brief and Wondrous Life of Oscar Wao*, as an example of how *mestizaje* as a type of synderesis subverts the various binaries posited by Eurocentric synderesis.

By looking at specific experiences and specific stories provided by a *mestizaje* oriented synderesis, we will work out a method of moral reasoning by employing casuistic thinking that takes seriously the multiple types of *cuentos*, or narratives that make up Latinx identity. First, we will provide a background on casuistry and its uses in medieval scholasticism, how it came into disfavor, and how it has gained a resurgence among varying virtue and narrative ethicists. We argue that casuistry is useful because it attends to context and story as a site of moral reasoning. We will then navigate through the different interpersonal, cultural, and communal narratives that

shapes Latinx social ethics. Through attuning to these different *cuentos* and narratives that shape the everyday lives of the Latinx community, we are actually engaging in a natural law casuistry. Through engaging in these narratives that shape the Latinx community one is able to engage the social, cultural, and political conditions that give rise to ethical reflection in the Latinx community and understand that for the Latinx community the quest for the good life as a process of story-telling and path-making. In particular, we will engage in the narratives of Latina and Hispanic women as a source of moral reflection. We will end our chapter on *cuentos* as casuistry by engaging Ana Castillo's groundbreaking novel *So Far From God* as a site of ethical reflection. We will argue that *So Far From God* serves as an allegory for the moral agency of Latinas and Xicanas and that by placing these women within the genre of "saint's lives", Castillo shows that the lives of everyday Latinas are more realistic saints than the ones that have been paradigmatic for the Church and Anglocentric narrative casuistry.

Our last chapter will focus on the issue of justice when it comes to the specific situation of Latinx undocumented immigrants in the U.S. immigration crisis. We will illustrate how contemporary theories of justice rooted in structural and abstract frameworks are not able to bring about justice for the undocumented Latinx community. We will discuss John Rawls' understanding of "justice as fairness" as unable to address the specific claims for justice by the Latinx community. Because Rawls seeks to establish an original position through a veil of ignorance, he unintentionally asks the Latinx community to forget injustices done to them that requires restitutions. We will also discuss critics of Rawls in the communitarian frameworks of justice. We will argue that while the communitarian frameworks seek to discuss distributive justice from the context of community, they establish idealized, independent, and autonomous communities that do not adequately accept responsibility for how their communities have

perpetuated injustice against the Latinx community. Communitarians respond to immigration through hospitality not justice. We will then discuss the capabilities approach developed by Amartya Sen and Martha Nussbaum. While their ideas of justice are rooted in capabilities provided by real communities to real people, they fail to negotiate a framework legislating who is responsible for providing basic capabilities. We will then draw on the work of Trisha Rajendra's understanding of justice as responsibility for relationships. For Rajendra, responsibility toward relationships illustrates how telling the right kind of stories is essential when discussing the U.S. immigration crisis. We will further Rajendra's understanding of justice as responsibility by addressing the question of what people are responsible for in the context of relationships. Here, we draw on Aquinas' natural law understanding of justice as giving each person their due to address the restitution needed for the Latinx community. When it comes to the complex history of U.S. relations with Latin American countries, a Latinx natural law understanding of justice suggests that restitution and reparation be made to the Latinx community before structural, distributive, and capability-based understandings of justice can be enacted. Not only does there need to be economic and political restitution made to the Latinx community but also cultural reparation needs to be made. Here we understand justice as giving one their due as a social virtue that understands that the entangling of multiple contexts and stories between Anglo-Americans and the Latinx community requires mutuality and respect for each other's culture.

Through this dissertation, we seek to establish a Latinx natural law framework that is rooted in Latinx contexts, history, and culture and is derived from Latinx experience and identity. By negotiating the narratives of natural law and the Latinx community we hope to illustrate how natural law is a valid ethical framework for Latinx social ethics. Through

emphasizing *mestizaje* as moral epistemology, *cuentos* as casuistry, and a Latinx natural law understanding of justice as restitution, reparation, and a social virtue, we hope to formulate a frame of natural law done *Latinamente*. Most importantly, by understanding natural law through the history, tradition, and stories of the Latinx community, I hope that I can continue the legacy of my grandmother and mother in keeping Latinx identity as offering a valid frame of viewing the world.

Chapter 1: Euroamerican Constructions of the Natural

Introduction

When discussing natural law and what ‘natural’ means within its definition, it is important to discuss outright that although ‘natural’ has been used as a universally recognizable concept, it is actually a framework of knowledge within particular communities. The word ‘natural’ is a narrative told that is supposed to represent reality. What constitutes the natural is constructed by a society's effort to seek normative ethical frameworks, usually from positions of power. Related to the concept of nature is the category of human nature and the questions that come with it such as the interrelationship between human nature and the natural world and what constitutes human nature itself. While both nature and human nature were once thought of as static concepts in enlightenment modernity, the dynamics of what constitutes the grand narrative of human nature and the natural world has undergone revision within postmodernism. As Michel Foucault famously states in *The Order of Things*,

Though the notions of nature and human nature have a certain importance in the Classical age, this is not because the hidden and inexhaustibly rich source of power which we call nature had suddenly been discovered as a field for empirical inquiry; nor is it because a tiny, singular, and complex subregion called human nature had been isolated within this vast field of nature...but if we follow the archeological network that provides Classical thought with its laws, we see quite clearly that human nature resided in that narrow overlap of representation which permits it to represent itself to itself...and that nature is nothing but the impalpable confusion within representation that makes the semblance there perceptible before the order

of the identities is yet visible. Nature and human nature, within the general configuration of the episteme, permit the reconciliation of resemblance and imagination that provides a foundation for, and makes possible, all the empirical sciences of order.”²³

For Foucault, nature is that which is repeated by a society as nature. Nature exists in its repetition and representation of itself. While Foucault’s definition of human nature, or lack of definition, has proven troublesome for some natural law theorists, it provides a starting point for engaging the Eurocentric natural law tradition from a Latinx perspective. Namely, that for much of history, human nature has been defined by a particular group and universalized to construct a hegemonic, colonial framework over the rest.

Because the natural is constructed by its repetition and representation of itself, it is important that for those who want to engage in the natural law tradition that they “must distinguish among the competing accounts of nature, yet these competing accounts of nature are embedded in particular contexts with particular narratives that shape the use of the term.”²⁴ Understanding the natural as a construct of particular communities does not mean that the understanding of nature must be abandoned, but rather that one must pay attention to who has the power in defining the natural. It is important, in discussing natural law, to understand that the use of the term ‘nature’,

²³ Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences*. (New York, NY: Vintage Books, 1994), 71.

²⁴ Craig A. Boyd, *A Shared Morality: A Narrative Defense of Natural Law Ethics*. (Grand Rapids, MI: Brazos Press, 2007), 37.

Is thus not a neutral entity, having the status of an ‘observation statement;’ it involves seeing the world in a particular way--and the way in which it is seen shapes the resulting concept of ‘nature.’ Far from being a ‘given’, the idea of ‘nature’ is shaped by the prior assumptions of the observer...if the concept of nature is socially mediated--to whatever extent-- it cannot serve as an allegedly neutral, objective or uninterpreted foundation of a theory or theology. *Nature is an already interpreted category.*”²⁵

To understand nature as a neutral observational category is to hide the way that nature has been used to justify racism, sexism, classism, heteronormativity, and Eurocentrism. If natural law’s primary task is to identify universalized categories that privilege a particular type of person over and against others, then such a natural law must be abandoned. Yet, for those who wish to take seriously the possibility of a moral realism that takes into account the very real power dynamics that often oppress a particular group of people, then it is necessary to unmask the neutrality of the term natural and to see how it works to the advantage of those with power. What is needed is a type of natural law that leads to the liberation of marginalized people groups, that gives the epistemic privilege to these groups within their specific context, and ways that determine the how ‘nature’ has been used to oppress these groups. From there, one can discern the marginalized conception of nature that can be used to function liberatively in contradistinction to hegemonic natural law.

In order to work towards a Latinx natural law, it is important to first unmask the ways that Eurocentric natural law has been used to enact physical, systematic, epistemic and cultural

²⁵ Alister McGrath, *A Scientific Theology vol 1: Nature* (Edinburgh: T&T Clark, 2001)113. As Quoted by Boyd, Craig A. *A Shared Morality: A Narrative Defense of Natural Law Ethics*. (Grand Rapids: Brazos Press, 2007), 38.

violence to marginalized communities, in particular, Black, Indigenous, and Latinx communities. Regardless of whether the effects of Eurocentric natural law are intentional or unintentional, the use of natural law has been used to suggest that Euro-American supremacy is the natural state of things and that epistemic frameworks, especially Latinx moral frameworks, are unnatural leading to the dismissal of the Latinx community in nearly every aspect of life in the United States.

The Euroamerican Natural Law Tradition

The United States is no stranger to masking the way natural law has been used to justify its colonial and imperial interests in relation to the rest of the world. On July 18, 2019, the U.S. State Department under Secretary of State Mike Pompeo started a *Commission on Unalienable Rights*. The commission's task was to reintegrate and resource the human rights tradition into the American natural law tradition.²⁶ A year later, the commission published a *Report on Unalienable Rights*. It focused on the United States' contributions to the human rights tradition including the promulgation of the Universal Declaration of Human Rights (UDHR) drafted by the U.N. Commission on Human Rights.²⁷ The report states that the U.S. was an integral part of

²⁶ A federal register notice on May 30, 2019 states, "The Commission will provide fresh thinking about human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights." <https://www.federalregister.gov/documents/2019/05/30/2019-11300/department-of-state-commission-on-unalienable-rights>

²⁷ The report goes so far as condemning specific countries for denying civil and political liberties yet fails to mention the U.S. failed to ratify the attending document called the International Covenant on Civil and Political Rights (ICCPR), drafted in 1966, until 1992 and signed but failed to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UDHR, the ICCPR, and the ICESCR make up the International Bill of Rights (IBR). See Jimmy Carter, "U.S. Finally Ratifies Human Rights Covenant." June 28, 1992. Thecartercenter.org <https://www.cartercenter.org/news/documents/doc1369.html> accessed 8/18/2020

the drafting of the UDHR and building a consensus around the universal validity of human rights. Yet despite the United States' support, "many people doubted the worth of a non-binding declaration affirming 'faith in fundamental human rights' and 'in the dignity and worth of the human person.' That faith had been sorely tested in recent memory."²⁸ Bemoaning the affronts to the human rights tradition, the commission views itself as an avenue to reassert the United States as a center of influence within the realm of human rights.

In defining unalienable rights, the report states that

Unalienable rights are universal and nontransferable. They are pre-political in the sense that they are not created by persons or society but rather set standards for politics. They owe their existence not to the determinations of authorities or to the practices of different traditions but to the fundamental features of our humanity. They are not founded merely on custom, law, or preference. Human beings never lose their unalienable rights — though they can be violated — because such rights are essential to the dignity and capacity for freedom that are woven into human nature.²⁹

Much of the commission's report is centered on the idea that it is the particular American iteration of human rights that should take precedence. The iteration of American understanding of unalienable rights is grounded in three areas: protestant Christianity, classical Rome, and

²⁸ *Report of the Commission on Unalienable Rights*. State.gov. <https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf>, 5.

²⁹ *Report on Unalienable Rights*, 12.

classical liberalism.³⁰ The report states that the American grounding in unalienable rights does not give it the ability to force regime change but does,

give the United States an interest in supporting liberal democracy as the form of government best suited to protecting rights; in promoting a freer and more open international order, one that is friendlier to claims of human rights and democratic self-government; and in standing with peoples everywhere who seek the dignity that comes from living under a government that respects individual freedom and equality under law.³¹

Yet, despite the fact that the report states that Unalienable Rights are “pre-political”, “not created by persons or society”, and not founded on “custom, law, or preference”, the commission fails to see the contradiction of placing natural law and natural rights tradition squarely in the United States’ constitutional and political tradition. Moreover, with unalienable rights being pre-political, it is also ironic that by placing unalienable rights in the U.S. tradition of natural law, the U.S. State Department can justify foreign policy decisions that support “liberal democracies”.³² With the theoretical justification for interventionist policies by assuming that liberal democracies are the form of government most apt for securing human rights and the centering of the human

³⁰ *Report on Unalienable Rights*, 8.

³¹ *Report on Unalienable Rights*, 25.

³² Despite claiming that the Commission of Unalienable Rights is serves in an advisory capacity and is supposed to “focus on principle and not policy formulation” (*Report*, 7), the reception of the report and in particular the report’s focus on creating a hierarchy of rights that emphasize property and religious freedom (*Report* 37-38) has the potential to undergird U.S. interventionist foreign policy. See also, Julian Borger, “Pompeo claims private property and religious freedom are 'foremost' human rights” *theguardian.com* July 16, 2020. <https://www.theguardian.com/us-news/2020/jul/16/pompeo-claims-private-property-and-religious-freedom-are-foremost-human-rights> accessed 8/18/20.

right tradition within the realm of U.S. political theory, the U.S. can also justify shielding itself from critique for its own human rights abuses.³³ In an open letter response to the report by over 200 Non-Governmental Organizations, scholars, and activists, the *Report of the Commission on Unalienable Rights*, received the critique that, “Americanization of the human rights framework is both unnecessary and harmful.”³⁴ So while at the same time that the report is advocating for an understanding of human rights that is not rooted in a particular tradition, it universalizes its own particular tradition of human rights. The very methodology in which the report draws primarily on the Declaration of Independence and the philosophical principles of the founding fathers undermines its attempt to discuss the universality of unalienable rights. By using the declaration and the founding documents of the United States, the report presupposes a human nature that was culturally specific while claiming that it was universally valid.

To root rights language in a particularly American iteration of natural law and natural right theories is to universalize a strand of natural law that was primarily rooted in arguments of possession and dominion of land, raw material, and trade that was often at the expense of communities of color and the Latinx community. These traditions have a wide and varied background. Yet, it is necessary to look at some representatives of this tradition to illustrate that by grounding rights and natural law language in these traditions, the U.S. justified the African

³³ In September 2020, Mike Pompeo under the executive order of Donald Trump issued sanctions against two lawyers for the International Criminal Court because of their effort to try the U.S. for potential human rights abuses in Afghanistan. Pompeo stated that the international criminal court was making, “illegitimate attempts to subject Americans to its jurisdiction.” See Laurel Wamsley, “Trump Administration Sanctions ICC Prosecutor Investigating Alleged U.S. War Crimes” *NPR.org* September 2, 2020, <https://www.npr.org/2020/09/02/908896108/trump-administration-sanctions-icc-prosecutor-investigating-alleged-u-s-war-crim>

³⁴ Mary Anne Glendon, “Letter.” July 30, 3030. <https://www.humanrightsfirst.org/sites/default/files/CUR%20Report%20Comment%20NGO%20Letter%20Final%2020.07.30.pdf>

Slave Trade, the destruction of Native American Land, and unjust policies towards the Latinx community. As Richard Tuck states, "...From its inception the language of rights had an ambiguous character, and already by the fourteenth century it was possible to argue that to have a right was to be the lord or *dominus* of one's relevant moral world, to possess a dominium that is to say, property. To have a strongly individualistic theory of rights was inevitably, given this political language, to have a possessive theory."³⁵ This possessive theory that forms and shapes the American natural law tradition is the cognitive and epistemological weapon that has been used for exploitation of a number of different communities of color. Such a natural law background that undergirds the founding principles of the United States emphasized a construction of human nature that is rooted in abstract individualism, the antagonism between human (often rendered culture) and the natural world, and autonomous acontextual frameworks of reason.

Enlightenment Antecedents

When we look at an analysis of natural law that is prevalent in the legal and academic traditions in the United States, we see that much is owed to enlightenment thinkers and the way they constructed their understandings of human nature and law. The foundational documents of the United States such as the Declaration of Independence draw directly on the political and philosophical theories of John Locke who, in turn, drew heavily from Hugo Grotius and the enlightenment-modernist tradition. The works of Grotius and Locke form the foundation of

³⁵ Richard Tuck, *Natural Right Theories: Their Origins and Their Development*, (Cambridge: Cambridge University Press, 2002), 3.

American legal institutions and jurisprudence.³⁶ Academic institutions in the U.S. also draw frequently on the epistemic theories of Immanuel Kant as a way to engage in the natural sciences as disinterested and neutral observers. Kant's moral theory is often juxtaposed against natural law because of his emphasis on duty. Yet, Kant works from a latent construction of human nature that separates reason from sentiment, context, and history that is generally accepted by the North American academy and new natural lawyers. Enlightenment thinkers such as Grotius, Locke, and Kant constructed ideas of the natural that privilege a Eurocentric epistemology in three primary ways. First, they construct an understanding of nature that focuses primarily on separating humanity from the natural world which justifies global capitalist extractivism through the acquisition and defense of private property. Second, they universalize their particular social location as normative for all people, creating an epistemic imperialism. Third, they presume an autonomous construction of the self that situates the natural as a way to secure individual rights over and against rights of communities and rights of the earth itself.

Grotius

The primary cultural backdrop from which John Locke developed his influential theories that would form and shape the American legal tradition is the thought of Hugo Grotius. Grotius, writing in the 17th century, fundamentally changed natural law theory and humanistic jurisprudence to include the idea of natural rights in such a way that, "particularly with regard to

³⁶ Most discussion of natural law in the U.S. is rooted in discussions about Aquinas. Yet, there is a clear break between Aquinas and the liberal protestant roots of the American natural law tradition.

property, are thus firmly grounded in colonial goals.”³⁷ Grotius’ ideas on property and punishment have created a cultural backdrop that grounds the disenfranchisement of Native Americans, undergirds theories that justify the slavery of African Americans and functions to justify strict border policies that adversely affects Latinx communities.

Central to Grotius theories is the role of *Ius* and *Dominium* as defined interrelationally. Prior to Grotius, there were debates on whether the definition of *Ius* should be considered a type of *Dominium*, or property.³⁸ Grotius understood that *Ius* as a right and a faculty of liberty that allowed one to arbitrate the use of one’s own property, defend oneself, and defend one’s property. Writing primarily to defend the Dutch’s acquisition of a Portuguese trading ship which prohibited Dutch trade in East India, Grotius developed a theory in which one was able to acquire private property through labor or through setting boundaries.³⁹ Grotius’ major work responding to this international situation was *Mare Liberum*. In *Mare*, the sea was not something one could acquire through labor (you cannot make the sea into anything), nor was it something one could put a border or boundary on (the sea is constantly moving). Thus, to prohibit its free

³⁷ Barbara Arneil, "John Locke, Natural Law, and Colonialism." *History of Political Thought* 13, no. 4 (1992): 589.

³⁸ You can find the essential history of this debate in Richard Tuck’s *Natural Rights Theories: Their Origin and Development* argues that there is a development from understanding *Ius* as primarily an objective right that comes out of relational obligations to understanding *Ius* as primarily a subjective right rooted in the idea that each person has *dominium* over themselves and their liberty. These debates are particularly seen to develop between the Dominicans and the Franciscans and revived among enlightenment humanists and the Salamanca school of Thomism.

³⁹ Tuck states, “Men had physically to take possession of the material object, or to alter or define it in some way:’ with respect to moveables, occupancy implies physical seizure; with respect to immovables, it implies some activity involving construction or the definition of boundaries.”, *Natural Rights Theories*, 61.

navigation or use would be justification for war because such an act would be an affront to natural law's insistence that it is humanity's nature to acquire property.⁴⁰ Grotius states,

Freedom of trade, then, springs from the primary law of nations, which

has a natural and permanent cause, so that it cannot be abrogated.

Moreover, even if its abrogation were possible, such a result could be

achieved only with the consent of all nations. Accordingly, it is not

remotely conceivable that one nation may justly impose any hindrance

whatsoever upon two other nations that wish to enter into a contract with

each other.⁴¹

Thus Grotius, "had provided a useful ideology for competition over natural resources in the non-European world, [that is the] right to take what they wanted and protect [it]."⁴² Grotius thus provided a theory in which property acquisition is the natural state of humanity and any prohibition that stops that property acquisition is contrary to the natural law.⁴³

Not only does Grotius develop a theory that is rooted in humanity's natural ability to acquire property, but Grotius' theory views humanity's moral agency as one that is itself

⁴⁰ Grotius' arguments are found primarily in his text *De Iure Praedae* in manuscript and its circulated chapter *Mare Liberum*.

⁴¹ Hugo Grotius, *Mare Liberum*, 1609-2009. trans. Robert Feenstra. ([Electronic Resource]. Brill, 2009), 131.

⁴² Tuck, *Natural Rights Theories*, 62.

⁴³ Tuck, *Natural Rights Theories* 61. Tuck describes Grotius' innovation as bridging the gap between the Spanish Dominicans and Protestant Humanists. The Protestant Humanists believed that humanity did not have rights related to dominium prior to society while the Dominicans believed that humanity had *dominium utile*, or dominion of use. For Grotius, humanity had something analogous to *dominium* and thus had a natural right prior to civil rights but that right was not only one of use but of actual sovereignty.

property. For Grotius, liberty is something that humanity could possess and trade if necessary. Liberty as a faculty of possession is integral to Grotius theory of punishment and to his just war theory found in *De Iura Bellis ac Pacis*. In Grotius' political theory, when one party functions as an aggressor toward another party's property or their ability to acquire property, there exists a state of war. Since, in the state of war what is at stake is one another's rights to property, the loser of such a war is entitled to reparations through the property of another. If the life of another person is threatened and life is considered a type of property, then the reparation against the aggressor is the life of the aggressor. Since a person's life is their property, Grotius suggests that punishment could be exacted on the aggressor by taking the aggressor's life or by taking their life as a form of payment through slavery. Grotius states,

[It] is not contrary to nature to despoil him whom it is honourable to kill. .

.. Therefore, it is not strange that the law of nations has permitted the destruction and plunder of the property of enemies, the slaughter of whom it has permitted. . . . It must be noted furthermore that such acts are permissible also against those who have surrendered.⁴⁴

Yet not only is it not against the law of nature to take an aggressor's life but also to put them and their family into perpetual slavery. Grotius states, "Not only do the prisoners of war themselves become slaves, but also their descendants forever, that is to say those who are born of a slave mother after her enslavement."⁴⁵ Thus, for Grotius if a person's liberty functions as their

⁴⁴ Hugo Grotius, *On the Law of War and Peace*. trans. Stephen C. Neff. [Electronic Resource]. (Student ed. Cambridge University Press, 2012), 357.

⁴⁵ Grotius, *On War and Peace*, 368. Brian Tierney's "Hugo Grotius." In *Liberty and Law* (Washington, D.C.: Catholic University of America Press, 2014), 237-238 includes a list acceptable actions that "included, as one would expect, a right to kill enemies, but in Grotius's account this meant not only combatants but all residents in enemy territory including women and children. Also permitted was the killing of prisoners of war, even those who had voluntarily

property and that person endangers another person's property, that person's liberty and their family's liberty is forfeit and can be seized. Not only can this punishment and enslavement be enacted between individual parties but is also transferable to interactions between nations. Barbara Arneil illustrates that it's at this point that Grotius not only changes natural law into a theory of property rights but also changes the law of nations (*Ius Gentium*) from being a law that is common between nations but to becoming the law that governs the property rights of nations.⁴⁶ Through Grotius' theory of punishment, nations can enslave other nations in perpetuity. As Richard Tuck states regarding Grotius theories in *De Iure Belli*, "we can easily see how it should have been taken up by theoreticians of absolutism, why Felden should have said that it 'destroys civil society, which is a community of free men, and makes it an aggregation of slaves.'⁴⁷ Felden's comment that Grotius' theory makes civil society an aggregation of slaves is, in fact, what happened. Grotius' theories of property and punishment have been used to justify the atrocities of the African slave trade and the destruction and acquisition of Native American property.⁴⁸ Grotius' theory of property provided colonial justification to acquire Native American land because it was seen to neither be used through labor nor did it have boundaries that serve as the acquisition of property. Grotius' theory of punishment provided the justification for the

surrendered. In addition, the devastation by fire of enemy lands, pillaging of villages, even looting of churches, was permitted. As for raping women, "Sometimes you read that it is permitted, sometimes not." Grotius thus set up an argument within which the very practices that he deplored seemed to be permitted by the law of war and perhaps by natural law too.

⁴⁶ Arneil, "John Locke, Natural Law, and Colonialism", 591.

⁴⁷ Tuck, *Natural Right Theories*, 79.

⁴⁸ Arneil writes, "For in colonizing the New World, theories to justify war and the appropriation of land legitimize the actions taken by European settlers towards their native counterparts." Arneil, "John Locke, Natural Law, and Colonialism", 591.

African slave trade in which slaves were seen to either forfeit their freedom through a state of war or were the descendants of a nation that was enslaved as a result of the state of war and were thus slaves in perpetuity.

Grotius' natural law, rooted in property and punishment, provides the cultural backdrop for natural law and rights theorists that form and shape American colonialism and the slave economy, in particular, John Locke. Locke adopts much of Grotius' theory of property and adopts his understanding of a state of war. While Locke does not adopt Grotius' theory of punishment's propensity to enslave the children of a slave, his personal actions regarding his own involvement in the slave trade in the Carolinas illustrates either a major blind spot in his own theories or the systematic exclusion of people of color from his theories of liberty.

Locke

John Locke's theories of property and labor are highly influenced by Grotius. Following Grotius, Locke believed that to engage in the political one must first engage in an understanding of human nature.⁴⁹ For Locke human nature is understood as, "a *state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man."⁵⁰ The only limit placed on humanity in its natural state is that which is outside of himself labeled, 'the

⁴⁹ John Locke, *Second Treatise of Government*, ed. C B. Macpherson (Indianapolis, Ind.: Hackett Pub. Co., 1980), 8. Locke states, "'To understand political power right, and derive it from its original, we must consider, what state all men are naturally in...'"

⁵⁰ Locke, *Second Treatise*, 8. One can make the assumption that Locke draws primarily on Grotius' understanding of Freedom as a faculty that one possesses as a sovereign of their own moral agency.

law of nature'. Here, we already see a constructed ontological antagonism that positions humanity and its ability to dispose of its possessions as it sees fit and the law of limits that is rooted in the natural world, or law of nature. Essential to Locke's understanding of natural law is the role that equality and reason play in the original state of nature.⁵¹ Yet, Locke's understanding of equality and reason is rooted in a person's equal opportunity to acquire property and to use it according to their individual reason. Locke's fundamental state of nature is for humanity to acquire property for their sustenance and their wellbeing. One acquires property through its use. While according to Locke, "The earth, and all that is therein, is given to men for the support and comfort of their being", once that land is mixed with the labor of that person, it thus becomes his own property.⁵² A person's labor and freedom, according to Locke, are the only things that are properly theirs, and whatever has been removed from the state of nature and mixed with labor becomes his or her property.

While Locke does not follow Grotius theory of punishment exactly, he does view the condition of slavery in relationship to "just war" in the same spirit⁵³. For Locke, the state of war exists between two parties when one party threatens the property of another party. Thus a person can defend themselves and their property. The resulting state of war can be dealt with harsh violence because those that threaten property or the free acquisition of property, "are not under

⁵¹ "Men living together according to reason, without a common superior on earth with authority to judge between them, is *properly the state of nature*." Locke, *Second Treatise*, 15.

⁵² Locke, *Second Treatise*, 18.

⁵³ Locke's understanding of Punishment is rooted in retribution and reparation. Locke states, "only to retribute to him, so far as calm reason and conscience dictate what is proportionate to his transgression, which is so much as may serve for reparation and restraint." Locke, *Second Treatise*, 9. Locke frames his understanding of slavery in relation to "just war" rather than direct punishment.

the ties of the common law of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey..."⁵⁴ The retribution against an aggressor, can result in death or slavery. As Farr suggests, Locke's just war grounds the principles of his abstract permission of slavery where,

Justly, his captor may put him to "service" in lieu of death. His power and authority-- his dominion-- over the captive-now-slave is "absolute" and "arbitrary." The slave's condition, when justified, contrasts dramatically with a person or a people who deserve their rights and freedom under the law of nature or the laws of civil society.⁵⁵

The arbitrary and absolute power is echoed in the drafting of the *Fundamental Constitution of Carolina* in which Locke was a primary author. The fundamental constitution gave two instructions on slavery. The first instruction was that slaves were to be allowed whatever Church suited them. The second instruction was that slave owners were to have "absolute power and authority" over his slaves.⁵⁶ Not only was Locke integral in drafting these founding documents for the Carolina colonies, he also directly benefited from their exploitation of and use of slavery.⁵⁷

⁵⁴ Locke, *Second Treatise*, 14.

⁵⁵ James Farr, "Locke, Natural Law, and New World Slavery." *Political Theory* 36, no. 4 (2008): 496.

⁵⁶ "The Fundamental Constitutions of Carolina: March 1, 1669" in *The Avalon Project: Documents in Law History, and Diplomacy*. Yale Law School. https://avalon.law.yale.edu/17th_century/nc05.asp accessed 9/28/2020. For a discussion on Locke's involvement in the *Fundamental Constitutions of Carolina* in relation to Locke's understanding of slavery see Farr's "Locke, Natural Law and New World Slavery", 496-500.

⁵⁷ Locke served under the Board of Trade and Plantations, worked as Secretary for the Lords Proprietors of the Carolinas, and invested in the slave trade directly through the Africa Trade Company and Bahamas trade. See Farr, "Locke, Natural Law, and New World Slavery",

Despite Locke's fundamental involvement in the colonization of the Carolinas and the direct investment in the African slave trade, Locke did not discuss either one in his *Second Treaties on Government*. And in fact, he argues against perpetual slavery as employed by Grotius. Locke's silence on the African slave trade in his political philosophy has led to a debate as to whether or not there is a general disjunction between Locke and his political theories and his political actions or whether there are more malicious forces at play.⁵⁸ For example, Locke does not write about racial theories to justify the African slave trade.⁵⁹ However, Locke's involvement with the African slave trade is damning and as such, "Given the depth of his informed involvement in new world slavery, Locke's hands are dirty. Knowing that those hands wrote the *Two Treatises* and contributed to the *Fundamental Constitutions*, it is not unreasonable to assume a connection between them and, more generally, between Locke's political theory and colonial practice."⁶⁰ As George Tinker states,

If we read the *Two Treatises* carefully, it is clear that Locke never intended to include African peoples in his tirade against slavery. Indeed,

497n8. Farr draws from Maurice Cranston, *John Locke: A Biography* (Oxford, UK: Oxford University Press, 1957), 115n3; and Roger S. Woolhouse, *Locke: A Biography* (Cambridge: Cambridge University Press, 2007), 111, 463.

⁵⁸ See Wayne Glasser, "Three Approaches to Locke and the Slave Trade," *Journal of the History of Ideas* 51 (1990): 199-216; Jennifer Welchman, "Locke on Slavery and Inalienable Rights," *Canadian Journal of Philosophy* 25 (1995): 67-81; William Uzgalis, "The Same Tyrannical Principle': Locke's Legacy on Slavery," in *Subjugations and Bondage: Critical Essays on Slavery and Social Philosophy*, ed. Tommy L. Lott (Lanham, MD: Rowman and Littlefield, 1998), 49-79.

⁵⁹ "But nowhere did Locke attempt any such theory. He did not endorse or anticipate the two historically dominant empirical theories-polygeny and degeneracy" Farr, "Locke, Natural Law, and New World Slavery", 510.

⁶⁰ Farr, "Locke Natural Law, and New World Slavery", 500.

his condemnation of slavery has nothing at all to do with the slave trade in which he was himself so deeply invested. Rather, it had more to do with the nature of civil government in England and his political dispute with an ardent royalist political writer.⁶¹

Even though Locke's political and philosophical writings limits the "just war" slavery of Grotius, Locke simply did not believe that his own arguments were applicable to people of color. For Locke, they were simply not a consideration. One may not be able to prove malicious intent when it comes to Locke's political theories but the erasure of people of color from the discussion is an epistemological violence that leads to the physical violence of slavery, genocide, and the appropriation of native lands.

For the Latinx community, and in particular the Mexican American community, Locke's and Grotius' natural law theories concerning property and just war have major implications. Locke's theory of property and just war not only was used to justify the colonization of the Carolinas and the original colonies of the United States, but similar arguments that were more racially charged were used to justify colonial expansion of the United States into the already colonized lands of Northern Mexico. James K. Polk not only used both Locke's and Grotius theory of property to justify American territorial expansion into lands that would become the American Southwest, but also used Locke's and Grotius theory of "just war" to advocate for the Mexican-American War.⁶² Polk viewed the lack of clear borders between Mexico, Texas, and

⁶¹ George E. Tinker "John Locke on Property." In *Beyond the Pale: Reading Ethics from the Margins*, (Louisville, Ky, Westminster John Knox Press, 2011), 51. Locke writes his *Two Treatises* in response to Robert Filmer's *Patriarcha*.

⁶² For the three stages that led to the Mexican-American war see Scott A. Silverstone, "The Mexican American War and Territorial Expansion." In *Divided Union: The Politics of War in the Early American Republic*, (Ithaca, London: Cornell University Press, 2004), 157-201.

the United States as an opportunity for territorial expansion. By using Grotius and Locke's understanding of property as acquisition through either the role of boundaries or labor, the lack of clear indicated boundaries and presumably lack of Lockean conception of agricultural labor, the Mexican territory was available to be acquired by the United States. Using anti-Mexican rhetoric that painted the Mexican people as unable to govern themselves, Polk was able to justify war because the Mexican government had prohibited the United States' acquisition of undeveloped property.⁶³ Not only have Locke and Grotius' theories been influential in the establishment in colonial America but they proved integral to the justification of territorial expansion of the United States under the rhetoric of Manifest Destiny.

Locke and Grotius' theory of property rights and just war continues to have cultural significance three centuries later in the United States' treatments of Latinx migrants. Rather than seeing migrants from Latin America as free peoples who wish to use their liberty to pursue a better life, Latin American migrants are portrayed as aggressors that pose a threat to the land that has been mixed with white labor and white boundaries. Rhetorically, Latin American migrants has been described as invaders and threats to white American property. Rhetoric rooted in Locke and Grotius just war theory has led to violent atrocities such as the 2018 Pittsburgh Tree of Life shooting killing 11 people and the 2019 El Paso killing of twenty-three people at the Cielo Vista Walmart. Both shooters justified their shootings by viewing migrants as invaders and those who helped migrants as betraying their white American property.

⁶³ Moises Sandoval, *On the Move: A History of the Hispanic Church in the United States*. Rev., 2nd ed, (Orbis Books, 2006), 26. For a rhetorical analysis of Polk's presidency see Karlyn Kohrs Campbell, "James Knox Polk, the First Imperial President" in *Before the Rhetorical Presidency*. 1st ed. Presidential Rhetoric Series, no. 19. (College Station: Texas A&M University Press, 2008).

If Grotius and Locke are integral to the development of American legal and political institutions, then Kant is responsible for the majority of the U.S. ethical and academic frameworks. While many would not consider Kant as a representative of natural law, at least by the standards of the late enlightenment's iterations of natural law, Kant seriously speculates about the conditions of a universal morality based on an understanding of humanity's natural capacity to reason.⁶⁴ Not only does Kant speculate on the possibility of a universal morality rooted in his understanding of reason, these constructions of reason are later racialized by Kant. Kant's theories on property rights, based on this racialized understanding of reason, are used to justify taking indigenous land through his speculating on humanity's 'primitive' or 'savage' nature. First, we must illustrate that despite Kant's hesitancy in using the category of the natural (constructed against the category of the cosmopolitan), his understanding of human nature in regard to reason is not far from natural law frameworks that construct humanity's nature as reason.⁶⁵ Second, we must discuss Kant's views on reason as being explicitly tied to his racialized constructions of the natural world. And finally, it's important to discuss Kant's racialized constructions of reason are used to epistemologically justify the property theft and epistemological violence against indigenous communities and communities of color.

⁶⁴ "In Kant, for example, to speak of autonomy of mind is synonymous with affirmation of the self's subjective intentional spontaneity as rational." Emmanuel Chuckwudi Eze, *On Reason: Rationality in a World of cultural Conflict and Racism*. (Durham, SC: Duke University Press, 2008), 87.

⁶⁵ Here I am referring to Jean Porter's main argument in *Nature as Reason: A Thomistic Theory of Natural Law* (Grand Rapids, MI: Eerdmans, 2005). She states that the scholastic conception of natural law sets humanity within the context of the natural world by stating that the natural function of humanity within that natural world is to exercise its reason. The nature of humanity is explicitly tied to its reason.

Despite the typical understandings of Kant's ethical frameworks as rooted in duty and categorized as deontological, Kant's speculation on a universal morality in the categorical imperative shows strong affinities to natural law's understanding of the human person as rooted in a rational nature.⁶⁶ Kant's ethical framework seeks to establish an autonomy of morality that is not derived from an agent's emotions or desires nor from "an appeal to what the scholastics have regarded as the province of speculative reason, including the metaphysical or theological truths as well as facts about the natural world..."⁶⁷ The good, therefore, cannot be derived from an outside construction or as a means to something else, lest that good be considered simply hypothetical or instrumental.⁶⁸ In order for something to be considered categorically good, it must be good in itself. The good must derive from a logical necessity of reason. For Kant, the only thing that can be categorically good is good will itself.⁶⁹ For something to be willed as a good in itself, it must be the result of his categorical imperative to, "act only according to that maxim by which at the same time will that it should become a universal law."⁷⁰ For Kant, the

⁶⁶ Porter believes that although many modern philosophers reject Kant's metaphysics that grounds his ethics, nevertheless, "the most influential contemporary theories of the natural law fall within the parameters of a Kantian account broadly construed." Porter, *Nature As Reason*, 236.

⁶⁷ Porter, *Nature as Reason*, 235.

⁶⁸ "A good will is good not because of what it performs or effects, not by its aptness for the attainment of some proposed end, but simply virtue of the volition, that is, it is good in itself, and considered by itself is to be esteemed much higher than all that can be brought about by it in favor of any inclination, pay, even of the sum total of all inclinations." Immanuel Kant "Fundamental Principles of the Metaphysics of Morals" in *Ethics: The Essential Writings*. Ed. Gordan Marino. (New York, NY: Random House Publishing, 2010), 192.

⁶⁹ Kant, "Fundamental Principles", 191.

⁷⁰ Immanuel Kant "The Categorical Imperative" in *The Right Thing to Do: Basic Readings in Moral Philosophy*. Ed. James Rachels (New York, NY: McGraw-Hill, 2003), 78.

effects produced by such a universality of law are what he calls nature. And thus, Kant's second iteration of the categorical imperative takes on the language of natural law. Kant states "[By analogy], then the universal imperative of duty can be expressed as follows: act as though the maxim of your action were by your will to become a universal law of nature."⁷¹ Kant's understanding of nature is thus nuanced. Rather than seeing nature as an empirically quantifiable grounding for the construction of the will, Kant refers to nature in its, "essential freedom as a noumenal being, and to those elements of physical nature that must be pursued in order to satisfy conditions necessary for human cooperative existence."⁷²

For Kant, the nature that is proper to humanity is an autonomous reason that is rooted in the subject. The natural or created order that functions outside the autonomous subject cannot be a framework in which to engage ethics.⁷³ If the end of ethics is happiness, as it was described by Aristotle, then instinct rather than reason should be the guide for ethical action.⁷⁴ Yet, as Kant describes, sometimes the ethical thing does not necessarily correlate to human happiness or comfort, because ethics is rooted in willing the good. An ethical action sometimes requires one to sacrifice their comfort or their happiness for the sake of duty. Thus, the use of reason guides the will to pursue ends that are "good in themselves" and such a will cannot be easily manipulated by outside forces.⁷⁵ Kant's project for the autonomy of morality is rooted on the

⁷¹ Kant, "The Categorical Imperative", 78.

⁷² Boyd, *A Shared Morality*, 73.

⁷³ "...reason generates moral norms through a self-reflective and discursive unfolding of its own exigencies" Porter, *Nature as Reason*, 236.

⁷⁴ Kant, "Fundamental Principles", 193.

⁷⁵ Kant, "Fundamental Principles", 194.

capacity that a human, through reason, can guide the will rather than it be guided heteronomously.

Despite the fact that Kant tried to establish a universal autonomous morality based on an autonomous reason, modern scholars have pointed out that not only is Kant's construction of reason far from autonomous and culturally specific to western Europe, but that his constructions of reason are rooted in racist pseudoscience of the late enlightenment. Decolonial thinkers have illustrated that Kant's attempts towards a universally applicable morality are in fact limited by his own experience.⁷⁶ Walter Mignolo states,

“Kant operates under the assumptions that knowledge is objective without parentheses and that the knower (or observer) can establish objectively that there is a correspondence between the description (in words or in cartography) and the world described. The knower occupies a place, the place of knowing. And--according to the premises of truth without parenthesis-- the place of knowing is beyond political histories and beyond body-political subjectivities....”⁷⁷

Through ignoring the geopolitical space, the politics of the body, and history which he occupied, Kant constructed a morality based on a demand to be followed in his construction of a morality

⁷⁶ Comparing the difference between Foucault and Kant in relation to Locke's understanding of tabula rasa, Boaventura Santos states, “But, in the place of tabula rasa, they both put forward presuppositions or a prioris that, according to them condition all contemporary human experience. They were unaware that all that experience was an intrinsically truncated experience, for it had been constructed to disregard the experience of those that were on the other side of the abyssal line--colonial people.” *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South*. (Durham, NC: Duke University Press, 2018), 4.

⁷⁷ Walter D. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options*. (Durham, NC: Duke University Press, 2011), 191.

of imperatives. Mignolo rightly states that the method of Kant's convictions are also methods of control against which there is no argument, "Kant characterized the CI (Categorical Imperative) as an objective, rationally necessary and unconditional principle that we must always follow despite any natural desires or inclinations we may have to the contrary...Kantian imperatives justified what modernity/coloniality achieved: management, control, and unidirectional cosmopolitanism."⁷⁸ The decolonial critique of Kant is that in positing his particular moral theory based on his autonomous construction of reason as universally applicable, he subjugates the knowledge of Indigenous and marginalized communities and in doing so negates universality in general. Anibal Quijano points out, "Nothing is less rational, finally, than the pretension that a specific cosmic vision of a particular ethnicity should be taken as universal rationality, even if such an ethnicity is called Western Europe because this actually pretends to impose a provincialism as universalism."⁷⁹ Not only is Kant's understanding of autonomous reason suspect because it ignores his own social location, but Kant is blind to the ways in which his constructions of reason are rooted in the racist pseudoscience of the time.

Emmanuel Chukwudi Eze has illustrated that, despite Kant's claim that his construction of moral reasoning is rooted in *a priori* categorical imperatives, Kant connects reason explicitly to the racialized pseudoscience of the time. Eze contends that Kant's racism not only exists in his non-philosophical works such as his *Observations on the Beautiful and the Sublime*, his *Natural History*, and his *Lectures on Physical Geography*, but also permeates his transcendental

⁷⁸ Mignolo, *Darker Side of Western Modernity*, 224.

⁷⁹ Anibal Quijano, "Coloniality and Modernity/Rationality" *Cultural Studies* 21, nos. 2/3 (2007):168-178. Mignolo expresses similar sentiments, "it was an aberration to pretend and act accordingly as *if their specific image of the world and their own sense of totality was the same for any- and everybody else on the planet.*" Walter D. Mignolo and Catherine E. Walsh *On Decoloniality: Concepts, Analytics, Praxis* (Durham, NC: Duke University Press, 2018), 195.

philosophy. Eze states, “Kant’s racial theories belong in an ‘intimate’ way to his transcendental philosophy, or at least cannot be understood without acknowledgement of the transcendental grounding that Kant explicitly provides them.”⁸⁰ Looking at Kant’s thought in *Observations on the feeling of the Beautiful and Sublime* (1764), he believes that certain characteristics are naturally attributed to different cultural groups in western Europe...⁸¹ Later, Kant attributes different characteristics to particular racist constructions. In Kant’s lectures *On Physical Geography*, Kant provides a particularly damning quote in regard to his racist beliefs when he states, “Humanity is at its greatest perfection in the race of the whites. The yellow Indians have a meagre talent. The Negroes are far below them and at the lowest point are a part of the American people’s.”⁸² In another quote from *Observations*, Kant explicitly connects a person’s race to their knowledge stating, “...this fellow was quite black from head to foot, a clear proof that what he said was stupid.”⁸³ These essentialized racial characteristics established by Kant are translated into the moral sphere. As Eze states,

“Unreflective mores and customs (such as supposedly practiced by the non-European peoples listed by Kant) are devoid of ethical principles

⁸⁰ Emmanuel Chukwudi Eze, “The Color of Reason’ in Eze (ed.), *Post colonial African Philosophy: A Critical Reader* (Oxford: Blackwell, 1997), 129. As quoted in Thomas E. Hill Jr. and Bernard Boxill, “Kant and Race” in *Race and Racism*. Boxhill (ed.), (Oxford: Oxford University Press, 2003), 452.

⁸¹ In regard to different aesthetic qualities that exist between different Western European’s Kant believes that Spaniards are, “often harsh and indeed quite cruel.” Kant, “Observations on the Feeling of the Beautiful and Sublime” in *Race and the Enlightenment: A Reader*. Eze (ed.) (Cambridge, MA: Blackwell, 1997), 51.

⁸² Immanuel Kant, “Physical Geography” in *Race and the Enlightenment: A Reader*. Ed. Emmanuel Chukwudi Eze (Cambridge, MA: Blackwell, 1997), 65.

⁸³ Immanuel Kant, “On National Characteristics” in *Race and the Enlightenment: A Reader*. Ed. Emmanuel Chukwudi Eze (Cambridge, MA: Blackwell, 1997) 57.

because these people lack the capacity for development of “character”, and they lack character presumably because they lack adequate self-consciousness and rational will, for it is reflectivity (the ‘ego concept;’) and rational principled will which make the up building of moral character possible through (educational) process of development of goodness latent in/as human nature.⁸⁴

Despite Kant’s obvious racism, there is debate on whether or not Kant’s racist theories are a result of “inconsistent universalism” or “consistent inequality” and whether or not Kant’s racialized theories have changed over time. Pauline Kleingeld argues that Kant, “ drops his hierarchical account of the races in favour of a more genuinely egalitarian and cosmopolitan view.”⁸⁵ Similarly, Thomas Hill and Bernard Boxill argue that, “while it is important to notice and block the influence of aspects of Kant’s writing that reflect or might encourage racism, the charges of racism do not reach Kant’s deep theory or undermine its potential for guiding deliberation about the problems of race.”⁸⁶ Despite efforts to rehabilitate Kant by looking at how Kant might have toned down his racial hierarchical theories in his later works and efforts to separate his works in anthropology from his works in “pure” philosophy, Kant’s theory of rights found precisely in his later work illustrate just how his theories of race undergird the frameworks

⁸⁴ Emmanuel Chukwude Eze, “The Color of Reason” in *Postcolonial African Philosophy: A Critical Reader*. Ed. Eze (Oxford: Blackwell 1997), 115.

⁸⁵ Pauline Kleingeld, "Kant's Second Thoughts on Race." *The Philosophical Quarterly* (1950-) 57, no. 229 (2007): 573.

⁸⁶ Thomas E Hill. And Bernard Boxhill, “Kant and Race”, 449.

that would deprive Indigenous communities of land because of Kant's conjectures on essentialized racial categories.⁸⁷

Similar to Grotius and Locke, Kant's view of right is rooted in the understanding of private property. Yet, instead of viewing a person's right to property vertically in relation to a person's ownership to a thing, Kant views property rights horizontally as an agreement between people. Kant suggests that an object does not come into one's possession through the relationship between the subject and the object, but through a general agreement between individuals in social relationships.⁸⁸ The understanding that property is rooted in a sort of social contract (Kant would not use these words), is why Pauline Kleingeld believes that Kant walks back his racism. She states, "The very fact that Kant regards Native Americans, Africans and Asians as (equally) capable of signing contracts, and as persons whose interests and claims present a normative constraint on the behaviour of European powers, indicates a shift in perspective."⁸⁹ Yet, Kleingeld's idealistic version of Kant's cosmopolitanism is undermined precisely in Kant's construction of provisional and conclusive possession of property in an effort to push people into his vision of cosmopolitanism. As Alan Kelner illustrates, Kant's understanding of rights is rooted in racist constructions of nature where, for Kant, the state of nature is one where a person

⁸⁷ Eze suggests that scholarly forgetfulness of Kant's racialized theories is a result of an "overwhelming desire to see Kant only as a 'pure' philosopher." Eze "The Color of Reason", 104.

⁸⁸Kant ([1797] 1996, [6:261] 413, [6:265] 417, [6:268] 419) "conceives of property not as a relation between a person and a thing—an "absurd way of representing it"—but rather as a relation between individuals.¹⁷ Kant ([1797] 1996, [6:261] 414) construes it as an omnilateral agreement between an individual "with all others." To this, he adds it holds only "in the civil condition." Alan J. Kelner "States of Nature in Immanuel Kant's Doctrine of Right." *Political Research Quarterly* 73, no. 3 (September 2020): 728.

⁸⁹ Kleingeld, "Kant's Second Thoughts on Race", 587.

is in a condition that is not “rightful.”⁹⁰ Kant understands this state of nature as primitive and savage and thus this state of nature must be exited either by persuasion or by force. While people have a provisional right to their property, that right becomes conclusive when one exits the state of right-less primitive nature into a social agreement that brings about the enforcement of property rights through social conditions enabling the use of force. Yet, if a person refuses to exit the state of nature in order to bring about such a social condition, for Kant, force is permitted so as to bring people out of the primitive state of nature. This is where Kant’s racist constructions and characterizations become dangerous. For Kant, while it is possible for Native Americans, Africans, and Asians to enter into a contract that safeguards property, Kant’s racist characterizations portray these communities (the Native American community in particular), as unwilling or unable to enter into these contracts. As Kelner states,

So long as indigenous peoples remain in the state of nature—and Kant clearly thinks they do—their possessions and everyone else’s are merely provisional. Kant seems clearly to think there cannot be a portion of the earth that does not recognize property (i.e., isn’t a state). Nonstate peoples threaten the status of property claims for states insofar as property is conclusive only when “such a contract” extends to the entire human race.⁹¹

Kant’s theory of rights ultimately is rooted in his essentialized and racialized construction of human nature and his theory has real world effects for Indigenous communities and Latinx communities.

⁹⁰ Kelner, “States of Nature”, 728.

⁹¹ Kelner, “States of Nature”, 732.

Kant's thought on human nature has three movements. Kant's first move was to assert that his provincial knowledge rooted in the northwestern European enlightenment constituted an objective and universalized understanding of reason superimposed onto all people. His second move was to equate reason and moral character to racial hierarchy. And finally, Kant's theories were used to advocate a cosmopolitanism that used his constructions of a state of nature to disenfranchise Indigenous communities from their land. What is particularly troublesome is that while Kant viewed himself as advocating for a moral system that was supposedly neutral, that neutrality became the guise for hegemonic discourse about morality as a whole. To question then the moral framework of Kant is to question reason itself and subsequently to rhetorically position oneself as one who is unreasonable.

New Natural Law

Following the Kantian effort to establish an autonomous morality, new natural lawyers such as Germain Grisez, John Finnis, and Robert George separate reason from nature in the same way as Kant seeks to establish categorical imperatives. They define the natural as descriptive of the world in which people inhabit. They suggest that moral force cannot be derived from the observations of the natural world and that basic goods are rooted in autonomous reason without any adherence to speculative truth. Goods, as they are found in the natural world or derived from observations, are premoral. According to Craig Boyd,

“What Grisez and Finnis propose is that the various goods of life can be grasped by the theoretical reason in a ‘premoral sense,’ a sense that will avoid the embarrassment of moving from is to ought. In contrast to the theoretical use of reason, the practical use of reason moves us to action, as

when we decide that ‘I must demonstrate mercy to this person now.’

Theoretical reason grasps the truth that ‘it is good to help those in need,’

but this is merely a premoral assessment of the good. Practical reason

moves humans to action and requires that I engage in the particular act

now.”⁹²

For Finnis and Grisez the possession of the pre-moral understanding of a good does not rest on any speculation about human nature. For Finnis and his reading of Aquinas, “the way to discover what is morally right (virtue) and wrong (vice) is to ask, not what is in accordance with human nature, but what is reasonable.”⁹³ Again, Finnis states, “Thus it is simply not true that ‘any form of natural-law theory of morals entails the belief that propositions about man’s duties and obligations can be inferred from propositions about his nature.’”⁹⁴ This statement comes with a few implications. Finnis first separates reason from humanity’s nature, thus perpetuating the separation of nature from humanity. Reason is therefore seen as autonomous and unrelated to making any statement about humanity. Secondly, this statement negates a teleological understanding of humanity based on any speculative knowledge about human nature grounded in any sort of metaphysical presuppositions.

Yet, despite the fundamental negation of any speculative knowledge or statements about human nature as grounds for moral obligation, Grisez and Finnis describe a set of basic practical principles that form basic goods that are ultimately rooted in conceptions of human nature. That

⁹² Boyd, *A Shared Morality*, 205.

⁹³ John Finnis, *Natural Law and Natural Rights*. (Clarendon: Oxford University Press, 1980), 36.

⁹⁴ Finnis, *Natural Law*, 33

is, Finnis and Grisez lay out human goods that they consider to be *a priori* to human nature, that in actuality of their pursuit latently presume things about human nature. Finnis states

There is (i) a set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realized, and which are in one way or another used by everyone who considers what to do, however unsound his conclusions; and (ii) a set of basic methodological requirements of practical reasonableness (itself one of the basic forms of human flourishing) which distinguish sound from unsound practical thinking and which, when all brought to bear, provide the criteria for distinguishing between acts that (always or in particular circumstances) are reasonable-all-things-considered (and not merely relative-to-a-particular purpose) and acts that are unreasonable-all things considered, i.e. between ways of acting that are morally right or morally wrong--thus enabling one to formulate (III) a set of general moral standards.⁹⁵

Yet these basic principles that indicate basic ideas of human goods and human flourishing presume a teleological presupposition of the human pursuit of happiness. To say there is a basic human good is to latently say that humans desire and pursue the good.

Furthermore, the list of goods that Finnis and Grisez propose as *a priori* and basic, presuppose more specific claims of human nature. Finnis proposes the basic goods of life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness, and religion as basic goods. These goods are basic in such a way that, “means ‘first, each is equally self-evidently a form of good. Secondly, none can be analytically reduced to being merely an

⁹⁵ Finnis, *Natural Law*, 23.

aspect of any of the other, or to being merely instrumental in the pursuit of any of the others.”⁹⁶ These goods cannot be derived without at least postulating that for these goods to be basic that they at the same time are integral to being human. Religion as a basic human good posits that humans, by nature, value religion. For knowledge to be a basic good presumes that humans possess a set of attributes that separate their knowledge from other animals.

Additionally, Finnis not only provides a list of basic goods, but provides a list of basic requirements of practical reasonableness that are needed to pursue these basic goods. This list of requirements include: a coherent plan for life, no arbitrary preferences among values, no arbitrary preferences amongst persons, detachment and commitment, efficiency within reason, respect for every basic value in every act.⁹⁷ These requirements of practical reason, once again, rest on presumptions about human nature. To make a coherent plan of life is to posit that humanity works out their actions in the context of teleological ends and such ends usually rest on metaphysical or religious speculations on the end of humanity. No arbitrary preferences among values and of persons presume a fundamental commitment from humanity to the ideas of freedom and equality. Notice how equality is not a fundamental human good for Finnis but is rather one of the requirements for practical reasonableness. This makes his argument for practical reasonableness as a basic human good hard to follow. One can ask what comes first, basic human goods, or the conditions that make their pursuit under the good of practical reasonableness possible. Regardless of which comes first, the list of basic human goods or the conditions that make their pursuit possible, both require postulations on human nature that both make the pursuit of these goods and the conditions in which humanity pursues them possible.

⁹⁶ Boyd, *A Shared Morality*, 206.

⁹⁷ See Finnis, *Natural Law*, 103-128.

One problem with the new natural law theory's relation to the natural in natural law is that it refuses to construct an ethical theory by actually attuning to what constitutes the natural in humanity. By constituting their natural law theory in the context of autonomous practical reason, they do not make any claims that would posit that humanity's nature is one that is constituted by humanity's use of reason (regardless of what type of reason employed). By placing value on autonomous practical reason, the new natural law theorists posit humanity as operating in both the realm of practical reason and speculative reason.

In constructing an ethic that rests on the value of practical reason alone to the exclusion of the speculative, new natural lawyers drastically misunderstand the role of speculative reason. According to Stephen A. Long, speculative reason is a precondition of practical reason. Since the new natural lawyers use Aquinas to suggest that morality is not based on speculative reason or metaphysical speculation, Long's critique of new natural law begins with a critique of their reading of Aquinas.⁹⁸ Instead of positing that Aquinas does not believe good and evil are fixed in metaphysics and speculative reason, Long believes that Aquinas' epistemology is rooted first in speculative reason that gives rise to practical reason. Speculative reason presents a truth as known whereas practical reason is rooted in operation. Long states,

Inasmuch as the practical intellect knows truth "just as the speculative" but is distinct from the speculative only in "directing the known truth to operation," it would appear that the notion of a truth with no speculative

⁹⁸ See Finnis, *New Natural Law*, 33-34. "Nor is it true that Aquinas' good and evil are concepts analysed and fixed in metaphysics before they are applied in morals. On the contrary, Aquinas asserts as plainly as possible that the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason (and not just by metaphysicians), are per se nota (self-evident) and indemonstrable. They are not inferred from speculative principles."

content whatsoever is alien to the thought of Aquinas: a contradiction in terms.⁹⁹

Aquinas believes that to know the identity of a thing is to employ speculative reason, while practical reason engages in the operation of such a thing. For Aquinas, to know how to use a thing, one must know what a thing is. Thus, to know a thing as good one must first speculate on the nature of a thing. As such, the claim that for Aquinas, “the first principles of practical reason [to know good and avoid evil] are not fixed in speculative reason” is to negate Aquinas’ theory of knowledge. For Long’s reading of Aquinas, “Nonetheless at root this practical knowing is speculatively adequated.”¹⁰⁰ Thus, Long’s ultimate critique of the new natural law theory is that

The basic goods schema of the new natural law theory in effect promulgates a category of truth with no speculative content, while at least for St. Thomas Aquinas the apprehension of speculative content—even by the practical intellect—is required by the very nature of knowledge itself.¹⁰¹

New natural law theory’s emphasis on practical reason is thus an impossible solution primarily because to engage in practical reason is to latently presuppose speculative reason.

Russell Hittinger provides an excellent example of how new natural law theorists latently use speculative reason to engage their ethics supposedly based solely on practical reason.

⁹⁹ Steven A. Long, “Natural Law or Autonomous Practical Reason: Problems for the New Natural Law Theory” in *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*. Eds John Goyette, Mar Latkovic, and Richard Myers (Washington DC: Catholic University of America Press, 2004), 169.

¹⁰⁰ Stephen A. Long “Natural Law or Autonomous Practical Reason”, 170.

¹⁰¹ Stephen A. Long, “Natural Law or Autonomous Practical Reason”, 172.

Hittinger suggests that for Grisez to engage in his arguments in bioethics concerning the preservation and reproduction of human life that Grisez latently speculates on the nature of life itself. As Robert P. George states, “A basic understanding of the integral organic function of the human body (i.e., of being alive) is a condition of any judgement, including any practical judgment about the status of life and health as basic goods.”¹⁰² To make any judgement about human reproductive rights or end of life care, there must be a speculative commitment on what constitutes life and what constitutes a life worth having. It is in the field of medical ethics, in particular, that moral precepts and competing notions of the good come to a head in such a way that clear moral precepts based on practical reasonableness becomes an impossible demand.

The new natural law’s theory’s commitment to self-evident principles of practical reason and refusal to discuss any conditions of human nature in which to ground the good is a continuation of the man/nature dichotomy that was brought about through enlightenment speculation. The enlightenment construction of man against the natural world has either led to the rejection of natural law frameworks or the reworking of frameworks to exclude understandings of the natural as it is presented in the created world. In an effort to separate human nature from that of the natural world enlightenment thinkers,

dissolved thereby the conjunction between the *is*, as such, and the *ought*.

But in their arguments against the uniformity and stability of reality, the proponents of the romanticism, vitalism, and evolutionism that may be subsumed under the shorthand label of "history" seemed to deny any general structure in the non-natural sector of reality germane to human morals and to expound a doctrine of eternal flux; while, correspondingly,

¹⁰² Robert P. George in *Defense of Natural Law* (Oxford: Clarendon Press, 1999), 63.

the utilitarians, social theorists, and social scientists who shared in the exaltation of "society" seemed to deny any universal or absolute basis for morality and to expound a doctrine of social relativism.¹⁰³

So, to address the is/ought distinction in an effort to establish an autonomous morality, the result was either a monolithic construction of reality that was untenable with the pluriformity of reality or a doctrine of social relativism. In the same way, practical reason alone became a priority for the new natural lawyers so that they can avoid the "naturalistic fallacy" but in reality displaced humanity from its social, historical, and narrational contexts as well as its lived experience in the created world. Humanity, for new natural lawyers, must be separated from any speculative content about its nature and must be removed from its positionality in the created world in order to engage in the ethical, despite the fact that ethics happens in the contexts of human relationships and humanity's relationships to the created world. Ethics happens in the narratives of real lives and the real world.

The resulting effect with the negation of metaphysical and natural speculation to establish an autonomous practical reason was to simply superimpose a construction of reason based on Kantian universals as normative for the whole of humanity. Thus, new natural lawyers fall into the same trap as their enlightenment counterparts, an epistemic hegemony that does not attend to the nuances of a variety of human cultures or narratives. The negation of human nature as it exists within the created world positioned epistemic structures that have told a narrative that justifies extractivist capitalism where humanity, as an autonomous subject, can therefore consume objects without regard to the interrelated effects of such consumption. The new natural

¹⁰³ Leonard Krieger, "Kant and the Crisis of Natural Law." *Journal of the History of Ideas* 26, no. 2 (1965): 195.

lawyer's understanding of premoral goods also functions within a framework of epistemic domination. By positing that goods are premoral the consumption of these goods can also be understood to be premoral. Thus, following a Lockean and Grotian understanding of liberty as dominion, one can posit that any threat to the free consumption of these goods is a threat to humanity's natural right to property. Thus, new natural lawyer's premoral goods and construction of the autonomous subject can be used to epistemically justify neo-colonial policies.

A primary example in which the confluence of sovereignty as established by Grotius and Locke, Kant's theory of right, and new natural law's understanding of autonomous pre-moral goods has affected and permeated the American legal system is through the enumeration of the Plenary Power Doctrine in immigration law. Derived from the Chinese exclusion case that upheld the Scott Act of 1888, an act that prohibited Chinese laborers from returning to the United States, *Chai Chan Ping v. The United States* gave the U.S. legislative system the power to determine its own borders as well as have power to enact immigration law that could abrogate prior U.S. treaties.¹⁰⁴ Some believe that the court's claim to sovereignty was not used to deny people rights enumerated in treaties but to solve a question of the federal government's power to enact immigration policy.¹⁰⁵ However, I argue that it is rather a battle between conceptions of what constitutes a right and which conception of rights matter in the U.S. legal system. Based on a conception of objective rights versus subjective rights, in the case of the Plenary Power

¹⁰⁴ The details of the case were that a Chinese immigrant named Chae Chan Ping went home to China under the Burlingame Treaty, which gave Chinese immigrants the ability to travel to and from China to the United States, to return to the United States and be detained because the Scott Act of 1888 abrogated the Burlingame Treaty. Chae Chan Ping was detained and then appealed his detention all the way to the Supreme Court. The court ruled against Chae Chan Ping.

¹⁰⁵ David A. Martin, "Why Immigration's Plenary Power Doctrine Endures," *Oklahoma Law Review* 68, no. 1 (Fall 2015): 31.

Doctrine, the concept of subjective rights as a right of dominion took precedence over the understanding of the natural right that derives from promises in relationships.¹⁰⁶ As such, a nation's rights to define their borders and enumerate immigration policies take precedence over the objective and passive rights given by the relationship found in a contract. Part of the reason that Doctrine of Plenary Power took precedence is the prevalence of a rights and natural law theory, derived from Grotius, Locke, and Kant that focuses primarily on subjective rights and goods that are acontextual and seek to exist outside of relationships.

The judicial concept of sovereignty in the plenary power doctrine was not so much a doctrine that protected American citizens but was one that protected white American citizens. The plenary doctrine was used to deport Mexican-Americans to Mexico in the 1930's because the prevalence of Mexican-American workers was perceived as a threat to white workers in the Southwest. Despite becoming citizens in 1848 as a result of the Treaty of Guadalupe Hidalgo at the end of the Mexican-American War, 500,000 Mexican-American citizens, born in the contiguous United States, were deported to Mexico.¹⁰⁷ In 1931, the federal government conducted raids and detained American born citizens of Mexican descent. State and local governments followed suit.¹⁰⁸ Despite having a legal claim to be in the United States, both by

¹⁰⁶ Here I follow Richard Tuck's understanding of passive and active rights and their corollary of objective and subjective rights. A passive right is one which is given to you by someone else and is therefore objective in the sense that it can be discoverable in relationships implied through contracts. An active right or subjective right is one that one possesses.

¹⁰⁷ For a comprehensive history of Mexican Repatriation see Francisco E. Balderrama, and Raymond Rodriguez. *Decade of Betrayal: Mexican Repatriation in the 1930s*. [1st ed.]. (Albuquerque, NM: University of New Mexico Press, 1995)

¹⁰⁸ See Eric L. Ray, "Mexican Repatriation and the Possibility for a Federal Cause of Action: A Comparative Analysis on Reparations," *University of Miami Inter-American Law Review* 37, no. 1 (Fall 2005): 171-196

treaty and by birth-right citizenship, the plenary doctrine or the role of the State to determine citizenship, immigration, and faithfulness to treaties was rooted in the concept of protecting property for white citizens. The same racial hierarchies that were explicit in Kantian understanding of public right remained implicit in American legal reasoning in the repatriation of Mexican-American Citizens.

Even in court cases that seem to contest the plenary power doctrine such as a recent case *Herrera v. Wyoming* that upheld the right of Crow tribes to hunt in the territory they ceded constituting the state of Wyoming and Big Horn National Forest, the legal reasoning upholding that right is based on subjective rights of dominion rather than objective rights that come from relationships like treaties. For *Herrera v. Wyoming*, the question at hand was not whether the Crow people had the right to hunt because of an 1868 treaty that allowed them to, “have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon,” but rather whether or not the forming of a state or national park constituted occupation of such a land.¹⁰⁹ The court held that the Crow’s hunting rights were not to be abrogated because the land was not considered occupied. Yet, the reasoning was rooted in the understanding of property rights formulated by Grotius, Locke, and Kant, and the principles employed were those that primarily considered moral principles not derived from relationships but were rooted in acontextual definitions of what constituted occupation and which legal case was drawn for precedent.¹¹⁰ One could then argue that the plenary doctrine was upheld even more so because the frame of argument was not based on whether or not the federal government should honor

¹⁰⁹ *Herrera v. Wyoming* 587 U.S. 3 (2019)

¹¹⁰ *Herrera v. Wyoming* discusses whether to use the legal case *Race Horse* or *Mille Lacs* was to set the precedent to whether or not the Crow’s right to hunt was suspended when Wyoming became a state.

previous treaties, but rather reinforces the government's right to supersede relational rights in so far as the correct steps are taken, e.g., correctly constituting occupation.

The legal reasoning of the United States owes much of its framework to the thought of Grotius, Locke, and Kant's understanding of natural law and new natural law's understanding of pre-moral goods, property rights, and autonomous moral reasoning. This legal reasoning, presumed as neutral and autonomous, has constituted frameworks that have justified the destruction and taking of Native American land, disenfranchised African American communities, and marginalized Latinx communities. In so far as the Latinx community is concerned, such legal reasoning that denies the rights derived from relationships constituting the plenary doctrine provides legal justification for arbitrary and cruel immigration laws. Through emphasizing a moral reasoning and natural law that is generated from the separation of humanity from its context, the U.S. tradition of the natural has masked its use of natural law and natural rights under the guise of neutrality and the application of general moral principles, regardless of the fact that those principles are rooted in a history that has emphasized the enslavement of people and the theft of land. What is needed is a natural law and rights theory that emphasizes the role of context, the role discernment, and that places real human relationships as primary when discussing moral reasoning.

Revisionist and Contextual Natural Law Theories

Recently, there have been efforts to retrieve a natural law and human rights framework that contests the commitments of a natural law construction that bases itself on autonomous, acontextual, and precept based moral reasoning. Jean Porter has spent a significant amount of her career retrieving natural law in a way that takes seriously the scholastic context in which it

originated and takes seriously the claim that natural law is a type of moral reasoning as opposed to a set of specific moral precepts. Within the realm of human rights language, Linda Hogan contributes to the discussion of the validity of human rights language by arguing for placing rights language in the context of multicultural, pluricentric, and relational frames as opposed to the abstract concepts of human nature rooted in Western individualism. Both Porter and Hogan's contributions to discerning natural law or human rights language within the multifaceted contexts in which the human person exists, opens up space for a discussion of natural law rooted in the Latinx narratives.

Revisionist Natural Law

Jean Porter

Jean Porter argues against new natural law's emphasis to frame natural law as providing specific moral precepts immediately recognizable by the autonomous function of practical reason. She does this by reinterpreting Aquinas' understanding of natural law within his wider scholastic context. In particular, she critiques Grisez and Finnis interpretation of Aquinas' ST I-II 94.2.¹¹¹ Grisez and Finnis read Aquinas' three inclinations found in I-II 94.2 as the establishment of precepts that protect pre-moral goods. They argue that anything that would prohibit the pursuit of these goods, i.e., procreation, living in society, is an intrinsic evil. Yet, Porter argues that Aquinas' list of inclinations is precisely what he claims them to be, inclinations. To give these

¹¹¹ Aquinas' ST I-II 94.2 asks whether or not natural law contains several precepts or one only. Here we get Aquinas' first principle of practical reason, that "good is to be pursued and evil to be avoided." We also get the list of Aquinas' three inclinations. The first is that man is inclined toward the good as it relates to all substances, e.g., self preservation. The second is that humanity is inclined toward the good unique to all animals, e.g., procreation and education of offspring. Third is that which is particular to humanity specifically, e.g., know the truth about god or live in society.

inclinations the status of moral precept would be to go further than Aquinas would regarding the goods that are established by these inclinations. For Porter and for Aquinas, the goods established by Aquinas' inclinations are not specific enough to dictate specific moral actions let alone be brought to the level of moral precepts that dictate principles of nonmaleficence. Porter's particular example is that while the first inclination under the first principle of natural law is to protect life, and thus establishing for Finnis and Grisez the inviolability of life, Aquinas understands that within certain contexts some encounters require the taking of human life (i.e., self-defense, war, etc.).¹¹² What this example does for Porter is establish her general thesis that natural law can never be specific enough to provide specific moral precepts that govern moral actions. The general principle of natural law to do good and avoid evil, must always be interpreted within the context in which the question is posed. Porter argues that Aquinas addresses the question of whether or not natural law is the same for all people and is immediately accessible to all knowledge in I-II 94.4. Here, Aquinas states

Consequently we must say that the natural law, as to general principles is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail, both as to rectitude, by reason of certain obstacles (just as natures subject to generation and corruption fail in some few cases on account of some

¹¹² Porter illustrates that this is also a primary example for a proportionalist reading of Aquinas. See Porter, Jean. "Moral Rules and Moral Actions: A Comparison of Aquinas and Modern Moral Theology." *Journal of Religious Ethics* 17, no. 1 (Spring 1989): 123.

obstacle, and as to knowledge since in some the reason is perverted by passion or evil habit, or an evil disposition of nature...¹¹³

For Porter and Aquinas, the first general principle of practical reason, to do good and avoid evil, is accessible and the same for all in so far as it remains a general principle. When the context demands a moral action, a certain level of discernment on what constitutes a good or evil within that specific context requires a level of discernment.¹¹⁴ Porter believes that this framework is normative for the scholastic tradition. For the scholastics, “they identify the natural law in the primary sense with a capacity for moral discernment or the fundamental principles through which such a capacity operates.”¹¹⁵ Thus, for Porter, natural law, its general principles, and inclinations function as the foundation for a type of moral reasoning that takes into account the general inclinations of human nature, in its desires and orientations, as well as the cultural context in which a person finds themselves.

Central to Porter’s argument that natural law is a type of moral reasoning that takes seriously the normative role of context is the fact that natural law itself is formed within a theological and scholastic context. Continuing her discussion on Aquinas’ *Summa Theologica* I-II 94.2, Porter illustrates that Aquinas was not simply positing his own theory of the first principles of practical reason in order to establish specific moral precepts, but rather was synthesizing the scholastic milieu of definitions of natural law. Porter illustrates that Aquinas’

¹¹³ *Summa Theologica* I-II Q 94.4

¹¹⁴ For example, to distinguish the principles of justice requires being grounded in, “normative equality which can only be articulated in terms of its ideal social embodiments.” Porter, “Moral Rules and Moral Actions”, 142.

¹¹⁵ Jean, Porter. *Nature as Reason*, 4.

understanding of the inclinations were a synthesis of other scholastic formulations of natural law.

Porter states

The first inclination which we share with all other creatures is associated with the natural law understood as a universal tendency towards existence or goodness mentioned by Roland. The second inclination, which we share with other living creatures, is associated with Ulpian's natural law, to which pertain reproduction and the care of the young. Finally, the properly human natural law, including those precepts relating to life in society and worship of divine being, are associated with distinctively human inclination to live together and to engage in intellectual activity, which were central to Cicero's conception of the natural law and were subsequently incorporated into scholastic reflection by early canonical commentators on Gratian's *decretum*.¹¹⁶

Rather than positing a system of natural law that does not take into the account the metaphysical or speculative notions of what constitutes the natural in the natural law as described by Finnis, Porter illustrates that Aquinas' aim was to synthesize the received tradition into a single framework of knowledge.¹¹⁷ In fact, the general project of scholasticism was to, "bring together

¹¹⁶ Jean Porter, "Does the Natural Law Provide a Universally Valid Morality?" in *Intractable Disputes About the Natural Law: Alasdair MacIntyre and Critics*. Ed. Lawrence Cunningham (Notre Dame, IN: University of Notre Dame Press, 2009), 67.

¹¹⁷ Finnis famously states, "On the contrary, Aquinas asserts as plainly as possible that the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason (and not just by metaphysicians), are per se nota (self-evident) and indemonstrable. They are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about 'the function of a human being', nor are they inferred from a teleological conception of nature or any other conception of nature. They are not inferred or derived from anything. they are underived (though not innate). Principles of right

the widest possible range of traditions and practical considerations into a perfect system of knowledge' unified by reference to scripturally mediated revelation."¹¹⁸ Thus the project of natural law in the scholastic framework is not to establish an autonomous conception of morality, but to bring into conversation natural law moralities as it relates to a wide range of traditions.

Not only is a scholastic conception of natural law rooted in context, but it views such a context as a resource for moral traditions. For Porter, in order to derive a moral action exegeting one's context is necessary. For Porter, human nature as reason, exists within particular contexts. Nature cannot be described primarily as autonomous or individualized or based on sheer "facticity", Porter states, "Nature in the sense of sheer facticity is not incorporated into the scholastic concept of the natural law, because nature taken in this sense cannot offer a basis for understanding the regularities of the non-human or social world."¹¹⁹ Humanity must exegete and understand their place in the world and understand natural law in relation to social customs and their own characteristics. Thus, nature can be seen "as the ordered totality of all creatures" or "seen as the intrinsic characteristic of a given kind of creature."¹²⁰ Human nature can be discussed in two ways, their nature in relation to the natural world and their relation to themselves as a reasoning creature. Thus, scholastics would go on to describe the specific aspect

and wrong, too, are derived from these first, pre-moral principles of practical reasonableness, and not from any facts, whether metaphysical or otherwise." Finnis, John. *Natural Law and Natural Rights*. (Clarendon Press: Oxford University Press, 1980), 33.

¹¹⁸ Porter, "Does the Natural Law Provide a Universally Valid Morality?", 68. Porter also discusses the fact that scholastic interpretation of natural was a quest to systematize and exposit authoritative texts. See Jean Porter, *Natural and Divine Law: Reclaiming the tradition for Christian Ethics* (Grand Rapids, MI: Eerdmans, 1999), 25-62, 76-84.

¹¹⁹ Jean Porter, *Natural and Divine Law*, 77.

¹²⁰ Porter, *Natural and Divine Law*, 77.

of human nature within the totality of the natural world as a creature whose primary function is that of reason. This contradicts the traditions of Grotius, Locke, and Kant who posit human nature and its faculty of reason in contradistinction to the natural world. Aquinas posits the natural world as integral to providing humanity the context in which reason is possible. Human reason functions within the natural world and thus must take seriously its relationship as part of the natural world and the contexts which are given. Thus, Porter's understanding of natural law morality transitions to a spectrum of natural law moralities that use the virtue of prudence to discern which moral action can take place within a given context.

Critiquing new natural law's understanding of autonomous practical reason as the immediate apprehension of specific moral precepts, Porter argues that practical reason is rooted in the will and desires of the person and these desires can be the result of cultural values given by society. Porter states,

If practical reason does not generate its own aims (or functions without reference to any aims at all), the obvious alternative would be to say that it takes its starting points from somewhere else- from the agent's own desires, or from the commitments and values shared by a given society. In other words, if practical reason is not autonomous, then it would appear to be instrumental to aims generated outside of it.¹²¹

Porter's understanding of Aquinas' use of practical reason is that while the first principle of practical reason, to do good and avoid evil, is the starting point of moral reflection, such a reflection is not specific enough to guide moral action. For Porter, "these principles by themselves do not lead to action, much less generate norms for action until they are engaged by

¹²¹ Porter, *Nature as Reason*, 239.

desires prompting a practical reflection and action.”¹²² Thus, contrary to the new natural lawyer’s understanding of autonomous practical reason, practical reflection is required to guide moral action and this practical reflection requires the use of prudence. Prudence functions as a discernment process that directs moral actions towards particular ends that are provided through the person’s desires as they are formed and shaped by societal contexts. Thus, “particular acts are chosen with reference to some further end that the agent has in view - whether as means to an end, or as one component of a more complex good, or as a way of expressing or enjoying one’s end in a particular act (47.1 ad 2).”¹²³ By assessing the ends of a particular act, Porter takes seriously the need to assess the value of an act within the context of a particular end. By assessing a moral act in reference to its ends, what is presumed is the context that gives saliency to each moral act.

First principles of practical reason are not ignored by either Porter or Aquinas.

Rather,

first principles, in turn, can only function practically insofar as they are informed by the natural inclinations of the human creature and given concrete meaning through the agent’s speculative beliefs about and overall orientation toward, whatever he regards as his final good. Practical reason is dependent for its functioning on speculative judgements, and by the same token the virtue of prudence presupposes--it does not directly generate--right judgements about the agent’s appropriate aims.¹²⁴

¹²² Porter, *Nature as Reason*, 249.

¹²³ Porter, *Nature as Reason*, 250.

¹²⁴ Porter, *Nature as Reason*, 309-310.

The speculative and metaphysical judgements that are provided through the process of the virtue of prudence function within the speculative frameworks of a given cultural narratives. Moral rules derived from first principles cannot provide guidance for moral action unless they are rooted in concrete narratives.¹²⁵ Cultures may have varying narratives, cosmologies, and understandings of virtues and thus right actions must always dialogue between one's culture, the person's desires or inclinations, and the general principle of choosing things that are perceived as goods.

Because moral actions must be assessed and understood within their instantiated concrete contexts, narratives, and the textured understandings of moral goods, communal reflection is necessary. This communal reflection is where Porter's natural law is clearly defined in opposition to the autonomous reason of new natural law and the individualized frameworks of enlightenment thought. Porter states,

The community cannot arrive at an adequate grasp of basic moral precepts except through the collective process of experience, debate, and reflection-- all of which must be informed by the prudential discernment of individuals if they are to go well. This is the level at which the creative scope of prudence will be most apparent, as each community develops its own specification of the natural law within the context of its own circumstances and history.¹²⁶

¹²⁵ "We cannot understand moral rules, or (what comes to the same thing) general concepts of kinds of actions, without some grasp of the way in which these apply to, and are instantiated in, concrete cases, which comprise paradigmatic instances of the relevant virtues (and vices)." Porter, *Nature as Reason*, 320.

¹²⁶ Porter, *Nature as Reason*, 320

Crucial to developing a natural law morality is to place it within the context of one's own community circumstances and history. Natural law as a type of moral reasoning rather than the prescription of universally valid moral precepts requires the taking seriously of the context in which such reasoning is taking place. By attuning to a community's values, desires, and goals, the speculative positing of goods provides the ends towards which moral action is oriented and provides a textured scene in which moral actions are tangibly assessed.

Porter's attention to the role of context in her argument for natural law as a type of moral reasoning provides a space in which one can engage the natural law tradition within the context of one's social location and narratives. By placing natural law, in its scholastic iterations, as context dependent, she contests the enlightenment and new natural law frameworks that frame natural law's moral precepts as autonomous and universalized. By placing natural law within its larger theological contexts, she illustrates that concepts of nature are always context dependent. Not only does she illustrate that natural law is context dependent but also that when engaging in natural law reasoning, one must engage cultural narratives in order to interpret the first principle of practical reason. How is one to know what goods are to be pursued and what evils are to be avoided unless one's cultural narrative enters into dialogue with what are considered goods worthy of pursuit and evils worth avoiding? Communal reflection does not just occur horizontally but also in dialogue with a community's history providing a multifaceted approach from where one is able to engage in natural law reasoning. As we begin to discuss what a Latinx form of natural law reasoning may look like in later chapters, it is important to take Porter's work as an avenue that opens up space to engage a context dependent starting point in which to begin natural law reflection.

Linda Hogan

Similar to Jean Porter's attempt to retrieve a natural law position that contests the frameworks of autonomous reason and abstract constructions of the individual, Linda Hogan seeks to formulate human rights language that is attentive to pluricentric and relationally situated knowledge. Her work seeks to, "challenge the assumption that the viability of human rights discourse depends on the articulation of a single, universally persuasive account of its foundations..."¹²⁷ When understood in this way, human rights, for Hogan, has become a form of "subjugated knowledge and dominatory discourse."¹²⁸ Rather than seeing human rights as a monolithic construction of human nature that is autonomous, individualized, and free, Hogan seeks to establish a human rights language that is attentive to culture and is instantiated in culture. Rather than constructing a human rights language that has been traditionally acontextual, acultural, and negates the contributions of particular cultures, Hogan discusses a type of human rights discourse recognizes, "comprehensive doctrines" and that accepts that, "the articulation of each community's distinctive worldview and ethic is embedded in political processes."¹²⁹

Hogan begins her discussion on human rights by providing historical nuance to the claim that human rights language, especially the language on the Universal Declaration of Human Rights (UDHR), was an effort in Western cultural imperialism. Hogan shows that the history of UDHR's ratification and promulgation was the result of non-Western countries holding fast to the claims of Human Rights. Hogan states,

¹²⁷ Linda Hogan, *Keeping Faith with Human Rights*. (Washington, D.C: Georgetown University Press, 2015), 7.

¹²⁸ Hogan, *Keeping Faith*, 5.

¹²⁹ Hogan, *Keeping Faith*, 7.

thus, although human rights discourse of the eighteenth and nineteenth centuries was essentially Western, liberal, and primarily (although not exclusively) individualistic, and was focused on civil and political rights, by the beginning of the twentieth century the influence of non-Western political aspirations had begun to transform the discourse.¹³⁰

This was primarily seen when Western countries tried adopting a colonial clause that would, “exclude their colonies from claiming the rights that were in the covenant and was motivated primarily by their need to resist the claim to the right to self-determination on the part of the peoples of the colonies.”¹³¹ Contradicting the popular narrative that the West superimposed rights language on non-Western countries, it was non-Western countries that contested the West's hesitancy to adopt the universality of rights language to their former colonies. Hogan illustrates that it was representatives from Indonesia, Lebanon, Cuba, the Philippines, and Chile who argued for the universality of human rights against the Western detractors. Hogan provides this example not to argue that the Western conceptions of human rights were not imperial, because implementation of a High Commissioner for Human Rights and the Asian Values debate of the 1990's proved otherwise, but to show that human rights language is already and always rooted in political and historical discourse about whose rights matter and who tries to circumvent those rights. Thus, discussions of human rights that emphasize their inalienability often forget that those unalienable rights were always historically contingent on those who have power.¹³² Human rights discourse, for Hogan, is always rooted in historical and political contexts.

¹³⁰ Hogan, *Keeping Faith*, 15.

¹³¹ Hogan, *Keeping Faith*, 21.

¹³² Linda Hogan reminds folks that discussions of human rights often did not include women, children or slaves. See Linda Hogan, “The Many Voices of Human Rights” in *Canopy*

Because human rights discourse is always rooted in historical and political contexts, Hogan wishes to bring to attention which of these contexts have taken precedent and how the over emphasis on this context has brought about what she considers a “crisis of legitimacy.” Namely, Hogan discusses how the human rights language has been rooted in “liberalism’s normative conception of the person as an individual, whose attachments are supplementary to her essential nature and whose identity can be articulated apart from her relationships, loyalties, and encumbrances.”¹³³ This construction of the person rooted in liberalism, for Hogan, is itself a product of “historical and political practices.”¹³⁴ By positioning the unencumbered self as that which is essentially human, what is really being posited is a particular version of human nature that emphasizes certain frameworks over others.

Drawing on feminist critiques of the western subject, Hogan illustrates that the essentialized understanding of a static individualized human nature was used to posit a claim of ontological sameness that marginalized those that did not fit the essentialized mold of the human. This mold often essentialized sexual difference, constructed gendered norms for discrimination, ignored the way the body was “enmeshed in culture” and carries a history. Most importantly, the essential construction of the human subject in the form of Western liberalized rendered various racial, ethnic, and sexual groups invisible. For Hogan, to rearticulate a pluricentric human right’s discourse one must engage in a framework that views the human as “first and foremost a being-

Forum on the Interactions of Law and Religion. January 2020. Canopyforum.org
<https://canopyforum.org/2020/01/08/the-many-voices-of-human-rights-by-linda-hogan/> accessed 10/8/2020

¹³³ Hogan, *Keeping Faith*, 31.

¹³⁴ Hogan, *Keeping Faith*, 35.

in-relation” that recognizes the role of difference.¹³⁵ Thus, “human rights discourse can no longer ignore the ethical responsibilities associated with rendering visible the experiences of those who are both unseen and excluded.”¹³⁶ Thus, in establishing a human rights language it is necessary to interrogate, “the nature of the discourse through which, the human is represented, noting the silences and absences and making space for the emergence of new voices.”¹³⁷ In interrogating the voices in that are privileged in discussing human rights language, it is important to consider the way that these privileged voices often universalize their particular vantage point to the subjugation of marginalized groups.

In order to contrast this hegemonic discourse that universalizes single viewpoints that are rooted in Western individualism, Hogan argues that “it is the situated rather than the abstract individual who ought to form the centerpiece of human rights discourse.”¹³⁸ As such, Hogan argues for what she considers to be a moral epistemology that is rooted in an embedded universalism. Hogan argues that human rights is undermined when, “we fail to acknowledge that human rights discourse began as a particular historical and cultural expression of value that, over time and through its persuasive appeal, acquired and continues to acquire a global influence and attraction.”¹³⁹ As a result, the idea that truth is that which corresponds to reality as an

¹³⁵ Hogan *Keeping Faith*, 84.

¹³⁶ Hogan, *Keeping Faith*, 84-85. Hogan is drawing particularly on Guyatri Spivak’s contributions towards a strategic essentialism to work towards giving those living in the subaltern a voice, or at the very least, acknowledging the way that one speaks for the marginalized and owning their own privilege in speaking for the subaltern.

¹³⁷ Hogan, *Keeping Faith*, 93.

¹³⁸ Hogan, *Keeping Faith*, 93.

¹³⁹ Hogan, *Keeping Faith*, 104.

epistemological framework presumes a guise of objective neutrality that proposes that moral realism must be rooted in an acontextualism. A true realism, for Hogan, is one that acknowledges that it is context dependent. Hogan states,

“The moral realism on which finite human beings can depend is not such that it corresponds to some abstract and universalist set of norms or principles. Rather, this moral realism is a fractured realism. It is a realism that is based on an acknowledgement that, while our identities are shaped by the material and discursive conditions of our lives, and while the ethical judgments we make are inevitably shaped by the historical and religious context of our moral formation, we can nonetheless strive to embody the virtues and excellences that have come to believe reflect the best that human beings can be.”¹⁴⁰

Some will suggest that because moral realism is a fractured realism based on material and discursive conditions that an attempt to ground human rights theories on metaphysical foundations should be abandoned.¹⁴¹ However, Hogan argues that there are many different ways of justifying human rights from a variety of different sources without necessitating a coherence of ontology, epistemology or metaphysics¹⁴² For Hogan, the error of finding a foundation for human rights discourse is that the search is often for a single monolithic foundation rather than

¹⁴⁰ Hogan, *Keeping Faith*, 108.

¹⁴¹ Here Hogan critiques the thought of Michael Ignatieff *Human rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001), Jack Donnelly’s work *Universal Human Rights Theory and Practice* (Ithaca NY: Cornell University Press 1989) 23-27, and Ronald Dworkin *Taking Rights Seriously* (London: Duckworth Press, 1977).

¹⁴² Hogan, *Keeping Faith*, 118.

taking a pluralist approach in which, “several foundations...taken together are likely to be agreeable to more people than any single foundation and no single foundation has a monopoly on reasonable claims to be made in its favor.”¹⁴³ By having multiple foundations for human rights language, no one cultural or religious understanding, is given hegemonic control.

While this idea of multiple foundations for discussing human rights might sound similar to the political liberalism of John Rawls in which “comprehensive doctrines relegated to the background culture” Hogan’s understanding of human rights is, “grounded in an appreciation of the integrity of distinct moral and religious traditions.”¹⁴⁴ She argues that what is needed are discursive bridges across traditions that result in concrete legal protections. She argues that the reason why human rights language has been able to withstand its abuses by Western imperialism and its decolonial critique is because it can and does accommodate a thick pluralism across traditions. Essential to Hogan’s idealism concerning a pluralist framework of rights language is her concept of porous communities.

While some could view Hogan’s optimistic outlook for multiple foundations for rights language as naive because it does not necessarily deal directly with incommensurability between cultural frameworks, her construction of porous communities helps frame her confidence in cross cultural dialogue. Hogan has argued that the incommensurability between cultures and community is the result of the way multiculturalism enforced a static understanding of culture and that communitarians overemphasized separatists' idea of community. Yet rather than

¹⁴³ Amy Gutman, quoted in Ignatieff, *Human Rights as Politics and Idolatry*, xviii.

¹⁴⁴ Hogan, *Keeping Faith*, 120. Hogan is referencing John Rawls’s main argument for public reason found in his work *Political Liberalism* (New York, NY: Columbia University Press, 1996), 212-254. Rawls argues that religious reasons or reasons stemming from a comprehensive doctrine for a particular position must be bracketed when entering public political discourse.

viewing cultures as monolithic, static, and bounded, culture is always in the process of negotiation and renegotiation. Community and belonging is also a site of negotiation because individual identities place values in multiple centers of belonging. Because culture, community, and tradition are dynamic, Hogan believes they can be sites of emancipatory politics. Drawing from Madhavi Sunder, Hogan states, “more and more people are claiming the right to remain as members of a group but define what that cultural membership means to them in their own terms.”¹⁴⁵ Rather than culture, community, and identity being essentialized, forcing people into particular roles and social spaces, recognizing that all these forms of relationships are open to negotiation and provides a space for someone to engage in multicultural and pluriform dialogue that can function as sites for human rights language.

Like Porter’s renegotiating of natural law as both existing within a tradition and needing context in order to function properly, Hogan’s discussion on human rights provides a framework from where Latinx communities can discuss human rights within their particular histories, languages, and communities. Most importantly, as we will discuss in chapter 3, Hogan’s understanding of porous communities and cultural frameworks is already a prevalent concept within Latinx traditions. While Hogan calls the spaces and identities one occupies as porous, Latinx theologians have been using the Spanish concept of *mestizaje* to discuss the multiple cultural, ethnic, and political identities people in the Latinx community have existed in for centuries. For Latinx communities, *mestizaje* is an epistemic stance in which to engage a particular type of moral realism that stems from a multifaceted and multicultural ethnic heritage. Thus, people of Latinx heritage already have an epistemological privilege in discussing human rights from Hogan’s perspective because they have the lived experience of situated knowledge

¹⁴⁵ Hogan, *Keeping Faith*, 160.

that is rooted in multiple spaces and multiple comprehensive doctrines. While Hogan views discursive bridges to exist between communities, within Latinx philosophy these bridges exist on our backs and are often the sites of epistemic violence.¹⁴⁶ However, because Hogan invites human rights discourse to constantly interrogate who is the one who is dominating the discourse, the space in which epistemic violence has occurred against the Latinx community in discussions of human rights can be made visible and become a site in which human rights can flourish not just for the Latinx community but for all.

Contextual Natural Law

So, what might a theology that engages natural law from within one's own particular tradition look like? There are three major contexts from which natural law has been approached from within one's own tradition, feminist natural law, black natural law, and recently queer natural law. When it comes to feminist natural law the works of Lisa Cahill and Cristina Traina are exemplary. They both engage the Catholic natural law tradition and critique the tradition for its emphasis on static conceptions of human nature that often marginalize the perspectives of women. Vincent Lloyd's recent work *Black Natural Law* provides a natural law framework that is derived directly from the perspective of Black leaders in the United States. In particular, Lloyd draws on the work of Frederick Douglas, Anna Julia Cooper, W.E.B. Dubois, and Martin Luther King Jr to establish a natural law tradition that he believes, "offers the best way to approach

¹⁴⁶ In particular I'm discussing Gloria Anzaldua's which emphasize the space of Latinx women occupying multiple identities and the failure by dominant cultures to recognize these identities. See Moraga, Cherrie, and Gloria Anzaldúa, eds. *This Bridge Called My Back: Writings by Radical Women of Color*. Fourth edition. (Albany: State University of New York (SUNY) Press, 2015.)

politics, not just for blacks but for everyone.”¹⁴⁷ Craig Ford, in discussing a foundation for a Queer natural law, provides a framework in which categories of human nature must constantly be revised and renegotiated. By engaging in feminist, black, and queer natural law traditions, one can find inspiration for a further engagement for a Latinx construction of natural law. A Latinx natural law framework would add to the milieu of frameworks that contest claims about natural law that are rooted in Eurocentric autonomous constructions of human nature.

Feminist Natural Law Traditions

For a feminist engagement in the natural law tradition, there are hardly works that are more influential than Lisa Cahill and Christina Traina. Both Cahill and Traina believe that there is an enduring value that natural law approaches to ethics have for feminist ethics. Cahill believes that a revised natural law is important to the feminist moral claim that women are owed certain substantive material goods and protection of wellbeing. She acknowledges that there are a variety and multiplicity of human goods and that a natural law theory that is attentive to the needs of women must root itself in an ongoing process of action and reflection.¹⁴⁸ As such, Cahill critiques understandings of natural law that posit a human nature that impose universal self-evident, essential, necessary, and mandatory features of human beings. Such static constructions of human nature, she argues, must give feminists pause. Yet, given the atrocities committed in the twentieth century in the wake of the holocaust, Cahill argues that human rights

¹⁴⁷ Vincent Lloyd, *Black Natural Law* (New York, NY: Oxford University Press, 2016), ix.

¹⁴⁸ See Cahill, Lisa Sowle. “Natural Law: A Feminist Reassessment.” In *Is There a Human Nature*, 78–91. (Notre Dame, Ind: University of Notre Dame Press, 1997), 79-81

make it possible for people to know that there are some practices and deeds that are crimes against humanity. Looking at Susan Thistlethwaite's claim against violence against women, there needs to be substantive categories that claim violence against women is always and everywhere wrong and that it must be stopped. Cahill discusses that first and foremost a feminist understanding of natural law must be attentive to differences in understanding practical reason. Reason as a static category cannot be applied to everyone everywhere.¹⁴⁹ Reason must first and foremost be rooted in experience.

The relationship between reason and experience is where Cahill finds common ground with Aquinas' construction of natural law. Cahill discusses the three central inclinations of Aquinas found in his *Summa* I-II 94.2. Cahill appreciates how Aquinas' thought is social, emphasizes the value of creation, and relies on scripture. Mainly, Cahill thinks that natural law and feminist theory can understand one another in the process of discerning from experience, beginning from the ground up. For both feminists and Aquinas, coming to know the good is an experiential process. Beginning from different experiences, feminists believe one can get to know the good. Deciding which bodily capacities, which human desires, and which social relationships constitute authentic goods are the central questions for feminist's moral discernment. For feminists, it is important to not only take the experiences of women as a starting point but to put priority on the experiences of women for discerning moral goods.¹⁵⁰

¹⁴⁹ Here Cahill draws on Katie G. Cannon's notion of emotional and intuitive knowledge of black women as a source of understanding the differences between persons and the use of practical reason as an example of these differences. Cahill, "Natural Law: A Feminist Reassessment", 83.

¹⁵⁰ Cahill, "Natural Law: A Feminist Reassessment", 87.

Natural law's claim to universality is strengthened by prioritizing what constitutes the human good from the perspective of women.

Experience is also central for Christina Traina's feminist ethics and natural law. She discusses the dangers of essentializing women's experiences which can lead to the negation of some women's experience over others. Traina believes that discussing experiences of women must always be attentive to nuance and difference. For example, Traina suggests that it would be appropriate for a white woman to use an African American spiritual to frame her own oppression.¹⁵¹ Thus Traina suggests, "experience can divide and oppress rather than unite."¹⁵² For Traina, "Instead, feminists must limit themselves to examining particular emancipatory practices in their concrete social and religious contexts."¹⁵³ As such, Traina dives into the differences between several types of feminisms.

Traina critiques feminism's liberal, naturalist, and deconstructivist iterations. For Traina, liberalism focuses on an uncritical view of the autonomous subject, a too thin notion of the good, ignores embodiment, and ignores the fact that, "the female body in particular might bring anything uniquely valuable to the human project of living well."¹⁵⁴ For Traina, feminism must include strong, thick definitions of the good for human flourishing. On the other hand, naturalist iterations of feminism may be too quick to codify social norms of oppression through

¹⁵¹ "Women in positions of power cannot automatically claim common cause with oppressed women but should make only very circumspect and respectful use of their ideas and experiences." Traina, *Feminist Ethics*, 3.

¹⁵² Christina Traina, *Feminist Ethics and Natural Law: The End of the Anathemas. Moral Traditions and Moral Arguments*. (Washington, D.C.: Georgetown University Press, 1999) 3.

¹⁵³ Traina, *Feminist Ethics*, 3.

¹⁵⁴ Traina, *Feminist Ethics*, 28.

focusing on is-ought similarities. Traina states that in contradiction to naturalist tendencies, “human fixities do not point clearly and inexorably toward a single, richly described end.”¹⁵⁵ Traina argues that Deconstructionist feminism is not able to provide an ethic because it deconstructs any possibility to make normative claims of justice. For example, Traina argues that Judith Butler's move to disassociate sex and gender from the body becomes problematic because to move away from normative categories of identity is itself a move away from any normative claim of justice that one makes based on the exclusion of some bodies over others, “in short, although social constructionism grounds a healthy much needed ethical critique, it cannot by itself produce an ethic.”¹⁵⁶ Thus, Traina suggests feminists need natural law in order to make normative claims against injustice.

For Traina, natural law, starting with Aquinas, provides rich discussion in which feminist ethics can dialogue in order to make normative claims of justice. The value of Aquinas for Traina is that Aquinas emphasizes the idea that nature is open potentiality toward its supernatural ends. Thus, human goods participate in the eternal good. For Traina, Aquinas roots natural law in telic and dynamic anthropology. Since human good must be discerned, natural law makes use of practical reason over speculative reason because human contexts change. As such, Traina claims that reason must work through what thoughts and actions are best suited to reach natural ends and to what degree.¹⁵⁷ Categories such as the common good are crucial because human beings are social and must work through practical reason in the context of human communities. Thus, for Traina, Individual flourishing requires social institutions and social institutions require

¹⁵⁵ Traina, *Feminist Ethics*, 31.

¹⁵⁶ Traina, *Feminist Ethics*, 35.

¹⁵⁷ Traina, *Feminist Ethics*, 75.

individual flourishing for legitimation.¹⁵⁸ Traina sees critical principals in feminist ethics that can be read as parallel to Aquinas' natural law including legitimate self-interest, embodiment, and the common good. Although there are substantial changes in anthropology the principals are similar.¹⁵⁹ Critical for Traina's appreciation of Aquinas from a feminist perspective is that Aquinas' anthropology is dynamic, his reason for natural law is practical and embodied, and that community and individual flourishing are interdependent.

Discussing modern proportionalist natural law theories, Traina writes favorably on casuistry because it requires drawing principles from specific situations. This requires practical reason akin to feminist embodied knowledge. Traina frames her discussion on proportionalism by discussing the thought of Joseph Fuch and Richard McCormick. Fuch's theory of natural law is rooted in transcendental Thomism. He argues that a person is not judged by individual acts but whether one is fundamentally open to the absolute. Moral wisdom exists within concrete acts as an individual strives to the absolute. Thus, the role of the Catholic magisterium should not prescribe specific acts but provide principles in which one can orient their actions in given situations.¹⁶⁰ Fuchs proportionalism is valuable for Traina because it is essentially oriented toward general ends while maintaining space for a variety of concrete actions. Traina states Fuch's thought is valuable for feminist's ethics because it provides, "for a meaningful return of power for moral reasoning to the individual conscience: the objectivity of the alert person in the

¹⁵⁸ Traina, *Feminist Ethics*, 81.

¹⁵⁹ Traina, *Feminist Ethics*, 122-129

¹⁶⁰ For Traina's discussion on the thought of Joseph Fuchs see Traina, *Feminist Ethics*, 169-202.

concrete situation.”¹⁶¹ By placing the capacity to moral reason in concrete situations, feminist can adopt such constructions of natural law because it provides a framework to address concrete forms of oppression.

The dynamic construction of natural law that provides for a variety of options for concrete acts is also found in McCormick’s thought. McCormick suggests that rather than natural law primarily assessing acts in their ability to prevent evil, one should look at it as the pursuit of the good. One should seek that which provides the most good in individual contexts. Moral norms are ideals in which to strive but falling short of these ideals does not lead to ontic evils. Thus, people can make decisions that are not always the ideal so that they can pursue proportionate moral value. Traina appreciates such a framework because, “the ‘proportionate, but not ideal’ label that results has the practical effect of approving the action without altering the content of the troublesome norm.”¹⁶² McCormick’s proportionalism, like Fuch’s transcendental Thomism, provides a space for multiple concrete actions to be assessed from within the contexts of particular situations with the realization that not all situations provide the contours for ideal ethical norms.

In moving from feminist critique to constructing a feminist ethic, Traina lists the importance of the natural law for a feminist ethics. The first contribution of natural law is the importance of a comprehensive ethic that demands an encompassing telos. For Traina, a feminist ethic must have a telos that meaningfully connects the many dimensions of the good. A natural law and feministic ethic first views persons as fundamentally good and whole. A telic anthropology also justifies a person acting in their self-interest. Natural law enforced by virtue

¹⁶¹ Traina, *Feminist Ethics*, 194.

¹⁶² Traina, *Feminist Ethics*, 217.

theory also shows that the moral life is not only about acting rightly but acting in relationship to a variety of human goods. Especially important for feminist ethics, is the valuation of natural law's positive construction of the body as a condition of temporal human flourishing. For Traina, telic natural law combined with feminist perspectives posits an ethic that is neither overly determinative nor irrelevant. She claims that natural law and feminist ethics can work together to redress moral injustices and posit a positive construction of human flourishing.

Black Natural Law

As far as black natural law is concerned, Vincent Lloyd constructs black natural law as its own tradition in the United States. His claim is that black natural law, when engaged, collectively catalyzes social movements and offers a critique of the wisdom of the world. In establishing a black natural law tradition in its own terms, Lloyd pluralizes understandings of nature. Black natural law offers a complex view of the human person that leads to the inclusion of emotion, community, and provides a critique of the wisdom of the world.

Lloyd discusses Frederick Douglass as one of the first to espouse a black natural law tradition. In particular, Douglass makes appeals to moral absolutes in his reaction to the Dred Scott case.¹⁶³ He makes appeals to a higher court than the Supreme Court.¹⁶⁴ As a strong rhetorician Frederick Douglass was one to understand natural law theory as rooted in both reason and emotion. Natural law for Douglass was not just a proposition of moral principles but a

¹⁶³ Douglas appeals to a higher authority than the supreme court, the supreme court of God to make the claim that the U.S. supreme court was wrong in declaring Scott not a citizen of the United States. Lloyd, *Black Natural Law*, 1.

¹⁶⁴ Lloyd, *Black Natural Law*, 1-2.

movement of people to a more just world. Douglas had a strong interest in catalyzing social movements which push for justice wherever it would be most effective. Within Douglass' own personal narrative of resistance, Douglass believed that his confrontation with the man who was appointed to whip him allowed him to see his resistance was constitutive of his humanity. For Douglas, it is human nature to resist unjust structures and slavery is a transgression of nature.¹⁶⁵ Douglass suggests that part of human nature is to resist being reduced to anything, especially objects. For Douglass, irreducibility is the main element of human nature. While acknowledging that the higher law is self-evident, one can still have a distorted view of human nature because of learned prejudice, custom, and superstition. By learning to perceive our nature rightly as one that transcends any description through using reason and emotion, one can see that black natural law demands freedom, equality, and the inherent value of human life.

Next, Lloyd discusses Anna Julia Cooper who believes that women have a privileged position to discern natural law. Black women, in particular, have an important position in respect to natural law. Cooper thinks that our emotional lives are central to who we are. Alongside emotion, the longing for future possibility shapes our nature and is constitutive of natural law. Because of the centralized role of possibility, for Cooper, the best perspective in the world is that of a child because a child rests in the future and possibility. As we grow the dynamism of a child is weighed down by learned cultural prejudices and inhibitors. In other words, human nature is oriented toward future possibility, but humans forget that nature. Cooper's analysis of oppression illustrates how political norms can be deeply rooted in normalized violence and can be overlooked when business interests dictate the terms of the conversation. Coopers' natural law emphasizes the role of women's voices as being unique with respect to understanding natural

¹⁶⁵ Lloyd, *Black Natural Law*, 16-20.

law. Lloyd states, “Cooper privileges all women in her account of natural law, but she thinks black women have a doubly important role. Given the oppression faced by blacks, the need to combat unjust laws is all the stronger--so the need for black children to be raised well is all the greater.”¹⁶⁶ She sees women as the primary teachers and formers of sentiment and therefore have a responsibility for forming the world into a better place through the raising of children, teaching of others, and forming critical policies. Any laws that take away a person's voice is wrong.

When discussing Du Bois, Lloyd frames him as a nonreligious writer who uses religious rhetoric. Lloyd suggests that Du Bois be understood as a natural law theorist because he makes normative judgments. Du Bois charges blacks with using their insight to change the world and, “implicitly argues that this can be done by attempting to implement natural law.”¹⁶⁷ Du Bois’s use of natural law starts from a scientific framework. For Du Bois, empirical and historical evidence provided groundwork to see how human actions can have an important effect on the world. Du Bois’s description of human nature consists of all that is human and makes approximations to human nature rather than static concepts. Du Bois’s work *Souls of Black Folk* can be seen as offering insights into the human soul or human nature gleaned from the experience of black life.¹⁶⁸ Part of this experience is Du Bois’s understanding of double consciousness and suffering oppression. Suffering these conditions gave insight into what it means to be human and into humanity's capability to resist oppression. For Du Bois, humanity can be seen most clearly in blacks and natural law can be most clearly discerned. For Du Bois, God is black. In Du Bois’s analysis of John Brown, he posits that John Brown was to advance

¹⁶⁶ Lloyd, *Black Natural Law*, 56.

¹⁶⁷ Lloyd, *Black Natural Law*, 59.

¹⁶⁸ Lloyd, *Black Natural Law*, 68.

natural law by putting himself on the line by sacrificing his privileges of whiteness and sacrificing his life. Through organization, critique, and educating children, one can begin to implement natural law.

Lloyd illustrates that Martin Luther King Jr leans heavily on a natural law tradition to fight against racial injustice, segregation, and poverty. His most notable contribution to the black natural law tradition is his letter from Birmingham jail. However, King used natural law language from his earliest speeches and writings. Lloyd seeks to treat King's work as performative rather than referential and seeks to treat King's oratory as "doing" natural law. King uses oratory to evoke feelings and to break illusions and confusions about the human person. For King, his protests and in particular his protests in Montgomery were opportunities for ordinary people to reflect and work toward justice. For King, his sense of human unity was not only political but also a religious principle.¹⁶⁹ King thought natural law was progressive and that calculation was important to implement the demands of justice. For example, the Montgomery bus boycott was not started to fight for integrated seating on busses but to hire more black bus drivers. King framed his struggle for justice as calculation and disciplined action and that these actions are directed by God in the framework of his love. King focused on the movement itself rather than the consequences of what's been achieved. Rather, it is in the movement towards justice that humans participate in the divine, "it is through social movement that natural law manifests."¹⁷⁰ King believed that natural law was respect for the dignity of the human personality. He then switched to a more practical idiom; unjust laws were those where a majority enforces a code on the minority which is not binding on itself. This type of unjust law

¹⁶⁹ Lloyd, *Black Natural Law*, 103.

¹⁷⁰ Lloyd, *Black Natural Law*, 96.

was what King thought segregation enacted. In asking if segregationists could fight against *Brown v. Board*, King suggested that it was not possible to practice civil disobedience because it has to do with laws imposed by the majority on a minority without the consent of that minority.

Lloyd discusses the decline of the black natural law tradition and begins with discussing how Martin Luther King's bust contains the word "love" but does not contain the words "law" or "black". Lloyd laments that ideology critique which is central to the natural law tradition is often no longer part of the conversation in natural law. This has been, in part, due to the rise of black intellectual elites taught at white institutions. Lloyd argues that after the civil rights movement, the rise of the black power movement made higher law rhetoric simply a means of political aims. The use of natural law outside a comprehensive context led to bracketing moral questions and using natural law for political gains. On the other end, some like Jesse Jackson, water down King's rhetoric for the sake of political gain.¹⁷¹ Lloyd critiques James Baldwin, Audre Lorde, and bell hooks for making use of emotion without the context of reason and voiding emotion of all content and nuance. On the other end, Lloyd critiques Clarence Thomas, Alan Keyes, and Ben Carson for reducing black natural law to individual reason without social critique. Natural law for Thomas, Keyes, and Carson become an effort for Black self-improvement. Critiquing Louis Farrakhan and Barack Obama's pragmatism, Lloyd suggests they trade prophetic social critique for political gain.

In his conclusion, Lloyd critiques Afro-pessimism, a movement that seeks to discredit the claims of western metaphysics or theology because they are entrenched in the commitment to the dehumanization of black bodies. But for Lloyd with no criteria by which to know justice all that is left is to pray or retreat into memories or memoirs. Central to natural law is ideology critique

¹⁷¹ Lloyd, *Black Natural Law*, 122.

and social movement organizing. The challenge of the racist legal system is an opportunity to confirm and refine black natural law. Lloyd also claims black natural law is beyond secularism and multiculturalism. Lloyd suggests that natural law has been obscured by secularism and multiculturalism. He suggests multi-culturalism purports to embrace race but only if it can be managed.¹⁷² The problem with multiculturalism is that there is no way to adjudicate what counts as a social problem or discern the relative urgency of social problems. Multiculturalism moves away from normative claims and does damage to marginalized communities that seek normative protections and rights against injustice. Lloyd suggests that black natural law should be viewed as a tradition, and such a tradition is not to make any claims about the biology of race or the significance of skin color. It is to pick out a set of practices and communities that set the standards for rationality. Part of this tradition of black natural law is the essential ineffability of every human. For Lloyd, “the process of discerning natural law is a process of working that ineffable point indefinitely, always failing but trying to fail better.”¹⁷³ For Lloyd, there are normative claims that can only be discerned through the epistemic privilege of the black community. Because there are normative claims the black natural law tradition can engage in ideology critique and social movement organizing.

¹⁷² “Multiculturalism purports to embrace race, but only if it can be managed, can take on a comfortable, controllable form. Race is reduced to culture, frightening skin tones converted to a festival of colors, ordered properly in a joyful rainbow. I contend that multiculturalism hampers black politics just as secularism hampers higher law, limiting its role in politics.” Lloyd, *Black Natural Law*, 152.

¹⁷³ Lloyd, *Black Natural Law*, 158.

Queer Natural Law

Recently Craig Ford has advocated for discussing natural law at the intersection of queer theory and queer theology. Ford's queer natural law adopts the "eudaemonistic , realist, and teleological emphasis" of Aquinas' natural law tradition while also advocating that the natural law tradition, "stands in need of queer thought."¹⁷⁴ Natural law can dialogue with queer theory in order to counteract the tendency to view human nature through hegemonic heteronormativity. Queer theory also provides natural law with a way to, "institutionalize a constant dissatisfaction with its own set of ethical prescriptions rendered at any historical moment, through the recognition of the need to revise those prescriptions as new movements of the Holy Spirit."¹⁷⁵ Not only does Ford seek foundations for a queer natural law but also draws from feminist natural law traditions and revisionist natural law traditions that emphasizes the moral tradition as a capacity of human reason.

Central to Ford's account of natural law and a queer natural law is a teleological account of human flourishing. Ford argues that without a teleological account, "it is impossible to determine what will allow a human being to thrive in a moral sense unless and until one also gets an idea of what a human being is *supposed to do* and what a human being is *supposed to be*."¹⁷⁶ Despite what Ford calls postmodern objections to a teleological account with a "queer inflection", Ford believes that it is possible to develop, "a normative account of human

¹⁷⁴ Craig Ford "Foundations for a Queer Natural Law" (PhD diss, Boston College, 2018), 2.

¹⁷⁵ Ford, "Foundations", 2.

¹⁷⁶ Ford, "Foundations", 77. Italics in the original.

flourishing that is adequate to meet these objections.”¹⁷⁷ Ford believes these objections to teleological accounts of human nature present more of an argument as to whether or not must accept moral antirealism is true. What Ford suggests is that to have any moral belief at all is to reject such an antirealism. A queer natural law takes the postmodern critiques about the contingency of knowledge and metanarratives seriously and requires its natural law method to always be susceptible to revision and that truth is rooted in its social and discursive context.¹⁷⁸ For Ford, one must first acknowledge that one’s knowledge is always limited by the context in which it is produced, and thus normative accounts of human flourishing must always be open to revision and must always posit itself in contingent terms.

As a result, the promise of queer natural law is that it provide possibilities for what it might look like when heteronormativity’s hegemonic claim on universal knowledge is decentered and what might it look like to “allow ourselves to think of a common life that draws normative significance from the lives and loves that are marginalized within what Lauren Berlant and Michael Warner call ‘heterosexual culture’.”¹⁷⁹ By reevaluating what constitutes the good life within heteronormative hegemonic discourse, queer natural law forces discussions about the good life to take into account what constitutes the virtue of justice as “a substantive notion of the value of equality” and make critical evaluations of the world based on those whose way of life are most marginalized within it, queer theory gives to the natural law tradition a more careful

¹⁷⁷ Ford, “Foundations”, 78.

¹⁷⁸ Ford argues that this openness to contingency of knowledge and the social realities of truth are rooted in Aquinas’ own thought. See Ford, “Foundations”, 125.

¹⁷⁹ Ford, “Foundations”, 285.

way to go about making comprehensive assessments of human nature.”¹⁸⁰ Through natural law’s traditional understanding of human nature as one that excludes the LGBTQ community; queer natural law creates the space to see that human flourishing can only be called flourishing when it is available for all humanity.

Conclusion

We began this chapter by stating that all natural law constructions are rooted in a particular context and tradition. Moreover, each natural law tradition in turn constructs its own notion of the natural. While the United States natural law tradition has proclaimed itself to be autonomous and universal, following its European progenitors, it was in fact rooted in a framework that sought to privilege its imperialist and colonial policies through racist constructions of human nature and constructions that emphasized property ownership. In so doing, the marginalization of black, Latinx, and indigenous populations were justified by their own natural law constructions. We also illustrated how these constructions continued through the adoption of New Natural Law frameworks.

In order to find a framework within Western thought that was able to make space for Latinx contributions we discussed the promising research found in revisionist discussions of natural law and human rights. In particular, the revisionist thought of Jean Porter and Linda Hogan was particularly helpful in establishing a discussion about natural law and human rights that did not presume abstract, autonomous, and universalized reason but sought to place context and situated knowledge as crucial to natural law thought. Through seeing that natural law and

¹⁸⁰ Ford, “Foundations”, 287.

human rights is always and already contexted, the use of context to begin moral discernment provides the space for Latinx communities to do natural law within their own contexts.

The examples of contextual natural law in feminist, black, and queer iterations provided a framework in which one can draw examples on how to do natural law thinking within particular contexts. Their effort to frame human nature as dynamic, open, attentive to emotions, and always open to revision is useful for Latinx theology because of its refusal to be essentialized into static cultural categories. Doing natural law from within a particular context contests the universalized and dangerous presumptions of Eurocentric and U.S. natural law traditions by illustrating that they themselves are context-dependent. Our next chapter is all about the Latinx context in which a natural law discussion can be derived. We will discuss the fact that since the construction of Latin America, as an epistemological category, natural law has played a part, either positively or negatively. We will discuss the part natural law played in the Valladolid debates concerning the Spanish exploitation and abuse of Amerindians. We will argue that within the Spanish tradition of natural law discourse, there exists a subversive natural law that contests Spanish colonialization. This natural law was rooted in community, the *imago dei*, and solidarity with Indigenous communities. The revisionist and contextual natural law theologians have emphasized the importance of context and the next chapter will seek to develop a Latinx natural law reasoning by first providing the context in which it has and can continue to develop.

Chapter 2: Natural Law in the Latin American Context

Introduction

Discussing the role of natural law in Latinx social ethics, we have illustrated how the American natural law tradition, rather than rooted in natural law derived from Aquinas and older sources, finds its sources primarily in the enlightenment-modern traditions of the 16th-18th centuries. The American tradition of natural law has been used to justify various systematic forms of oppression against communities of color, Indigenous communities, and the Latinx community. We also stated that these constructions of natural law found in the American natural law tradition are positioned as universal and as normative for all cultures. This positioning, in actuality, is simply a Euroamerican provincial construction of both human nature and the natural world. In order to construct a natural law that is helpful for the liberation of Latinx communities in the United States, it is necessary to find resources in history that were used to help those communities under oppression. In situating Latinx natural law within the historical narrative context of Spanish natural law theories, we will see that it contrasts Euroamerican natural law theories in its emphasis on natural law being rooted in community, the *imago dei*, and solidarity with Indigenous communities.

This chapter primarily engages in a method of *ressourcement*. *Ressourcement* was a movement of German and French theologians who sought to return the Catholic Church to its sources. As Gemma Simmonds states, “The primary purpose of *ressourcement* movement of the twentieth-century France was a theological and spiritual renewal based on a return to the original

sources of Christian tradition, namely scripture, the Fathers, and liturgy.”¹ *Ressourcement* is known by its proponents such as Henri de Lubac, Yves Congar, Jean Danielou, Hans Urs Von Balthasar, and Joseph Ratzinger. While much work has been done to resource the writers of the early Catholic Church, primarily in their Greek, Syriac, and Roman traditions, little has been done to engage in the Iberian, Hispanic, and Latinx traditions of the early, Medieval, and Renaissance periods.² Gary Macy has illustrated that the relative absence of the Iberian, Hispanic, and Latinx traditions from “mainstream theology” is a result of historical bias that emphasizes some cultures over others. In other words, “history is what historians decide it is” and theology in the United States has emphasized theologies from France, Germany, and Italy over Hispanic and Iberian theologies.³ However, to suggest that Iberian, Hispanic, and Latinx theology is out of the mainstream is to ignore history. Macy argues that “on the contrary, it is the heir of an ancient tradition that was greatly responsible not only for the preservation of the Western European tradition and learning, but also was one of the most influential creators of that tradition and that learning.”⁴ Thus for Macy, “*mainstream* theology is shorthand for hegemonic theology” and the absence of Iberian, Hispanic, and Latinx theology is the result of choices not

¹ Gemma Simmonds, CJ “Jansenism: An Early Ressourcement Movement” in *Ressourcement: A Movement for Renewal Twentieth-Century Catholic Theology*. Eds. Gabriel Flynn and Paul Murray. (Oxford: Oxford University Press, 2012), 23.

² One notable exception is Raúl Gómez-Ruiz’s work *Mozarabs, Hispanics and the Cross* (Maryknoll, NY: Orbis Books, 2007). Gómez-Ruiz discusses the history and theology of the Mozarabic liturgy in Spain and connects it as one of the many roots of Latinx *Religiosidad Popular*.

³ Gary Macy, “The Iberian Heritage of U.S. Latino/a Theology” in *Futuring Our Past: Explorations in the Theology of Tradition*. eds. Orlando Espín and Gary Macy (Maryknoll, NY: Orbis Books, 2006), 45.

⁴ Macy, “The Iberian Heritage”, 44.

to include them.⁵ The exclusion of these theologies has also resulted in a relative absence of the Iberian, Hispanic, and Latinx contributions to contemporary natural law conversations.

One reason that Iberian, Hispanic, and Latinx contributions to theology and natural law have been excluded is the prevalence of the black legend. The black legend is the understanding of colonial history that portrayed Spain and its colonial practices as *particularly* evil. While Spanish cruelty is an absolute fact and is attested to by its own historians and theologians, such claims are often embedded in anti-Spanish and Iberian propaganda by Northern European and English colonial competition.⁶ While painting Spanish colonialism as particularly evil, English, French, and German colonial practices are often portrayed as more gentle and paternalistic. As Mignolo states,

The ‘Black Legend’ of Spanish corruption, which the British initiated to demonize the Spanish Empire in a ploy to get a grip on the Atlantic economy during the seventeenth century, was a part of a European family feud over the economic, political, and intellectual (in the general sense of accumulation and control of knowledge including science and technology, of course) riches of the “New World.”⁷

The Spanish black legend also influenced how modern history viewed the colonial practices of the Spanish in comparison to the English. While the Spanish are seen to be particularly cruel and

⁵ Macy, “The Iberian Heritage”, 47.

⁶ “British and French exploitation of the Caribbean was as greedy as the attitude that those same countries attributed to Spanish conquistadores.” Walter Mignolo, *The Idea of Latin America* (Oxford: Blackwell Publishing, 2005), 55.

⁷ Mignolo, *The Idea*, 55.

“gold seekers,” the English are referred to as seekers of liberty.⁸ Spanish conquest is seen to be particularly cruel while English conquest is seen to be a necessity.

On the other hand, the emphasis on the bias created by the black legend can be used to gloss over the cruelty of the Spanish against the Indigenous communities of Latin America. For example, José Vasconcelos’ posits the origins of *mestizaje* as a result of Iberian “emphatic love” for Indigenous women. Vasconcelos glosses over the violent raping and pillaging of Indigenous people and culture and radically misrepresents Spanish conquest and colonization.⁹ The willingness of the Spanish to engage in sexual relations with Indigenous women has resulted in the understanding that while the Spanish were, “just as racist and superior-minded as other Europeans...they were not racial purists.”¹⁰ Moreover, the resulting *mestizaje* is often portrayed in early Latinx theology in a positive light without acknowledging it as a result of violence and conquest.¹¹ The black legend either furthers anti-Iberian, Hispanic, and Latinx bias in order to gloss over Northern European colonial violence or masks the violence done by the Spanish conquest of South America. Acknowledging both positions is integral to getting a clear picture on why there is a general absence of the Iberian, Hispanic and Latinx contributions to theology

⁸ For a thorough investigation on Anti-Hispanic propaganda see Philip Wayne Powell’s work, *Tree of Hate: Propaganda and Prejudices Affecting United States Relations with the Hispanic World*. (Albuquerque, NM: University of New Mexico Press, 2008), 11.

⁹ See Roberto Goizueta’s *Caminemos con Jesús: Toward a Hispanic/Latino Theology of Accompaniment*. (Maryknoll, NY: Orbis Press, 1995), 120.

¹⁰ Virgilio Elizondo, *Galilean Journey: The Mexican-American Promise*. (Maryknoll, NY: Orbis Press, 2000), 10.

¹¹ We will address the ambiguity of using *Mestizaje* as a cultural category in chapter 3. While Latinx theologians of the 1980’s and 1990’s portray *Mestizaje* in a positive light, more recent studies have acknowledged *Mestizaje* has been used to enforce racial hierarchies in Latin America. See Néstor Medina’s *Mestizaje: (Re)mapping Race, Culture, and Faith in Latina/o Catholicism*. (Maryknoll: NY, Orbis Press, 2009).

and natural law. Acknowledging both understandings of the black legend guards against the trend in *ressourcement* theology of idealizing particular periods of the past while ignoring their faults.

Regardless of the reasons for the exclusion of Iberian and Hispanic Catholicism from the method of *ressourcement*, resourcing these traditions are necessary if one is to engage in a Latinx ethic for several reasons. First, resourcing an Iberian or Hispanic theology and natural law provides a framework in which the ethical is embedded in the religious practices of the Latinx community. The integration between the religious and ethical is integral to Latinx ethical frameworks and natural law traditions. Roberto Goizueta has illustrated that, “Catholic *ressourcement* thus demands a retrieval of those popular religious traditions that, while perhaps not always recognized in the official theological and liturgical texts of teachings of the Church are nevertheless an integral part of the *sensus fidei*...”¹² This integration between religious practice and natural law frameworks helps situate the fact that Bartolomé de Las Casas’ religious conversion to solidarity with the marginalized Indigenous community was rooted in both a devotional and liturgical reading of scripture and an appreciation of legal reasoning. Rather than seeing ethics and theology as separate and disparate categories, engaging with Iberian and Hispanic Catholicism provides a framework in which religious systems ground ethical paradigms and the ethical gives real world saliency to the religious.

A second reason why a *ressourcement* of Iberian and Hispanic Catholicism is necessary in our discussions about Latinx natural law is that Iberian and Hispanic culture is integral for Latinx identity. For the Latinx community, “The Spanish-American Roman Catholic Church is

¹² Roberto Goizueta, *Christ Our Companion: Toward a Theological Aesthetics of Liberation*. (Maryknoll, NY: 2009), 48.

part of the common background of all Hispanics--if not personally, then at least in our ancestry.”¹³ The history of the Latinx community is rooted in the Spanish and Portuguese conquests of the Americas. The mixture of identity and the occupation of multiple social spaces forms *Latinidad*. Latinx identity is a mixture of Spanish, Portuguese, Indigenous, and African cultural realities. The social location of Latinx identity is rooted in the concept of *mestizaje*, in-betweenness, and borderland epistemologies.¹⁴ There is no monolithic construction of *Latinidad*, and oftentimes, we occupy the space of both the oppressor and the oppressed, the colonizer and the colonized. So, to ignore both the positive and negative aspects of the natural law discussions of Iberian and Hispanic Catholicism is to ignore a part of our multilayered and pluralistic ancestral history that takes seriously both the role of conquest and colonization and the varying tools used in the quest for liberation from oppression.

Finally, one of the major reasons to engage in a *ressourcement* of Iberian and Hispanic Catholicism and natural law discourse is that while the 15th-19th centuries are marked by conquest and violence, the Iberian and Hispanic Catholic traditions were the only traditions that questioned the ethics of colonization of North and South America. As Gustavo Gutiérrez states in his study on Las Casas, “It is important, however, to remember that Spain alone had the courage to hold a comprehensive debate on the ethics and morality of the European presence in the Indies. In the other countries of the old world, the right to occupy these lands was regarded as too obvious to be questioned.”¹⁵ Many of the dissenting voices in the debates about conquest

¹³ Justo González, *Mañana: Christian Theology from a Hispanic Perspective*. (Nashville, TN: Abingdon Press, 1990), 55.

¹⁴ For example, I identify as white Xicano from New Mexico with Zacatec roots while another person in the Latinx community might identify as *Afro-Latinidad* Puertorriqueño

¹⁵ Gustavo Gutiérrez, *Las Casas: In search of the Poor of Jesus Christ* (Maryknoll, NY: Orbis Books, 1993), 3.

used natural law as a resource for resisting the violence against the Indigenous communities of the Americas. Theologians under the Salamanca school advocated for the Indigenous rights of freedom and property. Theologians such as Francisco de Vitoria, Domingo de Soto, and Bartolomé de Las Casas advocated for Indigenous rights using the canonical and juridical traditions of Aquinas and scholastic natural law reasoning. This is not to say that discussions of natural law did not have negative effects, one only needs to look at the arguments of Juan Ginés de Sepúlveda to see negative contributions of natural law.¹⁶ Yet, engaging the Hispanic and Iberian Catholic traditions forces one to engage in the messy work of *ressourcement* that forces us to not idealize the past but come to terms with violent histories.

We will begin our work of *ressourcement* with the encounter between Spain and the Indigenous communities of South America. In particular, we will engage the natural law discussions surrounding the colonization, violence, and the rights of the Amerindians by the Salamanca school and the Valladolid debate. The discussion of natural law within the Salamanca school and the Valladolid debate on behalf of the Indigenous communities of Latin America provide a structure of resistance using the scholastic understanding of natural law in which they were embedded.

We start with the encounter between the Indigenous communities and the Spanish because to focus primarily on an Indigenous epistemology while not actually occupying such a space would be appropriative in this dissertation. To assume that there is a type of natural law that is rooted purely in Indigenous epistemologies would be to colonize such epistemologies. We begin with this point of contact because the clash of these cultures provides a matrix in which

¹⁶ As we will show, Sepúlveda argued for Spanish conquest of the Americas in his work *Democrates Secundus*

truth can be discerned from an already given situation. In other words, the reality of colonization and mixture of cultures has already occurred and thus it is important to work within these relationships to form liberative structures that acknowledge a disparate relational power. From a Latinx perspective where *mestizaje* is not only a cultural reality but an ancestral reality, the ability to speak from a position of pure indigeneity is not possible. For many in the Latinx community, as stated earlier, we occupy a space that is simultaneously colonizer and colonized. Thus, a framework that does not acknowledge its own complicity in colonization and its own pain from being colonized does not speak to the multifaceted reality that Latinx communities face. As a result, it is important that the place of *ressourcement* begins in the place where this multifaceted and pluriform reality begins, in the mixture of these cultures.

The Salamanca School and Colonial Conquest

The children's song "1492" about Columbus' "discovery" of America has a series of couplets that begins, "In 1492/Columbus sailed the Ocean Blue" and continues to sing about the bravery of Columbus sailing "day and night". It teaches that, "The Arakawa natives were very nice/and gave the sailors food and spice" and that "Columbus sailed on to find some gold/To bring back home, as he'd been told" ending with "He made the trip again and again/Trading gold to bring to Spain." The violence enacted by Columbus and his men against the native population is curiously absent from this rhyme. Yet it is commonly known that "nearly everything the Spaniards did created havoc on the Indigenous population."¹⁷ The establishment of *repartimiento* and the *encomienda* system alongside the introduction of new diseases by the

¹⁷ Mark A. Burkholder and Lyman L. Johnson *Colonial Latin America*. 4th ed. (New York, NY: Oxford University Press, 2001), 36.

Spanish, wreaked havoc on the native population. By the 1600s, the Indigenous population declined by 56 million.¹⁸ The encounters between the Spanish and the Indigenous communities of the Americas marks one of the greatest tragedies and the greatest loss of life in history.

Bartolomé de Las Casas, a Dominican priest, who knew Columbus, wrote about the cruelty of the Spanish. The encounter between the Spanish and the Indigenous communities were, “followed by acts of extreme violence, cruelty, and exploitation, with the Amerindians suffering at the hands of the Spanish conquistadors.”¹⁹ The treatment of the natives by the Spanish was so cruel that Las Casas doubted the humanity of the Spanish stating, “that not a few of the people involved in this story had become so anaesthetized to human suffering by their own greed and ambition that they had ceased to be men in any meaningful sense of the term and had become, by dint of their own wicked deeds, so totally degenerate and given over to a reprobate mind...”²⁰ According to Las Casas the Spanish,

Forced their way into native settlements, slaughtering everyone they found there, including small children, old men, pregnant women, and even women who had just given birth. They hacked them to pieces, slicing open their bellies with their swords as though they were so many sheep herded into a pen. They even laid wagers on whether they could manage to slice a

¹⁸ Koch, Alexander, Chris Brierley, Mark M. Maslin, and Simon L. Lewis. 2019. “Earth System Impacts of the European Arrival and Great Dying in the Americas after 1492.” *Quaternary Science Reviews* 207 (March): 13–36.

¹⁹ Alejandro Santana, “‘The Indian Problem’ Conquest and the Valladolid Debate” in *Latin American and Latinx Philosophy: A Collaborative Introduction*. ed. Robert Eli Sanchez, Jr. (New York, NY: Routledge, 2020), 36.

²⁰ Bartolomé de Las Casas, *A Short Account of the Destruction of the Indies* (London: Penguin Books, 1992), 4.

man in two at a stroke, or cut an individual's head from his body, or disembowel him with a single blow from their actions.²¹

When asked how the Spanish could be so cruel to these Indigenous communities, Las Casas replied, "the reason the Christians have murdered on such a vast scale and killed anyone and everyone in their way is purely and simply greed."²² Las Casas recounts a story about a local ruler named Hatüey fleeing from Haiti to Cuba to warn other Indigenous tribes of the coming of the Spanish. Having heard of the cruelty of the Spanish, these communities asked whether or not the Spanish were simply cruel and evil. According to Las Casas, Hatüey responded, "They [the Spanish] have a God whom they worship and adore, and it is in order to get that God from us so that they can worship him that they conquer us and kill us" and pointing to a basket of gold jewelry, Hatüey finished "Here is the God of the Christians."²³ According to Las Casas, the greed and cruelty was so great that even if the Spanish were to preach the Gospel of Christ, their actions so muddled their preaching that the natives thought the Spanish worshipped gold.

Despite the fact that most of the Spanish conquistadors and *encomenderos* committed heinous crimes against the Indigenous population, there were some Spanish priests and former *encomenderos* who stood in solidarity with the Indigenous populations and were voices of dissent within the Spanish Empire. Las Casas, as we will discuss below, was a former *encomendero* who became a priest and worked in solidarity with the Indigenous community. He would later be called, "protector of the Indians". Las Casas, himself, owed his own conversion to

²¹ Las Casas, *A Short Account*, 15.

²² Las Casas, *A Short Account*, 13.

²³ Las Casas, *A Short Account*, 28.

solidarity with the Amerindians to a sermon preached by a Dominican priest named Antonio de Montesinos in 1511.

On the fourth Sunday of Advent, Montesino preached a sermon that condemned the unjust treatment of the Indigenous communities. Montesino preached with passion proclaiming to the Spanish, “You are all in mortal sin! You live in it and you die in it! Why? Because of the cruelty and tyranny you use with these innocent people. Know for certainty that in the state in which you are you can no more be saved than Moors or Turks who have not, nor wish to have, the faith of Jesus Christ.”²⁴ After that sermon, colonists went to the religious superior, Pedro de Córdoba, threatening to do violence to Montesinos unless he recanted his teachings. The following Sunday, Montesino reaffirmed his teaching to the chagrin of the *encomenderos* and conquistadors. Gustavo Gutiérrez correctly states that, “after Montesinos sermon, there was no possibility of invincible ignorance as to the injustice with which the Spaniards had proceeded.”²⁵ Among Montesino were other preachers such as Luis Beltrán, Gil González de San Nicolás, and Pedro Clever who worked in solidarity with the Amerindians.²⁶ It is quite clear that there were two Christianities at work in the encounter between the Indigenous communities and the Spanish conquistadores. A Christianity that was numb to the violence enacted against the natives and a Christianity that stood with a voice of dissent with those who were crucified by the Spanish empire.

²⁴ Bartolomé de Las Casas. (H.I., bk 3, ch. 4 O.E. 2:176).

²⁵ Gutiérrez, Las Casas, 32.

²⁶ For a good overview of the contributions of these preachers see Justo Gonzalez, *Manana*, 54-60.

Not only were preachers and former *encomenderos* ones to voice dissent against the cruel treatment of the Amerindians, but also theologians and jurists in Spain itself understood the treatment of the Indigenous communities to be incompatible with Christianity. These jurists and theologians, who would form what is commonly called the Salamanca school, would use the Aristotelian-Thomistic natural law tradition they received to offer voices of dissent from within the Spanish Empire.²⁷ These theologians and jurists, “defended against the grain that: men were created free and equal; considering the substantial unity of the human species, there was no such thing as natural slavery for them in a strict sense but only a legal one; [and that] power was constitutive of all human communities..”²⁸ Their thought undergirded much of the theoretical defense against injustice of the Amerindians where their thought, “laid the groundwork for the concept of offense against the human species – which we call today crimes against humanity.”²⁹ Through providing theoretical frameworks from within the received Thomistic tradition, these theologians and jurists were able to establish voices of dissent from within the Spanish Empire and among those that held political power. It is this proximity to power and the shrewd use of the empire’s own theology against itself that allowed there to be tangible, although temporary, change to the conditions of the Amerindians. The thought of the Salamanca school would not only form the basis for limited change among the conditions of the native populations but would

²⁷ The Salamanca School as a group of theologians and jurists gets its name from the fact that many of these theologians and jurists came from the University of Salamanca. To include theologians from other universities some have called this group the school of peace (*paz*). We will use the terminology of the school of Salamanca for the sake of maintaining a single conceptual framework with other research.

²⁸ Pedro Calafate and Ricardo Ventura. "The Iberian School of Peace: Natural Law and Human Dignity." *Revista Portuguesa De Filosofia* 75, no. 2 (2019): 796-797.

²⁹ Calafate, “Iberian School”, 797.

also be a theoretical groundwork for Latin American independence movements and later liberation theology.

Francisco de Vitoria

One of the first defenders of the Amerindians from within the Spanish empire was Francisco de Vitoria who was considered to be one of the founders of the Salamanca school's theories of natural law. Born in 1483, Vitoria was educated in Paris and taught at the University of Valladolid. He came to theological prominence when he was elected to be the chair of theology at the University of Salamanca where he influenced many natural lawyers, canonists, and theologians including Domingo de Soto, Melchor Cano, Francisco Suárez and Juan Luis Molina. He also had a decisive influence on the Dominican theologian and Bishop of Chiapas, Bartolomé de Las Casas. Most importantly, for our discussions about Latinx natural law, Vitoria was one of the first theologians to provide a theoretical defense of the American Indigenous communities using natural law and Roman Catholic theology. Because of Vitoria's discussions about the role of the Spanish and the rights of the Amerindians, Vitoria became known as one of the founders of international law.³⁰ While his thought may not have always worked toward the favor of Indigenous rights, for example, he believed that there were some conditions in which Spanish colonialism could be justified, he ultimately left the Spanish, "only a slender claim to jurisdiction (*dominium iurisdictionis*) in America, but no property rights whatsoever."³¹ Vitoria's

³⁰ While Hugo Grotius is also considered a founder in international law, the two could not be more different. While Grotius founded his international law on the acquisition of colonial property, Vitoria focused on what constituted a commonwealth and questioned whether Spanish rule in the Americas was valid. While Grotius' theories undergirded colonization, Vitoria's questioned its validity.

³¹ Anthony Pagden and Jeremy Lawrence, "Introduction", *Vitoria: Political Writings*. eds Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), xvii.

use of natural law and theology provides a theoretical framework in which those who are both committed to a Roman Catholic natural law framework and the preservation of Indigenous rights can work in solidarity with the voices of Indigenous communities. Thus, one can argue that there are counterhegemonic lines of thinking that occur within the epistemology of Spanish colonization and that these voices of dissent can be used when discussing contemporary systems of oppression.

Vitoria roots his defense of the Amerindians in his understanding of civil power. For Vitoria, civil power's final cause, in a Thomistic sense, is out of natural necessity. Using primitive biological observation, Vitoria posits that human nature is naturally sociable and that this sociality was established in order to defend itself against predators. Humanity is sociable because nature gave humanity reason and virtue. The emphasis on reason left humanity defenseless when juxtaposed against brute strength and thus reason necessitated human community.³² The natural necessity of human community is thus considered for Vitoria a natural law. Vitoria states, "that the primitive origin of human cities and commonwealths was not a human invention or contrivance to be numbered among the artefacts of craft, but a device implanted by Nature in man for his own safety and survival."³³ For Vitoria, since the final cause of civil power is natural necessity, the efficient cause of civil power is God. Because natural law participates in the eternal law, or that patterned framework in which God sets all existence, that

³² "So it was that, in order to make up for these natural deficiencies, mankind was obliged to give up the solitary nomadic life of animals, and to live life in partnerships (*Societatas*), each supporting the other" Francisco de Vitoria, "On Civil Power" 4.1 in *Vitoria: Political Writings*. eds Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), 7.

³³ Vitoria, "On Civil Power" 5.1, 9.

which becomes a natural necessity is indirectly caused by the creator of the natural.³⁴ Yet, the most important Thomistic cause of natural law being an avenue for defense of the Indigenous rights is the material cause of civil power. For Vitoria, the material cause of civil power is the commonwealth itself.

Vitoria understood civil government as directly emanating from the people. For Vitoria, “Divine and natural law require there to be some power to govern the commonwealth, and since in the absence of any divine law or human elective franchise (*Suffragium*) there is no convincing reason why one man should have power more than another, it is necessary that this power be vested in the community which must be able to provide for itself.”³⁵ As Pagden and Lawrence aptly explain, “But if men possess a natural urge to live in society, the types of political societies in which they live would seem to be their own devising. All civil power, for Vitoria, is vested in the commonwealth (*res publica*), since, if all societies are natural organisms, it follows that no individual could have held power prior to their formation (*On Civil Power* 1. 4, p. 11).”³⁶ Contrasting the conception of natural law of Locke and Grotius, who argue civil society is necessary in order to protect each individual’s property, Vitoria proposes an alternative view in which civil society is not simply protection of an individual’s nature. Rather, Vitoria sees humanity’s natural capacity for community as a positive inclination of natural law.³⁷ For Vitoria,

³⁴“If, as we have shown, public power is founded upon natural law, and if natural law acknowledges God as its only author, then it is evident that public power is from God...” Vitoria, *On Civil Power*, Section 6.1, 10.

³⁵ Vitoria, “*On Civil Power*” 7.1. 11.

³⁶ Pagden and Lawrence, “Introduction,” xviii.

³⁷ Here Vitoria follows Aquinas’ third inclination of natural law that, “there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus,

the most apt form of government is monarchy because it presents a unity of government as opposed to the push and pull of timocracy and the multiple masters of aristocracy.

Although Vitoria supports monarchy as an ideal form of government, this does not mean that the authority of the monarch is absolute. While Vitoria does believe that, “royal power is not from the commonwealth, but from God himself...” that does mean that the monarch’s power is absolute. Vitoria understands power (*potestas*) in two ways. The first is the understanding of power as a capability; this is the power given by God to monarchs. The second understanding of power as authority is given by the commonwealth to put monarchs in charge of civil government. In other words, “Royal power, then, is a ‘capability’ and comes from God; but since such power clearly cannot be exercised in a void, kings must receive their authority or executive power from the community.”³⁸ This means that, “there is no question of two separate powers, one belonging to the sovereign and the others to the community.”³⁹ So that while a King or Queen is given both capability from God and authority from the people, this does not mean a King or Queen can do as they wish. Regal power functions as, “the executor of positive law” while, “legislative power itself resides with the commonwealth.”⁴⁰ The laws that a Queen or King promulgates must, “be in accordance with the customs of the commonwealth for which they are intended.”⁴¹ The power

man has a natural inclination to know the truth about God and to live in society....” Aquinas, *Summa Theologica*, II-II q 94.2

³⁸ Pagden and Lawrence, “Introduction”, xix.

³⁹ Vitoria, “On Civil Power” section 8, p16.

⁴⁰ Pagden and Lawrence “Introduction” xx

⁴¹ Pagden and Lawrence “Introduction”, xx.

of the monarch is then restricted to the authority of the commonwealth and to seek the common good of the community.

Because a monarch's authority is not a direct infusion of grace over a particular community but derives from the transfer of authority to the monarch by the commonwealth, Vitoria believes that it is impossible for non-Christians to lose the authority over their lands because of a nonbelief. Vitoria states, "there can be no doubt at all the heathen have legitimate rulers and masters" and "neither Christian sovereigns nor the church may deprive non-Christians of their kingship or power on the grounds of their unbelief, unless they have committed some other injustice."⁴² Because the non-Christian's sovereign is rooted in the natural capacity for humanity to organize itself in civil society and whose authority is derived from a commonwealth, to replace or abrogate such sovereignty without the consent of the commonwealth would be against natural law. It is important to note that at this time, Vitoria is discussing non-Christian kingdoms in the middleeast during the crusades and not the Indigenous communities in America. However, Vitoria's same line of thought will later be applied to the Amerindians.

Not only is monarchy restricted, but Vitoria's understanding of positive and natural law is rooted in the authority of the commonwealth as well. For Vitoria, a law is only a law insofar as it is oriented toward the common good. Further limiting the power of the monarch, a monarch cannot institute a law that is oriented to procuring private goods but must always be oriented toward the common good.⁴³ It is the role of the prince to be a servant of the commonwealth and

⁴² Vitoria, "On Civil Power" Section 9 p. 18.

⁴³ "A prince may not invent a law which has no regard for the common good, since otherwise the law will be tyrannical" Vitoria "On Law" in *Vitoria: Political Writings*. eds. Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), 157.

such services include promulgating laws for its good. A law that either is not useful or does not serve the good is not considered by Vitoria to be a true law. Vitoria states, “I assert that a law cannot be against the common good, not only *de iure* but also *de facto*, because in that case the law would be no law. If it were established that a law in no way concerned the common good, that law should not be obeyed.”⁴⁴ Rather, “the law must take as its chief concern the common good which is happiness (*Beatitudo*).”⁴⁵ Because the commonwealth is considered a natural good according to Aquinas’ third inclination of natural law, natural law itself cannot go against the good of the commonwealth since it is natural law that brought it into existence. Positive law participates in the natural law in that it is the commonwealth and its representatives that promulgate positive laws. Thus, neither a positive law nor a natural law can go against the good of the commonwealth.

The restrictions on the role of law in its orientation toward the good of the commonwealth becomes an important discussion when we discuss the encounter of two societies and whose law takes precedent. In the encounter between the Spanish and the Indigenous communities of the Americas, one must ask do the laws that take away the rights of the natives’ function as a true law since it is neither derived from nor looking out for the good of the natives? The restricted power of monarchy and law in Vitoria’s thought is important because the authority of the commonwealth transferred to the monarch becomes an important framework when Vitoria discusses whether or not the Spanish monarchy can claim authority of the Indigenous communities in the Americas and whether these laws are considered laws at all.

⁴⁴ Vitoria, “On Law”, 157. Martin Luther King’s *Letter from Birmingham Jail* uses Vitoria’s line of reasoning to suggest that an unjust law is no law at all.

⁴⁵ Vitoria, “On Law” 166.

Vitoria's interest in the situation in the Americas is first indicated in a letter to his religious superior, Miguel de Arcos, OP dated to 1534. In this letter Vitoria advises his superior to have nothing to do with the growing violence in Peru. Reacting to the Cajamarca massacre led by Francisco Pizarro on the Incas in November 1532 and the subsequent capture and death of the last Incan emperor Atahualpa in 1533, Vitoria stated, "that no business shocks me or embarrasses me more than the corrupt profits and affairs of the Indies. Their very mention freezes the blood in my veins."⁴⁶ Furthermore, Vitoria comments, "I do not understand the justice of the war....as far as I understand from eyewitnesses who were personally present during the recent battle with Atahualpa, neither he nor any of his people had ever done the slightest injury to the Christians, nor given them the least grounds for making war upon them."⁴⁷ Vitoria not only could not see justification of the war against the Incas but he could also not fathom their treatment after the war stating, "I know of no justification for robbing and plundering the unfortunate victims of defeat of all they possess and even what they do not possess...I cannot see how to excuse these conquistadors from utter impiety and tyranny."⁴⁸ The utter inhumanity in which the natives were treated by the Spanish led Vitoria to think of ways to discuss the injustice done to the natives from within the logic of Spanish neo-scholastic Catholicism. Vitoria's primary tool to undermine Spanish colonization was the natural law discussions leading to the understanding of civil power and civil resistance.

⁴⁶ Vitoria, "Letter 1: Letter to Miguel de Arcos, OP Salamanca, 8 November 1534", in *Vitoria: Political Writings*. eds Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991), 331.

⁴⁷ Vitoria, "Letter 1", 332.

⁴⁸ Vitoria, "Letter 1", 332-332

Rooted in his understanding of civil authority being transferred from the commonwealth to a monarchy or other type of government, Vitoria contests several claims that the Spanish made to justify the transfer of the sovereignty of the Indigenous community to the Spanish crown. The first claim of the Spanish colonial framework was that the Holy Roman Emperor is master of the whole world. Vitoria contests this by using natural law stating since all are free, “therefore no one can be emperor of the world by natural law” and that, “dominion and supremacy were introduced by human law and not natural law.”⁴⁹ According to Calafate neither could Divine Law be invoked. He states,

“According to Francisco de Vitoria’s lecture in Salamanca, divine law could not be invoked because in nowhere could be found that God had given to someone such universal power; the same applies to natural law since civil power emanated from the nature of the various communities constituted on earth. And as far as human law is concerned, universal authority could not be recalled since no one has ever conquered the world through just war or has been democratically elected by the peoples on earth.”⁵⁰

Since there are no claims either by natural or divine law that provide a justification for the Holy Roman Emperor to be the emperor of the world, an argument that transfers the dominion of the Indigenous communities to the Spanish crown based solely on authority is not possible. Even if, according to Vitoria, the Emperor could make a claim to the government of the whole world, it

⁴⁹ Vitoria, “On the American Indians”, 254.

⁵⁰ Calafate, Iberian School, 819.

would not apply to property but only to jurisdiction. Vitoria does not grant this jurisdiction but claims that the government and dominion of the Indigenous communities are true dominions.

In the same way that the Holy Roman Emperor could not make a claim of properties that do not properly belong to him, neither can the Pope grant properties to Christians that belong to non-Christians. The Pope could not grant these lands because the temporal or civil is not within the realm of his jurisdiction. Rather, the Pope enacts spiritual jurisdiction. Thus, for Vitoria, “the pope has temporal power only insofar as it concerns spiritual matters” and as such, “that even if the Indians refuse to recognize any dominion (*dominium*) of the pope’s, war cannot on that account be declared on them, nor their goods seized. This is obvious, because the pope has no such dominion.”⁵¹ The sovereignty of the Amerindians could not be transferred to the Spanish crown by the bulls of donation of Alexander VI.

In the same way that the dominion of the Indigenous communities cannot be taken away by authority of the Pope or the Emperor, for Vitoria, they also cannot be taken away from the Indigenous communities simply by unbelief. First, for Vitoria, there is significant doubt as to whether the Indigenous communities in fact can be considered sinful in their unbelief. The unbelief of the Indigenous communities for Vitoria qualifies as invincible ignorance. Yet, even when the Spanish preached the gospel to the Indigenous communities and they rejected Christ, “the Spanish cannot use it as a pretext to attack or conduct just war against them.”⁵² Furthermore, Vitoria believes that if the Indigenous communities rejected Christ, who could blame them? Vitoria states,

⁵¹ Vitoria, “On the American Indians”, 261, 263.

⁵² Vitoria, “On the American Indians”, 270.

It is not sufficiently clear to me that the Christian faith has up to now been announced and set before the barbarians in such a way as to oblige them to believe it under pain of fresh sin. By this I mean that, as explained in my second proposition, they are not bound to believe unless the faith has been set before them with persuasive probability...On the contrary, I hear only of provocations, savage crimes, and multitudes of unholy acts. From this, it does not appear that the Christian religion has been preached to them in a sufficiently pious way to oblige their acquiescence: even though it is clear that a number of friars and other churchmen have striven industriously in this cause, by the example of their lives and the diligence of their preaching, and this would have been enough, had they not been thwarted by others with different aims.⁵³

The dominion of the Amerindians cannot be transferred over to the Spanish based on any notion of unbelief in Christ. Unbelief for Vitoria is not a result of the culpability of the Indigenous communities, rather it is the result of the cruelty of the Spanish. The only way that the Indigenous sovereignty could be transferred over to a Christian prince as a result of conversion is if the Indigenous communities authentically, without force, convert to Christianity and elect a prince among them.⁵⁴ Yet, the ability to tell authentic conversion, by the time that Vitoria is

⁵³ Vitoria, "On the American Indians", 271.

⁵⁴ "It follows that if there was a Christian majority in any community or country, and they wished to have a Christian prince for the sake of the faith and for the common good, I believe they could elect such a prince and abandon their allegiance to their infidel masters, even against the opposition of the remainder of the population. By this I mean that they could elect a prince not only for themselves, but for the whole commonwealth." Vitoria, "On the American Indians", 288-289.

making these theoretical arguments, seem to be an impossibility because of the atrocious actions of the Spanish, often leading to forced conversion.

Vitoria severely limited the possibility for the Spanish conquistadors to make claims on the dominion of communities. Even when Vitoria does discuss the possibility for Spain to take control of Indigenous lands, he often limits the extent to which the Spanish can take the property of the Indigenous communities. For Vitoria, some of the possibilities that would allow for Spanish control would be if the Indigenous communities limited travel and trade of the Spanish, if they prohibited the preaching of the gospel, protection of converts, free and voluntary election, and the protection of allies. The most important claim in which the Spanish could justify their control was the defense of innocents against Indigenous human sacrifice.⁵⁵ For Vitoria, human sacrifice broke the second inclination of natural law which is to preserve the human species. Thus, for Vitoria, “Spaniards could intervene to save innocent people from cannibalism or other “unjust death” or to aid native friends and allies.”⁵⁶ While Vitoria severely limits the claims of the Spanish to have legitimate title to the lands of the Americas, these conditions do leave the possibility for a “just” war in which the transfer of dominion from the Indigenous communities to the Spanish could occur.

While Vitoria’s attempts to limit the claims to a just title to Amerindian lands, he leaves open the possibility for theoretical argument that could provide justification for Spanish colonization. Despite Vitoria’s ambiguous theoretical work which can limit or justify claims of

⁵⁵ We will discuss later on that the claims of Indigenous sacrifice were vastly overstated and actually quite rare. Even if it were the case that the Indigenous communities made human sacrifice, Bartolomé de Las Casas would make an argument that this did not necessarily break natural law directly.

⁵⁶ Burkholder, *Colonial Latin America*, 69.

the Spanish, one of the most important contributions of Vitoria's work is that he believes in the fundamental freedom of the natives. Vitoria leaves no room for the claim of the Spanish that the Indigenous communities were natural slaves and did not have true dominion. For Vitoria, Indigenous communities have always had true dominion because of their human dignity. He states,

The proof of this is that they are not in point of fact madmen but have judgement like other men. This is self-evident, because they have some order in their affairs: they have properly organized cities, proper marriages, magistrates and overlords, laws, industries, and commerce, all of which require the use of reason. They likewise have a form of religion and they correctly apprehend things which are evident to other men, which indicates the use of reason.⁵⁷

Because the Indigenous communities follow all of the criteria of Aquinas' third inclination of natural law, those things which are proper to humanity by their use of reason, natural law and all of its implications are applicable to the Indigenous communities and therefore provide a framework to establish their rights (*ius*). Thus, Indigenous society, which is a natural good according to Aquinas and Vitoria, is the framework where one begins engaging in natural law reasoning.

While some such as Walter Mignolo would like to position Vitoria in the realm of primarily viewing natural law as a way to protect private property in the company of Grotius and Locke and thus perpetuating a colonial matrix of power, others view the work of Vitoria and the

⁵⁷ Vitoria, "On the American Indians", 250.

School of Salamanca as offering a subversive natural law framework to colonial power.⁵⁸ David Lantigua argues that Mignolo and others fail to account for the theological pluralism of the Iberian peninsula and that the Spanish colonial debates contested the ideas of religious coercion and violence as well as, “developed an unprecedented scholastic theological reflection on the Gospel’s promotion of human freedom.”⁵⁹ I argue that contrary to the frameworks of Grotius and Locke, Spanish natural law does not start from the individual, but is rooted in the natural good of human community. Society isn’t gathered in order to protect individuals but is rather a natural good of humanity. Discussions of Vitoria about property do not follow the same pattern of Grotius and Locke in that Vitoria primarily discusses dominion and sovereignty for the Indigenous people as a whole. Thus, for Vitoria, power emanates from the community (commonwealth) rather than the individual. Because the Indigenous people live and work in a community, natural law ethics for the Hispanic community is primarily rooted in relationships within a society and between societies. Vitoria’s framework, then, is not simply a work to justify Spanish colonial interests but to limit the ability to enact colonial policy using an epistemological framework they would find hard to argue against. Not only does Vitoria limit Spanish interests from within the framework of Spanish scholasticism, but he also provides a theoretical framework from which the work jurists such as Domingo de Soto and activists such as

⁵⁸ To see Mignolo’s, in our opinion, unfair comparison of Vitoria to Locke and Grotius see, *The Darker Side of Western Modernity: Global Futures, Decolonial Options*. (Durham, NC: Duke University Press), 86-89. Mignolo accuses Vitoria of suggesting the Indigenous communities are unable to think. This is a misrepresentation of Vitoria’s argument. As we have clearly illustrated above, Vitoria, while still being influenced by the notions of Spanish supremacy argues that the Indigenous communities have full capacity of reason and are able to use logic like every other person.

⁵⁹ David Lantigua, “The Freedom of the Gospel: Aquinas, Subversive Natural Law, and the Spanish Wars of Religion.” in *Modern Theology*. 31:2 (April 2015), 314.

Bartolomé de Las Casas are able to work for substantial political change in regard to Spanish colonialism, especially seen in the Valladolid debates of 1550 and 1551.

Domingo De Soto

Following Vitoria as the chair of theology at the University of Salamanca was Domingo de Soto. De Soto not only became the chair of theology at Salamanca but was also an official imperial theologian and representative at the Council of Trent. De Soto not only followed Vitoria in his faculty position but also expanded and clarified much of Vitoria's thought. In particular, following Vitoria, de Soto also thought the Spanish engagement with the Indigenous communities of the Americas was unjust. Using similar methods of natural law moral reasoning as Vitoria, de Soto condemned the violence of the Spanish conquistadors. De Soto followed Vitoria's fundamental thoughts on natural rights and political authority. Like Vitoria, de Soto, "precludes the possibility of a single person ruling the world, be it emperor or pope, since 'every commonwealth has power over itself according to natural right'."⁶⁰ While Vitoria focused primarily on civil power rooted in the commonwealth, De Soto put more emphasis on the commonwealth being made of individual members who each hold within themselves the *Imago Dei*. De Soto further expanded the notion of natural right not only for the commonwealth but for those who lived individually within it.

Unlike Vitoria, de Soto's *relectio de domino*, his lectures on the affair in the indies, never presented hypothetical justifications for war. The only rights that de Soto emphasized that belonged to the Spanish were the right to preach and right to defend themselves.⁶¹ Yet, even

⁶⁰ Lantigua, "The Freedom of the Gospel", 331.

⁶¹ Lantigua, "The Freedom of the Gospel", 330.

within these rights of the Spanish, de Soto, placed stronger conditions in which people could defend themselves. Most importantly, de Soto emphasized that freedom is a prerequisite for someone to receive the gospel. Therefore, the right to preach must always be conditioned by the obligation to preserve the freedom of those who would receive such preaching.⁶² With the stronger restrictions on how one is to preach the gospel and with de Soto's greater emphasis on the *Imago Dei*, de Soto was able to understand his natural law theory and its relationship to Spanish colonialism within the framework of the virtues of freedom and justice.

For de Soto's the virtues of freedom and justice are primarily rooted in the individual as an image of God. De Soto primarily saw the image of God expressed through "self-movement," which "provides the touchstone of rights and this is what secures the autonomy of the political community."⁶³ The freedom to choose and make decisions is a key indicator that not only is one an *imago dei*, but also that one possesses subjective rights and natural *dominium*. Yet, for de Soto and the rest of the Spanish scholastics, right (*ius*) and dominion (*dominium*) were not coterminous. While dominion was considered the ability to possess property, right (*ius*) is related to conditions provided through relationship. While subjective rights according to French, German, and Dutch humanists conflated rights with dominion, (i.e., that rights were possessions), the Spanish scholastics, drawing on Aquinas saw *dominium* primarily in relationship to Aquinas' *dominium utile*.⁶⁴ One's *dominium* was at some level analogous to usufruct. That is, while one may not be sovereign one could derive profit from property and is

⁶² Lantigua, "The Freedom of the Gospel", 330.

⁶³ Lantigua, "The Freedom of the Gospel", 331.

⁶⁴ Tuck, "Natural Rights Theories", 48.

entitled to the rights (*ius*) of the profits. Contrary to the protestant liberal tradition that viewed property and the *imago dei* as rooted in grace that gave humanity the same sovereignty over property as God, the Spanish scholastics viewed property (*dominium*) as primarily on loan (usufruct) from God to be stewarded. Thus, dominion was not a result of grace that made it a right in itself, rather dominion was “subordinated to the laws of nature and God.”⁶⁵ Subjective rights were not considered simply dominion, but rather were related to the relationship in which God has endowed humanity with rights based on a framework of stewardship of creation based on relationship as opposed to subjective rights of property ownership. Human rights are based on relationship rather than the ability to do what one wants when they want. This is important because if a person’s freedom belongs to oneself, they could under a just war sell their freedom. But if a person’s freedom is subordinated to the the fact that it is rooted in the *imago dei*, there can be no justification for slavery because one’s freedom does not properly belong to oneself. As such, “Any theory which radically limited the circumstances under which men could rightfully become slaves, as the Dominicans did, could therefore help to undermine the trade.”⁶⁶ The resulting emphasis of freedom and rights as rooted in the welfare of men lead to the Dominican school, and de Soto, to “concentrate far more on questions of distributive justice.”⁶⁷ Thus, for de Soto, freedom was not considered simply as a property in which one can use as one wishes, rather freedom was a virtue or right that was enacted in relationships and obligations of

⁶⁵ Tuck, “Natural Right Theories”, 49.

⁶⁶ Tuck, “Natural Right Theories”, 49.

⁶⁷ Tuck, “Natural Right Theories”, 50.

protecting others freedom. To look after another's freedom was to focus on justice as an integral aspect of natural law.

De Soto, once again following Vitoria, rooted his understanding of justice explicitly in the Thomistic tradition. Therefore, de Soto understood ethics, "in terms of virtues, both natural and infused, which taken together shape the Christian into an agent who acts both self-consciously and in good conscience on behalf of the common good."⁶⁸ Following the argument of Aquinas in both the *Prima Secundae* and the *Secunda Secundae*, where both law and right are discussed, De Soto places justice as the mediating point that connects rights and law. For de Soto, justice cannot be simply explained under the categories of jurisprudence or legal philosophy but requires the use of practical philosophy because it presents the telos of humanity. As Merio Scattola states, "*Mientras la jurisprudencia se concentra exclusivamente en el objeto de la justicia y en su realización a través de la relaciones jurídicas, la filosofía pueda explicar las materias del derecho en su verdadero significado y en todas sus implicaciones, porque lo concibe como parte de actuar ético.*"⁶⁹ Once de Soto establishes his discussion of justice in relation to practical philosophy as opposed to jurisprudence, he illustrates that by treating justice as a virtue in continuity with Aristotle and Aquinas, justice becomes the "the principle that

⁶⁸ Scott Davis, "Humanist Ethics and Political Justice, Soto, Sepúlveda, and the 'Affair of the Indies'", in *Annual of the Society of Christian Ethics* 9 (1999), 194.

⁶⁹ "While jurisprudence concentrates exclusively on the object of justice and its realization through juridical relations, philosophy can explain the matters of right in their true signification and all their implications because it conceived justice as part of ethical action." Merio Scattola, "La Virtud de la Justicia en la Doctrina de Domingo de Soto" in *Anuario Filosófico* 45/2 (2012), 314-315. De Soto states, "mientras que el filósofo debe examinar las normas del derecho civil sobre la base de los principios de la filosofía." Domingo de Soto *De Iustitia et iure* (Exudebat A. a Portonariis, Salmantica, 1553).

orders everything.”⁷⁰ For de Soto, justice is the object of law and its purpose. The virtue of justice, according to Aquinas, ‘is a habit in accordance with which someone, through a constant and perpetual will, renders his right to each one.’⁷¹ In order to give someone their right then one must set up laws that provide for the expedient protection and distribution of what they are owed or due. How does de Soto determine what one is due? This question goes back to his emphasis on humanity as the *Imago Dei*. If each person is in the *imago dei* and God has pure *dominium* and freedom, then each person also has *dominium* and freedom that must be respected. Thus, for de Soto, since the native peoples of the Americas share in the *imago dei*, justice would require that their *dominium* and their rights must in turn be protected. If justice requires giving each their due then the Indigenous communities were entitled not only to be free of colonial rule, but also given restitution for the cruelty of the Spanish.

De Soto’s emphasis on the *imago dei* as both a condition of freedom and the condition of justice resulted in a serious reappraisal of the actions of the Spanish against the Indigenous communities of the Americas. Because these peoples shared in the *imago dei*, they were free and had rights claims towards justice. Bartolomé de Las Casas would take the rights claims to change and affect foreign policy in regard to the Spanish colonization. Both de Soto and Las Casas would be present at the Valladolid debates in 1550 and 1551. It would be at these debates that one of the largest colonial powers would be the only colonial power to reflect on the ethics of their colonial actions. This reflection is largely due to the theological reflections of Vitoria and de Soto and the actions of Las Casas.

⁷⁰ Scattola, “La Virtud”, 319.

⁷¹ Thomas Aquinas, *Summa Theologica* II-II 58.1

Bartolomé de Las Casas and The Valladolid Debate

While the work of the early Dominicans to stand in solidarity with the Indigenous communities exemplified by Antonio de Montesinos and the theoretical, juridical work by Vitoria and de Soto were helpful in establishing arguments for the autonomy and sovereignty of the Indigenous communities of the Americas against the cruelty of the Spanish, no one's work has been as influential to Indigenous freedom as Bartolomé de Las Casas and his work leading up to the Valladolid debate against Juan Ginés de Sepúlveda.

Las Casas was born in 1484 and in 1502 and joined Nicholas de Ovando's expedition to the Americas. Las Casas was originally an *encomendero* who had a group of Indigenous slaves working for him and, "over the next ten years, Las Casas was both actor and witness in the destruction of the native Tainos of the Island and elsewhere."⁷² In 1510, Las Casas was ordained a priest and the following year either heard or heard about the sermon of Antonio de Montesinos demanding repentance of the *encomenderos* for their treatment of the natives. Soon after, the Dominicans began denying confession to *encomenderos*, Las Casas included. Las Casas joined Diego Velasquez in his conquest of Cuba and Las Casas was awarded a larger *encomienda*. Yet, it wasn't until Las Casas witnessed the slaughter of the Taino and Arawak peoples on the Caonao river that, "His outrage as a human being and his Christian conscience were both seared by the slaughter of hundreds of innocents by Spanish soldiers and the cavalry."⁷³ The final push to solidarity with the Indigenous communities for Las Casas was his encounter with Ecclesiasticus 34:21-22. This passage states, "tainted his gifts who offers in sacrifice ill-gotten goods. Mock

⁷² Clayton and Lantigua, "Introduction", 6.

⁷³ Clayton and Lantigua, "Introduction", 8.

presents from the lawless win not God's favor. Like the man who slays a son in his father's presence is he who offers sacrifice from the possessions of the poor."⁷⁴ This passage vivified Las Casas' conscience to the point where he could not offer the sacrifice of the mass at the same time he persecuted the natives. As Roberto Goizueta states regarding the import of Las Casas' conversion, "If the Spanish conquistadors and missionaries condemned the Indians for their practice of human sacrifice, he argued the Spanish Christians themselves were guilty of human sacrifice when, in the Mass, they presented their offerings of bread and wine, products of the blood sweat, and tears extracted from the Indigenous peoples of the Americas."⁷⁵ The conversion of Las Casas led him to a life of study and action on behalf of the Indigenous communities of the Americas. Through his efforts on behalf of the natives, Las Casas was able to effect political change and became the Bishop of Chiapas in Mexico where he enacted a political and ecclesiastical practice that would force the *encomenderos* to acknowledge and repent of the way they exploited the native communities. Las Casas was not simply an activist but employed an erudite understanding of theology and both civil and ecclesiastical law on behalf of the natives.

David Orique compares Las Casas to other notable figures in colonial Latin America: Toribio de Benavente Motolinia and Juan Vasco de Quiroga. Orique illustrates that while Motolinia and Quiroga were primarily influenced respectively by the millenarianism of the Franciscan order and Thomas Moore's humanism, Las Casas was steeped in the Thomistic tradition as it was taught in the Salamanca school under Vitoria and De Soto.⁷⁶ Las Casas'

⁷⁴ Ecclesiasticus 3:18-22.

⁷⁵ Roberto Goizueta, *Christ Our Companion*, 151.

⁷⁶ See David T. Orique "Journey to the Headwaters: Bartolomé de Las Casas in a Comparative Context." *The Catholic Historical Review* 95, no. 1 (January 2009): 1–24. Orique

Thomistic thought brought about an emphasis on a universalism that contrasted the millenarian and utopian approaches of Motolinia and Quiroga. According to Orique, the millenarianism of Motolinia invoked a sense of viewing the encounter with the Indigenous communities of America as an opportunity to bring about a “New Jerusalem” leading to, “the future creation of this millennial Kingdom as an Indigenous church with the paternal Franciscans as temporal and spiritual leaders of the chosen Indigenous people.”⁷⁷ Similarly, Quiroga’s emphasis on the humanism of Thomas Moore led his interpretation of the encounter with Indigenous communities as an opportunity that, “these new people in this New World would renew the aging Church.”⁷⁸ The problem with both of these approaches is that both look toward Indigenous communities paternalistically. As Orique states both Motolinia and Quiroga, “related paternalistically toward the Indigenous, not ‘looking up’ to them or ‘face-to-face’, but rather gazing down on them as a loving parent looks at a needy child. Both saw the Indigenous as malleable candidates on which to build the New Church--the future millennial Kingdom for Motolinia, the reborn early apostolic community for Quiroga.”⁷⁹ Las Casas experience with the Indigenous community contrasts with both Motolinia and Quiroga in that Las Casas encountered persons from the Taino community when he was eight in Seville and as a teenager with a man named Juanico, where he “looked up to such different people.”⁸⁰ Las Casas was a first-hand

describes Motolinia as primarily being influenced by the apocalyptic thought of Joachim of Fiore and Quiroga as primarily being influenced by Thomas More’s *Utopia*.

⁷⁷ Orique, *Journey to the Headwaters*, 14.

⁷⁸ Orique, *Journey to the Headwaters*, 18-19.

⁷⁹ Orique, *Journey to the Headwaters*, 21.

⁸⁰ Orique, *Journey to the Headwaters*, 21.

witness to the destruction of Indigenous communities of Hispaniola. Las Casas's Eurocentric epistemology was challenged by all of these events which ultimately led to his quest for biblical justice for the Indigenous community.

Las Casas' quest for biblical justice, according to Orique, was rooted in the concept of *Kairos* and Rights language for the Indigenous community. Because *Kairos* is an understanding of time in which the eternal is made manifest and the present is imbued with the sacred, how one treats the Indigenous community has eternal and temporal consequence. Justice cannot wait until some future utopia or later millennia. For Las Casas, "this prophetic panorama demanded that he live in the middle, torn between Kairos time and chronos time-eternal time and temporal time in the pursuit of justice."⁸¹ Thus, the encounter with the Indigenous community had a sacramental effect in which the Indigenous community were not malleable instruments for future goals, but their agency in the here and now, must be respected. After experiencing the Caonao massacre and while meditating on Ecclesiasticus 34:18's statement, "unclean is the offering sacrificed by an oppressor," Las Casas realized that the treatment of the Indigenous community in the here and now has sacramental saliency.⁸² Las Casas experienced the encounter with the Indigenous community at the point of his conversion in the frame of Thomistic sacramental realism. In this particular experience, in these particular people, at this particular time, how one treats these people is indicative of one's relationship with God. Each person in all of their concrete

⁸¹ Orique, *Journey to the Headwaters*, 22.

⁸² Roberto Goizueta would call this sacramental orientation 'critical realism'. Such a realism contests the separation from the symbol and its referent. The material and concrete are the avenues in which the universal are manifested. See Goizueta, "*Christ Our Companion*", 44-49.

relationships, expressions, and cultural backgrounds are made in the image of God and are afforded dignity. Each person, for Las Casas, has a sacramental character.

This human dignity led Las Casas to labor for the universal rights for the Indigenous community. These rights not only included the right to life and right to freedom, but also included religious freedom which Motolinia and Quiroga were hesitant to adopt.⁸³ For Las Casas, the universal rights that were afforded to European communities could not be truly universal unless they were made manifest in the treatment of Indigenous communities. In the effort to establish a language of universal rights, “Las Casas coupled the new sixteenth-century Thomistic understandings with canonistic precedents to argue for Indigenous rights...”⁸⁴

Kenneth Pennington contrasts the two theories that Las Casas was primarily a Thomist or that Las Casas was primarily an activist that did not have, “any underlying coherence to his thought.”⁸⁵ Rather, Pennington suggests that Las Casas drew primarily on medieval juridical theory and canon law. The primary question in the medieval legal tradition was whether or not infidel’s *dominium* was legitimate. Pennington illustrates that there were two schools of thought articulated by medieval canonists. The first view by Pope Innocent IV, Oldradus de Ponte, Johannes Andreae, Panormitanus, Francesco Zabarella, and Dominicus de Sancto Geminiano believed that infidels maintained *dominium* and that their *dominium* could not be taken away from them unless they threatened the lives of Christians.⁸⁶ The second view followed by Alanus

⁸³ Orique, *Journey to the Headwaters*, 23.

⁸⁴ Orique, *Journey to the Headwaters*, 9.

⁸⁵ Kenneth Pennington. “Bartolomé de Las Casas and the Tradition of Medieval Law.” *Church History* 39, no. 2 (June 1970): 150.

⁸⁶ See Oldradus de Ponte, *Consilia* (Romae: 1472), consilium 264. Johannes andreae, *In quinque decretalium libros novella commentaria*, 5 volumes in 4 (ventetiis: 1581; r.p. Torino:

Anglicus, Hostiensis, and later by Matias de Paz and Juan Lopez de Palacios Rubios, believed that, “there was not any legitimate secular power outside of the Church.”⁸⁷ Canonists by the time of the late 14th and early 15th century agreed with the thought of Innocent IV, Oldradus, et. al. that infidels had *dominium*. Drawing from these canonists Las Casas argued, “that the Indians *dominium* was legitimate and just, and that the Spaniards did not have the right to usurp the Indians' just title.”⁸⁸

Las Casas argued for the freedom of the Indigenous communities of South America in his *De Thesaurus* by applying a legal maxim popular with canonists at the time, “*Quod omnes tangit debet ab omnibus approbari*; what touches all must be approved by all.”⁸⁹ This maxim was used to argue the right of consent of the ruled by both ecclesiastical offices and secular authorities. By adopting this legal maxim, Las Casas argued that the Indigenous communities could not be ruled by Spanish authorities without their consent and therefore, “that the pope cannot grant the Spanish king *dominium* in the New World without the consent of the Indians.”⁹⁰ The question remained, what did Alexander VI’s “bulls of donation give to the Spanish and Portuguese

1963), III fol. 173r. Panormitanus (Nicolo Tedeschi), *Commentaria seu lecturae in quinque libros decretalium* 8 volumes (Lugduni: 1531-1555), VI, Fol 177v and Dominicus de Sancto Geminiano, *Consilia* (Venetiis: 1581), consilium 96, fols. 80v-81v. The term “infidels” in Pennington’s work refers to non-Christians in relation to the Crusades. Pennington argues that Las Casas augments these works and applies them to new situations encountered in the new world.

⁸⁷ Pennington, 152.

⁸⁸ Pennington, 151.

⁸⁹ Pennington, 157

⁹⁰ Pennington 157-158.

crowns?⁹¹ Las Casas, by maintaining the legal theory of *Quod omnes tangit*, argued that all Alexander VI could award to Spain and Portugal was the right to preach the gospel. Pennington states, “it was imperative, of course, that Alexander’s donation not be construed as giving what its words indicated literally *cum omnibus illarum dominiis et jurisdictionibus*; with all their dominions and jurisdictions...He [Las Casas] observed that it would be absurd if the pope had actually taken the Indians’ dominum away; all he gave to the Spanish was the right to preach the faith.”⁹² Through the adoption of medieval canon law over speculative theological opinions, Las Casas arguments were given the force of law and Las Casas was, “able to bring enormous pressure to bear on the Spanish government” and its claims to dominion over Latin America. By viewing Las Casas as a prolific legal scholar, his thought was able to force Spanish colonizers to reflect on their actions towards Indigenous communities. Because of Las Casas’ legal and theological works, the Spanish would reflect on their actions at a debate in Valladolid in the years of 1550 and 1551, which would be the first time that a colonial power would reflect on the ethics of its actions.

The Valladolid Debates

The chief question of the Valladolid debates were the questions of how the Spanish were to treat the Indigenous communities of the Americas. To answer the question of how the Indigenous communities were to be treated, the Valladolid debates centered its arguments on the religious and intellectual capacity of the Amerindians. The common understanding of the Spanish

⁹¹ The bulls of donation were a collection of three papal bulls; *Inter caetera*, *Eximiae devotionis*, and *Dudum siquidem*. They delineated which territories would belong to Portugal and Spain.

⁹² Pennington, 159.

conquest of the Americas centers on the belief that the Spanish considered the Indigenous communities to not have the capacity to maintain their sovereignty and did not have the capacity to receive the faith of the Catholic Church. Yet, a more nuanced approach is needed. While the majority of the conquistadores believed that the native peoples did not have either capacity, early Bishops believed that the natives were able to receive the faith and had great intellectual capacity surpassing that of the Spanish. For example, in the first *junta* of the Council of the Indies in 1532, the presiding Bishops, Sebastian Ramirez de Fuenleal and Juan de Zumarraga declared, “no doubt that natives have sufficient capacity to receive the faith.”⁹³ When *encomendero* retractors wrote a negative response to Zumarraga’s declaration, Zumarraga responded in return, “You are the ones who are repulsive and disgusting to me, because you seek only vain frivolities and because you lead soft lives just as though you were not Christians. These poor Indians have a heavenly smell to me; they comfort me and give me health, for they exemplify for me that harshness of life and penitence which I must espouse if I am to be saved.”⁹⁴ Jacob de Testera, a companion to Zumarraga similarly attests, “How can anyone say that these people are incapable, when they constructed such impressive buildings, made such subtle creations, were silversmiths, painters, merchants, and able in presiding, in speaking, in the exercise of courtesy, in fiestas, marriages, solemn occasions, receptions of distinguished personages, able to express sorrow, and appreciation, when the occasion requires it and, finally very ready to be educated in the the

⁹³ Lewis Hanke, *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians*. (DeKalb: Northern Illinois University Press, 1994), 13.

⁹⁴ Jeronimo de Mendieta, *Historia Ecclesiastica Indiana* ed. Juaquin Garcia (Icazbalceta Mexico, 1870), 631-632. Quoted in Hanke, “All Mankind is One”, 14.

ethical, political, and economic aspects of life?”⁹⁵ The early work of Las Casas, Bishop Zumarraga, Jacob de Testera influenced the promulgation of the New Laws in 1542 that severely limited the claims of the *encomenderos*.

At the other end of the debate were the thoughts of Domingo de Betanzos and the historiographer Gonzalo Fernández de Oviedo y Valdes. Betanzos discussed the capacity of the Indigenous communities to the council of the Indies in 1532. Betanzos declared, “I have spoken somewhat on Indian capacity in general, not saying that they were wholly incapable, because I have never said that, but rather that they have very little capacity.”⁹⁶ Despite the fact that Betanzos did not deny the capacity of the native peoples, it was taken by those in Mexico that the Amerindians did not have the capacity to even be baptized.⁹⁷ Betanzos opinions drew the ire of Dominicans Bernardino de Minaya and Julián Garcés who both made an appeal to the pope. Garcés told the Pope, “that if some ecclesiastics make such allegations it is because they have ‘sweated little or not at all in the conversion of the Indians and who little zeal in learning their language and capabilities.”⁹⁸ The pope responded to these discussions by promulgating the bull *Sublimis Deus*, which stated

“We define and declare by these our letters, or by any translation thereof signed by any notary public and sealed with the seal of any ecclesiastical

⁹⁵ *Cartas de Indias*, pp 62--66. Quoted in Hanke, “All Mankind is One” 14.

⁹⁶ Mariano Cueveas, *Historia de la Iglesia en Mexico* 5 vols (Mexici: Assilo “Patricioa Sans”, 1922), vol I. 230.

⁹⁷ Robert Ricard, *The Spiritual Conquest of Mexico: An Essay on the Apostolate and Evangelizing Methods of Mendicant Orders in New Spain, 1523-1572*. Translated by Lesley Byrd Simpson. Berkeley: (Berkeley CA: University of California Press 1966), 90.

⁹⁸ Hanke, “All Mankind is One”, 20.

dignitary, to which the same credit shall be given as to the originals, that, notwithstanding whatever may have been or may be said to the contrary, the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they may be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved; should the contrary happen it shall be null and of no effect.”⁹⁹

Although this was an important bull and was used by Las Casas and others in their defense on behalf of the natives, the new laws that passed in 1542 that limited the *encomienda* system brought about more debates because it jeopardized the income of the *encomenderos* who used the natives as slave labor.

The primary tool used in these continued debates about the treatment of Indigenous communities in the Americas was Oviedo’s work published in 1535, *Historia general de las Indias*. In this work, Oviedo presented several theories that threatened the safety and sovereignty of the natives. First, Oviedo believed that the Americas were once under a Visigoth monarchy in Spain and that Castilian monarchs were merely recovering their lands. Second, that Christianity had been preached to the Indians before Columbus and that the natives forgot the faith and refused the faith. Finally, Oviedo thought the Indigenous people were incapable of becoming

⁹⁹ Paul III, *Sublimus Deus*. 1537.

Christians.¹⁰⁰ The history and the theories of Oviedo became a central resource for Sepúlveda in his preparation for the debates at Valladolid and was a prime enemy of Las Casas. As Victor Manuel Patiño suggested, “Las Casas fought many opponents during his long life...but none of them so absorbed his time and thought as Oviedo.”¹⁰¹ Las Casas thought Oviedo’s thoughts about the Indigenous communities were so dangerous that Las Casas referred to him as the “deadly enemy of the Indians.”¹⁰² Thus, while the Valladolid debates were primarily between Las Casas and Sepúlveda, Las Casas also had Oviedo well within his sights.

The continued debate about the New Laws and the rights of the Amerindians often resulted in resistance by the *encomenderos*. Las Casas enforced the New Laws to the ire of the Spanish *encomenderos* and made it a condition of confession that *encomenderos* provide restitution of the Indigenous communities’ wealth.¹⁰³ This brought on anger against the priests in Mexico, “threatening the Dominicans with physical violence.”¹⁰⁴ The ire against the New Laws occurred elsewhere. As Hanke describes. “The spirit of the times was such that the unfortunate first viceroy in Peru, Blasco Núñez Vela, who had tried to enforce the New Laws in that violent land, had been captured by angry and independent conquistadores, who killed the viceroy in

¹⁰⁰ For a summary of Oviedo’s views on the Amerindians see Hanke, “All Mankind is One”, 40-45.

¹⁰¹ Hanke 39.

¹⁰² Juan Frieda, “Las Casas y el Movimiento indigenista en España y América en la Primera Mitad del Siglo XVI,” *Revista de Historia de América* (Mexico), no. 34 (1952), 339.

¹⁰³ See Hanke 58.

¹⁰⁴ Hanke 58.

1546.”¹⁰⁵ Because of the constant violence and the quest of *encomenderos* to ensure perpetuity of their claims, in the last year of Las Casas Bishopric, the New Laws were revoked in 1547.

The revocation of the new law’s gave Sepúlveda the confidence to compose a treatise against Las Casas and those who worked for the rights of the Indigenous community. Sepúlveda had previously written a treaty against students in Bologna who argued that it was impossible for a Christian to also work as a soldier. These students viewed the actions of a soldier as incompatible with Christian virtue. His second treatise in response to Las Casas was called *Democrates Secundus* and “sought to prove that wars against the Indians were just and even constituted a necessary preliminary to their Christianization.”¹⁰⁶ Despite Sepúlveda’s efforts to have this treatise published, it was not well received. In university circles, Diego Covarrubias lectured against Sepúlveda’s ideas that an Empire’s greatness should be spread by force. Rather, Cavurrabias argued that an Empire’s strength rests in its culture. The Indigenous cultures of America furthered the argument that they should have their own autonomy. Yet, despite Sepúlveda’s lack of publication, he received popular support from *encomenderos*.

Despite the growing support for Sepúlveda’s position and the revocation of the New Laws, Las Casas continued to politically maneuver a delay of the Council of the Indies’ forthcoming decision to validate Sepúlveda or Oviedo’s position. Hanke states, “Maneuvers such as these have led historians to emphasize Las Casas qualities as a politician.”¹⁰⁷ Yet, Las Casas knew that he must accompany his passionate positions with legal reforms. Las Casas,

¹⁰⁵ Hanke 65.

¹⁰⁶ Hanke 62.

¹⁰⁷ Hanke, 59-60.

“energetically affirmed that the necessary reforms could be achieved if only the necessary laws were made by the Council of the Indies and upright men appointed to execute them in America.”¹⁰⁸ With continual letters emphasizing his position, Las Casas was able to convince some members of the Council that an official debate should take place.

With the emphasis on establishing further laws that would restrain the conquests of the Americas and the lack of accountability for the Conquistadores, the Council of the Indies requested a meeting of theologians and jurists to debate the rescinding of the New Laws and how the Amerindian population should be treated. The Council of the Indies wrote to Charles V, “We feel certain that these laws have not been obeyed, because those who conduct these conquests are not accompanied by persons who will restrain them and accuse them when they do evil...It would be fitting for your majesty to order a meeting of learned men, theologians, and jurists, with others according to your pleasure, to discuss and consider concerning the manner in which these conquests should be carried on in order that they may be made justly and with security of conscience.”¹⁰⁹ Charles V heard the request and ordered all conquests to stop on 1550 until the debate could decide on how the Spanish should proceed to engage the Americas.

The council at Valladolid began in August of 1550 and a council of fourteen judges heard debates between Las Casas and Sepúlveda. Among the Council were theologians from the University of Salamanca such as Domingo de Soto, Melchor Cano, and Bernardino de Arevalo. On the first day, Sepúlveda presented his resume and spoke for three hours. Las Casas, fully opposing the conquests, responded with a “numbing five-day reading of his 500-page-give or

¹⁰⁸ Hanke, 66.

¹⁰⁹ Hanke, 66-67.

take a few pages- track entitled ‘the Defense...Against the persecutors and Slanderers of the Peoples of the New World Discovered Across the Seas’.”¹¹⁰ Las Casas and Sepúlveda were never in the same room when delivering their arguments. Because Las Casas’ argument was so exhaustive the Council asked Domingo de Soto to condense his arguments.

Las Casas’ primary opponent in the Valladolid debates was Juan Ginés de Sepúlveda who argued in his *Democrates Secundus* that war and conquest against the Indigenous communities in Latin America was just. While some such as J. Minahane have argued that Las Casas won the debate because Las Casas’ thought has prevailed through history, others such as Mary Speer have suggested that within the immediate context of the debate that Sepúlveda won because of his proximity and influence to Philip II after the abdication of Charles V.¹¹¹ Speer makes her claim based on the fact that Sepúlveda taught Philip Latin, dedicated his translation of Aristotle's *Politics* to Philip, and Philip instituted policies that banned and restricted the spread of Las Casas works.¹¹² Most importantly, Philip’s policies echoed thoughts that Sepúlveda promulgated in personal correspondence with Philip that were similar to the thought Sepúlveda published in his *Democrates Secundus*. Regardless of who won the debate and by what criteria, one is able to make the judgement that natural law reasoning played a huge role in both Sepúlveda’s and Las Casas’ arguments. As Santana states, “At the Valladolid debate, natural law

¹¹⁰ Lawrence A. Clayton and David M. Lantigua *Bartolomé de Las Casas and the Defense of Amerindian Rights: A Brief History with Documents*. (Tuscaloosa, AL: University of Alabama Press, 2020), 19.

¹¹¹ See these two views see. Minahane, J. (2014)” The controversy at Valladolid, 1550-1551”. *Church and State*. Nu.116.[4] (2014) And Speer, Mary. "Tutoring the King: Juan Ginés De Sepúlveda's Victory Over Bartolomé De Las Casas." *Bulletin of Hispanic Studies* 97, no. 3 (2020): 271-287.

¹¹² Speer, “Tutoring the King”, 284.

provided one of the main bases (along with scripture and the writing of church authorities) that both Sepúlveda and Las Casas used to evaluate the justice and legality of the Spanish treatment of the Amerindians, including making war on them.”¹¹³ Sepúlveda used natural law primarily to reinforce notions of Spanish supremacy and racial hierarchies by making appeals to Aristotle while Las Casas used natural law to stand in solidarity with the native Indigenous peoples of the Americas.

Sepúlveda’s arguments that were summarized at Valladolid came from his work *Democrates Secundus*. *Democrates Secundus* was a dialogue between Democrates and a straw man, Leopold, who was to represent Las Casas position. In this Dialogue Sepúlveda argues that war against Indigenous Latin American communities was justified. Traditionally there were three reasons for just war. These were responding to an attack, recovering stolen possessions, and imposing punishment.¹¹⁴ However, in justifying war against the Indigenous communities, Sepúlveda disregards these reasons and presents four reasons for what he considered just war against the Indigenous communities of the Americas: the natural inferiority of the Indians, sins against natural law, obligations to release those who were oppressed in their own societies, and the evangelical precept of spreading the truth, using force if necessary.¹¹⁵ All of these arguments are based on the parallel notions of Spanish supremacy and false caricatures of Indigenous peoples.

¹¹³ Santana, 43.

¹¹⁴ Tubau, Xavier. "Canon Law in Juan Gines de Sepúlveda’s ‘Democrates Secundus’.” *Bibliothèque D’Humanisme Et Renaissance* 73, no. 2 (2011): 272.

¹¹⁵ Tubau, “Canon Law”, 272.

Sepúlveda's Arguments

Sepúlveda argues that the virtue of prudence or wisdom, which is given by God, is what determines those who should govern and those who should be governed. For Sepúlveda, those who have the higher capacity to reason should rule over the rest. Drawing from Aristotle, Sepúlveda argued that, “a natural slave is capable only of apprehending, not of having rational principle. Not only is it necessary to rule over them but also it is in their best interests to be enslaved by a ruler.”¹¹⁶ Aristotle believed that within a Greek household there was the master and an assistant. The assistant was considered a tool and a piece of property to be used by a master. Aristotle considered this person to be a natural slave. For Aristotle, “For anyone who despite being human is by nature not his own but someone else’s is a natural slave. And he is someone else’s when, despite being human, he is a piece of property; and a piece of property is a tool for action that is separate from its owner (154a12-17)”¹¹⁷ A natural slave for Aristotle, “completely lacked the capacity for rational deliberation and thereby were incapable of full rationality.”¹¹⁸ For Sepúlveda, the Indigenous communities of the America’s fit the description of a natural slave by asserting Spanish superiority.

Some, such as Robert Quirk argue that the term “*natura servus*”, being translated as natural slave, is a mistranslation that serves to disadvantage Sepúlveda’s modern reception. Quirk argues that “*natura servus*” is better understood within the context of medieval serfdom and should reflect that cultural background. Quirk states that because, “Sepúlveda was not a

¹¹⁶ Speer, “Tutoring the King”, 275.

¹¹⁷ Santana, “The Indian Problem”, 41.

¹¹⁸ Santana, 41.

historian in the modern sense and could have had no intimate knowledge of Greek slavery” the “key to understanding of that phase of the debate which concerned natural servitude lies, accordingly not in an exegesis of Aristotle, but in a study of the sixteenth-century concepts of serfdom and slavery; the two possible contemporary equivalents for Aristotle’s slavery by nature.”¹¹⁹ Las Casas seemed to have taken Sepúlveda's use “*natura servus*”, as “principally of serfdom’ when the latter described the ideal relationship between the more advanced, cultured Spaniards and the primitive inhabitants of the new world.”¹²⁰ When Las Casas refers to the Amerindians as being treated as slaves, he always uses the term *hecho*, to be made a slave.¹²¹ So, regardless as to whether or not they were slaves according to the Greek tradition, Las Casas’ first-hand experience illustrates that they were treated in such a way where there would be little difference between serf and slave. Not only does Las Casas testimony show the arbitrariness of Quirk’s point, but also one may find it hard to believe that Sepúlveda, who was a translator and scholar of Aristotle, would have not intimately known the context of Greek slavery when he was espousing that the Indigenous communities of the Americas fit such an Aristotelian category.

Regardless of the context in which *natura servus* was employed, Sepúlveda’s argument for justified war was built primarily on an understanding of Spanish superiority. Sepúlveda explicitly calls for the domination of the Indigenous community by saying that their, “*condición natural es tal que deban obedecer a otros*” and “*si rehúsan su gobierno y no queda otro recurso*,

¹¹⁹ Quirk, Robert E. "Some Notes on a Controversial Controversy: Juan Ginés De Sepúlveda and Natural Servitude." *The Hispanic American Historical Review* 34, no. 3 (1954): 358.

¹²⁰ Quirk “Some Notes”, 361.

¹²¹ Quirk, “Some Notes, 362

sean dominados por las armas”¹²² Spain, according to Sepúlveda, should govern and subjugate the Indigenous community not only because Spain exists at the height of reason, but because it is under natural law that more cultured communities subjugate less cultured communities.

Sepúlveda states, “*y será siempre justo y conforme al derecho natural que tales gentes se sometan al imperio de príncipes y naciones más cultura y humanas, para que merced á sus virtudes y á la prudencia de sus leyes, depongan la barbarie y se reuzcan á vida más humana y al culto de virtud.*”¹²³ According to Sepúlveda, natural law allows for some, “more cultured” communities to subjugate other, “less cultured” communities.

The second and third reasons that Sepúlveda believes that the conquest of the Indies is just are similar to one another. The second reason is that because some Indigenous communities practice human sacrifice, they are breaking natural law and must be deposed. The third reason is that it is the Christian’s duty to protect innocent life and therefore must intervene in Indigenous practice of human sacrifice and depose their leadership for the sake of love of neighbor. Love of neighbor and protecting the innocent is one of the few arguments that Vitoria says allows for justifying war. Sepúlveda takes Vitoria’s argument to the next level and condemns Indians for both idolatry and human sacrifice. According to Sepúlveda, because the gods of the natives are so different, they constitute an offense against God and not simply a mistake on the nature of

¹²² It is their “natural condition who ought to obey others” and “if they refuse to be governed there can be no other recourse than to be dominated by arms.” See Juan Ginés de Sepúlveda *Obres completes VIII: Demócrates Segundo; Apología en favor del libro sobre las justas causas de la guerra*. (Salamanca: Europa Artes Gráficas, 1997), 53.

¹²³ “And it will always be just and conform to natural law that such people submit to the rule of more cultured and humane nations and princes, so that, thanks to their virtues and the prudence of their laws, they may lay down barbarism and reuse themselves to a more human life and worthy of virtue.” Sepúlveda, *Obres complete VIII*, 55.

God. This is different from the noble Greeks or those nations surrounding Israel who were simply infidels. Because of the “primitive nature” of the Indigenous communities they were not simply just infidels but also idolaters. In regards to the argument that unbelief is not a cause for war, Sepúlveda responds “if there were to be discovered in the New World some cultivated, civilized, humane people to whom idolatry would be foreign and whom nature would have impelled to worship the one true God” such an argument would hold.¹²⁴ But Sepúlveda believes that because of the combination of idolatry and immolation of human flesh, the natives constitute an offense against God. For Sepúlveda, human sacrifice was not only an offense against God but was an offense against humanity. Summarizing Sepúlveda’s argument Gutiérrez states, “Human solidarity ought to entail the defense of innocent victims.... To offense of God is now added that of neighbor: now human solidarity is involved.”¹²⁵ Such a connection between offense of God and neighbor would seem to seal the deal for Sepúlveda. But Las Casas’ counter argument, as we will see below, will prevail.

The fourth and final argument Sepúlveda makes for the justification of war against the natives of the Americas is to evangelize and propagate the faith. For Sepúlveda, “Christians have a duty to spread the faith, and this cannot be done without first subjugating those who resist.”¹²⁶ While it is impossible to force someone to believe anything against their will, through subjugation they could be forced to listen to the presentation of the Gospel. Sepúlveda uses the parable of the “Great Feast” to illustrate his point. In this parable, a rich man hosts a banquet and

¹²⁴ *Democrates*, 44 in Gutiérrez 172.

¹²⁵ Gutiérrez, 173.

¹²⁶ Santana, 44.

his invited guests cancel at the last minute. The host asks his servants to compel people off the streets to come to his banquet. While this parable probably speaks more to the fact that the invited guests were the ones to reject Jesus and those off of the streets are the ones who actually understand and perceive how great it is to be invited to such a host's banquet, Sepúlveda focuses on the language of compelling the people on streets to come to the banquet. Rather, "For Sepúlveda, this parable is evidence for the permissibility of compelling unbelievers to the faith, by force if necessary."¹²⁷ Thus, for Sepúlveda, it is possible to evangelize with the gun and the sword.

Las Casas Defense

Las Casas' defense is a point-by-point refutation of Sepúlveda's fourfold argument. Las Casas not only attacks Sepúlveda's arguments directly but also attacks the way that Sepúlveda uses different biblical passages, early and medieval writers, and attacks the integrity of some of his sources like Oviedo's *History* and the thought of John Major.¹²⁸ Most importantly for our purposes, Las Casas employs a type of natural law reasoning that contests the natural law reasoning of Sepúlveda. As Clayton and Lantigua have pointed out

Las Casas, Similar to Dominican theologians from the University of Salamanca such as Soto and Francisco de Vitoria, applied the view of natural law inspired by St. Thomas Aquinas to support the legitimacy and

¹²⁷ Santana, 44

¹²⁸ "...in connection with divine and human law they abuse God's words and do violence to the scriptures, to papal decrees, and to the teaching handed down from the holy fathers." Las Casas, *Defense*, 27.

rights of Indian polities. The Dominicans advocated that no civilization such as the Amerindian ones--lacked natural reason in their political affairs.¹²⁹

In the Valladolid debates, Las Casas not only presents his arguments as an exchange of rhetoric, but also presents a contrasting view of natural law that stands in contradistinction to the natural law reasoning that supports empire. As Lantigua and Clayton suggest, contrary to the understanding that natural law was only a tool of empire, “Under Las Casas’s erudition and advocacy, natural law was not a tool of imperial conquest, but an ethic of resistance to colonial power.”¹³⁰ While it is tempting to portray Las Casas as a hero of modern liberal culture, to do so would damage to, “him, history, the truth, the imagination, and his Indians.”¹³¹ Las Casas was a man of his time and his language is often crude and his rhetoric sharp. His references to the Indigenous people are not without fault and are often paternalistic. Yet, Las Casas’ *Defense* provides a framework of natural law moral reasoning that stands in solidarity with the Indigenous communities of the Americas and takes the natural law reasoning of Sepúlveda and others like him to task.¹³² Las Casas uses his privilege as a Spaniard to work toward, “shaping in his lifetime the improvement of imperial policy regarding the treatment of Amerindians. He also helped lay the theoretical and legal groundwork for the development of international law and

¹²⁹ Clayton and Lantigua, *Bartolomé*, 19.

¹³⁰ Lawrence A. Clayton and David M. Lantigua *Bartolomé de Las Casas*, 21

¹³¹ Martin E. Marty, “Forward” in *In the Defense of the Indians*. Translated by Stafford Poole, C.M. (DeKalb, IL, Northern Illinois University Press, 1992), xiv.

¹³² “I shall show that the Reverend Doctor Sepúlveda, together with his follower, is wrong in law in everything he alleges against the Indians. While doing this I shall provide an answer to all his arguments and to the authorities he violently distorts.” Las Casas, *Defense*, 28.

human rights.”¹³³ Las Casas’ *Defense* is a prime example of how one who, within their own cultural framework, can speak from within their position of power to the powers of imperialism.

The first point of Sepúlveda’s argument that Las Casas refutes is the argument that the Indigenous communities are placed under the Aristotelian category of natural slaves. In refuting Sepúlveda’s first point, Las Casas accuses Sepúlveda of oversimplifying and wrongly categorizing Aristotle’s position on natural slaves in books 1 and 3 of his *Politics* and book 7 of his *Ethics*. Rather than there simply being one category of “natural slave”, Las Casas suggests that there are four types of ‘barbarians’ that only one could be vaguely considered a natural slave.¹³⁴

According to Las Casas, the first type of barbarian is one who is “cruel, inhuman, wild, and merciless, acting against human reason out of anger or native disposition.”¹³⁵ Las Casas did not believe the Indigenous communities of America fit this category. First of all, even if these communities were to commit inhuman and merciless acts, they would not be unique in history. Las Casas speaks of “both Greeks and the Latins, and any others who live even in the most highly developed states, can be called barbarians, if by the savagery of their behavior, they are anything like the Scythians, whose country was regarded as singularly barbaric.”¹³⁶ Most damningly Las Casas suggests that by Aristotle’s definition it is the Spanish rather than the

¹³³ Santana, 50.

¹³⁴ For a comprehensive discussion of Las Casas’ use of the term Barbarian see Castilla Urbano, Francisco. “La Revision Del Concepto De ‘Barbaro’ En Los Escritos De Las Casas.” *Romance Notes* 59, no. 1 (January 1, 2019).

¹³⁵ Las Casas, *Defense*, 28.

¹³⁶ Las Casas, *Defense*, 29.

Indigenous communities of the Americas that behaves barbarically. Las Casas states, “Indeed, our Spaniards are not unacquainted with a number of these practices. On the contrary, in the absolutely inhuman things they have done to those nations they have surpassed all other barbarians.”¹³⁷ So even if the Indigenous people fit the category of this first type, which Las Casas clearly believes they do not, the Latins, the Greek, and the Spanish also fit with these categories. Thus, if Aristotle was speaking about the first category of barbarians when he refers to “*natura servus*” then, historically, people of every nation fit the category, least of all the Indigenous communities of the Americas. Las Casas concludes that not only do the Amerindians do not fit the first category of barbarians and that the Spaniards better fit the description, but also that the first category of barbarian is not what Aristotle was referring to in discussing “*natura servus*”.

The second type of barbarian that Las Casas delineates are those who do not have a written language that corresponds to the spoken one. Las Casas considers such persons, “are not called barbarians in the absolute but in a restricted sense; that is, they are not barbarians literally but by circumstance....”¹³⁸ The circumstances that Las Casas speaks about are circumstances where there is misunderstanding between cultures where, “because of the difference of his language, does not understand another speaking to him.”¹³⁹ Las Casas recalls that in 1 Corinthians 14:11, the Apostle Paul himself, called himself a barbarian. Paraphrasing *Homilia 7 in Mattheum*, Las Casas argues that Chrysostom himself, states, “it is obvious that a people can

¹³⁷ Las Casas, *Defense*, 29.

¹³⁸ Las Casas, *Defense*, 31.

¹³⁹ Las Casas, *Defense*, 31.

be called barbarians and still be wise, courageous, prudent, and lead a settled life.”¹⁴⁰ Las Casas also points out that according to this second usage that the Greeks called the Romans barbarous and that the Romans called the Greeks barbarous. This understanding of barbarism, according to Las Casas, is entirely circumstantial and thus cannot be used as a justification to make war on anyone, let alone make the claim that because there is a miscommunication of language that anyone should be considered a “*natura servus*.”¹⁴¹ It is clear that if Las Casas considered the Indigenous people to fit into this second category, it was definitely in a restricted sense that other nations found themselves in as well. To make a claim toward justified war on the grounds of Las Casas’ second type of barbarism would be absurd and is clearly not the type of barbarism that Aristotle is referencing.

The third type of barbarism that Las Casas discusses is most likely the type that Aristotle is referencing when he discusses natural servitude and for Las Casas this is an extremely rare or even nonexistent occasion. This type of barbarism is reserved for those that, “of their evil and wicked character or the barrenness of the region in which they live, are cruel, savage, sottish, stupid, and strangers to reason.”¹⁴² Las Casas believes that it is very rare for any person to fit this description and this situation is not a situation that occurs in any kind of natural evolutionary trajectory nor through the intention of God. Because this type of barbarism is so rare, Las Casas condemns Sepúlveda vehemently for suggesting that such a type of barbarism could be attributed

¹⁴⁰ Las Casas, *Defense*, 31.

¹⁴¹ It is unfortunate that miscommunication or inability to understand one another’s language brought about accusations of Barbarism. This conversation is definitely a product of its time and one begins to wonder if barbarian could be analogous to the concept of foreigner rather than the strictly pejorative connotations it has today.

¹⁴² Las Casas, *Defense*, 32.

to an entire nation. Las Casas writes passionately, ‘Who, therefore, except one who is irreverent toward God and contemptuous of nature, has dared to write that countless numbers of natives across the ocean are barbarous, savage, uncivilized, and slow witted when, if they are evaluated by an accurate judgment, they completely outnumber all other men?’¹⁴³ In other words, Sepúlveda’s insistence that the entire number of Indigenous peoples in the Americas fit this third category of barbarism is so contrary to the will of God, the traditions that say God wills all to be saved would be made to be incoherent. Las Casas states, “Again, if we believe that such a huge part of mankind is barbaric, it would follow that God’s design has for the most part been ineffective, with so many thousands of men deprived of the natural light that is common to all peoples.”¹⁴⁴ For Las Casas, Sepúlveda’s claim that the Indigenous communities of the Americas are barbaric and natural slaves is not only offensive to the intelligence and culture of those communities but is offensive to God. To say that God created entire communities as barbaric is an insult to God. Not only is it offensive to God to say that entire communities could be considered barbaric, but it is also offensive to God to make war against these communities. As Las Casas states, “Again, if we want to be sons of Christ and followers of the truth of the gospel, we should consider that, even though these peoples may be completely barbaric, they are nevertheless created in God’s image. They are not so forsaken by divine providence that they are incapable of attaining Christ’s kingdom”¹⁴⁵ For Las Casas, even if there is the possibility of this

¹⁴³ Las Casas, *Defense*, 35.

¹⁴⁴ Las Casas, *Defense*, 36.

¹⁴⁵ Las Casas, *Defense*, 39.

third type of barbarism, they should be treated with the dignity afforded to them as image bearers of God.

Not only does Sepúlveda present a claim that would be offensive to God, but Sepúlveda also depends on inaccurate sources about the native populations. Since Sepúlveda, himself, had never travelled to the Americas he depended on Oviedo's biased history to make his claims about the Amerindian communities. Las Casas states, "The testimony of such a person of myself, who has spent so many years in America, on the character of the Indians nullifies any allegation founded solely on the testimony of Fernandez de Oviedo who had a preconceived attitude against the Indians because he held Indians as slaves."¹⁴⁶ It is clear for Las Casas, that even if Aristotle is referring to this third category as natural servants, the Indigenous communities and no other entire community could ever fit this category and that any testimony that would say these communities fit the description of the third type of barbarism come either from an uninformed or biased source.

The fourth and final type of barbarians that Las Casas defines are simply non-Christians. For Las Casas, "The Amerindians, however, are barbarians of the fourth type, but so are all other non-Christians, and this doesn't justify making war on them."¹⁴⁷ Las Casas, being a Dominican priest of the 16th century, enacts a Christo-supremacy that is common to his context stating, "For no matter how well governed a people may be or how philosophical a man, they are subject to complete barbarism, specifically, the barbarism of vice, if they are not imbued with the mysteries of Christian philosophy."¹⁴⁸ This type of barbarism is not one that is inherent to any group but a

¹⁴⁶ Hanke, 86.

¹⁴⁷ Santana 45.

¹⁴⁸ Las Casas, *Defense*, 49.

matter of a Christocentric perspective making value statements on others. Drawing from Augustine's conversation with Lactantius, Las Casas understands the religions of the ancient Greeks and Romans to be barbarous and often of the worst kind. If Aristotle was talking about this type of barbarism as the precondition for natural servitude, then Aristotle himself must fit the category since Aristotle did not participate in Christian philosophy.

Las Casas' categories of barbarism illustrate how often this framework is based on conditional and restricted meanings. Of the first type, a poignant observation of Las Casas is that Christians, especially the Spanish colonists, often fit this category. The Indigenous people are not barbarous in the second sense by nature but once again, Christians can occupy the second type of barbarism. The third type of barbarism that Aristotle is probably referencing when referring to natural servitude is so rare and that to call an entire nation this third type of barbarism would be offensive to the plans of God. The final type of barbarism is a result of a Christo-supremacy of the time and does not qualify for making just war.

The second and third arguments of Sepúlveda's that qualify a just war based on the Indigenous people breaking natural law by practicing "idolatry and human sacrifice" and the need for Christians to rescue the innocent are countered by Las Casas by meticulous interpretations of civic, ecclesiastical and natural law. As stated by Gutiérrez, "Human sacrifice and cannibalism were the gravest of the accusations lodged against the Indians by those who sought to legitimize the wars of conquest."¹⁴⁹ Even theologians sympathetic to Amerindian sovereignty such as Francisco de Vitoria, as we have illustrated, were concerned about the allegations of human sacrifice and believed that saving the innocent from human sacrifice was

¹⁴⁹ Gutiérrez, 166.

one of the few claims the Spanish could make to justify war. Las Casas rejects arguments that human sacrifice justifies Spanish conquest.

For Las Casas, the Spanish did not have actual jurisdiction over the Indigenous communities to punish transgressions of natural law. For Las Casas jurisdiction could only happen through habitation among Christians, a case under litigation within the land of a sovereign, if they are a vassal, or a crime committed within the jurisdiction of Christians.¹⁵⁰ Crimes that were committed by unbelievers who live in jurisdictions not controlled by Christians are unable to be prosecuted. “Surely”, Las Casas states, “no matter how despicable the crimes they may commit against God, or even against religion among themselves or within their territories, neither the Church nor Christian rulers can take cognizance of them or punish them for these.”¹⁵¹ People who have not converted to Christianity cannot be punished by Christians and are not subject to Christ. While the Catholic Church during Las Casas’ time believed that Christ had power over all nations, Las Casas argues that this is potential or habitual power rather than actual power. Las Casas argues

Unbelievers are subject to Christ only potentially, not actually, and do not belong to his authority or jurisdiction, insofar as it is potential until they be converted or die or until the end of the world, when Christ will exercise his full power over all persons by condemning the evil and rewarding the good. And then all things will be actually subject to him.

¹⁵⁰ Las Casas, *Defense*, 54.

¹⁵¹ Las Casas, *Defense*, 55.

Drawing from Christian writers such as Augustine, Chrysostom, and Aquinas, Las Casas argues that the Church is, “not in the business to punish the paganism of those who have never been cleansed by Christian baptism.”¹⁵² Not only does the Church not have jurisdiction over non-Christians, but the charge of idolatry cannot be punished because according to Las Casas, “the worship of idols presupposes paganism or unbelief and is a superstitious protestation of unbelief” and as stated earlier it is not possible to wage a just war on the basis of simple unbelief. Even if the Indigenous community were under the jurisdiction of the Church and the Church could punish unbelief, Las Casas’ final argument on why the Church should not even engage in such jurisdiction is that preaching Christ to unbelievers should never start with punishment.

Las Casas argues that if the Church had jurisdiction to save the innocent, that, “(a) this option should not always be exercised and (b) is no reason to make war, especially where there are viable and peaceful alternatives.”¹⁵³ For Las Casas, there are six reasons that the Church could make just war for the actions of non-Christians. The first is if unbelievers unjustly possess Christian lands. The second is if they practice idolatry in lands under former Christian jurisdiction.¹⁵⁴ Third is when unbelievers are blasphemous toward Christianity. The fourth is when they hinder the spread of Christianity. The fifth is if they attack Christian territories and the sixth is when they practice cannibalism and human sacrifice. It is clear to Las Casas that the first condition does not apply to the Amerindians because they do not possess Christian lands. The

¹⁵² Las Casas, *Defense*, 76 quoting Thomas Aquinas

¹⁵³ Santana, 46.

¹⁵⁴ Santana, 47.

second condition does not apply because their lands were never under Christian jurisdiction.¹⁵⁵

The third and fourth conditions of blaspheming Christianity and hindering the spread of Christianity, for Las Casas, are nullified by the atrocious actions of the Spanish against the Indigenous populations. For Las Casas, if the Amerindian communities blaspheme Christianity, it is because, “they are not referring to the Christian religion but to Christians who have mistreated them.”¹⁵⁶ If they hinder the spread of Christianity it is because they are acting in self-defense, “they have killed preachers not because the preachers are Christian; they have killed the preachers because they are Spanish.”¹⁵⁷ The fifth condition of just war does not apply to the Amerindian communities because they are not attacking Christian lands. The only possible cause of just war would be to protect the innocent from cannibalism and human sacrifice.

For Sepúlveda, if the Church was not able to punish the Indigenous communities for “idolatry and human” sacrifice, surely the Church and Spain could intervene and make a just war against the Indigenous communities of the Americas for the sake of protecting innocent lives lost in the acts of human sacrifice? Las Casas contests this claim as well. First of all, Las Casas argues that when there are two evils that one must face, it is necessary to choose the lesser evil. In the case of loss of innocent life in the case of human sacrifice against the case for making just war where there can be a loss of innocent life in the “fog of war”, Las Casas believes there would

¹⁵⁵ This is why Oviedo suggested in his *History* that the Americas were previously occupied by Christians. If this were the case, then war would be justified.

¹⁵⁶ Santana, 47.

¹⁵⁷ Santana 48.

be more loss of innocent life in Spanish conquest.¹⁵⁸ Las Casas believes in the course of war it is hard to distinguish the innocent from the oppressors because the large number involved, the turbulent fury of battle, and the confusion and fear of invaders.¹⁵⁹ The Spanish conquest would be an act that would involve far more loss of life than human sacrifice. Las Casas argument is contingent on, “if one accepts his account of the American reality, that is, the facts of the case regarding the ‘crimes’ of the American Indians on the one hand and the conduct of the Spanish on the other.”¹⁶⁰ In the case of Las Casas understanding of the Spanish conquest, far more innocent lives will be killed by the Spanish than by the sacrifices by the few Indigenous communities that actually practice these sacrifices.

Not only would a just conquest against the Indigenous communities of America lead to more loss of innocent life, but for Las Casas, the most powerful weapon against human sacrifice are not guns or swords but rather the word of God. For Las Casas, “God’s word is more effective than war, and experience has shown that Christianity is best spread only through preaching the gospel.”¹⁶¹ For Las Casas, “the real obstacle to the evangelization of the natives of the Indies is the counter testimonial of Christians themselves.”¹⁶² If God wants all people to be saved, then the atrocities committed by the Spanish against the natives would not be the best way to bring

¹⁵⁸ “Christ, then, does not seek but forbids that the guilty be judged or punished, or uprooted by men as long as they cannot be distinguished from the innocent without endangering them.” Las Casas, *Defense*, 209.

¹⁵⁹ Las Casas, *Defense*, 213.

¹⁶⁰ Glen Carman, “Human Sacrifice and Natural Law in Las Casas’s *Apologia*”, in *Colonial Latin American Review* Vol 25 No 3. (2016), 283.

¹⁶¹ Santana, 49.

¹⁶² Gutiérrez, Las Casas, 155.

the news of salvation. The violence conducted by the Spanish would serve as an impediment to the gospel. Las Casas believed this is what has happened in the past, “there is no other reason why Saracens, Turks, and other unbelievers refuse to embrace our faith than the fact that we deny them with our conduct what we offer them with our words.”¹⁶³ To make a just war would do more harm to Christian testimony than it would do good.

Finally, one of Las Casas most interesting arguments against making just war against the natives on the account of human sacrifice is that, according to Las Casas, human sacrifice is not necessarily a direct breaking of natural law. Drawing on the understanding of whether or not natural law is the same for everyone and natural law’s increasing variability in regard to specific conclusions in Aquinas Summa I-II 94.4 and Soto’s understanding that distorted customs can cloud or blind people from practical reason, Las Casas argued that human sacrifice can be an excusable error of the Indigenous population’s effort to follow natural law. While making this claim, Las Casas is quick to remind his readers that, “the ancient history of pagans and Catholics alike testifies that almost all peoples used to do the same thing.”¹⁶⁴ If at some point human sacrifice was common to all, how is it that it can be a result of natural law reasoning when the first inclination of natural law is to preserve human life? Las Casas reasoning is as follows:

- (1) All nations have a knowledge of God, even if this knowledge is
- confused; (2) “natural instinct” leads all to worship God and honor him in
- the best way they can; (3) there is no better way to worship God than
- through sacrifice, and, in fact, ‘natural law’ obliges men to honor God in

¹⁶³ Las Casas, *Apologia* 121-121v) quoted in Gutiérrez 156.

¹⁶⁴ Las Casas, *Defense*, 222.

the best way they can and offer him the best things in sacrifice; and (4) although the principle of sacrifice comes from natural law, the manner of sacrifice and the things to be sacrificed do not; these come rather from human law.¹⁶⁵

Las Casas goes on to argue that the value of human life is paramount and that without the guidance of divine revelation, “nature obligates us to offer to God what seems to us the most important and precious good, that is, human life.”¹⁶⁶ While such an argument seems to be quite extraordinary, Las Casas frames this argument by calling attention to the fact that God asked Abraham to sacrifice Isaac on Mt. Moriah. While God ultimately asks Abraham to stop, Las Casas’ point is that there are narratives within the Christian and Hebrew scriptures that bring into question the right to judge the Indigenous worldviews. As Gutiérrez states, “His effort to adopt the viewpoint of the dwellers of the New World (“as if he was an Indian”) enables him to discern the religious sense of actions such as the sacrifice to God of human beings’ lives--without approving these actions ethically-- however much they might provoke revulsion in his contemporaries.”¹⁶⁷ Adopting the viewpoint of the Indigenous communities not only provides Las Casas the ability to discern their religious actions, but also provides a framework for natural law reason acting in solidarity with Indigenous communities.

Las Casas illustrates that natural law reasoning, in order to be a law that is common to all, must come from within particular cultural contexts rather than above cultural contexts. In so

¹⁶⁵ Carman, “Human Sacrifice”, 290.

¹⁶⁶ Carman, “Human Sacrifice”, 291.

¹⁶⁷ Gutiérrez, “Las Casas”, 185.

doing, Las Casas provides a framework of natural law reasoning that acknowledges the social location of the reasoning subject. As such, while human sacrifice might be unheard of by the theologians of Salamanca, through natural law reasoning engaging both the imperial perspective and the Indigenous perspective Las Casas is able to dialogue between the two in order to speak to imperial power in solidarity with the marginalized.

The last argument of Sepúlveda's that Las Casas engages is primarily that Indigenous communities cannot be evangelized by force. Ultimately, Las Casas believes that Sepúlveda misunderstands the parable of the great feast in Sepúlveda's emphasis on compulsory attendance. When the host of the feast asks his servants to compel the outsiders to come to the feast, Las Casas conveniently notices the general lack of guns but rather how compelling the outsiders involves persuasion. Sepúlveda argues that Amerindians should not be forced to be baptized to which Las Casas responds, "Sepúlveda says that he does not want Indians to be baptized unwillingly or to be forced to the faith. But what greater compulsion can there be than that which is carried out by an armed phalanx, shooting rifles and cannon...?"¹⁶⁸ For Las Casas, the proper way to influence or preach to the native communities is through peaceful persuasion. Through good deed and rather than through violence.

Las Casas' work in the Valladolid debates were the culmination of years of his work on behalf of the Indigenous communities. He was able to contest the understanding of natural law that sought to establish Spanish supremacy over the Indigenous communities of the Americas by offering a natural law reasoning that was rooted in solidarity on behalf of Indigenous communities. Sepúlveda's work on the debate was not published during Sepúlveda's lifetime and his thought was generally suppressed. After Las Casas' death his thought was not well received

¹⁶⁸ Hanke, 96.

and was seen as radical by the Spanish authorities who sought to continue the exploitation of the Indigenous people and their lands. Las Casas legacy and his defense of the Amerindians has more recently been recognized as one of the first attempts to establish international human rights and Indigenous rights. Las Casas, because of his life's work in solidarity with the Amerindians, is known as one of the greatest advocates for human rights in history.

Conclusion

The works of Vitoria and de Soto in the Salamanca school and the work of Las Casas as an advocate for Indigenous rights has had a long-lasting impact on discussions about Indigenous rights, human rights, natural law, and colonialism. While the study of Spanish and Iberian natural law has been underdeveloped in the discussions about natural law in the United States, its *ressourcement* for the study of Latinx social ethics is an important avenue of study. The Latinx experience of imperialism is still an existential reality that Latinx communities face. Yet, for the Latinx community, “The relevant imperial power in our time is not Spain; rather it is the United States of America.”¹⁶⁹ Thus the *ressourcement* of the thought of Vitoria, de Soto, and Las Casas and their natural law framework provides opportunities to translate their interaction with Spanish imperialism with the Latinx experience being formed and shaped by policies that undergird U.S. neocolonialism. The history and thought of these authors are important because, “This history is also important in the philosophies of liberation, race, and identity. It is particularly crucial to understanding immigration issues in the Americas, as the U.S. itself bears significant responsibility for the brutal conditions that compel Latin American peoples, most notably those

¹⁶⁹ Santana 50.

in Mexico and Central America, to leave their home countries.”¹⁷⁰ U.S. neo-colonial and Imperial policies affect the everyday lives of Latinx communities whose identity is tied to U.S. foreign policy. By adopting a framework similar to the natural law frameworks of the Spanish scholastics, one is able to speak truth to the imperial power of the United States.

Not only is resourcing this Iberian natural law tradition important in discussing American imperial power, it is also helpful in establishing the multi-faceted contexts that undergird much of Latinx history and identity. Because many Latinx communities are of Latin American origin, it is helpful to see the role that natural law has formed and shaped our communities of origin. The thought of Las Casas and the Spanish scholastics formed much of theoretical underpinning for Latin American independence movements. As Jose Carlos Chiarmonte illustrates, “The laudatory stance arose from a belated recognition of natural law in the key arguments of independentists agendas. This was the central argument in legitimizing the constitution of governing bodies throughout Spanish America, namely, the doctrine of the *pacto de sujeción* (*pactum subjectionis*) and the corollary of *retroversion de las soberania al pueblo* (retroversion of sovereignty to the people).”¹⁷¹ Not only was natural law an important aspect in Latin American independence movements but it was in particular it’s Spanish iteration that proved important. For example, “*La Revolución que empezó en los años 1808-1810 tuvo poca influencia de la filosofía política de Norteamérica o Europa (con excepción de España); estuvo basada sobre la teoría política de la Escolástica española (pactum translationis), que fue la palanca para todo el movimiento que finalmente condujo a la independencia. La potestad de los reyes*

¹⁷⁰ Santana, 52

¹⁷¹ Jose Carlós Chiarmonte, "The Principle of Consent in Latin and Anglo-American Independence." *Journal of Latin American Studies* 36, no. 3 (2004): 566-567

emanó originariamente del pueblo; revierte a él cuando el trono queda vacante.”¹⁷² The language of power being drawn from the people is a key theme in the theologies of Vitoria, de Soto, and Las Casas.

Not only do Latin American independence movements derive their thought from the natural law theories of Vitoria, de Soto, and Las Casas, but much of the continued fight for liberation in the form of liberation theologies stem from their work. As Leonardo Boff, Clodovis Boff, and Maria Clara Bingemer state, “

“The historical roots of liberation theology are to be found in the prophetic tradition of evangelists and missionaries from the earliest colonial days in Latin America--churchmen who questioned the type of presence adopted by the church and the way Indigenous peoples, blacks mestizos, and the poor rural and urban masses were treated. The names of Bartolomé de Las Casas, Antonio de Montesinos, Antonio Vieira, Brother Caneca, and others can stand for a whole host of religious personalities who have graced every century of our short history.”¹⁷³

While there has been some hesitancy to adopt natural law frameworks from liberation theologians, such as Gustavo Gutiérrez and Ignacio Ellacuría, their contention is against a natural

¹⁷² “The revolution that began in the years 1808-1810 had little influence of the political philosophy of nor America or Europe (with the exception of Spain); it was based on the political theory of the Spanish scholastics which was the lever for the entire movement that brought about independence. The power of the king originally emanated from the people and reverted to them when the throne was vacated.” O.C. Stoetzer, *El Pensamiento político en la América Española durante el periodo de la emancipación (1789-1824)* vol. 2 (Madrid, 1966), 257. Translation mine.

¹⁷³ Leonardo Boff and Clodovis Boff, *Introducing Liberation Theology* (Maryknoll, NY: Orbis Books, 1987), 66. This is also quoted in Maria Clara Bingemer, *Latin American Theology: Roots and Branches* (Maryknoll, NY: Orbis Books, 2016), 2.

law framework primarily originating in central Europe. This form of natural law is criticized as ahistorical, uncritical, and dualistic, these theologians maintain that it has produced a conservative church and a non-prophetic moral theology. They further criticize natural law's concentration on philosophical reason to deduce moral prescriptions while ignoring both social-cultural locations and theological insights known through revelation and the practice of faith.”¹⁷⁴ Yet, this is quite obviously not describing the natural law discussions of Vitoria, de Soto, and Las Casas, who focus their natural law arguments in history and multiple sources and pay attention to social location. Gutiérrez and Ellacuría criticize a type of natural law that is rooted primarily in modern magisterial teachings that are more akin to the John Finnis and Germaine Grisez’s new natural law than it is to scholastic, revisionist, and contextual natural law. What liberation theologians attack are the natural law opinions that emphasize, “fixed moral content derived from natural inclinations that remains unaffected by new historical events and discoveries; the virtual ignoring of Sacred Scripture as an entailing source for evaluating and guiding human behavior; and the lack of a program of social reform.”¹⁷⁵ The type of natural law that Traina suggests that Gutiérrez formulates is a type of natural law that is focused on the human person over and against static moral principles, that is open and dynamic, and emphasizes the liberation of every person.¹⁷⁶ Gutiérrez even focuses an entire study on Las Casas and his

¹⁷⁴ Thomas L. Schubeck, “The Reconstruction of Natural Law Reasoning,” *Journal of Religious Ethics* 20, no. 1 (Spring 1992): 150

¹⁷⁵ Schubeck, 150.

¹⁷⁶ For Traina’s discussion of Gutiérrez as a natural law theologian see *Feminist Ethics and Natural Law: The End of Anathemas* (Washington, D.C: Georgetown University Press, 1999), 63-67.

natural law method which focuses on standing in solidarity with the marginalized and exercising natural law reasoning from within particular traditions.

Enrique Dussel argues that the thought of Las Casas and Vitoria constitute what he calls counter-discourse. In contrasting Eurocentric discourse, Dussel argues that the most important achievements in history are not explicitly European creations but are “instead the continued dialectic of impacts, effects and responses between the center and its periphery.”¹⁷⁷ The dialectic between center and periphery constitute counter-discourse as opposed to Habermas positioning counter-discourse as beginning with Kant. Rather Dussel suggests that counter-discourse began 500 years before Kant. As Dussel states,

if we approach history from a global perspective, anchored in a non-Eurocentrist vision of modernity, this counterdiscourse in fact is more than five hundred years old: it was first heard on the island of Hispaniola in the Caribbean in 1511, When Antonio de Montesinos assailed the injustices being committed against the Indigenous peoples of this region and echoed from there to the halls of the University of Salamanca, deepening the theoretical and practical labor of the critique initiated by Bartolomé de Las Casas in 1514, and thereafter, when this nascent counterdiscourse was reflected in the lectures of Francisco de Vitoria (compiled in his seminal work entitled *De Indis*). Once again, as is typical among philosophers from Central Europe, the sixteenth century is

¹⁷⁷ Enrique D. Dussel, and Alejandro A. Vallega. *Ethics of Liberation in the Age of Globalization and Exclusion*. Latin America Otherwise: Languages, Empires, Nations. (Durham, NC: Duke University Press, 2013), 43.

irrelevant, and Latin America is simply absent from their mental landscape.¹⁷⁸

What Habermas attributes to Kant has actually been a method of discussing ethics as counter-discourse since the time of the encounter between the Spanish and the Indigenous communities of the Americas. Not only does this encounter initiate the role of counter-discourse to empire, but it's because these discussions by Las Casas sought to do ethics from the position of the periphery rather than the center.

Not only does the ressourcement of Iberian and Hispanic natural law found in Vitoria, de Soto, and Las Casas provide a historical context for Latin American independence and liberation theology but their thought also provides a couple of important themes that we can appropriate in our effort to establish an explicitly Latinx natural law theory from within the Imperial constructs of the United States.

First, these theologians and jurists provide a framework of natural law that is rooted in the power of the community rather than simply the individual. Vitoria's understanding of authority deriving from the commonwealth illustrates that community is a natural good derived from Aquinas' third inclination of natural law. Contrasting Grotius', Locke's and Kant's understanding of social contract as primarily a movement to restrain the individual human's natural capacity to consume property and thus community is formed to protect an individual's property, the Spanish conception of community is a natural good whose goal is to protect the common good. This means that natural rights are not primarily rooted in an ontological antagonism that positions one individual against another but are the place through which natural moral reasoning can truly occur. Such a communal orientation gives validity to the emphasis of

¹⁷⁸ Dussel, *Ethics*, 45.

Latinx culture, narratives, and communal identity as a space from which moral reasoning about the world can occur. Since the Scholastic's view natural law as humanity's participation in the eternal law through the use of reason, communal reason that emphasizes the common good can be a starting point for moral reasoning and synderesis.

Not only is community important for Vitoria, de Soto, and Las Casas, but the virtue of justice is rooted in community and the common good as opposed to rectifying or creating structures that simply preserve the individual from the other. Taking on the concept of justice as giving each person their due, justice is essentially a virtue that orients one to another. This understanding of justice requires rights language to negotiate the nuances of viewing rights subjectively as property and viewing rights objectively as deriving from relationships. For justice to be oriented towards giving each their due, justice is rooted in encounter and relationships as opposed to faculties and liberties of individuals. De Soto's thought, in particular, forces us to ask, "what do we owe each other given these specific conditions of our relationship?" Knowing the conditions of each relationship requires that we get involved in each other's stories and to acknowledge how our stories are often told at the expense of others. Justice begins by knowing the conditions of our relationships and how our relationships form interrelated stories.

The emphasis on justice leads to appropriating Las Casas form of viewing natural law not as abstract principles but as intercommunal dialogue rooted in real circumstances instead of idealistic precepts. Natural law is done from the context of real communities with real problems. While it would have been better for the Indigenous communities to have never had to deal with Spanish conquest, the fact that the Spanish conquest brought about a set of circumstances that must be addressed means that natural law reasoning cannot be done outside the recognition of the real and intercommunal narratives of multiple communities. The encounter between the

Spanish and Indigenous communities happened and often to disastrous effects. Las Casas' natural law reasoning faces the realities of these effects and engages any resource available to stop the reality of the destruction of the Indigenous communities. While it is best to highlight the Indigenous voices in their indigeneity, when encountering the realities of an oppressive empire, Las Casas illustrates that one must use any tool available in order to preserve lives.

For the Latinx community, community, justice, and a natural law reasoning that is rooted in the realism of Latinx narratives is a framework of natural law reasoning that is worth reclaiming in the face of the hegemony of American natural law. Now that we have discussed the Latinx context from both the oppressive structures of the American natural law tradition and its revisionist and contextual efforts of rehabilitation and the Iberian and Hispanic natural law context, it will be necessary to construct a natural law tradition that takes seriously the specific epistemological and narrational contexts of Latinx identity.

Chapter 3: *Mestizaje* and Moral Realism: Towards a Latinx Synderesis

Introduction

In the first part of this dissertation, we focused on setting the historical context that shapes discussions about the relationship between natural law and the Latinx communities of origin. The American natural law and legal traditions functioned in ways that disenfranchise the Latinx community from participation in the American legal and academic systems. We discussed how the American natural law traditions were the inheritors of the traditions of Grotius, Locke, and Kant, who sought to propagate natural law traditions that focused on the protection of the individual and the protection of individual property. The discussions of individual property presented an ontological antagonism that was rooted in racist constructions of reason. For Grotius, Locke, and Kant, reason and whiteness were coterminous. Not only did we discuss the racist constructions of reason, but we also illustrated how these authors posited their provincial, Northern European construction of reason as universal. They universalized their particular understandings of human reason and the natural world as normative over all other epistemologies. At the end of chapter one, we discussed how revisionist and contextual natural lawyers sought to revitalize a type of reason that took seriously the multifaceted and pluralized epistemological locations in which people exist. These revisionist and contextual natural law theologians sought to place natural law within their theological, pluralistic, and multifaceted communities. These communities were theological, feminist, black, and queer communities. Rather than positing a universalized understanding of natural law that seeks to dominate all communities, these revisionist and contextual natural lawyers sought to promulgate a natural law that was discerned from within these multivalent human contexts.

In chapter 2, we focused on reclaiming the Iberian natural law traditions that functioned as a counter-discourse to Empire and worked for the liberation of the indigenous communities of the Americas. By resourcing an Iberian and Hispanic natural law, we worked to include a crucial aspect of Latinx heritage into modern conversations of natural law. From the works of Francisco de Vitoria, Domingo de Soto, and Bartolomé de Las Casas, we resourced a natural law that functioned as a voice of dissent from the type of natural law that justified Empire. In so doing, we drew from these natural lawyers a type of natural law that understood authority as deriving from the community, a type of law that posited justice as a central tenet of intercommunal dialogue, and a type of natural law that took emphasized a moral realism that took seriously the physical suffering of indigenous communities.

What the American and Iberian iterations of natural law have in common is a particular understanding of moral epistemology. Both understand natural law as a framework of antagonistic binaries in which opposites are pitted against each other. In the American natural law traditions, whiteness is pitted against people of color in order to form racialized hierarchical structures of reason. Iberian and Hispanic natural law served to codify Spanish imperialism to the detriment of Indigenous communities with the notable exceptions of the theologians we discussed above. Even from within the pre-enlightenment and pre-Colonial world of medieval theologians we see a type of moral reasoning that often created codified non-fluid binaries: good versus evil, reason versus passion, conscience versus synderesis. The natural law tradition of both the Euroamerican tradition and the purely Hispanic and Iberian traditions take for granted that their moral epistemology or synderesis is rooted in the construction of binaries. What is needed to contrast this moral epistemology is to adopt a new epistemology rooted in a Latinx understanding of *Mestizaje*.

Latinx *mestizaje*, or intermixture, is a type of epistemological framework that brings about new constructions that combat the notion of stable, nontransitive binaries. While *mestizaje* is rooted in the interrelation between Spanish colonizers and indigenous women resulting in mixed children, Latinx theologians in the United States have taken *mestizaje* to be an epistemological position of in-betweenness. This epistemological position or border thinking makes possible a type of thinking that is not rooted in either/or but in neither/nor and the both/and. By adopting such a position, the Latinx moral experience allows for more ambiguity and discernment. Even within the category of *mestizaje* itself, there exists a spectrum of culpability that illustrates that moral reasoning must always exist in a spectrum of complicity and solidarity with the most marginalized in the Latinx community.

This chapter will first illustrate how natural law moral thinking has been traditionally rooted in a nontransitive moral reasoning developed by a tradition of explicating and explaining synderesis. We will then look at the contributions of Latinx theologians to the epistemological concept of *mestizaje* in order to posit a type of synderesis that can transcend these antagonistic and non-transitive moral truth categories. We will illustrate what such a moral epistemology rooted in *mestizaje* might look like by looking at how it is embedded in the cultural production of Latinx literature. Within Latinx literature one can see *mestizaje* through the incorporation of magical realism. Magical Realism is a genre in which there exists an aggressive corporeality imbued with magical elements to show that neither are mutually exclusive. The conflict within such literature is often a type of impossible moral decision making that requires the type of thinking that antagonistic binaries cannot work through. We will make the claim that this type of literature, which often seems fantastic, posits a truer picture of the moral than a type of synderesis that is rooted in antagonistic binaries. Thus, *mestizaje* and magical realism posit a

type of moral realism that rings truer to the moral realities people face in their everyday life than the antagonistic binaries typically seen within Euroamerican and Iberian natural law.

What is Synderesis?

The process in which one knows the good is called synderesis. Synderesis has been defined by the Catholic magisterial hierarchy as the apprehension of the first principles of morality.¹

Synderesis, however, has never had a continually consistent definition but has been a matter of debate for centuries. Typically, synderesis has been understood to be infallible and impeccable, meaning that synderesis is a good in itself that does not change.² Theologians during the middle ages fought over the definition of synderesis asking whether synderesis was a power, was part of reason, or was a habit. Later moral theologians and ethicists took these arguments and developed a moral epistemology called moral realism. In what follows, I will provide a brief discussion on the development of synderesis that leads to modern conceptions of moral realism as a way of positing the good as an intransitive truth value immediately accessible to Eurocentric autonomous reason.

The term synderesis first comes into discussion through Jerome's commentary on Ezekiel.³ In his commentary, Jerome discusses the theophanic vision in the first chapter of Ezekiel. In particular, Jerome comments on the appearance of four heavenly creatures described

¹ *Catechism of the Catholic Church* (New York, NY: Doubleday, 1995) paragraph 1780.

² See Luc-Thomas Somme, "The Infallibility, Impeccability and Indestructibility of Synderesis." *Studies in Christian Ethics* 19, no. 3 (December 2006): 403-416.

³ For a brief account of Jerome's use of Synderesis see Oscar James Brown, *Natural Rectitude and Divine Law in Aquinas: An Approach to an Integral Interpretation of the Thomistic Doctrine of Law* (Toronto, 1981), 175-77.

in 1:10-14. The creatures, known as “tetramorphs” each have four faces. Each creature has a face of a human, a lion, an ox, and an eagle.⁴ Because of the general ambiguity of what Ezekiel encounters and the allegorical and typological readings of scripture employed by early Christian writers, the faces of the tetramorph were interpreted to symbolize a plethora of things including the four virtues, four major prophets, and the four gospel writers.⁵ Jerome interprets the tetramorph Christocentrically. Acknowledging the creatures’ reappearance in Revelation 4:7, Jerome speculates that the tetramorph symbolizes the four gospels. In the same way that the creatures in Ezekiel 1:10-14 obscure the divine image, the gospels contain the image of God within them, Jesus.

In his discussion about the symbolic meaning about the faces of the tetramorph, Jerome engages the philosophical interpretations of the creatures. In particular, he engages in the interpretations influenced by Plato’s tripartite distinctions of the soul. As Douglas Kries states, “these interpreters who were following Plato must be applying to Ezekiel the famous tripartite distinction between the ‘reasoning,’ the ‘spirited,’ and the ‘desiring’ parts of the soul discussed by Socrates in book 4 of the Republic.”⁶ Kries acknowledges that while there are four faces there are only three parts of the soul. Jerome states,

⁴ For a wirkungsgeschichte of what Ezekiel saw in his Theophanic vision see, Angela Russell Christman, “‘What Did Ezekiel See?’: Patristic Exegesis of Ezekiel 1 and Debates about God’s Incomprehensibility.” *Pro Ecclesia* 8, no. 3 (Sum 1999): 338–63.

⁵ For an in-depth study of the creature in Ezekiel’s vision see Tydlitátová, Věra. “On the Origin of the Tetramorph.” *Communio Viatorum* 45, no. 2 (2003): 153–62.

⁶ Douglas Kries, “Origen, Plato, and Conscience (Synderesis) in Jerome’s Ezekiel Commentary.” *Traditio* 57 (2002): 69 Kries also suggests that the Platonists that Jerome describes derive their image of Ezekiel from Book 9 of Plato’s Republic.

“And they place the fourth part, which the Greeks call syneidêsis, above and beyond these three. This is the spark of conscience (scintilla conscientiae), which, even in the breast of Cain after he was ejected from paradise, is not extinguished, and by which, even when conquered by pleasures or by rage, deceived by the very similitude of reason, we realize that we sin.⁷

According to Jerome’s understanding of the Platonist interpretations of the faces of the tetramorph, the human face represents reason, the lion’s face represents passion, the ox represents desire, and the eagle is above all and represents synderesis.⁸ It is Jerome’s use of synderesis that sparks discussions about the role synderesis plays in relation to conscience in the middle ages.

However, a problem arises in the way medieval theologians approach Jerome’s *Commentary on Ezekiel*. They presume that Jerome adopted the Platonist’s view of the tetramorph. As Kries states,

In a blunder of remarkable proportions, the fact that in this passage Jerome was reporting not his own view but that of those who follow the "foolish wisdom of the philosophers" was overlooked, presumably because the passage from Jerome had

⁷ Kries, “Origen”, 71 quoting Jerome’s (In Hiezechielem, CCL 75, 12, lines. 217-36)

⁸ Reason, Passions, and Desire are represented in the Greek as *Logikon*, *Thumikon*, and *Epithumikon*.

been incorporated into the glossae without the warning that preceded it in the original *Commentary*⁹

Nevertheless, the reception of the Platonist's view in Jerome's commentary allowed synderesis to be interpreted as a higher power that exists above human reason, passions, and desires. This understanding of synderesis became the normative ethical framework for the theologians of the middle ages. Not only do medieval theologians adopt the Platonist framework that was rejected by Jerome, but they also adopt Jerome's use of synderesis as a term that was corrupted from syneidesis. According to Kries, "most scholars acknowledge that the appearance of synderesis in the medieval manuscripts of Jerome's commentary is in all likelihood a corruption of the Greek word syneidesis, which is the standard correlate in Greek Patristic literature for the Latin conscientia."¹⁰ It is the adoption of the Platonist interpretation of the tetramorph and the adoption of the term synderesis that led to medieval debates about conscience and synderesis.

The debates about natural law in the middle ages were concerned with the difference between synderesis and conscience. The primary question the theologians of the middle ages sought to address was whether or not synderesis was innate to human reason as a power or if synderesis was innate to nature as part of creation outside the human subject. The debates about the nature of synderesis are also part of a wider debate in the work of the scholastics about whether to locate natural law in pre-rational order of natural creation or in reason as a nature unique to humanity. As Jean Porter suggests, "It is one of the legacies of modern romanticism that we tend to think of nature and reason as contrasts" and "the scholastics were not unaware of

⁹ Kries, "Origen", 83.

¹⁰ Kries, "Origen", 67.

such a contrast.”¹¹ Essentially, the scholastics delineate two types of nature. The first type of nature they discuss is nature as the pre-rational order of creation established by God. The second type of nature is a nature unique to the human person through reason. Despite these two contrasts of pre-rational nature and rationality unique to human nature, the scholastics did not see them as incommensurable. Rather they saw the dichotomy as working together. The discussions about pre-rational nature and rational nature required further investigation about the core features of natural law. Namely, does natural law exist in pre-rational nature or is it something unique to humans, and moreover, does natural law, “prescribe different forms of behavior for human beings and non-rational animals.”¹² Different scholastics often emphasized natural law existing in pre-rational nature or nature as human reason.

According to Porter, Phillip the Chancellor emphasized natural law as primarily “reason as nature”, in which, “the properly human expression of natural law involves acting in accordance with reason, because the characteristic expression of human nature *is* to act in accordance with reason.”¹³ Yet, human nature as rational doesn’t preclude the pre-rational as not participating in God’s reason. Albert the Great suggests, even though all creation works under rational principles, only humans and angels are rational creatures and therefore are the only one’s under moral obligation.¹⁴ The separation between pre-rational nature and nature as reason unique to humans provide the contextual framework in discussing where to locate natural law and its

¹¹ Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids, MI: Eerdmans, 1999), 87.

¹² Porter, *Natural and Divine Law*, 86.

¹³ Porter *Natural and Divine Law*, 87.

¹⁴ Porter paraphrases Albert’s *De Bono V 1.2 ad 12*, in *Natural and Divine Law*, 88.

obligations. Is natural law primarily in the pre-rational order of creation or is natural law unique to humans? Furthermore, where is synderesis located? Does synderesis as the ability to know the good primarily exist in the pre-rational nature or is synderesis a type of power unique to human reason? And finally, is synderesis natural law itself or a way to understand natural law?

In the same way that the medieval theologians and canonists had an abundance of views regarding the role of natural law's location in pre-rational nature or nature as reason unique to humanity, the debates on synderesis follow the same pattern. Simon of Bisignano, a 12th century canonist and Roland of Cremona, a 13th century scholastic philosopher, identify synderesis as natural law itself.¹⁵ Reading the story of Mary and Martha in John's gospel where Mary sits and contemplates at the feet of Jesus, Hugh of St. Cher equates Mary with contemplation and the *Stella Maris*, the guiding light of the sea.¹⁶ Mary's guiding light symbolizes synderesis which can be interpreted to be outside the volitional powers of the human subject. Rufinus, another 12th century canonist, contrasts the idea that synderesis exists outside the person by suggesting that synderesis is a natural force deep within the human person and that not even Cain, who killed his brother, has that force extinguished. William of Auxerre, Roland of Cremona, and John of La Rochelle follow the same line of thought and say that it is a power within a human person that is superior to reason.¹⁷ Alexander of Hale equates synderesis with reason itself.¹⁸ Phillip the

¹⁵ Porter, *Natural and Divine Law*, 89.

¹⁶ Robert A. Greene. "Synderesis, the Spark of Conscience, in the English Renaissance." *Journal of the History of Ideas* 52, no. 2 (April 1, 1991):201. ¹⁴ Hugh of St. Cher, *Opera Omnia* (Venice, 1600), VI, 355: "Maria stella maris, & significat rationem sive synderesim remurmurantem contra peccatum, ad quam recurrens Anima scit utrum erraverit, sicut naute per stellum."

¹⁷ Somme "The Infallibility of Synderesis", 405.

¹⁸ Somme, "Infallibility of Synderesis", 405.

Chancellor was the first to write a complete treatise on synderesis in his *Summa de Bono*. In this treatise Phillip connects synderesis to conscience. Ultimately synderesis is related to conscience as knowledge is related to action.¹⁹ Conscience, for Phillip, acts upon the knowledge of the good apprehended by synderesis. These medieval theologians that equate reason with synderesis become the focal point of 13th century discussions between Aquinas and Bonaventure on whether or not Synderesis is a power, a habit, or exists in conscience.

While many medieval canonists and theologians take synderesis as equivalent with reason, St. Bonaventure joins synderesis to the affective parts of the human will. Bonaventure places conscience in the realm of the will and by placing synderesis in the realm of the will it becomes the “spark” (*scintilla*) that drives conscience toward the good.²⁰ Bonaventure calls synderesis the spark because conscience cannot move without the, “mediation of synderesis.”²¹ For Bonaventure, synderesis is placed in the affective part of the will because humanity has an attraction to the good found in objects. Conscience, as part of the intellect, decides which objects to pursue. Synderesis becomes the innate attraction to the good expressed in the will. Since synderesis is placed in the affective parts of the human will, emotion usually associated with our modern notion of conscience such as guilt, shame, and regret are a result of synderesis. For Bonaventure, while synderesis never is implicated in sin or errs, it can be rendered ineffective by

¹⁹ Somme, 412 quotes Philip the Chancellor *Summa de Bono* (ad fidem codicum primum edita studio et cura Nicolai Wicki), editiones Franke Bernae, 1985 *pars prior*, Q. II (*de potentiis anime*), 3 (*de synderesi*) P. 201, lines 47-54.

²⁰ Douglas Langston, “The Spark of conscience: Bonaventure’s View of Conscience and Synderesis”, *Franciscan Studies* vol 53. Classical and Medieval Literature Criticism (Vol 79) 1993: Part 1 paragraph 1.

²¹ Bonaventure *Sentences* II d. 39, Art. 2, Q.1 (Vol. 2, 945B).

an erroneous conscience, by pursuit of unbridled pleasure, and obstinancy.²² By placing synderesis in the affective part of the will, Bonaventure stands in contrast with the medieval theologians that place synderesis as equivalent to reason.

In contrast to Bonaventure, Aquinas does not place synderesis in the affective powers of the will. Rather, Aquinas describes synderesis as a habit (*habitus*) of the immediate apprehension of the first principles of practical reason. Synderesis still drives conscience for both Bonaventure and Aquinas. Yet, for Aquinas, synderesis drives conscience through the apprehension of knowledge in which conscience acts. For Bonaventure, on the other hand, synderesis is the will that drives conscience to act. For Aquinas, synderesis is not a movement while Bonaventure synderesis is the first movement of action. Synderesis for Bonaventure is a power of movement from the will.

Aquinas' first work in which he discusses synderesis is his *Commentary on the Sentences*. In this early work, one can see the influences of early commentators in Aquinas' connecting synderesis to reason. In the *Sentences*, Aquinas places synderesis in the realm of reason but not coterminous with reason itself insofar as synderesis is not a power like reason but is a habit of apprehending the good.²³ Yet, ultimately, Aquinas suggests that synderesis is above reason. His argument in the *Commentary on the Sentences*, is that if synderesis is part of reason then it must attend to both good and evil as acting within the same genus. Synderesis, however,

²² See Langston, "The Spark of conscience" for a fuller discussion on impediments to synderesis and Bonaventure's response.

²³ M.B. Crowe, "The Term Synderesis and the Scholastics." *Irish Theological Quarterly* 23, no. 2 (1956): 231. Crowe suggests that mentioning Synderesis in relation to reason may be a concession to early commentators such as Phillip the Chancellor.

always attends to the good, and therefore must not be coterminous with reason but is a habit.²⁴ For Aquinas, synderesis is more like the immovable starting point from which action is derived. As Crowe states, “everything that undergoes change must proceed from something that remains one and the same” and requires “a stable and unchanging knowledge, not obtained by the normal *discursus* but immediately given to the intellect.”²⁵ For Aquinas, in the same way that speculative reason is founded on self-evident principles, practical reason begins in the apprehension of indemonstrable first principles. The apprehension of first principles is itself synderesis. As Crowe summarizes, “*Synderesis* is, therefore, the habitual knowledge of immediately-known first principles in practical matters.”²⁶ Synderesis guides conscience in such a way as it acts as an unmoving starting point.

Because synderesis is not a power or faculty within the subject of human reason but is rather analogous to the first principles of speculative reason, this means that synderesis cannot err. Synderesis is therefore, infallible, inerrant, impeccable, and Aquinas equates these qualities with the universal.²⁷ Aquinas does this by discussing the differences between the nature of angels and humans. Drawing from pseudo-Dionysius’ notion of hierarchy in the *Divine Names*, Aquinas argues that “Divine wisdom ‘joins the ends of nobler things with the beginnings of

²⁴ Aquinas, *Commentary on the Sentences* II. D. 24, q. 2, a. 3. “Praeterea, opposita in idem genus reducuntur. Sed synderesi opponitur fomes: sicut enim fomes semper ad malum instigat, ita et synderesis semper in bonum tendit”

²⁵ Crowe, *The Term Synderesis* 130.

²⁶ Crowe, *The Term Synderesis* 131.

²⁷ See *Somme*’s general argument in “Infallibility of Synderesis.” Note that Aquinas’ understanding of synderesis as infallible only applies the immediate apprehension of first principles and not the application of those principles. As we discussed in chapter one, first principles are not specific enough to demand moral precepts.

lesser things’.”²⁸ When it comes to moral epistemology or the pursuit of truth, angels immediately apprehend truth without “investigation or movement of reason,” while humans need discursive powers to know truth.²⁹ Yet, when humans participate in their highest nature, they are able to perceive truth immediately, although still lower than the angels. Once again, Aquinas makes the analogous comparison between synderesis and the first principles of practical reason and ultimately concludes that synderesis cannot be sublimated to the powers of human faculties but rather exists above it and is unchangeable. This unchangeable habit that is immediately accessible to the human mind, results in universalized principles. As Aquinas states:

For in the very habit of the universal principles of law there are contained certain things which pertain to the eternal norms of conduct, such as, that God must be obeyed; and there are some that pertain to lower norms, such as, that we must live according to reason. However, synderesis is said to refer to these unchangeable things in one way, and higher reason in another. For something is called unchangeable because of an immutability of its nature, and it is thus that divine things are unchangeable. Higher reason is said to deal with unchangeable things in this way. A thing is also said to be unchangeable because of the necessity of a truth, although the truth may concern things which according to their nature can change. Thus the truth: every whole is greater than its part, is

²⁸ Aquinas. *De Veritate* Q16. Art 1.

²⁹ Aquinas. *De Veritate* Q16. Art 1.

unchangeably true even in changeable things. Synderesis is said to refer to unchangeable things in this way.³⁰

The unchangeability of synderesis and its immutability make moral good an objective reality. The universalized objective goods that are immediately perceived by angel's, when humanity is at its highest nature, are immediately recognizable to humanity. Moral failure then does not occur in synderesis itself or in its knowledge but rather is a failure of subsequent principles and conscience.

Interpreters of Aquinas look at moral failure through the lens of syllogistic reason. As *Somme* describes, making moral decisions requires the use of several premises and a conclusion. The first premise is a first principle grasped by synderesis, such as “evil must be avoided.”³¹ The minor premise would consist of a lower principle such as, “adultery is evil.”³² The conclusions will be, “particular judgement concerning the course of action in a particular situation.”³³ The judgement of the course of action in any given situation would be the result of conscience. Given this syllogistic framework, synderesis as the first premise is indemonstrable and therefore must be taken as something to believe through faith. The knowledge of the good based on first principles cannot be wrong nor cannot it be rooted in sin. Moral error is typically found in the course of action decided upon by conscience.

Aquinas' understanding of synderesis as a habit that is able to immediately perceive unmoved first principles of practical reason becomes the normative framework through which

³⁰ Aquinas, *De Veritate* Question 16, Art. 1.

³¹ *Somme*, “Infallibility of Synderesis”, 407.

³² *Somme*, “Infallibility of Synderesis”, 407.

³³ Crowe, “The Term Synderesis”, 237.

moral realism is developed in the new natural law theories we discussed in chapter one. The fact that these first principles grasped by synderesis are immutable and unchangeable, and therefore universalized, provides a pathway to moral realism that views the good as intransitive objective goods that are universally recognizable regardless of cultural framework.

The problem with the understanding the role of synderesis as immutable and unchangeable as a ground for moral realism is that it does not seem entirely realistic to suggest that there is a type of morality that is always applicable within a variety of different situations and that each situation will always yield the same moral conclusion. One can also question the viability of syllogistic reasoning in the context of actual moral pursuits. While there are some occasions where one can choose between an unambiguous good and unambiguous evil, most situations are not black and white. Instead, moral choices often involve ambiguity wherein one must discern which action would produce the most good or least amount of evil. A synderesis that is rooted in the immediate apprehension of the good cannot effectively deal with the messiness of everyday moral decisions. Not only does such a synderesis ignore the practical in everyday decision making, it also ignores the fact that people's moral agencies are also tied up in varying degrees of oppressive structures. Moral decisions are conditioned by the systemic structures that frame such decisions. Not only are there moral decisions that don't have a stark dichotomy between good and evil but are competing notions of the good, there are also decisions where one has to decide which decision is the lesser evil. Rather than advocating for a type of synderesis that cannot bear the weight of everyday decisions that are intricately tied to systematic oppression, there needs to be a type of moral epistemology that takes into account the fact that most moral decision making does not occur within a type of syllogistic reason, but rather requires careful discernment between a variety of factors including cultural, historical, and narrational variables.

There needs to be an epistemology that can account for ambiguity, paradox, and mixture. For Latinx theologians, *mestizaje*, as an epistemological category, could provide a type of synderesis that can account for the messiness of moral discernment.

What is Mestizaje?

Mestizaje is a Spanish term that simply means mixture or intermixture. However, it is the context in which this term is employed that gives it epistemological and political saliency. *Mestizaje* was first a concept rooted in colonialism and racism and was used as a racialized term to denote mixture between Iberian *conquistadores* and exploited Indigenous communities in the Americas. Ultimately, *mestizaje* was a result of European white supremacy. *Mestizas/os* were people placed into a racialized hierarchy.

The birth of *mestizaje* as an ethic and racialized category came through the initial violence of Spanish colonialism against Indigenous communities. Christopher Columbus' encounters with the Taino of Hispaniola and Hernando Cortez' encounter with the Mexica people of Mexico resulted in genocidal violence against the native peoples. Part of this violence was sexual violence against the native women culminating in children with indigenous and Spanish ancestry. Facilitated by their victory over the Indigenous people and a sense of Eurocentric superiority, "The Spanish accounts offer racialized depictions of the indigenous peoples that downplayed the outstanding achievements expressed in their diverse civilizations."³⁴ Although the Spanish considered themselves to be biologically and culturally superior, they still had children with Indigenous women. The resulting children were usually,

³⁴ Néstor Medina "The Religious Psychology of Mestizaje: Gómez Suárez de Figueroa or Garcilaso Inca de La Vega." *Pastoral Psychology* 57, no. 1–2 (September 2008): 116.

“singled out, marginalized, and stripped of social and political privileges on the basis of their mixed condition” and resulted in a “racialized social hierarchy.”³⁵ At the top of the racial hierarchy were those colonists who were born in Spain and traveled to the Americas. Below them were the criollos, those who were born to Spanish parents. Because of the Spanish racialized hierarchy, Spanish colonizers sought to keep governance of Spanish colonies in the hands of the Spanish born or criollo class. Mestizos were “prevented from occupying public offices, enlisting in the army, being ordained as priests, and entering schools where only people with “pure” blood were allowed (Rosenblat 1954; Ares Queija 1997). They were discriminated against in many ways, and legislation was even passed by the *consejo de las Indias*, in which they could not own property, have *encomiendas*, or have indigenous people as servants.”³⁶ *Mestizaje* became a constructed badge of discrimination. Any perception of intermixture between Spanish and Indigenous ancestry lead to the deprivation of any political agency.

As a result of the lack of political agency through the systematic discrimination of the *mestizx* community, *mestizaje* itself became a source of political identity. Garcilaso Inca de La Vega, one of the earliest known mestizos, was one of the first persons to make his *mestizaje* central to not only his ethnic identity but also his political identity.³⁷ Because of the growing number of the Mestizx population in Latin America, *Mestizaje* became “the most powerful and widespread conceptual device with which Latin America has interpreted itself.”³⁸ Latin

³⁵ Medina, Religious Psych, 117

³⁶ Medina, Religious Psych 118.

³⁷ Medina, “Religious Psych”, 118.

³⁸ Antonio Cornejo Polar “*Mestizaje*, Transculturation, Heterogeneity” in *The Latin American Cultural Studies Reader* eds Ana del Sarto Alicia Rios and Abril Trigo. (Durham, SC: Duke University Press, 2004), 116.

American independence was centered around the concept that Mestizx community constituted a new people that could govern themselves. As Latin America continued to identify itself within the epistemological framework of *mestizaje*, it took on a salvation ideology that, “has prevailed and still does prevail as a conciliating synthesis of the many mixtures that constitute the social and cultural Latin American corpus.”³⁹ *Mestizaje* functioned as a major epistemological category that permeates Latin American identity.

Similar to Latin American formation of identity, U.S. Hispanic theologians have uncritically adopted *mestizaje* as a theo-political category in which they could identify themselves. *Mestizaje* became a political and religious banner of unity for a variety of Latinx populations from diverse backgrounds.⁴⁰ As Néstor Medina summarizes,

In the context of exclusion from the social imaginary of the United States, and in the search for creative ways to name their reality, the category of *mestizaje* provided these scholars with a way to name themselves as social subjects in resistance to the assimilatory policies of the U.S. government. As a collective of diverse ethnic and cultural groups, *mestizaje* served as the symbolic term for cohering as a people and for engaging the struggle for sociopolitical and economic justice.⁴¹

Medina illustrates how these theologians, while working to provide an epistemological and cultural framework that is more accepting of difference and the contingent nature of Latinx racial

³⁹ Antonio Cornejo Polar, “*Mestizaje*”, 116.

⁴⁰ Néstor Medina *Mestizaje: (Re)Mapping Race, Culture, and Faith in Latina/o Catholicism. Studies in Latino/a Catholicism*, (Maryknoll, N.Y.: Orbis Books, 2009), 5.

⁴¹ Medina, *Mestizaje*, 6.

and ethnic identity, fail to address the anti-Indigenous and anti-Black frameworks rooted in the historical use of *mestizaje*. For Medina, these theologians draw, “from idealized constructions about *mestizaje* in Latin America, and without engaging the socio-political contexts of the region.”⁴² The appropriation of *mestizaje* by these theologians occurred in a particular context in which the Latinx community encountered intense marginalization. Now that these contexts have changed, toward an increasing acceptance of some in the Latinx community, one must take into account the ways, “Indigenous, African and women’s voices are beginning to challenge the dominant versions of *mestizaje* in the different countries of Latin America.”⁴³ These voice have challenged the way that *mestizaje* has been understood in a context saturated by, “hegemony, homogenization, racism and sexism to the way *mestizaje* has been conceived and articulated differently by the Latin American elite.”⁴⁴ As we continue to discuss *mestizaje*, we will see how the trajectory of these theologians’ appropriation of *mestizaje* moves away from the biological reality and racialized hierarchies to an epistemological location of embracing difference that subverts the Latin American contexts that conceived *mestizaje* as a frame of exclusion. It is this epistemological understanding of *mestizaje*, as will be articulated by Ada María Isasi-Díaz, that forms the basis for a more open and dynamic understanding of synderesis. Following Díaz, we will adopt *mestizaje* as a moral epistemology that seeks to open oneself up to difference rather than homogenization. As such, describing *mestizaje* as a type of synderesis will allow us to view *mestizaje* as heuristic, an approximation for establishing a strategy of cooperation among diverse Latinx groups while also acknowledging both difference and mixture within these groups. Such a

⁴² Medina, *Mestizaje*, 82.

⁴³ Medina, *Mestizaje*, 82.

⁴⁴ Medina, *Mestizaje*, 82.

strategic use of *mestizaje* as a frame of synderesis will allow us to contextualize ahistorical and acontextual forms of moral reasoning with a type of reasoning, whose frame itself, is rooted in the messy and contradictory conditions of historical and contextual contingency.

Virgilio Elizondo, one of the first to adopt *mestizaje* as a theological category, writing about the Mexican-American experience, suggested that *mestizaje* was the in-betweenness that Mexican-Americans feel in regard to their nonacceptance by the dominant Anglo-community in the United States and their Mexican brothers and sisters south of the border. Elizondo considers this *mestizaje* to be a second *mestizaje* that speaks to the cultural rejection experienced by the Latinx community in the United States. Elizondo transforms the biological condition of *mestizaje* as originally understood in Latin America to a theological construction explaining the social location of the Latinx community in the United States.

Drawing on Elizondo's understanding of *mestizaje* as a theological category of in-betweenness, Roberto Goizueta applies the understanding of *mestizaje* to theological aesthetics. Rather than seeing the good, beautiful, and the true as mutually exclusive categories of thought, Goizueta argues that these 'transcendentals' are interdependent and their transcendence is mixed with the everyday religious practices of the Latinx community. For Goizueta, a mestizx theological aesthetic is most aptly seen in the popular Catholicism of the Latinx community in which it is seen as, "aesthetic praxis in that it embodies the Latino mestizo heritage and identity."⁴⁵ Popular Catholicism according to Goizueta subverts the binaries and rejects the dichotomies prevalent in Euroamerican epistemologies. Rather, U.S. Hispanics, "instinctively

⁴⁵ Roberto S. Goizueta. *Caminemos Con Jesús: Toward a Hispanic/Latino Theology of Accompaniment*. (Maryknoll, NY: Orbis Books, 1995) 119.

see the world as a fusion of “both/and” rather than as a separation of “either/or.”⁴⁶ Popular Catholicism views the universal in the particular and does not see one superimposing itself on the other. For Goizueta, Latinx popular Catholicism primarily subverts the tendency in Euroamerican epistemology to separate reality into abstract categories away from concrete realities which, “distorts our understanding of the nature of reality and the character of human action.”⁴⁷ Goizueta argues that the concrete is saturated with the real creating a real mixture. For Goizueta, *mestizaje* takes on a sacramental quality, or what he defines, as sacramental realism in which concrete religious symbols are not simply symbols but are imbued with universal import. Goizueta argues for a worldview that is, “characterized by a critical realism that is not naive or simplistic in its affirmation of religious truth, or in its understanding of reality” but is also is “not reducible to a mere human construction that, while meaningful for Hispanics, cannot be said to express a truth or reality that extends beyond the U.S. Hispanic community.”⁴⁸ For Goizueta, the mixture of the concrete and the universal functions as an epistemological framework that gives the U.S. Hispanic community universal value deriving from their particularity. Latinx popular Catholicism, in other words, *particularizes the universal rather than universalizes the particular*. To operate in worldview that does not particularize the universal but only exists in the abstract, Goizueta argues is the greatest threat to faith because it is, “represented by a rationalist or spiritualist Christianity that preaches God without a world; a Christ without a face, without a

⁴⁶ Goizueta, *Caminemos*, 119.

⁴⁷ Roberto S Goizueta. *Christ Our Companion: Toward a Theological Aesthetics of Liberation*. (Maryknoll, NY: Orbis Books, 2009), 45.

⁴⁸ Goizueta, *Christ our Companion*, 46.

body, without wounds; a cross without a corpus.”⁴⁹ The wounds of Christ and the wounds affecting the Latinx community are the same and must be accounted for if one is to call oneself a moral realist.

The theologian whose appropriation of *mestizaje* that is most useful for our understanding of *mestizaje* as a type of synderesis is Ada María Isasi-Díaz. For Díaz, *Mestizaje* is a symbol for the moral truth-praxis that focuses on the everyday (*lo cotidiano*) lives and struggles (*luchas*) of Hispanic women in the United States. For Isasi-Díaz, “*mestizaje* is, first of all, a call to recreate moral standards according to our daily struggle for survival, and it is a call for social change so we can embrace diversity and live according to our own moral norms.”⁵⁰ *Mestizaje* as a symbol of moral truth-praxis is a movement of positionality that subverts the notion that truth, in order to be universal, must be abstract. As Díaz states

“By using *mestizaje*, therefore, as a symbol of our moral truth-praxis, we once again claim the experience of Hispanic Women as the source of our theology. In claiming *mestizaje* as a symbol for our mortal truth-praxis we are saying that we do not believe in abstract notions of truth. We are suing the binomial *truth-praxis* to indicate that we deal with our own experience in a critical way and look at it in light of the histories of our own communities and of other communities of struggle, and in light of what

⁴⁹ Goizueta, *Christ our Companion*, 47.

⁵⁰ Ada María Isasi-Díaz, *En La Lucha/In the Struggle: Elaborating a Mujerista Theology*. (Minneapolis, MN: Fortress Press, 2004), 204.

has been passed down to us by our forebears, particularly our mothers, our *tías*, and our *abuelitas*.”⁵¹

Mestizaje is a category that mixes the universal with particular experiences of Hispanic women. Truth is not a static category of immediate apprehension but is something that is lived through praxis. Through rooting the universal in the lived experiences and struggles of Hispanic women, truth becomes a matter in which one takes the epistemological position to struggle for justice, reject hierarchical competition, and maintain responsibility for each other. *Mestizaje* is an epistemological commitment to diversity and to struggle on behalf of the marginalized.

It is quite important that Isasi-Díaz uses the language of symbol to discuss *mestizaje* as a symbol of moral-truth praxis. Within the realm of theology, a symbol does not simply point to an exterior reality. A symbol makes such a reality present in its very process of representation. It brings about the reality it represents. As such, making *mestizaje* a symbol of moral truth-praxis is to say that *mestizaje* makes present openness to the other and unity in diversity. As Isasi-Díaz states, “we judge our morality and our commitment to *mestizaje* by how effective we are in welcoming diversity and engaging with each other.”⁵² *Mestizaje* makes real diversity and engagement. Because of this sacramental-symbolic function of *mestizaje* in relation to moral truth praxis, it functions as a type of moral realism. *Mestizaje* speaks more to the reality of multiculturalism and diversity than types of moral realism that present monolithic conceptions of the good. Thus, *mestizaje* presents an alternative type of synderesis.

⁵¹ Isasi-Díaz, *En La Lucha*, 203.

⁵² Isasi- Díaz, *En La Lucha*, 204.

Mestizaje as a symbol of moral truth-praxis positions synderesis as praxis. That is, in order to know the good, one must do the good. To quote Richard Cohen who writes about the ethical/philosophical project of Emmanuel Levinas, “to know the good is to already not to have done it.”⁵³ By placing *mestizaje* as an epistemological commitment, it influences the way a person knows, how they know, and what they know. This means that what is considered to be good is passed down from the past and is both codified by its very process of being traditioned and is itself subject to change through encounters with other traditions. One begins to know the good through the very process of knowing and learning. Synderesis is therefore not the result of passive consumption of information but is the result of the dynamic process of dialogue, encounter, and discernment. The type of dynamic synderesis in which the good is pluriform rather than univocal is made present in the reality of *mestizaje*.

Mestizaje as a Moral Epistemology

There are advantages to adopting *mestizaje* as a moral epistemology or a type of way of engaging in a more global form of synderesis. Adopting *mestizaje* provides opportunities to create a more holistic understanding of synderesis by including more voices in moral conversations, recognizing that moral decision-making is a journey rather than the apprehension of a static truth, and privileging voices that have traditionally been marginalized through Eurocentric moral thinking. In adopting *mestizaje*, as a type of synderesis, natural law takes on the form of a type of moral reasoning rather than the explication of specific moral precepts. Adopting *mestizaje* as a type of moral reasoning allows for a type of realism that is invested in

⁵³ Emmanuel Lévinas and Philippe Nemo, *Ethics and Infinity* (Pittsburgh: Duquesne University Press, 1985), 11.

the everyday lives of the people who are doing the actual reasoning. Instead of viewing moral decision making as derived from generalized principles and actions compared to those principles, *mestizaje*, intermingles the universal and the particular to focus on the actual location of moral decision making. Through adopting *mestizaje* as a type of synderesis, one can contest the ideas that the universal must be univocal, that decision making is static apprehension of the good rather than a journey, and that there are privileged perspectives that marginalize non-Eurocentric moral reasoning.

Contesting the Universal as the Univocal

Adopting *mestizaje* as a type of synderesis subverts the idea that the universal is coterminous with the univocal. That is, to know the good is not to simply adopt a single voice, a single path, and a single pattern. To pay attention to the particularity of differing communities and to bring them together in their particularity is to participate in the intermixture of *mestizaje*. *Mestizaje* is not a catch-all term for Hispanic experience but rather is the relational coming together of multiple experiences. Therefore, to adopt *mestizaje* as the coming-together of interrelational interdependencies is to reject the universal as a monolithic voice.

Maria Pilar Aquino discusses prior conditions for doing theology from the perspective of U.S. Latino/a Theology. One of these conditions is understanding the ‘whole’ as culturally plural truths. Aquino argues, “we must move beyond the notion that the ‘whole’ implies ‘the truth’ or that ‘the truth’ exists in an abstract ‘whole’” but rather, “we must understand truth not as a condition or situation but as a process.”⁵⁴ The process of understanding truth involves

⁵⁴ Maria Pilar Aquino, “Theological Method in U.S. Latino/a Theology: Toward an Intercultural Theology for the Third Millennium”, in *From the Heart of Our People*. eds. Orlando Espín and Miguel H. Díaz. (Maryknoll, NY: Orbis Press, 1999), 21.

interdiscursive truth and we must choose to know, “not by imprisoning reality in a closed conceptual system, but by affirming that reality as a foundational ‘opening’ that is ‘respective’ to other modes of reality.”⁵⁵ This fundamental opening of reality involves, on the practical level, broadening the sources that make up theology. Knowing truth has less to do with static apprehension but more to do with attuning our understanding to multi-valent and culturally interdependent practices of truth-making.

Orlando Espín offers similar thoughts on the method of theology by understanding the quest for static truth as a univocal concept as a vain pursuit while at the same time critiquing the Euroamerican iterations of postmodernity as, “an attempt at ethically justifying self-sufficiency and the silencing of the voices of the non-dominant others.”⁵⁶ Rather, Espín argues that, there are no multiple particularities and there is not one evident human universality”, rather, “there are multiple historical, cultural, human universalities which can encounter one another, which can challenge one another, and which through intercultural dialogue might engage in the process of unveiling universally relevant truth.”⁵⁷ Essential for moving from a univocal reality toward plural universalities is understanding that knowledge is contingent and thus making universality itself contingent on interaction with others. Espín posits that, “by acknowledging the contingency of our universality (and of its knowing, living, and saying) we open our universality to the

⁵⁵ Aquino, *Theological Method*, 22.

⁵⁶ Orlando Espín, *Idol and Grace: On Traditioning and Subversive Hope*. (Maryknoll, NY: Orbis Press, 2014), 67-68. Espín argues that many Euroamerican post-modern frameworks fail to analyze their global ethical responsibilities that are interdependent with Latinx and Latin American realities. By offering a particularized notion of truth, Euroamerican postmodernists, shield themselves from their responsibilities of already living in an interdependent world.

⁵⁷ Espín, *Idol and Grace*, 68.

possibility, indeed to the need, for dialogue for learning from other historical and cultural universalities, and for allowing our universality to be called to solidarity with others.”⁵⁸ For Espín, the understanding of universality must shift to understanding universalities as rooted in interdependent particularities that lead not to universally *valid* truth but to universally *relevant* truths engaging in intercultural dialogue.

The advocating for an understanding of plural construction of universalities stands in direct contrast to a type of epistemology that constructs a monolithic and univocal construction of universality. Espín argues this understanding of universality, “is the opposite of Eurocentric dominant provincialism, whereby the dominant western cultures decree and define their own universality as the only ‘universally valid’ universality.”⁵⁹ Rather, by engaging in intercultural dialogue and understanding the pluralistic nature of particular universalities, “that only through the contrasting and difficult process of unveiling universally relevant truth will universally relevant truth be unveiled without imposition, without colonization, and with the utmost respect for all those who engage in this search.”⁶⁰ Espín calls this practice *verisimilitud*.⁶¹ Because truth is rooted in the conditions in which we know it, through particular communities in dialogue, knowing truth can never be a static apprehension of a concept but much like Aquino argues is a process that can only be done by analogy.

⁵⁸ Espín, *Idol and Grace*, 69.

⁵⁹ Espín, *Idol and Grace*, 69.

⁶⁰ Espín, *Idol and Grace*, 70.

⁶¹ Espín defines *Verisimilitude as plausibility*, “The translation insufficient when one considers the use of verisimilitude in real daily speech. Verosimilitud is more than ‘plausibility.’ It is plausible or ‘similar to truth’ because it is ‘very close to truth’.” Espín, *Idol and Grace*, 57.

The universal as univocal takes on an ethical importance when it comes to the everyday lives of the Latinx community in the United States. The monolithic and cultural domination enacted by Anglo communities in the U.S. physical and epistemological borders of who is in, who is out are a daily reality for the Latinx community. As Miguel de La Torre correctly points out, “To be a Hispanic living anywhere in the U.S. is to live constantly on the border, that is, the borders between power and disenfranchisement, between privileged and dispossession, between whiteness and ‘color’.”⁶² Daisy Machado discusses the borderlands stating, “The U.S. borderlands are *that* place where Latinas and Latinos live, struggle, love, fight, and strive to define who they are in the midst of a society that has for centuries kept them an invisible mass, a footnote in the homogenizing historical process of an entire nation.”⁶³ The homogenizing practices and the push towards Latinx assimilation to Euroamerican paradigms enacts an epistemological colonization that needs to be contrasted with border thinking or a *mestizaje* epistemology. For de La Torre, the in-betweenness that comes from living in the borderlands is the place where Hispanic ethical frameworks must originate.⁶⁴ Eurocentric constructions of moral thinking are based on universalizable and border-oriented epistemology excluding the Latinx community who live on the borders, physically and epistemologically. As such, the construction of Eurocentric moral thinking necessarily excludes those that live in the in-between.

⁶² Miguel de La Torre, *Latina/o Social Ethics: Moving Beyond Eurocentric Moral Thinking*. (Waco, TX: Baylor University Press), 73.

⁶³ Daisy L. Machado, “Kingdom Building in the Borderlands: The Church and Manifest Destiny” in *Hispanic/Latino Theology: Challenge and Promise*. eds. Ada María-Isasi-Díaz and Fernando F. Segovia (Minneapolis, MN: Fortress Press, 1996), 63.

⁶⁴ De La Torre, *Latina/o Social Ethics*, 73. I believe De La Torre would not have a problem using the term Latinx over Hispanic.

Thus, frameworks that we discussed in chapter one that are hierarchical and racialized, such as Kant's, do not have a place for those who are in the in-between.

Mestizaje and border thinking is not a framework that happens outside of the subject but rather is embodied within the bodies of the Latinx community that makes their own subjectivity pluriform and multi-spacial. One of the earliest persons to discuss the embodied mestizx reality was Gloria Anzaldúa. Anzaldúa argued for a new Mestiza reality that embraced within her body the negotiation of existing from within multiple spaces that blurs the lines of a single monolithic subjectivity from which one is supposed to engage in moral reasoning. For Anzaldúa, her *mestizaje* was deeply constitutive of her identity and was used as a source of resistance to what can be considered, "plural sources of cultural prejudice."⁶⁵ Not only did Anzaldúa find her social location to be in-between several different cultures (U.S., Mexican, and Indian), Anzaldúa's sexuality was a source of alienation from dominant U.S. and Mexican culture. Anzaldúa writes:

As a *mestiza* I have no country, my homeland cast me out; yet all
countries are mine because I am every woman's sister or potential lover.
(As a Lesbian, I have no race, my own people disclaim me; but I am all
races because there is the queer of me in all races.) I am cultureless
because, as a feminist, I challenge the collective cultural/religious male-
derived beliefs of Indo-Hispanics and Anglos, yet I am cultured because I
am participating in the creation of yet another culture, a new story to

⁶⁵ Ofelia Schutte, "Crossroads and In-Between Spaces: A Meditation on Anzaldúa and Beyond" in *Theories of the Flesh: Latinx and Latin American Feminisms, Transformation, and Resistance*. Eds. Andrea J. Pitts, Mariana Ortega, and Jose Medina. (New York: NY, Oxford University Press, 2020), 126.

explain the world and our participation in it, a new value system with images and symbols that connect us to each other and to the planet.⁶⁶

For Anzaldúa, her *mestiza* identity is not only made up of old identities (i.e., U.S., Mexican, Indian) but is rather used to construct a new world and new frame of knowing that transgresses static constructions of both identity and values. For Anzaldúa's understanding of *Mestiza* consciousness, tolerance for ambiguity is essential. The *mestiza* according to Anzaldúa is one who must move away from the static construction of values. Anzaldúa states, "*La Mestiza* constantly has to shift out of habitual formations; from convergent thinking, analytical reasoning that tends to use rationality to move toward a single goal (a Western mode), to divergent thinking characterized away from set patterns and goals and toward a more whole perspective, one that includes rather than excludes."⁶⁷ The more inclusive, whole perspective Anzaldúa advocates is the same perspective that must be advocated for when it comes to a realistic moral reasoning that takes into account the real experiences of the Latinx community.

The binaries that exist through the univocal and monolithic Eurocentric moral reasoning is transcended by Anzaldúa's use of *mestizaje*. For Anzaldúa, "The work of *mestiza* consciousness is to break down the subject-object duality that keeps her a prisoner and to show the flesh and through images in her work how duality is transcended. The bordered and binaried ways of thinking posited by a Eurocentric synderesis are transgressed and transcended by *mestiza* consciousness. Anzaldúa's work is transformative in that it takes the pluriform frames of oppressions that is latent in Eurocentric values and forced assimilation on one hand and

⁶⁶ Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* (San Francisco, CA: Aunt Lute Books, 1999), 102.

⁶⁷ Anzaldúa, *Borderlands*, 101.

machismo and patriarchy on the other and becomes the very place where a new perspective is born. This perspective is one that is done from being caught in-between multiple spaces negotiated within a Latinx identity. The identity of in-betweenness, *mestizaje*, rather than being a site of oppression is transformed into a sight of liberation.

For Walter Mignolo, the use and language of the new *mestiza* reality drawn from Gloria Anzaldúa, places border thinking in the matrix of modernity/coloniality/decoloniality. The monolithic and homogenized framework developed from Euroamerican epistemologies that in their very construction exclude those on the periphery. Mignolo calls this framework the colonial matrix of power resulting in colonial difference. Colonial difference is the space that borders or is othered by the colonial matrix of power that undergirds modernity/coloniality. For Mignolo, modernity and coloniality are not independent concepts but are rather interrelated. One cannot have modernity without the construction of colonial power that brings about the modern world system rooted in hegemonic capitalism. For Mignolo, the colonial matrix of power creates borders and such borders create colonial difference. For Mignolo, “borders are everywhere and they are not only geographic; they are racial and sexual, epistemic and ontological, religious and aesthetic, linguistic and national. Borders are the interior routes of modernity/coloniality and the consequences of international law and global linear thinking.”⁶⁸ Border-thinking is thus a type of thought that tries to de-link itself from the hegemonic and monolithic constructions of knowledge that are rooted in the coloniality of being. For Mignolo “the coloniality of being is instituted by racism and sexism.”⁶⁹ The coloniality of being justifies itself through a

⁶⁸ Walter Mignolo and Catherine Walsh, *On Decoloniality: Concepts, Analytics, Praxis*, (Durham, NC: Duke University Press, 2018), 112.

⁶⁹ Mignolo and Walsh, *On Decoloniality*, 148.

representational ontology that argues that ontology is represented by epistemology.⁷⁰ The way humanity sees the world is reflective of the way the world truly is. But, for Mignolo, epistemology instead is the starting point to constructing an ontology. Mignolo argues that, “ontologies are cosmologic/epistemic creations (storytelling about the creation of the world (cosmologies) and principles of knowing within a given cosmology (epistemology): it is through knowledge that entities and relations are conceived, perceived, sensed and described.”⁷¹ Thus, to delink from a coloniality of being, one must engage in a delinking from colonial epistemology, what we have argued is the Eurocentric monolithic construction of non-transitive truth properties.

When it comes to Eurocentric moral reasoning, Mignolo’s colonial matrix of power is seen to be analogous to the type of moral reasoning and *synderesis* that posits a single univocal and universal narrative. However, by adopting a framework in *mestizaje* and border-thinking, the static non-transitive truth claims and syllogistic moral reasoning can be confronted with a type of thinking that breaks away from the static bordered concepts and allows for a multivocal construction of moral reasoning. The multivocal construction of moral reasoning done in the context of *mestizaje* or *hibridez* contradicts the coloniality of thought that situates the subject outside a field of study in a traditional Cartesian mind/body binary.⁷² Rather than perpetuating another border between the observer and the observed, *mestizaje* can take on a type of thinking

⁷⁰ Mignolo and Walsh, *On Decoloniality*, 147.

⁷¹ Mignolo and Walsh, *On Decoloniality*, 135.

⁷² The thought that reflects a neutral observer is called a Zero-Point epistemology. For a detailed elaboration on zero-point epistemologies see Santiago Castro Gomez, *La Hybris de punto cero* (Bogota, Columbia: Editorial Pontifica Universidad Javeriana, 2007).

that is involved in its subject and can take on an activist role in scholarship. Or rather, as Mignolo discusses, drawing from Habermas,

knowledge without interests is an impossibility, and that the natural sciences' self-description as objective knowledge detached from human interest was a positivist self-description that favored instrumental reason and the use of knowledge for social management rather than for creativity, intellectual pursuit, and human 'emancipation' (Habermas's use of a post enlightenment word), or for human 'liberation' as Enrique Dussel and other Third World thinkers will prefer.⁷³

Knowledge of the world, through the eyes of *mestizaje* or border-thinking is not something that is "out-there" but is deeply intertwined with the knower. Thus, a *synderesis* that exists "out-there", much like the *synderesis* advocated by Aquinas, is one that takes for granted the subject-object distinction within moral thought. Moral thought is seen to be something that can be grasped as a reality that exists outside the knowing subject.

What border-thinking and *mestizaje* contests is that reality cannot exist in the abstract without being deeply interrelated with the personal and real relationships from which moral thought actually exists. For the Latinx community, a moral thought that is based in a single universalizable construction only means more assimilation to dominant cultures and ways of thinking and more exclusion from moral conversation. Yet, through the adoption of *mestizaje* and understanding morality as pluriform and interconnected, moral decision making does not come from a single universalizable perspective but is constituted by a plurality of universalities.

⁷³ Walter Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledge's, and Border Thinking*, (Princeton, NJ: Princeton University Press, 2000), 145.

A plurality of universalities is a place where multiple voices speak to interrelated existences. Thus, synderesis done *Latinamente*, is as diverse as the multiple spaces and identities that construct *Latinidad* in general. This leads to understanding of synderesis as not a grasping of generalized concept coming from a homogenized monolithic construction of right and wrong, but rather is understood as a process rooted in praxis. Or in the words of a popular Latinx saying, “*no hay camino, se hacemos camino al andar*,” we make the road by walking.

A Path-Making Epistemology

Emphasizing the mixture that is inherent between the universal and the particular, adopting *mestizaje* creates a synderesis rooted in dialogue, discernment, and path-making epistemologies. Dialogue is an open and creative process with mutual respect and ability to influence. Dialogue is not a road that is already paved in which speaking to one another simply reinforces old habits and beliefs. True dialogue, rooted in *mestizaje*, is the very process of making new roads together based on equal power relationships. Traditional truth-seeking philosophies presuppose roads that are already made. Latinx synderesis suggests, as we stated earlier “*no hay camino, se hacemos camino al andar*.” That is, while traditional Eurocentric understanding of synderesis emphasizes the apprehension of static categories, the type of synderesis that occurs by adopting a *mestizaje* based moral epistemology is more akin to understanding the good as a process or a journey. Synderesis done *Latinamente*, is a process of road-making.

The road making that occurs through a synderesis that is influenced by epistemological *mestizaje* is one that transgresses and travels through pre-established borders. Through the transgressing of borders through *mestizaje* itself, epistemological borders that are used for

exclusion themselves are transformed into, “frontiers of new existence.”⁷⁴ This frontier of new existence has the implication of travel and of border crossing and for Elizondo, “Every border-crossing relativizes human absolutes and challenges previously unquestioned taboos for the sake of the new family of unlimited love.”⁷⁵ Elizondo continues, “in this new humanity, no one person, culture, religion or race will be accepted as universal, normative, and ideal for everyone else.”⁷⁶ Through the permeability of boundaries, these borders that seek to exclude actually become points of contact.

Similar to Elizondo’s thoughts about boundaries as ‘frontiers of new existence’, Michael Nausner sees boundaries and borderlands as fields of negotiation. Drawing on Homi K. Bhabha, Nausner believes that boundaries are hybrid spaces. For Bhabha, a boundary is a “margin of hybridity, where cultural differences ‘contingently’ and conflictually touch.”⁷⁷ Thus for Nausner a boundary's significance, “is *not* primarily to keep apart or to strictly divide cultures and territories. In their constructedness they are not natural lines of separation, but rather highly relevant places for the production of meaning. Boundaries emerge as privileged fields of encounter, where differences and commonalities are continuously negotiated.”⁷⁸ While Nausner

⁷⁴ Virgilio, Elizondo, “Transformation of Borders: Border Separation or New Identity” in *Theology: Expanding the Borders: The Annual Publication of the College Theology Society*. Vol 43 (1998), 33.

⁷⁵ Elizondo, “Transformation”, 34.

⁷⁶ Elizondo, “Transformation”, 35.

⁷⁷ Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994), 207.

⁷⁸ Michael Nausner, “Homeland as Borderland: Territories of Christian Subjectivities” in *Postcolonial Theologies: Divinity and Empire*. eds. Catherine Keller, Michael Nausner, and Mayra Rivera (St. Louis, MO: Chalice Press, 2004), 124.

is primarily talking about the role boundaries play in Christian identity, his solutions can be helpful in understanding how to negotiate boundaries through an epistemological lens that affects how one views synderesis. While synderesis is seen to perpetuate static notions of truth, the understanding that the boundaries between what is considered a static truth and fluid contingency is precisely the place where truth is acted out rather than apprehended. Thus, understanding the truth of a moral situation needs a solution of nomadology. Nausner draws on Deleuze and Guattari's understanding of nomadology to illustrate that nomads do not "parcel out closed spaces to people" but rather "distributes people (or animals) in an open space."⁷⁹ By not settling or occupying a single space, rather tracking though land, boundaries become fluid and become sites of new possibilities. This fluidity or *mestizaje*, as would be understood through a Latinx lens, makes moral reasoning a process that is always on a continual journey navigating through various territories and narratives in finding ways of truth rather than apprehending a static truth.

Yet one does not need to simply draw from modern or contemporary theologians to see that from a Latinx perspective moral truth is not static but is dynamic and requires negotiation and discernment. To draw from Latinx indigenous knowledge by Mexico's native Mexica peoples, the dialogue needed to pursue moral goodness comes from Mexica thinkers called *tlamatinimeh* and what they developed is "what scholars call a 'way-' or 'path-seeking' philosophy" as opposed to, "a truth-seeking philosophy, the approach that has dominated the western philosophical tradition since Plato."⁸⁰ A truth seeking philosophy seeks to understand

⁷⁹ Nausner, "Homeland" 127-128 quoting Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis MN: University of Minnesota Press, 1987), 380.

⁸⁰ James Maffie, "Philosophy without Europe", in *Latin American and Latinx Philosophy: A Collaborative Introduction*. Ed. Robert Eli Sanchez Jr. (New York, NY: Routledge, 2020), 14.

concepts through apprehending, representing, believing and grounding actions upon specific norms.⁸¹ In contrast, the philosophy advocated by the Mexica people, “understand these notions in terms of finding, following and extending a path.”⁸² In the encounter between the Mexica people and the Spanish Franciscans, one can see these two paradigms collide. While the Franciscan sought to establish their philosophy on a God that is coterminous with an immutable reality, truth as a singularity and absoluteness, and doctrine derived from specific precepts, the Mexica people sought a path (*ohtli*). According to Maffie, “What concerns Mexica philosophers first and foremost is knowing how to act, i.e., the practical understanding involved in knowing how to maintain one’s balance on the slippery earth.”⁸³ For the Mexica people and their descendants in the Latinx community, moral reasoning is primarily found in the journey of life rather than apprehending universalizable principles.

Mexica ethics is focused on harmonious living within the current age. For Mexica peoples there have been four creations and four destructions. We are currently in the fifth age of the Sun.⁸⁴ Because the Mexica people view the fifth age as potentially ending, to forestall this ending humanity must journey to find a way to live in a balance with their environment. The Mexica people believe that humanity must “co-participate in the ongoing reproduction and

⁸¹ Maffie, “Philosophy”, 14.

⁸² Maffie, “Philosophy”, 14.

⁸³ Maffie, “Philosophy”, 19.

⁸⁴ We can see the effect of the Mexica understanding of being in the age of the sun through looking at how the Indigenous Juan Diego encountered the image of Mary on Tepeyac as clothed in the sun. To understand the importance of the sun in the imagery of Our Lady of Guadalupe see Tim Matovina’s *Theologies of Guadalupe: From the Era of Conquest to Pope Francis*. (Oxford University Press, 2019).

existence of the 5th age.”⁸⁵ The journey that promises the continuation of the fifth age is called *Macehua* and is the activity of meriting, deserving, or being made worthy. *Macehua* is the root of Mexica ethics and is about establishing balanced interpersonal relationships with all living things. *Macehua* is about,

social know-how or knowing how to get along with other persons in a social world--social because populated by a variety of different kinds of persons (human and other-than human, visible and invisible, who are characterized by different interrelationships and degrees of power) --in order to both remain on good terms with them and to induce them into cooperating by doing as one wishes.

Personhood, for the Mexica, is about action and participation in relationships rather than static ontic categories. Thus, moral action is not about apprehending, but rather by becoming. Reality is then, “fluid, dynamic, and defined by becoming and changing rather than stasis and permanence.”⁸⁶ The movement of reality and the continual change in the world requires a *synderesis* that is comfortable with ambiguity, movement, and the interchanging of relationships.

The fluidity of border thinking and reality from Latinx indigenous traditions means that there is a pluralism in how the Latinx community engages ethics. As Ismael Garcia suggests, “not all Latino/as engage the ethical task in the same way.”⁸⁷ The Latinx community must do ethics while navigating several spheres of social and ethical analysis. Since the Latinx

⁸⁵ Maffie, “Philosophy”, 23.

⁸⁶ Maffie, “Philosophy”, 29.

⁸⁷ Ismael Garcia, “Ethics” in *The Handbook of Latina/o Theologies*. eds. Edwin David Aponte and Miguel A. De La Torre (St. Louis, MO: Chalice Press, 2006), 83.

community faces oppression from cultural, political, and social spheres generalized precepts that may engage only one of these spheres will not be helpful for Latinx moral reasoning. Because each of these spheres of Latinx reality effects and interfaces with the other, moral reasoning done *Latinamente* draws on the social “know-how” that is a constitutive element of *Macehua*. Thus, moral reasoning is not a static apprehension of the good but the good is worked out through praxis. The good is not discovered, rather, it is done through the everyday practices of the Latinx community.

Mestizaje mixes the fluid and the static, the universal and the particular, in such a way that moral decision making requires the continual involvement in the world and in each other’s narratives. *Mestizaje* takes the encounter at the physical and epistemic borders of Eurocentric moral thinking and creates a new, fluid, and dynamic reality that takes synderesis from a static apprehension of the good to a journey or path-finding living out the good. As such, *Mestizaje* as synderesis, allows for the diving deep of interpersonal stories of individuals and communities that transgresses and transcends the efforts that delineate static categories of the good.

Privileging Marginalized Identities

A final reason to adopt *mestizaje* as a type of synderesis or moral epistemology is that it places marginalized identities as a loci of power and moral knowledge. Virgilio Elizondo’s *Galilean Journey* places Jesus’ identity as a Galilean in the context of *Mestizaje*. As a Galilean, he was not accepted by the Jerusalem elite as their own. As a Jew in Galilee, Jesus was not accepted by the Roman population. Jesus’ identity was one that was in-between. Yet, for Elizondo, God’s identification with Jesus, through his life, death, and resurrection introduced what Elizondo calls the Galilee principle. Elizondo states the Galilee principle as such, “what

human beings reject, God chooses as his very own.”⁸⁸ The *mestizaje* of Jesus was the thing that the Jerusalem elite and the Roman occupiers rejected, but this *mestizaje* was the very thing that God chose as God’s own. God identified directly as *mestizx*.⁸⁹ To take the Galilee principle epistemologically is to take the historically rejected idea of *mestizaje*, both as an ethnic and epistemological identification, and privilege it in the place of knowing. To privilege *mestizaje* as an epistemological *synderesis* is to privilege the perspective of those who have been marginalized due to strict binaries of insider/outsider, individual/community, public/private, and universal/particular. *Mestizaje* takes those identities which have been placed in precarious situations because of constructed borders and places them in a place of power and critique against arbitrary systems of domination. As Maria Pilar Aquino states, “precisely because *mestizaje* has been portrayed by dominant cultures as carrying a social value only worthy of exclusion, a *mestizo/a* theology will highlight the vital syntheses which ‘new peoples’ have interculturally created in order to explain their own vision and their own identities.” Adopting *mestizaje* as a type of moral realism presents the possibility to imagine spaces of power in which the marginalized occupy.

When considering decolonial thinking, Mignolo suggests that decolonial thinking and border thinking means thinking from the periphery or what he calls exteriority. For Mignolo, “Exteriority is not the outside, but the outside built from the inside in the process of building itself as inside. Exteriority is the dwelling place of the world population who do not belong to the

⁸⁸ Virgilio Elizondo, *The Galilean Journey: The Mexican American Promise* (Maryknoll NY: Orbis Books, 2000), 91.

⁸⁹ I use *mestizx* here rather than the gendered *mestiza/o* for two reasons. The first is to be inclusive to the LGBTQIA community. The second, is to illustrate that God, in God's Self is not gendered.

house of civilization and democracy. Thus, modernity is a discourse defining its interiority by creating the difference to be marginalized and eliminated.”⁹⁰ By thinking through the place of differentiation, or the place of exteriority, Mignolo believes one begins to think decolonially. Boaventura de Sousa Santos frames exteriority in the concept of the Abyssal line, or the line in which one judges who is outside or inside. To think across the abyssal line requires, “The decisive community of belongingness or identity” that has more to do with “sharing the struggle against domination.”⁹¹ For Santos, it is important to recognize which side of the Abyssal line one thinks from and that if one is to be a post abyssal researcher, one must be interested in, “producing and valorizing knowledges capable of strengthening resistance against domination.”⁹² If knowledge that is done from the periphery is rooted in a resistance to domination, then such a knowledge from the periphery is privileged against normative structures of Eurocentric moral reasoning.

In adopting *mestizaje* as a moral epistemological category that emphasizes the importance of the marginalized in moral decision making, it is also important to acknowledge the troubled history of *mestizaje*. While theologians such as Elizondo and Goizueta readily use *mestizaje*, oftentimes *mestizaje* is idealized to ignore its history in Latin America as a racialized concept. Within the colonial period the exploitation of the Spanish created two social classes, the marginalized Mestizx class and the more legitimate criollx class, born of European parents. Yet

⁹⁰ Walter Mignolo, “Decolonizing Epistemologies/Building Decolonial Epistemologies” in *Decolonizing Epistemology: Latina/o Theology and Philosophy*. eds. Ada María Isasi-Díaz and Eduardo Mendieta (New York, NY: Fordham University Press, 2011), 26.

⁹¹ Boaventura de Sousa Santos, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Durham, NC: Duke University Press, 2018), 150.

⁹² Santos, *End of the Cognitive Empire*, 153.

for Mestizx, “in order to secure their political power and racial privilege, often distanced themselves from their mother’s indigenous blood and culture.”⁹³ Because of this grab for political power, “Claiming a mestizo/a or mulato/a identity is a manner of ‘whitening’ one’s racial identity, gaining privilege over black and indigenous peoples.”⁹⁴ Yet, because of the way *mestizaje* is adopted by U.S. Hispanic Theologians, *mestizaje* is an important category to problematize static identities placed on the U.S. Latinx community by dominant communities. Being honest about the ambiguous history of *mestizaje* itself helps fight against the notion that *mestizaje* is a nonviolent blending of cultures. Rather, *mestizaje* is a site of contradiction and violence that forms identities shaped by ambiguous histories themselves. Adopting *mestizaje* is a reality that the Latinx community must face as part of our violent and complicit histories. By claiming *mestizaje* as our own, we must at the same time contest the ways it has been used to “whiten” ourselves for the sake of upward mobility. Adopting *mestizaje* as a strategy of cooperation requires owning the ambiguous and complicit history attached to the term. Through *mestizaje*, one must understand themselves as both oppressor and oppressed, colonizer and colonized. As such, *mestizaje* is a tool that forces the Latinx community to exist in a spectrum of complicity or solidarity with the most marginalized within their own community. *Mestizaje*, itself, cannot be just a static biological or cultural category of personal identity, rather it must be dynamic. Because of the ambiguous and sometimes troublesome ways *mestizaje* is used to both

⁹³ Michelle Gonzalez, “Who is Americana/o? Theological Anthropology, Postcoloniality, and the Spanish-Speaking Americas” in *Postcolonial Theologies: Divinity and Empire* (St. Louis, MO: Chalice Press, 2004), 67.

⁹⁴ Gonzalez, “Who is Americana/o?”, 67.

elevate marginality and silence it, it is important to adopt *mestizaje* as an epistemological position of standing in solidarity with the marginalized.

For Isasi-Díaz, adopting *mestizaje*, is less about one's biological identity and proximity to whiteness but is rather the symbolic-truth praxis that stands in solidarity with the marginalized. For Díaz, "*mestizaje* is a present historical reality being elaborated in our very lives. This is why it must be affirmed and chosen repeatedly in all aspects of our lives."⁹⁵ The ambiguity and hybridity that comes through *mestizaje*, for Díaz, is an epistemological choice in which one accepts diversity through praxis. Díaz, "to choose *mestizaje* means that we reject hierarchical understandings that set some over others. It also means that we reject a competitive individualism that destroys our sense of community and makes us see life as a win-lose situation."⁹⁶ By adopting *mestizaje* as a refusal to categorize, hierarchicalize, or delineate between those who are in or out, Díaz reconceptualized *mestizaje* to be a position in which one chooses a way to look at life. Most importantly for Díaz, *mestizaje*, "is an expression of our responsibility to each other."⁹⁷ By adopting *mestizaje* as an epistemological choice, one can engage in a type of ethic that negates and contests any type of ethic that tries to create lines of thought that exclude persons for any reason, but rather adopt an ethic that includes all people and especially those persons who have been excluded through Eurocentric normative ethics.

Adopting *mestizaje* as a type of synderesis allows one to engage ethics without privileging a univocal universality but allows for a pluricentric construction of many

⁹⁵ Isasi-Díaz, *En La Lucha*, 204.

⁹⁶ Isasi-Díaz, *En La Lucha*, 204.

⁹⁷ Isasi-Díaz, *En La Lucha*, 204, Here, Díaz is talking about the responsibility that Hispanic women have towards each other, but I think this can be broadened to the wider Latinx community as an epistemological choice to look after each other in mutual dialogue.

universalities that blurs the abstract and the particular. Not only does adopting *mestizaje* create the space for many particular voices to participate in moral reasoning, it also understands moral reasoning to be a process of dialogue, discernment, and road making where moral truth is not simply apprehended through static contemplation but is discovered in the very process of walking through life. Synderesis done by the Latinx community is more like creating a path rather than doing math. Thus, it involves intimate involvement with one's immediate community and environment of all living beings. In making this path, the privileged guides to moral decision making are the marginalized who through *mestizaje*, transgress exclusionary boundaries and for whom moral decision-making effects first. Yet, to discuss *mestizaje*, in the abstract and through theory alone, would be to deny the efficacy of *mestizaje* as a synderesis that is intimately involved in daily life and the cultural production of a people. Thus, we will close this chapter by seeing how *mestizaje* is illustrated through the cultural production of Latin American and Latinx literature.

Framing Mestizaje through Latinx Cultural Production

Mestizaje plays a prominent role in Latinx literature. Not only does *mestizaje* engage in the intermixture of cultural and nation of origins within Latinx identity, but within Latinx literature, “the colonial history implicit in the idea of *mestizaje* evokes the very real constraints imposed upon mestizo bodies, not least of which are the racial hierarchies generated using colonialism and passed down a legacy of discrimination and violence.”⁹⁸ Latinx literature often deals with

⁹⁸ Rafael Perez-Torres, “Mestizaje” in *The Routledge Companion to Latino/a Literature*. (Abingdon: Routledge and Taylor & Francis Group, 2013), 25-33.

the complex identity and history formed by colonization and the fact that the lines of oppressor and oppressed are often acted out within the bodies of the mestizx community. Yet out of the complex history and contradiction, *Mestizaje* as it is played out in Latinx literature, “allows for an understanding of culture and identity that incorporates difference and paradox as component characteristics of subjectivity and expression.”⁹⁹ The cultural production of Latinx literature does not only see *mestizaje* as an opportunity for expression of individual identity but also sees it as a mixture that provides the space to “balance a sense of boundless possibility with an awareness of constraint in historical connection.”¹⁰⁰ *Mestizaje* in Latinx literature takes seriously the role of colonial oppression that has marked mestizx identity and provides a way of navigating this marked identity into a role of new possibility that, for the sake of moral epistemology, frames the journey of discerning the good. In other words, how can one who has been marked by such oppressions navigate a multivalent world in which there is simultaneously good and bad, often mixed themselves, to find a moral agency that is simultaneously a good for the individual but also a good that has been conditioned by a community marked by oppression? The journey of moral agency is precisely what is at the heart of Latinx magical realist literature.

A great example to illustrate the journey of *mestizaje* when it comes to the discernment of the good life is the work by Junot Díaz, *The Brief and Wondrous Life of Oscar Wao*. This 2007 novel by Díaz is the story about a heavy-set young man named Oscar de León (whose interest in Oscar Wilde results in a misunderstanding that leads his friends to call him Oscar Wao). Oscar is of Dominican descent and lives in Patterson, New Jersey. Oscar’s goal in life is to find love and when he does not find it in college he fails at an attempt to commit suicide. On one of his visits

⁹⁹ Pérez-Torrez, “Mestizaje”, 26.

¹⁰⁰ Pérez-Torrez, “Mestizaje”, 27.

to the Dominican Republic, Oscar falls in love with a sex worker, Ybon, and is subsequently beaten up in a canefield by her boyfriend. After recovering from such violence in the U.S., Oscar goes back to the Dominican Republic to continue to confess his love to Ybon and is eventually killed by Ybon's boyfriend.

Díaz does not tell the story of Oscar in a linear narrative but intertwines it with multi-generational stories that are deeply interconnected to colonial violence and the American backed dictatorship of the Trujillo regime in the Dominican Republic. Díaz connects Oscar's story primarily to what is called the Fukú curse. The Fukú curse, in the narrative, is a curse of doom. Díaz writes,

They say it came first from Africa, carried in the screams of the enslaved; that it was the death bane of the Tainos, uttered just as one world perished and another began; that it was a demon drawn into Creation through the nightmare door that was cracked open in the Antilles...No matter what its name or provenance, it is believed that the arrival of Europeans on Hispaniola unleashed the Fukú on the world, and we've all been in the shit ever since."¹⁰¹

The Fukú curse is connected to colonial violence and the dictatorship of the Trujillo regime in the Dominican Republic. Anyone that seems to stand up against the colonial violence or violence of Trujillo feels its spell. The Fukú curse (i.e., the colonial and neocolonial violence of Trujillo regime) are what haunts Oscar throughout his life. In Oscar's story, the story of his family and the story of the Dominican Republic are weaved into one. Díaz employs a type of *mestizaje* to

¹⁰¹ Junot Díaz, *The Brief Wondrous Life of Oscar Wao*. (New York, NY: Riverhead Books, 2007), 1.

explain the contradiction of interpersonal tragedy and the tragedy of a nation. Because of colonial legacy and the legacy of Trujillo is ever present for Oscar and the rest of the Dominican diaspora, the only way to make sense of such violence is to mix the fantastic of the Fukú curse with the reality of the violence experienced by Latinx communities. The Fukú curse was brought about through European colonialism and although is a part of Díaz' fictional world, feels real for many of the Latinx community who face continual oppression in the dominant Anglo-American landscape. Thus, like Oscar, searching for the good life requires navigating the specter of colonial and neo-colonial violence that many in the Latinx community face on a daily basis.

Díaz' *mestizaje* is not only between the magical and the real, but also functions at a structural level of the novel. Díaz draws from American comic books and the Afro-Caribbean literary tradition.¹⁰² Díaz also mixes footnotes with narrative to intertwine the de Leon family with Dominican history in general. This intertwining or mixture of familial narrative with national narrative illustrates that for the Latinx community, their personal histories are intertwined with the history of oppression tied to their country of origin and the cultural baggage that comes with it. At least for the de León family, "the Fukú aint just ancient history, a ghost story from the past, with no power to scare. In my parent's day the Fukú was real as shit, something your everyday person could believe in."¹⁰³ The mixture of language between proper English of high English fantasy, colonial Spanish, English slang, and Spanish slang illustrates the result of living a reality of mixture through diaspora. Describing Díaz's use of mixture and

¹⁰² For a discussion on Díaz' use of multiple literary traditions see Monica Hannas, "Resembling the Fragments': Battling Historiographies, Caribbean Discourse, and Nerd Genres in Junot Díaz's *The Brief Wondrous Life of Oscar Wao*" in *Callaloo*, Spring, 2010. Vol 33 No. 2. (Spring, 2010), 498-520.

¹⁰³ Díaz, *Brief and Wondrous Life*, 2.

mestizaje, Pérez-Torrez states, “These linguistic and generic mixings on a formal level serve to express and embody the effects of mixture on racial, cultural, and social levels. Mixture on a formal level signals the contradictory forces that have one into the creation of a Latino/a culture.”¹⁰⁴ For Díaz the structural mixture that he applies to his novel reflects the cultural and social mixture that the Latinx community faces in their everyday lives living in either a physical, cultural, or psychological exile from dominant Anglo-communities.

One can find theological analogues to the mixture and contradictory nature of diaspora and *mestizaje* found in Díaz’ work. Fernando Segovia states, “as with exile itself, the result is a theology that cannot help but look in various different and even conflicting directions at all times, gathering together within itself the affirmations and contradictions, the joys and frustrations, the challenges and obstacles of a life of ‘otherness’.”¹⁰⁵ By taking on Latinx literature and the work of Díaz as an example of *mestizaje*, such an example provides us a way to articulate,

a sense of *mestizaje* that is critical and that seeks to make present the numerous struggles that remain a part of Latino/a societies along lines of class, race, language, sexuality, gender, and nationality. In short, the terms *mestizo* and *mestiza* do not attempt to name smoothly blended, easily hybrid cultural or personal identities. Rather, they name identities sutured

¹⁰⁴ Pérez-Torrez, “Mestizaje”, 28.

¹⁰⁵ Fernando F. Segovia, “In the World but Not of It: Exile as a Locus for a Theology of the Diaspora” In *Hispanic/Latino Theology: Challenge and Promise*. eds. Ada María Isasi-Díaz and Fernando F. Segovia (Minneapolis, MN: Fortress Press, 1996), 217.

together out of a desire for coping, surviving, and (hopefully) triumphing
over the unequal colonial legacies embodied by the idea of *mestizaje*.”¹⁰⁶

By looking at Latinx literature, one is able to get a sense of how an individual’s moral agency is tied up in and worked through a colonial legacy and a mixture of interacting parts. Through reading the personal, familial, cultural, and literary stories by the Latinx community one can see that moral decision making and the quest for the good life is not something that can be done through immediate apprehension of the good nor can it be done without the struggling through and path making synderesis provided by a *mestizaje* based moral epistemology. Rather, understanding of the good requires acknowledging the mixture of colonial, cultural, and interpersonal legacies; the mixture of multiple voices as opposed to the univocal; the understanding that knowing the good requires praxis and path-making, and that *mestizaje* privileges the marginalized voices that are incorporated into its very identity.

Conclusion

In this chapter we argued that both U.S. and Iberian natural law traditions worked from a moral epistemology that framed synderesis as an immediate apprehension of the good through types of reasoning that are rooted in a Eurocentric rationality. By giving the history of synderesis we were able to suggest that a synderesis that is both infallible and immediately knowable does not provide enough context for real life moral decision making and was not, in actuality, a type of moral realism that can affect everyday decision making. We then argued that by adopting the theological concept of *mestizaje*, could provide a solution that would allow moral knowledge to

¹⁰⁶ Pérez-Torrez, “Mestizaje” 28.

be practiced in the everyday. Namely, by arguing that *mestizaje* provides a framework that allows for multiple voices and multiple universalities as opposed to the universal as the univocal, one could understand moral decision making through multiple interacting cultural lenses. We also argued that by allowing for a multi-vocal approach provided by *mestizaje*, we could understand moral truth as a process and its acquisition as a path-making epistemology as opposed to a type of knowing that seeks to statically apprehend the good through contemplation. In other words, to know the good, one must do it. Finally, we argued that by placing mestizx identity as a locus of moral knowledge, marginalized groups who exist in a cultural, linguistic, and epistemological *mestizaje* would be able to lead in new ways of moral thinking. We concluded with understanding *mestizaje* in the context of Junot Díaz' *The Brief and Wondrous Life of Oscar Wao*, which provided texture to the theoretical framing of *mestizaje*.

As we continue to chapter four, we will increasingly rely on narrative in order to discern moral principles. *Mestizaje* formed the epistemological base for moral discernment. In chapter four, we will discuss the role of *cuentos* (stories/witnesses/accounts) as a type of natural law casuistry for Latinx social ethics. Much like using Díaz's novel to extricate some general principles about Latinx social ethics, the multivalent and multileveled stories found in Latinx experience will help us as we seek to derive some principles that are applicable not only to the Latinx community but the dominant Anglo-community as well. These *cuentos* will involve interpersonal stories, historical and social narratives of particular communities, and more literary stories that provide cultural themes for Latinx social ethics.

Chapter 4: Cuentos as Casuistry

Introduction

In the last chapter we discussed how moral epistemology done *Latinamente* involves employing *mestizaje* as an epistemological category. Through the employment of *mestizaje*, the universal is particularized through specific cultural communities and the binary between the universal and particular is obfuscated. Through employing *mestizaje* as a type of synderesis we discussed how the universal is multi-vocal and establishes a plurality of universalities, that knowing the good comes through engaging a path-making and road-making philosophy, and that the marginalized are the privileged knowers of the good. We ended our last chapter by taking a look at Latinx literature in Junot Díaz work, *The Brief and Wondrous Life of Oscar Wao*. In examining this work, we illustrated that *mestizaje*, as a moral epistemology, cannot be relegated solely to the abstract but takes root in the narratives of the Latinx community.

This chapter discusses the fact that Latinx theology is rooted in the stories and beliefs of the Latinx community. Stories or *cuentos* form the moral background through which the Latinx community continually reflects on ethical action. Essentially, the chapter argues that through engaging the various types of Latinx *cuentos*, or narratives, that we are working through a natural law casuistry. We will first define casuistry and discuss how it has been used to engage in ethical reflection in drawing conclusions from a case-by-case basis. We will also understand casuistry as primarily a reflection on narratives in which ethical action is manifested. As we will discuss, because ethical action is always aimed at a specific end within concrete situations, casuistry is the ethical methodology of choice for the Latinx community.

Because the Latinx community roots their theology in the concrete, everyday (*Lo Cotidiano*) narratives of their community we will then discuss the types of *cuentos* prevalent in the Latinx community and how they shape ethical reflection. We will discuss the interpersonal narratives often highlighting the voices of Hispanic women and see how their interrelational stories, often bound by a double oppression, have ethical import.¹ As Isasi-Díaz writes concerning Hispanic women, “it is often difficult to determine whether we are being oppressed because of our gender, our ethnicity, or our economic status.”² As such, the narratives of Hispanic and Latinx women are particularly important because they illustrate the multi-layered web of oppression that women of color face and the historical projects needed, “to give meaning and value to our daily struggle for survival.”³ We will then discuss how these stories are related to the grander, cultural, and communal stories that give shape to the smaller stories. These communal and cultural stories form the social imaginaries that provide the contours of Latinx experience in Anglo-dominant United States and how the Latinx community identifies itself while navigating multifaceted moral landscapes and systems of oppression. Through drawing from the everyday stories of the Latinx community one is able to engage in ethical reflection about the social, cultural, and political conditions of the Latinx community and understand the quest for the good life as a process of story-telling and path-making. As such, we will close our

¹ I am writing about Hispanic women primarily to honor the Hispanic women in my life who have had the greatest effect on me, my Abuela and my mother. Both of these women had to face overwhelming struggles being Hispanic women in Anglo-dominated culture. Their experiences were often overlooked and undervalued. In writing about them and their experiences I hope to accomplish what Ada Maria Isasi-Díaz, hoped to accomplish in her groundbreaking work, *En La Lucha*, that “to honor others honors one”. I hope to honor the experiences of my mom and abuela.

² Isasi-Díaz, *En La Lucha*, 34.

³ Isasi-Díaz, *En La Lucha*, 53.

chapter on casuistry by looking at the Ana Castillo's novel *So Far from God* as a story-telling cultural casuistry that provide paradigmatic Latina saints, whose everyday reality shapes their ethical reflection.

Casuistry and Narrative

Casuistry is a system of ethical reflection that is oriented by the study of cases. That is, ethical reflection occurs on a case-by-case basis. The beginnings of casuistic reflection start with Aristotle's differentiation between scientific or speculative reason (*episteme*) and practical reason (*phronesis*). While scientific reason is supposedly based on universal principles, practical reason takes seriously the particularity of each case. As Aristotle states,

In this respect *phronesis* and *episteme* are opposed. The intellect masters the basic definition of a science, which are not further demonstrable [and argues from these definitions]; but *phronesis* deals with the ‘ultimate particular’ (to *eschaton*), and this is an object of perception (*aesthesis*) rather than *episteme*.⁴

The main difference between speculative reason and practical reason is that the former is rooted in theory and the latter in praxis. While theory seeks to provide deductive universalizable proofs, practical reason often uses prudence and wisdom to orient oneself to practical goals, ends, and outcomes. Practical reason provides the roadmap to particular destinations rather than provides general proofs of universal applicability. Ethics is rooted in practical reason (*phronesis*) as opposed to merely scientific reason. As Albert Jonsen states,

⁴ Aristotle, *Eth. Nic* VI. viii. 9,1142a.

“Since real moral agents decide and act in relation to specific, attainable ends and in the context of concrete circumstances, practical reasoning can be said to be about “cases,” that is, “instances” (in Latin, *casus*), in which the particular agent’s specific purposes and motives, as well as the extant circumstances of time, place, probability, and possibility, etc., can be described.”⁵

Ethics deals with concrete circumstances seeking attainable ends. Thus, since ethics is described within the realm of practical reason, certain conditions apply to ethical reasoning that differ from scientific reasoning.

While scientific reason seeks to develop arguments that are “*idealized, atemporal, and necessary*,” practical wisdom seeks to establish arguments that are concrete, temporal, and presumptive”⁶ That is, while scientific reason seeks universally valid arguments, practical reason (and ethics), must make room for a multiplicity of valid arguments based on presumptive and concrete experience. Thus, when Aristotle talks about what is good or right he does not discuss them, “in abstract and general terms” rather only what is good or right, “*for an agent of a specific kind, acting on an occasion of a particular sort, in a situation that involves other people of equally specific kinds.*”⁷ Thus, Aristotle is not primarily engaged in a moral taxonomy, “rather, he is concerned to show how the moral deliberations of specific agents depend on their social,

⁵ Jonsen, Albert R. “Practical Reasoning and Moral Casuistry.” In *The Blackwell Companion to Religious Ethics*, (Malden, 2005), 53.

⁶ Albert R. Jonsen, and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley, CA: University of California Press, 1988), 26-27.

⁷ Jonsen and Toulmin, 69.

political, and personal status, and on the spirit in which they act.”⁸ By understanding ethical and moral knowledge within the context of practical as opposed to scientific reason, Aristotle provides a type of ethical analysis that is open to the variety of particular situations.

Because Aristotle takes seriously the variety of ethical situations that occur during the course of one’s life in relation to specific and concrete ends, the scientific methodology of syllogistic and deductive reason cannot account for the plurality of ethical situations. Thus, Aristotle teaches that the syllogistic reason that is prevalent in ethical analysis is “is taken over, in ethics and rhetoric, by analogous arguments he calls ‘enthymemes.’”⁹ Jonsen and Toulmin define enthymemes as having drawn

Their particular conclusions presumptively or probably (not ‘necessarily’):

they appeal, for example to matters of common knowledge, general

maxims, or ‘signs’--what a detective calls ‘clues’--or by referring to

historical events, fictional stories or other well-known ‘examples’

(*paradeigmata*).

Casuistry, as a result, does not make use of syllogistic arguments but makes use of enthymematic arguments that draw on a plethora of sources including personal, cultural, and communal narratives.

Despite the prevalence of Aristotelian thought in the early and medieval church, Christian casuistic thinking does not begin with the adoption of Aristotle’s distinctions between scientific and practical reason, but rather, with Jesus himself. Coming out of the Jewish tradition of interpreting the Torah, Jesus often created situations in which traditional readings of Torah were

⁸ Jonsen and Toulmin, 69.

⁹ Jonsen and Toulmin, 73.

challenged. Jesus' teachings which consisted of "moral challenges, moral paradoxes, hard saying, and abrupt revisions of familiar rules" created situations for early Christians that required casuistic thinking based on a, "a conflict of basic obligations."¹⁰ With the increased transition from Judaism to Hellenism in early Christian communities, legal obligations provided by the Torah had to take on more nuanced meaning with the increasing inclusion of gentiles into the early Christian community. At stake in these conflicting obligations is the ability to hold Jewish tradition in one hand and the new gentile inclusion of the early Christian community in the other. This conflict of obligation required a casuistic thinking that holds tradition, which we understand as a community's narratives of normative identity, and new situations in tension. Thus, religious casuistry requires holding two, sometimes contradictory, commitments together. As Jonsen states,

"Religious casuistry, then, is the practical reasoning of communities of faith. In the background always stand the scripture and traditional beliefs of the community. In the foreground stand the scholarly communities who interpret that scriptural and traditional background and teach it to the faithful.... They not only theorize but also respond to actual cases in which the faithful may face perplexity in acting according to their faith in current circumstances. They utilize to a high degree analogical reasoning, working from case to case, in order to reach a resolution that is both traditional and novel."¹¹

¹⁰ Jonsen and Toulmin, 91-92.

¹¹ Jonsen, "Practical Reason and Moral Casuistry", 59-60.

Religious casuistry is a way of moral reasoning that takes seriously the multiple narrative commitments of an individual and their community. While one may identify with a particular religious tradition such as Christianity, different social, political, and historical circumstances require navigating these commitments with new narratives, new stories, and new moral dilemmas. Navigating new situations is precisely how the tradition of high casuistry developed in the 13-16th centuries.

High casuistry developed in the 13th century with the confluence of treatises on natural law, the development of canon law, and the development of private confession and penitential books that give particular penances in relation to specific moral circumstances. To aid priests, *Summas* collected the theologies of natural and canon law and related them to specific examples to guide them in confessionals. Alongside the integration of natural and canon law and penitential deliberation, casuistry developed as a result of rapid change including the rise of nation states, consolidation of monarchies, the reformation, and the counter-reformation. The rapid change challenged “universal” principles that were taken for granted in the face such change. In other words, “These changes provided ample material for casuistry: new ‘cases of conscience’ were constantly being posed by new conditions.”¹² These new conditions necessitated a type of practical reason that was more open and adaptable to a variety of situations.

With the growing and rapid change in the 15th and 16th centuries, each case became a site of inductive reasoning that sought to generate common principles rather than apply general principles to specific cases. As James Keenan describes, “High casuistry looks to comparative,

¹² Jonsen and Toulmin, 144.

inductive reasoning, addresses a dilemma, invokes analogies, examines circumstances, resolves doubt, examines the intentionality of personal agents, and gives its solution. In short it makes its case.”¹³ In the instance of moral argument, cases are made for the probable solution rather than a certain solution derived from necessity. This probability in the case of moral decision making became a subspecies of casuistry called probabilism. Probabilism took root in Spain during the 16th century and was prevalent in Hispanic casuistry even in the Americas. According to Spanish casuistry,

Probabilism, according to which, given doubts about the best among a range of moral choices, it was permitted to adopt a “less probable” course of action, provided there was at least some basis for thinking it justified.

Not all casuists were probabilists but a probabilistic casuistry was the most adaptable to different professions, social classes, and political circumstances.¹⁴

The high degree of change allowed one to have a multiplicity of valid options when one encountered a moral dilemma. Rather than having stark boundaries of right and wrong, a probable solution was licit. The probabilism of Spanish casuists was made explicit by the maxim of Bartolome Medina, of the school of Salamanca, “It seems to me that, if an opinion is probable, it is licit to follow it, even though the opposite opinion is more probabilism.”¹⁵ Moral decisions

¹³ James F. Keenan “Moral Discernment in History.” *Theological Studies* 79, no. 3 (September 2018): 676.

¹⁴ William Childers, “Hispanic Casuistry Studies: Room to Grow.” *Hispanic Review* 79, no. 2 (April 17, 2011): 318.

¹⁵ Bartolomeo Medina, *Expositio in Summae Theologiae Partem I-II*, q 19, a. 6.

are rooted in ambiguity and requires a type of ethical analysis that understands a multiplicity of options utilizing moral wisdom and experience to discern a correct course of action.

Among Spanish Catholic clergy and the new Jesuit order of the 16th century, casuistry became the norm for moral formation. Because of the wide variety of vocations among the Jesuits including being sent on papal delegations, teaching at universities, advising princes and kings, and foreign missions, casuistry became the moral framework that was standard in Jesuit training because of its adaptability to a variety of situations. Because of their added emphasis on scholarship and action over contemplation, involvement over withdrawal, “they were forced to acknowledge the genuine problems of practical decisions faced by agents in complex circumstances involving conflicts of principle.”¹⁶ Not only were the Jesuits forced to engage in probabilism and casuistry because of the station of their mission, but their emphasis on the two were a result of contesting newfound skepticisms of the 16th century. Through the carefully argued moral guidance in the context of complex commitments and situations, both casuistry and probabilism, were an answer to increased skepticism that came as a result of turbulent change. Because of the increased change in culture, religion, politics, and economics, casuistry followed a particular pattern that taught a multiplicity of options in moral decisions. Its methodology, much like lived experience, sought to include a variety of changing circumstances.

Casuistry first sought to establish a paradigmatic case in which one would be able to draw out a general principle or maxim. An example of such a paradigmatic case would be a case of theft by deceptive banking practice. The general maxim would be that things stolen should be returned to the original owner. Such principles and maxims were only derived in so far as the paradigmatic case remained a generality. Next, the paradigmatic case would receive more layers

¹⁶ Jonsen and Toulmin, 149.

and progress in difficulty by adding different circumstances. An example of a layered circumstance would be a case where making restitution would bring the family of the offender to the point of starvation. Thus, one would perhaps make a condition of the restitution to allow just enough to be retained to keep that person's family fed. Yet, the condition of restitution would not be a *certain* and *necessary* outcome of such a circumstance and thus the concept of probability would be added to the understanding of the rightness or wrongness of a situation. Restituting property to a family at the cost of another family probably isn't the best solution. But, once again, such a decision depends on the cumulative circumstances surrounding any given case. Is the family that has been wronged wealthy enough to spare such restitution? Is the restitution of the property necessary for the safety and wellbeing of the wronged family? The cumulative arguments and circumstances require considering not only the specific conditions of a case but also personal, cultural, and social narratives at play. What was the social condition in which the person in question felt the need to engage in a deceptive business practice? Was such a practice necessary to feed a family at the point of starvation? These are the questions that casuistic reason seeks to answer with an acknowledged degree of uncertainty and probability.

Because of the multiplicity of circumstances, reasonings, narratives, high casuistry was accused of moral laxity and negative equivocation. Casuistry's main opponent was the Jansenist and moral rigorist, Blaise Pascal, who attacked the casuistry of the Jesuits. Pascal believed the Jesuits allowed a moral laxity. As such, "Pascal upbraided the Jesuits for catering to the intellectual and moral weakness of their powerful and wealthy clients."¹⁷ For Pascal, "casuistry was the denial of true morality."¹⁸ Pascal wanted ethics to be raised from the ambiguity of

¹⁷ Jonsen and Toulmin, 148.

¹⁸ Jonsen and Toulmin, 241.

probability and brought to the certainty of scientific reasoning. Based on Pascal's wager, Baudin writes about Pascal's position that, "What is, in any case of doubt, the absolutely certain choice to procure peace of soul, salvation and the truth that guarantees these? The response to this question never varies: opt for the unconditioned obligation of the revealed law of God."¹⁹ For Pascal, it is better to rely on the potentially certain solution over an ambiguous one. Yet, Pascal's critique of casuistry in his *Provincial Letters* was based on removing casuistry from the context of its reasoning. As Jonsen and Toulmin write about Pascal's argument,

Casuistry, as an exercise in practical reasoning, involved a tissue of distinctions, qualifications, and exceptions; and when the resolution of a moral problem was torn away from this fabric of reasoning it could easily be made to look ridiculous. Considered within that fabric, which was intended as a representation of the complexities of real life, it will appear much more plausible.²⁰

Pascal's removing casuistic reasoning from the narrational context from which it developed was the very transgression that casuistry sought to redress. By taking casuistry out of its context as a method, Pascal presented casuistic reasoning as trying to do something it never intended to do, be a set of principles. Casuistry, rather than being a moral theory-based was always a type of practical reasoning that was rooted in acknowledging the contingency of all moral situations rooted in a variety of narratives.

¹⁹ E. Baudin, *Études Historiques et critiques sur la Philosophie de Pascal*, Vol. III, *Sa critique de la Casuistique et du probabilisme morale* (Neuchatel, 1947), 132.

²⁰ Jonsen and Toulmin, 244.

Pascal's temptation to take casuistry out of its context is a temptation that occurs in contemporary conversations about casuistry as well. Stanley Hauerwas critiques Albert Jonsen and Stephen Toulmin's important work, *The Abuse of Casuistry*, from which we draw heavily, of taking casuistry out of its explicitly Christian narrative. Jonsen and Toulmin's work placed casuistry in contrast to programs that sought to make ethical reasoning akin to scientific reasoning by applying general principles to particular cases (e.g., Kantian, Utilitarian, and Contractarian). However, Hauerwas argues, "the problem is not, as Jonsen would have it, that philosophers have tried to do ethics on the model of scientific detachment, but rather they have tried to do ethics free from any concrete tradition and corresponding moral practices. In order to accomplish this, they have sought to reduce morality to a few basic moral principles that are allegedly constitutive of rationality qua rationality."²¹ In other words, Hauerwas believes that the problem with Jonsen and Toulmin's assessment about the state of moral deliberation is that they undervalue the role of narrative traditions in casuistic reasoning.

For Hauerwas, casuistry must be rooted in particular narratives before they develop general principles to apply to specific situations. For Hauerwas, "No doubt some of our moral notions and decisions involve some deductions from generally stated principles, but I suspect that such an account fails to do justice to the interrelation between stories that form our lives and the prohibitions and positive commitments we think correlative of those stories. What must be seen is that the virtues and the rules of constituting a morality are community dependent."²²

²¹ Stanley Hauerwas, "Casuistry in Context: The Need for Tradition." In *In Good Company: The Church as Polis*, (Notre Dame, Indiana: University of Notre Dame Press, 1995), 171.

²² Stanley Hauerwas, "Casuistry as a Narrative Art." *Interpretation* 37, no. 4 (October 1983): 379.

Hauerwas, rather than seeing moral dilemmas as primarily acontextual into which casuistry adds more context and more circumstance, sees ethics as already rooted in narrative contexts that bring about normative identities. Hauerwas famously argues that ethics is more about who we are than what we do.²³ For Christians specifically, “the nature of Christian ethics is determined by the fact that Christian convictions take the form of a story, or perhaps better, a set of stories that constitutes a tradition, which in turn creates and forms a community.”²⁴ For Hauerwas, story gives rise to ethical commitments rather than general principles being applied to a multiplicity of stories.

Casuistry takes on a different inflection for Hauerwas. Rather than casuistry being rooted in practical reason with specific ends, Hauerwas believes that stories are what brings about ends in which practical reason acts. Thus, casuistry is a way in which Hauerwas believes we test our narrative commitments. Hauerwas states,

From this perspective casuistry is not simply the attempt to adjudicate difficult cases of conscience within a system of moral principles, but it is the form that a tradition must use to test its own commitments. For in fact a tradition often does not understand the implications of its basic convictions. Those implications become apparent only through the day-to-day living of a people pledged to embody that narrative within their own lives.²⁵

²³ “Thus, questions of what we ought to be necessary are background for questions of what we ought to do”, Stanley Hauerwas, *The Peaceable Kingdom: A Primer in Christian Ethics*. (Notre Dame, IN: Notre Dame University Press, 1983), 21.

²⁴ Hauerwas, *The Peaceable Kingdom*, 25.

²⁵ Hauerwas, “Casuistry as a Narrative Art”, 380.

For Christians, casuistry is a way in which one tests their commitments to the story of God within a particular community. Casuistry asks: how faithful are Christians to their own stories? Rather than applying ethical principles to narratives, narratives give rise to ethical principles and are tested by casuistic reasoning.

Hauerwas' emphasis on narrative, I believe, is correct. However, Hauerwas often frames his discussions as if Christianity itself has a coherent and monolithic set of beliefs and narratives. For Hauerwas, these monolithic projections of Christianity are often latently equated with an Euroamerican understanding of Christianity. This assumption of a Euroamerican frame of Christianity is why Hauerwas makes statements such as, "I am in fact challenging the very idea that Christian social ethics is primarily an attempt to make the world more peaceable or just."²⁶ Miguel de La Torre rightly critiques Hauerwas' attack on a Christianity that works for justice stating, "all marginalized groups, not just us resident aliens, need to be very concerned, for this is a church whose actions have historically accommodated and justified every immoral form of human exploitation, from massacres to war, from slavery to colonialism."²⁷ Christianity, or the Church, is not only a collection of narratives about Jesus, but is also narratives in which Jesus is used to exploit marginalized groups and is also made up of the narratives of these marginalized groups. Casuistry, then, cannot be simply a testing of the Christian story against itself. If Christianity is not a monolithic story but is made up of a multiplicity of stories (for good or bad), then how can casuistry test itself against multiple and often contradicting stories. Thus, I argue that casuistry is not the application of general principles to a particular narrative or that casuistry

²⁶ Hauerwas, *The Peaceable Kingdom*, 99

²⁷ Wilson-Hartgrove, Jonathan, Brian D McLaren, Willie James Jennings, Jennifer M McBride, Miguel A De La Torre, Gary J Dorrien, James K A Smith, et al. "State of the Colony: Resident Aliens at 25." *The Christian Century* 131, no. 20 (October 1, 2014): 25.

is the testing of a narrative against itself in which a single narrative has already created ethical commitments. Rather, casuistry, in relation to narrative, is the way one reasons through a multiplicity of continually fluctuating and interrelating narratives.

Acknowledging a multiplicity of narratives and their interconnectivity between them is an essential aspect of Latinx social ethics. Stories, or *cuentos*, often form and shape Latinx ethical commitments. Narrative is an important aspect for Latinx theological ethics because Latinx theological ethics itself is, “simultaneously a narrative of liberation (of oppressed and marginalized Hispanic persons in the United States) and one of resistance to the brute forces of assimilation and the erasure of difference that tend to dominate in U.S. culture.”²⁸ The forces of assimilation and erasure are what operate latently in Hauerwas’ critique of social justice. Hauerwas is selective of his narrative and thus perpetuates the narrative of erasure of the Latinx community and God’s salvific story within it. As Natalia Imperatori-Lee eloquently argues, “narratives are indeed *más que cuentos*—beyond fantasy or story, or poetry or thick description, because they have the power to present reality and daily life, which for Latinx theology has always been a primary arena of God’s salvific activity.”²⁹ Latinx narratives provide the framework in which ethical commitments are discerned and developed. Rather than seeing an ethical commitment or principle as derived from a single, monolithic narrative, these intersecting narratives themselves is the process in which ethical commitments or principles come to be. This creates an active rather than passive process of moral discernment. The narratives, or *cuentos*, themselves create ethical commitments and ethical principles.

²⁸ Natalia Imperatori-Lee, *Cuéntame: Narrative in the Ecclesial Present*. (Maryknoll, NY: Orbis Books, 2018), 18.

²⁹ Imperatori-Lee, 31.

Cuentos as a Source of Ethical Reflection

Cuentos, sometimes translated narrative, stories, or witnesses, are cultural stories operative in Latinx social ethics. These stories occur in a variety of levels including personal and interpersonal stories, cultural stories, and communal stories that operate behind and within personal and cultural stories. These stories can be stories of oppression or resistance and often are a mixture (*mestizaje*) of both. Of particular importance are the stories of Hispanic and Latinx women. Because Hispanic women have faced the brunt of oppression on multiple fronts (race, gender, class, and sexual orientation), their stories highlight the way that cultural and communal stories either help or hinder Latina moral agency and reflect Latinx moral agency as a whole.

Interpersonal Narratives

The stories that affect Latina and Hispanic women are the stories that emphasize not only the cultural and communal, but the interpersonal stories of the everyday struggle for survival. Latina feminist and *mujerista* theologians often shape their narratives within the framework of struggle (*la lucha*) and the everyday (*Lo Cotidiano*). For Isasi-Díaz, “*La Lucha* and not suffering is central to Hispanic women’s self-understanding.”³⁰ She argues that despite seeing how Hispanic women, “manage to live in the midst of such arduous, demanding, rough, and trying reality, in the midst of great suffering” that she refuses to romanticize the suffering of these Hispanic women.³¹ Rather, for Isasi-Díaz, the ability to put on a *fiesta* or to find joy in the midst of great suffering is central to narratives of Latinas and Hispanic women. The struggle in the midst of

³⁰ Isasi-Díaz, *Mujerista Theology*, 130.

³¹ Isasi-Díaz, *Mujerista Theology*, 129-130.

suffering is essential to the narrative quest and moral contour of the Latinx quest for the good life. For Isasi-Díaz, and for many *mujerista* and Latina feminist theologians, “la vida buena, es la que se goza.”³² For Isasi-Díaz, “The good life does not ignore suffering. It struggles to go beyond it, to evade it.”³³ The quest for the good life is not one that is rooted in Socratic contemplation, rather, facing the harsh realities of life, *Mujerista* and Latina feminist theologians illustrate that the good life is one that struggles and finds joy in the everyday.

Essential to *La Lucha* of *Mujerista* and Latina feminist theologians is the concept of *lo cotidiano*, the everyday. The struggle for the good life is not one that is vested in abstract constructions of suffering. In fact, the abstraction of suffering leads to concepts of salvific suffering that values suffering itself without regard to the person who is suffering. Struggle against suffering and oppression happen in the everyday lives of the Latinx community. *Lo cotidiano*, in addition to being a category developed by feminist critical theory, “has always been present in Latino/a cultures as a way of designating the whole of doing and thinking of our people in their daily and recurring routine.”³⁴ Developed as a way to expose patriarchal and hierarchical dynamics in the discourses of ideological totalitarianism, *lo cotidiano* functions as a way to critique social models that ignore the reality of everyday people in ways that sublimate individual struggles under umbrella meta-discourses.³⁵ The importance of employing a hermeneutic of valuing daily life is that it broadens the conception of what it means to live a

³² Isasi-Díaz, *Mujerista Theology*, 130. “The good life is one that enjoys”

³³ Isasi-Díaz, *Mujerista Theology*, 130.

³⁴ Maria Pilar Aquino, “Theological Method”, 38.

³⁵ Maria Pilar Aquino, “Theological Method”, 38.

good life. The good life is not one that is reserved for patriarchal male contemplation, but one that, “can be continually supported by the whole of society. That is, a life where people may everyday enjoy a greater and better quality of life--a life worth living.”³⁶ By adopting a hermeneutic of *lo cotidiano*, ethical expression is one that is induced from the real lives of the Latinx community as opposed to principle-based deductions coming from an ethical hierarchy. For Hispanic women, *lo cotidiano*, “adds to the perspective ‘from below’ the consideration of ‘from within’, and ‘of our own selves’ in such a way that considers how Latinas, “consider action, discourse, norms, established social roles...”³⁷ This hermeneutic from below places the emphasis on the grassroot lives of Hispanic women and of the daily lives of the Latinx community as a whole. By placing the locus of the ethical narrative on the grass root lives of Hispanic women, Isasi-Díaz suggests mujerista theologians liberate, “not as an individual but as a member of a Hispanic community.”³⁸ Thus, by fighting for the agency of Hispanic women, Isasi-Díaz uses their individual narratives to bring about principles that are applicable to the Latinx community as a whole in its quest for authentic and tangible liberation.

Isasi-Díaz is able to work to understand the agency of Hispanic women through employing a methodology of ethnography and meta-ethnography. Isasi-Díaz employs these methods because of the qualitative rewards of “sustained interaction of the people being studied” and the importance of being part of the community from which a mujerista theology is being developed.³⁹ Not only does the ethnographic sustained interaction with the community bring

³⁶ Maria Pilar Aquino, “Theological Method”, 39.

³⁷ Isasi-Díaz, *Mujerista Theology*, 130.

³⁸ Isasi-Díaz, *En La Lucha*, 23.

³⁹ Isasi-Díaz, *En La Lucha*, 83-84.

about a theology derived from that community, but by the interaction of a variety of stories and narratives one is able to bring about a, “knowledge synthesis” which is both “inductive and interpretive”, invoking an emic approach to synthesis. The emic approach Isasi-Díaz engages involves bringing about a system of thought from within the framework of Hispanic women and applying it to ethical frameworks rather than applying principles to each of their individual stories. This is a matter of hermeneutic exegesis vs eisegesis of moral agency. As Isasi-Díaz states, “The purpose of this knowledge synthesis is not to establish norms and values--though they may be deduced quite easily--but to elucidate the self-understanding of Latinas in order to contribute to the enhancement of their moral agency.”⁴⁰ Rather than taking generalized moral principles or specific moral precepts and applying them to moral and ethical situations Hispanic women face, the narratives themselves dictate the terms of ethical discussion. By applying ethnography and meta-ethnography, Isasi-Díaz, is placing the lived experience of Hispanic women as the locus of ethical thought. Isasi-Díaz does this by conducting ethnographic interviews with grassroots Hispanic women to engage in ethical thought.

Isasi-Díaz interviewed nine Latinas from varying cultural and economic backgrounds asking them a variety of questions in order to get a spectrum of narratives and understandings of Hispanic women’s decision-making process. Isasi-Díaz had five reasons for interviewing Latinas for her work on Hispanic women’s moral agency. The first is to enhance the moral agency of Latinas by, “helping them to grasp how they are self-defining as they struggle to survive and to be liberated.”⁴¹ Next, for Isasi-Díaz, interviewing these nine Latinas provided a richness of

⁴⁰ Isasi-Díaz, *En La Lucha*, 105.

⁴¹ Isasi-Díaz, *En La Lucha*, 104.

testimony and experiences, their testimony filled a theological vacuum absent from theological studies at the time, they illustrated religion as a vivifying element in Latino culture, and they illustrated the pluriform understanding of Latinas practices, motivations, and moods.⁴² In focusing on the narratives of these women, Isasi-Díaz filled a void that has been desperately lacking in Roman Catholic ethical reflection, the actual historical and politically situated lives of those who engage in moral decision making. Because most moral theology is done from a principle-based approach, the use of the ethnographic interview provides a frame in which actual people engage the ethical task.

One of the first questions that Isasi-Díaz asked was what, “what should a mother do who has no money to feed her child?”⁴³ The nine interviewers give a variety of answers but ultimately, after exhausting all of their options, almost all of the women said that they would be willing to steal to feed her child. Their responses are an illustration of natural law moral reasoning from inductive casuistry rather than through applying specific moral precepts to a given situation. In fact, their answers follow the same line of thinking of Aquinas who suggests in his *Summa* that, “In cases of need all things are common property, so that there would seem to be no sin in taking another's property, for need has made it common.”⁴⁴ For Aquinas, human law does not invalidate natural law and since the division of goods is a movement of human law and the supplying of a person’s needs is governed by natural law, it is thus lawful to take another’s property in the case of need. Without engaging in such a type of syllogistic reasoning these

⁴² Isasi-Díaz, *En La Lucha*, 105

⁴³ Isasi-Díaz, *En La Lucha*, 111.

⁴⁴ Thomas Aquinas, *ST II-II* q. 66. Art 7.

Hispanic women worked through what Díaz calls the generative theme of “binomial survival-liberation.”⁴⁵ These women interviewed by Isasi-Díaz did not find it a moral dilemma to steal to feed their child. In fact, they intuit the first inclination of natural law that life is so important, that there will always be someone to help the mother of a hungry child.⁴⁶ Simply by looking from within their everyday lives, these women engaged in natural law moral reasoning. By attuning to their specific stories, these Hispanic women were aware that their reflections, “happen within a certain context, a given social reality constituted by a historical-political situation, economics, religious cultural background and personal decisions.”⁴⁷ For Isasi-Díaz, “Their telling of their stories shows how their struggle to survive includes praxis, reflective action.”⁴⁸ Isasi-Díaz’s emphasis on the interpersonal stories of nine Latina women illustrates that their stories, their lives, and their personal decisions are the central locus of ethical praxis.

Isasi-Díaz frames their answers in the language of self-definition and conscience. She contrasts this with the ecclesial understanding of conscience which has been used, “knowingly, or unknowingly as an instrument of control and domination.”⁴⁹ Isasi-Díaz critiques the increasing emphasis on the Roman Catholic magisterium as the arbiter of conscience. For Isasi-Díaz, such an increasing control of the magisterium in moral matters, “worries *mujerista* theologians because of recent blatant attempts by the Roman Curia to stifle opinions and

⁴⁵ Isasi-Díaz, *En La Lucha*, 162.

⁴⁶ Isasi-Díaz, *En La Lucha*, 162.

⁴⁷ Isasi-Díaz, *En La Lucha*, 133.

⁴⁸ Isasi-Díaz, *En La Lucha*, 133.

⁴⁹ Isasi-Díaz, *En La Lucha*, 104.

understandings in the church to the point of threatening primacy of conscience (that is, threatening to subordinate conscience to obedience to Rome in ethical matters as well as in matters of Church discipline.”⁵⁰ She argues that such an understanding of conscience that is subordinated to the Catholic Church, “disempowers Hispanic women in our attempt to strengthen our moral agency, an essential component in our struggle for liberation.”⁵¹ In the continual grasp on conscience by the Church’s magisterium, Isasi-Díaz argues that the magisterium is enacting an authoritarian framework of conscience that sets up the privileged clergy against the laity who are under the authority of the magisterium.

In establishing such a framework, the major sin is dissent or disobedience, even when such dissent is a matter of one’s own individual conscience. For many in the Latinx community, given the social realities that one must face in the course of the struggle, there may be situations in which following some of the Church’s teachings may be against one’s conscience.⁵² Within the context of the everyday struggles, deontological ethics that form binding principles such as, ‘do not steal,’ would force those who look to feed their family in a time of extreme scarcity to act against their conscience. Following Isasi-Díaz’ line of thought, then, such a principle that comes at the cost of feeding one’s family forces those who are in that marginalized position to go against their conscience. Thus, “An awareness that we are repeatedly obliged, for whatever reason, to act against something as central as our conscience contributes greatly to the sense of

⁵⁰ Isasi-Díaz, *En La Lucha*, 151.

⁵¹ Isasi-Díaz, *En La Lucha*, 151.

⁵² Here I am mainly referring to reproductive ethics and birth control in so far as poverty severely limits the economic viability of having large families.

being oppressed.”⁵³ Such a sense of oppression comes as a result of a double bind. That is to follow ethical principles without regard to context is a privilege of those who are not marginalized.

By highlighting the perspectives of grassroots Hispanic women, Isasi-Díaz moves the understanding of conscience to conscientization. Ethical paradigms that focus on authoritarian structures of conscience and that do not attune to the everyday struggles of the Latinx community and in particular, Latinas, perpetuate the marginalization of the Latinx community. Rather than frame conscience as an adherence to an authority or a set of moral precepts, Isasi-Díaz frames conscience as making moral persons. Isasi-Díaz states

“One of the important consequences of focusing on the person as agent instead of on conscience as an isolated part of the individual is that ethical considerations are not confined just to decision making but rather focus on the ‘self who continues from decision through decision and who actually affirms and create one’s moral self in and through those decisions.’ conscience, then, should not be understood as a faculty or power but instead should be identified with the ‘moral consciousness’ of the person.”⁵⁴

The ethnographic interviews conducted by Isasi-Díaz illustrate that within the everyday struggle of Hispanic women, moral decision making is rooted in the actual everyday lives and moral identity of these women themselves in contradiction to authoritarian conscience or hierarchically

⁵³ Isasi-Díaz, *En La Lucha*, 151.

⁵⁴ Isasi-Díaz, *En La Lucha*, 160.

ordered principles. In fact, for Isasi-Díaz, “These women found it difficult to deal with the ‘process’ because they see and understand it within a much broader scope of what constitutes the fiber of their moral being.”⁵⁵ For these women, “They quite appropriately resisted dissecting their experiences in order to identify the process of decision making” because “their common sense, formed within the Latino Cultural Ethos and sharpened by their struggle for survival, provides them the moral wisdom they need in their everyday lives.”⁵⁶ Their everyday lives (*lo cotidiano*) and narratives form and shape the locus of moral reasoning.

Cultural Narratives

The interpersonal narratives of the Latinx community are often shaped and formed through the cultural narratives that are emic to the Latinx community as a whole. Cultural narratives provide frameworks for shared meaning, group identity, and form a locus of ethical reflection. Culture is often an ambiguous term and it is necessary first to define culture and negotiate a particular view from within cultural studies for us to begin our ethical reflection on Latinx cultural narratives.

Robert Schreiter provides several frameworks in which scholars approach the subject of culture. The first is the functionalist approach which is concerned with, “how the various aspects of society are constituted and interrelated to form a cultural whole.”⁵⁷ Schreiter argues that many scholars of the functional approach to culture focus on method over theory and are primarily concerned with the categorization of empirical data. Similar to the functional approach are the

⁵⁵ Isasi-Díaz, *En La Lucha*, 133.

⁵⁶ Isasi-Díaz, *En La Lucha*, 133.

⁵⁷ Robert Schreiter, *Constructing Local Theologies*. (Maryknoll, NY: Orbis Books, 1985), 46.

ecological and materialist approaches to culture which focus on the relationship between society and its environment and how, “how the realities of the physical environment...shape and direct the cognitive dimension of culture.”⁵⁸ Taking a more psychological bend toward culture, structuralist studies of culture seek to understand the latent structures that form patterns and networks of systems that establish cultural frameworks. Schreiter relies most heavily on the semiotic understanding of culture most famously delineated by Clifford Geertz. Geertz primarily understood cultures within a framework of sign systems that interact and mutually define each other. Schreiter gives several reasons why he opts to work within a semiotic construction of culture including its interdisciplinary approach, how culture constitutes identity within the culture and the individuals within it, and provides strong patterns of change. The main benefit of adopting a semiotic analysis of culture is that it provides a way of “sorting out structures of significance...and determining their social ground and import.”⁵⁹ For Geertz and Schreiter, culture provides a system of structure and meaning in which one forms group and personal identity.

Following Geertz, Massingale provides a useful definition of culture. For Massingale, “Culture thus denotes a system of meanings and values, expressed in symbolic form, that conveys and expresses a people’s understanding of life. Culture is the set of attitudes toward life, beliefs about reality, and assumptions about the universe shared by a human group.”⁶⁰

⁵⁸ Schreiter, *Constructing Local Theologies*, 47.

⁵⁹ Clifford Geertz, “Thick Description: Towards an Interpretive Theory of Culture,” in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 9. As quoted by Schreiter, *Constructing Local Theologies*, 56.

⁶⁰ Bryan Massingale. *Racial Justice and the Catholic Church*. (Maryknoll, NY: Orbis Books, 2010), 16.

Massingale provides five observations about culture. Cultures, for Massingale, are shared group realities, learned communal beliefs, identity forming and are expressed symbolically. The symbolic expression of culture adds a layer to which culture is not just some outward expression of rituals that can be measured empirically, rather culture is internalized and constitutive of identity. Massingale states “...culture, at its core, is something internal. It is a people’s soul, a set of meanings and values that is an individual’s and social group’s identity. It is the frame of reference through which they interpret life. Culture shapes consciousness.”⁶¹ Cultural shapes worldview and as we will later argue worldviews are the grounds through which ethical reflections are located.

Culture, however, is not *a priori*, but is constructed through human enterprise. Orlando Espín has suggested that culture is the result of mutually imbricating shared meaningfulness and humanness.⁶² Espín states, “We are human because we have constructed the meaningfulness of our being human.”⁶³ Because of the contingency and constructedness of culture, for Espín, and for us, it is important to resist the constructions of cultural supremacy that imposes its values on others. For Espín,

This allows us to affirm furthermore that, no human culture and no historical configuration of culture (*because* these are human constructs and *because* they are results of culture’s internal struggles over hegemony and dominance) is ever absolute, permanent, exclusively good,

⁶¹ Massingale. *Racial Justice and the Catholic Church*, 18.

⁶² Orlando Espín, *Idol and Grace: On Traditioning and Subversive Hope*. (Maryknoll, NY: Orbis, 2014), 45.

⁶³ Espín, *Idol and Grace*, 45.

sinless, necessary or superior: cultures cannot be turned into idols,
although humankind seems to have this inclination.⁶⁴

The idealization and idolization of some cultures over others indicates that culture is not just a human construct that provides a framework of meaning solely connatural to human existence, but that culture is also political.

Leticia Guardiola-Sáenz, in constructing Mexican-American identities, illustrates that culture and cultural studies are not neutral enterprises. Rather, “it is a practice committed to social reconstruction by critical political involvement, exposing power relationships and the ways they influence and shape cultural practices. In that sense, culture is analyzed within its social political context in order to understand and change the structures of dominance.”⁶⁵ The structures of dominance have been defined as cultural hegemony, in which, dominance is established through cultural and societal means. Thus, culture is not a neutral observation but is a sight of contestation and resistance. As Guardiola-Sáenz argues, “culture as the terrain where meaning is incorporated or resisted becomes the battlefield where hegemony is won or lost.”⁶⁶ Thus, culture and its relation to the construction of identity is never monolithic or absolutized but rather is in constant negotiation between persons in power and the marginalized. What is at stake in this negotiation is the right to identify oneself and one’s community rather than be defined by others. Culture is a contestation of communal narratives.

⁶⁴ Espín, *Idol, and Grace*, 46.

⁶⁵ Leticia A. Guardiola-Sáenz, “Reading form Ourselves: Identity and Hermeneutics Among Mexican-American Feminists” in *A Reader in Latina Feminist Theology: Religion and Justice*. eds. Maria Pilar Aquino, Daisy Machado, and Jeanette Rodriguez. (Austin, TX: University of Texas Press, 2002), 86.

⁶⁶ Guardiola-Sáenz, “Reading form Ourselves” 85.

I argue that culture is the system of narratives that construct social imaginaries that give contour to social identities. The ability to determine one's narrative is key to establishing and maintaining moral agency. While Isasi-Díaz sought to preserve and enhance moral agencies through the telling of personal stories, another front for the preservation of moral agency must occur on the cultural and communal stories being told about the Latinx community and from the Latinx community. Through the establishment of social imaginaries through the use of cultural *cuentos*, one will be able to understand the ethical task as more than individual moral decision-making, but as a communal task of moral discernment in which one is able to construct resisting narratives.

Charles Taylor has elaborated on the function of social imaginaries. Rather than social imaginaries being a conscious worldview, they function as the implicit narratives that structure beliefs about the world. A social imaginary, for Taylor, is more about establishing the way people use, "images, stories, legends, etc." in order to establish how people, "imagine their social existence".⁶⁷ These stories (*cuentos*), legends, and images do not function as a cognitive choice but rather, "It concerns our precognitive pre-thematic grasp of the world and the ways this grasp orients how we perceive the world around us and our place in it."⁶⁸ As such, these stories, legends, and images are a result of culture rather than rational choice; these stories form the grounds from which all people enact their choices, in particular moral choices.

⁶⁷ For a good summary on Taylor's understanding of social imaginaries see Charles Taylor, *Modern Social Imaginaries* (Durham, N.C.: Duke University Press, 2004) and Robert A. Kelly's, "Public Theology and the Modern Social Imaginary." *Dialog* 50, no. 2 (Sum 2011): 162–73.

⁶⁸ Nancy, Pineda-Madrid, *Suffering and Salvation in Ciudad Juárez*. (Minneapolis, MN: Fortress Press, 2011), 40.

Nancy Pineda-Madrid draws on Taylor's understanding of social imaginaries to frame her discussion of femicide in Ciudad Juárez. For Pineda-Madrid, social imaginaries not only configure worldviews they also instill them with moral order. Pineda-Madrid believes a social imaginary is, "the given conception of moral order" and that it "assigns particular characteristics of the world and to divine action within it such that a given set of moral norms appears right, merits our pursuit and is at least partially realizable."⁶⁹ A social imaginary does not only construct a worldview, but constructs a moral order that undergirds moral decisions that constitute worldviews. While Pineda-Madrid adopts Taylor's worldview, she does not believe that Taylor accurately addresses the problem of false worldviews that construct violent realities. Pineda-Madrid argues, "While he does recognize the significance of people imagining their social existence and the precognitive dynamic of social imaginaries, he does not help us much beyond an initial discussion, to understand well and grapple effectively with the presence of false consciousness and distortion."⁷⁰ Such distortions and false consciousnesses have been used to justify worldviews and moral orders that enable violence towards women and have framed the violence against Latin American women in Mexico and Latinas in the Southwest.

Pineda-Madrid draws on the interpersonal stories of women who have faced violence in Juárez and families who have suffered as a result of femicide to illustrate that these acts of violence are a result of violent social imaginaries. Pineda-Madrid argues that Taylor's understanding of social imaginaries, "may be extended to suggest that a society in which femicide not only emerges but also endures has become subject to a manipulation of its

⁶⁹ Nancy Pineda-Madrid, *Suffering and Salvation*, 41.

⁷⁰ Nancy Pineda-Madrid, *Suffering and Salvation*, 43.

‘images, stories, and legends’ so that they forge a ‘moral order’ that implies that violence against women is just this side of ‘tolerable’.”⁷¹ The interplay between these violent social imaginaries and the interpersonal suffering that Latin American and Latinx women face is what Pineda-Madrid calls a social-suffering hermeneutic. A social suffering hermeneutic does not name suffering solely as interpersonal stories nor does it discuss suffering in detached and abstract terms, but a social suffering hermeneutic, “attends to societal problems and personal suffering” in which it gives, “attention to consequential personal suffering foregrounding particular experience of victims” while also keeping, “the macro level of analysis from becoming merely an abstraction.”⁷² This interplay of personal suffering and social analysis is at the root of “reading” the experiences of the suffering of the Latinx community.

For Pineda-Madrid, there are several images and stories that are operative of the oppression of Latin American women and Latinx communities on the border of Ciudad Juárez and El Paso. These cultural stories that construct the “social symbolic representation” of violence against women are the narratives of Guadalupe/La Malinche, La Llorona, and Coyolxauhqui. These stories form the cultural backdrop that form the social imaginaries that create worldviews that tolerate violence against women.

The narratives of the cultural heroes of Our Lady of Guadalupe and La Malinche form a cultural binary that codifies ideologies about the roles of Latina women. The emphasis on Guadalupe can establish the ideology of “*marianismo*” which, “idealizes suffering as integral to what it means to be a woman.”⁷³ By emphasizing in the story of Mary aspects of, ‘self-sacrifice’,

⁷¹ Pineda-Madrid, *Suffering and Salvation*, 42.

⁷² Pineda-Madrid, *Suffering and Salvation*, 36.

⁷³ Pineda-Madrid, *Suffering and Salvation*, 49.

‘self-effacement’ and ‘self-subordination’ as a model for all women, Pineda-Madrid argues, “cultivates in women a stance of passivity and endurance in the face of suffering.”⁷⁴ On the other hand, women who stand up for themselves, take care of themselves, and stand up against cultural norms are, “dubbed ‘traitors or ‘malinches.’” The narrative of La Malinche, is based off of the indigenous Mexican woman Malintzín Tenepal who served as Cortez’s translator in the conquest of Mexico. Malintzín was dubbed a traitor and, “serves as the sacrificial victim in the Mexican national consciousness and begins to be seen as a scapegoat of her people.”⁷⁵ Because Malintzín did what she needed to do for her own survival, she was dubbed a traitor. Thus, Hispanic women are caught in a double bind; if they patiently endure suffering their narratives are scripted through the ideology of *marianismo*. If Hispanic women resist their suffering, they are dubbed Malinches and traitors. The social imaginary of the binary of Guadalupe/La Malinche serves to, “keep Latina agency and behavior tightly circumscribed particularly in the midst of significant personal suffering.”⁷⁶ These social imaginaries work to severely limit Latinas moral agency and operate to categorize the suffering of Latinas as a given within a patriarchal Anglo-dominated worldview.

The narratives of La Llorona and Coyolxauhqui function similarly to justify Latina’s social oppression. La Llorona is a woman in a Mexican folk tale whose children were killed or who went mad and killed her two children. La Llorona was destined to roam the earth in agony

⁷⁴ Pineda-Madrid, *Suffering and Salvation*, 49.

⁷⁵ Pineda-Madrid, *Suffering and Salvation*, 48.

⁷⁶ Pineda-Madrid, *Suffering and Salvation*, 50.

for the loss of her children.⁷⁷ According to Pineda-Madrid, La Llorona is representative of the fact that Latina women are expected to live a life of suffering. According to Octavio Paz, in a patriarchal worldview, La Llorona represents, “*la chingada*” (the fucked one). To be “chingada” or a *hijo de la chingada* is to take on a posture of negativity, to be screwed, to have no way out.⁷⁸ Thus, the narrative of La Llorona has been used to suggest that the natural state of Latina women is to be screwed, betrayed, to suffer. Thus, for Pineda-Madrid, “the patriarchal context in which many Latinas find themselves must be destroyed at its root lest women be continually relegated to a ‘long-suffering’ life as central to the female condition.”⁷⁹ La Llorona functions as a mythic representation that justifies women’s suffering.

Coyolxauhqui, the moon goddess in the Nahuatl creation myth functions similarly to La Llorona as a representation of female suffering. In the Nahuatl creation myth, the mother goddess Coatlicue wished to have another child, Huitzilopochtli. Coyolxauhqui who was a child of Coatlicue viewed such a pregnancy as dishonoring her and her four hundred brothers. Coyolxauhqui plotted to kill her mother. Yet, as she attacked, Huitzilopochtli was born and killed Coyolxauhqui and her brothers. This myth goes on to illustrate, “the daily supremacy of the sun (Huitzilopochtli), which utterly obliterates the moon (Coyolxauhqui) and the stars (four

⁷⁷ Growing up, I was told not to wander off because La Llorona might get me.

⁷⁸ My self-understanding growing up was to be understood as *chingado*. The struggles of my Abuela and my Mom were always understood as *estar de la chingada*. Especially, in interracial situations, there was no way my Mom would ever trust someone who was Anglo (even though her own husband was Anglo and children were white passing). To trust someone who was Anglo was to set oneself up to be *chingado*. Thus, a common expression in our household was *chingao* (Fuck!)

⁷⁹ Pineda-Madrid, *Suffering and Salvation*, 52.

hundred brothers).”⁸⁰ This violence was reenacted at the Aztec Templo Mayor every year. This violence at the center of the Nahuatl creation myth functions to illustrate that violence is at the center of many cosmologies. The violence done to Coyolxauhqui and her subsequent dismemberment, for Pineda-Madrid, creates a, “‘sacred’ link between violence against women’s bodies and supremacy of male divinity” and “idealizes male humanity as dominant over female humanity.”⁸¹ In other words, “Perhaps the legacy of this myth can be found in the social-political unconscious, or said differently, the social imaginary worldview that idealizes ‘Latinas and suffering’ and makes this connection appear as somehow preordained by God.”⁸² The Nahuatl creation narrative that functions to serve as a justification for gender-based violence has permeated the unconscious of many Latinx communities but is not only unique to Latinx communities. Narratives such as Enuma Elish, and the Biblical stories of Dinah, Hagar, Bathsheba, and Tamar illustrate that violence against women was justified in traditions other than Nahual communities but remains a prevalent thread in many religious traditions.

These four illustrations provided by Pineda-Madrid illustrate how the personal suffering of Latin American and Latinx women are also rooted in cultural narratives that form social imaginaries that not only limits moral agency of Latinx women but also normalizes their suffering while justifying male dominance. Nancy Pineda-Madrid illustrates the importance of naming these cultural narratives and imaginaries through a social-suffering hermeneutic. She states, “If we are to understand the complexity of the appropriation of suffering within society, and if we are to grasp why social, political and even some religious authorities deem the

⁸⁰ Pineda-Madrid, *Suffering and Salvation*, 53.

⁸¹ Pineda-Madrid, *Suffering and Salvation*, 55.

⁸² Pineda-Madrid, *Suffering and Salvation*, 56.

suffering of Latinas to be of a lesser significance than that of others, then we need to recognize the presence of a hegemonic imaginary worldview as it is generated and sustain by reigning stereotypes of Latinas.”⁸³ The personal suffering and *La Lucha* of Hispanic women engages not only their personal lives but are intertwined with social and cultural stories that create the background for moral decision making. The resistance to hegemonic imaginaries and the fight for moral agency functions not only at the individual level but the communal level, as well.

Communal Narratives

In August 2019, Patrick Crusius, of Plano Texas, drove 650 miles to the Cielo Vista Walmart in El Paso Texas and shot and killed 23 people, injuring 23 others. This act of violence was described as the “largest attack on Latinos in modern U.S. history.”⁸⁴ Crusius didn’t enact this violence simply to do a random act of violence, but specifically targeted the Latinx population of El Paso.⁸⁵ Crusius enacted such violence because he was operating under a false cultural narrative against the Latinx population. In Crusius’ manifesto written before this terrorist attack he argues his attack was, “a response to the Hispanic invasion of Texas.”⁸⁶ Crusius racist manifesto reflects the current racist cultural narratives about the Latinx community perpetuated

⁸³ Nancy Pineda-Madrid, *Suffering and Salvation in Ciudad Juárez*, 39.

⁸⁴ Heather Murphy, “El Paso Shooting Suspect Indicted on Capital Murder Charge.” *The New York Times*. September 12, 2019. <https://www.nytimes.com/2019/09/12/us/el-paso-suspect-capital-murder.html> accessed December 14, 2020.

⁸⁵ El Paso is 80% Latinx.

⁸⁶ Lois Beckett and Sam Levin, “El Paso shooting: 21-year-old suspect 'posted anti-immigrant manifesto.’” *The Guardian*. August 4, 2019. <https://www.theguardian.com/us-news/2019/aug/03/el-paso-shooting-21-year-old-suspect-in-custody-as-officials-investigate-possible-hate>. Accessed, December 14, 2020.

by then, U.S. President Donald Trump. Trump has called the Latinx community, “drug dealers, criminals, and racists.”⁸⁷ He referred to Latin American undocumented migrants as animals.⁸⁸ These racist narratives undergirded his racist immigration policies which included a zero-tolerance immigration policy separating undocumented children from their parents, denying asylum to Latin American immigrants, and instituting a public charge rule limiting low-income migrants. Both Crusius and Trump operate under racial logics and narratives that substantiate racist policies and racial attack. While Trump’s rhetoric may not have caused Crusius’ racist attack against the Latinx community in El Paso, they operate under similar cultural narratives that portray the Latinx community as dangerous and as invaders that threaten Euroamerican values and individualism. Both Crusius and Trump work under racial logics and narratives that support white supremacy. To combat these racist cultural narratives, one must use alternative social imaginaries that are historically and critically conscious. In other words, to combat anti-Latinx cultural narratives one must replace them with truthful narratives that recognize the connection of Latinx identity in relation to U.S. imperialism and white supremacy. As Laura Gómez states, “In order to understand and combat racism writ large, we must do two things in coordination. First, we must know the histories of specific racial groups (e.g., Latinos, African Americans, etc.). Then we must uncover the connections among racial logics to reveal how they

⁸⁷ Amber Phillips, “‘They’re rapists.’ President Trump’s campaign launch speech two years later, annotated” *The Washington Post*. June 16, 2017. <https://www.washingtonpost.com/news/the-fix/wp/2017/06/16/theyre-rapists-presidents-trump-campaign-launch-speech-two-years-later-annotated/> accessed December 14, 2020.

⁸⁸ Julia Hirschfield Davis, “Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant” *The New York Times*. May 16, 2018. <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>. Accessed December 14, 2020.

support each other in the service of white supremacy.”⁸⁹ To combat anti-Latinx racist narratives one must know how these racial narratives came to be. Thus, the interpersonal narratives of Ada Maria Isasi-Díaz, the social suffering hermeneutic and social imaginaries discussed by Nancy Pineda-Madrid, must also consider the national narratives of the U.S. and Latinx countries of origin. One must frame these cuentos with the larger national cuentos that give rise and shape to Latinx identity.

U.S. Hispanic and Latinx identity stands in relation to U.S. imperialism and white supremacy. The United States has instigated or participated in regime change in numerous South American countries, including Guatemala, El Salvador, Chile, Argentina, Nicaragua, Panama, Cuba, and Paraguay. Such intervention was rooted in the attempt to establish the United States as a world imperial power under the guidance of Roosevelt and what was called gunboat diplomacy. The U.S. has set up “banana republics”, supported dictators, and trained torturers.⁹⁰ As Laura Gómez succinctly describes,

Whether in order to extend the country to the Pacific (Mexico), to extract resources like coffee, sugar, or bananas (Puerto Rico, Cuba, Guatemala, Honduras, Costa Rica), to connect the Atlantic and Pacific Oceans (Panama, Nicaragua), to achieve America’s ‘manifest destiny’ in the hemisphere (all), or to provide access to an exploitable labor force (all),

⁸⁹ Laura Gómez, *Inventing Latinos: A New Story of American Racism* (New York, NY: The New Press, 2020), 6-7.

⁹⁰ For more on the U.S. involvement in Latin American countries see, Miguel A. De La Torre, “Living on the Border.” *The Ecumenical Review* 59, no. 2–3 (April 2007): 214–20

the United States has invaded, annexed, covertly and overtly interfered,
and governed its way across Latin America for two centuries.⁹¹

Yet, while the U.S. has invaded almost every country in South and Central America and Mexico, it would be beyond the scope of this dissertation to intimately discuss all the ways the U.S. has enacted neo-colonial and imperial policies against each of these countries. Thus, we will take for example the way the U.S. imperialism and white supremacist policies have intimately affected the Mexican American community in the United States. By highlighting the true story of the U.S. involvement with Mexico, we can establish that any sort of cultural narrative that suggests that there is a Mexican-American invasion is simply not true, but rather, it was the Euroamericans that invaded the Southwest.

The U.S. involvement in Latin America started with the 1823 Monroe Doctrine that served as a warning to England and France not to interfere with affairs in the Western hemisphere, essentially claiming Latin America to be within the U.S.'s sphere of influence. The proclamation of the Monroe doctrine coincided with the growing independence of countries in Latin America. Mexico, weary from a war that resulted in declaring independence from Spain in 1821, alongside with the Monroe doctrine provided opportunities for the U.S. to expand its influence and power into Mexico. As Gómez illustrates, "Weakened from the long fight for independence and facing resistance from Indigenous peoples seeking their own sovereignty after the collapse of the Spanish empire, Mexico encouraged American settlement of its northeast region, known today as Texas."⁹² With the growing settlement of Texas by white Americans and the abolition of slavery by Mexico, the white settlers of Texas revolted in what would be called

⁹¹ Gómez, *Inventing Latinos*, 20.

⁹² Gómez, *Inventing Latinos*, 24.

in the United States as the War of Texas Independence. In elementary history classes the War of Texas Independence is often framed as settlers being oppressed by the Mexican Army. Slavery is not mentioned. This illustrates how racial logics seek to form their own narratives to support cultures of white supremacy.

The inclusion of Texas into the United States was also rooted in white supremacy. Not only was Texas included as a Southern, pro-slavery state in order to bolster pro-slavery claims in the United States but was also annexed to the U.S. through a campaign of racist rhetoric against Mexicans. Robert Walker, a senator from Mississippi argued that Texas should be included as a state, to support, “‘our kindred race’ against, ‘the colored mongrel race, and barbarous tyranny, and superstitions of Mexico’.”⁹³ Walker also stated, “‘five-sixths’ of Mexicans are ‘semi-barbarous hordes...composed of every poisonous compound of blood and color.’”⁹⁴ Not only was the inclusion of Texas into the United States the result of the racism rooted in slavery, but was also a result of anti-Mexican racism.

The rhetoric used to justify the inclusion of Texas into the United States was also used to provoke the Mexican-American War by James Polk and others. Because of the recent Mexican War of Independence and the War for Texan Independence the U.S. was able to assert, “an outrageously expansive border, claiming both Santa Fe and El Paso along the Rio Grande.”⁹⁵ When the Mexican government pushed back against the U.S. border expansion policy, the U.S. waged war. Part of the way such an aggressive war was sold to Congress was through the racist

⁹³ Gómez, *Inventing Latinos*, 24.

⁹⁴ Gómez, *Inventing Latinos*, 25.

⁹⁵ Gómez, *Inventing Latinos*, 25.

rhetoric. Gómez describes a newspaper editorial advocating for the War. It states, “Mexico was poor, distracted, in anarchy, and almost in ruins--what could she do to stay the hand of our power, to impede the march of our greatness? We are Anglo-Saxon Americans; it was our destiny to possess and rule this continent--we are bound to it.”⁹⁶ Within twenty-five years of the proclamation of the Monroe Doctrine, the U.S. provoked a war against Mexico that resulted in the U.S. appropriating the territories of New Mexico, Arizona, California, Nevada, Colorado and Utah.

As a result of the Treaty of Guadalupe Hidalgo in 1848, the U.S. appropriated most of its Southwestern territories and as a condition of this treaty, Mexican citizens living in those territories were naturalized as American citizens. The prevalence of Mexican Americans in the Southwest was not a result of crossing the border, or an invasion, but rather the border crossing them. Any invasion of territory that occurred was on the part of Anglo-Americans invading Mexican territory, not the other way around. As Gómez states, “The conviction that Mexicans were racially inferior informed every decision about the incorporation of these original Mexican Americans.”⁹⁷ With the increase of white settlers in the lands of the Cession came more racial hostility toward Mexican Americans to the point that from 1910-1930 many of these naturalized American citizens were deported and their citizenship revoked.

The years after the Mexican-American war were marked by massive expansion of industry through the Southwest. U.S. corporations often dictated the lives of Mexican-American

⁹⁶ Gómez, *Inventing Latinos*, 25.

⁹⁷ Gómez, *Inventing Latinos*, 26.

citizens and Mexican immigrants as they used both for cheap and exploitative labor.⁹⁸ Not only did U.S. corporations affect naturalized Mexican-American citizens, but they also affected the economy of Mexico itself. American corporate colonialism, “displaced tens of thousands of *campesinos*, rural Mexicans who spoke one of dozens of Indigenous languages native to Mexico. *Campesinos* were forced from their homelands to find work in Mexico's cities, and, when that failed, they migrated north to the United States to find work.”⁹⁹ With the growing number of Mexican nationals coming to the United States, over 50,000 crossing over annually, and the already naturalized Mexican-American citizens living in their ancestral lands in the Southwest, White Americans began demonizing Mexican nationals and Mexican-Americans and formed a national border patrol and immigration service in 1924 to begin deporting both Mexican nationals and Mexican-American citizens.¹⁰⁰ Mass deportations of anyone who passed as Latinx became commonplace.

The newly formed immigration service had very little actual oversight. The authority to deport was almost exclusively up to the discretion of local immigration agents, often using operative racial logics to decide who to deport. The deportation procedures employed by these immigration agents, “were made to order for wholesale violations of basic human rights. Mass raids and arrests were conducted without benefit of warrants. Individuals were often held incommunicado and not allowed to see anyone. Without the opportunity to post bail, deportees languished in jail until the next deportation train was formed. These procedures were the norm,

⁹⁸ “Ultimately, private businesses with American addresses played a far more lasting role in Latin America than did private individuals...”, Gómez, *Inventing Latinos*, 27.

⁹⁹ Gómez, *Inventing Latinos*, 28.

¹⁰⁰ Gómez, *Inventing Latinos*, 28.

rather than the exception, during the 1930s.”¹⁰¹ The racial logics operating with these immigration officials functioned systematically and interpersonally. Since the Immigration Service was housed under the department of labor there was reason to suspect that deportations of Mexicans and Mexican-Americans were to protect white privilege when it came to employment. As Balderrama and Rodriguez state, “the Service had a vested interest in getting rid of as many Mexicans as possible. The deportation of more Mexicans meant more jobs for ‘real Americans’.”¹⁰² Not only were the systematic deportations done to protect white jobs, but they targeted undocumented workers based on racist projections of the immigration officials. As Balderrama and Rodriguez illustrate, “All Mexicans, whether legal or illegal, looked alike to immigration officials. In street sweeps throughout the nation’s major cities, people who ‘looked Mexican’ found themselves at risk of being picked up and taken into custody.”¹⁰³ Deportations were not the only way in which Mexicans and Mexican-American’s found their lives in jeopardy. Repatriation of Mexicans and Mexican-American citizens occurred not just because of the racist constructions of immigration officials but also with the general racist cultures in the U.S. as a whole.

Mexican and Mexican-American repatriation was not conducted by immigration officials but by state and local government illustrating that racist logics permeated every aspect of American government. As a result of these racial logics permeating American culture, when the great depression occurred, “Latino workers became scapegoats, subject to the vagaries of local

¹⁰¹ Francisco E. Balderrama and Raymond Rodriguez. *Decade of Betrayal: Mexican Repatriation in the 1930s*. (Albuquerque, NM: University of New Mexico Press, 1995.), 52.

¹⁰² Balderama and Rodriguez, 53.

¹⁰³ Balderama and Rodriguez, 55.

and state reactions to unemployment. In the 1930s, as many as two million people, including some American citizens of Mexican descent, were deported so that their jobs could be given to whites.”¹⁰⁴ These repatriations were not simply done in order to create more jobs but they took on an unforgivable and nefarious quality through the repatriation of children and parents, hospital patients, the mentally-ill, and the terminally ill.¹⁰⁵ Repatriations such as medical repatriations prove that the racial logic took precedence over economic concerns. Since those who were bedridden and terminally ill posed no threat to the jobs of white Americans, the only reason left to enact such atrocious repatriation policies was anti-Latinx racism.

While it would seem that such policies are a thing of the past, Miguel De La Torre has illustrated that the U.S. still enacts, “A Kinder, Gentler, Gunboat Diplomacy.”¹⁰⁶ Such a diplomacy keeps U.S. corporate interests as the highest priority through exploitative labor practices at the expense of Latinx bodies. As De Le Torre observers, “In the quest for the lowest possible wage, the U.S. government encourages U.S. industry to relocate to places south of the 1,833-mile border under the philosophy that it benefits the overall neoliberal market. But relocating factories to the other side of the border does not mean that countries like Mexico have received a financial windfall.”¹⁰⁷ In order to protect neoliberal economics that favor U.S. corporations, the U.S. brought about the North American Free Trade Agreement (NAFTA). While NAFTA was intended to stop Mexican migration to the U.S. by reinforcing the economy

¹⁰⁴ Gómez, *Inventing Latinos*, 29.

¹⁰⁵ Balderrama and Rodriguez, 107. These deportations and repatriation have a similar rhetorical quality to Trump's zero-tolerance immigration policies.

¹⁰⁶ Miguel De La Torre, “Living on the Border.” 217.

¹⁰⁷ Miguel De La Torre, “Living on the Border.” 217.

of Mexico, “NAFTA is widely believed to have had the opposite effect.”¹⁰⁸ Because NAFTA favored U.S. corporations more than the actual economy of Mexico, “Mexican land peasants were forced to abandon their lands because they were unable to compete against heavily subsidized U.S. imported agricultural goods. They left their homesteads and moved to *colonias* (slums of shacks patched together from pieces of metal, wood and plastic) surrounding the *maquiladoras*.”¹⁰⁹ The massive loss of land by the *campesinos*, resulted in an even more exploitative labor policy. Because of NAFTA, the purchasing power and real income of Mexicans dropped by 20 percent and Mexican workers who earned 23% of American income dropped earning only 11%.¹¹⁰ Because of NAFTA

Small and medium businesses producing for the domestic market went out of business. Thousands of workers, especially women, were pushed out of the formal job market into informal employment where they had no benefits and job security and there were no minimum wage requirements. As a result, immigration to the United States leapt to half a million men, women and children a year.”¹¹¹

In order to curb increased immigration resulting from NAFTA immigration policies of the United States have sought to limit the migration of Mexicans into the United State through

¹⁰⁸ Gómez, *Inventing Latinos*, 33.

¹⁰⁹ De La Torre, *Living on the Border*, 217.

¹¹⁰ De La Torre, “Living on the Border”, 218.

¹¹¹ Laura Carlsen. “Trade Disagreement: The Inequalities of NAFTA.” *The Christian Century* 126, no. 18 (September 8, 2009): 10.

enacting the Illegal Immigrant Reform and Immigrant Responsibility Act which has been known by scholars as, “the Latino Exclusion Act” which fostered, “a new atmosphere of exclusion that had not been felt by Latino immigrants since the federal roundup of over a million Mexicans during Operation Wetback in the 1950’s.”¹¹² While the United States sought for capital to flow freely through borders, it prohibited the people who capital exploits from crossing these porous borders.

NAFTA not only enacted economic exploitation against Latinos, it also created a competing narrative about the value of suffering and whose suffering is worth the economic growth of American corporations. Coming back to the problem of femicide, Nancy Pineda-Madrid reminds us, “When various groups lay claim in the name of various interest to how we perceive suffering they create contested ground in which competing narratives shape our understanding of the suffering of the femicide’s victims.”¹¹³ The expansion of global capitalism and the exploitation of Latinas, for Pineda-Madrid, go hand in hand. The expansion of global capitalism and the exploitation of Latinas, “were interpreted as part of a ‘single process.’ Both were interpreted as ‘expressions of exercise of power and gender hierarchies,’ and each served in part, to explain the other.”¹¹⁴ Latinas working at the *maquiladoras* in Juárez were seen to be disposable, often called *mujeres desechables*.¹¹⁵ The economic policies enacted by the U.S.

¹¹² Nestor P. Rodríguez and Cecilia Menjívar “Central American Immigrants and Racialization in a Post-Civil Rights Era in *How the United States Racializes Latinos: White Hegemony and Its Consequences*, ed. Jose A Cobas, Jorge Duany and Joe R. Feagin (Boulder, CO: Paradigm Publishers, 2009), 195. Quoted in Gómez, *Inventing Latinos*, 33.

¹¹³ Pineda-Madrid, *Suffering and Salvation*, 28.

¹¹⁴ Pineda-Madrid, *Suffering and Salvation*, 29.

¹¹⁵ Pineda-Madrid, *Suffering and Salvation*, 30.

tells a story about whose lives matter and whose lives do not and for Pineda-Madrid, alongside the cultural stories about Hispanic women, NAFTA and its accompanying policies tells stories that devalue the lives of Latinx women.

The history of the relationship between the United States and Mexico illustrates that history is saturated with narrative value and not a neutral enterprise. By emphasizing and telling the story of U.S. exploitation of Mexican nationals and Mexican-American citizens, one combats the false narratives that present Mexican-Americans and Mexican migrants as invaders and dangerous when history illustrates it was quite the opposite. Through telling the truthful story of U.S. military aggression, systematic and violent deportation, repatriation, and negative economic policies, one can see that the personal suffering and struggle of the Latinx community and cultural *cuentos* must always be set within the frame of international relations. While we focused on the relationship between the U.S. and Mexico, it is by no means the only example of U.S. exploitation of countries that Latinx communities call their countries of origin. Countries such as Guatemala, Honduras, El Salvador, Columbia, Chile and even U.S. territories such as Puerto Rico all have histories and stories of physical, cultural, and economic violence committed by the policies of the United States that give rise to their particular communities' cultural and personal narratives.

Casuistry and Cuentos

The emphasis on narrative in casuistry and the levels of narratives central to Latinx ethical reflection provides for a unique opportunity to illustrate how the cultural production of the Latinx community in both its symbolic-performativity of popular religious practices and its literary production can be a locus of ethical reflection. Rather than simply addressing each of

these categories' popular religious production and literary output, we will address how these elements come together to provide a space for ethical reflection. In particular, we will use the literature of Ana Castillo's *So Far from God* to illustrate how the varying *cuentos* intersect to show how Latinx moral agency and ethical decision making is created and sustained by attention to Latinx narratives as a source of ethical reflection. In emphasizing Latinx literature as a source of theological reflection in which casuistry and the interpersonal, cultural, and social narratives intersect we can use Latinx literature as a paradigm that," can spark methodological insights, or deeper insights on God, understood as the Good, the True, the Beautiful, and the Just."¹¹⁶ Moreover, by looking at Latinx literature, we can further develop the interrelationship between casuistry and Latinx narratives.

Castillo's novel, *So Far from God*, is set in northern New Mexico and is saturated with the interpersonal, cultural, and national narratives that form Latinx ethical reflection and identity. *So Far from God*, is about four sisters (Fe, Esperanza, Caridad, and La Loca) and their mother, (Sofi). The themes in this novel include feminism, Anglo-dominant and Spanish cultural hegemony, and environmentalism told through a magical realist style that, as we discussed in the previous chapter, is saturated with *mestizaje* epistemology.¹¹⁷ Through the incorporation of magical realism, the novel's politics presents Latina agency as a site of resistance against narratives that wish to circumscribe their collective agency within pre-given patriarchal and Anglo-dominant narratives. There are scenes in the novel where the four sisters encounter or enact the miraculous to combat being circumscribed into oppressive narratives. For example, La

¹¹⁶ Imperatori-Lee, *Cuentame*, 35.

¹¹⁷ Marta Caminero-Santangelo, "The Pleas of the Desperate': Collective Agency Versus Magical Realism in Ana Castillo's *So Far From God*." in *Tulsa Studies in Women's Literature*, Vol 24, No 1. (Spring, 2005), 81.

Loca as a child was resurrected from death claiming to have gone to heaven, hell, and purgatory undermining the authority of the local priest. The scene of La Loca's resurrection illustrates that often, "the church's devils...are patriarchal reinscriptions of female and indigenous wisdom."¹¹⁸ Another sister, Caridad, is raped and abandoned in the streets only to recover and receive healing and magical powers. She later dies with her female lover in a "Thelma and Louise" type scene where they dematerialize and their bodies are never found. Esperanza becomes a journalist and dies while covering the middleeast. She frequently comes back to visit her family as a spirit.

The two most inspiring of the women are the sister Fe, who works an average job as a bank teller and later at a chemical plant and Sofi, the mother of the four sisters. Their lives are inspiring because their resistance is rooted in their everyday miraculous lives. Fe dies of cancer from working with dangerous chemicals. Sofi, after the death of all her daughters, starts an activist collective called, "Los Ganados y Lana Cooperative" that provides more opportunities for women in their small town of Tome. Sofi later became the mayor of Tome. What is emphasized in the lives of Fe and Sofi in particular is the idea that, "how to best address communal ills are the years of painstaking effort and collective participation rather than the 'magic' of divine or saintly intervention."¹¹⁹ Yet, what Castillo's story emphasizes is that through being attuned to the varying levels of narrative in these Xicana's lives, what is emphasized is their resistance to being told what their narrative is. Rather, the ability to

¹¹⁸ Gail Pérez, "Ana Castillo as *Santara*: Reconstructing Popular Religious Praxis" in *A Reader in Latina Feminist Theology: Religion and Justice*. Eds. Maria Pilar Aquino, Daisy L. Machado, and Jeanette Rodriguez (Austin, TX: University of Texas Press, 2002), 61.

¹¹⁹ Caminero-Santangelo ,84.

determine their own narrative in the face of patriarchy and other oppressive structures is what is illustrative of their moral agency.

So Far from God serves as an allegory for the moral agency of Latinas and Xicanas. Gail Pérez argues that the novel is, “extremely allegorical, a quality evident in both the tradition *cuento* and the saint’s life.”¹²⁰ What Pérez illustrates is that Castillo subverts the patriarchal understanding of sainthood to focus on the moral agency of Latinx women. The novel illustrates that these women do not operate in a traditionally androcentric morality, often shirking traditional morality in order to survive their oppressive contexts.¹²¹ Yet placing these everyday women within a narrative of saint’s lives sets them to be saints of the Latinx community that do what they need to do to survive in Anglocentric and dominant culture. This is where Hauerwas’ understanding of narrative context of casuistry can be reworked to the advantage of Latinx communities. Hauerwas states,

The ultimate test of casuistry in the Christian community is how well our reasoning embodies as well as witnesses to the lives of the saints.

Casuistry rightly done is meant to call Christians to attend to the innovative lives that we believe help us know better what our convictions entail. That does not mean we are called to slavishly imitate the saints, but rather they provide the paradigms to help us know better what we are to reason about.¹²²

¹²⁰ Pérez, 63.

¹²¹ For example, a traditional “saint’s life” about female saints is often oriented around sexual purity. These women often have sexual agency and an expressively sexuality that the Catholic Church would frown upon.

¹²² Hauerwas, *Casuistry in Context*, 181.

For Hauerwas, the lives of the saints set the paradigmatic context from which we can begin ethical reasoning. Yet, the saints that Hauerwas has in mind are rooted in a patriarchal, Euroamerican framework that ignores the everyday struggles of the Latinx community and ignores its own privilege to forget the way the Church itself has been complicit in the suffering of marginalized people. The saints provided by Castillo, despite the fact that they are presented in a magical and miraculous style, are much more realistic in forming paradigmatic casuistic cases. Castillo's saints provide a frame that doesn't demand principled moral excellence from a Euroamerican rigorist standard of morality. Castillo's *So Far from God* understands that in the context of multivalent stories and narratives, the ethical is not prescriptive in terms of applying general principles to particular narratives nor having pre-established narratives that prescribe ethical principles. Rather, *So Far from God* illustrates that what our lives require is the discernment of morality in a case-by-case basis that is attentive to the multilayered stories that give shape to identity and often tries to circumscribe identity. For the Latinx community in crafting our own narratives in the face of a plethora of interpersonal, cultural, and national narratives, we are able to engage our moral agency to reason what ways best to survive and to be able to determine what justice demands in a case-by-case basis, sometimes yielding general principles of justice.

Casuistry and Latinx *cuentos* come into relationship with one another in that it is only by attuning the varying levels of interdependent narratives, that one can engage practical, everyday moral decision making. Applying general principles to multi-valent and pluriform narratives will always come up short when addressing the concrete needs and ends of specific communities. In the case of the Latinx community, applying general principles without regard to understanding the intersecting levels of *cuentos* in such a community only leads to the continuing erasure to

concrete Latinx bodies. By presuming, like Hauerwas, that single monolithic narratives provide the principles in which casuistry is used to test a narrative against itself leads to ignoring how dominant narratives are complicit in the oppression of Latinx communities. The principles derived from single monolithic narratives often superimpose their principles onto marginalized communities. Thus, only by attuning to the tapestry of narratives that make up multiple communities in their personal, cultural, and national iterations can one see that casuistry is the very act of discerning through these narratives to form moral agents.

Conclusion

By adopting casuistry and the centrality of *cuentos* from Latinx narratives, we are able to reformulate natural law moral reasoning from simply being the apprehension of specific moral precepts to moving towards an understanding of moral reasoning that requires not only the use of practical reason but also the polyvalent narratives that form Latinx identity and social ethics. Through incorporating the type of casuistry illustrated by the high casuists and a modified emphasis on narrative provided by Hauerwas, we are able to argue that the interpersonal, cultural, and national narratives of the Latinx community provide a way to engage in natural law moral reasoning. As we discussed in chapter one, moral reasoning established by the revisionist natural lawyers required a culturally and prudentially aware moral reasoning over and against prescribed moral principles. Casuistry and attentiveness to Latinx narratives provide a type of reasoning that fits such an effort. Rather than applying moral principles to specific cases and rather than having a single monolithic narrative prescribing moral principles, Latinx casuistic moral reasoning provides a way to incorporate an epistemological *mestizaje* in particular cases. The road-making epistemology of *mestizaje* that we discussed in chapter three, is enacted in the

casuistic reasoning of Latinx social ethics. That is, by the narratives themselves producing, rather than prescribing, moral taxonomies, Latinx narratives provide a moral reasoning that is adaptive to different circumstances and is able to redress moral wrongs.

In the next chapter we will look at the specific case of Latin American immigration by using a *mestizaje* epistemology and *cuentos* based natural law moral reasoning to establish a framework of justice that demands specific measures to redress the moral wrongs of the United States committed against Latin American countries. In other words, since the United States instigated the immigration crisis that affects virtually every Latinx person in the country, justice demands redressing those wrongs with specific actions that requires a *mestizaje* moral epistemology and the casuistic moral discernment centered on the narratives of the Latinx community.

Chapter 5: Contemporary Theories of Justice, Latinx Natural Law, and U.S. Immigration: A Test Case

Introduction

In this chapter we will focus on how a Latinx natural law understanding of justice addresses the U.S. immigration crisis. We will focus on the U.S. immigration crisis because it is a crisis that, at some level, affects the lives of almost all Latinx persons. The U.S. immigration crisis affects the Latinx community either through its historic imperialism (i.e., the history of aggression against Mexico discussed in the previous chapter), or through recent neo-colonial policies affecting a variety of South American countries. The question at stake for the Latinx community is the question of justice. If the U.S. has instigated problems that have caused the border to pass over some and necessitated some to cross borders, what is a just response? In this chapter we will look at how to address an immigration crisis through the lens of Latinx natural law that takes seriously its communal history, a *mestizaje* epistemology, and a natural law that takes seriously the *cuentos* of the Latinx community. It is important to note that what we are doing in this chapter is not taking general principles and applying them to the specific situation of the U.S. immigration crisis. Rather, we are using a natural law that is rooted in a situated moral reasoning, discerning through the immigration crisis a just response to the multiple narratives that give rise to such a crisis. First, we will discuss how Euroamerican contemporary theories of justice have failed to address the U.S. immigration crisis. We will illustrate how political liberalism, communitarianism, and the capabilities approaches to justice have been inadequate in addressing the U.S. immigration crisis. Next, we will posit a natural law understanding of justice as a social virtue as a way to begin to address the crisis by rendering each community its just dessert. In this understanding of justice as a social virtue we will keep the concepts of *mestizaje* as a moral

epistemology and *cuentos* as casuistry in the background of discerning what is a just dessert.

Finally, we will illustrate by using a Latinx natural law moral reasoning that the just response to the U.S. immigration crisis in relation to the Latinx community is to recognize and apologize for the way the U.S. has destabilized Latin American economies and politics, move immigration courts from the justice department to the judicial system, and create a path to citizenship for the undocumented Latinx community.

Contemporary Theories of Justice

Unfortunately, contemporary theories of justice create systems, ideas, or capabilities that overlook specific instances of injustices that demand moral redress. In their plug and play theories these theories ignore the specific cries for justice by specific communities or they present communitarian claims of normative justice as arbitrary imagined communities rooted in exclusion and nationalism. We will look at three major contemporary theories of justice: political liberalism, communitarianism, and the capabilities approach, and illustrate how they are unable to address the U.S. immigration crisis. They are unable to address the crisis for either one of two reasons. First, their theories of justice remain abstract, unable to address specific claims of justice of particular migrant communities. Or, second, theories that offer thick descriptions of communities often present these communities as intransigent monolithic communities, not open to the other. A Latinx natural law response to the immigration crisis requires a theory of justice that does not remain only a theory nor presents community as rooted in isolated and intransigent identity. Rather, a Latinx natural law response to the immigration crisis redresses specific moral wrongs done to immigrant communities and presents communal identity as a construction that fluctuates and is rooted in the varying *cuentos* that bring about such an identity. Thus, a Latinx

natural law response to the immigration crisis will pay attention to the specific needs of specific communities in relationship to other communities.

Political Liberalism

One can hardly discuss contemporary theories of justice without discussing the political liberalism of John Rawls and his understanding of “justice as fairness” presented in his monumental work, *A Theory of Justice*. Rawls' theory of justice is rooted in constructing a system of procedural justice. In this frame of procedural justice, “there is no standard for deciding what is ‘just’ apart from the procedure itself. ‘Justice’ applies not to the outcome, but to the system.”¹ The system itself, because it is just, should yield a just outcome. Yet, justice is not rooted in the outcome. In procedural justice, “Principles of justice are derived not by assessing the utility of actions (or of tendencies of actions) but by rational choice in a fair setting.”² The procedure of justice that Rawls believes brings about just results is rooted in the social contract tradition. According to Karen Lebacqz, “Rawls’ aim is to use the concept of a social contract to give a procedural interpretation to Kant’s notion of autonomous choice as the basis for ethical principles. Principles for justice (and moral philosophy in general) are to be the outcome of rational choice.”³ The problem, however, with using contracts in themselves as a guide to justice is that not all contracts based on consent necessarily yield just results.

¹ Karen Lebacqz, *Six Theories of Justice: Perspectives from Philosophical and Theological Ethics*. (Minneapolis, MN: Augsburg Publishing House, 1986), 39.

² Lebacqz, 40.

³ Karen Lebacqz, *Six Theories of Justice: Perspectives from Philosophical and Theological Ethics*. (Minneapolis, MN: Augsburg Publishing House, 1986), 33.

Michael Sandel illustrates that consent itself does not yield just contracts. He uses the illustration of a plumber charging an elderly widow \$50,000 for a leaky toilet. Just because the widow agreed to the price of fixing such a toilet does not make such a contract just. As Sandel writes, “This case illustrates two points about the moral limits of contracts: First, the fact of an agreement does not guarantee the fairness of the agreement. Second, consent is not enough to create a binding moral claim.”⁴ Sandel presents the moral limits of actual contracts. In the situation of actual contracts there is often a disparity of power relations in which one party of a contract usually has knowledge that the other does not. In Sandel’s example, the plumber knew the going rates for material and labor while the widow did not. Thus, the plumber was able to use his knowledge to his advantage in such a way that would be considered exploitive. However, pure procedural justice would not be able to determine that such a contract would be unjust because it would appeal to a conception of justice that exists outside the contract itself. Thus, Rawls’ understanding of social contract as the root of justice requires removing itself from the context of specific situations and actual contracts. Rawls’ understanding of a social contract framework of justice must exist only theoretically in a place of fairness. In order to facilitate a concept of justice of fairness, rational choice must not be restricted by power differentials but rather, “if the principles are to be just, they must be chosen in a situation that is itself fair. That is, no one must be allowed to dominate the choice, nor to use the unfair advantage such contingencies as natural endowments or social position. Hence, principles of justice will be the result of fair choice-- ‘justice as fairness.’”⁵ Thus, in order for Rawls to understand the principles

⁴ Michael Sandel, *Justice: What’s the Right Thing to Do*. (New York, NY: Farrar, Straus and Giroux, 2009), 147.

⁵ Lebacqz, 34.

of justice from an original situation of equality he must take his idea of a social contract to a level of abstraction that presents all actors in the social contract as equal. Rawls' idea of procedural justice must be a heuristic.

The heuristic construction of an ideal and fair social contract is what Rawls calls the original position and must be entered under a “veil of ignorance.” According to Rawls, the original position is, “a state of affairs in which the parties are equally represented as moral persons and the outcome is not conditioned by arbitrary contingencies or the relative balance of social forces.”⁶ The parties in the original position are not bound by their social status or having knowledge that might affect the outcome of a fair bargaining system. In such a bargaining system in which the outcome is not rooted in contingencies and social forces, the parties must enter into it without any pre-acquired knowledge. They must enter such a bargaining situation through what Rawls calls a “veil of ignorance.” The “veil of ignorance”,

means that the parties choosing principles lack certain kinds of knowledge that might make the bargaining process unfair. They do not know what position they hold in society, nor what their own particular goals or life-plans might be. They do not know what society they belong to, nor what generation they are. Such particular kinds of knowledge always make it possible for persons to skew principles in their own favor.⁷

Rawls' “veil of ignorance” in an original position is intended to be a bargaining situation where each party in the original position is able to discuss what would constitute a just society without

⁶ John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Bellknap Press, 1999), 104.

⁷ Lebacqz, 34.

having knowledge they could use to exploit others. That is, no one knows what social disadvantage (or advantage) they may or may not have once the veil of ignorance is lifted. Because of this, persons occupying the original position would only institute principles that would benefit one person over the other if such differential benefits would also benefit the least advantaged persons in society. They would do this not out of concern for some greater good but out of self-interest. That is to say, once the veil of ignorance is lifted, they may turn out to be among the least well-off persons in society. As Rawls states,

In short, we have a circumstance in which people do not know their specific life plans, but know only that they are likely to want more of those basic goods that help to support any life plan. They enter the bargain with a view to furthering their own interests in obtaining such goods, but without the kind of envy that would make them refuse gain for themselves accompanied by greater gain for others. They are ignorant of the kind of things that would give them an unfair advantage in any bargaining position. Under these stipulations, the hypothetical 'contract' can proceed.⁸

The hypothetical contract that proceeds from the original position under the veil of ignorance is one that brings about pure procedural justice. Because no one knows what social position they occupy, their choices on what would constitute a just society are truly free and are not burdened by social contingencies such as race, sex, class, or gender. The only knowledge that would be allowed in the original position would be the general knowledge of economics and what

⁸ Lebacqz, 35.

constitutes society. With the limited knowledge in the original position the principles of a just society coming from the heuristic of the original position would be principles that themselves are just and would have a just outcome.

Rawls argues that from the original position there would be two principles of justice that would come out of such a hypothetical contract. The first principle of justice that would come out of the original positions would be one of equal liberty. Rawls states the first principle of justice this way, “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.”⁹ Because no one in the original position knows where they stand coming out of the “veil of ignorance”, Rawls argues,

that except under very stringent circumstances, the parties in the original position would never want to permit any compromising of basic liberties for the sake of other social or economic benefits. Thus, not only is equal liberty the first principle, but it stands in serial (‘lexical’) order, so that liberty can be restricted only for the sake of liberty and not for the sake of economic or other social gains.¹⁰

In other words, no one would sacrifice another person’s liberty for the sake of economic gain because no one would know if they would be negatively affecting their own liberty. Thus, the very first principle of Rawls hypothetical contract is one of equal liberty or freedom.

The second principle that would come from such a hypothetical contract would be one that is still rooted in self-interest but is one that makes provisions for the least advantaged in

⁹ Rawls, *A Theory of Justice*, 53.

¹⁰ Lebacqz, 36.

society. The second principle of justice coming from the original position is stated thus: “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”¹¹ The second principle of justice is called the difference principle and is rooted in the idea that inequalities would only be tolerated only if they end up being beneficial to everyone, including the least advantaged. Only if it would be advantageous to everyone (including the least well-off persons in society) would persons in the original position agree to some degree of inequality. Thus, things such as taxes for social welfare would be beneficial not only to the least advantaged but would create a societal structure that brings about a social safety net for any person coming out of the veil of ignorance in a disadvantaged position. Difference in pay would also be allowed where doctors are paid more than bus drivers because, “we could improve the situation of those who have the least--by increasing access to health care for the poor.”¹² The difference of pay is not merely one to provide incentives for individuals but oriented toward the good of society. Thus, for Rawls, “Social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.”¹³ Rawls’ difference principle makes an accommodation for the idea of incentives insofar as they benefit the rest of society but rejects incentives based on meritocracy. Rawls rejects meritocracy because even effort might be the result of arbitrary conditions of birth. Any inequality must be for the sake for the common good.

¹¹ Rawls, *A Theory of Justice*, 53.

¹² Sandel, *Justice*, 151.

¹³ John Rawls, *A Theory of Justice* (Cambridge, Mass: Harvard University Press, 1971), 15.

Despite Rawls' attempt to create a system of procedural justice based on an original position that seeks to protect the liberty of all people and provides provisions for the least of well off in society, there are serious methodological and concrete problems to his theory of justice. Most well-known is Michael Sandel's critique found in his *Liberalism and the Limits of Justice*. In this work, Sandel critiques Rawls' construction of a disembodied self through Rawls application of a thin theory of the good. In order for Rawls' original position to work, there must be some basic conceptions of the good (materially and idealistically) that must be agreed upon without the thick notions of the good life provided by comprehensive doctrines given by culture or contingency. These thin notions of the good provide a basic framework in which persons in the original position can begin their work. Some arguments against Rawls' original position argue that his thin notion of the good is, "too thick to be fair, the second contends that the veil of ignorance is too opaque to yield a determinate solution."¹⁴ The first argument posits that the fact that the original position values liberty over all others is actually just a disguise for American liberal democratic values. The second argument posits that the original position is too vague to actually provide systems of justice to concrete situations. Sandel's critique is based on the question of justice in general and whether Rawls theory can provide a framework of justice in itself without recourse to outside constructions. Namely, Sandel critiques Rawls' understanding of justice in the original position because his, "account of the circumstances of justice ceases to work as a simple empirical account which can be checked for accuracy against actual human conditions."¹⁵ This critique applies methodologically and empirically.

¹⁴ Michael Sandel, *Liberalism and the Limits of Justice*. (Cambridge: Cambridge University Press, 1982), 28.

¹⁵ Sandel, *Liberalism*, 41.

First, one can ask how Rawls can determine what constitutes a completely equal original position to establish a *fair* contract without appealing to an outside context that determines what is *fair* in the first place. Secondly, Rawls' understanding of justice based on procedure itself does not necessarily guarantee just outcomes and cannot be proved empirically because to do so would undermine the merit of justice existing in the procedure in the first place. In other words, Rawls' understandings of justice are only realizable within his imagined world of the original position and cannot be checked empirically to actually concretize justice in the everyday world. As Sandel argues, the rejection of the empiricist interpretation raises a more difficult question: “if the descriptive premises of the original position are not subject in any straightforward sense to empirical tests, to what sort of tests are they subject?”¹⁶ In other words, if Rawls' understandings of justice only work on paper, they are ineffective to actually address injustices of specific communities.

These critiques are particularly important for the Latinx community. If the methodology of Rawls' original position cannot be subject to concrete and empirical tests of justice, then it is unable to answer the cries of injustice made from the Latinx community. Rawls original position may negate the role of dessert when it comes to issues of meritocracy but because of his idealization of the original position he also ignores desserts that redress moral wrongs. That is, the criteria of entering an original position through a veil of ignorance, such ignorance also requires the forgetting of moral wrongs, in particular the wrongs brought about through colonialism and neo-colonialism. Tisha Rajendra puts it succinctly when she states,

¹⁶ Sandel, *Liberalism*, 42.

Rawls presumes a world of people who have no contact or prior relationship with each other. The global economic system is invisible in the law of peoples. Colonial and quasi-colonial interventions are treated as deviations from the ideal, but ones that do not appear to have any relationship to the present-day global distribution of wealth and power. Rawls' neglect of these challenges to global justice is only possible because of his methodology of ideal theory. Both justice as fairness and the law of peoples use an ahistorical methodology that deliberately sidesteps the messy relationship that individuals and peoples have with one another. For Rawls, in order to envision the ideal, one must abstract from the concrete.”¹⁷

Rawls' abstraction from concrete, messy, and real relationships allows his methodology to construct a system of justice that does not actually require people receiving what they are due because of past relationships. It is a heavy burden to ask those who have had historical wrongs done to them to forget these wrongs for the sake of a heuristic imaginary society that can enter into discussions about justice without asking any demands of restitution for past wrongs.

Not only does Rawls' theory not address actual injustices done against concrete communities but the original position itself perpetuates such injustices. The Latinx community's relationship within the United States is one where there is a forced assimilation to the Anglo-dominant community. The Latinx community is continually asked to shed their identity for some imagined whole. Such a request to shed identity, especially identities shaped by others and

¹⁷ Tisha M. Rajendra, *Migrants and Citizens Justice and Responsibility in the Ethics of Immigration* (Grand Rapids, MI: Eerdmans Publishing, 2017), 80

forced by others through racist social imaginaries and racist logics is to perpetuate a racist culture that protects whiteness. According to Brian Massingale, racist culture is the presumption of whiteness as the norm where, “a core element of white culture is the presumption of dominance and entitlement, that is, the presumption of being the norm or standard that measures all other frames of reference and to which all ‘others should conform.’”¹⁸ In other words, “white culture is a particular frame of reference or understanding of reality that does not acknowledge its particularity.”¹⁹ The original position proposes a self and identity that can stand outside of its history. To presume such an identity is to negate Latinx identity which is shaped and formed through *la lucha* against Anglo-dominant assimilatory practices. To ask Latinx community to shed its identity that has been shaped by oppressive racist structures is to perpetuate and enact such structures. Latinx identity that has had to deal with language imperialism, racial violence, and systematic exclusion from political and cultural institutions in the United States is further excluded from Rawls’ original position. It can be assumed that in shedding of Latinx identity, the language of the original position would be in English and the presumed goods would be ones that emphasize Euroamerican individualism.

Rawls’ original position constructs the self through the Euroamerican individual lens rather than the intrinsically relational lens of Latinx identity. For the Latinx community, “the community to which I belong extends beyond me not only spatially but also temporally: that community includes my ancestors as well as my progeny and their progeny.”²⁰ The self in Latinx community is rooted in others. Thus, it is impossible to enter an original position which asks for

¹⁸ Massingale, *Racial Justice and the Catholic Church*, 24.

¹⁹ Massingale, *Racial Justice and the Catholic Church*, 24.

²⁰ Goizueta, *Caminimos*, 52.

an ahistorical, acontextual self without enacting a white supremacy that views society as a collection of individuals rather than a community that constitutes the self. To ask the Latinx community to shed their identity to talk about issues of justice is to enact the same historical injustices that have excluded the Latinx community from the metaphorical table in the first place. Using Rawls' methodology of an original position and veil of ignorance would make justice for the Latinx community impossible because it enacts the very injustices the Latinx community has faced in the first place.

It is not only that the original position asks to shed any identifiers that would be required to discuss retributive justice but also acknowledges that at least some general knowledge is required for the original position to work. Yet, Rawls believes this general knowledge provided from a thin notion of the good is universalizable. Epistemologically this is problematic. Because the parties in the original positions are said to have some knowledge about society and economic theory one must ask, whose society and whose economic theory do they have knowledge of? As Wolff argues, "there can be no such 'general' knowledge that is not itself based on particular knowledge. What 'theories' about economics would be known? Any such theories have biases already built into them."²¹ Thus not only does the shedding of identity constitute white supremacy, but also the basic knowledge needed for the original position presumes the values that Rawls assumes as universal despite their particularity. Even Rawls' understanding of the type of person entering the original positions is saturated with cultural bias. For Marxist critics, "the concepts of humans as free, equal, and rational is not a neutral concept. In Marxist perspective, human nature cannot be defined entirely apart from social class. Nor is a 'well-

²¹ Lebacqz, 41.

ordered' society necessarily the goal in terms of which justice is to be defined, given Marxist assumptions about class struggle."²² Similarly, a Latinx critique of Rawls' methodology involves the assumption of racist structures permeating U.S. society. Thus, justice coupled with a 'well-ordered' society, from a Latinx perspective, has been used to justify structural racism where 'order' is used to exclude Latinx communities. Justice does not necessarily mean 'well-ordered' - in structures of oppression, justice may require destroying the current order.

Despite Rawls effort to create a procedural construction of justice rooted in liberty and seeks to provide a structural provision for the least advantaged of society, because its methodology ignores historical injustices against the Latinx community and perpetuates these injustices by assuming assimilatory practices in its core methodology, Rawls' theory of justice is not helpful for the Latinx community and the U.S. immigration crisis. To address the immigration crisis, a theory of justice must be empirically quantifiable and render tangible results for the liberation of the Latinx community. In order for these results to be tangible, it must be able to address the historical injustices perpetrated against the Latinx community. Thus, a theory of justice that is helpful for the Latinx community is one that does not ask them to forget the wrongs done to them but rectifies them.

Communitarian Justice

The main critique against Rawls' political liberalism comes from communitarian constructions of justice. The two main critiques that communitarians offer against Rawls' theory

²² Lebacqz, 41.

of justice is that it first paints a picture of liberal society as a fragmentation of society.²³ This is certainly the state of things that Alasdair MacIntyre paints in his groundbreaking work *After Virtue*. MacIntyre's imagines a dystopian society that has fragments of a natural science tradition, "detached from any knowledge of the theoretical context which gave them significance" would result in what would appear to be, "rival and competing premises for which no further argument could be given."²⁴ MacIntyre argues that such fiction is what has actually occurred in the world of moral language. MacIntyre argues, "what we possess, if this view is true, are the fragments of a conceptual scheme, parts which now lack those contexts which their significance derived. We possess indeed a simulacra of morality, we continue to use many of the key expressions. But we have-very largely, if not entirely-lost our comprehension, both theoretical and practical or morality."²⁵ The fragmentary condition of modern morality is seen to be the result of the emphasis of the individual over community, the emphasis on autonomous choice over traditions of moral inquiry, and the emphasis on thin descriptions of the good over thick descriptive communities. Walzer argues that the emphasis of fragmentation is the result of an increase in geographic, social, marital, and political mobility that creates the conditions for isolated individuals as opposed to rooted communities. For communitarians, if liberal society is

²³ See Michael Walzer, "The Communitarian Critique of Liberalism" in *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. ed. Amitai Etzioni. (Charlottesville, VA: University of Virginia Press, 1995), 55.

²⁴ Alasdair MacIntyre, *After Virtue*. (Notre Dame, IN: University of Notre Dame Press, 1984), 1-2.

²⁵ MacIntyre, *After Virtue*, 2.

seen to be a constellation of fragmentation, then “community is the exact opposite, the home of coherence, connection, and narrative capacity.”²⁶

If the first critique is that political liberalism sets up a fragmented society, the second critique of liberalism is that it radically misrepresents life.²⁷ The world that political liberalism presents is one where, “men and women cut loose from all socialities, literally unencumbered, each one the one and only inventor of his or her own life, with no criteria, no common standards, to guide the invention: these are mythical figures.”²⁸ In other words, liberal theory distorts reality and , “deprives us of any ready access to our own experience of communal embeddedness.”²⁹ The reality is that all people, regardless of their social conditions, are part of a community and their knowledge is contingent on their received traditions from communities. An isolated autonomous individual with nothing but pure will to decide their future is already a fiction created by a community. As we discussed in our critique of Rawls, that even the free, autonomous, unencumbered individual needed for the original positions, is a framework already saturated with tradition from a particular community.

Yet, aside from their general critiques against liberalism the question remains how do communitarians construct their understanding of justice from their presumed coherent and privileged communities? Much of their answer depends on how they define community and which community takes priority. Robert Fowler engages three types of community: (1)

²⁶ Walzer, “Communitarian, Critique”, 55.

²⁷ Walzer, “Communitarian Critique”, 56.

²⁸ Walter, “Communitarian Critique”, 56.

²⁹ Walzer, “Communitarian Critique”, 56.

communities of ideas; for example, the participatory democratic and republican models, (2) communities of crisis: for example, the earth community born of the environmental crisis, and (3) communities of memory: for example, religious and traditional ideas of community.³⁰ The communities of ideas, for Fowler, involve participatory and voluntarist communities in which people of diverse backgrounds come together for a common end. Those who participate in such a participatory community of ideas “emphasize the importance of people deciding together, face to face, conversing with, and respecting each other in a setting which is as equal as possible.”³¹ A community of crisis on the other hand is “fashioned by the times more than by intellectual ideas and the attention they receive is not necessarily a statement of approval.”³² Among this concept of community Fowler includes communities based on nationalism, race, and other tribal concepts. He states, “No form of community is less open than these ethnic or racial ones; none is more insistent on its truth; none can be harsher to those who dissent--or do not belong to the tribe.”³³ He looks at these communities with disdain but forgets that his own perspective condemning these communities is already saturated by a community that is shaped by race, nation, and ethnicity. His presumptive neutral observation is an indication of his complicit participation in a latent community of crisis that commits the very same monopoly on truth as he claims these other communities make. Yet, his community does so paternalistically.

³⁰ Robert Booth Fowler, “Community: Reflections on Definition” in *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. ed. Amitai Etzioni. (Charlottesville, VA: University of Virginia Press, 1995), 88.

³¹ Fowler, “Community” 89.

³² Fowler, “Community”, 90.

³³ Fowler, “Community”, 90.

The third type of community Fowler describes is the community of memory. He defines such a community as ones that, “derive from long-established belief systems that link the present and the past, communities fashioned, above all from tradition and religion.”³⁴ While he links communities of memory more explicitly to religion, his separation of this third type of community from others shows the general weaknesses of separating these types of communities in general. Describing communities of ideas, crisis, and memory as separate bounded communities, Fowler ignores how these different types of communities interact with one another and reinforce one another. In particular, Fowler ignores how voluntary communities of ideas can lead to communities of exclusion which lead to communities of crisis that are both codified in communities of memory. For the Latinx community, it was voluntary white communities that enacted violence on Latinx communities by “othering” them and thus making them a community of crisis. These various communities of the oppressor and the oppressed are often codified in traditions of memory in which racist structures are institutionalized and traditioned to different generations. Such a simple separation of different types of communities, although might be useful for observational categorization, ignores how these communities interact to form communities that enact violence on one another.

What do these imagined communities have to do with justice? For communitarians, justice is distributed from within the context of communities. Thus, the type of justice that is of the primary concern of communitarians is distributive justice. Such an emphasis on distributive justice is exemplified in Michael Walzer’s *Spheres of Justice*. Walzer argues that human society is primarily a, “distributive community” in which, “we come together to share, divide, and

³⁴ Fowler, “Community”, 91.

exchange.”³⁵ Yet for Walzer distributive justice is not simply the distribution of goods to other people, but rather rooted in the fact that, “people conceive and create goods, which they then distribute among themselves.”³⁶ Goods are not a priori but are created in the context of communities. Walzer argues,

goods with their meanings--because of their meanings-- are the crucial medium of social relations; they come into people’s minds before they come into their hands; distributions are patterned in accordance with shared conceptions of what the goods are and what they are for.³⁷

Because goods are patterned according to shared conceptions of the good rooted in community and communities are not always the same, Archimedean neutral standpoints or original positions such as the ones advocated by Rawls are simply not possible in pluralistic societies. Walzer argues for six propositions that concern distributive justice: (1) the goods that concern distributive justice are social in nature, (2) concrete identities are derived by the way people create, possess, and employ social goods, (3) no social goods are universalizable across all material worlds, (4) meanings of goods determine their movement, (5) Social meanings are historical in character and thus distributions are historically contingent, and (6) when meanings are distinct, their distributions must be autonomous.³⁸ The last principle is where Walzer

³⁵ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*. (New York, NY: Basic Books, 1983), 3.

³⁶ Walzer, *Spheres*, 6.

³⁷ Walzer *Spheres*, 7.

³⁸ See Walzer, *Spheres*, 7-10.

introduces the concept of autonomous spheres of justice and the concepts of simple and complex equality.

When it comes to distributive justice there are certain problems that arise that bring about unjust distributions of social goods. Those are primarily monopoly and dominance. Historically, there have been two answers to the problem of monopolies of social goods that affect their just distribution. The first is the political liberal answer to a monopoly of goods which is to simply redistribute the monopoly. This would be similar to Rawls' difference principle which seeks to protect the marginalized society for the sake of a society as a whole. In order to make a just distribution according to this framework is to enact "simple equality" (i.e., if wealth is the monopoly then everyone gets an equal distribution of wealth). The second way monopolies of social goods have been addressed is through the, "the claim that some new good, monopolized by some new group, should replace the currently dominant good."³⁹ This has been the common critique of monopolies by Marxism. The problem for Walzer, however, is not monopoly but the dominance of one social good over multiple spheres of influence. This contrasts with simple equality in that there are certain monopolies that should not have an effect on other spheres (i.e., money in the sphere of politics, or politics affecting healthcare distribution). The dominance of one social good over the other is what Walzer and classical philosophers calls tyranny. Walzer quotes Pascal saying, "Tyranny is the wish to obtain by one means what can only be had by another. We owe different duties to different qualities: love is the proper response to charm, fear to strength, and belief to learning."⁴⁰ The answer to the dominance of one quality working in

³⁹ Walzer, *Spheres*, 13.

⁴⁰ Walzer, *Spheres*, 18.

multiple spheres demands what Walzer calls complex equality. Walzer defines complex equality as a “complex relation of persons, mediated by the goods we make, share, and divide among ourselves; it is not an identity of possessions. It requires then, a diversity of distributive criteria that mirrors the diversity of social goods.”⁴¹ Each social good has its own sphere of influence and should function relatively autonomously. That is, complex equality, “establishes a set of relationships such that domination is impossible. In formal terms, complex equality means that no citizen’s standing in sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good.”⁴² Because person x has the quality valuable to sphere y, does not mean that he can influence sphere z. Complex equality means that the social goods determined by a community that have value in one sphere should not dominate over values in other spheres.

Not only do social goods come from the context of community, but complex equality must also play out within a communal setting. In particular, Walzer argues that complex equality must play out within a political community which is, “the closest we can come to a world of common meanings.”⁴³ For Walzer,

Language, history, and culture come together (come more closely together here than anywhere else) to produce a collective consciousness. National character, conceived as a fixed and permanent mental set, is obviously a myth; but the sharing of sensibilities and intuitions among the members of a historical community is a fact of life.

⁴¹ Walzer, *Spheres*, 18.

⁴² Walzer, *Spheres*, 19.

⁴³ Walzer, *Spheres*, 28.

It is in Walzer's constructed political community that the problems of communitarian constructions of both community and justice prove troublesome because they create political communities that are unencumbered with historical memory and isolated from other communities. While Rawls' imagined an original position of isolated individuals, Walzer and others imagine originary, ahistorical communities and concepts of membership within these communities that ignore relationships to other communities. In other words, Walzer's construction of a political community in which distributive justice works is an imaginary autonomous one.

For Walzer, distributive justice, "presupposes a bounded world within which distribution takes place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves."⁴⁴ Yet not only do communities with clearly defined boundaries share social goods among themselves, they arguably share the social good of membership among themselves. Walzer argues that, "The primary good that we distribute to one another is membership in some human community" and "what we do with regard to membership structures all our other distributive choices..."⁴⁵ Walzer understands membership as a social good that is constituted by our own understanding. That is, we are already part of our own community, "we who are already members do the choosing, in accordance with our own understanding of what membership means in our community and what sort of community we want to have."⁴⁶ Thus, for Walzer we don't distribute membership among ourselves, "it is already ours. We give it out to

⁴⁴ Walzer, *Spheres*, 31.

⁴⁵ Walzer, *Spheres*, 31.

⁴⁶ Walzer, *Spheres*, 32.

strangers.”⁴⁷ In other words, what Walzer proposes is that the understanding of community ultimately consists in our self-understanding of who we have responsibility for. He illustrates this with a thought experiment gauging how a community is to receive an injured stranger (i.e., a good Samaritan story). Walzer states

Groups of people ought to help necessitous strangers whom they somehow discover in their midst or on their path. But the limit on risks and costs in these cases is sharply drawn. I need not take the injured stranger into my home except briefly, and I certainly need not care for him or even associate with him for the rest of my life.⁴⁸

Walzer immediately applies this metaphor to the concept of immigration and hospitality as understood by John Winthrop of Massachusetts. Winthrop argues against free immigration to the colony, stating, “As for hospitality, that rule does not bind further than for some present occasion, not for continual residence.”⁴⁹ Walzer defends the right for nations to limit their accepting of outsiders based on need for the sake of maintaining the sovereignty of the original community. Unfortunately, Walzer only addresses situations of immigration in one direction.

For Walzer, immigration is an issue of only accepting outsiders for their well-being. Walzer uses refugees and guest workers as the examples of accepting outsiders of a community. In order for these two groups to be naturalized, “members must be prepared to accept, as their own equals in a world of shared obligations, the men and women they admit; the immigrants

⁴⁷ Walzer, *Spheres*, 32.

⁴⁸ Walzer, *Spheres*, 33.

⁴⁹ Walzer, *Spheres*, 33. Quoting John Winthrop *Puritan Political Ideas: 1558-1794*. Ed. Edmund S. Morgan (Indianapolis, 1965), 146.

must be prepared to share the obligations.”⁵⁰ Discussion of immigration for Walzer is always about the reception of migrants from a place of relative independence of the receiving community. Walzer works from what Rajendra calls neoclassical/agent-dominant migration theory, where “a migrant in search of a country is like a worker in search of a job.”⁵¹ The historical contingencies and interrelationships between countries are generally ignored.

Following Walzer’s understanding of political community, Daniel Tichenor discusses the Immigration Reform and Control Act of 1986 (IRCA) and The Immigration Act of 1990 from a communitarian lens. Agreeing with Walzer’s understanding for the need of a bounded community, Tichenor argues, “If bonds of mutual identification and responsibility among members are to be maintained, a degree of closure is necessary. Who is permitted to cross these boundaries (if anyone) sheds light on a society’s conception of attachments and obligations to others., whether they be aliens or citizens.”⁵² Tichenor discusses the early U.S. immigration crisis within the framework of global free markets expansionism and rights-based expansionism. He argues that both free market expansionists and rights-based expansionists offered an inclusive vision of political community. But in doing so, “in a society in which many citizens are economically excluded, they also expose the impoverishment of attachments and obligations among citizens.”⁵³ Tichenor offers the traditional tropes against a more expansive immigration

⁵⁰ Walzer, *Spheres*, 52.

⁵¹ Rajendra, 35.

⁵² Daniel J. Tichenor, “Immigration and Political Community in the United States” in *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. (Charlottesville, VA: University of Virginia Press, 1995), 259.

⁵³ Tichenor, 270.

system by citing that immigrants force U.S. citizens to choose between low wage jobs or unemployment, despite the continual studies that illustrate that immigration continually leads to economic growth for all.⁵⁴ He adds that immigration has led many Americans to be, “more partial to Asian, Central American, European and Mexican newcomers than to urban black citizens” placing the responsibility of white racism on immigrants rather than on white racists themselves, pitting immigrants against the black community.⁵⁵ He also argues that immigrants, even though they pay more in federal taxes than they cost in government services, place a strain on state and local governments forgetting the responsibility that state and local governments had in Mexican-American repatriation and racist deportation policies.⁵⁶ Tichenor not only presents immigration from the same one direction of Walzer which sees migrants only coming to the U.S. for economic well-being, but also sees immigration as a threat to the citizens already in the United States. For both Walzer and Tichenor, the reception of migrants is never a matter of justice. Justice is reserved for the naturalized citizens; the reception of immigrants is always a matter of arbitrary hospitality.

The problem with both Walzer and Tichenor’s understanding with immigration from their communitarian perspectives is that they both imagine the communities from which they work as autonomous, independent, and ahistorical. When one imagines their community as isolated from others, a person is responsible only for those in the community and the community

⁵⁴ Tichenor, 271.

⁵⁵ Tichenor, 272. Notice also how Tichenor associates Americans as presumed to be white as opposed to urban black citizens. Not to mention the fact that Mexican-Americans have been part of the United States since 1848.

⁵⁶ Tichenor, 273.

is only necessarily responsible for itself. Any outsider to the community is subject to arbitrary rules decided by the community and not the outsider, usually taking the form of generosity or hospitality. Even if a community has decided that it would be a hospitable or generous community it does not necessarily have responsibility for the other. When it comes to the U.S. immigration crisis, communitarians do not necessarily have to take any responsibility for communities other than their own since they imagine their communities to be autonomous, independent, and ahistorical. Hospitality towards migrants and refugees is all that is on the table. To use the metaphor Walzer discussed about what one owes to the stranger, “I need not take the injured stranger into my home except briefly, and I certainly need not care for him or even associate with him for the rest of my life.”⁵⁷ Yet the problem with the understanding of hospitality employed by communitarians is that they assume the home is theirs to begin with. Miguel de La Torre accurately and succinctly critiques the communitarian virtue of hospitality stating:

...to practice the virtue of hospitality assumes the ‘house’ belongs to the one practicing this virtue, who is sharing her or his resources with the Other, who has no claim to the possession. Thus, the complexity caused by the consequences of empire is missed. For example, consider Mexican undocumented aliens. Their ‘house’ was stolen from them when the U.S. invaded Mexico in 1845 and through superior military might appropriated what is now called the southwestern United States. Rather than speaking

⁵⁷ Walzer, *Spheres*, 33.

about the virtue of hospitality, it would historically be more accurate to speak about the responsibility of restitution.⁵⁸

The communitarian understanding of justice and immigration, as it stands, can never address the U.S immigration crisis because it fails to address its own community's responsibility for its complicity with imperial ravaging of other communities and countries.

Communitarian understandings of distributive justice cannot address the the U.S. immigration crisis not only because they construct their communities as independent and shed their responsibilities of relationship with other communities but also because distributive justice as autonomous separate spheres cannot address the injustices done by the dominance already done by social goods transgressing other spheres. To use U.S. and Mexico relations as an example, because the U.S. has already transgressed the spheres of political and financial (i.e., Polk and the westward expansion of U.S. companies), to imagine a community that does not take responsibility for such transgressions is not really complex equality, but rather simple irresponsibility. Complex equality must deal with restitution before they can imagine a world in which autonomous spheres with their respective social goods can be respected.

While one can agree that goods and their distributions are created, possessed, and allocated by community, communitarian understandings of justice would radically have to alter their understandings of community in order to be helpful for Latinx communities and their relation to the immigration crisis. Rather than viewing constructions of community as independent, ahistorical entities, they should adopt views of community that are interdependent and porous to let go of the incessant need for a type of communal unity that excludes others to

⁵⁸ Miguel de La Torre, *Latina/o Social Ethics: Moving Beyond Eurocentric Moral Thinking*. (Waco, TX: Baylor University Press, 2010), 27.

the point of ignoring their responsibilities to others. Linda Hogan's understanding of porous communities can be a helpful tool for communitarians. Instead of viewing communities as idealized and essentialized entities that are distinct and self-contained, Hogan argues that "contemporary ways of belonging are shaped by, as well as shape, the multiple ways in which identities and subjectivities are constructed..."⁵⁹ That is, identity is not shaped by monolithic constructions of coherent community but are rather interdependent and shape each other and are responsible for each other. In other words, communities exist in *mestizaje*, and should understand the ways they have historically contributed and enacted violence on one another. Only then can justice be done for communities that have historically been marginalized by communities presuming to be pure, distinct, and universalizable.

Capabilities Approach

An alternative approach to both political liberalism's detached individualism and communitarianism's independent parochialism is what has been called the capabilities approach. Developed by Amartya Sen and Martha Nussbaum, the capabilities approach, rather than focusing on abstract rights or precepts and imagined communities, focuses on the real capabilities provided to individuals in their actual communities. For Sen, the capabilities approach provides a way one can judge the well-being of individuals in a given society based on particular capabilities provided by these societies. For Nussbaum, capabilities understood from overlapping consensus provides opportunities to maintain thick descriptive communities while also creating space for universalizable values or capabilities. What we will see, however, is that the capabilities approach falls into some of the same pitfalls as both political liberalism and

⁵⁹ Hogan, *Keeping Faith*, 145.

communitarianism. Not only does the capabilities approach present capabilities as somewhat abstracted from context and recapitulates the imagined, independent and autonomous communities of communitarianism, but it also fails to delineate who is responsible for providing capabilities in interdependent communal contexts. This abstraction of capabilities from the communities responsible for providing them is problematic when addressing the U.S. immigration crisis. Because the inter-communal character of immigration, it is important to place capabilities in their communal and narrativial contexts in order to discern who is responsible for providing the capabilities for migrants (i.e., host countries, countries of origin, etc.). Thus, by acknowledging the strengths of the capabilities approach it is important to acknowledge where it fails to provide a framework of justice for Latinx communities.

Sen develops his understanding of the capabilities approach by first acknowledging his indebtedness to Rawls' theory of justice and political liberalism. In particular, Sen praises Rawls' conception of "justice as fairness." Alongside Rawls, Sen suggests that the idea of fairness must come prior to justice and that justice must, "in some sense derives from-the idea of fairness."⁶⁰ Providing a definition of fairness Sen argues

This foundational idea can be given shape in various ways, but central to it must be a demand to avoid bias in our evaluations, taking note of the interests and concerns for others as well, and in particular the need to avoid being influenced by our own respective vested interests, or by our personal priorities or eccentricities or prejudices. It can broadly be seen as demand for impartiality.⁶¹

⁶⁰ Amartya Sen, *The Idea of Justice*. (Cambridge, MA: Belknap Press, 2009), 54.

⁶¹ Sen, *The Idea*, 54.

Yet, this idea of fairness leaves much to be desired. If fairness is simply the demand for impartiality, it can lead to a sense of neutrality that ignores the fact that certain injustices demand both partiality and a preferential option.⁶² In situations of oppression, neutrality is often complicity.

The effort to create an impartial framework from which justice can be derived is where Sen and Rawls take separate paths. While Rawls proposes the original position under the veil of ignorance, Sen believes that such a framework is limiting to the multiple frameworks that can derive systems of justice. Sen argues that, “there are genuinely plural, and sometimes conflicting, general concerns that bear on our understanding of justice” and “many of them share features of being unbiased and dispassionate, and represent maxims that their proponents can ‘will to be a universal law’ (to use Immanuel Kant’s famous requirement).”⁶³ Moreover Sen argues, “indeed, plurality of unbiased principles can, I would argue, reflect the fact that impartiality can take many different forms and quite distinct manifestations.”⁶⁴ Sen and Rawls differ from the fact that while Rawls’ believes that justice can only be derived as principles from a singular, unbiased original position, Sen believes there are a plurality of positions one can argue from that derive unbiased principles.

⁶² In situations of oppression impartiality and neutrality can be seen as complicity. This is especially true of theological ethics. As Goizueta states, “if God did not love the poor preferentially, then by virtue of God’s neutrality, God would implicitly be loving the wealthy preferentially--by implicitly condoning the unjust status quo from which the wealthy benefit. To say that God’s love is universal is not to say that God’s love is neutral” Goizueta, *Camenimos Con Jesus*, 177.

⁶³ Sen, *The Idea*, 57.

⁶⁴ Sen, *The Idea*, 57.

Sen also critiques Rawls' theory of justice based on the fact that it almost entirely relies on institutions as the mechanism of justice. Sen argues, "in the Rawlsian system of justice as fairness, direct attention is bestowed almost exclusively on 'just institutions', rather than focusing on 'just societies' that may try to rely both on effective institutions and on actual behavioral features."⁶⁵ Sen argues that Rawls' theory of justice is the culmination of a contractarian approach that emphasizes transcendental-institutionalism. Transcendental-institutionalism, according to Sen, focuses on first, "what it identifies as perfect justice, rather than on relative comparisons of justice and injustice" and secondly, "in searching for perfection, transcendental institutionalism concentrates primarily on getting the institutions right, and it is not focused on the actual societies that would ultimately emerge."⁶⁶ Drawing on Indian traditions of justice called *niti* (organizational propriety and behavioral correctness) and *nyaya* (the comprehensive concept of realized justice), Sen argues that institutions, organizations, and principles of justice must be evaluated by the more comprehensive and realized justice espoused by *nyaya*. In other words, rather than focusing on a perfect justice of an imagined institution, Sen argues that one should use a comparative approach that situates justice on a spectrum between justice and injustice, realizing that there are varying degrees of situations.

Rather than using a transcendental-institutionalist approach such as Rawls, Sen argues that justice should be evaluated through an "accomplishment-based understanding of justice."⁶⁷ The accomplishment-based approach focuses less on institutional justice but on the the actual

⁶⁵ Sen, *The Idea*, 57.

⁶⁶ Sen, *The Idea*, 6.

⁶⁷ Sen, *The Idea*, 16.

freedoms that humans experience in their actual lives. Sen argues that, “in noting the nature of human lives, we have reason to be interested not only in the various things we succeed in doing, but also in the various freedoms that we actually have to choose between different kinds of lives.”⁶⁸ This accomplishment-based approach involves the relative comparison of different freedoms or capabilities that different societies have for their citizens.

The accomplishment-based or comparative-based approach focuses on capabilities as instantiations of substantial freedom over and against traditional utility-based or resource-based comparative approaches. By emphasizing capabilities, Sen argues that one can accommodate for the values found in multicultural societies. Sen argues that, “the capability perspective is inescapably concerned with a plurality of different features of our lives and concerns.”⁶⁹ Utility and resource based approach for judging general well-being tend to present homogenized utility in which values are judged under the , “counting of exactly one thing (‘is there more here or less?’)” and have helped, “to generate the suspicion of the tractability of ‘judging’ combinations of many distinct good things (‘is this combination more valuable or less’).”⁷⁰ In other words, not only does a capability perspective accommodate a plurality of values in a diverse society but its judgement allows for the principle of incommensurability of a multiplicity of values. Rather than focusing on whether or not each person of a society has achieved a monolithic value, the capabilities approach makes space for individuals to have the opportunities to choose the values that they wish to engage. As Sen argues,

⁶⁸ Sen, *The Idea*, 18.

⁶⁹ Sen, *The Idea*, 233.

⁷⁰ Sen, *The Idea*, 239.

The capability approach focuses on human life, and not just on some detached objects of convenience, such as incomes or commodities that a person may possess, which are often taken, especially in economic analysis, to be the main criteria of human success. Indeed, it proposes a serious departure from concentrating on the *means* of living to the *actual opportunities* of living.⁷¹

By focusing on the opportunities of living, the capability approach makes space for people to have the opportunity to pursue ends of their choosing, whether they are individual or informed by community. The general appeal of the capabilities approach is that it focuses on the capabilities of individuals to choose their ends and thus provides a certain versatility to include not only the specific ends of an imagined community but the multi-faceted ends by a multiplicity of communities.

The question remains, however, what capabilities are needed to be secured in order for an individual to engage in the ends they find valuable? For Martha Nussbaum, there are central capabilities that are constitutive of human dignity. Nussbaum's approach, "focuses on the protection of areas of freedom so central that their removal makes a life not worthy of human dignity."⁷² Nussbaum gives a list of ten capabilities that form a threshold level human dignity. These capabilities are (1) life, (2) bodily health, (3) bodily integrity, (4) senses, imagination, and thought, (5) Emotions and attachments to things or people, (6), practical reason (being able to form a conception of the good and planning one's life), (7) Affiliation (being able to live with

⁷¹ Sen, *The Idea*, 233. Italics in the original.

⁷² Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Belknap Press, 2011), 31.

others and having the social bases of self-respect and non-humiliation), (8) being able to live with concern for other species, (9) play, and (10) being in control over one's political and material environment.⁷³ These ten capabilities, for Nussbaum, belong "first and foremost to individual persons, and only derivatively to groups."⁷⁴ Nussbaum's priority of the individual is in order to preserve each person from being a means to an end so that no person's capabilities are sacrificed for the capabilities of another. For Nussbaum, the protection of each of these capabilities is the requirement for social justice where, "respect for human dignity requires that citizens be placed above an ample (specified) threshold of capability, in all ten of these areas."⁷⁵ In securing these capabilities, Nussbaum argues that institutions are important in ensuring that each person meets the threshold of dignity brought about by these basic capabilities.

Nussbaum contrasts with Sen in her advocacy that governments play a major role in securing the basic capabilities for each of its citizens. Nussbaum argues that while Sen suggests that, "capabilities do not have the conceptual connection to government that human rights clearly do" he however is "willing to assess governments in accordance with their performance in delivering capabilities."⁷⁶ In discussing the role of government Nussbaum argues that a government's job is not simply to remain hands-off and assume that through its nonintervention that capabilities are secured but rather the capabilities approach insists, "all entitlements involve an affirmative task for government: it must actively support people's capabilities, not just fail to

⁷³ For a fuller explanation of these capabilities see Nussbaum's *Creating Capabilities* 33-34.

⁷⁴ Nussbaum, *Creating Capabilities*, 35.

⁷⁵ Nussbaum, *Creating Capabilities*, 36.

⁷⁶ Nussbaum, *Creating Capabilities*, 64-65.

set up obstacles.”⁷⁷ National governments, in particular, play a major role in securing capabilities in the context of global justice. Contrasting arguments that argue that in order to address global problems a nation must first fix their own systems of justice or that the best way to address global justice is through philanthropic endeavors, Nussbaum argues that, “We need, then, an institutional solution to global problems.”⁷⁸ Nussbaum argues that global problems involving colonial exploitation, the world economy being influenced by global corporations, and everyday economic decisions “affecting lives as a distance,” requires a solution that involves a nations, “political structure, its schemes of institutions, and its assignment of duties.”⁷⁹ As such, national governments are not only responsible for securing the capabilities for their own citizens but are also responsible for global justice that involves a level of redistribution that enables poorer countries to secure capabilities for their citizens as well.

Despite Nussbaum’s emphasis on government and in particular, national government’s responsibility in securing basic capabilities for citizens, the capabilities approach still falls short when it comes to addressing injustice faced by the Latinx community and the migrant community in particular. The first problem that the capability approach encounters when establishing a framework of justice is that it fails to develop a theory of responsibility of securing capabilities for migrants. Despite the fact that Nussbaum never limits national governments to only provide for capabilities for citizens, she also doesn’t directly address migration which leads her to not assign particular responsibility to nations or institutions for migrants. For example, she

⁷⁷ Nussbaum, *Creating Capabilities*, 65.

⁷⁸ Nussbaum, *Creating Capabilities*, 120.

⁷⁹ Nussbaum, *Creating Capabilities*, 116.

never addresses who would be responsible for ensuring the capabilities of migrants whether it would be their country of origin, their host country, or the countries they occupy in transit. Thus, O'Neill's critique that Nussbaum's approach, "assigns rights or capabilities to people without specifying who has responsibility for developing or protecting the capabilities of specific people", holds.⁸⁰ Not only does the capabilities approach fail to address who has the responsibility for ensuring capabilities but it also fails to acknowledge, "the inevitability of conflicting obligations, the likelihood that people might not be able to discharge their duties toward all of the poor in the world, and that scarcity imposes compromises in decisions about entitlements."⁸¹ In other words, in the effort to secure certain capabilities, the capabilities approach as described by Sen and Nussbaum, fails to account for the historical contingency of capabilities and who has responsibility for providing them.

The problematic thread that runs through all of these contemporary theories of justice is that in an effort to create theories, spheres, or ideas of justice, each of their programs result in the ahistorical and acontextual frameworks that are unable to address specific instances of injustice. As Rajendra states these theories, "fail to account for the actual historical relationships that have brought migrants and citizens together."⁸² While Rawls, Sen, and Nussbaum present liberal theories of justice that tries to establish universal principles or capabilities of justice by either presenting an abstract original position or list of basic capabilities, neither of them are able to address the complicated and messy international relationships that often require redress for moral

⁸⁰ Rajendra, *Migrants and Citizens*, 88 is summarizing Onora O'Neill's critique in *Towards Justice and Virtue: A constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), 170-173.

⁸¹ Rajendra, *Migrants and Citizens*, 90.

⁸² Rajendra, *Migrants and Citizens*, 91.

wrongs. Liberal theories of justice such as Rawls' political liberalism or Sen and Nussbaum's capabilities approach both seek either impartial spectators or original positions that emphasize objectivity and neutrality in their frameworks of justice. Yet, because of the complicated colonial narratives involved in Latinx and Latin American relationships to migration, impartiality vis-a-vis historical wrongs often simply result in complicity with the status quo that silences the cries against injustice from the Latinx community.

The communitarian approaches, while acknowledging that goods are derived, possessed, and distributed by communities often idealize a particular community as normative for the rest and in doing so present a form of community that is independent, autonomous, and only responsible for itself. Communitarians also abstract justice in the frame of idealized communities to where those outside those communities are not met with justice but with arbitrary generosity and hospitality. Thus, the idealized communities of communitarian constructions of justice are incapable of addressing the interdependence of communities and the multiple communal commitments present in the U.S. immigration crisis.

Political liberalism, communitarianism, and the capabilities approach all involve a type of idealization that offers the possibility of distributive justice in idealized starting points and frameworks, but the U.S. immigration crisis must engage a type of justice that address the consequences of social sin and responsibilities toward relationships. All of these conditions of justice require attuning to the narratives of the Latinx community and their relation to migration. This type of justice must be centered on the not only the distributions of goods or ideals of justice but must be rooted in the mixed history of multiple communities and the narratives of their relationships.

Immigration and Conditions of Justice

The type of justice that is needed to address the perspectives of the Latinx community in regards to the U.S. immigration crisis is a justice that incorporates not only distributive justice but engages in restorative justice. Restorative justice takes seriously the injustices done both to the Latinx community and their Latin American countries of origin by taking seriously the complicated narratives that bring about migration. Narratives of immigration are not monolithic, and migrants do not fit a binary mold of “good” migrants and “bad” migrants. Migrant narratives are rooted in complicated histories and interdependent communities that require attention and nuanced understandings of restoring right relationships. Restorative justice, by attending to the narratives of migrants establishes a frame of justice that takes serious social sin and responsibility to relationships. These conditions of justice must be addressed before one is able to establish systems, ideals, or theories of justice that seek to distribute goods.

Kristin Heyer understands the U.S. immigration crisis in the context of social sin. Drawing on both John Paul II and Latin American liberation theologians, Heyer argues that, “The structural inequality between the United States and its Latin American neighbors, in its historical roots and maintenance in laws and institutions, constitutes objective sin.”⁸³ For Heyer, “In its broadest sense social sin encompasses the unjust structures, distorted consciousness, and collective actions and inactions that facilitate injustice and dehumanization.”⁸⁴ Drawing on John Paul II, Heyer highlights the personal dimension of social sin. For John Paul II and magisterial teaching, social sin always maintains an element of personal responsibility. For magisterial

⁸³ Kristin E. Heyer, *Kinship across Borders: A Christian Ethic of Immigration*. Moral Traditions Series. (Georgetown University Press, 2012), 44.

⁸⁴ Heyer, *Kinship Across Borders*, 37.

teachings, sin must always at its heart be a personal act. Without the personal dimension operative of social sin, personal responsibility to resist sinful structures can be lost to a culture of “passivity and conformity.”⁸⁵ Yet, social sin in the magisterial teachings of John Paul II often ignore the way that institutions create systematic structures of sin that cannot simply be resolved through personal responsibility.

While John Paul II recognizes social sin as primarily a summation of personal sins, Heyer argues that, “Latin American liberation theology articulates a framework that explicitly addresses both voluntary and nonvoluntary dimensions of social sin; in the case of immigration, it thus incorporates both the reality of the unjust institutions that contribute to border crossings and ideologies and symbolic systems that perpetuate blindness to such realities.”⁸⁶ For Latin American liberation theologians, social sin is both structural and personal. As José Ignacio González Faus states, “When human beings sin, they create structures of sin, which, in their turn, make human beings sin.”⁸⁷ This dialectical understanding of sin illustrates that, “structures are both consequential and causal in nature, and persons are subjectively responsible for sinful situations, yet remain subject to external influence.”⁸⁸ The interplay between personal and social sin reflects the interdependent *cuentos* of the Latinx community. To navigate what justice looks like for the Latinx community one must engage both the personal and social aspects of sin and engage personal and social aspects of restitution.

⁸⁵ Heyer, *Kinship Across Borders*, 42.

⁸⁶ Heyer, *Kinship Across Borders*, 42.

⁸⁷ José Ignacio González Faus, “Sin” in *Mysterium Liberationis*, ed. Ignacio Ellacuría and Jon Sobrino (Maryknoll, NY: Orbis Press, 1993), 537.

⁸⁸ Heyer, *Kinship Across Borders*, 46.

Given the realities of social sin and the troubled history between the U.S. and various Latin American countries we discussed in chapter four, “U.S. citizens may be willfully negligent of or indirectly responsible for the conditions that give rise to undocumented migration across their borders.”⁸⁹ In other words, U.S. citizens are complicit in the social sin that brings about the need for migration in the first place. Heyer identifies two primary ways in which the U.S. is engaged in social sin when it comes to the immigration crisis. First, Heyer argues that there are operative ideologies that portray migrants as a threat to U.S. culture and economic well-being (i.e., Tichenor’s communitarian position). These operative ideologies are rooted in what she calls, “amplified or distorted xenophobia, ethno cultural nationalism, or fear” and leads to an, “increasingly acceptable demonization of populations of color.”⁹⁰ The second way the U.S. is engaged in social sin is through a consumerist ideology that leads to the exploitive employment (either within the U.S. or in countries of origin) of Latinx persons for the sake of inexpensive goods. Such exploitive practices can be seen in the working conditions of Latinx farm workers or in the *maquiladoras* across the U.S. border. Both these ways the U.S. is engaged in social sin, Heyer argues, “require repentance from sustaining harmful myths out of fear or bias, from the greed of consumerism and from indifference to the plight of the marginalized south of the U.S. border and on its street corners.”⁹¹ Both the U.S.’s relationships to Latinx countries of origin and their complicity in exploitive labor practices constitute social sin in regard to undocumented migrants and the need for repentance.

⁸⁹ Heyer, *Kinship Across Borders*, 46.

⁹⁰ Heyer, *Kinship Across Borders*, 47.

⁹¹ Heyer, *Kinship Across Borders*, 48-49.

For Heyer, the way of repentance involves a solidarity that involves changing immigration rhetoric and reality from legitimization of the immigration industrial complex to a subversive hospitality rooted in a Christian ethic of subversive hospitality that functions as a “counter narrative of our common humanity, our kinship, with complications for a just immigration ethic.”⁹² Yet despite Heyer’s insistence that such hospitality would yield just systems, we have illustrated that the language of hospitality implies that the “house” one occupies belongs to you. A stronger language that takes into account restitution for wrongs done is needed. There needs to be a language of responsibility over a language of hospitality.

Rather than focusing on justice for immigrants in relationship to hospitality, Trisha Rajendra argues that an adequate account of justice for migrants is one that views justice as responsibility toward relationships. Rajendra argues that justice as a responsibility has three characteristics. First, “justice as responsibility takes as its starting point, the messy, complicated, and ambiguous relationships in which we find ourselves.”⁹³ That is, rather than abstracting away from relationships (i.e., Rawls) or idealizing certain forms of relationships (i.e., communitarianism), what takes priority are the actual relationships that form the need for immigration. These relationships are not always positive but are rooted in the often ambiguous conditions that most citizens and migrants find themselves in. Justice as responsibility takes seriously relationships that are rooted in history and fallibility.

The second characteristic of justice as responsibility is that it sees justice itself as a social good that exists and is given out in communal life. Rajendra argues that “responsibilities are

⁹² Heyer, *Kinship Across Borders*, 142.

⁹³ Rajendra, 114.

distributed by means of social narratives that map responsibilities onto various kinds of relationships.”⁹⁴ Because not all social narratives are truthful to reality, Rajendra argues that it is necessary to tell the right kind of stories. With respect to immigration, traditional narratives about who migrants are and why they have chosen or have been forced to migrate are often saturated with structural sin. Rajendra argues that structural sin affects narratives in two ways: “(1) it entrenches inaccurate narratives, and (2) it conditions relationships into patterns of domination and exploitation.”⁹⁵ Thus, it is important to recognize these inaccurate narratives and patterns of domination and understand the immigration crisis in the context of its multiple narratives. Rather than seeing migration solely as an effort to attain a better life (i.e., Walzer and Tichenor), it is important to understand migration in the multifaceted systems in which it exists, including its narratives of relationships past including guest- worker programs, colonial migration systems, and foreign investment.⁹⁶ Through telling the right kind of stories, “justice as responsibility, therefore, requires an understanding of the particularities of the relationships binding peoples across borders. It may require us to construct narratives where there are none and to critically examine the narratives we do have.”⁹⁷ Taking seriously the importance of telling the right stories, justice as responsibility can begin to map the ways particular communities allocate responsibilities towards other communities.

For Rajendra, the third characteristic of justice as responsibility is that rather than simply replacing understandings of structural theories and ideas of justice as understood in political

⁹⁴ Rajendra, 115.

⁹⁵ Rajendra, 56.

⁹⁶ For summaries of these narratives see Rajendra, *Migrants and Citizens*, 58-72.

⁹⁷ Rajendra, *Migrants and Citizens*, 125.

liberalism, communitarianism, and the capabilities approach, justice as responsibility supplements and compliments these theories. Specifically, by placing the theories of Rawls and Nussbaum in the contexts of right relationships, justice as responsibility can supplement Rawlsian ideal theories by not only describing how inequalities can be regulated but also how inequalities are historically situated. For Nussbaum's capabilities approach, justice as responsibility can help delineate which nations are responsible for providing capabilities. By placing these theories in the content of responsibility toward relationships with undocumented migrants, justice as responsibility, "involves recognizing that their presence in the United States is the result of a migration system that has roots in the actions of the U.S. government and corporations. Extending full citizenship to undocumented Mexican migrants is not a matter of amnesty or forgiveness of their supposed transgressions; rather it is a recognition of the history of the ongoing relationship between the two parties."⁹⁸ In placing justice within the context of historical relationships and telling the right narratives, Rajendra's justice as responsibility supplements the theories of justice we have just discussed.

Yet, despite Rajendra situating justice as responsibility to relationships, she does not make explicit what the underlying condition of what responsibility entails. While she offers the same solution I would advocate, the full inclusion of undocumented persons into citizenship in the United States, she fails to derive the governing principle on why that should occur. Namely, telling the right kind of stories should yield a path that governs different types of relationships. Namely, that justice requires giving each person their due. Justice as giving each person what they are due is not only what it means to have responsibility to a relationship but is also a long-standing principle of natural law that I believe not only incorporates distributive and structural

⁹⁸ Rajendra, *Migrants and Citizens*, 136.

theories of justice, but also incorporates Rajendra's responsibility to relationships as well. Moreover, by incorporating a natural law understanding of justice, done *latinamente*, one can not only incorporate justice as fairness, communal understandings of distributive justice, the protection and distribution of capabilities, and the responsibility towards relationships, but also incorporate methods of restitution leading to restorative justice of right relationships.

Natural Law, Restitution, and Restorative Justice

Natural law's understanding of justice usually starts from Roman classical law and in particular Ulpian's definition of justice. Ulpian defines the function of justice, "to render each his right (*ius*)."⁹⁹ While many take Ulpian's understanding of right (*ius*) to be understood as a subjective right or faculty, Michel Villey makes the argument that classical Roman law did not understand *ius*, as a subjective right. Villey argues that *ius*, as understood by Ulpian, "refers to the just share, the just due, of someone within an established structure of social relationships, varying with each person's status and role...the meaning of *ius* is not congruent with our idea of right."¹⁰⁰ A right (*ius*), in Roman law, was not seen as a power, faculty, or capability. Rather a right (*ius*), was primarily seen in the objective sense, "for them *ius* was not a power over something; it was a thing itself, specifically an incorporeal thing."¹⁰¹ Since a right (*ius*) was an incorporeal thing that

⁹⁹ See Justinian I.i

¹⁰⁰ Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*. (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing, 2001), 16. Tierney primarily draws on Villey's article, "L'idée du droit subjectif et les systèmes juridiques romains," *Revue historique de droit français et étranger*, series 4, 24 (1946): 201-227. We will primarily draw on Villey's view for understanding rights and justice in Aquinas.

¹⁰¹ Tierney, *The Idea of Natural Rights*, 16.

existed outside of the self, a right (*ius*), was derived from particular relationships and was the resulting claim that came out of these relationships. If one were to enter into a relationship or contract, one's right (*ius*) was that which one was due from the relationship or contract.

The notion of right as rooted in relationship is also found in Aquinas. Discussing the virtue of justice, Aquinas argues that while the other virtues are oriented towards the individual, "the right in a work of justice, besides its relation to the agent is set up by its relation to others."¹⁰² A right for Aquinas is not a power but is also a thing. For Aquinas, *ius* was still primarily a 'thing' (*rem*), something existing in external nature."¹⁰³ Aquinas then delineated two different types of right, natural and positive. Both rights are understood to be related to another person according to, "some kind of equality."¹⁰⁴ A natural right is based on natural relationships and positive rights are based on public consent. Yet, any right was always oriented and commensurate with another person either publicly or privately and not a subjective power of an individual agent.

Justice for Aquinas, follows the same trajectory as Ulpian's definition. For Aquinas, justice is, "a habit whereby a man renders to each one his due by a constant and perpetual will."¹⁰⁵ For Aquinas, justice is never really a matter of simply protecting individual, subjective rights rooted in an individualist anthropology but always involves keeping, "men together in

¹⁰² Aquinas, *ST*, II-II. 57.1

¹⁰³ Tierney, *The Idea of Natural Rights*, 23. Tierney is summarizing Villey's arguments on Aquinas, and although Tierney will ultimately disagree with Villey, I believe Villey is right. In replying to objection 1 in *ST* II-II. 51.1 Aquinas states, "In like manner the word *jus* (right) was first of all used to denote the just thing itself..."

¹⁰⁴ Aquinas *ST* II-II. 57. 2.

¹⁰⁵ Aquinas *ST* II-II. 58.1.

society and mutual intercourse...therefore justice is concerned only about our dealing with others.”¹⁰⁶ For Aquinas, there is a further delineation of different parts of justice. The first is commutative justice which is what is due between two individuals. The second is distributive justice which is what the whole owes to the parts or the distribution of goods. While at first glance it would seem that commutative justice could correspond to Rawls' first principle of justice and that distributive justice could be understood of the distribution of goods similar to Walzer's understanding of distributive justice, for Aquinas both commutative justice and distributive justice are not individual rights or goods but rather is the distribution of what one is owed by virtue of relationships to other people. In other words, justice cannot be simply structural or principled but has to do with real things that are owed to real people. As Aquinas argues

Justice is about certain external operations, namely distribution and commutation. These consist in the use of certain externals, whether things, persons, or even works: of things as when one man takes from or restores to another that which is his; of persons, as when a man does injury to the very person of another, for instance by striking or insulting him, or even by showing respect for him; and of works, as when a man justly exacts of another or does work for him.¹⁰⁷

Thus, justice has to do with real things that people are owed. This precludes both systems of justice that seek to isolate people in an original position to which what one is owed is forgotten and precludes systems that create isolated/independent communities that do not owe anything to

¹⁰⁶ Aquinas ST II-II 58.2

¹⁰⁷ Aquinas ST II-II 61.3.

other communities. Justice, according to Aquinas, also further defines what it looks like to be responsible towards relationships since justice is constituted through giving each person in relationship their due. Aquinas' understanding of justice incorporates structural justice systems such as political liberalism, provides for the distributions of goods and capabilities, and further defines the rules of relationship but most importantly for Latinx social ethics, also is related to the understanding of restitution.

One of the reasons justice can never be simply related to a theory, idea, or an abstraction is because there are real wrongs done to real people. For Aquinas, justice always makes provision for the fact that real injustices can and do occur. This is why Aquinas situates a question of restitution within his conversation on justice.

For Aquinas, restitution is a central matter of justice and is necessary for salvation. Before any kind of distributive or structural justice can be done, restitution must occur because, “restitution re-establishes equality where an unjust taking has caused inequality.”¹⁰⁸ For Aquinas, however, restitution is not simply the payment of a debt but must be considered in respect to the “part of the thing” (the payment of restitution), and the “sin of injustice” which requires (according to Aquinas’ Catholic background) either punishment, penance, or satisfaction. Restitution is also not simply the payment of the direct actor to the person or group for whom restitution is due but is also required from the person who causes an unjust taking either directly or indirectly. For Aquinas, “whoever is cause of an unjust taking is bound to restitution.”¹⁰⁹ A person is the direct cause of an action if they move another to take by command

¹⁰⁸ Aquinas ST II-II 62.3.

¹⁰⁹ Aquinas ST II-II 62.7

or council, if they give a taker shelter or assistance, or if they are an accomplice in any way. A person is indirectly the cause of unjust taking if they do not stop the taking, “by command, by counsel, by consent, by flattery, by receiving, by participation, by silence, by not preventing, by not denouncing.”¹¹⁰ Given these definitions of direct and indirect cause of unjust taking, the United States, in regard to its relationship to Latin American countries, both directly and indirectly has caused unjust taking. Whether through unjust wars (as we discussed in chapter four), through gunboat diplomacy, setting up banana republics, setting up dictators, or instigating civil wars and civil unrest, the United States is the direct cause of taking labor, precious metals, and land from Latin America, causing the immigration crisis. Through unfair economic policies such as NAFTA, the U.S. also contributes to the unjust taking of Latin American goods. As Heyer states, “Due to uneven agricultural subsidies that belie the term ‘free’, one-sixth of Mexican farmers have been expelled from their lands” and forced to immigrate.¹¹¹ Thus in an effort for cheap goods, U.S. citizens participate in and fail to denounce unfair trade practices that result in the loss of Mexican land. Aquinas’ natural law theory of justice makes room for an important aspect of justice that is absent in the contemporary conversations about justice, restitution.

How does the U.S. begin to think about how to make restitution for its historical misdeeds towards Latin American countries and its current complicity in causing the immigration crisis that negatively affects the Latinx community? This is where natural law done *Latinamente*, or incorporating the epistemological and methodological practices of chapters three

¹¹⁰ Aquinas ST II-II 62.7

¹¹¹ Heyer, *Kinship Across Borders*, 103.

and four come into play. The first step towards a just restitution towards the Latinx community and undocumented migrants is simply to acknowledge that a wrong has been done. So far, there has only been one occurrence acknowledging wrongdoing to South American countries and that was when former president Barack Obama apologized for the U.S. intentionally infecting Guatemalan prisoners, women, and intellectually disabled patients with syphilis without consent.¹¹² The U.S. did not offer compensation and did not submit to an authority of international court to make restitution.

In acknowledging any wrong doing the U.S. must also acknowledge the way in which it has systematically treated the Latinx community and the undocumented community with ambiguity by placing their bodies in precarious positions. The U.S. cannot simply make up its mind on how it treats both its citizens or undocumented persons in its midst, leading to both racialized violence and a position of in-betweenness for the Latinx community. Both in terms of acceptance and rejection from the U.S. and the Latinx community's respective countries of origin but also in relation to the "ambiguities and contestations" that "emerge as the defining features of Latino racialization in America", Latinx undocumented persons are excluded from cultural, political, and economic institutions in the U.S.¹¹³ Because the racial ambiguity and anti-Latinx racism in the U.S., undocumented migrants from Latinx countries face more of a difficult

¹¹² See Maggie Fox, "U.S. apologizes for syphilis experiment in Guatemala" in *Reuters* October 1, 2010. <https://www.reuters.com/article/us-usa-guatemala-experiment/u-s-apologizes-for-syphilis-experiment-in-guatemala-idUSTRE6903RZ20101001> accessed January 4, 2021.

¹¹³ Gómez, *Inventing Latinos*, 129 Gomez argues that Latinx persons are often racialized inconsistently, at some moments Latinx persons are not categorized as white, at other times, they are. While the Latinx community often faces racialized violence and stand in solidarity with Black communities, sometimes they are complicit in whiteness. For many white U.S. citizens, the complexity of Latinx identity, for example Black Latinx persons who identify as Afro-Latinidad, is overlooked and Latinx persons are categorized as one racial or ethnic group.

time gaining naturalization as U.S. citizens. Because of this ambiguous violence done to the Latinx community and undocumented migrants, the border (and one can say Latinx identity), has been what Gloria Anzaldúa has called, “*una herida abierta* (an open wound).”¹¹⁴ Thus, acknowledging wrongdoing means taking on a *mestizaje* epistemology in order to see how the Latinx identity is shaped by the precarious in-between positioning it has been placed in. In doing so, the need for strict borders, binaries, and categorizations of being can be dismantled alongside the harsh policies that infest the physical borders. Cases of immigration can then be treated with nuance rather than broad, racialized policy decisions. Clear cut definitions, binaries, and borders can be understood to be a fiction that does not give an honest assessment of the reality of Latinx communities' relationship to immigration.

In acknowledging wrongs through the adoption of a *mestizaje* epistemology and immigration cases being treated with nuance, the second step towards restitution is to establish immigration courts that listen to the stories of undocumented migrants. This would require the establishment of immigration courts that are not under the jurisdiction of the department of justice. According to *Reno v. Flores* and *Zadvydas v. Davis*, undocumented migrants are entitled to due process under the fifth amendment.¹¹⁵ Because the relationship established by these two cases between the U.S. and undocumented migrants, undocumented migrants are afforded the right to a fair trial under an impartial judge. Thus, a court system that would put in place unfair

¹¹⁴ Anzaldúa, *Borderlands/La Frontera*, 25

¹¹⁵ See *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”); see also *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”).

and biased judges would result in an injustice that would be contrary to the objective rights (*ius*) established by the relationship. Because immigration courts are not under the judicial system but rather the Department of Justice (DOJ) under the executive branch, whose job under the U.S. constitution is to enforce laws, judges in immigration courts, who work for the attorney general, function as prosecutors rather than impartial judges. As immigration judge Ashley Tabbador states, “What people don't realize is our immigration court system is actually within a law enforcement agency, and the immigration judges are hired by our chief federal prosecutor, the U.S. attorney general. We can be fired - and that the Department of Justice and Department of Homeland Security are also the ones who are overseeing our courts.”¹¹⁶ Since immigration courts are under the Attorney General, the Southern Poverty Law Center has accused the DOJ of tolerating bias, allowing judges to enact arbitrary rules, engaging in docket changes that undermine a migrants right to a fair hearing, unprofessional conduct from judges, and the weaponization of the immigration court system towards political ends.¹¹⁷ Because of these abuses in the immigration system, thousands of deportations are occurring without due process and without listening to the needs of each migrant. For example, a case of where a woman who was fleeing gang and domestic violence from El Salvador was denied asylum because of a biased immigration judge, she was denied her appeal, and because then Attorney General Jeff Sessions,

¹¹⁶ Ari Shapiro, “Immigration Judges Association Argues For Courts Independent Of Attorney General” NPR.com January 29, 2020 <https://www.npr.org/2020/01/29/800938026/immigration-judges-association-argues-for-courts-independent-of-attorney-general>. Accessed January 4, 2021

¹¹⁷ See, *The Attorney General’s Judges: How the U.S. Immigration Courts Became a Deportation Tool*. The Southern Poverty Law Center. Splcenter.org. June 2019. https://www.splcenter.org/sites/default/files/com_policyreport_the_attorney_generals_judges_final.pdf. Accessed January 4, 2021.

“used his controversial regulatory power to take over the case,” he transgressed precedent to give his judges the power to categorically deny asylum to domestic abuse survivors from Central America.¹¹⁸ Immigration courts are not only denying asylum for survivors of domestic abuse coming from countries that the U.S. destabilized, immigration courts are also trying toddlers alone in court. Children as young as three are forced to attend immigration court alone without a parent or guardian.¹¹⁹ If justice is as Ulpian, Aquinas, and the natural law tradition defines as giving each person what they are due and the U.S. court system has established that undocumented persons are afforded due process, the immigration court under the Department of Justice, is in fact an aberration of justice.

On top of acknowledging wrongdoing and changing the immigration court system, a system of reparations is needed to address the multiple narratives, *cuentos*, and stories of U.S. mistreatment of Latin American countries, repatriation, racialized violence, and economic exploitation. Laura Gómez gives four policy shifts to begin reparations for the Latinx and undocumented communities. First, she argues that “every Latino migrant in the country today should receive legal authorization to live and work here and a path to citizenship.”¹²⁰ Second, she argues that due to the U.S. destabilization of Central American countries, Central American migrants should have a lower threshold to be admitted to the U.S. as refugees. Third, Puerto Rico should be admitted to statehood. Lastly, there should be an organization under the department of

¹¹⁸ See *Attorney General’s Judges*, 4. The woman’s name has been redacted

¹¹⁹ See Christina Jewett and Shafali Luthra, “Immigrant toddlers ordered to appear in court alone” in [thetexastribune.org](https://www.texastribune.org/2018/06/27/immigrant-toddlers-ordered-appear-court-alone/). June 27, 2018
<https://www.texastribune.org/2018/06/27/immigrant-toddlers-ordered-appear-court-alone/>
accessed January 4, 2021.

¹²⁰ Gomez, *Inventing Latinos*, 177.

labor to protect migrants from labor exploitation. Gómez argues because, “of the pervasiveness of mixed-immigration-status families and residential segregation of Latinos--poor and working-class Latinos--” these policy shifts, “will have far-reaching impacts on Latinos generally.”¹²¹ These policy shifts are necessary because responsibility toward relationships and giving each person their due, demands restitution be made for the abuse of relationships that have occurred between the U.S. and the Latinx community. For justice to occur, restitution must be made in order to restore equity between all peoples in the United States.

Conclusion

Restitution and restorative justice cannot just occur in a political and economic dimension, but must have a cultural and spiritual dimension. One simply cannot pay off the Latinx or undocumented community in an effort to return to an idealized time where white U.S. citizens do not have to deal with the Latinx community or its undocumented members. The fact is, the Latinx community and the white U.S. community’s stories are deeply intertwined and constitutive of one another. Aquinas does not simply view justice as restitution but a habit of rendering the other their due by a constant and perpetual will. In other words, justice is a social virtue oriented toward the common good. Virtue is teleological and ordered to specific ends, the natural law conception of justice is oriented toward the good of others as its end. Because justice is oriented toward the good of others, it is necessary to understand and get involved in each other’s stories. Thus, a Latinx view of natural law that we previously discussed in chapters two-four provide a unique framework to view the virtue of justice as a mutual looking for the good of others.

¹²¹ Gomez, *Inventing Latinos*, 178.

First, Vitoria's, De Soto's, and Las Casas' understanding of the communal aspects of natural law and its roots in the commonwealth helps us understand that natural law conception of justice must, in so far as it relates the U.S. immigration crisis and its relationship to the Latinx community, be one that must take into context the value of occupying multiple communities. That is, much like Las Casas took into account not only his own framework but also the framework of the indigenous communities to discern the natural law from within multiple contexts, justice coming from the mutual stories between Anglo U.S. citizens and the Latinx community must discern and come from a mutual understanding of each person's role in these stories. That is, since we share a common space, our stories have commonality and justice must come from both communities that share the same space. Vitoria would call this shared space a commonwealth. Since these Hispanic theologians saw that the natural law was derived from the community, then justice must come from the mutual stories of these communities.

The mutual stories and the fact that justice has to come from these communities illustrates the need to discern justice through a *mestizaje* epistemology. Anglo-American citizens and the Latinx community do not exist in two isolated communities but have mutually intertwining stories. This can be seen in the mixed raced and bicultural children that occupy both Anglo and Latinx identities, resulting in a continued tradition of *mestizaje*. Justice, as a virtue seeking the common good, looks at what aspects and what stories are shared and discerns through these mixed stories how to give each person their due. It is only in mining and inhabiting these stories that we begin to see the contours of justice. Through knowing the stories of exploitation and pain that the Latinx community endures, one can discern the need for restitution. In the mutually intertwining stories, one can understand the need for distributive justice. Each

story requires special attention and must exist on a case-by-case basis, employing a casuistic reasoning to discern what is constitutes giving the other what they are due.

While contemporary theories of justice often try to create systems of justice that are universally binding, they often forget that the common good means encountering each other's stories and relationships. Sometimes, these relationships require restitution. Sometimes these stories need to be told and represented by the people telling them. Yet, what is required of justice is to get to know the stories that require restitution and the stories that require commutative and distributive justice. A Latinx natural law framework of justice is able to incorporate all.

Conclusion

This dissertation is rooted in the effort to continue the history, *cuentos*, and tradition of one particular perspective of the Latinx community. Part of this perspective is the seeking of an ethical framework that takes seriously the history and relationship of the Latinx community to the Euroamerican and Hispanic natural law. We illustrated that the American natural law tradition was rooted in the traditions of Grotius, Locke, and Kant as opposed to Aquinas. Grotius, Locke, and Kant establish a natural law that presents the natural as a way to protect individual property and equates nature with white Eurocentric reason. This natural law framework was used to take Indigenous land, justify slavery, and exclude Indigenous, Latinx, and African American communities from U.S. political, economic, and social institutions. The Kantian iteration of this natural law sought to establish autonomous reason (rooted in epistemic racism), became normative for the new natural law. This framework sought to establish a type of natural law that was rooted in autonomous reason that universalized its particular framework to establish specific moral precepts that exclude Latinx communities. We then discussed revisionist and contextual natural law as establishing, rather, natural law as a context dependent understanding of moral reason. Such a type of moral reasoning is a frame of natural law used as a model to understand a Latinx natural law.

We also situated a Latinx natural law in its historical antecedents in Spanish natural law as it was understood by the school of Salamanca. We discussed natural law as understood by theologians such as Francisco de Vitoria, Domingo de Soto, and Bartolomé de Las Casas. These theologians presented a natural law that was subversive to the natural law that justified Spanish colonialism. Ultimately through situating natural law in the context of community, the *imago dei*,

and solidarity with the indigenous community, we illustrated that such a natural law can be useful to subvert frameworks that seek to marginalize the Latinx community.

Not only have we sought to situate the natural law tradition in relationship to the Latinx community, but we also sought to establish a Latinx natural law framework by drawing from the culture and narratives in the Latinx community. Through these narratives and cultural frameworks, we sought to incorporate the *mestizaje* as a type of synderesis and moral epistemology, understand Latinx narratives and *cuentos* as a type of moral casuistry, and understand a Latinx understanding of justice as giving the Latinx community its due in terms of reparations, restitution, and the establishment of justice as a social virtue.

While establishing *mestizaje* as a type of synderesis and moral epistemology, we sought to subvert the type of moral epistemology that sought to establish conceptions of the good as static and intransigent binaries. These binaries create stark conceptual borders such as the universal as opposed to the particular. An epistemology that is rooted in *mestizaje* presented an opportunity to transgress arbitrary conceptual borders. Through establishing a Latinx and *mestizaje* based epistemology we were able to critique the concept that the universal must be univocal, see moral reasoning as a type of journey rather than an immediate apprehension, and privilege the knowledges of marginalized communities.

Through adopting *mestizaje* as a type of moral epistemology we were also able to understand Latinx *cuentos* as a type of casuistry and method of moral reasoning. We discussed three types of Latinx narratives including interpersonal, cultural, and communal narratives that shape Latinx identity. In these narratives we were able to illustrate that in attuning to these particular narratives we understand the everyday economic, political, and social conditions that

give rise to Latinx ethical reflection. In diving into these stories, we see that in doing so we engage in natural law casuistic reflection.

In viewing the specifics of Latinx narratives, in particular the U.S. immigration crisis, we looked to the conditions of justice. We critiqued understandings of justice that were rooted in political liberalism, communitarian distributive justice, and the capabilities approach. All of these approaches work for idealized and abstract constructions of justice that are acontextual and ahistorical understandings of justice that ignore instances of injustices done against the Latinx community. Drawing on the concept of justice as responsibility we posited the natural law conception of justice as giving one their due as what responsibility towards relationships looks like. By understanding the varying stories of undocumented persons in the Latinx community we can see that a natural law moral reasoning of giving people their due requires a framework of justice that involves restitution. We posited that restitution requires acknowledging wrongs, providing economic and political reparations, and understanding justice as social virtue.

By attuning to both the historical narratives of natural law in both its Euroamerican frameworks and Spanish frameworks, we were able to historically situate Latinx natural law. Through giving attention to the cultural narratives of the Latinx community we were able to derive a moral epistemology, a *cuentos* based casuistry, and a historically situated understanding of justice derived from the Latinx community. In so doing, we formulated a type of natural law oriented toward moral reasoning rather than moral precepts. Moreover, by providing a specifically Latinx natural law, we were able to establish a normative ethical framework that can provide liberative opportunities for the Latinx community and continue their narratives and the narratives of my mother and grandmother.

Bibliography

- “The Commission will provide fresh thinking about human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights.” *Federal Register*. <https://www.federalregister.gov/documents/2019/05/30/2019-11300/departament-of-state-commission-on-unalienable-rights>
- “The Fundamental Constitutions of Carolina: March 1, 1669” in *The Avalon Project: Documents in Law History, and Diplomacy*. Yale Law School. https://avalon.law.yale.edu/17th_century/nc05.asp
- Anthony Pagden and Jeremy Lawrence, “Introduction”, in *Vitoria: Political Writings*. eds Anthony Pagden and Jeremy Lawrence. xiii-xxviii. Cambridge: Cambridge University Press, 1991.
- Anzaldúa, Gloria. *Borderlands/La Frontera: The New Mestiza* (San Francisco, CA: Aunt Lute Books, 1999
- Aquino, Maria Pilar. “Theological Method in U.S. Latino/a Theology: Toward an Intercultural Theology for the Third Millennium”, in *From the Heart of Our People*. eds. Orlando Espín and Miguel H. Díaz. 6-48. Maryknoll, NY: Orbis Press, 1999.
- Arneil, Barbara "John Locke, Natural Law, and Colonialism." *History of Political Thought* 13, no. 4 (1992): 587-603.
- Balderrama, Francisco E., and Raymond Rodriguez. *Decade of Betrayal: Mexican Repatriation in the 1930s*. [1st ed.]. Albuquerque, NM: University of New Mexico Press, 1995.
- Baudin, E. *Études Historiques et critiques sur la Philosophie de Pascal*, Vol. III, *Sa critique de la Casuistique et du probabilisme morale*. Neuchatel, 1947.
- Bean, M. G., Focella, E. S., Covarrubias, R., Stone, J., Moskowitz, G. B., & Badger, T. A. “Documenting Nursing and Medical Students' Stereotypes about Hispanic and American Indian Patients”. *Journal of Health Disparities Research and Practice*, 7, no. 4. (2014). 14.
- Beckett, Lois and Sam Levin. “El Paso shooting: 21-year-old suspect 'posted anti-immigrant manifesto.’” *The Guardian*. August 4, 2019. <https://www.theguardian.com/us-news/2019/aug/03/el-paso-shooting-21-year-old-suspect-in-custody-as-officials-investigate-possible-hate>.
- Bhabha, Homi K. *The Location of Culture*. London: Routledge, 1994.
- Bingemer, Maria Clara. *Latin American Theology: Roots and Branches*. Maryknoll, NY: Orbis Books, 2016.

- Boff, Leonardo and Clodovis Boff. *Introducing Liberation Theology*. Maryknoll, NY: Orbis Books, 1987.
- Borger, Julian. "Pompeo claims private property and religious freedom are 'foremost' human rights" *theguardian.com* July 16, 2020. <https://www.theguardian.com/us-news/2020/jul/16/pompeo-claims-private-property-and-religious-freedom-are-foremost-human-rights>
- Boyd, Craig A. *A Shared Morality: A Narrative Defense of Natural Law Ethics*. Grand Rapids, MI: Brazos Press, 2007.
- Brown, Oscar James. *Natural Rectitude and Divine Law in Aquinas: An Approach to an Integral Interpretation of the Thomistic Doctrine of Law* (Toronto, 1981), 175-77.
- Burkholder, Mark A., and Lyman L. Johnson. *Colonial Latin America*. 4th ed. New York, NY: Oxford University Press, 2001.
- Cahill, Lisa Sowle. "Natural Law: A Feminist Reassessment." In *Is There a Human Nature*, 78–91. Notre Dame, Ind: University of Notre Dame Press, 1997.
- Calafate, Pedro and Ricardo Ventura. "The Iberian School of Peace: Natural Law and Human Dignity." *Revista Portuguesa De Filosofia* 75, no. 2 (2019): 793-836.
- Caminero-Santangelo, Marta. "'The Pleas of the Desperate': Collective Agency Versus Magical Realism in Ana Castillo's *So Far From God*." in *Tulsa Studies in Women's Literature*, Vol 24, No 1. (Spring, 2005): 81-103.
- Carlsen, Laura. "Trade Disagreement: The Inequalities of NAFTA." *The Christian Century* 126, no. 18 (September 8, 2009): 10–12.
- Carman, Glen "Human Sacrifice and Natural Law in Las Casas's *Apologia*", in *Colonial Latin American Review* Vol 25 No 3. (2016), 278-299.
- Carter, Jimmy. "U.S. Finally Ratifies Human Rights Covenant." June 28, 1992. [Thecartercenter.org. https://www.cartercenter.org/news/documents/doc1369.html](https://www.cartercenter.org/news/documents/doc1369.html) accessed 8/18/2020
- Castilla Urbano, Francisco. "La Revision Del Concepto De 'Barbaro' En Los Escritos De Las Casas." *Romance Notes* 59, no. 1 (January 1, 2019).
- Catechism of the Catholic Church*. New York, NY: Doubleday, 1995.
- Chiaramonte, José Carlos. "The Principle of Consent in Latin and Anglo-American Independence." *Journal of Latin American Studies* 36, no. 3 (2004): 563-86.
- Childers, William. "Hispanic Casuistry Studies: Room to Grow." *Hispanic Review* 79, no. 2 (April 17, 2011): 317–26.

- Christman, Angela Russell. ‘What Did Ezekiel See?’: Patristic Exegesis of Ezekiel 1 and Debates about God’s Incomprehensibility.” *Pro Ecclesia* 8, no. 3 (Sum 1999): 338–63.
- Clayton, Lawrence and David M. Lantigua. *Bartolomé de Las Casas and the Defense of Amerindian Rights: A Brief History with Documents*. Tuscaloosa, AL: University of Alabama Press, 2020.
- Cranston, Maurice. *John Locke: A Biography*. Oxford, UK: Oxford University Press, 1957.
- Cueveas, Mariano. *Historia de la Iglesia en Mexico* 5 vols Mexoci: Assilo “Patricioa Sans”, 1922.
- Davis, Scott “Humanist Ethics and Political Justice, Soto, Sepúlveda, and the ‘Affair of the Indies’”, in *Annual of the Society of Christian Ethics* 9 (1999), 193-212.
- Davis, Julia Hirschfield. “Trump Calls Some Unauthorized Immigrants ‘Animals’ in Rant” *The New York Times*. May 16, 2018. <https://www.nytimes.com/2018/05/16/us/politics/trump-undocumented-immigrants-animals.html>
- De La Torre, Miguel A. *Latino/a Social Ethics: Moving Beyond Eurocentric Moral Thinking*. Waco, TX: Baylor University Press, 2010.
- De La Torre, Miguel A., and Edwin David Aponte, eds. *Introducing Latino/a Theologies*. Maryknoll, NY, Orbis Books, 2001.
- De La Torre, Miguel A. “Living on the Border.” *The Ecumenical Review* 59, no. 2–3 (April 2007): 214–20.
- Deleuze, Gilles and Felix Guattari. *A Thousand Plateaus: Capitalism and Schizophrenia*. Minneapolis MN: University of Minnesota Press, 1987.
- Díaz, Junot. *The Brief Wondrous Life of Oscar Wao*. New York, NY: Riverhead Books, 2007.
- Donnelly, Jack. *Universal Human Rights Theory and Practice*. Ithaca NY: Cornell University Press 1989.
- Dussel, Enrique D., and Alejandro A. Vallega. *Ethics of Liberation in the Age of Globalization and Exclusion*. Latin America Otherwise: Languages, Empires, Nations. Duke University Press, 2013.
- Dworkin, Ronald. *Taking Rights Seriously*. London: Duckworth Press, 1977.
- Elizondo, Virgilio. “Transformation of Borders: Border Separation or New Identity” in *Theology: Expanding the Borders: The Annual Publication of the College Theology Society*. Vol 43 (1998), 22-39.
- Elizondo, Virgilio. *Galilean Journey: The Mexican-American Promise*. Maryknoll, NY: Orbis Press, 2000.

- Espín, Orlando "Popular Catholicism Among Latinos" in *The Faith of The People: Theological Reflection on Popular Catholicism*. ed. Orlando Espín. 111-155. Maryknoll, NY: Orbis Press, 1997.
- Espín, Orlando. *Idol and Grace: On Traditioning and Subversive Hope*. Maryknoll, NY: Orbis Press, 2014.
- Eze, Emmanuel Chuckwudi. *On Reason: Rationality in a World of cultural Conflict and Racism*. Durham, SC: Duke University Press, 2008.
- Eze, Emmanuel Chuckwudi. "The Color of Reason" in Eze (ed.), *Post-colonial African Philosophy: A Critical Reader*. Oxford: Blackwell, 1997.
- Farr, James. "Locke, Natural Law, and New World Slavery." *Political Theory* 36, no. 4 (2008): 495-522.
- Faus, José Ignacio González. "Sin" in *Mysterium Liberationis*, ed. Ignacio Ellacuría and Jon Sobrino. Maryknoll, NY: Orbis Press, 1993.
- Finnis, John. *Natural Law and Natural Rights*. Clarendon: Oxford University Press, 1980.
- Ford, Craig. "Foundations for a Queer Natural Law." PhD diss, Boston College, 2018.
- Foucault, Michel. *The Order of Things: An Archaeology of the Human Sciences*. New York, NY: Vintage Books, 1994.
- Fowler, Robert Booth. "Community: Reflections on Definition" in *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. ed. Amitai Etzioni. 88-89. Charlottesville, VA: University of Virginia Press, 1995.
- Fox, Maggie. "U.S. apologizes for syphilis experiment in Guatemala" in *Reuters* October 1, 2010. <https://www.reuters.com/article/us-usa-guatemala-experiment/u-s-apologizes-for-syphilis-experiment-in-guatemala-idU.S.TRE6903RZ20101001>
- Frieda, Juan. "Las Casas y el Movimiento indigenista en España y America en la Primera Mitad del Siglo XVI," *Revista de Historia de America* (Mexico), no. 34 (1952).
- Garcia, Ismael. "Ethics" in *The Handbook of Latina/o Theologies*. eds. Edwin David Aponte and Miguel A. De La Torre. 82-90. St. Louis, MO: Chalice Press, 2006.
- Geertz, Clifford. "Thick Description: Towards an Interpretive Theory of Culture," in *The Interpretation of Cultures: Selected Essays*. 9-25. New York: Basic Books, 1973.
- George, Robert P. *In Defense of Natural Law*. Oxford: Clarendon Press, 1999.
- Glausser, Wayne. "Three Approaches to Locke and the Slave Trade," *Journal of the History of Ideas* 51 (1990): 199-216.

- Glendon, Mary Anne. "Letter." July 30, 3030.
<https://www.humanrightsfirst.org/sites/default/files/CUR%20Report%20Comment%20NGO%20Letter%20Final%2020.07.30.pdf>
- Goizueta, Roberto. *Caminemos con Jesús: Toward a Hispanic/Latino Theology of Accompaniment*. Maryknoll, NY: Orbis Press, 1995.
- Goizueta, Roberto. *Christ Our Companion: Toward a Theological Aesthetics of Liberation*. Maryknoll, NY: 2009.
- Gómez-Ruiz, Raúl. *Mozarabs, Hispanics and the Cross*. Maryknoll, NY: Orbis Books, 2007.
- Gómez, Laura. *Inventing Latinos: A New History of American Racism*. New York, NY: The New Press, 2020.
- Gomez, Santiago Castro. *La Hybris de punto cero* Bogota, Columbia: Editorial Pontifica Universidad Javeriana, 2007.
- González, Justo. *Mañana: Christian Theology from a Hispanic Perspective*. Nashville, TN: Abingdon Press, 1990.
- Gonzalez, Michelle. "Who is Americana/o? Theological Anthropology, Postcoloniality, and the Spanish-Speaking Americas" in *Postcolonial Theologies: Divinity and Empire*. eds. Catherine Keller, Michael Nausner, and Mayra Rivera. 59-78. St. Louis, MO: Chalice Press, 2004.
- Gracia, Jorge J.E. *Hispanic/Latino Identity: A Philosophical Perspective* Malden, MA: Blackwell, 2000.
- Greene, Robert A. "Synderesis, the Spark of Conscience, in the English Renaissance." *Journal of the History of Ideas* 52, no. 2 (April 1, 1991): 195-219.
- Grotius, Hugo. *Mare Liberum*, 1609-2009. trans. Robert Feenstra. [Electronic Resource]. Brill, 2009.
- Grotius, Hugo. *On the Law of War and Peace*. trans. Stephen C. Neff. [Electronic Resource]. Student ed. Cambridge University Press, 2012.
- Guardiola-Sáenz, Leticia A. "Reading form Ourselves: Identity and Hermeneutics Among Mexican-American Feminists" in *A Reader in Latina Feminist Theology: Religion and Justice*. eds. Maria Pilar Aquino, Daisy Machado, and Jeanette Rodriguez. 80-97. Austin, TX: University of Texas Press, 2002.
- Gutiérrez, Gustavo. *Las Casas: In search of the Poor of Jesus Christ*. Maryknoll, NY: Orbis Books, 1993.

- Hanke, Lewis. *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians*. DeKalb: Northern Illinois University Press, 1994.
- Hannas, Monica. “Resembling the Fragments’: Battling Historiographies, Caribbean Discourse, and Nerd Genres in Junot Díaz’s *The Brief Wondrous Life of Oscar Wao*” in *Callaloo*, Spring, 2010. Vol 33 No. 2. (Spring, 2010), 498-520.
- Hauerwas, Stanley. “Casuistry in Context: The Need for Tradition.” in *In Good Company: The Church as Polis*. 267-284. Notre Dame, Ind.: University of Notre Dame Press, 1995.
- Hauerwas, Stanley. “Casuistry as a Narrative Art.” *Interpretation* 37, no. 4 (October 1983): 377–88.
- Hauerwas, Stanley. *The Peaceable Kingdom: A Primer in Christian Ethics*. Notre Dame, IN: Notre Dame University Press, 1983.
- Herrera v. Wyoming 587 U.S. 3 (2019)
- Heyer, Kristin E. *Kinship across Borders: A Christian Ethic of Immigration*. Moral Traditions Series. Georgetown University Press, 2012.
- Hill, Thomas E. and Bernard Boxill, “Kant and Race” in *Race and Racism*. Boxhill (ed.), Oxford: Oxford University Press, 2003.
- Hogan, Hogan. *Keeping Faith with Human Rights*. Washington, D.C: Georgetown University Press, 2015.
- Hogan, Linda. “The Many Voices of Human Rights” in *Canopy Forum on the Interactions of Law and Religion*. January, 2020. Canopyforum.org
<https://canopyforum.org/2020/01/08/the-many-voices-of-human-rights-by-linda-hogan/>
- Ignatieff, Michael. *Human rights as Politics and Idolatry*. Princeton, NJ: Princeton University Press, 2001.
- Immaculate Conception Church. “History of our Fiesta de La Familia” at iccalamogordo.org
<https://www.iccalamogordo.org/history-about-our-fiesta-de-la-fami> accessed January 4, 2021.
- Imperator-Lee, Natalia. *Cuéntame: Narrative in the Ecclesial Present*. Maryknoll, NY: Orbis Books, 2018.
- Isasi-Díaz, Ada María. *En La Lucha/In the Struggle: Elaborating a Mujerista*. Minneapolis, MN: Fortress Press, 2004.
- Isasi-Díaz, Ada María. *Mujerista Theology: A Theology for the Twenty-first Century*. Maryknoll, NY: Orbis Press, 1996.

- Jewett, Christina and Shafali Luthra, "Immigrant toddlers ordered to appear in court alone" in [thetexastribune.org](https://www.texastribune.org/2018/06/27/immigrant-toddlers-ordered-appear-court-alone/). June 27, 2018 <https://www.texastribune.org/2018/06/27/immigrant-toddlers-ordered-appear-court-alone/>
- Jonsen, Albert and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning*. Berkeley, CA: University of California Press, 1988.
- Jonsen, Albert R. "Practical Reasoning and Moral Casuistry." In *The Blackwell Companion to Religious Ethics*, 53–60. Malden, 2005.
- Kant, Immanuel. "On National Characteristics" in *Race and the Enlightenment: A Reader*. Ed. Emmanuel Chukwudi Eze. Cambridge, MA: Blackwell, 1997.
- Kant, Immanuel. "Fundamental Principles of the Metaphysics of Morals" in *Ethics: The Essential Writings*. Ed. Gordan Marino. New York, NY: Random House Publishing, 2010.
- Kant, Immanuel. "Observations on the Feeling of the Beautiful and Sublime" in *Race and the Enlightenment: A Reader*. Eze (ed.) Cambridge, MA: Blackwell, 1997.
- Kant, Immanuel. "Physical Geography" in *Race and the Enlightenment: A Reader*. Ed. Emmanuel Chukwudi Eze. Cambridge, MA: Blackwell, 1997.
- Kant, Immanuel. "The Categorical Imperative" in *The Right Thing to Do: Basic Readings in Moral Philosophy*. Ed. James Rachels. New York, NY: McGraw-Hill, 2003.
- Keenan, James F. "Moral Discernment in History." *Theological Studies* 79, no. 3 (September 2018): 668–79.
- Kellner, Alan J. "States of Nature in Immanuel Kant's Doctrine of Right." *Political Research Quarterly* 73, no. 3 (September 2020): 727–39.
- Kelly, Robert A. "Public Theology and the Modern Social Imaginary." *Dialog* 50, no. 2 (Sum 2011): 162–73.
- Kleingeld, Pauline. "Kant's Second Thoughts on Race." *The Philosophical Quarterly* (1950-) 57, no. 229 (2007): 573-592.
- Koch, Alexander, Chris Brierley, Mark M. Maslin, and Simon L. Lewis. 2019. "Earth System Impacts of the European Arrival and Great Dying in the Americas after 1492." *Quaternary Science Reviews* 207 (March): 13–36.
- Krieger, Leonard. "Kant and the Crisis of Natural Law." *Journal of the History of Ideas* 26, no. 2 (1965): 191-210.
- Kries, "Origen, Plato, and Conscience (Synderesis) in Jerome's Ezekiel Commentary." *Traditio* 57 (2002): 67-83.

- Langston, Douglas. "The Spark of conscience: Bonaventure's View of Conscience and Synderesis", *Franciscan Studies* vol 53. Classical and Medieval Literature Criticism (Vol 79) 1993.
- Lantigua, David. "The Freedom of the Gospel: Aquinas, Subversive Natural Law, and the Spanish Wars of Religion." in *Modern Theology*. 31:2 (April 2015), 312-337.
- Las Casas, Bartolomé de. *A Short Account of the Destruction of the Indies*. London: Penguin Books, 1992.
- Las Casas, Bartolomé de. *In the Defense of the Indians*. Translated by Stafford Poole, C.M. DeKalb, IL, Northern Illinois University Press, 1992.
- Lebacqz, Karen. *Six Theories of Justice: Perspectives from Philosophical and Theological Ethics*. Minneapolis, MN: Augsburg Publishing House, 1986.
- Lévinas, Emmanuel. and Philippe Nemo. *Ethics and Infinity*. Pittsburgh: Duquesne University Press, 1985.
- Lloyd, Vincent. *Black Natural Law*. New York, NY: Oxford University Press, 2016.
- Locke, John. *Second Treatise of Government*, ed. C B. Macpherson. Indianapolis, Ind.: Hackett Pub. Co., 1980.
- Long, Steven A. "Natural Law or Autonomous Practical Reason: Problems for the New Natural Law Theory" in *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*. Eds John Goyette, Mar Latkovic, and Richard Myers. Washington DC: Catholic University of America Press, 2004.
- M. B. "The Term Synderesis and the Scholastics." *Irish Theological Quarterly* 23, no. 2 (1956): 151-164.
- Machado, Daisy L. "Kingdom Building in the Borderlands: The Church and Manifest Destiny" in *Hispanic/Latino Theology: Challenge and Promise*. eds. Ada María-Isasi-Díaz and Fernando F. Segovia. 63-72. Minneapolis, MN: Fortress Press, 1996
- MacIntyre, Alasdair. *After Virtue*. Notre Dame, IN: University of Notre Dame Press, 1984.
- Macy, Gary. "The Iberian Heritage of U.S. Latino/a Theology" in *Futuring Our Past: Explorations in the Theology of Tradition*. eds. Orlando Espín and Gary Macy. 43-82. Maryknoll, NY: Orbis Books, 2006.
- Maffie, James "Philosophy without Europe", in *Latin American and Latinx Philosophy: A Collaborative Introduction*. Ed. Robert Eli Sanchez Jr. 13-35. New York, NY: Routledge, 2020.

- Martin, David A. "Why Immigration's Plenary Power Doctrine Endures," *Oklahoma Law Review* 68, no. 1 (Fall 2015): 29-56.
- Marty, Martin E. "Forward" in *In the Defense of the Indians*. Translated by Stafford Poole, C.M. xiii-xviii. DeKalb, IL, Northern Illinois University Press, 1992.
- Massingale, Bryan. *Racial Justice and the Catholic Church*. Maryknoll, NY: Orbis Books, 2010.
- Matovina, Timothy. *Theologies of Guadalupe: From the Era of Conquest to Pope Francis*. Oxford University Press, 2019.
- McGrath, Alister. *A Scientific Theology vol 1: Nature* Edinburgh: T&T Clark, 2001.
- Medina, Néstor. "The Religious Psychology of Mestizaje: Gómez Suárez de Figueroa or Garcilaso Inca de La Vega." *Pastoral Psychology* 57, no. 1–2 (September 2008): 115-124.
- Medina, Néstor. *Mestizaje: (Re)mapping Race, Culture, and Faith in Latina/o Catholicism*. Maryknoll: NY, Orbis Press, 2009.
- Mendieta, Jeronimo de. *Historia Ecclesiastica Indiana* ed. Juaquin Garcia. Icazbalceta Mexico, 1870.
- Mignolo, Walter D. and Catherine E. Walsh. *On Decoloniality: Concepts, Analytics, Praxis* Durham, NC: Duke University Press, 2018.
- Mignolo, Walter D. *The Darker Side of Western Modernity: Global Futures, Decolonial Options*. Durham, NC: Duke University Press, 2011.
- Mignolo, Walter. "Decolonizing Epistemologies/Building Decolonial Epistemologies" in *Decolonizing Epistemology: Latina/o Theology and Philosophy*. eds. Ada María Isasi-Díaz and Eduardo Mendieta. 19-43. New York, NY: Fordham University Press, 2011.
- Mignolo, Walter. *Local Histories/Global Designs: Coloniality, Subaltern Knowledge's, and Border Thinking*. Princeton, NJ: Princeton University Press, 2000.
- Mignolo, Walter. *The Idea of Latin America* Oxford: Blackwell Publishing, 2005.
- Minahane, J. "The controversy at Valladolid, 1550- 1551". *Church and State*. Nu.116.[4] (2014).
- Moraga, Cherríe, and Gloria Anzaldúa, eds. *This Bridge Called My Back: Writings by Radical Women of Color*. Fourth edition. Albany: State University of New York (SUNY) Press, 2015.
- Murphy, Heather. "El Paso Shooting Suspect Indicted on Capital Murder Charge." *The New York Times*. September 12, 2019. <https://www.nytimes.com/2019/09/12/us/el-paso-suspect-capital-murder.html>

- Nausner, Michael. "Homeland as Borderland: Territories of Christian Subjectivities" in *Postcolonial Theologies: Divinity and Empire*. eds. Catherine Keller, Michael Nausner, and Mayra Rivera. 118-133. St. Louis, MO: Chalice Press, 2004.
- Nussbaum, Martha. *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Belknap Press, 2011.
- O'Neill, Onora. *Towards Justice and Virtue: A constructive Account of Practical Reasoning*. Cambridge: Cambridge University Press, 1996.
- Orique, David T. "Journey to the Headwaters: Bartolomé de Las Casas in a Comparative Context." *The Catholic Historical Review* 95, no. 1 (January 2009): 1-24.
- Pennington, Kenneth. "Bartolomé de Las Casas and the Tradition of Medieval Law." *Church History* 39, no. 2 (June 1970): 149-161.
- Perez-Torres, Raphel. "Mestizaje" in *The Routledge Companion to Latino/a Literature*. Abingdon: Routledge and Taylor & Francis Group, 2013: 25-33.
- Pérez, Gail. "Ana Castillo as *Santara*: Reconstructing Popular Religious Praxis" in *A Reader in Latina Feminist Theology: Religion and Justice*. Eds. Maria Pilar Aquino, Daisy L. Machado, and Jeanette Rodriguez. 53-89. Austin, TX: University of Texas Press, 2002.
- Phillips, Amber. "'They're rapists.' President Trump's campaign launch speech two years later, annotated" *The Washington Post*. June 16, 2017.
<https://www.washingtonpost.com/news/the-fix/wp/2017/06/16/theyre-rapists-presidents-trump-campaign-launch-speech-two-years-later-annotated/>
- Pineda-Madrid, Nancy. *Suffering and Salvation in Ciudad Juárez*. Minneapolis, MN: Fortress Press, 2011.
- Pitts, Andrea J. "Latinx Identity" in *Latin American and Latinx Philosophy: A Collaborative Introduction*, ed. Robert Eli Sanchez, Jr. 220-241. New York, NY: Routledge Press, 2020.
- Polar, Antonio Cornejo. "Mestizaje, Transculturation, Heterogeneity" in *The Latin American Cultural Studies Reader* eds Ana del Sarto Alicia Rios and Abril Trigo. Durham, SC: Duke University Press, 2004
- Porter, Jean. "Does the Natural Law Provide a Universally Valid Morality?" in *Intractable Disputes About the Natural Law: Alasdair MacIntyre and Critics*. Ed. Lawrence Cunningham. 53-96. Notre Dame, IN: University of Notre Dame Press, 2009.
- Porter, Jean. "Moral Rules and Moral Actions: A Comparison of Aquinas and Modern Moral Theology." *Journal of Religious Ethics* 17, no. 1 (Spring 1989): 123-149.

- Porter, Jean. *Natural and Divine Law: Reclaiming the tradition for Christian Ethics*. Grand Rapids, MI: Eerdmans, 1999.
- Porter, Jean. *Nature as Reason: A Thomistic Theory of Natural Law*. Grand Rapids, MI: Eerdmans, 2005.
- Powell, Philip Wayne. *Tree of Hate: Propaganda and Prejudices Affecting United States Relations with the Hispanic World*. Albuquerque, NM: University of New Mexico Press, 2008.
- Quijano, Anibal. "Coloniality and Modernity/Rationality" *Cultural Studies* 21, nos. 2/3 (2007):168-178.
- Quirk, Robert E. "Some Notes on a Controversial Controversy: Juan Ginés De Sepúlveda and Natural Servitude." *The Hispanic American Historical Review* 34, no. 3 (1954): 357-364.
- Rajendra, Tisha M. *Migrants and Citizens Justice and Responsibility in the Ethics of Immigration*. Grand Rapids, MI: Eerdmans Publishing, 2017.
- Rawls, John. *A Theory of Justice*, revised ed. Cambridge, MA: Bellknap Press, 1999.
- Rawls, John. *Political Liberalism*. New York, NY: Columbia University Press, 1996.
- Ray, Eric L. "Mexican Repatriation and the Possibility for a Federal Cause of Action: A Comparative Analysis on Reparations," *University of Miami Inter-American Law Review* 37, no. 1 (Fall 2005): 171-196
- Reno v. Flores, 507 U.S. 292, 306 (1993)
- Report of the Commission on Unalienable Rights*. State.gov. <https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf>
- Ricard, Robert. *The Spiritual Conquest of Mexico: An Essay on the Apostolate and Evangelizing Methods of Mendicant Orders in New Spain, 1523-1572*. Translated by Lesley Byrd Simpson. Berkeley: Berkley CA: University of California Press 1966.
- Rodríguez Nestor P. and Cecilia Menjívar "Central American Immigrants and Racialization in a Post-Civil Rights Era in *How the United States Racializes Latinos: White Hegemony and Its Consequences*, ed. Jose A Cobas, Joge Duany and Joe R. Feagin. 183-199. Boulder, CO: Paradigm Publishers, 2009.
- Sandel, Michael. *Justice: What's the Right Thing to Do*. New York, NY: Farrar, Straus and Giroux, 2009.
- Sandel, Michael. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press, 1982.

- Sandoval, Moises. *On the Move: A History of the Hispanic Church in the United States*. Rev., 2nd ed. Orbis Books, 2006.
- Santana, Alejandro. “‘The Indian Problem’ Conquest and the Valladolid Debate” in *Latin American and Latinx Philosophy: A Collaborative Introduction*. ed. Robert Eli Sanchez, Jr. 36-57. New York, NY: Routledge, 2020
- Santos, Boaventura de Sousa. *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South*. Durham, NC: Duke University Press, 2018.
- Scattola, Merio. “La Virtud de la Justicia en la Doctrina de Domingo de Soto” in *Anuario Filosófico* 45/2 (2012), 313-341.
- Schreiter, Robert. *Constructing Local Theologies*. Maryknoll, NY: Orbis Books, 1985.
- Schubeck, Thomas L. “The Reconstruction of Natural Law Reasoning.” *Journal of Religious Ethics* 20, no. 1 (Spring 1992): 149-178.
- Schutte, Ofelia. “Crossroads and In-Between Spaces: A Meditation on Anzaldúa and Beyond” in *Theories of the Flesh: Latinx and Latin American Feminisms, Transformation, and Resistance*. Eds. Andrea J. Pitts, Mariana Ortega, and Jose Medina. 123-134. New York: NY, Oxford University Press, 2020.
- Segovia, Fernando F. “In the World but Not of It: Exile as a Locus for a Theology of the Diaspora” In *Hispanic/Latino Theology: Challenge and Promise*. eds. Ada María Isasi-Díaz and Fernando F. Segovia. 195-217. Minneapolis, MN: Fortress Press, 1996.
- Sen, Amartya. *The Idea of Justice*. Cambridge, MA: Belknap Press, 2009.
- Sepúlveda, Juan Ginés de. *Obres completes VIII: Demócrates Segundo; Apología en favor del libro sobre las justas causas de la guerra*. Salamanca: Europa Artes Gráficas, 1997.
- Shapiro, Ari. “Immigration Judges Association Argues For Courts Independent Of Attorney General” NPR.com January 29, 2020
<https://www.npr.org/2020/01/29/800938026/immigration-judges-association-argues-for-courts-independent-of-attorney-general>
- Silverstone, Scott A. "The Mexican American War and Territorial Expansion." in *Divided Union: The Politics of War in the Early American Republic*. 157-201. London: Cornell University Press, 2004.
- Simmonds, CJ , Gemma. “Jansenism: An Early Ressourcement Movement” in *Ressourcement: A Movement for Renewal Twentieth-Century Catholic Theology*. Eds. Gabriel Flynn and Paul Murray. 23-35. Oxford: Oxford University Press, 2012.
- Somme, Luc- Thomas. “The Infallibility, Impeccability and Indestructibility of Synderesis.” *Studies in Christian Ethics* 19, no. 3 (December 2006): 403-416.

- Speer, Mary. "Tutoring the King: Juan Ginés De Sepúlveda's Victory Over Bartolomé De Las Casas." *Bulletin of Hispanic Studies* 97, no. 3 (2020): 271-287.
- Stoetzer, O.C. *El Pensamiento político en la América Española durante el periodo de la emancipación (1789-1824)* vol. 2. Madrid, 1966.
- Taylor Charles, *Modern Social Imaginaries*. Durham, N.C.: Duke University Press, 2004.
- Teel, Karen. "The Unbearable Weight of Whiteness: Christian Faith and Racial Justice." Lecture. The Center for Interpretive and Qualitative Research, Duquesne University. Pittsburgh PA. October 16, 2016.
<https://edtech.msl.duq.edu/Mediasite/Play/0746c5a946844a6696c89d09451ed1841d>
- The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool*. The Southern Poverty Law Center. Splcenter.org. June 2019.
https://www.splcenter.org/sites/default/files/com_policyreport_the_attorney_generals_judges_final.pdf
- Tichenor, Daniel J. "Immigration and Political Community in the United States" in *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. ed. Amitai Etzioni. 259-280. Charlottesville, VA: University of Virginia Press, 1995.
- Tierney, Brian. "Hugo Grotius." In *Liberty and Law*. 237-238. Washington, D.C.: Catholic University of America Press, 2014.
- Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*. Grand Rapids, Michigan: Wm. B. Eerdmans Publishing, 2001.
- Tinker, George E. "John Locke on Property." In *Beyond the Pale: Reading Ethics from the Margins*. eds. Miguel De La Torre. 49-59. Louisville, Ky, Westminster John Knox Press, 2011.
- Traina, Christina. *Feminist Ethics and Natural Law: The End of the Anathemas. Moral Traditions and Moral Arguments*. Washington, D.C.: Georgetown University Press, 1999.
- Tubau, Xavier. "Canon Law in Juan Gines de Sepúlveda's 'Democrates Secundus'." *Bibliothèque D'Humanisme Et Renaissance* 73, no. 2 (2011): 265-277.
- Tuck, Richard. *Natural Right Theories: Their Origins and Their Development*. Cambridge: Cambridge University Press, 2002.
- Tydlitátová, Věra. "On the Origin of the Tetramorph." *Communio Viatorum* 45, no. 2 (2003): 153-62.

- Uzgalis, William. "The Same Tyrannical Principle': Locke's Legacy on Slavery," in *Subjugations and Bondage: Critical Essays on Slavery and Social Philosophy*, ed. Tommy L. Lott. 49-79. Lanham, MD: Rowman and Littlefield, 1998.
- Villey, Michel. "L'idée du droit subjectif et les systèmes juridiques romains," *Revue historique de droit français et étranger*, series 4, 24 (1946): 201-227.
- Walzer, Michael. "The Communitarian Critique of Liberalism" in *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. ed. Amitai Etzioni. 52-70. Charlottesville, VA: University of Virginia Press, 1995
- Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York, NY: Basic Books, 1983.
- Wamsley, Laurel. "Trump Administration Sanctions ICC Prosecutor Investigating Alleged U.S. War Crimes" *NPR.org* September 2, 2020, <https://www.npr.org/2020/09/02/908896108/trump-administration-sanctions-icc-prosecutor-investigating-alleged-u-s-war-crim>
- Welchman, Jennifer. "Locke on Slavery and Inalienable Rights," *Canadian Journal of Philosophy* 25 (1995): 67-81.
- Wilson-Hartgrove, Jonathan, Brian D McLaren, Willie James Jennings, Jennifer M McBride, Miguel A De La Torre, Gary J Dorrien, James K A Smith, et al. "State of the Colony: Resident Aliens at 25." *The Christian Century* 131, no. 20 (October 1, 2014): 22-31.
- Woolhouse, Roger S. *Locke: A Biography*. Cambridge: Cambridge University Press, 2007.
- Zadvydas v. Davis, 533 U.S. 678, 693 (2001)