THINKING ABOUT JUSTICE FROM "THE OUTSIDE" OF NATIONALITY:

RE-THINKING THE LEGAL AND NATIONAL

DIMENSIONS OF CITIZENSHIP

by

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A DISSERTATION

Presented to the Department of Philosophy
and the Graduate School of the University of Oregon
in partial fulfillment of the requirements
for the degree of
Doctor of Philosophy

September 2011

DISSERTATION APPROVAL PAGE

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Title: Thinking about Justice from "the Outside" of Nationality: Re-Thinking the Legal and National Dimensions of Citizenship

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Degree awarded September 2011

DISSERTATION ABSTRACT

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Doctor of Philosophy

Department of Philosophy

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This dissertation examines the legal and national dimensions of citizenship, focusing on the nature of social justice, multiculturalism and state formation in light of an increasing "migrant" population in the United States.

For many individuals, Hispanic people and undocumented immigrants are outside of stereotypic understandings of "American" and the legal structure of the United States. Seeking to question this belief and the subsequent political atmosphere it engenders, this work presents the challenges that Hispanic people and undocumented persons pose to the central tenants of liberal political theory and the politics of recognition.

Liberal theories of justice that assume the nation-state as their starting point and ignore the international elements of 21st century societies need reconsideration. Although John Rawls's work remains central to this tradition, by constricting his theory of justice to a closed, self-sustaining polity that assumes all persons behind the veil of ignorance to be citizens, the trajectory of liberal political thought after his work evades the question of citizenship and the possibility of social justice for undocumented people. Although

conversations about "multicultural citizenship" are abundant in North American political contexts, these discussions focus on the national representation of minority peoples and ignore the legal aspects of citizenship and the reality of undocumented immigration. Philosophers that do think about undocumented persons argue for international theories of justice, human rights or cosmopolitanism. These are positive steps in thinking about social justice for immigrants, but they only matter insofar as they do not impinge upon state sovereignty and render social justice for immigrants a secondary issue.

While Latin American political thinkers such as Enrique Dussel ground the origins of political power in the citizenry of states, they nonetheless assume the category of "citizen" to be uncontested. Thus, even in settings where radical political change is underway, the basis of state membership remains to be defined and freed of racial (or even "post-racial") expectations. I undertake this project in terms of *Estadounidense* or "Unitedstatesian" citizenship, a concept that combats ethnocentric beliefs about the meaning of "American" while also informing of more open understandings of legal citizenship and porous conceptions of the state.

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ACKNOWLEDGMENTS

Dedicated to any person I know with one of the following for a last name: Loera, Silva, Camacho, Hernandez, Heredia, Rodriguez, Duran, Fraijo or Melville. I especially dedicate this to my mother, Claudia, my first teacher and the best mom ever.

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INTRODUCTION: THE NATIONAL AND THE LEGAL DIMENSIONS OF

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[W]e are standing at the border today because we…recognize that being a nation of laws goes hand in hand with being a nation of immigrants. This, too, is our heritage. This, too, is important. And the truth is we've often wrestled with the politics of who is and who isn't allowed to enter this country. At times, there has been fear and resentment directed toward newcomers, particularly in periods of economic hardship. And because these issues touch on deeply held convictions – about who we are as a people, about what it means to be an American – these debates often elicit strong emotions.

President Barack H. Obama
El Paso, May 10th 2011

It has always been easier, it always will be easier, to think of someone as a noncitizen than to decide that he is a nonperson.
Alexander M. Bickel, *The Morality of Consent*

What the young Chicano understands and no one else, I don't think, is that the Mexican-American in this country has been sold a bill of goods for so long that it has weakened him to the point of impotence. From the beginning he was sold the idea that he was white, in other words, one of the boys. Well hell, he's not one of the boys. In my estimation he is not even white. The Chicano is finally realizing that there is nothing exceptionally great about being white or certainly nothing wrong about being white, that this illusion in the country that white is best must go.
Ruben Salazar
Los Angeles Times Journalist

The distribution of membership is not pervasively subject to the constraints of justice.
Michael Walzer, *Spheres of Justice*

In 1971, Roger Nett called the freedom of human movement across the globe "the civil right we are not ready for."[1] Over three decades later, in the spring of 2006, large immigrant rights protests took place in cities across the United States. Using Spanish- and English-language radio, cell-phones, the Internet, and word of mouth, thousands of high school and college students, service workers, professionals, the unemployed, and full-

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time parents interrupted their daily lives, marched into the streets of cities like downtown Los Angeles, Chicago, Dallas and New York, and signaled another round of civil rights protests.[2] The sheer magnitude of these events, in conjunction with the media coverage and grassroots mobilization, made visible the debates surrounding national identity, legal-citizenship, and undocumented immigrant rights like nothing before.[3] For many, these events signaled their unique political existence, the birth of a new "citizen," so to speak. It is this understanding of "citizenship"—and the problems that it posses to liberal policies of exclusion, the politics of recognition, and static or fixed conceptions of the state—that this dissertation explores.

Within the history of Western political philosophy there are two main understandings of citizenship, *national-citizenship* and *legal-citizenship*. National-citizenship is a positive, activity-based understanding of state membership with roots in ancient Athens and classical republicanism. Legal-citizenship originates in the legal status and civil protections of citizens in Imperial Rome, but its contemporary significance owes much to the modern, liberal embrace of negative rights and individual freedom. In what follows, I will briefly explain these understandings of state membership and describe their complementary nature. While some political philosophers, legal scholars, and social theorists offer more than two dimensions of "citizenship," most by adding a third identity-based perspective that I fold into the national,[4] I will argue that the dichotomy I offer constitutes the full range of state membership: legal-citizenship is the means towards being able to impact the political atmosphere in ways that reflect the activity of national-citizenship.

My goal in this dissertation is to demonstrate how the problem of undocumented immigration and the political nature of Hispanic people challenge both the legal and national dimensions of state membership on different levels and at different times. Describing the differences between legal-citizenship and national-citizenship is crucial in this respect, because it allows for the precise determination of how novel justice claims, made on behalf of immigrants and undocumented residents alike, relate to traditional views of state membership—something that has yet to be done in mainstream political philosophy. In other words, some of the claims made by immigrant rights activists pertain to the national dimensions of citizenship, others to the legal. Nothing more than confusion and hostility will arise from within the immigration debate unless this specificity is brought into light.

1. National-Citizenship

Although the term 'national' bears contemporary significance associated with the nation-state, national-citizenship arises in ancient Greece and is the understanding of state membership at work in classical republicanism, contemporary communitarianism, and multicultural or "recognition-based" views of citizenship. Will Kymlicka and Wayne Norman call this understanding of state membership, "citizenship-as-desirable-activity."[5] Rather than a passive legal status lacking consent or justification, national-citizenship amounts to a "thick" conception of state membership that harbors an assortment of duties and responsibilities on the part of the individual. Citizenship-as-desirable-activity is the idea at work when members of a political community are upheld as "outstanding citizens" and it is also the understanding of state membership that unites the traditions mentioned above (amidst their disagreements).[6] Within this framework, citizens are

expected to value and appreciate "civic" or public life, a disposition ingrained through either community activity or education. Debate ensues when the possibility of practicing one's citizenship duties *as* a woman, racial or ethnic minority, or with minimal state coercion, conflicts with the necessity of a shared value system or culturally homogenous core constituency. While advocates of multinationalism and multiculturalism argue against cultural, gender-based, racial, and sexual homogeneity, they nonetheless view citizenship as something an individual (or "differentiated" group[7]) *does*, that is to say, citizens have an active role in political life.

National-citizenship is often associated with "the freedom of the ancients," also known as positive rights, e.g. the right to vote, the right to run for office, the right to propose and amend law—the expression "freedom to…" best summarizes what is at stake in national-citizenship. Isaiah Berlin explains positive rights as those rights associated with the idea of self-mastery, "the wish on part of the individual to be his own master." He continues,

> I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other's men's, acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody; a doer—deciding, not being deicide for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them.[8]

Positive rights lend themselves to *the activity of citizenship* through the idea of political autonomy as opposed to heteronomy. Autonomous individuals are self-legislating; they "give themselves the law." Heteronomous individuals abide by laws created by someone or something else, e.g. a religious authority, monarchy, a military general, etc. Autonomous citizens must define for themselves, amongst a community of peers, what

they wish to do or not do, which, in this context, implies the actual construction of positive law and government. In the appropriately titled, *The Good Citizen*, David Batstone and Eduardo Mendieta write, "As an ideal, citizenship stands for the autonomy, self-legislation, and sense of civic solidarity that members of a group extend to one another. Through citizenship we affirm our autonomy on the one hand, while on the other dictating the obligations that constrain our expression of that autonomy. Through citizenship we are both subjects and objects of the law."[9]

The history of citizenship in ancient Athens best captures the idea of an active, autonomous citizenry. Being a "citizen" (*polites*) in Ancient Athens implied the ability to partake in the public construction of "the good," the supreme ideal that every political community aspires towards. Aristotle tells us, "Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think is good."[10] Although every community aims at some good or desirable end, the state or political community embraces all lesser goods, and in so doing aims at the highest degree of good possible, this being "justice."[11] In Athenian society, citizenship duties entailed the proposal of laws, assisting in the decision-making processes of the community, and participating in the self-rule of the *polis*. Citizens created justice, or as Aristotle put it, "a citizen was one who both rules and is ruled." The Athenian understanding of citizenship was more than just freedom from tyranny or oppression. As J. G. A. Pocock reminds, "[Athenian] citizenship is not just a *means* to being free; it was the only way of *being* free."[12] Thus, the Athenian practice of citizenship was an activity where one's participation in the public construction of the good occurred alongside of other citizens, equal to equal.[13] As I will show below, this

idea of a common good remains imbedded in civic republican and communitarian conceptions of national-citizenship.

Historically, the creation of ancient Greek citizenship goes hand and hand with the solidification of the *polis*, the Greek city-state.[14] The Athenian lawgiver Solon is often credited with articulating the first citizenship laws in the early sixth century B.C.E.[15] The dual creation of the *polis* and *polites* marks the substitution of archaic tribal relations based on kinship and personal demands for vengeance, with a politically organized life where justice reigns supreme.[16] As early as the ancient Greeks, citizenship was constructed within a bordered city-state, which was a self-enclosed political unit. In 451-0 B.C.E, the politician and general, Pericles, issued a reform that limited the status of "citizen" to those born with two citizen parents. Pericles was reacting to a rapid increase in the number of citizens.[17] This, together with the fact that Athens was a bordered political entity, is why I consider this Greek model *nationalistic*, a claim I will defend shortly. Without explicitly naming the reform, Aristotle's views on citizenship challenge Pericles' conditions.[18]

Although himself nothing more than a resident alien (a *metic*), Aristotle provides the most complete picture of citizenship in the *polis*: "citizenship" is not determined by residence, legal-status, or even by having the right to sue in court, but it is a political category that applies to those who share in the administration of justice, take part in political assembly, and hold office.[19] "The definition is essentially functional," writes Cynthia Patterson, "a citizen is defined not by birth or by membership in any human association, but by what he does."[20] Not even labor within the walls of *polis* was a proper criterion for citizenship. Aristotle tells us, "The truth is that we cannot include as citizens

all who are necessary to the existence of the state."[21] His reason, as Michael Walzer

reminds us, was that "Citizenship required a certain 'excellence' that was not available to

everyone." Walzer continues,

> Someone had to do the hard work of the city, and it was best if the workers were
> clearly marked out and taught their place from birth. Labor itself, the everyday
> necessity of economic life, put the excellence of citizenship beyond their reach.
> Ideally, the band of citizens was an aristocracy of the leisured…and its members
> were aristocrats because they were leisured, not because of birth and blood or any
> inner gift. Politics took most of their time, though Aristotle would not have said
> that they rule over slaves and aliens. Rather, they took turns ruling one another.
> The others were simply their passive subjects, the "material conditions" of their
> excellence, with whom they had no political relations at all.[22]

For Aristotle, the virtue or "excellence" of citizenship required a level of leisure beyond

the realm of necessary, mundane toil. Citizens live in the realm of "choice" or "freedom,"

where collective decision-making determines their fate. Conversely, the conditions of

economic life and material need determine the realm of necessary labor. Slaves, women

(relegated to the domestic sphere), general laborers and even "mechanics" could not be

citizens, because they were not "free." Rather these individuals provided the material

conditions for others to practice citizenship and thereby exercise their freedom. In sum,

for Aristotle, the positive rights of citizenship, as connected to the autonomy of the

political community, are incompatible if not impossible for those who spend their days

working to make ends meet. Citizenship is a political exercise requiring one's complete

attention and focus.[23]

Here is an initial objection to Aristotle's views, given that the practice of

citizenship does require a type of status: a "citizen" must be outside the realm of material

need, which is a socioeconomic, class status; it is also a gendered position, as Patterson

suggests (see below). In short, Aristotle maintains heavy normative expectations

pertaining to the type of person capable of being a citizen.

An Aristotelian response might remind us that while legal status is disregarded as a basis for citizenship, the focus is on moral excellence, which requires a certain amount of effort (and "luck" or "good fortune"). To put it differently, there are obvious moral dimensions associated with Aristotle's understanding of citizenship. Aristotelian citizenship is an exercise in self-mastery requiring virtuous individuals willing to actively perform their duties in a community of others doing the same. Remember, for Aristotle, the highest good possible is a community of individuals who are all striving to be virtuous, i.e., they demonstrate excellence of character through their repeated moral actions.[24] The practice of citizenship offers the opportunity to realize this atmosphere, since living well and embracing the good requires some kind of habituated activity, not just a passive state of being such as legal status. Although all individuals must aspire towards the virtuous life independently, regardless of whether or not they are born in a virtuous community, it does help if there are exemplars of virtue at the ready. Notice, however, that there is an element of contingency in this: *one happens to be born in the right community*, a point that Aristotle acknowledges when he explains that being virtuous requires a virtuous community. Thus, even from the onset, the idea of citizenship has an arbitrary foundation, a problem that is important in analyzing the work of John Rawls and, more generally, liberal political theory.

The Aristotelian definition of citizenship requires an escape from any immediate involvement in the material conditions providing for the political life of a "statesman"—from the instrumental material infrastructure to the ideal supra-structure (the end), to paraphrase Pocock.[25] For Gershon Shafir, this amounts to a "participatory aristocracy," because only a select few rule the polis.[26] Walzer prefers the phrase "band of citizen

tyrants."[27] Challenging this view from an egalitarian perspective requires either the emancipation of women, slaves, and the rest of those confined to the realm of necessary labor or the construction of a new understanding of citizenship that obviates the divide between a public life of leisured service and the realm of toil. However, as Pocock notes, doing away with the split between a political life of leisure and the material realm of toil may throw out the idea of "citizenship" altogether: its historic meaning seemingly implies the gulf between public life and the private-domestic realm.[28] This remains a contested issue in contemporary literature.

Patterson's analysis of gender dynamics revolving around the idea of citizenship in Athens demonstrates how women constantly contested the limits between the public and private.[29] Susan Moller Okin and Carole Pateman argue against such a rigid divide between the public realm of freedom and the private-domestic realm of material need. Rather than conflate the public and private, Okin argues that they may be separate but "inextricably connected," a move that assuages Pocock's concern to some extent. Pateman argues that various issues relegated to the private-domestic realm are consequences of public decisions. In addition, many aspects of private life are routinely made political.[30] Walzer notes that Aristotle's division between the public and private is a false dichotomy and not as rigid as one may think, because "citizens" did make decisions about material life.[31] For Pocock, transcending the Aristotelian trap of associating the activity of citizenship with the public realm may demand a new understanding of the political altogether, one that is not agent-based.[32] Below, I will present an alternative view of the political (and citizenship) constructed around the legal person and not the moral agent.

Given the emphasis placed upon citizenship as a practical, activity-based political category, one may object that my use of 'national-citizenship' is a misnomer, especially since the nation-state is a rather recent invention. If 'national-citizenship' focuses on the activity or practice of citizenship, which many theorists label "republican" or "civic" citizenship,[33] why refer to it as "national"?

Although this is a valid concern, throughout the history of citizenship-as-desirable-activity the main practice has been nationalism. The laws created by citizens, values exhibited in the decision-making processes, and communal goals realized by the activities of citizens are all meant to support or reify the nation, i.e., the particular group of people residing in the location where citizens acquire their status as such. This is especially true when the practice of national-citizenship assumes the existence of borders and the idea of a territorial state. The "good" that Aristotle's citizens try to realize is not that of the *cosmos*, but only the good of the political community, as it exists *within* the walls of the polis. Even Jean-Jacques Rousseau, enamored by the republican ideal of the political as primary consisting of an active close-knit citizenry ingrained with civic values, stands in favor of nationalism. A brief contrast between Rousseau and Thomas Hobbes on the source of political power and the difference between subject/citizen will make this point.

For Hobbes, political power is concentrated into the hands of a sovereign, who stands above the community and makes all political decisions. When creating the Leviathan, individuals lay down their arms, divest themselves of their right to self-rule and give this right to the sovereign. As the supreme authority in a given domain, the sovereign has a monopoly on political power and the legitimate use of violence.[34] The

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question for Hobbes is primarily about the legitimacy of the sovereign, which he grounds in the irrevocable consent of individual persons forming the social compact (remember that in the state of nature there is no political community so "the people" are not the source of political power).[35] With Hobbes, the difference between the ruler and ruled, sovereign and subject, is taken for granted: "every member of the body politic, is called a subject, to wit, to the *sovereign*."[36] There is no active citizenry but only a relation amongst subjects mediated by the authority figure articulating law.

The difference between "citizen" and "subject" is crucial in this respect. The citizen, being autonomous, constructs and maintains law; the subject, being heteronomous, is legally accountable but does not have any say over law, because political power is consolidated into the hands of the sovereign, monarch, or political figure making the decisions. This is why in the civic republican tradition, and the more recent communitarian tradition for the same reason, the question of admission into a national polity is a weighty issue. One cannot be subject to law without having an actual say in its maintenance; once admitted, "immigrants" or those seeking inclusion must participate on equal footings. In short, in this tradition, citizens are not subjects, but autonomous members of the body politic.

Rousseau anticipates the communitarian view of citizenship when he writes, "Strictly speaking, laws are merely the conditions of civil association. The populace that is subjected to the laws ought to be their author. The regulating of the conditions of a society belongs to no one but those who are in association with one another."[37] Rousseau is an extremist here, because the responsibilities of state membership force a person to be free: "whoever refuses to obey the *general will* will be forced to do so by the entire body.

This means merely that he will be forced to be free. For this is the sort of condition that, by giving each citizen to his homeland, secures him against all personal dependence."[38]

Contrary to Hobbes, Rousseau believes that communal life exists prior to political institutions: "What people…is suited for legislation? One that, finding itself *bound by some union of origin, interest or convention,* has not yet felt the true yoke of laws."[39] For Rousseau, the pre-existing political community is not only the source of political power, but the people are the actual "sovereign" themselves. Even if they decide to give power to an individual, "a people is a people before it gives itself to a king. This gift itself is a civil act; it presupposes a public deliberation."[40] For Rousseau, a representative sovereign cannot rule over a "people" (i.e. nation) but only an "aggregation," a group united by law and easily dissolvable with the collapse of the political order. Rousseau tells us, "There will always be a great difference between subduing a multitude and ruling a society. If scattered men, however many there may be, were successively enslaved by a single individual, I see nothing but master and slaves; I do not see a people and its leader. It is, if you will, an aggregation, but not an association."[41] "Associations" are communities formed through consent—yet another reason why admission policies are so important within the paradigm of national-citizenship.

If the question worth asking Hobbes pertains to the legitimacy of the sovereign, the important question for Rousseau pertains to the unity and cohesion of the people. What generates and maintains the unity? While the opposition of private interests creates the need for order that comes with the creation of society, the fact that humans are willing to form social groups implies that they do have common interests. This is what forms the social bond. Therefore, it is only "on the basis of this common interest that society ought

to be governed," or so argues Rousseau.[42] The state or political institution, consisting of and working for the people, directs itself toward the common good, and in so doing strengthens the community. As a safeguard, Rousseau expects citizens to have a steadfast commitment to self-rule that is passed on through education and civic values.[43] These values instill an appreciation for communal life and ensure that citizenry serve the common interest.

It is not hard to see how the question of identity arises from this Rousseauian perspective. The cohesion of the political community thrives on the fact that citizens identify with their community in such a way that grants personal meaning. There is also a historical component. The good of the community is *their* good, and that of previous members unto posterity—this is why when immigrants want to practice citizenship in such a way that takes this historical trajectory into a "new" direction, conflict is bound to arise.

It is through nationality that individuals are citizens; whenever the *activity of citizenship* occurs within the confines of a bordered polity, it assumes the wellbeing of nation to be its chief concern. This is most explicit in discussions of the "common good," a major set back for immigrants, because the practice of citizenship-as-desirable-activity may be problematic from the perspective of a foreigner. To privilege an immigrant's particular good (or even a minority's wellbeing) above the general political community amounts to a betrayal of the category "citizen," which again, acts with the highest good of the political community in mind. Along these lines, Rousseau writes,

> Finally, when the state, on the verge of ruin, subsists only in an illusory and vain
> form, when the social bond of unity is broken in all hearts, when the meanest
> interest brazenly appropriates the sacred name of the public good, then the general
> will becomes mute. Everyone, guided by secret motives, no more express their

opinions as citizens than if the state had never existed; and iniquitous decrees having as their sole purpose the private interest are falsely passed under the name of laws.[44]

Immigrants and minorities may aspire to their own good by remitting money to their country of origin or arguing for specific minority rights, but not as "citizens" *per se*, at least on a generous interpretation. A more stringent perspective might argue that they cannot do these at all, either as citizen or noncitizen. Moreover, from that conservative perspective, maintaining one's cultural tradition or a commitment to their home community is unpatriotic and a form of dissent. What I call "the ethics of political representation," confronts this line of thought head on and seeks a middle ground between talk of rights and talk of the good, in the form of "group rights." The important point, here, even if one disagrees with my use of 'national,' is that there is a tradition of citizenship that focuses on the activity of being a citizen. It is performative, rests upon an appreciation for public life, and strives after an autonomous political citizenry.

2. Legal-Citizenship

Most theorists summarize "legal-citizenship" as formal membership in an organized political community.[45] Interestingly enough, in today's world of the state, all aspects of citizenship fall under the jurisdiction of some legal system, including national-citizenship. To put it differently, "the law" protects both positive and negative constructions of citizenship.[46] Thus, the term 'legal-citizenship' is somewhat of a pleonasm. However, as I will explain in this section, this is not what I mean by "legal-citizenship."

Rather than the overt political activity described above, there exists an understanding of state membership connected to what are called "rights of noninterference," those legal entitlements that protect an individual from the actions of

others. Legal-citizenship is an ascriptive status conferred upon individuals through the *politics of birth* or naturalization. [47] By "politics of birth" I have in mind the ways in which group membership is distributed according to the place of one's birth (*jus soli*), one's parents, lineage, or bloodline (*jus sanguinis*), or a combination of both. Legal-citizenship is the actual having, or not, of official documentation or some form of state recognized identification that grants a person public legitimacy in a bordered political unit or pre-determined area. Compared to national-citizenship, legal-citizenship depends *more explicitly* on the existence of borders and well-defined polities. These designate the territorial range from where official membership is assigned. In this sense, legal-citizenship is fundamentally connected to the sovereignty of states, especially a state's right to create its own law. [48]

Before providing the history of legal-citizenship, let me briefly state that this is the idea of state membership most people have in mind when considering the problem of undocumented, informal, or "illegal" immigration. Owing much to the liberal, social democratic nature of contemporary states, legal-citizenship is the main idea of citizenship within the folk ordinary understanding of state membership. As such, it lacks the positive import attached to national-citizenship. Like whiteness in terms of the experience of a racial identity, or the experience of gender in the context of male identities, legal-citizenship is often taken for granted by a majority of the population of developed, first-world countries like the United States (besides those times when citizens have to use their birth certificate, apply for a driver's license, get married, etc.). Legal-citizenship is almost never in question for large segments of the population. Legal-citizenship is often the criterion for the practice of national-citizenship, a relationship I will say more about in

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the next section. Nonetheless, in states where the legal-citizenship is the primary model of citizenship, national-citizenship is often considered some form of "patriotism" or national pride.

Whereas national-citizenship expects citizens to perform an assortment of duties or tasks, legal-citizenship requires political institutions to be responsible for securing a certain standard of living and protecting basic civil entitlements. Negative rights, such as property rights, freedom of religion (or the separation between church and state), legal protections like *habeas corpus* and equal protection under law, in addition to civil rights ensuring equal opportunity, are crucial to legal-citizenship—"freedom from…" best expresses these rights. Berlin explains negative rights as those rights that provide "the area within which a man can act unobstructed by others. […] By being free in this sense I mean not being interfered with by others."[49] As Berlin notes, there is much debate in the history of modern liberal political thought regarding how wide of an area negative rights provide, in addition to how much the state or political institution needs to protect these economic and civil liberties.[50] Within the social democratic tradition, legal-citizenship requires the existence of a large welfare state that guarantees civil protections and a common standard of living, what the British political theorist, T. H. Marshall, calls "civil rights" and "social rights" respectively.[51] Given that they regulate individual liberty, not only are negative rights necessary for the existence of positive freedom, but they also entail certain basic entitlements that allow individuals to live productive lives that realize (to some extent) human potentiality.

Legal-citizenship harks back to Roman imperial conceptions of a fully recognized person endowed with proprietary protections throughout the Empire.[52] While the original

Roman republic had an understanding of citizenship closer to that found in ancient Athens, a more legalistic model replaced it with subsequent territorial expansion.[53] The Roman imperial conception of legal-citizenship or *civis Romanus* (*civitas*—where the word 'citizenship' derives) secured legal protections against the claims of others and ultimately the right of "appeal to the Emperor." According to Patterson, "citizen status was constructed as a juridical status providing access to the protection of Roman private law of person and property—and for men, access to political participation (and military service)."[54]

Paul of Tarsus, or Saint Paul of the Roman Catholic Church, is the most obvious example of the significance of legal-citizenship in ancient Rome. A convert to Christianity, through his standing as "citizen," Paul was able to travel throughout the Empire with impunity, taking full advantage of his civil protections and finding a unique opportunity to proselytize. Pocock writes, "Paul not only asserts that as a citizen he is immune from arbitrary punishment, he goes on to remind the officer threatening the punishment that he is a citizen by birth and the officer only by purchase and therefore of lower prestige and authority." Pocock adds that citizenship in the Roman Empire was "a legal-status, carrying with it rights to certain things—perhaps possessions, perhaps immunities, perhaps expectations—available in many kinds and degrees, available or unavailable to many kinds of person for many kinds of reason. One can say in the world of Saint Paul that citizenship is a right to certain things."[55]

For Pocock, the relation to "things" (*res*) is the defining characteristic of Roman *civitas*. If you recall, Aristotle's citizen was beyond of the world of material need, which includes "things" or objects. The relation between Athenian citizens was one of subject to

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subject, not subject to object. This is not to say that Athenian citizens did not make practical decisions that affected the material world, they obviously did. However, as Pocock reminds, "[Athenian] citizens did not act upon each other through the medium of things, and did not in the first instance define one another as the possessors and administrators of things."[56] For Roman citizens, on the other hand, "citizenship" implied the ability to act upon the world and take possession of objects. Given that conflicts arose between individuals desiring the same material goods, some medium was required through which legitimate claims could be made.[57] Jurisprudence or law served this role, thus regulating the interactions of citizens. In more modern settings this is the reason why law has to be objective and not at the service of any particular person; hence Hobbes' Leviathan stands above the body politic, literally above the law.

In short, Roman citizenship made one a proprietor capable of owning material possessions. The *res publica* was the political *and* legal realm (perhaps the "market place") where citizens exercised their rights as individuals. Here, Roman imperial citizenship fully anticipated the possessive individualism of the modern liberal tradition.[58]

Roman imperial citizenship reached its height in 212 C.E. when the Emperor Marcus Aurelius decreed that all free residents of the empire were citizens.[59] This somewhat inclusive policy reflects the cosmopolitan nature of Roman imperialism, a trait that often benefitted the empire. For Patterson, *civis Romanus* was key to the longevity of the Empire: "its creative use of its own or others' traditions and constructions of citizenship, allowing or at least tolerating diverse sorts of community and at time the crossing of borders."[60] While the purpose of an expansive citizenry was probably to

generate tax revenue, there is no doubt that the Roman Empire negotiated a certain level of complexity that recognized local and imperial law. This two-tiered system recognized local autonomy and citizenship law alongside the imperial model for citizenship.[61]

With the fall of the Roman Empire, regional municipalities arose (what are called *bourges* in French or *burgs* in German). "Bourgeoisie citizenship," as Pocock terms it, maintained legalistic understandings of group membership grounded in the particular laws of specific municipalities, a consequence of the Roman imperial tolerance of local autonomy. The legal-status of the Roman citizen became somewhat equivocal at this time, or at the very least just another jurisdiction that a person inhabited, even referred to as one's "*bourgeoisie Romaine*."[62] Nonetheless, the *bourgeoisie Romaine* remained a universally recognized form of citizenship that was not localized to any particular community, but part of the entire empire. It is this understanding of citizenship, as a categorical law applicable to all persons regardless of their local affiliations, that remains important to contemporary understandings of legal-citizenship, especially in the context of a federated republic like the United States or a political entity like the European Union.

The rise of the secular state in the 18th -19th centuries set legal-citizenship on the trajectory it maintains today.[63] In the move to create political institutions that were not controlled by the Church or monarchy, citizenship law in the secular state became a means of distancing its subjects from these other institutions. Hence, being a citizen in a secular state implied that one was under the administration and control of that particular political institution, a sovereign entity. As Walter Mignolo puts it, "When the idea of [legal] 'citizenship' came into view—and was linked to the materialization and formation of the nation-state in secular north Europe—it enforced the formation of communities of

birth instead of communities of faith."[64] The basis of birth, rather than faith, rendered the idea of "citizenship" the physical, reproducible link between the nation and the state. In addition, since it was localized to a particular territory, citizenship also became an effective means of regulating the rise of unskilled labor during the industrial revolution, an instrumental use of citizenship that exists until today.[65]

As Peter Schuck and Rogers Smith explain, "birthright citizenship originated as a distinctively feudal status intimately linked to medieval notions of sovereignty, legal personality, and allegiance."[66] For these political theorists, birthright citizenship arises at the onset of the modern state, especially in the legal works of Sir Edward Coke and Sir Robert Filmer, both of whom "wrote at a time when European monarchies generally, and the English Crown in particular, were still striving to unite fragmented territories and create centralized national government to replace a feudal order that divided power among diverse regional lords and religious authorities."[67] Coke found "the principle of ascription," as Schuck and Smith call it, a means of ensuring group membership across national and ethnic boundaries (a view prompted by property disputes in light of the unification of the United Kingdom, i.e. *Calvin's Case*). Coke viewed political identity as determined at birth and based on allegiance owed to the sovereign. In exchange for protection as an infant, subjects are indebted to their sovereign in ways similar to how a child owes their parents for care provided at birth (Hobbes's "Lord Mothers" comes to mind). One can have more than one allegiance, but those debts acquired at birth reign supreme.[68] In this sense, Schuck and Smith inadvertently explain why subsequent citizenship theorists find it necessary to say something about the family, when reformulating a theory of citizenship.[69]

There are two main problems with legal-citizenship. Given the fact that legal-citizenship is assigned by an objective external entity (i.e. the state), in addition to the fact that it relies upon the politics of birth, many argue that it (1) lacks a consensual basis and (2) provides no motivation for political activity. For this reason, Schuck and Smith's *Citizenship Without Consent* explains how birthright citizenship lacks credibility within the contractarian tradition.[70] They write:

> At a conceptual level, [birthright citizenship] was fundamentally opposed to the consensual assumptions that guided the political handiwork of 1776 and 1787. In a polity whose chief organizing principle was and is the liberal, individualistic idea of consent, mere birth within a nation's border seems to be an anomalous, inadequate measure or expression of an individual's consent to its rule and a decidedly crude indicator of the nation's consent to the individuals admission to political membership.[71]

On this account, given the workings of actual citizenship law, only immigrants who chose to naturalize into a given polity are citizens. The ascriptive nature of legal-citizenship is a fundamental problem for the liberal tradition that I will explore in more detail in chapter 4—especially since it suggest an arbitrary foundation for liberal thought. The second problem with legal-citizenship has to do with the fact that the expansion of welfare rights, "social rights,"[72] and civil rights, all of which are associated with legal-citizenship, tend to create a passive citizenry that does nothing overtly *political* or "public" in order to claim legal entitlements. As Kymlicka and Norman explain, Marshall believed that "the fullest expression of citizenship requires a liberal democratic state." They continue, "By guaranteeing civil, political and social rights to all, the welfare state ensures that every member of society feels like a full member of society, able to participate in and enjoy the common life of society."[73] The conservative response to that, according to Kymlicka and Norman, "argues that the welfare state has promoted passivity

among the poor, without actually improving their life chances, and created a culture of dependency. Far from being the solution, the welfare state has itself perpetuated the problem by reducing citizens to passive dependents who are under bureaucratic tutelage."[74] The question then becomes how to activate such a citizenry in a way that does not require public life?[75]

3. How to Order National and Legal Citizenship or The Plan for this Work

For some, the shift from the activity of citizenship to legal status implies a change in the concept of the political altogether, one that creates a conception of political life and social interaction requiring an external intermediary; ultimately a "sovereign."[76] This renders citizenship something inward, personal, and subjective, rather than an outward relation exhibited amongst peers. Shafir notes that this anticipates the liberal-communitarian divide on citizenship: political freedom *to* contribute in the political community versus legal protections that ensure freedom *from* other individuals.[77] This division establishes two separate trajectories for subsequent political thought regarding state membership: for communitarians the question of equality is of the utmost importance (Walzer's conception of "complex equality" is most representative of this train of thought), while for political liberalism the legitimacy of the sovereign or government and the idea of the institution as an unbiased intermediary are contentious issues (here John Rawls' focus on fairness is paramount).[78] That is to say, communitarians are most concerned with political relations amongst equals, whereas liberals are most concerned with the conditions for formal equality.

Kymlicka and Norman differentiate legal-citizenship from national-citizenship as follows: "[T]here are two different concepts which are conflated in these discussions:

citizenship-as-legal-status, that is, as full membership in a particular political community; and citizenship-as-desirable-activity, where the extent and quality of one's citizenship is a function of one's participation in that community."[79] In *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Phillip Cole points out that Kymlicka and Norman hold these understandings of state membership to be mutually exclusive, so that one can work on the question of what makes a person a "good citizen," without ever really entertaining the question of legal-citizenship.[80] They write, "we should expect a theory of the good citizen to be relatively independent of the legal question of what it takes to be a citizen, just as a theory of the good person is distinct from the metaphysical (or legal) question of what it is to be a person."[81]

According to Cole, the separation between good persons and legal persons is unsustainable and problematic. Political philosophers cannot construct theories of "good" citizenship without also addressing the legal dimensions of citizenship. Cole's claim is more than just a suggestion. Yes, the question of legal-citizenship is a "metaphysical" or "ontological" question about a persons' legitimate existence within a national boundary, while normative theories of citizenship inquire into the quality of citizenship practice. However, normative theories of citizenship cannot help but inform of the kinds of persons entitled to being a legal citizen. Thus, the "good" informs the "real," so to speak. Cole writes, "the two questions are inseparable, and to construct a theory of internal membership without addressing the question of admittance is a fatally flawed project."[82]

Instead of viewing national-citizenship and legal-citizenship as two separate understandings of state membership, I think contemporary liberal polities inherit both formulations of citizenship, and consequentially both conceptions of the political.

National-citizenship and legal-citizenship are two different moments of the same understanding of state membership, both of which constitute the full meaning of citizenship in contemporary states. Walzer expresses a similar sentiment when he writes, "[t]he security provided by the authorities cannot just be enjoyed; it must itself be secured, and sometime against the authorities themselves. The passive enjoyment of citizenship requires, at least intermittently, the activist politics of citizens."[83]

Part of my objective in this dissertation is to explain the nature of the relationship between national-citizenship and legal-citizenship.[84] It is my hope that parsing out this division between the legal and national will aid the immigration debate as it exists in developed countries today. It will also help clarify what, exactly, those in favor of immigration reform and immigrant rights are asking for, and why mainstream political philosophers are unable (or unwilling) to respond to these individuals by formulating ethical and political theories that take into consideration their concerns. In light of the arbitrary nature of the politics of birth, as alluded to above (and explained in more detail in chapter 3), I provide an expansive notion of "legal-citizenship" that ameliorates the vulnerable social predicament occupied by informal residents in places like the United States. As various legal scholars have made apparent, the law is rather inclusive when it comes to the rights associated with legal-citizenship, at times even recognizing noncitizens and undocumented people as entitled to certain protections.[85] Yet, the history of mainstream political philosophy does not reflect this expansive legal dimension of state membership. Political philosophers begin from conceptions of the state that are untenable, and in so doing they set the trajectory for subsequent thought on justice, rights, or equality in directions that will not help some of the most exploited and *needed*

individuals, e.g. undocumented immigrants. I argue that it is possible to start *re-formulating* theories of justice and state that reflect the workings of actual political institutions in ways that do not necessarily impede on the positive rights of national-citizenship. This, of course, requires that one grapples with the host of questions I pose in this work.

Explaining the relationship between the legal and the national requires that I explore the question of state membership within mainstream political liberalism, the politics of recognition or multiculturalism, and contemporary conceptions of state. In order to surpass most of the theoretical limitations that pervade these traditions, I will use the question of undocumented immigration and the political nature of people of Hispanic descent as the springboard for this discussion, a perspective that I call "the outside of nationality." Chapter 2 will explain my use of "the outside of nationality," as well as focus on Enrique Dussel's notion of the transmodern political institution (what I refer to as the "transnational-state"). Since Dussel views the construction of the state as an ongoing process that must take into consideration the marginalized and oppressed if it is to remain healthy, his "analectical politics" is crucial to rethinking immigration and citizenship today. However, amidst his transformative radical thought, Dussel does not make clear his stance on citizenship. I offer a critique of his views regarding state membership in light of his lack of a positive stance on the subject. Nonetheless, let me reiterate that Dussel's thoughts provide the theoretical maneuver necessary to launch any meaningful and engaging criticism of the traditions I explore.

As I will show, although there is a rich discussion of the importance of immigration and citizenship within contemporary political thought, little of this literature

has to do with the unique problem of *undocumented* immigration. The reality of undocumented immigration does not permit one to assume the existence of closed polities when constructing theories of justice. Discussions of formal or legal immigration do; formal immigration begins from a starting point viewing states as separate political units that can rightfully exclude or include whomever they desire. There are some pressing reasons why one must approach the question of state membership and theories of justice with the social and political positioning of "illegality" in mind. Illegality derives its meaning from legality. In using the real-life example of illegality, it is not only possible to address informal immigration from a political philosophical perspective, but the nature of "legality" itself requires reexamination. Thus, the fundamental question for a liberal polity is, as Cole phrased it, "how anybody, regardless of their circumstances, can legitimately be excluded from our political community?"[86]

The answer to the question of exclusion must be compatible with the principle of equality that structures the internal membership policies of liberal states. Otherwise, one must supply a compelling argument for denying the equal moral worth of all persons (not just those within a national boundary).[87] Cole writes,

> With its universalist commitment to the moral equality of humanity, liberal theory cannot coherently justify…practices of exclusion, which constitute 'outsiders' on grounds any recognisable [sic] liberal theory would condemn as arbitrary. And yet at the same time the liberal project depends upon those practices: the existence of a liberal polity made up of free and equal citizens rests upon the existence of outsiders who are refused a share of the goods of the liberal community. Liberal political philosophy maintains the appearance of coherence at the level of theory through the strategy of concealment.[88]

When made apparent, the best a liberal state can do in justifying its "policy of exclusion" (i.e., the explicit reasoning that prioritizes the nation over the general human population) is to argue that the need for political order outweighs the equal moral worth of all human

beings. In addition, appeals to the right of self-determination are frequently employed for justifying national groupings, as they *already* exist. Using Rawls as a paradigmatic example, Chapter 3 will argue that utilitarian policies of exclusion and the appeal to self-determination may justify the existence of borders in theory, but they do not abate the arbitrary nature of present-day state boundaries. I suggest that the best egalitarian effort that can be put forward is to formulate an idea of legal-personhood (not citizenship) that eventually leads to full membership in the nation, which is a move that happens to resemble the legal history of alienage law.

In the chapter 4, I explain how the questions of national representation and multiculturalism have little to offer the legal-dimensions of citizenship, at least *prima facie*. In fact, the popularity and attention multicultural discourses of citizenship have received further alienates the exigencies of undocumented immigration. At the heart of multicultural discourse is a conception of legal-citizenship that remains unquestioned and connected to "the paradox of democratic legitimacy." Aside from these issues, however, the politics of multiculturalism are central to establishing a political atmosphere conducive to immigrant rights. And so, through multiculturalism the division between national-citizenship and legal-citizenship can acquire new meaning that allows for both libratory discourses, the established work on national representation and novel work on illegality, to support one another. In addition, as an example of why multiculturalism must be accompanied by changes in political power, I present a historical example of the problems associated with multiculturalism in Bolivia. I recount how the transformation of indigenous peoples into national-citizens fostered a semblance of political equality, but allowed economic, social and class inequality to continue. These problems are

tantamount to the standard Marxist critique of formal citizenship: formal equality does nothing to assuage economic inequality or imbalances in power dynamics. My analysis of Marx's essay, "On the Jewish Question," serves as support.

Yet, for other reasons I will explore in chapter 5, multiculturalism is not easy to achieve in the "post-racial" world we inhabit today, and the political nature of Hispanic people in the United States makes this point apparent. Any meaningful engagement with national-citizenship must contend with the question of race and racism. In this sense, chapter 5 pertains to the ways that United States national-citizenship remains racialized in ways that reveal novel forms of racism (amidst formal multicultural policies). It is my claim that one can only realize this re-racialization of U.S. national identity by familiarizing oneself with the history of race in Latin America. I also show how nativists concerns over the balkanization of the United States, resulting from increases in immigration and ethnic enclaves, depend upon racist sentiments that are seemingly inclusive and thus difficult to critique without an awareness of the dynamic nature of race and racism.

This brings me to the conclusion, chapter 6, where I suggest some positive steps for rethinking justice, immigration, and citizenship in the 21st century. I explain how the political trajectory of the settler society makes it difficult to think about immigration reform or novel conceptions of state membership. Political philosophers tend to begin from a perspective that is ignorant of the historical relations between states. This has a determinant effect on the ways in which mainstream Anglo-American philosophy views naturalization law and immigration policy. In the haste to a certain level of abstraction, political philosophers have a tendency to forget that a history of colonialism or migratory

labor pervades the relationship between two countries. I argue for the importance of doing political philosophy with a historical orientation that is aware of the history of colonialism and oppression. I also offer a model of group interaction that is reciprocal and not founded on exclusive or one-way forms of assimilation.

4. Notes

[1] Roger Nett, "The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth," *Ethics* 81 (1971): 212.

[2] Most but not all of these people were "Hispanic." There was an interracial component to these marches that remains overlooked but is still visible in video footage from these events.

[3] These events took place between March and May of 2006. Estimates suggest that over one million people took to the streets across the United States on 1 May 2006, "May Day." See Laura Pulido, "A Day Without Immigrants: The Racial and Class Politics of Immigrant Exclusion," *Antipode* Vol. 39, No. 1 (2007): 1-7.

[4] For more than two dimensions to citizenship see: Linda Bosniak, "Citizenship," in *The Oxford Handbook of Legal Studies*, eds. Peter Cane and Mark Tushnet (Oxford: Oxford University Press, 2003), pp. 185-186; Gershon Shafir, "Introduction," in *The Citizenship Debates: A Reader*, ed. Gershon Shafir (Minneapolis: University of Minnesota, 1998), p. 2 (Shafir argues that the idea of citizenship amounts to an intellectual tradition housing "a string of citizenship discourses" with five main strands: the social democratic, communitarian, nationalist, feminist and multicultural, ibid.); Will Kymlicka and Wayne Norman, "Return of the Citizen: Survey of Recent Work on Citizenship Theory," *Ethics*, Vol. 104, No. 2 (Chicago: University of Chicago Press, 1994), p. 353 (see in particular their inclusion of citizenship as an identity issue, p. 369).

[5] Kymlicka and Norman, p. 353.

[6] Bosniak explains how the idea of a "good citizen" now extends beyond the political realm (or, as she notes, this could be an expansion of the domain of the political). One can now practice citizenship in universities, in the economic realm, within the confines of everyday private life, inside of grassroots social justice movements, with church communities, and even the realm of culture. See Bosniak, 2003, pp. 187-189.

[7] See Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *The Citizenship Debates: A Reader*, ed. Gershon Shafir (Minneapolis: University of Minnesota, 1998), pp. 263-290. I return to the debate regarding multiculturalism and differentiated citizenship in chapter four.

[8] Isaiah Berlin, "Two Concepts of Liberty," in *Contemporary Political Philosophy*: *An Anthology* (2nd Edition), ed. Robert G. Goodin and Philip Pettit (Malden: Blackwell, 2006), p. 373.

[9] David Batstone and Eduardo Mendieta, "What Does it Mean to be an American," in *The Good Citizen*, ed. David Batstone and Eduardo Mendieta (New York: Routledge, 1999), p. 3.

[10] Aristotle, *The Politics and The Constitution of Athens*, ed. Stephen Everson (Cambridge: University Press, 1996), p. 11 (line 1252a).

[11] Plato makes the case for "the good" of the *political* community being synonymous with justice, a type of harmony amongst the community. See Plato, *The Republic*, trans. G. M. A Grube (Indianapolis: Hackett, 1992), pp. 109-111 (line 434C).

[12] J. G. A Pocock, "The Ideal of Citizenship since Classical Times," *The Citizenship Debates: A Reader*, Ed. Gershon Shafir (Minneapolis: University of Minnesota, 1998), p. 34 (emphasis added).

[13] Ibid., p. 36.

[14] Darren J. O'Byrne, *The Dimensions of Global Citizenship: Political Identity Beyond the Nation-State* (Portland: Frank Cass & Co. Ltd, 2003), p. 10.

[15] Cynthia Patterson, "Citizenship and Gender in the Ancient World," *Migrations and Mobilities: Citizenship, Borders, and Gender*, Eds. Seyla Benhabib and Judith Resnick (New York: New York University Press, 2009), p. 53. See also O'Byrne, p. 11 and Pocock, p. 32.

[16] Pocock, p. 32.

[17] Patterson, pp. 49-50.

[18] For the time being, think about Pericles' reform as limiting the activity of citizenship to those with two *polites* as parents—I will return to the question of citizenship based on birth versus citizenship as an activity below.

[19] Aristotle, pp. 61-62 (line 1275a-b).

[20] Patterson, p. 51. Assemblyman and juror were the two main public offices citizens could perform. These were positions held exclusively for adult men. Thus, Greek citizenship was mostly gendered.

[21] Aristotle, p. 68 (line: 1277b33).

[22] Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), p. 54.

[23] This is not that far off from today: Most working-class individuals find it hard to vote. Although polling-places in the United States and other developed countries try to accommodate a busy schedule, being an informed voter who knows about policy and the potential decisions affecting their immediate lives takes time, which is a luxury one could barely afford when you have three kids, a low-income job, and bills. This problem is exacerbated by voter apathy, which tends to be a problem with the legal-construction of citizenship, as I will demonstrate below.

[24] See Aristotle, *Nicomachean Ethics,* trans. W. D. Ross (Oxford: Clarendon Press, 1908). See Book II, Ch.1-2, Book V Ch.1 and Bk. IX Ch. 9.

[25] Pocock, p. 34. One may question the divide between necessity and leisure from a Marxist/Hegelian perspective using something like the master/slave dialectic: seeing how dependent the life of leisure is upon the material world of need, there is some sense in which citizens are not really autonomous since it requires the existence of individuals who labor.

[26] Shafir, p. 4.

[27] Walzer, p. 54.

[28] Pocock, pp. 34-35.

[29] See Patterson, 2009 (her essay explores the question of gender in addition to providing an overview of the ancient Greek and Roman understandings of citizenship).

[30] Susan Moller Okin, "Women, Equality, and Citizenship," Queen's Quarterly Vol. 99, No. 1: p. 69; Carole Pateman, *The Disorder of Women. Democracy, Feminism and Political Theory* (Cambridge: Polity Press, 1989), p. 131.

[31] Walzer, p. 54.

[32] Pocock, p. 37

[33] See Bosniak (2003) for example.

[34] Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), p. 79-83.

[35] See Thomas Hobbes, "De Corpore Politico—Part the First: Laws of Nature," in *Body, Man, and Citizen*, ed. Richard S. Peters (New York: Collier Books, 1962), p. 312-313.

[36] Ibid., p. 311.

[37] Jean-Jacques Rousseau, *On the Social Contract*, trans. Donald A. Cress, (Indianapolis: Hackett Publishing Company, 1987), p. 38.

[38] Ibid., p. 26. In *Spheres of Justice*, Walzer reverberates Rousseau's thought: "No democratic state can tolerate the establishment of a fixed status between citizens and foreigners (though there can be stages in the transition from one of these political identities to the other). Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what the authority does," p. 61.

[39] Rousseau, p. 45 (Book II, Ch. 10) (emphasis added).

[40] Ibid., p. 23 (Book I, Ch. 5).

[41] Ibid.

[42] Ibid., p. 29 (Book II, Ch. 1).

[43] This is why Rousseau's *Emile* is read alongside of the *Social Contract*.

[44] Ibid., p. 80.

[45] Bosniak, p. 185; Kymlicka and Norman, p. 353.

[46] See Bosniak, p. 187.

[47] In the United States, there are several means through which legal-citizenship can be naturalized (usually after one acquires permanent resident status): general application; military service; familial/spousal relations; refugee or political exile status; plans for owning a business worth more than $500,000; and more (such as being an "alien with an extraordinary ability"). For naturalization policy in the United States see section 203(b)(5) of *The Immigration and Nationality Act* (INA), 8 U.S.C. § 1153(b)(5).

[48] As I will show in the next chapter, as convincing as the theoretical argument for state boundaries may be, the borders that exist in the real world fail to satisfy the "principle of rationality," i.e. the assumed non-arbitrary basis for political thought. For more on the principle of rationality see Phillip Cole, *Philosophies of Exclusion* (Edinburgh: University Press, 2000), p. 5

[49] Berlin, pp. 369-370.

[50] Ibid., p. 369. John Locke and Adam Smith would be minimalist in this sense. Locke believes in a rather optimistic view of human nature; Smith believes in free market egoism. Both endorse the idea that the state should only provide militaristic protection and civil courts for property disputes. Someone like Hobbes, with his pessimistic views on human nature, would require a more active state.

[51] See T .H. Marshall, "Citizenship and Social Class," in *The Citizenship Debates: A Reader*, ed. Gershon Shafir (Minneapolis: University of Minnesota, 1998). Marshall maintains one more category of rights, "political rights," which serve the same purposes as

national-citizenship.

[52] O'Byrne, p. 11

[53] Patterson, p. 64. As Patterson notes, prior to the Empire, citizenship rights were multifaceted and dependent upon an individual's wealth and age.

[54] Ibid. Its worth noting that slaves and foreigners could be granted citizenship-status, but only if they were adopted by slave owners or other citizens.

[55] Pocock, p. 37. Drawing form Pocock as well, Shafir summarizes the Roman understanding of citizenship in the following: "Instead of enabling one to freely participate in political decision making, citizenship became a legal *status* that provided protection from the emperor and his representatives' arbitrary rule. In addition, Roman citizenship was defined, for example by the jurist Gaius, not by the freedom to deliberate with other people but the by the right to be a proprietor. Roman law became the regulation over freedom to take and dispose of possessions, including slaves," p. 4.

[56] Pocock, p. 36.

[57] However, this did not imply that all citizens were equal; age and wealth were factors as well. Thus, citizenship was stratified and hierarchical. See Patterson, p. 64; O'Byrne, p. 11.

[58] Pocock, p. 36.

[59] Ibid.

[60] Ibid., p. 69.

[61] Ibid., p. 66.

[62] Ibid., p. 38

[63] For an excellent account of the formation of France and German citizenship law in the 18th-19th centuries see Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University, 1992). See also Andrean Fahrmeir, *Citizenship: The Rise and Fall of a Modern Concept* (New Haven: Yale University Press, 2007).

[64] Walter Mignolo, "Citizenship, Knowledge, and the Limits of Humanity," *American Literary History* Vol. 18, Issue 2 (2006): p. 312.

[65] Ibid.

[66] Peter H. Schuck and Rogers M. Smith, *Citizenship Without Consent: Illegal Aliens in the American Polity* (New Haven: Yale University Press, 1985), p. 2.

⁶⁷ Ibid., p 10.

⁶⁸ Ibid., pp. 12-13.

⁶⁹ Here, I have in mind political and social theorists who explore the link between immigration reform and the existence of transnational families. See Rhacel Salazar Parreñas, *Children of Global Migration: Transnational Families and Gendered Woes* (Stanford: Stanford University Press, 2005); Patricia Landolt and Wei Wei Da, "The Spatially Ruptured Practices of Migrant Families: A Comparison of Immigrants from El Salvador and the People's Republic of China," *Current Sociology* Vol. 59, No. (2011). See also *American Families United* (http://www.americanfamiliesunited.org/) an organization devoted to immigration reform on behalf of trans-national families.

⁷⁰ Schuck and Smith, p. 12.

⁷¹ Ibid., pp. 2-3.

⁷² See Marshall, pp. 93-112.

⁷³ Kymlicka and Norman, p. 354.

⁷⁴ Ibid., pp. 355-356.

⁷⁵ See Ibid. for an overview of the various responses to this question.

⁷⁶ Pocock, p. 37. See also Adrian Oldfield, *Citizenship and Community: Civic Republicanism and the Modern World* (London: Routledge, 1990).

⁷⁷ Shafir, pp. 4-5.

⁷⁸ In *Spheres of Justice*, Walzer writes, "no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good," p 19. Chapter 4 focuses explicitly on the question of citizenship in Rawls.

⁷⁹ Kymlicka and Norman, p. 353.

⁸⁰ Philip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000), p. 7.

⁸¹ Kymlicka and Norman, p. 353; Cole, p. 7.

⁸² Cole, p. 8.

⁸³ Michael Walzer, "Citizenship," *Political Innovation and Conceptual Change*, ed. T. Ball, J. Farr and R. L. Hanson (Cambridge: University Press, 1989), p. 217.

⁸⁴ I am not interested in fussing over the meaning of 'Hispanic' or 'Latino/a' in this

dissertation. While debates over these terms are important in regards to self-determination and respect, I do not think that they are meaningless referents and thus I will use them interchangeably. For more on the importance of group names and an overview of the debates regarding the above terms see Jorge J. E. Gracia, *Hispanic/Latino Identity: A Philosophical Perspective* (Malden: Blackwell, 2000). I will use of national markers such as 'Peruvian' or 'Honduran' when possible.

[85] Hiroshi Motomura, "The Rights of Others: Legal Claims and Immigration Outside the Law," *Duke Law Review* 59 (2010): pp. 1723-1786; Hiroshi Motomura, "Immigration Outside the Law," *Columbia Law Review* 108 (2008): pp. 2037-2097; Alexander Aleinikoff, "Between National and Postnational: Membership in the United States," in *Towards Assimilation and Citizenship: Immigrants in Liberal Nation-States*, ed. Christian Joppke and Ewa Morawska (Hampshire: Palgrave Macmillan, 2003); Linda S. Bosniak, "Membership, Equality, and the Difference that Alienage Makes," *New York University Law Review* Vol. 69, No. 6 (1994): pp. 1047-1149.

[86] Cole, p. xii.

[87] Ibid.

[88] Ibid., p. 2.

CHAPTER II

THE OUTSIDE OF NATIONALITY

Regardless of citizenship status, country of origin or duration of time within the

United States, most Latino/as are in some way viewed as foreigners by a majority of the

non-Hispanic United States citizenry.[1] This foreign status is almost definitional; being

"Latino/a," "Hispanic" or even "Latin American" implies a type of internationality. As

such, individuals of Latin American descent in the United States are said to be outside the

workings of the national imaginary; they are not the people called to mind when one

thinks about the typical "American." For some this foreign status is an issue of legality,

there is nothing imagined about it; for others it is a matter of national representation. As a

result, both the legal and national dimensions of citizenship are important to the citizen

status of Hispanic people as a whole.

Philosophical reflection on the political nature of people of Latin American

descent offers a unique opportunity to rethink the entire structure of state membership in

the United States, not just one half (i.e., the legal or national). However, prior to

exploring the inadequate ethical underpinnings of liberal policies of exclusion and the

shortfalls of the politics of recognition, which pertain to legal-citizenship and national-

citizenship respectively, I will turn to the work of Enrique Dussel so as to provide the

philosophical impetus for thinking about citizenship and social justice for immigrants

from what I call "the outside of nationality." While my initial goal in this chapter is to

explain the unique social and political positioning of Hispanic people, Dussel's view on

the political provide an argument for why engaging those persons occupying positions of

marginality and social exclusion is crucial to the type of critique I will launch against North American political philosophers.

I use the phrase "the outside of nationality" in a way similar to how Dussel and others speak of "the underside of modernity." For Dussel, Leopoldo Zea, Walter Mignolo, and Arturo Escobar, one cannot understand European modernity *in its fullest form* without reference to colonialism, or the underside of modernity. According to these *pensadores*, the construction of "modern man" rests upon material and philosophical underpinnings stemming from the encounter with America. "Modernity" thus depends upon the non-modern, i.e. the "savage," "uncivilized," and "indigenous." I provide a brief overview for the link between modernity and colonialism below. However, my point is to argue that one cannot understand the full scope of legal-citizenship and national-citizenship without reference to those who exist outside of the formal boundaries of the country or nation. Nationality, and the physical borders between states, rests upon a distinction made between insiders and outsiders. This distinction becomes increasingly problematic when one stops to analyze the reasoning behind this division, as I will explain in chapter 3.

The first section of this chapter presents an overview of the political nature of people of Hispanic descent in the United States. There is a great deal of literature on this subject from philosophical, social, and cultural studies.[2] My summation of the issues surrounding Latino/a identity is simply meant to problematize the two views of citizenship offered thus far.

In the second section of this chapter, I provide an overview of Dussel's recent political work, drawing from both the *Twenty Theses on Politics* and the *Politics of*

Liberation: A Critical World History.[3] I highlight the link between his early writings and the more recent political works. This link is found in Dussel's idea of "transmodernity," the foundation of his political philosophy of liberation. Transmodernity can best be described as an alternative global-social framework that is not predicated upon conquest, exploitation, and developmental theories of human culture, but rather an *analectical*[4] engagement with people of differing ways of life for the sake of mutual human flourishing (in light of ethical commitments such as mutual recognition, dignity, respect and the need for creativity or "alterity"). In the *Philosophy of Liberation* (i.e., Dussel's more early writings) the transmodern starting point is the critical engagement with the "Other," that is, "the peripheral colonial world, the sacrificed Indian, the enslaved black, the oppressed woman, the subjugated child, and the alienated popular culture."[5] In the *Politics of Liberation* (i.e., Dussel's more recent work) the transmodern starting point is the critical engagement with the victims of both legitimate and fetishized forms of governance, the inherent suffers of political oppression. This tracing out of "transmodernity" helps to show both the difference and continuity of Dussel's early and more recent thought, an implicit goal of this chapter. My claim is that whereas the philosophy of liberation begins from the underside of modernity (i.e. colonization), the politics of liberation begins from the outside of nationality, those situated beyond the scope and range of justice, such as undocumented immigrants and those associated with them based on common ancestry and ethnic/racial characteristics, i.e. Hispanics.[6]

In the third and last section of this chapter, I question several aspects of Dussel's political thought in the hopes of furthering key ideas and filling-in possible gaps. Of particular importance will be the status of state membership or the idea of "citizenship"

within Dussel's work. If political institutions are the formal and explicit manifestation of the latent power of political communities, how can the limits of one community be distinguished from another, such that the actions of one group do not impinge upon the autonomy of another? Is there a missing thesis regarding state membership (something akin to "citizenship") or the existence of political borders in Dussel's theory of legitimacy? I think that there is, and in this sense Dussel suffers from a similar tendency amongst political philosophers in assuming the category "citizenship" to be uncontested. Nonetheless, Dussel's reasoning for leaving out a positive definition for citizenship or state membership supports his idea of analectics. Thus, this is a shortcoming that must be explored for purposes at stake in this dissertation and in the context of libratory philosophy.

1. The Political Nature of Hispanic People

In the United States, most people of Latin American descent are directly or indirectly affected by the realities of modern day human migration and immigrant policy. Many can trace at least part of their family (if not their own self) to a country, countries, or region south of the continental United States. Others, although born or naturalized in the United States, cannot help but be associated with "foreigners" due to their skin color, surname, linguistic traits (such as an accent or bilingualism) and/or cultural traditions. Over a decade ago, the Latina feminist philosopher, Linda Martín Alcoff, put it the following way:

> The question of citizenship for U.S. Latinos is fraught with tensions that are in some respects different than for any other ethnic group. We are persistently seen by Anglo America as perennial foreigners: unassimilated, inassimilable, even uninterested in assimilation. Unlike other immigrant groups, our countries of origin are too close, our numbers too numerous and concentrated, to motivate the loss of Spanish language or cultural custom. Even though we may have lived in

North America for generations, even if as Chicanos our families have never lived anywhere else, we are perceived as a foreign people squatting within the United States.[7]

It is important to remind that Alcoff's words are prior to the terrorist attacks of September 11th 2001. Since then, the constant threat of terrorism has engendered even more suspicion about the citizen status of Hispanic people, such that their patriotism and national pride (or lack thereof) is called into question, in addition to the need to strengthen (i.e., militarize) the Mexican border in light of these suspicions.

Along these lines, Étienne Balibar credits the ascriptive foreign status of Hispanics to the creation of "hyper-borders," that is, walled, militarized divides between countries. Drawing from Karl Schmidt, Balibar argues that hyper-borders create distinctions between friend (insider) and enemy (outsider). The increased militarization of the border and the nationalist culture that this spawns blurs the line between enemy and stranger: in a state threatened by "illegal aliens," those who exhibit qualities that enemies have, such as speaking the same language or having similar physical traits, render them suspect or "strange."[8]

Considering that a third of the United States population is expected to be of Hispanic background by midway through the 21st century, roughly 132.8 million people,[9] one in three citizens will have a personal existence and/or close family ties that are in some way predicated upon "Hispanic foreignness," be it real or imagined by others.[10] Unless the United States citizenry is willing to alienate such a large percentage of the population, novel understandings of national identity and state membership are needed. The historical concern, put forth by the recently deceased Arthur Schlesinger Jr. and Samuel P. Huntington, and now revived by others such as David Miller, Francis Fukuyama, and Robert D. Putnam, argues that the alienation of Hispanics (and others) in

the United States leads to the formation of separate cultural enclaves that run the risk of balkanizing the United States (and worse, result in potential terrorist activity, according to Fukuyama who worries about alienated Muslim immigrants in Europe).[11]

The generally accepted number of unauthorized immigrants living in the United States ranges anywhere from 10 to 13 million, with most estimates holding at roughly 12 million.[12] An overwhelming majority of these individuals come from Latin America, particularly Mexico.[13] The existence of undocumented persons and their demands for social justice (or those made on their behalf) articulate claims that are not supposed to exist inside of the political realities of liberal states. Undocumented immigrants reveal the workings and limitations of political ontology in its brightest light by existing where they are not supposed to be—a political manifestation of the problem of nonbeing. At first glance, the question of citizenship for these individuals has little to do with national membership or cultural recognition, as in being included in the idea of the "American people." However, a state inclined towards a multicultural or culturally plural atmosphere can help to incorporate immigrants (documented or not) into mainstream society, *without* heavy assimilative demands. Nonetheless, for undocumented persons, the question of citizenship is primarily a legal issue.

Liberal national polities such as the United States have never seen anything comparable to this situation. Never has there been such a large transnational[14] ethnic minority inside of a modern state, so closely connected to undocumented immigrants. As the 2006 immigrant rights protests show, never have so many civilians and scholars questioned the morality of immigrant policy by considering the social/economic contributions of undocumented persons and challenging the main tenants of liberal

political theory, insofar as it attempts to justify immigration restrictions. When understood in these terms, non-Hispanics will also have to grapple with something of an "international identity" insofar as their daily interactions will force them outside of enclosed communities that consist of racially, ethnically, and even nationally homogenous majorities (this is, of course, unless Hispanics start belonging to the United States). Nonetheless, in the 21st century, because of the reality of human migration, recurrent political strife and the increasing scarcity of natural resources across the planet, in addition to global economic crises and climate change, all contemporary states stand in need of reflection on the link between state membership and national borders.[15]

The issues raised should not be alarming. After all, the United States is a nation of immigrants. Nonetheless, these issues do create a host of questions for political thinkers: What will the liberal polities look like when the traditional view of nation-states as existing for citizens has to reckon with vast numbers of noncitizens within their territory? Do concepts like autonomy and sovereignty, nationality and community, in addition to the equality of rights or universal ability to partake in the good, become contradictory in a state fixated on legal status? Rather than argue for one-way assimilative paradigms that expect immigrants to conform to dominant society, political philosophers of multiculturalism and multinationalism[16] ask the following type of questions: How do people of Latin American descent in the United States, given their international nature, fit into what is called "the politics of recognition"? Can we conceive of national-citizenship in a way that does not depend upon national identity?

2. The Transmodern, Trans-National State

Drawing from Dussel's recent political work this section offers a theoretical component to my use of "the outside of nationality." I frame this discussion around the following claim: If the chief form of political organization throughout modern political thought is the state (and subsequently the nation-state),[17] then the chief form of political organization derived from *transmodern* thought is what can be called the "trans-national state."[18] Here, the prefix 'trans' is of the utmost importance, it signifies the unfixed, ongoing process of an *analectical politics of liberation*—Dussel's central concern in his recent political philosophy. The trans-national state is a political institution that continuously represents and obeys the *will-to-life* of the *pueblo*, the political community and source of political power. Although institutions must have well-reasoned bases in order to be considered legitimate, their practical application or feasibility will cause harm in some way or another. The job of the political liberationist is not to justify a particular institution in light of these failures, but instead to remind the political community of the dynamic complexities of the *pueblo*, complexities that continually exceed their crystallized forms of institutionalization.

Best known for the *Philosophy of Liberation*, Dussel is political exile to Mexico from Argentina where in 1970's paramilitary forces bombed his home.[19] A student of Emanuel Levinas and Paul Ricoeur, Dussel is part of a generation of South American philosophers who placed the subject of colonialism and the legacy of colonial oppression against women, children, African slaves and the indigenous at the forefront of philosophical analysis.[20] Inspired by liberation theology, a branch of Roman Catholicism that maintains a tenuous relationship with the Church due to it political commitments and

social activism, the philosophy of liberation is one of the only segments of Latin American philosophy considered to be an autochthonous school of thought that attempts to think in and about the colonial experience (with much to say about the nature of philosophical discourse in Europe).[21]

Dussel's most current and important contribution to the field of political philosophy (not just Latin American philosophy) is a large three-volume work entitled *The Politics of Liberation: Critical World History* (Vol. 1)*, Architectonic* (Vol. 2) and *Critique* (Vol. 3).[22] *Critical World History* is a thorough description, reorientation and analysis of the theoretical landscape of the history of political philosophy, from ancient Babylon, Egypt and China to George Washington, Simón Bolívar and the Zapatistas, not to mention critical analyses of canonical political philosophers like Nicolai Machiavelli, Francisco de Vitoria, Thomas Hobbes, John Locke, Karl Marx, and more. The *Architectonic* and *Critique* supply a normative account of the purpose and overall structure of the concept of the political and the practice of politics. The second volume articulates the conditions for democratic legitimacy and political order, while the third deconstructs these categories so as to allow for the libratory moment. A more modest piece, *Twenty Theses on Politics* is a synopsis and heuristic for the above-mentioned *magnum opus* in which Dussel summarizes his massive project into twenty individual theses. I cannot overstate the importance of this text when interpreting the larger three-volume work. The rest of this section is devoted to explaining the transmodern basis of this new political theory.

At the onset of the *Twenty Theses*, Dussel states that the recent political events and social movements taking place in Latin America (and now perhaps the Arab world) require a new theory to interpret and represent their trajectory. However, as he suggests,

> The *new theory* cannot answer to the assumptions of the capitalist and colonialist modernity of the past 500 years. It cannot begin from bourgeois postulates, nor can it engage those of "real" socialism (with its impossible ideal planning, its "square circle" [or paradox] of democratic centrism, with ecological irresponsibility, the bureaucratization of its sectors [*cuadros*], with the vanguard dogmatism of its theory and strategy, etc.). What is to come is a *new transmodern civilization*, inherently *transcapitalist*, *beyond liberalism* and "*real*" *socialism*, where power was a type of exercise of *domination*, and where the political was reduced to a bureaucratic administration.[23]

Again, in the above passage (and those below), pay attention to Dussel's use of 'trans,' 'beyond,' 'further than,' 'surpass,' etc., because they reveal much about the process of liberation in both Dussel's politics and philosophy.

According to Dussel, there are three levels or stages required in describing the concept of the political, in addition to three corresponding principles that suggest normative ideals that bring these levels about. In its most basic formulation, the purpose of the political is the preservation, enhancement, and continuation of the life of the *pueblo*.[24] At this first stage, Dussel's understanding of the political implies a "material"[25] component aimed at ensuring *the continuation of human life* (which includes an account for why nonhuman life is equally important). The political is central or necessary to the material conditions that provide for the possibility of human existence, the content of political action. In its original form, political power consists of the will-to-life of the *pueblo*, the communal desire to stay alive. If it is to be effective in ensuring the survival of the community in ways that realize human potential, this will-to-life requires the institutionalization of power and the establishment of government. Dussel explains this as

the move from *potentia* (power as potential) to *potestas* (the actual institutionalization of power).[26] Here, Dussel warns of the fetishization of power, the ultimate corruption of politics, where a governing-will or political ruler views their individual authority as the source of political power and separate from the will-to-life of the community.[27]

Dussel recognizes a second level of the political while guaranteeing preventative measures against the corruption of politics, the legitimating sphere. This is where philosophers like John Rawls or Jürgen Habermas enter the discussion. Through such ideas as overlapping consensus, communicative action, or even in a broader sense the "social contract," political philosophers of the second level ensure the legitimacy of political institutions. Dussel also calls this the formal or procedural-normative sphere.[28] Again, at this level, the purpose of political philosophy is to explain the legitimacy of particular forms of government, democracy being the most feasible:

> From among the diverse systems of government (monarchies and republics), *democracy* came to emerge as the only feasible form for the achievement of legitimacy. Today, the task is to assess and improve upon the various types of democracy: republican, liberal, social democratic, welfare State, post-colonial populist, etc. Existing *empirical* democratic systems are always concrete, inimitable in their entirety by other States, and always open for improvement. Democracy is a perpetually unfinished system.[29]

Being "inimitable" and "unfinished," the legitimacy of states or political institutions is inherently unique and ongoing. That is to say, legitimacy must continually be asserted and cannot be generalized—particular people from their specific institutions must play an active role in legitimating process.

The third and final level of the political is the practical application or feasibility of political action. This is where political administrations arise and the actual practicing of politics takes place. The feasibility level pertains to what political institutions can actually do, i.e., the efficacy of legitimate forms of governance.[30] It is at this last level

where certain limitations become obvious: being the work of finite human beings, all political institutions will cause victims; even the best or most just political institutions will be unfair or harm someone, somewhere (both within its boundaries and outside).[31] Political institutions are a moment in the attempt to formalize or capture *potentia*; institutions rely upon a "snapshot" of the dynamic needs of the will-to-life of the political community, they are bound to fail in some degree. In light of inevitable shortcomings, political power becomes fetishized when the institution attempts to justify its existence amidst suffering. When this occurs the will-to-life of the institution or political ruler becomes separated from the will-to-life of the community. Once placed above the needs of the community, the institution's *will-to-power*—the desire to maintain its life at the expense of those suffering—is the corruption of politics.

For Dussel, even though they may be imperfect, institutions are indispensible: "For a critical and realistic politics, institutions are *necessary* despite their imperfection; they are entropic and as such there *always* arises a moment in which they need to be transformed, changed, or destroyed."[32] The idea of "entropy" refers to institutions that do not have any novel productive growth stemming from the pain experienced by the *oppressed members of society* (e.g. exploited laborers, poor rural farmers or racial minorities *inside* the system) and those *excluded from the political arena altogether* (e.g. undocumented immigrants, third world laborers, women prior to having the right to vote in the United States).[33] Instead, entropic institutions ignore the possibility for political transformation by interpreting novel justice claims as the latest form of a historical or existing criticism. Such claims as "universal health care is just another form of socialism"

or "pro-immigrant immigration reform is just about amnesty" serve as examples, because they deny the opportunity for novelty in today's political climate.

Dussel's stance regarding the indispensability of institutions stands in stark contrast to political anarchists (in fact, Dussel has defended his views in front of anarchists like the Zapatistas on several occasions[34]). Peter Kropotkin defines anarchism as:

> [A] principle or theory of life and conduct under which society is conceived without government—harmony in such a society being obtained, not by submission to law, or by obedience to authority, but by free agreements concluded between the various groups, territorial and professional, freely constituted for the sake of production and consumption, as also for the satisfaction of the infinite variety of needs and aspirations of a civilized being.[35]

Kropotkin continues by noting that "the state" is replaced by "interwoven networks" that provide an assortment of social functions. This idea of interwoven networks is almost identical to the social networks that operate in Zapatista communal arrangements (which inform Dussel of his views regarding political power). For the Zapatistas, what are called *caracoles* ("spiral shells") are indigenous social arrangements that rely upon a revolving representational basis, with each official promising *to rule through obedience*. Each *caracole* maps onto to an indigenous community and designates a range of autonomous actions. All of this is not a form of Western "government," argue the Zapatistas. "Government" implies that humans are inherently in need of the type of governing backed by coercive military force (as I will show in chapter 4, the governing view is also based on the supposed savagery of indigenous peoples, an idea the Zapatistas resent).[36]

Dussel's argument for political institutions boils down to the following: human potentiality and wellbeing is, and historically has been, maximized by social arrangements that formalize the latent power of the community. This formalization

establishes the state, which *serves* as a form of mediation between political communities and their elected representatives. Dussel understands the practice of politics as a "noble vocation," where political power is obediential service that not only upholds law but also has a "firmer obligation to obey the community."[37] Like republicans and contemporary communitarians (which share Dussel's fondness for Aristotle's political thought), Dussel assumes an active citizenry that maintains a civic minded populous that appreciates political life. The state or political institution is not some external entity, but comprised of the will-to-life and social interactions of the *pueblo* or "local, civil participants" (in light of his lack of a stance of citizenship, see below).

Dussel's disagreement with anarchist is somewhat semantic: he views *caracoles* as institutions, whereas Western political thinkers may see them as some form of indigenous tribal society. Dussel is on the same page with anarchists when it comes to "the dictatorship of the proletariat. " Crispin Sartwell explains the dictatorship of the proletariat as "merely a dictatorship of the party of an individual, and that dictatorship was wrong."[38] Here, Sartwell is criticizing vanguard movements and revolutionary platforms that place a single individual at the forefront of social change in favor of socialism. Dussel's anti-fetishized understanding of political power implies that the *pueblo* is the source for political power, not an individual ruler. Political representatives do not act in their own interest, so as to preserve or take power, but respond to the dynamic demands of the community.

It is for this reason that Dussel favors political "transformations" over the "changing" or "destroying" of corrupt institutions.[39] An initial explanation for this preference is the fact that transformations do not result in as much violence, bloodshed,

or political turmoil as revolutions. While Dussel does not rule out violence in the name of liberation,[40] if one wishes to take on the political hegemony of a place like the United States there is little hope in military action from the vantage point of the *people* (given the current state of military power and the national war on terror, both foreign and domestic). The professional military may be more successful in a coup against the government, but this too is problematic and highly susceptible to fetishization: "Power is not *taken* but is instead exercised through delegation, and if one wants such delegation to form of *obedience* then it is necessary to *transform* many institutional moments (notably, partial or total transformations of the system, not reforms)."[41] Political reform from within the prevailing system (either through changes in policy or law) is stifling and can result in entropy. Law serves to support the status quo in ways that can accommodate change, but this does not necessarily result in substantial shifts in power dynamics.[42] The Bolivian "multicultural" reforms in the mid-1990s and the critical analysis of James Tully's work (both in chapter 4), in addition to my analysis of the re-racialization of American national identity (chapter 5) all serve as examples. Political transformations are not just about inclusion of minorities or people of color into existing institutions, but the idea that the inclusion of marginalized peoples changes the composition of the whole.

In place of reform and revolution, the transmodern state incorporates political practices that add new variables into mainstream discourses by allowing alienated and/or marginalized perspectives to serve as the source for transformation. The necessary starting point for analectic practice must be those whose ability to "live fully" is denied by the political institution itself, seeing how the political is meant to ensure the continuation and sustenance of life. Those persons either alienated from or oppressed by

"the ontological horizon of politics"[43] have "the reason from beyond," they are

analectically situated. To put it differently, the oppressed and alienated have material

needs that the institution (in its current manifestation) cannot respond to, either because

of unwillingness or a lack of knowledge due to the novelty of the claims being made.

When successful, analectic critique ruptures political hegemony and serves as the impetus

for transformation in ways that do not result in reactionary politics or reaffirm

mainstream political platforms. The oppressed and marginalized counter the decay and

disorder that reform movements leave in place.

Given that Dussel argues that entropy will always come about, analectical politics

is an ongoing process, a nation in "transit" (recall the above quote: "democracy is a

perpetually unfinished project"). Dussel continues this idea at the end of the *Twenty*

Theses when he writes:

> It is true that the bourgeois Revolution spoke of *liberty*, but what is necessary now
> is to subsume that liberty and speak instead of *liberation* (as in North American
> pragmatism, one does not speak of *truth* but veri-*fication*). So now we do not refer
> to liberty but instead to liber-ation as a process, as the negation of a point of
> departure, and as a tension pressing towards a point of arrival.[44]

In the second and third volumes of the *Politics*, Dussel performs the "negation of a point

of departure" by first articulating the conditions for democratic legitimacy (Vol. 2), and

then deconstructing the political categories used to arrive at legitimacy in the first place

(Vol. 3). He does the same in the *Twenty Theses*; he first explicates a political philosophy

of democratic legitimacy (Theses 2-10), and then deconstructs this theory with the

victims of political institutions in mind (Theses 11-20).

Dussel's willingness to consider political victims and the innate entropy of political institutions owe much to his earlier work on "transmodernity," which served as a critique of modernity or modern thought in general. I will briefly elaborate this idea.

Although it is possible to tell the story of modernity without reference to America or colonization, i.e. from strictly Eurocentric point of view, for Dussel, and other Latin American thinkers such as Zea, Mignolo and Arturo Escobar, "modernity" is a worldview that began with the encounter of America and the Iberian justification for conquest.[45] While most scholars in the West understand the work of Francis Bacon, Galileo Galilei and René Descartes to be the origins of "modernity," Dussel argues that prior to these thinkers, Europe faced an epistemic crisis *and* obtained a position of global centrality resulting from the encounter with/of America.[46] The encounter with a landmass not recorded in the Bible or other pre-modern foundational texts destabilized medieval epistemic footings and rendered obsolete epistemological justifications based on myth, dogma, Papal authority, religious knowledge, raw sense experience, and cultural tradition.[47] This prompted a search for a "new" basis for knowledge, which came to be found in "reason."

Zea, for example, argues that the modern world is a product of a disappointment or letdown (*decepción*). The person who initiates the modern world is a disappointed person (*decepcionado*), "a man who has just encountered a world in which he does not fit." He continues, "that which was familiar changed into something strange, the clear to the obscure, from light into dark. It is from here that this man takes it upon himself to make clarity where one can only find darkness, to look for 'ideas clear and distinct.' Clarity is order and distinction. To order and distinguish is the mission that the modern

man puts forward."[48] Obviously, Zea has in mind Descartes' thoughts in the *Discourse on the Method* (the full title: *Discourse on the Method of Rightly Conducting the Reason, and Seeking Truth in the Sciences*—this will be important below), especially with the use of "clarity" and "distinctiveness."

In terms of the justification of conquest, the various philosophical and legal arguments (posed by Juan Ginés de Sepúlveda and others) for why Europeans who had dominion over the indigenous harbored a worldview predicated upon qualitative differences in human kind, e.g., "inferior," "superior," "barbarous," "civil," "holy," "unholy," and so forth. Initially these differences were based on religion and morality, especially in light of the Spanish *reconquista* (the expulsion of Moors and Jews from Iberia in early 1492). Later the differences between "superior" and "inferior" acquired novel significance and were understood to be the by-product of a groups' historical development or lack thereof. One's relation to Western history detailed a record of their progress. Those closer to the zenith of history were more or less "modern," while those assumed to be lower down were *historicized* (pre-modern, savage). Through the process of colonization, modern man posited himself as the supreme form of humanity that all needed to strive for.

Modernity sets itself as a *fixed* object that cannot be changed by anything external to it—it is the height of human ways of being. As the supposed culmination of humanity, "inferior" forms of knowledge that rest upon myth or tradition could not contribute anything positive to the modern worldview and thus to humanity as a whole. In fact, indigenous perspectives serve only as example of a past stage of human progress, a static point in human history. As Mario Saenz puts it in his review of Dussel's thoughts on

modernity, "From the beginning [modernity] is an *intersubjective* phenomenon in which the [colonized] subject is either denied completely or at best belittled as the humanity of an immature child to be molded by a conquering and colonizing father."[49]

Modernity is a one-sided cultural interaction, a cultural imposition (recently, Dussel refers to this as the "philosophical anti-discourse of modernity"[50]). Through the threat of violence, European powers demanded indigenous conformity to modernity. This not only expanded European markets and subsumed native economies into the fledgling capitalist world-system, but it also established European ways of living as the standard for civilization. [51] This standard depended upon the proper use of "reason," a measure that would not have been possible had it not been for the encounter with America in the first place. In *Critical World History*, Dussel elaborates this point:

> With an ironic and critical sense, Montaigne wrote about cannibals: 'we may well call these people barbarians, in respect to the rules of reason'. 'The rules of reason' will always be the foundation of the justification, and for this reason the syllogism will be tautological or self-referential. The argument from Ginés to Locke or Hegel is expressed thus: (a) we have 'rules of reason', which are 'human' rules in general (by being 'ours'); (b) the Other is a barbarian because s/he does not fulfill these 'rules of reason', his/her 'rules' are not rational 'rules'; because one does not have civilized rational 'rules', one is a barbarian; (c) being a barbarian (not fully human) one does not have rights; further, one is a danger to civilization, and (d) like all dangers, one has to eliminate it like a 'rabid dog' (an expression used later by Locke), to immobilize it or 'heal it' from its disease; and this is a good; one has to negate as irrational *alternative* rationality. That which is negated is not 'other reason' but 'the reason of the Other'. So, for the so-called civilized, the war against savagery would always be a 'just war'.[52]

During the European conquest it was the "reason" of other cultures that modernity destroyed. This eliminated the continuity of non-Western cultural practices and systems of thought since it was assumed that these have nothing to offer the modern worldview, hence the "anti-discourse" of modernity.

Transmodernity attempts to overcome the ethnocentric and self-referential ideals of modernity by developing intercultural dialogues that are engendered from outside of the social totality established during the conquest and colonialism, based on the reason of an "Other" (analectics). Without expecting indigenous conformity to European ways of living and thinking, transmodernity attempts to create an analectical dialogue between cultures. This is not, however, an argument for why cultures need to remain disconnected or isolated. "An intercultural dialogue," Dussel explains, "must be *transversal*, that is to say, it needs to set out from a *place other than* a mere dialogue between the learned experts of the academics or institutionally-dominant worlds. It must be a multicultural dialogue that does not presuppose the illusion of a non-existent symmetry between cultures."[53] Requiring a radical de-centering of the individual, transmodernity confronts human differences rather than demanding conformity to the "dominant" point of view. Again, the prefix 'trans' is important, it designates the unfixed (not unfinished) nature of an alternative view of cultural interaction.[54] Dussel writes,

> To overcome modernity, one must deny its myth [the irrational appeal to violence and the belief in European superiority]. I seek to overcome modernity not through a postmodern attack on reason based on the irrational incommensurability of language-games. Rather, I propose transmodern opposition to modernity's irrational violence based on the reason of the Other. I hope to go beyond modernity. I hope to transcend modern reason not by negating reason as such, but by negating violent, Eurocentric, developmentalist, hegemonic reason. In transmodernity, the alterity, coessential to modernity, now receives recognition as an equal. Modernity will come into its fullness not by passing from its potency to its act, but *by surpassing itself* through a corealization with its once negated alterity and through a process of mutual, creative fecundation. [55]

Critical World History makes clear the link between Dussel's earlier work on transmodernity and the recent political writings in the attempt to provide a transmodern basis for political institutions:

To speak of 'trans'-Modernity will demand a new interpretation of the whole phenomenon of Modernity, to count on moments which were never incorporated into European Modernity, and which subsuming the better of European and north American Modernity, will affirm 'from outside' itself essential components of the excluded cultures, *to develop a new political future, that of the twenty-first century*. To accept that massive exteriority will allow one to understand that there are cultural moments situated 'outside' of Modernity. One will have to overcome an interpretation that still assumes a 'second' and very subtle Eurocentrism, and move to a non-Eurocentric interpretation of the history of the world-system (after the world-empire), controlled by Europe for only 200 years, not 500. So the fact that other cultures, scorned until now, are emerging far from the horizon of European Modernity is not a miracle arising from nothing, but the return to being actors as they had been in history in recent eras. Although Western culture globalizes itself, at a certain technical, economic, political, military level, it does not exhaust other moments of enormous creativity, which affirm from their 'exteriority' other living, resisting and growing cultures.[56]

Critical World History reminds one of the "exterior moments of creativity" by providing a positive account of the history of political thought *writ* large. As Dussel demonstrates through the first volume of his *Politics*, the transmodern basis for political philosophy begins with a reformulation of the history of political thought, one that surpasses Western, Hellenistic and "modern" conceptions of history (the same history that charted cultural development and justified conquest). *This alternative history is crucial to the possibility of a new political future, one that is not determined by or limited to Western conceptions of the political.* It also lends credence to current libratory movements that are seen as lacking historical continuity, as I will explain below.

A great example of this historical reorientation is Dussel's analysis of *the Code of Hammurabi*. With the Hellenistic creation of the *polis*, justice is something that takes place within the body politic, amongst citizens. Here, 'justice' is "[t]he central concept in Greek philosophy and politics of *díke* (justice)… [which] derives etymologically from the Sumerian *diku-gal* (supreme judge), from the Babylonian *diqugallu*, from the Akkadian *duku*."[57] Within the *polis*, the ability to participate in the public construction of the good,

one sense of "justice," is limited almost exclusively to males of high social standing or "citizens."[58] Hammurabi, on the other hand, "does justice with the widow, with the orphan and with the poor, or with the foreigner."[59] Notice how "justice" can take place outside of the body politic, citizenship or official state-membership is not required (I leave you to imagine how this can translate into our time!). Neither is "justice" the explicit project of Western, Hellenistic thought but a continuation of pre-Hellenistic, Semitic ways of thinking, both etymologically and conceptually. Dussel does the same with the Greek terms for "demos," "equality" and "destiny" (among others).[60]

Critical World History is a macro-story of global political thought and it serves the function of a reference point for libratory claims to justice. Recent social movements like those present in indigenous politics in Latin America or amongst "radical" pro-democratic Arabs in the Middle East and North Africa do not come from nowhere. Dussel historicizes these movements in a non-linear, non-developmental history of political philosophy. He writes,

> The critical discourse of liberation therefore has to abandon the fragmentation of its story and produce a critical macro-story with the claim of truth (that is to say, aware that it is inevitably fallible, but still advanced as a truth claim) in order for the imagination of the victims, those dominated, to have the capacity to protect itself in a historical place with meaning, with global meaning (which will have to be corrected; therefore the macro-story is inevitably fallible).[61]

One may ask why global meaning is necessary. A possible answer is that this makes the project of liberation a world phenomenon and not a parochial concern of one class, one region or one people. The philosophy of liberation (and now politics of liberation) is more than just an autochthonous, de-colonial Latin American philosophy. Liberation is a distinctive human phenomenon. It maintains an innate global dimension that cannot be understated.[62] The macro-story being inevitably fallible, no one person or culture will

monopolize the truth, but instead cultures must come to terms with one another in reciprocal ways.

In order to fully understand the transmodern basis of Dussel's new theory of the political, replace the idea of "competing historical truth claims taking place within a global-analectical discourse between cultures" with the idea of "analectical justice claims taking place within specific political communities." The structure is essentially the same in that it is ultimately concerned with the limitations established by rigid social and political ontologies, rational accounts for what exists and what is possible in human social and political relations. That is to say, transmodernity is about freedom from oppression and the need for human creativity through alterity. It is about recognizing that there exist more than one way of being human, contrary to the myth of modernity, and also recognizing that the purpose of political institutions is to continually serve the complex and *dynamic* needs of the *pueblo*, the source of political power. Since the political is about the sustenance of human life, it too must not be a source for arresting the development of human potentiality, hence the practice of analectical politics.

3. Critical Analysis: The Missing Thesis on State Membership

There is much to admire within Dussel's retelling of the history of political philosophy. The wealth of knowledge, critical analyses of canonical figures, and obtaining a glimpse of the general perspective of one of the most important Latin American philosophers alive today is enough to warrant a read of all three volumes of the *Politics of Liberation* and the *Twenty Theses*. Nevertheless, several questions arise related to Dussel's views on state membership (or "citizenship") and his thoughts on the relations between *pueblos*. Considering that I will hold North American political

philosophers accountable for assuming citizenship and nationality as the starting points for theories of justice, rights or state (see chapter 3), I also want to make apparent that Latin American philosophers are subject to the same criticism.

Transmodern political thought is committed to the ideals of autonomy and equality, albeit with a certain nuance. The political community or *pueblo* is the "intersubjective referent" Dussel has in mind when explaining the purpose and structure of the political.[63] 'Intersubjective' does the work of getting beyond the atomistic individualism of the modern solipsistic subject, which Charles Taylor has also rightly criticized.[64] No human is completely autonomous and self-generating, but we are born into political communities that house power relations and social dynamics that we did not create. Our autonomy is situated, contextualized, and limited, but not gone. All participants of the political community are "free, autonomous, rational subjects with equal capacity for rhetorical intervention," according to Dussel.[65] The collective desire to stay alive is the will-to-life that leads to the creation of political institutions. These institutions require consensus, argues Dussel, a convergence of individual *wills* towards a common good.[66] Unfetishized political power is the ability of the members of the *pueblo* to have *symmetrical participation* in the governing process, another way of saying "equal rule." Dussel writes, "The more the individual members of the life-community participate and the more individual and common demands are satisfied, the more the power of the community—the power of the people—becomes through reasoned belief a protective wall [*muralla*] and a productive and innovative motor for that community."[67]

Dussel's employment of the Spanish *muralla*, which George Ciccariello-Maher rightly translates as "wall" (one could also say "rampart"), inadvertently sets up the

question of state membership. The "wall" that protects and ensures the autonomy and symmetrical participation (equality) of the community from corruption and fetishization also protects the *pueblo* from the influence and coercion of other communities. But this begs the question as to what constitutes group membership inside the *pueblo* in the first place and how is legitimate membership determined? In short, Dussel's political theory needs an explanation for what constitutes group membership within a *pueblo* in addition to an account for how one political community can exclude "foreigners" or members of a different *pueblo* from making legitimate justice claims.

My concern is that Dussel assumes the category "citizen" to be uncontested (or that he expects it to be contested). Thus, even in settings where radical political change is underway, the basis of state membership remains to be defined and free of expectations that might involve appeals to nationhood, borders, or even ethnic/familial bases. While Dussel does not explicitly mention any of these as criteria for inclusion in a *pueblo*, without some positive stance on what justifies membership, readers might supply these more problematic justifications that can undermine Dussel's project.

For several reasons, Dussel's lack of a stance on state membership is a difficult critique to launch. If there is in fact a missing thesis on citizenship it serves as another source for libratory politics. The initial construction of the political institution (which takes place in Volume 2 or Theses 2-10) is deconstructed during the critical analysis performed in Volume 3 (Theses 11-20). This means that a lack of a stance of citizenship ensures the future criticism of existing political institutions. Why construct an institution bound with such visible shortcomings in the first place?

Aside from the theoretical issues pertinent to Dusselian scholarship, the trans-national state serves as an alternative to thinking about political units without reference to "closed" or "fixed" polities—in fact, Dussel tries to avoid the entropy that results from closed systems altogether. The analectical method is a great asset in articulating the failures of mainstream Anglo-American political philosophy from the perspective of undocumented immigrants. These people are obviously outside of the political ontology, at least formally or legally speaking, but nonetheless the national economy depends upon their labor and position of vulnerability. This speaks directly to the concerns I will raise in chapter 3 regarding the assumptions of liberal political theory, which John Rawls' work serves as a classic example.

Compared to closed polities, Dussel's transmodern political institution is feasible and stable, but also subject to growth and change, both from within and outside. The state and subjects of justice (those to whom justice is due) remain a group continuously unfolding, hence my use of "trans-national." I turn to the trans-national state to rethink the nature of political organization with robust and fluid conceptions of both the state and state membership in mind. I also admire the nature of analectical critique since it not only endows political subjects with freedom, but also "liberates" the state in ways that transform oppressive power dynamics rather than reify the status quo (which speaks towards the concerns I will raise in chapter 4 pertaining to indigenous politics in Latin America).

Political stability will prove to be important in my critique of closed polities. There are good reasons for why states need some boundaries in place, and most of these reasons have to do with the distribution of rights/duties, the allocation of goods, and the

acknowledgement of autonomy. Dussel's analectic politics is great in this respect because it allows for the type of criticism I offer, based on the perspective of the marginalized and oppressed, however, analectical politics are meant to produce political transformations that rupture the workings of mainstream political platforms *but in ways that do not try to hinder the efficacy and continuity of political institutions.* This is yet another reason why Dussel circumnavigates the debate regarding revolution and reform; revolution can result in much turmoil and violence, reforms from within the status quo do little to change power dynamics. Institutions are necessary for Dussel, as explained above, even while the process of transformation is taking place.

Dussel's work on the underside of modernity provides a framework that allows me to make one last point about "the outside of nationality." Not only is the outside of nationality a location from where novel justice claims can be made, but the existence of an outside is also the basis for the "inside" itself (both philosophically and materially, i.e. in terms of exploitable cheap labor). As I will explain in chapters 3 and 4, legal and national constructions of citizenship depend upon outsiders; positive constructions of state membership are hard to come by, instead citizenship has historically been constructed through reference to those considered noncitizens, using what is called the *via negativa*.[68] Jorge J. E. Gracia notes that nations are not the type of thing consisting of essential features, conditions or properties.[69] Nations are clusters of individuals who share a range of things in common, such as culture, ideals, customs and perhaps even language, but no specific set or criteria is possible, since it is often the case that many who think of themselves as members will be excluded once necessary and sufficient

conditions are set. However, while nations appear to be positively inexplicable, using the *via negativa*, saying what a nation is not, can help this problem.

This is a similar claim to one that Terrance MacMullan provides in *Habits of Whiteness: A Pragmatist Reconstruction*.[70] MacMullan makes three points about whiteness: first, it is a social construct; second, although whiteness has meant different things at different times, it became a legal and social category in the 18th century (treated as a natural kind); third, "whiteness was established largely in a circular or negative fashion rather than through a clear articulation of who is white; its boundaries were defined primarily through the exclusion of those who were defined as non-white in their current age."[71] For MacMullan, "whiteness" gained its social significance in light of the denial of rights and privileges to nonwhites. "*Definition through negation*," as he writes.[72] Similarly, both positive and negative conceptions of citizenship depend upon a differentiation between citizens and noncitizens. One cannot successfully speak about a nation without first assuming the existence of those outside of nationality. And yet, to refer to an "outside" of nationality is to imply that a nation is a group with some sort of set limits, be they juridical or cartographic. What are those limits and how can they be justified if they are attached to differences in life expectancy and availability of resources?

4. Notes

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[1] This, of course, is not limited to non-Hispanics; even some Latino/as consider others, mostly recent immigrants, foreigners on account of their accent, immigration status, or some other factor. In addition, Hispanic citizens of the United States often encounter strange reactions to their citizen status abroad.

[2] See Ramon Grosfugel *et al*, *Latin@s in the World System: Decolonization Struggles in the 21st Century U.S. Empire* (Paradigm Publishers, 2005); Jorge J. E. Gracia and Pablo

De Grieff, ed., *Hispanics/Latinos in the United States: Ethnicity, Race and Rights* (New York: Routledge, 2000); Jorge. J. E. Gracia, *Latinos in America: Philosophy and Social Identity* (Malden: Blackwell, 2008) & *Surviving Race, Ethnicity, and Nationality: A Challenge For the Twenty First Century* (Oxford: Rowman & Littlefield, 2005) & *Hispanic/Latino Identity: A Philosophical Perspective* (Malden: Blackwell, 2000); Jorge J. E. Gracia, ed., *Race or Ethnicity? On Black and Latino Identity* (Ithaca: Cornell University, 2007)

[3] Enrique Dussel, *Politics of Liberation: A Critical World History*, trans. Thia Cooper (London: SCM Press: 2011 [2007]); *Twenty Theses on Politics*, trans. George Ciccariello-Maher (Durham: Duke University Press, 2008 [2006]). The Spanish versions are: Enrique Dussel, *Política de la liberación. Historia mundial y crítica* (Madrid: Editorial Trotta, 2007); *20 Tesis de Política* (Mexico City: Siglo XXI, 2006). See also Dussel, *Materiales Para Una Política de La Liberación* (Mexico City: Plaza y Valdes Editores, 2007); *Filosofía de la Cultura y de la Liberación* (Mexico City: UACM, 2006).

[4] "Analectic" is literally "the reason from an Other." It is derived from the Ancient Greek particle *ano* ("beyond" or "from above") and *logos* ("rational account of" or "science of"). For more on his use of the term see Dussel, *Philosophy of Liberation*, (New York: Orbis Books, 1989), p. 158. This probably the most important idea in Dussel's work, and yet it is routinely ignored by people working on his thought. Go figure.

[5] Enrique Dussel, *The Invention of the Americas: Eclipse of "the Other" and the Myth of Modernity*, trans. Michael D. Baber (New York: Continuum, 1995), p. 137

[6] I use the division between libratory *philosophy* and *politics* only for explanatory purposes, since it is often the case that those excluded from or oppressed within national polities are also the victims of colonization. Nonetheless, separating the political philosophy from the philosophy of liberation highlights some consistent theoretical maneuvers inside of Dussel's work that have to do with general meaning of "liberation." Also, Hispanics serve as one example of "the outside" of nationality; one can certainly make a similar argument from other the perspective of historically marginalized peoples.

[7] See Linda Martin Alcoff, "Latina/o Identity Politics," in *The Good Citizen*, ed. Eduardo Mendieta and David Batstone (New York: Routledge, 2000), pp. 94-95.

[8] See Étienne Balibar, "Strangers as Enemies. Further Reflections on the Aporias of Transnational Citizenship" (presentation delivered at McMaster University, March 2006), Accessed 5-21-2007: http://www.globalautonomy.ca/global1/servlet/Xml2pdf?fnRA_Balibar_Strangers.

[9] United States Bureau of the Census 2008. Based on the 2010 Census Report, over 50 million people identified as "Hispanic."

[10] This of course assumes that Hispanics do not assimilate into the mainstream white population as did previous immigrants groups such as the Irish, Italians and Eastern Europeans. Given the phenotypic differences of many Hispanic people (but not all), there is plausible reason to believe that this will not go as smoothly. In addition, the creation of "Hispanic ethnicity," which is an aspect of a person's identity aside from their race, serves as a mark of distinction between whites of non-Hispanic origins and those of Hispanic origin. As I will argue in chapter 5, there is strong reason to believe that Hispanics will not be incorporated into the dominant grouping based on the novel workings of racism in the United States.

[11] See Arthur Schlesinger Jr., *The Disuniting of America* (New York: W.W. & Norton & Company Inc., 1991); Samuel P. Huntington, *Who Are We? The Challenges to American National Identity* (New York: Simon and Shuster, 2004); David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000) and "Nationality in divided societies," *Multinational Democracies*, ed. Alain-G. Gagnon and James Tully (Cambridge: Cambridge University Press, 2001); Francis Fukuyama, "Identity, Immigration and Liberal Democracy," *Journal of Democracy* Vol. 17, No. 2 (2006): p. 6; Robert D. Putnam, "*E Pluribus Unum*: Diversity and Community in the Twenty-first Century" (The 2006 Johan Skytte Prize Lecture), *Scandinavian Political Studies* Vol. 30, No.2 (2007): pp. 137-174. Fukuyama states, "Culturally diverse immigrants create problems for all countries, yet Europe has become and will continue to be a critical breeding ground and battle front in the struggle between radical Islamism and liberal democracy. This is because radical Islamism itself does not come out of traditional Muslim societies, but rather is a manifestation of modern identity politics, a byproduct of the modernization process itself. In this respect, it is unfortunately a familiar challenge, one that we have seen earlier in the extremist politics of the twentieth century," p. 6.

[12] The USA Today/Gallup Pole, April 7-9 2005, states that there are roughly 11 million. Jeffrey S. Passel estimates 11.5 to 12 million. See Jeffrey S. Passel, "The Size and Characteristic of the Unauthorized Migrant Population in the U.S," The Pew Hispanic Center (2006), last accessed on **date,** http://pewhispanic.org/files/reports/61.pdf.

[13] See the Federation for American Immigration Reform (FAIR), http://www.fairus.org/site/News2?page=NewsArticle&id=16859&security=1601&news_iv_ctrl=1007

[14] Here, I am using 'transnationalism' in a way espoused by anthropologists, social theorists and migration scholars. See Roger Waldinger, "Immigrant Transnationalism," Editorial Arrangement of *socio*pedia.isa (2011), accessed 8-23-2011, www.sociopedia.isa. This use of 'transnationalism' focuses on the flow of people and goods across borders. It also expresses the diasporic nature of the migratory experience. I will offer an alternative version of this term, "trans-national" in my analysis of Dussel's work.

[15] For more on climate change and migration see Richard Black, Dominic Kniveton, Ronald Skeldon, Daniel Coppard, Akira Murata, and Kerstein Schmidt-Verkerk, "Demographics and Climate Change: Future Trends And their Policy Implications for Migration," http://www.migrationdrc.org/publications/working_papers/WP-T27.pdf; Addis Ababa and Lokichoggio, "Migration and Climate Change: A new (under) class of travelers," *The Economist*, accessed June 25th 2009, http://www.economist.com/world/international/displaystory.cfm?story_id=13925906. For more on the relationship between globalization and migration see Stephen Castles, "Globalization and migration: some pressing contradictions," *International Social Science Journal* Volume 50, Issue 156: pp.179-186.

[16] In particular I have in mind James Tully's use of "Multinationalism," in *Multinational Democracies*, ed. Alain-G. Gagnon and James Tully (Cambridge: Cambridge University Press, 2001), pp. 2-4.

[17] Whether or not the "state" is the sole product of modern political thought remains an open question. While for some it is unique to modernity, others view the Greek *polis*, the medieval principality, and feudal estate-system as precursors. These two stances on the origins of the state are not mutually exclusive. For an insightful volume devoted to this question see Erika Cudworth, Tim Hall and John McGovern, eds., *The Modern State: Theories and Ideologies* (Edinburgh: University Press, 2008). It is also worth noting that one could very easily point towards "the colony" or the colonial system as the chief form of political organization during the modern era; in between the 16th to 19th centuries more than half the world was a colony of some European power.

[18] Again, I do not mean "transnational" in the sense of international corporate ventures like Coca-Cola or Ford, nor do I have in mind the association of this term with migration and the movement of people across borders.

[19] Enrique Dussel, *The Philosophy of Liberation* (New York: Orbis, 1989). For a great account of the major events in Dussel's life and his intellectual lineage, see Linda Martín Alcoff and Eduardo Mendieta, "Introduction," *Thinking from the Underside of History: Enrique Dussel's Philosophy of Liberation* (Lanham: Rowman & Littlefield, 2000), pp. 13-25.

[20] For more on this generation, with an insightful critical analysis of Dussel's early work, see Ofelia Schutte, "Origins and Tendencies of the Philosophy of Liberation in Latin American Thought: A Critique of Dussel's Ethics," *The Philosophical Forum* Vol. XXII, No. 3 (1991): pp. #-#.

[21] For an overview of the philosophy of liberation see David Ignatius Gandolfo, "Liberation Philosophy," *A Companion to Latin American Philosophy*, ed. Ofelia Schutte, Susana Nuccetelli and Otávio Bueno (Malden: Blackwell, 2009), pp. #-#; see also N.L. Solís Bello-Ortiz, J. Zúñiga, M.S. Galindo and M.A. González Melchor, "La filosofía de la liberación," *El pensamiento filosófico latinoamericano, del Caribe y*

"latino"[1300-2000]: Historia, Corrientes, Temas, Filósofos, ed. Enrique Dussel, Eduardo Mendieta and Carmen Bohórquez (México, D.F.: Siglo Veintiuno, 2009), p. 399.

[22] Volumes 1 and 2 are available in Spanish (the first now in English—see note 2 above). Volume three is forthcoming in Spanish.

[23] Translation my own: "La *nueva teoría* no puede responder a los supuestos de la modernidad capitalista y colonialista de los 500 años. No puede partir de los postulados burgueses, pero tampoco de los del *socialismo real* (con su imposible planificación perfecta, con el círculo cuadrado del centralismo democrático, con la irresponsabilidad ecológia, con la burocratización de sus cuadros, con el dogma vanguardista de su teoría y estrategia, etc.) Lo que viene es una *nueva civilización transmoderna*, y por ello *transcapitalista*, *más allá* del *liberalismo* y del *socialismo real*, donde el poder era un tipo de ejercicio de la *dominación*, y donde la política se redujo a una administración burocrática," Dussel, *20 Tesis de Política*, pp. 7-8. I refer to the Spanish original because the English translation leaves out an important part of the last sentence referring to domination.

[24] Dussel, *Twenty Theses*, pp. 43-46 (Thesis 6).

[25] Dussel understands "'[m]aterial' in the sense of ethical-political 'content,' not merely physical," see *Politics of Liberation*, p. 15. See also Enrique Dussel, "Six Theses toward a Critique of Political Reason: The Citizen as Political Agent," *Radical Philosophy Review* Vol. 2, no. 2: pp. 79-95.

[26] Dussel, *Twenty Theses*, pp. 18-19 (Thesis 3).

[27] Ibid., pp. 30-35 (Thesis 5).

[28] Ibid., p. 50 (Thesis 8).

[29] Ibid., p. 51 (¶ 8.1.3).

[30] Ibid., p. 46.

[31] Ibid., p. 69.

[32] Ibid., p. 45.

[33] Ibid., p. 78 (¶ 12.1.2). Drawing from both Emmanuel Levinas and Karl Marx, Dussel differentiates between those persons *outside* the body politic and the oppressed people *within* a political system but on the bottom (the underside). Both of these grouping are heterogeneous and complex. With this move, Dussel provides a way of thinking about differential justice claims that are *prima facie* in conflict but nonetheless united by the

common goal of political transformation. See *Twenty Theses*, pp. 71-77 (Thesis 11). Both groups, those inside but on the bottom and those completely outside, can be part of the same analogical hegemonic bloc animated by what is called *hyperpotentia*, the political power of the *people* and *plebs* (different from the "political community"). See *Twenty Theses*, pp. 79-82.

[34] While at the University of Oregon (April 2008), Dussel explained that these exchanges took place in Chiapas, Mexico in 2007 and 2008.

[35] Peter Kropotkin, "Anarchism," in *The Encyclopaedia Britannica* (1910 Edition): #-#.

[36] For an overview of Zapatista political arrangements see *The Zapatistas: An Anarchist Analysis of Their Structure and Direction*, accessed 5-11-2011, http://www.struggle.ws/pdfs/pamphlets/zapatista/ZapatistaUSlet.pdf. See also Neil Harvey, "Globalisation and resistance in post-cold war Mexico: difference, citizenship and biodiversity conflicts in Chiapas," Third World Quarterly Vol. 22, No. 6 (2001), pp. 1045-1061.

[37] Dussel, *Twenty Theses*, p. 51. Dussel's idea of obediential service is connected to the ways in which "political power" manifest in the *caracoles*.

[38] Crispin Sartwell, *Against the State: An Introduction to Anarchist Political Theory* (Albany: SUNY Press, 2008), p. 7.

[39] Dussel, *Twenty Theses*, p. 110 (¶ 17.2). Note: here Dussel is also involved in the Marxist/socialist debate between revolution and reform.

[40] Ibid., p. 106 (Thesis 16 or ¶16.2.4).

[41] Ibid., p. 108.

[42] Ibid., p. 111. (¶ 17.2.6).

[43] The ontological horizon of politics is the totality of the political system, an account for what is possible or what exists within a specific political institution (e.g. the range of persons allowed to vote or considered a citizen at any given time, the types of legal arguments that can be made in a court of law, the dispersal of rights to individuals rather than groups, etc.).

[44] Ibid., p. 137.

[45] Enrique Dussel, "Eurocentrism and Modernity (Introduction to the Frankfurt Lectures)," in *The Postmodernism Debate in Latin America*, Vol. 20-3, ed. John Beverley-José Oviedo (Durham: Duke University Press, Durham, 1995 [1993]), pp. 65-76.

[46] Enrique Dussel, "Europe, Modernity, and Eurocentrism," *Nepantla: Views from the South* 1.3 (2000): pp. 468-471. Europe's global centrality serves as the basis for subsequent colonialism such as the British in India, which is why these philosophers begin with the conquest of America.

[47] For an extensive analysis of how the medieval/scholastic worldview was challenged by the existence of "America" see Walter Mignolo, *The Idea of Latin America* (Malden: Blackwell, 2005).

[48] Leopoldo Zea, "Una aventura en la 'Metahistoria,'" *Cuardernos Americanos: Filosofía de lo Americano* (Mexico, D.F.: Editorial Nueva Imagen, 1984), p. 29.

[49] Mario Saenz, "Enrique Dussel, The Invention of the Americas: Eclipse of 'the Other' and the Myth of Modernity," *Continental Philosophy Review* Volume 31, Number 1 (1998), pp. 425-434.

[50] See Enrique Dussel, *Anti-Cartersian Meditations: On the Origin of Philosophical Anti-Discourse of Modernity,* trans. George Ciccariello-Maher, accessed April 5, 2010, www.enriquedussel.org.

[51] Karl Marx and Frederick Engels make the same point in *The Communist Manifesto* (New York: International Publishers, 2008 [1948]): "The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all nations, even the most barbarian, into civilization. The cheap prices of its commodities are the heavy artillery with which it batters down all Chinese walls, with which it forces the barbarians' intensely obstinate hatred of foreigners to capitulate. It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them to introduce what it calls civilization into their midst, i.e. to become bourgeois themselves. In a word, it creates a world after its own image," p. 13.

[52] Dussel, *Critical World History*, p. 193.

[53] Enrique Dussel, "Transmodernity and Interculturality: An Interpretation from the Perspective of Philosophy of Liberation," accessed April 5, 2010, http://www.enriquedussel.org/txt/Transmodernity%20and%20Interculturality.pdf, p. 19

[54] In contrast to such thinkers as Karl-Otto Apel and Jürgen Habermas, Dussel questions the idea that "modernity" is a concept that has yet to be completed, as argued by the latter in particular. See Dussel, *The Invention of the Americas*, p. 10.

[55] Ibid., pp. 137-138.

[56] Dussel, *Critical World History*, p. 131 (emphasis added).

[57] Dussel, p. 12.

[58] See Cynthia Patterson, p. 47.

[59] Dussel, *Política de la liberación*, pp. 23-24.

[60] Dussel, *Critical World History*, pp. 15-16.

[61] Ibid*.,* p. 2.

[62] This is another geo-spatial interpretation of "trans-national."

[63] Dussel, *Twenty Theses*, p. 72.

[64] See Charles Taylor, "Atomism," *Social and Political Philosophy: Classic and Contemporary Readings*, ed. Andrea Veltman (Oxford: Oxford University Press, 2008), pp. 431-444.

[65] *Twenty Theses*, p. 15. Given Dussel's language in the last quote, Marta Nussbaum would argue that Dussel is subject to the criticism she launched against social contract theorists (see chapter 3). Namely, that there is a problem with conflating the subjects of justice (those to whom justice is due) with those who take part in the articulation of the compact. Again, those external to the state, like third world workers require some consideration, as do animals and individuals with developmental disabilities. See Martha Nussbaum, *Frontiers of Justice* (Cambridge: Harvard University Press, 2006), p. 16.

[66] Dussel, *Twenty Theses*, p. 15.

[67] Ibid*.*

[68] In Apophatic theology, the *via negativa* signifies the fact that a finite, rational being cannot positively describe God's infinite nature in its fullest and thus construct images of God based on what he is not, e.g. "God is not evil," "God is not subject to temporality," "God is not fallible."

[69] Gracia, *Surviving Race, Ethnicity, and Nationality*, p. 134.

[70] Terrance MacMullan, *Habits of Whiteness: A Pragmatist Reconstruction* (Bloomington, IN: Indiana University press, 2009).

[71] Ibid., pp. 25-26.

[72] Ibid., p. 30.

CHAPTER III

THE LAW OF <u>ILLEGAL</u> PEOPLES: POLITICAL LIBERALISM, STATE

BOUNDARIES, AND JUSTICE FOR UNDOCUMENTED IMMIGRANTS

From a political philosophical perspective, "undocumented," "informal,"

"clandestine," or "illegal" immigrants provide a unique opportunity to rethink the legal

dimensions of state membership in ways that reflect the actual workings of political

institutions. For those individuals residing in the United States without the *explicit*[1]

consent of the government, the legal dimensions of citizenship are more pressing than the

politics of recognition or multiculturalism, areas of political philosophy where talk of

"citizenship" abounds.[2] This is not to say that questions of national representation or

identity politics are insignificant in regards to the immigration debate, as I will show in

greater detail in chapter 4. However, for those living precarious lives without many of the

privileges, rights and *duties* that citizens have, legal status is the primary issue. In this

sense, the point of departure for this chapter are the problems posed to political liberalism

by the reality of undocumented immigration, the reality of individuals who informally

exist inside the boundaries of a national polity. I will thus perform an "analectical"

critique of mainstream theories of justice and state membership.

Political activists render demands for social justice for undocumented people a

question concerning the legitimacy of state membership. Pausing to examine the

theoretical justifications for liberal policies of exclusion, in addition to evaluating the

explanations for why mainstream theories of justice exclude undocumented immigrants

from theoretical consideration, generates a host of questions about the nature of

citizenship and social justice in the 21st century: How do we think about state

membership and social justice in a society with a population consisting of a "minority-majority," with dynamic and ongoing "post-racial" *racial* politics and an increasingly non-European migratory or international population? How does being within the scope of justice, which undocumented immigrants are, constitute a type of political subjectivity within the state? How can individuals contribute to the national economy and be subject to the law, but not have any say in its construction? Those who marched in the protest of 2006, and every May Day since, ask these questions to *all political philosophers*, not just those of Latino/a backgrounds. Thus, at their core, arguments in favor of immigration reform are standard justice claims that pertain to such issues as exploited labor, racism, national prejudice or jingoism, political misrecognition and more. Being justice claims of this variety, all of which have been addressed at great lengths by feminists, philosophers of race, and social theorists, why are mainstream domestic theories of justice unable to respond to these specific justice claims? The answer to this question has to do with the "nationalistic" orientation of mainstream political and social philosophy.

What follows are several reconsiderations of justice that provide for more robust and fair understandings of state membership.[3] These reconsiderations focus on the central tenants of liberal political theory and the work of John Rawls, undoubtedly the most significant political philosopher of the 20th century.[4] Of particular importance is the first limitation that Rawls places upon his *theory of justice*, namely, that it is a theory of justice for a closed society.[5] My contention is that this constraint provides too much information regarding the persons behind the famed "veil of ignorance"; when formulating the basic principles upon which the structure of society will depend, we may not know if we are rich, poor, black, white, able-bodied or not, male or female, gay or

straight, but we *do* know that everyone behind the veil will be a citizen (because of the limitation mentioned above). Through this constriction Rawls limits justice to those who are formal members of the body politic. With this move, upwards of 12 million undocumented people are immediately alienated from Rawls' basic conception of justice, individuals who clean our houses, take care of our children, pay taxes, serve us food, and rent the apartment down the hall. Although we did not formally invite them into this country (nor did they ask for permission), these are individuals that our national economy has historically turned to for cheap, reliable labor (hence another reason for why the "nation" depends upon those "outside"). Unless Rawls' first limitation is justifiable, how can the range of justice, *in its most basic form*, be so narrow?

In section 1, I argue that Rawls is paradigmatic of a general tendency in liberal political theory: he assumes the nation-state as his starting point. I attempt to hold Rawls accountable to standards that are his own: (1) justice should not rest upon arbitrary or contingent factors and (2) political philosophers must work with conceptions of people as the actually are, within the realm of what is actually possible.[6] Similar to Rawls requirement that one's family or class have nothing to do with one's relation to justice, since those are determinations outside of your control, the place of one's birth or the family one is born into should not have any effect on justice. It is increasingly difficult and indicative of a rift between theory and practice to think about justice in its idealized form when one assumes outdated if not impossible conceptions of society and the state as its starting point. In other words, I think it is impossible to think about justice today from the perspective of closed societies, instead I suggest the idea of more or less "stable" polities (amidst discussion of "ideal theory").[7]

I believe that Rawls was aware of this line of critique. In *The Law of Peoples* he acknowledges the arbitrary nature of borders on several occasions.[8] Nonetheless, his response to the nature of borders does not resolve the issue, and I will appeal to his difference principle to think through the problems posed above. I attempt to provide what amounts to Rawls' way out of the above questions. In the *Lectures on the History of Political Philosophy*, while explaining his approach to teaching philosophers like Hume, Leibniz, and Kant, Rawls writes: "I always assumed…that the writers we were studying were always much smarter than I was. If they were not, why was I wasting my time and the student's time by studying them? If I saw a mistake in their arguments, I supposed they [the philosophers] saw it too and must have dealt with it, but where? So I looked for their way out, not mine."[9] Thus, while attempting to rethink the scope and range of justice, so as to provide more adequate models of state membership in the 21st century, it should be possible to launch a Rawlsian critique of Rawls—what some thinkers might call an "imminent critique."

Section 2 explores the moral status of borders and the reasoning offered by political philosophers in favor of immigration restriction. I point out the historical contingency and arbitrary nature of state boundaries. I also provide what amounts to the best argument in favor of bounded political units. While borders are necessary, we need to think about them in ways that I will explain in section 3.

Section 3 argues for a domestic understanding of justice that avoids the pitfalls of human rights discourse and cosmopolitanism, but also draws from Rawls's difference principle. If the ascriptive foundations for legal-citizenship should not be factors in the construction of justice, such that Rawls' initial constraint must be justified or modified,

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then perhaps, using the difference principle, we can ask *why* some should be "citizens"

and *how* others regarded as "noncitizens" benefit from this particular difference in social

status. That is, we can thereby invoke Rawls's "difference principle," the idea that any

differences in social or class status among the people in his proposed society should

benefit the least advantaged, in a critical understanding of Rawls.[10] Once the arbitrary

bases for citizenship are included into the list of social and physical contingencies

curtailed by the Rawlsian apparatus, then an undocumented immigrant or non-citizen

resident become possible life options for persons behind the veil of ignorance.[11] Being a

non-citizen resident would thus join the list of things one doesn't know if one has or is.

This would mean that Rawls' theory would have to account for "illegal aliens,"

immigrants in general, and even people in developing nations, or else risk the arbitrary

starting point of an enclosed polity.[12]

In light of the arbitrary nature of borders, and the fact that historical contingency

is the primary factor that determines state membership across the globe, I will attempt to

provide an expansive notion of legal-personhood that reflects the workings of

contemporary alienage law and the actual functioning of states. This idea of legal-

personhood assumes that immigrants, legal or not, are citizens in waiting (at least

potentially). They must be treated in ways that reflect this status. Similarly, this view

assumes that states exist only as processes of transition and mutual co-dependency, such

that the juridical boundaries between states are constantly on the move. In this sense, I

return to my use of "trans-nationalism" (which already harbors temporal connotations) by

adding spatial dimensions that resonate with typical uses of this term: the construction of

national polities and national citizenries are processes that are continuously unfolding, expanding, and contracting.

1. The Citizen Behind the Veil

Within liberal political theory, the category "citizen" is often axiomatic. Theories of justice, the dispersal of political, economic and social rights, and even arguments for political institutions are justified in frameworks intended for "citizens" (this is also true even when discussions of "personhood" prevail). It is as citizens that individuals have their primary relation to the state—the "state," subsequently the "nation-state," being the chief form of political organization. Through an examination of Rawls' work, from the perspective of undocumented immigration, it can be shown that liberal political theory often begins *within* the nation-state and assumes bordered polities as its starting point, typically through the language of closed political units. Not only is this assumption unjustifiable, but it also limits the type of philosophical questions one can ask when it comes to justice for immigrants.[13]

If true to their beliefs, someone committed to the moral equality of all human beings cannot help but think about the lives of those outside of one's national boundaries. In the mid-1980's, James L. Hudson argued that any attempt to limit a moral framework in terms of nation-states runs the risk of arbitrarily handicapping its ethical commitments, adequate justification is required.[14] Hudson writes,

> The philosophical discussion of immigration restriction has thus largely been a discussion of the merits of nationalism. The issue is not finally settled, but nothing has yet been done to rescue nationalism from the dubious company of racism and sexism. The thesis that we should give priority to fellow citizens, like the similar thesis with respect to members of our own racial or sexual group, requires some strong support if it is to be credible. It has not yet been given such support, and the prospects are bleak.[15]

Most liberal theorists hold that the question of national belonging and political membership rests upon answers that satisfy liberal principles, particularly the central tenants of autonomy and equality, in addition to satisfying the rationality principle—the idea that political philosophy should rest upon non-arbitrary, justifiable grounds. However, as Phillip Cole notes, when one stops to reflect on these answers they increasing seem to defy the equal worth of all human beings.[16]

At the onset of *A Theory of Justice*, Rawls argues that his main object of inquiry is justice, the basic structure of society. As such, Rawls seeks a simple conception of justice and limits his project in two crucial ways: First, after noting that he is "concerned with a special case of the problem of justice," he writes "I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies."[17] Rawls reemphasizes this limitation in later works but adds that "this position views society as closed: persons enter only by birth, and exit only by death."[18] Rawls's second limitation is that he wishes to "examine the principles of justice that would regulate a well-ordered society." He continues, "Everyone is presumed to act justly and to do his part in upholding just institutions."[19] This is called *strict compliance theory*, which has generated a comprehensive academic literature. However, most Rawlsian literature explores the question of whether or not a well-ordered society implies that people share common conceptions of the good, and whether or not people would behave justly if presented with the opportunity to do so.

My concern here is with the first limitation (justice for a closed system). I take two issues: The first is that it renders the question of social justice for undocumented

people an afterthought; only after we settle the question of justice for citizens can we think about justice for immigrants, foreigners or those somewhere in between. This is analogous to saying that we need to figure *interracial* justice among whites first and interracial justice second.[20] How can the basic conception of justice not *immediately* pertain to 12 million people in the United States? One may attempt to address this concern by appealing to the fact that Rawls is working with ideal theory, which supplies the most perfect form of justice possible and then uses this as the rubric by which to judge existing societies.[21] My response to this view is found in Charles Mills' work on racial justice and the pitfalls of ideal theory (I return to this below).

My second issue with justice for a closed-society is that it reveals some knowledge about the individuals behind the veil of ignorance: although people behind the veil may not know if they are poor, rich, Black, White, Gay, able-bodied, etc., they do know that they will be citizens. This violates the main reasoning and motivation for the original position and veil of ignorance, which is to implement justice with a conception of it as fairness that allows for equality and liberty to be simultaneously possible.[22] I will explore this second concern first.

The closed-society limitation is *warranted* but *unjustifiable*. Closed political systems allow for the proper dispersal of burdens and benefits. They also ensure that individuals will exhibit prudence, since it is assumed that the citizenry cannot leave whenever they choose to do so. In *The Law of Peoples* Rawls holds that a government should be an effective means of making citizens respect their environment; they cannot trash the place and then just pick up and leave.[23] From a theoretical point of view, arriving at a basic conception of justice for a closed society allows for the vantage point

necessary that can be used to think about theories of justice on a global scale. It makes sense that Rawls would recreate the theoretical scenario that provides for the foundations of justice inside of a closed polity on a more global perspective. However, Rawls did not do this, but instead appealed to the idea of the Society of Peoples (where there is a form of the original position but it is a bit more open). His reasoning is that one will have to consider the existence of illiberal governments, as well as reasonably just institutions that remain religiously structured or monarchical.[24]

Rawls is clear that essential to the basic structure of a well-ordered society is fairness. Political institutions should be fair and the product of well-reasoned beliefs checked by moral intuitions, as well as methods of universalization. Reviving the social contract tradition, Rawls holds that consent is crucial to the formulation of systems of government. As a Kantain, Rawls thinks universality, in terms of the scope of justice for citizens, should also be present in a theory of justice *as* fairness. Using the famed "veil of ignorance," Rawls asks the members of a hypothetical society to create the conditions for justice by formulating the overall structure and rules of society without knowledge of how they will be affected by the end result. That is accomplished by not knowing who they are at the outset. Assuming that humans are unwilling to gamble that they will become the richest, most privileged members of society, given the risk they may end up the poorest least privileged, Rawls thinks that reasonable persons would not favor gross disparities in wealth or standards of living. At the end of the experiment, any differences amongst the lives of citizens should benefit the most disadvantaged or worst-off groups. The end result of this thought experiment, and hence a theory of justice in an ideal

setting, would result in an overlapping consensus on the basic structure of society that leaves room for reasonable disagreement on moral, metaphysical and political ideas.

According to Martha Nussbaum, Rawls differs from other social contract theorists by not assuming any type of natural rights in the original position, which Rawls intended to serves as his version of the state of nature.[25] Whereas Hugo Grotius, Samuel von Pufendorf and Francisco Vitoria influence Thomas Hobbes and John Locke in terms of international law and natural rights, Rawls makes no concessions in this regard. In addition, Rawls maintains the possibility of certain moral intuitions, stemming from Kant, which inform or check the hypothetical procedure whereby the basic structure of society is determined. Both the procedural orientation and the appeal to moral intuitions ensure that human interests can best be served by a social contract that "divest human beings of the artificial advantages some of them hold in all actual societies—wealth, land, social class, education and so on," as Nussbaum writes.[26] In Rawls' own words:

> [T]he reason why the original position must abstract from and not be affected by the contingencies of the social world is that the conditions for a fair agreement on the principles of political justice between free and equal persons must eliminate the bargaining advantages which inevitably arise within background institutions of any society as the result of cumulative social, historical, and natural tendencies. These contingent advantages and accidental influences from the past should not influence an agreement on the principles which are to regulate the institutions of the basic structure itself from the present into the future.[27]

Rawls's attempt to eliminate accidental or historical "bargaining advantages" when formulating the basic structure of society, i.e. justice, should again be emphasized.

If Rawls is concerned with contingencies of birth like class, race and gender why does he not recognize that *place* of birth or the family to *whom* one is born are equally contingent? These politics of birth are matters of luck that violate the rationality principle, i.e. the idea that as rational beings, humans can solve political problems

without reference to arbitrary decisions. Joseph Carens noticed this problem as well: "Citizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one's life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely."[28] It is for this reason that Peter H. Schuck and Rogers M. Smith argue that *jus soli* and *jus sanguinis* are ascriptive elements of state membership lacking consent, the cornerstone of the social contract. Building from the Lockean principle that it is "*consent which makes any one a member* of any common-wealth,"[29] Schuck and Smith argue that the politics of birth should be considered illegitimate within the contractarian tradition.[30]

2. The Right of Self-Determination and the Moral Significance of Borders

In more recent scholarship, the argument from consent rests upon the right of self-determination with varying opinion on the question of birthright citizenship. Most notable in this respect are the works by Michael Walzer, Christopher Heath Wellman, and Jacqueline Stevens.[31]

Walzer and Wellman concern themselves with the right of self-determination and for the most part drop the discussion of birthright citizenship. Both thinkers unfortunately assume a de-historicized political community in their arguments. Walzer and Wellman have convincing arguments for why admission policies should be based on a political community's right of self-determination, a right that is simply postulated.[32] They do not, however, explain how or why individuals who arbitrarily find themselves members of an existing polity can further their luck by then having a right to exclude or include others. Walzer and Wellman are missing a significant point about the formation of polity communities in the first place. Walzer writes,

The idea of distributive justice presupposes a bounded world within which distributions take place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves. That world, as I have already argued, is the political community, whose members distribute power to one another and avoid, if they possibly can, sharing it with anyone else. When we think about distributive justice, we think about independent cities or countries capable of arranging their own patters of division and exchange, justly or unjustly. We assume an established group and a fixed population, and so we miss that first and most important distributive question: How is that group constituted? I don't mean, [h]ow *was* it constituted? I am concerned here not with the historical origins of the different groups, but with the decisions they make in the present about their present and future populations.

Notice how Walzer assumes a bounded community. More on point, however, is the fact that he is not concerned with the historical origins of group formation. While the decision to admit or not may be clear-cut once the group is already in existence, its origins may be murky. This may have an effect on the relationship between two countries, and thus there might be some reason for maintaining certain immigration allowances that override the right of self-determination (I spell this out in the next paragraph).

Wellman argues that individuals and states have a right to determine whom they with whom they do or do not associate, using as an example the immorality of an arranged marriage.[33] However, not all human relationships are so decisive. For instance, I may select my spouse—assuming my partner selects me as well, and also assuming that humans make completely rational autonomous decisions when we are "in love"—but I do not get to select my in-laws, the family I am born into, neighbors, childhood friends (to some extent), and coworkers. My situation requires that I treat my in-laws, family, neighbors, friends, and coworkers fairly, and at time put up with certain obligations that I could abandon, but to tell my brother, mom or best friend that they do not have special significance in my life is to issue a lie, both to them and myself. Thus, the historical point I made against Walzer carries over into Wellman's essay: the historical formation of a

political community may impose certain obligations that we cannot forsake or ignore (obligations that extend beyond our local community[34]). Mexican immigration should be curbed, but the United States has historically relied upon cheap, reliable labor from Mexico. In addition, the southwestern part of the United States is a product of colonial expansion backed by war. And Mexico's drug problems are related to the United State's drug consumption. Thus, for the United States to say that they have a "right to order their own affairs as they please" is to appeal to a sense of autonomy that depends upon a material reality, which is dependent upon international relations (I will return to in the next section).[35] These are some problems with the starting point of an enclosed, self-sustaining polity.

Stevens' account differs from Walzer and Wellman in her view that birthright citizenship is connected to the promulgation of the "nation" (from the Latin *nasci*, "birth"). National affiliations based on the politics of birth are organizations that strive to curtail individual human mortality, and in so doing lend themselves to war or other dangerous political actions. Stevens writes, "The creation and reliance on kinship rules to determine membership is a symptom of an unmet desire for certainty and immortality in the face of life's actual conditions of chaos and death."[36]

The question of eliminating birthright citizenship is a contentious issue. Without an understanding of state membership based on the politics of birth, the entire liberal project cannot get off the ground. Nonetheless, the argument for birth-based state membership could work as follows:

As social animals, human beings require formal institutions and political organizations in order to realize human capabilities and ensure the wellbeing of

individuals. These institutions and organizations require various levels of complexity and longevity, in addition to an effective means of regulating the distribution of political power, particularly with reference to such ideals as liberty, autonomy, equality, community and fairness. Part of the historical efficacy of political groupings is their less-than-global, that is parochial, nature. For this reason, we live in a world of political communi*ties* (plural). From this picture, some form of state membership is required to allow for the differentiation of one community from another. "Citizenship" provides an efficient means of designating the range and scope of a particular state's authority and responsibility, in addition to the duties and benefits shared amongst its people.[37] Thus, it is only through the idea of bounded political units that political communities are possible. The determination of membership status is of the utmost importance and outweighs the need for non-arbitrary, well-reasoned arguments.[38]

A plausible argument for ignoring the fact that the politics of birth are historical contingencies rests upon utilitarian grounds: without the existence of political boundaries such ideas as autonomy and equality are impossible. As Carens notes, borders are needed to allow for the possibility of group autonomy and political stability. He refers to this as "the principle public order": In a borderless world states would not exist and chaos would ensue.

While it is one thing to argue that borders and political communities are necessary, this does not provide an account for why borders as they exist now are the products of fair or well-reasoned decisions. Because we need borders for political communities to be possible does not tell us why we should accept those currently in

existence, which are the product of historical contingency, including unjust or unjustified conquest through war. Given the arbitrary nature of current borders, a relaxed or more informed immigration policy could or should be considered.

In the *Law of Peoples*, regarding the arbitrariness of borders, Rawls tells us:

It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances. In a reasonably just (or at least decent) Society of Peoples, the inequalities of power and wealth are to be decided by all peoples themselves.[39]

Rawls continues by saying that in a global society of liberal and decent peoples the common sources for migration go away. He writes, "The problem of immigration is not, then simply left aside, but is eliminated as a serious problem in a realistic utopia."[40] All political philosophy is "realistically utopian when it extends what are ordinary thought of as the limits of practical political philosophy."[41] Rawls is not advocating for a world government or global-demos; he stands in agreement with Kant that such a place would not allow for effective forms of governance (think in terms of logistics) and result in frequent civil war. Rawls simply believes that under ideal circumstances the causes of immigration would cease, similar to how under ideal circumstances no one would be an undocumented immigrant inside of a domestic polity.

Here is where the argument for *ideal theory* comes in to play, as does the work of Charles Mills. Mills' project is to figure out Rawls's position of racial justice. At best, Rawls never really thought much about race, and at worst he willfully ignored this subject.[42] Mills argues for two forms of ideal theory, that which attempts to prevent such things as immigration or racial injustice, and that which tries to rectify past injustices or historical contingencies by creating ideal theories that consider non-ideal factors. Mills

thinks that the omission of racial justice affects the nature of justice in a variety of ways. Most important, it would require such things as an intergenerational concept of justice both for reparations and as means of curtailing racial tension for posterity.[43]

Against Mills, Yolanda Wilson argues that omitting the question of racial justice is not a fault in Rawlsian theory. Rawls is dealing with ideal theory, non-ideal theory may require one to engage questions of racial justice, but we cannot hold Rawls accountable for such an omission.[44] Similarly, in terms of my project, one may object that just because Rawls does not entertain the question of social justice for undocumented immigrants that this omission is not a flaw of Rawls's ideal theory. However, Mills is quick to argue that even in ideal conditions, a theory of justice that takes into account racial justice, as a variable that may change the end result of such a hypothetical situation, will appear drastically different from an ideal theory that does not. The ideal scenario that includes racial justice does not amount to the same ideal conditions that leave this question aside. Furthermore, insofar as the purpose of ideal theory is to serve as a rubric for justice in the real world; what good is ideal theory, Mills asks, if it cannot at all respond to or measure up to the goal of racial injustice?

Mills has a temporal point, namely that we cannot start over when thinking about justice, but instead must begin from where we are and then posit the ideal to be achieved. The past must be accounted for and not just pushed aside for the sake of contemplating perfection. Cole reminds us of this when he writes:

> The relation between states and the borders between them are the product of a history, and that history gives rise to ethical conclusions: for example there may have been a colonial relationship between the two states. Too often liberal political philosophy is written against the background of a fictional history in which colonial exploitation never occurred. But once we bring this historical

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element into our considerations, it has a profound impact upon our ethical reasoning concerning migration.[45]

This passage also applies to Walzer and Wellman's dismissal of the historical significance of group formation, as mentioned above.

In terms of space, the question of justice for undocumented persons does to Rawls's project what Mills attempts in terms of time (remember the intergenerational point). It is no longer possible to understand social justice in its most basic form within closed frameworks. Migrations, the activities of transnational corporations, and the existence of multinational people challenge the possibility of formulating theories of justice that ignore the international elements of 21st century societies. In similar ways, given the legacies of social oppression visible within gender or racial differences, questions of reparations, affirmative actions policies, and other redistributive procedures, a trans-historical approach to justice is required in those cases, as well.[46] As Nelson Maldonado-Torres, Ramon Grosfugel, and Jose Saldívar write, "The old way of thinking about migration is obsolete today given the compression of space and time."[47] One cannot think of national space as enclosed or isolated, nor can time be viewed outside of the causal relationships that generate each particular moment. In considering the nature of justice, these new ideas of time and space must therefore be acknowledged.

There is another consideration that appeals to ideal theory must take into consideration when thinking about justice as only for citizens. T. Alexander Aleinikoff argues that most of the rights that non-nationals or undocumented immigrants have inside of first world countries like the United States are products of constitutions and not international human rights law.[48] In an extensive legal study, Linda Bosniak provides a history of the ways in which various United States Supreme Court decisions have argued

in favor of noncitizens, including "illegal aliens," based on the 14th Amendment[49] and the language of "persons" not "citizens." [50] This also proves equally problematic to cosmopolitans and post-citizenship thinkers who often assume a general human rights platform when thinking about social justice for all people in the world. If anything, as Kristen Hill Maher argues, human rights may have an influence on how a state will recognize the rights of its *own* citizens, but this does nothing for noncitizens. For Maher, "human rights norms have generally been enacted within the nation-state system and administered as the rights of citizens."[51]

Worse, cosmopolitanism and theories of global justice problematize the reality of undocumented immigration. While individuals like Thomas Pogge may think that legal cosmopolitanism is possible in theory—in a way modeled after the European Union—the fact that this would impinge on state sovereignty makes it difficult to imagine.[52] In a world of global citizens, no person can be "illegal." Thus, the question of undocumented citizenship, as it exists today, is a nonissue from the perspective of cosmopolitan theory just as it is for Rawls. Relevant here is Paul Rabinow's idea of "coerced cosmopolitanism" that examines the ways in which transnational experience of the underprivileged in first-world countries consistently reminds migrants of their cultural particularity and alienation from capitalist, globalized culture.[53]

3. The Distribution of Legal-Personhood

Even though the category "citizen" is a dated concept reliant upon a Westphalian model of the state and national autonomy, citizenship is not going away. Although the world is increasing becoming globalized and interconnected—such that individuals like Seyla Benhabib, Yasemin Nuhoglu Soysal, and Peter Spiro view citizenship to be

outdated—it is unlikely that the significance of the concept will lessen given the existence of militaries and the state tendencies to avoid sacrificing national sovereignty.[54] Citizenship must be refigured in ways that are attentive to the contemporary concerns of 21st century societies, but nonetheless informed by the workings of the real world, cautious of utopian or idealistic fetters.

Rethinking the nature of justice from the perspective of "illegal" peoples necessitates new or reformulated models of political membership and state-boundaries that are more fluid and porous; *again, the assumption is that rethinking the subject of justice, those to whom justice is due, will inform us of new types of political membership.* I am hesitant to advocate for an open doors policy as a resolution to the undocumented immigration issue, since I think this would be impractical on several levels. The efficacy of political communities will be called into question and it also undermines the ability for other people to be autonomous. I do believe that we can do a better job with handling the reality of unauthorized immigration and constructing understandings of justice that are more friendly to immigrants in general. This would start by fostering domestic social atmospheres conducive to the rights of persons and not official members of the body politic, as well as making *legal-citizenship* an easy and open means towards achieving the ability to participate in the construction and reconstruction of the nation, *national-citizenship.*

If undocumented immigrants are to be included in the list of persons subject to the procedural construction of justice, and if we are really committed to the central tenants of liberal political theory (i.e., autonomy and equality), then they should also have a say in the construction of justice.[55] Being within the scope of justice—not just a theoretical

claim but also historical fact based on the history of alienage law—provides a type of

political subjectivity. What is this subjectivity? If it is not equivalent to legal-citizenship,

then at the very least it is a form of legal-personhood endowed with an assortment of

rights grounded in the Constitution (and not some cosmopolitan ethic or human rights

platform). The burden thus falls upon Rawlsian theory to justify this difference in social

status, meaning that Rawlsian theorists have to explain why political duties should

maintain an exclusive connection to national-citizen while the rights associated with

legal-citizenship can be expanded to noncitizens.

We can broaden the rights associated with legal-citizenship while preserving the

rights of nation-citizenship if there are rational arguments (non-arbitrary reasons) for why

we need national-citizens in the first place. This will fit the two main principles of

justice, as articulated by Rawls:

> (a) Each person has the same indefeasible claim to a fully adequate scheme of
> equal basic liberties, which scheme is compatible with the same scheme of
> liberties for all; and
>
> (b) Social and economic inequalities are to satisfy two conditions: first, they are to
> be attached to offices and positions open to all under conditions of fair equality of
> opportunity; and second, they are to be to the greatest benefit of the least-
> advantaged members of society (the difference principle).[56]

Of the above, "a" is constitutionally guaranteed by the 14th Amendment to all people who

happen to be in the United States. I offer an argument for "b" below.

A rational argument that preserves the distinction between citizen and noncitizen

can be made insofar as the pathways to national-citizen are open, relatively easy, and

subject to the interrelatedness of states (which would satisfy the first clause of this

principle, i.e. "equal opportunity"). The Rawlsian caveat is that non-citizens must benefit

from their specific status as such (the difference principle). In a large welfare state, this

criterion is somewhat easy to satisfy, assuming that there is a fair distribution of goods based on personhood. This is easier said that done, however, and the controversy ventures beyond definitions for what constitutes a "fair distribution of goods." As Mills has recently pointed out, arguments in favor of personhood are as capricious as those for citizens since historically the category "person" did not apply to all humans, even though corporations and other nonhuman entities are afforded this status.[57]

Another way noncitizens can benefit from their status as such is if those with official status perform an assortment of positive rights, like voting, running for office, and taking part in the construction of law, that benefit the entire body politic. Citizenship, in this sense, is more of an official post or type of office, rather than a passive status lacking any significant performative component. The problem with this perspective is that is ends up being paternalistic and contrary to the central tenants of liberal political theory, at least initially. As Cole and Walzer observe, if one is subject to law they must have a say in its construction and maintenance.[58] As I explored in chapter 2, a way of resolving this problem stems from Enrique Dussel's account of *analectics*. While citizens are needed to perform an assortment of duties that noncitizens benefit from, these duties are ongoing and constantly in the process of becoming. From the perspective of the transnational state, the category of citizen is continuously unfolding. The autonomy of a state is never complete or fixed but continually in transit (this is the temporal component of "trans-nationalism"). The divide between autonomy and heteronomy is never as clear as one might like. Human beings are born into communities that we are not responsible for; our autonomy is situated and intersubjective and thus a process that is more or less

stable at different times. This is another lesson learned from philosophers of multiculturalism (the subject of chapter 4).

Again, central to this argument is the idea that noncitizen aliens are really persons on their way toward becoming citizens. We can expect that immigrants are willing to perform the duties of being a citizen in return for the protections provided to citizens. Here, being an "immigrant" implies that one is actively pursuing naturalization into a state.[59] Hiroshi Motomura's essay, "Immigration Outside the Law," become extremely relevant at this point.

For Motomura any meaningful discussion immigration reform requires that one explore the tripartite structure of (1) the meaning of "unlawful presence" or "illegality," (2) the role of states and cities in the immigration debate, and (3) the integration of immigrants. What "unlawful presence" means is not settled in the United States. The Supreme Court has been ambivalent about the nature of legal and illegal immigrant rights, at times making decisions in favor of immigrants other times allowing plenary powers to run their course. Nonetheless, the federal government has made clear that immigration is national matter not a local or state issue. However, cities and states play a major role in establishing political and social atmospheres that are conducive to immigrant rights. Thus, effectively striking accord between state and federal governments on the issue of immigrant rights is crucial. Instead of viewing the expansion of immigrant rights as counter to the stability of the state, Motomura argues that these rights are actually the means of fostering successful integration into mainstream society (this point is worth highlighting since I wish to remind that legal-citizenship is the means to

national-citizenship). In this sense, immigrants have to be willing to positively affect society, which really means acknowledging the positive impacts of immigrant labor.[60]

Healthy integration requires an open and relatively easy naturalization process. We can preserve the positive rights associated with national-citizenship (e.g., voting) if naturalization law is transparent and easily accessible, in addition to the existence of a wider distribution of the rights associated with legal-citizenship (e.g. the right to health care, various civil protections like renters rights, union rights, public education, *habeas corpus*). This is a common sentiment among individuals working on the issue of immigration and justice.[61]

Last, in order for our theories of justice and network of rights to become more inclusive towards noncitizen residents, we must rethink the nature of states and the borders the give them their shape. While states exert sovereignty over their domain, they exist in a world of other states, "a political community of states," so to speak. States thus depend upon their "outside," both materially and philosophically. As an analog take the atomistic subject.

While modern, enlightened thinkers like Kant viewed the self as a solipsistic subject, autonomous and independent, subsequent philosophers challenged this understanding of the self and demonstrated how this *individual* is only possible within a network of other subjects who together provide the material conditions for life. As feminists, phenomenologists, and post-colonial philosophers argue, the modern subject only exists in a world with slavery, the oppression of women and minorities, and colonization. Thus, the modern *subject* became *inter-subjective*. Along these lines, in his *Cartesian Meditations*, Edmund Husserl argues that thinking things (Descartes *cogito*)

only exist insofar as they are thinking about something; the objects of thought (even if

they are an illusion) provide the conditions for the possibility for thought and self-

realization in the first place. Thus, human consciousness is consciousness-of-something.

There is no "thought" by itself but only thinking-about-something.[62] This does not mean

that self or modern subject has no autonomy, but the split between autonomy and

heteronomy is not black or white, gray areas are everywhere.

The last two points about the intersubjective-self and Husserl's explanation for

how the modern subject depends upon the object of knowledge relate to my claim about

the outside of nationality. Nation-states depend upon that which they are not, they are

intersubjective and co-dependent, both constitutively (i.e., in their formation) and even

after they are formed. Rousseau comes close when he writes:

> The state, in contrast, since it is an artificial body, has no fixed measure and is
> never sure of its proper size. It can always expand, and yet always feels weak as
> long as there are other states that are stronger than itself. Its security, its defense,
> demand that it try to appear more powerful than its neighbors; and it can only
> grow, feed itself and test its strength at their expense. Even if it does not actually
> need to seek its subsistence beyond its borders, it is ceaselessly on the lookout for
> new members who might give it a stable base. For the inequality of men has limits
> put in place by the hands of nature, but the inequalities of states can grow
> incessantly, until one absorbs all the others.
>
> Its powers being purely relative, the political body is forced ceaselessly to
> compare itself in order to know itself. It depends on its surroundings, and must
> take an interest in all that happens there. For in vain might it wish simply to keep
> to itself without risking gain or loss; whether a state becomes small or great, weak
> or strong, depends on whether its neighbor expands or pulls back, adds to its
> forces or reduces them.[63]

 As an "artificial body" the state is the work of human beings. Constructing the state is

an art that remains ongoing ("it has no fixed measure…"). As national collectives, states

are aware of others and gain their "sense of self" through comparison with others. The

growth of one usually means the constriction of another. While Rousseau argues for this

to be a cause of war, I wish to interpret this in the following way: one can never know where national polities end. Borders are not helpful in this regard since national interest routinely surpasses them (e.g., the United States has some material investment in Mexico, Canada and at the time of this writing, now Libya!).

Etienne Balibar's recent comments on the nature of borders are helpful in this regard.[64] Borders, for Balibar, are real, symbolic and imaginary. The reality of the border pertains to their increasing militarization and strengthening, but also the fact that the border enters everyday spaces, and thus becomes "more real" through their increasing presence. Borders are vacillating. They do not work in the same way for all people and the lines they form segmented pockets around the more affluent and dominant parts of a single state. In addition, borders stand as representations for what states want to be, they designate a range of what I call "legalistic aspiration." States purport or aspire to be the supreme legal authority in a designated (bordered) area, but legal transgressions occur constantly within its domain. Nonetheless, legalistic aspirations are checked by the sovereignty of other states, although at times a states jurisdiction ventures into another states' boundaries. As John Agnew excellently put it:

> What I have in mind…[is] reframing the border question in practical and ethical terms in such a way that moves beyond the simple either/or stipulation of the current debate. We need to change the way in which we think about borders to openly acknowledge their equivocal character. In other words, we need to see a border not as that which is either (a) fixed or (b) as such must be overcome, but as an evolving construction that has both merits and problems that must be constantly reweighed. My main normative commitment is to the idea that the answer to what borders do should always be related to the overriding ethical concern that they serve and not undermine human dignity and what Johnathan Seglow has called 'the right to a decent life.'[65]

The fact that borders provide a service is of the utmost importance in light of the argument for borders I provided in the last section. That is to say, they ensure human

autonomy and allocate rights, but as the product of past human interactions, which are not completely just and never complete or fixed (hence Agnew's use of "evolving construction").

Returning to my claim, the interdependence of national polities and the dynamic nature of borders necessitates novel constructions of state membership that reflect this co-dependency and jurisdictional fluctuation. Our immigration policy and theories of domestic justice, while they should "open" a bit, could do more to reflect the actual workings of states as inter-connected entities.

A conclusion to be drawn at this point is that although theories of justice, like that provided by Rawls, are positive steps in thinking about the overall structure of society and the principles meant to regulate the fair terms of social cooperation, they must always be improved, in an analectical sense. We do not simply achieve something like social "equality" or "fairness"; these are ideals that we are constantly striving towards. I am not saying that Rawls is working with a fixed understanding of equality or justice. His views are dynamic as well. But, given the constraints placed upon his theory of justice, Rawls's thought heads in a direction that I am not sure will help such individuals as undocumented immigrants—the fact that they are left aside speaks towards this. Part of the improving our theories of justice requires that our conceptions of the state and state membership become ongoing processes, not static or fixed. Rawls and mainstream liberals may have dynamic conceptions of justice in mind, but their trajectories are set in ways that further the arbitrary bases of state membership.

Liberal political theory begins from conceptions of the state that are self-enclosed. This self-enclosed origin determines the trajectory for subsequent political thought

regarding the nature of political institutions, state membership, and group/individual

rights in ways that locate these inside the boundaries a country. These boundaries are

hard to justify, morally, and not so clear-cut or well defined, in actuality. State boundaries

rest on shaky ground given that they are historically contingent and the products of

imperial expansion through war. Examining the reality of borders reveals that they are

shades of gray, not black or white, since national interest and the vacillation of borders

defy the lines the sand that state boundaries depend upon. In addition, the historical

relation between states, in terms of trade, economic co-dependency, and the flow of

people and goods across borders, defies the self-enclosed nature purported by mainstream

political theorists. All of this should be a factor in how state membership is determined.

Yet it is not. This is my main argument in this chapter, and in my concluding chapter (6),

I offer another way of explaining this argument relying upon two conceptual frameworks,

i.e. "encounter" and "discovery."

4. Notes

[1] I emphasize "explicit" because economic factors and the need for cheap, reliable labor *tacitly* endorse immigration, legal or not.

[2] See Charles Taylor, *Multiculturalism and the Politics of Recognition* (Princeton: Princeton University Press, 1994). I take up this branch of the "citizenship debates" in chapter 4.

[3] My assumption here is that theories of justice have some normative force or positive impact upon law, at least under ideal circumstances.

[4] By "liberal political theory" I mean that tradition of thought descending from political philosophers such as Thomas Hobbes, John Locke and John Stuart Mill to procedural-constructivists like John Rawls. I also have in mind offshoots and interlocutors of liberalism, i.e. libertarianism and communitarianism. As Phillip Cole reminds, it tends to be the case that with communitarian thinkers who focus on issues of nationality, immigration and citizenship, such as Michael Walzer or David Miller, it is hard to tell whether they represent "communitarianism-on-liberal-foundations" or "liberalism-on-communitarian-foundations." See Cole, p. 61.

[5] John Rawls, *Theory of Justice* (Cambridge: Belknap, 1971), p. 7-8. The first individuals to focus on this line of critique, albeit from a perspective concerned with immigration in general (and not undocumented people) are: James L. Hudson, "The Philosophy of Immigration," *The Journal of Libertarian Studies*, Vol. VIII, No. 1, 1986 & Joseph Carrens, "Aliens and Citizens: The Case for Open Borders," *The Review of Politics*, Vol. 49, No. 2, 1987.

[6] See *Justice as Fairness: A Restatement*, (Cambridge: Harvard University Press, [2001] 2003), pp. 14-18.

[7] Here, 'stability' refers to how it was used in my analysis of Dussel's work.

[8] See John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), p. 5 & 39.

[9] This quote is taken from Samuel Freeman's foreword to Rawls' *Lectures on the History of Political Philosophy*, Samuel Freeman (Ed.) (Cambridge: Harvard University Press, 2007), (pp. xiii-xiv).

[10] For more on the difference principle see Rawls, *Justice as Fairness*, pp. 42-43. The modification: assume a stable, domestic society, but undocumented people are taken into the consideration as a possible life option for those performing the famous thought experiment. The bargaining advantage of the politics of birth are thus removed.

[11] The arbitrary bases for citizenship are place of birth (*jus soli*) and the parents to whom one is born (*jus sanguinis*).

[12] Cole offers four responses to the nature of borders in this respect (see Cole, p. 6).

[13] The presumptive "nationalist" orientation of liberal political theory forces political philosophers to think about justice in more *global* or *cosmopolitan* terms when confronting the question of immigration or the rights of people in other parts of the world. This is a strategy in the right direction. Yet, as I argue below, it is problematic, somewhat unrealistic, and thus unproductive in resolving important contemporary political problems.

[14] See James L. Hudson, "Philosophy of Immigration," *The Journal of Libertarian Studies* (Vol. VIII, No. 1, Winter 1986), p. 53.

[15] Hudson, "Philosophy of Immigration," p. 59.

[16] Cole, p. 2.

[17] Rawls, *Theory of Justice*, p. 6-7.

[18] John Rawls, *The Law of Peoples*, p. 26. See also Rawls, *Justice as Fairness*, pp. 11-14

[19] Rawls, *Theory of Justice*, p. 8.

[20] In fact, this is exactly what happened in the literature on race, ethnicity and justice in the United States. In terms of the history of immigration in the United States in the late 18th and early 19th centuries, the first concerns about racial justice were with such people as Italians, Irish, and Eastern Europeans, then-considered racial groups. That changed to ethnicity. Now we have, awkwardly, ethnicity and race with Latin American peoples. See Leo Lucasen, *The Immigrant Threat: The Integration of Old and New Immigrants in Western Europe Since 1850* (Chicago: University of Illinois Press, year). Although Lucasen's primary concern is European immigratin, he draws excellent parrallels to the United States.

[21] For more on Rawls use of ideal theory see A. John Simmons, "Ideal and Nonideal Theory," *Philosophy & Public Affairs* (Vol. 38, no. 1, 2010).

[22] John Rawls, "Justice as Fairness in the Liberal Polity," *The Citizenship Debates: A Reader*, Ed. Gershon Shafir (Minneapolis: University of Minnesota, 1998), p. 62.

[23] Rawls, *Laws of Peoples*, p. 8 & 39.

[24] Rawls, Ibid, p. 59.

[25] Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006), p. 12.

[26] Ibid, p. 10. It is worth noting that the human interests being maximized are those who take part in the construction of justice (citizens of the political community). This is Nussbaum's main critique: liberal theorists assume the universal ability to participate in the creation of the social contract. Historically, the primary subjects of justice are those who assist in the creation of the social contract. Those behind the veil are also those who benefit from it. In this sense, where do animals, the mentally and physically impaired, and people such as third world laborers fit into the basic structure of just institutions? Leaving out these agents, one can have a perfectly just society that exploits a significant percentage of the world or ignores vast numbers of non-rational agents inside of the polity; justice is thus nationalized. See Ibid, p. 16.

[27] John Rawls, "Justice as Fairness in the Liberal Polity," p. 62. Also in John Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14 (Princeton University Press, 1985).

[28] Carens, p. 252.

[29] John Locke, *Second Treatise of Government*, C.B. Macpherson (Ed.), Indianapolis: Hackett, 1980), p. 65 (§122).

[30] Schuck and Smith, p. 12.

[31] Walzer, *Spheres of Justice,* pp. 31-63; Christopher Heath Wellman, "Immigration and Freedom of Association," Ethics (Vol. 119, No. 1, 2008), pp. 109-141; Jacqueline Stevens, *States Without Nations: Citizenship for Mortals* (New York: Columbia University Press, 2010), pp. 77-103.

[32] Wellman writes, "That freedom of association is highly valued is evident from our views on marriage. […] Today, virtually everyone agrees that we are entitled to marital and religious freedom of association.; we take it for granted that each individual has a right to choose his or her marital partner and the associates with whom he or she practices his or her religion," p. 109-110.

[33] Wellman, pp. 109-110.

[34] Wellman notes that the right of association is necessary for the distribution of justice amongst a political group. Thus, our close associates are owed special consideration. Yet, given the increasingly internatinoal nature of a place like the United States, a large segment of the population may have special affiliations with people outside the boundaries of the United States. This is not my point in the above passage, however. There, I am trying to argue for the ways in which a political community may be the product of a historical trajedy like war or colonialism.

[35] Ibid., p. 114.

[36] Stevens, p. 55

[37] This explanation of the argument for state membership is indebted to Enrique Dussel's *Twenty Theses*, Matthew Lister's schematic in "Citizenship in the Immigration Context," *Maryland Law Review* (Volume 70, Issue 1, 2010), p. 8 & Cole, p. 4.

[38] Cole, p. 6.

[39] Rawls, *The Law of Peoples,* p. 39.

[40] Rawls, *The Law of Peoples*, p. 27.

[41] Rawls, Ibid., p. 6.

[42] Charles Mills, "Rawls on Race/Race in Rawls," *The Southern Journal of Philosophy* (Spindel Conference Supplement), Vol. XLVII (2009), p. 169.

[43] See Carole Pateman and Charles Mills, *Contract and Domination* (Malden: Polity Press, 2007).

[44] Yolanda Wilson, "When is an Omission a Fault? Or, Maybe Rawls Just Isn't That Into You," *The Southern Journal of Philosophy* (Spindel Conference Supplement), Vol. XLVII (2009), pp. 185-190.

[45] Cole, *Philosophies of Exclusion*, p. 14.

[46] For an recent and thorough legal/philosophical argument for reparations, particularly for African Americans and Native Americans in the United States, see J. Angelo-Corlett, *Heirs of Oppression* (Lanham: Rowman & Littlefield Publishers, 2010).

[47] Maldonado-Torres, Nelson; Ramon Grosfugel, Jose Saldívar, *Latin@s in the World System: Decolonization Struggles in the 21st Century U.S. Empire*, (Boulder: Paradigm Publishers, 2005), p. 10.

[48] Aleinikoff, p. 111.

[49] Section 1 of Amendment XIV to the Constitution of the United States: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *The Declaration of Independence and the Constitution of the United States of America* (Washington D.C.: Cato Institute, 2002) p. 48.

[50] Bosniak, "Membership, Equality, and the Difference that Alienage Makes," pp. 1047-1149.

[51] Kristen Hill Maher, "Who Has Right to Rights? Citizenship's Exclusions in an Age of Migration," *Globalization and human rights*, Alison Brysk (Ed.) (Berkeley: University of California Press, 2002), p. 19.

[52] Thomas Pogge, "Cosmopolitanism," *A Companion to Contemporary Political Philosophy 2nd Edition Volume II*, Robert E. Goodin, Philip Pettit, and Thomas Pogge (Eds.) (Malden: Blackwell, [1993] 2007), p. 314.

[53] Paul Rabinow, "Representations Are Social Facts," Writing Culture: The Poetics and Politics of Ethnography, Eds. James Clifford and George E. Marcus (Berkeley: University of California Press, 1986), p. 258.

[54] For more on the decline of citizenship see Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago, 1994); Seyla Benhabib, *The Rights of Others* (Cambridge: University Press, 2004; Peter J. Spiro, *Beyond Citizenship: American Identity After Globalization* (Oxford: University Press, 2008).

[55] Jean-Jacque Rousseau makes a similar point. In the *Social Contract*, Rousseau writes: "Laws are, properly speaking, only the conditions of civil association. The people, being subject to the laws, ought to be their author: the conditions of the society ought to be regulated solely by those who come together to form it," (Book 2, Chapter 6).

[56] Rawls, *Justice as Fairness*, p. 42-43.

[57] Charles Mills, "The Political Economy of Personhood." Essay found at: http://onthehuman.org/2011/04/political-economy-of-personhood/

[58] See Walzer, p. 56; Cole, p. 10.

[59] This is a contentious issue since not all migrants are seeking admission. In this sense the solution I offer below is informative for immigrant rights, but not necessarily the problem of international migratio, the former involve people who venture into a state, legally or not, searching for work and also seeking some kind of residency, the latter is not necessarily doing this. I think the tension between migrants and immigrants can be resolved if we view migrants as potentially seeking naturalization, although they ultimately do not.

[60] Motomura, "Immigration Outside the Law," pp. 28-38.

[61] See Lister, p. 18. Lister's views resemble and draw upon the work of Michael Walzer, and to a lesser extent David Miller. As I explore in the next chapter, these communitarians are entrenched within a debate over the importance of nationality and the need for a core culturally homogenous political constituency grounded in the rights of self-determination.

[62] Edmund Husserl, *Cartesian Meditations: An Introduction to Phenomenology*, Trans. Dorion Cairns (Martinus Nijhoff Pub, 1977).

[63] Jean-Jacquess Rousseau, "Appendix A," *Rousseau's Unfinsihed Maniscript "On the State of War,"* p. 191.

[64] Etienne Baliber, "At The Borders of Europe," *Cosmopolitics: Thinking and Feeling Beyond the Nation*, Eds. P. Cheah and B. Robbins (eds.), Trans. by J. Swenson (London and Minneapolis: University of Minnesota Press 1998) pp. 216–233.

[65] John Agnew, "Borders on the mind: re-framing border thinking," *Ethics and Global Politics* (Vo. 1, No. 4., 2008), p.176.

CHAPTER IV

THE ETHICS OF POLITICAL REPRESENTATION AND THE LIMITS OF

POLITICAL RECOGNITION

My goal in this chapter is to explain the ways in which questions of

multiculturalism and the politics of recognition relate to undocumented immigration and

Hispanic people as a whole. I will explain how this branch of political philosophy can

help the immigration debate, and also report the shortfalls of this perspective when it

comes to changing power dynamics associated with legal-citizenship and *majority* group

rights. I emphasize majority because most theorists of multiculturalism are concerned

with minority group rights. I intend on flipping the backdrop of the politics of recognition

to show how they must be accompanied by real changes in the nature of political power.

Not only do I have in mind the history of multiculturalism in Bolivia in the mid-1990s,

but I am also anticipating the reality of a minority-majority and the future of group rights

in the United States.

Drawing from Charles Taylor, Iris Marion Young, James Tully and Will

Kymlicka, section 1 of this chapter reviews the politics of multiculturalism. I call this

range of questioning "the ethics of political representation." After providing an overview

of citizenship from within this perspective, I argue that this train of thought misses the

question of legality and instead relies upon a civic-oriented communitarian idea of state

membership, i.e. national-citizenship. Although many individuals think that this branch

of political thought can be used to argue for undocumented immigrant rights, even when

put into constitutional terms, the ethics of political representation does not combat the

exclusive nature of political power, nor does it entertain the question of state-membership

for undocumented peoples. Instead, the paradox of democratic legitimacy necessitates the existence of borders and divisions between nation-states (no matter how multinational they are). Hence, at the base of the politics of recognition is a conception of legal-citizenship that remains unquestioned.

There exist major set backs associated with the idea of multiculturalism, especially in terms of its practical application. In section 2 of this chapter, I explore one historical manifestation of these problems involving the application of multicultural reforms in Bolivia in the mid-1990s. These reforms aimed at "liberating" or "politicizing" the indigenous majority. I will make some general comments regarding the nature of indigenous politics in Latin America. Namely, from one perspective, "*indigenous* politics"—i.e., the practice of Western politics from the perspective of indigenous worldviews—is questionable, because indigenous people are seen as the foundation for Western political thought. I will then explore the actual Bolivian reforms put in place in the mid-1990s. Overall, my main point is encapsulated in comments Linda Bosniak has made regarding the standard Marxists critique of citizenship:

> Indeed, citizenship has been famously criticized as a formalist construct that purports to extend formal equality in the public sphere but which simultaneously obscures relations of domination in the private economic realm. Marxist thought, in particular, is well-known for counterposing citizenship to economy by maintaining that the formal equality of citizenship status masks relations of drastic inequality prevailing in what Marx himself called the domain of 'material life.'[1]

In chapter 5, I will present one more problem associated with multiculturalism that has to do with the dynamic nature of race and the ways in which United States national identity remains racialized, amidst much progress in combating racism. However, these critiques in this chapter (4) and the next (5) are not meant to obviate any discussion of cultural pluralism. In fact, as I will argue below, most theorists believe that

plausible immigration reform cannot come about without multicultural understandings of the state. This is why I parsed out national-citizenship from legal-citizenship. The politics of multiculturalism attack culturally exclusive forms of nationalism that harbor anti-immigrant sentiment. While it should be clear by now that I am interested in providing a conception of legal-personhood that improves the lived reality of undocumented peoples, I am also interested in supporting political atmospheres that are tolerant of "strangers" considering the view of trans-nationalism I offer (i.e. the state and the nation as a process).

1. The Ethics of Political Representation

"Cultural diversity," much like "multiculturalism," implies that nation-states are composed of an assortment of social groups that maintain their own cultural or ethnic practices, mores, languages, and ways of being (among other things). Professional, civil or political institutions and social theorists that promote multiculturalism endorse the idea that not only should institutions reflect the range of perspectives that they serve or represent, but also that diversity itself is a desirable goal. While the *fact* of multiculturalism is simply the existence of various distinctive cultural/ethnic groups, the normative sense of "multiculturalism" finds *value* in such an atmosphere and subscribes to the belief that diversity should be fostered, supported and even implemented. Note, however, that it is a mistake to view diversity itself as the end. Political philosophers, who do not say enough about diversity as the means of bringing about a political or social atmosphere where people equally influence one another *and* interact, run the risk of allowing for tokenism and separatism.

The early 1990's saw an explosion of debates revolving around the importance of cultural diversity in contemporary states and the national representation of ethnic, racial and gender minorities. The year 1992 in particular stands out insofar as libratory movements and the idea of cultural diversity are concerned. Originally published that year, Charles Taylor's *Multiculturalism and "The Politics of Recognition"* is probably the most widely known philosophical account of the role of cultural diversity in public institutions and the social and political life of the United States.[2] As Kymlicka and Norman explain, the focus on group rights at this time stemmed from the previous two decades of political thought: the 1970s focus on justice and the structure of political institutions (i.e., Rawls' work), and the 1980s focus on community (i.e., communitarian thought). In the 1990s, political philosophers combined the idea of justice and community, the end result being multiculturalism.[3] All of this is aside from the fact that there were race riots taking place in Los Angeles due to the complexities of the O. J. Simpson trial, in addition to the 500-year anniversary of the encounter with America.[4]

As is the case with Tully and Kymlicka, Taylor's work arises out of the debates regarding cultural rights in Canada, in particular, the rights of Francophone peoples in Quebec and the protection of the rights and land of First-Nations peoples. In the United States, one possible source for the attention paid to multiculturalism and the national representation of minorities is Ronald Reagan's call for the return to "traditional family values." Seemingly harmless, Reagan understood the family to be the means by which national culture was maintained and strengthened. Like Aristotle, who argued that the heterosexual family is the source of the state, Reagan asserts in *Proclamation of National Family Week*:

The family is the basic unit of our society, the heart of our free democracy. It provides love, acceptance, guidance, support, and instruction to the individual. Community values and goals that give America strength also take root in the home. In times of change and challenge, families keep safe our cultural heritage and reinforce our spiritual foundation.

[…]

National Family Week is a time to be thankful for the family as a national heritage and resource. It is a time to recommit ourselves to the concept of the family—a concept that must withstand the trends of lifestyle and legislation. Let us pledge that our institutions and policies will be shaped to enhance an environment in which families can strengthen their ties and best exercise their beliefs, authority, and resourcefulness. And let us make our pledge mindful that we do so not only on behalf of individual family members, but for America.[5]

Reagan's statements on family force the question as to what changes in legislation or society occurred to warrant such a recommitment to the family? The Reagan Administration makes clear that the loss of traditional family values stemmed from the "value-relativism" of the '60s and '70s, a time when public institutions and ordinary citizens were discouraged from imposing any particular set of morals or cultural traditions upon others.[6] At that time, toleration of value differences was viewed as a means of assuaging differences in culture and lifestyle. Hence, one way of reading Reagan's thoughts are as code for the restoration of heterosexual middleclass, unbroken Christian families, especially after the social events of the '60s-'70s. This adds some weight to Reagan's comments above, regarding the ways in which the family keeps safe "our cultural heritage" and his hopes that the American family can withstand certain lifestyle and legislation trends.

Yet the type of tolerance that the Reagan administration criticizes also challenges the idea of the family being at the center of United States national identity. When nations are based on families and familial relations that harbor specific cultural and religious

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affiliations, kinship and even ethnic commonalities serve as the core for such nations or peoples. This led Carter A. Wilson, among others, to argue that Reagan's use of the family also implied a racial component.[7] This was a plausible interpretation of the Reagan Administration's beliefs, because the value relativism that Reagan criticized coincided with the civil rights movement of the later half of the 20th century. In a political atmosphere where familial relations are the primary source for identification, familial bonds and extended clan relations serve as the basis for national membership and can begin to resemble genealogical practices of race, i.e., the idea that one's racial heritage has to do with blood ties and familial kinship. Any national culture or nationalism founded upon familial relations creates political communities of kinship that alienate vast segments of the United States by failing to present a culturally diverse United States of America. Viewed in this light, Reagan's return to the family contributed to an image of the United States as white, male-dominated, middleclass, and heterosexual. This is an image of the core "America" that many minority groups feel alienated from, because it does not reflect or recognize the many cultural realities of United States society. This is not to say that certain minority groups are not heterosexist and "traditional" than the mainstream, as well as more family oriented. I use 'minority' in the sociological meaning of less powerful, which would include women, gay, elderly, disabled, etc.

The ethics of political representation originate in the sentiments of minority groups alienated by hegemonic national imaginings that imply racial, cultural or ethnic homogeneity. This becomes ethical, according to Taylor, when misrecognition or non-recognition can damage a person's sense of self and also lead to scenarios where political institutions fail to recognize their responsibilities in helping to alleviate such things as

poverty or disease in areas housing minority groups.[8] The view of citizenship that arises

out of Taylor's "Politics of Recognition" originates within this need for recognition. It

tends to be the case that nation-states with population imbalances lead to national

identities that represent only the dominant group, so that alienated minorities are denied

the full process of identity formation as it manifests inside of public institutions. Taylor's

conception of citizenship is thus wedded to cultural representation and the universal

ability to contribute to the sustenance of the national image.[9]

Because we are social animals, Taylor argues that humans share a fundamental

need for recognition. This need drives the demand for political recognition on the part of

racial, gendered, and ethnic minorities.[10] The link between minority groups and

recognition is human identity. Human identity is constituted by our interactions with

others and must necessarily reflect the ways in which self-conscious beings think about

themselves. For Taylor, humans are not the atomistic or individual units that many

modern philosophers thought. We are born into established communities and political

institutions; we find ourselves constantly trying to make sense of our lives using ideas

that we did not create, languages we are not the founders of, and cultures we are not

initially responsible for. Human subjectivity or agency thus depends upon our

interactions with others—it is "intersubjective." Taylor writes, "my discovering my own

identity doesn't mean that I work it out in isolation, but that I negotiate it through

dialogue, partly overt, partly internally, with others." He continues, "My own identity

crucially depends on my dialogical relations with others."[11]

The origins of Taylor's conception of the interpersonal or intersubjective-self can

be found within G.W.F. Hegel's *The Phenomenology of Spirit*. Most social theorists and

philosophers look to the master-slave dialectic as the source for the intersubjective self, given that this section of Hegel's text coincides with the shift from a general sense of consciousness to *self*-consciousness (and it also includes much of the language pertaining to recognition). However, Hegel's thoughts on "culture" (*Bildung*) also provide an alternative way of viewing Taylor's intersubjective. The world of "culture," for Hegel, is responsible for one phase of self-consciousness's development, that is, the dynamic interaction between an individual and a pre-established social group or collective. Hegel holds that the existence and actuality of self-consciousness arises from a process by which an individual "divests itself of its personality, thereby creating its world." Hegel continues, "It is therefore through culture that the individual acquires standing and actuality."[12] *Bildung* is the act or process of cultivation, the refinement and acquisition of communal or social qualities and traits. The process of becoming "cultured," in Hegel's sense, places one in unison with the shared meanings and interpretive practices of their social, intellectual, aesthetical and moral surroundings. To become cultured means to learn, develop or become educated in the ways of being that are apparent in one's community. One does this by bracketing or taking stock of any commonalities that exist amongst a group, and then discovering what remains. The residual aspects of ourselves that is not found in the commonalities "creates" or "realizes" the self, while the commonalities "create" or "realize" the culture (understood as a social group).[13] Being able to find one's self through this process, in both the realization of the group and in the solidification of individuality, is an act of recognition. While one's outer self can be similar to others, one's inner self is made apparent by differentiating between those similarities and differences.

The same process of intersubjectivity is required in Taylor's conception of nation-states. The only difference is that cultural groups replace individual persons as the main subjects. Like his view of persons, nations require a plurality of human experiences in order to arrive at commonalities and uniqueness. Since encountering and referencing a host of temperaments and personalities helps to foster a sense of self for individuals, nation-states likewise require people of diverse ways of life in order to properly develop a national identity. Hence, the citizenry of a political community should reflect the cultural variety of the people it harbors. This is an idea that necessitates the protection of minority groups through the establishment of what Iris Marion Young calls "differentiated citizenship."[14]

For Young, ensuring the plurality of voices inside of nation-states necessitates the creation of public protections and political mechanisms that permit the self-organization, self-representation, and veto rights for minority groups, in regards to specifically harmful or detrimental (in the case of reproductive rights for women or land claims for Native Americans) policies This leads to a *differentiated* or variegated sense of citizenship, because not all members of the body politic will have these protections; only the underrepresented members of society require these acts.[15] Kymlicka argues that a "comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership and certain group-differentiated rights or 'special status' for minority cultures."[16] The challenge for liberal democracies posed by the reality of multiculturalism is to accommodate differentiated rights in a morally defensible way, argues Kymlicka. Along these lines, Young does not see the policies and procedures that allow for differential treatment as instrumental,

utilitarian suspensions of formal equality on behalf of minority people. Instead, she argues that group differences and social oppression will always be a possibility inside of modern social groups: "Thus a society should always be committed to representation for oppressed or disadvantaged groups and ready to implement such representation when it appears."[17]

Citizenship, in this context, is not so much a legal category for state membership but the proper basis for the ethical formation of a national identity. Individual cultures, inside of national structures, must learn to interact on reciprocal terms. When disparities in income or group numbers obscure the process of identity for members of a group, then national identity itself becomes problematic. Put differently, with one cultural group starts to impose itself upon others, via "monological" (as opposed to dialogical or intersubjective) methods of assimilation, nations cannot foster the sense of community needed for group development, to use Taylor's terms.[18] "Cultural diversity," in this sense, is both a process of self-development (and thus social-development), and the institutional, legal means by which these acts of cultivation come about. This sense of "culture" is rather introspective and representative of classical traditions. Anthropological and sociological conceptions of 'culture' may emphasize the process of becoming "cultured," but there the word is primarily used to describe the customs and traditions of a people. Taylor's communitarian leanings thus become obvious when one notices that his conception of culture lends itself to a theory of citizenship that emphasizes the equal ability to participate in the pursuit of the good, a process that requires personal reflection on the part of the members of a political group—the good being the formation of national identity.

Critics of multiculturalism argue that "identity politics" is the end result of the ideas that thinkers like Taylor put forward. In its negative connotations, identity politics is seen as an attack on individualism (especially since it favors ethnic, cultural, racial, and gender-based groups) and as a limited form of political liberation.[19] Francis Fukuyama argues that identity politics springs forth from "a hole in liberal theory," namely the limited significance and extent of group rights.[20] In more recent years, the politics of recognition has come under attack from reactions to the idea of a multicultural nation-state, on account of its supposed contradictory nature and likelihood to balkanize or fragment a country into ethnic divides. The fear is that without a unifying culture, ethnic divides will tear a country apart.[21]

The more serious criticism of the politics of recognition lies with the nature of political power and autonomy. *Recognizing* cultural groups and ethnic/national minorities in nation-states does little to change the workings of a political system with power imbalances, for instance, where all resources are controlled by a select few or where minority figures become tokenized political vessels for more conservative ideology. The act of recognition highlights the political power that certain individuals have, because those doing the recognizing remain in charge.[22] By placing this conversation between Taylor and his critics into constitutional terms, Tully attempts to resuscitate multicultural politics in terms of power. However, his project seeks out accommodations for minorities inside of existing political systems, which does not challenge the legitimacy of the entire framework itself (see the next section for a historical example).[23]

Nevertheless, when related to the idea of intersubjectivity, "citizenship" is a category open to all members of a body politic and is not limited to the perspective of

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dominant groups. Rogers Brubaker elaborates on this understanding of citizenship as connected to the national imaginary when he writes,

> Debates about citizenship, in the age of the nation-state, are debates about nationhood—about what it means, and what it ought to mean, to belong to a nation-state. As an institutional and social-psychological reality, the nation-state is a distinctive way of organizing and experiencing political and social membership. But the nation-state is also an idea—and an ideal: it is a distinctive way of characterizing and evaluating political and social membership.[24]

For Brubaker, debates about citizenship are normative discussions about the significance of "citizenship" that take place in the minds of the people these institutions are meant to serve, hence the significance of the "social-psychological" and the point about idealism. "Citizenship debates," in this sense, are self-conscious acts of figuring national identity from the perspective of those capable of contributing to such discussions, namely the entire citizenry. Cultural uniqueness and originality are central to this act of self-constitution, because people must authentically represent their own inner selves. The assumption is that distinct ethic groups harbor different ways of living and different ways of appreciating life. Nevertheless, this intersubjective basis for nation-states creates a moral framework that guarantees cultural diversity.

An initial criticism of the idea of citizenship in the ethics of political recognition is that recognition is strictly concerned with representation and national identity, and thus lacks any legal component whatsoever. In addition, even when political thinkers from this school of thought attempt to introduce constitutional reform on behalf of minority peoples, they mostly seek out protections for group rights in light of the individualism that pervades most contemporary constitutions. This is not to say that the ethics of political recognition are unimportant for the unauthorized immigration debate nor is to say that the great fault of this line of thought is the omission of specified legal issues

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about state-membership. Nonetheless, the ways in which Taylor and others think about democratic legitimacy, in omitting the question of legality, limit the applicability of their paradigm to undocumented persons.

In a recent essay, Taylor argues that a *demos* or "nation" must openly negotiate "a commonly acceptable political identity between the different personal or group identities that want to or have to live in the polity." [25] Taylor presents a version of the democratic legitimacy paradox when he writes, "Democratic States need something like common identity."[26] The paradox arises when one realizes that democracies stand in need of a *demos* or "people" as its base; the act of choosing or identifying such a people is a project that verges upon being anti-democratic, since it necessarily excludes others, namely "noncitizens." The question thus arises, how are noncitizens differentiated from those capable of contributing to "citizenship debates"? This is related to chapter 2 regarding Dussel and his work on the underside of modernity. What I argued there is that one cannot have nationalism without those outside the nation. The process of nationalism works in a negative sense that builds itself up by excluding others.

As Taylor notes, the citizen debates boil down to an issue of sovereignty, "For a people to be sovereign, it needs to form an entity and have a personality."[27] That "personality" may be variegated, multicultural, and inclusive (in fact the intersubjective aspects of this necessitate inclusivity), yet the basis for this personality is the existence and exclusion of other individuals who are not members of a particular body politic. Taylor's comments quickly take on legal connotations, because it builds upon rights of birth or naturalization, both of which assume the existence of borders or national divides to provide the initial justification for excluding some and including others. However,

appeal to borders is rather arbitrary; national borders are products of human artifice that are often immoral since almost every existing national border is a product of war or conquest, as indicated in chapter 4.[28]

Along these same lines, Hans Lindahl argues that the attempt to justify a *demos* from within the perspective of a bordered polity is an act that presumes the existence and history of a people without an actual, material or "real" referent.[29] Taylor is talking about a group that does not exist (nor has it ever) in empirical space and time but only in the minds of those positing it. Hence, what we should focus on is the workings of the national imaginary, from which, in the United States, Hispanic people are historically alienated.

Given that the real object of inquiry is the question of national identity and national-citizenship, on one level it may be fine to ignore the fact that the politics of recognition avoids the question of legal citizenship. This no longer is possible, however, given that unjustified and unquestioned means of legal inclusion and exclusion are the basis for multicultural citizenship in the first place. Although many individuals believe that the multicultural branch of political thought can be used to argue for undocumented immigrant rights, this tradition concerns itself with representation, and its immediate import in terms of legality is none. However, multicultural political thought remains very important to the undocumented immigration debate. As noted by Kymlicka and Nick Stevenson, a multicultural political environment is imperative to establishing a policy of legal-citizenship, or sense of legal-personhood, that is fair and conducive to immigrant rights.

Revealing how his thought on the relation between the national and legal have changed, Kymlicka, in "Immigration, Citizenship and Multiculturalism: Exploring the Links," while comparing the immigration law of the United Kingdom, the United States and Canada, argues that legal-citizenship is the means to national-citizenship.[30] He argues that any discussion of citizenship policies towards non-citizens requires a reformulation and explicit engagement with immigration policy and multiculturalism.[31] Clarity on how many immigrants will be granted naturalization rights and fairness regarding who will be admitted, in addition to an open stance on how immigrant assimilation will take place in light of cultural rights and minority protections, helps to define the goals of a nation-state in terms of how it sees "citizenship." Kymlicka writes:

> The success of efforts to revalue citizenship in an age of migration will depend not just on the nuts and bolts of citizenship policy, but also on broader attitudes towards immigration and multiculturalism. The likelihood of gaining a strong public consensus on citizenship policy may depend on developing a stronger consensus on immigration and multiculturalism (and vice versa).[32]

According to Kymlicka, we can preserve national-citizenship if we are clear that this is not a culturally homogenous core, but instead a community of beings acting in a way that expresses the interests of all people. Immigration policy, a commitment to multiculturalism or multi-nationalism, and citizenship policy are a "three legged stool" that must be properly balanced.[33] Few will consider immigration policy or restrictions unfair, *if* the state (1) has an open and positive attitude towards the rights of immigrants (formal or not) and (2) strives to achieve a culturally plural atmosphere. While the state may impose immigration restrictions, this should not lessen the quality of life for noncitizens.

Stevenson presents a similar idea: any plausible conceptualization of legal-citizenship requires a clear stance from the country proposing it regarding their efforts to

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increase, maintain and "recognize" a culturally diverse national populous.[34] In addition, immigration policies and immigrant rights must be transparent and not arbitrary. Put differently, this time drawing from Jean Hampton, "a state's policy on immigration is connected to its sense of itself and its own identity."[35] If a state's "sense of self" is plural in terms of culture and nationhood, the legal rights that immigrants have will promote a healthy integration that takes place on equal terms, which should lesson fears of nation-balkanization or heavy handed assimilation.

Kymlicka and Stevenson help to clarify the ways in which a country's xenophobic attitude towards non-citizens and immigrant groups can be a product of dated immigration policies and exhausted or confused debates regarding multiculturalism. In chapter 5, I suggest that this is the case in the United States: the cultural-racialization of United States national identity reveals a set back in multicultural discourse since it furthers an assimilative ideal that takes pride in a multi-*colored* America, which is a specious idea given that there is more to race than just skin color. In the next section, however, I present a historical case for why changes to national-citizenship have to attack structural power dynamics and economic inequalities.

2. Multiculturalism and Latin American Indigenous Politics

This section examines contemporary indigenous politics in Latin America with an emphasis on discourses of multicultural national-citizenship.[36] My goal is to explain the ways in which the practical application of multicultural policies has taken shape in Latin America, often to the detriment of indigenous peoples. I explore some recent issues in indigenous politics in Latin America, focusing on Bolivia. Building from Karl Marx, my

comments are meant to push for a rethinking of the state and the origins of political power, as influenced by Dussel's work explored in chapter 2.

My examination of indigenous politics draws from the recent development of what has been termed "critical liberalism," the indigenous embracement of the supposed cornerstones of liberal theory: autonomy and equality.[37] Interesting enough, analogous to this "indigenous liberal turn" is the recent scholarship by philosophers of race in the United States who are also attempting to reclaim liberal notions of autonomy and equality.[38] Both of these perspectives demonstrate the need for the protection of equal rights for minority peoples *or* indigenous majorities and group autonomy. However, as Marx points out in his exploration of "the Jewish Question," granting political freedom to ethnic groups does not signal the liberation of the citizen nor the state.[39] As a result, individual or collective autonomy (the first being for citizens, the second for cultural groups) in light of state sovereignty becomes the central issue that any project on citizenship must contend with.

By "indigenous people of Latin America" I do not have in mind such images as the "Aztec," "Maya" or "Inca." While descendants of these pre-Columbian civilizations exist, they do not represent pristine worldviews untarnished by Western culture.[40] Moreover, the awareness of these larger cultural groups, amidst the variety of people who lived prior to conquest, obscures classifications of indigenous people until today. While in some parts of the Amazon and other hard to reach places there may still be untouched cultures and traditions, most indigenous people in Latin America are cultural mestizo/as. They may have elements of native worldviews and knowledge, the extent of which may vary, but almost all are influenced in some fashion by Western culture and most are

bilingual. All this is to say that indigeneity in Latin America is a complex issue given the history of colonization, the recent effects of globalization, and the conscientious shift from a peasant-based political platform to an active politicized indigeneity.[41] Any adequate examination of indigenous politics necessitates an analysis of the relationship between the history of modern forms of governance and coloniality, that is, the peculiar power dynamic that functions within colonial atmospheres and often outlasts nation-building processes (I will return to this is chapter 6).[42]

The social conditions of many countries throughout the world are providing the necessary atmosphere for radical political change. This is especially true in Latin America. Novel questions, new potential political agents, and interesting forms of social organization are developing out of this insightful historical moment. Many non-dominant, sub-national and indigenous communities are quickly gaining political clout in countries like Bolivia, Mexico, Peru and Venezuela, just to name a few. Paralleling arguments and criticism of the politics of recognition in North America, indigenous politics in places like Bolivia and other parts of Latin America question the importance of a "multicultural" political atmosphere. These communities not only seek political recognition and equal treatment under the law, but they also wish to assert themselves as authentic agents of social change within the boundaries of their countries. Put differently, indigenous peoples are articulating political demands that exceed the nature and workings of "traditional" political institutions.

In addition, recent Latin American political thought questions the nature and workings of nation-states as historically linked to the legacy of European forms of civil governance. Modern nation-states descend from theories of government that hinge upon

the developmentalist perspective. Two famous lines from the work of early social contract theorist immediately come to mind: Thomas Hobbes famously wrote, "The savage people in many places of *America*…have no government at all, and live at this day in that brutish manner as I said before."[43] The brutish manner that Hobbes has in mind is the pre-political, and thus pre-historical, state of nature. This sentiment is echoed by John Locke's claim, "In the beginning all the world was *America*."[44] In this light, the basis for contemporary states can be viewed as a product of modern political theory that relied upon the idea of America (and the indigenous people on this continent) as immature, savage and in need of cultivation.

Erika Cudworth and John McGovern write, "the 'state' is the key formation of modern politics." They continue by noting that recent scholarship on the state varies: When or where the idea of the "state" began or whether or not the state is a product of modern political thought remains a question.[45] McGovern holds that the formation of the state, as connected to the idea of sovereignty, began in feudal Europe prior to the encounter with America.[46] While one can accept this point as fact, seeing how the various principalities and city-states that emerge from medieval Europe lend support to it, there is no doubt that with the advent of the European colonization of America the foundations and grounding for the state took new direction. This shift stemmed from the newfound interaction and subsequent domination of people and land unknown.

Gustavo Esteva, the Mexican political thinker, highlights this tendency when he argues that "Both the nation state and formal democracy are established on the premise that we are competitive and violent individuals who can coexist only if we are controlled by the state, which grants itself the sole monopoly on legitimate violence."[47] The idea of

a violent and competitive nature has a determinant affect on any political philosophy since it assumes that the need for governance is "an intrinsic quality of the human condition."[48] The state, in this instance, becomes "a specific kind of government associated with European modernity" considering that it rests upon modern postulates about human nature.[49]

Reviewing Hobbes on human nature supports this point. For Hobbes, pre-political human life was "poor, nasty, brutish, and short."[50] This is the infamous "state of nature," where war is a perpetual condition for human existence. Endowed with natural rights, the fundamental right of nature being self-preservation, one is at liberty to do whatever one must to preserve their life. Here, liberty is freedom from constraints, "the absence of external impediments."[51] Because of this fundamental right all humans have equal access to anything that can be to their advantage, i.e., in the state of nature all humans are ruled by their individual reason, for they have not submitted to the ultimate reason of a sovereign.[52] "Reason," here, is something humans use to navigate the world and also the means through which humans arrive at government. Aníbal Quijano summarizes this use of reason as an "organic social totality"—a social theory where the reason-based parts of society serves as the "head" of the "body politic" (a model which was also used to justify colonialism).[53] In this sense, modern humanisms arise out of a hierarchical ordering of human life that posits a particular individual as the height of civilization: modern rational man. This individual gains this status through a mythic ideal that began with the discovery of America.[54]

Contemporary states grow out of modern political contexts that understand the people of America early as alien cultures, glimpses into the past of human history. This

poses several major challenges to indigenous politics in places like Bolivia. "Anchors to the whole edifice of Western social thought," as Vince Deloria Jr. writes, tribal peoples are either forced into political positions that render their demands illegitimate (since they may advocate for group rights in light of neoliberal individualism) or the accommodations that are made to incorporate them into the political arena demand conformity to Western political practices and do nothing to change the dynamics of political power.[55]

In *Now We Are Citizens: Indigenous Politics in Postmulticultural Bolivia*, Nancy Grey Postero argues that the subject of her book is the emergence of a "post-multicultural" citizenship. This understanding of citizenship does not simply recognize ethnic minorities and indigenous communities while maintaining the status quo of modern nations, but forces new political agents into the realm of neoliberal politics, thus signaling "a new stage in the study of neoliberalism."[56] This suggest that indigenous politics are the continuance of liberal ideology, but only in a very peculiar sense given that indigenous politics in Latin America are not what one might expect from a United States perspective. As Courtney Jung explains, indigenous politics are more akin to class-based political movements, like unionization, rather than a form of identity politics grounded in specific cultural identities.[57] I think this provides the basis for an alternative critique of the politics of multiculturalism that reveals what is sometimes lacking in discourses of recognition.

The contexts of Postero's book are the mid-1990 political reforms in Bolivia, especially the Law of Popular Participation (LPP). This law changed the Bolivian constitution to recognize the state as a multiethnic and "pluricultural" state. Providing

protective measures for indigenous territorial land rights and promoting the teaching of indigenous languages and cultures in school, the LPP decentralized politics in Bolivia and "named indigenous people as actors in municipal development of decisions."[58] As Postero notes, this policy was a step in the right direction, insofar as it ameliorated the tension between non-indigenous and indigenous people in Bolivia. The LPP was also a step forward since "indigenous actors embraced the democratic potential of the reforms."[59]

The Law of Popular Participation in many ways reflects the "inclusive" ideals of nationality and national identity that was representative of many Latin American nations after the colonial struggles for independence. Simón Bolívar, the liberator of several Latin American nations, writes,

> [W]e are not Europeans, we are not Indians, but rather a race midway between the aborigines and the Spanish. Americans by birth and Europeans by rights, we find ourselves in the dilemma of disputing rights of possession with the natives and of sustaining ourselves in the country of our birth against the opposition of the invaders; thus our case is most extraordinary and complex.[60]

This mix between indigenous and Iberian (not to exclude the African component) is the idea of *mestizaje*, the fusion of race and culture in the hopes of fostering peace between once warring groups. With the advent of such laws as the LPP, this ideal seemingly became a political reality, not just national rhetoric.

However, the freedom to participate in the political arena did not come without constraints. Implicit in such reforms as the LPP was the expectation that ethnic-minorities and indigenous politicians would conform to the proprieties and political practices that pervade modern nation-states. While multicultural and "plurinational" in name, the LPP was assimilative, it expected a one-way or exclusive cultural influence rather than a true reciprocal exchange of ways of life. In short, indigenous conformity was expected. An

example of this is the ways in which indigenous politicians were expected to thrive in a time where many peasants and native communities were suffering from the effects of neoliberal economic privatization (such as water and gas). This did nothing but consolidate the power and wealth of the elite classes amidst much multicultural chatter.[61] The only way that indigenous politician would thrive in this atmosphere was to accept such things as exclusive water rights and then try to make the best of this situation, which in many ways was impossible.

The anthropologist, Charles Hale, asks "Under what conditions can indigenous movements occupy the limited spaces opened by neoliberal multiculturalism, redirecting them toward their own radical, even utopian political alternatives?"[62] Put differently, the reality of such movements as the LPP allowed for indigenous and multiethnic people in Latin America to participate in the political arena, yet what did this participation entail? Invested with a type of political *freedom,* indigenous people were given rights that protected their individual interests. They were denied political *autonomy*, however, the ability for indigenous communities to be self-governing or at least take part in the democratic creation of laws as collective units. Besides assisting in explaining what I see to be the difference between autonomy and freedom, Marx cautions of the traps of this kind of "political emancipation" in his essay "On the Jewish Question."[63]

A critique of the work of the young-Hegelian Bruno Bauer, "the Jewish Question" argues for the emancipation of humanity from the conditions leading to its alienation and exploitation, that is, for political emancipation. For Marx, since the state coincides with the rise of the consciousness of "civil society," it arises with the growth of capitalism and private property.[64] The exact relationship between civil society and capitalism is what

Marx explores, which renders this essay a direct commentary on the nature of the state. According to Marx, Bauer is concerned with a general political problem: Bauer asks if a Jewish person could ever really be a *citizen* of the German state, insofar as citizenship implies a civic identity grounded in the Christian faith. Would not one's religious leanings as a Jewish person always trump that of the state? Why should the state forgo its religious leanings when Jewish people choose not to? Only in what Bauer calls "a superficial sense" could a Jewish person remain "Jewish" or a "citizen" in political life. Essential to this person's identity would be their faith, and their political identity would only be a momentary exception to their essential and normal identity. As a result, Bauer calls for the abolition of religion from the state through the political emancipation of the human.

For Marx this leads to the division between the public and the private, the basis for bourgeois alienation and the "consummation" of political emancipation.[65] Marx writes, "The *decomposition* of man into Jew and citizen, Protestant and citizen, is not a deception practised [sic] *against* the political system nor yet an evasion of political emancipation. It is *political emancipation itself*, the *political* mode of emancipation from religion."[66] The guarantors of political emancipation are "rights"; as political beings, the state guarantees our rights. Rights, in turn, help define who we are *as individuals*. Given that rights are said to protect that which allows us to define who we are (such as property), our identity turns out to be a divided and alienated self that depends upon a particular economic system—this is exactly the position of the indigenous after the LPP. Since capitalism coincides with the rise of nation-state, both of which result in alienation and objectification, no real freedom is possible through the political ideal of liberty.

Worse, "civil society" (the basis for the bourgeois state) suggests that one should only

aspire towards political emancipation. Yet, for Marx, this is not human emancipation. It

misses the point.

> Marx writes,

> [Egoistic] man in this aspect, the member of civil society, is now the foundation and presupposition of the *political* state. He is recognized as such in the rights of man.
> […]
> But the liberty of egoistic man and the recognition of this liberty is rather the recognition of the *frenzied* movement of the cultural and material elements which form the content of his life.
> […]
> Thus man was not liberated from religion; he receives religious liberty. He was not liberated from property; he received the liberty to own property. He was not liberated from the egoism of business; he received the liberty to engage in business.[67]

Marx thinks that the state does not "restore" freedom (in a Rousseauian sense) but instead

endows humanity with alien powers. Marx quotes Rousseau:

> Whoever dares undertake to establish a people's institutions must fell himself capable of *changing*, as it were, *human nature* itself, of *transforming* each individual who, in isolation, is a complete but solitary whole, into a *part* of something greater than himself, from which, in a sense, he derives his life and his being; [of changing man's nature in order to strengthen it;] of substituting a limited and moral existence for the physical and independent life [with which all of us are endowed by nature.] His task, in short, is to take from *a man his own powers*, and to give him in exchange alien powers which he can only employ with the help of other men.[68]

All this is to say, in the context of Bolivian indigeneity the investment of rights and the

recognition of indigenous people as citizens arise from within the confines of a particular

political system. This political system does not represent a fundamental way of being

human, but a specific political ordering that is based on histories of oppression and

systems of power that grant or permit citizenship for indigenous people. And in doing

that, neoliberal political systems reinforce their own structure and deny the chance for

novel forms of political organization or citizenship. In this specious setting, formal

equality comes as the cost of true autonomy. This is why Marx says that "*Political*

emancipation certainly represents a great progress. It is not indeed, the final form of

human emancipation, but it is the final form of human emancipation *within* the

framework of the prevailing social order."[69]

My point is not to simply critique multicultural political platforms—again, I think

that these are positive steps in the right direction to formal equality in terms of

establishing a necessary atmosphere conducive to immigrant rights. But, multiculturalism

needs to be accompanied by changes in the distribution of political power in ways that

are transformative, and do not reify unfair status quos. Chapter 2 focused on Dussel's

recent political philosophy. In doing so, I explored the nature of the state in novel ways

that continually check the balance of power. Similarly, chapter 6 of this dissertation

suggests some ways in which exclusive forms of assimilation and group interaction can

be curbed.

3. Notes

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[1] Bosniak, "Citizenship," p.188.

[2] For an updated and expanded version printed two years later see Charles Taylor, "The Politics of Recognition," *Multiculturalism: Examining the Politics of Recognition*, Amy Gutmann (Ed.) (Princeton: Princeton University Press, 1994).

[3] Kymlicka and Norman, p. 352.

[4] The following texts were released during 1992 or shortly after: The original Spanish version of what became Enrique Dussel, *The Invention of the Americas: The Eclipse of the Other and the Myth of Modernity* (New York: Continuum, 1995); Leopoldo Zea, *The Role of the Americas in History*, Amy A. Oliver (Ed.) and Sonja Karsen (Trans.) (Savage: Rowman & Littlefield Publishers, 1992); Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture*. (New York: Oxford UP, 1992); Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge: Harvard

University Press, 1992); Ofelia Schutte, *Cultural Identity and Social Liberation in Latin American Thought* (Albany: State University of New York Press, 1993); John Rawls, "The Law of Peoples," *Collected Papers*, Samuel Freeman (Ed.) (Cambridge: Harvard University Press, 1999); Will Kymlicka, *Multicultural Citizenship* (Oxford: University Press, 1995); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: University Cambridge University Press, 1995).

[5] Ronald Reagan, *Proclamation of National Family Week* (Proclamation 4882) (As of 2-2-2009: http://www.presidency.ucsb.edu/ws/index.php?pid=43204). For Aristotle's origins of the polis see Aristotle, *The Politics and Constitution of Athens*, Stephen Everson (Ed.) (Cambridge: University Press, 1996), p. 12.

[6] Domestic Policy Council, *The Family: Preserving America's Future* (Washington, D.C: United States Executive Office of the President, 1986), p.42. Accessed 8-25-2009: http://www.eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/20/03/b8.pdf

[7] Carter A. Wilson, *Racism: From Slavery to Advanced Capitalism* (Thousand Oaks: Sage Publications, 1996), p. 218.

[8] Charles Taylor, "The Politics of Recognition," *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994).

[9] Taylor, "The Politics of Recognition," p. 25.

[10] Ibid., p. 25.

[11] Ibid., p. 34

[12] G.W. F. Hegel, *Phenomenology of Spirit*, A.V. Miller (Trans.) (Oxford: University Press, 1977), p. 297. Some have argued that the main problem of the *Phenomenology* is *Bildung*, i.e. the progression and development of Spirit. See G.A. Kelly, *Idealism, Politics, and History: Sources of Hegelian Thought* (Cambridge: University of Cambridge Press, 1969).

[13] Hegel, p. 297.

[14] Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *The Citizenship Debates: A Reader*, ed Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), pp. 263-290.

[15] Young, pp. 274-275.

[16] Kymlicka, *Multicultural Citizenship*, p. 468.

[17] Young, p. 275.

[18] Taylor, p. 32.

[19] For a reconsideration of identity politics see Linda Martín Alcoff, Michael Hames-Garcia, Satya P. Mohanty, and Paula M. L. Moya (Eds.), *Identity Politics Reconsidered* (New York: Palgrave Macmillan, 2006).

[20] Fukuyama, "Identity, Immigration and Liberal Democracy," p. 6.

[21] See Robert D. Putnam, *E Pluribus Unum*: Diversity and Community in the Twenty-First Century," Scandinavian Political Studies, Vol. 30, No. 2, 2007; Francis Fukuyama, "Identity, Immigration and Liberal Democracy"; Arthur Schlesinger, *The Disuniting of America* (New York: W.W. & Norton & Company Inc., 1991); Samuel Huntington, *Who Are We? The Challenges to American National Identity* (New York: Simon and Shuster, 2004); David Miller, "Nationality in divided societies," *Multinational Democracies*, Alain-G. Gagnon and James Tully (Eds.) (Cambridge: Cambridge University Press, 2001).

[22] See Nelson Maldonado-Torres, *Against War: Views from the Underside of Modernity* (Durham: Duke University Press, 2008), p. 287.

[23] James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: University Cambridge University Press, 1995), pp. 30-39.

[24] Rogers Brubaker, "Immigration, Citizenship, and the Nation-State," *The Citizenship Debates*, p. 132.

[25] See Charles Taylor, "Democratic Exclusion (and Its Remedies?)," *Diversity and Pluralism: Canadian and Comparative Perspectives*, Alan C. Cairns, *et al*, (eds.) (Montreal: McGill-Queen's University Press, 1999), p. 286.

[26] Ibid., p. 265

[27] Ibid.

[28] Jorge Valadez, "Immigration and the Territorial Powers of Nation-States," *APA Newsletter for Hispanics in Philosophy* No.7, Vol. 2 (2008), p. 9.

[29] Hans Lindahl, "The *anomos* of the earth: political indexicality, immigration and distributive justice," *Ethics & Global Policy* Vol. 1, No. 4 (2008), pp. 193-212.

[30] Will Kymlicka, "Immigration, Citizenship and Multiculturalism: Exploring the Links," The Political Quarterly Publishing Co. LTD. 2003 (Oxford: Blackwell, 2003), pp. 199 & 202.

[31] Ibid., p. 202.

[32] Ibid., p. 204.

[33] Ibid, p. 200.

[34] Nick Stevenson, "Cosmopolitanism, Multiculturalism and Citizenship," *Sociological Research Online* (Vol. 7, No. 1.)

[35] Jean Hampton, "Immigration, identity, and justice," *Justice in Immigration*, Warren F. Schwartz (Ed.) (Cambridge: Cambridge University Press, 1995), p. 67.

[36] For an overview of contemporary Latin American political thought, with accompanying texts from an interdisciplinary background, see Iván Márquez, *Contemporary Latin American Social and Political Thought* (Lanham: Rowman & Littlefield, 2008). In the preface of this work, Márquez ventures so far as to suggest that the political tendency of Latin American thought might even be considered a "principle." For more on the political nature of Latin American philosophy see Grant Silva, "The Political Nature of Latin American Philosophy: Nation-Building, Nation-Fixing, Nation-Transcending" (unpublished manuscript).

[37] I will be drawing from Courtney Jung, *The Moral Force of Indigenous Politics* (Cambridge: Cambridge University Press, 2008) and Nancy Grey Postero, *Now We Are Citizens: Indigenous Politics in Postmulticultural Bolivia* (Stanford: Stanford University Press, 2007).

[38] See Bill E. Lawson (Ed.), "Race, Racism, and Liberalism in the Twenty-First Century," *The Southern Journal of Philosophy*, Volume XLVII (Supplement, 2009).

[39] Karl Marx, "On the Jewish Question," *Identities: Race, Class, Gender, and Nationality*, Eds. Linda Martín Alcoff & Eduardo Mendieta (Oxford: Blackwell Publishers, 2003).

[40] Jung, pp. 18-19.

[41] Jung, p. 18.

[42] For more on coloniality see Aníbal Quijano, "Coloniality and Modernity/Rationality," *Cultural Studies* (Vol. 21, No. 2, 2007).

[43] Thomas Hobbes, *Leviathan* (Indianapolis: Hackett Publishing Company, 1994), chapter xiii, ¶11.

[44] John Locke, *Second Treatise of Government* (Hackett: Indiana, 1980), ¶49.

[45] Erika Cudworth, Tim Hall and John McGovern, *The Modern State: Theories and Ideologies* (Edinburgh: University Press, 2008), p. 1.

[46] John McGovern, "The Emergence of the Modern State," *The Modern State: Theories and Ideologies*, (Edinburgh: University Press, 2008), p. 21.

[47] Gustavo Esteva, "The 'Other Campaign' and the Left: Reclaiming an Alternative," Trans. Holly Yasui (2006), p. 13.

[48] Cudworth and McGovern, p. 2.

[49] Ibid.

[50] Hobbes, *Leviathan*, p. 43.

[51] Ibid., p. 79.

[52] Ibid., p. 80.

[53] Aníbal Quijano, "Coloniality/Modernity and Rationality," *Cultural Studies* 21:2 (New York: Routledge, 2007)

[54] Dussel, *The Invention of the Americas*, p. 131.

[55] Vine Deloria Jr., *Philosophy and Tribal Peoples*, *American Indian Thought*, Ed. Anne Waters (Malden: Blackwell, 2004), p. 3

[56] Postero, p. 18.

[57] Jung, p. 20.

[58] Postero, p. 5

[59] Postero, p. 6.

[60] Simón Bolívar, "Address to the Angostura Congress, February 15, 1819, the Day of Its Installation," *Nineteenth Century Nation-Building and the Latin American Intellectual Tradition*, Janet Burke and Ted Humphrey (Eds.) (Indianapolis: Hackett, 2007), p. 5.

[61] Postero, p. 142.

[62] Charles Hale, "Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Dominance in Central America," PoLAR: Vol. 28, No. 1 (2005), p. 11.

[63] The rest of Postero's book goes on to argue for what she calls a post-multicultural form of politics. She thinks that there is real change taking place in Bolivia. While I am willing to admit that this is indicative of a new phase in "neo-liberal thought," I question why one should maintain the ideals of neo-liberal political formations. I want to follow Marx's warning. Postero makes no reference to Marx's essay, though the title of the first section of her book is "The Indian Question."

[64] This is another way of including the myth of modernity into this conversation. The idea of civil society requires the uncivilized or savage in order to distinguish "progress."

[65] Marx, "On the Jewish Question," p. 18.

[66] Ibid., p. 22.

[67] Ibid., p. 27.

[68] Ibid., p. 28.

[69] Ibid., p. 21.

CHAPTER V

THE RE-RACIALIZATION OF UNITED STATES NATIONAL IDENTITY

The biggest threat to multiculturalism, and inadvertently a significant threat to legal-citizenship (given my comments in chapter 4), is the dynamic nature of race. This chapter will explore this claim by comparing the workings of race in Latin America to that in United States. While considering various interactions between these racial paradigms, especially those resulting from increases in human migration and globalization, this chapter explores the philosophical dimensions of the category "race" as it is connected to social and political communities in the 21st century.

One of the main questions motivating this chapter is the following: In terms of racial identification, what happens when people from two different social ontologies with diverse understandings of how race is demarcated, meet? Take for instance a brown-skinned Mexican immigrant answering the question "What is your race?" posed by an Anglo-American in the United States. Presume that the immigrant in question appears to be of an indigenous background, as a majority of the populations of Mexico and other countries like Guatemala or Peru, are. For reasons that this chapter explores, this person might designate their nationality, a mixed-racial identity, or the culture they associate with, before claiming (if they ever would) to be of the Amerindian, Native American, or even "Asiatic" race—classifications that the North American racial paradigm would suggest. By identifying as a *mestizo/a* or mixed-race person, or for that matter identifying with a national identity that is grounded in the process of *mestizaje* (the phenomena of racial and cultural fusion), this individual avoids being labeled an *Indio* or Indian.[1] Instead, this person aligns herself with a background of mixed ancestry, which to her and

many individuals inside of Latin America designates her race—regardless of whether or not any miscegenation or racial mixture ever took place in this person's ancestral lineage.

Explaining the reasoning behind this answer necessitates a comparative analysis of the history of race and racism in Latin America and the United States. Such an analysis, however, sheds light on the mechanics of racial exclusion *and* racial inclusion in the United States, especially in the context of current political debates regarding immigration. Take, for example, the contemporary demands for immigrant assimilation by so called neo-nativists and the recent celebrations of a post-racial United States of America.[2] Both perspectives pose peculiar dilemmas to traditional theories of racial justice in North America: on the one hand, those who think that all immigrants must adhere to historically "American" ways of living contradict the central tenants of multiculturalism, even though these individuals often make room for a racially plural environment; on the other hand, celebrants of the social and racial progress of the United States must be made aware of the long history of manipulative efforts in using biracial and poly-racial identities for political gain in Latin American history.[3] Those proud of an increasingly multicolored United States must realize that there is more to race than just skin color, yet this only becomes apparent when studying the ways that "race" differs in other parts of the world, which helps to explain why our Latina immigrant above might answer the way I suggest.

Throughout most of Latin America, race functions within a broad phenotypical hierarchy that places white or pale-skinned people on top and black or dark-skinned individuals on bottom. In addition to this color-based ordering, culture, language, education, and socioeconomic-class status are major factors of racial determination in this

region.[4] Alternatively, because of the historical importance of the one-drop rule, where the slightest intermixture with "African-" or "black-" ancestry designates racial impurity, supposed biological inheritance or genotype is held to determine race in the United States. From this second perspective, folk notions about race assume a genetic origin because it is an idea that is mostly associated with physical appearance—the (incorrect) presumption being that genetic or blood-based essences cause phenotypical racial traits.[5] Whereas racial identities are more fluid in Latin America, such that differences in custom or social positioning can cause racial fluctuations (even within a single family), race is said to be permanent in the United States. This permanence is due to the fact that questions of race remain connected to the black/white binary, which taken into consideration with the one-drop rule, provides the historical basis for racial purity or impurity.

By living in-between two racial paradigms, Latino/as and Latin American immigrants in the United States help create new ways of thinking about race and also reveal the mechanics of racial-political exclusion. Traditional forms of racialization reliant upon generalizations like "black" or "white" prove inadequate for people of Latin American descent, given that the social categories of "Hispanic" or "Latino/a" comprise a spectrum of races, cultures, and colors. Although some can be categorized as "brown," "white," or "black," many Latino/as are grouped in terms of culture, language, or some combination thereof, such as "ethnicity." Ethnicity, though, often serves as a substitute for race when dealing with darker-skinned individuals and also becomes a means of exclusion for people who are white but of Hispanic background.[6] Because of this collective racial ambiguity, not to mention the fact that power structures and social

hierarchies in the United States tend to replicate themselves on new fronts, I argue that whiteness has morphed into something that not only pertains to phenotypical appearance and supposed genetic inheritance, but also culture, custom, language, education, and socio-economic class level. This refinement or dispersal of whiteness signals the creation of a "white socio-race," something akin to how whiteness is understood in much of Latin America, as alluded to above. As put by Eduardo Mendieta, in the United States there exist a "racializing of Hispanics" and a "Hispanizing of race."[7]

With this understanding of whiteness in mind, neo-nativists and advocates of assimilation re-racialize United States national identity and national-citizenship when demanding that all immigrants adhere to traditionally "American" culture and ways of living.[8] When United States national identity is racialized along these lines any meaningful discussion of national-citizenship becomes problematic given that race and nationality begin to intersect once again, albeit in a rather nuanced way that implies a culturally "unified" or homogenous people for every nation.

Section 1 of this chapter provides some general comments on the nature of race as connected to social ontologies. These comments are central to my overall thesis about the dispersal and solidification of whiteness. While I am hesitant to supply a formal definition for "race," in part because I think this concept is one that cannot be encapsulated by a single set of characteristics, race is a highly philosophical ideal, grounded in human artifice. This in no way undermines the felt experience of racism or the ways that race assumes physical or cultural characteristics. Section 2 provides a historical framework for the two racial systems mentioned above, the Anglo and Latin. Arising from within the contexts of European history and the colonization of America,

the social relations apparent in what became Latin America relied upon alternative understandings of human difference than those operating in the North. Although the nature of the colonizer and the kinds of indigenous communities encountered are factors that can explain the various methodologies underlying imperial practices, the Iberian willingness (and need) to interact with the indigenous (at least more so than the Protestant settler-societies of New England) generated a different approach to mixed-race, multi-ethnicity, and race in general. Section 3 presents the current status of Latino/a identity in the United States by highlighting the problems that arise from attempts at racializing these people according to black/white conceptions of race.

If race is an ideological construct that depends upon culture and history for meaning, then this idea is subject to change when that culture undergoes a transformation or reorganization. Here, I am concerned with the ways in which racial identities in the United States respond to the growth of the Latino/a population. The Hispanic presence in the United States has changed what is meant by whiteness—I give reasons for this as an empirical claim. Unless aware of these changes, social theorists lose track of the ways in which "whiteness" remains the basis for national unity in the United States. When made explicit, the social force that immigrants have generates questions about current forms of political organization that focus on the nation, which begs the question of whether or not novel forms of political organization are needed (which is a claim I will explore in chapter 6).

1. Racial Dynamism and Social Ontology

Race is perhaps one of the most contrived ideas ever *realized*—as such it is one of the most philosophical concepts ever. As the anthropologist and expert on Latin

American race, Peter Wade, writes, "Since the Second World War, most biologists have agreed that race is not an analytic category to understand human biological diversity." He continues, "Race is a set of *ideas* about human similarity and difference."[9] Invested with great social force and a supposed material existence, the idea of race is one of the most pressing issues that philosophers continue to think about. This is especially true when it serves as the basis for national citizenship or when major changes in political and civil society occur.

Race can be viewed as an ideological construct that is wedded to the social ontology of a particular region. A social ontology is an account of the various ways that human social relations are ordered and organized. Social ontologies reflect the various aspects of group life and designate the importance of human difference, which includes the ways in which these differences are demarcated in the first place. Within particular social ontologies, the idea of race graphs onto human biology and culture, which grants this concept a material or physical existence—the reality of which is debatable and varies depending on the paradigm in question. As Michael Omi and Howard Winant argue, social theorists and philosophers need to think about race as a historical force. It is a concept that has an origin and history of structuring human social relations, often for manipulative and oppressive reasons. In other words, race is not a mere "social illusion"—it is an idea that may begin in the mind but it does not stay there—nor is it an essentialized biological ideal.[10]

Although 'race' can be found in use in European languages as of the 14th century, not until the mid-17 century did this term assume the connotations associated with being a pseudo-anthropological means of human sub-speciation.[11] This latter meaning owes

much to modern European colonialism. The encounters that took place in the modern period between people of various backgrounds and the subsequent attempt to justify the mass appropriation of people, land, and resources, brought the fact of human differences to the fore like nothing before. Nowadays, race is a fundamental way in which the human social world is structured and modern human relations are maintained and furthered. Even in "post-modern" times, race is a basic starting point for figuring human identity as it descends from past legacies of human identification. Put differently, race is a central way through which a vast majority of humans identify or figure their identities. In several respects, this reveals how distinctively "modern" human identity remains.[12]

Insofar as race was created during times of colonial expansion and imperial hegemony, differences in the method and form of colonization should imply differences in racial formation. Such is the case in the Americas, as I show in the next section. However, let me close this section with one final comment about "race" that is central to my thesis.

As Falguni Sheth pointed out,[13] race can be thought of in a similar manner to how Martin Heidegger views the phenomena of enframing in regards to technology: every technological advancement, every new piece of technology, is neither inherently good nor bad, but changes the ontological horizon of human possibilities. By revealing new potentialities and obscuring others, technology changes the ways in which human life is ordered and arranged.[14]

While I refrain from commenting on the inherent moral status of race (i.e. whether it is inherently good or bad)—because of 20th century attempts to construct a positive idea of race or racial identity out of a concept invented for subjugation[15]—once

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the idea of race is introduced into human social relations, it alters the range of possibilities of human identity and the ontological horizon of social life. All human identities and social groups are thus impacted by the existence of "race." This remains the case even for whites in the United States, who might not overtly identify in racial terms but nonetheless benefit (by default) from social and political institutions that historically privileged their particular ancestry and continue to do so. While my point here is to highlight white privilege, I would also like to highlight the ways in which racial identities (as we typically think of them in the United States) are unnecessary in order to be affected by the legacy of racial oppression. Once race and all the ideological and hegemonic baggage historically connected to it is introduced into the matrix of human social relations, there is no going back to a pre-racial age of human social relations. Social interactions, socio-economic differences, and the attachment to phenotypic difference, all of which race touches upon, alters human relations in ways that might lesson but not disappear. Philosophers of race must now find the means of identifying how the axes of political and social exclusion continue to rotate, without any overt talk of hypodescent theories of racial inheritance or only color-based mechanisms. The workings of race in Latin America provide such a vantage point.

2. Two Dogmas of Racialization

In the Americas, the particularities of various colonial endeavors differ on account of the Europeans involved and the indigenous people in question. The resulting colonial environments allowed for the development of two general patterns of racial formation.[16] Along these lines, Carlos A. Fernández argues that there are two different responses to race, racial-mixing and cultural assimilation in America, expressed through the ideas of

"*mestizaje*" (a concept pertaining to the metaphysics of race/culture mixing) and what he calls "melting-pot" (the ongoing exclusivist assimilative ideal of the United States nation-building project). These responses were shaped by the history of the Iberian Peninsula and the formation of Anglo-Protestant Europe.[17]

Iberia was an important site for the Roman Empire. Given its location and subsequent history of diversity, the people of the Iberian Peninsula developed something of a tolerance for what can be considered (by today's standards) racial differences. The main distinctions amongst the many people in Iberia were based on religion and culture.[18] This "tolerance" was inherited from Roman cosmopolitanism, something that emphasized tribute to Cesar over complete cultural assimilation—an example of which is the relative autonomy that the Jews are said to have experienced, as detailed in the Bible.[19] In northwestern Europe, on the other hand, the Germanic and Saxon tribes (the ancestors of White Anglo-Saxon Protestant people) never appreciated Roman cosmopolitanism, or so argues Fernández. For the Roman Empire, the northwestern European lands formed the border with the barbarian world. Remember, the Roman legions consisted of people from African, Mediterranean, Southern European and Asian backgrounds. Fernández argues that this posed a multi-ethnic threat to the Germanic and Saxon people. Never fully submitting to Roman rule, this threat created a strong desire for the preservation of cultural and ancestral lineages and a general uneasiness towards miscegenation in general. Fernández writes, "The persistence of the German peoples, born of their struggles against the Romans, can also be seen later in history as an important element in the Protestant schism with Rome accomplished by the German Martin Luther. It is no

coincidence that Protestantism is primarily a phenomenon of Northwestern Europe, while Catholicism is mainly associated with Southern Europe." [20]

I do not mean to suggest that Fernández's historical interpretation is indisputable or completely correct. First of all, the Germanic and Saxon people never were one homogenous group. Nordics, Celts, Francs, Gauls and others of Teutonic origin made up this region.[21] Second, though the Spaniards were in contact with many types of people and there is much mixing that went into the cultures of the Iberian Peninsula, there was no doubt a strong desire for ancestral purity in the Spanish homeland, a desire so strong that the beginning of 1492 saw the expulsion of all Jews and Moors from Spain. At that time, after 800 years of a relatively peaceful coexistence, the idea of *limpieza de sangre* (cleanliness or "purity" of blood) was a notion used to designate recent converts of Moorish or Jewish backgrounds from older Christians.[22] Nevertheless, as Fernández points out, the Iberian Conquistador, fresh from the Re-conquest of Spain, relied on culture, religion, and custom, rather than any sort of biological essentialism or ancestral lineage (outside of religious decent), as means of human differentiation.

Fernández's historical analysis of racial formation in the Americas gains more credibility with his examination of the nature of the colonizer and colonial communities. Whereas large groups of families were the main source for European expansion into the North, mostly male soldiers, missionaries, and slaves traveled into what became Latin America. There is little doubt that this had a profound effect on the idea of racial mixing in the Americas. In what became the Northeast United States, large communities of families with similar ethnic backgrounds started "self-sufficient" colonies. To these people, the Native Americans were savages who resided in the forest and had none of the

forms of political formation known in Europe.[23] The Anglo-Protestant colonizer had no

need or desire to mix with these strangers, because, as Fernández argues, these people

had an identity historically grounded in the avoidance of cultural and racial mixing (recall

the Germanic front and the Roman legions) and they brought their own families.[24]

A different colonial relationship was established in what became Latin America.

Based on their technology and imperialistic mindset, the Aztec and Inca had ways of life

rivaling those in Europe. As a result of their somewhat cosmopolitan attitude and need

for Indigenous assistance, as well as human relations, the Spaniards were more willing to

intermix with the natives. This type of social intermixture is exemplified by the

encomienda system.

Encomiendas (or *Haciendas*) were large plantation-like communities powered by

mostly Indian workers with Iberian masters. Often, indigenous nobility, or *caciques*, were

given positions of power in between the Spaniards and the rest of the Indians. The mixed-

race children of Spanish and Indian parents, who had better social standing than full-

blood Indians, subsequently filled these roles. Alliances between Spanish and Indians

were thus formed through bloodlines. While light skin mestizo/as had the advantage of

being noticeably different from Indians of dark complexions, dark complexioned

mestizo/as also had higher social status on account of their custom, language, and culture.

It became possible to differentiate skin shades along a continuum between light and dark

mestizo/as, to the point of creating a vast array of racial possibilities.[25] Nonetheless,

seeing the advantageous positioning that the first mestizo/a children of Iberian and Indian

background received, even when they looked indigenous, abandoning the indigenous

mindset and practicing Spanish cultural traits became a life or death decision in South

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and Central America. This colonization of both mind and body established the degradation of indigenous culture, an idea culminating in Juan Ines de Sepúlveda's argument for the treatment of the Indians as barbarians because of their inferior "customs and morality."[26] We should note that customs and morality are typically viewed as cultural traits and but that they are the defining aspects of identity in Iberia just prior to the encounter with America, which anticipates the importance of culture in the figuring of racial identities, later on.[27]

In Latin America, culture, socioeconomic-class status, and language are major factors in how race is determined. Demonstrating how this works with indigeneity, Fernández writes, "*Indian* has come to mean 'someone who speaks an Indian language' or who 'lives like an Indian,' that is, who is poor. The fact is, many biological Indians have become cultural mestizos who speak Spanish, and hence are regarded as mestizos."[28] Put differently, in Latin America, one can change their culture by speaking a new language or dressing in a different manner. This in turn changes one's race, e.g., one can go from being considered a "full-blood" Indian to a mestizo or mixed-race person, by learning Spanish and becoming Catholic. However, one cannot (usually) change their skin tone, bone structure, or hair type. So though there are limits, race can fluctuate depending on cultural habits and class status. A dark-skinned person from indigenous parents may be mestizo/a or mixed-race by speaking Spanish and not practicing any indigenous cultural traits, but this person can never claim to be a full-blood European-born Spaniard. Fernández emphasizes the socioeconomic aspects of this when he recants the Brazilian saying "a rich Negro is a White and a poor White is a Negro."[29] Although this saying is rhetorical or even metaphoric, it has a core of social truth. In this respect,

the idea of *mestizaje* is not only about the blending of phenotypical or "genetic" traits, but also the fusion of culture, custom and class on somewhat equal grounds.[30]

A consequence of this alternative understanding of race and racial composition is that it challenges claims that a majority of Latin American populations consist of mixed-race people. Wade writes,

> Sexual relations between Europeans, Africans and indigenous people led to "mixed" people, *mestizos*, who were recognized as socially distinct from their parents and enumerated using specific categories by colonial censuses. This mixed population became numerically dominant in some areas by the late 18th century. A broad contrast existed here with the US where, although such mixtures occurred, they were less recognized socially – especially during the 19th century – and the mixed children were placed socially, and often in censuses, into the racial category of the subordinate parent.[31]

While the latter part of this quote is consistent with Fernández's point about the different attitudes towards mixed-race children between the United States and Latin America, the ways in which a majority of Latin American colonial populations are considered "mixed" changes greatly by reflecting upon the meaning of 'mixture.' In the United States, race mixing arises from acts of miscegenation, the offspring of which were categorized in terms of the subordinate race—this makes the history of mixed-race people almost nonexistent.[32] In the United States, as the legacy of settler societies that maintained homogenous ethnic identities based on what were initially familial-based communities, the mixing of races leads to social exclusion. Conversely, in colonial settings where access to goods, rights, and social dignity accompany "higher" races, being of mixed ancestry is a much sought- after characteristic, a means of colonial inclusion. The same goes for post-colonial societies that attempt to bring together heterogeneous communities under the same national banner.

However, when questioning the reality of how "mixed" the populations of Latin American communities are, I do not imply that biological miscegenation did not take place in much of Latin America (although they are not alone, the Caribbean and Brazil standout as paradigmatic examples of "traditionally" mixed regions). "Mixed" meant in some cases, not biological mixture in parentage, but the acquisition by someone with all Indian ancestry of new cultural traits. Nonetheless, the process of *mestizaje* becomes a means of improving social status for people of Indigenous and even African ancestry, assuming that the mixture is heading towards European ideals of whiteness. For the elite classes, on the other hand, racial purity was much sought after, although the consequence of "taking a step back" (a Latin American racial term to explain a downward mixture) was not as great as in the United States. The main point here is that in the United States, mixed race is considered a biological phenomenon. In Latin America, it is partly cultural and race mixing can take place without any interracial sexual relations, which presents anthropologists and social theorists with some room to rethink historical census reports.

The significance of culture in the Latin American racial calculus is not about the way in which cultures become naturalized. Throughout the history of race theory sometimes it is the case that, as Wade writes, "racial thinking is not just about dividing people into physical categories, but also about explaining their behavior."[33] Apparent in the naturalization of culture is the idea that human behavior can be explained through biology. The belief in the racial inheritance of culture was a popular train of thought within many 19th century European racial theories, especially those put forth by so called social evolutionists such as Tylor, Morgan and Spencer. They assumed the biological or genetic transmission of cultural traits along with race. As early as 1924, drawing from

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Franz Boas and R. H. Lowie, Alain Locke argued that although there maybe some correlation between race and culture, they are not causally related such that one can predict a person's cultural traits based on their supposed race (biological).[34] In Latin America, culture becomes part of a racial identity but it need not be inherited nor does it have to be casually connected to a particular race. From a North American racialist point of view, people with similar phenotypic traits (say dark brown skin and straight hair) might be categorized as members of the same race. Any cultural differences between these people, say one speaks Spanish the other *Mixtec,* would signify mixed-race status in at least one of these individuals in Latin America.[35] With this example, being mixed-race does correspond to having a particular type of culture, namely that of a European, but there is no need to view genetic transmission as the cause of this cultural inheritance. In addition, this culture is not only connected to mixed-race people, since European- born Americans share in this culture as well. The difference is that the latter, the *Crillos,* are not reliant upon culture to prove their "higher" social status.

In short, culture is not necessarily determined by any set of physical characteristics though it may be associated with a particular people. *While it is one thing to say that culture is determined by race, it is another to argue that race is determined by culture.* Anthony Appiah, in his critique of the work of W. E. B. Du Bois, explains that culture cannot be linked to race in any way that assumes a biological or historical connection. Appiah furthers this analysis by eliminating the idea of "common impulses," "historical strivings," or even familial relations, as foundations for a general socio-historical account of race, which Du Bois aspires towards.[36] Appiah writes, "sharing a common group history cannot be a criterion for being members of the same group, for we

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would have to be able to identify the group in order to identify its history."[37] Identifying that group for historical purposes begs the question of what unites them if the goal to arrive at a common history. Thus, Appiah thinks that at the heart of any cultural discussion of race is the idea of skin color or some other ascriptive, physical identifying factor. Race is about the visual, the physical.

My point is to argue that a bicultural social identity may signify mixed-ancestry in Latin America. This in turn allows others to assume that miscegenation took place in this particular individual's past, which may or may not be the case. The history of colonization and the use of culture as a means of domination create doubt that European cultural traits were not assumed at some point by many slaves and natives in order to improve their lot. Latin American individuals may assume that a bicultural person is a product of miscegenation, but this does not have to be the case since cultural traits becomes an intermediary between various races. This intermediary status designates a mestizo/a person. Thus, in Latin America people can tap into whiteness or claim aspects of a white identity by participating in what are historically designated as white (read European) ways of living.

A response to the characterization of Latin America race presented here might be that culture is not a factor in racial formation as much as there is an apparent appreciation for whiteness and a tendency towards "passing." William Darity Jr., Jason Dietrich, and Darrick Hamilton argue this point.[38] They hold that throughout Latin America there tends to be an aversion towards identifying as black or "Negro" and a strong preference for whiteness. This remains the case even though countries like Mexico, Cuba, and Puerto Rico are estimated to be upwards of 75 percent "modern African descent" (as presented

in their paper these estimates are misleading for Mexico since they imply that 75% of the Mexican population retains African ancestry). Darity, *et al*, argue that "collective passing" is taking place, especially when it comes to self-identification. Their evidential support is the fact that 33% of "very dark" respondents, 31% of "dark" respondents, and 55% of "medium" or "brown" respondents ("very dark," "dark" and "medium or brown" being ascriptive skin hue designations assigned by an external interviewer using an "eye balling" method) all self classify as "white" when asked about their race.[39] While Darity, *et al*, may be correct in thinking that there is an aversion towards negritude in Latin America, they nonetheless misunderstand the nature of race formation in the region by missing the importance of culture in Latin American societies. The whiteness that Darity's subjects claim is a result of the dispersal of whiteness throughout Latin American culture. The respondents are not using "white" in the same manner as that found in the binary racial ontology of North America. This should be quite obvious seeing how "nonwhite" these individuals appear by United States standards, yet they still self-identify as white for some reason.[40]

It is in the manner presented above that Latin American racial identities can diverge from the way race is formulated in Anglo-America. Since racial mixing was not frowned upon in Latin America as it was in the North by whites, culture and class became a means by which racial identities could change, regardless of whether or not any sort of miscegenation took place. As far as racial mixing in the United States is considered, because of such things as the "one-drop rule" many were not able to benefit from racial mixing. Mendieta summarizes this point when he writes, "In the Americas…racial formations have coalesced around two different axes: in the United

States around the axis of domination and exclusion, in Latin America around the axis of hegemony and inclusion."[41] In other words, while racial mixing in Latin America became a means of acquiring or losing social status, racial mixing became taboo and in some places outlawed in the United States—the far extreme of this being the black/white dichotomy of American racial difference, the standard for designating purity/impurity. It was not until 1967 that anti-miscegenation laws were struck down by the Supreme Court.[42] In Latin America, "race" evolved not only as a method of exclusion, but also as a means of colonial subjugation, a type of inclusion.

The notion of race understood by most people today cannot be separated from its colonial origins. These racial formations dictate the social order and interactions of entire communities; they provide social benefits or positions of privilege for some, while simultaneously impinging upon the rights of others, subjecting them to both institutionalized and overt forms of prejudice. Race operates according to the same logic of domination regardless of the context. This logic is the coloniality of power, the underlying structure of exclusion and social hierarchy that originates in colonial atmospheres and becomes ingrained into everyday life to such an extent that it remains even after "post-colonial" or nation-building movements have taken place.[43] This logic of domination is also apparent when racial identities evolve to continue exclusive social practices, as I identify below.

3. Latino/as and the Mechanics of Post-racial Ideology

It often is the case that when philosophers and social theorists think about race in Latin America (or for that matter in other parts of the world), they do so from perspectives grounded in United States understandings about race. The anthropologist,

Woodrow Borah, recounts this tendency in regards to his first attempt at surveying Native Americans in Mexico. In his effort to find native Mexicans he realized that he could not encounter a single person claiming to be an *Indio* (again this is a derogatory term). Instead, he quickly realized that "the Indians" were all around him, they just did not think of themselves in that way, because they maintained practices that were of a mixed heritage (in addition they were not wearing headdresses or making sacrifices atop of some temple).[44] In the United States, race is intricately connected to and emerges from the black/white binary, which places much emphasis on physical appearance, ancestry and sometimes "blood" or genes. This is perhaps why ethnicity is so important as of recent. Ethnicity speaks towards the ways in which culture, custom, religion and language become locations for discrimination or representation.[45]

A more global idea of race can help resolve some of the issues that begin with the intersection of culture, race, and nationalism. This section flushes out the problems with racial identities generated by the existence of people of Latin American descent in the United States. It also helps to resolve some of the following questions: What does the characterization of race in Latin American presented above teach the United States? What does it reveal about "race" in general and racism in particular? How can it help us in the United States identify novel forms of racism? Is it possible to respond to the challenge set out by Linda Martín Alcoff in the following quote?

> The emerging Latino population in the United States is testing existing categories and modes of conceptualizing identity, status, and political effect. We need expanded categories of identity, as well as expanded notions of racism, to provide meaningful representations and analyses, and we need to be willing to devise new creative concepts like ethnorace to be able to avoid unproductive debates about whether Latinos are an ethnicity or a race, whether they are closer to black or white, or whether they represent a threat or a promise.[46]

The rise of immigration populations, various libratory movements, international happenings (such as war or climate change), and economic challenges create a national identity crisis for the United States. A crisis is an indecisive and critical moment often accompanied by feelings of uncertainty, anxiety, and the need for action. As new faces take on political positions historically linked to white males, it is quite natural that the country begins to question whether or not these events symbolize a change in the composition of the nation. Questions like "Does the election of President Barack Obama connote the end of racial barriers?" get to the heart of contemporary debates over the importance of affirmative action and racial discrimination. Other phenomena, like the rise of Korean, Vietnamese, or Spanish-language television programming, generate inquires into what language or way of life (if any) best expresses the United States. These questions are a product of the self-inquisitive nature of the "American" imaginary, insofar as the political institutions of this country remain tied to the nation-state. With nation-states, national identity and nationalism imply the idea of a single "people," i.e. a nation, as the core of the state. The potential dangers of this crisis lie in the fact that examining the relationship between race and society with antiquated models for what constitutes race or racism allows for new forms of prejudice to go unnoticed. One example of this is the recent resurgence of nationalism based on neo-nativist ideals of maintaining "American culture." Another example is the attitude that holds racism (post Obamian "change") to be a nonissue in today's society. Reviewing the Latino/a and Latin American relationship to race, especially as it exists in the United States, can afford the epistemological tools that direct these concerns.

People of Latin American descent in the United States are "mixed" given that their identity brings together two conceptualizations of identity, one Latin the other Anglo.[47] This understanding of mixture extends beyond mixed-race. Latino/as have a mixed-identity, their personal identities transverses the boundaries of a particular set of social relations, a single social ontology. Such is the case for Latin Americans who must engage the forms of racialization currently found it in the United States while maintaining the racial formations and dynamics of their home communities/countries. A system of identification that supports no real notion of mixed-identity makes the identity status of Latin Americans and Hispanics questionable; "are Latinos a race?" or "are Latinos a single culture?"—asked from both Latino and non-Latino perspectives— reiterate this point.

Contrary to popular misconceptions, which are due in part to specific experiences and individual relations to Hispanics, there is no single racial, ethnic, linguistic or cultural requirement necessary for categorization into the generic Latino/a population. Not all Latino/as need to be Mexican, Puerto Rican or Cuban, speak Spanish, eat beans and rice, or dance the tango. Moreover, current literature draws no conclusions regarding whether or not Latin Americans are even a single group or many. Nor is there consensus regarding whether labels like "Latino/a" or "Hispanic" are more useful than nationalistic terms like Argentine or Ecuadorian. Put differently, in the United States, those who are systematically categorized as Latin American, Latino/a, Hispanic or even "Spanish" can thus be thought of as racially, culturally, or ethnically different from others in this country.[48]

This is not to say that for Hispanics of darker skin, "race" is not a significant issue. For many, color-based theories of race and (more important) racism play a major role in their identity. As put by Linda Martín Alcoff, "In terms of pan-Latino identity…when Mexican Americans or Puerto Ricans are called Latino, the latter term will connote racial meanings; whereas Argentineans who are called Latino in the North may escape these connotations."[49] Take for example those Hispanics who come from families originating in southwestern states but no longer speak Spanish or maintain the cultural practices of their country of origin. Part of the American populous, the United States, is (and has been) their country of origin. Still, there is something that makes them Hispanic, i.e., the color of their skin. While it can be argued that their "Hispanicity" or "Latinidad" is due to their ethnicity or heritage, there is no doubt that these people are being treated in ways that correspond to their appearance. In short, while some Latino/as can be racialized, others, who look white, require alternative forms of identification since visual perceptive practices are misleading.

For those Latino/as who escape "traditional" racial connotations, language, custom and culture bear a majority of the mark of difference for them. Many public institutions now consider Latino/a or Hispanic identity a supplementary aspect to racial identity. One can now be "white" but be of "non-Hispanic origin" or "white" and be "of a Hispanic origin." This is the idea of ethnicity, which in the United States functions closer to culture rather than race, according to Zack.[50] However, ethnicity does not replace race as a proper means of identification when visual appearance remains a primary way that people are categorized. Alcoff writes, "When ethnic identities are used instead of racial ones, the perceptual practices of visual demarcation, by which we slot people into racial

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categories, continue to operate because ethic categories offer no substituting perceptual practice. In other words, the fact that race and ethnicity do not map onto the same kinds of identifying practices will make race harder to dislodge."[51] By focusing on the ways in which human beings are always already involved in visceral racial discourses without consciously realizing it (the phenomenology of race), Alcoff cautions of the tendency for color-based racism to persist even during instances where a person does not identify with the race that they are ascribed.[52]

For Latin Americans who would normally be identified as "white," ethnicity comes to serve as a second form of race. In this respect, the category "white but of Hispanic origin" designates different kinds of whiteness: there is that which can be applied to Latino/as of fair skin complexion, then there is that which pertains to the tradition and legacy of whiteness in the United States (which now has linguistic, cultural, and ethnic dimensions to it). For Suzanne Oboler, this creation of an "ethno-race" signifies a step towards changing the concept of race from a false biological determinism to a "rigid socioracial hierarchy of 'ethnic groups.'" Oboler writes, "Contrary to the biological determinism that historically has pervaded U.S. race relations, Latin American intellectuals and scientists alike understood 'race' in social terms—specifically in terms of the belief in the existence of higher and lower cultures, which could clearly be assimilated into a national socioracial hierarchy organized and (in)visibly marked by skin color and phenotype."[53] By designating nonwhite status in the same way being black or brown designate colored status, ethnicity serves the same function of racial exclusion. This signifies the creation or solidification of a white cultural-racial identity or a "white

ethnicity," something that now serves as the basis for a pernicious form of cultural racism.

Zack calls this "postracial race." She holds that the existence of a "white—non-Hispanic" form of identification signals the creation of type of whiteness that is different from the whiteness that pertains to Latino/as of fair skin complexion. The "postracial" aspect of this identity pertains to the ways in which this racial category does not rest on ideas about biology, but instead comes into being by default in the wake of a white supremacist culture.[54] Ramón Grosfoguel, Nelson Maldonado-Torres and José David Saldívar argue that implicit to the idea of race is the idea that "white European/Euro-American groups are always at the top of the racial/ethnic hierarchy."[55] What Grosfugel (*et al.*) call "cultural racism," is "a pervasive form of racist discourse in which the word 'race' is not even used. Cultural racist discourse uses 'culture' as a marker of inferiority and superiority, reinstalling again the same colonial/racial hierarchy of the European/Euro-American colonial expansion."[56]

The now infamous example of cultural-racism is found in the most recent work of the late Samuel Huntington, critic of domestic multiculturalism and Hispanic immigration. Huntington's last book concerns the influx of Hispanic immigration and the potential national fragmentation caused by these people maintaining "non-American" traditions and cultures. He argues that American national identity is connected to the cultural practices that the United States was founded on, making racial differences (in a supposed biological sense) and ethnic differences unnecessary.[57] In Huntington's United States, citizens can be of any color as long as they adhere to "the American core culture," which unites the country and consists of Anglo-Protestant values, traditions and beliefs.[58]

Huntington's argument demonstrates how "whiteness" is something that has made the jump from biology to culture given that his view of United States national identity implies a particular core culture, one that was historically associated with a certain race. An argument can be made that this is but an older view of race in the US, when Poles, Irish and Jews were considered nonwhite races because of their cultural differences. Nonetheless, demanding that all "Americans" (or citizens of the United States) adhere to Anglo-Protestant culture in light of recent immigration is a form of re-racializing the nation, albeit in terms similar to how race operates in Latin America.[59] With Huntington's call for American nationalism, then, the national identity of this country can account for the influx of Latino/as (among others) living in the boundaries of this nation. Here, non-white race still designates impurity and exclusion, just in new terms.

Drawing from Alain Locke, Huntington's neo-nationalism can be considered a case of "imperial politics." For Locke, when people of different ways of life meet, when a "race contact" (as he calls it) takes place, the practices of the dominant or ruling group dictates the political atmosphere of these interactions. Dominant groups impose their social orders through violence or coercion and mold political encounters their way.[60] For Locke, it is characteristic of modern imperialism to demand that the weaker civilization assume the culture of the dominant. Ancient imperialism, of the sort one finds with the Roman imperial project, was not a policy of total subjugation, but one where they made people dependent upon the Roman government (and therefore Roman taxation).[61] Conversely, modern imperialism, the type of which is visible in the European colonial projects of America, required total dominance; not only did modern colonialism require the appropriation of land, people, and resources, it required that the people adopt

"modern culture." Locke posits an economic basis for this: the forced adoption of European civilization required the implementation of European goods under the control of the colonial regimes. This made the European colonial elite socially and economically necessary.[62] This is important in returning to the neo-nativist thought of figures like Huntington, when we remember that the nationalism they purport requires a single people (read "culture") for each country. Not only does this necessitate cultural assimilation for immigrants, which places this instance of imperial politics into Locke's characterization of the modern tradition, but it also keeps alive the socio-economic power structures of white Protestant America on new levels. Huntington is thus an advocate for domestic imperial practices.[63]

Huntington is not alone in his call for an assimilative nationalism. Arthur Schlesinger Jr. also argues for such a position in light of fears that without a unifying culture multiculturalism and ethnic enclaves will balkanize the United States.[64] In fact, Schlesinger's chapter "A New Race," explores the historic need for a politicized identity founded upon civic responsibility and participation in the United States, the American creed being the basis for this identity.[65] As identified by Gunnar Myrdal of Sweden, the American creed consists in the ideals of "the essential dignity and equality of all human beings, of inalienable rights to freedom, justice, and opportunity."[66] Originally, the new race was one of people from common stock, founded in the Anglo-Protestant ability to be "new," to start over in the Americas. Later immigrants from western and northern Europe, such as the Scandinavian, Irish and German, pointed out the troubles associated with the distinctive Anglo bent in the American national character. Similarly, newer immigrants of southern and eastern Europe were at first subject to much hatred and

oppression. All, however, were sold an ideology that implied that they had a duty to mix, argues Schlesinger. However, the "incompleteness" of the melting pot became apparent early on in the 20th century as enclaves of ethnic based communities quickly began to form. This created an either/or logic expressed by Woodrow Wilson and Theodore Roosevelt: either one is American or not, there is no middle ground.[67] Interesting enough, this logic parallels hierarchical theories of race that emerge out of settler societies, i.e. black/white, pure/impure. Schlesinger writes, "The Ethnic upsurge…began as a gesture of protest against the Anglocentric culture. It became a cult, and today it threatens to become a counter-revolution against the original theory of America as 'one people,' a common culture, a single nation."[68]

More recently, Francis Fukuyama argued that the more serious long-term challenge to liberal democracies today concerns the integration of immigrant group *as citizens* of pluralistic democracies. In particular Fukuyama has in mind Muslim immigrants in the first world counties of Europe and the United States. Fukuyama's beliefs that radical Islamic Jihadism arises out of modern identity politics and that Muslim people request specific cultural allowances that liberal societies cannot permit are the basis for this claim.[69] Fukuyama argues that there is not such a great divide between church and state in modern liberal societies. Supporting Huntington, Fukuyama holds that American national identity is distinctively flavored by Anglo-Protestantism to such an extent that it influences everything from the work ethic to politics. This cultural foundation for national values is open to all newcomers, argues Fukuyama.[70] One can add that these values are not just open to newcomers but required, this being the distinctive ability of the American melting pot.[71] Conversely, European national identities have not

been so demanding upon immigrants, and as a result second and third generation Muslim immigrants attempt to discover their sense of identity through radical Jihadism, a de-territorialized Muslim ideology that thrives on alienated Muslim immigrants in European societies.[72]

Fukuyama's suggestion to European nation-states is to formulate nationalisms that are inclusive, but expect conformity to dominant cultural traditions. Put differently, national culture should be universal and open to public discussion, the inclusive aspect of this being that all people are allowed to participate in the discussion. The exclusive side comes out of Fukuyama belief in the need for "guiding cultures," social atmospheres that are respecting of differences and create the necessary and sufficient conditions for public debate over nationalism in the first place. As example he gives the United States melting pot ideal inspired by Anglo-Protestant inclusivity.[73]

I take issue with Fukuyama's depiction of the United States assimilative paradigm because it ends with the types of claims Huntington puts forward. While Fukuyama does a better job of allowing for dialogue, his model for what this dialogue looks like is the American melting pot, with its distinctively Anglo-Protestant cultural flavor. To some extent, insofar as immigrants seek inclusion, and assuming that their phenotypical differences do not get in the way (a large assumption), assimilation is possible. Yet this is a one-way cultural exchange that forces minorities and immigrants to conform, not the dominant group. In this sense, immigrants and racial minorities are not really authentic agents who can contribute to American national identity or European national identities. And, as Mendieta and others argue, the historical and legal dimensions of racism, the ways in which the Constitution, the Supreme Court and United States law have been used

to justify and uphold such things as Jim Crow, the Chinese exclusion act, the annexation of Mexican land, and the removal of Native Americans, raises doubts that racial minorities can buy into American ways of living *as citizens*, like Huntington, Schlesinger and Fukuyama suggest.[74]

Focusing on the social and legal construction of race, and showing how the ideal United States citizen has been racialized by the legacies and legalities of exclusion, Mendieta writes, "Law constructs race by regulating the ways in which social agents can enter and transverse the geography of society and by determining the kinds of affects they can and must feel, whether covertly or overtly."[75] The last part of Mendieta's quote, that pertaining to affect, is important because it connects to the workings of the American imaginary and also leads to a phenomenological critique of the nation-state. Mendieta claims that the Supreme Court has taught a majority of United States citizens how to respond to and value (or de-value) minorities and immigrant groups. Not only does this suggest that American sensibilities are *cultured* through prejudice—i.e. their feelings and attitudes towards others are developed by laws that tell them whom to respect and honor as full citizens and whom not to—but it also shows how a particular culture, or way of living, valuing and feeling, exists at the core of the United States national identity. This culture exists in both a descriptive and normative sense, which reflects the institutionalization of prejudice and how deeply ingrained into the American imaginary it remains. Mendieta performs a phenomenological critique of the nation-state when he points out how prior to entertaining the question of "Who is a citizen?" people inside of the United States have already been claimed by a legal discourse that pre-selects the answer that will be given. The phenomenology becomes obvious when Mendieta brackets

the question of who or what is a citizen, only to find that the history of American law always already shapes our thinking about this ideal person.

Mendieta's phenomenological critique of the nation-state reveals something similar to what Étienne Balibar points out in his work on nationalism.[76] Balibar argues that the fundamental problem for nation-states is how to produce people, since it is a historical fact that no current nation-state in reality has ever maintained a homogenous ethnic base. More precisely, argues Balibar, the real issue for nations is to bring about "the effect of unity by virtue of which the people will appear, in everyone's eyes, 'as a people,' that is, as the basis and origin of political power."[77] For Balibar, social communities are products of the functioning of institutions that serve them (here we can enter Mendieta's thoughts on the intersection of law and political power). National communities, however, attempt to monopolize the workings of state institutions such that one can say that the state belongs to a particular group of people. Similar to how race functions in idealist ways, such that it ventures from the mind of racialists to the reality of particular social ontologies, nationalism springs forth from the workings of national imaginaries and blankets states. These imaginative acts begin as a result of ideology that, as Mendieta highlights, discriminates and influences our understandings about who real citizens are, and, as Balibar notes, assumes in advance that the state exist for this type of people alone.

With the racialization of national identity, it becomes obvious that political power is said to arise from a particular group of people or a particular cultural heritage, either an imaginary collective or an ideal way of being, i.e., an ideal culture. We can identify ethno-racial formulations of this culture using conceptual tools that are made available to

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philosophers of race as it functions in Latin America—at least this is my main contention. When people argue for immigrant assimilation they are placing demands upon newcomers and racial minorities that resemble the seeming inclusive practices found within Latin American formations of whiteness. "Americaness" or "Americanity" remains the ideal from this perspective, just like Europeaness or European culture was dispersed throughout colonial Latin America, the effects of which persist until today.

Ultimately, I do not mean to suggest that with the rise of the Latino/a population phenotypical or color-based racism will end. As pointed out by Ronald Sundstrom, with the influx of racial minorities there is the belief that this coming social environment "will…'overwhelm' our history and render pointless 'old' black and Native American claims for social justice."[78] In other words, it is a mistake to view "the browning of America" as a solution to the problem of racism, because it is thought that all people at some point will be mixed. One can identify this mistake in the work of José Vasconcelos, one of the great thinkers of Latin American *mestizaje*. In Vasconcelos's view, the coming racial synthesis is expected to physically and spiritually unite the people of the world. It is the expected social condition for future humanity. This is rather convenient in terms of hegemony, since it allows the status quo to remain in place, colonial hierarchies and all. Thus, the idea of a mestizo Mexico (Vasconcelos's ideal) honors the dead Indian but pays lip service to those on the streets. One specific lesson philosophers of race in the United States can learns from Latin American political history is the ways in which *mestizaje* does not solve racial tension. Take for instance Benito Juarez, the former President of Mexico, elected to office in 1858. Juarez, Mexico's first President, was a full-blood *Mixtec* Indian, who spoke Spanish as a second language. Although he served for five

terms, the plight of the indigenous did not change. It would be great if Barak Obama's presidency signaled the end of racial oppression. However, as Sundstrom points out, with changes in the national demographic and politics of representation come changes in social justice.[79] While Obama's election is a great moment and step in the right direction for racial justice, we must remember that with every step forward we take in the direction of social and racial justice, prejudice moves with us, as if they are caught in some type of waltz or *salsa*.

4. Notes

[1] *Indio* is a derogatory word in much of Latin America, the connotations of which carry over in the United States as many Latino/as enter this nation.

[2] For the assimilative perspective see Arthur Schlesinger Jr., *The Disuniting of America* (New York: Norton, 1992); Samuel Huntington, *Who are We?: The Challenges to American National Identity* (New York: Simon & Schuster, 2004); Francis Fukuyama, "Identity, Immigration and Liberal Democracy," *Journal of Democracy* (April 2006, Volume 17, Number 2), pp. 5-20; Victor Davis Hanson, *Mexifornia: A State of Becoming* (New York: Encounter, 2007). After the election of Barak Obama the *New York Times* printed the following headline "RACIAL BARRIER FALLS IN DECISIVE VICTORY," Front Page (November 5, 2008). This remains a sentiment apparent in many communities across the United States.

[3] José Vasconcelos's *La Raza Cósmica/The Cosmic Race* (Baltimore: Johns Hopkins Press, 1997) is an excellent example of how a *mestizo* or mixed-race identity can be used in the construction of Mexican national identity. Rather than a text on the philosophy of race or the science behind race theory, Vasconcelos's *Cosmic Race* is better read along the lines I suggest, especially since it is a rather crude and confused consideration of racial science in the early 20th century.

[4] I intend this point to venture beyond simply saying that cultures are "naturalized" in Latin America, i.e., biologically grounded in, or organically connected to a particular group of people (I return to this point in the second section).

[5] Naomi Zack, *Thinking About Race* (2nd Ed.) (Belmont, CA: Thompson-Wadsworth, 2004), pp. 8-10.

[6] See Linda Martín Alcoff, *Visible Identities: Race, Gender, and the Self* (New York: Oxford, 2006), pp. 241-242. I take up Alcoff's view on ethnicity and race in the third section of this chapter.

[7] Eduardo Mendieta, "The Making of New People: Hispanizing Race," *Hispanics/Latinos in the United States: Ethnicity, Race and Rights*, Jorge. J. E. Gracia & Pablo De Grieff (Eds.) (New York: Routledge, 2000), p. 48.

[8] The 1790 Naturalization Act confined citizenship and thus national identity to white, land-owning males. Similarly, the history of slavery, segregation, Jim Crow and a prison system that disproportionately houses minorities also have a bearing on the ideal United States citizen. See Ian Haney Lopez, *White by Law* (New York: NYU Press, 1996).

[9] Peter Wade, "Race in Latin America," *The Blackwell Companion to Latin American Anthropology*, Deborah Poole (Ed.) (Malden: Blackwell 2008), p. 177 (emphasis in original).

[10] Michael Omi & Howard Winant, *Racial Formation in the United States* (2nd Ed.) (New York: Routledge, 1994), p. 184.

[11] Peter Wade, "Race in Latin America," p. 177; Robert Bernasconi and Tommy Lott, *The Idea of Race* (Indianapolis: Hackett Publishers, 2000), p. viii; Zack, *Thinking About Race*, p. 7.

[12] The fact that race is a product of modernity which still functions as a major component of human identity suggests that coloniality, or the specific instantiation of political power as it takes place in colonial settings, remains active in nation-states such as the United States. I will come back to this in the next two sections.

[13] Drawing from Heidegger and Michel Foucault, Falguni Sheth focuses on race as a "technology" and furthers the Heideggarian comparison, especially the idea of "enframing." See Falguni A. Sheth, *Towards a Political Philosophy of Race* (Albany: SUNY Press, 2009), pp. 35-39.

[14] Martin Heidegger, "The Question Concerning Technology," *Philosophy of Technology: The Technological Condition (An Anthology)*, Robert C Scharff and Val Dusek (Eds.) (Malden, MA: Blackwell Publishing, 2003), pp. 252-264.

[15] I have in mind W. E. B. Du Bois's "The Conservation of Races." See Bernasconi and Lott, *The Idea of Race*, pp. 108-117.

[16] I am putting aside the point that there will be differences inside of these two larger paradigms. There is no doubt that these generalizations about race formation will have exceptions. Take for example the way race works in Louisiana and other parts of the North America, the previous subjects of French colonization. The endorsement of

creolization, a type of blending of culture and race, speaks towards the distinctive French-Latin aspect of this segment of the United States. Another example is the ways in which race functions in Argentina and other places in Latin America with steady legacies of European immigration. The use of eugenics and its endorsement by thinkers like the Argentine Domingo Faustino Sarmiento, in addition to the color-based racism apparent in these places, resembles the workings of race in the United States. Another issue is that of the African influence on race formation in Latin America and the Caribbean. This poses distinctive challenges to my characterization of race in Latin America (which I will explore below). Still, I think the two general patterns I identify hold and are consistent with much literature.

[17] Carlos A Fernández, "La Raza and the Melting Pot: A Comparative Look at Multiethnicity," *Racially Mixed People in America*, Maria P.P. Root (Ed.) (Newbury Park, CA: Sage, 1992), p. 135.

[18] Walter Mignolo, *The Idea of Latin America*. (Malden: Blackwell, 2005) p. 16; Jorge J.E. Gracia, *Hispanic/Latino Identity: A Philosophical Perspective* (Malden: Blackwell, 2000), pp. 90-96; Fernández, p. 135.

[19] Fernández, "La Raza and the Melting Pot," p.135; Alain Locke, *Race Contacts and Interracial Relations*, Jeffrey C. Stewart (Ed.) (Washington, D.C.: Howard University Press, 1992), pp. 24-25.

[20] Fernández, "La Raza and the Melting Pot," p. 136.

[21] Alain Locke argues that one of the first instances of the idea of a Germanic-Saxon people sprang up within the work of German philologists in mid-19th century. Especially important is Jakob Ludwig Karl Grimm, the collector of folk tales, author of the German Dictionary and the *Grammatik*. While writing about the creation of the idea of racial superiority, Locke states, "it was [Grimm and other philologists] who invented the fiction of the Indo-Germanic peoples and the Indo-Germanic language [.] They also translated the notion of the Aryan languages into the notion of the Aryan peoples—a broad classification of Caucasian groups, which had never been thought of before and which was made necessary by their rather broad outlook upon the world of cosmopolitan culture." To some extent, this lends support to Fernández's argument since the ethnic polarization produced by Roman Imperialism corresponds to the cultures from where Grimm and other mid-19th century linguist turned for their work. See Alain Locke, *Race Contacts and Interracial Relations*, p.73 (note: the original is bracketed since it is an edited version of Locke's 1916 lecture notes).

[22] Wade, "Race in Latin America," p. 179.

[23] When indigenous political organization was encountered, attempts were made to disrupt it, e.g., by not recognizing women leaders or denying its existence in official discourse. However, I am not sure how valid Fernández's point is on this matter

considering that the Iroquois League of Nations was an established political configuration, although they were not imperialistic in the sense that the Aztec or Inca were. Nevertheless, Fernández wishes to demonstrate how differences in the types of Native Americans played a role in race formation.

[24] Fernández, "La Raza and the Melting Pot," p. 135.

[25] For more on the relationship between race and class in Latin America see Charles Wagley, "On the Concept of Social Race in the Americas," *Essays on Mexico, Central and South America: Race and Ethnicity in Latin America*, Jorge I. Dominguez (Ed.) (New York: Garland Publishing, 1994).

[26] Ofelia Shutte, *Cultural Identity and Social Liberation in Latin American Thought*, (New York: SUNY Press, 1993), p. 116.

[27] Jorge J.E. Gracia, *Hispanic/Latino Identity: A Philosophical Perspective* (Malden: Blackwell, 2000), p. 114.

[28] Fernández, "La Raza and the Melting Pot," p. 129.

[29] Fernández, "La Raza and the Melting Pot," p. 142.

[30] For more on the concept of mestizaje, especially in terms of the United States, see Gregory Velazco y Trianosky, "Beyond Mestizaje: The Future of Race in America," *New Faces in a Changing America: Multiracial Identity in the 21st Century,* Loretta I. Winters and Herman L. DeBose (Eds.), (Thousand Oaks: Sage Publications, 2003), pp. 176-193.

[31] Wade, "Race in Latin America," p.179.

[32] Zack, *Thinking About Race*, pp. 9, 25-33

[33] Wade, "Race in Latin America," p. 178.

[34] Alain Locke, "The Concept of Race as Applied to Social Culture," in Bernasconi and Lott, *The Idea of Race*, pp. 89-99.

[35] In a recent study conducted by the United Nations Children's Fund (UNICEF), the estimated number of Native Americans in Latin America is 40 million (10% of the population of Latin America). What is interesting is that this study is accompanied by a break down of how many indigenous languages remain in use today (420). One can speculate that given the focus on language, this was a means through which indigeneity was determined. If this is true, it shows how "biological" categories alone are useless in determining race and ethnicity in Latin America. In fact, many mestizos/as could be considered indigenous by US standards (leaving out language) yet are not because of the

endemic racism which remains. See Deborah Bonello, "Latin America has 40 mln natives with 420 languages: UNICEF," *The Los Angeles Times* (12-15-2008).

[36] Appiah, p. 123.

[37] Ibid., p. 124.

[38] William Darity Jr.; Jason Dietrich and Darrick Hamilton, "Bleach in the Rainbow: Latin Ethnicity and Preference for Whiteness," *Transforming Anthropology* 13:2 (October, 2005), p. 103.

[39] Darity, *et al*, "Bleach in the Rainbow," p. 105.

[40] If one can become a different race by dressing like a European and speaking Spanish, then it could be said that a type of "passing" is taking place, but only from a North American perspective. To some extent, then, most mestizos/as (and for that matter mulatto/as) are passing even though they may be full-blood Indian, black, or simply light skinned. Yet this is a simplification of racial dynamics in Latin America, considering that culture is a factor in the calculus that determines racial categories. If this does not suffice, note that there is no conscious or mental effort involved with the type of passing in question, although it may have been the case during colonial times when indigenous and African people tried to become mixed. Subsequent generations of Latin Americans simply inherited this racial dynamic.

[41] Mendieta, "The Making of New People: Hispanizing Race," p. 56.

[42] Naomi Zack, "American Mixed Race: The U.S. 2000 Census and Related Issues," *Harvard Black Letter Law Journal*, Volume 17 (Spring, 2001).

[43] For more on theories of race as connected to the coloniality of power see Aníbal Quijano, "Coloniality and Modernity/Rationality," *Cultural Studies* (Vol. 21, No. 2, 2007). Even in a post-racial age, types of racism apparent in other parts of the world are still functioning inside the United States: hence de-colonialism still needs to take place even though many post-colonial settings foster a racially diverse environment. A decolonial critique of race and racism posits that these issues are not resolved by the simple removal of European colonial rulers. It is often the case that American born Europeans, and other individuals of high social status, recreate forms of oppression that took place in the initial colonial practices. Thus, superficial adherences to "post-colonialism" or nation-building periods assume that autonomy resolves all social ills in colonial regions like Latin America. In this sense, post-colonialism is just as liberating as a post-racialism.

[44] See Borah, Woodrow, "Race and Class in Mexico," *Essays on Mexico, Central and South America: Race and Ethnicity in Latin America*, Jorge I. Dominguez (Ed.) (New York: Garland Publishing, 1994).

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[45] For a series of essays on the relationship between ethnicity and race, especially in regards to Latino/a identity and African Americans, see Jorge J.E. Gracia (Ed.), *Race or Ethnicity? On Black Race and Latino Identity*. (Ithaca: Cornell University, 2007)

[46] Linda Martín Alcoff, *Latinos Beyond the Binary*, p. 126.

[47] This is another meaning of mixed, different form the one described above concerning mixture based on the acquisition of culture.

[48] For a recent philosophical exploration on the problems with Latino/a identity see Jorge. J. E. Gracia. *Latinos in America: Philosophy and Social Identity* (Malden: Blackwell, 2008).

[49] Alcoff, *Visible Identities,* p. 241.

[50] Zack, "American Mixed Race," pp. 15 & 37.

[51] Alcoff, *Visible Identities*, p. 242.

[52] Ibid., p. 243.

[53] Suzanne Oboler, "It Must Be A Fake!," *Hispanics/Latinos in the United States*: *Ethnicity, Race and Rights*, Jorge. J.E. Gracia & Pablo De Grieff (Eds.) (New York: Routledge, 2000), p. 130-132.

[54] Naomi Zack, "Ethnicity, Race, and the Importance of Gender," *Race or Ethnicity? On Black Race and Latino Identity*, Ed. Jorge J.E. Gracia (Ithaca: Cornell University, 2007), pp. 118-119.

[55] Maldonado-Torres, *et al*, p. 12.

[56] Maldonado-Torres, *et al*, pp. 12-13.

[57] As example Huntington gives his friends who are "Anglo-Protestant Jews," see Samuel Huntington and Alan Wolfe, "Creedal Passions," *Foreign Affairs* (September/October, 2004). This is rather astounding idea given that his definition of culture includes religion. If religion is a part of one's culture, and Huntington is a cultural monist, how can one be an Anglo-Protestant Jew?

[58] Huntington, *Who Are We?*, p. 19.

[59] Through his claims for adherence to "American culture," Huntington inadvertently supports the Latino/a influence on race in the United States, the "Hispanizing of race."

Given his fears of the Hispanization of the United States, his arguments are in many ways a bit too late.

[60] Locke, *Race Contacts*, p. 22.

[61] Locke argues that the Romans in many ways absorbed the local groups into their own cultural hodgepodge. Fernández would argue that this is the beginning of Latin American mestizaje.

[62] Locke, *Race Contacts*, p. 26.

[63] For an alternative account for how Huntington is an advocate of domestic imperialism that hinges upon the coloniality of power see Nelson Maldonado-Torres, "Decolonization and the New Identitarian Logics after September 11: Eurocentrism and Americanism against the New Barbarian Threats," *Radical Philosophy Review* (Vol. 8, 2005).

[64] Schlesinger Jr., *The Disuniting of America*, pp. 13, 118-119.

[65] Schlesinger notes that his use of 'race' corresponds to 18th and 19th century European connotations associated with "nationality." What is interesting about this theory of national identity founded in civil participation and responsibility is that it opens the door for undocumented immigrants, who do much of the work the allows American society to subsist, to claim that their participation goes unnoticed. Recognizing the work of the unauthorized immigrants poses a question to recognizing their legitimacy as citizens from Schlesinger's point of view.

[66] Schlesinger, p. 33.

[67] Ibid., pp. 34-41 (see p. 40 for his use of 'incompleteness,' as it implies that total assimilation is the key).

[68] Ibid., p. 49.

[69] Fukuyama, "Identity, Immigration & Democracy," pp. 5-6. For more on Fukuyama's criticism of identity politics see chapter I of this dissertation. For a response to Fukuyama's claim that Muslim groups ask too much of liberal societies take a look at Tariq Modood, "Muslims, religious equality and secularism," *Secularism, Religion and Multicultural Citizenship*, Geoffrey Brahm Levey and Tariq Modood (Cambridge: University Press, 2009), pp. 164-185.

[70] Fukuyama, pp. 7-13.

[71] Gracia, *Hispanic/Latino Identity*, pp. 110-111.

[72] Fukuyama, pp. 10-11 (for the sources of radical Islam) & 13-14 (for European nationalism).

[73] Fukuyama, pp. 15-19.

[74] Eduardo Mendieta, "Racial Justice, Latinos, and the Supreme Court," *Race or Ethnicity? On Black Race and Latino Identity*, Jorge J.E. Gracia (Ed.) (Ithaca: Cornell University, 2007), pp. 206-224

[75] Mendieta, "Racial Justice, Latinos, and the Supreme Court," pp. 210-211.

[76] Etienne Balibar, "The Nation Form: History and Ideology," *Race Critical Theories: Text and Context*, (Philomena Essed and David Theo Goldberg (Eds.) (Malden: Blackwell, 2002), pp. 220-230.

[77] Balibar, "The Nation Form: History and Ideology," p. 221.

[78] Ronald Sundstrom, *The Browning of America and the Evasion of Social Justice* (Albany: SUNY Press, 2008), p. 3.

[79] Sundstrom, *The Browning of America*, p. 3.

CHAPTER VI

FROM IMMIGRANT ENCOUNTERS TO *ESTADOUNIDENSE*

I began this work by differentiating national-citizenship from legal-citizenship. National-citizenship is the activity of being a citizen. It is heavily normative, and as a result, at times it can be subject to racist and culturally exclusive ideologies—even in ways that reflect novel racist practices. Critical multicultural discourse is needed so as to ensure that nations remain sites of cultural exchange and inclusion. As sites of inclusion, pluralistic nations are more likely to not turn away strangers or associate newcomers with "enemies." Thus, immigration reform aimed at the category of legal-citizenship depends in part on culturally plural atmospheres. Yet, multiculturalism is a difficult ideal to achieve, and it must be accompanied by understandings of the state that do not just include marginalized perspective into oppressive power dynamics, but actual changes to the balance of power. On account of the impetus for change being the material needs of the marginalized and oppressed, Dussel's "analectical politics" aim for political transformations while also laying the foundations for an appropriate understanding of the state needed to combat power imbalances associated with the idea of citizenship.

Legal-citizenship is the site where the battle over immigrant rights takes place. I argue that the exclusive nature of legal-citizenship rights cannot be maintained in light of the arbitrary nature of borders. And yet, legal-citizenship is necessary for national-citizenship and the existence of political communities in general, and so we need to rethink our understanding of borders so as to allow for more robust and fair constructions of state membership. The liberal assumption that political theory can begin from conceptions of the state that are self-enclosed is untenable. John Rawls' work served as

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my main example of this, based on his own standards for what constitutes a reasonable argument. The problem with this self-enclosed origin is that it determines the trajectory for subsequent political thought on the topics of political institutions, state membership, and citizenship rights in ways that are heavily dependent upon the boundaries between countries. These boundaries are morally indefensible, outside of utilitarian appeals to the need for political order, and not so clear-cut or well defined in actuality. State boundaries are products of historically contingency but also the primary means by which legal-citizenship is determined. Rethinking the reality of borders reveals that they are in constant movement and constantly moved through. The historical and ongoing relations between states, based on treaty, trade and the global market, defy the self-enclosed nature purported by mainstream political theorists. Our views on state membership should follow suit.

In this concluding chapter, I argue that two axioms exist at the core of all political philosophy in the Americas: the *discovery* of America and the *encounter* of America. I use the term "axiom," since the resulting political atmospheres stemming from these concepts have a determining effect on the resulting political arrangements (such that it could almost be deduced from the concept itself). These understanding of the events of 1492 contribute to the theories of the state, understandings of multiculturalism and views on national-citizenship found throughout the region. The *discovery* of America connects to the settler societies of New England, the legacy of which attempt to maintain exclusive, bordered and fixed understandings of group identity. The *encounter* of America presents an ethical and political opportunity to interact with another human being regardless of their national affiliation or geopolitical situation. Aware of the history

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of "encounter," the first section of this chapter argues for political practices that respond better to questions of unauthorized citizenship, multiculturalism and social justice.

In the 21st century, due to the flow between borders and the rise of a minority-majority population, the basic axioms of "American" political thought (especially those associated with the justification of the settler society) stand in need of reconfiguration. Latin American political formations, and the social hierarchies that undergird those societies, provide the United States with the possibility of rethinking the relationship between race, national identity, and citizenship. In the second section of this conclusion, I will present one such re-conceptualization of U.S. citizenship and national identity, namely that of *Estadounidense*. This idea breaks with the assimilative paradigm of "American" domestic imperialism, while also providing the opportunity for novel forms of political existence to manifest.

1. Core Political Axioms: Settlerism vs. Discovery

Certain political axioms emerge from, and also support, interpretations of the initial meeting between the indigenous inhabitants of America and the European colonizers. I will focus on two paradigmatic understandings of this event: for some America was *discovered* while for others it was *encountered*. Though equally complex and debatable, these ways of viewing the historical events of 1492 help to shape the theoretical landscape of political thought in all of the Americas.

The difference between "encounter" and "discovery" has been explored at great length.[1] Most literature on this debate concerns the perspective(s) represented by each term, i.e. European, "Latin American," "mestizo/a" and indigenous. However, *encounter* and *discovery* serve as political poles that can lead towards different responses to

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multiculturalism, possible paths towards alternative conceptions of citizenship, and different notions of the state (one modeled on the modern subject, the other more inter-subjective).

"Discovery" is the dominant interpretation of the events of 1492 in the Anglo-American world. In a settler society like the United States, the discovery of America signifies a barren land, empty of *real* human inhabitants. The most apparent manifestation of this thought is the appropriation of the term "American" to describe the citizens of the United States. The paradigm of discovery lends itself to the exclusivist project of assimilative nationalism. The link between discovery and assimilative expectations is the settler society, a self-sustaining, enclosed community of transplanted individuals (Europeans) living in a new region. Nationalisms incorporating assimilative ideals require that immigrants integrate into the dominant social group when seeking admission into the body politic of a country such as the United States (assuming that full admission is possible in the first place). The concern is that a politics of multinationalism and the existence of immigrant cultural enclaves may result in the balkanization of the country. Here, the price for membership is cultural alterity; with assimilative nationalisms cultural influence is one-directional: immigrants must conform and not the dominant cultural/national group.

Complete cultural assimilation is a strange request, however, since the migratory experience, the fact of being part of an immigrant group, tends to "create" or solidify ethnic identities in the first place. In their home countries, those who immigrate are not fully aware of their "ethnic status," in the sense that they tend to be part of the dominant social grouping (this is <u>not</u> the case with ethnic refugees, obviously). For those who were

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part of the majority, their national identity, race or ethnicity acquires new meaning in the context of emigrating and subsequently immigrating. Once upon the shores of the United States, the Irish became an "ethnic group." And yet, the assimilation process, which aims at eliminating ethnic differences, attempts to undo what immigration does.

On the other hand, for those employing "encounter" (*encuentro*), this idea signifies that people were in the Americas before Europeans arrived. A "discovery" took place only from a Eurocentric perspective. For Enrique Dussel the term "discovery" not only begins from a European perspective but also requires at least two different moments of European understanding. The first "covers over" America by mistaking it for Asia; the second "dis-covers" the mistaken identity.[2] For many, this is the only significance of encounter. However, extending this idea, I will argue that encounter is a better framework than discovery for dealing with questions of multiculturalism and perhaps even national-citizenship Based on the history of "political meetings" or encounters in Latin America, I will suggest that this paradigm can lend itself to a political philosophy that responds better to Latino/as and other people whose existence in the United States is predicated upon internationality, i.e., people who, regardless of their citizenship status, have historically represented a "non-American" identity. The paradigm of encounter could put political thinkers on the path towards alternative bases for state membership. When based in a framework that acknowledges the coming together of people, encounters provide ethical opportunities or ways of being that necessitate a blurring of the line between praxis and contemplation.

For the United States, the fundamental politico-philosophical question is the justification of the "settler society." In her book coauthored with Charles Mills, *Contract*

and Domination, Carole Pateman supports this point when she writes that the question of legitimacy is unavoidable for the settler societies of North America, Great Britain and Australia.[3] Historical justifications, which have drawn heavily from John Locke, bypass any debate about whether the initial colonies of Great Britain were predicated on conquest or colonialism, the former being the outright declaration of war against natives, while the latter is the establishment of a settlement. For Pateman, the idea of *terra nullius* (empty land or land devoid of life) in addition to the *rights of husbandry* help justify British colonial enterprises by referring to unused land and absence of formal government (sovereignty) amongst native people.[4] In this sense, "conquest" is said to be a nonissue at the beginning of the United States, although one can argue that after Manifest Destiny, the appropriation of Mexican land, and other American imperial projects conquest emerged as a central concern.

The "settler question" serves two main purposes: First, it explains how and why countries like the United States can lay claim to the land that they exist on. In an area lacking sovereign inhabitants or in an area where indigenous people fail to recognize the full potential of the land they live on, early colonial political thinkers saw the potential for justifying appropriation. By positing the idea of *terra nullius*, apologists of European imperialism create a clean slate (using the language of "state of nature") from where states and subsequently nation-states can be created. As typical of states, these states are supported by social contracts with settler contracts as their ultimate base.[5] Having a settler contract is characteristic of modern colonial polities. The idea of "discovery" thus furthers the settler justification by establishing a rhetoric of prior emptiness that allows for the initial land holdings of a community.

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Second, the settler paradigm provides a means through which hegemonic power can be situated and maintained. Settler societies do not live amongst natives and form mixed communities like the Iberian Conquistadors did in what became Latin America. Settler societies rely upon the idea of self-enclosed, self-sustaining groupings. At their extreme, the types of nationalisms that settler societies exhibit generate an understanding of racial purity and a logic of exclusion that culminate in hypodescent theories of race. In this manner, the United States, supposedly based on the initial Anglo-Protestant settler community, is the continuation and legacy of European imperial projects. Eduardo H. Galeano makes a similar point when he writes,

> The *Mayflower* pilgrims did not cross the sea to obtain legendary treasures; they came mainly to establish themselves with their families and to reproduce in the New World the system of life and work they had practiced in Europe. They were not soldiers of fortune but pioneers; they came not to conquer but to colonize, and their colonies were settlements.[6]

By maintaining Old-World systems of order and exclusive communities of ethnically European people, the United States is a full partner in the racist, masculine and imperialist/colonial projects of the North Atlantic. The fight to maintain the direction of the nation-state, amidst the growing minority-majority population, thus challenges the legacy of imperial hegemony.[7]

As Pateman notes, the settler contract is bankrupt insofar as it rests upon the idea of *terra nullius*. Even though the Australian legal system has ruled *terra nullius* to be fiction, not to mention that it is politically insensitive to discount the pre-existence of native people in a colonized region, the expected legal challenges to national sovereignty are still missing in the United States.[8] The persistence of *terra nullius* is perhaps due to the fact that the rhetoric of emptiness remains ingrained in ordinary life, which is a sign of the great extent to which the modern imperial projects have been successful. However,

I argue that the political axiom of discovery is becoming less important given the growing number of people of Latin American descent in the United States. Besides changing the demographics of the country, Latino/as are also challenging the bedrocks of political theory by creating new angles from which questions of multiculturalism, multi-nationalism, national-citizenship are starting to arise.

Political philosophical thought about the political existence of Latino/as and Latin American immigrants in the United States is predicated on different axioms than the legacy of much Western political thought. Political issues regarding Latino/as do not presuppose land to be open and ripe for the taking. Through the lens of migration, Latin American immigrants arrive into populated or occupied territories. For migrants, the political question is one where dealing with differences and being "extra-national" cannot be ignored. As Nelson Maldonado-Torres, Ramon Grosfugel, and Jose Saldívar write, "Migrants do not arrive to an empty or neutral space."[9] Histories of colonialism and hierarchies of power pollute the political spaces where immigrants seek to go. Thus, for Latin American immigrants, and by association Latino/as who are already in the United States, a different political question needs asking: rather than assuming a political philosophy that begins with the idea of emptiness, which can be construed as a type of "original position" or "the original state of nature" from where abstract principles of ownership can be formulated (i.e. settler contract), Latino/as start from international or "trans-national" (in my Dusselian sense) predicaments.

Based on the types of indigenous people in the region, the method (and history) of the Iberian conquistadors and their subsequent interaction, the fundamental politico-philosophical paradigm for Latin America is that of encounter. Immigrants (authorized or

not), indigenous politicians representing subaltern perspectives and people of Latin American descent in the United States further this paradigm. The politics of encounter begin with the coming together of two people(s) or groups. Encounters start from where people are in the United States and in Latin America: post-colonial America.[10] However, this alternative basis for political thought harbors *decolonial* commitments, it combats the exclusivist and hegemonic orientations of nation-states rather than merely solving the problem of colonial rule itself. Thus, the politics of *encuentro* arise from "the outside" of nationality, a positioning other than that typically called to mind by the normative meaning of "American" or other nation-building projects.

The paradigm of encounter has been viewed with much suspicion. Dussel's warning and implicit criticism is found in the following: "If the *meeting* (*encuentro*) of two worlds were to signify the new hybrid, syncretistic culture that the mestizo race is articulating, its content would be acceptable. Popular culture in its own creative consciousness would then be producing this meeting, and not the brutal event of conquest."[11] I take Dussel's concerns further since I am weary of the traps of "mestizaje" and other unifying narratives in Latin America (see chapter 5).

I interpret the idea of *encuentro* only as the *con-front*ation of different people, the historical fact of a coming together and the attempt to workout some form of peaceful yet productive coexistence. Notice how the Spanish *frontera* (border) and the English *frontier* share the Latin *frons* as their root. The original meaning of *frons* refers to the "front brow" on a human face. Broken down further, this word also referrers to that foremost part of an object, that which would come into contact with other things (the boundaries of a nation). Hence the idea of exchange or encounter between borders is

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derivative of this root. Add the prefix *con* to this, or "with," and one has "confrontation," not in a negative sense but one inclined towards meetings.

My interests are in the political significance of what happens when different cultures meet. Often time these meetings end violently. When this occurs war and eventually conquest begin. War develops when the appropriation and control of land/resources are in the background. From historical positions of social and political clout, this is seemingly the case when indigenous politicians win a majority of votes or when it appears as though Mexicans are taking over southwestern United States. Yet, *encounter* does not have to end in violence. This framework highlights the shared ethical responsibilities that people have for maintaining their places of residence or dwelling. Sometimes these responsibilities imply allowing dominated peoples to take part in the governance of a region. Other times recognizing the social and economic contributions provided by alienated portions of society is required.

When assuming bordered, self-enclosed and nationalistic polities, the basic assumptions of Anglo-American political philosophy run counter to that of encounter. At times, this renders North American political thinkers somewhat incapable of critical thought regarding such issues as undocumented immigration and national-citizenship. One possible reason for this inability stems from the specified and thus limited conceptions of justice found in this tradition—most are fixated with private property, the welfare state, nationalism, war, and establishing borders. The theory of the state that arises from this perspective can be understood as the inheritor of modern colonial forms of social arrangement, namely, the settler society.

Rather than starting as pure *subject* or *national*, Latino/as begin from *inter-*subjective or *inter*-national predicaments, with foreign nationality, race, ethnicity and even culture serving as the signifiers of this status. Thus, a Latino/a political philosophy begins from the outside of nationality, a positioning that can respond better to the dynamic social climate of the United States and other first world countries. With a state that begins inter-subjectively, the model for social interaction is not assimilation but *asimilao*, an idea that fosters reciprocal cultural exchanges between immigrants and other "extra-national" individuals.[12] In advocating for this ideal, my project falls in line with Dussel's *Invention of America*. There, he argues for the realization of a true dialogue between the European and the colonized victim amidst the epistemic monologue of European modernity. The "monologism" results from the unwillingness to listen to an-Other. This unwillingness stems from the universalization and imposition of strict standards for knowledge, and the subsequent naturalization of indigenous bodies and ways of thinking. In contrast the *transmodern* attempts to articulate a de-historicized, unbounded human being that "progresses" through interacting with Others on equal terms. This is perhaps a better model for the state in the age of human migration. Human interests are better served by taking encounters for what they are, meetings, and trying to foster a sense of dialogue and mutual respect that does not alienate significant portions of society nor ignore the legal demands of civil participants who lack proper identification.

2. Re-Thinking the Meaning of 'American': *Estadounidense*

Attempting to introduce the question of internationalism or multi-nationalism to domestic/national politics, this section will explore the possibility of one such re-conceptualization of "American" national identity, the idea of *Estadounidense*, or

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Spanish for "citizen of the United States" and something akin to "Unitedstatesian".
People of Latin American decent are changing the mechanics of racial exclusion in the
United States, which brings to the fore novel types of participatory government that
acknowledge the various ways that individuals can be "political" and not have legal
status.

It is perhaps because all the nations of this region stem from the same era of
modern colonization, that the search for freedom (as a social and political category) is
bound to freedom of consciousness in all the Americas. This remains the case in literature
generated by Black Americans seeking incorporation into mainstream United States
society as well as Latin Americans seeking to break old colonial regimes.

For instance, in the philosophy of race in the United States, friction exists
between what can be called race-conservation and race-repudiation. Best espoused by
thinkers like W.E.B. Du Bois and the first Harvard educated Black philosopher Alain
Locke, the conservationist view seeks an authentic culture that can stand alone as an
original contributor to the goals of humanity. This is evident in Du Bois's call for the
embracement and cultivation of Black identity as a means of achieving a level of group
awareness that demonstrates a readiness for full citizenship.[13] Locke called this "the
stimulation of a secondary race consciousness."[14] In addition Locke writes, "one must
conform to the civilization type, but mere social imitation is, unfortunately, useless, for
the reason that it involves antagonisms and reactions on the part of the dominant group
that actually engender what we know as social friction."[15] On the other hand, the
repudiation view asks for an authentic understanding of the self that depends upon ideas
generated by an existential awareness of choice and a rejection of false biological notions

of race. Naomi Zack express this latter view when arguing that a first-person *existential* identification with a biological race is "tragic," because it is based on false scientific ideals; to identify (on a first-person individual level) with ideas generated for domination and servitude provide no possibility of understanding one's own life as free.

The tension I am concerned with arises when both currents of thought (i.e. race-conservation and race-repudiation) appeal to notions of authenticity, originality and freedom. There is no doubt that a link exists between freedom of mind or consciousness and a turn away from imperial impositions that colonize the mind. This is obvious in much Latin American political thought. For Latin Americans, projects of de-colonization often begin from a desire to avoid imitation. From Simón Bolívar to José Martí, Andrés Bello to Zea, the work of many Latin American intellectuals has concerned the intersection of cultural, racial, and political authenticity.[16] The idea of cultural identity as connected to the fear of being heteronymous or imitative plagues much Latin American thought. As such there is a constant desire in much Latin American literature to articulate understandings of the Latin American predicament that begins from one's own perspective, i.e., a colonized "mestizo/a" perspective.

In one word these various libratory movements can be summarized in the *nuestra* (or "our") of Martí's essay "Nuestra Ameríca" ("Our America"). For the Cuban thinker and journalist, "Nuestra Ameríca" is the articulation of an understanding of the geo-political positioning of Afro-Caribbean, Mulato, Mestizo/a, and other Latin Americans that differs from understandings of the region that are espoused by "Americans" in the north and conservative elites seeking to maintain oligarchies of power in the south. For Martí, *Nuestra Ameríca*, or "Our America," is an understanding of America for Latin

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Americans grounded in the histories of the indigenous people and the non-erudite social repressed/oppressed groups of the region.

Evaluating comments like Martí's, the Mexican philosopher, Leopoldo Zea, writes, "Originality is one of the major preoccupations of Latin American culture. Questions about the possibility of a Latin American literature, philosophy or culture are a clear indication of this concern with Latin American originality." Zea then asks the following question: "Originality as against what?" He continues, "Originality with respect to Europe, or Western culture. However, the expression 'with respect to' (*frente*) should rather be interpreted to mean 'in the presence of' (*ante*)."[17] Originality in this sense is not the creation of something *ex-nihilo* (from nothing) or from abstraction, for this tends to be a European understanding of originality. Rather originality in the Latin American context is the act of recreating, i.e., using something in an untypical manner for one's own purpose. To become authentic in a Latin American standpoint is to take part in the recreation of Western culture, argues Zea; for Latin Americans to be authentic in light of the centuries of colonialism means that they must become contributors to the cultural climate of the region rather than mere imitators or those seeking recognition from the dominant powers that be.

This type of authenticity, which Zea argues occurs in the presence of others and not in nothingness or abstraction, is the type of political being that is required in today's age of migration. One such idea, meant to be a microcosm of the Latin American political tradition, is that of *Estadounidense*, which is the Spanish word for citizen of the United States, akin to "unitedstatesian." For an individual to claim that they are an Estadounidense and not an "American" consciously acknowledges the history of

colonization and imperialism associated with the latter term. *Estadounidense* is a break

with the rhetoric of emptiness that continues "America" as a continent devoid of other

inhabitants. *Estadounidense* is a view of citizenship based on the notion of cultural

pluralism. It is a Hispanic racial, cultural and ethnic *conservation* and simultaneously a

repudiation of racist and ethnocentric beliefs about what constitutes an "American"; it is

a type of political authenticity. *Estadounidense* offers *a* way of thinking about U.S.

national identity and citizenship that is not racialized (nor racialized) by what is called

"hegemonic identity politics." However, my point is not to get people to use a new word

when they speak of themselves as a citizen of the United States (I do not care about that).

I want people to think about the meanings associated with such a terms and also realize

what legacies attach to the terminology they use.

It is apparent that as a nation we live in a critical moment. This moment is

perhaps part of a larger predicament that the world is currently in. Immanuel Wallerstein,

the world-systems theorist, identifies this as the brink of a new historical system. From

Wallerstein's perspective, the planet is entering into a new phase of history. It is one

where diverse historical possibilities are possible: the axes of power can remain the same

and thus privilege a racial, gendered, capitalist and imperialist hegemony, or it can shift

towards a more just and equitable system that combats the legacies of oppression around

the world.[18] Seeing how Latino/as are a growing populous inside of one of the most

dominant super power in the current state of affairs, their role as potential agents of

change on a global scale is great. Thus, there is crucial need for rethinking the

relationship between legal-citizenship and national-citizenship if we wish to (a) take

advantage of the political climate associated with the opportunity for "change" and social justice, and (b) combat the hegemony of the current world order.

In addition to the new axiomatic trajectory mentioned in the last section, it is important to add that ethnic minorities and other populations historically alienated from the national imaginary must take part in the construction of these new nationalisms. It is not enough to say that individuals of diverse backgrounds or national affiliations must be recognized as members of the body politic. The politics of recognition, in this sense, does empower some but it keeps real power in the hands of those who do the recognizing. As civic participants in the public domain, such people as immigrants and others like Latino/as must articulate political meanings that are partially their own doing. Put differently, in order for these new nationalities to be meaningful on a personal level they have to self-articulated and arise from the perspective of a consciousness searching for self-recognition (not recognition from others).

3. Notes

[1] See Walter Mignolo, *The Idea of Latin America* (Malden: Blackwell, 2005).

[2] See Enrique Dussel, *The Invention of the Americas: Eclipse of "the Other" and the Myth of Modernity*, trans. by Michael D. Baber (New York: Continuum, 1995). As Dussel explains, the idea of "encounter" (*encuentro*) has a long and controversial history of debate in Latin America, especially Mexico.

[3] Carole Pateman & Charles Mills, *Contract and Domination* (Cambridge: Polity Press, 2008), p. 37.

[4] Ibid., p. 46

[5] Ibid., p. 46

[6] Eduardo Galeano, "Open Veins of Latin America: Five Centuries of the Pillage of a Continent," *Contemporary Latin American Social and Political Thought: An Anthology*, ed. Ivan Marquez (Lanham: Rowman & Littlefield, 2008), p. 177.

7 Nelson Maldonado-Torres argues that rather than attempting to assert superiority, the resurgence of neo-nativist nationalism are simply attempting to survive given the rapid growth of Latino/as and others. See Maldonado-Torres, "Decolonization and the New Identitarian Logics After September 11," *Radical Philosophy Review* 8, no. 1, p. 38.

8 Pateman, *Contract and Domination*, pp. 72-78.

9 Ramon Grosfoguel, Nelson Maldonado-Torres and Jose David Saldivar, *Latin@s in the World System* (Boulder: Paradigm Publishers, 2006), p. 8.

10 I use 'post-colonial' cautiously since, as Enrique Dussel notes, American-born Europeans (*Criollos*) relied upon "encounter" to justify their fights for independence and nation building projects. Dussel, *The Invention of America*, p. 55.

11 Ibid., p. 57.

12 See Paula Moya, "Cultural Particularity versus Universal Humanity," *Hispanics/Latinos in the United States: Ethnicity, Race and Rights*, Eds. Jorge. J. E. Gracia & Pablo De Grieff (New York: Routledge, 2000)

13 W. E. B. Du Bois, *The Conservation of Races* (Washington: American Negro Academy, 1987), p 17.

14 See Locke, *Race Contacts and Interracial Relations* (Washington, D.C.: Howard University Press, 1992).

15 Ibid, 90.

16 In the Latin American philosophical context, both cultural and philosophical originality have been important themes of debate given the history of colonization, the colonial emphasis of scholasticism and the legacy of positivism.

17 Leopoldo Zea, *The Role of the Americas in History* (Savage: Rowman & Littlefield, 1992), p. 3.

18 Immanuel Wallerstein, "Latin@s: What's in a Name?," in *Latin@s in the World System*, Eds. Ramon Grosfoguel et al (Boulder: Paradigm Publishers, 2006), p. 3-4.

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