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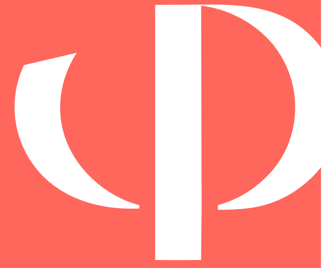
Hispanic/Latino Issues in Philosophy



FALL 2015

VOLUME 15 | NUMBER 1

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ISSN 2155-9708

For a philosopher who is placing freedom at the center of his inquiry, this lack of freedom granted to philosophers in Latin America seems particularly out of place. Silva seems resigned to accepting exclusions, writing, "My goal is not to exclude, but undoubtedly, this will be a consequence of my project. Instead, my goal is to preserve the tradition of thought in LAP that stands out in comparison to Anglophone understandings of philosophy." I think that Silva's desire to preserve the tradition of LAP is of the highest value, and I think that he, in fact, has the elements not only to preserve but to revive and lead the tradition in new, tradition-affirming directions. But I don't think we need to accept exclusions born of scorning Latin American thinkers who are not concerned with colonization in order to carry out the valuable project that Silva has delineated in his paper.

Part of my discomfort with such exclusions is that in such moves of exclusion and of scripting who and what counts as a Latin American philosopher we ghettoize the very tradition we are attempting to preserve, revive, and develop. Latin American philosophy and Spanish-speaking philosophers remain ghettoized. We have special committees to oversee the treatment of Hispanics in philosophy, in part because inclusiveness of this group cannot be taken for granted. We have to market sessions at the American Philosophical Association meetings so that they will appeal to mainstream philosophers: logic in Brazil is a crowd pleaser, while the topic of indigenous thought in America draws only a few eccentrics. The theme of German philosophy in the Americas is seen as more valuable than addressing the problem of modernity in Latin American, for the stentorian philosophical voice of the German tradition inevitably overpowers the muffled voice of the Latin American tradition. Paying serious attention to something like the problem of modernity in Latin America would surely be a sign of progress, of an overcoming of the "colonial condition" in which we have placed Latin American philosophy, for it would present Latin American thought in an autonomous light. But we cannot secure such autonomous light by limiting the freedom of Latin American thinkers, preventing them from taking their thought where their questions lead them. Whether we think the resulting work is good or bad is one matter, and we might even agree that the best work done within the tradition of Latin American philosophy is the work that deals explicitly with the colonial condition. But to deny that a given contribution by a Latin American thinker simply does not belong to the tradition because of its content seems not only wrong but damaging to the very future of the tradition. Colonial struggle is a central problem of the Latin American philosophical tradition, but why must we create a hierarchy according to which only those contributions that address this matter are really Latin American philosophical contributions—why not acknowledge that the tendency of thought within the Latin American tradition that deals with colonial struggle is a central one, a tendency that has shaped many of the valuable contributions of that tradition, while also acknowledging that there are other tendencies? Even if we cannot offer final words on what Latin American philosophy is, certainly we can all agree that there is a vast territory of themes and figures, of questions and of proposed answers to those questions. Rather than looking for exhaustive definitions and becoming entangled in the inevitable exclusions that come with such approaches, perhaps we should focus on the exclusions within the tradition so that we can continue to make the tradition more and more inclusive as we strive to achieve for the Latin American philosophical tradition the recognition that it deserves.

Doing Away with Juan Crow

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In May of 2008, Roberto Lovato wrote an article for *The Nation* magazine entitled "Juan Crow in Georgia." Lovato's article begins in a manner that is now familiar to those of us who pay close attention to the plight of DREAMers:[1] it tells us about a sympathetic young person, living in the United States under less than ideal circumstances, who nonetheless has a big American dream. In this particular case, the young person in question is fifteen-year-old Marie Justeen Mancha. At the time, Mancha was living with her mother in Reidsville, Georgia. The two of them had recently migrated to Reidsville and were eking out a meager existence by working in onion fields and living out of what Lovato describes as a battered old trailer. We are also told that, despite the seemingly long odds, Mancha plans to one day go to college and become a clinical psychologist.

In September of 2006 her dreams were put in jeopardy. As Mancha was getting ready to go to school, armed Immigration and Customs Enforcement (ICE) agents raided her trailer. These agents had neither warrants, probable cause, nor permission to enter Mancha's residence, but they entered anyway and interrogated Mancha over her and her mother's immigration status. At the end of this interrogation, the agents simply left. Mancha and her mother were not deported. Tragedy was averted because, as Lovato informs us, Mancha and her mother were: "the wrong kind of 'Mexicans'; they were US citizens."[2]

According to Lovato, Mancha's experience is not an isolated incident, but part of a larger and more troubling trend. As he writes:

> Mancha and the younger children of the mostly immigrant Latinos in Georgia are learning and internalizing that they are different from white—and black—children not just because they have the wrong skin color but also because many of their parents lack the right papers. They are growing up in a racial and political climate in which Latinos' subordinate status in Georgia and in the Deep South bears more than a passing resemblance to that of African-Americans who were living under Jim Crow. Call it Juan Crow: the matrix of laws, social customs, economic institutions and symbolic systems enabling the physical and psychic isolation needed to control and exploit undocumented immigrants.[3]

In the passage above, Lovato is both describing the wrong of Juan Crow and alluding to its connection to Jim Crow. While there are some very important differences between the two, Lovato seems to be suggesting that Juan Crow is similar to Jim Crow in that they are both instances of local and state laws being used in a systematic way to violate the civil rights and equal protection of minority citizens. In this essay, I would like to explore the implication Juan Crow has for an ethics of immigration. I want to argue that Juan Crow poses a challenge not only to federalist approaches to immigration reform, but to any immigration reform that has stricter enforcement as a key component. Instead, I want to suggest that a just immigration reform must adhere to two standards, *equality of burdens* and *universal protections*, and that only by doing so can the potential for Juan Crow be accurately avoided.

THE FEDERALIST ALTERNATIVE

Philosophers working on the ethics of immigration face an interesting challenge. It is assumed that political legitimacy requires a community to be both democratically self-determined and respectful of human rights. Yet the issue of immigration (maybe more so than any other issue) exposes a deep tension between these two commitments.[4] For example, a commitment to democratic self-determination would seem to suggest that a political community has a presumptive right to control its borders and determine its own criteria for citizenship.[5] However, a commitment to individual freedom or universal equality (i.e., the pillars of human rights) seems to speak in favor of open borders; either because respecting an individual's right to freedom of movement is weighty enough to override most of the reasons a political community would have to deny him or her admission[6] or because restrictive borders help to perpetuate or create unjust global inequalities.[7]

This is an exaggerated and simplistic way of situating the current philosophical debate over immigration, so it's worth mentioning that there are other nuanced positions that do not fit nicely into this neat division. For example, Arash Abizadeh has argued that a commitment to democratic norms would entail political communities *not* have the unilateral right to control their borders,[8] while Peter Higgins and Lea Ypi have argued that open borders would not necessarily promote universal equality and in fact could do the opposite.[9] Still, the philosophical question surrounding immigration has primarily remained focused on how to best reconcile democratic self-determination with human rights.

Out of all the possible contenders that have emerged in this debate, the one that seems to hold the most promise is the federalist approach. Federalism advocates for a dispersed notion of sovereignty, where political authority over a territory is allowed to operate at various levels. These different levels usually have one top level, for example, a central government or a supranational institution, and smaller subdivisions operating underneath, such as provincial, state, or local governments. On this model, the power to make and enforce laws operates on all these different levels with each enjoying a certain degree of autonomy. On this model, people do not need to be members at every level in order to obtain certain citizenship rights. For example, a person could be a citizen of the European Union and of the city of Berlin, and therefore be lawfully present in Germany and eligible to vote in certain elections, even though s/he is not a German citizen. Federalism therefore offers an immigration reform alternative that is both consistent with democratic norms—especially with regard to democratic representation at the transnational and local levels—and more open borders. Within the immigration debate, Thomas Pogge, Veit Bader, Seyla Benhabib, and to some extent William Flores and Renato Rosaldo, have championed some version of this view.[10]

For supporters of immigrant rights, this approach seems to hold a lot of promise. After all, while attempts at comprehensive immigration reform have stalled at the national level, over the last decade there has been a groundswell of local and state ordinances that seek to protect immigrants and extend benefits to all residents (including undocumented immigrants). For example, cities such as San Francisco, Denver, and New York now prohibit city employees (including police offers) from inquiring into people's immigration status and, in general, are refusing to let their local resources be used to help enforce national immigration laws. There have also been actions taken at the state level, where states such as California, Washington, and Nebraska have granted driver's licenses, in-state tuition, and health care to all of their residents regardless of immigration status. And even states that support stricter immigration enforcement, such as Texas and Utah, have proposed their own guest worker programs tailored to their own particular needs, rather than the current one-size-fits-all national model. While guest worker programs are not always great, if these state-level programs were to be implemented, many undocumented workers currently working in those states would be given legal status.

Conservatives in the United States have complained that these actions are unconstitutional and that local and state governments have over reached and should be punished by the national government. However, a generous reading of the U.S. Constitution would suggest that conservatives are wrong and that these local and state governments are on firm constitutional ground. For example, the U.S. Constitution only twice mentions matters directly relating to immigration, and neither time does it say much about where the power to establish immigration policy should reside.[11] Along with this, there is the Tenth Amendment (i.e., the federalist amendment), which states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." When read in this way, it seems that there is nothing explicitly unconstitutional about the aforementioned actions taken by local and state governments.

PLENARY POWER DOCTRINE: THE TYRANNY OF CENTRALIZED POWER

Despite the reading I have just provided, there is a long history backed by judicial precedent that has allowed the U.S. national[12] government to consistently usurp the power to control immigration and exercise it in questionable ways. For example, in 1798 President John Adams signed into law

a set of bills that have come to be known as the Alien and Sedition Acts. These bills were signed in the aftermath of the French Revolution, during a time that is now commonly referred to as the Quasi-War with France. The stated aim of these bills was to root out the "Jacobin threat" posed by French immigrants. Among other things, these bills increased residency requirements for naturalization from five to fourteen years, made speech critical of the U.S. government into a punishable offense, and allowed the president to imprison or deport any non-citizen who was considered "dangerous" or who was a citizen of a hostile nation.

In the Kentucky and Virginia Resolutions, Thomas Jefferson and James Madison presented a federalist response to these actions taken by the national government. Jefferson, for example, argued that these actions were unconstitutional because

> if the acts before specified should stand, these conclusions would flow from them; that the General Government may place any act they think proper on the list of crimes & punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them: that they may transfer its cognizance to the President or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction.[13]

Jefferson's worry was that the national government, and specifically the executive branch, was using the threat of a foreign menace to consolidate powers that the Constitution had not intended for it to have. This consolidation of power was troubling for Jefferson because, even if these powers were intended only to be used on noncitizens, they eventually could be turned on citizens. As Jefferson warns further down in this resolution: "the friendless alien has indeed been selected as the safest subject of a first experiment: but the citizen will soon follow, or rather has already followed; for, already has a Sedition Act marked him as its prey."[14]

Another example of this questionable usurpation of power comes in the form of the explicit racist immigration laws and policies that began with the passage of 1875 Page Act. This act was the first of many acts to restrict the entry of nonwhite immigrants into the United States. During this period of explicitly racist national immigration policy, the Supreme Court consistently ruled in favor of the U.S. government by appealing to a more unitary (as opposed to federalist) understanding of U.S. sovereignty. For example, writing for the majority in the 1889 *Chae Chan Ping v. United States* case, Justice Stephen J. Field argued that Mr. Ping had no right to be readmitted into the United States, even though he had a government issued return voucher, because

> the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power.[15]

This case, along with the other Chinese exclusion cases, has come to form the legal backbone of what is known as the Plenary Power Doctrine. This doctrine gives the U.S. national government a monopoly over the regulation of immigration, meaning its exercise of power in this area is not subject to judicial review. The lack of judicial review means that, with regard to cases involving the admission, exclusion, and deportation of noncitizens, constitutional protections (e.g., right to a trial by jury, right to court appointed legal representation, and freedom from unreasonable searches and seizures) are not applicable.[16]

These examples do not exhaust the list of abuses, but they are sufficient to underscore the following worry: there is a very real danger in a centralized approach to immigration policy because when given discretionary control over the admission, exclusion, and deportation of noncitizens, national governments have shown themselves incapable of not using this power in morally or politically problematic ways. In light of this worry, a federalist approach to immigration reform seems much more appealing. After all, federalism offers a way to break up or at least check the concentration of power without at the same time having to give up the notion of sovereignty (i.e., self-determination). With that said, however, there is an underside to federalism, and this underside is nowhere better exemplified than in the case of Jim Crow.

THE UNDERSIDE OF FEDERALISM AND THE SUPREMACY CLAUSE

As most people are aware, the U.S. Civil War put an end to chattel slavery and annulled the infamous Dred Scott decision that had denied U.S. citizenship to people of African descent. These achievements were constitutionally enshrined with the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments. Immediately after the passage of these amendments, however, local and state governments of the former Confederacy began to pass their own laws in an effort to circumvent the spirit of these amendments. These laws appeared neutral on the surface, but when implemented, they created a legalized form of racial segregation.

The constitutionality of these laws were tested and notoriously upheld in the 1883 *Civil Rights Cases* and the 1896 *Plessy v. Ferguson* case. These cases provided the legal precedent for what came to be known as the "separate but equal" doctrine. This doctrine basically stated that so long as facilities and institutions were equal, racial segregation was not in itself a breach of the Fourteenth Amendment's equal protection clause. The ruling in *Plessy v. Ferguson* is especially disconcerting for proponents of federalism because in making its case the state of Louisiana appealed specifically to the Tenth Amendment (i.e., the federalist amendment) and won the case on those grounds.

Jim Crow segregation was legally in effect throughout the former Confederacy from the end of Reconstruction (1877-ish) until the 1954 *Brown v. Board of Education* decision. The *Brown* decision, however, did not by itself settle the matters. In 1957, Arkansas Governor Orval Faubus defied the court's decision by calling out the state's National Guard in an effort to prevent black students from entering Little Rock Central High School and made an appeal to "state's rights" in justifying his actions. President Eisenhower responded to Faubus's actions by deploying the U.S. army and nationalizing Arkansas's National Guard. In 1963, Alabama Governor George Wallace—living up to his inaugural address promise of "segregation now, segregation tomorrow, segregation forever"—had his infamous "Stand in the Schoolhouse Door" debacle where he physically stood at the entrance to the University of Alabama in order to prevent black students from enrolling. Again, it took executive action, this time on the part of President Kennedy, to remove him.

It seems that one lesson that can be gleamed from the struggle against Jim Crow is that when local or state governments deny members of disadvantaged social groups their civil rights and equal protection, executive action at the national level can be an effective way of remedying the situation. This presents a further problem for proponents of federalism. The struggle against Jim Crow was successful not because of an increase in democratic procedures, since the majority of residents in Alabama and Arkansas would have likely favored segregation, or a decentralizing of power, as it took action at the national level to bring this practice to an end. It is in this vein that champions of immigrant rights, such as Representative Luis Gutierrez, have for years pleaded with President Obama to use his executive powers to act on immigration.

The sense of urgency that proponents of immigrant rights, such as Gutierrez, feel stems from the fact that it is not only immigrants who are being negatively affected by Congress's inability to pass comprehensive immigration reform; U.S. citizens are also being negatively impacted by this gridlock. In recent years, citizens like Marie Justeen Mancha have been migrating in greater numbers to parts of the United States where historically Latino/as have not resided in large numbers. Specifically, Latino/as have started to make homes for themselves in parts of the former Confederacy. The immediate assumption by many of the residents in these parts is that these new migrants do not belong. Some of the worries these residents have are driven by xenophobic attitudes and beliefs, but some truly believe that these new migrants are all undocumented and their presence is evidence that the national government is failing to do its job of enforcing immigration law. This despite the fact that the actual number of undocumented immigrants has remained steady for close to a decade, somewhere between 10-12 million, and in recent years has actually seen a decline. Also, since President Obama took office in 2009, the U.S. government has been deporting close to 400,000 undocumented immigrants a year, which is more than under any other previous administration.

Regardless of these facts, the public perception in states of the former Confederacy is that undocumented immigrants are swarming into their territory and the national government has failed to do anything about it. This has encouraged them in turn to pass a variety of anti-immigrant laws at the local and state level. The overall strategy these local and state governments have followed has been centered on enforcement, hence the mantras of "enforcement first" and "attrition through enforcement." These laws are therefore not designed to try to reform or repair the current immigration system. Instead, they are aimed at obtaining better and more efficient enforcement of the current one. They also recognize the difficulty of rounding up and deporting 10-12 million undocumented immigrants, so along with bringing stricter enforcement these laws are also designed to try to make the day-to-day lives of undocumented immigrants so miserable that they begin to self-deport.

As we saw in the opening case of Marie Justeen Mancha, not all Latino/as who migrate to parts of the former Confederacy are foreigners. In fact, most Latino/as in the United States are a lot like Mancha, U.S.-born citizens who are nonetheless being forced to bear the brunt of anti-immigrant laws and policies. In this regard we find the similarity to Jim Crow. The anti-immigrant laws that have come out of "enforcement first" and "attrition through enforcement" approaches to immigration reform are being passed at the local and state level by an overwhelming democratic majority, and they also appear neutral on the surface. When these laws are put into effect, however, they have a disparate impact on a particular minority segment of the citizenry (i.e., Latino/as). If the comparison to Jim Crow is warranted, then the recent actions taken by the Obama administration seem consistent with the earlier actions taken by presidents Eisenhower and Kennedy.

In response to Juan Crow, the Obama administration has sued the state of Arizona for its "attrition through enforcement" inspired Senate Bill. In 2012 this lawsuit went before the Supreme Court, where Arizona defended its actions in the same way Louisiana had in *Plessy v. Ferguson*, by appealing to the Tenth Amendment. This time, however, the court found that Arizona's anti-immigration bill was largely unconstitutional. It was unconstitutional not because of the harm it would cause foreigners or even Latino/a citizens, but because its actions violated the Supremacy Clause. The Supremacy Clause is found in Article XI, Clause 2 of the U.S. Constitution, and it states that when national law conflicts with state law, national law wins out. This is commonly referred to as preemption, and it gives the national government exclusive power to legislate over such areas as war and commerce.

Following this victory in the courts and at the behest of DREAMer activists, President Obama went on to issue an executive order granting deferred action (i.e., protection from deportation) to undocumented immigrants who entered the country before the age of sixteen (i.e., DACA). This past November, Obama extended this deferred action to include undocumented immigrants who are the parents of U.S. citizens or legal permanent residents (i.e., DAPA). This latter action, however, has been challenged by 26 states and its constitutionality is still currently being debated in the courts. Again, most of the states that have

challenged the president's use of deferred action are states of the former Confederacy.

For those who support immigrant rights, the recent actions taken by President Obama seem like cause for celebration. I want to suggest, however, that while these actions should be supported, they are at best incomplete and at worst Pyrrhic victories. President Obama has been able to provide undocumented immigrants with some relief through the use of executive action, but the way out of Juan Crow is not through executive action. Executive actions have a history of cutting both ways and so there are good reasons for being skeptical of them.

For example, three months after Japan bombed Pearl Harbor, President Roosevelt issued Executive Order 9066. This executive order forcefully removed between 110,000 and 120,000 mostly U.S. citizens of Japanese descent from their homes and placed them in internment camps far away from the Pacific Ocean. The reason behind this removal was the belief that lurking within this particular segment of the citizenry were potential spies who would relay signals to the Japanese navy if allowed to remain close to the Pacific Ocean. The case of Japanese interment is now taken to be one of the more disgraceful moments in U.S. history, but it is still important as a poignant reminder of how executive action can cut both ways. The actions of the executive branch can at times be used to protect the most vulnerable in our society, such as the actions by Eisenhower, Kennedy, or Obama might exemplify, but they can also be fueled by or be used to pursue racist or xenophobic ends.

A further complication with looking to the national government to provide relief from Juan Crow is that most of the enforcement measures that give rise to Juan Crow are already present at the national level. For example, the national immigration and welfare reform laws that were passed in 1996 allow the national government to commandeer local police for immigration enforcement duties, require employers to check the immigration status of their employees, and make immigrants ineligible for various sorts of benefits such as welfare and Medicare.[17] Again, while the letter of the law does not single out any particular social group, its application has disproportionately impacted citizens of non-European descent and especially U.S.-born children whose parents lack proper immigration status.

Federalist and centralized approaches to immigration reform therefore seem to leave us in a kind of quagmire: giving the national government too much discretion over immigration has historically proven problematic (e.g., Alien and Sedition Acts and Chinese Exclusion Acts), but supporting the kind of federalism that would allow local and state governments to check the national government's power and provide immigrants with some relief (e.g., offer them sanctuary, driver's licenses, and in-state tuition) would also allow these governments to pass their own anti-immigrant ordinances (e.g., Arizona's SB 1070). An ideal approach to immigration reform (i.e., one that avoids the potential for Juan Crow) seems to want it both ways. It wants to allow local, state, and national governments to provide immigrants with some protections and unencumbered access to certain benefits, while at the same time precluding the possibility of draconian immigration enforcement.

IMMIGRATION REFORM WITHOUT JUAN CROW

In my view, an ideal approach to immigration reform only appears to want it both ways. It gains this appearance from how the debate over immigration has played out in the United States, as a contest between the Supremacy Clause (i.e., the national government's check on federalism gone amuck) and the Tenth Amendment (i.e., state's rights). When the immigration debate is framed in this way, the point that Marie Justeen Mancha's story is supposed to drive home gets overlooked. The fight against Juan Crow is less about locating the power to control immigration and more about circumventing that power, at every level, so that certain segments of the citizenry do not get ostracized when and if it gets exercised. This suggests that, regardless of whether a country chooses to adopt a more centralized or federalist approach to immigration reform, the important question to address is how should enforcement be limited?

The answer I propose is that immigration enforcement should have to adhere to something like the following two standards: *equality of burdens* and *universal protections*. An *equality of burdens* standard would require that whatever burdens result from the enforcement of immigration policy, those burdens should be allocated as equally as possible among the citizenry. For example, if agents are allowed to conduct raids on private homes or places of work, then *every* citizen's home or place of work should potentially be as likely to be raided as any other citizen's home or place of work. I understand this might make immigration enforcement less efficient, but there are at least two good reasons why the implementation of this standard outweighs this concern.

First, it would make citizens more reflective about the kind of enforcement they are willing to let their government deploy. Since most citizens currently do not feel like they have much to worry about with internal immigration enforcement, the majority has shown itself to be increasingly willing to have stricter immigration enforcement, even when this increase negatively impacts the lives of minority citizens. By having a majority, and not just a minority, of citizens share in the cost of stricter enforcement, the excesses of this enforcement will not only be more fairly distributed, they will also impact decisions about the quality and quantity of enforcement.

Second, while this standard might not change deeply entrenched social attitudes on race, ethnicity, or culture, it will prevent those attitudes from unduly influencing enforcement and in the process self-affirm negative stereotypes about minority groups. While some might argue that this standard would prohibit all forms of selective enforcement, it would actually only prohibit selective enforcement when it disproportionately harms citizens for morally arbitrary reasons (e.g., race, ethnicity, or culture). In other words, while it might be okay for enforcement agents to focus more of their attention on people who self-identify as members of an outlaw motorcycle gang (e.g., wear a particular kind of leather jacket), as this is not a morally arbitrary reason, it would not be okay for enforcement agents to focus more of their attention on people who

self-identify with a particular kind of religion (e.g., Islam) or different part of the world (e.g., Latin America) because those are morally arbitrary reasons.

Along with an *equality of burdens* standard, just immigration reform will also require something like a *universal protections* standard. This standard would complement the *equality of burdens* standard by requiring mechanisms for oversight and restrictions on excessive government coercion. It is difficult to say what specific types of oversight or restrictions this standard would entail, as different communities will have their own unique set of circumstances and challenges, but there does seem to be at least one universal restriction that this standard would always entail. There must at least be a "presumption of innocence" restriction. In the immigration context, this would mean that all persons present should be treated as though they are lawfully present until their status has been confirmed to be irregular and even then should be treated with the dignity that is owed to all human beings.

In more concrete terms, if U.S. immigration enforcement policy were to adhere to something like a *universal protections* standard, it would need to give all persons present, regardless of their immigration status, such basic protections as the right to due process, equal protection under the law, freedom from unreasonable searches and seizures, a right to an attorney, and protection from indefinite detention, which is currently not the case in removal proceedings.[18] Protections like these are essential because without them immigration controls could easily infringe on both the rights of citizen and on human rights more generally.

When taken together, these two standards provide a canopy of protections that serve as a basis for immigrant rights. For example, one of the more odious aspects of current immigration law, which makes Juan Crow possible, is the commandeering of police officers for immigration enforcement purposes. This practice would be prohibited by these two standards because of its potential for abuse (e.g., police could use immigration enforcement as an excuse for harassing already marginalized communities), the risk that makes marginalized citizens even more vulnerable (e.g., victims of crimes, such as domestic violence, who also happen to live in mixed-status households could be hesitant to call police), and it would hinder the larger goal of fighting and preventing crime (e.g., undocumented immigrants are less likely to come forward to report or serve as witnesses for crimes if doing so might expose them to deportation, yet the safety of communities is dependent on the lawful cooperation of all persons present, regardless of immigration status). A similar argument can also be extended to include such areas as employment, home rentals, enrolling children in school, and many other everyday activities. An immigration policy that adheres to these two standards would prohibit enforcement schemes from intruding into these areas and by doing so would largely curtail the potential for Juan Crow.[19]

CONCLUSION

Regardless of one's own position on immigration, it is difficult to argue with the fact that what happened to Marie Justeen Mancha was unjust and that under a just regime those sorts of incidents should never occur. This belief is undergirded by an intuition that most of us share: legitimate political communities have a responsibility to treat their citizens as political equals and to not excessively or without warrant intrude on their lives. This intuition is expressed in what I have come to call the *equality of burdens* and *universal protections* standards. These two standards might not be enough to bring an end to racism or xenophobia, but adhering to them in immigration policy will prove sufficient to thwart the conditions that give rise to Juan Crow.

It's true that these standards limit the discretion political communities have in controlling immigration, and in today's political climate a position like this is largely out of favor. With that said, however, I still think we need to ask ourselves whether sacrificing the civil rights and equal protection of a minority citizen is worth enforcing an immigration system that all sides agree is broken. Instead of doubling down and continuing to enforce such a system, why not be open to the possibility of radically revising it? Of adopting an immigration system that can be enforced in a just and fair manner because its policy for admissions reflects global realities as opposed to xenophobic fears? It's true that such a revised system would likely entail much more open borders than most Americans are currently comfortable with, but then again no one ever said doing the right thing would be easy or popular.

NOTES

1. The term DREAMer comes from the acronym for the Development, Relief, and Education for Alien Minors Act, which, if passed, would regularize the status of most undocumented immigrants who arrived in the United States before age sixteen. Immigrant rights activists have now begun to use this term to refer to this particular subset of the undocumented immigrant population.
2. Roberto Lovato, "Juan Crow in Georgia," *The Nation*, May 26, 2008. http://www.thenation.com/article/juan-crow-georgia. Accessed December 21, 2014.
3. Ibid.
4. See Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge, UK: Cambridge, 2004); John Exdell, "Immigration, Nationalism, and Human Rights," *Metaphilosophy* 40, no. 1 (2009); and Eduardo Mendieta, "The Right to Political Membership: Democratic Morality and the Right of Irregular Immigrants," *Radical Philosophy Review* 14, no. 2 (2011): 177–85.
5. See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); Christopher Heath Wellman, "Immigration and Freedom of Association," *Ethics* 119 (2008): 109–41; David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Malden MA: Blackwell Publishing, 2005), 193–206; and David Miller, "Immigrants, Nations, and Citizenship," *The Journal of Political Philosophy* 16, no. 4 (2008): 371–90.
6. Chandran Kukathas, "The Case for Open Immigration," in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Malden MA: Blackwell Publishing, 2005), 376–388; Michael Huemer, "Is There a Right to Immigrate?," *Social Theory and Practice* 36, no. 3 (2010): 429–61; Javier S. Hidalgo, "Freedom, Immigration, and Adequate Options," *Critical Review of International Social and Political Philosophy* 17, no. 2 (2014): 212–34.

7. See Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1997); Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000).
8. See Arash Abizadeh, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory* 36, no. 1 (2008): 37–65.
9. See Peter Higgins, "Open Borders and the Right to Immigration," *Human Rights Review* 9, no. 4 (2008): 525–35; Lea Ypi, "Justice in Migration: A Closed Borders Utopia?," *The Journal of Political Philosophy* 16, no. 4 (2008): 391–418.
10. Thomas W. Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103, no. 1 (1992): 48–75; Veit Bader, "Citizenship and Exclusion: Radical Democracy, Community, and Justice. Or, What Is Wrong with Communitarianism?," *Political Theory* 23, no. 2 (1995): 211–246; Benhabib, *The Rights of Others*; William V. Flores, "New Citizens, New Rights: Undocumented Immigrants and Latino Cultural Citizenship," *Latin American Perspectives* 30, no. 2 (2003): 295–308; Renato Rosaldo, "Cultural Citizenship and Educational Democracy," Cultural Anthropology 9, no. 3 (1994): 402–11.
11. The first mention comes in Article 1, Section 8, Clause 4, where among a laundry list of things it states that "Congress shall have the power. . . . To establish a uniform rule of naturalization." Naturalization, however, is not the same as immigration. Establishing the rules of naturalization has to do with setting the requirements to become a citizen and not with rules for admission, exclusion, or deportation. People can, after all, be legal permanent residents (LPRs) without ever becoming citizens. The other mention comes in Article 1, Section 9, Clause 1, where it states that Congress shall not prohibit the migration or importation of persons, but this clause is specifically geared towards the issue of slavery and also expired in 1808.
12. By U.S. "national" government, I mean both the legislative and executive branches of the U.S. government. In this essay, I use the term "national" as opposed to the more conventional term "federal" in an effort to reduce confusion.
13. Thomas Jefferson, "Resolutions Adopted by the Kentucky General Assembly," in *The Papers of Thomas Jefferson Digital Edition*, ed. Barbara B. Oberg and J. Jefferson Looney (Charlottesville: University of Virginia Press, 2015), 553-54.
14. Ibid., 554.
15. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).
16. See Robert Senh, "The Liberty Rights of Resident Aliens: You Can't Always Get What You Want, But If You Try Sometimes, You Might Find, You Get What You Need," *Oregon Review of International Law* 11, no. 1 (2009): 137–78; and Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge MA: Harvard University Press, 2007), 16-17.
17. *1996 Personal Responsibility and Work Opportunity Reconciliation Act*, H.R. 2260; Pub.L. 104–93; 110 Stat. 2105. 104th Cong. (August 22, 1996); and *1996 Illegal Immigration Reform & Immigrant Responsibility Act*, H.R. 3610; Pub.L. 104-208; 110 Stat. 3009–546. 104th Cong. (September 30, 1996).
18. See Plenary Power Doctrine above.
19. For a similar argument, see Joseph H. Carens, "The Rights of Irregular Migrants," *Ethics and International Affairs* 22 (2008). doi: 10.1111/j.1747-7093.2008.00141.x.

White Supremacy, Guera/o-ness, and Colonization: An Argument for a Mexican-American Philosophy

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INTRODUCTION

In this paper I will show how the slave trade, mestizaje, and U.S. laws are constitutive elements in the construction of Mexican-American identity. During the slave trade, the Spanish colonialist established white identity as a source of supremacy, protection, and civilization.[1] Today, even as Mexican-Americans and U.S. law classifies Mexican-Americans as white, they do not share the same protection and privilege associated with whiteness.[2] Utilizing insights from legal history, I provide a contemporary framework that focuses, engages, and critically assesses the Mexican-American struggle with his circumstance. Making use of the work of several Mexican-American scholars who expose contradictions that exist between the idea of the Mexican-American and his actual circumstances, I show how Mexican-American philosophy must be an intimate relationship between ideas and historical circumstances. Furthermore, I show how dominant-group-controlled institutions exercise control over Mexican-American culture.

COLONIAL CREATION OF THE MEXICAN-AMERICAN

Since the late fifteenth century, Spanish colonialists developed a complex set of rules creating a race-based caste system with a distinct anti-black bias.[3] Concerned with drawing distinctions between products of miscegenation, the Spanish divided offspring of mixed couples into three general groups: *mestizo* (Spanish-Indian), *mulatto* (Spanish-Black), and *Zambo* or *Zambaigo* (Black-Indian).[4] Mixing of these three groups created the Black mestizo and other subdivisions within these categories. The offspring of miscegenation union, called *las castas*, due to their African ancestry, occupied the lowest socio-economic status.[5] As Taunya Lovel Banks notes in her essay, "Mestizaje and the Mexican Mestizo Self: No Hay Sangre Negra," "to prevent Afro-mestizo slaves passing as Indians, masters often used hot irons to brand "the insignia of servitude" on slaves' faces, or other places readily apparent to the observer."[6] The Spaniards created a class and racial system where "Spanish and white blood is redeemable . . . [and] inextricably linked to the idea of civilization . . . and Black blood bear[s] the stigma of slavery, [and] atavism and degeneracy."[7] The Spanish colonialists created a legal classification system based on hue or phenotype that birthed whiteness as the vanguard of redemption, reason, and humanity: "Afro-mestizos consistently tried to conceal their African ancestry because under rule, Indians had a higher socio-economic status than *castas* . . . even free Afro-mestizos had an interest in hiding their African ancestry since by law mulattoes, but not mestizos, were subject to paying tribute in the form of head taxes."[8]