



The LatCrit Monograph Series

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**LATCRIT THEORY AND LATIN AMERICAN STUDIES:
PRELIMINARY REFLECTIONS ON
LATIN AMERICAN SUBALTERN PERSPECTIVES
AND THE PROBLEMS OF LAW**

ABSTRACT

This Monograph provides some preliminary thoughts on the relationship between Latin American Subaltern Studies, Law, and recent LatCrit scholarship. This Monograph focuses on four sets of issues associated with modernity, the coloniality of power, race, and rights. The main objective of this Monograph is to contribute to a cross-disciplinary dialogue among scholars from the humanities and the legal academy grappling with issues of common interest to the South and North to help foster critical and comparative exchanges of anticolonial ideas hemispherically and globally. For more information, please contact the author.

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INTRODUCTION

The Latin American Subaltern Studies Group initially began meeting in 1993 on a yearly basis to engage in an interdisciplinary dialogue about questions entailing local knowledges from a Latin American/Latino/a South perspective.ⁱ Some of the issues addressed by this group of intellectuals included the possibility of conceptualizing a Latin American epistemology and more generally an alternative notion of modernity/coloniality that was informed by a perspective from the South. This alternative notion is premised on the idea that modernity/coloniality was a direct result of Europe's self-definition as the center or core of a universal world history and that Spanish America, like other colonial territories, occupied a peripheral status within this world view/system.ⁱⁱ More importantly this working group sought to offer an alternative perspective that could help transform an otherwise Eurocentric academic culture. Some of the key intellectuals involved in this project include important figures like Walter D. Mignolo, Enrique Dussel, Aníbal Quijano, and Immanuel Wallerstein.

In this Monograph I want to offer some preliminary reflections on four of the key tenets of the Latin American Subaltern Studies Group's epistemological claim. I am particularly interested in the temporal character of modernity/coloniality, the notion of coloniality of power, race, and implications of a group/individual rights argument. I will offer a critique of these tenets that is informed by some reflections of Latin American legal history. My premise is that a discussion of law introduces a number of political problems that appear to challenge the historical basis of the Latin American Subaltern Studies Group. Ultimately my goal is to contribute to the establishment of a dialogue between Lat Crit legal scholars and other scholars who identify a Latin American Subaltern Studies approach.

I.

LATIN AMERICAN MODERNITY/COLONIALITY

Citing Quijano's argument, Mignolo contends that the "Americas as a geosocial construct were born in the long sixteenth century."ⁱⁱⁱ Implicit in this argument is the notion that modernity begins with Cristobal Colón's voyage, encounter with, and Spain's subsequent colonization of the *Indies* or rather the Americas. Mignolo further contends that unlike the British/Indian Subaltern perspective, which has located the birth of its modernity in the British imperial project and the Enlightenment, the Latin American perspective encompasses those philosophers that were writing during the sixteenth century and who were engaging the question of the American *Other*. According to Dussel, it follows that modernity emerged when European philosophers began to conceptualize Europe as the center of world history and the Americas as peripheral territories.^{iv} More importantly, modernity was born when Europeans were able to self define themselves against the *Other*, a non-European American alterity.^v

By now it should be evident that this conception of modernity is contingent on the unification of a temporal or epochal experience with an ideological or substantive narrative about philosophical thought. While I agree that the encounter with the Indoamerican *Other*

and the colonization of the Americas led to a shift in perspectives about a world “system”, especially among European philosophers, it is not readily evident that there was a clear break with the past. This argument however appears to rest on what Bernard Yack has called a fetishism of modernity. Yack argues that postmodernists seem to cling to a story about the collective condition known as modernity, while “relying upon precisely the kind of claim that their critique of foundationalism and grand historical narratives rules out: that it makes sense to treat a whole epoch of human experience as a single stage in the unfolding development of human culture.”^{vi} The Latin American Subaltern arguments tend to agree on a conception of modernity that contends that modern philosophers’ theories were constituted by a modern world-view that was defined by a Eurocentric imperialism. This argument is especially evident in Dussel’s discussion of Eurocentrism and modernity.^{vii} It follows that European philosophers conceptualized their theories with a conscious or unconscious world-view that placed Europe and its empires at the conceptual center, and the colonies or the rest of the world, at the periphery.

This narrative of modernity, however, does not account for the philosophical reflections of modern political thinkers like Niccolò Machiavelli. Is he not a modern thinker? How can we explain his concern with the Italian city and his apparent lack of interest in a world-view that is not shaped by imperialism in the Americas? This is not to dismiss Dussel’s argument, but rather I am concerned with the amalgamation of temporal and substantive conceptions of modernity.^{viii} While I am sympathetic to a reflection on the relationship between the philosopher and the world she inhabits, I am leery of meta-narratives that exclude the anomalies.

Of course we must also consider the possibility that European political thinkers simply did not see the formations of Latin America as an expression of modernity. Perhaps modernity required revolutions that led to a radical transformation of the nation-state, in which case it is doubtful that nineteenth century political thinkers associated the Spanish-Creole wars of emancipation with the legacy of the French Revolution. Not even the Haitian Revolution, which represented an important and radical expression of a modern revolution was able to develop into the formation of a modern nation-state. In his refutation of the allegations that Karl Marx did not provide a significant place to Latin America in his political thought, José Aricó contends that:

Marx no logró ver en ellos la presencia de una lucha de clases definitoria de su «movimiento real» y por lo tanto fundante de su sistematización lógico-histórica. A partir de lo cual no pudo caracterizar en su personalidad propia, en su sustantividad y autonomía una realidad que se le presentaba en Estado magmático.^{ix}

This is not to say that Marx’s conception of a logic of world history was not in itself Eurocentric, but rather it explains why Marx did not focus on Latin America. In my opinion, one of the interesting contributions of a Latin American subaltern perspective is the re-thinking of world-history and the hegemonic power of European centered narratives. However, this inquiry should focus on the ways in which Latin American political and legal thinkers transplant modernity and its voices to the Americas.

From a legal perspective, the effort to locate birth of modernity in the Sixteenth century is troubling. To be sure, while the Spanish state devised a new and intricate legal system known as the *Laws of the Indies*, it is also evident that the *Indianist* legal and institutional regime was also comprise of competing feudal and medieval institutions like the *Fueros* and *Las Siete Partidas*. In a sense, the “colonial” legal regime needs to be understood as a constant negotiation between competing legal traditions and institutions that were rooted in both “pre-modern” and modern temporal orders. To this extent, the “modern” legal regime appears to be more of a contested arena than a coherent and unified system of power. More importantly while the *Laws of the Indies* were quickly displaced by the emergence of the Napoleonic Code and the adoption of this tradition in Latin America, the medieval legal institutions continued to exert their presence as a source of law well into the 20th Century.

One of the challenges that Lat Crit scholars face is attempting to articulate a conception of law that transcends modernity. Legal scholars in the Americas are generally working with legal texts that are products of the Enlightenment and more generally of Western Liberalism. The United States Constitution, and the various legal narratives that emerge from the Napoleonic Civil Law tradition are clearly rooted in modern revolutionary thought. It follows that efforts to articulate alternative arguments, informed by Lat Crit commitments are restricted to the confines of Liberal legal institutions. I think that it is important to come to terms with this limit, and to explore the possibilities of critically transforming^x existing legal narratives and institutions in a way that we can eventually move beyond Liberal institutions and not be trapped by a paradigm that is premised on the end of history. Of course this argument presupposes the possibility of a narrative of law, and legal institutions, that are not necessarily rooted in modernity or Liberal principles.

The notion of coloniality of power lies at the core of this argument. Initially conceived by Quijano, Mignolo defines this notion in the following manner: Coloniality is, for Quijano and Wallerstein, something that transcends the particularities of historical colonialism and that does not vanish with independence or decolonization. Coloniality is also embedded in national formation because, in their thesis, coloniality is constitutive of modernity and, therefore, of the modern/colonial world system.^{xi}

This argument suggests that imperial-colonial relationships of power have been reproduced in the national formation projects of Latin American nation-states. To be sure Mignolo contents that “Nation building, in other words, reproduced the colonial rules *vis-à-vis* the indigenous population and concentrated power in the Creole elite.”^{xii} Thus coloniality of power can help us explain the complexities of the formation of “internal colonies” in the Latin American nation-state as a reproduction of prior forms of imperial/colonial relationships. Coloniality of power provides a vocabulary that enables critics to draw parallels between historical conceptions of power and experimental relationships of power.

This argument raises two concerns for me. First, while I can see how Latin American nation-states have historically reproduced imperial/colonial relationships in the governance of their internal communities/colonies, I wonder whether the use of these narratives has been strategic rather than an inherent expression of a modern ideology. In other words,

could a Latin American nation-state rely on other spatial narratives of power in order to legitimize its control over subordinated groups within their respective geopolitical boundaries? I am also leery of the potential to obscure relationships of power by imposing a model that is determined by a historical conception of empire.

Secondly, and perhaps more importantly, we should note that the Latin American nation-states adopted the French Napoleonic Code and abandoned the Spanish civil law tradition as the basis for their national legal narratives. With the exceptions of Cuba and Puerto Rico, most Latin American nation-states relied on the French civil code to form their national institutions. Given that the French codified distinct principles in the Civil Code, one is left wondering whether Latin American political institutions have a more represent a continuation of a French ideological narrative rather than a Spanish one. Then again, perhaps the modern Latin American legal narrative can best be explained as a dialectical relationship between French legal ideologies, the remnants of Spanish imperial ideologies and other popular conceptions of law.

I think that some Lat Crit scholars that are trying to draw from different disciplines outside of the law, tend to use terms like Empire, imperialism, colonialism, and hegemony as metaphors that can explain how law participates in the subordination of the *Other*. I suspect that Lat Crit scholars that are attempting to challenge legal formalism draw on these terms to explain various forms of subordination with a ways that explain the silence of law regarding oppression. Thus, I think that the notion of Coloniality of Power offers an alternative metaphor that can explain the some of the ways in which power is reproduced by the law. To this extent, I think that Quijano's argument provides legal scholars with an additional resource from which to draw upon to explain distinct forms of legal subordination of space. I think that Lat Crit scholars interested in the case of Puerto Rico, or in the question of Aztlán, or in Native American sovereignty issues, among others, can draw on Quijano's argument as a more accurate term to describe the ways in which imperial conceptions of law are reproduced by modern nation-states.

It is also important to point out that "Quijano's conception of coloniality of power links race, labor and epistemology."^{xiii} Thus Mignolo contends that ...the word "race" did not exist in the sixteenth century and that the classification of people was largely based on religion. However, the underlying principle was racial. "Purity of blood," which served to establish the distinction between Christians, Moors, and Jews, was indeed religious but based on biological "evidence." In the nineteenth century, when science replaced religion, racial classification was no longer based on blood mixture but on skin color. Beyond the changing faces of racial configurations, the underlying principle of the modern/colonial world for the classification of people in epistemic hierarchies is racial in the sense that it is based on physical features, whether blood or skin, linked to either religious or national communities.^{xiv}

While the word "raza" did in fact exist during the early sixteenth century, and was used alternatively with *casta*^{xv} it is not readily evident that its use in the Americas was contingent on the emergence of science. In other words, "racial" categories in the Americas were transplanted from Spain and were applied in an arbitrary fashion often

independently of scientific narratives. More importantly, this use of the notion of race could potentially obscure two important practices in the everyday life of Spanish Creole communities. To be sure, the use of a “blood purity” standard to understand how the Spanish empire used race to promote local forms of social and economic stratification does not explain the contingent nature of racial mobility. For example, whereas a Jew could be baptized, subjects of African heritage could not become Spanish through this ritual, nor could they become “white” through intermarriage. In fact, not even the *Cadiz Constitution of 1812* would recognize subjects of African heritage as Spanish citizens. At best, wealthy subjects of African heritage could aspire to acquire a special citizenship contingent on his or her African lineage and wealth.

It is also interesting to note that “blood purity” certificates were generally issued by the Church. This meant that any individual who had the necessary financial resources could potentially bribe a priest and acquire a special certificate of blood purity, despite his or her phenotype or skin color. Perhaps the clearest examples of this practice can be discerned from the everyday life of Spanish subjects living in the North-American frontier. Given the absence of peninsular women, it was not uncommon for Spanish soldiers and other *peninsulares* to marry indigenous women, hence the traditional narrative of the mestizo. However, it was not uncommon for mestizos to marry other mestizos or Indo-Americans and purchase a blood purity certificate.^{xvi} All of which is to say that there was a clear gap between official narratives of blood purity and the every day practices and policies operating in the Spanish territories.

My point is not that race did not play a role in shaping an official narrative of imperialism, but rather I would question the centrality of race in shaping a narrative of modernity in the Spanish empire. I say this because the gap between the official narrative and the actual implementation of imperial policies in the Americas was so wide that one could argue that race was inconsequential in many places. It is also not readily evident that science played a defining role in transforming the narrative of blood purity in the Spanish territories, but rather simple economic relations, or rather mobility, were more instrumental in shaping the narratives of race. Thus, I would argue that rather than giving the narrative of a scientific conception of race a privileged status in this argument, I would emphasize the relationship between racist narratives, purchasing power, and social mobility.

To the extent that Lat Crit emerges out of a Critical Race Theory context, it is clear that narratives of race are central narrative of this approach to the study of law. However, it is interesting to note that Lat Crit discussions of race that focus on the racialization of Latino/a ethnicities are not necessarily rooted in the historical debates of race that the Subaltern Studies approach adopts. In a sense, the legacy of Critical Race Theory obscures the possibilities of adopting competing historical conceptions of race that emerge in different locations outside of the United States. To be sure, a Lat Crit conception of race that draws from CRT may define a Latino/a race in difference to competing paradigms such as the black/white-civil rights paradigm. Thus, a conception of race that is rooted in Spanish blood purity laws in difference to laws of hypodescent, can provide an alternative narrative of race that may offer a distinct perspective on the relationship between race and law.

Of course it is important to recognize that in the common law tradition, precedents and doctrines are important. Hence the difficulty of using alternative conceptions of race in formulating legal arguments in the U.S. However, we must also recognize that legal scholars in Latin America have been drawing on CRT and Lat Crit narratives to reform the national legal systems that are primarily influenced by the Napoleonic Civil Law tradition. Lat Crit exchanges, such as the Critical Global Classroom and the South-North Exchange contribute to the dissemination of legal narratives to Latin America. But what about constitutional borrowing? or legal transplantation? What about borrowing legal narratives from the *South* to re-think U.S. legal narratives? Why can't we use conceptions of race that are rooted in a Latin American history in order to re-think Critical Race Theory arguments? I think that Lat Crit scholars should be at the forefront of pluralizing legal narratives of race in the U.S. In fact, I think that Lat Crit scholars are in a more advantageous position to draw upon the current interpretations and debates occurring outside of the U.S. to interpret mainland debates because of the institutionalization of Lat Crit exchanges.

Notwithstanding the possible contributions to innovative reflection on the relationship between race, understood as a condition of *Otherness*, and law, it is important to note that both the Subaltern and legal approaches tend to be trapped by liberal institutions and narratives. Both of these academic projects rescue the voice of the subordinated and the marginalized, but they represent these traditionally excluded voices through liberal institutions. I think it is important to recognize that these narratives, which are also informed by a pragmatic commitment to the *Other*, limit the possibility of substantive political change.^{xvii}

Finally, I would like to take issue with Mignolo's remarks on the status of group rights in modernity. Mignolo writes:

The South Asian perspective takes as its point of departure the Enlightenment, which explains Guha's reference to Kant. The Latin American perspective takes as a point of departure the sixteenth century, which explains the importance of Bartolomé de Las Casas, of Vitoria and the School of Salamanca (for philosophy of liberation, Dussel) and the emergence of the Atlantic commercial circuit (Quijano, Mignolo). Vitoria set up an agenda for international relations (or the interstate system in Quijano's vocabulary), cosmopolitanism, and group rights that was ignored during the Enlightenment with emphasis on nation building and individual (man and citizen) rights.^{xviii}

At present I am not clear what Mignolo means by group rights. However, I will assume that he is referring to the notion of *terrenos comuneros*, which was a legal concept that recognized collective or communal land rights in the *Laws of the Indies*. I am also presuming that when Mignolo writes about individual rights, he is referring to the premise of liberalism, of which John Locke is one of the key representatives. To be sure, Nineteenth century Napoleonic Civil Codes adopted Lockean principles of individual land and property ownership that were in turn embraced by virtually every nascent Latin American nation.^{xix} Mignolo's argument appears to be nostalgic for the inclusion of group rights.

My contention is that group rights were traditionally used to oppress and subordinate the average subject during the colonization period. This is not to say that collective land ownership and group rights should not be pursued, in fact some indigenous groups have been using this argument against U.S. agro-industrial corporations like the United Fruit Company and Standard Fruit.^{xx} However, I do want to caution that individual rights narratives have been used in socially just ways in the interest of displacing oppressive policies that rely on the narrative of collective land ownership. One such example can be discerned from the Haitian unification project between 1822 and 1844.

When the Haitian forces under the banner of Jean Pierre Boyer invaded the nascent nation of Santo Domingo, now known as the Dominican republic, the Church and the local cattle ranching elites relied on a notion of collective land ownership^{xxi} in order to subordinate the average subject. One of the key reforms introduced by the Haitian occupation, was the division of collective landholdings and the allotment of individual land plots to former slaves, blacks and mulattoes, or if Franklin Franco Pichardo is right, to ninety-five percent of the population.^{xxii} In other words, the introduction of individual land rights provided a source of survival to an otherwise disenfranchised population that was living in oppressive conditions. More importantly, individual rights arguments helped traditionally oppressed and subordinated Dominicans to challenge the hegemony of white elites and the Church.

Again, my point is not to say that collective rights are not a hallmark of a Spanish-American modernity, but rather I want to problematize the relevance of this argument. I believe that individual rights can, and did, offer a more progressive alternative to collective rights in places like Haiti. Rather I would suggest that it is important to understand how individual and collective rights narratives were deployed during the colonization process, and access when these were used as a tool of subordination. I would argue, that in some cases collective rights were useful, and in other cases, depending on the context, individual rights narratives were more effective in aiding subjects and later citizens in the pursuit of justice. Of course, individual property rights narratives were not introduced in Latin America by the Enlightenment, these were already present as a legacy of the Romano-Germanic tradition. However, nineteenth century liberals did adopt Enlightenment arguments to justify privileging individual rights over collective rights in many cases. I think that we should continue to explore how rights narratives were deployed in the interest of promoting particular relationships of power. To this extent, Mignolo's argument is important because it emphasizes the relevance of this tension and its influence in a modern narrative.

CONCLUDING REMARKS

In an essay titled "*Is There an Ibero-American Philosophy?*" published in 1949 as part of the proceedings of the *Second Inter-American Congress of Philosophy*, the Argentinean philosopher Risieri Frondizi argued that Latin American philosophy had been "subordinated to non-philosophical interests," namely historical causes, cultural and political circumstances.^{xxiii} Stated differently, Frondizi's argument suggests that philosophical research in Latin America at the time was generally subordinated to the local historical, cultural, and political context of the region. Moreover, Frondizi contended that Latin American philosophy was "simply a rethinking of European problems that reached

our shores.”^{xxiv} At best, Frondizi wrote, Latin American philosophy could be understood as a form of perspectivism that was guided by the local context.^{xxv}

This argument suggests that Latin American philosophical thought is contingent on an *a priori* epistemology, namely a source of knowledge that is found in Latin America independent of European thought. In contrast, Dussel suggests that the dialectical relationship between the European “center” and the Latin American “periphery” can provide an alternative source of knowledge.^{xxvi} It follows, that a Subaltern Latin American philosophy could be discerned from the dialectical relationship between European hegemony, and the Latin American efforts to create a national identity in relationship to European imperialism.

Herein lies the importance of the Latin American Subaltern Studies approach, namely in a concern with how European imperialism both constituted a Latin American identity and has been in turn reproduced by Latin American nation-states. In my opinion, the concern with local perspectives raises interesting questions and concerns that can provide new insights about relationships of social, political, and institutional relationships of power in Latin America and to a certain extent in the experience of Latino/as living in the continental United States, at least to the extent that Latino/as retain a connection with Latin America.

My concerns, however, have to do with what I perceive to be important exclusions of historical legal events. A more rigorous study of Spanish and Latin American legal history introduces problems that are obscured by some of the key Latin American Subaltern Studies arguments. On the other hand, I believe that legal scholars involved in the Lat Crit South-North Exchange could benefit by engaging in a sustained dialogue with scholars like Walter Mignolo, Enrique Dussel, Aníbal Quijano, and others who identify with this academic project because legal scholarship often is limited by a concern with formalism, rules, and norms. Law students exposed to these arguments could potentially interrogate the law in distinct ways, and perhaps could challenge the very structure of current legal traditions. Perhaps, in raising alternative questions, legal scholars could envision alternative legal narratives that could contribute to the transformation of the current legal traditions, narratives, and institutions.

In addition, the Latin American Subaltern Studies position tends to reify its historical arguments in dangerous ways. Modernity/Coloniality, Coloniality of Power, race and rights become fixed categories that find legitimacy in the writings of these academics. LatCrit scholars should also be careful when borrowing arguments from the humanities in uncritical ways. More importantly, the rejection of legal formalism should not become a rejection to the specificity of non-legal concepts.

ENDNOTES

- ⁱ Walter D. Mignolo, "Introduction: From Cross Genealogies and Subaltern Knowledges to *Nepantla*," in *NEPANTLA, VIEWS FROM THE SOUTH* 1, 1-8 (2000).
- ⁱⁱ Enrique Dussel, "Eurocentrismo y Modernidad," in *CAPITALISMO Y GEOPOLÍTICA DEL CONOCIMIENTO, EL EUROCENTRISMO Y LA FILOSOFÍA DE LA LIBERACIÓN EN EL DEBATE INTELLECTUAL CONTEMPORANEO* (Walter D. Mignolo ed., 2001): 57-71.
- ⁱⁱⁱ Walter D. Mignolo, "Coloniality of Power and Subalternity," in *THE LATIN AMERICAN SUBALTERN STUDIES READER* 433 (Ileana Rodríguez, ed., 2001).
- ^{iv} *Supra* note 2, at 57.
- ^v *Id.* at 58.
- ^{vi} Bernard Yack, *THE FETISHISM OF MODERNITIES: EPOCHAL SELF-CONSCIOUSNESS IN CONTEMPORARY SOCIAL AND POLITICAL THOUGHT* 4-5 (1997).
- ^{vii} *Supra* note 2.
- ^{viii} *Supra* note 6, at 22.
- ^{ix} José Aricó, *Marx y América Latina*, *NUEVA SOCIEDAD* 180-181 (Jul-Oct 2002): 71-86, 81.
- ^x ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986).
- ^{xi} *Supra* note 3, at 433.
- ^{xii} *Id.*, at 439.
- ^{xiii} *Id.*, at 434.
- ^{xiv} *Id.*, at 435.
- ^{xv} REAL ACADEMIA ESPAÑOLA, *DICCIONARIO DE AUTORIDADES, EDICIÓN FACSIMIL, O-Z* (1990).
- ^{xvi} *See generally* RAMÓN A. GUTIÉRREZ, *WHEN JESUS CAME, THE CORN MOTHERS WENT AWAY: MARRIAGE, SEXUALITY, AND POWER IN NEW MEXICO, 1500-1846* (1991); AUDREY SMEDLEY, *RACE IN NORTH AMERICA: ORIGIN AND EVOLUTION OF A WORLDVIEW*, (2nd Ed. 1999); DAVID J. WEBER, *THE SPANISH FRONTIER IN NORTH AMERICA* (1992).
- ^{xvii} For an important critique of Liberalism and the Subaltern arguments, see Alex Betancourt-Serrano, "Let's bury a few liberals!" (*A Lacanian Gesture*), 5 *THE SYMPTOM* 1-9 (2004) <http://www.lacan.com/gesture.htm>.
- ^{xviii} *Supra* note 3, at 441.
- ^{xix} JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* 24-30 (C.B. Macpherson, ed. 1690, rev ed. 1980).
- ^{xx} *See generally* RIGOBERTA MENCHÚ, *I RIGOBERTA MENCHÚ: AN INDIAN WOMAN IN GUATEMALA*, (Ann Wright, trans., 1984).

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- xxi FRANK, MOYA PONS, *THE DOMINICAN REPUBLIC, A NATIONAL HISTORY* (1995).
- xxii FRANKLIN FRANCO PICHARDO, *EL PENSAMIENTO DOMINICANO, 1780-1940* 97-98 (2001).
- xxiii Risieri Frondizi, *Is There an Ibero-American Philosophy?*, 9 *PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH* 345, 346 (1949).
- xxiv *Id.*, at 351.
- xxv *Id.* at 352.
- xxvi *Supra* note 2, at 57.