Equity and Amerindian Languages and Cultures in the *Essais* of Michel de Montaigne

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Introduction

Michel de Montaigne invites readers of the *Essais* to appreciate his book as a product of his judgment when he describes this faculty as an important tool with which he writes the *Essais*: "Le jugement est un util à tous subjects, et se mesle par tout. A cette cause, aux essais que j'en fay ici, j'y employe toute sorte d'occasion" (I, "De Democritus et Heraclitus," 301a). During the four hundred years since Montaigne first published the *Essais* (Bordeaux 1580), readers have seen in Montaigne's judgment his unique revival of Pyrrhonist skepticism. However, according to Donald M. Frame, "[it] did not take Sextus Empiricus or Cornelius Agrippa to teach [Montaigne] his skeptical temper; it had ripened for thirteen long years in the halls of the Bordeaux Parlement." Philippe Desan has also attributed much of Montaigne's notion of judgment to his legal experience as a jurist: "Montaigne sait qu'un bon juge se doit d'être sceptique face aux arguments présentés et aux preuves rapportées. Peut-être encore plus que les philosophes, les avocats et les juges font également commerce de la vérité."

In 1554, Montaigne assumed the judicial seat of his uncle Pierre Eyquem de Gaujac at the Cour des Aides in Périgueux, a newly established royal court that lasted between two and three years.⁴ However, when he succeeded his uncle, Montaigne was twenty-one years old and below the legal age to practice law (Frame 45). That Montaigne served as an underage jurist

¹ William M. Hamlin, "On Continuities between Skepticism and Early Ethnography; Or, Montaigne's Providential Diversity," *The Sixteenth Century Journal*, 31.2 (Summer 2000): 361-79. David L. Sedley, "Sublimity and Skepticism in Montaigne," *PMLA*, 113.5 (1998 Oct.): 1079-92.

² Donald M. Frame, *Montaigne, A Biography* (New York: Harcourt, Brace & World, Inc., 1965) 62.

³ Philippe Desan, *Montaigne, Les formes du monde et de l'esprit* (Paris: PUPS, 2008) 145.

⁴ Katherine Almquist, "Writing Pluralist Biography of Montaigne's Legal Career," EMF 9 (2004): 58-76. Frame 46.

suggests that he was otherwise qualified to act as a magistrate. These qualifications likely resulted from his formal study of the law, either in Toulouse or in Paris.⁵

In 1561, Charles IX dissolved the Cour des Aides at Périgueux so as to incorporate it into the Bordeaux Parlement. This parlement was one of eight bodies that constituted the Parlement, the highest court system in France. Montaigne would act as councilor at the Chambre des Enquêtes of the Parlement of Bordeaux from 1557 to 1570 (Tournon "Justice" 96-97). The archives of the Parlement house fifty decrees that Montaigne signed as *rapporteur* (from June 1563 to August 1567), thereby indicating his scrutiny of their corresponding case documents. The archives also house 337 decrees in whose margins other judicial members and staff of the Bordeaux Parlement noted Montaigne's participation in case debates and final judgments. André Tournon has concluded from these documents that Montaigne was intensely involved in the Bordeaux Parlement as one of its jurists ("Justice" 97). Accounting for his early retirement from the legal profession, Tournon has described Montaigne as worn out ("Justice" 97).

However, even after Montaigne stepped down from the judicial bench in 1570 he continued to put his legal experience to use. He followed his father and grandfather into public service and acted as mayor of Bordeaux from 1581 to 1585. During his tenure as mayor,

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⁵ Frame 42-45. Few historical traces exist for the eight years in Montaigne's life that elapsed between his graduation from the "college de Guienne, tres-florissant pour lors, et le meilleur de France" (I, "De l'institution des enfans," 175a) and his donning of judicial robes. See in particular George Hoffmann, "Montaigne's Lost Years," *BSAM* 1.55 (2012): 121-141. However, Tournon accepts the legal opinions that Montaigne signed and submitted while a jurist as proof that he indeed studied the law. He reasons that it would have been impossible for Montaigne to have pronounced verdicts without the requisite knowledge of the legal texts and procedures upon which they were based. André Tournon, "Justice and the law: on the reverse side of the Essays," *The Cambridge Companion to Montaigne*, ed. Ullrich Langer (Cambridge: Cambridge University Press, 2005) 96-117, 96-97.

⁶ Frame 51-52 and Almquist "Pluralist Biography" 63. The Parlement was composed of the Parlements of Bordeaux, Paris, Toulouse, Grenoble, Dijon, Rouen, Aix, and Rennes (Frame 48-49).

⁷ Grimon Eyquem, Montaigne's grandfather, served as one of the *jurats* for Bordeaux (an executive administrative assistant to the mayor) from 1485 to 1503 (Frame 8). For an unspecified period of time, Grimon Eyquem also served as provost – "the jurat charged with matters of justice" (Frame 8). Pierre Eyquem de Montaigne, Grimon's eldest son and Montaigne's father, acted as provost and first *jurat* of Bordeaux in 1530, *jurat* and deputy major in 1537, mayor of Bordeaux from 1554 to 1546, and first *jurat* again in 1546 (Frame 10).

Montaigne also corresponded with Henri III and Henri de Navarre about judicial reform.

Géralde Nakam has concluded that, "en matière de justice, Montaigne était en France, et dans cette génération des plus brillants juristes qu'elle ait jamais possédés, une autorité respectée" (132).

In light of Montaigne's legal career and reputation, and his intense involvement in judicial reform, scholars such as Frame, Tournon, Desan, In Ian Maclean, It Stéphan Geonget, Marie-Luce Demonet, and Richard L. Regosin have asserted that Montaigne's legal experience significantly influenced his writing of the *Essais*. Katherine Almquist in particular drew the attention of literary scholars to Montaigne's tenure as a jurist, while other scholars have presented their research of sixteenth-century jurisprudence more generally. Despite these contributions, however, scholarly considerations of Montaigne's legal experience and its impact

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⁸ Both Frame (62) and Géralde Nakam have given further details into the correspondence of judicial reform between Montaigne and Henri III, and Henri de Navarre. See her book *Les Essais de Montaigne, miroir et procès de leur temps, Témoignage historique et création littéraire, Édition revue, corrigée et mise à jour avec une préface inédite* (Paris: Editions Champion, 2001) 132. Nizet published the first edition of this work in Paris in 1984.

⁹ In addition to "Justice and the law: on the reverse side of the Essays," see Tournon's article "Le Grammairien, le jurisconsulte, et l''humaine condition," *BSAM*, L'Expérience philosophique, Septième Série – No21-22 (Juillet-Décembre 1990): 107-18. See also his book *Montaigne*, *La glose et l'Essai* (Lyon: Presses Universitaires de Lyon, 1983) "Chapitre IV – les gloses," 147-202.

¹⁰ In addition to *Montaigne, Les formes du monde et de l'esprit*, see also Desan's chapter "Les formes judiciares chez Montaigne: essai de typologie" (379-89) in his book *Montaigne dans tous ses états* (Fasano, Italy: Schena Editore, 2001), as well as his article "Combien gagnait Montaigne au Parlement de Bordeaux? (un reçu du 27 août 1567)," *Montaigne Studies*, 16.1-2 (March 2004): 41-45.

¹¹ Ian Maclean, "Montaigne et le droit civil romain," in *Montaigne et la rhétorique, Actes du Colloque de St. Andrews, 28-31 mars 1992*, eds. John O'Brien, Malcom Quainton and James J. Supple (Paris: Honoré Champion Éditeur, 1995)163-176.

¹² Stéphan Geonget, "Justice, cas perplexe et question pour l'amy chez Montaigne," *BSAM*, Huitième Série – No21-22 (Janvier-Juin 2001): 159-170.

¹³ Marie-Luce Demonet, "À plaisir," Sémiotique et scepticisme chez Montaigne (Orléans: Paradigme, 2002).

¹⁴ Richard L. Regosin, "Rusing with the Law: Montaigne and the Ethics of Uncertainty," *L'Esprit Créateur*, 46.1 (Spring 2006): 51-63. Regosin appears to build upon Olivier Guerrier's insightful article "Des 'fictions legitimes' aux feintes des poètes," *BSAM*, Huitième Série – No21-22 (Janvier-Juin 2001): 141-149.

¹⁵ Katherine Almquist, "Montaigne judging with Henri de Mesmes (May-June 1565)," *Montaigne Studies*, 16.1-2 (March 2004): 37-41. In the same issue of *Montaigne Studies*, see Almquist's second article "Examining the Evidence: Montaigne in the Registres secrets du Parlement de Bordeaux" (45-75).

¹⁶ Andrea Frisch *The Invention of the Eyewitness, Witnessing & Testimony in Early Modern France* (Chapel Hill: University of North Carolina Press, 2004). Ian Maclean, *Interpretation and Meaning in the Renaissance, The Case of Law* (Cambridge: Cambridge University Press, 1992). Tournon *La glose* 147-202.

on the *Essais* still represent "de nouveaux apercus" into "la méthode de Montaigne." Reading the Essais through the lens of Montaigne's legal career is thus a recent but increasing trend among literary critics.

In comparison, literary analysis of Montaigne's allusions to the New World forms a rich corpus that dates to more than forty years ago and continues to grow. Scholars such as Margaret McGowan, ¹⁸ Edwin M. Duval, ¹⁹ Robert Melançon, ²⁰ and Thomas Parker ²¹ have observed that Montaigne compares the Old World and the New. Scholars have also shown that Montaigne borrowed from early modern European travel accounts and histories of the New World when he wrote the *Essais*, particularly "Des cannibales" (I:31) and "Des coches" (III:6). Pierre Villey²² and Gilbert Chinard²³ contributed the first studies of Montaigne's borrowings. While they pointed especially to the European histories of the New World that Montaigne read, Bernard Weinberg concentrated on the debt that "Des cannibales" owes to European travel narratives. 24 Frank Lestringant in particular has more recently continued the work of Villey, Chinard, and Weinberg.²⁵

¹⁷ John O'Brien's chapter, "Suspended sentences," is regrouped into the section "La Méthode de Montaigne – de nouveaux aperçus" in: Keith Cameron and Laura Willett, eds., Le Visage changeant de Montaigne-The Changing Face of Montaigne (Paris: Honoré Champion Éditeur, 2003), 91-102.

¹⁸ Margaret McGowan, Montaigne's Deceits, The Art of Persuasion in the Essais (London: University of London Press Ltd. 1974) 117-118.

¹⁹ Edwin M. Duval, "Lessons of the New World: Design and Meaning in Montaigne's 'Des Cannibales' (I:31) and 'Des coches' (III:6)," *Yale French Studies*, No. 64, Montaigne: Essays in Reading (1983): 95-112. ²⁰ Robert Melançon, "Une autre Antiquité," *BSAM*, Montaigne et le Nouveau Monde, Septième Série – No29-32

⁽Juillet-Décembre 1992 – Janvier-Juin 1993): 227-241.

²¹ Thomas Parker, "Art and Nature: the Old and the New World Seen through Montaigne's Spanish Mirror," Montaigne Studies, Montaigne et le Nouveau Monde, 22.1-2 (March 2010): 23-39.

²² Pierre Villey, Les sources et l'évolution des Essais (New York: B. Franklin, 1968).

²³ Gilbert Chinard, L'Exotisme américain dans la littérature française au XVIe siècle (Geneva: Slatkine Reprints, 1970), chapter 9 "Un defenseur des Indiens: Montaigne," 193-219. The original edition of this study appeared in 1911.

²⁴ Bernard Weinberg, "Montaigne's Readings for Des Cannibales," Renaissance and Other Studies in Honor of William Leon Wiley (Chapel Hill: UNC Press, 1968) 216-279.

²⁵ See especially Frank Lestringant, "Le Cannibalisme des 'Cannibales,' I. Montaigne et la tradition," BSAM, Sixième Série - No9-10 (Janvier-Juin 1982): 27-40, as well as his recent book Le Brésil de Montaigne, Le Nouveau Monde des "Essais" (1580-1592) (Paris: Chandeigne, 2005).

More than acknowledging that Montaigne borrowed from European accounts of the New World and its peoples, literary scholars have also analyzed Montaigne's masterful use of rhetorical strategies in his allusions to the Americas. Weinberg, Lestringant and Desan²⁶ have argued that Montaigne imitates the travel narrators whom he read, and thereby portrays himself as a witness of Amerindian cultures. Both Lestringant and Gérard Defaux have offered precisions on the kind of testimony that Montaigne presents readers of "Des cannibales" when showing that this essay cannot be read as an ethnographic account of the Tupí-Guaraní Amerindians.²⁷ David Quint has commented that Montaigne might indeed provide readers of "Des cannibales" with certain details about these Brazilians.²⁸ Quint has maintained, however, that Montaigne only borrows from European accounts of the New World in order to compare the Tupí-Guaraní and the French, and thereby to judge his own French society.

Sixteenth-century French society was "torn apart by the Wars of Religion" (Quint 76). Four civil wars of religion had occurred in the twenty years before Montaigne published his first edition of the *Essais* (Bordeaux 1580). The marriage of Catholic Marguerite de Valois with Protestant Henri de Navarre in Paris on August 18, 1572 sought to end the civil wars of religion. Only six days after the wedding, however, on the feast day of Saint Bartholomew,

[des] bandes armées fouillent méthodiquement les maisons ; les protestants sont traînés dehors et exécutés sans jugement ; les cadavres, dépouillés de leurs vêtements et souvent mutilés, sont tirés jusqu'à la Seine, certains ayant été auparavant entassés sur les places ou aux carrefours puis transportés dans des charrettes.²⁹

²⁶ Philippe Desan, "Le simulacre du Nouveau Monde: à propos de la rencontre de Montaigne avec des Cannibales," *Montaigne Studies, An Interdisciplinary Forum* 22.1-2 (2010) 101-118.

²⁷ Gérard Defaux, "Un Cannibale en haut de chausses: Montaigne, la différence et la logique de l'identité," *MLN*, 97 (1982): 919-957. Frank Lestringant, "Le Cannibalisme des 'Cannibales."

²⁸ David Quint, *Montaigne and the Quality of Mercy, Ethical and Political Themes in the Essais* (Princeton: Princeton University Press, 1998) chapter three, "The Culture That Cannot Pardon: 'Des cannibales' in the Larger *Essais*," 75-102. Quint adapted this chapter from his earlier article: "A Reconsideration of Montaigne's Des cannibales," *Modern Language Quarterly: A Journal of Literary History*, 51.4 (1990 Dec): 459-489.

²⁹ Arlette Jouanna, *La Saint-Barthélemy, Les mystères d'un crime d'État, 24 août 1572* (Mayenne: Gallimard, 2007) 7.

Before the end of the Saint Bartholomew's Day Massacre, the Seine ran red with the blood of at least 3,000 Protestant victims (Jouanna 10).

Quint has shown that Montaigne's judicial role in "Des cannibales" responds to the civil wars of religion then tearing France apart.³⁰ While Montaigne's judicial status in "Des cannibales" and the larger *Essais* corresponds to his context in France, it also creates an opposition within him. Montaigne is both the judge of his 'self' and the 'self' whom he judges.³¹ This *chiasmus* paradoxically renders Montaigne both the 'self' and the 'other' of his judgment. During the past thirty years, literary critics such as Michel de Certeau,³² Tom Conley,³³ Michel Liddle,³⁴ Jack I. Abecassis,³⁵ and Bart Moore-Gilbert³⁶ have explored the ways that Montaigne syncretizes the 'other' of his 'self' with an Amerindian 'other.' Scholars such as Roger Celestin³⁷ have evoked anthropological arguments and arrived at a similar conclusion:
Montaigne's treatment of an Amerindian 'other' enables him to identify with this 'other.' Thus,

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³⁰ Frisch and Timothy Hampton have also analyzed Montaigne's judicial status in "Des cannibales." Frisch 100-107. Timothy Hampton, "The Subject of America: History and Alterity in Montaigne's 'Des coches'," *Romanic Review*, 88.2 (March 1997): 203-227.

³¹ The studies that have especially guided my thinking in this dissertation are: Raymond C. La Charité, *The Concept of Judgment in Montaigne* (Netherlands: Martinus Nijhoff / The Hague, 1968) as well as his article "The Relationship of Judgment and Experience in the *Essais* of Montaigne," *Studies in Philology*, 67.1 (Jan. 1, 1970): 31-40. Richard L. Regosin, *The Matter of My Book, Montaigne's Essais as the Book of the Self* (Berkeley: University of California Press, 1977). Tournon *La glose* "Chapitre VI – L'essai : réflexion, témoignage, recherche" (257-286). Gérard Defaux, "Rhétorique et représentation dans les *Essais* : de la peinture de l'autre à la peinture du moi," *BSAM*, Septième Série – No1-2 (Juillet-Décembre 1985): 21-48. Carl H. Klaus, "Montaigne on His Essays: Toward a Poetics of the Self," *The Iowa Review*, 21.1 (Winter, 1991): 1-23. Zahi Zalloua, "(Im)Perfecting the Self: Montaigne's Pedagogical Ideal," in *Perfection*, ed. Anne L. Birberick (Charlottesville, VA: Rookwood, 2008) 111-

³² Michel de Certeau, "Montaigne's 'Of Cannibals': The Savage 'I," in *Michel de Montaigne's Essays*, ed. Harold Bloom (New York: Chelsea House Publishers, 1987) 119-32.

³³ Tom Conley, "Montaigne and the Indies: Cartographies of the New World," in *1492-1992: Re/Discovering Colonial Writing, Hispanic Issues 4*, eds. René Jara and Nicholas Spadaccini (Minneapolis: University of Minnesota Press, 1989) 225-263.

³⁴ Michel Liddle, "Montaigne et l'altérité," *BSAM*, Montaigne et le Nouveau Monde, Septième Série – No29-32 (Juillet-Décembre 1992 – Janvier-Juin 1993) 161-167.

³⁵ Jack I. Abecassis, "'Des cannibales' et la logique de la représentation de l'altérité chez Montaigne," *BSAM*, Montaigne et le Nouveau Monde, Septième Série – No29-32 (Juillet-Décembre 1992 – Janvier-Juin 1993) 195-205. ³⁶ Bart Moore-Gilbert, "'New Worlds, New Selves,' Montaigne, 'the Atlantic,' and the emergence of modern autobiography," *Atlantic Studies*, 2.1 (2005): 1-14.

³⁷ Roger Celestin, "Montaigne and the Cannibals: Toward a Redefinition of Exoticism," *Cultural Anthropology*, 5.3 (Aug. 1990): 292-313.

the act of judging oneself is for Montaigne interrelated with the act of judging an 'other,' and of particular interest to this study, an Amerindian 'other.'

The reciprocity between Montaigne's judgment of his 'self' and an Amerindian 'other' has led William M. Hamlin to associate Montaigne's skeptical inquiry in the Essais with nascent ethnography in the sixteenth-century.³⁸ Hamlin has argued that early modern European travelers to the New World (and their readers) became unsure of their culture, which in turn prompted them to revive and reinvent skepticism. Like the European travel authors whom he read, Hamlin has concluded, Montaigne's process of judging takes Amerindian societies as an important point of departure. The New World native fascinated Montaigne, Defaux argued, because of "les développements et les questions qu'il autorise" (Marot 147).

Not only do Amerindians play a key role in Montaigne's exercise of his judgment, but so do his education and legal experience. As I have already mentioned, French literary critics are increasingly associating Montaigne's skeptical inquiry in the Essais with his legal training and tenure as a jurist. Bearing these important aspects of his judgment in mind, I explore in my dissertation Montaigne's depictions of European encounters with the New World in the light of his experience with sixteenth-century French legal education and its practice.

In the first chapter, I contextualize and analyze several passages from the Essais in which Montaigne comments upon early modern jurisprudence. Regosin observed that in the Essais Montaigne uses fictio legis.³⁹ This judicial technique enabled legal practitioners in classical antiquity and the medieval and early modern periods to invoke a "conscious non-truth" and thereby adapt the law "to new social and political realities" (Regosin 57-58). "Fictional legal arguments can take various forms," Maclean has noted, but they are all "inspired by equity and

³⁸ Hamlin "On Continuities between Skepticism and Early Ethnography."
³⁹ Regosin "Rusing with the Law."

are designed to further the common good" (*Interpretation and Meaning* 139). That is, Montaigne's use of *fictio legis* in the *Essais* is an essential element for his rhetorical use of equity in his book.

Equity was an ancient Greek and Roman judicial procedure, as well as a social and political value that characterized these classical societies. In particular, equity expressed the social, political, and judicial ideals of "fairness between individuals." As Aristotle explains in his Nicomachean Ethics, equity is a "state of character" that dictates the social and political practices and relationships among citizens. ⁴¹ In *De officiis*, Cicero indicates how equity guides these practices and relationships when he argues that "arrangements between citizens" must be aeguus (Skinner 49). That is, "private individuals must live on level terms, on a fair and equal footing, with their fellow citizens" (Skinner 49). In the Essais, Montaigne dedicates "De l'amitié" (I:28) to a description of one such relationship: friendship that is "equitable et plus equable" (I, 28, 188c). In its judicial valence, equity was a procedure by which judges in classical antiquity and in medieval and early modern Europe could put litigants on an equal plane and smooth out their differences (Skinner 49). When weighing the circumstances of the case before him, a practitioner of equity went beyond considering the letter of the law and consulted his own reason and soul (Tournon La glose 188). In his verdict, he would soften the force of, or even amend, the same laws that his society required him to uphold (Tournon "Justice" 105).

In chapter one, I contextualize equity within classical antiquity and point to its continued presence in medieval and early modern jurisprudence. I also begin analyzing the literary role of judicial equity in Montaigne's *Essais*. Montaigne's criticism of the sixteenth-century trial of

⁴⁰ Quentin Skinner, Visions of Politics (Cambridge, UK: Cambridge University Press, 2002) 49.

⁴¹ Richard McKeon, ed., *The Basic Works of Aristotle* (New York: Random House, 1941) 1020.

Martin Guerre implies, Almquist observed, his preference for judicial equity. ⁴² She also noted that Montaigne practiced equity to judge at least one case while he served as a magistrate for the Bordeaux Parlement. ⁴³ Maclean, Alba Maria Robbiati-Gastaldi, ⁴⁴ Papa Gueye, ⁴⁵ and Ullrich Langer ⁴⁶ have also argued that Montaigne draws upon judicial equity in his *Essais*. Indeed, Maclean has even defined Montaigne's reason as his practice of equity: "équité ... c'est la raison humaine selon Montaigne" ("Montaigne et le droit civil romain" 167). Apart from the *Essais*, Langer has also analyzed the role of equity in Marguerite de Navarre's *Heptaméron*. ⁴⁷ In contrast to these recent developments in French literary criticism, English literary scholars have been discussing equity for the past forty years in both its judicial valence and its rhetorical use in early modern English literature, particularly Shakespeare's plays. ⁴⁸

My purpose in this dissertation is to continue the trajectory of the scholars whom I have mentioned and examine the operation of equity within the *Essais*, particularly in the chapters concerning the New World. My close readings of several chapters in the *Essais* show that Montaigne relies upon equity to present Amerindian societies to his readers. In "Des

⁴² Katherine Almquist, "Montaigne et le plus sûr," *BSAM*, Huitième Série – No21-22 (Janvier-Juin 2001): 151-57, 151. For Montaigne's criticism of the trial of Martin Guerre, see in the same edition of *BSAM* Nicola Panichi's article "La boiterie de la raison. Le cas Martin Guerre" (171-83).

⁴³ Katherine Almquist, "Judicial Authority in Montaigne's Parliamentary *Arrêt* of April 8, 1566," *Montaigne Studies*, 10.1-2 (1998): 211-228, 223.

Alba Maria Robbiati-Gastaldi, "De l'équité, mesure vertueuse de la justice," *BSAM*, Huitième Série – No21-22 (Janvier-Juin 2001): 81-86.
 Papa Gueye, "De la justice à l'ordre public : équité et harmonie sociale dans *Les Essais*," *BSAM*, Huitième Série –

⁴⁵ Papa Gueye, "De la justice à l'ordre public : équité et harmonie sociale dans *Les Essais*," *BSAM*, Huitième Série – No21-22 (Janvier-Juin 2001): 233-240.

⁴⁶ Ullrich Langer, "Justice légale, diversité et changement des lois : de la tradition aristotélicienne à Montaigne," *BSAM*, Huitième Série – No21-22 (Janvier-Juin 2001): 223-231.

⁴⁷See his article "Équité et nouvelle 'encadrée' (*L'Heptaméron*)," Éthique et droit, du Moyen Âge au siècle des Lumières (2012): 189-203.

⁴⁸ See for instance Roger T. Simonds, "The Problem of Equity in the Continental Renaissance," in *Renaissance Papers 1989*, eds. Dale B. J. Rendall and Joseph A. Porter (Durham, NC: The Southeastern Renaissance Conference, 1989) 39-49. Peter C. Herman, "Equity and the Problem of Theseus in A Midsummer Night's Dream: Or, the Ancient Constitution in Ancient Athens," *Journal for Early Modern Cultural Studies*, 14.1 (2014 Winter): 4-31. B. J. Sokol and Mary Sokol, "Shakespeare and the English Equity Jurisdiction: The Merchant of Venice and the Two Texts of King Lear," *Review of English Studies: A Quarterly Journal of English Literature and the English Language*, 50.200 (1999 Nov): 417-439. Nicholas W. Knight, "The Narrative Unity of Book V of The Faerie Queene: "That Part of Justice Which Is Equity," *Review of English Studies: A Quarterly Journal of English Literature and the English Language*, 21.83 (1970 Aug): 267-294.

cannibales," I find that Montaigne follows the argumentative style recommended by Cicero to practitioners of equity. To be specific, Montaigne uses several rhetorical strategies that Cicero encouraged practitioners of equity to adopt: *comparatio*, *remotio criminis*, and *relatio criminis*. I argue that Montaigne relies upon equity in "Des cannibales" in order to redirect European charges of Amerindian barbarity back onto his readers. In short, I claim that Montaigne uses equity to teach his readers how to judge both the Amerindians and themselves.

Nearly a century of European interactions with Amerindians had passed before

Montaigne wrote the *Essais*. This span of time provided Europeans, including Montaigne, with opportunities to encounter New World peoples. Beginning with Christopher Columbus, merchants and sailors "[kidnapped] New World men and [brought] them to Europe as proof of where they had been." Some scholars estimate that the frequency with which Europeans kidnapped Amerindians resulted in hundreds, if not thousands, of New World people in Europe. While still a jurist with the Bordeaux Parlement, Montaigne encountered at least three Tupí-Guaraní Amerindians at the royal entry of Charles IX into Bordeaux (1565). Facilitated by an interpreter, Montaigne had a conversation with at least one of these Tupí-Guaraní, whom he describes in "Des cannibales" as a war captain (I, 31, 214a).

In addition to his personal contact with the Tupí-Guaraní, Montaigne read several European travel accounts and histories of the New World and its peoples. Montaigne's particularity, however, lies in his choice of informants (Nakam 335-336). He consults authors who, through their sympathetic descriptions of Amerindian societies that practiced human

⁴⁹ Olive P. Dickason, *The Myth of the Savage, and the Beginnings of French Colonialism in the Americas* (Edmonton, Alberta, Canada: The University of Alberta Press, 1997) 205.

⁵⁰ See Dickason chapter 10, "Amerindians in Europe" (205-229).

⁵¹ It is possible that Montaigne encountered the Tupí-Guaraní in 1562, during the royal entry ceremony of Charles IX into Rouen; however, Desan has found it more probable that Montaigne encountered the Brazilians brought before Charles IX in 1565, when the French king visited Bordeaux ("Le simulacre du Nouveau Monde" 105-116).

sacrifice and cannibalism, decried European colonization of New World peoples (Nakam 335-336). Like these authors, Montaigne offers sympathetic descriptions of Amerindian societies (Hampton 218).

I argue in chapter two that Montaigne's practice of equity is a crucial element of his sympathetic presentations of New World peoples. In *Topica*, Cicero advises a jurist how to broaden language through his practice of equity.⁵² I suggest that Montaigne relies upon equity and the related technique of *distinguo* to broaden his language and convey both French and Amerindian perspectives. By including Amerindian viewpoints in the *Essais*, Montaigne both provokes his readers to adjust their judgments of New World peoples and teaches his readers how to do so. I thus find that equity, and the Amerindian languages and cultures that Montaigne treats through this judicial procedure, are key to his process of judging.

To understand the ways that Montaigne's practice of equity and treatment of New World peoples both contribute to his judgment, I turn my attention to his description of this faculty in "De Democritus et Heraclitus" (I:50). My inquiry leads me to analyze a particular phrase that Montaigne uses to outline his judgment alongside phrases from the Tupí-Guaraní Amerindian language, which were accessible to him through Jean de Léry's *Histoire d'un voyage faict en la terre du Brésil* (1578). From this comparison, I claim that Montaigne's description and practice of his judgment in the *Essais* harmonize with his New World readings. Appreciating Montaigne's use of equity in conjunction with his treatment of Amerindian linguistics and cultures can grant his readers new insights into his skepticism.

In the third and final chapter of this dissertation, I consider the ways that Montaigne's rhetorical use of equity informs "Des coches." In this essay, Montaigne shifts his interest from

⁵² H.M. Hubbell, trans., *Cicero; De inventione; De optimo genere oratorum; Topica*, vols. 1&2 (Cambridge, Harvard University Press, 1949) 2:311

the Tupí-Guaraní in Brazil to the Spanish conquest of the Aztec in Mexico and the Inca in Peru. During the Debates of Valladolid (1550-51), held under the auspices of a special jury that Spanish monarch Charles V assembled himself, the Spanish disputed how they should conquer and colonize Amerindians. However, the Dominican Francisco de Vitoria (1486-1547) especially invited Europeans to discuss their conquest of the New World first in terms of 'if' and 'when' before discussing it in terms of 'how.' Vitoria, who is known today as one of the forefathers of contemporary international law and equity, sought to establish the legal parameters by which Europeans could interact with Amerindians.⁵³ He ultimately maintained through his arguments on behalf of the Amerindians and the Spanish that both of these parties held equal claim to the New World.⁵⁴ In addition, Vitoria advised Europeans against justifying their conquest of the New World with "sham assertions of imaginary causes of war" (Anaya 18).

In this chapter, I argue that Montaigne's use of equity draws upon Vitoria's practice of this judicial technique and works to undermine any case that the Spanish could make for the *conquista*. Montaigne describes in detail South America and judges it to be "la plus riche et belle partie du monde" (III, 6, 910b). For Montaigne, the "villes de Cusco et de Mexico" exhibit an "espouventable magnificence" (III, 6, 909b). Not only does the New World milieu astound the Old World observer, but so do the Amerindians themselves. Montaigne celebrates the noble character of both the Aztec and Incan peoples and thereby implies that the Spanish were without 'just' cause to conquer them.

⁵³ S. James Anaya, *Indigenous Peoples in International Law*, Second Edition (Oxford: Oxford University Press, 2004) 16. See also: Martti Koskenniemi, *From Apology to Utopia, The Structure of International Legal Argument* (Helsinki: Lakimiesliiton Kustannus Finnish Lawyers' Publishing Company, 1989) 73-81.

⁵⁴ Anaya 16 and Koskenniemi 79. See: Francisco de Victoria, *De indis et de ivre belli relectiones* (Washington D.C.: Classics of International Law, 1917) (translation by J. Bate, based on Iaques Boyer ed., 1557; Alonso Muñoz ed., 1565; and Johanan G. Simon ed., 1696).

In his depiction of New World natives, Amerindian civilizations, and their fall to the *conquistadores*, Montaigne also creates a subtle comparison between sixteenth-century South Americans and Europeans. In my analysis of this comparison, I find that Montaigne relies upon three techniques characterizing equity: *distinguo*, *locus a simili*, and analogy. Through his use of these strategies, I argue, Montaigne includes in "Des coches" Amerindian perspectives of the *conquista*. He uses the viewpoints of the New World natives to exercise and reform the judgment of his readers, whom Montaigne leads to condemn the Spanish conquest of the New World as a European atrocity.

The conclusions that I draw within the chapters of my dissertation are three-fold. First, I suggest that Montaigne used the equity he had learned in his legal training to present New World societies to his readers. Second, I observe that Montaigne's use of equity harmonizes with Amerindian languages and cultures themselves. Third, I maintain that Montaigne engages his readers' faculties of judgment in his treatment of New World societies and thereby teaches his readers how to judge both themselves and Amerindians. I therefore conclude that equity, and the Amerindian languages and cultures that Montaigne treats through this judicial procedure, are key to his practice of skepticism. I also conclude that Montaigne uses his skeptical process of judging to provoke his readers to challenge their justifications for civil wars of religion in the Old World and European colonization of the New.

Chapter One

Early modern law, the New World, and the Essais

Early Modern Law

Early modern law in Europe drew upon the cultural customs of its societies and the *Corpus iuris civilis* (529 – 534 AD), issued by Byzantine Roman Emperor Justinian (c.482 – 565AD). Since the eleventh-century, Europeans interpreted, glossed, and adapted the Roman laws and legal procedures outlined in the *Corpus* to meet the juridical needs of their own societies. Indeed, the *Corpus* would continue to be legally relevant for Europe until the seventeenth-century (Maclean *Interpretation and Meaning* 14). Interpretations of the *Corpus* that date to the sixteenth-century show a revision in the teaching methods of university law faculties. In particular, legal education emphasized the Justinian texts composing the *Corpus*: "le droit romain est enseigné avec un tel éclat, il a si bien pris pied dans les tribunaux et dans la pratique." In France, legal education also stressed the history and relevance of French customs, or the *droit coutumier*, which functioned in combination with Roman law. 57

Sixteenth-century interpretations of the *Corpus* also show an emphasis on linguistic issues, in both legal education and practice. Commentators of the *Corpus* made accessible to its

⁵⁵ Ian Maclean, *Interpretation and Meaning in the Renaissance, The Case of Law* (Cambridge: Cambridge University Press, 1992) 14.

⁵⁶ Jean Brissaud, *Cours d'histoire générale du droit français public et privé à l'usage des étudiants en licence et en doctorat*, vols. I-II (Paris: A. Fontemoing, 1904) I:157.

⁵⁷ Maclean *Interpretation and Meaning* 16. The northern half of France tended to privilege French cultural customs as the law of the land, and was thus known as the "pays de droit coutumier." In contrast, the southern half of France was known as the "pays de droit écrit," due to the predominance of Roman law. Alan Watson, *The Making of the Civil Law* (Cambridge: Harvard University Press, 1981) 7. According to Georges Matoré, a specific concern of some French jurists, such as Charles Du Moulin, was that the *Corpus* might come to replace the *droit coutumier*, rather than function with it. Georges Matoré, *Le vocabulaire et la société du XVIe siècle* (Paris: Presses Universitaires de France, 1988) 169.

students the Greek passages that had been inadequately translated or not translated at all (Maclean *Interpretation and Meaning* 16). In legal practice, Montaigne explains, the interpretation and signification of grammar posed the greatest challenge to legal professionals in their application of the law:

Nostre parler a ses foiblesses et ses defauts, comme tout le reste. La plus part des occasions des troubles du monde sont Grammairiennes. Nos procez ne naissent que du debat de l'interpretation des loix; et la plus part des guerres, de cette impuissance de n'avoir sçeu clairement exprimer les conventions et traictez d'accord des princes.⁵⁸

Several sixteenth-century *artes legales* and commentaries on the *Corpus* that Montaigne would have known from his law studies, that dated to his tenure as a jurist, and that were contemporaneous to his *Essais*, begin with notes on grammar. These notes show that legal practitioners emphasized "the pragmatic function of language (the relationship between language and its user)" when they interpreted grammar (Maclean *Interpretation and Meaning* 70). In his *In Pandectarum titulum de verborum et rerum significatione tractatus isagogicus* (1546), Aurelius David Savius describes the relationship between language and its user when he claims that "words are not only the correlates of things, but also of intentions" (*Interpretation and Meaning* 71). Furthermore, he argues, "intention is a thing to be signified as much as the significate itself" (*Interpretation and Meaning* 71).

Pierre Rebuffi (1487-1557), in his *In titulum de verborum et rerum significatione* commentaria (published posthumously in 1576), points to the pragmatics of language when he defines a word:

mentis conceptus, qui de voce formanda et emittenda conciputur, antequam ulterius ad labia producatur; [hanc] [cogitationem] nullus posset declarare praeter Deum qui solus est cordium scrutator.

⁵⁸ Michel de Montaigne, *Les Essais*, ed. Pierre Villey (Paris: Quadrige/PUF, 1999) II, "Apologie," 527a.

⁵⁹ See Maclean Interpretation and Meaning 70-72. He emphasizes in particular Aurelius David Savius, In Pandectarum titulum de verborum et rerum significatione tractatus isagogicus (Lyon 1546). Jerome Sapcote, Ad primas leges Digestorum de verborum et rerum significatione (Venice 1579). The second edition (Lyon 1586) of Pierre Rebuffi, In titulum de verborum et rerum significatione commentaria (1576). The fifth edition (Nassau 1614) of Johannes Goeddaeus, Commentarius repetitae praelectionis in titulum XIV libri. I. Pandectarum (1591).

[a concept of the mind which is conceived for the voice to form and enunciate before it is brought forth by the lips; knowledge of this concept none can claim other than God who alone sees into our hearts.]⁶⁰

For Rebuffi, words "are the servants of things and conceptions," so that "their raison d'être is their use" (Maclean "Montaigne and the humanist jurists" 247). Maclean has found that Montaigne "fully [endorses]" the above precepts from Rebuffi throughout "De l'experience" (III:13) ("Montaigne and the humanist jurists" 247).

Legal interpretation thus aspired to grant its jurist access to the intentions that are "before, beneath, [and] inside" words (Maclean "Montaigne and the humanist jurists" 247).

Otherwise put, it sought "to provide access to the 'mens' or 'voluntas' of the speaker" (Maclean "Montaigne and the humanist jurists" 247). In "Que l'intention juge nos actions" (I:7),

Montaigne locates *voluntas*, or "la volonté" (I, 7, 30a), at the root of all human conduct: "en celle là se fondent par necessité, et s'etablissent toutes les reigles du devoir de l'homme" (I, 7, 30a).

Through his use of "volonté" in this essay, Montaigne commits word-play. He uses this term to signify 'will'⁶¹ and thereby describes the intentions that guide people's behavior in life as well as those that inform a person's final testament ("leur dernière volonté," I, 7, 31c). Montaigne aligns himself with his fellow jurists when, in the title of I:7, he acknowledges the paramount importance of intentions to judging people's actions. He also joins his fellow jurists when in this same essay he attributes people's codes of conduct to *voluntas*, through which he shows people communicating their intentions both in life and even after their deaths. As a jurist, Montaigne was confronted several times with the arduous task of interpreting the 'will' (final testament) of a

⁶⁰ Pierre Rebuffi, *In titulum de verborum et rerum significatione commentaria* (1576), 2nd ed., Lyon, 1586, fol. Quoted and translated in: Ian Maclean, "The place of interpretation: Montaigne and humanist jurists on words, intention and meaning," in *Montaigne: A Collection of Essays, A Five-Volume Anthology of Scholarly Articles*, Volume 4, ed. Dikka Berven, (New York: Garland Publishing, Inc., 1995) 238-259, 247.

⁶¹ See Donald M. Frame's translation of this essay in *Michel de Montaigne, The Complete Works, Essays, Travel Journal, Letters* (New York: Everyman's Library/Alfred A. Knopf, 2003) 23-24.

deceased person whose estate was in dispute among its heirs; a case of this kind also required its jurist to judge the 'will' (motivations) informing the actions and speech of the litigants before him.⁶² Hence in the "Apologie," when Montaigne recognizes the challenges that grammar posed to legal interpretation, he ultimately acknowledges the difficulty of interpreting the *voluntas* of any given speaker. Montaigne even evokes the liar paradox to emphasize the possible discord between grammar and a speaker's intentions: "Si vous dictes: Je ments, et que vous dissiez vray, vous mentez donc" (II, 12, 527b).

Bartolus de Saxoferrato (1314-1357), one of the most influential commentators of the *Corpus*, offers legal practitioners a possible solution to the problematic task of interpreting language. He proposes that the common usage of a language, *communis usus loquendi*, elucidates obscurities in the laws and their application (Simonds 44-6). The interpretation Bartolus offers corresponds to the original design of the *Corpus*: "On trouva dans les lois romaines la doctrine d'après laquelle la loi tire son autorité du *judicium populi*" (Brissaud I:242). However, *communis usus loquendi* in the Latin of republican or imperial Rome would not be the same in the vernacular kingdoms of early modern Europe.

In 1539, François 1er signed the *Ordonnance générale sur le fait de la justice*; it came to be known as the Edict of Villers-Cotterêts, where it was signed into law. This document "contains 192 articles designed to enact large-scale judicial and administrative reform." However, this document is perhaps best known for only two of them, articles 110 and 111:

110. Et affin quil ny ayt cause de doubter sur l'intelligence desdits arrestz, nous voulons et ordonnons qu'ilz soient faitz et escriptz si clairement, quil ny ait ni puisse avoir aucune ambiguite ou incertitude ne lieu a en demander interpretation.

⁶² For examples see the following articles by Katherine Almquist: "Judicial Authority in Montaigne's Parliamentary *Arrêt* of April 8, 1566," *Montaigne Studies*, 10.1-2 (1998): 211-228; "Quatres Arrêts du Parlement de Bordeaux, autographes inédits de Montaigne (mai 1566 – août 1567)," *BSAM*, Huitième Série – No9-10: (Janvier-Juin 1998): 13-38, 23.

⁶³ Katie Chenoweth, "The Force of a Law: Derrida, Montaigne, and the Edict of Villers-Cotterêts (1539)," *The Comparatist*, 36 (May 2012) 67-85, 67.

111. Et pource que telles choses sont souventeffois ad-venues sur l'intelligence des motz latins contenuz esdictz arrestz, nous voulons que doresenavant tous arretz ensemble toutes autres procédeures, soyent de noz cours souveraines ou autres subalternes et inférieures, soyent de registres, enquestes, contractz, commissions, sentences, testamens et autres quelzconques actes et exploictz de justice, ou qui en dépendent, soyent prononcez, enregistrez et délivrez aux parties en langage maternel françois, et non autrement (Quoted in Chenoweth 83, footnote 1).

Both articles emphasize the ambiguity and uncertainty in the law, particularly in its Latin expression, and both attempt to provide solutions through clarity. Article 110 requests that legal documents be written clearly, and article 111 replaces Latin with the language that it deems as a clearer alternative: French. Not only does the Edict of Villers-Cotterêts establish French as a preferable alternative to Latin, but it makes French synonymous with judgment when it establishes French as the "uniquely recognized language of justice, law, and state administration in France" (Chenoweth 67).

However, as Katie Chenoweth has shown, neither the royal request for clarity in legal procedures, nor the shift from Latin to French, improved the legal management of French society. For Montaigne also, the French language is one that does not contribute to its speakers' ability to judge. Montaigne observes that the French language "est tout formé de propositions affirmatives" (II, 12, 527a). The absence of critical expressions in the French language matches the absence of critical behavior in French society:

On reçoit comme un jargon ce qui en est communement tenu; on reçoit cette verité avec tout son bastiment et attelage d'argumens et de preuves, comme un corps ferme et solide qu'on n'esbranle plus, qu'on ne juge plus. Au contraire, chacun, à qui mieux mieux, va plastrant et confortant cette creance receue, de tout ce que peut sa raison, qui est un util soupple, contournable et accommodable à toute figure. Ainsi se remplit le monde et se confit en fades et en mensonge. Ce qui fait qu'on ne doute de guerre de choses, c'est que les communes impressions, on ne les essaye jamais; on n'en sonde point le pied, où giste la faute et la foiblesse; on ne debat que sur les branches; on ne demande pas si cela est vray, mais s'il a esté ainsin ou ainsin entendu (II, "Apologie," 539a).

The French linguistic tendency to affirm matches their corresponding social tendency to affirm the 'truth' by consensus. Montaigne's observation on French society reflects the linguistic value that legal practitioners emphasized: the relationship between language and its user (Maclean

Interpretation and Meaning 70-71). In the "Apologie," Montaigne focuses on a particular aspect of this relationship when he observes that the French "ne juge plus." That is, for Montaigne the French linguistic tendency to affirm and the corresponding French social tendency to affirm by consensus result in the French not judging.

Montaigne's commentary on French language and society ultimately speaks to the common usage of French, and the inability of its collective speakers to judge. His critical appraisal of the common usage of French, and any attempts to judge thereby, is thus actually his critique of *communis usus loquendi*. Indeed, Montaigne indicates in the *Essais* that he does not support Bartolus, who proposed *communis usus loquendi*: "Nous doubtions sur Ulpian, redoutons encore sur Bartolus et Baldus" (III, "De l'experience," 1067b). Not only does Montaigne implicitly criticize *communis usus loquendi* in the above passage from the "Apologie," but in its final clause Montaigne implies his second critique of Bartolus.

Beyond proposing *communis usus loquendi*, Bartolus also redefined legal interpretation. Legal interpretation before Bartolus focused on the content of language. That is, legal practitioners before Bartolus asked 'Is what the individual in question alleged to have said itself true?' (Maclean *Interpretation and Meaning* 92). Bartolus redirects legal interpretation to focus on the truth of the allegation itself, a shift that would have legal practitioners ask 'Is it true that the individual in question said what he is alleged to have said?' (Maclean *Interpretation and Meaning* 92). Otherwise put, Bartolus "subordinates the truth of the text or utterance to the truth of its allegation" (Maclean *Interpretation and Meaning* 92). When Bartolus subordinates the truth to the truth of its allegation, he subordinates truth to *communis opinio* – "the consensus of the best available legal opinion, not, as in humanistic writing, a prejudiced or unfounded belief" (Maclean *Interpretation and Meaning* 93).

In the above passage from the "Apologie," Montaigne refers to *communis opinio* in both its legal and humanistic uses. Montaigne speaks as a humanist when he indicates that the consensus of the people, which represented a prejudiced or unfounded belief, does not lead to appropriate judgment. Montaigne's humanist critique of *communis opinio* aligns with his judicial critique of *communis usus loquendi*, so that he ultimately describes the French as a people who "ne juge plus" (II, 12, 539a). Montaigne also speaks as a jurist when he indicates that the consensus of the magistrates, which adhered to the *Corpus* interpretations of Bartolus, does not demonstrate proper judgment. The solution that Montaigne advocates represents a reversal of the way that Bartolus had guided French legal practice. Rather than uphold *communis opinio*, Montaigne proposes that people ask first if something is true, rather than if its allegation is true – "demande [si] cela est vray" rather than "s'il a esté ainsin ou ainsin entendu" (II, "Apologie," 539a).

Apart from the "Apologie," Montaigne refers explicitly to judging by common usage in only one other essay: "Des cannibales" (I:31). Early in "Des cannibales," Montaigne notes the prevalence of *communis usus loquendi* across France when he observes that the French language and its customs prevented his countrymen from interpreting correctly the Amerindians:

il n'y a rien de barbare et de sauvage en cette nation [Tupí-Guaraní], à ce qu'on m'en a rapporté, sinon chacun appelle barbarie ce qui n'est pas de son usage (I, "Des cannibales," 205a).

Montaigne's observation and implicit critique of *communis usus loquendi* in France again aligns with his critique of *communis opinio*. Judging by *communis opinio* subordinated truth to consensus, a practice that Montaigne found occurred in France when his countrymen subordinated truth and reason to their collective culture:

comme de vray, il semble que nous n'avons autre mire de la verité et de la raison que l'exemple de l'idée des opinions et usances du païs ou nous sommes (I, "Des cannibales," 205a).

However, Montaigne cautions his readers against judging by *communis usus loquendi* and *communis opinio*, or "la voix commune":

il se faut garder de s'atacher aux opinions vulgaires, et les faut juger par la voye de la raison, non par la voix commune (I, 31, 202a).

Rather than use *communis usus loquendi* and *communis opinio*, Montaigne encourages his readers to judge by reason.

Cicero, upon whom Montaigne reflects in "Consideration sur Cicéron" (I:40), indicates in several of his works that "the law is nothing other than right reason." Since ancient Rome, European legal theoreticians and practitioners associated a specific way to apply the law with 'reason' (*naturalis ratio*), particularly the 'right reason' (*ratio legis*): equity (Maclean *Interpretation and Meaning* 176). Equity was the only means for a jurist to soften the force of, or even amend, the same laws that his society required him to uphold (Tournon "Justice" 105). Legal theoreticians and practitioners from classical antiquity onwards evoked the Lesbian ruler, a tool that builders adapted to the shapes of the stones they measured, to describe the exercise of their reason through equity. Maclean has observed that Montaigne's definition of reason implicitly evokes the Lesbian ruler⁶⁵:

J'appelle tousjours raison cette apparence de discours que chacun forge en soy : cette raison, de la condition de laquelle il y en peut avoir cent contraires autour d'un mesme subject, c'est un instrument de plomb et de cire, alongeable, ployable et accommodable à tous biais et à toutes mesures ; il ne reste que la suffisance de le sçavoir contourner" (II, "Apologie," 565a).

The resonance between Montaigne's definition of reason and the Lesbian ruler has led Maclean to conclude that "équité ... c'est la raison humaine selon Montaigne" ("Montaigne et le droit civil romain" 167). Maclean's interpretation of Montaigne's reason harmonizes with the judicial

⁶⁴ Maclean *Interpretation and Meaning 60-61*. He quotes the following works of Cicero: *Philippics, De legibus, De extensionibus*, and *Tractatus iuris universi (Interpretation and Meaning 60*, footnote 101).

⁶⁵ Ian Maclean, "Montaigne et le droit civil romain," in *Montaigne et la rhétorique, Actes du Colloque de St. Andrews, 28-31 mars 1992*, eds. John O'Brien, Malcom Quainton and James J. Supple (Paris: Honoré Champion Éditeur, 1995)163-176, 167.

expression "comme de raison," which specifically connoted a jurist's practice of equity through his use of reason ("Judicial Authority" 223). Katherine Almquist has shown that Montaigne used this judicial expression to denote his practice of equity in at least one case over which he presided: De Conget vs. De Maioraly ("Judicial Authority" 221, 223). Thus, it is likely that Montaigne associated reason with equity in his description of this mental faculty in the *Essais*. However, even as Montaigne's definition of reason alludes to judicial equity, he does not explicitly define reason as the practice of equity. Before we can pursue a consideration of what equity was for Montaigne, we must look for further indicators from the *Essais* or its sixteenth-century context that reinforce his association of reason with equity.

Near the end of the sixteenth-century, Guy Coquille (1523 – 1603) drafted the *Institution* au droict des françois (published in 1607). Where Montaigne criticizes the role that French language and customs played in the judicial interpretation and application of his society's laws, Coquille solidifies French customs as law in France:

...nos loix sont nos Coustumes. Qui faict que les Coustumes lient les volontez des personnes qui sont domicilees au territoire desdictes Coustumes: & qu'és affaires qui dependent des seules volontez & dispositions des personnes (240).

Since both Montaigne and Coquille acknowledge that French laws are synonymous with French customs, it is possible, and perhaps even probable, that Montaigne defines Roman law as Coquille does:

le droict ciuil Romain, n'est pas le droict commun [en France], il n'a pas force de loy, ains sert seulement pour la raison, & nos coustumes sont notre vray droict ciuil, pourquoy n'est besoin d'y faire l'interpretation à l'estroit....⁶⁶

In other words, Coquille elevates all Roman laws to the status of 'reason,' even as he argues on behalf of French customs (Simonds 49). And, while Coquille claims that French laws require no judicial interpretation whatsoever, his promotion of Roman laws to the status of reason implies

⁶⁶ *Institution au droict des françois*, par M. Guy Coquille, sieur de Romenay, A L'Angelier (Paris), 1607, 28. Available online through Gallica, the Bibliothèque numérique of the Bibliothèque nationale de France.

that the French could consult Roman laws in their interpretation and application of French ones. In fact, Parisian lawyer Louis Charondas Le Caron affirms in his *Responses ou décisions du droict françois* (1605) that French magistrates continued to refer to Roman laws in their interpretation and application of French ones. Thus, it is possible that in "Des cannibales" Montaigne encourages his society to appeal to Roman laws, including equity, when he encourages them to appeal to reason.

Indeed, equity played a fundamental role in the French appeal to Roman laws. Coquille subtly encourages his readers to practice equity when he advocates the use of *benigna interpretatio*:

Car en Italie le droict Romain est le droict commun ... mais à no[tre] le droict Romain ne sert que pour raison, & le droit Coustumier peut, & doit estre entendu & extendu au large, avec benigne interpretation (*Institution* 95).

Legal commentators from the medieval and early modern periods associated *benigna interpretatio* with equity (Maclean *Interpretation and Meaning* 176). When Coquille advocates the use of *benigna interpretatio* ("benigne interpretation"), he implicitly endorses a judicial practice that was of the same vein as equity, if he does not invoke *benigna interpretatio* to refer to equity itself. Only ten years after the publication of the *Institution*, Bernard de La Roche Flavin transforms Coquille's implicit endorsement of equity into an explicit one. At the same time, La Roche Flavin overtly associates the French judicial practice of equity with 'reason':

⁶⁷ Roger T. Simonds, "The Problem of Equity in the Continental Renaissance," in *Renaissance Papers 1989*, eds. Dale B. J. Rendall and Joseph A. Porter (Durham, NC: The Southeastern Renaissance Conference, 1989) 39-49, 48. Brissaud I:168. Watson 7.

⁶⁸ Responses ou décisions du droict françois, confirmées par arrests des cours souveraines de ce royaume et autres... enrichies de singulières observations du droict romain, reveuës et augmentées... d'un XIII. livre..., par L[ouis] Charondas Le Caron, N. du Fossé, Ivrisconsulte Parisien (Paris), 1605. Available online through Gallica, the Bibliothèque numérique of the Bibliothèque nationale de France.

Lesquels Parlemens qui sont tenus juger par le droit escrit des Romains, peuvent neantmoins juger par equité. Laquelle n'est autre chose, que la loy mesme declarée par raison naturelle, qui tempere la loy, et y adjouste la bonté de nature dicte en droit *aequum et bonum*...⁶⁹

Given Montaigne's own definition of reason, and the legal climate contextualizing his tenure as a jurist and his writing of the *Essais*, it perhaps comes as little surprise that in his book Montaigne also voices his support for equity as a way to judge.

Equity

Equity was the legal procedure by which magistrates could temper the letter of the law; otherwise, the law could become too inflexible and rigid (Maclean *Interpretation and Meaning* 175-76). Aristotle provides the following definition of equity in his *Nicomachean Ethics*:

Equity [...], though just is not legal justice [...], but a rectification of legal justice. The reason for this is that law is always a general statement, yet there are cases which it is not possible to cover in a general statement.... When therefore the law lays down a general rule, and thereafter a case arises which is an exception to the rule, it is then right, where the lawgiver's pronouncement because of its absoluteness is defective and erroneous, to rectify the defect by deciding as the lawgiver would himself decide if he were present on the occasion, and would have enacted if he had been cognizant of the case in question... (cf. Magna moralia, ii.I (1198b24), quoted in Maclean *Interpretation and Meaning* 22-23).

In this same work, Aristotle also invokes the flexible Lesbian ruler to describe the procedure of equity:

For when the thing is indefinite the rule also is indefinite, like the leaden rule used in making the Lesbian moulding; the rule adapts itself to the shape of the stone and is not rigid, and so too the decree is adapted to the facts. ⁷⁰

The *Annotationes in Pandectas* (1551) of Guillaume Budé (1467 – 1540), a magistrate of the Parlement, adopts Aristotle's discussion of equity from the *Nicomachean Ethics*. In his commentary on equity,

⁶⁹ Bernard de La Roche Flavin, *Treze Livres des Parlemens de France*, Bordeaux, Millanges, 1617, XIII, lxi, paragraph 13, quoted in André Tournon, *Montaigne, La glose et l'essai* (Lyon: Presses Universitaires de Lyon, 1983) 189.

⁷⁰ Richard McKeon, ed., *The Basic Works of Aristotle* (New York: Random House, 1941) 1020.

Budé cite l'exemple de la règle de plomb de Lesbos qui s'adapte aux pierres dans la construction : lorsqu'il est impossible d'adapter la disposition des pierres à la règle, il faut adapter, pour les besoins d'une construction précise, la règle à la disposition des pierres.⁷¹

Plato's *Laws* also emphasize the flexibility that equity affords its jurist, by which he can minimize the severity of punishments (Simonds 40-1). Rebuffi, in his *In titulum Digestorum de verborum et rerum significatione* (1576), upholds Plato's description of equity: "aequitas est rigori praeferenda' (equity is to be preferred to rigour)" (quoted in *Maclean Interpretation and Meaning* 175).

Not only does flexibility characterize equity, but also equality, which Seneca describes in his *Epistulae morales ad Lucilium*: "Prima autem pars est aequitatis aequalitas" (XXX, 11). Montaigne translates this verse of Seneca in "Que Philosopher c'est apprendre a mourir" (I:20): "I'equalité est la premiere piece de l'equité" (I, 20, 94c). Indeed, death awaits us all equally, and is thus "le plus juste de tous les phénomènes, car tous y sont également 'compris'" (Langer 195, footnote 2). In *Topica*, Cicero also emphasizes the equality that characterizes equity:

What is valid in one of two equal cases should be valid in the other; ... Equity should prevail, which requires equal justice in equal cases (Quod in re pari valet valeat in hac quae par est; ... Valeat aequitas, quae paribus in causis paria iura desiderat).⁷³

In *De inventione*, Cicero defines equity even more simply: "what is just and fair to all" (Hubbell 1:233) ("quod in omnes aequabile est," Hubbell 1:232).

The judicial definitions of equity that Cicero provides correspond to the larger political Roman concept of "fairness between individuals." In *De officiis*, Cicero argues that "arrangements between citizens" must be *aequus* (Skinner 49). That is, "private individuals must live on level terms, on a fair and equal footing, with their fellow citizens" ("Privatum autem

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⁷¹ Ullrich Langer, "Équité et nouvelle 'encadrée' (*L'Heptaméron*)," Éthique et droit, du Moyen Âge au siècle des Lumières (2012): 189-203, 190-191.

Raymond Lebèque, "La Syntaxe de Malherbe, traducteur de Sénèque," *Cahiers de l'Association international des études françaises*, 8.8 (1956): 139-46, 140.
 H.M. Hubbell, trans., *Cicero; De inventione; De optimo genere oratorum; Topica*, vols. 1-2 (Cambridge, Harvard

⁷³ H.M. Hubbell, trans., *Cicero; De inventione; De optimo genere oratorum; Topica*, vols. 1-2 (Cambridge, Harvard University Press, 1949) 2:396-97.

⁷⁴ Quentin Skinner, *Visions of Politics* (Cambridge, UK: Cambridge University Press, 2002) 49.

oportet aequo et pari cum civibus iure vivere") (Skinner 49). Thus, as Aristotle explains in his Nicomachean Ethics, equity is a "state of character" (McKeon 1020) that dictates the practices and relationships among citizens. Montaigne dedicates "De l'amitié" (I:28) to a description of one these relationships: friendship that is "equitable et plus equable" (I, 28, 188c).

Roman emperors depicted equity on the back-sides of antoniniani (monetary coins) with the goddess Aequitas. She stands facing left, holding a cornucopiae in her left hand, and balanced judicial scales in her right hand⁷⁵: "la déesse AEquitas, tendant une balance, comme la justice elle-même, résume la place de l'égalité au cœur de l'équité" (Langer 195). In contrast to the goddess Justitia, whose scales can be in imbalance, ⁷⁶ the scales of Aequitas are always in equilibrium, and thereby represent equality. The front-sides of antoniniani featured the profile of the Roman emperor (wearing a radiate crown), who solidified his status as ruler by having the coins struck.

In 1576, Montaigne had a small token struck of comparable size to an *antoninianus*.⁷⁷ The front-side of Montaigne's token "expose les marques d'une noblésse récente (Demonet inset page, verso side), thus solidifying his title to nobility. The back-side of this token "montre l'énigmatique balance d'orfèvre en équilibre toujours menacé, associée à la devise 'je suspends' (εΠεγω)" (Demonet in-set page, verso side). This motto associates Montaigne's process of judging with the precepts of pyrrhonist philosopher Sextus Empiricus. ⁷⁸ However, the judicial

⁷⁵ For examples, see the antoninianus for Claudius II Gothicus (Mediolanum, AD268-270, catalogue number 1987.46.30) and the antoniniani for Gordian III (Rome, AD240, two coins catalogued under number 1991.17.18), housed in the University of Virginia Fralin Museum of Art Numismatic Collection, and accessible through the online collection "Coins of the University of Virginia Art Museum."

⁷⁶ See for instance the painting Gerechtigkeit als nackte Frau mit Schwert und Waage (1537), by Lucas Cranach der

⁷⁷ (II, 436 and II, 12, 527, Villey footnote 7). For images of both sides of Montaigne's token, see: Marie-Luce Demonet, "À plaisir," Sémiotique et scepticisme chez Montaigne (Orléans: Paradigme, 2002) the cover and backcover of her book, and the verso of the in-set page of her book.

78 Alain Legros, Essais sur poutres, Peintures et inscriptions chez Montaigne (Paris: Klincksieck, 2000) 412-15.

scales in equilibrium, the recent claim of the family Montaigne to nobility, and the medium for these images – a coin – all suggest an association between Montaigne's judgment and equity, an association that dates as far back as classical Rome where it was represented on *antoniniani*.

As the examples of Budé, Rebuffi and Montaigne begin to suggest, medieval and early modern legal theoreticians and practitioners maintained classical definitions of equity. In particular, medieval and early modern commentators of the *Corpus* associated equity with several near-synonyms, such as *aequalitas*, *paritas*, *gratia*, *misericordia*, *benignitas*, *humanitas*, *carias*, *bona fides*, *conscientia*, *bonum publicum*, *publica utilitas*, *mediocritas*, *mitigatio poenae*, and *veritas* (Maclean *Interpretation and Meaning* 175). In the medieval period, legal theoreticians assigned equity the following four principal definitions:

- (i) 'rectitudo iudicii naturalem sequens rationem' (correctness of judgment, following natural reason);
- (ii) 'application animi ad directum iudicium, inllectu non errante in substantia nec in circumstantiis facti' (application of the mind to direct judgment, there being no error in the understanding of the substance of the case and the attendant circumstances);
- (iii) 'rerum convenientia quae in paribus casis paria iura desiderat et bona omnia aequiparat' (an equivalence which promotes the application of the same laws to the same cases and ensures justice and equality); and
- (iv) 'quod videtur aequum omnibus' (what appears fair to all).⁷⁹

In short, equity enabled a jurist to consult "natural reason," or *naturalis ratio*. Early modern practitioners of equity maintained this medieval precedent and defined equity as "that which natural reason proves clearly is just in each and every civil law" ('quod naturalis ratio in unaquaquam constitutione civili iustum esse convincit")." Medieval and early modern legal theoreticians also associated equity with Romans 2:15, 81 and thereby indicate how jurists could

⁷⁹ Maclean *Interpretation and Meaning* 175; Maclean quotes: Norbert Horn, *Aequitas in den Lehren des Baldus* (Köln: Böhlau, 1968) 8-12.

Maclean Interpretation and Meaning 176; Maclean quotes: Johannes Celcichius, De aequitate quid et quantum praestet in legibus liber, Wittenberg, 1602, p. 12.
 "Who shew the work of the law written in their hearts, their conscience bearing witness to them, and their

⁸¹ "Who shew the work of the law written in their hearts, their conscience bearing witness to them, and their thoughts between themselves accusing, or also defending one another." It is unknown which edition of the Epistles of Saint Paul Montaigne read. Villey pointed to Montaigne's signature in a Greek edition of the Bible (*Sources* 78); but, because "il est en gree, et nous savons que Montaigne ne se contentait pas d'une 'moyenne intelligence"

access natural reason: through the natural law that God wrote upon the hearts and souls, or consciences, of all human beings.

Natural law first developed within Greek philosophy, particularly within that of Plato (428-23 to 348-47 BC) and Aristotle (384-322 BC). Classical natural law represented the ways that human societies used to share "in the life of nature," when the "natural … became the source of norms for [human] behavior" (Morrison 27). Morrison has cautioned, however, that "classical natural law did not imply natural rights, rather it implied natural functions, ends and duties" (27) for people to perform. St. Augustine (354-430 AD) would adapt classical natural law, to define it as "man's intellectual sharing in God's truth, or God's eternal law." St. Thomas Aquinas (1224/5-1274 AD) would further adapt classical natural law to describe "man's nature" as "an indivisible unity of faith, intellect and will within which it exists, as innate, the knowledge of natural law." This natural law represented "a derivation of divine law," since "man's natural inclination is to act in accordance with the pre-existing normative code of God/nature" (Koskenniemi 75).

By the early modern period, natural law referred both to its roots in classical antiquity as well as to its Christian influences. ⁸⁵ Natural law could be defined as a derivative of divine law, so that it was distinct from but related to divine law; natural law could also be defined as

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⁽Sources 78), Villey suggested that Montaigne read the Bible in Latin. Marianne Meijer has proposed that Montaigne consulted the Latin Vulgate Bible, as well as four French Bibles. Marianne Meijer, "Montaigne et la Bible," BSAM, Cinquième Série – No20 (Octobre – Décembre 1976): 23-57. Both Villey and Meijer have pointed to Montaigne's heavy quotation from the Epistles of Saint Paul (Villey Sources 78, Meijer 24, 40, 43-44). I have quoted from the New Testament of the Douay-Rheims English translation (1582) of the Latin Vulgate Bible. The complete Douay-Rheims Bible is available online at: Douay-Rheims Bible + Challoner Notes, 2001-2013, http://www.drbo.org.>.

⁸² Wayne Morrison, *Jurisprudence: from the Greeks to post-modernism* (London: Cavendish Publishing Limited, 1998) 26. Morrison emphasizes Plato's *The Laws* and Aristotle's *Nicomachean Ethics*.

⁸³ Morrison points in particular to the *Confessions* (397-400 AD) (58-63).

 ⁸⁴ Quotations are from: Martti Koskenniemi, *From Apology to Utopia, The Structure of International Legal Argument* (Helsinki: Lakimiesliiton Kustannus Finnish Lawyers' Publishing Company, 1989) 75. See also Morrison 66-70, who refers in particular to St. Thomas Aquinas' *Summa Theologiae* (1265-74).
 ⁸⁵ Koskenniemi 74, 73-83.

synonymous with divine law (Koskenniemi 76). In either instance, natural law could accommodate the cases unforeseen in all other laws, and assist the practitioner of equity "to correct the deficiencies of written laws" (Simonds 40). As Tournon has explained, equity

n'était pas une facilité : du fait même qu'il [jurist] pouvait s'écarter du droit strict, il était conduit à s'interroger en son âme et conscience sur le bien-fondé des prescriptions légales et surtout des interprétations reçues qui en déterminaient l'application (*La glose* 188).

Equity is thus, at least in part, moral (Maclean *Interpretation and Meaning* 176). Indeed, Cicero associated equity with morality in his *Topica*:

Atque etiam aequitas dictur esse : una ad superos deos, altera as manes, tertia ad homines pertinere. Prima pietas, secunda sanctitas, tertia iustitia aut aequitas nominatur (Hubbell 2:452).

Equity is also said to have three parts: one pertains to the gods in heaven, the second to the spirits of the departed, the third to men. The first is called piety, the second respect, the third justice or equity (Hubbell 2:453).

Medieval and earl modern legal theoreticians maintained Cicero's definition of equity, associating the moral aspect of this legal procedure – *aequitas naturalis* – with the human conscience (the *vox cordis*) (Maclean *Interpretation and Meaning* 176). European legal theoreticians also syncretized equity with Biblical passages and Christian concepts of mercy and *benigna interpretatio* (Maclean *Interpretation and Meaning* 176).

The jurists of the royal circuit – "les cours souveraines (*suprema tribunalia*)" – had the ability to judge by equity, or *ex bono et oequo* (Langer 191). Even though Langer has described equity as "peu articulé" among early modern jurists (190), enough magistrates were deciding trials by equity, and by questionable application of this procedure, that

en 1536 les députés des États de Savoie demandèrent à François 1er d'astreindre leurs juges à « juger selon les loix, statuts, mœurs et coustumes de leurs pays, sans qu'il leur fut licite de juger autrement, soubs couleur d'equité » (Tournon *La glose* 188).

Indeed, the way that a jurist appealed to natural law in his practice of equity was specific unto him: "the discretion of the adjudicator conditioned the resort to and application of equity." Despite the disillusionment of the Savoie jurists, magistrates of the Parlement such as Budé maintained that equity was essential to jurisprudence:

La cour souveraine a le pouvoir de juger en dernier ressort (ultimam causarum disceptationem); et, si elle veut user de son droit, elle peut juger par équité, et même instituer ainsi un droit jurisprudentiel (exemplarem); toutefois, dans la plupart des cas elle se conforme aux lois et aux usages (*Forensia*, 1548, p. 254, in Tournon *La glose* 188).

As this passage indicates, the magistrates of the Parlement reserved the right to exercise equity, albeit discretely.

The practice of equity in sixteenth-century France did not exist only as a legal procedure, however. Literary authors knowledgeable of this legal practice included it in their works, so that equity came to function as a specific rhetorical device as well. The most frequent practitioners of equity were the royals, who held ultimate say over what case particularities could be reconciled within the established French laws, and how (Langer 192). Langer has described Queen Marguerite de Navarre as "la mieux placée pour comprendre sinon pratiquer l'équité," of all sixteenth-century authors of "nouvelles" (203). Langer has also argued that equity assumes the function of a rhetorical device in her *Heptaméron* (1558)⁸⁷:

Deux aspects de l'équité me semblent tout à fait présents dans les conversations et dans la dialectique des nouvelles : la « correction » de la loi trop rigoureuse par un cas particulier, et la capacité du législateur équitable à exercer une sorte de douceur, à suivre l'intention et non la lettre de la loi. Les nouvelles ne se donnent pas comme des cas adjugés, et les conversations ne sont nullement des arrêts ou des comptes rendu de législateurs, mais le rapport entre nouvelles et les relances dans les conversations servent à modeler un certain était d'esprit du prince apte à poser la loi ou à appliquer de manière équitable une loi déjà posée (197).

⁸⁶ Christopher R. Rossi, *Equity and International Law, A Legal Realist Approach to International Decisionmaking* (Irvington, New York: Transnational Publishers, Inc., 1993) 24.

⁸⁷ Modeled after the *Decameron* (1349-51) of Giovanni Boccaccio, the *Heptaméron* relates 72 short stories; each story is 'told' by one of the ten guests (five female, five male) who are stranded at the abbey Saint Savin. For further insights into the *Heptaméron*, see: John D. Lyons and Mary B. McKinley, eds., *Critical tales: new studies of the Heptameron and early modern culture* (Philadelphia: University of Pennsylvania Press, 1993).

In the *Essais* Montaigne mentions his reading of the *Heptaméron*, "qui est un gentil livre pour son estoffe" (II, "De la cruauté," 430a). While Langer has observed a particular relationship between equity and the "nouvelle," I argue that a particular relationship also exists between equity and the *Essais*.

Montaigne, like Marguerite de Navarre, was knowledgeable of equity. Like Budé, Montaigne was a former magistrate of the Parlement. He therefore had both the ability and the requisite training to practice equity. Indeed, Montaigne judged at least one case by equity (Almquist "Judicial Authority" 223). Montaigne mentions equity three times in the *Essais*, two of which I have already quoted. In his third mention of equity, Montaigne subtly defends this legal procedure as a corrective manoeuver to the unequal and unjust laws in France:

Or les loix se maintiennent en credit, non par ce qu'elles sont justes, mais par ce qu'elles sont loix. C'est le fondement mystique de leur authorité; elles n'en ont point d'autre. [C] Qui bien le sert. Elles sont souvent faictes par des sots, plus souvent par des gens qui, en haine d'equalité, ont faute d'equité, mais tousjours par des hommes, autheurs vains et irresolus (III, "De l'experience," 1072bc).

According to Montaigne, the people who are enemies of equality are the same people who establish the laws in France, and who also find fault with the judicial practice of equity.

Montaigne further explains:

Qu'ont gaigné nos legislateurs à choisir cent mille especes et faicts particuliers, et y attacher cent mille loix? Ce nombre n'a aucune proportion avec l'infinie diversité des actions humaines. La multiplication de nos inventions n'arrivera pas à la variation des exemples. Adjoustez y en cent fois autant : il n'adviendra pas pourtant que, des evenemens à venir, il s'en trouve aucun qui, en tout ce grand nombre de milliers d'evenemens choisis et enregistrez, en rencontre un auquel il se puisse joindre et apparier si exactement, qu'il n'y reste quelque circonstance et diversité qui requiere diverse consideration de jugement. Il y a peu de relation de nos actions, qui sont en perpetuelle mutation, avec les loix fixes et immobiles (III, "De l'experience," 1066b).

In this passage, Montaigne acknowledges that French legislators could not create laws capable of accommodating every future case. French legislators also recognize that their laws cannot apply

⁸⁸ See the *Style de la Chambre des Enquêtes*, particularly its paragraphs 116 and 117. This document is housed as MSS 362 in the Bibliothèque de Bordeaux; its reproduction is included in Pierre Guilhiermoz, *Enquêtes et Procès* (Paris: Alphonse Picard, 1892).

to every possible case, Montaigne comments, so they respond by writing more. Rather than advocating the creation of more rigid laws, Montaigne alludes to the flexibility of equity and the importance of this legal procedure. He indirectly states that there will always be a need for equity, through which jurists can accommodate the diverse and unforeseen circumstances that necessitate "diverse consideration de jugement." Montaigne thus echoes Aristotle in his *Nicomachean Ethics*:

Equity [is] a rectification of legal justice. The reason for this is that law is always a general statement, yet there are cases which it is not possible to cover in a general statement.... When therefore the law lays down a general rule, and thereafter a case arises which is an exception to the rule, it is then right, where the lawgiver's pronouncement because of its absoluteness is defective and erroneous, to rectify the defect by deciding as the lawgiver would himself decide if he were present on the occasion, and would have enacted if he had been cognizant of the case in question... (cf. Magna moralia, ii.I (1198b24), quoted in Maclean *Interpretation and Meaning* 22-23).

The position that Montaigne takes on the laws in France gives readers insights into the kind of magistrate that he must have been while he practiced law. In particular, it is clear that Montaigne was among the jurists who maintained that equity was essential to jurisprudence. Furthermore, the three explicit mentions that Montaigne makes of equity in the *Essais* show that he supported it holistically, in all its interrelated facets: equity in legal practice, in politics, and in relationships among people. The *Essais* also make clear that Montaigne used equity as a rhetorical device in this work, particularly in tandem with his treatment of the Amerindians.

Natural Law in the New World

In "De l'experience" (II:13) Montaigne reflects upon French laws and jurisprudence. He first states his opinion that France would be better to have no laws at all than to have the number of laws that it does:

Car nous avons en France plus de loix que tout le reste du monde ensemble, et plus qu'il n'en faudroit à reigler tous les mondes d'Epicurus.... Les plus desirables, ce sont les plus rares, plus simples et generales; et encore crois-je qu'il vaudrait mieux n'en avoir point du tout que de les avoir en tel nombre que nous avons (III, 13, 1066b).

He then contrasts the legal customs he has observed in France with those that Nature provides: "Nature les donne tousjours plus heureuses que ne sont celles que nous nous donnons" (III, "De l'exeperience," 1066b). Montaigne next offers his readers an example of a natural law:

Tesmoing la peinture de l'aage doré des poëtes, et l'estat où nous voyons vivre les nations qui n'en ont point d'autres. En voylà qui, pour tous juges, employent en leurs causes le premier passant qui voyage le long de leurs montaignes. Et ces autres eslisent le jour du marché quelqu'un d'entre eux, qui sur le champ decide tous leurs proces. Quel danger y auroit-il que les plus sages vuidassent ainsi les nostres, selon les occurences et à l'oeil, sans obligation d'exemple et de consequence? A chaque pied son soulier. Le Roy Ferdinand, envoyant des colonies aux Indes, prouvent sagement qu'on n'y menast aucuns escholiers de la jurisprudence, de crainte que les proces ne peuplassent en ce nouveau monde, comme estant science, de sa nature, generatrice d'altercation et division; jugeant avec Platon, que c'est une mauvaise provision de pays que jurisconsultes et medecins (III, "De l'experience," 1066b).

The natural law that Montaigne selects is the practice by which the wisest of a society decide each controversy as it arises, and on its own merits. Montaigne contextualizes this natural law within his painting of the Golden Age and thereby implies that the Amerindians are the sixteenth-century people who come closest to the ideals of this period. Indeed, when he entreats his early modern readers to look to the Americas to witness their natural laws, he emphasizes that Europeans no longer practiced the jurisprudence characteristic to the Golden Age.

Montaigne never names the American society that he likens to those of the Golden Age. However, readers can know that he draws their attention to the Amerindians, and not to the Spanish presence in the New World, because of the way that he explains King Ferdinand's colonization of the Americas. According to Montaigne, Ferdinand did not send Europeans who were trained in jurisprudence to the New World. If Ferdinand did not establish any kind of judicial process in the Americas, the New World society that abides by natural law must be Amerindian. Indeed in "Au lecteur," at the very outset of the *Essais*, Montaigne associates the

Amerindians with natural law: "Que si j'eusse esté entre ces nations qu'on dict vivre encore sous la douce liberté des premiers loix de nature..." (I, 3a).

Montaigne has cast Amerindian judgment as a portrait of the Golden Age; he has contrasted Amerindian practices of jurisprudence with those of Europeans; and he has declared his preference for the natural law by which the Amerindians abide. However, Montaigne goes beyond mere description of Amerindian judgment in the *Essais*. "Des cannibales" shows Amerindian judgment in action when Montaigne portrays three Tupí-Guaraní Amerindians interpreting and judging France. When they are brought before King Charles IX in 1565,⁸⁹

...quelqu'un en demanda leur advis, et voulut sçavoir d'eux ce qu'ils y avoient trouvé de plus admirable: ils respondirent trois choses, d'où j'ay perdu la troisiesme, et en suis bien marry; mais j'en ay encore deux en memoire. Ils dirent qu'ils trouvoient en premier lieu fort estrange que tant de grands hommes, portans barbe, forts et armez, qui estoient autour du Roy (il est vray-semblable que ils parloient des Suisses de sa garde), se soubsmissent à obeyr à un enfant, et qu'on ne choisissoit plus tost quelqu'un d'entr'eux pour commander... (I, "Des cannibales," 213-14a).

In this passage, the Tupí-Guaraní first assess French government; from the vantage point of their Amerindian customs, they find that the French government is odd ("fort estrange"). Unlike European leaders, Tupí-Guaraní leaders did not always inherit the ability to command, and those persons who did inherit leadership positions did not do so immediately. The people in any given Tupí-Guaraní society would decide if, when, and how they would follow one of their own; these leadership positions had to be earned from the rest of society, and were often temporary. ⁹⁰ The New World visitors cannot understand therefore why the French would choose to follow a child

⁸⁹ It is possible that Montaigne encountered the Tupí-Guaraní brought before the French king in 1562, while he was at Rouen; however, Philippe Desan has found it more probable that Montaigne encountered the Brazilians brought before Charles IX in 1565, while he was at Bordeaux. See: Philippe Desan, "Le simulacre du Nouveau Monde: à propos de la rencontre de Montaigne avec des Cannibales," *Montaigne Studies, An Interdisciplinary Forum* 22.1-2 (2010) 101-118.

⁹⁰ For insights into the historical social structures of Tupí-Guaraní societies, see Hélène Clastres, *La Terre sans Mal, le prophétisme Tupi-Guarani* (Paris: Éditions du Seuil, 1975). For other detailed information about the different kinds of leaders that can emerge in Tupí-Guaraní culture, see Eduardo Viveiros de Castro, *From the Enemy's Point of View, Humanity and Divinity in an Amazonian Society*, trans. Catherine V. Howard (Chicago: University of Chicago Press, 1992) 109-118.

("se soubsmissent à obeyr à un enfant"). ⁹¹ Furthermore, the Tupí-Guaraní do not limit themselves to assessment; rather than "ce qu'ils y avoient trouvé de plus admirable," the "advis" the three Brazilians pronounce takes the form of a corrective ruling. The Tupí-Guaraní advise that, of the "grands hommes, portans barbe, forts et armez," one could be chosen as a leader.

The Tupí-Guaraní do not restrict their comments to French government only. Montaigne indicates in "Des cannibales" that the Amerindians brought before King Charles IX also assess French society overall:

...secondement (ils ont une façon de leur langage telle, qu'ils nomment les hommes moitié les uns des autres) qu'ils avoyent aperçeu qu'il y avoit parmy nous des hommes pleins et gorgez de toutes sortes de commoditez, et que leurs moitiez estoient mendians à leurs portes, décharnez de faim et de pauvreté; et trouvoient estrange comme ces moitiez icy necessiteuses pouvoit souffrir une telle injustice, qu'ils ne prinsent les autres à la gorge, ou missent le feu à leurs maisons (I, "Des cannibales," 213-14a).

Unlike the French, Amerindians tended to divide their villages into halves. In *Tristes tropiques* (1955) Claude Lévi-Strauss describes the Bororo village of Kejara as

une roue de charrette dont les maisons familiales dessineraient le cercle, les sentiers, les rayons, et au centre de laquelle la maison des hommes figurerait le moyeu. [...] Le village circulaire de Kejara est tangent à la rive gauche du Rio Vermelho. [...] Un diamètre du village, théoriquement parallèle au fleuve, partage la population en deux groupes : au nord, les *Cera...* au sud, les *Tugaré*. Il semble – mais le point n'est pas absolument certain – que le premier terme signifie : faible, et le second : fort. Quoi qu'il en soit, la division est essentielle pour deux raisons : d'abord, un individu appartient toujours à la même moitié que sa mère, ensuite, il ne peut épouser qu'un membre de l'autre moitié. Si ma mère est *cera*, je le suis aussi et ma femme sera *tugaré*.

Lévi-Strauss further explains that the Amerindian practice of dividing a village into halves accomplished more than the management of marriages. The function of each half was to ensure the very survival of the other:

Chaque fois qu'un membre d'une moitié se découvre sujet de droit et de devoir, c'est au profit ou avec l'aide de l'autre moitié. Ainsi les funérailles d'un *Cera* sont conduites par les *Tugaré* et

⁹¹ King Charles IX would have been 12 at the 1562 Rouen audience he held with the Tupí-Guaraní, or 15 at the 1565 Bordeaux audience.

⁹² Claude Lévi-Strauss, *Tristes tropiques* (Paris: Librairie Plon, 1973) 249-251. Lévi-Strauss made this observation of the Bororo, who are linguistically and culturally related to the Tupí-Guaraní. On the relationship between the Tupí-Guaraní and the Bororo see: A. D. Rodrigues, "'Ge–Pano–Carib' X 'Jê–Tupí–Karib': sobre relaciones lingüísticas prehistóricas en Sudamérica," in L. Miranda, ed., *Actas del I Congreso de Lenguas Indígenas de Sudamérica, Tome I* (Lima: Universidad Ricardo Palma, Facultad de lenguas modernas, 2000) 95-104.

réciproquement. Les deux moitiés du village sont donc des partenaires, et tout acte social ou religieux implique l'assistance du vis-à-vis qui joue le rôle complémentaire de celui qui vous est dévolu. Cette collaboration n'exclut pas la rivalité : il y a un orgueil de moitié et des jalousies réciproques. Imaginons donc une vie sociale à l'exemple de deux équipes de football qui, au lieu de chercher à contrarier leurs stratégies respectives, s'appliqueraient à se servir l'une l'autre et mesureraient l'avantage au degré de perfection et de générosité qu'elles réussiraient chacune à atteindre (251-52).

The social practices observed by Lévi-Strauss ensured that all people within a Tupí-Guaraní village took mutual care of each other. Montaigne refers to these practices when he explains that the Tupí-Guaraní, "ont une façon de leur langage telle, qu'ils nomment les hommes moitié les uns des autres" (I, "Des cannibales," 214a).

The second Tupí-Guaraní observation that Montaigne includes in "Des cannibales" shows that they again assess the state of affairs in France as odd. Like the first observation that the Brazilians offer, their second one does not stop at assessment. According to the Amerindians, a segment of society that is oppressed has the right to recourse. The Tupí-Guaraní indicate this viewpoint and imply their corrective ruling when they express their shock that the impoverished French have not already seized the wealthy by the throat ("ne prinsent les autres à la gorge") or burned their homes ("ou missent le feu à leurs maisons").

Like he does in "De la coustume et de ne changer aisément une loy receüe" (I:23), in "De l'experience" Montaigne draws reader attention to the economic inequality that had corrupted French laws and legal customs. However, in these two essays he does little more than describe this deterioration of French society. In "Des cannibales" Montaigne again draws reader attention to the unequal French economic and social landscape when he presents the observations of the New World visitors to France. While Montaigne has pointed to the deterioration of French laws,

⁹³ In I:23, Montaigne reproaches his society at length for allowing the legal customs in his country to diminish into financial transactions: "Qu'est-il plus farouche que de voir une nation, où par legitime coustume la charge de juger se vende, et les jugements soyent payez à purs deniers contans, et où legitimement la justice soit refusée à qui n'a dequoy la payer... (I, 23, 117-118a).

legal practices, and society, he again does not offer any specific solutions. Instead, he shows that the specific solutions come from the mouths of the Tupí-Guaraní visitors to France.

That Montaigne presents the three New World observers as judges of France should not come as a surprise to readers of the *Essais*. In "De l'experience," Montaigne conveys his receptivity to adopt the natural law of the Amerindians, particularly their judicial practices, when he asks: "Quel danger y auroit-il que les plus sages vuidassent ainsi les nostres, selon les occurences et à l'oeil, sans obligation d'exemple et de consequence ?" (III, 13, 1066b). In "Des cannibales," Montaigne goes beyond asking why the French do not adopt Amerindian judicial practices. His portrayal of his encounter with the Tupí-Guaraní is one that actualizes his description of Amerindian judgment for his readers, who are thereby able to witness this judgment of France in action.

When Montaigne shows the Amerindians judging according to their customs, he fulfills all the characteristics of the natural law that he describes in "De l'experience," and that he indicates the Amerindians exemplify. He replaces the French with the Tupí-Guaraní as the authority on French government and society ("vuidassent ainsi les nostres," III, 13, 1066b), they judge the state of affairs in France based on what they see ("selon les occurences et à l'oeil," III, 13, 1066b), and without concern for precedent or consequence ("sans obligation d'exemple et de consequence ?" III, 13, 1066b). "Des cannibales" and "De l'experience" thus show that Montaigne drew on Amerindian culture, particularly its judicial practices, to judge France.

That Montaigne applies Amerindian justice to the state of affairs in France also reflects his experience as a magistrate, particularly his support of equity. The jurist who performed equity appealed to natural law in order to "correct the deficiencies of written laws" (Simonds 40). In "De l'experience" and "Des cannibales" Montaigne appeals to the natural law that the

Amerindians exemplify, specifically the practice by which the wisest of a society decide each controversy as it arises and on its own merits. The Amerindian judgment that flows from this natural law and through Montaigne's pen invites his early modern readers to temper their French customs. Notice that the Tupí-Guaraní do not advise the French to overthrow their monarchical style of government but simply to choose a more suitable king. In addition, the Tupí-Guaraní do not encourage the French to overhaul their economic practices that allowed for unequal wealth distribution among the French population. Rather, the Amerindians implicitly suggest that the impoverished French take measures of recourse when the wealthy French do not take care of them.

Readers can thus appreciate Montaigne's practice of equity in two ways. His use of this judicial technique enables him to appeal to the natural law that the Amerindians exemplify. The Amerindians articulate verdicts that, if the French enacted them, would temper and thereby amend their customs. When New World peoples suggest tweaking French customs, Montaigne casts them not only as an example of natural law, but also as practitioners of equity themselves. Indeed, equity not only enabled a jurist to tap into natural law, but equity was itself a natural law: "équité [...] n'est autre chose, que la loy mesme declarée par raison naturelle, qui tempere la loy, et y adjouste la bonté de nature dicte en droit *aequum et bonum*..." (La Roche Flavin, quoted in Tournon *La glose* 189). Thus, Montaigne invokes equity to appeal to the Amerindian's practice of natural law, which is itself an example of equity.

Equal coexistence among different people is the ultimate goal of equity, as Cicero explains in *De officiis*:

willingness to smooth out our differences is the only means of ensuring 'that the interests of all citizens are considered on level terms rather than being handled in a divisive way' (commoda civium non divillere atque omnis aequitate eadem continere) (Skinner 49).

After 1493, Amerindians and Europeans faced the shared challenge of coexisting with each other. European tendencies were to colonize New World peoples and consolidate them into Old World kingdoms. Montaigne, who did not support European colonization of the Americas, instead attempts to smooth out the differences among Amerindians and his French readers and thereby put them on a level plane.

Montaigne's Equity

Géralde Nakam has described "Des cannibales" as a "procès." Furthermore, she has described this trial as a prosecution of "la civilisation européenne toute entière" (Nakam 332), and specifically of "des moeurs françaises" (Nakam 337). Both Nakam and David Quint have argued that in "Des cannibales" Montaigne finds his early modern readers guilty of European conquest in the New World and civil wars of religion in the Old. Otherwise put, the trial that occurs in "Des cannibales" is one in which Montaigne examines the 'rightness' or 'wrongness' of French culture and conduct in both the New World and the Old. And, the verdict at which Montaigne arrives is not favorable to French customs.

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⁹⁴ See for instance the *Histoire d'un voyage faict en la terre du Brésil* (1578) of Jean de Léry, in which Léry refers to Brazil as "nostre departement." Jean de Léry, *Histoire d'un voyage faict en la terre du Brésil*, ed. Frank Lestringant (Paris: Le Livre de Poche, 1994) 504. In "Des cannibales," as elsewhere in the *Essais*, Montaigne uses first-person plural possessive adjectives and pronouns to refer to Brazil and its peoples.

⁹⁵ Olive P. Dickason, *The Myth of the Savage, and the Beginnings of French Colonialism in the Americas* (Edmonton, Alberta, Canada: The University of Alberta Press, 1997) 56.

⁹⁶ Géralde Nakam, Les Essais de Montaigne, miroir et procès de leur temps, Témoignage historique et création littéraire, Édition revue, corrigée et mise à jour avec une préface inédite (Paris: Éditions Champion, 2001) 332. The original edition of this work: Les Essais de Montaigne, miroir e procès de leur temps: témoignage historique et création littéraire (Paris: Nizet, 1984).

⁹⁷ Nakam 332. For the ways that Montaigne uses "Des cannibales" to condemn the civil wars of religion in France, see David Quint, *Montaigne and the Quality of Mercy, Ethical and Political Themes in the Essais* (Princeton: Princeton University Press, 1998) chapter three, "The Culture That Cannot Pardon: 'Des cannibales' in the Larger *Essais*," 75-102. This chapter was adapted from his earlier article: "A Reconsideration of Montaigne's Des cannibales," *Modern Language Quarterly: A Journal of Literary History*, 51.4 (1990 Dec): 459-489.

As I have already indicated, French jurists consulted Roman laws and legal procedures in order to rectify the shortcomings or failures of French customs. Since Montaigne condemns the customs of his society, it is reasonable to presume that he would correct them by consulting Roman laws and legal procedures, particularly equity. Furthermore, Cicero argued for jurists to refer to equity when deciding what is 'right' and 'wrong.' "When ... right and wrong are being discussed," Cicero instructed, "the topics of equity will be brought together" – "natural law" and "institutions" (Hubbell, *Topica* 2:451) ("Cum autem de aequo et iniquo disseritur, aequitatis loci collengitur. Hi cernuntur bipertito, et natura et instituto," Hubbell, *Topica* 2:450). In other words, cases of 'right' and 'wrong' call for their jurists to practice equity, which in turn requires him to appeal to natural law and apply it to temper the laws of his society (i.e., its "institutions").

Montaigne's inquiry into the 'rightness' or 'wrongness' of French culture and conduct in both the New World and the Old leads him to discuss Tupí-Guaraní cannibalism and polygamy. For Quint, both of these Brazilian practices exemplify martial valor and religious sectarian fanaticism, topics which he has found Montaigne treats in "Des cannibales." My reading of this essay owes much to Quint. As he indicates, however, his reading of "Des cannibales" continues the scholarly approach that takes this essay's early modern French context as the standpoint from which literary critics analyze Montaigne's use of Amerindian examples. While Montaigne's European context certainly guides his gesture to the Tupí-Guaraní, the Brazilian cannibalism and polygamy to which he points still correspond to their Amerindian culture. Thus, I propose to compliment Quint's reading with one that takes both French and Amerindian societies as the basis from which Montaigne uses the New World examples that he does.

⁹⁸ Michel de Certeau, "Montaigne's 'Of Cannibals': The Savage 'I," in *Michel de Montaigne's Essays*, ed. Harold Bloom (New York: Chelsea House Publishers, 1987) 119-33, 128.

Cannibalism was at the core of Tupí-Guaraní culture. Eduardo Viveiros de Castro explains:

Tupinamba cannibalism is but an element of 'an infinitely complex system' (H. Clastres 1972: 81) that cannot be reduced to a simple function. As in any central complex of a culture, it has no privileged level of explication, since, extrapolating what Lévi-Strauss (1977a: 65) said about myth, it consists 'in an *interrelation* of several explanatory levels.'99

Montaigne points to a specific explanatory level of Tupí-Guaraní cannibalism when he indicates: "Ce n'est pas, comme on pense, pour s'en nourrir, ainsi que faisoient anciennement les Scythes: c'est pour representer une extreme vengeance" (I, "Des cannibales," 209a). Montaigne neither emphasizes the human flesh that the Brazilians consumed. 100 nor does he define Tupí-Guaraní cannibalism as a practice in itself vengeful. Rather, Montaigne defines Tupí-Guaraní cannibalism as an expression of vengeance.

The cannibalistic practices of the Tupí-Guaraní expressed a specific kind of vengeance, through which Brazilians sought and attained immortality. 101 Tupí-Guaraní captors transformed their captive into an immortal celestial being through their execution and eating of him. This process also prepared captors and eaters to be similarly executed, eaten, and transformed. Indeed, Protestant missionary Jean de Léry indicates that only the Tupí-Guaraní "qui se sont bien vengez, et ont beaucoup mangé de leurs ennemis" (385) could enter into their eternal 'heaven.' 102

⁹⁹ Viveiros de Castro From the Enemy's Point of View 274. Viveiros de Castro quotes Hélène Clastres, "Les beauxfrères ennemis : A propos du cannibalisme tupinamba," Nouvelle Revue de Psychanalyse 6, "Destins du cannibalisme," (1972): 71-82. He also quotes Claude Lévi-Strauss, "Comparative religions of non-literate peoples," in Structural anthropology, vol. 2, trans. M. Layton (New York: Basic Books, 1977).

¹⁰⁰ According to Lestringant, European travel writers Hans Staden, André Thevet, and Jean de Léry also mentioned the symbolic value of cannibalism to Tupí-Guaraní culture (Léry 366, footnote 1). See also Eduardo Viveiros de Castro, The Inconstancy of the Indian Soul: The Encounter of Catholics And Cannibals in 16th-Century Brazil, Gregory Duff Morton, trans. (Chicago: Prickly Paradigm Press, 2011) 70.

¹⁰¹ Viveiros de Castro has concisely explained that "Immortality was obtained through vengeance, and the search for immortality produced it' (From the Enemy's Point of View 64).

¹⁰² For Montaigne's reading of Léry see in particular Bernard Weinberg, "Montaigne's Readings for Des Cannibales," Renaissance and Other Studies in Honor of William Leon Wiley (Chapel Hill: UNC Press, 1968) 216-279. Gilbert Chinard, L'Exotisme américain dans la littérature française au XVIe siècle (Geneva: Slatkine Reprints, 1970) chapter 9 "Un defenseur des Indiens: Montaigne," 193-219, 194-96. The original edition of this study appeared in 1911.

The cannibalization of Tupí-Guaraní persons not captured, killed, and eaten on earth occurred on the threshold to the realm of the afterlife. Even today, the Araweté Tupí-Guaraní deceased continue to take a direct route through the sky to the *teka kati we*, the "place of good existence" (Viveiros de Castro *From the Enemy's Point of View* 69), but before they can enter the *Maï hete* – celestial beings more perfect than humans – must transform them. The *Maï hete* "[eat] the dead, recompose and resuscitate them, thereby transforming them into beings akin to themselves" (Viveiros de Castro *From the Enemy's Point of View* 71). Whether in the mortal or spiritual realm, then, cannibalism expresses the transformation of the Tupí-Guaraní into immortal spiritual beings. ¹⁰³

In his description of Tupí-Guaraní souls, Montaigne indicates that the Brazilians believed in their immortality: "Ils croyent les ames eternelles, et celles qui ont bien merité des dieux, estre logées à l'endroit du ciel où le soleil se leve ; les maudites, du costé de l'Occident" (I, "Des cannibales," 208a). In the first clause, Montaigne is ambiguous as to what awaits the 'good' Brazilians on the other side of death. The expression "des dieux" could indicate the celestial realm open to worthy souls from among the Tupí-Guaraní, which Montaigne goes on to describe. Or, it could be an allusion to the deity status that 'good' Tupí-Guaraní achieved once the *Maï hete* cannibalized them. This ambiguity would have helped many of Montaigne's early modern

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¹⁰³ Viveiros de Castro *From the Enemy's Point of View*, especially 273-305, and *The Inconstancy Of The Indian Soul* 58-59.

According to Viveiros de Castro, this detail is impressive because European travel accounts were "not very informative with respect to the architecture of the [Tupí-Guaraní] cosmos" (From the Enemy's Point of View 85). Viveiros de Castro has described Montaigne as the only European who "reports that worthy souls resided in the eastern sky; the 'damned,' in the western..." (From the Enemy's Point of View 85). His fieldwork among the Araweté (a group of Tupí-Guaraní Amerindians) confirms that Montaigne's information is correct. By comparison, Léry indicates that worthy souls, "qui se sont bien vengez, et ont beaucoup mangé de leurs ennemis, s'en vont derriere des hautes montagnes" (385). In contrast, the damned "vont avec Aygnan ... avec lequel, disent-ils, elles sont incessamment tormentées" (Léry 385). André Thevet conveys a similar account to Léry. See: André Thevet, Le Brésil d'André Thevet, Les Singularités de la France Antarctqiue, ed. Frank Lestringant (Paris: Éditions Chandiegne, 1997) 150. André Thevet, La cosmographie universelle d'André Thevet, ... illustrée de diverses figures des choses plus remarquables veuës par l'auteur... Tome 1er [-4e], Paris, G. Chaudière, 1575, 923r. Available online through Gallica, the Bibliothèque numérique of the Bibliothèque nationale de France.

European readers. While their Christian faith would have taught them to believe that worthy souls reach heaven, it would not have prepared them to transform into deities. Thus, Montaigne appears not to distinguish the *teka kati we* ('heaven') from the deity-like status that Brazilians acquire in this realm. Otherwise put, Montaigne allows his early modern readers to understand Tupí-Guaraní religious beliefs according to familiar, Christian terms.

In addition, Montaigne does not explicitly indicate that the Tupí-Guaraní attained immortality through vengeance and cannibalism. Instead, he leaves it to his careful reader to piece together; in so doing, she has the opportunity to appreciate the central value of Brazilian cannibalism to its larger social context. Montaigne discloses "la vertu" of the Tupí-Guaraní and "leur devoir" (I, 31, 208a): "leur science ethique ne contient que ces deux articles, de la resolution à la geurre et affection à leurs femmes" (I, 31, 208a). Montaigne then describes two primary tasks that Tupí-Guaraní warriors performed: taking prisoners from their enemies and executing them in ceremonies of cannibalism (I, 31, 209). He also points to the Tupí-Guaraní practice of polygamy as the way that these Brazilians expressed love for each other.

Montaigne goes on to explain that, in Tupí-Guaraní culture, militaristic virtue is interrelated with polygamous expressions of love. As Montaigne interprets for readers of "Des cannibales," the most valiant of Tupí-Guaraní warriors also have the most wives:

Les hommes y ont plusieurs femmes, et en ont d'autant plus grand nombre qu'ils sont en meilleure reputation de vaillance : c'est une beauté remerquable en leurs mariages, que la mesme jalousie que nos femmes ont pour nous empescher de l'amitie et bien-veuillance d'autres femmes, les leurs l'ont toute pareille pour la leur acquerir. Estans plus soigneuses de l'honneur de leurs maris que de toute autre chose, elles cherchent et mettent leur solicitude à avoir le plus de compaignes qu'elles peuvent, d'autant que c'est un tesmoignage de la vertu du mary (I, 31, 212-13a).

I have suggested that Montaigne is ambiguous when he mentions the Tupí-Guaraní afterlife, in order that his early modern readers could understand it from the vantage point of their Christian beliefs. Montaigne again accommodates his readers when he contextualizes Tupí-Guaraní

polygamy in French social behavior. While French women are too jealous for polygamy to succeed in France, Montaigne argues, Tupí-Guaraní women are the exact opposite. Brazilian women unselfishly honor male militaristic valor with the gift of themselves, and, according to Léry, the beverage that accompanied ceremonies of cannibalism: *caoüin* (355). Montaigne points indirectly to both this beverage and its social exchange between polygamous females and warrior males when he comments upon its gendered production: "Une partie des femmes s'amusent cependant à chauffer leur breuvage [*caoüin*], qui est leur principal office" (I, 31, 207a). In short, Tupí-Guaraní men and women were united in love through warrior acts that culminated in cannibalism.

Thus, Tupí-Guaraní cannibalism both expressed and relied upon the militaristic virtue and polygamous love of Brazilian society. However, Tupí-Guaraní cannibalism was also an expression of vengeance – i.e. the Brazilians' attainment of immortality. In other words, military valor and polygamous love were means through which the Tupí-Guaraní achieved immortality in their rites of cannibalism. Putting together the puzzle pieces of Brazilian society that Montaigne has supplied in "Des cannibales," "la resolution à la geurre et affection à leurs femmes" (I, 31, 208a) make 'good' cannibalistic Brazilians who attain "des dieux" (I, 31, 208a). Indeed, Tupí-Guaraní cannibalism was not at all "comme on pense, pour s'en nourrir, ainsi que faisoient anciennement les Scythes" (I, "Des cannibales," 209a). Montaigne does not disappoint his careful early modern readers when, according to their familiar social and Christian terms, he expresses what Tupí-Guaraní cannibalism was in the context of its larger Amerindian culture.

However, Montaigne goes beyond implicitly presenting and contextualizing cannibalism within Brazilian culture, and in terms that his readers could understand and appreciate. He

invites his readers to partake in Amerindian cannibalism, first through his sensual presentations of its food and drink. Montaigne offers the following evocative description of *caoüin*:

Leur breuvage est faict de quelque racine, et est de la couleur de nos vins clairets. Ils ne boyvent que tiede : ce breuvage ne se conserve que deux ou trois jours ; il a le goust un peu piquent, nullement fumeux, salutaire à l'estomac, et laxatif à ceux qui ne l'ont accoustumé : c'est une boisson tres-agreable à qui y est duit (I, 31, 207a).

A European visitor to Brazil would see *caoüin* and feel its temperature from the gourd cup that he held in his hands, before he then drank it and felt its effects. Montaigne's sensual presentation of *caoüin* makes this beverage materialize for his readers, whose confidence he earns as someone knowledgeable of Tupí-Guaraní culture. At the same time, his evocative description of *caoüin* subtly invites readers to encounter it vicariously and to feel figuratively its effects. Montaigne's use of *enargeia* in his description of *caoüin* thus indicates that he is positioning readers to partake in the cannibalistic rites that *caoüin* accompanied. ¹⁰⁵

And yet, Montaigne does not use the term *caoüin* in his description of this beverage, nor does he explicitly link it to Tupí-Guaraní cannibalism. Rather, he implies its connection to Brazilian cannibalism through the fact that it is, after all, the drink of cannibals. Early modern readers who could readily recognize *caoüin* in Montaigne's description of it, however, would have likely learned of this beverage from European authors, particularly Léry. From Léry especially, Montaigne's readers also would have learned that Protestants discussed using *caoüin*

¹⁰⁵ For other insights into Montaigne's use of *enargeia*, particularly in "Des cannibales," see: Gerard Paul Sharpling, "Towards a Rhetoric of Experience: The Role of Enargeia in the Essays of Montaigne," *Rhetorica: A Journal of the History of Rhetoric*, 20.2 (Spring 2002): 173-192, 182-84. According to Sharpling, Montaigne uses *enargeia* liberally in I:31 "in order to provide vivid examples of the cannibals' seemingly brutal lifestyle" (182).

¹⁰⁶ George Hoffmann, "Anatomy of the Mass: Montaigne's 'Cannibals," *PMLA*, 177.2 (March 2002): 207-21, 213. According to Léry: "...ils [the Tupí-Guaraní] mashoyent tant les racines que le mil pour faire ce bruvage [...] lequel estant trouble et espais comme lie, a presque goust de laict aigre: et en ont de rouge et de blanc comme nous avons du vin" (Léry 248). Léry indicates that the Tupí-Guaraní consumed this beer as part of their cannibalistic rituals: "ils tuent solennellement un prisonnier de guerre pour le manger: leur coustume (du tout contraire à la nostre en matiere de vin, lequel nous aymons frais et clair) estant de boire ce *Caou-in* un peu chaut, la premiere chose que les

femmes font est un petit feu à l'entour des cannes de terre, où il est pour le tieder" (Léry 249). For the similarities between Montaigne's description of Tupí-Guaraní beer, and Léry's description of "Caou-in," see Léry 249, footnote 2. Montaigne's description of Tupí-Guaraní beer also matches the description of *caoüin* that André Thevet, in *Les Singularitez de la France antarctique* (1557), and Nicolas Barré, in his *Copies de Qvelqves Letres Svr La Navigation du Chevallier de Villegaignon et terres de l'Amerique* (1557) both provide (Weinberg 268).

for celebrations of Christian Communion in the New World (Hoffmann 213). When Montaigne does not define the beverage that he describes with its Brazilian name, or connect it explicitly to Tupí-Guaraní cannibalism, he does not restrict *caoüin* to its Amerindian context. Montaigne's description of *caoüin* can thus suggest simultaneously Tupí-Guaraní cannibalism and celebrations of Christian Communion in the New World.

As Montaigne evokes the sacramental beverage of both Brazilian cannibalism and Christian Communion, it perhaps comes as little surprise that he also points to the sacramental food that these rites shared. And, as Hoffmann has shown, Montaigne evokes food that would satisfy both Montaigne's Roman Catholic and Protestant Reformer readers. Catholic doctrine professes the transubstantiated Christ in the Eucharist at the mass. Montaigne describes the human flesh that the Tupí-Guaraní consumed through the song of a captive:

J'ay une chanson faicte par un prisonnier, où il y a ce traict: qu'ils viennent hardiment trétous et s'assemblent pour disner de luy: car ils mangeront quant et quant leurs peres et leurs ayeux, qui ont servy d'aliment et de nourriture à son corps. Ces muscles, dit-il, cette cher et ces veines, ce sont les vostres, pauvres fols que vous estes; vous ne recognoissez pas que la substance des membres de vos ancestres s'y tient encore: savourez les bien, vous y trouverez le goust de vostre propre chair (I, "Des cannibales," 212a).

Montaigne is the only European to place within the captive's mouth a song whose words harmonize with the key exhortation of the Christian rite (Hoffmann 213). Furthermore, he is the only European to depict a Brazilian captive in a pose that recalls the crucifixion of Christ (Hoffmann 231):

Apres avoir long temps bien traité leurs prisonniers, et de toutes les commoditez dont ils se peuvent aviser, celuy qui en est le maistre, faict une grande assemblée de ses cognoissans : il attache une corde à l'un des bras du prisonnier, [C] par le bout de laquelle il le tient, esloigné de quelques pas, de peur d'en est offencé, [A] et donne au plus cher de ses amis l'autre bras à tenir de mesme ; et eux deux, en presence de toute l'assemblée, l'assomment à coups d'espée. Cela faict,

¹⁰⁷ The transubstantiated Eucharist is central to Catholic Church doctrine. See: "Part Two: The Celebration of the Christian Mystery, Section Two: The Seven Sacraments of the Church, Chapter One: The Sacraments of Christian Initiation, Article 3: The Sacrament of the Eucharist, In Brief" in the *Catechism of the Catholic Church* (Citta del Vaticano: Libreria Editrice Vaticana, 1993) 1413. Available online at: http://www.vatican.va/archive/ENG0015/_INDEX.HTM>.

ils le rotissent et en mangent en commun et en evoient des lopins à ceux de leurs amis qui sont absens (I, 31, 209aca). ¹⁰⁸

The body of the captive thus joins the Tupí-Guaraní into a community through their eating of his flesh, similarly to how the Eucharist regroups Catholics into an *ecclesia*, or church (Hoffmann 213).

In contrast to Catholics, Protestants emphasize the symbolic presence of Christ in the food of Communion. For these of his readers, Montaigne emphasizes the symbolic aspect of Tupí-Guaraní cannibalism: he specifically indicates that cannibalistic rites represent vengeance, rather than incarnate it. Montaigne also describes the Brazilian food item that John Calvin, Théodore de Bèze, and Léry discussed using for their celebrations of Christian Communion in the New World (Hoffmann 213): "Au lieu du pain, ils usent d'une certaine matiere blanche, comme du coriandre confit. J'en ay tasté: le goust en est doux et un peu fade" (I, 31, 207a). While Montaigne's evocative description of *caoüin* enables his readers to partake vicariously in this cannibalistic beverage, his sensual testimonial of the Brazilian "matiere blanche" also implicitly invites his readers to partake in a symbolic communion with the Tupí-Guaraní that

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¹⁰⁸ According to Léry, the Tupí-Guaraní used cotton ropes to restrain a captive at his moment of death: his captors take him "par le milieu du corps le lians avec des cordes de cotton" (355). The seventeenth wood-cut illustration accompanying the 1557 Marburg edition of Hans Staden's *Warhaftige Historia* portrays a Tupí-Guaraní captive secured about the waist by the *Massurana* rope woven specifically for this purpose; Lestringant makes this illustration readily accessible through his inclusion of it in his edition of the *Histoire* (Léry 359). According to Hans Staden, the *Massurana* was "thicker than a man's finger." Neil L. Whitehead and Micheal Harbsmeier, trans. and eds., *Hans Staden's True History, An Account of Cannibal Captivity in Brazil* (Durham: Duke University Press, 2008) 73.

¹⁰⁹ In *The Babylonian Captivity of the Christian Church* (1520) Martin Luther argued that "[it] is not the doctrine of transubstantiation which is to be believed, but simply that Christ really is present at the Eucharist." Quoted in: Alister E. McGrath, *Historical Theology, An Introduction to the History of Christian Thought* (Blackwell Publishers: Oxford, 1998) 197.

¹¹⁰ Frank Lestringant, "Le Cannibalisme des 'Cannibales,' I. Montaigne et la tradition," *BSAM*, Sixième Série – No9-10 (Janvier-Juin 1982): 27-40, 40.

recalls the Christian Communion of the Protestants. As Hoffmann has concluded, I:31 appears as Montaigne's transposition of Christian rites onto cannibalistic ritual.¹¹¹

When Montaigne presents Brazilian rites in terms of Christian ones, he enables his early modern readers to understand Tupí-Guaraní culture according to their familiar Christian beliefs. Indeed, the comparison (comparatio) that Montaigne makes between the Christian sacrament of Communion and Tupí-Guaraní cannibalism shows his readers their similarity to the Brazilians. In Topica, Cicero encourages the jurist who would practice equity to use several rhetorical strategies to defend his amending the letter of the law (Hubbell 2:290-93). One of these strategies is comparatio, by which Montaigne provides his readers common ground with the Tupí-Guaraní. However, it is not enough for Montaigne to find resemblances among Christian and Tupí-Guaraní religious practices. Montaigne uses two additional strategies that Cicero recommends to practitioners of equity, which Montaigne uses to respond directly to the charges of cannibalism and polygamy that Europeans leveled against Brazilians: relatio criminis, or "retort of accusation" (Hubbell, Topica 2:293) and remotio criminis, or "shifting of the charge" (Hubbell, Topica 2:293).

Montaigne's use of *comparatio* casts Tupí-Guaraní cannibalism in its Catholic and Protestant versions. Montaigne thereby shows his European readers that they are as equally guilty of sacramental cannibalism as are the Brazilians. Similar to the cannibalistic rites that prepare the Tupí-Guaraní for immortality in the *teka kati we*, Christians celebrate and prepare themselves for immortality in heaven through their consumption of Communion foods.

Montaigne's comparison between Christian and Tupí-Guaraní religious practices implicitly shifts the French accusation of Tupí-Guaraní cannibalism back onto his readers (*remotio criminis*).

Hoffmann 212. See also the Introduction that Whithead and Harbsmeier provide to their edition of the *Warhaftige Historia*, particularly "The Cannibal Body and the Body-Politic" (Whitehead LVI-LXX).

However, Montaigne makes this shift explicit when he quite literally retorts the French accusation of Tupí-Guaraní cannibalism back at his readers (*relatio criminis*). In his rebuttal to readers, Montaigne alludes to the anthropophagy that occurred during the St. Bartholomew's Day Massacre:

Je pense qu'il y a plus de barbarie à manger un homme vivant qu'à la manger mort, à deschirer, par tourmens et par geénes, un corps encore plein de sentiment, le faire rostir par le menu, le faire mordre et meurtir aux chiens et aux pourceaux (comme nous l'avons, non seulement leu, mais veu de fresche memoire, non entre des ennemis anciens, mais entre des voisins et concitoyens, et, qui pis est, sous pretexte de pieté et de religion), que de le rostir et manger apres qu'il est trespassé (I, 31, 209a). 112

In this passage, Montaigne carefully echoes Léry who, in chapter fifteen of his *Histoire*, ¹¹³ offers readers gruesome details of the St. Bartholomew's Day Massacre. In particular, Léry indicates that this massacre rippled out from Paris across the rest of France and culminated in widespread acts of cannibalism:

...entre autres actes horribles à raconter, qui se perpetrerent lors par tout le Royaume, la graisse des corps humains [...] ne fut-elle pas publiquement vendue au plus offrant et dernier encherisseur? Les foyes, cœurs, et autres parties des corps de quelque-uns ne furent-ils pas mangez par les furieux meurtriers, dont les enfers ont horreur? Semblablement apres qu'un nommé Cœur de Roy, faisant profession de la Religion reformée dans la ville d'Auxerre, fut miserablement massacré, ceux qui commirent ce meurtre, ne decouperent-ils pas son cœur en pieces, l'exposerent en vente à ses haineux, et finalement le ayant fait griller sur les charbons, assouvissans leur rage comme chiens mastins, en mangerent? Il y a encores des milliers de personnes en vie, qui tesmoigneront de ces choses non jamais auparavant ouyes entre peuples quels qu'ils soyent, et les livres qui dés long temps en sont jà imprimez, en feront foy à la posterité (376).

Léry offers his readers detailed images of the cannibalism that accompanied the St.

Bartholomew's Day Massacre. In contrast to Léry, Montaigne obliquely alludes to this massacre and French anthropophagy in the above passage from "Des cannibales."

Montaigne depicts the cannibalism of his countrymen with broad strokes rather than with the level of specificity that Léry does. Furthermore, Montaigne neither indicates

¹¹² Montaigne reiterates his position in "De la cruauté" (II:11): "Les sauvages ne m'offensent pas tant de rostir et manger les corps des trespassez que ceux qui les tourmentent et persecutent vivans" (II, 11, 430a). ¹¹³ "Comment les Ameriquains traittent leurs prisonniers prins en guerre, et les ceremonies qu'ils observent tant à les tuer qu'à les manger" (Léry 354-77).

precisely where French cannibalism occurred nor does he explicitly associate it with the St. Bartholomew's Day Massacre. For his early modern French readers, however, this massacre and its related instances of cannibalism were still "de fresche memoire" (I, 31, 209a). In other words, Montaigne did not have to mention the St. Bartholomew's Day Massacre by name in order to remind his readers of this event and its outcomes. Thus, while Léry bluntly discusses this massacre in his *Histoire*, in "Des cannibales" Montaigne takes a more subtle approach.

Through this subtle approach, Steven Rendall has argued, Montaigne lays "traps" by which he manoeuvers readers to "his side." When Montaigne alludes to the St.

Bartholomew's Day massacre, and its related acts of anthropophagy, he draws an oblique comparison between French and Tupí-Guaraní cannibalism. Montaigne thereby shows his early modern French readers that the "label of barbarism, formerly reserved for the [Brazilian] cannibals" also includes them (Rendall 61). This label, one of the traps laid by Montaigne (Rendall 61), closes around his readers when he states: "[A] Nous les [Tupí-Guaraní] pouvons bien apeller barbares, eu esgard aux regles de la raison, mais non pas eu esgard à nous, qui les surpassons en toute sorte de barbarie" (I, "Des cannibales," 210a). According to Rendall, the first clause of Montaigne's statement "expresses the reader's initial view" that the Brazilian "cannibals are barbarians" (61). However, the second clause articulates the realization to which Montaigne leads his readers: the Tupí-Guaraní are neither "wholly savage," nor are they more savage than the sixteenth-century French who committed "atrocities comparable to, or even surpassing, those of the

¹¹⁴ Steven Rendall, "Dialectical Structure and Tactics in Montaigne's 'Of Cannibals'," *Pacific Coast Philology*, 12 (Oct. 1977): 56-63, 61 and 58 respectively.

'barbarians'" (Rendall 61). In other words, the cannibals to whom Montaigne points in "Des cannibales" are French as well as Brazilian.

Montaigne's oblique comparison between French and Brazilian anthropophagy echoes Léry's direct juxtaposition of French and Tupí-Guaraní cannibalism in his *Histoire*. Léry draws his readers' attention to the St. Bartholomew's Day Massacre when he concludes his presentation of Tupí-Guaraní cannibalism and thereby contrasts Amerindian and French acts of anthropophagy. Léry then uses his comparison to ask how Brazilian cannibalism could disgust his readers when, in his view, the French were guilty of more gruesome acts of cannibalism:

Parquoy qu'on n'harborre plus tant desormais la cruauté des sauvages Anthropophages, c'est à dire, mangeurs d'hommes : car puisqu'il y en a de tels, voire d'autant plus detestables et pires au milieu de nous, qu'eux qui, comme il a esté veu, ne se ruent que sur les nations lesquelles leur sont ennemies, et ceux-ci se sont plongez au sang de leur parents, voisins et compatriotes, il ne faut pas aller si loin qu'en leur pays, ny qu'en l'Amerique pour voir choses si monstrueuses et prodigieuses (377).

In "Des cannibales," Montaigne appears to respond to Léry's question at least twice. Montaigne decides that "il y a plus de barbarie à manger un homme vivant qu'à la manger mort…" (I, 31, 209a). That is, the French who cannibalized victims of the St. Bartholomew's Day Massacre before they were fully dead surpassed the 'barbarity' of the Tupí-Guaraní who ate their deceased captives. Montaigne therefore leads his early modern French readers to conclude that "[A] Nous les [Tupí-Guaraní] pouvons bien apeller barbares, eu esgard aux regles de la raison, mais non pas eu esgard à nous, qui les surpassons en toute sorte de barbarie" (I, "Des cannibales," 210a).

Events in sixteenth-century France, such as the St. Bartholomew's Day Massacre, thus provided Léry and Montaigne with a frame of reference for presenting, and even defending, Amerindian culture to their European readers. Not only did the early modern French context structure their presentations of Amerindian societies, but Léry and Montaigne also used it to

teach their readers how to judge themselves and New World peoples. In contrast to "Jean de Léry, bréviaire de l'ethnologue" (Lévi-Strauss 89), however, Montaigne appears to comment upon the Tupí-Guaraní and the French through his use of equity. The subtle comparison between the Tupí-Guaraní and the French that he creates through equity (comparatio) in turn enables him to perform subsequent manoeuvers through equity, particularly remotio criminis and relatio criminis. That is, Montaigne compares Tupí-Guaraní and French anthropophagy in order to redirect European charges against Brazilian cannibalism back onto his readers. Through this redirection, Montaigne teaches his readers how to judge themselves and New World peoples.

Montaigne completes this same process – *comparatio*, *remotio criminis*, and finally *relatio criminis* – to redirect European accusations of Tupí-Guaraní polygamy back onto his readers. As I have already shown, Montaigne casts Tupí-Guaraní polygamy as a noble act of love that is devoid of female jealousy and contributes to the Brazilians' attainment of immortality. Montaigne then compares Brazilian matrimony to that of the French, and finds that Tupí-Guaraní polygamy could not succeed in France due to the jealousies of French wives: "[C] Les nostres crieront au miracle; ce ne l'est pas: c'est une vertu proprement matrimoniale, mais du plus haut estage" (I, 31, 213c). To support his assessment of polygamy, Montaigne immediately supplies a list of Biblical examples for polygamy: "Lia, Rachel, Sara et les femmes de Jacob fournirent leurs belles servantes à leurs maris..." (I, 31, 213c). Montaigne shifts the French charge of polygamy away from the Tupí-Guaraní when he points to several Biblical characters for their practices of polygamy (*remotio criminis*). He then throws the French charge of polygamy back at his readers (*remotio criminis*) when he accuses them of failing to be nobly polygamous like the Brazilians and Biblical characters he has mentioned.

Despite the French accusations of Tupí-Guaraní cannibalism and polygamy that Montaigne turns back onto his readers, equity trials do not culminate in its jurist condemning one party and rewarding another. Rather, equity trials enable a jurist to smooth out the differences of the parties involved (Skinner 49). Montaigne's combined use of *comparatio*, *remotio criminis*, and *relatio criminis* enables him to show his readers that they and the Brazilians are not so very different from each other. As Quint has argued, the obstinate valor that Montaigne praises in the Tupí-Guaraní is the same valor that he consistently condemns in its European forms: stoic philosophy, an aristocratic code of martial honor, and sectarian religious fanaticism.

Thus, it is unclear if Montaigne is sincere in his praise of the Tupí-Guaraní, since in his presentation of their cannibalism he shows the Brazilians exhibiting the same qualities that he denounces among the French.¹¹⁵ Montaigne discloses:

Je ne suis pas marry que nous remerquons l'horreur barbaresque qu'il y a en une telle action [cannibalism], mais ouy bien dequoy, jugeans bien de leurs fautes, nous soyons si aveuglez aux nostres (I, 31, 209a).

In other words, Montaigne does not fault Europeans for abhorring cannibalism as a barbaric act.

Rather, he takes issue with Europeans for judging Brazilian acts of cannibalism differently than their own European ones.

However, Montaigne's disclosure still corresponds to his use of equity, and follows the argumentative structure that Cicero encourages practitioners of equity to adopt:

...first, praise and support of the law which you quote; then a comparison of the circumstances in question with the accepted principles of the law in order to show the similarity between the circumstances and the established principle; then comparing the two cases the speaker will wonder how it can be that one who grants that one is fair, should deny that the other is, which as a matter of fact is just as fair or fairer.... Finally, he should point out the fairness of his position, as is done in the absolute subdivision of the equitable issue. 116

¹¹⁵ Quint has described Montaigne's praise of the Tupí-Guaraní as satiric (91).

¹¹⁶ Hubbell, *Topica* 2:319. The original Latin reads: "...primum eius scripti quod proferas laudationem et confirmationem; deinde ieus rei qua de quaeratur cum eo de quo constet collationem eiusmodi, ut id de quo quaeritur ei, de qua constet, simile esse videatur; postea admirationem per contentionem, qui fierri posit ut qui hoc aequum esse concedat illud neget, quod aut aequius aut eodem sit in genere [...] deinde aequitas rei demonstranda est, ut in iuridiciali absoluta" (Hubbell, *Topica* 2:318).

Montaigne appears first to support French customs when he grants his readers leave to abhor cannibalism. However, the similarities that Montaigne presents between Christian and Tupí-Guaraní religious practices should open the eyes of his readers to the cannibalism that they share with Brazilians. Montaigne's readers could then appreciate Tupí-Guaraní cannibalism as they did their own. Or, if his readers were still horrified by Tupí-Guaraní cannibalism – a practice that Montaigne shows them exists in their own French society – they would presumably turn away from their own acts of vengeance.

Montaigne's appeal to Tupí-Guaraní culture thus corrects the judgment of his readers in at least two ways. His appeal first prompts readers to appraise Tupí-Guaraní and French acts of cannibalism as similar; it then provokes readers to "[subdivide] the equitable issue" (Hubbell, *Topica* 2:319), in this case cannibalism. Montaigne's readers could accept cannibalism in both the Old World and the New, or reform it in both contexts. Otherwise put, Montaigne does not leave his readers the option to continue sanctioning cannibalism in France but not in Brazil. Indeed, as Cicero states in his *Topica*: "What is valid in one of two equal cases should be valid in the other; ... Equity should prevail, which requires equal justice in equal cases" (Hubbell 2:397) ("Quod in re pari valet valeat in hac quae par est; ... Valeat aequitas, quae paribus in causis paria iura desiderat," Hubbell 2:396).

Montaigne's use of equity, in which he appeals to the natural law of the Amerindians, thus promises to be successful in amending French judgment and customs. Through his recourse to *comparatio*, *remotio criminis*, and *relatio criminis*, Montaigne enabled his early modern readers to straddle figuratively the common ground that he shows existed between the Old World

and the New. With one foot in France and the other figuratively in Brazil, readers of "Des cannibales" learn to judge themselves and others. 117

"Des Cannibales": A Lesson in How to Judge (by Equity)

According to Nakam,

Des Cannibales se déroule à partir du mot de « barbares », épithète utilisée par « l'opinion vulgaire » et « la voix commune » prétentieuses et ignares pour désigner tout ce qui n'est pas elles-mêmes. Montaigne fait le tour de cette notion. Le circuit se ferme tout à la fin de l'essai sur un nouvel écho de « la voix commune », obstinée et pincée : « ils ne portent point de haut de chausses ». Le dernier rappel de « la voix commune » est d'une ironie cinglante. Car les douze pages de l'essai ont démontré qu'avec leur derrière nu les « sauvages » n'ont rien de « barbares » (Nakam 345).

Since Montaigne ultimately disproves the "voix commune," he teaches us his readers "how we ought to judge other cultures – and ourselves" (Rendall 56). In particular, Steven Rendall has presented the ways by which "Des cannibales" converted its early modern readers from their assumption that their "own society provides a standard of excellence and civilization by which all others may be judged" (56).

Through equity, a jurist could acknowledge that his society and its laws did not provide him with a standard of excellence by which to judge. In fact, through his practice of equity a jurist recognized that the laws of his society were not unamenable, and then went a step further to correct them. At the outset of "Des cannibales," Montaigne indicates that he had escaped from the assumption of his society that French culture provided the standard by which all other

¹¹⁷ Montaigne has readers of "Des cannibales" straddle the Old World and the New in the same way that they would have one leg on either side of the same horse. The term "équité" shares the same root as the early modern term "équitation": "équi-... Empr. au lat. class. aequitas, -atis 'esprit de justice, égalité, juste proportion." *Le Trésor de la Langue Française informatisé*, Jacques Dendien, http://atilf.atilf.fr/tlf.htm. Even though Montaigne does not use the term "équitation" in the *Essais*, it seems unlikely that the relationship between "équité" and "équitation" could have been lost on him. Montaigne mentions horses 114 times in the *Essais* and dedicates "Des destries" (I, 68) to the topic of equine sports. In this essay, he even conveys that his most preferred place was on the back of a horse: "Je ne démonte pas volontiers quand je suis à cheval, car c'est l'assiette en laquelle je me trouve le mieux, et sain et malade" (I, 48, 289a).

societies may be judged. Indeed, it is not in France but in the Americas where Montaigne locates "la parfaicte religion, la parfaicte police, perfect et accomply usage de toutes choses" (I, 31, 205a).

Montaigne further proves his escape when he shares his juridical role with the Tupí-Guaraní, and evaluates France according to the 'perfect' customs of the Brazilians. Only a judge could pronounce a verdict, while it was the duty of a courtroom interpreter to communicate the verdict to the parties at trial (Maclean *Interpretation and Meaning* 88). Montaigne appears to adopt the role of courtroom interpreter when he claims merely to communicate to his readers the verdicts on French society that he supposedly witnessed the Tupí-Guaraní pronounce before Charles IX. However, since Montaigne is the author of "Des cannibales," only he can pronounce the verdicts that he attributes to the New World observers. In other words, only he can truly act as a jurist in I:31, albeit he exercises his judicial privilege through the Amerindians. Montaigne therefore fulfills both roles of jurist and courtroom interpreter in "Des cannibales": he is the only one who can pronounce verdicts (the privilege of a magistrate) and communicate them to his readers (the role of a courtroom interpreter). In short, Montaigne shares jurisprudence with the Brazilians.

That Montaigne shares his juridical role in the *Essais* reflects his legal career. In the sixteenth-century, a verdict was usually not the product of a single judge. Rather, it articulated a decision at which multiple judges arrived by voting on the case under their consideration (Almquist "Judicial Authority" 218). Beyond sharing jurisprudence with the Tupí-Guaraní, however, Montaigne also shares jurisprudence with his readers. André Tournon has argued that in the *Essais* overall, Montaigne creates a relationship of complicity with his readers: "L'espèce

de connivence qu'il [Montaigne] sollicite ... est une exigence de sa philosophie de *l'essai*."¹¹⁸ Rendall has analyzed the specific ways by which Montaigne creates "a relationship of complicity with the reader" of "Des cannibales" (Rendall 59). Thus, when readers of this essay practice and hone their judgment with Montaigne, ¹¹⁹ they are also exercising their judgment alongside the Tupí-Guaraní with whom Montaigne shares jurisprudence.

Montaigne provides his readers with two Amerindian verdicts on French society by which they can learn to judge, while the third verdict he claims to have forgotten: "ils respondirent trois choses, d'où j'ay perdu la troisiesme, et en suis bien marry; mais j'en ay encore deux en memoire" (I, 31, 213a). However, for Montaigne "l'oubli et le jugement se nourrissent ... mutuellement." Thus, he perhaps purposefully 'forgets' the third Tupí-Guaraní verdict on French society, and for the benefit of his readers. I suggest that Montaigne's lapse in memory, which occurs at the end of I:31, signals where he invites his readers to make the leap from *imitatio* of his judgment to its *mimesis* (Renner 106). Readers of "Des cannibales" learn to judge under the guidance of Montaigne, whose example they can imitate as they read this essay. However, readers would then need to be able to replicate the judgment that they exercised while reading "Des cannibales" outside of this essay. If readers arrive at judging the way that Montaigne does, they also achieve the judgment of the Amerindians, with whom Montaigne

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¹¹⁸ André Tournon, "Route par ailleurs," Le "nouveau langage" des Essais (Paris: Honoré Champion, 2006) 310. 119 Edwin M. Duval has analyzed "Des cannibales" and "Des coches" "not as dissertations, but quite literally as exercises designed to increase our understanding and sharpen our judgment by putting both of these faculties to the test." Edwin M. Duval, "Lessons of the New World: Design and Meaning in Montaigne's "Des Cannibales" (I:31) and "Des coches" (III:6)," Yale French Studies, No. 64, Montaigne: Essays in Reading (1983) 95-112, 111. Gérard Defaux has also argued that "Montaigne donne à son lecteur une série de leçons : et, ce faisant, il y essaye en même temps son propre jugement et le jugement de son lecteur. Rien alors de plus logique que le lecteur essaye à son tour son propre jugement, et que sa cible soit Montaigne." Gérard Defaux, Marot, Rabelais, Montaigne : l'écriture comme présence (Paris-Genève: Champion-Slatkine, 1987) 158.

¹²⁰ Bernd Renner, "La Mémoire défaillante de Montaigne: Un Stratagème judicieux?," *Cincinnati Romance Review*, 19 (2000): 102-110, 106.

shares his judicial role in "Des cannibales." Thus, readers of I:31 have the possibility to reach for themselves a kind of third Tupí-Guaraní verdict on French society.

However, the equity that Montaigne performs in "Des cannibales" does not necessarily free him and his readers completely from ethnocentric prejudice. 121 The jurist who practiced equity could only reconcile cases with the established laws, not remove these laws themselves. Thus, while Montaigne's rhetorical use of equity in "Des cannibales" reconciles Tupí-Guaraní society with French culture, it can only temper the ethnocentric opinions of his early modern readers. Montaigne cannot completely remove his readers' prejudices through his recourse to equity, and indeed he does not try to eradicate his readers' ethnocentric opinions. Rendall has shown that Montaigne in fact worked off of the prejudices of his readers. Otherwise put, Montaigne purposefully evokes "la voix commune" (I, 31, 202a) in order to lead his readers to discount it.

According to Eric MacPhail, Montaigne uses epideictic rhetoric to criticize "la voix commune." 122 MacPhail has argued that "Des cannibales" takes as its model Plutarch's On the fortune or virtue of Alexander the Great (part of the Moralia, c. 100AD). In particular, MacPhail has claimed that "Des cannibales" adopts "Plutarch's theme of philosophy in action," as well as his repudiation of "the hyperbolic consensus of values embodied in Alexander's career" (23). MacPhail has concluded that, while "Plutarch stretches the limits of consensus, Montaigne praises precisely what is best calculated to repel his audience and thereby to reveal the unstable foundations of consensus" (23).

¹²¹ Tzvetan Todorov, "L'Être et l'Autre: Montaigne," trans. Pierre Saint-Armand, Montaigne: Essays in Reading, ed. Gérard Defaux, Yale French Studies 64 (1983): 113-144, 124-125. Zahi Zalloua has nicely summarized Todorov's contention: "the essayist subsumes the [Brazilian] other under the humanist horizon of meaning and therefore does not free himself from ethnocentric prejudice." Zalloua has responded that "Montaigne never 'intends' to depict the cannibal as an 'absolute' alterity" (Zalloua 185). Zahi Zalloua, "Sameness and Difference: Portraying the Other in 'De l'amitié' and 'Des cannibales,'" *Montaigne Studies, An Interdisciplinary Forum* 15.1-2 (2003): 177-190, 180. ¹²² Eric MacPhail, "Philosophers in the New World: Montaigne and the Tradition of Epideictic Rhetoric," A Journal of the History of Rhetoric, 30.1 (Winter 2012): 22-36.

I suggest that Montaigne's use of epideictic rhetoric to undermine consensus compliments his rhetorical use of equity in "Des cannibales." Equity only works when its jurist abandons judging by communis usus loquendi and communis opinio, i.e. "la voix commune." While Montaigne's use of epideictic rhetoric "[reveals] the unstable foundations of consensus" (MacPhail 23), his use of equity then takes over to teach his readers how to judge themselves and others. The companionship of legal rhetorical devices and humanistic ones in the *Essais* does not come as any surprise, of course. MacPhail has defined epideictic rhetoric as grouped with deliberative and judicial rhetoric in the genera caussarum (36). Furthermore, he has described Aristotle's *Nicomachean Ethics* – the work that was so influential to the sixteenth-century practice of equity (Maclean 22-23; Langer 190) – as an important source of epideictic theory (MacPhail 36). Finally, early modern legal practitioners consulted Plutarch's *Lives* – including, presumably, that of Alexander – as an example for judicial writing (Almquist "Quatres Arrêts" 23). Indeed, Tournon has emphasized the close relationship between early modern law and Renaissance humanism in his definition of the law: "le foyer de vives controverses, où l'humanisme assume pleinement sa fonction critique" (*La glose* 163-164).

Montaigne, the humanist and jurist, thus criticizes in his *Essais* the French "voix commune" in both its humanist and legal forms. He also uses related rhetorical devices to voice his criticisms: humanist epideictic rhetoric and legal equity. However, Montaigne ultimately proposes a single, shared solution to each of his critiques: a new process of judging. Montaigne describes this process of judging as a language of inward questioning – "interrogation" (II, 12, 527b) – and as a corrective to the legal practices then in place (the *communis usus loquendi* and the *communis opinio* that the French adopted from Bartolus).

The only way for a jurist to correct the customs of his society was through his recourse to equity (Tournon "Justice" 105). If Montaigne uses equity to demonstrate his process of judging to French readers who "ne juge plus" (II, 12, 539a), then both equity and the New World examples that inform it should be integral to his judgment. In other words, the rhetorical devices and examples that Montaigne uses to propose and teach his judgment are also component parts of his judgment itself, so that it is a sum of its parts. Montaigne not only describes his judgment as a language, but also as an important tool with which he writes the *Essais*: "Le jugement est un util à tous subjects, et se mesle par tout. A cette cause, aux essais que j'en fay ici, j'y employe toute sorte d'occasion" (I, "De Democritus et Heraclitus," 301a). In the next two chapters of this dissertation, I will analyze one aspect of Montaigne's language and judgment in the *Essais*: his rhetorical use of equity, and the New World examples that inform it.

Chapter Two

Montaigne's Judgment and Tupí-Guaraní Language and Culture

Tupí-Guaraní Language and Culture

According to Olive P. Dickason, the "first contact that most sixteenth-century Europeans had with Amerindians was not in the New World, but in the Old." For readers of European travel accounts and histories of the New World and its peoples, this contact was vicarious.

Montaigne was among many Europeans to read Martin Fumée's French translation of Spanish historian Francisco Lopez de Gómara, *Histoire générale des Indes occidentales, et Terres-neuves du Pérou* (1584), 124 as well as Agostino di Cravalix's Italian translation of Gómara, *Historia di Don Ferninando Cortes... Parte terza...* (1576). 125 Gómara collected European testimonials of the New World to write his history; he was the secretary to Hernán Cortés upon his return to Spain in 1540, so the testimony of this *conquistador* features prominently. Villey observed that the *Histoire générale des Indes* especially influenced the *Essais*, even beyond the essay where Montaigne specifically discusses the *conquista* of the New World – "Des coches" (III:6). 126

Montaigne also read other histories which, like that of Gómara, represent European testimonials of the New World. Montaigne had in his personal library the Spanish language

¹²³ Olive P. Dickason, *The Myth of the Savage, and the Beginnings of French Colonialism in the Americas* (Edmonton, Alberta, Canada: The University of Alberta Press, 1997) 205.

¹²⁴ Pierre Villey, *Les Sources et l'Évolution des Essais de Montaigne*, Tomes 1-2 (New York: Burt Franklin, 1968) 137. Gilbert Chinard, *L'Exotisme américain dans la littérature française au XVIe siècle* (Geneva: Slatkine Reprints, 1970) chapter 9 "Un defenseur des Indiens : Montaigne," 193-219. The original edition of this study appeared in 1911.

¹²⁵ Villey *Sources* 138; Chinard 194.

¹²⁶ Villey comments in his preface to "Des coches": "Le livre où il [Montaigne] puise sa documentation sur ce sujet, *l'Histoire générale des Indes* [de Lopez de Gómara], est un de ceux qui ont le plus enrichi les *Essais*, et le plus stimulé la réflexion de Montaigne." Michel de Montaigne, *Les Essais*, ed. Pierre Villey (Paris: Quadrige/PUF, 1924) III, 898.

translation of Portuguese historian Lopez de Castañeda, the *Historia del descubrimiento y* conquista de la India por los Portugueses (1554). Montaigne also read *L'Histoire du* Portugal (1581), Parisian lawyer Simon Goulart's French translation of Castañeda. His translation contained within it the *Histoire du roi Emmanuel d'Osorio* and the *Histoire de la découverte des Indes*. 129

In addition, Chinard indicated that Montaigne read Urbain Chauveton's French translation of the Italian historian Girolamo Benzoni, *Histoire nouvelle du Nouveau Monde* (1579). Montaigne also read *La Cosmographie universelle de tout le monde* (1575) of Sebastian Münster and François de Belle-Forest. Furthermore, Lestringant has concluded that Montaigne read *La historia general y natural de las Indias, islas y Tierra-Firme del Mar Oceano* (1526) of Spanish historian Gonzalo Fernández de Oviedo y Valdés. It is not known which specific works of Bartolomé de las Casas (1484 – 1566) Montaigne read, but Tom Conley in particular has argued that this Dominican protector of "Indian rights" significantly influenced the *Essais*. 132

However, the first contact that sixteenth-century Europeans had with Amerindians was oftentimes more than vicarious. Beginning with Christopher Columbus, merchants and sailors "[kidnapped] New World men and [brought] them to Europe as proof of where they had been"

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¹²⁷ As testified by Montaigne's signature on the title page of this item. *Historia del descubrimiento y conquista de la India por los Portugueses compuesta por Hernan Lopez de Castañeda en lenguaje Portugues, y traduzida nueuamente en Romance Castellano, Dirigida al muy ilustre señor don Luys de Auila y Çuñiga Comendador mayor de Alcantara, &c.*, En Anvers, En casa de Martin Nucio, 1554. This item is available online through the Gordon Collection of the University of Virginia Special Collections Library. See also Villey *Sources* 94-95.

¹²⁸ Villey *Sources* 95 and 139.

¹²⁹ Géralde Nakam, *Les Essais de Montaigne, miroir et procès de leur temps, Témoignage historique et création littéraire, Édition revue, corrigée et mise à jour avec une préface inédite* (Paris: Éditions Champion, 2001) 336. The original edition of this study appeared in 1984.

¹³⁰ Chinard 197-202; Villey *Sources* 180-81.

¹³¹ Frank Lestringant, "Le Cannibalisme des 'Cannibales,' I. Montaigne et la tradition," *BSAM*, Sixième Série – No9-10 (Janvier-Juin 1982): 27-40, 29-31.

¹³² Quotation from: Francis Patrick Sullivan, S.J., *Indian Freedom, The Cause of Bartolomé de las Casas, 1484-1566, A Reader* (Kansas City, MO: Sheed & Ward, 1995) 7. For Tom Conley, see his "Montaigne and the Indies: Cartographies of the New World in the Essais, 1580-88," *Hispanic Issues*, 4 (1989): 225-262.

(Dickason 205). The frequency with which Europeans kidnapped Amerindians resulted in hundreds, if not thousands, of Amerindians in Europe.¹³³ The number of New World people that Europeans brought to the Old has led Dickason to suggest that "Amerindians were seen more frequently in Europe than documented instances would indicate" (205). Europeans crowded around merchant vessels at port to catch glimpses of New World people, and gathered in the streets to watch as Amerindians were escorted to royal courts.¹³⁴ By the mid-sixteenth century, it had become "fashionable in France for both royalty and wealthy nobles to have Amerindians in their entourages, a custom that was to continue until well into the next century" (Dickason 212).

Europeans also encountered Amerindians at royal entry ceremonies. For the royal entry of Henri II into Rouen (1550), the French reconstructed a Tupí-Guaraní village with 50 Amerindians and 200 Norman interpreters who assumed the appearance of Amerindians. The Tupí-Guaraní, alongside their convincing European impersonators, enacted a battle between two Brazilian tribes. So real was the reenactment that part of the reconstructed village caught fire. While Montaigne was not present at this royal entry, Philippe Desan has argued that he was present for the royal entry of Charles IX into Bordeaux (1565). For this royal entry, 300 armed Frenchmen escorted

douze nations estrangères captives, telles qu'estoient Grecs, Turcs, Arabes, Egyptiens, Taprobaniens, Indiens, Canariens, Mores, Ethiopiens, sauvages amériquains et Brésiliens, les

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¹³³ See chapter 10 in Dickason, "Amerindians in Europe" (205-229).

¹³⁴ Histoire générale des Indes occidentales, et terres neuves, qui jusques à présent ont esté descouvertes: augmentée en ceste 5e édition de la description de la Nouvelle Espagne et de la grande ville de Mexicque, autrement nommée Tenuctilan, A Paris, Chez Michel Sonnius, 1587, Livre 1, 24r. This edition is available online through Google Books.

¹³⁵ See again chapter 10 in Dickason, "Amerindians in Europe" (205-229). Ferdinand Denis, "Une fête brésilienne célébrée à Rouen en 1550" in *Une Fête brésilienne célébrée à Rouen en 1550, suivie d'un fragment du XVIe siècle roulant sur la théologie des anciens peuples du Brésil et des poésies en langue tupique de Christovam Valente*, 1850, Paris, J. Techener, Libraire (New Jersey: The Gregg Press, 1968) 4-19. Jean-Marie Massa, "Le monde lusobrésilien dans la Joyeuse entrée à Rouen," in *Les Fêtes de la Renaissance*, dir. Jean Jacquot, Quinzième colloque d'études humanistes, Tours, 10-22 juillet 1972, 3 vols. (Paris: CNRS, 1975) 3:105-116. José Alexandrino de Souza Filho, *Civilisation et barbarie en France au temps de Montaigne* (Lille: ANRT, 2003) 48-88.

¹³⁶ Philippe Desan, "Le simulacre du Nouveau Monde: à propos de la rencontre de Montaigne avec des Cannibales," *Montaigne Studies, An Interdisciplinary Forum* 22.1-2 (2010) 101-118.

capitaines desquels haranguèrent devant le Roy chacun en sa langue entendue, par le truchement, qui l'interprétoit à Sa Majesté. 137

In "Des cannibales" (I:31), Montaigne draws reader attention to a specific part of this event: the appraisal of France that three Tupí-Guaraní delivered before Charles IX. In addition, Montaigne indicates that he, facilitated by an interpreter, had a conversation with at least one of these Tupí-Guaraní, whom he describes as a war captain (I, 31, 214a).

However, when Montaigne commits his conversation with the Tupí-Guaraní to paper, he does not emphasize its dialogue. Rather, he vents his frustration with his translator:

Je parlay à l'un d'eux fort long temps ; mais j'avois un truchement qui me suyvoit si mal, et qui estoit si empesché à recevoir mes imaginations par sa bestise, que je n'en peus tirer guiere plaisir. Sur ce que je luy demanday quel fruit il recevoit de la superiorité qu'il avoit parmy les siens (car c'estoit un Capitaine, et nos matelots le nommoient Roy), il me dict que c'estoit marcher le premier à la guerre ; de combien d'hommes il estoit suyvy, il me montra une espace de lieu, pour signifier que c'estoit autant qu'il en pourroit en une telle espace, ce pouvoit estre quatre ou cinq mille hommes ; si hors la guerre, toute son authorité estoit expirée, il dict qu'il luy en restoit cela que, quand il visitoit les vilages qui dépendoient de luy, on luy dressoit des sentiers au travers des hayes de leurs bois, par où il peut passer bien à l'aise (I, "Des cannibales," 214a).

Since Montaigne goes on to relate a few of the Tupí-Guaraní's responses to his questions, Montaigne invites his readers to presume that some degree of communication took place during his conversation with the Brazilian. Even so, Montaigne's apparent disappointment suggests that he had expectations for his conversation with the Amerindian that ultimately were not met. Of course, modern readers of the *Essais* cannot learn his expectations from our distance of four hundred years. Nevertheless, we can consider how Montaigne arrived at the expectations he clearly had, and how he was able to conclude by the time he wrote "Des cannibales" that they were not met.

Bernard Weinberg in particular has shown that passages in "Des cannibales" closely resemble entries on Tupí-Guaraní culture in several New World travel accounts. ¹³⁸ From these

¹³⁷ Theodore Godefroy, *Le Ceremonial François contenant les cérémonies observées en France...*, 1619, 2 vols., Paris, Sebastien et Gabriel Cramoisy, 1649. Cited in Desan 108. Desan also provides his readers with an excellent list of documents (spanning four centuries, the sixteenth- to the nineteenth-century) that describe the royal entry of Charles IX into Bordeaux (108, footnote 9).

resemblances, scholars have concluded that Montaigne read Les Singularitez de la France antarctique (1557) and La cosmographie universelle (1575) of Catholic missionary André Thevet, ¹³⁹ as well as the *Histoire d'un voyage faicte en la terre du Brésil* (1578) of Protestant missionary Jean de Léry. 140 As Montaigne borrowed heavily from the descriptions of Tupí-Guaraní culture that both Thevet and Léry provide, I will argue in this chapter that Montaigne also borrowed from their descriptions of Tupí-Guaraní language.

Indeed, Montaigne's description of Tupí-Guaraní society in "Des cannibales" suggests his careful reading of Léry's description of Tupí-Guaraní language. According to Montaigne, the Brazilians "s'entr'appellent generalement, ceux de mesme aage, freres; enfans, ceux qui sont au dessoubs; et les vieillards sont peres à tous les autres" (I, 31, 210a). Montaigne's description matches one in Léry's *Histoire d'un voyage faicte en la terre du Brésil* (1578): "Il est à notter qu'on appele communément l'oncle comme le pere. Et par semblable le pere appele ses neveux et nieces, mon fils et ma fille." ¹⁴¹ Léry offers these details into Tupí-Guaraní society only once, in the chapter that he dedicates to presenting the Tupí-Guaraní language: "Colloque de l'entrée ou arrivée en la terre du Bresil, entre les gens du pays nommez Tououpinambaoults, et Toupinekins en langage sauvage et François" (Léry 479 - 503). In this chapter, Léry mentions the kinship structure of the Brazilians when he explains how they use the Tupí-Guaraní pronoun "ché" to refer to their family members. 142

¹³⁸ Weinberg has placed many passages from "Des cannibales" alongside passages from Les Singularitez de la France antarctique (1557) of André Thevet, the Copies de Quelques Letres Svr La Navigation du Chevallier de Villegaignon et terres de l'Amerique (1557) of Nicolas Barré, and the Histoire d'un voyage faicte en la terre du Brésil (1578) of Jean de Léry. See his chapter "Montaigne's Readings for Des Cannibales," Renaissance and Other Studies in Honor of William Leon Wiley (Chapel Hill: UNC Press, 1968) 216-279.

¹³⁹ For Montaigne's reading of Thevet see Weinberg 216-279, Lestringant 29-30, and Chinard 194-96.

¹⁴⁰ For Montaigne's reading of Léry see Weinberg 216-279, Lestringant 29-30, and Chinard 194-96.

¹⁴¹ Jean de Léry, *Histoire d'un voyage faict en la terre du Brésil*, ed. Frank Lestringant (Paris: Le Livre de Poche,

¹⁴² The kinship structure of the Tupí-Guaraní is of the Dravidian type. Eduardo Viveiros de Castro, *From the* Enemy's Point of View, Humanity and Divinity in an Amazonian Society, trans. Catherine V. Howard (Chicago:

Léry includes his observation of Brazilian kinship towards the end of chapter twenty. In the final nine pages of this chapter, he offers examples of simple sentences in Tupí-Guaraní with explanations of their structure and formation. Léry first provides his readers with a five-page list of Tupí-Guaraní expressions using *ché* (Léry 494-98), which is "la premiere personne du singulier qui sert en toute maniere de parler, tant primitive que derivative, possessive, ou autrement" (Léry 494). Readers learn from Léry's list that *ché* can denote possession of a noun:

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Chè-voua. Mon visage.
Chè-nembi. Mes oreilles.
Chèsshua. Mon front.
Ché-ressa. Mes yeux.
Chè tin. Mon nez.
Che-iourou. Ma bouche (Léry 494).
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Readers also deduce that *ché* can be used to create simple sentences:

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Ché-renni-auge-pe. Donne moy à boire.
[...]
Ché-embouassi. J'ay faim de manger.
Nam-che-jourou-eh. Je n'ay point appetit de manger.
[...]
Ché-reaic. J'ay chaut, je sue.
Ché-roü. J'ay froid.
Ché-racoup. J'ay la fievre.
Ché-carouc-assi. Je suis triste (Léry 496-97).
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Léry also defines *ché* as the disjunctive pronoun "moy" (Léry 496), which leads him to list the other disjunctive pronouns in Tupí-Guaraní (Léry 496), as well as a relatively small collection of other simple sentences that do not use *ché*.

After his treatment of *ché*, Léry teaches his readers how to conjugate *oico* ("être") and *aioüt* ("venir") in the present tense, the compound past tense, the imperfect past tense, the future tense, and the imperative form of the present tense (Léry 498-502). Readers thereby learn that Tupí-Guaraní verbs are appended to their subjects:

University of Chicago Press, 1992) 142. Dravidian kinship is a "mode of kinship reckoning whereby parallel and cross relatives (or "kin" and "affines") can be systematically distinguished," i.e. cross-cousins can be differentiated as cousins, while parallel-cousins are considered siblings. Quotation from: Roger Keesing, *Kin Groups and Social Structure* (New York: Holt, Rinehart and Winston, 1975) 149.

Oico ("être")	Aioüt ("venir")
Aico, Je suis.	Aiout. Je viens, ou je suis venu.
Ereico, Tu es.	Ereiout. Tu viens, ou es venu.
Oico, Il est.	O-out. Il vient, ou est venu.
Oroico. Nous sommes.	Ore-iout. Vous venez, ou estes venus.
Peico. Vous estes.	An-ae-o-out. Viennent, ou sont venus (Léry
Auraèo ico. Ils sont (Léry 498).	500).

As these verb conjugations demonstrate, Tupí-Guaraní has "person markers." 143 Rather than distinct subject words – like "je," "tu," "il," etc. – person markers are combined with verbs, nouns, and other parts of speech and are used in Tupí-Guaraní to denote subjects as well as objects (Jensen 493).

The person markers that Léry uses in his conjugations of oico and aioüt actually represent only one set of person markers. However, sixteenth-century Tupí-Guaraní had four sets of person markers that its speakers combined with different kinds of verbs, nouns, and other parts of speech to create highly complex expressions (Jensen 493). The Tupí-Guaraní Amerindian and French tradesman, whose conversation takes up the rest of chapter twenty, both use person markers that correspond to all four sets in Tupí-Guaraní. This conversation occurs in Tupí-Guaraní, but is accompanied by French translations. It spans thirteen pages (Léry 479-92) and teaches its readers the Tupí-Guaraní vocabulary and phrases to describe and barter the French trade items of European clothes, hats, guns, and knives. For example:

[Toüoupinambaoult]. – Maé pérérout, de caramémo poupé? Quelle chose est-ce que tu as apporté dedans tes coffres?

[François]. -A-aub, des vestemens.

T. – Mara vaé? De quelle sorte ou couleur?

F. – *Sobouy-eté* : De bleu :

Pirenc. Rouge.

Ioup. Jaune.

Son. Noir.

Sobouy, ouassou. Verd.

Pirienc. De plusieurs couleurs.

¹⁴³ Cheryl Jensen, "Part III: Comparative Study: Tupí-Guaraní," *Handbook of Amazonian Languages*, Volume 4, eds. Desmond C. Derbyshire and Geoffrey K. Pullman (Berlin: Mouton de Gruyter, 1998) 493. For other insights into Tupí-Guaraní language beyond Jensen, see: The World Atlas of Language Structures Online, eds. Matthew S. Dryer and Martin Haspelmath, 2011, Max Planck Digital Library, Munich http://wals.info/>.

Pegassou-aue. Couleur de ramier. *Tin*. Blanc (Léry 481-2).

Readers also learn the kinds of responses they should expect to hear from their Amerindian trading partners. The Tupí-Guaraní interlocutor is shown to reply that he and his people can supply the French trader with indigenous fish, birds, and animal skins, "*Ty poeraca apoavé*" (Léry 489). Léry first translates this Amerindian utterance, "Travaillons pour prendre de la proye pour eux," and then interprets it for readers, "Ce mot *yporraca* est specialement pour aller en pesherie au poisson. Mais ils en usent en toute autre industrie de prendre beste et ovseaux."

However, the Brazilian and the Frenchman use verbs, nouns, and other parts of speech in their conversation whose definitions and rules of use Léry does not provide. Thus, chapter twenty of the *Histoire* largely requires its readers to decipher the vocabulary and grammar rules of Tupí-Guaraní in order to learn this language. The basic vocabulary definitions and grammatical explanations that Léry offers, along with the French translations that accompany each Tupí-Guaraní utterance, serve to help readers learn words and structure patterns in the Tupí-Guaraní statements of this chapter.

Léry offers his readers further opportunity to learn the definitions and use of Tupí-Guaraní words and phrases when he, like Thevet, scatters them throughout his account of the New World. As a result, the descriptions and explanations that both Léry and Thevet offer of Brazilian flora and fauna, the village activities of the Tupí-Guaraní, their weapons of war and instruments of cannibalism, and their religious ideology all include words from the Tupí-Guaraní language. For instance, in *La cosmographie universelle* (1575) Thevet presents the Tupí-

¹⁴⁴ Léry 489. The French traded for specific beasts and birds; in his *Warhaftige Historia* (1557) Hans Staden reports that the French traded knives, axes, fishhooks, mirrors and combs for long-tailed monkeys, parrots, and other bird feathers, as well as cotton, brazilwood, and pepper. See: Neil L. Whitehead and Michael Harbsmeier, trans. and eds., *Hans Staden's True History, An Account of Cannibal Captivity in Brazil* (Durham: Duke University Press, 2008) 78, 82, 96, and 99. Dickason has also added to this list of trade goods jaguar skins and Brazil tobacco (183 and 185).

Guaraní narrative of the creation of the world. As he relates this narrative, he includes the Tupí-Guaraní names for the celestial characters in the story. For example, Thevet introduces *Monan* as the entity that most resembles the God of Christianity:

Monan, auquel ils [Tupí-Guaraní] attribuent les mesmes perfectios que nous faisons à Dieu, le disans estre sans fin & commencement, estans de tout temps, & lequel a creé le Ciel, la terre & les oyseaux & animaux qui sont en eux....¹⁴⁵

In his telling of the Tupí-Guaraní creation story, Thevet also includes other words from their vocabulary, such as the word for lightening: *Tatta* (*Cosmographie* 913v). *Monan* sent this "feu du ciel," Thevet explains, as punishment for the irreverent behavior of the first humans (*Cosmographie* 913v).

Beyond the Tupí-Guaraní terms that Thevet weaves into his descriptions and explanations of the Brazilians, in *La cosmographie universelle* Thevet also includes a Tupí-Guaraní translation of three Christian prayers. He includes the "Oraison Dominicale en Sauuage," or the "Our Father" in Tupí-Guaraní; he also identifies this prayer for his readers as the "Pater." (Thevet *Cosmographie* 925r). He then reproduces the "Salutation Angelique," or "Hail Mary," in Tupí-Guaraní; he also labels this prayer as the "Ave. sancta" (Thevet *Cosmographie* 925r). The last prayer whose Amerindian translation he presents is "Le Simbole des Apostres," or the "Apostles' Creed"; he further indicates for his readers that this prayer is the "Credo." (Thevet *Cosmographie* 925r). All three of these prayers are in Tupí-Guaraní, without any kind of translation accompanying them beyond the French and Latin titles that identify them. In other words, Thevet leaves it to his readers to compare the Tupí-Guaraní versions of these prayers with the versions – French or Latin – they knew to recite. However, within his

¹⁴⁵ André Thevet, *La cosmographie universelle d'André Thevet, ... illustrée de diverses figures des choses plus remarquables veuës par l'auteur...* Tome 1er [-4e], Paris, G. Chaudière, 1575, 913v. Available online through Gallica, the Bibliothèque numérique of the Bibliothèque nationale de France. All quotations from the *Cosmographie* in this chapter correspond to "Tome quatrieme. Description de la qvatre-ieme partie dv monde, illvstree de nostre temps." (903r-1025v).

description of Tupí-Guaraní village life, Thevet does supply French translations for several phrases by which these Amerindians greet visitors to their villages. For instance: "Marabissere,' 'Comment as-tu nom ?," 'Marapipo,' 'Que veux-tu dire ?'" (Singularités 131), "'Agatouren,' 'tu es bon'" (Singularités 177), and "'Eori asse pia,' 'montre-moi ce que tu as'" (Singularités 177).

Thus, Thevet's *Les Singularitez* (1557) gave Montaigne the opportunity to learn about Tupí-Guaraní language and culture before his conversation with the Brazilian war captain in 1565. 147 Thevet's *La cosmographie* (1575) and Léry's *Histoire* (1578), which Montaigne read after his own encounter with the Tupí-Guaraní, presented him further opportunity to learn about Tupí-Guaraní language and culture. Passages in "Des cannibales" date its composition to 1578 and 1579 (Villey, I, 202), which suggests that Montaigne wrote I:31 while he was reading the *Histoire*, or shortly thereafter. Montaigne's readings presumably reminded him of his "propre expérience cannibale" (Desan 106), so that even its frustrations would be fresh in Montaigne's mind as he wrote "Des cannibales."

Of course, Montaigne does more than intimate the disappointment he felt from his own encounter with at least one Brazilian. In "Des cannibales" Montaigne discusses Tupí-Guaraní language and culture. In particular, he observes that Tupí-Guaraní, "c'est un doux language et qui a le son aggreable, retirant aux terminaisons Grecques" (I, "Des cannibales," 213a); Montaigne then offers two Brazilian songs as proof. The first is "une chanson faicte par un prisonnier," which he appraises as an "Invention qui ne sent aucunement la barbarie" (I, 31, 212a):

J'ay une chanson faicte par un prisonnier, où il y a ce traict: qu'ils viennent hardiment trétous et s'assemblent pour disner de luy: car ils mangeront quant et quant leurs peres et leurs ayeux, qui

¹⁴⁶ André Thevet, *Le Brésil d'André Thevet, Les Singularités de la France Antarctqiue (1557)*, ed. Frank Lestringant (Paris: Éditions Chandiegne, 1997) 131.

¹⁴⁷ It is possible that Montaigne encountered the Tupí-Guaraní in 1562, during the royal entry ceremony of Charles IX into Rouen; however, Desan has found it more probable that Montaigne encountered the Brazilians brought before Charles IX in 1565, when the French king visited Bordeaux (105-116).

ont servy d'aliment et de nourriture à son corps. Ces muscles, dit-il, cette cher et ces veines, ce sont les vostres, pauvres fols que vous estes; vous ne recognoissez pas que la substance des membres de vos ancestres s'y tient encore: savourez les bien, vous y trouverez le goust de vostre propre chair (I, "Des cannibales," 212a).

While this Tupí-Guaraní song is "l'une de leurs chansons guerriere," Montaigne mentions that he has "un'autre, amoureuse, qui commence en ce sens : Couleuvre, arreste toy ; arreste toy, couleuvre, d'un riche cordon que je puisse donner à m'amie : anisi soit en tout temps ta beauté et disposition preferée à tous les autres serpens" (I, 31, 213a). Montaigne then goes on to analyze briefly this song: "Or j'ay assez de commerce avec la poësie pour juger cecy, que non seulement il n'y a rien de barbarie en cette imagination, mais qu'elle est tout à fait Anacreontique" (I, 31, 213a).

The authenticity of the Tupí-Guaraní songs that Montaigne recites cannot be determined, but his purpose in drawing readers' attention to them is clear. Towards the end of Montaigne's presentation of Tupí-Guaraní culture in "Des cannibales," he argues:

Et afin qu'on ne pense point que tout cecy se face par une simple et servile obligation à leur usance et par l'impression de l'authorité de leur ancienne coustume, sans discour et sans jugement, et pour avoir l'ame si stupide que de ne pouvoir prendre autre party, il faut alleguer quelques traits de leur suffisance (I, 31, 213a).

Montaigne immediately cites two examples of Tupí-Guaraní language and culture – the Brazilian songs that he claims to have learned – as evidence to support his assertion that the Tupí-Guaraní were not the unwitting actors of their customs, and could thus reason and judge. Montaigne's gesture to Tupí-Guaraní language reflects the linguistic value that legal practitioners emphasized: the relationship between language and its user. Montaigne focuses on a particular aspect of this relationship when he points to examples of Tupí-Guaraní language as evidence that it does not inhibit its speakers from reasoning and judging.

¹⁴⁸ "Montaigne, despite his acceptance of the belief in their immaturity, came closest to perceiving that Amerindians were fully fledged human beings. They had a trait in common with Europeans, he wrote, and that was the use of reason" (Dickason 56).

¹⁴⁹ Ian Maclean, *Interpretation and Meaning in the Renaissance, The Case of Law* (Cambridge: Cambridge University Press, 1992) 70-71.

In contrast, for Montaigne the French language is one that does not contribute to its speakers' ability to judge. In the "Apologie de Raimond Sebond" (II:12), he observes that the French language "est tout formé de propositions affirmatives" (II, 12, 527a). The absence of critical expressions in the French language matches the absence of critical behavior in French society:

On reçoit comme un jargon ce qui en est communement tenu; on reçoit cette verité avec tout son bastiment et attelage d'argumens et de preuves, comme un corps ferme et solide qu'on n'esbranle plus, qu'on ne juge plus. Au contraire, chacun, à qui mieux mieux, va plastrant et confortant cette creance receue, de tout ce que peut sa raison, qui est un util soupple, contournable et accommodable à toute figure. Ainsi se remplit le monde et se confit en fades et en mensonge. Ce qui fait qu'on ne doute de guerre de choses, c'est que les communes impressions, on ne les essaye jamais; on n'en sonde point le pied, où giste la faute et la foiblesse; on ne debat que sur les branches; on ne demande pas si cela est vray, mais s'il a esté ainsin ou ainsin entendu (II, "Apologie," 539a).

The French linguistic tendency to affirm matches their corresponding social tendency to affirm the 'truth' by consensus. Montaigne's observation on French society thus corresponds to the linguistic value that legal practitioners emphasized: the relationship between language and its user (Maclean *Interpretation and Meaning* 70-71). As he does in "Des cannibales," in the "Apologie" Montaigne focuses on a particular aspect of this relationship when he observes that the French "ne juge plus." That is, the French linguistic tendency to affirm and the corresponding French social tendency to affirm by consensus result in the French not judging.

For Montaigne, then, the Tupí-Guaraní language contributes to its speakers' ability to judge. In contrast, the French language does not help its speakers to judge, as Montaigne observes from its performance in French social behavior. In a century where the French sought to celebrate their language and culture, Montaigne criticizes them and celebrates instead Tupí-Guaraní language and culture.¹⁵⁰ For example, Henri Estienne sought "to [validate] the

¹⁵⁰ "Toward the end of the fifteenth century, a philosophy of language based on a celebration of the letter and of vernacular languages began to emerge in Europe." Walter D. Mignolo, *The Darker Side of the Renaissance*, *Literacy, Territoriality, and Colonization*, 2nd Edition (Ann Arbor: University of Michigan Press, 2014) 29; the first edition of this book appeared in 2011. Joachim Du Bellay first defended the French language in his *La Deffence et*

superiority of the French language" over other vernaculars, "based on its special relationship with Greek, itself superior to Latin." However, it is not French but the Tupí-Guaraní language that Montaigne associates with Greek: "c'est un doux language et qui a le son aggreable, retirant aux terminaisons Grecques" (I, "Des cannibales," 213a). The evident weight that Montaigne places on language – particularly its interrelation with judging – thus calls for our consideration of the role that Tupí-Guaraní language and culture play in Montaigne's judgment and in the *Essais*.

Montaigne's Judgment and Tupí-Guaraní Language and Culture

In "De Democritus et Heraclitus" (I:50) Montaigne describes his judgment:

Le jugement est un util à tous subjects, et se mesle par tout. A cette cause, aux essais que j'en fay ici, j'y employe toute sorte d'occasion. Si c'est un subject que je n'entende point, à cela mesme je l'essaye, sondant le gué de bien loing ; et puis, le trouvant trop profond pour ma taille, je me tiens à la rive : et cette reconnoissance de ne pouvoir passer outre, c'est un traict de son effet, voire de ceux dequoy il se vante le plus (I, "De Democritus et Heraclitus," 301a).

Montaigne uses the metaphor of fording a stream to illustrate the process by which he attempts to understand a topic that is incomprehensible to him. In particular, he indicates that he cannot cross a river when it is too deep for him; likewise, he cannot comprehend a topic that is too deep for his judgment. However, Montaigne insists that he does not remain motionless on the river bank:

Illustration de la Langue francoyse (1549). He then sought to acquire the fertile ground of the Italian Renaissance and resituate it in France, via his Antiquités de Rome and Les Regrets (1558): "De rebâtir en France une telle grandeur / Que je la voudrais bien peindre en votre langage" (Au Roi, lines 10-11). Joachim Du Bellay, Du Bellay, Les Regrets suivi de Les Antiquités de Rome, Le Songe, ed. François Roudaut (Paris: Livre de Poche classique, 2002).

Writings of Henri Estienne," in *Translation and the Transmission of Culture Between 1300 and 1600*, Jeanette Beer and Kenneth Lloyd-Jones, eds. (Kalamazoo, MI: Medieval Institute Publications, 1995) 259-304, 269. Lloyd-Jones has described Estienne as "One of the greatest scholar-printers of the French Renaissance and the most distinguished Hellenist of his generation, [whose] importance in the history of humanist translation is as much that of theoretician as of practitioner" (262).

Je me hazarderoy de traitter à fons quelque matière, si je me connoissoy moins. Semant icy un mot, icy un autre, eschantillon despris de leur piece, escartez sans dessein et sans promesse, je ne suis pas tenu d'en faire bon, ny de m'y tenir moy mesme, sans varier quand il me plaist; et me rendre au doubte et incertitude, et à ma maistresse forme, qui est l'ignorance (I, 50, "De Democritus et Heraclitus," 302c).

Topics can prove too deep for Montaigne to comprehend immediately or directly; so, in his extended metaphor, he indicates that he responds by walking alongside the stream. He moves here and there, planting a word here and there in his *Essais* as he goes, all the while open to how his judgment unfolds a topic before him. As the last clause of the above passage conveys, the movement that Montaigne adopts leads him to doubt and ignorance. He concludes that, in this state of ignorance, "Tout mouvement nous descouvre" (I, 50, 302c).

The process of judging that Montaigne outlines in "De Democritus et Heraclitus" is one in which he receives what he needs to judge. In particular, he accepts ignorance, so that he can then receive the 'movement' that will enable him to continue again in his direct and/or indirect process of judging and writing. In other words, Montaigne receives (an object behavior) so as to comprehend, judge, and write (subject behaviors). His process of judging is therefore one in which the judge – a role of subject agency – interchanges with the judged – a role of receiving object. In the "Apologie," Montaigne concisely describes this interchange when he concludes: "Et nous, et nostre jugement, et toutes choses mortelles, vont coulant et roulant sans cesse. Ainsin il ne se peut establir rien de certain de l'un à l'autre, et le jugeant et le jugé estans en continuelle mutation et branle" (II, 12, 601a).

Scholars usually focus on a particular facet of the subject-object transposition that characterizes Montaigne's process of judging: the opposition between Montaigne, who judges, and that which he most often judges in the *Essais*, his 'self.' In particular, Raymond C. La

¹⁵² The studies that have especially guided my thinking in this chapter are: Raymond C. La Charité, *The Concept of Judgment in Montaigne* (Netherlands: Martinus Nijhoff / The Hague, 1968) and his article "The Relationship of Judgment and Experience in the *Essais* of Montaigne, *Studies in Philology*, 67.1 (Jan. 1, 1970): 31-40. Richard L.

Charité has described this transposition as the process by which Montaigne conducts an "experimental" "experience of the self," in which his 'self' becomes the object of "épreuve" and "essai" (La Charité "Relationship" 33). Montaigne's treatment of the Tupí-Guaraní can thus appear as "une rupture" in his "perpétuel questionnenement de soi." However, Montaigne discloses in I:50 that all of his *Essais* – including, we can assume, its passages on the Brazilians – are the product of his judgment: "Le jugement est un util à tous subjects, et se mesle partout. A ceste cause, aux essais que j'en fais ici, j'y employe toute sorte d'occasion" (I, 50, 301a).

Indeed, Defaux found that "Des cannibales" exhibits "le problème pour lui [Montaigne] fondamental du jugement – jugement de l'autre, jugement de soi" (*Marot* 147). That is, the act of judging oneself is for Montaigne interrelated with the act of judging an 'other,' particularly an Amerindian 'other.' If "le cannibale ... fascine à ce point Montaigne," Defaux argued, "c'est [peut-être pour] ce qu'il *permet* : ... pour les développements et les questions qu'il autorise" (*Marot* 147). According to Defaux, Montaigne's fascination with the Tupí-Guaraní led him to offer readers of "Des cannibales" three lessons: "une leçon de méthode, une leçon de lecture, une leçon de morale" (*Marot* 157). His first lesson is a demonstration of the way that a historian "digne de ce nom écrit l'histoire" (Defaux *Marot* 157). The second lesson that Montaigne teaches through "Des cannibales" is how his readers should approach "un objet radicalement autre, singulièrement différent" (Defaux *Marot* 158) – in this case, the Tupí-Guaraní. For his

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Regosin, *The Matter of My Book Montaigne's Essais as the Book of the Self* (Berkeley: University of California Press, 1977). André Tournon, *Montaigne, La glose et l'essai* (Lyon: Presses Universitaires de Lyon, 1983) "Chapitre VI – L'essai : réflexion, témoignage, recherche" (257-286). Gérard Defaux, "Rhétorique et représentation dans les *Essais* : de la peinture de l'autre à la peinture du moi," *BSAM*, Septième Série – No1-2 (Juillet-Décembre 1985): 21-48. Carl H. Klaus, "Montaigne on His Essays: Toward a Poetics of the Self," *The Iowa Review*, 21.1 (Winter, 1991): 1-23. Zahi Zalloua, "(Im)Perfecting the Self: Montaigne's Pedagogical Ideal," in *Perfection*, ed. Anne L. Birberick (Charlottesville, VA: Rookwood, 2008) 111-126.

¹⁵³ Quotations from: Gérard Defaux, *Marot, Rabelais, Montaigne: l'écriture comme présence* (Genève: Champion-Slatkine, 1987) 146 and 145, respectively.

¹⁵⁴ Bart Moore-Gilbert has more recently shown that the New World 'other' became crucial for the European construction of 'self.' Bart Moore-Gilbert, "New Worlds, New Selves,' Montaigne, 'the Atlantic,' and the emergence of modern autobiography," *Atlantic Studies*, 2.1 (2005): 1-14.

third lesson, Montaigne catalyzes a "changement de perspective et d'opinion" within readers of "Des cannibales," through which we as readers abandon our "préjugés concernant les prétendus 'barbares,' mais aussi bien l'image extrêmement flatteuse de nous-mêmes que nous possédons immanquablement" (Defaux *Marot* 158).

William M. Hamlin has analyzed another effect of Montaigne's fascination with the Tupí-Guaraní: the beginnings of European ethnography, and its reciprocity with Montaigne's judgment. According to Hamlin, the skeptical inquiry that characterizes Montaigne's judgment relies upon "ethnological investigation" (366). An ethnographer must maintain some degree of separation from the society that she observes, in order for her to conduct relatively objective research; hence, she upholds a measure of distinction between her 'self' and the 'other' of her study. However, an ethnographer also cannot complete her research at a distance. She must go beyond observation to immerse herself in the society of the 'other' (participant observation); she only retreats long enough to record and interpret her research findings before she immerses herself again. Ethnographic practice is thus difficult for the fact that it blurs, lessens, and can even erase the once-clear distinction between the 'self' of the anthropologist, and the 'other' of her study. The 'self' and the 'other' oscillate within the ethnographer, during which they question and comment upon each other.

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¹⁵⁵ William M. Hamlin, "On Continuities between Skepticism and Early Ethnography; Or, Montaigne's Providential Diversity," *The Sixteenth Century Journal*, 31.2 (Summer 2000): 361-79.

¹⁵⁶ Anthropologists attribute ethnography, the professional practice of participant observation, to the early twentieth-century career of Bronislaw Malinowski; since then, however, anthropologists Clifford Geertz, James Clifford, and George Marcus have elaborated upon ethnographic practice. See: Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973). James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge: Harvard University Press, 1988). George E. Marcus, ed., *Rereading Cultural Anthropology* (Durham: Duke University Press, 1992).

Michel Liddle¹⁵⁷ and Jack Abecassis¹⁵⁸ have found that in "Des cannibales" Montaigne creates an opposition between Europeans and an Amerindian 'other.' Bart Moore-Gilbert has argued that this opposition informs Montaigne's identity, and Defaux (*Marot* 154) and Conley (241) have found that this opposition even enables Montaigne to identify his European 'self' with the Amerindian 'other.' Defaux described Montaigne as "réduisant progressivement le Cannibale à soi, le dévorant, l'assimilant, le transformant en soi, se transformant en lui" (*Marot* 173). In other words, "Des cannibales" exhibits the stages through which an ethnographer passes in her study of an 'other': 'self' vs. 'other,' 'self' and 'other' informing each other, culminating in little to no distinction between 'self' and 'other.'

Montaigne could have acquired his ethnographic sensibilities from at least two accounts of the New World that he read. Hamlin (370) and Lestringant have noted an oscillation of the 'self' and the 'other' in Léry's *Histoire*, ¹⁵⁹ and Ilan Stavans has drawn reader attention to the effects of this oscillation in the *Naufragios y Commentarios* (1542, republished in 1555) of Alvar Núñez Cabeza de Vaca. ¹⁶⁰ Stavans has described the *Naufragios* as akin to "Joseph Conrad's

¹⁵⁷ Michel Liddle, "Montaigne et l'altérité," in *Montaigne et le Nouveau Monde, BSAM*, Septième Série – No29-32 (Juillet-Décembre 1992 – Janvier-Juin 1993) 161-167.

¹⁵⁸ Jack I. Abecassis, "'Des cannibales' et la logique de la représentation de l'altérité chez Montaigne," in *Montaigne et le Nouveau Monde, BSAM*, Septième Série – No29-32 (Juillet-Décembre 1992 – Janvier-Juin 1993) 195-205. ¹⁵⁹ In particular, see Lestringant's interview with anthropologist Claude Lévi-Strauss, which he includes in his edition of the *Histoire* (Léry 6-14). However, Lévi-Strauss still ultimately appraises the *Histoire* as a magnificent piece of literature, and not as ethnography: "Le livre est un enchantement. C'est de la littérature. Qu'on laisse l'ethnologie aux ethnologues et que le public lise l'*Histoire d'un voyage faict en la terre du Bresil* comme une grande oeuvre littéraire (Léry 13).

grande oeuvre littéraire (Léry 13).

160 In 1527, Pánfilo de Narváez set out on a Spanish colonial mission to Florida. Cabeza de Vaca was both treasurer and *conquistador* under Narváez. The expedition quickly devolved into internal power struggles, and fell prey to both human and natural disasters – among the earliest and most devastating of which was being shipwrecked on the American coast. One of the few survivors of the shipwreck, Cabeza de Vaca traverses the entire breadth of the North American continent for ten years – from Florida to Texas, New Mexico, Arizona, and finally to northern Mexico – before he finds a means to return home to Spain. The first account of this disastrous Spanish colonial expedition was co-written by Cabeza de Vaca and two other survivors of the shipwreck – Andrés Dorantes and Alonso del Castillo Maldonado – upon their reaching Mexico City. It has become lost to posterity. However, sixteenth-century Spanish historian Fernández de Oviedo included the narrative of Cabeza de Vaca in his *Historia general y natural de las Indias* (1526), a work that Montaigne read (Lestringant 31). Cabeza de Vaca also independently published his narrative in 1542 and 1555. See: Ilan Stavans, "Introduction," in *Alvar Núñez Cabeza*

Heart of Darkness, in which the European traveler finds himself, unexpectedly, at the edge of the earth, alone and lonely and unsure of his culture" (x). At the edge of the earth, early modern ethnographers (and their readers) find themselves "positioned to reinvent skepticism" (Hamlin 366).

Skepticism – particularly its tenth mode of doubt – requires cultural diversity in order for its philosophy to work (Hamlin 366). In his *Pyrrōneioi hypotypōseis* Sextus Empiricus (c. 160 – 210 AD) introduces the tenth mode as the one that "is principally concerned with ethics, [the] one depending on ways of life and on customs, laws, mythic beliefs and dogmatic supposititions." He then provides his readers with a long list of examples, from which Hamlin has drawn the following formula for the practice of the tenth mode:

Customs, laws, beliefs, etc. appear differently and incompatibly to humans of different persuasions.

When someone claims that X (a custom, law, belief, etc.) is F, we respond by employing the technique of opposition and saying that while X appears F to those of persuasion P, X appears F* to those of persuasion P*.

We cannot prefer persuasion P to persuasion P*, or vice versa.

Therefore we suspend our judgment as to whether X is F or F.*162

Skepticism ultimately offers its practitioner at least one way to respond to the diversity that this philosophy requires (Hamlin 366): the suspension of judgment.

However, "the observation of cultural diversity need not necessarily lead to suspension of judgment" (Hamlin 368). Indeed, Montaigne goes one step farther. ¹⁶³ Rather than suspend his

de Vaca, Chronicle of the Narváez Expedition, Fanny Bandelier, trans. (New York, NY: Penguin Books, 2002) ix-xxxiii.

¹⁶¹ Benson Mates, trans. and ed., *The Skeptic Way, Sextus Empiricus's Outlines of Phyrrhonism* (New York: Oxford University Press, 1996) 108.

Hamlin 368. Hamlin draws upon the following two analyses of the tenth mode: Juliana Annas and Jonathan Barnes, *The Modes of Skepticism: Ancient Texts and Modern Interpretations* (Cambridge: Cambridge University Press, 1985) 160. R.J. Hankinson, *The Sceptics* (London: Routledge, 1995) 156, 262-72.

¹⁶³ "Montaigne abandons skeptical thought sequences at least as often as he adheres to them" (Hamlin 374). See also: David L. Sedley, "Sublimity and Skepticism in Montaigne," *PMLA*, 113.5 (1998 Oct.): 1079-92, 1082. Richard H. Popkin, "The Religious Background of Seventeenth-Century Philosophy," in *The Cambridge History of*

judgment as to whether X is F or F*, in "Des cannibales" he accepts that X is both F and F*. Let us substitute cannibalism and barbarity into the tenth mode of doubt:

Customs, laws, beliefs, etc. appear differently and incompatibly to humans of different persuasions.

When someone claims that cannibalism (a custom, law, belief, etc.) is barbarous, we respond by employing the technique of opposition and saying that while cannibalism appears barbarous to those of persuasion P – the French – cannibalism does not appear barbarous to those of persuasion P^* – the Tupí-Guaraní.

We cannot prefer persuasion P to persuasion P*, or vice versa.

Therefore we suspend our judgment as to whether cannibalism is barbarous. 164

As I argued in chapter one, however, Montaigne does more than suspend his judgment as to whether cannibalism is barbarous or not: he both affirms and denies that it is barbarous. At the same time that Montaigne denies the barbarity of Tupí-Guaraní cannibalism he sanctions its practice within its distinct cultural milieu, and thereby exhibits a nascent form of anthropological cultural relativity. However, Montaigne's practice of equity goes even farther than any anthropological sensibilities of cultural relativity. His use of equity, as I analyzed it in chapter one, invites readers to accept European Christian and Tupí-Guaraní rites of cannibalism as similar, regardless of the cultural milieu in which they are performed. Montaigne's apparent interrelated practice of skepticism and equity recalls the coin that he struck in 1576, upon which he included his translation of Sextus's motto "'je suspends' (εΠεχω)" and the equal scales that denote equity. 166

Seventeenth-Century Philosophy, ed. Daniel Garber and Michael Ayers, 2 vols. (Cambridge: Cambridge University Press, 1998) 1:393-422, 1:397. Richard H. Popkin, *The History of Scepticism from Erasmus to Spinoza* (Berkeley: University of California Press, 1979) 54. Hiram Haydn, *The Counter-Renaissance* (New York: Scribner's, 1950) 76, 90.

¹⁶⁴ See also Hamlin 367 for a similar analysis to my own.

¹⁶⁵ Lestringant finds that both Montaigne and Jean de Léry accept Tupí-Guaraní cannibalism according to its cultural context in Brazil, though Lestringant does not conclude that they thereby exhibit cultural relativity (36).

¹⁶⁶ II, 436 and II, 12, 527, Villey footnote 7. Quotation from: Marie-Luce Demonet, "À plaisir," Sémiotique et scepticisme chez Montaigne (Orléans: Paradigme, 2002) the verso of the in-set page of her book. See chapter one of

Thus, it would be perhaps incomplete to attribute Montaigne's judgment, including the subject-object transposition that is central to it, as wholly indicative of a nascent anthropology in the sixteenth-century. Not only ethnography but also equity requires its practitioner to identify with and sanction the 'other,' i.e. the particularities of the legal case before him. In his *Nicomachean Ethics*, Aristotle compares the practice of equity to the flexible Lesbian ruler that masons used to measure irregular building stones:

For when the thing is indefinite the rule also is indefinite, like the leaden rule used in making the Lesbian moulding; the rule adapts itself to the shape of the stone and is not rigid, and so too the decree is adapted to the facts. 168

However, medieval and early modern legal theoreticians go one step beyond Aristotle and identify the jurist who practiced equity as the Lesbian ruler itself, when they identify him as "a *lex loquens*, the embodiment of the flexible measuring rule of Lesbos" (Maclean *Interpretation and Meaning* 177). In other words, when the practitioner of equity retreated into his soul to discover how to broach parties at trial, he took the particularities of the case with him and thereby became the locus of their convergence. This convergence transformed the jurist, so that he became like the malleable ruler of Lesbos which changed to fit each item it measured. ¹⁶⁹ Thus, whether from nascent anthropology, or equity, or both, Montaigne is well-positioned from

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this dissertation, in which I argue that Montaigne's coin suggests an association between his judgment and equity, an association that dates as far back as classical Rome where it was represented on *antoniniani*.

¹⁶⁷ Lestringant goes even farther and concludes that "Toute lecture anthropologisante ... de cet essai ["Des cannibales"] semble donc reposer sur un malentendu profond" (37).

¹⁶⁸ Richard McKeon, ed., *The Basic Works of Aristotle* (New York: Random House, 1941) 1020. See also the *Annotationes in Pandectas* (1551) of Guillaume Budé (1467 – 1540), a magistrate of the Parlement, in which he adopts Aristotle's discussion of equity from the *Nicomachean Ethics*. In his commentary on equity, "Budé cite l'exemple de la règle de plomb de Lesbos qui s'adapte aux pierres dans la construction: lorsqu'il est impossible d'adapter la disposition des pierres à la règle, il faut adapter, pour les besoins d'une construction précise, la règle à la disposition des pierres." Ullrich Langer, "Équité et nouvelle 'encadrée' (*L'Heptaméron*)," *Éthique et droit, du Moyen Âge au siècle des Lumières* (2012): 189-203, 190-91.

¹⁶⁹ Katherine Almquist associated early modern legal interpretation with Montaigne's self-portrait in the *Essais*. In particular, she suggested that the pluralism and diversity of legal interpretation resonated with the pluralism and diversity of Montaigne's self-portrait. Katherine Almquist, "Writing Pluralist Biography of Montaigne's Legal Career," *EMF* 9 (2004): 58-76.

his legal experience and his New World readings to judge in a way that shares similarities with ethnography.

In "De Democritus et Heraclitus," Montaigne describes his judgment as a tool with which he writes the *Essais*: "Le jugement est un util à tous subjects, et se mesle par tout. A cette cause, aux essais que j'en fay ici, j'y employe toute sorte d'occasion" (I, 50, 301a). Thus, his practice of proto-ethnography and equity should be discernible in the language of his book. "Tout mouvement nous descouvre" (I, 50, 302c), the phrase from this same essay that Montaigne uses to sum up his process of judging, offers readers a case study.

This phrase is Montaigne's handwritten addition to his own copy of the 1588 edition of the *Essais*, the *Exemplaire de Bordeaux*.¹⁷⁰ According to Nicholas Cogney Russell, the "polysemic words" in "Tout mouvement nous descouvre" leave this sentence "open to multiple interpretations."¹⁷¹ Russell has explained that in the sixteenth-century, "mouvement" denoted both physical and mental activity (179). He has also indicated that "descouvrir" had several senses in the sixteenth-century, among them "to uncover," "to discover (in the sense of learn or reveal)," and "to take away something that protects" (Russell 180). The sentence "Tout mouvement nous descouvre," Russell has argued, "can be understood in different ways depending on how one understands each of those words" (180).

It is, however, more than the polysemic words of "Tout mouvement nous descouvre" that invites multiple readings of this sentence. Montaigne's addition of this phrase, Russell has argued, renders it a bridge between the text that precedes and follows it; as such, "Tout mouvement nous descouvre" conveys a double reading that corresponds to both sections of text.

¹⁷⁰ Michel de Montaigne, *Essais de Montaigne (Exemplaire de Bordeaux)*, ed. Philippe Desan (Fasano-Brindisi, Italy: Schena Editore-*Montaigne Studies*, 2002).

¹⁷¹ Nicolas Cogney Russell, "Steps Towards A Rhetoric of Judgment in Montaigne's 'De Democritus et Heraclitus' (I, 50)," *Neophilologus* 85.2 (April 2001): 177-192, 179.

The first reading of "Tout mouvement nous descouvre" corresponds to the text that immediately precedes this sentence, which conveys "the limitations of judgment" (Russell 181). As such, the first reading of "Tout mouvement nous descouvre" is a negative one that "warns the reader of the futility of using judgment to search for knowledge" (Russell 185). In constrast, the second reading of this sentence corresponds to the text that immediately follows it, which conveys that "to acquire knowledge of something, one must observe it in many different situations" (Russell 180). The second reading of "Tout mouvement nous descouvre" is therefore a positive one that "advises the reader of how to go about using judgment to acquire knowledge, implying that acquiring knowledge through judgment is possible" (Russell 185). The double reading of this sentence thus presents "an apparent contradiction, a paradox" (Russell 185).

More than a contradiction or a paradox, "Tout mouvement nous descouvre" expresses a "reversal of perspective, where the *nous* in the sentence can be read as both that which is judged and that which judges" (Russell 185). That is, the negative reading of "Tout mouvement nous descouvre" invites readers to reflect upon the limitations of their judgment; in other words, "nous" signifies the judged (an object). At the same time, the positive reading of this sentence denotes how readers ("nous") should judge (a subject behavior). Hence, "Tout mouvement nous descouvre" has within it a subject-object reversal (Russell 185). Russell has therefore interpreted this sentence as an example of Montaigne's process of judging in action, where "le jugeant et le jugé estans en continuelle mutation et branle" (II, 12, 601a). Otherwise put, "Tout mouvement nous descouvre" appears to connote a kind of ethnographic process, in which the 'self' (the judge) and the 'other' (the judged) continuously oscillate and inform each other.

Beyond denoting a process similar to ethnographic practice, I suggest that the subjectobject reversal inherent to "Tout mouvement nous descouvre" indicates an implied *chiasmus*.

Robert D. Cottrell has explained that a *chiasmus* can "intégrer les oppositions binaires dans un système d'échange." ¹⁷² In his analysis of "Par divers movens on arrive a pareille fin" (I:1), this system of exchange takes the form of subject-object transposition, and can be seen in the reversal of words and concepts in this essay. Otherwise put, I:1 exhibits a similar reciprocity between oscillating subjects and objects as does "Tout mouvement nous descouvre" and ethnographic practice. Of course, Montaigne does not describe the *chiasmus* that characterizes his language in terms of anthropology. Rather, he describes it in terms of equity, the legal procedure by which magistrates could temper the letter of the law; otherwise, the law could become too inflexible and rigid (Maclean Interpretation and Meaning 175-76). In "Des boyteux" (III:11), Montaigne indicates that the *chiasmus* can "amollir et modérer la témérité de nos propositions" (III, 11, 1030b) (Cottrell 70). Montaigne borrows his definition and use of the *chiasmus* from the Epistulae morales ad Lucilium of Seneca, 173 whose description of equity Montaigne also translates in "Que Philosopher c'est apprendre a mourir" (I:20). The instances of *chiasmus* within Montaigne's language thus denote how his process of judging resembles ethnography, which he describes in terms of equity.

Both ethnography and equity require its practitioners to draw upon the parties whom they observe and arbitrate, respectively. In equity, the jurist becomes the locus of convergence for the case particularities that he reconciles with the established laws of his society. That is, his 'self'

¹⁷² Robert D. Cottrell, "Croisement chiasmique dans le premier *Essai* de Montaigne," *BSAM*, Sixième Série – No11-12 (Juillet-Décembre 1982): 65-72, 70.

¹⁷³ "…le chiasme, figure que Montaigne aurait pu emprunter à Sénèque, est extrêmement fréquent dans les *Essais*." Floyd Gray, *Le Style de Montaigne* (Paris: Nizet, 1958) 46. For examples of *chiasmus* in Seneca, see: R. B. Steele, "Chiasmus in the Epistles of Cicero, Seneca, Pliny and Fronto," in *Studies in Honor of Basil L. Gildersleeve*, ed. Basil Lanneau Gildersleeve (Baltimore: Johns Hopkins Press: 1902) 339-53, 342-46.

¹⁷⁴ In his *Epistulae morales ad Lucilium*, Seneca indicates that equality characterizes equity: "Prima autem pars est aequitatis aequalitas" (XXX, 11). Montaigne translates this verse of Seneca in "Que Philosopher c'est apprendre a mourir" (I:20): "l'equalité est la premiere piece de l'equité" (I, 20, 94c). Raymond Lebèque, "La Syntaxe de Malherbe, traducteur de Sénèque," *Cahiers de l'Association international des études françaises*, 8.8 (1956): 139-46, 140.

becomes the locus of the 'other' before he renders his verdict. And, the 'self' of the anthropologist requires the language and culture of the 'other' in order to write ethnography, as the early examples of Léry and Thevet already demonstrate. Indeed, the ethnographic-styled European travel accounts of the New World that Montaigne read include their authors' use and accounts of Tupí-Guaraní language. Given the influence of proto-ethnographic European travel narratives on Montaigne's process of judging, ¹⁷⁵ some measure of Amerindian languages and cultures are likely represented in his judgment. And, if not by ethnography, then the New World could be represented in Montaigne's judgment through his exercise of equity. Through equity, a jurist conforms his judgment to the particularities of the case over which he presides, like the Lesbian ruler.

Tupí-Guaraní language of course has grammatical rules for joining parts of speech and multiple clauses into sentences. While independent clauses in Tupí-Guaraní "show somewhat free order," "basic [constituent] orders tend to be SOV or SVO" (Jensen 494). Sometimes the parts of speech that would normally come in the second half of a Tupí-Guaraní clause are moved to the front of the clause "for discourse reasons" (Jensen 526). A word, a collection of words, or an entire subordinate clause may be moved to the front of a Tupí-Guaraní sentence (Jensen 526-27). This syntactic construction is an "inverted sentence" (Jensen 526). At least two of the Tupí-Guaraní statements from the conversation that Léry presents between a Brazilian Amerindian and a French trader show inversion:

Ty ierobah apòau ari. Tenons-nous glorieux du monde qui nous cherche.

Apoau maè-ry oi jerobiah. Me tenant glorieux des biens que le monde nous apporte (489).

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¹⁷⁵ Defaux *Marot* 147; Hamlin 366.

The French translations that accompany these Amerindian utterances are almost identical, so the noticeable changes occur in the Tupí-Guaraní phrases. In particular, the two halves of each utterance appear to change positions with each other, and with minimal modification:

Ty ierobah apòau ari.

Apoau maè-ry oi jerobiah.

Which is the inverted sentence, and which is the more-or-less standard order sentence, is unclear. Tupí-Guaraní linguistic resources indicate that either of the above two sentences could be the inverted one (Jensen 526-27). For these two statements, then, the French translations can actually help clarify which Tupí-Guaraní sentence is likely inverted and which is not.

When an English or French speaker translates an inverted Tupí-Guaraní sentence, she must begin towards the middle of that sentence (the sentence parts are, after all, inverted so that what would normally be at the beginning of the sentence is now towards the middle). Once she reaches the end of the sentence, she then goes to its beginning and 'finishes' reading the sentence once she has arrived back at its middle, where she began. An inverted Tupí-Guaraní sentence therefore requires its translator to begin reading at its middle. Thus, the Tupí-Guaraní statement that is the inverted one from among the two above utterances will require readers to begin reading at its middle, in order for them to match it up with its French translation.

Léry has taught his readers that imperative expressions begin with a "t" (Léry 499), which the first Tupí-Guaraní utterance does. "Tenons-nous glorieux" therefore likely corresponds to *Ty ierobah*. A survey of the Tupí-Guaraní utterances and French translations on the page from which the above two sentences are found (Léry 489) provides readers with the definition of *apoau*: "monde" and/or "biens." The word *apòau* immediately follows *Ty ierobah*;

¹⁷⁶ For examples, see Jensen 526-27.

after *apòau* is its verb *ari* ("cherche"). The first Amerindian utterance, read from beginning to end, therefore matches up with its French translation, so it is likely not inverted. In contrast, the second Tupí-Guaraní statement begins with *Apoau* ("monde" and/or "biens"), which does not correspond to the beginning of its French translation. Instead, *Apoau* corresponds to the middle of its French translation, so the second Tupí-Guaraní utterance is likely inverted.

The way that I have shown a French-speaker reads and translates the two Tupí-Guaraní statements above is consistent with the technique of *chiasmus*, particularly the transposition of subjects and objects Cottrell has shown it can convey in the *Essais*. Let us take a final look at the following statements:

Ty ierobah apòau ari. Tenons-nous glorieux du monde qui nous cherche.

Apoau maè-ry oi jerobiah. Me tenant glorieux des biens que le monde nous apporte (489).

Léry interprets the subject action in both Tupí-Guaraní utterances as the Brazilians' reaction to the "monde," presumably the French traders who, laden with their "biens," find the Tupí-Guaraní. In other words, the subject action of the Tupí-Guaraní also implies their status as the affected objects of another entity, in this case the French. Much as "Tout mouvement nous descouvre" implicitly conveys that the "nous" is alternately a subject and an object, each of the two Tupí-Guaraní statements expresses that the Brazilians are alternately subjects and objects.

The alternation of subject and object behaviors in Tupí-Guaraní language and culture is ultimately an expression of causality, as Campbell observed during his fieldwork among the Wayãpí: "I found that often when I asked a particular individual why he or she did something, I would often get the answer that someone else had supplied the motive. In asking for a reason I am given a cause" (78). La Charité has shown that Montaigne's *Essais* denote his particular

¹⁷⁷ For further insights into the interrelation of subject and object behaviors in Tupí-Guaraní language and culture, see: Alan T. Campbell, *To Square with Genesis, Causal Statements and Shamanic Ideas in Wayãpí* (Edinburgh: Edinburgh University Press, 1989), particularly chapter four, "Cause: animating nature" (61-94) and chapter five "Pajé: causing death" (94-113).

interest in causality: "Montaigne seeks to understand, to penetrate experience in order to apprehend causality" ("Relationship of Judgment and Experience" 37). Since Montaigne demonstrates a pointed interest in causality, he perhaps noticed the nuances of causality in Tupí-Guaraní – i.e. its subject-object transposition – from his reading of Léry.

Indeed, through the phrase "Tout mouvement nous descouvre" Montaigne could express in French the sentence inversion and causality that are characteristic both to the Tupí-Guaraní and to his use of the *chiasmus*. When we read "Tout mouvement nous descouvre" from start to finish, "nous" is the clear object of the sentence. When we begin reading the sentence at its middle, however, as if we were crossing it by *chiasmus* or inverting the sentence like the Tupí-Guaraní do with theirs, "nous" is the first word we read. As a result, our inverted reading of "Tout mouvement nous descouvre" moves "nous" into the subject position of the expression. In other words, "Tout mouvement nous descouvre" appears to invite a reading of its syntactic structure that is consistent with how a French-speaker fond of *chiasmus* – like Montaigne – would learn to read Tupí-Guaraní from Léry's *Histoire*. The "*linguistic* boundary line" that typically separated "savage speech" and European-language "travel writing" (de Certeau 122) thus melts away in the phrase "Tout mouvement nous descouvre." Rather than demark this boundary line, "Tout mouvement nous descouvre" denotes a possible confluence of Tupí-Guaraní and French languages.

This confluence would be consistent with the judicial practice of equity. I have suggested that Montaigne's definition and use of *chiasmus* describe his practice of judging in terms of equity, even as his judgment shares similarities with ethnography. Through equity a jurist expanded the language of the law to accommodate the unforeseen particularities of cases. In *Topica*, Cicero advises a jurist how to broaden language through his practice of equity:

... [he] will profit greatly by converting something in the written document to his own case or by showing that it contains some ambiguity; then on the basis of that ambiguity he may defend the passage which helps his case, or introduce a definition of some word and interpret the meaning of the word which seems to bear hard upon him, so as to support his own case, or develop from the written word something that is not expressed. 178

In short, Cicero encourages the practitioner of equity to modify words and thereby turn them to his advantage. In the original Latin, Cicero specifies that the judicial procedure of equity would allow a jurist to translate ("traducere") from any given word a new sense, through "ratiocination" (Hubbell, *Topica* 2:310). Hubbell translates "ractiocination" as "reasoning" (*Topica* 2:316, note a). However, its function is more pointed: "[to stretch] a statute to cover an analogous case" (Hubbell, *Topica* 2:316, note a). Otherwise put, Cicero encourages jurists to use analogy to draw new definitions from the language of the law, in order to accommodate unforeseen cases.

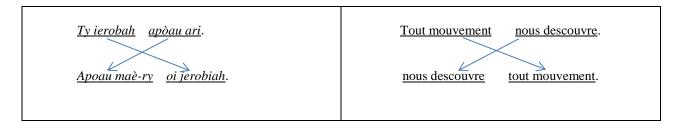
The procedure that Cicero recommends is similar to the linguistic phenomenon of semantic "broadening," during which the "meaning of a word broadens in scope." ¹⁷⁹ In this process, a word acquires a secondary signification, or even multiple ones. Speakers' figurative use of words is one way that their semantics can broaden in scope (Sihler 99). To use words figuratively, speakers of any given language draw upon metaphors (Sihler 108). These metaphors always imply a comparison (Sihler 108). For instance, the word "mouth" has come to denote both an anatomical feature and an opening. "Mouth" has acquired these semantic meanings because "the mouth of a river or a jar is in some sense LIKE the anatomical mouth" (Sihler 108).

Similar to metaphors, analogies also imply comparisons. Cicero encourages practitioners of equity to use analogy to translate new significations from the word(s) under their

¹⁷⁸ H.M. Hubbell, trans., *Cicero; De inventione; De optimo genere oratorum; Topica*, vols. 1&2 (Cambridge, Harvard University Press, 1949) 2:311. The original Latin reads: "... qui contra scriptum dicet plurimum proderit, ex ipsa scriptura aliquid ad suam causam convertere aut ambigue aliquid scriptum ostendere; deinde ex illo ambiguo eam partem quae sibi prosit defendere aut verbi definitionem inducere et illius verbi vim quo urgueri videatur ad suae causae commodum traducere aut ex scripto non scriptum aliquid inducere per ratiocination..." (Hubbell 2:310). ¹⁷⁹ Andrew L. Sihler, *Language History: An Introduction* (Philadelphia: John Benjamins Publishing, 2000) 31.

consideration. However, "analogy is a very vulnerable procedure" because the jurist who practices equity with analogy exposes himself to potential criticisms. ¹⁸⁰ That is, each of his analogies represents a comparison that, to someone other than himself, could be found invalid either in part or in whole (Maclean *Interpretation and Meaning* 80). In light of the risks, Ian Maclean has argued, Cicero finds that the interrelated practice of equity and analogy deserves praise: "that form of equity which desires the same law to be applied to the same cases is to be commended" ("valeat aequitas, quae paribus in causis paria iura desiderat") (*Topica*, quoted in *Interpretation and Meaning* 80).

Montaigne mentions "ratiocination" twice in the *Essais*, both of which are in the "Apologie," and which Maclean interprets as instances where Montaigne implicitly "[désigne] l'argument tiré de l'analogie." The phrase "Tout mouvement nous descouvre" could be therefore an example of Montaigne enacting Cicero's advice to practitioners of equity. Indeed, readers of "Tout mouvement nous descouvre" and Tupí-Guaraní statements can invert their sentence parts similarly:



This similarity suggests an analogy between Tupí-Guaraní sentence inversion and the rhetorical technique of *chiasmus*. Thus, "Tout mouvement nous descouvre" has within it the possibility of an Amerindian reading.

¹⁸⁰ Ian Maclean, *Interpretation and Meaning in the Renaissance*, *The Case of Law* (Cambridge: Cambridge University Press, 1992) 80.

¹⁸¹ Ian Maclean, "Montaigne et le droit civil romain," in *Montaigne et la rhétorique, Actes du Colloque de St. Andrews, 28-31 mars 1992*, eds. John O'Brien, Malcom Quainton and James J. Supple (Paris: Honoré Champion Éditeur, 1995)163-176, 164. Montaigne mentions "ratiocination" on II, 12, 460 and II, 12, 464, in the context of his analogies between people and animals.

The rich range of significations that "Tout mouvement nous descouvre" can convey align with Montaigne's critique of *communis usus loquendi*. As I discussed in chapter one, Bartolus de Saxoferrato (1314-1357) proposed that the common usage of a language – *communis usus loquendi* – elucidates obscurities in laws and inform a jurist's judgment (Simonds 44-6). The interpretation that Bartolus offers corresponds to the original design of the *Corpus iuris civilis* (529 – 534 AD), which guided early modern legal practice: "On trouva dans les lois romaines la doctrine d'après laquelle la loi tire son autorité du *judicium populi*" (Brissaud I:242). However, Montaigne indicates in the *Essais* that he does not support Bartolus: "Nous doubtions sur Ulpian, redoutons encore sur Bartolus et Baldus" (III, "De l'experience," 1067b). I also analyzed in chapter one the passages in "Des cannibales" (I:31) and in the "Apologie de Raimond Sebond" (II:12) where Montaigne pointedly critiques *communis usus loquendi*. It perhaps comes as little surprise, then, that in "De Democritus et Heraclitus" Montaigne does not conform to French common usage of their language when he describes his process of judging. Indeed, in "De l'experience" Montaigne explains: "J'ay un dictionnaire tout à part moy (III, 13, 1111b).

Tournon has interpreted the judgment that Montaigne describes by "Tout mouvement nous descouvre" as "a dialogic meditation." ¹⁸² For Tournon, this meditation expresses Montaigne's "hope of a convergence of points of view" (Tournon "Justice" 111). I suggest that Montaigne's judgment both achieves and represents such a convergence through his practice of equity. Not only can readers see this convergence in "De Democritus et Heraclitus," but they can also appreciate it in "Des cannibales."

¹⁸² Quotations from André Tournon, "Justice and the law: on the reverse side of the Essays," *The Cambridge Companion to Montaigne*, ed. Ullrich Langer (Cambridge: Cambridge University Press, 2005) 96-118, 111.

In "Des cannibales," Montaigne overtly uses his judgment to teach his readers how to judge. ¹⁸³ In particular, he alludes to the confluence of French and Tupí-Guaraní perspectives that his judgment can accommodate. In this same essay, he also demonstrates the subject-object transposition that is central to his process of judging. As I argued in chapter one, Montaigne shares his judicial role in "Des cannibales" with the Tupí-Guaraní, whose assessments of French society Montaigne includes at the conclusion of this essay. In other words, Montaigne and the Tupí-Guaraní judge together (a subject behavior), during which he brings the viewpoints of the Brazilians to bear on French society.

However, through his complicity with his European readers, Montaigne is also the object of the Amerindians' judgment. He additionally includes in "Des cannibales" European viewpoints of the New World and its peoples, which serve as the basis from which Montaigne prompts his readers to exercise their judgment. As Steven Rendall has shown, Montaigne uses the ethnocentric prejudices of his readers to lead them to correct their judgment. Not only are Montaigne's readers the objects of Tupí-Guaraní judgment, then, but Montaigne also leads his readers to assess and exercise their own judgment. In short, in "Des cannibales" Montaigne's readers and the Brazilians alternate between judging and being judged by each other. Hence, the confluence of Tupí-Guaraní and European perspectives in "Des cannibales" demonstrates how "le jugeant et le jugé estans en continuelle mutation et branle" (II, "Apologie," 601a).

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¹⁸³ Defaux argued that "Montaigne donne à son lecteur une série de leçons : et, ce faisant, il y *essaye* en même temps son propre jugement et le jugement de son lecteur. Rien alors de plus logique que le lecteur *essaye* à son tour son propre jugement, et que sa cible soit Montaigne" (*Marot* 158). See also Edwin M. Duval, "Lessons of the New World: Design and Meaning in Montaigne's 'Des Cannibales' (I:31) and 'Des coches' (III:6)," *Yale French Studies*, No. 64, Montaigne: Essays in Reading (1983): 95-112, 112. Steven Rendall, "Dialectical Structure and Tactics in Montaigne's 'Of Cannibals'," *Pacific Coast Philology*, 12 (Oct. 1977): 56-63.

¹⁸⁴ Tournon has argued that in the *Essais* overall, Montaigne creates a relationship of complicity with his readers: "L'espèce de connivence qu'il [Montaigne] sollicite ... est une exigence de sa philosophie de *l'essai*." André Tournon, "*Route par ailleurs*," *Le "nouveau langage" des Essais* (Paris: Honoré Champion, 2006) 310. For the particular complicity that Montaigne fosters with readers of "Des cannibales," see Rendall "Dialectical Structure and Tactics" 59 and Duvall 111.

¹⁸⁵ Rendall "Dialectical Structure" and Eric MacPhail, "Philosophers in the New World: Montaigne and the Tradition of Epideictic Rhetoric," *A Journal of the History of Rhetoric*, 30.1 (Winter 2012): 22-36.

Equity in "Des cannibales": Montaigne Expands a French Word

I argued in chapter one that Montaigne uses *comparatio* in his practice of equity to associate Tupí-Guaraní cannibalism with Christian Communion, and other European acts of cannibalism that occurred during the civil religious wars in France. Montaigne's comparison between Brazilian and European acts of cannibalism thus puts them into an analogy, from which Montaigne draws a conclusion about barbarity:

Je pense qu'il y a plus de barbarie à manger un homme vivant qu'à la manger mort, à deschirer, par tourmens et par geénes, un corps encore plein de sentiment, le faire rostir par le menu, le faire mordre et meurtir aux chiens et aux pourceaux (comme nous l'avons, non seulement leu, mais veu de fresche memoire, non entre des ennemis anciens, mais entre des voisins et concitoyens, et, qui pis est, sous pretexte de pieté et de religion), que de le rostir et manger apres qu'il est trespassé (I, 31, 209a). ¹⁸⁶

Montaigne's comment regroups European acts of barbarity with Amerindian ones. By putting the Tupí-Guaraní and Europeans on the same level, Montaigne provokes his readers by depriving them of their accustomed position of superiority.

One page later, Montaigne comments further on the analogy that he has created between Amerindian and European forms of barbarity: "[A] Nous les pouvons bien apeller barbares, eu esgard aux regles de la raison, mais non pas eu esgard à nous, qui les surpassons en toute sorte de barbarie" (I, "Des cannibales," 210a). Rendall has analyzed Montaigne's comment as an instance of *distinguo*, a technique that "derives from the language of medieval dialectics"; ¹⁸⁷ it "referred to the act of drawing a distinction, and eventually came to designate the distinction itself" (*Distinguo* 27). Rendall has shown that the *cedo* component to Montaigne's *distinguo* "[concedes] that it [the term 'barbarian'] is correctly applied to these people [the Brazilians] in

¹⁸⁶ Montaigne reiterates his position in "De la cruauté" (II:11): "Les sauvages ne m'offensent pas tant de rostir et manger les corps des trespassez que ceux qui les tourmentent et persecutent vivans" (II, 11, 430a). ¹⁸⁷ Steven Rendall, *Distinguo, Reading Montaigne Differently* (Oxford: Clarendon Press, 1992) 27.

one sense" (*Distinguo* 27), while the *nego* component "[denies] that it is properly applied to them in the other" (*Distinguo* 27). Hence this statement from "Des cannibales" functions as an instance of *distinguo*, since it "[distinguishes] two senses of the word 'barbarian'" (Rendall *Distinguo* 27).

The analogy that Montaigne has created between Amerindian and European acts of barbarity thus culminates in his translating from "barbare" an additional signification. When the *cedo* "[concedes] that it is correctly applied to these people [the Brazilians] in one sense" (Rendall *Distinguo* 27), Montaigne upholds the typical early modern European appraisal of the Amerindians as barbarians. At the same time, when the *nego* "[denies] that it is properly applied to them in the other" (Rendall *Distinguo* 27), Montaigne overturns the European appraisal of the Amerindians as barbarians. Montaigne does not specify which sixteenth-century party or parties – if any – held the viewpoint that the Amerindians were not barbarians. However, the Amerindians presumably did not view themselves as barbarians. ¹⁸⁹ Indeed, de Certeau has observed that the Amerindians whom the French invite to speak before Charles IX "express their surprise (they think *we're* savages?) at the *physical* disorder of French society" (131).

The *distinguo* in "Des cannibales" thus illustrates a characteristic trait of Montaigne's judicial tendencies in his *Essais*: the "convergence of points of view" (Tournon "Justice" 111), rather than their separation. Indeed, Montaigne's critique of the judicial practice of *divisio* implies that his practice of *distinguo* differs from it. According to Daniel Ménager, "Derrière le *distingo* montaigniste se trouve d'abord une figure de rhétorique : la *distinctio* de

¹⁸⁸ See Dickason chapter 2, "What Manner of Men are They?" (29-40) and chapter 4, "L'Homme Sauvage" (63-84). ¹⁸⁹ See for instance the eighteenth-century French official Louis Nicholas, who reported that "our Indians, while the most savage in the world, believe themselves to be the most noble of men" (Dickason 37). Dickason takes her quotation from the following unpublished manuscript: Louis Nicholas, "Histoire naturelle; ou la fidelle recherche de tout ce qu'il y a de rare dans les Indes occidentales" (BN Fonds français, 24225, fol. 126).

Quintilien....¹⁹⁰ However, in "De l'experience" Montaigne comments that jurists used *divisio* (also known as *distinctio*) to draw unnecessarily multiple interpretations from the already unambiguous words of a single witness.¹⁹¹ In short, Montaigne finds that jurists parsed the words of "celuy qui s'exprime si clairement" (III, 13, 1066b), and thereby rendered "obscur et non intelligible" his "contract et testament" (III, 13, 1066b). Rather than separate "barbare" into Amerindian and European forms of barbarity, Montaigne broadens the scope of "barbare" to regroup both parties into this single word. Montaigne's practice of *distinguo*, in which he "distingue et puis rapproche" (Ménager 156), is thus his nuanced departure from the rhetorical technique of *divisio/distinctio*. Montaigne's practice of *distinguo* is therefore his cohesive treatment of multiple testimonies and perspectives, without which he could not draw distinctions. Hence, his *distinguo* demonstrates a characteristic trait of equity: preserving and prioritizing the whole, rather than dividing it into parts (Eden 141-42).

In addition, Montaigne's *distinguo* follows the argumentative structure that Cicero encourages practitioners of equity to adopt:

...first, praise and support of the law which you quote; then a comparison of the circumstances in question with the accepted principles of the law in order to show the similarity between the circumstances and the established principle; then comparing the two cases the speaker will wonder how it can be that one who grants that one is fair, should deny that the other is, which as a matter of fact is just as fair or fairer.... Finally, he should point out the fairness of his position, as is done in the absolute subdivision of the equitable issue. ¹⁹²

Montaigne first upholds the typical early modern European appraisal of the Amerindians as barbarians, through his concession that the word "barbare" "is correctly applied to these people

est, ut in iuridiciali absoluta" (Hubbell, Topica 2:318).

¹⁹⁰ Daniel Ménager, "Montaigne et l'art du 'distingo," in *Montaigne et la rhétorique*, *Actes du Colloque de St. Andrews*, 28-31 mars 1992, eds. John O'Brien, Malcom Quainton and James J. Supple (Paris: Honoré Champion Éditeur, 1995) 149-59, 150.

¹⁹¹ Maclean "Montaigne et le droit civil romain" 169-70, Maclean *Interpretation and Meaning* 113.

¹⁹² Hubbell, *Topica* 2:319. The original Latin reads: "...primum eius scripti quod proferas laudationem et confirmationem; deinde ieus rei qua de quaeratur cum eo de quo constet collationem eiusmodi, ut id de quo quaeritur ei, de qua constet, simile esse videatur; postea admirationem per contentionem, qui fierri posit ut qui hoc aequum esse concedat illud neget, quod aut aequius aut eodem sit in genere [...] deinde aequitas rei demonstranda

in one sense" (Rendall *Distinguo* 27). However, his analogy of European and Amerindian cannibalism and barbarity shows his readers their similarity to the Tupí-Guaraní. That is, Montaigne redirects his early modern readers' attention from the object of their judgment – the Tupí-Guaraní – to the judger – themselves; this shift is of course commensurate with how we have seen Montaigne describe his process of judging in "De Democritus et Heraclitus" (Russell 189). Montaigne thus denies his readers the option to appraise the Amerindians as barbarians, without also attributing to themselves the same barbarity. Montaigne's *distinguo* thereby both upholds and overturns the European use of "barbare": he grants his readers leave to appraise the Tupí-Guaraní as barbarians, so long as they also appraise themselves as such. Otherwise put, Montaigne makes it so that "barbare" applies equally to Amerindians and Europeans; he thereby achieves "the absolute subdivision of the equitable issue" (Hubbell, *Topica* 2:319), in this case "barbare."

Maclean has argued that Montaigne's use of *distinguo* in "Des cannibales" does not refer only to its "scholastic practice," in particular "to the scholastic practice of the *quaestio*." ¹⁹³

Instead, he has suggested that it refers to Montaigne's "own perception of universal diversity and non-identity, and to the failure of any general categories to bring order to the world of nature" (Maclean "Le païs au delà"120). Equity, like Montaigne's use of *distinguo* in "Des cannibales," also acknowledges the failure of general categories to bring any kind of order: "Equity [...], though just is not legal justice [...], but a rectification of legal justice. The reason for this is that law is always a general statement, yet there are cases which it is not possible to cover in a general statement..." (Aristotle's *Nicomachean Ethics*, v. 10, [v.14] (1137b 11-33), cf. Magna moralia, ii.I (1198b24), cited in Maclean *Interpretation and Meaning* 22-23).

¹⁹³ Ian Maclean, "Le païs au delà': Montaigne and philosophical speculation," in *Montaigne: Essays in memory of Richard Sayce*, eds. I.D. McFarlane and Ian Maclean (Oxford: Clarendon Press, 1982) 101-133, 120.

The one time that Montaigne mentions *distinguo* in the *Essais* is in reference to his process of judging:

quiconque s'estudie bien attentifvement trouve en soy, voire en son jugement mesme, cette volubilité et discordance. Je n'ay rien à dire de moy, entierement, simplement, et solidement, sans confusion et sans meslange, ny en un mot. DISTINGO est le plus universel membre de ma Logique (II, "De l'inconstance de nos actions," 335b).

Montaigne indicates that his judgment originates from within him, and that he finds it from introspection. In the larger context of this passage, he comments that this introspection culminates in his interpreting his soul: "Je donne à mon ame tantost un visage, tantost un autre, selon le costé où je la couche" (II, 1, 335b). This quotation also shows Montaigne's ability to be supple and to accommodate multiple points of view, as he encourages readers of "Des cannibales" to do in deciding who is barbarous.

Like Montaigne's description of *distinguo*, judicial equity required its jurist to be flexible and to consult his soul. For a conscientious magistrate, Tournon has explained, equity

n'était pas une facilité : du fait même qu'il [jurist] pouvait s'écarter du droit strict, il était conduit à s'interroger en son âme et conscience sur le bien-fondé des prescriptions légales et surtout des interprétations reçues qui en déterminaient l'application (*Glose* 188).

Both *distinguo* and equity are therefore introspective processes for their practitioner: both invite him to consult and interpret his soul in order to judge.

By turning to his soul, a practitioner of *distinguo* and equity could acknowledge and reconcile differences without erasing them. Montaigne describes *distinguo* as that which probes the "contrarietez" within him (II, 1, 335b), and which permits their coexistence. The Biblical verse that medieval and early modern European legal theoreticians invoked to describe the judicial procedure of equity (Romans 2:15)¹⁹⁴ specifically mentions the "contrarietez" that are internal to everyone: "Who shew the work of the law written in their hearts, their conscience

¹⁹⁴ Maclean consults the works of legal theoreticians Rebuffi, Freher, Horn, and Oldendorp before he sums up that "[in] most senses, equity is linked to natural and divine law and the law inscribed in men's hearts (Rom. 2:15)" (*Interpretation and Meaning* 176).

bearing witness to them, and their thoughts between themselves accusing, or also defending one another." According to Saint Paul, the individual conscience of all humans has within it conflicting thoughts that both accuse and defend its person. The association that legal theoreticians made between Romans 2:15 and equity indicates that this legal procedure permitted natural law – the law that God wrote upon the hearts and souls, or consciences, of everyone – to regulate humanity's internal conflicts, or "contrarietez." As judicial equity and *distinguo* performed the same task in the soul of their jurist, the distinction between them, if there was any for Montaigne, is not clear. Since Montaigne both practices and describes *distinguo* in a way that resembles judicial equity, I suggest that these two strategies are interrelated for him, perhaps even interchangeable.

Montaigne's Judgment and the New World

The European discovery of a 'New World' brought new controversies to the Old World.

In particular, Europeans differed as to how they should interpret and interact with

Amerindians. In the course of the Debates of Valladolid (1550-51), held under the auspices of a special jury that Spanish monarch Charles V assembled himself, Dominican Juan Ginés de

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¹⁹⁵ It is unknown which edition of the Epistles of Saint Paul Montaigne read. Villey pointed to Montaigne's signature in a Greek edition of the Bible (*Sources* 78); but, because "il est en grec, et nous savons que Montaigne ne se contentait pas d'une 'moyenne intelligence'" (*Sources* 78), Villey suggested that Montaigne read the Bible in Latin. Marianne Meijer has proposed that Montaigne consulted the Latin Vulgate Bible, as well as four French Bibles. Marianne Meijer, "Montaigne et la Bible," *BSAM*, Cinquième Série – No20 (Octobre – Décembre 1976): 23-57. Both Villey and Meijer have pointed to Montaigne's heavy quotation from the Epistles of Saint Paul (Villey *Sources* 78, Meijer 24, 40, 43-44). I have cited from the New Testament of the Douay-Rheims English translation (1582) of the Latin Vulgate Bible. The complete Douay-Rheims Bible is available online at: Douay-Rheims Bible + Challoner Notes, 2001-2014, <a href="https://doi.org/10.1016/journal.org/10.1016/journ

¹⁹⁶ S. James Anaya, *Indigenous Peoples in International Law*, Second Edition (Oxford: Oxford University Press, 2004) 16. The first edition of this study appeared in 1996. The "Notes" to the first chapter, "This Historical Context" (34-48) include an excellent bibliography for readers interested in the interactions between Amerindians and Europeans, from the sixteenth-century onwards. Dickason 27-41. See too: Sara E. Melzer, *Colonizer or Colonized, The Hidden Stories of Early Modern French Culture* (Philadelphia: University of Pennsylvania Press, 2012).

Sepúlveda (1489 – 1573) argued that the Amerindians were without reason, and therefore akin to animals. ¹⁹⁷ In response, Dominican Bartolomé de las Casas (1484 – 1566) asserted that Aristotle's definitions of the "barbarian" and the natural slave were not applicable to the Amerindians because they could fully reason. ¹⁹⁸ Since de las Casas found that Amerindians could reason, he argued for Europeans to treat New World peoples as human beings, and to convert them peacefully to Christianity.

The Debates of Valladolid show that the Spanish disputed how they should colonize the Amerindians. At the same time, these debates make plain that the Spanish argued among themselves if they should even colonize New World peoples. Pope Alexander VI had signed the Americas over to the Spanish monarchs Ferdinand and Isabella on May 4, 1493, in the *Inter Caetera Papal Bull*. In 1513, the Council of Castile jurist Juan López de Palacios Rubios wrote the *Requerimiento*, in which he justified the assertion that God, through historical Saint Peter and appointed Papal successors, held authority over the entire Earth. Therefore, Rubios argued, it was within the capacity of Pope Alexander VI to confer his authority over the Americas to the Spanish, who bore the mission of bringing Christianity to the Amerindians (Anaya 17).

Like de las Casas, Dominican Francisco de Vitoria (1486-1547) rejected the papal donation of the New World to the Spanish (Anaya 17). Vitoria, who is known today as one of the forefathers of contemporary international law and equity, sought to establish the legal

¹⁹⁷ Juan Ginés de Sepúlveda, *Democrates alter* (1544). Henry Raup Wagner, *The Life and Writings of Bartolomé de las Casas* (Albuquerque: University of New Mexico Press, 1967) 278. The early modern European definition of reason reflected a legacy established in part by Aristotle, and which defined reason as a human capacity. In contrast, the "lack [of] reason" was an attribute of wild "beasts." Nigel Walker, "The Insanity Defense Before 1800," *The Annals of The American Academy of Political and Social Science, The Insanity Defense*, ed. Richard Moran (Beverly Hills: Sage Publications, 1985) 25-31, 28. For further details on the Europeans who described Amerindians as irrational animals, and the effect this definition had on European colonization of the New World, see Dickason 28-40.

¹⁹⁸ Bartolomé de las Casas, *Apología [contre Sepúlveda]* (Valladolid 1548-1550) (Wagner 278-79).

parameters by which Europeans could interact with Amerindians.¹⁹⁹ He ultimately maintained through his arguments on behalf of the Amerindians and the Spanish that both of these parties held equal claim to the New World.²⁰⁰ On the one hand, Amerindians had "rights by virtue of their essential humanity" (Anaya 19). On the other hand, the Spanish could engage in "just" war and conquest, the criteria for which "were grounded in a European value system" (Anaya 19). The arguments that Vitoria put forth were highly influential in the sixteenth-century, and beyond.²⁰¹

The legal and theological arguments that the French made to stake a claim in the New World reacted to those made by Pope Alexander VI, and by their Spanish and Portuguese colonial competitors (Melzer 172). In "Des cannibales," Montaigne subtly contributes to the European debates of Amerindian identity when he extends the signification of "barbare," the term around which the Debates of Valladolid revolved, ²⁰² to represent his readers as well as Amerindians. In the "Apologie," Montaigne again appears to contribute to these debates when he makes the following observation:

Les bestes nous montrent assez combien l'agitation de nostre esprit nous apporte de maladies. [C] Ce qu'on nous dict de ceux du Bresil, qu'ils ne mouroyent que de vieillesse, et qu'on attribue à la serenité et tranquillité de leur air, je l'attribue plustost à la tranquillité et serenité de leur ame, deschargée de toute passion et pensée et occupation tendue ou desplaisante, comme gents qui passoyent leur vie en une admirable simplicité et ignorance, sans lettres, sans loy, sans roy, sans relligion quelconque (II, "Apologie," 491ac).

Anaya 16. See also: Martti Koskenniemi, From Apology to Utopia, The Structure of International Legal Argument (Helsinki: Lakimiesliiton Kustannus Finnish Lawyers' Publishing Company, 1989) 73-81.
 Anaya 16 and Koskenniemi 79. See: Francisco de Victoria, De indis et de ivre belli relectiones (Washington D.C.: Classics of International Law, 1917) (translation by J. Bate, based on Iaques Boyer ed., 1557; Alonso Muñoz ed., 1565; and Johanan G. Simon ed., 1696).

²⁰¹ The "essential elements" of Vitoria's arguments "were advanced by other important European theorists" of the sixteenth-century, and who are "associated with the beginnings of international law, including Francisco Suárez (1548-1617), Domingo de Soto (1494-1560), Balthasar Ayala (1548-1584), and Alberto Gentilis (1552-1608)" (Anaya 19). His arguments also influenced the seventh-century legal theoretician Hugo Grotius, author of the famous *De jure belli ac pacis* (1625) (Anaya 19). For further insights into Vitoria, see: Jose Miranda, *Vitoria y los intereses de la conquista de América* (Jornadas – 57: El Colegio de México, 1947).

Anthony Pagden, "Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians" in *Theories of Empire*, *1450-1800*, Vol. 20, ed. David Armitage (Brookfield: Ashgate/Variorum, 1998) 159-178.

In this passage Montaigne moves seamlessly from the animals to the Tupí-Guaraní. The [C] text, which he inserted after 1588, flows from the 1580 [A] text, so that the explicit antecedent of "ceux" is "bestes." The 'beasts' with calm souls are the Tupí-Guaraní Amerindians who, according to European travel writers, enjoyed long and healthy lives because of their physical climate.²⁰³

And yet, Montaigne does not define the Tupí-Guaraní as animals. When he attributes the idyllic existence that he describes to the peaceful souls of the Brazilians, he clearly draws reader attention to Brazilian people and not animals. According to the book of Genesis, God endowed Adam with a soul, which then sealed his identity as a human being: "And the Lord God formed man of the slime of the earth: and breathed into his face the breath of life, and man became a living soul" (Douay-Rheims 2:7). The ambiguity of "ceux" thus allows readers to associate the Tupí-Guaraní both with Brazilian fauna and with people, which would of course include his European readers.

In other words, readers have two options for interpreting the above passage from the "Apologie." The first, explicit option is that in which readers understand "bestes" as the antecedent to "ceux." However, at least some of Montaigne's readers would presumably correct for the ambiguity of "ceux," and redefine its antecedent as 'people.' Indeed, in the [C] text of this passage Montaigne perhaps provokes his readers to redefine "ceux" when he emphasizes the human characteristics of the Tupí-Guaraní, particularly their souls. The second, implicit reading option for this passage thus invites readers to undo and correct the explicit one. In short, at least some of Montaigne's readers would have reassessed the identity of the Tupí-Guaraní when they redefined the antecedent of "ceux" from "bestes" to 'people.'

²⁰³ See particularly Léry 211-12.

Of course, readers cannot know if Montaigne purposefully leads them into the process of self-correction that I have analyzed. However, this process is consistent with Montaigne's description of his judgment in "De Democritus et Heraclitus." In this essay, Russell has observed, Montaigne "uses judgment to question judgment" (189) when he invites "readers to displace the focus of their attention from the object of the judgment to the person making the judgment" (189). The above passage from the "Apologie" could thus be an instance where Montaigne uses his judgment – the tool with which he writes his *Essais* – to question the judgment of his readers. The ambiguity of "ceux" trips readers and ultimately necessitates their shifting temporarily the focus of their attention from the Tupí-Guaraní to themselves and their judgment. In other words, readers have to define the antecedent of "ceux" in order for them to make sense of its surrounding passage. The explicit and implicit antecedents of "ceux" thus provide readers with an opportunity to exercise their judgment.

Furthermore, the process of self-correction that I have analyzed in the "Apologie" corresponds to the argumentative structure that Cicero encourages practitioners of equity to adopt:

...first, praise and support of the law which you quote; then a comparison of the circumstances in question with the accepted principles of the law in order to show the similarity between the circumstances and the established principle; then comparing the two cases the speaker will wonder how it can be that one who grants that one is fair, should deny that the other is, which as a matter of fact is just as fair or fairer.... Finally, he should point out the fairness of his position, as is done in the absolute subdivision of the equitable issue.

When readers understand "bestes" as the antecedent to "ceux," they uphold the views of most early modern European writers who recognized that the Tupí-Guaraní lived in greater harmony with nature than did Europeans. However, when readers redefine the antecedent of "ceux" to

²⁰⁴ Hubbell, *Topica* 2:319. The original Latin reads: "...primum eius scripti quod proferas laudationem et confirmationem; deinde ieus rei qua de quaeratur cum eo de quo constet collationem eiusmodi, ut id de quo quaeritur ei, de qua constet, simile esse videatur; postea admirationem per contentionem, qui fierri posit ut qui hoc aequum esse concedat illud neget, quod aut aequius aut eodem sit in genere [...] deinde aequitas rei demonstranda est, ut in iuridiciali absoluta" (Hubbell, *Topica* 2:318).

'people,' they acknowledge instead their similarity to the Brazilians. Montaigne appears to help his readers recognize this similarity when he indicates that the Tupí-Guaraní possessed souls.²⁰⁵ Thus, the "equitable issue" is souls and, by extension, status as a human being. Montaigne further subdivides equally this status among Amerindians and his readers when he explicitly claims that Europeans could improve their souls by following the example of the Tupí-Guaraní. Brazilians, even as they might exhibit animal-like qualities to sixteenth-century Europeans, still demonstrated for Montaigne a particular humanity from which his early modern readers could learn.

In the context of its passage, the ambiguity of "ceux" appears to be interrelated with Montaigne's use of equity. The larger passage surrounding "ceux" suggests, therefore, that the obscurity of this term is both purposeful and an important step in Montaigne's rhetorical practice of equity. Indeed, the vagueness of "ceux" is consistent with Montaigne's use of equity in "Des cannibales" to broaden the semantic scope of "barbare." Barbarity denoted an animal identity, as is shown by the Debates of Valladolid. Montaigne is ambiguous in "Des cannibales" about Amerindian identity, and about his readers' identity for that matter too, when he grants his readers the ability to appraise both themselves and Amerindians as barbarous (i.e. as animals), or neither as barbarous. I have argued in this chapter that Montaigne's ambiguity provokes readers of "Des cannibales" to reassess Tupí-Guaraní identity as well as their own. Thus, in the "Apologie" Montaigne likely reiterates, albeit subtly, an exercise in judgment that he has already

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²⁰⁵ Montaigne also emphasizes in "Des cannibales" that the Tupí-Guaraní possessed eternal souls: "Ils croyent les ames eternelles, et celles qui ont bien merité des dieux, estre logées à l'endroit du ciel où le soleil se leve ; les maudites, du costé de l'Occident" (I, 31, 208a).

²⁰⁶ In the Debates of Valladolid, Dominican Bartolomé de las Casas (1484 – 1566) asserted that Aristotle's definitions of the "barbarian" and the natural slave were not applicable to the Amerindians because they could fully reason. The early modern European definition of reason reflected a legacy established in part by Aristotle, and which defined reason as a human capacity (Walker 28). In contrast, the "lack [of] reason" was an attribute of wild "beasts" (Walker 28). Thus, to be "barbare" was the same as being an animal. For further details on the Europeans who described Amerindians as irrational animals, and the effect this definition had on European colonization of the New World, see Dickason 28-40.

provoked readers of "Des cannibales" to perform. The vagueness of "ceux," in combination with Montaigne's explicit statements vis-à-vis the Tupí-Guaraní, prompts readers of the "Apologie" to reconcile the different positions that Europeans took in their debates of Amerindian identity. Montaigne's readers thereby come to understand that the Tupí-Guaraní exhibit an animality that is also a particular form of humanity.

Beyond reconciliation, equity also afforded equal representation to all parties implicated in a case. It perhaps comes as little surprise, then, that the definition of Amerindian identity at which Montaigne arrives with his readers harmonizes with the viewpoints of the Tupí-Guaraní themselves. The Tupí-Guaraní did not define humanity by its difference from animality.

Viveiros de Castro comments:

The difference between men and animals is not [clear;] I cannot find a simple manner of characterizing the place of 'Nature' in Araweté cosmology. ...there is no taxon for 'animal'.... The distinctions within the domain of animals are essentially the same that apply for other categories of beings (71).

Indeed, the conversation that takes place between the prominent Tupí-Guaraní Amerindian Konyan Bebe and the German captive Hans Staden²⁰⁷ alludes to the overlap of humanity and animality in Tupí-Guaraní culture:

Konyan Bebe had a great basket full of human flesh in front of him. He was eating a leg and held it to my mouth, asking whether I also wanted to eat. I said [to him]: a senseless animal hardly ever eats its fellow; should one human then eat another? He took a bite, saying: Jau ware sche [Jauára ichê]. I am a tiger [jaguar]; it tastes well. With that, I left him (Whitehead 91).

Tupí-Guaraní men, through their warrior acts that culminated in acts of cannibalism, underwent an ontological transformation into jaguars, as part of their ultimate transformation into immortal celestial beings. The ambiguity of "ceux" can thus convey the fluidity between animality and humanity in Tupí-Guaraní culture, and in Brazilian self-definition.

jaguars through anthropophagy.

²⁰⁷ He does not specify the period of his captivity among the Tupí-Guaraní, which occurred during 1550 and 1555. ²⁰⁸ See Viveiros de Castro 262-72 for details into the ontological transformation of Tupí-Guaraní warriors into

In conclusion, the imprecision of "ceux" enables readers of the "Apologie" to accommodate both Amerindian and European methods for self-identification. In the first, explicit reading of "ceux," readers can acknowledge that the Tupí-Guaraní identified themselves as 'animals,' as did Europeans such as Sepúlveda. In the second, implicit reading of "ceux," readers can recognize that both Europeans and Amerindians have immortal souls, which seal their identities as human beings. That readers can equally accommodate both Amerindian and European methods for self-identification suggests Montaigne's use of equity. That readers can equally accommodate these methods through a particular word – "ceux" – especially suggests his practice of equity. The ambiguity of "ceux" enables readers to broaden the semantic scope of this term in a way that is commensurate with both Amerindian and European perspectives.

Otherwise put, Montaigne appears to follow Cicero's advice to practitioners of equity yet again when he and his readers expand "ceux" for the equal benefit of Amerindians and Europeans.

In a century where Europeans sought to justify through debates their colonization of the New World, Montaigne instead promotes equality between Europeans and Amerindians.

Montaigne's expansion of "ceux," along with his broadening the significations of "barbare" and "Tout mouvement nous descouvre," suggest his equal treatment of Tupí-Guaraní and European perspectives in his judgment and language in the *Essais*. Indeed, equal coexistence is the goal of equity, as Cicero explains in *De officiis*:

willingness to smooth out our differences is the only means of ensuring 'that the interests of all citizens are considered on level terms rather than being handled in a divisive way' (commoda civium non divillere atque omnis aequitate eadem continere). 209

Montaigne's practice of equity thus harmonizes with his opposition to European colonization of the New World (Dickason 56), which rendered Amerindians second-class citizens of European kingdoms. His use of equity also provokes his readers to exercise and improve their judgment.

²⁰⁹ Ouoted in: Quentin Skinner, Visions of Politics (Cambridge, UK: Cambridge University Press, 2002) 49.

Let us now turn our attention to "Des coches," the essay in which Montaigne explicitly discusses the *conquista*, from which we may continue to consider the role that equity and Amerindian languages and cultures plays in Montaigne's judgment.

Chapter Three

"Des coches" (III:6): Montaigne's Practice of Equity, the Aztec, and the Inca

Coaches

In "Des coches" (III:6) Montaigne focuses on the use of coaches in ancient Rome and in the New World.²¹⁰ He first evokes the coaches in the Roman triumphs of Marc Antony, Heliogabalus, and Firmus. The triumph enacted both a civil ceremony and a religious rite, as it publicly celebrated and sanctified the military achievement of a Roman army commander (who could also be the emperor).²¹¹ Montaigne explains that "[B] Marc Antoine fut le premier qui se fit mener à Romme, et une garse menestriere quand et luy, par des lyons attelez à un coche" (III, 6, 901b). Even as Montaigne describes Marc Antony's triumph as the first to occur in Rome, his

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²¹⁰ Much scholarship has been produced on "Des coches." The following studies have especially guided my thinking in this chapter: Timothy Hampton, "The Subject of America: History and Alterity in Montaigne's 'Des coches'," *Romanic Review*, 88.2 (March 1997): 203-227. Tom Conley, "Montaigne and the Indies: Cartographies of the New World," in *1492-1992: Re/Discovering Colonial Writing, Hispanic Issues 4*, René Jara and Nicholas Spadaccini, eds. (Minneapolis: University of Minnesota Press, 1989) 225-263. Géralde Nakam, *Les Essais de Montaigne, miroir et procès de leur temps, Témoignage historique et création littéraire, Édition revue, corrigée et mise à jour avec une préface inédite* (Paris: Editions Champion, 2001) chapter 5 "Cruautés," part III "La Conquête du Nouveau Monde: 'Une boucherie universelle'" (329-351). The original edition of this work: *Les Essais de Montaigne, miroir e procès de leur temps : témoignage historique et création littéraire* (Paris: Nizet, 1984). André Tournon's article "Fonction et sens d'un titre énigmatique (III,6)," *BSAM*, Sixième Série, No19-20 (1984 Juillet-Décembre): 57-68 and his book André Tournon, "*Route par ailleurs*," *Le "nouveau langage" des Essais* (Paris: Honoré Champion, 2006) "Chapitre IV, 'Ailleurs,' Un 'siège tremblant'" (313-331). Edwin M. Duval, "Lessons of the New World: Design and Meaning in Montaigne's 'Des Cannibales' (I:31) and 'Des coches' (III:6)," *Yale French Studies*, No. 64, Montaigne: Essays in Reading (1983): 95-112.

²¹¹ "To be awarded a triumph was the most outstanding honor a Roman general could hope for. He would be drawn in a chariot – accompanied by the booty he had won, the prisoners he had taken captive, and his no doubt rowdy and raucous troops in their battle gear – through the streets of the city [Rome] to the Temple of Jupiter on the Capitoline hill, where he would offer a sacrifice to the god." Mary Beard, *The Roman Triumph* (Cambridge: Harvard University Press, 2007) 1.

reading of classical historians would have taught him otherwise.²¹² However, Antony does indeed predate the other two Roman usurpers whose processions Montaigne evokes:

Heliogabalus en fit dépuis autant, se disant Cibelé, la mere des dieux, et aussi par des tigres, contrefaisant le Dieu Bacchus ; il attela aussi par fois deux cerfs à son coche, et une autre fois quattres chiens, et encore quattre garses nues, se faisant trainer par elles en pompe tout nud (III, 6, 901-2b).

Montaigne then explains that Firmus "fit mener son coche à des autruches de merveilleuse grandeur, de maniere qu'il sembloit plus voler que rouler" (III, 6, 902b).

Later in "Des coches," Montaigne matches these Romans with New World counterparts. Wealth unites the prosperous merchant Firmus with the *conquistadores*, who sought the riches and trade goods of the Aztec and Incan civilizations.²¹³ Indeed, Montaigne reduces the acts of the *conquistadores* to European greed:

Tant de villes rasées, tant de nations exterminées, tant de millions de peuples passez au fil de l'espée, et le plus riche et belle partie du monde bouleversée pour la negotiation des perles et du poivre: mechaniques victoires" (III, 6, 910b).

Marc Antony and Hernán Cortés resemble each other in their passion for foreign women, through whom both men sought to achieve their ambitions. The Roman historians Appian and Cassius Dio, whom Montaigne read (Villey *Sources* 64-65, 117-18), attribute Antony's attempted usurpation of the Second Triumvirate to his passion for Cleopatra. In the case of Hernán Cortés, his Amerindian mistress largely made possible his usurpation of the Aztec king

²¹² Pierre Villey points to several classical historians whom Montaigne read. Pierre Villey, *Les Sources et l'Évolution des Essais de Montaigne*, Tomes 1-2 (New York: Burt Franklin, 1968). See also Beard chapter 9, "The Triumph of History" (287-328).

²¹³ The *Historia Augusta*, a work that Montaigne read (Villey *Sources* 263), includes three persons named Firmus. One is a prefect in Egypt, possibly Claudius Firmus, another is a proconsul and commander of the Roman legions at the African frontier of the Roman Empire, and the third is a merchant in Alexandria, Egypt. Sir Ronald Syme, *Ammianus and the Historia Augusta* (Oxford: Clarendon Press, 1968) 55. Of these three possibilities for the identity of Firmus, in "Des coches" Montaigne likely points to the third. The Alexandrian merchant achieved a short-lived usurpation of the emperor Aurelian (214/215AD – 275AD), which thereby rendered him "empereur Firmus" (III, 6, 902b). Furthermore, only he processed in the way that Montaigne describes: "he was conveyed, or rather flown, on the backs of huge ostriches" (Syme 30).

²¹⁴ See Alain M. Gowing, *The Triumviral Narratives of Appian and Cassius Dio* (Ann Arbor: University of Michigan Press, 1992) 113-22, particularly 114-15.

Moctezuma II.²¹⁵ Heliogabalus appropriated both the divinity of his namesake and his position as emperor.²¹⁶ Firmus also seized a godly position when he usurped the emperor Aurelian, whom Romans hailed as a deity.²¹⁷ Moctezuma and Atahualpa resemble Aurelian, as the Aztec and the Inca believed that their respective kings were descendants of the Amerindian gods.

Thus, by the second half of "Des coches" Montaigne has moved from the Roman usurpers he mentioned to Amerindian versions of the emperors whom they usurped: Moctezuma and Atahualpa. In fact, the one Amerindian procession that Montaigne depicts at the conclusion of "Des coches" is also the event at which the *conquistadores* overthrow Atahualpa, the ruler of the Inca:

Ce dernier Roy du Peru, le jour qu'il fut pris, estoit ainsi porté sur des brancars d'or, et assis dans une cheze d'or, au milieu de sa bataille. Autant qu'on tuoit de ces porteurs pour le fair choir à bas, car on le vouloit prendre vif, autant d'autres, et à l'envy, prenoient la place des morts, de façon qu'on ne le peut onques abbatre, quelque meurtre qu'on fit de ces gens là, jusques à ce qu'un homme de cheval l'alla saisir au corps, et l'avalla par terre (III, 6, 915b).

On the first two occasions that Francisco Pizarro and his *conquistadores* visited Peru (1524 and 1527), Wayna Qhapaq was ruler of the Inca; he was the last Peruvian king to rule "without contact with the Spanish conquistadors." In their first two visits, the *conquistadores* performed mostly reconnaissance. San Miguel de Piura (the first Spanish settlement, off the

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²¹⁵ She was known by several names: La Malinche, Malinalli, Malintzin, and Doña Marina. Montaigne read of her as Marine, in Martin Fumée's French translation of the Spanish historian Francisco Lopez de Gómara. See: *Histoire générale des Indes occidentales, et terres neuves, qui jusques à présent ont esté descouvertes: augmentée en ceste 5e édition de la description de la Nouvelle Espagne et de la grande ville de Mexicque, autrement nommée Tenuctilan, A Paris, Chez Michel Sonnius, 1587, Livre 5, 72v. This edition is available online as a Google Book. For Montaigne's reading of Gómara, see: Gilbert Chinard, <i>L'Exotisme américain dans la littérature française au XVIe siècle* (Geneva: Slatkine Reprints, 1970) chapter 9 "Un defenseur des Indiens: Montaigne," 193-219. The original edition of this study appeared in 1911. Nakam 336. For further details into Marine, see: Camilla Townsend, *Malintzin's choices: an Indian woman in the conquest of Mexico* (Albuquerque: University of New Mexico Press, 2006).

²¹⁶ The Roman historian Herodian, whom Montaigne read (Villey *Sources* 147, 263), indicates that Heliogabalus was a priest to the Phoenician sun god Heliogabalus before he became emperor (Echols 139-40). At some point during his usurpation (Herodian does not specify when), he assumed the name Heliogabalus (Echols 142). Edward C. Echols trans., *Herodian of Antioch's History of the Roman Empire*... (Berkeley: University of California Press, 1961).

²¹⁷ Alaric Watson, Aurelian and the Third Century (London: Routledge, 1999) 187-91.

²¹⁸ Quotation from: Nicole Delia Legnani with Frank Salomon, eds., *Titu Cusi: A 16th-Century Account of the Conquest* (Cambridge: Harvard University Press, 2005) xi.

coast of northern Peru) and smallpox were all that the *conquistadores* left in the New World when they cast-off in 1528 to return to Europe (Legnani xi-xii). As Wayna Qhapaq lay dying of this "leprous disease," he divided the Inca Empire between his sons Huascar and Atahualpa.²¹⁹

According to the Spanish historian Francisco Lopez de Gómara, whom Montaigne read in French and Italian translation (Villey *Sources* 137-38), Wayna Qhapaq ceded Atahualpa "la Prouince de Quito" (Fumée 5:317r). To Huascar, Wayna Qhapaq conferred "la ville de Cuzco, & toutes les autres seigneuries de son pere, lesquelles estoient fortes grandes" (Fumée 5:317r). The two brothers ruled together peacefully for a time, "Mais ceste paix ne lui dura gueres, parce que Attabilipa [Atahualpa] occupa [une] prouince tresopulent à raison des mines d'or.... Elle es voisine de celle de Quito" (Fumée 5:317r). Atahualpa maintained that this neighboring province was part of his Quito inheritance, while Huascar claimed it as his own. Atahualpa refused to leave the gold-rich region, provoking a civil war between the two brothers (Fumée 5:317v). While it is unclear which brother began the fight – Gómara reports that some of the Inca claimed it was Atahualpa, while others asserted it was Huascar (Fumée 5:317v) – Atahualpa's forces would eventually win the war.

When Pizarro and his *conquistadores* returned to Peru in 1532, the Inca were still engaged in civil war. Even so, the Inca monitored the Spaniards' movements throughout their empire, and they also debated their response to the increased presence and offensives of the *conquistadores* (Betanzos 235-47). Shortly after the victory of his forces over Huascar (1533), Atahualpa reached the royal springs at Cajamarca; so also did Francisco Pizarro and his cortege. The Inca ruler processed in his royal golden litter to meet with the *conquistadores*, as Montaigne describes. However, as Montaigne depicts the scene, the parlay that occurred between the

²¹⁹ Quotation from: Juan de Betanzos, *Narrative of the Incas, Translated and edited by Roland Hamilton and Dana Buchanan from the Palma de Mallorca manuscript* (Austin: University of Texas Press, 1996) 184.

Spaniards and Atahualpa ultimately devolved into a battle that resulted in the Peruvian king's capture and great loss of Amerindian life: "Il y en mourut si grand nombre" (Fumée 5:313r).

While Montaigne closes "Des coches" with the procession of Atahualpa, the event at which he was usurped by the *conquistadores*, he opens this essay with a list of unsuccessful or temporary Roman usurpers and their processions. In other words, Montaigne transports readers of "Des coches" from the side of usurpers to that of the usurped. In particular, he brings his readers over to the Amerindian side of processions. Given that Montaigne has drawn reader attention to Romans who were not ultimately successful in their takeovers, he seems to suggest the eventual downfall of their counterparts in the New World: the *conquistadores*. In this dissertation chapter I will argue that Montaigne, who exercises the role of judge in "Des coches" (Hampton 216), relies upon equity and the interrelated strategies of *distinguo*, *locus a simili*, and analogy to refine the judgment of his early modern readers. My analysis of these strategies will lead me to propose that Montaigne uses equity in his attempt to dissuade his early modern readers from justifying European colonization of the Americas.

The Conquista

Sixteenth-century Europeans debated the ways in which they could 'legally' colonize the New World and its peoples. Of course, these debates were biased to Europeans and their "value system." This value system, and how it influenced European colonization, is evident in the *Inter Caetera Papal Bull* (1493). In this document, Pope Alexander VI signed the Americas over to the Spanish monarchs Ferdinand and Isabella. In 1513, the Council of Castile jurist Juan

²²⁰ Quotation from S. James Anaya, *Indigenous Peoples in International Law*, Second Edition (Oxford: Oxford University Press, 2004) 19. The first edition of this study appeared in 1996.

López de Palacios Rubios wrote the *Requerimiento*, in which he justified the assertion that God, through historical Saint Peter and appointed Papal successors, held authority over the entire Earth. Therefore, Rubios argued, it was within the capacity of Pope Alexander VI to confer his authority over the Americas to the Spanish, who bore the mission of bringing Christianity to the Amerindians (Anaya 17).

However, Dominican Francisco de Vitoria (1486-1547) rejected the papal donation of the New World to the Spanish (Anaya 17). Vitoria, who is known today as one of the forefathers of contemporary international law and equity, sought to establish the legal parameters by which Europeans could interact with Amerindians.²²¹ He ultimately maintained through his arguments on behalf of the Amerindians and the Spanish that both of these parties held equal claim to the New World.²²² On the one hand, Amerindians had "rights by virtue of their essential humanity" (Anaya 19). On the other hand, the Spanish could engage in "just" war and conquest, the criteria for which "were grounded in a European value system" (Anaya 19). The arguments that Vitoria put forth were highly influential in the sixteenth-century, and beyond.²²³

In "Des coches," Montaigne echoes Vitoria when he implicitly challenges the papal donation of the New World to the Spanish. Rather than criticize the pope directly, Montaigne criticizes the *conquistadores* who acted upon the papal donation: "S'ils [*conquistadores*] se fussent proposés d'estendre nostre foy, ils eussent consideré que ce n'est pas en possession de

Alonso Muñoz ed., 1565; and Johanan G. Simon ed., 1696.

²²¹ Anaya 16. See also: Martti Koskenniemi, *From Apology to Utopia, The Structure of International Legal Argument* (Helsinki: Lakimiesliiton Kustannus Finnish Lawyers' Publishing Company, 1989) 73-81.
²²² Anaya 16 and Koskenniemi 79. See: Francisco de Victoria, *De indis et de ivre belli relectiones*, trans. J. Bate (Washington D.C.: Classics of International Law, 1917). Bate based his translation on Iaques Boyer ed., 1557;

²²³ The "essential elements" of Vitoria's arguments "were advanced by other important European theorists" of the sixteenth-century, and who are "associated with the beginnings of international law, including Francisco Suárez (1548-1617), Domingo de Soto (1494-1560), Balthasar Ayala (1548-1584), and Alberto Gentilis (1552-1608)" (Anaya 19). His arguments also influenced the seventh-century legal theoretician Hugo Grotius, author of the famous *De jure belli ac pacis* (1625) (Anaya 19). For other insights into Vitoria, see: Jose Miranda, *Vitoria y los intereses de la conquista de América* (Jornadas – 57: El Colegio de México, 1947).

terres qu'elle s'amplifie, mais en possession d'hommes" (III, 6, 913b). Montaigne here simplifies Spanish claims to land and sovereignty in the New World by combining both of these claims in the expression "possession de terres." He then contrasts Spanish land possession in the New World with Amerindian evangelization, and thereby provokes his readers to question why Europeans should have sovereignty over American land in order to evangelize its inhabitants.

However, Spanish sovereignty claims resulted from the pope ceding them 'his' possessions in the Americas. Thus, under the guise of contrasting Spanish territorial claims and Amerindian evangelization, Montaigne ultimately contrasts European evangelization of New World peoples with papal land and sovereignty claims in the Americas. He thereby implies that neither the pope nor the Spanish could justify their possession of the Americas by invoking their Christian beliefs. As Montaigne observes,

Dieu a meritoirement permis que [leurs] grands pillages se soient absorbez par la mer en les transportant, ou par les guerres intestines dequoy ils se sont entremangez entre eux, et la plus part s'enterrerent sur les lieux, sans aucun fruit de leur victoire (III, 6, 913b).

While both Montaigne and Vitoria challenged the papal donation of the New World to the Spanish, Vitoria did grant the *conquistadores* the caveat of waging a 'just' war against the Amerindians. If New World peoples did not allow the Spanish to trade among them, to travel throughout their lands, or to proselytize in favor of Christianity, Vitoria concluded that the Spanish could rightly conquer the Americas (Anaya 18). However, Vitoria encouraged Europeans against making "sham assertions of imaginary causes of war" (Anaya 18).

The *conquistadores*' interpretation of Atahualpa's procession – the very procession with which Montaigne closes "Des coches" – was one such sham Spanish call to arms. When Atahualpa arrived at Cajamarca, Gómara reports, he found the *conquistadores* barricaded in its

tampu, one of many state-financed hospitality houses that lined Incan roads.²²⁴ Brother Vincent, a Catholic missionary travelling with the *conquistadores*, eventually emerged from their secure military position within the *tampu*:

...frere Vincent de Valuerde Iacobin aiant en sa main vne croix auec son Breuiaire, ou vne Bible selon aucuns, s'approcha de lui [Atahualpa], & lui fit la reuerence, lui donan la benediction auec la croix (Fumée 5:311v).

According to Gómara, Brother Vincent then recounted for the Peruvian king a condensed history of Christianity. The monk begins with the creation of Adam, acknowledges "comme icelui Adam a peché contre son Createur par inobediece," (Fumée 5:312r), recognizes the subsequent original sin of all humanity, tells of the redemption of humankind by Jesus Christ, and finishes his narrative with the founding of the Catholic Church (Fumée 5:312r).

His oration delivered, Brother Vincent then implores Atahualpa to convert to Christianity:

Obeissez donc au Pape, & receuez la foi de Iesus Christ: elle est saincte, & la vostre est faulse, & si ainsi vous faites, vous serez fort bien. Mais si faites au contraire, sçachez que nous vous ferons la guerre, & que nous vous osterons, & romperons vos idoles, afin que quittiez la deceuante religion de vos faux Dieux (Fumée 5:312r).

The content of Brother Vincent's speech suggests that he is orally delivering the *Requerimiento*. In 1513, the Spanish jurist Juan López de Palacios Rubios drafted the *Requerimiento* for the Castilian king Ferdinand.²²⁵ Anthony Pagden has explained that "every conquistador was to carry a copy of this document with him and to read it, in the presence of a notary, before making an attack" ("Introduction" xxiv-xxv). The *Requerimiento*, Pagden has summarized,

began with a history of the world since Adam. It then moved swiftly on to the grant made by the Pope to the Castilian Crown and the obligation of every Indian to pay homage to the agents of the Crown and to obey their orders. It finished with a gruesome account of what would befall any Indian who refused to obey ("Introduction" xxiv).

²²⁴ John Hyslop, *The Inka Road System* (Orlando: Academic Press, Inc., 1984) 275-76.

²²⁵ Anthony Pagden, "Introduction," *Bartolomé de las Casas, A Short Account of the Destruction of the Indies*, ed. and trans., Nigel Griffen (London: Penguin Books, 2004) xiii-xli, xxiv.

The *Requerimiento* was in Spanish, "a language no Indian could then understand" (Pagden "Introduction" xxv); furthermore, the *conquistadores* "made no attempt to explain the complex legal and theological terms in which it was expressed" (Pagden "Introduction" xxv). In fact, *conquistadores* frequently read the *Requerimiento* at night to sleeping villages or otherwise out of earshot of the Amerindians (Pagden "Introduction" xxv). "What mattered was the act," Pagden has explained ("Introduction" xxv). Once the *conquistadores* "had discharged their duty to inform, the way was clear for pillage and enslavement" (Pagden "Introduction" xxv).

However, Montaigne would have read that Atahualpa heard and understood some measure of the *Requerimiento* because the Inca ruler "[demande] au moine come il scauoit que le Dieu des Chrestiens eust crée le monde" (Fumée 5:312v). Brother Vincent holds up his breviary as proof of his faith and hands the book to Atahualpa, who leafs through it before he tosses it to the ground. Atahualpa's rejection of Brother Vincent's breviary indicates his rejection of the *Requerimiento* and Christianity, which Pope Alexander VI, the Castilian Crown, and the *conquistadores* all took as the authority for the *Requerimiento*. Thus, the *conquistadores* interpret Atahualpa's dismissal of Brother Vincent's breviary as their 'just' cause to conquer the Inca:

Attabalipa [Atahualpa] le print, le ouurit, le regarda de tous costez, & le feuilleta, & disant, qu'il n'en disoit mot, le ietta en terre. Frere Vincent ramassa son breuiaire, & s'en alla à Pizarre criant : il a ietté en terre les Euangiles, vengeance Chresties, chargez dessus, puis qu'il ne veut nostre amitie, ni receuoit nostre loi (Fumée 5:312v).

In short, the *conquistadores* and their company interpret the events associated with Atahualpa's procession as their justification to colonize the New World.

However, Vitoria argued that the Spanish could not rightly conquer the New World because Amerindians chose not to convert to the Christian faith that *conquistadores* presented

them in the *Requerimiento*. According to Section III, Article II of his "On The Indians Lately Discovered" (1557)²²⁶:

If the Indians allow the Spaniards freely and without hindrance to preach the Gospel, then whether they do or do not receive the faith, this furnishes no lawful ground for making war on them and seizing in any other way their lands. This has been proven above ... and it is self-evident, seeing that there can not be a just war where no wrong has previously been done (Bate 157).

Perhaps taking his cue from Vitoria, in "Des coches" Montaigne implicitly justifies Atahualpa's procession and, by extension, his refusal to be evangelized and colonized.

Montaigne has three reasons to defend processions, the first of which is: "...l'usage des coches au service de la guerre, divers selon les nations, selon les siecles, de grand effect, ce me semble, et necessité...." (III, 6, 901c). In other words, Montaigne acknowledges the tactical necessity of coaches in times of war. However, of the Roman and Amerindian processions that Montaigne describes in "Des coches," only Atahualpa's takes place in the midst of war. The battle context of Atahualpa's procession thus renders it an Incan act of military force, as indeed the Inca intended it to be.²²⁷ Gómara describes in detail the procession of the Peruvian king and his army. In particular, he tells how the ruler of the Inca believed that his pageantry successfully intimidated the Spaniards:

Il [Atahualpa] se fasoit porter en vne litiere d'or, paree par dedans de plumes de perroquets de diuerses couleurs, & estoit assis dedans vne basse chaire toute d'or sur vn riche coussin de laine garni de fort beaux, & precieux ioyaux. Il auoit sur le front vn grand flocquet rouge de laine tresfine, & deliee, lequel lui couuroit les sourcils, & les iouës, c'estoit la marque Roiale qu'auoient accoustumé de porter les Rois de Cuzco. Il menoit plus de trois cens estaffiers pour seulement seruir à porter sa litiere, & pour ietter les pailles, & ordures hors le chemin, & pour chanter au deuant de sa personne. Il auoit aussi plusieurs seigneurs, qui pour la maiesté de sa Cour se faisoient pareillement porter en litieres, & dedans des portoires. Il entra au Tabo [*Tampu*] de Caxamalca, & ne voiant aucuns cheuaux Espagnols, ni les gens de pied se remuer, lui estoit aduis que c'estoit de peur. Lors il s'arresta, & dist à ses gens : Ces Chrestiens sont tous estonnez, il sont à nous. Et commanda qu'on tuast les Chrestiens, qui estoient dedans la tour (Fumée 5:311v).

²²⁶ "On The Indians Lately Discovered" is included in Vitoria's *De indis et de ivre belli relectiones*.

²²⁷ Ciquinchara, Atahualpa's Incan interpreter for the Spanish, advised the Peruvian king to fight the *conquistadores* at Cajamarca. Otherwise, Ciquinchara counselled, the *conquistadores* "would have no respect" for the Inca (Betanzos 262).

In contrast, the Roman processions that Montaigne evokes in "Des coches" were not acts of military force in themselves. Rather, these processions commemorated in the Roman capital successful military campaigns that occurred at the margins of the Roman Empire, and extended its borders. Therefore, of the processions that Montaigne mentions in "Des coches," only Atahualpa's meets the first condition that Montaigne has to justify the use of coaches.

The necessity for a commander or ruler to appear formidable in times of war²²⁸ interrelates with Montaigne's second reason to defend processions:

L'estrangeté de ces inventions me met en teste cett' autre fantasie : que c'est une espece de pusillanimité aux monarques, et un tesmoignage de ne sentir point assez ce qu'ils sont, de travailler à se faire valloir et paroistre par despences excessives. Ce seroit chose excusable en pays estranger ; mais, parmy ses subjects, où il peut tout, il tire de sa dignité le plus extreme degré d'honneur où il puisse arriver (III, 6, 902b).

Romans used the triumph to celebrate their countrymen, such as Marc Antony, Heliogabalus and Firmus. Montaigne has indicated that these triumphs, and the public festivities to which they contributed, took place in Rome. By comparison, Atahualpa's procession did not occur strictly "parmy ses subjects." While his procession did not take place in a foreign country, it did occur before foreigners – the Spaniards – who sought to render Atahualpa and the Inca completely subordinate to their authority (Betanzos 261, 263; Fumée 5:312r-v). Therefore, of the processions that Montaigne mentions in "Des coches," only Atahualpa's comes closest to meeting the second condition that Montaigne has to condone the use of coaches.

Montaigne's final condition for processions is much more general. Rather than strictly applicable to processions themselves, it pardons the spectacles to which processions contributed. In the context of ancient Rome, these spectacles are the gladiatorial games (III, 6, 905-906).

After Montaigne describes the ways by which ancient Romans transformed the Coliseum to

²²⁸ Montaigne discusses parlays, and explores the necessity for their interlocutors to appear formidable, in at least three other essays: "Par divers moyens on arrive a pareille fin" (I:1), "Si le chef d'une place assiegée doit sortir pour parlementer" (I:5), and "L'Heure des parlemens dangereuse" (I:6).

present different kinds of gladiatorial games, he comments: "S'il y a quelque chose qui soit excusable en tels excez, c'est où l'invention et le nouveauté fournit d'admiration, non pas la despence" (III, 6, 907b). As Edwin M. Duval has observed of Montaigne, the spectacles of ancient Rome "may be blameworthy for their excessive cost (liberality being a misplaced virtue in rulers), but they are certainly admirable for the ingenuity they reveal" (104).

Montaigne finds Ancient World pomp excusable – and even admirable – for the ingenuity with which Romans transformed the Coliseum time and again for their gladiatorial games. However, in "Des coches" the Coliseum begins to pale in comparison to the engineering genius evidenced by Incan roads:

En l'estimation de cette ouvrage, j'ay compté la difficulté, qui est particulierement considerable en ce lieu là. Ils ne batissoient poinct de moindres pierres que de dix pieds en carré; il n'avoient autre moyen de charrier qu'à force de bras, en trainant leur charge; et pas seulement l'art d'eschafauder, n'y sçachant autre finesse que de hausser autant de terre contre leur bastiment, comme il s'esleve, pour l'oster apres (III, "Des coches," 914c).

If Romans celebrated the military conquests that enlarged their empire with processions and gladiatorial games, Amerindians acknowledged the conquests that enlarged the Inca Empire by extending its highway system. As John Hyslop has explained, the

idea of the Inka Road has meant different things to different peoples at different times. To the Inkas themselves, the *qhapaq ñan*, or *Inka ñan* (Inka road), was a complex administrative, transport, and communication system. It was a device to describe the empire's four basic divisions; one main road led out of Cuzco, the capital, to each quarter (2).

However, to the populations the Inca conquered and annexed into their empire, "the roads were an omnipresent symbol of the power and authority of the Inka state" (Hyslop 2). Indeed, as part of their obligation to the Inca state, subject populations built and maintained the roads that regrouped them into the empire of their conquerors (Hyslop 2).

Montaigne's admiration for the Coliseum also begins to wane in other respects. He evokes ancient Roman processions, and the gladiatorial games to which they contributed, as examples of state financial "superfluité" and "excez" (III, 6, 905b). Montaigne also criticizes

sixteenth-century European monarchs for their similar mismanagement of state funds. ²²⁹ He mentions especially "nostre Royne Catherine [de Medici]," and explains that she "tesmoigneroit à longues années sa liberalité naturelle et munificence, si ses moyens suffisoient à son affection" (III, 6, 902c). He then laments that Pont Neuf had yet to be completed, and would not be in his lifetime: "La Fortune m'a faict grand desplesir d'interropre la belle structure du Pont neuf de nostre grand' ville et m'oster l'espoir avant de mourir d'en veoir en train l'usage" (III, 6, 902c). In short, Montaigne finds Catherine's natural liberality misplaced when it does not support civic development in France.

Montaigne leaves his disappointment over Pont Neuf and goes on to admire the completed and extensive civic infrastructure of Incan roads:

Quant à la pompe et magnificence, par où je suis entré en ce propos, ny Graece, ny Rome, ny AEgypte ne peut, soit en utilité, ou difficulté, ou noblesse, comparer aucun de ses ouvrages au chemin qui se voit au Peru, dressé par les Roys du pays, depuis la ville de Quito jusques à celle de Cusco (il y a trois cens lieuës), droict, uny, large de vingt-cinq pas, pavé, revestu de costé et d'autre de belles et hautes murailles, et le long d'icelles, par le dedans, deux ruisseaux perennes, bordez de beaux arbres qu'ils nomment molly. Où ils ont trouvé des montaignes et rochers, ils les ont taillez et applanis, et comblé les fondrieres de pierre et chaux. Au chef de chasque journée, il y a de beaux palais fournis de vivres, de vestements et d'armes, tant pour les voyageurs que pour les armées qui ont à y passer (III, "Des coches," 914c).

Montaigne's description of Incan roads echoes passages in Martin Fumée's French translation of Spanish historian Francisco Lopez de Gómara, who describes in detail Incan roads:

Il y a en ce païs deux grands chemins royaux depuis la ville de Quito iusques à celle de Cuzco, qui est vn oeuure d'aussi grand coust comme il est remarquable. L'vn est par les montagnes, & l'autre par les plaines, tous deux durent plus de 200 mil. Celuy qui est en la campagne est reuestu de muraille des deux costez, & est large de vingt-cinq pieds. Il a en dedans des fossez, ou petis ruisseaux pleins d'eau coulante perpetuellement, & dessus iceux ont esté plantez force arbres, qu'ils appellent Molli.

L'autre qui est en la motagne, est de mesme largeur, entaillé par dedans les rochers, & aux endroits où il y auoit des vallons trop creux, pour esgaller le chemin on les remplissoit de pierres massonnées auecques de la chaux. En somme, c'est vn oeuure, qui mesme au dire de tous ceux, qui ont veu l'vn et l'autre surpasse les Pyramides d'Egypte, et les grands chemins pauez des anciens Romains, & tous les edifices anciens (Fumée 5:440v).

²²⁹ James Supple has found that Montaigne puts forth a "critique implicite du comportement du roi espagnol" (88) concerning the ability of this unnamed king (Philip II) to manage affairs of state, especially its finances. See: James J. Supple, "Que n'est tombée soubs Alexandre ou soubs ces anciens Grecs et Romains une si noble conqueste? Montaigne et les conquérants de l'or," *BSAM*, Septième Série, Montaigne et le Nouveau Monde, No29-32 (Juillet-Décembre 1992 – Janvier-Juin 1993): 85-95, 88-89 and 91.

Gómara, like Montaigne, draws his readers' attention to a particular feature of Incan roads: the *tampu* ("tambo"), which Montaigne and Fumée both translate as "palais." Gómara reports:

Ces chemins vont tous droits sans auoir par dessus aucune colline, ny montagne, et sans s'aboutir à aucun lac, ou estang : & dessus de iournee, en iournee on void de beaux grands palais bastis, qu'ils appellet Tambos, où se logeoit la cour, & les armees des Roys Yngas. Ces Palais estoient garnis d'armes, des prouisions, de vestemens, & des souliers pour les soldats : les païs d'enuiron estoient tenus de fournir tous ces chasteaux de tels choses (Fumée 5:440v-441r).

The *tampu* that lined Incan roads, Hyslop has explained, represented a state initiative "of free lodging for travelers in specific structures maintained by the local community" (Hyslop 276). The *tampu* were only a day's walk apart and primarily lodged travelers on state business (275). Local communities maintained these structures by stocking them with "food, fodder, firewood, and other commodities (clothing, arms, etc.)" (275). Thus, in contrast to the Roman gladiatorial games, the Incan highway system offered Amerindians civic services: mobility and road-side accommodations.

Montaigne appears to put his New World reading towards a *distinguo*, in which he evokes the similarities and differences between Roman and Amerindian processions.²³⁰ In the *distinguo cedo*, Montaigne concedes the necessity of coaches in times of war, and the ingenuity of the gladiatorial games to which Roman processions contributed. In the *distinguo nego*, however, Montaigne redirects his concessions from the Roman processions he has mentioned and the Coliseum. He subtly defends instead Atahualpa's procession and openly admires Incan roads. Indeed, Atahualpa's procession is the only one that Montaigne mentions that meets all three of his conditions for using coaches. Atahualpa did not intend his ostentatious procession to impress his subjects. Rather, it could confer to him some degree of tactical advantage in his parlay with the Spaniards. The Peruvian king put this advantage towards his attempt at

²³⁰ As Steven Rendall has shown, *distinguo* is a technique that "derives from the language of medieval dialectics"; it "referred to the act of drawing a distinction, and eventually came to designate the distinction itself." Steven Rendall, *Distinguo, Reading Montaigne Differently* (Oxford: Clarendon Press, 1992) 27.

maintaining the independence of his people from the Spanish. Otherwise put, Atahualpa's procession sought a domestic good, just as the roads upon which it occurred also represented for Montaigne an ingenious and financially responsible civic good.

That Montaigne can justify Atahualpa's procession indicates that he does not interpret its associated events as provoking Spanish conquest. Montaigne thus joins Vitoria, for whom the Spanish could not rightly conquer the New World because Amerindians such as Atahualpa chose not to convert to Christianity. Montaigne's acceptance of the Peruvian king's procession is thus also his counterargument to European justifications for colonizing Amerindians.

Furthermore, when Montaigne uses *distinguo* in order to refute these justifications, he suggests his practice of equity. As I argued in the previous chapter, judging by *distinguo* and equity are interrelated procedures for Montaigne. Montaigne's *distinguo* in "Des coches" again indicates this interrelation. Montaigne uses *distinguo* to distinguish the similarities, as well as the differences, between Roman and Amerindian processions. His *distinguo* thereby suggests his combined use of it with another rhetorical strategy upon which practitioners of equity relied: *locus a simili*. Jurists referred to *locus a simili* in order to establish that

deux choses [ont] beaucoup de points communs, mais aussi des différences. C'est le lieu qui autorise l'extension d'une loi aux cas similaires ... et fourni la définition juridique de l'équité ... : ... l'application des mêmes lois dans des cas similaires. ²³¹

Locus a simili enabled a practitioner of equity to put two legal cases, or two parties at trial, on equal footing, according to their figurative common ground. In his consideration of Roman and Amerindian processions, Montaigne finds common ground. When Montaigne implicitly associates the *conquistadores* with the Roman usurpers whose processions he lists, he also implies that the Spaniards transplanted the Roman triumph to the Americas. Under the armored-

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²³¹ Ian Maclean, "Montaigne et le droit civil romain," in *Montaigne et la rhétorique, Actes du Colloque de St. Andrews*, 28-31 mars 1992, eds. John O'Brien, Malcom Quainton and James J. Supple (Paris: Honoré Champion Éditeur, 1995)163-176, 172.

foot and horses-hoof of the *conquistadores*, the same Incan roads that bore Atahualpa to his parlay with the Spaniards became highways of Spanish triumph. The common ground to which Montaigne points is thus the Incan road system, which, according to Gómara, both the Inca and the *conquistadores* used.²³²

Montaigne's Practice of Equity in "Des coches"

Montaigne challenges the value system that structured European debates of colonization when he implicitly questions papal land claims in the New World and Spanish assertions of 'just' conquest in the Americas. However, Montaigne goes the next step and criticizes Europeans for the way that they invoked their value system. At the outset of "Des coches," Montaigne reminds his readers that legal discourse and action should not favor whoever wielded them. Rather, legal decisions should be to the benefit of whoever is on trial:

[C] La jurisdiction ne se donne point en faveur du juridiciant, c'est en faveur du juridicié. On fait un superieur, non jamais pour son profit, ains pour le profit de l'inferieur, et un medecin pour la malade, non pour soy. Toute magistrature, comme toute art, jette sa fin hors d'elle: « nulla ars in se versatur »²³³ (III, 6, 903c).

Montaigne's reminder subtly accuses Europeans of bias in their legal debates about New World colonization. If Europeans are to debate colonizing the New World, Montaigne argues, they should do so without the goal of finding a legal justification for their colonialism.

In "Des coches," Montaigne also turns his attention to the colonial discourse that emerged from European debates of colonization. This discourse, because of its partiality to European values, took the form of a list of demands. The Spanish claimed land from the Amerindians and then requested that New World peoples become their tributaries. In particular,

Not only has Gómara described the procession of Atahualpa, but he also comments upon the Spanish use of Incan roads: "Noz Espagnols, par leurs guerres ciuiles, ont ruiné ces chemins..." (Fumée 5:441r).
 "Nul art n'est enfermé en lui-même' (Cic., *De finibus*, V, VI.)" (III, 6, 903, Villey footnote 4).

the Spanish asked New World peoples to provide them with food goods and gold. Finally, the Spanish sought to convert Amerindians to Christianity. Montaigne lists these European demands in "Des coches":

En costoyant la mer à la queste de leurs mines, aucuns Espagnols prindrent terre en une contrée fertile et plaisante, for habitée, et firent à ce peuple leurs remonstrances accoustumées: Qu'ils estoient gens paisibles, venans de loingtains voyages, envoyez de la part du Roy de Castille, le plus grand Prince de la terre habitable, auquel le Pape, representant Dieu en terre, avoit donné la principauté de toutes les Indes ; Que, s'ils vouloient luy estre tributaires, ils seroient tresbenignement traictez ; leur demandoient des vivres pour leur nourriture et de l'or pour le besoing de quelque medecine ; leur remontroient au demeurant la creance d'un seul Dieu et la verité de nostre religion, laquelle ils leur conseilloient d'accepter, y adjoustans quelques menasses (III, 6, 911b).

Where Montaigne concisely reproduces the requests of the *conquistadores*, he takes almost an entire page (III, 6, 911b) to present the responses of the Amerindians. Montaigne's inclusion of these lengthy Amerindian responses transforms the European colonial discourse into a conversation. Moreover, in their responses to the Spanish, Amerindians "systematically and masterfully [confute]" (Duval 106) each of the European demands.

According to Duval, Montaigne "imagines" the responses of the Amerindians (106). He did not have to stretch his imagination too far, however, to present the conversation that he includes in "Des coches." Indeed, in this essay Amerindians echo Atahualpa's responses to Brother Vincent's demands:

...il [Atahualpa] ne vouloit point estre tributaire puis qu'il estoit libre, ni penser qu'il y eust plus grand seigneur que lui. Mais qu'il vouloit bien estre amy de l'Empereur, & le congnoistre : car ce deuoit estr vn grand Seigneur, puis qu'il enuoioit tant d'armees par le monde: Et ne vouloit point obeïr au Pape, puis qu'il donoit ce qui apparentoit à autrui, ni moins laisser son Roiaume paternel à celui qu'il n'auoit iamais veu. Et quant à la religion il dit que la sienne estoit fort bonne, & qu'il se trouuoit bien auec icelle, qu'il ne vouloit point, & aussi qu'il ne lui estoit pas seant, mettre en dispute, & controuerse vne chose de si longtemps approuuee... (Fumée 5:312r-v).

Montaigne's Amerindians reiterate Atahualpa's rationale not to convert to Christianity:

Quant à un seul Dieu, le discours leur en avoit pleu, mais qu'ils ne vouloient changer leur religion, s'en estans si utilement servis si long temps, et qu'ils n'avoient accoustumé prendre conseil que de leurs amis et connoissans... (III, 6, 911b).

They also join Atahualpa in his assessment that the Pope is an "homme aymant dissention, d'aller donner à un tiers chose qui n'estoit pas sienne, pour le mettre en debat contre les anciens possesseurs" (III, 6, 911b).

However, Montaigne does elaborate upon Atahualpa's example. In particular, his Amerindians respond that they would not fail to provide the Spanish with commodity goods:

Quant aux vivres, qu'ils leur en fourniroient ; D'or, ils en avoient peu ... pourtant ce qu'ils en pourroient trouver, sauf ce qui estoit employé au service de leurs dieux, qu'ils le prinssent hardiment (III, 6, 911b).

Otherwise put, the Amerindians did not prohibit trade with the Spanish. Nor did they outright obstruct the Spanish from travelling throughout the New World:

Quant aux menasses, c'estoit signe de faute de jugement d'aller menassant ceux desquels la nature et les moyens estoient inconneux ; Ainsi qu'ils se despeshassent promptement de vuyder leur terre, car ils n'estoient pas accoustumez de prendre en bonne part les honnestestez et remonstrances de gens armez et estrangers ; autrement, qu'on feroit d'eux comme de ces autres, leur montrant les testes d'aucuns hommes justiciez autour de leur ville (III, 6, 911b).

As this passage indicates, the Amerindians restrict only the travel of the *conquistadores* because of their threats. Impeding trade and travel in the Americas were two caveats that Vitoria granted the Spanish for waging a 'just' war against Amerindians (Anaya 18). Therefore, Montaigne likely invents these two Amerindian responses in order to emphasize that New World peoples did not give the Spanish any 'just' cause to colonize them.

Beyond testifying to the fact that Amerindians did not provoke European colonization, the Amerindian-Spanish conversation that Montaigne includes in "Des coches" is consistent with his practice of equity in this essay. As I have shown, the content of this conversation suggests that Montaigne takes his cue from Vitoria's arguments, which would render this Spaniard an important forefather of contemporary international law and equity. In addition, the structure of this conversation indicates Montaigne's use of equity. In his analysis of the *Heptaméron*, Langer has shown the equality among parties that equity achieves: "tous les devisants sont 'egaux,'

c'est-à-dire que tous sont capables de commander la parole et de juger des nouvelles qui leur sont présentées" (195). Like the "devisants" in the *Heptaméron*, the Amerindians in "Des coches" are able to speak and judge as much, if not more, than are the *conquistadores*. In their lengthy responses to the Spaniards, the Amerindians evaluate (i.e. judge) each demand that the *conquistadores* articulate. Thus, the Amerindian-Spanish conversation that Montaigne presents in "Des coches" demonstrates his own use of equity as a rhetorical strategy in this essay.

More than demonstrate Montaigne's practice of equity, however, this conversation also exhibits the "good judgment" (Tournon *Route par ailleurs* 326) of the Amerindians themselves. Indeed, beyond challenging European viewpoints of the *conquista*, Montaigne "enjoins the reader" to see Spanish conquest of the New World "through the viewpoint of the American" (Hampton 225). For Montaigne's readers to see the *conquista* from the standpoint of the New World natives, they must first abandon their faulty judgment ("c'estoit signe de faute de jugement d'aller menassant ceux desquels la nature et les moyens estoient inconneux," III, 6, 911b). Hence, Montaigne uses equity to challenge papal and Spanish land claims in the New World, to accuse Europeans of bias in their legal debates about colonization, and to refute the European colonial discourse. However, if readers are to understand the Amerindian perspective of the *conquista*, they must do more than shed their own viewpoints and previous judgments. They must learn to judge Spanish conquest of the New World as the Amerindians did.

The End of the World(s)

According to Montaigne, sixteenth-century Europeans judged the Old World as past its zenith and rapidly approaching its end. He frames his observation on European conceptions of

time within their discovery of the New World: "Si nous concluons bien de nostre fin, et ce poëte de la jeunesse de son siecle, cet autre monde ne faira qu'entrer en lumiere quand le nostre en sortira"²³⁴ (III, 6, 908b). However, Montaigne ultimately criticizes his readers for interpreting their Old World as such: "Comme vainement nous concluons aujourd'hui l'inclination et la decrepitude du monde par les arguments que nous tirons de nostre propre foiblesse et decadence, *Jamque adeo affecta est aetas, affectáque tellus*²³⁵" (III, 6, 908b).

Rather than their temporal miscalculations, however, it is the way by which Europeans reckoned the age of the Old World and the New that Montaigne criticizes: "par les arguments que nous tirons de nostre propre foiblesse et decadence" (III, 6, 908b). Montaigne intimates that Europeans correlated the advancements of their own civilization with progressed age. For instance, the Old World had accumulated a centuries-worth of literature. In contrast, Europeans found that Amerindians did not possess alphabetic literature and therefore interpreted the New World as young – "on luy aprend encore son a, b, c" (III, 6, 908b). 236

In contrast to Europeans, however, Amerindians judged their own world not as new or young but as rapidly approaching its end. Montaigne explains:

Ceux du Royaume de Mexico estoient aucunement plus civilisez et plus artistes que n'estoient les autres nations de là. Aussi jugeoient-ils, ainsi que nous, que l'univers fut proche de sa fin, et en prindrent pour signer la desolation que nous y apportames (III, 6, 913-14b).

Montaigne's gesture to Aztec civilization indicates that he considers the 'New World' from the vantage point of its native inhabitants. The "Five Suns," the Aztec creation story which

²³⁴ The poet to whom Montaigne refers is Lucretius (III, 908, Villey footnote 12).

²³⁵ "Tant désormais notre âge n'a plus la même vigueur, ni la terre la même fertilité" (Lucr., II, 1136)" (Villey, 908, footnote 6).

²³⁶ Walter D. Mignolo provides detailed analyses of the role that European conceptions of literature and literacy played in European colonization of the Americas. See his book *The Darker Side of the Renaissance*, *Literacy*, *Territoriality*, & *Colonization* (Ann Arbor: University of Michigan Press, 2003). The first edition of his study appeared in 1995.

Montaigne summarizes in "Des coches" (III, 6, 914b),²³⁷ tells of four worlds or Suns that existed before the fifth one during which the sixteenth-century Aztec lived. The gods sent different forms of cataclysmic supernatural destruction to end each world, before the next one was "brought into being when a certain god died or sacrificed himself to be reborn as [its] sun" (Brundage 27-28). Montaigne's presentation of the Five Suns acts to substantiate his observation that both sixteenth-century Europeans and Aztec judged the universe as nearing its end. The length of Aztec history, which spanned five distinct worlds, teaches Montaigne's readers that the Aztec civilization was old rather than new.

However, where Montaigne criticizes Europeans for the ways that they estimated the age of their world, he validates how the Aztec reckoned the age of theirs. Montaigne explains: "...leur nombre de ce quatriesme changement rencontre à cette grande conjonction des astres qui produisit, il y a huict cent tans d'ans, selon que les Astrologiens estiment, plusieurs grandes alterations et nouvelletez au monde" (III, 6, 914b). Montaigne thus implies that, while his readers incorrectly estimated the ages of both the Old World and the New, the Amerindians correctly calculated the age of their previous world.

The accuracy that Montaigne confers to the Amerindians thus serves to substantiate their appraisal for the end of the fifth Sun: "la desolation que nous y apportames" (III, 6, 914b). "Ce qu'ils estiment de la maniere que ce dernier Soleil perira," Montaigne explains, "mon autheur n'en a rien appris" (III, 6, 914b). 238 Gómara does include a singular event in his history, however, which reveals that the Aztec attributed the end of the fifth Sun to Europeans. The

²³⁷ Montaigne learned the Aztec creation story from his reading of Gómara (Fumée 2:158r-59r).

²³⁸ Gómara is the author to whom Montaigne refers. See Donald M. Frame's footnote in his translation of the *Essais, Michel de Montaigne, The Complete Works* (New York: Everyman's Library, Alfred A. Knopf, 2003) 848, footnote 5.

Spanish historian reports that an Aztec nobleman implored Cortés, in combination with the Sun, to end their world quickly:

...puisque tu [Cortés] es fils du Soleil, que ne fais tu auec lui que ceci finisse bien tost? Et vous Soleil, qui pouuez tourner à l'entour de ce monde en si peu d'espace du temps comme est vn iour & vne nuict, pourqoui ne nous tues-tu maintenant, & pourqoui ne nous ostes-tu d'vne si logue demeure? puisque des-ia nous desirons la mort... (Fumée 2:126v).

The Aztec nobleman uses the second-person singular twice, the first of which is when he identifies Cortés as the son of the Sun. The Amerindian then uses the second-person plural to recognize formally his god the 'Sun,' who could refashion the world in a short period of time. His statements taken together, the Aztec nobleman interprets Cortés as an emissary of the fifth Sun. Thus, the Amerindian's return to the second-person singular likely represents his specific appeal to Cortés. In desperation, the Aztec nobleman requests that Cortés complete quickly his task of world destruction. Gómara reports that the Amerindians in the company of the Aztec nobleman wept upon witnessing his plea (Fumée 2:16v). Indeed, the words of the Aztec nobleman even rendered Cortés speechless and moved him to compassion for the Amerindians: "Cortés ne lui feit autre response. Mais eut grande compassion les voiant si opiniastres" (Fumée 2:126). Montaigne alludes to this striking episode that Gómara includes in his history when in "Des coches" he summarizes the "Five Suns" and attributes the desolation of the sixteenth-century Aztec world to the *conquistadores*.

Beyond alluding to the end of the Aztec fifth Sun, however, Montaigne explicitly ascribes the fall of Amerindian civilization to the Spanish:

...pour ceux qui les [Amerindiens] ont subjuguez, qu'ils ostent les ruses et batelages dequoy ils se sont servis à les piper, et le juste estonnement qu'aportoit à ces nations là de voir arriver si inopinéement des gens barbus, divers en langage, religion, en forme et en contenance, d'un endroict du monde si esloigné et où ils n'avoyent jamais imaginé qu'il y eust habitation quelconque, montez sur des grands monstres incogneuz, contre ceux qui n'avoyent non seulement jamais veu de cheval, mais beste quelconque duicte à porter et soustenir homme ny autre charge; garnis d'une peau luysante et dure et d'une arme trenchante et resplendissante, contre ceux qui, pour le miracle de la lueur d'un miroir ou d'un couteau, alloyent eschangeant une grande richesse en or et en perles, et qui n'avoient ny science ny matiere par où tout à loisir ils sçeussent percer nostre acier; adjoustez y les foudres et tonnerres de nos pieces et harquebouses, capables de

troubler Caesar mesme... contez, dis-je, aux conquerans cette disparité, vous leur ostez toute l'occasion de tant de victoires (III, 6, 909-910b).

In his analysis of this "glorious sentence," Timothy Hampton has noted "grammatical incongruities" that "[blur] the distinction "between 'we,' the Europeans and 'they,' the Americans" (222). Montaigne first presents Europeans and Amerindians as two societies from which his readers are separated (Hampton 222). That is, Montaigne uses third-person pronouns to describe both Europeans ("ceux qui") and Amerindians ("les"). After rendering the European as much a stranger to his readers as the Amerindian, Montaigne then invokes the perspective of the New World native. European chroniclers of the *conquista* generally did not offer reasons for its success, apart from the favor of God which they believed they had in their endeavors. Not only does Montaigne enumerate reasons for its success, but he also does not use European vocabulary, such as 'armor' or 'firearms,' to describe the *conquistadores*. As a result, he enables his early modern European readers to see both the *conquista* and their "familiar world of horses and guns" through the lens of "another culture" (Hampton 224). In short, Montaigne "[assimilates]" his readers to the "perspective of the American" (Hampton 225).

While Montaigne does not associate his description with any one Amerindian civilization, it nevertheless harmonizes with the Incan reaction to the end of their world. In fact, Montaigne enumerates reasons for the success of the *conquista* similar to those given by Titu Cusi in his *Instrucción del Inca don Diego de Castro Titu Cusi Yupangui para el muy ilustre* Señor el Licenciado Lope García de Castro (1570):

1997) 30-31.

²³⁹ The *Inter Caetera Papal Bull* and the *Requerimiento* interpret European colonization of the New World as consistent with the will of God. See also: Francisco Morales Padrón, *Historia del Descubrimiento y Conquista de América* (Madrid: Editora Nacional, 1963) "Justificación de la conquista," 169-176. European travel writers and historians further emphasized the sanctity of European colonization in their presentations of New World peoples as either tormented by the devil, or in league with him. Olive P. Dickason, *The Myth of the Savage, and the Beginnings of French Colonialism in the Americas* (Edmonton, Alberta, Canada: The University of Alberta Press,

...los cuales decían que habían visto llegar a su terra ciertas personas muy diferentes de nuestro hábito y traje que parecían viracochas, que es nombre con el cual nosotros nombramos antiguamente al criador de todas las cosas diciendo Tecsi Viracochan, que quiere decir principio y hacedor de todo. Y nombraron de esta manera a aquellas personas que habían visto, lo uno porque diferenciaban mucho en nuestro traje y semblante y lo otro, porque veían que andaban en unos animales muy grandes, los cuales tenían los pies de plata y esto decian por el relumbrar de las herraduras, y también les llamaban así porque les habían visto hablar a solas en unos paños blancos como una persona hablaba con otra y esto por el leer en libros y cartas, y aun les llamaban viracochas por la excelencia y parecer de sus personas y la mucha diferencia entre unos y otros, porque unos eran de barbas negras y otras bermejas, y porque les veían comer en plata, y también porque tenían illapas, nombre que nosotros tenemos para los truenos, y esto decían por los arcabuces porque pensaban que eran truenos del cielo (Legnani 75).

...they seemed like Wiraquchas [Viracochas] – which is the name that we gave in ancient times to the creator of all things – saying Tiqsin Wiraquchan, which means the beginning and maker of all things. And they named, in this way, these people whom they had seen, because they were very different in clothing and appearance, and because they rode some very large animals, silver footed, and they said this because of the shining of their horse-shoes. And they also called them Wiraquchas because they had seen them speak to themselves in some painted clothes as one person speaks to another and this they said for the reading of books and letters. And they called them Wiraquchas because of their excellent appearance and the great differences among them: because some had black beards and others none; and because they saw them eat on silver plates; and because they had Illapas – name that we give to thunder – and this they said for the muskets they fired because they thought they were lightning bolts from the sky (Legnani 135).

Titu Cusi was the grandson of Wayna Qhapaq, and the nephew of Atahualpa and Huascar; he ruled the Inca from 1563 to 1571. In his narrative, Titu Cusi relates the return of Pizarro in 1532, and the capture and execution of his uncle Atahualpa at the hands of the *conquistadores*. He then describes the rule of his father Manku Inqa (1534 – 1544); during this period, the Inca and the Spanish contended with each other for sovereign control of Peru. His narrative concludes with the Spanish assassination of his father in 1544.

While the history of the *Instrucción* makes it unlikely for Montaigne to have read this work, ²⁴⁰ the reasons that Titu Cusi gives for the success of the *conquista* are consistent with the narratives of two other authors. The above passage from the *Instrucción* harmonizes with several from the Inca Garcilaso de la Vega's *Comentarios Reales de los Incas* (1609) and

²⁴⁰ According to Legnani, selected passages from the *Instrucción* were not published until 1877, and this work was not published in its entirety until 1916. See the "Introduction" she provides to her edition of Titu Cusi's *Instrucción* (1-53, particularly 1-6).

Historia General del Perú (published posthumously in 1616).²⁴¹ Garcilaso was born in Peru (1539) to the *conquistador* Sebastián Garcilaso de la Vega Vargas and the Incan princess Isabel Suárez Chimpu Ocllo, or Palla Chimpu Ocllo. In 1560, he sailed for Spain with the hope of becoming a courtier; later, disenchanted by the same courtly desires that brought him to Europe, he considered returning to Peru. However, he decided to remain in the Old World and try his fortune in the army (Gerzenstein 21-22). As a soldier, Garcilaso lived various places throughout Western Europe from 1560 until his own death in Córdoba in 1616. He also enjoyed a vast acquaintance.²⁴² Even though the publication dates of the *Comentarios Reales* and the *Historia General del Perú* fall after the death of Montaigne (1592), it is possible that Montaigne learned Incan perspectives of the *conquista* from second- or third-hand information that originated with Garcilaso.

The explanations that Montaigne, Titu Cusi and Garcilaso present of the contact between the *conquistadores* and the Inca are also consistent with several passages in the *Suma y narración de los Incas* (1551 or 1557) by Juan de Betanzos.²⁴³ Betanzos was Spanish, but spent his adult life in the Spanish Viceroyalty of Peru as its respected Quechua interpreter. In 1541, he married Atahualpa's widow, Doña Angelina Yupanque. His marriage into the royal Incan family positioned Betanzos to recount in his *Suma* a wealth of insights into Incan religious ideology, history, and traditions. According to Roland Hamilton, "Betanzos gives no indication that he aspired to publish his work"; yet, "someone took the work back to Spain" (xii). However, no

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²⁴¹ Ana Gerzenstein, ed., *Inca Garcilaso de la Vega*, *Comentarios Reales Tomo I* & 2 (Buenos Aires: Editorial Plus Ultra, 1967) see especially chapter 21 "Del nombre viracocha, y por qué se lo dieron a los Españoles" (50-53). *Historia general del Perú : trata el descubrimiento del, y como lo ganaron los españoles, las guerras ciuiles que huuo entre Piçarros, y Almagros, sobre la partija de la tierra, castigo y leuantamiento de tiranos, y otros sucessos particulares ... / escrita por el Ynca Garcilasso de la Vega ..., En Cordoua : por la Viuda de Andres Barrera, y à su costa, 1616. See especially Libro I: 12r-v, 13r, 16r, 19v, 20v, 32r-v; Libro II: 43r, 44r-v, 52v, 58r-v, 59v, 66v. This book is available online through Hathi Trust Digital Library.*

²⁴² For insights into his acquaintance see Gerzenstein 21.

²⁴³ See in particular Betanzos 247-50, 258-59.

one mentions the *Suma* before Father Gregario Garcia, who conveys in his *Origen de los indios de el Nuevo Mundo* (1607) that he relied upon Betanzos (Hamilton xii). Nevertheless, it is possible that Montaigne heard of the *Suma* and even became familiar with its contents after it was brought to Europe.

Of course, I do not point out consistencies between passages in "Des coches," the *Instrucción*, the *Commentarios Reales*, the *Historia del Perú*, or the *Suma* to argue that Montaigne somehow had access to the contents of these works, even though it is possible that he did. Rather, I mention these consistencies in order to emphasize the Amerindian perspective of the *conquista* that Montaigne includes in "Des coches." The viewpoint of the New World native that Montaigne conveys especially harmonizes with the reactions of the Inca to the *conquista*.

Montaigne's inclusion of New World viewpoints is consistent with his practice of equity. As I argued in the previous chapter, equity requires its practitioners to draw upon the parties whom they arbitrate. In his *Nicomachean Ethics*, Aristotle compares the practice of equity to the flexible Lesbian ruler that masons used to measure irregular building stones:

For when the thing is indefinite the rule also is indefinite, like the leaden rule used in making the Lesbian moulding; the rule adapts itself to the shape of the stone and is not rigid, and so too the decree is adapted to the facts. ²⁴⁴

As this passage indicates, the practitioner of equity adjusted the established laws of his society in order to conform to case particularities. Otherwise put, case particularities guided the way that a jurist bent established laws. Thus, practitioners of equity drew upon case particularities in their practice of this legal procedure.

²⁴⁴ Richard McKeon, ed., *The Basic Works of Aristotle* (New York: Random House, 1941) 1020. See also the *Annotationes in Pandectas* (1551) of Guillaume Budé (1467 – 1540), a magistrate of the Parlement, in which he adopts Aristotle's discussion of equity from the *Nicomachean Ethics*. In his commentary on equity, "Budé cite l'exemple de la règle de plomb de Lesbos qui s'adapte aux pierres dans la construction: lorsqu'il est impossible d'adapter la disposition des pierres à la règle, il faut adapter, pour les besoins d'une construction précise, la règle à la disposition des pierres." Ullrich Langer, "Équité et nouvelle 'encadrée' (*L'Heptaméron*)," *Éthique et droit, du Moyen Âge au siècle des Lumières* (2012): 189-203, 190-91.

However, medieval and early modern legal theoreticians went one step beyond Aristotle. Rather than describe the process of equity as similar to the Lesbian ruler, they identified the jurist who practiced equity as the Lesbian ruler. That is, medieval and early modern legal theoreticians recognized the practitioner of equity as "a *lex loquens*, the embodiment of the flexible measuring rule of Lesbos" (Maclean *Interpretation and Meaning* 177). This status indicates that, when a practitioner of equity retreated into his soul to discover how to broach parties at trial, he took the particularities of the case with him and thereby became the locus of their convergence. This convergence would transform the jurist, so that he became like the malleable ruler of Lesbos which could metamorphose to fit each item it measured. In short, the practitioner of equity conformed himself to the parties at trial in order to adjust the established laws of his society.

Hence, the jurist who practiced equity did not hold himself outside of his judgment. Indeed, the way that a jurist practiced equity was specific unto him and corresponded to the particular case before him: "the discretion of the adjudicator conditioned the resort to and application of equity." It is for this reason that early modern jurists, including Montaigne, used the expression "comme de raison" in their verdicts to indicate that they had judged subjectively by equity. In its judicial context, then, "raison" denoted a magistrate's exercise of his own discretion within clearly defined legal parameters; these parameters corresponded to their particular case and were determined by established laws, legal precedent, and the jurist's

Career," EMF 9 (2004): 58-76.

²⁴⁵ Katherine Almquist associated early modern legal interpretation with Montaigne's self-portrait in the *Essais*. In particular, she suggested that the pluralism and diversity of legal interpretation resonated with the pluralism and diversity of Montaigne's self-portrait. Katherine Almquist, "Writing Pluralist Biography of Montaigne's Legal

²⁴⁶ Christopher R. Rossi, *Equity and International Law, A Legal Realist Approach to International Decisionmaking* (Irvington, New York: Transnational Publishers, Inc., 1993) 24.

²⁴⁷ See Katherine Almquist, "Judicial Authority in Montaigne's Parliamentary *Arrêt* of April 8, 1566," *Montaigne Studies*, 10.1-2 (1998): 211-228, 223.

superiors and colleagues (Almquist "Judicial Authority" 223). The judicial valence of "raison" informs Montaigne's *Essais* where he defines reason as

cette apparence de discours que chacun forge en soy : cette raison, de la condition de laquelle il y en peut avoir cent contraires autour d'un mesme subject, c'est un instrument de plomb et de cire, alongeable, ployable et accommodable à tous biais et à toutes mesures ; il ne reste que la suffisance de le sçavoir contourner" (II, "Apologie," 565a).

For Montaigne, reason is unique to each individual person, functions at her discretion, and measures like the Lesbian ruler. As I indicated in chapter one, Ian Maclean has interpreted Montaigne's definition of reason as suggesting his practice of equity ("Montaigne et le droit civil romain" 167). Indeed, Maclean has concluded that "équité ... c'est la raison humaine selon Montaigne" ("Montaigne et le droit civil romain" 167). Montaigne's definition of reason, and its judicial context, both confirm that practitioners of equity exercised their personal discretion in the cases over which they presided.

The personal magisterial discretion that characterizes judicial equity has historically posed problems for legal practitioners and academics and still does today (Rossi 24, 27). In 1536,

les députés des États de Savoie demandèrent à François 1er d'astreindre leurs juges à « juger selon les loix, statuts, mœurs et coustumes de leurs pays, sans qu'il leur fut licite de juger autrement, soubs couleur d'equité ». ²⁴⁸

However, magistrates of the Parlement, such as Guillaume Budé, maintained that equity was essential to jurisprudence:

La cour souveraine a le pouvoir de juger en dernier ressort (ultimam causarum disceptationem) ; et, si elle veut user de son droit, elle peut juger par équité, et même instituer ainsi un droit jurisprudentiel (exemplarem) ; toutefois, dans la plupart des cas elle se conforme aux lois et aux usages (*Forensia*, 1548, p. 254, in Tournon *La glose* 188).

As this passage indicates, the magistrates of the Parlement reserved the right to exercise equity, albeit discretely. In the following century, Hugo Grotius (1583-1645), "perhaps the greatest of

²⁴⁸ André Tournon, *Montaigne, La glose et l'Essai* (Lyon: Presses Universitaires de Lyon, 1983) 188.

all classical international legal theorists" (Rossi 25), and Samuel Pufendorf (1632-1694), "the greatest of the classical German natural law theorists" (Rossi 25), defended equity at the same time that they urged jurists to be prudent in their exercise of this judicial procedure (Rossi 27). In *The Rights of War and Peace*, ²⁴⁹ Grotius encouraged practitioners of equity not to render their "selves" sovereign to the laws they were responsible for upholding (Rossi 27). The 'self' of the jurist was the site where he put case particularities into convergence, which in turn guided his adjusting of established laws. Thus, Grotius specifically cautioned jurists from privileging their ability to bend laws over the laws themselves.

In sum, practitioners of equity consulted their souls, or "selves" (Rossi 27), in order to render their judgments. In this process of consultation, an early modern jurist exercised his own unique reason by internalizing the case particularities before him, moulding himself to them like the Lesbian ruler, and conforming his verdict to them. Since practitioners of equity personally involved themselves in the cases over which they presided, they necessarily had to be prudent in their exercise of this legal procedure. Not only do sixteenth-century jurists in Savoie, Budé, Grotius, and Pufendorf acknowledge the abuse of equity by jurists who privileged their "selves" too much, but so also does Montaigne: "[nous] avons tant laissé à opiner et decider à nos juges, qu'il ne fut jamais liberté si puissante et si licencieuse" (III, "De l'experience," 1066b). In light of Montaigne's critique of judicial freedom, readers of "Des coches" may expect his exercise of equity to be responsible. That is, rather than circumvent completely the early modern European

of the Royal Academy of Sciences at Berlin (London: printed for W. Innys and R. Manby, J. and P. Knapton, D.

²⁴⁹ 1738, originally published in 1625 in Latin under the title *De juri belli ac pacis*. The complete title of the English translation is: *The rights of war and peace, in three books. Wherein are explained, the law of nature and nations, and The Principal Points relating to Government. Written in Latin by the learned Hugo Grotius, and translated into English. To which are added, all the large notes of Mr. J. Barbeyrac, Professor of Law at Groningen, And Member*

Brown, T. Osborn, and E. Wicksteed, 1738). This book is available online through the British Library. ²⁵⁰As Tournon has explained, equity "n'était pas une facilité: du fait même qu'il [jurist] pouvait s'écarter du droit strict, il était conduit à s'interroger en son âme et conscience sur le bien-fondé des prescriptions légales et surtout des interprétations reçues qui en déterminaient l'application" (*La glose* 188).

context that sanctioned colonization of the New World, Montaigne personally identifies with both Europeans and Amerindians in their struggle for the Americas. Montaigne's consultation of European and Amerindian perspectives through equity leads him to draw upon coaches and his own relationship with them.

Montaigne and procession vehicles

Montaigne defines coaches, litters, ships, and horses as comparable 'vehicles' when he observes that he cannot stomach being in almost any of them: "Or je ne puis souffrir long temps [...] ny coche, ny littiere, ny bateau; et hay toute autre voiture que de cheval, et en la ville et aux champs" (III, 6, 900a). In this sentence, Montaigne groups coaches, litters, ships, and horses as comparable "carriages" or "carts" when he defines them all as "voiture." Thus, when Montaigne associates the vehicles that he lists under the term "voiture," he analogizes them. Montaigne has discussed coaches according to their procession contexts in the Old World and the New. Thus, when he uses analogy to associate coaches with the vehicles that he lists, he confers to litters, ships, and horses the possibility of signifying processions.

When Montaigne begins to draw new and rich significations from the vehicles that he lists, he follows Cicero's advice to practitioners of equity (Hubbell, *Topica* 2:310 and 316, note a). The jurist who practiced equity translated new definitions from language, particularly the language of the law, to accommodate the unforeseen particularities of cases. In *Topica*, Cicero explains to the practitioner of equity that

... [he] will profit greatly by converting something in the written document to his own case or by showing that it contains some ambiguity; then on the basis of that ambiguity he may defend the

²⁵¹ Randle Cotgrave, *A Dictionarie of the French and English Tongves*, London, 1611 (Amsterdam: Da Capo Press Theatrvm Orbis Terrarvm Ltd, 1971).

passage which helps his case, or introduce a definition of some word and interpret the meaning of the word which seems to bear hard upon him, so as to support his own case, or develop from the written word something that is not expressed.²⁵²

In short, Cicero encourages the practitioner of equity to modify words and thereby turn them to his advantage. In the original Latin, Cicero specifies that the judicial procedure of equity would allow a jurist to translate ("traducere") from any given word a new sense, through "ratiocination" (Hubbell, *Topica* 2:310). Hubbell translates "ractiocination" as "reasoning" (*Topica* 2:316, note a). However, its function is more pointed: "[to stretch] a statute to cover an analogous case" (Hubbell, *Topica* 2:316, note a). Otherwise put, Cicero encourages jurists to use analogy to draw new definitions from the language of the law, in order to accommodate unforeseen cases.

The procedure that Cicero recommends is similar to the linguistic phenomenon of semantic "broadening," during which the "meaning of a word broadens in scope." ²⁵³ In this process, a word acquires a secondary signification, or even multiple ones. Speakers' figurative use of words is one way that their semantics can broaden in scope (Sihler 99). To use words figuratively, speakers of any given language draw upon metaphors (Sihler 108). These metaphors always imply a comparison (Sihler 108). For instance, the word "mouth" has come to denote both an anatomical feature and an opening. "Mouth" has acquired these semantic meanings because "the mouth of a river or a jar is in some sense LIKE the anatomical mouth" (Sihler 108).

Similar to metaphors, analogies also imply comparisons. Cicero encourages practitioners of equity to use analogy to translate new significations from the word(s) under their consideration. However, "analogy is a very vulnerable procedure" because the jurist who

²⁵² H.M. Hubbell, trans., *Cicero; De inventione; De optimo genere oratorum; Topica*, vols. 1&2 (Cambridge, Harvard University Press, 1949) 2:311. The original Latin reads: "... qui contra scriptum dicet plurimum proderit, ex ipsa scriptura aliquid ad suam causam convertere aut ambigue aliquid scriptum ostendere; deinde ex illo ambiguo eam partem quae sibi prosit defendere aut verbi definitionem inducere et illius verbi vim quo urgueri videatur ad suae causae commodum traducere aut ex scripto non scriptum aliquid inducere per ratiocination..." (Hubbell 2:310). ²⁵³ Andrew L. Sihler, *Language History: An Introduction* (Philadelphia: John Benjamins Publishing, 2000) 31.

practices equity with analogy exposes himself to potential criticisms.²⁵⁴ That is, each of his analogies represents a comparison that, to someone other than himself, could be found invalid either in part or in whole (Maclean *Interpretation and Meaning* 80). In light of the risks, Maclean has argued, Cicero finds that the interrelated practice of equity and analogy deserves praise: "that form of equity which desires the same law to be applied to the same cases is to be commended" ("valeat aequitas, quae paribus in causis paria iura desiderat") (*Topica*, quoted in *Interpretation and Meaning* 80).

Montaigne mentions "ratiocination" twice in the *Essais*, both of which are in the "Apologie," and which Maclean has interpreted as instances where Montaigne implicitly "[désigne] l'argument tiré de l'analogie."²⁵⁵ However, I suggest that Montaigne's analogizing coaches to litters, ships, and horses is a step in his practice of equity. That Montaigne uses equity to draw from these words additional significations aligns with his critique of *communis usus loquendi*. As I discussed in chapter one, Bartolus de Saxoferrato (1314-1357) proposed that the common usage of a language – *communis usus loquendi* – elucidates obscurities in laws and inform a jurist's judgment (Simonds 44-6). The interpretation that Bartolus offers corresponds to the original design of the *Corpus iuris civilis* (529 – 534 AD), which guided early modern legal practice: "On trouva dans les lois romaines la doctrine d'après laquelle la loi tire son autorité du *judicium populi*" (Brissaud I:242). However, Montaigne indicates in the *Essais* that he does not support Bartolus: "Nous doubtions sur Ulpian, redoutons encore sur Bartolus et Baldus" (III, "De l'experience," 1067b). I also analyzed in chapter one the passages in "Des cannibales" (I:31) and in the "Apologie de Raimond Sebond" (II:12) where Montaigne pointedly critiques

²⁵⁴ Ian Maclean, *Interpretation and Meaning in the Renaissance, The Case of Law* (Cambridge: Cambridge University Press, 1992) 80.

²⁵⁵ Maclean "Montaigne et le droit civil romain" 164; Montaigne mentions "ratiocination" on II, 12, 460 and II, 12, 464, in the context of his analogies between people and animals.

communis usus loquendi. It perhaps comes as little surprise, then, that in "Des coches" Montaigne does not conform to French common usage of their language. Indeed, in "De l'experience" Montaigne describes his particular use of language when he states: "J'ay un dictionnaire tout à part moy" (III, 13, 1111b).

Montaigne's analogizing coaches to litters, ships, and horses is the first step to his translating additional significations from the vehicles that he lists. During the next step in his practice of equity, he would bring the particularities of the case under his consideration to his soul, from which he would render his judgment. In other words, Montaigne would consider the *conquista* from the vantage point of his own identification with it. While regrouping coaches, litters, ships, and horses as comparable vehicles, Montaigne conveys his preference to be astride a horse. When he points to the horse as his transport of choice, he associates himself with the other horsemen who figure in "Des coches": the *conquistadores*. Montaigne describes these men

barbus ... montez sur des grands monstres incogneuz, contre ceux [Amerindians] qui n'avoyent non seulement jamais veu de cheval, mais beste quelconque duicte à porter et soustenir homme ny autre charge... (III, 6, 909b).

As Hampton has argued, Montaigne's equestrian connection to the Spaniards does more than associate him with the *conquistadores*. It invites Montaigne's readers to identify him "with the man who pulls down the Inca emperor" (Hampton 217).

However, Montaigne experienced motion sickness from almost all forms of transport (except by horse). In particular, he elaborates upon his inability to travel by boat:

Par cette legere secousse que les avirons donnent, desrobant le vaisseau soubs nous, je me sens brouiller, je ne sçay comment, la teste et l'estomac, comme je ne puis souffrir soubs moy un siege tremblant (III, 6, 901b).

Therefore, as Hampton has observed, Montaigne also disassociates himself from the *conquistadores* through his avowed inability to travel by sea (217). In other words, Montaigne

uses two different vehicles – horses and a "siege tremblant" – to associate himself with the Europeans in the New World, as well as to disassociate himself from them. Thus, Hampton has observed that Montaigne both associates and disassociates himself from Europeans.

I would like to compliment Hampton's reading of "Des coches" by suggesting that Montaigne also uses horses and a "siege tremblant" to associate himself with the Inca as well as to disassociate himself from these Amerindians. After all, contention for the Americas was shared between Europeans and Amerindians. Otherwise put, Europeans and Amerindians were parties at trial for the Americas. Montaigne's practice of equity would therefore invite him to self-identify with both parties at trial, in this case, Europeans and Amerindians.

Montaigne's equestrian connection with the *conquistadores* initially disassociates him from the Inca, who had never seen horses before the arrival of the Spanish. In fact, it was because horses were foreign to Amerindians that the *conquistadores* performed for them feats of horsemanship. That is, the Spanish used their displays of horsemanship as an intimidation tactic.²⁵⁶ As a result, equestrianism characterized European parlays with Amerindians.

European equestrianism also characterizes Montaigne's description of Atahualpa's procession to his parlay with the Spanish at Cajamarca. Gómara does not specify that Pizarro was astride a horse when he apprehended Atahualpa: "Pizarre ... le tira par le robe, & le feit choir en terre, & par ce moyen print fin ceste meslee" (Fumée 5:313r). Nevertheless, it seems reasonable to infer that Pizarro was on horse-back; he held a rank far above his foot-soldiers, from whom Gómara distinguishes Pizarro: "François Pizarre arriua sur ceste meslee auec ses gens de pied" (Fumée 5:312v). However, Montaigne clearly has his unnamed *conquistador* perform a feat of horsemanship when he apprehends Atahualpa:

²⁵⁶ Before Atahualpa reached Cajamarca, Spanish emissaries from Pizarro met him and displayed feats of horsemanship: "When Atahualpa had seen the Spaniards prance and run their horses and had witnessed the superb horsemanship of all the Spaniards, he was greatly impressed" (Betanzos 258).

Ce dernier Roy du Peru, le jour qu'il fut pris, estoit ainsi porté sur des brancars d'or, et assis dans une cheze d'or, au milieu de sa bataille. Autant qu'on tuoit de ces porteurs pour le fair choir à bas, car on le vouloit prendre vif, autant d'autres, et à l'envy, prenoient la place des mort, de façon qu'on ne le peut onques abbatre, quelque meurtre qu'on fit de ces gens là, jusques à ce qu'un homme de cheval l'alla saisir au corps, et l'avalla par terre (III, "Des coches," 915b).

An endless supply of carriers keeps Atahualpa's litter aloft; as soon as the Spaniards wound a throne bearer, another Amerindian takes his place. Montaigne, like Gómara, thus emphasizes the inability of the Spaniards to capture the Peruvian king by attacking his throne bearers:

Mais ils ne pouuoient le [Atahualpa] toucher, par ce qu'il estoit esleué haut en sa litiere, & pour ceste cause tuoient ceux, qui la soustenoient, à fin de le faire tomber. Mais aussi tost qu'il y auoit vn de ces porteurs mort, vn autre prenoit sa place de peur que leur Seigneur ne tombast à terre (Fumée 5:312v-313r).

Thus, the Spaniard who snatches Atahualpa from his litter succeeds only because he is at the same level as the Inca ruler. Due to the increased height that his mount gives him, the *conquistador* can go directly for the Peruvian king. In short, the horse grants the Spaniard access to Atahualpa.

As Hampton has noticed, Montaigne identifies as a fellow horseman with the *conquistador* who pulls down Atahualpa (217). Therefore, the equestrianism that Montaigne and this Spaniard share should also grant Montaigne figurative access to the Inca ruler, just as it did for the *conquistador* who unseated Atahualpa. Rather than lay hold of the Peruvian king, however, Montaigne portrays a different kind of access to Atahualpa: sympathy (Hampton 218). Rather than the result of any ethical motivations Montaigne might have had to feel compassion for the Amerindians, I suggest that his sympathy for the New World peoples results from his self-identification with them through his practice of equity.

After the Spanish horseman murders one Amerindian throne bearer, another assumes his place to keep Atahualpa aloft. This succession of throne bearers would cause the Peruvian king's litter to dip and sway – i.e. to become "un siege tremblant" (III, 6, 901b). Montaigne has disclosed from his own personal experience that he does not have the stomach to endure the kind

of turbulent coach that Atahualpa's litter became.²⁵⁷ In fact, Montaigne's inability to bear this kind of turbulence is the reason why he prefers to travel by horse-back. In other words, Montaigne's equestrianism is the direct result of his inability to tolerate the kind of motion that Atahualpa also proves incapable of withstanding. Montaigne's equestrianism represents paradoxically his ability to empathize with the Peruvian king; it grants him a kind of access to the ruler of the Inca.

Montaigne thus uses two kinds of vehicles to associate himself simultaneously with the *conquistadores* and the Amerindians, particularly the Inca: horses, and an unstable conveyance that takes the dual forms of a sea vessel and an equally undulating litter. Montaigne's self-associations indicate, moreover, his ability to identify with both Europeans and Amerindians in their struggle for control of the Americas. As I have argued, Montaigne portrays himself as a horseman with the *conquistadores*. At the same time, he casts himself and Atahualpa as similarly unable to withstand an unstable coach (III, 6, 901b).

Therefore, in addition to his use of *distinguo*, *locus a simili*, and analogy, Montaigne demonstrates his use of equity through his self-portrait in "Des coches." Commensurate with his practice of equity, Montaigne becomes "a *lex loquens*, the embodiment of the flexible measuring rule of Lesbos" (Maclean *Interpretation and Meaning* 177). That is, he becomes the locus of convergence for different parties at trial. As such, his portrait transforms to reflect his internal interrogation of how to accommodate the case parties before him. In this case, readers of "Des coches" see Montaigne's portrait metamorphose per the convergence of European and Amerindian perspectives on the *conquista*. Tournon has argued that Montaigne's judgment

²⁵⁷ Duval has described Atahualpa's golden litter as a coach (106).

²⁵⁸ Katherine Almquist associated early modern legal interpretation with Montaigne's self-portrait in the *Essais*. In particular, she suggested that the pluralism and diversity of legal interpretation resonated with the pluralism and diversity of Montaigne's self-portrait. Katherine Almquist, "Writing Pluralist Biography of Montaigne's Legal Career," *EMF* 9 (2004): 58-76.

represents "a dialogic meditation" and expresses his "hope of a convergence of points of view." I suggest that Montaigne's judgment achieves such a convergence in "Des coches" through his practice of equity.

Conclusions

Montaigne describes South America as "la plus riche et belle partie du monde" (III, 6, 910b), whose "villes de Cusco et de Mexico" exhibit an "espouventable magnificence" (III, 6, 909b). Not only does the New World milieu astound the Old World observer, but so do the Amerindians themselves. Montaigne finds that New World peoples exceeded Europeans in virtue:

...quant à la devotion, observance des loix, bonté, liberalité, loyauté, franchise, il nous a bien servy de n'en avoir pas tant qu'eux: ils se sont perdus par cet advantage, et venus, et trahis eux mesme (III, 6, 909b).

In this passage, Montaigne foreshadows his narrative of the capture of Atahualpa. The Inca faithfully paid his ransom to the *conquistadores*, but "[on] luy apposta une fauce accusation et preuve, qu'il desseignoit de faire souslever ses provinces pour se remettre en liberté" (III, 6, 912b). The false charges that the Spaniards brought against Atahualpa became their justification to sentence the Peruvian king to death: "on le condamna à estre pendu et estranglé publiquement, luy ayant faict racheter le tourment d'estre bruslé tout vif par le baptesme qu'on luy donna au supplice mesme" (III, 6, 912b).

According to Montaigne, the Amerindians also had not a single sixteenth-century equal for "la hardiesse et courage ... la fermeté, constance, resolution contre les douleurs et la faim et

²⁵⁹ Quotations from André Tournon, "Justice and the law: on the reverse side of the Essays," *The Cambridge Companion to Montaigne*, ed. Ullrich Langer (Cambridge: Cambridge University Press, 2005) 96-118, 111.

la mort" (III, 6, 912b). Montaigne's assessment foreshadows his narrative of the valor with which Moctezuma and the Aztec defended themselves against the *conquistadores*: "[Le] Roy de Mexico, ayant longtemps defendu sa ville assiegée et montré en ce siege tout ce que peut et la souffrance et la perseverance, si onques prince et peuple le montra" (III, 6, 912b). Indeed, the "constance" that Moctezuma demonstrated while being burned alive by the *conquistadores* "rendoit de plus en plus honteuse leur cruauté" (III, 6, 912b).

Montaigne's positive depiction of Moctezuma, Atahualpa, and their respective societies undermines any case that the Spanish could make for their *conquista* of the New World.

Otherwise put, the Spanish could not justify their conquest of the Americas as their 'just' war against the Amerindians. Indeed, the approach that Montaigne takes resembles that of Titu Cusi in his *Instrucción*. Frank Salomon has explained that, "[although] couched as a chronicle, and marked by European rhetoric of the era, [the] *Instrucción* was also intended to make a legal point" (Legnani v). For Salomon, this point is that "the Pizarran conquest of Peru in 1532-35 had been invalid, because the legitimate Inka sovereign had never given offense to Spain" (Legnani v). "Des coches," which Montaigne also couches in the history of the *conquista*, appears to make a similar legal point through his positive depiction of the Amerindians. Thus, Montaigne and Titu Cusi do not simply condemn the *conquistadores* for their acts in the Americas. Rather, both authors indict the process by which Europeans judged it right to colonize the New World.

Montaigne's criticism of European judgment, Tournon has argued, is ultimately his criticism of the state of European souls. For Tournon, the unstable conveyances that neither Montaigne nor the Inca ruler can sustain signify the necessity for each of these men to keep his soul "réglée" (*Route par ailleurs* 324). Tournon thus concludes that Montaigne uses the

examples of himself and Atahualpa to inspire readers of "Des coches" to keep their own souls regulated if they are to maintain good judgment: "il faut rétablir et maintenir la souveraineté du 'jugement,' quel que soit le désarroi organique ou psychique éprouvé" (*Route par ailleurs* 324). Tournon has furthermore concluded that the philosopher who considers "les bouleversements de l'Histoire" has the duty of seeing clearly in the face of History's instances of vertigo ("Fonction" 67).

I argue that Montaigne's practice of equity enables him to see clearly the end of the New World, as the Amerindians knew it. Through his practice of equity in "Des coches," Montaigne draws out of his soul two faces that he sets down on the pages of this essay. In his consideration of coaches and processions, Montaigne associates himself with a *conquistador* horseman and Atahualpa, and thereby implicitly casts himself in their likenesses. That Montaigne can associate himself with both Europeans and Amerindians in "Des coches" implies that these perspectives were not at odds within Montaigne or his essay, even as they were at odds in actual history. Thus, equity is for Montaigne a technique by which both he and his readers could regulate their souls, as well as judge themselves and New World peoples in their shared contention for the Americas.

However, Montaigne does not simply demonstrate how to perform equity through his own practice of this legal procedure. He enables his readers to "[assimilate] the perspective of the American" (Hampton 225). I have argued in this chapter that Montaigne's inclusion of Amerindian perspectives reflects his practice of equity. That Montaigne's use of equity draws upon the parties he adjudicates, particularly the Amerindians, is also consistent with his description of his judgment. As I argued in chapter two, Montaigne's judgment relies upon

"ethnological investigation" at the same time that it does his use of equity. Both ethnography and equity require its practitioners to draw upon the parties whom they observe and arbitrate, respectively. In equity, the jurist becomes the locus of convergence for the case particularities that he reconciles with the established laws of his society. That is, his 'self' becomes the locus of an 'other' before he renders his verdict. And, the 'self' of the anthropologist requires the language and culture of an 'other' in order to write ethnography, as the early examples of Gómara, Jean de Léry and André Thevet already demonstrate. Indeed, the ethnographic-styled European travel accounts and histories of the New World that Montaigne read include their authors' use and accounts of Tupí-Guaraní (the language of the Brazilians), Nahuatl (the language of the Aztec), and Quechua (the language of the Inca).

It should come as little surprise, then, that both Montaigne's practice and description of his judgment in the *Essais* harmonize with his treatment of Amerindian languages and cultures. As Defaux argued, the Brazilians exhibit "le problème pour lui [Montaigne] fondamental du jugement – jugement de l'autre, jugement de soi" (147). The cannibal fascinated Montaigne "[pour] ce qu'il *permet*: ... pour les développements et les questions qu'il autorise" (Defaux 147). In addition to the Tupí-Guaraní, the Inca and the Aztec provided Montaigne with an opportunity to develop equity as a rhetorical strategy in "Des coches." In particular, Atahualpa's responses to Spanish colonial demands, which Gómara reports in his history, harmonize with Vitoria's arguments on behalf of the Amerindians. Readers of Gómara who had legal training, such as Montaigne, would have seen that New World peoples exemplified a kind of equity. It is thus without surprise that New World peoples would serve as a prompt for Montaigne to demonstrate his own practice of equity for his readers.

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²⁶⁰ Quotation from William M. Hamlin, "On Continuities between Skepticism and Early Ethnography; Or, Montaigne's Providential Diversity," *The Sixteenth Century Journal*, 31.2 (Summer 2000): 361-79, 366.

Beyond demonstrating his exercise of equity, Montaigne uses this legal procedure to envelope his readers into his essay. Let us take a final look at the passage where Montaigne includes Amerindian perspectives of the *conquista* in "Des coches":

...pour ceux qui les [Amerindiens] ont subjuguez, qu'ils ostent les ruses et batelages dequoy ils se sont servis à les piper, et le juste estonnement qu'aportoit à ces nations là de voir arriver si inopinéement des gens barbus, divers en langage, religion, en forme et en contenance, d'un endroict du monde si esloigné et où ils n'avoyent jamais imaginé qu'il y eust habitation quelconque, montez sur des grands monstres incogneuz, contre ceux qui n'avoyent non seulement jamais veu de cheval, mais beste quelconque duicte à porter et soustenir homme ny autre charge; garnis d'une peau luysante et dure et d'une arme trenchante et resplendissante, contre ceux qui, pour le miracle de la lueur d'un miroir ou d'un couteau, alloyent eschangeant une grande richesse en or et en perles, et qui n'avoient ny science ny matiere par où tout à loisir ils sçeussent percer nostre acier; adjoustez y les foudres et tonnerres de nos pieces et harquebouses, capables de troubler Caesar mesme... contez, dis-je, aux conquerans cette disparité, vous leur ostez toute l'occasion de tant de victoires (III, 6, 909-910b).

Montaigne concludes this passage by projecting his essay beyond its text (Hampton 225) and urging readers to speak from the perspective of the New World native (Hampton 225). In particular, Hampton has argued, Montaigne urges his readers to "debunk the self assurance of the Spaniards" (225). To expose the exaggerated self-confidence of the Spanish, however, Montaigne points to equity. Or, put more precisely, he points to its historical absence from the encounter between Amerindians and Europeans. Had there been any equality characterizing the meeting of Europeans and Amerindians, Montaigne suspects that the *conquista* might not have happened: "je prevois que, à qui les [Amerindians] eust attaquez pair à pair, et d'armes, et d'experience, et de nombre, il y eust faict aussi dangereux, et plus, qu'en autre guerre que nous voyons" (III, 6, 910b).

In 1571, nine years before Montaigne began writing "Des coches," Spanish soldier and author Diego Fernandez acknowledged the culpability of at least Francisco Pizarro and Diego de Almagro for their conduct in Peru. ²⁶¹ Rather than putting an end to colonialism, however, the

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²⁶¹ *Primera, y segvnda parte, de la historia del Perv* ..., Seuilla, Hernando Diaz, Año de 1571, Libro primero, Capitulo primero, 1v. This book is available online through the Albert and Shirley Small Special Collections Library at the University of Virginia.

Spanish government simply prohibited Pizarro, Almagro, and their relations from being "encomenderos del Perú" (Fernandez I:1v) ('landholders in Peru,' my translation). European recognition of Spanish wrongdoing in the New World was therefore not enough to end European colonialism in the Americas.

In fact, at the close of the sixteenth-century France stood on the threshold of significantly increasing its influence in the New World.²⁶² On the eve of France's colonial projects in the Americas, Montaigne likely encourages French readers of "Des coches" not to emulate the *conquistadores* when he prompts them to "debunk the self assurance of the Spaniards" (Hampton 225). As Thomas Parker has argued, in "Des coches" Montaigne "[warns] the French reader against excessive avarice and imperialism by portraying it in others – notably the Conquistadors."²⁶³

However, Europeans could be guilty of excessive avarice and imperialism at home as well as abroad. Montaigne seems to have been dismayed by the European destruction of Amerindian civilizations. Nevertheless, he was more immediately troubled by his French compatriots who, during civil wars of religion, violently seized the property of their neighbors and even took their lives. Montaigne's warning to French readers of "Des coches" therefore likely responds as much, if not more, to the behavior of his countrymen in France than it does to European conduct in the New World.

In order to deter Frenchmen from vice at home and abroad, Montaigne confronts his readers with Spanish atrocities committed in the New World. He then uses his own judgment to exercise and reform the judgment of his readers. Key to this process is Montaigne's practice of

²⁶² See Dickason *Myth* and Sara E. Melzer, *Colonizer or Colonized, The Hidden Stories of Early Modern French Culture* (Philadelphia: University of Pennsylvania Press, 2012).

²⁶³ Thomas Parker, "Art and Nature: the Old and the New World Seen through Montaigne's Spanish Mirror," *Montaigne Studies*, Montaigne et le Nouveau Monde, 22.1-2 (March 2010): 23-39, 24.

equity, by which he enables readers to reassess the *conquista* including from the standpoint of the Amerindians. Thus, if any of Montaigne's early modern readers took his impassioned advice and adopted Amerindian viewpoints in European discussions of colonialism, they would presumably use equity themselves. And, if Montaigne's early modern French readers practiced equity, they would stop justifying European colonization of the New World and civil wars of religion in the Old.

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