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JUS SOLI AND JUS SANGUINIS:
POLITICS, RACE, CULTURE, AND CITIZENSHIP IN THE DOMINICAN REPUBLIC AND
HAITI

by

GUIDO A. PROANO

A master's thesis submitted to the Graduate Faculty in Liberal Studies in partial
fulfillment of the requirements for the degree of Master of Arts,
The City University of New York

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APPROVAL

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ABSTRACT

Jus Soli and Jus Sanguinis:
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by

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The promulgation of laws such as the Dominican Republic's Constitutional Court's Judgment TC-168-13 serves as a basis upon which to argue the major impediments presented by the Dominican government to deny Haitians and Dominicans of Haitians descent citizenship. The right to citizenship is based on legal principles of jus soli and jus sanguinis and is recognized in a series of international legal documents. Following a Marxist framework, this research demonstrates the uncounted possible relationships between modern social forces and politics that have been working closely following European productions of knowledge for decades against Haitians and Dominicans of Haitian descent in the Dominican Republic. Haitians and Dominicans of Haitian descent are not afforded the same constitutional rights and privileges as Dominicans because of their Blackness rooted in their African lineage. Judgment TC-168-13 is inherently a racist law that excludes Haitians and Dominicans of Haitian descent from procuring citizenship in the Dominican Republic.

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Dr. Etoke is a transformational educator in the tradition of Paulo Freire who challenges students to move beyond the comfort of their own world views.

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This master's thesis is dedicated to Octavia Anne Melián.

Introduction

This September 23, 2023 marks the tenth-year anniversary of the Dominican Republic's Constitutional Court's Judgment TC-0168-13. The judgment that gave a new interpretation with regard to the acquisition of nationality and citizenship by individuals born in the country to foreign parents in transit ("Preliminary Observations," 2013). The Dominican Republic's Constitutional Court's Judgment TC-168-13 is legislation evidenced by the centuries of mounting conflict between the Dominican Republic and Haiti. However, prior to the formation of independent nation states, the Dominican Republic and Haiti collaborated as European colonies working against the European powers that had interests in controlling the island of *Hispaniola* to advance their economic exploitation in the Caribbean region, but the social forces that presently control the politics in the Dominican Republic are more interested in maintaining and foregrounding the racial differences between Haitians and Dominicans. The elite in the Dominican Republic perceive themselves as direct descents of the former European masters. They identify exclusively with their ancestral whiteness and categorically negate their Blackness rooted in their African lineage.

This research posits three central questions that are presented separately in three chapters. First, chapter 1 addresses, "What political, racial, and cultural reasons undergird the legal principles of *jus soli* and *jus sanguinis*?" Second, chapter 2 explores, "How does the spatialized representation of the Old World vs. the New World in tangent with terms like non-native vs. native, and terms like non-citizen vs. citizen, express political, racial, and cultural ideologies that buttress the legal principles of *jus soli* and *jus sanguinis*?" Third, chapter 3 interrogates, "Why are the life experiences of Haitians and Dominicans of Haitian descent not the central focus in

the legal discussion of jus soli and jus sanguinis as their humanity and existence is erased when the Dominican Republic denies them citizenship?”.

In chapter 1, the research is contextualized within a Marxist paradigm observing the “various possible relationships between modern social forces and politics” (Mewes, 1976) that are at work in relation to the passing of Judgment TC-168-13. The Dominican Republic’s Constitutional Court’s Judgment TC-168-13 intensifies the problematic issue of citizenship. To delve into the laws which grant citizenship, the research examines closely the legal principles of jus soli (right of soil) and jus sanguinis (right of blood) as they were applied in Europe. Without citizens, there are no nation states. The granting of citizenship does not only protect citizens, but more importantly secures the survival of the nation states.

The research further explains how these legal principles of jus soli and jus sanguinis were employed in the Americas to augment and supplant the European customs and traditions positioning the Europeans above all the indigenous peoples of the Americas. The bureaucratic systems of exclusion and inclusion date back to 1492, when colonial powers in the Americas were defining what native and non-native meant within their bureaucratic systems. Similarly, the colonial powers made explicit distinctions between what citizen and non-citizen meant in the creation of nation states.

In chapter 2, the discussion of the legal principles of jus soli and jus sanguinis are problematized by expounding further on the terms non-native vs. native along with terms like citizen vs. non-citizen germane to the debate of citizenship. These terms have prevailed to demarcate the distinct social classes favoring one group of people and excluding others, and these terms are undergirded by European productions of knowledge, which Santiago Castro-Gómez (2021) has called the “zero-point hubris.”

In chapter 3, the research focuses on the people affected by the Dominican Republic's Constitutional Court's Judgment TC-168-13, and those who advocate for these people assisting them to navigate the Dominican legal system, and/or representing them in other governmental venues. There are agencies outside of the Dominican Republic assisting Haitians and Dominicans of Haitian descent like the Inter-American Commission on Human Rights (IACHR), Conectas Human Rights, and the Inter-American Court. Although citizenship is a universal right, sovereign nations determine who they allow into the polis. Even if you lodge a lawsuit in one of the International Courts against a nation for failing to grant the universal right of citizenship, there is no enforcing power by the International Courts to force a sovereign nation to grant citizenship rights.

This research is aligned with the field of Latin American, Caribbean, and Latino Studies, as it explores the political, racial, cultural, and distinct citizenship laws that distinguish the Dominican Republic from Haiti, two neighboring nations sharing the island of *Hispaniola*. At the center of this research is the legal analysis of the Dominican Republic's Constitutional Court's Judgment TC-168-13, which has been expounded by Patrick J. Glen (2007) and juxtaposed with the Fourteenth Amendment of the U.S. Constitution. However, my research differs from Glen (2007), as I have compared and contrasted the Dominican Republic to the former European colonizers with regard to the inhumane comportment and treatment of Haitians and Dominicans of Haitian descent.

I concur with Evelyn Glenn (2000) that there is a historical continuity and changes in American citizenship laws, but I contend that other nations like the Dominican Republic and Haiti maintain historical continuities and changes in nationality laws like the United States as well. At different points in the history of the Continental United States, certain groups of people

were excluded from obtaining U.S. citizenship. Similarly, the Dominican Republic's Court's Judgment TC-168-13 revokes the citizenship status of thousands of Dominicans of Haitian descent leaving them stateless in 2013 to the present time. I equate the mistreatment of Haitians and Dominicans of Haitian descent by the Dominican government and supporting factions to the maltreatment of the Europeans towards the native inhabitants of the Americas during the Age of Exploration. Like the Europeans with their native and non-native designations, the Dominican Republic's Constitutional Court's Judgment TC-168-13 is inherently racist as it excludes Haitians and Dominicans of Haitian descent from procuring membership into the nation state.

The primary hypothesis of this research is that in the modern capitalist society political factors exemplify the "various possible relationships between modern social forces and politics," as explained by Horst Mewes (1976). That is, this research is linked to a theoretical Marxist paradigm, in which I scrutinize the "modern social forces" that encouraged and supported the Dominican Republic's Constitutional Court's Judgment TC-168-13. The "modern social forces" manipulate the politics in the Dominican Republic, and as Mewes (1976) further points out, "politics serves society." The granting of citizenship is rooted in structures of power, the social forces that control the legislative, executive, and judicial powers that dictate and define the grounds to bestow or deny citizenship to the people in the nation states.

A secondary hypothesis of this research postulates that the colonial experiment allowed the Europeans to observe the natives oppressed by the colonial endeavor of nation building and ignore the deprivation of the humanity of the natives made possible by the process of observation. This observance created an attenuation that solidified the presence or absence of knowledge by the observer. Therefore, the false dilemma fallacy is a manipulative tool designed to polarize the inhabitants of the Americas and the Europeans, promoting one side, i.e., Europe,

and diminishing the other, i.e., the Americas. In the same manner, the Dominican Republic witnesses the persecution and disregards the absence of humanity committed against the Haitians and Dominicans of Haitian descent by standing idle in support of Judgment TC-168-13, as it is more exigent for the nation state to be free from acknowledging Blacks from Haiti and Dominicans of Haitian descent among the population of the Dominican Republic.

The two hypotheses presented in the research relate to one another as the modern social forces and politics, and the European productions of knowledge, are identifiable within the history of the Dominican Republic and its treatment towards Haitians and Dominicans of Haitian descent. The Dominican Republic has been consistent with its European past as it has never deviated from its racial stratifications supplanted by the former European colonizers. The Dominican Republic's insistence towards maintaining the racial stratifications is most evident in its treatment of Haitians, as it continues to pursue a racist immigration policy supported by constitutional and judicial codifications of laws against Haitians. Judgment TC-168-13 is the culmination of decades of persistent attempts by the Dominican Republic to remove Haitians out of the country. On September 23, 2013, the most egregious and inhumane judicial decision was rendered by the Dominican Republic's highest court, advancing the modern social forces which have manipulated the politics of the Dominican Republic, swaying the legislative and judicial institutions of the country to retroactively divest thousands of Dominicans of Haitian descent of their citizenship becoming stateless.

A Marxist framework continues to identify the social forces and “the dominant factors influencing who benefits, who is harmed, and which inequalities result from government action—inaction” (Johnson, 2022). There are many instances in history in which laws have protected the rights of some, and left others in a vulnerable position. As such, the Marxist

approach can be applied to the law as well. The primary judicial judgment analyzed in this research has been the Dominican Republic's Constitutional Court's decision TC-168-13, as it has affected thousands of lives leaving them stateless. This research should continue in the future as Haitians and Dominicans of Haitian descent have the universal right to move freely and belong to a nation they identify with since birth.

Furthermore, Dominicans of Haitian descent have the rights and privileges delineated in the Dominican Constitutional framework. The absence of recognized citizenship prevents the active participation in all social, economic, political, and legal institutions. The negation of citizenship with the enactment of laws stemming from the judiciary to the halls of the Dominican legislative bodies threaten the legitimacy of the Dominican nation in the Western Hemisphere. Dispossessing Haitians and Dominicans of Haitian descent of citizenship is depriving them a fundamental right not to be abrogated by racial paradigms informed by colonial remnants of superiority and exclusion for the maintenance of the power structure of the self-professed elite.

CHAPTER 1

Jus Soli and Jus Sanguinis: Political, Racial, and Cultural Reasons Allowing/Disallowing Citizenship

In this chapter, I would like to contextualize my research by offering some definitions as to how I will employ the terms *political*, *racial*, and *cultural*. I will problematize the term *political* to go beyond discussing the “human affairs of nation states” (Miller, 1980). In Miller (1980), the word *political* connotes something harmless, almost innocuous, as the meaning of the word focuses on the duties and obligations that the nation states have in service for the people.

Instead, my use of the term *political* is aligned more with Marx and less with Miller (1980). For Marx, in the modern capitalist society, *political* would be the “various possible relationships between modern social forces and politics” (Mewes, 1976). “Politics serves society,” and one possible modern social force that manipulates politics is the ruling class, the bourgeoisie, who are in struggle for economic survival and control over the working class, the proletariat (Mewes, 1976).

Furthermore, I utilize the term *racial* to continue my elaboration of the possible relationships between the social forces and politics by addressing the “dominant factors influencing who benefits, who is harmed, and which inequalities result from government action—inaction” (Johnson, 2022).

Finally, I apply the term *cultural* and revisit the Latin etymology of the word *cultura*, “a cultivating, agriculture,” but focus my attention more on the figurative meaning: “care, culture, and honoring.” At the center of the possible relationships between social forces and politics, in

the struggle for power and control, is the people *cultivated* from this earth, who have been disenfranchised from the politics. These people struggle to survive, and be heard, and want to be recognized that they are similarly situated like all other humans on this earth.

Therefore, I follow a Marxist paradigm in my research when I implement the terms *political*, *racial*, and *cultural*, as I am concerned with questioning the relationships between the social forces and politics. For example, the granting of citizenship is rooted in structures of power, the social forces who control the legislative, executive, and judicial powers, which dictate and define the grounds to bestow or deny citizenship to the people in the nation states.

This chapter examines the legal history of *jus soli* (right of soil) and *jus sanguinis* (right of blood) in the Caribbean, on the island of *Hispaniola*, shared by the Dominican Republic and Haiti. *Jus soli* is the legal principle that the citizenship of a child is determined by the place of its birth; and *jus sanguinis* is the legal principle that, at birth, a child acquires the nationality of his or her natural parents. Today, there are 64 countries in the world that adhere to the legal principle of *jus soli* in varying degrees. There are other countries that have a combination of both *jus soli* and *jus sanguinis* in their nationality laws.

Jus soli was part of the English common law¹, as opposed, to *jus sanguinis*, which derived from the Roman law² that influenced the civil law systems of most countries of continental Europe. During the Age of Discovery, also called the Age of Exploration, *jus soli* became the predominant legal principle in the Americas, because the European colonial powers

¹ English law has been “common law” since 1189. Common law has been called Anglo American law, also.

² Roman law existed from the time the City of Rome was founded in 753 BCE until the 5th-Century CE.

established lenient laws in the Americas to entice immigrants from the Old World to displace native populations in the New World³.

These lenient laws, citizenship laws, were the start of Europeans defining what *non-native* and *native* meant in the Americas. The non-native status was created to divide and distance the Europeans from the natives of the Americas to allow the Europeans to position themselves strategically and favorably within this spatialized representation and boundaries to secure and maintain power at the expense and subjugation of the natives. But the Europeans were well conditioned due to feudalism that social classes were bounded by space and time. David Brion Davis (2003), in *Challenging the Boundaries of Slavery*, writes:

I refer to boundaries in time as well as boundaries in geographic space, in human social and political relations, and in status. For example, a hereditary and absolute monarch or emperor stands above any hierarchies of caste or class, just as a hereditary chattel slave in theory lives below such bounded hierarchies. (“Introduction,” 14)

Therefore, the king was above everything and everyone. Within the feudal system, you were born into a social class. When Europe transitioned from feudalism to modern states, the social classes did not disappear, but the boundaries of the social classes ceased to be impediments for upward mobility. However, the Europeans were never going to place the natives in an equal footing in the Americas. The natives were always going to be situated below the Europeans.

In the action of creating the nation states, the architects with the plan were in control. Before the formation of the nation states in the Americas, the legal charters that the Europeans voyaged with across the Atlantic were all affixed with signatures and seals, which signified

³ Lenient naturalization laws favoring Europeans, as in the case of Britain, have fiercely protected the interests of the nation state. Naturalization has been economically important because it protects who could own real estate and bequeath it.

power across the European world. These European explorers were the agents of the monarchies they represented. As a result of these legal charters, the birth of long arm jurisdiction was established. The European colonies established in the Americas were protected by European laws.

Patrick Wolfe (2006), in “Settler Colonialism and the Elimination of the Native,” writes: “... the European sovereigns who laid claim to the territories of non-Christian (or, in later secularized versions, uncivilized) inhabitants of the rest of the world...” (390). The European sovereigns always came first, then the inhabitants of Europe, and last the natives of the Americas. Wolfe (2006) adds: “Though a thoroughgoing diminution of native entitlement was axiomatic to discovery, the discourse was primarily addressed to relations between European sovereigns rather than relations between Europeans and natives” (390). In other words, the doctrine of discovery emboldened the European sovereigns, supported by the papal bulls, and as a consequence the sovereigns ignored the rightful claim that the native inhabitants had to their lands. Therefore, the doctrine of discovery is undergirded by the Christian component of imperialism because the European powers used Christianity as a justification to colonize and exploit the people throughout the world.

Moreover, the doctrine of discovery is substantiated by other legal principles. For example, the legal principles of *jus soli* and *jus sanguinis* have always been used by the nation states to protect their survival. The likelihood of surviving any foreign threat is exponential when more citizens are born and are subjects of the nation states. But when nation states become exclusionary determining who they allow into the polis, then you should question the process of inclusion or exclusion. A case in point is the Dominican Republic, which previous and present

government administrations have excluded Haitians and Dominicans of Haitian descent from the protection of citizenship.

The policy of exclusion which targets Haitians and Dominicans of Haitian descent solidifies the access to legal, social, economic, and political participation that would counter the adverse effects of discriminatory practices under the guise of legal principles and codification of laws to protect the nation state from internal and external opposition to iniquitous laws.

In “The Right to a Haitian Name and a Dominican Nationality,” Jennifer L. Shoaff (2016) describes: “*El Corte* (the cut) is the label ascribed to the 1937 massacre of an estimated fifteen thousand Haitians and dark-skinned Dominicans by the regime of President Rafael Trujillo in the northwest region” (58). Here, Shoaff (2016) is referring to the Parsley Massacre in 1937, which was carried out by the Dominican military under Trujillo’s order. The massacre took place in the border regions and committed with weapons such as machetes. The most lethal weapon was the attack on the humanity of those who perished based on distinctions of color, class, and a brutal limitless objective to distinguish the superior class from the class of persons not defined by *jus soli* and *jus sanguinis*.

In the Dominican Republic, there is no period of rule more violent towards Haitians like the epoch under Trujillo. It is under Trujillo’s rule that Haitians were murdered in the thousands. Due to political pressures and inculcation, Dominicans, as a whole, identify with the culture of the Iberian Peninsula, *Hispania*, and have excluded everything that is African from their heritage. This *blanqueamiento* (whitening) was carried out wholeheartedly under Trujillo’s regime.

The Dominican Republic’s history with Haiti is worthy of some more exploration and consideration. The Dominican Republic would not be independent had it not been for the Haitian

Revolution. The conflict between both nations can also be traced back when both were European colonies. In 1492, the whole island of *Hispaniola* was once a territory of Spain; and with time, the western part of the island was abandoned, as Spain only inhabited the east, allowing other Europeans to fight over what Spain did not occupy. French pirates in competition with other Europeans for the western part of *Hispaniola* won and claimed the territory for France in 1625.

In the Treaty of Ryswick in 1697, the island of *Hispaniola* was split in two; Spain recognized the French control of the western one-third of *Hispaniola*, putting an end to the disputes that had lingered on in Europe for decades between both monarchies, as well on the island, as wars and politics are mirrored in multiple geographical locations. To move forward with colonial enterprises, as conflicts cost money and affect profits, it was in the interest of both European colonial powers to resolve their disputes. It is observed in subsequent ratifications of treaties between both nations that they wanted to come to an agreement—for example, the Treaty of Aranjuez in 1777, in which Spain recognized the sovereignty of France over *Saint Domingue*, the name given to the French colonial portion of *Hispaniola*; and the last treaty ratification, the Treaty of Basel in 1795, demarcating specifically the eastern two-thirds of *Hispaniola* to Spain and the western one-third of *Saint Domingue* to France.

The disputes between Spain and France from 1625 to 1795 did not end with the signing and ratifying of treaties, but new problems for both colonial powers were in the horizon. In 1791, African slaves were uprising in the French colony of *Saint Domingue*, which catalyzed into a successful insurrection and is recognized as the Haitian Revolution, ending with the independence of Haiti on January 1, 1804.

In 1801, the great leader of the Haitian Revolution, Toussaint Louverture, invaded the Spanish colony of *Hispaniola*, without much of any resistance from its inhabitants, and instituted

French law, abolished slavery, and modernized the Spanish territory. Louverture's primary purpose for invading the Spanish colony of *Hispaniola* was to expand his military control by capturing the port of Santo Domingo.

Yet, again, the conflict for dominance over the island becomes a political objective, as new leaders want to take possession of the French and Spanish colonies and unite the island as one. In 1805, Jean Jacques Dessalines and Henri Christophe, also important figures of the Haitian Revolution, assembled troops to invade through the east, and siege the Spanish colony, to finally chase out the remaining French forces and unite the island.

As Dessalines decides to retreat from Santo Domingo for fear of a renewed French reinforcement and invasion, he orders his troops to burn down the towns of Cotui, La Vega, and Santiago. He orders his troops, as well, to capture over a thousand men, women, and children, and forcibly relocate them to Haiti. Once in Haiti, Dessalines, Christophe, and other Haitian generals distribute the captives from the Spanish colony among the state administered plantations of northern Haiti.

The Haitian Revolution had freed former slaves from bondage; however, Dessalines, Christophe, and other Haitian generals, by force of circumstance and habit, in that moment, identified with their former European colonial masters, by employing the same draconian means of slavery to rebuild the island's plantation economy, when they forced the captives from the Spanish colony to work on the Haitian plantations.

There are other historical events that may explain the hostility between the Dominican Republic and Haiti, like the invasion of Jean Pierre Boyer into the Spanish colony in 1822, the Haitian domination on the whole island between 1822 to 1844, and the Dominican-Haitian War,

which lasted almost a decade, which resulted in the proclamation of the Dominican Republic in 1844 (Price-Mars, 1953).

As the timeline of conflicts between the Dominican Republic and Haiti illuminate what may be the animus between both nations that ruminate in the collective consciousness, the current President of the Dominican Republic, Luis Rodolfo Abinader Corona, complicates matters and worsens the relationship between both nations by promoting a right-wing anti-immigration hysteria policy in the Dominican Republic. He insists that a wall must be built near the Haitian and Dominican border for fear of Haitian armed bands crossing into Dominican territory and committing the worst atrocities. This exclusion is justified with the specious premise that Haitians pose a threat, and engage in criminal acts that threaten the national security of the nation state.

At the root of this anti-immigration hysteria policy is racial prejudice, as it rejects and refuses to protect Haitians and Dominicans of Haitian descent. It is a policy that is legally codified to distinguish Haitians and Dominicans of Haitian descent. It is a longstanding discriminatory and exploitive immigration policy.

As Samuel Martínez (2003), in “Not a Cockfight: Rethinking Haitian-Dominican Relations,” writes: “Perhaps even more important, people of both nationalities but especially many Dominicans *believe* themselves to be utterly different from and incompatible with their neighbors from across the island” (82). This belief by Dominicans towards Haitians is without merit or sufficient warrant. This belief is predicated on unfounded judgement.

In “The Nature of Prejudice,” Gordon W. Allport (1979) indicates that “While it is important to bear in mind that biases may be *pro* as well as *con*, it is none the less true that *ethnic* prejudice is mostly negative” (6). What Haitians and Dominicans of Haitian descent have

endured are mostly negative experiences in the Dominican Republic. The experiences have evolved to create a draconian legal system disallowing access to social, economic, and political upward mobility.

When political and racial exclusion are common practices of a nation state, those affected by discriminatory practices are never fully accepted within the larger culture and never allowed to develop a cultural identity. In the Dominican Republic, citizenship is granted by birth (*jus soli*), or by descent, or by naturalization; however, the legal principle of *jus soli* is restricted. On January 26, 2010, the Dominican Constitution was amended, broadening the definition of the 2004 migration law, which excluded from citizenship children born to individuals that were in transit to include non-residents, including individuals with expired residency visas and undocumented workers.

“The right to nationality,” according to Shoaff (2016), “is a prerequisite for the realization of an array of other aspects of full membership in society, including ‘the right to education, the right to health through access to social services, political participation, the freedom of movement, and access to justice’” (60). Denying Dominicans of Haitian descent a nationality is barring them from membership into the polity and integration into the culture, and as a result a cultural identity is stifled due to racial rejection.

However, birth within the Republic of Haiti does not automatically confer citizenship and its attending rights and privileges, like in the Dominican Republic; instead, citizenship laws in Haiti follow the principle of *jus sanguinis*, where at least one of the parents must be a native-born citizen of Haiti, regardless of the child’s country of birth.

Deciding whether *jus soli* or *jus sanguinis* is preferable over the other, H. S. Q. Henriques and Ernest J. Schuster (1917) write: “In a civilised country where there is a proper system of

registration of births, there will be no difficulty in proving any one's nationality of origin, and this will attach to him unless and until it is proved that it has been lost or changed. This advantage is absent where the rule of the Jus Sanguinis is adopted" (119).

Nonetheless, in the case of the Dominican Republic, the country has made it difficult for Dominicans of Haitian descent to prove citizenship because of the behemoth monster of the civil registry, which establishes requirements and procedures and empowers officials to do the nation's bidding to deny or confirm citizenship status based on political and racial immigration laws of the period. As Dominicans of Haitian descent fight the bureaucratic beast to facilitate or expedite their registration to be recognized as citizens, they are reminded by Dominican Republic officials that more proof is needed, or that inaccuracies in documentation exist; but when the inaccuracies are rectified, or more proof is provided forthwith, the law reminds them, yet again, that they were in transit when they were born; and, in transit is a physical reality that Haitian mothers were experiencing due to political, social, and economic pressures in Haiti coupled with the need to migrate.

These mothers were in transit to escape poverty, violence, political instability, government corruption, and/or any other conditions or realities that force any human being to relocate between geographical locations from west to east or north to south, or in any other direction as required for survival. But the Europeans were in transit when they arrived in the Caribbean region in 1492. However, they were not subject to such legal distinctions or restrictions. Their right to inhabit was by force and creation of legal systems to protect their colonial claims to foreign lands.

I would posit that these Europeans in transit, although guided by greed and ambition, were in pursuit of happiness. Material wealth would bring about this happiness. Similarly,

Haitian mothers in transit were in pursuit of happiness, but their happiness was not protected by the land they stepped on. Yet, the Europeans should know because of their lived experiences what it is to be at the receiving end of an abusive authority under the tyrannical despot; the pursuit of happiness is an individual right and freedom that the spirit of the Magna Carta protects.

The spatialized representation of Old World vs. New World in tangent with the definitions of *non-native* and *native* accentuates geographical differences in opposition to each other—European vs. North American, or European vs. Central American, or European vs. South American, or European vs. Caribbean—that is, Old World is always European, *non-native*, stable, civilized, and founded on legal traditions; New World is always the Americas, *native*, unstable, uncivilized, and not founded on legal traditions.

And there is also a religious component that supported these binary spatialized representations as the Catholic Church was in the business of converting non-believers into the Christian faith, and the European sovereigns were making it possible for the church to grow throughout the Age of Exploration. The Pope through his papal bulls gave Western nations the power, the right, and the justification to take ownership of the lands whose inhabitants did not know Christ. The teachings of the Bible also encouraged the Europeans to take dominion over the earth.

As Europeans were physically in transit to the New World, they had no right to claim *jus soli* on arrival, as they were not born on Caribbean soil, or had no right to claim *jus sanguinis*, as they had no grandfather on their father's side born in the Caribbean. The Europeans were in transit navigating the oceans looking for riches, exploring other navigational routes to Asia, or seeking to create international markets to buy and trade goods. The European in transit was

permissible or protected by European monarchies, juxtapose the movement of Dominicans of Haitian descent engaged is frowned upon, because the Dominican Republic wants to limit a specific group of people to move freely founded on false and discriminatory conceptions of social stratification and preservation of an artificial nation state unblemished by Haitian blood and lineage.

Jus soli and jus sanguinis are legal principles that protect the interest of the nation state, and such rights are granted when the nation state can benefit from the citizens it wants to protect. Unequivocally, the Dominican Republic does not want to protect the interests of Haitian or Dominicans of Haitian descent.

In “Permanently Foreign: Haitian Descended Populations in the Dominican Republic,” Eve Hayes de Kalaf (2022) asserts: “To exert political and economic control over the poor majority [of Dominicans], the intellectual elite spread fear about the threat of a Haitian invasion into Dominican territory” (16). The Dominican elite created a state of apprehension upon the poor Dominicans and through this machination exercised control over them through suggestive thoughts reinforced by fear. Fear has always served as a motivating factor for governments to exclude a class of persons by classifying them as others not capable of participating in the body politic.

In a report presented by the Open Society Institute, entitled “Dominicans of Haitian Descent and the Compromised Right to Nationality,” the report emphasizes that “the right to nationality is one of the most critical of human rights” (2010). For Dominicans of Haitian descent, the right to nationality has been eradicated, and as such, access to membership in a political community, with all the other benefits derived from it, have been made an impossible dream.

In other words, Dominicans of Haitian descent do not have one of the most basic rights to enjoy life in pursuit of happiness as members of a social and cultural group because the Dominican Republic has excluded them from the larger society. The report adds: “Singled out because of their national origin and their skin color, thousands of Dominicans of Haitian descent have been left effectively stateless and permanently excluded from the political, economic, social, and cultural life of their country of birth and residence” (2010).

The Dominican Republic’s denial of granting citizenship to Dominicans of Haitian descent, under the legal principle of *jus soli*, is consistent with the disparate treatment that Haitians have endured and survived in the Dominican Republic for centuries. In “Citizenship and Inequality: Historical and Global Perspective,” Evelyn Glenn (2000) writes: “Because of its relation to equality/inequality, citizenship has been the site of continual contestation” (1). In the history of citizenship, there are those who repeatedly attempt to restrict others from joining the nation and benefitting from membership, as membership has its privileges; but governments create the qualifications for membership, as we have seen in the past, for example, to become a citizen, you had to be a man, white, and a property owner.

In the Dominican Republic, Dominicans of Haitian descent are prohibited to develop openly a national character as they are seen as foreign and not part of the collective identity. Because Dominicans of Haitian descent are treated differently, as they are categorized by the Dominican Republic as “non-citizen,” they experience inequality and have no access to wealth and social standing.

The legal principles and categorizations explained in this present narrative of the politics of race, culture, and legal systems in the Dominican Republic and Haiti is demonstrative of the

enduring impact of the need to maintain and control a group of persons not defined as worthy of citizenship.

The historical implications of the emphasis on *jus soli* and *jus sanguinis* legal principles in the Dominican Republic are replicas of the attempts by many nations throughout history to dichotomize or separate persons by race, national origin, and lineage. This list of variables to advance exclusionary practices for purposes of exclusion and disenfranchisement are not exhaustive. For example, in the United States, during the existence of the “peculiar institution” of slavery, the legal codes covered matters to justify exclusion and the humanity of the oppressed to the degree that religious and unfounded scientific justifications for exclusion were introduced.

It was posited that persons of African descent were incapable of active participation in government. The Founding Fathers of the Continental States went so far as to reduce persons of African ancestry to animal like descriptions. In Thomas Jefferson’s essay on the “Notes of Virginia,” he describes African enslaved people as animal like, that they have transitory abilities to feel emotions, and lack the intellectual ability to ever compare to the intellectual ability of the white man by virtue of their inherent inferiority. Here, Jefferson is exerting epistemic violence against the people of African descent through his derogatory descriptions, which legitimizes the epistemic frameworks and practices of domination.

This epistemic framework and violence describing certain persons as inferior is the basis of the laws in the Dominican Republic toward Haitians, and Dominicans of Haitian descent, without the reference to *jus soli* or *jus sanguinis* status has existed since the creation of collectives of people with social, economic, and political goals who use the most powerful tool to advance their objectives. They use the laws they created, and protect their interests, and deny others of the same, with the threat of loss of life and liberty; and, as in the case of Dominicans of

Haitian descent, the loss of hope of ever becoming a part of the social, cultural, and political fabric of the Dominican nation. The adverse consequence of unconscionable and illogical laws to avoid the acceptance of the excluded Haitians and Dominicans of Haitian descent is the same in any geographic region, historical time period, or governmental structure. The final and desired goal of the ruling class is to deny access to every institution that would allow Haitians and Dominicans of Haitian descent the right to challenge the very laws that they must abide by but cannot change due to exclusion imposed and zealously protected no matter the irrational nature of the law.

The attempt to challenge the discriminatory and exclusionary as witnessed in the history of relations between Haiti and the Dominican Republic are apparent in the halls of justice and the interactions of the populace in their daily lives. Haitians are relegated to menial and laborious positions of employment. They are categorized as “*Negros*,” in Spanish, a term with negative connotations accompanied with more negative connotation that to be Haitian and Black is a sign of inferiority.

The national construct of the ruling class which includes the creators and protectors of the laws aimed at protecting the social stratification or caste system is evidenced by the internalization of the colonial paradigm that the mixing of the native indigenous population with the colonizers from Spain or France was a process ripe with opportunities for upward mobility. This construct is very much alive and thriving in the Dominican Republic today and the evidence of racial distinctions that serve as the foundations of the *jus soli* and *jus sanguinis* can be heard and observed through the treatment of persons of Dominican Haitian descent in everyday life. It is evident in the halls of justice and municipalities denying them citizenship with arbitrary and conflicting interpretations of the law to their demonization as interlopers on an island that they

share with an unwelcoming island to the east enveloped by racism, xenophobia, and an unrelenting desire to preserve institutional precepts that make the impact of oppression and racial classification enduring realities and remnants of colonization.

CHAPTER 2

Jus Soli and Jus Sanguinis: Ideology, Politics, and the Law in Favor/Against Citizenship

In this chapter, I would like to problematize the spatialized representation of the Old World vs. the New World in tangent with definitions of *non-native* vs. *native* and begin with the premise that the respective terms are logical fallacies. The spatialized representation of Old World vs. New World is a false dilemma undergirded by European productions of knowledge. According to Taeda Tomić (2013), in “False Dilemma: A Systematic Exposition,” he writes:

False dilemma is, though, a rather specific type of reasoning. Despite the fact that it is usually based on deductively valid argument forms, it comprises logically incorrect reasoning based on other aspects than deductive invalidity—even if due to its very deductive validity it may misleadingly appear to involve only logically correct reasoning—and is thus rightly depicted as fallacy. (348)

The Europeans erroneously deduced that there were only two options, Old World and New World, focusing on only two extremes, when in fact more possibilities existed. By more possibilities, I mean, they could have tried to understand the pre-Columbian societies from the perspective of the people that were already here in the Americas, e.g., learn from the Aztecs, the Incas, the Mayas, the Taínos, to name a few, and not comprehend the Americas from the point of view of the Europeans.

The Eurocentrism by the Europeans is consistent with what Santiago Castro-Gómez (2021) has called the “zero-point hubris,” in part and parcel, the “macrophysical level of ‘longue durée structures,’” that is, the forms of knowing which the Europeans continued in the Americas,

placing them always in a superior position and everyone else below them. The epistemic violence explained by Castro-Gomez (2021) posits that the colonial experiment allowed the Europeans to observe the natives oppressed by the colonial endeavor of nation building and ignore the deprivation of the humanity of the natives made possible by the process of observation. This observation created an attenuation that solidified the presence or absence of knowledge by the observer. Therefore, the false dilemma fallacy is a manipulative tool designed to polarize the inhabitants of the Americas and the Europeans, promoting one side, i.e., Europe, and diminishing the other, i.e., the Americas.

Regarding more possibilities that exist to explain Europe and the Americas, some genetic studies estimate that Pre-Columbian cultures are 40,000 to 13,000 years old in comparison to the genetic data that European cultures are 5,000 years old. In other words, the spatialized representation of Old World vs. New World was inaccurate, as the Americas were older than Europe based on genetic data. To support my argument, Walter D. Mignolo (2009), in “Epistemic Disobedience, Independent Thought and Decolonial,” writes: “the knowing subject maps the world and its problems, classifies people and projects into what is good for them” (160). The Europeans of the 15th-century did not have the genetic data we have available since the 20th-century, but to them it was convenient to think that the Americas was a New World, so they can impose their will and beliefs beyond it favoring the European way of life over the customs and practices of the people inhabiting the Americas.

Therefore, the Europeans did not discover the Americas, as the Americas had existed in time and place before the arrival of Europeans. Claiming the Americas as a discovery is a hasty generalization and a logical fallacy undergirded by the need to legitimize colonialism and its negative social, economic, and political effects. This is consistent with the imperialist paradigm

that undergirded the Age of Exploration. If *discovery* signified to the Europeans the message that a body of land never was inhabited by other Europeans, then perhaps I could understand better their hasty generalization. But I am still not convinced. *Discovery*, also, implied to the Europeans the message that there were no owners to claim the land they inhabited.

To clarify the point even more, the comportment of the Europeans throughout the Age of Exploration was consistent with the doctrine of exploration, which the Cornell Law School, Legal Information Institute, “refers to a principle in public international law under which, when a nation ‘discovers’ land, it directly acquire rights on that land” (“doctrine of discovery,” 2022).

To argue in favor of the rights of the people of the Americas, it would be fallacious to think that they did not have dominion over the land; they buried their dead; they worshipped their gods; they procreated to multiply like all the other species on the land; clearly, their lived experiences on the land were evidence that they had custody and a rightful possession of their territories.

But the Catholic Church is also complicit with the Europeans’ attitudes and behaviors, as Pope Alexander VI encouraged the imperialist stance with his “Demarcation Bull,” written on May 4, 1493:

should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered towards the west and south, by drawing and establishing a line from the Arctic pole, namely the north, to the Antarctic pole, namely the south, no matter whether the said mainlands and islands are found and to be found in the direction of India or

towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde.

(“The Doctrine of Discovery, 1493,” n.d.)

Pope Alexander VI’s “Demarcation Bull” established the geographical boundaries in which Spain could explore and colonize, giving Spain, at the time, a monopoly over the territories in the Americas. But Pope Alexander VI was also protecting the interests of the Catholic Church when he issued his Papal Bull, as Spain was proselytizing Christianity over the New World. New converts into the Catholic Church reaffirmed the survival of the church and solidified the power of the Pope.

Again, in 1492, Columbus did not have the genetic data that we have now in the 21st-century challenging his claim that he had landed on the New World, but instead landed on an older world than the one he knew back home in Europe. Therefore, if I am to expound on the logical fallacies of the Europeans, then I must re-evaluate how the Europeans viewed the world from a 15th-century perspective, and how their views shaped the world to the present. Frantz Fanon (1967) in *Black Skin, White Masks* writes, “Every human problem must be considered from the standpoints of time. Ideally, the present will always contribute to the building of the future” (“Introduction,” 14-15). But what is not in doubt here in this research is that European laws supplanted in the Americas only favored Europeans and not the inhabitants of the Americas.

Therefore, the *non-native* and *native* dichotomy was created in the Americas to divide and distance the Europeans from the natives of the Americas, and the Europeans to position themselves strategically and favorably within this spatialized representation to secure and maintain power at the expense and subjugation of the natives. Anibal Quijano (2000), in

“Coloniality of Power, Eurocentrism, and Latin America,” writes: “Terms such as *Spanish* and *Portuguese*, and much later *European*, which until then indicated only geographic origin or country of origin, acquired then on a racial connotation in reference to the new identities” (534). Therefore, the terms *non-native* and *native* are fallacious terms, from the perspective of the 21st-century, and most likely fallacious terms for the indigenous people living at the time in the 15th-century, but for administrative purposes and control were used by the Europeans in the 15th century to create a power structure and maintain their positionality of superiority over the rightful owners of the Americas. Nevertheless, the indigenous people continue to fight until this day against colonization and its attending adverse effects.

The spatialized representation of Old World vs. New World in tangent with terms like *non-native* and *native* accentuates geographical differences in opposition to each other: European vs. North American, or European vs. Central American, or European vs. South American, or European vs. Caribbean. That is, Old World is always European; *non-native* is stable, civilized, and founded on legal traditions. New World is always the Americas; for that reason, *native* is unstable, uncivilized, and not founded on legal traditions.

Fanon (1967) writes: “There will always be a world—a white world—between you and us.... The other’s total inability to liquidate the past once and for all” (“The Fact of Blackness,” 122). Here, the “white world” is the Old World, the non-native. Although the Europeans supplanted a “white world” in the Americas, with their institutions of government, corroborated by legal traditions from Europe, they failed to wipe away the lived experiences of the natives that continue to resonate in the spirit of their future generations. The fighting spirit of the oppressed and the refusal to succumb to pessimism and annihilation is the topic of my next chapter.

Fanon (1967) adds: “The white man wants the world; he wants it for himself alone. He finds himself predestined master of this world. He enslaves it” (“The Fact of Blackness,” 128). Because the Europeans’ pathos is deeply rooted in narcissism and a false sense of entitlement their worst actions were carried out in the colonized world. Alexander Koch, Chris Brierley, Mark M. Maslin, and Simon L. Lewis (2019), in “Earth System Impacts of the European Arrival and Great Dying in the Americas after 1492” write: “Our estimate of the number of people living in the Americas in 1492 CE is 60.5 million ...” (17). This research places the population in the Americas even higher than the often quoted population of 40-41 million in 1492. Sadly, there was a “90% decline to 5.6 million [indigenous people in the Americas] in 1600 CE” (Koch et al., 2019, p. 21). The loss of 55 million indigenous people from 1492 to 1600 should be considered a genocide.

When cries of independence were heard throughout the continent in the 19th-century, the European masters left the Americas, but the spirit of the European masters continue to live in the nation states in the Americas. The Dominican Republic mirrors the Europeans masters in the past, as the Dominican Republic has positioned itself strategically over the Haitians and the Dominicans of Haitian descent living on the land. This is due to the whitening of their history (blanqueamiento), as Dominicans claim to be direct descendants of Spaniards with no other mixture of races. Many other post-colonial countries in the Americas have done the same to create a supposed ideal of whiteness in their nation states. Quijano (2000) elucidates that, “The racial axis has a colonial origin and character, but it has proven to be more durable and stable than colonialism in whose matrix it was established” (533). The racial classifications are deeply rooted in the Americas that this model of power remains to date. The ruling class is always closest to whiteness, and any other racial group is permanently below.

However, the advantageous racial positionality of Dominicans over Haitians and Dominicans of Haitian descent is rooted on false pretenses of superiority, as there is no substantive scientific method to prove superiority, but DNA can prove racial mixture. What gives the Dominican Republic credence to feel superior over Haitians and Dominicans of Haitian descent is via the passing of laws that exclude specific groups of people from joining the nation state. In other words, the constitutional laws that exclude others justify the beliefs of superiority.

Patrick J. Glen (2007) in his comparative constitutional analysis between the Fourteenth Amendment¹ of the United States' Constitution, and Article 11² of the Dominican Republic's Constitution, explains that the U.S. framers understood how expansive the clause was due to the broad language they used in the amendment, but the Dominican Republic's Article 11 uses language that makes exceptions granting citizenship explicit. In other words, the Fourteenth Amendment grants citizenship to all those born in the United States regardless of the person being in transit; but in the Dominican Republic, if you are a foreigner in transit, and your child is born in the Dominican Republic, your child does not automatically obtain citizenship.

The Thirteenth Amendment, the abolition of slavery in the entire United States, the Fourteenth Amendment, the right to citizenship, and the Fifteenth Amendment, the right to vote are part of the Reconstruction Amendments, also called the Civil War Amendments. To be exact, the Fourteenth Amendment helps correct a political situation where people of African descent

¹ "Son dominicanos: 1. Todas las personas que nacieren en el territorio de la República, con excepción de los hijos legítimos de los extranjeros residentes en el país en representación diplomática o los que están de tránsito en él. / Dominicans are: 1. All persons who have been in the territory of the Republic, except the legitimate children of foreign diplomats resident in the country or foreigners who are in transit" ("D.R. Const. of 2002, Art. 11," 2009).

² "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside" ("U.S. Const. Amend. XIV," n.d.).

were not and could not be citizens. We can argue that the people of African descent in the United States prior to the ratification of the Fourteenth Amendment were in a similar stateless condition like the Dominicans of Haitian descent. Conversely, the conception of citizenship in the Dominican Republic is not concordant with the conceptions of citizenship in the Continental United States.

Furthermore, Glen (2007) asserts that the Fourteenth Amendment reestablished the *jus soli* principle that existed in British common law since the genesis of the United States. In the Dominican Republic, the *jus soli* principle has exceptions. *Jus soli* and *jus sanguinis* are legal principles brought from the Old World by Europeans to the New World to supplant a white world in the Americas. Although the Fourteenth Amendment grants automatic citizenship to those born in the U.S., nativist in the U.S. push back and are against foreigners coming into the country illegally, and allowed to have anchor babies to remain in the country.³ If constitutional amendments were an expedient process in the U.S., which did not require three-fourths of the states to agree for an amendment, then the *jus soli* legal principle would have been amended already.⁴ Those nativists would want the U.S. to have exceptions granting citizenship like the Dominican Republic.

The legal principles of *jus soli* and *jus sanguinis* are used to effectively sift through who the nation states choose to admit into the polis. For example, during the Trump Administration (2017-2021), Nurith Aizenman (2018) reports that "... President Trump complained about 'having all these [immigrants] from shithole countries come here' – and singled out Haiti, El

³ "Used to refer to a child born to a noncitizen mother in a country which has birthright citizenship, especially when viewed as providing an advantage to family members seeking to secure citizenship or legal residency" (Oxford Languages).

⁴ "A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the States (38 of 50 States)" ("National Archives," n.d.).

Salvador and Africa as examples – he also added that, ‘we should have more people from Norway’” (“Trump Wishes We Had,” para. 1). The two legal principles of *jus soli* and *jus sanguinis* continue to maintain the exclusionary tradition of non-native vs. native established by the Europeans in the Americas. The European masters left the Americas, but new masters rose with time, keeping the white world spirit of divisiveness and control alive.

The Dominican Constitution of 2002, Article 11, paragraph 1 reads: “Dominicans are recognized the right to acquire a foreign nationality.”⁵ Glen (2007) contends that “so long as the aliens intend on staying in the [Dominican Republic], then there is no inherent limitation in ... [Article 11, paragraph 1] that would foreclose the extension of the *jus soli* principle.” In other words, if the immigrants intend on staying indefinitely in the Dominican Republic, then the *jus soli* principle could be extended to their children born in the Dominican Republic. But how do Haitians with children born in the Dominican Republic prove to the Dominican government that they want to stay indefinitely on the land? For the Dominican government to rely on Haitians filling out a form, it would not be sufficient or satisfactory, as that would mean the Dominican government trusted and cared about Haitians. Governments will make paperwork requirements expedient and manageable for the applicant when they welcome the immigrant groups coming into the country.

But to be precise, Article 11, paragraph 1, of the Dominican Constitution of 2002 does not protect “seasonal workers, such as migrants” (Glen, 2007). Then, the “seasonal worker” designation could be used as a loophole for the Dominican government to use against Haitians residing and working in the Dominican Republic, so not to grant citizenship to the children of

⁵ “Párrafo I. Se reconoce a los dominicanos la facultad de adquirir una nacionalidad extranjera” (“D.R. Const. of 2002 Art. 11, para. I,” 2009).

migrant workers; therefore, the *jus soli* principle is not extended to the children of seasonal workers regardless of their intent to remain indefinitely in the Dominican Republic.

It is unequivocal that Article 11 of the Dominican Constitution of 2002 is restrictive, making it impossible for immigrants in transit, or seasonal workers, to continue insisting for a pathway towards citizenship in the Dominican Republic. But the spirit to fight towards citizenship is an ongoing battle, and the inconsistencies in the laws are grounds to challenge the Dominican Courts. For example, Amelia Hintzen (2014) clarifies that a Dominican Republic 1939 immigration law “distinguished between ‘immigrant’ and ‘non-immigrant’ by explaining that ‘foreigners admitted as immigrants can reside indefinitely in the Republic ...[yet] those non-immigrants will only be granted temporary admission’” (“Historical Forgetting,” 109).

The distinctions that echoed in the colonial era between non-native and native in the Americas continues to resonate in the Dominican Republic with the differentiations between “immigrant” and “non-immigrant” sustained by the 1939 immigration law. The designations are imbued with privileges and limitations set by the Dominican government, as it did with the designations set by the former European masters in the colonial era; to be labeled an “immigrant” was better than to be labeled a “non-immigrant” in the Dominican Republic, as one designation allowed you to remain indefinitely in the country.

But Hintzen (2014) was pointing out the legal arguments one could make using the 1939 immigration law challenging the Dominican Constitution and demanding citizenship based on “immigrant” and “non-immigrant” status, prior to the Dominican Republic’s Constitutional Court judgment TC/168-13 (*La Sentencia*) that set the course for thousands of Dominicans of Haitian descent to be stripped of their citizenship and become stateless. TC/168-13 declares that “temporary admission” is equivalent with “in transit,” concluding that “children born to Haitian

seasonal workers after 1929 are not considered citizens and should instead apply for Haitian citizenship” (Hintzen, 2014, p. 109). This means that anyone with Dominican citizenship and falls under said conditions set by the Constitutional Court’s judgment will be stripped of their citizenship becoming stateless. This judgment is unconscionable as it a decision that is being retroactively being applied. Has the Dominican Republic’s Constitutional Court ever considered using a grandfather clause?⁶

The courts have an obligation to solve social problems in the interest of justice, not to create more chaos in the lives of people. How can the courts not foresee the possible problems that will come about by retroactively enforcing a law that affects the citizenship status of thousands of people? If that is not the case, then we must consider that the court system is corrupt and biased against Haitian immigrants. But we know that the total mistreatment of Dominicans of Haitian descent is created through the legislation voted in the Dominican National Congress. Placing a grandfather clause in judgement TC/168-13 would have avoided thousands of Dominicans of Haitian descent to become stateless. More so, the judgement could have been applied to Dominicans of Haitian descent born on/after the date of the judgement. But the intent of the Dominican Republic’s Constitutional Court as ordered by the Dominican National Congress is not to alleviate the lives of Dominicans of Haitian descent, but to complicate the lives of thousands of people by forcing them to leave the Dominican Republic.

The Dominican’s Supreme Court directed the Civil Registry to go back 84 years and reevaluate the citizenship of Dominicans of Haitian descent to determine if the parents, primarily the mothers, were in” transit,” when the children were born in the Dominican Republic. TC/168-

⁶ A grandfather clause is “a clause exempting certain classes of people or things from the requirements of a piece of legislation affecting their previous rights, privileges, or practices” (Oxford Languages).

13 is a court decision that targets women, as they are the ones who have to carry out a pregnancy to childbirth. Immigration has historically had to address issues of gender, marriage-based domestic relations laws, and legitimacy of children. Kristin A. Collins (2014), in “Illegitimate Borders: ‘Jus Sanguinis’ Citizenship and the Legal Construction of Family, Race, and Nation,” explains that in the U.S. the “statutes governing parent-child citizenship transmission were facially race neutral, [although] the practices and legal regulation of family formation and recognition were not” (2138).

Here, Collins (2014) is discussing the practices of judges, administrators, and legislators, which were incorporated into the *jus sanguinis* citizenship law, becoming the “racialized domestic relations law principles [that] could be, and regularly were, used to exclude nonwhite children from citizenship” (2138). Therefore, in the U.S., like in the Dominican Republic, if an immigration officer did not agree with the moral character and/or racial class of the immigrants, it would have been more likely that the immigration officer would have processed the immigrant’s application unfavorably. The same racist practices of judges, administrators, legislators, and immigration officers exist in the Dominican Republic, when they exclude nonwhite children from citizenship like Dominicans of Haitian descent from being registered with the Civil Registry.

But the Dominican Republic’s laws have become more retaliatory and punitive against Haitians and Dominicans of Haitian descent over time. Hintzen (2014) argues that the Dominican “framers of the 1929 constitution” did not “intend the phrase ‘in transit’ found in Article 8 to apply to migrant sugar laborers” (109). The ongoing constitutional arguments might be of interest to lawyers and legal scholars, but the people affected by the changes in citizenship laws in 2013 are at the center of this disruption. Also, Hintzen (2014) contends that the

Dominican government did not use the 1929 constitution in its inception to strip Dominicans of Haitian descent of their citizenship, suggesting that former government administrations had more respect for the *jus soli* principle than targeting a group of people.

For example, in 1967, two hundred Haitians were detained and planned to be repatriated, the Director of Immigration in a letter advised the Secretary of the Armed Forces that “he needed to be careful not to ‘dismiss the possibility that Haitian nationals qualify to obtain permanent residence in the country for either their activities or for ... having children born in the country’” (Hintzen, 2014, p. 109). In other words, the Director of Immigration in 1967, like Hintzen (2014) and Glen (2007), were right to argue that children born in the Dominican Republic to foreign parents had legal standing to claim *jus soli* if the intent of the parents were to remain in the country permanently. Hintzen (2014) adds: “... in 1967 not only were children of Haitians considered citizens, but also those migrants who had children in the country were eligible for permanent residence and had protection against deportation as well” (109).

In 1969, in a letter from the Dominican Deputy Secretary of Migration to the Dominican President Joaquín Balaguer, the deputy secretary expresses concern about the “grave problem the country confronts in the face of the large number of Haitian nationals who have invaded [the] territory in a passive and massive manner, and even worse, have children ... who, due to the fact that they were born [in the country], are Dominicans” (Hintzen, 2014, p. 109). The primary documents from the 1960s in forms of letters that Hintzen (2014) has presented in her research is evidence that the problem with the Haitian immigration into the Dominican Republic has been simmering like a pressure cooker which finally exploded with the judgment TC/168-13.

To make matters worse, Law 169-14 was passed by Dominican Republic’s National Congress with the intent to create a pathway to reinstate the citizenship of Dominicans of Haitian

descent but made the administrative process so onerous that the affected population remains stateless.

The constant revision of the Dominican Constitution and immigration laws are machinations by the Dominican government to appease the social forces internally in the country that are in support of stricter immigration laws, and to appease the external forces outside of the Dominican Republic who advocate for the Dominicans of Haitian descent who are stateless. However, we must identify that the social forces are being motivated by a xenophobic form of populism, which is being constantly used in failed states or when the nation as a whole is unable to deal with structural crises pertaining to the economy, housing, education, and immigration.

Furthermore, the Dominican Republic must present to the international community that they are looking for a solution with the Haitian and Dominicans of Haitian descent crises; yet, not finding a solution keeps the elites in the Dominican Republic content, making the attempted good will to resolve the problem through the passing of laws disingenuous. However, there are thousands of Dominicans of Haitian descent living in a stateless quagmire without access to a better quality of life due to their legal status. But the Inter-American Court of Human Rights is holding the Dominican Republic accountable with the Case of expelled Dominicans and Haitians v. Dominican Republic, Judgement of August 28, 2014, ruling in favor of the Haitians and Dominicans of Haitian descent who brought forth their case to the international human rights court.

The Dominican Republic, like the previous European masters, maintains the spatialized representation of the Old World vs. the New World, but it is a false dilemma, as it is a manipulative tool used to polarize people, promoting only one side, and always diminishing the other. The terms non-native vs. native, and non-citizen vs. citizen, are designations of

positionality used to establish a two class system: the have and have not. The presence of Haitian immigrants in the Dominican Republic has been a source of cheap labor, exploitation, and capitalism for over a century favoring the Dominican elites. The social forces coerce the politics by controlling the political, racial, and cultural narratives to preserve the two class system. Race, racism, native vs. non-native opposition is a way to prevent class solidarity across racial lines. It is through the upholding of legal principles, like *jus soli* and *jus sanguinis*, and the passing of new laws that the power structure remains alive. As Fanon (1967) declared, “My final prayer: O my body, make me always a man who questions!,” we must continue to interrogate the Blackness/Haitianess in relation to Blanqueamiento/Non Black identity in the Dominican Republic (“By Way of Conclusion,” 232).

CHAPTER 3

Jus Soli and Jus Sanguinis: Haitians and Dominicans of Haitian Descent in a Stateless Quagmire

This September 2023 marks the tenth-year anniversary of the Dominican Republic's Constitutional Court's Judgment TC-0168-13 passed on September 23, 2013. Because of the judgment thousands of Dominicans of Haitian descent remain stateless. It is for this reason that Judgment TC-0168-13 continues to be of particular interest to those concerned with international citizenship and international human rights laws, because "it gave a new interpretation as regards the acquisition of nationality by individuals born in the country to foreign parents in transit. Based on this interpretation, individuals who previously had been recognized as having Dominican nationality were denationalized," affecting those born between 1929 and 2010 and invalidating the legal principal of *jus soli*, which granted them nationality in the first place ("Preliminary Observations," 2013).

Ricardo Rojas (2013), in "Dominican Court Ruling Renders Hundreds of Thousands Stateless," provides a picture of Sentilia Igmesa, outside of her home in Batey La Higuera, in the Seibo Province. She was born in 1930 in the Dominican Republic. Similarly, he mentions the Blemi family. Both the Igmesas and Blemis are descendants of Haitian immigrants and have been residing in the Dominican Republic for four generations.

The Igmesas and Blemis found themselves stateless after Judgment TC-0168-13, and many other thousands of families of Haitian descent living in the Dominican Republic, who could not prove that at least one parent was of Dominican blood, declaring all others to either be

in the country illegally, or in transit (Rojas, 2013). Many of the families affected by TC-0168-13 have not lived in any country other than the Dominican Republic, and do not speak Creole or French; their native language is Spanish.

The same lived experiences of the Igmesas and Blemis are observed in the documentary *Stateless* (2020) by director Michèle Stephenson, in which she depicts and uncovers the complex history and present-day politics of Haiti and the Dominican Republic. She begins by contextualizing the film on the Haitian Holocaust, or as referred to in the documentary as the genocidal massacre, and others call it the Parsley Massacre (October 1937), in which thousands of Haitians were murdered on the orders of President Rafael Leónidas Trujillo Molina (1891-1961).¹ The reference to the Parsley Massacre situates the documentary in the 20th-Century to emphasize that the problem between Haiti and the Dominican Republic is an ongoing problem dating back more than eight decades; but Stephenson has written in the opening scene that the racial tension between Haiti and the Dominican Republic dates back to the colonial era, pushing back the problem between the neighboring countries even farther back in time; the Parsley Massacre accounting begins by a female voice narrating it as a story to her son, then Stephenson flashes forward to the present year 2013; throughout the documentary, she returns to this female voice to continue telling the story of the Parsley Massacre to her son.²

In the present time, Stephenson's primary focus is the daily life of Dominicans of Haitian descent, who were affected by Judgment TC-0168-13, that stripped them of their citizenship and their homes. Stephenson closely looks at the life of a young attorney of Dominican and Haitian

¹ “Dominican soldiers carried around a spring of parsley and would ask people of being Haitian to pronounce the Spanish word for it: ‘perejil,’” as the /r/ in Haitian Creole sounds different from the Spanish /r/ (<https://www.bbc.com/news/world-latin-america-19880967>).

² Rosa Iris, the young Dominican and Haitian attorney in the documentary, is the female voice telling the story of the Parsley Massacre to her son.

descent, Rosa Iris (Diendomi Álvarez), advocating for human rights, and performing grassroots work alongside Dominican and Haitian communities; Rosa Iris helps Dominicans of Haitian descent gather pertinent papers as requirements to present to the Dominican Civil Registry to make a case for nationalization. She even accompanies them to their appointments at the Civil Registry speaking on their behalf.

As of a result of her grassroots work, she empowers these Dominican and Haitian communities with knowledge of the Dominican legal system, while she campaigns to become a congresswoman to bring forth awareness of her cause in the larger Dominican political stage. Sadly, Rosa Iris puts her own life on the line, and the life of her son, as she receives threats over the telephone because of her defense of human rights and advocacy towards Dominicans of Haitian descent. Due to the threats against her life and her son's life, she sought asylum in the United States, where she is now a political refugee.

Moreover, Stephenson presents the current political discourse by allowing us to hear it through the television sets of people who are experiencing the effects of denationalization. The camera zooms into their living rooms, and then closer to the television screen, and we hear the President of the Dominican Republic, Danilo Medina Sánchez, deny that more than 200,000 Dominicans of Haitian descent are stateless and blames international organizations for promoting the false narrative.³

Stephenson, also, uses other televised footage to narrate experiences by Dominicans advocating for the rights of children of Haitians in the Dominican Republic, as the case of attorney Genaro Rincón, who appears on the screen with contusions in his lips, face, and wounds

³ Danilo Medina Sánchez (b. 1951) was president of the Dominican Republic from 2012-2020.

on his upper head; we hear him declare that he was assaulted by being punched, stepped on, spat on, and even had bricks thrown at him.

To counter Genaro's and Rosa Iris' narratives in support of Dominicans of Haitian descent, Stephenson presents Gladys Feliz-Pimentel, a member of the Dominican Nationalist Movement. The camera follows her to Dajabón, the border between Haiti and the Dominican Republic. Gladys is speaking to Dominican soldiers protecting the border, and she is surprised as to how easily Haitians can enter the Dominican Republic without showing passports, or other documentation, but she cannot do the same if she were to cross the border into Haiti.

Soon, she finds out from Haitians standing near the border on the Dominican Republic side that she only needs to speak to the Haitian police protecting the border to let her in and out of country. Gladys never responds to the Haitians clarifying her misconceptions of crossing the border to and from Haiti. Then, Gladys begins expressing her views to the camera of how "Haitians operate" (*Stateless*, 2020); they are people who "commit murder, rob, chop up people," and "every day a Dominican family" falls victim to Haitians (*Stateless*, 2020). Here, Gladys is demonizing an entire group of people. The tropes she uses undergird right wing law and order narratives that justifies xenophobia and racism. These argumentations are the mechanisms employed to garner support for draconian laws that disregard the most basic legal conceptions of due process of law and recognition of the rights and privileges associated with the rights stemming from having been born in the Dominican Republic.

Furthermore, Gladys believes the Dominican government is not doing anything to stop the Haitian problem; therefore, her Nationalist Movement organization is proposing that the Dominican government build a wall on the border between Haiti and the Dominican Republic, closing "85 Haitian entry points at the border" to combat the Haitian immigration problem

(*Stateless* 2020). In “Making the Dominican Republic Great Again?,” Lorgia García-Peña (2022) writes:

While the similarities in Dominican and U.S. anti-immigration language and the policies around border control—which include the use of drones and surveillance, detention center, deportation, and the implementation of biometrics—are pretty obvious, the reasons and history behind them are less known. The reality is that when it comes to Haitian immigration, the Dominican Republic has always taken its cues from the United States. (“Making the Dominican Republic,” 2022)

To expound on García-Peña’s (2022) remark about the Dominican Republic and the United States, President Trump was in office from 2017-2021, and while in office he ordered that a border wall be constructed between Mexico and United States. It does not surprise me that the President of the Dominican Republic, Luis Abinader (2020-present) wanted to build a border wall, as well, separating the Dominican Republic from Haiti, as García-Peña (2022) has pointed out that the Dominican Republic “take[s] its cue” from the U.S. when it comes to Haitian immigration. To return to *Stateless* (2020), Gladys confirms that she will continue to fight and support the Dominican government until the Haitian immigration problem is resolved. Gladys’ rhetoric is continuously used to justify anti-haitianismo in the Dominican Republic.

In addition, Stephenson follows the life of Haitians and Dominicans of Haitian descent living in Batey Chicharrones, a sugarcane community in the Dominican Republic. You see images of children cutting and eating sugarcanes. Rosa Iris appears, again, helping this Dominican Haitian community, as she is compiling data as to how many have in possession an identification card, and explaining that in two years these Dominican Haitians must renew their identification cards in exchange for a Dominican Identification Card (*cédula*), and will need to

provide proof of their birth certificates. These Dominican Haitians inform Rosa Iris that they heard the same information she is giving them in the news in the early morning on that day.

Moreover, Stephenson does an excellent job in *Stateless* (2020) presenting the lives of many other people affected by Judgement TC-0168-13. She captures their frustrations and their pain, as some family must separate from one another, because they cannot find employment in the Dominican Republic, due to not having a *cédula*, as they cannot provide other supporting documentation to the Dominican Civil Registry as required by Judgement TC-0168-13. The current legislation allows for the dismantling of families. It has a destructive impact on the private lives of individuals whose ancestry has been criminalized. The bureaucratic process of excluding Dominicans of Haitian descent from their society creates a stateless condition which also lead to an existential crisis that affect parents and children. The hardships that these people feel is real and the viewer cannot withstand but sympathy for these Dominicans of Haitian descent stuck in a state of limbo without a nationality, and every privilege and right that comes with the membership to a nation state.

Evelyn Glenn (2000), in “Citizenship and Inequality: Historical and Global Perspectives,” writes: “Yet, despite the bourgeois, masculinist, and white trappings of American citizenship, the very groups that been excluded have often been the most eloquent proponents of the *ideal* of citizenship” (2). Here, Glenn is referring to the fighting spirit of those prohibited from citizenship in the United States, but the spirit to fight is universal, and it is observed in the Dominican Republic. When there is no other alternative, human beings will fight to bring about change, as we observed with Rosa Iris, Genaro Rincón, and so many other Dominicans of Haitian descent in *Stateless* (2020).

The struggle for citizenship is a global issue which historically has focused on issues of gender and race and its culturally specific. The construction of citizenship has produced both equality and inequality and has established very clear delineated social classes. “The modern,” Glenn (2000) argues, “western notion of citizenship emerged out of the political and intellectual revolutions of the seventeenth and eighteenth centuries, which overthrew the old feudal orders” (2).

Within the landscape of the feudal system in Medieval Europe throughout the 9th and 15th Centuries, the lord had responsibilities over those living on the land—primarily protection—, as well as the serfs had reciprocal duties towards the lord—that is, working the land, and/or paying rent, and/or paying taxes to the King. In the same manner, the lords had to pay taxes to the King for allowing them to maintain lands and titles over the kingdom, and when necessary, had to fight for the King. The reciprocal relationship in the feudal system was based on duties and obligations each respective class had within the social hierarchy, but there was no possibility for upward mobility. That is, the social classes were static and hierarchical.

The feudal system ended with the French Revolution in 1789, but some may posit that the system began to decline in the 1500s, and the vestiges of the system continued up to the 1860s. Nonetheless, the end of the feudal system transformed the European states. Qian Chengdan (2008), in “Transformation of European States: From Feudal to Modern,” writes: “... the two most important factors of [the] modern state, ..., [is] state sovereignty and national integration” (6683). A semblance of state sovereignty originated as the monarchies unified and became centralized, as is the case of Spain, which was the first unified monarchy in the world, and as a result became a superpower.

Prior to the unification of monarchies, monarchies were divided into fiefdoms, and loyalty was only to the fief. Under feudalism, the concept of allegiance to the state was unknown. Once state sovereignty was established, the allegiance to the state was possible through national integration. It is through the allegiance to the state that a relation between the individual and the state is created via citizenship. However, in the Middle Ages, citizenship was viewed only as membership into the nation states. But in modern times, citizenship describes the relation between a person and an overall political entity.

Therefore, citizenship is culture specific, as it is the case with the Dominican Republic, as the Dominican Republic chooses not to form a kinship via citizenship with Dominicans of Haitian descent. As I have explained earlier, it was a political decision by the Dominican government that led to this situation. Human action creates the current language for citizenship. As I have pointed out previously, historical changes occurred in Europe and led to social transformations/revolution that expanded citizenship to all, but abolished privileges to others. For example, in Nazi Germany, the same approach was used to disenfranchise the Jews. The denial of their German citizenship was in concrete term a process of dehumanization. In other words, once you are not considered to be a citizen, the state and its citizens are granted the right to not recognize your humanity. That is also the reason why the treatment of illegal immigrants is not just about their legal status but the refusal to treat them with dignity and respect, which manifest itself through violence and the incarceration of both adults and children.

Therefore, it is a fact that the Dominican Republic does not want to extend its kinship network by allowing Dominicans of Haitian descent legal rights, political participation, service in government, military service, voting rights, and freedom of movement. That is, Judgment TC-

0168-13 is being used by the Dominican Republic to designate Dominicans of Haitian descent as non-citizens and exclude them from the overall Dominican political entity.

Less than three months after Judgement TC-0168-13 was rendered by the Dominican Republic's Constitutional Court, the Inter-American Commission on Human Rights (IACHR) paid a brief visit to the Dominican Republic on December 2-6, 2013. In a press release, the IACHR writes: "The Commission carried out this visit to oversee compliance with the international commitments made freely by the State of the Dominican Republic in exercise of its sovereignty" ("Preliminary Observations," 2013). The issue of the modern state having complete jurisdiction over their territory is well established in law and agreed upon by the Western nations. We have observed the transition from feudal societies to modern states by emphasizing that the modern states have a centralized government and have complete sovereignty over their respective nation state. It is on the principle of sovereignty that nations shield themselves from accountability from other nation states. No sovereign nation can force another sovereign nation to act.

The Dominican Republic is part of the inter-American human rights system since 1948, and in 1959 collaborated in the creation of the Inter-American Commission on Human Rights (IACHR). The IACHR had done seven onsite visits to the Dominican Republic since its formation in 1959: in 1961, 1963, 1965, 1991, 1997, and 2013. In 2013, the IACHR, in a press release, reveal:

... during the visit the Inter-American Commission received troubling informing concerning grave violations of the right to nationality, to identity, and to equal protection without discrimination. The violations of the right to nationality that the Commission observed during its last on-site visit, in 1997, continue, and the situation has been

exacerbated as a result of Judgment TC 168/2013 of the Constitutional Court. An indeterminate but very significant number of Dominicans, estimated by various sources at more than 200,000 people, have been arbitrarily deprived of their nationality as a result of the ruling. Consequently, these individuals have seen their right to legal personhood violated, and they live in a state of extreme vulnerability. This situation disproportionately affects persons of Haitian descent, constituting a violation of the right to equal protection without discrimination. (“Preliminary Observations,” 2013)

Here, the IACHR observed violations of the right to nationality since their last visit in 1997, and since the passing of Judgment TC-0168-13 matters had gotten worse, estimating more than 200,000 people had been “arbitrarily deprived” of their “right to legal personhood,” but only persons of Haitian descent had been “disproportionately” affected by the judgment. To prove that only Haitians are disproportionately affected, Conectas Direitos Humanos (Conectas Human Rights) demographical information reveals that “the vast majority [of] Haitians ... represent 85% of the [Dominican Republic’s] immigrants” (“Voices of the Dominican,” 2015).

As I have discussed in an earlier chapter, the plight of Haitians and Dominicans of Haitian descent has been going on dating back to and beyond 1997. Haitians and Dominicans of Haitian descent have been systematically targeted by the Dominican government since the formation of the nation state in 1844, and other conflicts date back even farther back when France took position of the western territory of the island, and problems continued after Haiti became an independent nation because of the Haitian Revolution.

The contradiction of this whole matter to me is the Dominican Republic’s membership with the Inter-American Commission on Human Rights (IACHR). The voluntary participation of the Dominican Republic to an organization that protects human rights is a farce when your

actions as a nation state contradicts the human rights you claim to protect through your affiliation with IACHR. But sadly, this farce is not specific to the Dominican Republic. For instance, the U.S. does not respect children's rights, when they should be applicable to undocumented children. The double standard here only highlights the privilege of powerful nations.

Putting the farce of the Dominican Republic and the double standard of the U.S. aside, there is a bigger legal problem to discuss. Judgment TC-0168-13 is in contravention with international human rights law protecting the exercise and enjoyment of the right to nationality. The right to nationality is a universal fundamental right, which must be protected from possible arbitrary acts by nation states to prevent persons to such right. But it is important to remember that right wing populist politicians are constantly talking about how their countries should restrict access to citizenship and also remember that even in democratic states there are instances where one could be stripped of one's citizenship. The IACHR writes:

Article 20 of the American Convention on Human Rights establishes that every person has the right to a nationality, that every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality, and that no one shall be arbitrarily deprived of his nationality or of the right to change it.

(“Preliminary Observations,” 2013)

Article 20 of the American Convention on Human Rights looks great on paper, but there is no enforcing power to compel nation states to comply with this international human right. In the end, the determination of who obtains nationality continues to fall under the jurisdiction of the nation states. Therefore, we have gone full circle: the laws exist at the international law level protecting the human rights of the inhabitants of the world, but sovereignty protects nations from accountability when they deny the right to nationality.

But the Western nations need to continue pressuring the Dominican Republic. One option is to boycott the Dominican Republic's tourist industry if they do not assist Dominicans of Haitian descent obtain a Dominican nationality and comply with international law. According to WorldData.info, they observe: "In 2018, the Dominican Republic generated around 7.56 billion US dollars in the tourism sector alone" ("Tourism in the Dominican," n.d.). The World Tourism Organization (UNWTO), a specialized agency of the United Nations, notices in 2019, in the Dominican Republic that "the tourism sector has developed into a key pillar of the country's economy, generating 15% to 16% of GDP, including its indirect impact" and that "foreign direct investment in the tourism sector reached US\$ 942 million, making the tourism sector the largest recipient of FDI in the Dominican Republic in 2020" ("Tourism Doing Business," n.d.). Moreover, World Economics writes that the "... official estimate for Dominican Republic's GDP was \$218 billion at the end of 2022 in purchasing power parity terms" ("Dominican Republic's Gross Domestic," n.d.).

Therefore, if we use the data from the UNWTO and World Economics, the tourism sector in the Dominican Republic generated between \$32.7 billion to \$34.9 billion of GDP in 2022. From the information obtained from WorldData.info, UNWTO, and World Economics, the Dominican Republic from 2018 to 2022 has seen a growth in GDP from the tourism sector. As citizens from Western nations, we understand the law of supply and demand; if we do not purchase a commodity, product, or service available, then the price for the commodity goes down, as the desire of the buyers for the commodity regulate the price for the product. As citizens from Western nations, not supporting the tourist industry of the Dominican Republic would send a message to the country as the economy of the country depends on its revenue. David Bennett and Sophie Gebhardt (2005) identify that the "great majority of international

tourists, ..., currently come from just a handful of countries – the USA, Britain, France, Germany and Japan” (“Global Tourism and Caribbean Culture,” 2005, p. 15).

To begin a boycott campaign against the Dominican Republic’s tourist industry, a letter campaign must be started and addressed to all the foreign investor companies providing capital for tourism in the Dominican Republic. Letters will be going out to foreign investors in Britain, France, Germany, Japan, Mexico, Spain, and the United States. In “The Foreign Investment Regulation Review: Dominican Republic,” Fabio J. Guzmán Saladín and Pamela Benzán Arbaje (2022) write: “... the [Dominican Republic] has become the main recipient of FDI in the region, with this investment totalling US\$3.1 billion in 2019, of which 31.5 per cent came from the United States, 21.2 per cent from Mexico, 13.1 per cent from Spain and 7.9 per cent from France” (“The Foreign Investment Regulation,” 2022). Guzmán Saladín et al.’s (2022) foreign investment figures for 2019 are US\$2.16 billion more in FDI than the UNTWO determined for the same year at a lower figure of US\$942 million. The inference from this obvious large discrepancy in dollar amounts is that there is more foreign capital funneling into the tourism industry in the Dominican Republic than the UNTWO detected.

Therefore, making a written declaration via a letter campaign to boycott the Dominican Republic’s tourist industry, then publicly posting the same via the internet and social media is a start to get the attention of the Western nations and foreign investors in the Dominican Republic to pressure the country to comply with the Inter-American Court of Human Rights, Case of Expelled Dominicans and Haitian v. Dominican Republic, Judgment of August 28, 2014. In the end, foreign investors want to protect their image and it would be a good public relations response to the Dominican tourism boycott letter campaign to be on the side of a human rights cause.

I have also considered writing to the U.S. House of Representatives from New York's 13th district, Adriano Espaillat, as he is a Dominican-American politician, who serves as a member in the influential U.S. House Committee on Appropriations, and carries out duties in the House Budget Committee as well. I receive constant communications via email from U.S. Representative Espaillat, as I am actively involved in political petitions that affect the 13th district. In the past, I have spoken to one of his Office's Managers in Inwood to get a letter from Representative Espaillat supporting a nomination I made for a school principal to receive an award in New York State. The nomination letter was for a school principal in Representative Espaillat's 13th district. Representative Espaillat's Office did write the letter and he affixed his signature.

I understand that asking Representative Espaillat to make a public declaration in support of Haitians and Dominicans of Haitian descent, and requesting that the Dominican Republic comply with the Inter-American Court of Human Rights, Case of Expelled Dominicans and Haitian v. Dominican Republic, Judgment of August 28, 2014, is demanding more from him than getting a nomination letter for a school principal, but I will make the request in writing nonetheless on behalf of Haitians and Dominicans of Haitian descent living in a stateless condition in the Dominican Republic.

I would forward the request for Representative Espaillat to obtain his concession to the public awareness, recognition, and his personal opinion of the Dominican and Haitian dynamic in the Dominican Republic. My objective in doing so would be to exercise my right as a constituent and citizen to inquire vis-à-vis his political platform. Most important, it would be the line of inquiry regarding the treatment and exclusion of the Haitian community in violation of the political constructs that allowed him to become a Representative in the United States

Congress. Representative Espaillat has not during his political tenure in numerous political positions served as an advocate for the preservation of the rights of Haitians. In fact, the issue has been one from which he has steered away with the concern that advocating for the rights of Haitians would adversely affect his base in the State of New York many of whom do not support Haitian efforts to preserve their rights to citizenship. Representative Espaillat, like the Dominican politicians that amend the constitution and ratify laws to exclude and deprive Haitians of their rights and privileges that support citizenship and its attending protections, has been disturbingly silent on the matter.

The inherent contradictions and political attenuation related to his failure to support the Haitian population in the Dominican Republic is that it runs afoul of his oath to protect the Constitutional Framework in the Continental U.S., and the right of the citizens residing in all jurisdictions in the 50 states. Representative Espaillat should employ his oath to preserve the U.S. Constitution and apply the universal right of citizenship universally. It should include Haiti.

In the Judgment of August 28, 2014, the Inter-American Court found the Dominican Republic responsible for the violation of the following rights established in the American Convention on Human Rights:

recognition of juridical personality (Article 3), to nationality (Article 20), to a name (Article 18), and also owing to these three violations taken as a whole, the right to identity, to personal liberty (Article 7), to freedom of movement and residence (Article 22(1), 22(5) and 22(9)), to judicial guarantees (Article 8(1)), to judicial protection (Article 25(1)), to protection of the family (Article 17(1)), and to privacy in relation to the prohibition of arbitrary interference in private and family life (Article 11(2)). (*Case of Expelled Dominicans and Haitians v. Dominican Republic* 2014)

There are more violations that the Inter-American Court lists against the Dominican Republic, but at the center of these violations are the people who were affected by Judgment TC-0168-13:

William Medina, Lilia Jean Pierre, Awilda Medina Pérez, Luis Ney Medina, Carolina Isabel Medina, Jeanty Fils-Aimé, Diane Fils-Aimé, Endry Fils-Aimé, Bersson Gelin, William Gelin, Antonio Sensión, Ana Virginia Nolasco, Ana Lidia Sensión Nolasco, Reyita Antonia Sensión Nolasco, Victor Jean, Marlene Mesidor, Markenson Jean Mesidor, Miguel Jean, Victoria Jean, Natalie Jean and Rafaelito Pérez Charles, based on the specific situation of each victim. (*Case of Expelled Dominicans and Haitians v. Dominican Republic*, 2014)

All other Haitians and Dominicans of Haitian descent should have been included in this case, if they were affected by Judgment TC-0168-13, because of this law they are living in a stateless condition without the social, economic, and political protections that stem from the rights and privileges associated with citizenship.

As long as Judgment TC-0168-13 is part of the laws of the Dominican Republic and its constitutional framework, Haitians and Dominicans of Haitian descent will continue to be victims of this iniquitous law. TC-0168-13 targets Haitians who live in poverty and frequently suffer derogatory and discriminatory treatment. With the passing of Judgment TC-0168-13, the discriminatory mistreatment against Haitians and Dominicans of Haitian descent has increased their vulnerability exponentially in the Dominican Republic. It is through the retelling of their lived experiences that Haitians and Dominicans of Haitian descent will persevere and reach the attention of the Western nations, so that one day they can become members of their nation to live their lives with purpose, dignity, humanity, and the protections of the Dominican Constitution.

Conclusion

The power and the attending rewards for the oppressor has been to create illusory distinctions to solidify the social, economic, political, cultural, and racial control of the class of persons that are oppressed. The power and its imposition throughout history has created a myriad of dichotomies and constructs based on the objectives of the colonial powers in furtherance of creating a geo-political and social stronghold over the people they have subjugated. The dynamics of power under examination in this historical narrative centers on the presence of the colonial power, Spain, commencing in the 15th century, and its influence on racial stratifications that highlight the evolution of conceptions of race, class, and citizenship on the island of *La Hispaniola*, as it was named by Spain. A common practice undergirding colonialism to appropriate and impose external social, economic, political, cultural, and legal paradigms for the preservation of the colonial state.

At the time of Spain's colonial quest to increase the size of its monarchy, the territories that in the future became the Dominican Republic, to the east, and to the west, Haiti, were subjected to the same conditions and internalization of the values and world views of its European oppressor. The reality of the consequences of colonialism are inextricably linked to the adverse effects of colonialism that are evident in the Dominican Republic and Haiti in the 21st century. The remnants of colonialism have resulted in the metamorphosis of the Dominican Republic, a former colony of Spain, to act as the oppressor and possessor of power over the Haitian population residing in the Dominican Republic, whether it be under the legal principles of *jus soli* or *jus sanguinis*. The role of the oppressor is evident in that the denial of the rights to

citizenship result in the conditions that infringe on the access to vote, compete for gainful employment that leads to upward mobility, access to education, and a connection to their country of birth.

The legal and political institutions in the Dominican Republic, including, but not limited to, the employment of undemocratic modifications of the constitutional framework for the sole objective of ratifying draconian laws to divest Dominicans of Haitian descent of the right to citizenship and all rights and privileges stemming therefrom has been an objective fraught with reminders of the lasting impact and use of past colonial constructs. These remnant colonial constructs are in contravention to the most basic principles of natural rights conferred by birth independent of classifications based on nationality, race, place of birth, legal manipulation of longstanding conceptions of citizenship and how the same is defined and preserved.

The *jus soli* and *jus sanguinis* dichotomy is one that is not common only to the respective sovereign nations of the Dominican Republic and Haiti. What is characteristic and substantive for purposes of historical analysis is the lengths to which the Dominican Republic and its governing bodies in all institutions have vilified the Haitian population to deny those claiming a right to citizenship. The Dominican government has failed to observe the most basic conceptions of human rights from the laborious and underpaid menial labor engaged in by the Haitians in cane fields, to the halls of justice, academia, and its citizenry through xenophobic and patently dehumanizing characterizations of Haitians and Dominicans of Haitian descent as interlopers threatening the safety and sovereignty of the Dominican Republic. The political activism by its citizens charged with divisive and racial stratifications claiming superiority veiled or otherwise openly exclaimed, present a labyrinth of obstacles for the Haitian population advancing a valid claim to citizenship vis-a-vis the principle of *jus soli* in the Dominican Republic.

The conceptions of citizenship and the rights of citizens in all countries have been codified in legal codes referred to by the judicial system from lower courts to the highest courts to interpret the laws, whether statutory or constitutional to render decisions after adjudication based on the interpretation of those laws. This process is legal in nature and stems from the need of the judicial system to preserve the rights of its citizens, and as time progresses modify its laws to meet the social, economic, and political needs of the populace. The need for evolution of the interpretation of laws has allowed all forms of governments from totalitarian to democratic to adapt to the changes brought about by social stratification, race, gender, religious rights, culture, economic needs, and political agendas. These factors are the driving forces for the ideology, exclusionary political activism, and arbitrary interpretations of the laws in the Dominican Republic.

The objective is underscored by the creation and implementation of laws that negate any nexus between the Dominican Republic and Haiti. The long history of colonialism imposed by Spain and France, invasion of the Dominican Republic by Haiti led by Toussaint Louverture, and the indisputable geographical fact that the respective nations share an island. The proximity of the islands has not served as a deciding factor of unification. Instead, the proximity has been weaponized by the Dominican government to introduce an illusory threat to the sovereignty of the country and the characterization that Haitians are uneducated and dangerous interlopers with no redeemable qualities to grant citizenship. Dominicans cannot accept laws that allow Haitians the constitutional protections that are rightfully at their disposition. Instead, the Dominican response to the calls for citizenship are met by irrational, and racially charged arguments challenging this right.

The Dominican government has employed the racial inferiority argument to a degree so evident of personal animus against Haitians and Dominicans of Haitian descent as to deprive them of citizenship. It has allowed Dominicans with a direct link to African ancestry to perpetuate from generation to generation the fallacy of *blanqueamiento* and the absence of African ancestry. The Dominican Republic like so many nations before and after its global recognition as a sovereign state has internalized conceptions of superiority based on identifications with race. The irrational negation of the consequences of cultural diffusion and the miscegenation of races due to the need of the colonial powers to enslave Africans is a topic that is avoided and proves to be a polemical exchange when highlighting the historical reality between the anti-Haitian activists and the legal community in the Dominican Republic.

The promulgation of laws such as TC-168-13 requiring a look back period of 84 years to determine whether the mothers of Dominicans of Haitian descent were in “transit,” when the child was born in the Dominican Republic, serves as a basis upon which to argue the major impediments presented to deny the Haitians citizenship. This judicial judgment is an example of the unconscionable burden placed on Haitians to prove citizenship given the paucity of records dating back 84 years. The Dominican government’s failure to secure such records as their intent was not to include Haitians as a protected class in terms of being afforded the same constitutional rights and privileges as Dominicans not categorized as being of Haitian ancestry.

The ideology of Dominicans regarding the distinctions between *jus soli* and *jus sanguinis* have historically been correlated to conceptions of race, identifications of race, and connections, if any, for a great number of Dominicans to African ancestry. The use of the legal system to define racial classifications and entitlement to citizenship and its attending rights has been accompanied by a rigid and inhumane pursuit to deny Haitians and Dominicans of Haitian

descent citizenship. The legislative laws, constitutional amendments, and bureaucratic machinations at all levels of government conspire to deny Haitians and Dominicans of Haitian descent of their rights.

The abuse and manipulation of the legal system to advance the disenfranchisement of the Haitians and Dominicans of Haitian descent subject to *jus soli* and *jus sanguinis* legal distinctions serves as a constant reminder of the epistemic violence of the “zero-point hubris” as described by Santiago Castro-Gómez (2021). The Dominican observance of the Haitian presence and their realities in the Dominican Republic coupled with the attenuation that is made possible by unjust and impossible to meet legal requirements. Hence, the Dominican population is allowed to ignore the accountability that comes with being a member of a claimed democratic institution.

The Dominican Republic is a member of the Inter-American human rights system. It has been a member since 1948. The actions by the Dominican government are not reflective of the ideals that led to the creation of the human rights organization given the treatment of Dominicans of Haitian ancestry. There are thousands of potential citizens of Haitian ancestry who have been subject to deportation without due process and a blatant exclusion to the existing legal mechanisms and courts to assist them in protecting a fundamental right. The anomalous nature of the legal system in the Dominican Republic is the manner in which those in positions of power have committed acts that have separated families, and caused a fracture in the legal system that jeopardizes its legitimacy in the Dominican Republic, and in the Western Hemisphere.

There are many legal factors to challenge the laws ratified to deny Haitians and Dominicans of Haitian descent their rights with the *jus soli* and *jus sanguinis* distinctions and the questionable applicability related to the inherent contradictions to principles of natural rights in

furtherance of life, liberty, and property. The powers of any nation must rest on valued and morally justifiable principles of law and justice. The jarring reality is that the global community is aware, and if not should be aware of the iniquitous treatment of Haitians in the Dominican Republic. The island depends on the tourist industry to sustain its economy. The presence of foreign investors that grow exponentially is a factual assertion of a widespread knowledge of the Haitian problem in the Dominican Republic. Yet, these very same investors leave the conceptions of citizenship and humanitarian collaboration at the doorstep of the countries from which they arrive. It is an exemplar of the global hypocrisy of the Western nations to witness racist and exclusionary treatment, and choose to ignore the same.

The United States has taken on the role of the global big brother in its pursuit to preserve democratic ideals in the Western Hemisphere. It has gone to the extent to declare it was its obligation to do so under the principle of Manifest Destiny. The role of protector and preserver of the power and control of the Western Hemisphere has fallen short innumerable times, as this destiny has been one to acquire and sustain the same power structures created by the colonial powers. In the case of the Haitian peoples in Haiti and the Dominican Republic, politicians remain silent, like Adriano Espaillat, a member of the House of Representatives of the United States Congress. In choosing inaction, all are complicit in denying the Haitians the rights they loudly proclaim are durable rights in the halls of justice in the Continental United States, and in other Western nations.

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