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Shannon R. Connolly

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#### Résumé de l'article

Depuis la première parution des *Essais* à Bordeaux en 1580, les lecteurs ont reconnu dans les jugements de leur auteur, Michel de Montaigne, un fondement sceptique. De nombreux spécialistes des *Essais* ont soutenu que l'école pyrrhoniste du scepticisme reposait sur la diversité culturelle, ou que Montaigne était influencé par les rapports proto-ethnographiques fournis au XVI<sup>e</sup> siècle par les voyageurs européens au Nouveau Monde ; ils ont ainsi lu « Des cannibales » (1, 31) comme un texte proto-anthropologique. Cependant, dans ma lecture rapprochée de ce chapitre, je soutiens que Montaigne fait jouer dans les *Essais* une utilisation rhétorique de l'équité par Montaigne, et non pas une pratique, encore à débattre, de relativisme culturel proto-anthropologique, pour établir, en une relation de réciprocité particulière, un dialogue avec le jugement sceptique. L'équité est une procédure para-juridique que Montaigne a utilisée dans l'exercice de ses fonctions comme magistrat au parlement de Bordeaux (1557–70) : cette notion reste néanmoins très peu abordée dans les études sur les *Essais*.

# Equity and Amerindians in Montaigne's "Des cannibales" (1, 31)

SHANNON R. CONNOLLY

Sumner Academy

*Since the first publication of the Essais in Bordeaux in 1580, readers of this work have recognized skepticism underlying the judgment of its author, Michel de Montaigne. Arguing that the Pyrrhonist school of skepticism relies upon cultural diversity, or that Montaigne was influenced by sixteenth-century proto-ethnographic accounts of European travellers to the New World, many scholars of the Essais have read "Des cannibales" (1, 31) as proto-anthropological. In my close reading of this chapter, however, I contend that Montaigne's rhetorical use of equity, and not his debated practice of a proto-anthropological cultural relativism, shares a special reciprocity with his skeptical judgment in the Essais. Equity, a para-legal procedure that Montaigne used to judge while he was a magistrate in the Bordeaux parlement (1557–70), remains largely underdeveloped in scholarship on the Essais.*

*Depuis la première parution des Essais à Bordeaux en 1580, les lecteurs ont reconnu dans les jugements de leur auteur, Michel de Montaigne, un fondement sceptique. De nombreux spécialistes des Essais ont soutenu que l'école pyrrhoniste du scepticisme reposait sur la diversité culturelle, ou que Montaigne était influencé par les rapports proto-ethnographiques fournis au XVI<sup>e</sup> siècle par les voyageurs européens au Nouveau Monde ; ils ont ainsi lu « Des cannibales » (1, 31) comme un texte proto-anthropologique. Cependant, dans ma lecture rapprochée de ce chapitre, je soutiens que Montaigne fait jouer dans les Essais une utilisation rhétorique de l'équité, et non pas une pratique, encore à débattre, de relativisme culturel proto-anthropologique, pour établir, en une relation de réciprocité particulière, un dialogue avec le jugement sceptique. L'équité est une procédure para-juridique que Montaigne a utilisée dans l'exercice de ses fonctions comme magistrat au parlement de Bordeaux (1557–70) : cette notion reste néanmoins très peu abordée dans les études sur les Essais.*

## Introduction

Michel de Montaigne invites readers of the *Essais* to appreciate his book as a product of his judgment when he describes this faculty as an important tool with which he writes the *Essais*: "Le jugement est un util à tous subjects, et se mesle par tout. A cette cause, aux essais que j'en fay ici, j'y employe toute sorte d'occasion."<sup>1</sup> During the four hundred years since Montaigne first published the

1. Michel de Montaigne, *Les Essais*, ed. Pierre Villey (Paris: Quadrige/PUF, 1999), 1, "De Democritus et Heraclitus," 301a. (The "a" in the page number refers to the original "a" text in 1580; the "b" text, with Montaigne's additions and revisions, was produced in 1587, and the "c" text in 1588 with the author's

*Essais* (1580, Bordeaux), readers have seen in his method of judging his unique revival of ancient schools of skepticism.<sup>2</sup> Questioning traditional knowledge itself, Montaigne reinvented skepticism, in response no less to Europe's discovery of the New World than to the political, religious, economic, and cultural practices—and instabilities—in the Old that this discovery complicated. Identifying Montaigne's skepticism as either a "skeptical fideism" or a "fideist skepticism" in which Montaigne's theological considerations give way to a "skeptical anthropology,"<sup>3</sup> scholars have also described his treatment in the *Essais* of the Amerindians as "an essentially anthropological procedure."<sup>4</sup> Montaigne has therefore been considered a forerunner of both modern ethnography and anthropology, as defined by his readers in varying, nuanced terms.<sup>5</sup>

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further additions and revisions). All quotations from this edition will be referred to by book number, followed by chapter title or number, and then page numbers, in the manner shown here. Hereafter cited in the text.

2. Recent studies include Marc Foglia, *Montaigne, pédagogue du jugement* (Paris: Classiques Garnier, 2011); Jan Miernowski, "Montaigne on Truth and Skepticism," chapter 29 in *The Oxford Handbook of Montaigne*, ed. Philippe Desan (New York: Oxford University Press, 2016), 544–61; Pierre Force, "Montaigne and the Coherence of Eclecticism," *Journal of the History of Ideas* 70.4 (Oct. 2009): 523–44, accessed 31 May 2015, [jstor.org/stable/20621910](http://jstor.org/stable/20621910). Force provides a good list of recent studies on Montaigne's skeptical judgment (526n17), including Sylvia Giocanti's book *Penser l'irrésolution: Montaigne, Pascal, La Mothe Le Vayer; trois itinéraires sceptiques* (Paris: Honoré Champion éditeur, 2001), Marie-Luce Demonet, *À plaisir, Sémiotique et scepticisme chez Montaigne* (Orléans: Paradigme, 2002), and Frédéric Brahami's entry "Scepticisme," in *Dictionnaire de Michel de Montaigne*, ed. Philippe Desan (Paris: Champion, 2007), 1042–44. Force also provides a good bibliography of recent studies on Montaigne's practice of skepticism, including his own book *Le scepticisme de Montaigne* (Paris: PUF, 1997); José Raimundo Maia Neto, Gianni Paganini, and John Christian Laursen, eds., *Skepticism in the Modern Age: Building on the Work of Richard Popkin* (Leiden: Brill, 2009); Richard Popkin, *The History of Scepticism: From Savonarola to Bayle*, revised and expanded edition (New York: Oxford University Press, 2003); José R. Maia Neto and Richard H. Popkin, eds., *Skepticism in Renaissance and Post Renaissance Thought: New Interpretations* (USA: Humanity Books, 2004). See, too, Neto's chapter "Epoche as Perfection: Montaigne's View of Ancient Skepticism," in *Skepticism in Renaissance and Post-Renaissance Thought: New Interpretations*, ed. José R. Maia Neto and Richard H. Popkin (New York: Humanity Books, 2004), 13–42, and David L. Sedley, "Sublimity and Skepticism in Montaigne," *PMLA* 113.5 (Oct. 1998): 1079–92, accessed 11 June 2015, [doi.org/10.2307/463243](http://doi.org/10.2307/463243).

3. Miernowski, 556.

4. Philippe Desan, *Montaigne: A Life*, trans. Steven Rendall and Lisa Neal (Princeton: Princeton University Press, 2017), 156, [doi.org/10.2307/j.ctvc77g8q.7](http://doi.org/10.2307/j.ctvc77g8q.7).

5. Tzvetan Todorov, "L'Être et l'Autre: Montaigne," trans. Pierre Saint-Armand, *Montaigne: Essays in Reading*, ed. Gérard Defaux, *Yale French Studies* 64 (1983): 113–44, [doi.org/10.2307/2929954](http://doi.org/10.2307/2929954). Bart

Analyzing the *Essais* according to the fields of inquiry and discourse that existed in Montaigne's century, however, has led scholars to debate and challenge the anthropological, or proto-anthropological, qualities of Montaigne's judgment and *Essais*.<sup>6</sup> Engaging in this debate on Montaigne's practice of skepticism, particularly in the context of his New World chapters, I draw upon terms that early modern Europeans used to describe Amerindians and to navigate their interactions with New World peoples: i.e., legal terms. Indeed, it is an increasing trend for Montaigne's readers to explore the influence of his legal experience on the *Essais* and on the exercise of his judgment in this work.<sup>7</sup>

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Moore-Gilbert has attributed to this article the "'anthropological' turn in literary studies" that has since influenced Montaigne criticism, in Bart Moore-Gilbert, "'New Worlds, New Selves': Montaigne, 'the Atlantic,' and the Emergence of Modern Autobiography," *Atlantic Studies* 2.1 (2005): 1–14, 2, doi.org/10.1080/1478881052000341693. William M. Hamlin, "On Continuities between Skepticism and Early Ethnography; or, Montaigne's Providential Diversity," *Sixteenth Century Journal* 31.2 (Summer 2000): 361–79, accessed 28 June 2012, doi.org/10.2307/2671616. Tom Conley has stated that "Des cannibales" gives way to an emerging "ethnographic consciousness," in his chapter "The Essays and the New World," in *The Cambridge Companion to Montaigne*, ed. Ullrich Langer (Cambridge: Cambridge University Press, 2005), 74–95, 83. Frank Lestringant indicates that Montaigne meditates "sur la relativité des coutumes et sur les limites du savoir humain," and in an anthropological way, in *Le Brésil de Montaigne, Le Nouveau Monde des "Essais" (1580–1592)* (Paris: Chandeigne, 2005), 14 and 45, respectively. For an anthropologist's view of the *Essais*, see Roger Celestin, "Montaigne and the Cannibals: Toward a Redefinition of Exoticism," *Cultural Anthropology* 5.3 (August 1990): 292–313, doi.org/10.1525/can.1990.5.3.02a00030. Danilo Marcondes nuances his definition of anthropology also to convey Montaigne's theological (and philosophical) stance; see his chapter "The Anthropological Argument: The Rediscovery of Ancient Skepticism in Modern Thought," in *Skepticism in the Modern Age: Building on the Work of Richard Popkin*, ed. José Raimundo Maia Neto, Gianni Paganini, and John Christian Laursen (Leiden: Brill, 2009), 37–54, doi.org/10.1163/ej.9789004177840.i-390.7.

6. Though Lestringant has accepted an interrelationship between the *Essais* and modern anthropology, he and other scholars, such as Gérard Defaux and David Quint, have indicated that Montaigne does not provide his readers with an actual ethnography of New World peoples. See Frank Lestringant, "Le Cannibalisme des 'Cannibales,' I. Montaigne et la tradition," *BSAM* 6.9–10 (January–June 1982): 27–40. Gérard Defaux, "Un Cannibale en haut de chausses : Montaigne, la différence et la logique de l'identité," *MLN* 97 (1982): 919–57, doi.org/10.2307/2905872. See also David Quint, "The Culture That Cannot Pardon: 'Des cannibales' in the Larger *Essais*," ch. 3 in *Montaigne and the Quality of Mercy: Ethical and Political Themes in the Essais* (Princeton: Princeton University Press, 1998), 75–102. Quint adapted this chapter from his earlier article: "A Reconsideration of Montaigne's *Des cannibales*," *Modern Language Quarterly: A Journal of Literary History* 51.4 (Dec. 1990): 459–89, doi.org/10.1215/00267929-51-4-459.

7. In addition to *Montaigne: A Life*, see Philippe Desan's earlier book *Montaigne, Les formes du monde et de l'esprit* (Paris: PUPS, 2008), 145. See André Tournon, "Justice and the Law: On the Reverse Side

In 1556, Montaigne assumed the judicial office of his uncle Pierre Eyquem de Gaujac at the *Cour des Aides* in Périgueux, a newly established royal court whose members were, by royal edict, almost immediately reassigned into the Bordeaux *parlement*.<sup>8</sup> Montaigne's thirteen-year career in the Bordeaux *parlement* was substantial, even if it was short. Preoccupied with his legal career and promotion, Montaigne enthusiastically served as a court reporter and counselor; as the latter, he contributed to more than three hundred rulings, and, as the former, he reported far more than any of his colleagues.

Earning and enjoying the respect of his peers, however, did not prevent him from becoming disenchanted with a judicial system in the pay of particular interests. Constantly disputing case procedures and interpretations of events while losing sight of essential points, members of the Bordeaux *parlement* also acted more from their political and religious convictions than from their duty to respect and apply laws. Knowing that he was not cut out to become an eminent jurist during the civil Wars of Religion, after the death of his father Montaigne sold his counselor's position and assumed his father's seigneurial responsibilities.<sup>9</sup> Nevertheless, Montaigne continued to put his legal experience to use. He followed his father and grandfather into public service and acted as mayor of Bordeaux from 1581 to 1585. During his term, Montaigne

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of the *Essays*," in *The Cambridge Companion to Montaigne*, ed. Ullrich Langer (Cambridge: Cambridge University Press, 2005), 96–117, and Tournon's book *Montaigne: La glose et l'essai* (Lyon: Presses Universitaires de Lyon, 1983), particularly "Chapitre IV – les gloses," 147–202. See also Richard L. Regosin, "Rusing with the Law: Montaigne and the Ethics of Uncertainty," *L'Esprit Créateur* 46.1 (Spring 2006): 51–63, accessed 17 March 2014, doi.org/10.1353/esp.2006.0011; Katherine Almquist, "Montaigne et le plus sûr," *BSAM* 8.21–22 (January–June 2001): 151–57; Ian Maclean, "Montaigne et le droit civil romain," in *Montaigne et la rhétorique, Actes du Colloque de St. Andrews, 28–31 mars 1992*, ed. John O'Brien, Malcom Quainton, and James J. Supple (Paris: Honoré Champion Éditeur, 1995), 163–76; Stéphan Geonget, "Justice, cas perplexe et question pour l'amy chez Montaigne," *BSAM* 8.21–22 (January–June 2001): 159–70; Bernd Renner, "La Mémoire défaillante de Montaigne: Un Stratagème judiciaire?," *Cincinnati Romance Review* 19 (2000): 102–10.

8. The *parlements* of Bordeaux, Paris, Toulouse, Grenoble, Dijon, Rouen, Aix, and Rennes constituted the *Parlement*, the highest court system in France. See Donald M. Frame, *Montaigne: A Biography* (New York: Harcourt, Brace and World, 1965), 48–49.

9. For Montaigne's legal career, see Desan, *Montaigne: A Life*, ch. 2: "A First Career as a Magistrate (1556–1570)," 48–111.

corresponded with Henri III and Henri de Navarre about judicial reform, indicating his continued interest in law and its practice.<sup>10</sup>

Montaigne's involvement in judicial reform and, above all, his legal career have led scholars to assert that his legal experience significantly influenced his writing of the *Essais*.<sup>11</sup> Functioning as a workshop, this text provided Montaigne with a space to explore the judicial concepts and behaviours that he encountered during his legal career—for example, "justice" and how it ought to be dispensed<sup>12</sup>—and in the context of material that went beyond the cases "of a disconcerting banality" that Montaigne was "doomed" to deal with while working as a councilor.<sup>13</sup> Despite these scholarly assertions, however, considerations of Montaigne's legal experience and its impact on the *Essais* still represent "de nouveaux aperçus" into "la méthode de Montaigne."<sup>14</sup>

One of these new insights into Montaigne's *Essais* is his rhetorical use of equity, which I will develop in this article.<sup>15</sup> The term equity, or its variants, occurs in at least eleven different chapters spanning all three books composing the *Essais*, either in French or, when Montaigne quotes passages from classical literature and reproduces the bull granting his Roman citizenship, in Latin. The occurrence of equity or its variants in the *Essais* also spans all three phases of

10. Frame, 62. See also G  ralde Nakam, *Les Essais de Montaigne, miroir et proc  s de leur temps, T  moignage historique et cr  ation litt  raire*,   dition revue, corrig  e et mise    jour avec une pr  face in  dite (Paris: Editions Champion, 2001), 132. Nizet published the first edition of this work in Paris in 1984.

11. Desan, *Montaigne: A Life*, 77–78. See also his earlier book *Montaigne dans tous ses   tats* (Fasano, Italy: Schena Editore, 2001), especially the chapter "Les formes judiciaires chez Montaigne: essai de typologie," 379–89. In addition to Tournon's book *Montaigne, La glose et l'essai*, see his article "Le Grammairien, le jurisconsulte, et l'   humaine condition," *BSAM* 7.21–22 (July–December 1990): 107–18. See also Katie Chenoweth, "The Force of a Law: Derrida, Montaigne, and the Edict of Villers-Cotter  ts (1539)," *The Comparatist* 36 (May 2012): 67–85, doi.org/10.1353/com.2012.0008.

12. Desan, *Montaigne: A Life*, 99.

13. Desan, *Montaigne: A Life*, 101.

14. John O'Brien's chapter, "Suspended Sentences," is regrouped into the section "La M  thode de Montaigne – de nouveaux aper  us" in *Le Visage changeant de Montaigne / The Changing Face of Montaigne*, ed. Keith Cameron and Laura Willett (Paris: Honor   Champion   diteur, 2003), 91–102.

15. In addition to Maclean's "Montaigne et le droit civil romain," see Alba Maria Robbiati-Gastaldi, "De l'  quit  , mesure vertueuse de la justice," *BSAM* 8.21–22 (January–June 2001): 81–86; Papa Gueye, "De la justice    l'ordre public :   quit   et harmonie sociale dans *Les Essais*," *BSAM* 8.21–22 (January–June 2001): 233–40; Ullrich Langer, "Justice l  gale, diversit   et changement des lois: de la tradition aristot  licienne    Montaigne," *BSAM* 8.21–22 (January–June 2001): 223–31.

the work's printing.<sup>16</sup> Looking beyond the number of instances when the term equity occurs in the *Essais*, however, it is my contention that the concept of equity exists even more significantly between the lines of the *Essais*. Underlying this work, equity presents itself more as a method that the author uses when judging and, ultimately, when crafting his *Essais*.

Equity was an ancient Greek and Roman paralegal procedure, as well as a socio-political value. Emphasizing "fairness between individuals," equity characterized these classical societies and influenced medieval and early modern legal practice.<sup>17</sup> Seneca defines equity by its characteristic trait of equality in his *Epistulae*. Describing death in his thirtieth letter as "unavoidable" for everyone, Seneca also describes death in terms of equality, or equity.<sup>18</sup> Translating Seneca, Montaigne states in his essay "Que philosopher c'est apprendre a mourir" (1, 20) that "l'égalité est la premiere piece de l'équité" (1, 20, 94c).

Not only could equity be used to describe the end of life, it also guided social practices and relationships in life. Cicero writes in *De officiis*: "[the] private individual ought first, in private relations, to live on fair and equal terms with his fellow-citizens, with a spirit neither servile and grovelling nor yet domineering."<sup>19</sup> Commenting upon this relationship between persons who serve and those who are served, Montaigne observes: "les polices où il se souffre moins de disparité entre les valets et les maistres, me semblent les plus equitables" (3, "De trois commerces," 821c). Even more specifically, equity could guide a particular social relationship—friendship—as Cicero indicates

16. "Nos affections s'emportent au dela de nous" (1, 3, 20c), "Que philosopher c'est apprendre a mourir" (1, 20, 94c), "De l'amitié" (1, 28, 188c and 192a), "De la moderation" (1, 30, 197a), "Apologie de Raimond Sebond" (2, 12, 456b and 471a), "De la praesumption" (2, 17, 658c and 659c), "De l'utile et de l'honneste" (3, 1, 792b), "De trois commerces" (3, 3, 821c), "Sur des vers de Virgile" (3, 5, 864b), "De la vanité" (3, 9, 999b), and "De l'experience" (3, 13, 1072c).

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

18. "Mors necessitatem habet aequam et invictam. Quis queri potest in ea condicione se esse in qua nemo non est? Prima autem pars est aequitatis aequalitas" / "Death has its fixed rule, – equitable and unavoidable. Who can complain when he is governed by terms which include everyone? The chief part of equity, however, is equality." Seneca, *Epistles 1–65*, trans. Richard M. Grummere, vol. 4 (Cambridge, MA: Harvard University Press, 1996, reprint of the 1917 edition), 216 (Latin) and 217 (English translation).

19. "Privatum autem oportet aequo et pari cum civibus iure vivere necque summissum et abiectum neque se efferentem." Cicero, *Cicero in Twenty-Eight Volumes, De officiis*, trans. Walter Miller (Cambridge, MA: Harvard University Press, 1975, reprint of 1913 edition), 21:126 (Latin) and 127 (English translation); from bk. 1, sec. 34.124.



in his *Laelius de amicitia*. Inspired by Cicero's work, the author of the *Essais* dedicates "De l'amitié" (1, 28) to a description of friendship that is "equitable et plus equable" (1, 28, 188c). In this, Montaigne also takes his cue from the *Nicomachean Ethics*, wherein Aristotle discusses "forms of friendship" that are "friendships of equality": ones in which "both parties render the same benefit and wish the same good to each other, or else exchange two different benefits."<sup>20</sup> Advocated by Montaigne's unequalled friend Étienne de La Boétie in his *De la servitude volontaire ou contr'un*, this republican ideal of friendship also recalls, Philippe Desan has observed, the potlaches and other ritual exchanges of the Amerindians, to whose practices Montaigne points in his *Essais*.<sup>21</sup>

Not looking to befriend Amerindians, however, Europeans debated their conquest and, ultimately, their colonization of the New World from Pope Alexandre's 1493 bull *Inter caetera* onwards. Apart from this text, one of the most important to these debates was *De indis* (1539), written by the Dominican Francisco de Vitoria who, drawing upon equity, became one of the founders of contemporary international law. Attempting to establish the legal parameters by which Europeans could interact with Amerindians, Vitoria argued that New and Old World peoples all held equal claim to the Americas. Vitoria therefore advised Europeans against justifying their conquest of the New World with sham assertions and, ultimately, sham judgments against the Amerindians.<sup>22</sup>

Montaigne alludes in "Des cannibales" (1, 31) to these debates that ultimately spanned and continued beyond his lifetime, as did European recourse to equity in their dealings with New World peoples.<sup>23</sup> In 1608—eleven years after the final, posthumous publication of the *Essais* in 1595—Sir Edward Coke, chief

20. Aristotle, *The Nicomachean Ethics*, trans. H. Rackham, vol. 19 (Cambridge, MA: Harvard University Press, 1990; a reprint of the revised edition of 1934), 475 and 477. (bk. 8, sec. 6.7). Hereafter cited in the text.

21. Desan, *Montaigne: A Life*, 154.

22. Francisco de Vitoria, *De indis et de ivre belli relectiones*, trans. J. Bate, based on Jaques Boyer, ed. (1557), Alonso Muñoz, ed. (1565), and Johanan G. Simon, ed. (1696; Washington, DC: Classics of International Law, 1917). See also S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (Oxford: Oxford University Press, 2004), 16 and 18; Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Helsinki: Lakimiesliiton Kustannus Finnish Lawyers' Publishing Company, 1989), 73–81.

23. "Ils [Amerindians] ne sont pas en debat de la conquête de nouvelles terres, car ils jouyssent encore de cette uberté naturelle qui les fournit sans travail et sans peine de toutes choses necessaires, en telle abondance qu'ils n'ont que faire d'agrandir leurs limites" (1, 31, 210a).



justice of the common pleas in England, encouraged Christian conquerors to judge and govern by equity their newly won, non-Christian subjects:

[...] if a Christian King should conquer a kingdom of an Infidel, and bring them under his subjection, then *ipso facto* [by that fact] the Laws of the Infidel are abrogated for that they be not only against Christianity, but against the Law of God and of Nature, contained in the Decalogue; and in that case, until certain Laws be established amongst them, the King by himself, and such Judges as he shall appoint, shall judge them and their causes according to natural equity, in such sort as Kings in ancient times did with their kingdoms, before any certain Municipal Laws were given as before hath been said.<sup>24</sup>

Coke articulates his opinion in Calvin's Case,<sup>25</sup> which he uses to reinforce the royal contract that two years prior he and Lord Chief Justice Sir John Popham made with the Virginia Company. In this contract, Coke dismisses Amerindian rights to the lands that they already occupied and authorizes the English invasion of the New World under the pretext of Christian evangelization.<sup>26</sup> Rather than argue as Vitoria did that both Amerindians and Europeans held equal claim to the Americas, Coke draws upon a different facet of equity, denoted as natural equity.

Natural equity, or *aequitas naturalis*, is a "moral equity." It is the result of medieval Europeans infusing classical equity and its practices of fairness with Christian thought, particularly Luke 6:31: "And as you would that men should do to you, do you also to them in like manner."<sup>27</sup> Additionally denoting

24. Sir Edward Coke, *The Selected Writings of Sir Edward Coke*, ed. Steve Sheppard, 3 vols. (Indianapolis: Liberty Fund, 2003), 1:207.

25. A legal case deciding if persons born in Scotland could be considered landholding subjects in England after the English crown passed to the Scottish King James VI in 1603. See Polly J. Price, "Natural Law and Birthright Citizenship in Calvin's Case (1608)," *Yale Journal of Law and the Humanities* 9.1 (1997): 73–145; available online through the Yale Law School Legal Scholarship Repository, digitalcommons.law.yale.edu/yjlh/vol9/iss1/2.

26. Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press, 1992), 201–02.

27. Ian Maclean cites Luke 6:3; however, the verse he provides suggests 6:31. See his book *Interpretation and Meaning in the Renaissance: The Case of Law* (Cambridge: Cambridge University Press, 1992),

mercy and *benigna interpretatio* on the part of judges, natural equity in Calvin's Case signifies in particular the capacity of a European king to exercise fairly his judicial discretion for the benefit of all parties involved in cases that either predated the written laws of his Christian society or were beyond the scope of the ones currently in place.<sup>28</sup> For, in its judicial valence, equity was the only recourse for a jurist to accommodate cases unforeseen by legislators. Outside the scope of laws, these cases prompted jurists—the ultimate of whom was the king—to negotiate the force of, or even amend, the same laws that their society required them to uphold.<sup>29</sup> Looking again to the *Nicomachean Ethics*, Aristotle provides the following judicial definition of equity:

[...] equity, though just is not legal justice, but a rectification of legal justice. The reason for this is that law is always a general statement, yet there are cases which it is not possible to cover in a general statement. [...] When therefore the law lays down a general rule, and thereafter a case arises which is an exception to the rule, it is then right, where the lawgiver's pronouncement because of its absoluteness is defective and erroneous, to rectify the defect by deciding as the lawgiver would himself decide if he were present on the occasion, and would have enacted if he had been cognizant of the case in question. (315–17)

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76–77. Pierre Villey notes Montaigne's signature in a Greek edition of the Bible; yet, because "il est en grec, et nous savons que Montaigne ne se contentait pas d'une 'moyenne intelligence,'" Villey suggests that Montaigne read the Bible in Latin. See Pierre Villey's *Les sources et l'évolution des Essais*, 2 vols. (New York: B. Franklin, 1968), 1:78. Marianne Meijer has proposed that Montaigne consulted the Latin Vulgate Bible, as well as four French bibles; see Marianne Meijer, "Montaigne et la Bible," *BSAM* 5.20 (October – December 1976): 23–57. I have quoted from the New Testament of the Douay-Rheims English translation (1582) of the Latin Vulgate Bible. The complete Douay-Rheims Bible is available online at Douay-Rheims Bible + Challoner Notes (2001–13), [drbo.org](http://drbo.org).

28. "[...] before Judicial or Municipal Laws were made, Kings did decide causes according to natural equity, and were not tied to any rule or formality of Law, but did *dare jura* [give the laws]" (Coke, 1:196).

29. Roger T. Simonds, "The Problem of Equity in the Continental Renaissance," in *Renaissance Papers* 1989, ed. Dale B. J. Rendall and Joseph A. Porter (Durham, NC: Southeastern Renaissance Conference, 1989), 39–49, 48. See also Jean Brissaud, *Cours d'histoire générale du droit français public et privé à l'usage des étudiants en licence et en doctorat*, vols. 1–2 (Paris: A. Fontemoing, 1904), 1:168; Alan Watson, *The Making of the Civil Law* (Cambridge: Harvard University Press, 1981), 7; Tournon, "Justice and the Law," 105.

Tempering the letter and force of laws, which were otherwise too general or too inflexible and rigid to respond adequately to all cases, was integral to the judicial practice of equity. Apart from its practice in the Ancient and Old Worlds, equity was also a way by which Europeans could judge and ultimately interact with Amerindians in the New. Justifying their wars of conquest by Christian evangelization,<sup>30</sup> European conquerors were then urged by Coke to exercise equitably their discretion, until Europeans could institute their laws in the Americas.

Only a year after Coke's prescription for natural equity, however, Robert Johnson, then the director of the East India Company and an investor in the Jamestown venture in Virginia, and Robert Gray, a popular Puritan preacher, both omitted Coke's reference to equity, even as they echoed his argument for the legality of making war upon Amerindians.<sup>31</sup> This English reticence and ultimate failure to judge foreigners—in this case, the Powhatans—by equity dates to the fourteenth century at least. At that time, applying natural law and its associated paralegal procedures—including equity—to non-Christians appeared to the English “to encroach upon the king's authority for the benefit of foreigners.”<sup>32</sup>

While this English reticence was shared by other Europeans from the 1300s onwards, I argue that it was not shared by all, particularly not by Montaigne—who regretted that the Amerindians were not discovered by “des

30. Olive Patricia Dickason, “Into a Strange World,” in *The Law of Nations and the New World*, co-authored by Leslie C. Green and Olive P. Dickason (Alberta: University of Alberta Press, 1993), 185–200, 194 and 196.

31. Williams, 210.

32. Sir William Holdsworth, *A History of English Law*, 16 vols. (London: Redwood Press Limited, 1971; a reprint of the fourth edition printed in 1936), 2:602. According to Olive P. Dickason, the European legal outlook governing in the New World “was not the natural law that Las Casas upheld so vigorously, but one that was rooted in the politics of power.” See her chapter “Is All Mankind One?” in *The Law of Nations and the New World*, 201–14, 214. In this politics of power, New World peoples were considered undeserving of natural law being extended to them. Since Amerindians were not Christian, their customs did not conform with natural law in its Christian sense. Nor did their customs—which could include cannibalism and polygamy—conform to Europeans' secular, classical antiquity definition of natural law. Europeans therefore tended to consider Amerindians as irrational savages, “not yet fully human but capable of becoming so” (Dickason, “Crossing,” 182). Living in a state of nature like animals rather than as humans, most Europeans found Amerindians to be “beyond the pale of natural law” (Dickason, “Conclusion,” 246).

hommes qui en eussent sceu mieux juger que nous" (1, 31, 206a), and who bemoaned the consequence: European destruction of Amerindian societies and civilizations.<sup>33</sup> Teaching, therefore, his readers how to judge Amerindians better than the men who met them, Montaigne also teaches his readers how to see and judge accurately themselves.<sup>34</sup>

In Montaigne's lesson to readers, I argue, he draws upon equity. Focusing on "Des cannibales," the New World chapter perhaps best known to Montaigne's readers, I reframe the scholarly discussion of his proto-anthropological cross-cultural relativism in this essay by emphasizing its legal components. Replacing an anthropological relativism with the legal and paralegal maneuvers that Montaigne knew of in their application to the New World, and that he exercised during his judicial career in the Old, lends nuance and precision to his readers' understanding of his skeptical judgment according to his century—a century bookended, as the examples of Vitoria and Coke indicate, by European recourse to equity in order to judge Amerindians. Thus, in this article I also interpret the role that equity plays in Montaigne's judgment overall, beyond "Des cannibales": his practice of skepticism.

### A global view of equity in "Des cannibales" (1, 31)

In the first paragraph of this essay, Montaigne depicts ancient Greek commanders—Pyrrhus and Philip—encountering for the first time the impressive ancient Roman military. This encounter inspires the Greek

33. "Trois d'entre eux [Amerindians], ignorans combien coutera un jour à leur repos et à leur bon heur la connoissance des corruptions de deçà [Europe], et que de ce commerce naistra leur ruyne" (1, 31, 213a). And, "Tant de villes rasées, tant de nations exterminées, tant de millions de peuples passez au fil de l'espée, et la plus riche et belle partie du monde bouleversée pour la negotiation des perles et du poivre : mechaniques victoires" (3, "Des coches," 910b).

34. In addition to Quint's chapter "The Culture That Cannot Pardon," see Gérard Defaux, who has argued that "Montaigne donne à son lecteur une série de leçons : et, ce faisant, il y *essaye* en même temps son propre jugement et le jugement de son lecteur. Rien alors de plus logique que le lecteur *essaye* à son tour son propre jugement, et que sa cible soit Montaigne," in Marot, *Rabelais, Montaigne: l'écriture comme présence* (Paris and Geneva: Champion-Slatkine, 1987), 158. See also Edwin M. Duval, "Lessons of the New World: Design and Meaning in Montaigne's 'Des Cannibales' (I:31) and 'Des coches' (III:6)," in "Montaigne: Essays in Reading," special issue, *Yale French Studies* 64 (1983): 95–112, doi.org/10.2307/2929953; Steven Rendall, "Dialectical Structure and Tactics in Montaigne's 'Of Cannibals,'" *Pacific Coast Philology* 12 (Oct. 1977): 56–63, doi.org/10.2307/1316483.

commanders to abandon a cultural practice that associated barbarity and foreignness and, as a result, to stop judging the Romans as barbaric. All too often, this essay is read as Montaigne's demonstration of a kind of proto-anthropological, cross-cultural relativism; I argue that he is instead, from the outset, drawing upon his legal experience—particularly equity—as indicated especially by this paragraph's conclusion.

In the final sentence of the first paragraph of the essay, Montaigne indicates: "il se faut garder de s'attacher aux opinions vulgaires, et les faut juger par la voye de la raison, non par la voix commune" (1, 31, 202a). The "voix commune" has been accurately translated as the "popular say,"<sup>35</sup> and, as Eric MacPhail has shown, it denotes Montaigne's use of epideictic rhetoric to undermine consensus. Epideictic rhetoric was grouped with deliberative and judicial rhetoric in the *genera caussarum*, however, thereby lending common consensus—or the "popular say"—a legal sense, too, especially for legal practitioners like Montaigne.<sup>36</sup>

In its legal valence, common consensus, or *communis opinio*, is the consensus of the majority of a society, or the majority of its wisest, and represented the best available legal opinion in judging whatever case to which it was applied. The case that Montaigne evokes at the beginning of "Des cannibales" is the practice of the ancient Greeks to associate, by popular consensus, foreignness with barbarity. Seeing for themselves that the ancient Romans were not barbaric, Pyrrhus and Philip overturn their culture's prior definitions of foreignness and barbarity. Montaigne, too, overturns his culture's associated definitions of foreignness and barbarity—grounded in Greek

35. Here, the English translation comes from Montaigne, *Michel de Montaigne: The Complete Works*, trans. Donald M. Frame (New York: Everyman's Library, 2003), 1, "Of cannibals," 182a.

36. Eric MacPhail, "Philosophers in the New World: Montaigne and the Tradition of Epideictic Rhetoric," *A Journal of the History of Rhetoric* 30.1 (Winter 2012): 22–36. Furthermore, MacPhail has described Aristotle's *Nicomachean Ethics*—the work that was so influential to the sixteenth-century practice of equity (Maclean, *Interpretation and Meaning*, 22–23)—as an important source of epideictic theory (MacPhail, 36). Besides this overlap, early modern legal practitioners consulted Plutarch's *Lives* not only as a resource for epideictic rhetoric, but also as an example for judicial writing. Katherine Almquist, "Quatres Arrêts du Parlement de Bordeaux, autographes inédits de Montaigne (mai 1566 – août 1567)," *BSAM* 8.9–10 (January–June 1998): 13–38, 23. Indeed, Tournon has emphasized the close relationship in general between early modern law and Renaissance humanism in his definition of the law: "le foyer de vives controverses, où l'humanisme assume pleinement sa fonction critique" (*Montaigne, La glose*, 163–64).

thought, and informing sixteenth-century Europeans' self-images<sup>37</sup>—when he states in "Des cannibales": "Or, je trouve, pour revenir à mon propos, qu'il n'y a rien de barbare et de sauvage en cette nation [the Tupí-Guaraní Amerindians], à ce qu'on m'en a rapporté, sinon que chacun appelle barbarie ce qui n'est pas de son usage" (1, 31, 205a).

Cultural customs ("usage") have historically influenced, and even became synonymous with, laws and legal practice.<sup>38</sup> In Montaigne's France, the northern half of the country tended to privilege French cultural customs as the law of the land and was thus known as the *pays de droit coutumier*. In contrast, the southern half of France was known as the *pays de droit écrit*, due to the continued predominance of written, ancient Roman law: the *Corpus iuris civilis*, issued by Byzantine Roman Emperor Justinian, which included and denoted the practice of equity.<sup>39</sup>

The constant competition of these two legal approaches in France, Valérie M. Dionne has noted, ushered in a climate of legal reform.<sup>40</sup> Indicating in the *Essais* his Gascon pride for the Gascon gentleman who opposed Charlemagne's desire to rule according to Latin and imperial laws,<sup>41</sup> Montaigne nevertheless indicates his support for the Roman paralegal procedure of equity as the only recourse for jurists to correct the laws that their society required them to uphold:

Or les loix se maintiennent en credit, non par ce qu'elles sont justes, mais par ce qu'elles sont loix. C'est le fondement mystique de leur autorité ; elles n'en ont point d'autre. [C] Qui bien le sert. Elles sont souvent faictes par des sots, plus souvent par des gens qui, en haine d'égalité, ont faute

37. Timothy J. Reiss, "Montaigne, the New World, and Precolonialisms," chapter 10 in *The Oxford Handbook of Montaigne*, 196–214, 197.

38. Tournon has demonstrated that there is, for Montaigne, a link between custom and law (*Montaigne: La glose*, 7–13 and 147–202).

39. Maclean, *Interpretation and Meaning*, 16.

40. Valérie M. Dionne, "Montaigne on Justice and the Law," chapter 25 in *The Oxford Handbook of Montaigne*, 471–92, 479.

41. "Je sçay bon gré à la fortune, dequoy, comme disent nos historiens, ce fut un gentil'homme Gascon et de mon pays, qui le premier s'opposa à Charlemaigne, nous voulant donner les loix Latines et Imperiales" (1, "De la coustume et de ne changer aisément une loy receüe," 117a).

d'équité, mais tousjours par des hommes, auteurs vains et irresolus. (3,  
 "De l'experience," 1072bc)

Aligning himself with Guillaume Budé, who advocated the judicial use of equity, Montaigne thereby seems to have supported a combined use of French customs and Roman legal and paralegal maneuvers in France.<sup>42</sup> Indeed, it was in the southern half of France where Montaigne likely studied law, at the university of Toulouse under "the great young renovator of the study of Roman law Jacques Cujas."<sup>43</sup> In Montaigne's personal possession, furthermore, was a legal manuscript authored by another teacher of Roman law—François Baudouin.<sup>44</sup>

Not, then, a question of Montaigne choosing one over the other legal approach; in "Des cannibales" he appears rather to refer both to French customs—the "popular say"<sup>45</sup>—and to Roman judicial procedures. His associating the "opinions vulgaires" of his early modern French readers with

42. "Montaigne was undoubtedly aware of the long-winded work of his colleague Antoine Loysel, who had compiled his *Institutes coutumières* consisting of 958 maxims based on [French] customary laws but with a Roman structure" (Dionne, 480). In regard to equity, because it relies upon a jurist's personal discretion, it has historically posed problems for legal practitioners and academics and still does today. Christopher R. Rossi, *Equity and International Law: A Legal Realist Approach to International Decisionmaking* (Irrington, NY: Transnational Publishers, Inc., 1993), 24 and 27. In 1536, jurists in Savoie appealed to Francis I to revoke the ability of French magistrates to judge by equity (Tournon, *Montaigne: La glose*, 188). The jurists of the royal circuit—"les cours souveraines (*suprema tribunalia*)"—were the only ones, outside of royalty, who could judge by equity. Ullrich Langer, "Équité et nouvelle 'encadrée' (*L'Heptaméron*)," *Éthique et droit, du Moyen Âge au siècle des Lumières* (2012): 189–203, 191. Questionable practice of this legal procedure, however, led magistrates in Savoie to advocate restricting jurists to judge by the laws, statutes, mores, and customs of France. Sixteenth-century magistrates of the *Parlement*, such as Guillaume Budé, nevertheless maintained that equity was essential to jurisprudence. Arguing that jurists of the royal circuit followed, in most cases, the law and only judged by equity as a last resort, Budé and other magistrates of the *Parlement* reserved the right to exercise equity, albeit discretely (Tournon, *Montaigne: La glose*, 188).

43. Quotation from Frame, 43. See also Desan, *Montaigne: A Life*, 37.

44. On the presence of this manuscript in Montaigne's library, see Ingrid A. R. De Smet and Alain Legros, "Un manuscrit de François Baudouin dans la « Librairie » de Montaigne," *Bibliothèque d'Humanisme et Renaissance* 75.1 (2013): 105–11, accessed 2 June 2017, [jstor.org/stable/24329318](http://jstor.org/stable/24329318). On Baudouin teaching Roman law, see R. Dareste, "Charte relative à François Baudouin, 1563," *Bulletin de la Société de l'Histoire du Protestantisme Français (1852–1865)* 1.5/6 (Oct./Nov. 1852): 147–50, accessed 2 June 2017, [jstor.org/stable/24280739](http://jstor.org/stable/24280739).

45. Montaigne, *The Complete Works*, trans. Frame, 1, 31, 182a.



*communis opinio* removes its typical value to signify the truth: *verisimilis* and *credibilis*, which lend plausibility to an argument, and *probabilis*, or the "probable mode."<sup>46</sup> No longer plausible or probable, the consensus of Montaigne's early modern readers vis-à-vis the Tupí-Guaraní is no longer the truth, or anything even remotely resembling it. Engaging "the very nature of 'truth'" in "Des cannibales," as Tom Conley has observed, Montaigne, I here add, does so in a legal valence.<sup>47</sup>

*Communis opinio* now devoid of truth value, Montaigne proffers "raison" as a way for his readers to judge. Reason, Frédéric Brahami has concluded, is put to the test by Montaigne's practice of skepticism, including reason's capacity—or not—to break free from "des opinions, lesquelles de ce fait paraissent comme quelque chose de beaucoup plus profond que de simples opinions."<sup>48</sup> The legal valence of "opinions" indeed signifies more than a mere opinion; so, too, does the legal valence of that which can mitigate the force of *communis opinio*: "reason." "Comme de raison," or "comme bon luy semble," in verdicts indicated when councilors judged by equity.<sup>49</sup> While the latter expression signifies an almost unfettered practice of equity, the former conveys a restricted use of this judicial procedure, wherein a councilor would charge the guilty party to pay in damages a specified sum of money, or *droit*, stipulated by his judicial manuals. Even though these manuals left little personal freedom to a jurist's practice of equity, the jurist who judged equitably by referring to his reason still needed to know how to wield appropriately this intellectual faculty. In this, Montaigne's professional colleagues must have held him in esteem, because authority over at least one judicial request for equity (De Conget vs. De Maioraly) was transferred to him from Joseph d'Eymar, a senior ranking magistrate in the Bordeaux *Chambre des Enquêtes*.<sup>50</sup>

46. Maclean, *Interpretation and Meaning*, 92–93.

47. Tom Conley, "Montaigne on Alterity," chapter 38 in *The Oxford Handbook of Montaigne*, 699–714, 707.

48. Brahami, 1044.

49. Katherine Almquist, "Judicial Authority in Montaigne's Parliamentary *Arrêt* of April 8, 1566," *Montaigne Studies* 10.1–2 (1998): 211–28, 222–23.

50. Almquist, "Judicial Authority," 223 and 226. Likely a dispute about property, the case of De Conget vs. De Maioraly stalled because De Maioraly delayed the court's inquiry, despite a court order. Claiming financial loss because of De Maioraly's delay, De Conget wanted damages paid to her. Finding De Maioraly reluctant to obey the court's order, Montaigne used equity when he relied upon his personal

Informed by this judicial valence of reason, Montaigne defines and describes in the *Essais* his use of this intellectual faculty:

J'appelle tousjours raison cette apparence de discours que chacun forge en soy : cette raison, de la condition de laquelle il y en peut avoir cent contraires autour d'un mesme subject, c'est un instrument de plomb et de cire, alongeable, ployable et accommodable à tous biais et à toutes mesures ; il ne reste que la suffisance de le sçavoir contourner. (2, "Apologie de Raimond Sebond," 565a)

For Montaigne, reason is unique to each individual person, functions at her discretion, and measures like the Lesbian ruler. Evoking this ruler in particular to describe their practice of equity, European magistrates from classical antiquity onwards took their cue from the *Nicomachean Ethics*, wherein Aristotle describes the procedure of equity by invoking the flexible Lesbian ruler that masons used to measure irregular, polygonal building stones.<sup>51</sup>

For what is itself indefinite can only be measured by an indefinite standard, like the leaden rule used by Lesbian builders; just as that rule is not rigid but can be bent to the shape of the stone, so a special ordinance is made to fit the circumstances of the case. (317)

Equity, similar to the Lesbian ruler, allowed its practitioner to adjust the established laws of his society in order to conform to case particularities. Montaigne's apparent translation of *raison* from its judicial context into the *Essais* has led Ian Maclean to conclude that, for Montaigne, equity is synonymous

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discretion to decide the sum that De Maioraly owed De Conget in damages (Almquist, "Judicial Authority," 219, 222–23). Equity, Christian Biet has argued, denoted in the eighteenth century the practice of "[returning] to everyone what belongs to them." Christian Biet, "From Pornography to Moral Didacticism: How the French Play with Emblems," in *Genealogies of Legal Vision*, ed. Peter Goodrich and Valérie Hayaert (London: Routledge, 2015), 135–51, 150. This view of equity appears to date to the sixteenth century at least, when Montaigne uses equity to return to De Conget what he finds De Maioraly owed her.

51. "[...] or in making the Lesbian form of moulding, which had a double curve." This is Rackham's note in his translation of Aristotle's *Nicomachean Ethics* (317).

with reason.<sup>52</sup> Though Montaigne describes reason in other, nuanced terms elsewhere in the *Essais*, in the "Apologie de Raimond Sebond" (2, 12) he does also evoke "ma balance inegale et injuste" (2, 12, 563a) to indicate when his use of reason, especially as it confronts diversity, ultimately must be righted. The implied correction for a balance scale that is unjustly unequal is one that is justly equal in its fairness to that which the balance scale is weighing, or judging. This equitable process is described by Cicero as *aequabilitas*—"the virtue of impartiality" that enables equity—a term that Montaigne cites in the *Essais*.<sup>53</sup> Thus, in this work Montaigne describes reason in terms that suggest processes of equity—*aequabilitas* and the Lesbian ruler—and, moreover, in the context of navigating diversity.

Therefore, when Montaigne advises his readers of "Des cannibales" to judge by reason, it is my contention that he encourages judging by equity. Not only does the legal valence of the language at the start of "Des cannibales" suggest this, but so also does the overall trajectory and conclusion of the essay. Claiming to report the speech of three Tupí-Guaraní Amerindians in France, Montaigne's essay culminates in criticism of the French monarchy. Unlike the Tupí-Guaraní system of leader selection,<sup>54</sup> the French system of kingship was one of blood ascension resulting—the Amerindian visitors to France observe—in

52. "[...] équité [...] c'est la raison humaine selon Montaigne" (Maclean, "Montaigne et le droit civil romain," 167).

53. Elaine Fantham, "Aequabilitas in Cicero's Political Theory, and the Greek Tradition of Proportional Justice," *The Classical Quarterly* 23.2 (November 1973): 285–86, 286n3, accessed 31 May 2015, doi.org/10.1017/S0009838800036764. Montaigne's quotation of Cicero's discussion of *aequabilitas* in *De officiis*: "Omnino, si quidquam est decorum, nihil est profecto magis quam aequabilitas universae vitae, tum singularum actionum: quam conservare non possis, si, aliorum naturam imitans, omittas tuam" (2, "De la praesumption," 658c). ("Certainly, if anything is becoming, it is uniformity [*aequabilitas*] in our whole lives and in our individual actions; which you cannot maintain if, imitating the nature of others, you eliminate your own" [Montaigne, *Michel*, trans. Frame, 607c]).

54. Tupí-Guaraní leaders did not always inherit the ability to govern, and those persons who did inherit leadership positions did not do so immediately. The people in any given Tupí-Guaraní society would decide if, when, and how they would follow one of their own; these leadership positions had to be earned from the rest of society and were often temporary. For insights into the historical social structures of Tupí-Guaraní societies, see Hélène Clastres, *La Terre sans Mal, le prophétisme Tupi-Guarani* (Paris: Éditions du Seuil, 1975). For detailed information about the different kinds of leaders that can emerge in Tupí-Guaraní culture, see Eduardo Viveiros de Castro, *From the Enemy's Point of View: Humanity and Divinity in an Amazonian Society*, trans. Catherine V. Howard (Chicago: University of Chicago Press, 1992), 109–18.

a youthful, inexperienced leader who would do better to trade places with one of the adult guards surrounding him (1, 31, 213a–214a). Next, the New World observers allude to the interdependent structure of Tupí-Guaraní society. Each constituent social group corresponds to another, and therefore considers itself “half” of another to care for, and to be cared for by.<sup>55</sup> Rather than “halves,” the Amerindian visitors note, French society exhibited “haves” and “have-nots,” leading the Tupí-Guaraní to question why the impoverished French did not violently revolt against the privileged in their society (1, 31, 214a).

In “Des cannibales,” Montaigne’s appraisal of the sixteenth-century French social order puts blame on its political and religious context, as Desan has discussed. Seeming to play the proto-anthropological topographer, and moving beyond the Dordogne river that ran next to his home to New World resources and contacts—including his own—Montaigne uses these, ultimately, as witness testimonies and arrives at extracting from them a legal judgment on his society, thereby concluding “Des cannibales.”<sup>56</sup>

The legal valence of the cultural relativism that Montaigne presents in “Des cannibales” and throughout the *Essais* is recognized as such by his early English readers, one of whom leaves a note in the margins while reading John Florio’s 1613 English translation of the *Essais*: “thinges lawfull in some places unlawfull in others.”<sup>57</sup> Denoting a link in the early modern mind between cultural diversity and legality, this comment furthermore indicates that to which Montaigne brings his reader’s attention: inequality. Relativizing laws and corresponding customs according to the practices of different societies,<sup>58</sup>

55. See Claude Lévi-Strauss’s description of the Bororo in his book *Tristes tropiques* (Paris: Librairie Plon, 1973), 249–51. The Bororo are linguistically and culturally related to the Tupí-Guaraní. On the relationship between the Tupí-Guaraní and the Bororo, see A. D. Rodrigues, “‘Ge-Pano-Carib’ X ‘Jê-Tupí-Karib’: sobre relaciones lingüísticas prehistóricas en Sudamérica,” in *Actas del I Congreso de Lenguas Indígenas de Sudamérica, Tome I*, ed. L. Miranda (Lima: Universidad Ricardo Palma, Facultad de lenguas modernas, 2000), 95–104.

56. Desan, *Montaigne: A Life*, 177 and 182.

57. William M. Hamlin, *Montaigne’s English Journey: Reading the Essays in Shakespeare’s Day* (Oxford: Oxford University Press, 2013), 79, doi.org/10.1093/acprof:oso/9780199684113.001.0001. Hamlin cites pp. 102 and 327 of a 1613 re-print of Florio’s 1603 edition of the *Essais* in English translation, but he does not indicate the essays within which these pages fall. If the pages of the 1613 re-print match those of the 1603 edition, the pages that he cites are in “Of the Caniballes” and “An Apologie of Raymond Sebond,” respectively.

58. Dionne, 474.

Montaigne evokes in "Des cannibales" a "pell-mell of customs" so as, ultimately, "to equalize people."<sup>59</sup> In other words, Montaigne's approach to and presentation of cultural relativity are legal and intended to put different peoples on a fair and equal footing with each other. Equity, as a paralegal, relativizing equalizer of different peoples' practices, therefore seems appropriate to consider as a rhetorical device that Montaigne uses in "Des cannibales."

### Procedures of equity in "Des cannibales" (1, 31)

The first of these procedures gives way in the course of the comparison (*comparatio*) that Montaigne makes across the cultures of classical Rome, early modern France, and sixteenth-century Brazil.<sup>60</sup> Sharing nuanced forms of stoic philosophy, aristocratic codes of martial honour, and sectarian religious fanaticism, each of these cultures results in a self-consuming society at war with itself.<sup>61</sup> Presenting their similarities, Montaigne casts a mirror-image likeness between Old and New World peoples through which he reflects, or shifts, French accusations of barbarity against the Tupí-Guaraní back onto his countrymen.<sup>62</sup>

Montaigne's shift of French accusations, while discussed by scholars in their analyses of his engagement with alterity, has not yet been considered in its legal valence.<sup>63</sup> Focusing particularly on Montaigne's oscillation between

59. Reiss, 208.

60. Quint, 75–102. For Montaigne's readings about the New World, and his interactions both with Europeans returned to France from the New World and Amerindians brought to France, see especially Desan, *Montaigne: A Life*, 162–82.

61. Quint, 76.

62. Quint, 100. See also Dudley M. Marchi, "Montaigne and the New World: The Cannibalism of Cultural Production," *Modern Language Studies* 23.4 (Autumn 1993): 35–54, 40, accessed 21 June 2017, doi.org/10.2307/3195204; Rendall, 61.

63. Scholars tend to focus on other facets of Montaigne's engagement with alterity. See Zahi Zalloua, "Sameness and Difference: Portraying the Other in 'De l'amitié' and 'Des cannibales,'" *Montaigne Studies: An Interdisciplinary Forum* 15.1–2 (2003): 177–90; Jack I. Abecassis, "'Des cannibales' et la logique de la représentation de l'altérité chez Montaigne," *BSAM* 7.29–32 (July–December 1992 to January–June 1993): 195–205; and Michel Liddle, "Montaigne et l'altérité," *BSAM* 7.29–32 (July–December 1992 to January–June 1993): 161–67. In addition to his chapter "Montaigne on Alterity," see Tom Conley's "Montaigne and the Indies: Cartographies of the New World," in *1492–1992: Re/Discovering Colonial Writing*, Hispanic Issues 4, ed. René Jara and Nicholas Spadaccini (Minneapolis: University of Minnesota

the “self” and the “other,” scholars have shown that the line separating the two blurs in the text of “Des cannibales.” Though they have attributed this blurring to a kind of proto-anthropological participant-observation exhibited by Montaigne for the benefit of his readers, I attribute it instead to his practice of equity. For, beyond describing the procedure of equity by invoking the Lesbian ruler, medieval and early modern legal theoreticians identified the jurist who practised equity as the Lesbian ruler itself: “a *lex loquens*, the embodiment of the flexible measuring rule of Lesbos” (Maclean, *Interpretation and Meaning*, 177). In other words, when the practitioner of equity retreated into his personal discretion—his reason—to discover how to broach different parties at trial, he took the particularities of the case with him and thereby became the locus of their convergence. This convergence rendered him like the malleable ruler of Lesbos, which metamorphosed to fit each item it measured.<sup>64</sup>

Adapting himself—i.e., his essay<sup>65</sup>—to the case at hand, Montaigne first shifts French accusations of barbarity against the Tupí-Guaraní back onto his countrymen. Shifting an accusation for an offence to another person or thing, Cicero explains in *De inventione*—historically, among the most influential and widely accessible texts for law students across Europe<sup>66</sup>—is *remotio criminis*.<sup>67</sup> Done in one of two ways, *remotio criminis* either shifts the responsibility for an

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Press, 1989), 225–63. See also Michel de Certeau, “Montaigne’s ‘Of Cannibals’: The Savage ‘I,’” in *Michel de Montaigne’s Essays*, ed. Harold Bloom (New York: Chelsea House Publishers, 1987), 119–32, and his earlier article “Le lieu de l’autre, Montaigne: Des cannibales,” *Oeuvres et critiques* 8.12 (1983): 59–72; Gérard Defaux, “Rhétorique et représentation dans les *Essais*: de la peinture de l’autre à la peinture du moi,” *BSAM*, 7.1–2 (July–December 1985): 21–48.

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

65. In addition to Almquist, see Richard L. Regosin, *The Matter of My Book: Montaigne’s Essais as the Book of the Self* (Berkeley: University of California Press, 1977), doi.org/10.1525/9780520327696.

66. Maclean, *Interpretation and Meaning*, 76–77.

67. “Remotio criminis est cum eius intentio facti quod ab adversario infertur in alium aut in aliud demovetur. Id fit bipertito: nam tum causa, tum res ipsa removetur.” (“*Remotio criminis* (shifting of the charge) occurs when the accusation for the offence which is alleged by the prosecutor is shifted to another person or thing.”) Cicero, *Cicero, De inventione, De optimo genere oratorum, Topica* (Cambridge, MA: Harvard University Press, 2006, reprint of the original 1949 edition), 252, English translation by H. M. Hubbell on 253. See also 292–93.

act, or it shifts the act itself, away from the accused. For the first, Cicero provides the example of the Rhodians, who appointed several men as ambassadors to Athens. The treasury did not give them money to travel, however, so they did not leave Rhodes. Should the ambassadors have performed their duties, Cicero asks, despite not being paid? If a judge were to rule in defense of the ambassadors, Cicero explains, he would be shifting their responsibility to fulfill their appointment to the treasury.<sup>68</sup>

For the second way that a jurist could perform *remotio criminis*—shifting an act itself—Cicero points to a treaty between an unnamed Roman general and the Samnites.<sup>69</sup> The Roman Senate, who disavowed the treaty after it was made, gave the Roman general over to the Samnites. The senate also debated giving them the young Roman soldier who assisted the condemned general. A jurist of this case, Cicero explains, could decide to shift blame away from the accused soldier, who neither had the rank to disobey his commander nor the authority to write a better treaty. In other words, the act of making the treaty “did not and does not bear any relation” to the accused soldier, “his powers or his duty.”<sup>70</sup>

In like fashion, Montaigne, the jurist in “Des cannibales,” shifts the acts that Europeans accused the Tupí-Guaraní of committing: stoicism, militarism, and religious extremism. First using *comparatio*, Montaigne shows his readers that they were just as mired in self-consuming warfare as the Brazilians. However, a mirror ultimately reflects an image of the subject gazing into it. In reflecting a New World image of Old World France, the Brazilians also return to Montaigne’s readers an image of the acts that Europeans accused the Tupí-Guaraní of committing. Returning this image serves to shift acts that Europeans levelled against New World peoples back onto Montaigne’s readers. Transferring to the French “[acts] or the intent or the power to perform [them],”<sup>71</sup> Montaigne draws upon *remotio criminis*, a procedure that

68. Cicero, *De inventione*, 252–57.

69. Cicero, *De inventione*, 257–61.

70. Cicero, *De inventione*, 259. The original Latin reads, “In hoc autem non accusare alterum nec culpam in alium transferre debet, sed demonstrare eam rem nihil ad se nec ad postestatem neque ad officium suum pertinuisse aut pertinere” (Cicero, *De inventione*, 258).

71. Cicero, *De inventione*, 31. The original Latin reads, “Remotio criminis est cum id crimen quod infertur ab se et ab sua culpa et potestate in alium reus remove conatur” (Cicero, *De inventione*, 30).



Cicero encourages jurists to practise in conjunction with *comparatio*, and in the ends of their judging by equity.<sup>72</sup>

Using *remotio criminis*, Montaigne shifts an act in addition to stoicism, militarism, and religious extremism: polygamy. Although central to the cannibal culture of the Tupí-Guaraní, polygamy has not been discussed in scholarship on “Des cannibales.” Montaigne, who took “an interest in the Indians’ sexual practices and in the role of women in the domestic life of Cannibal societies,”<sup>73</sup> implicitly conveys the Tupí-Guaraní’s association of polygamy with cannibalism, however, when he indicates that Brazilian men of the greatest valour also had the most wives:

Les hommes y ont plusieurs femmes, et en ont d’autant plus grand nombre qu’ils sont en meilleure reputation de vaillance : c’est une beauté remarquable en leurs mariages, que la mesme jalousie que nos femmes ont pour nous empescher de l’amitié et bien-veillance d’autres femmes, les leurs l’ont toute pareille pour la leur acquerir. Estans plus soigneuses de l’honneur de leurs maris que de toute autre chose, elles cherchent et mettent leur sollicitude à avoir le plus de compaignes qu’elles peuvent, d’autant que c’est un tesmoignage de la vertu du mary. (1, 31, 212–13a)

The valour to which Montaigne refers in the first sentence of this passage is the “obstinate valor” that, David Quint has argued, Tupí-Guaraní and French men alike performed through their stoicism, militarism, and religious extremism.<sup>74</sup> As Montaigne explains, it is through this valour that Brazilian men captured prisoners to be eaten in cannibalistic ceremony:

C’est chose esmerveillable que de la fermeté de leurs combats, qui ne finissent jamais que par meurtre et effusion de sang; car, de routes et d’effroy, ils ne sçavent que c’est. Chacun raporte pour son trophée la teste de l’ennemy qu’il a tué, et l’attache à l’entrée de son logis. Apres avoir long temps bien traité leurs prisonniers, et de toutes les commoditez dont ils se peuvent aviser, celui qui en est le maistre, faict une grande assemblée

72. Cicero, *De inventione*, 30–31 and 252–55.

73. Desan, *Montaigne: A Life*, 157.

74. Quint, 99.

de ses cognoissans : il attache une corde à l'un des bras du prisonnier, [C] par le bout de laquelle il le tient, esloigné de quelques pas, de peur d'en estre offensé, [A] et donne au plus cher de ses amis l'autre bras à tenir de mesme ; et eux deux, en presence de toute l'assemblée, l'assomment à coups d'espée. Cela faict, ils le rostissent et en mangent en commun et en envoient des lopins à ceux de leurs amis qui sont absens. (1, 31, 209aca)

If this valour existed in both Worlds, however, its result in polygamy did not. Having cast Tupí-Guaraní polygamy as a noble act of love devoid of female jealousy, Montaigne goes on to claim that Brazilian polygamy could not succeed in France due to the jealousies of French wives: "[C] Les nostres crieront au miracle ; ce ne l'est pas : c'est une vertu proprement matrimoniale, mais du plus haut estage" (1, 31, 213c). To support his assessment of polygamy, Montaigne immediately supplies a list of biblical examples: "Lia, Rachel, Sara et les femmes de Jacob fournirent leurs belles servantes à leurs maris" (1, 31, 213c). Montaigne's tripartite comparison (*comparatio*) of Brazilian, French, and biblical forms of marriage redefines polygamy as a virtue, of which the French fall short. This redefinition thus shifts the French accusation of polygamy against the Tupí-Guaraní into an accusation against the French for not successfully practising polygamy themselves. In other words, Montaigne again performs *remotio criminis*.

Montaigne goes a step beyond his use of *remotio criminis*, however, when he excuses the convergence point of the Brazilians' stoicism, militarism, religious extremism, and polygamy: their practice of cannibalism itself. Echoing André Thevet and Jean de Léry, whom Montaigne read, he states that cannibalism "[represente] une extreme vengeance" (1, 31, 209a). Vengeance, Cicero recognizes in *De inventione*, is an excusable provocation for further action, even murder. Pointing to Horatius, who killed Curiatii in a battle that claimed the lives of his two brothers, Cicero recounts how Horatius, after returning home in triumph, noticed that his sister was not distressed by the death of her brothers. Rather, she grieved the death of her betrothed, Curiatius.<sup>75</sup> "Filled with rage," Cicero explains, "[Horatius] killed the girl".<sup>76</sup> Describing the grief

75. Cicero, *De inventione*, 244–45.

76. Cicero, *De inventione*, 245. The original Latin reads, "Indigne passus virginem occidit" (Cicero, *De inventione*, 244).

of Horatius's sister as "intolerable,"<sup>77</sup> Cicero indicates that Horatius was "duty bound to punish it."<sup>78</sup> His taking revenge on her is a case for *relatio criminis*, Cicero concludes.

*Relatio criminis* ("retort of accusation"),<sup>79</sup> Cicero explains in *De inventione*, "occurs when the defendant admits the act of which he is accused but shows that he was justified in doing it because he was influenced by an offence committed by another party."<sup>80</sup> Accounting for the intent of and provocation for revenge, *relatio criminis* is a procedure to excuse the revenge of one person against another, and in the potentiality of a jurist ultimately judging by equity.<sup>81</sup>

Revenge, Montaigne indicates in "Des cannibales," is the purpose of the Tupí-Guaraní's cannibalism. Not only does his summation echo the sixteenth-century travel writers whom Montaigne read, but it is also supported by ethnographic data gathered as recently as the twentieth century. Eduardo Viveiros de Castro, a modern ethnographer of the Araweté—a Tupí-Guaraní people of Brazil—has explained that their ritual execution of an enemy, culminating in cannibalism, consummated a warrior's vengeance for the past deaths of his family members. Furthermore, this execution guaranteed for the warrior performing it his access to immortality in the afterlife.<sup>82</sup> Cannibalism, while no longer practised physically among the Araweté, is still practised figuratively by these people. A single element in a complex system within Tupí-Guaraní culture,<sup>83</sup> cannibalism is, however, an irrefutable expression and consummation of vengeance. In its physical form, cannibalism was both

77. Cicero, *De inventione*, 251. The original Latin reads, "non fuisse toleranda" (Cicero, *De inventione*, 250).

78. *De inventione*, 251. The original Latin reads, "deinde eiusmodi, ut in eam is maxime debuerit animadvertere qui animadverterit" (Cicero, *De inventione*, 250).

79. "The retort of the charge is used when the defendant claims that the deed was done lawfully because someone had first illegally provoked him" (Cicero, *De inventione*, 33); "Relatio criminis est cum ideo iure factum dicitur, quod aliquis ante iniuria lacesierit" (Cicero, *De inventione*, 32).

80. Cicero, *De inventione*, 243 and 245. The original Latin reads, "Relatio criminis est cum reus id quod arguitur confessus, alterius se inductum peccato, iure fecisse demonstrat" (Cicero, *De inventione*, 242 and 244).

81. Cicero, *De inventione*, 250–53.

82. Viveiros de Castro, 274.

83. Viveiros de Castro, 274. He is quoting Hélène Clastres, "Les beaux-frères ennemis: A propos du cannibalisme tupinamba," *Nouvelle Revue de Psychanalyse* 6 ("Destins du cannibalisme") (1972): 71–82, 81.

a prompt for and the result of Brazilian warfare. It was a kind of "alpha and omega of war."<sup>84</sup>

Cannibalism, as both a result and a provocation of warfare, can thus be defended by *relatio criminis*—which, Cicero explains in *De inventione*, "occurs when the defendant admits the act of which he is accused but shows that he was justified in doing it because he was influenced by an offence committed by another party."<sup>85</sup> Indicating in *De inventione* that a man who responds to violence with violence could be defended by *relatio criminis*,<sup>86</sup> Cicero concludes in *Pro Milone* that the violence of an attacked man—including the homicide he may commit—cannot be judged as worse than the violence of his attacker: "And if there is any occasion (and there are many such) when homicide is justifiable, it is surely not merely justifiable but even inevitable when the offer of violence is repelled by violence."<sup>87</sup>

Cicero thus excuses violence when committed in self-defense, as does Montaigne vis-à-vis the Tupí-Guaraní:

Leur guerre est toute noble et genereuse, et a *autant d'excuse* et de beauté que cette maladie humaine en peut recevoir : elle n'a autre fondement parmy eux que la seule jalousie de la vertu. Ils ne sont pas en debat de la conqueste de nouvelles terres, car ils jouyssent encore de cette uberté naturelle qui les fournit sans travail et sans peine de toutes choses necessaires, en telle abondance qu'ils n'ont que faire d'agrandir leurs limites. (1, 31, 210a, my emphasis)

Implying that Europeans waged war without any prompt—just their desire to colonize—Montaigne juxtaposes their actions with the war of the Amerindians,

84. Viveiros de Castro, 276. He is quoting Florestan Fernandes, *A função social da Guerra na sociedade Tupinambá*, 2nd ed. (São Paulo: Difusão Européia do Livro, 1970), 351.

85. Cicero, *De inventione*, 243 and 245. The original Latin reads, "Relatio criminis est cum reus id quod arguitur confessus, alterius se inductum peccato, iure fecisse demonstrat" (Cicero, *De inventione*, 242 and 244).

86. Cicero, *De inventione*, 292–93.

87. "Atqui si tempus est ullum iure hominis necandi, quae multa sunt, certe illud est non modo iustum, verum estiam necessarium, cum vi vis inlata defenditur." Cicero, *Cicero in Twenty-Eight Volumes, Pro T. Annio Milone*..., trans. N. H. Watts (Cambridge, MA: Harvard University Press, 1979, first published in 1931), Latin text on 14:14, English translation on 14:15.

whose only prompt for warfare is retaliatory: capturing prisoners from among their enemies to execute ritually and cannibalize, in response to their enemies' prior ritual executions and cannibalizations against them. In other words, Montaigne casts Tupí-Guaraní warfare as a kind of self-defense, which, as such, is excusable via *relatio criminis*. Cannibalism, as both an alpha and omega for the Tupí-Guaraní warfare now excused via *relatio criminis*, thus becomes excusable, too, by connection.

In sum, *relatio criminis*, in tandem with Montaigne's use of *remotio criminis* and *comparatio*, enables Montaigne to defend an otherwise indefensible offence. Montaigne, whose praise of the Tupí-Guaraní also reads as satiric,<sup>88</sup> discloses that he is not a proponent of the cannibalism that the Tupí-Guaraní practice. Montaigne states: "Je ne suis pas marry que nous remarquons l'horreur barbaresque qu'il y a en une telle action [cannibalism], mais ouy bien dequoy, jugeans bien de leurs fautes, nous soyons si aveuglez aux nostres" (1, 31, 209a). Not faulting Europeans for abhorring anthropophagy, Montaigne rather takes issue with Europeans for judging Brazilian acts of cannibalism differently from their own European ones. Alluding to the cannibalism that occurred in France during and after the St. Bartholomew's Day Massacre,<sup>89</sup> Montaigne states:

Je pense qu'il y a plus de barbarie à manger un homme vivant qu'à la manger mort, à deschirer, par tourmens et par geénes, un corps encore plein de sentiment, le faire rostir par le menu, le faire mordre et meurtir aux chiens et aux pourceaux (comme nous l'avons, non seulement leu, mais veu de fresche memoire, non entre des ennemis anciens, mais entre des voisins et concitoyens, et, qui pis est, sous pretexte de pieté et de religion), que de le rostir et manger apres qu'il est trespasé.<sup>90</sup>

88. Quint, 91.

89. The marriage of Catholic Marguerite de Valois with Protestant Henri de Navarre in Paris on 18 August 1572 sought to end the civil wars of religion then tearing apart France. Only six days after the wedding, however, on the feast day of Saint Bartholomew, armed gangs methodically searched all the houses in Paris for Protestants. The renegades executed adherents to the Protestant faith and loaded their bodies into carts kept at street intersections, from where they wheeled them to the banks of the Seine and dumped them into the river. Arlette Jouanna, *La Saint-Barthélemy, Les mystères d'un crime d'État, 24 août 1572* (Mayenne: Gallimard, 2007), 7.

90. 1, "Des cannibales," 209a. Montaigne reiterates his position in the essay "De la cruauté": "Les sauvages ne m'offensent pas tant de rostir et manger les corps des trespassez que ceux qui les tourmentent et

In this passage, Montaigne carefully echoes Léry who, in chapter 15 of his *Histoire*,<sup>91</sup> offers readers gruesome details of the St. Bartholomew's Day Massacre. Rippling out from Paris across the rest of France, this massacre culminated in widespread acts of cannibalism committed by Catholics against Protestants in the name of religious virtue.<sup>92</sup> In contrast to Léry, Montaigne depicts the anthropophagy of his countrymen with broad strokes and does not associate it explicitly with the St. Bartholomew's Day Massacre. For his early modern readers, however, this massacre and its related instances of cannibalism were still "within fresh memory."<sup>93</sup> Not needing to mention the St. Bartholomew's Day Massacre by name in order to remind his countrymen of this event and its outcomes, Montaigne subtly shows them the "virtuous" cannibalistic barbarity that they shared with the Tupí-Guaraní.<sup>94</sup>

Refusing to judge European and Brazilian anthropophagy as different, Montaigne appears to overturn the intertwined skeptical and proto-anthropological framework that scholars have argued underlies Montaigne's process of judging. Skepticism—particularly its tenth mode of doubt—requires cultural diversity for its philosophy to work, William M. Hamlin has argued.<sup>95</sup> In his *Pyrrōneioi hypotypōseis*, whose content Montaigne accessed from a number of sources,<sup>96</sup> Sextus Empiricus introduces the tenth mode as the one

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persecutent vivans" (2, 11, 430a).

91. Jean de Léry, *Histoire d'un voyage faict en la terre du Brésil*, ed. Frank Lestringant (Paris: Le Livre de Poche, 1994), "Comment les Ameriquains traittent leurs prisonniers prins en guerre, et les ceremonies qu'ils observent tant à les tuer qu'à les manger," 354–77.

92. Léry, 376.

93. Montaigne, *Michel*, trans. Frame, 189a.

94. Rendall, 61.

95. Hamlin, "On Continuities," 366.

96. Pierre Villey has argued that Montaigne likely read Henri Estienne's 1562 Latin translation of Sextus Empiricus's text, *Hypotyposes*, five years after its publication. This timeline would place Montaigne's reading of Estienne two to three years before his writing "Des cannibales." See Villey, *Les sources*, 1:202 and 1:218. In addition to Estienne's translation, Neto has noted that Montaigne likely had access to Gentien Hervet's 1569 Greek–Latin translation, *Adversus Mathematicos* (Neto, "Epoche as Perfection," 35n8). Miernowski also indicates that Montaigne could have read both texts (Miernowski, 554). Beyond these two texts, Villey has noted that Montaigne further read about Empiricus's skepticism in Diogenes Laertius's Greek text *The Life of Pyrrho* (*Les sources*, 1:116), translated into Latin; it is unknown which, of the several Latin editions available to Montaigne, the author of the *Essais* consulted (Villey, *Les sources*, 1:117). It is also possible that Montaigne had access to Pierre Cousteau's 1560 French text *Le Pegme*,

that “is principally concerned with ethics, [the] one depending on ways of life and on customs, laws, mythic beliefs and dogmatic suppositions.”<sup>97</sup> He then provides his readers with a long list of examples, from which Hamlin has drawn the following formula for the practice of the tenth mode:

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

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

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

Therefore we suspend our judgment as to whether X is F or F\*.<sup>98</sup>

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

However, “the observation of cultural diversity need not necessarily lead to suspension of judgment.”<sup>99</sup> Indeed, Montaigne goes one step further.<sup>100</sup> Rather than suspend his judgment as to whether X is F or F\*, in “Des cannibales” he accepts that X is both F and F\*, as is seen by substituting cannibalism and barbarity into the tenth mode of doubt:

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from which he could have received inspiration through its philosophical narrations (Villey, *Les sources*, 1:22).

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

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

99. Hamlin, “On Continuities,” 368.

100. “Montaigne abandons skeptical thought sequences at least as often as he adheres to them” (Hamlin, “On Continuities,” 374). In addition to Brahami, see Sedley, “Sublimity and Skepticism in Montaigne”; Richard H. Popkin, “The Religious Background of Seventeenth-Century Philosophy,” in *The Cambridge History of Seventeenth-Century Philosophy*, ed. Daniel Garber and Michael Ayers, 2 vols. (Cambridge: Cambridge University Press, 1998), 1:393–422; and Richard H. Popkin, *The History of Scepticism from Erasmus to Spinoza* (Berkeley: University of California Press, 1979), 54, doi.org/10.1525/9780520342453.



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

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

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

Therefore we suspend our judgment as to whether cannibalism is barbarous.<sup>101</sup>

Rather than suspend his judgment as to whether cannibalism is barbarous or not, Montaigne both affirms and denies that it is barbarous. At the same time that he recognizes with his readers the barbarity of Tupí-Guaraní cannibalism, he sanctions its practice within its distinct cultural milieu.<sup>102</sup> However, in comparing this cannibalism to the anthropophagy occurring in France, he displaces Amerindian cultural practices from the New World. Montaigne thus surpasses an anthropological sense of cultural relativity, which sanctions cultural acts only within the geographic confines of their culture. Drawing instead upon equity, which relativizes different practices, Montaigne invites readers to accept European and Tupí-Guaraní acts of cannibalism as similar, regardless of the milieu in which they are performed.

Indeed, Montaigne's invitation loosely follows the advice of Cicero:

[...] primum eius scripti quod proferas laudationem et confirmationem; deinde ius rei qua de quaeratur cum eo de quo constet collationem eiusmodi, ut id de quo quaeritur ei, de qua constet, simile esse videatur; postea admirationem per contentionem, qui fieri posit ut qui hoc aequum

101. For a similar exercise to my own—inserting the terms "cannibalism" and "barbarity" into the formula for the tenth mode—see Hamlin, "On Continuities," 367.

102. Lestringant finds that Montaigne accepts Tupí-Guaraní cannibalism according to its cultural context in Brazil ("Le Cannibalisme des 'Cannibales,'" 36).

esse concedat illud neget, quod aut aequius aut eodem sit in genere [...] deinde aequitas rei demonstranda est, ut in iuridicali absoluta.<sup>103</sup>

[...] first, praise and support of the law which you quote; then a comparison of the circumstances in question with the accepted principles of the law in order to show the similarity between the circumstances and the established principle; then comparing the two cases the speaker will wonder how it can be that one who grants that one is fair, should deny that the other is, which as a matter of fact is just as fair or fairer. [...] Finally, he should point out the fairness of his position, as is done in the absolute subdivision of the equitable issue.<sup>104</sup>

Montaigne appears to support French customs when he momentarily joins his readers in remarking on the barbarity of Brazilian cannibalism (“Je ne suis pas marry que nous remerquons l’horreur barbaresque qu’il y a en une telle action,” 1, 31, 209a). However, Montaigne ultimately reveals to his readers that they practised cannibalism, too. Montaigne’s readers could then understand Brazilian cannibalism as they did their own. Or, if his readers were still horrified by Brazilian cannibalism—a practice that Montaigne shows them existed in their French society—they would presumably turn away from their own acts of vengeance.

Montaigne’s appeal to Tupí-Guaraní culture thus corrects the judgment of his readers in at least two ways. His appeal first prompts readers to view Tupí-Guaraní and French acts of cannibalism as similar; it then provokes readers to “[subdivide] the equitable issue,”<sup>105</sup> in this case cannibalism and its larger cultural contexts. Montaigne’s readers could accept cannibalism in both the Old World and the New, or reform it in both. In other words, Montaigne does not leave his readers the option to continue sanctioning cannibalism in France but not in Brazil. Indeed, as Cicero states of comparisons in *De inventione*: “What is valid in one of two equal cases should be valid in the other; [...] Equity should prevail, which requires equal justice in equal cases.”<sup>106</sup>

103. Cicero, *De inventione*, 318.

104. Cicero, *De inventione*, 319.

105. Cicero, *De inventione*, 319.

106. Cicero, *De inventione*, 397. The original Latin reads, “Quod in re pari valet valeat in hac quae par est; ... Valeat aequitas, quae paribus in causis paria iura desiderat” (Cicero, *De inventione*, 396).

## Conclusion

Montaigne's exposure to equity in a legal context seems to influence his writing of the *Essais*. Beyond the passages already cited, in "Des boyteux" (3, 11) Montaigne criticizes the sixteenth-century trial of Martin Guerre. Reported by Jean de Corras, one of Montaigne's probable law teachers in Toulouse, Montaigne read about the trial of Martin Guerre, whose proceedings Montaigne also witnessed.<sup>107</sup> The *parlement* of Toulouse condemned Arnould Du Tilh to be hanged for his impersonation of Martin Guerre, a verdict with which Montaigne disagrees. In "Des boyteux," Katherine Almquist has argued, Montaigne advocates a less harsh judgment that implies equity. Calling for the court to render ultimately a verdict of doubt—"quelque forme d'arrêt qui die : « La court n'y entend rien » (III, 11, 1030b)"—Montaigne thereby also associates equity with his unique, skeptical judgment.<sup>108</sup>

His skeptical judgment, more than just a verdict of doubt, however, rather represents a process of judging that, as a critical method, acts upon doubt. Returning to the quotation that began this article, Montaigne describes his judgment in "De Democritus et Heraclitus" (1, 50):

Le jugement est un util à tous subjects, et se mesle par tout. A cette cause, aux essais que j'en fay ici, j'y employe toute sorte d'occasion. Si c'est un subject que je n'entende point, à cela mesme je l'essaye, sondant le gué de bien loing ; et puis, le trouvant trop profond pour ma taille, je me tiens à la rive : et cette reconnoissance de ne pouvoir passer outre, c'est un traict de son effet, voire de ceux dequoy il se vante le plus. (1, 50, 301a)

Testing the waters of what he does not immediately, and may never fully, know—"je ne voy le tout de rien" (1, 50, 302c)—Montaigne nevertheless arrives in his *Essais* at formulating and presenting judgments that reflect his progress in his process of judging any given topic. Not only does this style of

107. Desan, *Montaigne: A Life*, 39–40.

108. Almquist, "Montaigne et le plus sûr," 151–52. See also Nicola Panichi's article "La boiterie de la raison. Le cas Martin Guerre," *BSAM* 8.21–22 (January–June 2001): 171–83.

judging bespeak judicial maneuvers in the early modern legal field,<sup>109</sup> but, as his response to the case of Martin Guerre further suggests, Montaigne's process of judging also includes equity.

Indeed, in "Des cannibales," Montaigne draws upon equity when he leads his early modern readers to test figurative waters that reflect images not only of themselves but also of New World peoples. Through this process, his readers arrive on the other side of the riverbank—indeed, on the other side of the ocean, in the New World—with an equitable understanding of themselves and Amerindians. For Montaigne's recourse to *comparatio*, *remotio criminis*, and *relatio criminis* provokes his readers to enact a fourth strategy that Cicero associated with equity: "*Concessio* (confession and avoidance) is the plea in which the defendant does not as a matter of fact approve of the deed itself, but asks that it be pardoned."<sup>110</sup> Montaigne draws the attention of his countrymen to the Brazilian cannibal "culture that cannot pardon,"<sup>111</sup> in order to prompt the French—defendants on trial in "Des cannibales"<sup>112</sup>—to seek a figurative pardon. Their crime, Montaigne shows them, is their unfair judgment of French and Tupí-Guaraní societies. Montaigne's practice of equity thus teaches his readers how to judge themselves and others.

Montaigne's apparent interrelation of his practice of equity with his skeptical process of judging appears, however, to predate the first published edition of the *Essais* (1580, Bordeaux). The front side of the token coin that Montaigne had struck in 1576 promotes the recent claim of his family to nobility, and thereby solidifies their title. The back side of the token features an image of balanced scales and the motto "'je suspends' (εΠεχω)."<sup>113</sup> This motto associates Montaigne's process of judging with the precepts of pyrrhonist philosopher Sextus Empiricus.<sup>114</sup> However, the judicial scales in equilibrium, Montaigne's token promotion of his family's recent claim to nobility, and the medium for

109. See also O'Brien, "Suspended Sentences."

110. Cicero, *De inventione*, 261. The original Latin reads, "Concessio est per quam non factum ipsum probatur ab reo, sed ut ignoscatur, id petitur" (Cicero, *De inventione*, 260).

111. Quint, 75.

112. Nakam, 332 and 337.

113. Demonet, inset page, verso side.

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

these images—a coin—all suggest an association between his judgment and equity.

Roman emperors historically depicted equity on the back sides of *antoniniani* (monetary coins) with the goddess Aequitas. As Guillaume Du Choul reproduces in his *Discours de la religion des anciens Romains...* (1556)—a book in Montaigne's library<sup>115</sup>—equity stands facing left, holding a cornucopia in her left hand and balanced judicial scales in her right hand.<sup>116</sup> This same personified image was used to designate the goddess Moneta, whose coins were to be equally good for whatever station of man held them. To ensure the authenticity of the coins, the front sides of *antoniniani* featured the profile of the Roman emperor (wearing a radiate crown), who also promoted and solidified his status by having the coins struck.<sup>117</sup>

Beyond a possible gesture to a practice of the ancient Roman civilization that fascinated early modern French society, the emblem that Montaigne creates also fits within a sixteenth-century tradition of emblem production embraced especially by legal practitioners.<sup>118</sup> Their emblems, particularly the ones in French jurist Pierre Coustau's *Le Pegme* (1555), have been described by Valérie Hayaert as a "form of essay."<sup>119</sup> Visually piecing together "a mosaic of scattered texts, constantly updated, interpreted, and commented on," these essays suggest the later structure of Montaigne's *Essais*.<sup>120</sup> Evoking juridical rhetoric, the adages and mnemonic devices of the emblems essentially mime a trial, or, put otherwise, evoke processes of judging.

115. Dionne, 471.

116. Guillaume Du Choul, *Discours de la religion des anciens Romains, Escript par Noble Seigneur Guillaume du Choul, Conseiller du Roy, & Bailly des montaignes du Dauphiné et illustré d'un grand nombre de médailles et de plusieurs belles figures retirees des marbres antiques, qui se trouvent à Rome, & par nostre Gaule* (Lyon: Imprimerie de Guillaume Rouille, 1556). The 1581 edition reprint is available online, via the Internet Archive, in which the goddess Aequitas is covered on pages 126–27; accessed 16 January 2019, [archive.org/details/discoursdelareli00duch/page/n129](http://archive.org/details/discoursdelareli00duch/page/n129). Consult also Langer, "Équité et nouvelle 'encadrée,'" 195.

117. Du Choul, 126–28, 131–32.

118. Valérie Hayaert, "Pierre Coustau's *Le Pegme* (1555): Emblematics and Legal Humanism," *Eblématique* 14 (2005): 55–99, 79–93.

119. Hayaert, 72.

120. Hayaert, 72.

It would be incomplete, therefore, to consider Montaigne's method of judging in the *Essais* without also considering his career of judging as a magistrate, particularly his use of equity in this context, and in his book. The *Essais*, while testifying to Montaigne's knowledge of the Amerindians—he is the only European who correctly reports that the “worthy souls” of the Tupí-Guaraní deceased “resided in the eastern sky; the ‘damned,’ in the western”<sup>121</sup>—does not show, as Quint has observed, its author playing the role of the ideal ethnographer in “Des cannibales,” reporting “just the facts, please.”<sup>122</sup> Rather than merely share his impressive insight into Tupí-Guaraní culture, Montaigne draws upon equity to shape and present his Amerindian subject to its desired effect, in order to teach his readers how to judge themselves and New World peoples.

121. Viveiros de Castro's fieldwork among the Araweté (a group of Tupí-Guaraní Amerindians) confirms that Montaigne's information is correct (Viveiros de Castro, 85).

122. Quint, 77.