

Response by Vincent Rougeau, Dean, Boston College Law School

Black Natural Law by Vincent Lloyd. Oxford: Oxford University Press, 2016

Conversation at the Boisi Center, September 14, 2016

It is a pleasure to be here and to meet Prof. Lloyd. Thank you to the Boisi Center for inviting me, and particularly to my colleague Cathy Kaveny, who knew how much I would enjoy and appreciate this very interesting book.

Much of my own work has considered the relationships among increasing social diversity as a result of global migration, Catholic Social Teaching, and broad based community organizing. In particular, I have been looking at how immigration and undocumented migration are affecting our understandings of citizenship, membership, rights, and responsibilities in wealthy, liberal democracies in North America and Europe.

My interest in Catholic social teaching has obviously oriented me toward natural law. Black Natural Law offered tremendous insights to me, and opened up a number of new avenues of inquiry about the ways in which we understand natural law discourse.

Since my time is brief, I want to offer three sets of reactions.

First, I want to engage Prof. Lloyd's definition of what black natural law is and why it is offers helpful and important insights for how we think about questions of justice in the American context.

Second, I want to use black natural law to analyze two seemingly divergent current phenomena in American public life, and to demonstrate why black natural law analysis can continue be important and helpful, despite its increasing incoherence in African-American political discourse in the post-Civil Rights era.

Third, I want to think a bit about the unraveling of the black natural law tradition and offer an idea for its revival and re-engagement, particularly around issues of global justice. In other words, I want to propose moving black natural law beyond its US domestic origins and bring it into service for conversations about global social justice questions, for instance, the rights of migrants and undocumented immigrants.

I

I think it is extremely important and insightful when Prof. Lloyd offers a reinterpretation of the natural law tradition that it rooted in the powerful American black experience of chattel slavery and racial injustice. The over-dependence of the most common interpretations of the tradition on rationality as the means to understand what God intends for us does a tremendous disservice to our understanding of the realities of the human person.

I encountered this in my early work that explored interest rate regulation and credit card debt. The deregulation of the credit markets proceeded on assumptions about how people behave around money that completely jettisoned the emotional, or worse, demonized those whose financial life and decisions were shaped by non-rational choices. Suffice it to say that over the last twenty years, and particularly since 2008, we have reaped a bitter harvest from the

numerous legal and regulatory changes that have been put in place that many would argue have devastated the American middle-class. More on this line of thought later . . .

Black natural law privileges the insights that black people bring to discussions about law and justice by taking seriously both reason and emotion, and as Prof. Lloyd notes, offers a better way to approach politics, not only for blacks, but for everyone. To paraphrase Prof. Lloyd loosely, black natural law recognizes the mixture of reason, emotion, and imagination that more honestly describes the human experience and makes it more obvious how unrepresentable human nature truly is.

But that is only the first part. What this recognition leads to is collective action and organizing to achieve justice, a deeper understanding of how individuals are shaped by their membership in groups, a more serious respect for certain capabilities and capacities of the human person, and a sharper way of assessing , for instance, just or unjust laws.

In the US context, black natural law is an antidote to the anodyne, hyper-individualist expressions of the American experience so common in American public discourse—the somewhat naïve and emotionally empty tale of constant progress, inexhaustible strength, and exceptionalism that acknowledges:

- No struggle
- No trade-offs
- No victims
- No irony

The black experience helps to make the American story real by situating it in the inevitable messiness of the human experience and recognizing its flaws and contradictions. Emotion and imagination allow hope and love to flourish in the midst of injustice and brutality, but that does not diminish us, it ennobles us and connects us more meaningful to an understanding of our world’s brokenness, and for Christians, the nature of Christ’s passion. Ultimately, it helps to provide us with a much clearer understanding of what justice requires and of the range of what is possible.

II

How might all this be visible in our public life today? Let’s consider two seemingly divergent movements: Black Lives Matter and the rise of Donald Trump.

Neither movement is completely rational. Much of what is being expressed comes from deep emotional and visceral reactions to a strong sense that things have gone terribly wrong.

Black Lives Matter presents an easier case for a connection to black natural law, deeply rooted as it is in the American story of racial discrimination. Police shootings of unarmed black men strike a collective wound and a sense of memory in African Americans that is still raw from centuries of oppression, despite all of the meaningful progress that blacks have made in the United States. Ultimately, the sense of lingering injustice propels people to organize, particularly the young, who feel that they should not be seeing what they are seeing or

experiencing what they are experiencing. They should not be confronting, still, this violent and deadly reminder of what it means to be black in American culture.

Do the protests help? What is the cause they hope to advance? What do they seek? That is not always clear, but if the response is not necessarily fully rational, that should not be a surprise. Black natural law would help us to understand that *the injustice is real, the pain is real, and the suffering is real*. Something is wrong that needs to be corrected and those who sense and feel the injustice, as well as see its consequences need to act.

On a certain level, it is not all that different with what is perceived by some of Donald Trump's supporters. Many people in this country—and not just Donald Trump supporters, of course—sense that something is deeply wrong with our economic system and how its benefits are allocated. *That injustice is real*. We don't need our rational minds alone to detail it for us. Our emotions and our imagination tell us that the society in which we live could and should be different.

What happens, however, when the emotions become involved, is that the response can be unpredictable. What is the appropriate balance of the rational and the emotional? Donald Trump knows what to say and how to say it so as to feed the emotional needs of the group that has organized around him as a response to real economic injustice. Unfortunately, many have begun to abandon the rational completely and seek in him a kind of apocalyptic eschaton.

A recent Boston Globe story about the economic devastation of a small Pennsylvania town made this clear. One Trump supporter in his late 50s had the following to say about his support for the candidate: "I know he will probably drive us into war, but I just don't care anymore."

What many of the Trump supporters have lack, and what black natural law explains, is a sense of hope despite an understanding of our world's our brokenness. They have accepted uncritically the anodyne tale of American exceptionalism, and they cannot understand why it no longer supports and empowers them.

III

What has happened to black natural law today? Well, I think Prof. Lloyd gives us some good reasons for its unraveling. It became increasingly incoherent for all kinds of reasons after Martin Luther King, Jr. as the role and experience of African Americans in American society changed. Opportunities changed, the economy changed, the audiences changed.

I would add one more thought. The understanding of God and religion in American life changed. The common "God language" that was so important to black natural law no longer resonates the same way for both black and white audiences. What happens to black natural law in a society of religious "nones"? What does the breakdown of organized religion in American life mean for the powerful engagement that black natural law had with the Hebrew Scriptures and the notion of a God to whom we are ultimately accountable?

Going forward, I think there is more work that black natural law can still do, and I think it lies in speaking to broader global injustice. Here, God language may well still resonate—it is

still resonant and intelligible to many around the world. For instance, I think black natural law would offer a very compelling critique of the plight of the undocumented migrant and stateless refugee.

There is a clear issue around the justice of a system of global benefits that offers those with wealth or those born in wealthy nations a privileged position of comfort and security through birthright or purchased citizenship. The role the undocumented play in propping up that system through their labor in the shadows deserves deeper exploration. This is not to mention war, political corruption, ethnic and religious violence, and the accelerating effects of climate change as reasons for human displacement. What should we do?

The binary assessment of legal versus illegal immigrant cannot do the work necessary to address these concerns. We need to think beyond what we know currently. Black natural law might offer a means for bringing in the emotion, the imagination, and ultimately, the organizing, that we will need to truly understand what is at stake as our world is transformed by more and more people on the move.

My thanks, again, to the Boisi Center for this wonderful event, and to Prof. Lloyd for this thoughtful book. I enjoyed the opportunity to read it and it was a privilege to part of this conversation.