Law and race in Latin America: Brazil and Peru in an echo of two stories

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Abstract

This study presents a legal-historical analysis on discourses of nation and citizenship in Brazil and Peru to demonstrate the persistence of racial normativity during post-independence that still informs contemporary forms of racism as the "afterlife of racial slavery" (Hartman 1997). The choice to undertake this historical analysis is to confront the recurrent argument that race and racism were not institutionalised in Latin America. Looking at how the concept of race was mobilised in theoretical and legal-political debates over time unveils racist presumptions and reflects their modulation of institutional practice and theory, challenging the supposed innocence of the law in the region (Hernández 2013). Based on a literature review and the analysis of legal frameworks produced during colonial rule and the beginning of the Republic, I relate Brazil and Peru as echoes of two stories of a shared experience of Amefricanos (Gonzalez 1988). To study race and racism as "constitutive of the colonial condition" (Goldberg 2014) implies an effort to broaden our analysis from just states' circumscriptions. Consequently, in transcending the artificiality of state borders, it is possible to conclude that colonial technologies of conquest were always shared and that racism was/is an efficient colonial tool to guarantee forced labour, expropriation, and white life/wealth.

Keywords: racial rule; law; racism; Latin America

Making connections beyond borders: an introduction

The legal discourse in Latin America is permeated by a supposed "innocence" (Hernández 2013) with the recurrent argument that laws have not institutionalized race or racism based on comparisons to the Jim Crow segregation in the United States. Even critical studies about racism in Latin America tended to repeat this formula: "the country did not adopt a law on racial segregation (in contrast to the United States and South Africa), and therefore a legal definition of racial belonging was not established" (Silva and Rosemberg 2009, 59) or "it is true that there has been no regime of apartheid in the region, it is true that no racist legislation has ever existed in the region either" (Dulitzky 2001, 101). Even the argument that the *type* of racism experienced was reproduced within formal citizenship for all "in the absence of institutionalized racial discrimination" (Guimarães 1999, 59). This essay presents a short historical overview of racial regulation and discourses

regarding nation, race, and racism in Brazil and Peru to demonstrate the persistence of a racial rule in post-independence as the "afterlife of racial slavery" (Hartman 1997). Focusing on the Black experience in Latin America, I undertake a literature review of studies about racial enslavement, law, and justice from the colonial rule to the beginning of the republic. I also analyse the main normative framework from both periods to reveal the continuities of the racial legality, interrogating assumptions of neutrality of law and the faux innocence of liberal republican values (Fitzpatrick 1990). [1]

The racial State has resorted to various normative frameworks and policies that have directly governed and controlled racialized peoples, "reproducing the racialized regime of legality in postcolonial Latin American societies" (Alves 2016, 231). Formal law is not the only aspect of state regulation; the system put into practice to implement and interpret it should also be taken into consideration. Thus, legal opinion, jurisprudence, regulation at local and regional levels, and denied access to rights or services can all be seen as aspects of a legal regime (Bertúlio 1994). Hernández (2013) criticizes the focus on the criminalization of racism within legal studies to understand the racial order, instead of looking at a broader institutional form of systemic discrimination that guarantees the maintenance of the racial hierarchy. In Latin America, a legal-historical approach is central to understand current trends of racism as institutionalized structural oppression. Following Saidiya Hartman's stand, I consider that the "effort to reconstruct the past is, as well, an attempt to describe obliquely the forms of violence licensed in the present, that is, the forms of death unleashed in the name of freedom, security, civilization, and God/the good" (2008, 13). Thus, looking at the colonial history and the continuities in legal reasoning and national narratives in the Republic, it is possible to assess how racial enslavement imprinted in the legal common-sense racial presumptions "by racializing rights and entitlements" (Hartman 1997, 24) for the benefit of white lives and profit.

By looking at Brazil and Peru I draw on Lélia Gonzalez's work and the concept of *amefricanidade* (1988) as a claim to overcome barriers – territorial, linguistic, ideological -, to understand the historical process of the Black diaspora in the Americas through its shared experience of intense cultural dynamic (adaptation, resistance, reinterpretation). The experience of Blacks in the Americas was marked by the denegation of their inheritance since Latin America, even in name, reproduces white supremacist values and standards while overlooking Black and Indigenous peoples. Since colonial times, *Amefrica* is about the strategies of "cultural resistance, in developing alternatives of free social organization, which concrete experiences are found in the *quilombos, cimarrones, cumbes, palenques, marronages* and *marrons societies*, spread throughout the different corners of the continent" (Gonzalez, 1988, 79). Even

[1] This article results from the research project POLITICS - The politics of anti-racism in Europe and Latin America: knowledge production, political decision-making and collective struggles. This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No ERC-2016-COG-725402)

though this paper's focus is not on the various forms of Black resistance, they are central to understanding how the racial rule was moved by the white fear of Black freedom. In addition, my focus on the Black diaspora experience is a methodological choice, as anti-indigeneity is at the core of Latin American nation-states' fiction, even though historically indigenous peoples were differently regulated and, thus, produced different imaginaries (O'Toole 2012). The creation of "the Indian" and "the Black" is entangled with the creation of the *human* as the *white man* (Wynter 2003). This reflects national discourses around progress, citizenship, and rulership. The "Indian problem" in Peru (Drinot 2016) and the "Black problem" in Brazil (Ramos 1954) were constitutive of the colonial/imperial rule, and the national/republican rule.

In the Brazilian case, some authors within the legal field have undertaken the effort to demonstrate the racist trajectory of law relating to racial enslavement (cf. Bertúlio 2019; Duarte 2019; Flauzina 2006; Góes 2016; Pires 2013; Queiroz 2018). In the case of Peru, this literature is mostly present in the fields of history and sociology (cf. Carazas 2019; Barrantes 2018; Aguirre 2005; Velázquez Castro 2005; O'Toole 2012), but legal scholarship has looked at the indigenous and the racial rule (cf. Núñez 2019; Fajardo 2006). Building on their work, I aim to expand this debate to Latin America by relating Brazil and Peru as echoes of two stories of a shared experience of Black peoples. Exploring how theoretical constructions and political decisions over time resort to racial legal-political argumentation can help to unveil racist presumptions and reflect on their modulation of institutional practice and theory, particularly the concepts of citizenship and morality. The choice of putting two contexts in relation – Brazil and Peru – in an echo of two stories, forces us to be attentive to see beyond the boundaries of the State, to relate anti-black racism with theories, ideas, and practices that circulate globally and are locally put into action. For that reason, I am using relationality as a method to question exceptionalities of national-limited approaches (Lentin 2017), and for its prospect to reveal the global trends of exclusion beyond reaffirming existing hierarchies. To study race and racism as "constitutive of the colonial condition" (Goldberg 2014) implies an effort to broader our analysis of states' circumscriptions. Ideas, practices, and frameworks of the racial rule might have local contours, but they interact with racial ideas and experimentations that are tested or designed elsewhere. Following David Goldberg's proposition on the relational method, I consider comparative studies to "fail to account for the interactive relation between repressive racial ideas and exclusionary or humiliating racist practices across place and time, unbounded by the presumptive divides of state boundaries" (2014, 1274).

The text is divided into three parts. The first echo explores the discourses of the Peruvian nation against Black and Indigenous peoples, highlighting the racial rule in racial enslavement and later, in the post-independence as the new Republic is created. In the second part, the Brazilian racial rule is presented as a second echo, from the colonial forms of control to the racist continuities in the newborn Republic. As I present the echoes of the two stories, I propose an echo

that transcends borders to reveal the different mechanisms that have naturalised racism as part of the normal function of our societies (Almeida 2019).

First echo: The Peruvian nation against Black and Indigenous peoples

From the beginning colonialism functioned through racial lines. The Iberian model of colonialism implemented social-racial division to control labour, land, and power under the racial rule in the Americas. The Spanish crown adapted a regime similar to the one deployed on European soil in the colonies: the "*limpieza de sangre*" or cleanliness of blood concept, used to hierarchise and control non-Christians, such as Roma communities, Jews, and Moors (Gonzalez 1988). This hierarchisation relied on differentiated legal regimes for the various peoples living in the Peruvian territory: one system for the whites, called the Republic; another system, called "*Pueblos de Indios*" or "Republica de Indios", to regulate the lives and territories of indigenous peoples; and a third one for enslaved African peoples, ruled outside the "res publica" (Cotler 2009, 30). As a Catholic State[2], the Spanish crown invested in a powerful weapon to racially divide and legitimately control the conquered peoples: the Catholic church and its Cristian morality.

The forced labour of Indigenous and Black peoples was regulated differently. As indigenous people were considered *vassal* to the Spanish Crown, a tax was imposed to be granted the "king's protection". The indigenous tax or *mita*, guaranteed indigenous labour, but also enabled the decentralisation of the colonial administration, as this practice relied on regional authorities (Cotler 2009, 53). The *mita* rendered various communities dependent on landowners – *gamonales* - and organised the oligarchical power structure. The use of Black enslaved people was a factor of social distinction for wealthy enslavers, they were employed mostly in the urban setting, such as in the capital of the Vice-kingdom, Lima, but also by large plantation farms mostly in the Coastal areas of the country (Aguirre 2005; Barrantes 2018) with presence in Andean regions (O'Toole 2012). Considering my intent to dialogue with the Black diaspora experience, I give more emphasis on Black peoples in racial enslavement, as the Indigenous experience has been extensively studied (cf. Drinot 2016; Cadena 2004; Cotler 2009; Restrepo and Rojas 2010; Degregori 2014).

White fear in Peru was driven by both Indigenous and Black insurrection. Racial regulation was proportional to the need to control the population and guarantee their submission to sustain white supremacy. The Regulation of the occupied

[2] The "natural" superiority of the European invaders was constructed under racist assumptions, properly illustrated by the debate known as Valladolid, between Bartolomeu de las Casas and Ginés de Sepulveda, 1600-1601, "as to whether or not the New World Indians were equally 'men' (Las Casas) or 'slaves-by-nature' (Sepúlveda)" (Wynter 2003, 332).

Spanish territory, known as "*La recopilación de las Leyes de Indias*" (1680)[3] regulated the different "peoples" demarcated by racial codes. The 7th law forbids relations between Blacks and Indigenous people (both sexual and labour), prescribing penalties for the white "masters" that employed them simultaneously. The fear of a Black and Indigenous alliance produced a rigid control of both groups' socialisation. For example, Blacks were forbidden to drink *chicha* or to go to "rancherías de indios", regulated by the "Siete Partidas del rey Alfonso el Sabio, Partida IV, Título VI" (Barrantes 2018, 83). In the colonial discourse, Indigenous peoples were seen as being under constant threat, in need of protection or guidance, including "protection from the Black". As Rachel O'Toole suggested, "official discourse contrasted the qualities of blacks and Indians to justify Spanish colonialism" (2012, 18), the constructed antagonism as Indian-Black hostility "was more visible in an official language when contrasted with local realities" (2012, 23).

In the case of Lima, the presence of both freed and enslaved Africans fostered the white fear of "losing control over that population, seen as disordered, immoral and incapable of decent behaviour" (Barrantes 2018, 23). Lima had a large Black population, which could be up to 44,6% by the XVIII century, from those, 19% were freed, which raised the need to exercise constant control (2018, 65). In Peru, the Catholic Church was key to the colonisation process, holding juridical power in the Ecclesiastic Tribunal. If we take into consideration that the church was responsible for birth and death certification, marriage, and the moral control of society, its power over the space in the name of "public morality" was relevant. Civil and criminal cases were taken to the Royal Audience (*Real Audiencia*). The Brazilian case is slightly different, because in most of the colonial period, "justice" was left in the hands of private landowners (Flauzina 2006). Even though the Church played a key role in the moral control of society, it was not directly administrating justice as extensively as in the Peruvian case.

Such forms of racialised legality assured control of the Black body, stipulating rights and duties along racial lines. The freed Blacks were a source of great fear and in seeking to keep them in their "proper place", as non-humans, their lives were extensively regulated. According to the *Ley de Indias*, the freed "negros y mullatos" were to pay taxes to the Spanish Crown (*Libro VII, titulo V, ley primera*). To enforce this command, the 3rd law prescribed that freed Blacks had to live with known "masters", so it would be possible to collect the payment. According to the regulation, freed Blacks were not recognised as having a fixed residence - "*no tiene asiento*", so they were not allowed to move from the "master's" house without a court's permission. If a freed Black was found outside their "master's" home, they were to be arrested and made to learn how to "live accountably and with reason". Besides, the "idle freed" were to be sent to work in the mines (4th law). At that time, vagrancy was also a crime, leaving little room for freed Blacks to determine the fate of their lives in a racial

[3] Available at: http://www.gabrielbernat.es/espana/leyes/rldi/indice/indice.html , accessed on the 15th September 2020.

enslavement system. The third law on freed Blacks is very illustrative of the limits of freedom for Blacks in racial slavery, so I cite in length:

> *Ley iii. Que los Mulatos, y Negros libres vivan con amos conocidos, para que se puedan cobrar tributos.* Hay dificultad en cobrar los tributos de Negros, y Mulatos libres, por ser gente, que no tiene asiento, ni lugar cierto, y para esto conviene obligarlos à que vivan con amos conocidos, y no los puedan dejar, ni pasar a otros sin licencia de la Justicia ordinaria, y que cada distrito haya padrón de todos, con expresión de sus nombres, y personas con quien viven, y que sus amos tengan obligación de pagar los tributos a cuenta del salario, que les dieren por su servicio, y si se ausentaren de ellos luego noticia a la Justicia, par que en qualquier parte donde fueren hallados, sean presos y sueltos a sus amos con prisiones, y apremiados a vivir, de forma, que haya cuenta e razón. Mandamos a los Virreyes, y Justicias, que assi lo ordenen, y provean.[4]

The Black enslaved were also regulated by the *Ley de Indias*, which defined severe penalties for rebellion and *cimarronaje*.[5] If enslaved persons did not perform their duties for more than 8 days, they would be whipped 100 times. However, in the case of committing a felony (as *cimarronaje*, for instance), the penalty was death in the gallows. To be able to make rebellious leaders examples, the 26th law removed the requirement of a judicial trial. Aguirre (2005, 25) narrates how the captured *cimarrones* were immediately executed and their bodies publicly exhibited. The Plaza Mayor was the centre of Lima and the colonial domain, where the colonial power was enforced, and the public punishment took place. As described by Arrelucea Barrantes,

> people would go to the plaza and observe the punishment of bandits, *cimarrrones*, petty thieves, and other criminals. In this space, the exercise of authority was highlighted and their representatives were granted the natural right to inflict severe punishments. In addition, the show had its doses of persuasion and intimidation: after seeing the dismemberment of a person, more than one looked for an alternative to their problems (2018, 64).[6]

Blacks were more severely punished as they occupied the lowest place in the racial hierarchy. Public demonstrations of violence were necessary for the naturalisation of identity and place, of different bodies and their different geographies (McKittrick 2006, 13). The performance of violence ratified racial hierarchies and maintained a constant atmosphere of terror. It was also needed because *cimarronaje* was an actual threat for the enslavement system. It not

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[4] "Law iii. That the Mulattoes and free Negroes live with known masters, so that tributes can be collected. There is difficulty in collecting the tributes of Blacks and Free Mulattoes, because they are people, who have no "seat", or a specific place, and therefore it is convenient to force them to live with known masters, and they cannot leave them, or pass on to others without a license of the ordinary Justice, and that each district has a register of all, with expression of their names, and people with whom they live, and that their masters have the obligation to pay taxes on account of the salary, which they give them for their service, and if they will be absent from them then report to the Justice, so that wherever they are found, they are imprisoned and released to their masters with prisons, and urged to live, in a way, that there is account and reason. We send the Viceroys, and Justices, who order it, and provide." (author's translation)

[5] C*imarronaje* in Peru, such as *Quilombagem* in Brazil, originated from the struggle of Black people to break free from racial slavery by escaping captivity and forming autonomous communities known as *palenques* or *quilombos*. See more in Aguirre, 2005 and Moura, 1981.

[6] Author's free translations from the Spanish original.

only represented evidence of Black political liberation in contrast to Black inhumanity colonial ideology. The relation between the *palenques* and other parts of society, such as commercial relations by providing foods and other goods (Pastor 2008, 18) could also challenge the colonial system (white supremacy) in itself by naturalizing Black freedom.

It is important to note that despite a colour-coded differentiation in the regulations, which was mobilised mostly for the freed Blacks, this form of racialised legality did not guarantee privileges for Black people in Peru. Even the supposedly advantage of *morenos*, those of lighter skin, was precarious. As a result, those who were freed or enslaved were not defined by a colour code from Black to *moreno*, but from black to white. As the 6th law reveals, "the son of a Spanish and a Black woman were to be preferred in the purchase by their father", "colour" variation was therefore deemed secondary to determining control over the racialised body. The use of "black" indistinctively, for instance, could encompass both freed and enslaved. The 12th law is illustrative of this broad use of the term, which stated that Blacks could not be outside their "master's house" at night. Or the 5th law, which determined Blacks ought only to marry other Blacks, whether freed or enslaved. The only differentiation declared by the law was regarding *morenos*, and according to the 10th law, freed *morenos* should be properly treated and not be disturbed, if living peacefully (19th law). *Mulatos* and *Zambaígos*, on the other hand, were equal to *negros*, in that they could not carry weapons (24th law). The use of various racial categories by the law (*negros, mulatos, zambaígos, morenos*) was intended to make humanity/fungibility indisputable and not open to interpretation. Thus, blackness was fully regulated.

The work of Maribel Arrelucea (2018) and Rachel O'Toole (2012) has demonstrated how racial regulations were permeated by constant negotiation. Black people struggled for freedom in various ways, and sometimes by mobilising the system in their favour. *Cimarronaje*, punished with death, was not always an option. There were many motivations to go to trial as plaintiffs, such as: claiming the validity of a freedom letter, demanding a fair price for one's freedom, accusing one's "master" of abuse, and claiming the right to marry, as Carlos Aguirre exemplifies (2005, 27). Nonetheless, the racialised legality, even if exceptionally negotiated, still set the hierarchies of control and vigilance that all Black people, freed or not, were subject to. The simple fact that the regulation existed, even if not fully enforced, turned it into an instrument of constant threat and coercion. Blacks did not have the power to negotiate; this power was in the hands of the whites and their institutions. Consequently, the regime regulated specific peoples as *fungible* and, thus, they could never set the terms of the negotiation. It is not by chance that Black women and men were trying to prove they were good Christians, or that they were honest or good workers, they could only mobilise the values conceived as valid by those white institutions. In addition, there was also a blatant gender differentiation in racial slavery. Black women were seen as sources of sin and moral corruption (Barrantes 2018, 89) and were overly sexualised. For women it was of vital

importance to be able to demonstrate their "honour". They often petitioned for a catholic marriage because the "illegitimacy" of their unions or children was a source of dishonour.

In the case of Peru, women were also relegated to jobs of lower social esteem, such as butchering animals or selling in the streets. These were perceived as violent and dirty jobs (Barrantes 2018, 91). Such racial gendered differentiation is important in racial slavery, and conversely, the immorality of Black women set contours of white women's femininity. Sexuality and race were constantly mobilised to draw racial lines to build both the Black (men and women) and the white (men and women). Lélia Gonzalez (1984, 230) analyses the racial-sexual construction of the *mucama* or the "house slave" as occupying both the bed and the kitchen. According to Katherine McKittrick, "spatial differentiation communicates sexually promiscuous, immoral, perpetually pregnant, inferior stereotypes; it reaffirms the places and spaces available within the racist patriarchy through the unfree body" (2006, 82). The Black body was also constructed this way, even when "freed". In this same construction, "white femininity, white masculinity, and white corporeality are, for the most part, rendered protected and protectable". Whiteness had to be protected from the dangers of the over-sexualised and immoral body, and particularly in specific geographies of whiteness, "slave quarters, plantation homes, fields, kitchens are, for black women, unprotected—it is in the material landscape, at work, in the home, and within the community, where the body is rightfully retranslated as inferior, captive, and accessible to violences" (McKittrick 2006, 82).

The Republican/ national (racial) rule

The work of Marcel Velásquez Castro (2005) explores the "cultural construction" of the Afro-Peruvian by the Criollo elite during 1775-1895, providing important accounts on the legal-political tensions during the transition to the Republican State. Debates before the Constitution of 1823 revealed the tension around liberal values, being property rights – over enslaved people - and the claim of equality for all. While some abolitionists defended the gradual abolition of slavery, enslavers argued that the economy would collapse without enslaved labour for the plantation system (Castro 2005, 202). As a result, the first Republican Constitution approved the end of the transatlantic slave trade, but legal commerce within the Americas was later legalized by decrees[7], a victory for enslavers who had requested this. The independence of Peru (1821) changed little for the lives of *Amefricanos*, still dissociated from Latin America as a desired white continent. The regime of Black enslavement remained, and only residual legislation was signed by San Martin in 1821[8],

[7] According to Castro, in 1835 General Salaverry issued a decree allowing the slave commerce within the Americas (Velázquez Castro 2005, 205).
[8] Carlos Aguirre (2005, 17) tells an interesting fact on how Bolívar has promised black slavery abolition when he was in a meeting with Alexander Petión in free Haiti but broke this promise as he relied on economic elites to support his political project.

providing freedom for the children of an enslaved person and of those Blacks who fought in the Independence War (those who were still alive). Abolition was formally declared in 1854 when slave owners were financially compensated by the State for their "property losses".[9]

The liberal principles enunciated by the Constitution of 1823 regulated who was considered a *citizen*. Article 17 stipulated the requirements, which included literacy and ownership of land or a recognized profession. This last requirement has been pointed at as a liberal opening to citizenship that could encompass Indigenous and free Blacks (Velasco and Rojas 2013). Nonetheless, citizenship could be suspended, according to Article 24, in the following cases: being *morality* inept for free labour; the condition of domestic labour; the lack of a job or other forms of employment; those criminally processed; and those whose scandalous lifestyles offended the public morality.[10] The motifs for the suspension demonstrate the racial delineations of citizenship in the Republican era. If we consider who was in domestic labour and who was constantly described as immoral, it is seems obvious to conclude that Black people were not considered as rightful citizens.

A letter by the politician José María de Pando addressing the Constituency of 1834[11] evidenced the white fear of Black freedom, but also the incompatibility of the "slave" with Peruvian citizenship. Pando argues that a "slave" is not a full man because he "requires long civil and moral training to enter society as a citizen" (Castro 2005, 204). Pando also refers to the experience of Santo Domingo or the Haitian Revolution, to say that freedom from slavery would be dangerous since, in his words, "*la gente de color*" are prone to barbarism and horrible crimes. The juridical-political arguments defining the boundaries of citizenship were racialised; morality and civility were inherent to whiteness and antagonist to blackness. The association of blackness with criminality in those political debates at the beginning of the Republic shows that white fear perpetuated colonial ideas to guarantee constant control and white privileges. In addition, the constant reference to *morality* is significant, because it was attached to the condition of whiteness or *blancura* as Christian morality, as argued by Castro-Goméz (2005). After all, the first Constitution declared Peru a Catholic nation, forbidding the exercise of any other religion (Articles 8 and 9). The constitutional rank of the Catholic religion lasted until 1979 when Peru became a secular state. This constitution recognized the Catholic Church's importance for the historical, cultural, and *moral* formation of Peru. This is still the case in the current Constitution of 1993 (Article 50).

After independence, San Martin stated that Spanish criminal legislation - *Las Siete Partidas* and *La recopilación de las Leyes de Indias* - should continue to

[9] According to Julio Cotler (209, 109), the government paid six million pesos to compensate the losses of enslavers.
[10] This list has slightly changed in the new Constitutions of 1828 and 1860, but the censitary vote remained until the constitution of 1928.
[11] The letter is entitled "Reclamación sobre los vulnerados derechos de los hacendados de las provincias litorales del departamento de Lima en 1833" (Velázquez Castro 2005)

be in force. Despite previous attempts to promote a codification of the scattered Spanish regulation, Peru's first Penal Code was not issued before 1863. This Code is illustrative of the continuum role of the Catholic Church in stating the boundaries of morality, thus criminalizing Blacks and Indigenous non-submissiveness. Articles 99 to 107 describe the crimes against religion, including the celebration of any cult that was not Catholic to be sentenced with imprisonment and even expatriation. In addition, any immoral act was to be severely punished. Articles 372 and 373 proscribe offences against the Catholic Church, such as blasphemy or any act of "irreverence". Articles 374 to 379 describe the offences against "morality", including any public offence such as intoxication. Articles 380 and 382 proscribe offences to public order, such as gatherings and spectacles causing noise and disturbance. Thus, being "moral" is a condition for citizenship that draws racial lines of control over public spaces, public practices of spirituality, with a particular emphasis on embodied/ engendered behavioural codes and sexuality.

Mestizaje and the (white) future of Peru

It is within this specific "moral compass" that the Peruvian academia engaged with eugenic European theories, applying scientific methods to describe the different races in the late XIX century and beginning of the XX. The "Indian problem" was seen from different perspectives, but overall, it went hand-in-hand with the racial construction of other major groups, categorised as "inferior races", including the Blacks and the Chinese. Carazas (2019) and Hilario (2019) have debated how Peruvian intellectuals and academia invested in the ideologies of race improvement and nation formation, but ultimately defended the elimination of non-white races. One of the "solutions" for the problem was the *blanqueamiento* through mestizaje. As Gonzalez argues, "conveyed by the traditional media, [the whitening ideology] reproduces and perpetuates the belief that the classifications and values of the white West are the only true and universal ones" (1988, 73). There were two different mestizaje projects in the political debate. One was proposed by "scientific racism", aimed at "improving the race" by mixing the indigenous and the Black with whites, leading to whitening of the population. The other, presented by the Mexican José Vasconcelos, was "*la raza cosmica*"; mestizo as the perfect race. Milagros Carazas argues that even those intellectuals critical of eugenic approaches to mestizaje have defended the mestizo as being "a new social type that assimilates more rapidly to western culture, although it is uprooted in the process", as the socialist Jose Carlos Mariátegui[12] writes (2019, 5).

These national projects are best understood in relation to the regionalization of race in the country. The Lima-Cuzco dichotomy (Costa vs. Sierra) is relevant to

[12] Mariátegui discussed Vasconcelos' idea of the mestizo as the "cosmic race" in the *Seven Essays*. For him, Vasconcelos was a utopist because "el chino y el negro complican el mestizaje costeño. Ninguno de estos dos elementos ha aportado aún a la formación de la nacionalidad valores culturales ni energías progresivas" (Mariátegui 2005, 305).

this debate as the *indigenistas* composed an important intellectual and political movement in Peru. This sustained mestizaje as a national project. As Marisol de la Cadena shows, by the beginning of the 20th century half of the theses defended at the University of Cuzco were concerned with how to suppress the "deficiencies" of the indigenous personality to avoid the negative consequences of their "degenerate race" for the construction of civilisation (2004, 103). Different from Lima intellectuals, Cuzco's *indigenistas* revitalised the Inca Empire as the great civilisation to build a sense of nationalist pride based on a glorified past. They advocated against the eugenic mestizaje project, as the corruption of the "pure Indian race", and supported education as the way to "civilise" the indigenous peoples. De La Cadena's argues that the *indigenistas* represented an alternative project to Lima, which they considered as anti-indigenous and pro-Spanish, yet still embedded in racist conceptions of progress as desindianization.

As the violence in rural areas and land expropriation were a constant source of tension, the racial construction of the *gamonales,* to differentiate them from the *hacendados* (the "good" landowners), was politically relevant. Anti-blackness was mobilised by Cuzco intellectuals, so to contrast both the *haciendados* (the white and owners) and the indigenous peoples ("pure and submissive" race) to the *gamonales*. Cuzco elites demonised the *gamonales* relying on anti-black stereotypes, and this newspaper article from 1922 is illustrative:

> Chopped off pox, with sunken eyes and very small, with thin and frizzy hair, [skin colour] pulling black, with a flat nose, thick lips, thick moustaches, no beard, to look cannibalistic [...] talking stuttering, always wearing a black suit and red or green tie, [...] affection to steal the lands of the defenceless indigenous people, of criminal tendencies (55. El Sol, 31 de junio de 1922, p. 3. apud[13] de la Cadena, p. 99)

Arguing to be morally superior to the Criollos from Lima, the *indigenistas* also had to differentiate themselves from the *gamonales*. This was done reinforced racial lines across social places of superiority/ inferiority. Even though *gamonales* could be seen as mestizos, as an economic elite, they were reproducing whiteness. Wilber Hilario emphasises that "the gamonal was also recognized in the *imagery of whiteness*, although it did not share the *habitus* of the Lima elite. However, the *misti* constructed a reality in which he recognized himself as superior to the Indian, with whom he established ambivalent relationships" (Hilario 2019, 95).

The country's elite saw the Peruvian population as an obstacle to progress because they were racially inferior (Drinot 2016, 29). Nonetheless, a nationalist thought was constructed against the idea of the "white Lima", extracting elements of indigenous culture to build the *peruanidad* or national identity.

[13] Translated from the original Spanish: "Picado de viruelas, de ojos hundidos y bien pequeños, de cabellos ralos y crespos, [de color de piel] tirando al negro, de nariz chata, de labios gruesos, de bigotes gruesos, barba ninguna, de mirar canibalesco [...] de hablar tartamudeando, siempre terno negro i corbata roja o verde [...] afecto a robar las tierras de los indefensos indígenas, de tendencias criminales. 55. El Sol, 31 de junio de 1922, p. 3" (de la Cadena 2004, 99).

Later, the Black Peruvians would become important for the solidification of the mestizo ideology by incorporating their culture into the *criollo* one. The popularity of the Black urban culture in the '50s, particularly in Lima, turned out to be, as Aguirre discussed, "a central element of the criollo culture, that for many was the authentic manifestation of Lima identity and even the Peruvian one" (2013, 143–44). The absorption of the Black element in the *criollo* culture turned out to be one of the stronger arguments of Peruvian mestizaje, as the celebration of the positive mixture of cultures. However, it served to reinforce an anti-black argument of Black assimilation and pro-Spanish - as *criollo* also means the Spanish born in the Americas and still represents a white identity. On the other hand, in the debate about the construction of the national foundational myth, the Black people were rendered highly invisible. The work of Suzanne Oboler on racism in Peru raised a concern with the denial of the race question through mestizaje. For her "the presence of blacks as an integral part of Lima's *criollismo* seems to serve as a justification for the relationship between race and power in Peru being understood and resolved mainly, though not exclusively, in socioeconomic and status terms, and not racial" (1996, 37).

Even though Black people were invisibilized in Peruvian debates on race, citizenship, and law[14], a case in 1957 that led to the death sentence of Jorge Villanueva Torres is very illustrative of how antiblack racism informed the racial rule. A white child was found dead and one single witness placed a Black man close to where the body was found. Soon, the defendant was named "Monstruo de Armendáriz", with details of a sexual crime described by local media. The only piece of evidence necessary for Torre's conviction was the witness statement that Torres was seen in the vicinity, so Torres was presumed guilty. This case illustrates how a Black man is not entitled to subjectivity and does not need to be placed at the scene of the crime. This case also teaches us that blackness was synonymous with criminality, where fungibility worked as *in dubio against black*. A more recent analysis of the case has shown that the child might not have been a victim of murder at all, bearing injuries pointing towards an accident, not a killing.[15] Torres was the last person to be sentenced to death before the capital penalty was abolished in Peru for this type of crime[16], and this is the only reason we know about Torres's fate. The last person to be legally executed by the Peruvian State was a Black man.

Second echo: The "Black problem" and the Brazilian racial democracy myth

[14] Recent works on criminology and race focus on the Indigenous and state regulation, such as the work of Núñez 2019 and Fajardo 2006.
[15] See more about the case in <https://lpderecho.pe/conmemoran-60-anos-ejecucion-monstruo-armendariz/>, accessed on the 1st September 2020.
[16] The death sentence is still valid in Peru for cases of terrorism and crimes against the nation (Constitution Article 140).

Borrowing from Lilian Schwarcz (2007) "*raça sempre deu no que falar*" [race always made the conversation going], since the beginning of the social sciences race was an issue *about* or *in* Brazil. From early exoticized Europeans' descriptions or the civilizational laboratory of Unesco[17] project, through the race was *how* Brazil was described (Schwarcz 2007). Whereas society was described or problematized through racial lines, the racial democracy myth has strongly been sustained by legal innocence, legitimized by the nondiscrimination clause – "we are all equal" - that has been echoed in the Constitutions since the first one of 1824.[18] Colonial rule in Brazil privatized the control over land and Black bodies, by resorting to the legal institute of *sesmaria* to both encourage settlers to promote the colonial venture and guarantee that settlements were profitable to the Portuguese Crown. The institute of *sesmaria* was created in 1375 to establish Christian settlers in Moorish areas, obliging those entitled to make the land productive (Prioste 2017). A similar logic was used to occupy land in the Americas, with the distribution of *sesmaria* titles for those Portuguese willing to make the colony productive. This allowed for a great accumulation of power in the hands of landowners, the *sesmeiros*, who exercised control with great jurisdictional, political, and military power as intermediaries of the Portuguese Crown. During this period, the control over land, but also control over people - moral codes, religion, and production - was privately organised. As Ana Flauzina explicates, from 1500 to 1822 a colonial-mercantilist system was built on private relationships, "where punitive materiality takes place" (2006, 46). On the other hand, evangelisation was the "superstructural support of conquest" functioning "through the pedagogy of sin, death, and guilt" (Vera Malaguti, 2003, 30).

The enslavement of African peoples was authorised in 1549, extending until 1888, when it was officially abolished. During more than 300 years, Brazil was the biggest destination for enslaved people, with an estimated 5,8 million people forcedly brought from various African regions, a number that is only an estimation considering both illegal traffic and unaccounted trips.[19] The scale of racial enslavement, the need to control the Black body, and how white fear is exercised, shaped Brazilian history and built the racist foundation of the country (Flauzina 2006, 44). Central to that was the exercise of disciplinary violence, as "rigid hierarchical societies need the death ceremonial as a spectacle of law and order" (Batista 2003, 32).

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[17] Following the trauma of the Nazi regime and interested in the proclaimed solution in the "racial democracy" of the mixed-race nation, UNESCO founded a project with the intention to assess if Brazil could be an example to the world, considering the studies of Gilberto Freyre and Pierson celebrating the "pacific encounter of races" and the positive results of miscegenation. The results were not so celebratory and reveal that the racial democracy was a myth. (Guimarães 1999; Schwarcz 2007)

[18] Despite every person being declared equal by law (article 179, XIII), the Constitution expressly distinguished the "freed", who once was enslaved, and the "ingenous", who were born from an enslaved person (article 6, I), when describing who was considered Brazilians.

[19] The Project Voyages has examined 34.948 records of slave ships, building an extensive databased on the history of the transatlantic trade, showing how Brazil/ Portugal ships have been majorly responsible for the biggest forced migration in history. Available at http://www.slavevoyages.org/assessment/estimates, accessed on 28.05.2018.

The high number of Black people in Brazil mobilised a constant fear of Black insurrection. The regulation was targeting the need to control and exemplarily punish any attempt of Black non-submissiveness that questioned the racial enslavement system. Thus, the *quilombos,* such as the *cimarrons* in the Peruvian case*,* were the main target to be annihilated, and the *quilombolas* erased from peoples' memories or hopes, physically or spiritually. By the time gold was finally "found" in the Americas and the wealth of the colonisers increased, the need to enhance the control of their domains had also risen, and the regulations had become more deadly for those who challenged the racial-colonial system. As Luciano Góes describes, in 1669, the murder of a *quilombola* or a runaway enslaved was not considered a crime; and in 1701 those who had killed a *quilombola* were to be awarded "six gold octaves per head of Black *aquilombado* dead in combat". White fear was quite evident in a provision of 1741, stipulating that any gathering of five or more Black people was considered a *quilombo* (Góes 2016, 175). The regulation also established that runaways should be marked on their flesh, burned, representing a clear message of the colonial regime against Black freedom (Cotta, n.d., 2). In those provisions, we also see the privatisation of "justice" through an award system, creating a generally harsh environment of constant terror, mistrust, and violence.

Regardless of the increase in colonial violence, to run away from captivity to live in the quilombos was a lived experience in Brazil, perpetuating *quilombismo* as both practice and utopia of Black liberation (Nascimento 1980). The renowned Quilombo dos Palmares (1580-1716) is an example, it came to be a Republic in itself, formed by many cities and with a complex political structure that guaranteed its survival in the centre of the Portuguese "colonial Empire" for more than 100 years. According to Luciano Goes, in 1630 Palmares accounted for 3000 inhabitants, but by 1654 there were 23,000 to 30,000 *quilombolas*, which represented around 13% of Brazil's population at the time (2016, 175).

The white fear of Black freedom

In this context of constant instability the formal independence of the country was seen by the elites as a solution to guarantee the continuity of the enslavement system and avoid changes in power. Independence was triggered by the fear of what was happening in the Spanish controlled territories, but especially by the need to avoid the "Haiti effect" or the Black people taking power, in a reference to the first country in the Americas to break free from both colonialism and racial enslavement: Haiti (Queiroz 2018). The Búzios uprising in Bahia (1798-1799) and the Pernambuco revolution (1817-1818), and so many other popular revolutions throughout the country, shared the large participation of racialized people and the claim for equality (Queiroz 2018). Many enslaved fled captivity and even enlisted as troops in the fight for independence, because for them independence meant freedom from enslavement. Nevertheless, white elites neutralised their internal divisions, enabling to neutralize the formalization of Black aspirations for freedom. The son of the Portuguese king

declared the country's independence in 1822, installing a monarchy that lasted 67 years, perpetuating relations with Portugal, but on different terms. The monarchy endured as long as the slavery system, representing the greatest national whiteness pact to remain in power.[20]

The discourses of freedom present during the constituent Assembly of 1823 show how legal-political debates managed to assert the supremacy of the right to property for political stability – including ownership over the Black body. For instance, one Deputy argued that freedom from slavery could not lead directly to the enjoyment of political rights, as these were tied to whiteness-Christianity-civilisation- morality, while blackness meant quite the opposite:

> How is it possible that, simply by obtaining the freedom letter, citizenship is acquired? It is not said in Article 14 ch. 2 who will enjoy political rights in the Empire who profess Christian communions? And doesn't Article 15 say that religions other than Christianity inhibit the exercise of political rights? And how will it be understood by the article under discussion that slaves by the simple fact of obtaining the freedom letter become citizens? Will the article also talk about slaves who come from the coast of Africa? Won't they hinder them from being pagans and other idolaters? (apud Queiroz 2018, 161–62)[21]

Even those liberals who saw slavery as an odious system that the nation had inherited, proposed a slow process of emancipation to avoid the "cancer of captivity" bursting out with violence against "vital parts of the civil body" (Queiroz, 2018). The differentiation of civil rights and political rights marked the legal arrangement to sustain racial lines among the new configuration of "free men", encompassing both Blacks and whites. The Constitution of 1824 established property and racialised *morality* as tenets of citizenship, whereas the elites "offered" a horizon of "improvement" and "civilization" to Africans (Queiroz 2018, 176). Part of this "civilizational path" was the transition from enslavement to free labour, the discipline and control of labour as means to access citizenship. This argument sustained a central policy of the Empire: the subsidies for white European immigration, seen as providing more suitable workers necessary to the modernisation of the country. While the white European was seen as the salvation of the nation, control of the Black body reflected the lineation of a punitive system and public security policies. The penal code of 1830 prescribed the insurrection against enslavement with capital punishment (Articles 113 to 115), reflecting white fear of Black rebellion.

A side effect of the wide use of African enslaved labour was that the elites were now struggling to reverse the Africanisation of the country. By 1834 around 44% of Brazil's population consisted of enslaved people (Batista 2003, 129). Main cities such as Salvador, Rio de Janeiro, and Ouro Preto were inhabited by a

[20] It is interesting to highlight that one of the discussed topics in the Assembly of 1823 was the amnesties of those regional elites who took part in dissents with the Empire or with the Portuguese monarchy. The Constitution was part of the pact of white elites to guarantee a 'smooth' transition, meaning an independence that did not affect the racial-social structured hierarchies, despite political disagreement within the white elites. Thus, the white narcissistic part was fulfilled (Queiroz 2018).
[21] Author's free translation from Portuguese original.

majority Black people, both freed and enslaved. In the census of 1849, the capital city of Rio de Janeiro had the largest urban Black population of the Americas, raising the concern with public space and security (Batista 2003). The Malés uprising in 1835, organised by Muslim Africans through the exchange of notes in Arabic in a time when most of the Portuguese were illiterate, together with the constant fear of the Haiti effect, hardened the criminal regulation. In 1835 a law decreed the death penalty to any enslaved person that committed a felony against their "masters" or their families (Batista 2003).

Control over the use of public space in the urban centres became mandatory to contain a large number of enslaved and freed Black populations. According to Ana Flauzina, the need to regulate the freed Blacks led to the formulation of vagrancy as wrongdoing, they were not allowed to exercise "freedom without the bonds of surveillance", so the offence meant "the criminalization of freedom" for Blacks. Regulations at the local level replicated the need to control public space. In her work, Luiza Flauzina shows that "the proliferation of municipal laws regulating this type of matter [circulation and practice of religious worship] illustrates the interference of public power in the daily life of the black segment, as a way of delimiting the spaces for circulation and occupation of the city, as well as the social rise of the freed" (2006, 57).

Clovis Moura explores how discourses over labour also changed to justify the import of white immigrants, whilst the the work of Black people was depreciated as free labour. In Moura's argument, the work organised through slavery guarantee leisure time for whites, placing enslaved Black people in various skilled occupations, particularly in the urban context. With the inevitability of the abolishment of black enslavement[22], Blacks were thus stereotyped as unfit for work, lazy and alcoholic, while whites were seen as honest and more skilled. In Moura's words, "to modernize and develop Brazil, there was only one way: to put the immigrant worker in the place of the Black, to discard the country from this passive, exotic, fetishist and dangerous burden by a Christian, European and demigodized population"[23] (2019, 109). According to Moura, it is then that the "myth of the incapacity of the black" is created, precluding the paid job for the huge contingency of free Blacks.

Slavery was abolished gradually: first, the slave trade was forbidden (1850) and then the children of an enslaved woman were declared born free (1871). Clovis Moura demonstrates the relationship between the decomposition of the enslavement system and the number of European immigrants entering the country. Once the transatlantic trade was forbidden, and restrictions to internal trade were imposed, European immigration opened avenues for a new business opportunity, in what Moura called the "second trade". A series of arrangements,

[22] This occurs at a time when there was great pressure to end slavery on the part of the world powers, represented by a series of treaties between Portugal / Brazil and England, which made the move to a wage labour regime. Examples are the Anglo-Portuguese Treaty of 1818 and the Anglo-Brazilian Treaty of 1826, as well as the Law of 7 November 1831 (Duarte et al., 2015).
[23] Author's free translation from original in Portuguese.

theories, public policies, and regulations were in place to guarantee the control and surveillance of Black life while investing in wealth and power for whites. The examples are countless, but one law is particularly illustrative due to its consequences to current unequal conditions, the Land Law of 1850. This legal instrument both interdicted Black access to land and regulated the policy of *whitening* by stimulating white immigration to be paid for by the national treasury, for whom agricultural land was granted (Article 18). The law provided for the distribution of land to white Europeans through public policies that benefited landowners, who could access governmental funds by adhering to the programme.[24] "Colonizing companies" were open and became a lucrative business, as Moura demonstrates (2019). Moura criticises how some Brazilian sociologists[25] while analysing this historical process, had reinforced racist ideologies, such as the supposed unfitness of Blacks to work, but justifying it as a "trauma of slavery" (2019, p. 130). Finding the answer to the "Black problem" became one of the greatest academic efforts in sociological and anthropological academia. This obsession was termed by Guerreiro Ramos as the "pathology of the white Brazilian" (1954).

The republican project: Black criminalization and whitening

The Republic was founded in the post-abolition period (1889) and a series of norms were reissued to inaugurate this new legal regime within the framework of political liberalism (Bertúlio 2019). Positivism was the theoretical foundation, demonstrated in the national flag inscription: order and progress. In 1891, the first Republican Constitution declared that "all are equal before the law", and liberal aspirations are also found in the Constitution. As Dora Bertúlio has demonstrated, the legal norms promoted the universality of the main liberal principles, but still, guarantee control of racialized peoples. The devaluation of Black people in legal texts was done without referring to "race", but through the perpetuation of the racial order already in place. This is evident in the 1891 Constitution in the enunciation of civil and political rights (Bertúlio 1994, 16): Article 70 excluded "beggars and illiterates" from voting.[26] Most of the Black population did not have access to education and was even prohibited to attend formal education in public institutions at various moments (Barros 2016). Thus, citizenship was limited to a restricted group of literate whites while the Black population was excluded and pushed to the margins of citizenship. Flauzina

[24] Decree no. 528 of 1890 that regulated immigration, stipulated the public policy of access to agricultural properties for European immigrants, through prizes and bonuses granted to landowners who joined the program.
[25] Moura (2019, 112–13) criticises in particular the work of Celso Furtado, an eminent political economist, for reproducing the racist ideologies of the elites that the white immigrant was more skilled and fit for the work, while Blacks were lazy and indolent.
[26] The denial of voter status for "illiterates and beggars" is maintained in the 1934 Constitution (Art. 108), curiously removed in the 1937 Constitution (which inaugurates an authoritarian regime, then without free elections), but which reappears for the illiterate in the Constitution of 1946, and then maintained in the Constitution of 1967. Those who cannot express themselves in national language did not have political rights, marking a relationship between nationalism (colonial nation-state - Portuguese) and citizenship. Those restriction were only removed by the current Constitution of 1988.

(2006) also demonstrates how, at the beginning of the Republic, the exclusion of citizenship meant entry into the punitive system. The decrees of 1893 and 1899 ordered the correctional imprisonment of beggars, vagrants, and "strayers", whilst simultaneously denying bail to the homeless. According to the author, "the punitive republican architecture of that first period, which fundamentally aims at incorporating the urban mass and the spoils of slavery into the industrial and productive development project, carries a basic racial dimension" (Flauzina, 2006, 71).

The debates between intellectuals in the late 19th and early 20th century concerned a need to overcome the "demographic problem" of the country, seen as a population comprised of too many Blacks, mestizos, and Indigenous peoples. The new Republic needed the new and modern man to leave behind the backwardness and horrors of slavery, and so the ideology of whitening was reinforced, now with a scientific basis. The scientific positivism that founds the Republic legitimises the knowledge produced only by "science", thus criminalising knowledge produced and practised outside of this rationality, for their potential of contamination and public immorality.[27] For instance, healing practices with various herbs, transmitted by ancestral knowledge and, often, central to the sacred practices of African-based religions, were brutally criminalized to guarantee "public order", but also, "public health". The penal code of 1890 criminalised the curative practices of Indigenous peoples and Black communities, inscribed as crimes of quackery and *curandeirismo*. Under Article 158, the penal code of the Republic prohibited what was referred to as "ministering, or simply prescribing, as a curative means for internal or external use, and under any prepared form, substance from any of the kingdoms of nature, making, or exercising thus, the officer's so-called healer" (author's translation).

Meanwhile, some eugenic intellectuals, such as Sylvio Romero (1851- 1914) and Oliveira Viana (1883-1917) saw the potential of miscegenation to assure the future of the country. For instance, Romero believed that miscegenation was a transitory and intermediary phase for a presumably white nation (Munanga 1999, 52–53). Viana also argued that miscegenation was good because it could provide a gradual whitening of the population and should be encouraged. His demographic projections showed that the progressive racial mix would lead to the growth of the percentage of "Arian" blood and European features – being superior - would prevail (Costa 2001, 145). The Decree 528 of 1890, for instance, declared free entrance to the country for individuals fit for work,

[27]The same penal code, Article 157, criminalised the "practicing spiritism, magic and its sorceries", which was used to criminalise afro-Brazilian religions. Thus, inscribed in the field of "magic", capable of breaking through with "public credulity", the *terreiros* were seen as places of criminal practice (Barbosa 2010, 4). Afro-Brazilian religions represented a strong expression of Black resistance to colonial assimilationist impositions (Saad 2013, 116) and, therefore, they were the target of harsh persecution and criminalisation. Always represented through negative constructions based on the white-Christian framework, their practices were not recognised in the context of "religion" deserving of state protection, but in the field of mysticism and immoral fetishism.

however, the entrance of those "indigenous from Asia and Africa"[28] would depend on approval by the National Congress. The original text is illustrative:

> Art. 1º E' inteiramente livre a entrada, nos portos da Republica, dos individuos válidos e aptos para o trabalho, que não se acharem sujeitos á acção criminal do seu paiz, exceptuados os indigenas da Asia, ou da Africa que sómente mediante autorização do Congresso Nacional poderão ser admittidos de accordo com as condições que forem então estipuladas.[29]

Gilberto Freyre's *Casa Grande e Senzala* (The Master and the Slaves, 1933) represented a change in Brazilian social thinking, describing racial relations as harmonious, stating that Blacks and Indigenous people had contributed positively to Brazilian culture and portraying the *mestizo* as a positive element in the national identity (Munanga 2003). Kabengele Munanga concludes that the founding myth of the nation is created through Freyre's work, in which portrayed a harmonious union of the three races as a product of the Portuguese people "character", which favoured miscegenation as they did not have an "idea of race". The government of President Getúlio Vargas (1934-1945; 1951-1954) was the first to articulate the nationality around a genuine "Brazilian culture" while instituting numerous racist policies. Elements of Black culture became part of the Brazilian nationality - or the idea of Brazilianness - and were valued and encouraged, such as *samba* and *capoeira*. The separation between religiosity (which continued to be pursecuted as magic or charlatanism) and "popular culture" is evidenced in projects from the '40s and '50s, with the cataloguing and promotion of various manifestations within the scope of national "folklore". A growing intellectual movement started to value *popular culture*, in addition to the institutionalisation of organisations around *folklore* (Tsezanas 2010). On the other hand, the Constitution of 1934 provided federal states with the authority to "stimulate eugenic education" (Article 138).

The first legislation that criminalised racial discrimination in Brazil was signed in 1951 under n. 1390, known as "Afonso Arinos's Law". Afonso Arinos himself was a conservative, white deputy, who surprised many people for being the one proposing a bill on anti-discrimination to congress (Grin and Maio 2013). Even though racism remained on the political agenda since the debates for a new democratic constitution of 1946, and the Black movement was prominent in its mobilisation[30], Arinos was not their spokesperson. Grin and Maio suggest that

[28] The term "indigenous" is used here to delimit a racial differentiation in African and Asian populations. Those continents were mostly under the colonial rule of several European nations, and so there were white settlers. The racial regulation differentiated the population in colonial territories dividing them into "indigenous" and "assimilated". In Portugal, the Indigenato Statute was in force until 1961 and provided, for example, that the "indigenous" could be subjected to forced labour (Tjipilica and Valério 2014).

[29] "Article 1 The entry into the ports of the Republic of valid and able-bodied individuals who are not subject to criminal action by their country is entirely free, with the exception of indigenous people from Asia or Africa who only have the authorization of the National Congress may be admitted in accordance with the conditions then stipulated." (author's translation)

[30] In 1950 the 1st Congress of the Black Brazilian took place. Earlier, in 1945 the TEN (the Black Experimental Theatre) had organised the Black National Convention, which ended with a demand to convert racism into a constitutional *lesa-patria* crime, or "against the nation" (Grin and Maio 2013). In the 50's the UNESCO

the project represented a rescue of "the genuine atmosphere of racial harmony present in the trajectory of racial relations in Brazil since abolition" (2013, 45). It put racism in a moral place, as a need to "elaborate a moral pedagogy", especially after the public debate had been triggered by a highly mediatized racist event with a Black dancer from the United States, Katherine Dunham. Relating racism to exceptional events was also convenient to avoid debates about structural inequalities and the deep roots of the racial State. The Manifesto of the Black National Convention of 1945 expresses several concerns with the social inequality between Blacks and whites in Brazil. There were several demands related to urgent improvements in Black people's lives in areas such as economy and education. In this context, criminalising racial discrimination (even as a minor offence) "would mean the emptying of the potential conflict present in the racial question in the name of its moral normalization" (Grin and Maio 2013, 45).

The echoes transcend borders: racialised legalities

As we hear the echoes of these two histories, we transcend the artificiality of states' borders to grasp how colonial technologies of conquest were shared, and how *amefricanos* constructed a history of struggle and resistance in the continent. We can also confirm that racism was the most efficient colonial tool used to guarantee forced labour, expropriation, and exploitation, regulated by racial rule. A "tool" that was refined throughout the years and utilised in the "independent territories" during the Republican era as a normal way to distribute privileges, titles, and limiting formal citizenship to whiteness. We also observe the perpetuation of Christianity as an ideological tool used to draw the line between human and non-human, legitimising conquest at first, then later, to control social behaviour through the state punitive apparatus, as racialised morality.

In the post-independence period, the elites' ideal nation-state model was sustained by European standards. Consequently, those new Latin American States would not be "considered nations unless it was admitted that a minority of colonizers in charge were genuinely representatives of the entire population" (Quijano 2000, 565). In this perspective, the ideology of mestizaje enabled the desired national unity or homogeneity, after all, "we are all mestizos". The ideology of mestizaje enabled the articulation of the "three races" to become the foundational myth of most Latin American countries, reinforcing racism by denegation as Gonzalez (1988) theorized. Both Brazil and Peru have claimed the exceptionality of their national context, either using mestizaje ideologies or racial democracy to deny racism. In both countries, the majority of the population is non-white and governed by predominantly white elites,

project started to assess the "racial relations" in Brazil, which first results were already contradicting the dominant narrative of racial democracy (Pereira 2008).

reproducing whiteness as a system of privilege, thus, institutionalising racist practices at structural levels.

The region has also used mestizaje and racial democracy ideologies to sustain its legal innocence, as supported by the alleged non-institutionality of the racial order. Homogeneity of nation-states in Latin America occurred in the discursive field, even though they were created and "conceptualised by whites, through whites, for whites" (Nascimento 1980, 15), and against Black and Indigenous people, as Quijano has suggested. This legal-historical overview exposes the continuities of legal-political regimes of white supremacy, drawing the lines of the human in the racialised legal regime. Restricting the use of direct racial expressions in the legislation did not remove the racial content that remained in the liberal formulations of citizenship during the Republican era. Legal reasoning and juridical-political debates over the nation that framed rights and entitlements as racial conceptions, articulated in the ideas of progress, development, and civilisation. In addition, the constant mobilisation of morality as an element for citizenship delimited the boundaries of humanity to whiteness (which mestizos can often occupy in the "passing"[31], but in a precarious way).

Looking at what Saidiya Hartman calls the "afterlife of slavery", one understands how Black fungibility – the objectification of Black identity as equal to a slave, a dispensable thing, killable, stripped of humanity/ subjectivity - still informs the logics of anti-black racism. Racial enslavement was imprinted in the legal common-sense presumptions of ownership, subjectivity, and morality to *whiteness*. The "myth of the white superiority" (Gonzalez 1988) is constantly reified and updated. At the same time, anti-blackness activates presumptions through the principle of fungibility. As Hartman discusses, "law of slavery subjected the enslaved to the absolute control and authority of any and every member of the dominant race. At the very least, the relations of chattel slavery served to enhance whiteness by racializing rights and entitlements, designating inferior and superior races, granting whites' domination over blacks" (1997, 24).

The need to control bodies concerning space highlights the spatial dynamics of racism. As suggested by McKittrick (2006), the construction of blackness as something dangerous and, at the same time, the exposure of Black bodies in public spaces, public torture, and subjugation, were/are central to the construction of society as a whole, and not marginal. If we look at Brazilian and Peruvian cities, we can see that the torture of Black non-submissiveness had to be public. Moreover, the definition of vagrancy and the exercise of any form of spirituality other than Christianity as wrongdoing meant "the criminalization of freedom" for Blacks (Flauzina, 2006). The message about the "place" of Black people in society was central to the formation of hierarchies of power; it is how

[31] Monica Figueroa argues that being mestizo is a privilege that offers a safer, albeit precarious, place that is closer to whiteness. The privilege position of the mestizo is deeply connected with his/her position in the class structure. The wealthy mestizo is tolerated in higher social circles, whereas the poor mestizo is not. So, the "passing" is not so much a matter of colour, but a more complex set of characteristics that can pull the mestizo up from "the other side" (2010, p. 398).

racialised power relations were reproduced. Therefore, comprehending the continuities of the colonial-racial-modern state in legal discourse is crucial to unveiling how race is still central to power relations in Latin American countries.

The dehumanisation of the racialised is reproduced in the routines of the state, as institutional racism encompasses "discriminatory legislation and policies endorsed and put into place by the state, and patterns of racist routine governmentalities sustained by public and private (in)actions and affecting the key life spheres such as education or housing" (Maeso 2018, 13). The racialised regime of legality is not only written codes and rules, but also legal reasoning, jurisprudence, and knowledge. Anti-black racism has supported presumptions that update Black fungibility, as lacking entitlement to subjectivity or morality, thus prone to criminality. Whiteness has supported presumptions that value white lives, white property, and white rule.

These reflections push the need for more academic effort to unveil how the "afterlife of slavery" impacts current legal theory and practice in Latin America. Racial enslavement and its legal constructions persist in differentiating the weight of "justice" through racial lines. It also sustains discourses over development and progress which are anti-black and, in different accounts, anti-indigenous. To recognise that racism exists, confronting the existing regimes of denial of racism in the region is not enough if one does not make an effort to reconstruct the past to question current forms of racist violence (Hartman 2008, 13), and how they are legitimated by racialised legal regimes.

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