

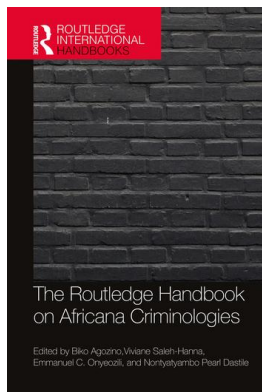
This article was downloaded by: 10.3.97.143

On: 05 Dec 2023

Access details: *subscription number*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



The Routledge Handbook on Africana Criminologies

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The Criminalization of People of African Descent in Brazil

Publication details

<https://www.routledgehandbooks.com/doi/10.4324/9781003004424-10>

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Published online on: 30 Dec 2020

How to cite :- Paulo Mileno. 30 Dec 2020, *The Criminalization of People of African Descent in Brazil* from: *The Routledge Handbook on Africana Criminologies* Routledge

Accessed on: 05 Dec 2023

<https://www.routledgehandbooks.com/doi/10.4324/9781003004424-10>

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6

THE CRIMINALIZATION OF PEOPLE OF AFRICAN DESCENT IN BRAZIL

Paulo Mileno

Introduction

This chapter analyzes the history of the criminalization of the Brazilian Black people and, through history, tries to demonstrate alternative routes of exit from this status quo. Moreover, the chapter shows the specific case of how racism is veiled in Brazil, where, until recently, the national government did not recognize issues that involve race and racism in its policies. The Anti-Racist Laws were created in democratic periods of national life, and the military civilian regime itself was charged with censoring Black organizations and the influence of international movements. For example, the Black Panthers in the United States were not allowed to have affiliates in Brazil. The exit route alternatives, therefore, should be articulated internationally; Brazil has a fundamental voice as the second-largest Black nation in the world, behind only Nigeria on the entire African continent. This publication in English will contribute to this revolutionary process of fighting against the racism because the Portuguese language ends up being a barrier, limiting access to the knowledge. I think this topic is important because it is an opportunity to know other viewpoints about the Brazilian Black people. In Brazil, 54 percent of the population are people of African descent, and the Black consciousness expects the African world to conduct the anti-racist revolution collaboratively. A true revolution, with Black communities, universities, organizations, journals, publishers, hospitals, companies, and all the best that the Black people deserve would collaborate with similar organizations everywhere to advance equality and liberty. I planned this research with reliance on thinkers as W.E.B. Du Bois, Achille Mbembe, Frantz Fanon, Abdias Nascimento, and Steve Biko, among others. I began with the viewpoint of W.E.B. Du Bois: “The problem of the Twentieth Century is the problem of the color line,” even though the color line in Brazil is different than that in the U.S. Here, within Brazil, when it comes to race, the color of Black race literally is broken down. So, there exist the “brown,” “little brown,” “black,” “little black,” “cor de burro quando fogue” (color of donkey escaped),

and many others names. Therefore, I made a original contribution to the debate and struggle against the racism, through the view point of Black Press, the approach of anti-racists laws and the redemption role of Brazilian Diaspora.

We're the survivors; yes, the black survival
We're the survivors; yes, the black survival
We're the survivors like Shadrach, Meshach and Abednego
Thrown in the fire but never get burn.

Bob Marley, "Survival"

William Edward Burghardt Du Bois said, like a prophet, "The problem of the Twentieth Century is the problem of the color line" in his classic book *The Souls of Black Folk*. The case of Brazil proves to be an interesting example for us to consider on the question of the color line, being, hypocritically, a nation that, until recently, was considered a paradise of racial democracy where all the races, due to their multiracial marriages, coexisted harmoniously among themselves. Here in Brazil, the mixture of races is attractive as a pattern of beauty and acceptance in social life, when the "colorism" tends towards light color: that is, when it is close to White. But when we see the "brown," "clear brown," "little brown", "cor de burro quando fogue" (color of donkey escaped) and many other names, we know that Brazil has a big problem with racism. The darker the skin tone, the greater the stress brought on by racism. Unlike the "one-drop rule" in the U.S. that makes someone Black, one drop of White blood makes someone no longer Black in Brazil.

We need to understand the world of Du Bois, a Black man who was born on February 23, 1868, just five years after the so-called abolition of slavery in the United States, due to the Civil War between the North and South of the country. In Brazil, the last country in the world to abolish the slave system, it took exactly 20 years more for the supposed end of colonialism. If the Black body was no longer sold as merchandise in the Americas, on the African continent, political independence would come only in the second half of the 20th century.

However, there is hope that the ideological drift and cultural blackout under most of humanity, as Achille Mbembe very well defines in his prologue to *Exiting the Great Night*, transmutes into an African Renaissance since "parallel to the post-colonial crisis operates a reconversion of the spirit." He named that spirit Afropolitanism to give hope to Africans at home and abroad despite the crises of criminal justice (Mbembe, 2013, 16).

While Brazil was under a slave system in the beginning of the 19th century, the ideology of Pan Africanism was being developed intellectually on other "beaches of the diaspora." Just as by these lands we had the Quilombos in Brazil, we also had the Palenques in Colombia, the Cimarrones in Panama, the Cumbes in Venezuela, the Mambises in Cuba, and the Maroons in the Caribbean, Jamaica, and the United States. Although the dread of the Black wave that caused the Revolution in Haiti was frightening news for the lords of the empire, it lacked the possibility of international

articulation with the Afro-diasporic world. Despite the general view that the Western world has produced of the enslaved, Professor Muniz Sodre tells us:

It is well known that many of the Africans brought as slaves were made up of political prisoners for counter – hegemonic struggles in Africa. Many of them were people of high intellectual level. . . . An African elite formed here by means of an implicit symbolic pact among individuals of different ethnicities, despite hostilities among Creoles (born in Brazil) and Africans from the Coast of the Mine or the Coast of the Slaves.

(Muniz Sodré, Pensar Nagô, 2017, 91)

The Anti-Racist Laws, Afonso Arinos Law, and Caó Law as instruments for combatting racism and criminalization of the Black community: A study of this symbiosis in the punitive system of the democratic state of law

Every day comes to us with news that Black bodies are being tortured, falling into an inexplicable¹ war, being offended in public spaces. Because of these offenses and physical aggressions and the genocide of Black people, we have a real brainwashing that completely distorts the legitimate value of Black people, turning them into an inferior race. This is, to this day, an intellectual control in which fear reigns in the African mentality so that, powerless on any historical basis, the African people can be dispersed over time without taking the autonomy of their destiny.

Although the African people are the absolute majority in Brazil, their status as inferior in terms of economic, political, and cultural issues has not yet radically transformed because the situation is more complicated than just numbers. We have two issues. The first is the power of influence in the imaginary, the surrounding narratives, and the second is the traitor Black himself. With a weak mind, brainwashing has already corrupted your values. As the historical activist of the Brazilian Black Movement Luiz Carlos Gá told me:

Paulo, my brother, the white racist we already know and this we combat, the biggest problem is the black people who are hugging you, calling you brother and working well paid for “Casa Grande.” We cannot be generous to them. But this is part of the fight, the racist who kidnapped us from our ancestors brought along the “Capitães do Mato.”

After all, what would explain attitudes like the Black policeman who enters a Black community shooting or the security officer at a market who strangles² a Black youth or whips³ the back of a Black boy after undressing him? What would be the motivation of filming such cases as the conduct of security guards who took a Black woman into a room and knocked⁴ her in the face with a slipper? These are practices of torture similar to those in the slavery period.

If we are talking about theft, the same does not apply to the White⁵ man, who can swear without even being touched by supermarket security. Policemen, security

guards, and vigilantes all come from the same origin as poor Black young people, yet when they take up their jobs, they look like a racist society.

I am sure that it is completely unknown on the international level that the country of football, supposedly also the paradise of racial democracy, has in its federal Constitution a law to combat racism, although it is in the field where there are frequent cases of discrimination by and from the crowd. According to data from the Observatory of Racial Discrimination in Brazilian Football, in 2014, 20 cases were registered; in 2015, 35; in 2016, 25; and in 2017, 43. Currently, the best Brazilian soccer player, Neymar, is not even recognized as Black. We look forward to combatting the racism in football and in the wider society. This advance in the fight against discrimination must be understood as a reflection of the anti-racist struggle of the Black Movement in Brazil.

However, as evidenced by facts, the struggle of the Black Movement is taking place through a revolutionary process once undertaken autonomously, or, as the Black militant Luiz Carlos Gá says, “we have always been on our own and will get there anyway.” What I would like to contextualize now is that, after centuries of struggle and after another case of racial discrimination in the year 1951, the Afonso Arinos Anti-Racism Law was created.

That was in the first half of the 20th century, when Brazilian society strongly implanted through its fine literature the misconception of racial harmony, generating a supposed feeling of the repudiation of prejudice, when, actually, there was in the air its tolerance for racial discrimination. This polarized climate represented only a time span of 37 years post abolition.

As we are here contextualizing Black people’s criminality in Brazil, this discriminatory view present in the general Brazilian society could only reach its contours as such, generating debate about who are themselves criminalized and barbarized by this oppressive and exclusionary system, in that order, if it were not untrue that the law is “neutral.”

Within the area of criminal justice, could there exist prejudice? Walter de Oliveira Campos (2015) answers this question in his article Expectations around the Afonso Arinos Law (1951): The ‘New Abolition’ or ‘Law for the American to See?’ We can understand perfectly how the “studies of Critical Criminology that in recent years have treated the criminal law from the point of view of its use as an instrument of domination and legitimation of an exclusionary social order” since:

The color or race element is taken into account in the construction of these stereotypes and is decisive in the repression by criminal prosecution bodies, such as the police and the judiciary. This is suggested by studies that point to the tendency of greater punishment for blacks in relation to whites and, on the other hand, of lower criminalization of discriminatory conduct against blacks. In his book, *Black Body on the Ground: The Penal System and the Genocidal Project of the Brazilian State*, Ana Flauzina (2006) inserts the penal system in a path of subjugation and control of the black population by the state, which is achieved through processes such as slavery, social exclusion, erasure of the culture, tradition and memory of these peoples and, in some cases, even annihilation of individuals and entire populations.

(Campos 2015)

When we talk about “annihilation of individuals and entire populations,” we have in mind Abdias Nascimento, an unquestionable leader in Brazil and obviously one of the greatest exponents of human rights activism in the world. He defined the process of the criminalization of Black people as “The Genocide of the Brazilian Negro: The Process of a Masked Racism.”

In 1946, Abdias, through the Experimental Theater of the Black (TEN), produced the II National Convention of the Negro in Rio de Janeiro and São Paulo, which had as a consequence the disclosure of the Manifesto to the Brazilian Nation, which sent proposals to the National Constituent Assembly of that same year. The demands were denied.

As reported by Professor Elisa Larkin Nascimento, widow of Abdias, in her work *The Sorcery of Color: Identity, Race and Gender in Brazil*, it was necessary for North American anthropologist Irene Diggs to be prevented from entering the Hotel Serrador in Rio. TEN actors were prevented from entering at Hotel Gloria, also in Rio de Janeiro, for a party, with invitations from the Brazilian Society of Artists and the hotel owner himself to serve “concrete examples” of racial discrimination.

However, only in 1950, when world-famous American dancer Katherine Dunham was prevented from staying at the Hotel Esplanada in Sao Paulo did the “elite sectors of national politics” begin to recognize the “concrete examples” of racism in Brazil. With this, Deputy Afonso Arinos of the National Democratic Union (UDN) presented a proposal, including reference to the case of Katherine Dunham. This time, the law was passed by Parliament, renamed the Afonso Arinos Law. It was notorious that the deputy resumed the content of the same proposal that was presented to the National Constituent Assembly in 1946. The Afonso Arinos Act had the following articles:

Article 1. It is a criminal offense, punished under the terms of this Law, the refusal, by a commercial or educational establishment of any nature, to host, serve or receive a client, buyer or student, due to prejudice of race or color.

Article 2. Refusing someone to stay in a hotel, pension, inn or establishment of the same purpose, because of race or color prejudice.

Article 3. Refuse to sell goods in stores of any kind, or serve customers in restaurants, bars, patisseries and similar places, open to the public, where food, beverages, sodas and candies are served, by race or color prejudice.

Article 4. Refuse entry to a public, amusement or sports establishment, as well as to barber shops or hairdressers because of race or color prejudice.

Article 5 Refuse to enroll students in educational establishments of any course or degree, on grounds of race or color.

Article 6. To obstruct one’s access to any office of the civil service or to service in any branch of the armed forces, by prejudice of race or color.

Article 7. Deny employment or work to anyone in a local authority, mixed economy company, public service concessionaire or private company, due to prejudice of race or color.

(Law No. 1,390 of July 3, 1951)

The Law Caó, Law 7,716/1989, produced by a Black Movement activist, journalist, and lawyer, Carlos Alberto Caó de Oliveira, typified the crimes of racism that until then were recognized as criminal misdemeanors. In addition, Caó was the author responsible for the inclusion of item XLII of Article 5 of the Brazilian Constitution of 1988, which states that “the practice of racism constitutes an indefeasible crime and no bail.” These were the years of the end of the civil-military dictatorship and the beginning of the Brazilian Redemocratization.

The new national Anti-Racist Law, Law No. 7,716 of January 5, 1989, retained the articles mentioned earlier and was reformulated, making Brazil the only place in the world where elevation discrimination is prohibited, as noted⁶ by the polymath Luanna Teófilo, Brazil is the only place in the world where discrimination in the elevator is prohibited and the only place in the world where an elevator serves as scene and inspiration to a song and is about racism. The song is called “Identity”⁷ and was written by poet of samba Jorge Aragão. We highlight the following articles of this law:

Article 11. Prevent access to social entrances in public or residential buildings and elevators or stairs.

Article 12. Prevent access or use of public transport, such as airplanes, ships, boats, buses, trains, subway or any other means of transport.

Article 13. Prevent or impede access to service in any branch of the armed forces of the Armed Forces.

Article 14. Prevent or prevent, by any means or form, marriage or family or social coexistence.

Article 20. Practicing, inducing or inciting, by the media or by publication of any nature, discrimination or prejudice against race, color, religion, ethnicity or national origin.

It was in Article 20 of Law 7,716/1989 that then-candidate Jair Messias Bolsonaro was denounced by the prosecutor general of the Republic, Raquel Dodge, for his lecture⁸ at the Hebrew Club of Rio de Janeiro on April 3, 2017:

In a lecture, parliamentarian JAIR MESSIAS BOLSONARO spoke in a negative and discriminatory way about quilombolas, indigenous people, refugees, women and LGBT's. For a better understanding of the content and extent of the accused's discriminatory and racist discourse, I highlight the following excerpts from its manifestation, which characterize what the doctrine calls hate speech.

Let's see a few words from Brazil's then-presidential candidate, Mr. Jair Messias Bolsonaro:

16:00 minutes: "The richest area in the world is exactly marked as land indigenous area, an area larger than the Southeast region is demarcated as indigenous land.

I had it in Roraima. One of the accusations I receive is 'Xenophobe!' . . . And I'm against foreigners in here."

51:44: "If an idiot in a debate with me talk about misogyny, homophobia, racism, homosexuality, I won't answer about that."

For these words, said without any embarrassment, which caused the audience to laugh, it is important to note here that the prosecutor general of the Republic came the following conclusions:

JAIR BOLSONARO treated with total disrespect the members of communities Quilombolas. He referred to them as animals by using the word "arroba."

This unacceptable manifestation is in line with the regime of slavery, in which blacks were treated as a mere commodity, and the idea of inequality between human beings, which is absolutely refuted by the Brazilian Constitution and all the Treaties and Conventions Internationals to which Brazil is a signatory, which affirm equality between human beings as a universal and protected human right. Not satisfied, the accused affirmed that the quilombolas do not do nothing and do not serve to procreate more, depreciating them emphatically and utterly only for their personal condition.

JAIR BOLSONARO also affirmed, by comparison, that the Japanese are a working people who do not beg. Thus, he evidenced that, in his view, there are individuals or peoples superior to others, treating quilombolas as inferior human beings.

JAIR MESSIAS BOLSONARO practiced the illicit conduct specified in art. 20, caput of Law 7,716/ 89, since in his speech he treated the quilombolas as inferior human beings, equating them with the commodity (discrimination) and even considered them useless, lazy (prejudice) and also incited discrimination against foreigners, encouraging those present at the Hebrew Club, an audience of approximately three hundred people, as well as others who had access to publicized videos of the event, to think and act in the same way (induction and/or incitement).

(Dodge, 2018)

The historic Black Movement militant died on February 4, 2018, at the age of 76 in the city of Rio de Janeiro, two months before this complaint by the prosecutor general. However, Mr. Jair Bolsonaro was already known to the Brazilian public for his racist and homophobic statements. In an interview⁹ with Poder

Online, the illustrious Carlos Alberto Caó was asked about these statements by Bolsonaro:

He is still trying to defend himself by saying that he did not understand the question. But racism or homophobia are always concealed in disguised statements. What amazes in this case is that he exhibits rudeness. He does not make a point of saying that he thinks otherwise simply because he does not think so. . . . Justice has to condemn Bolsonaro to show that the law is for real. It is not a dead letter of the Constitution. It is a fundamental clause! It takes a sentence to encourage others who experience discrimination to report the crime. It is as in the case of violence against women. If there is impunity, the victim suffers. But I feel that Brazilian society no longer accepts this.

These allegations against then-presidential candidate Jair Bolsonaro were not effective. The society thinks that the Anti-Racist Law does not work in practice, which is not true. We have records of over 2,000 cases in which the law was applied. And if Bolsonaro were sentenced to prison, it would be the best example that the Anti-Racist Law applies to anyone, including those who run for president.

According to federal judge Marcelo Pereira da Silva, he understood that parliamentarians have “the right to speak freely in the exercise of their mandates with the certainty that they are inviolable, which excludes the possibility of civil or criminal liability.”¹⁰ Process closed.

However, Bolsonaro was sentenced¹¹ to pay R\$150,000 for collective moral damages for his homophobic and racist statements during TV Bandeirantes’s *CQC* program.

The current Anti-Racist Law 9.459 of May 13, 1997, which amended Law 7.716 of January 5, 1989 (the famous Caó Law, amending Articles 1 and 20) and repealed Article 1 of Law 8.081 and Law 8.882 of June 3, 1994, as well as repealing the first Anti-Racist Law 1,390 of July 1951 (Afonso Arinos Law), is becoming better.

Increasingly, it needs to be applied. According to Black Movement activist Carlos Alberto Caó (2011), who authored the law, “The more judgments, the more cases come to the knowledge of society, better will be the law enforcement.” This legal instrument provokes a popular feeling that society no longer supports the crimes of racism.

On the applicability of the Anti-Racist Law, the article “Punitive Anti-Racism Laws in Brazil: An Overview of the Enforcement of Law by Brazilian Courts” helps us understand this “strategy of juridifying racism via criminal law.” Through this work, we have the record of 2,061 court decisions divided between racism, aggravated disparagement, racial disparagement, and racial discrimination. However, concerning the flaws in the applicability of the law, the study endorses this “conduct of social thinking”:

Extinguishment of Liability

We realize that a significant amount of cases were extinguished on the occurrence of some cause of termination of punishability,¹² mostly for the statute of limitations and prescription.

According to the authors Marta Rodriguez de Assis Machado, Natália Neris da Silva Santos, and Carolina Cutrupi Ferreira, “the interpretation of racist insults as simple disparagement” from the Whiteness point of view, made it necessary for Senator Paulo Paim – traditionally linked to the Black Movement – then proposed the creation of the concept of aggravated misdemeanor, with a punishment as severe as that of the crime of racism, outspokenly aiming to “fight against impunity.” Meantime:

The outcome of the amendment to the laws did not regard the procedural route of these cases within the criminal court system: as well as other crimes against individual honour, aggravated disparagement continued to be processed by means of a criminal lawsuit of private initiative (which was changed only in 2009). This procedural difference in the prosecution of racial disparagement and other racial crimes, in addition to having access to justice implications (as the victim is responsible for arranging a lawyer and be heedful of the progress of their case), wound up bringing about pathological mishaps in the procedural flow of the cases. This was one of the most relevant findings of our research.

(Machado, Santos, and Ferreira, 2011: 26)

In the field of law, which is a way of combatting the criminalization of Black people, it is proved that the interpretation of the cases, which is not difficult to imagine, is given through White heads, through which the laws and the judgments themselves are elaborated. It is clearly once again the domain of White supremacy. “But it would not also be the case to discard the possibility of improper functioning of the institutions in charge of producing evidence (police stations and first instance courts). This assertion, however, would require further research.” According to conclusion, the authors of this article together said:

The empirical research of law plays, therefore, a relevant political role in a democracy where the access of citizens to the exercise of power by the legal system is still undergoing an incomplete process of institutionalization.

(Machado, Santos, and Ferreira, 2011: 32)

On these judgments, I could not fail to record in my first contribution to a book on so important a subject the first case of combatting racism that I knew at only 12 years old. The Leda Case¹³ was fundamental in building my self-esteem as a Black African. This case is considered the first¹⁴ case of racism in Rio de Janeiro and the third¹⁵ in Brazil. I would like to illustrate this meeting 22 years later, when we arranged an interview for this book that I am writing now and from which I could access the various reports that came out at the time, either through the newspapers or the so-called Great Media or the Black Press.

This case had a lot of repercussion at the time; it was broadcast on television, and, for all of us at General Carlos Caetano Miragaya School, Professor Leda was the “powerful teacher.” She became even more powerful after this case. This

milestone reached the Brazilian Parliament through the speech of then-Deputy Paulo Paim:

Mr. President, Ms. Deputies and Mr. Deputies, we would like to register another edition of *Raça Brasil* magazine. This magazine has made a tremendous contribution to the visibility of Afro-Brazilian values, both in the diversity of cultural facts it addresses, and in the growing space it has devoted to the more political dimension of race relations, to the efforts of black movements. This March issue shows us an important report about the first flagrant of racism in Rio de Janeiro.

We approach here from this platform the discrimination suffered by Professor Leda Francisco and the arrest of the merchant who insult her. We are forwarding a copy of this report to the bureau, for the richness of its debate about the misunderstandings of the judiciary in applying anti-racist legislation.

It is a fact routinely reported by newspapers throughout Brazil that, since the sanction of Law No. 9,459/97, the number of complaints of racial discrimination has increased. This law was originated through of the concrete desires of the black population, who needed a legal instrument to face the situations of racial discrimination of their daily lives.

However, there is enormous resistance from delegates and judges in the prosecution. The report of *Raça Brasil* magazine discusses the theme in depth, bringing relevant testimonials from lawyers linked to black entities. We request your transcript in the Annals of this House.

(Paim, 1998)

In the aforementioned *Raça Brasil* magazine, from which I had access to archives, the cover bears the following title: “OUR RIGHTS. Learn all about the Leda Case, the first flagrant of racism in Rio de Janeiro. Year 03, No. 19.” The day of the incident was November 27, 1997.

What the then-deputy and current senator Paulo Paim refers to as “misunderstandings of the judiciary in the application of anti-racist legislation” can be understood, in his own words, as follows:

This attitude proves that the racial issue is poorly resolved within the judiciary. The judge did not put it in his shoes, so, it was not understood the seriousness of the fact. On the contrary, he was insensitive and unaware of the Law.

(*Raça Brasil Magazine, Year 3, No. 19, page 06*)

My former teacher, coming back with her partner to collect the money back from buying two windows at *Estilo Colonial* (Colonial Style) store, started to have problems. That day, my former teacher had been verbally insulted by the store owner, Jorge Luiz Alves da Silva, and had also complained at the police station.

The following day, when she returned to recover the other part of the money, Professor Leda Francisco was greeted by the proprietor: “Black rascal, black dirty.”

The trouble caught the attention of the policeman who had assisted Leda the day before, and, in the face of racial offenses, he arrested Jorge Luiz in the act based on Article 5 of Law 7,716/89.

He spent 15 days in a special cell. The other prisoners, who were Black, did not want to share a cell with the racist. However, the judge who adjudicated the case, Fabio Dutra, interpreted that there was no crime of racism because the case should be “fairly characterized” and that Leda should bring a private criminal action. In its words about the case:

In a tolerant country such as ours, it is in our best interest to have a rubber over, so that society walks in a harmonious way. No one wants racism.

(*Raça Brasil magazine, Year 3, No. 19, page 06*)

As the Black Movement has long claimed, there is still a stronger resistance to framing situations like this as crimes of racism. Cases of this nature are always framed as racial injury. Racist motivation as an element of justification for crime is not taken into account.

Interestingly, the subjectivity factor is contextualized as individual; however, the collective content, intended for the whole Black mass, is not considered as subjective within this objective logic itself.

After so long, my former teacher felt that she was making history and wanted to leave a positive legacy for her children and the younger generations. The then-councilwoman of PT, Jurema Batista, chairman of the Human Rights Commission of the City Council, granted a motion in honor of the 32nd police officers who acted in accordance with the civil service and the historical demands of the population.

The Centro de Apoio às Populações Marginalizadas (Center for Support to Marginalized Populations); Councilman Edson Santos; and then-state deputy of the Workers Party and member of the Unified Black Movement Marcelo Dias, chairman of the Special Committee on Racism Cases in the State of Rio de Janeiro, were also present at the police station, giving full support to my former teacher, Leda Francisco.

This case was discussed in the book *Race in Another America: The Significance of Skin Color in Brazil* by Edward E. Telles, published in 2004 by Princeton University Press. With all the repercussions of the case, which appeared in several newspapers, as the main news of the country, like *O Globo* (journal), TV Globo, the newspaper *O DIA*, and Black media like *Raça Brasil* magazine and *Mundo Black*, Leda Francisco still would face another case of racism years later.

On October 14, 2005, the newspaper *O DIA* reported “Racism leads to jail” on page 4 while on the same day, the newspaper *EXTRA* reported “Racist goes to jail” on page 6. This time, she was already living in the upscale neighborhood of Copacabana. This time, when she went to court to complain about an account, Leda Francisco asked Mrs. Tânia Maria Saldanha Messina for a favor because Leda could not to walk down the aisle and it was the reason for hre to hear a racist manifestation:

It had to be black. Negro is racist. She has all this space, why is she here?
Want a stage?

(*O DIA, 2005, 4*)

As in the first case, the racist was arrested and placed in a different cell from other prisoners for fear of retaliation and was released on bail after a night in prison. This case was also framed as an injury for prejudice, per Article 140 paragraph 3 of the Penal Code.

With this explanation, we can see that here in Brazil, it is very difficult to frame the crimes of racism in the form of the law while we will now see how the racist system of criminalization of the Brazilian Black people works. Note how antagonistic these two points of view are within the legal apparatus itself.

**Criminology understands prevention as solution for the
crime's phenomenon while the marginalization is
productized to control the masses**

The “racist motivations” are never clear. Another question is how the difference between massacre and the genocide of Black people is debated without questioning the racist foundation: that is, to kill the Black man in order to annihilate the Black race. Talking to my partner, Mary Ratcliff, editor of *The San Francisco Bay View National Black Newspaper*, on this issue, she exposes me to this point of view:

I need to read that myself. On your distinction between massacre and genocide, I agree, but the massacre can be a deliberate – or subconscious – part of a genocide. I mean not everyone participating in a genocide – not every cop, for example – may intend to exterminate the Black race, but one cop's racist murder of Blacks could be part of a genocide even if he wasn't conscious of that as an overall goal.

Here in the US, since police terror has become an issue – no longer taboo – people, especially Black people, often call it genocide despite the relatively small numbers because of the racist intent. Killing Black people whenever you can is almost as bad and seeking out Black people to kill.

*(Mary Ratcliff, editor of The San Francisco Bay View National
Black Newspaper, email message to author)*

While my friend and partner Orlando Zaccone, police chief responsible for the case of the murder of Amarildo, another very well-known case¹⁶ in Rio de Janeiro and Brazil, informs me in another private conversation of his point of view:

Hi, Paulo. The definition of the crime of genocide was built by the UN and contemplates several hypotheses, which are provided in the law 2889/56. The problem is that we are talking about a state policy and criminal law is about criminalization of individual conduct only. What we have in the Brazilian context is a state policy of extermination of the black people. This is called by Criminology as a massacre, which differs from genocide because is a systematic state policy and not an action of people or groups. A PM entering in the periphery and killing a young black man does not practice genocide because he does not intend to eliminate a racial group, as provided by law. The criminalization of genocide causes the systemic phenomenon, through state extermination policies, to be considered massacre.

(Orlando Zaccone, Personal Communication)

Exposed here is that the Black person is the target of the criminalization process and the legal system, and, even though, in this way, we have in our history the constitution of anti-racist laws to criminalize racism, the process of mass incarceration of the Black population, begging, and massacre are still present in the everyday situation of the Black people.

It took the arrival of a Rio de Janeiro military police colonel, Black, in the person of Carlos Magno Nazareth, to, in his time (when the Brazil returned to democratic system) through his lectures as a guest in countries such as the United States, Colombia, and Italy, among others, as well as the interest in their research and exchanges at world polices institutes as the Police Foundations in Washington and the Vera Institute of Justice in New York, it is possible to gain a global understanding about the problems of the criminalization:

We believe the importance of this research was to have demonstrated the usefulness of the police's good relationship with the community; more than that, it was demonstrating the need for police to work closely with the community to identify their problems and establish specific strategies for their resolution. The researchers say the study demonstrates that the cycle of fear and crime in cities can be greatly alleviated when police and citizens come together in even purpose. This leads us to insist on the need to break the supremacy of the understanding of crime by the exclusively legal bias that leads to the belief in the decisive and exclusive role of the criminal justice system in the eradication of crime. This vision offers the police and police officers no other task than patrolling and criminal investigation to arrest criminals and control crime.

(Leal et al., 2010)

Until today, since Rio de Janeiro has historically been the model city for the founding of the military institution since 1809 throughout Brazil, little is known about the history of those who tried to change, from the inside, the current thinking either in the police apparatus or in the police *polys*.¹⁷ Colonel Carlos Magno Nazareth was one of those people. Having been the chief of staff of the military police, secretary of state of the military police, and general commander of the military police of the state of Rio de Janeiro, Nazareth was well known in the area, so anyone interested in studying Brazilian criminology cannot research human rights, public safety, and sociology without approaching this illustrious person. Here is the introduction to the book *Sonho de uma Polícia Cidadã (Dream of a Citizen Police)*:

Cerqueira was an intellectual who paid special attention to criminology. In their writings, notices the influence of authors who, especially from the 1960s, were concerned with studying the historical forms of social control exercised by the State. They moved away from the theories of criminal anthropology that, under the influence of Lombroso's studies marked the early decades of the twentieth century. The Commander's effort was constant – even in his years of administration – in bibliographic research,

in the development, encouragement and dissemination of studies that mark his pioneering spirit in an attempt to invest in an important process of institutional transformation.

(Leal and Íbis Silva Pereira e Oswaldo Munteal Filho, *Sonho de uma polícia cidadã: Coronel Carlos Magno Nazareth Cerqueira*, Page 25, Rio de Janeiro: NIBRAHC, 2010).

It is valid to contextualize that Nazareth assumed important positions of command between 1983s and 1987s. These years was the transition from the regime of the Military Civil Dictatorship to the Democracy in Brazil. Contextualizing, therefore, that the military police were forged by military thinking in a logic of war between combatants and enemies, it is important to highlight¹⁸ some experiences in order to change the introjected imaginary within the repressive institution, as the I and II Cycles of Studies on Public Security Studies, Seminar on Legal Studies on Security, as well as the Meeting with the Black Community.

Colonel Carlos Magno Nazareth sought to confront the “theoretical conceptions” that formed and still form the subjective minds of the punitive criminal justice system on the Black community, the lower social classes, and other “marginalized categories.” In his article for the Carioca Institute of Criminology, *The Black Man and Public Security* Nazareth, presenting himself as a Black and policeman, draws our attention to the “subcultural” conceptions in which racial discrimination is settled:

Looking at some “popular sayings” such as: “black running is a thief, white is an athlete”; “Black, when not dirty at the entrance, dirty at the exit” is seen as the stigmata of criminals or dangerous people are assembled, attributing to black such characteristics, elevating him with distinction to the category of privileged “suspect,” which he creates without doubt, the reasons for justifying police actions. All of this, added to my experience as a police officer, justifies my emphasis on ideological confrontation to staff. Such ideological confrontation will consist in denouncing or criticizing the ideas or thoughts that enable any social and racial discrimination; in the struggle for citizenship rights, denied to the many blacks in this country, unfortunately still segregated and abandoned; It will be also be about to provide the police and criminal institutions with new theoretical references, which may help them with a more appropriate and fairer and more democratic operational programming or employment philosophy.

(Leal, Pereira, and Filho, 2010: 209)

State and private security forces are, without doubt, those who have the best feeling for color lineage or the so-called colorism. The best example of a racist state is the panoramic view of sunbathing in Brazilian prisons. The color line is explicitly homogeneous. The same color line is practically 100 percent in the shelters of children and young people, as in adulthood and in old age too, in situations of family abandonment in the streets. With 54 percent of the population of Brazil being people of African descent, a look at homicide statistics shows that Black and Brown people are overrepresented in homicides:

Table 6.1: Homicide statistics per 100,000 by race in Brazil

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Black/Brown	32.42	32.15	33.66	34.28	35.42	35.14	36.69	36.74	38.49	37.65	40.25	43.15
Non-Black/ Brown	17.12	15.45	15.89	16.06	15.11	14.18	15.75	15.31	16.05	15.25	16.01	15.95

Source: Constructed by author from graph: www.statista.com/statistics/867757/homicide-rate-brazil-ethnicity/

These rates of homicide for Black/Brown people do not appear to include police homicides against them. According to National Public Radio in the U.S., race is a matter of life and violent death in Brazil. NPR reported a case just before the 2014 World Cup in Brazil when police officers picked up three Black teenagers who had not committed any crime, though they were known to have committed petty offenses in the past. They took them to some outskirts and shot one in the head, killing him; they shot another in the leg and in the back, leaving him for dead; and one escaped. The case came to light only because the police officers left their dashcam on with impunity, and the video¹⁹ was shared by Brazil’s Globo TV.

NPR reported that the officers bragged on camera that with two down, if they did this every day, they would reach their target of reduced crime before the World Cup. It is reported that Brazil recorded 56,000 homicides per year, much higher than the 15,000 recorded in the U.S. Hidden in those figures is that homicide rates are declining for the White and Whiter population that can afford private security. Additionally, the Brazilian police kill an additional 2,000 people who are mostly Black or Brown, showing that the Black Lives Matter movement is an international movement. Much of the killing by gangs in the favelas has been linked to gangs feuding over turf and afraid of police informers, but if the drugs were legalized, the poor people could grow and sell them legitimately and create wealth for their families and jobs for their communities.

Throughout the development of criminology studies, it has been evident that the phenomenon of crime manifests due to social injustices. Indeed, the problem of crime is not just a police issue. We need to prevent the crime, and examples of the prevention of violence is what the Nós do Morro (We from Hill) do and did. For example, the opportunity for actors in the historical masterpiece *Cidade de Deus* (*City of God*) and the AfroReggae NGO that has been effectuating true social transformation,²⁰ rescuing young people from drug trafficking and integrating them into society through art and culture.

We need to register another example of prevention through martial arts promoted by my jiu-jitsu teacher, Flávio Soldado, a police officer. A Black man like me, Flávio began in 2009 teaching free jiu-jitsu classes to the community in the 18th Military Police Battalion in Jacarepaguá, strengthening the police relationship with the community, showing that there are serious people committed to the well-being of the

population. Within the unease with the negative image of the police that persists for those who suffer the police approach remains the opportunity for dialogue to improve this relationship and promote peace.

My teacher, Flávio Soldado, follows the tradition of the Master Oswaldo Fadda, who was a pioneer in teaching free jiu-jitsu classes to the community, and his students won a historic combat against the Helio Gracie's students. Admittedly, the whole world knows Brazilian jiu-jitsu through the Gracie family, who implemented their academies in the prime areas of Rio de Janeiro, such as the downtown and the South Zone. However, in the North, the West Zone, peripheries, and slums, jiu-jitsu was also developed, and many champions were born.

These initiatives to prevention criminality conceived by my teacher Flávio Soldado, Oswaldo Fadda, Nós do Morro, AfroReggae, and many others reinforce the viewpoint that the Black community has always been on its own since arriving in the Americas.

Conclusion

In all the world, history shows us that the Negro has always been the buffalo soldier. Neither Trump nor Bolsonaro can stop us. The strength of the Black body needs to be studied in your worldview, since the memory of the DNA of the new generations still makes them stronger against past traumas.

Certainly, we do not need the Whiteness to guide us towards our best destiny. Faced with the current model of globalization, what we need is a direction, looking at Africa as taught by Professor Molefi K. Asante's Afrocentricity theory. Writing this text in English, the best definition is what I think was translated by my friend Carla Muhammad as "Global South Thought."

With this chapter, I sought to critically analyze the process of the criminalization of the Black people of Brazil and how it is effective in its naturalness. It is so natural for young Blacks to be marginalized that nobody questions the high standards to which they are subjected.

You can't talk about African crime without indicating the causes and, of course, the solutions. In the *Maafa*, which is the Black genocide, many White men have already written about the conditions of oppression that they themselves have conditioned. Would there be any interest among them in changing the status quo?

It is well known that not all Whites were complicit with slavery (within the Quilombos here in Brazil, there were Whites too); however, all Whites directly enjoy the privileges that the slave mentality has produced in the popular imagination. Thus, the criminalization of a Black body is subjective to social classes. Where there is a Black outside the spaces where his phenotype is understood as natural, that Black will always draw attention. Questioning his capabilities like the famous racist joke "Preto quando não caga na porta, caga na saída" (black when you don't shit in the door, shit out) make you a potential suspect who has to prove his talents all the time without the chance of a mistake.

As this body travels on public roads, attention remains on your Black-skinned person. Therefore, he is the suspect who will be approached by police forces or

followed by security guards within private establishments. Even by Black agents who, in the name of their position, act in accordance with the racist *modus operandi*. To transform this reality radically, I hope that the studies proposed here can provoke the so-called anti-racist Whites about their role in the White environment, and the Blacks form their own racial consciences since this conscience is individual, even though the context is about race, and the concept of race is as broad as the statistics that encompass and trace the life and prosperity of Black people in Brazil and around the world.

Notes

- 1 Watch the documentary *Nenhum Motivo Explica a Guerra* (2006) by Cacá Diegues.
- 2 For more, see *Jovem foi asfixiado e estrangulado em supermercado na Barra, aponta laudo*, <https://odia.ig.com.br/rio-de-janeiro/2019/02/5620839-jovem-foi-asfixiado-e-estrangulado-em-supermercado-na-barra--aponta-laudo.html>.
- 3 For more, see *Polícia investiga tortura contra jovem que teria furtado chocolate em supermercado da Zona Sul de SP*, <https://g1.globo.com/sp/sao-paulo/noticia/2019/09/02/policia-investiga-tortura-contra-jovem-que-teria-furtado-chocolate-em-supermercado-da-zona-sul-de-sp.ghtml>.
- 4 For more, see *Polícia investiga vídeo em que mulher é agredida por supostos seguranças no Rio* by Henrique Coelho, *G1 Rio* 17/02/2017 15h33 *Atualizado há 2 anos*, <https://g1.globo.com/rio-de-janeiro/noticia/policia-investiga-video-em-que-mulher-e-agredida-por-supostos-seguranças-no-rio.ghtml>.
- 5 For more, see *Brasil: Dois pesos, duas medidas; homem é flagrado com produto roubado e é liberado*, <https://ipiauonline.com.br/brasil-dois-pesos-duas-medidas-homem-e-flagrado-com-produto-roubado-e-e-liberado/>.
- 6 Watch the lecture by Luanna Teófilo on TEDx “Elevador | Luanna Teófilo | TEDxCampinas”: www.youtube.com/watch?v=1Sw3xQKHEO4&fbclid=IwAR0K_DJ1XF0PQk1oPchghhGDJTUUaDwTHdQ7XlGur_eBqjy-reNjcbqSKg.
- 7 Listen to the song “Identidade”: www.youtube.com/watch?v=ttZ7jCNdvCc.
- 8 Watch the lecture: www.youtube.com/watch?v=acgQ4hxlVpk.
- 9 For more, see *Caó: A Justiça tem que condenar Bolsonaro para ver que lei é pra valer*. <http://poderonline.ig.com.br/index.php/2011/04/03/cao-a-justica-tem-que-condenar-bolsonaro-para-ver-que-lei-e-pra-valer/>.
- 10 Read more: *Justiça encerra processo contra Bolsonaro sob acusação de racismo*, <https://valor.globo.com/politica/noticia/2019/06/07/justica-encerra-processo-contra-bolsonaro-sob-acusacao-de-racismo.ghtml>.
- 11 Read more: *Bolsonaro é condenado a pagar R\$150 mil por declarações racistas e homofóbicas*, www.brasildefato.com.br/2019/05/14/bolsonaro-e-condenado-a-pagar-rdollar-150-mil-por-declaracoes-racistas-e-homofobicas/.
- 12 Note from the author: These circumstances that led to the termination of the government’s punitive claim are provided for under Article 107 of the Criminal Code and are: death of perpetrator; amnesty; executive pardon or general pardon; retroactiveness of law that does not consider the fact as a criminal offense; prescription, lapse of time or pre-emption; waiver of the right to complain or acceptance of pardon, in the crimes of private action; admission by the perpetrator and pardon by the judge in the cases provided for under the law.
- 13 Read more: “O Caso Leda” Ano 3, nº19. *A Revista dos Negros Brasileiros*. Raça.
- 14 Read more: “Professora sofre Discriminação Racial e leva culpado à prisão,” *Mundo Black*, December 4, 1997, p. 3.
- 15 Ibid.
- 16 Read more: Rio court sentences 13 police over torture and killing of Amarildo, <http://agenciabrasil.ebc.com.br/en/geral/noticia/2016-02/rio-court-sentences-13-police-over-torture-and-killing-amarildo>.

- 17 *Polis* means city-state. From Ancient Greece.
- 18 Read more: Ana Beatriz Leal, Íbis Silva Pereira e Oswaldo Munteal Filho, *Sonho de uma polícia cidadã: Coronel Carlos Magno Nazareth Cerqueira*, Rio de Janeiro: NIBRAHC, 2010, p. 28.
- 19 Watch the video “Reflita Assassinato cometido pela PM – RJ”: https://www.youtube.com/watch?v=GorRIpE_CIA.
- 20 Read more: *The AfroReggae Cultural Group: A Rebirth Of Hope Within Rio De Janeiro's Favelas*, <https://theculturetrip.com/south-america/brazil/articles/the-afroreggae-cultural-group-a-rebirth-of-hope-within-rio-s-favelas/>.

Bibliography

- Barbosa, Kelly de Souza e Nuno Manuel Morgadinho dos Santos Coelho (2017). A questão étnico-racial do sonho americano: o encarceramento dos pobres e negros no Estado policial. *Rev. Bras. Segur. Pública. São Paulo*, Vol. 11, n. 1, 164–182.
- Campos, Walter de Oliveira (2015). ‘Expectativas em torno da Lei Afonso Arinos (1951): a “nova Abolição” ou “lei para americano ver”?’ *Revista Latino-Americana de História*, Vol. 4, n. 13 – Julho de by PPGH-UNISINOS.
- Caó, Carlos Alberto (2011). “A Justiça tem que condenar Bolsonaro para ver que lei é pra valer”. *Poder Online*. April 03.
- Da Silva, Jorge (1988). *Normas e costumes: o negro, o direito e a cultura racial no Brasil*.
- Demissie, Fassil (2014). *African Diaspora in Brazil. History, Culture and Politics*. Abingdon: Routledge.
- Du Bois, W. E. B. *Papers (MS 312) Special Collections and University Archives*. University of Massachusetts Amherst Libraries. Link: <http://credo.library.umass.edu/view/full/mums312-b164-i266>
- Du Bois, W. E. B. (1903). *The Souls of Black Folk*. Chicago: A.C. McClurg & Co.
- Du Bois, W. E. B. (1919). *The Black Man in the Revolution of 1914–1918*. Amherst, MA: University of Massachusetts Amherst
- Flauzina, Ana Luiza Pinheiro (2006). *Corpo Negro Caído No Chão: O Sistema Penal E O Projeto Genocida Do Estado Brasileiro*. Dissertation of the master's degree in Law Brasília University Universidade De Brasília.
- Garmany, Jeff and Anthony W. Pereira (2019). *Understanding Contemporary Brazil*. Abington: Routledge.
- Gilroy, Paul (2001). *O Atlântico Negro. Modernidade e Dupla Consciência*. Universidade Candido Mendes. Centro de Estudos Afro Asiáticos. Editora.
- Leal, Ana Beatriz, Íbis Silva Pereira e Oswaldo Munteal Filho (2010). *Sonho de uma polícia cidadã: Coronel Carlos Magno Nazareth Cerqueira*. Rio de Janeiro: NIBRAHC.
- Macedo, Donald and Panayota Gournari (2006). *The Globalization of Racism*. New York: Routledge.
- Machado, Marta Rodriguez de Assis, Natália Neris da Silva Santos e Carolina Cutrupi Ferreira (2011). *Punitive Anti-Racism Laws in Brazil: An Overview of the Enforcement of Law by Brazilian Courts*. This paper is part of the research project entitled “Esfera pública e direito no Brasil: um estudo de caso sobre decisões envolvendo igualdade de raça” (Public Sphere and Law in Brazil: A case study on decisions involving racial equality) developed by the Section of Law and Democracy of the Brazilian Center of Analysis and Planning (CEBRAP) under the Thematic Project “Moral, Política e Direito: Autonomia e Teoria Crítica” (Morals, Politic and Law: Autonomy and Critical Theory).
- Marley, Bob and Wailers (1979). *Survival*, Kingston, Island/Tuff Gong.
- Mbembe, Achille (2005). *Afropolitanisme. Africultures Les Mondes En Relation*.
- Mbembe, Achille (2013). *Sortir de la grande nuit. Essai sur l’Afrique décolonisée*. Paris: La Découvert.
- Mbembe, Achille (2014). *Crítica da Razão Negra*. Lisboa, Portugal: Editora Antígona.
- Nascimento, Abdias (1978). *O Genocídio do Negro Brasileiro. Processo de um Racismo Mascarado*. Paris: Editora Paz e Terra.

- Nascimento, Elisa Larkin (2003). *O sortilégio da cor: identidade, raça e gênero no Brasil*. Lisboa, Portugal: Editora Selo Negro.
- O DIA (2005). Racism leads to jail. Teacher is cursed in Copacabana Court Hall. Shopkeeper goes to cell in Mesquita
- Paradies, Yin (2017). *Re – configuring Anti – Racism*. New York: Routledge.
- Pereira, Amílcar (2010). “O Mundo Negro”: a constituição do movimento negro contemporâneo no Brasil (1970–1995). Doctoral Thesis. Universidade Federal Fluminense (Brasil) and Johns Hopkins University, USA.
- Santos, Milton (2000). *Por uma outra Globalização: Do pensamento único ao pensamento universal*. Paris: Editora Record.
- Silva Nascimento, Carlos Alexandre da (2015). *Representando o “novo” negro norte americano: W.E.B. Du Bois e a revista The Crisis, 1910–1920*. Dissertation. OAB, Rio de Janeiro.
- Sodré, Muniz (2017). *Pensar Naçô*. Petropolis, Brazil: Editora Vozes.
- Telles, Edward E. (2004). *Race in Another America: The Significance of Skin Color in Brazil*. Princeton e Oxford: Princeton University Press.