Challenging Racism in Brazil

Legal Suits in the Context of the 1951 Anti-Discrimination Law

Desafiando o racismo no Brasil

Ações judiciais no contexto da "Lei Anti-Discriminação" de 1951

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Abstract This article examines efforts to define the nature of racial discrimination in Brazil, within an environment shaped by perceptions of the meaning of racism in the United States and perceptions about the nature of race relations in the lusophone world. The article asks how did black Brazilians work to define discrimination, and what opportunities did they find to mount challenges? This study elucidates reactions to discrimination, looking for these acts where they occurred rather than where the U.S. experience tells us to find them, exploring efforts to define discrimination and to create means to challenge it. Though these efforts often dialogued with ever-present perceptions about race in the U.S., they were adapted to particular legal, political, social and cultural circumstances in the Brazil of their time. In particular, I examine challenges to discrimination through criminal suits brought under Brazil's 1951 anti-discrimination law.

Keywords Brazil, racial discrimination, law, race relations

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Resumo Este artigo analisa os esforços para definir a natureza da discriminação racial no Brasil, em um ambiente moldado por percepções sobre o significado do racismo nos Estados Unidos e sobre a natureza das relações raciais no mundo lusófono. O ensaio interroga como os negros brasileiros operaram na definição da discriminação e quais oportunidades encontraram para encaminhar questionamentos. Este estudo elucida as reações à discriminação, procurando por esses atos não onde a experiência norte-americana nos diz encontrá-los, mas onde onde eles ocorreram, explorando os esforços para definir a discriminação e criar meios de combatê-la. Embora esses esforços tenham frequentemente dialogado com persistentes percepções sobre raça nos Estados-Unidos, eles foram adaptados às circunstâncias legais, políticas, sociais e culturais no Brasil de seu tempo. Em particular, examino as oposições à discriminação por meio de ações judiciais provocadas pela "Lei Anti-discriminação" brasileira de 1951.
Palavras-chave Brasil, discriminação racial, legislação, relações raciais

Introduction

Brazilian race relations have long been understood and debated within external frames of reference. These frames of reference situate the Brazilian historical experience in contrast with that of the United States, and within a world of Portuguese culture and values. These frames of reference have shaped perceptions of race relations and racial politics in Brazil, defining questions and guiding the interpretation of historical evidence. By revisiting the assumptions that have guided research in the field of Brazilian race relations, we can understand patterns of race relations to be more distinct from, and autonomous of, those external frames. In the context of this essay, I examine patterns of challenges to racial discrimination in Brazil in the decades between 1951 and 1989 during which the first law barring racial discrimination was in effect.

As a point of departure, this article adapts the suggestion of George Reid Andrews, who observes that comparisons with the United States

narrows our understanding of Brazilian race relations in the article in which he asks "how might our understandings of race in Brazil change if we were to shift the comparative optic away from the United States and toward some other point(s) of reference?" (Andrews, 2008, p.12). Andrews finds that when framed against the experience of Spanish America, the degree of racial mobilization in Brazil stands out: "The massive scale and open brutality of Brazilian slavery, lasting longer than in any other American society, generated Latin America's only mass-based abolitionist movement… [and] the overt inequality of present-day Brazilian race relations… prompt[s] the creation of Latin America's largest and most successful black political movement" (Andrews, 2008, p.27).

With regard to uses of the law to combat discrimination, the comparison with the United States similarly distorts the understanding of discrimination and challenges to it in Brazil. In the United States, legal challenges served to challenge the legal codification of white supremacy and dismantle structures of segregation. Since neither of these existed in Brazil, it is inappropriate to expect the same in Brazil. But that does not mean that the 1951 anti-discrimination law was insignificant. If — following Andrews — we ask what, in the Brazilian context, did racial mobilization look like, we get a very different picture.

The interpretation of race relations in Brazil has been shaped in particular by comparison with the United States. This comparison has been made by Brazilian and U.S. scholars alike. The comparison also informs my approach to this article. The comparison with the United States created an interpretive framework for defining Brazilian race relations. Hebe Mattos cautions scholars from remaining bound to the study of race as a 'scientific' or ideological construction, and argues that the significance of race is not expressed only in social thought but also in racialized experiences (Mattos *apud* Pereira, 2007, p.88). But even when we move from the social scientific study of race to the lived experience of race reflected in the challenges to prejudice and discrimination examined in this article, we still see the reach of the comparison between Brazil and the United States, which was routinely made in Brazilian

newspaper articles on prejudice and discrimination in Brazil, and was often discussed in the court cases analyzed in this article.

In the case of the 1951 law, what we see is a surprising quantity of legal challenges to prejudice and discrimination, and these challenges share three characteristics. First, unlike in the United States, the law provided individual remedies to discrimination rather than remedies to structural obstacles that had broad application. Second, cases of discrimination brought under the 1951 law were frequently discussed in relation to race relations in the United States: plaintiffs, defendants and judges repeatedly used the U.S. example to navigate the meanings of discrimination. Third, the cases frequently served as vehicles by which accusers engaged in the labor of defining the meaning of discrimination, and experimented with developing the proof needed to denounce discrimination. By means of these cases, accusers used the courts and the press to turn what was an individual remedy to the wrong of discrimination into tool for systematically challenging discrimination in the public arena.

These anti-discrimination cases — and our study of them — face a challenge: the systemic, rather than systematic nature of discrimination in Brazil. In the South of the United States, schools, restaurants or hotels systematically excluded people of color. By contrast, in Brazil, discrimination was systemic in the sense that it was widespread but not absolute. It was occasional or even frequent, but not constant. As Florestan Fernandes explained, "color prejudice does not appear on the social scene in a systematic way, but as a surreptitious, ambiguous, and vague social reality" (Fernandes, 1969, p.389). A hotel, or restaurant or school, would discriminate sometimes, but not always. It would bar some people of color rather than all people of color. These racial barriers seem to have been disproportionately faced by black women. This was the case of Globo journalist Gloria Maria, barred in 1980 from the Hotel Othon in Rio at the same time that (as the hotel management alleged) a Nigerian delegation stayed at the hotel. Or that over many years some black Brazilians or foreigners would have difficulty taking a room at the Copacabana Palace or Hotel Gloria, while others would not.

These systemic barriers resulted from a climate that tended to reject explicit expressions of segregation and discrimination, but which nonetheless was extensively discriminatory: on one hand Brazilians of color, and on the other hand, establishments, employers, and — frequently — doormen, continually navigated dual social codes that simultaneously promoted and inhibited discrimination. This "relationship between tolerance and intolerance" made challenges to discrimination triply difficult: first, it allowed someone charged with discrimination to defend themselves on the grounds that discrimination did not exist; second, it was difficult to show that a racial barrier was applied to all people of color, and a defendant could often point to patrons or employees of color to demonstrate that they did not discriminate; and, third and most important, when challenged, someone practicing discrimination such as a doorman at a nightclub or a prospective employer, would simply remove the barrier in the limited context of that challenge (Fernandes, 1969, p.426). This last characteristic made systemic discrimination more flexible: the general ideology of antiracism in Brazil made it unlikely that someone would hold their ground in defending an act of discrimination or segregation, as might happen in specific contexts in the United States or South Africa. But that flexibility also made discrimination more resilient: discrimination could survive legal challenges because it was applied individually rather than to an entire population, and because it would be disavowed only in the specific cases where it was challenged.

The 1951 law

The 1951 law is commonly know as the Afonso Arinos law, named after the legislator who drafted it in the aftermath of a 1950 case of racial discrimination at the Esplanada Hotel in São Paulo against African American dancer Katherine Dunham. Arinos also indicated that he was motivated by an act of discrimination against his black chauffeur at a supposedly Spanish-owned bakery. In the press debates about the Dunham case and around the passage of the law, public figures like Afonso Arinos and Gilberto Freyre discussed the need for the law as a

preventive measure aimed to avoid the introduction of foreign racial discrimination, particularly at the hands of immigrants. By this line of reasoning, prejudice and the discrimination that resulted threatened a supposed antiracist tradition which many, especially Freyre, attributed to Portuguese culture. Prejudice-based racial discrimination loomed as a risk that could make Brazil more like the United States.

The "Afonso Arinos law" has been freighted with both positive and negative mythology. Positively, it has symbolized a Brazilian antiracist tradition: it is an assertion that Brazil would not tolerate the emergence of racial intolerance of the character known in countries like the United States or South Africa. By extension, the seeming absence of cases brought under the law would confirm that it was precautionary and largely unnecessary. Negatively, it has been seen as an accessory to the "perfect crime" of concealing discrimination because of the manner in which the law was written, with the expectation that the accuser demonstrate the accused's racist intent, made it difficult or impossible to win a case. As Abdias do Nascimento argued, "Trata-se de uma lei que não é cumprida nem executada. Ela tem um valor puramente simbólico" (Nascimento, 2002, p.127). By extension, the seeming absence of cases under the law would confirm its power to disarm or demobilize action against discrimination.

The life of the 1951 law offers an opportunity to reframe our approach to the study of Brazilian race relations. The law was frequently employed by its supporters and critics alike as an example of a Brazilian culture distinct from the United States and situated in a Portuguese tradition. But an examination of cases brought forward under the 1951 law show that the law created a context for challenging racial discrimination that reflects the labor of defining racial prejudice and denouncing its consequences. These challenges look different from what either the comparisons with the United States or the perceptions that situate Brazil in a Portuguese tradition would lead us to expect.

Two of the most common perceptions of the law are incorrect: the beliefs that either no cases were brought forward under the law or that no cases could succeed. To the contrary, based on research at the archives of the Tribunal de Justiça in Rio de Janeiro and São Paulo, the

reading of court periodicals such as the *Revista Forense*, and examination of newspaper accounts, I have so far found nearly two dozen cases brought under the 1951 law. Of these, seven resulted in verdicts favorable to the accuser either in the original case or on appeal. It is striking not only that the perception that the law is incorrect — there were both cases and legal victories — but that even in the context of these actual cases, the perception endured: reporting on the cases and verdicts frequently described each one as the first or only of its kind. It is remarkable that the mythology about the law even accompanied evidence to the contrary, demonstrating the persuasive power of the myth.

If the power of the myth is one question, another is the substance of the cases themselves. What do we learn about Brazilian race relations by examining the cases mounted to combat experiences with discrimination?

One way to begin answering this question is to move away from the practice of referring to the law as the "Afonso Arinos law". The common practice of calling Law 1.390/51 the "Afonso Arinos law" mirrors other conventions that reinforce the convention that Brazil is a country shaped by cordiality nurtured by enlightened statesmen. Another example is the "Golden Law" abolishing slavery in 1888, associated with Princess Isabel. The concerted shift away from the commemoration of May 13 as Abolition Day to November 20th as Black Consciousness day is matched by shifts in the scholarship on Brazilian race relations that increasingly places the end of slavery in the hands of slaves engaging in massive flight and resistance, rather than in the hands of legislators and regents who legally consummated the freedom the slaves made.

The label "Afonso Arinos" frames the law within Arinos' intentions, which were, as he asserted, to prevent the emergence of eventual discrimination. In this sense, Peter Eccles suggests that the law intended to preserve a status quo, in contrast with the Brown v. Board of Education court decision in the United States in 1954, which was intended to change the status quo: "Embora a lei brasileira não tenha sido vista como uma clara ruptura com o passado do país, da mesma forma que a 'decisão Brown' nos Estados Unidos, mas apenas um selo oficial aposto

sobre as visões raciais prevalecentes, caracterizadas pela tolerância racial, os negros brasileiros, nas últimas quatro décadas, tornaram-se mais marginalizados, social, política e economicamente, do que eram antes dessa lei" (Eccles, 1991, p.135).

Nonetheless, despite the law's considerable flaws, its limited objectives, and the constraints the Brazilian legal system placed on complaints against discrimination, the 1951 law created a new fact: discrimination based on racial prejudice was a violation of the law and a moral transgression. The law opened a door — however little — to challenges against discrimination. The label "Afonso Arinos" refers to the law as an artifact of racial politics, but the law itself has an alternative life as a space for defining and denouncing discrimination. To keep the critical focus on the uses of the law, this article does not use its political name, and will refer to it from here onward simply as the 1951 law.

Limits to the law

In *Preconceito e Discriminação*, Antonio Sérgio Guimarães surveyed legal challenges to prejudice and discrimination in 1990s Salvador and São Paulo, using Law 7.716 (also known as the Lei Caó, after the political name of its author, Federal Deputy Carlos Alberto de Oliveira, ratified in 1989). Guimarães found that experiences with discrimination in Brazil generally involved the attribution of a subordinate status upon the victim, such as the equation of blackness with criminality, insults or disparaging language, and disqualification of a victim that impedes their access to employment or public life. For Guimarães, the 1989 law did not fit well with these kinds of experiences of discrimination, applying instead to "crude and segregationist racism" — actions intended to impose a barrier to racial integration in the workplace and public facilities (Guimarães, 2004, p.37-38). The 1951 law worked similarly. The difference between the two is that the 1951 law was less severe: the 1988 law made discrimination a criminal act, while the 1951 law made discrimination a legal violation (akin to a traffic ticket), and covered fewer categories of discrimination.

Others have made similar critiques to the succession of anti-discrimination laws in Brazil, stressing their limitations. In particular, one flaw the 1951 law (like succeeding ones) had was it spelled out specific contexts in which discrimination was barred, such as restaurants and barber shops. This created an ambiguity that hindered many cases: what did the law mean for cases of discrimination in locations not specifically delineated by the law? For instance, it applied to places that were "open to the public" and to commercial spaces. But what did this mean for clubs that required membership? Or for private condominiums which barred people of color from using the social elevator. Eunice Prudente explains that in the 1951 law's language "a expressão 'aberto ao público,' prejudica a compreensão e aplicação da lei, dando a impressão de que nos estabelecimentos comerciais destinados a público especial, podem praticar a discriminação racial" (Prudente, 1989, p.241).

The ambiguity about which settings the law applied to arose frequently within legal cases. In 1965, a conviction under the law was overturned on these grounds. The judge in the original trial found that a person who placed an advertisement to rent a room in their home that read "Não aceito gente de côr" had violated the 1951 law. The judge's verdict held that the law's prohibition of discrimination at hotels applied even more forcefully to permanent dwellings. The appellate court rejected this "extensive" reading of the law, declaring that it could not be applied "by analogy" but only to the circumstances it explicitly prohibited.[1]

That judges struggled to apply the law extensively was made even more complicated by the oddly specific language of the law. As both Eunice Prudente and Peter Eccles argue, the law was not intended to correct behavior but to establish a moral norm. As a result, the language of the law was not crafted to capture and correct categories of discrimination but to serve up examples of settings where discrimination should not take place. Prudente sees the law's language on establishments that serve the public, which defined them as places "(...) onde se sirvam

1 *Revista Forense,* vol. 213, ano 62, p.363-365, jan./mar. 1966.

alimentos, bebidas, refrigerantes e guloseimas (...)" as an unnecessary impediment that narrowed access to the law as a remedy for discrimination. Further, as Prudente argues, the term public in the law meant that many establishments defended themselves from charges of discrimination by declaring themselves private (Prudente, 1989, p.241).

Writing in a law review journal on a 1985 revision of the 1951 law that expanded the definitions of public facilities covered by discrimination suits to explicitly include establishments such as supermarkets and saunas, prosecutor Valdir Sznick stressed the limitations of even this set of guidelines. Sznick noted, for instance, that even the broader law did not protect someone from discrimination in transportation such as taxis, and called instead for an expanded definition of discrimination: "Será punido, pela presente lei, toda e qualquer forma de discriminação ocorrida no território nacional, quaisquer que sejam os meios e formas empregadas, bem como a divulgação, velada ou expressa, de propaganda incitando referida discriminação" (Sznick, 1987, p.15).

Legal challenges under the 1951 law: a mixed record

In *Discriminação e Desigualdades Raciais no Brasil*, Carlos Hasenbalg compiled a list of 48 incidents of racial discrimination between 1968 and 1977 from the newspaper archives of the *Jornal do Brasil*. Several of these resulted in court cases including the ones discussed in this article. The patterns Hasenbalg found resemble the court cases this research has identified: the most common denunciations of discrimination regarded people being barred from entering nightclubs, restaurants and social clubs. This was followed by denunciations of employment discrimination. The individuals making the accusations were typically

professionals or students, and were typically younger adults. Based on the patterns of the cases, Hasenbalg concluded that the law was predominantly known by educated black Brazilians in cities, who also found their experiences with social mobility or their social status undermined. Hasenbalg also found that press accounts of discrimination — like the court cases here — were individual in nature rather than collective social actions. He also argued that they reflected a small sample of the daily experiences of black Brazilians with prejudice and discrimination (Hasenbalg, 1979, p.269).

Based on a similar collection of newspaper accounts, the clippings collection of the *Centro de Estudos Afro-Asiáticos* in Rio de Janeiro and other sources, I have identified 23 outright legal cases (rather than complaints to the police or to the press) over discrimination that went to trial and in which a judge rendered a legal decision. Of these cases, 7 resulted in convictions or court orders mandating integration. Of these cases, two were described in the press as the first of their kind (they were from 1975 and 1985, so neither were).Twenty-one of the cases were brought under the 1951 law. The other two were brought as cases of *desacato* — disrespect of the authorities — and involved public officials who were of Japanese descent. Of these cases, one resulted in a conviction, and the other failed because of false testimony given by several witnesses.

The record of these cases is remarkable: that nearly two dozen cases against discrimination were taken to trial between 1951 and 1988 does not correspond with either the narratives of those who argued the law was unnecessary because discrimination did not exist, or those who argued that the law was an instrument of suppressing racial mobilization. Even more remarkable is that more than 25% of the cases successfully resulted in conviction. And it is curious that even in the context of the cases themselves, the mythology about the law endured when they were described as the first convictions of their kind.

Table I - Discrimination Cases Resulting in Convictions, 1951-1988

Year	City	Setting	Subject
ca. 1951-55	Rio de Janeiro	Happy School Brazil-Canadá	Refusal to enroll student
1956	Rio de Janeiro	Happy School Brazil-Canadá	Expulsion of student
1966	Porto Alegre	Soc. de Canto União Fraternal	Refused entry to dance
1974	Itapetininga, SP	Clube	Disrespect of japanese *fiscal*
1975	Igarapava, SP	Clube	Refused entry to dance
1975	Juiz de Fora	Boite	Refused entry
1985	Rio de Janeiro	Boite	Refused entry

In addition to these cases that went to trial, the number of complaints filed with the police is too large to count. These criminal complaints at times resulted in action by the police, who for instance closed a bar in Bagé, RS in 1972 after black students were not allowed to enter.[2] In other cases, police called on the accused to give testimony about the circumstances of the accusation, such as the case in which Globo television journalist Gloria Maria was barred from the Othon Palace in Rio de Janeiro by a night manager who declared "negro aqui não entra".[3]

These cases frequently appeared in the press, raising a question: how frequently did someone making a police complaint, or filing charges and taking someone to court, seek to disseminate the case in the media? It appears that one of the major reasons a victim of discrimination filed charges was to bring attention to the reality of discrimination, so it appears that typically the action in the police station or the court was connected with an effort to bring the incident to the press. On

2 Racismo fecha bar em Bagé. *Jornal do Brasil* (Rio de Janeiro), 03 jun. 1972.

3 Começa o barulho: Negros, lésbicas, índios, homossexuais e feministas prometem ganhar as praças nos anos 80. *Veja* (São Paulo), n. 614, p.24, 11 jun. 1980.

the other hand, the methodology used to identify these cases, which primarily employs the newspaper collection of the Centro de Estudos Afro-Asiáticos, the political police (DEOPS) archives of Rio and São Paulo, which engaged in extensive newspaper clipping, and the online newspaper archive of the *Estado de S. Paulo*, does not serve to identify complaints with the police, or cases taken to court in which the plaintiff or defendant did not seek to engage the media. The appellate discrimination cases discussed in legal journals also received coverage in the press.

Three cases

Three cases, all of them unsuccessful, reflect the major patterns in anti-discrimination suits. These patterns reflect both the challenges that plaintiffs faced, as well as the strategies they employed. The cases usually involved a combination of the following factors:

- People bringing anti-discrimination suits forward, as well as their lawyers, were cautiously and methodically engaged in defining what racial discrimination was in its Brazilian context;
- People bringing suit were often carefully engaged in building the body of evidence that could serve to meet the burden of proof that discrimination occurred;
- Frequently, prosecutors and judges refused to consider the possibility that racial discrimination existed in a legally punishable fashion;
- People accused of discrimination almost never admitted it, going to considerable lengths to represent their actions as a terrible misunderstanding;
- The press and the courts tended to emphasize the foreignness of perpetrators of discrimination, contributing to the perception that discrimination was something alien to Brazilian culture but was introduced by racist foreigners. (That said, many of the people accused appear to have been of foreign born);
- Press reports typically accepted that the plaintiffs were victims and morally condemned the accused.

Salon owner fires employee, Rio de Janeiro, 1970

In this case, the owner of a hairdressing salon in Copacabana fired an employee, allegedly for opening the salon early to attend to a client. As the hairdresser dismissed her, he allegedly told her of his "não gostar de prêto," called her "negra vagabunda," stated "prêto não vale, mesmo, nada" and that because she was black, she was "evergonhando o salão".[4] The fired employee, Adelaide de Morais, contracted a lawyer, who was also black, and filed suit.

Morais' case faced an immediate obstacle: the prosecutor assigned to it refused to consider it a case of racial discrimination, and reclassified the accusation as an honor crime, because he saw it as a "conflito entre pessoas, sem conotações discriminatórias". Among the cases he studied in the 1990s, Guimarães finds that this was a common outcome for suits brought by women. For Guimarães, this kind of reclassification diminished the significance of cases by making them about individual, private, circumstances rather than denunciations of widespread experiences (Guimarães, 2004, p.42-44).

But if the tendency of the court was to minimize the accusation's implications about racial discrimination, the tendency of the press in this case (and typically in reporting of other cases as well), to both emphasize the potential foreignness of the perpetrator of the act and express moral repudiation for their alleged acts. From its first sentence on, the *Correio da Manhã* account of the case repeatedly described the owner of the salon as "português". The *Correio da Manhã* also represented him as shamed and shameful, describing, for instance, his departure from the courtroom that acquitted him as anything by triumphant: "preferiu abandonar o fôro de justiça pela porta dos fundos encobrindo o rosto com uma revista, para evitar que os jornalistas presentes o fotografassem". Nonetheless, the defendant successfully employed the most commonly

4 Absolvido cabelereiro que diz 'não gostar de negros' e despede empregada. *Correio da Manhã* (Rio de Janeiro), 29 jan. 1970.

used defense: that the whole incident was a misunderstanding. His apparently black lawyer declared "se êle fôsse mesmo racista, não teria me contratado para defendê-lo, e sim um advogado de sua raça". Why would a racist possibly hire a black lawyer to defend himself in a racial discrimination suit?

Morais' lawyer used the case to define the nature of discrimination in Brazil and to argue that the application of law in Brazil was inherently discriminatory: "o elemento negro não encontra outros negros para julga-lo, apenas brancos, e um branco, se fôr decidir a quem dar razão entre outro branco e um negro, é claro que optará pelo primeiro". He went on to denounce the 1951 law:

> A Lei Afonso Arinos não tem resultados prácticos. É só ostentação pois a sua aplicação depende da confirmação do acusado de que realmente é racista, nada valendo a palavra do reclamante… A Lei que fizeram para reprimir a discriminação racial no Brasil foi idealizada por uma situação que qui não existe, isto é o conflito direto entre brancos e negros. Isso ocorre nos Estados Unidos, mas no Brasil o racismo é velado, e a própria Justiça colabora com êsse estado de coisas, ao fazer uma lei que não prevê como crime de discriminação o fato de alguêm dizer que 'prêto não vale nada.' Procura ver essa atidude apenas como injúria.[5]

The comparative nature of race relations in Brazil and the United States figured not only in the assertion that this was a discriminatory incident, and also in the act of negating that discrimination could have occurred. In acquitting the owner of the salon, the judge acussed Morais' lawyer of "estar tentando a importação para o Brasil de uma situação que aqui não existe, como o conflito entre brancos e negros nos Estados Unidos."

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5 Absolvido cabelereiro que diz 'não gostar de negros' e despede empregada. *Correio da Manhã* (Rio de Janeiro), 29 jan. 1970.

The Banco Mercantil de São Paulo "doesn't hire blacks," Petrópolis, 1976

In this case, José Julio Bastos brought suit against the Banco Mercantil de São Paulo branch in Petrópolis after being told as a job applicant that the bank did not hire employees who were black.[6] According to his testimony, Bastos applied for a clerk position at the bank, and passed the preliminary exams in Portuguese, math, accounting and typing. After the last exams, the accountant conducting the hiring process told him, in a seeming act of solidarity, that he regretted that Bastos' candidacy would go no further, because the bank had the practice of not hiring black employees and explaining that in his own opinion this was wrongful.

A few days later, on May 13, Bastos alleged that he told his friend from his vocational school, who told him that he should challenge the bank on their discriminatory practices. The timing is interesting: by the mid 1970s, two things had begun to transpire around the date of May 13, which commemorated the abolition of slavery: first, black activists had begun to intensify denunciation of discrimination around that date; which was related to, second, the expanded attention and space that the press gave to questions of race relations and discrimination around that date. In fact the case would become front page news in the *Diário de Petrópolis* Sunday edition. We can infer that the conversation with his classmates resulted in a decision to mount a public challenge to discrimination within the context of the May 13 focus on discrimination.

The next day, Bastos went to his job at the municipal offices in the Petrópolis bus terminal and related the experience with the bank to his supervisor, the municipal director of public works, who expressed disbelief. He set up a telephone call for Bastos to the accountant who had told him that he would not be hired. The director of public works listened on a separate line as the accountant repeated his warning: he reason the

6 Processo 11.566, Banco Mercantil de São Paulo, querelado, 1976. *Tribunal de Justiça do Estado do Rio de Janeiro*. Arquivo do TJRJ.

manager will not hire him is because of his color, and please do not tell anyone. Now armed with a witness to the act of discrimination who was also a public figure, Bastos went to the *Diário de Petrópolis* and related the story, which the newspaper published on its Sunday front page.

The next morning, the accountant and someone else from bank appeared at Bastos' home to tell him the good news that he had been offered the job, and asking him to come to the bank to talk to the manager. Bastos told them he couldn't accept — that he no longer had the "condições psicológicas normais" to work there, but he agreed to go to the bank. When he did not show up at the bank, the accountant and two bank directors visited his workplace at the bus terminal, and insisted to talk to Bastos about the situation. They sought to persuade him not to press charges, and insisted that they would like to hire him.

The bank used at least three, and possibly four, lines of defense in the case Bastos pursued against it. First, the bank branch offered Bastos the job. Second, the branch affirmed that it did not practice discrimination and that it had previously employed a black person. Third, they tried to discredit Bastos (to whom they belatedly had offered the position), by saying he was rejected not because of his color but because a routine background check using the bank's records showed that he had once bounced a check. The potentially fourth strategy is inferred by the way in which the case ended: the judge sent the case back to the police to gather additional information. Several years elapsed before the case was returned by the police: specifically, it was returned to the judge three years and 360 days after the event occurred, and five days later the judge ruled the case closed because the 4-year statute of limitations meant it had expired. Had the bank's lawyers managed to get the police and/or the judge to stall the case until it disappeared?

But leaving aside what we don't know about the case, what do we understand from it? We see a process in which Bastos, perceiving he has faced discrimination, cautiously worked to build a case. Conferring with friends, he developed a strategy in the context of the period of the year in which denunciations in the press are most frequently made. He constructed proof of the act of discrimination in the form of

an unimpeachable witness — the municipal director of public works - who could testify firsthand to the act of discrimination. He brought the case to the press, giving it national visibility. Beyond the *Diário de Petrópolis,* the incident was covered by at least *O Globo* and *O Estado de S. Paulo*. The municipal council of Petrópolis sent a report on the incident to President Ernesto Geisel. Finally, Bastos worked to define the damaging impact of discrimination, and also to disarm the bank's opportunistic offer of the job it had withheld, by declaring his moral inability to accept the job offer in the context in which it was proffered.

Incident at the Studio Night Club, São Paulo, 1985

Like many cases of discrimination, this one took place at the door of a nightclub, this one located in the affluent Jardins neighborhood of São Paulo. A group of white siblings, accompanied by their adopted black sister, Helena Maria Coimbra, attempted to enter the Studio Night Club, but were barred by a doorman who told they could only enter with an invitation. Watching other patrons enter without invitations, the white sister asked the doorman, pointing at her sister, "is this the problem?" The doorman nodded affirmatively.

The next weekend, the sisters returned, prepared to build a case against the club. They arrived accompanied by two other black friends, and accompanied by a columnist for the *Folha de S. Paulo* and a photographer from the newspaper. Coimbra had a tape recorder in her pocket. Arriving at the club, the doorman asked them "you again?" and barred their entry. Coimbra asked why, specifically, she could not enter. She was told she did not meet the dress code. We know from her deposition, and from the photo in the *Folha de São Paulo,* that she was wearing a white linen dress, pink Italian silk scarf, black shoes and a black handbag.

When the columnist from the *Folha*, Fernando Pessoa Ferreira, identified himself and the reporter began taking pictures, the doorman perceived the perilousness of the situation he and the club faced, and he abruptly changed course, inviting the group in. They refused and Pessoa asked to speak with the owner of the club. He was admitted and

spoke with owner Carlos Suplicy, relating his conversation later in the *Folha* and in his deposition for the trial. Suplicy told Pessoa: "It's hard to build up a nightclub like this one, but finishing it off is very easy… I am not the one who chooses who can frequent the club, the club's public does that. If let two black girls in, that same day ten people will come and complain and folks start commenting that the quality of the place is diminishing. You know how the bourgeoisie of São Paulo is!".[7]

Carlos Suplicy went on to defend himself by saying that he was from one of the city's founding families ("de quatrocentos anos"), and asking "Você não conhece a família Suplicy?" He was a distant cousin of Worker's Party politician Eduardo Suplicy, then preparing to run for mayor of São Paulo. Suplicy walked out to greet the women on the sidewalk. He explained to them that he was not himself racist, and offered as evidence that: "Não há nada de pessoal nisso. Minha secretária, que é meu braço direto, também é… desculpem a expressão, escura. Ah, vocês deviam conhecer o namorado dela. É pavoroso! Se a gente cruzar com ele de noite, treme de medo de assalto!" In her deposition, Coimbra's sister recalled the expression as even harsher: that Suplicy described his secretary's boyfriend as a "horror de preto".[8]

Equipped with witnesses to the act of barring the group from the door, newspaper reports, photographs, a tape recording and Suplicy's statements, Coimbra went to court. Suplicy, the manager, and two partners mounted a defense that sought to demonstrate that the nightclub did not discriminate and arranged testimony from black patrons and employees to that effect. The prosecutor for the case recommended acquittal, arguing that the sisters never offered proof that the reason they were denied entry was explicitly racial prejudice. Coimbra also had the misfortune of a judge who was distinctly opposed to cases of

7 FERREIRA, Fernando Pessoa. Negras barradas no bar vão à polícia. *Folha da Tarde* (São Paulo), p.12, 04 fev. 1985.

8 Processo 134/85, José dos Santos Silva, Alfredo Tambelini Neto, Ricardo José de Oliveira Fairbanks e Antonio Carlos Suplicy. 06 mar. 1985. *Tribunal de Justiça do Estado de São Paulo*. Arquivo do TJSP, TJ Jundiaí, A81-1000360623.-8.

discrimination. The verdict he issued not only absolved the night club owners but foreclosed the possibility that discrimination could be remedied in court, declaring:

> The accused declared having nothing against blacks.
> There was no racial segregation.
> In Brazil that practically does not exist. Blacks are beloved, they are idols not just in sports, music, cinema, etc, and the *mulatas*, without a doubt, are coveted by the majority of men, be they black or white. As a matter of fact, the "yellow" women too.
> Unfortunately, there is much more social and economic segregation than racial, but that, with all due respect, was not the case here.
> As a result, cases based on the old "Afonso Arinos law" are quite rare, even though we have judges with dark complexions.[9]

The judge, Paulo Miguel Campos Petroni, issued a nearly identical ruling in 1994 discussed by Guimarães, who describes his language as "romanesco" (Guimarães, 2004, p.39). In that later ruling, Petroni declared that "não temos racismo rigoroso e cruel como em outras nações, onde os não 'brancos' são segregados…". Here again, the United States served as the external frame for disqualifying discrimination.

Though Coimbra lost the court case, it represented only part of a strategy to define and denounce discrimination. She, her sister and her friends mounted a case based on cautious production of evidence — repeating the incident, wearing the same clothing, adding different categories of witnesses, and carrying a tape recorder. They created a visible case in the press, which, as in other episodes discussed here, was supportive of the victims of discrimination, critical of the perpetrators, and employed the case to document other cases of discrimination. Pessoa's column, for instance, referenced an earlier case in São Paulo

9 Processo 134/85, José dos Santos Silva, Alfredo Tambelini Neto, Ricardo José de Oliveira Fairbanks e Antonio Carlos Suplicy. 06 mar. 1985. *Tribunal de Justiça do Estado de São Paulo*. Arquivo do TJSP, TJ Jundiaí, A81-1000360623.-8.

in which a woman lost a suit about using the social elevator in a condominium because it was a private building. The case lost in court, but was also litigated in the Municipal Assembly, which debated a law that would close establishments that practiced discrimination. Assemblyman Eduardo Suplicy accompanied the sisters to court in the case against his distant cousin.

Conclusions

There is no question the 1951 law was an imperfect tool, and one that was not intended to redress widespread experiences with discrimination. The law nonetheless played several roles that are worth understanding. First, it provided a moral baseline that victims of discrimination could employ to denounce discrimination as both a moral wrong and an illegal act. Over the life of the law, hundreds and perhaps thousands of denunciations were made with police and in the press. The law anchored press coverage of acts of discrimination: violations of the law made news, and newspapers proved surprisingly willing to cover acts of discrimination. Many of the cases examined here became the subject of reports in multiple newspapers, in multiple cities, over multiple days.

A (preliminary) review of cases brought to trial under the 1951 law brings greater focus to the picture that newspaper accounts provide. They show careful labor on behalf of victims of discrimination to employ their experiences to build a definition of specifically Brazilian patterns racial discrimination and their contexts, as well as painstaking efforts to build the bodies of evidence they believe could serve to actuate the law. The acts of building of meanings of prejudice, discrimination and morality that we see were intended to redefine discrimination away from the image associated with the United States. In turn, the victims were often frustrated by prosecutors and judges who invoked perceptions of segregation in the U.S. to dismantle claims about Brazilian discrimination.

Finally, one striking feature of these cases is the victim's response to the efforts that those they accuse made to remedy the situation and

avoid punishment for their acts: Bastos was offered the job at the bank, and Coimbra was invited into the club. The bank and the club were clever in doing this because it complicated the cases against them. But both Bastos and Coimbra held their ground in order to continue to build their cases. And in doing so, they each reached for arguments about the moral damage the initial act of discrimination had caused as more significant than the subsequent act to placate them. They were wrestling with the difficulty of documenting, denouncing and criminalizing systemic discrimination by seeking to have the individual act of discrimination be defined as the crime, even in the absence of systematic discrimination.

The 1951 law was a flimsy tool that was difficult for victims of prejudice and discrimination to employ in the courts. It did, however, serve as a moral instrument black Brazilians used to define right and wrong. The courts did not provide a large, nor an easily accessible, nor a necessarily welcoming environment for legal challenges to discrimination. But victims of discrimination used the law in other ways. In particular, newspapers did provide a forum for defining and denouncing discrimination, and in newspaper accounts and commentaries the law served as a rhetorical tool for defining moral markers of right and wrong in race relations.

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