

COLORISM AND THE LAW IN LATIN AMERICA—GLOBAL PERSPECTIVES ON COLORISM CONFERENCE REMARKS

TANYA KATERÍ HERNÁNDEZ*

There are approximately 150 million people of African descent in Latin America, which represents about 1/3 of the total population.¹ This density of Afro-descendants is the result of the slave trade that brought an estimated 10.7 million African slaves. This represents 65 percent of all African slaves brought to Latin America in comparison to the 388,000 to 450,000 African slaves (or 6 percent) brought to the United States.² “Yet, these are considered conservative demographic figures given the historical undercounting of persons of African descent in Latin American national censuses, and often completely omitting a racial/ethnic origin census question.”³ Today, persons of African descent make up more than forty percent of the poor in Latin America and have been consistently marginalized and denigrated as undesirable elements of the society since the abolition of slavery across the Americas.⁴

However, Latin Americans still very much adhere to the notion that, because racial mixture and the absence of Jim-Crow racial segregation are such a marked contrast to the United States’ racial history, the region is what I term “racially innocent” and thus resistant to proposals that institutions use public policies of inclusion to address the entrenched racial disparities.⁵ This resistance exists despite the fact that a recent study empirically demonstrates the exclusionary effects of Latin American pigmentocracies.⁶

* Professor of Law, Fordham University School of Law (THernandez@law.fordham.edu).

1. MARGARITA SÁNCHEZ AND MAURICE BRYAN, PERSONS OF AFRICAN DESCENT, DISCRIMINATION AND ECONOMIC EXCLUSION IN LATIN AMERICA 3–4, tbl.1 (2003), available at <http://www.minorityrights.org/933/macro-studies/afrodescendants-discrimination-and-economic-exclusion-in-latin-america.html>.

2. EMORY UNIVERSITY, TRANS-ATLANTIC SLAVE TRADE DATABASE, <http://www.slavevoyages.org/tast/index.faces> (last visited July 18, 2015).

3. Juliet Hooker, *Afro-Descendant Struggles for Collective Rights in Latin America: Between Race and Culture*, 10 SOULS 279, 281 (2008).

4. GUSTAVO MÁRQUEZ ET AL., OUTSIDERS? THE CHANGING PATTERNS OF EXCLUSION IN LATIN AMERICA AND THE CARIBBEAN 15–17 (2007).

5. TANYA KATERÍ HERNÁNDEZ, RACIAL SUBORDINATION IN LATIN AMERICA: THE ROLE OF THE STATE, CUSTOMARY LAW, AND THE NEW CIVIL RIGHTS RESPONSE 2 (2013).

6. The term “pigmentocracy” was coined by Chilean anthropologist Alejandro Lipschutz to refer to the ethnic and color-based hierarchies of Latin America. Specifically, a pigmentocracy is a hierarchy based upon a color continuum that can also appear as an ethnoracial hierarchy with Whites

Princeton University's Project on Ethnicity and Race in Latin America (PERLA) surveyed four large Latin American countries (Brazil, Columbia, Mexico, and Peru), which together represent about sixty-five percent of Latin America's population along with many of its indigenous and Afro-descended peoples.⁷ PERLA's central conclusion is that skin color is a central axis of social stratification.⁸ Particularly noteworthy was PERLA's ability to study skin color inequality in depth by not only using the traditional survey method of direct questions about racial attitudes but also using a skin color palette (i.e. a chart of skin color gradations) for interviewers to record each respondent's skin shade.⁹ The color palette allowed researchers to statistically document the salience of skin color and its effect on the study's results. The use of a color palette may strike some people as an outrageous reification of skin color differences, but the study persuasively shows that race and ethnicity are not simply a matter of identity or consciousness.¹⁰ Rather, race and ethnicity also involve the gaze of the "other" in ways that indicate skin color measures capture racial inequalities that solitary racial categories often miss. This is because racial fluidity in Latin America is based upon the premise that racial classifications are determined more closely by how one phenotypically appears to belong to one race rather than strictly by one's ancestors.¹¹ For instance, before a racial designation of Black or "*Negro*" is deemed appropriate, custom dictates an informal visual assessment of an individual's hair texture, nose width, thickness of lips, and degree of dark pigmentation for consistency with what is stereotypically viewed as a Black person.¹² Accordingly, individuals with identical racial heritage can be identified socially or informally by distinct racial designations based on their phenotype.

To a certain extent, Latin American racial category practices also permit economic and social status to mediate the determination of racial

on the top, mestizos/mulattoes in the middle and Black and indigenous people at the bottom. ALEJANDRO LIPSCHUTZ, *INDOAMERICANISMO Y EL PROBLEMA RACIAL EN LAS AMERICAS* 254 (1944).

7. EDWARD TELLES, *PIGMENTOCRACIES: ETHNICITY, RACE AND COLOR IN LATIN AMERICA* 5 (2014).

8. *Id.* at 3.

9. *Id.* at 11–13. "We thus created a color palette, which interviewers used to rate the facial skin tone of respondents. Thus we created a variable denoting skin color as observed by the interviewer using an actual color palette; that allowed us to reasonably fix skin tone We also trained the interviewers in all four countries using a uniform training manual." *Id.* at 11–12.

10. *Id.* at 10.

11. See MARVIN HARRIS, *PATTERNS OF RACE IN THE AMERICAS* 57 (1964).

12. *Id.* at 57–58 (detailing anthropological accounting of at least 40 different racial terms to identify people with some African ancestry depending on color and phenotype variations).

classification. As a result, dark-skinned Afro-descendants with higher socioeconomic standing have more leeway in selecting a racial classification, which invokes greater Whiteness than more impoverished individuals with the same skin-color.¹³ The interplay between social class and racial classification is rooted in the Brazilian “*branqueamento*” (and Latin American/Caribbean “*blanqueamiento*”) White ideal that continues to be central to Brazilian and Latin American/Caribbean race ideology.¹⁴ “*Branqueamento*,” which means “Whitening,” refers to both the aspiration and possibility of transforming one’s social status by approaching Whiteness. An individual can become socially lighter by marrying a lighter-skinned partner or by becoming wealthy or famous. For instance, it is consistently alleged that the dark-skinned soccer icon from Brazil, Pelé, successfully deployed the *branqueamento* ideology when he had his birth certificate amended to reflect a White racial classification after achieving world fame.¹⁵

In concert with the *branqueamento* approach to racial identification, the Latin American/Caribbean race model advances the cultural practice known as “*mestiçagem*,” which asserts that race mixture has made racial identification a very indeterminate and unnecessary practice.¹⁶ In turn, racial mixture is rhetorically idealized and promoted as the national norm. However, the national representation of racial mixture that is preferred is closer to light rather than to dark, and individuals are overtly discouraged from identifying along racial lines in order to maintain the national myth of racial democracy.¹⁷

13. See Peggy A. Lovell, *Race, Gender, and Development in Brazil*, 3 *LATIN AM. RES. REV.* 7, 13 (1994).

14. See Edith Piza, *Branco No Brasil? Ninguém Sabe, Ninguém Viu . . .*, in *TIRANDO A MASCARA: ENSAIOS SOBRE O RACISMO NO BRASIL* 97, 103 (Antonio Sergio Alfredo Guimaraes & Lynn Huntley eds., 2000) (discussing the whitening ideal in Brazil). See also Arlene Torres & Norman E. Whitten, Jr., *To Forge the Future in the Fires of the Past: An Interpretive Essay on Racism, Domination, Resistance, and Liberation*, *Introduction to BLACKNESS IN LATIN AMERICA AND THE CARIBBEAN* 3, 8–9 (1998) (“‘Blanqueamiento’ [in Latin America and the Caribbean] refers to the processes of becoming increasingly acceptable to those classified and self-identified as ‘White.’ This is an ethnic movement—contaminous with socioeconomic advancement governed by the ideology of development . . .”).

15. See Telephone Interview with Anani Dzidzienyo, Professor of Afro-Brazilian Studies, Brown University, Africana Studies Department and Portuguese & Brazilian Studies Department (Feb. 20, 2002) (explaining that Brazilians so frequently set forth Pelé as the proof that “money Whitens” that it is also thought that Pelé altered his official racial classification on his identity documents).

16. See Torres & Whitten, *supra* note 14, at 7–8.

17. See Rebecca Reichaman, *Introduction in RACE IN CONTEMPORARY BRAZIL: FROM INDIFFERENCE TO INEQUALITY* 1, 2–7 (Rebecca Reichmann ed., 1999) (describing the Brazilian racial democracy myth that denies the existence of racism and stifles racial debates and mobilization).

In those Latin American countries, such as Brazil, Cuba, Colombia, Panama, Venezuela, and Nicaragua, where sizable communities of Blacks reside¹⁸ and where Whites are a numerical minority, a favored light skin class called “Mulatto”¹⁹ has long been recognized as distinct from the subordinate dark-skin population.²⁰ The late historian Carl Degler termed this phenomenon as the “mulatto escape hatch,” which he defined as the “recognition of a special place for mixed bloods.”²¹ Mulattoes are accorded greater favors than Blacks, but fewer privileges than the numerical minority of empowered Whites: “The top jobs in business, politics and academia are held by those with light skin Studies show that Blacks are poorer, less educated and less respected than Whites and Mulattoes.”²² This is facilitated by employment practices of asking for photographs with resumes and posting job announcements where “good appearance” is an understood code for light appearance, which is often included as a job requirement. In turn, the greater opportunities available

18. This is in contrast to those Latin American countries, such as Mexico, Peru, and Ecuador, where indigenous persons are a majority of the population of color and persons of African ancestry are fewer in number. Yet, it should also be noted that the Black minorities in such countries are also denigrated. See LESLIE B. ROUT, JR., *THE AFRICAN EXPERIENCE IN SPANISH AMERICA: 1502 TO THE PRESENT DAY 185–226* (1977) (examining the Black experience in Argentina, Uruguay, Paraguay, Chile, Bolivia, Peru, and Ecuador); Calvin Sims, “*For Blacks in Peru, There’s No Room at the Top*,” N.Y. TIMES, Aug. 17, 1996, at A1, available at LEXIS, News Library, Nyt File (describing Peruvian Blacks’ discontent with their menial jobs).

19. Although the use of the word “Mulatto” to describe mixed-race persons has a derogative etymology, it is used in this Article to reflect accurately the terminology used for mixed-race persons in Latin America and in the United States during certain historical periods to be discussed herein. See JACK D. FORBES, *BLACK AFRICANS AND NATIVE AMERICANS 131–50* (1988) (explaining that the word “Mulatto” became equivalent to the word “hybrid” in the sixteenth century and that “Mulatto” historically implied such traits as immorality, inferior physical status, and subservience commonly associated with mules as laboring animals).

20. Although the Mulatto racial class is distinct in much of Latin America, most scholarship has concentrated on the case example of Brazil, which has the largest Black population outside of the African continent. Sabrina Gledhill, *The Latin Model of Race Relations*, in CARLOS MOORE, CASTRO, *THE BLACKS, AND AFRICA* app. 1, at 355 (1988) (explaining that the Latin American model of race relations is structured upon recognition of a Mulatto class and the premise that miscegenation will solve racial problems); cf. Lovell, *supra* note 13, at 7 (“Brazil is home to the world’s largest population of African descent except for Nigeria.”); David L. Marcus, *Melting Pot Coming To A Boil: Brazilians Blur Color Lines, but Racism Stands out Clearly*, DALLAS MORNING NEWS, Jan. 16, 1994, at 1A, available at 1994 WL 6103958 (reporting that about half of Brazil’s population is comprised of people with African blood).

21. CARL N. DEGLER, *NEITHER BLACK NOR WHITE: SLAVERY AND RACE RELATIONS IN BRAZIL AND THE UNITED STATES* 103, 245 (1971) (discussing the gradations of color and the higher ranking of value attached to those closest to White in the creation of a Mulatto Escape Hatch).

22. See generally Marcus, *supra* note 20.

to Mulattoes encourage them to dissociate themselves from their African ancestry.²³

This dynamic is not a social artifact divorced from the role of law. Light skin preferences were historically manifested in actual government policy in ways that have powerfully shaped the structure and maintenance of race-based hierarchies informed by skin-color. A useful case study is that of Brazil—the Latin American nation with the greatest number of Afro-descendants. In Brazil, the government used its immigration laws to exclude Afro-descended workers from the formal labor market and thereby insulate light-skin privilege. The first step in the Brazilian national Whitening campaign was legislating restrictive immigration laws designed, first, to encourage European immigration and, second, to prohibit or severely discourage the immigration of peoples of African, Asian, and Indigenous ancestry. As early as the 1850s, with the growing international pressure to disengage from the slave trade and abolish slavery completely, the legislature took decisive steps to encourage European immigration.²⁴ For example, a statute passed that year provided generous land grants to European immigrants.²⁵ That same statute denied land title to residents of *quilombos*—(land that had been occupied by the descendants of runaway slaves for generations). The provincial government of São Paulo then heavily funded the Society for the Promotion of Immigration.²⁶

After the final emancipation of slaves in 1888, and the dissolution of the Brazilian Empire in 1889, the legal preference for White immigrants would become more overt because of the distaste Brazilian elites had for the vision of Afro-descended peoples as paid laborers.²⁷ Indeed, in official gatherings of the slaveholders anticipating the end of slavery, meeting

23. *See id.* (“[D]ark-skinned Brazilians are reluctant to call themselves Black. To [sic.] many Blacks the goal is to be ‘promoted’ out of being Black, to join the mainstream.”); *cf.* Anthony W. Marx, *Contested Citizenship: The Dynamics of Racial Identity and Social Movements*, reprinted in Supp. 3 INTERNATIONAL REVIEW OF SOC. HISTORY, CITIZENSHIP, IDENTITY, AND SOCIAL HISTORY 159, 177–79 (Charles Tilly ed., 1996) (maintaining that the Brazilian state’s propagation of an image of racially inclusive citizenship hinders racial identity formation for social mobilization despite the existence of inequality).

24. KIM D. BUTLER, FREEDOMS GIVEN, FREEDOMS WON: AFRO-BRAZILIANS IN POST-ABOLITION SÃO PAULO AND SALVADOR 26–27 (1998).

25. EUNICE APARECIDA DE JESUS PRUDENTE, PRECONCEITO RACIAL E IGUALDADE JURIDICA NO BRASIL 129–31 (1989).

26. Thomas P. Holloway, *Immigration and Abolition: The Transition from Slave to Free Labor, in the São Paulo Coffee Zone*, in ESSAYS CONCERNING THE SOCIOECONOMIC HISTORY OF BRAZIL AND PORTUGUESE INDIA 163 (Dauril Alden and Warren Dean eds., 1977) (2013).

27. CECILIA MARIA MARINHO DE AZEVEDO, ONDA NEGRA, MEDO BRANCO: O NEGRO NO IMAGINÁRIO DAS ELITES SÉCULO XIX 252 (1987).

minutes recorded the preference for White immigrants over the “indolence” of the native population then laboring in servitude as a “decrepit race.”²⁸ Understanding the preference for European immigrants as racially motivated is especially clear when one observes that the Europeans recruited were not skilled laborers, and many were illiterate rural dwellers.²⁹ Moreover, during the post-emancipation period, when European immigrants were being sought, the wage labor positions available were for low-skilled laborers without education or professional training that could have been easily filled by the newly emancipated Brazilians had they not been viewed as racially “unfit” for wage labor.³⁰ Indeed, newspaper classified advertisements explicitly stated, “WHITES preferred.”³¹ These racialized attitudes about the ability to work in wage labor were then reflected in regional legislative assemblies, such as that of São Paulo in 1888 where the desirability of White foreign workers was discussed along with the proposal to provide land grants to encourage their immigration.³²

Accordingly, one of the first enactments of the new republic was Immigration Decree No. 528 promulgated on June 28, 1890, by the provisional president, Manoel Deodoro da Foneseca.³³ His decree excluded all members of the indigenous populations of Asia and Africa from immigrating to Brazil. This was at a time when overall immigration was at its height and immigrants from other continents like Europe were allowed entry without a fee. In 1921, the Brazilian Congress passed a similar law, which specifically prohibited Black immigrants from entering Brazil.³⁴ When Blacks sought to do so, they were simply denied visas.³⁵ This preceded the U.S. National Origins Quota Immigration Act of 1924, which explicitly based U.S. immigration on racial and ethnic origin. However, one of the decree provisions was relaxed two years later, when a statute passed in October 1892 permitted the entry of Chinese and

28. CONGRESSO AGRÍCOLA DO RIO DE JANEIRO 155–59 (1878).

29. PETRÔNIO DOMINGUES, *UMA HISTÓRIA NÃO CONTADA: NEGRO, RACISMO, E BRANQUEAMENTO EM SÃO PAULO PÓS-ABOLIÇÃO* 89–91 (2004).

30. LÚCIO KOWARICK, *TRABALHO E VADIAGEM: A ORIGEM DO TRABALHO LIVRE NO BRASIL* 118 (1987).

31. DOMINGUES, *supra* note 29, at 109–10.

32. Relatório apresentado à Assembléia Legislativa Provincial de São Paulo pelo presidente da Província Exmo. Sr. Dr. Francisco de Paula Rodrigues Alves, no dia 10 de janeiro de 1888 (São Paulo: Tipografia a vapor de Jorge Seckler & Comp., 1888), at 32.

33. PRUDENTE, *supra* note 25, at 151–52.

34. Decree No. 4247, art. 5, de 6 janeiro 1921, *Diário Oficial Da União* [D.O.U.] (Braz.).

35. TERESA A. MEADE, “CIVILIZING” RIO: REFORM AND RESISTANCE IN A BRAZILIAN CITY, 1889–1930, at 31 (1996).

Japanese immigrants.³⁶ Large waves of immigration in Brazil coincided with the abolition of slavery in 1888, making European immigration a national policy by the late nineteenth century with migrant numbers only exceeded by Argentina.³⁷ In fact, in 1889 Brazil enacted a law to grant automatic naturalization to the immigrants who migrated from Europe.³⁸

Furthermore, the government expended funds to encourage European immigration with the payment of transportation costs. The Brazilian national government paid these European transportation costs to Brazil from 1851 to 1909 and then by the São Paulo province (and later state) from 1881 to 1927.³⁹ São Paulo administrative law also provided for state funded housing where food and hospital care would be supplied,⁴⁰ along with a cash grant that varied by the age of the European immigrant.⁴¹ São Paulo state-funded immigration expenditures also included pro-immigration lobbying in European countries, farming tools, and the waiver of military service for the children of immigrants.⁴² In 1888, just months before the final emancipation of the slaves, the São Paulo Provincial Assembly authorized the government to allocate this plethora of immigration subsidies to a minimum of 100,000 immigrants.⁴³ The dedication of governmental funds to the Whitening project of European immigration was so significant that by 1895 immigration subsidies took up 14.5 percent of São Paulo's annual budget, 10 percent of its 1896 budget, and 10.8 percent of its 1901 budget.⁴⁴

While the floodgates were opened for European immigrants, the continued ban on immigrants from the continent of Africa was broadly interpreted so as to exclude U.S. tourists of African descent who had never set foot in Africa let alone had citizenship status in a country on the African continent. Furthermore, the Brazilian government continued to exclude U.S. citizens of African descent despite its flagrant breach of the

36. PRUDENTE, *supra* note 25, at 153–54.

37. Mary Elizabeth Bletz, *Whiteness of a Darker Color: Narratives of Immigration and Culturation in Brazil and Argentina, 1890–1930*, at 22–23, 30 (2003) (unpublished Ph.D. dissertation, New York University) (on file with the author).

38. *Id.* at 157–58.

39. Regulamento para o Serviço de Imigração da Província de São Paulo (São Paulo: Tipografia do Correio Paulistano, 1887), art. 17, at 7.

40. *Id.*

41. *Id.*

42. DOMINGUES, *supra* note 29, at 69.

43. TELÉFORO DE SOUSA LOBO, SÃO PAULO NA FEDERAÇÃO: PROBLEMAS SOCIAIS, QUESTÕES RACIAS, POLÍTICA IMIGRANTISTA E ESTUDOS ECONÔMICOS 219 (1924).

44. *Boletim da Diretoria de Terras, Colonização e Imigração*, no. 1, São Paulo, 1941, at 6–22.

1828 Peace, Friendship, Trade, and Navigation Agreement between Brazil and the United States. This treaty stated:

The citizens and subjects of both countries may travel throughout the other, with right to reside and do business. . . . There will be a perfect, fixed, and inviolable peace and friendship between [the United States and Brazil] in all their possessions and territories . . . without distinction of people and places.⁴⁵

The racial restriction on Brazilian immigration law continued with the government of Getúlio Vargas (1930–45). In 1934, his new constitution would effectively limit immigration to Whites.⁴⁶ This was done by capping the annual number of immigrants to 2 percent of those of each national origin who had arrived in Brazil within the last fifty years. Because Africans were not allowed to immigrate to Brazil in the prior fifty years, the 2 percent annual quota effectively prohibited all African immigration without ever having to be racially specific in its terminology.⁴⁷ The Brazilian Constitution also went on to effectively prohibit settlements by Blacks or Asians regardless of their country of origin, by forbidding a concentration of immigrants anywhere in the country that would conflict with the law to regulate the selection of immigrants and their assimilation.⁴⁸ This measure was presumably designed to curtail their immigration from other Latin American nations.⁴⁹ Provisions in the Brazilian Constitution designed to allow the government to prevent non-White immigrants from entering the country were reenacted in the 1946 Constitution and in a 1969 decree by the military government.⁵⁰

With the overt racialization of the immigration policy, Brazilian legislators and elite stakeholders were quite explicit about the desire to use immigration to eradicate Blacks. Like Spanish America's *blanqueamiento* Whitening projects, Brazilian White immigration was rooted in eugenics discourse that reinforced preexisting Brazilian beliefs about the inferiority

45. Jeffrey Lesser, *Immigration and Shifting Concepts of National Identity in Brazil during the Vargas Era*, 31 LUSO-BRAZ. REV. 23–44 (1994).

46. PRUDENTE, *supra* note 25, at 155–56.

47. Constituição da República Dos Estados Unidos do Brasil de 16 julho de 1934, art. 121, para. 6.

48. *Id.* para. 7.

49. Prudente, *supra* note 25, at 155–56.

50. Constituição da República Dos Estados Unidos do Brasil de 18 setembro de 1946, art. 162.

of Africans and their eventual extinction.⁵¹ For instance, in 1879, parliament member Joaquim Nabuco stated:

[A]s the Black man and the White live together in the same society for hundreds of years, the former's blood will tend to be absorbed into that of the latter, or it will disappear altogether as the one race gives up the field to the other, better prepared for the struggle of life.⁵²

The Brazilian *branqueamento* immigration project was so successful that in less than a century of subsidized European immigration, Brazil imported more free White laborers than Black slaves imported in three centuries of the slave trade (4,793,981 immigrants arrived from 1851 to 1937 compared to the 3.6 million slaves forcibly imported).⁵³ In São Paulo, where European immigration was the most intense, the population of African descent (*Mulato* and *Negro* counted together) decreased from 47 percent in both 1811 and 1836 to 16 percent by 1928.⁵⁴

While Blacks were not completely eradicated from the entire Brazilian population, the *branqueamento* immigration policy was successful to the extent that newly freed slaves and their descendants were purposely displaced from the labor market by the importation of European immigrants. No support or social guarantees of any kind were provided to former slaves to help them enter the free labor system after their release. It is true that the northeastern state of Bahia did enact a color-blind distributive land law in 1897 that could theoretically enable post-abolition Afro-Brazilians and others to garner legal title to small parcels of farmland, but freed slaves encountered many obstacles that hindered their ability to obtain such titles in great numbers.⁵⁵

Furthermore, Afro-Brazilians were systematically excluded from the labor market. For instance, the post-emancipation naval services were well known for excluding Afro-Brazilians from the rank of officer to such an extent that the popular press commonly referred to Whiteness as a prerequisite. The newspapers from 1910 to 1923 are replete with accounts

51. Sales Augusto dos Santos & Laurence Hallewell, *Historical Roots of the 'Whitening' of Brazil*, 29 *LATIN AM. PERSPECTIVES* 75 (2002).

52. Joaquim Nabuco, *Discursos Parlamentares* (Brasília: Câmara dos Deputados, Centro de Documentação e Informação, Coordenação de Publicações, 1983), at 82.

53. Dos Santos & Hallewell, *supra* note 51, at 70.

54. Samuel Lowrie, *O elemento negro na população de São Paulo*, 48 *Revista do Arquivo Municipal* 12 (1938).

55. Mary Ann Mahony, *Afro-Brazilians, Land Reform, and the Question of Social Mobility in Southern Bahia, 1880–1920*, in *AFRO-BRAZILIAN CULTURE AND POLITICS: BAHIA, 1790'S TO 1990'S*, 90–116 (Hendrik Kraay ed., 1998).

of the military service preference for candidates who were “as White as possible.”⁵⁶

Similarly, in a 1928 São Paulo legislative session, which discussed the eventual 1928 enactment of a law to lift the prohibition against the entry of Afro-Brazilians to the local police force, it was noted that Afro-Brazilians were prohibited from employment as prison guards and military police.⁵⁷ And even with the 1928 legally mandated prohibition against the exclusion of Afro-Brazilians from the local police force, Whiteness was still included as an official requirement for applicants in solicitation documents.⁵⁸ Afro-Brazilians were only nominally able to enter the São Paulo police force after 1932.

In an 1894 listing of occupations after abolition in São Paulo, where more than 50 percent of the immigrants settled, foreigners represented 82.5 percent of workers in occupations essential to rapid urban expansion and industrialization (e.g. manufacturing, crafts, transport, commerce) while Blacks were relegated to domestic sphere employment. In São Paulo alone, 71.2 percent of the workers at that time were foreigners.⁵⁹ Furthermore, in rural locations able to attract sufficient immigrant workers, these workers too were preferred to emancipated slaves resulting in their displacement as free laborers. Indeed, the Minister of Agriculture Antonio Prado proposed measures to promote the establishment of immigrants in agriculture.⁶⁰ The preference for White immigrants is also demonstrated in Sam Adamo’s study of Rio de Janeiro employment practices of the 1930s.⁶¹ Adamo found that lower-skilled White immigrants were preferred to better-educated Afro-descendants even though the Afro-descendants were typically paid less.

56. Álvaro Pereirado Nascimento, *Um Reduto Negro: Cor e Cidadania na Armada (1870–1910)*, in *QUASE-CIDADÃO: HISTÓRIAS E ANTROPOLOGIAS DA PÓS-EMANCIPAÇÃO NO BRASIL* 283–311 (Olívia Maria Gomes da Cunha and Flávio dos Santos Gomes eds., 2007).

57. *Anais da Câmara dos Deputados de São Paulo*, vol. 1, 1928, 13 Sessão Ordinária em 31 julho, at 351.

58. DOMINGUES, *supra* note 29, at 137.

59. George Reid Andrews, *Black and White Workers: São Paulo, Brazil, 1888–1928*, 68 *HISPANIC AM. HISTORICAL REV.* 491–524 (Aug. 1988).

60. FLORESTAN FERNANDES, *THE NEGRO IN BRAZILIAN SOCIETY* 19 (Jacqueline D. Skiles, A. Brunel, and Arthur Rothwell trans., 1971).

61. Sam C. Adamo, *The Broken Promise: Race, Health, and Justice in Rio de Janeiro, 1890–1940*, 62–80 (1983) (unpublished Ph.D. dissertation, University of New Mexico) (on file with author).

CONCLUSION

In short, the examination of historical instances of state sponsored Whitening in Brazil demonstrate that the Brazilian government was just as involved in regulating race as was that of the United States during Jim Crow segregation. Furthermore Brazil was not alone in its governmental attempts to Whiten populations in Latin America.⁶² The construction of skin-shade obsessed citizens in Latin America was not an instinctive process—it entailed the direct actions of nation-states. And as such, the contemporary Afro-descendant demand for remediation of the legacy of slavery and racial exclusion within its pigmentocracies⁶³ can find additional support in referencing the troubled role of the state in the legal regulation of race that I have just briefly described here and elaborate upon more in my book “Racial Subordination in Latin America.”⁶⁴

62. *See generally* HERNANDEZ, *supra* note 5.

63. *See supra* note 6 and accompanying text.

64. *Id.*