



História, Ciências, Saúde-Manguinhos

ISSN: 0104-5970

ISSN: 1678-4758

Casa de Oswaldo Cruz, Fundação Oswaldo Cruz

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O rábula, o médico e o anseçada suicida: Evaristo de  
Moraes, Nina Rodrigues e o atentado que abalou a República

História, Ciências, Saúde-Manguinhos, vol. 25, núm. 2, 2018, Abril-Junho, pp. 371-389

Casa de Oswaldo Cruz, Fundação Oswaldo Cruz

DOI: <https://doi.org/10.1590/S0104-59702018000200005>

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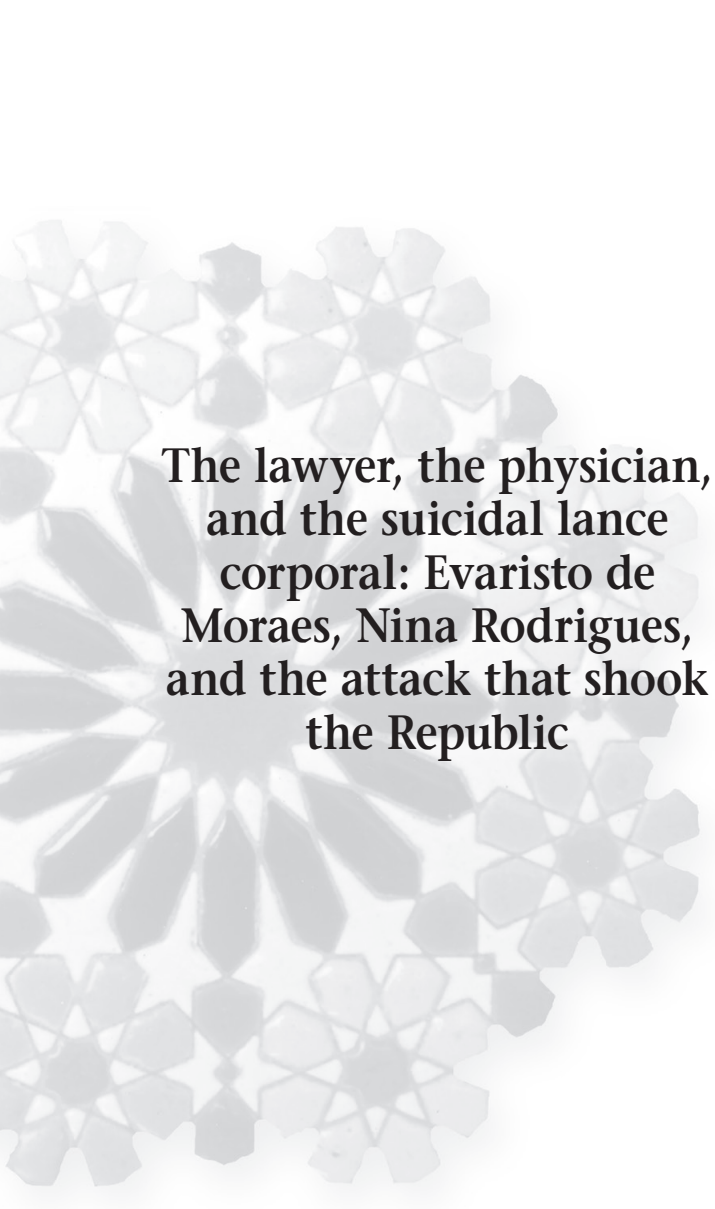
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# The lawyer, the physician, and the suicidal lance corporal: Evaristo de Moraes, Nina Rodrigues, and the attack that shook the Republic

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Received on 3 Nov. 2016.

Approved on 21 Jul. 2017.

Translated by Rebecca Atkinson.

<http://dx.doi.org/10.1590/S0104-59702018000200005>

GAHYVA, Helga Cunha. The lawyer, the physician, and the suicidal lance corporal: Evaristo de Moraes, Nina Rodrigues, and the attack that shook the Republic. *História, Ciências, Saúde – Manguinhos*, Rio de Janeiro, v.25, n.2, abr.-jun. 2018. Available at: <http://www.scielo.br/hcsm>.

## Abstract

The lawyer Evaristo de Moraes and the physician Nina Rodrigues both investigated the criminal behavior of Marcelino Bispo, the perpetrator of an attack against President Prudente de Moraes on November 5, 1897, both highlighting the same issue: criminal responsibility. Speaking out in favor of the precepts of criminal anthropology, they shared the conviction that Bispo's criminal responsibility should be attenuated in virtue of his suggestible nature. Despite the similarities, could the specific ways they each used the contributions of criminology give us the chance to identify different forms of appropriation of a single intellectual framework? The aim of this study therefore consists of analyzing where the arguments in their respective analyses converged and diverged.

Keywords: criminal anthropology; First Republic; racialism; Evaristo de Moraes (1871-1939); Nina Rodrigues (1862-1906)



## The crime

It has been said that in 1897 “the most fashionable idea was that of political assassination” (Carvalho cited in Moraes, 1989a, p.107).<sup>1</sup> This is not such an overstatement: in fact, the turbulent events that marked the administration of Prudente de Moraes, the first civil president of the burgeoning republic of Brazil, culminated, on November 5 of that year, in an attempt to assassinate the head of the executive branch of government (Carone, 1971; Penna, 1998). While the attack may have failed in its primary goal, it did result in fatal injuries being inflicted on the minister of war, Marshall Carlos Bittencourt.

The authorities and populace had gathered at Pharoux wharf, now Praça XV square, to welcome home the victorious troops from the War of Canudos. The president and minister went onto the packet Espírito Santo to personally greet General João da Silva Barbosa, who had commanded the final expedition to the settlement. On their return, they crossed the bridge that led from the war arsenal to the courtyard where the crowds had assembled. There, they were suddenly attacked by “a small brown-skinned man, aged 22, clean-shaven, son of the state of Alagoas” (Atentado, 6 nov.1897) called Marcelino Bispo de Melo, a lance corporal in the 3rd company of the 10th infantry battalion, who pulled out a pistol and fired at the president. The weapon jammed, giving Coronel Luiz Mendes de Moraes and Marshall Bittencourt time to react. The colonel dealt Bispo a blow to the head, but it was not strong enough to prevent him from fatally wounding Bittencourt with a knife.

These events provide the factual basis for this article. The perpetrator, Marcelino Bispo, attracted the attention of two well-known personages in the First Republic (or early period of the republic): a physician called Raimundo Nina Rodrigues<sup>2</sup> and a lawyer, Evaristo de Moraes, whose courtroom work was already earning him the acclaim that went on to make him “the greatest criminological mind the country has ever seen” (Moraes, 1989c, p.230). In a period of just two months (p.108), the two men published analyses about Bispo, pointing to a common issue: criminal responsibility. Moraes became involved in the case as Bispo’s defense lawyer, although his work was curtailed when the defendant took his own life just over three months after the crime. For Nina Rodrigues (1957, p.28), the case study was just one more element in his fight against the “spiritualist metaphysics” underlying the 1890 Penal Code, of which he had been a vocal critic since his inaugural work, published in 1894, *As raças humanas e a responsabilidade penal no Brasil* (*Human races and criminal responsibility in Brazil*) (Rodrigues, 1957).

In Moraes’s 1922 *Reminiscências de um rábula criminalista* (*Memoirs of a criminal lawyer*) – a book in which, as the title suggests, he recorded memories of his time as a lawyer – he assured readers that the study by Rodrigues “adopted precisely the same orientation, taking advantage of the same elements from the police inquiry and drawing on the same scientific data” (Moraes, 1989d, p.108). Both called for observance of the postulates of the school of criminal anthropology<sup>3</sup> – which, unlike the classical school,<sup>4</sup> argued against the concept of free will, in virtue of the many kinds of determinism that guided human behavior, especially criminal behavior (Schwarz, 1993, p.166). This affinity is illustrated, for instance, by the fact that many of the bibliographic sources they featured were the same.<sup>5</sup> As we will see later, Nina Rodrigues and Evaristo de Moraes also shared the conviction that Marcelino

Bispo's criminal responsibility should be attenuated in view of his suggestible nature. Yet despite their clear similarities, could the specific ways they each used the contributions of criminology give us the chance to identify different forms of appropriation of a single intellectual framework? While Rodrigues's support of racist beliefs – so dear to the prevailing paradigm of scientism – is well known, did Moraes, himself a mulatto, adopt and utilize the theories of heredity in the same way as the physician? Mariza Corrêa (fev. 2006, p.136) assures us that “the Nina Rodrigues who was a specialist in the racial issue came into being many years later, after the selective publication of his works by his self-proclaimed followers.” The importance later attributed to the subject of race in his work could have obscured his fundamental concern with public health and downplayed his consideration of other factors that, together with race, contributed to the identification of criminal behavior. In this sense, what could the causal links established in “The Regicide Marcelino Bispo” tell us about Rodrigues's (2006a) theoretical choices? Notwithstanding his almost complete acceptance of the prevailing form of scientism (p.137), could there be any alternative perspectives in this study that might mitigate the impact of the racist explanations given in his work? Or else, would his “psychological medical analysis” (p.115) of the lance corporal's suicide corroborate the supremacy of hereditary factors in investigations of criminal motives, illustrating how, in Brazil, criminal anthropology outweighed sociological approaches (Alvarez, 2002, p.696)?

Guided by these questions, the next two sections of this article are devoted to analyzing the studies by Moraes and Rodrigues, respectively. In the hope of shedding light on the abovementioned questions, the following section will compare the two narratives.

Methodologically speaking, this investigation proposes to build knowledge from a particular scale of observation. As such, it is inspired by the microhistorical approach (Ginzburg, 1989; Revel, 1998), where by “varying the objective does not mean simply augmenting (or diminishing) the size of the object in view, but modifying its form and what it reveals” (Revel, 1998, p.20). However, it is not a matter of offsetting the particular against the general, because reducing the scale is perceived as a “particular modulation of global history” (p.28). Rather, the idea is to reveal how Moraes's and Rodrigues's analyses of that specific event can help clarify and at the same time problematize the ways the paradigm of criminology was circulated and appropriated in the first decades of the Brazilian republic.

## The lawyer

Evaristo de Moraes was assigned to defend Marcelino Bispo in the council of war. In his memoirs, he said that in accepting the task he had been “seduced by the problem of criminal psychology” (Moraes, 1989a, p.108), which had recommended the case to him. It was from this perspective that he prepared the notes upon which to base his case in court. As mentioned earlier, the defendant's suicide meant this task was aborted. However, Moraes (1898, p.7) recognized in his defense statement a chance to fill the gap, in Brazil, “[of] these works of impartial criminological inquiry.” His “study of one of the best known causes at the end of this century” (p.7), he claimed, reproduced a practice that was common “in far more cultivated countries”<sup>6</sup> (p.5) of placating the “legitimate curiosity of the people”

about criminal proceedings without turning his back on the “composed observation of the facts” (p.7). It was therefore in response to this lack of scientific analyses of criminal documents that the lawyer turned his notes into the sixty-page volume named after his erstwhile future client: *Marcelino Bispo: estudo de psicologia criminal* (*Marcelino Bispo: a study of criminal psychology*) (Moraes, 1898).

Moraes’s arguments are divided into four parts. First, he evaluates the influence of hypnotic suggestion on criminal behavior. In the next two parts he analyzes separately the effects of collective and individual suggestion, which were supposed to have guided Marcelino Bispo’s conduct. In the last chapter – certainly missing from the original version – he presents his suicide as the logical consequence of the interpretation adopted in the other three parts: the fate of the lance corporal, the “ultimate expression of his moral weakness” (Moraes, 1898, p.26), was the scientific proof of his hypotheses. Now let us look more closely at how Moraes pieced together his narrative.

His main source was the police report on the investigation of the attack signed by the assistant chief of police, Vicente Saraiva de Carvalho Neiva, on January 10, 1898 (*Atentado...*, 12 jan. 1898). The inquiry confirmed the suspicions of political conspiracy that had emerged soon after the crime: Marcelino Bispo’s action had, from the outset, been interpreted as the “product of a conspiracy,” making any alternative hypotheses that attributed his actions “solely to the fanaticism of a madman” (*O atentado*, 11 nov. 1897) untenable. Not surprisingly, the day after the attack, even an opposition newspaper like *O Paiz* did not fail to wonder on its pages:

Are we before an imprudent individual who acted on prior intent in a moment of fervor, or is this killer the blunt instrument of unscrupulous political activists, embittered demagogues, who, in their plots for destruction, turned even to the violence of attacking the existence of the President of the Republic? (*O atentado*, 6 nov. 1897, p.1).<sup>7</sup>

If Marcelino Bispo had been an “instrument of political exploitation” (*Atentado...*, 12 jan. 1898), it was Moraes’s strategy to combine the elements of direct and indirect suggestion behind the crime – described in the police report – with his knowledge of criminal psychology in a bid to “attenuate, to a large extent, the responsibility of the fanatical lance corporal” (Moraes, 1989a, p.108).

To prove that the assassin’s act had been induced by suggestion, the lawyer first identified the influences in Brazilian society, or the role of indirect suggestion. His goal in so doing was to describe the “political atmosphere in which the attack of November 5th became possible” (Moraes, 1989a, p.35).

An important event for his explanation was the naval uprising. As he argued, it represented a kind of turning point in the nation’s history: While we may have had “three bloodless revolutions” (Moraes, 1898, p.27), “we [then] witnessed the outbreak of brutality that we would not dare imagine slumbered in the Brazilian nature” (p.28). Moraes drew on the concept of “moral mimicry” devised by Scipio Sighele to explain how the nation’s character had been so transformed. If an individual’s instinct of self-preservation leads him to adapt to his social environment, the conflagrations between the

supporters of President Floriano Peixoto and those who took part in the mutiny taught “the people, seeing the scarlet examples of the massacres, to hold the life of others in contempt” (p.37-38).

The heightening of revolutionary passions outlived the official end of the uprising, becoming the “alarming seedbed of all our present-day sufferings” (Moraes, 1898, p.33). For Moraes, the exacerbation of feelings on all sides of the political divide had sparked a connection between the rebels from Canudos and the threat of the return to monarchic rule. In fact, the historiography of the period shows how, especially after the fateful expedition by Moreira César to Canudos, pro-Floriano newspapers were quick to denounce the monarchist plot they held was behind the actions of the followers of Antônio Conselheiro (Carone, 1971, p.152). Both Moraes’s work and the police report pointed the finger at these radical newspapers for fomenting a conspiratorial atmosphere, which came to a height with the assassination of Coronel Gentil de Castro, owner of pro-monarchy newspapers, at São Francisco Xavier station in Rio de Janeiro. One such newspaper was *A Cidade do Rio*. On March 8, 1897, the same day on which Castro was shot, the newspaper published a story about the “painful news of the disaster of Canudos,” telling its readers that though “the Republic tolerates its opponents’ propaganda,” the current situation called for it to leave the “orbit of tolerance” (Aos heróis, 8 mar. 1897).

The definitive defeat of Conselheiro and his followers, however, did nothing to assuage political fears. In an article exploring the circumstances surrounding the thirty days between the government’s successful defeat of the rebels in Canudos and the attempted assassination of President Prudente de Moraes, Lincoln de Abreu Penna (1998, p.28) revealed how, in this short space of time, “a panorama of tangible intolerance between the parties who one assumed had inherited the victory over Canudos” had taken shape.

Evaristo de Moraes concluded his exposition concerning the action of indirect suggestion on Marcelino Bispo by making reference to two other interrelated events whose roots he believed also lay in the rivalries between the supporters of Floriano Peixoto and the rebels. First, the Federal Republican Party (Partido Republicano Federal) had split in mid-1897. The reaction by the group led by Francisco Glicério<sup>8</sup> to Arthur Rios being reappointed speaker of the House (Carone, 1971, p.159-163) had clearly revealed the “discord between the radical intransigence of the party chief and the conciliatory tolerance of the Head of State” (Moraes, 1898, p.33). Secondly, there were discussions about the amnesty granted to members of the military uprising. The question had been putting strain on the government’s relationship with the opposition since 1895. In October of that year, Prudente de Moraes had negotiated a restrictive amnesty with Congress that allowed the rebels to rejoin the armed forces two years later (Carone, 1971, p.143). According to Moraes (1898, p.35), as the “fatal date” drew near, the climate of political intransigence had once again reared its head.

In the police report, the self-proclaimed heirs of Floriano Peixoto are painted in a sectarian light. According to the police chief, they believed they held “the sacred flame of the sanctuary outside of which, in their view, are the enemies of the Republic” (Atentado..., 12 jan. 1898). The rumors about the return of the military rebels had, it was held, induced the malcontents, “in the absence of legal means,” to embrace “the idea of

violence, which must have been so skillfully imbued in the spirit of Marcelino Bispo” (Moraes, 1898, p.35).

This, according to Evaristo de Moraes, explains the political circumstances that had guided the action of the lance corporal. He had not, however, been an “automaton” (Moraes, 1898, p.35). As such, it was not so much a matter of completely denying his responsibility, but of showing how the influence of society, through contagion, could be seen to attenuate it, such that he concluded his exposition on the influence of collective suggestion on the assassin’s behavior in these terms:

This means that the public spirit has become accustomed to the spectacle of sectarian revenge, that respect for liberty has disappeared, coinciding with disrespect for life, the latest manifestation of which was the sinister plot hatched in the Pacheco dispensary and of which the miserable Bispo was made an instrument (Moraes, 1898, p.40).

Yet aside from the mechanisms of indirect suggestion, the analysis of the defendant’s conduct called for an investigation of the effects of an “indisputable truth” (Moraes, 1898, p.41): the influence of one individual on another, or the action of direct suggestion.

In this, Sighele continued to be Moraes’s main source. The Italian had appropriated the concepts of incubus and succubus from medieval demonology to illustrate the phenomenon through which the former galvanized his prestige to bend the succubus, “weak and of limited strength, morally speaking” (Moraes, 1898, p.43), to his designs. In the case in point, there had been an association of two individuals, where the suggester of the criminal act, Diocleciano Mártir, had held absolute sway over the other, Marcelino Bispo, corrupting his personality.

To substantiate his hypothesis, Moraes once again turned to the police report. According to Vicente Neiva, the lance corporal’s initial silence about his motives indicated observance of “a pact of blood... taken in the name of something sacred” (Atentado..., 12 jan. 1898). Official suspicion turned to the honorary captain Diocleciano Mártir, director of *O Jacobino* newspaper, the warrant for whose arrest had been issued the day after the crime.<sup>9</sup> When Bispo finally broke his silence, on November 13, the authorities confirmed that the person who had been primarily responsible for the “slow suggestion” that had made “an honest and brave soldier into an assassin” had indeed been Mártir (Fagulhas, 27 jan. 1898).

In his deposition, Bispo had stated that, as a loyal reader of *O Jacobino*, he had, in August 1897, made direct contact with its director, Mártir. From this encounter, the relationship between the two men developed in a slow process of suggestion through which Mártir gradually became the “absolute lord of that spirit” (José Rodrigues Vellozo cited in Moraes, 1898, p.53), turning his admirer into a “powerful killing machine” (p.50).

Having settled on the hypothesis of dual suggestion, even Bispo’s suicide could not be explained by individual reasons. Despite being under the sway of political passions, his criminal act had been guided by outside influences. Valuing his shared loyalty to the memory of Floriano Peixoto, Mártir had, in a broader context of political radicalization, been capable of using his personal prestige over the lance corporal to make him the instrument of his own volition.



In this kind of suggestion, the consummation of the act is followed by a resumption of one's own will, which has until then been "put to sleep by external influence" (Moraes, 1898, p.60). If, as Moraes claims, Bispo "appears, in the light of criminal psychology, to be a perfect example of suggestion" (p.66), the return of his conscience was not accompanied by remorse, a sentiment that presupposes an awareness of responsibility, but "excruciating pain" (p.61), which prompted his suicide.

For the lawyer, the lance corporal's fortunes confirmed the hypothesis of the Italian school of anthropology that absence of remorse implied the refutation of free will. Thence his defense of diminished criminal responsibility for Bispo: he could not even feel guilty because, like Othello, he had been the victim of "perverse suggestion" from outside impulses (Moraes, 1898, p.66).

## The physician

Nina Rodrigues (2006a, p.111) began his study of the lance corporal's suicide by attributing his crime to an association of two that developed in the context of a "political sect." He then gave a detailed description of the components of this relationship: the incubus, Diocleciano Mártir, and the succubus, Marcelino Bispo.

He described the former as a "superior degenerate,"<sup>10</sup> stressing the sectarian feelings that induced him to act violently "against anyone who did not share his red-hot political opinions." He highlighted his work in the press, through which he had been capable of exploiting military agitation, turning pro-Floriano activists into an "intolerant sect" (Rodrigues, 2006a, p.112).

Mártir's influence over Bispo had begun, as noted above, even before they actually met. If, as Gabriel Tarde suggests, the content of a newspaper marks its readership "cerebrally" (Rodrigues, 2006a, p.119), it was primarily through his perusal of *O Jacobino* that the lance corporal had shaped his political convictions. Translating, in its own way, for "people of limited intellect" and "deficient education," the "most subversive and inflammatory doctrines" (p.112), the newspaper took an opposition stance that, Nina Rodrigues argued, made "the partisan press the whipping post where our gentlemen of state are exposed to public hatred" (p.126).

This "journalistic suggestion" (Rodrigues, 2006a, p.119) was compounded by physical proximity, after which "the story of Marcelino Bispo is that of the slow suggestive preparation for murder" (p.121). To prove his hypothesis, Rodrigues, like Moraes, drew on passages from the police inquiry he believed laid bare the process by which the lance corporal had been turned into Mártir's "moral captive" (p.113).

If Mártir could be described as a "vulgar sectarian criminal" (Rodrigues, 2006a, p.111), the medical and psychological analysis of Bispo demanded more precise investigations in order to prove that he exhibited the traits of both "modern regicides and criminal succubi" (p.111). This was a case, Rodrigues claimed, of "regicide by suggestion" (p.118), whose "ephemeral and passing mystical delirium" (p.118) had developed through an association of two, in conjunction with the "indirect co-participation of the social environment and the political moment in the social environment" (p.126).



In the first footnote of his volume, Evaristo de Moraes (1898, p.9) refers to a book by Emmanuel Régis, *Les regicides dans l'histoire et dans le présent*, published in 1890, to distinguish criminals guided by mental disturbance from ones who acted under the influence of others. If Bispo was, as Moraes argued, a representative of the latter group, those who committed regicide should fit into the former. Based on the same work by Régis, Nina Rodrigues (2006a, p.115) highlighted the elements that indicated Bispo belonged to the former category, albeit without abandoning his hypothesis of external influence. First, there was his tender age of 22, when the “manifestations of degeneracy” were most common. Next, his indigenous heredity indicated the “extent of his inherited impulsiveness” (p.115).<sup>11</sup> The way the crime was committed, in a public place in the full light of day, also revealed traits common to regicides. Finally, although the postmortem report of Bispo by doctor Barata Ribeiro stated that “there is not, in any part of the body ... any stigmata of any kind whatsoever” (Marcelino Bispo, 26 jan. 1898), Nina Rodrigues – whether ignorant or mistrustful of this information – bemoaned the lack of data on his physical marks and mental states. Instead, he turned to photographs and prints, in which he observed “a great development and salience of the jawbone, one of the most significant stigmata of criminal or morbid degeneracy” (Rodrigues, 2006a, p.116). This finding was no surprise, since, “like all regicides, he is naturally a degenerate” (p.115).

The lance corporal’s mental imbalance reinforced his beliefs. This was combined not only with his itinerant lifestyle, derived from the “nomadic instincts of his savage forefathers” (Rodrigues, 2006a, p.116), but the exaggerated mysticism that nurtured his worship of Floriano Peixoto.

However, Bispo’s behavior after the attempted murder ruled him out of the classic class of regicide. Along with his initial silence came his lackluster statement, marked by his denouncement of the ringleaders of the political plot behind the attempted murder of the head of state. Those who commit regicide, Nina Rodrigues (2006a, p.118) claimed, “only have accomplices in exceptional cases,” because they wish to claim for themselves alone the whole grandeur of the act, as is attested by the hue and cry that normally follows it. This is why they rarely take their own lives. The desire for glory, in such cases, smothers the remorse it was understood had caused Bispo to take his life.

In the absence of Mártir’s influence, the pathological obnubilation that had caused the attack also vanished, again indicating his shallow nature. All that was left to Bispo, “under the hateful pressure of the crime committed” (Rodrigues, 2006a, p.123), was to resign himself to repentance and death, corroborating the theory that it had been regicide by suggestion. Hence, his conclusion was that “without disregarding the ever incontestable value of the anthropological factor, in the determination of the crime, thus is confirmed here the just sentence of Lacassagne: ‘society is the cultural breeding ground for its criminal microbes’” (p.126).

For Nina Rodrigues, the artificial and passing nature of the assassin’s delirious state did not relieve him of culpability. Once again taking to task the classical school that would clear Bispo of all legal responsibility, the physician defended the solution dear to positivist criminalists: confinement in an asylum or madhouse (Rodrigues, 2006a, p.125).

## The same, yet different

As indicated earlier, Nina Rodrigues's and Evaristo de Moraes's reflections about Marcelino Bispo were composed on similar theoretical underpinnings. While taking different routes – medicine and law – they both illustrate the impact of criminal anthropology on thinking the early republican years.<sup>12</sup> They were, in other words, contemporary to the attempts to expand the scope of influence of medical science on the field of law.<sup>13</sup> In this context, the particular value of the figure of the expert was often pivotal in discussions about criminal responsibility (Mendonça, 2007, p.138), for according to the precepts of criminology, especially but not exclusively the Italian school, the abstract notion of crime should be replaced by an individualized conception of the criminal (Darmon, 1991, p.21). Essentially, it was a condemnation of free will – or, to use Rodrigues's (1957, p.60) well-known expression, the “illusion of freedom” – in virtue of the discovery of forms of determinism capable of explaining “baseless crimes” (Augusto, Ortega, 2011, p.224).

Inspired by the precepts of the classical school, in the 1890 Penal Code moral responsibility was conditioned on criminal responsibility. Consequently, sentencing took the criminal's discernment into account, becoming irrelevant in cases where subjects were incapable of comprehending the results of their actions (Mendonça, 2007, p.149-150). In *As raças humanas e a responsabilidade penal no Brasil* (*Human races and criminal responsibility in Brazil*), Rodrigues (1957) was keen to point out the inevitable risks inherent to this conception. His mainstays,<sup>14</sup> mentioned in his dedication – Lombroso, Ferri, and Garofalo, “leaders of the New Criminalist School,” and Lacassagne, “leader of the New French Forensic School” (p.21) – provided support for his arguments as he examined the factors that could affect culpability by studying the relationships between criminal responsibility and racial attributes.

For Rodrigues, the spiritualist conception typical of the classical school had been overtaken by new scientific discoveries. The hypothesis of “a soul of the same nature in all peoples” (Rodrigues, 1957, p.28), as was supposed by the followers of Beccaria, failed to take account of the “law of inheritance” (p.30) so dear to the modern precepts of evolution:

Thus, not only does mental evolution presuppose, in the different stages of development of a race, a very different cultural capacity, albeit of growing perfectibility, but it also states the impossibility of suppressing the intervention of time in its adaptations and thus the impossibility of imposing, at once, on a people, a civilization [that is] incompatible with the degree of its intellectual development (p.29).

From a criminal law perspective, the evolutionary lag between the different human races had given rise to different conceptions of crime, because “law is a relative concept, and varies with the phases of social development of humanity” (Rodrigues, 1957, p.77). In other words, at each stage of moral and intellectual development there was a corresponding form of criminality. In ethnically homogeneous groupings endowed with “the same degree of average mental culture” (p.47), free will was justified as a basis for criminal responsibility. This was not, however, the case of Brazil, whose population was ethnically heterogeneous: “We may only speak of a Brazilian people from a political viewpoint. From a sociological and anthropological viewpoint, much time will pass before we can consider the population

of Brazil as unified" (Rodrigues, 2006c, p.103). In this case, "the existence of non-white races belied assumptions fundamental to liberalism" (Ventura, 1991, p.53). What should be done in the case of internally dissonant human groupings where the social conceptions inherent to advanced races were imposed on those that were less developed? In answer to the question, the basis for his study of the relationships between human races and criminal responsibility, Nina Rodrigues (2006c, p.104) stated his conviction reiterated in a work on Lucas da Feira,<sup>15</sup> published in 1895: "I believe that few populations have such conditions as Brazil to offer the Italian criminalist school a more brilliant confirmation of the doctrines it defends."

There were two interrelated defects in the 1890 Penal Code: it was nationally unified and it based culpability on individual free will. As concerns the first aspect, his position was clear:

For its marked climatological difference, for the country's physical features and conformation, for the ethnic diversity of its population, already so pronounced, and which tends to increase further, Brazil should be divided, for the effects of criminal legislation, at least into its four major regional divisions, which ... are so naturally and profoundly distinct (Rodrigues, 1957, p.167).<sup>16</sup>

However, this solution was predicated on the second problem, because modern science, proving "the fatal subordination of all supposedly voluntary determination to prior psychic connections" (Rodrigues, 1957, p.66), revealed how the abrupt imposition of a superior civilization on black, indigenous, and mixed-race people came up against the "necessary action of time" (p.30), obscuring "awareness of laws and duty" (p.47). If the 1890 code failed to take scientific discoveries into account, insisting on an association between moral and criminal responsibility, the mismatch between modern criminology and the obsolescence of the new legislation would expand the range of potential causes of attenuated or diminished criminal responsibility. "If the alienists, natural experts in the subject, are all educated in the positive and deterministic spirit of modern psychology ... how much more numerous shall be the declarations of irresponsibility and how much more frequent the acquittals" (p.66). As such, the risk was that the streets would be flooded with dangerous, yet unindictable individuals.

It was a double-edged sword. Nina Rodrigues (1957, p.163) recognized that the criterion of social defense often prevailed over free will when sentences were determined, yet "while we await, thus, the slow preparation, the natural evolution of the spirits to enable a complete and harmonious execution of the ideas and principles of the positive criminalist school" (p.165), the lag between theory and practice was the safeguard of social order. Meanwhile, the assumption of free will in the Penal Code, along with all its ambiguities (Augusto, Ortega, 2011, p.225; Mendonça, 2007, p.144-154; Caulfield, 2000, p.73), coupled with the seduction – not by right but in fact – exerted by deterministic suggestion in courts of law, could bring about the generalized impunity so feared by the physician. Turning to Gabriel Tarde (cited in Rodrigues, 1957, p.67), he spoke out about the risk: "Before the courts of law, it becomes increasingly easy for the lawyer, with writings by the alienists at hand, to demonstrate the irresistible nature of the criminal urges that

impelled his client; and for both the juror and the legislator, the non-responsibility of the suspect is the consequence.”

This understanding formed the basis for his criticism of the institution of the jury. Contrary to the requirement, dear to criminal anthropology, of the figure of the illustrious judge (Mendonça, 2007, p.178-179), article 113 of the law that regulated the organization of the state judiciary, passed in July 15, 1892 (Rodrigues, 1957, p.185), forbade the “less incapable, illiterate, and independent” (p.186) from doing jury service. Thus, “the jury, with all the flaws inherent to it, has found means, in the indifference and incapacity of the mass of the population, to become more dangerous still” (p.166).

Rodrigues’s studies of well-known criminals served to reinforce certain hypotheses he raised in his inaugural work. After all, “the problem should not be resolved in general terms of race, but demands that one go down to the appraisal and examination of individuals” (Rodrigues, 1957, p.118).<sup>17</sup> This was why characters like Antônio Conselheiro, Lucas da Feira, and Marcelino Bispo should be the object of specific analysis.

Arthur Ramos (2006, p.20), in the 1939 preface to a compilation of Rodrigues’s studies, *As coletividades anormais* (*Abnormal collectivities*), argued that while the physician was “restricted to the scientific theories of his time,” marked by a “rigid Lombrosianism” (p.18), in his analyses he stressed the importance of sociological and psychological factors.

In fact, as we saw earlier, in his examination of the young lance corporal’s behavior, the anthropological elements, of undoubted importance, were intensified in a palpably sectarian social and political setting. The lesser weight attributed to biological criteria can perhaps be clarified by certain gaps: there is no explicit reference to the best known name in criminal anthropology. While Lombroso’s presence can be felt indirectly – in Rodrigues’s quest for stigmata on Bispo, his focus on his impulsive behavior, and his reference to Laschi, Lombroso’s partner in *Il delitto politico* (1890)<sup>18</sup> – the effect of suggestion exerted by Diocleciano Mártir on Bispo presupposed the kind of political fervor so well described in Moraes’s work.

Looking at the suggestions present in his inaugural work, Nina Rodrigues (1957) could have insisted on explaining Bispo’s behavior through inherited features. He would have betrayed in his physical and moral constitution the marks of miscegenation with the “least useful of our ethnic elements” (p.144), the indigenous indian, explaining both his errant lifestyle, “given by the facility with which the reputedly civilized people go back to savagery” (p.34), and the impulsiveness that led him down the path of crime (p.140-141). In other words, if he had drawn exclusively on the 1894 book, he would have reached the same conclusion he held five years later as to the just fate of Bispo: if “the negroes and the indians, wholly irresponsible in their savage state, have the incontestable right to attenuated responsibility” (p.123), “their mestizos should be less responsible than civilized whites” (p.140).

However, Nina Rodrigues (2006b, p.42) insisted on the importance of the sociological factor he had stressed in 1897 in his article on Canudos. Like Bispo, whose degenerate mixed-race instinct had been incited by pro-Floriano radicalism, turning him into a criminal, Antônio Conselheiro, “surely a simple madman” (p.44), would not have fomented the epidemic madness in Canudos, awakening the “atavistic qualities of the mestizo” (p.51),

if “the sociological conditions in the environment in which this took place” (p.43) had been missing.<sup>19</sup>

Nina Rodrigues’s (2006b, p.48) interest in the “psychology of the time and the environment” is consistent with studies of collective psychology – especially concerning the imputation of criminal responsibility on collective crimes – being developed at the time by Scipio Sighele (1954, p.27-74; Gallini, 1988), giving primacy to sociological aspects<sup>20</sup> in the field of criminal anthropology, under the inspiration of Ferri (Corrêa, 2013, p.70; Alvarez, 2002, p.81; Darmon, 1991, p.102) in Italy and the medical-legal and anthropological school of the “social milieu” in Lyon, France. Under the leadership of Alexandre Lacassagne, the French were reacting specifically to the atavistic theory of the innate criminal (Mucchielli, 2000, p.63-64; Renneville, 1994, p.193, 1995, p.24) and, more widely, the overuse, amongst Lombroso’s fellowmen, of biological metaphors fostered by the Darwinist concept of the struggle for existence (Harris, 1993, p.97).

It was not a matter of blindly accepting an apparently strict opposition between Lombroso and Lacassagne.<sup>21</sup> Despite their respective support for the hypotheses of atavism and degeneracy to explain criminal behavior (Mucchielli, 2000, p.63), both associated it with heredity. In other words, the Frenchman saw no contradiction between the value he gave to the action of the social environment and the idea of an organic substrate guiding deviant behavior (Renneville, 1995, p.8). However, while he continued to attribute a key role to biological elements, “the main difference in relation to Lombroso was that he saw the physical and psychic anomalies of criminals as resulting from an unfavorable social environment ... and not etiological factors of criminality” (Renneville, 1994, p.193).

Ultimately, it is known that in his last book on criminology, *Le crime: causes et remèdes*, from 1899, Lombroso (1907) let himself be “invaded by sociological theses” (Darmon, 1991, p.38), supplementing the biological aspects of his theory with a discussion of the social and economic causes of crime. Even while admitting that “as for the innate criminal, there is only one palliative therapy” (Lombroso, 1907, p.VIII), there was, he held, a significant contingent of potential criminals whose fate could – and should – be altered by a program of moral *nourrissage*.

There was therefore a widespread movement through which the most markedly sociological conceptions gained prominence in criminological analyses.<sup>22</sup> The fact that Nina Rodrigues concluded his study of Marcelino Bispo with a quote by Lacassagne should not be overlooked.

Cesare Lombroso appears in the first (aforementioned) footnote of Moraes’s defense case, and Sighele, as we have seen, constituted one of his theoretical mainstays. In the 1890s, the lawyer had published a series of studies on criminal law in which he particularly focused on the work of the Italian criminologists (Mendonça, 2007, p.63). If the increasing proximity of medicine and law was sparking power conflicts, enabling multiple forums for the representatives of the two areas of knowledge to spar with one another (Augusto, Ortega, 2011, p.233), science was often the protagonist in court cases. Moraes’s work illustrated the different ways “medical language was appropriated by lawyers with the main purpose of defending their positions” (Paula, 2011, p.192). As a defense lawyer, it was his job to harness the arsenal of science to sow doubt: “When

he could not guarantee certainty of innocence, he sought to insinuate doubt about [the defendant's] guilt" (Mendonça, 2007, p.144).

In the case of Bispo, it is clearly impossible to know whether Evaristo de Moraes would have managed to attenuate his criminal responsibility. But his actions in two cases involving Turkish immigrants illustrates how the appropriation of science in courts of law, despite the dogma of free will expressed in the Penal Code, seemed to confirm Rodrigues's concerns about a potential rise in impunity (Mendonça, 2007, p.267).

The first Turk, José, had killed his wife in late 1895. For Moraes (1989b, p.79), his criminal responsibility should be negated or attenuated in view of "the uxoricide's pathological heredity," itself the root cause of the "vile nature of the alcoholic-jealous" (p.78) individual. Armed with documents that spoke of the compromising fate of several of his relatives, Moraes assured those present that his client would inevitably lose his sanity. His words managed to convince the jury and the defendant was found not guilty by unanimous agreement. A few days later, Moraes's prophecy came true: his client checked into a lunatic asylum.

Shortly after this Turk killed his wife, a compatriot of his was killed by Laclínio Freire Barbosa. Evaristo de Moraes met him in prison on visits to his client José, and his physical features quickly drew his attention. "His long face, his huge jawbones, his shallow forehead, his wing-like ears, his unfocused gaze, his foolish laugh – all indicated an imbecile-like degenerate" (Moraes, 1989b, p.82). As someone who was "keen on matters of psychiatry" (p.82), he decided to take on the case even though he held out little hope of an acquittal. However, his expectations went unfulfilled, for two events conspired to make the jurors sensitive to the man's plight. First, shortly before the trial, Moraes had received a new and expanded edition of Lombroso's *O homem delinquente* (*The delinquent man*). In it, he came across a picture of a killer who had been an imbecile from birth, whose physical features were very similar to those of Barbosa. In his defense, "Lombroso's book was passed from hand to hand amongst the jurors" (Moraes, 1989b, p.82), many of whom had also taken part in the trial of José.

Additionally, Moraes (1989b, p.83) also exhibited a certificate proving the madness of the first Turk, the symptoms of whose disease, foretold by his defense lawyer, had manifested before the session that resulted in the acquittal of Barbosa for his "native imbecility."<sup>23</sup> "The supreme disgrace of a Turkish street hawker contributed strongly to the defense of the killer of another Turkish street hawker" (p.82).

Behind the two acquittals, Evaristo de Moraes's well-known legal and rhetorical talent indicates how defense attorneys often turned the convictions of criminal anthropology into a "saving grace" (Darmon, 1991, p.175) capable of diminishing their clients' responsibility. In the case of the two Turks, Moraes appropriated the intellectual arsenal of Lombroso with the aim of impressing the jurymen. In other words, his goal was far from an attempt to produce scientific knowledge; rather, he galvanized it as a "key element for the legitimization of opinions and positions" (Mendonça, 2007, p.182).

However, in this manoeuvre, his recourse to Lombroso's classical work was atypical. Moraes actually played down the more specifically raciological bias in criminology, in which racial features were converted into factors for attenuating criminal responsibility and in



which, as we have seen, Nina Rodrigues was an expert. Generally speaking, it would be fair to say that for Moraes, “the theories that associated race with criminal responsibility do not seem to have had equal importance when it comes to their action in the legal and judicial field” (Mendonça, 2007, p.268).

Although in his memoirs Moraes himself insisted on the similarities between his and Rodrigues’s approaches to the Marcelino Bispo case,<sup>24</sup> the analyses they produced reveal they had different ways of selecting their material from the repertoire of criminal anthropology at their disposal. In the case of Rodrigues, there was a consideration of sociological factors in conjunction with the importance he traditionally conferred on the ethnic elements at the root of criminal behavior. Meanwhile, in his volume, Moraes made no mention of his client’s racial features. These differences are eloquent: “The same science ... that was cultivated as a means of assuring a place in the world of ‘men of learning,’ legitimizing their forensic work, was also, in many of its interpretative branches, what disqualified individuals of their ‘race’” (Mendonça, 2007, p.279; emphasis in original).

The young lance corporal was not a “relatively distant” Turk. Like his defense lawyer, he bore on his skin the marks of Brazilian-style miscegenation. But for Moraes this did not make his client a degenerate, which is why he refused to call him a “regicide.” Bispo had been the victim of suggestive effects that outweighed that “blind and fatal force” (Régis cited in Avelino, 2010, p.10) Régis had identified in the essentially degenerate nature of regicides.

A concern with the effects of racial mixing amongst Brazilians was a marked feature of intellectual circles in the early republican years. Dilemmas concerning the feasibility of a mixed-race nation translated into a polarization between those who pointed to the inevitable degeneration of such a nation and those who saw “whitening” as an encouraging potential route for the country to join the concert of civilized nations. What both schools of thought shared was a belief in white superiority (Gahyva, 2010, p.248; Schwarz, 1993, p.208). While Sílvio Romero – who, incidentally, was very close to Evaristo de Moraes (1989d, p.214-219, 1933, p.116-123; Mendonça, 2007, p.279-287) – was a key figure amongst the followers of the former position, Rodrigues was skeptical of the “ideology of whitening” (Rodrigues, 1957, p.90; Monteiro, 2016, p.509). In his racial hierarchy, mestizos composed an “ambiguous, intermediate category” (Corrêa, 2013, p.133) endowed with “catastrophic potential” (Mendonça, 2007, p.270): to colonize, and thereby transform, “the world of the whites.”

For Moraes, that national dilemma was intimately tied up with his own personal trajectory (Mendonça, 2007, p.266). In a moment of inspiration, he said the following about himself: “There are individuals who, when they are born, receive a grease-covered pole as a good-luck present” (Moraes, 1989c, p.230). When he got to the top of his, running counter to the supposed inexorable fortune, he metonymically refuted Nina Rodrigues’s convictions.

## Final considerations

Evaristo de Moraes’s trajectory of success could cast him as one of those exceptions to whom Nina Rodrigues (1957, p.118) referred in his study of criminal responsibility. But



in both this work and his analysis of the achievements of the Rebouças brothers,<sup>25</sup> the physician put little hope in the effective capacity of “talented mestizos” (Rodrigues, cited in Corrêa, 2013, p.143; Rodrigues, 2008, p.1161-1162).

He seems to have believed that ultimately the fate of the Moor Othello,<sup>26</sup> “an eloquent testament to the psychological knowledge of Shakespeare” (Rodrigues, 1957, p.119), haunted all mixed-race spirits. Like Bispo, the infamous wife-killer had been subject to an intense process of suggestion, which, deriving from the external environment, found in his ethnic constitution “the ancient instincts, cemented and stratified by the inheritance of along chain of forefathers, ... thereby giving justification and predominance to the indomitable instinctive impulses – criminal in the new environment – but completely unimputable” (p.118-119).

As we have seen, Moraes made reference to the Shakespearean tragedy to explain the lance corporal’s behavior. However, if, as he saw it, “Marcelino Bispo appears in the light of criminal psychology as a perfect case of suggestion” (Moraes, 1898, p.66), it was not on a degenerate organism, but on an impassioned soul (p.65), that Mártir had acted so insistently: “It was the confused love of the memory of a Death ..., and it was the sublime love of the Fatherland and the Republic, both masters of the lance corporal’s spirit, that served as fodder for the perverse suggestion that led to the crime and resulting suicide” (p.66).

In the case of Nina Rodrigues, the recourse to Othello illustrates the pregnancy of racist suggestion in his reflections. We have seen, it is true, that his was not a single causal explanation. His study of Bispo indicated the importance of external factors in driving criminal behavior. But if political circumstances had favored the lance corporal’s acts, Mártir’s skill in awakening a kind of Iago that lay dormant in the breast of each mestizo also played a part.

For Moraes (1933, p.13), the connection between Bispo and Othello confirmed his conviction about the “‘criminal irresponsibility’ of certain passionate beings” (emphasis in original). While in 1898 he stated that “science ... shows that love – in any of its manifestations – prepares the spirit for the most pernicious of exploitations” (Moraes, 1898, p.66), over three decades after the publication of his analysis of the crime that shook the Republic, in *A criminalidade passional* (*Criminality of passion*) (Moraes, 1933), he picked up on Ferri’s analysis of the Shakespeare character to insist on the similarity between romantic and political passions, since “love itself, however it is, is already a product of suggestion” (p.83).

Ultimately, while drawing on the same theoretical references as Nina Rodrigues and, like him, denouncing the “shaky psychological foundation” (Moraes, 1933, p.17) of the classic notion of free will, Moraes was not particularly inclined towards the racialological branch of criminal anthropology. Perhaps this distancing can be partially explained by his brief comment on the recurrence, “amongst peoples and races who are diverse and inhabit different regions,” of those pacts that result in homicide and suicide for love: “Everything demonstrates that the human heart is always the same” (p.81).

## NOTES

<sup>1</sup> In this and other citations of texts from non-English languages, a free translation has been provided.

<sup>2</sup> The study was published in *Revista Brasileira*, 5º ano, t.17, in 1899 (see Ramos, 2006, p.14).

<sup>3</sup> The term is used here to refer to studies devoted to anatomical, biological, and sociological features of criminals who, despite their internal divergences, share a certain *communauté de regard*: the medical gaze (Renneville, 1994, p.200-202). Also, “the denomination of criminal anthropology, while it does not have precisely the same meaning, is often exchanged with the Positive School, not only by its contemporaries but also by scholars of the subject” (Ferla, 2009, p.23). For its most acclaimed exponent, Cesare Lombroso, it was a “global science capable of producing homogeneous knowledge of the mechanisms of living beings and cross the frontier between the sciences of nature and the science of men” (Coffin, 2017, p.2).

<sup>4</sup> “A classical criminal-legal school, organized as such, has never existed. The term ‘classical school’ was coined by Enrico Ferri and was first adopted by the followers of the positivist school to indicate their opponents and formulators of the previous penal doctrine” (Dantas, 2013, p.4). For a brief distinction of the classical and positive schools, see Cancelli (2001, p.32-33).

<sup>5</sup> All the bibliographic references the physician drew on are also present in the lawyer’s volume, although the opposite is not true, since Moraes’s range of sources was wider.

<sup>6</sup> Moraes (1898, p.6) referred directly to Italy, France, Portugal, and Spain “so we do not leave the countries of Latin race.”

<sup>7</sup> However, unlike the police report, the editors of *O Paiz* claimed that those who attributed the attack to the constitutional opposition would be “vomiting the most sordid of slanders” (*O atentado*, 6 nov. 1897, p.1).

<sup>8</sup> Vicente Neiva’s police report “caused great commotion” because it “directly or indirectly” involved important personages from the political circles of the day, including the vice-president, Manoel Vitorino, and Glicério himself, “all having as an instrument the lance corporal Marcelino Bispo” (*O Atentado*, 4 nov. 1898, p.1).

<sup>9</sup> Sentenced to 30 years in prison, Diocleciano Mártir was released in 1903.

<sup>10</sup> In an article published in 1899, Nina Rodrigues (2008, p.1161) stated that it was possible to diagnose “brilliant manifestations of intelligence” amongst superior degenerates.

<sup>11</sup> Even though, inspired by Lacassagne, Nina Rodrigues (2008, p.1160) refused to attribute degeneracy exclusively to consanguinity, he did note “how frequent the manifestations of degeneracy are in the mestizo population.”

<sup>12</sup> The reception of criminology in Brazil was spread from the Faculty of Law of Recife (Faculdade de Direito do Recife) in the mid-1880s. “After Recife, countless jurists throughout the First Republic divulged criminology, including Evaristo de Moraes” (Alvarez, 2002, p.684). In her analysis of *Revista Acadêmica da Faculdade de Direito do Recife*, Schwarz (1993, p.156) highlights a “new treatment of crime” in the journal’s pages, the outcome of its early adherence to evolutionary ideas, especially in their racialist variations.

<sup>13</sup> Darmon (1991) called this process the “medicalization of society,” a perspective endorsed by Augusto and Ortega (2011, p.221), Cancelli (2001, p.24), and others. Questionings of the concept are encountered in Antunes (1999, p.9-11, 271-275) and, primarily, in Paula (2011, p.19-29, 266), who denounces the hiatus between the medical ambitions and the effective reach of the social intervention projects. A third position, arguably the most fertile, insofar as it is the most balanced, guides the reflections of Ferla (2009, p.42), ridding it of “two seductive shortcuts: recognizing the complete failure of the utopian positivist program or, otherwise, considering its victory and implementation to be complete, without concessions or mediations.”

<sup>14</sup> According to Mariza Corrêa (2013, p.68), “the longest lasting [theoretical] options [of Nina Rodrigues] seem to have been made after he read the works of Lombroso and his group and the works by Lacassagne and his team in Lyon.” Gabriel Tarde is another source he repeatedly referred to (Corrêa, 2013, p.71).

<sup>15</sup> The case of Lucas exemplifies the relativity of the concept of crime: “Thus, Lucas is indeed a criminal to us Brazilians, who live under European civilization. In Africa, however, he would have been a bold warrior, a famous king” (Rodrigues, 2006c, p.108).

<sup>16</sup> Nina Rodrigues’s demand is in line with a broader movement in Brazil during the last three decades of the nineteenth century for the reevaluation of classical penal codes (Harris, 1993, p.93).

<sup>17</sup> For Nina Rodrigues (Rodrigues, 2008, p.1153), it was not a matter of opting for one of two dimensions, but of supplementing the generic study of racial features with “direct and indirect observation.”

<sup>18</sup> Given the lack of reference, it is not clear if the work by Laschi consulted by Nina Rodrigues was the one written together with Lombroso.

<sup>19</sup> Nina Rodrigues refers specifically to the transition from monarchy to republicanism.

<sup>20</sup> Borlandi (2000, p.9) notes the dispute between criminalist anthropologists over the real meaning of the idea of “social causes,” but despite the polysemy, the expression normally related to economic issues.

<sup>21</sup> The development of a narrative that put them in opposing camps was also an important part of a strategy to distinguish the two thinkers, especially at the criminal anthropology conferences (Harris, 1993, p.100; Mucchielli, 2000, p.66; Renneville, 1995, p.10-14).

<sup>22</sup> This value given to sociological factors should not be mistaken for the effort to explain the social facts from other social facts, as Durkheim was claiming at the time. While the broadening of scope of the causes of criminality in the field of criminal anthropology could be understood deriving from an increasing attention to social factors, it was also in opposition to this school that the aforementioned victorious sociology of Durkheim affirmed its singularity (Durkheim, 2000, p.67-99; Mucchielli, 2000, p.60; Renneville, 1995, p.27).

<sup>23</sup> But Laclínio was not set free: “I had undertaken, with the jurors, to require the application of art. 29 of the Penal Code if he was acquitted” (Moraes, 1989b, p.83). The murderer ended up in the National Hospital for the Insane.

<sup>24</sup> For an analysis of the parallels Moraes draws between his and Rodrigues’s studies, see Mendonça (2007, p.260-265).

<sup>25</sup> Although Nina Rodrigues held that Antônio Rebouças was “another mestizo notable for his talent,” he went on to remember that he “died of a myelitis and his genic degeneration that made him actively homosexual was well known” (Rodrigues cited in Corrêa, 2013, p.143-144). It was to this very same Rebouças, “the greatest amateur lawyer of Brazil” (Moraes cited in Mendonça, 2007, p.303), that Moraes dedicated his memoirs. The dedication page, missing from subsequent editions, shows how, “in the memory of the lawyer who had attained intellectual recognition, ... Moraes seemed to seek out the attributes he wanted to communicate about his legal past. One of the identities established, alongside practicing the law, was race – another question he inevitably had to address” (Mendonça, 2007, p.265).

<sup>26</sup> Ferri, in *Criminal sociology* (1884), already identified Shakespeare’s character as “a typical criminal of passion” (Moraes, 1933, p.19).

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