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The Observatory of Justice for Afrodescendants in Latin America (OJALA) as an initiative of engaged anthropology for the promotion and defense of human rights

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Abstract

In this essay, I write about the initiative of engaged legal anthropology that led to the formation of the Observatory of Justice for Afrodescendants in Latin America (OJALA), housed in the Kimberly Green Latin American and Caribbean Center (KG-LACC) at Florida International University (FIU). I have been delighted to serve as OJALA's main coordinator and founding director since February 2018. This piece's intent is to explain the foundation of OJALA, out of an interest for understanding how the Latin American multiculturalist state "functions" in the concrete relations it threads with its Afrodescendant citizens, and particularly and most importantly, what the state's justice system does, or doesn't do, in the courts of law, with the legal instruments the "new Latin American constitutionalism" brought, when the time comes to defend Afrodescendants' rights. This led us to engage in careful comparative ethnographic work on specific litigations filed by Afrodescendants in the justice systems of various Latin American countries. Ultimately, the ethnographic knowledge of Latin American justice systems "at work" will be useful for the enhancement of the public acknowledgement, protection, and defense of Afrodescendants' rights.

Keywords: Engaged anthropology, legal anthropology, Afrodescendants, multiculturalism, new constitutionalism, ethnoracial law.

O Observatório de Justiça dos Afrodescendentes na América Latina (OJALA) como iniciativa da antropologia engajada na promoção e defesa dos direitos humanos

Resumo

Neste ensaio, escrevo sobre a iniciativa de antropologia jurídica engajada que levou à formação do Observatório de Justiça para Afrodescendentes na América Latina (OJALA), sediado no Kimberly Green Latin American and Caribbean Center (KG-LACC) da Florida International University (FIU). Tenho o prazer de servir como principal coordenador e diretor fundador de OJALA desde fevereiro de 2018. A intenção desta peça é explicar a fundação de OJALA, com o objetivo de compreender como o estado multiculturalista latino-americano “funciona” nas relações concretas com que se relacionam seus cidadãos afrodescendentes e, em particular e mais importante, o que o Sistema de justiça do estado faz, ou não faz, nos tribunais, com os instrumentos jurídicos que o “novo constitucionalismo latino-americano” trouxe, quando chegar a hora de defender os direitos dos afrodescendentes. Isso nos levou a um cuidadoso trabalho etnográfico comparativo sobre litígios específicos movidos por afrodescendentes nos sistemas judiciários de vários países latino-americanos. Em última análise, o conhecimento etnográfico dos sistemas de justiça latino-americanos “em funcionamento” será útil para o aprimoramento do reconhecimento público, proteção e defesa dos direitos dos afrodescendentes.

Palavras-chave: antropologia engajada, antropologia jurídica, afrodescendentes, multiculturalismo, novo constitucionalismo, direito etnoracial.

El Observatorio de Justicia para Afrodescendientes en América Latina (OJALA) como iniciativa de antropología comprometida con la promoción y defensa de los derechos humanos

Resumen

En este ensayo, escribo sobre la iniciativa de antropología jurídica comprometida que llevó a la formación del Observatorio de Justicia para Afrodescendientes en América Latina (OJALA), ubicado en el Centro Kimberly Green para América Latina y el Caribe (KG-LACC) en Florida International University (FIU). Estoy encantado de ser el principal coordinador y director fundador de OJALA desde febrero de 2018. La intención de esta pieza es explicar la fundación de OJALA, por un interés por comprender cómo el estado multiculturalista latinoamericano “funciona” en las relaciones concretas que teje con ciudadanos afrodescendientes, y particular e importantemente, lo que hace o no hace el Sistema de justicia estatal en los tribunales, con los instrumentos jurídicos que trajo el “nuevo constitucionalismo latinoamericano”, cuando llega el momento de defender a los derechos de los afrodescendientes. Esto nos llevó a realizar un cuidadoso trabajo etnográfico comparativo sobre litigios específicos presentados por afrodescendientes en los sistemas de justicia de varios países de América Latina. En definitiva, el conocimiento etnográfico de los sistemas de justicia latinoamericanos “en funcionamiento” será útil para potenciar el reconocimiento público, la protección y la defensa de los derechos de los afrodescendientes.

Palabras clave: antropología comprometida, antropología jurídica, afrodescendientes, multiculturalismo, nuevo constitucionalismo, derecho etnoracial.

The Observatory of Justice for Afrodescendants in Latin America (OJALA) as an initiative of engaged anthropology for the promotion and defense of human rights

Jean Muteba Rahier

The conceptual framework behind the founding of the Observatory of Justice for Afrodescendants in Latin America (OJALA) and its initiatives is grounded on the premise that in the late 1980s began in the Latin American region what has been called a “multicultural turn” that has been made most manifest in the emergence of an attendant “new Latin American constitutionalism” that opened the way for the adoption of related special laws, to which we refer with the expressions “ethnoracial law” or “ethnoracial legal instruments”.

OJALA ambitions to go above and beyond the consideration of these legal instruments’ texts to instead produce critical knowledge about their application in the practice of Latin American justice systems for the benefit of Afrodescendants¹. Through comparative examinations of the application of ethnoracial law, we ambition to contribute to the edification of detailed knowledge useful for making Latin American societies that are more just, wherein Afrodescendants can fully enjoy both the right to be different (usually associated with the recognition of collective rights thanks to the adoption of “multicultural law”), and the right to be the same (thanks to the adoption of “anti-discrimination law”).

In the 1970s and 1980s, activists and scholars alike wrote a great deal about the processes of “invisibilization” of Afrodescendants in a great many Latin American national contexts. Official versions of history failed to mention black populations’ participation in, and contributions to, the nation. Critical scholars denounced the fact that many Latin American academic traditions reproduced national processes of invisibilization of Afrodescendant populations. At the end of the 1970s and in the early 1980s, new Afrodescendant organizations developed strategies and engaged in struggles for recognition in accordance with the specificity of their national contexts, and with the eventual additional support of national and non-governmental organizations from other countries of the region, and from regional organizations, and institutions of global governance. These organizations clashed with their mis-recognizing nation-state and demanded full recognition of Afrodescendants as citizens.

That exclusion from ideologies of national identity had very much been shaping the daily experiences of Afrodescendants, wherever they live. With the political effervescence of the early 1990s that accompanied the transnational indigenous movement’s preparation to commemorate “500 Years of Resistance” (a counter celebration of 1992, which was referred to in official presentations as “the anniversary of 500 years of Discovery”), black organizations and individuals became more “visible” in civil society and on the political scenes of their respective countries. Some made alliances with indigenous organizations, while others entered traditional politics, investing their energies in leftist political parties, but also in parties associated with the political right. The publication in 1995 of the Minority Rights Group’s famous book, *No Longer Invisible: Afro-Latin Americans Today* (1995), was a direct testimony of this growing reality.

¹ The expression is further explained below.

² See the special issue of the journal *Latin American and Caribbean Ethnic Studies* (LACES) we published in late 2019 (Rahier, 2019a), and in which we explore specific litigations involving ethnoracial law in Honduras, Colombia, Ecuador, Venezuela, Peru, Bolivia, Brazil.

The UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, from August 31 to September 8, 2001 (<http://www.un.org/WCAR/durban.pdf>), usually simply called the Durban conference or even just “Durban,” provided another important opportunity to Afrodescendants to organize and collaborate in the design of strategies at the regional level. It had a great impact on black social movements in a variety of national contexts.

The Latin American Multicultural Turn and the Emergence of “Ethnoracial Law” as a Major Characteristic of the “New Latin American Constitutionalism”

To explain the spread of the “multicultural turn” in the Latin American region since the late 1980s, scholars refer to the combination or alignment of local and national indigenous and Afrodescendant political activism with international influences and interventions from Global North countries (through bilateral relationships, Non-Governmental Organizations [NGOs] based in the Global North, etc.), and multilateral organizations (the International Monetary Fund, the World Bank, various United Nations organs, regional financial and justice institutions, etc.) (Fontaine, 2012; Rahier, 2012; Paschel, 2016; Hale, 2014). Across the region, that “turn” has taken different shapes in different national contexts, at dissimilar paces, and rarely at exact identical times. With it, indigenous individuals and organizations have progressively become unavoidable and in some cases relatively successful political players on national and international scenes. The same has also been the case for some Afrodescendant individuals and organizations.

With the multicultural turn, Latin American official narratives of the nation changed notably in a movement from ideological “monocultural mestizaje” (“racial democracy” in Brazil) and the “invisibilizing” of ethnoracial differences in national populations to multiculturalism and state constitutional acknowledgement of the existence of ethnoracial differences within “national populations,” often in a logic of state corporatism/co-optation and ethno-normativity that always racialized indigenous people differently than Afrodescendants (notwithstanding their different self-identifications) (see Stutzman, 1981; Dulitzki, 2010; Rahier, 2012; Gallírgos, 2017). With the “turn,” came not only the recognition of ethnoracial collective rights for indigenous people through the adoption of “multicultural law”—and in some specific cases for Afrodescendants too—but also legal protection against ethnoracially-based discrimination through the adoption of “anti-discrimination law,” also called “racial equality law.” Undoubtedly, these two different categories of legal instruments emerged with novel ways for the powerful to reproduce the ethnoracial status-quo and its characteristic anti-black racism, under the cover of the state’s new multiculturalist *modus operandi*, and multiculturalist, ideological, national narrative.

Latin Americanist legal scholars write about what they call the “New Latin American Constitutionalism” as the most visible expression of the multicultural turn in the region. For such scholarship, present-day Latin American constitutionalism is considered “new” because it is utopian in spirit, transformationalist, and rigid. It is utopian and transformationalist, as opposed to “conservative,” because it does not aim to preserve a current state-of-affairs considered good and desirable, as do typical democratic liberal constitutions (Gaviria Díaz, 2015: 22). Instead, the new Latin American constitutionalism seeks to contribute to the establishment of a state-of-affairs, which it describes, that has not come to existence yet but that is considered to be ideal, necessary, and beneficial. “What is not and has not been in existence yet, and that we consider urgent to reach: a truly democratic society” (Gaviria Díaz, 2015: 23; see also Noguera-Fernández and Criado de Diego, 2011; Martínez Dalmau, 2009). Mark Goodale (2017) identifies this utopian nature of Latin American multiculturalisms and “new constitutionalism” as an expression of a larger, global process that began taking shape at the end of the Cold War (the late 1980s). Indeed, in late 19th and early 20th centuries, many Marxist political movements wanted to revolutionize economic relationships and put an end to the power of property-owning classes

(the Russian, Cuban, and Chinese revolutions). In some cases, anticolonial movements adopted violence to reach independence. At that time, law was not seen as providing an avenue for social progress. Instead, it appeared as one aspect of the prevailing power structure useful for the dominant to remain on top, and that progressive forces had to fight against. The end of the Cold War corresponded to the beginning of a new period and a novel perception that law—if used correctly—can provide a means to produce a just society. Disenchantment with the practice of Communism and of revolutions’ violence at the time combined to ignite a new era of enthusiasm for law as an ideal tool to reach justice. The development of international law responded to global capitalism’s needs for a global legal order. The strict enforcement of just laws was seen as a good way to fight against corruption and for accountability.

The expansion of human rights, international criminal courts, the global regulation of trade, and UN peacekeeping are all indications of a turn to law as the path to promoting social order. Producing a global legal order clearly benefits states as well as international corporations. It pulls domestic conflicts under the authority of state governance, thus enhancing state control over populations. It also empowers what is called the “international community” as a central source of governance and legal order. But this term conceals the extent to which this community is made up of powerful nation-states, which exercise disproportionate power in international institutions and international law. (Engle Merry, 2017: x).

Beginning in the late 1980s in Latin America, new constitutions and their recognitions of ethnoracial diversity in national populations were a novelty when considering the long list of previous Latin American constitutions from the monocultural *mestizaje* period that never mentioned any ethno-racial diversity in national populations, often assuming a “silent” white-mestizo “we” that naturalized white supremacy and invisibilized ethno-racial differences. The new Latin American constitutions project a symbolic and ideological dimension in that they are inscribed in a desired democratic rupture with the immediate societal and constitutional past (Nolte and Schilling-Vacaflor, 2012) mired in republican universalism. They are imbued with the hope that their application in all identified aspects of life will contribute to bringing about justice and happiness. They are innovative and their scope is vast, as is—when compared to previous constitutions—the number of their articles. Their most striking characteristic is certainly the extended catalogues of rights they recognize for identified vulnerable groups (women, children and the youth, the physically impaired, the elderly, etc.) and historically marginalized minorities (indigenous groups and communities of Afrodescendants, mostly), including the protection against discrimination that they provide them with. A number of special laws making operational constitutional articles and principles have also been passed along with, or right after the adoption of, constitutional reforms or new constitutions. As already stated, the multicultural turn, or to be more precise the new Latin American constitutionalism, has brought about specific legal instruments. Two such categories of legal instruments are in focus here: 1) those that have for objective to recognize and protect identity-based collective rights (for indigenous people and also sometimes for Afrodescendants and others) often called “multicultural legal instruments”; and 2) those instruments that typify hate crimes and provide sentences for perpetrators of racist and hate crimes, and remedies to the victims of racial and other discriminations. At OJALA, we call both of these two different categories of legal instruments: “ethnoracial law.”

OJALA’s determination to consider both types of legal instruments at the same time is justified as follows: 1) both kinds of instruments make their appearances on the region’s legal landscapes at the same time, with the advent of the new Latin American constitutionalism (see below); 2) OJALA’s focus is on the rights—in the contemporary moment—of both rural and urban Afrodescendants, as the demand for the recognition of collective rights has been more associated with rural communities, and the fight against discrimination with urban ones. The work of Keisha-Khan Perry in Salvador da Bahia, Brazil, interestingly points to the fact that in some cases, urban communities of Afrodescendants have demanded collective rights over city

neighborhoods (Perry, 2005). Our Observatory's interests are to carefully examine how each category of legal instruments is actually applied for the benefit of Afrodescendants in the concrete practice of Latin America's justice systems, that is to say in the courts of law. This brings us to move beyond the simplistic appreciation of legal instruments' specific texts and the utopia they might convey to instead enter the world of sociopolitical praxis and the concrete bureaucratic mechanisms sociopolitical groups employ to either work for an improvement of the rights of ethnoracial minorities, or on the contrary to work for the reproduction of the ethnoracial *status quo*.

In her book, *Becoming Black Political Subjects: Movements and Ethno-Racial Rights in Colombia and Brazil*, Tannia Paschel (2016) proposes a categorical dichotomization of what she calls two different "political field alignments," which she conceptualizes as two separate and mutually exclusive politico-legal discourses of "ethno-racial collective rights" (or "multicultural rights") on one side, and "racial equality law" on the other, which correspond to the two categories of legal instruments brought by Latin America's new constitutionalism discussed above and which we—at OJALA—label "ethnoracial law." For Paschel, each one of the two political field alignments results from the combination of domestic politics with the politics of the "global ethno-racial field." Up to this point in her argument, we tend to agree with her. We stop doing so, however, when she becomes adamant to take distance from the many Latin Americanist scholars who identify both "political field alignments" with the multicultural turn because they see their respective intents as falling within the scope of Latin America's new constitutionalism. Instead, Paschel wants to conceptualize them as two political field alignments that would have occurred at two different time periods: the late 1980s and the 1990s for the "multicultural alignment," and the 2000s for the "racial equality law alignment." When considering the Latin American region as a whole, and moving beyond the particularities of this or that specific national context (Brazil or Colombia, for example, the two national contexts she focuses on in her book), we can undeniably see in virtually all relevant constitutional reforms or in the adoption of new constitutions—including the Brazilian and Colombian cases—articles prohibiting racial and other discriminations prominently placed alongside articles recognizing ethnoracially based collective rights. Legal scholars consider the recognition of "ethnoracial collective rights" and the adoption of "legal protection against racial and other discriminations" as two aspects of the new Latin American constitutionalism, or in other words as two different threads of a single multiculturalist project to reorganize society. When consulting recent constitutional reforms and adoptions of new constitutions, one can appreciate that both sets of preoccupations and instruments have unambiguously characterized Latin American multiculturalisms and new constitutionalism since their very beginning.

There is obviously intellectual value to Paschel's distinction between what she also calls the "multicultural alignment"—mostly associated with ethnoracially based collective rights for Afrodescendant communities usually located in rural areas (the quilombos in Brazil and the "black communities" of the Pacific coast in Colombia)—and the "racial equality law alignment"—usually associated with urban individuals and communities and growing black middle classes. The dichotomization she argues for has the benefit to lay emphasis on the profoundly different logics behind each set of political demands and legal accommodations: the right to be different (multicultural collective rights) versus the right to be treated as anyone else or the right to be the same with equity (anti-discrimination law). However, her insistence in understanding these two "political field alignments" as definitely antithetical and as belonging to different "time periods," as if both of their logics could not be found at work at the same time in one particular national context, or in one given constitution or set of constitutional reforms is not an accurate depiction of what has actually happened in the multiple national contexts of the region. Her want-to-be-valid-across-the-region periodization is certainly the most problematic aspect of her argument. The so-called Latin American multicultural turn has taken place at different times and paces in the different countries of the region. While Brazil and Colombia—the two countries she focuses on—are the first two to engage in the turn (see the 1988 Brazilian, and the 1991

Colombian constitutions), other Latin American countries have not engaged in it before the 2000s altogether, while others—for a number of different reasons—remained almost untouched by it (Puerto Rico, the Dominican Republic, Cuba). To only take a few examples: it is only in 2019 that the constitution of the Federal United States of Mexico was reformed to include—for the very first time—the recognition of the existence of Afro-Mexican peoples and communities (see Camara de Diputados, 2019). In Ecuador, although the first constitution to adopt a multiculturalist orientation was passed in 1998 with separate articles acknowledging the possibility of collective rights for Afrodescendants and assuming an anti-discrimination stance, the 2008 constitution adopted during Rafael Correa’s administration (2007–2017) re-emphasized the same on both fronts with vigor. Bolivia approved a new constitution in 2009, which for the first time named Afro-Bolivians as part of the nation, granting them—“in all that applies” (Article 32)—the same collective rights and protections as indigenous peoples, and also protecting them against discrimination. The International Labour Organization (ILO) Convention 169, a legal instrument of importance for Afrodescendants to defend their collective rights to territory, particularly in Central America, has only been ratified after the year 2000 by Argentina, Brazil, Chile, Nicaragua, and Venezuela. Paschel’s periodization too enthusiastically conflates the rather rigid timeframe she put together to make sense of the Brazilian situation to the entire Latin American region. If it is true that the 2001 U.N. World Conference Against Racism that took place in Durban, South Africa had a considerable impact on black social movements in Latin America, it is not right to say that prior to “Durban” there was no adoption of anti-discrimination or racial equality legal instruments, or that prior to 2001 no Afrodescendant organization in the region was actually active politically against discrimination.

In her book, in a section on “Multicultural Constitutionalism,” Paschel (2016: 7) directly contradicts her affirmation that racial equality laws and policies only emerged in the 2000s. Indeed, she confirms that with the advent of “multiculturalism” many Latin American states “[...] also passed affirmative action policies, in the areas of education and even in political life” (2016: 8). Later on in the same book, when she discusses the work of the Brazilian National Constituent Assembly on ethnoracial rights that preceded the adoption of the first multiculturalist constitution in the region in 1988, Paschel acknowledges how heated the discussions about affirmative action policies were (2016: 92–95) and that many propositions came from different black organizations. Of these, “only two [...] were ultimately included in Brazil’s 1988 constitution: racism was criminalized, and quilombos were guaranteed territorial rights” (2016: 90). This statement of Paschel clearly illustrates the intertwined duality “multicultural constitutionalism”-“racial equality law” found in Latin American multiculturalisms since the very start of the multicultural turn or of the new Latin American constitutionalism. The genesis of these legal instruments has indeed been entangled, even if one might have eventually given the impression to dominate the political conversation/debate at different time periods in given national contexts, without ever erasing the actual existence of the other.

The categorical separation between “multiculturalism” and “racial equality law” Paschel argues for is also contradicted by the facts of Brazilian legal history. Indeed, in Brazil, a number of anti-discrimination laws were passed quickly after the adoption of the 1988 constitution (see Hernández 2013: 121–123) and before the 2000s. In 1989, the Brazilian Congress passed Law 7716 (called *Lei Caó*), which criminalized race and color discrimination in public facilities and in employment in both the public and the private sectors, with punishments/imprisonments ranging from 1 to 5 years (*Lei Número 7.716 de 5 de Janeiro de 1989*). Then, in 1990, Law 8081 added to Law 7716 the new crime of “practicing, inducing or inciting, by means of public communication or publications of any nature, discrimination or prejudice on the basis of race, religion, ethnicity, or national origin” (*Lei Número 8.081, de 21 de Setembro de 1990*). Committing this crime came with a punishment of 2 to 5 years of imprisonment. In 1997, Law Paim further transformed Law 7716. One of the most notable changes it introduced is certainly the notion of “racial insult” (*injúria racial*) (*Lei Número 9.459 de 13 de mayo de 1997*).

At OJALA, we are aware that when considering the region as a whole, both types of ethnoracial legal instruments (those that recognize multicultural collective rights and those called “racial equality law” or “anti-discrimination law”) are undoubtedly linked to each other and to the multicultural turn/new constitutionalism. We nonetheless deal with them separately to acknowledge that in Brazil, for example, as one national context of the Latin American region among others, both sets of instruments have been politicized by some in the Brazilian black social movements as existing somewhat in opposition to each other (see Igreja and Ferreira, 2019). We do so for pragmatic reasons, acknowledging the value in considering the two “political field alignments” (to use Pashel’s vocabulary) as participating in somewhat separated logics, despite our disagreement with Paschel who sees them as two opposite and mutually exclusive political discourses that would have dominated black social movements and the fight for human rights for Afrodescendants in the region at different time periods, one succeeding the other. OJALA wants to assess the application of both kinds of instruments for the benefit of Afrodescendants living in both rural and urban areas, in the practice of Latin America’s justice systems.

OJALA’s Ambition to Produce Critical Knowledge for the Improvement and Defense of Afrodescendants’ Rights

OJALA’s comprehensive objective is to contribute to, and facilitate the creation of, comparative and critical knowledge about Afrodescendants’ interactions with Latin American justice systems, as these deal with Afrodescendants’ collective rights, and their right to live joyful lives free from racial discrimination. That comprehensive objective is grounded on the fundamental premise that any production and accumulation of knowledge about Afrodescendants and Latin American justice systems cannot be but beneficial for the recognition, promotion, improvement, and defense of Afrodescendants’ rights across the region. We foresee that OJALA’s comparative research ambitions and its targeted production of knowledge will be of use to community-based and/or national activist organizations, policy makers, law practitioners, scholars, government organizations, and others.

We propose to reach this far-reaching objective through three specific and non-exclusive major activities.

1) The creation of a Regional Repository of Legal Archives in Spanish and Portuguese (with User Guides in Spanish, Portuguese, and English)

OJALA works to establish in the Florida International University’s Law School Library, a Repository of Legal Archives regrouping all archives of relevant legal cases from all national contexts in the Latin American region in which multicultural legal instruments, anti-discrimination law or “racial equality law”, and any other relevant legal instrument(s) have been in use for the promotion and defense of Afrodescendants’ human rights. As it reaches various stages of completion, the Repository will be made available digitally to attorneys from the region as they litigate new cases, to researchers (mostly graduate students and professional researchers) interested in the systematic practices of the Latin American justice systems as they engage with Afrodescendants, to activists in search of documentation about related legal cases in other countries of the region, and to reformist policy makers. Such an easily reachable online repository will contribute to the making of a regional jurisprudence about Afrodescendants’ rights in the region’s justice systems.

The repository will have its own professionally designed website that will facilitate users’ navigation to specific litigations on the list of relevant cases in each Latin American national context. We plan to design user guidelines that take into consideration the particularities of archiving systems in each national context. We imagine these guidelines as also facilitating online linkages within the repository to the archives of other litigations from across the region that our system will have identified as sharing similarities with the first

results obtained in any given search. An attorney litigating on behalf of an Afrodescendant a case of ethno-racially based discrimination against a white or white-mestizo officer in a military school, for example, will receive links to other similar cases that were litigated against the military in other national contexts of the region. Easily accessing these related and relevant archives will facilitate attorneys' deployment of the right and nuanced arguments they need to elaborate to win new cases.

We are currently looking for funding to support the building of this Latin American repository. As we conduct specific research projects in the region, we have begun collecting legal archives in—and this is our ultimate goal—all Latin American national contexts. The Repository will include scanned legal archives not available online in the countries where each case unfolded. It will also redirect specific searches to national archives available online in each country of the region.

2) The Conduct of Research Projects about Afrodescendants and the Contemporary Latin American Justice Systems

We plan to design and conduct research projects in specific national contexts. Some of these projects will be comparative in nature and include multiple countries from across the region. This research will be aimed at producing knowledge about ethnoracial law and its usage to protect the rights of, and provide remedies for, Afrodescendants in Latin America.

We were already awarded seed funding through a Ford-LASA Small Grant in 2018, and an Initiative Wenner Gren Foundation for Anthropological Research Initiatives grant in 2019 to develop The Observatory of Justice for Afrodescendants in Latin America (OJALA) at Florida International University. We have published a special issue of the scholarly journal *Latin American and Caribbean Ethnic Studies* (LACES) entitled "Justice for Afrodescendants in Latin America: An Interrogation of Ethnoracial Law" (see Rahier, 2019a), in which we analytically disentangle specific litigations filed by Afrodescendants in various countries of the region. We are currently preparing a special issue of the journal, *Abya-Yala: Revista sobre Acesso à Justiça e Direitos nas Américas*, published by the University of Brasília, Brazil. That special issue is entitled: "Afrodescendants' Rights, Ethnoracial Law, and the Practice of Justice Systems in the 2020s' Latin America."

3) The Dissemination of Existing Knowledge about Afrodescendants and the Contemporary Latin American Justice Systems through the Development of Workshops and Symposia

We envisage to disseminate the comparative, regional, and critical knowledge produced and gathered by OJALA and others through the design of workshops and symposia that target a varied audience of stakeholders in the region: a) operators of the justice systems (prosecutors, public defenders, judges, and attorneys) to emphasize the spirit and importance of ethnoracial law across Latin America for the defense of Afrodescendants' rights, and inform about ordinary challenges for its application; b) Afrodescendant social movements to contribute to, and support the improvement of, their politico-legal strategies aimed at triggering and securing the application of ethnoracial law for the benefit of Afrodescendants' collective rights and protect them against discrimination.

OJALA's Current Research Project: "A Multifaceted Examination of the Application of Ethnoracial Law for Afrodescendants in Contemporary Multicultural Ecuador"

In August 2020, we submitted a research proposal to the National Science Foundation (NSF) in the United States. After a first round of evaluations, and requested revisions, we resubmitted the proposal in February 2021 and were then successful: in July 2021, the NSF awarded us the funding to conduct the three year-long research entitled: "A Multifaceted Examination of the Application of Ethnoracial Law for Afrodescendants in Contemporary Multicultural Ecuador."

The proposed research covers: -the political discussions and formal adoption processes of ethnoracial legal instruments in and by national and municipal legislative bodies since 1998, the year the first Ecuadorian constitution to recognize the country as a multicultural nation-state was adopted; -the relative inclusion of these ethnoracial legal instruments in the curricula of the country's law schools and specialized post-law school workshops attended by the justice system operators (judges, prosecutors, attorneys, public defenders, etc.); -an interrogation of the application of ethnoracial law in relevant litigations involving Afrodescendants processed in the country's courts of law since 1998.

This is the first study to engage in such a systematic and multidimensional examination of ethnoracial law's adoption and applications for the benefit of Afrodescendants in the practice of one representative South American justice system. We consider this project to be a "pilot study" that prepares the way for the development of a research model to comparatively scrutinize the application of ethnoracial law in other Latin American national contexts. With its ambitious design, the project aims to go beyond the usual approach to such legal instruments, often limited to an exclusive consideration of their texts. Instead, it engages in the necessary disentangling of the multi-layered applications of these legal instruments' texts in the courts of law.

Ecuador's relatively small size makes it ideal to come to terms with its research objectives in 36 months. The geographic and population characteristics of Ecuador (17.8 millions) further justify its selection as the national context wherein to conduct this pilot examination. The country's geography encompasses tropical climate-coastal areas, tempered climate-Andean highlands, and a portion of the Amazonian tropical rain forest, three of South America's major ecosystems. The Ecuadorian population's ethnoracial diversity (*indígenas* 7.03%; *afrodescendientes* 7.19%; *mestizo/as* 71.93%; *blanco/as* 6.09%; *Otro/as* 0.37%; *Montubio/as* 7.39%; 2010 Ecuadorian census [the 2020 census was suspended because of the pandemic]) is also representative of the entire South American sub-region's ethnoracial population composition (Wade, 1997; Whitten, 2003; Telles, 2014). My Ecuadorianist publications (Rahier, 2013), along with the work of many others, have shown how much white supremacy is anchored in Ecuadorian society. Ecuadorian anti-black racism is very much representative of anti-black racist formations in other South American societies. The multiple dynamics of the diverse Afro-Ecuadorian communities and social movements, located in, or acting from different rural and urban areas, are also representative of similar or comparable processes experienced by rural and urban Afrodescendants in other South American countries (Rahier, 2019b). Across the region, Afrodescendants have been contributing to, and very much involved in the making and management of the so-called multicultural turn in their respective country (Rahier, 2011).

The specific objectives of this project are:

- 1) To reconstruct the history of relevant international legal instruments and processes, and international courts of law decisions that make significant jurisprudence in support of the application of ethnoracial law in Ecuador.

- 2) To explain the history of existing Ecuadorian municipal and national ethnoracial law with relevance for Afrodescendants in Ecuador since 1998—year of the adoption of the first multiculturalist constitution (de la Torre, n.d.), the second multiculturalist constitution was adopted in 2008. This historical synthesis will

associate the discussions about, and final adoption of each ethnoracial legal instrument within their respective surrounding political context in Ecuador and internationally.

3) To assess qualitatively and quantitatively the level of knowledge the justice system operators (judges, prosecutors, attorneys, public defenders) have about ethnoracial laws as they apply to Afrodescendants.

4) To scrutinize the application of ethnoracial legal instruments in the courts of law: -a. By compiling a detailed list of all relevant litigations initiated since 1998 by Afrodescendants and/or by a state agency on their behalf, in which ethnoracial law was in use. -b. By collecting and examining the archives of each procedural step of these individual cases. Interviews with the social actors and justice system operators involved in the cases will also be conducted. I expect that we will be working with a total of between 60 to 75 litigations. Preliminary research revealed that the archives have traces of many more complaints that never made it to a court of law as a full-fledged litigation (Rahier, 2019b). We will systematically attempt to collect information about such complaints every time possible. Afro-Ecuadorian community leaders know of many such discarded complaints, which will help our search, as will our research in Ecuadorian press archives. We maintain a permanent contact with Afro-Ecuadorian social movement organizations of various kinds. During the three years duration of the project, we will keep track of all litigations either planned or already unfolding in a court of law.

5) To assess qualitatively and quantitatively the teaching of relevant ethnoracial law in Ecuador's law schools and in post-law school spaces of continuing education (workshops, short seminars, and other forms of training) for the justice system operators. In addition to gathering information about all Ecuadorian law schools' curricula for analysis, the research team will also focus specifically on three Ecuadorian law schools for the conduct of focus groups with the students enrolled in selected relevant courses, and for individual interviews with students and instructors of such courses. The first two law schools exist within the two state universities with the largest law school programs in the country. One is located in the capital city of Quito, which is situated in the Andes (the Facultad de Jurisprudencia, Ciencias Políticas y Sociales of the Universidad Central del Ecuador, Quito). The second is in Ecuador's largest city, Guayaquil, on the country's coast (the Facultad de Jurisprudencia y Ciencias Sociales y Políticas of the Universidad de Guayaquil, Guayaquil). While parts of the same country, these two regions have had very distinct histories in terms of racial makeup and the ways race relations and racism play out in day-to-day life. The third site is also located on the coast. It is distinguished by having the largest Afro-Ecuadorian student population within that specific law school: the Facultad de Derecho of the Universidad Laica Eloy Alfaro de Manabí, in the city of Manta. The three Dean's Offices of each one of these law schools have committed to collaborating with this project. Due to current budgetary crisis in Ecuador, universities have seen their budgets slashed. This has had an impact on course offerings in law schools. We will determine on which group of students attending which specific courses we will focus on once the project begins and that curricula have been finalized. We will establish a list of all post-law school continuing education courses, seminars or workshops offered during the timeline of the project by the judiciary school, the school for prosecutors, and workshops organized by various NGOs or multilateral institutions, focused on the rights of ethnoracial minorities. These offerings vary a lot from year-to-year. We will interview the instructors and conduct focus groups with enrolled students in selected such courses. To give an example, in the recent past the Ecuadorian Judicial School (Escuela Judicial) offered the following courses: "Interculturalidad Aplicada a la Actividad Judicial" and "La Responsabilidad de la Actuación Fiscal frente a la Jurisdicción Indígena."

We are definitely conscious of the urgency to do OJALA's work, when considering current political developments and the rise of conservative politics in numerous national contexts of the region.

Concluding Remarks

To conclude this brief presentation of OJALA's intentions and objectives, I could emphasize the following, in which can be appreciated both an intellectual and theoretical ambition, in addition to a fundamental political commitment to produce work that cannot be but directly beneficial for the improvement of Afrodescendants' rights in Latin America:

1) We are aware that the analysis of the microphysics of the relations the region's justice systems have with Afrodescendants in the contemporary period will continue revealing that the state is far from being the monolith that some of its most passionate critics suggest that it is, often using an essentialist vocabulary to characterize it, of the kind: "the state does this..." or "the state doesn't do that...". The work we have already accomplished (Rahier, 2019a), and the research we are currently involved in reveal that the state is nothing but a series of processes that might not always go in the same direction, or labor in concert to reach the same goals. The work we have already published uncovers how much contradictory various agencies of the same state can be in their practices and in the way they relate—in specific situations—with citizens. Each one of the litigations we have deconstructed has made blatantly apparent that state agencies can have adopted positions that can be adamantly opposed to each other when considering the application of ethnoracial law for the benefits of Afrodescendants. Some litigations involved—for example—a prosecutor making alliance with Afrodescendant social movements, in an attempt to better secure a "positive outcome" in their case against an officer in a military school (Rahier and Antón, 2019). At some point in that case, the judge called upon the police to reinforce their presence in court the day he condemned the military officer to prison, fearing that the military might attempt to free by force the accused and condemned officer. In fact, it is rather rare that all state agencies and state bureaucrats involved in a given case adopt the exact same position in favor of, or against Afrodescendants' rights.

One of the fundamental premises of OJALA's intellectual project is that to seriously and meticulously study the multicultural state in Latin America, we may not be content with assuming it to be nothing more than an abstract and monolithic entity. We want to take the time to carefully examine citizens-state interactions as they relate to the use of ethnoracial law in Latin American justice systems, and to the interventions of differently positioned state bureaucrats (state officers, judges of various instances, prosecutors, public defenders, law enforcement officers, etc.) and other socio-political actors in specific legal cases, both in and outside courtrooms.

We are aware of the importance of the state in multiculturalist Latin American societies. Rather than dismissing the state, we want to study it, its organs and functionaries, the way they all actually "work" or function in the practice of everyday life, and above all in the processes of its legal system. We want to overcome routine and ordinary theoretical fetishizing of the state that take it as a departure point and fail to demystify its existence. Such fetishizing reifies the state and treats it as a thing or a given separated from society, a naturalized entity that maintains within itself its own power/authority in an organic unity that reveals it as the embodiment of reason (Hobbes and Gaskin, 1998; Avineri, 1972). We prefer to see the state "as a mappable constellation of social practices". Indeed, there is no doubt that it is through the eyes and minds of citizens that the state comes to existence, that is to say—as Gupta and Sharma indicated (2006)—that it is through the representations of the state that citizens carry along, reproduce, and transform in their interactions with state bureaucrats that the state lives on.

To understand the state, how it works, how it reproduces itself and how it changes, micro-analyses of interactions between identified state functionaries and specific individual citizens are necessary, as are an examination of the images of the state they hold. This is where ethnography intervenes. And this is where OJALA's project develops. By paying careful ethnographic attention to the mechanics of legal cases as they unfold in specific national contexts, OJALA wants to look at practices of the state in the context of its legal

system and the application of multicultural legal instruments and anti-discrimination law for the benefit of Afrodescendants. The state doesn't exist but through the more-or-less ritualized practice and performances of its different representatives, through the practice and administration of the law by specialized and trained agents (judges, prosecutors, attorneys, law enforcement officers, etc.) who interact with, in this case, Afrodescendant citizens who are turning toward the state for redress.

The recent work of Tatjana Thelen, Larissa Vetter, and Keebet von Benda-Beckmann, and their theorizing of what they call "stategraphy," which they see as "a relational anthropology of the state" is particularly useful to express what we have in mind:

(...) (W)e can describe the state as a relational setting that cannot be categorized according to simple hierarchies or a governing center, but that exists within the relations between actors who have unequal access to material, social, regulatory, and symbolic resources and who negotiate over ideas of legitimate power by drawing on state images—at once reaffirming and transforming these representations within concrete practices. Such a conceptualization does not attach any regulative functions or source of authority *per se* to the state. States are viewed not as being characterized by static ties but as being processual in nature. From that perspective, states can be understood as ever-changing political formations with institutional settings that are structured by social relations in interactions characterized by different state images (2017: 7).

2) Most importantly, OJALA wants its work to constitute an engagement in the production of critical knowledge useful to improve Afrodescendants' lives. OJALA wants to produce, reveal, accumulate and circulate useful knowledge about Latin American justice systems' concrete dealings with Afrodescendants in contemporary times. OJALA hopes to make evident the processes that work against the full realization of the utopia the adoption of ethnoracial legal instruments point to and expose.

As I have argued elsewhere (Rahier, 2019b), unfortunately, notwithstanding few affirmative action policies based on some kind of reparation for those coming from a lineage associated with a long history of group discrimination, the Latin American ethnoracial legal instruments that criminalize racial discrimination do not address but individual behaviors identified as racist and discriminatory, without ever engaging directly and significantly with "race regulation customary law" or structural racism (see Hernandez, 2013). This continued virulence of race regulation customary law is certainly one of the most limiting factors working against current Latin American ethnoracial law, and more specifically against any potential impact racial equality/anti-racial discrimination law might have.

3) The novelty of OJALA's approach is certainly in its ambitioning to pay careful, systematic, and meticulous attention to the workings of the region's justice systems as they deal with ethnoracial law and attempt to apply it for the benefit of Afrodescendants in the courts of law. There has not been, previously, such a systematic scholarly and political endeavour. Its findings could inform the design and elaboration of new Afrodescendant politico-legal strategies in the region.

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