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978-1-107-02486-1 - Racial Subordination in Latin America: The Role of the State, Customary Law, and the New Civil Rights Response

Tanya Katerí Hernández

Excerpt

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RACIAL INNOCENCE AND THE CUSTOMARY LAW OF RACE REGULATION

I don't think there is much racism in [Latin] America because we are a mix of races of all kinds of Europeans, Africans, Asians, and other races that were or will be; but I understand that in many other parts there is racism, above all in the United States and Europe, is where there is the most racism.¹

There are approximately 150 million people of African descent in Latin America, representing about one-third of the total population (see Maps 1 and 2).² Yet, these are considered conservative demographic figures given the histories of undercounting the number of persons of African descent on Latin American national censuses and often completely omitting a racial/ethnic origin census question.³ At the same time, persons of African descent make up more than 40 percent of the poor in Latin America and have been consistently marginalized and denigrated as undesirable elements of the society since the abolition of slavery across the Americas.⁴ Yet, the view that “racism does

¹ “Iberoamérica, ¿una región racista?” (Ibero-America: A Racist Region?) BBC Mundo, October 13 2005, http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_4331000/4331708.stm.

² Margarita Sánchez and Maurice Bryan, *Persons of African Descent, Discrimination and Economic Exclusion in Latin America* (London: Minority Rights Group International, 2003), 3–4, tbl.1, <http://www.minorityrights.org/933/macro-studies/afrodescendants-discrimination-and-economic-exclusion-in-latin-america.html>.

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

⁴ Gustavo Márquez et al., *Outsiders? The Changing Patterns of Exclusion in Latin America and the Caribbean* (Washington, DC: Inter-American Development Bank, 2007), pp. 15–17; Henry Louis Gates, Jr., *Black in Latin America* (New York: New York University Press, 2011).

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not exist” is pervasive in Latin America despite the advent of social justice movements and social science researchers demonstrating the contrary. When the BBC surveyed Latin Americans in 2005 regarding the existence of racism, a significant number of respondents emphatically denied the existence of racism. Many, for instance, made statements such as “Ibero-Americans are not racist,” and “Ibero-America is not a racist region, for the simple fact that the majority of the population is either indigenous, creole, or mixed.”⁵

Thus the denial of racism is rooted in what many scholars have critiqued as the “myth of racial democracy” – the notion that the racial mixture (*mestizaje/mestiçagem*) in a population is emblematic of racial harmony and insulated from racial discord and inequality. Academic scholarship has in the last twenty years critiqued Latin American “mestizaje” theories of racial mixture as emblematic of racial harmony. Yet, Latin Americans still very much adhere to the notion that racial mixture and the absence of Jim Crow racial segregation are such a marked contrast to the U.S. racial history that the region views itself as what I term “racially innocent.” Indeed, the extensive survey data from the Latin American Public Opinion Project’s “Americas Barometer 2010” demonstrates that biased Latin American racial ideologies have not completely evolved despite the existing scholarly critiques of *mestizaje* as a trope of racial innocence. For instance, in the Americas Barometer 2010 survey of Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, and Peru, the vast majority of the country populations (of all races) agreed with the *mestizaje* notion that “racial mixture is good for the country.”⁶ In fact, more than 75 percent of all respondents agreed with the statement and largely endorsed the idea of interracial marriages. Yet, the Americas Barometer data also show that for those Latin Americans who did express disagreement with the idea of their children marrying black partners, the opposition level was dramatically greater from white respondents in contrast to black respondents. Specifically, in those countries where the Americas Barometer asked whether there was disagreement with one’s

⁵ “Iberoamérica, ¿una región racista?”

⁶ “Americas Barometer 2010,” Ethnicity Module of the Project on Ethnicity and Race in Latin America (PERLA), Latin American Public Opinion Project of Vanderbilt University, www.AmericasBarometer.org.

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own children marrying a black person, such as Brazil, Colombia, the Dominican Republic, and Ecuador, the opposition by whites to interracial black marriages was on average 60 percent greater than the opposition of blacks to such marriages. (Other countries were asked about marriage to a person of indigenous descent.) These results thus accord with the long-standing data that marriage patterns in Latin America are generally racially endogamous.⁷

The Americas Barometer 2010 data also indicate that white respondents in several Latin American countries are considerably more likely than other groups to state a preference for lighter skin. For instance, in Colombia, Ecuador, and the Dominican Republic, on average 26 percent of white respondents agreed that they would prefer lighter skin, in contrast to the 13 percent average of black respondents who prefer lighter skin. In Mexico and Peru, blacks on average had greater rates of preference for lighter skin (37%) than whites (26%). In Brazil the rate of white preference for lighter skin closely approximated blacks' lighter-skin preference rate. Even socialist Cuba continues to manifest a preference for whiteness and a white opposition to interracial marriage.⁸ Moreover, in a 2004 comparison of implicit and explicit racial bias in the United States, Cuba, the Dominican Republic, and Puerto Rico, the rates of both implicit and explicit racial bias were higher in all three Latin American contexts as compared to the United States.⁹ Thus despite the overwhelming articulation of *mestizaje* as an indicator of racial harmony across much of Latin America and the different ways that it is articulated within each country, attitudes of racial distinction and superiority persist beneath the celebration of racial mixture. In part, the absence of a legal critique of the Latin American comparisons to the Jim Crow United States has enabled the Latin American "racial innocence" stance to remain. This book seeks to fill in that gap in the literature and provide the legal critique.

Specifically, this book is about the ways in which the Latin American denial of racism operating in conjunction with the notion that true

⁷ Peter Wade, *Race and Sex in Latin America* (London: Pluto Press, 2009), pp. 168–73.

⁸ Mark Q. Sawyer, *Racial Politics in Post-Revolutionary Cuba* (Cambridge: Cambridge University Press, 2006), pp. 124–6.

⁹ Yesilernis Peña, Jim Sidanius, and Mark Sawyer, "Racial Democracy in the Americas: A Latin and U.S. Comparison," *Journal of Cross-Cultural Psychology* 35 (November 2004), 749–62.

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racism can only be found in the racial segregation of the United States veils the actual manifestations of racism in Latin America. I will argue that an examination of the role of the state after the abolition of slavery in regulating race through immigration law and customary law disrupts this picture of Latin America as “racially innocent.” I will then assess the ways in which the contemporary Latin American antidiscrimination laws seek to eradicate the legacy of racial inequality wrought by the historic racism of the state. Finally, I will conclude the book with insights as to how the examination of the Latin American context may be helpful to the U.S. racial justice movement today, given the growing denial of the existence of racism in the United States. In doing so, I shall adopt the term “Afro-descendants,” which Latin American race scholars and social justice movement actors use to encompass all persons of African descent in Latin America who are affected by antiblack sentiment whether or not they personally identify as “black” or adopt a mixed-race identity such as mulatto or mestizo. This book will not focus upon the racial inequality issues of indigenous groups in Latin America given the extensive literature that already exists regarding that topic. Instead the analysis will focus upon the particular history of Afro-descendants’ relationship to the state as formerly enslaved subjects seeking visibility as citizens and full participants in the national identity despite the societal denial of racism.

**“¡NO SOMOS RACISTAS!” “WE ARE NOT RACISTS!”
THE RACISM-DENIAL CLOAK AROUND ACTUAL
DISCRIMINATION**

The force of racism denial is so strong in Latin America that even the ubiquitous utterance and dissemination of racist speech are viewed as inconsequential. Yet, the very term “negro” (black/negro) is widely considered derogatory, because persons of African descent are stereotyped and referred to as inherently criminal, intellectually inferior, overly sexual, and animalistic. Because the racialized stereotypes of persons of African descent are pervasive, they are commonly understood to smell like animals and, in particular, monkeys. In addition to these commonalities in antiblack stereotypes across Latin America,

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each country in the region has also developed its own subset of derogatory phrases for blacks and blackness.

In Argentina, “negro de mierda”¹⁰ (“shitty negro”) is a popular expression, and “negro” is viewed as the worst of insults.¹¹ As a result, even children’s songs in Argentina are replete with antiblack references such as “I like the white, long live the white, let the black die.”¹² In fact, a young Argentinean created the Facebook page “Extermination of the (Negros de Mierda) Shitty Negroes.”¹³ In Brazil, persons of African descent are referred to as “macaco” (monkey), “besta” (animal), “vagabundo” (bum), “filho de puta” (son of a whore), “safado” (insolent person), “ladrão” (thief), and “nega fedorentas” (stinking female nigger).¹⁴ Pointedly, the Brazilian insults are viewed as being coterminous with blackness. This is also unfortunately manifested in Brazilian primary school textbooks, in which black people are consistently depicted as animallike, as socially subordinate, and in other stereotyped manners.¹⁵ In Colombian newspapers, even the polluted air of Cali is blamed on the presumed dirtiness of blacks.¹⁶ In Costa Rica, blacks are typically described as “pigs,” “stinking,” “unkempt,” and “ugly.”¹⁷ In Cuba, “doing things like a black person” is a common expression to describe a poorly done task or acts of delinquency.¹⁸

¹⁰ Corina Courtis et al., “Racism and Discourse: A Portrait of the Argentine Situation,” in Teun A. van Dijk (ed.), *Racism and Discourse in Latin America* (Lanham: Lexington Books, 2009), pp. 13, 32.

¹¹ Marina Ari, “Argentina: Empanada, Asado de Vaca y Mucho Racismo,” *Kaos En La Red*, May 22, 2010, <http://www.kaosenlared.net/noticia/argentina-empanada-asado-vaca-mucho-racismo>.

¹² “Piden que Un Libro Infantil que Fomenta El Racismo sea Quitado de Circulación,” MDZ Online, May 27, 2010, <http://www.mdzol.com/mdz/nota/212497>.

¹³ Carlos Neri, “Un Grupo Argentino Exterminación de los Negros de Mierda Indigna en Facebook,” *Moebius*, March 2, 2008, <http://enmoebius.com.ar/?p=972>.

¹⁴ Teun A. van Dijk, *Racism and Discourse in Spain and Latin America* (Philadelphia: John Benjamins, 2005), pp. 136–7.

¹⁵ Hélio Silva Jr., *Discriminação Racial nas Escolas: entre a lei e as práticas sociais* (Brasília: UNESCO Brasil, 2002), pp. 34–8.

¹⁶ Hernando Salazar, “Colombia Contra el Racismo,” *BBC Mundo*, May 23, 2008, http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7415000/7415897.stm.

¹⁷ Marjorie Jiménez Castro, “Las Máscaras del Chiste Racista,” *InterSedes: Revista de las Sedes Regionales*, 2 (2001), 43.

¹⁸ Fernando Ravsberg, “Advierten Sobre Racismo en Cuba,” *BBC Mundo*, February 13, 2003, http://news.bbc.co.uk/hi/spanish/latin_america/newsid_2759000/2759775.stm.

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In fact, the Cuban Academy of Sciences found in 2003 that dozens of Cuban phrases are used to connect blacks with delinquency and inferiority.¹⁹ This is best exemplified by the popular phrases “It had to be a negro”²⁰ and “There is no such thing as a good black or a sweet tamarind.”²¹ In Ecuador, an often-repeated joke is that “a black person running is a thief, a white person running is an athlete.”²² This helps to account for the 2009 survey findings in Ecuador demonstrating that five out of seven Ecuadorians harbor racial prejudice against blacks.²³ Even Ecuadorian state officials are often quite comfortable stating their racialized perspectives. One chief of police publicly stated in 1995, “There is a type of race that is drawn to delinquency, to commit horrible acts ... that is the Black race, which is taking over the urban centers of the country, forming poverty belts that are conducive to delinquency because of their ignorance and their audacity.”²⁴ In Mexico, Afro-Mexicans respond to the stereotypes that they are “ugly” and “dark” with the focus on marrying lighter-skinned partners in the Latin American hope to lighten and thus “improv[e] the race” of their progeny.²⁵ In Nicaragua, the phrase “100 negroes for one horse” directly compares the inferiority of blacks with the greater value of a single horse,²⁶ given how blacks are viewed as drug addicts and drunks in Nicaraguan society.²⁷ In Peru, the common statements

¹⁹ Ibid.

²⁰ T. Avellaneda, “Manifestaciones del Racismo en Cuba: Varias Caras de Un Viejo Mal,” *Revista Digital Consenso*, 2005, http://www.desdecuba.com/02/articulos/11_01.shtml.

²¹ Rafael Duharte Jiménez and Elsa Santos García, “‘No Hay Negro Bueno Ni Tamarindo Dulce’: Cuba, 118 Años Después de la Abolición de la Esclavitud,” *Matices*, <http://www.matices.de/18/18pcuba.htm>.

²² José Alfredo Andaluz Prado, “Prácticas Racistas y Discriminatorias Es Castigada Con Prisión,” *Diario Correo*, July 6, 2009, <http://www.diariocorreo.com.ec/archivo/2009/07/06/practicas-racistas-y-discriminatorias-es-castigada-con-prision>.

²³ Ibid.

²⁴ Jean Muteba Rahier, “Blackness and the ‘Racial’ Spatial Order, Migration, and Miss Ecuador 1995–1996,” *American Anthropologist* 100 (1998), 421–30, 424.

²⁵ Alicia Castellanos Guerrero et al., “Racist Discourse in Mexico,” in van Dijk, *Racism and Discourse*, pp. 217, 233.

²⁶ K. W. Stephenson, “Michael Campbell: El Racismo Está Enraizado en la Sociedad Nicaragüense,” *La Brújula Digital*, February 25, 2011, <http://www.labrujula.com.ni/noticia/159>.

²⁷ Carlos Salinas Maldonado, “Alta Hooker Rectora de la Uraccan ‘El Chamán es Sólo la Punta del Iceberg,’” *Diario de la Prensa*, February 22, 2009, <http://archivo.laprensa>.

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about blacks are that they are criminals, that they can only work in low-level positions, that they only think until midday, that they are delinquents and live badly, that they are a leisurely race, and that black women are prostitutes.²⁸ A study of Peruvian newspapers from 2008 found a total of 159 different racist adjectives for describing persons of African descent.²⁹ In Venezuela, despite the national pride in being a mixed-race “café con leche” (coffee with milk) society, the plethora of racist sayings commonly iterated includes the phrase “Kill a negro and live a Pepsi [enchanted] day.”³⁰ The widely circulated racial stereotypes about Afro-Venezuelans include

[B]lack people are dangerous, they're thieves, they smell bad, they have bad habits, they discredit a company's image ... it's not their fault if they're like that ... black people when they don't do it [make a mess] on the way in they do it on the way out.³¹

Such racialized stereotypes also are repeatedly circulated through Venezuelann popular music with lyrics such as

Black woman! ... if you were white and had straight hair / My mother told me in distress not to marry a black woman, because when she's asleep, she looks like a coiled snake / A black woman with a big nose doesn't cook for me, because she hides the mouthfuls in her nostrils.³²

Within Latin America there is also the use of racialized language as terms of endearment, which unconsciously invoke the paternalism of slavery's past. For instance, affection is expressed by stating, “That's my black person” or calling someone “my little black person.” Even compliments directed toward those who are black are reserved for

com.ni/archivo/2009/febrero/22/suplementos/domingo/313375.shtml (describing racism in Nicaragua from the perspective of a Caribbean black woman).

²⁸ van Dijk, *Racism and Discourse*, pp. 159–60.

²⁹ Centro de Estudios y Promoción AfroPeruanos Lundu, “Informe 2008: Presencia de Afrodescendientes en los Medios Impresos en el Año 2008,” 2008, <http://lundu.org.pe/web2/informe%20anual%20web/informe%202008.pdf>.

³⁰ Jesús Chucho García, “El Racismo Nuestro de Cada Día,” Geledés Instituto da Mulher Negra, March 21, 2010, <http://www.aporrea.org/ddhh/a97436.html>.

³¹ Adriana Bolívar et al., “Discourse and Racism in Venezuela: A ‘Café con Leche’ Country,” in van Dijk, *Racism and Discourse*, pp. 291, 292–3.

³² Bolívar, “Discourse and Racism in Venezuela,” p. 293.

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those presumed to “supersede” their blackness by having other “superior” traits. Such racialized compliments include “He is black but has the soul/heart of a white”; “She is black but good looking”; “He is black but well groomed and scented.” While such statements are not meant to carry racial malice, they still activate racial stereotypes about the inferiority of blacks. In fact, these perspectives about persons of African descent are so embedded in the social fiber of Latin American societies that persons of African descent’s subordinated status in society is viewed as natural and logical. Furthermore, the long-standing notion that “racism does not exist” in Latin America makes those unaffected by hate speech disinclined to acknowledge the harms it causes marginalized groups.

Moreover, when flagrant instances of racist conduct are detailed in the Latin American news media, they are understood as the acts of aberrant individuals who do not represent the greater racial tolerance presumed to be a part of Latin American culture. This dichotomy is well exemplified by a study indicating that while 87 percent of non-black Brazilians manifest racial bias in their response to survey questions, only 10 percent admit to having any racial prejudice.³³ Similarly, while 89 percent of all Brazilians state that racism exists in Brazil, only 4 percent admit to harboring racial prejudice.³⁴ Thus, despite Brazil’s reputation as a land of “cordial” race relations, Brazilians, like others in Latin America, are acutely aware of color distinctions and their hierarchical significance. As one ethnographer who traveled to Brazil to study liberation theology but found racism instead reports:

The issue of color was, I saw, a constant presence in how men and women looked at each other, chose their lovers and spouses, modeled their bodies. It was there in the daily round of jokes, banter, insults, and accusations. It was there in how people talked to and about each other, in how they touched or did not touch each other.³⁵

³³ “Datafolha Revela O Brasileiro,” *Folha de São Paulo*, June 25, 1995, Especial-2, 3, <http://almanaque.folha.uol.com.br/racismo02.pdf>.

³⁴ Gevanilda Santos and Maria Palmira da Silva (eds.), *Racismo No Brasil: Percepções Da Discriminação E Do Preconceito Racial Do Século XXI* (São Paulo: Fundação Perseu Abramo, 2005), pp. 141, 145.

³⁵ John Burdick, *Blessed Anastácia: Women, Race, and Popular Christianity in Brazil* (New York: Routledge, 1998), p. viii.

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In fact, Brazilians, like most Latin Americans, cannot imagine an Afro-Brazilian equivalent of Barack Obama being elected their president as a self-professed Afro-descendant.³⁶ In short, despite the regional differences in racial demography and the prevalence and manner of racial mixture rhetoric, across Latin America there is a common anti-black reality.

Nevertheless, Latin American racial denial is deeply embedded within racially hierarchical environments. This dualism has been historically facilitated by the deployment of strategic comparisons to the U.S. racial regime that are meant to depict Latin America as innocent of perpetrating racism. I call this the rhetoric of “racial innocence.” As the Latin American human rights scholar Ariel Dulitzky has stated, “[a] kind of presumption of moral superiority vis-à-vis the United States of America is quite widespread throughout our region. Rarely does a conversation on this issue among Latin Americans take place without mentioning the serious incidence of racism and racial discrimination that exists in the land of our neighbors to the north.”³⁷ For instance, in the 2005 BBC survey of Latin American racial attitudes, the following invocation of racial innocence was quite prevalent: “I don’t think there is much racism in [Latin] America because we are a mix of races of all kinds of Europeans, Africans, Asians, and other races that were or will be; but I understand that in many other parts there is racism, above all in the United States and Europe, is where there is the most racism.”³⁸ In fact, in Suzanne Oboler’s study of racism in contemporary Peru, she found that as in most nations of the Americas, the U.S. laws of segregation constitute the ideological definition of racism.³⁹

³⁶ Luis Fernando Verissimo, *O Mundo é Bárbaro – E o que Nós Temos a Ver Com Isso* (Rio de Janeiro: Objetiva, 2008).

³⁷ Ariel E. Dulitzky, “A Region in Denial: Racial Discrimination and Racism in Latin America,” in Anani Dzidzienyo and Suzanne Oboler (eds.), *Neither Enemies nor Friends: Latinos, Blacks, Afro-Latinos* (New York: Palgrave Macmillan, 2005), pp. 39, 42–50.

³⁸ “Iberoamérica, ¿una región racista?”

³⁹ Suzanne Oboler, “The Foreignness of Racism: Pride and Prejudice among Peru’s Limeños in the 1990s,” in Dzidzienyo and Oboler (eds.), *Neither Enemies nor Friends*, pp. 75–100.

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Indeed, Latin America has long prided itself on the historical absence of state-mandated Jim Crow racial segregation laws that existed in the United States. When assessing contemporary racial conditions, Latin Americans continually make the comparison to the U.S. Jim Crow segregation history with statements such as “There is no violent racism like in other parts of the world like neonazism or the segregation in the south of the United States.”⁴⁰ “That is a problem of the Americans.”⁴¹ Conveniently, the use of the United States as a point of reference has long shielded from view the racial subordination of persons of African descent in Latin America.

Furthermore, the historical absence of official Jim Crow laws of segregation is used as a justification for resisting contemporary black social justice movement demands for racially conscious social policies.⁴² For example, in discussing the possibility of workplace affirmative action in Colombia, one commentator warns, “That would be like buying a ticket to a conflict we do not recognize.”⁴³ Another Colombian similarly states, “If we do not want to create a racial conflict that does not exist in this country, we will have to lower the tone of the ethnic complaints and propose universal solutions, like the fight against poverty.”⁴⁴ Similarly, the Brazilian reaction to the use of affirmative action in some universities is to denounce it as “the replacement of the Brazilian notion of racial democracy with a U.S. style positive discrimination that would generate polarization.”⁴⁵ Indeed, a widely circulated statement opposing Brazilian affirmative action is entitled “We Are Not Racists: A Reaction to Those Who Want to Transform Us into a Bi-Color Nation.”⁴⁶ It makes very little difference to such

⁴⁰ “Iberoamérica, ¿una región racista?”

⁴¹ Oboler, “The Foreignness of Racism,” p. 85.

⁴² Anani Dzidzienyo, “The Changing World of Brazilian Race Relations?” in Dzidzienyo and Oboler (eds.), *Neither Enemies nor Friends*, pp. 137–55; Hooker, “Afro-descendant Struggles for Collective Rights in Latin America,” pp. 279–91.

⁴³ Catalina Gallo Rojas, “Igualdad Sin Cuotas,” *El Tiempo*, July 12, 2009, p. 7.

⁴⁴ César Rodríguez Garavito, “En Defensa de las Acciones Afirmativas,” *El Espectador*, July 13, 2009, <http://www.elespectador.com/columna150499-defensa-de-acciones-a-firmativas>.

⁴⁵ Gonzalo Vega Sfrani, “Universidad Reserva La Mitad de sus Cupos Para Negros y Desata Polémica,” *El Mercurio*, October 22, 2006, http://www.ifcs.ufrj.br/~observa/noticias/elmercurio/discriminacion_22.htm.

⁴⁶ Ali Kamel, *Não Somos Racistas: Uma Reação Aos Que Querem Nos Transformar Numa Nação Bicolor* (São Paulo: Nova Fronteira, 2006).