



**Qualis A1 - Direito CAPES**

## Presentation

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We present the September issue of Law and Praxis Journal, the third number of 2019 (vol. 10, no. 3, 2019, 27th edition - Sept-Nov). In this issue, we have a general section of articles with contributions from national and international authors, gathering works in the areas of Latin American studies, studies of gender and sexuality, memory and truth, as well as analysis on the current Brazilian political and constitutional crisis. There are twelve unpublished works resulting from cutting edge research and reflection.

We continue the year of commemoration of the Journal's tenth anniversary with the special issue organized by Silvia Rodríguez Maeso (Centre for Social Studies, University of Coimbra) and Cesar Augusto Baldi (University of Brasilia): "Rethinking legislation and public policies through anti-racism in European and Latin American contexts". The issue is the result of a constant academic and activist dialogue between the guest editors and researchers on the subject. The contributions bring about historical approaches, based on social analysis, to the manifestation of racism in the context of implementing legislation and public policies.

In the translations section, we present the work of Professors Marta Rodriguez de Assis Machado (São Paulo) and Rebecca J. Cook (Toronto, Canada) entitled "Constitutionalization of abortion in Brazil: an analysis from the case of anencephalic pregnancy". Finally, in the reviews section, we publish a review of the book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, by Michelle Alexander, that addresses some of the Special Issue's topics. We remind you that the editorial policies for the different sections of the Journal can be accessed in our website and that the



submission of papers is permanent and always welcome! We would like to thank, as always, our authors, evaluators and collaborators for the trust in our publication.

Enjoy your reading!

**Law and Praxis** team



## Presentation: rethink legislation and public policies from anti-racism in European and Latin-american contexts

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We cannot defeat race prejudice by proving that it is wrong. The reason for this is that race prejudice is only a symptom of a materialistic social fact. (...) The articulate white man's ideas about his racial superiority are not rooted deeply in the social system, and it can be corrected only by changing the system itself (Cox, 1959 [1948], p. 462).

*American's* experience, for example, makes it possible to think about violence from the perspective of the disproportionate impact of dehumanization processes on the zone of non-being, and not as destabilization processes of the hegemonic normality that keeps freedom as an exclusive attribute of the *zone of being* (Pires, 2018, p. 74, emphasis in original. Our translation).

(...) Racialization is not an abstract process, although it contains a symbolic feature. Quite the opposite, we speak of a genocidal, epistemicidal, and destructive technology (Garcés, 2017a, Our translation)



This special issue<sup>1</sup> results from conversations between the two guest editors concerning the analysis of racism as a system of oppression that has historically structured the formation of Europe and *América Latina* (cf. González, 1984, p. 236-237; González, 2018, p. 321- 334; Machado Dias, 1980; Bairros, 1998). The place of decolonial theory and critical theory of race and racism in academia, particularly in socio-legal studies and analysis of state policies (cf. Baldi 2019; Maeso 2018), has been at the center of our concerns and academic-political dissatisfaction.

A starting point was an advanced training course organized in Lisbon in April 2018 as part of the COMBAT research project – “Combating racism in Portugal: an analysis of public policies and anti-discrimination law” –, coordinated by Silvia Maeso and hosted by the Centre for Social Studies.<sup>2</sup> The course addressed the reproduction of institutional racism, as well as the political obstacles to fight against its implications within the context of public policies and legal initiatives in the European and Portuguese contexts. This debate has been enriched through dialogues with knowledge production in Brazil and the broader Latin American context, fostered by the POLITICS project – “Anti-racism policy in Europe and Latin America: knowledge production, political decision and collective struggles”<sup>3</sup>.

On the other hand, in relation to the second organizer, this issue is also shaped by the participation in the councils for LGBT rights, the committee on religious diversity and the committee for the prevention and fight against torture, and the political, epistemic, theoretical and practical discomfort concerning the barriers to the inclusion of discussions about race and gender in public policies.

The issue is situated in the current *American* and European political context, which shows the colonial and racist-patriarchal entrails of the so-called democratic systems, as well as the rule of law that sustains and legitimizes them. A context that also shows the political precariousness of the (scarce) anti-racist initiatives that the states

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<sup>2</sup> The course “(Re) thinking legislation and public policies through (anti) racism” occurred at José Saramago Foundation, Lisbon. More information about the course syllabus is available at: <https://ces.uc.pt/en/formacao-extensao/courses-of-formacao/2018/re-pensar-a-legislacao-e-as-politicas-publicas>. Accessed on July 15, 2019.

<sup>3</sup> This project receives funding from the European Research Council (ERC) under the European Union Research and Innovation Framework Program, Horizon 2020, (ERC-2016-COG-725402 grant agreement). More information available at: <https://politics.ces.uc.pt/>. Accessed on: July 14, 2019.



have incorporated, and the backlash of white power over the grassroots movements that have struggled for those initiatives. The contributions to this special issue also emerge from this white racial fear of the emancipating possibility and reality of anti-racism and decolonization (Azevedo, 2004; Queiroz, 2018). Thus, the contributions propose a critical approach to the definition of certain concepts and vocabularies (e.g., institutional racism, 'race', racialization, discrimination, social pact, segregation, resistance and violence) within political and historical debates specific to each geopolitical context, and the various initiatives developed by governmental bodies, educational, juridical and legislative institutions, and anti-racist and feminist grassroots movements.

The articles provide an unconventional approach to the relationship between race, anti-racism, law, and public policies, and it is possible that the title of the special issue may lead to misunderstandings or may confront the readers with unfulfilled expectations. Both the articles that focus on the analysis of a public policy or a concrete legal measure, as well as those that address a range of political and legal discourses, are not questioning their (in)effectiveness, but rather the power relations that articulate and convey certain conceptions of race and racism, class, sexuality, gender, merit, freedom and humanity, among others. Therefore, the analysis of the relationship between power and knowledge production – and how it informs the debates and design of public policies and legislative bodies – is crucial. Similarly, it is also central the understanding of historical processes that have structured what we consider as political (national) communities – e.g., racial enslavement, genocide or access to citizenship.

The epistemological approach of this issue could be summarized as a collective effort to rethink through anti-racism as an exercise that demands the (re)creation of our horizons of interpretation, in other words, it requires an exercise of political imagination in contexts dominated by violence and dehumanization. If we consider that decoloniality cannot be restricted to a certain theoretical approach, nor a single methodology or intellectual current, but, it has to be understood, according to Puerto Rican philosopher Nelson Maldonado-Torres, as “a direct challenge to the temporal, spatial and subjective axis of the modern/colonial world and its institutions, including the university and the state” (2016, p. 4, loosely translation), then, thinking through anti-racism calls us to develop an exercise of political imagination. That is to say, an approach that seeks



another intellectual archive, another memory of collective struggle that is nourished by that amputated and silenced ancestry, produced as nonexistent or irrelevant. This is not an exercise understood as a process of “recovery”, but rather a process of envisaging counter-narratives and denaturalizing state power and its colonial ways.

Rethinking through anti-racism requires conceptual and historical rigor that pays attention to the state’s resistance to political transformation and the persistent will to maintain the status quo. The promise to restore *order* depends on alliances in the reproduction of knowledge about what racism is and its place in the narratives concerning to nation, European-ness, Latin American-ness, and this democracy *in perpetual crisis*. In the face of recurrent and ubiquitous ideologies of “racial democracy”, “mestizaje” or “multiraciality”, of a supposed “colour-blind universality”, the articles gathered in this issue assume a standpoint that shows racism as constitutive of the rule of law and democracy.

Racism is neither dysfunctional, nor an aberration, a mistake or blindness in knowledge production and the implementation of public policies. As Stokely Carmichael [Kwame Ture] and Charles Hamilton have pointed out in their book *Black Power* about the American context marked by civil rights movements: we are not facing a *dilemma*, because the liberation of the black population is not in the interests of white people that hold state power. Thus, “institutional racism has another name, colonialism” (1969 [1967], p. 22). Racism, as Thula Pires argues, nourishes this “hegemonic normality” (2018, p. 74), that creates the conditions of possibility of a human life – white power – that simultaneously create the conditions of impossibility of *life* for racialized populations, that is to say, it produces the zone of nonbeing in the Fanonian sense. Racialization is a technology of government (Cf. Hesse, 2007; Garcés, 2017a) and, accordingly, “racism is the institutional practice, the representation and theory of governmental racialization” (Hesse, 2007, p. 657). In this sense, “ ‘race’ invokes the historically instituted colonial relation ‘European’/‘non-European’ ” (Ibid., p. 661, emphasis in the original), a relationship that racism rules, disciplines, and oversees (Cf. Quijano, 2005).

This conceptual approach, thus, is strengthened by knowledge produced from the margins and countering Eurocentric colonial thinking, such as radical black thinking and decolonial thinking. However, as the Romani writer and activist Helios Garcés points



out from his experience in the Spanish context, reading and quoting Fanon has become “too comfortable for left-wing whites: he is dead. They must face the dialogue with his heirs ”(2017b, our translation). This is also a reminder of the academy’s predatory logic and its *deflating inclusion* of black, indigenous, or Romani thinking, as well as their analytical categories. This inclusion operates mainly to give comfort for hegemonic white thinking, rather than to a real commitment towards the decolonization of knowledge and its impact on power relations. In this sense, assuming that “racism is not limited to representativeness” (Almeida, 2019, p. 49), the abandonment of the predatory and comfortable practices of academic knowledge requires a constant questioning of the place that we, white academics, occupy in higher education institutions – and in other central institutions for the reproduction of white supremacy - and the practices of including racialized bodies in decision-making spaces (Cf. Bispo 2019).

In dialogue with these theoretical, analytical and political questions, we can highlight three aspects that are present in all contributions to this special issue:

(i) The *denial of racism* continues to shape the academic and political debate as it is constitutive of the great narratives about our political communities and myths of national-civic belonging. This denial is already articulated in the way that race is made effective and (re)signified, because, “race serves to naturalize the groupings that it identifies in its own name” and, above all, to naturalize “the order of difference” (Goldberg, 1992, p. 559-560).

These forms of denial result from, as it is examined in several articles , from certain ways of conceptualizing and producing knowledge about racism and, specifically, from initiatives to combat it. Legislation, public policies, as well as many emancipatory knowledge and movements tend to reproduce depoliticized and Eurocentric conceptualizations of racism that reduce it to discriminatory practices, or as Clovis Moura pointed out for the Brazilian context, “what is conventionally called by the euphemism of *color prejudice*” (1987 [1981], p. 10, our emphasis), or the well-known “problems of national integration” that continue to deny the existence of racialized populations that are doomed to think of themselves as “a problem” (Du Bois (1999 [1903]), a life denied by whiteness/Europeanness.



The denial of racism permeates many emancipatory solutions and paths (from feminism to human rights, passing by the inclusion of so-called “popular classes” and even the defense of animal rights). As Sarah Ahmed warns, declarations of anti-racism are often banal, devoid of meaning: “... to be against something is precisely not to be in a position of transcendence: to be against something is, after all, to be in an intimate relation with that which one is against. To be anti ‘this’ or anti ‘that’ only makes sense if ‘this’ or ‘that’ exists” (2004, paragraph 47).

(ii) Racism and colonialism are built upon *violence*. In the opening minutes of the documentary directed by Ana Flauzina, *Além do Espelho* (Flauzina, 2014), the journalist and black activist Edson Cardoso reflects on police brutality against the black population in Brazil and proposes to analyze and understand violence and death as the product of the institutionalized ethos of politicians, media, publicity, the silencing of the historical trajectory and culture of the black population in schools. In other words, police lethal violence cannot be detached from the production and circulation of knowledge, images, narratives, in multiple places (the court, the university, the prison...) and by a diverse range of individuals (judges, legislators, teachers, social assistants, publicists...). In Cardoso's words: “The soldier kills because he is part of a culture that authorizes killing”. The special issue focuses on the different faces of white violence – from those that appear as benevolent initiatives or discourses, to the most cruel ones – and the counter-narratives and strategies that, albeit precarious in appearance, underlie the resistance in an anti-black, anti-roma, and anti-indigenous world.

(iii) An historical and contextualized approach is crucial in the analysis presented in the contributions. They aim to offer an interpretative basis for understanding racism and anti-racism that is not tied to the immediacy of a controversy or event. The papers bring about an analysis of trajectories in the production of knowledge in academic work and in the institutional decision-making. The analysis of these trajectories do not help to design more effective “anti-racist solutions”, but rather to raise different questions and to problematize some assumptions that we take for granted or as self-evident.

The issue is still an exploratory effort with limitations on several fronts. On the one hand, reading the articles enables a cross-view between the contexts of *América Ladina*, of *Abya Yala*, and Europe, but we need to face the task of a truly relational





analysis that could provide a trans-border understanding of racism and antiracism that engages with the complex connections between race, gender, coloniality, and class. On the other hand, we embrace the challenge of a relational understanding of racism that does not collapse or homogenize historical experiences (cf. Segato 2007) and the ways in which white power has produced and operated since anti-blackness, *anti-gypsyism* and *anti-indigeneity* – the three logics and materialities of racism addressed in this issue.

In the North American context, Jared Sexton has warned against what he considers to be a decentralization and censorship of questioning from the experience of (anti-)blackness that simultaneously makes black suffering available for analogy. According to Sexton, these approaches “bear a common refusal to admit to significant differences of structural position born of discrepant histories between blacks and their political allies, actual or potential” (Cf. Sexton, 2010, p. 47-48). Is a relational approach that considers, for example, as Lyko Day argues, a dialectical analysis between racial enslavement and settler colonialism, an undesirable and depoliticizing endeavour? In the American context, for Day, indigeneity – the racial content of its nominaton – is marked by “dispossession of land through genocidal elimination” (Day, 2015, p. 114); indigenous bodies have also been represented outside, and contrary to, the normativity of what is considered labor, the working class – outside the process of proletarianization.

Black genocide and indigenous genocide are constitutive of *América Latina's* past and present, but with different intensities and configurations in the European colonial empires' administration of populations and the formation of national communities in independent republics (cf. Hooker 2006). In the words of João Vargas, black genocide is still taboo, “a taboo that reveals the ideological strength of the anti-black imperial integration project that defines the Americas”, but which is unveiled by movements such as *Reaja ou Será Morta/o* (which means *React, or You'll be Dead*) (Vargas, 2017, p. 103-104; Cf. Flores, 2019). For Vargas, these movements speak the truth from the centrality of the experiences of blackness, “a united black front – one that recognizes the structural depth of antiblackness and the impossibility of assimilation in the empire –, has always been necessary for the survival of black people” (Ibid., p. 104).



In the European context, the racial ontology of former metropolis and their satellites and accomplices, is difficult to think without the centrality of antiblackness, Islamophobia – that in some contexts is mainly expressed as “Arabophobia” – and anti-gypsyism. In this context, Roma people have historically been subjected to racial enslavement and genocidal projects, their racialization stems from their construction in radical opposition to the national/sovereign political body and to the capitalist normativity of the “good worker”. Roma men and women are the antithesis of any project of emancipation, whether in the context of dissident sexualities, the working class or “stateless nations” and their condition escapes to the hegemonic nominations of “native”, “foreigner” or “colonized”. However, the history and experiences of Romani population have been largely absent from the critical theorization of race and racism.

In the colonality/modernity of the Iberian context, more specifically, the tense relation with Islamic knowledge and practices, surpasses the mere relation with religion, permeated here by an epistemic racism.

Therefore, the debate on relational analysis and empirical analogies in the contexts of Europe and *América Ladina* is still open. Anti-racism has political significance only as a struggle against the structures of the world in which we live and, consequently, the “integration” or “assimilation” into a structurally anti-black world is itself a genocidal act, because “blackness = death” (Vargas, 2017, p. 104). Are there any possible conditions for Roma life in a Europe shaped by antigypsism? Is the life of indigenous people viable within the life of Latin American national communities? What possibilities exist in “times of destruction”, as Beatriz Nascimento would point out?

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