



[Unpublished articles]

## **Institutional Racism and the Legal Field: Limits, Expectations and Potentialities of Knowledge Production about Race in Brazilian Universities**

*Racismo Institucional e o Campo Jurídico: Limites, Expectativas e Potencialidades da Produção de Conhecimento sobre Raça em Universidades Brasileiras*

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The article was received on 05/12/2023 and accepted on 01/21/2024.



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## Abstract

This article stems from a larger research project that problematized the implications of the different approaches to anti-racism adopted by state institutions, grassroots social movements, and universities, taking into account the analysis of knowledge production processes about race, racism, and anti-racism. For this study, we analyzed the speeches of seven interviewees - three black law students, two women and one man, and four law professors, one black and three white, from two universities in the city of Rio de Janeiro, Brazil, in 2018. Among the topics covered are academic, curricular and epistemological cultures in relation to academic training in law, taking into account studies on ethnic-racial relations (race, racism and anti-racism), legal education and human rights. In this approach, we work with the theoretical perspectives of Achille Mbembe, Ana Flauzina, Pierre Bourdieu, Charles Hamilton, Frantz Fanon, Stokely Carmichael, and Thula Pires. The method involves semi-structured interviews anchored in Teun van Dijk's critical discourse analysis. This approach reveals that the expectations and limitations of studying and aspiring to certain positions depend not only on the course attended by the student, but are also determined by institutional racism and various issues related to racial, economic, cultural and social capital.

**Keywords:** Curriculum; Racism; Law; Race; University.

## Resumo

Este artigo é derivado de um projeto maior de pesquisa que problematizou as implicações das diversas abordagens ao antirracismo adotadas pelas instituições do estado, movimentos sociais de base e as universidades, considerando a análise de processos de produção de conhecimento sobre raça, racismo e antirracismo. Para este estudo analisamos discursos proferidos por sete entrevistados, - três estudantes do curso de Direito (negros/as), - duas mulheres e um homem e de quatro professoras do curso de Direito (uma negra e três brancas) de duas universidades localizadas na cidade do Rio de Janeiro, Brasil em 2018. Entre os tópicos abordados estão as culturas acadêmicas, curriculares e epistemológicas no que se refere à formação acadêmica em Direito, à luz dos estudos das relações étnico-raciais (raça, racismo e antirracismo), educação jurídica e dos Direitos Humanos. Nesta abordagem trabalhamos com as perspectivas teóricas de Achille Mbembe, Ana Flauzina, Pierre Bourdieu, Charles Hamilton, Frantz Fanon, Stokely Carmichael e Thula Pires. O método inclui entrevistas semiestruturadas, ancoradas pela



análise crítica do discurso de Teun van Dijk. Esta abordagem revela que as expectativas e limitações para se estudar e almejar determinadas posições não dependem apenas do curso que o estudante frequentou, mas são determinadas pelo racismo institucional e diversas questões relacionadas ao capital racial, econômico, cultural, social.

**Palavras-chave:** Currículo; Racismo; Direito; Raça; Universidade.



## 1. Introduction

This article proposes a discussion on the production of knowledge about race, racism, and anti-racism, focusing on the university curriculum of Law, in light of studies on race and racism (CARMICHAEL; HAMILTON, 1967; FANON, 2008; MBEMBE, 2018); Human Rights (PIRES, 2018; FLAUZINA, 2006); Education (GOMES, N. 2017); Social Sciences (BOURDIEU, 2010; COSTA JUNIOR, 2021); Whiteness Studies (BENTO, 2005); (anti)racism and Legal education (PIRES, 2013; CONCEIÇÃO, 2009-2021; FREITAS, 2021).

The interviews conducted with law students and professors made it possible to analyze competing interpretations of power and knowledge relations (van DIJK, 2001) and to highlight various issues related to inequalities in economic, cultural and social capital (HALL, 2006; WEST, 2000; SAVAGE et al., 2018). However, other nomenclatures have been proposed to think about how institutional racism orders the "control of access to socio-professional positions of privileged status". In this case, the field of law is configured as a privileged socio-professional position and is therefore a relevant field to understand how racism is naturalized and used in the "symbolic subtraction of value" (COSTA JUNIOR, 2021, p. 9).

In this sense, since skin color is used to generate "evaluative conceptions about people and social groups" (COSTA JUNIOR, 2021, p. 2), this text discusses the concepts of existential and racial capital to introduce a critical reading of Bourdieu that can address the discussion of institutional racism (CARMICHAEL, HAMILTON, 1967; WERNECK, 2016; SILVA, 2017).

According to Ture and Hamilton (1969 [1967], p. 20), institutional racism "originates in the workings of established and respected forces in society and therefore receives much less public condemnation than [individual racism]" and "rests in the active and pervasive operation of anti-black attitudes and practices". According to Coelho, *et al.*, (2023):

Institutional racism shows that there is no deviation or contradiction between the rights enshrined in the [Brazilian Constitution] and the reality of black people: the relationship between the state and black people is defined as a colonial situation that is routinely perpetuated through racist policies, but which is neither recognised nor named as such (COELHO *et al.*, 2023, p. 74, emphasis added).

Coelho *et al.* (2023, p. 21) ask: "how has the discourse and legal and juridical apparatus of human rights addressed institutional racism?" The debate proposed by Pires



(2018) helps us to understand "the centralisation of the category of race as an analytical, political and normative lens for thinking about human rights. The author proposes "racialising the human rights debate in order to politicise it" (PIRES, 2018, p. 66)

In this article, we highlight the importance of problematising the experiences of law students and teachers who are committed to anti-racist education and the "intersections between race, class, gender and ability, as structural and structuring intersubjective and institutional relations" (PIRES, 2018, p. 66). We understand that in the field of educational, anti-racist education aims to promote pedagogical and curricular practices that value the history and culture of Afro-descendants, Afro-Brazilians and Indigenous peoples, and to combat institutional racism.

The discourses captured through interviews with law students and professors reveal trajectories characterised by a complex relationship between need and choice. However, these trajectories are not only characterised by a relationship with variables such as need or scarcity. The experience of black people in Brazilian universities, in general, and the analysis of the curriculum must also include existential and racial considerations, by questioning the extent to which universities marked by a colonial history can offer existential resources to black people. In this sense, while the concept of racial capital is mobilised to understand the subtraction of value, existential capital is configured as a possibility for thinking about how the diasporic experience also builds collective resources within universities that go beyond individual logic.

Silva and Pires (2015, p. 62) emphasise the importance of "placing the race criterion as an informant in the reflection on the law, not only in its normative order, but also institutionally, historically, politically and structurally" and they stress the urgency of "highlighting aspects neglected by the 'convergence of interests' that the white supremacy model fosters" (SILVA and PIRES, 2015, p. 62). On the other hand, Bento (2005) brings this discussion to the Brazilian scenario, emphasizing that "in a context where the places of power are hegemonically white, and the institutional reproduction of these privileges is almost automatic, change requires an explanation on the part of those excluded" (BENTO, 2005, s.i)<sup>1</sup>.

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<sup>1</sup> Maria Aparecida Silva Bento. Whiteness and power: the question of quotas for blacks people. In: International Adolescent Symposium, 1., 2005, São Paulo. [http://www.proceedings.scielo.br/scielo.php?script=sci\\_arttext&pid=MSC00000008200500010005&lng=en&nrm-abn](http://www.proceedings.scielo.br/scielo.php?script=sci_arttext&pid=MSC00000008200500010005&lng=en&nrm-abn).



We highlight the importance of the affirmative action policies introduced in Brazil in the 2000s, which are defined as "public (and private) policies aimed at implementing the constitutional principle of material equality and neutralising the effects of discrimination based on race, sex, age, national origin and colour" (GOMES, J., 2001, p. 132). These policies, derived from the intense struggles of the Brazilian Black Movement, aim to increase the presence of racialised, underrepresented populations in areas of social life, as well as to promote racial equality and correct the current effects of institutional racism (CARMICHAEL and HAMILTON, 1967; WERNECK, 2016; SILVA, 2017).

We understand that academic life also reflects the dynamics of inequalities and institutional racism that shape Brazil's historical and social formation. Therefore, the persistent selectivity of the Brazilian educational system justifies the adoption and maintenance of affirmative action policies, especially in Brazilian higher education (Law No. 14,723/2023) and in the labour sector (Law No. 12,990/2014).

We also underline the importance of other legislation that includes the compulsory teaching of African, Afro-Brazilian and Indigenous history and culture in Brazil's official school curriculum (Laws 10.639/2003 and 11.645/2008). These laws are fundamental for the construction of an anti-racist society, especially in universities, and this includes law courses (COSTA, COSTA; GARROTE, 2021). With this study, we propose to make a critical contribution to progress in the legal field and to the reorganisation of power structures in Brazilian universities. Some of the questions we raise are: How has the academic discourse in the field of law addressed the study of ethnic-racial relations in its curriculum? How does this manifest itself in the production of knowledge about race and (anti-)racism?

To bring out the perceptions of our interviewees from the law course on the subject under study, we illustrate our debate with specific reports collected through semi-structured interviews, conducted out in the city of Rio de Janeiro (RJ), Brazil (BR), with seven interviewees from higher education/postgraduate studies in 2018. In the survey, we included the race/colour category (black, brown, white, indigenous and yellow), according to the Brazilian Institute of Geography and Statistics (IBGE). The participants were selected from a database based on the responses to emails sent to the interviewees, in which seven of the invitees expressed their desire to contribute to the research and corresponded to the desired profile: students, professors, law course (undergraduate and/or postgraduate, public and/or private universities, residents in the city of Rio de



Janeiro. Thus, the corpus of this research consisted of seven participants: two undergraduate students (Kieza and Nala/black), one postgraduate student (Akin/black) and four teachers (Yaa/black; Lina, Alice, Sol/white). Fictitious names have been used to protect the anonymity of the interviewees<sup>2</sup>. The universities of the participants have also been anonymised.

The interviews were semi-structured (GASKELL, 2002), individual and transcribed into text, after which the extracts were selected to make up the corpus. The questions focused on the triad: black presence, curricular confrontation and institutional racism. The interviews were analysed from the perspective of van Dijk's critical discourse analysis (2001), which considers "the ways in which the abuse and inequality of social power is represented, reproduced, legitimated and resisted through text and speech in the social and political contexts" (van DUK, 2001, p. 466).

It should be remembered that this study is derived from a larger research project entitled POLITICS/The politics of anti-racism in Europe and Latin America: knowledge production, political decision-making and collective struggles (2017-2023), which analysed the power relations that shape anti-racism in Latin American and European contexts. One of the project's axes investigated the production of knowledge about race and (anti-)racism in public universities in four countries (Portugal, Spain, Peru and Brazil). In Brazil, our focus of attention, 56 interviews were conducted in the social sciences and humanities at a public higher education institution (HEI) located in the city of Rio de Janeiro. The results booklet<sup>3</sup> of the project, entitled *O Antirracismo em Disputa: conceitos, debates públicos e projetos políticos - Caderno de debate do projeto POLITICS* (2023), provides an illustrative and informative overview of the main results of the research.

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<sup>2</sup> This article is derived from the research project POLITICS - The politics of anti-racism in Europe and Latin America: knowledge production, political decision-making and collective struggles, funded by the European Research Council (Project: 725402 -POLITICS -ERC-2016-COG). The research was qualitative and was based on the ethical principles set out in the Brazil Platform CAAE Number: 02024318.5.0000.5582. Opinion number: 3412173.

<sup>3</sup> [https://www.ces.uc.pt/ficheiros2/files/01\\_POLITICS\\_V7\\_Versao%20Digital.pdf](https://www.ces.uc.pt/ficheiros2/files/01_POLITICS_V7_Versao%20Digital.pdf)



## 2. Anti-racism and the Academic Debate in Law Schools

The contributions of Ana Flauzina, Ísis Conceição and Thula Pires help us to understand the issues of racism in Brazilian legal thought and order. According to Pires (2018), "understanding the dynamics through which racism operates in each context is fundamental to building political-institutional responses that confront its mode of operation in a concrete way" (PIRES, 2018, p. 70). And this includes, with rare exceptions, Brazilian universities, where the production of anti-racism, anti-discrimination and racial justice, including in law, is still timid. According to Conceição (2021, p.1760): "in Brazil, the production of legal content on the theme of racial justice can be described as non-existent, especially given the invisibility of the production of authors such as Joaquim Barbosa, Dora Bertúlio, Eunice Prudente and Hédio Silva Jr." The story of Kieza, a black undergraduate law student, illustrates this situation:

In my curriculum, the debate on race passed very quickly. In general, I observed a debate that included Marx, Weber and Durkheim, in Philosophy and Sociology in the logic of passing very quickly. Apart from that, there was no debate on racism or anti-racism" (KIEZA, student. Interview conducted on 23 October 2018, RJ, BR).

Kieza's comments bring us back to the growing number of blacks entering Brazilian universities, which has led to tensions in law courses (curricular matrix, epistemologies). "[...]. We said: 'gee professor', it's absurd not to have a black author in your theory of law curriculum" (KIEZA, student. Interview conducted on October 23, 2018, RJ, BR). The increase in the number of black students in Brazilian universities calls into question an environment that is mostly occupied by whites and has historically been constituted as a space for the reproduction of whiteness (ARAÚJO; SILVA, 2022). Therefore, we emphasize the importance of broadening the focus of university curricula to include the study of ethnic-racial relations, since "the relevance of the study of issues arising from Afro-Brazilian and African history and culture is not limited to the black population; on the contrary, it concerns all Brazilians" (BRAZIL, 2004). We understand that these guidelines are a response to the demand for more affirmative action policies and the valorisation of the history and culture of black social and cultural movements. For this reason, we would like to highlight the importance of the black and indigenous collectives that have been created in universities, movements that have played a fundamental role in the fight against racism and for anti-racist education in Brazilian higher education.





These collectives act as forums for welcoming and promoting anti-racist actions, valuing Afrocentric and indigenous epistemologies in university curricula, as well as being involved in monitoring policies for the admission and permanence of racialized students (black and indigenous) in Brazilian higher education (TRINTADE, 2021, SILVA; ARAÚJO, 2023).

Some of these demands are confirmed by interviewee Lina, a white teacher:

I especially remember my students who had no access to books. Law books are very expensive. There's also the question of access to housing. In a city like Rio de Janeiro, the permanence grants don't guarantee all of the students' demands (LINA, professor, interview conducted on 21 August 2018, RJ, BR).

In Brazil, other authors have also addressed the issue of higher education in law. Almeida (2016, p. 211), for example, has developed reflections related to the study of ethnic-racial relations in law courses, analysing the trajectories of university students. He calls for "providing law students with the opportunity to expand their knowledge of law and the Brazilian issue of race". Costa, Costa and Garrote (2021) draw attention to manifestations of intolerance, and especially racism in universities, and attest to the urgency of implementing a curriculum "that expands anti-discriminatory law and approaches ethnic-racial issues [...]. The construction of anti-racist universities is more fundamental than ever" (COSTA, COSTA and GARROTE, 2021, s.i)<sup>4</sup>.

Canto (2022) reaffirms the need for legal education in Brazil to discuss the relationship with racism, addressing anti-racist education and decoloniality. Freitas (2019), when discussing youth, especially black youth, states that in recent decades the field of Social Sciences has been the scene of several debates on "youth as a social category and on the emergence of young people and their collectives as political actors in the struggle for rights [...], however, they have not been accompanied by similar investigations in the field of law" (FREITAS, 2019, p. 1337). Ferreira (2018, p. 264) reinforces the previous dialogues and stresses the need for a "legal teaching methodology that values the country's racial diversity, with special emphasis on aspects linked to blackness".

These studies are linked to the perspective of our research, which proposes thinking about the field of law and studies of ethnic-racial relations in Brazilian higher education, drawing attention to the debate on anti-racism. We understand that anti-racism encompasses everything from legal provisions to correct individual acts of

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<sup>4</sup> For an anti-racist university. <https://jornal.usp.br/?p=396966>



discrimination to the implementation of more comprehensive policies for structural change, such as affirmative action policies. "Anti-racism is [...] a collective struggle for liberation that seeks to combat racism and dismantle the structures of racial oppression and dehumanisation, as well as confront institutionalised racism" (COELHO et al., p.68, 2023).

To further explore the issues raised above, we will now look at how dehumanisation permeates the law curriculum and how this relates to the different forms of capital proposed.

### 3. The Racial Question, Existential Capital and the Field of Law

Understanding the law school curriculum from the perspective of institutional racism requires a focus not only on economic stratification, but also an understanding of the processes of mobilisation, structuring and appropriation of other forms of capital. There is a need to mobilise concepts that do not focus solely on perceptions of economic inequality. The presentation of the concepts of racial and existential capital offers the possibility of understanding the relationship between the social and the individual, including the consideration of affections and emotions and how they are articulated.

Existential capital (WEST, 2000; NETTLETON, 2013; PERRY 2003) is a concept that refers to the set of resources that connect the individual to society through skills, knowledge, experiences, values, affections and interpersonal relationships. Racial capital is associated with the symbolic power of racism, "transmuted and incorporated" into common sense and habitus. This racial capital manifests itself both in everyday life and affects the exercise of power more broadly, with its "dimension of violence" ignored (COSTA JUNIOR, 2021, p. 7). There are two distinct uses of the term existential capital, which can be considered parallel contributions to the development of the concept. One of the seminal analyses of existential capital was conducted by Cornel West, the other by Sarah Nettleton.

As well as providing a synthesis of both currents, in this text we seek to acknowledge the contributions of both authors that can be applied to understanding the law curriculum and its relationship with anti-racism. Although West (2000) uses existential capital to think about the reality of white people, he does so from a critical perspective



that places the issue of race at the centre, unlike Nettleton (2013). Perry (2003), in his analysis of the book *Screen Savors: Hollywood Fictions of Whiteness*, refers to West and points out:

[...], White people are consistently portrayed as more upstanding, enterprising, courageous, kind, cultured and beautiful than other peoples in other words, as racially superior. Showing us that notions of white racial superiority, however unconscious, are alive and well in US culture is, in my opinion, one of the most important aspects of this text. Within sociology, the tendency to emphasise white privilege as if it were only material privilege neglects what Cornel West calls the 'existential capital that White people gain from an inherently high self- image (PERRY, 2003, p. 1225).

This passage, written before Trump's rise to power in the United States, with a discourse based on white superiority, highlights the need to think about how whiteness produces benefits that are not only material, even though these resources can eventually become economic capital. Nettleton's (2013) analysis is based on a critical understanding of Bourdieu's sociology, but focuses on a very specific group of people (white British people over 55). The same can be said of other work using the concept of existential capital (FREITAS; GAUDENZI, 2022).

By analysing mountain runners in the United Kingdom, Sarah Nettleton realised that the challenges provided by fell running generate an affective and embodied satisfaction that gives rise to the resources needed to consolidate the sociality that exists between participants. These resources are referred to by Nettleton (2013) as existential capital. Existential capital is presented as a resource that is affective and embodied, capable of connecting the individual and the social (NETLETON, 2013; FREITAS and GAUDENZI, 2022). The same can be said of the notion of racial capital, since it helps us to understand how an individual characteristic, such as skin colour, becomes a "subjective paradigm inscribed in the objective dimension of the reality of the social world" (COSTA JUNIOR, 2021, p. 7).

In this text, the concepts of existential and racial capital allow us to understand how institutional racism affects the expectations and perceptions of black people, based on what law students and professors say. However, while the notion of racial capital is used to explain the subtraction of value operated through institutional racism, existential capital points to dynamics of value creation, which can be appropriated, collectivised or disputed.



This reflection can help to understand institutional racism in the justice system, since racist behaviour is not only driven by a perception of the fungibility of the black body due to a lack of material resources. The justice system operates on the assumption that the black body lacks humanity (FLAUZINA, 2006). In this context, the justice system and racial policing policies are guided not only by a reality associated with the lack of material resources of the population who are victims of violations, but also by the way in which the existential resources of the black population are demeaned, devalued or appropriated. The students interviewed reveal that they not only know the effects of the policy of death implemented in Brazilian favelas and communities, but that they also feel these consequences directly. In this sense, the story of Kieza, a young black woman, law student and social activist focused on the issue of the right to land and housing for Brazil's black population, illustrates this debate. The interview with Kieza took place at her place of study (university). She arrived late for the interview, which made the researcher apprehensive. But the situation was understood by Kieza's justification:

I live in Vila Operária, which is a favela in Duque de Caxias, and the means of transport to get to the university are poor, in addition to the mishaps that can happen during the journey" (KIEZA, student. Interview conducted on 23 October 2018, RJ, BR).

Kieza stressed that she was a "favela dweller" and that she didn't use the term "community", which for her is a way of hiding the favela and its characteristics: "we who are favela dwellers and live in the favelas have reclaimed the place where we live". For her, the favela is a very expressive place with many stories that its residents want to reaffirm.

This account brings us back to Alves (2011), when the author emphasises that "the territorial redefinition [of cities] in the post-abolition period pushed the black population into precarious regions of urban infrastructure" (ALVES, 2011, p. 112, emphasis added). For Cunha Júnior (2020, p.16), "anti-black racism is a structural problem in Brazilian society and it materialises in the urban space and in the territories of the majority black population". Territory is therefore an element that simultaneously mobilises existential and racial capital. Kieza's speech shows how living in Vila Operária reinforces the maintenance of a given social and racial hierarchy, and is an element that deepens the dynamics of devaluation, dehumanisation and value extraction associated with racial capital. On the other hand, the favela is also a place of "expressiveness" and "stories". The "expressiveness" and "stories" of the favelas are configured as ways of



mobilising existential capital, which is often transformed into other forms of capital and even appropriated by other institutions, such as institutional politics or the press.

Kieza speaks from two points of view about the fight against racism and social inequalities: university student and citizen. She visits favelas in Rio de Janeiro and talks to residents about human rights, police violence, public safety, health, housing and education. Kieza's concern is echoed by Alves (2011), when he draws our attention to understanding this context:

[...], state violence in its many forms as a "necropolitical" category [...], through which the state exercises its sovereign power. However, I understand state violence to be not only the now commonplace police practices of extermination and massacre in the favelas, but also the state's complicity and disregard for homicidal violence, the daily violence expressed in spatial segregation, the systematic denial of citizenship rights, the avoidable deaths in public hospital queues (ALVES, 2010, p. 109-110).

Kieza reaffirms the favela as a peripheral place: "where the state is absent. Or rather, when it is present in the logic of public security, in the logic of necropolitics, where black favela bodies are the first bodies to be abstracted" (KIEZA, student. Interview conducted on 23 October 2018, RI, BR). According to Alves (2011), "[...] The necropolitical notion developed by Mbembe [...], makes explicit the limits of the technologies of neoliberal governmentality in dealing with urban spatial dynamics in societies structured on racial domination" (ALVES, 2011, p. 119).

The extraction of value translated through the concept of racial capital is relevant to the analysis of this extract from the interview. Since there are gains to be maximised through racial violence, that are nevertheless denied, the exploitation of racial capital will be advantageous to whiteness within a field such as the legal system. In this way, the interviews show that resistance to change occurs in two areas: firstly, through the difficulty that black people have in accessing the field of law in positions of social prestige. Secondly, the legal field itself structures legal knowledge, which has a necessary impact on the production of laws, which in turn structure the exploitation of racial capital (COSTA JUNIOR, 2021).

A very important characteristic of the alternative forms of capital considered here is the fact that the logic of accumulation is not guided solely by the assumption of scarcity. Therefore, understanding them requires an understanding of flows, mediations, intensifications, appropriations, among other processes. However, it is possible to convert existential capital, often through processes of appropriation, into economic, social or



cultural capital. One of the hypotheses that can be raised is that the exploitation of racial capital results in existential capital to be exploited by whiteness.

It is necessary to distinguish between existential and cultural capital, even though there may be various studies aimed at complexifying the understanding of cultural capital (SAVAGE et al., 2018). Pierre Bourdieu's elaboration of this concept is closely linked to the way stratification was conceived in France and other European countries. As the empirical research has shown, the concepts of existential and racial capital do not necessarily indicate a relationship between culture and social inequality, unlike the concept of cultural capital, but translate the way in which a person or people are seen as possessing humanity, fungibility and the right to their own way of being in the world. In other words, both existential capital and racial capital are not simply linked to social stratification, which is thought of exclusively through social class. This statement is relevant because it can be argued that the notions of existential and racial capital are rooted in processes that predate the "advent of class society" (COSTA JUNIOR, 2021, p. 5). As the author puts it:

With the advent of class society and the maintenance of the colonial social hierarchy in the modern state, there was a homogeneous polarisation of racial concentration in the different social classes. This facilitated the association, however unconsciously and obtusely, of class distinctions and their respective conditioning with antagonistically positioned racial categories, maintaining and reinforcing the myth of racial superiority, now converted and "ratified" into an ideology of achievement (COSTA JUNIOR, 2021, p. 5).

In addition, understanding how racism affects the subtraction and creation of value requires conceptual tools that allow us to understand a process of legitimising social inequalities rooted in the colonial experience. Using concepts such as existential and racial capital is an exercise in this regard.

#### 4. Voices and Actions against Racism at the University

Werneck (2016) conceptualised institutional racism as "the most neglected dimension of racism" (WERNECK, 2016, p. 535). Institutional racism operates through structures, being linked to norms, institutions and social practices that result in hierarchies and inequalities (WERNECK, 2016; SILVA, 2017). Its impact on the lives of the black people in Brazil can be seen in their direct relationship with the services and institutions that should guarantee their fundamental rights. Thus, recognising the existence of this dimension of inequality



that is so deeply structured in Brazilian society and the State is essential to tackling it. It is fundamental and urgent that the legal field contributes to the political dimension of the fight Against institutional racism by producing and disseminating knowledge in its academic curricula that permeates law and race relations.

In this section we look in more detail at the discourses of the interviewees on the discussion of academic and curricular cultures. For example, the account of Yaa, a black teacher, reinforces this debate:

We come from a history of criminalising non-white bodies, don't we? So the criminal justice system is built on creating someone who escapes the ruler of a unit, who escapes the 'standard of the human, therefore, the subject of sovereign law" (YAA, teacher. Interview on 22 October 2018, RJ, BR).

This discussion brings us back to Pires (2018, p. 65), when she discusses human rights and the "limits and possibilities of the criminalisation of racism in Brazil". The mass incarceration of the black population in the country is an example. For her: "Institutional racism, mass incarceration and the historical ineffectiveness of anti-racist penal norms make up the scenario that turns the criminal justice system into a cruel machine for grinding up black bodies" (PIRES, 2018, p.72).

The dialogue established in the interview with Yaa also shows us that, at different historical moments, it was precisely the mobilisation of the penal state that criminalised (and criminalised), "disposable bodies [...] and offers protection for the zone of being and leaves us in permanent violence, doesn't it?" (YAA, teacher. Interview conducted on 22 October 2018, RJ, BR). Yaa's words bring us back to Fanon (2008), who emphasises this stratification of humanity based on the concept of being and not being, of who is human and who is not. Passos (2020, p. 76) adds to this debate by pointing out that "this dehumanisation promotes the objectification of non-being, in other words, it animalises and objectifies, which means that it can have its existence exterminated. We can say that there are different strategies to promote the extermination of the non-being". Pires (2018) reiterates this argument, saying that "there are many expressions that denounce the treatment given to those in the zone of non-being by the modern colonial slave project and by updated forms of disrespect and extermination" (PIRES, 2018, p. 67). When we focus on these black bodies in movement, "between-places", and the role of universities, we return to the dialogue with two university lecturers (Alice and Lina) who demonstrate the importance of implementing affirmative action policies in higher education in Brazil.



Alice, a white professor, talks about her experience as a teacher when she discusses racial quotas:

We have to realise that issues such as the debate on racism at the university have been provoked, obviously, from the moment that black people entered university, because otherwise we would still be talking about this "little white clan", in the "little ivory tower", without worrying at all about this kind of questioning. But these [quota] students are questioning today, and that's incredible, because it gives us the opportunity to expand our epistemological horizons, doesn't it? (ALICE, teacher. Interview conducted on 22 September 2018, RJ, BR).

Lina, a white lecturer, on the other hand, emphasises that at the beginning of her career as a university lecturer there were very few black students in her classes. It was after the introduction of the quota system at her university that she began to see a greater number of black students in her classrooms, who without affirmative action policies would not have entered higher education: "They are students who value being there and are very interested and aware of the importance of this public university space" (LINA, lecturer. Interview conducted on 21 August 2018, RJ, BR). The lecturer also says that it has been very interesting to see all the potential of these racial quota students in her classes and that they undoubtedly enrich her law classes. Lina's account is echoed by Alice, a white teacher: "My students who came from the South, who were 'white', became 'different'. Today the university has most students who come from the Baixada Fluminense and the favelas of Rio de Janeiro" (ALICE, professor, Interview conducted on 22 September 2018, RJ, BR).

The interviews also show that there are still demands and barriers to overcome. For example, student Kieza got into the university through the quota system (affirmative action policies). However, she didn't immediately get a permanence grant, because they didn't have a racial cut-off. "I've been getting by, trying to adapt here [at university], and I've been taking the exams, which there are, both for permanent scholarships and academic scholarships" (KIEZA, student. Interview conducted on 23 October 2018, RJ, BR).

Lina, a white lecturer, draws attention to other issues surrounding the permanence of students in universities, and points out that:

Many Brazilian universities still don't have the infrastructure to meet certain requirements. [...]. It's a drama at the institution when it comes to the "trayão" (canteen/food), the accommodation, isn't it? Another example concerns students with disabilities, for example, the HEI had a broken lift for many years until a 'wheelchair user' arrived, and only then did the institution start to repair it" (LINA, university lecturer. Interview conducted on 21 August 2018, RJ, BR).





On the one hand, we understand that affirmative action policies have allowed black individuals, especially black youth, to occupy spaces that were previously denied to them. Young black men and women began to transform, through political action, spaces occupied by white elites and middle classes, including public universities, into spaces with the presence of an Afrocentric aesthetic and thought. There is therefore a movement to recognise and structure a form of existential capital aimed at valuing the presence of black people in academia or in the field of law. More and more black students are entering Brazilian universities, and they themselves are feeling the need for those spaces to carry out political struggles.

On the other hand, as Coelho et al. (2023) argue, racism, to this day, creates obstacles to the free movement of the black population, especially young black people in Brazil: "Statistics on the situation of denial of the right to life of black youth [...] have shown the existence of racial stereotyping in the construction of the 'suspect' subject" (COELHO et al., 2023, p. 15). The inclusion of the black population in university spaces, although it is having a major impact on the production of knowledge, especially on race, racism and anti-racism in higher education institutions, historically exclusive to the white population, has not yet been able to stop the deaths of young black people. These black bodies live under eternal surveillance that places the black body under eternal surveillance, and police surveillance also falls on these supposedly "included" young people (COELHO et al., 2023; GOMES; LABORNE, 2018; MUNIZ; COELHO, 2021).

There is still a process of regulation of the black body that takes place in a "tense and dialectical way, with the struggle for social emancipation undertaken by the black person as a subject" (GOMES, N., 2017, p. 98). As we can see from the interviews, the subtraction of value provided by racial capital even affects the results of affirmative action policies: "Racial capital, therefore, is not restricted merely to the 'racialised' aesthetic identity, but above all to the socially, historically and politically constructed meaning around the concept of race" (COSTA JUNIOR, 2021, p. 9).

Another important issue is related to the low number of black lecturers in Brazilian universities, due to racism and social inequalities. This observation is mentioned by Nala, a black law student, who says:

There are very few black teachers. We have one black teacher at the university. I think this is a challenge we have to face in order to effectively democratise the university" (NALA, student. Interview conducted on 15 September 2018, RJ, BR).



Alice, a white lecturer, adds to this discussion and asks:

How many law lecturers do we have who are black? So this is an issue that I have to problematise, I can't talk about human rights and not talk about the absurdity that is my field, right?" (ALICE, professor. Interview conducted on 22 September 2018, RJ, BR).

These reports refer us to Fernandes et al. (2021, p. 3) who emphasise that the inclusion of black lecturers in Brazilian public universities "[...] is slow. In public universities, black lecturers are still a minority". In this vein, our interviewee Yaa emphasises that "it is important for universities to have an anti-racist agenda and more competitions and hiring of black lecturers, as well as staff" (YAA, professor. Interview on 22 October 2018, RJ, BR).

## 5. Confronting the Law School Curriculum and the Racial Debate

In the interviews we conducted, we tried to find out a little more about the production of knowledge about race, racism and anti-racism in the curricula of law school in Brazil, where the black community is demanding a curriculum that breaks away from the Eurocentric perspective. When we deepened our dialogue with student Kieza, she told us that:

Even with these demands, there are white professors who still don't 'accept' it, [...] who think that this is an 'absurd debate', and that the Law has nothing to do with it, and that it is giving real Rights, in other words, it doesn't want to debate blackness" (KIEZA, student. Interview conducted on 23 October 2018, RJ, BR).

Nilma Gomes (2017, p. 40) stresses that "the perception of this absence does not happen by chance. Questioning it could be a way forward". That is, to promote changes in the academic and curricular cultures in the Brazilian educational field (MUNIZ; SILVA, 2022). In this sense, teacher Alice emphasises the importance of de facto inclusion. For her, the student who comes from the periphery or from the favela has a different life experience than a student from a middle-class family who is white and lives in rich areas of the city: "Black students have different questions. They demand more pragmatic questions from the teacher, don't they?" (ALICE, teacher. Interview conducted on 15 September 2018, RJ, BR). Alice adds:



Which is curious, because at the Law School, especially, the "bulk" of the students, when we ask them: "Why did you do Law?", they answer: "To take the competitive exams." It's not because they want to. So where are the big questions? I teach a lot of electives, you know? So, for example, I work on subjects that involve critical theories. So, the "bulk" of my students, in these electives, are students who come from the periphery, and most of them are black. In extension, the same thing (ALICE, lecturer. Interview conducted on 15 September 2018, RJ, BR).

This discussion involving the labour market and neoliberalism brings us back to the discussion of existential capital. The concept of existential capital is fundamental, as it implies contextual affective gains that can be analysed from an individual point of view, but that result from collective action. Alice draws attention to a collective problem perceived through the absence of black people in this space, the speeches show an intensification of existential capital through the entry of black people into universities, stimulating the political struggle:

As a student, I realised that there were no black people in my class, on the course, at the university. In other words, there was a racial issue there. And that was very shocking to me. Where were the black people? They were in the cleaners, in the canteen, they were carrying books in the library, weren't they? They weren't in the classroom, either as teachers or students (ALICE, teacher. Interview conducted on 15 September 2018, RJ, BR).

Alice stresses that "Brazil was founded on slavery and we can't relegate that to the background or minimise or relativise it. We have to understand it, manage it and change it, don't we?" (ALICE, teacher. Interview conducted on 15 September 2018, RJ, BR). The teacher is referring to what Costa Junior (2021, p. 4) discusses, that is, the "context in which peoples indigenous and African were subjected to a systematic process of devaluation of their human condition and their existential matrices. This led to a loss of power for these two groups".

Alice asks:

The first question: the law itself, the law [10.639/03] already exists, doesn't it? How do I, as a [white] law professor, think I should contribute, can contribute or am I 'obliged' to contribute?" For Alice, it is necessary to make themes involving the black population viable within the structure of law courses. "Is the judiciary racist? Is it misogynistic? Does it need to be challenged? What is the structure of the judiciary like in Brazil today? How many black people are there? Men and women? How many black people are in courts?" she asks (ALICE, professor. Interview conducted on 15 September 2018, RJ, BR).

The Brazilian educator emphasises the importance of law courses being able to talk more about racial issues and racism, which mainly involves gender, race and class.



According to the interviewee, it is not possible to discuss racism without problematising the maintenance of punitive systems, such as the imprisonment of black people. In practice, what is needed are struggles for emancipation, and punitivism is hardly emancipatory, since it reinforces the same system that allows, among other processes, the limitation of processes that generate existential capital and its conversion into economic and social capital.

## 6. Trajectories, Blackness and Curriculum in Law

The various forms of capital do not operate in a vacuum, and to understand how they relate to each other, it is necessary to deepen our understanding of the concept of field. As Bourdieu put it in "The Social Uses of Science", the concept of field proposes to overcome oppositions such as the one between those who believe in the autonomy of the text, known as internalists, and those who emphasise the context, known as externalists. As Bourdieu points out, this opposition appears in various debates, from literature to law. Thus, agents and institutions are situated within fields, which are "relatively autonomous" spaces, microcosms "endowed with their own laws" (BOURDIEU, 2010, p. 20). Fields are neither completely autonomous nor entirely dependent on their context. However, the legal field is not structured in such a way as to recognise racial capital or existential capital in the terms discussed above. Racial capital, for example, despite being decisive in explaining the difference in positions in the legal field, is ignored. The same can be said about existential capital when it is used to promote black presence in white spaces in the legal world.

In this section, we highlight, among other accounts, that of participant Akin, a black man and a postgraduate law student. Akin comes from the state of Bahia and has spent his entire educational career in public institutions. But until high school he had no access to the racial debate, even though he comes from the interior of the Brazilian state of Bahia, where there is a higher concentration of black people in Brazil. Akin emphasises: "We had access to the phenomenon of racism. But not the debate at school. So I realised I was black, but without the tools to affirm it, when I arrived to study in the capital Salvador." (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR).



When he began his law studies, coming from a background of social vulnerability, Akin had a scholarship to stay at the university (housing, extension programmes, study groups), which enabled him to immerse himself in the racial debate (pedagogical practices in peripheral communities in Salvador). Akin built up his black identity during his studies. As he tells it:

This process was transformative for me, because it was after this immersion that I saw myself in this place as a black man, living in Salvador, which is a black city, but also very unequal, where the spaces of power don't belong to the black population" (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR).

In relation to this issue, Sansone (2003) stresses that "blackness is inescapable because there is an inherent tension between what is 'white' and what is 'black'. According to this scheme, race and the history of racial difference must be defended" (SANSONE, 2003, p. 18). For Akin, the process of recognising himself as a black man came from the aesthetic issue, because when he started to let his hair grow, he remembered his childhood days:

And I've always been taught, since I was a child, to have very short hair, my hair was almost shaved, my father said my hair had to be like that, and it was tiny, we don't know, I didn't know what it looked like" (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR)

From this perspective, curly hair is not considered in isolation, but within the context of race relations constructed in Brazilian society (GOMES, N., 2017). On the one hand, Akin reaffirms his blackness, "I assume this place, I'm going to let my hair grow and wear African clothes to work" (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR). On the other hand, Akin notes that people have started to look at him differently:

With resistance, people look at me differently, sometimes they start praising my clothes, my hair, even before they talk about my work. In other words, often the body, the aesthetics, come before the legal professional, it's a dimension of 'benevolent racism', as if it were to grace me, to praise my hair, instead of talking about the work I'm doing there" (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR).

For Nilma Gomes (2017), the black body gains visibility by tensing the relationship between adaptation, revolt and overcoming racism, "which takes it for [...] exotic" (GOMES, N. 2017, p. 94). When discussing the tension between regulation and emancipation of the black body, she emphasises that "the process of regulating the black



body took place (and still takes place) in a tense and dialectical way with the struggle for social emancipation undertaken by the black person as a subject" (GOMES, N. 2017, p. 98) within the legal field.

Another finding from Akin's accounts is that during his law degree, he had no curricular components that discussed racial issues in Brazilian society, "not a single subject, and that was a big criticism when I entered the university. The texts and authors we studied were European" (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR). For Yaa, a black lecturer, "in very general terms, it's very difficult to be open to mobilising a bibliography that isn't hegemonic, isn't it?" (YAA, lecturer. Interview on 22 October 2018, RJ, BR). Alice adds: "I don't remember there being any compulsory subjects on racial issues, only electives. I remember the boys asking for this subject" (ALICE, teacher. Interview on 22 September 2018, RJ, BR). For her part, Sol, a white lecturer, adds: "in the postgraduate programme I'm part of, we don't have compulsory subjects on race relations in the Law course, but there is a demand from students" (SOL, professor Interview conducted on 19 October 2018, RJ, BR),

We believe that it is fundamental and urgent to create compulsory subjects that discuss race and (anti-)racism in the field of law, in addition to elective subjects. And that the demand for studies on ethnic-racial relations should not be limited to student interest, as Akin emphasised:

Since graduation, the search for knowledge about race and racism has been my choice, it's not the institutions that offer it to me, because as I told you, I didn't have this discussion in my undergraduate degree, I didn't have it in my masters degree and I didn't have it in my doctorate. I was the only black student in the courses (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR).

The theme of "choice" is associated with the study of racism. Akin's reflection is important in terms of broadening the debate on racism and anti-racism beyond reflections divorced from historical contexts. It is crucial to focus on the tensions that cross the relationship between academia and anti-racist movements to generate new debates that challenge the racial narratives and logics that structure public policies, anti-discrimination regulations and legislation, knowledge production and political struggles. Akin ends his interview by talking about his research. He believes that it is necessary to build tools to tackle the inequalities and violence that societies experience, especially in Brazil. As he puts it: "there is no possible way to analyse Brazilian society without taking



into account the issue of race in dialogue with issues of social class and gender" (AKIN, postgraduate student. Interview conducted on 17 October 2018, RJ, BR).

From Akin's account, we understand that existential capital emerges from participation in the movement, in the search for resources to navigate an exclusionary and white system. In this sense, it is worth thinking about existential capital as resources used to counter the exploitation of racial capital, mainly through the creation of affective communities and social movements, such as black collectives in universities.

## 7. Final Considerations

The interviews analysed above indicate the predominance of white and European references among the main authors studied in academia, and the almost non-existence of debates on racism. The black interviewees showed that they perceived the legal field, as well as the academic production of law, as a white context. These students and professionals understand that the rules produced by this relatively autonomous field will therefore protect whiteness. Thus, Black people who enter the legal field see the need to challenge the extraction of value promoted by racial capital and mobilise to create spaces that mobilise existential capital. However, the legal field remains structured by the denial of racism and the need to broaden the debate to include curricular changes, new methodologies and greater diversity in terms of literature.

The interviews analysed often reflect what Hall (2006) called a decolonised sensibility. Being at university as a black teacher or student is discussed in the interviews with a constant tension between necessity and choice. The experience of being black at a university in Brazil is crossed by questions about the autonomy that can be exercised in this space. However, this discussion is also linked to economic structures and social expectations. What are the expected trajectories of a black student and a white student who want to enter the field of law? The answer to this question cannot be given in a completely objective way, but it leaves open a question that can be addressed and deepened by other analyses that do not start exclusively from an understanding of the tools that white students can obtain through material resources. The answer to the above question begins with an understanding of expectations, which are related both to the



individual and to social structures. These have a direct impact on the definition of what is "possible", depending on how this individual is positioned socially and racially.

The interviews show that the expectations and limitations for studying and aiming for certain positions don't just depend on the course the person attended or the social class they belong to, but are affected by institutional racism (WERNECK, 2016; SILVA, 2017). However, it is important to understand the mechanisms that continually structure racism. When developed by Bourdieu (2010), the term cultural capital had a strong link to symbols of high status and the skills needed to appreciate art, gastronomy and access specific forms of knowledge. However, according to Stuart Hall (2006), the very definition of culture has changed. In this way, the concepts of existential and racial capital are very relevant to understand the issues that emerged during the interviews with members of the teaching and student staff at law universities in Brazil.

Analysing the interviews through the concepts of existential and racial capital provides us with clues to understanding how institutional racism operates in ways related to class markers, many of which are associated with economic and social capital, but not exclusively. However, among the established forms of capital, cultural capital has limitations associated with a construction that is overly tied to notions of high and low culture and a Eurocentric reality. Regarding economic or social capital, various analyses have already been carried out on the material limitations that affect access to university through quotas. It is crucial to analyse racism while avoiding a "one-dimensional understanding" (CONCEIÇÃO, 2021, p. 1745), since the promotion of equality and the fight against racism require public policies in various areas, including racial literacy and other activities aimed at members of the justice system and the police. However, as pointed out throughout the text, the naturalisation of inequality through the exploitation of racial capital is a resource exploited by capitalism that is unlikely to be resolved through awareness-raising activities.

Considering that universities are institutions capable of changing the rules that govern the legal field, changing the curriculum and including more brown, black and indigenous people could have an impact on equalising the exploitation of racial capital when compared to the valorisation of existential capital. However, it should be noted that the inclusion of these people in the labour market is another challenge to be faced and many interviews pointed out that within the legal field there is a racial and class hierarchy between the various possible positions. This indicates the need to expand policies for





permanence, professional integration and changes in academic, curricular and epistemological cultures, including African, Afro-Brazilian and indigenous histories and cultures in the academic curriculum. Nevertheless, the expectations placed on black students when compared to white students, as well as their understanding of their potential or ability to choose, affect this trajectory. Expectations and potential are constantly produced or sabotaged by institutional racism and the extraction of value provided through racial capital.

### Translation

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**The authors are solely responsible for writing the article.**

