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Afrodescendants, Law, and Race in Latin America

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Tanya Katerí Hernández

Book Chapter, "Law and Race in Latin America," in Handbook of Law and Society in Latin America, eds. Tatiana Alfonso, Karina Ansolabehere, and Rachel Sieder (Routledge 2019).

Abstract: Law and Society research in and about Latin America has been particularly beneficial in elucidating the gap between the ideals of racial equality laws in the region and the actual subordinated status of its racialized subjects. This chapter maps recurring research themes in the race-related socio-legal literature, mostly focusing on studies about afro-descendant populations and the ways in which states throughout the region have dealt with ideas of race and racial discrimination. I organize this literature according to the analysis of what Latin American states have achieved –or not- in addressing racial inclusion, racial discrimination, and racial equality through reparations and affirmative action. As a result, I identify three sets of socio-legal debates: the limits of multicultural constitutional reform for full political participation; the limits of the Latin American emphasis on criminal law to redress discriminatory actions; and the challenges to implementing race conscious public policies such as affirmative action. Following my mapping of the field, I signal the resistance of legal systems to enforcing anti-discrimination measures in order to show that future research should interrogate the judicial presumption that racial violence does not and has not existed in Latin America, and the resulting social disempowerment of not naming violence as racial.

I. Limits of multicultural constitutional reforms

Law and Society literature has documented the advent of multicultural constitutions. For instance, Jean Muteba Rahier's work points to the ways in which the "Latin American multicultural turn" since the 1980s has rightfully celebrated indigenous and Afro-descendant contributions to nation-states that were historically ignored and/or not fully valued (Rahier 2014, 105); other authors have argued that the multicultural constitutional turn created new forms of citizenship in nations composed by ethnically diverse populations (Yashar 2005, Loveman 2014). However, Tianna Paschel notes that, for the case of Afro-descendants, the existing scholarship on Latin America tends to collapse policies of collective rights and race-based affirmative action into a singular "multicultural turn" rather than distinguishing between the two varied developments (Paschel 2016, 20).

Disaggregating the development of multiculturalist collective land rights from affirmative action and anti-discrimination laws helps to illuminate the limits on their reach and enforcement and how they can reproduce racialized color hierarchies (Rahier 2014, 105). In fact, the literature regarding multicultural constitutions is roughly made up of two sub-categories, where one focuses on the rise of indigenous political activism and the other on the recognition of racial discrimination against Afro-descendants. Within the indigenous rights literature indigeneity is not for the most part examined as a matter of racial identity for which racial discrimination laws are paramount (Sieder 2002). This could very well be because indigenous leaders themselves have not usually engaged with discourses centered on racism and discrimination (Beck, Mijeski and Stark 2011, 102-125).

In contrast, racial identity has been the primary focus regarding the examination of Afro-descendant communities (Hooker 2005, 285-310). Juliet Hooker's work has suggested that not all multicultural constitutions similarly situate Afro-descendant communities. She aptly notes

that because Latin American states have primarily envisioned multicultural rights as pertaining to indigenous peoples, who are viewed as deserving “ethnic” group members, Afro-descendants have often been excluded as distinct “racial” subjects without an ethnic identity needing constitutional protection (Hooker 2009, 80-82). For instance, Hooker lists Colombia, Brazil, Ecuador, and Peru as those jurisdictions where Afro-descendants have obtained some multicultural constitutional rights, but not to the same extent as indigenous communities.

The dichotomy drawn between deserving “ethnic” indigenous persons and the undeserving “racial” Afro-descendants overlooks both the racialization of indigenous peoples as well as the cultural identities of Afro-descendant communities. For this reason, Colombia stands out as a jurisdiction that has included Afro-descendants while also exemplifying the limitations of a nation equating multicultural rights with ethnic group status (Ng’weno 2007a). Colombia thus provides an illustrative contrast to countries like Mexico and Venezuela that completely exclude Afro-descendants from their multicultural rights landscape. Colombia also compares with those countries that have accorded Afro-descendants the same collective rights to land and culture, such as Guatemala, Honduras, and Nicaragua.

The Colombian Constitution states that it “recognizes and protects the ethnic and cultural diversity of the Colombian nation.” Transitory Article 55 of the 1991 Constitution mandated that laws recognizing Afro-descendants’ rights to collective property be enacted. The constitutional provisions have thus been augmented by specific legislation. In order to implement the mandate of Article 55, in 1993 Ley 70 (Law 70) was enacted to provide protection for traditional landholdings of Afro-Colombians as an essential element of their ethnic identity, recognizing their right to organize collectively through their own traditional authorities and apply for collective title. Article 7 of Ley 70 provides that collective titles are inalienable, protected from

seizure, and exempt from statutes of limitations. The law was originally devised for black communities in the Pacific Coast but as the Afro-Colombian movement and black identity gained ground since the 1990s, black communities in different regions of the countries have made claims for land. Black rights to collective land have been extended (via jurisprudence) to other areas, especially the Caribbean coast, wherever communities defend a self-ascribed black identity, collective organization and traditional forms of land settlement and use. Law 70 requires that only lands deemed to be *tierras baldías* (state-owned vacant land) can be passed on to collective ownership: urban areas, indigenous territories, national park areas, and regions reserved for national security and defense are not deemed apt for collective titling. Yet Afro-Colombians are regionally and ethnically diverse and do not all live on *tierras baldías*. Furthermore, the land titling process is particularly demanding in that it requires the production of historical, demographic, economic, and cartographic studies of the community claiming collective ownership. What this effectively means is that vast numbers of urban Afro-descendants are excluded from the benefits of collective title because they are not viewed as having firmly rooted ties to specific parcels of land, as –by contrast, is the case with indigenous communities’ collective land titles (Ng’weno 2007b). Ley 70 thus addressed the needs of only one type of Afro-Colombian.

In addition, Jaime Arocha observes that many Afro-Colombians have been dissuaded from pursuing the land titling process by the violence of paramilitary groups and the Colombian Army (Arocha 1998, 70-89). Similarly Kiran Asher describes how Afro-Colombian community organizers seeking collective ownership have seen themselves labeled as guerrillas or terrorists and have then been targeted for violence by government agents interested in controlling

resource-rich Afro-Colombian areas for corporate development (Asher 2009). In addition, right-wing paramilitary squads long enmeshed in drug trafficking are similarly involved in land grabs (Rosero 2002, 547-559). Indeed, at least one study found that 33 percent of all Afro-Colombians have been expelled from their lands by armed groups (Hernández 2013, 117). Afro-Colombians represent the largest percentage of those displaced because of the civil war (Hernández 2013, 117): n Afro-Colombian is 84 percent more likely to be displaced than a mestizo. Of the Afro-Colombian population with registered collective property titles in 2007 alone, 79 percent had been forcibly dispossessed of their lands (Rodríguez, Alfonso and Cavelier 2008, 34-35). So significant has been the displacement of Afro-Colombians (and indigenous communities as well) that in 1999, the United Nations officially put the Colombian government on notice to address it as a form of racial discrimination (CERD 1999). Thereafter, Colombia's Constitutional Court evaluated the government's policy for dealing with the plight of the many dispossessed and held that the policy was inadequate and unconstitutional in its violation of the fundamental rights of Colombian citizens (Constitutional Court of Colombia, 2004). Since that court order, the government has been obligated to design policies to prevent the forced removal of landowners, in addition to ameliorating the poor living conditions of the dispossessed. In a subsequent decision the Constitutional Court assessed the particular and specific impact of the armed conflict and forced displacement on Afro-Colombians as a targeted group and concluded that for these communities, displacement was a result of the structural exclusion of this population.

In contrast to the situation regarding land, the government has been willing to focus upon Afro-Colombians as a group with respect to educational reform. In 1998, President Ernesto Samper, in compliance with the dispositions of Law 70 of 1993 on protection of cultural identity and the obligation to establish Afro-Colombian studies as a permanent part of the school

curriculum, passed a presidential decree mandating that schools teach Afro-Colombian history and culture (Decree No. 1122 1998). The general law of education (Law 115 of 1993) in its article 160, provides that the board of each education district must include a member representing the local Afro-Colombian community, if such a local community exists.

However, the promise of multicultural constitutions and new laws will need to confront the long embedded history of racially exclusionary politics in Latin America. For example, César Rodríguez Garavito describes how in the Colombian context even though the legislation for the “multicultural protection” of the Constitution requires that government authorities consult Afro-descendant communities before making decisions that affect their communal lands, Afro-Colombians confront barriers to the consultation process because the government must first officially recognize a pre-established community council of Afro-descendants before they are entitled to be consulted (Rodríguez Garavito 2011, 263 - 305). The official recognition process has thus been perceived as overly bureaucratic and restrictive (Rodríguez 2008). Nevertheless, in her review of multicultural constitutions Donna Lee Van Cott notes that after so many years of marginalization, even the symbolic constitutional recognition of the importance of Afro-descendants is indeed some measure of progress (Van Cott 2000).

II. Limits of the emphasis on criminal law to redress discriminatory actions

The law and society literature has been helpful in illuminating how the vast majority of countries in the Latin America have focused on criminal law as the vehicle for addressing racial discrimination. This literature has highlighted that such approaches, while sending a message about state commitment, leave structural and institutional causes of racial discrimination untouched. Moreover, the emphasis on criminal sanctions tends to create a gap between the mere

existence of the norm and its implementation, just as in the classical gap between law in the books and law in action.

César Rodríguez Garavito and Carlos Baquero Díaz note that all Latin American countries except for Paraguay have passed laws to criminally punish acts of racial discrimination (Rodríguez and Baquero 2015, 68). Given the long histories of ignoring the existence of racism and discrimination in Latin America, it is understandable that the strongest state sanction that criminal law provides would be sought as the symbol of the state's new commitment to recognizing societal discrimination. Robert J. Cottrol thus rightfully notes that criminal law sanctions are often the default anti-discrimination approach because they contain a strong normative message that the State condemns racism (Cottrol 2013, 290).

Relatively few criminal prosecutions have been brought since the social justice advocacy for recognition of racial discrimination of the 1990s. In 2013 Claudia Dary reported that six court cases had been brought by indigenous Maya persons in Guatemala since the nation's enactment of its discrimination criminal code provision in 2002 (Dary 2013, 140). Peru convicted an individual for racial discrimination against an Afro-Peruvian for the first time in 2015 (Sentencia No. 479-2015-2JPL-PJ-CSJJU). Similarly, Ecuador issued its first prison sentence for racial discrimination against an Afro-Ecuadorian only in 2016 (Proceso No. 17124-2014-0585).

The public focus on criminal law conflicts with fully addressing the sources of racial inequality. For instance, further entrenching the focus on criminal law provisions has been the notion that Latin American nation-states are innocent of racial wrongdoing. Tanya Katerí Hernández notes that given the absence of state mandated Jim Crow segregation in the region, the legal stance toward racism has been to view it as an aberration rather than a systemic part of a national culture (Hernández 2013, 104). As a result the legal response has been to treat racism

as the work of isolated individuals, who are presumably abnormal in their prejudices. In short, racists are criminals rather than representatives of longstanding racist cultural norms. Rodríguez and Baquero conclude that the use of criminal law individualizes racism and fails to challenge the structural causes of racial inequality (Rodríguez and Baquero 2015, 92). This also helps to explain why the large majority of hate speech laws in Latin America are part of the criminal codes in the region. Yet limiting the idea of racism to biased words uttered by those labeled as aberrant racists overlooks the structural and institutional aspects of discrimination that operate in the absence of racist commentary. The work of Carlos de la Torre has exemplified these law and society insights with respect to the plight of Afro-Ecuadorians. For instance he notes that “[r]educing racism to the hostile words and actions of ignorant, ethnocentric, and parochial individuals, a view that was dominant in American sociology until recently, does not take into account power relations” (de La Torre 2005).

Tanya Katerí Hernández’s work in particular has documented how some countries in Latin America maintain a singular criminal approach to discrimination (Hernández 2013). For example, in the Dominican Republic, the 1997 *Ley contra la Violencia Intrafamiliar* (Law against Interfamily Violence) makes it a crime to inflict unequal or humiliating treatment based on race or ethnicity. Persons found guilty of the crime of discrimination can be imprisoned for a year and one month and be subject to a fine of two to three times the minimum wage (Ley No. 24-97). In Nicaragua, the Criminal Code penalizes the obstruction of a constitutional right because of race or ethnicity (Ley No. 641). The penalty is six months to one year of imprisonment. If the racially motivated obstruction of a constitutional right is found to have been publicly promoted, an additional fine can be imposed. The Criminal Code also authorizes the

augmentation of a penalty for other crimes when they are racially motivated (Crim. Code Art 36.5).

What the law and society literature on the criminalization of racial discrimination underlines is that even though criminal sanctions suggest a strong normative commitment to the eradication of discrimination, they may in practice have had the ironic effect of making the legal system less capable of dealing with the problems of inequality and discrimination. Criminal cases require stronger evidence and a higher burden of proof than civil cases. For instance, an analysis of experiences of filing a criminal complaint of discrimination in Peru found that the evidentiary standard for discrimination cases was high and that it was often difficult for a victim to prove that he/she had experienced discrimination. The report described the case of an individual who lodged a complaint against the police department alleging discrimination for the inappropriate issuance of a traffic ticket because of his race. The public prosecutor deemed that this complaint did not merit a criminal investigation or action because the evidence presented was insufficient. Yet the complainant had submitted an affidavit and that of a family member who witnessed the incident: it is difficult to fathom what more he could have submitted in order to support his allegations (Defensoría del Pueblo, República Del Perú 2007, 119).

In addition to the reluctance of prosecutors to proceed with racial discrimination cases, judges are reluctant to impose criminal sanctions. Latin American criminal justice systems are overloaded with traditional crimes of violence and crimes against property. In a system plagued with case overload and systemic inefficiencies, the crimes of racism and racial discrimination are likely to continue to have a low priority.

Moreover, entrusting the enforcement of the criminal law to public authorities risks having the law undermined by the complacent inaction of public officials who may harbor the

same racial bias as the agents of discrimination. Indeed, commentators have noted that Latin American police officers are often the perpetrators of racial violence against persons of African descent because they see their role as protecting society from “marginal elements” by any means necessary without regard to the rule of law (Pinheiro 1999, 1-16). This is a particular danger in Latin America, where police officers consistently discourage Afro-descendants from filing racial discrimination complaints and are often themselves the perpetrators of discrimination and violence (Brinks 2008, 49-54; Mitchell and Wood 1999, 1001-20).

Seth Racusen notes that a civil framework can provide for broader theories of discrimination and less burdensome evidentiary standards (Racusen 2002, 87-8; Racusen 2004). In addition, the civil context carries less risk of selective enforcement whereby vulnerable populations are disproportionately targeted for prosecution. This is because, unlike in criminal prosecutions, the state need not be the primary enforcer of the legislation. Yet because of the prevalent notion that criminal laws against discrimination show how serious the state is about racism, the development of civil law measures has been slow and their reach has been modest.

III. Reparations and Affirmative Action

In contrast to the United States’ narrow vision of reparations as limited to state-based apologies and financial compensation for specific harms, the Latin American conception of reparations has been depicted in the law and society literature as broadly encompassing not only multicultural constitutional land rights provisions but also policies of affirmative or positive action (Rodriguez and Baquero 2015, 93). Claudia Mosquera Rosero-Labbé and Luiz Claudio Barcelos in particular, set out the varied possibilities for formulating demands for reparations in Latin America (Mosquera Rosero-Labbé and Barcelos 2007). They note that the regional

discussion about reparations includes affirmative action policies, redistribution of wealth and power, state protection of cultural forms, protection and compensation for territorial expulsions, legal recognition and title for ancestral lands, and studies for the recognition of the harms of subtle implicit bias.

In the specific case of Colombia, Rodríguez Garavito and Lam suggest that the frame of reparations is a better lens for redressing the collective injustices that ethnic populations have incurred as a consequence of being displaced from their lands, displacement that often occurred with state support (Rodríguez and Lam 2011, 13). With Afro-Colombians followed by indigenous groups as the largest numbers of displaced persons, the racialization of their expulsions is marked and necessitates the racially-conscious lens of reparations discourse (Rodríguez, Alfonso and Cavelier 2009a, 7). Yet, as previously noted, Colombia has been slow to respond to the racially specific occurrences of land displacement with reparations-like racial specificity. This may be due to some extent to the great variation in understandings on the part of government actors about what constitutes affirmative action (Mosquera Rosero-Labbé, Díaz and Morales 2009, 350).

However, in Colombia and other nations that have broached the issue of affirmative action, states have been more willing to consider racially targeted policies. In fact the recent growth in race-related law and society literature regarding Latin America is centered on the topic of affirmative action (Htun 2016). For instance, Rocío Martínez describes the national government's consideration of affirmative action and the implementation of its strategies at municipal level in the city of Bogota (Martínez 2013, 207-226). Indeed Bogota's municipal movement on affirmative action stands in marked contrast to Colombia's national failure to implement effective legislation (Rodríguez, Alfonso and Cavelier 2009b, 325).

Brazil's wider implementation of affirmative action policies across various sectors means it is the country where law and society analysis of racial discrimination is most focused (Reiter and Mitchell 2009). Ollie A. Johnson III and Rosana Heringer's 2015 collection on affirmative action provides a comprehensive picture of the complexities involved in legislating affirmative action policies in Brazil (Johnson III and Heringer 2015). As a whole this literature has highlighted how affirmative action is pursued as a means to address racial exclusion, even when that racial exclusion continues to operate when socio-economic status is the same across races (Telles 2004).

However, whenever the issue of racial and ethnic empowerment is raised as a political issue for Latin America, the inevitable critique is voiced that such concerns are not relevant to such a racially mixed context. Socioeconomic status is still understood to be the most salient factor for understanding inequality in the region. However, law and society scholarship has documented how indigenous and Afro-descendant social justice activists with very different perspectives have successfully lobbied for ethnic and racial policies of inclusion in Brazil. It has also shown how Brazilian officials have managed to administer affirmative action programs that creatively operate in the midst of racial fluidity by using various combinations of nonwhite race proxies, such as public secondary school attendance and low-income status, along with racial self-declarations of being black or brown, photographs, and interviews for determining program participation (dos Santos and Lobato 2003).

Moreover the literature indicates that Brazilian affirmative action programs are relatively successful. For instance, a study of student outcomes at the State University of Campinas found that students from socioeconomically and educationally disadvantaged backgrounds performed relatively better than those from a higher socioeconomic and educational level (Pedrosa 2007).

The study concluded that the need for hard work when striving for greater opportunity (as in preparing for the university admission examination when coming from an under-resourced public secondary school) creates an “educational resilience” that improves educational performance once a student is admitted to university. The educational resilience of the less privileged students resulted in higher grade point averages of the affirmative action students after only one year of university study in 31 of the 55 possible undergraduate courses of study and the success rate improved over the course of their years at the university. Overall the relative performance of the affirmative action students was higher in 48 of the 55 courses. Equivalent studies at the University of Brasilia, the State University of North Fluminense, the Federal University of Bahia, the State University of Rio de Janeiro, and the Federal University of Espirito Santo found similar outcomes (Velloso 2009; Brandão and da Matta 2003; Queiroz and dos Santos 2006; Vieira 2011; Ford 2011). In other words, affirmative action students succeed once provided the opportunity of admission.

The law and society literature shows that growing numbers of Brazilians and program beneficiaries have come to view affirmative action as positive. In fact, the most common student stereotype about the program beneficiaries is that they are “cones” (nerds) who prefer to work all the time rather than party (Cicalo 2012). The general student body’s respect for the program participants is illustrated by the following reflection by a University of the State of Rio de Janeiro law student : “I can tell you that I’m in the third year and I don’t see any real difference between the marks of the quota and non-quota students. Many cotistas [quota students] do very well, and they definitely deserve to be here; this fact has made me change my [negative] opinion of quotas in the last few years” (Cicalo 2012, 256-57). Similarly, in a 2007 study of 557 university instructors, the vast majority considered that affirmative action had contributed to

democratizing the academic space by having it more accurately reflect Brazilian society (Petrucci 2007).

At the same time that the law and society research has traced the evolving shift in Latin American attitudes regarding the suitability of presumably U.S.-like race-conscious policies of inclusion, it has also documented judicial resistance to the notion that racial discrimination exists in Latin America simply because its manifestations are deemed to be inconsequential compared to the “real discrimination” of the racially violent United States. The next section addresses the legal system’s resistance to enforcing anti-discrimination laws.

IV. Legal System Resistance to Anti-Discrimination Enforcement: The case of racial violence

Ariel Dulitzky, was one of the first legal scholars to assess the region-wide phenomenon of denying the existence of racial discrimination because of the assertion that “the serious incidence of racism and racial discrimination” more accurately exists in the United States (Dulitzky 2005, 39). This observation was based upon an analysis of official nation state reporting responses to human rights violation claims before the United Nations Committee on the Elimination of Racial Discrimination. Despite evidence that racial discrimination permeates every realm in the region including social, political, education, labor, culture, and public health sectors, government responses downplayed its significance as inconsequential compared to the legal violence of the USA.

Dulitzky’s general insight has also accorded with country specific studies that describe legal systems which treat racial discrimination claims as lacking merit because of the belief that

Latin America is not a region with “real racism.” For instance, in the Brazilian context, Antonio Guimarães found that judges frequently dismissed such claims based on the notion that Brazilian culture is immune from racial bias (Guimarães 1998). For instance, Guimarães quotes one representative case in which the judge explicitly stated: “We do not have the rigorous and cruel racism observed in other countries, where non-“whites” are segregated, separated and do not have the same rights. That is racism” (Guimarães 1998, 35).

While not all judges are so explicit about how a particular comparison to the United States limits the full recognition of racism in Latin America that should be legally regulated, other country-specific studies have observed a similar refusal to acknowledge the existence of racism in the enforcement of equality laws. For instance, in the Justice Studies Center of the Americas’ examination of Colombia, the Dominican Republic, and Peru, it was found that each of these countries suffered from a limited legal response to the issues of racial discrimination (Judicial Studies Center of the Americas 2004). Similarly, Carlos de la Torre’s inquiry into the Ecuadorian legal system discovered that the Ecuadorian government had a constrained view of racism as solely a problem of isolated verbal expressions of infrequent individual bigotry (de la Torre 2005). Even apparent victories in court that recognize that racial discrimination exists can be premised on problematic understandings of racism. For instance in his analysis of Colombian Constitutional Court case findings, Jorge González Jácome concludes that the Court confines its understanding of racism to the acts of individuals with overtly manifested intent to discriminate in ways that problematically shields from consideration the ways in which pervasive structural discrimination operates (Jácome 2006). The focus on individual intent is yet another articulation of the vision of discrimination as exceptional in Latin America.

Given continued resistance to recognizing the gravity of racial discrimination in Latin America, emerging law and society literature could most productively turn to empirical evaluations of how structural racial discrimination operates in practice. Such studies could be instrumental in disrupting judicial attitudes of racial innocence that interferes with the enforcement of anti-discrimination laws. This could be effected most directly by interrogating the presumption that racial violence does not and has not existed in Latin America, along with examining the social disempowerment that occurs when violence is not named as racial.

For instance, in João Costa Vargas's analysis of violent police practices in Brazil, he readily identifies the racialized aspects of policing in the poor regions, despite the Brazilian norm of treating poverty as the sole basis for social differentiation unaffected by racism (Costa Vargas 2004, 459). Rather than accept at face value the traditional Latin American explanation of racial disparities in police violence as solely emblematic of socio-economic class distinctions, Costa Vargas digs deeper to demonstrate how "urban space became a metaphor, a code concept for blackness, in the same way that the *favela* was rendered a code word for blacks" that justifies racialized violence (Costa Vargas 2004, 455). Similarly, Carlos de la Torre describes a parallel dynamic of racialized police practices in Ecuador where police "conceive of their mission as protecting citizens from the 'danger' of blacks. These blacks are not viewed as citizens but rather as violent intruders that invade the cities" (Espinosa 2002, 33). A study of police practices in Cali, Colombia also notes that Afro-Colombians perceive law enforcement as targeting the Afro-Colombian community with physical mistreatment (Lam and Ceballos 2013, 35). Examples of state violence extend beyond law enforcement officials to instances of state complicity in the contemporary massacre of ethnic populations. Aurora Vergara Figueroa describes such an instance in the 2002 massacre of Afro-Colombians in Bellavista, Colombia

(Figueroa 2011). More recently, an Afro-descendant student was repeatedly physically attacked by his classmates and was ultimately burned with acid as racist slurs were uttered (LaFM, 2013).

Nor are Colombia, Ecuador and Brazil the only countries in the region with reported instances of racialized violence. In Argentina, a young female Senegalese street vendor was physically attacked and kicked in the stomach by a doorman as he shouted “I don’t want to see a black woman when I walk out of the door of this building” and “go back to your country you shitty black woman” (IARPIDI 2014). In Uruguay, a Nigerian man was beaten and thrown out of a dance club by four club doormen as they shouted “get this shitty negro out of here” (Lima and Delgado 2011). The beating was so brutal that the victim lost vision in one eye. In each reported attack those interviewed asserted how common such racial violence is in the region.

In the future a law and society race-related research agenda could productively explore the role that racial violence plays in subordinating vulnerable populations in Latin America, as well as deconstructing the judicial premise that violence in Latin America is unrelated to racial discrimination,

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