

QUASE PRETOS DE TÃO POBRES?
Race and Social Discrimination in Rio de Janeiro's
Twentieth-Century Criminal Courts*

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Abstract: Conceived as a contribution to debates about the role of state institutions in perpetuating racial inequality in modern Brazil, this article explores the relative importance of social and racial characteristics in determining defendants' treatment in Rio de Janeiro's criminal courts between 1930 and 1964. Focusing on rarely noted aspects of defendants' class and citizenship status, and emphasizing the importance of judicial procedure, it argues that social discrimination was open in Rio de Janeiro's courts, but that race alone was a relatively poor predictor of defendants' fates. At the same time, it suggests that racial and social characteristics ought not to be seen as separate and competing categories, both because "social" language had important racial meanings and because "social" discrimination had significant racial implications. Institutionalized social prejudice may thus go far in explaining the stubborn persistence of racial inequity in an age when "racial democracy" became a national hope and mantra.

Brazilian race relations have intrigued, entranced, and impassioned both nationalist intellectuals and foreign observers for more than half a century. Few subjects are more central to Brazil's national identity, and few have undergone such radical paradigmatic shifts. In the early 1930s, with the publication of Gilberto Freyre's masterful and synthetic (if not entirely original) vision of Brazilian culture, the belief that Brazil had forged from miscegenation and tolerance a society uniquely free of racial prejudice began to take root in both national discourse and international fantasy, gradually replacing the pessimistic "scientific racism" that

*I wish to thank members of the University of Chicago Latin American History workshop (especially Dain Borges and Claudio Lomnitz), participants in the Five-College Social History workshop, and the anonymous LARR referees for their valuable critiques of earlier versions of this article. I am grateful also to the Fulbright Commission, Harvard University, and the Social Science Research Council for support provided over various years of research. Thanks, too, to Jonathan Brown, Peter Ward, and all of the members of the LARR editorial team for their kindness throughout. Finally, my gratitude to Emilio Kourí, for his insightful readings, and for his loving support.

Latin American Research Review, Vol. 39, No. 1, February 2004
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had enveloped the Brazilian intellectual and political worlds for most of the late nineteenth and early twentieth centuries.¹ In the wake of revelations about Brazil's persistent racial and social inequities at mid-century—findings that sprung, ironically, from U.N.-sponsored studies that sought to demonstrate to the post-war world Brazil's unique formula for *harmonious* race relations—Marxist intellectuals and the Brazilian public at large modified (but did not discard) the newly minted notion of “racial democracy,” arguing that racial disparities and prejudice were rooted in social and material inequalities inherited from the slave system and perpetuated by skewed patterns of economic development, and adhering still to the notion that discrimination based exclusively on race was an anathema to the Brazilian character.² Over the last thirty years, scholars have persistently chipped away even at these last remnants of the myth of Brazilian racial cordiality, and a growing consensus has emerged among intellectuals that modern Brazil's sharp social inequalities can be neither explained nor resolved without explicit attention to pervasive racial prejudice.³

1. Gilberto Freyre, *Casa grande e senzala* (Rio de Janeiro: Mia and Schmidt, 1933); *Sobrados e mucambos* (Rio de Janeiro: Cia. Editora Nacional, 1936). On Brazilian intellectuals, scientific racism, and influences on Freyre's thought, see Thomas Skidmore, *Black into White* (Durham, N.C.: Duke University Press, 1993); Dain Borges, “Puffy, Ugly, Slothful and Inert,” *Journal of Latin American Studies* 25, no. 2 (May 1993): 235–37; Lilia Schwartz, *O espetáculo das raças* (São Paulo: Cia. das Letras, 1993); Jeffrey Needell, “History, Race and the State in the Thought of Oliveira Viana,” *Hispanic American Historical Review* 75, no. 1 (February 1995): 1–30 and “Identity, Race, Gender and Modernity in the Origins of Gilberto Freyre's Oeuvre,” *American Historical Review*, 100, no. 1 (February 1995): 51–77.

2. Charles Wagley, *Race and Class in Rural Brazil* (Paris: UNESCO, 1952); L.A. Costa Pinto, *O negro no Rio de Janeiro* (São Paulo: Cia. Editora Nacional, 1953); Thales de Azevedo, *Les elites de couleur dans une ville brésilienne*, (Paris: UNESCO, 1953); Roger Bastide and Florestan Fernandes, *Relações raciais entre negros e brancos em São Paulo* (São Paulo: Anhembi, 1955). For insightful analysis of the UNESCO studies, see Marcos Chor Maio, “O Projeto UNESCO e a agenda das ciências sociais no Brasil dos anos 40 e 50,” in *Revista Brasileira de Ciências Sociais* 14, no. 41, (October 1999): 141–58; “Uma polemica esquecida: Costa Pinto, Guerreiro Ramos e o tema das relações raciais,” in *Dados—Revista de Ciências Sociais* 40, no. 1, (1997); “A questão racial no pensamento de Guerreiro Ramos,” in Marcos Chor Maio and Ricardo Ventura Santos, eds., *Raça, ciência, e sociedade* (Rio de Janeiro: Centro Cultural do Banco do Brasil, Fiocruz, 1996), 179–94.

3. George Reid Andrews, *Blacks and Whites in São Paulo* (Madison, Wis.: University of Wisconsin Press, 1991); Carlos Hasenbalg, *Discriminação e desigualdades raciais no Brasil* (Rio de Janeiro: Graal, 1979); Lilia Moritz Schwarcz and Renato da Silva Quieroz, comp., *Raça e diversidade* (São Paulo: Editora da Universidade de São Paulo [EdUSP], 1997); Pierre-Michel Fontaine, *Race Class and Power in Brazil* (Los Angeles: University of California at Los Angeles [UCLA], Center for Afro-American Studies, 1985); Peggy Lovell, org., *Desigualdade racial no Brasil contemporâneo* (Belo Horizonte: CEDEPLAN, FACE, Universidade Federal de Minas Gerais [UFMG], 1991); Carlos Hasenbalg and Nelson do Vale e Silva, *Estrutura social, mobilidade e raça* (São Paulo: Vertice; and Rio de Janeiro: Instituto Universitário de Pesquisas do Rio de Janeiro [IUPERJ], 1988) and *Relações raciais no Brasil contemporâneo* (Rio de Janeiro: Rio Fundo Editora, 1992); Rebecca Reichmann,

In this ever-darkening spectrum of beliefs, some questions have doubtless been resolved. Disparities in income, education, and opportunity clearly persisted in Brazil after abolition; racist discourse and behavior evidently coexisted with the myth of racial democracy (though later versions were often couched in sociological or psychological rather than biological language); and the very idea that racism did not exist in Brazil may have inhibited race-based political organization, thus perpetuating the very racism it set out to deny.⁴ Significant as these findings are, though, large gaps remain. First, while Brazilians largely seem to accept the view that social and racial prejudice are irrevocably linked—Caetano Veloso succinctly captured these overlapping conceptions when he described police beatings of “*pretos, pobres e mulatos e quase brancos quase pretos de tão pobres*” (blacks, the poor, *mulatos*, and whites who are almost black because they’re so poor)—academic production has not always emphasized this reading.⁵ Understandably, in view of the denial or minimalization of racism prevalent in Brazil through the 1970s, many recent scholars have focused so intently on proving that racial discrimination exists as an autonomous social force that they have generally not emphasized the ways in which social and racial prejudices interact, forging together the profile of Brazilian inequality.⁶ We thus do not know with any certainty which are the stronger influences—whether poverty, African ancestry, or isolation from powerful personal and bureaucratic networks are the principal causes of discrimination and exclusion, or if, indeed, these factors can plausibly be disentangled. Secondly, despite

ed., *Race in Contemporary Brazil* (University Park, Penn.: Pennsylvania State University Press, 1999); Michael Hanchard, *Orpheus and Power* (Princeton, N.J.: Princeton University Press, 1994); Carlos Antônio Costa Ribeiro, *Côr e criminalidade* (Rio de Janeiro: Ed UFRJ, 1995); Yvonne Maggie and Claudia Barcellos Rezende, *Raça como retórica* (Rio de Janeiro: Civilização Brasileira, 2002); Robin Sheriff, *Dreaming Equality* (New Brunswick, N.J.: Rutgers U. Press, 2001).

4. See, especially, Valle e Silva, Hasenbalg, Andrews, and Hanchard, *op. cit.*; Robin Sheriff, “Exposing Silence as Cultural Censorship: A Brazilian Case,” in *American Anthropologist* 102, no. 1 (March 2000): 114–32; Peter Fry, “Color and the Rule of Law in Brazil,” in Juan E. Méndez, Guillermo O’Donnell, and Paulo Sérgio Pinheiro, eds., *The (Un)Rule of Law and the Underprivileged in Latin America* (Notre Dame, Ind.: University of Notre Dame Press, 1999); and Chor Maio and Ventura Santos, *op. cit.*

5. Caetano Veloso, *Haití*, from Caetano Veloso and Gilberto Gil, *Tropicália 2*, copyright 1995.

6. This observation is especially relevant for the work of Hasenbalg and Valle e Silva, whose statistical studies often show the strong influence on socio-economic inequality of apparently non-racial factors such as regional origin and education, but whose conclusions focus mostly on race. See, for example, Valle Silva, “Cor e pobreza no centenário da abolição,” in Valle Silva and Hasenbalg, *op. cit.*, 1992, 119–38, and Hasenbalg, “Desigualdades raciais no Brasil,” in Hasenbalg e Valle Silva, *op. cit.*, 1988, 115–43. George Reid Andrews’ work on São Paulo stands out as an important exception to this trend.

recent studies on education and labor market practices, we remain too ignorant about the mechanisms that have perpetuated Brazilian racial inequalities, and especially about the role that the Brazilian state has played in this process.

This article addresses these questions through a close examination of rhetoric and procedural practice in Rio de Janeiro's criminal courts between 1930 and 1964. Its analysis is divided into three sections, overlapping but methodologically distinct. The first explores qualitatively the role of race in 514 criminal cases from the 1930s to the 1960s, highlighting the remarkable absence of racial language from both juridical and popular discourse during these years, and noting the ways in which these silences challenge our understandings of race's place in the pantheon of Brazilian social prejudice. The second speculates on the reasons for racial silence, questioning the degree to which the demise of biological racism signaled the end of racial prejudice, and noting the racial implications of apparently social bigotry. A final section analyzes quantitatively race's impact on judicial treatment and outcomes, suggesting that social factors were better predictors than racial ones of an individual's fate in the *carioca* (Rio de Janeiro) criminal justice system.

From these intertwining lines of argument, I conclude that broad social prejudices mattered much more than narrowly racial ones in shaping human interactions and institutional practice in Rio de Janeiro's mid-century criminal courts. I also argue, however, that understanding social and racial prejudices as entirely distinct phenomena would be both ahistorical and artificial. Social prejudice in Rio's judicial system was a highly racialized phenomenon. Categories of social degradation had clear racial associations for common citizens and judicial officials, and to them any clear-cut distinction between the two would have made little sense. Everyone knew that most of the poorest inhabitants of Rio de Janeiro were of Afro-Brazilian descent; in discriminating against the social characteristics associated with poverty, *cariocas* did not openly rupture the semi-fiction of a racially harmonious society, but they did perpetuate the close link between race and class that was central to the Brazilian social structure. The argument that social prejudice was at the heart of many of the criminal justice system's greatest inequities thus in no way negates the reality of racism, and in fact offers a powerful explanation for how it was perpetuated over time even as the myth of racial democracy became the centerpiece of Brazilian nationalism. Although these conclusions apply directly only to one state institution in a single place and era, I suggest that a broader examination of the overlap between the social and the racial in Brazilian private and institutional life may be key to our understanding of the country's history of racial discrimination and social inequality.

MURDER IN *PRETO E BRANCO*

Two interracial murder cases highlight the byzantine interplay of race and class that characterized most cases tried in the Brazilian criminal justice system at the dusk of Brazil's populist republic. One involved a white murderer and a black victim; the other a black murderer and a white victim. Both confound any attempt to reduce social discrimination to racial bias.⁷

When Paulo Francisco de Almeida came to work on 4 July 1955, few would have guessed that he was about to commit a murder. Twenty-five years old, single, a native of Recife with only a few years of primary education, Paulo—like so many other Northeastern migrants of his era—had come to Rio de Janeiro in the early 1950s with hopes of latching on to the promise of Brazil's rapidly industrializing postwar economy. By July 1955, luck seemed to be on his side. He held a steady factory job as a furniture finisher, and he lived close to major transportation routes in a poor northern suburb at least somewhat removed from the sprawling *favelas* that housed many of his fellow migrants.⁸ He supported his mother and younger sisters in Recife, avoided trouble with women and with the law, and seemed to be on his way to what limited form of respectability was available to a young man of his social background.

On that July Monday, all of this changed. The previous Saturday, Paulo's supervisor—Norcy de Freitas, an equally humble but *preto* migrant from Rio de Janeiro state—had stolen Paulo's street clothes and shredded them with a razor blade, boasting that he did not like Paulo and wanted to beat him up. Paulo said that these actions culminated months of groundless persecution and real threats of violence; Norcy's friends protested that the whole thing had been a big practical joke. In any case, that Monday the dispute escalated into a street brawl and Paulo—"in a cold and cowardly manner," according to one newspaper report—stabbed Norcy eight times, killing him. Paulo was then attacked and nearly lynched by the onlooking crowd, including Norcy's brother.⁹

7. Records from the archives of the Primeira Vara Criminal, Maço 407, no. 4184 (formerly held in the State Judicial archive of Rio de Janeiro) and from the Arquivo Judiciário of the Rio de Janeiro Fórum, Vara de Execuções Penais, Processo no. 2242/1959.

8. Steady, legal factory employment was, in fact, quite hard to come by in mid-twentieth-century Rio and is now widely acknowledged to have been a relatively privileged attainment throughout Brazil. For rates of employment by sector in Brazil, see Brodwyn Fischer, "The Poverty of Law: Rio de Janeiro, 1930–1964," Ph.D. diss., Department of History, Harvard University, 1999; for the relationship between factory work and other forms of employment with regards to race, see Hasenbalg, "O negro na indústria: proletarização tardia e desigual," in Hasenbalg and Valle Silva, op. cit., 1992, 101–18; Lovell, op. cit.; and Andrews, op. cit.

9. Citation unavailable; found within the *processo*.

After a long stay in a hospital, and an even longer stint in the penitentiary, Paulo was convicted of murder in November 1957 and sentenced to fourteen years' hard time. Paulo's publicly appointed lawyer never wrote more than two lines in his defense, and no witnesses spoke in his favor. Attempts on appeal by a more competent lawyer to highlight Paulo's impeccable previous behavior and to argue that he had acted in self-defense fell on deaf ears, as did an emotional letter from his mother to President Juscelino Kubitschek. Paulo—described by one district attorney as “an inadep *jagunço*” whose crime was “brutal, typical of a north-eastern migrant maladjusted to the pavement of the metropolis”—spent nearly seven years in prison before being released on good behavior and allowed to return to his half-blind and seriously ill mother in Recife.¹⁰

A few months later, in October 1962, another interracial murder took place, this time amidst the filth of the municipal garbage dump in the *carioca* port district of Cajú. The neighborhood was something of a no-man's land—bounded by warehouses, water, a cemetery, and several *favelas*—and the crime's victim was utterly disreputable. According to evidence presented to the courts, José Fernandes Pinto, known to his companions as “Zé Cara Suja” (José dirty face), was a thirty-one-year-old white immigrant from Minas Gerais. Single, with no definite residence or employment, José lived by collecting and selling glass and other scraps of rubbish, a common occupation that was nonetheless highly dangerous because of persistent governmental attempts to bar scavengers from the dumps. José's cadaver was discovered clothed in dirty, worn garments that revealed that he was a “miserable pauper”; a rusty knife presumed to have belonged to the victim lay discarded a few meters from his body. Subsequent investigation revealed that, twelve years before, José had been the lead perpetrator in the brutal gang rape of a sixteen-year old girl.

José thus could be believably portrayed as one of the “marginals,” “evil-doers,” and “bad elements” who, according to municipal employees, “infested” the dump and posed a constant threat to its guards. When a *preto* vigilante named Manoel Francisco dos Santos—paradoxically nicknamed “*areia branca*” (white sand)—stated that he had killed José in self-defense with a single shot through the chest, neither police nor judicial officials doubted him. Manoel was married and literate, father to five children, described by his supervisor as a “good *servente*.”¹¹ The

10. *Jagunço*, often translated as “bandit,” implies a particular kind of outlaw, one tainted and brutalized by the environmental and racial handicaps that elite Brazilians viewed as shaping Northeastern *sertanejo* (rural inland) populations. Euclides Da Cunha's *Rebellion in the Backlands* famously explores the term.

11. *Servente* implies a worker of humble status, not exactly a “servant,” but also not “working class.”

only challenge to his tale came from José's companion in garbage collecting, an unemployed *preto* named Anastacio Bento da Silva, who portrayed the shooting as a cold-blooded assassination. Manoel contested this by claiming that Anastacio had participated in the threatening scene that had resulted in José's shooting; Anastacio was arrested for arms possession and never testified again. Manoel was released from prison without bail after forty-three days—an act of leniency almost unheard of in *carioca* murder cases—and was only re-incarcerated when a formal indictment by a judge legally mandated such action. Even the juridically admissible news that Manoel had been indicted in another, 1963 murder—he was accused this time of shooting his ex-lover in a *Cajú favela*—failed to affect the trial's final outcome. A unanimous jury found Manoel innocent, and he left prison in April 1965.

Two Murders in the Universe of Carioca Criminal Justice

Two anecdotes amongst thousands of *carioca* crime stories, the cases of Manoel, José, Paulo, and Norcy can hardly illuminate the racial and social dynamics of the city's entire criminal justice system. Yet closer examination reveals deep similarities, uniting these cases both to one another and to the vast majority of other cases from their era. First, these incidents were in many ways typical of all crimes prosecuted in Rio's courts. Although murder accounted for 2 percent of cases prosecuted between 1942 and 1963, physical assault and attempted murder accounted for 40 to 50 percent, and the issues and legal strategies involved in murder cases were similar to those arising in these other crimes.¹² Each event took place amongst men,¹³ and both were linked both to male honor and to each man's ability to earn a living, always among the most common motives for physical crimes.¹⁴ In each case, moreover, the victim and the defendant occupied different rungs of the occupational ladder, but were close to one another in the *carioca* social spectrum. Manoel's

12. Brasil, Serviço de Estatística Demográfica, Moral e Política, *Crimes e contravenções* (Rio de Janeiro: Serviço Gráfico do IBGE, 1942–47; Departamento de Imprensa Nacional, 1948–64).

13. Between 1942 (when city officials began to compile criminal statistics) and 1963, on average 90 percent of all defendants in *carioca* criminal trials were male. Women were frequently victims of crime—especially domestic violence, violence among neighbors, sexual crimes, and thefts and robberies—but they were not especially frequent victims of physical violence and murders in public spaces and in the workplace. Information on defendants, *ibid.*; on victims, based on my own sample.

14. This pattern held true long before the twentieth century and far beyond Rio's borders; Lyman Johnson and Sonya Lipsett-Rivera, *The Faces of Honor* (Albuquerque, N.M.: University of New Mexico Press, 1998) and Sueann Caulfield, Lara Putnam, and Sarah Chambers, *Honor, Status and Law in Modern Latin America*, under review, Duke University Press.

dangerous, dirty job as dump guard was barely better than José's work as a scavenger—his supervisor explained to police that most of his employees had to be “roped in” to the job—and both men had been accused of serious crimes. Similarly, Paulo's and Norcy's stable jobs, steady pay, and clean criminal records placed them both amongst the ranks of successful and relatively respectable rural migrants. This social proximity was also highly typical; very few mid-century *carioca* crimes were committed across significant class lines.¹⁵

These cases also contained procedural and stylistic similarities that highlight significant features of the mid-century *carioca* justice system. In the early 1940s, as part of Getúlio Vargas's wide-reaching reform of Brazilian law, both the Criminal Code and the Code of Criminal Procedure underwent significant transformation. The new Criminal Code differed from its 1890 predecessor in that it partially incorporated the so-called “Positivist” school of criminology, which held that defendants should be judged and punished as much for their individual “personalities” and propensities towards crime as for any acts they may actually have committed.¹⁶ The Procedural Code, replacing myriad nineteenth-century local codes, echoed these ideological sympathies, leaving ample room for differential treatment of defendants with varying social backgrounds and criminal records. While jurists hailed both codes for bringing increased unity and consistency to the criminal justice system, both in fact left ample legal space for the uneven applications of its laws. Neither, moreover, proved as powerful in practice as it was in theory; the Procedural Code in particular was often violated with impunity.

These codes governed Paulo and Manoel's trials, and each showcased their faults. In obvious violation of their civil rights, both defendants languished in pre-trial prison far longer than they should have, and Paulo received woefully inadequate public legal representation. These and other procedural violations (such as police abuse, falsified confessions, and enormous delays) tainted 36 percent of sample cases and 47 percent of sample

15. The exceptions to this trend in my own sample are thefts and robberies, for obvious reasons.

16. On differences between positivist theories of criminology and the so-called “classical” school that had dominated the 1890 code, see Peter Fry, “Direito positivo versus direito classico: a psicologização do crime no Brasil no pensamento de Heitor Carrilho,” in Sérvulo A. Figueira, org., *Cultura e psicanálise* (São Paulo: Brasiliense, 1985); Fry and Sérgio Carrera, “As vicissitudes do liberalismo no direito penal brasileiro,” *Revista Brasileira de Ciências Sociais* 1, no. 2 (1986): 48–54; Carlos Antônio Costa Ribeiro Filho, “Clássicos e positivistas no moderno direito penal brasileiro: uma interpretação sociológica,” in Micael M. Herschmann and Carlos Alberto Messeder Pereira, *A invenção do Brasil moderno: medicina, educação e engenharia nos anos 20–30* (Rio de Janeiro: Rocco, 1994). For a longer analysis of the transition from older to newer criminal and procedural codes, see Fischer, op. cit.

murder cases from the 1950s and early 1960s.¹⁷ Moreover, each verdict ultimately hinged explicitly—and quite legally—on judgments about the character and social worth of the defendants and victims. The 1941 Procedural Code, in fact, required police investigators to present a thorough evaluation of each defendant's character (the *vida pregressa*), and witnesses demonstrated their awareness of character's importance by highlighting defendants' and victims' qualities as friends, parents, workers, and neighbors. Explicit references by witnesses and lawyers to then-fashionable theories of social marginality stand in particularly sharp relief; witnesses in the Cajú dump murder case, for example, painted José as dangerous and worthless by referring to the "marginal elements" who "infested" the dump, and the prosecutor in Paulo's trial explained the defendant's behavior through reference to the natural alienation of rural migrants.¹⁸

THE SILENCE OF RACE

Given this cacophony of character analyses, these cases were all the more notable for their shared, and deafening, racial silence. Aside from a brief descriptive word attached to each man by a police scribe (*de côr preta* for black, *de côr branca* for white, *de côr parda* for mixed-race), no one in either trial ever mentioned the incidents' interracial nature, or attempted to describe character or infer proclivity towards crime through overt racial reference.¹⁹ In the spat that led to Norcy's death, none of the insults traded touched on race, and no witness in either case referred to race or its euphemisms in characterizing their friends or enemies.

This was not an isolated phenomenon. In my 1930–42 sample, involving 251 accusations, racial references emerged rarely, and they were voiced exclusively by Europeans and by judges, prosecutors, and lawyers concerned with the sexual licentiousness they associated with African descent. In 263 cases from the 1950s and 1960s, personal traits (willingness to work, commitment to family, sexual morality, bravery,

17. These percentages refer only to cases that actually went far enough for rights violations to be determined, 249 criminal trials including 62 murder and attempted murder trials.

18. This sort of language was the *lingua franca* of many sociologists, anthropologists, social workers, and policymakers throughout the 1950s, 1960s, and even 1970s. For a concise explanation, see Janice Perlman, *The Myth of Marginality* (Berkeley and Los Angeles: University of California Press, 1976).

19. Although some researchers argue that racial categories used by the police were highly mutable, I did not generally find this to be the case. Although an individual's racial category would occasionally shift over the course of a trial, these shifts were very rare and were almost never across the white/nonwhite divide. These words obviously reflect the social perception of an individual's color rather than an exact analysis of biological descent or "race," but seemed to be extraordinarily consistent in the sample I considered.

honesty, respect for community) often surfaced, but race emerged explicitly only four times. Once, police noted that a white defendant was a “marginal” despite his “white skin and good appearance,” thus associating whiteness with respectability. Once, a white witness said that he wanted to marry a black defendant “because she was a *preta que merece*” (worthy black woman), implying that most black women were unworthy of such a privilege. Once, a man was described as poor, *preto*, and married to a *preta*—but respectable and hard working *all the same*. Finally, in the most interesting of the cases, a white physical assault victim was said to have provoked the nonwhite defendant by calling him a “*negro atrevido*” (impertinent negro) and a “*vagabundo*,” to which the defendant replied that the *white victim* was the “*negro*,” and that he, the defendant, was “a train conductor and a man.”

The last case crystallizes a quality clear in all four of these rare racial incidents. For the defendant, the term *negro* referred as much to occupational status and masculinity as it did to physical race—thus the otherwise “white” victim could also be called *negro*. In all three other cases, too, race came to light precisely because an individual defied racial expectations regarding class and behavior. In baring racist assumptions, each witness simultaneously revealed their relative flexibility, implying that individual behavior could transform race’s social implications. None of this, of course, negates the racism of each statement. But it does suggest that, even here, racial categories were informed by physical race, but were not entirely delimited by it; racial prejudice was, in fact, a fusion of racial bias and social discrimination.

The silence of race in these trials would be understandable if it had reflected an absence of racism in Brazilian society. But, after five decades of merciless attacks on the myth of racial democracy, it now seems highly unlikely that this scarcity of explicit attention to race in the courtroom signaled its absence from either mid-century *carioca* social relations or from the larger economic and governmental structures that ordered them. Racial bias infused the discussion of broad social issues such as migration and urban poverty, discussed below, and this language reflected and perpetuated deeper patterns of racial disparity and discrimination. Over the course of the 1950s, this was demonstrated by a series of social scientific studies explicitly challenging the hypothesis that Brazilian racism existed only as the waning legacy of the slave system. Early in the decade, research undertaken for the Brazilian Institute of Geography and Statistics indicated wide gaps between urban *brancos*, *pardos* and *pretos* in income and employment, and census data from 1950 and 1960 indicated similar gulfs in literacy.²⁰ The UNESCO studies appeared on the heels of

20. Giorgio Mortara, “Atividade e posições na ocupação nos diversos grupos de cor da população do Distrito Federal” and “A composição da população do Distrito Federal

these findings; although partially conceived to expose the mechanics behind Brazil's "racial harmony," many in fact highlighted extensive social and institutional racism, especially in São Paulo.²¹ The research of the so-called São Paulo school, most notably of Florestan Fernandes, Octavio Ianni, and Fernando Henrique Cardoso, grew directly from the UNESCO research; while still arguing that class would eventually gradually surpass race as a determinant of social status in a rapidly modernizing Brazil, they documented the depth and extent of racial disparities to a degree that those earlier projects could not.²²

Modern research has confirmed the tenor of these findings. Non-whites were at the bottom of every measure of socio-economic status from the mid-to-late twentieth century: their rates of infant mortality were the highest; their life expectancies and educational rates were the lowest; they worked the worst jobs; they earned the least; they were most likely to grow up in single-parent households; they made up the majority of Brazil's devastatingly poor rural and northeastern populations; and in cities they composed a disproportionately large percentage of *favela* residents, an indicator not only of poverty but also of lack of access to public goods such as electricity, basic sanitation, and education.²³

Various researchers have now discarded the view that these inequalities were mere legacies of slavery, and have begun to explore the role that racial discrimination played in their creation. Nelson do Valle Silva and Carlos Hasenbalg have shown decisively that racial differences in education, employment, and income observable from the 1950s through the 1980s could not be attributed solely to differences in regional origin, urban/rural residence, work experience, marital status, or family background.²⁴ Hasenbalg and Valle Silva, together with George Reid Andrews and Peggy Lovell, have unearthed convincing evidence both of racial

segundo a côr," in IBGE, *Pesquisa sobre os diversos grupos de côr nas populações do Estado de São Paulo e do D.F.* (Rio de Janeiro: n.p., 1951).

21. See note 2, above. On Bahia, for an interpretation that diverges somewhat from the standard view, see Antonio Sérgio Alfredo Guimarães, "Côr, classes e *status* nos estudos de Pierson, Azevedo e Harris na Bahia, 1940–1960," in Chor Maio and Ventura Santos, *op. cit.*, 143–58. For the standard interpretation of these studies' importance in the history of race relations in Brazil, see Carlos Hasenbalg, "Racial Inequalities in Brazil and Throughout Latin America: Timid Responses to Disguised Racism," in Elizabeth Jelin and Eric Hershberg, *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, (Boulder, Colo.: Westview Press, 1996).

22. The classic here is of course Florestan Fernandes' *The Negro in Brazilian Society*, translated by Jacqueline D. Skiles, A. Brunel, and Arthur Rothwell (New York and London: Columbia University Press, 1969).

23. See, especially, Lovell, *ed.*, *op. cit.*, 1991, and Valle Silva and Hasenbalg, *op. cit.*, 1992. There is considerable disagreement as to whether these disparities are significantly less visible for *pardos* than they are for *pretos*.

24. Hasenbalg and Valle Silva, *op. cit.*

disparities in employment and of the discriminatory practices that perpetuated these differences (though there is some indication that, at least in São Paulo, such disparities narrowed at mid century).²⁵ Sueann Caulfield has shown that poor and working class *cariocas* from the 1920s to the 1940s tended to limit marriage and consensual unions to members of the same racial group, and Valle Silva has suggested that patterns of racial endogamy in marriage observed at mid-century by Thales de Azevedo continued into the 1980s; both of these studies deal blows to the idealized vision that social mobility in Brazil commonly occurred through racial intermarriage.²⁶ Edward Telles has shown increasing rates of spatial segregation in Brazilian cities at the end of the twentieth century, and my research in the mid-century social demography of Rio de Janeiro indicates high correlations between race, education, and access to basic sanitation, transportation, and other municipal services from the 1930s through 1980.²⁷ Racial disparities, in short, stood in sharp relief in Brazil's mid-century "racial paradise," and there is strong evidence that, at least in some parts of the country, overly racist practices played a significant role in perpetuating them.

SOCIAL LANGUAGE, RACIAL MEANING?

Given such abundant indications that race did indeed matter in mid-twentieth-century Brazil, its absence from criminal trial records seems all the more puzzling. If racial disparities were extensive, and racist practices were partially responsible for perpetuating them, why is race absent both from trial participants' accounts of everyday life and from the discourse of judicial authorities? Did that absence indicate that race did not influence judicial processes—a conclusion that would fly in the face of most modern scholarship about the subject?

The relative lack of reference to race amongst ordinary trial participants is most difficult to explain; given the lack of adequate historical research on popular perceptions of race, we are left with inference and reference to contemporary findings. Social scientists have offered at least two possible explanations for the absence of explicit racially charged language in ordinary people's tales of Brazilian daily life. The first posits the hegemony of the myth of Brazilian racial democracy, which encourages Brazilians of all classes and colors to define race flexibly and

25. Ibid; Andrews, *op. cit.*; Lovell, *op. cit.*

26. Valle Silva, "Distância social e casamento inter-racial no Brasil," in Valle Silva and Hasenbalg, *op. cit.*, 1992, 17–52; Sueann Caulfield, *In Defense of Honor* (Chapel Hill, N.C.: Duke University Press, 2000).

27. Edward E. Telles, "Race, Class and Space in Brazilian Cities," *International Journal of Urban and Regional Research* 19, no. 3 (September 1995): 394–406; Fischer, *op. cit.*

individually, to see the symbolic and selective adoption of Afro-Brazilian cultural practices by whites as indicative of cultural plurality, to give exceptions more weight than norms in forming a general conception of Brazilian race relations (thus accepting, for example the occasional example of nonwhite social mobility as a negation of racism's existence), and to interpret social discrimination in terms of class rather than race. True believers in this myth would never use racially charged language because they would instead articulate their prejudice in social and moral terms; others, silent racists, might never admit to using such language because it would be seen as indelicate or un-Brazilian. Michael Hanchard, studying the relative weakness of racially charged political movements in twentieth-century Brazil, suggests this argument; France Winddance Twine—focusing on the lack of racial consciousness among Afro-Brazilians in a small town in Rio de Janeiro state—takes it furthest, arguing that silence about racism among nonwhites results from a distorted understanding of reality, a tendency to think about race in individual rather than collective terms, to accept the myth of racial democracy, and to sublimate or ignore racist incidents that might contradict it.²⁸ More recently, Robin Sheriff has diverged, arguing that, while white Brazilians might well allow themselves to believe in the myth of racial democracy in order to sublimate or mask the racism of Brazilian society, poor Afro-Brazilians maintain silence on racism, if not on race itself, not because of ignorance or excessively individualistic conceptions of race, but rather through a sort of collective agreement to “let pass” racial incidents that are perceived as unavoidable and extraordinarily painful.²⁹

Both of these are plausible explanations for the silence about race in certain realms of Brazilian public and private life, but neither entirely explains the void surrounding the subject of race amongst common participants in Rio de Janeiro's criminal trials. If silence about race was a matter of delicacy, then why was it sometimes voiced in official discourse—such as that surrounding migration and urban poverty—outside of the courtroom? And why, if witnesses were willing to mention to police the most indelicate circumstances imaginable involving humiliating insults, violence, sex, and abortion, would they uniquely exclude race? If silence were a matter of avoiding painful memories, how could so many witnesses and victims recount other excruciating recollections such as rape, abuse, and degrading arguments? If silence were a matter of adhering to the myth of racial democracy, why would participants who had themselves been victims of racist insults not bring them up as

28. Michael Hanchard, op. cit.; France Winddance Twine, *Racism in a Racial Democracy: The Maintenance of White Supremacy in Brazil* (New Brunswick, N.J.: Rutgers University Press, 1997).

29. Robin Sheriff, “Exposing Silence,” op. cit.; *Dreaming Equality*, op. cit.

examples of the fundamental depravity—or even the un-Brazilian nature—of their judicial adversaries? It seems at least doubtful, in short, that racial tensions were being expressed constantly in racial terms in daily life, and then simply excluded from courtroom discourse.

There are hints of at least one other explanation for the trial's racial silences. Without excluding the likelihood that many trial participants held racist views, it may be possible that they did not in fact use racist language, but rather spoke of social traits that had a clearly racialized tinge in the *carioca* public imagination. This is suggested by fragmentary evidence regarding the racial silence of jurists and lawyers, a subject nearly as puzzling as the absence of race in witness testimony.

In recent years, abundant evidence has surfaced of racist discourse and beliefs amongst *carioca* judicial officials in the first decades of the twentieth century.³⁰ We know significantly less, however, about the destiny of these racialized legal notions after the 1930s. Race certainly found no explicit place in the newly reformed Criminal and Procedural Codes of 1940 and 1941. These documents, as noted above, openly welcomed social factors as highly significant determinants of guilt, innocence, and punishment. The Procedural Code, in particular, specified certain forms of behavior and indicators of status that would invariably affect the course of any criminal case—the employment, residence, and family status of any individual, for example, determined his or her eligibility for bail and ability to earn early release—and also mandated the formal presentation of the *vida progressa*, a mini-biography admissible according to the Criminal Code as a valid sign of probable guilt, innocence, and danger to society. These provisions obviously left abundant opportunity for social prejudice to enter into judicial proceedings, but the letter of the law never mentioned race as a significant variable. This conformed to doctrines of racial equality present in the Brazilian Constitution and in official nationalist discourse from the era; it also paralleled the omission of trace from trial participants' testimony in my 1930s sample. Clearly, however important scientific racism was in informing the mentalities of juridical practitioners in the 1920s and 1930s, it was not considered legitimate material for lawmaking in the early 1940s.³¹

30. Martha Abreu and Sueann Caulfield have observed extensive adherence to racialized notions of female sexuality and the dangers of urban modernity in *carioca* legal texts, police stations, and courtrooms; Olivia Gomes da Cunha has revealed the pseudo-scientific racism that persisted at the highest levels of the *carioca* police and legal-medical establishments well into the 1930s; and Sérgio Carrara has indicated indirectly the extent to which race tinged the practice of criminal psychology. Martha Abreu, *Meninas perdidas*, Rio de Janeiro, 1989; Sueann Caulfield, op. cit.; Olivia Gomes da Cunha, *Intenção e gesto: pessoa, côr e a produção cotidiana da (in)diferença no Rio de Janeiro* (Rio de Janeiro: Arquivo Nacional, 2002); Sérgio Carrara, *Crime e loucura* (Rio de Janeiro: EdUERJ; São Paulo: UDESC, 1998).

31. Racial difference had a remarkably weak overt presence in Brazilian law from its

The legal influence granted to social factors, however, clearly left room for the entry of a variety of prejudices, racial and otherwise, into *carioca* criminal trials. At least one eminent figure indicated clearly that factors described as purely social could have profound racial connotations. In a paper presented to the Center For Studies of Social Medicine in 1950, Nelson Hungria—a prominent jurist, principal author of one of the most widely cited interpretations of the Brazilian Criminal Code—set out to explain the overrepresentation of *preto* and *pardo* defendants in Brazilian criminal statistics.³² The numbers he cited were, indeed, striking. Among condemned criminals in the Federal District, 61 percent were *pardo* and *preto*, though Afro-Brazilians made up only 30 percent of the *carioca* population, and figures elsewhere in Southeastern Brazil were similarly distorted. For Hungria, the overrepresentation of nonwhites among criminal defendants clearly demonstrated that blacks and mulattos were more prone to crime than whites—an assumption that has since, of course, been widely questioned because of observable differences in the rates at which individuals of varying racial categories are prosecuted and convicted. Be that as it may, Hungria went on to reject the blatantly racist notion—widely accepted until the 1930s, based on essentialist ideas of race advanced by Europeans such as Arthur de Gobineau and Cesare Lombroso and by Brazilian followers such as Raymundo Nina Rodrigues and Francisco José Oliveira Vianna—that

the greater frequency of criminality among men of color, in civilized social environments, can be explained by their racial inferiority, by their inability to evolve, and by their tendency or pre-disposition . . . to diverge from the ethical patterns of a superior culture. (23)

Citing contemporary American and European scholars, Hungria entirely rejected the biological basis for racial differences in criminal tendencies, thus contradicting some fifty years of racialized criminal-judicial thought.

Hungria did not, however, dismiss race's social significance. He may honestly have believed that "the overwhelming evidence of cultural factors argued for the inexistence or unimportance of the biological" in explaining the criminality of "men of color."³³ But he did not assert that

origins. Before abolition, the key legal distinction was based on slave or free status, not upon race, and in the post-emancipation period explicit legal distinctions between the races were virtually non-existent.

32. Nelson Hungria, "A Criminalidade dos homens de cor no Brasil," *Revista Forense*, ano XLVIII, vol. CXXXIV (Março 1951): 21–30.

33. Hungria, p. 26, quoting Donald R. Taft, *Criminology* (New York: MacMillan, 1948), 91. It is clear throughout the article that Hungria is using the word *culture* in the same broad sense as the American criminologists he cites, and not in the narrow Portuguese sense of educational and social level.

the absence of the biological basis for racial difference negated the difference itself. And that divergence, he believed, reflected a profound socio-cultural gulf between Brazil's white and nonwhite populations;

certainly, the criminogenic factor is not race in and of itself, but rather the conflict between patterns of culture that emerges when two races come into contact with another, or the fact that the inferior grade of culture of one race, relegated to a lower plane when it comes into competition with another more civilized one, creates for the men of inferior culture obstacles in the sense that the more base patterns of their native culture keep them from advancing. (26)

Citing the Bahian anthropologist Arthur Ramos—whose arguments foreshadowed the better-known theses of Florestan Fernandes and others from the São Paulo school—Hungria went on to assert that Afro-Brazilians, while never barred from mainstream Brazilian society by law or by a clearly demarcated color line, had been neglected by the Brazilian elite after abolition, left “defenseless, maladjusted, and abandoned” to conditions of work and life for which they were entirely unprepared, thus joining the ranks of “the socially maladjusted, the highway vagabonds, the multitude of beggars and urban unemployed”(26). Hungria concluded:

This is the undeniable reality: the cultural backwardness and social and economic inability of the majority of our men of color are not the result of their incapacity for civilization or of their racial inferiority, but rather of their lack of education, of their insufficient preparation for the struggle for life, of the lack of enlightened social assistance. Their nearest ancestral traits come from slavery, not exactly a regime that promoted the mental attitudes and personality types adequately prepared for competition in social life, and the maladjustments have persisted in subsequent generations, because of the continuing lack of concern for the effective educational elevation of colored men to the grade of civilization of white men. They do not take measures to improve or exorcise their disorganized individual, family, and social conditions. In the cities, they are “the people of the hill [*gente de morro*],” crowding improvised huts and shacks, agglomerating themselves in the tenements or infected basements, in scandalous promiscuity, arm in arm with every imaginable necessity, necessarily accustomed to penury, malnourished, ragged, without the most elementary comfort or hygiene, insufficiently equipped with the minimum of ethical principles, possessed of twisted moral criteria, given to sexual licentiousness (not excluding incest) and to every sort of vice, thoroughly united in all of their bad habits (forming among certain groups a true *esprit de corps* for crime), without any kind of recreational life, some with no defined profession and others barely earning enough to support themselves and their illegitimate families . . . in the rural zones, the tenor of life is no better. (27).

If Hungria did not blame the biology of “men of color” for their inferior economic and cultural traits, he certainly associated with them the worst pathologies of modern urban poverty. This association assumes a more virulent tone towards the end of the passage, when his emphasis shifts from a censure of ex-slaves' abandonment to a dramatic chroni-

cling of the modern nonwhite population's supposed social pathologies. Some of Hungria's characterizations of the Afro-Brazilian *gente do morro* were simple factual observations; they lived "arm in arm with every imaginable necessity . . . without the most elementary comfort or hygiene." But other statements in this passage—regarding their "twisted moral criteria," their proclivity to incest, their criminal tendencies, their "illegitimate" families—reflected profound stereotypes that linked inseparably, and quite falsely, race, poverty, and social deviance.³⁴

Hungria was not alone in using the language of social marginality to characterize Afro-Brazilians. Even though most professionals had by the mid-1950s moved away from the glaringly biased language of "scientific" racism, they still habitually lamented the social, psychological, and cultural inferiority—and even pathology—of Afro-Brazilians, a blanket prejudice no less potent because it was rooted in social or psychological rather than biological theory. Emblematic was the language commonly employed in analyzing Rio de Janeiro's rapidly expanding shantytowns, or *favelas*. In 1948—long after the ideology of racial harmony had begun to infiltrate Brazil's national self-image—Rio's first *favela* census claimed that

it is not surprising that *pretos* and *pardos* predominate in the *favelas*. Backwards by virtue of heredity, without ambition, and badly adjusted to the social necessities of modern life, they form the largest contingent among the lowest classes of all our urban nuclei.³⁵

Such language might have allowed its articulators to claim that they were not racially biased on the narrow semantic grounds that they highlighted social rather than biological defects, but it did little to discourage the racial prejudices of *cartoca* society. Ten years later, similar views still surfaced. One especially convoluted study of "the mental life of *favelados*" sanctimoniously denied the "erroneous" idea that "*favelados*, and above all the people of color who predominate amongst them" had no "mental structure." At the same time, the study's authors claimed that the psyches of these same "*favelados*" were inevitably deformed by their "tribal" ancestry and "rural" customs, and stated further that the

34. For two early works disproving these assumptions in relation to *favela* populations at large, see Vitor Tavares de Moura, *Relatório sobre o problema das favelas* (Rio de Janeiro: n.p., 1940); and Maria Hortência do Nascimento Silva, *Impressões de uma assistente sobre o trabalho na favela* (Rio de Janeiro: Prefeitura do Distrito Federal, Gráfica Sauer, 1942). For sociological evidence against these early stereotypes, see Perlman, op. cit.; Elizabeth Leeds and Anthony Leeds, *A sociologia do Brasil urbano* (Rio de Janeiro: Zahar Editores, 1977); Licia do Prado Valladares, *Passa-se uma casa* (Rio de Janeiro: Zahar Editores, 1978).

35. Prefeitura do Distrito Federal, Secretaria Geral do Interior e Segurança, Departamento de Segurança e Estatística, *Censo das favelas: aspectos gerais* (Rio de Janeiro: Prefeitura do Distrito Federal, 1949).

"*favelado's* subconscious inheritance is not enough to resolve the unforeseen problems that surge forth in the new urban environment, and his psychic level doesn't allow him to find creative solutions." In conclusion, the study claimed that, without a complete moral, social, and political re-education, "we will soon find fanatical and hysterical hordes, riled up by agitators, descending the hills and assaulting the city and the country."³⁶ Non-whites may not have been biologically inferior, but their cultural inheritance left them ignorant, impotent, and susceptible to mass hysteria; in the minds of these analysts, racial fear converged with class paranoia and panic about revolution and social disorder to create a potent "modern" form of racist assumption.

Hungria's lusty language clearly echoed the fears and prejudices of these analysts, and implied a similar paradox. Hungria and many of his contemporaries took extraordinary pains to deny the importance of biological race. But they clearly clung still to the racial stereotypes—links between race, poverty, deviance, and vice—that they might have explained thirty years before with the terminology of scientific racism. Race may have been illegitimate as an analytical category, but people of "color" were effectively inseparable from poverty, ignorance, criminality, unemployment, sexual promiscuity, and urban misery, characteristics that might in another context be understood as purely social. Poverty, in short, was a highly racialized social category; after reading Hungria's words, it is impossible to imagine the derogatory words that described it used without racial implication. Numerous scholars have suggested over the years that Brazilian racial categories are essentially social. Hungria's passage and the language used to describe *favelas*, suggest that the contrary was true also.³⁷ From his elision of Afro-Brazilians and the "*gente do morro*" (an assumption population statistics belied), it would seem that Hungria saw socio-economic categories as having profound racial undertones. In this understanding, any *pobre* was guilty of sinking to the "low cultural level" derived from the experience of Afro-Brazilians, poverty itself was tarred with a racially tinged brush. Perhaps this is why Brazilian lawyers, judges, and prosecutors rarely used explicitly racial language in *carioca* criminal trials; their employment of the language of social marginality encompassed race, allowing them at once to maintain that race was an illegitimate category and to openly voice prejudices with profound racial connotations. Perhaps a similar process was at work in the minds of common trial participants, who likewise substituted racially tinged social language for open racism.

36. IPÊME, *A vida mental dos favelados* (Rio de Janeiro: IPÊME, 1958), 31–34.

37. For a thoughtful reflection on this merger of the racial and the social in Brazil, see Guimarães, *op. cit.*

RACE AND SOCIAL DISCRIMINATION IN INSTITUTIONAL PRACTICE

The language of social discrimination in mid-century Rio de Janeiro may well have been infused with racial meaning, and this might explain the paradoxical absence of explicit racial references in trials involving interracial crimes committed in a society where race possessed enormous social significance. But Paulo's and Manoel's trials also reveal another incongruity, the implications of which go beyond the racial dynamics of everyday life. In both cases, contrary to nearly every expectation created by modern scholarship on race and criminal justice in Brazil, the white participant—Paulo as a defendant, José as a victim—fared considerably worse than his *preto* counterpart. While responsibility for the victim's death was equally clear and arguments for self-defense were equally precarious in both cases, Paulo was found guilty, and Manoel was found innocent; Norcy's killer was imprisoned, and José's went free. While each defendants' civil rights were violated because of extended pre-trial imprisonment, Paulo, the white defendant, represented by an incompetent public defender, spent 875 days in prison before being found guilty, while Manoel, the *preto* defendant, with a private lawyer, spent 352 days in prison before being found innocent. And these patterns reflect the broader results of my research into cases from both 1927 to 1942 and the late 1950s to early 1960s. In these *carioca* trials, a defendant's racial identity never accurately predicted either his access to civil rights or his case's final outcome, while a number of other social and bureaucratic indicators did. This surprising finding does not entirely contradict other studies, which have often observed that "social" factors have a stronger independent influence on socio-economic status than do racial ones, even as they argued for the determinacy of race.³⁸ But it does force us to question these studies' emphasis, and to reconsider the degree to which mid-century Brazilian legal institutions perpetuated specifically racial inequalities—as opposed to more general social ones—in *carioca* society. It would seem that, just as the language of social marginality enveloped and disguised racial bias, so the *carioca* criminal justice system reinforced racial inequality mainly by perpetuating already existing socioeconomic and civil hierarchies in which Afro-Brazilians occupied the lowest ranks.

Given the urgent need to better understand the institutional mechanisms behind Brazilian racial inequality, it is not surprising that the Brazilian criminal justice system has attracted abundant scholarly attention.³⁹

38. See note 6.

39. Most work on the institutional mechanisms that perpetuate Brazilian racial difference has focused on employment and earnings patterns rather than governmental practices. Our knowledge of the Brazilian state's role in this process is limited, a glaring gap in light of its enormous twentieth-century role in distributing both concrete benefits

The system is unique in its long history of producing and preserving records that not only trace police and judicial processes in extraordinary detail, but also provide extensive identifying information, including racial characteristics, about both perpetrators and victims of common crimes. Because of this—and also because of dramatic increases since the late 1980s in crime rates and in public awareness of police violence against poor, nonwhite Brazilians—a number of studies have emerged across academic disciplines seeking to understand the system's racial dynamics. Most studies, historical and modern, have focused on São Paulo and Rio de Janeiro, and most have concluded that Brazilian criminal justice is rotten with racial prejudice. Afro-Brazilians are arrested and harassed by police more frequently than whites (despite the fact that many—if not most—of the arresting officers are themselves nonwhite); they have less access to decent legal representation; they are convicted at higher rates; and they are less likely to be respected or vindicated as victims of crime.⁴⁰

These writings, however, have focused surprisingly little on the relationship between race, civil rights, and institutional practice. Although they document impressively the racially disproportionate outcomes of certain judicial processes, few illuminate the institutional and social dynamics behind them.⁴¹ Extant literature says little about how racial bias within the justice system has changed over time and with periodic bouts of juridical reform, since historical studies uniformly focus on the era before the 1940–42 reforms, and modern inquiries nearly always portray very brief periods. It also reveals little about the differential application of civil rights and guarantees by police and judicial authori-

such as social security, public housing, legal land titles, welfare, vocational education, and intangible goods such as workers' and citizens' rights. Emerging exceptions include studies of immigration (see, especially, Jeffrey Lesser, *Negotiating National Identity* (Durham, N.C.: Duke University Press, 1999); Giralda Seyferth, "Construindo a nação: hierarquias raciais e o papel do racismo na política de imigração e colonização," in Chor Maio and Ventura Santos, op. cit., 41–58; Skidmore, op. cit.; and Schwartz, op. cit.). For education, see Jerry Dávila, *Diploma of Whiteness* (Durham, N.C.: Duke University Press, 2003); public health, Gilberto Hochman, *A era do saneamento* (São Paulo: HUCITEC-ANPOCS, 1998) and Nísia de Trindade Lima and Gilberto Hochman, "Condenado pela raça, absolvido pela medicina," in Chor Maio and Ventura Santos, op. cit., 23–40.

40. See Boris Fausto, *Crime e cotidiano* (São Paulo: Brasiliense, 1984); Alba Zaluar, *A maquina e a revolta* (São Paulo: Brasiliense, 1985); Caulfield, op. cit., 2000; Abreu, op. cit.; Gomes da Cunha, op. cit.; Costa Ribeiro, op. cit.; and Sérgio Adorno, "Racial Discrimination and Criminal Justice in São Paulo," in Reichmann, op. cit., 123–38.

41. For well-conceived exceptions, see Caulfield, op. cit., 2000, and Gomes da Cunha, op. cit., though only Caulfield couples quantitative and qualitative analysis. Roberto Kant de Lima's dissertation is an illuminating study of police procedure and practice, but he does not privilege race in his analysis (Roberto Kant de Lima, "Legal Theory and Judicial Practice: Paradoxes of Police Work in Rio de Janeiro City," Ph.D. diss., Department of Anthropology, Harvard University, August 1986).

ties, because most works explore accusations and verdicts but rarely focus systematically on judicial practice and on the degree to which procedural laws were followed.⁴² Finally, the literature has hardly explored how race compares to myriad other social, economic, and even bureaucratic characteristics as a determinant of judicial treatment and access to legal rights, because even the few studies that look at race in comparative perspective do not take into account some of the most basic Brazilian social markers, such as possession of citizenship documents, literacy, and place of residence.⁴³ This wave of scholarship has told us, in short, that Afro-Brazilians have much larger chances than whites of ending up on the wrong side of the criminal justice system, but we cannot argue with certainty that racism is the sole, or most important, reason for this circumstance. Without some exploration of these questions, any conclusions regarding the racial dynamics of the Brazilian criminal justice system remain at best incomplete and at worst highly speculative; in any case, they tell us little about the role institutions play in propagating racial inequality.

AN ALTERNATE VIEW: STUDY SAMPLING AND METHODOLOGY

It is with these lacunae in mind that I undertook quantitative analysis of two *carioca* criminal case samples, the first involving 251 accusations from the 1930s and early 1940s, and the second involving 263 accusations from the 1950s and early 1960s.⁴⁴ The time periods were chosen to capture the effects of the 1940s reforms, and the cases themselves differ from those analyzed in other studies because they involve a variety of crimes, including physical assault and murder, sexual transgressions, theft and robbery, defamation, abortion, vagrancy, and arms possession.⁴⁵ Both samples included roughly equal proportions of guilty

42. A partial exception is Joana Domingues Vargas' analysis of sexual crimes in Campinas ("Indivíduos sob suspeita: a côr dos acusados de estupro no fluxo do sistema de justiça criminal," in *Dados* 42, no. 4 [1999]: 63–82). Her sample, though, was too small, and her statistical techniques too simple, to reach definite conclusions, and she did not consider procedural violations.

43. Citizenship documents included civil identification cards, worker identification cards known as *carteiras de trabalho* and papers certifying military service and voter registration. Carlos Antônio Costa Riberio has probably gone further than anyone in considering a number of diverse factors in analyzing judicial outcomes ("As práticas judiciais e o significado do processo de julgamento," *Dados* 42, no. 4 [1999]: 691–727), but his sample is too small—and his time frame too narrow—to yield definitive results.

44. The cases were chosen from records held in the Brazilian National Archive, Rio's now privatized state judicial archives, and the archives of Rio's principal sentencing court.

45. I chose to analyze diverse crimes because patterns of police and judicial behavior tend to vary widely, as do socio-economic profiles of defendants and victims, and I aimed to capture as broad spectrum as possible. The percentage of white defendants

verdicts and had a fairly even geographical distribution throughout Rio de Janeiro's neighborhoods, but cases were otherwise chosen at random. Defendants in both samples were generally poorer and less white and educated than Rio's population at large.⁴⁶ This is entirely in line with previous studies, but it is not clear whether the overrepresentation of poor, black defendants reflected higher rates of criminality or higher rates of police prosecution and judicial enforcement among these populations.⁴⁷ The percentage of white defendants in my sample differs in the two periods; in the cases from the early 1930s, 53 percent of all racially identified defendants were white, and in the later sample this percentage had diminished to 39.3 percent.⁴⁸

In analyzing these cases, I sought to study the connections between race, social status, and the workings of Rio's criminal justice system by measuring the relationship between defendants' personal characteristics and four distinct indicators of judicial procedure and outcome: whether a case was dismissed before trial; whether a defendant was

did not vary much from one sample crime to another, reducing the chances that drawing the sample from a variety of crimes distorted my findings. When there are variations, they involve larger percentages of white defendants in crimes that were less vigorously prosecuted and prone to fewer rule violations than average, meaning that if anything my cross tabulations tend to exaggerate whiteness' significance in producing lenient treatment. In the multivariate analysis, crime type was considered as an independent variable.

46. Because there are no citywide figures available for the 1930 period, we cannot know whether or not this group of defendants was representative of all. Compared to all *cariocas*, these defendants were less white (53 percent as opposed to 70 percent), slightly more illiterate (26 percent as opposed 22 percent), and more likely to be single (60 percent as opposed to 51 percent). Statistics are drawn from the 1940 census. In the 1950s and 1960s, citywide crime statistics are available (though not, disaggregated), and they indicate that defendants in my sample were slightly less white, somewhat more literate, and more frequently single than their counterparts in all of the sample crimes committed in Rio. Compared to the citywide population in 1960, defendants in my sample were more often Afro-Brazilian (60 percent as opposed to 30 percent), slightly more literate (82 percent as opposed to 72 percent), more frequently single or involved in a consensual unions (66 percent as opposed 46 percent), and more likely to live in *favelas* or other forms of informal housing (34 percent as opposed to 10 percent).

47. There are no thorough historical studies of criminality rates by class and race in Brazil, though there is evidence that poor, black Brazilians tend to be more frequent victims and perpetrators of crimes in modern Brazil. Many researchers have concluded that exaggerated police vigilance and abuse are the main reasons that blacks are over-represented in populations of defendants and prison inmates, citing as evidence U.S. studies to the effect that there are no racial differences in criminal propensity. While this is most certainly true in abstract, and while the very definition of which acts are crimes is generally infused with racism and classism, theory is no substitute for further study. See Adorno, *op. cit.*, and Costa Ribeiro, 1995, *op. cit.*

48. This smaller percentage of white *reus* in the latter sample may reflect a citywide trend; between 1942 and 1963, the proportion of white defendants fell from 54 percent to 45 percent. See *Crimes e Contravenções*, *op. cit.*

found guilty; whether a defendant spent time in prison; and whether civil rights guaranteed in the procedural codes were respected or violated.⁴⁹ The first and second are at once statements of fact (some defendants were, most likely, actually guilty) and measures of the defendant's success in navigating the Brazilian criminal justice system; the third is essentially a measure of punishment; and the last is a measure of procedural harshness or leniency. In studying these relationships, I began with a simple cross-tabulation, determining the percentage of defendants with each characteristic that received determined types of treatment and comparing these percentages with the statistical average for all defendants. I went on to run a series of logistic regressions, which illuminated the independent influence of each variable, but which produced few statistically significant results because of the large number of variables and the relatively small sample size.⁵⁰ Neither analysis should be considered statistically definitive, but they are notable nonetheless for the consistency with which they point to race as among the weakest and most equivocal predictors of a defendant's fate.⁵¹

Race, Justice and the Socio-Economic Tangle

Most research on race and Brazilian criminal justice has focused on final outcomes, concluding that determinations of guilt and innocence are highly biased along racial lines.⁵² Here, as elsewhere, the results of my study suggest that these conclusions, while not necessarily wrong, are simplistic. I first analyzed patterns of case dismissal, particularly notable because they depend not only on the determinations of highly educated public prosecutors, but also on the representations of police investigators, who were nearly as poor, disenfranchised, and nonwhite

49. The personal characteristics considered differed according to the type of analysis. For the cross tabulations of the 1930s sample, I began with eleven commonly noted characteristics: region of birth, civil status, race, educational level, occupational level, employment status, housing type (shack, rooming house, apartment, etc.), neighborhood type (formal, informal, or mixed), access to legal counsel (considered only for cases that went to trial), prior arrest record, and possession of a state identification document (already, by the 1930s, an important marker of citizenship status). For the later sample, I added two categories; possession of the *carteira de trabalho*, and each defendant's characterization in the police *vida progressa*. For the logistic regressions, I necessarily reduced the number of factors considered, eliminating categories in order to maximize the predictive power of each model.

50. Small by statistical standards, my samples are nonetheless among the largest utilized so far in historical studies of Brazilian criminal justice.

51. Due to space constraints, the discussion of statistical results that follows is condensed. For tables and a more extensive discussion of methodology, please see my Northwestern University website.

52. See, especially, Adorno, op. cit.

as the suspects they investigated.⁵³ In the cross-tabulations, race first emerges in seemingly predictable ways; white defendants in my period saw their cases dismissed at higher rates than *pardos*, who in turn fared better than *pretos*.⁵⁴ Less predictably, however, racial variations in case dismissal were considerably weaker than those based on factors such as socio-economic level, citizenship status, and a defendant's criminal record. In the 1930s, employment, residence, literacy, and previous criminal records had a particularly strong influence on rates of dismissal, accounting for variations of as much as 26 percent from the average; after 1950, region of birth and defendant's characterization in the *vida pregressa* (VP) also gained importance.⁵⁵ The logistic regression analysis also points to the relative insignificance of race. Before 1942, whites' odds of going to trial were relatively low, .422 to one. Yet literate defendants also faced low odds, as did professionals and residents of formal private housing; and shantytown or tenement residents, factory workers or skilled laborers, and unskilled workers all had very high trial odds.⁵⁶ After 1950, the

53. The low social status and mixed racial composition of the Rio's police dated back at least to the late nineteenth century; See Thomas Holloway, *Policing Rio de Janeiro* (Stanford: Stanford University Press, 1993), and Marcos Luiz Bretas, *Ordem na cidade: o exercício cotidiano da autoridade policial no Rio de Janeiro, 1907–1930* (Rio de Janeiro: Rocco, 1997).

54. In the 1930s, cases against white defendants were dismissed 10 percent more often than the mean, cases against *pardos* were average, and those against *pretos* were dismissed 6.6 percent less than the mean. After 1950, *pardos* and *brancos* were in the average range, while *pretos*' cases were dismissed 8.2 percent less than the mean. The only really surprising result here is the consistent difference between *pardos* and *pretos*, given modern researchers' doubts about the validity of the distinction. For a discussion of this debate as related to the criminal justice system, see Costa Ribeiro, *op. cit.*; Adorno, *op. cit.*

55. Characteristics with average dismissal rates more than 10 percent different than average in the early sample were: professional occupation (26.3), formal housing type (10.1), white skin (10), previous criminal inquiries (-10.2), occupation as an unskilled laborer (-12), previous conviction (-12.5), illiteracy (-13.7), shack housing (-14.6), residence in an informal neighborhood (-19.2), and unemployment (-21.7). In the latter sample, they included occupation as a housewife (36.4), occupation in the police or military forces (11.8), formal housing type (10), occupation as a white-collar employee (-10.8), residence in an informal neighborhood (-11), weak literacy (-11.9), lack of employment (-13.8), previous conviction (-22.8), and a negative VP (-23.8).

56. Models are standard logistical regression equations, where the natural log of the odds that any individual will go to trial, be found guilty, spend time in prison, or experience civil rights violations are equal to a constant added to the "B" corresponding to each characteristic possessed by an individual. Models were constructed to maximize their overall predictive power, and predict correct outcomes between 71 and 86 percent of the time, considerably higher rates than those produced from random guesses. Results are expressed as odds; odds lower than 1 are low, and those over 1 are high. In 1930, whites' odds of going to trial were .422, residents of formal housing faced odds of .574, residents of shacks and tenements faced odds of 2.233, professionals faced odds of .162, factory workers and skilled laborers faced odds of 2.336, unskilled laborers faced odds of 2.207, and those with primary literacy faced odds of .569. All findings here are significant to .05. See my Northwestern web page for full discussion.

strongest variations in odds related predictably to the *vida progressa*, to criminal records, and to work status.⁵⁷

An analysis of trial verdicts magnifies these findings. Before 1942, the cross-tabulations suggest that defendants with darker skin were found innocent *more* often than average; after 1950, the contrary is true, but the differences are insignificant. Once more, variations by race paled in comparison with others. Before 1942, variations of more than 10 percent either way were related to access to counsel, housing type, literacy, and employment type and status. In the post-1950 sample, possession of work and civil identification documents and characterization in the *vida progressa* were also important.⁵⁸ The statistically significant results of the logistic regressions suggest similar conclusions. Before 1942, the odds of *brancos* being convicted were probably considerably higher than those of *pretos*.⁵⁹ Those with a public defender had four times greater odds of being convicted than those with access to private counsel, and defendants with clean criminal records and *carteiras de trabalho* (worker identification cards) faced significantly slim odds of conviction. In the post-1950 sample, unskilled laborers faced the greatest odds of conviction, and those with a *carteira de trabalho* faced the least; weaker evidence points to higher odds for those who lived in informal

57. Residents of informal housing had high odds of going to trial (2.389, at .05 significance), as did white-collar workers (2.938, at .05), those with previous convictions (2.698, at .05–.15) and those with a negative VP (2.876, at .05). Unskilled laborers, those with a clean criminal record, and those with a positive VP all faced low odds of trial (.522, .517, and .136, all at .05–.15 significance). The negative results for white-collar employees may be due to a tendency among defendants to claim “employment in commerce” in order to disguise unemployment or criminal occupations. The positive results for unskilled laborers can only be explained through further research, although they—like positive results for Afro Brazilians detailed below—may be due for the system’s tendency to dismiss as unimportant crimes committed among low-status individuals (see Caulfield, *op. cit.*). Crime type influenced odds in predictable ways in all regressions.

58. Before 1942, deviations of more than 10 percent in the percentage of innocent rulings appeared for defendants who had access to private counsel (17.7), lived in formal housing (12.9), worked as professionals (11.9), had high levels of literacy (10.2), lived in shack housing (-11.1), had no lawyer (-12.8), had previous convictions (-12.8), had a public defender (-16.5), or were unemployed (-22.1). After 1950, deviations of more than 10 percent appeared for the highly literate (46.8), professionals (44.2), housewives (37.5), policemen and soldiers (32), those with a *carteira de trabalho* (26.3), foreigners (25.6), those with private counsel (23.2), those with civil identification card (15.9), those with positive VPs (11.6), those with previous convictions (-10.5), Northeastern migrants (-11), those with public defenders (-11.5), those with rudimentary literacy (-16.2 percent), residents of collective housing (-16.6 percent), those with negative VPs (-16.9), unskilled laborers (-18.3), and the unemployed (-23.6).

59. *Brancos*’ odds were 2.3, and *pretos*’ odds were .097, though only the latter is significant to .05–.15. This is quite possibly an anomalous result, given its magnitude, but it is not unique in pointing to more lenient treatment of *pardos* and *pretos*, a phenomenon that may be related to the status of their victims.

neighborhoods or worked as white-collar employees, and lower ones for professionals and those with clean criminal records.⁶⁰ These results suggest the importance of social and citizenship status rather than race alone in predicting trial verdicts.

My analysis of imprisonment patterns—of punishment rather than guilt, an important distinction given the frequently low correlation between the two—also points in this direction. In the 1930s cross-tabulations, occupation, literacy, residence, and criminal records all influenced predictably the percentage of defendants who spent any time in prison; after 1950, possession of work and civil identification, characterization in the *vida progressa*, and marital status also stood out.⁶¹ Race was insignificant in either analysis. In the logistic regressions, race did emerge, but again in unexpected ways; *pretos'* odds of spending any time in prison were less than a fifth of those of *brancos* in the pre-1942 sample; the post-1950 figures lacked statistical significance. Before 1942, odds of prison time increased for defendants with a criminal record and for factory workers, and they decreased for those with civil identification, foreign birth, or residence in formal housing or in the wealthy *Zona Sul*. After 1950, the regressions indicated predictably that defendant's odds of prison time were higher if they were illiterate and had a criminal record and a negative *vida progressa*, but also suggested that white-collar employees faced worse odds than their counterparts in lower-status jobs.⁶²

60. Before 1942, white defendants' odds of a guilty verdict were 2.3, while *pretos'* were .097 (to .05–.15 sig.); those with a private lawyer faced .397 odds (.05 significance) and those with a public defender 1.749 (.05–.15). Less significant results also indicate low conviction odds for residents of formal housing (.661 at .15–.25 sig.) and with a work card (.275 at .15–.25 sig.). After 1950, the most significant results (.05 significance) indicate very low conviction odds for holders of the *carteira de trabalho* (.071) and very negative ones for unskilled laborers (odds of 4.55). Less significant results (.05–.15) indicate high odds for white-collar workers (3.302), and less significant numbers still (.15–.25) indicate low conviction odds for professionals (.194) and those with no criminal record, and high odds of a guilty verdict for residents of informal housing (1.719).

61. Before 1942, variations of more than 10 percent from the average percentage of defendants who spent no time in jail were found for housewives (24.9), the highly literate (17.7), police and military personnel (15.6), professionals (13.6), residents of formal housing (12.7), skilled laborers (-12.5), those with previous criminal inquiries (-19.5), those with previous convictions (-29.2) and the unemployed (-40.9). After 1950, variations occurred for housewives (30.2), professionals (23.1), police and military personnel (18.5), those with the *carteira de trabalho* (16), those with positive VPs (13.3), those with civil identification cards (12.1), those who were married or widowed (10.1), those with previous criminal inquiries (-10.4), white-collar workers (-10.7), skilled laborers (-11.2), the barely literate (-11.5), the unemployed (-20.8), those with a criminal conviction (-34.9) and those with a negative VP (-38.1).

62. Before 1942, results significant to .05 indicate low odds of prison time for *pretos* (.391) and for holders of civil identification cards (.384), but high ones for those with previous convictions (3.693). Results significant from .05–.15 indicate low odds for

Analyses of guilt, innocence, and punishment thus indicate that defendants' destinies varied wildly, if rarely in racially predictable ways. But we cannot know that these results do anything but reflect reality; however politically or morally distasteful the idea may be, it is at least possible that poor, uneducated, unemployed, undocumented *cariocas* with criminal records were simply more often guilty and dangerous than their more prosperous, educated, employed, documented, criminally virgin counterparts. One final measure circumvents this problem. Through close attention to patterns in violations of the rules imposed by the 1924 Federal District Code of Criminal Procedure and national Procedural Code of 1941—and especially of the codes' specifications regarding access to lawyers, trial delays, and pre-trial imprisonment—it is possible to analyze the links between defendants' personal characteristics and the degree to which police and judges respected their civil rights.⁶³

This measure indicates even more strongly than the others that the Brazilian judicial system was complicit in perpetuating patterns of social discrimination in the application of citizenship rights, but it also suggests that race's determinacy has been exaggerated. In the pre-1942 cross-tabulations, employment type and status, literacy, housing type, civil identification, and criminal records most predictably influenced variations in average rates of civil rights violation; after 1950, the *carteira de trabalho* and the *vida progressa* once again joined these other factors in predictable ways.⁶⁴ While whites fared better than *pretos* and *pardos* in

foreigners (.479), residents of formal housing (.651), and residents of the Zona Sul (.433) and high ones for *brancos* (1.909), and factory workers or skilled laborers (2.359). Results at .15–.25 significance indicate high odds for rural-urban migrants (1.528). After 1950, the only results significant to .05 give high odds of prison time to those with negative VPs (3.147) and previous convictions (2.576); those with .05–.15 significance indicate low odds of prison time for *pardos*, *pretos*, and those with a positive VP (.4, .44, and .523), and very high odds for white-collar workers (2.204). Results at .15–.25 indicate reduced odds for the literate (.643).

63. Although police and judges rarely explicitly acknowledged procedural violations in trial documents, such violations emerged in a variety of ways. Rarely, defendants had highly competent lawyers who pointed out procedural violations and demanded that something be done about them. More frequently, trial delays could be identified simply by looking at the dates in trial records and comparing them with the regulations set out in the procedural codes, and illegally long pre-trial imprisonments could be detected in the same way. Violations involving absent or incompetent lawyers were similarly easy to discern, and defendants and lawyers alike often brought complaints about police abuse directly to judges, whom they seemed to think capable of rectifying such injustices.

64. Variations of more than 10 percent from the average percentage of cases without violations were found before 1942 for police and military personnel (21.5), professionals (19.1), the highly literate (17.3), foreigners (12.3), residents of formal housing (12.1), those with civil identification cards (11.6), white-collar workers (11.3), the solidly literate (11.1),

both samples, the variations were insignificant. And, when untangled from other factors in the logistical regressions, race's impact is once again unpredictable; in the pre-1942 sample, *pretos'* odds of civil rights violations are *lower* than those of other racial groups; after 1950, the results are statistically insignificant. In both regression series, though, social and bureaucratic factors once more emerge predictably. Before 1942, residents of shacks and tenements had three times the rights violation odds of formal, private housing residents; inhabitants of Rio's center, North, and West had five times the rights violations odds of people living in the Zona Sul; and workers and unskilled laborers had respectively ten and twenty times the rights violation odds of professionals. Civil identification reduced defendants' odds, and stained criminal records dramatically increased them. After 1950, a negative *vida progressa*, a criminal record, and residence in informal housing increased the odds of rights violations, while formal housing and possession of a work card decreased them.⁶⁵ In short, poor *carriocas* with low-status jobs and tenuous claims to their homes certainly faced slim odds in the stacked lottery of rights that was the *carrioca* criminal justice system. But the color of their skin does not seem to have been the most important factor in determining their fate. Despite the necessary tenuousness of findings based on relatively small samples, the consistency of their direction should be enough to force us to re-examine the primacy of race alone as a determinant of institutional discrimination.

those who lived in shacks (-11.4), those who lived in informal neighborhoods (-13.2), the illiterate (-14.7), unskilled laborers (-16.7), those with previous criminal inquiries (-17), those with previous convictions (-27.8), and the unemployed. After 1950, significant variations occurred for housewives (30.4), police and military personnel (29.8), professionals (23.2), those with the *carteira de trabalho* (22.7), the highly literate (21.2), those with civil identification cards (17.8), those with positive VPs (15.2), residents of formal housing (13.7), those with no criminal record (10.4), those with previous criminal investigations (-10.1), those with no civil identification card (-11.1), unskilled laborers (-12.9), those with rudimentary literacy (-13.3), residents of informal neighborhoods (-13.7), the unemployed (-33.9), those with previous convictions (-35.3), and those with negative VPs (-37.4).

65. Before 1942, results significant at .05 indicate low odds of civil rights violations for foreigners and holders of civil identification cards (.296 and .365) and high ones for unskilled laborers (3.001). Results at .05-.15 significance indicate low odds for *pretos* (.459) and residents of formal housing (.589) and high ones for shack and tenement residents (1.738), residents outside of the Zona Sul (2.107), and those with previous convictions (2.319). Results at .15-.25 significance indicate high odds for migrants (1.56) and skilled and factory workers (1.785), and low ones for Zona Sul residents (.414) and professionals (.161). After 1950, results significant at .05 indicate high violations odds for residents of informal housing (2.731), those with criminal records (3.072), and defendants with a negative VP (3.351); results significant from .15-.25 indicate low odds for formal housing residents (.161) and defendants with the *carteira de trabalho* (.379).

CONCLUSIONS: THE FALSE DICHOTOMY OF RACE AND CLASS

Race was thus mostly a silent undertone in the texts of *carioca* criminal trials from the 1930s through the 1960s, and statistical analysis indicates that racial identity had a stealthy and uneven relationship with trial processes and outcomes. Crimes were not openly committed, arguments were not openly fought, and trial strategies were not openly based on racial identities; and a person's race was on the whole a weak predictor of his fate in police stations and courtrooms. Although my conclusions echo other scholars in sometimes pointing towards the existence of racial inequalities in the institutions of criminal justice, they also indicate that other factors were far more significant, and that studies that do not take these into account cannot fully explain the role that race has played in the socially discriminatory universe of Brazilian judicial practice.

Does this, then, suggest that we have come full circle, that it would be somehow appropriate to return—at least in the area of criminal justice—to the worn mantra that class and not race explains Brazilian inequality? If I have argued anything here, it is that both the argument that class trumps race and its negation have been based on false dichotomies. To discriminate against poor, ill-educated, migrant populations with only weak or tenuous links to state bureaucracy in mid-century Brazil was, fundamentally, to discriminate against the nonwhites who made up the majority of these groups. Possession of state documents, legal employment, decent housing, and access to strong character witnesses could effectively “cleanse” a nonwhite defendant for the labyrinthine purposes of the criminal justice system, and white defendants could easily be degraded by lack of these same signs and symbols; witness the stories of Paulo and Manoel. But by operating in such a way as to prejudice the chances of all defendants already at the bottom of the Brazilian social and bureaucratic pyramid, the *carioca* criminal justice system helped to sustain these structures, and thus to perpetuate the relegation of Afro-Brazilian populations to the lowest possible ranks. In discriminating socially, the *carioca* courts were discriminating racially, blocking the road towards social mobility of any kind and making the dream of equal rights for all no more than a distant fantasy. The lie at the heart of the myth of racial democracy was not necessarily in the overwhelming prevalence of open and purposeful racial discrimination, but rather in the fallacy that social discrimination could be practiced free from racial implications. The key to understanding the persistence of Brazilian racism may be, ironically, in recognizing the fundamental unity of the social and the racial in Brazilian daily life.