Brazilian anti-racism debate: multiscale reflections

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Abstract: Human rights mechanisms range from the domestic, transnational and international scales and policy-making is often impacted by one or all these scales. This article presents an overview of articulations of the Black Movement in Brazil within these scales, aiming to exemplify how these forces are at work. Taking into consideration the transformations the involved actors have suffered in the period along with their own specificities and how they impact each other and policy-making, this is illustrated in practice by four laws promulgated in the last decades that resulted from these dynamics in different ways, namely laws against racial discrimination and other affirmative action measures. The goal is, through this discussion, to propose a reflection upon the tools involved in the decision-making process regarding anti-racism measures in Brazil in the last decades.

Keywords: Black Movement, anti-racism, Brazil

Introduction

To better understand the mechanisms that are part of the racial segregation in the Brazilian context, along with the governmental actions towards the end of racial inequality, and the promotion of racial equality, I offer an overview of how the social movements contributed to the political agenda and political reforms and to the dialogue among the domestic and international actors. To illustrate the processes that allowed the creation of new spaces to think of a racial issue, in the last section, I present four laws that tackled racism in Brazil, noticing effects different actors might have had on their creation.

First, I present a theoretical overview of the spaces where these debates can take place in the public sphere regarding the domestic, the international, and the transnational environments. Second, a historical overview of the construction of a Black Movement in the country, taking into consideration the "III World Conference Against

Racism, Racial Discrimination, Xenophobia, and Related Intolerance", placed in Durban, South Africa; the shift in the federal government's political ideology, in 2002. Finally, I present some laws that discussed racism and affirmative action for the black population, comparing their background. Namely, Law 1.390/1951, from Afonso Arinos , against racial discrimination; Law 1.716/1988, from Carlos Alberto Caó, which supported the criminalization of racism in the constitution, and imposed harsher sentences for crimes against race; Law 10.639/2003, from Esther Grossi, that established Afro-Brazilian culture and history as a mandatory subject the school's curriculum, and Law 1.288/2010, from Paulo Paim, which established the Statute for Racial Equality, a major achievement of the Black Movement, and which is often seen as a contribution of the debates that took place in Durban.

The political arena

Policy-making is directly affected by the efforts of different political actors and different (inter)national mechanisms such as laws, conventions, and the community. Beth Simmons (2012) proposes these constitutions, international courts, and statutes have great influence over political decisions in the domestic level. This level has helped promote change in laws regarding claims for rights due to international treaties and conventions, meaning that international law and the international forums, along with the actors involved in it have influence over the domestic development of claiming rights (Simmons, 2012). Good examples of articulations that started to tackle the issue in Brazil, internally, are the Brazilian Black Front, I the 1930s, the Black Experimental Theatre – *TEN,* in the 1940s and 1960s, and the Black Unified Movement -*MNU*, in 1978 (Fernandes, 1976).

Many actors are usually involved in the decision-making processes of creation of laws and public policies and these range from the international level: the international legal framework, the conventions and the treaties; to the national/transnational ones: the state, the civil society (NGOS and organized social movements), and the political parties. Friedmann (2009) suggests that, regarding contexts such as these, it is important to frame them with a multiscale approach. This means taking into consideration the political institutions in the judiciary, the executive and the legislative; the actors that interact with them; and the discourses that permeate the debates. In this sense, the

domestic contexts, and the way they relate to the actors are crucial when analysing these policies. They are part of a dynamic system, in which these institutions, and the laws, along with the policies that result from those interactions must be perceived as a part of a bigger structure (Friedman, 2009).

The governmental and non-governmental actors – the institutions, the nation-state, the civil society and other actors within a transnational framing of the context – might bring insights to the contributions of the Brazilian Black Movement, and the implementation of the laws directly related to their efforts, where the dynamics that connect the nation-state and internalization of norms are outcomes of transnational efforts (Berman, 2005). Hence, as Trapp (2014) suggests, the III World Conference Against Racism can be perceived as a transnational context of action that allowed, among other factors, the transformation of the dialogue and a shift in the formulation of policies on the racial issue in Brazil. Even though Berman (2005) treats the transnational approach as a tool that is not enough for the analysis of such processes - since they are more complex than the concept is able to grasp - he admits it is an approach that moves towards the right direction, thus it is crucial to be explored.

Hence, the governmental and non-governmental actors are essential. Civil society has a crucial role in the making of transnational norms and in the way that NGOs influence and construct important networks that allow action. Consequently, those are part of a "complex, post-national social formation" (Appadurai *apud* Berman, 2005:505). These networks involve governmental agencies, international organizations, and NGOs. Moreover, these non-governmental networks have contributed with valuable resources in constructing regulations and norms in the recent years, with the example of the transformations after the Durban Convention, in 2001. This can be confirmed by many current examples of policy-making which were influenced by transnational efforts involving non-governmental entities, such as the policies adopted in Brazil after Durban (Berman, 2005; Trapp, 2014).

The important aspect is how we think the nation-state, the representative unity of the national arena in the international community. The construction of a larger understanding of community is its basis. However, communities are more than just a group of people who share characteristics. They are made of a symbolic identity, which

allows us to think beyond the notion of a nation-state (Berman, 2005). The way of thinking identity, nationalism and equality, especially in terms of unequal societies, must be carefully thought. When tackling these issues, and this feeling of "belonging", when it is an artificial imposition (Souza, 2008), it is an important side to consider. Even if these groups have asymmetrical power relations among themselves (Reis, 2008).

This does not mean denying the importance of the nation-state. In fact, as Reis (2008) states, in the transnational scale, there is no other complete equivalent of what "participating in a community" that offers governability. Still, the possibility of thinking in communities as a plurality, within the same nation state, is one of the chore concepts to understanding the transformations the Black Movement have suffered in Brazil throughout the years, especially recently, with their approximation to the rescuing of African-Brazilian symbols and their roots (Trapp, 2014). There is the emergence of a new way of thinking the nation-state, an entity that acknowledges these communities, a pluricultural state, admitting that, to be socially and politically developed, it is necessary to create alliances with these groups (Souza, 2008).

Regarding this, it is fundamental to think of both spaces: the one provided by the nation-state and the transnational space. Furthermore, non-governmental organisations can fit in spaces that are neglected by the nation-state as an important power in the scope of policy and law-making. Hence, the dynamics that entail transnational policy-making have increased more and more, with NGOs as stakeholders concerning certain themes, as well as other actors (Berman, 2005).

Yet, it is not only about the NGOs and the transnational networks. After all, the tools that are used for the implementation of laws and policies in the bureaucratic system are important, and so are the claims these institutions ought to handle. While NGOs play the part of inspecting and applying pressure to these actors, official international institutions might also be able to influence with the international treaties, declarations, commissions, conferences, translating it into empowerment of certain causes (Berman, 2005).

Finally, when taking all these instances into consideration and perceiving them as process in motion - the national and international institutions, the transnational

networks (NGOs, civil society, social movements) - the nation-state can be understood as an important part of a bigger machine, where the pressures have influence over the bureaucratic processes throughout time, entangling the local, the national, the international and the transnational levels in an international community that is a "collection of interests" (Berman, 2005:551).

Discussing racism in a multiscale overview

Concerning the dynamics of the international context in the 1990s and 2000s. The democratization process after the Military Dictatorship was characterized by the acknowledgement of a society marked by racial inequality in Brazil, and the transnational aspect of the social claims observed a shift in the debate on citizenship, which started to include more specific demands that asked for a different approach regarding the Brazilian political agenda (Lima, 2010). The Constitution of 1988 had assertions as the criminalization of racism (that later had the crimes typified by Law 1.716/1988), and the recognition of territories that belonged to *quilombola*[1] communities and the creation of the *Palmares* Cultural Foundation. Nevertheless, these specific points in the constitution were a result of an intense debate within the Black Movement(s), which applied pressure aiming for recognizing policies (Lima, 2010).

In 1995, there was the *Zumbi dos Palmares* March against racism, named after a Black leadership from the *Quilombo dos Palmares*[2]. This was an important moment in the domestic context regarding the debate, because it gave room to a closer dialogue between the State and the Movement, culminating in the creation of the "Work Group for the Valorisation of the Black Population", in the National Secretariat of Human Rights, brought by the March to then president Fernando Henrique Cardoso as the "Program to Overcome Racism" (Lima, 2010). This was also seen in the history of the Black Movement as the inflexion point where the government acknowledged structural racism, placing it in the political agenda (Trapp, 2014).

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[1] Traditional communities originated from the *quilombos* (communities of run-away slaves).
[2] Famous *quilombo* resistance community in the 17th century.

The World Conference Against Racism (WCAR) took place in Durban in 2001. It had a great influence over the Black Movement in Brazil allowing the establishment of an even closer dialogue between them and the state and to other international movements, which had already intensified in the 1990s (Trapp, 2014). There is also the emergence of new actors in the international scene, with the redefinition of strategies to rethink the national anti-racism movements (Trapp, 2014). This shows an example of how the international community and transnational spaces influence internal agendas of rights. There was a shift within the Movement itself, opening space for NGOs. The transnationalization of the discourse also allowed the intensification of bi-national and transnational networks. Most interestingly, the external influences of other movements in other contexts, along with the conquests achieved in Durban I, helped the Black movement's discourse to shift to the search for an ethnic and racial black identity (Trapp, 2014). Durban acted as a transnational context that allowed for a better dialogue and enabled transformations in the discourse against racism in Brazil (Trapp, 2014)

Another important change occurred in 2002, where there was a shift in the federal government in Brazil, when president Luís Inácio Lula da Silva was elected president. As a member of the Worker's Party, a political party that was usually more connected to the left-wing demands, he made it possible for the creation of other spaces for dialogue regarding the debates on race, racial inequality and the connected themes, for instance the creation of Special Secretariat of Politics for the Promotion of Racial Equality - *SEPPIR*, in 2003.

Hence, this context can be perceived as an effort from both sides, the domestic and its ideological influence, more aligned to what is known in Brazil to be the claims for rights, and the transformations caused due to the Durban Convention that took place after the 2000s. As for external influences on the Brazilian Black Movement, in the last decades, it is important to have in mind how the United States' and their movements contributed to the social movements in Brazil. With special attention to the connection to Africa, and the search for an identity that looked to that continent, something that helped give a different view of the Brazilian Black identity (Pereira *apud* Trapp, 2014).

Some of the developments that took place after the Durban Convention concerning the discussion on racism in Brazil, during president Cardoso's mandate, were the

National Council to Combat Discrimination, the Program Diversity in the University, the Program Brazil Gender and Race, and many ministries adopted affirmative actions. Nevertheless, the racial issue was still strongly connected to the human rights agenda, and these developments were more connected to an approach where recognition was the goal, but there was still serious need for redistribution policies (Lima, 2010). On the other hand, an important contrast is that, when president Lula was elected, the Black Movement and the civil society had their roles transformed. From the position of demanding public policies, they occupied a place in formulating them, actively participating from inside the state apparatus (Lima, 2010). In this sense, it is interesting to see how these mechanisms become more complex, with bodies that applied pressure from the outside, shifting to create transnational networks of action, to climax with them playing their part side by side with the policy-makers.

Left-wing parties did not set structural racism as a priority in their agenda, since things should be handled as class struggles. Even so, when the Worker's Party (PT) is elected to the presidency, there is more space and visibility of the racial issue and partnerships between the civil society and international bodies, including events as the I and II National Conferences for the Promotion of Racial Equality (Lima, 2010). Therefore, building a strong argument for the role the government had, alongside the Durban Convention, and the transnational networks in the centralization of the racial issue, as well as the enactment of laws that valued recognition and reparation, allowing the creation of spaces of emancipation.

Public policy and anti-racism: the context of law-making

The impacts discussed in previous sections are shown in practice when we analyse and compare Law 1.390/1951, Law 1.716/1988, Law 10.639/2003, and Law 1.288/2010, with different backgrounds in their elaboration process. In this sense, one law did not have a direct connection to the Black Movement's influences, another was more directly connected to it, in the democratization period of the 1980s, and the last two were outcomes of decades of pressures from the Black Movement, the Durban conference, and the political alignment of the Brazilian government, enlarging the space in the political arena.

Law 1.390 /1951, which is also known as Law Afonso Arinos, was named after the federal deputy who first presented it. It was the first law targeting racial discrimination in Brazil. This was the result of an international scandal, involving Katherine Dunhan, an African-American ballerina, who was not allowed to stay at a hotel in Brazil, while on tour. It turned discrimination based on race or skin colour into a legal misdemeanour, but for decades after it was enacted, no one in the country was arrested based on it. This law was not a result of the domestic mobilization of the Black Movement or even a transnational effort, but it was inspired by an international scandal. Additionally, as a legal misdemeanour, the punishments were up to three months of prison, that could be replaced by fines, and the closure of establishments. It was only in 1988, with the Law 1.716, that there was the harshening of punishments, with jail time up to five years, and its criminalization, later backed by the Constitution of 1988. This law was a result of the effort of black congressman and militant Carlos Alberto Caó, and the influences of the Black Movement at the time (Câmara dos Deputados, 1950; Câmara dos Deputados, 1988; O Globo, 2013).

There is a huge contrast behind the creation of both laws, as the motivations were different. The first one was originated from an international scandal that internally was not given much attention, and even the measures it was supposed to take against perpetrators of racism, were not strict. The other one was the outcome of a proposition of law presented by a federal deputy who had a history with the black movement, achieving an effort of decades of militancy, resuming the influence the militancy had in the 1980s.

As for the other two: Law 10.639/2003, that established as mandatory the teaching of Afro-Brazilian history and culture and Law 1.288/2010, which established the Statute for Racial Equality. Trapp (2014) and Lima (2010) propose they are perceived as outcomes of two factors, the transformations after the debate in the Durban Convention and the approximation between the government and the Black Movement, which became even closer after President Lula was elected. The Statute marks an essential point in the history of the Black Movement's demands and it was a result of a collective effort from all these actors (Trapp, 2014; Lima, 2010; Câmara dos Deputados, 1999; Câmara dos Deputados, 2005). This illustrates how the system became more complex

and how the multiscale approach, borrowed from Simmons (2015), is able to offer another frame to analyse the actors and their impacts.

Final Thoughts

By bringing this brief reflection among these laws that tackled racism, I tried to focus on how the many levels of action of the actors might have influenced the demands for and from the Black population. One of the highlights is that, as Simmons (2012) suggests, there is evidence the international arena has impacts over the domestic environment, such as it is seen in the developments after the Durban Convention that was called by the United Nations in 1990s – namely the creation of *SEPPIR*, the enacted laws that instituted the Statute for Racial Equality and the teaching of African-Brazilian History and Culture in the national educational curriculum, demands that had been long waited by the Black Movement. In addition, the promotion of a shift in the way of thinking Black consciousness and identity in social movements. Still, this is all part of a dynamic system composed by many different actors that impact each other (Friedman, 2009).

In that sense, the transformations that occurred in the country after Durban may also have had more force because of the state, since there was an ideological shift in the presidency when president Lula was elected, in 2002. Durban allowed for the transnationalization of the discourse, the strengthening of the strategies of political action, the increase of affirmative action policies, a stronger alliance with the state, and more space for the debate over the racial issue (Lima, 2010)

Indeed, NGOs, institutions, symbolic identities and how they are dynamic within the state and outside of it might also have influenced the development of policies concerning rights (Berman, 2005), and specifically the black population's rights. We can only start to think of the construction Black Conscience as an identity after the efforts made by articulations such as the Black Experimental Theatre – *TEN* and the Unified Black Movement – *MNU* (Fernandes, 1976), as well as the transformations the country underwent in terms of democratization in the 1980s, the Durban Convention and the ascension of president Lula, in the 2000s. Therefore, these processes are dynamic, and

they are only possible to be analysed if they are thought to be non-static from the beginning (Lima, 2010; Reis, 2000, Trapp, 2014).

Through the legislative, it is possible to see these forces in action and how each law had a different background. Law Afonso Arinos was a result of an international scandal that was not considered within the domestic sphere. It did not impose harsh sentences on those who violated it, or even prosecuted anyone in the decades after its publication. Law 1.716, from 1988, was a result of the democratization forces and the Black Movement after a long period of dictatorship in the country. In contrast, Laws 10.639, from 2003, and 1.288, from 2010, marked the transformations allowed by Durban, the transnational networks, the Black Movement and the Brazilian State (then with a left-wing orientation). These laws were not the only outcomes. There was the creation of *SEPPIR*, and other bodies enhancing the possibilities regarding the places to discuss race in the Brazilian political arena.

Certainly, the dynamics that surround the Black Movement and the achievements concerning policies for the Black Population in Brazil are much more complex than it can be grasped here. These outcomes are part of an ongoing debate that must be seen and understood as part of a bigger picture that is still in motion and which is subjected to the transformation of all the involved actors. Nevertheless, the debate on the racial issue has gained strength because of the militancy and the debates in the academia (Lima, 2010), and because of the current reality where it is possible do think of racism and anti-racism through many levels of action: domestic, international, transnational, ratifying the United Nations' Resolution adopted by the General Assembly (2011) that proposed the mobilization of these levels for the effective implementation of the Durban declaration as a crucial effort.

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