

## Possessed Persons and Legal Persons in Brazil

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## Case Studies: Continuation of Volume 29 Series

### Possessed Persons and Legal Persons in Brazil

PAUL CHRISTOPHER JOHNSON<sup>†</sup>

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*If we put all together that the school-boy rehearses, that the crowd relates, and that the philosopher demonstrates about spirits, this would seem to constitute no small part of our knowledge. Nevertheless, I dare assert that all these smatterers could be placed in a most awkward embarrassment, if it should occur to somebody to insist upon the question, just what kind of a thing that is about which these people think they understand so much.*

-Kant, *Dreams of a Spirit Seer*<sup>1</sup>

In the zones of the Americas where plantation slavery formed an economic base built over three centuries, roughly from 1550–1850, to provision European colonies with cheap labor in the production of brazilwood, cacao, indigo, cotton, tobacco, and above all sugar, certain

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\* Given the Author's expertise and renowned knowledge of the topic, foreign language translations and other presentations of historical fact were accepted as accurate at publication; the Author is responsible for content therein.

1. IMMANUEL KANT, *DREAMS OF A SPIRIT SEER* 41 (1900) (1766).

patterns emerged.<sup>2</sup> Antonio Benítez-Rojo gathered them under the phrase, “the repeating island” in order to give emphasis to the relative uniformity of the plantation economy and its human machinery across the archipelago in spite of differences in language, geography, and culture.<sup>3</sup> I expand on his idea of a repeating morphology to also include the religious practices performed by slaves and their descendants, and the techniques of their control or suppression as applied by colonial governance. One of the regularities on the so-called repeating island was that Afro-Atlantic practices took shape as systems, traditions, or “thinly coherent” cultures within and alongside colonial Christianities—Protestant in the Dutch or British colonies and Catholic in the domains of Portugal, France, or Spain.<sup>4</sup> A second recurring feature was that Afro-Atlantic religions launched under plantation slavery often included ritual events evoking collective states which colonial officials, then criminologists and doctors, and finally psychiatrists and anthropologists, all described as “possession.”<sup>5</sup> A third regularity was that rituals where such spirit-possession events took place were rigorously policed and legally repressed. In the history of European encounters with peoples of Africa and the Americas, spirit-possessed action came to be viewed as the opposite of *individual* action—accountable, contract-worthy, transparent, and properly civil action—in early modern social theories that became the template for political states in the Americas.<sup>6</sup> Even more, the figure of “the possessed” helped define the

2. See Ralph Lee Woodward, Jr., *The Political Economy of the Caribbean*, THE 1996 PORTER L. FORTUNE, JR. SYMP., (Oct. 4, 1996). The precise duration of the plantation form varies case by case: In Brazil, for example, enslaved Africans are first debarked in the 16th century, and slavery was officially abolished in 1888. See *The Lei Aurea* of 1888 (Golden Law) (abolishing slavery in Brazil).

3. ANTONIO BENÍTEZ-ROJO, *THE REPEATING ISLAND* 8 (1996). “We can speak, nevertheless, of a Caribbean machine as important or more so than the fleet machine. This machine, this extraordinary machine, exists today, that is, it repeats itself continuously. It’s called: the plantation.” *Id.* Benítez-Rojo described the main function of the Caribbean plantation system as the transformation of nature into capital, and its transfer from the Caribbean archipelago to European metropoli. *Id.*

4. See William H. Sewell, *The Concept(s) of Culture*, in *BEYOND THE CULTURAL TURN: NEW DIRECTIONS IN THE STUDY OF SOCIETY AND CULTURE* 35, 49, 52 (1999) (discussing the “thin coherence” of a cultural symbol system).

5. Paul Christopher Johnson, *An Atlantic Genealogy of “Spirit Possession,”* 53 *Comparative Stud. in Society & History* 393, 395–396, 400, 407–408, 418 (2011). Spirit possession refers to the notion that an outside agent can occupy the body of a living human being and act through that body. Spirit possession involves beliefs, practices, social events, and religious institutions devoted to cultivating the incorporation of spirits by participants. This complex has long been considered a frequent component of African and Afro-Atlantic religions.

6. Many scholars questioned the legal premise of the autonomous, free, individual whatsoever. See, e.g., TALAL ASAD, *Trying to Understand French Secularism*, in *POLITICAL THEOLOGIES* 494, 523 (2006) (stating “[t]he liberal idea is that it is only when this individual

proper sort of individual in relation to which civil participation in emergent states was imagined at all, beginning with the writings of Thomas Hobbes and John Locke in the mid-17th century.<sup>7</sup> These political philosophers tried to imagine and then describe the personhood that modern nation-states would need in order to survive and thrive. “Citizens” needed to be free, autonomous, rational individuals with durable identities; only such would be capable of making, guaranteeing, and fulfilling trustworthy contracts that nation-states founded on principles of private property would require. Certain forms of religion enabled and fortified the proper individualism—Protestantism above all—while others threatened to undermine it. African and Afro-Atlantic practices that appeared to generate non-rational states of possession were regarded as socially and politically dangerous; at best, productive of the worst form of shifty, intemperate, and impermanent persons and at worst, sedition, or revolution.

Under French slave laws decreed in 1685 by Louis XIV as the “Code Noir” (Black Code), to take a prominent example, all slaves had to be baptized as Roman Catholic, and the practice of any other religion was prohibited.<sup>8</sup> African religions were especially feared as potential sources of slave insurrections, and ritual gatherings that produced states of possession were especially regarded as potential dangers. The Revolution in Haiti,<sup>9</sup> and the reports of a ritual pact that generated it, gave evidence that possession rituals could foment violent

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sovereignty is invaded by something other than the representative democratic state, which represents his individual will collectively, and by something other than the market, which is the state’s dominant civil partner (as well as its indispensable electoral technique), that free choice gives way to coerced behavior...”; BRUNO LATOUR, *ON THE MODERN CULT OF THE FACTISH GODS* 11 (2010) (stating “[n]either anti-fetishists nor fetishists know who acts and who is mistaken about the origins of action, who is master and who is alienated or possessed”).

7. See, e.g., Thomas Hobbes’ 1651 book *Leviathan* frequently invoked the threat of possession and other “enthusiast” religious experiences to the notion of rational citizenship that the modern nation-state would require. THOMAS HOBBS, *LEVIATHAN* 57 (1987) (stating “[a]nd for that part of Religion, which consisteth in opinions concerning the nature of Powers Invisible, there is almost nothing that has a name, that has not been esteemed amongst the Gentiles, in one place or another, a God, or Divell; or by their Poets feigned to be inanimated, inhabited, or possessed by some Spirit or other”).

8. SUE PEABODY & KEILA GRINBERG, *SLAVERY, FREEDOM, AND THE LAW IN THE ATLANTIC WORLD: A BRIEF HISTORY WITH DOCUMENTS* 31–36 (2007); *Le Code Noir* [C. Noir] [Black Code] Mar. 1685, art. 2, 3 (Fr.).

9. The Revolution against the French colony of Saint Domingue was launched in 1791 and culminated with the 1804 declaration of a new state called by the indigenous name for mountainous place, “Haiti.” LAURENT DUBOIS, *A COLONY OF CITIZENS: REVOLUTION AND SLAVE EMANCIPATION IN THE FRENCH CARIBBEAN, 1787–1804*, 107–112, 320, 441 (2004).

rebellion.<sup>10</sup> Afro-Atlantic possession practices were policed and legally repressed more aggressively than ever. Laws regulating religious practices of slaves were enacted across the Caribbean basin, from Surinam to Cuba, and from Trinidad to Brazil. Beginning in the 18<sup>th</sup> century, slaves' religions in British colonies were regulated by Anti-Witchcraft Laws.<sup>11</sup> In Jamaica and Trinidad, anti-Obeah Acts were passed in 1816 and in 1898 to curtail African healing practices; there were likewise prohibitions against Shouters, or Spiritual Baptists, after 1916.<sup>12</sup> In 20<sup>th</sup> century Haiti, Vodou was legally attacked by North Americans under Penal Code Laws 405-7 against *sortilèges* ("spells") even as Vodou was luridly fantasized about, and not seldom enjoined, during the U.S. occupation of Haiti from 1915 to 1934, spawning a wave of Hollywood horror movies on "voodoo" and zombies when those Marines returned home.<sup>13</sup>

In Brazil, a less dramatic story about the repression and freedom of

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10. The Revolution was said to have begun in a ritual event. The event was a legendary Vodou ceremony held at Bois Caiman, the Alligator Woods, on or around August 14, 1791. The main sources are Antoine Dalma's *History of the Revolution*, published in 1814, but supposedly written in 1793–1794, and an oral report from a mulatto woman named Cecile Fatiman, a priestess (*manbo*) who was at the event (as told to her grandson and thence to Etienne Charlier, who published it). See ANTOINE DALMAS, *HISTOIRE DE LA REVOLUTION DE SAINT-DOMINGUE XX* (1977); ETIENNE D. CHARLIER, *APERÇU SUR LA FORMATION HISTORIQUE DE LA NATION HAÏTIENNE XX* (1954); DAVID PATRICK GEGGUS, *HAITIAN REVOLUTIONARY STUDIES* 81, 82 (2002). To say that a ritual directly motivated the rebellion is speculation, but among Haitians the Vodou ritual is popularly viewed as the spur of the Revolution. See DUBOIS, *supra* note 9, at 432.

11. PAUL CHRISTOPHER JOHNSON, *Introduction, in SPIRITED THINGS: THE WORK OF "POSSESSION" IN AFRO-ATLANTIC RELIGIONS* 1, 9 (2014); see also An Act to Remedy the Evils arising from Irregular Assemblies of Slaves, Jamaica, 1760, TNA CO 139/21 (where Obeah, a kind of sorcery in the Caribbean, became illegal).

12. See DIANA PATON, *NO BOND BUT THE LAW: PUNISHMENT, RACE AND GENDER IN JAMAICAN STATE FORMATION* (2004); see also Sasha Turner Bryson, *The Art of Power: Poison and Obeah Accusations and the Struggle for Dominance and Survival in Jamaica's Slave Society*, 41 *CARIBBEAN STUD.* 61, 65 (2013).

13. See generally DIANA PATON, *THE CULTURAL POLITICS OF OBEAH* 41, 143 f.164 (2015) (discussing anti-Obeah acts in Jamaica and Trinidad); REINALDO L. ROMÁN, *GOVERNING SPIRITS: RELIGION, MIRACLES, AND SPECTACLES IN CUBA AND PUERTO RICO, 1898–1956* (2007). On Haiti see KATE RAMSEY, *THE SPIRITS AND THE LAW: VODOU AND POWER IN HAITI* 13, 120 (2011) (discussing anti-Obeah acts and anti-Shouters acts in Haiti); Michael Norton, *Haiti Officially Sanctions Voodoo*, *Midland Reporter Telegram* (Apr. 10, 2003), [http://www.mrt.com/import/article\\_8c236da5-fdb8-57ed-837c-8b2512ed55f3.html](http://www.mrt.com/import/article_8c236da5-fdb8-57ed-837c-8b2512ed55f3.html) (reporting how Vodou became a bona fide, fully legal "religion" endowed with official state powers to marry and bury, on April 4, 2003, under President Aristide). The most famous of the early horror movies featuring Vodou was the 1943 hit, "I Walked With a Zombie." Others were "Voodoo Island" (1941), and "Voodoo Man" starring Bela Lugosi (1944). *I WALKED WITH A ZOMBIE* (RKO Radio Pictures, Inc. 1943); *VOODOO ISLAND* (Oak Pictures, Inc. 1957); *Voodoo Man* (Banner Productions 1944).

religion unfolded. During most of the colonial period, Afro-Brazilian religions were classified as fetishism (*feitiçaria*) or witchcraft, and regulated under the Portuguese Philippine Code (*Ordenações Filipinas*), named for the Spanish King Phillip who ruled Portugal and announced the code in 1602.<sup>14</sup> The Portuguese Inquisition also levied punishments against *feitiçaria*. In the early 19<sup>th</sup> century, with Brazil's independence (1822) new laws on religion came into effect, lasting until emancipation in 1888.<sup>15</sup> For example, from 1830, the Criminal Code (Chapter 1, Article 276) levied consequences for offenses against "religion, morality and good custom," which included any religious practice not viewed as Catholic.

The transition from the Monarchy to new Republic, in 1890, brought with it another key shift, namely the declaration of freedom of religion and the official separation of church and state. These were announced in the Decree 119A of January 7, 1890, and ratified in the Constitution of 1891.<sup>16</sup> Freedom of religion was an ideal only partly realized.<sup>17</sup> For example, members of monastic orders requiring vows

14. ORDENAÇÕES FILIPINAS [C. CIV.] [CIVIL CODE] book V, title III (1602) (Braz.). "On Fetishists," prohibits the invocation of spirits and the use of material artifacts to this end.

15. Prior to its modern applications by Karl Marx and then Sigmund Freud, fetishism referred to illegitimate religious practices. It stemmed from the Portuguese word *feitiço*, meaning an object made by a human hand, and used by the Portuguese to describe African uses of ritual objects on the west coast of Africa beginning in the late fifteenth century. By 1600 the word was au courant across European languages, as it was used by the Dutchman Pieter de Marees to describe practices on the Gold Coast, roughly today's Ghana, in his description from 1602. In 1760, the French scholar Charles de Brosses coined the term *fétichisme*, still using descriptions of the Gold Coast and Dahomey as his main exemplars. See PIETER DE MAREES, DESCRIPTION AND HISTORICAL ACCOUNT OF THE GOLD KINGDOM OF GUINEA (1602); CHARLES DE BROSSES, DU CULTE DES DIEUX FÉTICHES, OU PARALLÈLE DE L'ANCIENNE RELIGION DE L'EGYPTE AVEC LA RELIGION ACTUELLE DE NIGRITIE (1760). See generally William Pietz, *The Problem of the Fetish, I*, 9 RES: Anthropology and Aesthetics 5 (1985); William Pietz, *The Problem of the Fetish, II*, 13 RES: Anthropology and Aesthetics 23 (1987); William Pietz, *The Problem of the Fetish, IIIa: Bosmann's Guinea and the Enlightenment Theory of Fetishism*, 16 RES: Anthropology and Aesthetics 105 (1988) (describing the genealogy of fetishism as a religious problematic).

16. CONSTITUIÇÃO 1891 [CONSTITUTION] art. LXXII, §3 (Braz.) (stating "[a]ll individuals and religious confessions may publically and freely practice their religion, associate for this reason, and acquire property to this end" ("Todos os individuos e confissões religiosas podem exercer publica e livremente o seu culto, associando-se para esse fim adquirindo bens, observadas as disposições do direito commum.")).

CONSTITUIÇÃO 1891 [CONSTITUTION] art. LXXII §7 (Braz.) (declaring the separation of church and state as "[n]o religion or church will benefit from official support or have any relation of dependence or alliance with the federal government or its states" ("Nenhum culto ou igreja gozará de subvenção official, nem terá relações de dependencia, ou aliança com o Governo da União, ou o dos Estados.")).

17. This is the case in every nation-state; freedom of religion is always and necessarily only partly realized. *E.g.*, WINNIFRED FALLERS SULLIVAN, THE IMPOSSIBILITY OF RELIGIOUS

of obedience were prohibited from voting, since they had renounced their autonomy as individuals.<sup>18</sup> Freedom of religion was especially restricted, however, in regard to Afro-Brazilian traditions. New legal controls of Africans and Afro-Brazilians were established only months after the declaration of religious freedom, serving as “clawback” mechanisms to restrict Afro-Brazilian ritual practices.<sup>19</sup> Decree 528 of June 28, 1890, prohibited African immigration.<sup>20</sup> Law 173 of 1893 set limits on religious associations, requiring all congregations to be registered with the state, and requiring them to refrain from promoting “illicit” or “immoral” ends.<sup>21</sup> The Penal Code of 1890 interdicted “pretending” to be a religious leader for monetary or other gain, a crime that could implicate virtually any non-Catholic priest.<sup>22</sup>

But most important of all among these clawback laws was the addition to the Penal Code in 1890 of three new articles, numbers 156, 157, and 158. Article 156 prohibited illegal medicine.<sup>23</sup> Article 157 prohibited “the practice of spiritism, magic and its sorceries, talismans and cartomancy to arouse sentiments of hate and love, the promise to cure illnesses, curable and not curable; in sum, to fascinate and subjugate public belief.”<sup>24</sup> Article 158 proscribed “administering, or simply prescribing any substance of the natural domains for internal or external use, or in any way prepared, thus performing or exercising the office denominated as *curandeiro*.”<sup>25</sup> Roughly speaking, Article 156 restricted healing practices, Article 157 prohibited the invocation of

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FREEDOM (2005).

18. CONSTITUIÇÃO 1891 [CONSTITUTION] art. LXX, §4 (Braz.).

19. YVONNE MAGGIE, *MEDO DO FEITIÇO: RELAÇÕES ENTRE MAGIA E PODER NO BRASIL* (1992); EMERSON GIUMBELLI, *O CUIDADO DOS MORTOS: UMA HISTÓRIA DA CONDENAÇÃO E LEGITIMAÇÃO DO ESPIRITISMO* (1995); PAUL CHRISTOPHER JOHNSON, *SECRETS, GOSSIP AND GODS: THE TRANSFORMATION OF BRAZILIAN CANDOMBL . . .* (2002).

20. Decreto no. 528, de 28 de Junio de 1890, DIÁRIO OFICIAL DA UNIÃO [D.O.U] de 28.6.1890 (Braz.).

21. Decreto no. 173, de 10 de Setembro de 1893, DIÁRIO OFICIAL DA UNIÃO [D.O.U] de 10.9.1893 (Braz.).

22. Decreto no. 847, de 11 de Outubro de 1890, DIÁRIO OFICIAL DA UNIÃO [D.O.U] de 11.10.1890 (Braz.) (stating it is to a crime to “[p]retend to be a minister of a religious confession or exercise functions as such for financial gain or any other use. (“Fingir-se ministro de qualquer confissão religiosa e exercer as funções respectivas para obter de outrem dinheiro ou utilidade.”)).

23. Decreto no. 847, de 11 de Outubro de 1890, DIÁRIO OFICIAL DA UNIÃO [D.O.U] de 11.10.1890 (Braz.).

24. *Id.*

25. *Id.*; MAGGIE, *supra* note 19, at 22; GIUMBELLI, *supra* note 19, at 55; JOHNSON, *supra* note 26, at 77, 82.

spirits or the manufacture of objects understood to have power or mobilize sentiments, and Article 158 repeated 156, specifying the occupation of the usually indigenous or Afro-Brazilian religious healer, curandeiro. Yet none of these articles were seen as contravening freedom of religion because Afro-Brazilian practices were regarded less as “religion” than as a hybrid of custom, morality, hygiene and health.<sup>26</sup> Afro-Brazilian ritual practices were policed and prosecuted under these so-called “public health” laws, until 1940.<sup>27</sup>

Noteworthy is how Afro-Brazilians religions were legally classified as a form of disease afflicting the national body.<sup>28</sup> The regulation of Afro-Brazilian religions was intended to cause their cessation. The imagined scenario, at least from the perspective of the agents of the State, was that freed slaves would assimilate and adopt religious identities in keeping with the national form—that is, as Roman Catholic.<sup>29</sup> African religions were not viewed as part of the legally protected freedom of religion; instead they were relegated to the alternative legal track of public health and hygiene law.

In fact, the Afro-Brazilian religion called Candomblé—a tradition similar to Haitian Vodou or Cuban Santería, which conducts ritual events in which the gods of West Africa (orixás) are incorporated in the bodies of devotees—was never fully protected under the 1891 constitutional “freedom of religion” clause until 1976.<sup>30</sup> Unlike Afro-American religious practices, there was no revolution after which religious freedom was directly bestowed on Afro-Brazilian religions. Rather, over a period of fifty years, spirit possession practices came to seem familiar and domestic rather than foreign and dangerous. This

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26. Paul Christopher Johnson, *Law, Religion, and “Public Health” in the Republic of Brazil*, 26 *LAW & SOCIAL INQUIRY* 9, 15–20 (2001).

27. *Id.*

28. See, e.g., JURANDIR FREIRE COSTA, *ORDEM MÉDICA E NORMA FAMILIAR* (1989); Dain Borges, ‘Puffy, Ugly, Slothful, and Inert’: *Degeneration in Brazilian Social Thought, 1880–1940*, 25 *J. LATIN AM. STUD.* 235 (1993).

29. So, for example, the first medical doctor and criminologist to study Candomblé in any depth, Raimundo Nina Rodrigues, expressed concern about the degree to which practitioners of this religion *could* become legitimately Catholic or Brazilian.

RAIMUNDO NINA RODRIGUES, *O ANIMISMO FETICHISTA DOS NEGROS BAHIANOS* 15, 28 (1935).

30. For a concise summary of the religion of Candomblé, see JOHNSON, *supra* note 26, at 35. On the achievement of freedom of religion for Candomblé, see J. LORAND MATORY, *BLACK ATLANTIC RELIGION: TRADITION, TRANSNATIONALISM AND MATRIARCHY IN THE AFRO-BRAZILIAN CANDOMBLE* 261 (2009). In Haiti, Vodou was not granted full legitimacy as a “religion,” with the right for its priests to legally marry and bury citizens, until 2003, under Jean-Bertrand Aristide. See Paul Christopher Johnson, *Secretism and the Apotheosis of Duvalier*, *JOURNAL OF THE AMERICAN ACADEMY OF RELIGION* 420, 440 (2006).



occurred as they were gradually associated with North American and European practices of Spiritism inspired by the French writer Allan Kardec.

Spiritism was a new religious movement spawned in the 1850s in part from technological developments like the telegraph and photography. Its adherents perceived messages from the dead, much as the telegraph enabled hearing messages from afar. Allan Kardec began publishing manuals on the techniques of communicating with the dead in 1857; by 1860 his books were already widely circulating in Brazil and acquiring a following among elites.<sup>31</sup> Like Afro-Brazilian rituals, Spiritism involved mediumship or spirit possession, yet it came to be viewed as a legitimate middle-class religion in the first decades of the 20<sup>th</sup> century. The legitimacy of Spiritism slowly shifted how elites viewed Afro-Brazilian traditions.<sup>32</sup> Mediated and brokered by Euro-American Spiritualism and its popular appeal, possession practices became a standard and universally accepted ritual repertory by the mid-20th century in Brazil; perhaps even a part of its particular social contract.<sup>33</sup>

In the following pages, I recount and interpret two kinds of legal processes and two sets of spirits that appeared in Brazil roughly a century apart, one from 1871 and others from almost a century later, after the legitimization and normalization of possession practices through the acceptance and toleration of Spiritism and, later, of Afro-Brazilian Candomblé. By counter-posing cases from the two periods, I aim to cast into relief the legal repression of spirit possession, and in the later case the elevation and even legal uses *of* spirit possessions. Thus juxtaposed, the cases raise key questions, elaborated in the Discussion section: What is a “legal person”? What kind of personhood does law require? The comparison will show that the legal person is a shifting target. In the first case of an accused Afro-Brazilian priest named Juca Rosa, his possessed personhood rendered him criminally outside of the

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31. ALLAN KARDEC, *LE LIVRE DES ESPRITS* (1857). On this and other works' circulation from France to Brazil, see MARION AUBRÉ E AND FRANÇOIS LAPLANTINE, *LA TABLE, LE LIVRE ET LES ESPRITS: NAISSANCE, EVOLUTION ET ACTUALITÉ DU MOVEMENT SOCIAL SPIRITE ENTRE FRANCE ET BRÉSIL* (1990); DAVID J. HESS, *SPIRITS AND SCIENTISTS: IDEOLOGY, SPIRITISM, AND BRAZILIAN CULTURE* 86 (1991).

32. GIUMBELLI, *supra* note 19, at 229.

33. The Brazilian anthropologist Gilberto Velho, for example, described the familiarity with the idiom of spirits and spirit-possession as a “strong binding factor” for understanding otherwise heterogeneous Brazilian social experience. See GILBERT VELHO, *Unidade e fragmentação em sociedades complexas*, in *DUAS CONFERÊNCIAS* 27, 34, 41 (1992).

law. He was, so to say, possessed of an illegal personhood. The second case presented, a set of more recent trials in Brazil involving spirit-testimonies have, by contrast, placed possession states at the center of at least some legal decisions. Spirits and their human mediators have been used as a potential legal tool and technique of truth-telling. All the cases involving possession, though, entail and allow a deferral or complicating of individual accountability, as spirits have variously infiltrated the legal process.

I begin with 1871 and the case of Juca Rosa, a famous Afro-Brazilian “sorcerer” (*feiticeiro*). In the second part, I describe several cases from the 20th and 21st centuries where spirit-testimonies transmitted in writing by possessed mediums entered into the legal process. In the concluding discussion, I compare the cases and call attention to the challenge of discerning and defining the “legal person” in societies where multi-personated bodies are cultivated.

#### 19TH CENTURY BRAZIL AND THE CASE OF JUCA ROSA

##### *A context of social and national transition*

Brazilian trade with states other than Portugal greatly expanded in 1808, with the opening of Brazilian ports and the loosening of a strictly enforced mercantile relation with Portugal.<sup>34</sup> The charter expanded trade with Great Britain, but in so doing also invited new religious diversity. Protestant and Jewish traders and their descendants now mixed with Catholics, and debates about a “civil” idea of religion that would give equal rights to non-Catholics were initiated. Religious toleration was officially registered in Brazil’s 1824 Constitution, Article 5, in the wake of declaring its independence from Portugal in 1822.<sup>35</sup> Still, the 1830 Criminal Code (Article 276) declared the public display or participation in any religion other than that of the State to be a crime, and even proscribed the seeking of spiritual “gifts” (*graças*) or other religious kinds of authority from outside the State.<sup>36</sup> In prac-

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34. This decree (*carta régia*) of January 28, 1808 was promulgated by the Prince-Regent João VI, as the Decreto de Abertura dos Portos às Nações Amigas (Decree Opening Ports to Friendly Nations).

35. See JOHNSON, *supra* note 26 at 77.

36. See 1830 Criminal Code Article 81: ([Under the category of Crimes against the Nation]: Taking recourse of entreaties to spiritual benefits, distinctions or privileges of the Ec-

tice, Catholicism remained in control of virtually all aspects of Brazilian personhood: marrying, burying, and inheritance, but even a subject's legal existence whatsoever. As the Brazilian historian Keila Grinberg noted, "In the last instance the Church guarded even the power to determine the juridical status of a person, since the sole documents of individual registration were produced in the Church—especially baptismal records that in practice served as birth certificates."<sup>37</sup>

Afro-Brazilian ritual practices, meanwhile, though operating in the direct shadow of the Catholic Church and even appropriating Catholicism's saints, festal days, garments and tools, did not even register in the constitutional question of religious tolerance. Since 1810 the question of religious liberty had focused mostly on accommodating foreign Protestants.<sup>38</sup> African and Afro-Brazilian slaves underwent nominative conversions and regularly took part in Catholic saints' day holidays.<sup>39</sup>

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clesiastic Hierarchy from foreign authorities either within or outside the empire without legitimate permission. ("Recorrer á Autoridade Estrangeira, residente dentro, ou fóra do Imperio, sem legitima licença, para impetração de graças espirituaes, distincções ou privilegios na Jerarchia Ecclesiastica, ou para autorização de qualquer acto religioso.").

Article 276: [under Crimes Against Religion, Morality and Custom] Celebrating a cult or other religion besides that of the State in any house or building that has the exterior form of a Temple or anywhere in public.

("Celebrar em casa, ou edificio, que tenha alguma fôrma exterior de Templo, ou publicamente em qualquer lugar, o culto de outra Religião, que não seja a do Estado.").

The Criminal Code of 1830 can be consulted at:  
[http://www.planalto.gov.br/ccivil\\_03/leis/lim/lim-16-12-1830.htm](http://www.planalto.gov.br/ccivil_03/leis/lim/lim-16-12-1830.htm) (last viewed on March 2, 2016).

In the Constitution of 1824, freedom of "private" religion, as "domestic cults," was promulgated. See Article 5: The Apostolic Roman Catholic Religion will continue to be the religion of the Empire. All other religions will be permitted in household or private practice, or in houses designated for this purpose without any exterior marks of a temple.

("A Religião Católica Apostólica Romana continuará a ser a religião do Imp. . . rio. Todas as outras religiões serão permitidas com seu culto dom. . . stico, ou particular, em casas para isso destinadas, sem forma alguma exterior de templo.").

The Constitution of 1824 can be consulted at:  
[http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao24.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao24.htm) (last accessed March 3, 2016).

37. KEILA GRINBERG, *CÓDIGO CIVIL E CIDADANIA* 38 (2001).

38. Beginning in 1810, Portugal signed a treaty with the British securing freedom of religion in Portuguese lands including Brazil. Protestants were not allowed to build obvious religious structures or otherwise demonstrate their faith in public, but were otherwise granted religious liberty. This policy was continued, with some modifications, until the 1891 disestablishment of Catholicism as state religion. See JUSTO GONZÁLEZ AND ONDINA E. GONZÁLEZ, *CHRISTIANITY IN LATIN AMERICA* 190 (2007).

39. See, e.g., KATIA M. DE QUEIRÓS MATTOSO, *TO BE A SLAVE IN BRAZIL, 1550–1888* 127, 128 (1986); JANE LANDERS & BARRY ROBINSON, *SLAVES, SUBJECTS, AND SUBVERSIVES:*

Questions of Afro-Brazilian religious freedom were buried in much broader civil questions of slaves and former slaves' personhood. If a slave was a thing and form of property without any legal possibility of entering into a contract or leveraging a civil action against a citizen, the question of his or her capacity to engage in legitimate "religion" was mostly moot.<sup>40</sup> Freedom of religion for Afro-Brazilians was inextricably entangled with the history of emancipation.

Unlike Haiti's or Cuba's anti-colonial revolutions leading to abolition, Brazil's transition to emancipation was a long, graduated process. Slave-shipping was officially illegal after 1836, at least "para inglês ver" (for the English to see), yet it continued with only partial disruption from the British navy until 1850.<sup>41</sup> After 1850, the trans-Atlantic shipments of African slaves mostly ceased, but the institution of slavery and the internal trade in slaves continued, a great migration from the northeastern sugar zones of Bahia and Pernambuco to the burgeoning coffee plantations in the southeastern states of Rio de Janeiro and São Paulo.<sup>42</sup> Many landowners lobbied for resolving the impending labor crisis of abolition with the importation of Chinese "coolies" who might prove more submissive than Africans, as the British slaving colonies had done after their 1836 emancipation of slaves in Caribbean colonies like Jamaica and Trinidad. Other elites argued this would only deleteriously "mongolize" the Brazilian nation and was a mistake. At least, they argued, the African and Afro-Brazilian slaves were already Catholic, and in that sense part of the nation.<sup>43</sup>

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BLACKS IN COLONIAL LATIN AMERICA 113–14 (2006).

40. See GRINBERG, *supra* note 37, at 48–49. Slaves in Brazil were considered as property albeit, at least by the later 19th century, inalienable property in the sense that they would cease to be slaves by virtue of being sold. But beginning in the early 19th century, slaves were on rare occasions successful in asserting legal personhood: On one slave's successful freedom suit in 1813 against a master who had granted emancipation and then rescinded it, see KEILA GRINBERG, *LIBERATA, A LEI DA AMBIGUIDADE—AS AÇÕES DE LIBERDADE DA CORTE DE APELAÇÃO DO RIO DE JANEIRO NO S. . . CULO XIX* (1994). To compare with slightly later cases in Louisiana and Cuba, see REBECCA J. SCOTT, *DEGREES OF FREEDOM: LOUISIANA AND CUBA AFTER SLAVERY* (2008). In the U.S., the problem of slaves' personhood was famously "solved" in the U.S. by James Madison, in Federalist No. 54 that characterized slaves' three-fifths ratio to describe persons who were also things. See Malick W. Ghachem, *The Slave's Two Bodies; The Life of an American Legal Fiction*, 60 *THE WILLIAM AND MARY QUARTERLY* 809 (2003).

41. The Eusébio de Queiros Law, passed on September 4, 1850, made the shipping of enslaved Africans to Brazil illegal.

42. Robert Slenes gives the number of 222,500 slaves transferred internally between 1850–1881. See ROBERT SLENES, *The Brazilian Internal Slave Trade, 1850-1888: Regional Economies, Slave Experience, and the Politics of a Peculiar Market*, in *THE CHATTEL PRINCIPLE: INTERNAL SLAVE TRADES IN THE AMERICAS* 325, 331 (2004).

43. EMILIA VIOTTI DA COSTA, *THE BRAZILIAN EMPIRE: MYTHS AND HISTORIES* 149 (2000).

Slaves who fought in the war against Paraguay from 1865 to 1870 were offered their liberty, and the old institution's grip was further shaken with the September 28, 1871 "Law of the Free Womb" (*Lei do Ventre Livre*), emancipating children born of enslaved mothers. In 1885, those over 60 years of age were granted their freedom. Total emancipation was finally decreed by Princess Isabela's declaration of the "Golden Law" of 1888.<sup>44</sup> If the Golden Law's arrival was relatively anti-climactic, this was because Brazil was the last nation of the Americas to abolish slavery, two years after Cuba in 1886, and also because by 1888 most Afro-descendants in Brazil were already free. For example, in Rio de Janeiro, the capital, between 1849 and 1872 the proportion of slaves declined from 42% to just 18% of a population of around 275,000.<sup>45</sup> Such a precipitous decline points to the dramatic social transition then underway in Rio, from a city dependent on slave-labor to a mostly free city. Paradoxically, though, the arrival of freedom for the previously enslaved was correlated with increasing police and legal surveillance of their religious practices.<sup>46</sup> The 1870s policing of Afro-Brazilian religions often applied 17<sup>th</sup> century representations of African spirits—a dramatic case of what I will call *judicial lag*--as the next section will show.

#### *The Juca Rosa event*

At the precise moment the Law of the Free Womb was being debated, and then passed, the most notorious nineteenth-century case of illegal fetishism was tried in the imperial city of Rio. The case involved Juca Rosa, a descendant of slaves and a famed Afro-Brazilian priest in Rio. Rosa was arrested in 1871 and his trial was front-page news for the duration of the proceedings and long thereafter.<sup>47</sup> An anal-

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44. See The *Lei Aurea* of 1888 ("The Golden Law").

45. SIDNEY CHALHOUN, *VISÕES DA LIBERDADE* 199 (1990).

46. The historian Thomas Holloway found that Afro-Brazilian religions were rarely directly policed in Rio during the 19<sup>th</sup> century, except when they intruded on "what the white elite considered a necessary level of social peace and public calm." The interest in Afro-Brazilian religious practices was mostly a late-19<sup>th</sup> century phenomenon, roughly correlated with Abolition. See Thomas H. Holloway, 'A Healthy Terror': Police Repression of Capoeiras in Nineteenth-Century Rio de Janeiro, 69 *HISPANIC AMERICAN HISTORICAL REVIEW* 645 (1989). I would argue that the Juca Rosa case marked the beginning of the problematizing of Afro-Brazilian religions, as emancipation neared and those religions would become part of the social life of the nation.

47. "Juca Rosa" became the generic name of a type of person. Even two decades after the case, newspapers invoked the name. See, inter alia, the major Rio newspaper *O Paiz*, March

ysis of his arrest and trial will help us focus and clarify issues of possession and personhood that were in play just below the surface of the law. At stake in 1871 was nothing less than the question of whether, and how, Afro-Brazilians, slaves and former slaves, could become full citizens—accountable, contract-worthy, rational, and autonomous, but also sufficiently loyal to the nation that had enchained them.<sup>48</sup> Afro-Brazilian slaves and freemen alike were feared and, albeit usually more circumspectly, often admired for their putative skill in emerging national forms of music, in the martial art/dance form called *capoeira*, in magic and seduction, and for their gifts in the ritual arts of possession. From the perspective of the police and imperial authorities, they demanded reconnaissance and interpretation. State interests were involved in learning to read possession, in seeing and reforming the secret forces that lay under the skin and, toward that end, in anthropologically documenting and legally reckoning that inner life. This was the project to which early criminological, anthropological, medical, and photographic efforts were devoted.<sup>49</sup> In the age of gradual emancipation and the pluralization of the public sphere Afro-Brazilians required strategic assimilation, containment, or marginalization. Any or all of these scenarios would call for expanded political and medical surveillance. Gabriela dos Reis Sampaio carefully documented this case, and I make reference to her work while also employing my own reading of the case archive.<sup>50</sup>

The trial of Jose Sebastião Rosa, known as Juca Rosa, was among the most sensational of the 19<sup>th</sup> century, and the public attraction to the case seems to have represented at once fascination and fears of the pollution of the national body in the period leading to emancipation, as described above. Accused of “charlatanism” and fraud (*estelionato*), Rosa was alleged to have illegally and immorally profited

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26, 1889, p. 1, where, under the story entitled “Scenas Vulgares,” a disreputable but seductively charismatic personage is described as “a Juca.” Even in the 1920s, the newspaper *Jornal do Brasil* printed an advertisement for a book entitled, “The Book of Sorcery; or the Science of Juca Rosa Revealed” (LIVRO DO FEITIÇO, OU A CIENCIA DE JUCA ROSA REVELADO.) *Jornal do Brasil*, May 6, 1924, p. 21.

48. See SIDNEY CHALOUB, *VISÕES DA LIBERDADE: UMA HISTÓRIA DAS ÚLTIMAS D. . . CADAS DA ESCRAVIDÃO NA CORTE* (1990).

49. See PAUL CHRISTOPHER JOHNSON, *Objects of Possession*, in *SENSATIONAL RELIGION: SENSORY CULTURES IN MATERIAL PRACTICE* 25 (2014).

50. GABRIELA DOS REIS SAMPAIO, *JUCA ROSA: UM PAI-DE-SANTO NA CORTE IMPERIAL* (2007).

by representing himself as a bearer of false magical powers. The defendant was creole, born in Brazil of an African mother.<sup>51</sup> His father was never identified. In Rosa's early adult years he earned a living as a tailor and a coachman. By the 1860s he had acquired a following as a possession priest of remarkable skill. In his dwelling in a part of the city known for vice, he received a large clientele that crossed classes and races, as well as a devoted circle of at least several dozen ritually initiated "daughters" and "sons."<sup>52</sup> Most of his followers, though, were women.

In 1870 Rosa was anonymously denounced in a long, 20-page letter drafted to the Imperial Police and published in a major newspaper, *Diário de Notícias*.<sup>53</sup> The letter was received by the Judge of the 2nd District, Miguel José Tavares, who had recently undertaken a dogged campaign to purge the inner city of its brothels and slums.<sup>54</sup> In fact, he helped 186 female slaves who were forced to prostitute themselves gain their freedom, arguing successfully before the courts that masters forfeited their property rights over slaves by prostituting them.<sup>55</sup> Judge Tavares likely envisioned his prosecution of Juca Rosa as part of the larger mission of eliminating Rio's underworld prostitution, and for that reason kept Rosa in jail on scant evidence for a full eight months during his investigation, even prior to his conviction. In July of 1871, Juca Rosa was charged with fraud (*estelionato*, under Penal Code Article 264) and sentenced to six years of prison and hard labor until 1877, after which he disappeared from the public record. Yet for a full year prior to his sentencing, the story of the celebrity *feiticeiro* was front-page news, not only in Rio but even nationwide. The mere name,

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51. While Juca Rosa enjoyed unusual fame, the arrest and prosecution of Afro-Brazilian priests and priestesses for reasons of illegal sorcery or for fraud was hardly rare. See JOÃO JOSÉ REIS, DOMINGOS SODRÉ, UM SACERDOTE AFRICANO: ESCRAVIDÃO, LIBERDADE E CANDOMBLÉ NA BAHIA DO SÉCULO XIX [2008]; and LUIZ ALBERTO ALVES COUCEIRO, PAI GAVIÃO E A COROA DA SALVAÇÃO (2004); JAMES HOKE SWEET, DOMINGOS ÁLVARES, AFRICAN HEALING, AND THE INTELLECTUAL HISTORY OF THE ATLANTIC WORLD (2011). The fact that he was born in Brazil rather than in Africa was important in his sentencing. African-born priests were sometimes deported back to their countries of origin, cf. the case of Antão Teixeira in Sampaio, *supra* note 58, at 78, but this possibility never arose in the case file of Juca Rosa.

52. Processo José Sebastião de Rosa, Arquivo Nacional, Corte de Apelação (Court of Appeals), Rio de Janeiro. Maço (Bundle) 196, caixa (Box) 11139, número 1081, galeria C (1871).

53. *Id.*

54. RONALDO VAINFAS, HISTÓRIA E SEXUALIDADE NO BRASIL 160 (1986).

55. Tavares letter of March 18, 1871, in ROBERT CONRAD, CHILDREN OF GOD'S FIRE: A DOCUMENTARY HISTORY OF BLACK SLAVERY IN BRAZIL 131–32 (1983).

“Juca Rosa,” became a type and a fulcrum for gossip about Afro-Brazilian religions and their place in the emerging public sphere, such that we should consider Juca Rosa as an “event” extending well beyond the parameters of his specific case.<sup>56</sup>

Central to this event were issues of class, sex, religion, and race. The public was fascinated by the accusations of Jose’s deflowering of white women, and his marriage to a Portuguese senhora, and indeed, it was the reports of these alliances that prompted the anonymous denunciation and motivated the initial inquest.<sup>57</sup> Beyond the specter of interracial sex, the fact that Rosa was routinely possessed by “foreign” spirits was a subject of special concern to investigators.<sup>58</sup> As one journalist put it, “The sorcerer says he is inspired by an invisible power that is not God, nor any saint known to us.”<sup>59</sup> A public prosecutor involved in the case, Antonio de Paula Ramos, accused Juca Rosa of presenting himself as master of supernatural powers. Dressed in a “special manner” before the altar of Our Lady of the Conception, he celebrated crude ceremonies. He claimed to be inspired and infallible by virtue of this illuminated state—with “saint in the head”<sup>60</sup>—and received money and presents as a result of this special status. Through claims of spirit knowledge, he “deceived uncultivated, weak and superstitious spirits [of his followers].”<sup>61</sup> Here then was a subversive social “adventurer,”<sup>62</sup> as he was called, taking over the national body by sabotaging its rational direction and assuming its controls from within during a period of radical change

The prosecution’s focus on Juca Rosa’s involvement with spirits, and spirit possession, was tenacious. Neither Judge Tavares nor the public prosecutor showed much interest in other features of ritual performance.<sup>63</sup> They demanded no information on lyrics of the songs that

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56. *Supra*, note 55.

57. Processo José Sebastião de Rosa, *supra* note 52.

58. *Id.*

59. “The sorcerer has power over everything, because his ‘saint’ [spirit] knows everything, hear’s everything and tells of it . . . The sorcerer claims to be inspired by an invisible power that is not God, nor any saint that we know.” (“O feiticeiro . . . para tudo tem poder, porque o seu santo tudo sabe, tudo ouve e tudo conta. . . O feiticeiro diz-se inspirado por um poder invisível que não é Deus, nem santo do nosso conhecimento.”) *Diário de Notícias*, October 2, 1870. Cited in Sampaio, *supra* note 50 at 40.

60. *Id.* at 104a.

61. Processo José Sebastião de Rosa, *supra* note 52 at 63.

62. *Id.* at 12.

63. *Id.* at 67b.



were sung, for example, or the ingredients of the foods that were prepared and offered to the saints. Descriptions of drums and icons appear to enter the record in only cursory ways, as placeholders in a standard caricature of primitive fetishism.<sup>64</sup> The investigation remained resolutely focused on Juca's posturing as a spirit-holder, and the kind of power with which that role endowed him. They wanted to know how, by virtue of receiving "saints in the head," he was able to exact not only fealty but also generous financial, material, and sexual favors from his followers.

Also of concern to the prosecution were issues of religion and national identity. Rosa's "theft" of Catholicism was noted in Inspector Tavares' introduction to the case file.<sup>65</sup> The prosecution accused him of performing illegitimate baptisms and marriages and of misusing Catholic saints in an African possession religion, taking control of the look of the saints but then insidiously transforming them from within. Tavares wrote in the opening pages of the case file, "The audacity and perversity of these criminals goes to the point of involving our Holy Religion in its infamous practices, succeeding in substituting it with the most crude and abject superstition."<sup>66</sup> A few pages further on he added, "Rosa dares to make use of the images and names of the saints of the Catholic Church, in order to take advantage of even the religiosity of his victims, which he then transforms into the vilest superstition."<sup>67</sup>

Not incidental in the depositions that appear in the case file was a debate over what constitutes "Religion" at all. No comparative legal definition existed of "Religion," since in the colony—where the Código Filipino and Catholic Inquisitorial law reigned supreme, such that no bona fide "religion" existed outside of the Church, as described above—none had been required. Nevertheless, a civil notion of religion was being worked out in the legal process, in the interstices. For example, the defense lawyer Fillipe Jansen de Castro Albuquerque Junior argued for Rosa's innocence based on what he called a specious

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64. *Id.*

65. *Id.* at 14b.

66. *Id.* at 12b ("A audacia e perversidade d'estes crimiosos chega ao ponto de envolver a nossa Santa Religião em suas practices infames, conseguindo substitui-la pela mais grosseira e abjecta superstição.")

67. *Id.* at 14b ("Rosa atreve-se a servir-se de imagens e do nome de Santos da Igreja Catholica, afim de aproveitar-se até da religiosidade de suas victimas...religiosidade que elle transfrma na mais grosseira e vil superstição.")

and shifting opposition between “sorcery” vs. “religion.”<sup>68</sup> He wrote, “This fame, this power, these wonders, when tolerated and not suppressed by the police, repeated over many years, will elevate these ‘sorceries’ to a ‘belief’ or ‘religion.’”<sup>69</sup> One period’s sorcery may be a succeeding generation’s religion, he claimed. Albuquerque Junior made additional subtle arguments. He proposed, for example, that the investigation and prosecution had applied terms to Juca Rosa that technically enjoyed no standing in a court of law—“sorcery,” “fetishism,” “deflowering.”<sup>70</sup> They should, he argued, be acknowledged as anachronistic survivals of the Phillipine Code<sup>71</sup> still alive but breathing its last gasps. Argued Albuquerque Junior, these terms could not serve as legitimate categories of empirical investigation, thus their presence had no purpose but to bamboozle: to sway public opinion, enflame sentiments, and otherwise infiltrate proper judicial reasoning with the terms of medieval witch hunts. In short, the defense lawyer tried to marshal and quicken the judge’s “modern” ambitions and, more broadly, the national fears of being left behind in the evolution of nations.

Given the extremely public quality of the trial, that its every subtext was reported in newspapers nationwide, the relentless drumbeat of the *feiticeiro* accusation likely influenced Rosa’s eventual conviction. Into that one loaded word a series of notions was packed: of Africanness, black magic, dissimulation, promiscuous sexuality, and more. It may seem surprising that at least a half-century after a new legal regime (the 1830 Penal Code) had officially replaced the Phillipine Code, such terms nevertheless remained. We can call this “judicial lag,” the interstitial or overlapping period between two legal regimes.<sup>72</sup>

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68. *Id.* at 140b.

69. *Id.*

70. *See generally id.* at 15.

71. The *Ordenações Filipinas* derived 1603, from the time of King Phillip who ruled Spain in the period when Spain and Portugal were a joined kingdom (1580–1640). The Code can be accessed at <http://www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm> (last consulted March 10, 2016).

72. A new Civil Code was mandated when Brazil became independent from Portugal in 1822, and the 1824 Constitution ordered new Civil and Criminal Codes, specifying that the *Ordenações Filipinas* should continue in effect until the new codes were completed and implemented. While a new Criminal Code became effective in 1831, and a new Commercial Code was effected in 1854, a new Civil Code was not completed until 1916; thus the Phillipines Code remained in play, at least technically, well into the 20<sup>th</sup> century. Teixeira de Freitas, President of the Institute of Brazilian Lawyers and counsel for the Secretary of State (*Conselho de Estado*) was contracted by the government in 1855 to draft the new code, but by 1867 he desisted, citing incompatibilities with the government. *See* GRINBERG, *supra* note 42 at 10.

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The terms and categories from 1603 yet remained in the interstices, embedded in all the discourse that takes part in constituting, and influencing the outcome of, a trial.

No legal process could determine the authenticity of Rosa's possessions, or his intent—how could one determine whether he was possessed by spirits, or whether he authentically believed himself so inspired. Still, his conviction derived in part from being persuasively presented *as* a feitiçeiro, in colorful 17<sup>th</sup> century terms.<sup>73</sup> Though the defense lawyer assiduously reminded the court that *fetishism* and *sorcery* were no longer valid crimes, the very need for those repeated reminders only indicate how powerful those words still were. The African spirits, and the 17<sup>th</sup> century representations of them, haunted the legal record of the early 1870s.

By virtue of their ritually superadded agencies, the spirits of foreign sovereigns that occupied their bodies, Afro-Brazilian practices were judged to not be viable citizens' religions, as religions able to be assimilated to Catholicism, the only legal religion through 1891. This was for predictable reasons of national identity being entangled with religious tradition, but also because of the growing power of the medical establishment that consolidated its authority by marginalizing folk healers, divination techniques, and Afro-Brazilian material practices (*curandeiras*, *sortilegios*, *feitiçaria*) under the antiquated rubrics.<sup>74</sup> To wit, even two decades after the trial, the influential doctor and criminologist, Raimundo Nina Rodrigues described the Afro-Brazilian tradition of Candomblé as a risk to the budding republic: Its West African deities comprised a form of foreign government, he posited, and those who practice Yoruba religion thus practice a rival political system.<sup>75</sup> Rodrigues declared that he had even heard of possession's power in motivating battle and sedition—a good reason, he wrote, to prohibit African immigration.<sup>76</sup> The religion problematically involves possession, the loss of individual personality, memory, and accountability.<sup>77</sup> Finally, he argued, Candomblé has already taken possession of the

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73. See *e.g.*, Book V, Code III from 1603 expressly prohibits acts of calling powers of the devil—("invocar spiritos diabolicos"). The Code can be accessed at <http://www1.ci.uc.pt/ihti/proj/filipinas/ordenacoes.htm> (last consulted March 10, 2016).

74. MAGGIE, *supra* note 19..

75. Raimundo Nina Rodrigues, O ANIMISMO FETICHISTA DOS NEGROS BAHIANOS 112 (1935).

76. *Id.*

77. *Id.* at 99, 116–17.

country; it has penetrated “no ânimo publico,” into the public spirit, and risks further expansion via contagion. He drove this home dramatically with a description of a possessed white girl,<sup>78</sup> a rhetorical move calculated to demonstrate the spread of Afro-Brazilian practices across all social sectors, and the risks to personhood—and thus to the nation—they posed.

*Photographic evidence and “intent”*

Juca Rosa evoked fear and invited interpretation for many of the reasons named by Nina Rodrigues. Emerging national, medical, and criminological regimes—and often all three at once—availed themselves of the new technology of photography to assess the inner lives of citizens/ patients/ perpetrators.<sup>79</sup> In the same year that the French police were gathering photographs of all who had participated in the Paris Commune in order to catalogue all dissidents,<sup>80</sup> Brazilian authorities were anxiously examining a photo of Juca Rosa for dangerous signs. His case was thoroughly affected by the new technology of photography, as we will see.

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78. *Id.* 123–6. For the case of Cuba, compare FERNANDO ORTIZ, *HAMPA AFRO-CUBANA: LOS NEGROS ESCLAVOS* 17 (1916), who does the same.

79. See generally Susan Sontag, *ON PHOTOGRAPHY* (1977). On the co-making of Anthropology and photography, see *ANTHROPOLOGY AND PHOTOGRAPHY* (Elizabeth Edwards, ed. 1992); Jens Andermann, *Espetáculos da diferença: a Exposição Antropológica Brasileira de 1882*, *TOPOI - REVISTA DE HISTÓRIA* 128–70 (2004); PATRICIA LAVALLE, *O ESPELHO DISTORCIDO: IMAGENS DO INDIVÍDUO NO BRASIL OITOCENTISTA* (Belo Horizonte: UFMG, 2003), Georges Didi-Huberman, *Invention de l'hystérie: Charcot et l'iconographie photographique de la Salpêtrière* (1982). Lilia Moritz Schwarcz, “Além do enquadramento: Em Paris ou no Rio de Janeiro, fotos de presos revelam muito mais do que a identificação de ‘vagabundos,’” *Revista de história.com.br*, 2011.

80. Sontag, *On Photography*, 7. The French photographer Disdéri systematically took portraits of the dead in their coffins.

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Rosa's case was unusual because of the large role played by one small photograph. His case file still includes the image.

Figure 1



[Photo taken by Author. Processo José Sebastião de Rosa, Arquivo Nacional, Corte de Apelação (Court of Appeals), Rio de Janeiro. Maço (Bundle) 196, caixa (Box) 11139, número 1081, galeria C, at 22 (1871)].

The photo was discovered by the police in the home of one of his followers and was employed in the process of acquiring depositions. Investigators presented the photograph to all witnesses, wielding it as a prompt for testimony.<sup>81</sup>

The photograph's material form was that of the *carte de visite*, a type of small portrait produced in sets of eight per photo plate and popularized in the late 1860s for cheap and easy distribution.<sup>82</sup> The portrait depicts Juca Rosa and a companion standing on a proscenium painted with flowers and set against a bare white background. The

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81. Inspector Ignacio Ronaldo recorded his discovery of the photograph and his use of it in acquiring testimonies. Processo Jos. . . Sebastião de Rosa, *supra* note 52 at 12, 27.

82. Jaguaribe, Beatriz and Maurício Lissovsky. 2009. The Visible and the Invisibles: Photography and Social Imaginaries in Brazil. *Public Culture* 21/1: 175–209.

open space is filled by a ritual situation or, more likely, a ritual simulation. A follower named João Maria da Conceição kneels before Rosa and points toward him with a staff.<sup>83</sup>

Despite the action conveyed and the import accorded to it by the police investigation, the photograph is silent in its fact-making. We know from depositions only that Juca's clients possessed his photograph, and that Rosa also kept photos of them.<sup>84</sup> The uses of the photographs remain blurred, though some depositions hint that holding images of persons may have served as a means of ritually controlling them.<sup>85</sup> Leopoldina Fernandes Cabral told Tavares that even when she wanted to break free from Rosa's influence, she could not because he had threatened her, "telling her that if she does (leave), he, with the spirit that he ruled for good as for harm, would disgrace her and make her end up in at Mercy Hospital."<sup>86</sup>

Matjis Van de Port gives a plausible explanation from another sector of 19<sup>th</sup> century Brazilian religion: "The 'photographic real' was picked up in religious-magical practices, where it came to substitute the body."<sup>87</sup> Photographs were used, he notes, in place of wooden body parts as ex-votos left in churches testifying the occurrence of a miraculous healing, and even as proxies of deceased children.<sup>88</sup> Rosa may have used carte de visite photographs of his devotees following this logic, as proxies for their bodies, just as many Afro-Atlantic ritual practices, as well as other traditions, employ photographs in our own time. By ritually acting on the photograph for harm or benefit, the person is affected as well, and indeed, several statements given by witnesses indicate that Rosa declared as much.<sup>89</sup> Juca Rosa's photograph may also have served as a bodily proxy of his presence for his followers. Here the photographic real assumes another meaning, however, whereby the photograph extends a priest's presence and power into clients' homes and bodies to, by virtue of the "photographic real," exert religious authority over them.

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83. Processo José Sebastião de Rosa, *supra* note 52 at 35.

84. *Id.* at 104, 133.

85. *Id.* at 20, 86b.

86. SAMPAIO *supra* note 50 at 99.

87. MATTIJIS VAN DE PORT, ECSTATIC ENCOUNTERS: BAHIAN CANDOMBLÉ AND THE QUEST FOR THE REALLY REAL 87 (2011)..

88. *Id.* at 85.

89. Processo José Sebastião de Rosa, *supra* note 52 at 86b.

The same photograph held a quite different meaning for the police, serving as testament to the performance of illegitimate ritual and illegal practices. It froze Rosa in time, donned in the vestments of possession. That image was key to the investigation's inquiry into *how* he was transformed from rational individual into a person possessed.<sup>90</sup> For, at least according to the depositions, Juca Rosa was typically possessed when wearing the garments that he chose to depict in the photograph.<sup>91</sup> For the police investigation and then in the trial, the photo served as visual evidence of Rosa's priestly performance, and perhaps it worked similarly on his ritual community, such that seeing his portrait in the garb of possession helped them to recall and re-experience Rosa's authoritative presence. For participants in the ritual group, the photograph helped to produce new modes of sociality, ritual practice, and even new modes of "religious experience": the presence of a priest now rendered present via photographic proxy. From the side of the investigation, the photo presented visual evidence, etched in black and white, that he ritually called and engaged African spirits on behalf of clients who he helped, and from whom he also illegally profited.

Photographs also radically transformed the legal process in relation to religion and the freedom of religious practice. As nation-states took up the project of documenting their citizenries' characteristics at the end of the 19<sup>th</sup> century, including religious ones, the photograph's material form neatly fit the procedures of state bureaucracies and "police work" as those systems came into being.<sup>92</sup> The flat shape and flexible paper construction of Juca Rosa's *carte de visite* photograph made it a congenial fit for the hand, convenient for interrogations in the short term, and amenable to flat rectangular shape of the legal file in the long term. This quality of the image-thing's material "fit" in the court file is what allows me access to the photograph still today, granting it an ongoing power of signification. But what, exactly, *did* it signify?

Judge Tavares was able to deduce the following from the witnesses: At a specific moment in ritual gatherings in the home of one of his devotees (Henriqueta Maria de Mello), Rosa would retreat to a separate chamber in the company of a woman named Ereciana in order to

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90. *Id.* at 104.

91. *Id.*

92. Holloway, *supra* note 46.

change to his special attire of blue corduroy and silver fringe—the accoutrement that appears in the photograph.<sup>93</sup> Upon reemerging, he was transformed into a powerful authority named Father (*Pai*) Quibombo. He would then fall to the floor and be “taken” (*tomado*) by a range of additional spirits—among them “Santo Zuza” and “Pai Vencedor.”<sup>94</sup>

Rosa never confessed to such possession states, nor to the influence they may have exerted over his mostly female devotees, nor the sexual possibilities he was accused of exploiting by virtue of his religious status.<sup>95</sup> While undergoing his second interrogation, he was asked about the special garments, but Rosa denied any kind of ritual use at all. He claimed the clothes were a Carnival costume (“mandou fazer essas vestimentas e as possuía para usar pelo Carnaval”).<sup>96</sup> And when asked to justify his possession of the photographs of many of his followers, he insisted it was just for play or a joke (*chalaça*).<sup>97</sup> And so inspectors and prosecutors used Juca Rosa’s portrait to try to discern the *look* of possession—evidence of one who works with a “saint in the head.”<sup>98</sup> They easily found all the requisite parts of the accusatory narrative, conveniently and graphically presented for the prosecution: “African” garments (even a “feitiço” sack hanging from his belt); “primitive acts” (indexed by his bare feet); the tools for a drumming ceremony; and unwarranted social hierarchy, implying the power Juca Rosa exerted over followers. The photograph was as crucial to Juca Rosa’s conviction as it was to his fame. The case suggests how Afro-Brazilian spirit possession evoked fears related to religion, legal personhood, citizenship, and national identity. Juca Rosa in particular seems to have focused fears of social contagion, the fear that even white elites could be permeable to African and Afro-Brazilian spirits, as indeed they were, and are today.

Not all possession religions, however, inspired the same fears, or hearkened back to 17<sup>th</sup> century terms of diabolical “sorcery.” Not all spirit possession traditions of Brazil were treated with the same ju-

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93. Processo José Sebastião de Rosa, *supra* note 52 at 16b.

94. SAMPAIO, *supra* note 50, at 186.

95. Processo José Sebastião de Rosa, *supra* note 52 at 17b.

96. Mandou fazer essas vestimentas e as possuía para usar pelo Carnaval, In Gabriela dos Reis SAMPAIO. Nas Trincheiras da Cura. As diferentes medicinas no Rio de Janeiro Imperial 128 (2001)

97. *Id.*

98. Processo José Sebastião de Rosa, *supra* note 52 at 104.



dicial lag. In fact, the legal treatment of possession or mediumistic religions split in early 20<sup>th</sup> century Brazil. Euro-Brazilian Spiritism and its spirit possessions acquired a protected legal status and legitimacy as “religion” long before Afro-Brazilian rites did. To explore the differences, I now turn to another type of spirit possession case in Brazil.

#### FRANCISCO XAVIER AND THE 21ST CENTURY POSSESSED

##### *Humberto de Campos case*

This highly publicized case from 1944 reveals how, by problematizing the issue of authorship, legal definitions of personhood and “the individual” were refined and illuminated in relation to spirits and the question of mortality or bodily death.

Humberto de Campos died in December 1934. Though he died young, as the best-known Brazilian author of his day, he already occupied seat number 20 in the Academy of the Immortals, the pantheon of literary greats modeled after Paris. Humberto de Campos proved immortal in more than one way. In March 1935, just three months after his death, he began to speak to a boy in the state of Minas Gerais, Francisco (“Chico”) Xavier.<sup>99</sup> In this section I rely on the detailed case summary published by Miguel Timponi (1959), as well as journalistic accounts and my own reading of the materials.<sup>100</sup>

Xavier recalled hearing the spirit’s words, “Prepare yourself, boy, we have lots to do tonight.”<sup>101</sup> After finishing work at his day-job in Belo Horizonte, he devoted several hours nightly to writing down Humberto de Campos’ words, in a state of trance.<sup>102</sup> To describe the process of spirit-writing (*psicografia*) he said: “It is as though someone applied an electrical device to my right elbow with its own automatic will. It’s not me who writes. I obey a superior force.”<sup>103</sup>

By 1944 Xavier had published five books authored “by” the famous deceased writer, Humberto de Campos.<sup>104</sup> In that year, though,

99. Interview with Chico Xavier. Celestino Silveira, *O espírito de Emanuel*, REVISTA DA SEMANA, 29 1944 (July 22).

100. MIGUEL TIMPONI, *PSICOGRAFIA ANTE OS TRIBUNAIS* (1959).

101. SILVEIRA, *supra* note 99.

102. *Id.*

103. *Id.* “como si aplicassem no meu cotovelo direito um aparelho electric com dispositivo automatic. Não sou eu quem escreve. Obedeço à força superior.”

104. Here are the titles: *Crônicas de além-túmulo*; *Brasil, coração do mundo, pátria do evangelho*; *Novas mensagens*; *Boa nova*; *Reportagens de além-túmulo*. Roughly translated, the titles are “Chronicles from Beyond the Grave”; “Brazil, Heart of the World, Fatherland of

Humberto's widow and three children filed suit against Xavier and the Spiritist Federation of Brazil (FEB).<sup>105</sup> The trial filled headlines as the "Humberto de Campos Case." The family asked the court to render a definitive decision as to whether the works were or were not drafted by the spirit of their deceased husband or father.<sup>106</sup> They accused Chico Xavier of selling his own books by exploiting the fame of Humberto de Campos.<sup>107</sup> Moreover, they argued, such books confused the reading public and competed for sales with the books he actually wrote while still alive. The books mediated by Chico Xavier were inferior, the suit continued, and when not inferior then simply plagiarized.<sup>108</sup> Finally, Humberto de Campos' family insisted that if their father or husband *were* determined by the court to be actually still writing, as a spirit, in that case the royalties for any books sold must be paid to the family.<sup>109</sup> On the other hand, if the books were judged to not be authored by the spirit of Humberto, they requested that all copies be removed from circulation, and that the medium Chico Xavier be prosecuted for fraud.<sup>110</sup>

While the family accused Xavier of plagiarism, the Brazilian Spiritist Federation (FEB), which had published Xavier's books and was therefore part of the defense, tried to show that the books by post-mortem and pre-mortem Humbertos were indistinguishable in style. They entitled their defense document, widely circulated to the public, "Two Humbertos: One Style, One Soul, One Feeling" ("Os dois Humbertos: um só estilo, uma só alma, um só sentimento.")<sup>111</sup> Most importantly, they claimed that the courts hold no jurisdiction in adjudicating the question, since the asserted presence and voice of a post-mortem spirit is a matter of freedom of religion and thus constitutionally protected.<sup>112</sup>

The family's lawsuit demanded that all parties appear in person: Not only Chico Xavier but also the spirit of Humberto de Campos,

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the Good News"; "New Messages"; "Good News"; "Reports from Beyond the Grave."

105. The suit was filed by the widow of Humberto de Campos and family was filed in Civil Court against Francisco Cândido Xavier (Chico Xavier) and his publisher, Federação Espirita Brasileira, in 1944. The case was heard by Judge João Frederico Mourão Russell of Federal District 8.

106. TIMPONI, *supra* note 100, at 14.

107. *Id.* at 11.

108. *Id.* at 220.

109. *Id.* at 32.

110. *Id.* at 34, 44, 85, 103.

111. *Id.* at 177–205.

112. *Id.* at 17–20.

whose “operationality” should be demonstrated and verified.<sup>113</sup> On August 23, 1944, though, Judge João Frederico Mourão Russell declared the suit invalid, arguing that, 1) upon death the individual forfeits his/her civil rights, such that the entity “Humberto de Campos” no longer carried legal standing and 2) inherited authorial rights were limited to works an author produced prior to death.<sup>114</sup> Finally, he noted that, 3) the judicial system is only empowered to pronounce on entities already existing within a judicial relationship; it is ill-equipped to decide whether or not the entities of such a relation empirically “exist” in the first place.<sup>115</sup> The family appealed but to no avail, and the decision was reaffirmed in November 1944.<sup>116</sup> In the wake of the trial, Chico Xavier went on to publish another seven books under the authorship of Humberto de Campos, until 1967. Humberto was now named “Brother X” on the book-covers in order to avoid further legal entanglements with the deceased author’s family, but Brother X was known by all to serve as a code-name for Humberto de Campos.<sup>117</sup>

Noteworthy from this case was how, by problematizing authorship, the legal definition of the individual was called into play and clarified. The court made clear that at least in terms of civil rights, individual identity ceases to exist with bodily death.

#### *José Divino Nunes case*

Spirits entered the legal process through the agency of Chico Xavier on several further occasions. Among them was the first time in Brazilian law that a spirit’s testimony was admitted as legal defense.

On Saturday morning, May 8, 1976, in the Brazilian city of Goiânia, a 16-year-old boy named José Divino Nunes killed Maurício Henrique.<sup>118</sup> Maurício found the gun in José’s father’s bag.<sup>119</sup> A few moments later he was dead. Two years later, while in a spirit-writing

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113. *Id.* at 21.

114. *Id.* at 40.

115. *Id.* at 29, 30.

116. *Id.* at 255.

117. See the website of the Federação Espírita Brasileira (FEB), where the books by “Brother X” alias Humberto de Campos are still sold. <http://www.febeditora.com.br/autores/humberto-de-campos-irmao-x/> (last accessed March 12, 2016).

118. The case details are recounted in NEMER DA SILVA AHMAD, *PSICOGRAFIA: O NOVO OLHAR DA JUSTIÇA* (2008).

119. *Id.*

trance, Chico Xavier drafted a letter from the deceased victim to his family.<sup>120</sup> The message said:

Dear Mother, Father and Sisters. I came here today asking for your courage. I ask you not to think of my trip here with sadness. Neither José Divino nor anyone was to blame for what happened. We were playing with the revolver thinking that with a loaded gun you could wound someone by aiming at his image in a mirror. I was wounded as a result of this foolish game, and the rest we all know.<sup>121</sup>

Judge Orimar Bastos of the 6<sup>th</sup> district court verified that the spirit's signature was identical to that of the deceased teenager.<sup>122</sup> The defense reminded the court that, under the modern penal code, it is "the motives...that are the touchstone of crime. There is no crime without intent; it is only there that a crime exists" (Citing Article 121 of the Penal Code).<sup>123</sup> Based on a judgment of motive and the lack of intent as conveyed by a spirit witness—that is, the spirit of the victim—the judge pronounced Nunes innocent.<sup>124</sup> The legal foundation he named was the lack of any apparent intent or premeditation in the homicide, but he added in his written statement,

We must give credibility to the spiritual message even though it is unprecedented in judicial circles, that the victim himself, after his death, comes to relate and furnish facts . . . that correspond with the declaration of José Divino himself . . . . This frees the accused of guilt.

He added,

Mauricio's message not only enlightened me, but also backed up all of the defense's testimony...The message had to be mentioned in the ruling because it helped me

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120. *Id.*; see also Judge Orimar de Bastos' own story of the case and its aftermath: ORIMAR DE BASTOS, *O JUSTO JUIZ: HISTÓRIA DE UMA SENTENÇA* (2010); and the story from the perspective of the deceased, as mediated by Chico Xavier, in *SPIRIT OF MAURÍCIO GARCEZ HENRIQUE THROUGH FRANCISCO CÂNDIDO XAVIER*, LEALDADE (1982)

121. SANDRA JACQUELINE STOLL, *ESPIRITISMO À BRASILEIRA* 125 (2003).

122. *Id.*

123. "Os motivos determinados constituem, no direito penal moderno, a pedra de toque do crime. Não há crime gratuito ou sem motivo, e é no motivo que reside à significação mesma do crime".

124. ORIMAR DE BASTOS, *supra* note 120..

make my decision...I am not a spiritualist. I judged Nunes innocent because the killing was not premeditated. Mauricio's message said the killing was a foolish mistake, no one was to blame. The decision was easy for me.<sup>125</sup>

We should add that by this time Xavier, who had mediated the spirit's testimony, was a national celebrity. Indeed, Chico Xavier's authenticity as a *legitimate medium* was supported during the trial by a public statement read by a representative of the Public Prosecutors' Office of the state of Goiás.<sup>126</sup> It was the first time in Brazilian history that a spirit had helped a judge to decide a case, though it wouldn't be the last. Additional cases involving spirit-testimony were tried in 1984 and 2006.<sup>127</sup>

#### *Spirit-testimonies as legal technique*

In more recent decades, certain prosecuting attorneys have begun seeking out "spirit testimonies" as an effective and persuasive way to reach juries. The 2006 case spurred public debate on the future of Brazil's judiciary, and the specter of widespread reliance, or even solicitation of, spirit testimony. I take the liberty of translating and excerpting the story as it appeared in Brazil's most respected news daily, *Folha de São Paulo*, on May 30, 2006:

Two spirit-writing letters were used in the defense's argument for the case in which Iara Marques Barcelos, 63, was acquitted of homicide, by a [jury] vote of five to two. The letters were attributed to the authorship of murder victim...The defense lawyer, Lúcio de Constantino, read the documents in court last Friday, seeking to absolve his client of the accusation that he had ordered the killing of the notary public, Ercy da Silva Cardoso. Though it has caused controversy in the judiciary, spirit-written letters have already been accepted in judgments...

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125. Id.

126. Xavier appeared at and was honored by the Goiás State Legislature on May 7, 1974. [Cite to statement or some documentation of event.]

127. [Cases or reports of testimonies should be cited to.] The deceased wrote again (on May 12, 1980), this time to his mother (presented to the father on television, Programa Flávio Cavalcanti): "Ask Father to accept the version that I gave of this event (that my physical body had suppressed). Don't look for a guilty party. Everything ended in peace, because the accident really was an accident, and father must reflect on this, based on my own words." See XAVIER, LEALDADE, *supra* note 120. Chico Xavier died in 2002.

The lawyer's reading of the letter was heard with careful attention by the seven jury-members. He read, "What most weighs on my heart is to see Iara accused like this, by dissimulators and fakers who are just like those who killed me...I send Iara a fraternal embrace from me, Ercy."

The notary public was 71 at the time of his death. He died in his home in July 2003, as a result of two gunshots to the head. Iara Barcelos was accused when Ercy da Silva's 29 year-old housekeeper, Leandro Rocha Almeida, stated that he had been contracted by Iara Barcelos to scare her patron, with whom she also maintained an affective relation...Almeida was condemned to 15 1/2 years of prison, though he denied having committed or ordered the crime.

The letters from the victim were spirit-written [psicografada] by the medium, Jorge José Santa Maria. One of the letters was addressed to the husband of the accused, who was also a friend of the victim. The other letter was addressed to the defendant herself. The accused's husband initially sought help regarding the case at a spiritist meeting.

The defense lawyer claims to have studied spiritist theory in order to prepare the defense, though he himself claims no religious affiliation. He cited the letters as the breaking point in the decision, playing a key role in his client's acquittal. *Folha de São Paulo* was unable to speak with the medium. Because jurors are not asked to comment on the rationale for their votes, it is difficult to evaluate the influence of the spirit letters. The documents were accepted in court because they were presented within the proper time frame, and because the prosecutor did not attempt to prevent or impugn their status...(trans. mine)<sup>128</sup>

Striking in this case was the fact that the defense lawyer admitted to using spiritism and spirit-testimony as a defense ploy and emphasized how well it had worked. This move motivated substantial

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128. <http://www1.folha.uol.com.br/foha/cotidiano/ult95u122179.shtml>, consulted on July 28, 2014.

concern. *Folha de São Paulo* ran a story on May 19, 2008, under the banner, “Association Wants to Spiritualize the Judiciary.” The report addressed the “polemic” surrounding the multiple and increasingly forceful associations of spiritist judges and lawyers. The largest of these is called the Brazilian Association of Spiritist Magistrates (Associação Brasileira de Magistrados Espíritas) and numbers over 700 judges of the court.<sup>129</sup> Among them is Francisco Cesar Asfor Rocha, who sat on Brazil’s Supreme Court from 1992–2012. A newer organization comprised of police deputies, prosecutors, lawyers, and judges was recently founded in São Paulo, called the Association Juridical-Spiritist, and counts several hundred members.<sup>130</sup> The association advocates for a judiciary that is “more responsive to humanitarian questions,” and able to engage polemical issues like abortion, euthanasia, gay marriage, the death penalty, and stem-cell research.<sup>131</sup> They state, “God is the greatest law,” and defend the use of spirit-written letters in court.<sup>132</sup> One of the Association’s founders, the prosecutor Tiago Esado declared, “The State is secular (*laico*), but people are not. There is no way to dissociate enough to say: I’ll only use my faith only in the spiritist center.”<sup>133</sup> Meanwhile the president of the Brazilian Association of Spiritist Magistrates, retired federal judge Zalmino Zimmerman, stated that the Association’s objective is “the spiritualization and humanization of law and the judiciary.”<sup>134</sup>

When the Ministry of Justice (Conselho Judiciario Nacional) was asked to address the question of spirit-testimony and the apparent growing power of spiritist-judiciary associations, the judge and spokesman Alexandre Azevedo dismissed the concern, “I don’t see any difference between a declaration given by me or you, and a declaration given by a medium, spirit-written (*psicografada*) by someone.”<sup>135</sup> By at least some measures, then, spirit-writing as testimony is being normalized as a part of the legal process in Brazil.<sup>136</sup> Spiritists

129. From the organization’s own website, available at: [abrame.org.br](http://abrame.org.br) (last accessed on March 12, 2016)

130. See their website: <http://www.ajesapaulo.com.br/> (last accessed on March 12, 2016)

131. FOLHA DE SÃO PAULO, May 19, 2008: “Associação quer espiritualizar o Judiciário,” <http://www1.folha.uol.com.br/fsp/cotidian/ff1905200801.htm> (last accessed March 12, 2016).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* (“Não enxergaria nenhuma diferença entre uma declaração feita por mim ou por você e uma declaração mediúnica, que foi psicografada por algu..m.”) <http://www1.folha.uol.com.br/fsp/cotidian/ff1905200801.htm>, consulted on July 28, 2014

136. I note here that the legal notion of a *testimonial individual* (a witness) is much less narrowly circumscribed than the *authorial individual*. This is because legal defenses allow

counter the claim that they are infusing religion into law by arguing that Spiritism is not a religion so much as a science of knowing; an epistemology, a way of seeing, a method of inquiry. For these judges and lawyers, practicing Spiritism is much like practicing law.

#### DISCUSSION

Multi-person bodies and the traditions that cultivate them as sources of special revelation pose special challenges for legal institutions and procedures. Because such religions and their manifold invisible agents are prevalent across most of the world, those challenges should be addressed, and perhaps this essay will serve to open avenues of comparative inquiry. To follow Annemarie Mol's work on medicine and the body multiple,<sup>137</sup> this essay did not seek an epistemology of law—how legal situations come to “know” personhood—but rather focused on legal *enactment*, the question of how personhood is shaped into certain form through the procedures of specific cases. As in medicine, legal enactments are shot through with implicit normative judgments, not least with respect to the question of accountable and legally liable, or *forensic* personhood. Spirits and possession straddle medical and legal versions of the normative.<sup>138</sup>

The cases suggest a question that hopefully by now has been made more uncanny than when I began: What, exactly, is a “legal person”? Phrased differently, what kind of personhood does law require? The case studies from Brazil reviewed in this essay make it clear that the legal person is subject to contest and legal debate. Juca Rosa's possessed personhood, a shape-shifting personhood with “saint in the head,” rendered him a transgressor and placed him outside of the law. More recent cases involving spirit-testimonies, by contrast, have placed possession or mediumistic states and their revelations at the center of at least some legal decisions. All the cases involving possession, though, entail and allow a deferral or complicating of individual

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greater latitude than do legal claims or accusations.

137. ANNEMARIE MOL, *THE BODY MULTIPLE: ONTOLOGY IN MEDICAL PRACTICE* vii (2003).

138. Georges Canguilhem opened his classic work, *The Normal and the Pathological*, “When we see in every sick man someone whose being has been augmented or diminished, we are somewhat reassured, for what a man has lost can be restored to him, and what has entered him can also leave. We can hope to conquer disease even if it is the result of a spell, or magic, or possession...Disease enters and leaves man as through a door” (2007: 39).



accountability.

One reason is that possessions may complicate the time sequence usually required in legal reckonings of causality. For example, in one of the cases, the appearance of a victim's spirit in 1978-9 helped to determine "what happened" in 1976. In another case, two letters written in 2006 from a man killed in 2003 secured the defendant's innocence. In both instances, spirits acted on legal time and seriality, achieving a temporal collapse by which a victim three-years in the grave was enabled to speak forcefully into the judicial present.

While personhood ends with natural death, according to the Brazilian civil law verdict in the 1944 Humberto de Campos case, natural death is not a self-evident or consistent boundary. Certain later cases suggest the possibility of intelligent human agency persisting beyond the body's demise. In multiple homicide cases described above—in 1978, 1984, and 2006—deceased witnesses' testimony was admitted in court after being written down by a different, living human medium's hand.

A second point: Spirit possessions may act on legal reckonings of *intent*. At least, as we have seen, spirit-testimony is effective in influencing Brazilian juries' understanding of intent. José Divino, for example, was shown by a spirit's testimony to have not acted with intent, and to therefore not be accountable for homicide. Brazilian and other legal systems are replete with subtle adjustments based on putative intent: Religious commitments affect intent and can change legal status.<sup>139</sup> Then too, crimes committed in a fit of violent rage after being provoked, when one is "not oneself" can reduce a sentence dramatically; conversely, crimes committed with too much intent, "for egoistic motives," can receive particularly harsh sentences. Madness or insanity claims present legal extremes of non-intentional action and sentences are modified accordingly.<sup>140</sup> Given all of these complications of

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139. In Brazil's 1891 Constitution, *religiosos* of any monastic community that required vows of obedience were prohibited from voting (along with beggars, women, the illiterate, and those under 21 years of age), because they "had renounced their liberty as Individuals." To pose the question in these terms, What did it mean to, through religious practice, "renounce one's liberty as an Individual?" We might argue that the individual being renounced was that of the state-sanctioned and *legal* individual, but this only begs the further question of precisely what constitutes such a being.

140. In Brazil's 1890 Penal Code, offenders "under a state of total perturbation of the senses and intelligence at the time of the crime were not criminally responsible." "Honor crimes" are regarded "temporary insanity." The 1940 code introduced the phrase "semi-imputable" as a category of mental status, partial impairment of cognitive or volitive elements,

intent and the measuring of defendants' interior states they require, spirit possession may be seen less as a full departure from other legal calibrations of the internal person, than as an especially complex problem of how to gauge inner motivations, since possessed defendants may refer to multiple agents acting in the same body.

Parenthetically, I would call attention here to the striking juxtaposition between, on one hand, the *legal* prestige of "intent" and the kind of individuality such gauging of intent requires, and on the other hand the *religious* prestige of non-intentionality--the spirits or the Spirit acting on, or acting through a body understood as a vessel of invisible and greater power, with ritual events made to dramatize that difference in power. What happens when those two systems collide in public space? In the North Atlantic tradition, people express dismay when spirits appear in political or judicial space. Witness the news made by then-vice presidential candidate Sarah Palin when a Kenyan pastor exorcised her bad spirits.<sup>141</sup> Note how the House of Representatives stenographer Dianne Reidy made news on October 16, 2013, when she abruptly grabbed the microphone in Congress while in the throes of the Holy Spirit.<sup>142</sup> This kind of hyperagency, the excess of persons in a given body in political or judicial space, seems dangerously illegible and underdetermined, at least based on the more recent episodes of the use of spirit-testimony in criminal trials presented here, and the wide latitude accorded to the legal actor of "testimonial individual."

Brazil seems to reside on the edge of this North Atlantic tradition. There, spirit possession and mediumship are familiar, even comprising an inter-religious national repertoire. The legitimacy of spirit possessions arrived through spiritism in the early 20<sup>th</sup> century, and that legitimacy was only then retroactively applied to Afro-Brazilian traditions. As we have seen, spiritist possessions been long been granted more legal space in which to act than Afro-Brazilian traditions. The French Kardecist, racially white, and pseudo-scientific articulation of

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and this feature was continued in the 1984 Code: Art 121 ("Codigo Penal § 1º Se o agente comete o crime impellido por motivo de relevante valor social ou moral, ou sob o domínio de violenta emoção, logo em seguida a injusta provocação da vítima, ou juiz pode reduzir a pena de um sexto a um terço. Aumento de penal—se o crime é praticado por motivo egoístico . . .").

141. Laurie Goodstein, *YouTube Videos Draw Attention to Palin's Faith*. NEW YORK TIMES, October 25, 2008. [http://www.nytimes.com/2008/10/25/us/politics/25faith.html?\\_r=0](http://www.nytimes.com/2008/10/25/us/politics/25faith.html?_r=0) (last accessed March 12, 2016).

142. <http://abcnews.go.com/blogs/politics/2013/10/house-stenographer-credits-holy-spirit-for-her-rant-against-congress/> (last accessed on March 12, 2016).

spirits found resonance among at least some members of the judiciary, such that symbiotic juridical-spiritist associations could be forged. To members of such associations, the “primitive” possessions of Juca Rosa’s sort, involving transformations or extensions of personhood like becoming Father Quibombo, or having one’s head “mounted” by Yoruba *orixás* and Amerindian *caboclos*--these cannot appear in court other than as targets of prosecution. They seem to obliterate the reckoning of individual intent whatsoever, undermining the kind of accountable individuality that law typically requires, and hails.

Finally, perhaps we can use the Brazilian case to think comparatively on the issue of “legal personhood.”<sup>143</sup> Author Charles Taylor famously argued that the western individual is characterized by the notion of the “buffered self,” a form of personhood that is impermeable to possession by external agents and therefore, by virtue of its very insularity, at least relatively identical over time.<sup>144</sup> The temporal dimension of enduring accountability and recognizability is key to the very notion of *identity*. Susanna Blumenthal described the “default legal person” in the U.S. as something much like Taylor’s buffered self.<sup>145</sup> Versions of a default legal person exist in every national legal culture, and legal systems may even require a default legal person in order to function at all. Lacking one, they apply techniques to create one. One method of creating a default legal person is by contrasting him (and it has mostly been a him), with the “weak spirits” that appear in, say, the descriptions of Juca Rosa’s initiates, or in Kant’s discussions of Swedenborg.<sup>146</sup> In the writings of figures like Hobbes, Locke,

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143. Other forms of a legal “excess of persons” are becoming routine. Take the idea of the juridical person as distinct from the natural person. This doctrine, by which corporations act as legal persons descends from the words of Pope Innocent IV in the 13<sup>th</sup> century, with his simple phrase, “since the College is in corporate matters figured as a person.” By this he underscored that a given community within the Church could be collectively represented by a single natural person; and, moreover, that this personness exists beyond any natural person, as *persona ficta*. It was a spiritual, not material reality. In other words we can read a religious, uncanny quality back into the early legal formulation of “incorporation” (Otto von Gierke 1868) and corporate personhood. It seems uncanny precisely because of how it contrasts an excess of persons with intuitive and inherited ideas of natural personhood. Perhaps our discomfiture with the recent Supreme Court decision in the U.S. on the corporate “personhood” of anonymous collections of political donors, in that vein, is not altogether different than our surprise at hearing of spirits acting through Chico Xavier in the Brazilian judiciary. Both require a leap of faith from natural bodies to personae ficta, the figure/fact/fantasy of many persons acting in one body. The leap may evoke horror, or wonder, or both.

144. CHARLES TAYLOR, *A SECULAR AGE* 27 (2007).

145. Susanna L. Blumenthal, *The default legal person*, *UCLA LAW REVIEW* 54 (2007).

146. *See supra* note 1.

Kant, and Hume, for example, the accountable individual person acquired its silhouette over and against another type, namely the *very permeable person*—like Juca Rosa and his women, to wit—who anthropologists later tried to interpret through their various prisms.<sup>147</sup>

Very permeable persons described by anthropologists must be made or translated into legal persons if and when they enter states' purviews. Some argue that legal culture even requires this submission, a disfiguring. As Judith Butler wrote, "To be dominated by a power external to oneself is a familiar and agonizing form power takes. To find, however, that what 'one' is, one's very formation as a subject, is in some sense dependent on that very power is quite another."<sup>148</sup> Butler's line has been too often and too casually cited, but what intrigues me is how it, like Taylor's descriptions of the buffered self or Blumenthal's default legal person, plays frictionally over and against the figure of the possessed. In Butler's formulation, becoming a political subject is every bit as much of a possession (and dispossession) as discovering a god in one's body.<sup>149</sup> Author Colin Dayan names the quest for the legal individual an "idiom of servility": "state-sanctioned degradation in America is propelled by a focus on personal identity, the terms by which personality is recognized, threatened, or removed. I treat the legal history of dispossession as a continuum along which bodies and spirits are remade over time."<sup>150</sup> Dayan seeks leverage by assessing how the spirit of law and laws about spirits were intertwined.<sup>151</sup>

I agree with this critique in principle, yet it strikes me as too easy: It is all well and good to posthumously support the spirit-possession of subalterns like Juca Rosa and his circle of followers. But what shall

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147. Here is Marriot's inaugural formulation of the 'dividual': "[S]ingle actors are not thought in South Asia to be 'individual', that is, indivisible, bounded units, as they are in much of Western social and psychological theory, as well as in common sense. Instead, it appears that persons are generally thought by South Asians to be 'dividual' or divisible. To exist, dividual persons absorb heterogeneous material influences . . ." MCKIM MARRIOTT, *HINDU TRANSACTIONS: DIVERSITY WITHOUT DUALISM* 109 (1976).

148. JUDITH BUTLER, *THE PSYCHIC LIFE OF POWER: THEORIES IN SUBJECTION* 1–2 (1997).

149. She clarifies the power of law over subjecthood in the recent co-authored work, *Dispossession*: "[W]hen a woman is raped goes before the law in order to have the crime against her prosecuted, she has to comply with the very idea of the reliable narrator and legitimate subject inscribed in the law. As a result, if the law finds that she is not a legitimate subject, that what she claims has no value, and that her speech in general is without value, then she is actually deconstituted as a subject by the law in question." JUDITH BUTLER & ATHENA ATHANASIOU *DISPOSSESSION: THE PERFORMATIVE IN THE POLITICAL* 77 (2013).

150. COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* xiii (2013).

151. *Id.*

we do with spirits when wielded by the wealthy and powerful, as in the Brazilian associations of spiritist judges? How did this legally legitimate form of spirit possession come to be? If Juca Rosa and his marginalized followers seem to warrant our defense, these present-day spiritist judges deserve our critique, or at least our attention and concern.

*A lumpy history of legal personhood and spirits*

In the period dividing Juca Rosa from Chico Xavier, the last third of the 19<sup>th</sup> century and the first half of the 20<sup>th</sup>, the default legal person was remade in the terms of a bio-person. Between 1850-1900 identities began to be verified in photographs, fingerprints, and anthropometric signs, acquired in techniques pioneered by criminologists like Bertillon in France and Galton in England.<sup>152</sup> But this did not mean that other kinds of persons abruptly ceased to exist. Multi-personated bodies continued to act and continue today in the religions of Candomblé, Vodou, Santería, and many others, with “saint in the head.” They work on everyday crises of love, health, fertility, and financial success. Spiritism, by contrast, adapted itself to the terms and procedures of the bio-person, applying photography, stenography, and medical sciences to their authorizing procedures, and building elaborate bureaucracies (like legal associations) that neatly matched the rationalizing institutions that characterized the early 20<sup>th</sup> century. They postured themselves as not even members of something as lowly and partial as a “religion”; rather, they spoke in terms of science. They rejected the primitive term, “possession,” and embraced the techno-term of “mediation.”<sup>153</sup>

## CONCLUSION

Mediating messages from the dead in spirit-writing is no less uncanny than dancing an African god into presence. For reasons of racial and social advantage, only the Spiritists of Brazil were able to successfully mimic the legal process, to symbiotically merge with it, and even in certain instances, to infiltrate it, possess it, make it their own.

152. Giorgio Agamben, *Identity without the person*, in *NUDITIES* 46–54 (2011).

153. The distinction between the two appears already in Kardec’s *Book of Mediums*, published in 1861. In chapter 13 Kardec specified degrees of “obsession.” The altering of personality, or spirit possession, is classified as “obsession”; it is negative and can lead, argued Kardec, even to criminal behavior. ALLAN KARDEC, *LE LIVRE DES MÉDIUMS* (1861). On the technophilia of spiritism as a science and a mechanics rather than a religion, see JEREMY STOLOW, ED. *DEUS IN MACHINA: RELIGION, TECHNOLOGY, AND THE THINGS IN BETWEEN* (2013)..

In the history of European encounters with peoples of Africa and the Americas, spirit-possessed action came to be viewed as the opposite of *individual* action—accountable, contract-worthy, transparent and properly civil action—in early modern social theories that became the template for political states in the Americas. Here I have focused on Brazil to show how the figure of “the possessed” helped define the proper sort of individual in relation to which civil participation in emergent states was imagined, and the kind of legal personhood it would require, and cultivate. In Brazil these especially came to the fore between 1870 and 1950—between the lead-up to Abolition and the mid-20<sup>th</sup> century legitimacy of certain (spiritist) forms of mediumship.

Proper state citizenship was imagined to require free, autonomous, rational individuals with durable identities; only these could become legal persons capable of making, guaranteeing and fulfilling trustworthy contracts—or being accountable or liable for failing to do so—that nation-states founded on occidental values of liberalism and private property seemed to require. Certain forms of religion enabled and fortified the proper individualism, and these were protected by the state, while others threatened to undermine it. These were classified as fetishism, sorcery or, later, fraud. African and Afro-Brazilian practices in particular appeared to generate non-rational states of possession that could be socially and politically dangerous. At best they might be productive of permeable and multiple forms of personhood, at worst they might induce sedition or threats to “public health.” By the mid-20<sup>th</sup> century, the spirit possessed began to become legally recognizable, as not wholly unlike other variables of identity like claims of insanity, or uncontrollable rage. This happened via the relative social prestige and racial whiteness of Spiritism, a technique of mediumship arrived from France. Some argue that spirit mediums have moved from being prosecuted (as in the case of Juca Rosa, 1871) to being protected, and even solicited by prosecutors as persuasive witnesses.

In present day Brazil, the phenomenon of spirit-testimonies presented in court raises fresh questions on the need to more precisely stipulate boundaries of legal personhood. But how to do so remains as fraught and uncertain as the interior lives of legal subjects themselves—traversed by spectral hues of motive, mood, intent, and memory; not to mention a veritable crowd of extrahuman voices and guides.