



THE STRUCTURAL BACKLASH EFFECT AS A REACTION TO THE CHANGES IN THE STRUCTURAL FOUNDATION OF SOCIETY

O EFEITO *STRUCTURAL BACKLASH* COMO UMA REAÇÃO ÀS TRANSFORMAÇÕES DA FUNDAÇÃO ESTRUTURAL DA SOCIEDADE

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ABSTRACT

The paper proposes to investigate the backlash effect as a reaction to changes in the structural foundations of society. The research of the paper focuses on the effectiveness of human rights in promoting social change in a society where discrimination practices exist. The paper aims to analyze the reaction from state, municipal, and federal legislatures to the Brazilian Federal Supreme Court's decision. Qualitative analysis of the data collected from samples was the methodology developed in the research. I examined the documents that record the full Brazilian Federal Supreme Courts deliberations and legislative reactions, such as ADPF 132, ADI 4277, RE 597285, and the legislative reactions to Bill 6583/13, Bill 0994/19, and Bill 4125/21. The papers highlight scientific contribution is to demonstrate that the traditional notion of backlash effect is incomplete and hides the real goals of the social reaction against the judicial decision. Finally, I argue that the Brazilian Federal Supreme Court's decisions on historic constitutional cases, such as the LGBTQIA+ community's fundamental rights, and racial and indigenous quotas in public universities, were challenged by the structural backlash effect through Brazilian legislatures.

Keywords: human rights; original Constitution; backlash effect; structural changes; transformative courts.

RESUMO

O artigo propõe investigar o efeito backlash como reação às mudanças nas bases estruturais da sociedade. A investigação do artigo centra-se na eficácia dos direitos humanos na promoção da mudança social numa sociedade onde existem práticas de discriminação. O artigo tem como objetivo analisar a reação dos legisladores estaduais, municipais e federais à decisão do Supremo Tribunal Federal brasileiro. A análise qualitativa dos dados coletados nas amostras foi a metodologia desenvolvida na pesquisa. Examinei os documentos que registram a íntegra das deliberações e reações legislativas do Supremo Tribunal Federal brasileiro, como ADPF 132, ADI 4277, RE 597285, e as reações legislativas ao Projeto de Lei 6583/13, Projeto de Lei 0994/19 e Projeto de Lei 4125/21. Os artigos destacam que a contribuição científica é demonstrar que a noção tradicional de efeito backlash é incompleta e esconde os reais objetivos da reação social contra a decisão judicial. Por fim, argumento que as decisões do Supremo Tribunal Federal brasileiro em casos constitucionais históricos, como os direitos fundamentais da comunidade LGBTQIA+ e as cotas raciais e indígenas nas universidades públicas, foram desafiadas pelo efeito de reação estrutural através das legislaturas brasileiras.

Palavras-chave: direitos humanos; Constituição original; backlash effect; mudanças estruturais; tribunais transformadores.

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1 - INTRODUCTION

Despite being identified as historic achievements, human rights have often been achieved through judicial decisions. However, it is important to maintain the structural foundations of conservative societies, by defending the lack of legitimacy of judicial courts for the recognition of rights not affirmed in the original Constitution or not expressly stated in the constitutional amendments.

These political and social contexts are reinforced by populism through its ability to change democracy and liberal institutions (FINCHELSTEIN; URBINATI, 2018, 16). Popular leaders often disregard established, unwritten rules and constitutional conventions, opting instead to create their own new rules and norms. Furthermore, the specific ideology associated with populism is reflected in the constitutional interpretation. Populist leaders try to change the constitution through ordinary laws, and populist governments often have the political power to make these changes (KOVALČÍK, 2022). As a result, so-called abusive constitutionalism (LANDAU, 2013) and authoritarian legalism emerge (MELO; MENDES, 2022).

All political attacks against the constitution result in the erosion of core global constitutionalist principles, as well as the deconstitutionalisation process, which includes the erosion of the international rule of law, critiques against international human rights, attacks on the international criminal court, and the decline of democracy (PETERS, 2022).

On the other hand, judicial decisions that recognize rights not enshrined in the Constitution often suffer adverse social reactions in conservative societies. These reactions may be captured by populist state legislatures and may promote the so-called "backlash effect" (KLARMAN, 2011). This paper proposes to demonstrate that the backlash effect can be understood as a reaction to any change in the structural foundations of society reflected in the original Constitution, and that it produces a block to the effectiveness of human rights in contemporary complex societies.

The methodology used in the research was a qualitative analysis of the data collected from samples and bibliographic surveys. The samples are documents that record the full Brazilian Federal Supreme Court's deliberations and legislative reactions to these judicial decisions.



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The research of the paper focuses on the effectiveness of human rights in promoting social change in a society where discrimination practices are prevalent. The research is justified because the political and social contexts of the attacks against the Federal Supreme Court's decisions, described as a simple backlash effect, conceal the purpose of reinforcing the original Constitution in Brazil and trying to delegitimize the Court's transformative functions.

The paper aims to investigate the backlash effect as a reaction to changes in the structural foundations of society. The research elucidates the reactions of the state, municipal, and federal legislatures towards the decisions of the Federal Supreme Court in Brazil. To achieve this objective, the paper aims to examine the cases of the Brazilian Federal Supreme Court, namely ADPF n. 132, ADI n. 4277, and RE n. 597285, as well as the legislative responses to these judicial deliberations, including the Bill 6583/13, the Bill 0994/19, and the Bill 4125/21.

The backlash effect is not understood in this research as a reaction to judicial decisions based on *reasonable moral disagreement* in the conflict between fundamental rights - *watershed issues of rights* (WALDRON, 2006) -, or as a potentially constructive effect of the backlash to engage the people in influence over the content of the constitution (POST; SIEGEL, 2007), in contrast, the originality of the paper is to understand the backlash effect as a reaction against structural changes in society reflected in the original constitution.

The research is divided into four parts. The first part of the paper examines the conflict between conservative societies, human rights, and transformative courts over the meaning of the constitution within those societies. The second part analyzes the relationship between conservative societies, constitutional law, and the structural backlash effect, understanding it as the reaction from any change in the structural foundations of society reflected in the original constitution that produces the blockage of the effectiveness of human rights. It occurs because human rights are enforced through the constitution in today's complex society. The third part of the paper explains the research method and develops data analysis. The fourth part describes the research findings to conclude that the structural backlash effect has emerged against the transformative decisions ruled by the Brazilian Federal Supreme Court to safeguard the rights not written in the constitution. Indeed, the structural backlash effect is a reaction to structural changes in society reflected in the original constitution. Finally, I argue that the Brazilian



Federal Supreme Court's decisions on historic constitutional cases, such as the LGBTQIA+ community's fundamental rights, and racial and indigenous quotas in public universities, were challenged by the structural backlash effect through Brazilian legislatures.

2 - THE TRANSFORMATIVE COURTS IN CONSERVATIVE SOCIETIES

Human rights are a historical process of the human being's accomplishments and represent the triumph of equal dignity (HERNANDES; PIOVESAN, 2021). They are both predictions of the future and critics of the legal positivism system (DOUZINAS, 2000). Human rights embody the libertarian ideals of individuals and serve as a means of safeguarding citizens from the authority of the state and its arbitrariness (DOUZINAS, 2000; HERNANDES, 2019).

However, international human rights have been enforced by judicial decisions within some domestic societies, where these rights are not declared in the written constitution. The judicial decision-making process to enforce human rights and uphold the rule of law through the national constitution is complex and involves a dialogue between international and national courts (LENAERTS, 2019; HERNANDES, 2018; WATERS, 2005).

The process of adjudicating rights linking human rights and constitutional rights can produce a conflict between the original Constitution and the substantial outcomes of judicial decision-making. Since international courts have transformative functions, such as the inter-american court of human rights (HERNANDES; PIOVESAN, 2021), national courts can become transformative courts themselves as a result of the dialogue between them (BOGDANDY, 2019).

The transformative constitutionalism (KLARE, 1998) is a method of interpreting and implementing constitutional provisions in a way that aims to address and overcome systematic shortcomings. It is built up not only by the law; it also emerges as a social practice that involves state institutions, social institutions, and social actors (BOGDANDY; SPIEKER, 2022).

According to Gloppen (2006), a social transformation can be understood as the change of structural inequalities and power relationships in certain societies in order to reduce the weight of irrelevant moral circumstances, such as social-economic status, race, religion, gender,



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and sexual orientation. The court's transformative performance is its contribution to changing effective structural inequalities and power relations in society.

The transformative ideal (HERNANDES; PIOVESAN, 2022) of constitutionalism implies an engagement between constitutional courts, state institutions, and social actors to cooperate in promoting social changes towards constitutional norms (HERNANDES; PIOVESAN, 2021). An example of that approach is the judicial engagement developed by supreme courts or by constitutional courts, such as those in Argentina, Brazil, Colombia, and South Africa (GARGARELLA; DOMINGO; ROUX, 2006).

Despite these supreme courts having transformative judicial functions, conservative forces from society may enforce a conservative interpretation of the constitutional means. This conservative judicial decision-making reflects a conservative culture within society. The consequence is an increase in conflict between human rights and constitutional norms in conservative societies, resulting from a dispute over the meaning of the constitution within this society.

Because of this, the transformative approach strengthens constitutionalism as a means of increasing the dialogue in intensity and quality among the courts, institutions, and social actors in order to raise the protection of human rights, democracy, and the rule of law (HERNANDES; PIOVESAN, 2022).

3 - THE STRUCTURAL BACKLASH EFFECT

Judicial decisions that recognize rights that are not enshrined in the Constitution often experience adverse social reactions in conservative societies. The idea that judicial courts lack democratic legitimacy for the recognition of rights not affirmed in the original Constitution or expressly stated in the constitutional amendments is a defense of maintaining the structural foundations of those societies.

As a consequence, the structural foundations of conservative societies may reflect social inequalities and an imbalance of power. Indeed, constitutional law has the ability to establish an institutional design (GARGARELLA, 2022) that perpetuates inequalities rather than promoting rights protections. Therefore, even though rights are safeguarded by law, the



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outcomes of judicial decision-making are systematically challenged by conservative forces in society.

The reaction to judicial decisions ruled by the Supreme Court may be captured by municipal, state, and federal legislatures to promote the so-called "backlash effect". The "backlash phenomenon" (KLARMAN, 2011) consists of the objection and massive resistance against judicial decisions, which can result in the reversal of the judicial deliberation.

Traditionally, the backlash effect is understood as a public reaction to a court's decision. This notion of a backlash effect is articulated in Cass Sunstein's definition of the "public backlash" in the following way:

Intense and sustained public disapproval of a judicial ruling, accompanied by aggressive steps that ruling and to remove its legal force. In cases of backlash, many minds have rejected the Court's decision, and they have done so with conviction. (SUNSTEIN, 2009).

For the purpose of this research, Cass Sunstein's definition is incomplete and does not explain the real question behind the backlash phenomenon in contemporary society. On the other hand, the democratic constitutionalism approach has the same problem. The democratic constitutionalism understands the backlash effect in a constructive manner. According to Post and Siegel :

Democratic constitutionalism thus offers a fresh perspective on the potentially constructive effects of backlash. This is not the common view in the legal academy, where law-abidingness and deference to professionals are generally prized. Backlash challenges the presumption that citizens should acquiesce in judicial decisions that speak in the disinterested voice of law. Backlash twice challenges the authority of this voice. In the name of a democratically responsive Constitution, backlash questions the autonomous authority of constitutional law. And in the name of political self-ownership, backlash defies the presumption that lay citizens should with out protest defer to the constitutional judgments of legal professionals. (POST; SIEGEL, 2007).

According to the structural view of the backlash effect, it can be understood as a structural



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backlash effect. It is a reaction to any changes to the structural foundations of society reflected in the original constitution. Similarly to the cultural backlash, the structural backlash effect involves certain steps, as Norris and Inglehart explain:

The story of the cultural backlash can be broken down logically into a series of sequential steps involving: (1) long-term social structural changes in the living conditions and security which successive generations experienced during their formative years; (2) the way these developments led to the silent revolution in cultural values; (3) the conservative backlash and authoritarian reflex that this stimulated; (4) medium-term economic conditions and rapid growth in social diversity accelerating the reaction; (5) how the conservative backlash drives voting support for Authoritarian Populist parties and leaders; (6) how votes translate into seats (and thus government offices) through electoral systems; and finally (7) the broader consequences of this phenomenon, including for the stability of established democracies and hybrid regimes, for party competition and the issue agenda, and for the civic culture. (INGLEHART; NORRIS, 2019).

The structural backlash effect follow these steps: first, long-term structural changes are implemented in society; then, the institutional structures affected by the social changes are transformed; next, these changes promote social inclusion and visibility for previously invisible groups in society; subsequently, conservative groups react to the changes, sometimes in a deeply authoritarian way, based on the original constitutional means; finally, the democratic legitimacy of the institutions is challenged, disrupting their stability.

The conflict between conservative and progressive views about the meaning of the constitutional norms, through constitutional interpretation, is based on different ideas about what the Constitution is and its functions. This disagreement between interpretive views is strongly affected by the social context and the historical evolution of the constitutional institutions in the society. The disagreement over the meaning of the Constitution offers the opportunity to cause a structural backlash in society. Consequently, the disagreement analyzed is not a simple disagreement about rights (Waldron, 2006); rather, it is a deep and fundamental opposition to the society of structure designed in the Constitution.



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Cass Sunstein argues that conservative forces have an influence on judicial decision-making in the United States:

Popular convictions present a more complicated picture. In the Warren Court years, many conservatives endorsed a form of popular constitutionalism. This was a period in which the Supreme Court was quite aggressive in a liberal direction—invalidating mandatory school prayer, desegregating schools, requiring a rule of one-person, one-vote, and creating a right of privacy. In that period, conservatives wanted the judiciary to pay respectful attention to the practices and judgments of We the People. But in the 1920s and 1930s, it was liberals who endorsed popular constitutionalism, asking the Supreme Court to uphold democratically enacted legislation, including minimum wage and maximum hour laws, the National Labor Relations Act, and the Social Security Act. In the modern period, liberals have reacted to the new judicial conservatism by asking judges to be more deferential. In short, it is not easy to read the interest in popular constitutionalism in political terms, and its political valence shifts dramatically over time. (SUNSTEIN, 2009).

However, the constitutional state achieves such quality not by having a written constitution, but rather when the constitution is achieved and there is practical enforceability. The effectiveness of the constitution is influenced by its institutional and social compliance.

The entrenchment of the Constitution in its original sense fosters a conservatism in judicial decision-making and its processes for interpreting the Constitution. Mark Tushnet explains how conservative forces operate through textualism and originalism:

Why do conservatives value textualism and originalism? They are alternatives or supplements to the umpire metaphor: both are thought to eliminate or at least sharply confine judicial discretion.(TUSHNET, 2020).

The original approach to interpretation of the Constitution is neither dialogic nor democratic; rather, it is a simple way of reinforcing structural inequalities and power relations in each society, as reflected in the constitutional design of the institutions, as seen in many Latin American Constitutions and the U.S. Constitution, as Gargarella claims (GARGARELLA,



2020). In this regard, the design of the Constitution is a consequence of the colonial legacy and Eurocentrism, particularly in the context of Latin American Constitutions (PETERS, 2022; BORGES, 2020).

The interpretivist approaches to constitutional interpretation may introduce a strict method based on the written word in the Constitution (CALLAHAN, 1994), or they may also restrict the interpretation to a starting point in the Constitution as a document (ELY, 1977), limited by the original intent of the framers (DWORKIN, 1986). Therefore, it is important that the judicial decision-making process uses a "decolonial filter" (BORGES, 2020) over the constitutional design and the interpretivist approach.

Therefore, the structural backlash effect offers a comprehensive understanding of the structural issues that affected the struggle over the constitutional meaning by different political and ideological approaches of the Constitution interpreters. The next part of the paper will apply the structural backlash effect to the analysis of selected historical lawsuits decided by the Brazilian Supreme Court, which were affected by the reactions of the municipal, state, and federal legislatures.

4. METHODOLOGY

4.1 DATA COLLECTION

This research is a qualitative analysis. Katerina Linos and Melissa Carlson (2017) claim that "(...) qualitative methods are particularly well suited for analyzing the types of evidence, and developing the types of arguments, we typically see in law reviews". They explain that court decisions "(...) alone offer unusually extensive and in-depth perspectives on law, on the actions of various stakeholders, and on the societal context in which these operate". The constitutions, statutes, administrative regulations, and lawsuits provide valuable insight into the events that are interconnected within legal processes. Therefore, legal scholars would greatly benefit from using qualitative analysis tools specifically designed for studying these interdependencies (LINOS; CARLSON, 2017).



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Katerina Linos and Melissa Carlson (2017) propose two qualitative techniques for achieving this goal: first, legal scholars can employ careful case selection to identify ideal conditions for testing their theories; second, a thorough within-case analysis can strengthen their conclusions. The Brazilian Federal Supreme Court has ruled in historic cases regarding fundamental rights. These cases provided an opportunity for safeguarding multiple aspects of these rights, but were challenged by conservative groups in Brazilian society and suffered the consequences of a structural backlash effect.

For the purpose of this paper, the qualitative analysis focuses on the case law pertaining to the recognition of the fundamental rights of the LGBTQIA+ community and the implementation of racial and indigenous quotas in public universities. Both cases are examples of structural inequality and the unbalancing of power relationships in Brazilian society. The research data were found on the websites of the Brazilian Federal Supreme Court (www.stf.jus.br) and the websites of the state, municipal, and federal legislatures.

4.2 DATA ANALYSIS

The first case was decided on May 5, 2011. The claim questioned whether same-sex unions were granted under the Constitution as a family. The Court ruled that:

Same-sex unions are family units. The rules applied to steady unions between a man and a woman shall apply to them until the National Congress enacts a specific law to regulate the matter. (BRAZIL, 2022).

Even though there are no written constitutional norms setting forth same-sex unions as family units, based on a progressive interpretation of the Federal Constitutions Article 3, item IV, Justice-Rapporteur Ayres Britto stated that: "The sex of people, unless otherwise specified, does not lend itself to legal inequality" (BRAZIL, 2022). The court provided an interpretation of Article 1723 of the Civil Code in accordance with the Constitution and applied to same-sex unions the same statutory norms as those that applied to heterosexual couples.

The Justice Rapporteur, Justice Ayres Britto, asserted:



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The equal protection between heterosexual couples and homosexual ones only gains full meaning if it leads to the equal subjective right to form an autonomous family. This is understood, in the context of the two types of legal subjects, as a domestic nucleus independent of any other and constituted, as a rule, with the same factual characteristics of visibility, continuity, and durability. (BRAZIL, 2022).

The Brazilian Federal Supreme Court has held that same-sex stable unions must be governed by the same law that regulates stable unions between men and women in ADPF n. 132, decided jointly with ADI n. 4277. Since then, the Brazilian Federal Supreme Court has upheld landmark decisions and established a body of case law regarding the rights of the LGBTQIA+ fundamental community (BRAZIL, 2022).

The Family Statute is Bill 6583/1343 (BRAZIL, 2023), which is currently being debated in the Chamber of Deputies in Brasília (Federal District). The Family Statute is a draft law that changes the concept of family entity to understand it as the social core composed of a man and woman unit, either through marriage or a common-law marriage, as well as a community composed of any parents and their descendants.

In 2012, the Brazilian Federal Supreme Court ruled in favor of restraining racial and indigenous quotas in public universities in RE n. 597285. The subject of the RE n. 597285 case was whether the University of Brasília could reserve a certain percentage of enrollment in the courses offered by the University for black and mulatto candidates and for indigenous people.

The Court ruled that: “Racial and indigenous quotas for admission to a public university do not violate the constitutional principle of equal protection” (BRAZIL, 2022). There was no formal written constitutional norm regarding it. Nevertheless, the constitutional norms were not an outcome of formal rules, such as the Justice Rapporteur, Justice Ricardo Lewandowsk understood:

For contemporary societies that have experienced slavery, repression, and prejudice, giving rise to a derogatory perception of race in relation to traditionally subjugated groups, the legal guarantee of mere formal equality underlines the differences between people, contributing to perpetuate the de facto inequalities that exist between them. (BRAZIL, 2022).



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Since 2018, populist (GOUVÊA; CASTELO BRANCO, 2021) and conservative movements have been opposed to case RE n. 597285, despite the Court's ruling becoming law (BRAZIL, Law 12.711 of August 29, 2012). The Bill 4125/21 (BRAZIL, 2021) on legislative deliberation at the Chamber of Deputies in Brasília (Federal District) changes Law 12.711 of August 29, 2012, and sets out the abolition of racial and indigenous quotas for admission into a public university. The quotas will only be for low-income students under The Bill 4125/21.

4.3 FINDINGS AND DISCUSSION

The Statute of Family can be understood as a structural backlash against transformative judicial decisions. The Statute of Family will strengthen structural inequalities and imbalances in the power dynamics of Brazilian society. The structural backlash effect has also been seen across state legislatures as a reaction to the Court's case law on the LGBTQIA+ community's fundamental rights.

Since the populist (GOUVÊA; CASTELO BRANCO, 2021) Bolsonaro's election in 2018, conservative movements in Brazil have influenced state legislatures and different municipal laws to ban inclusive same-sex educational policies in local public schools. These political movements have attempted to employ an interpretivist approach to constitutional interpretation and have aimed to confine the constitutional interpretation to its original meaning.

The entrenchment of the Constitutional meaning in its original meaning is a reaction to the changing of the structural foundations of society reflected in the original constitution, based on resistance to the fundamental rights of the LGBTQIA+ communities. However, the Brazilian Supreme Court has enforced its case law against authoritarian populist movements and the structural backlash effect in Brazil, such as ADPF n. 46048, ADPF n. 45749, ADPF n. 46150, and ADPF n. 5265.

Although the Brazilian Federal Supreme Court analyzed above, state legislatures continue to deliberate on the subject, as Bill 0994/19 (BRAZIL, 2023) has been approved by lawmakers in the State of Goiás.

The Bill 4125/21 is a structural backlash effect against the Brazilian Federal Supreme Court's case law on black and indigenous people's rights, due to conservative movements in Brazil



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trying to prevent the transformative effects of the decisions of the Brazilian Federal Supreme Court. These behavior patterns of the conservative movements and the legislative branch increase the deep structural inequality and historic discrimination standards in Brazil (HERNANDES; PIOVESAN, 2022).

The context of structural inequality challenges has worsened as a result of the democratic representative crisis in Brazil, which was exacerbated by populism. The outcome of this crisis has deeply impacted vulnerable groups during the pandemic in Brazil. Because of this, the Brazilian Supreme Court has engaged in overcoming these challenges through a dialogic approach with the Inter-American Human Rights System, state institutions, and social actors especially impacted by violations of fundamental rights at the national level. The Brazilian Supreme Court uses inter-institutional cooperation and a shared enterprise of constitutional adjudication to protect human rights in a multilevel (PERNICE, 2009) perspective. The judicial dialogue between national and international courts has the potential to transnationalize rights (PETERS, 2017) and strengthen human rights in national orders. This is what happened in Brazil during the pandemic (HERNANDES; PIOVESAN, 2022).

As a research finding, the cases analyzed in this paper demonstrated that the structural backlash effect has emerged against the transformative decision ruled by the Brazilian Supreme Federal Court for safeguarding the rights not written in the Constitution. It has not occurred under a *watershed issues of rights*, nor as a potentially constructive effect of backlash to engage the people to influence the content of the Constitution. In contrast, it occurs as a reaction against structural changes in the society reflected in the original Constitution and as a simple way to reinforce the structural inequalities and power relations in Brazilian society reflected in the constitutional design of the institutions.

The research indicates that the structural backlash effect can be understood as a reaction to any change in the structural foundations of society, such as reflected in the original Constitution, which produces the blockage of the effectiveness of human rights, the enforcement of which is enforced. It is an important finding of the research.

Particularly, the research identified that the Brazilian Federal Supreme Court's decisions on historic constitutional cases, such as the LGBTQIA+ community's fundamental rights, and



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racial and indigenous quotas in public universities, were challenged by the structural backlash effect through Brazilian legislatures.

Thus, the structural backlash effect as a result of conservative forces stemming from a disagreement on the Constitution's meaning is neither dialogic nor democratic, but rather a means to reinforce the structural inequalities and imbalance the power relationships reflected in the original constitutional design of the institutions, as reflected in Brazilian society.

5. CONCLUSION

The research provides a comprehensive analysis of the complex relationship between the process of adjudicating rights linking human rights, constitutional rights, and the interpretation of the Constitution. The conservative reaction to the transformative functions of the Constitutional Courts, such as the Brazilian Federal Supreme Court, was examined through this complex relationship.

Despite transformative judicial decision-making, this paper analyzed that conservative social forces systematically disagree with judicial decisions when they recognize rights not enshrined in the original Constitution. These reactions against Supreme Court decisions can be used by municipal, state, and federal legislatures to promote the so-called backlash effect.

Thus, the traditional notion of backlash effect is incomplete and hides the real goals of the social reaction against the judicial decision. As a result, the structural backlash effect is a scientifically and methodologically coherent approach to analyze and understand contemporary political and social reactions against the Court's decisions on fundamental rights in complex societies.

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