# Backlash Against Rights: Conceptual Apparatus and Research Agenda

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## Abstract

What do we mean by backlash against rights? How does backlash vary? What explains its variation?

Although backlash is recognized as a crucial problem in the legal mobilization literature, it is treated as a residual category. This paper proposes a conceptual apparatus and research agenda for its identification and analysis. We propose a definition of backlash that distinguishes it from ordinary legal mobilization and identify the relevant dimensions along which backlash varies–actors, realms, tactics, goals, and outcomes. We construct typologies and criteria for telling the different types of backlash apart. And we formulate hypotheses on the sources of variation, which can be used in future empirical studies.

The main novelty of our typologies and explanations is the concept of *veiled backlash*, which occurs in the backdoor of state agencies when regressive networks have dominant influence thereon. We claim that veiled backlash tends to adopt *pseudo-legal tactics*, which are difficult to detect and challenge, thus making veiled backlash's success more likely. We further argue that veiled backlash is often *cumulative*; it has the ambitious goal of curtailing pro-rights policies or state agencies, yet can go unnoticed because it is sought through frequent tactics that may look like ordinary legal mobilization.

## 1. Introduction

The recent rise of right-wing movements and parties across the globe (Blee and Creasap 2010; Caiani 2017; Caiani and Císař 2019; Caiani et al. 2012; Castro-Rea and Solano 2023; Mayka and Smith 2021) has made the law and society literature realize the crucial importance of understanding such actors' nature, strategies and impacts on rights (Botero et al. 2022; Payne et al. 2020; Payne et al. 2023).

The literature's original focus on progressive social movements and their legal mobilization strategies (McCann 1994, 2006; Polletta 2000; Rajagopal 2003; Sarat and Scheingold 2001) made sense in the era of the "rights revolution" (Epp 1998), when the third wave of democratization promoted generous constitutional consecrations of aspirational rights in many countries (Couso et al. 2010; García Villegas 2004; Gloppen et al. 2004; Sieder et al. 2005). Various social movements demanded the enforcement of such rights and many tribunals accepted the task (Gauri and Brinks 2008; Gloppen et al. 2010). The academic focus, then, was to understand the conditions under which rights were enforced by tribunals (Botero 2023; Gloppen et al. 2010, Langford et al. 2017) and the extent to which progressive judicial rulings produced social change (Botero 2023; Brinks and Gauri 2014; Galanter 1983; Gargarella et al. 2006; Helmke and Ríos Figueroa 2011; McCann 1994; Rosenberg 1991).

The achievements of the rights revolution are, however, vulnerable to backlash (Botero et al. 2022). A systematic understanding of backlash is crucial for the law and society literature and for studies on legal mobilization, as McCann (2006: 35) seminally noted.[1] Not only can backlash regress or curtail legal mobilization's advancements in rights protection; it can do so through seemingly legal mobilization tactics akin to those of progressive social movements (Escoffier and Vivaldi 2023; Lehoucq 2021; Lemaitre 2012; Salvi 2023). Yet, the law and society literature has devoted little attention to backlash against rights. The analysis of regressive actors has been much scarcer than that of progressive ones (Payne et al. 2023:18-9; Ruibal 2022: 89) and it does not offer a systematic understanding of the tactics they deploy or the goals they pursue.

In this paper, we hope to fill in the void. We propose a conceptual apparatus and research agenda for identifying and explaining backlash against rights. To do so, we first analyze the extant social movements and law and society literature on (counter)movements and legal (counter)mobilization (e.g. Lehoucq and Taylor 2019; Lo 1982; Meyer and Staggenborg 1996; Ruibal 2022), recourse to violent and illegal tactics by actors in the extreme-right and the "right-against-rights" (e.g. Caiani 2017, Caiani et al. 2012; Escoffier et al. 2023; Payne

[1] "[a]ttention to the backlashes and retrenchment following rights-based movement struggles defines one of the most important and interesting areas of future inquiry for socio-legal scholars."

2000, 2023; Payne et al. 2021), and state tactics against civil society organizations' legal mobilization (Buyse 2018; de Silva and Plagis 2023; van der Vet 2018).

Next, following Madsen et al. (2018)'s core distinction between pushback (i.e., ordinary legal mobilization) and backlash, we define backlash against rights as an extraordinary reaction to the adoption or application of an institutional policy or practice entailing a progressive development in rights protection. The reaction is extraordinary because it seeks to reverse or curtail such policy or practice by challenging and attempting to transform or subvert the rules or procedures that ground the progressive development. On the grounds of the definition, we propose the relevant dimensions along which backlash varies–actors, realms, tactics, goals, and outcomes. To analyze such variation, we construct typologies and criteria for telling the different types of backlash apart. Further, to explain the sources of such variation, we formulate hypotheses, which can be used in future empirical studies.

The main novelty of our typologies and hypotheses is that they bring insights of the literature on informal and weak institutions (e.g., Brinks and Blass 2013; Brinks et al. 2020; Helmke and Levistky 2004), illicit networks and state capture (e.g., Gambetta 1996; Garay-Salamanca and Salcedo-Albarán 2012; Salcedo-Albarán and Garay-Salamanca 2016; Yashar 2018) to propose the concept of *veiled backlash*. We argue that veiled backlash occurs in the backdoor of the state when regressive networks have a dominant influence on state agencies. From

within state agencies–hence beyond public scrutiny–veiled backlash seeks to reverse or curtail pro-rights advancements while subverting or transforming institutions. Veiled backlash tends to adopt *pseudolegal tactics*, which either seem legal but discreetly contradict the objectives of institutions or legalize illegal tactics. Pseudolegal tactics are difficult to detect and challenge, thus making veiled backlash's success more likely. Further, veiled backlash is often *cumulative*; it has the ambitious goal of reversing or curtailing pro-rights policies or state agencies, yet can go unnoticed because it is sought through frequent tactics that may look like ordinary legal mobilization.

## 2. Existing literature

*Countermovements and legal (counter)mobilization*

According to the literature on social movements, like the latter, countermovements are networks of individuals and organizations that make political claims on the state and seek public opinion and mass media attention (Meyer and Staggenborg 1996). However, they have regressive instead of progressive aims, such as perpetuating inequalities (Lo 1982) or reverting to a status quo ante (Della Porta and Diani 1999; Mottl 1980). Movements and countermovements interact through an action-reaction dynamic by which the first mover's

claims and successes trigger the other's countermobilization (Tarrow 1999; Zald and Useem 1987: 247-48). The latter often mirrors the choice of realms and tactics of the adversary and is framed around a sense of threat or outrage for progressive advancements (Meyer and Staggenborg 1996: 1645; Mottl 1980: 624).

The socio-legal literature has recently observed a similar dynamic concerning legal mobilization. Defined as "the use of law in an explicit, self-conscious way through the invocation of a formal institutional mechanism" (Lehoucq and Taylor 2019: 3), legal mobilization entails the filing of a claim using a venue within the state, including "administrative procedures, quasi-judicial procedures, and litigation" (Lehoucq and Taylor 2019: 14). Actors with regressive aims labeled as conservative (Biroli and Caminotti 2020; López 2021; Lemaitre 2012) or against-rights (Payne et al. 2023, Payne 2023) mirror the legal mobilization framing and tactics of their adversaries (Escoffier and Vivaldi 2023; Payne et al. 2023).

Thus, in Latin America, conservative groups who oppose advancements in abortion rights use the language of human rights and secularism (Contreras and Escalante 2018; Rodriguez de Assis Machado et al. 2022). Similarly, relatives of perpetrators of human rights violations frame their claims against trials using the language of criminal guarantees and even the "Never Again" slogan (Salvi 2023). Furthermore, conservative actors increasingly use legal

mobilization tactics–notably litigation–against a variety of pro-rights advancements. These include the promotion of judicial review of measures enacting racial affirmative action (Sharnak 2023), granting equal rights to LGTBQI couples and families (Lehoucq 2021), and expanding access to abortion services and to other emergency contraception methods (Ruibal 2024: 115). Often, these legal tactics are part of wider repertoires including protest, media campaigns, party militancy, political lobbying, national and transnational advocacy (Lehoucq 2021:1; Peñas Defago and Morán Faundes 2014; Rodriguez de Assis Machado et al. 2022:11-14; Lessa et al 2014:78-80; Payne et al. 2021:188-209).

*Extreme right and "right-against-rights" actors' violent and illegal tactics*

The socio-legal recent focus on conservative legal mobilizations and countermovements contrasts with the literature specializing on extreme-right and "right-against-rights" actors, which has emphasized these actors' inclination towards violence and illegality.

Studies on regime transitions have long referred to the risk of violent backlash in the form of coups, riots or attacks by armed groups facing trials against human rights violations (Vinjamuri and Snyder 2003). Further, recent studies on post-transitional scenarios indicate that accountability "veto players" do not only include former armed actors but also

complicitous members of the business sector. To block accountability, veto players deploy intimidation and violence against victims, defenders, witnesses and judicial operators (Lessa et al. 2014; Payne et al. 2022; Pereira et al. 2022). They further use other illegal non-violent–tactics, such as bribery, and seemingly standard legal tactics that turn into effective vetoes. Thus, corporations hire high-priced, high-skilled lawyers who promote dilatory and non-compliance tactics, as well as aggressive tactics to harass or retaliate against victims' defenders and prosecutors, as illustrated by the abusive use of slander and fraud cases (Payne et al. 2022:188-209; Pereira et al. 2022:1431-2).

On the other hand, the growing literature on extreme-right actors refers to the use of violence as an important shared feature, along with their anti-egalitarian ideology (Caiani 2017; Caiani et al. 2012; Castro-Rea 2018; Mudde 2007; Payne 2000; Payne 2023). Caiani et al. (2012:79-85) classify repertoires of action in terms of their level of radicalism, ranging from heavy (i.e., physical) violent action to conventional political action (lobbying, electoral mobilization, etc.), with light violence (insults, threats) and demonstrative, expressive and confrontational as intermediate forms.

Finally, the recent literature on the "right-against-rights" defines the latter as "collective extra-institutional and institutional mobilisation to check, roll back, or reverse specific rights promoted by previously marginalised groups and communities" (Escoffier et al. 2023: 3).

Certain right–against–rights groups, which they call uncivil movements, make use of exclusionary language and attitudes, as well as of threats and violence to eliminate rights-seekers (Payne 2023: 32). However, violent behaviors are used in tandem with legal ones, including their forming of alliances with mainstream right-wing parties, leaders and countermovements. Even if the latter sometimes distance themselves from uncivil movements' use of violence, they also frequently rely on their capacity to build and mobilize grassroots support. In turn, uncivil movements find in their political alliances sources of legitimacy and protection (Payne 2023: 32).

*State tactics against legal mobilization*

Violent and illegal tactics are not only deployed by private actors. Studies referring to states' backlash against NGO legal mobilization in the international realm point to the "squeezing of civic space" in the domestic realm (De Silva and Plagis 2023: 37). Accordingly, "when civil society organisations are considered too critical or too much of a nuisance, states have been found to apply a range of measures under the guise of legality of existing rules, but which in effect descend into the gray zone between legal and extra-legal action" (Buyse 2018: 971).

State tactics range from direct forms of violence and threats to the promotion of legislation or administrative decisions on NGOs restrictions and criminalization, such as foreign funding limitations, organizational and operational barriers, arbitrary inspections, de-registration, office closures, seizures of property, excessive fines, and arrests (Buyse 2018: 981). Studies explain such tactics as part of a global tendency (Buyse 2018), which is aggravated in contexts of new forms of authoritarianism or democratic backsliding (van der Vet 2018). Although they likely violate the law, these measures are portrayed as legal by states. And they severely affect the conditions under which human rights can be promoted and protected (De Silva and Plagis 2023: 40).

## 3. Backlash against rights

### *The concept of backlash*

Even though the literature across fields and subjects is filled with references to backlash as a serious problem, the concept is often analytically lacking because it is formulated in either too narrow or too imprecise terms. On the one hand, there are many topic- or arena-specific

studies[2], which define backlash in terms of a particular realm or target, without an underlying analytical framework that could be applied to others. On the other hand, as Madsen et al. note (2018: 199), backlash tends to be employed as "a folk notion smuggled into social scientific analysis"; it is used to transmit the idea of a strong negative reaction, but without identifying its defining traits. This is problematic because it allows to lump together multiple forms of reaction–many of which can be part and parcel of ordinary politics–and to impute to them similar causes and consequences.

On the grounds of a thorough revision of available definitions and with the purpose of covering various realms and targets, we define backlash as an extraordinary reaction that seeks to revert, curtail or block an institutional development considered in opposition to the interests or values of the actors who carry it out.[3] Note that the definition separates the reaction from its outcome, since backlash may or may not be successful (Madsen et al. 2018: 199), and this may result from the shape that backlash adopts. The definition also allows for

[2] See, among others, on backlash against gender rights, Cupać and Ebetürk (2020); LGBTQ rights Klarman (2012); immigration Kauppi and Madsen (2014); globalization (Posner, 2009); public policy Patashnick (2019); contentious politics Lamarché (2019); international courts, de Silva and Plagis (2023), Sandholtz et al. (2018); domestic courts (Bowen 2022).

[3] This definition draws importantly from the literature on backlash against international institutions, which has made crucial advancements in concept formulation (Madsen 2020; Madsen et al. 2018; Soley and Steininger 2018; Vinjamuri 2017). However, the definition is adapted so it can cover domestic policies and institutional realms beyond the judiciary, as well as the problems of state capture.

variation in the constellations of actors who promote backlash, which may influence the shape it takes (Madsen et al. 2018: 203-6).

Backlash's three necessary traits are: (i) it is a reaction against–i.e. it lashes back at (Mansbridge and Shames 2008: 627)–an institutional development; (ii) it is retrograde or regressive in its general objective–i.e. it seeks to take back or hinder such institutional development (Alter and Zürn 2020); (iii) it is extraordinary in its goals–i.e. it does not seek to reverse an institutional development using the established channels, but rather deliberately challenges and attempts to subvert such established channels, the norms on which they are grounded or the authority of the agencies responsible for the development (Madsen et al. 2018). Indeed, while disagreement and contestation about the interpretation of the law are part and parcel of its dynamic (Dezalay and Madsen 2012), backlash goes beyond or breaks with that dynamic by questioning the rules of the game by which such disagreement and contestation may be pursued, typically by attempting to reconfigure procedures or dismantle agencies (Alter and Zürn 2020; Madsen et al 2018; Soley and Steininger 2018; Vinjamuri 2017).

Backlash is hence different from ordinary legal countermobilization or pushback, which simply seeks to revert or block a particular institutional development or decision–such as a

judicial decision–using the established channels and accepting the authority of the agency issuing it (Madsen et al 2018: 202-203, 209).

*Backlash against rights*

Applying the previous definition, we define *backlash against rights* as an extraordinary reaction to the adoption or application of an institutional policy or practice entailing a progressive development in rights protection (Deitelhoff 2020; Ruibal 2022). The reaction seeks to reverse or curtail such policy or practice by challenging and attempting to transform or subvert the rules or procedures on the grounds of which the development was made or the authority of the agencies responsible for the development. And it has the regressive objective of restoring or deepening a status quo of traditional rights allocation and protection (Escoffier et al. 2023: 3).

By *progressive development* in rights protection, we mean an institutional advancement or expansion in the amount or content of rights protected, the right-holders who can demand protection, the conditions by which that protection can be demanded, or the powers, resources, integration, and autonomy of agencies in charge of developing protection policies, resolving claims or monitoring compliance (see, e.g., Brinks et al. 2022; Sieder 2019; Sieder et al.

2005). Following the literature on movement-countermovement interaction (Meyer and Staggenborg 1996) but expanding it to include actors other than movements (Lehoucq and Taylor 2019), we understand backlash as an extraordinary reaction to institutional policies or practices that are the result of prior successful mobilization by progressive actors. Following the right-against-rights literature, we understand those progressive actors to generally be part of previously marginalized groups or to promote marginalized rights claims, such as those related to gender and sexuality, ethnicity, race, environment, and accountability for crimes against humanity and other human rights violations (Escoffier et al. 2023: 3).

Backlash against rights seeks to revert or restrict a policy or practice entailing a progressive advancement of the sort. It is different from pushback, since it does not simply seek to block the advancement in a concrete instance, but rather has the *extraordinary goal* of subverting or transforming the rules or procedures on the grounds of which the development is made, or the authority of the agencies responsible for the development.

Now, backlash thus defined can vary significantly across different dimensions, and it is one of the central contributions of this paper to propose how this variation can be identified and studied.

*Backlash dimensions and patterns*

Even if always extraordinary in its goals, backlash can vary significantly in the extent of such extraordinariness–what we call the ambition of the goal or the scope of the target. It can further vary in the amount and type of tactics–more or less legal–through which said goal is pursued, and in the realms where that takes place. Such dimensions are likely influenced by the organization and level of influence of the actors who promote backlash, and it in turn affects the outcomes of backlash.

To account for this, we use the term *backlash patterns*[4] to refer to the different bundles or repertoires of tactics that are carried out by actors with diverse levels of organization and a common goal in one or several realms, which may have divergent outcomes across those realms. We further use the term *reactive patterns* to include both backlash and pushback, and hence enable comparison.

There are multiple possible backlash and reactive patterns, given the multiple possible combinations of actors, realms, goals, tactics, and outcomes. So rather than offering an exhaustive typology of patterns, we propose typologies of the ways in which backlash can

[4] We employ the term pattern like Madsen et al (2018), though they refer to reactive patterns in order to include pushback, and they do not distinguish among types of backlash.

vary across these key dimensions. For each dimension, we offer criteria to tell the different types of backlash apart, use examples obtained from secondary literature to illustrate their particularities, and propose hypotheses about the factors that may explain variation.[5]

*Actors*

We define regressive actors as individuals, organizations, movements or networks who oppose progressive achievements in rights protection. Regressive actors can be more or less organized and influential in different institutional and non-institutional realms. At one extreme, we can find isolated individuals, small groups or organizations who exercise peripheral influence. At the other extreme, we can find dense, cohesive and central networks of actors and organizations whose influence is large in scope within, across, and beyond institutional realms.

Caiani et al. (2012: 53-68) propose to classify rightist networks in terms of their density, cohesion and centrality, as determined by the number of organizations, the number of links

[5] Our use of typologies and hypotheses, and their illustration through examples, is inspired in concept-building and research agenda-setting papers like Brayne et al. (2023) and Helmke and Levitsky (2004).

and degrees of separation among them, and their ties to political actors–i.e., their level of influence. They posit that the smaller, more isolated and peripheral extreme right organizations are, the more likely it is for them to engage in violent actions, while the denser, more cohesive and central their networks, the more they will engage in political coordinated collective action strategies.

Authors assume that rightist actors can only be influential in state institutions through de jure political power–i.e., the type of power allocated by formal institutions like the electoral system. We argue, instead, that regressive networks can be (and often are) influential in state institutions through de facto power, which emerges from the ability to promote decisions on the grounds of force or material resources (Acemoglu and Robinson 2008). Indeed, the literature on organized state corruption and state capture has shown that there can exist powerful economic and political illicit networks within the state, which communicate and enforce informal rules that undermine formal ones. In the classical examples of mafia and state organized corruption in Italy and Russia, state agents who belong to these networks undermine formal institutions because their network belonging requires them to enforce rules that are divergent from the objectives of such institutions (Darden 2002; Moreno Ocampo 2002; Helmke and Levitsky 2004).

In the more recent examples of transnational business corporations and criminal organizations–notably drug-trafficking–networks in Latin America, their influence on state agencies can be such that they may not only offset the impact of formal institutions that go against their interests, but wholly reconfigure the functions and even the nature of the state (Bull 2014; Garay-Salamanca 2008; Illmer 2024). Due to a mixture of the de facto power of such networks and the weakness of state institutions (Yashar 2018), scholars refer to their capacity to control entire regions and to induce the collusion of state agents or achieve the capture of entire state agencies to increase their wealth and ensure their impunity (Garay-Salamanca and Salcedo-Albarán 2012 on Colombia, Guatemala and Mexico; Illmer 2024 and Schwartz 2021 on Guatemala; Vázquez Valencia 2019 on Mexico; Yashar 2018 on Central America). Such state agencies often include police, prosecutorial bodies, and courts in the regions where networks exert influence (Yashar 2018). But cooptation can go as far as the highest echelons of formal political and judicial institutions, thus suggesting the criminalization of the state (Illmer 2024: 14).

The literature tends to agree that there is no obvious relation between the strength of illicit networks and coercion. Even though illicit networks have strong coercive capacities, they need not use violence frequently to impose their will. Networks recur to violence when they face competition; not when they are hegemonic (Gambetta 1996; Snyder and Durán-Martínez

2009; Yashar 2018). Similarly, the greater the control of a state agency by an illicit network, the less will it need to recur to bribery or extortion; institutional infiltration makes networks' power so strong within state institutions that advantageous decisions are almost certain without the need of external inducements (Garay-Salamanca et al. 2008: 55).

If we take de facto and illicit networks into account, not only can we question the predictions of the literature linking violence to lack of organization (and successful reaction to political coalition-building); we must also adapt the concept of backlash so that it captures the way in which reaction takes place inside state institutions and outside the public eye.

*Realms*

According to the literature, backlash can take place both in the public opinion realm and in the formal or state institutional realm.[6] We discuss each in term, and suggest two internal

[6] The literature on backlash varies in terms of the studied arena, which is connected to the field of inquiry. We can hence find references to cultural backlash (i.e., Norris and Inglehart 2019) and public opinion attitudes (i.e., Flores and Barclay 2016), social movements and contentious politics studies (i.e., Della Porta 2020; Lamarché 2019; Ruibal 2014), and judicial politics studies (i.e., Bowen 2022; Keck 2009; Klarman 2012).

classifications for the latter: a standard one based on the separation of powers, and a novel one based on what we call the external and internal faces of the state.

**Cultural backlash**

In the cultural (i.e., non-formal institutional) realm, backlash is associated with the diffusion of reactive discourses and symbols against advancements in rights protection in the classical mass media (tv, radio, press) and in the newer social media and information technologies (e.g., Facebook, X, bots). The reproduction of such discourses and symbols–which are at times based on hate speech and misinformation (Baldauf et al. 2019)–can impact beliefs (Castells 2010) and behaviors (Nacos et al. 2020), including the encouragement of violent ones (Koopmans and Ozlak 2004).

Opinion backlash is successful when it produces "a large, negative, and enduring shift in opinion against a policy or group" (Bishin et al 2015: 2). The issue of immigration in Europe provides an example. The diffusion of political leaders' speeches associating migration with parasitism, reluctance to integrate and even criminality has fostered citizens' hostility towards immigrants and legitimized policies restricting their rights (Lesińska 2014).

**Institutional backlash**

Backlash in the institutional realm can take place in the different arenas of state decision-making and practice where mobilization occurs. The most obvious is the political realm, where counter-reforms to policies or state agencies can be promoted to regress advancements in rights protection. An example of successful radical *political backlash* is provided by counter-reforms promoted against redistributive land reforms in mid-20th century Latin America. In cases like Guatemala and Chile, reformist presidents were overthrown by coups, land reform policies were repealed, and expropriated lands were returned to original owners (Kay 1998; Wittman and Saldivar-Tanaka 2006).

Now, backlash can also take place in the judicial and executive arenas. These are the realms where ordinary legal mobilization takes place (Lehoucq and Taylor 2019) and hence tend to be sites for pushback. However, backlash happens therein when what is challenged is not only a concrete judicial or administrative decision implying an advancement in rights protection but also the underlying rules or authority of decision-makers (Madsen et al. 2018).

Thus, judicial backlash consists in the promotion of a judicial decision to overturn or curtail a pro-rights policy or state agency's mandate (Ruibal 2022). The 2022 US Supreme Court Dobbs decision to revoke Roe v. Wade (1973)'s long-lasting precedent on the right to abortion

is a good illustration; it was grounded on the Court's alleged lack of authority to decide on the matter, and hence implied the uncurtailed devolution of such authority to states, even in cases of bans (Murray and Shaw 2024).

Similarly, executive backlash consists in the promotion of an executive decision restricting the implementation of a pro-rights policy or state agency's mandate. The possible scope and target of the decision depend on the formal distribution of competences in the executive branch both vertically and horizontally. But, if successful, executive backlash can entail transcendent decisions. A recent example is provided by Argentine President Milei's decision to eliminate the National Institute against Discrimination, Xenophobia and Racism by decree on the grounds of its ideological politization (CELS 2024).

Table 1 summarizes the realms in which, according to the literature, backlash can take place. It also specifies the expected result of backlash in each realm, if successful.

**Veiled backlash**

When the literature refers to the former as realms for mobilization and backlash, it tends to suppose that regressive actors make claims to state agencies as minimally separate from them. Agencies may not grant or dismiss such claims solely on the grounds of their connections

with such actors, but rather on the grounds of the law. Sure, there are uneven material, organizational and know-how resources that can be employed to formulate better arguments with better chances of succeeding before state institutions (Galanter 1973). There are also politicians, bureaucrats and judges with more ideological and interest affinities that actors can calculate will operate in their favor (Segal and Spaeth 1993). There are even activist bureaucrats who mobilize within the state to push for policy implementation on ideological grounds (Anria et al. 2024). But the definition of the state requires that its agents maintain some autonomy from society even when they are socially embedded (Evans 1995), since otherwise they cannot be distinguished from a gang of bandits (Hart 1961; Rodgers 2006).

However, as the literature on weak state capacity and institutions has highlighted (Centeno et al. 2017; O'Donnell 1993; Levitsky and Murillo 2009; Brinks et al. 2020), there is great variation in the infrastructural, budgetary and human resources of formal institutions across and within states, which make them more or less vulnerable to the influence of de facto powers. In O'Donnell (1993:1359)'s terms, in many countries, there are large "brown" geographical or functional areas in which state agents do not treat all citizens' claims equally but rather selectively because state agents are deeply influenced by de facto power relations. That is not the case only of authoritarian regimes but also of many democracies (O'Donnell 1993:1355).

When state agents are thus influenced, they may seem to act like the state because they offer legal precepts as justification for their decisions; but they do not really do so, since those precepts are not the actual motivation for their deciding and their legality is likely dubious when scrutinized (Brinks et al. 2020: 23-4; Smulovitz 2022: 241). Moreover, such selective application of the law may be easily attributed to problems of insufficient resources rather than to the intention of state agents to favor certain interests. Indeed, it is difficult to distinguish whether a state agent's decision favoring the interests of a group is motivated by her will to do so or her lack of technical skills or material resources to come up with a different decision (Holland 2016). It is moreover difficult to understand whether institutional capacities remain low across time because they are hard to strengthen or because they bring such advantages to the beneficiaries of selective application that there are not sufficient incentives to invest in increasing them (Brinks et al. 2020: 29).

To account for these situations and encourage their analysis, we propose a novel institutional realm in which backlash may be deployed, which we call the internal face or backdoor of the state. In it, backlash adopts a veiled or clandestine facet. *Veiled backlash* complies with the definition of backlash because it pursues the regressive goal of taking back or restricting progressive advancements in rights and the extraordinary goal of subverting or transforming institutions. Yet it does so from within state agencies and hence beyond public scrutiny, such

that decisions with no or dubious legal justification are portrayed as legally justified ones. Veiled backlash can affect agencies whose functioning is crucial for rights protection. Examples include not only courts but also investigative police units, prosecutorial offices, archives of security and intelligence forces, centers for the attention of victims, offices in charge of the promotion of rights protection–such as anti-discrimination agencies, centers for the promotion of reproductive health, anti-corruption offices, etc.

As Table 2 indicates, veiled backlash is different from public backlash in that it is not the result of the usual coalitional politics and legal mobilization mechanisms driving state decisions, but rather of regressive actors' internal influence on state agencies. Such influence enables the promotion of internal decisions and even informal policies on competence, appointment, resource allocation, rules of operation, etc., which increase the likelihood of regressive decisions, and hence reduces the uncertainty that is characteristic of decision-making procedures in which two sides of a conflict compete for prevailing in a state forum.

Veiled backlash may be easily distinguished from public backlash, since in the latter explicit arguments about the legality and desirability of taking back or curtailing rights protection and dismounting the agencies in charge of it are made. Indeed, definitions of backlash often refer to the overt criticism or defiance of targeted institutions as an important characteristic

(Madsen et al. 2018; Soley and Steininger 2018; Lamarché 2019). In contrast, veiled backlash can have similarly ambitious goals, which are, however, not publicly defended or promoted in public. Even in its most ambitious form, successful veiled backlash may be portrayed as the result of ordinary pushback or as no regression at all. It may surreptitiously bring about full policy or state agency overhauls without publicly justifying their inadequacies, and hence without opportunities for public criticism and contestation.

Consequently, methodological strategies are required to detect veiled backlash behind those appearances. These may include, for instance, indicators measuring the solidity or technical merit of the legal justification of state decisions (Brinks et al. 2020: 23) and counterfactuals for the rate and direction of decisions that state agencies would produce in the absence of veiled backlash, which could be used as baselines to evaluate actual decisions.

**Explaining the choice of realms**

According to Meyer and Staggenborg (1996:1650), while movements tend to respond to the defeat in one arena by mobilizing in an alternative one where opportunities are open, movement-countermovement dynamics imply that they may not shift to arenas offering better opportunities unless opportunities are fully closed in their adversaries' chosen field because of the extent of success. Moreover, the shift to alternative fields will depend on available

additional institutional venues for action, which are greater the more divided governmental authority is–i.e., the greater the levels of decision-making both in terms of separation of powers and federalism (Meyer and Staggenborg 1996:1637).

While the choice of subsequent realms of action depends on the formal opportunities for contestation that such realms offer, we argue that it may also depend on the *informal opportunities for influencing decisions in the backdoor of the state.* We further argue that such opportunities need not be alternative but can rather be complementary to or reinforcing of formal opportunities. Indeed, in the face of a legal mobilization triumph in a concrete case, regressive actors may seem to be mimicking their adversaries through legal tactics in the judicial arena, while also recurring to informal opportunities to enhance their chances of winning their external battle in such case and future ones. Consequently, *we hypothesize (H1) that the greater the informal opportunities for influencing decisions in the backdoor of the state, the more will regressive actors choose to operate in that realm–the availability of formal opportunities notwithstanding.*

Further, following the literature on state collusion and capture (notably Yashar 2018), we argue that informal opportunities inside state agencies are shaped by the formal institutional weakness of such agencies and the de facto power of anti-rights networks. *We hence*

*hypothesize (H2) that the greater the institutional weakness of a state agency in a given realm and the more hegemonic the de facto power of a regressive network in the territory where that state agency operates, the more likely it is for the network to have dominant influence on the state agency.*

Now, the informal influence of regressive actors may not only vary within a given state agency but also across state agencies in a given level and realm, and even across levels or realms. Indeed, we can observe networks that are dominant in a particular state agency within a realm–say a single tribunal, bureaucratic office or legislative commission; across state agencies in a given realm and level–say local tribunals in a province; across realms in a level–say local tribunals and police units in a municipality–; or across levels in a realm–say local and federal tribunals. We call this the scope of influence of networks, which can be measured in terms of the amount of state agencies across realms in which it exerts influence. We hypothesize (H3) *that the greater the scope of influence of regressive networks in a given realm (and across realms), the more likely it is for the network to determine state agencies' decisions in such realm (and across realms)*.

*Tactics*

We propose to understand regressive actors' reactive tactics along a continuum that ranges from overtly illegal–i.e., violent–behaviors–to conventional legal ones. In between, we propose a novel category called *pseudolegal tactics*, which is at the border between legal and illegal behaviors. We identify two different subtypes of pseudolegal tactics–illegal behaviors that are made to appear legal and formally legal tactics that go against the spirit of institutions. Table 3 depicts the different types of reactive tactics and provides illustrations of their particular instantiations in the different institutional realms. Of course, locating real-life cases in each category will depend on the local laws in force, so the examples are tentative.

**Illegal violent reactive tactics**

On the right-hand side of the table, we find violent behaviors. These are the most extreme illegal type of reactive tactics because they give up on the use of available institutional channels to resolve conflicts. There are forms of violence that tend to be used in specific realms and concerning specific targets. For instance, coups, armed rebellions and riots have at times been used to revert the adoption of laws enabling trials against human rights violations in the political realm (see, e. g. Acuña and Smulovitz 1995, Payne 2000). In turn, in some contexts, torture against witnesses or defendants in human rights trials is used to force the production of evidence to wrongfully incriminate innocent people and evade justice for the guilty (See GIEI: 259-60 on Mexico).

Yet there are other forms of violence that tend to be used across realms. That is the case of targeted murders, attacks and threats against right-seekers, activists, judges and politicians (see, e.g., Koopmans and Olzak 2004: 19 on Germany's extreme right attacks on asylum seekers and other right-claimant minorities; Comisión Andina de Juristas Seccional Colombiana 1992 and Albarracín et al. 2022 on Colombia's attacks against human rights defenders, prosecutors and judges). These forms of violence produce a chilling effect on the promotion of rights advancements not only on direct targets but also on others like them. They can also lead to the forced exile of pro-rights actors, which can significantly curtail pro-rights advancements when it involves members of the prosecution and the judiciary actively protecting rights (see Benítez-Jiménez and Escobar 2024: 92-93 on Guatemala).

**Illegal non-violent reactive tactics**

There are multiple illegal–i.e., forbidden–though non-violent reactive tactics. Some tend to be employed across institutional realms, such as bribes, which can be used to induce politicians, bureaucrats and judges (Ackerman and Palifka 2016) to decide in favor of a pro-rights policy reversion or state agency dismantling.

But other forms of illegal behaviors are specific to each realm. Illustrations are provided by fake news in the cultural realm (Schwarz and Holnburger 2019) and clientelism in the political

one (Stokes et al. 2013). In the executive realm, theft or cyber-attacks may be used to hijack valuable information for rights protection guarded by NGOs (Buyse 2018:273). In the judicial realm, a variety of illegal tactics may be employed to hinder right-seekers from claiming justice or state actors from advancing trials against rights violators. They include unfounded incriminations, arbitrary detentions, evidence manipulation or falsification (see, e.g., van der Vet 2018 on Russia).

**Legalizing pseudolegal reactive tactics**

Many of the former tactics may remain in impunity if they are made to appear legal by state agents. Legalizing tactics are one of the two forms of pseudolegal tactics that we contemplate. They consist in a pretty clear law violation, which is, however, supplied with a legal grounding by a competent state agent.

Thus, in the cultural realm, the circulation of unverified news or the use of discriminatory categories may find a far-fetched legal interpretation indicating that they do not breach the rights to information and equality standards. In the political realm, a bill may be pass or fail due to an ill-intended interpretation of quorum rules.

In the executive realm, valuable information held by state agencies (like intelligence bodies) may be hidden under the guise of archive relocation or reclassification; it may also be denied

access on its alleged confidentiality (see, e.g., MEH 2023 on Mexico). Moreover, NGO offices may be inspected or closed, and their members arrested or fined on the grounds of rarely invoked tax rules but with the real purpose of obtaining information, harassing or silencing right-promoters (van der Vet 2018:3). Wiretapping can also be used against those organizations and state agents promoting rights with similar purposes, while finding a legal pretext for its use (see, e.g., IAHRC 2024 on Colombia).

Finally, in the judicial realm, many of the previously mentioned illegal tactics performed in other realms, as well as those committed in the judicial arena–arbitrary detentions, unfounded incriminations, evidence manipulation–may be portrayed as legal by prosecutors and judges or validated as such when overseen by courts. Because these tactics often entail the prosecution of rights-seekers, analysts refer to them as the criminalization of legal mobilization or protest (van der Vet 2018:2; Sieder 2021:4).

**Discrete non-compliant pseudolegal reactive tactics**

Pseudolegal tactics are in place not only when the illegal is made to appear legal but also when the legal is violated in a discrete manner, such that it undermines the law's objectives or contradicts its spirit while formally complying (Nino 1992: 42). Discrete non-compliant pseudolegal tactics formally adapt to the letter of the law but they boycott its goals. They may

hence be understood as an abuse rather than a use of the law or, as Fernández and Garay (2020:185) call it, as "'legal' non-compliance".

In the cultural arena, polarizing speech in the media may undermine the latter's aims of freedom and plurality, while still remaining formally compliant with the rules forbidding discrimination and hate speech (Wright 2023). In the political realm, aggressive political lobbying and campaign funding may not formally violate rules against undue inducements or funding limits, yet go against the objectives of fair electoral competition and pluralism (Nyberg 2021).

In turn, in the executive realm, executive discretion may formally allow the push for administrative decisions implying restrictions in the registration or funding of NGOs (Buyse 2018:971). However, such decisions' willful targeting of rights-seekers goes against those institutions' objectives of promoting pro-rights activism and protection and could be interpreted as adversary persecution or "lawfare" (Smulovitz, 2022).

Finally, in the judicial realm, the promotion of slander, fraud or corruption complaints are allowed by the law when the latter are recognized as prosecutable crimes. But when they are used to drive attention away from right-protection procedures (Payne et al. 2021:194-195; van der Vet 2018:2), they subvert the goals that such crimes seek to achieve.

**Legal conventional reactive tactics**

Legal conventional reactive tactics consist of the typical behaviors that players can or are supposed to perform in the different realms according to the rules of the game in a realm. For instance, criticizing opposed policies in the cultural realm; forming parties, making-claims or protesting in the political realm; activism to push for policy implementation in the administrative realm, and litigation in the judicial realm.

There is in principle little doubt about the legality of such tactics, since the law permits and regulates them–in some cases, like party formation, it even encourages them. However, as we will see below, when such tactics are part of a wider repertoire aimed at reverting or curtailing pro-rights policies or state agencies, they can entail backlash.

**The choice of predominant tactic in a repertoire**

While pushback consists in single tactics, backlash consists in bundles or repertoires of tactics with a common goal. Such repertoires may combine different kinds of tactics, but we propose to identify the most frequent or predominant kind and explain its variation.

Like the choice of realms, that of tactics' is influenced not only by the first move of regressive actors' antagonists, but also by the formal and informal opportunities available within and across state agencies. Regressive actors will likely mirror pro-rights actors' legal tactics in a

given state agency, say by pushing back against pro-rights litigation or policy implementation activism in the external face of the state. Yet, *we hypothesize (H4) that, if their networks are dominant inside the state agency where the confrontation is taking place, regressive actors' predominant tactic will be pseudolegal.*

Indeed, pseudolegal tactics are preferable over both illegal and legal tactics when available. The former are costlier, since they are more likely to be sanctioned and to entail reputation and legitimacy losses (Garay-Salamanca et al. 2008: 67). In turn, purely legal tactics take more time to be effective and their outcomes are more uncertain; they depend on coalitional politics and the uneven material and legal resources of contenders. Instead, when regressive networks control a state agency, they can both call the shots and disguise decisions that challenge the law as legal with no internal resistance. They do not need to convince state agents to decide in their favor either through legal or illegal means, since they *are* the state and they can portray their preferences as being the law.

*We further hypothesize (H5) that the choice between types of pseudolegal tactics is shaped by rule ambiguity and specific influence on judicial and quasi-judicial agencies.* Indeed, when even ambitious substantive rules do not define the criteria according to which they must be regulated and enforced, decision-makers can easily use discretion to go against the goals (Fernández and Garay 2020:187). In such instances, we should observe discrete non-

compliant tactics be chosen over legalizing ones, since rule implementation and enforcement could easily lack consistency with the objective of the rule without necessarily violating it. In contrast, the more precise the rule, the harder it is for law-violating tactics to be presented as legal, unless an authoritative actor legalizes them. The pseudolegal tactic of making the illegal appear legal requires judicial or quasi-judicial intervention stating that a legal interpretation for them exists. Since this delegation has the risk of being imperfect, it will likely be chosen when discrete non-compliant tactics are not available.

As regressive actors' internal influence decreases, they may be less capable of using pseudolegal tactics without internal resistance or external competition. Resistance comes from conscientious state agents who do not want to break the law or are committed to rights protection, and it likely responds to organized civil society's insistent pressure in rights protection (Lessa et al. 2014:76-78; Tsutsui et al. 2012). Competition comes from rival de facto powers wishing to also influence state agents (Yashar 2018).

When regressive actors' influence on state agencies is disputed by any of the latter, they will likely recur to more external forms of pressure. In Table 3 that means moving away from the center gray areas and towards either more illegal (right-hand side) or legal (left-hand side) tactics. *We hypothesize (H6) that, whenever* regressive *actors have resources to deploy them*

*and calculate that they will be effective, they will prefer illegal tactics over legal ones and non-violent illegal tactics over violent ones.* Indeed, illegal tactics (such as bribes) decrease the uncertainty of decisions more than legal ones. They are also harder to detect than violence, and hence less costly in terms of potential sanctions and reputation. *However, (H7), bribes may be less effective concerning rightful rights defenders and conscientious state agents, in which case, violence may prevail.*

In consequence, purely legal tactics are unlikely to be predominant when regressive actors have dominant influence on state institutions or access to violence.

*Goals*

We propose to understand the extraordinary nature of backlash goals along a continuum that can vary in terms of the ambition of its goals or the scope of its target–i.e., how far is backlash willing to go against state institutions. We further propose to apply this criterion to pushback, thereby distinguishing between ordinary and extraordinary or illegal pushback–both of which are part, along with backlash, of the more encompassing category of reactive patterns.

Table 4 presents the different types of reactive patterns that result from the proposed variation in goal ambition or scope of target, as well as the criteria that can be used for telling them apart.

**Full backlash**

Full backlash is characterized by the ambitious goal of reversing an entire policy or dismantling a state agency that brought about an advance in rights protection. The wideness of the target of full backlash may vary depending on the number of policies or state agencies involved. Full backlash may be identified by the existence of a plan or counter-policy with the regressive objective of taking back the targeted policy(ies) or dismantling the targeted agency(ies).

When full backlash is public, such a plan or counter-policy is explicitly defended on the grounds of the illegitimacy of the pro-rights agenda, often with the purpose of obtaining popular support. Even though *full public backlash* can take place in different institutional realms–as when regressive actors publicly promote the reversal of a judicial precedent–we most commonly use the term backlash when it occurs in the political arena. Full political public backlash is also the most likely ambitious in scope since, if successful, it can entail the elimination or overhaul of multiple policies and state agencies across realms. To be successful, full backlash requires political support in the formal political representation field; hence, it is more likely to occur when regressive actors are well organized and have influence on such realm and the mass media.

A recent example is Argentine President Milei's promotion of the *Ley de Bases,* which offered legal grounds for the elimination by decree of almost any state agency with an explicit–and quite popular–anti-rights and anti-state spending justification (Alvez 2024). But examples abound across the Americas and Europe of reactionary political leaders seeking popular support for the reversal of pro-rights policies, the dismantling of agencies in charge of their protection or the withdrawal from the jurisdiction of international tribunals protecting rights (Lesinska 2014; Norris and Inglehart 2019; Sandholtz et al. 2018).

In contrast, when full backlash is veiled, the plan of reverting a pro-rights policy or dismantling a state agency exists but is hidden to the public, so its existence must be proven. We argue that *full veiled backlash* can be identified when a widespread or systematic practice of pro-rights policy reversion or state agency dismantling exists and is informally recognized as binding by state agents. A widespread practice is characterized by the frequency of behaviors; a systematic one by the similarity of their target and modus operandi.[7] In turn, an informal binding rule can be identified when actors consider that not incurring in the practice implies a negative consequence or informal sanction–or, conversely, that engaging in the practice results in a positive inducement or prize (Brinks 2003).

[7] See Gutiérrez-Sanín and Wood (2017) on patterns of violence.

Full veiled backlash can be carried out through mainly discrete non-compliant pseudolegal tactics. This happens when a plan of institutional retrenchment (Hacker 2004) is carried out, such that a pro-rights policy is turned into insignificant (Brinks et al. 2020) or a state agency active in rights protection is hollowed out or starved from human or material resources (Suryanarayan 2016). The decisions through which such a plan is carried out can include replacing, demoting or transferring qualified personnel; reducing or reallocating funds devoted to rights protection, or classifying or restricting access to information necessary for rights protection. And they likely entail sanctions against pro-rights agents who resist the informal policy change and rewards for anti-rights collaborating ones.

An illustration is offered by Guatemala. In 2018, in the face of significant advancements in the judicialization of corruption and human rights violations perpetrated by political, economic and military elites, President Morales appointed Consuelo Porras as General Prosecutor, despite her known links with said elites. The appointment entailed the massive replacement, via destitutions and transfers, of qualified personnel, including the dismissal of Juan Francisco Sandoval, the head of the Special Prosecutor's Office Against Impunity (FECI), who was in charge of more than 100 corruption cases (Benítez-Jiménez 2022:63).

Now, full veiled backlash may also predominantly involve legalizing pseudolegal tactics. The Colombian case of the armed forces' "false positives" offers an illustration. Between 2003

and 2008, more than 6,000 civilians were murdered by the armed forces and portrayed as rebels killed in combat. The murders were demonstrated to be part of an informal policy ordered from above, which was enforced through rewards and promotions to those who complied and through marginalization and even murder against those who resisted. The informal policy targeted civilians falsely signaled as being part of the guerrilla due to ideological affinities, alleged ordinary criminals and vulnerable persons (Uprimny 2023). It could thus be interpreted as backlash against the application of international human right standards to the armed forces by the judiciary, which had been increasingly resisted within the military ranks (Kalmanovitz 2018).

**Ordinary Pushback**

The opposite extreme reactive behavior of full backlash is ordinary pushback. We discuss its contours to make the distinction neat. Ordinary pushback is characterized by: (i) a very restrictive goal—blocking a concrete decision entailing a rights advancement, for instance by appealing a judicial decision; (ii) the use of a legal tactic to attain it, and (iii) the legal tactic's isolated or very infrequent occurrence (Madsen et al. 2018).

The second trait–legality of the tactic–makes ordinary pushback most often be public, since behaviors are hidden when illegal. However, we contemplate the possibility of ordinary

pushback being veiled to cover situations like informal meetings in which a decision is discussed but not unduly induced (Pion-Berlin 2010). To be legal, veiled pushback cannot imply forbidden actions or transactions, but it can imply those outside the scope of the law. This excludes pseudolegal tactics, which, as argued next, could be considered extraordinary pushback.

**Extraordinary pushback**

We propose the category of extraordinary pushback to capture the many instances in which regressive actors attempt to block progressive advancements in rights protection through violence, illegality or pseudo-legality. Extraordinary pushback is similar to ordinary pushback in the restricted ambition of its goal and in the singularity or infrequency of its occurrence. But it is different in the means through which it seeks to attain it–for instance bribing or harassing a witness with slander suits so that there is not enough evidence versus simply formulating a counter plea or an appeal challenging the sufficiency of evidence.

The illegality or pseudo-legality of the tactic entailed by extraordinary pushback makes it a challenge to institutions–although a restricted one given its infrequency. However, not all behaviors against the law are equally serious, and some may hardly be considered system-defying when they consist of single occurrences (Madsen et al. 2018). That is the case, for

instance, of non-cooperating or non-complying behaviors concerning courts' proceedings or decisions (Soley and Steininger 2018: 241)

The overt defense of extraordinary pushback that can characterize its public facet may help classify a less serious form of legal violation like non-compliance as extraordinary rather than ordinary pushback. When a non-serious form of *public extraordinary pushback* is justified and even celebrated by the actor as worthy of popular support, it can be classified as a challenge to the rules of the game. Examples can be found in powerful business people or politicians who claim that they will not attend a court hearing due to the pro-rights bias of the court, or in state agents who publicly defend their non-compliance with a ruling. Boasting non-compliance can have a deleterious effect on the authority of the decision-making agency in the concrete case. And, depending on the salience of the issue and the influence of the actor, it can trigger wider backlash. A telling example is provided by Trump's aggressive criticisms of signaled judges in social media (Brenan Center for Justice 2020), which motivated some followers to call for physical violence against them (Eisler et al. 2024)

The illegality or pseudo-legality of extraordinary pushback makes it more likely to take place in a veiled form. *Extraordinary veiled pushback* consists in illegal or pseudolegal clandestine behaviors, which influence state decision-making and make it seem like the result of ordinary pushback. Thus, for instance, if a bribe or threat of disciplinary action are the motivation

behind a judge's decision to drop a case against a rights violator, we may wrongly attribute the result to the defense's solidity unless the tactic is unveiled. An example is offered by the intricate case involving former Colombian President Uribe in the bribing of witnesses to change testimonies in which they referred to his connections with paramilitary groups. When such testimonies were made public by Congressman Iván Cepeda, Uribe recurred to the pseudolegal tactic of judicially denouncing Cepeda for allegedly collecting false testimonies (Jaramillo Bernat 2023). When these are isolated behaviors, we can consider them pushback due to their narrow target. But when they are frequent, they can result in cumulative backlash.

**Cumulative backlash**

We propose a novel type of backlash that falls in between full backlash and pushback in terms of the scope of its target. *Cumulative backlash* is characterized by frequent pushback reactions to the adoption or application of an institutional policy or practice entailing an advancement or increase in rights protection. Each of those reactions may seem, on its own, ordinary in its goal and even in its tactic but, taken together, they can be as ambitious in their scope–and as devastating in their effects if successful–as full backlash.

Conceptual analyses of backlash agree that forms of legal violation like non-compliance may be understood as pushback if isolated and as backlash if reiterative (Madsen et al. 2018:210-

211). In such analyses, frequent non-compliance is assumed to be the result of political will, and hence as a challenge to institutions' authority (Madsen et al. 2018: 203-204). However, in contexts where weak institutional capacity abounds, a crucial challenge for the notion of cumulative backlash is that it indeed does not equate to the latter but that willful defiance of institutions can be proved.

To face that challenge, *we define cumulative backlash as a widespread or systematic practice of curtailing the advancement of a policy or eroding the functioning of a state agency protecting rights, which can be shown to be approved or tolerated by those who could sanction or reorient it.* The main difference between cumulative and full veiled backlash is the absence of an identifiable strategy, plan or counter-policy from above. This entails that cumulative backlash may be hard to detect even when performed in public.

Indeed, *public cumulative backlash*'s tactics are performed in a seemingly fragmentary or disconnected way, so the existence of a widespread or systematic practice must be proven through the identification of recurrent tactics with similar targets and modus operandi. An example is what the International Commission against Impunity in Guatemala (CICIG 2017) labeled "malicious litigation": the excessive or disproportionate use of legal contestation measures (such as appeals, recusals, writs of protection, procedural pleas) by defendants of powerful elites accused of corruption and human rights abuses with the purpose of stalling

criminal procedures. A further example is the practice identified by Payne et al. (2021:194-196) of corporations facing human rights trials using slander threats against rights-seekers in places like the United Kingdom, Argentina and Colombia. In these cases, state toleration towards the practice can be said to exist when its institutional curtailing intent or effect are clear, yet judges admit the cases without inquiring into their patterned nature or correcting their course.

In turn, *cumulative veiled backlash* may be harder to detect than public cumulative backlash but easier to detect than full veiled backlash. Indeed, the identification criteria for veiled cumulative backlash are less demanding, since the practice need not be ordered or sanctioned from above. It suffices that the practice is wide or systematic–even if only in the low or intermediate echelons of the state apparatus–and that it is tolerated by superiors or sanctioning agencies (see Wood 2018 on rape). Proving toleration requires that the latter know or should know about the practice and that they have sufficient institutional capacity to reorient or sanction it but do not do so.

The case of the 2016 murder of indigenous environmentalist activist Berta Cáceres in Honduras offers an illustration. Her organization's active mobilization against a hydroelectric project led to her harassment, surveillance and eventual killing by a network of corporate elites, illicit violent actors and state agents. Research on the case has unveiled a widespread

practice with a similar modus operandi targeting human rights and environmental defenders beyond Cáceres' organization (Tapias Torrado 2022: 162-3). The fact that the state's surveillance and coercive apparatuses were so widely and effectively used to target social leaders proves that the practice was at least tolerated, but also likely approved, by high echelons in state agencies and governmental posts. It also proves that weak state capacity cannot be alleged as the cause for lack of sanction of the practice.

**Explaining variation in goals**

It is pretty evident that the more ambitious the reactive patterns' goal, the more planning, and hence strategic coordination, does it imply. This means that regressive actors' organizational features and influence are again a crucial factor explaining variation. While isolated and peripheral actors will have little capacity to plan coordinated strategies and will hence only be able to promote discrete goals akin to pushback, networks whose influence is dominant, wide in scope, and centralized will be able to plan and coordinate ambitious counter-reform goals, which may cover multiple state agencies across realms. *Consequently, we hypothesize (H8) that the more dominant, wider, and centralized the influence of regressive networks across state agencies and realms, the more will they engage in full backlash, and the greater will the scope of the latter's target be.*

Now, between isolated peripheral actors and widely influential and centralized networks, we can find networks that are dense and dominant in some state agencies but not in others, such that they can promote coordinated actions therein, but not beyond. We can further find networks whose influence is loose or uneven within and across agencies, such that reactive tactics can involve frequent practice without coordinated action from above. While in the former situation, veiled backlash entailing a plan or strategy is more likely, in the latter, cumulative backlash as tolerated practice will probably prevail. *Hence, we hypothesize (H9) that the less centralized or looser the influence of regressive actors within state agencies, the more likely it is for them to engage in cumulative backlash rather than in full backlash.*

In turn, to explain the strategic choice between public and veiled backlash, the sensitivity or unpopularity of the issue at stake seems crucial. Several strands of the literature argue that the more sensitive the issue advanced upon-i.e. the more it threatens the interests or values of a wide sector of the population–the more likely it is for a reaction to mobilize wide public support.[8] We argue that veiled backlash takes place in situations in which the sensitivity of the issue operates the other way around: when it is the reaction, rather than the progressive

[8] See Meyer and Staggenborg (1996) on countermovements; Klarman (2012), on judicial backlash; Alter and Zürn (2020) and Solely and Steininger (2018) on backlash against international institutions.

advancement, which may generate a strong reaction in the public, regressive networks who are influential in the backdoor of the state may still count on state agents to promote backlash on the sly. An example is provided by reactions against advancements in the prosecution of corruption, which may be popularly despised and hence preferred to be promoted as informal impunity rules or practices even when formal political opportunities are open to carry out public backlash. W*e hence hypothesize (H10) that the less public opinion is favorable to the regressive issue in question, the more will regressive actors prefer veiled over public backlash.*

**Outcomes**

We understand the main outcome of backlash as its success–i.e., whether its goals are attained. The reversion or dismantling of a state agency promoting rights protection, the curtailment of the former's advancement or the latter's mandate, and the blocking of a concrete pro-rights' decision are, hence, the basic indicators of full backlash, cumulative backlash, and pushback success, respectively.

One could think that the more ambitious the goal, the harder it is to achieve. However, we claim that the realm and means through which the goal is pursued may make more ambitious goals easier to attain than narrow ones. Indeed, *we hypothesize (H11) that, when backlash is*

*promoted in the backdoor of the state through mainly pseudolegal tactics, it is more likely to be successful than other forms of backlash.* This is so, first, because regressive networks' influence reduces state impartiality and hence decision uncertainty. And second, because pseudolegal tactics are harder to detect and challenge. The more dominant the influence of regressive networks on state agencies, the more will they determine such agencies' decisions and dress them in the garb of legality without internal opposition–i.e., independent non-conforming state agents–and external competition–i.e., competing de facto power networks attempting to also influence state agents. This can mean that, despite its ambition, full backlash can succeed more easily than ordinary pushback when it is veiled and predominantly pseudolegal.

The factors to which the rights revolution literature usually point as favorable to rights advancements may hinder veiled backlash's success only under certain conditions. Pro-rights social movements' support structures (Epp 1998) can bolster movements' legal resources to identify and challenge concrete illegal and pseudolegal tactics in court. But such effort may be akin to David's against Goliath unless movements identify and defy veiled backlash as a plan or practice. This entails gathering hard-to-access information, analyzing it with techniques enabling pattern detection and systematic irregularities in pseudolegal state decisions, and formulating structural litigation cases before the judiciary. The technical

support of social scientists can be crucial in this endeavor. Hence, we *hypothesize (H12) that the more social movements' legal mobilization strategies include techniques for identifying and denouncing informal plans and practices, the more they will be able to hinder veiled backlash success.*

In turn, progressive bureaucrats (Anria et. al 2024) and judges (Pereira 2022; Uprimny and García-Villegas 2005) can resist the pressure to comply with veiled backlash by continuing to issue pro-rights decisions. Yet, such resistance can look like an oasis in the middle of the desert and lead to increasing violence against its promoters unless it is wide–i.e., covers whole agencies–and concerted–i.e., maintained and reinforced as a recruitment strategy aimed at countering veiled backlash. *We thus hypothesize (H13) that the more state agencies remain purposefully independent from regressive actors' networks and include progressive bureaucrats and judges, the less will veiled backlash succeed.*

Finally, transnational mobilization (Keck and Sikkink 1998) can promote significant international pressure and even sophisticated mechanisms for unveiling and challenging veiled backlash. A recent trend in such mechanisms is the creation of international hybrid mechanisms in charge of investigating cases of massive human rights violations, corruption and macro-criminality (Hudson and Taylor 2010:54-55), which seek to overcome structural

impunity at the domestic level. Yet such mechanisms can backfire: their results can lead regressive actors to come out of the closet and promote even more radical forms of backlash against them. Critical examples are found in the dissolution of the International Commission against Impunity in Guatemala (CICIG) in 2019 (Bowen 2022) and the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH) in 2020 (Call 2021). Only changes in the political balance of power seem capable of resisting such an outcome. Hence, *we hypothesize (H14) that the more transnational mobilization is accompanied by domestic shifts in the balance of power in favor of progressive actors, the more it will hinder veiled backlash success.*

Still, veiled backlash is a problem that likely requires more than what rights advancements generally do. The influence of illicit networks on state agencies does not only lead to the reversion of pro-rights policies and state agencies, but also to the undermining of the state as a forum where rights claims can be made and receive fair consideration. It hence possibly requires the creation of wide multi-level pro-rights networks and the redesign of transnational governance institutions specifically aimed at avoiding state capture and dismounting macro-criminality (Ferrajoli 2023).

## Concluding remarks

This paper proposed a conceptual framework and set out a research agenda for analyzing backlash against rights. It put forward a comprehensive definition of backlash–and more broadly reactive–patterns, identified its dimensions, used typologies to identify their variation across dimensions, and proposed hypotheses for explaining such variation. We hope this framework can be useful for future empirical works. Of course, such works will need to identify precise indicators and operationalization strategies, as well as hypotheses, to take into account the particularities of the topic and context under analysis. But the concepts, indicators and hypotheses proposed here may offer a blueprint, and can also help make studies on backlash across fields and subjects more comparable and capable of dialogue among them.

The paper's main contribution is the notion of veiled backlash and the particular actors (illicit networks), realms (the backdoor of the state), goals or targets (full policy or state agency dismounting or cumulative curtailing), tactics (pseudolegal), and outcomes (higher likelihood of success) with which it is associated. Veiled backlash is a potent way through which pro-rights policies and state agencies can be curtailed or reversed. Yet it has received scant attention because it takes place beyond the public's eye, and often through tactics that seem legal and that do not produce effects instantaneously but rather cumulatively. Because it is

difficult to detect, much of the conceptual effort in the paper has been devoted to proposing definitions and indicators that can help in that endeavor, so that veiled backlash is not confused with less ambitious forms of reaction–like pushback–or with non-intentional problems of state institutions–namely weakness.

It is crucial to distinguish reactive strategies from the structural obstacles that hinder progressive advancements in rights protection in weak institutional contexts–such as the lack of resources and technical capacities. The proposed concept of veiled backlash aims at that precisely, by identifying political will or motivation as the crucial criterion explaining reactive tactics like institutional packing or hollowing out, or selective non-sanctioning of rights violators. Future empirical work should focus on developing precise identification and measuring strategies to separate situations of intentional institutional weakening from those of weak institutional capacities.

Our discussion of veiled backlash makes it evident that regressive networks tend to have significant advantages in resisting progressive change vis-a-vis progressive social movements. Indeed, the latter rarely have internal influence on state agencies and, when they do as activist bureaucrats, they do not have the strength to capture entire state agencies; rather, their main risk is to be coopted or absorbed by stronger political parties (Garay and Anria

2024). Moreover, due to the value they tend to assign to human rights and democracy and to the accountability that their grassroots exert over them (Mayka 2019), it seems unlikely that progressive social movements will engage in clandestine violent or pseudolegal tactics. This makes them rest on quite an uneven foothold, since they only count on legal–conventional or at most discrete non-compliant–tactics to advance their causes, and in such endeavor their resources tend to be much meager (Galanter 1973).

This explains the sense of limitation or pessimism about the rights revolution in recent literature. According to Botero et al. (2020:11), de jure rights conquests have largely remained on the books or been regressed by backlash due to weaknesses in state capacity, and vested interests. The conceptual apparatus and research agenda that we propose can help unpack the mechanisms by which such vested interests lash out against progressive change from within weak state agencies. This can hopefully also be useful for thinking about the institutional reforms and social and political forces that are necessary to counter such reactions. In that sense, we hope to contribute to the recent literature on progressive policy entrenchment, which has urged studies to focus not only on progressive movements who promote policy implementation but also on conservative actors who dig in their heels to block such efforts and thus preserve or exacerbate existing inequalities (Anria et al. 2024: 19).

Even though we propose general indicators for identifying variation in the strength and influence of regressive actors, much more empirical research is needed to investigate the particular configurations that regressive networks can have–what sectors compose them and what is their internal balance of power; what pacts sustain them and how are they enforced; how does external competition affect them; what types of resources do they have and how does that impact the scope and type of influence they exert on state agencies.

Future conceptualization and empirical case studies are also needed to understand how legal mobilization and backlash patterns operate through time in the historical trajectories that different countries follow in different periods. We hope our paper motivates such studies.

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**Table 1. Types of backlash by realm of mobilization and main expected result, according to the literature**

| Type of backlash | Realm | Main expected result of backlash if successful |
|---|---|---|
| **Cultural** | Public opinion (Mass/social media) | Negative perception of rights, inclusive policy or agency; withdrawal of public support |
| **Institutional** | Political (Congress, elected government) | Revert pro-rights policy or dismantle state agency |
| | Judicial/quasi-judicial (tribunals or administrative agencies reviewing legality of regulations/enforcing law in concrete cases) | Overturn or curtail pro-rights policy or state agency's mandate |
| | Executive (administrative agencies implementing policy) | Revert or curtail pro-rights policy implementation or state agency mandate |

**Table 2. Types of backlash by faces of the institutional arena**

| Face of the institutional realm | Type of backlash | Mechanism driving regressive decision | Public justification of regression | Likelihood of regressive decision | Legal grounds of regressive decision |
|---|---|---|---|---|---|
| **External** | Public backlash | External legal arguments/resources used by claimant and adversary (coalitional politics/legal mobilization)<br><br>Ideology of deciders (attitudinal)<br><br>Institutional resources (state capacity) | Yes; backlash is explicitly justified as a legitimate reaction worthy of public support | Uncertain; external material and legal resources, ideology and institutional capacity matter but do not determine decision ex ante | Solid |
| **Internal (backdoor)** | Veiled backlash | Internal decisions/informal policies on competence, which impede certain external decisions or force others (Corruption/collusion/ capture) | No; backlash must be identified through methodological strategies | High likelihood of regressive decision; internal decisions taken by corrupted, colluded or captured state agents reduce uncertainty and influence of legal resources/arguments on decision | Dubitable, seemingly spurious |

**Table 3. I(l)legality of reactive tactics across realms**

| | (Il)legality of tactics | | | | | | |
|---|---|---|---|---|---|---|---|
| | **Legal** | | **Pseudo-legal** | **Illegal** | | | |
| | **Conventional** | **Discrete non-compliant (formally legal but against the spirit of institutions)** | **Legalizing (illegal but made to appear legal)** | **Illegal - not violent** | | **Violent** | |
| **Cultural** | Criticism of opposed policies/ideas | Polarizing speech | Circulation of unverified information; use of discriminatory categories | Fake news | | Hate speech, incitation to violence | |
| **Political** | Party formation, coalition claim-making, protest | Aggressive political lobbying, campaign funding | Quorum manipulation | Bribes | Clientelism | Threats, physical attacks, murder | Coups, armed rebellions, riots |
| **Administrative** | Activism | Push for personnel replacing, defunding of agencies; restrictions in NGO registration /funding | Relocating or reclassifying archives; denying access; office inspections, closures; arrests, fines; abusive wiretapping | | Cyber-attacks/theft of archives/ computers | | |
| **Judicial/Quasi-judicial** | Litigation | Defamation/fraud cases against rights-seekers/state agents protecting rights | Legalization of arbitrary detentions, unfounded incrimination, fraudulent evidence, archival classification, office inspections, defenders' arrests, fines, wiretapping. | | Arbitrary detentions, unfounded incrimina-tion, evidence manipula-tion/ falsification | | Torture |

**Table 4. Types of reactive behaviors by the ambition of goals**

| | | Types | | | |
|---|---|---|---|---|---|
| | | **Ordinary Pushback** | **Extraordinary Pushback** | **Cumulative Backlash** | **Full Backlash** |
| | **Scope of Target** | Very narrow | Narrow | Intermediate | Wide |
| | **Description of goal** | Blocking concrete decision through legal tactic | Blocking concrete decision through illegal tactic | Incremental curtailing of policy's scope or agency's functioning | Entire policy reversal or state agency dismantling |
| | **Identification criterion** | Isolated/infrequent use of legal tactic with no identifiable pattern | Isolated/infrequent use of illegal tactic with no identifiable pattern | Pattern of reactive tactics indicating strategy or tolerated practice to curtail | Plan/counter-policy to reverse or dismount |
| **Face of institutional realm** | **External** | Ordinary public pushback | Extraordinary public pushback | Cumulative public backlash | Full public backlash |
| | **Internal** | Ordinary veiled pushback | Extraordinary veiled pushback | Cumulative veiled backlash | Full veiled backlash |