

Contextualized Rights as Effective Rights to All: The Case of Affirmative Action in Brazil

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Submitted: 13 September 2023 **Accepted:** 31 January 2024 **Published:** 11 March 2024

Issue: This article is part of the issue “Who Wants To Share? Attitudes Towards Horizontal Redistribution Across the Globe” edited by Frances Stewart (University of Oxford), Arnim Langer (KU Leuven), and Line Kuppens (University of Amsterdam), fully open access at <https://doi.org/10.17645/si.i414>

Abstract

This article explores how two main narratives about slavery may lead to varying perspectives on social rights. Some collective narratives endorse a superficial idea of equality of rights, neglecting factors such as race and ethnicity, while others reject this apparent universalistic view, promoting more effective, de facto equality. The latter narrative supports horizontal redistribution, strongly contrasting with the former. Using Brazil's affirmative action programs for Black students as a case study, this article will address two prevalent national narratives about the slavery of Black Africans and persons of Black African descent. Only one of those narratives could lead to what I would identify as a “contextualized theory of rights,” ensuring horizontal equality amidst a backdrop of brutal slavery and structural racism. This narrative offers a plurally faceted, dialogical approach to rights that can respond to the needs of differently situated individuals. The article will explore the evolution of such a collective narrative in Brazil's race relations.

Keywords

affirmative action; education; narrative; racial discrimination; structural racism

1. Introduction

An effective theory of rights—that is, a theory of rights aimed at assuring equal rights to all in practice—requires a realistic definition of each individual as a rights subject. The term “realistic,” in this context, means to consider both abstract and concrete human characteristics. Given our inability to define ourselves in purely concrete terms due to limited knowledge about the extent of our individual freedom vis-a-vis environmental factors, a realistic approach may involve a combination of known concrete traits and abstract prescriptive traits. Concrete traits include gender, race, class, nationality, age, and sexual orientation, while abstract traits

refer to what we aspire to be, i.e., our “capacity to formulate and live by universalizable principles” (Kant, as cited in Benhabib, 2007, p. 12); our capacity “to feel for each other” at a higher level than other animals (Rorty, 1993, p. 122); our being “creatures of God” (Stackhouse, 1999); our capacity for “communicative freedom,” for building meaning through dialogue (Benhabib, 2007, pp. 13, 16–19).

While formal equality relies on recognizing shared abstract traits, substantive or de facto equality acknowledges the impact of diverse contexts on the implementation of rights. Dialogue emerges as the key to ensuring equal rights in practice (Benhabib, 2007, pp. 15, 16)—where diverse obstacles to the fruition of rights and responses are shared and articulated. The challenge lies in promoting a dialogue that encompasses the widest diversity in a society to reflect the most comprehensive image of that society. A realistic definition of the “rights subject” aims at rendering invisible individuals visible, enabling their participation in shaping new collective narratives and conceptualizing rights that accommodate the diverse needs, aspirations, and capabilities of distinct individuals.

Individuals, as communicative agents, are shaped by both their individual narratives and the collective narratives in which they are immersed. Understanding these collective narratives is crucial for framing theories of rights, as they help define individual identities within historical processes that artificially assign value to various races, ethnicities, and salient characteristics. These narratives may extend to national identities, forming “imagined communities” based on shared beliefs or values rather than direct personal connections (Anderson, 1983/2006; Haas, 1986, p. 709; Tamir, 1995, p. 423). The focus of this article is on broad national narratives framing national identities.

These collective narratives not only contribute to shaping individual identities but are also subject to change by the individuals immersed within them, both in terms of values and image. Regarding values, national narratives only remain relevant in bringing society together if they allow ongoing internal bargaining around core collective values that rearrange “wealth, status, and power” (Haas, 1986, p. 710). As values evolve, such narratives may create new “community images” (Tamir, 1995, p. 422).

In this article, I will explore how changes in collective narratives have influenced the establishment of more effective rights, focusing specifically on contrasting narratives regarding the slavery of Black Africans and people of Black African descent in Brazil. One narrative portrays cordial slavery, mixed races, and racial democracy, while the other highlights harsh slavery practices and structural racism. These narratives connect respectively to neutral (or formal) rights, which disregard race and other concrete traits, and to “contextualized rights,” which consider such traits. Although those two narratives do not exist in isolation, I will emphasize them to highlight two opposite approaches to rights, particularly their impact on values and national image, shifting from a racially homogeneous and non-discriminatory image to the image of a racially plural country that needs to tackle structural racism.

My analysis will centre on affirmative action for Blacks in Brazilian universities, emphasizing, first, the reasons why the narrative of brutal slavery gained space in the national discourse in the last two decades, and second, how an expanded dialogue about race and racism enabled the mainstream acceptance of a collective narrative that recognizes structural racism. This expanded dialogue has paved the way for adopting a more effective rights theory and a more diverse array of “possibilities of existence” (e.g., Butler, 1986, pp. 41, 48).

In the 2022 census, 45.3% of Brazilians identified as brown, 10.6% as Black, and 42.8% as white—a significant shift from the 2012 census, which reported 46.6%, 7.4%, and 46.3%, respectively (IBGE, 2023, pp. 1, 12), and the 2000 census figures of 38.5%, 6.2%, and 53.7% (IBGE, 2007). The increase in the Black population over the past two decades primarily stems from a rise in self-identification as Black (Miranda, 2015) despite consistent categories in census data (Telles, 2004, pp. 80–81). Throughout this article, I will use Black to encompass both Black and brown, as is common practice in Brazilian literature.

2. A Collective Narrative of Cordial Slavery, Mixed Races, and Racial Democracy

Anthropologists Gilberto Freyre and Sérgio Buarque de Holanda built a narrative that became widely accepted in Brazilian society throughout the 20th century (Itaborai, 2005). This narrative portrayed Brazil as having experienced a milder form of slavery compared to other economies with a slave-based system. The idea was rooted in a unique form of Catholicism and Portuguese interactions with diverse cultures, asserting that Brazil's Christianity was “lyric” and “festive,” fostering bonds among Blacks, the “Brazilian family,” and its culture (Freyre, 1963b, pp. 81, 184, 372; Itaborai, 2005, p. 171; Souza, 2000, pp. 70–76). This narrative attributed the purportedly less severe treatment of slaves to Moorish influence and the perception that “slaves were [often] members of the household” (Freyre, 1963a, pp. 222–23). In 1936, Freyre even characterized the Brazilian slavery system as a “cooperative system of society” (Freyre, 1963a, p. 679).

According to this narrative, the notion of a milder form of slavery laid the foundation for a 20th-century concept of racial democracy, emphasizing a single mixed race and national unity (Putnam, 1943, pp. 325, 335). In essence, Brazilian society embraced the idea of a nation built on racial mixing (A. S. A. Guimarães, 2002, pp. 117–118, 152–154; Zaid, 2006, p. 63).

The myth of racial democracy in Brazil claims the country has always been harmonious and racially inclusive—an idea deeply flawed given the historical cruelty and high mortality rates within Brazil's slavery system. Criticism of this narrative emerged in the 1950s and 1960s, but the military regime (1964–1985) reinforced the narrative. In a 1970 report to the United Nations Committee on the Elimination of All Forms of Racial Discrimination, Brazil's Minister of Foreign Affairs asserted there was no racial discrimination in the country, thus no need for legislative action. This period saw the exile of individuals who researched racism or challenged the ideology of racial democracy, including figures such as Abdias do Nascimento, Florestan Fernandes, Guerreiro Ramos, Fernando Henrique Cardoso, and Octavio Ianni (A. S. A. Guimarães, 2002, pp. 98, 155; Telles, 2003, pp. 57–61).

The narrative of racial democracy was still prevalent in Brazil in the early 1990s, and there were attempts to revive it under Bolsonaro's government (2019–2022), as mentioned below.

3. A Collective Narrative of Harsh Slavery Practices, Structural Racism, and the Myth of Racial Democracy

The narrative against racial democracy (see Ikawa, 2017) centres on the brutal history of slavery in Brazil. It was highlighted by the Brazilian Black movement throughout the 20th century, but it only transcended the limits of the movement in the last two decades (Martins, 2007, p. 179). This narrative highlights a grim

reality: Brazil's slave trade lasted over 300 years (Rout, 1976, p. 73), making it one of the longest transatlantic slavery regimes. In 1888, Brazil was the last independent nation in the Western world to abolish slavery.

Slaves occupied diverse roles, including on sugar cane plantations in the Northeast (peaking in the 17th century), mining in the state of Minas Gerais (peaking in the 18th century), and in cotton plantations in the state of Maranhao (from mid-18th to mid-19th century). Contrary to the notion of gentler slavery, slaves endured gruelling labour and were merely replaced if injured or killed (Siqueira, 2007, pp. 177–178). Mines alone saw the sale of half a million slaves, primarily from the Gulf of Guinea, with an annual death rate reaching 7,000. Slaves were subject to cruel punishments, including whipping, beating, poisoning, and hanging (Grinberg, 2018, pp. 149–154). Although some achieved freedom or emancipation, they faced challenges finding employment due to stigma, as whites did not accept their change of status (Rout, 1976, p. 86). Access to clerical, civil, and administrative appointments depended on proving “cleanliness of blood” (Rout, 1976, pp. 79–87).

In this narrative, the myth of racial democracy is a myth of denial that has perpetuated de facto discrimination in Brazil. This denial operates on three levels: denial of race, denial of racism, and denial of structural forms of racism, that is, of institutionalized or widespread representations of racism. The statistics presented below pertain to a period predating affirmative action programs and the shifting of narratives, characterized by particularly high levels of denial despite a growing number of statistical studies.

Denial of race in Brazil results from conceptual confusion regarding the definition of race, driven by the belief that objective definitions are elusive in a nation marked by extensive racial mixing and the absence of institutionalized segregation policies (Ikawa, 2008, Chapter 3). Although often overestimated, racial mixing does exist in Brazil and at a much higher level than in the United States, for instance. In 1992, the rates for endogamic marriages were 99.8% among whites and 96.6% among Blacks in the United States (A. S. A. Guimarães, 2002, pp. 138–152; Telles, 2003, pp. 57–61), but 83% among the general Brazilian population (Braziliano, 2022, p. 18). With no legal segregation since slavery's abolition and a racially mixed society, some argue that identifying distinct races in Brazil is not possible. Consequently, many Brazilians deny the existence of race. This argument overlooks, however, the understanding of race as a socially constructed concept that varies across societies, involving complex definitions and identification processes.

In Brazil, census-based racial classification has always relied on self-declaration (Telles, 2004, pp. 80–81). Reliable data collection on race in Brazil started in 1872 (Zaid, 2006, pp. 45–47, 52–58). Presently, the Brazilian census administered by the IBGE employs five categories: Black, white, yellow, brown or *pardo* (mixed-race), and Indigenous. Racial fluidity has not impeded a considerable degree of shared racial classification. Illustratively, surveys in 1976 and 1995 revealed that although Brazilians mentioned 135 colours and races to identify themselves, “94 percent of the respondents from both studies classified themselves within six principal categories” (dos Santos & Anya, 2006, p. 41).

The denial of racism in Brazil operates on two fronts: First, there is the belief that racism will be automatically overcome by an anti-racist ideology (A. S. A. Guimarães, 1997, p. 66), that is, by the belief that racism will be defeated by avoiding any discussion of individuals' categorization into distinct races; and second, there is the belief that discrimination in Brazil stems from class rather than race. As to the former front, eliminating race-related discourse while discrimination persists undermines the development of

policies to critique and combat racial discrimination. A 2003 survey conducted by the Perseu Abramo and the Rosa Luxemburg Stiftung Foundations, which interviewed more than 5,000 people in 266 municipalities, shed light on the consequences of this form of denial. While 96% of the Brazilian population denied being racist themselves, 89% of all Brazilians recognized that racism existed in the country, and 74% expressed some degree of racial discrimination as they commented on the following statements:

A good Black is a Black with a white soul.

When Blacks do not make a mistake entering a building, they do so exiting the building.

What would you do if you had a Black boss?

Eighty-one percent of browns and 57% of Blacks reported that they had personally never suffered any form of racial discrimination (Santos & Palmira da Silva, 2005, pp. 117, 130, 141–148). In sum, although Brazilians were able to recognize the presence of racial discrimination in the country, they denied being either the perpetrator or the victim. They denied guilt; they denied responsibility; and they also tried to flee from discrimination's oppressive mantle by denying its existence. The second front of denial, supported in the early 20th century by figures such as Freyre and Pierson, argued that Brazil's hierarchical social structure is rooted in class rather than race (Telles, 2004, pp. 7–8, 35). Despite increased statistical research at the end of the century revealing structural racism (Telles, 2004, pp. 54–55), many Brazilians persisted in this belief, undermining the significance of race as a source of discrimination. Certainly, not only class, but also gender, disability, sexual orientation, and age, among others, intersect and inform how race is perceived (Battle & Ashley, 2008; Carbado, 2019). The flaw with this second front of denial lies not in the indication that class is an additional factor of discrimination but rather in the deep disregard of race as a source of discrimination.

A third source of denial is the focus on immediate discriminatory treatment rather than on structural racism. Until the early 2000s, the prevailing perception among Brazilians regarded racism as an isolated, non-structural issue grounded in individual guilt and responsibility despite three centuries of brutal slavery and evident racial disparities (Ikawa, 2008, pp. 106–119, 139–205). The Perseu Abramo survey highlighted this belief, indicating that 49% of Brazilians felt that combatting racial discrimination was an individual responsibility, with only 36% acknowledging it as a governmental duty (Santos & Palmira da Silva, 2005).

Structural exclusion reinforces a narrative of exclusion, strengthening stigma and lack of recognition, thus validating the existing structure. In the 1990s, exclusion was deeply reflected in income distribution, health, and education. In 1992, Blacks earned merely 44% of what their white counterparts did. By 1999, income inequality had worsened, dropping that percentage to 42% (Henriques, 2005). Also, in 1999, the poorest tenth of the population was 70% Black and 30% white, while the richest tenth was approximately 85% white and 15% Black (Henriques, 2001). According to the 2000 census, while Brazilian whites had a life expectancy of 74, browns and Blacks averaged only 68. Mortality rates due to specific health issues were substantially higher for Blacks compared to whites, notably in reproductive and sexual health, where pregnancy-related mortality was twice as high for Blacks as for whites (Lopes, 2003, p. 25).

In education, the stark racial disparities persisted, with 51.1% of the Black population over 25 years old being illiterate in 1999, while only 10.4% of the white population in the same age group faced illiteracy (Henriques,

2005, Table 22). Data from the Institute of Applied Economic Research (IPEA) for the period between 1929 and 1974 revealed that, despite an increase in schooling years and the implementation of universal education policies, inequality between whites and Blacks remained largely unaffected (Henriques, 2001, pp. 26–30). In 1991, there were 1.1 million white students aged 18 years old or over enrolled in universities, compared to only 277,000 Blacks and browns, with the result that white students accounted for 78.3% of the university population, and Blacks and browns for only 19.7%.

Economic exclusion extended to political participation and positions of power (e.g., Stewart, 2009, pp. 317–318). In 1996, only one in 10 judges were Black. A survey of over 2,000 House of Representatives members from the late 1980s to 1994 revealed that only 29 were Black or brown. Edward Telles noted that there was only one Black general in 100 and eight Black prosecutors among 600 in the Federal Prosecutor's Office. Using 1980 census data, he found that whites were eleven times more likely to hold professional or managerial occupations than Blacks (A. S. A. Guimarães, 2002, pp. 189, 208–209; Telles, 2003, pp. 57–61; Telles & Paixao, 2013).

4. Two Narratives, Different Concepts of Rights

Different responses emerge in terms of rights, depending on the narratives we embrace. Embracing the narrative of cordial slavery and racial democracy tends to favour allegedly neutral or formal rights and policies, sustaining the denial of race and racism; doing so, then, favours the denial of a more realistic subject of rights that encompasses not only abstract but also concrete traits. This seemingly neutral stance disregards specific obstacles faced by racial groups, perpetuating de facto or substantive inequality. Such apparently universal policies may seem neutral, but they can disproportionately affect different groups due to unaddressed barriers (Langer et al., 2017, p. 1), promoting only formal equality and disregarding actual disparities. In education, neutrality could mean a uniform entrance exam for public universities, ignoring disparities between public and private schooling and the underrepresentation of Black students. This approach also undermines effective access to resources in various fields, including civil, political, social, economic, and cultural rights. In sum, neutrality usually means formal equality only, that is, “equality on paper.”

Contrarily, adopting the narrative of harsh slavery, structural racism, and rejecting racial democracy calls for contextualized rights. This approach considers diverse real-life experiences, acknowledging history and racism when analyzing rights and policies, and, therefore, acknowledging a more realistic subject of rights.

Using affirmative action in Brazilian higher education as a case study, I will explore how the narrative of brutal slavery and structural racism gained traction in the past 20 years, enabling a contextualized and more effective theory of rights. First, I will address the growing dialogue about race and racism within the population at large. Second, I will delve into how debunking the myth of racial democracy led to embracing a more realistic subject of rights and broader “possibilities of existence.”

5. A Narrative Transition: The Expansion of Dialogue About Race and the Fallacy of Racial Democracy

The Brazilian journey towards a more effective theory of rights began with an expanded dialogue around race. Having existed within the black movement throughout the 20th century (e.g., Ardoin, 2023,

pp. 27–40), it engaged the Brazilian population at large after two sets of events: the official recognition of racial discrimination in the 2001 UN World Conference against racism, racial discrimination, xenophobia, and related intolerance, held in Durban, and the subsequent implementation of race-based affirmative action programs. The inclusion of new actors in the debate legitimized the anti-racism dialogue in a way not seen before (Domingues, 2005, p. 174; Htun, 2003; Santos & Palmira da Silva, 2005, pp. 10–11; Telles & Paixão, 2013, p. 11).

The creation of this mainstream space for dialogue, this expanded “imagined community” (Anderson, 1983/2006, pp. 6–7, 62), allowed the “bargaining,” to use Haas’s (1986, p. 710) expression, of a narrative of denial into a narrative of structural racism, leading to a new image of the nation and the restructuring of values in the distribution of goods: The nation was to be perceived not as a homogeneous group of mixed-race individuals but rather as a racially plural group, and goods, such as education, were to be redistributed through affirmative action programs, in response to structural racism. In this mainstream space, the specific obstacles faced by Blacks to the realization of rights would finally be considered in relation to the definition of those rights to encompass affirmative action programs.

The expansion of the narrative of structural racism to new actors was made possible by the mobilization of the Brazilian black movement, an opening in the federal government to promote change, and the increasing adoption of race-based affirmative action programs. In 1995, the Black movement engaged the newly democratized Brazilian government in discussions about combating racial discrimination and adopting affirmative action initiatives (Bailey et al., 2018; Telles, 2004, p. 56). This engagement gained traction through active participation in the 2000 National Preparatory Committee for the Durban conference, where pressure was exerted on Fernando Cardoso’s government to acknowledge racial discrimination in Brazil (Bailey et al., 2018; Htun, 2003, pp. 61–62; Silva & Trapp, 2012, pp. 41–43). Collaborating with national and international groups further bolstered the movement’s legitimacy and advocacy strategy and generated political support (Htun, 2003, pp. 81–84). At the Durban conference, the Brazilian president not only recognized the existence of racial discrimination but also the need for affirmative action. After the conference, there was a shift in the affirmative action discourse from the black movement to politics in general. This change spurred institutional reforms, prompting more conversations about race and racism across Brazilian society.

Following Durban, Brazil introduced a national human rights program committed to combatting racial discrimination and promoting equality. Government bodies began implementing quotas for hiring Blacks, women, and individuals with disabilities in the diplomatic service (Domingues, 2005, p. 167; Htun, 2003, pp. 61–62), the Ministry of Agrarian Development, the Supreme Court, and the Ministry of Justice (Htun, 2003, pp. 68–72). In 2003, a special secretary was appointed to promote racial equality and embed racially based policies in federal agendas.

The rise of affirmative action programs in education, starting in 2001, fueled discourse further. By 2012, 70 public universities, primarily through local laws or university regulations, had adopted affirmative action programs, benefiting public school students (60 out of 70 public universities) and Black students (41 out of 70 universities; Daflon et al., 2013, pp. 307–312).

Institutionalization of affirmative action programs evolved further when the issue reached the Brazilian Supreme Court and the Brazilian Congress in 2012, expanding dialogue across Brazilian society. ADPF 186

(an allegation of non-compliance with a fundamental constitutional precept) presented by the Democratas political party, aimed to challenge the University of Brasilia's 20% racial quotas for student admissions, seeking its declaration as unconstitutional (Supremo Tribunal Federal, 2012).

In this case, the University of Brasilia highlighted the positive results of its affirmative action policies. Out of 3,980 students admitted through quotas since 2004, both quota and general system admissions showed similar graduation rates (7.1% and 7.9%, respectively) and comparable grades. Also, this case prompted the Supreme Court's fifth public hearing in its history, where 38 experts from academia, social movements, human rights organizations, and government agencies debated the issue extensively ("Cronograma da audiência pública," 2010; L. G. Guimarães, 2021).

The Supreme Court deemed the University of Brasilia's affirmative action constitutional, citing principles of substantive equality and pluralism of ideas within the Brazilian Constitution. The Court highlighted that affirmative action aligns with substantive or de facto equality, allowing both universalist policies and targeted actions benefiting specific social groups to address historical inequalities. It stressed that measures tackling the historical structure of inequality within universities should not be judged solely based on individual constitutional principles such as merit, considered in isolation. Affirmative action should rather be viewed within the broader framework of Brazil's principles (Supremo Tribunal Federal, 2012, pp. 2–3, 19). For instance, the principle of pluralism of ideas, a cornerstone of the Brazilian state, justified differentiated admissions that consider racial or socioeconomic criteria for the benefit of society. Justice Gilmar Mendes defined pluralism in light of a history of racial inequalities and as part of the "value of equality." He stated that, in a racially diverse society marked by such history, the Court was compelled to go beyond formal equality to promote the constitutional value of de facto equality through the adoption of affirmative action programs (Supremo Tribunal Federal, 2012, pp. 178–179).

The Supreme Court decision triggered the enactment of a new federal law (Law no. 12.711) in 2012, mandating affirmative action in admissions to federal public universities and technical schools. This law reserved 50% of positions for students from public high schools, with 50% of those reserved for low-income families. Moreover, positions were to be reserved at least in the same proportion as the representation of Blacks, browns, Indigenous peoples, and persons with disabilities in the state where the educational institution was located (Law no. 13409/2016).

Educational institutions were given four years to fully implement the law, and the executive branch would revise the racial quotas ten years after the law's publication (Law no. 12.711), a date that will most probably be postponed by a few decades (e.g., Bill no. 1788/2021 and Bill no. 3422/2021; see Feres Júnior & Luz, 2022). By the end of 2012, all public universities were using either class quotas (mainly focusing on students who had attended public schools) or a combination of class and race quotas rather than purely race quotas (Telles & Paixão, 2013, p. 10).

The number of Blacks and browns at universities doubled between 2003 and 2013, that is, in the first ten years of affirmative action programs, from 19% to 38% (Gois & Duarte, 2013). By 2020, among the 5,574.551 students in undergraduate programs, 44.91% were white (2,503.874), and 37.19% were Black (2,073.667) (IBGE, 2022).

The extended debate about race and racism in Brazil, the debate that encompassed an expanded “imagined community” opposed to the myth of racial democracy, promoted a shift in public opinion over the years, with increased support for affirmative action for Blacks in universities.

In 2003, a survey conducted by the Perseu Abramo Foundation indicated that 59% of those interviewed supported racial quotas for university admission (Domingues, 2005, p. 172). In 2008, a survey by the Datafolha Institute concluded that 62% of Brazilians at least partially agreed with quotas for Blacks in the field of education (Telles & Paixão, 2013, p. 11). In 2010, a survey conducted by the Latin American Public Opinion Project at Vanderbilt University posed the following question to a nationally representative sample of 2,482 Brazilians: To what extent do you consider reserving spaces in universities for Black students fair (on a scale from 1 to 7)? More than two-thirds of the interviewees substantially agreed with the statement, choosing either 7 (*strongly agree*), 6, or 5 (Smith, 2010, pp. 1–2).

In 2015, a survey conducted by Caregnato and Oliven, covering a representative sample of 900 Brazilians living in the state of Rio Grande do Sul, found that 75.8% of Brazilians supported the 2012 federal law that established racial and class quotas for all federal universities (Caregnato & Oliven, 2017, p. 179; Turgeon & Habel, 2022). Results differ, however, depending on factors like race and income, as well as the type of affirmative action under scrutiny. Turgeon and Habel (2022, p. 506) found that whites and high-income respondents are less supportive of quotas than others and that racial quotas have lower support than income and public-school quotas.

The shift from a narrative of denial to a narrative that recognized the fallacy of racial democracy did not happen in a vacuum, however. Other narratives have either sustained or limited that shift. For instance, Brazil’s constitutional process in the 1980s, supported by social movements like the Unified Black Movement, shaped a narrative emphasizing pluralism and political engagement. Born in the 1970s in reaction to racial inequalities and police violence, the Unified Black Movement became a key force behind Congress’s small black caucus. It was successful in ensuring that racism was treated as a crime in the 1988 Constitution when the narrative of denial was still prevalent (Paixão, 2019; Telles, 2004, p. 50). The movement’s success stemmed from unifying Black leaders, grassroots campaigns, and the establishment of influential NGOs such as Geledes, CEERT, and CEAP (Telles, 2004, pp. 48–52). Subsequently, however, an opposing narrative gained strength. Bolsonaro’s administration (2019–2022) amplified the old denialist narrative while also embracing explicit racism (Bledsoe, 2019). During his campaign for the presidency, Bolsonaro rejected the notion of “special classes” (Utida, 2022) based on race, gender, or sexual orientation, coining the term *coitadismo* or “underdog-ism” to delegitimize any discourse around discrimination and exclusion (Alencar & Silveira, 2022, p. 36; Caleiro, 2018). When the Black Lives Matter movement gathered momentum in the United States and when the racially motivated murder of a Black man in a Brazilian supermarket caused outrage around the country, Bolsonaro’s vice president, Hamilton Mourao, reinstated the narrative of racial democracy, by arguing that there was no racial discrimination in Brazil (Rios, 2022). Additionally, Bolsonaro made overtly discriminatory statements about Quilombolas, suggesting they were unproductive (Bledsoe, 2019, p. 165). His discriminating discourse may have been connected to an increase in killings of Quilombolas by 350% in 2017. He also promoted aggressive police actions, particularly impacting the Black community (Bledsoe, 2019, pp. 166–168). In 2018, he argued that the police should shoot first and then ask questions, adding that those killing more should be decorated, not punished. Such comments might also have led to steep increases in the number of people killed by the police. In the state of

Rio de Janeiro alone, 1,810 people were killed by the police in Bolsonaro's first year of mandate, the highest level in two decades (Gortazar, 2020).

The change in Brazilian politics from the Bolsonaro regime to that of Lula in 2023 has brought about another change in discourse. Despite 81% of the Brazilian population acknowledging the country's racism in 2023 (Lucca, 2023), a 2022 survey by the Datafolha Institute revealed that only 50% of respondents still supported race-based affirmative action programs in universities ("Datafolha: Metade dos brasileiros," 2022). The impact of the Lula administration, and its pro-affirmative action discourse (Carvalho, 2023) on this scenario remains unknown. As of 2024, the 2012 federal law implementing race-based affirmative action programs in federal universities and the 2012 Supreme Court decision affirming their constitutionality remain in force.

6. A More Realistic Identity for the Subject of Rights and a Contextualized Theory of Rights

Despite Bolsonaro's discourse of denial and overt racism, the extended discourse on race and racism has led to the acceptance of a more realistic view of identity concerning the subject of rights. While this discourse preserved an idea of abstract equality, it also unveiled a broader spectrum of "possibilities of existence" or of individual ways of being in a particular social context regarding race, gender, sexuality, and other traits (e.g., Butler, 1986, pp. 41, 48; Butler & Reddy, 2004, pp. 115–23; Honneth, 1995; Lopez, 1994; Miller & Vance, 2004). In other words, a broader array of concrete individual traits that were rendered invisible by the narrative of denial were made visible in the first decade of the 2000s by a narrative of structural racism.

Individual identities are malleable and dependent on the context in which they are immersed. Each person's possibility of existing in a certain way is limited by the set of identities considered acceptable in a given society. This idea applies especially to racial identities. Such identities are not held in isolation. They are a social construction grounded in our interaction with pre-established social norms, or, more specifically, as argued in this article, in social norms immersed in collective narratives about slavery, denial of race and racism, or recognition of race and racism. They are identities embedded in divergent life experiences around race.

The narrative that developed centred on the myth of racial democracy downplayed the relevance of race despite existing racial inequalities. Considering Brazil's lengthy slavery regime and its historical utilization of race for purposes of exclusion, silence over race and racism not only threw a veil of invisibility over people's experiences of living in a society entrenched in racism but also over the possibility of producing a collective (national) narrative that embraced Black identities as valuable, that is, that created diverse racial possibilities of existence that would be valued by society at large. In sum, the narrative of denial, to a considerable extent, erased racial identities, especially Black identities, and reinforced structural racism itself. If one cannot openly explain structural racism within a society deeply embedded in racial inequalities, the responsibility for social exclusion is implicitly allocated to the victim of discrimination. This allocation of responsibility, in turn, justifies those inequalities.

The erasure of Black identities in the context of rights and affirmative action programs was highlighted in the 2012 Brazilian Supreme Court case mentioned above. Here, the Fundação Nacional do Índio, one of the organizations to intervene in the case, stressed that denying the existence of racism "disqualifies the life

experience of the persons who have been discriminated against, denying their reality” (Supremo Tribunal Federal, 2012). Additionally, the Court referenced Zygmunt Bauman, noting that mutual understanding requires shared experiences, which can only occur if a “common space” is created (Bauman, 2005, p. 44, also cited in Supremo Tribunal Federal, 2012). This common space, where distinct racial experiences can be exchanged, may be found at a racially inclusive university or, more generally, in a more amorphous dialogue space involving a society at large.

The increasing adoption of a narrative of structural racism across Brazilian society has indeed dispelled, at least in part, the veil of invisibility, revealing a wider range of valued possibilities of existence, particularly concerning race. It has created a national space where more pluralist racial experiences of existence, including experiences of discrimination, are mainstreamed, that is, where experiences of living within the realm of structural racism are mainstreamed. It has created a space for collective and plural learning about race and racism. Such a change in narrative has allowed for a better understanding of the reasons why particular racial groups are excluded from access to resources, such as education, and has given us a new starting point for addressing those reasons to the extent that one can include race as an element in the conceptualization and implementation of rights. One could start thinking, for instance, of race-based affirmative action programs as an element of the right to education. In other words, one could reconceptualize the formal right to education as a contextualized right to education by considering affirmative action programs based on race as one of the elements of the right to promote de facto equality or equality in practice. In sum, while a formal right to education would be blind to differences among racial identities, the contextualized right to education would be aware of such differences, encompassing a right to affirmative action programs.

The shift toward recognizing a more realistic subject of rights, a subject with a race and a class, marked a transition from stigmatized and marginalized racial identities to empowered, visible, and valued agents. This transformation turns race from a foundation for oppressive social hierarchies into a tool for dismantling such structures (Ikawa, 2008; Supremo Tribunal Federal, 2012). Indeed, Bragato and Colares (2017) interpret the recognition of the demands by Blacks in the 2012 Supreme Court decision as a “decolonial turning,” a disruptive move through discourse from otherness and non-existence to inclusion and empowerment. More specifically, they stress that “the decision highlights a discourse according to which the claim itself (reservation of quotas) has the potential to break with [inferiorization] discourses and reverse the negative effects of discrimination, promoting what [a] Supreme Court justice calls inclusion, a compatible reading, in many points with the concept of empowerment” (p. 976). By combining this empowerment theory with Benhabib’s (2007) and Anderson’s (2006) approaches, this shift could be interpreted as the recognition of concrete individuals with specific race-related and class-related experiences as equal communicative agents in an expanded “imagined community.” As equal communicative agents in dialogue, they were able to mainstream a collective narrative of structural racism and, from there, the possibility of rights that included affirmative action programs. More specifically, they were able to push for the recognition of a right to education that included race-based affirmative action programs in Brazilian universities.

7. Conclusion

As mentioned at the beginning of this article, an effective theory of rights would start with some understanding of who we are and what we need—the recognition of a more realistic subject of rights. Such recognition is possible through the articulation of collective, intersubjective narratives that may become dominant in the

national sphere. In the context of racial identities, these narratives have emerged with the history of slavery, and they have continued to be developed over the last century and a half.

Two main narratives were considered here: the narrative built around the myths of gentler slavery and racial democracy, prevalent in Brazilian society throughout the 20th century, and that of brutal slavery and structural racism that emerged from the Black movement and became more familiar to society at large after the Conference in Durban.

The anti-racist narrative (the narrative of denial) is in itself a form of structural racism, as it makes invisible a status quo immersed in racial inequalities. It protects this status quo from criticism and creates a false myth of racial democracy: a dogma that cannot be questioned. It legitimizes, therefore, the de facto racial inequalities underneath the myth.

The narrative of brutal slavery provides a basis for responses to structural racism, as it lifts that veil of invisibility for the Brazilian society at large. Indeed, the reinforcement of this narrative has led to institutional changes that have impacted structural racism.

Moreover, while existing affirmative action programs do not encompass all possible contextualized approaches to rights and do not guarantee complete de facto equality in terms of rights, they do reflect a significant transformation in how society perceives racial groups—from a stigmatized group to empowered agents whose history of discrimination is made visible, whose existence is made visible, and whose rights are finally recognized in their contextualized entirety.

This progress reflects substantial gains in representation and inclusion. However, persistent regional disparities and unequal representation in prestigious courses remain. Additionally, higher education participation is one facet of the broader landscape of structural racism in Brazil. According to numbers just published by IBGE in 2022, for instance, those living below the poverty line (1.90 USD/day) in Brazil included 5% of whites, 9% of Blacks, and 11.4% of browns. Whites comprised 69% of management positions, while Blacks and browns comprised 29.5% (IBGE, 2022, p. 1).

Although some progress has been made towards racial equality, there is still much work ahead and a stronger narrative to be crafted. One major obstacle may be the legacy of Bolsonaro's narrative of denial and the overt racism he normalized. The Bolsonaro period shows that political factors influence how narratives evolve, and the changes recorded here are not necessarily irreversible. The narrative of structural racism may be reinforced if a more realistic subject of rights is widely acknowledged, including the consideration of race in an enlarged "imagined community."

Conflict of Interests

The author declares no conflict of interests.

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