

**POPULAR LYNCHING AS A MODALITY OF PARASTATAL JUSTICE****EL LINCHAMIENTO POPULAR COMO MODALIDAD DE JUSTICIA PARAESTATAL****O LINCHAMENTO POPULAR COMO MODALIDADE DE JUSTIÇA PARAESTATAL****João Gaspar Rodrigues<sup>1</sup>**

**ABSTRACT:** The present study brings together reflections on the collective aggressiveness that results in modalities of parastatal justice, such as popular lynching. The phenomenon of collective aggressiveness has only recently been studied in order to identify the multiple forms acquired by intraspecific human violence, as well as the social, legal and institutional weaknesses under the broad context of the Democratic Rule of Law. Furthermore, it seeks to assess whether the State model is fulfilling its functions and whether there are points of erosion in the social environment.

**RESUMEN:** El presente estudio reúne reflexiones sobre la agresión colectiva que deriva en modalidades de justicia paraestatal, como el linchamiento popular. El fenómeno de la agresividad colectiva ha sido recientemente estudiado para identificar las múltiples formas que adquiere la violencia humana intraespecífica, así como las debilidades sociales, jurídicas e institucionales en el contexto amplio del Estado Democrático de Derecho. Además, busca evaluar si el modelo de Estado está cumpliendo con sus funciones y si existen puntos de erosión en el entorno social.

**RESUMO:** O presente estudo reúne reflexões sobre a agressão coletiva que resulta nas modalidades da justiça paraestatal, como o linchamento popular. O fenômeno da agressão coletiva tem sido estudado apenas recentemente com o objetivo de identificar as múltiplas formas adquiridas pela violência humana intraespecífica, assim como as fragilidades sociais, legais e institucionais sob o amplo contexto do Estado Democrático de Direito. Ademais, busca avaliar se o modelo de Estado está cumprindo as suas funções e se existem pontos de erosão no ambiente social.

**KEYWORDS:** Parastatal justice. Collective aggression. Lynching. Rule of law. Public Insecurity.

**PALABRAS CLAVE:** Justicia paraestatal. Agresión colectiva. Linchamiento. Estado de derecho. Inseguridad Pública.

**PALAVRAS-CHAVE:** Justiça paraestatal. Agressão coletiva. Linchamento. Estado de Direito. Insegurança Pública.

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## Introduction

There are certain social phenomena that, although extremely harmful to the peaceful and orderly existence of society, remain lacking in a reflective scientific approach and, what is worse, surrounded by multiple myths. Among these phenomena are the modalities of parastatal justice, such as lynching, private revenge, militia, death squads, etc. The topic has been so neglected by social scientists that, in general, the material is poorly organized, under-analysed<sup>2</sup> and wide open to new interpretations.

The study of these modalities of private justice, in addition to the intrinsic interest of understanding (which presupposes a standard and an intelligible objective order), sheds a little light on social and political organization. It helps to clarify the social, legal and institutional weaknesses under the broad context of the Democratic Rule of Law, as well as to identify the multiple forms acquired by violence.

Among the modalities of parastatal justice, we selected popular lynching, due to its greater visibility and recurrence, to be the object of analysis in this essay. Obviously, there is no adequate and productive discussion of a problem if it is conducted out of all relations to the

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<sup>2</sup> Because it is scarcely studied by the social sciences, it is a problem about which it is “much easier to be dogmatic than correct” (Smith, 1957, p. 243).

context that determines the meaning of the problem (Nagel, 1966, pp. 13/299). It is not possible to operate, nowadays, in any area of knowledge, without a relational approach.

Each thing is such an integral part of a context that it cannot exist or be truly conceived outside of that contextual setting. Furthermore, one cannot give a social phenomenon a univocal meaning. Therefore, any approach that is intended to be fruitful presupposes, as a good methodological technique and intellectual construction, a contextual, relational and functional view,<sup>3</sup> within a hermeneutic of totality. There is only one way to achieve a clear understanding of the value of methodological principles: to place their identifiable functions in effective research.

We have little systematic knowledge about lynching, as a modality of parastatal justice, and there has not been much reflection, politically and legally grounded, on the subject. This is favored by the lack of official records on the phenomenon, since it is not classified as a crime and, therefore, is not accounted for in the institutional filters of the police and the justice system. The lack of definition of the phenomenon makes it more recurrent and, to a certain extent, socially and institutionally permissible. As a social fact, it does not present a constant line of action, but varies from time to time, according to social, political, economic and cultural conditions.

The degree of confidence of a beam of reflections – not merely marginal ones – is in direct proportion to the perfection of what is observed and exposed using the best available methods. The correctness of the methods used to reach safe conclusions guarantees any study to identify and distinguish the false from the true, dissolving prejudices and dogmas from an accurate critical reflection.

Several studies present evidence in support of the conceptions regarding the origins of human action in its collective bias, which are deeply disturbing, about widely held hypotheses on the basis of human rationality and responsible action. Massive movements of unrestrained violence insinuate themselves as representative models of these concerns.

The purpose of this essay is to try to reflect on a general guideline – a working hypothesis or an analysis model – capable of manipulating or managing the labyrinthine

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<sup>3</sup> What is known about lynchings is confined and reduced, basically, to the red notes and the news discourse of the newspapers. “The headlines of the electronic and printed media are eloquent and often have a double impact on citizens: this journalistic work cannot resist the temptation to season its informative work with succulent doses of morbidity and, many times, it raises its voice, crying out enough is enough, in frank challenge to the institutions of justice. The severity with which the application of a 'firm hand' is demanded against insecurity, transforms the news event into an electronic court of fact of society” (Islas, 2002, p. 39).

complex of facts related to lynchings, as a modality of parastatal justice, and to find theoretical means to establish some notions conceptual or simple essences.

## 1. Lynching preliminary notions

The Democratic Rule of Law obeys two basic principles of public order: 1 - the submission of citizens to a formally recognized legal system under the filter of constitutional supremacy; 2 - the legitimate monopoly of the use of force by the State<sup>4</sup>. In this monolithic political scheme, around which social and political mechanisms must organize themselves, there is no reasonable space for individual or collective subjective manifestations that ignore it, such as parastatal forms of justice: arbitrary exercise of their own reasons, private revenge, lynching, extermination squads (or “death squads”), militias, etc.

The movements of parastatal justice, including lynching, constitute a direct affront to the foundations and objectives of the Republic, with regard to the dignity of the human person (CF, art. 1, III) and the construction of a just society (CF, article 3, I). And they still violate the high constitutional commitment to the “peaceful resolution of conflicts” (CF, art. 4º, VII) and the essential guarantee that “no one will be deprived of their liberty or their property without due legal process” (CF, art. 5, LIV), in addition to the entire table of fundamental rights.

And it is not possible to take justice into one’s own hands, because for this there is a duly institutionalized judicial system, from which the “law will not exclude ... injury or threat to law” (CF, art. 5º, inciso XXXV – Brazil, 2022a). In theory, recourse to justice in one’s own hands would be prohibited, as we would have courts with a speedy, exhaustive and impartial (and in the case of the hyposufficient, free) action. Despite this, self-protection still finds support in some legalized situations: self-defense (Criminal Code, art. 23, II – Brazil, 2022b); personal effort<sup>5</sup> (Civil Code, art. 1210, § 1 – Brazil, 2022c); legal pledge or pledge credit (Civil

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<sup>4</sup> “It is after all with the instrument of positive and coercive law that the political coexistence of a political community is legitimately regulated” (Habermas, 2002, p. 86). In a classic lesson, John Locke (1964, p. 17) highlights: “...all force belongs to the magistrate alone, nor should any individual at any time use force except in self-defense against unjust violence.”

<sup>5</sup> “The troubled or dispossessed possessor may maintain or restore himself by his own strength, provided he does so soon; the acts of defense, or of effort, cannot go beyond what is indispensable for the maintenance or restitution of possession.”

Code, art. 1467, inc. I<sup>6</sup> – Brazil, 2002c); the strike, in labor law (guaranteed by the Constitution itself, art. 9<sup>7</sup> – Brazil, 2022a).

Brazilian civil law also emphasizes that those “practiced in self-defense or in the regular exercise of a recognized right” do not constitute illicit acts (CC, art. 188, I). The art. 345 of the criminal law (Código Penal – Brazil, 2022b) by providing for the crime of “arbitrary exercise of one’s own reasons” (“taking justice into one’s own hands, to satisfy a claim, albeit legitimate...”), excludes acts permitted by law.

At the international level, the Mexican Constitution is explicit (Mexico, 2022):

“No person can do justice for himself, nor use violence to claim his right” (art. 17).

What does that mean? It is not that it deprives the individual of being able to do justice (Goyri, 2002, p. 59), but that in the logic of the social pact it is no longer possible to do justice with one’s own hands, because we hand over, among others, this natural faculty to state institutions of a permanent character. What is further clarified in the same art. 17 of the Mexican Constitution:

“Every person has the right to have justice administered by courts that will be able to administer it within the terms and conditions established by law, issuing their resolutions promptly, completely and impartially; your service will be free, consequently, court fees are prohibited”.

The rule of law, even if imperfect, allows the peaceful existence of society and opens a wide space for the “democratic control of violence.” If acts of collective violence begin to be viewed with condescension, everyone’s safety and life are put at constant risk. The legal-social pact represented by the Rule of Law is the compass and the sea chart of an organized and civilized society, designed to disintegrate, one after the other, the inherited fragments of an authoritarian and violent structure. And in this regulatory mission, it is able to resist infractions, exceptions and crises, without breaking or devitalizing.

The violation of current legality, converted into a massive disturbing phenomenon, is directly proportional to the lack of a strong and healthy social structure (Ciaramelli, 2009, p.

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<sup>6</sup> “The following are pledge creditors, regardless of agreement: I - hosts, or inn or food providers, on luggage, furniture, jewelry or money that their consumers or customers have with them in their homes or establishments, for expenses or consumption that they have there done”.

<sup>7</sup> “The right to strike is guaranteed, and it is up to workers to decide on the opportunity to exercise it and on the interests that they must defend through it”. The abuses committed are protected, subjecting those responsible to the penalties of the law (CF, art. 9, §2°).

168), and represents the rupture of the limits, even if minimal, between institutional effectiveness and the society. Therefore, they are functional and illegal mass movements and behaviors are appropriate, which punish not only the delinquent (or the outsider), but also the institutional constellation of the Rule of Law. Even if they are publicly disapproved, their recurrence is something easily observable in the turbulent daily life, something chaotic and insecure on the outskirts of large cities (with equal or proportional incidence in rural areas).

The rule of law based on the power of the people puts an end to the domination of man over man, typical of pre-modern societies, which have their own sense of justice. Even in complex and modern societies, there is a very specific legal and moral status that is triggered in certain borderline situations. In these “borderline situations” (of accumulated anger and recurrent impotence), whether in the beginnings of the human species or in the last achievements of civilization, “physical force”, Beatty (2014, p. 01) tells us, “has usually been the resource used to resolve the most difficult and most deeply felt disagreements”.

In a democratic society, the people are the maximum holder of power, but they must know that they should not do anything (Rodrigues, 2021, p. 152), such as suspending the current legal order and imposing justice into their own hands, believing that they are the *vox populi, vox Dei*. Democracy is the regime of self-limitation and “well-regulated dispute, in which force without violence prevails” (Jouvenel, 1996, p. 60; Beatty, 2014, p. 02; Popper, 1974, p. 126). While police apparatuses and army squads can be governed by orders, democracies require negotiations, compromises and concessions (Levitsky/Ziblatt, 2018, p. 80). When not subject to any control, democracies are capable of stripping people of their property and dignity and, where the death penalty is legal, even of killing them without hesitation.

These movements of justice rescue all the obscure instinct of the primitive childhood of humanity: they are facts filled with the past and ancestral tendencies, and without any future on the horizon of institutional normality. Collective indignation is not always guided by a sense of justice and almost always becomes an act of injustice in itself. In this fleeting moment of fury and violence, the individual enjoys a primitive freedom (a kind of “cathartic power”<sup>8</sup>), a tenacious residue of a remote origin, without experiencing the feeling of guilt so typical of the individual act itself. The anonymity of the crowd is a magic ticket to compose the

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<sup>8</sup> The lynchers “kill because they hate the impunity of rapists, thieves and murderers, but above all because of the cathartic power conferred on them by the death penalty” (Monsivais, 2002, p. 16). This author understands the massification of lynching, fundamentally, as the combination between the return to barbarism, as a sign of righteous affirmation, and the local growth of homicide rates (2002, p. 17).

lynching mob, guaranteeing the irresponsibility of all the participants and, therefore, that much appreciated “primitive freedom”, the “fullness of extermination”.

Man is an animal and his rational faculties are the extension of very rudimentary biological functions (Nagel, 1966, p. 153; Santayana, 1958, p. 16; Gould, 1991, p. 351; Ferrater Mora, 1983, p. 20), which are exacerbated when acting in a group or collectively. Man, at the multitudinous level, is closely linked to animals. In this module, the collective mind becomes a passive recipient of external stimuli that arrive at the cerebral cortex as alerts and not as information data to be processed through reflection. For valuable moments, the individual divests himself of the rational animal condition to enter a state of irrationality (defying the madman who wears him tied to his waist, in the words of Santayana<sup>9</sup>), without full knowledge of himself and his actions.

A certain dose of aggressiveness integrates the survival drive of any organic being, with the elimination of obstacles and even of other living beings (Ferrater Mora, 1983, p. 177). And the process seems to repeat itself, with the relevant modifications, in the social and historical world, where neither coexistence, nor mutual tolerance nor peace have been norms to guide the constitution and development of human societies or of groups and individuals within these societies. As Thomas Jefferson (1964, p. 63) says, “man is the only animal that devours its own kind”, inflicting pain and death on it.

Mob lynching is a free invention of emotion and baser instincts, outside the realm of logical and rational processes. There is no calculation or planning, just the eruption of unrestrained emotions that reveal the most diabolical side of human nature. The responses of the transgressing masses to the stimuli received are almost always more rigid, immediate, stereotyped and merciless than the responses of an individual placed in the same situation. The individual’s reactions are, as a rule, more flexible and variable. As we proceed from the parties (individuals) to the collectivity (lynching mass), the latter exhibits greater rigidity. The inventiveness of individual behavior differs essentially from the extremist (“all or nothing”) and mechanical or binary (“us or them”) routines of massive groups.

In his historical attempt to separate himself from animals, man opens up his animality by integrating a lynching mass and its impetus for destruction. He easily loses his wits in the crowd, allowing himself to be carried away by the numbers, the shouts and the herd

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<sup>9</sup> Literally says G. Santayana (1958, p. 16), in a famous reference: “The smart man that history knows blossoms into a fool and has a madman tied up”. This passage brilliantly summarizes the dynamics of human misery, honing the truth that “we will not understand man if we do not study his animal nature” (Becker, 1977, p. 17).

enthusiasm. The integration of ontological disparities, man and multitude, individuality and anti-individuality, in the lynching mass unity, results in an explosive compound.

A trigger is required to activate the popular lynching module. And this trigger (“superstimulus” or “action indicator”) is a kind of instinctive communication or instruction for massive action, not reflection. There is no delay in responding. When a certain situation occurs (a failed robbery with a replica or a simulacrum of a firearm, for example), the mass interprets it as a message or a specific command to unleash their lynching fury, without reflecting on the context and conditions involved<sup>10</sup> or responding to screams of mercy. Its response unit is immediate (or automatic) and unique; there is a single point of contact with reality, which soon dissolves in emotional catharsis. The material of reality with which the mass comes into direct contact has a primary (almost primitive) emotive character.

There is no appreciable interval (“delay in response”<sup>11</sup>) between the incoming stimulus (“trigger”) and the action undertaken. The crowd does not recite an Our Father or count to ten (as would, in principle, a solitary individual placed in identical circumstances), they simply let themselves be dominated by the emotional charge contained in the superstimulus. Does not take the time to decode the situation or reflect on it and the consequences of an immediate response. Under the stimulus-response model, overwhelming fury passes through the members of the lynching mass as through an electrical circuit.

This “delay in the response”, that is, the interval between the stimulus and the emission of the message it provokes, is a central and formative trait not only of human language, but also of man’s condition of being rational. The delayed response produces, among other consequences, the *separation of affectivity*. In the animal kingdom there is no separation from the emotional charge that surrounds your messages. Among humans, the content of a stimulus is independent of its emotional charge. The lynching mass, for ignoring the delayed response and the separation of affectivity, leaves for immediate, emotional and aggressive animal action.

Massive involvement loosens the grip of identity. The members of the transgressive movement do not have identity characteristics, they are cogs in a precarious gear without personality. The small cumulative and interacting individual fluctuations in an organized social group do not appear – or are momentarily neutralized – in a context of collective aggression.

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<sup>10</sup> This situation is similar to what happens among animals. When an animal emits a message (howl, scream, bray, etc.) or sound stimulus of danger, “the animal that hears fires, without reflecting” (Bronowski, 1977, p. 90). The sounds and signals emitted have the force of instruction rather than information.

<sup>11</sup> The interval between superstimulus and action has the effect of producing an internal discussion of alternatives before an immediate aggressive action takes place.



Anyone let loose in such an environment loses his personality like an animal in the herd. The individual, although fully aware of what he is doing, acts as if he were in a bacchanal trance. And in this trance, he frees himself, momentarily, from the shackles of commandments, prohibitions and morality, being swallowed and remodeled by the transience of the ignorant mass. His moral conscience and the threats of his “inner judge” are, for the moment, ignored, while his action is diluted in the anonymity of the crowd.

The masses, as mentioned by M. Oakeshott (2020, pp. 95/96), “are not composed of individuals; are made up of anti-individuals united in a revulsion against individuality”. The similarity with the physical terms “matter” and “antimatter” is not absurd, because just as the encounter of these two fundamental particles leads to extinction, the individual before the lynch mob loses his personality and individuality; he disappears as a rational being. This anti-individual (synonymous with mass man or manqué man) has feelings and not thoughts, impulses instead of opinions, incapacities instead of passions.

In the mass context, the concept of individuality, already ambiguous, loses all operational meaning. Once the individual mixes his identity with the palpitating power of the lynch mob, he loses control over himself. The individual has a value, justice, he believes in it, but surrounded by the crowd, he adheres to the execution of his own hand, developing a non-valuable impulse or an anti-value, or a form of cathexis. There is no equivalence between value and impulse; this is a short-term response to more superficial preferences, while value implies a broader, longer-term view.

Crowds seem to find themselves in a state comparable to hypnosis, a strange state that excites in each individual an obscure need to merge with the whole (Moscovici, 1993, p. 121). It relieves the individual of his solitude and transports him to a world of collective intoxication and jubilant instincts, where he experiences the euphoric sensation of his omnipotent freedom, inaugurating the image of a new barbarism.

It is not always casual or uninformed crowds or groups of people who lynch. Under the epithet of “mass”, “people” or “popular”, hide formal or informal organizations prepared for parastatal justice, which take advantage of social needs. Examples of these organizations (or “para-institutions”) are: neighborhood or street surveillance, groups of neighbors (who close streets, put up fences and guards<sup>12</sup>), community leaders, self-defense committees, militias, etc. These organized groups take on typical police tasks such as patrolling and surveillance, and also carry out actions not only for prevention, but also for repression and punishment.

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<sup>12</sup> A clear indication of distrust in State justice, in the public security apparatus and in their own security.

## 2. Popular or parastatal justice

Like any phenomenon, lynching has some verifiable regularities (see item 5) that allow it to be defined in constructive terms. Thus, based on a definition by Vilas (2003, p. 51), we can say that lynching is a collective, private and illegal action that can cause the death or severe mutilation of the victim<sup>13</sup> in response to actions or conduct of it, and which is numerically inferior to the lynch mob. The reaction of the lynch mob is, as a rule, excessive and disproportionate.

The lynch mob is a reduced and misshapen representation of a people or population, acting as a mob or occasional gathering of people, guided by fierce and basic aggregated instincts. Strictly speaking, the concept of mass (lynching) is “a pure quantitative abstraction” (Nicol, 1953, p. 250), given its amorphous character.

The various forms of parastatal justice translate, in their infinite variety, the violence of man’s inhumanity to man, showing that “humanity is not yet, in any way, reconciled with itself” (Chatelet, 1972, p. 187). The human panorama of the lynching mob, in particular, is nothing more than an undifferentiated sum, whose totality bears no resemblance to the addition of its parts.

Lynching, as a kind of popular or parastatal justice, is configured as an anti-legal fact in the face of the positive law of the State. But to what extent are these collective lynchings and other forms of para-state justice not a devitalized by-product of postmodern irrationalism and obscurantism? Or a one-dimensional mass society that sees the other as the enemy and destroys everything it does not understand? Do the decay of rational values and the emergence of new demands somehow favor the indistinction between good and evil, right and wrong?

The more immediate material needs of life absorb all the will, making it unavailable for higher purposes. Thus, when society deals with pressing basic problems such as unemployment, health, education, public safety and corruption, conventional and rational phrases about personal freedom and human rights sound more and more unrealistic and do not lend themselves to conceptualizing the existing crisis, but they are themselves critical

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<sup>13</sup> It is a brutal and shocking experience to come across an event of this nature. “Popular anger is fearsome” (Hume, 1963, p. 97). When excessive violence does not result in death, what remains is the severity of injuries with fractures (external and internal), wounds that require sutures, severe polytrauma, profanation, etc.

symptoms. The maximum relevance of this humanist scenario passes for anachronism, a disquieting anachronism.

### **3. Reasons that lead to parastatal justice**

The scarce studies on the subject indicate several causes that lead to lynching, such as: crisis of social responsibility, crisis of authority, moral crisis, aggressive human nature, etc. Below we indicate, by our metric, some reasons or causes that determine these movements.

#### **3.1. Increased perception of security**

The community's massive/aggressive reaction refers to an active memory consolidated from the perception of insecurity and fear of common criminal practices. The punishment inflicted does not derive solely or immediately from the current infraction, but from all previous ones committed by the same person or, what is even more serious, from other diffuse crimes (committed by other people or in other places) strongly rooted in the collective imagination (Santillán, 2008, p. 66). It is as if the lynching person functions as a "scapegoat" for past, more or less profound, collective grievances.

The negative forces existing in the community, such as feelings of inferiority, victimization or insecurity, are discharged and projected onto a scapegoat, and appeased or eliminated, momentarily and symbolically, along with this one. When a criminal or an outsider is a victim of lynching, there is a reason that goes directly to the heart and mind of each person, which is the shadow projection of all the feelings aligned. Since the social scene will never be perfect, it will always be universally necessary to have victims and scapegoats.

Chronic collective fear can lead to rumors or false rumors acting as a trigger or "sufficient reason" for lynchings. The propagation of these rumors will be all the easier the greater the perception of insecurity in a given community. However, although this "perception of insecurity" prevails in almost all of society, it does not homogeneously define the behavior of different social groups.

In theory, the punishment imposed on victims may be proportionate to the level of insecurity experienced and perceived by the community or the degree of individual and

collective internalization of the scenario of public insecurity, fear and apprehension in the face of crime and violence. The greater or lesser relationship between these variables can result from one of two: the mere arrest of the criminal to hand over to state authorities or pure and simple lynching.

In addition, citizen participation in public security “as everyone’s responsibility” leads to the need for self-protection, in which the individual seeks his own security, not due to the absence or deficiency of the State, but as a fundamental right to seek a safe life for his own means, and not just by the means<sup>14</sup> provided by the State (historically inefficient). Under this broad and expansive argument of the individual’s free self-determination clause, fueled by the principle that necessity knows no law (*necessitas non habet legem*), lynching emerges as an immediate and precarious form of self-protection, as valid as other acceptable forms, the example of maintaining a private security service or owning weapons.

### **3.2. Defense of property “versus” recurrent offenses in the underserved classes: robbery, theft etc**

Lynching is an intraspecific violence, of the poor against the poor, under a primitive punitive and punishing logic. The materialization of the property crime (with or without violence to the person), mainly, highlights the vulnerability of all members of the community, and not just the direct and immediate victims. The feeling of collective offense is very present in such cases. These classes and groups see the shape of things through a glass clouded by anguish, fear and insecurity. And because of this, quite naturally, punishment is applied disproportionately and degradingly.

In social contexts marked by high levels of precariousness and social suffering, there are transformations, circularities and interconnections between different forms of violence. From this background, lynchings can be seen as a form of collective violence related to less obvious, but highly toxic violence such as social inequality, pauperism<sup>15</sup> and the contradictions of each country, whose commitment to the full fulfillment of rights is more rhetorical than real

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<sup>14</sup> The public security regime of co-responsibility gives the individual the baton of a general to apply justice with his own hands. It works, at least, as a rationalizing pass.

<sup>15</sup> This does not mean that in all places with these characteristics “lynchings take place, however it suggests that these conditions create a general framework for the exercise of this form of violence because it does not seem casual that similar items are not registered in residential areas with better conditions of life including security” (Santillán, 2008, p. 64).

(Santillán, 2008, p. 59). From this angle, lynchings constitute a crude and primitive response to the increase in delinquency and social deprivation.

As cruel, bloody and shocking as it may be, popular justice in such circumstances becomes demands for justice in a much broader sense and a collective clamor for better security conditions, effective action by state institutions and a better order. This realism, however brutal, is not cynical: it is the cry of irrationality from a rebellious citizenry demanding institutional rationality. This combination of rationality and irrationality is enough to cause perplexity to the modern spirit, but when things are well analyzed, this is how humanity walks, in a dialectical way. Strictly speaking, reality ends up being a unification of contradictory forces. Moreover, as Lecomte Du Noüy (1951, p. 112) says “it is by fighting that man humanizes himself, and it is to humanize himself that he fights”.

If war is the continuation of politics by other means, in Clausewitz’s classic statement (1943, p. 16), popular justice is, keeping proportions, the continuation of social demands by other means; an instrument of rebellion and social demand, as if emanating from a rational root. As the Freudian school reveals, the irrational, in addition to being a fundamental part of man, has a structure and, therefore, can be understood. Lynching is not, therefore, an incomprehensible “irrational aberration”, but a basic human reflection of an immediate truth that is projected onto hated objects<sup>16</sup>, direct (criminals, outsiders, poor, blacks, etc.) or indirect (State and its inefficient institutions).

In a primitive way, collective physical aggression gives voice to the individual’s feeling of impotence in the face of criminality, violence and the inefficiency of the State. It is the expression of feeling obstructed, limited, abandoned, frustrated, helpless, impotent. And the property of irrationality that is attributed to it does not have the power to remove its demanding nature, mainly in view of the fact that there is no safe border between normal and abnormal in human affairs. Furthermore, if men live on myths and not on absolutes, who guarantees that reason is the sole guide of social life?

If war has a political nature, on a reduced scale, popular lynching has a claiming nature<sup>17</sup>, making violence its showcase for claiming rights. Every activity or social movement has a reason for being, sometimes even higher unrecognized motivations. It is estimated,

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<sup>16</sup> A “hated object need not be a special class or race, or an enemy, but it can be things that take impersonal but real forms, such as poverty, disease, oppression, natural disasters etc” (Becker, 1977, p. 237).

<sup>17</sup> The military mind sees force as an instrument of policy; the lynching collective mind sees punishing aggressiveness as an instrument of social demand (or revenge). They are means of rationalizing phenomena at the service of death and violence, reducing their antisocial reach (considered as something animal and not human).

therefore, that this modality of parastatal justice plays a role, given that, as a rule, it sends a message and aims to satisfy a local need. The occurrence of lynchings almost always indicates the dissatisfaction of some valuable assets for the community: security, order, guarantee of rights, preservation of uses and customs, etc. It is an imperfect and crude formula for trying to keep things in balance, although it often focuses on “scapegoats” or harmful stereotypes of Society.

The massive act itself exists because of a “community need” (a set of material, psychosocial and cultural conditions) not met by regular institutional means; it is like certain weeds that appear when there is a floristic imbalance. For a reasonable understanding of the phenomenon, it is necessary to pay attention to the community demands and needs, which vary according to cultural, geographic, linguistic, historical and social diversity.

Lynching arises as an “act of justice” in response to the commission of a previous crime, and usually leads to the arrest of the lynching victim before the perpetrator. There is therefore a high degree of impunity; the lynch mob is accountable for its actions only to itself, under the widespread prejudice that the people do not make mistakes. Added to this is the difficulty of establishing individual responsibility in an act of an eminently collective nature (Santillán, 2008, p. 62). The only cases in which an investigation and judicial prosecution of the perpetrators is attempted is when the detainee/lynched dies, and even then there are no reports of legal sanctions adopted against those who execute.

Given this line of argument, every act of lynching has two contradictory aspects: it is intended in a vital statement to claim fundamental rights (security, justice, freedom, etc.), but carries within itself the putrefaction of denying the fundamental rights of a life human.

### **3.3. Disbelief in public institutions**

There is widespread distrust<sup>18</sup>, disbelief, frustration and resentment (“moral indignation” or “social irritation”) among vulnerable groups excluded from the fundamental goods of civilization in relation to public power and its associated institutions. An example is the way in which the police are received in these corners: with frank hostility or fearful silence.

“Moral indignation” is understood as the breaking point at which society or a

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<sup>18</sup> “...mistrust in authorities has been the breeding ground for social violence, which increasingly makes lynching a means of rejecting authority that does not comply” (Guillén/Heredia, 2005).

fragment of it expresses through collective violence the rejection of different ways of altering the rhythms of everyday life, when the offenses of some member of society or some authority generate discontent, not at the individual level, but collectively (Guillén/Heredia, 2005). Moral outrage always expresses itself as collective action, and violence is the means by which it attempts to assert a claim that individuals alone could not carry out. It is a way of limiting different individual and organized actions that constantly offend people's dignity, property and lives, to the point of creating conditions for violent outbursts.

Disbelief in public institutions by the common sense of the population is the initial fuel for scenarios of massive transgression. Popular forms of justice are the most visible symptom. Citizens are increasingly impatient with ineffective institutional action and, therefore, massive violations of laws proliferate. And when these violations cause more sympathy than indignation in society, the level of concern rises, as the apparatus of justice and even the rule of law itself are called into question.

**“The bad or non-application of justice is one of the main causes of lynchings and social violence in general”, affirm Guillén/Heredia (2005). And they still add distrust in relation to the authorities and police bodies, which results in an “authority crisis”. The problem or motivation for lynchings is posed here as a matter of institutional or social arrangement, and not just of a moral nature.**

The lack of effectiveness of institutional action is revealed in negligence or omission in the exercise of public function, bureaucracy, abuse of power, corruption or abusive interpretation/application of the law by institutions, public bodies or individuals invested with authority. When this lack of effectiveness is verified in practice, there is, naturally, the replacement of the institutional apparatus of the State (and its monopoly of force) by massive violence, as a means to fill a social need for some kind of justice. As long as institutional ineffectiveness, insecurity and injustice prevail, it is possible that cases of lynching will remain at a high level.

If by the social pact synthesized in the Constitution, citizens give up private justice in favor of prompt action by state institutions (with the respective guarantee of security and justice), and if they do not deliver the agreed goods, in some subliminal way the State returns the mandate received, leading to lynchings and other forms of private justice becoming more and more recurrent. To use an image from Goyri (2002, p. 63), it is like buying or selling a car: it is sold in exchange for money, and if the value is not given, the good is requested back. Or if the car is purchased and not transferred in its entirety, the money back is demanded. In the social

and political sphere, exactly the same thing happens: if the proper, human function is transferred to the State, to take justice into its own hands, to seek revenge, and the State does not give the adequate response, then it begins to do take justice into their own hands (rescuing the original transfer). And the more these social institutions of security and administration of justice disintegrate, the more extreme situations of private justice occur<sup>19</sup>.

Justice movements feed in the popular imagination an undesirable skepticism in public security institutions and in the criminal justice system, which, in a kind of vicious circle, feeds back to parastatal justice means, representing a picture of the conjunctural or structural crisis that affects the judicial and police systems. Furthermore, if collective justice into one's own hands expresses indignation at state inefficiency, on the other hand, it opens up a large space for "hard-line" political schemes ("law and order", for example).

The irremovable paradox of these massive parastatal justice movements, when the credibility of security and justice institutions is in question, is that the actors produce material that they also consume, that is, they generate an insecurity that they also suffer from. This primitive mass is aggressor and victim at the same time (it is humanity at war with itself), under a community language of extreme cruelty. Today's executioner may be tomorrow's victim.

### **3.4. Social vulnerability**

The most significant interpretations of lynchings emphasize the absence-deficiency of the state apparatus to impose the juridical-administrative order in specific areas and/or populations (Santillán, 2008, p. 65). In this sense, lynchings are understood as valid ways of maintaining or reappropriating the resource of violence by marginalized populations, as architects of their own self-determination. Its main meaning is to challenge the legitimacy of the State's monopoly on the use of force.

The motivations for widespread and massive illegality cannot be explained solely on the basis of functionality (anticipating a punishment that one believes will not become effective – cf. item 4.3), but meet the imperative of immediate satisfaction of a collective impulse to obtain peace, order or impose a punishment at any price. This feeling is more present

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<sup>19</sup> "Except in the face of the extreme need for self-defense, the citizen cannot take justice into his own hands, since this has been entrusted to public power agents. If he does so, his acts will not be legal and he will be an 'outlaw' individual" (Lipson, 1967, p. 100).



in those strata or social groups of greater vulnerability and helplessness<sup>20</sup>, in which their voices are not heard, nor their anguish felt or shared.

If it is true that a society is as free as its lower strata are (Bay, 1961, p. 20), it is equally true that it will be all the safer the less privileged and assisted its members are, bombarded daily with the facts most tragic in life. The environment in which lynching thrives is incomplete and with intrinsic or structural deficiencies.

Modalities of parastatal justice are by-products of social psychology and the organization of individuals in community, and reflect the general factors that influence societies (media, social fear, insecurity, hate speech, etc.). The peculiarities inherent to each modality transcribe, above all, gradations of coherence and social organization.

#### **4. Characteristics or attributes**

In the lines that follow, we will present some specific or diacritical characteristics of lynching, without intending to decompose, in a cartesian way, this markedly irrational totality, to later recompose it conceptually. Conceptuality, the profoundly rational and logical enterprise of converting experiences into concepts, cannot set itself up as the ultimate arbiter of a phenomenon whose main pillars besiege irrationality. This insufficiency, also synonymous with humility, accompanies any scientific approach.

In any case, in social science, an object is known when we can define it or represent its constituent parts (or even, its essential conditions). But what should we do to endow a social phenomenon with meaning? We must establish for a certain number of people, who will manipulate the phenomenon in its cognitive minutiae, a definitive way of understanding it (Ajdukiewicz, 1975, p. 33; Ribot, 2020, p. 59). As a result, the unavoidable importance of consolidating a conceptual nucleus around it, in order to establish, at the very least, a homogeneous way of understanding it.

Thus, we present below some attributes or properties that help to identify and individualize the phenomenon of popular lynching.

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<sup>20</sup> "The frustrated man, who suffers deprivation, weak, without individuality, commits aggression very easily" (Becker, 1977, p. 230).

#### 4.1. Isolated, disconnected and fragmentary character

In a reasonably civilized and policed State of Law, the phenomenon of popular lynching is produced by the indignation of uncontrolled (and amorphous) groups or crowds, exhausting itself and not keeping any relation to other acts of the same nature. However, this non-linear dynamic of an empirical nature does not prevent recognizing the existence of certain triggers that sometimes give a systemic and spatial character to lynchings.

It is scenarios like this that magically transform social problems into warlike adventures or increasing modes of parastatal justice (lynchings, paramilitary groups, summary executions, death squads, militias, etc.). In an ordered society, an illegal act (collective or individual) occasionally imposes itself, but it imposes itself only as a social disturbance as long as it remains occasional – that is, as long as its very practice does not destroy the social order.

As a rule, lynchings present themselves as *de facto* illegal states and not as organized movements capable of replacing state organization. The pure formless mass cannot be the subject of political action (Nicol, 1953, p. 250). One cannot even speak of an “embryonic state organization”, because given their isolated, disconnected and fragmented character, they are movements that dissolve as quickly as they arise; they exhaust themselves, with no other consequence than a bad example and a possible radiating effect (by pure mimetic adherence).

The democratic organization rests on order, security, social peace and regulated conflict, and these characteristics flow from the Rule of Law like the sap from the roots of the plant to its extremes. The principle established in every free people is that law alone governs and that the eminent property of all order is rationality (Nicol, 1994, p. 246). When private justice or collective violence assumes an organic, systemic and repeated character<sup>21</sup>, within a continuum of ever-increasing violence, it weakens, to a great extent, the solid foundations of the Rule of Law with disastrous effects for social security and harmony (given the macrosocial and macropolitical reflexes).

Illegal popular agitations, even if fragmented, episodic and discontinuous, reflect the fragility of the rule of law in meeting, in an institutionalized and peaceful way, the pressing demands of society or vulnerable social groups (security, order, justice, urban inputs, standards ascendants of life, provision of public services, etc.). Each lynching brings the people closer to anomie, to a ruder state, averse to inhibitory and limiting mechanisms. Not without a certain

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<sup>21</sup> Such an anomie scenario has a drag and seduction force on other social groups that, by mimicry, start to challenge the official legality.

dose of reason, it is said that civilization is three meals away from barbarism<sup>22</sup>.

Perhaps the best reading is that every basic fundamental right that is not guaranteed and not implemented is a step of civilization taken away from the people. This may even lead to justice not only being done by one's own hands (in the face of situations of injustice and insecurity), but leading, in situations of extreme social vulnerability, to a form of social justice by one's own hand that can be expressed in collective looting of supermarkets and other similar establishments, land invasions, collective occupation of housing, etc.

#### **4.2. Reactive character**

Collective violence has a reactive and unidirectional character because, intuitively, it reacts to a given situation in a mechanical and instinctive way, without any prior judgment, even if summary. We see the river running its course, but we ignore its source, the deep reservoir that nourishes its source.

The multitudinous event is occasional and variable: it is circumscribed in that emotional unit called rage. And it always responds to limited stimuli of a here and a now (fragmentary character). Collective fury, the primary and fruitful instrument of reaction, is a basic emotional substratum of human animality guided by a herd mentality.

#### **4.3. Self-referentiality**

The anti-legal phenomenon of lynching has a marked self-referentiality, given that the protagonist mass is aggressor and victim at the same time: it faces itself and feeds on its own irrationality, consistent with the aforementioned confusion between aggressor and victim. Aggressiveness and victimization are linked in a dialectical and self-destructive movement, whose starting and ending point is the individual himself (it is, in many cases, a justice of the poor against the poor). The motive for illegal collective action is insecurity, but paradoxically it produces more insecurity and drags its context along with it, which is why there is no winner in this phenomenon. What is held together by fear is broken by fear.

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<sup>22</sup> "...when people are hungry it is absurd to expect them to care about free speech, except, at best, as a means of articulating their demand for food. Poverty can limit freedom of expression more effectively than political tyranny" (Bay, 1961, p. 30).

The dialectic of aggressor and victim accounts for the self-referentiality of parastatal justice (mainly in regions of great social vulnerability). Every effort to take justice “with one’s own hands” leads to the most brutal and medullary injustice, in an unconscious combination of itself. The act of aggression overwhelms the victim, but does not leave the aggressor unaffected. Failure is twofold.

#### **4.4 Mechanical adhesion**

The individual’s adherence to the furious and righteous mass does not keep any trace of rationality. It is a movement of mechanized, mimetic adhesion and pure instinctive reflex. It rolls like a stone rolls, according to the stupidity of mechanics. The sense of reasonableness is engulfed by the frenzy of the transgressive mass. It succumbs to the attractive and seductive force of massive irresponsibility, unable to discriminate between a criminal or premeditated act and a reckless or accidental act.

The individual will adhere to and submits to the instructions captured by the lynching mob, momentarily disappearing as an individual and autonomous soul element; the individual integrates the mass by simple immersion. The ends are not consensually desired, there is only an easy adherence to a collective movement of aggression (which obeys a peculiar internal dialectic).

Questions about the loss of individuality and mechanical adherence to the lynch mob based on the laws of psychology belong to the group of unanswerable ones, even for the most idealized observer.

#### **4.5. Precariousness**

Under the umbrella of this attribute, popular lynching can be defined as a crowd or group of people who, successively, taken as a whole, experience an intense communion and then disintegrate, in the wake of the physical principle that an intense phenomenon is always fleeting. Its ties are based on a complementarity that links, in a precarious way, the parts to the whole.

The bonds established between the members of a lynch mob are precarious, transient and elusive. As a parastatal category of justice, the lynching mob enjoys stability for

a limited and very strict time, unlike state institutions that have perennality (or perdurability) as their most peculiar characteristic. There is no lasting purpose for the performance of the aggressor group. It dissolves as quickly as it appears and aggregates; its action takes place in the arena of the circumstantial and the transitory. Its ends are equally ephemeral. It is a rare instance where common participation is disjunctive, not cohesive.

The links that unite the aggressors in an angry mass are forged from a fragile and transient alloy: a sense of insecurity, an awakened aggressive instinct, anger, basic revenge, an artificial system of beliefs, practices and customs. These are extreme emotions that destroy themselves. Like any intense phenomenon, popular lynching is short-lived: it is a brief emotional transport. Noise and fury constitute the only rhetoric that, during the tumult of ephemeral passions, one can apprehend from a lynch mob.

The crowd, the mass gathering of people, is subject to unpredictable crises of instability, highlighting its immediate qualities of precariousness and contingency. However, in that time interval, the psychic domain belongs to the mass, to the precariously assembled collective. The integrating individual is a mathematical component, but not a composer of the resulting composite (a non-determining constituent factor). This individual is a historical character forged by modernity, the orteguian mass-man, the “uncrowned king of modernity”, the “manqué individual”<sup>23</sup> (Oakeshott, 2020, pp. 77/92), who enjoys cultural goods as if he were in the state of nature.

Criminality, violence and insecurity exert two effects on the mass-man (or awaken two emotions): resignation or resentment. With resentment, a new disposition takes shape: the impulse to escape the situation by imposing it on the rest of humanity (the endless search for “scapegoats”).

Collective fury for a moment absorbs the fear, insecurity and ordinary impotence of community life exposed to crime, violence and official neglect. For brief moments, the lynching mob victimizes rather than being victimized, making lynching an escape valve. It is as if, for a limited period of time, he becomes immune to the normal limitations of human existence, acquiring the power of life and death over the lynched.

#### **4.6. Purpose opacity**

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<sup>23</sup> In French, *manqué* means “defective”, “unfinished”. For Oakeshott (2020, p. 92), the *manqué* individual is that individual who is the result of a “combination of weakness, ignorance, timidity, poverty or bad luck”.

The lynching scene bears witness to an activity that lacks purpose and superior meaning, as the mass acts and moves blindly guided by an emotional explosion that spreads, like a wildfire, to all components. It is acknowledged, in honor of accuracy, that lynchings have causes (“triggers”) and consequences, but not a well-defined beginning and end. There is no forethought, planning or rational strategy.

If there is no individualized will and conscience in a group, how can there be a single, definite intention? It is psychologically inconceivable and impossible. The best you get is a vague and ill-defined (or undifferentiated) convergence of intent. After all, you have an independent will.

All lynching boils down to blind, undifferentiated groups of atomized individuals, with no purpose other than the aggressive rage driven by the triviality of animal life. The mass and its movements are not explained from their basic units (individuals or eminently social/moral agents), but by the special mechanical and irresponsible way of acting. In this sense, it is pure “inert matter”, endowed only with mechanical impulse, without meaning or higher purpose.

The massive action is not oriented towards a specific objective, but affects the phenomenal world like an electrical discharge in a sudden emotional storm. Nor is it the sum (or composition) of the individual wills that integrate them<sup>24</sup>. That’s why we called the massive purposes opaque, given the logical and rational lack of definition of the justifiable actions typical of popular lynching. From these actions one cannot deduce, by logical steps, their profound meaning.

Reductionism, that is, the attempt to explain the whole (“justice mass”) by the random joining of its parts or basic units (“individuals”) does not explain this special form of parastatal justice at all. And if the investigator insists on this cartesian methodology, he incurs the so-called “reductive error”<sup>25</sup>. These “basic units” cease to behave like men when the force of the totality breaks the organization of their bodily actions and their fields of conduct.

An example drawn from physics serves to clarify the cognitive limits of reductionism. As much as we know the interaction of hydrogen and oxygen with other chemical elements, it is impossible to infer from this knowledge the fact that they unite to form water

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<sup>24</sup> A *force majeure* force imposes itself on the free will of individuals, who, once engulfed in the lynch mob, lose control over the action.

<sup>25</sup> “The reduction of a sequence to the parts that compose it is not a sufficient explanation for its totality” (Bronowski, 1977, p. 145).

(Nagel, 1966, pp. 28-29); in particular, the properties that emerge once water is formed (its transparency or its ability to quench thirst, for example) could never have been predicted from these elementary data.

There is a clear asymmetry present in the relationship between the autonomous components (individuals and their spheres of will and conduct) and the dynamics of the popular lynching phenomenon. Thus, no matter how broad the knowledge about all the individuals that make up a lynch mob is (in specific details such as: ideological inclinations, profession, schooling, morality, religious belief, etc.), this knowledge does not allow deducing the characteristics, conduct and purposes of the massive whole. The parts do not explain the whole: they are components, not composers.

Reductionism to its constituent parts (individuals) does not explain the nature of a lynch mob. The cartesian<sup>26</sup> reduction of a sequence to the parts that compose it is not a sufficient explanation for its totality. This helps to understand why the mass union with a view to parastatal justice, in addition to being precarious, is clumsy, since it lacks a deep sense of what is being done. The potential for stability and lucidity that lies hidden in the basic units of the justice mass is not shared by the latter. And, therefore, it does not govern its impulses, nor dominate many of the forces that surround it.

#### **4.7. Imposition of punishment**

The use of force or excessive violence by the lynching mob does not only seek to prevent the crime or detain the offender for the measures of the State authorities, but mainly to punish him through severe and, almost always, disproportionate punishment physical, in a perverted reading of the constitutional slogan that "safety is everyone's responsibility".

The distinction between stopping or preventing the crime and "doing justice" with the imposition of physical punishment outside the state institutions in charge of applying the law is not always easy to make in practice, but it responds to the essential definition of lynching. The fundamental point to establish this discrimination is to gather information that indicates the intention to proceed with the arrest (as, in fact, every citizen is authorized to do<sup>27</sup>) or proceed

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<sup>26</sup> The cartesian method exhorts us to fragment a complicated problem into simple problems as components, and to study these one by one (Elsasser, 1969, p. 112), finding in the recomposed totality the illuminating final answer.

<sup>27</sup> "Any of the people may, and the police authorities and their agents must arrest anyone found in flagrant delict" (Code of Criminal Procedure, art. 301). This normative provision, of an exceptional nature, indicates that "there

with physical punishment.

## 5. Conclusion

The analysis of popular lynchings, as a modality of parastatal justice, allows us to bring to light the problems of public insecurity, ineffectiveness of the judicial system and effects of police action, in addition to other transcendental questions such as legitimacy regarding the use of violence and the study of man in society, which saturate many centuries of the social sciences.

Parastatal justice, in all its modalities, is one of the many obstacles to the evolution of society and refers to much deeper roots that touch the constitutive fibers of the social and political structure (Guillén/ Heredia, 2005). It does not seem to us, in any way, that it is a negligible, futile or uninteresting threat to the social and political health of the country. The problem is current and important, and from a political and legal perspective, it provides material to assess whether the State model is fulfilling its functions and whether there are erosion points in the social structure.

It is the State's task to ensure citizens a life in society, free from fear and insecurity (Roxin, 2009, p. 22), variables responsible for dominating the culture of violence<sup>28</sup>. As long as state institutions, with their actions, programs and initiatives, do not make the democratic rule of law a concrete reality, lynching will continue to exist in the population's imagination as a valid collective mechanism of punishment ("right to use punitive violence"), for outside institutionalized state justice, making torture and homicide their macabre instruments of vindication. And the unit of motivation for the lynching will continue to be the individual, with his fears, prejudices, unmet needs and hopes.

The act of collective aggression, in itself, exists due to a set of material, psychosocial and cultural conditions not met by regular institutional means. In order to provide solutions and eradicate this social problem, it is necessary to pay attention to social demands, against the background of cultural, geographic, linguistic, historical and social diversity. And in this sense, some challenges are very clear: to stop, in a systematic way, social distrust in the

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are occasions when circumstances emerge of such magnitude that they are placed above the normal resources of the authorities. In these cases, the principle that they are agents of the community is reinforced by appealing to the help of the citizens themselves" (Lipson, 1967, p. 100).

<sup>28</sup> The man, because of his fears, helps to ensure that the culture of violence dominates him.



institutions responsible for applying the law; reduce objective and subjective insecurity<sup>29</sup>; replace the culture of violence with a culture of tolerance, respect and legality; and bringing authorities closer to social needs, making them more effective.

The most elementary conceptions of democracy and law demand that parastatal justice movements be tamed or neutralized by the rule of law. Even better, that they be replaced by institutionalized mechanisms predisposed to the peaceful resolution of conflicts, preventing these collective movements from continuing to disseminate the culture of violence, in a growing *continuum*, within a pattern that tends, unfortunately, due to social mimicry to “normalization”.

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<sup>29</sup> Security is not just being safe (objective security), but feeling safe (subjective or psychological security).

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Recebido em: 03/07/2023

1º Parecer em: 10/09/2023

2º Parecer em: 21/09/2023