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Law, violence and social movements: reflections from the case of the movement for the removal of statues

Direito, violência e movimentos sociais: reflexões a partir do caso do movimento pela remoção de estátuas

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Abstract

Using the epistemological instrument of historical and dialectical materialism, embodied in the critique of the legal form of Pachukanis, with the procedural modality attributed to it by Edelman, consisting of formulating theoretical developments from the immanent critique of judicial decisions, the article investigates the relations between law and violence, especially in light of its impact on social movements, from the case study of the legal dispute surrounding the removal of the statue of a Confederate general in the city of Richmond, Virginia. In the end, it is concluded that, even when the state welcomes the interest of a critical social movement, as in the case in question, it does so in order to reaffirm the mechanisms of reproduction of the legal form that imprisons the contesting movements and prevents them from advancing towards the transformation of the mode of production.

Keywords: Critique of law; Legal form; Violence; Political form; Social movements.

Resumo

Valendo-se do instrumental epistemológico do materialismo histórico dialético, consubstanciado na crítica da forma jurídica de Pachukanis, com a modalidade procedimental que lhe atribuiu Edelman, consistente em formular desenvolvimentos teóricos a partir da crítica imanente de decisões judiciais, o artigo investiga as relações entre direito e violência, especialmente à luz de sua incidência na atuação de movimentos sociais, a partir do estudo de caso da disputa judicial em torno da remoção da estátua de um general confederado na cidade de Richmond, Virginia. Ao final, conclui-se que, ainda quando o estado alberga o interesse de um movimento social crítico, como no caso em exame, o faz de forma a reafirmar os mecanismos de reprodução da forma jurídica que aprisiona os movimentos contestatórios e impede que avancem em direção à transformação do modo de produção.

Palavras-chave: Crítica do direito; Forma jurídica; Violência; Forma política; Movimentos sociais.

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Introduction

On July 13, 2013, when white police officer George Zimmerman was acquitted of murdering black teenager Trayvon Martin in Sanford, Florida, the intense use of a *hashtag* on social media, #blacklivesmatter, gave rise to the homonymous movement (DAY, 2015). Some time later, the Black lives matter movement ended up gaining national prominence in the United States of America with street manifestation called to protest the murders of two other black men by white police officers: Eric Garner, in Staten Island, New York, killed by Daniel Pantaleo on July 17, 2014; and Michael Brown, in Ferguson, Missouri, shot by Darren Wilson on August 9, 2014 (LUIBRAND, 2015). These latest protests, especially those in Ferguson, suffered police violence and therefore lasted for months. Six years later, the Black Lives Matter movement would be in the spotlight for several weeks in the international news, definitively breaking American borders when Derek Chauvin, a white police officer from Minneapolis, Minnesota, killed, on May 25, 2020, the black man George Floyd.

In this most recent chapter[1] of escalating tensions over the American racial issue, a new discussion has gained prominence: the removal of monuments and statues erected in honor of generals who commanded the Confederate army during the armed conflict that opposed northern and southern states from 1861 to 1865, known as the American Civil War. As it is known, one of the main reasons that moved the southern states of the United States of America in this conflict was the maintenance of the enslavement of black people, which was opposed by the northern states[2]. The fact that the Confederacy was reincorporated into the Union in 1865 due to a military defeat led to the maintenance of a revanchist feeling that to this day creates tensions, especially in the South of the United States. This extemporaneous celebration of the Confederacy, very present in the

[1] It is important to make explicit that, evidently, the issue is very old, dating back to the enslavement of black people and the manner in which it was abolished in the United States in the context of the Civil War. Since that moment, the issue has never been effectively overcome, and there have been several waves of escalating tensions, with this being only the most recent of them. In this regard, observe the surprising similarity of the events discussed here with the episodes that occurred a hundred years earlier, as reported by JANNEAU (2021: especially pp. 71-75).

[2] This is, obviously, a simplification whose full development exceeds the scope of this work. There were some states in which enslavement was legalized and that never considered leaving the Union to join the Confederacy, such as Delaware, as well as deeply divided states, such as Maryland and Virginia, the latter will be addressed more thoroughly later in the following sections of the text. However, for the purposes of this brief introductory account to this investigation, what matters is the pro-enslavement – and, consequently, racist – symbolism that remains associated with the Confederacy to this day.

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movements known as the *alt right*[3], is traditionally associated with racism and white supremacism, precisely because the enslavement of black people occupied a prominent role in the conflict between the Union and the Confederacy.

In the midst of all this context, the debate over the removal of monuments had its origin in 2015, when Dylann Roof, a white supremacist obsessed with Confederate symbols, murdered nine black people in a church in Charleston, South Carolina (FAUS, 2015). The episode drew the attention of the authorities to the intimate relationship between white supremacism and Confederate symbols, initiating a movement towards the removal of the statues[4].

The authorities' action led to two orders of consequences. On the one hand, it intensified the racial conflicts that, by that time, as narrated above, were already taking over the streets of the United States, and there were even violent protests called by racist groups that were against the removal of the statues (DE LLANO, 2017). The fact, evidently very relevant, will certainly be the object of sociological and anthropological investigations, but for this text, which intends to make an investigation in the science of law, it will not be considered. This article will focus on the second order of consequences of the removal of statues by public authorities: the legal disputes that followed around the administrative acts determining the removal of the aforementioned monuments. In fact, the administrative decisions that determined the removal of statues were taken to courts and the resulting judicial decisions will be examined in this article.

Once the facts have been introduced, the object of study will be delimited. The objective of this article will be to theoretically investigate the relationship between law and violence, especially in the light of its incidence in the actions of social movements, based on a case study, based on the judicial decision regarding the legal dispute around the removal of the statue of Confederate General Robert Lee from the city of Richmond, Virginia. From this point on, it is necessary to explain some of the circumstances involved in the choice of this theme and the procedure for its approach.

[3] These are movements that, after many years confined to the underground of the world wide web, were brought into the spotlight and empowered by Donald Trump (KRIEG, 2016).

[4] "The debate over Confederate statues and symbols exploded in the United States after Dylann Roof, a young white supremacist fascinated by the Confederacy, murdered nine parishioners in a church in Charleston, South Carolina, in June 2015. Authorities then began to remove some of the Confederate statues and symbols that are abundant in the Southern states. It is estimated that around 1,500 still remain standing" (EL PAÍS BRASIL, 2017).

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First of all, it is important to point out that this text is based on the methodological premise, established by Bernard Edelman (1976 and 2016), according to which the appropriate way to give concreteness to the epistemological discovery of Evgeni Pachukanis (2017) is the immanent critique of judicial decisions. After Pachukanis had epistemologically established the way of doing the science of law within the framework of historical-dialectical materialism, working critically with the fundamental abstractions of legal dogmatics in the same way that Marx did with those of political economy, Edelman added important procedural refinements to it. In this sense, in his two main works, Edelman used judicial decisions of French courts dealing with copyright in photography, in the first case (1976), and collective labor law, in the second (2016). From the critique of such decisions, Edelman was able to make theoretical inferences that allowed him to present important contributions to the so-called Marxist critique of law, a current of thought in which the present work intends to be inserted.

Thus, the chosen structure for this text is justified: it will begin with comments on a decision of the Supreme Court of the State of Virginia, from which theoretical considerations about the relationship between law and violence will be made. The fact that the decision in question is from the Supreme Court of Virginia also imposes the need to explain the circumstances surrounding this choice.

It is necessary to emphasize, at the outset, that the United States of America is by far the place where the debate over the removal of racist monuments has made the most progress. Specifically in the case of Brazil, where this text is produced, the debate has been very timid and, even more relevant in the methodological perspective adopted in this text, it did not reach the judicial route, and was therefore not articulated through legal categories. Even so, it is worth highlighting at least two episodes involving monuments erected in the city of São Paulo in honor of the bandeirantes, men historically linked to the enslavement and genocide of black and indigenous people. In 2016, the Monument to the Flags, designed by Victor Brecheret, an important Italian-Brazilian modernist sculptor, located in the vicinity of Ibirapuera Park, a noble place in the city of São Paulo, dawned stained with colored paint, as well as the statue of the bandeirante Manoel da Borba Gato, located on Avenida Santo Amaro. This last statue was again the target of protests in 2021, when it was set on fire by two of the leaders of the anti-fascist Delivery Workers movement. In both cases, the state's response was criminal, seeking the arrest of those involved, but without any progress in the judicial sphere. In addition,

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although the cases can be isolated considered, it is a fact that there was the beginning of a debate, in the form of projects of laws, but no concrete measures has been taken in this direction, contrary to what happened in the American scenario, and apparently a conciliatory solution is moving towards – which, in the opinion of the authors of this text, is absolutely insufficient – consisting in the insertion of explanatory messages in the vicinity of the monuments.

On the other hand, among the numerous U.S. court decisions dealing with the subject, it was quite difficult to find one that went to the heart of the problem. The exploratory researches for the delimitation of the theme of this article revealed that, exactly as it happens here in Brazil, the judiciary of the United States of America is filled with filigree and small procedural issues of the most absurd nature, which end up transforming very important legal-political debates such as this one into decisions about court fees, intertemporal law or interpretations about the grammatical meaning of this or that word. This is not the case with the Virginia Supreme Court's decision on the Robert Lee statue in Richmond, as will be seen. This decision effectively addresses the juridical-political foundations of the debate, allowing us to formulate a paraphrase of the Edelmanian exercise in order to understand, from the criticism of the state's action in the case of the confederate statues, whether it is possible to confirm the hypothesis to be tested in the present investigation: that the law, by its own form, acts violently towards those who criticize the instituted order.

Thus, in the next section, we turn to the judgment of the Supreme Court of Virginia, which, in its own words, evaluates “we consider whether language in an 1890 deed, signed by the then Governor of Virginia … prohibit the Governor of Virginia from ordering the removal of a state-owned monument from state-owned property” (JUSTICE S. BERNARD GOODWYN, 2021: 1).[5]

The factual substratum of the issue of the statue of General Robert Lee in Richmond, Virginia, is picturesque, to say the least[6]. The equestrian monument was

[5] From here on and in the following section, all quotations from the judgment will be made in free translation into the Portuguese, under the responsibility of the authors, from the original in English mentioned in the references. The original in English will not be brought in order to avoid overinflating the dimensions of the text, and in view of the simplicity of finding the original on the world wide web from the reference. The circumstance will be observed only on this occasion to avoid compromising the fluency of the reading of the text.

[6] It is worth noting, in passing, that Richmond, Virginia, has been considered since the 19th century, and until recently by its enthusiasts, the "capital of the Confederacy." In fact, two of Robert Lee's daughters attended the inauguration of their father's statue in the city in 1890.

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erected between 1888 and 1890 by an association called *Lee Monument Association*, from donations – of resources and the piece of ground on which the statue would be located – made by the heirs of William C. Allen, an architect and builder of local importance who designed part of the modernization of the city in the nineteenth century. In December 19, 1889, the Virginia General Assembly not only authorized it — on the grounds that "whereas this patriotic purpose is highly appreciated and approved by the General Assembly " (JUSTICE S. BERNARD GOODWYN, 2021: 2) — but also requested the Governor of the state to accept the donation of the statue and its respective grounds, as well as to give the assurance that the state would keep the monument *"perpetually sacred to the monumental purpose to which it has been devoted* " (JUSTICE S. BERNARD GOODWYN, 2021: 2). In view of this, after the completion of the statue's construction, on March 17, 1890, Philip W. McKinney, in the dual capacity of Governor of Virginia and president of the *Lee Monument Association*, signed a deed with himself consummating the donation.

One hundred and thirty years later, in June 2020, Ralph Northam, the then Governor of Virginia, approved a plan for the removal of the statue in response to the popular feeling of opposition to its maintenance, as already discussed in the introduction, which led to the filing of a lawsuit by a group of property owners in the historic district of Richmond, adjacent to the monument. It is noteworthy that, as part of the rationale for their lawsuit, the plaintiffs invoke the *"doctrine of separation of powers,"* since the Governor's act would violate the Virginia Constitution and the legislative powers to set the state's public policy, as adopted by the General Assembly in the resolution of 1889 (JUSTICE S. BERNARD GOODWYN, 2021: 3). For them, the fact that the 1890 deed established the obligation to keep the statue in its place in perpetuity could be defended through the right of ownership.

An important fact in the controversy, regarding the maintenance or not of the defense of the perpetuity of the monument as a valid public policy in the state of Virginia, ended up having a twist during the course of the process, when the General Assembly itself, in October 2020, amended the public budget to include an allocation for the removal and storage of the statue (JUSTICE S. BERNARD GOODWYN, 2021: 5). From then on, Governor Northam went on to defend a process that the state's public policy not only supported but also, in *an "indisputably evident" way*, determined the removal of such monument.

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It may seem strange to take a critical look at the decision of the Supreme Court of Virginia, which, after all, upheld as valid Governor Northam's decision to remove the statue and which, therefore, endorsed the guarantee of the right of black people not to live in a city whose government, by maintaining the monument honoring a Confederate general, celebrated the pre-1865 Southern way of life, in other words, the enslavement of black people and white racial supremacy. It is, therefore, a decision in line with what is conventionally called "progressivism". This strangeness dissipates when one realizes that this is exactly what Bernard Edelman did in his main work, *The Legalization of the Working Class* (2016). Also there, contrary to what one might expect, his critical dialogue is not established with representatives of corporate labor law, willing to defend the interests of capital in the field of labor law, but with what he himself calls "*progressive jurists*" (2016: 150), humanists, allegedly supporters of the interests of the working class. It is precisely here that the critique of law must be sought, because it is precisely in this space that it will not be able to offer space for a critique of content, but will allow us to glimpse in its own form the historical specificity of its attachment to the capitalist mode of production.

This is what happens in the decision investigated here, in which, strictly speaking, the merits of the decision regarding the removal of the statue are not entered. On the contrary, in a "progressive" way, and based on the substantial opinion brought to the process by Governor Northam, the Supreme Court of Virginia takes it for granted that the sentiment of the past towards the Confederacy is racist and that the maintenance of the statue of General Lee would be a racist attitude. This aspect of the content of the decision is not called into question at any point in the course of this legal debate.

A digression is appropriate here to make it clear that, in the case of a decision issued in the American judicial system, the fact of not going into the merits of the decision to remove the statue expresses a virtue of the judgment of the Supreme Court of Virginia, and not its limit. The decision analyzed clearly exemplifies the distinction that Ronald Dworkin, in his classic study *Taking Rights Seriously*, wedges between principles and policies, identifying that the former would be properly legal and, therefore, could be taken as reasons for deciding by the judiciary, while the latter, in general, do not (2007: 36). Thus, a good Anglo-Saxon judge could never scrutinize the reasons why the statue should or should not be exhibited on the central avenue of Richmond, from the moment that the content of the public policy in this regard adopted by the constituted authorities was

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recognized. This is exactly what the Virginia Supreme Court states at one point in the judgment (JUSTICE S. BERNARD GOODWYN, 2021: 18):

> The dominant role in articulation of public policy in the Commonwealth of Virginia rests with the elected branches. The role of the judiciary is a restrained one. Ours is not to judge the advisability or wisdom of policy choices. The Executive and Legislative Branches are directly accountable to the electorate, and it is in those political venues that public policy should be shaped. .

Once this finding is made, the entire legal basis of the judgment will be fundamentally concentrated on three points, as will be seen: demonstrating the link between the monument, the governmental discourse and municipal public policy; demonstrate the transformation of municipal public policy in the one hundred and thirty years that separate the construction of the statue and its removal; and to demonstrate the legal legitimacy of the transformation of such public policy. It is in this path that the secret of violence can be found in the very form of law as a manifestation of the organization of the state, as we intend to demonstrate in the sequence of the text.

The Virginia Supreme Court strives to present a very close approximation between visual demonstrations, such as statues and monuments, and what is repeatedly referred to in the case judged as "government speech," something like a substantive political opinion that guides the formulation of public policy by certain political office holders in certain localities. In this context, when commenting on the permanence, still in the year 2020, of an equestrian statue of a Confederate general in the city of Richmond, that court observes that (JUSTICE S. BERNARD GOODWYN, 2021: 12-13):

> "Permanent monuments displayed on public property typically represent government speech" (...). Government speech is a vital power of the Commonwealth, the democratic exercise of which is essential to the welfare of our organized society. Indeed, it would be difficult to imagine a government that could function absent this freedom. .

This so-called "government discourse" is the key to understanding the violence inherent in the Virginia Supreme Court's "progressive democracy," since it "does not need to be viewpoint neutral " since "Inevitably, 'government will adopt and pursue programs and policies [that may be] contrary to the profound beliefs and sincere convictions of some of its citizens '". Thus, in a conception of majoritarian electoral democracy, even if episodically, in this case, public policy has favored in a "progressive" way the interest of racial equality of the black population, it is not possible for the judiciary to interfere in the

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content of public policies. *"Ultimately, 'it is the democratic electoral process that first and foremost provides a check on government speech '"* (JUSTICE S. BERNARD GOODWYN, 2021: 13). The court goes even further, recognizing, impotently, that *"'no fixed rules can be given by which to determine what is public policy." Wallihan, 196 Va. at 124-25. In fact, '[t]he very reverse of that which is public policy at one time may become public policy at another time '"* (JUSTICE S. BERNARD GOODWYN, 2021: 18).

The message conveyed to the citizens of Virginia is quite explicit: just as Governor McKinney had the right to honor General Lee and invite his daughters to the unveiling of a statue in 1890, Governor Northam has the right to remove it, and nothing prevents current Governor Glenn Youngkin – who, by the way, is a militant in the opposite party to Northam – from going back on his decision. Anyway

> The essence of our republican form of government is for the sovereign people to elect representatives, who then chart the public policy of the Commonwealth or of the Nation. Democracy is inherently dynamic. Values change and public policy changes too. The Government of the Commonwealth is entitled to select the views that it supports and the values that it wants to express (JUSTICE S. BERNARD GOODWYN, 2021: 23).

If a certain group, such as the black population, in the one hundred and thirty years preceding the removal of the statues, has its rights or its dignity violated by a certain public policy or governmental discourse, it cannot expect shelter from the judiciary of a state that functions only around principled arguments and not policies. The democratically elected government can make its decisions, "even if some members of the citizenry disagree because, ultimately, the check on the Commonwealth's government speech must be the electoral process, not the contrary beliefs of a portion of the citizenry " (JUSTICE S. BERNARD GOODWYN, 2021: 24).

The background to the Virginia Supreme Court's argument, therefore, is the very legal form of electoral democracy, in which, just as in the sphere of private law the owners of commodities appear as subjects of rights, so in the condition of equal owners, citizens appear as equal holders of their portions of state property in the equality of their voting rights.

Thus, it can be seen that the Virginia Supreme Court's reading of public policies constitutes the apex of the sophistication, appropriate to the progressive legal philosophical discourse of the twenty-first century, of the well-known theories of the social contract, according to which only according to their own contractual manifestations

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of will, even if hypothetical, could human beings be subject to state authority. It is obvious that, knowing that it is a fetishized appearance that transfers to human beings characteristics that, strictly speaking, belong to commodities in the process of exchange that drives the capitalist mode of production, it is evident that there is no possibility of contractual agreement or effective manifestation of will, but only an essential and violent class domination that presents itself in the legal form typical of the capitalist mode of production, as, in fact, is the case with all social forms at this historical moment. The state form, as a form derived from the juridical form in the capitalist mode of production, and which adopts the form of an egalitarian and majoritarian electoral democracy, is the form of violent class domination with a "progressive" appearance. It is from here that it is possible to develop, with this background, several implications of the relationship between law and violence, especially in its incidence on the actions of social movements, as will be done in the following sections.

II. Legal Form, Ideology and Violence

As mentioned above, the decision of the Supreme Court of Virginia is criticized not for its content, but for its form; that is, not because of its progressive appearance, but because of the way in which operates the systemic violence. The first basis of this decision is a clear expression of the legal form, that is, it is constituted from the notion of viewing individuals as "equal", "free" and owners (subjects of rights), reducing them to mere citizens of bourgeois democracies that cannot extrapolate their thematic limits. The apparent free manifestation of will about the permanence or removal of the statue reveals itself as a sophisticated mechanism of legal form, essential to class domination.

It so happens that the basis of capitalist sociability is shaped by the relations of production that ultimately determine the productive forces (TURCHETTO, p. 9); however, two floors rise on the basis of the superstructure: the ideological and the juridical-political. Law, then, appears here as a social form that can conform the other forms, that is, it gives them a format consistent with the basis. Therefore, the juridical form – as will be seen below – circumscribes the grammar of political power, it circumscribes the state itself. Hence the need to shape the specificity of law as the only analysis that can clarify the *modus operandi* of the state in the case at hand, which reduces the workers' demand

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to a mere discussion about a supposed "collective interest", which in the end, only broadens the form of legal subjectivity. The revolutionary potentials of workers' demands fade when they are phagocytosed by an apparent demand for "citizenship."

In order to understand the legal form, is necessary, therefore, to analyze, in a more detailed way, the thought of the Soviet jurist Evgeny Pachukanis, capable of perceiving law as the "specific form that social relations have to assume in capitalism, given that commodity circulation only operates to the extent that everyone is constituted as legal subjects" (AKAMINE JR., 2022: 62-63).

Pachukanis asserts that "capitalist society is first and foremost a society of commodity owners" (2017: 119); therefore, the relationship between individuals in production takes place through commodities (fetishized form of the product of labor), which are related to each other by their exchange value and independently of the will of the one who produced them. However, the realization of exchange value depends on a voluntary act of the owner of the commodity, in other words, on a desire to dispose of one's goods. In this sense, Marx demonstrates:

> Commodities cannot go to market by themselves and exchange themselves for one another. We must, therefore, turn to their guardians, the owners of commodities. They are things, and therefore they cannot impose resistance on man. If they are not solicitous, he may resort to violence; In other words, you can take them by force. (MARX, 2011: 159).

In this way, Pachukanis concludes that, at the same time that the product of labor materializes into commodity, the human being becomes a subject of law, becoming the bearer of rights and will. This would happen, according to the Russian, because in order to maintain the dynamics of exchange it is necessary that people recognize themselves as free owners, possessing, at the same time, autonomy of will, "in such a way that one can only appropriate the commodity of others and alienate his own commodity in accordance with the will of the other" (PACHUKANIS, 2017: 159).

Thus, Pachukanis concludes that law is, in its form, bourgeois, since it *presupposes the existence of the subject of law*, an abstraction capable of crystallizing a society based on the exploitation of labor as a producer of value. By narrating the process of transition from concrete to abstract work[7], the theorist demonstrates that law essentially has a role

[7] Regarding this, Marcus Orione states: The transformation from concrete labor to abstract labor refers to the historical moment when the worker ceases to have a direct relationship with the product of their labor, as the produced object was not intended for exchange. "With the shift to capitalism, labor loses this

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as a guarantor of the reproduction of capital. The abstraction of the subject from the law is fundamental to the reproduction of capitalist sociability, and it is from this that the relationship between the exploited and the exploiters becomes a *contractual bond between "equals".* In this sense, Julia Lenzi Silva (2019: 67) states that the legal form is essential "for the configuration of the category of the 'guardian of goods' (owner) who appears in the market to effect the exchanges". This converges with the magisterium of Marcus Orione:

> Therefore, the figure of the subject of law is fundamental so that the process of labor abstraction can be completed. It is not without reason that the legal norm is made up of elements such as generality, impersonality and abstraction (it is valid equally for everyone, without distinctions, and is not designed for a specific case). Liberty and equality, in fact, are the indispensable elements in capitalism for property to be realized. (2017: 144)

However, the legal form must be studied from its two basic aspects: the subject of law form and its necessary ideological production. In this sense, it should be kept in mind that legal ideology operates so that the constitution of social relations through the legal form occurs through the formation of an individual perception of the world that does not escape the parameters of the law itself; in other words, it operates as a kind of linguistic order limiting the perception of the Self, not because of its biological concreteness, but as that abstract stunt double with no parallels with the real that is the subject of law. In a related sense, Nicole Édith-Thévenin (2010: 57) demonstrates, in her terms, that:

> Legal logic is, therefore, a logic that must be able to materialize, to be exercised. It also means showing that the functioning of law, and therefore of legal categories, is defined only by its function: the reproduction of the relations of production, which at the same time requires a role of mystification [...] and coercion.

Similarly, Edelman demonstrates that legal ideology is an essential element for the crystallization of legal form in capitalist sociability (PACHUKANIS, 2017: 148).

Moreover, for Althusser, ideology is not a false consciousness of reality, as it is not solely confined to the minds of individuals, but possesses a material existence. In other words, ideology cannot be merely a misguided perception of the real, as it permeates people's lives in terms of the subject's relationship with reality:

concreteness and becomes abstracted. There is no longer a direct connection between the producer/worker and what is produced, as production occurs on a generalized scale for exchange." (2017: 144).

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> [T]he ideology represents, in its necessarily imaginary deformation, not the existing relations of production (and the others that derive from them), but first of all the (imaginary) relation of individuals to the relations of production and to the relations that derive from them (ALTHUSSER, 1980: 82).

Ideology, in this way, is something materially concretized by practice, that is, ideology is material, as long as it reveals itself through the ideas and beliefs of the subjects, they are material practices. "There is only ideology by the subject and for subjects. It should be understood: there is only ideology for concrete subjects, and this destination of ideology is only possible through the subject: that is, through the category of subject and its functioning" (ALTHUSSER, 1980: 93). Ideology translates the way in which individuals perceive social relations and thus constitute themselves as subjects (MCLELLAN, 1986: 32-33). In a word, ideology is the form of recognition of oneself, of others and of the social relations that surround them.

In this way, the individual is questioned by ideology, constituting himself, "by himself", a subject of law, that is, "every ideology has the function (which defines it) to 'constitute' concrete individuals into subjects" (ALTHUSSER, 1980: 94). In this sense, interpellation constructs subjects in the double sense of the word: (i) as "free" subjects, owners and "equals"; and (ii) as subjected, submissive to the existing social structure regardless of their choices (KASHIURA JR., 2015: 61). In short, ideology is operationalized from the – apparently autonomous – practice of the subject in subjecting himself to the recruitment of the social role structurally attributed to him. Therefore, in the full exercise of one's "equality" and "freedom", the subject fulfills the essential role for the maintenance of capital: to submit – mediated by the contract and, logically, by the legal form – to the purchase and sale of labor power. As Sampedro demonstrates:

> it is also done under the guise of autonomy, so that the subject does not perceive the support function as imposed. The subject, according to Althusser, is only free to freely submit to the occupation of the position and place that the technical-social division of labor (mask of the division into classes) attributes to him in production, ensuring the mechanism of reproduction of the relations of production (SAMPEDRO, 2010: 52).

With this in mind, it can be said that the legal form is, *par excellence,* an essential element of capitalism, that is, it does not exist without capitalism and vice versa. Law, therefore, functions from its appearance of freedom and equality in order to crystallize – in a hidden way, since in its content it appears to have a progressive and dignified character – the exploitation of the labor force. It is the juridical form that guarantees the

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contractualization of the world, that allows violent class domination, that sustains the capitalist mode of production, based, fundamentally, on the "voluntary" purchase and sale of labor power. Therefore, the greatest violence of law is not in the ever-present threat of punishment for non-compliance with the norms, but in the mythical violence capable of maintaining and establishing the law itself; It is, therefore, in the maintenance and reproduction of capitalist sociability.

Now, if the so-called progressive rights – such as the decision under analysis – constitute one of the necessary bases for the maintenance and reproduction of capital, there is in them a *large quantum of* mythical violence, in the terms of Walter Benjamin. In other words, if the granting of these rights and the recognition of subjects as equal to each other are necessary for the reproduction of the capitalist mode of production, in order for them to assert themselves as such, there is a necessary violence that establishes this order; And for them to remain valid, there is a necessary sustaining violence.

To clarify the violence intrinsic to law, it is necessary to take the teaching of Walter Benjamin in *Critique of Violence*. The author clarifies that, for juspositivism, the legitimacy of violence is given to institutions, that is, it is the institutions that establish the legal conditions for the use of violence. Therefore, starting from juspositivism, the crucial question for Benjamin is to identify which forms of violence are legitimized and which are expelled from the field of legality and legitimacy.

In this way, Walter Benjamin realizes that the legal system does not admit that natural ends (natural goals of each individual) are achieved by themselves with the use of violence. On his own terms, we have:

> In these juridical relations, and with regard to the individual as a subject of law, the dominant tendency is not to admit natural ends in all cases in which the realization of these ends could eventually be adequately achieved by the use of violence. In other words, this legal system strives to establish, in all areas in which the ends of individual persons can be adequately achieved by the use of violence, ends of law that only the judiciary can achieve in this way (BENJAMIN, 2012: 63).

Thus, law understands all violence external to law as a threat, as a "danger of subversion to the established order" (BENJAMIN, 2012: 63). The explanation for this monopolization of violence by law is not given with the justification of guaranteeing the ends of the legal order, but rather by the need to guarantee the law itself. To elucidate this finding, Benjamin uses two examples present in the right to strike. According to the author, there is the political general strike, which is a movement of struggle for the

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conquest of more rights – which ends up strengthening the state and, applying Pachukanis, expanding legal subjectivity –; However, there is also the proletarian general strike, which is a strike desirous of the annihilation of state power, because it is a strike against labor as a regime of value production.

In view of this, the legislation of the right to strike has its application limited, that is, the right to strike is guaranteed to the extent that its exercise does not harm the reproduction of capital. Therefore, if the strike is political and calls for the establishment of more rights, the right to strike is respected; However, if the strike is proletarian and the workers pose a politically offensive force for the dismissal of their own right, the right to strike is limited. In short, the right to strike only exists as a violence that maintains – or establishes – the law, but never as a disintegrator of the legal order.

However, if social movements begin to mold their actions to the juridical logic, all their revolutionary potential is lost, to the extent that the struggle for the end of the law metamorphoses into a struggle for more rights, into a struggle that defends, in the end, the capitalist mode of production itself. Edelman, in *The Legalization of the Working Class*, states that the structure of "progressive" rights, including labor law itself, throws the "conquests" of social movements into legal form and, from there, only the reproduction of capital itself is achieved (EDELMAN, 2016: 76-78).

Therefore, in Benjamin's view, there is instituting and sustaining violence – agglutinated in mythical violence – but there is pure violence, which acts as a force that deprives the law. In this sense, for the author, there is no way to detach violence from the ethical-historical sphere of action, because every action mobilizes a power for the achievement of its ends, since ends cannot assert themselves without force – either at the current level or in potential, that is, the real possibility of the use of violence. Thus, the critique of power cannot be limited to questioning laws or juridical customs, aiming at their exclusion or replacement by others; The powerful critique must perceive that there is a threatening violence inherent in the entire legal order, a violence that establishes and maintains the law that guarantees capitalist sociability itself, that ensures violent class domination.

Thus, it is necessary to keep in mind that there is a constant threat of invisible and non-physical violence present in the capitalist system for things to happen as they are – mythical violence – but that it can materialize as bloody violence if actions go beyond the limits of capital.

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Therefore, the decision of the Supreme Court of Virginia, insofar as it is permeated by legal subjectivity and is a guarantor of its expansion and maintenance, is fundamental to the reproduction of capitalist sociability. Precisely because it expands and guarantees the figure of the subject of law – the basis for capitalist reproduction – it is violent, because it makes use of the threat necessary to maintain the system; It is violent, therefore, because it establishes and maintains the order of power. In this way, the social struggles that are guided by the defense and expansion of human rights end up advocating, in the final analysis, the maintenance of violence, the permanence of the law, and, therefore, the reproduction of the capitalist mode of production. Therefore, social movements – interpellated by legal ideology, while recognizing themselves as representatives of subjects of rights – end up taken by merely legal demands, which cannot extrapolate the logic of capital.

The contradictions of capitalism, therefore, cannot be resolved within its sociability. The legal "solutions" of conflicts are, in fact, perpetuations of the violent and exploitative order. The expansion and defense of progressive rights – such as the decision – cannot solve class problems, on the contrary, they only reinforce them to the extent that they reaffirm the reproduction of capital, regardless of the content of its norms. It is no coincidence that more than a century and a half ago, Engels and Kautsky concluded their classic on *Legal Socialism* by declaring that "it has not occurred to any of the existing socialist parties to make a new philosophy of law out of their program, and it may not occur to them in the futurea" (2012: 48).

Thus, the violence of capitalism cannot cease with more rights, but rather the non-violent solution is the one that neither establishes nor maintains the right, it is the one that dismisses it. The end of law, according to Walter Benjamin, is achieved by divine violence, that is, the power that comes from the lower classes not to preserve, but to dissolve class society. Divine violence frees life from law and, therefore, is not committed to the reproduction of the violence that is the basis of the material structure of capitalist society; In such a way that, by not allowing this violence, it becomes non-violent, even if it makes use of revolutionary processes that involve deaths or other bloody acts. The non-violence of divine violence does not lie in its physical character, but in its liberating character from the typical violence of capitalism.

That said, it is clear that the expansion and struggle for rights can only imply the reinforcement of the violence that maintains and establishes the law. To the extent that

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social movements are reduced to the terms of juridical ideology, they are deprived of their revolutionary potential, they are devoid of their divine violence; They thus become incapable of reading the ills of capitalism from the class point of view, but rather from the individualizing point of view of the subject of law.

III. The State and the Myth of the "Collective Interest"

Once again: the decision of the Supreme Court of Virginia was concerned, in this case, with legitimizing the "progressive" public policy in the sense of sustaining the removal of the statue of the Confederate general – a symbol that acquires, in the historical future, as said, a white supremacist connotation – using, mainly, the paradigms of the state and its political form. This was done through the allegation that in the essence of a republican government lies the sovereignty of the people, who, through individualized voting, elect representatives, who must move state action in order to promote the general welfare; in this sense, Governor Ralph Northam should heed the demands of the streets. In these terms, the claim brought to the fore by the popular movements began to be treated, not only by the Court, but also by the government, by the average public opinion and by the mainstream media, as a mere problem of public policy. Thus, the "contracting" of the social struggle by the state is finalized. Let us explain.

The Court takes up the issue of the state to give validity to the action of the governor of Virginia. This makes it essential for this analysis to establish the theoretical paradigms of derivationist theory about the state and the political form, both derived from the legal form. This is because, insofar as one wants to establish the links between law and the subjective violence mentioned above, it must be affirmed that the juridical form and the state, in their real movement, in order to ensure the continuity of capitalist relations and conditions of production, phagocytize the conflicts and antagonisms of society; Moreover, at the same time that they translate these conflicts on their own terms, they circumscribe them within their thematic limits, ensuring that they are sterile in the production of disruptive movements.

In other words, it means that, *as part of those political-juridical abstractions necessary for the sedimentation of the relations of production, both the law and the state are typical forms of the capitalist mode of production and operate, at the level of human*

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relations, the guarantee of the perpetuation of such conditions of production. Thus, they are very efficient ways to manage conflicts and social antagonisms. Its *modus operandi,* to this end, consists in the "contractualization" of these "problems", so that they are operated by the parameters of capital accumulation. *In other words, to the extent that they convey the continuity of capitalist productive relations, they operate the maintenance of the violence inherent in the economic exploitation of the working class*.

In the case of this analysis, it is possible to clearly see the movement of the state to, through law and legal ideology, circumscribe the "collective interest" in order to promote a broadening of legal subjectivity while completing the process of class abstraction. Occasionally, it is noticed the apprehension by the state of the demands of the working class concerning its monumental, symbolic and identity dimension. In doing so, the state is able to transform these demands to their full qualitative extent, in such a way as to reduce the question to the ideological substratum of the capitalist mode of production, that is, to the institutes of juridical ideology, equality, freedom, property and, finally, citizenship.

However, it is necessary to return this analysis to the specific issue of the state in order to demonstrate the way in which this entity develops the reproduction of systemic violence. This leads us to (i) the definition, materiality, and historical origin of the state for derivationist theory; (ii) the ideologized way in which the state presents itself to the body of society; and, finally, (iii) the concept of "relative autonomy". Let us analyse.

Initially, it is essential to point out that, unlike in pre-capitalist societies, class domination in bourgeois society does not develop in a direct and immediate way; on the contrary, under capitalism, political domination requires an apparatus of power that presents itself as impersonal, distant from social classes, which therefore positions itself as a public authority, which acts to promote the common well-being and the collective interests of society (POULANTZAS, 2015: 24). This is what allows Flávio Batista and Marcus Orione to conclude that:

> It is aspects such as competition and freedom of contract that do not allow domination by a so-called public power in the context of the self-understanding of bourgeois society to be confused with power considered private, in the way that this occurred in feudal domination. The legal form establishes the separation between public and private and requires the existence of the State form, ensuring and coercively sanctioning it (2022: 106).

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The politician apparently detached from the relation of economic exploitation, attends, as will be shown, to the ideologically sustained material need for the reproduction of capitalist relations of production.

This is because social organization in capitalism separates direct producers from the means of production, thus establishing a network of wage labor. Thus, it should be noted that the public character of the state can only be imagined in a society organized under the principle of the exchange of equivalents, insofar as this presupposes the presence of property subjects who voluntarily relate to each other, without, therefore, the presence of coercion from any party (NAVES, 2000: 79-80).

This is what leads Pachukanis (2017: 168), in this sense, to point out that the "public power" operates "acting as a guarantor of these relations [mercantile exchange relations]", representing the pursuit of impersonal interest. This is because, as the author will state, "the power of man over man is realized as a power of law itself, that is, as a power of the objective and impartial norm" (2017: 175). *The state, in this way, appears as a third party in the capital-labor relation; in its form, it thus appears as a guarantor of contracts, of the exchange and circulation of commodities, and, above all, of the exploitation of labor power in the form of wage labor.*

Let us explain. To the extent that there is a separation of the workers from their direct means of production, there is a necessity to exploit labor power, the only means of production left to the worker, through the form of the labor contract. The labor contract, on the other hand, however, only possesses the material and ideologized validity that it possesses insofar as it opposes two proprietary "subjects", free and equal, in a relation of exchange of commodities (wage-labor power). In order for this relationship to be well constructed, there is a need for these "subjects of law", equal and proprietary, to submit to an "impartial" third party, who guarantees the "fairness and probity" of the fulfillment of the contract; Thus, the force of the exploitation of the human being over the human being is produced, in a fetishized way, in the juridical form and in the state.

The same is true of all other commodity exchanges. To the extent that capitalist society represents itself as a society of mass exchange of commodities, there is a need for the establishment of this "third guarantor" in order for the circulation of commodities to be feasible. Thus, rather than condensing power dynamics – which, under the capitalist mode of production, are always power dynamics between classes – the capitalist state must be able to functionalize the economic, which ultimately *determines* it.

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It is, therefore, through the structure of the reproduction of capital that the state – as well as the political apparatus it uses – must be understood, as it is presented nowadays.

Before going any further, it should be said that the materiality of the state, in short, responds, for the derivationist theory, by being the factor of condensation of the various contradictions of capitalist society; More than that, the materiality of the State lies in the fact that it is the organizer of the hegemonic project of the ruling class and the forms that are necessary for it. In addition, it is imperative to clarify that the hegemonic class is the one that concentrates in itself, at the political level, the dual function of representing the general interest of the nation-people and of maintaining a specific domination between classes and the dominant fractions. In other words, the cohesion desired by the state in the face of the latent social antagonisms of capitalism is nothing but the cohesion of the bourgeois hegemonic order.

Finally, the state as the organizer of the struggle of the ruling class, presents itself, in its ideologized materiality, as the manager of the "collective interest" of the entire body of society.

It is precisely here that lies the *ideologized form* of the capitalist state to be highlighted. This is because, even though it operates the political interest of the hegemonic class, the bourgeoisie, the state is capable of favoring itself from its material condition of existence, that is, of positioning itself, in the heart of society, as the impersonal public power, which pursues the common welfare, the "collective interest", feeding back the exposed domination. This is a result of the fact mentioned above, that the state is that "third party guarantor", fundamental to the relations covered by the legal form. Remember: as a third party guarantor, it must indispensably be impersonalized, pursuing the collective well-being. The favoritism, however, derives from the fact that, in the course of its hegemonic project, it manages to obscure its classist nature, presenting itself to the body of the collectivity as a supra-class entity, which operates in favor of all – individually.

In this sense, in order to properly exercise its functions, the state needs to operate its ideologized form, which is, evidently, necessarily linked to its materiality. In a word, the material necessity that entails a mediate, indirect political domination implies the emergence of ideological forms of their own that sustain the hegemony of the bourgeois state.

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"Relative autonomy" – to borrow a term from the theoretical tradition on which we are based, a term that condenses the notion of apparent detachment from the state of economic relations – is, for all these reasons, indispensable to its materiality. About this, Poulantzas:

> the specific autonomy of the capitalist state and of the relations of production of the C.M.P. [capitalist mode of production] is reflected, in the field of the class struggle, in an autonomy of the economic struggle and of the explicit class struggle; this is expressed through the effect of isolation in social and economic relations, with the State having a specific autonomy in relation to it insofar as it presents itself as the representative of the unity of the people-nation, a political body established on the isolation of social and economic relations. (POULANTZAS, 1986: 131)

Once again, legal ideology is present to legitimize the continuity of the relations of production. Thus, it is also through the form "subject of law" that the political domination of the hegemonic class conceals itself. Domination is thus, for Pachukanis, "ideologically doubled", because:

> In the first place, because there is a special apparatus, separate from the representatives of the ruling class, and this apparatus rises above each individual capitalist and figures as an impersonal force. Secondly, because this impersonal force does not mediate each separate relation of exploitation, for the wage-worker is not politically and juridically coerced to work for a particular entrepreneur, but alienates his labour-power to him, formally, on the basis of a free contract. To the extent that the relation of exploitation is formally realised as the relation of two "independent" and "equal" owners of commodities, one of whom, the proletarian, sells labour-power, and the other, the capitalist, buys it, class political power can take the form of public power. (2017: 172)

It should be noted, however, that in order to fully realize its ideologized form, which functionalizes its directly material operations, the state, in order to demonstrate that it is truly a pursuer of the "collective interest," authorizes individuals to access it. However, this access is only allowed to them in isolation, through the condition of "citizen", thus making it impossible to organize the working class as a class interest group, which is understood by the hegemonic project of the bourgeoisie. In this regard, Márcio Bilharinho Naves is conclusive in pointing out that:

> By granting access to the State only to individuals in the condition of citizens, the juridical ideology allows the creation of the link that makes possible the transition from civil society to the State, or rather, the juridical ideology will allow the establishment of the means of expression of the State, in the form of the general interest, of the *various and contradictory particular interests that clash in civil society, and that by virtue of this "overtaking" they deny*

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> *their particular determination. Everything happens, therefore, as if the State, by abolishing classes, thereby annulled its own condition, erecting itself in the place of non-contradiction, where the "common good" is realized*. (NAVES, 2000: 83-84) [Emphasis added]

More than that: it should be noted, in this sense, that the notion of "collective interest" necessarily denotes, like all ideological production, a "real fact". Thus, according to Poulantzas (1986: 185), "this State allows, by its very structure, the guarantees of economic interests of certain dominated classes, possibly contrary to the short-term economic interests of the dominant classes, but compatible with their political interests, with their hegemonic domination".

It is essencial do note that this dynamic is governed by the compressions and decompressions of the political and economic struggle of the working class. *The guarantees – that is, concessions – made by the hegemonic class, in this way, seek to ensure, within the logic of a long-term political project, the perpetuation of its hegemony*. Even, therefore, the presence and "conquests" of members of the popular classes in the political form of capitalism have contributed to the reproduction of the relations of production, insofar as it articulates and extends the hegemonic ideology.

In short, one cannot lose sight of the fact that, within the state, "the central function of its apparatus of force consists in guaranteeing private ownership of the means of production as a precondition for the commodity exploitation of labor power" (HIRSCH, 2010: 29)

The conceptualization of the state, as Joachim Hirsch does, suggests, in this sense, that the state is a complex of fetishized social relations, "an expression of an antagonistic and contradictory socialization" (HIRSCH, 2010: 20), and that it has a field of action with its own conditions and dynamics, and is not, therefore, a mere superstructural fact. In other words: "[The] State is the expression of a determined social form that assumes the relations of domination, power and exploitation under capitalist conditions" (HIRSCH, 2010: 24). It is, therefore, an impersonal apparatus of public power, which is linked to capitalist socialization, being itself an integral part of the relations of production. In short:

> It is neither the expression of a general will, nor the mere instrument of a class, but the objectification of a structural relation of classes and exploitation. It can only be maintained as long as the process of economic reproduction as a process of capital valorization is guaranteed. [...] The state is not a neutral instrument that lies outside the "economy", but is linked to the capitalist relations of production, of which it is a part. (HIRSCH, 2010: 32-33).

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From all the above, it can be seen that, in fact, the opening of entry into the state to the universality of individuals, in the condition of "citizens", instead of promoting the collective interest of the working class as a class for itself –expressed, indeed, with sincerity, in the acts of the social movements that demanded, in the streets, the tearing down of racist monuments – promotes a "collectivized individualization" of the demands of the popular classes, which – as in the case in question – as being phagocytosed by the forms of capital, come to be governed as simple questions of public policy. It is a matter of reducing enormous social upheavals to derisory legal discussions.

In other words, the state and the political form appropriate collective demands, internalize such conflicts, digest and regurgitate them in the form of legal ideology, responsible for atomizing individuals and, therefore, for preventing the formation of classist interest groups. The process of individualization promoted by the dialectic of the forms of capital is, therefore, of absolute importance, as it prevents the logical functioning of the issue from a class perspective (ORIONE, 2018: 38). This is precisely what Carolina Catini (2013: 206) suggests when highlighting that "[...] the contradiction between the State and civil society requires that it be considered politically, that is, be placed in a legal form apprehensible by state power, the form of citizenship – which rejects the complete privatization of civil life in favor of the "common good".

The public policies of bourgeois social democracy, in this sense, by representing actions in the general interest, aiming to promote the well-being of the intire society, actually pursue only the perpetuation of the hegemonic political project of the bourgeoisie. The policies of the capitalist state, therefore, cannot operate in favour of the interests of the collective working class as such; they can only produce social forms that appear to be collective action – which, in reality, is a classist action of the domiant class itself, the bourgeoisie; an action that reinforces its domination.

Conclusion

The article exposed the dialectical movement of the impact of capital forms on a given demand of popular movements. In it, we saw how the legal form and the state acted, amidst the contradictions and antagonisms produced by capitalist sociability, to refrain

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the revolutionary potential of the actions of social movements. *In this sense, it was intended to show that the dispute at hand is, in fact, a metonymy of the operational factual for the continuity of capitalist conditions of production*. In other words, the analyzed case, which deals with the disputes in urban spatiality regarding its monumental order, demonstrates the relationship of force and power existing between the actions of the working class movements and the bourgeoisie, which is equipped with its instruments of domination, the law and the state. Thus, subjective, mythical, systemic violence, or any other valid term, subsists here, operated by the law and the state. The social conflict provoked by the action of the masses thus takes on contours of resolution and pacification to the extent that they are incorporated by the circumscription of the collective interest, of "well-being", becoming merely a matter of broadening legal subjectivity and citizenship, which dissolves the class perspective of the workers. The revolutionary potential of the working class' action is thus eroded by the forms of capital. This is the greatest manifestation of violence – hidden, indeed – that some may glimpse in the current days. Let us denounce it.

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