

**The Sacred Law: The Philosophical Origin of René Girard's Scapegoat
Mechanism and Giorgio Agamben's *Homo sacer***

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Table of Contents

Abstract	3
Resumé.....	4
Acknowledgements	5
Introduction.....	6
Chapter I: Philosophical Mimesis	25
A. Mimetic Sacrifice	26
B. Mimetic Desire and Kojève.....	30
C. Sartre and Divinity	34
D. Metaphysical Desire.....	39
E. Freedom as Sadomasochism.....	41
F. Irreparable Alienation	44
Chapter II: Mimesis in the Modern Aesthetics	51
A. Art and Metaphysics of Will.....	52
B. Ungraspable Essence of Art	56
C. Mimesis and Self-Transcendence of Art.....	59
D. Mimetic Art in Plato's Republic	63
E. Artist and His Double	66
F. Unstable Mimesis	68
Chapter III: The Sacred Law.....	72
A. Law in Suspension	74
B. Inaccessible Freedom in the Sacrificial Crisis	83
C. Crisis of Doubles.....	88
D. Psychologization of the Sacred	96
E. The Scapegoat and homo sacer	101
F. Wolf-man and Pharmakos	106
G. The Sacred Law	113
H. Bestiality at the End of History.....	123
Conclusion	126
Bibliography.....	130

Abstract

In spite of the growth of secularism after the Enlightenment era in the Western societies and its impact on the legal structure of these societies, whether the legal system has been stripped of the religious thinking is a question that is far from being answered. The idea of the sacred as one of the elements of religious thinking is the subject which many jurists and sociologists take into consideration in their studies on the relationship between the religion and the law. Since the nineteenth and the twentieth centuries many thinkers such as William Robertson Smith, Émile Durkheim, and Marcel Mauss have studied the impact of the sacred on the social life and placed it at the center of the social order. Yet, although these theories have shed light on the role of the sacred in the formation of the legal systems, they have also brought up some new questions which contribute to the complexity of the above-mentioned relationship. In the twentieth century, two authors, René Girard and Giorgio Agamben also addressed the subject of the correlation between the law and the sacred. While René Girard, similar to Émile Durkheim, perceives the sacred as a religious idea which constitutes the origin of social life, Giorgio Agamben opposes any religious narrative of the sacred and defines it as a juridico-political phenomenon, which is excluded from both divine and human laws. However, both thinkers depart from the theories of other scholars such as Durkheim since they believe that the sacred as the origin of the law belongs to an originary zone in which human relations are governed by violence. The use of violence enables the legal structure to establish itself on the life of human beings. Thus, given that Girard, contrary to Agamben's formulation, identifies the sacred with the religion, the main question of the present study is whether it is possible to reconcile Girard's and Agamben's theories of the sacred, and determine if the Girardian idea of religion has affinity with the juridical nature of the sacred which Agamben proposes. To answer these questions, earlier writings of Girard and Agamben which belong to the domains of literary criticism and modern aesthetics are taken into consideration because these literary and aesthetic studies present some themes such as the negative foundation of humanity which later take the center stage in their theories of the sacred. In addition, their literary and aesthetic studies have philosophical roots which create a link between these theories. Proximity of their early writings shows that in spite of Agamben's and Girard's different methods, their theories of the sacred point to the same violent origin of law, which belongs to a zone of indistinction between law and religion.

Résumé

En dépit de la croissance de la laïcité après Le siècle des Lumières dans les sociétés occidentales et son impact sur la structure juridique de ces sociétés, si le système juridique a été dépouillé de la pensée religieuse est une question qui n'est pas encore résolue. L'idée du sacré comme l'un des éléments de la pensée religieuse est un sujet que de nombreux juristes et sociologues prennent en considération dans leurs études sur la relation entre la religion et la loi. Depuis dix-neuvième siècles, de nombreux penseurs tels que William Robertson Smith, Emile Durkheim et Marcel Mauss ont étudié l'impact du sacré sur la vie sociale et l'a placé au centre de l'ordre social. Pourtant, ces théories contribuent à la complexité de la question mentionnée ci-dessus. Au XXe siècle, deux auteurs, René Girard et Giorgio Agamben a abordé le sujet de la corrélation entre la loi et le sacré. Alors que René Girard, similaire à Émile Durkheim, perçoit le sacré comme une idée religieuse qui constitue l'origine de la vie sociale, Giorgio Agamben s'oppose à toute narration religieuse du sacré et le définit comme un phénomène juridico-politique, qui est exclu de deux lois divines et humaines. Cependant, ces deux penseurs partent des théories d'autres savants tels que Durkheim, car ils croient que le sacré comme l'origine de la loi appartient à une zone originaire dans lequel les relations humaines sont régies par la violence. L'usage de la violence permet à la structure juridique de s'imposer sur la vie des êtres humains. Ainsi, étant donné que Girard, contrairement à la formulation d'Agamben, identifie le sacré avec la religion, la question principale de la présente étude est de savoir s'il est possible de concilier leurs théories du sacré, et de déterminer si l'idée Girardien de la religion a une affinité avec l' nature juridique du sacré qu'Agamben propose. Afin de répondre à ces questions, les premiers écrits de Girard et Agamben qui appartiennent à la critique littéraire et esthétique moderne sont pris en considération parce que ces études littéraires et esthétiques présentent des thèmes tels que la fondation négatif de l'humanité qui jouent des rôles fondamentaux dans leurs théories du sacré. En plus de leurs études littéraires et esthétiques ont des racines philosophiques qui créent un lien entre ces théories. Compte tenu de la proximité de leurs premiers écrits, on peut soutenir que, en dépit de leurs différentes méthodes, leurs théories du sacré se réfèrent à la même origine violente de la loi, qui appartient à une zone d'indistinction entre le droit et la religion.

Acknowledgements

When I started my graduate studies at McGill University's Faculty of Law, my legal knowledge mainly consisted of the rules and the principles which present the technical aspect of the laws. Although I knew that law is not an isolated entity and the legal system is interwoven with other aspects of the social life, I had never felt the urge to study the legal principles from an interdisciplinary perspective. But my experience at the courses I attended at McGill university helped me realize that I had to set aside my narrow view and see the legal system as a living creature whose life is dependent on many other realities. As a result, I decided to change my plans and choose a subject for the present study, which led me to study many different disciplines such as philosophy, religious studies, and anthropology.

Yet, I was a beginner in these fields, and I had no preconception of what lies ahead of me. I clearly remember those days when I was thinking that I should not have entered a field of studies with which I was not familiar. But every time I got frustrated, every time I was confused, I knew that my thesis supervisor and my mentor, Prof. Mark Antaki, would help me find the right direction. He not only guided me to overcome the theoretical problems I was struggling with, but he also taught me how to remain self-aware at each and every moment of this project. He helped me to remember why I started this project and helped me to understand how to love what I was doing. I know that without his support, and his patience, it could not have reached the finish line.

Introduction

Whether or not the rules of a modern legal system can be influenced by the religious beliefs which are of the sacred nature is not a new question. Although centuries have passed since the religious reformation in Europe and the introduction by the enlightenment thinkers of the separation of the church and the state, controversy about this question is still a matter of public debate and makes headlines all over the world. On the one hand, secular nature of the legal system in the Western societies does not allow the idea of the sacred to play any role in the administration of social life. As a case in point, the first amendment of the U.S. constitution explicitly states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹ On the other hand, some countries with followers of a religion in the majority, mostly Middle Eastern countries, support the legislation of religious laws.²

Yet, seen from a more general perspective and apart from the particular features of various legal jurisdictions, the theoretical aspects of the question at hand needs careful consideration. Thus, if comparative study of different societies and their legal systems, in which sanctity of legal rules may vary from the sacred beliefs being the foundation of the juridical structure to the total separation of the sacred and the law, is put aside, and our focus is placed on a deeper layer of the theoretical relationship between the idea of the sacred and the foundation of law, the question of this thesis can be phrased in the following manner: Is there any room available for the idea of the sacred in the realm of law in a modern society which has gone through a long process of secularization?

As it becomes apparent by this question, in the present study I intend to explore the relationship between the idea of the sacred which seems to have a religious origin and the modern understanding of the law. Yet, the ideas, such as religion, the sacred, and the law, are

¹ US Const amend I.

² New constitutional reforms promoted by the political changes in the Arab world bring the same question to the center of public debates. As a case in point, the newly drafted constitution of Egypt demands that all new laws comply with the divine rules of Sharia. Adoption of this section of the constitution has both its supporters and opponents, and there is no doubt that such constitutional reform has substantial consequences.

loaded words for which numerous interpretations can be proposed. In order to start the inquiry of this thesis, it is profitable to start with the ideas of Émile Durkheim, the thinker whose theory aims to find a common ground for all these concepts. Durkheim believes that these concepts are essentially interlinked since in his view, religion and the sacred, which is one of the fundamental religious elements, can serve the community as the source of the social order, one of whose manifestation is the laws of the community.³ For Durkheim, the sacred brings about order for the community since with the emergence of the sacred, all community members are united and provided with a collective identity, and this collective identity provides the community members with criteria for the regulation of their social relations and the establishment of order.⁴ Durkheim defines religion as:

“[A] unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden-beliefs and practices which unite into one single moral community... all those who adhere to them. ... It makes it clear that religion should be an eminently collective thing.”⁵

Durkheim's narrative of the relation between law and religion begins with a dichotomy between the sacred and the non-sacred which he calls the profane. In fact, sacred persons, objects, or places are those that are excluded from the profane life, and this division is protected by prohibitions, which are mostly of religious nature. A profane person is not allowed to approach and touch the sacred, and any contact will not go unpunished.⁶ Since the sacred is the foundation of the social order, it remains to some extent immune from constant changes which may destabilize the origin of order. A sacred belief also claims an authority which isolates it from any profane assessment and interpretation.⁷ While the sacred is “inviolable and unalterable”, the profane to the contrary is alterable, and its formation depends upon the social interactions of “everyday life” and distribution of power.⁸ Furthermore, at least for Durkheim,

³ S. Romi Mukherjee, “On violence as the negativity of the Durkheimian: between anomie, sacrifice and effervescence” (2006) 58:Supplement1 International Social Science Journal 5 at 20.

⁴ Ibid.

⁵ Émile Durkheim, *The Elementary Forms of religious Life*, translated by Joseph war swain (London: George Allen & Unwin Ltd. 1915) at 47.

⁶ Ibid at 37-42.

⁷ Massimo Rosati, *Ritual and the Sacred: A Neo-Durkheimian Analysis of Politics, Religion and the Self* (Farnham: Ashgate Publishing Ltd. 2009) at 95.

⁸ Richard Munch, *Understanding Modernity: Toward a New Perspective Going Beyond Durkheim and Weber* (New York: Routledge, 2011) at 38.

the sacred is the rigid foundation of the social order, and the sacred and the profane heterogeneity is the ground from which the collective identity of a moral community arises.⁹

The rough definition of the sacred presented above helps us to return the question as to whether or not the sacred ideas have any place in our understanding of law. Prior to any further clarification of the subject, it is necessary to announce that the question at hand is not a new one. Careful discussion of the probable correlation between these two social phenomena dates back at least to one century ago. Two founding fathers of the modern discipline of sociology have taken different standpoints towards this matter.

Max Weber whose analysis of the historical development of the rationalization process in a modern society has a great impact on our understanding of modernity presents some arguments with respect to the role of the sacred in the administration of modern society although he has not addressed this subject as directly as Durkheim discussed it in his intellectual projects. Weber's account of the development of modern sciences explains how rationalization of science has replaced any value system - be it religious or not- intended for the administration of the profane life, establishing a bureaucratic order which rejects any interference of the sacred beliefs into the business of the everyday life.¹⁰ The result is a modern order which has been stripped of any spiritual dimension.¹¹ This process is in opposition to the collective nature of the sacred which provides a ground for the unifying value system of a community. Another argument presented by Weber which challenges the untouchability of the sacred in the profane world of everyday life is

⁹ Émile Durkheim, *supra* note 5, at 44, "A society whose member are united by the fact that they think in the same way in regard to the sacred world and its relation with the profane world, and by the fact that they translate these common ideas into common practices, is what is called a Church."

¹⁰ Max Weber, *The Protestant ethic and the Spirit of Capitalism* (Introduction by Anthony Giddens) (New York: Routledge, 2001) at xviii; *Ibid* at 33-4 "The capitalistic system so needs this devotion to the calling of making money, it is an attitude toward material goods which is so well suited to that system, so intimately bound up with the conditions of survival in the economic struggle for existence, that there can to-day no longer be any question of a necessary connection of that acquisitive manner of life with any single *Weltanschauung*. In fact, *it no longer needs the support of any religious forces, and feels the attempts of religion to influence economic life, in so far as they can still be felt at all, to be as much an unjustified interference as its regulation by the State*" (emphasis added); *ibid* at 124 "Since asceticism undertook to remodel the world and to work out its ideals in the world, material goods have gained an increasing and finally an inexorable power over the lives of men as at no previous period in history. To-day the spirit of religious asceticism—whether finally, who knows?—has escaped from the cage. *But victorious capitalism, since it rests on mechanical foundations, needs its support no longer.*" (emphasis added)

¹¹ *Ibid* at 124, "No one knows who will live in this cage in the future, or whether at the end of this tremendous development entirely new prophets will arise, or there will be a great rebirth of old ideas and ideals, or, if neither, mechanized petrification, embellished with a sort of convulsive self-importance. For of the last stage of this cultural development, it might well be truly said: "Specialists without spirit, sensualists without heart; this nullity imagines that it has attained a level of civilization never before achieved."

based on the fact that the sacred beliefs are no longer placed outside the profane world, and they have been located within the institutions of the profane world.¹²

Whereas Weber predicts the gradual demise of the sacred beliefs, Émile Durkheim makes the reinterpretation of the sacred within a modern narrative and explanation of its ongoing presence in our age as one of the objectives of his projects. His intention to revive the role of the sacred in the formation of collective identity is not limited to the historical analysis of the sacred in his famous book, *“The Elementary Forms of the Religious Life”*. Reflecting on the challenges the French society is going through in the face of the Dreyfus Affair, he explicitly attaches the sacred status to some of the fundamental principles of his account of humanity such as the right to life and liberty. In his essay, *Individualism and the Intellectuals*, he states that

“The human person (*personne humaine*), the definition of which is like the touchstone which distinguishes good from evil, is considered sacred in the ritual sense of the word. It partakes of the transcendental majesty that the churches of all times lend to their Gods. It is conceived of as being invested with that mysterious property which creates a void about sacred things, which removes them from vulgar contacts and withdraws them from common circulation. And the respect which is given it comes precisely from this source. Whoever makes an attempt on a man's life, on a man's liberty, on a man's honor inspires in us a feeling of horror analogous in every way to that which the believer experiences when he sees his idol profaned.”¹³

In the passage above which is heavily loaded with the religious terminology of the sacred and the profane, a new religion of humanity is introduced by Durkheim. This new set of common values which is constantly reaffirmed through ritualistic actions can be called the “civil religion.”¹⁴

The brief comparison between the ideas of Weber and Durkheim is one further step in illuminating the scope of the main question. It is worth mentioning that on the one hand, Weber does not preclude the possibility that individuals in a modern society possess value systems

¹² Max Weber, *supra* note 10, at 100, “The religious life of the saints, as distinguished from the natural life, was—the most important point—no longer lived outside the world in monastic communities, but within the world and its institutions.”

¹³ Robert Neelly Bellah, ed, *Émile Durkheim on Morality and Society* (Chicago: University of Chicago Press, 1973) at 46.

¹⁴ Richard Munch, *supra* note 8 at 46. As a result, it becomes apparent that for Durkheim the sacred still serves the community as the origin of the customs and partices even if the idea of the sacred is not familiar to the modern societies. Maria Margaroni, “Violence and the Sacred: Archaic Connections, Contemporary Aporias, Profane Thresholds” (2012) 56:2 *Philosophy Today* 115 at 116.

which have some similarities with the sacred beliefs of pre-modern communities. On the other hand, Durkheim has given the sacred beliefs of the community a new content cutting off the theological roots of the sacred. In fact, for Durkheim the sacred beliefs should not be reduced to an element of the ancient religions. Yet, the divergence point between these two thinkers is the key to my argument. Weber believes that the sacred values which are excluded from the profane world and isolated from the rationalization process of modernity have ceased to be effective in a modern community, and any value system is to operate within the institutions of the profane world. To the contrary, Durkheim places importance on some fundamental principles such as the sacred which are not subject to the scrutiny of the profane men, and serve the community as the basis of its collective identity although these sacred values are not derived from the ancient religions. In light of the previous arguments, it seems that the sacred-profane dichotomy is a matter of form and boundary rather than content and substance. In fact, for these thinkers the distance and the red line between the sacred and the profane are the constitutive element of both phenomena regardless of the content the sacred beliefs may take. In fact, the role that the sacred plays in the social relations is influenced by the separation it makes between the ideas which constitutes the origin of social life and those beliefs which govern the normal state of affairs in everyday life. Whether the content of the former group of ideas arises from the theological systems does not have a great influence on the essence of the sacred beliefs. As a case in point, sanctity of human life for Durkheim is a sacred belief although it has humanistic content because no one is allowed to touch this matter with impunity.

Given the opinions of these prominent sociologists, we are able to provide more elaboration on the question of this thesis. Is there any element in the structure of a legal system which the community perceives as an untouchable part of the system? Is there an element of law which is not subject to the scrutiny of the people who obey it? That the sacred is excluded from the realm of everyday life encourages us to ask whether it is possible to think of any value or belief which, though being located outside the reach of the law, contributes simultaneously to the formation of that legal system.

Yet, the intellectual project for a better understanding of the sacred will be of no avail if that research lacks praxis. In fact, when a research is focused on analyzing an abstract concept, the process through which this concept is to be transformed into a concrete action helps us avoid

being trapped in illusory narratives that have no ground in reality. Durkheim, well aware of such a hazard, places great importance on the object which represents the sacred in the society. He argues that in our mind the effect of the sacred in social life is attached to the concrete object which ritualistically accompanies the sacred. Thus, the sacred never remains an abstract entity, a “free-floating substance”¹⁵ which takes no form; rather it is incarnated by an object, a place, or a body:

For we are unable to consider an abstract entity, which we can represent only laboriously and confusedly, the source of the strong sentiments which we feel. We cannot explain them to ourselves except by connecting them to some concrete object of whose reality we are vividly aware. Then if the thing itself does not fulfil this condition, it cannot serve as the accepted basis of the sentiments felt, even though it may be what really aroused them. Then some sign takes its place; it is to this that we connect the emotions it excites. It is this which is loved, feared, respected; it is to this that we are grateful; it is for this that we sacrifice ourselves. The soldier who dies for his flag, dies for his country; but as a matter of fact, in his own consciousness, it is the flag that has the first place. It sometimes happens that this even directly determines action. Whether one isolated standard remains in the hands of the enemy or not does not determine the fate of the country, yet the soldier allows himself to be killed to regain it. He loses sight of the fact that the flag is only a sign, and that it has no value in itself, but only brings to mind the reality that it represents; it is treated as if it were this reality itself.¹⁶

We may disagree with Durkheim on his analysis of the sacred and its materialistic representation, but it remains no doubt that a research on this issue must take the external appearance of the sacred in the society into consideration. This need clearly explains why some thinkers in their researches have taken a historical approach towards various forms which the sacred beliefs have taken in the communities and the effects they have caused in social practices over the ages. Scholars of different disciplines such as linguistics, sociology, anthropology, and theology are among those who have conducted extensive studies about the historical process through which the sacred has appeared in society all over the world.¹⁷

Studies on the historical appearances of the sacred can take various forms. It may aim to define the nature of the sacred, and determine the meanings it arouses in mind of the members of

¹⁵ S. Romi Mukherjee, *supra* note 3 at 29.

¹⁶ Émile Durkheim, *supra* note 5 at 220.

¹⁷ Émile Benveniste, *Indo-European Language and Society*, (University of Miami Press, 1973) <<http://chs.harvard.edu/wb/1/wo/2hC0puYIMPdn9FPuOWEIR0/4.0.0.0.19.1.7.15.5.1.1.1.5.7.1.1>>; Henri Hubert & Marcel Mauss, *Sacrifice: Its Nature and Functions*, (University of Chicago Press, 1964); Claude Levi Strauss, *The Savage Mind*, (University of Chicago Press, 1966); Rudolf Otto, *The Idea of the Holy* (London: 1936).

the community. It may explore the different functions the sacred beliefs fulfill in the social practices of the community as it was the case in Durkheim's and Mauss's writings. Yet, it is worth noting that the adoption of a functional approach towards this subject is made possible by the acceptance of some assumptions about the nature of the sacred from the beginning while these assumptions may be challenged by those who have different thought about the nature of the sacred. It may also focus on the external appearances of the idea of the sacred in the realm of the social life such as sacred places, sacred rituals, or sacred persons. In the present study, the idea that the sacred is the foundation of the social order which has to be excluded from the world of profanity prompts me to ask the question if the sacred is excluded from the profane world, how is it possible for the profane men to be in connection with the sacred? If the sacred is the foundation of the community, how does the isolation of the sacred takes place? And finally, is it possible for any member of the community to cross this border and communicate with the sacred world? Marcel Mauss and Henri Hubert, two famous followers of Durkheim's theory, have addressed the same question. Isolation of the sacred from the profane world as a principle of the Durkheimian theory in their view is not a permanent state of affairs since during the religious rituals the profane men are allowed to contact with the sacred.¹⁸ Then, inquiry about the connection between the sacred and the profane, which seems to be in contradiction with the isolated essence of the sacred, and the individuals who cross this border determines the attitude I intend to adopt toward the concept of the sacred and its relation with the law.

Selection of the connection between the sacred and the profane, and the person who undertakes the task of communication as the focus of the study offers an advantage and makes our inquiry more complicated at once. As stated previously, this approach in the beginning does not propose any solution to the paradoxical idea of the sacred, and it can also increase the complexity of the problem. In fact, the sacred is known through its distance from the profane world, and the boundary between these two phenomena has a pivotal role in the formation of the sacred. Thus, it is quite striking to see that a profane man is allowed to cross the red line and enter into the world of the untouchable sacred. In fact, while the sacred person is seen as one of the manifestations of the sacred in our social life, the mere act of the communication with the sacred world seems to be incompatible with the Durkheimian definition of the sacred. Yet, in

¹⁸ Marcel Mauss and Henri Hubert, *supra* note 17 at 97.

spite of the paradoxical essence of the sacred person, this attitude toward the sacred does not take any presupposition to the functions it may fulfill in the social life, and remains neutral to that question until the final answer is revealed. When the nature of the sacred man is discussed, we will be able to understand if his presence satisfies a need for the society.

Then, in light of these arguments, it is necessary to ask the following questions: What form does the connection of the sacred and the profane take? Who is the sacred man? Fortunately, there is a rich literature on the community's perception of this figure. This literature is composed of the researches of various disciplines. The Scottish theologian, William Robertson Smith is one of the first thinkers of the modern era who have tried to define who the sacred person is. He identifies holiness and impurity as two feelings which members of the community experience in their contact with the sacred person. He argues that in addition to the idea of holiness which always accompanies the sacred individuals and objects, *taboo* also convey a sense of impurity and uncleanness which should be excluded from the realm of the profane life. In fact, in the societies whose religious beliefs he has studied, people were not fully capable of detaching the sense of impurity from the holiness of the sacred.¹⁹ The same line of thought was followed by the French linguist, Émile Benveniste. In pursuit of the meaning of the sacred in languages of the Indo-European people, he faced the same contradictory elements of the sacred. He explores the root of the Latin word, *sacer*, and states that this word, which is the root of the "sacred" in the English language, has double meaning. On the one hand, it refers to something which belongs to the realm of holiness and thus deserves veneration and respect, and on the other hand, it has been used to denote "the accursed" person and object.²⁰

Hubert and Mauss who followed Smith's argument in their book on sacrifice also point to the double nature of the sacred. Although their book is focused on the rite of sacrifice, they attribute the contradictory combination of the pure and the impure to all religious forces including the sacred.²¹

¹⁹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998) at 76. [Agamben, *Homo Sacer*]

²⁰ Émile Benveniste, *supra* note 17, book 6, chapter 1
<<http://chs.harvard.edu/wb/1/wo/2hC0puYIMPdn9FPuOWEIR0/4.0.0.0.19.1.7.15.5.1.1.1.5.7.1.1>>

²¹ Hubert & Mauss, *supra* note 17 at 60, "This is indeed because, as Robertson Smith has clearly shown, what is pure and what is impure are not mutually exclusive opposites; they are two aspects of the religious reality. The religious forces are characterized by their intensity, their importance, their dignity; consequently they are separated."

Émile Durkheim also identifies these two contradictory elements as constitutive forces of the sacred. He believes that both these contradictory meanings have one thing in common as both the holy person and the accursed and impure person are untouchable for the profane men, and there are interdicts which prohibit any contact with them. In fact, the untouchable nature of the sacred is again affirmed by these different understandings of the sacred:

“But while these two aspects of the religious life oppose one another, there is a close kinship between them. In the first place, both have the same relation towards profane beings: *these must abstain from all contact with impure things just as from the most holy things*. The former are no less forbidden than the latter: they are withdrawn from circulation alike. This shows that they too are sacred. Of course the sentiments inspired by the two are not identical: respect is one thing, disgust and horror another. Yet, if the gestures are to be the same in both cases, the sentiments expressed must not differ in nature. And, in fact, there is a horror in religious respect, especially when it is very intense, while the fear inspired by malign powers is generally not without a certain reverential character. The shades by which these two attitudes are differentiated are even so slight sometimes that it is not always easy to say which state of mind the believers actually happen to be in. Among certain Semitic peoples, pork was forbidden, but it was not always known exactly whether this was because it was a pure or an impure thing and the same may be said of a very large number of alimentary interdictions.”²²

It is evident that all these thinkers while using different methods have come to similar conclusions. At least, the French sociologists of the early twentieth century were heavily influenced by this narrative of the sacred. There is no doubt that this list of scholars who have addressed the dual nature of the sacred is not exhaustive, yet, I intend to add two other thinkers of the second half of the twentieth century who, in spite of their divergence from the classical definition of the sacred, have proposed theories that have affinities with the idea of the dual nature of the sacred.

First, the French literary critic and anthropologist, René Girard, is another scholar who has established his theory upon the dual nature of the sacred. For Girard the sacred is a source of both impurity and holiness; however, he gives a new dimension to the dual essence of the sacred which separates him from the thinkers I have mentioned before. Second, Giorgio Agamben, the Italian philosopher, has also studied the sacred in social life and has applied the results of this theory to the modern conception of law. Agamben takes a different standpoint from Girard because he neither accepts the functions French sociologists attribute to the sacred nor believes

²² Émile Durkheim, *supra* note 5 at 410.

in the dual nature of the sacred as proposed by Durkheim and accepted by Girard. Yet, his narrative of the sacred which will be carefully discussed in following sections offers a new understanding of the sacred, and this new conception entails an exclusionary aspect of the sacred life which brings it close to the theories of Durkheim, his followers, and Girard.

That many thinkers including above-mentioned scholars have addressed the emergence of the sacred in a community prompts any reader to ask what criteria we have for distinguishing the writings of Girard and Agamben from all other relevant theories. To this end, it is of great importance to list underlying reasons justifying such a selective approach.

The main reason for singling out Agamben and Girard is the philosophical root of their theses. Girard has described his theory of the scapegoat mechanism which is in his view the origin of the sacred in his book, *Violence and the Sacred*.²³ This book includes analyses of practices of the primitive tribes and deconstruction of myths of different cultures particularly Greek mythology. Seen from this perspective, his work seems similar to those of the early twentieth century's scholars whose arguments heavily depend upon the empirical facts discovered through anthropological studies. Discussion of Australian tribes' practices by Durkheim in *the Elementary forms of religious life* is a perfect example of this approach. Yet, the scapegoat theory of Girard has its roots in his previous projects. In fact, the scapegoat mechanism is another revision of the mimetic theory presented in his early writings including *Deceit, Desire, and the Novel*.²⁴ Although this book seems to be a comparative study of some grand works of literature, the theory of mimetic desire is to a great extent indebted to the Hegelian philosophy of human desire, and particularly Alexander Kojève's and Jean-Paul Sartre's readings of the Hegelian theory.²⁵ Therefore, it is arguable that Girard has first prepared

²³ René Girard, *Violence and the Sacred* (Baltimore: The Johns Hopkins University Press, 1977). [Girard, *Violence and the Sacred*]

²⁴ René Girard, *Deceit, Desire, and the Novel: Self and Other in Literary Structure*, (Baltimore, The Johns Hopkins University Press, 1976) [Girard, *Deceit*]

²⁵ Michael Kirwan, *Discovering Girard* (London: Darton, Longman & Todd, 2004) at 33. Philippe Lacoue-Labarthe correctly explains that the origin of the Girardian theory is influenced by the Hegelian theory of human desire. Philippe Lacoue-Labarthe, "Mimesis and Truth", Book Review of *Système du Délire* by René Girard, and *La Violence et le Sacré* by René Girard, (1978) 8:1 *Diacritics* 10 at 22.

a solid philosophical ground for his theory, and then he has used literary criticism and anthropological facts in order to supplement his conclusions.²⁶

The same can be said of the works of Agamben. His perception of the sacred is discussed in *Homo Sacer: Sovereign Power, and Bare Life*. In order to explain how the sacred can contribute to the formation of law, he proposes a specific definition of a figure of the ancient Roman law, *homo sacer*, and explores the historical origin of the sacred in the Western civilization. Yet, his book cannot be classified as a historical study because Agamben's argument is fundamentally based upon the philosophical theories of Michel Foucault,²⁷ Immanuel Kant,²⁸ Walter Benjamin,²⁹ and Carl Schmitt.³⁰

The philosophical ground of these two narratives offers a considerable benefit for this thesis. As we are faced with a historical phenomenon whose appearance in the social life of the mankind is traced back to the time immemorial,³¹ and it is impossible to achieve a first-hand experience of the sacred,³² the validity of empirical studies can easily be challenged with the introduction of some new data. As a case in point, Agamben definition of *homo sacer* has been challenged by some scholars who have had recourse to other resources for their analyses.³³ Yet,

²⁶ It must be noted that Girard's method of analysis is based upon specific works of literature and anthropology. He justifies his selection of the texts upon which he establishes his theory in the following terms: "The writers who interest me are obsessed with conflict as a subtle destroyer of the differential meaning it seems to inflate. I must share somewhat in that obsession. Many critics obviously do not and, fortunately for them, many writers do not either. Some of the things that interest these critics also interest me, but to a lesser degree. I do not claim to be a complete critic, or even a critic at all. I am not really interested in a text unless I feel it understands something I cannot yet understand myself. The distinction between "theoretical" and "literary" texts appears spurious to me, but few critics are ready to challenge it because it justifies, they believe, their existence as critics. Thus, the "theory of literature" approach is alien to me. If you can write the "definitive" theory, in your own eyes, it means that literature, to you, is really a dead object. Not literature as such, I believe, but certain literary texts are vital to my whole "enterprise" as a researcher, much more vital than contemporary theory. Mine is a very selfish and pragmatic use of literary texts. If they cannot serve me, I leave them alone." René Girard, "Interview: René Girard" (1978) 8:1 *Diacritics* 31 at 50-51.

²⁷ Agamben, *Homo Sacer*, *supra* note 19 at 3-7.

²⁸ *Ibid* at 51-53.

²⁹ *Ibid* at 15-19.

³⁰ *Ibid* at 50-55.

³¹ Colby Dickinson, *Agamben and Theology* (New York: T. & T. Clark, 2011) at 63-66.

³² Girard, *Violence and the Sacred*, *supra* note 23, at 164. "The apparition of the monstrous double cannot be verified empirically, nor for that matter can the body of phenomena that forms the basis for any primitive religion. Despite the texts cited above the monstrous double remains a hypothetical creation, as do the other phenomena associated with mechanism that deteries the choice of surrogate victim. *The validity of the hypothesis is confirmed, however, by the vast number of mythological, ritualistic, philosophical, and literary motifs that it is able to explain, as well as by the quality of the explanations, by the coherence it imposes on phenomena that until now appeared isolated and obscure.*" (emphasis added)

³³ Frederiek Depoortere, "Reading Giorgio Agamben's *Homo Sacer* with René Girard" (2012) 56:2 *154*, at 156.

in this thesis I do not intend to analyze the validity of the anthropological dimension of these theories. Beyond the historical materials both Girard and Agamben provide to justify their arguments, the philosophical grounds of their theories will be taken into consideration in order to determine if it is possible to find a common ground for both theories and produce a narrative of the sacred which shows the correlation between the sacred and law. I do not claim that the philosophical attitudes of Girard and Agamben toward the sacred are the only theories which address the idea of the sacred through the lens of philosophy. Yet, the advantage of their philosophical arguments is that they present their theories as a response to the historical and anthropological studies of scholars such as Durkheim. In fact, while Girard and Agamben reject the previous studies of the sacred, their theories of the sacred and especially the philosophical origin of these theories provide us with an opportunity to understand why other scholars such as William Robertson Smith and Emil Durkheim define the sacred as a paradoxical phenomenon and help us to overcome this paradox. In other words, Agamben and Girard not only provide us with a new philosophical theory of the sacred, but they also point to the reasons which led Durkheim and other scholars to present a paradoxical interpretation of the sacred in their historical studies.

In addition, the theoretical grounds have enabled these thinkers to go beyond the discussion of the primitive societies' sacred beliefs and make some comments about the sacred nature of the modern law. It is arguable that these thinkers perceive the historical materials of their studies as a paradigm in the Foucauldian definition.³⁴ Although they have focused on some historical concepts such as the Roman law figure of *homo sacer* in Agamben's theory or the Greek figure of *pharmakos* in Girard's narrative, they intend to discern a structure in these examples and account for the continuation of this structure in the human history.³⁵ Since the interdependency of the sacred and law is the subject of this research, the paradigm of the sacred which Girard and Agamben explain in their theories makes it easier to make a transition from the archaic manifestations of the sacred to the impacts of the sacred beliefs on modernity.

³⁴ Leland de la Durantaye, *Giorgio Agamben : A Critical Introduction* (Stanford: Stanford University Press, 2009) at 224.

³⁵ Ibid at 223. Girard, *Violence and the sacred*, supra note 23, at 299-300. "There is a unity that underlies not only all mythologies and rituals but the whole of human culture, and this unity of unities depends on a single mechanism, continually functioning because perpetually misunderstood—the mechanism that assures the community's spontaneous and unanimous outburst of opposition to the surrogate victim."

Yet, juxtaposing the scapegoat mechanism with Agamben's narrative of *homo sacer* may face resistance from the followers of both thinkers because they both are reluctant to consider the implications of their theories for the arguments of each other. On the one hand, Girard strongly believes that the sacred and the foundation of religion are closely linked. In fact, in his view, religion in the broadest sense which has the sacred at its core is the system of beliefs which give birth to social life; thus for Girard, the social aspect of humanity originates in religion.³⁶ He argues that careful analysis of the religious nature of the sacred as the first product of human civilization empowers us to find the traces of the same process in other fields of social life such as law and politics.³⁷ Even it is arguable that although there is a good possibility for the application of Girard's theory to any analysis of the origin of law, he has not conducted an in-depth comparison between the sacred origin of religion and that of legal system, and decided to make some general comments on that point. On the other hand, Agamben rejects the idea that a religious interpretation can reveal the true essence of the sacred, and puts ideas of all thinkers who have studied the double nature of the sacred in a religious setting in one group which in his view accounts for neglecting the true essence of the sacred and its role in the rise of politics and sovereignty.³⁸ It is surprising that Agamben while attacking the defenders of the religious nature of the sacred has not mentioned anything about Girard's theory.

In spite of the *prima facie* opposition between these two hypotheses, Girard's and Agamben's divergent attitudes broaden the scope of insight into the nature and origin of the sacred. Since from William Robertson Smith in the nineteenth century to Émile Durkheim in the twentieth century, the religious root of the sacred constitutes the mainstream in this field of study, and

³⁶ Girard, *Violence and the Sacred*, *supra* note 23, at 306-307. "Human society does not begin with the fear of the 'slave' for the 'master,' as Hegel claims, but—as Durkheim maintains—with religion." *Ibid* at 24. "Religion shelters us from violence just as violence seeks shelter in religion." *Ibid* at 31. "Violence is the heart and secret soul of the sacred."

³⁷ Girard, *Violence and the Sacred*, *supra* note 23 at 23. "The procedures that keep men's violence in bounds have one thing in common: they are no stranger to the ways of violence. There is reason to believe that they are all rooted in religion. As we have seen, the various forms of prevention go hand in hand with religious practices. The curative procedures are also imbued with religious concepts—both rudimentary sacrificial rites and the more advanced judicial forms. Religion in its broadest sense, then, must be another term for that obscurity that surrounds man's efforts to defend himself by curative or preventive means against his own violence." (emphasis added by the author)

³⁸ Agamben, *Homo Sacer*, *supra* note 19, at 80. "An assumed ambivalence of generic religious category of the sacred cannot explain the juridico-political phenomenon to which the most ancient meaning of the term *sacer* refers. On the contrary, only an attentive and unprejudiced delimitation of the respective fields of the political and the religious will make it possible to understand the history of their intersection and complex relations. It is important, in any case, that the originary juridico-political dimension that present itself in *homo sacer* not be covered by a scientific mythologeme that not only explain nothing but is itself in need of explanation."

Girard also mainly focuses on the religious essence of the sacred, it is highly useful that Agamben's theory which directly addresses the legal dimension of the sacred be compared with the Girardian theory. In fact, I intend to find out if what Girard defines as religion and places at the origin of the social life has affinity with the juridico-political nature of the sacred in Agamben's theory.

In response to the claim that synthesis of these two ideas is *prima facie* impossible, some of the apparent points of similarity have to be emphasized. For both thinkers the sacred is not a belief or an object. The sacred has a human reality. Its origin is found on the life and the body of a sacred man. In fact, for both the sacred is a matter of life and death. Girard believes that without a scapegoat whose life is taken for the protection of the profane world the sacred would not come into existence.³⁹ Similarly, Agamben points to the nullification of *homo sacer*'s life and his deprivation of any legal meaning as the foundation of society and origin of the sacred.⁴⁰

Another point which should not go unnoticed is the originary nature of the sacred for both scholars. Girard does not consider the sacred to be an outcome of a religious process. In contrast, in his view, both the sacred and religious rites are rooted in the generative violence, and emergence of the sacred and the formation of religion are interlinked.⁴¹ This description totally corresponds to the "original" and the "originating" feature Agamben attributes to the sacred.⁴²

In light of above-mentioned arguments, it can be concluded that Girard and Agamben both agree on the categorizing effect of the sacred. Although they have made clear that their projects in no sense would be the continuation of previous studies of the early twentieth century's writers, it is important to notice that the exclusion of the sacred from the profane world-be it the lawless expulsion of *homo sacer* or the sacrifice of the scapegoat- delimits the boundaries of the social life. For Girard the sacred is a notion whose being is owed to the transcendence from the

³⁹ Girard, *Violence and the Sacred*, *supra* note 23 at 258. "[T]he sacred cannot function without surrogate victim."

⁴⁰ Agamben, *Homo Sacer*, *supra* note 20 at 83, "*homo sacer* presents the originary figure of life taken into the sovereign ban and preserves the memory of the originary exclusion through which the political dimension was first constituted."

⁴¹ Girard, *Violence and the Sacred*, *supra* note 23 at 93. "At present we have good reason to believe that the violence directed against the surrogate victim might well be radically generative in that, by putting an end to the vicious and destructive cycle of violence, it simultaneously initiates another and constructive cycle, that of the sacrificial rite-which protects the community from that same violence and allows culture to flourish."

⁴² Agamben, *Homo Sacer*, *supra* note 19 at 83. "The life caught in the sovereign ban is the life that is originarily sacred – that is, that may be killed but not sacrificed – and, in this sense, the production of bare life is the originary activity of sovereignty."

everyday life.⁴³ Likewise, Agamben suggests that abandonment of *homo sacer* and banishment from the realm of legal meaning constitutes the essence of the sacred.⁴⁴ In fact, one of the reasons which led to the selection of Girard's and Agamben's theories as the main subject of the present study is that their theories not only have philosophical grounds, but, as we will see, these grounds also have many points in common.

It is also worth noting that theories of the Girard and Agamben converge into one fundamental theme. As stated above, the sacred is an originating phenomenon, and also the first outcome of social life. Yet, apart from seeing the sacred as the origin of social life, the origin of the sacred itself is a matter of high significance. Since both thinkers define an originating effect for the sacred, they are left with no option other than perceiving the sacred as a transition from the facts to norms. Girard is of the opinion that the society feels compelled to have recourse to the invention of the sacred when sheer violence and physical force only govern the human relations.⁴⁵ "Loss of difference" and indistinguishability of men from each other is the main feature of the chaotic situation which gives rise to the sacred making mechanism of society, and Girard calls this situation the "sacrificial crisis".⁴⁶ In fact, at the time of sacrificial crisis, no concept and distinction, and no classification can stand, and all men are doubles of each other: violent beasts. Agamben also believes that the origin of the sacred is a zone of indistinction between the fact and norms from which the normative legal rules arise.⁴⁷ The society's decision regarding *homo sacer*'s life, which turns out to be the ban and abandonment, is the first juridico-political act of the community, prior to which no legal meaning is thinkable.⁴⁸ Yet, the question is whether the idea that suspension of norms is the origin of the sacred is derived from a common line of thought? Viewing both theories through the lens of the sacred nature of the foundational act brings up a new possibility for analysis of the sanctity of law, an element of law which though influencing the legal sphere of the profane world is not subject to the assessment of profane men. In fact, it is plausible to look for this element of the law at its origin because the

⁴³ Girard, *Violence and the Sacred*, *supra* note 23 at 134. "Religion, then, is far from "useless." It humanizes violence; it protects man from his own violence by taking it out of his hand, transforming it into a transcendent and ever-present danger to be kept in check by the appropriate rites appropriately observed and by a modest and prudent demeanor."

⁴⁴ Agamben, *Homo Sacer*, *supra* note 19 at 83.

⁴⁵ Girard, *Violence and the Sacred*, *supra* note 23 at 39-67.

⁴⁶ *Ibid.*

⁴⁷ Agamben, *Homo Sacer*, *supra* note 19 at 27.

⁴⁸ *Ibid.*, at 83.

foundational act is both included and excluded from the realm it establishes. It is included in our legal thinking in terms of creating a new order, and it is excluded in the sense that the foundational act which has its roots in facts and reality of the social life cannot be examined by the norms it creates.⁴⁹

The objective of this thesis, which is to carry out a comparative study between the Girardian theory and Agamben's narrative of the sacred, has been previously pursued by other authors. Three different lines of thought can be found in these writings. The first group, similar to Agamben, rejects the idea that the sacred can be defined by any religious interpretation.⁵⁰ They insist that the sacred must be seen as a purely political and juridical concept which constitutes the origin of law. The second group supports the argument that Girard correctly links the sacred with the religious interpretation of the sacrifice.⁵¹ The third group has attempted to choose a motif which influences both theories, and claim that it is possible to reconcile ideas of these two thinkers in spite of differences between their theories.⁵² Yet, since both Girard and Agamben did not discuss each other's theories, and they both have made statements which seem to separate their theories, a thorough and comprehensive analysis showing the proximity of their theories and their differences has not been conducted yet.

It is also worth noting that the works cited above mostly concentrated on Girard's and Agamben's theories of the sacred, and did not pay enough attention to the origins of these arguments in their earlier writings. As a case in point, Girard's idea of the sacred which is based on his theory of mimetic desire is viewed as a religious study on the ritual of sacrifice. In addition, it is not reasonable to view Girard's idea of mimetic desire as an isolated theory which is wholly focused on literary studies. Girard himself says that in his first books he was heavily

⁴⁹ Andrea Brighenti, "Dogville or the Dirty Birth of Law", (2006) 87 Thesis Eleven 96, at 1003. "No founding act can be judged in the terms and categories of the system set up by that very act: the founding act is located on a threshold. This position is not different from that of the critical being: as a founding subject, the critical being cannot be fully part of the system it fundamentally contributes to setting in place."

⁵⁰ See Nasser Hussain and Melissa Ptacek, "Thresholds: Sovereignty and the Sacred" (2000) 34:2 Law and Society Review 495; also See Adam Sitze, "The Question of Law Analysis" (2007) 64:3 American Imago 381.

⁵¹ See Rey Chow, "Sacrifice, Mimesis, and the Theorizing of Victimhood: A Speculative Essay" (2006) 94:1 Representations 131.

⁵² See Michael Marder, "Taming the Beast: The Other Tradition in Political Theory" (2006) 39:4 Mosaic 47; also See Christopher A. Fox, "Sacrificial Pasts and Messianic Futures: Religion as a Political Prospect in René Girard and Giorgio Agamben" (2007) 33 Philosophy Social Criticism 563; also See Lars Östman, "The Sacrificial Crises: Law and Violence" (2007) 14 Contagion: Journal of Violence, Mimesis, and Culture 97.

influenced by the French Hegelianism of the 1950s.⁵³ Thus, it is necessary to look at Girard's theory of the sacred through the lens of his narrative of mimesis and takes the philosophical roots of the theory of mimetic desire into account.

In the Girardian theory, mimesis has fundamental consequences for social relations. In this regard, Girard thinks that his theory of mimesis is similar to Plato's opinion about mimesis in *The Republic*. Although Girard believes that Plato did not present a comprehensive theory of mimesis, the fact that Girard similar to Plato views mimesis as a social issue shows that Girard's theory of mimetic theory goes beyond the boundaries of the literary studies.

It must be noted that Agamben also in his first writings discussed the Platonic idea of mimetic art. The fact that both Girard and Agamben presented their arguments about Plato's attitude towards mimesis provides us with an opportunity to understand their opinion about the effects of mimesis on social relations. Discussion of mimesis and art and their effects on the social relations enables us to make a transition from Girard's and Agamben's early works to their theories of the sacred.

In order to develop new insights into the theoretical questions raised above, this thesis consists of three chapters. The first chapter is allocated to the discussion of the ideas which constitute the origin of the Girardian theory. In fact, I intend to show that the theory of mimetic desire is not an isolated literary study, and this theory is influenced by the philosophical theories of other thinkers. First, I turn to Alexandre Kojève's interpretation of Hegel's *Phenomenology of the Spirit* in order to determine the impacts of Kojève's ideas on Girard's mimetic desire theory. The comparison between Girard and Kojève is necessary since the Girardian idea of desire has affinity with Kojève's reading of Hegel. Then, the Sartrean theory of the human desire will be taken into consideration because it seems that Girard's definition of triangular desire is more similar to Sartre's philosophy although Sartre himself was to a great extent influenced by Kojève. Reading the Girardian theory in light of Sartre's philosophy helps to understand what are the common grounds and differences of these two theories, and how the theory of mimetic desire has its roots in the philosophical studies of the 1950s. Analysis of the divergence between their theories enables us to understand why Girard predicts a different destiny for the project of

⁵³ René Girard, *La conversion de l'art* (Carnets Nord, 2008) at 19.

human desire of which Sartre was not aware, and how the mimetic behavior in human beings leads to the emergence of the sacred in the social relations.

When the philosophical grounds of the mimetic desire are revealed, in the second chapter, it is necessary to determine if the Girardian theory of mimetic desire has affinity with Agamben's philosophy. Since Girard's and Agamben's theories of the sacred have their roots in their earlier studies, prior to any analysis of their sacred theories, it is of great importance to find out if their earlier ideas stand on a common philosophical ground. It is easier for us to discuss the philosophical origin of Agamben's theory since from the beginning of his intellectual project he has explicitly discussed the theories which have influenced his works. Although Agamben's theory of the sacred has its origin in his philosophical studies of the human language, I have decided to compare the ideas presented in his first book, *The Man without Content*, with Girard's theory of mimetic desire. The reason underlying this decision is that the mimetic desire theory places a transcendental principle, the subject's desire to be the foundation of his own being, at the center of the intersubjective relations. Thus, we are conformed with individuals whose transcendental desires lead to alienation. Similarly, in *The Man without Content*, Agamben explores the effect of a transcendental principle on the individuals who are confronted with an artwork. Although Agamben's analysis relates to a particular context, the comparison between the mimetic desire theory and Agamben's aesthetic analysis provides us with an opportunity to understand how the establishment of human essence on a transcendental principle can lead to alienation. Furthermore, the effects of alienation will be explored with a reference to Plato's attitude towards the mimetic art, which can be viewed as the intersection of Girard's reading of mimesis and Agamben's aesthetic study. The importance of the comparison between Girard's and Agamben's arguments regarding Plato's treatment of mimesis in *The Republic* lies in the fact that the effect of an account of subjectivity which is defined by a transcendental principle on the social relation will be revealed, and it will be possible to understand how the main concepts of Girard's and Agamben's earlier studies influence their theories of the sacred.

The third chapter directly addresses both thinkers' theories of the sacred. This chapter will begin with Agamben's argument that the legal structure originates in the state of exception in which the law is suspended. This definition of the law helps us to understand if the negative account of the subjectivity in Agamben's and Girard's earlier studies is similar to the concept of

the law which has its origin in its suspension. Since, in Agamben's theory, law arises from the state of exception in which it is suspended, I intend to determine whether Girard also places a chaotic state of affairs at the origin of his sacred theory in which the social order arises from the loss of order. The next step is to define both thinkers' definition of the sacred and to determine how their accounts of the sacred are related to the state of exception and the sacrificial crisis. In other words, the question is why Girard and Agamben consider the sacred to be the origin of the law and social order. It is also important to investigate if both Agamben and Girard agree with the paradoxical definition of the sacred which was presented by William Robertson Smith and those who followed his opinion. In this regard, it will be explained that although Girard, similar to Smith and Durkheim, proposes a religious and paradoxical definition of the sacred, his theory has some common grounds with Agamben's interpretation of the sacred which rejects the religious essence of the sacred. Then, Girard's argument about the common origin of the law and the sacred will be discussed in order to show whether his religious interpretation of the sacred can be reconciled with the juridico-political definition of the sacred that Agamben presents. Finally, in light of the proximity between these two theories, it would be possible to determine whether in Girard's and Agamben's views our understanding of the modern law can be influenced by the idea of the sacred.

Chapter I

Philosophical Mimesis

In the present study, the inquiry about the correlation between the sacred and the law is based on the theories of Girard and Agamben. Yet, from the beginning, we are confronted with the question whether their engagement with the idea of the sacred has any roots in their previous writings. In fact, it seems reasonable to follow Girard's and Agamben's line of thought as their intellectual projects have developed over time. Neglecting the effects of their earlier writings on the theory of the sacred deprives us of a complete view of their ideas unless it is argued that there is a rupture between their earlier works and the ideas which are elaborated in their later books. In order to find an answer to this question, it is necessary to turn to their earlier works.

It must be stressed that the nature of Girard's work differs from Agamben's. Girard started his intellectual career as a literary critic while Agamben's first books such as *The Man without Content* or *Language and Death* are philosophical studies about the modern aesthetics and human language. However, if we look at the foundation of their theories and turn to the ideas of thinkers who have influenced these early writings, it will be possible to determine if their arguments about the idea of the sacred have common grounds. But, this is not an easy task. The difficulty arises from the fact that Girard has not explicitly discussed the theories which influenced his early books. As a case in point, although some of the famous interpreters of the Girardian theory such as Wolfgang Ivaler, Robert Doran, and Jean-Pierre Dupuy think that there is a link between the Girardian theory and the twentieth-century French thinkers such as Jean-Paul Sartre and Alexandre Kojève, Girard has preferred to avoid a direct engagement with these thinker's ideas. In fact, his comments on their influence on his books are very brief.⁵⁴

Thus, prior to any discussion about the theoretical origin of Agamben's thought, I find it necessary to concentrate on Girard's theory of mimetic desire, and analyze its affinity with Sartre's and Kojève's philosophy.

⁵⁴ Robert Doran, "René Girard Apocalyptic Modernity" (2011) 11 *Comunicacao & Cultura* 37 at 39.

A. Mimetic Sacrifice

René Girard has been a prolific writer whose ideas have been presented in numerous books. From the 1960s to 2000s, he wrote and published almost 30 books, and any research on his theories is bound to draw upon the progress of his ideas during these five decades. Yet, Girard's theory of the sacred is identified almost exclusively with his magnum opus, *Violence and the Sacred* (first published in French in 1972, and then translated and published in English in 1977). In this book, Girard offers us an account of the sacred which originates in a social crisis involving widespread violence. He depicts a community tormented by violent rivalries in which social norms and institutions can no longer bring harmony and order. Girard associates peace and harmony with the cultural distinctions to which violence and violent rivalries are immanent threats.⁵⁵ These distinctions for Girard are based upon the social position each person possesses. As a case in point, in the familial life, the distinction between father and son is one of the elements which govern the relationship between the family members. The superior position of the father in relation to his son determines their rights and duties, and if the distinction between them is lost, order of the familial life will be in jeopardy.⁵⁶ He believes that "it is not these distinctions but the loss of them that gives birth to fierce rivalries and sets members of the same family or social group at one another's throats."⁵⁷ The loss of distinctions is caused in turn by mimetic desire.⁵⁸ Girard allocated a chapter of *Violence and the Sacred* to the discussion of mimesis and mimetic desire. One of the constitutive elements of Girard's theory is the concept of mimesis and the role it plays in every social conduct. Men are, in the Girardian analysis, bound to start their rivalries in the social life because their desires and choices are guided by the desire of their models. He contends that any subject who is attracted to an object borrows his decision from another subject who is his model, and the source of this choice. The desirability of the object for any person in this narrative is created by the desirability of the same object for another

⁵⁵ Girard, *Violence and the Sacred*, *supra* note 23 at 119. "Family and social hierarchies are temporarily suppressed or inverted; children no longer respect their parents, servants their masters, vassals their lords."

⁵⁶ *Ibid* at 47. "The destruction of differences is particularly spectacular when the hierarchical distance between the characters, the amount of respect due from one to the other, is great— between father and son, for instance. This scandalous effacement of distinctions is apparent in Euripides' *Alcestis*. Father and son are engaged in a tragic dialogue; each accuses the other of fleeing from death and leaving the heroine to die."

⁵⁷ *Ibid* at 49.

⁵⁸ It is worth mentioning that Girard has used two terms, "distinctions" and "differences," in the same meaning. The element that both these terms indicate is the particular position each person acquires. He believes that there is a hierarchy of social positions which determine what a community member can do and how he shall be treated by others.

human being. Girard's conviction about the mimetic structure of desire is perfectly captured in the following words of his:

"In all the varieties of desire examined by us, we have encountered not only a subject and an object but a third presence as well: the rival... the subject desires the object because the rival desires it. In desiring an object the rival alerts the subject to the desirability of the object. The rival, then serves as a model for the subject, not only in regard to such secondary matters as style and opinions but also, and more essentially, in regard to desires."⁵⁹

These rivalries lead to violent struggles as Girard states this conclusion in the clearest way. He believes that "two desires converging on the same object are bound to clash."⁶⁰ Thus, mimesis coupled with desire leads automatically to conflict. The violence which accounts for the destruction of all distinctions in the crisis that Girard discusses emerges from these violent conflicts and rivalries of the mimetic desire. The reader then faces a group of antagonists who are not distinguishable from one other. Girard continues to claim that, in the absence of the sacred, the community lacks any apparatus to control the violent crisis as vengeance has the last word among the aggressive antagonists. In his view, the desire for vengeance is the sole common characteristic of all the community members. Girard recognizes the urge for vengeance as the "an interminable infinitely repetitive process, [which] every time turns up in some part of the community, it threatens to involve the whole social body."⁶¹ However, the only common characteristic of the community members also threatens the survival of the community as nothing stops them from satisfying their thirst for violence. Violence, in this theory, is viewed as a phenomenon which erases all differences, differences that define any individual social status and establish and maintain a distance between members of the community. Girard points to "violent reciprocity" as the source of the dissolution of all differences.

At the height of such a crisis, he defines the sacred as a solution to the spread of the uncontrolled violence when the threat of annihilation has reached the highest level. In fact, the sacred for Girard works like a breaking mechanism in the emergency situations.⁶² According to Girard's narrative, the community whose members are not separable by means of any social norm consists of people who can be easily replaced by one other due to their formless identities. He perceives the "complete effacement of differences" as the fundamental element which makes

⁵⁹ *Ibid* at 145.

⁶⁰ *Ibid* at 146.

⁶¹ *Ibid* at 14.

⁶² *Ibid* at 67.

these people “interchangeable”.⁶³ The ever-growing pattern of violent behaviors is unstoppable until the individuals’ need for violence is satisfied. Men who are guided by their desire for vengeance desperately look for the cause of the crisis. The process of scapegoating comes into effect and leads to the arbitrary selection of a victim who is regarded by the community as the source of crisis.⁶⁴ The victim, by way of his exclusion from the community, restores peace and harmony.⁶⁵ He is the source of both maleficent and beneficent forces and thus has a double character, combining the contradictory features of the sacred which have been discussed by other thinkers which I have presented in the introduction. The victim founds the structure of the social peace and order.⁶⁶ The selection of the victim is also made possible due to the identical characters of all community members, which helps the community to transfer the responsibility from other members to one victim who has become the representative of the wrongdoings of the whole community.⁶⁷

I do not intend here to provide more elaboration of the Girardian account of the crisis and the sacred-making process which in his view comes to rescue the community from annihilation. I will address it in the following chapters. Many questions can be asked of Girard about the process through which the community restores peace and harmony with the help of the sacred, or better said, the sacred victim. Yet, the most important question which must be addressed prior to any other inquiry, in my view, relates to the origin of the rivalry in the crisis-ridden community. In fact, the process which Girard describes as the origin of peace and order, and the role given to the sacrifice and the scapegoat mechanism entails numerous arguments and facts, each of which can be subject to scrutiny. It has been very difficult for many thinkers to accept various parts of the theory which claims to address the origin of all cultural institutions and social norms. It has been even argued that the Girard narrative is constructed by a reductionist approach towards the origin of community, which interprets any event through the lens of sacrifice and the scapegoat

⁶³ *Ibid* at 79.

⁶⁴ *Ibid* at 79-80. “Any community that has fallen prey to violence or has been stricken by some overwhelming catastrophe hurls itself blindly into the search for a scapegoat. Its members instinctively seek an immediate and violent cure for the onslaught of unbearable violence and strive desperately to convince themselves that all their ills are the fault of a lone individual who can be easily disposed of.”

⁶⁵ This exclusion can be an act of killing, or expulsion of the victim from the community.

⁶⁶ *Ibid* at 85. “Because the violence directed against the victim was intended to restore order and tranquility, it seems only logical to attribute the happy result to the victim himself.”

⁶⁷ *Ibid* at 77. “The whole process of mythical formulation leads to a transference of violent undifferentiation from all the Thebans to the person of Oedipus. Oedipus becomes the repository of all the community’s ills.”

mechanism.⁶⁸ Even authors who similarly believe in the central role of the sacred in the constitution of the social order consider Girard's theory to be "totalizing" since for them, every peace-making process cannot be interpreted by the scapegoat mechanism.⁶⁹ Yet, there might be a possibility that his theory is able to bear the heavy burden of this all-encompassing argument. The line of inquiry must thus begin from the primary stage of his theory when the community has not yet unraveled under the pressure of the violent rivalries. It is not reasonable to challenge the Girardian narrative about the establishment of the culture and social life upon the scapegoat mechanism while the source of the crisis, which prepares the ground for the emergence of the sacred, and the establishment of norms and peace, is left unaddressed. If Girard insists that in order to overcome the threat of annihilation, the community is left with no other choice but to choose a victim, exercise the practice of sacrifice, and grant him the sacred status, it is tenable to ask him, prior to any other question, why the community has been threatened by the violent crisis in the first place. Is there any other imaginable destiny for a community of human beings except for the spread of uncontrolled violence which can only be contained through the scapegoat mechanism? Since Girard introduces mimetic desire as the source of all violent rivalries, it is worth asking what role mimesis plays in the formation of the human beings' behaviors and choices.

Therefore, it appears to be necessary to take one step back to Girard's early writings where he showed his first encounter with the idea of mimetic desire. His first books are far from 'anthropology' and tend to be categorized as 'literary criticism.' In addition, these works are less engaged in investigation of matters such as peace and order of the community, and are more concentrated on the nucleus of the social sphere, such as the basic relation between two human beings. In fact, it is arguable to say that Girard's so-called literary works are more concerned with the micro-social phenomena than social structures on the macro-scale. Although they choose the "inter-subjective" relations as the scene of address,⁷⁰ the focus is placed upon subjectivity and its implications for social relations. In fact, in *Violence and the Sacred*, human

⁶⁸ Michael E. Hardin, "Mimetic theory and Christian Theology" in Sandor Goodhart et al, eds, *For René Girard: Essays in Friendship and in Truth* (East Lansing: Michigan State University Press, 2009) 263 at 266.

⁶⁹ Paul Kahn, *Sacred Violence: Terror, Torture, and Sovereignty* (Ann Arbor: University of Michigan Press, 2008) at 120. Girard has been criticized for his selective method because it is been argued that he only chooses the texts which contribute to his theory while he neglects other parts which are not compatible with his arguments. Andrew D. Gross, ed, *In Pursuit of Meaning: Collected Studies of Baruch A. Levine* (Winona Lake: Eisenbrauns, 2011) at 420.

⁷⁰ Girard, *Deceit*, *supra* note 24 at 37.

beings and their mimetic desires and violent rivalries are viewed as parts of a bigger picture while the collective issues shape their identity. In contrast, the literary interpretation of subjectivity for Girard in his early writings takes inter-subjective relations into consideration more independently from the impacts of communal structure - even though he strongly rejects any isolated and purely individualistic analysis of the subject and his identity.

B. Mimetic Desire and Kojève

In light of the above, it would be surprising to find any discussion of the sacred in these early writings since the sacred for Girard comes into existence as the savior of the community as a whole. *Deceit, Desire, and the Novel*, as a starting point of his intellectual projects, places mimesis at the center of human relations, which for him inspires all human choices. Desire for Girard is triangular, and he sees at the core of any desire the presence of a third element, another person who serves the desiring subject as model.⁷¹ While rejecting the belief that the objects of desires and their natures determine their values, Girard points to the prestige of the model as the source of the object's desirability.⁷² In other words, anything the subject wants is desirable only because another human being desires it. But, why?

The period during which this work was written and published, the 1960s, gives us a clue to some other theories influencing the triangular definition of desire. It has been argued that Girard, similar to many other French thinkers of the time, was under the influence of Alexandre Kojève's interpretation of Hegel's *Phenomenology of Spirit*.⁷³ Girard himself admits that his thought at the time was "contaminated by the Hegelian climate of the fifties."⁷⁴ Although the word "contamination" conveys a negative sense to anyone who intends to explore the possibility of interdependency between these two theories, the similarity between their arguments have not gone unnoticed in the eyes of those who have reviewed Girard's arguments.⁷⁵ The model Girard

⁷¹ *Ibid* at 21.

⁷² *Ibid* at 15, 17.

⁷³ Michael Kirwan, *supra* note 25 at 33.

⁷⁴ René Girard, *supra* note 26 at 32.

⁷⁵ George Erving, "René Girard and the Legacy of Alexandre Kojève" 10 *Contagion: Journal of Violence, Mimesis, and Culture* 111; Eugene Webb, *The Self Between: From Freud to the New Social Psychology of France* (Seattle: University of Washington Press, 1993) at 116; Guy Vanheeswijck, (2003) "The Place of René Girard in Contemporary Philosophy" 10 *Contagion: Journal of Violence, Mimesis, and Culture*, 95. All these writers have

offers for the explanation of the mimetic desire has been also emphasized by Kojève in the following terms: “desire directed toward a natural object is human only to the extent that it is mediated by the desire of another directed toward the same object: it is human to desire what others desire, because they desire it.”⁷⁶ When faced with these two utterances, one might conclude that the Girardian narrative is shaped by Kojève’s interpretation of Hegel because they both perceive desire as a phenomenon which is mediated by an other. Yet, this would be a quick conclusion. In order to locate the theory of mimetic desire within Kojève’s interpretation, we have to investigate what element in both theories leads to the central role of another human being in the formation of the subject’s desire.

Kojève accords the mediated nature to desire because in his philosophy human subjectivity is in sharp contrast with natural entities. He defines natural life and natural beings as “static” and “thingish” phenomena which are given and incapable of change. To the contrary, human essence is a “nothingness”, an “absence of being” which annihilates the natural given beings to transform itself and become what it is not.⁷⁷ The contradiction between the natural life and the human life, the objects of desire and the subjects who desire them encourages Kojève to state that “human desire” needs an intervention of another human being, otherwise the isolated relation between the subject and the object fails to produce anything human, and remains in the domain of natural life.

In light of this brief introduction of Kojève’s reading of human desire, it is necessary to determine if Girard is also led by the same reasoning in his theory of mimetic desire. The Girardian subjects also feel a sense of nothingness, and this sense of lack is the driving force pushing them to imitate another subject. By interpreting the literary works, particularly the novels of Cervantes, Flaubert, Proust, and Dostoyevsky, Girard brings to light the lack of being of the characters of these works of literature. The Girardian subject hates his own identity, and his dissatisfaction with himself is not limited to some qualities of the character and challenges the stability of the subject’s belief in his own essence.⁷⁸ Girard infers from Jules de Gaultier’s

discussed the common points between Kojève’s interpretation of the Hegelian philosophy and the Girardian theory of mimetic desire although none of them believe that Girard has followed the same line of thought although he has been very influenced by Kojève’s interpretation of the Hegelian philosophy.

⁷⁶ Alexandre Kojève, *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit* (Ithaca, Cornell University Press, 1980) at 6.

⁷⁷ *Ibid* at 38.

⁷⁸ Girard, *Deceit*, *supra* note 24 at 55. “all heroes of the novels hate themselves on a more essential level than that of qualities.”

analysis that Flaubert's characters such as Emma Bovary are "marked by an essential lack of fixed character and originality of their own"⁷⁹ and they are nothing by themselves. The lack of originality invites them to imitate another human being whom they consider to be privileged with real existence and precious originality. Girard uses Proust's words in *Swann's Way* to justify the lack of being each subject experiences: "everything which was not myself, the earth and the creatures upon it, it seemed to be more precious and more important, endowed with a more real existence."⁸⁰

Although even this preliminary understanding of Kojève's arguments and Girard's narrative needs much more elaboration, it has become obvious that these two thinkers visit the role of desire in the formation of subjectivity in different ways. The Hegelian subject of Kojève is a nothingness, but this nothingness is defined by the contrast with the positive content of the natural world. The object of desire is influenced by the choice of another human being only because for Kojève natural life and objects have no part in the definition of humanity. In contrast, for Girard, the lack of being is totally understood by his relation to another human and the static being of the nature seems to have no part in creation of the feeling of inferiority from which the subject suffers. The Girardian subject lacks originality and character in the face of other human beings to which he feels inferior. The exclusion of the human subject from natural static life encourages Kojève's subject to place his focus on the desire of other human beings and require them to recognize his humanity.⁸¹ In fact the subject in Kojève's account is capable of fulfilling his human desire if the process of negation is completed. To the contrary, the Girardian subject can never escape his inferiority. Since the subject lacks originality and does not perceive himself as the source of value, in his encounter with the other, he fails to receive the recognition Kojève attributes to the Hegelian community. For Girard, the subject strives to appropriate what originally belongs to the other, and with the purpose of possessing the other's desires and appropriating his being, he starts imitating the other as his model.⁸² Thus, it appears to be

⁷⁹ *Ibid* at 63.

⁸⁰ *Ibid* at 55.

⁸¹ Kojève, *supra* note 76 at 6. "Desire is different from animal Desire (which produces a natural being, merely living and having only a natural life) in that it is directed, not toward a real, "positive," given object, but toward another Desire. Thus, in the relationship between man and women, for example, Desire is human only if the one desires, not the body, but the Desire of the other; if he wants "to possess" or "to assimilate" the Desire taken as Desire—that is to say, if he wants to be "desired" or "loved," or, rather, "recognized" in his human value, in his reality as a human individual."

⁸² Girard, *Deceit*, *supra* note 24 at 185.

difficult to reconcile the pessimistic picture of the subject in the mimetic desire theory with Kojève's account of recognition, for the subject in Girard's view has no value to be recognized.

Considering the driving force of mimesis, the Girardian subject does not recognize any value in his own identity to present it in the encounter with the other. In other words, the creation of originality in Girard's narrative appears to be impossible. The divergence between these two thinkers is discernible if the need for transcendence is taken into account. It is arguable that both believe in the necessity of transcendence for the subject to create his subjectivity. Yet, while Kojève points to nature and natural life of the subject as something to be negated and transcended,⁸³ Girard considers the need for transcendence as a constitutive part of human identity regardless of the distinction between the natural life of the subject and his metaphysical human essence as presented by Kojève. The Girardian subject experiences irresistible urge for wanting infinity.⁸⁴ Although the belief in the metaphysical human identity and the presence of the God has diminished since the Enlightenment era, the need for transcendence for Girard is the bridge between religious thinking and the secular modernity. Religious thinking is willing to give up its own claim to infinity and attribute infinity to God and metaphysical beings. The secular world has rejected this promised source of infinity. However, Girard accuses the secular thinkers who have predicted the replacement of God by human beings, since this is for him a false prophecy. Girard holds that the human being who has averted his eyes from the presence of the God is deluded by the belief in his autonomy, and he will face frustration when he becomes

⁸³ Although desire makes the distinction between the subject and the desired object clear,⁸³ the desire which is directed towards a natural given being does not contribute to our understanding of self-consciousness. Since the subject, by consumption of the object, absorbs its content and feeds his own being, a desire provides the subject with the materials of which the object consists. ("The positive content of the "I", constituted by negation, is a function of the positive content of the negated non-I... Generally speaking, the greedy emptiness-the "I"-that is revealed by biological Desire is filled-by the biological action that flows from it-only with a natural biological content. Therefore, the "I", or the pseudo-I, realized by the active satisfaction of this Desire, is just as natural, biological, material, as that toward which the Desire and the Action are directed." Kojève, *supra* note 76 at 39.) Desire directed towards a natural being will offer the subject its "thingish" content, and as a result, desire of a natural thing does not empower the subject to transcend his given being. Kojève explains the passivity of the natural desire in following terms "If, then, the Desire is directed toward a "natural" non-I, the "I", too, will be "natural." The "I" created by the active satisfaction of such a Desire will have the same nature as the things toward which that Desire is directed: it will be a "thingish" I, a merely living I, an animal I." *Ibid* at 39. When desire is directed towards a natural thing, human life will be indistinguishable from animal life. An animal is deprived of self-consciousness as it only has "sentiment" of itself. *Ibid* at 3. Similarly, when subject consumes a natural being, he is not separated from his animal life; his human dignity is not realized since he has just achieved the "sentiment of self." As a result, in order to achieve the self-consciousness, and actualize the idea of humanity, desire shall be directed towards another desire, another "I".⁸³ For Kojève, directing desire by the subject towards another human desire is identical to transcending the given natural being of the subject.

⁸⁴ Girard, *Deceit*, *supra* note 24 at 65.

aware of the fallacy of this promise.⁸⁵ The need for transcendence and being attached to an infinite source of being pushes the subject to grant his fellow man a divine status and transforms the other into the source of transcendence and infinite being. Girard states that “denial of God does not eliminate transcendency but diverts it from the *au-delà* to the *en-deçà*.”⁸⁶ In other words, Kojève believes that the subject needs only to transcend the nature and then he will be able to take the place of God.⁸⁷ Girard disagrees and claims that the human being can never be the end of his own transcendence and the transcendental movement must be directed toward a being external to the subject-be it God or another fellow man.⁸⁸

C. Sartre and Divinity

I do not intend here to claim that there is no common ground upon which both Girard and Kojève base their theories. Yet, it is evident that we have to look for the origin of Girard’s theory of mimetic desire in another theory than Kojève’s.⁸⁹ Robert Doran, in a short article on the Girardian theory of mimetic desire, “René Girard Concept of Conversion and the *Via Negitiva*: Revisiting *Deceit, Desire and the Novel*”, identifies the Sartrean philosophy as the theoretical domain in which Girard’s narrative of desire originates.⁹⁰ Yet, his analysis and other authors’ interpretation of the common ground of these two theories are in most cases brief, and many issues are left unexamined.⁹¹ In fact, shifting the focus of the mimetic desire analysis to the Sartrean philosophy must be accompanied by a warning because although five decades have passed since the publication of *Deceit, Desire, and the Novel*, the Girardians and Girard himself

⁸⁵ Girard, *Deceit*, *supra* note 24 at 56. “For two or three centuries this has been the underlying principle of every “new” Western doctrine: God is dead, man must take his place. Pride has always been a temptation but in modern times it has become irresistible because it is organized and amplified in an unheard-of way. The modern “glad tidings” are heard by everyone. The more deeply it is engraved in our hearts the more violent is the contrast between this marvelous promise and the brutal disappointment inflicted by experience.”

⁸⁶ *Ibid* at 59.

⁸⁷ Kojève, *supra* note 76 at 66. “Man can really become what he would like to be only by becoming a man without God- or, if you will, a God-Man. He must realize in himself what at first he thought was realized in his God.”

⁸⁸ Girard, *Deceit*, *supra* note 24 at 58. “Choice always involves choosing a model, and true freedom lies in the basic choice between a human or a divine model.”

⁸⁹ Guy Vanheeswijck, *supra* note 75 at 99.

⁹⁰ Robert Doran, “René Girard’s Concept of Conversion and the Via Negativa: Revisiting the Deceit, Desire, and the Novel” (2011) 43:3 *Journal of Religion and Literature* 170.

⁹¹ See Wolfgang Palaver, *René Girard’s Mimetic theory* (East Lansing: Michigan State University, 2013); Jean-Pierre Dupuy, “La Mauvaise Foi et Self-Deception” (1996) *Revue Raison Présente*, <http://www.arm.asso.fr/offres/doc_inline_src/57/JP+DUPUY+Mauvaise+foi+et+self-deception.pdf>

have mostly neglected Sartre's influence on their intellectual works.⁹² The underestimation of the dependence of Girard's narrative upon the existential philosophy in *Deceit* is prompted by the reluctance of Girard himself to acknowledge the existential root of his theory, as he has tried to distinguish his theory from Sartre's philosophy.⁹³ Of course, it is worth mentioning that in his book, Girard has explicitly referred to Sartre and his book, *Being and Nothingness*, and has borrowed some terms such as "bad faith" from Sartre, which indicates the proximity of these two theories. As a case in point, Girard, similar to Sartre, calls the journey of human desire the "projet." He also points to the Sartrean "bad faith" as the reason which leads to the failure of the project of human desire. In addition, prior to the introduction of the mimetic desire theory, Girard was recognized as an existentialist author, which is manifest in his 1950s essays.⁹⁴ His focus on the matter of human existence, and the original desire to be, which for Sartre and Girard goes beyond the particular qualities of the human being, is evident in these writings.⁹⁵ He has even admitted that "*Being and Nothingness*" was the first major philosophical book he believed to have fully understood and be influenced by.⁹⁶ He has recently held that the Sartrean tone of his first book is undeniable.⁹⁷

The similarity between these two theories goes much beyond the adoption of the same terms and the same themes such as "desire" and "bad faith." Girard's mimetic desire theory is fundamentally shaped by Sartre's existential arguments. The lack of being and longing for the being excluded from the subject are the repeating motifs of the mimetic desire in the *Deceit*. The Girardian subject feels inferior to others, he lacks the originality, and he finds himself excluded from the blessing everything else on the earth possesses, that is, authentic and original human value.⁹⁸ In parallel with the lack of the original human identity, the other is blessed with the

⁹² Robert Doran, *supra* note 90 at 174.

⁹³ Wolfgang Palaver, *supra* note 91 at 83; Robert Doran, *supra* note 54 at 39.

⁹⁴ Robert Doran, *supra* note 90 at 174.

⁹⁵ René Girard, "Existentialism and Criticism" (1955) 16 *Yale French Studies* 45 at 47. "The final term in the process [the literary criticism] may not be named a project but it is still a dynamic attitude toward existence, at the same time fundamental and unique, of which the work of art is an actualization. And this attitude cannot be defined as a mixture of "sentiments" and "qualities" which appear more fundamental but are really less significant, since they apply to more and more individuals. The critic must tend toward the primordial, the irreducible, without losing the concrete richness of existence. His is primarily a search for singularity."

⁹⁶ René Girard, *supra* note 53 19. René Girard has referred to an article, *La mauvaise foi* and the self-deception, published by Jean-Pierre Dupuy, as an important work which has shed light on the role of Sartre's philosophy in the development of the mimetic desire theory.

⁹⁷ *Ibid.*

⁹⁸ Girard, *Deceit*, *supra* note 24 at 53, 55, 57, 63, 65.

superior source of value. The origin of “subjectivity” is occupied by the “victorious Other” who has access to the “closed garden” of being.⁹⁹

There is no doubt that the postulate that human beings feel a lack of being is the very foundation of the Girardian analysis. This is the first step everything begins with. Facing the concept of the lack, one might ask what this being - or better said, lack of being - means for Girard? Does the subject have any hesitation about his existence? Is the subject unsure of his being alive? The answer to these questions is negative. The being the subject lacks is not natural existence. The subject does not hesitate about his natural needs as he easily identifies them, and takes action to satisfy them.¹⁰⁰ Thus, the subject in Girard’s view looks for authentic human value in a domain which is separated from natural life. It must of course be restated that the distinction between natural life and human value for Girard contrasts with what Kojève identifies as the incompatibility of nature and the human identity. For Kojève the finitude of human life and the infinite and static content of nature push the subject to transcend nature and create the human value.¹⁰¹ Girard goes in the opposite direction. Girard believes that the subject is longing for the infinity and can never give up this desire. The mimetic desire is founded upon the existential concern of the subject who “escapes the feeling of the particularity” because “they are not able to give up infinity.”¹⁰² Even if the inanimate creatures appear attractive to the Girardian subject, it is because the subject considers the static life of the nature to have access to infinity.¹⁰³

Yet, it is evident that the human value that Girard is writing about is also a transcendental value going beyond natural life. Sartrean philosophy here comes to our assistance to find the ontological root of the Girardian lack of being. Girard discusses a shift in history which has been introduced by secularization and the rejection of divinity. The religious man of the pre-modern

⁹⁹ *Ibid* at 33.

¹⁰⁰ Michael Kirwan, *supra* note 25 at 14; Girard, *Violence and the Sacred*, *supra* note 23 at 146. “Once his basic needs are satisfied (indeed, sometimes even before), man is subject to intense desires, though he may not know precisely for what. The reason is that he desires being, something he himself lacks and which some other person seems to possess.” These phrases clearly show that Girard makes a distinction between the natural needs which stem from his natural life, and the desire which is of an inter-subjective nature and pertains to the realm of social relations.

¹⁰¹ Judith Butler, *Subjects of Desires: Hegelian Reflections of the Twentieth-Century France* (New York: Columbia University Press, 1999) 63. “Kojève writes from a consciousness of human mortality that suggests that human life participates in a peculiar and unique ontological situation that distinguishes it from the natural world.”

¹⁰² Girard, *Deceit*, *supra* note 24 at 65.

¹⁰³ *Ibid* at 286. “The individual becomes increasingly bewildered and unbalanced by a desire which nothing can satisfy and finally seeks the divine presence in that which radically denies his own existence: inanimate.”

world turned his face to the world beyond to find the origin of his own createdness. Girard holds that rejection of the spiritual origin of creation includes a promise of autonomy. The secular world requires human beings to take the responsibility of their own creation. These ideas are reflected in the following terms: “for two or three centuries this has been the underlying principle of every new Western doctrine: God is dead, man must take his place... Men who cannot look freedom in the face are exposed to anguish. They look for a banner on which they can fix their eyes. There is no longer God, king, or lord to link them to the universal.”¹⁰⁴ The appearance of freedom in this context is surprising, but as explained later, it becomes evident that the autonomy and freedom, which Girard describes as the new responsibility of the secular man, are the requirements of the self-sufficiency of the subject in being the foundation of his own being.¹⁰⁵

Sartrean philosophy is indeed the origin of this description.¹⁰⁶ Sartre’s theory, as explained in *Being and Nothingness*, begins with two opposite poles of the human life and the external world, the in-itself and the for-itself. The in-itself is a being which is always identical to itself, and has no consciousness of its own.¹⁰⁷ The being of the objects or the corporeality of the human being are examples of the being in-itself. The for-itself is a being or an “essence” actualized in desire, will, and the intentionality of the human subject who can possess consciousness and self-perception.¹⁰⁸ The consciousness directed towards the external world does not possess the in-itself being and is a being “which is what it is not and which is not what it is”.¹⁰⁹ There is a paradox for Sartre between the in-itself and the for-itself which results from the incompatibility of the facticity of human life, the human body, and the human desire to create his own existence and body.¹¹⁰ The incompatibility is caused by a dualism and disparity between the human consciousness and the world it attends. When the subject has a sensuous relation with the world, it has no consciousness of it, and when it reflects upon it, it will be externalized from the world it reflects.¹¹¹ The for-itself is entrusted with a project with an aim, that is, “becoming the

¹⁰⁴ *Ibid* at 56, 65.

¹⁰⁵ Wolfgang Palaver, *supra* note 91 at 74-77.

¹⁰⁶ It must be noted that my understanding of Sartre’s philosophy is totally indebted to Judith Butler’s study on the reception of the Hegelian philosophy by the twentieth-century French philosophers. Judith Butler, *supra* note 101.

¹⁰⁷ Wolfgang Palaver, *supra* note 91 at 74.

¹⁰⁸ *Ibid*.

¹⁰⁹ Jean-Paul Sartre, *Being and Nothingness: An Essay in Phenomenological Ontology* (New York: Philosophical Library Inc. 1956) at 58, cited in Judith Butler, *supra* note 101 at 93.

¹¹⁰ Judith Butler, *supra* note 101 at 96.

¹¹¹ *Ibid* at 129. “Because for Sartre a unity with the world is always an impossibility, the subject that we ultimately come to confront in the world is always a projection of this negativity, an externalization that differs from that of the

foundation of its own being”.¹¹² In order to elaborate on the existential project of the for-itself which is identical with human desire, Sartre envisions three different layers of human desire. The general desire to be, which is created by the for-itself project, the “fundamental choice” following the general desire to be, which emerges as the fundamental choice made by the subject about the establishment of his identity, and finally the particular desires and decisions which are taken in the context of the contact with the external world while pursuing the general and fundamental existential desire.¹¹³

The same narrative can be found in the Girardian theory, and it is arguable that in some parts, the Sartrean project is repeated in *Deceit* verbatim. Girard states that the “metaphysical desire” which is the driving force of any human relation and leads to mimesis is a desire for being.¹¹⁴ Girard even respects the various levels of the desire Sartre has previously mentioned in his book as he also claims that “there is only one metaphysical desire but the particular desires which instates the primordial desire are of infinite variety.”¹¹⁵ The single metaphysical desire parallels Sartre’s general desire to be. The similarity of these two narratives of the general desire is more illuminated with Sartre’s definition of the “general desire to be” in mind. Sartre, though an atheist, defines the desire to be as the desire to be God. God for the human being represents the being which has overcome the difference between the world and the self, and through this overcoming, God appears to be the foundation of its own being, that is, combination of being and the human project of freedom.¹¹⁶

Hegelian subject who is lucky enough to discover the world as internal to its own consciousness. Sartre’s consciousness instates itself in the world, but never belongs to it; his is a negativity never resolved into a more inclusive unity. Hence, externalization of the subject for Sartre always takes place within the context of the irreducible ontological disparity of self and the world, and whatever “unity” appears is always fundamentally a projection and illusion.”

¹¹² *Ibid* at 96.

¹¹³ Jean-Paul Sartre, *supra* note 109 at 562-567, cited in Judith Butler, *supra* note 101 at 123-124.

¹¹⁴ Girard, *Deceit*, *supra* note 24 at 53. “[T]he desire is aimed at the mediator’s being.”

¹¹⁵ *Ibid* at 83.

¹¹⁶ Judith Butler, *supra* note 101 at 124. “God, value and supreme end of transcendence, represents the permanent limit in terms of which man makes known to himself what he is. To be man means to reach toward being God. Or if you prefer, man fundamentally is the desire to be God.” (Citing Nothingness and Being, 566)

D. Metaphysical Desire

Girard follows the same line of thought.¹¹⁷ The metaphysical desire pursues one end in its existential project, that is the creation of a “subjectivity almost divine in its autonomy.”¹¹⁸ The usage of two different terms in the Girardian analysis needs more elaboration: autonomy or freedom and divinity. It is reasonable to ask how the image of God or divinity is linked with the concept of freedom. The above mentioned arguments presented by Sartre displays the connection. The divine character is the one who enjoys the freedom to be the foundation of his own being. Girard believes that the religious view was capable of satisfying the human need for freedom since God could connect the finite human being with the “universal” being which is the manifestation of absolute freedom.¹¹⁹ The rejection of God’s existence compels the subject to take the responsibility of his own freedom project and construct the origin of his own being. In fact, the divine project of being for Girard is the reconciliation of his own particularity which has been stripped of the link with universality with the Sartrean project of freedom.¹²⁰ The parallel desire for divinity in the Girardian theory is well reflected in his interpretation of Nietzsche’s *Zarathustra*: “superhumanity will be based on a double renunciation of both vertical and deviated transcendency. Zarathustra tries to enter into the sanctuary of his own existence through a purifying *askesis* analogous to religious *askesis* but differently oriented.”¹²¹ The whole project of freedom shifts from “the service of God to the service of the Self.”¹²²

Juxtaposing the two theories has helped to understand both the common ground upon which they are established and the ultimate goal they pursue. However, as it has been stated, Girard follows the Sartrean theory to establish his own account of mimesis in the formation of desire. Thus, it must be investigated whether Sartre is in agreement with Girard on the idea that the existential project of desire and freedom leads to mimetic desire? And if not, it is important to

¹¹⁷ Robert Doran, *supra* note 90 at 175.

¹¹⁸ Girard, *Deceit*, *supra* note 24 at 29.

¹¹⁹ Girard, *Deceit*, *supra* note 24 at 65.

¹²⁰ *Ibid* at 65. The cynical tone of Girard is evident in his prediction of the outcome of the project: “Men who cannot look freedom in the face are exposed to anguish. They look for a banner on which they can fix their eyes. There is no longer God, king, or lord to link them to the universal. To escape the feeling of particularity they imitate another’s desires; they choose substitute gods because they are not able to give up infinity.”

¹²¹ *Ibid* at 274.

¹²² *Ibid* at 154.

find out how Girard separates himself from Sartre's existential desire and places mimesis at the center of the desire project.

As stated above, the synthesis of the in-itself and the for-itself, or the desire to be God, is the ultimate end of the Sartrean project of desire. Yet, the project in Sartre's view is doomed to fail as the difference between the self and the world is unsurpassable.¹²³ The impossibility of overcoming the existential disparity has its roots in the role externality plays in the emergence of the consciousness which is the engine of Sartre's project. And any imagination of the unity between the in-itself and for-itself is an "illusion."¹²⁴ The ontological disparity, the distance between the self and the world, gives specific form to the reflections human consciousness undertakes. Consciousness in its encounter with the external world, be it an object or another human being, is always alienated from itself as if the subject consciousness is absorbed by the object of reflection. This Hegelian account of reflection which interprets any process of knowledge through mediation and alienation is almost followed by Sartre.¹²⁵ However, It must be noted that Sartre's philosophy differs from Hegel's since Sartre defines the pre-reflective consciousness as a mode of consciousness which does not need the mediation of the external world for the self-knowledge.¹²⁶ In order to justify the alienation of the subject in the development of the consciousness, Sartre claims that the subject has to either live his own life or reflect upon itself, and at the moment it begins the process of reflection, it loses its direct connection with itself.¹²⁷

The impossibility of the synthesis of the in-itself and the for-itself led Sartre to come up with the concept of bad faith. "Bad faith" for us depicts a subject who is trying to accomplish an impossible objective while he himself is solely responsible for his failure. The subject cannot escape the burden of the responsibility for his doomed failure as Sartre believes that the subject pre-reflectively is aware of the futility of his project, and the subject himself has chosen the

¹²³ Judith Butler, *supra* note 101 at 96.

¹²⁴ *Ibid* at 129. "The externalization of the subject for Sartre always takes place within the context of the irreducible ontological disparity of self and world, and whatever "unity appears is always fundamentally a projection and illusion."

¹²⁵ *Ibid* at 131.

¹²⁶ *Ibid* at 133.

¹²⁷ *Ibid* at 142. "The self can be only obliquely conscious of itself; it either senses itself indirectly, or infers from its act what it might be. The self is burdened by the fact that it must live and reflect upon itself at once; hence, its self-understanding is never complete, for in the moment that it grasps itself reflectively, it escapes itself pre-reflectively."

desire which is impossible.¹²⁸ Girard has used the same term, “bad faith”, for the description of the project of desire in which the subject has always failed to acquire his objective by imitating the other.¹²⁹

The same problems with the unity of the in-itself and the for-itself is experienced by the subject in its encounter with the other. The other who “looks” at the subject provides the subject with being (objectification), but the other also deprives him of his freedom, and inflicts alienation upon the subject.¹³⁰ The objectification occurs as if the subject’s being is recognized by the other, and this recognition is an act of constitution.¹³¹ In fact, the subject’s being is subjected to reflection. Yet, since the agent of the reflection is another human being, it is the first time that the subject does not need to distance from himself and therefore does not lose the sense of his own being. In other words, the subject can live the in-itself while the subject he has done nothing with respect to his own project of desire, and the for-itself project of desire has remained dormant. The individual who looks at another human being also experiences alienation and separation from his own body, which happens in any experience of reflection. In addition, this individual has performed an act of freedom as he has granted another subject being.¹³²

E. Freedom as Sadomasochism

The encounter between the self and the other is for Sartre manifested in the sadomasochistic relationship between two subjects.¹³³ The sadist is the other who looks at the masochist and attempts to transform the masochist into an object of his own project of freedom, which

¹²⁸ *Ibid* at 130, “one knows the outcome pre-reflectively in the case above, and one consents to the drama with this knowledge pre-reflectively intact; the surprise, the pain, the keen sense of betrayal which issue from the drama’s denouement are, in actuality, expressions of disappointment that reflective consciousness could not maintain its hegemony.”

¹²⁹ Girard, *Deceit*, *supra* note 24 at 234, 240, 254, 273. Robert Doran, *supra* note 90 at 175.

¹³⁰ Judith Butler, *supra* note 101 at 141. “The Other’s look fashions my body in its nakedness, causes it to be born, sculpts it, produces it as it is, sees it as I shall never see”; “I grasp the Other’s look at the very center of my act as solidification and alienation of my own possibilities.” (Citing Jean-Paul Sartre, *supra* note 109 at 364, 263.)

¹³¹ *Ibid*.

¹³² *Ibid* at 143. “The other who “looks,” who defines and produces the agent identified with corporeality, is itself a disembodied self, a pure vision ungrounded in the world. Insofar as the “look” signifies a free act of constitution... the self who merely sees does not know itself reflectively, but can only sense itself pre-reflectively as transcendent flight toward the self it apprehends.”

¹³³ *Ibid* at 140. “Sadomasochism introduces the paradox of determinate freedom as a drama of consciousness and objectification.”

objectifies the masochist and provides the masochist with being.¹³⁴ The masochist in turn receives determinate being from the sadist. While he is deprived of any freedom, his corporeal being is confirmed by the sadist. It is worth noting that the corporeality of the masochist is not the life which he used to live before the encounter with the sadist, as the being conferred upon the masochist springs from the other, the sadist. In fact, the masochist's idea of being is not a subjective notion anymore since recognition of his being comes from the other's consciousness. The masochist is absorbed into the freedom of the other. This sense of being only emerges in the inter-subjective relationship between two subjects and differs from the subject's solipsistic awareness of his own body.¹³⁵ The sadist also initiates a project of disembodiment. Since in the sadomasochistic relationship, the sadist's body gets out of sight, and the sadist becomes the foundation of the being given to the masochist's body, the sadist ignores his own corporeality and uses it as an instrument of his own project of freedom, leading to the disincarnation of the sadist.¹³⁶

Following the comparison between Sartre's arguments and Girard's theory, the description of sadism and masochism in *Deceit* bears the signs of Sartre's influence. The sadomasochism in the Girardian narrative is primarily an existentialist project, a project directed toward being, and the sexual nature of sadomasochism only reflects the desire to acquire being.¹³⁷ The masochist for Girard is the subject who tries to participate in being, or in the divine presence of his model, the sadist.¹³⁸ The usage of the word "divine" is illuminating as it displays that the Girardian masochist intends to have access to the freedom the sadist exercises. The divinity of the sadist for the masochist has its roots in the freedom the masochist attributes to the sadist. The masochist in Girard's view desires the sadist's "autonomy, and a god-like self-control."¹³⁹ On the

¹³⁴ *Ibid* at 145. "As is clear from Sartre's description above, the sadist does not seek the Other as pure body, but as freedom that has determined itself as a body."

¹³⁵ *Ibid* at 146. "The masochist fashions himself an object, not to lose consciousness but to gain an expanded consciousness of himself. By identifying with his body, he seeks to elicit a thorough comprehension of himself through the objectifying look of the Other, the masochist wants to be defined by the Other and to participate in the Other's gaze."

¹³⁶ Jean-Paul Sartre, *supra* note 109 at 399. "Sadism is a blind alley, for it not only enjoys the possession of the Other's flesh but at the same time in direct connection with this flesh, it enjoys its own non-incarnation."

¹³⁷ Girard, *Deceit*, *supra* note 24 at 186. "Sexual masochism is a mirror for existential masochism."

¹³⁸ *Ibid* at 182.

¹³⁹ *Ibid* at 183.

other side of the relationship, the sadist is trying to accomplish his own project of divinity or freedom as he hopes to achieve the freedom he has been longing for.¹⁴⁰

Sartre's account of the self and the other encounter does not stop at this stage. The first impression of the encounter leads the reader to the conclusion that the project of freedom always fails due to the obstacle of the subject's corporeality, and the distance it creates between being and consciousness.¹⁴¹ The impossibility of the project applies to both sides of the Self-Other encounter. The subject is trying to absorb the freedom of the other which was revealed to the subject through the objectification of the self in the encounter with the other, but the subject himself is totally absorbed by the other, and feels alienated and excluded from the autonomy the other possesses. On the other side of the story, the other who gives being to the subject at whom he looks is also separated from himself, and his act of freedom and constitution is perceived as a flight from his own corporeality. In fact, the two sides of the Sartrean encounter are bound to be estranged from their reality. It explains why the for-itself project is conceived as a flight from the self. The flight from the self is the result of the rupture between the pre-reflective consciousness and the reflective consciousness since the mediation of the externality occurs at the cost of losing the immediate awareness of the pre-reflective consciousness. In fact, the project of freedom motivates the subject to be the foundation of his own being, but the outcome is nothing except for the irreparable division between being and freedom. In addition, there is another reason for failure in the project of freedom. In Sartrean philosophy, the pre-reflective consciousness as the origin of the ontological desire is not accessible to other human beings.¹⁴² Although the sadist tries to absorb the masochist's being by his gaze, his act of freedom is incomplete because the interior part of the masochist, his pre-reflective consciousness, is inviolable. Therefore, the sadist provides the masochist with being, but the interior part of the masochist is not affected by the sadist's project of freedom. Thus, inaccessibility of pre-reflective consciousness implies that the attempt to wholly constitute the subject's being by the other or to participate in the other's freedom by the subject is doomed to fail.

Yet, Sartre's project of freedom goes beyond the disembodiment of the other and the objectification of the self, and enters into a context of the embodied consciousness in which the

¹⁴⁰ *Ibid* at 185. "[T]he sadist violence is yet another effort to attain divinity."

¹⁴¹ Judith Butler, *supra* note 101 at 139-140.

¹⁴² *Ibid* at 139.

subject who has gone through a process of alienation in the encounter with other tries to rediscover his own consciousness and corporeality. In fact, in addition to being a limit to the freedom project, the body also serves the subject as an agency which engages the subject in the world he confronts.¹⁴³ In fact, the Sartrean project is not limited to the alienation and estrangement of consciousness from the world due to the distance between the facticity of the body and the external world. The subject's body at later stages of the development of consciousness becomes a mode of comprehension of the world and the other, which reveals the world to consciousness. In contrast with the flight from the self, the engagement of the subject with the external world is defined by Sartre as "embodied consciousness",¹⁴⁴ which adds another feature to the corporeality of the subject. Initially, the body is a limit to the project of freedom. It then leads to the revelation of the world. This is a paradox in Sartre's view to which there is no solution, and for which, unlike the Hegelian outcome of the dialectic, no synthesis can be imagined.¹⁴⁵

F. Irreparable Alienation

The process of consciousness-embodiment is the turning point which separates the Girardian theory from the Sartrean philosophy. The inevitability of the flight from the self in the Sartrean philosophy has one implication for Girard. Girard claims that the subject has no choice other than choosing a source of being outside of himself.¹⁴⁶ However, the Girardian subject when faced with the impossibility of his project and alienation is incapable of recovery and developing an embodied consciousness. Having failed to assimilate the freedom of the other, the Girardian subject continues his attempts to appropriate his model being. The inaccessibility of the other intensifies the subject's view that the other possesses the gift he lacks. Thus, the Girardian subject's project of the for-itself is an unending series of failures.¹⁴⁷ While Sartre describes a

¹⁴³ *Ibid* at 149.

¹⁴⁴ *Ibid* at 137. "The progression of Sartre's own views on desire in later works-*Critique of Dialectical reason*, *Saint Genet: Actor and Martyr*, and *The Family Idiot: Gustav Flaubert 1821-1857* – attests to his growing awareness that paradox of an embodied consciousness need not be formulated as an antagonistic struggle between body and consciousness. Indeed, in a set of remarks recorded in an interview, "Self-Portrait at Seventy," Sartre suggests that the body can be an expressive medium for consciousness."

¹⁴⁵ *Ibid* at 120.

¹⁴⁶ Girard, *Deceit*, *supra* note 24 at 58.

¹⁴⁷ *Ibid* at 238. "desire never actually acquires its true object: it leads to failure, oblivion, and death."

process of recovery, which is made possible by the suffusion of consciousness and the body as a mode of engagement with the world,¹⁴⁸ the Girardian subject continues to attempt to absorb the other's freedom, which he sees as a source of being. Sartre defines the absorption of freedom as an impossible project due to the inaccessibility of the other's desire, which brings the subject back to his own flesh. Girard agrees with Sartre on the impossibility of the project, but in his view the bad faith from which the subject suffers denies any possibility of recovery, and leads him to believe that this project may ultimately reach its objective and that he might be able to appropriate the other's freedom through appropriating the other's desire. Even the failure of a specific desire does not inform the subject of the impossibility of his project as he can just hesitate about the possibility of that particular desire while he is unaware of the fact that the general desire to be or the desire to be God is the origin of all these failures. As a result, the Girardian subject is never able to recover from the alienation which the flight toward the other causes.¹⁴⁹ This appropriation is effected through the imitation of the other's desire.

The emergence of mimetic desire seems to be related to the attempt by the subject to participate in the freedom of the other. Sartre identifies the attempt to absorb the other's freedom with the experience of being-looked-at during which the subject is given objective being and deprived of his own freedom.¹⁵⁰ Girard describes another mode of assimilation. In his account, the subject believes that if he imitates what the other chooses, he may appropriate the other's desire, and thus, he will be able to achieve the freedom he lacks. And since the other's desire is never accessible, the subject is stuck with the failed attempts of assimilating the other's desire.

Embodied consciousness for Sartre is also influenced by the reciprocity of the subject's desires. Sexual desire creates a circle of desires in which every act of looking (constituting) brings an experience of being-looked at. The subject who is looked at by the other is tempted to

¹⁴⁸ Judith Butler, *supra* note 101 at 137.

¹⁴⁹ Girard, *Deceit*, *supra* note 24 at 89. "He cannot deny the failure of his desire but he can confine its results to the object which he now possesses and possibly to the mediator who directed him to it. The disappointment does not prove the absurdity of all metaphysical desires but only that of this particular desire which has just led to disillusionment. The hero realizes that he was mistaken. The object never did have the power of imitation which he had attributed to it. But this power he confers elsewhere, on a second object, on a new desire."

¹⁵⁰ Judith Butler, *supra* note 101 at 143. "The self so regarded seeks to recover itself through an assimilation or absorption of the reflective posture of the Other: "thus my project of recovering myself is fundamentally a project of absorbing the Other." The effort to absorb the Other's freedom is effected through the appropriation of an objectifying point of view on oneself, and, hence, the surpassing of the perspectival limits of corporeality." (Citing Jean-Paul Sartre, *supra* note 109 at 364.)

look back. In this circle, the body of each subject becomes an expression and a mode of freedom.¹⁵¹ The reciprocal nature of the sexual desire in the Sartrean project is productive as it leads to the corporeal determination of freedom. However, the Girardian subject is deprived of this productive reciprocity. Of course, Girard does not believe that the model can always maintain his superior position, which attracts the subject to the other. The self and the other positions can indefinitely change within the context of imitation, and we may face two individuals alternatively as model-disciple and disciple-model.¹⁵² These individuals who are model and disciple at the same time are incapable of accomplishing any determinate form of freedom as introduced by Sartre since the for-itself project leads them to go outside themselves and look for the very thing they lack. Therefore, in the theory of mimetic desire, the reader faces a group of disappointed subjects who, unlike the Sartrean subject, cannot bring about and experience any form of freedom.

The underlying reason for the divergence between Sartre and Girard emerges from their view on the general desire to be God. Although Sartre started his philosophical thoughts from this standpoint, over time, and in his later writings, he introduced some modifications to the idea of the general “desire to be”.¹⁵³ The necessity of overcoming corporeality is replaced by the embodied mode of consciousness which leads to suffusion of the corporeality with the project of freedom.¹⁵⁴ In contrast, Girard remains committed to the idea of the desire to be God since in his view the relatedness to infinity is the only solution for the subject to the disappointment caused

¹⁵¹ Judith Butler, *supra* note 101 at 143. “The circle of desire, which comes to be explained in terms of sadomasochism, is the paradox of the body as a determinate freedom played out in the context of reciprocal desire.”; *Ibid* at 139. “Sexual exchange is a circle in which the inversion of sadism into masochism, and masochism into sadism, follows according to the ontological necessity that every determinate individual is what he is not and is not what he is... the phenomenon of inversion gives rise to the consciousness of inversion, and this consciousness is at once awareness and choice... the constancy of inversion is, for Sartre, a new basis of reciprocity; the impossibility of being both subject and object at once proceeds from the perspectival character of corporeal life. Sadomasochism is the paradox of determinate freedom revealed in sexual life.”

¹⁵² Girard, *Deceit*, *supra* note 24 at 99.

¹⁵³ Judith Butler, *supra* note 101 at 140. “In Sartre’s discussion of the circle of desire, the body is not exclusively identified with contingency, and neither is freedom always construed as the freedom to be God... In Being and Nothingness, and more distinctly in the later biographical studies and The Critique of Dialectical Reason, freedom becomes less tied to ontological ideals that transcend history than to concrete and highly mediated projects of surviving, interpreting, and reproducing a socially complex situation.”

¹⁵⁴ *Ibid* at 137. “In the context of the sexual relations, we find that the desire to “be” is not merely a desire for an omnipotent transfiguration of the world, but is also the desire to be known, to come into being through the look of the Other. Moreover, this look is not merely a hostile glance, and the exchange between two selves is not merely a fight in which each seeks to assert himself as God.”

by the for-itself project.¹⁵⁵ While Sartre is the one who proposed the concept of “bad faith”, which explains the orientation of the subject toward an impossible goal, Girard claims that Sartre himself is haunted by the bad faith. For Girard, the Sartrean imaginary world which comes to rescue the disappointed subject enabling him to express a mode of freedom is in fact the same illusion Sartre himself was warning about in his early writings.¹⁵⁶

For Girard the desire to be God leaves Sartre with only two choices. Either the subject manages to satisfy his desire on his own, which leads to a solipsistic narrative of subjectivity while this type of solipsism is devoid of any reality;¹⁵⁷ or the ontological desire must be fulfilled on an inter-subjective level, which inevitably directs the subject toward the other.¹⁵⁸ In fact, Girard believes that any subjective belief is influenced by the subject’s relationship with the other.¹⁵⁹ The rejection of the individualistic account of the subjectivity for Girard has its roots in the role he attributes to the externality in any discovery of the truth. The desire not affirmed by the other in the Girardian theory cannot produce any form of truth.

Girard’s interpretation of the Sartrean project presents the ontological desire to be God as a drive entangled with the desire for the Other’s desire. In fact, in his view, the other for the subject manifests the synthesis of the in-itself and the for-itself.¹⁶⁰ Simply put, if the subject repudiates the idea of an infinite otherworldly God, he is bound to find the synthesis of the two

¹⁵⁵ Girard, *Deceit*, *supra* note 24 at 158. “Hegel’s unhappy consciousness and Sartre’s projet to be God are the outcome of a stubborn orientation toward the transcendent, of an inability to relinquish religious patterns of desire when history outgrows them... In the eyes of the novelist, modern man suffers, not because he refuses to become fully and totally aware of his autonomy, but because that awareness, whether real or illusory, is for him intolerable. The need for transcendence seeks satisfaction in the human world and leads the hero into all sorts of madness.”

¹⁵⁶ René Girard, *Mimesis and Theory: Essays on Literature and Criticism 1953-2005*, ed by Robert Doran (Stanford: Stanford University Press, 2011) at 145. “Bastards and the Antihero in Sartre”, “Sartrean discourse remains impregnated with the illusions that it denounces. And all these allusions are never so alive as at the very moment when the author is fighting against them, when he vilifies and ridicules them with all of the artistic means at his disposal.”

¹⁵⁷ *Ibid* at 138. “After having affirmed—rather fleeting one might add—that the genesis of the divine is intersubjective, Sartre constructs this god that the project is aiming at according to solipsistic model. This god that is the essence of the solipsistic project is itself necessarily solipsistic. Of god does not belong to world of human society, if it is not re-created by every individual out of his concrete relations with others, then this god, no matter how imaginary it remains, resides in some metaphysical empyrean. It is outside humanity and the world.”

¹⁵⁸ *Ibid* at 139. “The project of being god, which had previously been abstract, bloodless, and skeletal, is transformed into in The Words into something that is infinitely concrete, living, and rich in meaning... This means that the project of being Self coincides perfectly with the project of being Other, and that this rift is inscribed from the outset in all that one can call Ego.”

¹⁵⁹ *Ibid* at 117.

¹⁶⁰ *Ibid* at 151. “This union between the Other and meaning, this obsessive presence of the Other in the object and of object in the Other, is the synthesis of the in-itself and the for-itself.”

poles of project in another human being. But why does Girard so strongly insist on the unity of the synthesis of the freedom and being (desire to be God) and the orientation toward the other?

One reason for such insistence springs from the rejection of the Cartesian narrative of subjectivity, that is, the identity whose formation solely relies on the self. Yet, it seems that there is also another reason which leads Girard to reject Cartesian solipsism. The issue separating Girard from Sartre is the concept of the “createdness.”¹⁶¹ Girard strictly follows the Sartrean interpretation of the desire to be God as it is defined as being the foundation of oneself. The subject in his encounter with the other desires to be God but instead he feels a lack. On the contrary, the other for the subject seems to be self-sufficient.¹⁶² Girard offers two quotations from Sartre’s *Being and Nothingness* in which the other is presented as an individual whose existence is independent of the subject. Even the passions of the other for the subject appear to be true and endowed with being. The self-sufficiency of the other in the Sartrean philosophy for Girard is reflected in the following terms:

“The suffering of Others is presented to us as a compact, objective whole which did not wait our coming in order to be and which overflows the consciousness which we have of it; it is there in the midst of the world, impenetrable and dense, like this tree or this stone; it endures; finally it is what it is.”¹⁶³

Girard even goes one step further and unites being of the objects with the presence of the other. In his view, the meaning of the object which signifies the “brute” facticity of the object springs from the other.¹⁶⁴ When the subject directs his desire towards an object, he is trying to have access to the meaning that the object possesses. The unity of the other and the object in the Girardian theory is of great significance because in this theory, the in-itself or being is only made accessible to the subject by the meaning which the other confers upon the being of the objects. In other words, the in-itself which the subject strives to acquire plays a role in the formation of subjectivity only when its meaning or referent is appropriated by the subject. Even the Sartrean hero, depicted in *Nausea*, who strives to break the circle of disappointment and failure caused by the impossibility of the project of desire has no choice other than the destruction of all meanings

¹⁶¹ Wolfgang Palaver, *supra* note 91 at 78.

¹⁶² René Girard, *supra* note 156 at 153.

¹⁶³ Jean-Paul Sartre, *supra* note 109 at 142, cited in René Girard, *supra* note 156 at 151.

¹⁶⁴ René Girard, *supra* note 156 at 151. “The object is a meaning that masks the brute existent, that hides the in-itself. And it is the bastards- the culture heroes - who confer meaning. The object, insofar as it contains a meaning, that is, insofar as it is truly an object, always refer to the Other; it belongs to the Other.”

given to the objects by the other so that he might manage to have access to the brute existent, the in-itself, without the mediation of the other. However, Girard believes that this project is also doomed to fail.¹⁶⁵

Finally, it is worth mentioning that the Girardian interpretation of the ontological desire is prompted by neglecting one fundamental issue in the Sartrean philosophy. The Girardian subject is paralyzed permanently and is incapable of achieving the freedom he seeks because he is constantly attracted toward an external entity, the other, while this external entity can never be appropriated. Yet, the Sartrean project of the freedom begins with a spontaneous consciousness, that is, pre-reflective consciousness, which is the source of all desires. Although pre-reflective consciousness creates a sense of nothingness for the human being, the same source pushes through the development of consciousness leading to the emergence of the body as a mode of engagement with the world. Pre-reflective consciousness, as stated previously, is the domain of inviolable freedom, inaccessible to the other.¹⁶⁶ Even the alienation caused by the encounter with the other can only cause the subject to overlook it temporarily as the subject due to the presence of the spontaneous desire to “be” will strive to recover itself.¹⁶⁷ However, Girard has doubts about the potency of this source of desire and human reality. In his book, there is no sign of the primordial origin of freedom which is inviolable and finally brings about a mode of freedom in the encounter with the other. In fact, for him the consciousness directed toward the external world does not possess any productive force, and it only leads the subject to imitate and appropriate what the other possesses. Girardian scholars hold that Sartre himself acknowledges that the being of the subject comes into existence only with the medium of the other, and the subject can never achieve this goal on his own.¹⁶⁸ There is no doubt that the Sartrean project is

¹⁶⁵ *Ibid* at 154. “He [antihero] tries to prove to himself that divine apparition is a mirage, and if the mirage persists, he endeavors to annihilate it. This effort results in the disassociation between meaning and the in-itself; that is, it results in the revelation of the “brute existent.”

¹⁶⁶ Judith Butler, *supra* note 101 at 139, 142.

¹⁶⁷ *Ibid* at 142. “The self regarded is never simply a self appropriated through an Other’s glance; indeed, convinced of its own alienation, seeking to recover itself, this objectified self already surpasses the look that defines it. The sense of “being convinced,” the striving toward self-recovery, are already postures of freedom- pre-reflective orientations which elude the look of the Other.”

¹⁶⁸ Wolfgang Palaver, *supra* note 91 at 78. “Sartre uses this insight to describe the grounds for human affection as well, arguing that “the joy of love” is based on the other’s justification of our own existence. Sartre is not trying to say here, however, that the human subject’s relation to others is necessary for the constitution of its individual being; for the subject can only exist “in-itself” for the others and never in-itself on its own. There exists an unbridgeable gap between the self and others. Sartre remains caught in the individualism of Cartesian ontology; he shows a fundamental unwillingness— and incapability—to overcome Descartes’ philosophy. He speaks on the one hand, of

substantially dependent upon the encounter with the other in the formation of subjectivity, and the synthesis of the in-itself and the for-itself by the subject is an impossible task; yet, due to the inviolable freedom of pre-reflective consciousness, the subject is able to develop an embodied mode of consciousness which appears as the experience of consciousness as a flesh. Thus, Girard and his followers do not accept the modification Sartre introduced to his philosophical project, and believe that the desire to be God is the driving force which inevitably leads to mimesis and imitation as an attempt to appropriate the divine being manifested in the other.

As stated above, the subject goes through alienation in the encounter with the world since consciousness is absorbed by the object of desire-be it a natural object or a human being.¹⁶⁹ The Girardian theory of mimetic desire is also founded upon the same narrative of the desirable object. The other whom is seen by the subject as the source of freedom and originality attracts the subject to participate in the other's freedom, yet, the other also appears as an "obstacle" to the subject since the other is not willing to relinquish the accomplishment of his freedom project in which the being of the subject is conferred by the other as an act of constitution. On the one hand, at the moment of alienation, Sartre is predicting the rediscovery of the self through the embodiment of the consciousness. Consciousness so estranged from itself finds its own corporeality as a determinate form of freedom.¹⁷⁰ On the other hand, the Girardian subject is incapable of recovery.

an expanded Cartesian *cogito*, which reveals the existence of others for the subject; on the other hand, however, he fails to clarify any fundamental difference between being "for-itself" and "for-others." Robert Doran, *supra* note at 176. In fact, Jean-Pierre Dupuy is the first author who has pointed to this difference between Sartre's philosophy and the Girardian theory. He states that "C'est toujours l'Autre qui est plein de lui-même, donc qui échappe au désir mimétique, et c'est bien pourquoi je désire selon lui. Mais c'est parce que je désire selon lui, donc que j'imité son désir, qu'imitant lui-même mon désir, il peut donner l'illusion de se désirer lui-même. La synthèse impossible du pour-soi et de l'en-soi, ou encore ce "désir d'être Dieu" dont parle Sartre, c'est la fusion impossible entre l'autosuffisance que je vise pour échapper à l'enfer du désir mimétique, et mon désir qui sait toujours comment ruser pour se perpétuer dans son être. Ou, plus simplement, c'est la fusion impossible entre l'Autre et moi." Jean-Pierre Dupuy, *supra* note 91.

¹⁶⁹ Judith Butler, *supra* note 101 at 128.

¹⁷⁰ *Ibid* at 139. "Simply put, Sartre identifies the body with the limit to freedom and the insurpassable condition of individuation. And yet Sartre's view is not wholly negative, for the body mediates and determines freedom in the case of sexual desire."

Chapter II

Mimesis in the Modern Aesthetics

The lengthy description of the mimetic desire theory from the Sartrean perspective of desire was made necessary by Girard's reluctance to elucidate the philosophical grounds of his work. In fact, it is not easy to describe the nature of Girard's studies.¹⁷¹ His works are primarily viewed as literary criticism, and he continues his project by focusing on the anthropological studies of religion. As stated in the previous chapter, all these writings are influenced by the philosophical ideas of the other thinkers such as Sartre. However, without entering the debate about the precise location of his theory in the domain of intellectual works, it suffices to illuminate the philosophical roots of his ideas in order to prepare the ground for a dialogue between Girard and Agamben. In fact, the main subject of the thesis is the correlation between the sacred and the law as proposed by Girard and Agamben. I also intend to discuss these theories of the sacred in light of the ideas which were elaborated in their earlier works. In fact, this chapter serves this study as a means for the transition from the philosophical origins of Girard's and Agamben's theories to their narrative of the sacred.

As stated in the previous chapter, the existentialist project of the synthesis of the for-itself and the in-itself, the general desire to "be", or the desire to be God, is in the Girardian narrative always confronted with the insurpassibility of the other, who to the subject appears to have achieved the ultimate objective of the desire project as an autonomous and original individual.

In the theory of mimetic desire, the reader encounters some themes such as the exclusion of the subject from the autonomy of the other, and the impossibility of appropriating the other's desire and freedom, which play the central role in the formation of the Girardian narrative. In fact, as we will see in the next chapter, the themes such as the desire to be God, the subject's alienation, the impossibility of achieving the ideal human reality contribute to Girard's theory of the sacred. Yet, prior to a direct engagement with Girard's and Agamben's theories of the sacred, it is necessary to determine if Agamben, similar to Girard, believes that the constitution of a phenomenon in light of a transcendental essence leads to alienation of the subject and makes the

¹⁷¹ Michael Kirwan, *Girard and theology* (London: T & T Clark, 2009) at 6-9.

achievement of the objective impossible. In addition, if the answer to this question is positive, I intend to investigate if the alienation caused by the transcendental idea of humanity has impacts on the social relations of those people whose actions are governed by the transcendental idea. In fact, given that I intend to apply the main arguments of Girard's and Agamben's earlier works to their theory of the sacred and the law which is related to the domain of social life, it is important to take out the concepts such as the transcendental idea of humanity and alienation from their original context in Girard and Agamben's theories and analyze the effects of these concepts on the social relations of human beings.

A. Art and Metaphysics of Will

Among Agamben's numerous writings, his first published book, *The Man without Content*, is the place in which the answer to the above-mentioned question may be found. It is worth mentioning that this book concentrates on the analysis of the destiny of modern art and modern aesthetics. It would be thus surprising to discuss the proximity of these thinkers from a comparison between the theory of mimetic desire and Agamben's theory of modern aesthetics. In fact, there is no literature on this subject. Yet, as it will follow, it becomes evident that the same narratives of the other's freedom and of the inaccessibility of the freedom for the subject take the center stage. In addition, although Agamben has also conducted elaborate analyses of the role of language in the formation of the subjectivity, his comments on the two figures of the modern aesthetics, the artist and the spectator, provide us with an opportunity to realize how the ideal of freedom can affect the identity of individuals who stand before the transcendental idea of freedom

The main theme of Agamben's book is related to the split in modern art between the artist and the spectator, and consequently the same split in Agamben's view occurs in the identity of both the artist and the spectator.¹⁷² Agamben argues that the old attitude toward artistic creation defines art as an activity in which the creator and the spectator were able to identify with the conceptions the work of art represents.¹⁷³ The unity of the artist and his work and of the spectator

¹⁷² Catherine Mills, *Philosophy of Agamben* (Acumen: Stocksfield, 2008) at 55.

¹⁷³ Giorgio Agamben, *The Man Without Content* (Stanford University Press, 1999) at 47. [Agamben, *The Man Without Content*]

and the work he sees was therefore guaranteed because the world the artist presented in his work was the same world which the spectator knew even though the artist was able to depict these conceptions of the world “in its highest truth.”¹⁷⁴

The very unity of the artist’s conception of the world and the work of art is put into question by the evolution of aesthetics in modernity. The challenge for Agamben comes from the new approach introduced by Kant and Nietzsche.¹⁷⁵ The artist is entrusted with the full power of free will in his creation, which drives him to negate each and every content he knows in his surrounding world, and the spectator is urged to take a “disinterested” view toward art.¹⁷⁶ This transformation is in fact caused by the introduction of the metaphysics of will. The metaphysics of will urges the artist not to reveal the world he sees but to show an act of pure creativity which has no origin in the world and is independent from any contingency.¹⁷⁷ The artist’s independence from any determinate being which exists in the world around him presents his activity as “creation *ex nihilo*.”¹⁷⁸ On the one hand, the new form of art is the realm in which the creator is enabled to produce a work to which no existing meaning can be attached. On the other hand, the spectator is precluded from the process of creation as any intervention by the spectator in the artistic process is seen as a threat to the creative role of the artist.¹⁷⁹

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid* at 2.

¹⁷⁶ *Ibid.* “The experience of art that is described in these words is in no way an *aesthetics* for Nietzsche. On the contrary: the point is precisely to purify the concept of “beauty” by filtering out the αἴσθησις, the sensory involvement of the spectator, and thus to consider art from the point of view of its creator. This purification takes place as a reversal of the traditional perspective on the work of art: the aesthetic dimension--the sensible apprehension of the beautiful object on the part of the spectator--is replaced by the creative experience of the artist who sees in his work only *une promesse de bonheur*, a promise of happiness”

¹⁷⁷ With the introduction of the idea of pure freedom in the artistic activity, the artist is no longer expected to borrow from the content of the world he see around himself since he is supposed to engage in the artistic activity which is independent from the concepts available to him and the artist is compelled to present the work which only represents the power of his freedom. Catherine Mills, *supra* note 172 at 57. “This takes us to the heart of the problem with modern aesthetics. For rather than understanding poesis in a more original way as unveiling, modern aesthetics also continues to be wedded to the metaphysics of will,” Agamben, *The Man Without Content*, *supra* note 173 at 72. “Artaud’s aspiration to a theatrical liberation of the will, and the situationist project of an overcoming of art based on a practical actualization of the creative impulses that are expressed in art in an alienated fashion, are all tributary to a determination of the essence of human activity as will and vital impulse, and are therefore founded in the forgetting of the original pro-ductive status of the work of art as foundation of the space of truth. The point of arrival of Western aesthetics is a metaphysics of the will, that is, of life understood as energy and creative impulse.” Claire Colebrook, “Agamben: Aesthetics, Potentiality, and Life,” (2008) 107:1 *South Atlantic Quarterly* 107 at 117.

¹⁷⁸ William Watkin, *The Literary Agamben: Adventures in Logopoiesis* (New York: Continuum, 2010) at 69.

¹⁷⁹ Agamben, *The Man Without Content*, *supra* note 173 at 2.

The split in the character of both the artist and the spectator stems from the position which have been conferred upon them. The spectator is required to praise the very thing from which he has been banned to participate, that is, the free play of creativity. For Agamben, a sense of alienation would be the inevitable outcome of the new attitude. The spectator is supposed to long for the essence which is not his, and belongs to the other, the artist.¹⁸⁰ Here comes to light the first link between the Girardian theory and Agamben's narrative. As stated in the previous chapter, the Girardian subject, pushed by his general desire to be what he is not, the desire to be God and to be the foundation of his own being, is inevitably directed toward the other, who in his encounter with the subject, appears to possess the divine gift of autonomy. Yet, the freedom of the other is inaccessible to him since the mere act of the freedom of the other deprives him of any sense of autonomy. The spectator of the modern art in Agamben's account goes through the same irreversible loss and alienation. The spectator, visiting a work of art, is left with no choice other than admiring while "suppressing his wish that he had been its author."¹⁸¹ For both thinkers, the absolute freedom of the other/artist is the source of deprivation of autonomy because in any relation in which one side is endowed with the absolute free will, the other is doomed to experience alienation. There is no doubt that Agamben focuses on the artistic activity and Girard explains the universal paradigm of human relations. But, I intend to show that the introduction of the pure freedom in any human activity-be it mimetic behavior or the artistic activity- can lead to the alienation of the individuals who are striving for the actualization of the pure freedom.

The fact that the modern idea of the artistic activity replaces the revelation of truth with the pure act of freedom for Agamben leads to the reconfiguration of artistic activity as the work of art is now produced by the free act of will, and not revealed through the unveiling and emergence of truth.¹⁸² The same is true with the interpretation Girard presents regarding the ultimate goal of the desire project. The subject ontologically is urged to transform his identity from what he is to

¹⁸⁰ *Ibid* at 37. "the spectator sees himself as other in the work of art, his being-for himself as being-outside-himself; and in the pure creative subjectivity at work in the work of art, he does not in any way recover a determinate content and a concrete measure of his existence, but recovers simply his own self in the form of absolute alienation, and he can possess himself only inside this split."

¹⁸¹ *Ibid* at 24.

¹⁸² Agamben, *The Man without Content*, *supra* note 173 at 72. "The essence of poiesis has nothing to do with the expression of a will (with respect to which art is in no way necessary): this essence is found instead in the production of truth and in the subsequent opening of a world for man's existence and action." Catherine Mills, *supra* note 172 at 56.

what he is not. He has to make choices to become the foundation of his own particular being. In the absence of God, every link with the infinity and universality is severed and he has to establish his own link with the source of being.¹⁸³ The prioritization of the “expression of a will and a creative force” over any other mode of production illuminates what is at stake in the Sartrean/Girardian project of desire since the destiny of the subject project in their theory has to be “established” not “discovered.”¹⁸⁴ The description Agamben offers for the position of the spectator in this context is so similar to the subject’s attitude in the Girardian theory toward his model that it perfectly fits the line of thought Girard pursue in the *Deceit, Desire, and the Novel*.¹⁸⁵ Agamben argues that the man of taste, who is the modern spectator of art *par excellence*, is only capable of “judging” the work of art, while he is not able to “grasp” it or produce it himself.¹⁸⁶ Inability of the spectator to “grasp” the work of art means that the spectator cannot identify with the essence of the artwork, which is the pure act of freedom since the pure idea of freedom has no roots in the facts of the world in which the spectator lives. The admiration of the work of art the “man of taste” expresses finds its parallel in the Girardian theory under the name of fascination.¹⁸⁷ The object of fascination or the seducing model transforms the subject into “pure nothingness”¹⁸⁸ and makes the fascinated subject’s consciousness wholly dependable upon itself. For Sartre and Girard, the subject is not absorbed in the object of fascination, yet his consciousness is completely transformed by the object.¹⁸⁹ The same destiny is predicted by Agamben for the man of taste as he says that

“taste is his only self-certainty and self-consciousness; however, this certainty is pure nothingness, and his personality is absolute impersonality. The very existence of such a man is a paradox and a scandal: he is incapable of producing a work of art, yet it is upon art that his existence depends.”¹⁹⁰

¹⁸³ Girard, *Deceit*, *supra* note 24 at 65.

¹⁸⁴ Judith Butler, *supra* note 101 at 132.

¹⁸⁵ It must be stressed that others who carried out a comparison between Agamben’s theory and Girard’s theory were concerned with the idea of the sacred, did not take note of the proximity of Girard’s theory of mimesis and Agamben’s aesthetic studies.

¹⁸⁶ Agamben, *The Man without Content*, *supra* note 173 at 26.

¹⁸⁷ Paul Dumouchel, “Fetishism and Form: Erotic and Economic Disorder in Literature” in Paul Dumouchel ed, *Violence and Truth: On the Work of René Girard* (Stanford: Stanford university Press, 1988) 134 at 140.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ Agamben, *The Man Without Content*, *supra* note 173 at 23.

B. Ungraspable Essence of Art

Agamben also views the relationship between the spectator and the work of art or artist through the lens of authenticity and originality, which is also one of the main motifs of the Girardian theory. The originality of the model in the Girardian theory in the eyes of the subject is defined by his own lack. The other due to his divine claim to freedom is considered to possess the original identity.¹⁹¹ In Agamben's view, the originality attributed to the work of art in the modern aesthetics brings about the same implication. If the subject, in his confrontation with another subject or an object of the other's creation, is led to the conclusion that these people and their works belong to the world to which he has no access, then, the result is that the subject would identify authenticity with inaccessibility. In other words, the truth for which the subject in both theories is longing is the value with which he is not able to identify.¹⁹² In this regard, Agamben holds that "we believe, then, that we have finally secured for art its most authentic reality, but when we try to grasp it, it draws back and leaves us empty-handed."¹⁹³ Therefore, for both thinkers, the authenticity of one subject which is defined by the deprivation of the other would definitely lead to alienation of the spectator and the Girardian subject because the source of value the subject praises has been from the outset rendered inaccessible to him. Simply put, the spectator's exclusion from the domain of freedom, and the inaccessibility of value are the two sides of the same coin. In fact, exclusion of the subject from the artistic activity is established by the most fundamental essence of art since it is not possible for the spectator to be in relation to the essence which is devoid of any content he possesses. The Girardian subject is also excluded from the domain of freedom from the beginning since his ideal of freedom is independent from any determinate quality he possesses, and cannot be achieved by any determinate choice. The irony of this figure for both Agamben and Girard is that the split in his identity compels him to establish his own true place exactly on the same split and alienation. The spectator thus wants to "negate his own negation, suppress his own being suppressed."¹⁹⁴ The same is true for the Girardian masochist who in spite of his constant failure in the fulfillment of

¹⁹¹ Girard, *Deceit*, *supra* note 24 at 63. "Flaubert's characters are marked by an "essential lack of fixed character and originality of their own... so that being nothing by themselves, they become something, one thing or another, through the suggestion which they obey." These characters "cannot equal the model they have chosen."

¹⁹² Agamben, *The Man without Content*, *supra* note 173 at 24. "He is in front of something, as it seems to him, puts him back in contact with his innermost truth, yet he cannot identify with it."

¹⁹³ *Ibid* at 33.

¹⁹⁴ *Ibid* at 48.

his desire “bases his enterprise of autonomy on failure, and founds his *projet* of being God on an abyss.”¹⁹⁵ This is the narrative of a negative essence taken to the extremes.

The other pole of the spectator-artist relationship, the artist, possesses specific characteristics, which correspond with that of the spectator. In fact, for Agamben, disinterestedness and alienation of the spectator are logically interwoven with the “creative-formal” activity of the artist.¹⁹⁶ The artist, the man of free will, is supposed to present his innermost value in his work of art, the pure act of freedom, which is detached from any type of content and contingency.¹⁹⁷ Regardless of any value or quality with which the artist may be able to identify, his creation negates any meaning and content, and may appear as a form devoid of any meaning.¹⁹⁸ Furthermore, the introduction of the creative-formal principle has destroyed the common grounds within which artist could be in contact with his culture. The artist has been detached from the realm of forms and meaning in which he is living. The artist’s tie with his culture is severed because any dependence upon the very domain from which he has risen challenges his creative essence.¹⁹⁹

The meaningless form of the artistic work enables the artist to acquire a particular status devoid of any particularity, which Agamben calls the “uncanny” truth of the artist.²⁰⁰ The artist presents a duality as he is himself, and the other, everyone and no one.²⁰¹ The faceless identity of the artist conveys a sense of divinity because his existence has no content, and is nothing other

¹⁹⁵ Girard, *Deceit*, *supra* note 24 at 177.

¹⁹⁶ Agamben, *The Man Without Content*, *supra* note 173 at 5. “To the increasing innocence of the spectator's experience in front of the beautiful object corresponds the increasing danger inherent in the artist's experience.”

¹⁹⁷ *Ibid*, 36, “The artist then experiences a radical tearing or split, by which the inert world of contents in their indifferent, prosaic objectivity goes to one side, and to the other the free subjectivity of the artistic principle, which soars above the contents as over an immense repository of materials that it can evoke or reject at will. Art is now the absolute freedom that seeks its end and its foundation in itself, and does not need, substantially, any content, because it can only measure itself against the vertigo caused by its own abyss. No longer is any other content—except art itself—*immediately* for the artist the substantiality of his consciousness, nor does it inspire him with the necessity of representing it.”

¹⁹⁸ *Ibid* at 9. “The quest for absolute meaning has devoured all meaning, allowing only signs, meaningless forms, to survive.”

¹⁹⁹ Leland de la Durantaye, *supra* note 34 at 37.

²⁰⁰ Agamben, *The Man without Content*, *supra* note 173 at 7.

²⁰¹ *Ibid* at 55. “he tears himself away from the world of contingencies and corresponds to that experience in the consciousness of his own absolute superiority on every content... every artistic phenomenon is founded on the existence in the artist “of a permanent duality, the power to be at once oneself and another . . . the artist is artist only on condition of being double and of not ignoring any phenomenon of his double nature.”

than the essence of creation.²⁰² The modern artist is the perfect candidate for replacing God in the absence of otherworldly divinity.²⁰³

The idea of the pure creativity of the artist, similar to the disinterestedness of the spectator, can also be detected in the Girardian theory. In light of the Sartrean reading of his theory, and the explicit references by Girard to the matter of divinity, it is arguable that the creative-formal principle of modern aesthetics is identical with the ontological desire of the Sartrean/Girardian subject to be God. The ideal of the subject, in this narrative, is the negation of all contingencies and corporealities which seem to be a limit to the synthesis of the in-itself and the for-itself because contingency and determinacy of the contents cause the self to be distant from the ideal principle of absolute freedom and prevent it from realizing the absolute freedom.²⁰⁴ The dismemberment which the sadist, the agent of pure freedom, goes through in the Sartrean philosophy points to the pure negation of the artist, the absolute freedom in which the content of the artist, his own contingency, like the corporeality of the Sartrean subject, is annihilated.²⁰⁵ The essence of the artist is in opposition to what he in the world of contingencies possesses as Sartre defines the human reality as a journey from what the human is to what he is not. Girard as an author who does not believe in the Sartrean determination of freedom through the embodied form of consciousness explicitly refers to the replacement of God by the human being, which echoes the modern artist's new task.²⁰⁶

It is worth mentioning that the artist of modern aesthetics like the model of the Girardian theory is not blessed with a coherent identity. His identity due to the negation of all contents is bifurcated. What is essential for him does not belong to him.²⁰⁷ The alienation of the artist is inevitable. The Sartrean sadist and the Girardian subject experience alienation as well. The pure negation of the corporeality and the Girardian subject's claim to divinity in spite of his particular being are the ideal of the subject longing for the synthesis of the in-itself and the for-itself, yet, this ideal is an impossible project. The impossibility of the project is perfectly explained by the

²⁰² Claire Colebrook, *supra* note 177 at 117.

²⁰³ Agamben, *The Man Without Content*, *supra* note 173 at 56.

²⁰⁴ Judith Butler, *supra* note 101 at 124.

²⁰⁵ *Ibid* at 143.

²⁰⁶ Girard, *Deceit*, *supra* note 24 at 56.

²⁰⁷ Agamben, *The Man without Content*, *supra* note 173 at 54. "He knows that pure artistic subjectivity is the essence of everything; but if he seeks his reality in pure artistic subjectivity, he finds himself in the paradoxical condition of having to find his own essence precisely in the inessential, his content in what is mere form."

rupture which stems from the incompatibility of living and reflecting: The subject for Sartre has to either live and maintain his spontaneous connection with his corporeality, or reflect upon the external world and experience alienation due to the act of reflection.²⁰⁸ The essence of freedom directs the subject toward something which separates him from his own contingency.

C. Mimesis and Self-Transcendence of Art

Agamben sees in modern aesthetics a tendency in art to define itself in a self-referential mode. The artist's consciousness is founded upon a radical orientation toward himself while the essence to which it is directed is beyond any determinacy and contingency.²⁰⁹ Agamben points to Hegel in this matter, who is concerned about the dangers of such a radical mode of consciousness, a consciousness free of every determinacy, even the determinate being of the artist.²¹⁰ The self-referential feature of artistic subjectivity reminds us of the desire project in the Sartrean philosophy, which Girard has followed to some extent. The ideal of consciousness, in Sartre's view, at least the Sartrean concept Girard accepts, is also realized by the same self-referential principle since the human desire in this narrative is expected to start its journey with a conformation with the external world. Yet, it has to return to itself as a being which is the foundation of its own being. To be the foundation of its own being requires that consciousness reaches full self-sufficiency by a self-referential movement; such a divine character does not deny the existence of determinacy and contingency, but these facts are the creations of its freedom, and not his own essence of freedom.²¹¹ Any dependence on corporeality which is seen as a limit to freedom is a threat to the establishment of free consciousness.²¹² As a remark for further analysis in the context of the Girardian theory of the sacred, it shall be noted that the Sartrean project is paralyzed by its own impossible target, and the artist's radical mode of consciousness for Hegel and Agamben also contains a destructive potentiality, a "self-

²⁰⁸ Judith Butler, *supra* note 101 at 142.

²⁰⁹ Agamben, *The Man without Content*, *supra* note 173 at 53, "Hegel thinks about art in the most elevated manner possible, that is, *from the perspective of its self-transcendence*."

²¹⁰ Agamben, *The Man without Content*, *supra* note 173 at 56. "Hegel was aware of this destructive vocation of irony. Analyzing Schlegel's theories in the *Aesthetics*, he saw in the omnilateral annihilation of all determinacy and all content an extreme reference of the subject to himself, that is, an extreme way of giving oneself self-consciousness."

²¹¹ Judith Butler, *supra* note 101 at 133.

²¹² *Ibid* at 124.

annihilating” essence, which ties the destiny of the Sartrean subject and the modern artist to each other. The “self-annihilating” feature of free will and the destructive nature of the perpetual play of mimesis in both theories provide us with an insight that will help us in the following chapter to trace the same mechanism which governs both the realm of aesthetics and the politics of the community.

The proximity of these two theories is not limited to the self-alienation that the two poles of the relationship go through. On a deeper layer, the definition of true freedom and true human essence displays another dimension of the similarity between their ideas.

The spectator as the man of taste in the modern aesthetic is supposed to admire the artwork on the basis of the value which is alien to him. The question posed by Agamben then is how and according to what criteria the truth of art is understood by the spectator? In other words, what is the definition of the taste according to which the spectator judges the work of art?

Agamben claims that the same paradoxical situation which determines the spectator’s attitude in confronting an art work governs the concept of true art, or the distinction between art and non-art. As stated above, the identity of the spectator and the artist is determined through a process of perversion. Everything that belongs to the essence of these agents is defined by identifying their identity with the essence of the other while this being-other is the very identity they have to acquire.²¹³ This is the definition of perversion the spectator represents in the realm of modern aesthetics. The idea of good art can also in Agamben’s view be defined by what is not art. In order to understand the good taste which conforms to the idea of true art, the bad taste must be delimited.²¹⁴ In fact, since the pure freedom of the artistic activity is devoid of any content, and its essence is independent from the determinate modes of being in the world, it is not possible to give a content to something, which has no content. The meanings to which the spectator and the artist have access fall outside the essence of art, and if they try to present a definition of art, they cannot use the meanings and the contents they find in the world. Thus, the

²¹³ Agamben, *The Man Without Content*, supra note 173 at 48. “In the aesthetic judgment, being-for-itself has as its object its own being-for itself, but as something absolutely Other, and at the same time immediately as itself; it is the pure split and lack of foundation that endlessly drifts on the ocean of form without ever reaching dry land.”

²¹⁴ *Ibid* at 43. “If we wanted to express this characteristic with a formula, we could write that critical judgment thinks art as meaning by this that the critical judgment, everywhere and consistently, envelops art in its shadow and thinks art as nonart. It is this that is, a pure shadow, that reigns as a supreme value over the horizon of *terra aethetica*.”

only means available to the spectator and any aesthetic critic for the assessment of the art work is the characteristics of non-art, and bad taste, which Agamben calls the “shadow” of the art. This shadow, not the essence of art, is the only essence which comes into the spectator’s grasp because from the beginning, the essence of art, the “creative-formal principle,” escapes any determinacy and definition.²¹⁵ Agamben believes that the free nature of art can only be defined by negative propositions such as “not this”, “not this”, and “I do not know”, “I do not know.”²¹⁶ For Agamben, the truth of art is the very principle of perversion since its essence in definition collapses into the inessential.²¹⁷

The same tendency of perversion at the heart of the truth can be identified in the Girardian narrative. As we have already seen, the ultimate goal of the Girardian subject is the achievement of originality and freedom. In this regard, the static being and the natural life must be in clear contradiction with the ideal of human reality. Yet, Girard predicts another conclusion. Since the freedom sought by the subject always belongs to the other, the concept of freedom is tied with alienation and inaccessibility. And similar to the spectator in Agamben’s view, the subject can only insist on his negativity and takes it to the extreme, and the more he tries to affirm his own ideal, the more he continues to only negate himself.²¹⁸ The idea of freedom constituted by the alienation of the subject will resonate in the very thing which is the most alien to it, the natural life, and the “inanimate.”²¹⁹ The self-sufficiency which is detached from any participation of the subject leads him to something which seems to be the most self-sufficient phenomenon around him and the most alien to him, the lifeless creatures of the nature. In order to reach the foundation of this paradox, one must look at the desire for the autonomization in both theories, a self-referential autonomy which is stripped of any content. On the one hand, we encounter the

²¹⁵ *Ibid* at 43. “Aesthetic judgment confronts us with the embarrassing paradox of an instrument that is indispensable to us in knowing the work of art, but that not only does not allow us to penetrate its reality but also at the same time points us toward something other than art and represents art’s reality to us as pure and simple nothingness.”

²¹⁶ *Ibid*.

²¹⁷ *Ibid* at 22. “Good taste does not simply have a tendency to pervert itself into its opposite; it is, in some way, the very principle of any perversion, and its appearance in consciousness seems to coincide with the beginning of a process of reversal of all values and all contents.”

²¹⁸ Girard, *Deceit*, *supra* note 24 at 287. “The affirmation of the self ends in the negation of the self. The will to make oneself God is a will to self-destruction which is gradually realized.”

²¹⁹ *Ibid* at 286. “Other is more fascinating the less accessible he is; and the more despiritualized he is, the more he tends toward an instinctive automatism, the more accessible he is. And the absurd project of self-divinization ends up by going beyond the animal to the automatic and even the mechanical. The individual becomes increasingly bewildered and unbalanced by a desire which nothing can satisfy and finally seeks the divine essence in that which radically denies his own existence: the inanimate.”

artist who attempts to present the absolute meaning independent of all forms. Agamben calls this artist the Terrorist who is trying to produce a work which corresponds to the status of the natural beings.²²⁰ On the other hand, there is the subject who passionately longs for the autonomy in human reality, while he ends up with the desire for the inanimate beings.

The perversion of the essence to the non-essence, in the Girardian theory, finds its echo again in another analysis. The underlying reason which necessitates comparison between Agamben's idea of "perversion" and Girard's argument about indistinction between transcendental freedom and static natural life is that Girard believe that the paradox inherent in the ideal of freedom and the impossibility of its realization find its parallel in the human project of desire. While men strive to realize the freedom which cannot be defined by any static and determinate being, the impossibility of the realization of freedom directs them to the static being which is in contradiction to the ideal freedom. As we will see in the next chapter, this paradox is driving force behind the violent oppositions of the sacrificial crisis and gives birth to the sacred. In order to show the paradox of human freedom, Girard turns to Sartre's philosophy. The true hero in Sartre's writings achieves true freedom by realizing that the mission of humanity is impossible, while all other heroes of the culture are still striving to fulfill their impossible dream.²²¹ Although Sartre exerted great influence on Girard's ideas, here is one of the important points on which Girard departs from the Sartrean theory. Girard claims that the self-sufficiency of the Sartrean hero is also actualized in a reference to what has to be repudiated. Girard refers to the Sartrean hero as the antihero whose freedom is the negation of existing values. The antihero tries to establish his desire to be God on his power of negation, and yet, his freedom can only be meaningful with the reference to what he rejects,²²² thus the essence of the antihero relies on the very inessential which it is not. The Sartrean antihero like the spectator attempts to negate his nothingness, but due to the foundational spilt in his consciousness, his negation is doomed to produce more radical consequences and makes him more dependent upon the source of the value

²²⁰ Agamben, *The Man without Content*, *supra* note 173 at 8-10.

²²¹ Jean-Paul Sartre, *Words*, translated by Irene Clephane (New York: Penguin Books, 1967) at 156, cited in René Girard, *supra* note 156 at 149.

²²² René Girard, *supra* note 156 at 151. "The antiheroic being's conquest is achieved through the destruction of the heroic pretensions-real or supposed-of a multitude of Others. The work is a mirror in which the genesis of the antihero is reflected; but it is also, and still more essentially, this genesis itself-or its failure-for it contains the essential message; the antihero depends, in his being, on how this message will be received;" *Ibid* at 150. "As long as it rests on unilateral decision, on a purely subjective *fiat*, it lacks reality. Only the consent of the Other can lend weight to what is simply a dialectical sleight of hand."

which is alien to him. The perpetual and circular play between essence and non-essence in modern aesthetics, and freedom and the lack of freedom in existentialist philosophy for Agamben has its roots in the fundamental interdependence of being and non-being in the Western culture since beginning of the Western philosophy, the essence of a thing has been defined with a reference to what that thing is not.²²³

D. Mimetic Art in Plato's *Republic*

Many aspects of the proximity between theories of Girard and Agamben have been discussed in the previous arguments. Yet, one question remains to be answered: Is there any possibility for reconciliation between Girard's view about mimesis and Agamben's attitude toward the aesthetics? And do both Girard and Agamben agree on the impact of mimetic art on the social relations? The split caused by the introduction of the absolute freedom in these narratives has encouraged each thinker to choose a different motif for the elaboration of his theory. Girard, as stated previously, believes that the ideal of freedom urges the subject to have recourse to mimesis in order to actualize the freedom which has always escaped his grasp. Agamben does not discuss the concept of mimesis in *The Man without Content*. Yet, he begins his book with a reference to a thinker whose ideas are closely related to the effects of mimesis: Plato. In fact, Plato and his treatment of the poetic activity in the ideal city he describes provide us with a context in which the consequences of the metaphysics of freedom in both theories can be analyzed in relation to each other. It must be noted that Girard also refers to Plato as one of the first philosophers who addressed the idea of mimesis and its impact on the social relations.²²⁴ I do not intend here to discuss the Platonic treatment of mimesis in details as this subject needs a separate study. What I am trying to explain is the arguments both Girard and Agamben present about the effect of mimesis on social relations. Discussion of these arguments enables us to prepare the transition from Girard's literary studies and Agamben's aesthetic works to their

²²³ Agamben, *The Man without Content*, *supra* note 173 at 41. "In fact, it is likely that this mysterious kind of conditioned reflex, with its question about being and nonbeing, is simply one aspect of a much more general attitude that Western man, ever since his Greek beginnings, has almost always had before the world around him, asking every time *τι το ὄν*, what is this thing that is, and distinguishing the *ὄν*, that which is, from the *μὴ ὄν*, that which is not."

²²⁴ René Girard, *Things Hidden Since the Foundation of the World*, translated by Stephen Bann & Michael Metteer (Stanford: Stanford University Press, 1987) at 8. [Girard, *Things Hidden*]

theories of the sacred as I believe that the themes they address on this issue constitute parts of their theories of the sacred.

Agamben says that In *The Republic*, Plato was concerned about the effect of mimesis on the human relations in the city. Agamben says that Plato regarded mimesis as a source of terror, which can ruin the foundation of the city.²²⁵ But the question is why Plato perceived mimesis as a destructive force.

First, it is of great importance to refer to some parts of *The Republic* in order to understand how Plato describes the mimetic poet's activity. In Book X, Plato describes the imitating poet as a "craftman" who is "able to make all implements," and "produces all plants and animals, including himself, and thereto earth and heaven and the gods and all things in heaven and in Hades under the earth."²²⁶

One of the reasons that lead Plato to condemn this particular kind of poetic activity is the confusion that the poet can cause among the citizens since individuals would not be able to find their proper place in the social life.²²⁷ The poet is the person who presents himself as someone who he is not because the value and the work he creates do not belong to him.²²⁸ This false presentation is explained by Plato with the example of the mirror. The "mimetician" as a mirror-carrier for Plato is able to represent himself as anyone. He is not the author of his own identity since he is just a "pseudo-author."²²⁹ Thus, in order to protect the "self identity of the subject" the agent of mimesis shall be excluded.²³⁰ His presence in the city would lead to instability since

²²⁵ Agamben, *The Man Without Content*, *supra* note 173, at 7.

²²⁶ Plato, *The Republic*, translated by Paul Shorey (London: W. Heinemann, 1930) at 596 c.

²²⁷ Philippe Lacoue-Labarthe, *Typography: Mimesis, Philosophy, Politics* (Cambridge: Harvard University Press, 1989) at 121-2. "He suffers it, is perhaps even afraid of it-and if only because he, Plato, perhaps confuses "himself" [or is confused-"se" confond] (once again, the *reflexive* is undecidable) with anyone, the first charlatan he meets in the street or the last of the poets or sophists. And to such an extent, moreover, that if he: philosophizes we can well suppose that it is finally with no other intention-and initially the most urgent-than to stabilize this alarming circulation of resemblance and "to fix this vertigo" where "he," he who is named Plato, loses "himself.""

²²⁸ *Ibid* at 129, "What is threatening in mimesis, understood in these terms, is exactly that kind of pluralization and fragmentation of the "subject" provoked from the outset by its linguistic or "symbolic (de)constitution: an effect of discourses, the "self" -styled "subject" always threatens to "consist" of nothing more than a series of heterogeneous and dissociated roles, and to fraction itself endlessly in this multiple borrowing. Thus, the mimetic life is made up of *scenes from the life of one who is suited for nothing-or of a Jack-of-all-trades.*"

²²⁹ *Ibid* at 89.

²³⁰ John Martis, *Philippe Lacoue-Labarthe: Representation and the Loss of Subject*, (New York: Fordham University Press, 2005) at 22.

his mimetic nature enables him to acquire all functions and roles while no role and function reveal his truth.

It is now necessary to see the Platonic idea of mimesis through the lens of Agamben's aesthetics. Prior to any further reflection, it must be noted that Plato's view and Agamben's argument belong to different stages of the artistic activity in history. Plato is describing the poetic work during the period which dates back to the origin of the Western culture, and Agamben is pointing to the position of the artist in the modern era. Agamben claims that the artistic activity in the ancient era did not suffer from the split which is the characteristics of the modern aesthetics since the artist before the introduction of modernity was a figure whose work reflected the artist's conception of the world.²³¹ However, in spite of the artistic transformation which is reserved for our time, both thinkers have the same view about the destabilizing effect of the activity in which the act of infinite doubling is inherent.

It must be noted that the negative essence of the modern art, which is pure freedom, differs from the Platonic definition of mimesis. While the modern artist negates any meaning which is available to him, the mimetic poet does not negate the meanings and content which he imitates. However, they both are involved in a process of infinite doubling. The artist of the modern era similar to the mimetician of the ancient Greek culture has the capacity to transcend any determinate form of being and be himself and everyone at once while the product he presents is foreign to "truth of his being".²³² In other words, the common feature of these figures is their ability of infinite doubling.²³³ Agamben finds the artist trapped in the perpetual circle of being himself and another at the same time as he says that "art had to become its own object, and, no longer finding real seriousness in any content, could from now on only represent the negative

²³¹ Agamben, *The Man without Content*, supra note 173 at at 47. "Gone is the time when the artist was bound, in immediate identity, to faith and to the conceptions of his world; no longer is the work of art founded in the unity of the artist's subjectivity with the work's content in such a way that the spectator may immediately find in it the highest truth of his consciousness, that is, the divine."

²³² *Ibid* at 36.

²³³ Philippe Lacoue-Labarthe, supra note 227 at 115. "For it is quite necessary, in the rejection of the "bearer of mimesis," that the victim incarnate in one way or another this impropriety, this lack of being-proper necessarily supposed, as Plato knows very well, by the mimetic fact. That is to say, not only the undifferentiation and endless doubling which threaten the social body as a whole, but, on an underlying level and actually provoking them, *mimetism* itself, that pure and disquieting *plasticity* which potentially authorizes the varying appropriation of all characters and all functions (all the roles)" that kind of "typical virtuosity" which doubtless requires a "subjective" base-a "wax"-but Without any other property than an infinite malleability: *instability* "itself."

potentiality of the poetic I, which, denying, continues to elevate itself beyond itself in an infinite doubling.”²³⁴

E. Artist and His Double

The interesting point about the divergence and the convergence of both theories lie in fact that while Plato considers the poetic activity of mimetician to be the most dangerous passivity,²³⁵ Agamben defines the pure activism and the absolute freedom as the essence of the artist. Yet, for both thinkers, both essences, the passivity and pure creativity, reveal as nothingness since they cannot be captured in positive work. Plato accuses the mimetician of not producing his own truth,²³⁶ while Agamben believes that the artist is determined to construct his essence in the artistic activity. But, the essences they criticize have one thing in common, that is, the self-referential mode of production. In Agamben’s view, the only thing to which the artist is loyal is the principle of the absolute creativity, the principle whose power is not dependent upon any content, and any form and meaning he presents does not correspond to the essence of art. Similarly, Plato perceives imitation as the only truth to which the poet has allegiance, and any form and truth can be ruined in the perpetual play of its representative power.²³⁷ Thus, both principles can be defined in terms of “self-transcendence.” The modern artist not only transcends the content of the external world in his activity, but also ends up transcending and negating his own essence since his essence is the pure negation. Agamben says that:

“the artistic subject, who has elevated himself like a god over his own creation, now accomplishes his negative work, destroying the very principle of negation: he is a god that destroys itself. To define this destiny of irony, Hegel uses the expression *ein Nichtiges, ein sich Vernichtendes*, “a self-annihilating nothing.” At the extreme limit of

²³⁴ Agamben, *The Man without Content*, *supra* note 173 at 55.

²³⁵ Philippe Lacoue-Labarthe, *supra* note 227 at 89. “At most, he is responsible (*aitios*)-though touching, ultimately, the very limit of pure passivity-for the mirror’s orientation.”

²³⁶ John Martis, *supra* note 230 at 26, “Platonic mimesis is determined as falsity by virtue of its not letting Being “stand up” in the beings it represents. Mimetic production has meaning, never on its own terms—say, as “autoproduction”—but always in relation to an “original” adequation that allows truth to stand erect and Being to be unconcealed.”

²³⁷ Philippe Lacoue-Labarthe, *supra* note 227 at 94. “It rests only upon a play of mirror(s) and is therefore nothing-or nearly nothing: a mere sleight of hand, a *Stellvertretung*. This latter would consist in doing everything without doing anything, in pretending to know how to do everything when one does not work and is content to imitate or “double’ (or, in the language of the theater, *stellvertreten*) the one who does something by fraudulently substituting oneself for him and by using, in order “to produce the illusion, a material that lends itself to this in advance (or that others have already prepared in advance) and that one need only *divert* from its own *proper* use, or use generally and *improperly*.”

art's destiny, when all the gods fade in the twilight of art's laughter, art is only a negation that negates itself, a *self-annihilating nothing*.²³⁸

Philippe Lacoue-Labarthe points to the same feature of mimesis as the pure representational essence of mimesis leaves no essence for it. Since mimesis in Lacoue-Labarthe's view is the pure act of representation to which there is no end, mimesis stands on an abyss.²³⁹ Mimetic activity is a threat to the essence of anything which it imitates as the thing imitated does not reveal the essence of mimetician.²⁴⁰ And since nothing can reveal the essence of mimetician himself, his essence is negative and groundless. In fact, the mimetician not only transcends the meanings he imitates, but also transcends his essence, and he appears as a man without essence.²⁴¹

Agamben's interpretation of "originality" is very relevant to the discussion of the essence of art and mimesis, which both produce something that is not true to the essence. Originality is defined by Agamben as the quality of being in "proximity to the origin".²⁴² Identification of the artistic essence with free creativity is a challenge to the originality of his work since right at the moment the artist creates his work and finishes it, it becomes an object, and this object loses its energetic connection with the essence of pure creativity, which is its origin.²⁴³ Therefore, the originality of the artistic activity remains as a potentiality which is inaccessible and inspiring at once since the modern aesthetics is founded upon the creative principle.²⁴⁴

Such a definition of originality prepares ground for determining Girard's position on the subjects such as "self-annihilating" essence of pure freedom and mimesis, and self-transcendental nature of pure freedom and mimesis. Originality in the Girardian theory plays a vital role in the formation of subjectivity. The same definition of originality can be applied to the

²³⁸ Agamben, *The Man Without Content*, supra note 227 at 56.

²³⁹ Philippe Lacoue-Labarthe, supra note 227 at 115.

²⁴⁰ *Ibid* at 116, "This is why the only recourse, with mimesis, is to differentiate it and to appropriate it, to identify it. In short, to *verify* it. Which would without fail betray the essence or property of mimesis, if there were an essence of mimesis or if what is "proper" to mimesis did not lie precisely in the fact that mimesis has no "proper" to it, ever (so that mimesis does not consist in the improper, either, or in who knows what "negative" essence, but *eksists*, or better yet, "de-sists" in this appropriation of everything supposedly proper that necessarily jeopardizes property "itself"). Which would betray its essence, in other words, if the "essence" of mimesis were not precisely absolute vicariousness, carried to the limit (but inexhaustible), endless and groundless-something like an infinity of substitution and *circulation* (already we must again think of Nietzsche): the very lapse "itself" of essence."

²⁴¹ *Ibid*.

²⁴² Agamben, *The Man without Content*, supra note 173 at 61.

²⁴³ Margaret A. Oziarski, "The Weak Origin of the Work of Art: La Belle Noiseuse, Nietzsche, Heidegger, Agamben, Vattimo" (2010) 47:2 Australian Journal of French Studies 196 at 200.

²⁴⁴ Christopher Kul-Want, *Philosophers on Art from Kant to the Postmodernists: A Critical Reader* (New York: Columbia University Press, 2010) at 251.

Sartrean/Girardian narrative. The ideal of freedom for the subject is defined as the ability to be the foundation of his own being. Thus, the subject may support his claim to freedom only if he manages to consider all modes of contingency and determinacy as mere reflections of his free will.²⁴⁵ In this regard, it is arguable that the object of desire will be in permanent proximity to its origin. But, how is it possible for the subject whose corporeality distances him from the external world to achieve this level of originality? And again, how is it possible for this subject whose essence is defined as nothingness and lack of freedom, at least in the Girardian narrative, to be in close proximity to the essence which has been from the beginning attributed to the other? And How does the accomplishment of a particular desire fulfill the subject's need for the actualization of the absolute freedom?

F. Unstable Mimesis

The answer Girard gives to these questions is derived from the impossibility of this project. In fact, he holds that the impossibility of the project of desire and the free and destructive play of mimesis are interlinked. The subject who finds himself deprived of freedom and originality still attempts to pursue the objective of his ontological project in vain. Freedom belongs to the other, and his decisions and choices for the subject are the manifestation of this ideal freedom.²⁴⁶ The attempt to appropriate the other's freedom takes place in terms of imitating the other.

The irony of the subject's project lies in the fact that the subject is striving to accomplish autonomy and self-sufficiency which makes him different and independent from any other human being.²⁴⁷ However, what he actualizes is the doubling of the other. Thus, the difference sought leads to undifferentiation.²⁴⁸ In fact, since the subject considers the other to have achieved the ideal of freedom, he begins to imitate him in order to have access to the ideal human reality.

²⁴⁵ Judith Butler, *supra* note 101 at 136.

²⁴⁶ Girard, *Deceit*, *supra* note 24 at 89.

²⁴⁷ Philippe Lacoue-Labarthe, *supra* note 227 at 102. "Desire wants difference and autonomy, the proper and property."

²⁴⁸ *Ibid* at 120. "[I]n Girard's case (where it is linked in an apparently intra-philosophic manner to desire-to the *subject* of desire), mimesis is thought of more as an *assimilation* (primitive doubling, general reciprocity, undifferentiation, etc.), but in such a way that all the values associated with the opposition adequate/in-adequate are perverted (beyond redress, so to speak), and such that the proper is engulfed in it without there being the least chance, ultimately, for any sort of reappropriation: again we have disinstallation, but this time in the form of a generalized *instability*, actually much more threatening because it is irreducible to a simple decline or fall."

Yet, the free subject is defined as an individual who is the author of his own identity, and is the foundation of his own being. The difference he seeks is defined as self-sufficiency, but since his project of freedom leads him to imitate the other, he becomes more dependent on the other. As a result, the subject who is longing for difference is drawn into a zone of undifferentiation with others. The later stages of the mimetic desire theory depict the situation in which all subjects appear to possess the same forms and roles.²⁴⁹ But, prior to the description of the community devastated by mimetic behaviors, it is necessary to address the particular status of the imitating subject as it has been done by Plato and Agamben. The Girardian subject, similar to the artist, and the imitating poet, presents himself as the bearer of values and forms which do not belong to him. The alienation and split caused by the adherence to the essence of the other gives the subject the same status of the artist and the poet. His content is suppressed in the mimetic process, and the content presented is alien to him.

Given Agamben's definition of originality, it is impossible for the Girardian subject to be original and authentic. The freedom project which is the essence of the subject leads him toward the other. Yet, again, the corporeality of the subject which has been a limit to his freedom severs the connection with the origin.²⁵⁰ The corporeal distance between the subject and the other as the source of imitation places the origin of the freedom project in a place alien to the subject, and the insurpassibility of the corporeal distance deprives the subject of any possibility to be in proximity to the origin. In addition, the distance is not merely corporeal. The ontological deprivation of the subject of his ideal essence also separates him from the origin. The essence praised by the subject is that of the other, and we may describe the Girardian subject by Agamben's words which state that the essence of the subject is the "absolute will to be other."²⁵¹ Even if the subject manages to possess the object which belongs to the other or imitate the other's behaviors perfectly, the freedom for which he is longing remains inaccessible. In fact, at the moment the tangible thing is possessed, or the specific behavior is imitated, the subject's action loses its tie with the origin since the origin is the ideal freedom that cannot be reduced to any object or behavior.²⁵² The fact that the ideal of freedom transcends any determinate being

²⁴⁹ *Ibid.*

²⁵⁰ Judith Butler, *supra* note 101 at 139.

²⁵¹ Agamben, *The Man without Content*, *supra* note 173 at 48.

²⁵² Girard, *Deceit*, *supra* note 24 at 89. "The hero realizes that he was mistaken. The object never did have the power of imitation which he had attributed to it. But this power he confers elsewhere, on a second object, on a new desire."

explains why Girard says that the objective of the mimesis goes beyond some objects, attitudes, or qualities, and it is directed toward an essence.²⁵³ The distance between the subject and the other's desire which manifests freedom precludes the appropriation of the other's freedom while all the subject can possess are the things which have no proximity to the origin, that is, the ideal freedom.

The Girardian subject's claim to originality, thus, inevitably fails, and he can only pursue his failure. In fact, he is stuck in a spectrum whose both extremes have no essence but nothingness. The subject's identity is defined in terms of deprivation and lack, and he cannot offer anything on his behalf, which can be in proximity to the true essence of freedom. The ideal sought by the subject cannot be defined in terms of any determinacy and content either since it is superior to any content. He is doomed to continue the imitation perpetually since nothing authentic can come out of the adherence to the nothingness, and out of the project which has been founded on an abyss.²⁵⁴

The hallow essence of the both positions, the starting point and the ideal outcome, refers to the same self-referential mode discussed in the Platonic treatment of poet and in Agamben's view of the artist. The true essence of both positions is constituted by the transcendence of any content and determinacy given to the subject. As we have seen in Agamben's arguments, this self-referential essence, which is beyond any content and meaning, has the potentiality to be transformed into infinite doubling.²⁵⁵ And as we will see in the next chapter, Girard believes that the infinite doubling caused by mimesis leads to destructive instability²⁵⁶ because the doubling effect of mimesis entrusts the subject with capacity to produce countless identities without any constraint. In fact, the free play of mimesis transforms human beings into creatures whose identities are not distinguishable because mimesis allows the imitating subject to be himself and another at once. In his analysis of the Girardian theory, Lacoue-Labarthe states that all the imitative behaviors which are the subject's attempts to recover the alienated freedom²⁵⁷ eventually lead to a chaotic situation in which all the figures are anti-heroes, anti-heroes who

²⁵³ Girard, *Deceit*, *supra* note 24 at 53, 55.

²⁵⁴ *Ibid* at 173.

²⁵⁵ Agamben, *The Man Without Content*, *supra* note 173 at 56-57.

²⁵⁶ Philippe Lacoue-Labarthe, *supra* note 227 at 120.

²⁵⁷ *Ibid* at 103.

have fundamentally deviated from their proper place.²⁵⁸ The impossibility of the differentiation for Girard reveals the problematic essence of mimesis, and this is the subject which will be discussed in the next chapter.

²⁵⁸ Girard, *Violence and the Sacred*, supra note 23 at 295.

Chapter III

The Sacred Law

As stated earlier, the main objective of the present study is to look for the correlation between the concept of the sacred and the foundation of law. Yet, the two previous chapters, if read isolated from the context of the theories of Girard and Agamben, may give the impression that this study is supposed to elaborate the dynamics of freedom and subjectivity. Although a direct engagement with the concept of the sacred in both theories is possible, such an attitude may seem surprising to many and will lead to suspicious views about the validity of their theories of the sacred. In fact, similar to criticisms of the theory of mimetic desire which find it totalizing and reductionist, Agamben's theory of the sacred which defines it as a juridico-political phenomenon also has received the same negative review.²⁵⁹ If Agamben's theory of the sacred in his book, *Homo Sacer: Sovereign Power and Bare Life*, is taken into consideration isolated from his previous writings, it will be reasonable to claim that the whole structure of the juridico-political phenomena in the history of the Western culture, or even more radical, the origin of the metaphysics in these societies, cannot be founded upon the definition of a figure of the Roman law, *homo sacer*, which Agamben proposes in his book.

However, it would definitely be a hasty conclusion. In fact, it is necessary to determine whether the ideas presented in his book, *Homo Sacer*, originate in his previous writings which address different domains such as ontology, metaphysics, linguistics, aesthetics, and so forth.²⁶⁰

Since both thinkers base their arguments on their definition of the sacred as the origin of social order and law, it seems reasonable to trace back the origins of the sacred theory for both thinkers in their previous books, which enables us to understand how they reached the decision

²⁵⁹ Ernesto Laclau, "Bare Life or Social Indeterminism?" in Matthew Calarco & Steven DeCaroli eds, *Giorgio Agamben: Sovereignty and Life* (Stanford: Stanford University Press, 2007) 11 at 11, cited in Leland de la Durantaye, *supra* note 34 at 220. "One often has the feeling that [he] jumps too quickly from having established the *genealogy* of a term, a concept, or an institution, to determine its actual working in a contemporary context."

²⁶⁰ Justin Clemens, "The role of the Shifter and the Problem of Reference" in Justin Clemens, Nicholas Heron, & Alex Murray eds, *The Work of Giorgio Agamben: Law, Literature, Life* (Edinburgh: Edinburgh university Press, 2008) 43 at 55. Claire Colebrook, *supra* note 177 at 108. "From *Homo Sacer* to *The Open*, Agamben's work looks at a present distinction, such as the difference between the political and the nonpolitical or between the human and the animal, and retrieves the more original potentiality from which such differences are actualized."

to grant the sacred such a fundamental status in social life. This explains why in previous chapters I concentrated on the early works of these thinkers.

Prior to any further discussion of the theory of the sacred, two points need to be stressed. First, the above-mentioned arguments should not be interpreted so as to suggest that both Girard and Agamben failed to point to the idea of the sacred in their previous books, and that the idea of the sacred only took the center stage in their famous writings, *Violence and the Sacred*, and *Homo Sacer*, without any preceding discussions. On the one hand, although Girard's introduction of the mimetic desire theory in *Deceit, Desire, and the Novel*, is mostly focused on the idea of mimesis and the mimetic structure of desire, he has in various instances identified the inaccessible ideal of autonomy, the model's essence, with the concept of sacred about which the subject has paradoxical feelings, an immense feeling of desire, and strong sense of hatred.²⁶¹ Of course, the paradox of the sacred in the early writings of Girard can be accommodated to the general description of the freedom project and the role of the other in this project, a project which defines the ideal essence of human reality. The fact that this project produces human reality, and is always doomed to failure due to the impossibility of its objective can explain for the paradoxical feelings of the subject for the inaccessible ideal to which Girard has given a sacred status. On the other hand, Agamben has also referred to the sacred foundation of human actions in his linguistic studies in *Language and Death: the Place of Negativity*.²⁶² Yet, in the present study, I decided to avoid the discussion of the sacred in previous chapters and focus on themes which form the foundation of their theories. Now I turn to the application of these themes to the arguments of the *Violence and the Sacred*, and *Homo Sacer* which directly address the concept of the sacred.

²⁶¹ Girard, *Deceit*, *supra* note 24 at 79, "Everything, in fact, is false, theatrical, and artificial in desire except the immense hunger for the sacred." *Ibid* at 81. "To see the truth of desire is to seen the double role, evil and sacred of the mediator," Girard in fact identifies the idea of the sacred with the presence of the model to whom the subject shows paradoxical feelings. "Even in this purely sexual masochism, therefore, it cannot be said that the subject "desires" sufferings. What he desires is his mediator's presence, contact with the sacred."

²⁶² Giorgio Agamben, *Language and Death: The Place of Negativity*, translated by Karen E. Pinkus & Michael Hardt (Minneapolis: University of Minnesota Press, 1991) at 105-6. [Agamben, *Language*]

A. Law in Suspension

It is better to begin our inquiry about the sacred theories of both thinkers in this chapter by discussing Agamben's thoughts. The reason underlying this decision arises from the fact that for Agamben the idea of the sacred is completely tied to the origin of law and the juridico-political structure. To the contrary, Girard's approach toward the sacred is attached to a more general context, the human culture since time immemorial. Girard in some parts of his writings has explained the relationship between the sacred and our understanding of law,²⁶³ yet, these comments are brief; thus, an analysis of the interdependence between his theory of the sacred and the origin of law needs much more elaboration.

In "*Homo Sacer: Sovereign Power and Bare Life*" Agamben discusses the origin of law and its relation to the sacred. In this regard, the process through which law is posited, and its content are of secondary significance since the source of law, be it an authoritarian state or a democratic state, is the phenomenon upon which Agamben has placed his attention.²⁶⁴

In this regard, Agamben's idea of law and sovereignty are interlinked as sovereignty undertakes two roles with respect to law, first, constituting the legal order, and second, preserving and enforcing the body of the norms declared as the law.²⁶⁵ Agamben here points to a division between the constituting law and the constituted law.²⁶⁶ The constituting law refers to an act of the sovereign in which the sovereign has to presuppose its validity and legitimacy without any reference to the content of what it intends to establish.²⁶⁷ Agamben believes that the sovereign power is identical with the act of constitution.²⁶⁸ In fact, at the moment the sovereign is about to declare its law-making power, the rule it intends to create does not exist; thus, it is left

²⁶³ Girard, *Violence and the Sacred*, *supra* note 23 at 21-27. Girard, *Things Hidden* *supra* note 224 at 10-19.

²⁶⁴ Ernesto Laclau, *supra* note 259 at 20. Agamben, *Homo Sacer*, *supra* note 19 at 30. "The principle according to which sovereignty belongs to law, which today seems inseparable from our conception of democracy and the legal State, does not at all eliminate the paradox of sovereignty; indeed it even brings it to the most extreme point of its development."

²⁶⁵ Agamben, *Homo Sacer*, *supra* note 19 at 41. "The sovereign power divides itself into constituting power and constituted power and maintains itself in relation to both, positioning itself at their point of indistinction."

²⁶⁶ *Ibid* at 39.

²⁶⁷ *Ibid* at 40.

²⁶⁸ Catherine Mills, *supra* note 172 at 75. "Agamben rejects Negri's attempt to separate constituent power from sovereignty, and instead equates potentiality with sovereignty. This equation is indicated in his characterization of a "matchless potentiality" of the *nomos* and explicitly posited in his discussion of Aristotle's conception of potentiality. In this, Agamben claims that the paradox of sovereignty is most clearly evident in the distinction between constituting and constituted power, where constituting power is essentially identical with sovereign power in so far as each is concerned with the "constitution of potentiality.""

with no option other than founding its power upon itself. This idea of constituting power has not been foreign to other thinkers. Jacques Derrida in his analysis of Walter Benjamin's *Critique of Violence* states that "since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without ground."²⁶⁹ Agamben following the same line of thought holds that "*the constitution presupposes itself as constituting power* and, in this form, expresses the paradox of sovereignty in the most telling way."²⁷⁰ [emphasis in the original]

In Agamben's view, the problem with the division of the sovereign power into these two categories is that for thinkers of the modern era, the constituted law has been detached from its origin, the constituting power, in a way that the administration of juridical affairs has lost sight of its origin of power. Agamben has recourse to Walter Benjamin to emphasize this matter as he says:

"If the awareness of the latent presence of violence in a legal institution disappears, the juridical institution decays. An example of this is provided today by the parliaments. They present such a well-known, sad spectacle because they have not remained aware of the revolutionary forces to which they owe their existence. . . . They lack a sense of the creative violence of law that is represented in them. One need not then be surprised that they do not arrive at decisions worthy of this violence, but instead oversee a course of political affairs that avoids violence through compromise."²⁷¹

Then, the question for Agamben is whether it is possible to find an area of legal action by the sovereign where the current state of the law will be in connection with its origin.²⁷² In other words, if the constituting power is fully domesticated by the succeeding constituted laws, then the relation between the existing laws and their origin is lost.²⁷³ Agamben identifies this domain with the state of exception.²⁷⁴ Agamben even starts his book with the description of such a state

²⁶⁹ Jacques Derrida, "Force of law: Mystical foundation of Law" (1989) 11 Cardozo L. Rev. 922 at 943.

²⁷⁰ Agamben, *Homo Sacer*, *supra* note 19 at 40.

²⁷¹ Walter Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed by Peter Demetz (New York: Harcourt Brace Jovanovich, 1978) at 288, cited in Agamben, *Homo Sacer*, *supra* note 19 at 40.

²⁷² Agamben, *Homo Sacer*, *supra* note 19 at 39. "Hence the impossibility of harmoniously constructing the relation between the two powers – an impossibility that emerges in particular not only when one attempts to understand the juridical nature of dictatorship and of the state of exception, but also when the text of constitutions themselves foresees, as it often does, the power of revision."

²⁷³ Leland de la Durantaye, *supra* note 34, at 230.

²⁷⁴ Agamben, *Homo Sacer*, *supra* note 19 at 40. "Just as sovereign power presupposes itself as the state of nature, which is thus maintained in a relation of ban with the state of law, so the sovereign power divides itself into constituting power and constituted power and maintains itself in relation to both, positioning itself at their point of indistinction."

of affairs. Following Carl Schmitt's theory, the state of exception is defined by Agamben as a situation in which the chaotic circumstances compel the sovereign to suspend its laws to find a solution to the problem for which there is no answer in the established body of norms.²⁷⁵ Although the first impression anyone has about the state of exception is that it is a lawless situation, Agamben states that the sovereign is the entity which must declare the existence of this situation. Thus, the state of exception is also in relation with the juridical authority of the sovereign. But, this is a particular type of relation, a relation of non-relation. He describes the relation between the law and the state of exception in following terms:

[T]he sovereign is "*at the same time* outside and inside the juridical order" (emphasis added) is not insignificant: the sovereign, having the legal power to suspend the validity of the law, legally places himself outside the law. This means that the paradox can also be formulated this way: "the law is outside itself," or: "I, the sovereign, who am outside the law, declare that there is nothing outside the law [*che non ce unfiori legge*]." ²⁷⁶

Since the state of exception is a product of sovereignty, which is the origin of law, Agamben claims that the state of exception is the realm in which the constituting power and the constituted law acquire a specific relation. The sovereign intends to prepare the necessary circumstances for the enforcement of the existing laws while its action suspends the existing laws.²⁷⁷ Based upon Carl Schmitt's analysis of the state of exception, the law requires peace and order for its application, and its reference to the reality of life is made possible by the establishment of peace.²⁷⁸ This task is done through the declaration of the state of exception which puts an end to the anomaly and paves the path for law enforcement. But, the ground for the application of the constituted law is not founded upon the same law and its content, but upon the suspension of the law in the state of exception.

However, the importance of the state of exception does not simply arise from the fact that it provides the peace which is necessary for the application of the law. Agamben defines the state of exception as the "originary" decision of the sovereign regarding the rule and the legal

²⁷⁵ *Ibid* at 15.

²⁷⁶ *Ibid*.

²⁷⁷ *Ibid* at 17. "[O]nly because its validity is suspended in the state of exception can positive law define the normal case as the realm of its own validity."

²⁷⁸ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. (Cambridge: MIT Press, 1985) at 22, cited in Agamben, *Homo Sacer*, *supra* note 19 at 16. "Order must be established for juridical order to make sense. A regular situation must be created, and sovereign is he who definitely decides if this situation is actually effective. All law is "situational law." The sovereign creates and guarantees the situation as a whole in its totality. He has the monopoly over the final decision."

structure because any rule from the inception is established upon a presupposition determining the limit of its application and the zone to which it no longer applies.²⁷⁹

The suspension of the law necessitated by the state of exception serves a fundamental role in the generality which each rule of law requires for its validity. If it is stated that a rule of law is actualized only in its application to an individual case, then this rule will be deprived of its generality.²⁸⁰ Thus, the rule of law must be imaginable regardless of any determinate form of actualization it may take in its application. In fact, when application of a rule of law is suspended, the general essence of the rule is revealed and maintained. As Agamben says if we reduce a rule of law to a decision in a trial or an executive act, its essence will be downgraded to an act or a decision which is made for a particular case.²⁸¹ However, a rule is supposed to acquire a general status in order to cover various individual cases. Agamben believes that suspension of the application which cuts the relation of the law to any particular case gives the rule its general status.²⁸²

In light of the above-mentioned arguments, the coherent nature of Agamben's thoughts in his various books is disclosed. In his first book, *The Man without Content*, he refers to the principle of art, the creative-formal principle, which goes beyond any content and determinacy to maintain its pure essence. The same feature can be attributed to the pure potentiality of the law. Similar to the true essence of art,²⁸³ the true essence of law can only be revealed in its suspension. The artistic work produced by the artist does not reveal the true essence of art since it is beyond any determinate form. Thus, the relation between the artist and his work can be understood in the suspension of the artistic essence in the work of art.²⁸⁴ The essence of art applies to the artistic work in no longer applying. It is arguable that revelation of the true essence in the state of

²⁷⁹ Agamben, *Homo Sacer*, *supra* note 19 at 18. "The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule."

²⁸⁰ *Ibid* at 20. "The validity of a juridical rule does not coincide with its application to the individual case in, for example, a trial or an executive act. On the contrary, the rule must, precisely insofar as it is general, be valid independent of the individual case."

²⁸¹ *Ibid*.

²⁸² *Ibid*.

²⁸³ Agamben, *The Man Without Content*, *supra* note 173 at 53. "Far from embodying an anti-artistic tendency with his judgment, as Croce feared, Hegel thinks about art in the most elevated manner possible, that is, *from the perspective of its self-transcendence*. His is in no way a simple eulogy, but is rather a meditation on the problem of art at the outer limit of its destiny, when art loosens itself from itself and moves in pure nothingness, suspended in a kind of diaphanous limbo between no longer-being and not-yet-being."

²⁸⁴ *Ibid*.

suspension enables such indeterminate principles to remain in relation of non-application with the exteriority.²⁸⁵

In addition to the relationship I proposed between Agamben's aesthetics theory and his narrative of the sacred, Agamben himself compares the essence of law with another human phenomenon, that is, the human language. When Agamben claims that "there is no outside to law" or "the law is outside itself" in the state of exception,²⁸⁶ these statements correspond to what he has explained regarding the same feature of language.²⁸⁷ The relation with anything out of language is only possible through language itself. Agamben, with respect to the pre-supposition of language in any attempt to grasp the non-linguistic facts, says that "it is not possible either to enter into relation or to move out of relation with what belongs to the form of relation itself."²⁸⁸ Due to the identical structure of language and law,²⁸⁹ Agamben claims that the juridical structure which is perfectly manifested through its suspension is based upon the pre-suppositional feature of language. What is at stake here is a relation of non-relation between a closed circle of general norms and the external facts. This body of general norms, in spite of their signifying and denotation functions, is independent from what they signify or regulate in case of law, and through their independence they manifest their most pure mode of potentiality.²⁹⁰ As a case in point, although Agamben places demonstrative pronouns, e.g. "this" or "that," at the foundation of linguistic categories, he believes that the thing to which these pronouns refer is not a non-linguistic fact outside of language, but the mere occurrence of an instance of the linguistic

²⁸⁵ Agamben, *Homo Sacer*, *supra* note 19 at 27. "The statement "The rule lives off the exception alone" must therefore be taken to the letter. Law is made of nothing but what it manages to capture inside itself through the inclusive exclusion of the *exceptio*." [emphasis in the original]

²⁸⁶ *Ibid* at 15.

²⁸⁷ *Ibid* at 20. "Here the sphere of law shows its essential proximity to that of language, just as in an occurrence of actual speech, a word acquires its ability to denote a segment of reality only insofar as it is also meaningful in its own not-denoting (that is, as *langue* as opposed to *parole*, as a term in its mere lexical consistency, independent of its concrete use in discourse), so the rule can refer to the individual case only because it is in force, in the sovereign exception, as pure potentiality in the suspension of every actual reference."

²⁸⁸ *Ibid* at 50.

²⁸⁹ *Ibid* at 21. "The particular structure of law has its foundation in this presuppositional structure of human language."

²⁹⁰ *Ibid* at 25. "The thought of our time finds itself confronted with the structure of the exception in every area. Language's sovereign claim thus consists in the attempt to make sense coincide with denotation, to stabilize a zone of indistinction between the two in which language can maintain itself in relation to its *denotata* by abandoning them and withdrawing from them into a pure *langue* (the linguistic "state of exception")."

experience, which at the same time removes the non-linguistic fact in order to make the taking place of language possible.²⁹¹

Yet, the distinction between norms - be they linguistic or juridical - and the real external facts takes a particular form in the state of exception. At the moment that rules of law are suspended by the sovereign, the wall between these two categories collapses. The sovereign is bestowed with the power to decide on the exception, yet this decision is not of the regulative nature because the content of law is not designed to deal with the state of exception. It also has nothing to do with the facts since it is the product of the sovereign decision. Although the state of exception is a chaotic and lawless zone, and the sovereign decision is a response to that situation, it must be noted that it is not the facts of the situation which determines the outcome, but the sovereign determines how the problem has to be resolved. Since the sovereignty is a juridico-political phenomenon, it is necessary to state that the state of exception is not merely a factual situation, and it is also a matter of sovereignty. It is of great importance for the sovereign to have a claim to the domain which cannot be regulated by its rules. Then, the rules are put aside, and sovereign maintains its relation with the state of exception through its decision, the decision to declare the existence of the exception.²⁹² Therefore, Agamben says that the state of exception is neither a matter of fact nor a matter of right.²⁹³ The only thing which governs the state of exception is the decision of the sovereign.

This explains how in the state of exception the application of law is detached from its content. In order to elucidate the idea of law which is devoid of any content, Agamben refers to Kant's definition of the "pure form of law" as "being in force without significance in his *Critique*

²⁹¹ Agamben, *Language*, *supra* note 262 at 35. "if we turn now to the problem of indication, perhaps we can understand how the voice articulates the reference of shifters to the instance of discourse. The voice-which is assured by the shifters as the taking place of language- is not simply the *phone*, the mere sonorous flux emitted by the phonic apparatus, ... The voice, the animal *phone*, is indeed presupposed by the shifters, but as that which must necessarily be removed in order for meaningful discourse to take place."

²⁹² Giorgio Agamben, *State of Exception*, translated by Kevin Attell (Chicago: The University of Chicago Press, 2005) at 51. [Agamben, *Exception*] "This space devoid of law seems, for some reason, to be so essential to the juridical order that it must seek in every way to assure itself a relation with it, as if in order to ground itself the juridical order necessarily had to maintain itself in relation with an anomie. On the one hand, the juridical void at issue in the state of exception seems absolutely unthinkable for the law; on the other, this unthinkable thing nevertheless has a decisive strategic relevance for the juridical order and must not be allowed to slip away at any cost."

²⁹³ Homo Sacer, at 18. "The situation created in the exception has the peculiar characteristic that it cannot be defined either as a situation of fact or as a situation of right, but instead institutes a paradoxical threshold of indistinction between the two. It is not a fact, since it is only created through the suspension of the rule. But for the same reason, it is not even a juridical case in point, even if it opens the possibility of the force of law."

of *Practical Reason*.²⁹⁴ Agamben says that Kant believes that if law is detached from any content, we will be confronted with a “simple form of universal legislation.”²⁹⁵ The pure force of law, which is just a form, is the element which guarantees its universality. The pure form has to be independent from any determinacy and content.²⁹⁶ Thus, the individual, who stands before this simple form of legislation, is confronted with an “empty” law, which still possesses the power of law.²⁹⁷ But since this kind of law has no content, the individual confronting it can neither obey it nor disobey it.²⁹⁸ The subject who encounters this pure form is stuck in limbo since he can be neither free nor unfree, yet, he is subjected to the pure form of law.²⁹⁹ The actions taken by the sovereign are an example of the pure form of law. In order to explain the pure form of law Agamben says that while this action is not a rule of law, it possesses the legal force. In the state of exception, the law is in force, but its content has no force, and the force of law is transferred to actions which in the normal situation have no legal validity.³⁰⁰ Agamben identifies this pure form of law with what is at stake in the state of exception.³⁰¹ The state of exception in Agamben’s view is entangled with an impossible decision. The decision the sovereign has to make in order to keep its relation with the exception appears as an impossible task because the normal criteria which are used for evaluating the circumstances and determining whether the state of exception exists or not are useless. The content of exception escapes any normative assessment because the state of exception, as explained by Carl Schmitt, is a zone which is not defined by the legal rules.³⁰² Schmitt says that no legal system can claim that its rules can cover all situations especially the exceptional situations.³⁰³ A rule of law determines the context of its application, but the state of exception is a situation whose circumstances cannot be

²⁹⁴ Agamben, *Homo Sacer*, *supra* note 19 at 52.

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid* at 53.

²⁹⁷ *Ibid* at 52.

²⁹⁸ *Ibid* at 52.

²⁹⁹ *Ibid.*, at 52.

³⁰⁰ Agamben Exception, *supra* note 292 at 38. Johan van der Walt, *Law and Sacrifice: Towards a Post-Apartheid Theory of Law*, (London: Birkbeck Law Press, 2005) at 199.

³⁰¹ Agamben, *Homo Sacer*, *supra* note 19 at 52-53. “It is truly astounding how Kant, almost two centuries ago and under the heading of a sublime “moral feeling,” was able to describe the very condition that was to become familiar to the mass societies and great totalitarian states of our time. For life under a law that is in force without signifying resembles life in the state of exception, in which the most innocent gesture or the smallest forgetfulness can have most extreme consequences.”

³⁰² Carl Schmitt, *supra* note 278 at 19-22, cited in Agamben, *Homo Sacer*, *supra* note 19 at 15.

³⁰³ *Ibid.*

predicted by the legal structure in advance.³⁰⁴ Thus, the available rules which are used for a normative assessment in a normal situation do not work in the state of exception. Yet, the decision is necessary, and has to be taken.³⁰⁵

The decision the sovereign has to make in the state of exception which cannot be contained in any type of regularity for Agamben has its roots in the metaphysical tradition of the Western culture.³⁰⁶ It has to be stressed that this decision is necessary because, as stated above, it creates the situation in which the constituted laws are going to be enforced and the existence of the sovereign depends upon it. In Agamben's view, the same form of decision reveals the structure of the metaphysical process through which any being is actualized in the world.

The connection between the structure of sovereignty and the metaphysics of being relies upon the definition Agamben provides for the concept of potentiality. In this matter, Agamben's argument rests upon the Aristotelian interpretation of potentiality.³⁰⁷ Any being which possesses a potentiality for a specific action reveals its capacity through actualization of the potentiality in a discrete action. In light of such an attitude toward the matter of potentiality, Agamben states that one might think that in the process of actualization, the potentiality of that being is destroyed and exhausted. In this narrative, it may be argued that a being is left with two choices. Either it exists on the level of potentiality, or it is transformed into actuality, and this conclusion may be extended to the division between the constituting power and the constituted laws as if the constituting power may be exhausted in the enactment of written laws.³⁰⁸ However, Agamben

³⁰⁴ *Ibid.*

³⁰⁵ Agamben, *Exception*, *supra* note 292 at 54-55. "The sovereign violence in *Political Theology* responds to the pure violence of Benjamin's essay with the figure of a power that neither makes nor preserves law, but suspends it. Similarly, it is in response to Benjamin's idea of an ultimate undecidability of all legal problems that Schmitt affirms sovereignty as the place of the extreme decision. That this place is neither external nor internal to the law—that sovereignty is, in this sense, a *Grenzbegriff* [limit concept]—is the necessary consequence of Schmitt's attempt to neutralize pure violence and ensure the relation between anomie and the juridical context. And just as pure violence, according to Benjamin, cannot be recognized as such by means of a decision (*Entscheidung* [Benjamin 1921, 203/252]), so too for Schmitt "it is impossible to ascertain with complete clarity when a situation of necessity exists, nor can one spell out, with regard to content, what may take place in such a case when it is truly a matter of an extreme situation of necessity and of how it is to be eliminated" (Schmitt 1922, 9/6-7); yet, with a strategic inversion, this impossibility is precisely what grounds the necessity of sovereign decision."

³⁰⁶ Agamben, *Homo Sacer*, *supra* note 19 at 44. "The relation between constituting power and constituted power is just as complicated as the relation Aristotle establishes between potentiality and act, *dynamis* and *energeia*; and, in the last analysis, the relation between constituting and constituted power (perhaps like every authentic understanding of the problem of sovereignty) depends on how one thinks the existence and autonomy of potentiality."

³⁰⁷ *Ibid.*

³⁰⁸ Giorgio Agamben, *Potentialities: Collected Essays in Philosophy*, translated by Daneil Heller-Roazen (Stanford: Stanford University Press, 1999) at 180. "This is why Aristotle criticizes the position of the Megarians, who

rejects this interpretation because for Agamben, following Aristotle's definition, potentiality possesses two faces, potentiality to be, and potentiality not to be.³⁰⁹ Even when a being actualizes its capacity, it does not destroy the other face of its potentiality. In this situation, that being only lets itself to be while its potentiality not to be is only set aside, not ruined.³¹⁰ Thus, the potentiality not to be remains intact. Agamben believes that the emergence of being in this narrative is a result of a decision, a decision between to be and not to be. In fact, if being does not possess the potentiality not to be, its actualization will not be a choice between two options. But, if we accept that being's potentiality has two faces, potentiality to be and potentiality not to, then there must be a choice.³¹¹ Thus, if we believe that actualization of being is a result of a choice or a decision, we should take note that this decision contains a presupposition, that is, its potentiality not to be.³¹² Such an attitude toward the concept of potentiality has some consequences. The pure potentiality is revealed only in its negative side.³¹³ Agamben ties this analysis with the sovereign essence of being in the metaphysical tradition of the West. Any general rule remains independent and maintains its true essence only when it exercises its potentiality not to be. The same is true for the sovereign decision. The sovereign can only maintain its true essence by the suspension of laws through which the legal rules preserve their validity in no longer applying to individuals.³¹⁴ This mode of relation with the subject which is

maintain that all potentiality exists only in actuality. What Aristotle wants to posit is the existence of potentiality: that there is a presence and a face of potentiality."

³⁰⁹ Agamben, *Homo Sacer*, *supra* note 19 at 44, "Against the Megarians, who (like those politicians today who want to reduce all constituting power to constituted power) affirm that potentiality exists only in act (*energē monon dynasthai*), Aristotle always takes great care to affirm the autonomous existence of potentiality – the fact that the kithara player keeps his ability [*potenza*] to play even when he does not play, and that the architect keeps his ability [*potenza*] to build even when he does not build."

³¹⁰ *Ibid* at 46. "What is potential can pass over into actuality only at the point at which it sets aside its own potential not to be fits *adynamia*). To set im-potentiality aside is not to destroy it but, on the contrary, to fulfill it, to turn potentiality back upon itself in order to give itself to itself." Potentialities, *supra* note 308 at 183. "What Aristotle then says is: if a potentiality to not-be originally belongs to all potentiality, then there is truly potentiality only where the potentiality to not-be does not lag behind actuality but passes fully into it as such. This does not mean that it disappears in actuality; on the contrary, it preserves itself as such in actuality. What is truly potential is thus what has exhausted all its impotentiality in bringing it wholly into the act as such."

³¹¹ William Watkin, *supra* note 178 at 64.

³¹² Agamben, *Homo Sacer*, *supra* note 19 at 46. "Potentiality (in its double appearance as potentiality to and as potentiality not to) is that through which Being finds itself *sovereignly*, which is to say, without anything preceding or determining it (*superiorem non recognoscens*) other than its own ability not to be."

³¹³ *Ibid* at 47, "Sovereignty is always double because Being, as potentiality, suspends itself, maintaining itself in a relation of ban (or abandonment) with itself in order to realize itself as absolute actuality (which thus presupposes nothing other than its own potentiality). At the limit, pure potentiality and pure actuality are indistinguishable, and the sovereign is precisely this zone of indistinction."

³¹⁴ *Ibid*. "That constituting power never exhausts itself in constituted power is not enough: sovereign power can also, as such, maintain itself indefinitely, without ever passing over into actuality."

manifested in abandoning the subject is called by Agamben the “ban”, a term which he borrows from Jean Luc Nancy.³¹⁵ In light of the above-mentioned arguments about the concept of potentiality, this sovereign decision of the ban for Agamben is the originary structure of any juridico-political system.

B. Inaccessible Freedom in the Sacrificial Crisis

The description Agamben provides with respect to the exceptional situation which gives birth to the legal structure enables us to adopt a specific attitude towards the Girardian theory of the sacred. The question is whether the Girardian theory also depicts a state of exception and gives it a primary status? This question is of great importance for the present study because we need to determine whether Girard also believes that the origin of law and order is based upon the suspension of the law.

In light of the arguments presented in previous chapters, it has been discussed that the subject’s ontological desire to be autonomous and establish his own foundation of being without any dependence on any other entity leads to alienation and privation of freedom. This is the origin of the mimetic desire theory. Mimesis in this regards serves as a means for the subject to reclaim his freedom.³¹⁶ Mimesis in the Girardian theory is thus acquisitive.³¹⁷ In the Girardian theory, the originality and freedom attributed to the model and his choices appear to the subject as the source of the model’s superior position.³¹⁸ The subject is urged to appropriate the other’s freedom through acquiring his objects of desire. I have argued in the first chapter that the impossibility of the freedom project precludes any chance to accomplish the objective of this project. Yet, the Girardian subject who suffers from bad faith is not capable of breaking this

³¹⁵ *Ibid* at 28. “It is the originary structure in which law refers to life and includes it in itself by suspending it. Taking up Jean-Luc Nancy’s suggestion, we shall give the name *ban*.”

³¹⁶ Philippe Lacoue-labarthe, *supra* note 227 at 102. “The law of desire (the Law?) is that of reappropriation, of ‘recovery’ from the primitive alienation that governs it.”

³¹⁷ Girard, *Things Hidden*, *supra* note 224 at 8. “What is missing in Plato’s account of imitation is any reference to kinds of behavior involved in appropriation. Now it is obvious that appropriation figures formidably in the behavior of human beings, as it does in that of all living beings, and that such behavior can be copied. There is no reason to exclude appropriation from imitation; Plato nonetheless does just this, and this omission passes unnoticed because of all of his successors, beginning with Aristotle, have followed its lead. It was Plato who determined once and for all the cultural meaning of imitation, but his meaning is truncated, torn from the essential dimension of acquisitive behavior, which is also the dimension of conflict.”

³¹⁸ Girard, *Deceit*, *supra* note 24 at 37.

closed circle and continues his quest for freedom through acquisitive mimesis.³¹⁹ As Lacoue-Labarthe correctly suggests, the mimetic behavior is an attempt by the subject to recover the freedom which has been inaccessible to him.³²⁰

However, a transition in the Girardian theory can be detected as he turns to the anthropological studies of the sacred in *Violence and the Sacred*. In his early writings, Girard claims that the inaccessibility of the freedom which exclusively belongs to the model arouses paradoxical feelings in the subject since the other appears as the model and the rival at once.³²¹ The model is revered and at the same time he is detested by the subject. This is the origin of rivalry in the Girardian theory. But there is a difference between the Girardian subject of the literary studies and the Girardian subject in his anthropological studies of the sacred.³²² On the one hand, the early writings of Girard depict a human who takes great pain to conceal his alienation and lack of freedom. This leads Girard to oppose the Hegelian dialectic of master-slave, particularly Kojève's narrative, since, in his theory, any act of violence toward the model, the other, reveals the lack of originality and the alienation from which the subject is suffering. He states his opposition to the Hegelian thought in following terms:

"The two themes of the Phenomenology of the Mind which particularly interest contemporary readers are the "unhappy consciousness" and the "dialectic of master and slave." We all have a vague feeling that only a synthesis of these two fascinating themes could throw light on our problems. That original synthesis, impossible in Hegel's system, is precisely what the novelistic dialectic permits us to glimpse. The hero internal mediation is an unhappy consciousness who relives the primordial struggle beyond all physical threat and stakes his freedom on the least of his desires.

The Hegelian dialectic rested on physical courage. Whoever has no fear will be the master, whoever is afraid will be the slave. The novelistic dialectic rests on hypocrisy. Violence, far from saving the interests of whoever exerts it, reveals the intensity of his desires; thus it is a sign of slavery....

³¹⁹ *Ibid* at 89. "He cannot deny the failure of his desire but he can confine its results to the object which he now possesses and possibly to the mediator who directed him to it. The disappointment does not prove the absurdity of all metaphysical desires but only that of this particular desire which has just led to disillusionment. The hero realizes that he was mistaken. The object never did have the power of imitation which he had attributed to it. But this power he confers elsewhere, on a second object, on a new desire."

³²⁰ Philippe Lacoue-Labarthe, *supra* note 227 at 102.

³²¹ Girard, *Deceit*, *supra* note 24 at 10. "The subject is torn between two opposite feelings toward his model-the most submissive reverence and the most intense malice. This is the passion we call *hatred*." [emphasis in the original]

³²² Andrew O'Shea, *Selfhood and Sacrifice: René Girard and Charles Taylor in the Crisis of Modernity* (New York: Continuum, 2010) at 106-107.

In the universe of internal mediation—at least in the upper regions—force has lost its prestige. The elementary rights of individuals are respected but if one is not strong enough to live in freedom one succumbs to the evil spell of vain rivalry.”³²³

On the other hand, the subject in his anthropological studies is still directed by the same ontological desire,³²⁴ but, the outcome of his ontological pursuit leads to violence. The violent outcome of desire for Girard follows a simple pattern. Human beings shape their desires according to their models, and they desire what their models desire. Thus, the mimetic desire directs the subject and the model to the same object.³²⁵ The rivalry is inevitable. This rivalry between the subject and the model is called “double bind.”³²⁶ The double impulses the subject receives from the model’s behavior make him believe that the model is saying: “imitate me, do not imitate me.”³²⁷ Girard then claims that the violent clash between two persons is bound to occur. Thus, the mimetic rivalry turns into violent opposition.³²⁸

The point which links this violent outcome of rivalry in the Girardian theory to the foundation of his theory is that these violent oppositions take place because individuals try to establish their self-identity in terms of being the sufficient ground of their own identity. The violent opposition is for Girard another face of the desire to be God, to acquire “divine self-sufficiency” which is impossible due to the inherent paradox of the project itself.³²⁹ Girard states

³²³ Girard, *Deceit*, *supra* note 24 at 111-112.

³²⁴ Eugene Webb, “Girard, Buddhism, and desire” in Sandor Goodhart et al eds, *For René Girard: Essays in Friendship and in Truth* (East Lansing: Michigan State University Press, 2009) 147 at 150.

³²⁵ René Girard, *To Double Business Bound: Essays on Literature, Mimesis, and Anthropology* (Baltimore: The Johns Hopkins University Press, 1978) at 96. [Girard, *Double Business*] “Mimesis is always a project of self-differentiation that seeks to realize itself, especially in the negative stage of violence and the obstacle. The more desire aspires to difference, the more it generates identity. Mimetic desire is always more self-defeating. As it progresses, its consequences become more aggravated, and this aggravation in the end is identical to delirium and madness. This is why we find exactly the same things in delirium as in the anterior stages of mimetic desire, only here the form is exaggerated, caricatural. At least in appearance, there is mere difference and more identity because the doubles never stop imitating each other, and this time imitation is quite visible because those observers probably the least inclined to follow us speak here of schizophrenic *historionics*. Delirium is nothing but the obligatory outcome of a desire that imbeds itself in the impasse of obstacle-model. The impasse in question is the most general form of the double bind that Gregory Bateson sees as the source of psychosis. All desires ultimately trap each other in the contradictory double injunction, “imitate me, do not imitate me.”

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ Girard, *Violence and the Sacred*, *supra* note 23 at 144. “In the traditional view [on mimetic desire] the object comes first, followed by human desires that converge independently on this object. Last of all comes violence, a fortuitous consequence of convergence.”

³²⁹ *Ibid* at 148. “Violent opposition, then, is the signifier of ultimate desire, of divine self-sufficiency, of that “beautiful totality” whose beauty depends on its being inaccessible and impenetrable. The victim of this violence both adores and detests it. He strives to master it by means of a mimetic counterviolence and measure his own stature in proportion to his failure. If by chance, however, he actually succeeds in asserting his mastery over the

that the quest for divinity thus is transformed into a struggle between two rivals.³³⁰ Therefore, the subject's attempt for self-identity is in vain since it only leads him to imitate his model and become more identical with him.

The conclusion which Girard draws from the context of mimetic rivalries shows that the ontological project of desire is self-annihilating. But what does it mean for the project of desire to be self-annihilating? He explicitly says that the reason for the self-defeating nature of desire is the inaccessible nature of its objective.³³¹ This argument makes sense in the context of the Girardian theory. In addition to this interpretation, it is also possible to arrive at the same conclusion through Agamben's theory of aesthetics. However, this approach must be accompanied by a warning. Agamben's discussion of the essence of art is limited to the artist's position regarding his work. Yet, it is arguable that if we extract the logic of his arguments and apply it to the Girardian mimetic theory, the proximity of these two theories is revealed.

If we take the "infinite doubling" which Agamben has discussed in the destiny of modern aesthetics, it becomes evident that the same process is in effect in the mimetic desire. The infinite doubling which Agamben borrows from Hegelian philosophy is the result of the introduction of the creative-formal principle in the essence of artistic activity.³³² The creative-formal principle is the driving force which leads the artist to define his essence as something which does not fall within any content and determinacy.³³³ Thus, the work the artist produces does not reflect his pure essence. Anything the artist produces is negated by the creative-formal principle.³³⁴

model, the latter's prestige vanishes. He must then turn to an even greater violence and seek out an obstacle that promises to be truly insurmountable."

³³⁰ *Ibid* at 129. "The symmetry is so implacably applied that in the end it dissolves the difference between man and god. Divinity becomes nothing more than a prize in the struggle between two rivals."

³³¹ *Supra* note 55 and the accompanying text."

³³² Agamben, *The Man Without Content*, *supra* note 173 at 55. "The romantics, reflecting on this condition of the artist who has made in himself the experience of the infinite transcendence of the artistic principle, called *irony* the faculty through which he tears himself away from the world of contingencies and corresponds to that experience in the consciousness of his own absolute superiority on every content. *Irony* meant that art had to become its own object, and, no longer finding real seriousness in any content, could from now on only represent the negative potentiality of the poetic I, which, denying, continues to elevate itself beyond itself in an infinite doubling."

³³³ *Ibid* at 56. "Hegel was aware of this destructive vocation of irony. Analyzing Schlegel's theories in the *Aesthetics*, he saw in the omnilateral annihilation of all determinacy and all content an extreme reference of the subject to himself, that is, an extreme way of giving oneself self-consciousness. Yet he also understood that irony, on its destructive course, could not stop with the external world and was bound fatally to turn its negation against itself."

³³⁴ *Ibid* at 56-57. "Artistic subjectivity without content is now the pure force of negation that everywhere and at all times affirms only itself as absolute freedom that mirrors itself in pure self-consciousness. And, just as every content goes under in it, so the concrete space of the work disappears in it."

Agamben following Hegel says that there is no end to the process of doubling, and this endless process of negation is a “self-annihilating nothing.”³³⁵ The fact that the artist infinitely produces a work and at the same time attributes the essence to something which is beyond any determinate form makes of the artist a person who can just negate. Thus, his essence is just a pure negation.³³⁶ The Girardian subject suffers from the same problem. Undoubtedly, the context Girard is analyzing is much vaster than the domain of modern aesthetics, but the Girardian subject is also confronted with a principle, the desire to be God which cannot be defined in any content.³³⁷ Thus, anything he achieves, and appropriates in his rivalry with the model, does not satisfy his desire for “divine self-sufficiency” which is beyond any determinate object.³³⁸ The subject is doomed to continue his mimetic behavior, and the only thing he is capable of doing is just the negating activity which manifests his true essence. Every time the subject achieves its goal, and acquires a particular object or quality, he can only conclude that the outcome is not the ideal for which he was longing.

Girard then brings the concept of the infinite doubling to the realm of social life, and the destructive nature of the self-annihilating essence of pure freedom, the desire to be God becomes more evident.³³⁹ The community Girard depicts is a group of people who are striving to be autonomous, people who are determined to reclaim their freedom through the acquisitive imitation, and at the same time they become more similar to each other, and are oriented toward the same objects, which is the origin of the conflict.³⁴⁰ Prior to any further analysis, it must be stressed that I do not intend here to combine Agamben’s aesthetic studies with the politics of the sacred. But, in his aesthetic theory, Agamben points to the idea of pure negation. What I borrow from his interpretation of modern art is the effects which he attributes to the idea of pure negation. In fact, I believe that the results which arises from the negative essence of artistic activity is not limited to modern art, and the negative essence of desire in the Girardian theory also follows the same logics.

³³⁵ *Ibid* at 56.

³³⁶ *Ibid*.

³³⁷ Judith Butler, *supra* note 101 at 136.

³³⁸ Girard, *Violence and the Sacred*, *supra* note 23 at 148.

³³⁹ *Ibid* at 143. “In *The Bacchae*, by contrast, Dionysus and Pentheus have nothing concrete to fight over. Their rivalry centers on divinity itself; but behind that divinity there lies only violence. To compete for divinity is to compete for a chimera, because the reality of divine rests in its transcendental absence.”

³⁴⁰ *Ibid* at 146.

C. Crisis of Doubles

Girard believes that if the mimetic behaviors are taken to the extreme, the community will be full of people who are doubles of each other.³⁴¹ Girard considers the process of doubling to be dangerous and destabilizing. Then, the question is why the similarity of the individuals which stems from the mimetic behavior leads to instability. The answer to this question lies in the fact that for Girard distinctions between people is the foundation of social order.³⁴² In this narrative, distinctions and difference between individual separate them from each other, and the loss of these distinctions leads to a chaotic situation in which men are tempted to encroach upon others' positions.³⁴³ Girard finds the origin of this idea in ancient Greek poetry. He states that "degrees, or *gradus*, is the underlying principle of all order, natural and cultural. It permits individuals to find a place for themselves in society; it lends a meaning to things, arranging them in proper sequence within a hierarchy; it defines the objects and moral standards that men alter, manipulate and transform."³⁴⁴ He goes on to say that even without distinctions between men, language will be in crisis, and any moral judgments will be impossible.³⁴⁵ Girard points to Shakespeare's *Troilus and Cressida* to explain his narrative:

".... O, when degree is shaken,
Which is the ladder to all high designs,
Then enterprise is sick! How could communities,
Degrees in schools and brotherhoods in cities,
Peaceful commerce from dividable shores,
The primogenitive and due of birth,
Prerogative of age, crowns, scepters, laurels,
But by degree, stand in authentic place?
Take but degree away, untune that string,
And, hark, what discord follows! each thing meets
In mere oppugnancy: the bounded waters
Should lift their bosoms higher than the shores
And make a sop of all this solid globe:
Strength should be lord of imbecility,
And the rude son should strike his father dead:
Force should be right; or rather, right and wrong,

³⁴¹ *Ibid* at 203. "Their resemblance is such that they do not possess identities of their own. We are left with a group of people *all bearing the same name, identically dressed*." [emphasis in the original]

³⁴² *Ibid* at 49. "The Sacrificial crisis can be defined, therefore, as a crisis of distinctions-that is, a crisis of affecting cultural order. This cultural order is nothing more than a regulated system of distinctions in which their differences among individuals are used to establish their "identity" and their mutual relationships."

³⁴³ *Ibid*.

³⁴⁴ *Ibid* at 50.

³⁴⁵ *Ibid* at 51.

Between whose endless jar justice resides,
Should lose their names, and so should justice too.”³⁴⁶

Girard believes that the dissolution of distinctions and differences can start from the nucleus of social life, that is, the family. In Euripides’ *Alcestis*, the relationship between father and son which is the foundation of familial life is in jeopardy, and the crisis of differences is perfectly manifested in the chorus lines which warn about the collapse of the line between father and son.³⁴⁷ In Girard’s eyes, all this happens because all differences are effaced.

In order to understand the process through which the social life is threatened by the violent conflicts, we need to look at the seeds of violence in the mimetic desire.³⁴⁸ In the first chapter, I discussed how the divine autonomy the Girardian subject is longing for is defined by inaccessibility, and the model always appears as an obstacle to the inaccessible freedom. The violence first appears as a means by which the obstacle is removed and the objective is attained. Yet, as the conflict becomes tense, the distinction between the violence and the desire, as a means to an end, is blurred. Girard states that

“If desire is allowed to follow its own bent, its mimetic nature will almost always lead it into a double bind. The unchanneled mimetic impulse hurls itself blindly against the obstacle of a conflicting desire. It invites its own rebuffs, and these rebuffs will in turn strengthen the mimetic inclination. We have, then, a self-perpetuating process, constantly increasing in simplicity and fervor. Whenever the disciple borrows from his model what he believes to be the “true” object, he tries to possess that truth by precisely desiring what this model desires. Whenever he sees himself closest to the supreme goal, he comes into violent conflict with a rival. By a mental shortcut that is both eminently logical and self-defeating, he convinces himself that violence itself is the most distinctive attribute of the supreme goal.”³⁴⁹

In fact, in the Girardian narrative, the autonomy the subject seeks shifts from the object and the choices the model makes to violent behavior. Then the paradox which is inherent in the objective of the mimetic behavior is intensified. The subject strives for difference and self-identity which is independent from others, but what emerges from the violent rivalry is the perpetual process of undifferentiation.³⁵⁰ Violence also increases the similarity of two persons who are imitating each other. Girard claims that it is very difficult to distinguish two persons with violent gestures from each other as violence destroys differences among human beings,

³⁴⁶ *Ibid* at 51-52; Girard, *Double Business*, *supra* note 325 at 141.

³⁴⁷ Girard, *Violence and the Sacred*, *supra* note 23 at 47.

³⁴⁸ *Ibid* at 148. “Mimetic desire is simply a term more comprehensive than violence for religious pollution.”

³⁴⁹ *Ibid*.

³⁵⁰ Girard, *Double Business*, *supra* note 325 at 96.

differences which give the community member their personal identities.³⁵¹ In fact, violence in the Girardian narrative is an impersonal phenomenon since it destroys differences between personal identities.³⁵² Again, the self-annihilating essence of desire for self-sufficiency becomes evident. While the subject attempts to present a different identity, he ends up with an identity similar to any other person who is showing his aggression. The self-annihilating essence is created by desire for a being which is independent from any other determinate being, but anything which is achieved by the subject falls short of the requirement of this pure essence since his autonomy is threatened by the ever-growing process of undifferentiation with others. The Girardian subject also has to relinquish every object he appropriates. Since any determinate outcome of the project which is guided by a pure essence does not reach the ultimate goal, the Girardian subject has no option other than the perpetual negation of what they achieve.

The ominous combination of desire with violence is anything but the desired objective of the self-sufficiency project. The mimetic behavior and consequent violent oppositions create a situation in which each person is just the double of the other.³⁵³ Girard holds that when all differences are effaced, the outcome will be the infusion of the “I” and the “Other” whose relationship was supposed to bring about difference and autonomy.³⁵⁴ This is Girard’s description of the chaotic situation which he calls “sacrificial crisis”:

“Everywhere we now encounter the same desire, the same antagonism, the same strategies-the same illusion of rigid differentiation within a pattern of ever-exploding uniformity. As the crisis grows more acute, the community members are transformed into “twins” matching images of violence. I would be tempted to say that they are each *doubles* of each other.”³⁵⁵

It now seems that both Agamben and Girard depict the same factual situation which is the origin of law and order in their theories. It must be stressed that I have just explained the factual description of these situations, and the inquiry about the role of sovereignty in the state of exception and the sacrificial crisis will be carried out in the following pages. The state of exception for Agamben is the situation in which the distinction between facts and norms are

³⁵¹ Girard, *Violence and the Sacred*, *supra* note 23 at 47. “The tragedians portray men and women caught up in a form of violence too impersonal in its workings, too brutal in its results, to allow any sort of value judgment, any sort of distinction, subtle or simplistic, to be drawn between “good” and “wicked” characters... In Greek tragedy violence invariably effaces the difference between antagonists.”

³⁵² *Ibid.*

³⁵³ *Ibid* at 203.

³⁵⁴ *Ibid* at 164.

³⁵⁵ *Ibid* at 79.

erased. The sacrificial crisis of the Girardian theory is also a state of exception. All degrees and norms vanish, and any rule or norm which was supposed to regulate the conflict between hostile antagonists loses its efficiency. Agamben believes that the state of exception is not a matter of right or wrong, but a matter of decision, a sovereign decision. Girard too points to the same crisis. Undifferentiation of individuals makes it impossible to produce any moral or legal judgment which can be used in a normal situation.³⁵⁶ Girard states that the tragedians who depicted the same situation in their works were confronted with the same problem, the problem of decision.³⁵⁷ Anyone who is dealing with the perpetual play of mimesis is not capable of any moral judgment, he has to decide, and his decision cannot be based upon any pre-existing norm.³⁵⁸ However, there is a methodological difference between these theories. While Girard has recourse to his anthropological studies and his theory of mimetic desire to explain how the community enters into the sacrificial crisis, Agamben uses a different method to explain the emergence of the state of exception. This method which he calls the “logico-formal”³⁵⁹ provides a narrative of the sovereignty which states that the origin of law is logically tied to the suspension of law.

Prior to the discussion of the resolution of the state of exception and the sacrificial crisis in both theories, it is important to note that descriptions of the crisis for both thinkers overlap in various ways. The state of exception for Agamben is the realm in which the distinction between the law and unlawful violence disappears.³⁶⁰ Agamben starts his analysis of the nexus between law and violence with a discussion of the ancient Greek thinkers’ statements about the relationship between these two phenomena. In fact, Agamben holds that the opposition between violence and law, has been the subject of interpretation since the beginning of the Western political thoughts. Agamben refers to Pindar’s fragment 169 to show that in ancient Greek

³⁵⁶ *Ibid* at 47.

³⁵⁷ *Ibid* at 129.

³⁵⁸ Girard, *Double Business*, *supra* note 325 at 105. “Against bad mimesis, therefore, culture knows no other remedy but good mimesis. This is why mimesis is undecidable, notably in Plato, as Jacques Derrida demonstrates. Everything touching the sacred is truly undecidable. The scapegoat mechanism furnishes the principle of all decision, even in ritual and paratritual repetitions as weak and desacralized as they might become. *Decidere*, in Latin, means to decide in our sense only because it first means to cut with a knife, to kill the sacrificial victim.”

³⁵⁹ Agamben, *Homo Sacer*, *supra* note 19 at 109.

³⁶⁰ Agamben, *Exception*, *supra* note 292 at 59, “Every fiction of a nexus between violence and law disappears here: there is nothing but a zone of anomie, in which a violence without any juridical form acts. The attempt of state power to annex anomie through the state of exception is unmasked by Benjamin for what it is: a *fictio iuris* par excellence, which claims to maintain the law in its very suspension as force-of-law. What now takes its place are civil war and revolutionary violence, that is, a human action that has shed [*deposto*] every relation to law.”

culture, the idea of sovereignty which Agamben explains was presented as the union of violence and law in the existence of the sovereign.³⁶¹ The conclusion Agamben draws from his analysis is that the state of exception is the domain within which human actions have no basis other than violence. In other words, in the state of exception, violence serves the role law plays in the normal state of affairs, and appears as the supreme arbiter of human actions.³⁶²

Referring to Schmitt's definition of the exception, Agamben says that the essence of sovereignty which goes beyond any "positivistic" form of law creates a "juridically empty space" in which distinction between "outside and inside, nature and exception, *physis* and *nomos*" is not possible,³⁶³ and the sovereign's action is determined by what it seems to be "de facto necessary" for the resolution of the crisis.³⁶⁴

Girard also follows the same line of thought with respect to the sacrificial crisis. As stated before, the sacrificial crisis for Girard is identified with the loss of distinctions. Since ancient myths are one of the resources from which he has drawn his conclusions about the sacrificial crisis, he believes that all myths referring to the sacrificial crisis at the beginning depict a "social and cultural crisis, that is, a generalized loss of differences."³⁶⁵ The process which leads to the loss of differences is instigated by the mimetic desire, and the dissolution of distinctions and differences is accelerated by the violent conflicts.³⁶⁶ It is now important to address the question whether the resolution of the state of exception and the sacrificial crisis is in both theories determined by the free play of violence.

³⁶¹ Agamben, *Homo Sacer*, *supra* note 19 at 30-31.

³⁶² Agamben, *Exception*, *supra* note 292 at 59. "The stakes in the debate between Benjamin and Schmitt on the state of exception can now be defined more clearly. The dispute takes place in a zone of anomie that, on the one hand, must be maintained in relation to the law at all costs and, on the other, must be just as implacably released and freed from this relation. That is to say, at issue in the anomic zone is the relation between violence and law—in the last analysis, the status of violence as a cipher for human action."

³⁶³ Agamben, *Homo Sacer*, *supra* note 19 at 38. "What happened and is still happening before our eyes is that the "juridically empty" space of the state of exception (in which law is in force in the figure – that is, etymologically, in the *fiction* – of its own dissolution, and in which everything that the sovereign deemed de facto necessary could happen) has transgressed its spatiotemporal boundaries and now, overflowing outside them, is starting to coincide with the normal order, in which everything again becomes possible."

³⁶⁴ *Ibid.* It is arguable that Girard also refers to the same zone of indistinction between *physis* and *nomos*. In the Girardian theory, the sacrificial crisis and the origin of the sacred is a zone between nature and culture. Andrew J. McKenna, *Violence and Difference: Girard, Derrida, and Deconstruction* (Chicago: University of Illinois, 1992) at 69.

³⁶⁵ René Girard, *The Scapegoat*, translated by Yvonne Freccero (Baltimore, The Johns Hopkins University Press, 1989) at 24.

³⁶⁶ Girard, *Violence and the Sacred*, *supra* note 23 at 144.

Similar to Agamben's definition of the state of exception as a "juridically empty space," Girard also argues that the sacrificial crisis is a zone which is devoid of any norm and rule.³⁶⁷ The destructive force of violence in the Girardian theory erases all norms, and all meanings and values are mingled to a point of undifferentiation.³⁶⁸ In the state of exception, the content of law does not work to regulate the situation, and law and violence become indistinguishable. Girard also believes that in the sacrificial crisis, there is only one signifier, that is, violence, which signifies nothing but itself.³⁶⁹ As a result, individuals facing the sacrificial crisis possess no value or norm for judgment, and the only means available to them is violence.

The inclusion of anomie and undifferentiation in the origin of law and order in both theories brings one similar consequence.³⁷⁰ Agamben argues that since the origin of law is established in the state of exception, and any rule emerges from its suspension and its non-application to any individual case, the ordinary command of law is not the interdiction of an action which is deemed as a transgression, but its commission.³⁷¹ In fact, actions which occur during the state of exception cannot be contained in a legal rule, the situation of whose enforcement is prepared by the sovereign decision in the exceptional situation. The specific status of the exception precludes us from saying that the action performed by the sovereign in the state of exception is a crime because the only juridical element present in the state of exception is the pure force of law which is stripped of any content, any command or interdiction. In this regard, Agamben states that:

³⁶⁷ *Ibid* at 49, "The *sacrificial crisis*, that is, the disappearance of the sacrificial rites coincides with the disappearance of the difference between impure violence and purifying violence. ... The sacrificial crisis can be defined, therefore, as a crisis of distinctions—that is, a crisis affecting the cultural order."

³⁶⁸ Girard, *Double Business*, *supra* note 325 at 110. "Because they always recover and disguise the two faces of violence, the great symbols of the sacred symbolize at once all desymbolization and symbolization. They only become the signifier because they have first signified the end of signification. This is why they are always undecidable. ... For example, in sacred monarchies, incest can only signify stabilized difference, the established law and sovereignty, because it first of all signifies the loss of difference and real violence."

³⁶⁹ Girard, *Violence and the Sacred*, *supra* note 23 at 64. "The very concreteness of the conflict tends to efface its significance; to lend it the character of a real historical event. With enemy brothers, as with twins, the sign cannot fail to betray the thing signified because the "thing" is the destruction of all significations. It is violent reciprocity, on the rampage everywhere, that truly destroys differences, yet this process can never be fully signified."

³⁷⁰ Agamben believes that when the city is founded, the state of nature remains as a part of the sovereignty, which gives it the power to decide in the state of exception. Thus, in his view, the state of nature which is an anomic state is always included in the idea of sovereignty. Agamben, *Homo Sacer*, *supra* note 19 at 109.

³⁷¹ *Ibid* at 21. "Inscribed as a presupposed exception in every rule that orders or forbids something (for example, in the rule that forbids homicide) is the pure and unsanctionable figure of the offense that, in the normal case, brings about the rule's own transgression (in the same example, the killing of a man not as natural violence but as sovereign violence in the state of exception)."

“That the law initially has the form of a *lex talionis* (*talio*, perhaps from *talis*, amounts to “the thing itself”) means that the juridical order does not originally present itself simply as sanctioning a transgressive fact but instead constitutes itself through the repetition of the same act without any sanction, that is, as an exceptional case. This is not a punishment of this first act, but rather represents its inclusion in the juridical order, violence as a primordial juridical fact (*permittit enim lex parem vindictam*, “for the law allows equitable vengeance” [Pompeius Festus, *De verborum significationes* 496. 15]). In this sense, the exception is the originary form of law.”³⁷²

If we apply the same argument to the description of the sacrificial crisis, it is possible to reach the same conclusion. The importance of this comparison lies in the fact that we need to determine whether in the Girardian theory, similar to Agamben’s philosophy, the law emerges from the commission of an action the same law is supposed to forbid in the normal state of affairs. In the Girardian theory, the sacrificial crisis which is the origin of cultural order in general corresponds to the state of affairs in which the commission of an action which is prohibited takes the center stage.³⁷³ Girard believes that prohibition of an action is after a series of the transgressions that threaten the community as a whole. In fact, the transgression which afterwards acquires prohibitive force is transformed in a process of survival.

To understand the correlation between the prohibition as a command of law and the transgression in the Girardian theory, it is worth focusing on the crimes which exert great impacts on social distinctions, such as incest, patricide, or regicide. Girard argues that one of the features of the sacrificial crisis in myths is the prevalence of these crimes.³⁷⁴ The ever-growing process of violent conflicts which erase differences contributes to the prevalence of crimes such as incest since in the absence of familial and social hierarchy it is highly possible for individuals to encroach upon each other’s possessions. The commission of these offenses in turn intensifies the loss of distinctions. Simply put, Girard believes that “the act of regicide is the exact equivalent, vis-à-vis the polis, of the act of patricide vis-à-vis the family. In both cases the criminal strikes the most fundamental, essential, and inviolable distinction within the group. He becomes, literally, the slayer of distinctions.”³⁷⁵

In order to put an end to the sacrificial crisis, the community comes up with a solution, which is essentially similar to the transgressions. The act of violence which is the expulsion of the

³⁷² *Ibid* at 26.

³⁷³ Girard, *Violence and the Sacred*, *supra* note 23 at 74.

³⁷⁴ Girard, *The Scapegoat*, *supra* note 365 at 24.

³⁷⁵ *Ibid* at 74.

scapegoat is identical with the transgressions of the sacrificial crisis. In fact, as stated earlier, in the sacrificial crisis, the community members enter into violent oppositions which bring death and destruction. In order to avoid its annihilation, the community strives to extinguish homicidal desire of its members, but the solution it proposes is itself a murderous action, the expulsion of the scapegoat. Girard believes that the unanimous use of violence can satisfy the desire for violence since all the community members participate in it.³⁷⁶ The only difference between the violence of the sacrificial crisis and the unanimous use of violence at the end of the sacrificial crisis is that this final act of violence prepares the situation for the establishment and the enforcement of the prohibition when the crisis is resolved. Yet, this solution cannot be established upon any kind of judgment since the community has lost its apparatus of judgment, that is, its norms. This is the undecidable nature of the sacrificial crisis, and the only means available to the community in the Girardian theory is the use of violence against the person known as the scapegoat. In order to explain the violent essence of the decision, Girard, after analyzing the root of *decidere* in Latin, states that:

“The final resolution is too closely integrated with crisis for the rites clearly to distinguish the two. As a rule, this is why rites carry elements having an objective character of transgression, but constituting religious imitation of the process that engendered the prohibition. This imitation is necessarily identical to the transgression of the prohibition, especially when understood in terms of the latter. Thus, we have reciprocal violence, crises of possession, that is,, paroxysmal imitation, multiple forms of violent undifferentiation, ritual cannibalism, and of course incest. These phenomena always have a maleficent character, they only become beneficent with the rite, in close association with some form of sacrifice, that is, with the ritual element the most directly commemorative of the scapegoat.”³⁷⁷

Then, it is understandable how these theories can be reconciled with respect to the state of exception and the sacrificial crisis. In fact, in both narratives the violent decision of the sovereign and the community cannot be judged by the rules and norms originating in the state of exception and the sacrificial crisis, and it gives birth to the stable and normal situation in which these rules and norms can be in force. The violent decision of the sovereign which is made necessary out of the exceptional circumstances of the crisis reminds us of the community which, while threatened by the loss of distinctions, is left with no option but to necessarily have recourse to an act of

³⁷⁶ Girard, *Violence and the Sacred*, *supra* note 23 at 79.

³⁷⁷ Girard, *Double Business*, *supra* note 325 at 105.

violence, with the nature similar to the transgression, in order to put an end to the crisis of violent conflicts.³⁷⁸ However, different natures of these theories must be taken into consideration.

D. Psychologization of the Sacred

Having discussed the proximity of these theories in their description of the origin of law and cultural order in the sacrificial crisis and the state of exception, it is possible now to understand the resolution of these situations and its impact on law which stem from the exception and chaos. Both Agamben and Girard tie the resolution of the state of exception and of the sacrificial crisis to the emergence of the sacred. The suspension of law in the state of exception for Agamben attaches the sacred status to the person who is the object of the sovereign decision.³⁷⁹ Agamben refers to a figure in the Roman law, *homo sacer*, who cannot be “sacrificed and yet may be killed” with impunity.³⁸⁰ This figure of Roman law clearly discloses the sovereign ban on the sacred person. *Homo sacer* is abandoned by both realms of law, that is, the human law and the divine law.³⁸¹ Thus, the sacred person is in relation to the law through his exclusion from the realm of divine law as he cannot be consecrated and offered to the world of deities, and exclusion from the human law as his murder is not recognized as homicide.³⁸² The double exclusion also reflects double inclusion. In fact, in Agamben’s view, *homo sacer*’s tie with the human law and divine law is not completely cut. The only action these two realms of law prescribe for the sacred person is his abandonment.³⁸³ Thus, the sacred person whose destiny is

³⁷⁸ Girard, *Violence and the Sacred*, *supra* note 23 at 131. “Everything suggests a crowd whose intention were initially pacific, a disorganized mob that for unknown reasons (or of no real importance to our argument) came to a high pitch of mass hysteria. The crowd finally hurled itself on an individual, even though he had no particular qualifications for this role, he served to polarize all the fears, anxieties, and hostilities of the crowd. His violent death provided the necessary outlet for the mass anguish, and restored peace.”

³⁷⁹ Agamben, *Homo Sacer*, *supra* note 19 at 83. “The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life – that is, life that may be killed but not sacrificed – is the life that has been captured in this sphere.” [emphasis in the original]

³⁸⁰ *Ibid* at 82. “Just as the law, in the sovereign exception, applies to the exceptional case in no longer applying and in withdrawing from it, so *homo sacer* belongs to God in the form of unsacrificability and is included in the community in the form of being able to be killed. Life that cannot be sacrificed and yet may be killed is sacred life.” [emphasis in the original]

³⁸¹ *Ibid* at 82. “If this is true, then *sacratio* takes the form of a double exception, both from the *ius humanum* and from the *ius divinum*, both from the sphere of the profane and from that of the religious. The topological structure drawn by this double exception is that of a double exclusion and a double capture, which presents more than a mere analogy with the structure of the sovereign exception.”

³⁸² *Ibid*.

³⁸³ *Ibid*.

not determined by the divine and human laws is at the mercy of the sovereign and any member of the community in the state of exception, and is exposed to the pure force of the sovereign, which is the employment of violence in the absence of any regulative norm and law.³⁸⁴

Although the sacred in the religious and anthropological studies of the nineteenth and twentieth centuries has been related to the origin of the religion, Agamben strongly rejects any religious interpretation of the sacred, which links the sacred with the religious sacrifice and presents the sacred man as the one who is killed for a god. As stated in the introduction, from William Robertson Smith, to Durkheim, and Hubert and Mauss, the sacred is defined by paradoxical traits.³⁸⁵ ³⁸⁶ The sacred is considered to be holy and impure at once. However, Agamben believes that these explanations are proposed by these thinkers because over time people who are involved in the study of the sacred have lost sight of the real content of the sacred, and have had recourse to contradictory meanings to define a concept which seems problematic to them.³⁸⁷ Agamben calls this approach the “scientific mythologeme” which fails to interpret the definition of *homo sacer* in the archaic Roman law.³⁸⁸ Agamben asks them how it is possible for the sacred to be a residue of the religious thinking while this figure of Roman law cannot be selected for the sacrificial rites.³⁸⁹ ³⁹⁰ As a result, he argues that this scientific

³⁸⁴ *Ibid* at 82. “What defines the status of *homo sacer* is therefore not the originary ambivalence of the sacredness that is assumed to belong to him, but rather both the particular character of the double exclusion into which he is taken and the violence to which he finds himself exposed. This violence – the unsanctionable killing that, in his case, anyone may commit – is classifiable neither as sacrifice nor as homicide, neither as the execution of a condemnation to death nor as sacrilege.”

³⁸⁵ *Ibid* at 76-78.

³⁸⁶ Although Agamben has patiently described the theories of those thinkers who have attributed a religious meaning to the sacred, and has started his analysis from the nineteenth century to the first half of the twentieth century, it is questionable that he has not mentioned Girard’s theory, which in his view falls within the same category. Rey Chow, *supra* note 51 at 141.

³⁸⁷ Agamben, *Homo Sacer*, *supra* note 19 at 80. “There is a moment in the life of concepts when they lose their immediate intelligibility and can then, like all empty terms, be overburdened with contradictory meanings. For the religious phenomenon, this moment coincides with the point at which anthropology – for which the ambivalent terms *mana*, *taboo*, and *sacer* are absolutely central – was born at the end of the last century.”

³⁸⁸ *Ibid* at 75. Although Agamben has not mentioned Girard’s theory in his criticism of the religious interpretation of the sacred, it has been argued that Girard also follows the same line of thought. Sarah Kathryn Hansen, “Agamben, Kristeva, and the Language of the Sacred” (2012) 56:2 *Philosophy Today* 164 at 164.

³⁸⁹ Agamben, *Homo Sacer*, *supra* note 19 at 73. “Neither position can account economically and simultaneously for the two traits whose juxtaposition, according to Festus, constitutes the specificity of *homo sacer*: the unpunishability of his killing and the ban on his sacrifice. In the light of what we know of the Roman juridical and religious order (both of the *ius divinum* and the *ius humanum*), the two traits seem hardly compatible: if *homo sacer* was impure (Fowler: *taboo*) or the property of the gods (Kerenyi), then why could anyone kill him without either contaminating himself or committing sacrilege?” [emphasis in the original]

³⁹⁰ It is worth mentioning that Agamben has not been totally persistent in his rejection of the religious reading of the sacred. In his later book, *The Time That Remains*, he has identified a ancient mode of social life where the

mythologeme is a narrative which while attempting to explain the problematic nature of the sacred is in need of explanation itself.³⁹¹

Prior to any further discussion of Agamben's definition of the sacred, it is important to turn to Girard and present his narrative of the sacred. Girard argues that at the height of the sacrificial crisis, the community whose existence is threatened by the self-perpetuating circle of violent conflicts is desperately looking for a solution to the crisis and trying to find the person who is responsible for all these atrocities.³⁹² Yet, in the absence of all norms and distinctions, it is almost impossible for people to make any judgment about the causes of the crisis. Girard believes that at this moment, a process of scapegoating becomes effective and helps the community to put an end to violence.³⁹³ In his view, since all distinctions and norms are erased, any accusation against a person who is not able to defend himself is deemed to be true and the community directs all the hostilities against that person, whom Girard call the scapegoat or the surrogate victim.³⁹⁴ In the Girardian narrative, the use of violence against the surrogate victim is the foundation of sacrificial rites, and in a more general context, is the foundation of religion and any sort of cultural institutions such as the legal structure.³⁹⁵ Similar to those thinkers of the twentieth century whose theory of the sacred Agamben criticizes, Girard also tries to present a contradictory definition of the sacred. Simply put, Girard state that when the community levels the accusation against the surrogate victim, he is perceived as the origin of the conflict; thus, he

distinction between religion, politics and law was not clear, and these realms were "interwoven." Giorgio Agamben, *The Time That Remains: A Commentary on the Letter to the Romans*, translated by Patricia Dailey (Stanford: Stanford University Press, 2005) at 116. See Christopher A. Fox, *supra* note 52 at 592.

³⁹¹ Agamben, *Homo Sacer*, *supra* note 19 at 80.

³⁹² Girard, *Violence and the Sacred*, *supra* note 23 at 77. "If the community is to be freed of all responsibility for its unhappy conditions and the sacrificial crisis converted into a physical disorder, a plague, the crisis must be first stripped of its violence, or rather, this violence must be deflected to some individual-in this case, Oedipus. In the course of tragic debate all the characters do their utmost to assist in this process. As we have seen, the inquest on Laius's death is in fact an investigation into general subject of the sacrificial crisis; and it is clearly a matter of pinning the responsibility for the troubled state of community on some individual, of framing a reply to the mythical question *par excellence*: "who initiated the crisis?"

³⁹³ *Ibid* at 67.

³⁹⁴ *Ibid* at 79. "A single victim can be substituted for all the potentials victims, for all the enemy brothers that each member is striving to banish from the community; he can be substituted, in fact, for each and every member of the community. Each member's hostility caused by clashing against others, becomes converted from an individual feeling to a communal force unanimously directed against a single individual. The slightest hint, the most groundless accusation, can circulate with vertiginous speed and is transformed into irrefutable proof."

³⁹⁵ *Ibid* at 92. "The presence of a religious element at the source of all human societies is indubitable; yet, of all social institutions, religion is the only one to which science has been unable to attribute a genuine objective, a real function. I contend that the objective of ritual is the proper reenactment of the surrogate-victim mechanism; its function is to perpetuate or renew the effects of this mechanism; that is, to keep violence *outside* the community.

is seen as a maleficent character. But, when the crisis is resolved, the scapegoat acquires a beneficent feature because his expulsion brings peace and harmony.^{396 397}

The *prima facie* conclusion we can draw from this brief introduction of the sacred-making process is that Girard's theory exactly follows the same line of thought Agamben is determined to reject. However, further elaboration of the Girardian theory provides us with an insight which reveals the proximity of these two arguments.

The first illuminating point is found in Girard's negative attitude towards the narrative which presents the sacred as an ambivalent and paradoxical phenomenon. Girard also takes note of Hubert and Mauss's study of sacrifice. In fact, Girard begins his book, *Violence and the Sacred*, with a criticism of their idea of the sacred. Girard argues that in their theory, the scapegoat is sacred, and it is not permitted to touch or kill the sacred person, and at the same time, the very reason which makes the scapegoat sacred is the fact that he is to be killed.³⁹⁸ Girard believes that this definition of the sacred is circular and cannot provide us with any insight on the true essence of the sacred.³⁹⁹ Girard's criticism of Hubert and Mauss's study is that If the sacred person is a figure who is devoted to the world of deities, then how is it possible for the community not to sacrifice but to to kill the scapegoat, whom is consecrated by the religious rite? As Hubert and Mauss say that repetition of the sacrifice over time gives birth to the idea of god, Girard asks

³⁹⁶ *Ibid* at 85. "At the supreme moment of the crisis, the very instant when reciprocal violence is abruptly transformed into unanimous violence, the two faces of violence seem to be juxtaposed; the extremes meet. The surrogate victim serves as catalyst in this metamorphosis. And in performing this function he seems to combine in his person the most pernicious and most beneficial aspect of violence. He becomes the incarnation, as it were, of a game men feign to ignore, one whose basic rules are indeed unknown to them: the game of their own violence." Although Girard has criticized Hubert and Mauss's study of the sacrifice, one element of their definition is similar to the Girardian theory. They define the ritual of sacrifice as an attempt by the society to purify its ills and problems by the expulsion of the victim. The attitude has been accepted by Girard as in his theory, the sacred was seen by the primitive societies as a means to eliminate the violence by the scapegoat mechanism. Marty Slaughter, "Sacrifice and the Singular" (2011) 7:1 Law, Culture, and Humanities 6 at 6.

³⁹⁷ The description Girard provides for the interpretation of the sacred gives us the impression that the sacred is a "healthy antidote to social anarchy," and the sacred is a response to aggression. Miranda Green, *Dying for the Gods: Human Sacrifice in Iron Age and Roman Empire* (Charleston: Tempus Publishing Inc. 2001) at 56. But it must be noted that although Girard believes that the scapegoat mechanism is the foundation of religion and human culture, he does not intend to justify the sacrificial foundation of the society. We have to bear in mind that Girard criticizes the mimetic behavior which is directed toward another human being, which gives birth to the crisis of violence.

³⁹⁸ Girard, *Violence and the Sacred*, *supra* note 23 at 1. Kathryn McClymond, *Beyond Sacred Violence: A Comparative Study of Sacrifice* (Baltimore: The Johns Hopkins University Press, 2008) at 45.

³⁹⁹ Girard, *Violence and the Sacred*, *supra* note 23 at 1.

then why and for what purpose the first victim is sacrificed.⁴⁰⁰ Agamben is also opposed to the idea that the first sacred person is killed in an act of sacrifice.⁴⁰¹

Having rejected the definition of the sacred by the twentieth century thinkers, Girard offers his own definition of the sacred in light of the sacrificial crisis which gives birth to the idea of the sacred. As stated above, at the height of the crisis, the community resembles a group of people who are totally similar to each other. The crisis-ridden community is a group of doubles, and the scapegoat is also one of these people, and it is not possible to distinguish him from others.⁴⁰² Thus, in order to understand the essence of the sacred person, it is important to determine what it means for a person to be a double of others? What does it mean for all members of the community to become identical?

The effacement of differences makes it impossible to assign any essence to the doubles of the sacrificial crisis. The sacrificial crisis marks the end of all significations, the significations which produce identity for each individual.⁴⁰³ Yet, the free play of violence brings about a realm of undifferentiation in which it is not possible to draw a line between man and animal, man and god.⁴⁰⁴ The term with which Girard defines the essence (or the lack of essence) of doubles is monstrosity.⁴⁰⁵ In order to justify his usage of the term, monster, Girard extensively relies on the interpretation of the ancient myths and Greek tragedies. As a case in point, he refers to Euripides' *Bacchae* in which we see an antagonism and rivalry between Dionysus and king of Thebes, Pentheus.⁴⁰⁶ In his work, Girard argues that two antagonists who are supposed to reside in different realms, the world of deities and the human world, become indistinguishable from each other, and each has claims to what is alien to him.⁴⁰⁷ Dionysus, a deity, comes out of his divine position and is mingled with human beings and Pentheus struggles to take the place of

⁴⁰⁰ *Ibid* at 89-90.

⁴⁰¹ Agamben, *Homo Sacer*, *supra* note 19 at 73.

⁴⁰² Girard, *Violence and the Sacred*, *supra* note 23 at 203.

⁴⁰³ *Ibid* at 49.

⁴⁰⁴ *Ibid* at 283. "Any man deprived of his status is transformed into a "monstrous double." ... Like Dionysus or the sacred king, he becomes a lion or leopard, ... expressing himself solely in growls and roars."

⁴⁰⁵ *Ibid* at 162, "doubles are always monstrous, and duality is always an attribute of monsters."

⁴⁰⁶ *Ibid* at 119-142.

⁴⁰⁷ *Ibid* at 128. "The characteristics of each protagonist are all reproduced to a degree, in the other. For example, the divinity of Dionysus is counter-balanced by a secret humanity implied by his appearance as a long-haired youth. Similarly, the humanity of Pentheus is counterbalanced, if not by divinity, at least by a delusion of divinity, revealed in the superhuman claims that accompany his final submission to Dionysiac spirit. ... In the Dionysiac frenzy all differences between man and god tend to disappear."

Dionysus; in other words, he has a claim to divinity.⁴⁰⁸ Of course, this work of Euripides is not the only piece upon which Girard has established his argument, and many tragedies such as Sophocles' *Oedipus The King*, and many rites such as rituals for the succession of monarchs in different cultures are explained in detail; but a thorough and comprehensive analysis of all these resources goes beyond the scope this study. It must be noted that the gist of all these rites and tragedies for Girard is that any determinate feature which has been attributed to the monstrous doubles in these works are of no importance since in his view the true essence of monstrous doubles is their indeterminate character and undifferentiation. In this regard, Girard states that:

“Nothing is more futile than to seek distinctions among these monsters, unless it is the attempt to derive psychological insight from their stories, insights pertaining to either to individuals or to the “collective consciousness.” Of all learned pursuits undertaken in the course of Western history, that one is surely the most foolhardy.”⁴⁰⁹

E. The Scapegoat and *homo sacer*

This statement reveals one of the common grounds upon which both Agamben and Girard have founded their theories. In his analysis of Durkheim's theory of the sacred, Agamben says that the attempt by thinkers such as Durkheim who attribute contradictory feelings to the notion of the sacred is made with the purpose of producing a psychological content for the concept of the sacred because they are not able to reach the real origin of the sacred.⁴¹⁰ Agamben says that since the modern thinkers feel unease in front of the sacred, they try to take refuge in a narrative which reduces the sacred to a phenomenon that contains paradoxical feelings such as horror and reverence.⁴¹¹ In Agamben's view, this is the psychologization of the sacred which veils its true meaning. The same reasoning can be found in the Girardian theory since Girard believes that the paradoxical interpretation of the sacred which loses sight of the indeterminate origin of the sacred is an attempt to give psychological content to the violent essence of the sacred.⁴¹²

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid* at 253.

⁴¹⁰ Agamben, *Homo Sacer*, *supra* note 19 at 78.

⁴¹¹ *Ibid.*

⁴¹² Girard, *Violence and the Sacred*, *supra* note 23 at 251. “In addition to such “personalized” interpretations, there is an impersonal approach. It corresponds to the full range of the term *sacred*, or rather, of the Latin *sacer*, which is sometimes translated “sacred,” sometimes “accursed,” for it encompasses the maleficent as well as the beneficent. Analogous words can be found in many languages; the ‘ famous *mana* of the Melanesians, for example, or the

In another instance, Girard holds that:

“As we have seen, differences disappear in the domain of the sacred only because they are indiscriminately mixed together and become indistinguishable in the confusion. To be associated with the sacred is to share in this monstrosity; to be lacking in differences or over-equipped with them comes to the same thing.”⁴¹³

In light of above-mentioned arguments, it is reasonable to claim that the idea of the sacred in both theories is to some extent similar. As Agamben criticizes the religious interpretation of the sacred, he says that the concept of the sacred stems from a zone of indistinction between the profane world, and the religious world of divinity.⁴¹⁴ The same realm is discernible in the Girardian theory. The sacred for Girard pertains to the realm in which it is not possible to distinguish divinity from the human world.⁴¹⁵ The sacred in the Girardian theory is a threshold - if we use Agamben's words - between god and human. In Agamben's philosophy, the threshold which is defined by the suspension of divine and human laws is the origin of both realms. Girard also believes that only by the emergence of the monstrous scapegoat, or the sacred victim, and his expulsion, the worlds of divinity and humanity are established and separated from each other.⁴¹⁶

Another trait of the sacred, which is in fact the lack of any trait, is the destruction of all meanings and significance. Agamben insists that the sacred person belongs to the state of exception in which law is devoid of any content, it appears as pure force, and violence is in effect.⁴¹⁷ Thus, the sacred person is stripped of any significance and meaning which regulate

wakan of the Sioux and the *orenda* of the Iroquois. In one respect at least the structure of the *sacer* is the least deceptive, the least mythic of all; it postulates no single master of ceremonies, no intervention by a privileged party, even a superhuman one. The fact that the *sacer* can be understood in terms that require no anthropomorphic presence demonstrates that religion should not be defined as animism or anthropomorphism. If religion consisted of "humanizing" the nonhuman or bestowing "souls" wherever they were felt to be lacking, an impersonal apprehension of the sacred would not be possible.”

⁴¹³ *Ibid* at 282.

⁴¹⁴ Agamben, *Homo Sacer*, *supra* note 19 at 86. “This double excess opens the zone of indistinction between and beyond the profane and the religious that we have attempted to define. From this perspective, many of the apparent contradictions of the term “sacred” dissolve.”

⁴¹⁵ Girard, *Violence and the Sacred*, *supra* note 23 at 128.

⁴¹⁶ *Ibid* at 198. “A careful comparison of sacrificial rites and totemic beliefs will bring out certain dominant strains that have a direct bearing on the subject of collective murder. All the signs seem to suggest that the gods, along with the community itself, owe their origin to internal and unanimous violence and to a victim who is a member of the community.”

⁴¹⁷ Agamben, *Homo Sacer*, *supra* note 19 at 51. “Everywhere on earth men live today in the ban of a law and a tradition that are maintained solely as the “zero point” of their own content, and that include men within them in the form of a pure relation of abandonment.”

both realms of divinity and humanity. The sacred in the Girardian narrative is also a phenomenon without any significance.⁴¹⁸

Yet, with respect to the Girardian theory, this question remains: how is it possible to attribute contradictory traits to the indeterminate essence of the sacred? As stated before, Girard argues that the sacred victim is perceived as an agent of evil at the height of the sacrificial crisis, and is deemed to be a beneficent character when peace is restored.

Girard states that both the maleficent and beneficent features of the scapegoat stem from the monstrous nature of the sacred.⁴¹⁹ In fact, the sacred victim not only represents the destructive and negative feature of all members of the community who are attracted to the violent oppositions, but he also manifests the productive essence which leads to the restoration of peace and harmony.⁴²⁰ Yet, the question remains how the community struggling with the crisis of doubles can make such judgment about the positive and negative features of the sacred when the same community is deprived of any sort of norm employed for judgment?

The answer Girard provides for the ambivalent nature of the sacred is that all these features - be they negative or positive - are attributed to the sacred victim retrospectively.⁴²¹ In fact, he believes that the transfiguration the sacred victim goes through is necessary for the whole process to achieve its goal.⁴²² The underlying reason for the necessity of transfiguration is that since the selection of the victim is essentially arbitrary, the community attributes these features to the sacred victim in order to justify its violent decision, that is, the expulsion of the

⁴¹⁸ Girard, *Violence and the Sacred*, *supra* note 23 at 282. "As we have seen, differences disappear in the domain of the sacred only because they are indiscriminately mixed together and become indistinguishable in the confusion. To be associated with the sacred is to share in this monstrosity; to be lacking in differences or overequipped with them comes to the same thing."

⁴¹⁹ *Ibid* at 251. "As we have seen, the surrogate victim meets his death in the guise of the monstrous double. All sacred creatures partake of monstrosity, whether overtly or covertly; this aspect of their nature can be traced to the monstrous double. The marriage of beneficent and maleficent constitutes, of course, the original and fundamental monstrosity, the superhuman creature's absorption of the difference between "good" and "bad" difference, that basic difference that dominates all others."

⁴²⁰ The same narrative is adopted by Durkheim who believes that the sacred rituals enables the community members to acquire collective identity while the effervescent process of the ritual takes away the subjective traits of each person. In fact, the productive effect of the ritual is achieved by the destruction of the subjectivity and the creation of the collectivity to which each person has access. S. Romi Mukherjee, *supra* note 3 at 29.

⁴²¹ Girard, *Violence and the Sacred*, *supra* note 23 at 64. "Monstrosities recur throughout mythology. From this we can only conclude that myths make constant reference to the sacrificial crisis, but do so only in order to disguise the issue. Myths are the retrospective transfiguration of sacrificial crises, the reinterpretation of these crises in the light of the cultural order that has arisen from them."

⁴²² James G. Williams, ed, *The Girard Reader*, (New York: The Crossroad Publishing Company, 1996) at 14.

scapegoat.⁴²³ Thus, the scapegoat mechanism totally depends upon the concealment of the violent nature of the excluding decision.⁴²⁴ Girard claims that the concealment is carried out by the myths which emerge after the expulsion of the scapegoat; they produce a narrative for the community regarding its sacrificial crisis.⁴²⁵

The mythical narrative which tries to justify the expulsion of the scapegoat maintains its validity because the expulsion of the victim helps the community to distance itself from the sacrificial crisis and make it a matter of the past.⁴²⁶ The exclusion of the victim enables the community to begin a new era, and create a new domain of social life in which everything is put in its proper place.⁴²⁷ The deities will reside in the world of divinity, and human beings find their proper place in the profane world. Thus, it is arguable that the illuminating feature of the Girardian theory lies in the fact that he tries to demystify the mythical definition of the sacred, which Agamben calls the “scientific mythologeme,” and to find a pure violent decision at the heart of the sacred which is devoid of any paradoxical elements. The proximity of these theories can be brought to light if we understand that both Agamben and Girard define without any recourse to the mythical narrative⁴²⁸ the true essence of the sacred as a violent event which is

⁴²³ Girard, *Violence and the Sacred*, *supra* note 23 at 132. “The collective violence is openly displayed, but the essential process —the arbitrary choice of the victim and the sacrificial substitution that restores unity—remains concealed. The actual expulsion of the victim recedes from sight and maintains its efficiency by appearing only in the guise of institutionalized sacrifice. From the viewpoint of the sacrificial crisis, the relationship between the *doubles*, Dionysus and Pentheus, is reciprocal in a double sense. There is no reason why it should be Dionysus rather than Pentheus who sacrifices his companion. Yet from the viewpoint of established religion, even if this reciprocity is at one level acknowledged and the sacrificer and his victim are recognized as *doubles*, on another and more basic level this same reciprocity is abolished. The direction must not be allowed to reverse itself; it has been fixed once and for all, and the expulsion is always understood to have *already* taken place.”

⁴²⁴ *Ibid.* Girard believes that the differences which individuals claim to possess in their mimetic and sacrificial behaviors can remain intact as long as the true essence of the scapegoat mechanism, arbitrary selection of the victim, is concealed. If its essence is revealed, the whole mechanism becomes ineffective. Jean-Pierre Dupuy, “Totalization and Misrecognition” translated by Mark R. Anspach, in Paul Dumouchel, ed, *Violence and Truth: On the Work of René Girard* (Stanford: Stanford University Press, 1988) at 78.

⁴²⁵ Girard, *Violence and the Sacred*, *supra* note 23 at 132.

⁴²⁶ *Ibid* at 82. “As Oedipus and Tiresias show us, the knowledge of these violent impulses continues to expand in the course of the sacrificial crisis. However, far from restoring peace, the knowledge only increases the antagonists’ awareness of the *other’s* violence, thereby serving to intensify the controversy. This baleful knowledge, this lucidity that is only another manifestation of violence, is succeeded by an all-inclusive; ignorance. At a single blow, collective violence wipes out all memory of the past.” *Ibid* at 83. “From what we have seen, it seems likely that the process of finding a surrogate victim constitutes a major means, perhaps the sole means, by which men expel from their consciousness the truth about their violent nature—that knowledge of past violence which, if not shifted to a single “guilty” figure, would poison both the present and the future.”

⁴²⁷ *Ibid* at 168.

⁴²⁸ Christopher A. Fox, *supra* note 52 at 573.

thinkable for us only through its exclusion from the realm of human life - be it religious or profane.⁴²⁹

The dual character of the sacred in the Girardian theory may show its affinity with the juridico-political definition of Agamben's theory from another perspective. As stated above, the paradoxical definition of the sacred in terms of being maleficent and beneficent at once in Girard's view is a result of the process through which the sacred emerges in the community.⁴³⁰ The sacred victim is deemed as beneficent only when he is excluded from the community.⁴³¹ Girard thinks that the process of expulsion enables the community to "dehumanize" violence, and attribute to it something non-human.⁴³² Although Girard holds that the exclusion of violence is a way to make the violence appear as a transcendental phenomenon,⁴³³ it must be noted that the transcendence of violence is from the beginning tied with the exclusion. Then, it is arguable that within the Girardian narrative violence attributed to the scapegoat has no place in the profane world, and its transcendental exclusion prepares the situation for the emergence of order and norms.⁴³⁴

⁴²⁹ Girard, *Violence and the Sacred*, *supra* note 23 at 309. "Even if innumerable intermediary stages exist between the spontaneous outbursts of violence and its religious imitations, even if it is only these imitations that come to our notice, I want to stress that these imitations had their origin in a real event. The actuality of this event, over and above its existence in rite and record, must be kept in mind. We must also take care not to restrict this event to any one context, any one dominant intellectual framework, whether semantic or symbolic, which lacks a firm basis in reality." Agamben, *Homo Sacer*, *supra* note 19 at 83. "What is captured in the sovereign ban is a human victim who may be killed but not sacrificed: *homo sacer*. If we give the name bare life or sacred life to the life that constitutes the first content of sovereign power, then we may also arrive at an answer to the Benjaminian query concerning "the origin of the dogma of the sacredness of life." The life caught in the sovereign ban is the life that is originally sacred – that is, that may be killed but not sacrificed – and, in this sense, the production of bare life is the originary activity of sovereignty. The sacredness of life, which is invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses precisely both life's subjection to a power over death and life's irreparable exposure in the relation of abandonment."

⁴³⁰ Girard, *Violence and the Sacred*, *supra* note 23 at 275.

⁴³¹ *Ibid* at 85.

⁴³² *Ibid* at 135. "To think religiously is to envision the city's destiny in terms of that violence whose mastery over man increases as man believes he has gained mastery over it. To think religiously (in the primitive sense) is to see violence as something superhuman, to be kept always at a distance and ultimately renounced."

⁴³³ *Ibid* at 134. "It [religion] protects man from his own violence by taking it out of his hands, transforming it into a transcendent and ever-present danger to be kept in check by the appropriate rites appropriately observed and by a modest and prudent demeanor." See Banu Bargu, "Unleashing the Acheron: Sacrificial Partisanship, Sovereignty, and History" (2010) 13:1 Theory and Event <http://muse.jhu.edu/journals/theory_and_event/v013/13.1.bargu.html>

⁴³⁴ Girard, *Violence and the Sacred*, *supra* note 23 at 134.

The same argument may be applied to Agamben's theory. In fact, he explicitly states that *homo sacer* has no dwelling in the profane world.⁴³⁵ His status can be understood only through his lack of position within the realm of human law. This is in Agamben's view the clear manifestation of the exclusive inclusion of the sacred. Similarly, Girard provides anthropological materials in justification of Agamben's logical definition of the exclusive inclusion. Girard argues that although the scapegoat is excluded from the community, its tie with the community is not completely severed.⁴³⁶ This connection is made possible through the sacrificial rituals which are held within a particular context while many rules govern the communication between the community and the sacred. On the one hand, he says that if the connection between the sacred and the community goes beyond the boundaries, it provokes a new sacrificial crisis.⁴³⁷ On the other hand, if the connection is cut and the community loses sight of its sacred origin, the community will be again susceptible to the free play of violence.⁴³⁸ Thus, Girard argues that the community whose existence is founded upon the exclusion of the scapegoat can maintain its peace and harmony only when it continues its social life under the spell of the sacred without being contaminated by the sacred.⁴³⁹

F. Wolf-man and *Pharmakos*

In previous pages, numerous parts of the Girardian theory have been discussed to show that the definition of the sacred for Girard is not so far from Agamben's view although at first each seems to propose the arguments which are rejected by the other. Yet, in spite of all the similarities which have been claimed in this thesis, we still need to address this question: how can we locate the concept of the sovereign in the Girardian theory? In fact, Agamben's theory of

⁴³⁵ Agamben, *Homo Sacer*, *supra* note 19 at 100. "We find ourselves confronted with a bare life that has been separated from its context and that, so to speak surviving its death, is for this very reason incompatible with the human world."

⁴³⁶ Girard, *Violence and the Sacred*, *supra* note 23 at 286. "This is not to say that the mediative element has been eliminated. A total separation of the community and the sacred would be fully as dangerous as a fusion of the two. Too great a separation can result in a massive onslaught of the sacred, a fatal backlash; then, too, there is always the risk that men will neglect or even forget how to implement the preventive measures taught them by the sacred itself as a defense against its own violence. Human existence thus remains under the constant tutelage of the sacred and is observed, regulated, and promoted by it."

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.*

⁴³⁹ *Ibid.*

the sacred is established upon a dichotomy between the sacred person, *homo sacer*, and the sovereign, and their common ground is the exercise of law devoid of any rule in terms of pure and unbounded violence. But, with respect to the Girardian theory, we are confronted with two poles which are the sacred victim, and the community. In this theory, the scapegoat is viewed as the source of all good and evil forces, and the community in spite of its excluding action is regarded as a passive entity which has no role in the politics of violence.⁴⁴⁰ Of course, Girard claims that the religious interpretation has been invented by the community to deny its part in the outbreak of violence in the sacrificial crisis.⁴⁴¹ In fact, the scapegoat mechanism gains all its force through this alteration of truth, the truth which shows that the sacrificial crisis has its roots in the reciprocal violent hostilities in which all member of the community as monstrous doubles were involved.⁴⁴² Girard argues that the monstrosity attributed to the sacred victim in fact reflects the same indeterminate nature which constitutes the essence of all antagonists of the sacrificial crisis.⁴⁴³ The active role of the sacred victim in the eyes of the community members and their passive role in the crisis is a myth which enables them to transfer the whole collective responsibility to a single person.⁴⁴⁴ Yet, the presence of the sovereignty in the Girardian theory remains unclear. Since we are confronted with two poles, we might reinstate the question above in the following terms: Is the sacrificial community as a whole the sovereign which manifests its capacity to kill beyond any human law and religious belief? Or does the scapegoat also possess the features which in Agamben's analysis belong to the sovereignty?

⁴⁴⁰ *Ibid* at 76. "Patricide and incest serve the same purpose here as do twins in many primitive religions. The crimes of Oedipus signify the abolishment of differences, but because the nondifference is attributed to a particular individual, it is transformed into a new distinction, signifying the monstrosity of Oedipus's situation. The nondifference became the responsibility, not of society at large, but of a single individual."

⁴⁴¹ *Ibid* at 135. "Men would not be able to shake loose the violence between them, to make of it a separate entity both sovereign and redemptory, without the surrogate victim. Also, violence itself offers a sort of respite, the fresh beginning of a cycle of ritual after a cycle of violence. Violence will come to an end only after it has had the last word and that word has been accepted as divine. The meaning of this word must remain hidden, the mechanism of unanimity remain concealed. For religion protects man as long as its ultimate foundations are not revealed. To drive the monster from its secret lair is to risk losing it on mankind. To remove men's ignorance is only to risk exposing them to an even greater peril. The only barrier against human violence is raised on misconception."

⁴⁴² *Ibid*.

⁴⁴³ *Ibid* at 275.

⁴⁴⁴ *Ibid* at 77. "At the conclusion of his drama Sophocles has Oedipus address the Thebans in the terms best calculated to quell their doubts and fears. He assures them that all the evils abroad in the community are the sole responsibility of the surrogate victim, and that he alone, as that victim, must assume the consequences for these ills: "Believe me, you have nothing more to fear. My ills are mine alone, no other mortal is fit to bear them." Oedipus is indeed the responsible party, so responsible that he frees the community from all accountability.

In order to answer these questions, it is tenable to turn to the symmetry between the sovereignty and the sacred person which Agamben has elaborated in the anthropological part of his theory. There is no doubt that Agamben gives primacy to the argument which he presents in the first chapter of *Homo Sacer* about the sovereignty and the concept of the sacred. These arguments are not based upon the anthropological and historical materials which he later discusses in the second chapter of his book. However, as his theory unfolds, he turns to some historical studies to reinforce the logico-formal definition of the sacred.⁴⁴⁵

The focus of his analysis is placed on the rites of *devotus* and the imperial Roman *consecratio*. The devotee is a warrior who has given up his life and devoted it to the well-being of the city which is in a war with an enemy, and in this way, he has exposed his life to death.⁴⁴⁶ Yet, if the warrior survives the battle, his living body does not possess a normal life for his political life has been devoted to the city; thus, his living body manifests the bare life of the warrior which is situated in a threshold between two worlds of living people and the dead.⁴⁴⁷ Then, a rite must be conducted in which a substitute will be buried under the ground to compensate for the death which should have occurred since by devoting his life to the city, the bare life of the warrior must be exposed to death.⁴⁴⁸

Another manifestation of bare life can be found at the time the sovereign, which in Agamben's book is the Roman emperor, dies and the funeral can begin only when a wax effigy of the emperor is burned and buried.⁴⁴⁹ The funeral of the wax effigy takes place a few days after the real death of the sovereign. Agamben believes that in this case, again we are confronted with the sacred life, but this sacred life which is the counterpart of the sacred life of *homo sacer* resembles the absolute power of the sovereign.⁴⁵⁰ This absolute power is the one which cannot be contained in any rule and is exercised upon the sacred person whose life can be taken with impunity and without any religious sacralization. Therefore, in the state of exception, both the

⁴⁴⁵ Agamben, *Homo Sacer*, *supra* note 19 at 109.

⁴⁴⁶ *Ibid* at 96.

⁴⁴⁷ *Ibid* at 97. "Why does the survival of the devotee constitute such an embarrassing situation for the community that it forces it to perform a complex ritual whose sense is so unclear? What is the status of the living body that seems no longer to belong to the world of the living? In an exemplary study, Robert Schilling observes that if the surviving devotee is excluded from both the profane world and the sacred world, "this happens because this man is *sacer*."

⁴⁴⁸ *Ibid*.

⁴⁴⁹ *Ibid* at 93.

⁴⁵⁰ *Ibid* at 101.

body of the sacred person and the sovereign point to the sacred origin of law, which is founded upon the bare life of human being.⁴⁵¹

The symmetry between the sacred person and the sovereignty is instructive for the sake of the comparison between Agamben's and Girard's theories. Similar to Agamben's analysis of the symmetry, Girard refers to the Greek myths and the monarchy succession rites. *Oedipus, the King* gives us the clue to the Girardian theory of symmetry. Girard says that the fate of Oedipus discloses the destiny of the scapegoat *par excellence* because at the time the community decides to expel him, he is seen as the source of all the problems from which the Thebans suffer, and after his expulsion in *Oedipus at Colonus* he is viewed as the source of harmony and peace.⁴⁵² Girard while borrowing from Jean-Pierre Vernant, defines him with a dual character. This duality is not about the beneficent and maleficent character of Oedipus. Here he is seen as both the *pharmakos* and the sovereign. Oedipus as "*tyrannos-pharmakos*" in Girard's view provides us with a clue to the violent origin of human culture.⁴⁵³ In fact, in the Girardian theory, the scapegoat has been granted the sovereign status because in the eyes of the community members, he is the one who has access to the pure and unbounded violence which gives birth to the community order and peace.⁴⁵⁴ Yet, a misconception and alteration of truth prevent the community to see its real foundation. Girard argues that in reality it is not the scapegoat who has exercised the absolute power, and this task has been done by the community.⁴⁵⁵ Yet, in order to ignore the murderous origin of order and peace, the community transfers the responsibility of the sacrificial crisis from the collective body to a single person. As stated before, the surrogate victim only reflects the monstrous character of the doubles, and each and all members of the community are monstrous doubles in the sacrificial crisis. Both Agamben and Girard believe that

⁴⁵¹ *Ibid* at 100.

⁴⁵² Girard, *Violence and the Sacred*, *supra* note 23 at 85.

⁴⁵³ *Ibid* at 108-109. The symmetry of the tyrant and the scapegoat also points to the fact that the human reality can be defined by these two figures whose essences are bestial; thus, they have no dwelling in the normal state of affairs. Adam Sitze, "The Question of Law Analysis" (2007) 64:3 *American Imago* 381 at 394-395.

⁴⁵⁴ Girard, *Violence and the Sacred*, *supra* note 23 at 109. "Only the social utility of this collective violence can account for a politicoritualistic scheme that consists not only of constantly repeating the process but also of making the surrogate victim the sole arbitrator of all conflicts, proclaiming it a veritable incarnation of absolute sovereignty."

⁴⁵⁵ *Ibid*.

the Hobbesian notion of the state of nature in which every man is a wolf to others alludes to this essence of human order whose origin is the monstrous and unregulated use of violence.⁴⁵⁶

The idea that the scapegoat reflects the monstrous essence of the community members in the sacrificial crisis helps us understand the real symmetrical relation between the sacred victim and its community. In this regard, Girard states that “surely, it is the symmetry of doubles that is being suggested [in the *Bacchae*]; that of the surrogate victim and the community that expels it, of the sacrificed and the sacrificer.”⁴⁵⁷ Thus, it is arguable that similar to Agamben’s narrative, the Girardian theory is also founded on a symmetrical relation between the scapegoat, bearer of the sacred, and the community which exercises its absolute power in the sacrificial crisis. In addition, it is arguable that sovereignty in Agamben’s view is a more concrete phenomenon than the Girardian theory. While Agamben depicts the situation in which the sovereign fully exists, Girard points to the circumstances in which the community appears as the sovereign at the moment it has made its decision to expel the scapegoat.

The same symmetrical relation has been identified by Girard in the monarchy succession rites. In some African tribes, before the succession of the new king, the king is allowed or even in some cases compelled to engage in various transgressions.⁴⁵⁸ These transgressions are those acts which in the normal situation constitute the wrongs with highest condemnation such as incest. Girard believes that the king is enabled to show his relation to the original foundation of the community, that is, the surrogate victim.⁴⁵⁹ Since the surrogate victim is perceived by the community as the bearer of the absolute sovereignty and as the one who has access to the pure destructive violence which is the real arbiter of the sacrificial crisis, the king is also required to show its proximity to the same origin. When the African king commits the most heinous wrongs, he discloses his claim to the same source of monstrous power.⁴⁶⁰ To apply Agamben’s terms, it is arguable that the king manifests his relation with the sacred life by his transgressions which only suggest the suspension of any norm and the exercise of absolute power.

⁴⁵⁶ René Girard & Mark R. Anspach, “A Response: Reflections from the Perspective of Mimetic Theory” (1991) 3:3 *Terrorism and Political Violence* 141 at 147. Agamben, *Homo Sacer*, *supra* note 19 at 105-106.

⁴⁵⁷ Girard, *Violence and the Sacred*, *supra* note 23 at 163.

⁴⁵⁸ *Ibid* at 104.

⁴⁵⁹ *Ibid* at 106.

⁴⁶⁰ *Ibid* at 107.

The commission of these transgressions by the king in the Girardian theory refers to the bestial essence of the sovereignty which the king possesses.⁴⁶¹ The bestiality, which exclusively belongs to the world of the sacred, at first only resides in the monstrous character of the scapegoat. Yet, as stated above, the monstrosity of the scapegoat is the result of the mythical transfiguration. The monstrosity which the scapegoat symbolizes mirrors the monstrous essence of the community. In the sacrificial crisis, the real content of all the community members' behaviors is violence, which is the ultimate arbiter of the human actions. Therefore, since the Girardian theory defines the absolute sovereignty as the pure violence, then, the sovereign king also possesses the same bestial character. The idea of the sovereign's bestiality also finds its reflection in Agamben's theory in the figure of the wolf-man.⁴⁶² The sovereign who uses the pure force of law against *homo sacer* is in relation to a kind of life which is neither the animal and natural life, nor the human life.⁴⁶³ This zone embraces the bare life, and this zone of indistinction cannot be contained in any human or natural category. Girard also insists that the realm of the sacred is beyond any known limits and categories.⁴⁶⁴ The sacred by its monstrous essence puts an end to all religious and profane categories.

Yet, the symmetry between the sacred and the sovereignty in its pure form points to a problem which makes these two theories incompatible. Both the sovereign and *homo sacer* in Agamben's theory find their origin in the existence of a threshold which is the zone of bare life, but they are two opposite poles of this exceptional zone. The sovereign has access to the absolute power, and *homo sacer* lives the body upon which this power is exercised. The Girardian narrative however is based upon the dual character of the scapegoat, its destabilizing essence and peace-making effect. But, it should not be neglected that in reality the scapegoat is not alone in the creation of the sacred world. Although myths such as Oedipus suggests that Oedipus has

⁴⁶¹ *Ibid* at 252, "The sacred king is also a monster. He is simultaneously god, man, and savage beast. Royal titles like "the Lion" or "the Leopard" may degenerate into mere formulas, but they have their origin in memories of the monstrous double and generative unanimity."

⁴⁶² Agamben, *Homo Sacer*, *supra* note 19 at 108.

⁴⁶³ *Ibid* at 109. "Yet this life is not simply natural reproductive life, the *zoē* of the Greeks, nor *bios*, a qualified form of life. It is, rather, the bare life of *homo sacer* and the *wargus*, a zone of indistinction and continuous transition between man and beast, nature and culture." See Miachel Marder, *supra* note at 53.

⁴⁶⁴ Girard, *Violence and the Sacred*, *supra* note 23 at 266. "Once the outer limits of the community have been crossed we enter the domain of savage sacredness, which recognizes neither boundaries nor limits."

brought about this horrifying destiny for himself, the sacred-making process has another pole, that is, the community's unanimous act of expulsion.⁴⁶⁵

In order to justify the presence of the paradoxical features in one figure, Girard claims that over time the sovereign king has been detached from the scapegoat, and the sovereign undertakes the unanimous act of expulsion and the absolute exercise of violence while a ritual victim becomes the body which is exposed to the unanimous violence.⁴⁶⁶ Simply put, Girard suggests that in the primitive societies it was not possible for human beings to distinguish two contradictory features of the sacred.⁴⁶⁷ Then, the development of the political structure of power prepares ground for the establishment of the sovereignty which becomes stable by distancing from the unstable sacrificial origin and responsible for the exercise of unbounded violence.⁴⁶⁸ However, it must be noted that the separation between the sovereign which is in charge of the sacred violence, and the scapegoat does not eliminate the common ground of both figures in the paradoxical essence of human condition. To this end, Girard states that the scapegoat, the sacred person, is the "prototype of human beings" because the tendency to uncontrolled use of violence which is at the origin of any regulative norm does not only belong to the scapegoat, but to all members of the community, and this is the essence of any cultural order.⁴⁶⁹ In his view, the figure of *Richard II* in Shakespeare's work points to the very ground of this double tendency in the human reality. This is not surprising that in order to interpret Shakespeare's work and explain the sacred life of the king, Girard, similar to Agamben, relies on Ernst Kantorowicz's famous study, *The King's Two Bodies*.⁴⁷⁰ The conclusion he draws from Kantorowicz's study is that all the various stages the king goes through from the rise to power to his fall is accompanied by one

⁴⁶⁵ *Ibid* at 77. "At the conclusion of his drama Sophocles has Oedipus address the Thebans in the terms best calculated to quell their doubts and fears. He assures them that all the evils abroad in the community are the sole responsibility of the surrogate victim, and that he alone, as that victim, must assume the consequences for these ills: "Believe me, you have nothing more to fear. My ills are mine alone, no other mortal is fit to bear them." Oedipus is indeed the responsible party, so responsible that he frees the community from all accountability."

⁴⁶⁶ *Ibid* at 304-305. "With the passage of time the substitute victim's authority becomes more durable, more stable; the factors opposing it lose their importance, and another victim, human or animal, is substituted for the king. Everything that has to do with the reverse side of supreme authority—wrongdoing and humiliation, maleficent violence and sacrificial punishment—becomes merely "symbolic" and soon disappears from view. The vestiges of ritual are like traces of chrysalis clinging to an insect; they are soon discarded. Sacred royalty is transformed into royalty pure and simple, into political power."

⁴⁶⁷ *Ibid* at 85.

⁴⁶⁸ *Ibid* at 305.

⁴⁶⁹ *Ibid* at 305.

⁴⁷⁰ *Ibid*.

hidden fact, that is, the “naked misery of man.”⁴⁷¹ In the Girardian analysis, the miserable human condition stems from the fact that while human beings try to escape the violence, the seed of violence is sown in his nature.

G. The Sacred Law

It is now possible to provide more elaboration on the Girardian narrative of the sacred as the origin of law. In fact, arguments which have been discussed in previous pages enable us to turn to Girard’s approach toward law. The scapegoat as the bearer of the sacred life incarnates both the victim and the sovereign; the true essence of the sacred is indeterminate violence which cannot be delimited by any human category, and it can ruin any norm and border. These arguments prepare ground for the transition from the general context of the sacred as the foundation of all cultural orders to the presence of the sacred in the origin of law.

Girard takes great care to prove that the sacred as the origin of any order is the founding force of religion. Thus, the question is whether Girard’s idea of religion is the same religious interpretation Agamben rejects or there is a link between Girard’s religion and Agamben’s idea of law. It is necessary to investigate if what Girard thinks of religion possesses the juridico-political nature which Agamben attributes to the sacred as the origin of law. In fact, in his view, any order, and even human civilization in general, begins with the formation of religion, and religion is defined as the original force which becomes effective in the form of a unanimous violent act.⁴⁷² The unanimous violence for Girard is the source of communal life since it provides

⁴⁷¹ Ernst Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political theology*, (Princeton: Princeton University Press, 1957) at 27, cited in Girard, *Violence and the Sacred*, supra note 23 at 305. “The duplications, all one, and all simultaneously active, in Richard— *Thus play I in one person many people* (5.5. 31)—are those potentially present in the King, the Fool and the God. They dissolve, perforce, in the Mirror. Those three prototypes of “twin-birth” intersect and overlap and interfere with each other continuously. Yet, it may be felt that the “King” dominates in the scene on the Coast of Wales (3.11), the “Fool” at Flint Castle (3.111), and the “God” in the Westminster scene (4.1) with Man’s wretchedness as a perpetual companion and antithesis at every stage. Moreover, in each one of those three scenes we encounter the same cascading: from divine kingship to kingship’s “Name” and from the name to the naked misery of man.”

⁴⁷² Girard, *Violence and the Sacred*, supra note 23 at 302. “The various “scapegoat” phenomena are not the reflection of some ill-articulated guilt complex, but rather the very basis of cultural unification, the source of all rituals and religion.”

human beings with the possibility of social coexistence.⁴⁷³ Religion for him paves the way for harmony since it eliminates all hostilities inherent in the mimetic structure of human desire, otherwise nothing could stop human beings from annihilating their social life.⁴⁷⁴ The religion removes the tendency to violence and vengeance because the unanimous violent action appears as the final act of violence which satisfies all the needs for violence.⁴⁷⁵ I do not intend to discuss the correlation between vengeance and the origin of law. In my view, it is possible to approach the idea of origin from the perspective which has been elaborated in this study. This perspective shows that the sacrificial state from which the law emerges makes it impossible to find any solution to the problem of violence on the basis of a judgment that is derived from a rule or a norm. The exceptional nature of this situation forces human beings to make a decision for the problem to which no norm or regulation can provide any answer.

The ultimate decision of the community which for Girard has tragic nature is justified by religion, which originates in the sacrificial crisis. The role of religion, and all succeeding myths and rituals is to present a narrative which can justify the arbitrary use of violence against the scapegoat.⁴⁷⁶ In light of these arguments, Girard believes that his theory seems foreign to modern thinkers because in the modern community the need for justifying the violent origin of social life is satisfied by the legal structure.⁴⁷⁷ The legal structure serves the role which used to be played by the religion, myths, and rituals because the authoritative interpretation which the legal rules provide helps us make a decision which was impossible for the primitive societies to reach. Girard says that the rationality and the impartiality of the legal system removes any doubt about the validity of the decision the legal structure renders in any individual case.⁴⁷⁸ In fact, the

⁴⁷³ *Ibid* at 144. "social coexistence would be impossible if no surrogate victim existed, if violence persisted beyond a certain threshold and failed to be transmuted into culture. It is only at this point that the vicious circle of reciprocal violence, wholly destructive in nature, is replaced by the vicious circle of ritual violence, creative and protective in nature."

⁴⁷⁴ *Ibid* at 221.

⁴⁷⁵ *Ibid*.

⁴⁷⁶ *Ibid* at 81. "*violent unanimity* will, I believe, reveal itself as the fundamental phenomenon of primitive religion; although wherever it plays a crucial role it is completely, or almost completely, absorbed by the mythological forms it engenders."

⁴⁷⁷ *Ibid* at 18. "When we minimize the dangers implicit in vengeance we risk losing sight of the true function of sacrifice. Because revenge is rarely encountered in our society, we seldom have occasion to consider how societies lacking a judicial system of punishment manage to hold it in check. Our ignorance engages us in a false line of thought that is seldom, if ever, challenged. Certainly we have no need of religion to help us solve a problem, runaway vengeance, whose very existence eludes us."

⁴⁷⁸ *Ibid* at 22-23. "This rationalistic approach to vengeance might seem to stem from a peculiarly intimate relationship between the community and the judicial system. In fact, it is the result not of any familiar interchange

tendency to violent hostilities in social life is checked by the supreme power of law which prevents the members of the community from continuing their violent hostilities.⁴⁷⁹ Thus, the sacrificial crises which were prevalent in the primitive societies are not familiar to modern men.

It must be stressed that the link Girard creates between religion and law is not based upon the abstract notions of right and wrong. The feature the legal system has borrowed from the religious practices is the effectiveness of the use of violence.⁴⁸⁰ The unanimous use of violence in the religious context of the sacrificial crisis puts an end to the exceptional situation and gives way to the norms to flourish. The legal system also bars the antagonists from continuing their violent hostilities since it has “monopoly” over the use of violence.⁴⁸¹ Yet, the impartiality of the judicial system, and the validity and legitimacy of its rules increases the efficiency of its ultimate position with respect to a dispute.⁴⁸² The tragic decision that the primitive societies had to make in a crisis of differences has been “rationalized” by the legal system with the help of its impartiality and the legitimacy of rules.⁴⁸³ Yet, the essence of the legal system is disclosed in its capacity to put an end to violent oppositions and bring peace and harmony to the community.

This aspect of the Girardian narrative of law has been picked up by some thinkers who believe that the legal structure is a modern substitute for the religious sacrifice which unifies the community against one victim, and satisfies the need for violent actions in the community.⁴⁸⁴

between the two, but of the recognition of the sovereignty and independence of the judiciary, whose decisions no group, not even the collectivity as a body, can challenge. (At least, that is the principle.)”

⁴⁷⁹ *Ibid* at 18.

⁴⁸⁰ *Ibid* at 23. “*Religion* in its broadest sense, then, must be another term for that obscurity that surrounds man's efforts to defend himself by curative or preventative means against his own violence. It is that enigmatic quality that pervades the judicial system when that system replaces sacrifice. This obscurity coincides with the transcendental effectiveness of a violence that is holy, legal, and legitimate successfully opposed to a violence that is unjust, illegal, and illegitimate.”

⁴⁸¹ *Ibid* at 23. “The judicial system never hesitates to confront violence head on, because it possesses a monopoly on the means of revenge. Thanks to this monopoly, the system generally succeeds in stifling the impulse to vengeance rather than spreading or aggravating it, as a similar intervention on the part of the aggrieved party would invariably do.”

⁴⁸² *Ibid* at 22-23.

⁴⁸³ *Ibid* at 22. “Instead of following the example of religion and attempting to forestall acts of revenge, to mitigate or sabotage its effects or to redirect them to secondary objects, our judicial system *rationalizes* revenge and succeeds in limiting and isolating its effects in accordance with social demands. The system treats the disease without fear of contagion and provides a highly effective technique for the cure and, as a secondary effect, the prevention of violence.”

⁴⁸⁴ There are some jurists who believe that the law enforcement and the exercise of the punishment in particular is remnant of the religious rituals, and the formalistic nature of the punishment procedure proves the origin of punishment in the religion. Donlad L. Beschle, “Why Do People Support Capital Punishment? The Death Penalty as Community Ritual” (2000-2001) 33 Conn. L. Rev. 765, at 773; Donald L. Beschle, Whats Guilt (or Deterrence) Got

This approach to law has not been foreign to sociologists and jurists such as Émile Durkheim⁴⁸⁵ and George Herbert Mead.⁴⁸⁶ They indeed attribute the same unifying function to religion and the law.

Prior to any further analysis of the Girardian theory of law, it is reasonable to turn to Agamben and explicate his position regarding the religious origin and the unifying effect of the law as we have seen in the Girardian theory. It is worth noting that Agamben's position has changed over time. In *Language and Death*, he briefly points to the idea of the sacred origin of human language. He claims that the negation of the foundation of human language in every act of speech which he calls the "Voice" shows that human language is made possible through a violent act of sacrifice.⁴⁸⁷ Then he goes on to say that human reality is constructed by a violent sacrifice.⁴⁸⁸ However, in *Homo Sacer*, he modified his argument as he strongly rejects any argument defining the sacred origin of law as a concept which has remained from a religious

to Do with it?: The Death Penalty, Ritual, and Mimetic Violence, (1996-1997) 38 Wm. & Mary L. Rev. 487, at 519; Brian L. Smith, Capital Punishment and Human Sacrifice, (2000) 68:1 Journal of American Academy of Religion 3, at 4. In addition to the formalistic procedure of the punishment, which corresponds to the religious practices, it is also contended that the punishment, similar to the rituals of the primitive societies, has vengeance at its core as one of the objectives it pursues. James McBride, Capital Punishment as the Unconstitutional Establishment of the Religion: A Girardian Reading of the Death Penalty, (1995) 37:2 Journal of Church & State 263, at 270; John Steele, A Seal Pressed in the Hot Wax of Vengeance: A Girardian Understanding of Expressive Punishment, (2001) 16 J. L. Religion 35 at 47. In order to apply these narratives to the Girardian theory, it has been noted that the vengeful nature of law for these thinkers leads to the transfer of the collective responsibility to the criminal as the scapegoat while contrary to the primitive religions, this transference has been rationalized. George Newton, vengeance is His: Justice in the Oresteia, (1995) 4:1 Angelaki: Journal of the Theoretical Humanities 135 at 144; Roberta M. Harding, Capital Punishment As Human Sacrifice: A Societal Ritual As Depicted In George Eliot's *Adam Bede*, (2000) 48 Buff. L. Rev. 175 at 247. The scapegoat selected in the criminal procedure, similar to the religious ritual, is a marginalized member of the community who cannot defend himself against the unanimous use of violence. Barry Vaughan, The Punitive Consequences of the Consumer Culture, (2002) 4 Punishment & Society 195 at 205.

⁴⁸⁵ S. Romi Mukherjee, *supra* note 3 at 29.

⁴⁸⁶ George Herbert Mead sees human's tendency to self-assertion as a force which can threaten social life. George H. Mead, "Psychology of Punitive justice" (1918) 23:5 American Journal of Sociology, 577, at 599. The result of anti-social self-assertion is destructive for the social cohesiveness since it leads the community to disintegrate into "mutually repellent individual particles." *Ibid* at 591. Yet, the same self-assertion, in case of defense against the common enemy, can create a collective identity. The common enemy such as a criminal unites people to attack him with the criminal system. This collective attack reinforces the social harmony. *Ibid* at 586. His statement that "the majesty of the law is that of the sword drawn against a common enemy" perfectly conveys his opinion. *Ibid* at 590. One striking similarity between Mead's theory and Girard's description of the scapegoat mechanism is that Mead also believes that unanimity created by the collective attack upon the common enemy just brings "temporary relief from the social frictions" before society is again drawn into individuals' rivalries. *Ibid* at 600.

⁴⁸⁷ Agamben, *Language*, *supra* note 262 at 105.

⁴⁸⁸ Colby Dickinson, *supra* note 31 at 63-66.

origin of the legal structure such as the ritual of sacrifice,⁴⁸⁹ or any argument which traces the emergence of the sacred back to the time that the juridical and the religious dimensions of the sacred were indistinguishable.⁴⁹⁰ Agamben insists on his position because he believes that the originary act of excluding inclusion of *homo sacer* cannot be defined by any religious narrative as the abandonment of *homo sacer* happens at a zone of indistinction which gives birth to the different realms of the human law and the religious law.⁴⁹¹ In addition, Agamben disagrees with any unifying interpretation of the sacred⁴⁹² Yet, the religious interpretation he rejects is the argument that religion is the source which unifies two worlds of divinity and human life.⁴⁹³ He argues that the essence of the religion is to ensure the separation of the divine world and the profane realm.⁴⁹⁴ Thus, his understanding of religion brings him closer to the Girardian theory since Girard also defines the sacred as a phenomenon which guarantees the separation of the destructive violence as the origin of religion and the profane world of human beings. However, this interpretation of the religious practices has not been repeated in the analysis of *homo sacer*, and in this book, there is no room for a religious reading of the sacred.⁴⁹⁵

Therefore, one more time we are confronted with the question whether it is possible to reconcile the religious interpretation of the sacred by Girard with Agamben's juridico-political definition of *homo sacer*. Yet, even Girard's brief analysis of law and its relation to the sacred provides us with ideas that point to the proximity of these theories. Girard does not discuss the correlation between the sacred and the legal structure in his book, *Violence and the Sacred*, as much as Agamben does in *Homo Sacer*. Yet, Girard has indeed allocated some pages to this matter. Surprisingly, these arguments can be found in the first chapter of the book where he intends to introduce his theory. But, as his study unfolds, he distances from the current state of the legal structure and decides to shed light on the idea of the sacred as it was perceived by the

⁴⁸⁹ Agamben, *Homo Sacer*, *supra* note 19 at 84-85. "The proximity between the sphere of sovereignty and the sphere of the sacred, which has often been observed and explained in a variety of ways, is not simply the secularized residue of the originary religious character of every political power, nor merely the attempt to grant the latter a theological foundation."

⁴⁹⁰ *Ibid* at 72-73.

⁴⁹¹ *Ibid* at 74.

⁴⁹² Maria Margaroni, *supra* note 14, at 118.

⁴⁹³ Giorgio Agamben, *Profanations*, translated by Jeff Fort (New York: Zone Books, 2005) at 74-75.

⁴⁹⁴ *Ibid*.

⁴⁹⁵ It seems that both Agamben and Girard agree with Durkheim on the point that the essence of the religious practices is the separation between the human social life and the world of divinity. Ronjon Paul Datta, "From political emergencies and states of exception to exceptional states and emergent politics: A Neo-Durkheimian alternative to Agamben" (2009) 58:1 International Social Sciences Journal 169 at 177.

primitive societies because he thinks this is the origin of his theory, and this is the part which would receive strong criticisms; thus, he takes great care to support the origin of his theory.

The argument which suggests proximity of Agamben and Girard is Girard's statement that the common ground of law and religious sacrifice is the transcendental quality by which the legal structure can justify its validity, legitimacy, and finally and more importantly its monopoly on the use of violence.⁴⁹⁶ Girard believes that there is no doubt that the modern understanding of evil and good, wrong and right helps the judicial system to make decisions that seem rational to the community.⁴⁹⁷ In his view, here it lies the difference between the religious practices and the legal decisions. If the primitive societies had to have recourse to a paradoxical narrative to justify the violent decision which led to the expulsion of the victim, the modern legal system is able to make a decision regarding a violent dispute, which appears as a right decision;⁴⁹⁸ thus there is no need for the invention of the paradoxical narrative of the sacred as being beneficent and maleficent at once. The underlying reason for such a claim to validity of the judicial decision rests on the fact that the modern system claims that with the help of its juridical norms, it is capable selecting the real wrongdoer who is responsible for the outbreak of violence.⁴⁹⁹ In fact, while the tragic decision of the primitive societies in the sacrificial crisis was addressed to the matter which was inherently undecidable for them due to the collapse of all differences and norms, the modern system which is well-equipped with its legal rules claims that it can correctly

⁴⁹⁶ Girard, *Violence and the Sacred*, *supra* note 23 at 23. "The procedures that keep men's violence in bounds have one thing in common: they are no strangers to the ways of violence. There is reason to believe that they are all rooted in religion. As we have seen, the various forms of prevention go hand in hand with religious practices. The curative procedures are also imbued with religious concepts —both the rudimentary sacrificial rites and the more advanced judicial forms. *Religion* in its broadest sense, then, must be another term for that obscurity that surrounds man's efforts to defend himself by curative or preventative means against his own violence. It is that enigmatic quality that pervades the judicial system when that system replaces sacrifice. This obscurity coincides with the transcendental effectiveness of a violence that is holy, legal, and legitimate successfully opposed to a violence that is unjust, illegal, and illegitimate."

⁴⁹⁷ *Ibid* at 22. Girard believes that these features of the modern legal system prevent the escalation of violence. The primitive societies which did not have access to a legal structure were more vulnerable to violence crisis. Nigel Davies, *Human Sacrifice in History and Today* (New York: William Morrow and Company, Inc. 1981) at 26.

⁴⁹⁸ Girard, *Violence and the Sacred*, *supra* note 23 at 22. "It has long been assumed that a decisive difference between primitive and civilized man is the former's general inability to identify the guilty party and to adhere to the principle of guilt. Such an assumption only confuses the issue. If primitive man insists on averting his attention from the wrongdoer, with an obstinacy that strikes us as either idiotic or perverse, it is because he wishes above all to avoid fueling the fires of vengeance."

⁴⁹⁹ *Ibid* at 22. "In the case of sacrifice, the designated victim does not become the object of vengeance because he is a replacement, is not the "right" victim. In the judicial system the violence does indeed fall on the "right" victim; but it falls with such force, such resounding authority, that no retort is possible."

identify the origin of the evil and wrong.⁵⁰⁰ Therefore, the modern system does not need to take advantage of the mythical narrative which was invented to transfer the collective responsibility of the community to a single person because the problem of violence in the modern community in Girard's view is deemed to be attributable to a single person from the beginning.⁵⁰¹ The primitive societies desperately were looking for the cause of the sacrificial crisis, but in the modern era, the legal system can convince us that it has captured the right person.⁵⁰²

In spite of the capability of the modern legal system to rationalize the juridical decision and resolve the problem of the undecidability of violent oppositions, Girard believes that the power of the judicial system lies in a transcendental quality which any legal system has to presuppose for itself. With a tone which reminds us of Agamben's theory, Girard states that "it is not a question of codifying good and evil or of inspiring respect for some abstract concept of justice, rather it is a question of securing the safety of the group by checking the impulse for revenge."⁵⁰³ This statement shows that the transcendental quality of law in the Girardian narrative does not stem from the content of the law or any abstract idea of justice. The real origin of law in this theory rests upon the monopoly of the legal system over the use of violence, which enables the legal system to control the desire for revenge.⁵⁰⁴ In order to have a better understanding of this statement, it is fruitful to turn to Agamben's interpretation of the Hobbesian state of nature. Agamben argues that when the commonwealth is established, the state of nature in which any man is a wolf to others does not disappear and it remains an element of the sovereignty which in the commonwealth is the sole bearer of the power any man can have in the state of nature.⁵⁰⁵ As Girard claims, the power of the legal system is not derived from the content of law, but from the sovereign's capacity to be the only institution which can have recourse to violence whose legitimacy does not depend upon any rule or any regulative norm.

⁵⁰⁰ *Ibid.*

⁵⁰¹ Girard, *Things Hidden*, *supra* note 224 at 12. "We tend to focus on the individual act, whereas primitive societies attach only limited importance to it and have essentially pragmatic reasons for refusing to isolate such an act from its context."

⁵⁰² Girard, *Violence and the Sacred*, *supra* note 23 at 22.

⁵⁰³ *Ibid* at 21.

⁵⁰⁴ *Ibid* at 23.

⁵⁰⁵ Agamben, *Homo Sacer*, *supra* note 19 at 106. "Contrary to our modern habit of representing the political realm in terms of citizens' rights, free will, and social contracts, from the point of view of sovereignty *only bare life is authentically political*. This is why in Hobbes, the foundation of sovereign power is to be sought not in the subjects' free renunciation of their natural right but in the sovereigns preservation of his natural right to do anything to anyone, which now appears as the right to punish."

Agamben defines the origin of law as the sovereign's capacity to exercise lawless violence and the capacity to subject any person to death without any obligation to justify its decision by any legal rule. Girard similarly regards the foundation of the legal system as the superior capacity to monopolize the use of violence while this monopoly cannot be constrained by any definition of justice.⁵⁰⁶ Girard believes that the only transition which has taken place from the primitive societies to the modern communities is that the legal system has managed to acquire a transcendental position which places it above any individual in the community.⁵⁰⁷ But this superior position is not related to the content of the decision it renders in any case. The superior position of the law can be defined in relation to the use of violence and the monopoly over the use of violence, and Girard has presented many arguments to prove that the issue of violence is devoid of any significance and content since it ruins any content when it is exercised. In his analysis of the Kantian notion of the law "being in force without significance," Agamben also argues that the law which is in force without any content is just a "transcendental object."⁵⁰⁸ The transcendental position of law makes it impossible for any man to obey it or disobey.⁵⁰⁹ The only position he can take is respect and submission to the pure force of law.⁵¹⁰ Girard goes in the same direction when it says that the legal system's monopoly over the use of violence guaranteed by its transcendental position has to be respected by any individual while violence as the ultimate arbiter of the human action defies any signification. The necessity of pure transcendence at the origin of any cultural order including the legal system is perfectly echoed in the following terms by Girard:

"A unique generative force exists that we can only qualify as religious in a sense deeper than the theological one. It remains concealed and draws its strength from this concealment, even as its self-created shelter begins to crumble. The acknowledgement of such a force allows us to assess our ignorance-ignorance in regard to violence as well as religion. Religion shelters us from violence just as violence seeks shelter in religion. If we fail to understand certain religious

⁵⁰⁶ Girard, *Things Hidden*, *supra* note 224 at 54. "Royal power is situated at the very heart of society. It demands observance of the most fundamental rules; its purview extends to the most intimate and secret aspects of human existence, such as sexual and familial life, it insinuates itself into what is most personal in us, and yet, in many aspects, it remains independent of the rules it embodies."

⁵⁰⁷ *Ibid* at 12. "What permits us to conceive abstractly of an act of violence and to view it as an isolated crime is the power of a judicial institution that transcends all antagonists. If the transcendence of the judicial institution is no longer there, if the institution loses its efficacy or becomes incapable of commanding respect, the imitative and repetitious character of violence becomes manifest once more; the imitative character of violence is in fact most manifest in explicit violence, where it acquires a formal perfection it had not previously possessed."

⁵⁰⁸ Agamben, *Homo Sacer*, *supra* note 19 at 53.

⁵⁰⁹ *Ibid* at 54.

⁵¹⁰ *Ibid*.

practices it is not because we are still to a very real extent enclosed within them. The solemn debates on the death of God and of men are perhaps beside the point. They remain theological at bottom, by extension sacrificial; that is, they draw a veil over the subject of vengeance, which threatens to become quite real once again, in the form not of a philosophical debate but of unlimited violence, in a world with no absolute values. As soon as the essential quality of transcendence-religious, humanistic, or whatever-is lost. There are no longer any terms by which to define the legitimate form of violence and to recognize it among the multitude of illicit forms. The definition of legitimate and illegitimate forms then becomes a matter of mere opinion, with each man free to reach his own decision. In other words, the question is thrown to the winds. Henceforth, there are as many legitimate forms of violence as there are men to implement them, legitimacy as a principle no longer exists. Only the introduction of some transcendental quality that will persuade men of the fundamental difference between sacrifice and revenge, between a judicial system and vengeance, can succeed in bypassing violence.”⁵¹¹

Then, it seems that both the unanimous use of violence authorized by the transcendental position of law in the form of the expulsion of the scapegoat or the sovereign’s capacity to exercise pure violence over *homo sacer*, which is not constrained by any law, refer to the same sacred origin of law. The remaining difference exists at the level of the distinction between the juridico-political essence of law in Agamben’s theory and the religious definition of the sacred in the Girardian narrative. Yet, it seems that Agamben’s opposition to the religious definition of the sacred is caused by the fact that most religious narratives he describes misses the real and violent foundational event of law which goes beyond the dichotomy of the religious law and the human law. In fact, in his view, existence of the threshold which gives birth to the division between religion and the human world is neglected by theologians.⁵¹² Yet, the Girardian analysis points to the same origin. The sacred origin of religion in the Girardian narrative is a zone of indistinction between human law and religious law. The founding act of unanimous violence is not a sacrifice for a pre-existing religious order⁵¹³ or the enforcement of human law because the foundational violent act is the origin of all these realms. In fact, in order to prove that the expulsion of the scapegoat precedes any kind of the religion, Girard states that “sacrifice too can be defined solely in terms of the sacred, without reference to any particular divinity; that is, it can be defined in terms of maleficent violence polarized by the victim and metamorphosed by his death into beneficent violence.”⁵¹⁴ Even if a religious or mythical narrative is developed afterward, this is

⁵¹¹ Girard, *Violence and the Sacred*, *supra* note 23 at 24.

⁵¹² Agamben, *Homo Sacer*, *supra* note 19 at 80.

⁵¹³ Kathryn McClymond, *supra* note 398 at 15.

⁵¹⁴ Girard, *Violence and the Sacred*, *supra* note 23 at 258. Although it seems that Girard does not necessarily link the idea of the sacred with the ritual of the sacrifice in a strictly religious sense, and believe that the sacred refers to the violent foundation of any cultural order, some authors have argued that the Girard has over time reduced all kinds of the scapegoating to one particular religious ritual. Nasser Hussain & Melissa Ptacek, *supra* note 50 at 509.

because the violent origin of the sacred is concealed, and the arbitrary use of violence is justified.⁵¹⁵ In fact, only when the scapegoat is killed or expelled, the religious practices and the human order come into existence. In addition, the Girardian analysis of religion is essentially political as the act of expulsion is not a sacrifice devoted to a God, but a political decision taken at the height of the crisis for the protection of the community.⁵¹⁶ In this regard, the Girardian theory of the sacred reminds us of the idea of the constituting power which gives birth to law while the only thing it presupposes is its own violent event. The constituting act of violence by the sovereign in Agamben's view is based upon a self-presupposition. Similarly that the unanimous act of violence is arbitrary in the Girardian theory also shows that there is no norm for assessing the validity of the foundational act. The unanimous use of violence does not presuppose anything except for itself. In fact, violence constitutes the origin of religion and law because only violence can put an end to violence in the sacrificial crisis. In addition, it is really difficult to separate the political dimension of Girard's arguments from the whole structure of his theory. In his theory, Girard is trying to define the origin of the community as a zone of indistinction between religion and politics. In fact, he believes that the origin of the sacred is the zone from which both religion and politics emerge, and it is not possible to separate the political nature of the sacred from its religious essence.⁵¹⁷ In *Homo Sacer*, Agamben rejects the idea that the sacred belongs to the epoch when religion and law were entangled. Yet, in his later writings, Agamben presents arguments which are in opposition to the distinction he made between law and religion in *Homo Sacer*. In *The Time That Remains*, he points to some primordial stage of

⁵¹⁵ Girard, *Violence and the Sacred*, *supra* note 23 at 132. "But from the point of view of a religion-in-the-making, the murder of Pentheus appears as a spontaneous resolution that could be neither planned nor anticipated. The collective violence is openly displayed, but the essential process —the arbitrary choice of the victim and the sacrificial substitution that restores unity—remains concealed. The actual expulsion of the victim recedes from sight and maintains its efficiency by appearing only in the guise of institutionalized sacrifice. From the viewpoint of the sacrificial crisis, the relationship between the *doubles*, Dionysus and Pentheus, is reciprocal in a double sense. There is no reason why it should be Dionysus rather than Pentheus who sacrifices his companion. Yet from the viewpoint of established religion, even if this reciprocity is at one level acknowledged and the sacrificer and his victim are recognized as *doubles*, on another and more basic level this same reciprocity is abolished. The direction must not be allowed to reverse itself; it has been fixed once and for all, and the expulsion is always understood to have *already* taken place."

⁵¹⁶ *Ibid* at 275. "religious misapprehension figures largely in the very real protection offered society by ritual sacrifice, and indeed by religion in general."

⁵¹⁷ René Girard, *Job: The Victim of His People* (Stanford: Stanford University Press, 1987) at 59, "Like Greek tragedy the Prophets the Dialogues of Job, and Psalms reflect great political and social crises that are also religious. These crises all contribute to the decadence of the sacrificial systems that were still in use in these two societies. We are at that junction between religion which is still sacrificial in the strict sense, and politics that is sacrificial in the broad sense. Certain aspects of the religious speech can already be translated into a political speech, and vice versa."

the human culture when it was not possible to distinguish religion from politics and law,⁵¹⁸ but he does not offer an explanation for the contradiction between this statement and his arguments in *Homo Sacer*. In fact, it is arguable that in spite of strong rejections by Agamben in *Homo Sacer*, these theories have many points in common.

I do not claim that there is no difference between these two theories. Indubitably, the Girardian theory lacks the logical definition Agamben offers for the establishment of the law upon its non-application and suspension. In addition, the unifying nature of religion in the Girardian narrative and Agamben's idea of the law which contains its exteriority in the form of the ban differ from each other. Yet, there are many similar arguments in both theories which show the necessity of the dialogue between these two theories, the dialogue which has not received the attention it deserves.

H. Bestiality at the End of History

Since the inquiry about the sacred origin of law in this study started from the discussion of the root of the sacred in the definition of human reality in the Girardian theory which is to some extent indebted to the Sartrean philosophy of desire, it is reasonable at the end of this study to return to the origin and see how both thinkers whose ideas have been reviewed react to such a definition of human reality. The starting point was Sartre's definition of human desire, which he has borrowed from Kojève's reading of the Hegelian philosophy.⁵¹⁹ They perceive human reality as a movement from what the human is to what he is not and has to become. And I intend to see what Girard and Agamben say regarding the opposition between the natural life and the human reality.⁵²⁰

⁵¹⁸ Agamben, *The Time That Remains*, supra note 390 at 116. "If we want to comprehend the meaning that underlies the opposition between *pistis* and *nomos* in the Pauline text, we should keep in mind this rooting of faith in the sphere of the law-or rather, in prelaw, that is, where law, politics, and religion become tightly interwoven."

⁵¹⁹ Jean-Paul Sartre, supra note 109, at 58, cited in Judith Butler, supra note 101 at 93. "Sartre's own formulation of human reality as paradoxical unity of in-itself, and for-itself appears to echo almost verbatim Kojève's phrasing: "We have to deal with human reality as being which is what it is not and which is not what it is."

⁵²⁰ The same attitude can be found in Aristotle's definition of what he calls "good life". The good life which any person must acquire in order to be allowed in the *polis* establishes a division between a qualified nature of the political life and the excluded natural life. In fact, the qualified life is defined by the sacrifice of the mere life. Andrew Norris, "Giorgio Agamben and the Politics of the Living Dead" (2000) 30:4 *Diacritics* 38 at 43-44.

As stated before, Girard finds this narrative of desire unstable and self-destructive. The ontological desire to overcome the corporeality and the negation of static being as the foundation of human reality, in his view, leads to alienation of the subject who tries to establish his independence from any determinate mode of being and be the foundation of his being.⁵²¹ The attempt to recover from the alienation is realized by an acquisitive mimesis, which does not bring any autonomy and to the contrary leads the subject to a zone of indistinction in which the subject and others are not distinguishable from each other.⁵²² The emergence of violence in the project of desire only exacerbates the problem, and at the end of the project, we are confronted with monstrous creatures which are neither animal nor human.

Agamben also takes the same position with respect to a definition of humanity whose true essence is manifested in the complete negation of the static being. In order to criticize Kojève's reading, he says that the master's attempt to complete the process of negation and to appear as the wise man at the end of history never reaches its end.⁵²³ The master who tries to put an end to the dialectical movement and overcome the opposition between the subject and the object, between human and nature cannot maintain his satisfaction as it slips away from his hands.⁵²⁴ The pure nothingness that is sought by this narrative is never achieved in Agamben's view. The same is true in case of the Girardian subject who desires to be God. Any achievement the subject acquires immediately vanishes as the essence which he is longing for cannot be defined in any determinate form, and it remains always inaccessible.⁵²⁵ The same concern prompts Georges Bataille to argue that the humanity which can only be realized in pure negation is only achieved through a process of subterfuge.⁵²⁶ The animal life which has to be negated is the life that

⁵²¹ Girard, *Deceit*, *supra* note 24 at 238. "Desire never actually acquires its true object: it leads to failure, oblivion, and death."

⁵²² Girard, *Violence and the Sacred*, *supra* note 23 at 151.

⁵²³ Agamben, *Language*, *supra* note 262 at 49. "It is this negative articulation in its originary vanishing status that Bataille, along with the French Hegelian of Kojève and his disciples, attempted to affirm as a possible fundamental experience beyond the horizon of the Hegelian dialectic. This affirmation of desire, of the *Meinung*, the master's enjoyment, in a word, of the figures of the Dead (*das Tote*)-or, as Bataille expresses it, of "disengaged negativity" (negativity sans emploi)-this affirmation is perfectly legitimate, given their fundamental function, as we have seen, in the Hegelian system; but if we wish to play out this negativity against and outside of this very system, it is just as perfectly impossible." [emphasis in the original]

⁵²⁴ *Ibid.*

⁵²⁵ Girard, *Violence and the Sacred*, *supra* note 23 at 148.

⁵²⁶ Georges Bataille & Johnathan Strauss, "Hegel, Death and Sacrifice" (1990) 78 *Yale French Studies* 9 at 19. "The privileged manifestation of Negativity is death, but death, in fact, reveals nothing. In theory, it is his natural, animal being whose death reveals Man to himself, but the revelation never takes place. For when the animal being supporting him dies, the human being himself ceases to be. In order for Man to reveal himself ultimately to himself,

supports the human project and without it the human project also ends.⁵²⁷ Thus, the human being can fulfill its human desire for negation of life only when death or the ultimate stage of negation happens to another human being.⁵²⁸ In fact, in his view, the realization of human reality is only possible at the cost of another person in the form of sacrifice. The same process is in effect in the Girardian narrative as the subject who sees violence as the true signifier of the god-man reality satisfies its need with an act of violent expulsion which is directed at another human being.⁵²⁹

Both Girard and Agamben in fact believe that this project of humanity never reaches its final stage. To the contrary, it leads to the conclusion which is in clear contradiction with the ideal objective of the project. Girard argues that the desire to be God creates a sacrificial crisis in which we are confronted with the beasts which cannot be defined by any category.⁵³⁰ Likewise, Agamben says that the ideal humanity as the pure negation is not achieved by the post-historical humans who are in harmony with the natural life, but it produces a specific mode of life which is neither animal life nor human life.⁵³¹

At the end, it seems that in the *Bacchae*, Euripides perfectly described the self-defeating project which attempts to establish an unattainable human reality:

“Human wisdom is not wisdom, and to aspire to more than man's due is to shorten life, is to sacrifice the fruit at hand for what is out of reach. I think it is sheer madness or plain stupidity to act in such a manner. . . . Keep heart and mind aloof from overreaching intellects. The beliefs and practices common to the common man are good enough for me.”⁵³²

he would have to die, but he would have to do it while living-watching him- self ceasing to be. In other words, death itself would have to become (self-) consciousness at the very moment that it annihilates the conscious being. In a sense, this is what takes place (what at least is on the point of taking place, or which takes place in a fugitive, ungraspable manner) by means of a subterfuge. In the sacrifice, the sacrificer identifies himself with the animal that is struck down dead. And so he dies in seeing himself die, and even, in a certain way, by his own will, one in spirit with the sacrificial weapon. But it is a comedy!”

⁵²⁷ *Ibid.*

⁵²⁸ *Ibid.*

⁵²⁹ Girard, *Violence and the Sacred*, *supra* note 23 at 151.

⁵³⁰ Girard, *Double Business*, *supra* note 325 at 96.

⁵³¹ Giorgio Agamben, *The Open: Man and Animal*, translated by Kevin Attell (Stanford: Stanford University Press, 2004) at 12.

⁵³² Girard, *Violence and the Sacred*, *supra* note 23 at 129. (Citing Euripides, *Bacchae*).

Conclusion

I started the present study with a question: Is there a relationship between our understanding of law and the idea of the sacred? And I decided to search for the answer to this question with the help of two famous thinkers, Giorgio Agamben and René Girard. The underlying reason for choosing these thinkers is that the sacred was defined by the scholars of the nineteenth and twentieth centuries such as William Robertson Smith, and Émile Durkheim as the residue of ancient religions, and they considered it to be the foundation of the social order and law. In addition, they regarded the sacred as a paradoxical phenomenon which provokes horror and reverence at once. Both Girard and Agamben take this narrative of the sacred into consideration, and criticize it. They also intend to suggest a new definition which resolves the paradoxical nature of the sacred. The comparison between Agamben's and Girard's theories has another advantage. While Girard discusses the sacred as a religious phenomenon, Agamben tries to define it as a juridico-political phenomenon. Since the question of this study addresses the correlation between law and the sacred, their theories enable us to find the relationship between the sacred and law. I knew that there is no quick answer to the question, and some theoretical inquiries are necessary prior to the direct engagement with these authors' theories of the sacred. Yet, the path I chose to find the answer involved problems. Not many writers have attended to the subject of the proximity between Agamben's and Girard's thoughts, and those who addressed this question did not take note of the philosophical origins of their theories. They discussed the Girardian theory as an anthropological study of religion, which in their view reduces the idea of the sacred to the ritual of sacrifice. Of course, this approach is not surprising since the nature of Agamben's works is different from Girard's writings. Yet, the Girardian theory of the sacred is based on his theory of mimetic desire which is influenced by the French Hegelianism of the twentieth century. The philosophical origin of the Girardian theory enables us to find the common ground of his ideas and Agamben's philosophy. But, since this aspect of the Girardian theory was left unnoticed by those authors who compared Girard's ideas with Agamben's philosophy, I was left with no option but to pave the way on my own.

In addition, Girard's style of writing was a challenge for me as I was trying to bring to light the philosophical origins of his thought. Girard has attempted to separate his theory from all other similar theories during all these years, and has not provided enough explanation for the

influence of other thinkers on his theory. However, different natures of Agamben's and Girard's works are not the only reason which led me to turn to their early writings. Their theories of the sacred are based on arguments which are elaborated in these early books. In fact, Girard's scapegoat mechanism depicts a chaotic situation, the sacrificial crisis, from which the sacred emerges. In fact, the sacrificial crisis is a primordial stage of social life, but it is necessary to understand why this crisis occurs? Why is any community in the Girardian theory doomed to face the sacrificial crisis? Girard himself claims that the reason for the existence of the sacrificial crisis at the origin of social life is derived from the mimetic nature of human behavior. Therefore, a discussion of the theory of mimetic desire was of great importance.

Agamben also points to the idea of law which is in force without significance as the origin of the legal structure. The idea that law is in force without any content shows that the essence of law is a transcendental object which cannot be defined by any determinate content. Thus, it is profitable to understand what it means for an individual to be confronted with a transcendental object. In this regard, I decided to focus on the relationship between an individual and a transcendental essence in a context other than the legal structure. I adopted this approach in order to find out what happens in Agamben's view to a person who is confronted with a transcendental essence. Although Agamben's theory of the sacred is to a great extent indebted to his philosophical studies about human language, I preferred to discuss his aesthetic studies, and his first book, because the essence of the artist and the spectator of the artwork is formed through their position toward a transcendental essence which is beyond any content and action the subject can take.

The result that I have drawn from Girard's theory of mimetic desire and Agamben's aesthetics is that the subject who strives to define his essence with a transcendental concept is doomed to face failure and dissatisfaction. The transcendental essence of the Girardian subject is the desire to be God, the desire to be the foundation of his own being. But this essence can only be understood as the pure negativity because nothing can meet the requirements of such a divine presence. In fact, any action and achievement in Girard's view is a threat to the transcendental idea of human reality as the determinacy of the subject's action undermines the indeterminate essence of the transcendental idea. Therefore, the Girardian subject is longing for an essence which always escapes his grasp. The subject distances from himself to reach the position which

is inaccessible. The result is the permanent alienation from which the subject suffers. Agamben also predicts a similar destiny for the artist and the spectator of the artistic work. Definition of the artistic activity as the pure creation compels the artist to find his essence in something which is foreign to him. The pure freedom which the artist is supposed to represent cannot be limited by any pre-existing meaning and content.

At this stage, there is no doubt that the contexts of Girard's work and Agamben's theory are different. Girard discusses the human relationship in general, and Agamben focuses on the artistic activity of the modern era. But what I intend to show is that both thinkers believe that defining a phenomenon according to a transcendental essence leads to the constitution of that reality on a negative foundation. And it is not possible to reach the desired outcome since from the beginning the objective has been made inaccessible. The subject in both theories is in relation with the transcendental essence but the relation leads only to the exclusion of the subject from what is governed by the transcendental principle.

Based upon the definition of human reality as an inaccessible transcendental objective, Girard proposes his theory of mimetic desire. The human desire longs for a divine essence which is autonomous and independent from any determinate being, but it only creates human beings who are similar to each other. The monstrous doubles of the sacrificial crisis are individuals who look for the same objects and inevitably enter into a cycle of violent oppositions. In fact, in the Girardian theory the ideal of humanity which is independent from all determinate forms indeed produces human beings who have no form and represents no meaning. But this faceless humanity leaves room for the free play of violence and is inherently destructive.

Agamben also places the same transcendental essence at the origin of law. Law in its purest form is beyond any norm and rule, and the subject facing the pure form of law is only exposed to its force. He cannot either obey it or disobey it. This subject, *homo sacer*, is a man without any content. The only thing he has is his bare life which is addressed by the transcendental law. In fact, if Agamben claims that the pure form of law is an act of violence and, at this stage, law and violence become indistinguishable, the reason rests on the fact that the sovereign which applies the pure form of law is not constrained by the laws it enacts for the normal situation. In Agamben's view, it is not possible to distinguish between the force of the law which is stripped of its content and violence

The same is true about the Girardian theory of the sacred. Girard believes that the transition from the triangle of the mimetic behavior to the sacrificial crisis can be explained by the desire to be God. Men who strive for the fulfillment of this desire turn into formless creatures. At the origin of social life, we are confronted with monstrous creatures and their only means of the communication is violence.

Thus, if the sovereign intends to prepare the situation for the enforcement of the rules it posits, if the community struggling with the sacrificial crisis needs to establish peace, there is no way other than the use of violence which leads to the exclusion of the faceless subject. In fact, this violent role is played by the sacred. The sacred person in Agamben's theory is the repository of the transcendental law. He has to absorb to the free play of violence in order to prepare the situation for the emergence of norms and rules. The exclusion of the sacred person enables the community to distance from the state of nature. Girard also believes that the community needs to negate its negative foundation, and the scapegoat is the one who absorbs the violent essence of human reality and takes it into the realm of the sacred. In Girard's view, only through the exclusion of the scapegoat can the community give birth to its norms and laws.

Thus, both Girard and Agamben define the sacred as the origin of the law which is violent and leads to the exclusion of the sacred life. They believe that the paradox of the transcendental principle and the negative foundation of human reality are revealed when the law establishes itself at the cost of the sacred person, and its life. In light of their arguments, I think that both Girard and Agamben agree with Jean-Luc Nancy as he argues that the economy of the sacred and sacrifice remains intact, and life is exposed to death as long as the immanent experience of life is defined by an abysmal idea of transcendence.⁵³³ In fact, it is possible to think beyond the sacred origin of law if we believe that:

"The existent arrives, takes place, and this is nothing but a being-thrown into the world. In this being-thrown, it is offered. But it is offered by no one, to no one. Nor is it self-sacrificed, if nothing - no being, no subject - precedes its being-thrown. In truth, *it is not even offered or sacrificed to a Nothing, to a Nothingness or an Other in whose abyss it would come to enjoy its own impossibility of being impossibly.*"⁵³⁴

⁵³³ Jean-Luc Nancy & Richard Livingston, "The Unsacrificeable" (1991) 79 Yale French Studies 20 at 37.

⁵³⁴ *Ibid* at 36.

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