Sacrificing *Homo Sacer*
René Girard reads Giorgio Agamben

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Abstract   Taking as its point of departure the existing critical literature on the intersections between René Girard's and Giorgio Agamben's anthropogenetic theories, this essay aims to add further considerations to the debate by discussing some of Agamben's intuitions within a Girardian paradigmatic explanatory framework. I show how by regressing the archeological analysis to a pre-institutional and pre-legal moment, and by re-examining the antinomic structure of the sacred in its genetic organizing form (so briskly dismissed by Agamben in *Homo Sacer*), one can account more cogently for certain key issues relevant to Agamben's theoretical project, such as the "paradox of sovereignty," the nature of the "state of exception," and the dissociation between *culpa* and individual responsibility in archaic law, as recently discussed in *Karman.* I also put forward arguments concerning the limitations of Agamben's immanent ontology to account for the *zoe/bios* distinction as a key structural element of his particular take on biopolitics, viewing this specifically in the light of Girard's anti-sacrificial interpretation of the Judeo-Christian Scriptures.

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In current theoretical and philosophical discussion and analysis, a potential comparative dialogue—or even confrontation—that is increasingly attracting academic scrutiny is that between Giorgio Agamben and René Girard.[1] In some cases, the reference to Girard's work within discussions of Agamben's theory is limited to a gesture motivated by bibliographic scrupulousness, aimed often at neutralizing or dismissing Girard's perspective on sacrifice.[2] Conversely, other scholars have used Girard's mimetic theory to shed light on the various aporias and incongruities in Agamben's writings. Still others have tried to put the two thinkers into productive dialogue, presenting many potential theoretical convergences that could contribute to a mutual clarification and comprehension. Most importantly, as Frederiek Depoortere has noted, "exploring the nexus formed by the work of Agamben and Girard may be a fruitful thing to do for contemporary reflection on the sacred and its link to violence."[3]

In fact, both Agamben's inquiry and Girard's mimetic theory explore very specific issues and questions, consigning other subjects and problems

1. The most pertinent engagements with the possible dialogue between Girard and Agamben are: Rey Chow, "Sacrifice, Mimesis, and the Theorizing of Victimhood (A Speculative Essay)," *Representations* 94, no. 1 (2006), doi:10.1525/rep.2006.94.1.131; Christopher A. Fox, "Sacrificial Pasts and Messianic Futures: Religion as a Political Prospect in René Girard and Giorgio Agamben," *Philosophy and Social Criticism* 33, no. 5 (2007), doi:10.1177/0191453707078920; Andrew Pump, "AIDS and Sacrifice: A Discussion of René Girard's Scapegoat Theory of Sacrifice, Jean-Luc Nancy's Unsacrificeable, and Giorgio Agamben's Homo Sacer," *Ottawa Journal of Religion* 2 (2010); Frederiek Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," *Philosophy Today* 56, no. 2 (2012), doi:10.5840/philtoday201256234; Colby Dickinson, "Beyond Violence, Beyond the Text: The Role of Gesture in Walter Benjamin and Giorgio Agamben, and its Affinity with the Work of Rene Girard," *Heythrop Journal* 52, no. 6 (2011), doi:10.1111/j.1468-2265.2011.00683.x; Brian Sudlow, "Agamben, Girard and the Life that Does Not Live," in *Intensities: Philosophy, Religion and the Affirmation of Life*, ed. Steven Shakespeare and Katharine S. Moody (Farnham: Ashgate, 2012); Anthony W. Bartlett, "Girard's Lost Time: Messianic Temporality in Things Hidden," *Contagion: Journal of Violence, Mimesis, and Culture* 21 (2014), doi:10.14321/contagion.21.2014.0175; Kristof K. P. Vanhoutte, "'Oh God! What a Lovely War': Giorgio Agamben's Clausewitzian Theory of Total/Global (Civil) War," *Russian Sociological Review* 14, no. 4 (2015), doi:10.17323/1728-192X-2015-4-28-43; Antonio Cerella, "The Myth of Origin: Archaeology and History in the Work of Agamben and Girard," in *The Sacred and the Political: Explorations on Mimesis, Violence and Religion*, ed. Elisabetta Brighi and Antonio Cerella (London: Bloomsbury, 2016); Lyle Enright, "'Divine but Not Sacred': A Girardian Answer to Agamben's *The Kingdom and the Glory*," *Contagion: Journal of Violence, Mimesis, and Culture* 26 (2019).

2. See for instance, Andrew Norris, "Introduction: Giorgio Agamben and the Politics of the Living Dead," in *Politics, Metaphysics, and Death: Essays on Giorgio Agamben's Homo Sacer*, ed. Andrew Norris (Durham: Duke University Press, 2005); Eva Geulen, *Giorgio Agamben zur Einführung* (Hamburg: Junius, 2005); Johanna Oksala, "Violence and the Biopolitics of Modernity," *Foucault Studies* 10 (2010), doi:10.22439/fs.v0i10.3122.

3. Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," 161.

to generic elaborations sketched in broad historical and theoretical brush-strokes. Girard's theory, in particular, is more fruitfully engaged with as a hermeneutic frame of reference than as a careful study in historical causality. The absence of a properly laid out political dimension in Girard,[4] and the absence in Agamben of both an anthropological dimension and one of deep history, are limits that have been highlighted as contrasting features of these two theoretical perspectives.

While I share critical reservations regarding certain specific theoretical issues discussed by Agamben in his works, my interest in this essay is to re-compose some of Agamben's intuitions within a Girardian paradigmatic explanatory framework. I will focus on some "genetic" structures that emerge from a reading of *Homo Sacer* and *Karman*,[5] these being ones that will help to address key issues in relation, for instance, to the antinomic genetic structure of the sacred and the paradox of sovereignty, and the permanence of a sacrificial structure within an immanent understanding of the political in relation to its religious underpinning.

Agamben never mentions Girard's hypothesis concerning the sacred, nor accords him the position of a legitimate philosophical interlocutor. The reasons for this omission may be manifold.[6] With few exceptions, Agamben is never overly generous towards thinkers who are contemporaneous with him, this possibly being a strategy for promoting his own argument in terms of its perceived originality. Furthermore, given his background as a historian and literary critic, Girard also frequently lacks philosophical rigor, and his victimary hypothesis can sound excessively generic and unsubstantiated from a theoretical standpoint. In terms of disciplinary hegemony,

4. An increasing number of scholars are discussing the underlying political consequences of Girard's mimetic theory, particularly following the publication of *Achever Clausewitz*. See, for instance, Domenica Mazzù, ed., *Politiques de Caïn: En dialogue avec René Girard* (Paris: Desclée de Brouwer, 2004); Paul Dumouchel, *Le sacrifice inutile: Essai sur la violence politique* (Paris: Flammarion, 2011); Maria Stella Barberi, ed., *Spazio sacrificale, spazio politico. Saggi di teologia politica e antropologia fondativa* (Massa: Transeuropa, 2013); Roberto Farneti, *Mimetic Politics: Dyadic Pattern in Global Politics* (East Lansing, MI: Michigan State University Press, 2015); Elisabetta Brighi and Antonio Cerella, eds., *The Sacred and the Political: Explorations on Mimesis, Violence and Religion* (London: Bloomsbury, 2016). "*René Girard politique*, Dossier coordonné par Charles Ramond et Stéphane Vinolo," *Cités*, 53, 2013, 3–138.

5. Giorgio Agamben, *Homo Sacer. Il potere sovrano e la nuda vita* (Turin: Einaudi, 1995); trans. as *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998); Giorgio Agamben, *Karman. Breve trattato sull'azione, la colpa e il gesto* (Torino: Bollati Boringhieri, 2017); trans. as *Karman: A Brief Treatise on Action, Guilt, and Gesture*, trans. Adam Kotsko (Stanford, CA: Stanford University Press, 2017).

6. Various commentators have conjectured about this omission or "overlooking"—e.g., Fox, and Chow.

one might also invoke the "excommunication" suffered by Girard in French philosophical and intellectual circles (and voiced by Michel Foucault)[7] following the publication of his scathing critique of Gilles Deleuze and Felix Guattari's *Anti-Oedipus: Capitalism and Schizophrenia* (1972).[8]

Nevertheless, Agamben's work in fact dwells on some conceptual structures and theoretical issues that are profoundly relevant to Girard, and which resonate with the "archaeological" underpinning of the mimetic and victimary process exposed by the latter in *Violence and the Sacred* and *Things Hidden Since the Foundation of the World*. Girard's mimetic hypothesis may also illuminate some grey areas in Agamben's theorization, whilst Agamben's archaeological analyses could be included in a probatory framework aimed at substantiating Girard's theoretical speculation, so that it advances a more cohesive and robust explanatory argument.

ARCHAEOLOGIES

From a methodological standpoint, Agamben and Girard share an interest in defining a possible *arché* in the cultural and political development of human beings.[9] Both the scapegoat mechanism proposed by Girard, and the juridical institution of the *sacertas* in the Roman law analyzed by Agamben, function as *termini post quem* of the anthropogenetic process, linked to the role of religion and the sacred in the constitution of human political and social history.

In Girard's theory of sacrifice and violence, the scapegoat or emissary mechanism was the "instrument" or "coping device" through which protocommunities were able to regulate the explosion of endogenous violence within a pre-institutional and pre-juridical space, by means of unanimous polarizations of collective rage and violence against expiatory victims. These spontaneous events were gradually ritualized into liturgical forms of surrogate victimization and expulsion. Agamben's theory of the "state of exception"—that is, of anomic, unregulated violence as the paradigm of a biopolitical exercising of power—hinges on the Roman juridical figure

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7. Personal communication.

8. René Girard, *"To Double Business Bound": Essays on Literature, Mimesis, and Anthropology* (Baltimore: Johns Hopkins University Press, 1978), 84–120.

9. "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." Justin Clemens, "The Role of the Shifter and the Problem of Reference," in *The Work of Giorgio Agamben: Law, Literature, Life*, ed. Justin Clemens, Nicholas Heron and Alex Murray (Edinburgh: Edinburgh University Press, 2008), 55.

of the *homo sacer*, whereby a member of the community falls victim to a similar, if not equivalent, form of violence, and stands as a paradigmatic emblem of the type of thanatopolitics on which the political order rests.

In their archaeological projections, neither thinker attempts to pin matters down to some specific event or points of origin in human history with a distinct chronology; instead, they seek to define a "field of possibilities" through which some fundamental determinations of human political and social life came to be established. As Agamben asserts in an interview:

> Nous appelons archéologie la recherche qui, dans toute enquête historique, se mesure avec son *a priori* historique et avec sa pré-historie. Il va de soi que l'a priori historique ne coïncide pas nécessairement avec un événement que l'on pourrait situer avec précision et dater dans une chronologie. L'a priori historique ultime, qui constitue l'horizon de toute recherche, est l'anthropogénèse, le devenir humain de l'homme, que l'on doit présupposer comme advenu, et qui est cependant impossible à dater. La philosophie — ou l'archéologie philosophique — est la tentative de maintenir tout problème et toute enquête historique en relation avec cet événement indatable.[10]

Similarly, for Girard, the proto-event of the founding scapegoat murder, subsequently ritualized in the form of blood-sacrifice, should not be considered a unique historical occurrence (Girard criticizes Freud's conception of a single slaying of one historical Father in *Totem and Taboo*).[11] Rather, the event and its ritual elaboration are to be thought of as being enacted in any number of "incidents," no doubt repeated over time before the pattern was actually perceived as compelling, necessary, and repeatable in respect of its socially pacifying and organizing effects. The structurally common, ritualistic behavior that ensued among ancient humans was selected for its reconciling and protective potency. This coincides with the emergence of religion in its ritualized form.[12]

Agamben also draws a distinction between the *arché* of his "archaeological" method and the *arché* posited by grammarians and other intellectual historians who locate the source of the present in the past, asserting:

10. Giorgio Agamben, "Principia hermeneutica," *Critique* 836–837 (2017): 13.

11. See René Girard, *Violence and the Sacred*, trans. Patrick Gregory (London: Bloomsbury, 2003), Chapter 8.

12. See René Girard, Pierpaolo Antonello, and João Cezar de Castro Rocha, *Evolution and Conversion. Dialogues on the Origins of Culture* (London: Continuum, 2007); Pierpaolo Antonello and Paul Gifford, eds., *How We Became Human: Mimetic Theory and the Science of Evolutionary Origins* (East Lansing, MI: Michigan State University Press, 2015).

> It is clear that the *arché* toward which an archaeology seeks to regress cannot
> be understood in any way as a given that can be situated either in a chronology
> (even in a broad category like "prehistoric") or even beyond it, in an a-temporal
> metahistorical structure…. It is, rather, a force working in history, exactly as
> the Indo-European language expresses first of all a system of connections
> among historically accessible languages; just as the child in psychoanalysis
> expresses a force that continues to act in the psychic life of the adult; and
> just as the "big bang," which is supposed to have given rise to the universe,
> is something that never stops transmitting its background radiation to us.[13]

Likewise, for Girard, the victimary mechanism is at the same time institutive
of the religious, social, and political order. What is more, it is a structure that
maintains a visible presence throughout human history, albeit transformed
into shapes that are visibly consistent with its genetic original force, from
which human societies and cultures have progressively tried to distance
themselves. As Antonio Cerella has pointed out, "anthropogenesis, for both
Girard and for Agamben, represents a watershed that must have left traces
of its ambiguous passage in language as well as in thought, in the political
structure as well as in that of the exception."[14] And further: "Archaeology, in
short, for both Girard and Agamben, is a 'science of signs,' an inquiry into
the signatures left by the Origin on the living body of history and power."[15]

 Consistent with this, and very much as for Girard, in Agamben there is
a rejection of modern attempts to establish "religion" as a separate, self-
contained realm, thereby opening up a path for a new and different way of
conceiving of the relationship between theology and philosophy, outside
the paradigm of religious versus secular. However, this issue also fore-
grounds a fundamental difference between Agamben and Girard, each of
whom sees the genealogical relation of politics and religion in opposing
terms. Whilst for Girard, religion and the sacred constitute the origins of
everything symbolic and cultural in humans, including political institutions
and laws ("il n'y a rien dans la culture humaine qui ne puisse ramener au
mécanisme de la victime émissaire"),[16] for Agamben, politics defines the
social space upon which the entire human social grammar hinges, as well

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13. Giorgio Agamben, *The Sacrament of Language: An Archaeology of the Oath*, trans. Adam
Kotsko (Stanford, CA: Stanford University Press, 2010), 10.

14. Cerella, "The Myth of Origin," 223.

15. Ibid., 225.

16. René Girard, *Des choses cachées depuis la fondation du monde* (Paris: Poche, 1983), 72.
As in several other instances, this sentence is omitted in the English translation of the book,
see René Girard, *Things Hidden Since the Foundation of the World*, trans. Stephen Bann and

the modalities of operational and violent control of the human. At the core of the hermeneutical thrust of *Homo Sacer* lies the original sovereign ban which is the founding biopolitical act (whereby "power" has the possibility to make life "bare").

   In Agamben's view, the religious sacrificial rite, which lies at the heart of Girard's understanding of anthropogenesis, does not have anything to do with the sovereign ban—the overlapping of the two terms being a subsequent confusion that occurred in modern scholarship. Only later will the apparent ambiguity of the ancient Roman juridical figure "begin to resonate with the religious category of the sacred": as, in Agamben's account, this takes place "when [the category of the sacred] irrevocably loses its significance and comes to assume contradictory meanings."[17]

   Although the "archaeological" method appears to be common to both Agamben and Girard, in Agamben's case the discussion is somewhat limited at the conceptual and linguistic level, in that he rejects the possibility of exploring the deep-rooted anthropological layers articulated at a pre-linguistic and symbolic level. Girard's mimetic theory, by contrast, aims to unearth the pre-linguistic mechanisms and habits through which human proto-groups could survive explosions of intra-species collective violence, during a phase when dominance patterns and the increasing mimetic propensity of humans were capable of having negative effects on the stability of primitive societies. This was done by combining descriptive analysis and research from fields as diverse as biology, ethology, ethnology, archaeology, and anthropology, and through the interpretation of "cultural fossils" (myths, rites, legends, and classical tragedies) from which he advanced a scientific hypothesis about the emergence of culture and institutions. This is a vast territory that remains highly conjectural and speculative, and one that philosophical discourse tends to evade. Girard's theory is in fact offered more as a scientific than a philosophical enquiry (it claims a sort of resistance to philosophical vocabulary and argumentative structure), bringing with it a problem of discursive commensurability.[18] However,

Michael Metteer (Stanford, CA: Stanford University Press, 1987), 50. For a general discussion see Girard, Antonello, and Rocha, *Evolution and Conversion*, Chapter 3.

   17. Giorgio Agamben, "Homo Sacer," in *The Omnibus Homo Sacer* (Stanford, CA: Stanford University Press, 2017), 51.

   18. "The so-called 'système-Girard' which is attributed to me … Exists primarily in the mind of those who have no firsthand experience of the dynamic force of the mimetic theory. They see my work as something static, a bunch of dogmatic propositions about the way things are…. What should be taken seriously … Is the mimetic theory itself—its analytical power and versatility—rather than this or that particular conclusion or position, which critics tend to turn into some creed which I am supposedly trying to force down their throats. I am much

because of that it is more expansive than Agamben's in both historical and scientific terms.

THE AMBIVALENCE OF THE SACRED

One of the issues that both Agamben and Girard challenge in their ground-breaking works (respectively, *Homo Sacer* (1995) and *La violence et le sacré* (1972)) is the "ambivalence" of the sacred, construed as a preliminary question in relation to their attempts to introduce their theoretical perspectives. Agamben is polemically opposed to a specific tradition of classical anthropology. He argues that interpretations of many social phenomena are weighted down by a "scientific mythologeme": the theory of the "ambivalence of the sacred," which dates from Victorian anthropology and has enjoyed a considerable career since then. From William Robertson Smith's *Lectures on the Religion of the Semites* (1889) to Marcel Mauss and Henri Hubert's *Essai sur la nature et la fonction du sacrifice* (1898), to Durkheim and Freud's writings, this mythologeme posits that the sacred is both auspicious and inauspicious: associating adoration and damnation, holiness and taboo. As Agamben explains, "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."[19] In Agamben's view, the theory of the ambivalence of the sacred is merely a later "psychologization of religious experience," the result of "a theology that had lost all experience of the revealed word."[20] Consequently, this scientific mythologeme "not only explains nothing but is itself in need of explanation."[21] From here, one can perhaps more readily understand Agamben's avoidance of Girard's theory, which he probably grouped within this cluster of anthropological and historical interpretations.[22]

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less dogmatic than a certain reading of my work suggests." Rebecca Adams, "Violence, Difference, Sacrifice: A Conversation with René Girard," *Religion & Literature* 25, no. 2 (1993): 22.

19. Agamben, *Homo Sacer*, 88–9.

20. Ibid., 66.

21. Ibid., 68.

22. Ibid. Eva Geulen explicitly mentions Girard as the last defender of the theory of the ambivalence of the sacred. See Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," 164. However, as Tommasi underscores: "la specificità del fenomeno di *homo sacer* e il suo situarsi a livello di 'filosofia prima' risaltano in modo particolare se confrontati proprio con il sacrificio, che in questo testo sembra l'obiettivo polemico chiamato in causa per definire meglio i contorni, e quindi far risaltare l'originalità, della proposta. A giudizio di Agamben, prendere il tema del sacrificio come filo conduttore per comprendere la questione del sacro rappresenta, infatti, un fraintendimento che non permette di cogliere il significato del termine e dunque la sua portata così decisiva." Francesco Valerio Tommasi, "Homo sacer

However, Girard himself is equally critical regarding the question of the ambivalence of the sacred, a question he foregrounds on the very first page of *Violence and the Sacred*:

> Because the victim is sacred, it is criminal to kill him—but the victim is sacred only because he is to be killed. Here is a circular line of reasoning that at a somewhat later date would be dignified by the sonorous term *ambivalence*. Persuasive and authoritative as that term still appears, it has been so extraordinarily abused in our century that perhaps we may now recognize how little light it sheds on the subject of sacrifice. Certainly, it provides no real explanation. When we speak of ambivalence, we are only pointing out a problem that remains to be solved.[23]

For Girard, "ambivalence" is merely a descriptive term that fails to engage with the deep-rooted anthropological substructure that underpins this enigmatic conceptual quandary, and which he explains through the mechanism of the victimary matrix that lies at the heart of the sacred: that of the pharmacological instrument used by the proto-community to keep guard over its endogenous systemic and mimetically inflected violence.

Girard is the only interpreter of the sacred who can provide a clear anthropological explanation in genetic and evolutionary terms of the emergence of the double bind that lies at the core of the sacred. In this regard, I agree with Depoortere, who claims that:

> Girardian theory offers us a mechanism that explains the ambivalence of the sacred and not merely presupposes it (as twentieth-century theorists have, as mentioned by Girard at the outset of *Violence and the Sacred*, most often done). The ambivalence of the sacred becomes intelligible when we understand that the sacred comes into being through externalising violence, by dehumanising it and turning it into a transcendent power. This power is subsequently experienced as both the source of violence and the source of peace. As the source of violence, the sacred is maleficent (and thus to be feared); as the source of peace it is beneficent.[24]

e i dispositivi. Sulla semantica del sacrificio in Giorgio Agamben," *Archivio di Filosofia* 76, no. 1/2 (2008): 397.

23. Girard, *Violence and the Sacred*, 1.

24. Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," 161.

The sacred originates as the outcome of an anthropological matrix in which a double form of collective transfer is involved in sacrificial phenomena and rituals. The emissary and sacrificial victim is responsible both for the social disorder that is "inflicted" upon the community (and which is generated by the community itself), and the restorative, cathartic effect of its expulsion. For Girard, this reconciliatory transference sacralizes the victim. "The sacred is the sum of human assumptions resulting from collective transferences focused on a reconciliatory victim at the conclusion of the mimetic crisis. Far from being a leap into the irrational, the sacred constitutes the only hypothesis that makes sense for human beings as long as these transferences retain their power."[25]

Homo Sacer

This antinomic, double-bind structure of the sacred would then help to explain the "paradox of sovereignty"—one of the preliminary issues discussed by Agamben in *Homo Sacer*. The juridical institution, converted into a philosophical category, around which Agamben's political theorization pivots, is in fact the *homo sacer*, referencing the Roman law of the *sacertas*. The *sacertas* was a juridico-religious sanction imposed on any person who compromised the *pax deorum*; as a consequence, he or she would lose the protection that the *civitas* granted any citizen, affording the possibility that anyone might with impunity kill the lawbreaker. *Sacer esto* ("let he or she be accursed") was the formula through which the transgressor was consecrated to the underworld; a formula present in the *Leges Duodecim Tabularum*, the Law of the Twelve Tables, the legislation that stood at the foundation of Roman law.

Agamben sees in this law both an enigma and a paradigm for the articulation of a genealogy of sovereignty. What specifically catches his attention is the double injunction of exclusion that the *homo sacer* suffers: "The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide." The *homo sacer* is excluded both from the *ius humanum* (human law) and the *ius divinum* (divine law). As such, he is subjected to a "double exclusion," one which opens a distinct dimension of violence.[26]

According to Agamben, the sacredness of the *homo sacer* was obscure, not only to modern scholars, but even to the Romans themselves. Agamben

25. Girard, *Things Hidden*, 42.
26. Agamben, *Homo Sacer*, 52.

purports to resolve the contradiction by positing the *homo sacer* as an autonomous figure, one that is located "in a zone prior to the distinction between sacred and profane, religious and juridical."[27] Further, "[the] *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."[28] With the *homo sacer*, Agamben believes he has identified an *ur-phenomenon* that, although subtracted from a specific temporal determination, is historically operating at the foundational level of society, in the transitional zone between nature and culture.[29]

Several criticisms have been raised about the legitimacy of extrapolating such general political categories from a single law of this type, bound to a very specific cultural and historical context. As Paul Rabinow and Nikolas Rose maintain, Agamben's argument is too atemporal and static to allow for a more nuanced and differentiated analysis.[30] Agamben's passage from *sacer*, as the key term in the "mythologeme" of the ambivalence of the sacred, to *sacratio*, as the term that holds the interpretative key to the *homo sacer*, seems almost more sleight of hand than a convincing argument. Meanwhile, Fox has argued that:

> one can ask whether the ancients really were so fastidious as to have knowingly created some third sphere distinct from the religious and juridical economies to guarantee the sovereign a power of unpunishable killing. A merely reflexive response to Agamben's claim might be to invoke Occam's razor and to critique him for multiplying causes, textual evidence notwithstanding.[31]

Similarly, Depoortere sees Agamben's interpretation as "at odds with historical reality," and "a fanciful creation."[32] Agamben's theoretical use of the *homo sacer* does not in fact seem the result of a detailed genealogical and archaeological investigation, but rather is employed as a synecdoche of a dynamics of sovereignty that becomes particularly visible in the modern context. In this sense, it is perhaps more a retrospective projection of contemporary political preoccupations than a well-grounded historical

27. Ibid., 47.

28. Ibid., 83.

29. Ibid., 126.

30. Paul Rabinow and Nikolas Rose, "Biopower Today," *BioSocieties* 1, no. 2 (2006), doi:10.1017/S1745855206040014.

31. Fox, "Sacrificial Pasts and Messianic Futures," 573.

32. Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," 154.

analysis.[33] As Ernesto Laclau pointed out, "one often has the feeling that Agamben 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."[34]

In terms of a more detailed historical analysis, Depoortere has argued that Agamben excluded from his consideration other contextual sources that would help to give a clearer explanatory picture of the *sacratio*. He ventures to suggest that Agamben's argument fails to account for the fact that in the original Latin sources, the *homo sacer* is guilty of a heinous crime. Agamben's claim is that such crimes constitute "the originary exception in which human life is included in the political order in being exposed to an unlimited capacity to be killed."[35] Agamben offers no substantial proof of this; in his view, "it seems more accurate to accept what the sources explicitly say and to consider *sacratio* [that is, the condition of the *homo sacer*] to be the punishment for a number of severe crimes, crimes that ... affect the foundational relationships of Roman society."[36] In this sense, Girard's theory concerning the sacrificial origins of any legal punishment seems the more useful hermeneutical tool for categorizing the *sacratio* in its historical context. According to Girard, the sacrificial ritual is the primordial mechanism of religious and judicial regulation of proto-communities, and the vestige of sacrificial rites remains clearly visible in the *sacratio*.

However, the only reference to the *homo sacer* present in Girard's work is in *Violence and the Sacred*. It occurs in a quotation from Louis Gernet's *Anthropologie de la Grèce antique* (1968), which deals with the issue of capital punishment, interpreted in terms both of purification and the elimination of pollution, and also of expulsion and devotion, linking the *homo sacer* to the Greek *pharmakon*. "There is no doubt that the death penalty is portrayed here as a direct extension of the generative violence," Girard

33. As Chow paraphrases, the sacredness of the *homo sacer* "consists not in any (residual) religious sense of the sacred but rather in the inextricable link between sovereign power and human existence.... As more and more people get killed in our contemporary world without reason or justification—as innocent human lives pile up like wreckage against the precarious grounds of sovereignty—the sovereign relation itself is increasingly being exposed for what it is: an arbitrary configuration of power that has immense potential for abuse and that has, indeed, been thoroughly abused." Chow, "Sacrifice, Mimesis, and the Theorizing of Victimhood," 134.

34. Ernesto Laclau, "Bare Life or Social Indeterminism?," in *Giorgio Agamben: Sovereignty and Life*, ed. Matthew Calarco and Steven DeCaroli (Stanford, CA: Stanford University Press, 2007), 11.

35. Agamben, *Homo Sacer*, 85.

36. Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," 111.

argues.[37] The death penalty has its roots in sacrificial liturgy, which acted as the primeval engine for the death penalty's later institutionalization within an increasingly complex legal framework, but remains still visible even in modern accounts of these punitive acts.[38] Being substitutive of the regulatory mechanism of sacrifice, the judicial system maintains structural and symbolic links with its original sacrificial matrix.[39]

In order to prepare his genealogical benchmark—a sort of arbitrary "blank slate" as a theoretical starting point—Agamben is again quite dismissive with reference to those historical and critical accounts that see the *sacratio* as, he writes, "a weakened and secularized residue of an archaic phase in which religious law was not yet distinguished from penal law and the death sentence appeared as a sacrifice to the gods."[40] Agamben does not try to trace a historical genealogy of the institute of *sacertas* which, while reaching its heights of diffusion with the *leges sacratae* and the attribution of the *sacrosanctitas* to the plebeian tribunes, has more ancient origins. Institutions of religion and juridical characters similar to *sacertas* were already present in Ancient Greece, as in the case of the ἀτιμία. In early ancient Athens, *atimia* meant outlawry, the total deprivation of all rights (literally, the "loss of time, honour"), such that a citizen could kill an *atimos* without committing an offence or incurring blood-guilt.[41] It was a typical form of capital punishment. Positing sacrifice as a pre-judicial instrument for resolving internal disputes and controlling potential escalations of vengeance, Girard argues that sacrifice gradually becomes an empty form when a judicial system comes into being, as in the case of both Ancient

37. Girard, *Violence and the Sacred*, 339.

38. See James McBride, "Capital Punishment as the Unconstitutional Establishment of Religion: A Girardian Reading of the Death Penalty," *Journal of Church and State* 37, no. 2 (1995), doi:10.1093/jcs/37.2.263; Mark Brewin, "Girard, Mediated Texts, and the Modern Death Penalty," *Journal of Media and Religion* 11, no. 4 (2012), doi:10.1080/15348423.2012.730 318; Jan-Melissa Schramm, "'Let us carve him as a feast fit for the gods': Girard and Unjust Execution in Nineteenth-Century Narrative," in *Mimesis, Desire, and the Novel: René Girard and Literary Criticism*, ed. Pierpaolo Antonello and Heather Webb (East Lansing, MI: Michigan State University Press, 2015). Recently Brian K. Smith has discussed the permanence of the link between capital punishment and human sacrifice; see Brian K. Smith, "Capital Punishment and Human Sacrifice," *Journal of the American Academy of Religion* 68, no. 1 (2000), doi:10.1093/jaarel/68.1.3.

39. See Rafael Van Damme, "The Presumption of Innocence: An Antidote for Sacrificial Venom? Patterns of Girard's 'Primitive' Sacred in Late Medieval and Early Modern Criminal Law," *Netherlands Journal of Legal Philosophy* 1 (2016), doi:10.5553/NJLP/.000044.

40. Agamben, *Homo Sacer*, 48.

41. Christopher Joyce, "Atimia and Outlawry in Archaic and Classical Greece," *Polis: The Journal for Ancient Greek and Roman Political Thought* 35, no. 1 (2018), doi:10.1163/20512996-12340139.

Greece and Rome, writing that "it is precisely under such circumstances that sacrifice usually comes to our notice, and our doubts as to the 'real' function of religious institutions are only reinforced."[42] This could explain Agamben's dissociation of the political and religious spheres, seen in terms of a later superficial historical overlapping.[43]

It is, on the contrary, in this primitive indistinction between religion, politics, and law that Girard's explanation becomes more persuasive than Agamben's. The *homo sacer* would, then, become a juridical figure produced at the moment of exhaustion of the sacrificial rite, but before the instauration of a completely secular judicial system. Modern scholarship's interpretation of the *homo sacer* as not a foundational figure of sovereign power, but rather a final but enduring link (in the Western World) between the sacred and the profane, is rejected by Agamben. The Roman grammarian Festus's insight with regard to the unsacrificeability of the *homo sacer* brings to the fore the formation of a secular, somewhat inchoate awareness that the sacrificial rite has ceased to adequately function. After all, according to Pliny the Elder at least, human sacrifice in Ancient Rome was rare; indeed, so rare that by the time it was officially banned in 97BC, the decree was merely symbolic.

The ban suffered by the *homo sacer* placed him or her in a liminal space in which he or she could no longer be religiously sacrificed. This could be explained by the antinomic structure and the double-bind logic of the sacred, particularly in reference to his or her position as an insider/outsider, as Depoortere observes:

> A potential sacrificial victim has to be a part of the community (he lives among the other members of the community), but has to remain at the same time an outsider, an outcast. This Girardian perspective on what constitutes

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42. Girard, *Violence and the Sacred*, 19.

43. In the attempt to keep religion and politics as separate domains, Agamben's argument lapses into self-contradictory historical claims, as Fox suggests: "In *The Time That Remains*, Agamben comes into conflict with his own claim from *Homo Sacer* that the sacred man arises from a political sphere independent of religion. In a lengthy attack on Buber's distinguishing of Greek *pistis* from Jewish *emunah*, faith versus belonging, Agamben roots both attitudes in the sphere of what French legal scholars call *prédroit*, or prelaw. Regarding this sphere, Agamben writes: '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 sphere of law—or rather, in prelaw, that is, where law, politics, and religion become tightly interwoven.'" Fox, "Sacrificial Pasts and Messianic Futures," 573; Giorgio Agamben, *The Time That Remains: A Commentary on the Letter to the Romans*, trans. Patricia Dailey (Stanford, CA: Stanford University Press, 2005), 116.

> a suitable sacrificial victim may be helpful in explaining the unsacrificeability
> of the *homo sacer*: the *homo sacer* is too much of an outsider and not enough
> of an insider to be a suitable sacrificial victim.[44]

Depoortere advances this observation further in mimetic terms, advocating the problem of contagion as one of the key elements that defines the sacrificial space and practice. Walter Burkert, in *Creation of the Sacred*, explains that "concepts of pollution and guilt represent two stages in the evolution of the human mind; of these, the fear of pollution is supposedly more primitive and hence should be earlier in the development of civilization."[45] The sacrality that is bestowed upon the *homo sacer* by the Roman law of *devotio* clearly refers to a dimension of infraction and guilt, but it is still tied to primitive dimensions of contagion and contamination by which the scapegoat is banned—"abandoned"—for his or her polluting quality. Also from this point of view, the *homo sacer* could be seen as the relic of a transitional historical sacrificial practice progressively secularized into a judicial institution.

In the historical progression of these forms of secularization of sacrificial structures later incorporated or metamorphosed into judicial institutions, Girard's line of analysis could be traced back further to find a compelling and somewhat revealing mythical rendering of the *homo sacer*: Oedipus. Sophocles' Oedipus Rex is a tragic figure: a sovereign that enacts simultaneously the dimensions of contagion and "guilt"; holding the ambiguous position of being both insider and outsider; displaying a form of *double exclusion*. Oedipus has suffered a double ban: as infant, following a typical mythical pattern (Moses, Cyrus, Sargon of Akkad, Romulus and Remus—but also Christ),[46] and later, as incestuous and regicidal king, responsible for the plague that devastated Thebes. Already, constitutionally, the king was a "bandit": an insider turned outsider, then insider again, only to be finally banned. The differential impulse of religious thought and language, and the reiterative nature of rituals and myths, organized around the repetitive structure of the surrogate sacrifice, are mirrored in the mythical account in which figures of expulsion abound. Because of the impossibility

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44. Depoortere, "Reading Giorgio Agamben's Homo Sacer with René Girard," 159.

45. Walter Burkert, *Creation of the Sacred: Tracks of Biology in Early Religions* (Cambridge: Harvard University Press, 1996), 125.

46. The inclusion of Christ within a cluster of mythical figures has, in the Girardian formulation, a dialectical and contrasting value, in the sense that the narrative of the Gospel incorporates mythical structures in order to subvert them through a process of complete revelation of the victimary origins of both the sacred and the social order.

of representing the antinomic structure of the sacred, myth lays the narrative and etiological tesserae on a temporal differential axis, by which the sovereign as the *homo sacer* is repeatedly expelled (but not sacrificed) for being the bearer of a (mimetic, violent, and destructive) form of contagion.

The Paradox of Sovereignty

The antinomic genetic structure of the sacred can, therefore, explain the "paradox of sovereignty," one of the preliminary questions addressed by Agamben in *Homo Sacer*: "The paradox of sovereignty consists in the fact that the sovereign is, at the same time, outside and inside the judicial order."[47] Agamben underlines that "it has often been observed that the juridico-political order has the structure of an inclusion of what is simultaneously pushed outside…. We shall give the name of *relation of exception* to the extreme form of relation by which something is included solely through its exclusion."[48]

Agamben postulates that this enigmatic "inclusive exclusion" is at the core of sovereignty. Sovereignty is neither a wholly political nor a wholly juridical category, nor yet a power external to law, as Carl Schmitt claimed;[49] rather,

> it is the original 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* (from the old German term that designates both exclusion from the community and the command and insignia of the sovereign) to this potentiality … of the law to maintain itself in its own privation.[50]

Introducing once again a historical regression towards a pre-juridical state, in which cultural and social structures are still fluid and largely undifferentiated,[51] this paradox of a sovereign falling into a state of

47. Agamben, *Homo Sacer*, 17.

48. Ibid., 19.

49. See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 2005).

50. Ibid., 27.

51. As Cerella writes: "[as distinct from Girard,] who sees in the ambiguity of *sacertas* a kind of universal mechanism that must remain fluid, open, and therefore, beyond good an evil, human and divine law, to be effective, since it would generate both—Agamben is convinced that this form of the exception hides a fundamental yet different paradigm…. For him, not only politics would be based on the logic of the exception, but also the whole of Western ontology would be based on this mechanism of exclusionary-inclusion." Cerella, "The Myth of Origin," 221.

exception of liminal inclusive exclusion should be considered in relation to Girard's explanation of the development of kingship and central power through the ritualization of human sacrifice. From a mimetic standpoint, it is not difficult to see the similarity of the position of the *homo sacer* and that of the sovereign—a comparison observed by Agamben himself, when he notes the symmetry between the body of the sovereign and that of the *homo sacer* (alongside the multiplications of substitutive totemic royal images incorporated in the rituals of sovereign power).[52]

Identifying the many similarities observable in ethnographic accounts between rituals of royal enthronement and those of sacrifice, Girard proposed that the regal institution emerged as a by-product of the sacrificial mechanism and its ritualistic amplification in its proto-historical development.[53] He writes:

> in all human institutions it is necessary to reproduce a reconciliatory murder by means of new victims. The original victim is endowed with superhuman, terrifying prestige because it is seen as the source of all disorder and order. Subsequent victims inherit some of this prestige. One must look to this prestige for the source of all political and religious sovereignty…. It is necessary and sufficient for the victim to take advantage of the lapse of time before the sacrifice and to transform veneration into real power.[54]

The institution of sovereignty would then be based on a sacralization of the surrogate victim who, because of his or her prestige and symbolic power, succeeded in deferring the moment of immolation. In Girard's terms,

> this extension, in turn, will permit the future victim to consolidate progressively more power over the community. At some point this power and the submission of the community would become sufficiently effective and extensive as to make an actual sacrifice of the monarch impossible if not unthinkable.[55]

For Girard, the sovereign is the first "bandit": the point of intersection of internal and external, repositioned from the margins of the social order to the centre.[56] This would indicate a consubstantial interdependence between

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52. Agamben, *Homo Sacer*, 115.
53. Girard, *Things Hidden*, 51.
54. Ibid., 53.
55. Ibid.
56. Ibid., 54.

what lies within and without the social systemic order. The sacrificial victim is banned, "abandoned," by the community, to use Agamben's conceptual vocabulary; but he or she is also intrinsically and constitutionally bound to the community, by virtue of being, himself or herself, a product of the differential act of exclusion through which the community externalizes its own violence. In so doing, the community confers and transfers to the victim its own inherent violent power. According to Girard's theory, the scapegoat has been granted sovereign status because, in the eyes of the community members, he or she personally and individually has accessed the pure and unbounded violence which, in turn, gives birth to community order and peace. In the state of exception, violence fulfils the role that law plays in the normal state of affairs and appears as the supreme arbiter of human actions: "The sacrifice of a king: is that not the very image of power that seeks to deceive human beings and mask the arbitrariness of the tyranny imposed on them?"[57]

That the sovereign inhabits a state of exception is further evidenced by the instantiation of the sacrificial victim at the point of crisis. The highest point of the hierarchical structure is the most exposed, and could be returned to the position that the institutional apparatus has progressively masked: its victimary origin. There is a similarity between what stands at the margins and what at the center of the social order, since both are *exceptional* positions. They retain an ex-centric position in respect to the collective: "it is precisely [the king's] position at the center that serves to isolate him from his fellow men, to render him casteless. He escapes from society, so to speak, via the roof [*par le haut*], just as the *pharmakos* escapes through the cellar [*par le bas*]."[58] These elements are easily conflated in the surrogate victim. Oedipus embodies all the typical differential victimary signs of etiological myths: as infant, as foreigner, as cripple, as blind man, and as *king*.[59]

As Michel Serres discusses in *Les Origines de la géométrie*, the circle that defines the perimeter of social inclusion and exclusion is also the structure that approaches its own center to subvert it; that is, "invading the entire rim of the circle, exclusion approaches the center and occupies it."[60] More

57. Ibid., 52.

58. Girard, *Violence and the Sacred*, 13.

59. Girard, *Things Hidden*, 120; Girard, *Violence and the Sacred*, 287–9. Carlo Ginzburg shows this widespread connection between limping, or limb mutilations of some sort, in mythological figures with ritual killing and the world of death: Carlo Ginzburg, *Storia notturna. Una decifrazione del sabba* (Torino: Einaudi, 1989), 206–75.

60. Michel Serres, *Geometry: The Third Book of Foundations*, trans. Randolph Burks (London: Bloomsbury, 2017), 119.

given than Girard to the use of an archaeological lexical analysis to express his historical arguments, Serres explains that the Greek word *kentron*

> designates the goad with which the plowman formerly spurred on the pair of oxen at the plow, the weapon in the bee's belly or at the scorpion's rear, but also a whip with nails, an instrument of torture. The same word designates the tool of punishment and he who undergoes or merits it, the victim. The royal apex of the political form therefore ends up receiving the poor wretch, condemned to the stirrup leathers or the lethal goad, at the same time as it lets its place be seen.... As though it accompanied the history of science, language recounts that the center of the circle or of a closed curve in general, the pure ideality, far from designating at the outset the calm reference place where people debate in serene democratic equality of the aristocrats and the exclusion of a forgotten population, describes the trace left by the goad, the stimulation under a distinct *stilus*—the common root of these words, *stigma*, is soon going to signify the point in Euclid—the nail of the whip of the one being thrashed, the torture site and the place of the ridiculed king, in the middle of the circle formed by those responsible for the lynching.[61]

STATE OF EXCEPTION AND MIMETIC CRISIS

A further conceptual element identified by Agamben that would fit into the Girardian hermeneutical framework is one of the characteristics that defines the life of the *homo sacer*: namely, "his unsacrificeability according to the forms prescribed by the rite of the law," which is also "to be found in the person of the sovereign."[62] The killing of the *homo sacer* does not constitute homicide; "accordingly, there is no juridico-political order (even among those societies in which homicide is always punished with capital punishment) in which the killing of the sovereign is classified simply as an act of homicide."[63] For Girard, the sovereign in fact lives in a state of exception; that is, of infinite deferral of the ritual sacrificial act. The sacrifice of the sovereign as the *homo sacer* is implicitly present and sanctioned by his or her enthronement, but is never fulfilled. Like the sovereign, the *homo sacer* lives in an anomic space, in a permanent or semi-permanent suspension, in which the sacredness is a sort of historic and religious palimpsest. The *homo sacer* is "sacred" as much as the sovereign is sacred, writes Girard: "We say sacred monarchy, as if the monarchy were primary and the sacred

61. Ibid., 118–9.
62. Agamben, *Homo Sacer*, 85.
63. Ibid., 87.

simply a secondary modification of it, something added to a pre-existing monarchy whose origin requires no explanation."[64] Further:

> If the principle of kingship and divinity exclude one another, at least at their origin, it is because they constitute two somewhat different responses to the basic question of ritual: How should the violent resolution to the crisis be reproduced? In kingship the dominant element is what happens *before* the sacrifice, in divinity it is what comes *after* the sacrifice.[65]

The king as sacrificial victim inhabits a zone of non-differentiation, outside the moral and legal framework which regulates prohibitions and taboo. In some African tribes, before his succession, the new king is permitted—or even, in some cases, compelled—to engage in various transgressions.[66] These transgressions are those acts which under normal circumstances constitute those wrongs that attract the highest condemnation—such as incest. Girard believes that the king is thus able to show his relation to the original foundation of the community—that is, the surrogate victim.[67] Since the surrogate victim is perceived by the community to be the bearer of absolute sovereignty and, further, he (or she) who has access to the pure destructive violence that is the real arbiter of the sacrificial crisis, the king is also required to show his proximity to that same origin. When the African king commits the most heinous wrongs, Girard proposes, he discloses his own claim to that same source of monstrous power.[68] To apply Agamben's terminology, the king manifests his relation with the sacred life through his transgressions, where this implies the suspension of any norm and the possibility of exercising absolute power.

The sacrificial crisis in Girard's theory corresponds, then, to the primordial "state of exception" in the Agambenian sense. "The state of exception is not a 'state of law' but a space without law," a "zone of anomie."[69] All degrees and norms vanish, and any rule or norm which was supposed to regulate the conflict between hostile antagonists loses its efficiency. "One of the elements that makes the state of exception so difficult to define is certainly its close relationship to civil war, insurrection, and resistance," Agamben

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64. Ibid., 54.
65. Ibid., 57.
66. Girard, *Violence and the Sacred*, 105.
67. Ibid., 106.
68. Ibid., 107.
69. Agamben, "State of Exception," 50–1.

points out.[70] This "state of exception" is not regulated by a sovereign, but is rather a process of violent degradation of the social order which, in the Girardian scheme, would lead to an implosion of this order, or would call for a pharmacological use of violence as an instrument to reinstate the order. Such a state of exception is constitutionally unstable, and collective violence would polarize its energy, as previously discussed, on the margins or at the center of the social system. And this state of exception is a victimological apparatus, by which the social and political order aims to reinstate its lost equilibrium through a victimary polarization that, historically, has taken the form of regicide (the French and Soviet Revolutions), and of unjust and arbitrary persecutions of an internal *part maudite*. As Paul Dumouchel summarizes in *The Barren Sacrifice*, "the advent of wars of extermination in Europe went hand in hand with obsession with the enemy within, with hatred of the 'Other on the inside,' whether communist, bourgeois, or Jewish: the enemy that absolutely had to be tracked down and destroyed."[71] Although this question merits separate and lengthy discussion, we might posit that, in mimetic terms, this is linked to the anti-sacrificial thrust of Christianity, which renders inoperative, barren, or useless the traditional sacrificial and pharmacological structure of the sacred, and through which modernity has come to exhaust the Schmittian paradigm of the friend/enemy dichotomy and engulf modern mass society in forms of endo-sacrifice—in the context of the kind of biopolitics Agamben has set out.

Causa and *Culpa*

In his most recent book, *Karman: A Brief Treaty on Action, Guilt, and Gesture* (2017), Agamben addresses further terms of contention upon which mimetic theory may cast some explicatory light or offer some theoretical convergences. Here, he begins by questioning "two concepts that serve as a threshold to the edifice of the law—*causa* and *culpa*": two concepts, that is, that act as a brake on his own linguistic and genealogical understanding, because they lack a precise etymology.

   Causa does not mean "trial," but rather, "what is at issue in a trial, what gives rise to the suit";[72] "the term refers constitutively both to the conflict and to what is at stake in it."[73] From the Latin *causa* derives the Romance

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70. Ibid., 168.

71. Paul Dumouchel, *The Barren Sacrifice. An Essay on Political Violence* (East Lansing, MI: Michigan State University Press, 2015), xxiii–iv.

72. Agamben, *Karman*, 17.

73. Ibid., 19.

languages words *cosa* and *chose* (thing, affair): "what is in question, at issue with people."[74] Although Agamben does not make reference to it, one implicit subtext is Heidegger's essay "The Thing" (*Das Ding*), which further extends the issue in etymological terms. "the Old High German word *Thing* means a gathering, and specifically a gathering to deliberate on a matter under discussion, a contested matter."[75] "Thing/cosa," as *causa*, requires a collective public deliberation, in the form of a trial, to resolve the matter. From the point of view of mimetic theory, one could reverse the causal link. The *thing* is what becomes "visible," relevant, named, and indexable, as the center of attention for the assembly—for a gathering that is originally a flow of seizing actions which merge because of the imitative, mimetic make-up of the human psyche. The mimetic convergence of the group is responsible for making the *thing* relevant within the actual symbolic and discursive space of what is human. The *thing*, the ob-ject, is essentially what is disputed. Epistemology resides in mimetic and antagonistic (and therefore sacrificial) premises.

The concept of *culpa* is the other conceptual limen of the edifice of the law for Agamben: "the point at which a certain act or fact enters into the sphere of the law."[76] It indicates "the threshold across which a certain behavior becomes imputable to the subject.... *Obnoxious*, culpable does not designate the one who has caused the crime, but ... the one who stands in *culpa*."[77] To be accused of a crime is sufficient to be in *culpa*, without needing to be actually responsible for the crime:

> *Crimen* is "action, insofar as it is sanctioned," i.e., implicated by a *sanctio* in the order of penal law.... *Crimen* is, that is to say, the form that human action assumes when it is imputed and called into question [*in causa*] in the order of responsibility and law. We are certainly not dealing with a happy dimension: action, which has stepped over the calamitous threshold of *crimen*, loses its innocence.[78]

Reading Kafka's *Der Prozess*, Agamben conjectures on this apparently puzzling dissociation between *culpa* and individual responsibility, which acquire

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74. Ibid., 18.
75. Martin Heidegger, "The Thing," in *Poetry, Language, Thought* (New York: Harper & Row, 1971), 172.
76. Agamben, *Karman*, 20.
77. Ibid., 21.
78. Ibid., 25.

a causal link only gradually in a long historical process: "As happens in archaic law, from the violation of a command there follows the pronouncement of a punishment and, granted that one can speak of a fault, this is so only in relation to an injunction that seems totally arbitrary."[79] That is to say, Agamben concludes, the sanction "is not subsidiary to the law: rather, the law consists, in the last analysis, essentially in the sanction."[80]

And further: "One of the few questions on which historians of ancient thought seem to be in perfect agreement is … the lack of a notion corresponding to that of the will in the modern sense."[81] Indeed, in *Creation of the Sacred*, Walter Burkert explains that

> the Greeks arrived at a rational concept of personal guilt only at a ripe and late age, having started from impersonal and primitive "taboo" … Special juridical elaborations, with clear distinction as to free will and responsibility, are of course products of advanced and enlightened civilizations. But in most of the examples discussed here the declaration of guilt was no more intentional, the causality no more obvious, than a statement of indistinct pollution would be…. These stories express rather the tendency to find connections at all cost, to concentrate on one person or action in order to have a fixed point from which to tackle a catastrophic situation.[82]

These assumptions seem to converge on the idea of the arbitrariness of the accusation and the sacrificial sanction. Agamben recalls that "culpa is synonymous with noxa, a term whose etymology refers to the dark sphere of violent death (nex)."[83] This violent death clearly has a religious and ritualistic structure, which survives in the later secularized institutionalization. Sanction, in particular, is that part of the text of the law that contains the pronouncement of the punishment that strikes the transgressor. But sancire properly means to render sanctus ("in ancient Roman legislation the penalty

79. Ibid., 12.

80. Ibid., 13.

81. Ibid., 29. Further: "To distinguish actions that we call voluntary from involuntary ones in the sphere of law and ethics, the Greeks made use of the terms *hekousion* (which designates an action unconstrained by exterior causes) and *akōn* (what happens against our will). That *hekousion* cannot be translated simply as 'voluntary' is shown clearly in the fact that when Aristotle treats this problem in the *Eudemian Ethics*, he defines as *hekousion* the behavior of animals as well (1111 a 25–27), and one must not forget that among the competencies of the *Prytaneion*, one of the judicial panels in Athens, were crimes committed by animals and even by inanimate objects." Ibid., 30–1.

82. Burkert, *Creation of the Sacred*, 125–6.

83. Agamben, *Karman*, 16.

was inflicted by the gods themselves who intervened as avengers").[84] In Girardian terms, sanction is clearly tied to the sphere of sacrifice, which originally excludes any culpa in terms of individual responsibility, but it is instituted first of all as a mechanism of selection of expiatory victims. The root of the word sin is quite revealing in this sense. Agamben underscores the fact that, according to its etymology, *peccatum* (sin) in fact means, simply, "false step":

> *Scelus* (crime) and *sceleratus* (criminal) also have a similar etymology and refer to the Sanskrit *skhalati*, "to make a false step." But even the Hebrew verbal root *ht,'* which expresses the idea of sin in the Bible, originally means "to take a false step" or "to miss the mark." It certainly cannot be surprising, at this point, that the Greek words *hamartanō* and *harmatia*, which render *ht'* and *hatta't* in the Septuagint and the New Testament, meaning "to sin" and "sin," were originally equivalent to "missing the mark."[85]

Agamben argues that the idea of sin in the Judeo-Christian sense must have been "a subsequent construction by prophets and theologians."[86] But how can we account, then, for the fact that "the notion of sin could be elaborated from that of an involuntary error (like making a false step or missing the mark)"?[87]

   By regressing further to a sacrificial understanding of capital punishment—that is, the administration of any collective punishment through sacrificial ritualistic practice—this primitive idea of sin could refer to the agonistic and aleatory space of the sacrificial rite itself, by which the victim was often chosen *at random*, *au hazard*: literally, by a throw of the dice.[88]

> Certain rituals involve often very ingenious aleatory procedures in order to deprive people of the opportunity to choose the victim, that is, to prevent any chance of disagreement.[89]

This is related to Girard's reading of Roger Caillois' book *Les jeux et les hommes*, in which it is evident that the only element in games and play not

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84. Ibid., 15.

85. Ibid., 11.

86. Ibid.

87. Ibid.

88. The word "random" stems from the proto-Germanic *randa*, meaning "to run."

89. Girard, *Things Hidden*, 49.

shared by humans with animals is in fact *alea*, chance, which is a cultural by-product of ritual practice.[90] Rituals keep some "memory" of the aleatory elements at the base of victim selection in the scapegoat mechanism, by staging games or riddles for contingent selection of the victim to be sacrificed.[91] In his essay, "Origins: A View from Literature," Girard analyzes a Tikopian myth in which the hero, a foreigner who is expelled at the end of the narrative, falls during a running contest and begins to limp;[92] limping, moreover, is a recurrent element in etiological myths.[93] Following an integrated parallel reading of myths and rituals, the sacrificial victim was in fact chosen quite literally because of a false step, or a missed mark.

The word *casus* (case) can also be linked to this same conceptual and symbolic framework. It is a term drawn from the judicial and legal sphere, "an event, a situation, quarrel, trial," but describes a fall, from the Latin *cadere*: falling under the blows of the accusation. *Cadere* is also linked to *caso* or chance, from **cadentia*, "that which falls out": a term used in dice, from the neuter plural of Latin *cadens*, present participle of *cadere*. The Proto-Indo-European root *-kad* means "to fall," from which also derives the word *cadaver*. The primitive arbitrariness of the victimary selection in the sacrificial space produces a lexicon and a cluster of concepts that remain present in the later institutionalization of legal norms and procedures. As Rafael Van Damme argues, "some legal concepts found in the *ius commune*'s penal system (*mala fama*, torture, *atrocitas/enormitas*, *notorium*, *poena extraordinaria*, *absolutio ab instantia*) are (1) compatible with or at least affiliated to scapegoat dynamics, and (2) more or less flagrant breaches of our contemporary conception of due process as informed by the presumption of innocence."[94]

This "indifference" towards the question of guilt is tied to the need to defend as far as possible against any potential escalation of vengeance—one located, according to Girard, right at the very origins of prohibitions—and

90. Roger Caillois groups games according to four features: *agon, alea, mimicry, ilinx*. See Girard, Antonello, and Rocha, *Evolution and Conversion*, 70. Brian Collins discusses the use of a game of dice in Vedic sacrificial rituals, as a form of election of the sacrificial victim, with an *en passant* reference to Agamben, and *homo sacer*. See Brian Collins, *The Head Beneath the Altar: Hindu Mythology and the Critique of Sacrifice* (Michigan, MI: Michigan State University Press, 2014), 182–4.

91. Girard, *Things Hidden*, 100–1.

92. René Girard, "Origins: A View from the Literature," in *Understanding Origins: Contemporary Views on the Origin of Life, Mind and Society*, ed. Francisco J. Varela and Jean-Pierre Dupuy (Dordrecht: Springer, 1992), 27–42.

93. See note 59.

94. Van Damme, "The Presumption of Innocence," 12.

to the development of proto-judicial systems: "In a universe where the slightest dispute can lead to disaster … the rites of sacrifice serve to polarize the community's aggressive impulse and redirect them towards victims that may be actual or figurative, animate or inanimate, but that are always incapable of propagating further vengeance."[95] For Girard, the judicial system emerged essentially as a mechanism for regulating the escalation of vengeance and feud, through an expropriation of the right to exact retribution for an offence; that is, as an instrument to regulate and control any escalation of retaliatory violence that could undermine group stability or actual survival.[96] Agamben also observes this link ("the law is rooted in violence, so that in its primordial form it presents itself literally, according to Pindar's words, as a justification of violence or, in Solon's terms, as a connection of violence and justice") with respect to the juridical regulation of vengeance.[97]

At stake in this process, in fact, is a disconnection between action and reciprocity, guilt and punishment, to such a point that in some cultures the perpetrator of a crime is spared at the expense of an innocent victim. As a compelling example, Girard quotes Robert Lowie in *Primitive Societies*, discussing collective reactions to an act of violence that brings out a fact well worth noting here: "The Chukchi generally make peace after the first act of retribution.… While the Ifugao tend to protect a kinsman under almost all circumstances, the Chukchi often avert a feud by killing a member of the family."[98] A similar act seems to be the convergence between a sacrificial act and capital punishment: "the Chukchi solution is not to be confused with retaliatory vengeance, ritual sacrifice, or legal punishment. And yet it is reminiscent of all three institutions. Their solutions seem to occur at the point where all three intersect."[99] What is more:

> When we require a direct link between guilt and punishment we believe that
> we adhere to a fundamental truth that has somehow eluded the primitive

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95. Girard, *Violence and the Sacred*, 19.

96. Ibid., 19–32.

97. Agamben, *Karman*, 20. Further: "The term *talio* most likely derives *from talis* (the same); this means that the law does not simply show itself as the sanction of a transgressive act, but as the repetition of the same act without any sanction, i.e., as permitted. And this represents not so much the punishment of the first violent act as its inclusion in the juridical order, one time as sanctioned, the second as permitted. Hence the proximity between sanction and vengeance, which was noted long ago," ibid.

98. Girard, *Violence and the Sacred*, 27.

99. Ibid., 30.

mind. In fact, we are ignoring the problem that poses a very real threat to all primitive societies: escalating revenge, unleashed violence—a problem the seeming extravagances of their customs and the violence of their religious practices are specifically designed to meet.[100]

There may be other proto-legal elements that would also converge to explain the arbitrariness of the *culpa*, and which would lend themselves to sacrificial, expiatory practices. Some key examples are discussed for instance by Walter Burkert in the chapter "Guilt and Causality" in *Creation of the Sacred*. These are ones through which social crises of a material nature (plague, famine, social disorders) are solved thanks to mythical forms of attribution of responsibility, in which guilt and contagion amount to overlapping categories. Burkert also underscores the critical (in its etymological sense)[101] role of the mediators (seers, oracles, shamans, medicine men, rabbis), who "create sense to counteract what seems unacceptable: sheer coincidence."[102] This sense-making is based on a kind of rationality that a modern mind might well call "superstitious," but which in fact does not refer to any principle of individual responsibility. The whole process is part of a mythical etiology in which a "culprit" is to be selected on the basis of arbitrary (divinatory) clues, where issues of pollution and transgression converge.[103] This would resonate with Agamben's thought that the primal cause (*causa*) is the accusation, and every accusation is, in some way, a slander—which latter is the early meaning of the terms *criminatio* and *criminator*: "To slander (*calunniare*) means etymologically to *pronounce the magical formula of a spell*"[104]—a mythical attribution of responsibility.

In this mythical framework, all accusations are slanders. Like Girard, Agamben, too, recalls that "the accuser, par excellence, is the devil."[105] *Satan* is the Hebrew word for *adversary, opponent* (LXX *3 Ki.* 11.14, 23), translated as *epiboulos* (plotting against) in LXX *1 Ki.* 29.4, as well as *accuser*, translated as *ho diabolos* (slanderous, backbiting). For Girard, in particular, Satan is the entire scapegoat mechanism:[106] "[He] is the voice of the

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100. Ibid., 29.
101. From *krineo*: "to separate, to decide, particularly in times of crisis."
102. Burkert, *Creation of the Sacred*, 118.
103. Ibid., 152.
104. Agamben, *Karman*, 25; emphasis mine.
105. Ibid., 25.
106. Girard, *Things Hidden*, 215.

old religion, of the old lynching."[107] Satan is not an "entity," but a form of mythical projection,

> a kind of personification of "bad contagion" just as much in its conflictive and disintegrative aspects as in its reconciling and unifying aspects … the one who foments disorder, the one who saw scandals.[108]

The social group externalizes its own violence and sacralizes it, giving it a transcendental form, which must necessarily contain the elements of arbitrariness and violence of the totality itself.[109] This is essentially the mechanism of arbitrary persecution that we find at the heart of the sacrificial order, but transferred also to the judicial order which, whilst trying to move away from this "Satanic" dimension, cannot fully escape it.

Zoe and *Bios*

In this moving away of the judicial order from a sacrificial and satanic matrix, Girard allocates a crucial role to the Judeo-Christian tradition. The role attributed to Christianity in the historical and socio-cultural evolution of humankind within the Western context is an important point of divergence between Girard and Agamben. Girard sees a decisive and transformative point of inflection, of discontinuity in respect of the violent regime of the sacrificial logic which had scaffolded human communities politically, institutionally, and socially. By contrast, Agamben sees in Christian theology the two principal dominant political paradigms of modernity, namely:

> political theology, which founds the transcendence of sovereign power on the single God, and economic theology, which replaces this transcendence with the idea of an *oikonomia*, conceived as an immanent ordering—domestic and not political in a strict sense—of both divine and human life. Political philosophy and the modern theory of sovereignty derive from the first paradigm; modern biopolitics up to the current triumph of economy and government over every other aspect of social life derive from the second paradigm.[110]

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107. Girard, Antonello, and Rocha, *Evolution and Conversion*, 197.

108. René Girard, *I See Satan Fall Like Lightning*, trans. James G. Williams (Maryknoll, NY: Orbis Books, 2001), 87.

109. Jean-Pierre Dupuy, "Totalization and misrecognition," in *Violence and Truth: On the Work of René Girard* (Stanford, CA: Stanford University Press, 1988).

110. Agamben, "The Kingdom and Glory," 373.

However, as Lyle Enright has argued, Agamben's understanding of Christian theology is purely immanent and, by refusing any form of transcendence, Agamben

> rejects orthodox Christianity as one more form of biopolitics—though one with perhaps other liberative potentials best activated though immanentist, heterodox readings.[111]

What Agamben tries to bypass, based on his overall ideological premises, is the anti-sacrificial and anti-violent thrust of Christianity, which indeed resists, and actually moves in the opposite direction in respect to, any form of biopolitics. Agamben fundamentally sees a continuity or coincidence between normative Christianity, which is essentially non-violent, and historical Christianity and its institutions, which has maintained violent and sacrificial elements.[112] For Girard, the Judeo-Christian tradition bears witness to a progressive withdrawal from a violent divinity and movement towards a full-scale revelation, through Christ's self-sacrifice, of the arbitrary and violent nature of sacrificial practices at a religious and political level.[113]

Consequently, there are textual elements that, in Agamben's analysis, resist his interpretation from a normative standpoint, and resonate more with the type of break defined by Girard and in general by Christian theology.

In *Homo Sacer*, for instance, Agamben sets out his premises by claiming that

> the fundamental categorial pair of Western politics is not that of friend/enemy but that of bare life/political existence, *zoē/bios*, exclusion/inclusion. There is politics because man is the living being who, in language, separates and opposes himself to his own bare life and, at the same time, maintains himself in relation to that bare life in an inclusive exclusion.[114]

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111. Enright, "Divine but Not Sacred," 242. This is the limit of some interpretations, such as Chow's, which sees Girard advocating a "seemingly 'amoral' religion-oriented argument of mimetic violence," which "comes closest to Agamben's 'nihilistic,' atheist understanding of law and power." Chow, "Sacrifice, Mimesis, and the Theorizing of Victimhood," 146.

112. "When we speak normatively, or take Christianity and its institutions according to its best ideals, Christianity is essentially nonviolent. But when we speak descriptively, i.e., take Christianity according to what the institutions of Christianity have actually done, and according to how those who call themselves Christian have actually acted, we can make the argument that Christianity is violent. Analogous distinctions can be made from within the other four traditions." Robert J. Daly, "Violence and Institution in Christianity," *Contagion: Journal of Violence, Mimesis, and Culture* 9 (2002): 4, doi:10.1353/ctn.2002.0008.

113. Girard, *Things Hidden*, 158ff.

114. Agamben, *Homo Sacer*, 12.

As we have already discussed, Agamben is touching here upon the dynamics of the expiatory mechanism that lies at the heart of human cultural and institutional origins, and the "physiology," as formulated by Girard, through which the social order originated and is maintained thanks to a dialectics of exclusionary inclusions. The power of sovereignty rests on the totalization produced by the mimetic violent effervescence of the group.

Agamben notes that the Greeks originally used two words for life: *zoe* and *bios*. Moving beyond the Aristotelian distinction itself, for Agamben, *zoe* defines the bare life, as opposed to *bios*, which is the politically qualified life. *Zoe* is the simple fact of being alive that is common to all living beings; *bios* is the form or way of living proper to an individual or a group, a particular kind of life perfected individually by virtue and socially by politics. For Agamben, the "state of exception" is a zone of indistinction between *bios* and *zoe*. "Bare life," as *zoe*, is the production of the exclusion enacted by the sovereign power; or, rather, *zoe* is included or co-opted into the political domain because of its potential to supply the raw lifeline of a particular *bios*, but by the same token is excluded because it does not remain itself.[115]

In this case, too, Agamben commits a genealogical hypostatization by halting his archaeological regression at the limit of the distinction made by classical Greek philosophy, which itself is clearly a later conceptual elaboration of an episteme of greater historical depth. First of all, from the point of view of their etymology, *zoe* and *bios* derive from the same Proto-Indo-European term that underwent a process of subsequent differentiation.[116] Moreover, Brian Sudlow has noted that "while the sharp distinction of *zoe* and *bios* clearly serves Agamben's argument about sovereign power, at the same time it leads Agamben into creating a simplistic dichotomy which sits uneasily with the intertwining narratives of *zoe* and *bios* that shape Greek conceptualizations of the body and of the relationship of physicality to the human."[117] Agamben seems to discount the anthropological assumption that pre-modern cultures do not have a concept of materiality—of "bare life" in strict biological terms, deprived of spiritual and symbolic significance. To speak of "bare life" in traditional, pre-modern culture is simply nonsense.[118]

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115. Ibid., 9–11.

116. These two words are actually cognate with each other; they show the differing reflexes in Greek of labiovelar consonants. In the noun ζωή (*zoe*) and the corresponding adjective ζωός (*zoos*), the initial ζ developed from a cluster with the semivowel y; the noun βίος (*bios*) shows the normal development of PIE *gʷ before the full vowel /i/.

117. Sudlow, "Agamben, Girard and the Life that Does Not Live," 44.

118. Well-known in this regard is Maurice Leenhardt's *Do Kamo. La personne et le mythe dans le monde mélanésian*, in which he records the answer of a local native to his Western interlocutor

Biblical anthropology ignores the modern dichotomy between "body" and "spirit." As Claude Tresmontant explains, Hebrew

> est une langue concrète qui ne nomme que ce qui existe. Aussi, n'a-t-il pas de mot pour signifier la "matiere," pas plus que pour le "corps," puisque ces concepts ne visent pas des réalités empiriques contrairement à ce que nos vieilles habitudes dualistes et cartésiennes nous portent à croire. Personne n'a jamais vu de la "matière," ni un "corps," au sens où le comprend le dualisme substantiel.[119]

As Le Breton writes, "L'individuation de l'homme va de pair avec la désa-cralisation de la nature," and the body as individuation of the singular becomes the modern invention par excellence.[120] In Greek, the word ψυχή (*psyche*) is the closest equivalent to the Hebrew *nephesh*. The word refers to aspects of sentience, and both human beings and other animals are de-scribed as having *nephesh*. Plants, whilst living organisms, are not referred to in the Bible as possessed of *nephesh*.

In this case, too, Agamben's lexical and conceptual analysis is selective and partial. It avoids confrontation with the Biblical text, in which we find a stark inversion of the conceptual and lexical dichotomy laid down by the Italian philosopher.[121] If, in classical Greek, it is *bios* and not *zoe* which is

who had insisted that what evangelization had brought to their culture was the notion of "spirit." The native's answer is emblematic: "ce que vous nous avez apporté, c'est le corps." Maurice Leenhardt, *Do Kamo. La personne et le mythe dans le monde mélanésian* (Paris: Gallimard, 1947), 263. See also David Le Breton, *Anthropologie du corps et modernité* (Paris: PUF, 1990).

119. Claude Tresmontant, *Essai sur la pensée hébraïque* (Paris: Cerf, 1953), 53.

120. Le Breton, *Anthropologie du corps et modernité*, 46.

121. Similarly, Brian Sudlow points out Agamben's elusion in *Homo Sacer* of the Christian jurisprudential tradition which make his conceptualization more problematic: "Even if we accepted Agamben's analysis of *homo sacer* as a figure of Roman culture, why should we also accept that the theological or jurisprudential postulates of Roman society have the same effects as those of Christianity which was a dominant influence on the tradition of Western politics and whose grand projects have included the recovery of the excluded and the exaltation of the humbled? In fact, the entire tradition of sanctuary laws, not only in their Christian forms but even in their Roman forerunners, seems to offer a refutation of Agamben's reading of *homo sacer*. While sanctuary law is thought by some to have achieved its apogee precisely in the absence of properly constituted sovereign power, other readings of the sources find sanctuary, and the attendant practices of *intercessio*, clemency and pardon, to be deeply in-scribed in Greek, Roman and Christian legal traditions which are at the same time predicated on clear conceptualizations of sovereign power. Given the thousand years of jurisprudential history in which sanctuary legislation was implemented widely across Europe, the idea that sovereign power generally constitutes itself through some self-constituting act of excluding the *homo sacer* is entirely moot." Sudlow, "Agamben, Girard and the Life that Does Not Live,"

essentially used in an ethical sense, in the Bible this emphasis is inverted. In the New Testament, *zoe* corresponds to the highest blessedness of the creature: the "crown of life [*zoes*]" (Rev. 2:10); "tree of life [*zoes*]"(Rev. 2:7); "book of life [*zoes*]" (Rev. 3:5); "water of life [*zoes*]" (Rev. 21:6); "life [*zoe*] and godliness" (2 Pet. 1:3); "life [*zoe*] and immortality" (2 Tim. 1:10); "the life [*zoe*] of God" (Eph. 4:18); "eternal life [*zoe*]" (Matt. 19:16; Rom. 2:7); "an endless life [*zoe*]" (Heb. 7:16); and "what is truly life [*zoes*]" (1 Tim. 6:19). The Biblical use of *bios*, on the other hand, defines the purely biological, mundane aspects of life: "pleasure of life [*biou*]" (Luke 8:14); "affairs of this life [*biou*]" (2 Tim. 2:4); "the pride of life [*biou*]" (1 John 2:16); "the livelihood [*bios*] of the world" (1 John 3:17); and "cares of this life [*biotikai*]" (Luke 21:34). In fact, in *Metaphysics* (1072b, 28), Aristotle speaks of a *zoē aristē kai aidios*, a more noble and eternal life, as an attribute of the divine.

In *The Kingdom and the Glory*, Agamben stumbles upon this conceptual shift within the Judeo-Christian tradition. The eternal life and the life of Christ are defined, in fact, as *zoe*:

> Hellenic Judaism defines it, therefore, as "true life" (*alēthinē zōē*: Philo, The Special Laws 1, § 32, pp. 536–537) or "incorruptible life" (*aphthartos zōē*: ibid., *On the Giants*, § 15; *On Flight and Finding*, § 59, pp. 153 and 326 , respectively) or even "carefree life" (*zōē amerimnos*). The rabbinical tradition describes this future life in opposition to the present life and, at the same time, in a singular contiguity with it.[122]

Similarly, notes Agamben, in his epistle, St Paul calls Jesus "life," *zoe tou Iesou*:

> To live in the Messiah means precisely to revoke and render inoperative at each instant every aspect of the life that we live, and to make the life for which we live, which Paul calls the "life of Jesus" (*zōē tou Iesou—zōē* not *bios*!), appear within it.[123]

Agamben's exclamation mark clearly points at the conceptual aporia, the semantic shift, with respect his to initial formulation of the *zoe/bios* dichotomy; but he does not try to solve it retrospectively.[124]

43–4; referencing Karl Shoemaker, *Crime and Sanctuary in the Middle Ages 500–1400* (New York: Fordham University Press, 2011).

122. Agamben, "The Kingdom and Glory," 596.

123. Ibid., 597.

124. Fox notes other inconsistencies in Agamben's argumentation: "In *The Time That Remains*, Agamben comes into conflict with his own claim from *Homo Sacer* that the sacred man arises

In *Things Hidden*, Girard argues that Judeo-Christian scripture institutes a gradual, but eventually complete, exit from the sacred as a system that functions on the basis of a pharmacological use of violence, both in the religious and the political sense.[125] The de-sacralization of life would correspond to a restitutive embrace of a *zoe* that is a communion with the foundational originality of life devoid of original sin—meaning outside the victimary dynamics that regulates human affairs and earthly life as *bios*. There is an interesting passage in Aristotle's *Politics* that retains a sacrificial ring, whereby man as "political animal" (πολιτικὸν ζῷον) is dialectically opposed to a "man without a state," who is not only or simply a "tribeless, lawless, heartless one" as denounced by Homer, but a "natural *outcast*," who can be compared to "an isolated piece in draughts," who is "either low in the scale of humanity or above it" (Aristotle, *Politics*, [1253a] [1]). This again seems to resonate on the one hand with the aleatory element of ritualistic sacrifice (a "piece in draughts"), and on the other with the double nature of the victimary ban, which produces a *pharmakon* (below humanity) or a deity (above it).

Bios would become, then, a marker for politics as the institutional space framed by a sacrificial blueprint. The *bios* is internal to the political matrix that is structured by conceptual and ritualistic forms of both internal and external differentiation and exclusion. Social and political organization is based on a pharmacological extrojection of some alterity, a *part maudite*, or an enemy, which functions as a systemic, operational closure (in Luhmann's sense) of the socio-political order.

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from a political sphere independent of religion. In a lengthy attack on Buber's distinguishing of Greek *pistis* from Jewish *emunah*, faith versus belonging, Agamben roots both attitudes in the sphere of what French legal scholars call *prédroit*, or prelaw. Regarding this sphere, Agamben writes: '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 law—or rather, in prelaw, that is, where law, politics, and religion become tightly interwoven' (TR 116)."

125. "Within the framework of the mimetic theory one should read mythology as a more distant, and more obscure form of prophecy, which, in order to be intelligible, must include the inversion of mythical values. In fact, in the Old Testament one still finds a good deal of violence: in *Judges* and other historical books, there is still a mythical valorization of the community against the scapegoat victim. In the so-called psalms of malediction or execration, there is also the hatred and resentment of the victim. However, this hatred is the response to the despair experienced by a man who has become, for whatever reason, the victim of his entire community. It is a stage in a growing process of discovery of the scapegoat mechanism, which presents moments of regression and moments of fast progression. Some of this progression is common to most societies, like the shift from human to animal sacrifice, but it remains at a surreptitious level, while in the Bible it is made fully visible and glorified." Girard, Antonello, and Rocha, *Evolution and Conversion*, 206–7.

Zoe would be characterized by a double determination, in the sense described by Girard. It is integrated and juxtaposed with *bios* as an element of systemic differentiation: as the part which is expelled to ensure the temporary stability of the social organism. But *zoe* is rescued both anthropologically and from a religious and theological standpoint by Christian revelation, which makes this *part maudite*, this stone rejected by the builders, the cornerstone of the Church (Sal. 118, 22–23; Mc. 12,10; Matt. 21,42; Acts 4,10ss).[126]

Against this background, *zoe* assumes profound moral significance and becomes the optimal way to express blessedness. Absolute *zoe* is synonymous with absolute holiness. In John 14:6, Christ affirmed that "I am ... the life [*he zoe*]" (cf. 1 John 1:2), implicitly affirming thereby that he was absolutely holy. It is this *zoe*, rejected by the *bios*, that becomes the fully holy, since it is foreign to both the spontaneous, undifferentiated violence of the mob, and to the pharmacological violence of the political order as an institutional organization structured around this type of expulsion.

The Judeo-Christian scriptures would rescue, then, the *zoe*, returning it to its pre-sacrificial divine matrix, stripped of any violent inflection. *Zoe* is life which pre-exists the fall, while *bios* is regulated by exclusionary and differentially violent practices and logic.[127] Moreover, if the exit from the logic of the sacred extolled by Christianity corresponds, as Girard claims, to a process of de-sacralization, this would not implicate simply a process of profanation, following Agamben's interpretation, but additionally the need to enter into an intimate, superior relationship with the divine.[128] *Zoe*

126. The symbolism of the cornerstone may also refer to the widespread archaic sacrificial practice whereby a victim was offered for the stability of the building, as in the Japanese ritual of the *Hitobashira* (人柱, "human pillar"), in which maidens were buried alive at the base, or near, certain constructions as a prayer to insure the buildings against disaster. Frazer, in *The Golden Bough*, charts both the various propitiatory sacrifices and the effigy-substitution involving an animal or human sacrifice being laid in the foundations. James George Frazer, *The Golden Bough: A Study in Comparative Religion* (Sioux Falls, SD: NuVision Publications, 2006), 106–7.

127. Sudlow argues: "If bare life or *zoe*, the life prior to *bios*, might in Girardian terms be labelled as the life of unorganized mimesis, in which the processes of desire and imitation are unchecked and free to run wild, then *bios* can be associated with the way in which, according to Girard, mimetic desires have historically been brought to order within some sacred framework." Sudlow, "Agamben, Girard and the Life that Does Not Live," 47.

128. This is the same distinction made by C. S. Lewis in *Mere Christianity*: "In reality, the difference between Biological life and Spiritual life is so important that I am going to give them two distinct names. The Biological sort which comes to us through Nature, and which (like everything else in Nature) is always tending to run down and decay so that it can only be kept up by incessant subsidies from Nature in the form of air, water, food, etc. is *Bios*. The Spiritual life which is in God from all eternity, and which made the whole natural universe

therefore becomes a provenance and a destination of a life *beyond politics and beyond the law.*

While strongly resonating with Girard's perspective, these questions have profound philosophical and theological implications in respect of Agamben's radical immanent reading of the Scriptures and the eschatological and messianic considerations that he advances in works such as *The Time That Remains* and *The Kingdom and the Glory*.[129] However, given the self-imposed archeological focus of this essay, these would need to be considered in a further study of the intersections between Agamben's philosophy and Girard's sacrificial and Christian hermeneutics.[130]

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is *Zoe*. Bios has, to be sure, a certain shadowy or symbolic resemblance to *Zoe*: but only the sort of resemblance there is between a photo and a place, or statue and a man. A man who changed from having *Bios* to having *Zoe* would have gone through as big a change as a statue which changed from being a carved stone to being a real man. And that is precisely what Christianity is about. This world is a great sculptor's shop. We are the statues and there is a rumour going around that some of us are some day going to come to life." C. S. Lewis, *Mere Christianity* (London: Geoffrey Bles, 1952), 159.

129. Giorgio Agamben, *Il tempo che resta. Un commento alla Lettera ai Romani* (Turin: Bollati Boringhieri, 2000); trans. Patricia Dailey as *The Time That Remains*; Giorgio Agamben, *Il regno e la gloria. Per una genealogia teologica dell'economia e del governo* (Turin: Bollati Boringhieri, 2007); trans. as *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*, trans. Lorenzo Chiesa and Matteo Mandarini (Stanford, CA: Stanford University Press, 2011). In *The Time that Remains*, Agamben questions, for instance, the internal aporias in the discussion about the law (*nomos*) in St Paul's *Letter to the Romans*. St Paul's text might be interpreted through an understanding of the law as an institution operating within a sacrificial and pharmacological framework. This may be the reason why sin is consubstantial to the law: "sin was indeed in the world before the law, but sin is not reckoned when there is no law" (*Rom* 5, 13).

130. These issues have already been partially discussed by Anthony Bartlett and Lyle Enright. See Enright, "'Divine but Not Sacred'" and Bartlett, "Girard's Lost Time: Messianic Temporality in Things Hidden."

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