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Contagion: Journal of Violence, Mimesis, and Culture, Issue 14, 2007,
pp. 97-119 (Article)

Published by Michigan State University Press

DOI: <https://doi.org/10.1353/ctn.2008.0005>

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The Sacrificial Crises

Law and Violence

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It is well known that the main theme in René Girard's literary theory and project is to analyze the transition from the Old Testament to the New Testament, showing violence's unmasking of the former by the latter. Although it would be impossible to write without history, what this article strives to provide is not an analysis of violence as a historical phenomenon but an attempt to analyze violence *as such*. Hence, the theme of the article is to extend Girard's theory of a critique of violence in order to use it as a critique of sovereign power and law in general. Thus, the article aims to present a reflection on and discussion of political violence.

The article is an attempt to adjust the Girardian analysis to bring a more concrete political orientation to such problems as they present themselves according to his theory and in the New Testament. More precisely, the focus of the article will be on the process¹ against Jesus. Here, it will be argued, the complexity of violence in relation to the juridical presents itself most clearly; this is why an extension of Girard's theory naturally finds its starting point here.

The article will accordingly discuss the two fundamental concepts in the Girardian theory of violence: mimetic desire and the scapegoat mechanism. I will begin with an introduction to Girard's concept of desire, the basis of mimesis, but the article's main theme is a deeper critique of the concept of mimesis and the scapegoat mechanism.

DESIRE

According to the New Testament there is something fundamentally wrong with the culture in which Jesus lives.² One of the places where this is most obvious is indicated by Jesus's unmasking of the Pharisees and the learned elite.³ They are accused of a typical mythological explanation of events such as Abel's death, that is, the *necessary* death of an innocent. The death is caused by the rivalry between Abel and his brother Cain, which can be taken as a paradigm for Girard's conception of mimetic violence.⁴ They both desire and praise the Lord's blessing. In this strife, the physically weaker brother dies. Cain kills Abel out of jealousy. The Lord did not want Cain's sacrifice, only Abel's. In the New Testament's first book, it is already very clear that the focus is being moved from an object orientation, that is, sacrifice, to a subject orientation.⁵

Girard explains the brother rivalry via the concept of mimesis:

Le sujet désire l'objet parce que le rival lui-même le désire. . . . le désir est essentiellement *mimétique*, il se calque sur un désir modèle; il élit le même objet que ce modèle.⁶

According to Girard, the subject's desire (*désir*) is not caused by a biological fact—genetic or instinctive—as Freud believed. The focus is on the subject's desire. This object is never one's own. It is always already the other's. Or, most importantly, it is what the subject *supposes* is the other's desired object.

It is important to stress, nonetheless, that what Jesus, according to Girard's theory, revolts against is not mimetic desire as such, which is a fact of human, social interaction. Instead, the accusation is against the part it plays in a sovereign structure of law. Thus, the members of the learned elite maintain that the murder of Abel was necessary, *knowing well* it was murder out of envy. They neither did nor do proclaim the injustice of this, but praise Cain as the founder of culture.

Jesus can therefore reply in the following way:

Over you shall all the just blood come, which has been spilled upon the earth, from the blood of Abel the Just to the blood of Zacharias, Barakias's son who you killed between the temple and the altar. This I do say to you: All this will come upon this kin.⁷

* * *

What is important is that the concept of desire has a political connotation. Desire relates immediately to the sovereign's control of it. Jesus does not accuse either Cain or Abel but instead the culture: the city founded upon this conflict and, more importantly, the continuance and maintenance of this religion by the sovereign. The specific form of sovereignty found in the Old Testament is hence a sacrificial sovereignty (that is, of *ius divinum*) and so appears as the authority that decides when and where such a desire may be used and—in a special sense of the word, which we will now investigate—be set free. Let us therefore look more closely at this political aspect of mimesis.

MIMESIS AND LAW

Let us start with a summary of Girard's concept of mimesis, considered first as a crisis and then as a mechanism, followed by a deeper analysis.

To Girard, a culture or a city consists of a collective desire for what the members think is desired by other citizens. This "exigence du mimétique" is what constitutes a city. Naturally, being objects in the culture itself, conflicts may, and do, occur when two desires collide, as was the case for Cain and Abel. One can therefore read the myth, or any rendering or memory of an *originary foundation* of law and rule, of νόμος (norm, law), as the unity of the culture, a mechanism for avoiding a possible and future conflict.⁸

Rituals are functional expressions of this rendering and the oldest memory of culture. Rituals transform the real, potential crisis into a symbolic one. In this transformation process, ritual resolves on a symbolic level the potentially real crisis, keeping it away from the city. As the crisis is a real, constant risk, it must constantly be solved symbolically via ritual action. If this transformation does not, or cannot, take place on a symbolic level, the conflict and the crisis become real. It is important to stress that the possibility of ritual's occurrence is a symbolic possibility. The mimesis theory does not discuss the sociological or empirical facts in connection with ritual (that is,

who, why, and when). Instead, the fundamental question Girard poses is: What is ritual as such and why does it leave its symbolic sphere?⁹

This is seen in the New Testament's tragic irony from the very beginning. Jesus is guilty not *per se* (Pilate can find no reason to execute him) but *per consequentionem*, that is, the city does not prove, but *decides on*, his guilt. Truth is political.

From a sociological position, the mimesis mechanism's strength therefore lies in its ability to solve either a real or a potential crisis; or, more correctly, the *anomaly* in the city. Note that from this perspective only the solution is important, not whether it is carried out on a real or on a symbolical level. If the rituals are working, the anomaly can be handled on a symbolic level; if they are not, then the mimesis mechanism will have to be placed outside the religious space (church, temple, and so forth) and in the entire city.¹⁰ Plagues, floods, and hunger are all crises with highly important political consequences but with no political causes. Are they solved by the mechanism described above? The answer is both yes and no. Some would say that one does not solve profane crises with sacred methods and solutions. Religion, however, is the belief that this is not true. One can therefore view Jesus as a sacred solution to a profane problem, that is, a solution that works. Herein hides the dangerous potentiality of the mimetic mechanism. Its success is immune to factual evidence, to fact as such. The meaning of ritual (its rituality) is therefore not fundamentally changed when it escalates into the political sphere. Thus, rituals have both a symbolic and a political outcome but maintain the same structure.

The myth, in its paradigmatic sense, therefore, according to the mimesis theory, tells the successful story of a profane solution to a sacrificial-political crisis.¹¹

In its most technical sense, the mimetic mechanism is indeed a mechanism. It functions automatically and independent of conscious interaction.

To Girard the interesting aspect in the Oedipal myth, therefore, lies not in the "Oedipal slip"—*sit venia verbo*—but in the crisis evolving in the city. It is clear in the myth that no rituals can function in the crisis; it suspends normal order. This vacuum between the profane and the sacred, the individual and the collective, is where Oedipus finds himself.¹² He is in both, belonging to neither. The crisis is both sacrificial (the rituals do not work) and differential (the difference between norm and anomaly is suspended).¹³ The collapse of

spheres consists of a crisis on the micro level (such as the incestuous act of Oedipus or the rivalry between the brothers Cain and Abel), which at the *same time* is a macro-level crisis, a political catastrophe in the city:

Les institutions perdent leur vitalité; l'armature de la société s'affaisse et se dissout; d'abord lente, l'érosion de toutes les valeurs va se précipiter; la culture entière risque de s'effondrer et elle s'effondrer un jour ou l'autre comme un château de cartes.¹⁴

It is by pointing out a *scapegoat* that the reestablishment of the city structure is completed. Hereby the city restores its norm and can once again deal ritually or symbolically with the anomaly. This can be illustrated by the following model from another successful mechanism, thermodynamics.¹⁵

Let me try to explain the model. We can understand a culture's energy in terms of a harmony between its members, the city's cohesion. Although there is a negative relation between cause and effect, leading to a loss, the pointing out of the scapegoat and eliminating him from the city, in the most crucial moment of the crisis, leads to a total gain in the city's cohesion and the restoration of the norm. The difference, however, lies not in the immediate effect, which is similar to that in a normal model of energy, namely, some is gained, but much more is used. What instead distinguishes the mimetic mechanism, as a mechanism of energy, from other types is its gain in energy over time.

The burning of fossil fuels requires more energy than can be produced, because, as we all know, it takes a longer time for the system (nature), to develop what is lost than to burn it. In the mimesis mechanism, even though an apparently meaningless loss has taken place (the expulsion of an innocent), at first leading to the same negative relation between cause and effect as in a normal system, the mimetic mechanism produces *more* energy than was inherent in it from the beginning. The harmony and cohesion in the culture are not simply restored but raised to an even higher level after the pointing out and expulsion of the innocent person, the scapegoat.

The model also shows that ritual is prior to myth. The ritual is the originary act, uniting and strengthening the culture, leaving myth just to rationalize and construct as real a need, not a truth, as possible for the act.¹⁶

L'exigence d'une victime consentante caractérise le totalitarisme moderne aussi bien que certaines formes religieuses et parareligieuses de monde primitif. Les victimes des sacrifices humains sont toujours présentées comme extrêmement favorables à leur propre immolation, tout à fait convaincues de sa *nécessité*. C'est le point de vue des persécuteurs, que le néo-primitivisme actuel est incapable de critiquer.¹⁷

Two aspects of Girard's theory have been shown to be important. First, the annulment of differences, especially the difference between profane and sacred law (*ius humanum*, *ius divinum*). Second, that this annulment is due to the institution's lost validity. A third aspect of no less importance is the notion of *nécessité* in relation to the crisis.

* * *

Girard's indication of mimesis's culmination as a crisis will now be our focus. In order to further understand mimesis, and continue along Girardian lines of thought, let us try to discuss this crisis as *a state of necessity*.

In the New Testament it is clear that the state (the Roman governor Pilate: Pontius Pilatus) decides to withdraw and suspend Roman law, letting an innocent man, Jesus, be executed. Pilate wants to avoid a political crisis before it escalates and gets out of control. In the four Gospels it becomes clear just how complex the problem is. In the Synoptic Gospels Pilate steps aside to let sacred law take over. Pilate—representative of the profane law—never finds Jesus guilty; he washes his hands, he wants to please the crowd, and he wants to free himself from guilt:

When Pilate saw that nothing could be done, but that instead there was unease, in taking some water he washed his hands in front of the crowd, saying: "I am innocent in this man's blood. It is in your hands."¹⁸

Pilate, wanting to please the crowd, freed Barabbas to them and let Jesus be whipped so that he could be crucified.¹⁹

But they spoke with loud voices and insisted on his crucifixion and their screams won. Hence, Pilate decided that their demands should be met. He freed him as they demanded, being thrown into jail for riot and murder. Jesus he handed over to their will.²⁰

As it is clear in the Gospel according to John, the sacred law of the Jews does not allow execution by crucifixion, only by stoning, a detail John seems to have forgotten.²¹ Nonetheless, the situation is now quite complicated.

Pilate said to them: "Shall I crucify your king?" The chief priests answered: "We have no king but the Caesar." Thus, he then gave him to them to be crucified.²²

When Pilate decides not to crucify Jesus—although he can but may not, as he finds Jesus not guilty—but instead hands him over to the Jews—who also may not crucify him, although they can execute him in another way—Jesus finds himself in a no man's land. He finds himself in a zone between profane and sacred law. He is about to cross the threshold of the law of the city and enter the lawless land outside (the angry crowd outside Pilate's residence). Jesus is innocent but nonetheless convicted. With the "trial" of Jesus it starts to become clear that law has nothing to do with truth but with authority and power.

The need to execute Jesus is twofold. At one level it is necessary for Jesus to die in order to show the *theological* and (therefore!) sacrificial foundation of his city, his culture, and to demonstrate "what has been hidden since the foundation of the world," as pointed out by Girard.²³ It is this kind of foundational act that the New Testament criticizes. Jesus's argument against his city's political system, therefore, is as follows: the establishment of monuments to murdered prophets and "just people" indicates a promotion of the necessity of their deaths.²⁴ Not in the way Freud imagined, that is, as a death cult, but instead as the salvation of the city norm via the repetitive killing of innocent persons.

At another level Jesus's death is *political*. He must die, if Pilate wants to maintain order, peace, and security in the city. The two levels are not to be considered in isolation from each other. Jesus's death is neither solely theological nor political; it is instead theological-political.

But what is the meaning of this vacuum between profane and sacred law? The pointing out of Jesus as scapegoat is possible because the collapse of spheres allows the use of sacred techniques in the profane and political sphere and vice versa, leaving the act itself in neither of them. But just how, then, are we to understand this zone of indistinction between the political and the religious, between fact and right, leaving nothing that is either completely sacred or completely profane?

The crisis thus appears to us as a condition in which nature reveals itself in culture and paralyzes it. One can therefore speak neither of a pure state of nature nor of a pure state of culture in Hobbes's or Rousseau's senses of the concepts.²⁵

The crisis of the institution is the impossibility of guaranteeing the citizen's life-form by institutions. The institutions that before the crisis upheld the law, governing life in its different aspects, the religious aspect in the church, the political aspect in the assembly, the state, and so forth, and the private aspect in the house, no longer exist. At the same time (symbolic) ritual as such is demolished, making death in its cultural sense impossible, as the process against Jesus clearly shows. One could almost speak of the impossibility of a death-form. Thus, what kind of life is Jesus living after his appearance before Pilate? What kind of death is Jesus dying? It cannot be described in either profane or sacred terms or concepts. When Jesus is executed neither by profane nor by sacred law, is he simply killed? In the crisis of the institution we must ask ourselves how we are to understand the meaning of law. It seems as if both profane and sacred law are suspended to set free a violence outside law and order.

Before considering the concept of violence in *terminus technicus*, let us first discuss, according to our hypothesis, the juridical aspects founding this violence. The works of the German philosopher of right Carl Schmitt still contain some of the deepest analysis of the state of exception. He describes a condition in which law withdraws in order to guard and protect the state and law itself as in a situation so extreme that no law can be prescribed, which is exactly what is expressed in the Medieval Latin *necessitas legem non habet*.²⁶

This is exactly what Pilate does. He fears that peace, order, and security in his Roman *provincia* will end in riots, perhaps even in a civil war. The only thing left is to give in to the crowd's demands, to please them, and let an innocent be executed.

Let us therefore try to understand Girard's concept of the crisis of the institution via Schmitt's theory of "Fall äußerster Not," in order to get a better understanding of the problem at hand.²⁷

Schmitt's *Politische Theologie* (1922) will serve as the main reference in the attempt to demonstrate the status of law and right in relation to the conviction of Jesus.

The relevance of Schmitt in the present context is found in his famous dictum that political concepts are secularized *theological* concepts.²⁸ Girard himself is not unaware of this connection between the two spheres. Girard probably has something similar in mind when he describes not a dissolution of the institution but the institution's loss of validity.²⁹ The institutions are weakened and the difference between the sacred institutions (for example, the church and the temple) and the political institutions (the assembly, the state, and so forth) is dissolved. We are, Girard writes,

au point de jonction entre un religieux encore sacrificiel au sens strict et une politique *sacrificielle* au sens élargi. Sur certains points, il est déjà possible de traduire le discours religieux politique et vice versa.³⁰

What we shall try to understand is the meaning of the concept *necessitas*, the highest need or necessity, which to us appears to be a twofold concept: theological and political.

The interesting aspect is that *necessitas* places itself between fact and right. As mentioned, Jesus's death is factual because of the political tension and Pilate's decision, but it is just as much theological, being the only way Jesus's project can be fulfilled. *Necessitas* therefore presents itself as a Möbius's band; at one point the concept is theological and at another it is political, but it is never fully the one or the other. In our context, the institution continues to exist but has no force or power, because it always already is about to become its own opposition.

Necessitas is a circumstance allowing the setting free of law, suspending its restrictions or suspending the law as such, if the situation is urgent.

“Si la nécessité est urgente,” Schmitt writes, with reference to the French philosopher Bodin, the people are no longer bound by the law of the prince.³¹ *Necessitas* separates the two terms contained in the word *Rechtsordnung*. *Recht* and *Ordnung* are therefore not conceptually but politically united in a normal situation, just as they are separated to maintain (state) order if *necessitas* requires it. One should notice that *necessitas* relates to a situation of anomaly, a crisis situation, just as law relates to the normal situation. Schmitt can thus conclude that sovereignty is the state itself, the one determining the end of the Hobbesian *bellum omnium contra omnes* (a riot or civil war) which in practical terms means to guarantee public safety and security, as we saw in the case of Pilate’s decision. In Schmitt’s analysis, prevention and resolution are one dialectical concept, tied together, leaving politics and police indistinguishable.

It is now clear that *necessitas* does not have its own law, functioning more or less like any other law according to a set of a priori principles. Instead, the term shows that necessity in a particular situation creates its own *transgressing* of the law in that very situation. The Latin saying, *necessitas legem non habet*, can thus be interpreted in two ways: (1) *necessitas* does not have law; and (2) *necessitas* creates law.³² One recognizes this problem as the problem of fact and right, mentioned earlier.

But in the process against Jesus, neither Pilate nor the Jews in a strict sense act completely against or entirely inside the borders of the law. The two possible interpretations of *necessitas* thus do not seem to fully convey the complexity of the term in its practical use. The difficulty consists of *necessitas*’s creation of a lacuna between fact and right, leaving the problem less inside the law itself than in regard to the problematical relation between law and its reality, law’s application.³³

So, *necessitas* appears to have some relation to the law, but the letter of the law cannot be observed. *Necessitas* thus makes the law mute, but not numb. It pushes the law, the norm, out of its borders, or rather, pushes what is normally outside the law, that is, reality (violence, nature, and so forth), inside the law. To Schmitt, it is clear that the state of exception is a case of utmost necessity, *extremus necessitatis casus*.³⁴

Let us therefore try to develop a position in which *necessitas* from a juridical point of view makes possible the mimesis mechanism’s use of sacred and profane procedures in each other’s spheres.

The state of exception, Schmitt writes, is

die Suspendierung der gesamten bestehenden Ordnung. Ist dieser Zustand eingetreten, so ist klar, daß der Staat bestehen bleibt, während das Recht zurücktritt. Weil der Ausnahmezustand immer noch etwas anderes ist als eine Anarchie und ein Chaos, besteht im juristischen Sinne immer noch eine Ordnung, wenn auch keine Rechtsordnung.³⁵

The Girardian crisis situation seems to correspond precisely to this definition of the state of exception:

Les persécutions qui nous intéressent se déroulent de préférence dans ces périodes de crise qui entraînent l'affaiblissement des institutions normales et favorisent la formation de *foules*, c'est-à-dire de rassemblements populaires spontanés, susceptibles de se substituer entièrement à des institutions affaiblies ou d'exercer sur celles-ci une pression décisive.³⁶

The entire juridical order is suspended in the process against Jesus. It seems clear that even though only Jesus is affected by the situation, Pilate has in this very moment no power whatsoever over his province. In yet another way, Schmitt's definition of the state of exception draws attention to an important aspect of Girard's thought on the crisis situation. The situation is not chaos. The institution has lost its validity but still exists. The scapegoat is not a chaotic means to an end but a means to protect the institution from overall collapse and disintegration. The juridical ceases to be law and now presents itself as pure (noninstitutional) norm.

Hence, as is seen in the process against Jesus, the juridical power becomes the executive power. In practical terms, Pilate hands over the trial and the decision to the mob, the people; technically, he places the decision on the shoulders of the priests. Behold the fact that Pilate is not brought down. The state still exists. For a period of time, that is, during the process against Jesus, the juridical power of Rome is simply suspended. From a juridical point of view, actions during this period of time are committed in a zone between fact and right. Both life and death lose their institutional forms, and the difference between public and private collapses. The dissimilarity between private life and public law is demolished, and life becomes living law; the safeguarding of life itself, life inside the norm, becomes law's only concern and is no longer an institutional question of creating the proper form. The crucifixion itself illustrates this institutional crisis. Even though Jesus is guilty by sacred law,

his death is political, profane. He is executed by the Roman state yet not by Roman law.

The crisis surrounding the process against Jesus, which we are trying to understand as a state of exception, is peculiar in yet another sense. From the state's point of view, as Schmitt specifies, the state of exception appears as a miracle to the juridical system: "Der Ausnahmestand hat für die Jurisprudenz eine analoge Bedeutung wie das Wunder für die Theologie."³⁷ Girard's analysis of other crisis situations, for example, the Oedipal situation, seems to agree on this. The expulsion of Oedipus appeared to the state to be a miracle and effectively healed the anomaly: the plague went away.³⁸ As has been underlined several times, the situation under discussion can hardly be regarded in the same way. First of all, the suspension of Roman law is not decided by the state, but by the crowd led by the priests. To the Roman Empire, the state of exception is forced upon it by the probability of a complete dissolution of the Roman province if the law is not suspended and Jesus executed. From a juridical point of view (in terms of both *ius divinum* and *ius humanum*) the crisis, having Jesus at its heart, is not a miracle but a catastrophe.

Let us summarize the ways in which the Girardian analysis of the institutional crisis should be adjusted, according to our paradigm of the state of exception.

First, one must distinguish between the crisis as a *state* method and the crisis as a social, political, or religious method, as does Girard himself in his analysis of, for example, the Oedipal myth. In the first method, the state uses the crisis to guarantee itself (the state norm), as was the case in the Oedipal myth, by a controlled anomaly. The second method is a nonstate method with which to uphold a political, social, religious, or any other norm, as is seen in the conflict between Cain and Abel, also described by Girard. This difference corresponds to Schmitt's distinction in his *Die Diktatur* between commissary and sovereign dictatorship. Either law as such is suspended in order to save it or, as is the case in sovereign dictatorship, a new situation must be created in order to produce a new law.³⁹

Second, Girard faces the same problem as Schmitt, because what makes the process against Jesus interesting in relation to the distinction between commissary and sovereign dictatorship is that the political, social, and religious norm, that is, the nonstate norm, is upheld by means of the state (the crucifixion). The Schmittian *Entscheidung* of a political theology performed by the state to save the same state by suspending right (*Recht*) simply cannot explain the situation. Schmitt's solution to the sovereign paradox of how to relate the state of exception to law via an *Entscheidung* does not work. Between

state power (Pilate and the Roman law) and its application to reality, its executive force, no sovereign decision seems able to consolidate the two spheres of norm and reality, norm and application.

Third, Girard's institutional crisis is fundamentally a state of exception in which a zone of indistinction between a political, social, and religious anomaly and the juridical opens and is left undecided.

Let us now look more closely at the relation between life and law in the crisis situation, understood as a state of exception, and hence turn to the question of violence.

MIMESIS AND VIOLENCE: THE SCAPEGOAT

Ten years after *La violence et le sacré*, Girard publishes *Le Bouc émissaire*. Here a closer understanding of the type of violence in the crisis comes to light, in a paradoxical formulation, but nonetheless containing its annulment and resolution:

Le mécanisme fondateur révélé, le mécanisme du bouc émissaire—l'expulsion de la violence par la violence—est rendu caduc par sa révélation.⁴⁰

The problem is how to describe the kind of violence taking place during the state of exception in the process against Jesus. In Girardian terms, this is the problem of the difference between the scapegoat as such (Oedipus, Abel, and others) on the one hand, and Jesus as scapegoat on the other. Let us therefore summarize Girard's analysis of the scapegoat and then continue our analysis of what kind of difference Jesus, according to Girard, is said to represent.

Avec la même rapidité déconcertante, l'idole devient le maudit, la souillure, le pestiféré, celui dont le châtement *collectif* restituera la bénédiction divine temporairement soustraite à une communauté qui tardait trop à se mobiliser contre l'ennemi de Dieu.⁴¹

In the pointing out of the scapegoat, guilt is a question not of facts but of aesthetics. It concerns behavior, physical appearance, background, and so on. These are of course in one sense facts, but they have no causal connection with the circumstances they are meant to explain, that is, the crisis. The creation of the scapegoat's guilt and the subsequent expulsion are ideological: they are the *missing link* explaining what normally cannot be explained.

The scapegoat is a *phantasm*; he is on a political level convicted by *lex ex post facto*. He is simply convicted, without a trial. It is a sort of situational law created by *necessitas*. Even if it is made outside the institution, the decision to eliminate the scapegoat from society is made by the sovereign, for example, the family in the Oedipal myth, the priests in the process against Jesus, but it is carried out by the people. There is no need for a trial; the scapegoat's guilt is unquestionable. Crime ceases to be crime and the distinction between legal and illegal disappears, as the juridical institution is demolished.⁴²

The city is interested in the belief, in the faith, that the establishment of a causal link between the scapegoat and the crisis is real. The scapegoat becomes constitutive for the (political, social, or religious) effect the city needs. He becomes the reconstituting element for the city norm, which has become sickened in the crisis. Oedipus, or any other scapegoat, can function only as long as its reality remains hidden, that is, as long as the scapegoat is not revealed as an ideological construction, that is, as *necessitas*, a means needed to provide an illusionary solution. If the scapegoat as such is revealed, if the missing link cannot be sustained by the belief in its reality, then the effect of the scapegoat is lost. The mimesis mechanism as a social function presupposes this belief and blind acceptance.⁴³ The metamorphosis of the scapegoat must be total.⁴⁴

It is important not to forget that the scapegoat also marks the disappearance of the concrete body. It exists only as form, never as real person; definitively not as a citizen, but as a *living anomaly*.⁴⁵ With the clash of the profane and sacred spheres, the impure element cannot be dealt with on a symbolic level, that is, according to normal rites. The scapegoat's unclean element is real and must be eliminated from the city on its real level.

Using Schmitt's definition of the state of exception, discussed earlier, it is possible to conceive Girard's conception of sovereignty in yet another Schmittian sense: sovereignty is invested in the one determining the state of exception because he is inside and outside the juridical system at one and the same time. Sovereignty places self, Schmitt writes, "außerhalb der normal geltenden Rechtsordnung und gehört doch zu ihr."⁴⁶ Institution has lost its power but sovereignty exists nonetheless. Its structure is, in fact, even strengthened.

The violence inflicted upon the scapegoat perfectly fits the Schmittian conception of the law's two basic tendencies, mentioned earlier. Hence, violence either conserves law or creates a future situation suitable for a new law: Violence is consequently either inside or outside the law; thus both are conceivable in a jurisprudential vocabulary. However, when it comes to Jesus as a scapegoat, the Girardian system seems to have difficulty describing the

juridical dimension of the process against Jesus. Just as Schmitt evolved his theory of sovereignty founded upon the state of exception, because this situation could not be comprehended inside the concepts of either a commissionaire or a sovereign dictatorship, so the violence and the execution inflicted upon Jesus place themselves on just such a threshold between conservative and revolutionary violence. Hence, the Girardian analysis of (mimetic) violence has to be supplied in a way that corresponds to our analysis of the juridical dimensions of Girard's theory. How can this be done?

All this, of course, indicates that the question of sovereignty in the process against Jesus—and in general—is difficult to comprehend in terms of a juridical or even a political vocabulary. More than simply placing itself *outside* the juridical sphere's two entities, *ius humanum* and *ius divinum*, sovereignty seems to create a zone between the two poles.

The interesting dimension in our perspective, though, is by what right—if any—the violence acts under these circumstances of neither conserving nor constituting law. The dilemma is even more complex than the problem of punishment, being inside the borders of law by reason of a legal system (leaving, as Foucault has done, only to analyze this very system).⁴⁷

The question posed here is twofold. At one level, it is how to describe violence, on the threshold of the juridical system, in this zone of indistinction where the violence in the process against Jesus has been shown to take place. Girard speaks of the view from the point of view of the persecutors.⁴⁸ At another level, it is how to describe the violence from Jesus's perspective, or better, on the textual level at which the authors of the New Testament reveal to us "what has been hidden since the foundation of the world."⁴⁹ Here, Girard speaks of the point of view of the persecuted.⁵⁰

In the view of the persecutors, the elimination, in the case of Jesus even the death, of the scapegoat must be related to the juridical system. For this reason a state of exception is created, leaving Jesus's death and the violence inflicted upon him on a threshold, neither inside nor outside, but in relation to the juridical via the priests' decision to convict him. From this view, Jesus is, so to speak, dying two deaths—that of the *ius humanum* and that of the *ius divinum*—at one time, yet not belonging completely to either of them. The only thing connecting him to the world is the sovereign decision. From Jesus's point of view the matter is different. Girard's position is very clear on the matter. The tragic irony that is with us from the start of all four Gospels consists

in the fact that we are not alone in knowing Jesus will die. Jesus himself also knows it. And most significantly, he also wants it.⁵¹

Violence's true nature is revealed through Jesus's deliberate and desired death—through violence itself—thereby showing the violent foundation on which the culture rests. But how are we to understand, in this process itself, the concept of violence?—a violence simultaneously confirming and ending itself in relation to the juridical system.

When we consider these questions, Benjamin's project in *Zur Kritik der Gewalt* (1921) can help us move ahead.⁵² Two aspects are of importance to us. First, that Benjamin in this text hopes to show how violence's dialectical structure (*Schwankungsgesetz*) can be broken, neither conserving nor constituting law, and "der rechtsetzende wie der rechtserhaltenden Gewalt zum Abschluß bringen will."⁵³ Second, as stated by Benjamin most clearly at the end of the text, it is a violence excepting law:

auf der Entsetzung des Rechts samt den Gewalten, auf die es angewiesen ist wie sie auf jenes, zuletzt also der Staatsgewalt, begründet sich eine neue Zeitalter.⁵⁴

Girard may have the same idea in mind in defining the mimetic violence as *l'expulsion de la violence par la violence*, which at the same time contains its revelation, as was presented earlier.⁵⁵

So, if Schmitt's concept of the state of exception allows us to understand the viewpoint of the priests and Pilate, that is, to relate the situation to the juridical, Benjamin's concept of pure violence (*reine Gewalt*) can help us to understand the situation from the perspective of the persecuted. This is the attempt to demonstrate a strictly human violence beyond the juridical sphere.

* * *

The Girardian expulsion of violence by violence corresponds to Benjamin's mentioning of the death penalty. Meanwhile—as pointed out above, making the Benjaminian statement apparently beside the point—Jesus does not die a death that is institutionally conceivable, either from the point of view of the priests or from Jesus's point of view. What Benjamin is discussing is the relation between life and law, which naturally is most clearly stated discussing the death penalty.

Denn in der Ausübung der Gewalt über Leben und Tod bekräftigt mehr als in irgendeinem andern Rechtsvollzug das Recht sich selbst.⁵⁶

Far more than being an institutional aim, letting the legal system contradict itself, ending the life of a citizen, which the system was supposed to protect, Benjamin holds that the death penalty is nothing but the self-confirmation of the juridical system itself, its norm. Thus, when the death penalty is not active, it is in fact suspended, giving life to the citizen. In its most literal sense, the rule lives in the exception. Thus, Schmitt's concept of the state of exception explains well the juridical dimension vis-à-vis the persecutors, the priests, but from Jesus's point of view, violence in relation to him has nothing whatsoever to do with the establishment of a para-normal situation where the city norm reinforces itself, letting the system and the state continue.

The New Testament reveals culture's violent foundation, as Girard says.⁵⁷ However, Jesus's life as such—*das bloße Leben*, as Benjamin describes myth's theme, a life *made* to be outside an institutional frame—demonstrates the core of the juridical. In an almost Kafkanian sense, only by letting law itself incarnate his body and so becoming a living law, like Franz K. in Kafka's *Der Prozess*, can the juridical be overthrown.

Schmitt's attempt to create a zone—the state of exception—where the two parts of the juridical system can be united at the time of a crisis situation is challenged by Benjamin's notion of a pure, divine violence (*reinen göttlichen Gewalt*).⁵⁸ In this light, the process against Jesus is not simply a death penalty more or less in relation to the juridical. Far more than relating to the juridical, being a genuine penalty, the death penalty is violence manifesting itself. Here, society's norm, the city's norm, is incarnating itself.

The norm therefore seems to be far more than the juridical system's totality (the collection of law's two parts). It appears to relate to life itself (*das bloße Leben*). The process against Jesus from the persecuted's point of view is therefore less a crisis of the juridical system's two parts in which his death cannot be apprehended, and more a constitution of the juridical norm itself.

The confirmation of the city norm via the death penalty in terms of the scapegoat demonstrates a continuing process of creating and constituting normal life as such by excluding *abnormal* life.

* * *

Why is Girard right when stating that the meaning of law, *nomos*, is language itself, *logos*?⁵⁹ Why is Jesus's parable the response to the dialectics of

the juridical, the breaking of the juridical's dialectics? The solution posed by Girard is nothing less than making Jesus the last scapegoat, the one who destroys the connection between violence and the juridical.

In the traditional myth (Cain and Abel, Remus and Romulus, and so forth), the difference between *nomos* and *logos* has no place in humankind's world. Together they represent a sphere where, to some degree, when secularized, that is, when humankind (*logos*) interferes in the divinely created world order (*nomos*), *hybris* or, in Girardian terms, the crisis evolves. In this context, one of the most interesting ideas in the Girardian corpus is the reflection upon the importance of the ancient Greek tragic drama in *La violence et le sacré*.⁶⁰ What to Girard is starting to happen in European culture at this time is a slow secularization of the two concepts. The change consists in a linguistic turn, best seen in the Oedipal myth and in the Bible in the Book of Job. *Logos* is becoming more and more human, taking *nomos* along with it. To Girard this idea culminates in the New Testament where Jesus is *logos* incarnated.⁶¹ *Nomos*, according to the Girardian system, cannot be anything but a coming *nomos*. What (the new) *nomos* is lies in Jesus's *logos*, his parable, henceforth appearing as *reine Mittel*, in the sense Benjamin intended. This is how we are to understand Jesus's famous question: "My God, my God, why have you left me?"⁶²

Benjamin in his *Zur Kritik der Gewalt* can thus be read to summon the Girardian idea:

Den rechtmäßigen und rechtswidrigen Mitteln aller Art, die doch samt und sonders Gewalt sind, dürfen nämlich als reine Mittel die gewaltlosen gegenübergestellt werden.⁶³

To Benjamin, *rein* (pure) is to be understood only as relational not as substantial. Hence, the difference between pure violence and juridical violence consists not in the concept of violence itself but in its relation to an externality (which is an end to the juridical).⁶⁴ If the parable is language presenting itself (pure language, that is, *langue*), then only interpretation makes it understandable. Just as *langue* is nothing in itself but only in relation to *parole*, so also the parable is nothing in itself. Only through interpretation does the parable become conceivable (as *parole*) as *historically* related to the juridical externality. From Jesus's perspective, which in this sense is the point of view of the authors of the New Testament, violence is here pure, as it consists in a demonstration and a deposition of the condition between the juridical and violence, leaving it only human. The just blood that Jesus prophesies will come over the city is only the human blood and no longer the divine, necessary sacrificial

blood, related to the juridical.⁶⁵ It is human because this violence is neither conserving nor constituting the juridical but is leaving it deactivated. Violence and law, the juridical, is left as history.

Jesus's "violent revolution" consists in the parable, language itself, not relating violence to anything other than human communication and interaction. Jesus as *logos*, language itself, incarnates *nomos* as he freely lets law become his body. As Agamben states:

Come, nel saggio sulla lingua, pura è quella lingua che non è strumento al fine della comunicazione, ma comunica immediatamente se stessa, cioè una comunicabilità pura e semplice, così pura è quella violenza che non si trova in relazione di mezzo rispetto a un fine, ma si tiene in relazione con la sua stessa medialità.⁶⁶

Let us try to tie together the foregoing analysis of Girard's theory of violence.

The problem of sovereign violence has presented itself as the vacuum between profane and sacred violence, between *ius humanum* and *ius divinum*. In the New Testament, however, this problem is becoming more and more problematical. The question of law—ultimately, the question of the citizen's life and death—loses its rationality. The difficulty becomes the juridical itself, presenting, at the same time, the question of humanity itself.

Although Schmitt's position explains this difficulty from the point of view of the state, the problem at hand in the process against Jesus is even more complex. One can maintain the Schmittian conception insofar as life itself is immediately connected to juridical violence, but never entirely placed inside its borders, via the state of exception. Hence, life is left in neither of law's two spheres but between them.

Life itself, Benjamin's *bloße Leben*, is, however, the core of the argument in the four Gospels. Jesus is deliberately choosing this situation to promote and demonstrate the juridical's culmination understood as the decision over life and death. The mimetic or mythic violence committed against Jesus corresponds to the parable's pure language, separating a juridical end, for example, the salvation of the entire city, from the value of the individual per se. The revealing is language itself: this pure violence unfolding violence as a strictly human condition via the parable.

Language becomes but language communicated from human to human and no longer from god to human; not from a mythic, sovereign *necessitas*

of maintaining a permanent and eternal norm. Instead, perhaps against its intention, it constitutes a bipolar system where the rule and the exception constitute the two sides of a new governmental system.

NOTES

All references to the New Testament and all quotations from it are taken from the original Greek text, *Novum Testamentum Graece*. All translations are by the present author.

1. Throughout this essay, “process” recalls that in German and Italian *trial* is *process* and *processo* thereby indicating a process, a duration of time, and somewhat like a “juridical duration” of a “lifelong law.” This is most clearly found in the work of Kafka, particularly in his work *Der Process* [*The Trial*].
2. It must be stressed that the Old Testament is the history of humankind, of culture and the city *as such*. Hence, Cain’s culture is not Jewish. Adam in Hebrew means “the first man,” which is why Jesus is interpreted as the second Adam, the second foundation of culture and city: see, for example, René Girard, *Des choses cachées depuis la fondation du monde—Recherches avec Jean-Marie Oughourlian et Guy Lefort* (Paris: Éditions Grasset & Fasquelle, 1978), 224–25.
3. Matt. 23:1–36.
4. Gen. 4:1–24; Girard, *Des choses cachées depuis la fondation du monde*, 207–12.
5. Girard’s use of literary theory naturally leaves questions of the chronological sequence of the Bible’s different parts as completely irrelevant. The Bible is therefore the fact of a certain rendering, not a historical, that is, empirical, rendering. As we are to continue this theory into a discussion of violence as such, not violence at a certain historical epoch, this seems furthermore to be in agreement with Girard’s view.
6. René Girard, *La violence et le sacré* (Hachette Littératures, Éditions Albin S.A., 1990; orig. pub. 1972), 216–17. (italics in the original). In the English translation of Freud’s complete works, Trieb is translated as drive (Lacan: *jouissance*) and not, as should have been the case, as desire. In French, it is rendered, correctly, as *désir*.
7. Matt. 23:35–36.
8. Girard, *Des choses cachées depuis la fondation du monde*, 379–87.
9. Girard, *La violence et le sacré*, 143; Girard, *Des choses cachées depuis la fondation du monde*, 33–38.
10. Girard, *La violence et le sacré*, 383–95.
11. Girard, *La violence et le sacré*, 141–42; Girard, *Des choses cachées depuis la fondation du monde*, 182–83.
12. René Girard, *La voix méconnue du réel* (Paris: Grasset & Fasquelle, 2002), 228–33.
13. Girard, *La violence et le sacré*, 77.
14. Girard, *La violence et le sacré*, 78.
15. Kasper Nefer Olsen, *Offer og objekt—En introduktion til Michel Serres’ Statuer*, særtryk no.4 (Copenhagen: Det Kongelige Danske Kunstakademi, 1993), 23–24.

16. René Girard, *La route antique des hommes pervers* (Éditions Grasset & Fasquelle, 1985), 133.
17. Girard, *La route antique des hommes pervers*, 134 (my italics).
18. Matt. 27:24.
19. Mark 15:15.
20. Luke 23:23–25.
21. John 18:31.
22. John 19:15–16.
23. Matt. 13:35. “Au lieu de faire de la crucifixion une cause de la divinité, ce qu’un certain christianisme doloriste est toujours tenté de faire, il vaut mieux y voir une *conséquence* de celle-ci” (Girard, *Des choses cachées depuis la fondation du monde*, 317; italics in the original).
24. Matt. 23:29–33.
25. Thomas Hobbes, *Leviathan, or The Matter, Forme, and Power of a Common-Wealth Ecclesiastical and Civil* (Penguin Books, 1974; orig. pub. 1651), for example, chapter 13, chapter 14; Jean-Jacques Rousseau, *Du contrat social; où principes du droit politique* (Éditions Gallimard, 1964; orig. pub. 1762), for example, Livre 1.
26. *Necessitas*: to avoid any confusion with the scientific and methodological use and to avoid any misunderstanding regarding normal English practice and language, I use the original Latin.
27. Carl Schmitt, *Politische Theologie—Vier Kapitel zur Lehre von der Suveränität*, 8th ed. (Berlin: Dunker & Humblot, 2004; orig. pub. 1922), 14.
28. Schmitt, *Politische Theologie*, 43. It is true that Schmitt’s exact words are “modern politics” (“Begriffe der modernen Staatslehre”), but this is simply because to Schmitt, the myth of modernity is that politics and theology can be separated. Politics is always political theology.
29. Girard, *La violence et le sacré*, 78.
30. Girard, *La route antique des hommes pervers*, 73.
31. Schmitt, *Politische Theologie*, 15.
32. Giorgio Agamben, *Stato di eccezione* (Turin: Bollati Boringhieri, 2004; orig. pub. 2003), 34.
33. Agamben, *Stato di eccezione*, 43.
34. Schmitt, *Politische Theologie*, 17.
35. Schmitt, *Politische Theologie*, 18.
36. René Girard, *Le Bouc émissaire* (Éditions Grasset & Fasquelle, 1982), 23 (italics in the original). The persecutions in which we are interested generally take place in times of crisis, which weaken normal institutions and favor *mob* formation. Such spontaneous gatherings of people can exert a decisive influence on institutions that have been so weakened, and even replace them entirely. *The Scapegoat*, tr. Yvonne Freccero, (Stanford: Stanford University Press, 1986), 12.
37. Schmitt, *Politische Theologie*, 43.

38. Girard, *La violence et le sacré*, 131.
39. "Die kommissarische Diktatur hebt die Verfassung in concreto auf, um dieselbe Verfassung in ihrem konkreten Bestand zu *schützen*. Die souveräne Diktatur sieht nun in der gesamten bestehenden Ordnung den Zustand, den sie durch ihre Aktion beseitigen will. Sie *suspendiert* nicht eine bestehenden Verfassung kraft eines in dieser begründeten, also verfassungsmäßigen Rechts, sondern sucht einen Zustand zu schaffen, um eine Verfassung zu ermöglichen, die sie als wahre Verfassung ansieht. Sie beruht sich also nicht auf eine bestehende, sondern auf eine herbeizuführende Verfassung" (Schmitt, *Politische Theologie*, 133–34; italics in the original).
40. Girard, *Le Bouc émissaire*, 266. "Once the basic mechanism is revealed, the scapegoat mechanism, that expulsion of violence by violence, is rendered useless by the revelation." *The Scapegoat*, 189.
41. Girard, *La route antique des hommes pervers*, 43 (italics in the original).
42. Girard, *La violence et le sacré*, 77–78, 109, 111, 114–115, 120, 123, 125, 131–34; Girard, *Des choses cachées depuis la fondation du monde*, 38–46, 126–33, 163–67.
43. To all cultures, its foundation must remain unknown and unconscious and can hardly be anything else. Culture is completely functional and partly ahistorical. Memory and rendering have their limits, when it comes to the rendering and memory of the culture itself, the foundation on which it stands. If not, in which language could such an act be possible? The language cannot escape itself, cannot reach behind itself and think itself. The most famous statement of this fact is probably in Marx's *Das Kapital*: "Sie wissen das nicht, aber sie tun' es." Every thinking and revelation of the culture's foundation means the beginning of a new foundation, no matter how small the differences may (or may not) be in comparison the old one.
44. Girard, *La violence et le sacré*, 411–13, 422; Girard, *Des choses cachées depuis la fondation du monde*, 189–200; Girard, *La route antique des hommes pervers*, 38–41.
45. A more recent example of this logic of the phantasm is found in the Third Reich's conceptions of the Jew. This logic also seems to be the reason for the treatment of the Jew as an industrial product. This is not a person, but a thing that must be kept, stored, and undergo industrial processes (the concentration camps) like any other product. In the camp the product is—as the sign announcing that "Arbeit macht frei" at the entrance to every concentration camp clearly states—freedom. Some products are failures and therefore cannot take part in this production and are eliminated (the death camps).
46. Schmitt, *Politische Theologie*, 14.
47. Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 1975).
48. Girard, *Le Bouc émissaire*, 7–36.
49. Matt. 13:35; Girard, *Des choses cachées depuis la fondation du monde*, 317.
50. Girard, *Des choses cachées depuis la fondation du monde*, 252–53, 286–88; Girard, *Le Bouc émissaire*, 151, 156–61.
51. "Now *my soul is upset* and what shall I say? Father, *save me* from this hour? But this is why I have come to this hour. Father, say the meaning (δόξασόν) of your name." John 12:27–28 (italics in the original).
52. One must remember that *Gewalt* in German also means power. Furthermore, the genitive case used has a double connotation: hence the title can be translated either as *To a Critic of*

Violence/Power or as *To a Critic by Violence/Power*. When considering that Benjamin among other things in this text tries to argue in favor of a revolutionary nonviolent position of pure means (*reine Mittel*), leaving law neither conserving nor constituted but *studiato* (Agamben, *Stato di eccezione*, 82), the second version of the translation appears less paradoxical.

53. Walter Benjamin, "Zur Kritik der Gewalt," in *Zur Kritik der Gewalt und andere Aufsätze* (Frankfurt am Main: Suhrkamp Verlag, 1965; orig. pub. 1921), 43.
54. Benjamin, "Zur Kritik der Gewalt," 64.
55. Girard, *Le Bouc émissaire*, 266.
56. Benjamin, "Zur Kritik der Gewalt," 43.
57. Girard, *Des choses cachées depuis la fondation du monde*, 243–51, 259–64, 321; Girard, *Le Bouc émissaire*, 277–95.
58. Benjamin, "Zur Kritik der Gewalt," 59.
59. Girard, *Des choses cachées depuis la fondation du monde*, 362–67. In the New Testament, translating λόγος to "word" completely misses the meaning, not only in relation to the theory presented here but in general. The essence of this concept lies not in the speech act but in the fact that this act is based on subjective, reflective reason (ratio) in opposition to the Old Testament where it relates to law. Here λόγος is in harmony with νόμος: law, norm, and sovereign power.
 See, for example, διαλογίζομαι (*cogitatio, intellego*) in Matt. 13:14–15, Marc 8:17; συνίημι (*intellego*) in Mark 8:21, Acts 7:25, Rom. 15:21, νοέω (*intellego*) in: Matthew 16:11, Rom. 1:20; οἶδα (*cogitatio, scisco*) in Mark 4:13, John 16:18; γνώσκω (*cogitatio, intellego, scisco*) in Mark 8:17, John 8:28, 8:32, 8:52, 10:38, 13:12, 14:20, 17:7, 17:23, Acts 8:30, 1 Cor. 14:9; διανοίγω (*intellego*) in Luke 24:45. For emphasis, I have taken the concepts' Latin translations from the *Vulgata*, as these, more obviously than in Greek, demonstrate the clear connotation of a critical (or, if preferred) philosophical project.
60. See, for example, chapter 3, chapter 7.
61. Girard, *Le Bouc émissaire*, 262–63.
62. Mark 15:34.
63. Benjamin, "Zur Kritik der Gewalt," 47.
64. Agamben, *Stato di eccezione*, 79.
65. Matt. 23:35–36.
66. Agamben, *Stato di eccezione*, 80. In the essay on language, pure language is that which is not an instrument for the purpose of communication, but communicates itself immediately, that is, a pure and simple communicability; likewise, pure violence is that which does not stand in a relation of means towards an end, but holds itself in relation to its own mediality. *State of Exception*, tr. Kevin Attell (Chicago: The University of Chicago Press, 2005), 62.