

Between the pure and the impure: The peculiar case of the *homo sacer*

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ABSTRACT

According to Durkheim, the notion of ‘sacred’ is *per se* ambivalent, because it includes antinomic notions such as the pure and the impure. This theory would be justified by the original ambiguity of the Latin *sacer*. Only one case is always quoted: the peculiar condition of the *homo sacer*, a criminal consecrated to the gods. But the ambiguity of the *sacer* is not a problem for the Romans. The uncertainties of modern interpretation stem from the fact that this *consecratio* of a criminal is often explained as a sacrifice, but the destiny of the *homo sacer* is more analogous to the fate reserved for the violators of international treaties: on the profane side, the culprit is deprived of his citizenship and becomes a foreigner. Nor, however, is he accepted by enemies. In the same way, from an anthropological point of view, the consecrated person stays on a liminal stage: he remains forever in an uncertain gap between the sphere of men and the world of the gods. There is no ambiguity of the sacred because the *homo sacer* could not really reach the gods or pollute them.

KEYWORDS

ambivalence, consecration, *deditio*, *homo sacer*, liminality, purity, Roman religion, sacred, sacrifice

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INTRODUCTION

According to Emile Durkheim, the notion of ‘sacred’ is *per se* ambivalent, because it includes antinomic notions such as the pure and the impure, the holy and the cursed. For this purpose, he cites Robertson Smith’s studies on religion of the Semites.¹ As for the epigones of the French sociologist, this theory of the ambivalence of the sacred would be justified by the original ambiguity of the term sacred, which is a translation of the Latin adjective *sacer*. The main problem stems from the fact there is only one case which is always quoted for illustration: the peculiar condition of the *homo sacer*.² Like a sacrificed animal, the *homo sacer* was consecrated to the gods: he was separated from the world of men and was no more entitled to be protected by the laws of Rome. His assassination thus became legitimate, as Macrobius says, with the following words: “*hominem sacrum ius fuerit occidi* (a consecrated person may be killed legally).”³ For me, this does however not imply some ambiguity of the sacredness.

How could the gods accept such an offering? How could the pure and the impure mingle? My analysis is based on bringing together the concepts of consecration and sacrifice, but can we compare the ritual treatment applied to a *homo sacer* to that of an animal-sacrifice? In both cases, it is a matter of transferring a living being from the world of men to the world of the gods in order to establish a relationship between the two parties. Can one therefore qualify as a sacrifice the consecration of a man?⁴ As Y. Berthelet has shown, interpreting the figure of

¹DURKHEIM, É.: *Les formes élémentaires de la vie religieuse*. Paris 1912, 586 quotes SMITH, W. R.: *Religion of Semites*. London 1889, 446: “Holiness, Uncleanness and Taboo”.

²ERNOUT, A. – MEILLET, A.: *Dictionnaire étymologique de la langue latine*. Paris 1931, s.v. *sacer*: “*Sacer* désigne celui ou ce qui ne peut pas être touché sans être souillé ou sans souiller ; de là le double sens de ‘sacré’ ou ‘maudit (à peu près)’”; *Le Petit Robert*. Paris 1986, s.v. *sacré*: “I. Qui appartient à un domaine séparé, interdit et inviolable (par opposition à ce qui est profane) et fait l’objet d’un sentiment de révérence religieuse : Saint, tabou. [...] II. (Du fait de l’ambiguïté originelle de *sacer*) Maudit, exécré”. ELIADE, M.: *Traité d’histoire des religions*. Paris 1979, 26: “Le tabou et l’ambivalence du sacré [...]: L’ambivalence du sacré n’est pas exclusivement d’ordre psychologique (dans la mesure où il attire ou il repousse) mais aussi d’ordre axiologique ; le sacré est en même temps ‘sacré’ et ‘souillé’. En commentant le mot de Virgile, *auri sacra fames*, Servius (*ad. Aen.* III 75) (*sic*), remarque à juste titre que *sacer* peut signifier à la fois ‘maudit’ et ‘saint’. Eustathius (*ad Iliadem*, XXIII 429) observe la même double signification de *hagios*, qui peut exprimer en même temps la notion de ‘pur’ et de ‘pollué’”. Cf. RUDHARDT, J.: *Notions fondamentales de la pensée religieuse et actes constitutifs du culte dans la Grèce classique*. Paris 1992, “Le sacré, le pur et l’impur”, 21–22.

³Macr. *Sat.* III 7. 5. (All translations in this article came from *The Loeb Classical Library*).

⁴MOMMSEN, TH.: *Le droit pénal romain* III. Paris 1907, 233; BENNET, H.: *Sacer esto*. *TAPhA* 61 (1930) 5–18; FUGIER, H.: *Recherches sur l’expression du sacré dans la langue latine*. Paris 1963; MAGDELAIN, A.: *Le ius archaïque*. In MAGDELAIN, A.: *Ius Imperium Auctoritas. Études de droit romain*. Roma 1990, 3–96; FIORI, R.: *Homo sacer: dinamica politico-costituzionale di una sanzione giuridico-religiosa*. Napoli 1996; AGAMBEN, G.: *Homo sacer. Le pouvoir souverain et la vie nue*. Paris 1997, 79–126; CANTARELLA, E.: La sacertà nel sistema originario delle pene. Considerazioni su una recente ipotesi. In HUMBERT, M. – THOMAS, Y. (eds): *Mélanges de droit romain et d’histoire ancienne. Hommage à la mémoire d’André Magdelain*. Paris 1998, 47–71; LOVISI, C.: *Contribution à l’étude de la peine de mort sous la république romaine (509-149 av. J.-C.)*. Paris 1999, 13–64; CANTARELLA, E.: *Les peines de mort en Grèce et à Rome. Origines et fonctions des supplices capitaux*. Paris 2000, 267–278; SCHEID, J.: Les pontifes romaines et le parjure. In BATSCHE, C. – VARTEJANU-ROBERT, M. (eds): *Manières de penser dans l’Antiquité méditerranéenne et orientale : mélanges offerts à Francis Schmidt par ses élèves, ses collègues et ses amis*. Leiden 2009, 183–191; SCHEID, J.: Appartenenza religiosa ed esclusione dalla città. In CORBINO, A. – HUMBERT, M. – NEGRI, G. (eds): *Homo, caput, persona. La costruzione giuridica dell’identità nell’esperienza romana dall’epoca di Plauto a Ulpiano*. Pavia 2010, 347–365.



consecrated man on the basis of the sacrificial model can introduce “an interpretative bias”.⁵ If the consecration of the *homo sacer* is not a sacrifice, the comparatist approach borrowed by Macrobius remains illuminating. The sacrifice can serve as a benchmark for the treatment of the *homo sacer* if it is taken for what it is: a model.⁶ Inspired by the work of O. de Cazanove on the *uer sacrum*, my opinion is that the condemnation of the *homo sacer* can be interpreted as an unfinished sacrifice.⁷

I do not intend here to deal with all the cases of consecrated men, nor of the *deutio*, but only with the case of the *homo sacer*, as it can be interpreted from different Roman laws, mainly the XII Tables or the *leges regiae*.⁸ First of all, I will insist on the fact that the case of the ambiguity of the *sacer* is not a problem for the Romans. The uncertainties of interpretation stem from the fact that the *consecratio* of a criminal is often explained as a sacrifice, but it is not really the case: the *homo sacer* is not formally put to death.⁹ So, as I will explain, my hypothesis is that the destiny of the *homo sacer* is probably analogous to the fate reserved for the violators of the sworn faith within the context of international treaties: on the profane side, the culprit is deprived of his citizenship and becomes a foreigner in the eyes of the Romans. Nor, however, is he accepted by enemies. In the same way, from an anthropological point of view, the consecrated person stays on a liminal stage: he remains forever in an uncertain gap between the sphere of men and the world of the gods. There is no ambiguity of the sacred because the *homo sacer* cannot really reach the gods or pollute them.

CONSECRATIO OR SACRIFICIUM?

Macrobius points out that the concept of *sacer* is not ambivalent in itself, but the condition of being a *homo sacer* is.¹⁰ He is not the first author to deal with this case, but he does not speak as an antiquarian, as do Verrius Flaccus and his compiler Festus, for example.¹¹ He calls, too, for

⁵BERTHELET Y.: *Homo sacer, consecratio et destinatio dis*. In BOURDIN, S. - LANFRANCHI, T. (eds) : *Autour de la notion de sacer*. Roma 2017, 189.

⁶JACOB, R.: La question romaine du *sacer*. Ambivalence du sacré ou construction symbolique de la sortie du droit. *Rhist* 639.3 (2006) 523–588.

⁷CAZANOVE, O. DE: Sacrifier les bêtes, consacrer les hommes. Le printemps sacré italique. In *Rites et espaces en pays celte et méditerranéen. Étude comparée à partir du sanctuaire d'Acy-romance*. Roma 2000, 257–258. This scholar shows that *uer sacrum* is not an human sacrifice and demonstrated how the testimonies oppose the sacrificial killing of animals to the consecration-expulsion of men.

⁸This is a particular case, which seems already being an evolution of this original condemnation. The case of the *sacrationes capitis* made par the tribune is already examined by BERTHELET (n. 5). Cf. CANTARELLA: *Les peines de mort* (n. 4) 278.

⁹Tib. I 2. 27–28: *Quisquis amore tenetur, eat tutusque sacerque / Qualibet : insidias non timuisse decet* (“Whosoe’er hath love in his heart may pass safe and in heaven’s keeping where he will; no ambush should be fear”). Unlike a sacrificial animal, the *homo sacer* can go wherever he pleases.

¹⁰Macr. Sat. III 7. 5: *Hoc loco non alienum uidetur de conditione eorum hominum referre quos leges sacros esse certis dis iubent, quia non ignoro quibusdam mirum uideri quod, cum cetera sacra uiolari nefas sit, hominem sacrum ius fuerit occidi*. (“Here it seems appropriate to comment on the condition of those people whom the laws consecrate to specific gods, because I know some people think it strange that a consecrated person may be killed legally when it is against the law for all other consecrated things to be treated violently.”)

¹¹SANTALUCIA, B.: *Diritto e processo penale nell’antica Roma*. Milano 1989, 11, n. 20.



authoritative texts, but he analyzes and rethinks Roman religion according to his Neo-Platonic engagement. Several times, he mentions human sacrifices that would have been practiced at the origins of Rome: the gradual disappearance of these ‘savage’ practices, replaced by substituted rites, would have progressively sanctioned the process of civilization of the Romans.¹² But the practice of *homo sacer* is in apparent contradiction with his reconstruction of the history of the Roman religion. The few lines quoted from Macrobius show the double exception constituted by the case of *homo sacer*: the sacred man is not any longer a Roman citizen, since it is possible to kill him without being considered as a *parricide*. At the same time, he cannot be assimilated to an animal victim because it is not immolated and ‘cooked’.¹³ Stories concerning uneasy offerings are in Dionysius of Halicarnassus as well, but in his case, Macrobius remarked that “some are surprised (*mirum uideri*)” by having to protect the *res sacrae* when, at the same time, it is legitimate to attack the *homo sacer*.¹⁴ His interest in this criminal sentence clearly occurs in a controversial context. In the passage relevant to the present study, he speaks through the guise of the philosopher Vettius Agorius Praetextatus, who would be seventy-four years old on the fictitious date of the dialogue, in 383. An illustrious representative of the traditional paganism, Praetextatus, had protested against the prohibition of the nocturnal sacrifices under Valentinian I.¹⁵ The section the author of the *Saturnalia* devoted to the *homo sacer* can be understood as a hidden, implicit answer to the attacks carried out by the Christians against the Roman sacrificial practices, *non ignoro quibusdam mirum uideri* (“I am not unaware that it seems strange to some people”).¹⁶ This passage suggests that the description of the *homo sacer* rite has to be done through the lenses of the broader context of religious change in Late Antiquity. At a time when the sacrificial practice is coming to an end, at least in its public form, the concept of sacrifice is needed as an grid for analyzing all religious rites.¹⁷

If ancient testimonies of the punishment of the *homo sacer* are not always clear, the link between this condemnation and the rite of sacrifice cannot be denied. The operation, which consists of making sacred, *sacrare*, is in theory a consecration. *Consecratio*, however, also means, in the Imperial period, the deification of the emperor following his funeral as decreed by the Senate.¹⁸ The parting elements between different types of dedication, consecration or sacrifice,

¹²PRESCENDI, F.: *Décrire et comprendre le sacrifice. Les réflexions des Romains sur leur propre religion à partir de la littérature antique*. Stuttgart 2007, 169–202 “La substitution du sacrifice humain”.

¹³Fest. 424 L., s.v. *sacer mons*.

¹⁴Macr. Sat. III 7. 5.

¹⁵CHASTAGNOL, A.: *Les Fastes de la Préfecture*. Paris 1962, 171–178; FLAMANT, J.: *Macrobe et le néoplatonisme latin*. Leiden 1977, 26–36; KAHLOS, M.: *Vettius Agorius Praetextatus – A Senatorial Life in Between*. Roma 2002.

¹⁶BOISSIER, G.: *La fin du paganisme. Étude sur les dernières luttes religieuses en Occident au IV^e siècle II*. Paris 1891, 209, quoted by FLAMANT (n. 15) 677: “Ce n’est certainement pas un hasard qui les amène tous à ne pas prononcer le nom d’une religion qu’ils détestent : c’est une entente, un parti-pris, dont la signification ne pouvait échapper à personne. Ce silence, un silence hautain et insolent, est devenu pour eux la dernière protestation du culte proscrit”; Cf. KAHLOS (n. 15) ch. 5: « Saeculum praetextati: Praetextatus in Macrobius’ Saturnalia ».

¹⁷STROUMSA, G.: *La fin du sacrifice. Les mutations religieuses de l’Antiquité tardive*. Paris 2005, 141. Cf. BROWN, P.: *La société et le sacré dans l’Antiquité tardive*, French transl. Paris 1985.

¹⁸POTTIER, E. in DAREMBERG–SAGLIO I, c. 1450–1451, s.v. *consecratio*. Cf. DUPONT, F.: *L’autre corps de l’empereur dieu*. In *Le corps des dieux. Le temps de la réflexion 7* (1986) 231–252.



were not as efficient in the Romans' eyes as we might think:¹⁹ each time, « l'attention reste marquée sur l'action principale: le passage de l'offrande dans le monde divin » (“The attention is marked by the principal action: the passage of the offering in the divine world.”).²⁰ In the same way, just as each sacrificed animal is deemed to have a particular affinity with the superior entities that receive it, the citizens who become *sacri* are doomed to the gods because of their crimes:²¹ to the god Terminus if boundary stones had been removed or displaced for example.²² A particular deity, however, is not necessarily attributed to each crime. According to Dionysus of Halicarnassus, it could also be the case, more generally, of underworld deities.²³ Modern scholars who have rejected the theory of the ambivalence of the sacred consider that men are explicitly consecrated to a deity so as to be entrusted to the power likely to punish them. Like the sacrificed animals, sacrificed *homines* were destined to the gods and, as Macrobius explained, their souls were “due to the gods (*dis debitas*)”; their death or expulsion would have been aimed at satisfying the offended deities.²⁴ In the same way, Servius explained of the death of sacrificed animals as a form a punishment with respect to the deity they harmed.²⁵ These analogies, however, do not identify the fate of the *homo sacer* and that of the sacrificed animal.

Unlike a sacrificed animal, the *homo sacer* is not delivered directly to the gods.²⁶ This punishment is more like a proscription, an expulsion from the Roman world, than an ‘integration’ into the world of the gods, as is the case for a sacrifice.²⁷ Claire Lovisi presents a reconstruction of the evolution of this condemnation which explains some inconsistencies in the evidence.²⁸ The earliest Latin inscription – that from the *lapis niger* – alludes to the *homo sacer*, but without specifying the divinity to which he would have been destined. Festus seems to evoke this law when he indicates that the man who moves boundaries must also become *sacer*, but without naming the precise god who must receive him.²⁹ The text of Dionysus of Halicarnassus

¹⁹Isid. *Etym.* XIX 30: *sacrificium autem est uictima, et quaecunque cremantur in ara seu ponuntur, omne autem quod Deo datur ut dedicatur aut consecratur.* Cf. J. TOUTAIN in DAREMBERG–SAGLIO IV/2, c. 973, s.v. *sacrificium*.

²⁰PRESCENDI (n. 12) 28–29.

²¹Macr. *Sat.* III 7. 5. FUGIER (n. 4) 245: “La logique du système veut que le coupable ait été remis au dieu correspondant à son délit.”

²²D. H. II 74.

²³D. H. II 10.

²⁴Macr. *Sat.* III 7. 7.

²⁵Serv. *Georg.* 2. 380: *Per contrarietatem, ut porca, quae obest frugibus, Cereri, ut caper, qui obest uitibus, Libero, item capra Aesculapio, qui est deus salutis, cum capra numquam sine febre sit . . . quia uites, quae in honore ipsius fuerant, ab eo comestae sunt, iratus Liber pater eum occidi fecit et ei tolli utrem, in quo mitti uinum fecit pro eius uindicta.* Cf. PRESCENDI (n. 12) 224.

²⁶The tribunes of the plebs certainly showed that individuals guilty of an attack on their *sacrosanctitas* would pay with their lives the price of their crime and did not hesitate to prolong the *consecratio capitis* by a precipitation from the Tarpeian Rock. But the necessity here was political and not intrinsic to the *consecratio capitis*, as proved by the fact that the survivors to the precipitation were left, it seems, alive. Cf. BERTHELET (n. 5) n. 35.

²⁷Cf. FIORI (n. 4) ch. 9.

²⁸LOVISI (n. 4) 40–43.

²⁹Paul. *Fest.* 505 L. The text is unclear. Cf. CANTARELLA, E.: *I supplizi capitali in Grecia e a Roma*. Milano 1991, 290; COARELLI, F.: *Il Foro Romano I*. Roma 1992, 178.



which mentions the same case (cf. n. 30 above) seems more recent than the sources used by Festus: he attributes the violator to Zeus *Horios*, assimilated to Jupiter *Terminalis*.³⁰ Generally, whereas the Greek sources – Dionysus of Halicarnassus or Plutarch – attribute the *homo sacer* to the divinity that he would have offended, the Latin text talks about the *homo sacer* without attribution or consecration to undetermined divinities.³¹ This can be explained by the fact that, originally, the Latin *sacer* designated an exclusion from the community and represented a form of civic proscription.³² With no equivalent to this enigmatic ritual, the Greeks would have explained it according to their own thinking habits.³³ It is only gradually that the consecrated man was attributed to a specific god. In the Republican times, the punishment of *sacratio* was apparently no longer applied for private crimes, but some scholars consider that it could have been replaced by the *interdictio aqua et igni* following a gradual evolution of the law. At the time of the Severans, preference was given to *deportatio*.³⁴ These hypotheses, however rigorous they are, remain fragile, because analogy does not imply identity.³⁵ Like the proscription, *sacer* originally insists on the expulsion from Rome, both from a legal and geographical point of view: the culprit lost his civil rights and was exiled. It was a civic execution, before than a capital one. To escape death, the fallen citizen had the opportunity to leave the territory of Rome. If he remained and was murdered by an individual, the Roman state was no longer responsible.

AN UNFINISHED SACRIFICE

The fate of a consecrated man is not that of a sacrificed animal but is similar to that of a breaker of sworn faith. John Scheid, who puts the fate of the *homo sacer* closer to that of the impious, cites the case of a *pullarius* from Aquilonia whose punishment is thought to be after the model of the *noxae datio*.³⁶ Guilty of a willful impiety and therefore inexpiable, this man is rejected with horror by the Romans in the zone that separates the two armies, a true no-man's land at the same time from the military, but also and especially a religious separation. The gods are then free to punish him, and the warlike, imprudent man perishes from an enemy's weapon even

³⁰D. H. II 74. 2–3: (2) κελύσας γὰρ ἐκάστω περιγράψαι τὴν ἑαυτοῦ κτήσιν καὶ στήσαι λίθους ἐπὶ τοῖς ὄροις ἱεροῦς ἀπέδειξεν ὄριον Διὸς τοὺς λίθους . . . (3) εἰ δέ τις ἀφανίσειεν ἢ μεταθεῖη τοὺς ὄρους, ἱερὸν ἐνομοθέτησεν εἶναι τοῦ θεοῦ τὸν τούτων τι διαπραξάμενον, ἵνα τῷ βουλομένῳ κτείνειν αὐτὸν ὡς ἱερόσυλον ἢ τε ἀσφάλεια καὶ τὸ καθαρῶ μιάσματος εἶναι προσῆ. (“For, having ordered everyone to draw a line around his own land and to place stones to Jupiter *Terminalis*. . . He also enacted that, if any person demolished or displaced these boundary stones he should be looked upon as devoted to the god, to the end that anyone who wished might kill him as a sacrilegious person with impunity and without incurring any stain of guilt”).

³¹Fest. 422 L. *sacer alicui deorum* ; Macr. Sat. III 7. 3: *sacros esse certis dis* Cf. JACOB (n. 6) n. 68.

³²BENVENISTE, E.: *Le vocabulaire des institutions indo-européennes*. Paris 1969, 206. JACOB (n. 6) 529, proposes to translate *sacer* by ‘proscribed’.

³³RUDHART, J.: *Notions fondamentales de la pensée religieuse et actes constitutifs du culte dans la Grèce classique*. Paris 1992, 7: “le Grec ignore cet antagonisme” between sacred and profane.

³⁴FIORI (n. 4) 284–286.

³⁵RIVIÈRE, Y.: *L’interdictio aqua et igni et la deportatio sous le Haut-Empire romain (étude juridique et lexicale)*. In *Exil et relégation. Les tribulations du sage et du saint durant l’Antiquité romaine et chrétienne (I^{er} - VI^e ap. J.-C.)*. Paris 2008, 52.

³⁶SCHEID: *Appartenance religiosa* (n. 4) 347–365.



before the fight has begun.³⁷ Another peculiar case may be cited here: the act of *deditio* resembles the destiny of the *homo sacer* more closely. The similarity between this ritual within a military context and the consecration was already noted by ancient authors: this is the case of Spurius Postumius Albinus in 321 BC.³⁸ It was not enough for some senators to deliver him to the Samnite army as an expiatory victim for the salvation of the Roman people; they also gave the enemy even the young man who had kept the sow to be sacrificed during the sanction of the treaty, as if he had been bound by the oath pronounced on that occasion.³⁹ With the leaders of the army and the tribunes of the *plebs*, the general was deprived of his Roman citizenship and declared to be a Samnite citizen.⁴⁰ The *deditio* deviates from the normal function of abandonment because it is not specifically intended to satisfy the injured party. In the case of the consul Postumius or those who were punished with him, “on rechercherait en vain une infraction dont les *sponsos* se seraient rendus coupables vis-à-vis des Samnites”.⁴¹ By sticking strictly to their commitments to the Samnites, the Romans can then lead, from a legal point of view, a *bellum iustum*.⁴² The Samnite general, Pontius, sees the event as a parody of religion, but the final victory of the Romans shows that their interpretation was accurate.

Any denunciation of a treaty, *sacrosanctum foedus* or simple *sponsio*, engages the *religio* of the whole Roman people, and the offending man, who swore to this treaty, must be excluded from the city so that he atones for the crime that he has committed. In the same way, by the *sacratio*, the criminal must be proscribed from Rome as a sign of good faith to the gods, to maintain the *pax deorum*.⁴³ Literary evidence on which we rely, going back mostly to the Republican and Imperial periods, attribute the *homo sacer* to the divine world, and this did not defile the superior entities. I propose that the behavior of the gods to whom a man is delivered is similar to that of the Samnites or Corsicans in a *deditio*. The latter do not accept the man who is ‘transferred’ to them, as if the Roman perjury was an offered gift that cannot be received. The guilty parties are never accepted: the Samnites refuse the sacrifice of Tiberius Veturius Calvinus and Spurius Postumius Albinus.⁴⁴ The essential point, as Pontius expresses it, is that Rome respected all its commitments towards the opposite party. After being refused by the Corsicans

³⁷Liv. X 40. Cf. SCHEID, J.: Le pullaire belliqueux et le censeur incensé. *AEHE* V 91 (1982–1983) 355–356.

³⁸Liv. IX 10 3–4: *Postumius in ore erat; eum laudibus ad caelum ferebant, devotioni P. Deci consulis, aliis claris facinoribus aequabant: emersisse civitatem ex obnoxia pace illius consilio et opera; ipsum se cruciatibus et hostium irae offerre piaculacque pro populo Romano dare.* (“Postumius was on all men’s lips; they extolled him to the skies, and compared his conduct to the devotion of Publius Decius, the consul, and to other glorious deeds. The state, they said, had emerged – thanks to his wisdom and his services – from a slavish peace; he was freely giving himself up to the tortures of a resentful foe, that he might make expiation from the Roman people.”)

³⁹Cic. *inv.* II 91.

⁴⁰Liv. IX 10.

⁴¹VISSCHER, F. DE: La *deditio* internationale et l’affaire des Fourches Caudines. *CRAI* 90/1 (1946) 90.

⁴²Cf. CHEMAIN, J.-F.: *L’évolution de la notion de « bellum iustum » à Rome des origines à Saint Augustin*. Angers 2015.

⁴³Plut. *TG* 7.

⁴⁴Liv. IX 11. 13: *Et illi quidem, forsitan et publica, sua certe liberata fide ab Caudio in castra Romana inviolati redierunt.* (“And the guarantors, released it may be from the nation’s pledge, but at all events from their own, returned from Caudium, inviolate, to the Roman camp.”)



in 236, the Senate removed Clineas' status as a free man and put him to death.⁴⁵ In 136 BC, the Senate refused to ratify the treaty Mancinus had signed with the Numantians, and the consul was surrendered to his enemies for perjury. Excluded from the Roman citizenship, he was bound naked to a post in the Numantine territory, lost in Rome's eyes like the augur chickens he had allowed to escape. Nor did the Spanish want him: *publicam uiolationem fidei not debere unius lui sanguine*.⁴⁶ After being left naked and chained for three days in front of the walls of Numance, Mancinus was finally released and allowed to return to the Senate.⁴⁷ It must be noted that none of these men were put to death either by the enemy or by someone else. The *homo sacer* was a gift-offering that could not be received, or more precisely whose destiny was unknown: he was "lost in translation" on his way to the gods. If the killing of a *homo sacer* were allowed from the both points of view of "human and divine right (*ius fasque*)", it is true that neither religion nor public law would any longer offer him any protection.⁴⁸ The *homo sacer* is consecrated to the gods, but this consecration is equivalent to a proscription.⁴⁹ The *homo sacer* is ultimately excluded from protection given by the law and from participation in cults; he is ultimately alone and fundamentally a 'rejected' being.⁵⁰ Rejected by the Romans, he is forgotten by his family: he cannot have a regular funeral. Similar to a dead man walking, he is excluded from Rome, inexpiable: even death will not allow the *homo sacer* to join the anonymous crowd of Manes. A special place is reserved in the underworld for those who mistreated their father or did not respect their *patronus*.⁵¹

If we turn to an anthropological hermeneutic, human consecration and animal sacrifice can ultimately be understood according to the paradigm of the *rites de passage*. From a legal point of view, the man and the animal victim gain the same status, they are consecrated. However, if both the *homo sacer* and the animal victim were removed from the profane world, their fates would present significant differences. The specificity of a *homo sacer* is that, unlike an animal, he cannot be killed in a ritual manner. The fate of the consecrated man already evoked for the

⁴⁵Val. Max. VI 3. 3a; Dio frg. XLIV 2; Amm. Marc. XIV 11. 32; Zonar. VIII 18 (II, p. 225). Cf. BROUGHTON, T. R. S.: *The Magistrates of the Roman Republic 1 (509 B.C.-100 B.C.)*. Cleveland/Atlanta 1986, 223; RE 3.2 (s.v. *Claudii* n. 115).

⁴⁶Vell. II 1. 5.

⁴⁷Cic. *top.* VIII 37; *Caecin.* 34. 9; *de or.* I 40. 181; 56. 238; II 32. 137; *off.* III 30. 109; *rep.* III 18. 28; *Brut.* 27. 103; *har. resp.* XX 43; *Liv. per.* LVI; *Vell. Pat.* II 1. 4–5; II 2. 1; 90. 3; *Val. Max.* I 6. 7; 2. 7; *de. v. ill.* 59. 4; *Plin. H.N.* XXXIV 18–19 (X 5); *Quint.* VII 4. 12; *Plut. TG V* 1; *Flor. I* 34. 7 (II 14), 2. 2 (II 14); *App.* 79, 80, 83; *Dio frg.* LXXIX 1–3, 83. 2 s.; *Mod. D.* 49. 15. 4; *Min. Fel.* 26. 3; *Iul. Obseq.* 24; *Eutr.* 4. 17. 1; *Oros.* 5. 4. 20–21; 8. 2; *Mart. Cap.* 5. 456. Cf. WIKANDER, Ö.: Caius Hostilius Mancinus and the Foedus Numantium. *Opuscula Romana* 11 (1976) 85–104; MICHEL, H. J.: L'extradition du général romain. *Latomus* 39 (1980) 675–693; CRIFO, G.: Sul caso di C. Ostilio Mancino. In BAGNALL, R. S. – HARRIS, W. V. (eds): *Studies in Roman Law: In Memory of A. Arthur Schiller*. Leiden 1986, 19–32; ROSENSTEIN, N.: *Imperatores uicti*: The case of C. Hostilius Mancinus. *Cl. Ant* 5 (1986) 230–252.

⁴⁸Liv. III 55 5.

⁴⁹For the particular case of the violator of the tribune, *Fest.* 424 L. *Si quis eum, qui eo plebei scito sacer sit*. It's only after the law Valeria-Horatia that he culprit is consecrated to Jupiter, as *Liv.* III 55. 7: *Eius caput Iovi sacrum esset*. Cf. LOVISI (n. 4) 41.

⁵⁰Macr. *Sat.* III 7. 6–7.

⁵¹Verg. *Aen.* VI 602–603: *Hic, quibus inuisi fratres, dum uita manebat / Pulsatusue parens, et fraus innexa clienti*. These verses evoke the law of the XII Tables: *patronus si clienti fraudem fecerit, sacer esto*. Cf. JOHNSTON, P. A.: *Vergil. Aeneid Book 6*. Newburyport 2012, 80.



Roman *exegetes* the fate of a *fugiens uictima*, who could not be sacrificed but could be killed by anyone.⁵² The animal that escaped during the ritual had to be killed right where it was found and the escape of the animal would be considered a prodigy subject to expiation.⁵³ The *fugiens uictima* is put out of the world of men, yet without benefit for the gods. Texts do not mention what happens to the animal ‘on the run’: theoretically, it might be killed where it is found, but we do not know if its carcass could be available to the butchery. Consecrated beasts who happened not to be put to death during the ritual disappear in the outskirts of the Roman territory, like the oxen which fled to Sicily after having been smeared with *mola salsa*.⁵⁴ These fleeing animals are no longer mentioned. The escaped beast can no longer constitute an offering of honor. Similarly, the *homo sacer* is a culprit who, by his action, has transgressed the order of the city and cannot be properly sacrificed. The sacrifice was not completed. The man who has been made sacred is offered to the gods at the time of the *sacratio*, but he does not travel along the whole path: he is not ritually killed.⁵⁵ There is no ‘*aboutissement complet du procès*’ which nullifies the idea of an ambivalence of the sacred: the gods are not sullied by contact with the *homo sacer*.⁵⁶ The *homo sacer* seems to remain on a ‘liminal phase’: he is separated from the human community, but not re-integrated into another one.⁵⁷ He is between humans and gods, life and death, Romans and strangers. The Romans do not defile the gods by consecrating a criminal because the *homo sacer* is not directly in their hands. The gods can seize him, but that is no longer the responsibility of the Romans. Proscribed by men, offered to the gods who may not accept him, the *homo sacer* is above all marginalized before potentially joining the domain of their gods.

CONCLUSION

The *homo sacer* is a particular case in Roman religion: he’s ambivalent in himself, between two worlds, but this does not imply the ambiguity of the sacred. Throughout the *immolatio* rite, a victim is transferred from the world of the humans to that of the gods. If the *litatio* declares that the animal is welcomed by the deity, the *exta* are offered to him/her, while the meat is then profaned in order to be consumed. Conversely, during the *sacratio* of a sacrilegious Roman citizen, there is an offering, but this offering cannot be regularly received because the sacrifice is unfinished. Ambiguity of the sacredness is in fact a problem that does not arise at all in Rome, at least not until the debate with Christianity. Macrobius’ concerns with criticisms about the ritualistic nature of Roman religion and the conception of the sacred are to be considered not as

⁵²Serv. Aen. II 104: *Quia sacrorum est ut fugiens uictima, ubicumque inuenta fuit, ne piaculum committatur*. Cf. AGAMBEN (n. 4) 124.

⁵³Paul. Fest. 287 L.

⁵⁴Serv. Aen. X 541: *Lauini boues immolatos, prius quam caeduntur, profugisse in Siciliam*.

⁵⁵CANTARELLA: *Les peines de mort* (n. 4) 276: “*Sacer* était ce qui était offert aux dieux. *Sacrificium* était l’acte qui consacrait aux dieux ce qui lui avait été offert, achevant le destin de la victime sacrificielle (comme le dénote le verbe *facere*, qui l’implique) : ce qui était *sacer* en fait devenait victime sacrificielle seulement dans un second temps.”

⁵⁶FUGIER (n. 4) 235.

⁵⁷TURNER, V.: *Le phénomène rituel*. Paris 1969; TURNER, V.: Variations on a theme of liminality. In MOORE, S. F. – MYERHOFF, B. G.: *Secular ritual*. Amsterdam 1977, 36–52.



a defensive positioning of polytheism but as a particularly vigorous reinterpretation of ancient practices.

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