

THE IMPACT OF ARTIFICIAL INTELLIGENCE ON INTELLECTUAL PROPERTY: CHALLENGES IN LIGHT OF RENÉ GIRARD'S LEGAL AND ANTHROPOLOGICAL THEORY

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INTRODUCTION

A. *Artificial Intelligence and Intellectual Property*

Artificial Intelligence (AI) represents one of the most transformative technological advances of the 21st century. Its applications span a vast array of fields, from medicine and finance to art, law, and education. Kaplan and Haenlein define AI as “the ability of a system to correctly interpret external data, learn from that data, and use those learnings to achieve specific goals and tasks through flexible adaptation.” This definition underscores AI’s adaptability—a feature that has enabled its seamless integration into creative and analytical processes. However, this capacity for adaptability also raises questions about the originality of AI outputs, as all such creations inherently emerge from preexisting data. An analogy with the binary system may provide a clearer understanding of this assertion. Indeed, binary language consists solely of 0s and 1s, and it is the arrangement and combination of these elements that distinguishes one statement from another. In other words, the originality of any binary expression ultimately lies in the very same components: 0 and 1. How can we truly affirm the existence of originality? Yet, we remain continually astonished by the novelty and originality of new multimedia expressions. Consequently, what AI produces is arguably not “pure” creation but a

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novel amalgamation of existing elements, challenging traditional notions of intellectual innovation and authorship.

On the other hand, the economic and social impact of AI is immense and undeniable. Studies illustrate that generative AI tools can automate routine tasks while simultaneously augmenting human creativity. Yet, this transformative potential also brings with it significant philosophical and legal questions, particularly in the realm of intellectual property (IP). This rapidly evolving landscape compels us to reexamine not only the nature of law but also its anthropological underpinnings, interrogating the very purpose of legal frameworks in promoting innovation while maintaining social equilibrium.

Regarding law, IP law serves as a cornerstone of this regulatory framework. It is a set of legal protections designed to safeguard human intellectual creations—ranging from inventions to literary and artistic works, as well as symbols, names, and images used in commerce. The primary aim of IP law is to incentivize innovation by granting creators exclusive rights to benefit economically and socially from their endeavors. As Hans Kelsen and René Girard suggest, the ultimate goal of law is to ensure societal harmony by establishing a regulatory system that mitigates conflict and fosters peace.

In the context of technological acceleration, however, IP law faces unprecedented challenges. One such challenge is determining authorship and ownership of works created by AI. Existing legal frameworks assume human agency as the basis for authorship and inventorship, leaving a regulatory void for AI-generated works. This gap not only undermines the goal of ensuring social peace but also creates significant uncertainty, as current laws fail to account for the collaborative nature of human-AI creativity. The rise of generative AI, exemplified by tools like OpenAI's GPT-4, further intensifies these debates by

producing text, images, and music indistinguishable from those created by humans.

Furthermore, the economic stakes are enormous. A 2022 WIPO report estimates that intangible assets, including intellectual property rights, account for 40% of the value of leading global companies. The absence of regulatory clarity in this arena risks stifling technological innovation, discouraging investment, and potentially leading to crises fueled by legal ambiguity. Such crises contradict the legal system's pacifying purpose, highlighting the need for a robust theoretical and practical framework to address the complexities introduced by AI.

B. René Girard's Anthropological Theory

In René Girard's Anthropological theory, mimesis refers to the phenomenon where human desire is not inherently original but is instead imitative, drawn from the desires of others. Girard argues that this desire is learned from role models—such as parents, friends, or societal figures—rather than being purely instinctual. This imitative nature of desire shapes human behavior and societal dynamics, as reflected in modern advertising, public relations, and social influence. The theory of mimesis is supported by scientific discoveries, such as mirror neurons, which suggest that humans subconsciously mirror others' actions and desires.

Girard's concept of rivalry emerges when two or more individuals desire the same object, often leading to competition and conflict. This rivalry is intensified by the mimesis of desires, particularly when the desired object is limited or exclusive, such as status, power, or intellectual property. Mimesis makes the desire for the object not only mutual but competitive, triggering rivalry. However, cultural rites and prohibitions can mitigate this escalation by regulating competition and establishing boundaries.

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In the context of conflict, when mimesis and rivalry go unchecked, a double-bind situation arises, where the individuals involved mirror each other's desires but are unable to differentiate themselves enough to secure the object of desire. This stagnation can escalate into violence if no external intervention or cultural mechanisms, such as laws, are in place to prevent it.

The concept of the scapegoat plays a crucial role in Girard's theory. In times of intense rivalry and social breakdown, society seeks an external victim to absorb and redirect its collective violence, restoring social order. Historically, scapegoats were marginalized or different individuals—such as outsiders, criminals, or even monarchs—who could be sacrificed to bring peace to the community. In modern times, the scapegoat is not always a literal victim, but can take the form of societal figures who are blamed for collective frustrations, such as through media, law, or political scapegoating.

Girard's myth theory connects to the scapegoat mechanism, suggesting that myths and religious narratives were created to rationalize and sanctify the violence of mimesis. In these myths, the gods—often seen as human-like beings—demanded sacrifices, which allowed society to interpret violence as divine will and maintain social order.

Lastly, rites and prohibitions are established within society to distinguish between "sacred" (good) violence, which serves to calm social tensions, and "profane" (bad) violence, which exacerbates conflict. These rites, historically embedded in religious or legal systems, serve as mechanisms to prevent the destructive effects of mimetic rivalry. Laws, such as the Ten Commandments, prevent the escalation of violence by imposing prohibitions on coveting, stealing, or harming others, thereby curbing the mimetic cycle that could lead to societal collapse.

C. *René Girard's Anthropological Theory Applied to Law, IP.*

René Girard's theory provides a compelling lens through which to examine the intersections of intellectual property. Girard argues, legal systems emerge as cultural instruments designed to regulate mimetic cycles, prevent rivalry, and maintain societal peace.

Within this paradigm, intellectual property law functions as a set of prohibitions and permissions that regulate the mimetic impulse to copy. By delineating the boundaries of permissible imitation, IP law seeks to prevent conflict and establish processes for attributing blame to those who violate its rules). For instance:

Trademark law prohibits the use of confusingly similar marks, thereby preventing competitive mimicry that could lead to consumer deception and market rivalry.

Copyright law protects the original expression of ideas, disallowing unauthorized reproduction or misattribution.

Patent law grants exclusive rights to inventions, barring others from using them without permission.

Mimesis in IP law allows for imitation under specific, clearly defined circumstances, recognizing that certain levels of mimetic behavior—such as inspiration, reference, or fair use—are inherent in creative and commercial processes. These legal provisions aim to foster competition and innovation without stifling it by overprotecting creators' rights. The regulation of mimetic behavior is crucial for maintaining a balance, allowing imitation but setting clear boundaries to prevent excessive copying that could undermine original creators' rights.

IP law also establishes rules to limit mimesis by defining the scope of intellectual property rights and the conditions under which individuals or entities can assert competitive claims. These regulations ensure that the

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competition remains fair and structured, protecting the legitimate interests of creators while also allowing new innovation.

In terms of rivalry, as mimetic competition intensifies, IP law prevents violence or unlawful actions. Legal processes, such as the enforcement of patents, copyrights, and trademarks, provide a formal mechanism to resolve disputes rather than allowing parties to take matters into their own hands, thus averting unlawful acts of aggression or piracy.

The crisis and scapegoating phases of the mimetic cycle are also addressed by IP law through the establishment of formal judicial and administrative procedures. In cases of infringement or violation, the system designates the “culprit”—be it an individual or corporation—through structured legal processes. These procedures ensure that accusations are resolved without mob justice or extrajudicial actions. Furthermore, penalties such as fines, damages, or injunctions serve as measures to address the violation, restoring order and resolving the societal tension created by the infringement.

Finally, the antitrust and commercial loyalty norms within IP law also play a vital role in regulating mimetic rivalry. These laws prevent monopolistic practices or unfair competition, which could exacerbate mimetic cycles by creating power imbalances. Through these regulations, IP law seeks to ensure that competition remains ethical, and that the mimetic tension between competitors does not escalate into harmful monopolistic control or unfair market manipulation.

These mechanisms illustrate how IP law mirrors Girard's mimetic theory by addressing the various stages of the mimetic cycle—mimesis, competition, rivalry, and crisis—and by providing non-violent resolutions through legal processes rather than direct confrontation.

D. *AI and Intellectual Property Through Girardian Theory*

AI, like humanity, lacks absolute originality. It learns by imitating existing data, recombining known elements into new configurations. This process mirrors the mimetic nature of human creativity, as described by Girard. Yet, unlike humans, AI lacks intrinsic desire or intentionality; it operates as an extension of human cultural and intellectual input. Despite this distinction, the outputs of AI challenge traditional notions of authorship, raising critical questions about the essence of originality and ownership.

Consider, for example, the distinction between human education and AI training. Humans are allowed to learn from protected works, provided they do not infringe on those works in subsequent use. AI, however, is often restricted from similar learning processes under current IP laws. This discrepancy raises profound ethical and legal dilemmas, particularly as AI becomes increasingly integral to creative and intellectual pursuits.

Moreover, Girard's theory compels us to reconsider the foundations of human originality. If human desires are inherently mimetic, as Girard suggests, then the very premise of intellectual property—rooted in the notion of protecting originality—becomes philosophically tenuous. Instead, IP law might be better understood as a system for managing mimetic competition and mitigating its potential for conflict.

Consequently, authorship may not constitute an inherent prerequisite for intellectual property but instead represents a pragmatic construct for resolving disputes and establishing a foundational basis for the allocation of rights—a construct that, while not arbitrary, serves to balance the competing interests intrinsic to mimetic dynamics.

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Viewing law as an instrument of pacification rather than a mere vehicle for dispensing justice offers a paradigm shift that not only elucidates the rationale behind many legal regulations but also broadens the horizon for exploring alternative methods of conflict resolution. This perspective emphasizes the role of law in mitigating disputes and fostering social harmony, potentially paving the way for non-violent mechanisms to address and diffuse tensions effectively.

Girard's theory should not be regarded as an isolated island amidst a vast philosophical ocean but rather as an interpretative lens through which various legal and philosophical theories converge as complementary perspectives on a shared objective. A compelling illustration of this alignment is found in Kelsen's work, which, and as already said, like Girard's, identifies social peace as the ultimate purpose of law. This convergence underscores the potential for unifying diverse theoretical approaches, such as natural law philosophy and positive law philosophy and critics, to name just the main philosophical law schools, under a common framework of understanding.

FINAL REMARKS

The application of Girardian theory to AI and IP law provides valuable insights into how legal systems can adapt to technological and cultural change. By recognizing the mimetic nature of both human and AI creativity, we can develop more nuanced frameworks that address the realities of collaborative and derivative creation. Such frameworks must balance the need to incentivize innovation with the imperative to maintain social harmony, ensuring that legal systems continue to fulfill their pacifying purpose in an era of rapid technological evolution.

At its core, this analysis underscores the need for a fundamental shift in our understanding of law and originality. As AI continues to challenge traditional notions of authorship, it also compels us to rethink the anthropological and philosophical foundations of intellectual property law. In doing so, we may find new pathways for resolving the complex legal and ethical questions posed by this transformative technology.

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