

ARTICLE

Shame, Guilt, and Punishment

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ABSTRACT: In *Discipline and Punish*, Foucault states that there lies a certain shame in the act of open punishment that contributed to the disappearance of the spectacle of shaming and helped to give rise to discipline and control instead. To illuminate this thesis, the paper provides a Foucauldian reading of affects – namely of shame and guilt – as produced in *affective arrangements* that prove to be a necessary complement to Foucault’s concept of dispositive. On this basis, it argues that the legal practices of punishment predominant in secular cultures rearrange affects of shame according to an economy of guilt. In a time, however, that is seeing a clear return of excessive shaming, both online and in recent debates in philosophy of law, Foucault’s diagnosis needs to be reassessed. The paper offers a reading of this return to shame as a – somewhat problematic – form of resistance against the economy of guilt.

Keywords: Shame and guilt, punishment, affective arrangements, affective economy, discipline.

1. Introduction: *Discipline and Punish* and the unexpected return of shame

Foucault’s *Discipline and Punish* (DP)¹ is a book about the subtleties of power folded into a ‘history of the prison’ as today’s prevalent form of punishment. According to Foucault, punitive practices shed their ritualistic and thereby public character in the middle of the 18th century and turned into more elusive practices of incarceration, discipline, control, and surveillance. Rewriting this history, *DP* shows Foucault’s great scepticism against a humanistic interpretation of the prison as a milder, more civilized form of punishment. Behind the humanistic discourse, Foucault tries to uncover the real productive undercurrents of an “economy of power” that underlie this development.² At the heart of this economy is the production of the disciplined subject; a subject that is

¹ Michel Foucault, *Discipline and Punish* (New York: Random House, 1995).

² Foucault, *Discipline and Punish*, 35.

defined by the place it occupies within the machinery of power, by operations to reinforce this placement, and by practices of affirmation and/or resistance on the part of the individual. *DP* is therefore also a book about power that is no longer accumulated around a sovereign centre of oppression, but dispersed and distributed onto a landscape of institutions, micro-political conflicts, strategies, and points of resistance, and – as I will add – certain affective dynamics that have to be addressed to complete the picture.

In this article, I want to investigate the possible role of shame and guilt as important “political affects” within Foucault’s theory of discipline and punishment. This serves two objectives: First, it will further recent attempts which connect Foucault’s theories of power with current debates on emotions and affect,³ the benefits of which seem evident: a philosophy of emotions without a notion of power remains naïve, a theory of subjectivation without perspective on emotions seems incomplete.⁴ In order to trace the affective dynamics of shame and guilt, I will, after a brief summary of Foucault’s understanding of *punitive models* laid out in his 1972-73 lecture *On the Punitive Societies* (part 2), sketch a possible Foucauldian take on emotions, drawing on Deleuze/Guattari’s notion of *agencements* (arrangements) and on Sara Ahmed’s concept of an *affective economy* (part 3). This will also shed light on my reading of how an affective dispositive or arrangement works. I will suggest that all forms of punishment must be understood as such affective arrangements. On the basis of this terminology, I will then (part 4) take a closer look at the complex of shame and guilt and how it aligns with Foucault’s ideas about discipline in *DP*. I will differentiate between a micro-political shame or embarrassment that has low visibility and is distributed onto a plane of daily interactions, and an excessive or public shame that tends to be tabooed.

The role of excessive shame leads to the second objective of this article. It picks up on a remark on shame that Foucault himself drops at the beginning of *DP*, where he states that in „modern justice and on the part of those who dispense it there is a shame in punishing, which does not always preclude zeal. This sense of shame is constantly growing.”⁵ Following authors as different as Martha Nussbaum and Helen B. Lewis, I read this growing shame in punishing as a *shame about shame*.⁶ It creates the *urgency* to which the dispositives of discipline and control answer. In my reconstruction of Foucault’s argument, shaming as an especially shameful form of

³ See for example: Sara Ahmed, *The Cultural Politics of Emotion* (New York: Routledge, 2004); Lisa Blackman, *Immaterial Bodies: Affect, Embodiment, Mediation* (London: Sage 2012). <https://doi.org/10.4135/9781446288153>; Patricia T. Clough and Jean Halley, eds., *The Affective Turn: Theorizing the Social* (Durham: Duke University Press, 2007). John Protevi, *Political Affect: Connecting the Social and the Somatic*. (Minneapolis: University of Minnesota Press, 2009).

⁴ With regard to this objective, the article can touch on only some issues (especially concerning the role of shame in the process of subjectivation) that deserve further explorations.

⁵ Foucault, *Discipline and Punish*, 10.

⁶ It does not really matter for my argument who feels the shame – the shamed offender or the shaming executer. It is the overall presence of shame that is important.

punishment has not been *replaced*, neither by incarceration nor by discipline or control, but has been hidden and *transformed* into an economy of guilt where it lives on as micro-political shame or embarrassment (part 5).⁷ I will try to illuminate this using electronic monitoring (EM) as an example of a tool that was intended to render legal punishment and its corresponding shame invisible (part 6).

However, contrary to these intentions, we can see how today *EM* is embedded in legal practices that turn *EM* into an instrument of shaming, thereby perverting its original purpose. This reverse effect raises the question of how valid Foucault's analyses in *DP* still are today, especially in light of recent debates in philosophy of law on the value of shame-punishments. In Martha Nussbaum's opinion,⁸ a liberal system of justice should not rely on these sentiments at all: For her, guilt is supposed to take shame's place – which is a good example of Foucault's diagnosed *shame in punishment*. However, can we not see a trend away from this humanistic discourse on punishment and towards *less* lenient and *less* subtle forms of punishment? It is noteworthy that Nussbaum sees it necessary to articulate her view as a *defence* against a return or revival of shame-punishments. Against what seemed to be the unchallenged stance on punishment, more and more authors of contrary persuasion, like Dan Kahan or Thom Brooks, argue that punishments qua being punishments will always include a moment of shaming.⁹ Even if the punisher remains passionless or is replaced by an architectural feat like the *Panopticon*, the same 'stoicism' cannot be asked of the person being punished. The authority to punish will therefore always remain the authority to shame. Kahan stresses the fact that a legal system cannot simply neglect its foundation in the public feelings of shame and disgust of a certain community without ceasing to be the legal system *of* and *for* that community. According to him, shame is the point of contact or adherence between a codified law and an individual perpetrator. Only in his or her feelings of shame lies a valid acknowledgment and recognition of the law or norm that has been transgressed. Punishments that have lost their quantum of shame, these authors argue, also lose their rehabilitating and preventative effects. Shame, Brooks concludes, is necessary to trigger a true understanding of guilt "in those who had been numb and unmoved by their wrongdoing."¹⁰

⁷ Foucault shows acute awareness for the economic qualities of guilt: "Just as the wage rewards the time for which labour-power has been purchased from someone, the penalty corresponds to the infraction, not in terms of reparation or exact adjustment, but in terms of quantity of time of liberty." *On the Punitive Society. Lectures at the Collège de France 1972–1973* (New York: Palgrave MacMillan, 2015), 70.

⁸ Martha Nussbaum, *Hiding from Humanity. Disgust, Shame, and the Law* (Princeton and Oxford: Princeton University Press, 2004).

⁹ Thom Brooks, "Shame on You, Shame on Me? Nussbaum on Shame-Punishment", in: *Journal of Applied Philosophy*, Vol. 25 (4) (2008), 322–334. <https://doi.org/10.1111/j.1468-5930.2008.00403.x>. Similar: John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge: Cambridge University Press, 1989). <https://doi.org/10.1017/CBO9780511804618>.

¹⁰ Brooks, "Shame on You, Shame on me?", 326.

This (unexpected) *return of shaming*¹¹ does not only take place in philosophical discourse: The phenomenon includes social media outcries and shaming as reaction to the moral failure of a person or an organisation, as well as any mean-spirited attempt of public degradation that aims at unwarranted revenge. Obviously, there are fundamental differences in motive, style, and outcome of different forms of shaming; some incidents might claim some sort of rectification, others seem to be downright cruel. Yet they all show an intimate relation to *excess*, surely not equal but at least corresponding to the excessive torturing of Damians in the famous opening of *DP*. From a criminologist's viewpoint, David Garland calls these social developments:

puzzling because they appear to involve a sudden and startling reversal of the settled historical pattern. [...] The modernizing processes that, until recently, seemed so well established in this realm – above all the long-term tendencies towards 'rationalization' and 'civilization' – now look as if they have been thrown into reverse.¹²

It is fair to say that since the publication of Garland's book in 2001, this development has neither slowed down nor become less puzzling.

Excessive shaming, I will argue, does not fit well in the narrative of the new subtleties of power, unless we take it as a (somewhat problematic) form of resistance against an *economy of guilt* and as dissidence against control (part 7).¹³ Only then can the puzzle of a return to 'archaic' and 'anti-modern' expressive gestures in punishment (Garland) be analysed and discussed well within a Foucauldian framework.

2. Penal tactics, purposes, and models. The rise of an *economy of guilt*

Foucault names three punitive models in which tactics and purposes have merged to become a grander strategy: *infamy* (immediate public denunciation), *talion* (correlation between penalty and offense), and *slavery* (hard and public labour). More models/strategies could probably be named, but for Foucault these three outline a certain evolution from a direct and concrete model of punishment to more and more abstract forms.

Foucault defines the *model of infamy* as the punitive model that focuses on shaming, marking, denouncement.¹⁴ He regards it the "ideal model of punishment."¹⁵ A model "in which judgment in the juridical sense of the term would be entirely reduced to judgment in the psychological

¹¹ See: Aaron S. Book, "Shame on You: An Analysis of Modern Shame Punishment as an 'Alternative to Incarceration'", *William and Mary Law Review* (1999), 40, 653-686.

¹² David Garland, *The Culture of Control. Crime and Social Order in Contemporary Society*, (Chicago: The University of Chicago Press, 2001), 3.

¹³ If I attribute a certain quality of *resistance* to those practices, it is because Foucault teaches us that resistance can spring from the most obscure places, and that resistance does not necessarily belong only to the 'right side of history'.

¹⁴ Foucault, *Punitive Societies*, 68.

¹⁵ Foucault, *Punitive Societies*, 68.

sense; the judgment will be nothing other than the totality of the individual judgments of the citizens.”¹⁶ This jurisdiction without legislation is neither in need for a codification of crimes nor for any legal institutions for that matter. It seems evident why this can only work in small communities with a coherent public opinion where a system of shame-related feelings – what the texts of Homer call *aidôs* – regulates and stabilizes daily life.¹⁷ The *model of infamy* is therefore limited to communities with minimal municipal organisation but maximal public space for social interaction in which the individual is constantly aware of his or her precarious social position. In the *model of infamy*, shame – not guilt – is the main distributor of affects and emotions.

Homeric societies with the emphasis of *aidôs* might indeed be the closest manifestation of a *model of infamy*. Therefore, their transformation into the Athenian democracy, where a *model of talion* under the paradigm of *dikê* (justice) took over the role of *aidôs*, seems like a precursor to the event that Foucault describes in *DP*. For imprisonment, too, started as an instrument of mere prevention with little to no role to play in any penal model, be it based on infamy or compensation. In *DP*, Foucault describes at great length how prisons slowly became part of a *model of infamy* first (in the form of torture chambers) and only then turned into a place of rehabilitation with the prison reforms of Pennsylvania.¹⁸ In *PS*, Foucault sketches yet another transformation after which prisons no longer work only as rehabilitations facilities, but also as a legitimate form of retribution or even compensation with less and less disciplinary character but more and more economic productivity; a process that blurs the lines between slavery and wage labour.¹⁹

This parallel between labour economy and retributive punishing is not accidental. Foucault is not claiming any causation between the two but a resonance that is more than just correlation: both follow a logic of calculation using time and money as a perfectly abstract codification of crime with no apparent room for feelings of shame. The *model of retribution* thereby responds to the urgency that lies in the *shame to punish*, insofar as it integrates the excess of shame into an *economy of guilt*. For Foucault, this evolution, whose exact mechanisms I will address in the following section, echoes the mechanisms of labour work. The economization and abstraction of penalties obscure the relationship between punishment and the criminal act (maybe not entirely

¹⁶ Foucault, *Punitive Societies*, 68.

¹⁷ Agnes Heller: “The Power of Shame”, in: *The Power of Shame: A rational Perspective*, (London: Routledge, 1985), 1–56, 7.

¹⁸ Foucault, *Discipline and Punish*, 238.

¹⁹ Before its abolition by Solon (558 b.c.), Athenian society used *debt slavery* as a form of punishment: the inability to repay debt was punishable by enslavement. Thus, all of Foucault’s models that he discusses for the 17th and 18th century had their forerunners in Antiquity. Hence, although the occurrence of discipline depicted by Foucault in *DP* describes a singular moment in history, the underlying affective dynamic does not. A change in the model of punishment can happen before or even without a change of penal tactics. The “birth of the prison” is better understood as a differentiated reoccurrence of an event that is the transformation from *shame* into *guilt*. It is important to stress the reoccurring nature of this event because otherwise the return of shame remains misunderstood.

unrelated to the alienation labour creates for the worker and his work). Many advocates of alternative sanctions argue that the more abstract a punishment is, the less it will serve a rehabilitative function.

3. From Dispositive to Affective Arrangements: Sketch of a Foucauldian take on emotion.

Foucault does not talk much about the emotions of the subjects he describes (except, maybe, generically in terms of desire); a reluctance that surely has to do with the overall anti-psychological stance of Foucauldian philosophy itself. Before we come to discuss the complexities of shame (and guilt), I will therefore introduce two concepts to address this difficulty: a) the notion of *affective arrangements*, which can be understood as an application of dispositive- and agencements-theories to the field of affectivity and emotion;²⁰ and b) the idea of an *affective economy*, coined by Sara Ahmed, which tries to capture the dynamic and distributive nature of affectivity within a society or community.

a) *Affective arrangements* tackle emotions in a non-psychological way by relating to Foucault's own concept of *dispositif*, a term closely associated with *DP*. Foucault gives very few concrete definitions of what a *dispositive* is. It is an ensemble of power, discourse, knowledge, institutions, practices ...²¹ But is it a single ensemble? An ensemble of ensembles? A multitude of ensembles? What scope does a *dispositive* have?

Gilles Deleuze tried to clarify the concept of the *dispositive* by discerning within it a certain dynamic between an abstract machine on the one side, working on a macro-level as a diagram of force-relations, and a multitude of concrete machines on the other side that effectuate and at the same time constitute these relations on a micro-level as arrangements (*agencements*).²² The *Panopticon* as abstract machine is therefore not a "dream building: it is the diagram of a mechanism of

²⁰ The term *affective arrangement* has been coined by Jan Slaby, Rainer Mühlhoff and me as part of our work at the Collaborative Research Center (CRC) 1171 *Affective Societies* at Freie Universität Berlin.

²¹ Foucault, "The Confession of the Flesh" (1977), in *Power/Knowledge Selected Interviews and Other Writings* ed. Colin Gordon New York: Pantheon Books, 1980): 194–228, 194 seq.

²² Gilles Deleuze, *Foucault*, (Minneapolis and London: University of Minnesota Press, 1988), esp. the chapter concerning *DP*: „A new Cartographer“. See also: Gilles Deleuze and Félix Guattari, *Kafka. Toward a Minor Literature*, (Minneapolis and London: University of Minnesota Press, 1986): ch. 9; Deleuze and Guattari, *A Thousand Plateaus* (Minneapolis and London: University of Minnesota Press, 2004): ch. 15). Giorgio Agamben's (2009) small essay "What is an apparatus?" (*What is an Apparatus? and Other Essays*, (Stanford: Stanford University Press, 2009), 1–24) is another interesting interpretation of Foucault's *dispositive*, but might go too far in pronouncing an ontology that consists *only* of living things on the one side and apparatuses on the other. With regards to emotion-dispositives, Robert Seyfert has coined the expression *affectif*, which comes closest to what I mean in terms of using *dispositif* as a way to talk about affects and emotions. According to Robert Seyfert, the *affectif* is "the entirety of all heterogeneous bodies involved in the emergence of an affect" (31) – "an assemblage of heterogeneous elements (...) [including] the nature of the connection that can exist between these (...) elements." (Robert Seyfert, "Beyond Personal Feelings and Collective Emotions: Toward a Theory of Social Affect", *Theory, Culture & Society* 29 (6), (2012): 27-46, here 33). <https://doi.org/10.1177/0263276412438591>.

power reduced to its ideal form [...] detached from any specific use.”²³ It normalises and disciplines the whole social body but can only be effectuated by concrete machines or arrangements – classrooms, cells, hospitals — which in turn can only be understood in the context of the abstract machine.

For my purpose, it is sufficient to understand *affective arrangements* as such machines whose function is the production of certain affective dynamics. It fulfils this function by conjoining multiple actors, facilitating affective resonance between them and giving (or taking away) opportunities to act on emotions. A series of examples might best help to illuminate the function and scope of what I mean: A modern workplace is (among other things) an *affective arrangement*. It may encourage certain expressions of affects (like commitment) and dispel others, it gives space and opportunity for some affective interactions with co-workers, it discourages others, and it intensifies certain feelings that are intrinsic to work, like stress or fulfilment, as it diminishes others. *Affective arrangements* are very often connected to a place (or a type of place like a church, a sports site, a stage) that helps to trigger certain emotions, but it can also be the other way around, for example when a ceremonial regime – like Christmas – appropriates places for a certain time. Facebook’s use of *emojis* as a way of expressing (dis)content belongs as much to the *affective arrangement* of this site as its algorithms that are designed to keep the user affectively engaged. Installation art, social sculptures and some forms of political activism also consciously experiment with *arranging affects*.

When Foucault defines a *dispositive* as a “heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions – in short, the said as much as the unsaid”, then *affective arrangements* belong to the elements that *dispositives* are ensembles of. The production of micro-political shame must be located here, on the micro-political level, too

Affective arrangements, however, are not elements of *dispositives* like any other. They not only belong to the “system of relations”²⁴ of these elements, but amplify and intensify these very relations. The affective resonance they produce can help to constitute the *dispositive*, but may also transform and change it – abruptly or over a longer course of time. Thus, calculations and intentions regarding the desired outcome are most frequently subverted by the *affective arrangements* themselves. There is an asymmetry between the desire of the living (human) being to amplify its potentials with new and changing relations and the interests of control to maintain a system of fixed and stable relations. Some elements of a *dispositive*, namely living beings with their desire to create new relations, add greater contingency (or ‘virtuality’, to use Deleuze’s term) to a system than others. This incommensurability of control and desire explains why these ma-

²³ Foucault, *Discipline and Punish*, 205.

²⁴ Foucault, *Confessions of the Flesh*, 194–195.

chines never run smoothly, but can suddenly become points of resistance rather than machines of discipline.²⁵

At the beginning of *DP*, Foucault mentions one of these moments in which the intended arrangement of affects (horror, shame, pity, glory, violence) fails:

[I]n punishment-as-spectacle a confused horror spread from the scaffold; it enveloped both executioner and condemned; and, although it was always ready to invert the shame inflicted on the victim into pity or glory, it often turned the legal violence of the executioner into shame.²⁶

This brings me to the last example of an *affective arrangement*, which I take from *DP* itself: The *chain-gangs*, processions of delinquents who were chained together by the neck and paraded to the prisons. Foucault describes the last chain-gangs in France of the early 19th century as “saturnalia of punishment” (*DP* 261) that perverted “marks of repentance” into a “mad joy” (261). Designed as a tool of both safe transportation and degradation, the chain-gangs produced affective dynamics between the delinquents and the witnesses that were not predicted by the officials:

Something violent aroused and accompanied the procession along its entire course: anger against a justice that was too severe or too indulgent; shouts against the detested criminals; movements in favour of prisoners one knew and greeted; confrontations with the police. (258).

Foucault interprets the result of this unwanted affective turbulence as a “technical mutation. From this transition spring a symptom and a symbol: the replacement, in 1837, of the chain-gang by the police carriage.” (257) The *affective arrangement* was changed to uphold or re-establish social and ‘legal peace’; a ‘peace’ that should be understood as a balanced arrangement of public emotions and a general feeling of contentment that legal justice has been maintained.²⁷

²⁵ Foucault and Deleuze discuss the difficult relations between desire and power in: Foucault/Deleuze: “Intellectuals and Power”, in Donald F. Bouchard (ed.), *Michel Foucault: Language, Counter-Memory, Practice* (Ithaca: Cornell University Press, 1977), 205–217.

²⁶ Foucault, *Discipline and Punish*, 9.

²⁷ When theories of criminal justice discuss the question to what end societies (really) punish, they often admit that their prime concern is not with the crime or the criminal but with upholding a feeling of legal concord or ‘legal peace’ (*Rechtsfrieden*) within society – at least in countries with a state-centred political economy, like Germany or France. For Germany see: Matthias Isensee and Paul Kirchhoff, *Handbuch des Staatsrechts der Bundesrepublik Deutschland Band II: Verfassungsstaat*, Karlsruhe: Müller, 1987), 755; or: Klaus Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (Munich: Beck, 1982), 106. For a comparative account see: John Reitz, “Political Economy and Abstract Review in Germany, France and the United States”, in: Sally Jenney, William Reisinger John Reitz, eds., *Constitutional Dialogues in Comparative Perspective*, (New York: Palgrave MacMillan, 1999), 62–88. https://doi.org/10.1057/9780333982518_4. The fact that ‘legal peace’ is not explicitly mentioned in American penal theories does not mean that it does not play a vital role.

All forms of punishment can be understood (among other things) as *affective arrangements*. This seems evident for, let's say, the pillory, the guillotine or the gallows – the 'punishment-aspectacle' – but it is also true for the prison cell, solitary confinement, or the ankle monitor. Not only are they forms of punishment, they also arrange feelings of shame, guilt, remorse, pity, anger, indignation²⁸ – in the culprit as well as in the potential witnesses and the public as an overall feeling of 'legal peace' within a society. This legal concord is, as I have mentioned, itself a desired arrangement of public feelings. But it occurs on such a large scale, engaging so many agents and institutions, and is of such a fluctuating nature that I follow Sara Ahmed in calling it an (*political*) *affective economy*.²⁹

b) In her essay, "Affective Economies", Sara Ahmed argues, that "emotions are not simply 'within' or 'without' but that they create the very effect of the surfaces or boundaries of bodies and worlds."³⁰ Ahmed especially emphasizes two dynamic elements of affective economies that can also be found in Foucauldian *dispositives*: distribution and adherence. Affects – like feeling ashamed – are distributed to mark spaces and situations in which to feel ashamed, and at the same time this distribution of shame creates adherence of bodies to norms and institutions. In her example, racism can be a distributing factor, attaching emotions to bodies, aligning "some subjects with some others and against other others,"³¹ and also aligning "individuals with communities", "bodily space with social space" (119). Racism, however, is the distributor not only of hate but of many other emotions like envy or disgust, yet also of love and attachment or even shame. Due to the distributing and adhering powers of *affective economies*, it is possible to be made to feel ashamed for one's upbringing, class, gender, ethnicity or sexual orientation in daily micro-political interactions, even long after having intellectually or rationally emancipated or liberated oneself from these structures.

In what follows, I will describe *guilt* as a distributing factor, and I will talk about an *affective economy of guilt*.³² Punishment, discipline and control are essential tools in stabilizing this *affective economy*. Like Deleuze's abstract and concrete machines, the *affective economy of guilt* and the *affective arrangements* of punishment are co-constitutive and interdependent.

²⁸ These feelings have come to be known as *Rechtsgeföhle* ('feelings concerning legal justice') in German jurisprudence. See for example Rainer Schützeichel, „Soziologie des Rechtsgeföhls“, in: Hilge Landweer and Dirk Koppelberg, eds., *Recht und Emotion I. Verkannte Zusammenhänge* (Freiburg: Karl Alber, 2016), 65–99.

²⁹ Sarah Ahmed, „Affective Economies“, *Social Text*, 79 (22, 2), (2004): 117-139: "I am using 'the economic' to suggest that emotions circulate and are distributed across a social as well as psychic field. I am borrowing from the Marxian critique of the logic of capital." (120).

³⁰ Ahmed, "Affective Economies", 117.

³¹ Ahmed, "Affective Economies", 117.

³² This should not be understood as a mono-causal explanation. Every economy, be it affective or monetary, consists in the on-going communication between diverse and unforeseen contributing factors and in the alignment or conflict of different distribution factors.

4. Complexities of shame and guilt

To talk about shame being distributed by guilt is to talk about a certain relation between shame and guilt: a typology-building, but not a necessary relation. Drawing on psychoanalytic vocabulary, one could call it a certain *complex* of shame and guilt. Again, to describe this complex serves two objectives: a) to complement Foucault's story of power with its affective dimension, and b) to make plausible how a sudden return to excessive shame fits into this narrative.

Shame and guilt have often been recognized as (the most) important emotions when it comes to discipline, control and overall conformity to social norms.³³ For shame, this seems rather obvious: We comply with norms not so much because we fear formal/legal sanctions, but because we risk social rejection in the form of shaming. This mechanism seems to be at the heart of discipline – both in a general and Foucauldian sense.³⁴ With guilt the case is more complicated: In addition to shame about our shortcomings, guilt also implies that we have damaged somebody or something and that we are now somehow indebted to them and need to seek ways of restoration. (This indebtedness can also take the form of an abstract damage to a virtual entity like society, a sovereign, or God.)

In other words, shame and guilt disclose different aspects of a (potentially identical) transgression:³⁵ Shame discloses a painful discordance between a specific norm I recognize³⁶ and the person I am (at the moment); guilt discloses a damage or suffering I have caused in someone or something else. Since harming others can be against values that I recognize, it can be cause for shame and guilt at the same time and thereby give a full account of my moral responsibility.

Consequently, there are two distinct ways in which to look at transgressions. They can be understood as moral inadequacy and be punished with shame: *Look at who you have become!* Or they can be understood as virtual or real damage that has to be – but also *can* be – repaired or re-vented: *Look at the pain/damage you have caused!* Both ways arrange affectivity differently.

According to this divide, there is a longstanding tradition to see shame and guilt as two distinct or even opposing models of organising societies; a tradition, which has not always avoided cultural essentialism and *othering*.³⁷ This lead to the dubious impression that shame would be as irrelevant for or even unknown to guilt-cultures as guilt would be in shame-cultures. Hence,

³³ See the notion of the 'looking-glass self' in: Charles Cooley, *Human Nature and the Social Order*, New York: Scribner's, 1922).

³⁴ Thomas Scheff, „Shame and Conformity: The Deference-Emotion System“, in: *American Sociological Review*, 53.3 (June 1988) 395–406. Erving Goffman, *Interaction Ritual*, (New York: Avon, [1897] 1967), 108, discusses similar thoughts under the notion of embarrassment.

³⁵ Nancy Sherman, „Self-Empathy and Moral Repair“, in: Sabine Roeser and Cain Todd, eds., *Emotion and Value*, (Oxford: Oxford University Press, 2014), 183–198. <https://doi.org/10.1093/acprof:oso/9780199686094.003.0012>.

³⁶ This recognition is embodied rather than intellectual.

³⁷ Most notably: Margaret Mead, *Cooperation and Competition among primitive Peoples*, (New York and London: McGraw-Hill, 1937); Ruth Benedict, *The Chrysanthemum and the Sword. Patterns of Japanese Culture* (Boston: Houghton Mifflin, 1947).

finding yet other ways of differentiating between shame and guilt has become something of a subgenre of philosophy of emotion.

But instead of delving further into the phenomenological niceties of shame and guilt, I will follow authors like Jeffrie G. Murphy and Helen B. Lewis³⁸ who try to look at shame and guilt as a complex of distinguishable emotions that nevertheless share at least one important point of transition between them: Both refer to a transgression as formal object, but they differ in its evaluation as well as in their orientation (towards the self in the case of shame towards the other in the case of guilt). The affects involved in this transgression can therefore be arranged both ways: according to a logic of guilt or one of shame. From this perspective, I will infer a description of the *economy of guilt* in which the logic of guilt (that one has to make up for something) distributes shame onto a micro-political plane of daily possibilities for feeling ashamed and in which this micro-political shame secures the adherence of bodies to this *economy of guilt*. Obviously, this is not the 'natural order' of shame and guilt (there is no natural order) but one (subconscious) arrangement.

In her influential book *Shame and Guilt in Neurosis* (1971), Helen B. Lewis confesses that from a therapist's perspective it is not always easy to discern clearly between feelings of shame and guilt or to disentangle the shame that lies hidden within feelings of guilt. Patients tend to suppress intense shame and articulate guilt instead (and therapists too often comply): "When shame and guilt are both evoked in the context of moral transgressions, the two tend to fuse with each other, and to be labelled 'guilt'."³⁹ Shame, according to Lewis, is 'buried' in guilt because guilt offers welcomed forms of rationalisation like excuses, apologies, promises of reparation etc. If not interrupted, guided, or corrected, the patient's rhetoric *transforms* the ineffable feelings of intense shame by means of a discourse of guilt and thereby also transforms what patients (and therapists) actually feel. In other words, the patient's self-report works as an affective arrangement subsuming feelings of shame under the grander scheme of guilt. How is this to be understood?

Shame and guilt, according to their different intentional object (the 'self' or the 'other'), open or close different spaces of possibilities to act, what Sartre, following Gestalt-psychologist Kurt Lewin, called a mapping of a *hodological space*, and in which we can see a phenomenological precursor of Foucault's *diagrams*. It is via these diagrams that emotions are shaped; not only conceptually but also on the level of *felt* experiences:⁴⁰ Fear of *x*, for example, narrows the hodological space down to one escape route and has a clear vector: *away from x*. Boredom, to give another ex-

³⁸ Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993); Jeffrie G. Murphy, *Punishment And The Moral Emotions. Essays in Law, Morality, and Religion*, (Oxford: Oxford University Press, 2012). <https://doi.org/10.1093/acprof:osobl/9780199764396.001.0001>.

³⁹ H. Lewis, "Shame and Guilt in Neurosis", in: *Psychoanalytic Review* (1971), 58, 3, S. 426.

⁴⁰ Kurt Lewin, *Principles of Topological Psychology* (New York: McGraw-Hill, 1936); Jean-Paul Sartre, *Sketch for a Theory of the Emotions* (London: Routledge, 2014). <https://doi.org/10.1037/10019-000>; Jan Slaby and Philipp Wüschner, "Emotion and Agency" in: Sabine Roeser and Cain Todd, eds., *Emotion and Value*, (Oxford: Oxford University Press, 2014): 212–228. <https://doi.org/10.1093/acprof:oso/9780199686094.003.0014>.

ample, can open up a wide, yet undirected space bereft of possibilities. In a complex situation of transgressions or misdemeanour, shame and guilt, too, come with different options to act: shame will reduce these options to their minimum and inhibit agency, guilt will offer ways of making up for it. If one imagined a society based solely on intensive 'guiltless' shame, it would be a society of rigid social norms, yet entirely lacking the idea of moral responsibility towards others because this responsibility demands a line of flight that leads out of shame and onto a field of possible retribution.

With this observation in mind, it can be argued that the logic of guilt offers a trajectory or 'solution'⁴¹ for the barring powers of shame by opening up the space of retribution and reparation, and thereby of reintegration into a society: It directs all the inhibiting feelings that are concerned with the self towards someone or something else. It thus gives the opportunity to right a wrong – i.e. *to act* – by mapping out a space of retribution. The space of retribution and repair offers the same means of abstraction, namely time and money, that helped transform the punitive *model of infamy*. This leads to a further distinction between shame and guilt that has already been hinted at: Guilt is an economic term that allows or even calls for quantification. In guilt, the inefable feelings of shame find a medium of expression that also quantifies them.

In relation to Sara Ahmed's terminology, I want to call this process an *economisation of shame* or a rationalisation of shame within an *economy of guilt*. In this process the felt quality of shame itself is altered in at least two crucial ways: a) shame becomes less visible (in discourse, gestures, and demeanour) because it is 'hidden' behind guilt; and b) shame, which can be quite an excessive, sometimes even suicidal feeling, turns into a controlled *micro-political* shame which is less intense but continuously reiterated.⁴²

However, this 'solution' is neither ready at hand nor a matter of choice, but is organised or *arranged* by rules, laws, forms of punishments, customs, discourses, architectural elements, forms of subjectivity, affective arrangements – in short by *relations of power* organised by a dispositive in the Foucauldian sense. This is the reason why it is so important not to understand the 'solution' of guilt naïvely. It bears in itself 'compulsive' potential of exactly the kind that Foucault (echoing Nietzsche's famous genealogy of guilt and bad conscious)⁴³ addresses in *DP*. If a guiltless shame devoid of remorse and responsibility is imaginable, then so is a shameless or at least shame-

⁴¹ I use 'solution' in a psychoanalytical way, where compulsive or even auto-aggressive behaviour can still be considered psychological 'solutions' to, for example, a traumatic situation. I read Helen Lewis' reports on her patients' reluctance to address their shame in the same light.

⁴² Scheff, „Shame and Conformity“, 405.

⁴³ Arguably, Nietzsche already talks about a *shame/guilt-machine* and not purely about guilt by offering a twofold genealogy of guilt: first as an internalisation and inhibition of natural drives when someone becomes a member of a community and subjects to its norms (*shame*), and second as a perpetuation of this internalisation modelled after the logic of debt (*guilt*).

forgotten guilt.⁴⁴ Shameless guilt can take the problematic form of an eternal recurrence of guilt (for instance in the form of a religious feeling).⁴⁵ This eternal guilt is, if we follow Helen Lewis's psychoanalytical lead, shame-forgotten rather than shameless. It is, as Michael Stocker shows in a discussion of Bernard Williams' account, a weirdly *amoral* or even fanatic guilt.⁴⁶ So to call guilt a 'solution to' or 'line-of-flight from' shame does not mean that this escape will not in the end turn out to be another trap; a shameless or shame-forgotten guilt which I will try to illustrate, if in rather broad strokes, in the following section.

5. Shameless guilt and control societies

It is easy to understand why shame and guilt together are ideal to do the moral work in a community or society: In order to avoid shame you have to become a different person according to the given (moral, legal, aesthetic, political, liberal) norms, and guilt is ready to offer the according course of action.⁴⁷ Within a dispositive of guilt, the normalising power of shame is distributed on a plane of thousands of micro-political interactions: between you and the co-workers you have let down, you and your parents/teachers who only wanted to see you "live up to your God-given potential", you and your friends who manage to present a better, more eventful, seemingly effortless life on social media than you, and – finally – between you and yourself because, again, you have eaten too much of the wrong food, wasted your time on the wrong interests, and slacked off your training routine as it is demonstrated shamefully clear and in indisputable numbers on the screens of one of the devices that monitor your daily activities.

I think these scenes are indeed well explained by Sara Ahmed's idea of an *affective economy* in which guilt distributes shame by the use of codification and quantification that also outline possibilities to become proactive, and in which shame provides individual adherence to these

⁴⁴ For guiltless shame see: Michael Stocker, "Shame, Guilt, and Pathological Guilt", in Alan Thomas (ed.), *Bernard Williams. Contemporary Philosophy in Focus*. (New York: Cambridge University Press, 2007.) 135–153. <https://doi.org/10.1017/CBO9780511611278.007>. As I have shown elsewhere, Homeric societies that were organised around a concept of shame (*aidôs*) very close to the idea of a guiltless shame had to develop *affective arrangements* that reorganized feelings of shame as feelings of guilt in order to stabilize their growing communities. Philipp Wüschner: "Scham – Schuld – Strafe. Zur Frage nach der Legitimität von Schamstrafen", in: Hilge Landweer, Fabian Bernhard eds., *Recht und Emotion II*, forthcoming. See also Lene Rubinstein, "Differentiated Rhetorical Strategies in the Athenian Courts", in: Michael Gagarin/David Cohen, eds., *Ancient Greek Law*, 129–145. <https://doi.org/10.1017/CCOL0521818400.008>.

⁴⁵ A less problematic case of shameless guilt is discussed as 'accident guilt', where a person causes (collateral) damage and feels guilt but not shame since her course of action agrees with the values she cherishes.

⁴⁶ Stocker, "Shame, Guilt, and Pathological Guilt", 138. Shameless guilt might in fact be an apt diagnosis of Heidegger's notion of guilt (*Schuldigsein*) as existential to Dasein (chapter 2 of *Being and Time*).

⁴⁷ Hilge Landweer, *Scham und Macht. Phänomenologische Untersuchungen zur Sozialität eines Gefühls* (Tübingen: Mohr Siebeck, 1999), Alexander Kozin, Hilge Landweer, et al., "A phenomenological ethnography of shame in the context of German criminal law", in *Empedocles: European Journal for the Philosophy of Communication*, 6: 1 (2015), 57–75.

codified norms: It is by feeling ashamed that I recognize these norms as relevant for me individually: it is by turning to guilt that I feel obliged to act and to commit myself to others or something else.

Again this fits neatly into what Foucault writes about the subjectivating powers of discipline that combine the “parallel classification of crimes and punishments” with “the need for an individualization of sentences, in accordance with the particular characteristics of each criminal.”⁴⁸ Here, too, we find a double-movement: one guilt-like that distributes, codifies and quantifies; one shame-like that creates an adherence between the individual and his (codified) crime. We can see how punishment, serving both codification *and* individualisation, becomes somehow drawn apart between these two forces.

Foucault, too, realises that to align the “codification of the offences-punishments system”, i.e. the calculus of guilt, with “the modulation of the criminal-punishment dyad”, i.e. the recognition of norms by feeling ashamed, means to bind together divergent forces. He in fact talks about the “radical opposition” between codification and individualisation. Their tension produces cracks within the system of codification, personal irregularities of abnormal individuals; cracks that constantly need to be mended by shame which in turn perpetuates efforts of retribution; an industrious process that demands a form of on-going panoptical self-monitoring. Sociologist Thomas Scheff calls this guilt-shame-machine the “deference-emotions system” with three crucial features: i) a continuous social monitoring of the (adult) self; ii) an evaluative component of this monitoring, giving rise to either pride or shame; iii) low visibility of this shame that is necessary for the deference-emotions system to run smoothly.⁴⁹ One could call this last point the optical paradox or even the optical illusion of monitoring: it hides shame by looking out for it.

In saying that as *affective arrangements* or guilt-machines these monitors alienate from shame, I do in no way claim that people become incapable of feeling intense shame in private situations, just that its public articulation is tabooed. What I claim is that these arrangements – just like Lewis’s patients – favour the rhetoric, rituals, and habits of guilt over those of shame. And this has an effect on the felt reality of the subjects: They will talk about their guilt rather than their shame, they will try to control their actions rather than search their soul, they will try to make compensations rather than to seek penance, they will look for the damage done to someone else or the community or to the person they seek to be rather than to reflect on the damage they have done to the person they actually are. A careful shift from shame to guilt or a balance between them is not necessarily a bad thing as an overly shameful society can produce a lot of suffering for misfits and non-conforming persons. But as Michael Stocker points out, if shame and guilt have to be taken as a complex, then both shame without guilt and guilt without shame are dysfunctional. Shame without guilt becomes the inverted picture of narcissistic rage that does not really care for the ones who have been wronged but only grieves the loss of social recognition. Guilt without

⁴⁸ Foucault, *Discipline and Punish*, 81.

⁴⁹ Scheff, “Shame and Conformity”, 399–400.

shame can lead to an internalised, shame-forgotten guilt and maybe to extreme forms of altruism, but also to the erosion of any deeper understanding of what someone is actually guilty of. In Bernard Williams' words: "Shame can understand guilt, but guilt cannot understand itself."⁵⁰

6. Making shame invisible. The example of electronic monitoring

With these reflections on shame-less guilt, I want to return to the question of punishment within an economy of guilt. The story told in *DP* ends before prison punishments take their final turn into abstraction. It concludes with prisons and the prisonlike institutions of the 18th century as *affective arrangements* of discipline. It is Deleuze who provides the last turn in his *Postscript on Societies of Control*. Here, he diagnoses a crisis of all sites of confinement and the rise of a world of enterprises, projects and constant training in which one never really manages to come to an end with something, least of all with oneself. Deleuze's predictions show a surprising accuracy: In accordance with the European Prison Rules from 2006,⁵¹ the German penal law (*Strafvollzugsgesetz*), for example, provides for an 'enforcement plan' (*Vollzugsplan*) for each prisoner individually. The plan, which includes medical and psychological examination, is set up in collaboration with the convict and concerns, in addition to questions of their prison regime, the necessity of 'social therapy', accommodation, the re-integration of the inmate into the job market, training-programs and career planning for the time after the imprisonment. The prison inmate is obliged to collaborate.

Deleuze further predicts that it:

may be that older means of control, borrowed from the old sovereign societies, will come back into play, adapted as necessary. The key thing is that we're at the beginning of something new. In the *prison system*: the attempt to find 'alternatives' to custody, at least for minor offenses, and the use of electronic tagging to force offenders to stay at home between certain hours.⁵²

Electronic tagging has indeed increasingly become an alternative to imprisonment, but it seems that Deleuze emphasizes the wrong aspect: The point of electronic surveillance is that the convict does *not* have to stay at home, but can go to work regularly. It also blurs various sorts of sanctions like curfews, restraining orders, rehabilitating measures and so on.

The ankle monitor, invented by a Harvard research group of psychologists in the 1960s, completes the transition of punishment that is now invisible and fully integrated into daily (working) life. (It is also cheaper than imprisonment.) Although not beyond all doubts regarding their effectiveness, ankle monitors are widespread in the US and are frequently used in European countries like Sweden, France, the Netherlands and Great Britain. Since 2007 the US has been test-

⁵⁰ Williams, *Shame and Necessity*, 94.

⁵¹ They were originally adopted in 1973 and then reformulated in 1987 and 2006.

⁵² Deleuze, "Postscript on Control Societies", in Deleuze, *Negotiations* (New York: Columbia University Press, 1995), 177-182, 182.

ing an improved model that is also capable of detecting alcohol consumption by monitoring the convict's skin. Offenders who committed crimes under the influence of alcohol can thereby be sentenced to abstinence. After France restricted the use of the ankle monitor in its pilot project to six months because of expected cases of psychological crisis linked to the use of the ankle monitor over an extended period of time, the European Council financed research on ethical and psychological issues of EM, finding that it was only advisable in combination with social or therapeutic support. But it also states: "In some jurisdictions the very principle of constant, real-time GPS tracking is believed to be such an invasion of privacy that it is considered to be an inherently disproportionate response to any crime."⁵³

Most European countries decided on a one-to-one exchange rate between prison sentence and EM-sanctions. This correspondence, as the Handbook for the use of EM points out critically,

reinforces the idea of RF [radio frequency] EM as a form of confinement rather than a flexible form of control which can be used in different ways alongside, and integrated with, other penal interventions [...] The point being made here is that creative uses of EM may be stifled, if it is only considered as an equivalent and commensurable form of confinement to imprisonment.⁵⁴

In this study's opinion, EM-devices are more than *prisons-to-go*; they draw their usefulness directly from their characteristics as *affective arrangements* that stretch beyond individual convicts onto their families and social surroundings: EM-devices,

aim at 'breaking crimogenic habits' – for example associating with criminal peers. In addition, family members, out of concern for the offender, may bring a positive influence to bear on him or her, and this may help strengthen tentative inclinations to desistance.⁵⁵

Although this study, financed by the European Council, does not necessarily reflect the official policy of the EU, it certainly echoes critical debates and discourses on imprisonment. It nevertheless also reveals the very same humanistic 'concern' for and interest in the incarcerated subject that Foucault criticises in *DP*.

When the research team around the twin brothers Robert and Ralph Schwitzgebel (later shortened to Gable) tested the first EM-devices, the goal was not to prove the effects of deterrence, but those of positive reinforcement. The point was to allow for a two-way feedback system where the addict/convict could ask for help in moments of distress and the researcher could offer support or even rewards (for attendance to meetings, job-interviews and so on). Instead of deterring offenders *from* criminal acts, they should be nudged *towards* good behaviour. This period of

⁵³ Mike Nellis, *Standards and Ethics in Electronic Monitoring. The Handbook for professionals responsible for the establishment and the use of Electronic Monitoring*, (Council of Europe, 2015), 18.

⁵⁴ Nellis, *Standards and Ethics in Electronic Monitoring*, 19.

⁵⁵ Nellis, *Standards and Ethics in Electronic Monitoring*, 20.

active positive reinforcements was meant to go on even after the sentence was completed. Such long-term effects, the idea of *keeping up* with good behaviour, can only be achieved by transforming the deterring yet quickly fading qualities of shame into the less intense but longer lasting qualities of guilt. A use of EM as an *affective arrangement* of shame (which the study of the European Council strongly and explicitly advises against) would therefore reverse the intentions of its inventors.⁵⁶

In contrast to the European approach, which – along the lines of Foucault’s diagnosis of a “shame in punishment” – tries to emphasize the alternative nature of monitoring, most US jurisdictions openly accentuate the punitive and shameful character of EM, not its possible “creative uses” for rehabilitation. They are therefore much less interested in reducing shame in this form of punitive measures. EM is mainly seen as a “technological fix” to the problem of exploding imprisonment numbers:

We in the United States have great faith (largely well placed) in the capacity of technology, primarily computer based, to solve problems and improve our lives. In a field that is so human capital intensive as corrections, the idea that a ‘technological fix’ could reduce the workload in dealing with the problem of crime is almost irresistible.⁵⁷

Burrell and Gable regard this approach to EM as misled, calling it ideologically orphaned. Not only does EM, when understood as a simple *replacement* of prison sentences, still have to prove its efficiency, there are also some notable side effects. The ankle bracelet produces an unintended although maybe not unwelcomed amount of stigmatization and shame that runs counter to the compliance expected from the offender, and might reverse the supportive effect of family members. In addition to the visual mark of the bracelet itself, media coverage and public opinion can attach certain connotations and affects to the device; for instance, linking EM-devices to certain crimes, like sex offenses. But instead of looking at these phenomena as ‘side effects’, this stigmatization might in fact be part of the underlying punitive intent: Burrell and Gable quote U.S. District Judge Miriam Cedarbaum, who famously sentenced TV presenter Martha Stewart to five months of monitored confinement “to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment.”⁵⁸

These tolerated or even invited side effects of EM as shaming-devices are, in my view, the most important twist in its history: At the heart of the perfect monitoring machine that works to

⁵⁶ This does not, of course, happen only in punitive systems. To find a much more perfect manifestation of Gable’s intentions than the ankle-monitor used for EM, one has only to look at recent self-quantifying products like Apples iWatch.

⁵⁷ William Burrell and Robert Gable, “From B. F. Skinner to Spiderman to Martha Stewart: The Past, Present and Future of Electronic Monitoring of Offenders”, in *Journal of Offender Rehabilitation*, 46:3-4 (2008): 101-118, DOI: 10.1080/10509670802143342.

⁵⁸ Quoted from Burrell and Gable, “From B. F. Skinner to Spiderman to Martha Stewart”, 109.

guarantee the low-visibility of shame lies the opportunity to make this shame visible again, to excessively draw attention to the moral failure of the culprit. How is this to be understood?

If guilt offers (the semblance of) agency as an escape from the inhibitory powers of shame – for better or for worse –, perhaps the same is true for the disrupting quality of intensive, excessive shame that in turn could function as an (equally questionable, problematic) form of resistance or at least rupture with regard to the *economy of guilt*. If this is the case, and if we acknowledge that the *economy of guilt* can itself become *shame-forgotten*, then this is the basis on which a ‘return’ to shame and shaming needs to be discussed: with *guilt* as the idling algorithm of an abstract penal machine that distributes shame onto a field of “hundreds of tiny theatres of punishment”, but lacks sufficient understanding of its powers of adherence.⁵⁹

7. The *aneconomy* of excessive shame.

To understand this, we have to look at shame again, yet not at the micro-political everyday episodes of feeling ashamed, but at excessive, open shame; shame that cannot be deflected by talking about guilt instead. This acute or excessive shame rests heavily on the person who feels it because the shift of focus and the corresponding rearrangement of affects is inhibited by the intensity of the feeling itself and/or by other elements of the *affective arrangement*, like its high visibility or the presence of an audience. The loss of agency is aptly embodied in lowering one’s gaze or covering one’s face. Shame makes a person to want to hide from the world *but at the same time* thwarts her agency and thus keeps her captive in a position of discomfort. It reduces the *hodological space* to a suffocating level, minimising it to the very ground a person stands on.

According to Giorgio Agamben, this really is what it means to be a (bad) example: you are included in a community but only in the form of your exclusion, as the odd one, the abject, the unwelcomed.⁶⁰ You are captured in that position, neither able to reintegrate nor to dis-integrate entirely. Shame-punishments that exploit this form of shame therefore have quite literally an *exemplary* function for a society that sets them apart from prison-punishments or fines that emphasize the regular rather than the exemplary.

It is important to distinguish this form of public and often excessive shaming from the micro-political moments of *feeling ashamed* that play such a vital role in a control society. First of all, excessive shaming is *not* disciplinary, neither in regards of its techniques nor its goals, because it gives no room for modulation, which would require (controlled) possibilities of (self-)modulation; it does not work with continuous subtlety but with momentary excess; and it is not repetitive and strategic but singular and tactical.

Secondly, instead of hiding shame and thereby guaranteeing a smooth operating of the ‘deference-emotion system’, it creates – especially within the cultures of social media – very dis-

⁵⁹ Foucault, *Discipline and Punish*, 113.

⁶⁰ Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life*, (Stanford: Stanford University Press, 1995), 21 seq.

tinct and noticeable optics of shame. Compare these to the subtle optics of monitoring: monitors constantly try to transfer the see-able into the realm of the say-able or countable, thereby making it less exemplary. Micro-political shame distributed by guilt has an almost an-aesthetic quality about it. It allows one to look away from shame and ignore it. Excessive shame instead always takes the form of an aestheticized, mediated illustration of the depravity and deficiencies of someone. It has an exemplary nature that excludes the one who is shamed from a group. (The rich *one per-cent* is, for example, excluded from the ninety-nine by virtue of its members' wantonness.) And it includes on this aesthetic level, especially when it comes to social media, performative moments like sharing, commenting, liking.

Thirdly, and maybe most interestingly, public shaming does not aim at producing a certain individual subjectivity. It rather seeks to destroy, if not the physical, then the social body or the career of a person. It is, in the terms of an *economy of guilt*, surprisingly wasteful.

If Foucault's claim is true and the alignment between the codification of crime on the one hand and the individualisation of punishment on the other does not go without tensions, then excessive shaming is one of those incidents in which this tension has proven to be too much; in which the tie between the offense and the character of the offender is so strong that a codified punishment cannot do justice to the act. When the character or demeanour of the perpetrator itself becomes the actual crime, then any legal codification that distracts from the individual nature of the criminal loses its moral foundation. This is why debates about the need of shaming or other alternative ways of punishment are usually sparked by crimes that carry a certain air of moral wickedness, like financial scams, sex offenses or particularly cruel murders. Contrary to what one would assume when looking at different 'correctional institutions' or 'departments of correction', there is often little interest in public opinion to *correct* these character traits or to re-integrate the offenders back into the communities. There is little faith that the normalizing effects of power really *work* that deep. There are of course positive or productive effects of the shaming, but they are not directed at the person being shamed. Shaming emphasises the *exemplary* nature of punishment that addresses bystanders and witnesses over its *disciplinary* nature. It thereby strengthens *their* communal band and restores or even creates *their* reputation or sovereignty.

Foucault is of course very aware this fact, and in *PS* he offers the same explanation that Nietzsche gives for the shift to exemplarity over discipline: it is a sign of a weakened society. "So, as first principle we have the relativity of penalties, which is not ordered by reference to the individual himself, but to the state of society."⁶¹ A strong society can afford to be lenient. Foucault goes on to quote Nietzsche who writes in the *Genealogy of Morals*:

As the power and self-confidence of a community grows, its penal law becomes more lenient ... It is not impossible to imagine a society so conscious of its power that it could allow itself the noblest luxury available to it – that of letting its malefactors go unpunished. 'What do I care about my parasites', it

⁶¹ Foucault, *Punitive Societies*, 67.

could say, 'let them live and flourish: I am strong enough for all that!'⁶²

If we follow Foucault and Nietzsche, part of an interpretation of *what it means* that we can sense a rising atmosphere of shaming could be that it is a sign of a weakened societal bond and a disturbed legal peace. This leads to questions like the following ones: Have we become unsure about the efficiencies of our codifications and uncertain about the consequences of our instruments of control? Do we seek the exemplary to question the regular? And above all: Do we have to understand this return of shame, in some unexpected and even problematic way, as a form of resistance against an *economy of guilt*? This does not mean to proclaim the end of control societies, but claims that a new affectivity has risen from within them.

The prevalent forms of punishment today⁶³ follow an economy of guilt and at the same time shy away from shame, generally effectuating the same mechanism that Helen Lewis observed in her patients, and that can be traced as recurrent through history. An economy of guilt will always try to charge crime against retribution, therefore needing a codification system that aligns crime and punishment and implementing affective arrangements that bind an individual to these codes by the means of his or her micro-political shame. It favours a clear and abstract reference system – usually time and/or money – to express these relations objectively. Open and public shaming, on the other hand, disrupts this economy of guilt. It borrows from the forms of sovereign power to punish, but gives it excessively to every individual, thus creating a somewhat perverted idea of a radically democratic right to shame. Anyone has the right to shame anyone at any time.

It is this seemingly democratic quality that provides shaming its legitimacy and at the same time delegitimizes other democratic institutions because a *model of infamy* is in its nature (see above) anti-institutional. This opens a chiasm: On the one hand, the practices of shaming which were considered suitable *punishments* under the *model of infamy* appear as potential *crimes* within the legal *model of talion or compensation* (e.g. the crime of cyber mobbing). On the other hand, legal punishments that no longer suffice in the eyes of public opinion are considered to be moral crimes (e.g. the lack of punishment for bankers and stock traders involved in the financial crisis). Instead of mutually supporting each other, shame- and guilt-dispositives seem to delegitimise each other.

Yet it is not Deleuze who helps to understand the actual political power of this process, but also Derrida's idea of the aneconomic quality of the gift in contrast to the economic character of exchange that he discusses in his book *Given Time: I. Counterfeit Money*.⁶⁴ For Derrida, the excess

⁶² Friedrich Nietzsche, *On the Genealogy of Morality*, (Cambridge: Cambridge University Press, 1994), 51.

⁶³ Obviously, this is not a universal claim about every legal system in the world. Yet neither "Western" nor "developed", nor "democratic" function as generic terms. 'Secularism' seems to be the best common denominator, but this would open another debate that I cannot do justice here.

⁶⁴ Jacques Derrida, *Given Time I: Counterfeit Money* (Chicago and London: The University of Chicago Press, 1992), 7.

and singularity of the gift does not sit well with the economy of exchange. Gift and exchange produce the same tension that Foucault saw between individualisation and codification. This tension between gift and exchange, shame and guilt, aneconomy and economy cannot be solved. Derrida teaches us to look at our practices of exchange or codification as necessary yet insufficient attempts to 'make the incommensurable commensurable'. Because they are quantifiable, time and money become the main tools of economies of all sorts. But in spite of the tension between them, the economic sphere of guilt or exchange remains, in Derrida's eyes, dependent on the aneconomic excesses of the gift or shame respectively. This dependency is not a historical one but rather repeats itself with structural necessity within *all* economic spheres. To return to the *excess* of shaming, therefore, means to radically question the principals of codification and to delegitimise the economy of guilt – while at the same time replenishing its very conditions; just as power is reinstated by and through points of resistance.

In relation to the philosophical debates with which I began this article, it is important to understand that authors in favour of shame-punishment argue for shame not necessarily out of a conservative critique of a too lenient punitive system, but out of a critique of the senseless and dehumanizing conditions of prisons. Interestingly enough, they do not suggest therapeutic measures either, but seem to believe in a form of sanction that addresses the criminal as an exemplary individual – even if only via social condemnation.⁶⁵ In their view, punishments are meant to re-establish the social bond, thereby producing the prerequisite condition of a meaningful re-integration. Many authors see shaming – for example in the form of a call-out culture – as a veritable instrument of political activism exactly *because* it could set the rules for a new organisation of the social and the political.⁶⁶

Obviously there is the sceptic's point to be made: The case for shaming presupposes an idea of community that might not exist in urban spaces where the crime rates are highest. In fact, they simply seem to imagine a world of functioning communities that already run on a shared sense of *aidôs*-like shame that has long ceased to exist. But this desire for *aidôs*-organized communities, which is at the heart of the arguments of the advocates of shame-punishments, is nevertheless intriguing because it also belongs to the undercurrents of communitarianism and identity politics: What does it mean to wish for small-scale communities run by *aidôs* rather than *dikê* in times of distributed networks and fleeting, intersectional identities? What does it mean other than to reinstate those identities?

⁶⁵ Dan Kahan, "What Do Alternative Sanctions Mean?", in *Faculty Scholarship Series*. 114 (1996): 591–653. Toni Massaro: „Show (Some) Emotions“, in Susan A. Bandes, ed. *The Passions of Law*, New York/London: NYU Press, 1999): 80–122.

⁶⁶ Jennifer Jacquet, *Is Shame Necessary? New Uses for an Old Tool*. (New York: Pantheon, 2015).

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