ABSTRACT: This paper addresses the issue of identifying in public the persons that are either arrestees or suspects of crime or tax evaders. Naming and shaming measures have been recently introduced in Greece as a tool for enabling social control and thus achieving purposes of law enforcement. Shaming becomes a formal tactic of punishment itself, signalizing social disgrace and reflecting a shift to the conception of compliance and the role of the society. Shaming interferes with the fundamental rights and liberties of the persons affected. The approach of this paper is that evaders, arrestees and suspects should not be deprived of their rights, especially their rights to informational privacy and dignity. Furthermore shaming publicity may threaten the right to the presumption of innocence. The stigmatizing effect of shaming is enhanced through the technical apparatus, which renders information more easily detected, reproduced, permanently stored, and undermines the right to oblivion and rehabilitation. The invocation of the social control, often as a substitute of proper public action, does not fit into any cognizable notion of state responsibility, while it is not sure that this art of sanction deters future crime and connects the offender and the society to an understanding of lawfulness by internalizing these lawful values. The assumption of this paper is that a democratic, liberal State should treat a person as someone possessing the basic dignity and never humiliate a person by using her as means.

KEYWORDS: naming, shaming, sex offenders, tax evaders, reputation informational privacy, presumption of innocence, dignity.

1. NAMING AND SHAMING: AN INTRODUCTION

Recently, there has been in Greece a considerable public debate about the so-called «naming and shaming» policy, which is implemented mainly in relation to sex/child pornography offenders and tax evaders. In the first case the Greek law provides for the competence of prosecutors to decide on the naming of persons accused or suspected, whereas in the latter case the naming of tax evaders is laid down as an obligation of tax authorities.

Naming the offender constitutes an integral component of shaming policies. In the context of this paper we understand by «naming» the disclosure, publication and dissemination of the identity of a person, who is convicted or suspected of crime or tax evasion. The affected person may be either directly identified or identifiable by reference to factors specific to her identity. Naming magnifies the negative effects inherent in accusation or conviction
through communicating the offender’s status and relation to an illegal conduct to a wide public. Publicity serves as means (in order) to shame, reprimand, reproach, censure, control, influence, supervise the person identified as offender [Pawson 2001]. This stigmatizing publicity aims and/or results to raise sentiments of guilt and shame.

If shame is considered a private emotional reaction of the wrongdoer, shaming is a social process of purposefully expressing disapproval and/or contempt with the intention or effect of provoking embarrassment, discomfort, anger and –last but not least– fear. Apparently shame and shaming are closely intertwined. Shaming practices expose the offender inflicting personal and psychological as well as social costs on her. Some authors distinguish between stigmatic and reintegrative shaming. Stigmatizing shaming brands the offender and shuns her from society while reintegrative shaming not only involves the community but it also aims at the reintegration of the shamed person back into it [Nussbaum 2004].

Shaming is not a new tool. Shaming, carried on in various ways by state authorities and communities, has been a dubious and pervasive part of punishment throughout history. Romans branded a letter signifying the crime onto the offender’s forehead. In ancient Rome, also the doors to the homes of criminals were branded in order to alert the public of the acts of their residents. Harmanopoulos in Hexabiblos (Εξάβιβλος), a compilation of byzantine legislation in force in 14th century, is referring to the punishment provided for dishonest merchants and contractors, who «after being paraded around, spat and with their heads shaved, have to be sent into exile». Communities have used shaming as a mechanism for preserving civility and social order. Brands and signs were (and still are) intended to announce the spoil identity of the wrongdoer to the world.

Over time, the use of punishments such as the «Scarlet Letter» disappeared as a rejected practice of a foregone era. The Enlightenment, the recognition of the dignity of a person as a constitutional value, the rise of the strong central State, which reinforced norms through punishment, and the changes in the structure and nature of communities (urbanization, mobility etc.) formed a new context for judging and punishing the offenders. However, we experience a rebirth of shaming as norms enforcement tool. On the one side shaming is amplified through mass media in the name of crime control and entertainment [Kohm 2009] and on the other side the State reintroduces shaming no more or –at least– not primarily as punishment of sin but mainly as a tool of law enforcement and protection of the public.

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1 Shame is a highly individualized experience that strikes at the core of a person’s self-concept. About shame and shaming more analytically in Nussbaum (2004) and Ivancevich et al. (2008).
2 For example Romans branded the Latin equivalent of M for murder or V for vagrancy. See Solove (p. 91)
3 The Hexabiblos formed the basis of the civil law of the Greeks not only during the period of Turkish rule but also in the modern Greek state until the new Civil Code was put in force (1946).
4 In colonial America offenders of certain customs were branded or locked in pillories.
5 A powerful illustration of shaming punishment in colonial America is provided in the novel of N. Hawthorne The Scarlet Letter (1850).
In the following section (2) we discuss naming and shaming as expression of moral disapproval and integral part of crime deterrence policies. This section focuses on the examples of shaming through publicly naming of persons, who are suspects and/or convicted of crime or tax evasion in Greece. In the same section we present also the relationship between the reappearance of shaming punishments and the new conception of law enforcement and safety/security. Section 3 then presents the impacts of naming and shaming policies on the reputation as well as on the right to informational privacy and dignity of the person affected. Emphasis is given to issues concerning the impacts of shaming on the right to presumption of innocence. This section addresses also the effects of online shaming publicity, the wide availability and the persistency of information on the main principles of data protection and the rights of individuals, like the right to oblivion. In the last section (4) we assess the compliance of shaming policies with the imperatives of the proportionality principle. The first part deals with the question if shaming is appropriate, necessary and reasonable in order to achieve deterrent or rehabilitating effects. The main conclusion of this contribution is that the main problem with naming and shaming practices and measures is that they threaten the dignity of the person by making her an instrument of the State.

2. SHAMING AS SANCTION POLICY

2.1. Shaming Policies

During the last decades the so called naming and shaming strategies have been proposed especially as part of moral disapproval and crime deterrence policies. Press releases or public notices concerning incidents have long been a practice of law enforcement authorities. However, public disclosure becomes systematic and detailed [van Erp 2008]. By naming the offender a state agency condemns her in full view of the society for engaging in an unlawful and repugnant act [Blank 2009]. Shame punishments mark the wrongdoer with a degraded identity. Offenders are made to feel guilt and remorse for their acts in an effort to build consciousness und an understanding of lawfulness. Moreover the State expects the community to participate to the punishment process by disgracing and degrading the offender.

A main objective of public condemnation and social demotion of the offender is to discourage the shamed or others from committing crime in the future time [Ivancevich et al. 2008]. The main assumption is that naming publicly the offender deters others, who become aware of the incident of shaming and wish to avoid shame [Pawson 2001]. Crime deterrence theorists suggest that the «offender fears the look in the eyes of his or her intimates, including family, friends, and colleagues, who know about his behaviour, more than he or she fears punishment»6. In this context, shaming amounts to a formal tactic of punishment itself rather than an unintentional byproduct or outcome [Pratt 2000].

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6 Ivancevich et al. p. 407.
The media, often in close collaboration with governmental agencies, take a considerable part in naming and shaming processes by publicizing reports on law enforcement actions, arrests and trials against sex offenders, paedophiles and tax evaders. In the rise of infotainment, shame penalties have become increasingly commodified [Kohm 2009], especially if celebrities are involved. The media industry capitalizes on the public’s insatiable hunger for sensations. Media seems to be the easiest way to reach the wide and appropriate public in order to achieve the specific goals of shaming. The mediatisation of reality has become so dominant that we are witnessing a transformation of what we understand as public sphere and participation to public discourse. In reporting on offenses and punishment, media signal implicitly social values [Branham 2009], while having significant effects on the popular sense of «justice for all» [Levi 2010], even if media coverage provokes often a vigilant justice.

2.2. Naming suspects and convicted sex offenders

In 2007, the Greek Parliament in response to public anger after the rape of a 9 years old girl by a man already once convicted for rape, has enacted an amendment of the Data Protection Law, which provided that the competent Public Prosecutor is entitled to allow the publication of the names of persons involved in criminal charges or convictions. According to the law, «[t]he publication of criminal charges or convictions aims at the protection of the community, of minors and of vulnerable or disadvantaged groups, as well as at the facilitation of the punishment of those offences by the State». The Minister of Justice defended the public disclosure of the names of suspects and convicted persons by arguing that this provision «throws off the masks of murders, rapists and paedophiles and all persons, who we meet in everyday life without having the possibility to handle them in the way they deserve». Not only ordinary people but also public officials and judges felt that sex offenders lost their ability to argue their civil rights and liberties when they committed such an offense.

7 Infotainment, defined as the combination or the blurring of information and entertainment, structures in a powerful way public stories about crime and crime control.
8 Some argue however that the visibility of celebrities can be used to the shaming’s efficiency advantage. See Blank (2011).
9 It is noteworthy that the Council of Europe Recommendation (2003) 13 prohibits (Principle 7) the exploitation of information about ongoing criminal proceedings for commercial purposes or purposes other than those relevant to the enforcement of the law.
10 Law 2472/97 on the protection of personal data. Available at www.dpa.gr
11 The fact that it was a hasty and improvised political response to public pressure is obvious as the respective provision is laid down as an addition to the definition of «sensitive data» (art. 2b) and not as a rule allowing the processing of this category of data (art. 7).
12 Greek Parliament, Archives of the Parliamentary Session of 13/12/07, p. 2579.
13 Some months before the Prosecutor of the Highest Civil Court pronounced in his Opinion 14/07 that the criminal behaviour of a person does not fall under the notion of personal data and their protection.
The aim of this policy is apparently multifold. Proponents of shaming policies point to the (legitimate) public safety reasons: public disclosure of the offenders’ names is introduced to enable the public to protect itself from the danger posed by sex offenders. The respective legislation was enacted in the heat of the moment to face what many proclaimed to be a high rate of recidivism by sexual offenders however without using any study or testimony from experts. The publicity decision might also serve gathering additional evidence. Especially the naming of arrestees and/or suspects might additional criminal charges, additional complainants or defendants more and – in any case – additional witnesses.

2.3. Naming and Shaming Tax evaders

The naming of tax evaders is laid down as an obligation of tax authorities. Law 3843/2011 serves as the legal basis for the public disclosure of the names of the persons with debts of more than 150,000 Euros owed to the Greek State. Under the pressure of the economically critical situation in Greece, a debt-laden country, State authorities concentrate their efforts on improving tax collection and controlling tax evasion. Indeed, tax evaders’ naming was also conceived as tax collection means. The fear of social stigma and impacts on business should force debtors to pay their debts and discourage taxpayers from evading taxes.

In addition to enhancing deterrence, the publicity strategy aimed at increasing confidence among compliant individual taxpayers, who pay considerable attention to reciprocity and fairness in relation to compliance to their tax duties. It was hoped that taxpayers and debtors would comply with their obligations and civic duties not only because they fear criminal sanctions but driven of social shaming that the public disclosure would create.

The principle of tax equality and justice is embedded in the Greek Constitution. At the end of January 2012, the Ministry of Finance has published a list of 4,152 debtors, after having required clearance by the Greek Data Protection Authority. The DPA approved the

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14 Reza defines this «right» as «informed living», i.e. the government should arguably inform the public about its suspicions regarding an arrestee or suspect so that people may practice «informed living», the right to exercise an informed choice about those with whom they live and associate.

15 The recidivism argument is widely shared and seems to be a decisive one. The U.S. Supreme Court referred (in McKune v. Lile) explicitly to the «frightening and high risk of recidivism of the offenders who refused treatment».

16 It is noteworthy that the OECD in its Report concerning Greece (2011) proposed that «the thresholds for naming evaders (€150 000) could be lowered and made systematic rather than discretionary, as seems currently to be preferred».

17 According to reciprocity theory, these types of taxpayers will comply with the tax system only if they believe that other taxpayers are paying their taxes honestly. See Blank (2011), p. 8.

18 According to article 4, paragraph 1 of the Constitution of Greece all Greeks are equal before the law and according to article 4 paragraph 5 Greek citizens contribute without distinctions to public charges in proportion to their means. The Constitution provides both the tax obligation of everyone and the guarantee of (proportional) tax equality and justice.
publication, while imposing some restrictions and exceptions. It seems that the financial situation and the fight against tax evasion has been the decisive criterion for the DPA, which adopted the argumentation of the Ministry that the naming of debtors would enhance the «tax morale» and the compliance with the «civic duty» of Greeks tax payers and convey (a sense of) justice to honest taxpayers. In this socio-economical context the DPA refrained from assessing the proportionality (and especially the necessity) of the measure in relation to the purposes to be achieved.

2.4. Shaming in the context of new security perceptions

Naming and shaming measures are adopted to degrade the offenders in public while inviting the public to participate to the punishment of the wrongdoers. The come-back of such scarlet-letter punishments indicates the recognition of the limited dissuasive force and the barriers of the traditional sanctions. Furthermore it reflects a shift in the conception of law enforcement and safety/security. With an important, «traditional» role of the state being the protection of the physical security of people and property, security is privileged over values such as privacy and autonomy in various strands of political philosophy [Mitrou 2010]. The contemporary politics of security and crime control focus on public protection, risk management and prevention. Managing the persons perceived to be a threat to society has become recently an acute popular and governmental concern.

Explicit appeal to shame and humiliation appears to emerge out of the popular punitivism toward a new law and order concept [Thomas 2004]. As Kohm underlines, the new law and order orientation, which became obvious at the last decades, has been a fertile ground for these new forms of punishment to be imposed by the public and via the mass media [Kohm 2009]. Naming and shaming measures implicate the society in law enforcement and crime and/or offenses punishment. The social model of collective security, dominant during the 20th century, has been slowly supplemented –and in some fields replaced– by the responsibilization of the individuals as agents of law enforcement. The community is encouraged to become actively involved in reporting crime, stigmatizing and imposing limitations on the offenders’ freedom, chances and choices. Shaming penalties not only focus on deterrence

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19 Data Protection Authority, Opinion 4/2011. Available at www.dpa.gr
20 The list did not include the names of those who have already made arrangements to settle their tax arrears. The release of the list follows months of warnings that the names would be made public. According to the press reporting many of the over 4,000 people featured in the list who owed Greece about 15 billion Euros in total, could not pay or they were already in prison. Topping the list with arrears of 952 million Euros is a convicted tax fraud who is already serving a 504-year prison sentence for issuing fake receipts to companies that wanted to lower their tax bill!
21 Nussbaum (p. 175) points out that communitarian political thinkers, like Etzioni, recommend the revival of shaming as a way of expressing and reinforcing shared moral values.
22 Rose (p. 324) is characterizing these strategies as «ethopolitical», as they are operating through the self-steering forces of honour and shame, or propriety, obligation, trust, fidelity and commitment to others.
but they aim at or they result to an ever widening attempt to put more people under social control [Nussbaum 2004].

3. IMPACT OF SHAMING (S)A(N)CTIONS

3.1. Impact of shaming on reputation, privacy and dignity

Beyond the shame effect that a public disclosure and dissemination of information is expected to have on involved individuals, shaming might result in «sanctions» that are imposed on offenders by the (social or professional) community. The fact that a person is depicted in public as suspect or offender may strongly injure her social dignity, her reputation 23. Public disclosure of shaming facts or suspicions affects not only the ability of a person to formulate conceptions of self, values, preferences, goals. A lost or damaged reputation may have serious impact on the ability of a person to engage in society. As everyone depends upon others and their perceptions to engage in social or professional transactions, shaming publicity threatens –often irrevocably– relationships 24, social status, current and future employment of the shamed person.

Losing control over one's own reputation is the inevitable effect of losing control over the circulation of one's own information 25. The spread of information caused by public disclosure of the implication with a crime or an offense interferes with the right to informational privacy, which is understood both as a right to seclusion and anonymity and as prerequisite for taking autonomous decisions, freely communicating with other persons and being included in a participation society. Informational privacy is strictly related to the protection of life choices and life chances from public control and social disgrace. If public authorities and consequently the media disclose and disseminate information about the identity of a convicted or suspected person, freedom of expression 26 collides with the individual's right to privacy and anonymity 27. Evaders, arrestees and suspects should not be deprived of their

23 D. Solove (p. 30) defines «reputation» as the «shared, or collective, perception of a person».
24 Relationships of the shamed person are affected in multiple ways: Family members are the «collateral damages» of shaming punishments. Furthermore the shamed person experiences fear, remorse and anxiety if relatives and friends abandon or isolate her because of the shaming publicity (Ivancevich et al. 2008).
25 The right to informational self-determination consists in the right of a person to know which of the information about her is known to her environment and to principally determine when, how, and to what extent information about her is communicated to others and used by them.
26 Which includes also the right to impart and receive information. See Art. 10 of ECHR.
27 The person's right to avoid disclosure of facts and information about her status of being accused or convicted is laid down in central european law either as confidentiality/secrecy of the pre-trial stage or as restricted and exceptional access to criminal records. In USA the Supreme Court has repeatedly restricted access to arrest records as a consequence of the right to avoid disclosure to personal matters (Reza p. 761).
rights. On the contrary: «the more publicly embarrassing the crime, the stronger the deter-
rent effect – and the greater harm – of being named in connection with it». Due to the
plethora of harms that attend being named and shamed as suspect or accused, the need for
protection is arguably more pressing.

Undoubtedly, the right to informational privacy is not an absolute one. Informational
privacy may be restricted either for reasons of public interest such as security reasons or
for preserving others’ rights and liberties. In some jurisdictions revealing a suspect’s or of-
fender’s identity is per se an issue of public interest and consequently free speech overrides
the person’s right to anonymity. Continental legal systems cope with the underlying conflict
between freedom of information and rights to informational privacy through a process of
balance of interests, either in abstracto through a legal norm or in concreto through the
judging of a case by the courts. Decisive are the criteria of the nature and the gravity of
crime/offence, the status of the person accused or convicted, the value of the evidence (to
be) gathered. Another element of crucial importance for balancing the competing rights and
interests is assessing the proportionality of the harm caused to individual by the disclosure
of such information in relation to the purpose to be achieved.

The claim for (protection of) privacy may not waive the accountability of a person for
her actions and acts. On the other side, our (traditional?) justice system penalizes the act and
is based on the conviction of a person for the crime committed. The feature and personality
of the offender is of importance only for understanding and/or proving the act and for
determining the concrete sanction. The public disclosure of the name of a person accused
or convicted for a crime aims per se at degrading and humiliating her as person. Humili-
ation constitutes an interference with personality of the accused and/or convicted person.
Moreover, it threatens her human dignity. Shaming per se subjects the person to a form of
peculiar vulnerability, which may deprive her of personhood and dignity [Whitman, 1998].

3.2. Shaming and presumption of innocence

Reputation, privacy and dignity are not the only interests and values that are infringed
by naming and shaming actions. Affected may be also the so-called presumption of innocence,
which is understood as the right to be presumed innocent until the conviction. In some juris-
dictions the presumption of innocence is meant as an evidentiary rule without acknowledging

28 Reza, p. 773.
29 About the ECHR case law in relation to Art. 10 see Council of Europe, Freedom of Expression in
Europe (2007).
30 For example the Greek Penal Code, which reflects the central-European tendencies in penal law,
provides (Art. 68) for the publication of a penal judgment only on the basis of a ruling of the Court
to be made either ex officio for reasons of public interest or following a request of the victim who has
a legitimate interest.
31 Nussbaum (p. 230) argues that when the public laughs at someone in the pillory, people are not
invited to focus on the committed criminal or unsocial act.
any application or effect before trial. In Europe the presumption of innocence conditions the
treatment of an accused person throughout the phase of criminal investigations up to the
end of trial32. According to the European Court of Human Rights, from Article 6 § 2 of the
ECHR is also drawn that every person has the right not to be publicly presented as offender
before final conviction. Recognizing this right only as an instrument of proof would result in
legitimizing the humiliation imposed upon persons accused but not yet convicted on crime.

Art 6 § 2 of the Convention binds not only judges or courts but also any other public
authority. Recently, this principle is applied also to the horizontal relationships between pri-
vates. Presumption of innocence is becoming a «normative parameter» in the balancing of
rights of the affected persons and the informing media. The Council of Europe Recommen-
dation (2003) 13 on the provision of information through the media in relation to criminal
proceedings provides(Principle 10) that «in the context of criminal proceedings, particularly
those involving juries or lay judges, judicial authorities and police services should abstain
from publicly providing information which bears a risk of substantial prejudice to the fair-
ness of the proceedings». This approach should prevent shaming punishments at least prior
to conviction and especially at a time when the words «suspect» and «offender» are becoming
increasingly synonymous [Quintard-Morenas 2010].

3.3. Impact of shaming in digital age

The impact of shaming on the affected persons cannot be assessed without taken into
account the techno-social context of shaming actions. The rise of Internet33 and the exponen-
tial increase of its content, its possibilities and its actors/users opened up a vast frontier
for shaming and humiliating individuals. Accessing and gathering information on offenders
and offenses has become ease, cheap and routine. The shift to online media, the ability to
search newly digitized collections of information (such as old newspapers), the fact that
many courts make their records available means that past information is more accessible
than ever before [Solove 2007, Schwartz 2009].

There is virtually no limit to the amount of information that can be recorded and to
the time period that it can be stored. The persistency of information entails that it can last
longer than the circle and context, in which its processing was legitimate. The online avail-
ability and accessibility of information that was legally published offline in the past is not
at all self-evident. In connection with the wide availability this persistency undermines the
principles of purpose limitation and proportionality34 or the rights of individuals, like the

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32 France (French Code Civil, Art. 9-1) has reinforced the presumption of innocence by providing it as
a personality right.

33 Naming and shaming of offenders could take place through traditional media but now reports about
offenses can be published on the Internet without any cost or effort. More analytically see Meijer et
al., 2009.

34 According to the U.S. Supreme Court, «...notice of a criminal conviction subjects the offender to pu-
ublic shame, the humiliation increasing in proportion to the extent of publicity» (Case Smith v. Doe).
right to oblivion\(^\text{35}\), i.e. the right to forget and to be forgotten [Mitrou 2010]\(^\text{36}\). Moreover, information stored and accessed on the Web consists of fragments of people’s lives that may be out of context, at random, incomplete or wrong [Solove 2007]. This is especially the case where a suspect has been acquitted of all the charges. Having been accused of a crime lasts in the public eye, although vast numbers of arrestees are dismissed soon after arrest, and countless accusations are unfounded or improvable. Rarely acquittal or dismissal of charges receives as much public attention as arrest or suspicion. Even if information is corrected on the source websites, Internet archives, cache copies and various abstracts produced by search engines may still provide an inaccurate and distorted status/picture of the person\(^\text{37}\).

The ubiquity of data collection practices, advances in search methods, content creation, decreasing costs of infinite storage enhance perpetual dissemination of shaming information and threaten to erode what we understand as social forgetting [Ambrose et al. 2011]. In the «global village» shaming is no more a temporary mark of disgrace and becomes a widespread and lasting inscription of stigma [Solove 2007]. Due to the Internet’s perfect and perpetual memory it is becoming harder and harder for people to escape their past\(^\text{38}\). Some years ago (2009), Wikipedia has been sued by two Germans who claimed that the online encyclopaedia’s description of their involvement in the murder of a German actor back in 1990 violates their right to privacy. They had already successfully pressured German publications to remove their names from their online coverage\(^\text{39}\). German editors of Wikipedia had scrubbed their names from the German-language version of the article about the victim, the actor Walter Sedlmayr. By supporting their right to privacy after having «paid their debt to society» their lawyer underlined that «they should be able to go on and be resocialized, and lead a life without being publicly stigmatized»\(^\text{40}\).

\(^{35}\) Bernal (2011) refers to the right to oblivion as a right to silence on past events in life that are no longer occurring, such as crimes for which the person has been exonerated.

\(^{36}\) Due to the enormous risks associated with the proclaimed total and eternal memory of the Internet, the right to oblivion has been proposed as an explicit right to be enshrined in the EU (Draft) General Data Protection Regulation. Available at http://ec.europa.eu/justice/data-protection/document/review2012/

\(^{37}\) In Greece a person, accused and acquitted of all charges, sued a newspaper claiming to remove the respective information from its website. The newspaper proved that it had no more the technical possibility to remove the inaccurate content, because it was actually saved on a mirror page. On January 2006, the Italian Garante Privacy has called upon Google to find out solutions to remove obsolete or inaccurate personal information after such information has been amended at the source websites. See Liguori and De Santis, The Right to be Forgotten: Privacy and online News (18/3/2011), available at www.portolano.it

\(^{38}\) As expressed by the EU Commissioner Viviane Reding »God forgives and forgets, but the Web never does«.

\(^{39}\) The Swedish Data Inspectorate had decided that five years after the information has been published, the only key to sensitive data to be used for search to electronic archives should be the date of publication and not the name of suspect or convicted person (Council of Europe, 1990).

4. CONCLUSION

4.1. Is shaming appropriate, necessary and/or efficient?

In the age of «perfect» or «excessive» remembering\(^1\) perpetual memory has a devastating impact: it hinders forgetting and decreases the chances of forgiveness. Thereby, the persistence of shaming information limits the ability of a person to pursue in life and to change it. Through the right to oblivion forgiveness is tied to privacy and the ability to escape the past and build the future. Besides, imposing sanctions aims both to deter crime and to rehabilitate the offender, allowing her the re-integration into society.

An issue meriting discussion is the appropriateness, the necessity\(^2\) and the stricto sensu proportionality of shaming punishment in relation to the purposes to be achieved. The right to privacy as well as the more specific right to be forgotten should be carefully shaped in order to strike an adequate balance between this right and other important rights and interests, such as freedom of speech and information or law enforcement purposes. Lawfulness and acceptance of applying shaming measures on suspects and convicted offenders depends on whether evidence can be presented that this form of incidental sanctions are necessary, effective, efficient and fair. The driving forces behind publicity of offenders’ identity are to prevent re-offense and to appease the anger of the public. Does branding these people insure public safety or provide a false sense of security? Does shaming effectively deter crime or change people’s views and values about compliance with the law and harmfulness of criminal behaviour or tax evasion? These questions should be addressed by empirical research. Actually there is no statistical or practical evidence that shaming is appropriate, necessary and reasonable in order to achieve deterrent or rehabilitating effects.

In the case of sex offenders there are several studies that question the efficiency of naming and shaming strategies. There are serious doubts on the effectiveness of sex offender registries (as provided for example by Megan Laws in USA) to significantly reduce rates of sexual offending [Corenti 2010]. Furthermore scholarly research does not support that sex offenders will repeatedly re-offend and the vast majority of child victims are victimized at the hands of relatives, acquaintances or family’s friends [Kohm 2009]. As far as it concerns types of extreme offenders it is unlikely that shaming actions would lead them to change their behaviour in response to the fear of humiliation and stigma [Owens 2001].

Shaming is pertinent to persons accused or convicted of tax evasion. However, it is highly questionable if shaming publicity may play a significant role in determining compliance with the law [Murphy and Harris 2007]. What is shown by studies is that tax enforce-

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\(^1\) About the analysis of forgetting and forgetfulness see Mayer-Schönberger, who characterizes forgetting as «a life-saving advantage».

\(^2\) According to the jurisprudence of the ECHR on Art. 8 § 2 of the Convention, restrictions of privacy rights have to pass the so-called «democracy test»: even if a restriction is foreseen in law and serves a public interest, it (the restriction) has still to be necessary in a democratic society and shouldn't reach further than what is strictly necessary.
ment actions against offending taxpayers and especially actions that involve penal sanctions may have an important and positive deterrence effect [Blank, 2011]. Moreover, studies have shown that choices about compliance are influenced by multiple factors, while research has also revealed that deterrence-based enforcement strategies sometimes generate future resistance to compliance with tax law [Murphy and Harris 2007].

To deter persons from engaging in unlawful behaviour, shaming sanctions must threaten to harm their reputations within their communities. Furthermore, the deterrence effect of shaming actions depends upon the relationship of the person affected by shaming to her community, on the networks of mutual social understandings in society as well as upon the values and attitudes of the latter. It is argued that wide-ranging use of shaming sanctions is likely to erode their effectiveness, and that their extensive use especially as a substitute for traditional law enforcement actions may undermine their deterrent effects [Harel and Klement 2005]. Some authors point out the necessity of re-integrating procedures, which are important to prevent shaming from devolving into pure vigilantism.

4.2. Some concluding remarks

The power of shaming actions to deter crime and to rehabilitate the criminals seems to be questionable. Shaming measures frustrate the primary purpose of justice, i.e. to reintegrate the wrongdoer into society [Solove 2007]. Punishment should aim at and end in connecting the offender and the society to an understanding of lawfulness by internalizing lawful values. Shaming signalizes a moral condemnation of the offending conduct. However, shaming publicity is primarily conceived and designed to humiliate the offenders while inviting the public to participate in their punishment by disassociating from them or even ostracizing them into a permanent «underclass».

In naming and shaming the State metes out sanctions through its own established and legitimized institutions. Law enforcement or justice by shaming means is not the impartial, neutral justice that is typically expected by a liberal-democratic state and society. Moreover, shaming measures are unreliable as they may target persons who will be acquitted of any charge. Furthermore, such measures are difficult to balance: in many cases the impact on offenders may be disproportional to the severity of the offense [Solove 2007].

Virtually, every person convicted for serious crimes suffers humiliation and shame simply in virtue of being punished. Shaming publicity destructs a person’s reputation and dignity, regardless of the fact that this person actually feels humiliated or not. Crime and offense is not a sufficient reason to treat people without due respect. A democratic, liberal state does not simply respect the dignity of those who obey the law, but of all people. Shaming as intended consequence and/or true end is not consistent with the values of a democratic state. Individuals remain accountable over time for the consequences of their acts and behaviour but both shaming and persistent digital remembering foreclose the opportunity for the of-

43 U.S. Supreme Court in Case U.S. v. Koon
fender to redefine herself and to be recognized as having the basic dignity of moral agency [Kahan 2006].

Dignity, an intrinsic value in each human being, requires the State to recognize and respect it for the welfare of the individual and not the reverse [Cheyng 2012]. Even if naming and shaming serves deterring crime, a goal of public interest, shaming constitutes an interference with ethical and psychological integrity of a person. Even if indirectly, offenders are used for display purposes. The shamed offender is used as an instrument of the state, as means and not as end. A decent society, moreover a democratic, liberal State should built on norms of respect and protect its citizens from degradation and humiliation.

5. BIBLIOGRAPHY


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