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THE PUBLIC PERFORMANCE OF SANCTIONS IN INSOLVENCY CASES: THE DARK, HUMILIATING, AND RIDICULOUS SIDE OF THE LAW OF DEBT IN THE ITALIAN EXPERIENCE. A HISTORICAL OVERVIEW OF SHAMING PRACTICES

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Abstract

This study provides a diachronic comparative overview of how the law of debt has been applied by certain institutions in Italy. Specifically, it offers historical and comparative insights into the public performance of sanctions for insolvency through shaming and customary practices in Roman Imperial Law, in the Middle Ages, and in later periods.

The first part of the essay focuses on the Roman *bonorum cessio culo nudo super lapidem* and on the medieval customary institution called *pietra della vergogna* (stone of shame), which originates from the Roman model.

The second part of the essay analyzes the social function of the *zecca* and the *pittima Veneziana* during the Republic of Venice, and of the practice of *lu soldate a castighe* (no translation is possible).

The author uses a functionalist approach to apply some arguments and concepts from the current context to this historical analysis of ancient institutions that we would now consider ridiculous.

The article shows that the customary norms that play a crucial regulatory role in online interactions today can also be applied to the public square in the past. One of these tools is shaming. As is the case in contemporary online settings, in the public square in historic periods, shaming practices were used to enforce the rules of civility in a given community. Such practices can be seen as virtuous when they are intended for use as a tool to pursue positive change in forces entrenched in the culture, and thus

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to address social wrongs considered outside the reach of the law, or to address human rights abuses.

Indice Contributo

Keywords

Public Shaming - Diachronic Comparative Method - Pietra Della Vergogna – Pittima -Zecca - Functionalism

1. Introduction

This study provides a diachronic comparative overview of how the law of debt has been applied by certain institutions in Italy. Specifically, it offers historical and comparative insights into the public performance of sanctions for insolvency through shaming and customary practices in Roman Imperial Law, in the Middle Ages, and in later periods.

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To provide the international reader (who is not Italian or a civil lawyer) with a better understanding of these issues, I will discuss the meanings of certain legal concepts, categories, and institutions that cannot be translated directly from Italian into English[1]. When referring to those concepts, I either use the Italian or Latin term or a roughly equivalent English term. Moreover, I seek to provide adequate definitions and explanations for each of the categories I am using, and for the functions of the legal concepts cited[2].

Generally speaking, shame is considered a form of social control, which 'occurs when a person violates the norms of the community, and other people respond by publicly criticizing, avoiding, or ostracizing him'[3]. Shame can be distinguished from the largely self-imposed feeling of guilt because of the external element of public transgression/behavior and social enforcement[4]. In other words, guilt is falling short of individual and personal expectations, while shame is a violation of a norm group, and has an audience[5].

The definitional focus on the normative role of shame in the contemporary context is mainly provided by 'internet law scholarship', with a specific emphasis on the role

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[1] Susan Šarčević, *New approach to legal translation* (Kluwer Law International 1997) 145-160.

[2] Valentina Jacometti and Barbara Pozzo, *Traduttologia e Linguaggio Giuridico* (Wolters Kluwer Cedam 2018) 91-117.

[3] Eric Posner, *A terrible shame: Enforcing moral norms without law is no way to a virtuous society*, Slate, 9 April 2015 <https://slate.com/news-and-politics/2015/04/internet-shaming-the-legal-history-of-shame-and-its-costs-and benefits.html>.

[4] Kate Klonick, 'Re-shaming the debate: social norms, shame and regulation in an internet age' (2016) 75 Maryland Law Review, 1033.

[5] Jennifer Jacquet, *Is shame necessary: new uses for an old tool* (Pantheon Book 2015) 11-12.

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of norms in regulating the online environment. I use a functionalist approach[6] to apply some arguments and concepts from the current context to this historical analysis of historical institutions that we would now consider ridiculous. This paper shows that the customary norms that play a crucial regulatory role in online interactions today can also be applied to the public square in the past. One of these tools is shaming, and I dissect what happens when shaming goes awry. As is the case in contemporary online settings, in the public square in historic periods, shaming practices were used to enforce the rules of civility in a given community[7]. Such practices can be seen as virtuous when they are intended for use as a tool to pursue positive change in forces entrenched in the culture, and thus to address social wrongs considered outside the reach of the law, or to address human rights abuses. For example, shame campaigns have been waged against corporations to punish them for violating a perceived social norm or committing a moral wrong, or to pressure them to improve environmental standards. Such a campaign was waged against Facebook for its refusal to shut down a rape joke group[8].

At the same time, shaming also has a dark side, as it can become a brutal form of abuse that causes social withdrawal, depression, and anxiety in the person who is shamed, especially when the sanctions and the punishments are disproportionate to the social transgression; the perpetrators of the shaming are anonymous and diffuse;

[6] On functionalism and comparative law, see Ralph Michaels, 'The Functional method of comparative law' Duke Law School Legal Studies, research paper n. 87< http://ssrn.com/abstract=939826>; Jakko Husa and Jan M. Smits, 'A dialogue on comparative functionalism' (2011) 18 Maastricht Journal of European and Comparative Law, <http://ssrn.com/abstract=1965933>; Pier Giuseppe Monateri, 'Methods in comparative law: an intellectual overview' Pier Giuseppe Monateri (ed), *Methods of comparative law* (Edward Elgar Pub. 2013) 7-24, an electronic version is available at <http://papers.ssrn.com/sol3/paper.cfm?abstract_id=2151819>; James Gordley, 'The functional method' Pier Giuseppe Monateri (ed), *Methods of comparative law* (Edward Elgar Pub. 2013) 107-119. On functionalism and on the way in which it has been reconsidered throught the factual approach, see Michele Graziadei, 'The functionalism Heritage' Pierre Legrand and Roderick Munday (eds), *Comparative legal studies: Traditions and transitions* (CUP 2003) 100. On the necessity to over pass the formula of the *praesumpio similitudinis*, which is not enough to ensure a reliable map of similarities and divergences, as, instead, thought by Konrad Zweigert and Hein Kotz, *Introduzione al diritto comparato*, vol. I (Giuffrè 1988) 44, see Ugo Mattei, Teemu Ruskola and Antonio Gidi, *Schlesinger's comparative law* (7th edn, Thompson Reuters Foundation Press 2009) 70. For an analysis on the links between the textual approach and the functional approach, see Vivian Grosswald Curran, 'Cultural immersion, difference and categories in U.S. Comparative Law' (1998) 46 *Am. J. Comp. L.* 43-60.

[7] Lawrence Lessing, 'Social Meaning and social norms' (1996) 144 University of Pennsylvania Law Review 2181-89.

[8] Lizzy Davies, 'Facebook refuses to take down rape joke pages' The Guardian, 30 September 2011.

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and the shaming is immediate, reaches a worldwide audience, and is memorialized in Google search results[9].

2. The manus iniectio and la pietra della vergogna in ancient rome: personal executions and public spaces

In Rome, a public announcement of an individual's insolvency was made in the *Comitium*, and thus in the same place as the location where funeral ceremonies took place, and eulogies for the deceased were delivered. Thus, a 'reverse funeral' for the insolvent debtor, which affected the debtor as a person rather than his family of origin, resulted in the spectacle of a 'civil death' in a place crowded with images and symbols. At the time of Cicero, traces of such archaic 'concrete' laws persisted. However, the personal procedure for dealing with an insolvent debtor gradually – albeit much more slowly than has often been assumed – lost its most punishing elements and became depersonalized, and was thus 'softened'.

Only a few years after Cicero's orations, the 'spectacle' of the shaming of the insolvent debtor moved to another location, marking the transformation of ancient values and changes. The lack of a clear demarcation between personal and patrimonial executive procedures, which characterized the entire Ciceronian age, was overcome only gradually. However, in the Middle Ages, the legal culture returned to the use of humiliating and dark customs, which had probably survived through traces of past practices, and can be seen as *cryptotipical*[10]. In Italy, the personal executive procedure that mandated imprisonment as a penalty for debts was not abolished until the enactment of the 1942 Code. Even today, people may be subjected to various shaming practices through the media, newspapers, the web, and social networks, which have a broader diffusion, and can have more far-reaching effects on an individual's reputation, privacy, and life.

[9] Emily Laidlaw, 'On line shaming and right to privacy' (2017) 6 Laws 3.

[10] On the concept of legal formant sand criptotypes, see Rodolfo Sacco, 'Legal Formants: A Dynamic Approach to Comparative Law' (1991) 39 Am. Journ. Comp. Law 343, 401; Mauro Balestrieri, *La legge e l'arcaico. Genealogia comparata dell'ordine moderno* (Mimesis 2017).

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Under Julius Caesar (I BC), one of the Laws of the XII Tables was replaced: namely, the rule that stated that unsatisfied creditors were authorized to kill or enslave the defaulting debtor. The ancient institution that was abolished was called *manus iniectio*[11].

While this new punishment did not deprive the debtor of his physical life, it annihilated all of his personal dignity through a sort of 'civil death'.

It appears that the Roman legal culture at the time of Cicero (I BC) was still steeped in traces of archaism. It is well-known that archaic law was based on the ritual pronunciation of solemn words that were capable of determining reality. Thus, convictions were arrived at almost as if through magic. By contrast, later on law was based on both words and actions: i.e., on the ability to listen, which was, for example, prompted by touching the earlobe to invite a person to give witness (*aurem vellere*)[12]; but also by the ability to see, which required the concrete materialization of rights, powers, and forms of subjugation.

A living debtor, who was not a fugitive and had not defaulted on his debt, could be dealt with in different ways:› namely, through the '*funerale civile'* where the individual was not killed following a personal procedure, or through being *addictus* or *ductus,* which required the *compedes* to spend the rest of his life redeeming the debt by working as a slave for the creditor.

It is important to note that the 'civil death' took place *ante rostra,* and thus in the place where real funerals were celebrated, and the life and the actions of the deceased were praised.

The meaning and the relevance of the choice of this location for carrying out credit and debt practices have been studied and described by F. Coarelli[13], who analyzed the connections between the monuments that had the function of admonishing debtors

[11] Mario Varvaro, 'Gai 4.21 e la presunta manus iniectio ex lege Aquilia' Annali del Seminario giuridico della Università di Palermo AUPA (Giappichelli 2016) 335-347; Riccardo Cardilli, 'Damnas Esto e Manus Iniectio nella Lex Aquilia: un indizio paleografico?' (2014) 20 1 Fundamina on line at <https://journals.co.za/doi/pdf/10.10520/EJC159278>.

[12] Plinio, Naturalis Historia, 11, 103, 251 on line < https://www.latin.it/autore/plinio_il_vecchio/naturalis_historia>; Carla Masi Doria, 'Aurem vellere' AA.VV., *Iuris Vincula Studi in onore di M. Talamanca* (Napoli 2001) 314-342.

[13] Filippo Coarelli, *Il Foro romano. Periodo repubblicano e augusteo* (Quasar Edizioni1985).

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and compensating creditors. It is hardly necessary to emphasize the very significant ideological and symbolic value of this area of the *Comitium,* where l'*actio* took place in front of the '*niger lapis*'[14] (the black stone) and under the eyes and the *imperium* of the *pretor*, who had become the guardian of the peace among the citizens (creditors and debtors) a short time before being subordinated to the imperial majesty.

When insolvency was sanctioned in a public performance, the main character was the debtor, who was subjected to a ruthless personal execution, and, at the same time, to a harsh patrimonial procedure. The stage was a meeting place where the monuments were linked to the execution, particularly to the forced execution for debts[15]. Moreover, the show that was created through the system of monuments (*monumenta-monimenta)* had the power to transmit values and to call to mind specific images that were evocative of archaic traditions that were still salient in Cicero's Rome[16]. It is not by chance that scholars have underlined the existence of real and effective 'images of power'[17], and of the use of physical objects, artifacts, or monuments as a means of communicating and capturing legal traditions[18].

After what has been defined the '*invenzione del diritto in Occidente*'[19] and since the start of modernity, a 'forced execution' has normally been resolved within the jurisdiction

[14] Raimondo Santoro, 'Il tempo ed il luogo dell'actio prima della sua riduzione a strumento processuale' Annali del Seminario giuridico della Università di Palermo AUPA (Giappichelli 1991) 281 ss.

[15] Gianfranco Purpura, *La pubblica rappresentazione dell'insolvenza. Procedure esecutive personali e patrimoniali al tempo di Cicerone*, relazione al Convegno 'Lo spettacolo della giustizia a Roma: le orazioni di Cicerone' Palermo 7 marzo 2006, online at <https://www1.unipa.it/~dipstdir/portale/lo%20spettacolo%20della%20giustizia/Insolvenza.pdf> refers to the a specific zone between the Curia and the jail where the *subsellia tribunicia*, the 'court' of the *pretor*, the *tresviri capitales*, and the *Menia* column were located.

[16] Gianfranco Purpura, 'Luoghi del diritto, luoghi del potere' Annali del Seminario giuridico della Università di Palermo AUPA (Giappichelli 2005) 249-268.

[17] Paul Zanker, *Augusto e il potere delle immagini* (Bollati e Boringhieri 2006); ID., *Un'arte per l'impero. Funzione e intenzione delle immagini nel mondo antico* (Mondadori Electa 2002) 63-96.

[18] H. Patrick Glenn, *Legal traditions of the World. Sustainable Diversity in Law* (OUP 2014) 7-8; Rodolfo Sacco, *Il diritto muto. Neuroscienze, conoscenza tacita, valori condivisi* (Il Mulino 2015).

[19] Aldo Schiavone, *Ius. L'invenzione del diritto in Occidente* (Einaudi 2005).

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through a state enforcement procedure aimed at concretely satisfying the claims alleged and ascertained in a previous judgment[20].

By contrast, the most ancient practices were based on a complex set of ritualized acts that were performed in public by the active subject, the creditor, as a means of self-protection. At least initially, these acts were performed without any judicial intervention[21].

Until recently, modern juridical practices have reacted to the non-observance of duties by private individuals – even if these duties were derived from mandatory constraints – through the use of personal enforcement procedures that involved serious punishments of the debtor, such as the deprivation of liberty and various kinds of corporal and moral physical penalties.

In Italy, the regime of imprisonment for debts, which was provided for by the Napoleonic Code of 1804, and was adopted[22] in the Italian Civil Code of 1865, remained in force at least until the enactment of the Civil Code of 1942, except for some exempt cases enumerated in a law enacted in 1877.

In a reconstruction that goes beyond the assumption of the inability of ancient thought to conceive of a direct execution on the *res*, it is recognized that even when the creditor put 'his hands on' the insolvent debtor by implementing a personal

[20] Here I am referring to the judicial proceeding where the legal existence of the credit can be verified, proved, and declared in cases of litigation between the creditor and the debtor.

[21] Giovanni Nicosia, *Il processo privato romano. I. Le origini* (Giappichelli 1986) 87 ss.

[22] On the circulation and imitation of different models through legal transplants, see Alan Watson, 'Legal Transplants and law reform' (1972) 92 *L.Q.R.* 79 *et seq*.; Id., 'Law and legal change' (1978) 38 Camb. L. J. 313 *et seq*.; Id., 'Two-Tier Law, An approach to law making' (1978) 27 Int. & Comp. L. Q. 552 *et seq*.; Id., 'Legal change: sources of law and legal culture' (1983) 131 Un. Of Pennsylvania L. Rev. 1121 *et seq*.. With some criticisms on Watson theory, see Hotto Kahn-Freund, 'Book Review, Legal Transplants' (1975) 91 L.Q.R. 292 *et seq*.; William Twining, 'Diffusion of law: a global perspective' (2004) 49 1 Journal of Legal Pluralism 34-35; Id., *General jurisprudence: understanding law from a global perspective* (CUP 2009). On legal formants and circulation of models in the Italian literature, see again Rodolfo Sacco, 'Legal Formants: A Dynamic Approach to Comparative Law' (1991) 39 *Am. J. Comp. Law*, 1-34 and 343-402; Rodolfo Sacco and Antonio Gambaro, *Sistemi Giuridici Comparati* (Utet 1996) 4-7; Rodolfo Sacco, *Introduzione al diritto comparato* (Utet 1992) 43; Ugo Mattei, 'Why the wind changed. Intellectual leadership in western law' (1994) 42 Am. J. Comp. Law 195 *et seq*.; Alan Watson, 'From legal transplants to legal formants' (1995) 43 Am. J. Comp. Law 469 *et seq*.; Pier Giuseppe Monateri, 'Black Gaius' (2000) 51 Hastings LJ. 510-513.

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enforcement procedure, there was, at the same time, a type a patrimonial execution that aimed to restoring the assets of the creditor himself.

In short, the archaic *manus iniectio* was not exercised only to exact revenge or to subjugate the debtor while inducing his relatives and friends to pay back the debt, but also to lay claim to his labor and to take possession of any surviving assets during the state of subjugation. This state could last a long time, causing the *addictus* (forced) to adapt the condition of the *nexus,* and thus to more or less voluntarily submit to being subjugated.

On the other hand, if the very ancient practice taking of possession of the debtor's things (*pignoris capio*) has not gained ground on the use of *manus iniectio* as a procedure aimed at reinstating the property of the creditor, it is because the latter achieves a public and sacral effect of punishing the debtor that goes beyond the goal of ensuring that the debt is repaid.

It has generally been observed that at the end of the republican age, the *praetor* was induced to create a means of execution based on assets, which had long held a position secondary to that of personal execution. Such remedies ended up being of primary importance, and their field of application was increasingly extended. For instance, modern codes provided for imprisonment for debts, and the *glossa* to the '*Institutiones*'[23] mentioned the procedure of '*bonorum cessio culo nudo super lapidem*' for insolvent debtors.

This custom, which was connected to the '*pietra della vergogna*' or '*vituperium*', spread rapidly throughout the imperial territories, and lasted for a long period of time, even after the end of the empire. In the early years of the empire, under Tiberius (I AC), there were numerous executions for the non-payment of large debts. Thus, the application of this new custom was hailed as an act of relative leniency by the public powers.

The debtors were taken to the *Campidoglio* and exposed to public mockery, stripped from the waist down and obliged to participate in the *'bonorum cessio culo nudo super*

[23] *Glossa alle Istituzioni* IV, 6, 40.

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lapidem': to sell their assets (to the auctioneers) while sitting with bare buttocks on a stone[24].

In front of everyone, the condemned man had to shout three times *'Cedo bona'* – that is, 'I surrender my property' – while he sat with his clothes pulled up in front of a crowd who mocked him. The figure of a lion was carved on the stone that was placed in front of the *Campidoglio* in Rome.

After the insolvency declaration and the related conviction, the creditors could no longer retaliate against the debtor after he had transferred his assets as compensation. As the era of the bankruptcy judge was still to come, the recovery arrangements were quickly decreed and carried out in the public square. The public performance served to warn all people to behave correctly, and to follow good practices in their business and trade relationships.

3. In the Middle Ages and in later periods

The expressions '*la pietra dello scandalo,*' '*la pietra della vergogna,*' and '*la pietra del vituperio,*' are still widely used in Italy. They refer to the practice of exposing the debtor to public mockery in a scandalous way that leads to him being ridiculed. Today it is only as a symbolic saying, because this custom is no longer practiced. While the phrase 'stone of scandal' is still widely employed, few people who invoke it stop to wonder why a stone is associated with a scandal.

In Turin, people still say '*andare dal culo*', which can be translated literally as 'going from the ass.' It is a popular saying that comes from the practice of forcing the debtor to beat his backside on the stone while shouting '*cedo bona*' in front of everyone. The punishment was carried out with great clamor from the crowd near the old Tower of the City, which stood in the current *Via Garibaldi*, and has since disappeared.

[24] Juan Alfredo Obarrio Moreno, 'The Cessio Bonorum in the Medieval Legal Tradition' (2016) 443 Glossae: Eur. J. Legal Hist. on line < https://www.glossae.eu/wp-content/uploads/2016/11/Obarrio-Cessio-bonorum.pdf>.

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While the popular phrase 'to go from the ass' (to fail) is more common than '*batè 'l cul sla pera*' (beating your ass on the stone), that latter gives a better sense of this very old custom.

Economic enterprises that end badly are described with the expression '*finì cont el cü per tearra*' in the Milanese dialect; '*restà a cul biòt'* (naked) in the Piedmont dialect; and '*dâ du cù in ta ciappa*' in the Genoese dialect.

Actually, these idioms are widespread throughout Italy, because they all derive from the same customary practice and law.

The 'stones of scandal,' also known as 'stones of infamy' or 'stones of failures,' were scattered throughout Italy, even outside of the big cities. Some of these stones are still visible today.

In San Donato Valdicomino (Frosinone), there is the 16th-century *pietra di San Bernardino* (promoter of the *Monti di Pietà*), where the debtor had to sit uninterruptedly with bare buttocks for a period of time proportionate to the size of his debt.

In Rimini, under the *portico* of the *Palazzo dell'Arengo*, where justice was publicly administered among the bankers and notaries, there was a large stone (*lapis magnum*) where the condemned man had to beat his bare bottom three times and with violence, shouting each time: '*Cedo bona!*' (I sell my assets!).

In Asti, the stone of shame is now hanging vertically in the atrium of the town hall, but it was once in the center of the main square where the markets were held.

In Genoa, the stone was located near the fish market and *Palazzo San Giorgio*. In Bergamo, it was a seat attached to one of the two columns in *Piazza Vecchia*. In Milan, it was a block of black granite located in *Piazza Mercanti*.

The punishment in Florence had a precise name, '*the Acculata*,' and took place in the *Loggia del Porcellino* in the new market. The stone, which is still visible today, was a circle of six segments of marble representing the Carroccio wheel, a symbol of legality.

In Florence, the magistrate of the *Bargello* chanted aloud the name of the condemned man and the reason for the sentence during hours when the market was full. The debtor then lowered his breeches, was grabbed by the arms and legs, and was made to swing over the crowd '*ostentando pubenda*;' which can be translated as 'showing the

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lower parts of the body'. Finally, as the crowd laughed, the debtor dropped to '*percutiendo lapidem culo nudo*'.

Similar performances also took place also in Salaparuta in Sicily, where the stone can still be seen in the city center. Its former use is evoked by a colorful Sicilian expression to indicate insolvency: '*sugnu cu culu 'nterra*;' literally: 'I find myself with my back on the ground'.

In Modena, the treatment of debtors was particularly cruel. The city used the '*ringadora*' stone, which is gigantic block of red Veronese marble that is now located at the corner of the *Palazzo Comunale* in *Piazza Grande*, to punish debtors. An ordinance of the Citizen Statute of 1420 prescribed that the debtor must be led there for three consecutive Saturdays (a market day), and go around the square three times preceded by trumpeters to attract attention. At every turn, the debtor was pushed to '*dare a culo nudo su la petra rengadora la quale sia ben unta da trementina*,' which can be translated as 'to stay with a bare backside on the *rengadora* stone, which is well-oiled with turpentine'. Thus, the debtor was made to suffer, and not just because of shame (!).

Today, when people in Abruzzo want to emphasize that a certain person is in bad economic straits, they still say that he *'ha misse lu cule a lu tùmmere'* (he has put his bottom on the *tomolo*). The dialect word *tùmmere* derives from *tomolo,* and indicates not only an agrarian measure of surface (2,700 square meters), but also a measure of capacity for cereals, especially wheat, equivalent to about 44 kg.

Lu tùmmere was made of stone, and its shape recalled that of some ancient mortar stones where salt and spices were ground, and which today are highly sought after for furnishing rustic settings, or for use as ornaments in modern apartments. In Roccaraso and in other Abruzzo town centers, there was a kind of public *tùmmere* that was used for measuring the quantity of cereals given on loan, and for measuring the cereals when they were returned with a certain quantity added. The function of this vessel was probably to establish a fixed point of reference in an economy often regulated by barter, thus obviating the need to change the regulations if the currency had depreciated when the sale was made.

However, people who had borrowed a certain quantity of cereals, as measured at the *tùmmere*, were not always able to return the same amount, especially if the harvest was

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ruined due to drought or other poor weather conditions. The creditor then had two options to seek compensation for the damage suffered: i.e., to take the normal path of justice, or to take revenge in a more unusual way. On a day and at a time previously communicated to the debtor, the creditor could force the debtor to go to the place where the *tùmmere* was located and to remain seated there for a certain period of time with his behind completely naked, and thus exposed to stinging taunts or to the pity of passersby[25].

In Pescocostanzo, the stone of shame was located at the foot of the steps of the church of *Santa Maria del Colle*. In this city, a person who had substantial debts and could not repay them was obliged to attend the main mass celebrated on Sunday. After the blessing, he had to quickly descend the staircase to reach the place where the *tùmmere* was located. He then had to drop his trousers, and to remain seated until the last faithful man had left the church. After voluntarily exposing himself to the pillory, he no longer had any debts. By ancient custom, the creditors could no longer legally prosecute him. There were no known instances in which some poor devil, after sitting on the *tùmmere*, still received pressure from creditors. Thus, there was a kind of honor code that was respected by both sides[26]. With the passage of time, the infamous punishment of the *tùmmere* was extended to a series of other crimes. As D'Antonio reported: 'In Pescocostanzo, in the case of *abigeato* (which was the theft of animals, such as sheeps, cows…), the prosecuted was led to the public square and, after a summary judgment, in the presence of all the people summoned for that occasion, was condemned to contempt and flogging. Leaning against a stone stool, he had to show his backside to the people, uncovering himself amid the laughter and contempt of all; and then he was whipped'[27].

According to Luigi Braccili, in Castilenti, in the province of Teramo, 'a large parallelepiped stone called *tomolo* still exists today. Today the stone is found at the foot of a large elm at the beginning of an avenue of the town's ring road, but once it was

[25] Franco Cercone, 'La Pietra della Vergogna e la Zacca nella Tradizione Popolare Abbruzzese' (1979) 45 1 Lares 59-60.

[26] Ibid, 61

[27] The translation presented here proposed is by the author, from the Italian scholar Antonio D'Antonio, *Villalgo. Storia, leggende, usi, costume* (Editrice Italica 1976) 79.

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placed in the square at the end of an inclined plane leading to the mother church. Lu *tòmmele*, as the big stone is still called, was used to seat those who became bankrupt. In a certain sense it was a kind of pillory, an ungenerous means of exposing to teasing those who had not been able to keep their financial commitments'[28].

Even today, in the area of the Fino Valley, a person who becomes bankrupt is described as '*quello ha messo il culo a lu…tommole*;' which can be translated as 'that put his ass to *lu ... tòmmole*'.

The rite took place in the main square of the town at the exit of the main mass, around half past 11 on Sunday and in the presence of almost the entire population of Castilenti. The poor bankrupt man had to expose his backside and sit several times on the *tomolo*, shouting each time he sat on the stone: *'tommolo è uno, tommolo è due, tommolo è tre,'* etc. Of course, the number of sessions mandated depended on the extent of the failure. For the merchants of the Fino Valley, suffering the stigma of participating in the rite of sitting on the *tomolo* in the square of Castilenti meant that they were then able to return to engaging in business.

After the rite was forbidden, the *tomolo* was removed from the main square and was placed on the outskirts of the town, as if to demonstrate to the people of Castilenti that civilization had rightly purged a custom that was considered medieval.

According to some authors, this ancient legal tradition was also in force in Vasto, where the '*Piazzetta del tomolo*' still exists; and in Ortona, where vessels from the Roman period were used as *tummere* for public measures for cereals, and were then placed at the entrance of *Palazzo Farnese*.

Moreover, in Sulmona, 'in the small square called Nunzio Federico Faraglia [...] which even before had the name of *Piazza del Pesce*, there was a large and thick stone slab called the stirrups. In ancient times, perhaps in the century XVI, the stubborn debtors were forced to beat their naked backside three times on that stone'[29].

[28] Ut supra, the translation here proposed is by the author, from the Italian scholar Luigi Braccili, *Folk in Abbruzzo* (Tipografia Arte della Stampa 1973) 30.

[29] Ut supra, the translation here proposed is by the author, from the Italian scholar Francesco Sardi De Letto, *La città di Sulmona. Impressioni storiche e divagazioni* (Tipografia Labor 1972) 154.

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Lu tùmmere was a popular juridical custom that was very well known in Abruzzo, and that may have been in force as late as the 17th century. If it were still practice today, it would lead to substantial disruptions of the social life of our towns and cities, due to the many 'false bankruptcies' filed by contemporary traders. We would thus see endless lines of individuals who were waiting quietly, reading the newspaper while awaiting their turn to sit on the *tummere* and declare their well-calculated bankruptcy.

In the cases described above, public shaming had a precise compensative function: i.e., shame was demanded instead of money or assets to pay off the debts. Thus, shaming took the place of satisfying the creditors.

To a contemporary observer with a state-based conception of justice, such forms of public shaming would likely appear to be overdetermined punishments with indeterminate social meanings, or to be poorly calibrated or disproportionate forms of punishment that lacked precision in terms of who and what was being punished. The historical perspective shows us the viability of the legal, normative, private, but also public solution of shaming as a practice intended to enforce substantive norms. These practices had a similar function compared to the shaming which occurs today online, albeit in a more pervasive way[30]. But, looking at certain effects, it was more favorable to the debtor, because after the public performance the debt was intended as solved.

4. The zecca in abruzzo and the pittima veneziana. The juridical and social functions of these figures in the institutional structure

The word *zecca* can be translated into English as tick, which is a parasitic arachnid that attaches itself to the skin of a terrestrial vertebrate from which it sucks blood, leaving the host when sated and sometimes transmitting diseases.

In some Italian regions, the word was used to refer to a person who was empowered by the city administration to collect taxes, or who was hired by a private person (a

[30] Kate Klonick, 'Re-shaming the debate: Social norms, shame, and regulation in an internet age' (2016) 75 4 Maryland Law Review 1029. <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3720&context=mlr>.

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creditor) to demand payment from a debtor. In both cases, the *zecca* received a percentage of the recovered amount of money as payment for his services.

According to an ancient custom, neither the public administration nor the private creditor could order the *zecca* to go to the debtor's house, which was considered sacred. The *zecca's* efforts at persuasion could took place only in the public streets and squares. The stage on which the debtor was held accountable was outdoors, as we will see was also the case for the *pittima*. The debt collector wandered through the streets and squares of the town waiting for the debtor, and then, with two blows on his shoulder, reminded him to pay the debt.

The *zecca* did not have any qualms about carrying out his task even when the debtor was with other people. Thus, the debtor's friends, as well as strangers, were made aware of his unfortunate economic situation, which could seriously damage his image, reputation, and name.

The only way for a debtor who did not want to pay or who could not pay to escape from the *zecca* was to stand with his shoulder in front of and alongside the wall of a private house, where, according to a customary rule that was widely followed in Abruzzo, the *zecca* could not continue to pursue the debtor. Thus, the wall gave the debtor a degree of protection or immunity from prosecution. It is likely that the Italian expression '*mettere qualcuno con le spalle al muro*,' which can be translated as 'pushing someone with his shoulder close to the wall,' comes from this practice. Indeed, it now means 'forcing someone not to move anymore'[31], and it can be used in a literal or a metaphorical sense.

Pittima is a term that was used particularly in the maritime republics of Venice and Genoa, but also in Naples, to refer to a person who was paid by creditors to constantly follow their debtors. He was a sort of debt collector whose job was to remind debtors that they had to pay off their debts. The *pittima* could scream loudly to embarrass the debtor, and his constant stalking was intended to exhaust the debtor so that he would decide to pay what he owed. Upon collection of the debt, the *pittima* would earn a certain percentage of the amount collected.

[31] Franco Cercone, cited 62.

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The *pittima* wore red so that everyone would know that he was chasing and pestering a defaulting debtor. This spectacle served to heighten the embarrassment of the individual who was being tailed by the *pittima*.

In the Serenissima Republic of Venice, a *pittima* was usually recruited from among the marginalized and disadvantaged residents of the city-state, who benefited from certain forms of social assistance provided by the *doge,* including public canteens and hostels reserved for their use. However, the individuals who took on the role of the *pittima* had to make themselves available upon the request of the republic's institutions. If the stalked debtor tried to harm these institutional figures, he could be punished.

This system, which was fully integrated into the social structure of the Serenissima, helped to ensure that accounts were settled, and the reputation of the Republic was upheld. Hence, defaults by debtors were discouraged, and the economic system was protected. Creditors had to be defended to preserve the good name of the Republic of Venice, which was a major commercial center.

However, this form of debt collection was not a private initiative, as in Venice, the defense of creditors was seen as a state affair. Thus, the *pittimas* were protected by law, and while they were not public officials, they served a public function. As was mentioned above, the *pittimas* were chosen from among the poor people who were receiving social assistance from the state, and who were allowed to use canteens and public dormitories. To repay this assistance, they had to agree to act as a *pittima* when the authorities asked them to, and they were also permitted to keep a percentage of the sum repaid. In short, being a *pittima* was an institutional assignment, and was therefore seen as socially useful work.

The same figure, with the same name and the same position, also existed in the maritime Republic of Genoa. Institutional models tend to be shared and imitated across systems that have similar problems and needs. Thus, the solutions to the problem of debt collection were similar in these maritime republics, where trade was the lifeblood, and the very life of the state[32] depended on its smooth functioning.

[32] There is a huge body of comparative law literature on the reasons why a juridical solution, a legal model, or a rule might circulate and be imitated in other juridical contexts, starting with Alan Watson's studies, and continuing with debates about different theories and approaches. Among these reasons are, generally, the prestige of the imitated model or its economic efficiencies or rhetorical and hegemonic narratives, and the

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In Abruzzo, in the area of Teramo, the *zecca* was called the *pittima*. As L. Braccili explained: '[I]t often happened that in the most heated moments of a discussion, perhaps between friends of a certain importance around a table, [the *pittima*] would approach someone and, after having patted one of the interlocutors on the shoulder, would suddenly distract him from the fervor of the discussion, saying something like: 'Remember that the debt you have with Tizio is still waiting to be paid and it's time to pay it off, don't you think?' The *pittima*, in doing so, was performing the job the creditor had paid him to do […]. Sometimes it happened that the *pittima*, while trying to persuade the debtor, was hit, punched, or slapped by the latter. In this case, the expenses for the mistreatment were paid by the creditor-employer-client. Being beaten by the victims of his solicitations was not the only risk for the *pittima* [...] When he entered a public place, there were more than a few who turned their backs on him. [...] Marginalized from the world of friendship, the *pittima* put more effort into his work, thus increasing the negative reactions of those who had to undergo his constant solicitations'[33].

The *pittima* had both a social and a moral role. Indeed, he could be seen as a guarantor of rules of good conduct.

Today, the word *pittima* refers to a person who always complains, is insistent, and is pedantic.

To understand the etymology of the word, we must go back to ancient Greek. The origin is linked to the Greek term ἐπίθεμα, which means 'what is placed above'. This word also refers to a kind of bandage or poultice used for therapeutic purposes. The application of a bandage can lead the person who wears it to feel annoyed or embarrassed, as his mobility is limited. This original meaning later changed as the term came to refer to an annoying person. In the Venetian and Genoese dialects, the term

capacity of the imitated model to respond to the underlying social needs. In particular, in Monateri's theory, the main aspects of the import/export of rules and legal categories as crucial points in comparative law and politics are: 1) that normally, the process is not governed by the exporting party, but by the importing actors, and according to local strategies; 2) that because most of the legal systems in the world are 'hybrids,' 'pure' models are isolated historical cases, and are therefore relatively unimportant when considering how law really works in the global legal landscape. Pier Giuseppe Monateri, 'The 'Weak Law: Contaminations And Legal Cultures. Borrowing Of Legal and Political Forms' (2003) 13 Transnational Law & Contemporary Probs 575.

[33] Luigi Braccili, cited 56-58. The translation is by the author.

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has come to mean a lamentable person. This meaning was derived from the figure of the noisy debt collector.

The phrases in which the term *pittima* is most commonly used today are '*Ti xe proprio na pittima!*' (You're really someone who constantly complains about nothing!) in the Venetian dialect, and '*T'ê pròpio 'na pìtima!*' in the Genoese dialect. The term is also used in the Florentine dialect, and it still appears among the entries in the *Garzanti* Italian dictionary, which defines a *pittima* as 'a boring person who constantly complains about little things'.

The *Treccani* dictionary defines the term similarly. The etymology it provides (lat. Late epithĕma, from the Gr. Ἐπίθεμα, propri. 'What is placed above') states that the original meaning of *pittima* is a 'compress for therapeutic purposes,' from which the meaning of 'annoying person' was derived. A comparison with the word 'poultice' is suggested.

Beyond the ancient origin of the term, its current social implications remain fascinating. There is a beautiful song by Fabrizio De André that refers to it, and that can help people today better understand it. This song, '*A' pittima*', is on the album *Creuza de mä*.

The social function of the *pittima* can be recognized in another customary institution, '*lu soldate a castigo*', which was quite common in many areas of Italy where the land was the main patrimonial asset, mainly during the Bourbon dynasty.

In cases of non-payment or evasion of land taxes, a soldier or a policeman entered the house of a debtor and started living there, and ate and slept with the debtor's family until the taxes due had been paid. A debtor who had a '*soldate*' in the house typically tried very hard to hide his presence in the house from other people, as it indicated the dire economic situation of the family. Usually, however, after a soldier arrived in a debtor's house, the news spread quickly in the neighborhood, bringing shame and dishonor on the debtor.

5. Some insights into contemporary shaming practices. Concluding remarks

In the introduction of this paper, I referred to online shaming practices, and to the literature on such worldwide, communitarian, and spontaneous shaming practices in

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order to define shaming as a social sanction. However, it is important to underline that contemporary governments, as well as public administrators, judges, and state entities, can also use shaming, particularly in the form of 'regulatory shaming'[34]. This form of shaming refers to the publication of negative information by public institutions or agencies about private regulated bodies, mostly corporations, in order to pursue public interest goals[35]. For example, in Italy, the agency that is responsible for investigating tax evasion and collecting taxes has the power to publish data on tax evaders. Moreover, in many legal systems, certain courts have the power to order the publication of judgements that provide for the payment of punitive or compensative damages in mass tort law cases. For example, in Indonesia, Brazil, and the United Kingdom[36], institutionalized practices of 'naming and shaming' have been used to publicly disclose the names of companies that do not comply with minimum wage regulations.

It is evident that such practices are expressions of a democratic regulatory approach, which suggests that shaming tactics can be legitimately and efficiently used in the public interest. Thus, these forms of shaming are quite different from private shaming.

The shaming of private individuals by other private individuals has changed in the internet era. In the past, private shaming mainly took the form of a statement being made about a person or a corporation in a physical public space where other people could hear it, or could read it if it was written. This type of shaming, which is generally regulated through defamation laws, is no longer the main arena of shaming practices[37], as communication tools and mass media have broadly changed the epistemic identity of communities[38]. The spread of social media networks, as well as of other online platforms, has increased the damage that public statements can inflict, as these

[34] Sharon Yadin, 'Regulatory Shaming' (2019) 49 Enviromental Law 407-451.

[35] Ibidem.

[36] The list of companies that were not paying the minimum wage in the UK has been published on the government's institutional website, at http://www.gov.uk/government/news/record-number-of-employers-named-and-shamed-for-underpaying.

[37] Jon Ronson, *So you've been publicly shamed* (Riverhead Books 2015).

[38] H. Patrick Glenn, cited, (OUP 2014) 21-22.

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statements can reach a wide audience in few seconds, thereby amplifying the adverse effects of shaming[39] and the harm to the person being shamed, as well as to others in her/his circle. Indeed, in extreme cases, shaming statements can even lead to the loss of life. The contemporary form of 'lynch-mob justice' can be considered a type of private shaming (perpetrated by individuals), even if it done by a mob of individuals. This type of shaming, which occurs outside the realm of formal legal proceedings[40], is often used as a kind of social justice tool to punish a person who, according to the shamers, has acted illegally or immorally. But in many cases, this kind of shaming is itself immoral, undemocratic, and disproportionate.

In scholarly debates, private shaming is considered by some authors to be a harmful social practice that should be eliminated[41], while others see it as an effective civilian 'punishment' that can achieve commendable outcomes and maintain civil order[42]. The latter group argue that shaming is generally intended as a democratic practice and an expression of freedom of speech that can successfully bypass slow and costly governmental bureaucracy and justice.

Shaming performed by governmental actors (regulatory) is very different from civilian-private forms of shaming. From a historical perspective, the Western legal tradition[43] has discussed governmental shaming as part of the state's punishment doctrine, whereby shaming is mainly applied by the courts to individuals or companies

[39] Ronen Perry and Tal Z. Zarsky, 'Liability for online anonymous speech: comparative and economic analyses' (2014) 5 J. Eur. Tort L. 205-206.

[40] Daniel Solove, *The future of reputation: gossip, rumor, and privacy on the Internet* (Yale University Press 2007) 80, 92 full text available at <https://ssrn.com/abstract=2899125>.

[41] Martha C. Nussbaum, *Hiding from Humanity: Disgust, shame, and the law* (Princeton University Press 2004) 321.

[42] Amkitai Etzioni, The monochrome Society (Princeton University Press 2003) 42.

[43] On the concept of Western legal tradition, John Henry Merryman, *The civil law tradition. An introduction to the legal systems of western Europe and Latin America* (Stanford University Press 1969) 2. According to the author, 'A legal tradition, as the term implies, is not a set of rules of law about contracts, corporations, and crimes, although such rules will almost always be in some sense a reflection of that tradition. Rather it is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective'.

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who are charged under criminal law as an alternative to the use of traditional sanctions (incarceration, penalties, or license revocation).

The diachronic comparative analysis presented here has shown that the history of legal shaming was rooted in punishments, such as public beating and mockery, that included a component of public moral denunciation, and that were characterized by a strong stigmatization of the illegal act. Thus, public shaming was intended to prevent future damages to the group. The goal of these punishments was to reinforce pervading social norms and a law-abiding culture by denouncing the non-conforming behavior of the shamed individual[44]. While in the past, criminal shaming was executed by simple technical means, as was illustrated above through the examples of the *pietra della vergogna,* the *pittima,* and the *zecca*; today these punishments have been replaced by other measures that are less extreme, but that serve the same function. Contemporary regulatory-governmental shaming proceedings are often mandated by courts, as the defendant may, for example, be ordered to publish an apology in the newspaper for the unlawful act.

The ridiculous and humiliating practices that this historical analysis has described can be seen as the ancestors of regulatory shaming, rather than of private shaming (perpetrated by civilians), as customary rules provided mechanisms through which the entire community (in the case of the *pietra della vergogna*), or a specific figure with public relevance (the *zecca,* the *pittima,* or the *suldate a castighe*) undertook shaming as a communitarian (*pietra della vergogna*) or governmental strategy (*pittima* and *zecca*).

Those were institutions that expressed disapproval with the intention of eliciting the condemnation of others who were made aware of the shaming: i.e., they were social processes of expressing disapproval with the intention of invoking remorse in the shamed person[45].

In the past and in the present, regulation by shaming is utilized to help in enforcing administrative or civil norms, and not only to punish and deter criminal behavior.

[44] Dan M Kahan, 'What do alternative sanctions mean?' (1996) 63 U. Chi. L. Rev. 591 et seq.

[45] John Braithwaite, *Crime, Shame, and reintegration* (CUP 1989) 100.

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Today, it can even be used in connection with corporate moral and social responsibilities, and in situations in which no legal norms have been breached.

While a detailed discussion of contemporary legal systems is beyond the scope of this diachronic comparative analysis, it is worth noting that regulatory shaming is a useful strategy from both a normative and a practical perspective for three main reasons.

First, it is inherently efficient, as it can achieve goals more quickly, more simply, and at less expense than other enforcement tools.

Second, it encourages citizens to play an active role in the regulatory process by promoting cooperation, democratic values, and trust between citizens and their government, their bureaucracies and legal systems, and the corporations themselves at a time when this trust is being eroded.

Third, unlike in the past, in the current context, regulatory shaming does not affect regulated corporations in the same way that shame affects individuals psychologically and personally. Thus, today, regulatory shaming can be considered a softer and more proportional tool when compared to other sanctions and enforcement strategies, such as criminal or administrative proceedings[46].

[46] Sharon Yadin, cited (2019) 411.

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