

## **Performing the repentant lover under courtroom and public surveillance: An analysis of the Oscar Pistorius trial**

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### **Abstract**

Michel Foucault (1977) presented social theorists with a consideration of power as existing everywhere. Furthermore, Jonathan Heaney (2013) recently asserted that emotions and power should be considered conceptual counterparts. In this chapter, I propose that what Foucault considered the omnipresence of power refers to its deeply social connection to emotions as they are experienced in certain locations. To exemplify, I present an analysis of the trial of Oscar Pistorius as it took place in the High Court of Pretoria. His example is significant as it offers the space to link conceptually romantic love to power, as the famous athlete attempts to recreate his sense of exemplary masculinity through the performance of *the repentant lover* role, in relation to the courtroom as a discourse of power, enhanced by digital surveillance. The analysis plays on two levels: a) firstly, through his courtroom interactions with the judge, and b) through manipulating the public gaze to his advantage. As such, the televised South African courtroom becomes a space for the portrayal of a power-suffused masculine identity, which is flexibly reconstituted through emotional *control* and emotional *release*; in relation to this, the courtroom's design serves as a space for the accused's emotional containment. Lastly, my own self-reflexive involvement in the analysis of the trial contributes to a distinct experience of surveying his performance, reversing the gendered gaze and *othering* the male self.

**Keywords:** *courtroom, masculinity, South Africa(n), emotions, power*

### **1. Love & murder from a private room to a public courtroom**

Paula Meth (2017) argues that the pervasive culture of violence in South Africa is borne out of social inequalities across racial, gendered and classed lines, and augmented by the design of domestic spaces in urban areas. In her view places and spaces have a constitutive role in everyday relations of power and the perpetuation of violence. In large urban settings such as Cape Town, the high rate of crimes have led to the development of a programme for Violence Prevention through Urban Upgrading (VPUU) seeking to re-construct public spaces, to reduce violence and increase public safety. However, the boundaries between public violence and private violence are permeable in South Africa, as the home is the main site for the perpetuation of gendered abuse, mostly instigated by the design of certain spaces (such as shabbily built homes which attract predatory behaviours in poor areas). Yet public spaces can also be used as sites for intimacy and redemption, through social agents' emotional performance of their personal troubles, in situations when the safely protected homes of the rich become publicly scrutinized due to gender-based violence. Such acts indicate how love and power contribute in the creation of permeable boundaries between the two spheres.

To illustrate the links between architectural design and emotions as constitutive elements in the production of power (Heaney, 2013), I focus in this chapter on the highly mediatized case study of the athlete Oscar Pistorius, accused of the murder of his girlfriend, the model Reeva Steenkamp, which took place on the 14<sup>th</sup> of February 2013. According to press releases, the case was summarised in lyrical terms by Judge Eric Leah, who in December 2015 re-convicted Pistorius of murder, after the initial sentencing was over-ruled:

“A young man overcomes huge physical disabilities to reach Olympian heights as an athlete. In doing so he becomes an international celebrity, he meets a young woman of great natural beauty and a successful model,

romance blossoms, and then, ironically on Valentine's Day, all is destroyed when he takes her life."

Paradoxically the events that took place in Oscar Pistorius' home on the 14<sup>th</sup> of February 2013 echo the themes of martyrdom and redemption present in the original story of the formation of Saint Valentine's Day (Schmidt, 1993). What is particularly significant about this case is that it serves as a canvas to explore the intersections of racial, gendered and class-based privilege in a specific setting. The South-African courtroom is particularly interesting as it provides the space for the temporary emotional containment of the endemic violence that forms part of everyday life in the region. The trial of Oscar Pistorius, a South African public icon and amputee athlete who competed in Olympic championships, began in the North Gauteng High Court in Pretoria in April 2014, one year following his conviction. The trial was streamed online through SABC NEWS (a South African public broadcaster) and SkyNews (a general broadcaster) and was therefore easily accessible world-wide to members of the public with an internet connection or access to a television. The material I use for analysis in this chapter relies on online videos of the trial, and on my reading of several news pieces about the trial, published between February 2012 and January 2018.

### *Theoretical backdrop*

The framework I employ to support my reflections is Michel Foucault's theoretical consideration of Jeremy Bentham's Panopticon (1977) but also his later development of the concept of *technologies of the self* (1988). In this analysis I follow Foucault in considering the panopticon as a symbol of power and control, but I transpose it from Bentham's specific architectural prison model to the space of the modern South African courtroom, panoptically constituted through digital surveillance. As such, in the South African courtroom, on the one hand the architectural space is designed to enact control and order, while on the other hand the

insertion of filming cameras which broadcast the trial to the wider public enact a form of mass surveillance. The power of the legal institution is therefore enacted through a combination of architectural and technological modalities. In addition, I offer a reconsideration of the architectural space as it contributes to the containment of violence in the South African setting, establishing links between the exercise of power and the expression of emotions (Heaney, 2013). My main argument is that in interactions with these processes, Pistorius used his body alongside his emotionality as technologies of self, to construct a repentant lover performance that helped him transform from an *object* of power to an *agent* of power and manipulate the disciplining force of the gaze to achieve a privileged sentencing.

#### *A virtual panopticon*

The word *panopticon* stems from Greek and means “all seeing”. Applied to surveillance technologies it refers to the act of making the controlled subject “seen” while taking away his power to “see,” turning him into an “object of information, never a subject in communication” (p. 200, Foucault, 1977). But before becoming a prisoner, the accused, privileged by his race (White), gender (man) and above-all social status (famous), might use digital surveillance to resist the power of the court. From this perspective and following on from Foucault, power in the courtroom is reconstituted through perceptual *visibles* and *invisibles*. In the present example, the *visibles* are: the courtroom, Pistorius’s body and his displays of emotion (crying), while the *invisible* is represented by the observant public gaze, physically present in the courtroom only through cameras, and therefore enhancing the court’s power through the unseen and unexpected potential of multiple moral gazes, those of the audience.

The courtroom is an architectural system of control, and in this specific case it is symbolic of the functioning of South African power. This power relies materially upon the architecture, that supports it, and is reflected in its design. Unlike the Constitutional Court in

Johannesburg, built to reflect an inclusive and democratic society following the conflicts of the apartheid era (Noble, 2011), the North Gauteng High Court in Pretoria was not built to have a self-standing identity, but forms part of the reformed and fragmented apparatus of judicial power currently operating in the reformed South African landscape. Information on its original architect is scarce (Ellis, 2010); it is likely the commissioned work of the local public administration. Frequently in the media, it appears ‘compiled’ together with its other branch, the South Gauteng court in Johannesburg. The North Gauteng High Court in Pretoria was not designed in the Dutch Architect’s Sytze Wierda’s colonial style exemplified in the Palace of Justice, nor does it completely emulate Gordon Leith’s round dome imperial architecture depicted in the South Gauteng High Court in Johannesburg. To my eye, it appears as a *hidden* hybrid, a mix of the imperial style of the South Court with a functional and modern finish (Noble, 2008). This aspect of the hidden is also re-emphasized by its location, as the building is placed right behind the Palace of Justice.

#### *The emotional elements of architecture*

In this context, I propose that even as he is constrained by the disciplining aspect of legislative power, Pistorius uses his agency, at key moments in the trial through either controlling or releasing his emotions, to *maintain* a set of privileges, previously conferred to him by his status, his race and his gender. His performance was enhanced by the courtroom design meant to architecturally symbolize the application of reason and order, with the aim of containing violence (Spaulding, 2012).

The pervasive nature of crime in South African culture influences how safety is understood and how urban buildings are designed (Awol, 2016). The North Gauteng Court in Pretoria has a rectangular shape, made of massive dark wood, with neatly organised silos, symmetrically delineating the side of the law and the side of public, that of the defence and the

prosecution. Even if this design reflects the Foucauldian principle of *partitioning* as “each individual has his own place; and each place its individual” (p. 143, 1977), one is left to consider what makes this particular courtroom special? My interpretation is that the space, not initially designed according to a panoptic structure, becomes as such due to the presence of the cameras colluding with the fame of the accused, and thus brings the audience into the courtroom. This creates a hyper-real environment that magnifies the space of the South African court to a wider and international audience. The North Gauteng courtroom became widely known precisely because of the presence of Pistorius within it, as his own individual power in relation to his status and popularity influence the space; it is not simply the case, that the space exerts exclusively power over him as a prisoner.

In addition, a fortified structure such as the North Gauteng court, does not only repudiate criminal access, but it can also serve to hermetically contain it, and reinterpret it for the public, through trial and sentencing. The space of the courtroom is not a hyper-permeable one but one which claustrophobically contains a lot of the tensions that exist in South African society across class, gender and race (Meth, 2017). If Paula Meth discusses how informality and insecurity shape domestic housing, I am concerned with the *formality* and *security* that the architecture of the North Gauteng court symbolizes. My reading is that even if the courtroom attempts to keep order and emotional control through ritualized proceedings, it is not the neutral place that it attempts to be as emotions are contained but also performed within this space. This emotional containment is evidenced by the architectural elements of the courtroom designed to support the enactment of the means of correct training (Foucault, 1977) and thereby materialize the production of power.

a) *The judge's power and position*

Firstly, the judge, Thokozile Masipa, sits with two assessors on a podium, overlooking the court and through this she performs *hierarchical observation*. In addition, the decolonised space of the courtroom, symbolically linking back to the indigenous origins of the space is represented (Barnard, 2010) by the coat of arms of arms of ancestral South African heritage which stands directly above the judge. The coat of arms promotes the motto “!Ke e: /xarra //ke”, which translated as “Diverse people unite”. This symbol reminds of the unity and persistence of indigenous populations even as they were subjected to West-European colonizing forces, but also about the supremacy of some African tribes over others; such complex social forces left behind a legacy of violence that nowadays forms part of everyday life in the South African society (Meth, 2017). This architectural element is emotionalized by its placement behind judge Masipa’s body, framing her as the person with utmost decision-making power in the room, meaningfully increased along tense racial and gendered lines, as this power is represented here by an educated Black woman, contesting through her embodiment the privilege of White Afrikaners. Another particularity of the South African courtroom is that the judge’s power is also increased because juries were abolished under the apartheid regime (Awol, 2016).

This case could have also been part of judge Masipa transformation of her public role, famously tough on male sex offenders and domestic violence cases, but surprisingly lenient in Pistorius’ case (Chibba, 2014). Through online streaming, the audience can see that the camera is focused mainly on the advocates and the judge, who holds the control over the representation of the witness, obscured from sight. For example, the judge asks on the first day of the trial for the camera to not film the witness; on another occasion, Masipa prohibited the live tweeting and broadcast of the post-mortem report of Gert Saayman. This presents a selective model of the transparency of justice, which is *being done* and *seen* as being done through screens in real time (whether televised or computerised), but only in the selected moments that the judge

allows. But were these attempts to protect or to control? Although it can be argued that Masipa, wanted to protect the witness in case and to not mediatize the images of the dead victim's body, a carefully orchestrated surveillance served to increase the judge's power through selectively presenting the trial in the televised/online representation of the courtroom. In this space, according to Foucault "the judge – magistrate or juror – certainly does more than 'judge'" (p. 21, 1977). Public viewers were left to imagine the rest, while the judge prioritized the ethic of protecting participants, the potential to include the public into a transparent process of justice was diminished.

*b) Intimate hybridization*

Furthermore, the intimate drama of Oscar's love relationship with Reeve, and her subsequent murder, is brought into the courtroom through material devices, such as the reconstitution of the bathroom door from Pistorius' apartment during the ballistic report test, the presentation of their private text messages and of their home environment through the architectural scrutiny of their domestic place. In this manner, private elements of their relationship before and after the incident, were reconstructed through legislative power in the space of the courtroom and disseminated under the gaze of the public.

This reshaped and hybrid space of the courtroom (material and televised) is essential therefore in the creation of Oscar Pistorius' repentant lover identity but also in how the viewer's gaze is influenced to feel certain emotions. In this setting, Oscar Pistorius manipulates the reforming power of the gaze with the moral weight it carries, to create an alliance with the public. He thus presents a lover's discourse which challenges the discourse of power of the courtroom. Such a strategy asks for public forgiveness through image rehabilitation and is sufficiently resistant to contribute to the reduction in his sentence, even if temporarily. The contextual aspects that help produce his performance are multiple and intersectional: on



gendered lines, Pistorius' masculinity interacted with judge Masipa's femininity; on racialized lines, a Black civil servant interacted with a famous White Afrikaner athlete; and finally, along the lines of ability, Pistorius' prosthetic legs contrasted with most of able-bodied presences in the courtroom. Several social forces thereof collided in the South African courtroom in problematizing Oscar Pistorius' trial.

*c) Architectural order and the limits of emotional containment*

In front of the judge sit in rows other members of the judicial system and technicians who operate computers. These rows demarcate a line between the accused and the judge, isolating the former and enhancing the power of the latter. This row, situated in the centre of the courtroom, is flanked on all sides by an array of television monitors, all pointing in different directions. The monitors do not broadcast all the time but are left switched on during the trial, to be used by experts for the *detailed examination of proofs* (Foucault, 1977). In front of the accused (situated in a low-level gated section that blends into the wooden carpentry of the room), are the defence lawyer Barry Roux and at a relative distance on the same row is the prosecuting lawyer Gerrie Nell, both standing behind lecterns. Behind the accused, are the members of the public and supporters (family and friends) and parallel to these are the family of the victim, and supporters of the prosecution.

The witness booth, situated to the right of the judge and diagonally from the accused, serves as the place for expert depositions which construct power/knowledge (Foucault, 2007). As an interesting detail, the online viewers do not see the witnesses at the request of judge Masipa; only the experts are shown through the online streaming of the trial. According to Foucault, the people that embody the legal and moral apparatus of the court (psychological experts, members of prison service etc.) are meant to "fragment the legal power to punish" (p. 143, 1977).

What the viewers are presented with is a cohesive yet selective image of the functioning of the apparatus of power, which I shall return to in the second section of this chapter. However, even if the proceedings are televised, their broadcasting is frequently interrupted by court-breaks, reminders of housekeeping rules, and judge's requests to leave witnesses out, which often disrupted the power and the reverence imposed by the space of the courtroom. For example, before the beginning of the trial, at one moment, judge Masipa used the media to remind spectators in a stern message that they should respect not only the law but the building within which it is enforced by not treating it as their 'picnic place'. The judge was left to maintain order in a case that, because of its mediatisation and the fame of the athlete, would overwhelm the boundaries of the building, as people climbed over the gates to see the accused, or sit for hours waiting outside. This episode denotes the limits of the architecture in containing the intense emotions and actions of the public, in relation to the trial.

If the accused and members of the public are incited through the design of the room to exert emotional control, the perceived messiness of emotionality disturbs the order of the room upon which the constitution of power relies. Moreover, the control of emotions is enhanced through surveillance strategies. The space of the courtroom also controls the acts of *looking-out* and *looking-in*, of *seeing* justice function, therefore it is to my mind significant when the only direct windows of the room are those available through the cameras of the filming crew, positioned close to each entry into the courtroom. Only certain select members of the public are invited to *watch on* the trial proceedings. As the ceiling is low and there are no windows, the room conveys a claustrophobic atmosphere and other citizens are obstructed from spontaneously *looking in*; confirmed by the fact that it recently received public complaints of submitting its attendants to over-heating, as doors had to be shut because of poor acoustics and the air conditioning system malfunctioned during the warm season (Venter, 2018). These elements when considered in their entirety, present the High Court in Pretoria as a space of

order and oppression, rather than civic gathering on equal terms; this sense of oppression is digitally augmented on a panoptic dimension, through the presence of the broadcasting cameras.

## 2. Agency, architectural surveillance and processes of Othering

As Foucault posited, institutional surveillance shapes bodies, recreating them on docile terms through disciplining practices; but through bodies emotions are also controlled and released. Panoptic surveillance adds to the institutional power of the court because according to him this “schema makes any apparatus of power more intense” (p. 206, Foucault, 1977). Furthermore, as Piro (2008) adds, in a society that privileges the visual, then the visual environment “intensifies power” (p. 31). Therefore, architectural elements such as those presented above that echo the violent history of the country and the visual elements, such as the surveillance of the filming cameras, work together to confer legal institutions like the High Court in Pretoria, their power. Moreover, a reformed judicial system is concerned not only with punishing perpetrators but also curing them, and this is reflected in judge Masipa’s final ruling:

“Thankfully *healing* has already started as both Mr. Steenkamp and Mrs. Steenkamp have stated that they have forgiven the accused. The life of the accused shall also never be the same. He’s a *fallen hero*, who has lost his *career* and is *ruined financially*. The worst is that in having taken the life of a fellow human being, in the manner that he did, he cannot be at peace. It came as no surprise therefore when both Mr. Nell, his pastor and professors described him as *a broken man*. *Recovery* is possible, but it will depend mostly on *the accused’s attitude towards the punishment* imposed on him. This court is aware that the accused through his past has shown a willingness and expressed a wish to do community work as punishment (...) However

punishment is not what you choose to do, it is something that is imposed on you. By its very nature punishment is unpleasant, uncomfortable, it is painful and inconvenient (...) Although a custodial sentence is the proper sentence, I am of the view that a long term of imprisonment will not serve justice in this matter. The accused has already served a sentence of 12 months imprisonment, he is a first offender and considering the facts of this matter, *he is not likely* to re-offend.”

In this context, one question remains: what made Pistorius choose emotional release in the public setting of the courtroom, when in other public circumstances such as the Olympic stadium, he relied on emotional control and agility? According to previous interviews that the athlete gave to the press before his conviction, he considered himself as able bodied as any other sportsman (Perry, 2013). While in court this discourse changed. Simultaneous with a change in discourse, came a transformation of the body, which shifted from an agile and self-disciplined one to a docile and vulnerable body. It has been previously claimed that institutions create and legitimate certain masculine roles (Connell, 2002). Therefore, I argue that Pistorius’ exemplary masculine role could not be performed under the control of the court and public surveillance.

To assert his innocence, Pistorius had to transform under the demands of docility and discipline; he therefore, took on a repentant lover role, which both incurred for him new privileges under the guise of a *caring form of masculinity* while also complying with the power of the court. One emotion played a central role in this transformation: love. Since he had murdered the person he loves, the only manner through which romantic love could be used in his favour was through publicly expressing *regret*. These processual operations between love and power worked to create his repentant lover performance, denoting the embodied and gendered links between emotions and power (Heaney, 2013).

### *From the exemplary athlete to the repentant lover*

First of all, Pistorius used his emotions and body in court to manipulate the gaze; seemingly spontaneous outbursts of emotional release occurred at pivotal moments when the evidence seemed to point against him. For example, in 2014, during a neighbour's description of the moment he attempted to save Reeva's life and again during the pathologist's report, Pistorius held his head in his hands and started weeping, distracting the attention of court members from the witnesses' deposition. On another occasion, in 2016, during an appeal for leniency on his sentence, he takes off his prosthetic legs and walks in front of the court on his stumps, visibly on the brink of tears and barely walking upright. Through such actions, Pistorius became "more than just a body to be watched" (p. 3, Mackay and Flynn, 2017). The episodes disrupted the discourse of power in the courtroom, as the audiences watched the unravelling of a powerful White man contravening the features of exemplary masculinity (Messner, 1995) through an intense display of emotions. As an athlete, Pistorius was undoubtedly familiar with the power of disciplinary practices. However, he enacted the role of the repentant lover to secure forgiveness, and thereby used the courtroom to construct a new role for himself, as forensic details reconstructed the reality of the murder.

### *Agent regret*

One way to interpret Pistorius's crying in court, is through Amelie Rorty's (1980) concept of agent regret, as the emotional reaction to a situation of wanton and harm. Although the prolonged crying combined with instances of physical disgust, such as vomiting in court, might point towards and experience of remorse or guilt which are the higher intensity forms of regret.

"Shame tends to involve obsessive imagistic replays of the moment of exposure, to be expressed in the focused remembering of the event, as it time

were arrested (...) The condition of publicity can be internalized when the shame person is his own witness; private shame is derivative from imagined public shame. In culture or contexts where a person's sense of his agency is his sense of how he is perceived, regret and shame can coincide" (p. 498).

It is difficult to assert what he might have been *feeling*, but the focus of the analysis is to show that Pistorius's display of emotional and physical instability was devised to earn the court members' and the camera's (and through this the public's) forgiveness. For example, Pistorius' request to be forgiven by Reeva's parents, Barry and June Steenkamp, formed part of this redemptive performance. The victim's parents displayed the sadness and grief ordinarily expected of loving parents in such circumstances. But by *matching* his grief to theirs, Pistorius could become *likeable* again and reinstate his public power.

In addition, the images that appeared in the media were predominantly focused on Reeva and Oscar's before-the-murder bliss, and after the murder were zoomed in on Pistorius's face and his body, depicting his moments of crying or vomiting in court. These images were pitted against June and Barry Steenkamp's reactions and displays of mourning in court, such as during Barry' intense description of the pain of losing his daughter (Burke, 2016b). The photos in online and paper magazine told a different visual story than the one taking place in court. Pistorius stood singularly with his head bent down, was for most of the trial quiet and subdued, taking notes or listening.

#### *Embodying vulnerability in a legal setting*

Since the architecture of the courtroom holds together all the political investments of the body, my interpretation of the situation is that it also contains its emotions, which Pistorius has used to subvert legal power, by being himself a man in a powerful position due to his fame but also helped in this context, by his race and disability. Consequently, as part of his

performance of vulnerable masculinity, re-presenting his body as vulnerable and disabled emphasized his plea for *earning forgiveness* (Lippitt, 2017). According to this framing, he is worthy of forgiveness because he is visibly repenting for his actions, he is not the able murderer but the frightened lover who tried to protect his girlfriend from an intruder. Pistorius then reforms his image as that of a disabled athlete who is a victim of circumstance in South Africa's tense racialized and gendered socio-political conditions (Meth, 2017); he is also a *crying* (to be read as emotionally sensitive) disabled man in the rigid if ordered atmosphere created by the architecture of the courtroom, which helps him produce a striking visual contrast; in a different setting his performance would have garnered a different meaning.

However, the public gaze reacted differently than the intended effect. This happened to my mind because there was a division between the courtroom gaze, which could be observed by the accused while it was seeing, and the public gaze, unidirectional aimed at Pistorius, but nonetheless divided in its belief of his culpability. Public opprobrium was not secured through this emotional performance, and many railed in front of the building against the initial sentencing of culpable homicide (Burke, 2016a), claiming that he should be convicted to murder as the legislation stipulates a punishment of 15 years, which would have normally been applied to ordinary South African men. Many public voices claimed, that he incurred racial and status-bound privileges in receiving less time in prison. These critical voices and the subsequent appeals of Gerrie Neil and the Steenkamps, were powerful enough to contest Judge Thokozile Masipa's initial conviction and submit the accused to a re-sentencing. And it is here where judge Leah (quoted at the beginning of the chapter) intervened convicting him of murder, an action which then led to him receiving a sentence of 15 years in prison (Cowell, 2017).

The cameras in the courtroom form an optical system of control which is distributed to the larger population not physically present in the courtroom at the time of the trial. Through allowing the televization and online streaming of the trial, panopticism functions in this media-

environment as the combined collection of the public's eye, magnifying the gaze of surveillance. But this gaze is not only disciplining and moral, it is also gendered. The accused's identity, performance, body and emotions are *othered* through technological devices. As such Pistorius is not only the repentant lover, the accused, and athlete, but also an object of desire, which can be eroticised or status-related: viewers participate in the emotional unfolding of his identity from the exemplary masculine role to the repentant lover role, enacted under the material constraints of the courtroom, but also in relation to themselves as bearers of the moral gaze.

### *Othering Pistorius*

There are gendered aspects to emotional performances in designated spaces (Gorman-Murray & Hopkins, 2014), which highlight how transitions between public and private environments are laced with power and control. For example, a man does not enter courtroom in the same way that a woman does. He is *seen*, he *occupies* and can *use* the space of the room differently due to the unconscious power of gender stereotyping and the structure of the courtroom itself, which promotes patriarchal values through the structure and ordering of legal settings (Smart, 2002). Gendered performances matter in how the public gaze surveys an individual and asserts its power over the body, and in this case contributes to its sentencing verdict. Following from this, I argue that the trial shows the viewers how a) Oscar Pistorius's public image transformed from *exemplary* masculinity (shown through physical prowess and a socially rewarded emotional and physical discipline) (Messner, 1995) to the *toxic* masculine trope (evidenced through Pistorius's obsession with guns and excessive risk-taking which lead to murder), and b) that Pistorius is using his emotionality to shift the discourse and perform an appealing form of vulnerable masculinity (Scott, 2014), in his attempts to influence the public gaze to his advantage and reinstate his hegemonic role.



As a sociologist, a woman and a White viewer learning about the South African judiciary system, I also played a part in this analysis. My feminist standpoint (Ramazanoğlu, 1993) compels me to reflexively consider my own gaze and its capacity to *other*. While watching the trial I kept wondering, how does Foucault's idea of disciplining power work to control an already self-disciplined body that would not remain docile? Oscar Pistorius was constructed in media discourses as a hero, as a South African symbol of national pride, whose fame was compared to that of Nelson Mandela (Gibson, 2013). And yet during the trial Pistorius' body suffered a transformation, and devolved from what was according to him, the body of a prototypical able-bodied athlete, into a vulnerable body in the space of the courtroom.

I'm particularly interested in how his body became *cathected* (Connell, 2002), in relation to the courtroom as a discourse of power, but also in terms of the *affective atmosphere* (Griffero, 2014) that the accused created to influence the moral gaze of the judge and the public. In this sense, his episodes of emotional release were intensified as they contrasted with the simplistic yet heavy wood-panelled and claustrophobic architectural elements of the room (a lack of windows, for example). However, I argue in this chapter that his body far from being docile, reconstructed itself in front of the public gaze in an empowering way to first ask for his freedom, and as this became limited, to negotiate leniency. In the following section, I turn my analytical focus in tackling their implications, first the space of the courtroom as a discourse of power, then in the second part I describe how the public gaze can function as a digital apparatus of surveillance and consider issues which appear when the gaze is reversed.

### *Reversing the 'gaze'*

As a spectator of the trial, I was complicit in the spectacle of Pistorius' powerlessness and appeals to forgiveness. My gaze however was a female one. Initially, Simone de Beauvoir introduced the female as the object of the *male gaze*, as the object of desire produced in the act

of ‘othering’. However, current conceptualizations of the gaze, have *inverted* it. For example, men ‘other’ each other on racialized and classed lines in the constitution of privileged forms of identity (Stahl, 2017). Moreover, Ruth Waterhouse described how there is a positive pleasure experienced when taking control of the gaze (1993). Although unlike her analysis mine does not imply that I extend the female gaze on the female body, but rather on the male body and its emotionality. Surveillance as control and surveillance as eroticization of the male body are thus blurred. If Laura Mulvey, who initially coined the term, described the gaze as serving the creation of “the function of woman in forming the patriarchal unconscious” (p. 833), then what is the function of *man* in the female viewer’s unconscious? Mulvey argued that the power of the gaze functions through an optical sorting: “Power is backed by the certainty of legal right and the established guilt of the woman (...) the man is on the right side of the law, the woman on the wrong” (p. 841, 1999)

In my viewing of the Pistorius trial, by reversing the gaze, the male as *spectator* becomes the male as *spectacle*. Through streaming his trial online, I become the bearer of the look, which is both moralising but also libidinal, fulfilling unconsciously a voyeuristic phantasy which implies temporary and clandestine omnipotence over a famous man who murdered a woman. I along with the rest of an unseen audience, broadcasting the trial in their homes, become participants in a pathological fantasy, which fascinates in connection to the juxtaposition of a social taboo (murder) with a powerful ideology (romantic love). There was indeed a certain kind of pleasure involved, a voyeuristic phantasy in seeing this man’s intimate life come undone in the controlled hermetically sealed confines of the courtroom: “looking itself is a source of pleasure, just as in the reverse formation, there is pleasure in being looked at” (p. 835, Mulvey, 1999). I was complicit in the eroticization of a hegemonically normative body and it gave me a sense of satisfaction in visualizing his final verdict.

Due to the context and its representation in the courtroom I experienced conflicting feelings, having to match my moral outlook of analytical disbelief and concern with the types of masculine performance on display: My concern, was how does the disciplined and attractive body of an athlete become a strategy meant to diminish a sentence? How did he employ the discourse of love and his role within it as a repentant lover to emotionally manipulate the people who were judging him, and diffuse the operations of power? And what does the temporary success of his repentant lover performance say about surveillance? Based on my reading of this case, I tentatively assert that rather than being a tool for producing docile bodies, and therefore acting against the freedom of the individual, surveillance can be a tool asserting the agency of the subject, as a tool for liberation.

From a feminist perspective concerned with the gendered aspects of discourse of power (Ramazanoğlu, 1993), I am aware that I have written a chapter focused on the male role in the trial, and not that of his partner: Reeva Steenkamp, who continues to be the side-lined agent in this whole story, the other presence in the courtroom, visible only through the acts performed on her by Pistorius's reinstatement of power, to which the viewers both myself and the audience are complicit. As a female viewer, I emotionally reverberated with the unfolding of her story, aware that in my role as a woman, such forms of gender-based violence do not exclude me. What I witnessed was a media story focused on the perpetrator and not on the victim; where *his* journey, *his* story of loss and redemption, are described, while she is merely a daughter to a mourning family, a presence reconstituted from evidence. This gendered myopia was enhanced in combination with the critical backlash on Judge Thokozile Masipa's sentencing, deemed inadequate by the angry public and members of the victim's family, which appealed against her judgement.

The restrained and claustrophobic space of the courtroom serves to contain Pistorius's performance of emotional control and emotional release; this is repackaged and redistributed

to the voyeuristic viewer, instilling doubt & fascination. The emotional holding that the space of the courtroom provides is to my mind significant, as it produces the question: “Could it have been as well, that Pistorius is using the courtroom not only to perform a vulnerable role that could reduce his sentence, but also as a public space for redemption and healing?” To my mind his acts in the courtroom described what Connell (2002) has named accessing the *patriarchal dividend*, by appealing to the public gaze to reward him the privileges he had lost through his actions but hoped to regain through a public acknowledgement of regret, discursively enriched by the humanizing effect of upholding the ideology of love (Evans, 2001). In this manner, it is not only that the court shapes his performance of vulnerable hegemony (Scott, 2014) but that the courtroom is reinterpreted through the emotional & bodily characterises he brings into the room: it becomes a place of healing, of cathecting the stoic body of an athlete into that of a vulnerable lover and setting the stage for his redemptive performance, enhancing in this way the symbolic meaning of the application of justice.

*Spatially amplifying race, gender and emotions*

As previously mentioned, the space of the courtroom is also a hyper-real one (Kellner, 2015), amplified by its television, and wide-spread in its mediatization for a number of years, which also polarized the viewers as the bearers of the gaze, engaged in this multi-level experience. In this context, the gaze dominates, objectivizing the subject and operating as a *technology of power* (Foucault, 1988). Considering this analysis, Foucault description appears eerily premonitory of the Pistorius trial in underlining how others but also how the individual acts upon himself through moral dissemination:

“The meaning of this mourning must be clear to all; each element of its ritual must speak, repeat the crime, recall the law, show the need for

punishment and justify its degree. Posters, placards, signs, symbols must be distributed so that everyone may learn their significations” (p. 111, 1977).

The mediatization of the event is significant across gendered and racial lines: here was a White couple in love, which each acceded to the exemplary femininity role - a beautiful blonde homely model - and the exemplary masculinity role - a successful, competitive and sexy athlete (Gibson, 2013). In court, their idealized public images contrasted sharply to the portrayals of the predominantly impoverished Black ethnic majority in the Pretorian landscape.

However, and unlike Awol Allo (2016), who describes the context of the Black man in a White court room, Pistorius’ performance was that of a White disabled rich man in a South African court of law ruled by a Black, female judge; their public images were juxtaposed, creating polarized public interpretations about *her competence* and *his innocence*. The social circumstances of a trial, which was about establishing intent in a situation suffused in emotions and out-of-courtroom drama, were magnified through their interaction with the televised broadcast and its spread across the media in newspapers and Twitter feeds. Televised surveillance, through my gaze (and that of the public) replaced the role of the supervisor, although viewers were granted less power since they were remote and could not physically access the courtroom, and the perpetrator, akin to a Deleuzian concept of surveillance as “control at a distance” (p. 20, Galič et al., 2017). This also strengthens the idea that that even though Pistorius was trialled for murder nonetheless fulfilled his hegemonic re-conscription: which happened once as a disabled Olympic athlete in his role as a blade runner - a nick-name earned because of his carbon-fibre prostheses, serving to accentuates his Otherness (Sokolovejan, 20120) - and again through his conscription as the repentant lover during the murder trial.

Oscar Pistorius employs a *technology of the self*, which according to Foucault permits individuals to:

“effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality” (p. 18, 1988).

In summary, Pistorius deploys his self, his body (represented this time, as a vulnerable and docile body) and most importantly his emotions to subvert power and re-attain public recognition and reminding us through this case study of the links between emotion and power (Heaney, 2013). He achieves this through the performance of the repentant lover, which enables him to not only appeal to the judge’s gender-assumed emotional leniency, but by following from Foucault, it enables him to re-conscribe himself under the gaze of the public as a moral actor. Furthermore, Foucault posited that the technologies of self which evolved from Christian theology (*exomologesis* and *exagoreusis*) crystalized into verbalisation, but the accused’s use of the emotions and his body creates in certain moments of the trial, a dramatic performance breaking through those normative confines of verbal and reasonable disclosure, reaching the audience emotionally and unconsciously.

Oscar Pistorius was aware that the world was watching his trial, since a row of cameras and a group of journalists ever-present at the entry to the courtroom throughout the duration of the trial. Paralleling this experience of being, seen with that of Foucault’s interpretation of Bentham’s panopticon the prisoner, unlike Pistorius, the panoptic prisoner is not under constant surveillance, but merely thinks that they *might* be under surveillance at any given time. That’s why the prisoner is refused the ability to look back: the curtains in the central tower are closed so that the prisoner does *not* know whether someone is indeed watching. This is different from

a camera, which would give the prisoner the certainty of having an audience/being watched. Therefore, the possibility of manipulation in the Pistorius case is not equivalent to the potential for manipulation afforded to the Panopticon prisoner. This manipulation remains in my argument, a visual and emotional one: the accused asks the public to *know* him and *see* him based on a performance of vulnerable masculinity, and through this to *take care* of him, as the last remaining partner of a wounded duo of star-crossed lovers. Resisting then the objectification of the gaze, the accused acts as an agent in the courtroom asking to be transformed and *subjectified* (Friesen, 2017), both through conscious interactions with the space and actors in the courtroom, and by making a powerful and mediatized representation on the viewers at an unconscious level, teletechnologically impressing the gaze (Clough, 2000).

### **Conclusion: The architectural and emotional reshaping of hegemonic masculinity in the courtroom**

Oscar Pistorius' emotionally oppressed performance in the North Gauteng courtroom, whether veridic or not, in the process of atoning for his actions through visible displays of intense sorrow, hybridizes his image with that of his victim's, becoming the victim of the system. This image recalibration is reliant upon not only the institutional order of the judicial South African system but publicly mediated by plays between progressive and naturalized understandings of gender, confined and contained by the space of the courtroom, and broadcasted in the homes of the viewers.

This case study is significant because it demonstrates as Jonathan Heaney has argued that emotions and power are deeply intertwined (20130), in reminding us that loving and killing can co-exist and that love and power mediate the transfer of experiences from the private sphere into the public, and vice-versa, helping a privileged man transforms his masculine role in front of an audience. This role transformation was supported by the architecture of the place, meant

to exercise the rational application of justice and of emotionally containment, and through this inadvertently functioning as a scene for the emotional release which allowed Pistorius to perform his repentant lover role. He achieved this through a combination of emotional regret and physical vulnerability in reconstruct hegemonic masculinity on new terms, helped by surveillance devices and the public's gaze.

Spatially-determined performances of gender and emotionality as they collude with the institutionalization of power are relevant in the age of "dataveillance" (Galič, 2017), defined by the constant monitoring of human interactions through mobile phones, drones and the spread of Closed Circuit Television cameras (CCTV). This new, constructed social environment is one of constantly *watching* and being *watched*. In this context, surveillance fulfils a double function: as something external to individuals and connected to the institutionalization of power, and as a self-inflicted activity, in the process of which the physical and (as I have argued) the emotional is merged with the digital.

Interestingly, the public's collective voice is re-situated as a powerful agent, helping us reflect on how much things have changed since Foucault's analysis of 18<sup>th</sup> public violence with direct moral messages. Events might be more progressive nowadays through teletechnological mediation, comprising of unconscious flows between agency, televised technology and ad-hoc processes of making sense of the world (Clough, 2000), that can limit the power of institutionalized mechanisms of justice and reshape the architecture of the courtroom. But this also reminds that the fate of the agent under surveillance and institutional control escapes complete rationality and fairness but is decided at the unconscious and emotional conference of multiple and unequal intersectional advantages: those of gender, race, status and ability, contained in specific architectural spaces.

Words: 7770



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