

Encyclopedia of Community Corrections

Public Shaming as Punishment

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Although criminologists have made a compelling case that incarceration degrades offenders, hardens their antisocial tendencies, and is extraordinarily expensive, imprisonment rates remain high in the United States. Since the 1960s, there has been growing recognition that it makes sense to divert nonviolent and infrequent offenders to probation supervision, halfway houses, work release programs, and other community corrections programs that keep offenders out of prison and as close as possible to their families and job opportunities. As of December 31, 2009, approximately 70 percent of the men and women under correctional supervision were under community supervision, and [p. 357 ↓] approximately 30 percent were housed in local jails and state or federal prisons.

It strikes many as paradoxical that the increase in community-based programs that offer an alternative to imprisonment has been accompanied by what seems to be a growing judicial willingness to impose “shaming” or “scarlet letter” punishments on offenders. Convicted offenders have been forced to place bumper stickers on their cars, post signs in their yards, carry signs, or wear T-shirts proclaiming their guilt. Sometimes these punishments are imposed in addition to a jail or prison term, but often they are meted out as an alternative to imprisonment, usually as a condition of probation. This practice raises the following question: When a shaming punishment accompanies a community-based sentence, does it add to the deterrent or rehabilitative effects of the punishment, or does it undermine these laudable goals of punishment by humiliating and stigmatizing the offender?

Shaming Punishments in Early America

The early settlers in North America brought with them a firm belief in the effectiveness of shaming punishments, painful corporal punishments, or a combination of both. More than a dozen offenses, including murder, treason, robbery, and rape, were punishable by death. Corporal punishments that were meant to inflict both public humiliation and intense pain were routinely meted out to vagrants, beggars, petty thieves, Sabbath breakers, and other minor offenders. The whipping post, the branding iron, and the pillory were prominently displayed and frequently employed in the town squares of 17th-and 18th-century America. Political and religious leaders found the pillory (a set

of wooden frames with holes for the head, hands, and sometimes the feet) to be an especially versatile device for inflicting a large dose of shame and a requisite measure of pain. The spectacle of a miscreant helpless in its grasp, his head protruding through its beams and his hands through two holes, was thought to educate the public as to the consequences of sinful behavior and to send a deterrent message to both the humiliated lawbreaker and others who might be tempted to stray from the strict tenets of colonial moral standards. Culprits could expect to be pelted with ridicule and insults as well as with sticks and stones. The more serious misdemeanants were sometimes nailed through their ears to the pillory, branded, and shaved bald.

Perpetrators in high-profile criminal cases often conceal their faces from the news media while being booked and processed, a practice that has become known as a “perp walk.” Once convicted, there is a trend toward subjecting offenders to a degree of public humiliation as part of their punishment.



(Wikimedia)

Branding, either as one part of a public degradation ritual or as a stand-alone punishment, became popular in all of the American colonies. The laws of colonial New Jersey, for example, stipulated that first-offense burglars were to be punished with a T (for “thief”) burned into a hand. A second offense called for an R (for “rogue”) to be burned into the forehead. A 1662 Maryland law decreed that a person twice convicted of hog stealing was to have an H burned into a shoulder. This law, however, was widely viewed as too lenient and was amended in 1666 to apply to first-offense hog stealers, who were to receive the brand on the forehead. *The Scarlet Letter*, Nathaniel Hawthorne's 1850 novel of punishment in 17th-century Massachusetts, accurately

depicted the Puritan practice of forcing adulterous wives to attach an *A*, cut from scarlet cloth, to their upper garments. Others who offended Puritan notions of morality were similarly adorned; blasphemers wore a *B*, paupers a *P*, and drunkards a *D*.

The 1791 ratification of the Bill of Rights, including the Eighth Amendment's prohibition of "cruel [p. 358 ↓] and unusual punishments," signaled that America had entered a new era of enlightenment that would lead to doubts about the appropriateness and effectiveness of 16th- and 17th-century methods of punishment. Moreover, changing demographic patterns led to a decline in the use of shaming punishments. As populations increased, people became less closely acquainted with one another. A growing number of people migrated to larger cities characterized by increased anonymity, a greater appreciation of the value of privacy, and a decreasing dependence on close community relationships. These changes undermined the social cohesiveness that enabled shaming punishments and diluted the psychological pain of public punishment. Belief in the deterrent effectiveness of public humiliation crumbled, and shaming punishments all but disappeared for two centuries.

Today's "Scarlet Letter" Punishments

The demise of early American shaming punishments coincided with the development of the penitentiary in the early 19th century. Although questions of the desirability and efficacy of imprisonment inspired vigorous debate, incarceration emerged as the prevailing method of punishing criminals in the years following the Civil War. Today, with some 2.3 million people in prisons and jails and 4.2 million probationers (and 820,000 parolees) under community supervision, prison and probation clearly rank as the dominant societal responses to serious crime.

Two seemingly contradictory trends have developed since the 1980s—increasing pressure to expand alternatives to imprisonment and continuing public insistence that criminal courts must "get tougher" on criminals. Perhaps the most controversial result of these competing impulses is the return of punishments that bear an obvious resemblance to the scarlet-letter punishments of colonial America. To show that they too are exasperated with overly lenient sentences, judges have increasingly resorted

to shaming sentences. Sometimes these sentences are stand-alone punishments, but they are imposed as a condition of probation in the majority of cases.

Today, most people convicted of a violent or serious property crime can expect to be sentenced to prison, probation, a work or school release program, community service, fines, victim restitution, or some combination thereof. However, there is a clear trend toward subjecting offenders to some degree of public humiliation as part of their punishment. This has become increasingly acceptable among state and federal trial judges. Since the 1990s, hundreds of shaming punishments have been imposed, many of which have received increased publicity through coverage in print and broadcast media. Stories of bizarre or unusual punishments, of course, are also ubiquitous on the Internet, as any devotee of YouTube knows all too well. In most of these cases, a judge has incorporated a shaming punishment into individualized probation conditions that are chosen to “fit the crime.”

Today's shaming punishments often force offenders to carry or wear signs or T-shirts proclaiming their guilt. Convicted shoplifters, for example, have been compelled to stand in front of store entrances attired in a T-shirt reading “I am a thief” or “I got caught stealing.” Sometimes the offender must walk on busy sidewalks wearing a sandwich board saying, for example, “I got caught with cocaine” or “I am on felony probation for burglary.”

Another common form of shaming punishment is to make offenders place a sign on their property. Sex offenders, for example, have been required to post signs on their home reading “Dangerous sex offender—No children allowed,” and people convicted of assault have been ordered to place signs in their yard declaring, “Warning—A violent felon lives here.” Drivers convicted of driving while under the influence (DUI) have been forced to affix phosphorescent bumper stickers to their cars that proclaim “I am a drunk driver” or “Convicted of DWI.”

Other varieties of shaming punishments include posting offenders' pictures in newspapers or on billboards, television, or the Internet. Some judges have required offenders to confess their crimes in church or to deliver court-approved “shaming speeches” or “apology speeches” on the steps of courthouses.

Arguments in Favor of Shaming Punishments

Defenders of shaming punishments often begin by distinguishing shaming punishments from sex offender registration laws, commonly known as Megan's laws. These laws require certain sex offenders to register with and provide personal information to state or local law-enforcement authorities either as a condition of probation or upon release from confinement into the community. [p. 359 ↓] The information typically includes the offender's name, age, gender, address, occupation, and picture, and this information is then made available to the public. All 50 states enforce a version of this kind of law, and most post the information on the Internet. These laws have been challenged on constitutional grounds, but in two decisions announced in 2003, *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe*, the U.S. Supreme Court upheld the Megan's laws of Alaska and Connecticut as nothing more than the dissemination of accurate information about criminal records that are already in the public domain. The Court concluded that the primary purpose of such laws is to alert the public to the risk of sex offenders in their neighborhoods and that these are civil laws that may prove embarrassing to sex offenders but do not harm offenders in a serious enough manner to amount to “punishment” in the legal or constitutional sense.

Those who advocate contemporary shaming punishments that do not include the publication of sex-offender lists contend that these punishments can save money while advancing perfectly proper goals of punishment. In an influential 1996 law review article, legal theorist Dan Kahan stressed the flexibility such punishments offer judges who wish to fit the punishment to the crime. Imprisonment, he asserted, is not only expensive but also too harsh and degrading, especially when imposed on nonviolent offenders. On the other hand, the conventional alternatives to imprisonment—probation, fines, and community service—are sometimes inadequate and ineffective in fulfilling the goals of retribution, deterrence, and rehabilitation. Lenient sentences may fail to convey the seriousness of the crimes to some offenders while concomitantly having little or no deterrent or rehabilitative value. Arguably, a criminal punishment is more likely to be effective when it has an appropriate “expressive effect.” Wearing a sign in public or

making a public apology imposes only a minor limitation on an offender's freedom, but it creates an unpleasant emotional experience that fulfills the goal of retribution and is likely to deter the offender (and others) from similarly offensive behavior. Whereas conventional probation and other community-based correctional programs send a morally ambiguous message both to the offender and to the community, a carefully constructed shaming punishment can speak considerably more clearly to the offender and to the community as to what kinds of behavior are socially unacceptable. Moreover, when a shaming punishment is of short duration and is proportionate to the offense, it offers the offender a chance for contrition and an opportunity to make the case that his or her punishment is complete and that he or she is now deserving of a second chance.

Kahan's endorsement of the idea that a shaming punishment can be devised as a middle-range punishment—neither too harsh nor too lenient—that sends a clear message to everyone involved has been seconded by the well-known criminologist John Braithwaite. In his classic 1989 book *Crime, Shame and Reintegration*, Braithwaite asserts that a shaming punishment can either prevent crime or cause crime. A society's best course, he argues, is not to shield offenders from any sense of shame or blame but to shame offenders judiciously and in a cultural context offering the offender both respect and a pathway to redemption. Braithwaite makes an important distinction between “stigmatizing shaming” and “reintegrative shaming.” The first type of shaming will usually fail, because it conveys nothing but disgust, hatred, and public scorn for an offender. It thus has a strong tendency to label the offender, not simply his or her wrongdoing, as evil. As a result, the offender sees him- or herself, and the community identifies the offender, as a “criminal,” an outcast not morally worthy of forgiveness and social support. By contrast, reintegrative shaming labels only the offender's criminal behavior as evil, while preserving the identity of the offender as essentially good and worthy of new opportunities to demonstrate goodness. Braithwaite stresses that a reintegrative-shaming punishment need not be weak or lack a punitive “bite.” It differs from a stigmatizing punishment not so much in severity as in its duration and significance. The punishment is finite rather than endless. It ends with apology and repentance and is rewarded by forgiveness and opportunities to reconcile with the community. So-called restorative justice programs, such as carefully supervised meetings between offenders and victims in which both parties discuss the impact of the offender's actions and possible ways to “make things right,” generally are considered as

realistic examples of programs that can facilitate an offender's reintegration into a free society.

Arguments against Shaming Punishments

Opponents of shaming punishments often express disagreement with the Supreme Court's 2003 [p. 360 ↓] decisions that distinguished sex offender registration laws from shaming punishments. In fact, three justices disputed this distinction in dissenting opinions in *Smith v. Doe*. Justices Stephen Breyer, Ruth Bader Ginsburg, and John Paul Stevens took the position that legislative labeling of these laws as “civil” could not hide the fact that they actually are criminal laws that are punitive in intent and severely stigmatizing in effect. Megan's laws thus should be understood as inflicting a criminal punishment on offenders and should be open to constitutional challenges. All three justices agreed that these laws closely resembled the scarlet-letter shaming punishments of colonial America. Justice Ginsburg added that offenders were subjected to profound humiliation and ostracism that made it all but impossible to live normally in the community.

According to those who oppose shaming punishments, sex offender registration laws are flawed in the same ways as are other shaming punishments: They offer a simplistic solution to the complex problem of crime, play to the most punitive instincts of the public, and fail to achieve any of the legitimate goals of retribution, deterrence, or rehabilitation. In a noteworthy 2001 article in the *Vanderbilt Law Review*, Dan Markel made the case that shaming punishments fulfill the goal of vengeance but not the very different goal of retribution. Retributive theory demands that legal punishments be proportionate to the offense and dispensed by agents of the state who are acting under but constrained by the law. Unlike the members of a vigilante mob, state officials authorized to punish convicted criminals are not expected to exhibit inappropriate rage or take great pleasure in seeing the offender suffer. Properly understood, retributive justice seeks to treat offenders with dignity by recognizing them as competent human beings who have erred but are capable of making better moral choices in the future. Retribution is meant to end the process of crime and punishment. Markel contends, however, that shaming punishments achieve none of these goals. These punishments rely to a great extent upon the public at large—the “crowd”—to express disgust and

inflict humiliation on offenders. History is replete with examples of crowds that clearly took great pleasure in pelting those identified as deviants with insults, mockery, and all too often, fruit, stones, or bricks. Judges who impose shaming punishments thus are undermining the retributive principle that the state and only the state is authorized to punish lawbreakers. Sometimes judges who sentence an offender to play the lead role in his own shaming ritual will post a police officer nearby to protect the offender from violence. This shows that judges do realize that they are making the crowd an instrument of the state and that the dominant purpose of their sentence is the public humiliation of the offender. This arguably is a classic example of revenge, the result of which is likely to prolong the process of crime and punishment and strip the offender of what remains of his or her dignity as a human being.

Critics of shaming punishments are also skeptical that shame can be an effective deterrent. Shaming punishments are imposed by only a few judges and rarely on a regular basis. They differ according to the nature of the crime, the offender, the community, and judges' notions of justice. Consequently, there have been no systematic empirical studies of the deterrent or rehabilitative efficacy of shaming punishments. The common wisdom that public degradation ceremonies will surely deter both offenders and onlookers from criminal behavior is, according to many criminologists, simply wrong. Indeed, shaming punishments may very well push the offender into more and more serious criminal behavior. A punishment that by its very nature stigmatizes and labels an offender as "criminal" creates a classic self-fulfilling prophecy that leads the offender and others to identify him as a criminal. After the public humiliation and media coverage of the offender's punishment spectacle, jobs and other opportunities to return to the community are not nearly as likely to be available to the shamed offender as they are for an offender sentenced to routine probation. A sense of humiliation and worthlessness, combined with an absence of noncriminal employment options, is a recipe for more, not less, crime.

The alleged rehabilitative benefits of shaming punishments also have been disputed. Many criminologists acknowledge the strength and logic of Braithwaite's arguments in favor of reintegrative shaming. However, in the absence of systematic, empirical studies of contemporary shaming punishments, there is no evidence that any sequence of punishments that includes a large element of public humiliation has any rehabilitative value. Some critics have asked why we would demand both shame and reintegration

for offenders. The benefits of shame are illusory and unproven, they argue. However, [p. 361 ↓] correctional programs that place the emphasis squarely on reintegration have demonstrated considerable success. Victim-offender mediation programs and other restorative justice programs that do not rely on a shaming punishment have been shown to be effective alternatives to incarceration. Evaluations of these programs have found high levels of satisfaction among both offenders and victims, and several studies indicate that restorative justice is consistent with the goal of holding offenders accountable for their behavior and has lessened recidivism rates.

Emerging Legal Questions

The debate over the wisdom, fairness, and effectiveness of public shaming as a method of punishing criminals will not be resolved anytime soon. Even if large-scale, methodologically sound empirical studies of the impact of shaming punishments on crime rates were available, they would not resolve the issue. At heart, the question of whether a democratic society should include public shaming in its arsenal of criminal punishments is a normative question that must be answered by the people and their elected representatives one case at a time and one jurisdiction at a time. America's courts will certainly play a significant role in many cases. It is the courts, after all, that began the latest round of scarlet-letter punishments in the 1980s and 1990s. Now there is a sense that the judges who have been experimenting with creative penalties that are meant to convey a message of shame may have had unrealistic expectations and might have been better off sticking with incarceration, probation, work and restitution programs, and other traditional, well-established punishments. It is hard to believe, for example, that the pathologies that lead to domestic violence can be easily checked by forcing the abuser to apologize publicly or that a chronic alcoholic with multiple DWI arrests will suddenly see the light by affixing a "Caution: Convicted Drunk Driver" sticker to his car bumper.

Because questions surrounding the moral appropriateness and practical utility of shaming punishments are complex, it is not surprising that federal and state courts have not even come close to a consensus on the constitutionality of the varieties of shaming punishments. The U.S. Supreme Court has not yet agreed to hear a case specifically raising the issue of the constitutionality of shaming punishments other than

the aforementioned cases involving sex offender registration laws, which, according to the majority, did not impose a criminal punishment and thus were constitutionally sound. So far, the leading decision on the constitutionality of what undeniably was a shaming punishment is *United States v. Gementera*, a 2004 ruling by the U.S. Court of Appeals for the Ninth Circuit. A federal trial judge sentenced a man convicted of pilfering letters from mailboxes to two months of imprisonment and three years of supervised release, one of the conditions of which was wearing or carrying a large, two-sided sign stating “I stole mail; this is my punishment” in front of a post office for eight hours. On appeal, the *Gementera* court held that the sign-carrying punishment was reasonably related to the goal of rehabilitation, as required by federal sentencing law, and that it would stretch credulity to suggest that eight hours carrying a signboard amounted to a constitutionally cruel and unusual punishment. It is noteworthy, however, that one judge dissented on the grounds that the punishment was an anachronism with no rehabilitative value and had no place in a federal courtroom.

Although most of the federal and state courts that have reviewed shaming sentences have rejected claims of unconstitutionality, there have been noteworthy differences of opinion. For example, in *People v. Letterlough*, the New York Court of Appeals in 1995 struck down a condition of probation that required a motorist convicted of drunk driving to affix to his car's bumper a sticker reading “Convicted DWI.” The New York court characterized the bumper sticker as a “scarlet letter” with no rehabilitative value and concluded that the trial judge should not have imposed a condition of probation that was not expressly authorized by statute. Yet, in *Goldschmitt v. State*, a virtually identical case, a Florida appellate court in 1986 found no statutory or constitutional problems with this kind of condition of probation. In this case, a motorist convicted of driving under the influence of alcohol was ordered to attach a sticker stating “Convicted DUI-restricted license” to his automobile's bumpers. The probationer appealed on both statutory and constitutional grounds, but the Florida court rejected his arguments. The court noted that the Florida probation statute contains a catchall provision permitting Florida judges to add conditions deemed appropriate to the offender's crime and concluded that the bumper-sticker requirement was well [p. 362 ↓] within the trial judge's discretion. The probationer's Eighth Amendment claim was also denied. The court conceded that the punishment was reminiscent of colonial times but held that it fell far short of the kinds

of painful and oppressive punishments banned by the cruel and unusual punishment clause.

These conflicting opinions are indicative of the divergence of opinion that exists among courts, legislatures, elected officials, and the general public on the issues surrounding contemporary shaming punishments. Whether public shaming is an appropriate and effective punishment that will deter crime and rehabilitate offenders or a punishment that is ineffective at best and counterproductive at worst is a question that will remain controversial for many years to come.

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See also

- [Public Safety and Collaborative Prevention](#)
- [Punishment](#)
- [Violent Offender Reconciliation Programs](#)
- [“What Works” Approach and Evidence-Based Practices](#)

Further Readings

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