

ONLINE REGISTRIES: A 21ST CENTURY PILLORY

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In this piece, Mr. Cardez outlines the eerie parallels between the outlawed punishment devices of the past with one of today's most common forms of public punishment and explains the pervasiveness of extreme forms of shaming through U.S. history and its negative impacts on those subjected to it.

I believe that ex-offender public online registries are ineffective security theater and amount to nothing more than modern day pillory—one of those medieval devices where an offender's hands and head are fastened to a wooden instrument to be mocked. This dual punishment and spectacle started more than a thousand years ago in Europe before spreading to the New World. It lasted well into the Nineteenth century before it was deemed too cruel and outlawed.¹ In the 21st Century it has been replaced by the various criminal online registries—sex offenders, youth offenders, violent offenders, and so on—living on the new public square: The Internet.²

For better or worse, the internet and social media have significantly amplified society's means of public shaming, taking its victims from the town square to a global network of connected screens. The internet has simplified and supercharged our ability to publicly shame on a scale never previously imagined. The result is a steady flow of new names and faces as targets—both high-profile and everyday citizens—flooding our media feeds and rage cycle. Some proponents call

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¹ *Manchester Stocks and Pillory*, PRISON HISTORY, <https://www.prisonhistory.org/lockup/manchester-stocks-and-pillory/> [<https://perma.cc/WFV3-T684>] (last visited Nov. 19, 2022) (explaining the history and use of the pillory); *Pillory*, Merriam Webster, <https://www.merriam-webster.com/words-at-play/pillory-word-history-and-origin> [<https://perma.cc/6KZA-PU9K>] (explaining that the pillories existed in the United States until about 1905).

² *US: Sex Offender Laws May Do More Harm Than Good*, HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2007/09/11/us-sex-offender-laws-may-do-more-harm-good> [<https://perma.cc/2YE2-5PQT>] (explaining the harm of laws aimed at people convicted of sex offenses on former offenders).

it justice and, “others embrace it as a social reckoning”³, while politicians hide behind unfounded community safety arguments.⁴ Whatever it’s called, this “new wave of public shaming”⁵ is affecting individuals and communities in various forms of psychological turmoil.

Public shaming is not a new phenomenon. Throughout history we can see various examples of offenders who violate moral codes being fastened to pillars, stocks, and pillories—even Jesus Christ endured a type of public shaming in his crucifixion. Regardless of the method, the history of human civilization runs parallel with shaming.⁶ Some social psychologists believe that it is possibly an evolved mechanism to ensure our survival by favoring group cooperation.⁷ Shame may be a way of internalizing the social cost of certain behaviors in a way that helps to protect individuals from future undesirable social circumstances, such as being ostracized by a group. Unfortunately, the reality is, these feelings of shame are negatively internalized and evolve into a feeling of disgust and lack of self-worth for the individual.

Prolonged shame is linked to various forms of mental, emotional, and physical distress, wreaking havoc on the individual.⁸ It has been seen to cause extreme negative emotions associated with feelings of powerlessness⁹, like being stuck in a barrel at the bottom of the ocean with no options. There is no worse feeling. Even if, at best, it could be attributed to the slightest community benefit, the cruel effects on the individual level are simply too high.

Experts agree: we should not confuse guilt with shame.¹⁰ Guilt can be good for us. It teaches us when we have done something wrong through feelings of regret

³ Tree Meinch, *Shame and the Rise of the Social Media Outrage Machine*, DISCOVER MAGAZINE, Feb. 12, 2021, <https://www.discovermagazine.com/the-sciences/shame-and-the-rise-of-the-social-media-outrage-machine> [<https://perma.cc/76CW-JPSY>]

⁴ Sandy Jung, Meredith Allison, Carissa Toop, Erin Martin, *Sex offender registries: exploring the attitudes and knowledge of political decision-makers*, 27 *Psychiatry, Psychol. and Law* 478 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7534266/> [<https://perma.cc/7QV2-P8Y4>] (explaining that the impetus for the United States has created these laws originates from community concerns about former offenders committing new offenses, U.S. politicians have held more negative attitudes toward the rehabilitation of sexual offenders, and that the hope is that registries help ensure public safety.)

⁵ Meinch *supra* note 3.

⁶ Ute Frevert, *The History of Humiliation Points to the Future of Human Dignity*, PSYCHE (Jan. 20, 2021), <https://psyche.co/ideas/the-history-of-humiliation-points-to-the-future-of-human-dignity> [<https://perma.cc/BCP9-L8DF>] (explaining how the practice of public shaming dates back to the Middle Ages, describing how public shame and humiliation have evolved into their modern forms, and providing suggestions for how to reform these practices).

⁷ Meinch *supra* note 3.

⁸ Sarah Lupis, Natalie Sabik, Jutta Wolf, *Role of shame and body esteem in cortisol stress responses*, 39 *J. OF BEHAV. MED.* 262 (2017) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5125296/> [<https://perma.cc/F96J-V5FP>] (explaining that, “repeated or chronic activation of stress systems has consistently been linked to negative physical and mental health outcomes”; shame in particular can predict stress responses.)

⁹ *Shame and Attachment*, TRAUMATIC STRESS INSTITUTE, https://traumaticstressinstitute.org/wp-content/files_mf/1276631745ShameandAttachment.pdf [<https://perma.cc/FK3A-LGR7>] (last visited Nov. 20, 2022) (explaining that shame can be or bring feelings of powerlessness).

¹⁰ Ying Wong & Jeanne Tsai, *Cultural Models of Shame and Guilt*, in *THE SELF-CONSCIOUS EMOTIONS: THEORY AND RESEARCH* 209–223, 211 (Jessica L. Tracy, Richard W. Robins & June Price Tagney, eds., 2007),

and remorse. Shame, on the other hand, is pointless, causing mostly feelings of uselessness and self-judgment, which can inevitably lead to more serious mental issues.¹¹ More simply, the distinction between guilt and shame is the equivalent of you *did* something bad versus you *are* bad. It is hard to imagine a scenario when simply making someone feel small and helpless is the morally correct thing to do...this sounds more like torture or revenge.

I suppose the question begs, to what degree should any single mistake define a person's reputation and ability to ever live a normal life again? When does shaming cross the line to simply another form of bullying?

It is complicated. Registries are devoid of context. There is no opportunity to hear both sides of any given circumstance; there is no back-and-forth discourse that people would be able to interpret as in real life. It is simply a red dot on a map on your computer screen that, when clicked, shows a photo, name, and address: This is where the monsters are, stay away or...go get them. But it is hard to think of someone as subhuman when you get to know them, when you see their humanity. Registries are designed for broadcasting; they are one-sided, there is no opportunity for listening or understanding. They are simply a platform for public moral outrage directed at certain offenders.

It is interesting to note that shaming through registries is not the same worldwide. In America, we feel the need to endlessly punish ex-offenders, oftentimes for life, by berating them with the idea that since they did something wrong, they are a piece of s^*&, unworthy of redemption. But in more collectivistic societies, shame is used thoughtfully in a manner meant to promote self-improvement and moral guidance, connecting and repairing relationships¹² ... sounds a lot like the pillars of restorative justice initiatives (which are still in their infancy in America).¹³

http://www.gruberpeplab.com/teaching/psych3131_summer2015/documents/3.2_WongTsai_2007_CultureShameGuilt.pdf [<https://perma.cc/N6XR-TCR9>] (explaining how emotion researchers differentiate shame as involving real or perceived negative evaluations from *others*, whereas guilt involves a negative evaluation of *oneself*, and concluding that “[s]hame, therefore, is associated with the fear of exposing one’s defective self to others. Guilt, on the other hand, is associated with the fear of not living up to one’s own standards.”).

¹¹ See *id.* (“[E]mpirical findings suggest that in U.S. contexts, unlike experiencing shame, experiencing guilt leads to higher self-esteem and increases in empathy and perspective taking. . . . Moreover, shame-prone individuals are more likely to engage in avoidance and withdrawal, to experience inward anger, and to blame others than are guilt-prone individuals.”).

¹² See Wong & Tsai, *supra* note 10 at 213 (finding that in collectivistic cultures, the concept of shame aligns more with how American culture views guilt, i.e., associated with “specific and temporary attributions” rather than “global and stable characteristics,” and describing how shame is more effective in collectivistic cultures like Chinese culture “because it is associated with a code of ethics that varies by situation and relationship . . .”). See also Wong & Tsai, *supra* note 10 at 214 (describing how many non-Western cultures place a positive value on shame, which is “consistent with the interdependent goals of self-effacement, adjustment to group standards and norms, and self-improvement,” and concluding that shame is not necessarily psychologically harmful in every context, but can inform and motivate members of collectivistic societies).

¹³ See Restorative Justice, CENTRE FOR JUSTICE & RECONCILIATION, <http://restorativejustice.org/restorative-justice/#sthash.mKYtHfMF.dpbs> [<https://perma.cc/223Y-WA2B>] (last visited Feb. 26, 2022) (outlining the key principles of restorative justice, including that justice should focus on repairing the harm caused by crime; that those most affected by crime should have the ability to participate in resolving it; and that the government has a responsibility to maintain

Online registry-caused shaming or violence against ex-offenders can become even more complex when it perpetuates the history of stigmatizing ex-offenders as social pariahs in the U.S. People often act and react only by the prompts of current societal norms. It is no surprise, therefore, that shaming certain ex-offenders found on the internet will continue. They are an easy target, just like those stuck in a pillory in the public square.

The criminal offender registry system is a result of the conflation of public safety with public vengeance. By branding them with a scarlet letter unlike what any other offender leaving the corrections system has to bear, no matter how terrible the offense, registries are harmful to people who have paid their debts to society. What's more, they further harm those people's families by exposing them to undue stigma and ostracism.¹⁴

There is a solution: The immediate and complete abolishment of all national and state public online criminal registries. There is a horrible cost every time we create a sub-human scary creature to justify our cruelty, which only results in exposing the monster within us. Brutality taxes the deliverer and community in invisible ways—not as apparent, but just as detrimental, as it does the receiver.

order and building peace in communities). *See generally* Ted Wachtel, *Defining Restorative*, IIRP (2016), https://www.iirp.edu/images/pdf/Defining-Restorative_Nov-2016.pdf [<https://perma.cc/4ABQ-3XBF>] (defining restorative justice and providing its history, supporting framework, and various processes).

¹⁴ *See, e.g.*, Kristan Russell, Katie M. Snider, William Evans & Shawn C. Marsh, *Shame and Justice: Partners of Individuals on Sex Offense Registries Encourage Policy Reform*, 11 QC 1 (2022), <https://www.qualitativecriminology.com/pub/lezor6ns/release/1> [<https://perma.cc/3WAZ-EBW3>] (describing how sex offense registries negatively affect partners of registered individuals, including through courtesy stigma, reductions of social support, and mental health consequences, and surveying partners on their opinions about how to reform current policies).