

SHAMING THE GUILTY

THE RULES & LIMITATIONS OF PUBLIC EMBARRASSMENT



A. The Value & Danger of Shaming

1. Humiliation In The 21st Century: Should We Be Ashamed Of Public Shaming?¹

...The phenomenon of public shaming has remarkable staying power. It began well before the Internet, with pillories and stockades, and shows no sign of abating...

Some psychologists differentiate between shame — a social emotion stimulated by someone else’s disapproval — and guilt, which is a more internally generated emotion, aroused by conscience. One is concerned with how we are perceived, the other with how we act. But there’s a crucial difference between feeling ashamed — which one can argue has some moral and societal benefits — and the act of shaming.

In a 2013 article for *The Nation*, Cole Stryker notes that, “Shame works in closed, small communities that share similar norms. As the New World opened up and expanded, public humiliation ceased to be an effective means of norm reinforcement.” Our communities — the people with whom we share values, beliefs and common purpose — are simply too diffuse and not dependent enough on physical proximity to sustain ostracism as an effective form of enforcement. We have the Internet to thank for that generally positive development. But what’s so deeply disturbing is that the Internet also enables us to *create* a sense of community — however transient and illusory — through the exposure and humiliation of others. As Stryker notes, “... public shaming begins to look like a tool designed not to humanely punish the perp but rather to satisfy the crowd.” Even worse, it becomes a substitute for real, meaningful action driven by the values we condemn others for violating.

I don’t mean to suggest that there’s never a role for inducing discomfort in those who engage in hate speech or other forms of socially undesirable behavior. If explicit disapproval causes

¹<http://www.wbur.org/cognoscenti/2015/04/30/britt-mchenry-monica-lewinsky-ben-affleck-julie-wittes-schlack>

people to keep bigoted, hateful thoughts to themselves, fine ... *if* it makes for a more civil society. But that's a big "if," because social desirability is so culturally specific, and the individual consequences of having to hide one's deviation from the norm are so potentially destructive. Public disapproval can drive thoughts, even some behaviors, underground, too often leaving their wellspring untouched. Shaming generally causes us to hide ourselves from others, even from ourselves. Still, when it doesn't, the results can be beneficial...
 "Examination" — not catharsis, not punishment, not vindication — can and should be the positive consequence of shame.

B. A Jewish Perspective

1. Talmud Bavli Berachot 43b - I'd Rather Die

<p>It is preferable, from an ethical perspective, for one to throw himself into a fiery furnace rather than humiliate another in public.</p>	<p>נוח לו לאדם שיפיל עצמו לתוך כבשן האש ואל ילבין פני חברו ברבים</p>
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2. Rambam Mishna Torah Hilchot Deot 6:8 - The Limits of Rebuke

<p>At first, a person who admonishes a colleague should not speak to him harshly until he becomes embarrassed as [Leviticus 19:17] states: "[You should]... not bear a sin because of him." This is what our Sages said: Should you rebuke him to the point that his face changes [color]? The Torah states: "[You should]... not bear a sin because of him."</p> <p>From this, [we learn that] it is forbidden for a person to embarrass a [fellow] Jew. How much more so [is it forbidden to embarrass him] in public. Even though a person who embarrasses a colleague is not [liable for] lashes on account of him, it is a great sin. Our Sages said: "A person who embarrasses a colleague in public does not have a share in the world to come."</p> <p>Therefore, a person should be careful not to embarrass a colleague - whether of great or lesser stature - in public, and not to call him a name which embarrasses him or to relate a matter that brings him shame in his presence.</p> <p>When does the above apply? In regard to matters between one man and another. However, in regard to spiritual matters, if [a transgressor] does not repent [after being admonished] in private, he may be put to shame in public and his sin may be publicized. He may be subjected to abuse, scorn, and curses until he repents, as was the practice of all the prophets of Israel.</p>	<p>המוכיח את חברו תחלה לא ידבר לו קשות עד שיכלימנו שנאמר ולא תשא עליו חטא כך אמרו חכמים יכול אתה מוכיחו ופניו משתנות ת"ל ולא תשא עליו חטא מכאן שאסור לאדם להכלים את ישראל וכל שכן ברבים אף על פי שהמכלים את חברו אינו לוקה עליו עון גדול הוא כך אמרו חכמים המלכין פני חברו ברבים אין לו חלק לעולם הבא לפיכך צריך אדם להזהר שלא לבייש חברו ברבים בין קטן בין גדול ולא יקרא לו בשם שהוא בוש ממנו ולא יספר לפניו דבר שהוא בוש ממנו במה דברים אמורים בדברים שבין אדם לחברו אבל בדברי שמים אם לא חזר בו בסתר מכלימין אותו ברבים ומפרסמים חטאו ומחזרפים אותו בפניו ומבזין ומקללין אותו עד שיחזור למוטב כמו שעשו כל הנביאים בישראל:</p>
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C. Four Examples of Shame

1. Talmud Bavli Yoma 86b - For God's Sake

Furthermore, they said: One exposes the hypocrites due to the desecration of God's name, so others will not think that they are truly righteous and that their deeds bear imitating,	מפרסמין את החנפין מפני חילול השם
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2. Nechemia 13:25 - The sanctity of Marriage

And I quarreled with them, and I cursed them, and I struck some of them, and I plucked out their hair, and I made them swear by God, "You shall not give your daughters to their sons nor take their daughters either for your sons or for yourselves.	וְאָרִיב עִמָּם וְאֶקְלָלֵם וְאֶכָּה מֵהֶם אֲנָשִׁים וְאֲמַלְטֵם וְאֲשַׁבְּעֵם בְּאֱלֹהֵי יִם אִם־תִּתְּנוּ בְנֹתֵיכֶם לְבָנֵיהֶם וְאִם־תִּשְׂאוּ מִבְּנֹתֵיהֶם לְבָנֵיכֶם וְלָכֶם:
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3. Rambam Mishna Torah Ma'achalot Assurot 8:9 - Guilty Butchers

[The following rules apply when] a butcher is considered as trustworthy to sell meat, but it is discovered that he sold meat that was <i>nevelah</i> or <i>trefe</i> . He must return the money to its owners. He is placed under a ban of ostracism and is removed from his position	טבח הנאמן למכור בשר ונמצא בשר נבלה או בשר טריפה יוצא מתחת ידו מחזיר את הדמים לבעלים ומשמתין אותו ומעבירין אותו
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4. Shulchan Aruch Yoreh Deah 256:4 - Cut Off From Your People

A Mamzer, is treated as a (regular) Jew (In the matter of a Brit Mila) and we make the blessing over the act of Mila until he enters the Brit, but we do not request mercy for him. And we publicize at the time of the Brit that he is a Mamzer	ממזר, פְּיִשְׂרָאֵל הוּא וּמְבָרְכִים עָלָיו בְּרֵכַת מִילָה עַד פֹּרֵת הַבְּרִית, אֲבָל אֵין מְבַקְשִׁים עָלָיו רַחֲמִים. וּמְפָרְסְמִין בְּשַׁעַת מִילָתוֹ שֶׁהוּא מַמְזֵר.
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D. Ethical Checklist

1. Sefer Chofetz Chaim, Hilchot Lashon Hara 10:1-2 - The Proper Path

If one saw a person wronging someone else, through theft, deceit or any other form of harm ... and one knows with certainty that no amends were made ... one may tell this information to others in order to help the victim, or to publicize how unacceptable these acts are. He must, however, make sure that the following seven conditions are met:	אם אחד ראה אדם שעשה עולה לחבירו כגון שגזלו או עשקו או הזיקו...ונודע לו בכירור שלא השיב את הגזילה...יכול לספר הדברים לבני אדם כדי לעזור לאשר אשם לו, ולגנות המעשים הרעים בפני הבריות. אך יזהר שלא יחסרו אלו השבעה פרטים שנבארו בסמוך. ואלו הן:
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<ol style="list-style-type: none"> 1. [The speaker of the negative information] must have witnessed the incident, and not heard about it from someone else, unless he is able to verify its truthfulness. 2. He must calmly think over whether or not the incident actually constitutes a theft, damage or wrongdoing, examining the issue from all sides and not coming to hasty conclusions. 3. He must first attempt to approach the offender himself, if that is possible, gently rebuke him for his misdeed and urge him to set things right. 4. He must not exaggerate in his account of what transpired. 5. His intent must be only for the sake of achieving justice, and not God forbid, enjoying the negative light in which he is casting his fellow. Nor may he speak out of hatred that he already harbors for the subject. 6. If there is any way in which he can achieve the same results without having to resort to relating the negative information, he is required to take that course of action. 7. It must be clear that the consequences that the offender will suffer will be no more severe than those he would face were he to be brought to Beit Din [Jewish court of law]. 	<p>א] שיראה דבר זה בעצמו, ולא על ידי שמיעה מאחרים אם לא שנתברר לו אחר כך שהדבר אמת.</p> <p>ב] שיזהר מאד שלא יחליט תכף את הענין בדעתו לגזל ועושה או להזק וכיו"ב, רק יתבונן היטב את עצם הענין אם הוא על פי דין בכלל גזל או נזק.</p> <p>ג] שיוכיח את החוטא מתחילה ובלשון רכה אולי יוכל להועיל לו...</p> <p>ד] שלא יגדיל העולה יותר ממה שהיא.</p> <p>ה] שיכוין לתועלת, ולא ליהנות ח"ו מהפגם ההוא שהוא נותן בחבירו ולא מצד שנאה שיש לו עליו מכבר.</p> <p>ו] אם הוא יכול לסבב את התועלת הזאת גופא בעצה אחרת, שלא יצטרך לספר את ענין לשון הרע עליו, אזי בכל גוני אסור לספר.</p> <p>ז] שלא יסובב על ידי הספור היזק להנידון יותר מכפי הדין שהיה יוצא אילו הועד עליו באופן זה על דבר זה בבית דין.</p>
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2. Talmud Bavli Niddah 61a - A Fine Line

<p>Raba observed: As to slander, though one should not believe it one should nevertheless take note of it. There were certain Galileans about whom a rumour was spread that they killed a person. They came to R. Tarfon and said to him, 'Will the Master hide us?' 'How', he replied, 'should I act? If I don't hide you they would see you. If I hide you, I would be acting contrary to the statement of the Rabbis, "As to slander, though one should not believe it, one should take note of it". Go you and hide yourselves'.</p>	<p>אמר רבא האי לישנא בישא אע"פ דלקבולי לא מבעי מיחש ליה מבעי הנהו בני גלילא דנפק עלייהו קלא דקטול נפשא אתו לקמיה דרבי טרפון אמרו ליה לטמרינן מר אמר להו היכי נעביד אי לא אטמרינכו חזו יתייכו אטמרינכו הא אמור רבנן האי לישנא בישא אע"ג דלקבולי לא מבעי מיחש ליה מבעי זילו אתון טמרו נפשייכו (במדבר כא, לד)</p>
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