Introduction

In *Discipline and Punish* (1977) Michel Foucault argues that the modern prison system was predicated less around punishing more humanely than “punishing better” (p. 80). By substituting prison walls for the gallows, the principles of deterrence and retribution superseded those of the retributory spectacle, as criminologists sought not only to control offenders’ bodies but their very souls. This paper agrees with Foucault’s starting point, but attempts to take its implications in a somewhat different direction. As the philosopher rightly recognized, incarceration encourages an “out of sight, out of mind” mentality, wherein our convicted are both symbolically and literally separated from the public sphere. By preventing the possibility of more informed opinions from actively emerging, however, modern corrections perversely hinders and discredits democratic ideals in a way Foucault failed to conceptualize. Further, as the following paper shall contend, only the widespread adoption of public shaming sanctions offers any hope for realizing a truly representative criminal justice system.

The paper’s first section discusses what I have labeled the Veiled Society, in which I contend that contemporary policy, like death before it, has been gradually and effectively closed off from the public sphere. While separating death from the social domain led to the suppression of many contagious diseases I believe veiling public policy
and modern corrections has had a far more pernicious effect, undermining the very fabric of a healthy democracy. In the second part I describe my solution, or the broad embrace of public shaming sanctions. I argue that shamings’ many critics have ignored its democratic qualities, and attempt to detail where their contentions most significantly go awry. In the paper’s final passage I address the specific objections of philosopher and shaming critic Martha Nussbaum, who seems to implicitly recognize shamings’ representative possibilities but cannot overcome certain lingering prejudices. I conclude by identifying Nussbaum’s major concerns and how these can ironically help to both strengthen and balance my own argument. Public shaming sanctions have engendered a great deal of previous academic debate, and my argument will therefore offer a novel perspective within an already substantial field of scholarship (for example, see Braithwaite, 1993; Etzioni, 1999; Kahan, 1997, 2006; Massaro, 1997; Whitman, 1998; Newman, 1995).

Part I: The Veiled Society

In his magnum opus *The Hour of our Death* (2008) philosopher-historian Philippe Aries focuses upon the gradual veiling of death, from its status as an essentially public process to its eventual concealment behind hospital walls. While this event dramatically mitigated the spread of disease and led to significantly longer life spans Aries contends that it also altered individual conceptions of the very nature of death. Whereas past generations regularly encountered the chronically ill and saw dying as a natural part of life, the birth of the hospital fostered a view of death as something both abnormal and deeply mysterious. Separating death from the public sphere further made it seem almost
escapable, creating a schizophrenic society both obsessed with the inevitability of death while at the same time consumed by ways in which to somehow avoid it.

Although Aries focuses exclusively upon the idea of death he would likely agree that contemporary public policy has undergone a similar process of concealment. This has not led to a healthier public but one significantly sicker, however, in its inability to both realize and implement its political and social ideals. Most egregious is the constant lionization of an ethos that is continually espoused but only illusorily practiced. As I shall contend, while we irrevocably praise the ideal of self-government, the veiling of public policy simultaneously and schizophrenically makes its fulfillment impossible.

My first contention is relatively simple and uncontroversial: In a democracy citizens must have a say over the policies that govern them. While electing representatives may somewhat blunt the full possibility of this, congressmen are nevertheless expected to carry out their constituents’ will. Integral to this process is that citizens fully understand what they are voting for; i.e. what policies their representatives seek to institute. In order to understand a particular policy, however, one must have some conception of its potential consequences. Merely pulling a lever and moving on is simply not enough; having some ideal notion of how something works is wholly different from watching it work. And herein lies our problem: Veiling public policy walls off its consequences from the general citizenry, making policy decisions as great an abstraction as that of death.

Let us consider the state’s most serious decision, that of launching and conducting a war. The notion of self-government is predicated around accepting the will of the majority (as long as it does not violate certain Constitutional provisions, which are
themselves open to popular adjudication). Although a sizable segment of the country may disagree with the decision to go to war, representatives (including the President) are nevertheless expected to enforce the majority opinion. Yet how is this logically possible if the reality of war is restricted from public view? This was relatively difficult to do when the draft was in place, as nearly everyone had a friend or relative that was involved and could (at least partially) explain what war was like. Since the draft has been rescinded it has become considerably more difficult to grasp war’s full nature; the media, for example, is often shielded from showing explicit video footage, and bodies of the fallen are even hidden from popular view. If embedded reporters endanger soldiers’ lives their removal is certainly acceptable; any other reason to restrict their presence on the ground hinders the public’s task to both judge and determine its nation’s most serious conduct.

Of course, such a phenomenon does not only hold for the example of war but for a host of other pertinent issues. Perhaps chief among these is that of the death penalty. If the citizen grants the state the right to kill, he or she should fully realize what this right entails. This involves not merely supporting the death penalty but seeing it in action. Executions should no longer be hidden from popular view, but be made as public as possible; indeed, there seems no offender more important for the populace to stare in the eye than one they condemn to die. If the majority of citizens cannot do this it is time to revoke the state’s license to execute.

Animal Rights activists have made a similar point. We support all sorts of laws allowing animal slaughter but actively shy away from the process itself (and often reject food that even slightly resembles the creature it once was). If we are unwilling to accept
how our food is produced what right do we have to eat it? Every time we consume a formerly living being we should have some conception of both the process it went through and the path it took to our plates. Whether this involves having glass slaughterhouses that everyone can view (as the food philosopher Michael Pollan (2007) has suggested) or some other method of public acknowledgment is a matter of purely procedural rather than ethical concern. Of similar relevance is the issue of abortion. If we support a woman’s choice we should know what such laws physically entail. Here, of course, physical enforcement is impractical, and videos may therefore be of great help. Those making such a decision should perhaps have to view films of a real abortion, and then formally decide whether they want to carry on with the procedure.

I would further contend that politics of concealment help to both engender social extremism and provoke greater inter-personal hostility. Such concealment not only helps to reinforce the existence of contemporary political binaries, but the incredible amount of vitriol that such dichotomies arouse. If we had to mutually and communally look at the policies we endorse we could likely come to a deeper understanding of each other’s perspectives. We could say, “ah, so this is what you find so troubling about abortion”, or “I understand why you find eating meat so abhorrent”. At the very least putting everyone on the same playing field could allow a larger dialogue to commence; instead of bludgeoning one another with talking points we could step back and actively discuss the things we have communally witnessed. A larger sense of social solidarity would not necessarily result, but at least some building blocks towards a greater empathy for each other’s positions (and for one another) would potentially be laid.
Part II: Piercing the Veil

Although I have identified a number of diverse areas in which our Veiled Society greatly damages democratic ideals, this paper will focus exclusively upon the realm of criminal justice and specifically on modern corrections. This is primarily for two distinct reasons: (1) it seems a great segment of the population (if not the majority of it) is particularly unaware of how criminal offenders are punished, as jail and prison facilities, like hospitals, are physically separated from everyday life, and (2) if people had to actively consider the consequences of many criminal sanctions it is conceivable they would want them drastically altered (i.e. more authentic opinions would emerge). Contemporary criminal justice is thus a particularly egregious example of our Veiled Society, in which human beings are forcefully removed from a public sphere that simultaneously ignores their existence but ensures their livelihood.

On the surface most individuals would seem to have an adequate understanding of contemporary criminal sanctions. A number of television programs showcase criminal procedure, and there are few individuals who have not seen any jail or prison films. But how extensively does popular culture and everyday reality truly converge here? As the prison historian Julian Roberts (2005) has empirically detailed, representation and reality differ enormously. While prison programs and films continue to enjoy considerable financial success, the public remains startlingly uninformed regarding actual practices. Interviewing a wide breadth of the citizenry, Roberts found little knowledge of today’s prison conditions, whether concerning the amount of individuals currently incarcerated, the economic cost of such incarceration, or the nature of sentencing practices. Further, most citizens had no direct contact with penal institutions, and hence based their
knowledge of prisoners’ daily lives on uninformed hearsay or inaccurate fictional portrayals. As Roberts summarizes, “although the traffic of people in and out of the prison gates today is large, nevertheless the prison is a silent world still shrouded in mystery” (p. 286).

And indeed, as long as incarceration remains separated from the public domain individual citizens will continue to have little idea of how the most serious sanctions are administered and the consequences thereof. Only two solutions seem suitable in order to rectify this dilemma: The government must (1) create a greater awareness of who is in jail or prison for what crime and what their everyday life consists of, or (2) somehow integrate the world of corrections into the public sphere. The former scenario seems difficult if not impossible to successfully fulfill: Encouraging individuals to occasionally visit jails and prisons (as the scholar Graeme Newman (1995) has called for) would not only grossly infringe upon their personal liberty, but also cost an extraordinary amount of money and require constant organizational expertise. An attempt to resolve this might be through the use of film, or requiring citizens to (occasionally) watch detailed prison documentaries. This scenario also seems ineffectual; while film can certainly prove a powerful medium, it is no substitute for concrete experience. As discussed previously, passively absorbing and actively participating are two very different things, and engage the senses in unique ways. While film may be useful in certain examples (as was mentioned in the example of abortion), its use should therefore be restricted to cases of necessity.

Fortunately, the second solution proposed (bringing corrections to the citizenry) is not only practical but already instituted. Less perilous than mandating citizens to visit
prisons and more tangible then showing them films, public shaming penalties force us to look offenders face to face, bringing the nature of our sanctions formally and undeniably into public view.

Although public shaming sanctions have a number of basic definitions, such punishments explicitly advertise an offender’s “illegal conduct in a way intended to reinforce the prevailing social norms that disapprove of such behavior” and thereby seek “to induce an unpleasant emotional experience” in the convicted (Harvard Law Review, 2003, p. 2187). There are currently three recognized forms of criminal shaming. First, an offender can be stigmatized publicly, with their criminal status demarcated for all to see (Kahan, 1996). This involves literal stigmatization, or sanctions that “effectively paste the label on the offender” (Massaro, 1997, p. 691). Perhaps the most famous examples of this are forcing the convicted to wear “sandwich signs” detailing their offense, or affixing DUI license plates to the cars of serial drunk drivers. Second, there is self-debasement, which “involves ceremonies or rituals” meant to publicly disgrace the offender (p. 691). Such penalties may incorporate both literal and public stigmatization, but also involve specific procedures or protocols for the offender to follow. The recent passage of Megan’s Law represents this particular form of shaming sanctions, as convicted child molesters are forced to publicly reveal their transgressions and enter living locations into a widely available database. Finally there is contrition, or penalties that force offenders to openly apologize for their crimes to either a public or private audience.

Beginning in the mid-1990s a number of U.S. judges began to openly administer all three forms of stigmatized shaming. Such penalties have continued to spread throughout the nation, almost always introduced by lone magistrates. Various town
judges, for example, have forced convicted thieves to wear shirts stating their offense, or ordered papers to list the names of Johns caught in local prostitution stings (Garvey, 1998, p. 735). Perhaps most publicized has been the use of shaming signs, including those forced to affix bulletins on their lawn exposing criminal behavior (Kimball, 2004).

Although only a recent phenomena public shaming sanctions have already faced constitutional challenge. Indeed, while the Supreme Court has rejected any relevant cases, the United States Court of Appeals for the Ninth Circuit established federal precedent in *United States v. Gementera* (379 F. 3d 596 2004). In this case a mail thief was forced to stand outside a post office wearing a sandwich sign stating, “I am a mail thief. This is my punishment.” According to the defendant such a sanction expressly violated the Eighth Amendment, constituting both cruel and unusual punishment. While the Court agreed that Mr. Gementera’s penalty was somewhat peculiar, they refused to declare it unusual. Further, the Court stated that “contemporary standards of decency” were not violated, and there was hence no reason to conclude the “bounds of “civilized” punishment had been breached (p. 10789).

**Shamings Few Friends and Many Enemies**

Although the use of public shaming sanctions has reached the point of formal constitutional protection the use of such punishments has (at least so far) enjoyed only marginal support within the academic community. As I shall detail, this may be due more to their specious defenses than anything else, and both proponents and critics’ continual failure to realize shamings democratic qualities. In his seminal article *What Do Alternative Sanctions Mean?* (1997) Yale legal scholar Daniel Kahan made an influential
(and much derided) argument for the adoption of shaming sanctions, but based upon simple notions of deterrence and fiscal pragmatism. According to the author such punishments could maximize social utility, providing a cost-effective alternative to mass incarceration. Kahan proposed that stigmatized shaming could better deter criminality on both the specific and general level (Nussbaum, 2004, p. 228). First, offenders would be so humiliated as to never again commit the act in question, and second, the shame would cement public norms within its viewers and hence discourage general misconduct. While Kahan must be credited with laying the intellectual foundations for public shaming’s defense, it is entirely unclear whether shaming would tangibly result in either significant deterrence (a point to which we will later return) or promote adequate fiscal responsibility.

A handful of other scholars support expressive punishments beyond reasons of mere deterrence. The sociologist Amitai Etzioni has perhaps stood foremost in this debate, viewing shaming sanctions as procedural solutions to decreasing moral standards and increasing social decay (Etzioni, 1999). In Etzioni’s view shaming sanctions brilliantly match the offender’s violation; they also reveal what “is and is not okay” in a given community, and properly reinforce and enunciate communal solidarity. Despite Etzioni’s obvious enthusiasm, however, his stance seems to miss the larger picture. As I have argued, shaming sanctions can certainly help in reinforcing solidarity, but through integrating corrections within the public sphere rather than merely enforcing vague moral standards and appeasing nebulous concerns of social deterioration.

Although shaming’s principal critics have also failed to acknowledge the democratic qualities of this form of punishment they have nevertheless expressed a
variety of important concerns. Interestingly, I believe many of their contentions actually reinforce rather than counter my larger argument. This is most obvious in the case of Daniel Kahan himself, who recently went from shamings most well known proponent to perhaps its harshest critic. In his reformed view Kahan claims that shaming would egregiously conflict with the egalitarian and pluralistic principles that many citizens hold. While not wrong “in itself” stigmatized shaming sanctions would thus create too much political controversy for their former proponent’s continued endorsement.

I think Kahan is quite correct in his assertion that public shaming could create a volatile social rift, but that is entirely the point. Public shaming would force people to actively consider the laws in place, and if this stirs an intense and passionate debate that is a healthy social consequence. By bringing sanctions into the open criminal justice will no longer be the exclusive property of judicial elites and cloistered academics, but a matter to be reviewed and contemplated within the larger public sphere. As should be obvious, this goes well beyond endorsing popular referendums; indeed, as long as criminal justice remains separated from the public domain any such referendums would be deeply misinformed and consequently inauthentic.

While Kahan attacks shaming from a social solidarity standpoint, the philosopher Eric Markel rejects such sanctions for being improperly retributive. In Markel’s view punishment must center around balancing the scales of justice: Someone is penalized because their offense provided them with a metaphysical advantage over others, and this debt must be repaid in order for “society to set itself aright”. This implies offenders are punished for their acts alone and implicitly recognized as rational moral agents. Shaming sanctions supposedly violate this notion of personal sovereignty, and in Markel’s view
are hence disproportionate (p. 63). Indeed, according to Markel, such punishments fundamentally undermine the very concept of human dignity, and therefore infringe upon the underlying tenets of a moral order (2004, p. 2).

While Markel’s dignity claim is certainly compelling it is also remarkably shortsighted. The modern punishment of incarceration (which Markel seems to implicitly support) does even less to protect human dignity than public shaming; imprisonment not only often treats individuals as subhuman but also makes considerable claims upon their self-respect and agency. Open corrections would be considerably more dignified: The offender not only knows what they are “in for,” but is constantly reminded of the reasons for their punishment (something easily forgotten in the “perpetual punishment” of incarceration).

A third prominent critic of stigmatized shaming is the scholar James Q. Whitman, whose critique is procedural rather than theoretical. According to Professor Whitman shaming penalties would amount to a modern-day public lynching. By displaying offenders for all to see the convicted would be left at the mercy of crowd temperament and popular judgment (1998). State sovereignty would be replaced by the will of the mob, which could turn violent and vindictive at even the slightest provocation. The government cannot control popular vigilantism or individual justice, and is taking an unnecessary and indefensible risk in allowing stigmatized shaming sanctions to proceed, regardless of any emotional justifications. Yet Professor Whitman’s concerns seem easily addressed: A court-assigned guard could be appointed to protect the shamed offender, making sure he or she is not physically assaulted. Even the staunchest critics of
stigmatized shaming (such as Markel) admit this to be an adequate solution, and
Whitman’s fears can subsequently be easily avoided.

Another common critique of shaming sanctions is a purely racial one: Since
African-Americans make up a disproportionate majority of the nation’s prisoners, the
idea of so many more blacks than whites being shamed may bring uncomfortable
reminders of not only segregation but slavery itself (scholars such as Loic Wacquant
(2005) have even argued that American history for people of color has largely progressed
from slavery to segregation to prison). But if this makes people angry or uncomfortable
we have yet another reason to promote public shaming sanctions. By bringing this
striking imbalance into the open, the populace would be forced to finally and honestly
deal with this issue rather than let it continue to fester behind prison walls (and within
particular African-American communities).

While Kahan, Markel, and Whitman challenge shaming sanctions on a variety of
fronts, they therefore fail to offer any particularly effective critique. Far more penetrating
has been the work of Toni M. Massaro, whom has sought to discredit such punishments
from both a labeling and deterrence perspective. Similar to theorists such as Howard
Becker and Charles Lemert, Massaro asserts that certain early offenders may become
“labeled” by their shame and as a result adopt a defeated, even criminogenic mindset.
Feeling they have little left to lose such “deviants” may come to accept and potentially
embrace the label given to them, falling into a downward spiral of social alienation and
interpersonal anger.
The contention that some offenders may be permanently stigmatized, while certainly a troubling one, is a trade-off I am willing to accept. To avoid the full effects of stigmatization magistrates would do well to evaluate the offender before them, deciding their degree of existing social support and the subsequent effects of publicly shaming the person. In even the most careful of cases pernicious labeling will always constitute a risk, however, and while this is surely regrettable it is an acceptable evil. One must ultimately ask him or herself which is preferable, a system where offenders are marginalized to the point of invisibility, or openly acknowledged as fellow social actors? Permanent stigmatization is a serious concern, but I believe a small price to pay for a more open and authentically democratic society.

Massaro’s argument is considerably more convincing from a purely deterrence standpoint. What if such sanctions do nothing to prevent future recidivism, and by stigmatizing the offender actually motivate further criminal behavior? Few empirical studies have been conducted regarding this matter and it is consequently impossible to voice any sort of informed opinion. Yet this demand to forge a comprehensive utilitarian calculus entirely overlooks my larger point. I do not support public shaming sanctions for their supposed efficacy (as the early Kahan did), but their ability to publicize corrections. If such sanctions lead to substantial reductions in recidivism this would of course be a welcome and noteworthy consequence. My advocacy of open corrections is not for the sake of simple deterrence, however, but to purely help create a more representative society.

Critics will surely press further, questioning how far I am willing to sacrifice efficiency for transparency. What if such sanctions have a significantly perverse effect on
criminality, and their institution clearly and unequivocally lead to a substantially higher crime rate? How many homicides am I ultimately willing to endure for the sake of democratizing corrections? Of course, such hypotheticals can be directed at nearly any argument, and drawing a line in the sand will always prove an arbitrary exercise. It is certainly tempting to be a Kantian and endorse the state’s very dissolution before the sacrifice of one’s ideals. Deterrence theorists preach the opposite extreme, and by seeking to ground everything in cost-benefit analyses leave us bereft of virtually any ideals whatsoever. Yet everyday life ultimately exists somewhere in-between, and that is where any practical argument must be situated. While I believe integrating corrections into the public sphere is an essential feature of any truly self-governing order, I am certainly not willing to blithely sacrifice some inordinate amount of lives in order to do so. Nor can the details of such a hypothetical trade-off be scientifically or logically grounded, but should be the result of an open and transparent social consensus.

Part III: Cautiously Removing the Veil

There is one final critique I think worth considering in depth, presented by philosopher Martha Nussbaum in her celebrated book *Hiding from Humanity* (2004). While Massaro’s critique is primarily directed at the conceivable effects of stigmatized shaming on the convicted Nussbaum considers such punishments implications on the populace as a whole. In Nussbaum’s eyes stigmatized shaming embraces the bestial impulses lying at the very borders of human conduct; “civilized” nations have eliminated shaming for this reason, having properly recognized the perverse and immoral impulses unleashed by public degradation. According to Nussbaum, policies built around shame
therefore endanger any act found to be distasteful or disgusting, and could likely result in eroding social progress itself.

Out of all shamings critics only Nussbaum seems to recognize that such punishments can genuinely democratize corrections. In a sense, she seems to fear public sanctions as overly democratic. Nussbaum appears to suggest that people have a natural enjoyment for others’ suffering (known in German as Schadeunfreude), and open sanctions will only magnify this bestial impulse. The law will simply follow the masses’ will, and in doing so marginalize any act deemed offensive. The worst excesses of populism will invariably result (spurred by the latest moral panic) and tyranny of the majority will become a concrete reality.

If Nussbaum is correct and the majority will derive some natural satisfaction from others’ pain I believe this instinct better tempered than unsuccessfully abolished. If humans inherently desire seeing others suffer let it be carefully restricted to the deserving\textsuperscript{viii}, for doing otherwise is both socially inauthentic and an affront to the very notion of a self-governed citizenry. Of course, critics will reflexively assert that civilization has been founded on repressing such an animalistic impulse. To the contrary I would contend that such “barbaric” urges continue to exist in a muted (and considerably more hypocritical) form. Rather than openly confronting our offenders modern practice is to lock them away in distant prisons, where they are daily denigrated and socially marginalized. We then gain incredible pleasure in detailing our criminal elements most terrible exploits through “exclusive” television programs and sensationalistic movies, knowing next to nothing of the reality behind them. As offenders’ humanity is virtually revoked, reduced to a number and forcefully spared from the public eye, the state’s
rejects quickly transform into invisible actors ix. This is both morally and socially troubling; ignorance may be bliss, but not if we have any pretensions for a more transparent society.

As argued earlier stigmatized shaming sanctions force us to openly confront the social norms and resulting sanctions we implicitly endorse everyday, and bring criminal offenders into open view. If we truly believe certain actions should be penalized we must have the moral character and internal decency to face those who violate them. If not, we must use our voices to change things. This lies at the heart of a government supposedly determined by the people, and offers a formal challenge to the veiled and conflicted carceral system in which contemporary criminal justice finds itself x.

Nussbaum’s fear of public shamings’ draconian possibilities certainly holds some relevance, however, and a number of restrictions are therefore necessary in order to avoid the potential abuses of unbridled populism. First, minority groups cannot be shamed merely for their identity or because the majority finds their actions eccentric or distasteful. The Constitution both provides the ultimate safeguard on such repressive populism, and establishes the foundations for American self-government to properly function in the first place.

Second, as reviewed earlier, public shaming sanctions should only be enacted if a magistrate feels the offender under review will be properly humiliated but also has enough communal support to avoid being overly stigmatized. Although the widespread adoption of shaming sanctions will dramatically alter the criminal justice system, such change should be incremental rather than revolutionary. This can obviously only work on a case-by-case basis and its practicalities will consequently develop organically. For
example, certain jurisdictions may not have the resources to properly review all relevant cases, and will be forced to restrict public shaming to the rarest of incidents. A more difficult question concerns whether to incorporate a larger indiscriminate shaming scale or to leave penalties entirely up to judicial authority. I feel both scenarios are problematic, and a combination of both may then yield the most practical solution. Thus, a sentencing guideline system (on the state level) should set recommended sanctions, but still leave additional openings for reasonable judicial discretion. Further, once the shaming ritual is complete all rights must be fully restored to the individual offender, as their scarlet letter is not to be worn for life.

Finally, a court representative should be made available in order to address any questions or concerns raised by the perpetrators’ friends, family, and relevant victims. Such questions should only concern the factual nature and scope of the shaming punishment, and the designated representative must always be easy to contact and communicate with. In providing such a service courts will also be forced further into the public sphere. The victim (if there is one) can become part of the process as well, and gain knowledge of where and when their offender is to be held accountable.

Proponents and critics alike will surely wonder if all crimes should warrant shaming sanctions, and what tangible forms such punishments will actually take. Ideally any offense could be openly punished, with drug charges, basic assault, property crimes, various white-collar offenses, and serial drunk driving most likely to lead the way. These particular crimes have already engendered a number of innovative shaming sanctions and would undoubtedly provide relevant models for many other transgressions. Most difficult to implement will likely be shaming sanctions for crimes of murder and rape. Although I
argued earlier for the implementation of public executions, this can only be in the (extreme) minority of cases. Of course, it is conceivable no adequate punishment could ultimately be settled upon and prisons may subsequently be a regrettable necessity. Here prison documentaries could likely come in handy as flawed but unique bridges between the world of corrections and the public domain.

Conclusion

Many people express immediate repulsion at the very idea of public shaming sanctions. While emotional responses are certainly valid, it is equally important to step back and rationally consider the issue at hand. Separating death from the public domain unquestionably led to a healthier populace; as I have argued in this paper, the veiling of public policy has had a far less wholesome effect, allowing us to vote for punitive abstractions while simultaneously ignoring their concrete consequences. Only by bringing these consequences into the common realm, actually staring those they affect most in the eye, do I believe we can truly comprehend the policies themselves. I certainly understand that such understanding may result in discomfort or derision, but this is ultimately part of living in a genuine democracy. Forcing corrections into the public sphere would thus begin to fulfill those ideals we continually profess, inserting a measure of authenticity into a society that all too often abstains from looking its failures in the eye.
Endnotes

i Beyond exploitative television programs and films

ii I readily acknowledge that the prospect of stigmatic shaming raises a wealth of important historical and philosophical issues that I do not have the space or expertise to cover in this particular paper, and sincerely hope other social scientists will therefore pick up where I have left off. For example, why such penalties originally dissipated and have only recently regained in popularity seems to me a particularly pertinent issue.

iii It should be noted that contrition is usually linked to Reintegrative Shaming procedures, a form of punishment that will not be discussed within the following paper (Braithwaite, 2000). This is because such penalties center around the convicted and those he or she has wronged rather than the greater public sphere.

iv Although a variety of nations have begun to adopt shaming policies here I shall focus exclusively upon the United States.

v Also see Shame, Stigma, and Crime (2004)

vi It should be noted that he himself does not use this phrase.

vii The only quantitative study I could find found mixed results regarding the deterrence effect of stigmatized shaming. The researchers’ sample size was admittedly small, and the authors conceded that “more and better research” was “necessary before firm conclusions” could “be drawn” (Tittle, Bratton, and Gertz, 2003, p. 614).

viii Skeptics may question who the deserving are, but that is exactly what a democratic society should allow its citizens to decide.

ix Here critics will likely assert that I am being too “soft” on offenders; that they deserve to suffer for their crimes and all this talk of fellow human beings fails to recognize the seriousness of criminality. While I certainly agree that many offenders deserve to suffer I am only true to this position if I can openly and honestly stare it in the face. As the philosopher Ludwig Wittgenstein once remarked, the most important things in life can only be shown and not said.

x This will probably be especially relevant regarding narcotics offenses; one can only imagine the uproar if those caught with marijuana were forced to wear patches identifying themselves as Class C Drug
Offenders. I envision such a scenario could likely spell the end of marijuana laws (especially when the sons and daughters of the wealthy and connected were confronted with the patch), and if not, people would at least be forced to question what moral purpose such sanctions serve.
References


*United States v. Gementera*, 379 F.3d 596 (9th Cir. 2004).

