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From the Stocks, to Handcuffs, to Hollywood: An Analysis of Public Humiliation in Judge Judy's Syndi-court

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FROM THE STOCKS, TO HANDCUFFS, TO HOLLYWOOD: AN ANALYSIS OF PUBLIC HUMILIATION IN JUDGE JUDY'S SYNDI-COURT

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A plaintiff stands as the bailiff swears him in. The judge takes one look at the plaintiff, who is wearing a pair of casual jeans, and asks, "Who taught you to dress like that for court?"[1] *The plaintiff swallows a lump in his throat as humiliating silence ensues. But the silence does not last long. Enraged by the plaintiff's lackadaisical appearance, the judge proceeds to chastise the plaintiff for his obvious indiscretion. After minutes of aggressive censuring, the man attempts to offer an excuse by interrupting the judge. The judge's reply is sharp: "I'M SPEAKING!" The plaintiff stops mid-syllable. The judge declares, "This isn't* American Idol *sir, this is a court!"*[2] *The mass laughter that follows reminds the plaintiff that he being recorded in front of a live studio audience, and that the proceeding will be broadcast to millions of at-home viewers. The plaintiff feels embarrassment churn in the pit of his stomach. In this moment, the plaintiff is questioning his decision to appear on syndi-court.*

I. INTRODUCTION

The term "syndi-court" refers to televised court shows such as *Judge Judy*, *The People's Court*, and *Judge Joe Brown*.[3] The phrase was coined because the television rights to these shows are

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[1] This hypothetical scenario was created by the author for illustrative purposes. The quotes included in the scenario are similar to those of actual syndi-court judges.

[2] *American Idol*, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=American_Idol&oldid=632705456 (last visited Nov. 8, 2014). *American Idol* is an American singing competition television series that employs a panel of judges who critique the contestants' performances.

[3] *See* Philip Z. Kimball, *Syndi-Court Justice: Judge Judy and Exploitation of Arbitration*, 4 J. AM. ARB. 145, 145-47 (2005), *available at* http://www.americanbar.org/content/dam/aba/migrated/dispute/essay/syndicourtjustice.authcheckdam.pdf.

bought on the syndication market.[4] Syndi-courts feature actual litigants seeking to resolve legitimate disputes.[5] While syndi-courts portray themselves as courts created by the state, they are actually arbitration proceedings.[6] These arbitration-based reality shows recently gained popularity across the country due to the personalities of their judges.[7] For example, Judge Judith Sheindlin, the presiding judge on *Judge Judy*, is famous for her quick wit and humor on the bench, which is similar to that offered by the judge in the hypothetical scenario above.[8] Often, her witty and humorous remarks, known as "judyisms," humiliate or embarrass the individuals to which they are directed.[9]

While orations by Judge Judy may embarrass or humiliate litigants, her comments also offer true life lessons and advice (*e.g.*, parties should dress appropriately to court).[10] But is this harsh advice directed precisely to those individuals or, rather, society-at-large?[11] This article explores the origin, use, and effect of public humiliation in Judge Judy's syndi-court.[12] First, this article explores the role of public humiliation in America's legal system since the colonial era

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[4] *Id.* "Syndication is the practice of selling rights to present television programs, generally to local television stations or cable channels. Most shows on television are from the syndication market. The exceptions to this are generally current network prime-time programs, live news programs and live coverage of sports and other special events." *Id.*

[5] *Id.*

[6] *Id.*

[7] Kimball, *supra* note 3.

[8] *Id.* She is generally known by the name "Judge Judy." *Id.*

[9] Judge Judy, http://en.wikipedia.org/w/index.php?title=Judge_Judy&oldid=632565536 (last visited Nov. 9, 2014). For example, Judge Judy frequently makes statements like: "If you live to be 100, you will never be as smart as I am, sir," "Clearly you are not wrapped too tight," "Where did you think you were coming to today, a tea party," and "Do I look like I need help from you?" *Id.*

[10] *Id.* Examples of these statements include: "A good deed never goes unpunished," "Beauty fades, dumb is forever," "If it doesn't make sense, it's not true," and "Do you know when teenagers are lying? When their mouths move." *Id.*

[11] *See infra* Part III.

[12] *See infra* Parts II-III.

and identifies key issues surround "shaming sanctions."[13] Next, this article links the traditions and customs of public humiliation in America to pluralistic adjudication in Judge Judy's syndi-court.[14] Further, this article suggests that Judge Judy employs public humiliation to address the moral collapse of our society, rather than the distinct indiscretions of individual litigants.[15] Finally, this article concludes that American legal scholars should embrace syndi-courts for serving as visible public platforms that promote personal accountability.[16]

II.BACKGROUND

A.Public Humiliation in Colonial America

The American legal system has long incorporated public humiliation as normative punishment in criminal contexts.[17] Applying British law, seventeenth century colonial magistrates used shaming sanctions in many ways.[18] These magistrates often ordered criminal offenders to confess their guilt and express their remorse in

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[13] *See infra* Part II. This article uses the terms "public humiliation" and "shaming sanctions" interchangeably. Shaming sanctions are usually criminal penalties that incorporate methods of conventional public humiliation.

[14] *See infra* Part III.

[15] *Id.*

[16] *See infra* Part IV. Many scholars criticize syndi-court shows and judges for arguably distorting the American public's perception of the justice system. *See, e.g.*, Kimberlianne Podlas, *Blame Judge Judy: The Effects of Syndicated Television Courtrooms on Jurors*, 25 AM. J. TRIAL ADVOC. 557, 557-58 (2002). However, there is little literature with respect to the positive implications of syndi-court shows.

[17] James Q. Whitman, *What Is Wrong with Inflicting Shame Sanctions?*, 107 YALE L.J. 1055, 1089 (1998).

[18] Matthew W. Meskell, *The History of Prisons in the United States from 1777 to 1877*, 51 STAN. L. REV. 839, 842 (1999). As a customary form of punishment, shaming sanctions in colonial America were firmly rooted in British penal ideology. *Id.* Indeed, colonial magistrates commonly applied British penal statutes verbatim. *Id.* During the eighteenth century, Britain's penal code defined at least 160 capital offenses within colonial America. *Id.*

the town square.[19] Other offenders were forced to sit in the stocks as bystanders sneered and snickered.[20] Sometimes, offenders confined to the stocks were also forced to wear dough, cabbage, or other items on their heads.[21] To heighten the mortification, onlookers would throw stale eggs at the offenders.[22] More severe forms of punishment involved branding and maiming.[23] All of these punishments were widely viewed by the public because, to maximize the humiliation, local officials implemented the penalties in bustling areas.[24]

Into the eighteenth century and following the American Revolutionary War, public humiliation continued being enshrined into American culture.[25] Although British penal ideology fell out of favor following American independence, religious clerics publicly lectured criminals in an effort to reform their character by prompting remorse.[26] In some cases, the offender had to beg their congregation for forgiveness following formal admonition from church officials.[27] These practices influenced penal philosophy in early America because many communities were founded upon common religious

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[19] Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880, 1888 (1991).

[20] James A. Cox, *Bilboes, Brands, and Branks: Colonial Crimes and Punishments*, COLONIAL WILLIAMSBURG FOUND., http://www.history.org/Foundation/journal/spring03/branks.cfm (last visited Sept. 29, 2014).

[21] Massaro, *supra* note 19, at 1914.

[22] *Id.*

[23] Jon A. Brilliant, *The Modern Day Scarlet Letter: A Critical Analysis of Modern Probation Conditions*, 1989 DUKE L.J. 1357, 1361 (1989).

[24] Rosalind K. Kelley, *Sentenced to Wear the Scarlet Letter: Judicial Innovations in Sentencing—Are They Constitutional?*, 93 DICK. L. REV. 759, 772 (1989).

[25] Meskell, *supra* note 18, at 843 (noting Americans' "aversion to the harshness of the English criminal code" following the American Revolutionary War); Barbara Clare Morton, *Bringing Skeletons out of the Closet and into the Light—"Scarlet Letter" Sentencing Can Meet the Goals of Probation in Modern America Because It Deprives Offenders of Privacy*, 35 SUFFOLK U. L. REV. 97, 116 (2001) (discussing "modern implementation of shame sanctions").

[26] Morton, *supra* note 25, at 102.

[27] *See* Scott E. Sanders, *Scarlet Letters, Bilboes and Cable TV: Are Shame Punishments Cruel and Outdated or Are They A Viable Option for American Jurisprudence?*, 37 WASHBURN L.J. 359, 363 (1998).

beliefs.[28] The religious homogeny and social intimacy of early-American communities rendered shaming sanctions particularly effective because most offenders feared the disgrace of public admonishment.[29] Thus, most communities punished offenders with shaming sanctions, rather than simple imprisonment.[30]

However, during the nineteenth century, judges increasingly punished offenders with imprisonment because the small intimate communities that previously existed in colonial America had evolved into anonymous modern populates.[31] By diluting the fear associated with public humiliation, the newfound anonymity in urban America caused the effect of shaming sanctions to fade.[32] As crime rates began to rise, judges preferred long term prison sentences over other forms of punishment like shaming.[33]

B.Public Humiliation in America Today

Into the twentieth century, the newfound right to privacy—now a fading social norm—enticed contemporary jurists to reevaluate the legality of public humiliation as punishment for criminal offenses.[34] Despite the elaboration of the right to privacy, courts consistently sustain shaming sanctions in light of constitutional principles.[35] For example, in Florida, an appellate court stated "[t]he mere requirement that a defendant display a 'scarlet letter' as part of his punishment is not necessarily offensive

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[28] Major W. Renn Gade, *Crime and Punishment in American History*, 146 MIL. L. REV. 297, 298 (1994).

[29] Massaro, *supra* note 19, at 1912. Influenced by Judeo-Christian principles, communities expected offenders to both seek forgiveness and repent. *Id.* at 1912-13.

[30] Gade, *supra* note 28, at 298.

[31] Morton, *supra* note 25, at 105.

[32] *Id.* at 106.

[33] *Id.* at 107.

[34] *Id.* at 116-17. The twentieth century marked the recognition and expansion of the constitutional right to privacy. Ken Gormley, *One Hundred Years of Privacy*, 1992 WIS. L. REV. 1335, 1336 (1992).

[35] *See, e.g.*, Goldschmitt v. State, 490 So. 2d 123 (Fla. Dist. Ct. App. 1986).

to the Constitution."[36] In fact, courts acknowledge that the scope of discretion given to sentencing judges is breathtakingly broad.[37]

Furthermore, the American legal community has not voiced any significant objection to shaming sanctions.[38] Many legal scholars agree that shaming sanctions are a constitutional and effective alternative to imprisonment.[39] The United States Supreme Court also agrees.[40] In *Paul v. Davis*, the police circulated a flyer including the names and photographs of shoplifters.[41] There, the Supreme Court imposed a barrier to constitutional challenges of shaming sanctions.[42] Writing for the majority, then-Associate Justice William Rehnquist stated "that the interest in reputation asserted in this case is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law."[43]

After Congress passed the Sentencing Reform Act of 1984 ("the Act"), shaming sanctions became a tool for supervised release.[44] Through the Act, Congress directed the newly-created United States Sentencing Commission to develop guidelines for courts sentencing federal offenders.[45] Congress passed the Act to increase consistency among sentencing policies for the federal

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[36] *Id.* at 125.

[37] *See, e.g.*, Porth v. Templar, 453 F.2d 330 (10th Cir. 1971). *But see* State v. Burdin, 924 S.W.2d 82, 87 (Tenn. 1996) (noting that courts may not "impose punishments which are beyond the bounds of traditional notions of rehabilitation").

[38] Whitman, *supra* note 17, at 1057. Still, some legal scholars examine the constitutionality of shaming sanctions with skepticism. *See, e.g.*, Massaro, *supra* note 19, at 1944 (noting "[o]ne of the principal constitutional objections is based on the eighth amendment's proscription against cruel and unusual punishment").

[39] *See, e.g.*, Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 594 (1996) ("Shaming penalties unambiguously express condemnation and are a feasible alternative to imprisonment for many offenses").

[40] *See* Paul v. Davis, 424 U.S. 693 (1976).

[41] *Id.* at 694-97.

[42] *Id.*

[43] *Id.* at 712.

[44] *See generally* Preston H. Neel, *Punishment or Not: The Effect of* United States v. Gementera*'s Shame Condition on the Ever-Changing Concept of Supervised Release Conditions*, 31 AM. J. TRIAL ADVOC. 153, 153-54 (2007).

[45] 18 U.S.C. §§ 3551 *et seq.* (2012).

criminal justice system.[46] The Act also created a supervised release system to help imprisoned offenders reintegrate into their communities through rehabilitative means.[47] Accordingly, some sentencing judges impose shaming sanctions as part of supervised release conditions to promote social reintegration of offenders.[48]

However, subsequent changes to the Federal Sentencing Guidelines call into question the legality of shaming sanctions for purposes of supervised release.[49] According to a congressional report concerning those amendments, Congress created the supervise release system "to ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment."[50] Thus, while supervised release conditions should help rehabilitate or reintegrate an offender, supervised release conditions might not be a means of reprimand or retribution.[51] Although the Supreme Court has upheld shaming sanctions in other contexts, the court has never addressed the lawfulness of shaming sanctions for purposes of supervised release under the Federal Sentencing Guidelines.[52]

C.A Survey of Modern Case Law: Public Humiliation in Official Courts

Despite a lack of precedential guidance from the Supreme Court, a handful of intermediate appellate courts disfavor shaming

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46 28 U.S.C. § 991 (2012).

47 S. REP. NO. 98-225 (1983).

48 *See* Note, *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116 HARV. L. REV. 2186, 2192-93 (2003).

49 S. REP. NO. 98-225 (1984).

50 *Id.* Notably, the section of the law authorizing judges to impose supervised released conditions is entirely devoid of the term "punishment." 18 U.S.C. § 3553(a). The chief purpose of the law is rehabilitation. *Id.*

51 S. REP. NO. 98-225 (1984).

52 *Compare* Paul v. Davis, 424 U.S. 693 (1976) *with* Gementera v. United States, 546 U.S. 1031 (2005) (denying certiorari where a convicted mail thief challenged a supervised release condition requiring the thief to wear a signboard stating, "I stole mail. This is my punishment").

sanctions as conditions of supervised release.[53] In Illinois, for instance, an appellate court vacated a punishment in *People v. Johnson* that required an offender to, as a condition of supervised release, publish an apology containing her mug shot in a local newspaper.[54] The *Johnson* court recognized "the trial judge may be attempting to put more bite, or punishment, in the supervision process."[55] However, in considering the potential emotional and mental consequences of the publication requirement, the *Johnson* court determined that any psychological damage likely caused by the publication was inconsistent with rehabilitative goals.[56] Thus, the court invalidated the publication requirement.[57]

In a similar case, *People v. Hackler*, the California Court of Appeals vacated a supervised release condition requiring a defendant to wear a shirt broadcasting his status as a felony thief.[58] Referencing Nathaniel Hawthorne's *Scarlet Letter*, the trial court in that case branded the offender as a modern day "Hester Prin [sic]," and characterized the sanction as "going back to some extent to the era of stocks."[59] Ultimately, the appellate court reasoned that shaming sanctions expose offenders to public ridicule and humiliation, rather than facilitate rehabilitation.[60] Accordingly, the *Hackler* court struck down the shaming sanction in that case.[61]

Two years after the *Hackler* decision, the New York Court of Appeals agreed in *People v. Letterlough* that shaming sanctions do not reasonably relate to rehabilitation.[62] In that case, the court evaluated a condition requiring a drunk driver to place a florescent

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[53] *See, e.g.*, United States v. Gementera, 379 F.3d 596 (9th Cir. 2004); People v. Letterlough, 655 N.E.2d 146 (N.Y. 1995); People v. Hackler, 16 Cal. Rptr. 2d 681 (Cal. App. 5th Dist. 1993); People v. Johnson, 528 N.E.2d 1360 (Ill. App. Ct. 1988).

[54] People v. Johnson, 528 N.E.2d 1360, 1362 (Ill. App. Ct. 1988).

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] People v. Hackler, 16 Cal. Rptr. 2d 681, 682 (Cal. App. 5th Dist. 1993).

[59] *Id.* at 686.

[60] *Id.*

[61] *Id.* at 682.

[62] People v. Letterlough, 655 N.E.2d 146, 150 (N.Y. 1995).

sign on his vehicle stating "CONVICTED DWI."[63] The *Letterlough* court reasoned that "public disclosure of a person's crime, and the attendant humiliation and public disgrace, has historically been regarded strictly as a form of punishment."[64] Hence, the *Letterlough* court ruled the sanction was unrelated to rehabilitation and, therefore, impermissible as a supervised release condition.[65]

More recently, however, in *United States v. Gementera*, the United States Court of Appeals for the Ninth Circuit affirmed a supervised release condition requiring a mail thief to stand in front of a local post office wearing a sign stating he stole mail.[66] The *Gementera* court agreed with the trial court's "reasoning that rehabilitation would better be served by means other than extended incarceration and punishment is plainly reasonable."[67] The court also explained that the offender failed to prove the condition violated contemporary standards of decency under the Eighth Amendment of the United States Constitution.[68] At bottom, the *Gementera* court upheld the supervised release condition because, unlike the *Hackler* and *Letterlough* courts, the *Gementera* court found the condition to be reasonably related to the objective of rehabilitation.[69] In a glaring dissent, however, Judge Michael Daly Hawkins argued "[t]o affirm the imposition of such punishments recalls a time in our history when pillories and stocks were the order of the day."[70]

III. ANALYSIS

A. Distinguishing the Purposes and Effects of Public Humiliation

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[63] *Id.* at 147.
[64] *Id.* at 149.
[65] *Id.* at 150.
[66] United States v. Gementera, 379 F.3d 596, 598 (9th Cir. 2004).
[67] *Id.* at 607.
[68] *Id.* at. 608.
[69] *Id.* at 607.
[70] *Id.* at 612 (Hawkins, J., dissenting). Despite this debate, sentencing judges regularly impose shaming sanctions in the context of first-offender petty crimes. Neel, *supra* note 44, at 173.

The purposes of public humiliation in official courts are twofold.[71] First, shaming sanctions offer offenders opportunities to rehabilitate themselves without institutional confinement, which is often costly and reserved for society's most serious offenders.[72] Second, shaming sanctions are often punitive.[73] Despite this theoretical distinction, courts struggle to draw lines between rehabilitative and punitive shaming sanctions.[74] The *Letterlough* court observed the "inherent overlap and the difficulty in drawing lines between rehabilitative and punitive or deterrent sanctions."[75]

Courts also struggle to assess the psychological effect of shaming sanctions on individuals.[76] The *Johnson* court acknowledged that "[h]olding an offender up to ridicule has an impact upon the offender that does not have the disadvantages of

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[71] *Letterlough*, 655 N.E.2d at 149. Note that official courts are non-arbitration courts created by state or federal law, such as federal district courts.

[72] *Id.* As the *Letterlough* court explained, "[t]he utility of rehabilitation as a vehicle for preventing criminal behavior 'rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified, and that on this basis therapeutic measures can be employed to effect changes in the behavior of the person treated.'" *Id.* at 148 (quoting LaFave and Scott, *Substantive Criminal Law* § 1.5, at 33).

[73] *Id.* at 149. Generally, "'[w]hen one shames another person, the goal is to degrade the object of shame, to place him lower in the chain of being, to dehumanize him.'" *Gementera*, 379 F.3d at 612 (quoting Dan Markel, *Are Shaming Punishments Beautifully Retributive? Retributivism and the Implications for the Alternative Sanctions Debate*, 54 VAND. L. REV. 2157, 2179 (2001)).

[74] *See Letterlough*, 655 N.E.2d at 153 (Bellacosa, J., dissenting). In the opinion of one judge, "[t]he sentencing environment does not abide a theoretical purity that would cabin 'punishment' and 'rehabilitation' into such discrete, mutually exclusive universes." *Id.*

[75] *Id.* at 149. Peripheral purposes also exist, such as to protect the public through warning. *Id.* at 147. In *Letterlough*, when the trial court required a drunk driver to bear the sign "CONVICTED DWI" on his license plate, the judge said, "This gentleman is 54 years of age and I do not wish to be the one that opens a newspaper and sees that this gentleman has caused an accident that has taken an innocent person's life because I did not do something that either warns the public or treated his problem. I hope to be doing both." *Id.*

[76] *See* People v. Johnson, 528 N.E.2d 1360, 1362 (Ill. App. Ct. 1988).

imprisonment nor the financial detriment to the offender or the offender's family of a substantial fine," and that, in certain cases, shaming sanctions "might be quite rehabilitative and instructive, particularly to people who do not have general criminal tendencies and who would be embarrassed by the publicity."[77] Nonetheless, the *Johnson* majority also acknowledged that, without professional assistance, courts cannot definitively predict the psychological or psychiatric effect of shaming sanctions.[78]

In reviewing shaming sanctions, courts and legal scholars likewise consider the psychological effects of these sanctions on the public.[79] Indeed, even the *Gementera* court alluded to the overall effects of shaming sanctions on society-at-large.[80] In the context of syndi-courts, these composite controversies raise an important question: what effects does public humiliation in Judge Judy's syndi-court have on individual litigants and society-at-large?[81]

B. Through the Lens of Legal Pluralism, Syndi-courts Are Legitimate Rule Setters and Decision Makers

Before proceeding with further analysis, it is important to delineate the inherent legitimacy of syndi-courts. Without a formalistic notion of legitimacy intrinsic to official courts established by the state, syndi-courts do not have teeth; syndi-court rulings would be neither binding nor final. Syndi-courts maintain their legitimacy through the theory of legal pluralism.

Legal pluralism "is generally defined as a situation in which two or more legal systems coexist in the same social field."[82] In essence, legal pluralism extends the rule of law beyond official forms of law to include unofficial notions of law, such as custom and

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[77] *Id.* at 1363 (Green, J., concurring).
[78] *Id.* at 1362.
[79] *See* United States v. Gementera, 379 F.3d 596, 605 (9th Cir. 2004) (citing Kahan, *supra* note 39).
[80] *Id.*
[81] *See infra* Parts IIIC-D.
[82] Sally E. Merry, *Legal Pluralism*, 22 LAW & SOC'Y REV. 869, 870 (1988).

tradition.[83] Since the conception of this theory, legal scholars mostly apply legal pluralism to the study of post-colonial societies in Africa.[84] In the early twentieth century, social scientists examined the legal order of indigenous peoples among these colonized societies.[85] While those indigenous peoples were subject to European law practiced by colonists, the indigenous peoples subtly maintained a rich variety of customary law in nondominant legal regimes.[86]

The parallel arrangement between these dominant and nondominant systems occasionally offered individuals an opportunity for forum shopping.[87] For example, in a family support dispute, a party seeking to avoid paying alimony might have preferred to litigate in an official court because English common law did not obligate individuals to offer family support.[88] The other party, however, might have sought to resolve the dispute in a customary legal regime because, as a matter of custom, family support was prerequisite to custody and marital rights.[89] Therefore, despite the existence of dominant, official court systems in post-colonial Africa, some parties sought to resolve their disputes in nondominant, unofficial systems.[90]

Syndi-courts create similar opportunities for forum shopping because many litigants prefer to appear in syndi-court in lieu of pursuing formal litigation.[91] Particularly, syndi-court forums offer stark advantages to defendants:

A defendant who thinks he or she has a bad case has a great incentive to appear on the show, since the appearance itself absolves

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[83] Richard Nobles & David Schiff, *Using Systems Theory to Study Legal Pluralism: What Could Be Gained?*, 46 LAW & SOC'Y REV. 265, 265 (2012).

[84] Merry, *supra* note 82, at 869.

[85] *Id.*

[86] *Id.*

[87] *See generally* Savitri Goonesekere, *Family Support and Maintenance: Emerging Issues in Some Developing Countries with Mixed Jurisdictions*, 44 FAM. CT. REV. 361 (2006) (exploring the existence of plural legal traditions that enable manipulation of jurisdiction for personal advantage).

[88] *Id.*

[89] *Id.* at 362.

[90] *Id.*

[91] *See* Kimball, *supra* note 3.

any personal liability. Alternatively, if the defendant has a very good defense, they can earn an appearance fee for a few minutes of on air berating by someone like Judge Judy.[92]

But, for both plaintiffs and defendants, syndi-court is cheaper than formal litigation because the expenses of the parties are generally paid for by the producers of each show.[93] Additionally, judgments against syndi-court litigants are not reported as small claims judgments to credit bureaus.[94] Finally, syndi-court offers litigants the flexibility of arbitration, which is typically faster than traditional litigation because syndi-courts need not adhere to complex rules of procedure or evidence, and need not obey rigid calendars enforced by formal courts.[95] Thus, litigants may seek to resolve their disputes in the unofficial syndi-court system, instead of the official state-created court system.[96]

However, unlike the dominant legal system of many post-colonial African countries, which were established after their corollary customary legal regimes, the official court system in the United States predates the syndi-court system. Ironically, this chronologically inverse pluralistic relationship gives syndi-courts their binding authority. Without an official system that recognizes arbitration law, the judgments in arbitration-based reality court shows would be frail. After all, while the methods used by syndi-court judges are rooted in age-old tradition or custom, the creation of syndi-court as a vehicle for dispute resolution is not.[97]

The relationship between official courts in the United States and syndi-courts is more analogous to that of state-recognized customary courts and other official courts in African countries today.[98] Malawi, for example, enacted ordinances identifying courts

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92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *See supra* Part II.

98 *See generally* Megan Crouch, *Improving Legal Access for Rural Malawi Villagers*, JURIST, (Aug. 18, 2011, 2:00 PM), http://jurist.org/dateline/2011/08/megan-crouch-local-courts-malawi.php. After

having authority to hear disputes under customary or traditional law, which would not have been enforced otherwise.[99] Overall, within a framework of governance, dominant, official court systems that incorporate nondominant, unofficial court systems strengthen the authority base of those otherwise unofficial legal regimes, whether they be customary regimes or syndi-courts.

C. Public Humiliation by Judge Judy Has Little Effect on Individual Litigants

The effects of Judge Judy's tough adjudicating approach illustrates the dichotomy of modern privacy values and colonial-style public humiliation.[100] In colonial America, shaming sanctions effectively deterred wrongdoing by exploiting a shared sense of disgust against criminal offenders in tightknit communities.[101] In modern America, shaming sanctions should be equally effective because they deprive offenders of privacy.[102] However, many *Judge Judy* litigants, plaintiffs and defendants alike, "are just looking for their fifteen minutes of fame."[103] Thus, Judge Judy's hard-hitting style does not affect individual litigants in the same way that shaming sanctions influence criminal offenders.[104]

Nevertheless, Judge Judy's practices undoubtedly emanate from colonial customs and traditions.[105] Through rhetoric, Judge Judy commonly berates litigants for inappropriate behavior or sloppy

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the country gained independence in 1964, the Malawian legal system consisted of both conventional courts and traditional courts. *Id.*

[99] *Id.* In 1969, the traditional courts gained official jurisdiction over criminal cases. *Id.*

[100] *Compare* Wesley MacNeil Oliver, *Western Union, the American Federation of Labor, Google, and the Changing Face of Privacy Advocates*, 81 MISS. L.J. 971, 989 (2012) (observing "[w]e are no longer a private people. We live out loud") *with* Massaro, *supra* note 19, at 1912.

[101] Massaro, *supra* note 19, at 1912.

[102] Morton, *supra* note 25, at 123.

[103] Lawrence M. Friedman, *Judge Judy's Justice*, 1 BERKELEY J. ENT. & SPORTS L. 125, 131 (2012).

[104] *Id.*

[105] *See* Morton, *supra* note 25, at 102.

conduct.[106] As her cases unfold, Judge Judy often makes statements such as: "[Y]ou ought to be ashamed of yourself!" or "Do you feel as if you're getting whipped? You sure are!"[107] These statements, in particular, spring from colonial activities and ideas, such as when wrongful parties were sentenced to public whippings.[108] Judge Judy's verbal statements also connote her principal understanding of the effects of humiliating experiences on litigants.[109]

Alone, Judge Judy's hard-hitting words are not intended to cause all the embarrassment for the parties.[110] Her remarks sting so much because they are made in front of a live audience and millions of at-home viewers.[111] The audience often laughs at litigants forced to describe or explain lucrative acts.[112] Further, the audience regularly applauds Judge Judy for delivering demeaning remarks that indirectly label hostile litigants as enemies.[113] As one commentator noted, "implied cues, combined with Judge Judy's affectively charged delivery, allow the audience to rehearse public moral posturing along with her."[114] Like colonial era jurists, Judge Judy knows all too well the desired effect of embarrassment on antagonistic parties in front of an audience.[115] Actually, in chastising

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[106] MIKE TOMLINSON, THE MOST UNUSUAL QUIZ BOOK IN THE WORLD EVER 28 (3d ed. 2012).

[107] *Id.*

[108] Caleb Johnson, *Crime and Punishment in Plymouth Colony*, MAYFLOWERHISTORY.COM, http://mayflowerhistory.com/crime/ (last visited Oct. 19, 2014).

[109] *See* Morton, *supra* note 25, at 123.

[110] Christina R. Foust, *A Return to Feminine Public Virtue: Judge Judy and the Myth of the Tough Mother*, 27 WOMEN'S STUD. COMM. 269, 279 (2004) (noting audience participation).

[111] *Id.* "As the implicit narrative's protagonist, Judge Judy scolds litigants about their 'immoral' behavior, allowing the audience outside of the conflict to share a laugh and vicariously punish those who violate 'the rules.'" *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.* at 280.

[115] *See* Rebecca Buckwalter-Poza, *Judge Judy Is a National Treasure*, PAC. STANDARD, (Feb. 20, 2014), *available at* http://www.psmag.com/navigation/politics-and-law/judge-judy-national-treasure-73418/.

one individual, she stated: "Consider yourself having been reasonably humiliated in front of ten million people. Now, without saying another word, turn around, and find the exit. Goodbye."[116]

But because Judge Judy's "no nonsense" temperament is so widely known, most litigants that appear on the show have some forewarning of the possible embarrassment to which she may subject them to.[117] Accordingly, some individuals who appear on the show are desperately seeking attention, or hope that their brief television appearance will miraculously propel them into fame and fortune.[118] Others appear on the show for material incentives.[119] For example, litigants receive an appearance fee of at least $100 and, in essence, an all-expense-paid vacation to Hollywood, California, where the show is filmed.[120] Whatever their motives may be, the benefits for litigants who attend the show outweigh the verbal lashings that Judge Judy may deliver.[121] Litigants who appear on *Judge Judy* contravene the basic tenets of colonial era probationers, who considered the loss of privacy a large price to pay.[122]

Overall, in a society that values privacy, individuals generally comport to avoid widespread public embarrassment.[123] Yet, *Judge Judy* litigants voluntarily subject themselves to verbal reprimands in front of millions of viewers.[124] Prior to filming the show, the litigants know what to expect—a few flippant words from a television personality dressed in a black robe.[125] With this anticipation, Judge Judy's exacting words lose their "bite."[126] For that reason, the embarrassment experienced by litigants appearing before Judge Judy

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116 *Id.*
117 *See* Friedman, *supra* note 103, at 131.
118 *Id.*
119 *Id.*
120 *Id.*
121 *Id.*
122 *See* Massaro, *supra* note 19, at 1912.
123 Morton, *supra* note 25, at 123.
124 *See* Friedman, *supra* note 103, at 131-32.
125 *See id.* at 131.
126 *Id.*

does not parallel the discomfiture traditionally experienced by colonial era offenders.[127]

D. Judge Judy Uses Public Humiliation in Syndi-court to Address Big Picture Societal Transgressions

While the embarrassment caused by Judge Judy may not have long term effects on individual litigants, this ostensible mortification does have an emotional impact on society-at-large.[128] Perceivably, modern society has experienced a collapsing of traditional values and moral substance since the early twentieth century.[129] Judge Judy's actions, rulings, and words in her show are pointed to address this moral decay.[130] The genesis of her goal harkens back to her experience as a family court judge.[131] Through each case, Judge Judy uses her televised forum to address the moral carelessness of society-at-large, just as colonial era magistrates did when they used the town square to punish morally decrepit offenders in early America.[132]

The idea that America is experiencing as moral decline is shared among many factions.[133] According to a recent poll, 53% of Democrats, 82% of Republicans, and 72% of independents have negative opinions of the country's moral principles.[134] Merely four decades ago, only one third of Americans felt that the nation's morals

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[127] *Id.* In his article, Lawrence M. Friedman stated that, "[s]upposedly, people in our society dearly value privacy, and most do." *Id.* However, he went on to recognize that "a small but significant minority seems willing to strip naked, so to speak, to wash their dirty linen in public, and consider the loss of privacy a very small price to pay for the thrill of appearing on national television." *Id.*

[128] Foust, *supra* note 110, at 280-81.

[129] Rebecca Riffkin, *New Record Highs in Moral Acceptability*, GALLUP (May 30, 2014), http://www.gallup.com/poll/170789/new-record-highs-moral-acceptability.aspx.

[130] Foust, *supra* note 110, at 280-81.

[131] *See* JUDY SHEINDLIN & JOSH GETLIN, DON'T PEE ON MY LEG AND TELL ME IT'S RAINING: AMERICA'S TOUGHEST FAMILY COURT JUDGE SPEAKS OUT 1-9 (1996) (recounting her days as a family court judge).

[132] *Compare* Foust, *supra* note 110, at 280-81 *with* Massaro, *supra* note 19, at 1888.

[133] Riffkin, *supra* note 129.

[134] *Id.*

were poor.[135] The decline of morality in America can be attributed to a number of reasons: alcohol and drugs; divorce; government dependency; greed; lack of religion; selfishness; and the internet, television, and other media; among other things.[136] Regardless of whether (or why) moral decay is actually occurring in America, many people perceive this as being the case.[137]

In her show, Judge Judy directly addresses the crumbling of morality in America.[138] Judge Judy's mission to cure America's moral decay dates back to her tenure as a family court judge.[139] In 1982, New York City Mayor Ed Koch appointed her to Manhattan's family court.[140] On the bench, she heard over 20,000 cases involving juvenile adoption, child neglect and abuse, child support, custody, delinquents, domestic violence, guardianship, paternity, termination of paternal rights, and visitation.[141] From this experience, Judge Judy believes that America's moral decay derives from lack of honesty and responsibility and, notably, "the myopia of a media that, despite its vast power to do good, is too often asleep at the switch."[142]

Taking things into her own hands, Judge Judy's rulings, actions, and words on her daytime television show illustrate an overarching theme of personal responsibility.[143] Judge Judy highlights the basis of this theme in her memoir: "By shifting the emphasis from individual responsibility to government responsibility," she says, "we have infantilized an entire population."[144] Thus, pandering to the broader television and cultural audience, Judge Judy addresses her concerns by broadcasting moral judgments rather than merely punishing irresponsible litigants.[145] To

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135 *Id.*
136 *Id.*
137 *Id.*
138 Foust, *supra* note 110, at 280-81.
139 SHEINDLIN, *supra* note 131, at 5.
140 *Id.* at 6.
141 *Id.* at 5.
142 *Id.* at 8.
143 Foust, *supra* note 110, at 280-81.
144 SHEINDLIN, *supra* note 131, at 6.
145 Foust, *supra* note 110, at 280.

that end, like colonial officials who used shaming sanctions to heighten the social disapproval of criminal offenses in a highly socialized colonial America, Judge Judy uses her daytime television show as a bullhorn to speak directly to an equally socialized modern American about the moral discrepancies of its citizens.[146]

IV.CONCLUSION

In recent years, syndi-court programs such as *Judge Judy* have become increasingly popular.[147] This article makes three key observations with respect to syndi-courts.[148] First, in general, a pluralistic perspective offers syndi-courts notions of formalistic legitimacy inherent to official courts, even though syndi-courts are private, unofficial means of adjudicating disputes.[149] Second, syndi-court judges like Judge Judy use public humiliation when dealing with foolish parties; however, unlike in the colonial era, when magistrates would publicly humiliate criminal offenders, public humiliation in syndi-courts does not trigger heightened feelings of shame today.[150] Finally, although public humiliation in syndi-courts does not significantly impact individual litigants, syndi-court judges may use public humiliation to address societal immorality by pandering to a larger audience via television.[151] Overall, the American legal community should embrace syndi-courts for offering society a public platform for accountability, honesty, and personal responsibility.

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146 Massaro, *supra* note 19, at 1898.
147 Kimball, *supra* note 3.
148 *See supra* Parts IIIB-D.
149 *See supra* Part IIIB.
150 *See supra* Part IIIC.
151 *See supra* Part IIID.