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*Bryan Schwartz warns against trying too hard to make the punishment fit the crime*

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THE latest trend in sentencing lawbreakers is actually a blast from the past. In colonial America, a thief's forehead might have been branded with a T, or the person might have been locked in a pillory. As Nathaniel Hawthorne's story recalls, an adulterous woman might have been forced to wear a scarlet letter A.

Here are some real examples of modern American "scarlet-letter" sentences. To a drunk driver: Display a licence plate saying you were convicted for drunk driving. To a sex offender: Put a sign on your door that says "dangerous - sex offender." To a burglar: Publish an apology in the local newspaper.

Judges in family cases have tried to jump on the bandwagon. An Indiana court ordered a man to stand at the courthouse bearing a sign saying, " Need job to pay child support." An appeals court was not amused and reversed the order.

Canadian judges are starting to join in. A few weeks ago, a Manitoba judge ordered a man who had vandalized a bus stop to stand there all day, holding an apology for being a "jerk."

Offenders are sometimes given a choice: Wear the scarlet letter, or go to jail. The "option" should not blind us to the real ethical issues involved. Whipping or amputation is a barbaric sentence, even if offered as an alternative to jail.

Not all scarlet-letter sentences are objectionable. Sometimes the public does need to be warned of an offender's propensities. Sex offenders might reasonably be required to register with local police to ensure that they are not inadvertently hired by schools or day-care centres.

Generally speaking, though, the scarlet letter should be avoided. Some of the risks involved also apply to corporal and capital punishment: They appeal to our worst instincts and are likely to demean both those in authority and their victims. We tend to be fascinated by the suffering and death of others. Public executions and beatings have been popular in many times and places. Humiliating other people - destroying their dignity - is another exercise that can attract our destructive impulses.

Scarlet-letter sentences have been praised by judges and academics as creative sentences. That is part of the problem. They can turn psychological brutality into a game. Judges can sit on high, thinking of ingenious new ways in which they can look clever and righteous by making others looking abased and ridiculous.

Their energies would better be spent on more constructive alternatives to jail sentences, such as finding types of community service that will chasten and rehabilitate the offender while producing something positive for others, or experimenting with confinement to one's home as an alternative to prison.

Forced apologies are a particularly objectionable form of scarlet-letter sentencing.

A few years ago, a Northwest Territories court ordered a company to issue a public apology for a pollution offence. On appeal, Mr. Justice Mark de Weerdts reversed the order. He said the statute in question gave no mandate for forced apologies and he doubted that the Charter of Rights and Freedoms would permit them. Judge de Weerdts observed that an apology is only worthwhile if it is sincere; he recalled the long common-law tradition of protecting individuals from forced confessions and contrasted it with their prevalence in police states.

In an early 1980s case, a labour board found that an employer had used unfair labour practices. The board drafted a letter of apology and ordered the company's president to sign it and distribute it to all employees. The board ordered the employer to refrain from modifying the letter in any way. The board's order was reviewed and reversed by the Supreme Court of Canada. The late Mr. Justice Jan Beetz was notably moderate and precise in his choice of words. We should not easily forget his conclusion. "This type of penalty is totalitarian," he said.

A genuine apology can sometimes work wonders. It can ease the pain and anger of the victim. If it leads to forgiveness, the transgressor may gain a feeling of redemption. A coerced expression of regret is worse than none. Instead of teaching integrity - a hallmark of which is to mean what you say - it shows that force prevails and the best way to cope is hypocrisy.

Before we join the U.S. craze for handing out scarlet letters to wrongdoers, I hope that we will pause for a moment of reflection. When exercising the awesome state authority to punish, we should be almost as afraid of ourselves as of those who have transgressed.

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