Crimes, Punishments, and Justice in Sentencing:
Justice has to be seen to be believed for the inaudible and invisible child victim of crime

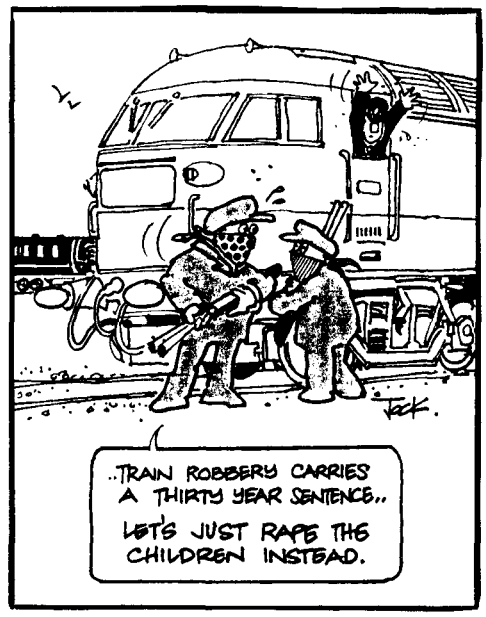
Chris Goddard

Ronnie Biggs' fame as a Great Train Robber is of particular relevance to Australians. He spent some time here in Melbourne while fleeing from the full weight of British justice. He had been sentenced to 30 years for his part in the train hold-up and had gone missing from the British prison system before any of the principles of punishment (retribution, deterrence, and rehabilitation) had taken effect. The Great Train Robbery seized the public imagination and, perhaps for this reason, the miscreants received what was seen at the time to be heavy sentences. The robbers were regarded as heroes in many quarters and, in spite of the attack on the driver of the train, the robbery came to be viewed almost as a victim-less crime.

I was talking to Ronnie Biggs about this one day in Rio de Janeiro. Unfortunately I cannot find my notes on the conversation so I cannot be certain that my memory has remained completely true over the years. Rio seemed to me to be an ideal place for a robber to 'hole up' after the crime. The image of the place that has been created by the advertising copywriters for the tourists has always been one of sex and exoticism (Goddard, 1989).

Getting to talk to Ronnie was quite easy. He was in the Rio telephone directory, just beneath 'Big Bar' and 'Big Burger'. On this particular day he was happy to chat (I apologise to him if he reads this account and feels that it does not do him justice). Our conversation turned naturally to crime and punishment, and he described to me something that happened in his brief time in Wandsworth Prison. He painted a picture of a life of relative ease, with his prison routine set up to meet his needs. He said he knew that he would not be in there for a great deal of time, but that he had what he wanted while he was there.

At one stage a new prisoner was placed in the cell next to Ronnie's. Ronnie got into conversation with him and asked him how long he was in for. Nine years, was the reply. What for? Ronnie asked. His new neighbour said that he had been caught breaking into and robbing offices. Ronnie said that he thought at the time that that was a long sentence for that particular type of offence. He then told me that when he picked up his local paper a few days later he discovered that the prisoner, Ronnie's new neighbour, had been sentenced for the violent sexual assault of a young girl.



Child molesters are not popular in prison but Ronnie did not tell me the story to illustrate that point. Rather he was suggesting that there was something wrong when a man who robs a train gets a 30-year sentence, while a child rapist gets less than a third of that amount.

There was something almost surreal about this part of our conversation. Here was a man who had escaped to Rio rather than spend years in Wandsworth or worse (and, believe me, they are a world apart) complaining about justice. Ronnie probably misses his native London very badly at times, and I wondered if he ever regretted his decision. He would have been free long ago if he had stayed in the cell he had made sound so comfortable in that London prison.

The conversation with Ronnie Biggs came back to me in the rather more prosaic surroundings of Spencer Street Station in Melbourne. Perhaps it was the railway connection that brought it to mind. While I was waiting for the train, I read about the dreadful case of the 'revenge rapist'. Briefly, the details of this Victorian case are as follows:

> Robert Tahche was on parole for raping a woman when he raped the same woman again as revenge for reporting him the first time. Tahche was sentenced to three-and-a-half years for the first offence, but had served only four months (one month in Pentridge and the rest on a prison farm) when he raped the woman the second time. The details of the second offence were described in the *Herald-Sun*:
>
> The court heard the woman was alone in her house when Tahche forced his way in... He grabbed the woman by the throat and pushed her to the floor before raping her with an unidentified sharp metallic object which caused her 'severe pain and bleeding'. The judge said the rape was particularly chilling, cold-blooded and premeditated. It was clearly punishment as part of a 'payback' and demonstrated callous behaviour.
>
> (Heaney and Giles, 1992)

For the second offence, the judge:

> ... sentenced Tahche to one year for indecent assault, 10 years for the first

count of rape and 14 years for the rape committed with the metallic object. The sentences will be served concurrently...
(Heaney and Giles, 1992)

The sentence of only 14 years' prison (six years short of the maximum) caused a great deal of comment. The County Court judge stated that the rapist had made the victim's worst-possible nightmare come true; the then Victorian Premier, Mrs Kirner, described it as an 'absolutely horrendous crime'; and the Leader of the Victorian Opposition, Mr Kennett, complained to the Director of Public Prosecutions, who agreed to review the sentence (Hannan, 1992).

Soon afterwards, merely days later, the case of Rodney King received worldwide coverage. Rodney was hit 56 times by Los Angeles police when he was stopped after a car chase. The world saw each blow, thanks to someone with a video camera in a flat nearby who shot 81 seconds of tape; King, as a result, 'suffered facial fractures, brain damage, a broken leg and other injuries' (Rowland and agencies, 1992). In spite of the video evidence, Officers Powell, Briseno and Wind, together with Sergeant Koon, were acquitted after a seven-week trial. The riots that followed, as journalists say in documentaries, are now part of history. It was suggested, and it was clearly believed by many of those taking part in the subsequent riots, that the fact that the victim was black, and the police white, had a not insignificant influence on the outcome.

The identities of the offenders and victims have been said to have influenced a number of cases in Australia recently. In an article in the *Sunday Herald-Sun*, Bronwen Martin (1992) reports that nine Victorian lawyers have pleaded guilty to the thefts of more than $4 million, with all but two of the convicted walking free from the courts. Martin outlines some of the cases, including one where the lawyer pleaded guilty to 21 counts of theft of a total of $243,000 and received a three-year good behaviour bond (Martin, 1992). For a similar example, readers can turn to the following quiz.

POINT AND COUNTERPOINT: THE CRIMES

1. A man stole a mango from boxes of fruit left on Platform 11 of Spencer Street Station.

   His excuse to the police: 'A craving overtook me'.

2. A man wandered into a hotel bottle shop and tried to swap seven beer bottles filled with water for seven bottles of the real thing...
   Two hours later he smashed two windows at the railway station...

   He pleaded guilty to obtaining property by deception, burglary and criminal damage...
   He also pleaded guilty to a charge of assault...

3. A former solicitor who stole more than $200,000 of his clients money...

   pleaded guilty to 15 counts of theft...

4. A man who stole cheques worth more than $411,000 from Australian Airlines...

   pleaded guilty to 14 counts of theft...

5. Two extortionists who threatened to blow up Qantas planes and gas the airline's terminals...

6. A man who repeatedly kicked a baby girl who would not stop crying when he was watching the football on TV... He told police he had kicked the baby 'about half a dozen times'...

   pleaded guilty to one count of recklessly causing injury...

POINT AND COUNTERPOINT
THE TIMES AND FINES

1. SENTENCE: 14 days' jail for theft

   (Source: *The Age,* undated)

2. SENTENCE: A six-month suspended sentence and pay $214 damages to the Public Transport Corporation.

   (Source: *The Age,* 23 April 1992)

3. SENTENCE: A five-year,$5000 good behaviour bond.

   (Source: *The Age,* 28 March 1992)

4. SENTENCE: Three years' jail, with a minimum of 18 months.

   (Source: *The Herald Sun,* 20 March 1992)

5. SENTENCE: The pair were sentenced to six years' and four years' jail respectively.

   (Source: *The Age,* 2 May 1992)

6. SENTENCE: Two-year community based order... 100 hours of community work... Judge O'Shea said that it was his opinion that the baby would not suffer any permanent damage from the incident. He said that he would put the case before him 'at the lower end of the perspective'.

   (Source: *The Herald-Sun,* 10 July 1992)

Of course, these are far from the first occasions on which there have been complaints about the sentences passed on criminals. I remember reading of a complaint made in the late nineteenth century to the British Home Secretary about the sentencing policy of judges. Sir Edmund du Cane pointed out that prison sentences of certain lengths were preferred; five, seven and ten year periods were much more common than six, eight or nine (Fitzmaurice and Pease, 1986: 103) (in spite of what I believe Ronnie Biggs said). Sir Edmund believed that the sentences passed were the same as those used when transportation, rather than prison, was the norm (1986: 103).

Fitzmaurice and Pease tentatively suggest that there are some basic rules of sentence length, in Britain at least (1986: 110). If the crime is sufficiently serious to warrant a sentence of between six and eighteen months, increments of three months are used; if the sentence is between eighteen months and three years, increments of six months are used; and beyond three years, increments of twelve months are normal (1986: 110–112). Those passing sentence have 'preferred numbers', with fines operating under a decimal system ($25, $30 etc.), while sentences involving imprisonment operate with a duodecimal pattern, using multiples of three, six and twelve months (Fitzmaurice and Pease, 1986: 113). It appears that these rules might apply in Australia, as Fox suggests that a maximum sentence of five months is rare, while five years is common (1991: 107)

In order to introduce sentences that will be used as alternatives to imprisonment, therefore, Fitzmaurice and Pease suggest that they must be expressed in multiples of three, six and twelve:

> It was cunning of those who introduced community service orders to consider 120, and finally accept 240 hours as the maximum number of hours which may be ordered, since the upper end of community service thereby has associations with sentencing to imprisonment, which it would not have had if, say, 250 hours had been the maximum.
>
> (1986: 113)

I cannot comment on whether these principles apply to Australia. Earlier in their book, Catherine Fitzmaurice and Ken Pease suggest that:

> A sense of injustice is felt keenly only when sentences can be contrasted with other sentences passed at around the same time and roughly the same place.
>
> (1986: 10)

They review the American literature on three extra-legal variables. The issue of the social class of the offender is said to be 'finely balanced', with the evidence of the link between race and 'sentence severity' said to be 'rather stronger', while the attractiveness of the defendant may lead to more lenient sentences (1986: 11).

...the smaller the victim, it appears, the less serious the crime.

Rosemary Gillespie, however, in an article in *The Sunday Age*, is less hard to convince:

> Discrimination has been part of the practice of law ever since the first convicts were deposited on Australian shores in 1788. From the beginning, this discrimination was primarily on the basis of class, sex and race.
>
> (Gillespie, 1992)

Gillespie's article is prompted by another Victorian case that provoked outrage recently, the Hakopian rape case. In this appeal, the Supreme Court ruled that to rape a prostitute is a less serious offence than to rape a 'chaste' woman:

> ... Hakopian was convicted in August of raping a prostitute at knife-point. Judge Jones, in the County Court, sentenced him to 16 months' jail and said the crime was less grave because the victim was a prostitute. On appeal the Supreme Court, while increasing the sentence to a two-and-a-half year minimum, agreed with Judge Jones and upheld its decision in a 1981 case which ruled that 'prostitutes suffer little or no sense of shame or defilement when raped'.
>
> (Magazanik, 1992)

Bias, according to Gillespie (1992), pervades English law on which Australian law is based:

> For example, Lord Diplock, notorious for his prescriptions as to how to deal with Irish rebels, had this to say in DPP v Hester in 1973 in the House of Lords: '(There are) two other categories of witnesses whose reliability either generally or as to particular matters was liable to be suspect for other reasons. They were children who, though old enough to understand the nature of an oath and so competent to give sworn evidence, and yet so young that their comprehension of events and of questions put to them or their own powers of expression may be imperfect; and persons, regardless of their age, who claim to have been victims of a sexual assault'.
>
> (Gillespie, 1992)

Such views led Jocelynne Scutt to coin the phrase 'the incredible woman', whereby in criminal law women, whether victims or perpetrators of crime, lack all credibility (Scutt, 1991). If women are 'incredible' as Scutt suggests, Diplock's warning places children who are victims of sexual assault in double jeopardy at the very minimum: children, I suggest, are not only incredible, but also inaudible and invisible.

Research for the Law Reform Commission of Victoria certainly bears this out: cases of sexual abuse of children were extremely difficult to 'track' through the criminal justice system; information from the police was hard to find; and very few cases result in convictions (Goddard, 1988).

Informal and organisational 'screening processes' operate to 'filter out' of the system many cases of child sexual abuse (Goddard and Hiller, 1989). Where convictions **are** gained, the sentences make Hakopian's term appear severe. In one case, for example, a conviction for sexual penetration led to a $500 good behaviour bond and psychiatric treatment (Goddard, 1988: 144); the smaller the victim, it appears, the less serious the crime.

Serious assault on a child is still regarded as less serious than stealing a mango, let alone robbing a train.

Ronnie Biggs has served his sentence in somewhat different surroundings to those envisaged by the judge who decided to make an example of him. Copacabana and Ipanema have their problems, but the views are preferable to those offered by a Wandsworth prison cell, and the climate is better. Ronnie's complaint to me (and I am certain my memory has not betrayed the gist of it) about the disparities and inconsistencies of sentencing by judges and the relative severity of different crimes, is as relevant in Australia today as it was in London in the 1960s or in Sir Edmund de Cane's letter of a century ago.

Serious assault on a child is still regarded as less serious than stealing a mango, let alone robbing a train. In the words attributed to J.B. Morton, the late British humorist, 'Justice must not only be seen to be done but has to be seen to be believed'. Some criminals appear to get preferential treatment while some victims are clearly regarded as less important (and less prone to damage) than others. It must be reassuring to Ronnie, should he decide to return to Melbourne or London before he dies, to think that some things never change.♦

References

Fitzmaurice, C. and Pease, K. (1986) *The Psychology of Judicial Sentencing*, Manchester: Manchester University Press.

Fox, R.G. (1991) 'Order Out of Chaos: Victoria's New Maximum Penalty Structure' *Monash University Law Review* 17 (1): 106-131.

Gillespie, R. (1992) 'Tradition vs Justice' *The Sunday Age*, 19 January.

Goddard, C.R. (1988) 'A Child Sexual Abuse Police Tracking Project: A Hospital-based Study for the Law Reform Commission of Victoria', *Sexual Offences Against Children: Research Reports*, Melbourne: Government Printer, pp. 61-185.

Goddard, C.R. (1989) 'The Rio Roundabout' *The Age Saturday Extra*, 28th October.

Goddard, C.R. and Hiller, P.C. (1989) 'Tracking Child Sexual Abuse' *Legal Services Bulletin* 14 (1): 25-28.

Hannan, E. (1992) 'DPP acts on rape sentence outrage' *The Australian*, 15 April.

Heaney, C. and Giles, C. (1992) 'More Jail for Rapists' *Herald-Sun*, 14 April.

Magazanik, M. (1992) 'Sex and Violence: How the Court Got Them Confused' *The Age*, 7 January.

Martin, B. (1992) 'The Scales of Justice' *Sunday Herald-Sun*, 19 April.

Rowland, J. and Agencies (1992) 'Sometimes police work is brutal' *The Australian*, 1 May.

Scutt, J. (1991) 'The Rape of Equality' *The Weekend Australian*, 28-29 September.