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INTRODUCTION

Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) 'Our penalties are a joke,' declared Steve in the Victorian *Herald Sun's* letters pages in November 2014. The previous day, the newspaper's website had displayed video footage of a sickening assault. While travelling on a bus, a 68-year-old grandfather had asked a much younger man to turn the music down on his mp3 player. The two men got off the bus at the same stop and the verbal confrontation continued. This was when the bus's CCTV camera

picked it up.

Just as the bus was about to pull away from the kerb, the younger man punched the older man once, sharply, in the Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) face. The victim collapsed, and the attacker walked off. Two schoolgirls sitting on the bus saw the attack and got off to administer first aid. Ultimately, the victim suffered a broken nose, swelling and bleeding on the brain. He also lost four teeth. He was lucky to be alive.

It wasn't the first time the *Herald Sun's* readers had been introduced to this particular assault. The previous month, the paper's *Leader* supplement had reported, misleadingly, that the 'Grandfather attacker walks free from Dandenong Magistrates' Court'. I say 'misleadingly' because the twenty-year-old assailant was actually sentenced to a one-year Community Corrections Order – one of the highest penalties short of imprisonment available to Victorian courts. This order meant that for the next twelve months the young man would need to attend regular supervision sessions with an officer from the Department of Corrections. He'd also need to attend regular treatment and Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) rehabilitation appointments, probably with a drug and alcohol counsellor and at an anger management course, and would be assessed for Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) a mental illness.

If he failed to attend more than a handful of those appointments over the next year, the corrections officer would allege that he'd breached the Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) order, and the matter would return to court for re-sentencing. If that happened, the young man Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) would very likely face jail.

But the *Herald Sun's* reportage played for outrage, and outrage it got from those writing in. 'It is time magistrates are elected into (and out of) their role by the public,' growled Michael. 'Only then will they give sentences that reflect what society expects.' CJ wondered 'how this magistrate will feel if they see the same offender in a few years' time, but the victim ends up dead'. Elijah went one step Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) further: 'So the scum just walks away? I hope those in the justice system responsible for such an out-of-step decision are the ones Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) who are attacked next time.'

The particular magistrate who sentenced this young man was Greg Connellan, formerly a well-known human rights lawyer. I appeared before him a number Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly) of times while I was working as a lawyer with the Victorian Aboriginal Legal Service between 2012 and 2014. It's unlikely there's a magistrate who approaches their judicial responsibilities with more thoroughness and sincerity. And he's certainly not afraid to use jail – he sent one of my clients away for nearly two years, and soon after he was appointed to the bench in 2007 he criticised the leniency of the maximum penalty available (five years) for a reckless conduct charge. Connellan does need a

very good reason to send someone to prison, though, and despite the views of the *Herald Sun* and its selection of baited readers, it's unlikely that *Crime & Punishment: Offenders and Victims in a Broken Justice System* (Redback Quarterly) reason existed in this case.

Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly)

It almost did, though. Causing serious injury is among the gravest charges heard by magistrates courts, and Connellan said in sentencing the offender that he'd be going to jail if he hadn't already made 'significant changes'. More than six months had elapsed since the original assault, which gave the offender time to complete a pre-sentence bail program known as CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment). The idea is that an accused person who would otherwise be remanded in custody until they are sentenced is given access to treatment or rehabilitation services for four months, if it's assessed that their problem with drugs, alcohol or mental illness is a factor in their offending. Their engagement with those services, and their progress in addressing some of the problems which may have contributed to their offending, is then taken into account by the sentencing magistrate.

'I hope *Crime & Punishment: Offenders and Victims in a Broken Justice System* (Redback Quarterly) karma will catch up *Crime & Punishment: Offenders and Victims in a Broken Justice System* (Redback Quarterly) with [the offender],' said David, another letter-writer in the *Herald Sun*. David likely doesn't know the assailant, so was expressing a familiar idea – that criminal offenders are motivated primarily by evil intent, that they're basically villains who should get their just deserts. But if David had read the *Herald Sun's* report closely, he would have learned that the assailant in this case had been diagnosed with ADHD and a mild intellectual disability, and had been previously observed to have anger management issues. David would also have learned that the offender grew up in a violent home.

None of this represents an excuse for the offender's conduct, which is why he was charged, processed through the criminal justice system and sentenced. But the backgrounds of most offenders provide courts with hints as to what might be causing their behaviour. Unfortunately, it's all too common for children who experience violence while growing up to express themselves violently as they get older.

We don't have to bend our minds too much to imagine what kind of childhood this young man had. At various times, he would very likely have been described as a victim himself. The *Crime & Punishment: Offenders and Victims in a Broken Justice System* (Redback Quarterly) *Herald Sun* was quick to cast him as a 'thug' and a 'coward', but he might equally be seen as a kid who fell through the cracks – a kid whose society failed in its duty to protect him from damage and to educate him into self-sufficiency and prosperity. David might hope karma catches up with this young man, but on another view, karma might already owe him some points.

'This sentence in no way reflects community expectations for such a vicious and unwarranted assault,' asserted Michael in the *Herald Sun*. 'What an absolutely disgraceful sentence,' *Crime & Punishment: Offenders and Victims in a Broken Justice System* (Redback Quarterly) bellowed Matthew. 'Hopefully this is appealed.' We pay for jail in cases like this one. There's a pattern to it – first, we convince ourselves that the offender is bad, a villain, and then we want them to suffer as much as possible.

And we instinctively link punishment to deterrence. 'This will continue to happen until we get fair dinkum about punishments,' thundered Mark. 'At the moment creatures of his ilk know jail is unlikely.' According to Keith: 'Gutless thugs will continue to rule the streets if this type of decision continues.' The problem with this kind of instinctive reaction is that jail doesn't do what Mark and Keith think it does. It doesn't actually work very well as a deterrent.

Perhaps even more significantly, prison doesn't solve the problem Mark and Keith expect it to solve: it doesn't rehabilitate. If anything, it augments any existing problem, for the offender and for his society: a twenty-year-old who goes to prison *Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly)* for a few months is 'warehoused' in an environment with other offenders, and nobody will give him a job upon his release. Meanwhile, his underlying problems – the causal factors in his criminal behaviour – go largely unaddressed.

Without knowing much about this young man, we can tell that he's angry – and that he can't control his anger. From the fact that he was carrying two cans of Wild Turkey bourbon on a public bus during *Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly)* daylight hours, we can surmise that he's probably got a problem with alcohol. What's the most important thing here? That he be punished with a term of imprisonment which doesn't address whatever drove him to punch a stranger in the face? Or that *Crime & Punishment: Offenders and Victims in a Broken Justice System (Redback Quarterly)* we find a way to prevent him from doing the same thing to someone else?

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