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NATIONAL VICTIMS OF CRIME CONFERENCE

VICTIMS OF WHITE COLLAR CRIME

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In 1949, American sociologist Edwin Sutherland formally introduced an idea that he had been discussing for a decade: that society should explore the types of crimes committed by people of “respectability and high social status in the course of [their] occupation.”

*The term “white collar crime” was
born*

What does it cover?

Occupational crime (crime committed by persons in the course of their work, either against the bosses or clients or co-workers).

Corporate crime (crime committed by organisations using organisational resources) including violence or violations of rights, such as causing death or injury in a workplace or against the environment.

Not covering general fraud and dishonesty, nor non-criminal activities that lead to financial ruin.

1970s

- The Council of Europe in 1973 recommended that ‘the Committee for Criminal Problems’ study white collar crime.
- Parliament of Australia Report 1974, *Senate Select Committee on Securities and Exchange: Australian Securities Markets and their Regulation*.
- Fifth Congress on Crime Prevention and Treatment of Offenders* (UN) in 1975 was “crime as business on the national and transnational level, organised crime, white collar crime, and corruption.”

***But as an issue for victims
(implications, compensation,
sentencing of offenders) ...
it's rarely discussed.
Why is it so?***

- Not seen as *real* crime
 - Indeed, seen as a 'crime against society' (if a bank or insurance company or government is the victim)
 - Very low reporting rates (embarrassment)
 - Inconsistency in enforcement
 - Inter-agency rivalry in regulation
- Thus, conflicting messages were sent about the pervasiveness, seriousness and implications of white collar crime generally.*

- 1. What strides have we made in the quest for a reduction in white collar crime?**
- 2. What are the issues at play now for victims?**

- 1. Towards a reduction in white collar crime***
 - a) Occupational crime
 - b) Corporate crime

a) Occupational crime

The principal regulator of occupational crime in Australia is the Australian Securities and Investments Commission (ASIC). Its lawyers can, and regularly do, ask the courts to consider lengthy terms of imprisonment for those who defraud their employers or clients and customers.

Avery case

John Avery pleads guilty to 130 counts involving \$500,000. 4.5 years (NPP 2.25)

“I’m not a lawyer hater, but the reality is Mr Avery’s nice family home, furniture, car etc will still all be there in one piece when he gets out of the slammer in 2 years time, so who is doing the suffering here? Let’s face it ... [a] 4 1/2 year sentence is worthless when we all know he’ll be out in half that time. Posted by: Nigel Crisp of Hobart 9:04pm September 19, 2008” (Hobart Mercury)

Imprisonment is not unusual ...

ASIC prosecutions 1996-2005

On average around Australia,

>2 years <4	6.8 people per year
>4 years <8	4.8 people per year
>8 years <10	0.9 people per year
>10 years	<u>0.4</u> persons per year
12.9 x 10 years = 129	

That's a total of 129 Australian persons with financial authority who have served significant periods behind bars during that decade (Adams, 2006 and ASIC data)

b) Corporate Crime

This is the crime where the corporation itself is the criminal. Again, a key regulator of corporate crime in Australia is the ASIC. But where there has been environmental damage or workplace death and injury, the environmental and OH&S regulators frequently bring prosecutions too (through their respective DPPs).

National Occupational Health and Safety Commission

- 1 in 20 workers suffers a work-related disease or injury each year in Australia
- Someone is injured seriously enough to lodge a Workers Compensation claim every 2.4 minutes
- 50 will suffer injuries each day with 5 of them suffering some form of permanent incapacity (chairman OHS Commission 4/04)
- But difficult to find a sentence of imprisonment.

***R v Clarke* [2007]** Qld Court of Appeal

- Charged with causing grievous bodily harm by criminal negligence after an accident that left the victim brain damaged after falling from a flying fox.
- Convicted under s 289 of the *Criminal Code* 1899 (Qld) for failing to use reasonable care.
- Jailed for 2 yrs 8 months. Lost the appeal.

Why do bosses not go to jail?

- They rarely have previous convictions.
- Their standing in the community is often high.
- Their remorse is often well expressed.
- They have many character witnesses.
- They may have suffered professional shame, stigma and personal grief.
- The company is likely to “go to the wall.”

Should they go to jail?

- People who are “high managerial agents” will go to jail if the *Industrial Manslaughter* laws get a foothold.
- But it is very rare in the absence of criminally & grossly negligent behaviour.
- and there are alternatives ...

R v Leighton Contractors 2004 (Vic)

Judge Gebhardt ordered the company to pay \$525,000 in fines, donations to charities and money into the trust funds of the deceased worker's children. Plus ...

- the directors were ordered to approach two universities for the purpose of improving OH&S training for engineers, and
- the directors were ordered to pay a significant financial contribution towards the development of a training program for construction workers.

What are the issues for victims?

i) Have high imprisonment rates reduced crime? (Hence, should we encourage this practice?)

ii) Are there better ways for victims' rights and interests to be protected?

i) Have high imprisonment rates reduced crime?

Very difficult to say ... but let's look at the corrections data

Australian prisoners

It is difficult to say how many of Australia's current 27,000 or so prisoners fall into the 'white collar' category, as the statistics recording "most serious offence" speak of "deception offences" of which white-collar fraud is but one.

For the record, around seven per cent of prisoners are in prison for "deception offences". Perhaps 2,000 prisoners.

Imprisonment is being used more and more as a sentence across the board

The imprisonment rate in Australia has increased from

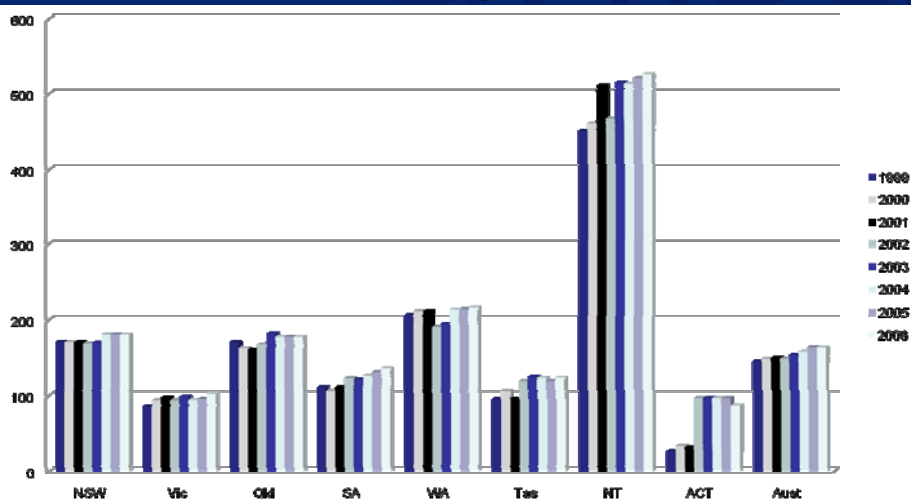
88 per 100,000 adult population in 1984

133 per 100,000 adult population in 1996

163 per 100,000 population by 2005 and it remains at that rate currently.

Rates of imprisonment in Australia

Imprisonment rates Australia 1999 - 2006



Australian imprisonment rates (adult prisoners per 100,000 population) 1999-2006

What can we say about imprisonment rates?

Little consistency across the jurisdictions (Victoria has the lowest crime rates and the lowest imprisonment rate).

Great inconsistency between who ends up in prison (Indigenous Australians are 22% of the Australian prison population, compared with 14% at the time of the RCIADC)

Little consistency with regard crime reductions. While property crime is down across the board ...

- personal crimes (including sexual assaults) are increasing each year
- recorded assaults up 40% in the past 10 years
- recorded sexual assaults up 20% in the past 10 years, and
- for children under 15 the increases are double those rates of increase

Deterrence theory is uncertain

Deterrence theory is based upon the very problematic assumption that people do think about the consequences of their actions, and weigh up the pleasures to be gained thereby (wealth) against the pains of their being caught (a possible term of imprisonment).

So,

1. Not much consistency in the evidence, and
2. Problematic assumptions about deterrence

But jail them we do

This is presumably because parliaments, prosecutors and judges have been reading the public mood; a public that is now more likely to have a financial stake in corporate Australia and who see themselves – correctly – as indirect, if not direct, potential victims of others' greed. That being the case, we appear less inclined to have qualms about sending a former pillar of society to prison.

Having said that, imprisoning perpetrators may make some victims feel better in the short term, and send “the right message”, but it’s unlikely that this strategy will make any *long term* difference to outcomes.

ii) Are there better ways for victims’ rights and interests to be protected?

No doubt an ultimate sanction is important.

It is important also, however, to have the full package: clear laws, all-embracing detection methods, and a vigilant public.

We must also demand a change in corporate attitudes.

Corporate attitudes?

- Corporates are tarnished by stories of executive misdeeds, so ...
- Happy to hide the wrongdoer's plight (sacking rather than reporting to police).

That mindset cannot continue.

Corporate attitudes?

We must also demand individuals and businesses promote exemplary standards and virtues, so that we starve the economic, political and socio-cultural environments in which white collar crime can continue.

Corporate attitudes?

- **R**ewarding moves towards international harmonisation of accounting standards
- **B**uilding a 'culture of compliance'
- **E**ncouraging propriety by incentives

This is arguably more effective than simply enlarging the formal apparatus of external public prosecution (Sarre and Fiedler 1999).

Attitudes of agencies?

- SA Declaration of Principles Governing the Treatment of Victims of Crime

Makes an interesting observation in its preamble ...

SA Declaration of Principles Governing the Treatment of Victims of Crime:

“The principles are not enforceable in criminal or civil proceedings; do not give rise to any right to damages for breach; and do not affect the conduct of criminal proceedings. However, ***public agencies and officials are authorised and required to have regard, and to give effect, to the principles so far as it is practicable to do so*** having regard to the other obligations binding on them.”

SA Declaration of Principles Governing the Treatment of Victims of Crime:

Thus, victims of consumer fraud, for example, could expect the Office of Consumer and Business Affairs (OCBA) to have regard to the principles, or a victim of a workplace injury (to self or family member) can expect SafeWorkSA to do so, or a victim of an environmental crime can expect it of the EPA too.

Summary: Victims and WCC

- It is not enough just to ask for enforcement of the criminal law and sentences of imprisonment
- It will take more than tinkering with the 'regulatory system' to prevent further victimisation (O'Connell 2000)
- It's about clear goals and informed policy
- Changes to the way that corporates respond
- and agencies having regard to the principles set down in legislation (at least in SA!)

References

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