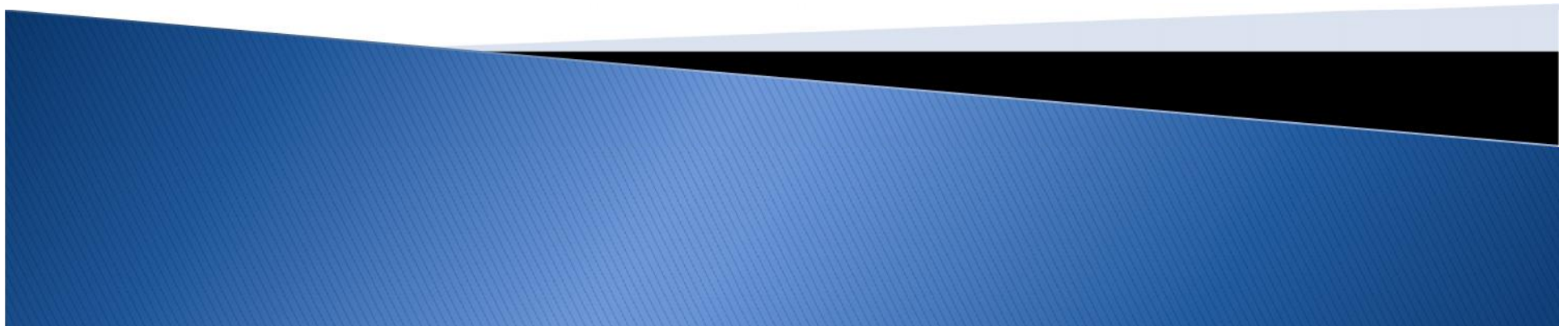


Corporate and White-Collar Crime in Ireland: A New Architecture of Regulatory Enforcement

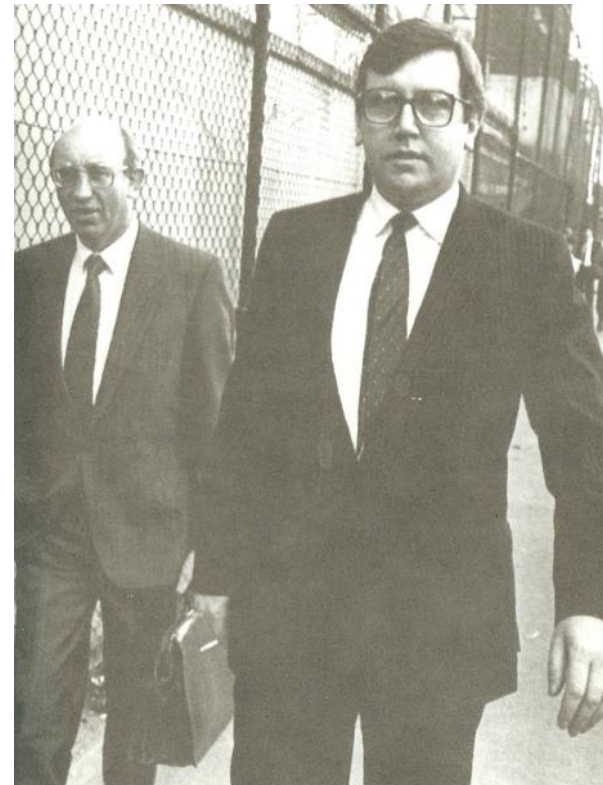
28th October 2015

Dr. Joe McGrath,
Sutherland School of Law, UCD.



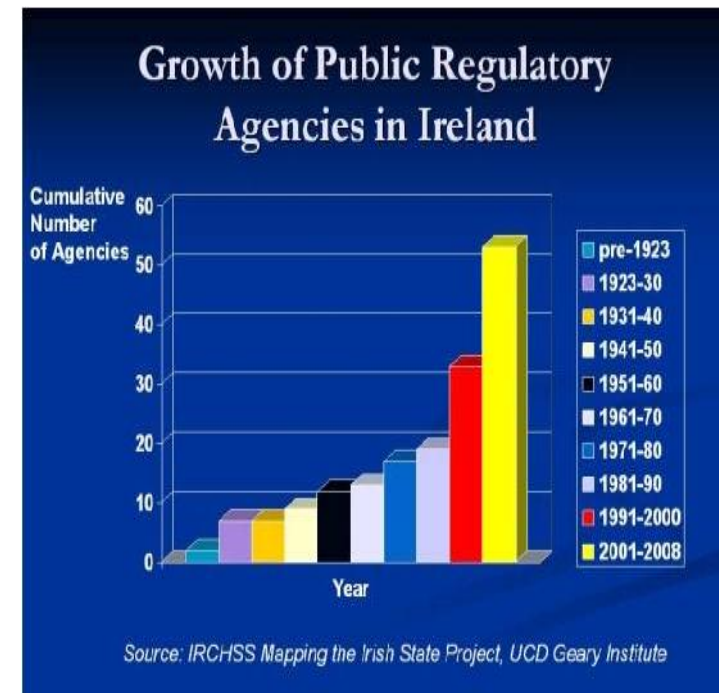
Traditional Approach to Regulation (from foundation of State to 1998)

- ▶ Based on conventional crime model.
- ▶ Criminal sanctions.
- ▶ Conventional policing and prosecution authorities.
- ▶ Due process safeguards.
- ▶ Law rarely enforced.



Contemporary Approach (1998 – 2008)

- ▶ Increased reliance on regulatory agencies.
- ▶ Diversification of enforcement techniques.
- ▶ Compliance-orientated, 'responsive' model.



Contemporary Enforcement

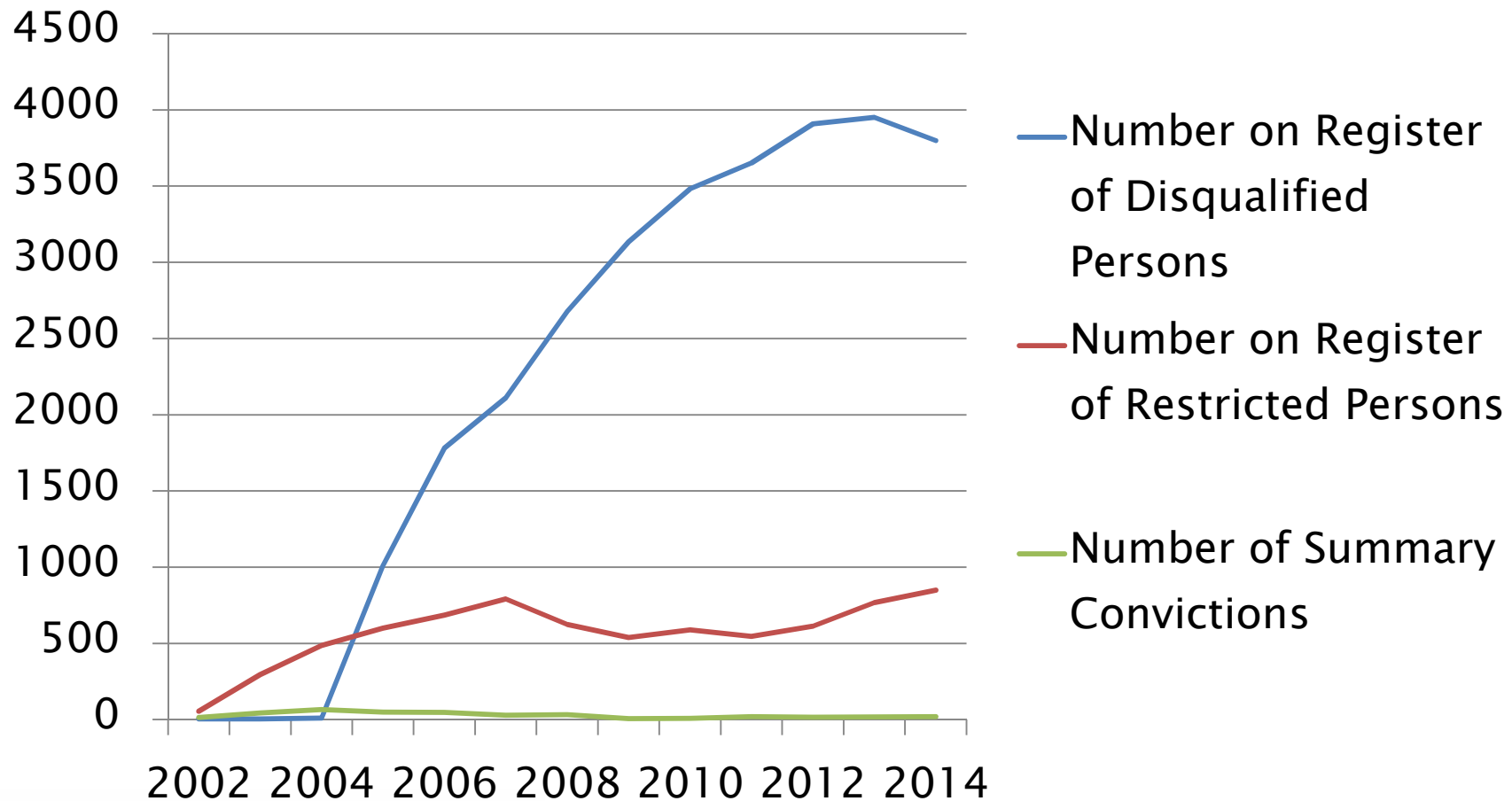


(Ayres & Braithwaite,
1992:35)



(Appleby, 2010:187)

Corporate Enforcement in Practice



Evidence of Another Shift



From Instrumental to Expressive Governance (Since 2008)

- Corporate and financial wrongdoing politicised.
- New laws introduced to boost accountability but also to 'act out' for public approval.
- Early indications of a more aggressive sanctioning approach in practice.



Sentencing Principles in Ireland

- ▶ “In Ireland, it has been established for many years that any sentence imposed must reflect the crime and the criminal. It must be rational in connection to both. It must be proportionate. Therefore, factors such as the seriousness of the offence (culpability, harm, behaviour etc.), the circumstances in which it is committed and the prescribed punishment must be looked at. As of course must any aggravating circumstances as well as mitigating ones.”
 - *DPP v Duffy & Anor* [2009] IEHC 208, per McKechnie J at 629.



Constructing Proportionate Punishment

- ▶ Sentences reflect:

1. The particular circumstances of the crime.
2. The personal circumstances of the criminal.

The court considers:

- ▶ The range of penalties and the seriousness of this particular offence.
- ▶ The mitigating and aggravating factors to reflect the particular circumstances of the offender.

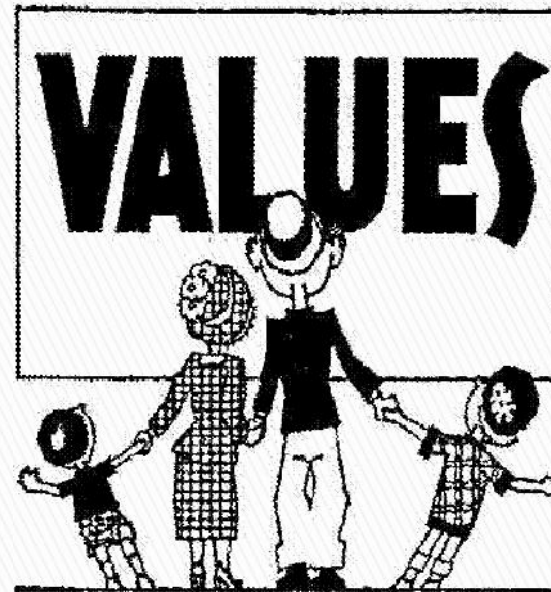


Aggravating Factors

- ▶ Premeditation.
- ▶ Excessive violence.
- ▶ Use of weapons.
- ▶ Home invasion.
- ▶ Targeting vulnerable victims.
- ▶ Degradation of victim.
- ▶ Motivation is victim's race, religion etc.
- ▶ Commission as part of a criminal gang.

Mitigating Factors

- ▶ Good character.
- ▶ Absence of previous convictions.



Why is *Duffy* so significant?

- ▶ Describes white collar crime, particularly price fixing, as *mala in se*.
- ▶ Instead of tailoring punishment to the particular circumstances of the offence and the offender, the courts should now place more emphasis on the harm caused by the offence.
- ▶ Suggests that there should be a mixed sentence, involving both fines and imprisonment, for white collar criminals.



Case law since Duffy

- ▶ *DPP v. Paul Murray* ([2012] IECCA 60)
 - ‘Widespread tax evasion by the wealthy and well-to-do can gravely threaten social solidarity and, as a consequence, the very stability of a state itself.’
 - Suggested ‘for the future guidance of sentencing courts that significant and systematic frauds directed upon the public revenue – whether illegal tax evasion on the one hand or social security fraud on the other – should generally meet with an immediate and appreciable custodial sentence’



Case law since Duffy

- ▶ *DPP v. Paul Begley* ([2013] IECCA 32)

Offenders without previous convictions would not get significant credit for mitigating factors where they were common among those who committed similar crimes.

This was the case even where they were rehabilitated and unlikely to offend again.

Nevertheless, mitigating factors could not be ignored.

Sentencing an offender with regard only to rationales of punishment and deterrence alone, without proper consideration of other relevant factors, was an error of principle.



Anglo Circuit Criminal Court Trials



Tiarnan O'Mahoney (3 years)
Bernard Daly (2 years).
Aoife Maguire (18 months).

No custodial sentences
but decision not
inconsistent with
tougher sentencing
principles that have
emerged in recent years.

Conclusion

- ▶ Legislative reform, cultural sentiments requiring increased corporate accountability, and enforcement practices, have coincided.
- ▶ Irish approach to white-collar crime has resulted in a transition from one paradoxical model of corporate enforcement to another.



Materials

- ▶ McGrath, J. *Corporate and White Collar Crime in Ireland: A New Architecture of Regulatory Enforcement* (Manchester: Manchester University Press, 2015).
- ▶ McGrath, J. “The Prosecution of White-Collar Crime in a Developing Economy: A Case Study of Ireland in the 20th Century” in Judith van Erp *et al*, *Handbook on White-Collar Crime in Europe* (London: Routledge, 2015), 399.
- ▶ McGrath, J. “The traditional court of crime approach to the definition of a crime” in: *Regulatory Crime in Ireland* (Dublin: Lonsdale, 2010), 29.
- ▶ McGrath, J. “Sentencing White-Collar Criminals: Making the Punishment fit the White-Collar Crime’ (2012) 3 *Irish Criminal Law Journal*, 72.
- ▶ McGrath, J. “Confronting our continuing failure to prosecute respectable wrongdoers” (December 2010/ January 2011) *First Law Criminal Law*, 109.

