Understanding the seriousness of corporate crime: Some lessons for the new 'corporate manslaughter' offence
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Understanding the seriousness of corporate crime:
Some lessons for the new ‘corporate manslaughter’ offence

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Abstract

The measurement of public attitudes towards the criminal law has become an important area of research in recent years because of the perceived desirability of ensuring that the legal system reflects broader societal values. In particular, studies into public perceptions of crime seriousness have attempted to measure the degree of concordance that exists between law and public opinion in the organization and enforcement of criminal offences. These understandings of perceived crime seriousness are particularly important in relation to high-profile issues where public confidence in the law is central to the legal agenda, such as the enforcement of work-related fatality cases. A need to respond to public concern over this issue was cited as a primary justification for the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007. This article will suggest that, although literature looking at the perceived seriousness of corporate crime and, particularly, health and safety offences is limited in volume and generalist in scope, important lessons can be gleaned from existing literature, and pressing questions are raised that demand further empirical investigation.

Key Words

corporate manslaughter • public perceptions • seriousness
Introduction

The introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 into the law of England and Wales represents a notable shift in the way that the criminal law responds to, and categorizes, cases where the activities of a corporate body cause the death of a worker or member of the public. The law has historically struggled to hold corporate defendants criminally liable under the law of manslaughter, and has tended instead to deal with these incidents as regulatory health and safety cases (Clarkson, 1996; Sullivan, 1996; Wells, 2001). The new corporate manslaughter offence introduced by the 2007 Act is intended to ‘properly reflect the gravity and seriousness’ of work-related fatality cases (Home Office, 2005: 6) by facilitating the successful prosecution of the worst cases under the criminal law of homicide. Current Health and Safety Executive (HSE) statistics indicate that there were 364 work-related fatalities in the year 2006—7 (HSE, 2007), however, to date only seven corporate bodies have ever been convicted of manslaughter following a work-related fatality.

This article aims to explore the rationale behind the introduction of the new offence, in particular, the arguments put forward by the Law Commission (1996) and Home Office (2000, 2005) that law reform was necessary to reflect the seriousness of work-related fatality cases and restore public confidence in the law. The Home Office (2005: 58) clearly indicated that there was symbolic and communicative value to be obtained from the imposition of an explicitly criminal label to the forms of wrongdoing involved in these cases, observing that treating them as serious criminal offences is necessary in order to differentiate them from lesser ‘offence[s] that might be characterised as regulatory’. Drawing this distinction was seen as important in order to demonstrate that the law is capable of responding to the cases in a sufficiently robust manner, and in doing so reflect the high degree of seriousness that they are perceived to possess. By holding corporate offenders guilty of a manslaughter offence, the argument goes, the legal system is able to reflect adequately the normative importance that the public attaches to these cases, and address the concerns and fears that work-related fatality cases can provoke.

Yet the claims that are made in order to justify this new offence are open to question, and there are grounds for scepticism in relation to some of the assertions made about public attitudes and perceptions in this area. Neither the Law Commission nor the Home Office provided any evidence to back up their claims to be responding to a widespread public concern or demand for criminalization in this area, and the limited empirical evidence available does tend to suggest that public attitudes are not straightforwardly punitive or demanding of criminalization (Almond, 2008). This article will attempt to evaluate the notion that public sentiment regards work-related fatality cases as serious and important, and understand how public concerns are liable to map on to the new offence. The findings of crime seriousness surveys will be explored in order to gain a clearer understanding of public
attitudes, and the ways in which criminal offences are evaluated. Measuring perceived crime seriousness allows for assessment of whether the criminal justice system is in line with collective normative judgements (Warr, 1989). The insights obtained will be used to evaluate the claims made in justifying the introduction of the new offence, and to assess the likely relationship between the enforcement of the new offence and public perceptions of appropriate legal responses in such cases.

**Context: The Corporate Manslaughter and Corporate Homicide Act 2007**

Calls for reform of the law relating to work-related fatality cases have been prompted by an increased public scepticism about corporate activities in recent years, coupled with the heightened prominence of this issue following a series of transport disasters (Snider, 1991; Wells, 2001). Work-related fatality cases are significant because the harms involved make them powerful indicators of social risk (Hutter and Lloyd-Bostock, 1990; Wells, 2001), but a paucity of successful manslaughter prosecutions in the past, underlined by the failure to convict any substantially sized corporate defendant for that offence, has seemingly fostered a general perception that the law is ineffective in controlling these risks and does not recognize the seriousness of such cases (Home Office, 2005: 8). The new corporate manslaughter offence is intended to resolve the formative shortcomings of the previous law, such as the inability of the ‘identification doctrine’ to attribute liability to a corporate body (Clarkson, 1996; Sullivan, 1996; Wells, 2001), and the Home Office (2005: 7) has stated that the new offence is ‘primarily designed to secure in a wider range of cases a conviction for a specific, serious criminal offence that properly reflects the gravity and consequences of the conduct involved’.

The corporate manslaughter offence is broadly equivalent to the common-law offence of gross negligence manslaughter, in that it imposes liability for causing a death in circumstances where the defendant had exercised a standard of care which fell far below that expected of them (as laid down in *R v Adomako* [1995] 1 AC 171). Specifically, the Corporate Manslaughter and Corporate Homicide Act s. 1(3) specifies that the ‘way in which any of [the organization’s] activities are managed or organised by its senior managers’ must amount to a substantial element of a gross breach of a duty of care. Section 8 of the Act specifies that such a breach of duty is assessed via reference to the regulatory requirements and guidance laid down in health and safety law (such as the Health and Safety at Work Act (HSWA), 1974) and associated ‘best practice’ documents issued by the Health and Safety Executive (HSE, the body with responsibility for health and safety regulation). Conviction under this offence is punishable via the imposition of an unlimited fine, which can be augmented by the issuing of a remedial order, requiring that the breach of duty be remedied (s. 9), and
a publicity order, which requires the convicted corporate body to publicize the fact and circumstances of its conviction (s. 10). Although the fines that can be imposed are no higher than those available under the previous law, the inclusion of these orders as options constitutes a development of the previous law and a recognition of the essentially communicative and symbolic aims of the offence. They also reflect the desire to encourage the imposition of larger fines by courts in fatal cases via the repositioning of such cases as ‘crimes’; the average fine levied following a work-related fatality conviction in 2001 was around £34,000 (Almond, 2006: 894), and many were very low indeed.

As mentioned previously, the primary factor driving reform of the law in this area was the desire to recognize and reflect the perceived seriousness of such offences in the eyes of the wider public. Government rhetoric surrounding the 2007 Act has focused on this justification more than the potential deterrent effect of the legislation, and commentators have observed that the Act seems to primarily constitute a ‘symbolic statement about corporate responsibility’ rather than a meaningful reorganization of the law’s practical capacity to punish (Ormerod and Taylor, 2008: 589). The symbolic function of the new offence centres on its attempts to redefine the normative status of the law; the health and safety offences used to prosecute companies following most work-related fatalities (primarily HSWA, 1974) are not regarded as a form of criminal law by the public or by those to whom they apply (Gunningham and Johnstone, 1999: 7; Wells, 2001: 7; Almond, 2006), and the failure of attempts to make the previous law of manslaughter apply to corporate defendants has simply served to underline and reinforce perceptions that the law is ideologically constructed so as to preclude meaningful control of corporate activity, and reflects the interests of the business lobby rather than the wider public (Snider, 1991; Wells, 2001). The infrequency of prosecution and the low fines levied in relation to fatal events that are supposedly regarded as highly serious have, it is claimed, contributed to a weakening of the perceived value of the law, and it is this which underpins claims made about the need for the new offence.

While it is instructive to note the degree to which these reform proposals have sought to respond to public concern, there is room for scepticism because the public attitudes involved have never been empirically investigated. The Law Commission and Home Office did not provide any evidence of the public attitudes that they discussed, seeming to rely instead on general impressions of public disquiet, perhaps influenced by the views of interest groups such as Disaster Action (Law Commission, 1996: 7.9—7.15). While work-related fatalities can prompt widespread media coverage, assuming that this is representative of broader public attitudes can be misleading (Hough, 2002; Green, 2006). Furthermore, attitudes in the aftermath of these incidents cannot be assumed to reflect any sustained concern over the issue. This constitutes a critical oversight in the justificatory underpinnings of the new offence; it is presented as a response to public concerns, but the
lack of evidence base means that the new offence is open to charges of being a ‘penal populist’ measure, a ‘policy developed primarily for its anticipated popularity’ (Roberts et al., 2003: 65; see also Bottoms, 1995) rather than because it is likely to facilitate successfully any particular policy outcome.

This trend towards public opinion-led policymaking can be seen as part of a broader culture of penal punitiveness (Garland, 2001), whereby loosely defined public demands for ‘tougher’ responses to crime feed into the development of punitive and non-rehabilitative sanctions, the politicization and ‘emotionalization’ of penal policymaking, and the expansion of the penal infrastructure. Empty appeals to ‘public sentiment’ leave the lawmaking process open to criticism as unprincipled and opportunistic. Yet there is an alternate way of understanding the role of the public voice in policymaking; researching true public attitudes can also be seen as part of a democratizing movement which increases the legitimacy of the criminal law by ensuring it rests upon a basis of public commitment (Tyler and Darley, 2000), and accords with fair labelling principles (Warr, 1989; Mitchell, 1998). In this context, ‘fair labelling’ means that the law should meaningfully reflect different levels of wrongdoing through a clear structure of offences that label and sanction distinctive forms of criminality in a manner that is clear and proportionate. Such a scheme is only meaningful insofar as it makes sense to the wider public audiences to whom these messages are directed. As Lacey (2004: 156) observes, structural couplings between formal systems of law and community norms are important in shaping norms of behaviour and legitimating the law. Ensuring that there is concordance between the normative values held by the public and embodied within the law allows for the principle of fair labelling to be fulfilled; also, laws that fulfil public interests come to be regarded as having greater legitimacy (Beetham, 1991; Almond, 2007).

An evaluation of the available evidence relating to public attitudes towards work-related fatality cases will provide the opportunity to ascertain whether the legal reform process really does reflect public concerns, and is therefore responsive in the way that is intended. The new offence is intended to apply to only ‘the most serious management failings that warrant the application of a serious criminal offence’ (Home Office, 2005: 32). Which work-related fatality cases do the public view as most serious? Are these the same cases as those which are treated as ‘most serious’ by the new offence? Much of the literature on regulatory enforcement processes highlights that prosecution and the use of formalized enforcement fulfils a primarily symbolic role (Hawkins, 1984, 2002; Hutter, 1997; Almond, 2007), and this symbolism is contingent upon the ability of enforcement to communicate successfully intended messages about the nature and value of the law. If the new offence is to succeed in its stated aim of addressing public concerns over the state of the law in this area, then its substance must articulate closely with community-based normative morality and expectations (Lacey, 2004: 157).
Investigating public perceptions of the criminal law

Research into public perceptions of the criminal law has proved to be an important component of attempts to analyse the role and functions of the criminal justice system. In particular, crime seriousness surveys have set out to identify which offences are regarded as most serious and what features moderate these perceptions (Stylianou, 2003). The information gathered can be useful in allowing policymakers to respond to issues of public concern through changes in policing, sentencing practices and the normative structuring of offences (Hoffman and Hardyman, 1986) to ensure that the labels invoked by the imposition of criminal liability accurately reflect the perceived culpability of the offender (Mitchell, 1998). While much of this literature has focused on attitudes towards the criminal justice system in the broader sense (Roberts et al., 2003; Roberts and Hough, 2005), investigations of attitudes towards specific offences have been less common. Studies that use qualitative or deliberative methodologies have provided important insights in relation to specific offence areas (Mitchell, 1998, 2000; Almond, 2008), but the most sustained body of information is provided by the mainly US-based tradition of quantitative crime seriousness surveys. This international literature may not address the British legal system directly, but it does provide some important generalized findings that have indicative value; although the quantitative data can be difficult to interpret, the general findings and trends are robust and broadly consistent from study to study.

Crime seriousness surveys seek to establish whether a social consensus exists over views of crime seriousness, and whether this consensus is reflected in the criminal justice system, as a way of demonstrating that the law acts in pursuit of a public mandate (Rossi et al., 1974: 224). These seriousness surveys typically involve the recruitment of large sample populations (ranging from approximately 200 upwards) who rate a number of crime ‘items’, in the form of offence descriptions or vignettes, according to their relative seriousness. These ratings are then used to construct a comparative scale of offence seriousness, which can then be used to evaluate legal categorizations and priorities. The earliest crime seriousness study, by Sellin and Wolfgang (1964), engaged samples of court judges, police officers and undergraduate students to rate the seriousness of 141 offences; the groups placed the offences in a broadly consistent seriousness ranking scheme, and this scheme was also broadly consistent with the prioritizations found within the formal law (1964: 268). Subsequent studies have revised and refined this initial methodology, for instance, Rossi et al. (1974) utilized a more representative, less ‘haphazard’ (1974: 225) sample of 200 adults, who rated the seriousness of 140 offences on a nine-point rating scale, (where 1 = ‘least serious’ and 9 = ‘most serious’); respondents were able to undertake the cognitive process required with ease (1974: 226).

By 1985, the crime seriousness survey had attained a new level of validation with Wolfgang et al.’s National Survey of Crime Severity (NSCS),
a large-scale ($N = 60,000$) survey of the American general population. Respondents rated 204 different crime items for seriousness, producing a very sizeable body of data, which was then used in conjunction with actual recorded crime statistics to quantify the extent of the ‘crime problem’ in the USA. The methodology required a seriousness rating be given for each crime comparative to an ‘anchor item’ (stealing a bicycle from the street, rated ‘10’); planting a bomb which kills 20 people received the highest rating (72.1) and playing truant from school received the lowest (0.2). These studies demonstrate some of the key strengths of this research method, such as the capacity to produce generalizeable and representative data that illustrate key aspects of public opinion, the robust and replicable nature of that data and the capacity to focus in detail on more specific issues and types of crime. For instance, Cullen et al. (1982) replicated Rossi et al.’s general study, but focused more explicitly on attitudes towards corporate crime in particular; their findings were broadly the same as that of the earlier study, but they also demonstrated that public attitudes towards corporate crime had hardened significantly since the Rossi survey (1982: 93). The general findings of the main seriousness surveys are summarised below (Table 1).

The surveys outlined here also provide some more generalized findings, such as the special degree of seriousness that appears to be attached to fatal offences (Hansel, 1987; O’Connell and Whelan, 1996; Kwan et al., 2000), perhaps because they typically involve grave moral wrongs as well as very harmful consequences (Mitchell, 1998). O’Connell and Whelan (1996: 308) suggest that the perceived seriousness of fatal offences reflects the extreme ‘individualized violation … of a person’ and intensity of impact involved. Non-fatal offences against the person are also rated highly; Rossi et al. (1974) placed rape as the fourth most serious offence, ahead of many fatal offences (Cullen et al., 1982; Kwan et al., 2000). Offences against the person commonly outrank even the most serious property offences (Douglas and Ogloff, 1997), and victimless offences are generally rated as least serious (Cullen et al., 1982: 91). Three features have been highlighted as playing a particularly important role in determining offence seriousness; the harmfulness of the criminal activity in question, the normative wrongfulness that attaches to it and the _mens rea_ that the offence involves. These important concepts require discussion in more detail.

**Harmfulness**

The consequences of a criminal action have long been identified as determining the seriousness that it is perceived to possess; Wolfgang et al. (1985) found that varying the degree of physical injury resulting from an offence against the person led to different public seriousness ratings—a fatal stabbing received a ratio seriousness score of 35.17, a stabbing causing hospitalization, 18.02 and a stabbing not causing hospitalization, 17.14. Both financial and physical harms have an effect on perceived seriousness; Casey and O’Connell (1999: 268) found that fraud, burglary and arson
<table>
<thead>
<tr>
<th>Study</th>
<th>Methodology (summary)</th>
<th>Most serious item (and mean score)</th>
<th>Median item (mean score and rank)</th>
<th>Least serious item (mean score and rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sellin and Wolfgang (1964)</td>
<td>N = 251 public, 141 items, rated on 1–11 scale</td>
<td>Intentional killing with knife, 10.86</td>
<td>Theft of jewellery worth $1000, 6.09 (rank 46)</td>
<td>Neighbourhood noise disturbance, 2.85 (rank 140)</td>
</tr>
<tr>
<td>Wolfgang et al. (1974)</td>
<td>N = 200 public, 140 items, rated on 1-9 scale</td>
<td>Planned killing of policeman, 8.47</td>
<td>Killing 20 people with bomb, 72.1 (rank 8)</td>
<td>Child under 16 plays truant from school, 3.53 (rank 140)</td>
</tr>
<tr>
<td>Rossi et al. (1974)</td>
<td>N = 690 public/student, 11 items, rated on 1–11 scale</td>
<td>Domestic assault with knife causing wounding, 9.0</td>
<td>Promoted killing for money, 8.38</td>
<td>Trespassing on railway property, 2.37 (rank 31)</td>
</tr>
<tr>
<td>Walker (1978)</td>
<td>N = 105 public, 140 items, rated on 1–9 scale</td>
<td>Intentional killing with knife, 10.86</td>
<td>Passing false cheques worth $100, 6.18 (rank 102)</td>
<td>Street robbery worth $4, 6.10</td>
</tr>
<tr>
<td>Cullen et al. (1982)</td>
<td>N = 60,000 public, 204 items, compared to anchor (dollar theft=1)</td>
<td>Premeditated killing for money, 8.38</td>
<td>Mail-order fraud against public worth £1000, 8.31 (rank 5)</td>
<td>Mail-order fraud against public worth £1500, 8.17 (rank 5)</td>
</tr>
<tr>
<td>Levi and Jones (1985)</td>
<td>N = 960 public, 14 items, rated on 1–11 scale</td>
<td>Intentional killing with knife, 10.65</td>
<td>Mail-order fraud against public worth £30, 5.20 (rank 10)</td>
<td>Social welfare benefit fraud worth £30, 5.20 (rank 10)</td>
</tr>
<tr>
<td>Warr (1989)</td>
<td>N = 336 public, 31 items, rated on 1–11 scale</td>
<td>Double homicide in course of robbery, 9.87</td>
<td>Street robbery worth $4, 6.10</td>
<td>Theft, 1.11 (rank 15)</td>
</tr>
<tr>
<td>O'Connell and Whelan (1996)</td>
<td>N = 623 public, 10 items, rated on paired comparison method</td>
<td>Intentional killing with knife, 10.86</td>
<td>Blackmail and intimidation, 8.43</td>
<td>Theft, 1.11 (rank 15)</td>
</tr>
<tr>
<td>Kwan et al. (2000)</td>
<td>N = 150 public, 15 category items, paired comparison method</td>
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</tbody>
</table>

**Table 1.** Key findings of general seriousness surveys

Note: Where studies have surveyed multiple groups individually for the purposes of comparison (e.g., police officers and members of the public), the findings relating to the public group have been included in the summary table. Note that Walker (1978) excludes the most serious and least serious offences from the survey, and so contains no fatal offences.
Offences were all rated as more serious when their financial value or the number of victims increased. Walker (1978: 353) moderated the fiscal costs involved in four property offence scenarios (burglary, shoplifting, fraud, tax evasion), and found that the seriousness ratings given when the cost was £100 were significantly (between three to four points on the 1—11 scale) higher than those given when it was just £1. The fact that seriousness ratings do not increase in direct proportion to the elevated costs involved suggests that the psychological effect of consequence is not merely additive; they function as an ‘anchoring heuristic’, rendering the abstract wrongfulness of a criminal action knowable and more salient to our lives (Tversky and Kahneman, 1974), without fundamentally changing the moral character of the offence (Casey and O’Connell, 1999). Consequences root an offence in the sphere of common experience, meaning that we rate harmful crimes as serious because we see ourselves as potentially subject to the same risk of harm. In this sense, the harmful consequences ‘signal’ the risk of crime and the potential for it to affect us, and so the higher ratings found in these studies constitute a reaction to an implied threat to the respondent (Innes, 2004).

Wrongfulness

While consequentiality is an important ingredient of crime seriousness, it is not the only factor that shapes public ratings of offence items. While murder and Causing Death by Dangerous Driving both result in the same physical harm, our evaluations of these fatal offences differ according to the wrongfulness or moral gravity they are perceived to possess, as well as their outcomes (Mitchell, 1998, 2000). Warr (1989) suggests that seriousness is a composite concept, reflecting harmfulness and wrongfulness, and posits that these two factors can dictate different seriousness ratings in relation to the same offence. For example, shoplifting goods worth £1 might be classified as non-serious given the minimal harm inflicted, but of considerably higher seriousness when assessed according to wrongfulness criteria, because stealing is widely regarded as morally wrong (1989: 796). It is possible that many seriousness studies may, by framing items in both normative and consequential terms, have measured different things.

Warr (1989) asked 353 members of the public to rate 31 offences for seriousness, wrongfulness and harmfulness, and found that the majority of respondents viewed harmfulness and wrongfulness as broadly correlated, with property offences deemed slightly more wrongful than harmful, and offences against the person slightly more harmful than wrongful. The most serious crimes (robbery-homicide, arson-homicide, sexual assault) were categorized as such because they were rated the most wrongful (1989: 802). Warr concluded that respondents use one or the other of the two criteria as a primary basis for their seriousness ratings, depending on which predominates for each offence. This ‘primacy’ model suggests that seriousness judgements are more complex and sophisticated than might be thought; when rating
for seriousness, we process and evaluate multiple variables, and categorize according to the best fit. This model supports arguments that assessments of crime seriousness are both meaningful and ‘deliberative’ (Hough, 2002; Green, 2006), and suggests that the process of categorization is linked to more than simply emotive and transitory ‘surface’ attitudes.

**Mens rea and motive**

As within the criminal law more generally, studies into crime seriousness have considered the role of mens rea, or the subjective culpability of the offender, as a basis for assessment of criminal conduct. The issue of wrongfulness is closely linked to mens rea; we distinguish wrongful acts from innocent ones largely on the basis of the state of mind that the act is committed with. Such considerations are also relevant to determinations of seriousness. Sebba (1984) found that the explicit categorization of a criminal offence as either intentional, reckless or negligent led to significant differences in the mean seriousness scores given for offences across the three conditions, with intentional offences rated as more serious than reckless ones, which were in turn more serious than negligent offences. Mitchell (1998: 467) found that motive, premeditation and advertence were all influential in determining seriousness perceptions in homicide cases. Subsequently, Herzog (2004) confirmed Sebba’s seriousness hierarchy, but found little evidence to suggest that motive played a particularly important part in shaping seriousness ratings; only killings motivated by mercy or in response to prolonged domestic abuse were viewed as mitigated by the mens rea involved.

Although valuable, these studies are not without conceptual problems. First, they do not clearly define ‘seriousness’ as a concept, so it is by no means clear that all respondents are evaluating the same thing. Rossi et al. (1974: 224) imply that seriousness is a clearly understood but indefinable normative concept, relating to the inherent wrongfulness of an action, while the NSCS sees seriousness as synonymous with harmfulness (Warr, 1989: 797). Part of the ambiguity over the meaning of seriousness arises because the concept is viewed as determined by a range of ‘offence features’; Rossi et al. (1974: 232) list 11 offence ‘dimensions’, including ‘crimes against the person resulting in death’ and ‘crimes involving property resulting in the loss of more than $25’, which determine seriousness. These dimensions are really categories of offence type, rather than offence features per se, and as such, tell us what is regarded as serious rather than why. Also, the studies outlined here presented differing information to the respondents who provided the seriousness ratings, with variations between studies in the level of detail provided about injury, victim identity and method of assault, and in the language used, meaning that direct comparisons cannot be made easily. Lastly, questions remain about how far the responses gathered actually demonstrate deeper public attitudes, rather than merely reflecting transient and surface-level ‘opinion’ (Green, 2006). Despite these drawbacks, the methodological approaches developed within these studies have identified some significant
trends and provided a framework for understanding public attitudes that has allowed subsequent surveys to gather more specific information.

The seriousness of corporate offending

The crime seriousness survey methodology has proved to be a valuable way of investigating how and where corporate offences fit into the public consciousness of crime, and uncovering some important trends regarding the recognition and acceptance of these forms of wrongdoing. Sellin and Wolfgang’s (1964) survey only used crime items that specified an individual offender, and did not focus on corporate crime at all, but later studies have moved towards recognizing of corporate crime as a subject of study (see Table 2). In addition to perceptions of corporate crime seriousness, the literature has also allowed the perceived seriousness of different categories of white-collar offending to be explored (Levi and Jones, 1985; Rebovich and Kane, 2002). Many studies have tended to conflate these two categories and disregard the differences between offences committed by corporate actors and those committed by individuals within a working or clerical context (for example Cullen et al., 1982), meaning that care is needed when interpreting their findings. The primary findings are broadly consistent; corporate and white-collar crimes are generally rated as less serious than other harmful offences, and tend to receive lower seriousness ratings than comparable ‘mainstream’ offences. Fatal corporate offences are regarded as the most serious examples of corporate offending, and tend to be rated as more serious than most ‘mainstream offences’ but less serious than comparable ‘mainstream’ fatal offences.

The tendency of respondents to rate offences which result in fatalities or other physical injury as the most serious forms of corporate offending lends some weight to arguments that it is the notion of harmfulness which dictates perceived seriousness in this context. In particular, the role that actualized harms can play in making the risks associated with criminal conduct salient is especially important in the case of corporate offending (Rosenmerkel, 2001: 324). The majority of corporate crimes occur in contexts and involve actions and outcomes that are significantly removed from the everyday experience and awareness of the general public. Rosenmerkel (2001) demonstrated (following Warr, 1989) that the public tend to rely on the concept of perceived harmfulness when assessing the seriousness of white-collar and corporate offences, rather than the perceptions of wrongfulness that are more commonly used in relation to traditional forms of ‘street crimes’. This tendency perhaps reflects the perceived moral ambiguity that attaches to corporate offences as a result of their broadly legitimate contexts and perceived status as offences that are ‘mala prohibita’ rather than ‘mala in se’ (Wells, 2001; Clarkson, 2005; Almond, 2006). While outcomes are easily appreciable by non-expert observers, the levels of negligence that contribute to complex system failures or technical infringements of the law are much
Table 2. Seriousness survey findings relating to corporate crime

<table>
<thead>
<tr>
<th>Study</th>
<th>Most serious CC item (mean score, rank/total no. of items)</th>
<th>% of CC items in top 50% of all items (by seriousness score)</th>
<th>Mean score/rank of CC items</th>
<th>Least serious CC item (mean score, rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rossi et al. (1974)</td>
<td>‘Manufacturing and selling drugs known to be harmful to users’ (7.65/9, 25/140)</td>
<td>29% (5 of 17 CC items included in survey)</td>
<td>Score 6.13/9, rank 89.4/140</td>
<td>‘False advertising of a headache remedy’ (4.08/9, 132/140)</td>
</tr>
<tr>
<td>Cullen et al. (1982)</td>
<td>‘Knowingly selling contaminated food which results in death’ (8.47/11, 13/140)</td>
<td>41.2% (7 of 17 CC items included in survey)</td>
<td>Score 6.94/11, rank 73.1/140</td>
<td>‘Overcharging on repairs to an automobile’ (5.76/11, 116/140)</td>
</tr>
<tr>
<td>Wolfgang et al. (1985)</td>
<td>A factory knowingly pollutes water supply with waste; 20 die (39.1, 7/204)</td>
<td>58.8% (10 of 17 CC items included in survey)</td>
<td>Score 12.56, rank 85.8/204</td>
<td>Knowingly selling ‘large’ eggs as ‘extra-large’ eggs (1.9, 179/204)</td>
</tr>
<tr>
<td>Grabosky et al. (1987)</td>
<td>A factory knowingly pollutes water supply with waste; 1 death as a result (19.0, 3/13)</td>
<td>100% (2 of 2 CC items included in survey)</td>
<td>Score 18.5, rank 3.5/13</td>
<td>Employee loses leg in machinery after employer knowingly failed to install guarding (18.0, 4/13)</td>
</tr>
<tr>
<td>Rosenmerkel (2001)</td>
<td>‘Knowingly selling bad food that result in death’ (9.21/11, 5/23)</td>
<td>50% (3 of 6 CC items included in survey)</td>
<td>Score 6.95/11, rank 13.7/23</td>
<td>‘Overcharging for automotive repairs’ (4.94/11, 21/23)</td>
</tr>
</tbody>
</table>

Note: For the purposes of this table, only items that evidently involve a corporate offender have been included within the ‘corporate crime’ category; offences such as ‘fraud’ which could be committed by either an individual or a corporate offender, have not been counted as ‘corporate’. In addition, a number of ‘white-collar’ offences, which involve individual offenders acting within a broadly administrative or workplace context (such as income tax fraud or embezzling company funds) have not been included as they are not ‘corporate’ offences in any real sense (Wells, 2001).
less easy to appreciate; the actualized harm involved in an offence makes the underlying ‘risk come...to life’ (Hutter and Lloyd-Bostock, 1990: 418).

A related issue is the impact that issues of *mens rea* and intentionality can have on perceptions of offence seriousness, particularly in the corporate sphere. A primary feature of many regulatory corporate offences is a lack of any pure *mens rea* element; most involve either strict liability or some form of negligence. It follows that we might expect the public to regard corporate crimes where orthodox *mens rea* is present as being more serious than those where it is not. Cullen et al. (1982: 93) demonstrated that fatal corporate offences were rated as more serious where the conduct had been perpetrated ‘knowingly’, that is, with a degree of advertence to the risk being taken, while those committed negligently received lower seriousness ratings. In fact, three of the five most serious white-collar offences within Cullen et al.’s study involved conduct committed knowingly, thereby implying that advertence does affect perceptions of seriousness. Lastly, it appears that the public do sometimes impute higher degrees of culpability and blameworthiness where an offence is committed by a corporate rather than a human defendant. Hans and Ermann (1989: 157) found that otherwise identical offences were rated as significantly more negligent and serious when the defendant was a corporate body than when it was individual (3.51 versus 2.67/5.00). The different contexts and standards of care applied by the public in these cases suggest that corporate offending is often viewed as a conceptually distinct form of criminal conduct.

**Discussion: The implications for the corporate manslaughter offence**

The literature on public perceptions of crime seriousness has developed in scope and sophistication over time and makes a significant contribution to knowledge about the interface between law and public opinion. The value of such research lies in its ability to provide evidence from which the normative alignment of the criminal law can be evaluated. While the majority of seriousness research has remained at a relatively abstract level, it has identified a number of important trends that have applications within more specific fields of inquiry. In the context of work-related fatality cases, the knowledge obtained can be translated into suggestions for future policy decisions regarding the corporate manslaughter offence. What does the available evidence tell us about the potential relationship between public attitudes and perceptions, and the likely use that will be made of the new offence?

The first key point to be drawn from this evidence is that the relative importance attached to harmfulness and outcomes in shaping offence seriousness perceptions is likely to lead to certain cases being prioritized in terms of prosecution action. Corporate and white-collar offences are rated primarily in terms of their harmfulness, while ‘street crime’ is rated using
wrongfulness as the primary factor (Rosenmerkel, 2001). As we have seen, harm renders an offence salient and understandable; the immediacy of the link between the offence and the perceiver, whether arising from a shared context, the visibility of the harm, or the perceived threat involved, plays a fundamental role in shaping risk perceptions (Tversky and Kahneman, 1974). A salient risk is one that is perceived to be imminent to the perceiver, for instance, because the outcomes are dramatic, visible or in some other way related to the perceiver’s life. The correlate of this is that those offences that do not demonstrate a high degree of salience or harmfulness may not be perceived as serious, and prompt lower levels of public concern than those that do.

The new corporate manslaughter offence is intended to reflect the gravity of the harm inflicted in work-related fatality cases (Home Office, 2000, 2005), and it is suggested that the primary shortcoming of existing health and safety offences (which are not consequentialist) is their inability to reflect the harmfulness of work-related fatality cases (Sullivan, 1996; Wells, 2001; Clarkson, 2005; Almond, 2006). We might expect that public attitudes towards these cases would be shaped by the degree of harm involved; many high-profile work-related fatality cases involve multiple fatalities, and would seem to constitute harm-based offences within Warr’s dichotomy, thus leading to a public perception that they are serious (Almond, 2008). The new offence was introduced in order to demarcate the most serious work-related fatality cases, as evidenced by the relatively high threshold of liability inherent in the requirement that death occur as a result of a gross breach of a duty of care (Corporate Manslaughter and Corporate Homicide Act 2007 s. 1(4)b). As such, the implication is that the new offence will be targeted primarily at the most harmful cases involving members of the public, particularly multiple fatality cases, as they have the greatest impact upon public perceptions of risk. These ‘signal’ cases (Innes, 2004) render risk both salient and retrievable, heightening underlying levels of concern (Tversky and Kahneman, 1974: 1127). Public demands for prosecution action are likely to centre on a limited number of cases only, and a prosecution policy that is directed by these concerns will result in the prioritization of a specific type of case, perhaps to the exclusion of others.

What is less clear is how the harmfulness of work-related fatality cases relates to their perceived wrongfulness. There is evidence that the public differentiate fatal offences on the basis of the wrongfulness, or moral desert, of the offender (Mitchell, 1998), and that the mens rea state with which an offence is committed is also a significant factor determining perceived seriousness (Herzog, 2004). The corporate manslaughter offence is conceptualized in terms of requiring the establishment of a ‘management failure to control health and safety risks’, and builds upon the form of the existing law of manslaughter in terms of its requirement that a gross breach of a duty of care be established. As such, it does not formally require proof of
an advertent mens rea state, and liability is primarily based on recognition of responsibility for the harms caused, rather than the wrongfulness of the act (in Warr’s terms) as demonstrated through advertence and moral culpability. One possible effect of the perceived primacy of ‘harm’ as a component of seriousness is that demands for prosecution may focus on the most harmful cases and overlook the most wrongful. This would be undesirable, as differentiations in culpability (based on advertence or degrees of negligence) do exist between work-related fatality cases.

Effectively differentiating the worst cases is important in order to ensure that enforcement is seen to be both deserved and reasonable, as heavy-handed enforcement can erode a regulator’s legitimacy (Bardach and Kagan, 1982; Almond, 2007) and compromise the symbolic value of enforcement action at the top of the regulatory pyramid (Ayres and Braithwaite, 1992; Hawkins, 2002). It must be demonstrated that the cases to which the new offence is applied deserve the additional censure that the ‘manslaughter’ label invokes. A conceptualization of the seriousness of work-related fatality cases that is based on harmfulness alone runs the risk of reducing the normative value of the manslaughter offence to the status of a regulatory offence, rather than elevating the worst cases to the status of ‘crimes’, by failing to demarcate the most culpable and blameworthy cases as qualitatively different from those that are dealt with under ‘quasi-criminal’ regulatory laws (Gunningham and Johnstone, 1999: 214). As such, the normative component of the new offence requires greater clarification if it is to differentiate successfully the most serious cases from other fatal breaches of health and safety law (Clarkson, 2005) and establish itself as reflective of a distinctive standard of wrongfulness.

The implications for the new offence, then, are intriguing. Public attitudes and expectations in the aftermath of high-profile work-related fatality cases tend to be ‘rather punitive’ (Hawkins, 2002: 212), and this leads to pressure on enforcement bodies from the media and interest groups to prosecute in cases where public concern is high (Hutter and Lloyd-Bostock, 1990: 410). Prosecution decision making by enforcers is likely to be guided by both harmfulness and wrongfulness considerations, particularly given the role that establishing blameworthiness and fulfilling the fault element of the offence plays in constructing cases that are seen by health and safety enforcers to be both very winnable and in the public interest (Hawkins, 2002: 407—8). Prosecutions of wrongful cases are most likely to satisfy the requirements of the legal decision-making process, and so succeed, but public expectations and demands for prosecution are likely to attach on the basis of harm, particularly in relation to the most salient cases, creating a fundamental tension within the prosecution process. If data existed on the attitudes of enforcers in this sphere towards offence seriousness, it is likely that it would show a tendency towards a wrongfulness-based interpretation scheme (Levi and Jones, 1985; Hawkins, 2002; Almond 2006).
Conclusions

This article has aimed to illustrate the extent of current knowledge about public attitudes regarding corporate crime, and highlight the need for future research. The ambiguous moral character of work-related fatality cases, and of health and safety law, has long been seen as a barrier to the imposition of orthodox criminal liability, and has led to these offences being commonly categorized as ‘regulatory’ (Gunningham and Johnstone, 1999: 213; Wells, 2001: 7). If these cases are actually regarded as more serious and unambiguous than previous analyses have suggested, then this would have major implications for the new offence. The interplay between harmfulness and wrongfulness within the concept of seriousness demonstrates that more complex normative evaluations underlie these public assessments than might be thought. While work-related fatalities are capable of being categorized as serious by the public, these findings do not necessarily tell us why; is it because of the gravity of the harm involved, or due to assessments of the normative wrongfulness associated with the worst forms of corporate negligence? If the former, then how do different work-related fatalities compare in seriousness once variations in mens rea/culpability are introduced? If the latter, then do these perceptions of seriousness extend into ‘pure risk’ prosecutions, where there does not necessarily have to be a manifested harm in order for liability to arise?

Crucially, it remains to be seen how the normative evaluations of work-related fatality cases by the public relate to existing legal categorizations. To what extent does the law reflect these evaluations? It must also be remembered that the research outlined above may not provide as clear a picture as is claimed; it is unclear whether the seriousness survey methodology uncovers what respondents think the law should be (normative evaluation), or believe the law actually to be (descriptive knowledge), casting doubt onto the validity of the attitudes identified (Hansel, 1987: 457). It may be that the comparative ratings identified here are simply reflective of a public uncertainty and lack of knowledge about issues of health and safety law (Pidgeon et al., 2003), and it remains the case that quantitative surveys such as those described here cannot fully account for the complexity and depth of actual public attitudes (Green, 2006). This suggests that caution needs to be exercised in determining how to respond to any mismatch between public and legal categorizations, as it may be public attitudes, rather than the law, which requires realignment. There is a need for more qualitative empirical research to provide convincing and more detailed evidence as to the depth of public concern about these cases, and identify the factors that determine public attitudes. Until more evidence of this sort is obtained, it will remain the case that the normative impact and implications of work-related fatality cases remain a matter more of conjecture than of empirical reality, and are therefore less likely to be addressed effectively by lawmakers.
Notes

1 This adjusted figure represents a combination of fatal injuries to (a) employees, (b) the self-employed and (c) members of the public (excluding those occurring following trespass onto the railways), as a result of working activities during 2006—7.

2 The former Home Secretary, Charles Clarke, said that the criminal justice system must ‘command the confidence of the public. A fundamental pat of this is providing offences that are clear and effective. The current laws on corporate manslaughter are neither, as a number of unsuccessful prosecutions over the years stand testament’ (Home Office, 2005: 4). In doing so, he echoed Jack Straw: ‘there is a public perception that those whose acts or failures have contributed to … [work-related] deaths have not been held fully accountable. The law needs to be clear and effective in order to secure public confidence’ (Home Office, 2000: 3).


4 As was the case in, for example, proceedings following Zeebrugge (R v P&O European Ferries (Dover) Ltd [1991] 93 Cr. App. R. 72), and Southall (R v Great Western Trains Co. Ltd [1999] Unreported, Central Criminal Court, 19 June 1999).

5 The average fine levied under health and safety legislation in the 81 prosecutions brought in 2003/4 following work-related fatalities was £43,707 (HSC, 2006: Table 8), compared to an average fine in all health and safety prosecutions of £13,551 (2006: Table 1(a)).

6 For example, Sellin and Wolfgang (1964: item 5) ask respondents to assess the seriousness of rape by using the descriptor ‘The offender forces a female to submit to sexual intercourse. The offender inflicts physical injury by beating her with his fists’, while Rossi et al. (1972: item 13) include ‘Forcible rape of a stranger in a park’ and Kwan et al. (2000: item 1) simply include ‘Rape’.

References


Cases cited

R v Adomako [1995] 1 AC 171
R v Great Western Trains Co. Ltd [1999] Unreported, Central Criminal Court, 19 June 1999
R v P&O European Ferries (Dover) Ltd [1991] 93 Cr. App. R. p72

Statutes cited

The Health and Safety at Work Act 1974
The Corporate Manslaughter and Corporate Homicide Act 2007

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