



Improving Banking Culture for Good

Dr Joe McGrath

UCD Sutherland School of Law



SOCIAL



ECONOMIC



POLITICAL

SUMMARY

Dr Joe McGrath specialises in corporate and white-collar crime. His work on corporate accountability contributes to national debates on this topic and informs the discourse that shapes public policy. He recently convened the “Regulating Bank Culture” Conference at UCD, stimulating a discussion on banking culture among leading Irish and international academics, regulators, and legal practitioners. The conference aimed at influencing forthcoming banking legislation on banking culture. This will benefit not only banks, but also businesses, consumers, and the State.

In addition to publishing in leading Irish, European, and American journals, he regularly reaches across the town-and-gown divide. His research has been cited by the Law Reform Commission and he has been invited to share his expertise with the Company Law Review Group, the Central Bank of Ireland, the Institute of Bankers, and the Federal Reserve Banks

at Minneapolis, Chicago and New York, among others. On these occasions, he shared his research on regulating the corporate and banking sectors, demonstrating how Ireland and the US can learn from the convergences and divergences in their approaches to regulatory enforcement. He also disseminates his scholarship in accessible forms by regularly engaging with the media to discuss his areas of expertise and to influence public discourse.

“I have always been interested in how power is exercised through seemingly neutral institutions, often in very subtle and tacit ways, and sometimes to give the illusion of effective regulation of the corporate and financial sectors. Laws may be punitive on paper but lenient and ineffective in practice if not enforced.”

RESEARCH DESCRIPTION

Dr Joe McGrath researches company law, financial regulation, and white-collar and corporate crime. His approach is interdisciplinary and draws on regulatory theory, criminology, penology, and jurisprudence. His research focuses on corporate accountability, with an emphasis on white-collar crime.

Dr McGrath studies the evolution and enforcement of corporate and white-collar criminal liability in contemporary societies, mainly in Ireland and the US. The intellectual signature in his work explores paradoxes running through regulatory paradigms. In his work on white-collar crime, he demonstrates that while the State may invoke on paper its most powerful weapon of moral censure, criminal law, it is remarkably lenient in practice when the law is not enforced. He states that cooperative, conciliatory models of enforcement can contain exceedingly punitive, instrumental measures to surmount the difficulties of proving guilt in criminal cases. Also, he shows that prosecutorial and judicial responses to white-collar crimes are more complex and less consistently punitive than the rhetoric and policies advanced by politicians.



Joe McGrath

McGrath looks more specifically at bank culture, and the corporate and individual accountability framework in the banking sector. Several reports found that both the banking culture and bad regulatory culture significantly contributed to the financial crisis in Ireland. Since then, new laws allow the Central Bank of Ireland to take a more intrusive approach to regulating financial institutions and management. However, a report on banking culture, prepared by the Central Bank of Ireland in 2018, shows that problems persist with the organisational cultures within Irish banks. Banks remain insufficiently consumer-centred, the management style is too directive, and widespread groupthink prevails. McGrath explores the question of why tough law and enforcement practices over the last decade have not changed the internal culture inside banks.

The Government proposes legislation that will introduce a Senior Executive Accountability Regime (SEAR). This is a framework in which individual responsibilities will be mapped across the bank, allowing bankers themselves to be more aware of their responsibilities. It will also facilitate greater regulatory oversight because it will help to identify who is responsible for wrongdoing. McGrath argues that the Government must legislate not only for individual accountability, but that it should also address the broader organisational and market conditions within which those individuals act. He recommends increasing gender diversity on boards to reduce groupthink and improve decision-making processes. He also suggests that introducing greater competition to the market may make banks more responsive to consumers' needs.

Funding | The Irish Research Council funded McGrath's initial research on corporate accountability. More recently, his research was funded by the UCD foundation, the College of Social Science and Law (CoSSL) research funding scheme in UCD, and the Fitzpatrick Foundation Research Award in Criminology.

RESEARCH IMPACT

Stimulating a discussion to influence legislation related to banking culture | Dr Joe McGrath and Professor Claire Hill from the University of Minnesota organised a conference entitled "Regulating Banking Culture". The conference was held at UCD in February 2020, and brought together leading academics from various disciplines, regulators, and industry leaders. Among the participants were: experts of law, behavioural economics, neuroscience, and psychology; a representative from the Central Bank of Ireland, the Chair and CEO of the Irish Banking Culture Board (IBCB); the CEOs of KBC and PTSB; and senior representatives from the Federal Reserve Bank of New York and Minneapolis.

The conference focused on contemporary issues in banking culture, including recent developments, international differences, and new directions for generative change. In addition to analysing the issue of individual accountability, discussions concentrated on the broader organisational dynamics and market conditions in which banks operate; increasing gender diversity in bank boards and improving consumer-oriented approaches by encouraging more competition in the market. The aim was to stimulate a discussion and to influence the legislation to be considered by the government. The focus was not only on the question of how the law can shape decision-making but how behavioural science can also be an important influence in that context.

The discussions at the conference were of broad interest to both the government and the banking community, who can now take into account the suggested solutions. Banks may benefit from engaging in less risky decision-making, and individual bankers will benefit by having a clear map of their responsibilities. Changes in banking culture will also benefit clients, who will enjoy more consumer-centred behaviour within banks. Those improvements will help banks, businesses, customers, and the entire economy.

"Regulating Banking Culture", a conference at UCD, February 2020



Providing policy analysis on regulatory enforcement to US Federal Reserve Bank | As part of his work at the Federal Reserve Bank of Minneapolis in 2019, McGrath engaged with the US Attorney's Office, federal banking supervisors, and national and regionally based banking institutions.

Contributing to the work of Law Reform Commission | The Commission is an independent statutory body which reviews the law and proposes reforms, mainly by recommending legislation to clarify and modernise the law. McGrath's work on white-collar crime was cited in a report by the Law Reform Commission on Regulatory Powers and Corporate Offences. The Commission's proposals are expected to contribute significantly to the development of reforms in regulatory enforcement in the State.

Sharing knowledge with the Company Law Review Group (CLRG) | McGrath presented his research on reforming the law on white-collar crime in Ireland. The Company Law Review Group is a statutory advisory expert body to the Minister for business, enterprise and innovation on the review and development of company law in Ireland. Along with representatives from the Office of the Director of Corporate Enforcement, the Office of the Director of Public Prosecutions, and the Law Reform Commission, he proposed reform-oriented legislative solutions to better secure corporate compliance and enforcement.

Influencing through engagement with the media | McGrath occasionally presents his research and recommendations on TV and radio shows. For example, he has served as a commentator on white-collar crime, regulatory and compliance issues on RTE Television, Today FM radio, and New York Public Radio. He also regularly writes for the national newspapers. He has written over two dozen articles for the Irish Times, the Irish Independent, the Sunday Independent, and the Dublin Inquirer.

Left to right: Dr Joe McGrath, UCD Sutherland School of Law; Ciaran Walker, consultant at Eversheds Sutherland; and Mr Justice John Hedigan, Chair of the Irish Banking Culture Board.



REFERENCES

- McGrath, J. and Healy, D. (2020) "Theorizing the drop in white-collar crime prosecutions: An ecological model" *Punishment & Society*, 1-26.
- McGrath, J. and Healy D. (2020) "Comparing apples with oranges disguised as apples" (but still producing fruit): The Methodological Difficulties in Conducting Comparative White-Collar Crime Research and a Way Forward" *Irish Jurist* [63(63), 61-81]
- McGrath, J. and Healy, D. (2020) "Same Differences? Reflections on The Comparative Method in White-Collar Crime Research in Ireland and the US" in Nicholas Lord, ed. "What is 'European' about white-collar and corporate crime in Europe?" (Bristol: Bristol University Press) (2020) [forthcoming]
- McGrath, J. The changes still needed to tackle the banks' bad management cultures, *Irish Independent* (3 February 2020), 34.
- McGrath, J. (2020) "Why Do Good People Do Bad Things? A Multi-Level Analysis of Individual, Organizational, and Structural Causes of White-Collar Crime", *43 Seattle U. L. Rev.* 525-553.
- McGrath, J. (2020) 'Walk softly and carry no stick': Culture, opportunity and irresponsible risk-taking in the Irish banking sector. *European Journal of Criminology*, 17(1), 86-105.
- Healy, D. & McGrath, J. (2019) "Simple Rhetoric and Complex Punitiveness: Federal Criminal Justice Responses to White-Collar Criminality", *Justice Quarterly: New Theory and Research on Sentencing*, vol. 36, no. 7, pp. 1258-1283.
- McGrath, J. (2019) "Regulating White Collar Crime in Ireland: An Analysis using the Lens of Governmentality" (2019) *72(4) Crime, Law and Social Change*, 445-465.
- McGrath, J. (2019) "White Collar Crime: Contemporary Issues in Policing, Prosecution and Punishment" in Joe McGrath, ed. *White Collar Crime in Ireland: Law and Policy* (Dublin: Clarus Press).
- McGrath, J. (2019) "Reflecting on the Past and Future of Regulatory Enforcement" in Joe McGrath, ed. *White Collar Crime in Ireland: Law and Policy* (Dublin: Clarus Press).
- McGrath, J., Ed. (2019) *White-Collar Crime in Ireland: Law and Policy*. Clarus Press.
- McGrath, J. (2018) "Twenty Years Since the McDowell Report: A Reflection on the Powers and Performance of the Office of the Director of Corporate Enforcement" *60 (60) Irish Jurist*, 33-66.
- McGrath, J. (2017) Instrumental and expressive governance: corporate and white-collar crime in contemporary society, *Law and Financial Markets Review*, vol. 11, no. 2-3, pp. 96-104.
- McGrath, J. (2015) *White Collar Crime in Ireland: A New Architecture of Regulatory Enforcement*. Manchester: Manchester University Press.
- McGrath, J. (2015) 'The Prosecution of White-Collar Crime in a Developing Economy: A Case Study of Ireland in the 20th Century' In: *The Routledge Handbook of White-Collar and Corporate Crime in Europe*. Oxford: Routledge.