

Wowserism back as porn retailer jailed for victimless crime

Sydney magistrate has sent a sex-shop proprietor to jail for three months for selling porn movies. The sentence was confirmed on appeal and the Oxford Street, Sydney, retailer has begun his sentence. He is, as far as can be established, the first person to go to prison for the victimless crime of pornography for more than 60 years.

Daryl Cohen, proprietor of an establishment that sold sex toys and erotic videos, was sentenced last month. His shop was raided at the instigation of the Minister for Home Affairs, Brendan O'Connor, by police who seized his stock of an estimated 4000 DVDs, combed through them and singled out 43 as the basis of a charge of selling pornography. It is not illegal to possess X-rated DVDs but in the states it is illegal to sell them. Cohen's stock had not been classified, which costs \$850, depending on running time, for each DVD. The police submitted the 43



DAVID BARNETT

most graphic of the confiscated films to the Australian Classification Board, which ruled that 38 were acceptable for import into Australia under the X-classification, but that five should be assigned to the category of Refused Classification, because they depicted homosexual bondage and sado-masochistic acts.

A magistrate thereupon sentenced Cohen to three months' imprisonment. He appealed to the District Court, where a judge decided that Cohen would be unable to pay a fine of \$11,000 a video, totalling perhaps \$500,000. He was broke, and living at home with his aunt.

She therefore confirmed the sentence of three months' imprisonment, which Cohen is now serving, believed to be the first jailing of a censorship offender since 1945, when Robert Close was imprisoned for writing a novel entitled *Love Me Sailor*.

The sentence on Close produced extensive media coverage, and prompted a reaction against legal wowserism. The pendulum, which had resulted in the banning of two notable works of fiction, D.H. Lawrence's *Lady Chatterley's Lover*, and James Joyce's *Ulysses*, not only in Australia but elsewhere in the world, began to swing back. Redeeming literary merit became a defence, and censorship crumbled in the Western world.

Retailers began selling erotic DVDs in the states, capturing the mail-order market that operated out of the ACT and the Northern Territory. The police ignored this 'crime' and got on with hunting down drug deals and

keeping a watch for terrorists.

And then it changed. The Rudd Government moved the censors to Canberra, gave them a new name – the Australian Classification Board – and an investigatory arm with a doublespeak name, the Classification Liaison Service.

Two public servants were assigned to visit retailers selling erotic DVDs. When they found something they did not like, they wrote to the police on Attorney-General letterhead, prompting police to initiate prosecutions. There were fines, escalating from perhaps \$1000 to \$50,000.

Then police found the hapless Cohen, who has been ruined by the seizure of his stock.

It was back to the bad old days when Bob Menzies imposed sales tax on contraceptives, presided over book-banning, and tried to ban the Communist Party, but with an important difference.

The jailing of Robert Close drew

intensive media coverage. The jailing of Daryl Cohen, with the exception of a paragraph or two in the gay press, has drawn none. He has disappeared behind bars without a trace. No fuss. No outcry. No questioning of the principle of censorship, which in its fundamental says that some of us are entitled to read and see all published material, and then to rule that the rest of us cannot.

Nobody asked the question: who has suffered loss because Cohen sold porn movies, either as damage to property or personal injury. As with Close's imprisonment, we are back in the days of 'crimes' without victims, 'crimes' which do no harm to anyone.

There are no longer Members of Parliament like Lionel Murphy, Gareth Evans and Don Chipp prepared to put up a fight for the rights of individuals and for freedom of speech. Instead, since the days of Paul Keating, MPs have been looking for ways to tighten the purity laws,

with none more zealous than Communications Minister Stephen Conroy, who when he is not engaged in destroying Telstra is combing the internet for images he finds offensive.

In NSW, Labor Premier Kristina Keneally has announced that redeeming artistic merit is to be removed as a defence against prosecution.

This is not an issue that affects only people with shops in Oxford Street selling DVDs without, it must be conceded, not a lot of redeeming artistic merit.

The Rudd Government has added a new question to the Customs declaration form that returning travellers must fill out at airports. Are you carrying firearms, drugs and now, for the first time, pornography, for which it must be said, there is no legal definition.

Is *Playboy* porn? Or *Deep Throat*, or those jokes that circulate on the internet?

Already there are instances where people have had their lap-tops seized, regardless of the files, correspondence, diary entries and financial accounts that is nobody's business but that of the owner of the lap-top, and whose loss can have a severe impact on the owner's work.

We are a "live and let live" country, except at the top. On the basis of the polls, we do not support banning erotic videos.

There is no demand for a return to wowserism, which has nevertheless crept back into our lives, like a metastasising cancer, with nobody on either side of the federal Parliament prepared to speak up, as Lionel Murphy, Gareth Evans and Don Chipp once did, and in the NSW State Parliament, with only the Greens prepared to have a go.

Close, an acclaimed writer of sea stories, spent most of the rest of his life in France. He died in 1995.

■ David Barnett is a Canberra writer.

Ensuring workers' rights

Multinational companies continue to be minor and major abusers of basic human rights, JUSTINE NOLAN writes

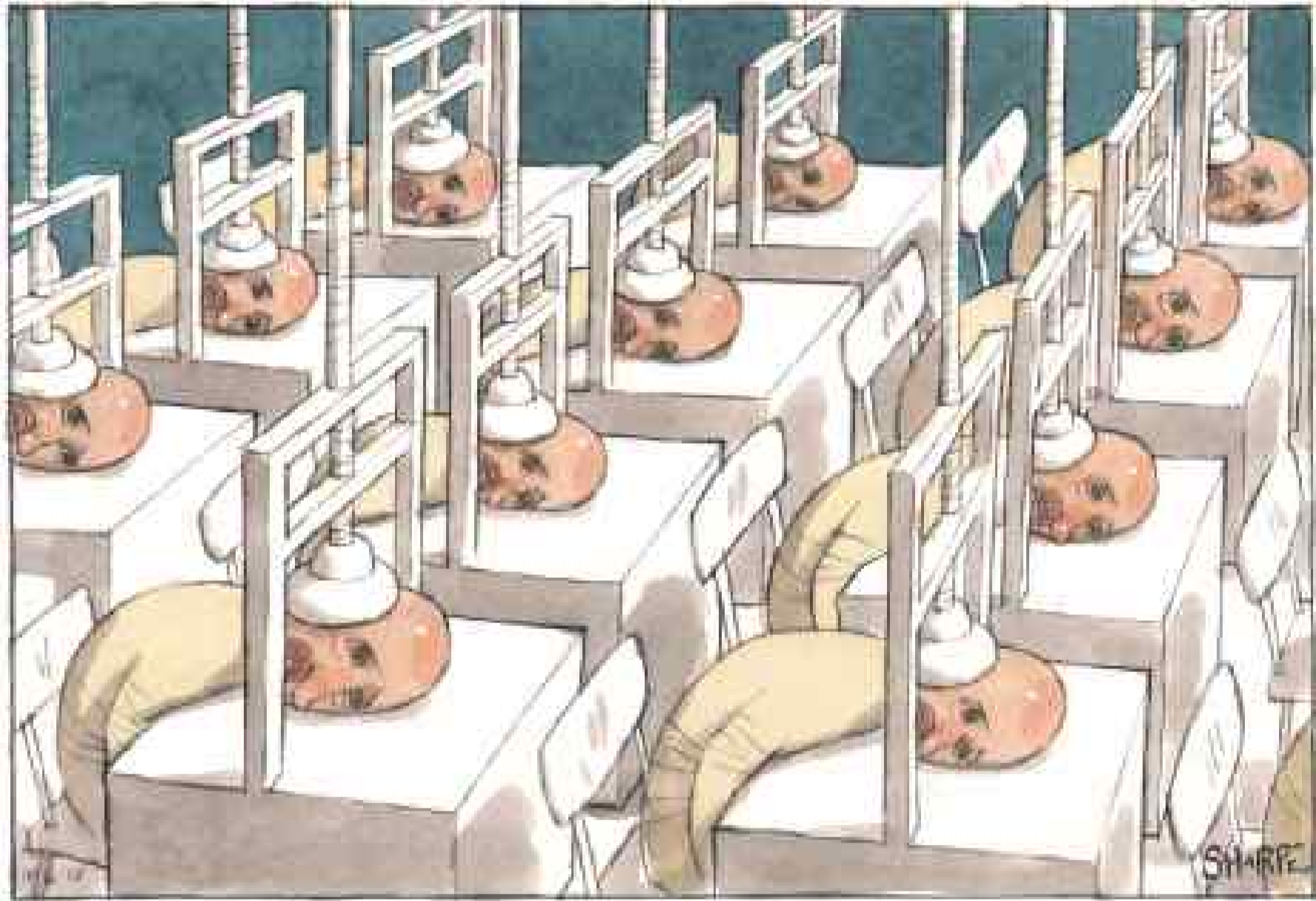
Twenty-five years after a deadly gas leak from Union Carbide's factory in Bhopal, India killed more than 3000 people and injured thousands more, the elusive search for corporate accountability continues. This week, an Indian court found eight men who worked for Union Carbide in India guilty of negligence. This carries a maximum sentence of two years' imprisonment.

Despite a \$US470 million (\$A572 million) settlement being paid by the company to the Indian Government in 1999, no other individuals or the company itself has ever been found liable for any wrongdoing or admitted any responsibility in relation to the deadly gas leak.

Which company you might ask should be liable? Union Carbide's Indian subsidiary running the plant or Union Carbide's American parent company, who, some have long alleged, contributed to the leak by ordering drastic cost-cutting measures in the Indian factory which impacted safety measures.

A similar question has arisen this week in relation to the continuing deaths at a Foxconn factory in China. Foxconn, the world's leading electronics manufacturer and one of Apple's major suppliers, has been linked to 10 worker suicides at one of its Chinese plants this year alone.

Deplorable labour practices including extremely low wages, excessive overtime, extreme productivity targets and a particularly harsh and isolating management system contribute to an oppressive working environment.



productivity targets for producing its much sought after computers and ipads have forced the need for excessive overtime?

Is Apple unaware of the extreme conditions in which its goods are produced? Shouldn't it be aware? If companies legally assume responsibility for the quality of their products regardless of where they are manufactured around the world, should they also not bear some responsibility for the manner and conditions in which they are produced?

In a world where the raw materials might be sourced in Africa, the computer assembled in China and sold by an American company to an Australian consumer, who, if anyone, is willing to take responsibility for ensuring workers' rights in this global supply chain are respected.

Where do we draw the line on ensuring respect for basic human rights?

In most countries there exists a substantial body of local laws that regulate (or has the potential to regulate) corporate activities which affect human rights such as laws relating to anti-discrimination, health and safety at work, environmental protection, and labour rights. However, it is naive to assume that all governments around the world have the will or in some cases the necessary means to monitor workplace standards and it is not unusual to find local laws flouted without fear of repercussion.

At the international level, the corporate form is barely recognised, still less directly liable, whether in respect of human rights or any other field. This has meant that multinational companies have

been able to operate largely in a legal vacuum because international human rights law imposes no direct legal obligations upon them. More than 85,000 multinational corporations currently span the globe, with roughly 770,000 subsidiaries and millions of suppliers. With massive economic power at their disposal, these companies have capability to do great harm as well as good for human rights, at both the global and domestic levels.

The role that corporations play in domestic and international economies is fundamental. Their impact on human rights is equally important. Through commercial activity driven by corporations, jobs and wages are made available, goods and services are provided and taxes are paid, enabling governments

to provide further goods and services. Thereby, directly or indirectly, a vast array of human rights may be supported – from rights to work, welfare, food and shelter, health and education, and freedoms of speech, association and movement.

In short, not only are corporations central to the provision of many of the things that make human life more tolerable, enjoyable and fulfilling, the work and wages that corporate enterprise brings to all communities are key elements to the establishment and maintenance of individual human dignity to which end human rights strive to meet.

However, the influence of corporations on human rights is not all benign as both the Bhopal and Foxconn examples illustrate. Corporations, both local and multinational, have been and continue to be minor

and major abusers of human rights.

Later this month in New York, the United Nations is celebrating 10 years since it instituted its "Global Compact" with business which calls on chief executives of major and minor companies to embrace and respect human rights.

For the Bhopal victims, it has been a 25-year wait with little result. Will it be another 10 years before we are ready to accept a binding international code on companies that doesn't just ask, but requires them to respect basic human rights of workers wherever they might be located or do we simply sit back and wait for the next example of corporate irresponsibility to emerge?

■ Justine Nolan is deputy director of the Australian Human Rights Centre at the University of NSW.

Signs point to a double dip

HAMISH MCRAE

There is going to be a double dip. Or to put it more precisely and a little less starkly, there is an overwhelming probability that the bounce off the bottom that most economies have experienced will falter later this year and that some at least will experience a fall-back in output.

This decline may not be protracted enough to qualify as a second leg to the recession but it will be scary. It will be scary for policymakers, who find themselves pretty powerless. They can, and did, prevent a meltdown, but they cannot create growth. It will be scary for businesses which thought they had come through the worst and then find demand weakening again. And it will be scary for the rest of us because we have been led to believe that things would, come a year or two, be back to normal. They won't. A double dip was always a possibility, for many recessions follow this pattern. But two things have changed in the past month or so that have sharply increased the probability. One is in Europe, the other in the US.

Europeans have become aware that there is no time. There was never really much time to correct the fiscal deficits, but governments kidded themselves that they could wait until growth was running strongly before setting about the fiscal clean-up. The conventional view now is that Greece changed that, for it faced a melt-down in confidence and became the first country to be rescued by the eurozone.

Actually I don't think it makes sense to load the blame on to Greece. There is a structural problem within the eurozone, for we can now see clearly that its different economies need different interest rates. Had Greece not been in the common currency it would not have been able to run up such huge debts.

But rising indebtedness is a burden on almost the entire continent, and even the strongest nation, Germany, feels it has to eliminate its deficit.

There is a practical reason for what people might see as German masochism. It is that a tough fiscal line holds down the country's borrowing costs. Spain has to pay 2 percentage points of interest more than Germany for 10-year money; Belgium has to pay 1 per cent more, and even France (which has been somewhat tardy in cutting its deficit) has to pay 0.5 per cent more. Interest

costs for all governments are likely to climb in the next two or three years as monetary policy gets back to normal. So it makes huge sense not only to cut borrowings but also to keep interest costs as low as possible. So it is not really masochism; it is mathematics.

But – and this is the downside – a faster-than-expected return towards balanced budgets is likely in the short term to depress demand. It would be nice to be able to assure people that the boost to confidence and the lower-than-otherwise interest rates will more than offset the impact of fiscal consolidation. In the longer term that is almost certainly true. But we are talking about the next year and it is not realistic to expect the private sector to switch on the demand that the public sector is withdrawing, especially if the former is clobbered with higher taxes.

The US outlook has also deteriorated. Federal Reserve Board chairman Ben Bernanke said on Monday that he hoped the US would avoid a double dip. "My best guess is we will have a continued recovery, but it won't feel terrific," he said.

Let's hope he is right, but the fact that he should feel obliged to say so carries the implicit warning that another dip is possible. What seems to have happened is that the various one-off schemes designed to turn the US economy around have now expired: for example, the "cash for clunkers" car scrap scheme and the tax credit for people buying new homes or trading up. The latest job statistics showed a surge in employment, but only because of temporary jobs associated with the US census. Jobs in the private sector only inched up. When those figures were published last week sharemarkets around the world plunged.

Another indicator that, while not actually signalling a double dip, at least would be consistent with one occurring is sharemarkets. They do reflect, in their incoherent way, the collective view of global investment community, the world's savers. Typically they give a few months' notice of big swings in the world economy. They plunged in the autumn of 2008, suggesting that 2009 would be a dreadful year for the world economy, as indeed it was. And they recovered from March 2009 onwards, suggesting that we were beginning to bottom out, as indeed we were. The markets suggest there will be some sort of pause in the recovery, and we should not ignore them.

Independent

Rumours of Rudd's demise have been greatly exaggerated

This week is an extremely difficult time to argue that the Rudd Government may still survive. The weekend was bad enough for the Government. When the polls were still neck and neck, Kevin Rudd was faced with adverse publicity surrounding two new books. Both trashed his personal reputation.

One, *Power Trip* by David Marr, effectively uses dubious psychology on the Prime Minister, concluding that he is a freaky individual driven by rage caused by childhood traumas.

The second, *Betrayal* by Simon Benson, about the alleged underbelly of NSW Labor, concludes that Rudd betrayed NSW premier Morris Lemka by failing to support his electricity privatisation plans. Paul Keating is quoted on the front cover saying that NSW Labor will drag down Federal Labor. Rudd Labor was dead.

If that was not bad enough, the



JOHN WARHURST

news for the Government early this week was even worse. *The Sydney Morning Herald* led with the Herald/Nielsen poll reporting that the Opposition was now leading 53:47 after distribution of preferences. The headline read "Labor faces wipeout".

The *Australian* newspaper led with one of the other big pollsters, Newspoll, reporting that the mining tax issue had so undermined Labor support in marginal seats that the Government would lose enough seats in Queensland and Western Australia alone to suffer defeat. Rudd Labor was even deader.

Rudd may well lose. He has few

media friends and is unloved by both the Right and the Left. But as a perverse political scientist, I remain unconvinced that his defeat is inevitable or even probable. The bedrock of my position is that changes of government are the exception rather than the rule. That position can lead to a stubborn refusal to see the bleeding obvious, of course.

I was slow to see the inevitability of the defeat of the Howard government in 2007. However, my refusal to blow with the wind has been rewarded during the state and territory election campaigns over the past 2½ years. Only one government has fallen when many Labor defeats have been predicted.

What possible reasons are there now for sticking with Rudd? One is a close scrutiny of the polls. The pollsters themselves see some light for the Government, but it is often not reflected in the big headlines. They hedge their bets in the fine print

and reckon Rudd can come back. They point to two elements that suggest caution.

The first is that the Leader of the Opposition is equally unpopular. In the Nielsen poll, Tony Abbott's popularity had fallen further than Rudd's in the most recent survey and the two leaders are locked on a miserable popularity rating of only 41 per cent.

Can either man recover in the polls? The answer is probably not. Whoever wins the next election will still be relatively unpopular. Most Australians have made up their minds about them.

Often opposition leaders have a much larger "uncommitted" response than prime ministers, but not so Abbott. People feel that they know him already, for better or for worse.

The best analysis recently of the competing leaders has been by George Megalogenis in *The Australian*. He points out the details

of the polls. Rudd maintains positive levels of support among those under 35, particularly among younger women. Abbott is more popular among men than women, especially those 35 and older.

The second reason is the failure so far of voters to switch directly from Labor to the Coalition. Only one switcher in 10 is prepared to nominate a vote for the Coalition. This explains the 16 per cent support for the Greens. Almost 25 per cent of voters don't like either of the major parties.

Rudd Labor can't survive on minor party second preferences alone, but the Coalition has yet to convince the growing number of anti-major party voters.

Another basis for defending the chances of the Government is that it still has strengths. Objective analysis of government performance is ultimately less important than how voters perceive it. Nevertheless, one of its strengths remains the

economy. The economy didn't save Howard in 2007 and may not save Rudd in 2010 but it is a strength, both in itself and in how it has been managed by the Government during the global financial crisis.

The other strength is the relative performance of Government ministers compared to the Opposition. Such comparisons often reflect unfairly on Opposition spokespersons yet to have their time in the sun. But even given that caveat there are pluses for the Government.

They have only lost one minister to resignation over an almost full term, the former defence minister Joel Fitzgibbon, and are a tight team. They have fewer duds than might be expected. There are many senior figures with reasonable to good reputations, such as Julia Gillard, Lindsay Tanner, Wayne Swan and Stephen Smith and some junior figures, such as Tanya Plibersek, Greg Combet and Bill Shorten who are highly regarded.

The Opposition team is still struggling. The Nationals have an invisible leader, Warren Truss, who may become deputy prime minister, and an unpredictable spokesperson in Barnaby Joyce. The Liberals still have an unconvincing deputy leader, Julie Bishop, who may become foreign minister.

Six months is a long time in politics. Rudd might call an early election, but I doubt it. Like John Howard before him, faced with the same dilemma, he will neither resign nor think the solution is to surprise the Opposition. Like Howard, he will gamble that the new opposition leader self-destructs, and will back his own ability to overcome him.

Howard was wrong, and Rudd might be too. But it is too early to call the undertaker.

■ John Warhurst is emeritus professor of political science at the Australian National University. John.Warhurst@anu.edu.au