

How the law protects corporate property

Australian businessman Alan Bond walks free from jail

By Mike Head
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Former high-flying Australian business tycoon Alan Bond was released from a West Australian jail last Thursday night after serving a little more than three years for corporate frauds in excess of \$1.2 billion.

He was released on parole just hours after the High Court ruled in his favour on a constitutional technicality. Bond was originally jailed in August 1996 for a \$15 million swindle involving the Manet painting *La Promenade*. In 1997 he was sentenced to a further four years after pleading guilty to deceptively siphoning off \$1.2 billion from one of his companies, Bell Resources, to prop up his ailing Bond Corporation.

The leniency of that sentence provoked widespread outrage, forcing the federal government to appeal to the West Australian Court of Criminal Appeal, which increased the sentence to seven years. The High Court, however, has now declared that the Commonwealth Director of Prosecutions had had the right to prosecute the case under state criminal law, but not to appeal against the sentence. It quashed the lengthened sentence, even though Bond's lawyers had not raised that issue in 1997 and waited until last year to appeal to the High Court.

The state government may have the jurisdiction to now lodge a fresh appeal against the inadequacy of Bond's original sentence, but the West Australian Attorney-General Peter Foss has already downplayed that possibility, saying that Bond's release was probably irreversible.

Paul Barry, a journalist who has chronicled Bond's rise and fall, has calculated that Bond's release after 1,298 days meant that he spent roughly one day behind bars for every million dollars he stole. Barry pointed to the recent mandatory sentencing in the Northern Territory of a young Aboriginal man to a year's jail for stealing \$23

worth of cordial and biscuits. Had the same formula applied to Bond, he would have been imprisoned for 50 million years.

Yet while Barry and numerous other media pundits have objected to the glaring disparity between the two cases, none have gone beyond making the fairly obvious comment that there is one law for the rich and another law for the poor. Both cases illustrate, in fact, how the legal system systematically protects corporate property.

In the case of 22-year-old Jamie Wurrarama from a remote Groote Eylandt mining town, he was locked up for walking into an open shed at the giant Gemco manganese project on Christmas Day 1998 and consuming biscuits and cordial. Wurrarama was sentenced to 12 months' jail because it was his third "property offence". Another youth was jailed for 12 months and another, a second offender, for 90 days.

In Bond's case, his release was not exceptional. It was a graphic example of how the law operates to shield corporations and those who head them from punishment.

From his ability to hire expensive lawyers and run his case in the High Court, and from the mansion he and his wife are building in Perth, Bond clearly has access to millions of dollars, gained dishonestly at the expense of his ex-shareholders. His sons and other relatives control multi-million dollar family trusts and a Swiss banker holds funds believed to be even greater.

Yet he has been able to evade virtually every legal sanction after guiding his Bond Corporation to Australia's biggest corporate loss in 1989, declaring himself to be the country's worst bankrupt in 1992, and being convicted of the nation's biggest fraud in 1997.

Corporate law is so notoriously full of loopholes and complexities that Bond was able to make it difficult for the Australian Securities Commission (ASC) to prove

anything against him. At various stages, he claimed to be suffering from brain damage, making recollection of the details of his activities impossible. In 1997 Bond finally pleaded guilty to certain specific charges, in the expectation of receiving the light sentence that he did. That was only after 22 ASC investigators spent four years on the case and produced 1.2 million pages of evidence.

In every other respect, Bond and his accomplices have gone scot-free. The Australian Federal Police was ordered in October 1998 to end its five-year \$600,000 operation to recover Bond's offshore fortune. Former Bond Corporation director Tony Oates, who was charged under the same investigation, absconded to Poland, from where the government has been trying for years to extradite him.

Bond's trustee in bankruptcy also spent three years and more than \$1 million in unsuccessful efforts to access Bond's funds. During the 1990s Bond and his Swiss associate, Jurg Bollag, fought 13 legal actions to stop Swiss documents being handed over to the Federal Police and to prevent Bollag giving evidence about his role in Bond's affairs. In the end, Bollag refused to answer questions in Switzerland on the grounds that he might incriminate himself.

In the meantime, in 1995 Bond and his family bought him out of bankruptcy, using about \$12 million they had salted away in trusts to pay off creditors who were owed some \$1.8 billion. The rules of bankruptcy allow such deals to discharge a bankrupt, no matter how large the unpaid debt.

Similarly, company legislation still permits boardrooms to juggle funds to deprive shareholders and employees of their entitlements, as Bond did. At the same time, because companies are limited liability entities, directors can escape personal liability for most corporate crimes.

Bond was not alone in enjoying protection from the law. Failed media magnate Christopher Skase, for one, is still living in luxury on the Spanish island of Majorca, pleading ill-health to prevent extradition. They were only the most visible of the recent "white collar" criminals—many more have no legal difficulties as they engage in serious crimes ranging from deceptive advertising to breaching workplace safety rules and contaminating the air, water and soil with industrial pollution.

Media commentators have portrayed Bond as simply an example of excessive "greed" that gripped the financial system in the 1980s. But Bond was no corporate "cowboy". He became a pillar of the Australian financial and political establishment. Not only did the media and

the Hawke Labor government acclaim him as a national hero in 1983 when his syndicate won the America's Cup yachting regatta, he was anointed Australian of the Year in 1987 and founded his own university, Bond University.

At the height of his financial power, before the October 1987 global share market crash, he took over or tried to take over the cream of Australian big business. This included the Channel 9 TV network, West Australian Newspapers, British Satellite Broadcasting (later part of Murdoch's BskyB), Arnott's biscuits, Castlemaine Tooheys, Swan Breweries, oil company Santos, retailers Grace Brothers, Waltons and Norman Ross and the Argyle diamond mine.

In any case, it is plain that the conditions that produced Bond's crimes have not dissolved since the 1980s. On the contrary, with share prices soaring, fuelled by frenzied speculation on Internet and other telecommunications-related stocks, many more Alan Bonds are in the making. As the *Australian Financial Review* noted on Friday, "the fact that he [Bond] has received a very light sentence will do nothing to discourage imitators".

Indeed, according to his associates, Bond is planning to launch himself into the world of "dot.coms". The *Melbourne Age* reported on Friday: "If his friends and colleagues are right about his continuing appetite for deal-making, Alan Bond could return to the corporate scene at a time when a new generation of Internet entrepreneurs are making overnight fortunes."

Legally, as a convicted corporate criminal, Bond cannot be a director or be involved in the management of a company, public or private, for five years. But, having had little difficulty pursuing his money-making activities while behind bars, that technicality is unlikely to faze him or his financial backers.

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