

WHITE COLLAR CRIME

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There is no doubt at all that what is often called "white collar" crime has increased enormously in Australia (as well as in many other countries) in recent years. The spate of armed hold-ups in our various capital cities - especially Melbourne - seems to have filled the newspaper headlines. Yet the amount involved in "white collar" crimes is enormously greater than in "hold-ups".

"White collar" crime is nothing new. There are always opportunities which constitute an ever-present temptation to those who occupy positions of trust and responsibility but who are unworthy of that trust and responsibility. The cupidity of man leads to corporate crime. The cupidity of the speculative investor is often matched by the greed of corporate criminals who are ready to take full advantage of the greed and ignorance of the investor. The so-called South Sea Bubble of 1720 was one early example.

In recent times many company failures have revealed how easily investors' money is effectively transferred to the pockets of company directors with a talent for lining their own pockets at the expense of the company and its shareholders or depositors.

The recent recognition of the problem of "white collar" crime, though a step in the right direction, obviously does not solve it.

With "white collar" crime so prevalent it may well be asked, why are there so few convictions?

To answer this query, first we must recognise that our criminal laws were developed to meet a very different set of circumstances than now prevail and as usual "the law" is slow in adapting to changed circumstances. The complexities of some branches of the criminal law leave far too many loopholes available for use by the cunning criminal and the astute lawyer who serves him. Constant legal reform is essential. In the United Kingdom following reports from a Criminal Law Committee the Theft Act was passed in 1968. This Act abolished the offences of larceny, embezzlement and fraudulent conversion and substituted one general offence of theft. Some other offences were similarly "simplified".

It would seem that the time is over-ripe for the creation of all-embracing offence to cover the depredations of company "sharks".

One very real problem facing prosecutors for any offence in which the evidence is in the slightest degree complicated, is that while it may be quite possible to adduce evidence sufficient to lead to a conviction, a jury with no accountancy or other training is likely to be completely confused. An astute barrister is able to "throw dust in the jurymen's eyes" (shades of W.S Gilbert) A confused jury usually acquits.

I recall the true story of a shire clerk in north-western Queensland many years ago, who was charged with embezzlement from his Council. His solicitor advised him to plead not guilty, presumably on the basis that jurors in the trial town seldom convicted anyone. The accused was found not guilty in the teeth of the clearest evidence of a deficiency in the council funds. The solicitor was curious enough to ask one of the jurors why the jury had acquitted. The juror explained that the jury "thought it quite possible that that fellow from the south had taken the money". "That fellow from the south" was the auditor who had discovered the defalcations.

Certainty of punishment is of course likely to be a greater deterrent than severity. Accordingly, some of the present proposals for the summary trial of "white collar" offences by a judge or magistrate have much to commend them. However, unless there is a new offence created with provision for a summary trial, invidious distinctions are likely to be drawn between the situation of a "white collar" criminal who would be liable for lower penalties following summary conviction, and that of a person convicted in the normal course on indictment for the same offence who would be liable to a much greater penalty.

If the jury is to be retained for all "white collar" crimes, some of which are likely to be highly complicated in execution and therefore in explanation to and not easily understood by a jury, it would be essential for offences to be tried before some kind of "special" jury. A special jury panel might comprise accountants, managers, business executives and perhaps people such as engineers who have undergone a course of training likely to give them special ability in solving problems. Certainly it is absurd to expect the ordinary member of the community to understand the ramifications of complex company defalcations or computer manipulations which lead to benefits for a crooked computer programmer. Computers are wide open for manipulation by crooked programmers yet, broadly speaking, we are completely unprepared to meet this challenge. As a community we should be a step in front of the criminal not several steps behind.
