

Donald Trump Must be an
Australian

John Hyde

Peter Costello, Opposition Shadow Minister for Corporate Law Reform recounts a joke that did the rounds in New York after the collapse of the Trump Empire: "Donald Trump must be an Australian". Our reputation for spectacular corporate collapses and corporate shonkyness is hindering even our 'best' companies in foreign capital markets as much as it has frightened investors at home.

An institutional investor told the House of Representatives Legal and Constitutional Affairs Committee that \$8 billion of Australian investors' losses were directly attributable to corporate malpractice. Yet, our governments not only failed to prevent malpractice, they were involved in it, and their inappropriate regulations are still contributing to much that is untoward.

Costello made the last point by reference to unlisted property trusts. These institutions invest subscribers' funds mainly in CBD real estate, a market that has turned down. Investors in property trusts may challenge the wisdom of interest-rate policies which encourage property busts, but they should, nevertheless, expect to lose money whenever prices fall.

Had it not been for corporate regulation, investors would have suffered the usual marginal losses associated with the unwise or unlucky choices of conservative investments. The National Companies and Securities Commission (NCSC), however, required the managers of unlisted property trusts to agree to re-purchase investors' units within 60 days of request. That is, the NCSC, in its wisdom, forced organisations that were investing long (in real estate) to borrow short (on 60 days call).

Inevitably, once investors saw that land prices were falling, they tried to withdraw their funds. The liquidity was not there to buy back the units and the funds had to suspend redemptions. There are two difficulties with this. First: some investors got their money out while others did not. Second: some investors had chosen property trusts only because the

corporate regulators had encouraged them to expect the impossible.

Many investors in Pyramid could tell a similar story--- and tell it honestly. They wanted Pyramid's exceptionally high interest rates, it is true; but, up to points inversely related to individual sophistication, they believed the Victorian Government when it told them that Pyramid was sound. If the Cain Government's assurances to Pyramid investors, made during the run up to the Federal election, were in response to promptings by Federal colleagues, then not only the integrity of business regulation but also that of democratic process is called into question.

Even though institutional investors and others believe that investors' recent losses were substantially a result of malpractice, there is no shortage of laws supposedly governing corporate malpractice. Indeed, these laws fill a pile of books six inches high. The truth is that during the eighties there was no concerted attempt to enforce corporate law---for want of resources, few prosecutions were brought. The reason is plain: of the \$200 million raised annually from companies' fees only about \$70 million was spent on corporate regulation. The rest was siphoned off by State Governments into making big fellows of themselves with their voters.

While the reasons for non-enforcement may be clear, the consequences are less so. Corruption involves the breaking of established rules, whatever these may be, in ways that take advantages at the expense of rule-keepers. Moreover, the more complicated the rules are, the more opportunities there are for corruption. During the eighties, a complicated body of law that was not policed provided an ideal environment for people who felt little compunction when taking such unfair advantages. Although some of these people have now lost reputations, the worst corporate sharks will escape the liquidators with a few millions and the most devious Ministers leave office with tidy pensions.

Since almost any set of rules, that are kept, could provide pre-conditions for fair competition it might be asked why not have no rules at all? Rules allow people in markets to predict each others behaviour in much the same way that footballers predict that opponents will not wield cricket bats or epees---translated into jargon: good rules lower transaction costs and some are necessary. Rules do not, however, reduce corruption: they cause it by providing opportunities for deviant behaviour.

Thus the last thing that Australians need to overcome the excesses of the eighties is more rules. We need fewer and better rules that are enforced. And, above all, the Governments themselves need to obey the rules.

Perhaps the simultaneous bids by Bond Corp and the Western Australian State Government Insurance Corporation for 20% each of Bell Group was coincidental, but it looked as though a State Government instrumentality had breached the

take-over rules. There is nothing magic in the 20% threshold nor, indeed, any obvious sense in the take-over laws, but rules, even silly rules, that are kept selectively are unfair and make commerce more difficult.

Never again should we have such 'elastic' valuations as priced the Western Australian petro-chemical industry, because truth is the most fundamental of all the rules and we should expect it to bind governments and corporations alike. Never again should a company treat its minority shareholders as those of, say, Bell Corp. were treated (unless the company's articles provide for the cancellation of minority shareholders' interests and the fact is well publicised). This is because 'trust' is a long-established rule that is part and parcel of capital markets. Never again should taxpayers' money be used to bale out a Government's mates because that practice is also a breach of trust. Etc.

In a society where business leaders and government office-holders do not maintain high standards, a plethora of corporate law will not prevent some people from taking unfair advantage of others. Nevertheless, one possible consequence of current corporate troubles is a raft of new law that constrains the honest, provides even more opportunities for the dishonest, and, far from reducing transaction costs, raises them to the point where inefficiency is virtually compulsory. If so, then Donald Trump might consider emigrating to Australia.

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