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Self-righteous Greens must obey law

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Illustration: Eric Lobbecke. Source: Supplied

“IF you are going to steal,” they say in America, “steal big.” Jonathan Moylan did just that: by issuing a fraudulent ANZ press release claiming the bank had withdrawn its support from the Maules Creek mining project, he knocked \$300 million off the market capitalisation of Whitehaven Coal.

But far from imposing the maximum penalty for market manipulation of 10 years in jail, the NSW Supreme Court has now let him off with a gentle slap on the wrist, releasing him from a sentence of 20 months’ imprisonment in exchange for \$1000 and a two-year good behaviour period.

Moylan, you see, is a green; and although “the market was manipulated, vast amounts of shares were unnecessarily traded and some investors lost their investment entirely”, the court concluded leniency was warranted, as the anti-coal activist, who has a long string of trespass offences to his name, did not act for or obtain a personal financial gain.

No, Moylan wasn’t motivated by a thirst for yachts, fast cars and the company of starlets. He gets his kicks dreaming of a world without coal.

But if fanaticism excuses crime, are jihadists now entitled to issue misleading financial information about Jewish-owned companies in their quest for the global caliphate?

Or is there one law for the zealots of Gaia and another for everyone else?

Moylan was hardly unaware that he was committing a crime. On the contrary, immediately before issuing the fraudulent press release, he downloaded the relevant legislation, which specifies that the maximum penalty for the offence of market manipulation was doubled in 2010, reflecting the harm fraud does to investors and to public confidence in the financial system.

But Moylan was convinced that “change doesn’t happen without people taking risks”; so he methodically prepared his crime, creating a false web address with the ANZ’s name, analysing previous ANZ market announcements, illegally copying the ANZ logo, and identifying the names and phone numbers of the ANZ officers listed on press releases of investor information.

He also studied the impact that market developments had had on Whitehaven’s share price, found its share price to be “volatile” and concluded that Whitehaven’s “current profit margin is paper thin”. It must have been obvious to him that his false press release could cause chaos.

And indeed it did. On the day of his fraud, trading in Whitehaven shares was three times greater than it had typically been, as panic-stricken small investors and managed funds liquidated their holdings, taking heavy losses.

Nor did Moylan try to prevent the chaos once it started to unfold. Masquerading as an employee of the ANZ to a journalist who phoned the number he had given, his first reaction was to try to bluff his way through. It was only when it became clear that the press release was a hoax that he fronted up, and even then he continued to lie, including to callers from the ANZ itself.

Yes, once he was uncovered, Moylan confessed; but the evidence against him was overwhelming. It is also true that he subsequently apologised to the investors he harmed. But as the court found, until sentencing loomed, “many of the earlier expressions of remorse were somewhat qualified”, and he has never expressed regret for the damage to the ANZ’s reputation and to Whitehaven Coal itself. Instead, he blamed the media for not spotting the fraud more quickly and submitted that “the journalists more than the offender ought to be held to account for the ultimate effect on the market”.

Moreover, Moylan is no Nelson Mandela: lacking the moral courage to take responsibility for his actions, he “chose not to give evidence at the sentencing proceedings”, preventing “his understanding and expectations” of how the market works from being tested.

This was, in short, “offending attended with a considerable degree of planning and premeditation”, whose consequence in terms of “actual damage was considerable”, undertaken in full knowledge of the penalties by a well-educated man who “has been prepared to break the law on a number of occasions”.

Sure, he sought “to further the causes in which he believes”. And he is, no doubt, full of “passion and concern for social justice”. But he committed the serious crime of fraud, using “thorough planning so that at least in the short term the recipients of the false media release would believe the truth of what was contained within it”.

The leniency therefore not only adds insult to the injury Moylan’s victims suffered; it also suggests an abhorrent double standard, in which the self-appointed guardians of the planet are shielded from the law’s full force.

Yet it would be wrong to blame the court alone. Rather, its decision reflects an environment in which, day after day, the Greens, led by Christine Milne, paint coalmining coal as a crime, thus legitimising those who, having failed to convince voters of their cause, descend into illegality to prevent mining

occurring. And it is merely the latest incident in which the greens and their fellow-travellers celebrate actions, such as those of the Sea Shepard, which flaunt a disregard for legalities.

But to have one law for the greens and another for everyone else is to have no law at all. If that is where we are, then our clocks, like Baudelaire's, should have their hands removed and bear the legend "it is later than you think". Too late for thought; but not too late for stupidity so grievous as to slow the rotation of the earth. Too late for honesty; but not too late for the shrill arrogance of the self-righteous. And worst of all, too late for justice, which, no longer blind, has been struck deaf and dumb.

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