

Two Faces of Deviance

**Crimes of the
Powerless and
the Powerful**

**edited by
Paul R. Wilson
and
John Braithwaite**



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13. "Australian Pharmaceutical Benefits Scheme". Submission by the Commonwealth Department of Health to the Select Committee of the House of Representatives on Pharmaceutical Benefits in Australia, October 1970, Table 11, pp. 47-49.
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15. Telephone interview, 12 May 1976.
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An Exploratory Study of Used Car Fraud

John Braithwaite

INTRODUCTION

This study is a very preliminary exploration of the incidence of and the reasons for involvement in one particular form of white collar crime—tampering with the mileage readings on the odometers of used cars by used car dealers. In Queensland, where the study was undertaken in 1974 and 1975, an attempt to mislead consumers as to the mileage of a car by turning back an odometer reading can be prosecuted as criminal fraud. Civil fraud prosecutions are also possible since tampering with odometer readings is a specific offence under the Consumer Affairs Act. (Readings are in miles since most used cars at the time were calibrated in miles. 1 mile equals 1.6 kilometres.)

THE EXTENT OF USED CAR FRAUD

Problems in studying the powerful. While most criminologists study the crimes of powerless people, there has been, in contrast, a dearth of empirical studies of white collar crime. One of the main reasons for this is that powerful people use their power, both explicitly and implicitly, to minimize scrutiny of their behaviour by criminologists. In tracing the history of this small research project, the following paragraphs illustrate how pressure can be brought to bear so that the abuses of the powerful might be left alone.

Mileage readings had been recorded on a random sample of over one hundred used cars sitting in lots around Brisbane. It was then intended to locate the previous owner and ascertain

the mileage reading at the time of sale to the dealer. In a telephone conversation with a Department of Main Roads official, an assurance had been given that any individual could come off the street and, for a search fee of fifty cents, be informed of the previous owner of a vehicle.

Nevertheless, when senior main roads officials learnt of the purpose of my research, they refused to have the searches done. One senior official explained to me that the reason for the refusal was that the used car industry would create trouble for them if they cooperated in the research. "My phone would be running hot with complaints from used car dealers and dealers' organizations," he said. An official admitted that the size of the search was not unusual; indeed, that many larger searches had been done for automotive dealers themselves, so that the dealers could write to people urging them that it was time they purchased a new car.

I was given private legal advice that as a citizen I had a right to this information, and that I could issue a Writ of Mandamus upon the Department of Main Roads to obtain the information. The fact that there is a public right to the information was confirmed by the minister for main roads in response to a question upon notice in the Parliament.

When there seemed to be no alternative, a case was put to the research committee of my university, requesting support in principle for spending department research funds to issue the writ necessary for me to complete my research. The request was rejected, and the reaction from certain members of the research committee was hostile, as evidenced by the following statements made at the meeting.

I don't see research activity as based on threatening people.

We need the cooperation of the Main Roads Department and other government departments in the future.

The university should not be a pressure group of any kind. We should be neutral. If you're going to do research, you've got to work through the system. At some stage you've got to come to grips with reality. You've got to operate through the power structure as it exists.

However, a member of the research committee did give me the name of a friend, who in turn gave me the name of a

policeman who could be bribed to obtain the information. The policeman would demand the information required on the pretext of searching for stolen cars or some similar fabrication. It was interesting that the member of the research committee who had been most vehemently opposed to my taking legal action told me that bribing a policeman was a method of obtaining the information which he *would* support because it would not involve upsetting the authorities.

I rejected this course of action on ethical grounds. However, I did eventually manage to discover another devious means for obtaining the information from the Department of Main Roads. I am unable to divulge what this means was. It involved no bribing of officials, nor any other illegal action, and only a small degree of dishonesty! Unfortunately, by the time this course of action could be expedited, the data on the sample of used cars was dated, so a new sample was selected.

The above narrative has been included for the reason that it serves to illuminate why criminology is a lopsided discipline which is preoccupied with the crimes of the powerless, almost to the exclusion of the crimes of the powerful. There are few empirical studies of white collar crime because if the abuses of the powerful are laid bare, these people can cause trouble for bureaucrats, for academics, for politicians, and most importantly, for the researcher.

Selecting the new sample. Twelve used car lots formed the sample. Since there is no comprehensive list of used car dealers in Brisbane, location formed the basis of selection. An area of Brisbane three kilometres in radius was randomly selected, and all twelve used car lots falling in the area were included in the sample. Ten (or fewer) cars were selected in each car yard. Where there were less than twenty cars, each second car was chosen. In yards with more than twenty cars, random numbers were used on the matrix (rows and columns) of cars, to randomly select a starting point for the sampling. From this point, every second car was included until ten cars had been obtained. In this way, one hundred and three cars were sampled. Cases where the mileage reading could not be discovered with absolute clarity were not included in the sample.

The person who sold the car to the dealer was traced and

interviewed for forty-three of the one hundred and three cars. A mailed questionnaire with a stamped addressed envelope was sent to those who had been traced. The researcher then called personally upon those living within one hundred kilometers who did not reply to the letter.

Results. Two of those interviewed refused to answer questions about the mileage readings of the cars they sold. There is evidence that people recall mileage with considerable accuracy from an Australian study which compared recalled and observed odometer readings.¹ Moreover, the mileage reading on a car at the time of sale is likely to be particularly memorable, because mileage is one of the key factors in determining sale price. Nevertheless, six cases were excluded from the analysis because the respondent did not feel certain about the mileage reading at the time of sale.

Thus, thirty-five cases remained which could be classified. If a car had a mileage reading more than one thousand miles higher at the time of sale by the former owner than it did when later observed in the used car lot, it was classified as turned back. This provides a conservative estimate of the number of cars which had mileage readings reduced. In some cases, there was a seven- or eight-month interval between when the car was sold to a dealer and when it was observed in a used car lot. In certain cases, it was discovered that a car had been in the hands of another private owner between the time it was sold by the last recorded owner, and the date it was observed in a used car lot. The car may also have been driven on test runs, on trips for repairs, and for use by personnel at the used car yard. In some cases, cars had changed hands from dealers in one part of the state to dealers in another part. One way or another, all cars were sure to have been driven a certain amount during the months between sale by the former owner and observation. Thus, any estimates of whether odometers had been turned back, and by how much, must be conservative estimates.

Of the thirty-five cars, thirteen had a mileage reading at least one thousand miles higher at the time of sale by the former owner than when it was later observed in the used car lot. It must be stressed that thirteen is a conservative estimate of the number of cars with the mileage turned back because some of the other twenty-two cars may have had the mileage reduced,

but had been driven to the point where the deficit was almost overcome. This is quite possible in a seven-or eight-month period because, as one dealer said, he had seen cars turned back as little as six thousand miles "just to overcome consumer resistance to buying a car with over 60,000 on the clock".

The average discrepancy between the observed and the recorded mileage readings for the thirteen cars was 10,000 miles. Again this is a conservative estimate for the reasons cited above. The most extreme case in the sample was a discrepancy of 53,000 miles.

The instances of mileage fraud were not isolated to a few used car dealers. Clear-cut cases were found for ten of the twelve dealers sampled. These were not backyard dealers. All of them were substantial firms which could afford to advertise on television.

Conclusion. Conservatively, it is calculated that over thirty-eight per cent of the random sample of cars for which adequate data was obtained had had their mileage reading reduced. The statistics section of the Department of Main Roads estimates from its transfer of registration and reregistration figures that well over two hundred thousand used cars were sold by used car dealers in Queensland in the year of the study. If we conservatively estimate that over one-third of these sales involved a mileage fraud, then we are dealing with an annual number of offences of over seventy thousand. This figure makes an interesting comparison with the total number of crimes of all types reported to the Queensland police in 1974-75 of 80,181, of which 27,572 became arrests.²

We shall see later that it is almost always proprietors or managers who are culpable of used car fraud. Thus, the sheer volume of this offence is sufficient to invert traditional views of the social class distribution of crime, which take at face value official statistics showing that offenders are disproportionately working class.

THE PROSECUTION OF OFFENDERS

It cannot be argued that these are offences of a trivial nature. They typically involve fraudulently increasing the sale price of

a car by some hundreds of dollars. Cases of genuine economic hardship caused by used car fraud were discovered in the course of this study.

One case, not from the above random sample, was taken to the police. A man had sold a car with 85,000 miles on the clock for \$800. The man had been delighted to get this price because the car was in disastrous mechanical condition. Some months later, the car was resold with a mileage reading of 28,000 at an advertised price of \$2,000. However, with terms over a three-year period, the cost was \$3,200. Before the three years were up the car would be on the scrap heap, and the new owner would be in economic difficulties, because she would be paying hefty installments on a car she no longer had. On an \$800 car, the mileage fraud had enabled the dealer to have a profit margin of \$2,400 (three hundred per cent).

I rang police headquarters about this case, and was put through to the fraud squad. After explaining the details of the fraud to the policeman, this is how the conversation continued. Policeman: Look I'm afraid we really can't do much about that.

J.B.: You must be able to do something.

Policeman: Oh, [pause] not really [pause]. They can say they put a second-hand speedometer in it. They're doing it all the time, but we don't become involved [long pause]. Listen is your friend a member of the R.A.C.Q.?

J.B.: Yes.

Policeman: Take it to the R.A.C.Q.. They have a free legal service for members. They might give the used car dealer a blast in their magazine. If you don't do any good there, take it to the Consumer Affairs Bureau, or ring the *Sunday Sun*—they'll stir about it.

J.B.: This sort of thing is against the law isn't it?

Policeman: Yes, for bloody sure.

J.B.: And you can't do anything to go out and catch offenders?

Policeman: No. We don't come into it much. We do other things like forgeries and bloody business swindles and things. But not with this. The R.A.C.Q. would be your best bet.

It is hardly surprising, then, that as far as can be ascertained, there has never been a prosecution for criminal fraud of a Queensland car dealer who has tampered with an odometer reading.

Nevertheless, in recent years it has been possible to prosecute traders under the Consumer Affairs Act for civil fraud. Altering odometer readings is now a specific offence under the Act, being classified as a false trade description. For the year ending 30 June 1974, there were no prosecutions of traders under the Consumer Affairs Act for mileage fraud. But for the year ending 30 June 1975, there were seven prosecutions. The average fine imposed in these cases was \$72, the heaviest fine being \$154.25.

An official of the Consumer Affairs Bureau informed the author that the main hindrance to prosecutions in the past had been that when a car changed hands from one dealer to another, or from an auto auction to a dealer, it was impossible to prove beyond doubt which trader had tampered with the odometer. Consequently, since January 1975, all traders have been required, under provisions of the Auctioneers and Agents Act, to keep a record of the odometer reading of each car at the time it comes into the business, and at the time it leaves the business. This record must be signed by both the buyer and the seller in both transactions.

INTERVIEWS WITH USED CAR SALES MANAGERS

Introduction. Initially, it was intended to interview all of the dealers from whom cars were sampled. This intention was quickly abandoned when the author was almost assaulted by one irate dealer. Some people who had been interviewed about their transactions with a dealer had informed him about the content of the interview.

It was decided, therefore, to get the dealer's side of the story by interviewing a number of dealers who were not included in the original sample. Twenty indepth interviews, varying in duration from thirty minutes to two and a half hours, were secured with used car sales managers (or owner-managers) in the Brisbane area. The interview was semistructured, with certain set questions being covered in each interview.

How common is mileage fraud? Every single respondent denied that his company ever turned back mileage readings, although a number admitted that it was done regularly in companies which had previously employed them. Given what we know from the previous pages about the incidence of mileage fraud in Brisbane, this consistent denial constitutes an interesting validation of self-report measures of crime.

There was no consensus among respondents about how common mileage fraud is in the trade. Estimates of the proportion of dealers engaging in mileage fraud ranged from "none to practically none" to "practically all of them". However, there was virtual unanimity that "in the past" most dealers did turn back the clock. A typical response was "Very few [do it] today. But in the past practically everyone did it." It was continually pointed out that in the past "to be competitive you had to do it". In other words, this kind of crime was explained by the forces of the competitive market making it almost impossible to survive unless one engaged in the same illegality as one's competitors. "There was a kind of vicious circle. You went into business and found that the bloke up the road was beating you to sales all the time because he was turning back the mileage, so you started doing it too. Then when another bloke went into business he couldn't compete with you unless he started doing it too. We didn't start out wanting to be dishonest."

As we shall see later, most respondents felt that the circuit breaker which stopped this "vicious circle" was Consumer Affairs legislation. "Today less than 10 per cent of dealers turn back the clock; but before the Consumer Affairs came into the picture it was better than 50 per cent."

Who is responsible for mileage fraud? Respondents indicated that most mileage frauds are initiated by the manager, who instructs one of his mechanics to do it on a particular car. In smaller firms, it is also common for the owner-manager to do it himself. Particularly if a good job is desired, the car may be sent to an outside workshop—usually an auto electrician or instrumentation specialist. The fee demanded in these workshops ranged at the time from \$4 to \$15 per car.

Almost invariably, it is the manager who makes the decision to have the odometer tampered with; but several of the managers

claimed that they often come under tremendous pressure from a salesman to allow the salesman to turn back the odometer on a car which is proving difficult to sell. After all, it is the salesman who is sacked if he does not meet his sales quota for the month, or who receives a fat bonus if he surpasses his quota. The manager structures the situation—through commissions, bonuses, and sackings—such that the salesman sometimes has more to gain by increasing sales than does the manager himself. Thus, it is not surprising that the pressure to break the law sometimes comes from the salesman to the manager, rather than vice versa.

Clearly, then, for any one offence, there are likely to be a number of offenders—almost always the manager or owner-manager, often a salesman or mechanic, and sometimes people from an outside firm. It is quite clear that the manager who issues the instruction or gives permission to have the mileage reduced is guilty of both criminal and civil fraud. The legal position of the mechanic who does a simple mechanical operation under instructions from his employer, without explicit intent to defraud, is less clear. It is difficult to imagine him being prosecuted. Certainly, under the Consumer Affairs legislation it is only "the trader" who is culpable.

"The Consumer Affairs". As discussed earlier, the Auctioneers and Agents Act requires dealers to keep a record, signed by the dealer and the former owner, of the mileage reading on the car when it came to the dealer, and another one to be signed when the car is sold by the dealer. Ten of the twenty dealers were not aware that there was such a legal requirement, and seven of them did not keep the required records. Of those who were aware that keeping such records was law, all but one agreed that the introduction of the law had cut down on the incidence of odometer fraud. The respondents often confused the Consumer Affairs Act and the Auctioneers and Agents Act, but there was an intense generalized fear of "the Consumer Affairs." The fact that the mileage reading is recorded on paper seems to be a genuine situational deterrent against turning back the mileage reading. It is unfortunate that this effective situational deterrent has not been felt by those who do not keep records, and are not aware that it is a legal requirement to do so. The

legislation is clearly good legislation which is having the intended effect where its impact is being felt, but its impact is not being felt widely enough because of poor implementation.

In fact, I spoke to one of the two inspectors of the Auctioneers and Agents Act in the Corporate Affairs Office, and explained to him that I understood there to be a requirement in the act for used car dealers to keep a record of mileage readings of all cars that pass through their hands. His reply, "That's the first time I've heard that one." Later, when I spoke to the secretary of the Auctioneers and Agents Committee, he agreed, after checking the Act, that the keeping of such records was required, but added, "We don't get around to check that they are recording them at all." He expressed the hope that when their complement of inspectors was increased, they might be able to do so. There has never been a prosecution for failure to keep these records. It would seem to be a reasonable reform to transfer responsibility for checking that these records are kept from the Auctioneers and Agents Office to the Consumer Affairs Bureau, since the Consumer Affairs Bureau follow up all other aspects of controlling used car fraud and are in frequent contact with dealers over such matter.

Why do they do it? Perhaps the most central question in the interview was "Why basically do you think some used car dealers do this kind of thing?" Most respondents regarded it as a stupid question because the answer seemed so obvious to them: "The answer to that is obvious—to increase profits", "To increase their sales of course." Only one respondent who answered this question did not reply with "the profit motive", "the greed of the dollar", "to improve sales", or in similar terms. The one exceptional reply was "because of poor character". With this one exception, respondents lent no credence to popular and academic theories of crime based on personality, deprived childhoods, the permissive society, soft treatment by the courts, and so on. Turning back mileage readings was regarded as a normal response by normal people to the profit motive in the context of a highly competitive market system.

Following this up, respondents were asked, "Do you have to be a bit dishonest at times to make a profit?" Of those who answered, nine said no, and seven said yes. It was fascinating

though, that six of the seven who said yes, qualified this by saying that they would be liars if they didn't say yes.

Dealer: The only honest answer is yes. How many of those you've interviewed so far have said no?

J. B.: About half.

Dealer: Well they're bloody liars.

Every businessman is dishonest, particularly with the government we have now. Let's say we all tell white lies. Anyone who doesn't admit that sometimes you have to be dishonest to make a profit is a liar.

Again the competitive system is invoked as the explanation for it all.

To keep up with your opponents you have to be a bit dishonest. And even when you get ahead of them you feel the urge to keep the profits increasing and keep your competitors on the run.

Criminogenic market forces. Leonard and Weber⁴ argued that the big manufacturers of new cars use their greater market power to put a financial squeeze on dealers which leaves the dealers little choice but to make up for their low profits on new cars with excessively high profits on used cars. Often the high profit which is required on the used cars to make up for the new car financial squeeze can only be made by cutting a few legal corners. A participant-observation study by Farberman⁵ confirmed Leonard and Weber's theory in an American setting.

Thirteen of the respondents either belonged to a firm which sold new as well as used cars, or in the recent past belonged to such a firm. They were asked, "Do you find it necessary to have a bigger profit margin on used cars to make up for the low profit margin on new cars?" In only four cases was the answer a direct yes. Circumstances seemed to vary greatly from one manufacturer to another, and from one type of dealer to another. One respondent with a Toyota dealership said that the profit margin on a new Toyota was often higher than on used cars. Some said that the profit margins were much the same. Some firms, which put greatest emphasis on selling new cars, overtrade (offer an excessive trade-in-price) in order to attract new car buyers. Consequently, their used car section runs at a loss. With other companies, the used and new car divisions are

totally independent operations, and each has to stand on its own feet and run at a profit. While one could point to examples such as the Leyland dealer who claimed that he made only thirteen per cent on the wholesale price of new cars but around thirty per cent on his used cars, overall the situation seems much more complex in Australia than the Leonard and Weber hypothesis would have us believe.

Nevertheless, even though there was not consistent evidence that new car profits were forced so low that used car profits had to be set very much higher to compensate, there was abundant evidence that some of the kinds of squeezing of dealers by big manufacturers pointed to by Leonard and Weber, and demonstrated by Farberman, does go on.

Respondents were asked, "Are there any ways that the big manufacturers of new cars squeeze dealers so as to keep the manufacturers' profits high and the dealers' profits low?" Only one dealer said no to this question.

They say they'll give you so many of the easy-to-sell lines if you take so many of their poor selling lines. They exploit you when there's a shortage of good selling lines—and that's most of the time. To meet quotas a lot are forced to overtrade used cars, and that means they either charge the world for their used cars when they come to sell them, or they go out of business.

Especially G.M.H.: You've got to sell so many a month or they won't give you as many as you want when they're scarce, or they'll only give you unpopular lines.

Especially the big three use their market power to force colours and models onto dealers that they don't want and you can't sell.

Dealer: You sell so many cars or else.

J. B.: Or else what?

Dealer: They use the carrot as well as the stick . . . bonuses, or on the other hand they threaten to cancel your franchise or refuse to give you stock.

Thus, the dealers did feel that in certain significant ways the manufacturers use their market power to increase their own profits in ways that are directly contrary to the profit-making interests of the dealers. Whether this exploitation of the dealer by the manufacturer causes the dealer to compensate by in turn exploiting the consumer, and whether the squeezing of the dealer's profits in one area leads him to seek illegitimate means

of making profit in other areas are empirical questions which cannot be answered on the basis of the data available here.

Other law violations. Respondents were asked, "What other kinds of illegal activities do used car dealers sometimes engage in?" The most common offences were regarded as false advertising, failure to meet warranty obligations, and misrepresentations such as telling the consumer the wrong year number for a car. There were various other types of offences which were reported as being very common.

Dealer: Say you have a 50/50 warranty—you pay half and the dealer pays half. Say a repair costs \$40. The dealer tells the customer the repair cost \$80, so the customer pays the whole \$40.

J. B.: Is there any risk that the customer will find out about this?

Dealer: He has no way of knowing. You fill out a dummy invoice.

Getting people to sign contracts without the figures being filled in. They're filled in later with bigger numbers. That can be done quite easily. I've seen and heard of it happening.

Jacking deals to get finance. If a person can't afford to pay a deposit on a \$2,000 car you ask the finance company for a loan on a \$2,600 car with \$600 deposit.

To the question, "Why basically do you think some dealers do this kind of thing?", responses were totally consistent with the same question asked earlier in relation to turning back mileage readings.

To make a bigger profit.

To make a quid.

It's a hard business. The game's so tough that this will always go on.

All respondents answered in these or similar terms. Thus, the motivation of mileage fraud was seen by the respondents as totally corresponding to the patterns of motive for other white collar crimes in the used car industry.

The moral isolation of the used car dealer. To introduce a discussion of ethics, the following question was asked of all respondents. "We've been talking about illegal activities. What other kinds of things do dealers sometimes engage in which are legal, but which you regard as unethical?" A few respondents mentioned specific activities such as spotter's fees, highballing, and patching up rust holes with paper. However, in most cases, respondents were totally nonplussed by the question.

I can't think of any.

Anything that's legal I wouldn't call unethical.

What do you mean by ethics?

Don't know. You've got me there mate. I'm stumped.

It would be an understatement to say that most dealers did not have a coherent point of view on what was and was not ethical. There was clearly no distinction in the minds of respondents about what was legal and ethical, what was legal but unethical, and what was illegal. Perhaps the moral outlook of the used car dealer was best exemplified by the dealer who almost assaulted the author.

In everything in life there are shades of grey. Who's to say what is really dishonest? The people who sell cars to us do a lot of dishonest things to us. It's not that one side is the villain and the other side is on the receiving end. In that situation you can't really say what's honest.

Respondents were asked, "Why do you think that used car dealers don't get together like doctors or solicitors and enforce their own written code of ethics?" More than anything else, responses to this question reflected a feeling that dealers were isolated from one another by the competitive struggle in which they were engaged, and did not trust one another.

It's a cut throat business. Dealers in the same town won't work together because they're competitors.

Car dealers won't get together and talk. If I talk about my ideas, he picks up all my good ideas.

We did have an association around here about twenty years ago but it broke up because no one obeyed the rules. In fact the

first to break the rules was the secretary. We had this rule that if I offered a bloke 500 pounds for a car, another dealer would not up my offer by 50 pounds. But the first to break the rule was the secretary. They're independent people. They like to go it alone. We all had to get where we are by hard individual effort. Some would say it's dog eat dog.

Used car dealers feel unable to get together with people whom they often regard as their enemies to lay the ground rules for a moral order. Instead, they grope in a moral fog. This is quite the opposite of a conspiracy theory, which conceives of the capitalists as conspiring in concert to exploit the consumer. Competitive isolation inhibits the crystallization of consensus over moral codes, so that individual dealers make up the rules as they go. Not surprisingly, when businessmen play the profit-making game by ear, instead of by clearly defined ethical rules, they play it in a fairly self-interested way.

Social selection. To explore the possibility of a social selection effect, respondents were asked, "What sort of blokes find that they don't like the used car business and get out?" An assortment of characteristics was cited, including people who are "too shy", "can't sell", "can't stand the pressure", "no business sense", "no personality". Particularly significant from the point of view of explaining the criminality of used car dealers was the suggestion by several respondents that people who are too honest or "too soft" are selected out of the trade. "You can't be a softie. You've got to be a bit hard. A couple of guys we had working here for a while were too nice. It's just no good if you're a nice guy. You can't be a pushover softie. Really you've got to be a bit of a cunt. I guess that makes me a cunt."

This amounts to a social selection hypothesis: the used car business is dishonest because honest people are weeded out in the competitive struggle. However, two respondents suggested quite the reverse of this hypothesis. It was felt that now that the Corporate Affairs Office instigated thorough investigations before a dealer's, manager's, or salesman's licence is issued, much of the former criminal element in the business is being weeded out. This reverse selection effect was suggested to operate in other ways as well. "Dishonest dealers are forced out through honest dealers, and complaints through the Consumer

Affairs." "Why do they get out? Because everyone is after their blood. They've got to get out."

At various points during the interviews a number of managers mentioned the impact of consumerism in cleaning up the industry. It was believed that consumerism as a social movement had heightened public awareness of business fraud. The president of the Automobile Dealers Association suggested that consumerism fostered the social selection of dishonest dealers out of the trade. "With consumerism in the last couple of years, dealers who do the wrong thing are quickly caught up with."

Perhaps there is a sense in which both social selection hypotheses are correct. If a dealer is not prepared to engage in a certain degree of dishonesty, he is unlikely to survive. If he engages in dishonesty to the extent that he treads too hard on toes of other dealers, or to the extent that his dishonesty becomes highly visible to consumers or to government authorities, he is likely to be pushed out.

Summary of dealers responses. The twenty used car sales managers or owner-managers agreed that in most cases in their experience it was the manager who was responsible for having a mileage reading turned back. There was a strong feeling that Consumer Affairs and similar legislation had done much to reduce used car fraud in recent years. The Auctioneers and Agents Act requirement to keep a record of all odometer readings of cars when they first enter and last leave the business was believed by those who were aware of its existence to be a particularly strong situational deterrent. But implementation of this effective legislation has been so inadequate that only half of the respondents knew of the requirement.

In a number of ways, managers expressed faith in (and fear of) situational approaches to dealing with various forms of used car fraud. It was pointed out that the compulsory stamping of the year number on I.D. plates of newer model cars had virtually eliminated the practice of misrepresenting the year number of these cars by dealers. It was admitted that the roadworthiness certificate requirement for all cars sold had cut down on many practices to inadequately patch up unsafe cars. And some argued that manufacturing odometers which were more difficult to tamper with would reduce the form of crime studied here. The

following statement by one of the dealers expresses the majority view on the latter point. "It's impossible to have a tamper-proof odometer. But tampering can be made more difficult and harder to conceal, and therefore a less attractive proposition." The view was also strongly expressed that consumerism as a social movement had "cleaned up" the used car business.

Totally lacking amongst respondents was a coherent view of business ethics. They felt that the main reason dealers did not get together to enforce a code of ethics was that they felt isolated from one another by the savage competitive struggle in which they were engaged.

There was almost unanimous agreement that the essential reason for used car fraud was the desire to increase profits. Most agreed that the used car business was a "cut throat game", and the pressure to keep one's head above water in this fierce struggle was a major criminogenic factor. Survival and success depended on dishonesty and illegality. Generally, however, this maxim was believed to be less true now than in the past.

Dealers who also sold new cars felt exploited by the big manufacturers, and it was pointed out how in a number of ways manufacturers and distributors used their market power to put the financial squeeze on dealers. Dealers, in turn, seem to exploit salesmen in a similar kind of way. While the manufacturer and distributor make the dealer suffer if he does not perform in a way that is satisfactory to the manufacturer's interests, the dealer makes the salesman suffer if he does not perform in a way that is satisfactory to the dealer's interests. Beware the salesman who does not meet his quota of sales. Consequently, we have seen that it is often the salesman who pleads with the manager to allow him to have the odometer turned back on a car so that he can make his quota. Thus, it would seem a reasonable hypothesis that the manufacturer exploits the dealer, in turn the dealer exploits the salesman, and finally the salesman exploits the consumer. The consumer, who is at the end of the chain of exploitation, is the only one who is not in a position to pass on the exploitation, and so is the ultimate victim.

Finally, one important theoretical point needs to be clarified. Leonard and Weber suggest two reasons why the big new car manufacturers exploit dealers. Firstly, they have immense power over dealers—the power to cancel franchises, withhold stock,

provide only poor-selling lines—and this power enables them to do what they will with dealers. Secondly, the lack of competition in the oligopolistic market structure of the United States new car industry is said to create a situation where exploitation can flourish because distributors who squeeze their retailers cannot be put out of business by competitors who offer a nonexploitative alternative. “A competitive market system supposedly limits their opportunity for consumer deception, fraud, shoddy merchandise and poor service. In the absence of competition, no such limitations exist.”⁶

The second of these arguments is directly contrary to the conclusion of the present study that fierce competition (rather than the lack of it) is a criminogenic market force. In fairness, it should be pointed out that the lone voice of one dealer *did* support the Leonard and Weber view. “The competition ensures that it is difficult to make money illegally. There are too many dealers. If you do the wrong thing you can be destroyed by your competitors.”

However, most dealers put the view, and put it strongly, that the intense competition created pressure to deviate from the law rather than to conform. The second of Leonard and Weber's reasons is weakened by the finding that in Australia, where the new car business is more competitive and less oligopolistic than in the United States, the dealers still felt that they were exploited by the manufacturers. The exploitation of dealers by manufacturers would seem, therefore, to be better explained by the power the latter have over the financial affairs of the former, and not by the lack of competition in oligopolistic markets. Certainly the concentration of economic power is a criminogenic force, but not because it eliminates competition. The findings of the study suggest that we should turn upside down that part of the conventional wisdom of private enterprise which says that competition eliminates business malpractice. Rather, the view which comes from the people in private enterprise studied here is that competition does more to encourage crime than to discourage it. Admittedly, in limited circumstances competitions might discourage crime. For example, when a dealer is so blatantly and visibly dishonest that he treads too hard on the toes of other dealers, or when his dishonesty becomes widely known among consumers, then he is likely to be forced out by

competition. But few dealers are foolish enough to be so blatantly dishonest.

In defence of used car dealers. Dealers were fairly open about the dishonesty of the business they were in. “Some dealers would do anything”, I was told. “It would make your hair curl, this bloody game.” And some dealers had some fairly curious ways of rationalizing the dishonesty. One respondent even suggested that they were doing a service to the public by turning back mileage readings.

People pay too much attention to the mileage reading on a car. There might be a car with a low mileage reading but all sorts of faults and another perfect car with a high mileage reading. It doesn't matter what the mileage reading is, but how good the car is. Yet people put all their faith in the mileage reading. So if you turn the mileage reading back of a car in perfect order, you are encouraging the people to buy a good car.

Apart from this denial of injury, a number of others of Sykes and Matza's⁷ neutralization techniques were apparent in the rationalizations of the dealers. The use of such neutralization techniques by used car dealers would make an interesting study itself. By far the most common neutralization technique was condemnation of the condemners. The respondents were unanimous in agreeing that the people who accused them of being dishonest—the general public—were just as, or more, dishonest than themselves. “I started off honest but have been publicly trained—trained by the public to be dishonest. Most dealers start off honest but the public perverts you. We call them L.T.C.s in the trade. It's a common expression in the trade. It stands for Liars, Thieves, and Cheats. You treat a customer like an L.T.C. until he's proved otherwise.” Perhaps a significant insight was achieved by a dealer who said. “They think because you're a used car dealer you're a liar. So they treat you like one and lie to you. Can you blame the dealer for lying back?”

Thus, because the used car dealer is stigmatized as being dishonest, the consumer treats him as if he is dishonest, and the dishonesty becomes a self-fulfilling prophecy. Some dealers felt the stigma of being a used car dealer quite deeply.

On T.V. they depict the used car dealer as someone with a flair for conning. It's not fair.

Sometimes I get upset because people think you're a shrewdie or sharpie if you meet them at a party and tell them what you are.

Some of the people who leave the business are those who can't take the social stigma of the horse trader.

One can only feel sympathy for the distress which the stigma associated with their line of work wroughts upon some used car dealers. But more importantly, that stigma seems to play a role in creating the illegal behaviour of concern. The theory was earlier suggested that the manufacturer exploits the dealer, the dealer exploits the salesman, and the salesman exploits the public, so that the public is on the receiving end of the chain of exploitation. Perhaps, after all, the consumer does give as much as he takes, and the cycle of exploitation is completed by the consumer attempting (albeit less professionally) to exploit another dealer when he comes to sell his car.

POLICY SOLUTIONS TO MILEAGE FRAUD

This paper has uncovered a serious crime problem whereby people are being defrauded of millions of dollars each year in Australia by unscrupulous used car dealers. What then are the possible solutions to this problem which grow out of the study?

The punitive approach. A mileage fraud normally benefits the used car dealer to the tune of several hundred dollars, and often much more. An average fine for the offence of \$72 is therefore paltry. The benefits from committing the crime by far exceed the costs of being caught. Any rational assessment by a dealer who is interested in maximizing his financial returns must convince him that this form of crime does pay. Not only is the cost of being caught low, so is the probability. In Queensland at the moment, the probability of being caught would seem to be conservatively less than one chance in ten thousand. At present the Consumer Affairs Bureau acts only on complaints which are brought to them. These are very few because the consumer is unlikely to positively discover that his odometer has been tampered with. There is no reason why the Consumer

Affairs Bureau could not actively trace instances of mileage fraud in the same way as has been done in this study.

The situational approach. We have found that requiring dealers to have a record of the mileage reading signed by both buyer and seller for each purchase or sale of a used car is a genuine situational deterrent to mileage fraud. Enacting legislation to do this is clearly insufficient. There must be enforcement of the legislation, and inspectors must be assigned to make spot checks on these records. This would probably be the cheapest and most effective way for the government to wipe out mileage fraud.

The business ethics approach. Used car dealers' associations could be asked, under threat of more punitive measures, to police more effectively the ethics of their members. A dealers' association could be given a more authoritative status to administer a code of ethics through a complaints committee. This committee might reimburse consumers out of a complaints fund, with deregistration being used as the ultimate sanction.

The reputational approach. The names of firms which persistently defraud customers can be prominently displayed in advertisements placed in newspapers by the government. This is already done in a very limited way by the Consumer Affairs Bureau in Queensland. The Bureau could also distribute press statements on more sensational cases, so that dealers might begin to fear loss of business through adverse publicity.

The consumer education approach. Many unscrupulous dealers pick on women (whose socialization leaves them less sophisticated in mechanical matters) for consumer deception. Women in particular might be educated to recognize when a car is in poor mechanical condition even though it shows a low mileage reading. At the very least, people lacking in mechanical sophistication should be advised to seek an expert assessment before buying a used car.

The technical approach. If odometers can be designed so that it is more difficult in terms of time and money to turn them back, then mileage fraud will become a less attractive proposi-

Crimes of the Powerful

tion for the businessman. It is doubtful, however, that there can ever be a tamper-proof odometer.

The social structural approach. The deepest reason for all forms of used car fraud, as expressed by the managers and owners themselves, is the savageness with which the competitive struggle is fought in an exploitative capitalist milieu. It was interesting that people who were so committed to the competitive market of capitalism felt so strongly that this competition in which they believed was the main cause of white collar crime in their industry.

We have revealed a chain of exploitation in which everyone (including the consumer) is attempting to dupe everyone else. Exploitative behaviour is normal and expected in a capitalist market dominated by the icons of profit and self-interest. It is perhaps only the popular stereotyping of the used car dealer that makes the exploitativeness of his industry so apparent and malevolent to us. The used car dealer is not an abnormal curiosity. He is not a deviant white collar equivalent of the lower class "nuts, sluts, and perverts" who preoccupy mainstream criminologists. No, the used car dealer is a rational human being responding in a normal way to a market and a society which has built into its structure of social relations a propensity to take advantage of the other.

NOTES

1. Bureau of Census and Statistics, *Survey of Motor Vehicle Usage*, Reference 14.4 (Canberra: Australian Government Printer, 1973).
2. These figures exclude offences against public order. See Queensland Police Department, *Report of the Commissioner for the Year Ended 30 June, 1975* (Brisbane: Queensland Government Printer, 1975), p. 22.
3. "The past" was defined variously as being from four or five years ago to twenty years ago.
4. W.N. Leonard and N.G. Weber, "Automakers and Dealers: A Study of Criminogenic Market Forces", *Law and Society* 4 (1970): 407-24.
5. H.A. Farberman, "A Criminogenic Market Structure: The Automobile Industry", *Sociological Quarterly* 16 (1975): 438-57.
6. Leonard and Weber, "Automakers and Dealers", p. 410.
7. G. Sykes and D. Matza, "Techniques of Neutralization: A Theory of Delinquency", *American Sociological Review* 22 (1957): 664-70.

8

Pat Hodge *Medibank Fraud*

As a single leaf turns not yellow but with the silent knowledge of the whole tree, so the wrong-doer cannot do wrong without the hidden will of you all.

Kahlil Gibran

Before the Medibank Health Insurance Scheme was introduced, there were loud objections, many of them from doctors, claiming that the scheme would be open to abuse—not by medical practitioners but by patients.¹ Now, some three years after its introduction, those unfounded claims seem ironical, since the most serious abuses of Medibank have apparently been committed by doctors themselves.

The latest statistics from the federal Department of Health show that the average income of a doctor in private practice has risen to \$70,000 per year. This represents an increase of fifty-five per cent over the previous year and is seen as being partly attributable to the Medibank scheme, and to bulk billing in particular.²

There are numerous ways in which doctors have been able to increase their incomes through Medibank. They have been accused of overservicing, perhaps by encouraging patients to have more consultations than are really necessary, or by recommending large numbers of diagnostic tests, such as pathology tests. (Pathologists claim their practices have expanded by 30-40 per cent since the introduction of Medibank.)³

In some instances, doctors have claimed payment from Medibank for services which were never rendered to patients. Bulk billing makes it possible for doctors to charge fees for imaginary patients, for longer consultations than were given, or for after-hours consultations which were actually within hours.⁴