

The Lamb Marketing Corporation

John Hyde

Section 92 of the Australian Constitution states: "...trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free." To a legal layman, like me, that seems plain, but no section has caused more disputes or, I suspect, made fame and fortune for more silks.

Recently the High Court, in *Cole v. Whitfield*---"The Crayfish Case"---ruled that the law of a State---to wit, Tasmania---was constitutionally valid if it did not place a penalty or restriction on out-of-state production that it did not also place on domestic production. The effect of this ruling is that a State can prevent interstate trade, so long as the restriction is not selectively directed against interstate trade.

At issue in *Cole v. Whitfield* was Premier Robin Grey's right to prevent the sale in Tasmania of crays which were legally trapped in South Australia, but which would have been too small if trapped in Tasmania. No doubt each State's law appropriately preserves each State's stock of fish, but even if not, a States' Righter, such as Mr Grey, is unlikely to claim the right to protect South Australian fish. The effect of Mr Grey's action is to benefit Tasmanian fishermen at the expense of South Australian fishermen and Tasmanian consumers. It seems to me that that was also his intention---but I am not a lawyer.

The High Court seems to be saying that the State law is constitutional if, and only if, it treats domestic and out-of-state production identically. What then is the constitutional validity of a law which penalises local production to benefit out-of-state production? "Not an issue", you say, "No Government would be so stupid". Wouldn't they?

The WA Meat Marketing Corporation has the power to "acquire" Western Australian lambs destined for slaughter, although not adult sheep. ("Acquire" in this context is a euphemism for "appropriate" or "commandeer"; it does not mean "purchase by voluntary exchange".) It uses its power to acquire to extract what is effectively a tax of at least \$6 on each domestically produced lamb.

The WA private-sector wholesalers supply 465,000 carcasses, the Meat Corporation itself supplies 140,000 lambs directly to the WA market and South Australia and Victorian abattoirs supply 144,000. The Corporation "taxes" the private-sector wholesalers a minimum of \$6 per lamb. Since the freight from South Australia is only \$4 per head, the private-sector abattoirs have difficulty competing with Eastern States producers. They are, therefore, tempted to lose count of their slaughtering or add a few months to lambs' ages.

Mr Boulton, President of the Pastoralists and Graziers Association---the non-socialist one of the two producers' organisations in Western Australia---said: "The abattoirs are expected to pay the producer a premium for his product, to sell it to the corporation then buy it back, leaving a differential of up to \$8 to \$10 per lamb."

This so-called "acquisition" of lambs has not benefited farmers. In 1968, when the Western Australian population was about 1 million, we ate about 1.2 million lambs; now that the population is 1.5 million we eat only 750,000 carcasses and nearly 20% of these come from out of state. This decline is not just the trend away from red meat: at the same time, consumption of WA-produced beef rose from 38,000 tonnes to 51,000 tonnes.

Neither has "acquisition" benefited consumers. Until 1980 retail lamb prices in Perth and Adelaide remained relatively close. Since 1980, Perth prices have been markedly dearer---dear enough to justify lamb shipments from the East.

The uneconomic and unjust legal edifice is kept in place with a Draconian penalty---\$100 for each unauthorised slaughtering. Perth Magistrate, Keith Chapman, when imposing a mandatory fine of \$189,800 on an Esperance abattoir said he found it hard to accept that he was obliged to pass a much harsher penalty for slaughtering lamb than for taking human life.

Another abattoir has now been charged with illegal slaughtering. The Corporation has made the political mistake of backing its opponents into a corner. About 100 farmers and most of the country abattoirs are about to ask the High Court to rule whether trade is "absolutely free" when a State Legislature favours out-of-state producers. I doubt the founding fathers contemplated such a thing when they drafted our Constitution.

We should not, however, marvel only at the legal mind which interprets "absolutely free" to mean "absolutely stopped". The political mind that legislates so as to prejudice both local consumers and producers is also quite marvellous. I leave the legal mind for others to explain, but I think I understand the political mind. It works like this:

Politicians are self-serving creatures who pursue self-interest most of the time. Economists, who also use euphemisms, call these politicians "utility maximisers".

Actually politicians are no more selfish than the rest of us, but they are more hypocritical---they pretend to be on our side when, in fact, they are on their own side. In this respect, producer politicians on the Statutory Boards are not different from federal, state and local politicians.

Producer politicians' interests in the confiscation and control of a product are not hard to understand. The statutory authorities give them power, standing and overseas trips. What is more, a producer politician's advice comes primarily from the employees of an organisation which is so inefficient that it could not exist without the power to confiscate. In economists' jargon, the producer politicians are "captured" by their bureaucrats. The information and misinformation that producer politicians provide to farmers, usually at farmers' own expense, not unnaturally favours the acquiring monopolies.

Parliamentary politicians, also, are captured by bureaucrats who have no interest in free markets and, further, they responded to the hot air generated by the producer politicians and statutory authorities. Politicians are interested in votes---whereas only statesmen are interested in truth. The average farmer or consumer is not aware that he is being duped and the politician has no interest in telling him. Until the Meat Marketing Corporation was forced to use its draconian powers, the incentives to oppose the one-sided information flow were insufficient. That may now have changed.

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