

Robe River Iron and the Common Law

John Hyde

Australians like to boast of their fair-mindedness. In the abstract they deplore witch-hunts, Jew-baiting, inquisitions and McCarthyism. But they are not so good with specific cases. Few have protested and too many have been party to the McCarthy-like attacks on Robe River Iron Associates (RRIA).

RRIA is prosecuting certain work-boat crews for illegal possession of RRIA boats, and suing them at common law for recovery of the losses their actions caused. Since issuing the writs, RRIA has been subjected to organised vilification. The witch-hunt is a much greater worry than the industrial dispute that started the row, or the alleged illegal possession of private property that triggered the writs.

Even the WA Premier, Mr Dowding, has accused Robe of "political motives" and of being "extremist", because Robe sought to recover damages in ordinary Western Australian courts. Premiers are charged with upholding the authority and independence of their courts. Heads of government should not intervene in civil or criminal actions. With any other litigant, I do not believe Mr Dowding would.

Systematic vilification is being employed to deny Robe access to the normal courts. RRIA is being branded as a pariah by those in high office. The few who are defending its right to appeal to common law are being branded right-wing or worse. Thus a price has been attached to defending the liberal, democratic institutions and processes to which Robe has turned. Even the fellow iron-ore producer, Mt Newman, has been loud in condemnation---could it be for thirty million pieces of union silver?

Witch hunts are conducted by mobs, but they are not spontaneous. It seems that the hunt is being whipped up by Industrial Relations Club apparatchiki who fear that Robe might show that the whole top-heavy industrial relations procedure is inefficient and despotic. The time-honoured way for despots to justify themselves is by claiming to protect us from enemies of the state, the class or the system. Any bogeyman will do, so long as he is not too strong. Labor

politicians line up with the IR Club to show solidarity with the union movement, and perhaps ensure their endorsements. Thus, bullies and cowards are combining to persecute Robe.

Some unions have threatened nation-wide industrial action. ACTU President Simon Crean has said: "A precondition for settlement of the dispute was withdrawal of the writs." If those threats are not contempt of court, then they ought to be!

Premier Dowding says that by resorting to the civil courts in an "industrial matter" Robe is "undermining Australia's well-established industrial relations system." Perhaps so, but two points need to be made about that argument: By ignoring Arbitration Commissioners' orders, unions have long since undermined it; and, so long as Australians act lawfully, they are free to try to change old practices. If Mr Dowding does not like what Robe is doing, he should amend his Police Act and legislate to specify those people who are not to have access to common law. If he can do that without bringing down his government, I will be both surprised and disappointed. Neither the public nor his backbench would deliberately undermine the common and criminal law.

The facts of the dispute, which have been lost among assertions about motives, point to Robe's reasonableness. For the company's sake they bear reiteration. But if Robe had been unreasonable, it could still go to the courts---a right even convicted criminals enjoy.

The facts seem to be: A strike began on April 11 when tug crews declined to berth the Chishirokawa Maru. Not until the 13th were the unions directed by Commissioner Turbet to return to work. The crews remained in unauthorised control of boats and did not berth the vessel until the 15th. Robe River is not, as most of the media asserted, "prosecuting" its workers for "striking". The right to strike (which, subject to voluntary contractual obligations, should be defended) is not at issue this time.

The company contends merely that the crews had no right to take possession of its property. Woodside faced a similar situation when a drilling rig crew commandeered the North Rankin drilling platform. Then, Mr Dowding's predecessor, Mr Burke, defended that company's right to control company property. But Woodside was not a pariah.

The Premier has accused RRIA of a bunker mentality. He may be right, but he might also ask whether he has not himself contributed to it. Throughout this altercation Robe has not attempted to defend itself. In the media, it has just vacated the field to its opponents. Its public relations have not been dreadful; they have been non-existent. As every battle in a democracy is potentially a political battle, it is at least unwise of the company not to contest the issue in public. But, just as the Jews' bad PR does not excuse anti-semitism, Robe's failure to talk does not excuse the McCarthyist tactics

directed against it. We all have a selfish, as well as a moral, interest in ensuring that witch-hunts do not become part of the Australian way of life.

I attended a private school from 1948 to 1952. Most of my schoolfellows' families were staunchly anti-communist. However, one boy's parents made their communist sympathies known. Quite a large portion of the school population gave this lad an oral rough-housing in a disgraceful exhibition of mob behaviour. Our only excuse was that we were children, and the headmaster, normally a mild man and certainly anti-communist in his sympathies, thought that that was no excuse at all. He shamed us into understanding that our behaviour was like the things our fathers had fought against in WW II. Premier Dowding is much younger than I, but he attended the same school. I wish he had been around to hear Headmaster Murphy that morning.

ENDS