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Lionel Murphy Memorial address by Don Dunstan

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THE LIONEL MURPHY MEMORIAL ADDRESS.

DON DUNSTAN.

Much has been spoken and written about Lionel Murphy. I first met him at a time when I was Federal Vice President of the Labor Party. The Federal Executive in those days consisted only of twelve members - two delegates from each State. The Executive was evenly divided between those like myself who were insistent that party members obey the rule that they could not stand on a ticket in Union or other elections which contained members of another political group, (and at that time that meant the Communists, who had not fractured into differing sects as they did later, and the DLP,) and the others who condoned unity tickets regardless of repeated party decisions. The "left" forces in Sydney decided that here was a youthful radical who could be detached from the "right" and so went to work on me on an occasion when I was in Sydney. Rex Connor, (then a State MP) and Jack Ferguson had me to lunch at Parliament House and set out to persuade me to change my ways - it was pretty crude lobbying and didn't work at all. Lionel Murphy and Arthur Gietzelt were more subtle. They took me to a night club to hear Shirley Bassey and tried to be charmingly persuasive between "Hey Big Spender" and "Si Bon Si Bon". That didn't work either, but I came to know Lionel as a good companion with whom I was able to

co-operate later and who remained an admired friend for the rest of his life. For Lionel was a passionate civil libertarian and reformer, a bon viveur, a kindly and compassionate man.

It is appropriate that I should be delivering a lecture in Lionel's memory here in South Australia, because under Labor Governments here law reform has on many occasions been an important part of the Labor program. In two years as Attorney General Lionel Murphy was chief architect of the Trade Practices Act, the Family Law Act and the Racial Discrimination Act, he established the Australian Law Reform Commission and the Australian Legal Aid Office. As a judge he endeavoured to interpret the law as necessarily serving the civil liberties and rights of citizens in a free democratic society, and to follow the traditions established by some of the great judges on the United States Supreme Court rather than some of his predecessors on the High Court Bench who treated the Law as a sacred mystery to be divined to serve the existing social and economic order.

Here in South Australia we had two bases for the extensive law reform program which started in 1965 when I was Attorney-General, continued and expanded from 1970 on when Len King held that post, and subsequently with those who followed. One was to address manifest injustices - as with the Prohibition of Discrimination

Act (the first in Australia) and then the Equal Opportunities legislation. The other was to ensure that legislation aimed to provide protections for citizens actually worked for them - that remedies must be simple and of use.

But a Murphy Memorial should not simply be a reflection on past glories. Lionel Murphy himself would always have hoped that the work of Labor lawyers in addressing the ills of society and reassessing the value of what had been done in the past would continue and expand. He would want that we addressed now the problems which are obvious now.

One problem which was obvious in his lifetime and remains so today is currently being tackled by the Labor Government here and I applaud what they are doing. The rights of privacy of Australian citizens has been abused by gross invasion particularly by the media. Self-regulation of the media on such matters is a joke. The potential for abuse has grown in marked degree with the growth of computer techniques. The press oligarchy of this country will fight bitterly and with all the bias and unfairness of which it has shown itself capable to stop any control upon its right to publish anything. Len King while Attorney brought in a Bill for a Privacy Act. His case for it was unanswerable. But few in the public were ever allowed to hear it because the press, radio

and TV would not allow it even to be put. They would only publish their own wrong, perverse, and fanciful summaries of the measure. That is what is happening today, again. You can see in this morning's paper the reaction of a newspaper owned by the same concern whose Melbourne journal splashed all over its front page a story that a former leading dancer of the Australian Ballet and present ballet teacher was HIV positive. Although that is clearly in breach of the AJA's "code of ethics," the AJA in this State is bitterly defending its employer's right to defy that code.

But there is something of more fundamental importance yet which we should all be addressing. Lionel started to address it in the Trade Practices Act, though still only marginally. I must take a good deal of blame for the fact that I did not address it at all, but allowed the situation I shall now describe to become the more institutionalised by having much of the first Uniform Companies Law drafted here in South Australia.

What should be now abundantly clear is that a great deal of the trouble in our economy has been either caused or compounded by the nature of authorised corporate structures.

The Corporations law in Australia has militated against enterprise, long-term planned development, research and re-equipment. It has, together with the

structure of trades unions produced a nineteenth century management and an entrenched adversary system between organised workers and employers. It has authorised corporate raiding and piracy, and deprived entrepreneurs with development capabilities of the protection necessary to accomplish development.

Under our present Corporations law, directors of a company are responsible not to their shareholders but to the notional corporation. If they know matters which are inimical to their shareholders or the public they may not publish them if they are also inimical to the corporation. They must maintain by the provision of dividends the public share value as reflecting the total value as a going concern of the company, as otherwise they are subject to take-over bids, about which they must constantly look over their shoulders. If a takeover bid or even a buying up of shares short of such a bid takes place they may not protect their control of the corporation by buying shares themselves at prices which do not reflect the total value as a going concern even though it be at market price because that is insider trading, and that is a criminal offence.

So we have entrenched takeovers and corporate raiding. This is not new to the Australian economy, but has been of delight to foreign investors in most of whose countries have rather stricter controls than we

do. Early in the 1970s Gordon McCarthy in "The Great Big Australian Takeover Book" illustrated and analysed the problem with examples current at that time, e.g. the operations of Slater Walker and Industrial Equity, the takeovers of Angus and Robertson, Ansett, Travelodge. But apart from a few local defensive measures in particular areas, (such as the legislation in this State which I brought in to protect trustee companies,) nothing was done by Labor Governments, and the Liberals ranks were burgeoning with corporate raiders anyhow.

Now, of course, we have the spectacle of the collapse of many corporate empires which arose entirely from takeover operations. The high fliers of the corporate world - many of them gurus to the Liberal Party, now have had the wax of their wings melted by being too near the sun of reality. Mr. Elliott, Mr. Bond, Mr. Skase, Mr. Herscu, Mr. Spalvins, were the heroes of the Murdoch press and the reactionaries of this country, and in some cases highly regarded by some leaders in our own party. How empty now are their vaunted pontifications. We must now count the cost of

their operations:

(1) In order to finance their purchase of companies at prices which those companies could not sustain from profits many of them borrowed, as did Mr. Murdoch, substantial amounts overseas and contributed heavily to Australia's balance of payments problems.

(2) The collapse of major trading enterprises has produced a downturn in the property market and contributed substantially to problems for the banking system generally.

(3) They have helped thereby to generate a depression in business activity as happens in any "bust" with dire consequences in unemployment and misery for the e working people of Australia.

Since the pump-priming methods of Keynes are considered inappropriate by current economic orthodoxy as being certain to be inflationary, we are in a situation in which we appear to have no remedies for the economic disaster which is only smaller in extent though similar in nature to the problems of the 1930s. The liberals have no answer except to make it all worse.

For long-term recovery we should eliminate the possibility of a repetition of our current and previous woes by making the corporate structure responsible to its proper constituency.

(1) At present, as has been chronicled by writers from Burnham to Galbraith the connection between directors of public companies and their shareholders is tenuous, and the operation of companies makes the directors but little accountable to the so-called owners of the companies. We should abolish the restrictions on directors about information giving and require them to provide information to shareholders and that the shareholders have a responsibility which is not merely that of speculative investors hiding behind limited liability.

(2) We should require that boards of listed companies have publicly appointed directors who are required to protect the public interest.

(3) We should pursue the establishment of worker participation which requires of workers that they take responsibility for the health of the enterprise by which they are employed, and have worker directors required to communicate with the shop floor.

If we were to do all this, the path of the corporate raider would be infinitely more difficult. It would be possible to ensure longer term investment, research and development. Silly management like the needless confrontationism which occurred in South Australia in recent years at Shearers plant would be eliminated. The absurd adversary system of labour relations could steadily be phased out.

Undoubtedly entrenched extremists at both ends of the political spectrum would resist such reforms as endangering their positions. So they do. But now is not a time for extremism. The world is at last and steadily rejecting the nonsense of dialectical and historical materialism as expressed by Marx Engels and Lenin. But it is in danger of forgetting that their view of the future could only gain currency because of the dreadful depredations on the workers of the world by unrestrained and unregulated capitalism. I am horrified to hear Labor leaders now telling me that

Labor is the "human face of capitalism". I am sure that Lionel Murphy is turning in his grave. While democratic socialists believe in the necessity of a market-driven economy, and are prepared to use rentier finance, if the Labor party is not about intervention in the economy where is its *raison d'être*? If we do not, amongst other measures of intervention, as Labor lawyers seek a reform of our Corporation laws and structures, then Labor Governments of the future will face again the present problems which have simply not occurred in other countries where corporate structures have been more carefully devised.