Towards 2000: politics, the law and technology
Introduction

I am very honoured to be here tonight presenting the 12th Lionel Murphy Memorial Lecture. I'm pleased to be the first Democrat, despite previous attempts to get one, who turned out to be something else.

This is an opportunity to remember a great man who still affects our legal and parliamentary process - and remember a legacy recognising the human element in our legal system and the larger view of a legal system which brings humane results.

I am here to discuss a contemporary and controversial subject. I want to talk about science and technology, politics and the law, and the foundation Lionel Murphy left us for what are the issues at the end of this century.

It is also appropriate to celebrate Lionel Murphy's interest in science.

New technologies raise complex issues which need to be resolved, but at the same time there are dazzling potential benefits. What these issues are sometimes depends on your particular perspective too.

Bill Gates recently pointed out that had the automobile industry made the same advancements as the computer industry, we would be driving cars that got ten thousand miles to the gallon. Representatives of the automobile industry shot back that most cars don't crash twice a day and we don't have to buy a new car every time they repaint the lines on the roads.

Any emerging technology is not all good news. And I don't simply mean that problem of not checking your email for a while and finding hundreds of messages.

Problems which arise with new technologies must be addressed through a combination of government intervention, legal regulation, scientific imagination and technical invention.

It is this balance which the Parliament must make, and in the process we need education, creativity, law reform, and those three great Democrat ideals of social justice, accountability and environmental sustainability.

The Australian Democrats believe that if our society is to become more technically and socially complex, we must constantly achieve higher levels of broad education, producing citizens with a well-integrated understanding of technical and social processes and interactions. Science, engineering and technology education must not be restricted to only those areas which serve the technical purposes of society.

Society must constantly ask of new technology, who should own this technology, for what purpose it is to be used and who benefits from it? This can only be effective if Australian society has the necessary education and we respect the public interest in what is good for everyone.

Drug law reform

An issue where I would argue we have not focused on the social angle, is in our drug laws. Now some of you may have seen the parliamentary debate between Senator Amanda Vanstone and myself last fortnight on this subject. She practically set the sniffer dogs onto me.

But, as Paul Dietze has pointed out, drug law reform is overdue and a topic of particular interest to the Trustees. I commend this interest and concern.

We have moved to the moral high ground with technological fixes to catch drug pushers and ignored basic human values.

This Government is spending a lot of money on trying to prevent illicit drugs coming into this country. This is the largest island in the world and I don't think that is a realistic aim.

Even if we succeed in creating a security wall around our coastline, even if we spray poison from crop planes on marijuana plants, as has been proposed in SA - even if we eventually ban liquid paint thinner, petrol and methylated spirits, people show a remarkable inventiveness in finding drugs.

Our government has focused on more helicopters, faster boats, more cameras, smaller bugs, more complex computers and high tech forensic science. I do not think we can have a technological fix to prevent supply, so we have to try to reduce demand.

I do not doubt the Government is committed to reducing drug-related...
deaths and drug-related harm in the community. The Government is spending almost $200 million over four years on the “Tough on Drugs” Strategy.

But the balance is still far too much in favour of law enforcement. The spotlight is mounted on a police helicopter and the media glare is focused on the drug pusher - at least in the headlines. In reality, as a West Australian study reported recently, marijuana accounts for almost 75% of drug charges and most people charged with drug offences under West Australian law were under the age of 25.

The Democrats support harm minimisation over zero tolerance for drugs. We believe drug abuse is a social and a health problem that should be addressed primarily through medical and social services, not through the law and justice systems.

A social policy focus

Lionel Murphy’s greatest contribution to our society has been to recognise the “public interest”.

You will know Lionel Murphy studied science at the University of Sydney and graduated with first class honours in 1945. He then went on to study law and continue his career as a lawyer, Senator, Attorney-General and High Court Judge.

I want to acknowledge Lionel Murphy as a great law reformer. From my perspective, some of his notable achievements include his creation of an environmental law group in the Attorney-General’s Department, his administrative law reforms, legal aid, family law, human rights, trade practices legislation, and his support for community legal service providers.

I also want to acknowledge he was part of a Government which abolished fees for education - opening up our tertiary institutions, challenging their unspoken privilege and giving opportunities to the traditionally disadvantaged to participate in higher education.

Free education has been successively hacked into with short sighted goals that ignore the jobs, wealth and improved lifestyles which follow innovation. These outcomes are contingent on our support for education and research and development.

Perhaps the most telling tale in this ongoing saga is the Government’s Investing for Growth industry policy statement released in December 1997. This policy had, as its very foundation, the notion of innovation. Its commitment to education was predominantly literacy and numeracy with a single reference to higher education and research being resolved by the West Review. Unfortunately the West Review did not achieve anything like what was implied by Investing for Growth. Basically, Professor West was given an assignment that asked the wrong questions.

Not included in the West terms of reference for funding of higher education, was public funding - it was the notion West rejects!

It is absolutely essential that Australia develop a vibrant and growing manufacturing and services sector to provide the high skilled, high value jobs for the future. This requires the government to provide the strategic direction necessary to develop the local industry. Part of this process is the need to develop a strategic plan for industry sectors.

This should be an integrated approach to science and technology, recognising, of course, the importance of education, research and development support and initiatives, intellectual property protections, venture and seed capital, the encouragement of innovation and creativity, a government purchasing policy, a comprehensive industry policy, and initiatives, including taxation, in the short, medium and long term, as well as a social assessment of technology and the inclusion of innovation in the economic analysis and budget planning undertaken by government.

To achieve these goals, we must integrate the place of education, research and development and innovation into the economic agenda. The Democrats support economic independence for Australia where we as a nation earn more, save more and invest smarter and, in particular, support an active industry policy to identify and develop, sector by sector,
export and import replacement opportunities and the adoption of the latest innovations and technologies. That science and technology will lead us into the future with wealth, jobs and improved lifestyles, is a central plank of our current Government's economic agenda. But this is not matched by a commitment from Parliament and the Government to actually make it happen.

I am continually disappointed to listen to so-called industry policy and, in the next breath, the decline of higher education, research infrastructure and lost opportunities to use innovation.

I am also wary of the focus on the bottom line in the economic equation to the exclusion of social policy. I am sceptical of the narrow determination of economic indicators which say an environmental disaster, such as an oil spill, is good for GDP and, therefore good for the country. There is a delicate balance here between developing our industry and making sure we have the basic human values looked after.

The debate three weeks ago in the Parliament about the regulation of a new Australian space industry illustrates the Government's and 1990s Labor approach, and contrasts the Democrats recognition of some of these social policy issues.

Now, I am taken by Douglas Adams' description of space:

"Space is big. Really big. You just won't believe how vastly, hugely, mindbogglingly, big it is. I mean you may think it is a long way down the road to the chemist, but that's just peanuts to space."

Space is a big place, but radioactivity still has consequences, and in this corner we know radioactivity is bad for you. I also know we do not need a Chernobyl from space to deal with.

So, I moved amendments to the Space Activities Bill to try to stop commercial operations putting radioactive and toxic materials into space. This was done because radioactive materials are routinely put into space and the consequences of an accident can be horrific, and this is something we should not allow the private sector to do. I have similar views about defence uses of space, but this Bill was only dealing with the private sector use of space.

To illustrate this concern, last year some of you may recall the Cassini space probe was launched from Cape Canaveral to round the sun and hurtle back past the Earth with 33 kilograms of plutonium, on its way out into our solar system. I, together with a lot of other people, was concerned about the potential for an accident.

The NASA environmental impact statement estimated the risk of accident as the probe swung past Earth on the way to Saturn was very low - people suggested infinitesimally low - but the consequences of an accident would have seen an estimated five billion of the Earth's seven billion people contaminated with radioactive plutonium.

The issue here is that the risks may be very low - and scientists are very good at calculating risks, I acknowledge that - but is it worth risking that many people for a launch, and what price is worth a new industry?

What trade-offs, deals, politics and business opportunities are worth that kind of risk - exposing 70% of the world's population to potentially harmful radioactivity? The Australian Democrats say that cost is too high and we should not be trying to match the same low standard of other nations for these sorts of materials.

If the materials are put into space commercially, then those making the money should also be responsible for dealing with the mess, and not the taxpayers. This is a question of values and acknowledging the importance of social issues in the making of industry policy.

In the end these are value judgments, and we need to make sure the public interest is involved as an important element of the decisions. Murphy was committed to the public interest and I think we should follow that lead in our decision making.

**Trade practices**

Murphy's stand for the Trade Practices Act is a foundation which is becoming more important. I expect the future will see more activity from a strong Australian Competition and Consumer Commission stamping out anti-competitive activities and practices.
We need to make sure they have the powers to keep trade practices competitive and the forces of the mega-corporations do not over-run and destroy our communities. The only way to do this is through laws such as the Trade Practices Act to limit these mega-corporations taking advantage of their market power.

I think we do need to again review the powers on the Trade Practices Act dealing with restrictive trade practices. Unfortunately, new technologies make some of these topics very difficult. This is well illustrated by the Gates litigation now taking place in the United States.

The United States Government argues that in forcing the software Explorer onto manufacturers and customers, Microsoft is being anti-competitive. I note today's Sydney Morning Herald article by Anne Summers and her comment that his estimated worth in dollar bills under his mattress would require him to jump 17.6 kilometres out of bed each morning, and that does not include the thickness of the mattress.

How does Bill Gates change a light bulb? He doesn't. He just declares "darkness" as the standard!

Microsoft says that Explorer must be packaged with Windows when put on new computers, while non-Microsoft sanctioned products can not be added. Manufacturers must comply with this, as they simply can not afford to sell computers without Windows. With nearly all programs requiring Windows, people simply can not work effectively without it.

This, coupled with Microsoft's policy of giving Explorer away for free, has led to a loss of both market share and revenue for Netscape, as they have to give Navigator away for free to stay competitive.

It holds real and serious implications for the everyday life of all Australians. Australia has no substantial competitor to Microsoft. We use the most accessible products, those of Microsoft, which increases our susceptibility to their whims.

Murphy realised very early the market was not perfect, and the Commonwealth could intervene for the greater benefit. The Trade Practices Act and its subsequent amendments have achieved a lot. We need to make sure this institution can continue and in fact evolve to meet the new challenges.

**Internet content**

Information technology is an industry which has dazzling potential for the future. However, the Government's proposed private sector leadership, minimal government intervention and self-regulation are not the best way to take advantage of this great new technology.

It is not a level playing field out there and Australians do not have the numbers or wealth to play a fair game. In science and technology we have strengths in software, biology and medical research, earth and environmental sciences, and it is in these niches we should get out there with all the benefits government and regulation can do for us.

In 1973 Murphy had the foresight to establish a Committee to examine the issue of computerising legal data. 1973 was just 25 years ago, and in that time computers have undertaken massive developments - especially legal databases. It is very impressive that such foresight established basic standards for databases which we still rely on today.

Perhaps more impressive, Murphy delivered his High Court judgments relying on clear structures, pioneering the use of headings and paragraph numbering. These sorts of innovations formed the basis for vendor neutral and medium neutral citation and the delivery of on-line judgments. This has greatly reduced costs, reduced the time taken to publish a judgment after it has been handed down, increased public access to decisions, and enhanced hyper-text linking, automatic searching, and copy and pasting of text. This makes our laws more accessible, faster and should make lawyering cheaper - all things that Murphy would undoubtedly have been fully in favour of.

We have a Senate IT Committee which is supposed to be examining the important issues our community faces with the impact of the new information technology. Issues such as information equity, privacy, defamation, vilification, intellectual
property, the millennium bug, to name just a few.

Yet, the hot topic in Parliament is Internet content and censorship.

I'm not joking when I say this Committee was almost entirely responsible for having Sex Life scrapped because they were concerned post 9:30pm television should not have simulated sex between consenting adults. I wonder whether they've read the Star report which is an official publication from the US parliament?

Whatever I was expecting from politics, it wasn't sitting in Parliament House watching porn videos with Brian Harradine.

Back in the days when Don Chipp was the Minister for Customs, he started what the Democrats continue to push - that adults should be able to see, hear and read whatever they wish so long as it is not offensive. Murphy continued the same cause, and sadly we still have the same debate raging in the Federal Parliament.

These days it's body parts on the television and the Internet.

I am just disappointed we get stuck on the same issues when there are such important issues to deal with. We need to make sure Australia's egalitarian principles apply to information equality so we don't end up with another unnecessary division. This is serious and we can set the policy now to make sure this division does not happen.

Genetics

Another technology in which Australians have a natural advantage is genetics. We should exploit that advantage.

In the United States, President Bill Clinton has clearly set out guideposts for genetics into the next century. These recognise a commitment to human values, a good society and a basic sense of right and wrong. The various legislatures in the United States have introduced legislation - and in some States actually passed legislation - that limits the applications of health sciences and recognises these basic human values. I believe we should do the same thing in Australia.

I think we should ban cloning human beings.

I have tried hard to get genetics discussed in Parliament to make sure our communities get the full benefits of this new technology. There is a need for this debate and I believe it should be led by the Parliament.

The exponentially increasing number of genetic conditions which may be tested and the huge range of genetic information that will be available from the human genome project will make genetic information a reality for many in our community. In fact, it is estimated that there may be 3,000 to 4,000 genetic hereditary diseases and conditions, and their identification at the gene level is now possible, or soon will be.

The potential for genetics to actually treat and ameliorate human suffering is substantial and is an issue to be addressed by this Parliament through health care funding, access to health services and a sympathy throughout the community to the use of technologies.

The existing and the future applications of genetics require a framework of legislated protections. Without this certainty, I believe our communities will continue to be reluctant to adopt the great potential that genetic technology and genetic advancement offers. The most basic of these is genetic privacy and informed consent. I have set out some of these concerns in my Genetic Privacy and Non-discrimination Bill. This Bill makes no attempt to provide answers, but it does say we have some issues here which we need to discuss, and sooner rather than later.

Genetic technology opens up the possibility for new forms of discrimination. I believe genetic discrimination should be unlawful, unless the community sanctions particular forms of discrimination which are clearly set out in legislation, such as in some limited employment situations, where advances in science can be directly beneficial to the individual. I welcome the ongoing debate about my Bill and this issue, and this should be a robust debate as they are very big issues.

Here again there is a place for government intervention and some severe criticism.

When it comes to self-regulation -
despite their best intentions - voluntary codes always hide the potential activities of disreputable organisations and disguise the fact that there is no guarantee of protection. Without compulsion through clearly stated guidelines and legislated rules, there will not be the certainty or the confidence necessary for the broader community to accept new technologies - and that it is acting in their best interests - or to take up its beneficial parts.

The Federal Government has indicated its intention to introduce a package of measures designed to provide appropriate regulation of gene technology.

I look forward to this legislation.

Unfortunately, I suspect that some broader social and environmental issues may have been subsumed by obfuscation of scientific evidence and the selective claims of particular interest groups. The ongoing community debate will hopefully uncover this.

The Republic

Of course, one of the most important issues facing us as we approach the next millennium is how we perceive ourselves as a nation. The move to becoming a Republic encompasses many of the difficult questions relating to identity and legal implications that new technologies pose.

Whether to become a Republic, and what form it should take, have become national preoccupations with accompanying widely divergent views. What could be a profoundly uniting change, drawing together all Australians as part of an independent entity, threatens to become mired in division.

However, the debate which has, and will continue to take place on this issue also gives us the opportunity to examine broader issues relating to the kind of country and society we want, and to redefine what is important to us. The Australian Democrats have always supported a broad agenda of constitutional change, not only examining changing the Head of State, but other issues of constitutional reform, such as greater recognition of human rights, and I hope that we can continue to be instrumental in raising these concerns.

Conclusion

There are many things to look forward to as we approach the new millennium as well as problems to solve. How we achieve meaningful reconciliation between indigenous and non-indigenous groups. How we solve the seemingly intractable problem of unemployment, especially among young people. How do we protect our wonderful and unique natural heritage? How do we progress as a nation towards an Australian Head of State?

I cannot give a Lionel Murphy address without acknowledging the work of the Chairman, Mr Neville Wran, in the campaign to achieve a republic.

I see the referendum unfolding before us as a chance to consolidate our multi-cultural society, just as reconciliation must play a key role in any republican debate providing the opportunity for all Australians to negotiate their shared history.

I am genuinely excited by the future and the science and technology we have now and what we are likely to have in the short, medium and long term future. We have some big problems just around the corner, and science and technology will provide us with some of the solutions.

These are great opportunities and we can make them even better by taking our political system and developing the plans and guidelines for choosing what are socially just and environmentally sustainable options, and use our legal system constructively to implement these plans.

Lionel Murphy was noted for his optimism. Justice Michael Kirby, (and I acknowledge his presence here tonight), says:

"Lionel Murphy never quite threw off the enduring optimism of the scientist. He never embraced the cold cynicism or tolerance of injustice which can sometimes result from a lifetime in the law".

I can only agree, and say we must hold on to this optimism, and turn science to our long-term benefit using our political and legal systems for the benefit of the broader “public interest”.

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