**Communist Party Dissolution Attempt, 1950 and 1951 - Sixty years on**

 **by Malcolm Mackerras**

(A paper for the symposium on Saturday 8 May 2010 at the Haydon-Allen Tank at the Australian National University, organised by the Canberra Region Branch of the Australian Society for the Study of Labour History.)

There is a definitive study of the 1951 referendum. It is titled *Communism and Democracy in Australia: A Survey of the 1951 Referendum* and it is by Leicester Webb. It was published in 1954 by F.W. Cheshire for the Australian National University. I wish to start this conference by quoting a passage on page 175, as follows:

It is appropriate to end this survey by reverting to the real question which faced the Australian people in the period from 27th April 1950, when the Prime Minister brought down the Communist Party Dissolution Bill, to 21st September 1951 when the referendum poll was held. Broadly, that question was how to combat Communism in a democratic society. Was the method of suppression, proposed by the Menzies Government, justified by the aims and activities of the Australian Communist Party? If so, was suppression likely to be an effective instrument, and could it be used without compromising the values of a democratic society? These are questions which now face all democracies. Were they answered – or merely settled – by the Australian electorate on 21st September 1951? Could it be held that the result of the referendum poll demonstrated the attachment of the Australian people to liberal democratic ideas? Or was the result merely the fortuitous outcome of a long-drawn political conflict involving a wide range of issues?

At the end of this paper I shall give my answers to the above questions and indicate how they differ from those of Webb. I shall also ask two further questions which interest me. However, I feel I should begin with an earlier date and say something about the political atmosphere in Australia at that date. The date to which I refer is 10 November 1949 and that is when Opposition Leader Robert Menzies delivered his policy speech at Canterbury, Victoria, in the heart of his electoral division of Kooyong. The significant passage of that speech reads as follows:

The day has gone by for treating Communism as a legitimate political philosophy. . . The Communists are the most unscrupulous opponents of religion, of civilised government, of law and order, of national security. Abroad, but for the threat of aggressive Russian Imperialism, there would be real peace to-day. Communism in Australia is an alien and destructive pest. If elected, we shall outlaw it.

The Communist Party will be declared subversive and unlawful, and dissolved. A receiver will be appointed to deal with its assets. Subject to appeal, the Attorney-General will be empowered to declare other bodies substantially Communist; to follow the party into any new form and attach illegality to that new association.

No person now a member of the Communist Party shall be employed or paid a fee by the Commonwealth; nor shall any such person be eligible for any office in a registered industrial organisation. The laws with respect to sedition or other subversive activities will be reviewed and strengthened. Conviction under such laws will disqualify from employment under the Crown or from office in a registered organisation.

At that time there were five Australian political parties with at least one parliamentary representative, federal or state. They were Labor, Liberal, Country, Lang Labor and Communist. The Communists were strong in the trade unions but they also enjoyed a significant popular vote, significant enough to suggest the possibility that one senator might be elected under the new Senate electoral system. There were two Communists in the British House of Commons.

The most successful Communist candidate ever in Australia was Frederick Woolnough Paterson who, at the August 1943 federal general election in the coastal North Queensland division of Herbert, had polled 20,629 first preference votes to the 22,697 polled by the sitting Labor member, George Martens. However, after the distribution of preferences of two other candidates (who had a combined vote of 16,993) Martens finished up with 37,219 votes to 23,100 for Paterson.

On 15 April 1944 Fred Paterson was elected to the Queensland Legislative Assembly for Bowen, a state electorate then falling wholly within the federal division of Herbert. On 3 May 1947 he was re-elected to a second term. However, on 29 April 1950 he was defeated in the gerrymandered seat of Whitsunday, Bowen having been abolished for the purpose of defeating him. The Saturday of his defeat was two days after Menzies had presented the Communist Party Dissolution Bill to the House of Representatives.

On Thursday 27 April Menzies gave his second reading speech. I could re-produce that speech but I see no need. Essentially the Bill did what Menzies had promised in November 1949, quoted above. Far more interesting than Menzies is the Labor reaction. On 4 May the federal Labor Caucus endorsed the principles of the Bill but announced it would insist on four amendments. These were: the onus of proof provisions be shifted to the Crown; appeal rights to be extended; rights of search of homes and premises to be limited; and repayment to persons, ultimately found innocent, of the costs incurred in their appeal.

In the light of Labor’s 1951 vigorous opposition to the Bill it may seem surprising that the caucus was so willing, so quickly, to endorse the principles of the Bill. However, three factors must be remembered. First, there was a substantial body of real support within Labor for the Bill.

These were the people who, from 1955 onwards, formed the Democratic Labor Party. Second there was a real fear within Labor that a Senate which blocked the Bill would be taken to the people at a double dissolution with this as the issue. Third, there was no doubting that the Bill enjoyed strong popular support. Indeed, soon after that decision was taken there was a Gallup Poll showing 80 per cent support for the Bill.

In 1950 the House of Representatives had 74 supporters of the Menzies Government (55 in the Liberal Party and 19 in the Country Party) while there were 47 Labor members. However, in the upper house there were 34 Labor senators and only 26 supporting the Menzies Government, of whom 20 were Liberals and six Country Party. That Labor majority lacked democratic legitimacy. It was the consequence of the fact that Labor had won 15 of the 18 seats contested in 1946 (under the old preferential block majority system) combining with the numbers elected in 1949 under proportional representation. That was seen at the time as the Chifley Government successfully rigging the 1949 Senate election against the incoming Menzies Government.

From May through to October of 1950 there was much wrangling in the Parliament about tactics. To what extent should Labor stick to its Senate amendments in the light of the probability of a double dissolution? That was the question and it was answered on 16 October when the Federal Executive of the Labor Party (by eight votes to four) ordered the parliamentary party to pass the Bill in the form demanded by the Menzies Government. Menzies made this comment:

This must surely be the most abject surrender in the history of the once great Australian Labour Party. All opposition to the Anti-Communist Bill is to be withdrawn not by the decision of Labour members of Parliament, but by the decision of 12 outsiders who have already succeeded in holding up the legislation in the interests of the Communist Party for six long months.

Of course, the Federal Executive has made this decision not because it favours the Bill, but because it fears the electors. But the Government will now expect the support of the Labour Party in giving full effect to the legislation.

Thus a 1950 double dissolution was avoided but Menzies had a further trigger in the form of the Commonwealth Bank Bill for which he already had a clear mandate. In the end there was a double dissolution in March 1951 resulting in general elections for both houses in April 1951. Thus the Menzies Government now had a majority in both houses. In the House of Representatives election the result was 52 seats for the Liberal Party, 17 for the Country Party and 52 for Labor. In the Senate election the result was 28 for Labor, 27 for the Liberal Party and five for the Country Party.

On 19 October 1950 the Australian Communist Party and ten unions announced their intention to challenge the Communist Party Dissolution Act in the courts. On 9 March 1951 the High Court delivered its judgment. Of the seven judges, six declared the Act invalid. The dissentient was the Chief Justice, Sir John Latham. Webb notes on pages 40 and 41:

The grounds on which the other six judges found the Act invalid need not be traversed here in detail. It is perhaps not a serious over-simplification to say that, in most cases, the issue was decided by a refusal to accept Sir John Latham’s view that it was not for the Court to determine whether a threat to national security did in fact exist. ‘Parliament’, said Mr. Justice Fullagar, ‘cannot recite itself into a field the gates of which are locked against it by superior law’.

The reason why there was a referendum six months later is simply explained: the Menzies Government sought to over-turn the High Court’s decision by a vote of the people. Those who are attending this conference are probably expecting me to engage in a psephological discussion of the results. However, I see no point in that. All the contemporary detail anyone would want can be found in Chapter XII ‘Results’ ,in the statistical note to Chapter XII, and in Chapter XIII ‘Reactions and Consequences’ in the book by Leicester Webb cited at the beginning of this paper.

However, since we are now 60 years on from the 1951 referendum it is worthwhile to place it in some context. Consequently I have attached three tables to this paper. In truth, of the 25 referendum questions placed before the Australian people since 1945 there have only been two really close results. They are the 1951 Communist question and the May 1977 question which bore the title ‘Simultaneous Elections’. What is interesting is that in both cases New South Wales, Victoria and South Australia were on one side while Queensland, Western Australia and Tasmania were on the other. The sole case in which Labor advocated a ‘No’ vote was this 1951 referendum: in the other 24 cases the Labor recommendation was for a ‘Yes’ vote. This 1951 referendum is also the only case among the 25 in which Queensland and Tasmania voted ‘Yes’ for a losing proposition.

In 1951 the radical Right of politics recommended a ‘Yes’ vote while the conservative Left said ‘No’. It was the narrow victory for ‘No’ in Victoria which saved Australia from the disaster of an affirmative vote. In 1977 the radical Left of politics recommended a ‘Yes’ vote while the conservative Right said ‘No’. It was the narrow victory for ‘No’ in Western Australia which saved Australia from the disaster of an affirmative vote. There is a difference, however. In 1951 the narrow win in Victoria not only defeated the proposal: it also caused the proposal to fail to win an overall majority of the vote. By contrast the 1977 proposal easily enjoyed an overall affirmative majority. For that reason I count the 1977 case as the closest result in the 25 cases and the 1951 case as the second closest.

Before I answer the questions put by Leicester Webb at the beginning of this paper I wish to put to the conference two questions of my own. In order to do that, however, I need to quote large slabs of a book published very recently. The book is *Malcolm Fraser: The Political Memoirs* by Malcolm Fraser and Margaret Simons. It was published earlier this year by the Miegunyah Press. Notwithstanding the title, it really is a biography of Fraser by Simons. From my point of view the really interesting pages are 90 to 94.

On page 90 there is this paragraph:

The year that Malcolm Fraser came to parliament as its youngest member marked the high-water point of the struggle within Australia against communism; but this is a judgment that is possible only in retrospect: it was not clear at the time. In the short term, the departure of the anti-communists from the Labor Party created opportunities for the communists, and broad alliances were formed between them and Labor, including combined tickets for union officeholders. Nevertheless, it is now possible to see that 1955 was a turning point. . .

The following are selected passages from pages 91 to 94.

In 1950, in fulfilment of an election promise, the Menzies government had moved to outlaw membership of the Communist Party. The Communist Party Dissolution Bill was one of the most draconian ever introduced into an Australian parliament. . .(Here follows a brief description of the measure and events immediately thereafter). The referendum was narrowly defeated after an enormously vigorous campaign by Evatt and the Labor Party. The Menzies government had not succeeded in convincing the Australian people that communism was a threat sufficient to justify the undermining of their civil rights.

Fraser had been overseas, at Oxford, during these events, and only broadly aware of them. . .

In recent times, Fraser has said that Evatt was right – very right indeed – to oppose and campaign against the Communist Party Dissolution Bill. ‘He won, rightly. It was much to his credit; it said a great deal about principle and his readiness to support principles. Where do we see such courage today, such determination? Perhaps that is why bad policy has assumed a dominance in certain areas.’ But would the Fraser of the early 1950s, so fearful of communism and so critical of Evatt, have been on Evatt’s side, or Menzies’s? Today he likes to think he would have been with Evatt. He also thinks that Menzies never had his heart in the legislation. He bases this view on his study of history, and his discussion with Menzies in later years. It is a view quite out of kilter with that of most historians. Fraser says, ‘Look at the kind of campaign that Evatt ran against the legislation compared to the campaign Menzies ran for it. Menzies spoke very seldom, very little. He was a real believer in the rule of law, and a real liberal.

But there was a strong anti-communist element within the Liberal Party. There was a number of senior, important ex-servicemen around who would have had this view, and they would have been pushing him. On my reading of Menzies’s character, he wouldn’t have liked this legislation, though he was wily enough politically to use it, I guess’. . .’I think he probably felt that it would be buying too big an argument with the party not to be seen to act against the communists’.

There is support for Fraser’s view. In his autobiography, Bob Santamaria recorded that he had advised Menzies, through Dick Casey, against the legislation. He thought it was a counter-productive and ‘useless’ ritual that would split the opposition to communism and undermine the campaign to isolate them. Santamaria’s advice on this was rejected. He later wrote that Menzies had been motivated partly by pressure to be seen to ‘do something’ and partly by his own concern that if there were another war, communist trade unionists might be ‘treacherous’. Fraser says today, ‘On the one hand, thinking oneself back into that era, you can see why banning the Communist Party seemed necessary to some, but, on the other hand, it goes directly against liberal philosophy. It goes against the rule of law; it goes against free speech; it goes against all sorts of things’. . .

It is difficult for the present day Fraser to think himself back to those times. Would he really have put liberal values first, had he been part of the Menzies government at the time of the attempts to ban the Communist Party? He believes so. . .

My answer to that question is that Fraser is kidding himself about himself. Had he been a Liberal backbencher at the time he would have gone along with the party line. There were some dissenters in the party, such as Alan Missen, later a senator. However I do not believe for one minute that the back bench member for Wannon would have been a dissenter.

On the other hand I think Fraser and Santamaria are right about Menzies. I do not believe he had his heart in it. For him it was just a useful political stunt to divide Labor. Evatt was a conviction politician, Menzies just a clever tactician.

For me the interesting thing about reading the Malcolm Fraser and Leicester Webb books together is to note their dates. One was published in 2010, the other in 1954. Consequently Webb is not nearly as generous towards Evatt as is Fraser.

Indeed, reading Webb the surprising thing is his lack of generosity towards Evatt and the Labor Party generally. The book paints a picture of a populist ‘No’ campaign based on the usual fear-mongering of the typical ‘No’ campaign. However, Webb’s answers to his own questions are these ones.

On page 176 there is this:

Ultimately, the Australian electorate did reject the Communist Party Dissolution Act, but possibly this was due to the unpopularity of the Menzies Government and not to uneasiness over the Act itself.

Then on page 177 there is this:

The Communist Party Dissolution Bill would have fared very differently in the Commonwealth Parliament and the Caucus rooms if there had not been in the background a High Court which, over a period of nearly half a century, had shown itself a vigilant defender of civil liberties.

So my answers to Leicester Webb’s questions are, essentially, thank God for the Constitution, thank God for the High Court and thank God for the Australian tradition of saying ‘No’ at federal referendums. Actually I do not think the referendum result demonstrated any attachment of the Australian people to liberal democratic ideas. The result was due to the vigilance of several Labor politicians, notably Dr Evatt himself.

There was a time when I was a natural ’Yes’ voter. What cured me of that attitude was the ‘Simultaneous Elections’ referendum of May 1977. Being an elector of the Australian Capital Territory I was not entitled to vote in that referendum, in which four questions were put to the people. Only the ‘Simultaneous Elections’ proposal went down. If carried, that proposal would have ruined the Senate and it is a very good thing the result was negative. However, the win for ‘No’ was the result of the vigilance of the Tasmanian Division of the Liberal Party combined with that of two great Australian state premiers, Charles Court and Joh Bjelke-Petersen.

Being an elector of the ACT I have voted on the eight questions set out in Table 3. If I had been an elector of a state I would have been entitled to vote on the 20 questions set out in Table 2. I have no idea how I would have voted in that circumstance but I can say that I have cast eight ‘No’ votes. In that I have been a typical Australian, but not a typical Canberran.

By the 1960s it was universally realised that the Australian people had made the right call in 1951. Even in the Liberal Party that was universally accepted. I believe it was the unpopularity of the Menzies government at the time which produced the result, not uneasiness over the Communist Party Dissolution Act. Does it really matter? However, the sheer closeness of the vote of the two proposals discussed in this paper is, in my opinion, a lesson to us all. Fads of the time are not a good guide as to how the decision of the voters will be seen over the long term.

**Table 1: ‘Yes’ and ‘No’ States Since 1945**

|  |  |  |  |
| --- | --- | --- | --- |
| State | ‘Yes’ | ‘No’ | Total |
| New South Wales | 14 | 11 | 25 |
| Victoria | 9 | 16 | 25 |
| Queensland | 6 | 19 | 25 |
| South Australia | 6 | 19 | 25 |
| Western Australia | 8 | 17 | 25 |
| Tasmania | 6 | 19 | 25 |
| Australia (aggregate)a | 9 | 16 | 25 |

a The four cases of aggregate ‘Yes’ which failed were rejected by three or four states. In other words five proposals have been carried but nine have received an overall majority of votes.

**Table 2: ‘Yes’ and ‘No’ States Since 1960**

|  |  |  |  |
| --- | --- | --- | --- |
| State | ‘Yes’ | ‘No’ | Total |
| New South Wales | 11 | 9 | 20 |
| Victoria | 6 | 14 | 20 |
| Queensland | 4 | 16 | 20 |
| South Australia | 5 | 15 | 20 |
| Western Australia | 4 | 16 | 20 |
| Tasmania | 4 | 16 | 20 |
| Australia (aggregate)a | 6 | 14 | 20 |

a The two cases of aggregate ‘Yes’ which failed were rejected by three or four states. In other words four proposals have been carried but six have received an overall majority of votes.

**Table 3: ‘Yes’ and ‘No’ Jurisdictions Since 1980**

|  |  |  |  |
| --- | --- | --- | --- |
| Jurisdiction | ‘Yes’ | ‘No’ | Total |
| New South Wales | 1 | 7 | 8 |
| Victoria | 1 | 7 | 8 |
| Queensland | – | 8 | 8 |
| South Australia | – | 8 | 8 |
| Western Australia | – | 8 | 8 |
| Tasmania | – | 8 | 8 |
| Australian Capital Territory | 4 | 4 | 8 |
| Northern Territory | 1 | 7 | 8 |
| Australia (aggregate)a | 1 | 7 | 8 |

a The one aggregate ‘Yes’ failed because of ‘No’ majorities in Queensland, South Australia, Western Australia and Tasmania. Consequently no proposal has been carried.