

events of 1926 at the Forrest River, but something for the betterment of our humanity and of our life together with the Aboriginal people of this land in the years to come.

+PETER PERTH.

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## Duty Rules — OK?



### THE PRINCIPLE OF DUTY

By David Selbourne  
(Sinclair-Stevenson pp 288 \$39.95)

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Few books on political philosophy can have enjoyed as sensational and highly publicised a launch as David Selbourne's *The Principle of Duty*. In London, *The Times* graced the occasion with two leading articles, three supporting feature articles and a two-day serialisation of the book. In addition, together with Dillons Bookstore, *The Times* organised and co-hosted the official launch of the book before an audience of 450 distinguished guests at the London School of Economics on 14 June 1994.

Though *The Times* was unstinting in its praise for the book, reviewers in other journals were far less ecstatic. However, all paid tribute to Selbourne for having put the question of *duty* (and service), as opposed to rights and liberties, back on the political and moral agenda. Beyond this, opinion was divided.

One of the principal criticisms made of *The Principle of Duty* by reviewers in England was that it is badly argued and does not merit the description of 'political philosophy', given to it by Selbourne (p 2). For example, Noel Malcolm, who reviewed the book for the *Sunday Telegraph* (12 June 1994), thought that the book lacked the intellectual rigour and depth of knowledge which are the hallmarks of true philosophy. Likewise, John Gray, writing in the *Times Literary Supplement* (23 September 1994), felt that the book was more of 'a melange of idiosyncratic opinions and judgements' than a serious philosophical tract.

### Fair comment?

These criticisms are deserved, but they should not be allowed to obscure the fact that the book carries an important and timely message which can be summarised as follows. (1) An ever increasing number of people are becoming wholly absorbed in their own selfish interests and pursuits and are ignoring their obligations to their fellow citizens and the state as a whole. (2) The state has shown itself unwilling, or powerless, to combat this problem. (3) The impotence of the state, in the face of the growing selfishness of its citizens, has led to a precipitous decline in moral and social standards which, if unchecked, may threaten the existence of the state itself. (Selbourne refers to this process as 'civic disaggregation'.)

It is an interesting thesis, and one which is argued with skill and vigour; but

whether it deserves the title 'political philosophy' is open to doubt.

One reason why the book appears 'unphilosophical' is that it fails to provide clear definitions of its key terms. It is true that some of the more important concepts (eg, 'civic order', 'civic bond', 'civic sense' and 'civic disaggregation') are defined (pp 16-19), but the definitions given are loose and unhelpful. For example, take the phrase 'civic disaggregation' which is used repeatedly throughout the book, usually prefaced by the word 'accelerating' or 'quickening'. When Selbourne claims that 'society' is in the throes of 'an accelerating process of civic disaggregation', *which* society does he have in mind — England, the United Kingdom, Europe, the Western World, or mankind in its entirety? The geographical focus of Selbourne's argument is left unclear. Likewise his claim that the process of disaggregation is 'accelerating' is asserted but never proved. Furthermore, no attempt is ever made to pinpoint the historical events which have precipitated the supposed 'disaggregation' or to identify the group (or groups) in society who may be held responsible for it. Selbourne points the finger at university dons (p 3), and even at some members of the Judicial Committee of the House of Lords (pp 143-144), but beyond this no individual or group is clearly held to account for the social and moral breakdown about which he complains.

Another key term which is left only partially explained is 'civic order' (chs 4 & 5). This is the entity to which the citizens owe their primary civic duties. But what the civic order is, and why it should be entitled to be obeyed by citizens, is not made clear. Selbourne points out that the civic order is not the same thing as the state, but the difference between the two is obscure. The confusion is compounded by Selbourne's insistence that the civic order owes duties *towards* the citizens, including the duty to provide them with such things as drinkable water, clean air, efficient schools, universities, hospitals and housing (p 203). This sounds remarkably like the responsibility of central and/or local government. So why not simply drop the pretentious term 'civic order' and substitute a more familiar word like 'government', 'nation' or 'state'? Comprehension would be assisted thereby.

## Dissent and coercion

More importantly, however, the book fails to give a clear picture of how dissent is to be accommodated within a reinvigorated civic order. Selbourne affirms that dissent must be allowed (and even welcomed) — but then adds, menacingly, that the civic order has the right, and even the duty, to quash dissent when its own interests are threatened. How might this theory be applied to the Press? Selbourne explains:

When the excessive power of particular interest in the control and dissemination of information is able, in free pursuit of such interest, to impose upon the sovereign civic order *systematic falsehood, or values which degrade the citizen...*the civic order, under its duty of self-protection and protection of the citizen, is obligated to prevent such abuse, including, where it becomes necessary, by censorship of the media of information (p 213, my emphasis).

The problem here is that 'systematic falsehood' and 'values which degrade the citizen' are not defined. They are vague and open-ended terms which could easily be manipulated by the government of the day to suppress views not in conformity with its own. But it is not only freedom of the press which is implicitly threatened by Selbourne's undisciplined and casual theorising, for it is clear that many other

established rights and liberties could also be curtailed by the civic order under its so-called 'duty of self-protection and protection of the citizen'. The implications of this for, say, the right to demonstrate or the right to strike are potentially far-reaching. Certainly the student protests of the 1960s, and the anti-Viet Nam war demonstrations of the 1970s, would not have been looked upon favourably in a civic order inspired by the principle of duty.

The most surprising aspect of Selbourne's thesis, however, concerns the enforcement of civic duties. These duties, he says, could be enforced by penal sanctions imposed by a new system of courts, to be known as 'Courts of Obligation'. How these new courts would interrelate with the existing civil and criminal courts (if at all) is nowhere discussed. What is clear, however, is that the new courts would be required to impose punishments on citizens according to simplistic retributive principles. For example, a hooligan who defaced public buildings would be barred from entering all such buildings for a given period, whilst a miscreant who damaged public transport would be forbidden from using it for an appropriate length of time (p 257). The difficulties involved in enforcing such bans in a large metropolis like London or Sydney are too obvious to state, but sadly they are nowhere acknowledged in the book.

There is another drawback to Selbourne's scheme. How do the Courts of Obligation decide what positive civic duties can be required of citizens? Selbourne's answer is that a comprehensive list of such duties would be drawn up and legislated (ie, codified), presumably by Parliament (p 268). That way everybody would know where they stand. But this idea of providing a legislated code of civic duties can be queried on two grounds. *First*, it surely underestimates the difficulty of compiling a comprehensive list of positive civic duties on which all or most members of the community could agree. In England, both the Criminal Law Revision Committee and the Law Commission have declined to compile a list of positive duties which could be enforced by the *criminal* law on the ground that there is no community consensus as to what such a list should contain. Furthermore, successive attempts in England to codify the criminal law, stretching back over the past 150 years, have equally all met with failure. This suggests that the task of getting community agreement for a legislated code of positive civic duties might well pose insuperable difficulties — a crucial point not noted in Selbourne's book.

*Secondly*, to reduce the civic duties of citizens to a formal legislated code (akin to a criminal code) would be to 'set those duties in concrete', in other words, to make them immutable. Yet community attitudes to what is socially and ethically desirable may fluctuate dramatically over time: what was regarded as socially unacceptable 50 years ago may be acceptable today. It is doubtful whether any legislated code of civic duties could be, at one and the same time, *both* sufficiently



Selbourne: dutiful

detailed for it to provide a clear guide for the Courts of Obligation to act upon *and* sufficiently flexible to allow it to adapt quickly to changing ethical and social standards in the community. Such flexibility could be maintained only by keeping the proposed civic duties as 'unwritten law', and by educating people in those duties through example and otherwise, but without resort to any formal court sanctions.

*The Principle of Duty* is a timely book which provides a useful counterpoint to the unceasing debate about rights and liberties which has dominated the intellectual scene in recent years. But many of the book's prescriptions seem paternalistic and naive. It is doubtful whether the notion of a legislated code of civic duties, enforceable by so-called Courts of Obligation, will ever be adopted in England or elsewhere.

GEORGE SYROTA

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## Saint or Sinner?



LIONEL MURPHY — A RADICAL JUDGE

*Edited by Jocelyne A Scutt*  
 (McCullough Publishing pp 275 \$29.95)

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This book was first published in 1987. It may seem odd to review it in 1995. In this case, however, there is a special justification. It is now a decade since the death of Lionel Murphy. It is therefore of some interest to read this collection of essays by various associates, journalists, commentators and academics to see how well their assessments have stood the test of time and whether predictions about his lasting influence have been vindicated.

Many of the contributions are of a personal or biographical nature, such as those by Neville Wran ('Murphy the Barrister'), Gordon Bryant ('Murphy the Politician') and Gary Sturgess ('Murphy and the Media'). These are mainly of historic interest, though still good reading. Of special note is the thoughtful treatment by Tony Blackshield of 'The Murphy Affair', the controversial events and issues that dogged his latter days. For the lawyer, however, it is particularly the essays dealing with his contribution as a legislator, minister and judge that are of current interest: see Michael Kirby ('Foreword'), Laurence Maher ('Murphy the Attorney General'), John Goldring ('Murphy and the Australian Constitution') and Peter Hanks ('Murphy on Economic Regulation'). The book also contains some specialised examination of his contributions to family law, taxation, women's rights and property law.

Several writers (Kirby, Maher and Goldring) make acute observations about the similarities and differences between Lionel Murphy and Sir Garfield Barwick. Undeniably, in their different ways, both Murphy and Barwick rank among the most influential Australian lawyers of this century. They each started their public life as advocates, then went on to become politicians, ministers and justices of the High