

## **Freedom Is My Business\***

### **Coming Out**

**By Arnold Fishman**

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After all these years it is time for me to escape the confines of the closet. I am a Social Democrat! (There I said it and I am glad.) While there can be disagreement as to what that means, there can be no argument that it excludes what is the abysmal state of our current policonomic\*\* affairs. I confess that with much trepidation, because I am aware that the reflexive response to Capitalism, as a moral value in America, is on par with the knee-jerk reaction to baseball, motherhood, and apple pie.

Lets talk first about Capitalism. The mantra of market-driven “*laissez-faire*” Capitalism is: “Price is determined in the market place through the interaction of supply and demand.” The validity of that axiom is dependent upon the existence of three unstated preconditions. They are: 1) an infinite number of sellers; 2) an infinite number of buyers; and 3) perfect knowledge. The unlimited number of sellers is required to prevent a situation, like the DeBeers diamond cartel, where a group of sellers collaborate to control the supply in order to artificially inflate the cost. The unlimited number of buyers is required to prevent a giant buyer like Wal-Mart from dragooning sellers in order to unnaturally drive down the price. And the perfect knowledge prerequisite is obligatory to insure that the parties on both sides of the transaction are bargaining over the same thing (e.g. only I know the bucket has a hole in it). With all that on the table, it becomes clear that *laissez-faire* Capitalism exists only as an ideal.

Not only does *laissez-faire* Capitalism exist just in our imagination; let us not overlook the role that government plays in our lives. While in one sense it is true that I have built my business, in another sense government has been my partner. The roads that my clients drive on to get to my office, the police and

firefighters that protect that office, the zoning enforcement that permits my use and excludes incompatible neighbors are all taxpayer-supported emoluments of my success. From the grid that delivers the electric to the person who delivers the mail, coordinated collective action is required. And where would lawyers be without the courts?

Less obvious but even more important are the strategic decisions made at each level of policonomic authority. Tax and trade policies as well as a myriad of other laws, resolutions, ordinances, regulations, executive orders, and judgments have a pervasive impact on all economic activity. By way of example, mortgagees can't reorganize and students can't discharge their debts, but corporations can renege on their pensions in bankruptcy. Banks are bailed out while homeowners are still under water. The government is enjoined from negotiating lower prices for your medicine while you are prohibited from buying them abroad. In a world where some people go hungry, not only do we feed corn to our animals now we are, by legislative fiat, "feeding" it to our cars. From the cereal that graces your breakfast table to the cotton in the shirt that covers your back, countless subsidies abound. The judgments made by business entities, from sole proprietorships to multinational corporations, – whether to hire or fire, whether to move the factory or stay put, whether to increase production or let inventories decline, whether to buy, merge or sell the division, whether to pay a dividend or retain a surplus etc. -rounds out the picture.

Closer to home, I can remember, before no fault, when people had to lie their way into a cause of action for extreme cruelty in order to get a divorce, and child support was meted out by the length of the chancellor's foot rather than according to guidelines, when the Uniform Commercial Code harmonized a gaggle of separate statutory schemes, and when Title 2A, the Criminal Code, which preserved common law crimes, morphed into Title 2C that abolished them thereby making all crimes statutory. Every real estate settlement included a lawyer representing the mortgagor and a check from the title company to the

buyer's attorney as a "gratuity" (think kickback) for placing the insurance through that particular agency. Who (besides me that is) can remember automobile negligence cases before a tort threshold? First, there was a series of increasing dollar amounts - which only served to inflate the medical bills – much to the glee of the treating physicians. Then came the verbal threshold. Now a plaintiff can survive on the question of liability and get no caused on the issue of damages. If you don't think that was a game-changer, just ask someone who lived through it. Whole industries and even entire segments of our economy come and go at the pleasure and whim of our elected and appointed officials. The responses by the bar in this dynamic environment have transformed the practice of law. We went from a profession dominated by general practitioners to one of specialists within my tenure.

Now lets turn to Democratic Socialism. I believe in a well-regulated market economy with a robust public sector and a government responsive to the aspirations of its citizens in its commitment to policies that would: 1) foster personal freedom and the inviolability of human rights as a means to, rather than and obstacle to, achieving a pervasive climate of individual and collective security in an atmosphere of world peace; 2) environmental sustainability and the amelioration of the wounds we have inflicted on our home planet as a path to, rather than an impediment to, economic prosperity; and 3) a benevolently strong and tightly woven social safety net as an integral element of, rather than an intolerable burden upon, a more just and humane society for our chosen tomorrow.

If that is not what Democratic Socialism is, then that is what it should be. And regardless of any labels, this is what I believe. The economy needs regulation because history should have taught us that the confluence of American ingenuity, our renowned tendency toward excess, and the rapacious greed of some of the players, forcing others to follow suit, would conspire to produce disastrous results. Also, regulation would insure that the wealth

generated by our incredible economic engine is more evenly distributed, so that we have the customers that have the buying-power to purchase what we produce. The strong public sector will smooth the boom and bust of the private economy. When consumers stop spending and private employers stop hiring, government can step in to save the day. It is at those times that investment can be made in the magnificent infrastructure projects that distinguish developed from third world countries. Those ventures create jobs that cannot be outsourced, stimulate demand, and produce consumers and taxpayers that empty the shelves while reducing our staggeringly swelling national debt.

The governmental policies enumerated – liberty with safety, survival with comfort, empathy with fairness - on behalf of a brighter future will result in a rich and rewarding life not only for our posterity but also for us. We could rest content that we are keeping faith with our responsibility to help create a better world. As the proverb reminds us, “We do not inherit the world from our parents; we borrow it from our children.”

Who could oppose these ideas and on what basis? Aren't we all in that same closet? I've always imagined I wasn't alone.

*\*Freedom Is My Business* was the byline of the late Martin Margolit, long-term editor of the *Barrister*. It is in honor of his memory that I employ it.

\*\* Our blended political/economic system.

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