DEMOCRATIC DISSENT AND CIVIL DISOBEDIENCE

By The Honourable Mr. Justice Bright

Delivered at a meeting of the Medico-Legal Society held on 8th April 1972, at 8.30 p.m. at the Royal Australasian College of Surgeons, Spring Street, Melbourne. The Chairman of the meeting was the President, Dr. J. G. McMahon.

One must have some concept of the meaning of terms before one can usefully embark on such a subject as this. Many stimulating arguments are carried on by persons who use the same words in different senses. Unless you take the view that it is better to argue hopefully than to arrive at a conclusion you should avoid this kind of discussion.

Dissent bears a dictionary meaning of "difference of opinion, disagreement, non-conformity". It cannot exist in a vacuum but must relate to some rule or practice which is dissented from. Strictly speaking there can be no such thing as a religious dissenter unless there is an established religious liturgy with which that person disagrees. So, there are no religious dissenters in South Australia, although the leading history of that State, by Douglas Pike, is entitled "Paradise of Dissent".

I have more difficulty with the word "democratic". A little over a hundred years ago conservative people took the same view of the label democracy (as they understood it) as is taken by conservative people today with regard to the label communism. In neither case was the word defined or given a universal meaning. At the present time the word democracy is used as a cure for all political evils and as a description of all political systems. The East German State is named the Democratic German Republic to distinguish it from the West German State. I would relate the word democracy to its root meaning. A democracy is a system of government in which the people are the rulers. It is distinguishable from an aristocracy or an absolute monarchy. I realize that this is a fancy description and that it does not get us far. In Australia one might usefully ask to what extent the general body of the people control the way in which their representatives vote in the various parliaments, and one might go on to ask to what extent the members of parliaments control the activities of the various executives. One might ask the question even more readily in a country, and there are many such countries, where

there is only one permitted political party. Indeed, one of the unsolved puzzles of political science relates to this very question as to where the power really lies in any particular form of government.

I think perhaps we shall do better to approach the meaning of the word democracy in an anthropological way. What we commonly speak of as "the people" may be thought of as a group. Mankind is gregarious and people tend to act in groups. One cannot think of democracy in absolute terms, but on the contrary one has to say that the more the group is able to control its own affairs simply by the interaction of its own members the more democratic that group is. On the contrary the more the activities of a group are controlled from without the group the less democratic the group is. This is by no means a definition. It could possibly describe what most people would regard as an undemocratic situation in which there was a single leader with a surrounding group of disciples. It is more appropriate, I think, when the group is expanded to contain the whole of the citizens of a self-governing region or country. At all events the description given by me emphasizes two features, namely that the group is not controlled from without, and that it uses a process of interaction to solve its management problems. So I use the words democratic dissent as a compound phrase. I am thinking of the differences of opinion and the disagreements that are permitted within the sort of society that we have in Australia today. To put it in another way, I am thinking of the expressions and conduct uttered or performed by members of our society as indications of disagreement with some rule or practice which for the time being is laid down by our society as an appropriate rule or practice.

I have less trouble with the word disobedience. Sometimes it is hard to tell whether conduct is disobedience or not. Usually, however, it is plain that some act or failure to act on the part of a citizen is a disobedience of some rule or practice. Disobedience is a failure to act when required to act or alternatively an act or a type of act which is forbidden.

The phrase "civil disobedience" is properly to be regarded as a term of art, and I prefer to deal with it later in this paper. I think an understanding of the phrase, at least as I understand it, is best attained after prior introduction of certain ideas.

There are many methods of showing as an individual, as a member of a group, or as a group, a dissent from some rule or practice. The methods will no doubt vary according to the limits

of dissent permitted by the particular society. Certainly the legal limits will vary. Those limits were very narrow for Ivan Denisovitch. They are narrow in any society which for either political or religious reasons endeavours to maintain an orthodoxy of thought. They are wider in a society like our own where there is no embargo on freedom of thought and where it is conduct rather than belief which dictates any state intervention.

I come therefore to some discussion of methods used in Australia to indicate dissent in matters of slight, of great, and of fundamental importance. The dissent will be from a rule which requires or forbids some activity. That rule may be social, religious, moral or a matter of law.

Under the heading of a social rule one may class rules of etiquette. The unfailing politeness of counsel to the Bench is a form of etiquette of which I am always gratefully conscious. Perhaps under this heading one should also include, though somewhat doubtfully, the rules of grammar.

Under the religious heading may be included particular religious observances such as fasting, or general religious requirements such as going to church or otherwise participating in religious activities.

Under the moral heading I include behaviour in relation to abortion, family planning, adultery, child care and care of the aged.

Under the heading "matter of law" I am of course referring to laws of the State. King Canute, was not a dissenter against the laws relating to tidal motion. He was making a demonstration of dissent against the allegations of his own omnipotence which his sycophantic subjects were making. I include all aspects of the criminal law including all rules of conduct laid down by common law or statute which are enforced by sanctions of the criminal code.

The interesting feature of my attempt at classification is that the groups are not watertight. For an example in my first class, a breach of etiquette may become the offence of offensive behaviour and therefore be in class IV. Studied impoliteness by counsel has recently been the subject of much discussion. It is sometimes an offence justifying the removal of the offender from the roll of counsel and perhaps imprisonment for contempt of court.

Similarly in class II, the religious laws, failure to go to church was a criminal offence for a very long time in British Law. As regards class III, the moral laws, publishing writings about con-

traception was a criminal offence until fairly recently and was punished as an obscene libel. Adultery has I think always been an offence under the New York criminal code. When that code was entirely revised recently the draftsman left out the offence, but the legislators prudently reinstated it. In case any members of the Australian National Travel Association happen to be present I hasten to add that nobody is ever prosecuted for that offence in New York. Depriving a child of opportunities which he ought to have, or neglecting an old person may amount to a punishable offence. In the fourth group, criminal offences vary with time. Many acts are criminal not absolutely but at particular times. Moreover, the sanctions vary with time. In my own judicial experience, in my own State, the usual punishments imposed on young men for carnal knowledge of willing females have dwindled from sentences of imprisonment to small fines. Homosexuality in private between consenting adults is another example of a practice which is regarded as offensive in some countries at some times but not in other countries at other times. Attempted suicide is another example. Abortion is another, but I shall deal with this in a different context later.

One purpose of dissent is to draw attention to the rule from which dissent is made and to the dissenter's belief in the need for change. There are various kinds of dissent. Any society has an ebb and flow of conservative and radical forces. Frightened people make rigid laws. Intensely committed people, whether imbued with strong religious feelings or strong political feelings, tend to do the same. A dissent may be an indication of total disapproval of a rule, or it may be a protest against the rigour with which the rule is enforced. Some laws can only be effectively enforced if they meet with general approval by the general body of the people. Those who seek to change this type of rule do not have to persuade the majority of their fellows that the rule is wrong; they merely have to influence the opinions of a large number of people in the community. Capital punishment is an example of this. I doubt whether any community, just after the committing of a brutal murder, would vote on a referendum, by a majority, in favour of the abolition of capital punishment. But in any society in which there is a strong body of opinion, even if not a majority, against the continuance of a particular practice such as capital punishment, the tendency is either in practice to commute the punishment to some other punishment, or to abolish the law.

The kinds of dissent available in Australia are, first, silent disapproval. This, when continued over a long period by a sufficient number of people, often affects the views of others by influencing those others to think about the matter; secondly, an individually stated disapproval; thirdly, a stated disapproval coupled with a plea by the dissenter to change the law. The last named is a direct attempt to motivate other people. Commonly, reasons for change are adduced, although sometimes the basis for change may be purely emotional. Fourthly, there is group dissent in which a number of persons gather into a group to express dissent as a group. The right of assembly is expressly laid down in many countries although not in Australia. Peaceful assembly, however, is not prohibited in Australia and in practice and in legal theory is permitted or tolerated within very wide limits. Fifthly, a parliamentary petition sometimes originates in disapproval and dissent. It is, then, an application by a group of citizens to the legislative body to introduce changes in the law. Sixthly, the introduction by a member of parliament of a bill to change the law and the consequent debate in the parliament may indicate dissent. Seventhly, in the realm of court punishment, the lessening of penalties over a period may indicate or reflect a community view accepted by the sentencing authority, that some other method ought to be adopted for dealing with the particular conduct in question.

Another and a more serious form of dissent is a refusal to obey the law. This may be either doing what is forbidden or failing to do what is required. Such a refusal may be so widespread that the authorities do not attempt to enforce the particular law. Examples are laws forbidding adultery and laws or rules prohibiting trade combinations as conspiracies. There will often have to be, however, Tolpuddle Martyrs or their equivalent to trigger off this form of dissent from the law. People in society do not like to see their fellows punished for conduct which they themselves do not regard as wrong.

I want now to deal with two kinds of laws, one permissive and the other obligatory as they relate to conduct with respect to which persons may have religious or moral scruples. As an example of a permissive law I take laws relating to abortion. There has been a good deal of talk about the South Australian abortion law. Nobody really knows whether there are more abortions in South Australia now than there were before the law was passed. We know how many are done in hospitals and we know

that to be a greatly increased number. We also know that there are hospitals which have had to put back elective surgery because of the incidence of abortion cases. But no one knows the extent of backyard abortion. However, the South Australian law does not *require* a doctor to abort a patient. A doctor who disapproves of abortion may demonstrate his dissent from the law relating to abortion merely by declining to act within the scope of the permission granted by the law. This may be his only form of dissent. Yet it must be remembered that a doctor who declines to carry out a procedure because he believes that although permissible it is immoral may be forcing his views to prevail over the equally strong views of a patient who sees nothing immoral in the procedure. In other words, and especially where an alternative doctor is not available, he may be frustrating a liberty granted by the laws. It may be well to mention here the procedure of *amnio centesis,* now much discussed. By abdominal puncture a sample of amniotic fluid is drawn from a pregnant woman's uterus. Analysis may indicate genetic variation from normal. Chromosomal patterns may strongly suggest (to put it no higher) that the child when born will be found to have Down's Disease, or to be in the group now thought to exhibit certain criminal tendencies. I am told that at present the procedure of *amnio centesis* is carried out at about the twenty-eighth week, and many doctors might hesitate to abort at that late time. But let us suppose that the procedure is performed at an earlier time in the pregnancy. I wish only to indicate the problems that may occur if a doctor, knowing that the child is likely to be a mongol or a moral cripple, refuses to abort despite the mother's desire that he should do so.

At least thirty-five years ago in at least one large hospital in this city there were periodic dilation and curettage clinics. These were not to clear up miscarriages, but were elective, on the ground that the mother had tuberculosis or a heart murmur or was otherwise thought to be an unsuitable person to bear a child. Catholic residents and catholic nurses were never required to carry out the procedures.

Another example of a permissive law, looked at from the patient's viewpoint, relates to blood transfusion. Apart from legislation, blood transfusion is simply a permitted surgical procedure. At first it was an unsafe procedure because the principles relating to blood-grouping were not known, and even today I am told that there are occasional mishaps because of some strange idiosyncrasy of blood. Certainly there is still always the possibility of human

error. But in Australia the benefits of blood transfusion so far outweigh any possible risks that most people accept blood transfusion as a normal procedure. The sale of blood in South Australia and Victoria is prohibited by law. In the United States there is no such provision, and blood is openly sold. Some medical practitioners participate in the sales, perhaps even when engaged in the performance of the particular transfusion—perhaps selecting blood bought from a company in which they have an interest in preference to blood donated by a voluntary donor. One recent report alleged that a person receiving a transfusion of blood in the United States had, by reason of the sources of supply, a more than 50 per cent chance of incurring hepatitis. I should think therefore that a patient who was offered blood transfusion except in extreme emergency might well hesitate in the United States before submitting to it.

But blood transfusion is not always merely permissive. In South Australia there is a law which entitles a surgeon to give a blood transfusion to a child against the will of the parent. There is at least one religious sect which for entirely non-medical reasons, based entirely upon scriptural interpretation, regards it as deadly sin to receive the blood of some other person. Faced with the choice between probable death if the transfusion is not received and deadly sin if it is received the person who elects to be subject to either of these evils has my sympathy. I myself doubt whether it is a duty of society to enforce compliance by the patient with either of the alternatives. Should the patient with a gangrenous leg be forced to have an amputation which he does not want? Or should the patient with an internal cancer be forced to submit to surgical treatment? I do not think that the principles involved in these two cases differ greatly from that involved in the case of the person who does not wish to have a blood transfusion, except that our compulsion does not relate to adult patients but merely overrides a parental denial of permission. One begs the question by talking of reasonable beliefs. Just as in every case of conscientious belief, it is the firmness of the belief that is important not the reasonableness of it.

I have been dealing, in the main, with laws *permitting* rather than ordering some particular procedure. I have indicated the lawfulness of dissent from, in the sense of declining participation in the procedure so permitted. I must now spend a little time in considering dissent from *orders* having the authority of law. A famous example arose from the allegation (probably a false one)

that ammunition supplied to the Indian army had been manufactured by a process which included the use of pig-fat. An order was administered to Indian troops to use the ammunition. Disobedience of that order was one of the origins of the mutiny.

A law prohibiting association between groups, Jews and non-Jews, black and coloured, black and white, coloured and white, Hindu and Moslem, may cause violent dissent which many people would regard as justified, and perhaps I should add a law enjoining such association may also cause such violent dissent, and is doing so today in the United States. A law directing conformity to a particular religion has often been accompanied by sanctions of the greatest cruelties that man can devise. A ruler convinced that such conformity was essential in order to prevent the subject from eternal damnation, may regard any punishment which he can inflict as being less than the consequences of non-conformity.

Dissent from such an order or law may sometimes be achieved by leaving the country in which it operates. Not every ruler will permit this course but South Australia has reason to be grateful to one ruler who did. King Frederick William III of Prussia, in 1822, by cabinet order, established a new form of liturgy. This was not observed by evangelical Lutherans, who disagreed on certain points. For a time they were allowed to continue under their own liturgy but were officially discouraged and out of favour. In 1829 a new cabinet order directed that compliance with the new liturgy was compulsory from the 25th June 1830. Coercions and prosecutions followed. South Australia was created at that time largely by dissenters from state ordained religion. One of their fixed views was that there should be no official church and no preference for any denomination. The South Australian Act was passed in 1834. The Prussian dissenters were attracted to South Australia and with help from George Fife Angas, who was a particular Baptist, and under the guidance of Charles Flaxman, his confidential clerk, they settled in the Barossa Valley and elsewhere in South Australia. So the liturgy of the evangelical Lutherans has gone full circle from being approved, discouraged but permitted, prohibited and finally again approved.

I have mentioned advice on contraception. Where persons in authority were opposed to the giving of such advice it was easy to find laws which effectively established legal prohibitions. With changing views by those people advice on contraception is now

officially encouraged in most parts of the world although it seems that the advertising for sale of contraceptives is still an offence in all parts of Australia except South Australia. It is certainly permitted in the United Kingdom.

I mentioned abortion previously and an old practice in a hospital in Melbourne. The resident medical officers who carried out the abortion procedures were not conscious of either sin or illegality. Sin is a personal matter, a particular consideration, but illegality is a general prohibition of the criminal law. The procedure in the hospital to which I referred was not a statutorily authorised procedure, and it may have been illegal. In Victoria this is especially interesting because the words of the prohibition have not changed, although perhaps the accepted legal interpretation of them has. The matter may be tested (thanks to the legality of earlier procedures) by asking a question—assume a pregnant woman with a heart murmur had gone in 1937 to a suburban general medical practitioner, and he had aborted her in his surgery, would he have risked prosecution?

Another medical procedure which may be mentioned here is vasectomy. Not long ago I think that most doctors would have refused to perform the operation. It was held by many authorities to be illegal as well as sinful. Public attitudes are now making it an acceptable and accepted procedure. It is nevertheless a form of self-maiming and I do not doubt that many doctors would still not perform the operation. Another difficult area relates to military orders. The general view a hundred years ago was that theirs was not to reason why. No one doubted that an order, on a military matter, within the apparent scope of authority of the officer giving the order, was valid justification. The doctrine of acting under protest—but still acting—was pretty generally accepted, although the manual of military law indicated that there were limits, and that a soldier who was ordered to fire on civilians was sometimes in an agonizing dilemma. He risked either military or civil prosecution. The Nuremberg doctrine affirmed the discretion to refuse an order which the person ordered thought to be wrong. The dilemma is certainly no less agonizing today.

I draw the following conclusions from the above examples:

1. Assumptions as to what is illegal sometimes change with time even without legislative change. This is especially so when the prohibition is not specific but general, in other words when it is directed to a broad area of conduct. But even when there is a

specific direction or law, the interpretation may vary with time.
2. When a law or order is pressed against strongly held religious beliefs, disobedience may readily result. It is sometimes reasonable to allow persons holding such contrary beliefs to refrain from the activity, but such persons ought to think not only of themselves but of other persons affected.
3. Where the order directs an act which the person directed sees to be wrong, especially morally wrong, the person directed has not merely a right but a duty to consider the validity of the order.
4. Laws not consonant with the views of a substantial section of the community tend to be in the first place not enforced and in the second place repealed.

I now approach the question of civil disobedience. I spent a considerable time last year in considering how to express my understanding of the meaning of the phrase "civil disobedience" and my attitude towards it. I hope you will forgive me if I therefore repeat some observations from my report on the September 1970 moratorium demonstration in Adelaide.

Civil Disobedience is not a phrase which has the same meaning to all citizens. "Disobedience" means disobedience to some law (including in that term by-law) which applies to the disobedient person in the context of his disobedience. The disobedience may be an act, such as a trespass, or an omission to act, such as a failure to obey a lawful police direction.

The concept of civil disobedience has come to connote an absence of violence, and the phrase certainly has this meaning in the historical progression from Thoreau through Gandhi and Martin Luther King. I have no doubt that it imports a concept of non-violence to most of those who used it in relation to the September moratorium. It does not necessarily import a concept of non-violence to all men, and it is not difficult to find writings justifying the overthrow of some particular form of government, or indeed all government, by disobedience of the laws accompanied by violence. That in fact is another way of describing revolution.

There are two categories of disobedience by non-violent persons, and these should be distinguished
1. The disobedience is of a law which the disobedient person regards as immoral or unjust. He may also regard it as invalid and may seek to test its validity in a prosecution. In the latter case his act is not really a disobedience but a preliminary to a legal process. This type is not uncommon. Examples are failure to pay a tax (e.g. a receipts tax or a road maintenance tax) which

may be unconstitutional. But an invalid law is no law at all and this type of disobedience may for present purposes be disregarded. The disobedience of which I speak in this category is disobedience of a law which is considered to be a valid exercise of law-making power but which the person disobeying it regards as requiring him to do something which conflicts with his conscientious beliefs. An example may be a law requiring him to register for military service.

2. The disobedience is of a law which is not in itself immoral or unjust, although it may be capable of being used unjustly. Examples are disobedience of laws or directions relating to traffic control. Disobedience in this category is not based on any allegation that the particular law is unjust. The disobedience is intended to dramatize some demonstration and thereby to draw the attention of the previously uncommitted citizen to his need to think about the topic on which the demonstration is being made. "Stop the country to stop the war" is a slogan epitomizing an intention to do something which is probably incapable of being done if full compliance is rendered to all relevant laws.

A distinction must be drawn between disobedience of a law where the disobedience is a deliberate act, an end in itself, committed in order to dramatize a situation, and disobedience of a law which occurs as a mere incident to some other activity. When Thoreau refused to pay a tax, on the ground that his country was engaged in the immoral activity of countenancing slavery, he exemplified the former: when demonstrators ignore traffic laws in the course of their marches they usually exemplify the latter.

Personally, I have a great deal more sympathy with those who disobey laws which they regard as immoral or unjust than with those in the second category, at least when the disobedience is regarded as an end in itself.

It is always open to a citizen to refuse to obey a law which he regards as unjust, provided he is prepared to take the consequence. I do not mean, by the last sentence, that a citizen ever has a legal right to break the law. But every citizen has a power of choice, and he may choose, if so minded, to do an act which the law forbids, or to refrain from doing an act which the law requires to be done. Such a power of choice is not a matter of legal right: it is a decision to obey or not to obey the requirement of the law. Obviously there is no moral value in refusing to obey and then trying, by some legal quirk to evade the consequences. But throughout history men have willingly suffered for their

beliefs. Such men have won admiration not so much for the depth or rightness of their beliefs as for their willingness to suffer for them.

Disobedience of the second type can range from the tiresome to the revolutionary. It is, in my view, "open-ended". It is an expedient open to all groups desirous of demonstrating, and perhaps it is a more effective expedient for a small group than a tiny march would be. For public order is always vulnerable at the hands of a small determined group, whose disobedience may range from occupying a building to blowing up a power-house. I do not suggest that a group which would do the former would also do the latter, but if there is to be an awareness of the nature of this second type of civil disobedience then that awareness must comprehend not merely peaceful temporary interruption but also violent extended interruption. A moderate group might do the former, an extremist group attempt the latter. An extreme example recently was the hijacking and blowing up of aeroplanes, to dramatize the aspirations of what was apparently a relatively small extremist political group. The bombing of Aldershot was another recent example.

In my report on the moratorium demonstration I was of course thinking of civil disobedience in relation to a public march intended as a demonstration against the Vietnam war. But that is only one kind of civil disobedience and of itself need not constitute a breach of the law, in which case it cannot be characterized as civil disobedience at all.

I must now, because they are so frequently cited, say a little about Thoreau, Gandhi and Martin Luther King. Thoreau's essay on civil disobedience was first given to the public as a lecture to the public in January 1848 under the title "On the relation of the individual to the State". He had, for some years, refused to pay a poll tax imposed by the Commonwealth of Massachusetts. Eventually he was arrested and put in gaol. An anonymous friend immediately paid the tax on his behalf and he was released. He does not use the phrase "civil disobedience" in his essay, but he is reputed to have coined the phrase. He was non-violent, he refused to obey the law, he suffered punishment for breach of it.

However, it was Gandhi who expanded the concept of civil disobedience from a mere personal protest into a campaign to oust the British raj. He too was non-violent. He adopted the method of disobedience to laws as a mass expression. If several

thousand people lie down, side by side, on a roadway it is pretty difficult to do anything much about removing them. Notice the difference, however. Gandhi was not objecting to the traffic laws. Breach of those laws was merely incidental to the demonstration. Gandhi had an extraordinary magnetism, and achieved a remarkable mass compliance with his tactics. The controlled nonobservance by a large number of people of some law or of a large number of laws presents to the executive power problems of enforcement that may be insuperable, or at least insuperable without having recourse to a remedy (such as firing on a crowd) which creates more troubles than it overcomes. The willingness of Gandhi to suffer, his identification with the hopes and the miseries of Indians, have made him a figure whose memory will be revered in India for centuries. Martin Luther King owed much to Gandhi. He was a black clergyman who too was nonviolent. In his letter from the gaol in Birmingham Alabama he described his method, in reply to a letter from a group of clergymen who described his activities as being unwise and untimely. The activities in question were an active refusal to conform to laws imposing segregation and leading mass marches, contrary to local prohibitions, by way of demonstration against those laws. The method was, in his words,

> In any non-violent campaign there are four basic steps: (1) Collection of the facts to determine whether injustices are alive; (2) Negotiation; (3) Self-purification; and (4) Direct action.

The letter described the course of the method, the broken promises, the police brutality, and the failure of anything short of direct action. He invoked St. Augustine to support the proposition that an unjust law, such as one imposing segregation, is no law at all. He, like Gandhi, was willing to suffer and he, too, identified himself with the mass of fellow sufferers. He too, like Gandhi, was murdered by a fanatic. Perhaps the most potent form of persuasion is a demonstrated willingness to die for a belief. The important consideration in all types of civil disobedience is that there is an element of dissent included in the disobedience. In other words the disobedience is not a mere neglect or a mere wickedness but is an expression of dissent. Dissent of this kind occurs at all levels of human activity. It is a type of civil disobedience to refrain from doing up a seat belt because one disapproves of the law making the wearing of seat belts compulsory. But it is not civil disobedience to exceed the speed limit

on a country road merely because one is in a hurry. The person exceeding the speed limit does not dissent from the law, he merely takes a chance on being caught for disobeying it. It is civil disobedience to refrain from filling up the forms required by the Commonwealth Department of Health because you disapprove of the forms. It is not civil disobedience to refrain from filling them up because you are too busy or forget. When these acts constitute civil disobedience they are examples of my category (1.) above, disobedience of a law which the disobedient person regards as immoral or unjust. Disobedience of an innocuous law to dramatize opposition to a law considered objectionable is more difficult to cope with. It often, as I have pointed out, leaves persons in authority in a helpless position. In the moratorium demonstrations in Adelaide demonstrators disobeyed a State law in order to dramatize their opposition to a Federal law.

Further along the line still is the situation taken up by those who deny the authority of those who have made the laws. It is becoming increasingly common for persons who rebel against the authority of the State to treat all the organs of State including the courts as being in the same category. Since they deny the authority of those who created the courts, they deny the authority of the courts that have been created. Hence increasingly we find persons charged with offences which might be regarded as having some political flavour refusing to admit that the courts have any authority over them, and refusing to participate in the court processes to determine guilt or innocence. The Chicago trial is only one of many illustrations of this. We must expect to have such events occurring in Australia, and, indeed, they have begun to occur in England.

One of the troubles is that it is so easy for persons who have no real moral scruples about obeying the law to offer as an excuse, when caught disobeying it, that the law is unjust. If, however, we can separate out the impostors from the genuine dissenters it is my belief that we should approach the latter group with sympathy and an attempt at understanding. We shall not concern ourselves too much with the rationalities lying behind the dissent, but merely with the objective fact that the dissent is firmly and genuinely based. We shall try to examine whether the continued expression of the dissent is causing harm to other members of the community. We shall try to distinguish mere wicked behaviour from dissent. We shall try to understand the dilemma in which such persons find themselves. We shall not

forget that a group of genuine dissenters sometimes gets caught up in a wider expression of dissent than they either intended or desired.

I am not saying that breach of law must be condoned. Indeed many dissenters recognize that the consequence of their dissent must be punishment and they accept the alternative of punishment as being preferable to the alternative of obeying the law. However, our attitude towards such persons and the kinds of punishment, if any, that are inflicted must be influenced by an appreciation of the dilemma in which the dissenters are placed.

Finally, if we are reasonable beings and if we find a considerable number of people or, sometimes, even a small number willing to go to prison rather than to obey some particular law, no matter on what subject, we should ourselves consider the purposes of that law and consider whether its continuance is consonant with the principles that support our society. We should in other words apply the principle that I mentioned earlier, namely that a law which is regarded as wrong by a substantial number of members of the public ought to be reviewed and ought to be discontinued in its operation or repealed if it cannot be justified by sufficiently cogent reasons.