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SPEECH BY THE PREMIER, MR. DUNSTAN, TO COUNCIL OF CIVIL LIBERTIES, SYDNEY,
JULY 3rd, 1978.

Mr. President, Mr. Abba, distinguished guests, ladies and gentlemen.

When Mao Tse Tung told his people to "let a hundred flowers bloom", he unleashed a torrent of criticism, unrest and dissent which for a time seriously weakened his party's grip on Chinese society.

The experiment proved dangerous. Ideological orthodoxy is far easier to handle, and was again imposed in the interest of public order.

But whereas dissent weakens closed societies, it should be the dynamic of democracies.

Men and women are made many and our community can gain its strength, not from conformity but from diversity.

In a democratic society it's vital that people should be able to state their opinions and be allowed the widest of diversity and dissent from conformity that can be consistent with their not specifically harming other people or intruding on their freedom to hold views.

Sometimes I think that Australians have a fear of freedom despite all the rhetoric about democracy the "free world", free enterprise and individual initiative. Indeed, it was a common saying at the time of federation that although Australians were more equal than their British cousins, they were less free.

So many times in our history the knee jerk reaction has been to ban or outlaw a certain point of view, ideology, book, film or political party in order to protect democracy. So much for democracy.

Indeed, there has been a great history in Australia of social as well as legal pressure on people to conform to certain, quite unreasonable norms.

Throughout our history, for instance, people who have dressed or behaved in a manner which didn't harm other people, but which upset them as being nonconformist, were penalised under our vagrancy laws as being rogues and vagabonds.

Perhaps the Australian affinity to "mateship" held strong only when one's mates were like minded and fitted a certain mould.

I can remember two twins who were at school with me. They weren't really radical but they chose to act in an unorthodox manner. When they were adult, they had enough money to live without working and so adopted a life style different from the rest, wearing their hair long and dressing in an unusual fashion. I am afraid that at the time this "behaviour" shocked a good many people in Adelaide.

Under a Liberal Government the twins were arrested and charged with vagrancy because of their unusual behaviour. Yet this behaviour wasn't obscene, indecent - or anything of that kind. They were simply nonconformist, and that nonconformity - strange as it may seem - was upsetting to other people.

It's a pity that sort of thing occurred in South Australia, a State originally known as the paradise of dissent. In religious matters, for instance, we have always had a higher proportion of dissenters from the orthodox churches than from any other part of Australia.

Since we were able to encourage people in South Australia to hold heterodox opinions we ought to have also followed through and allowed them to lead heterodox lifestyles.

We are still inhibiting dissent in various ways within Australia. This was shown vividly by the attacks by State and Federal Governments against people who were protesting against the war in Vietnam and sporting ties with South Africa.

Police brutality was allowed to occur against people who were simply endeavouring publicly to demonstrate their protest in a peaceful manner. Yet, that was the only way they had of bringing other people's attention to matters about which they, as dissenters in the community, felt strongly.

During the past year Australians have experienced two controversies which I believe have fundamental implications for the right of dissent in this country.

The first of these occurred in Queensland; the second in my own State of South Australia. But they should both be of concern to everyone in Australia.

In Queensland, the undemocratically elected, minority Government has passed laws which prevent its citizens from participating in peaceful street demonstrations.

On the surface that may not seem a matter of national moment. But the Queensland Parliament, which sits infrequently and allows very little examination of issues of importance to its citizens, has legislated to deprive Queenslanders not just of a right that is fundamental to free expression, but one that is fundamental to democracy and human dignity.

Late last year hundreds of peacefully protesting Queenslanders, including some Parliamentarians and Ministers of Religion, were arrested and at times harrassed and intimidated - by police.

Many were convicted and thereby suffered the penalty for breaking the law.

Its a serious matter for a citizen to disobey a law but I believe, in this instance, the Brisbane demonstrators were right in doing so and I applaud their courage.

Martin Luther King told black "freedom riders" in Mississippi, who'd broken the law by riding on segregated buses, that "in the same way that one should obey just laws, one has a moral responsibility to disobey unjust laws." Indeed, King echoed Saint Augustine by saying "an unjust law is no law at all", and he chided lawyers who put order above justice.

In fact, the segregation laws of the southern United States and the street march bans in Queensland, did and do little to achieve order - as the U.S. riots and Brisbane street clashes have demonstrated.

But let me clarify my position on civil disobedience before Mr. Bjelke Petersen and the editorial writers of the Murdoch press read the Riot Act on me for inciting lawlessness and anarchy.

I believe there is a clear moral obligation on citizens, in all ordinary circumstances, to obey the law. It's only by observance of the law that the peace, order and rights of citizens can be secured. We depend for the security of our persons, families, livelihoods and property upon the observance of the law by others.

It is, therefore, morally incumbent upon citizens to act in a law abiding fashion. But this moral obligation to obey the law cannot apply to laws which are intrinsically immoral, and which violate fundamental rights.

Tyrannical, unjust or immoral laws cannot impose a moral obligation upon citizens to obey.

But what is plain in theory and in moral philosophy, poses difficulties in the harried world of lawyers and judges.

Different mens' consciences differ and, of course, the King has a conscience as well as the subject.

The law does not and cannot recognise itself as immoral. It has to assume that it's just and proper, and therefore, binds the conscience of the citizen.

A citizen's conscientious belief that a law is unjust cannot be recognised as a defence to a charge of committing a breach of the law.

It follows, then, that someone who feels forced to disobey the law for conscience sake must be prepared to accept the punishment which the law prescribes.

However, as South Australia's Justice King, when he was Attorney General, told an Adelaide Seminar on Civil Liberties, "a just and humane society may mitigate the harsh consequences of the rule of law .. and .. every effort should be made in all branches of the law to provide, so far as it is possible, for those whose consciences might lead them in good faith into conflict with the law."

I think a great deal more can be done in this regard - as it was done, to some extent, for conscientious objectors to military service.

Obviously, there can never be any general exception from complying with the law for those whose consciences won't allow compliance. Such a situation would undermine legitimate public authority and reduce the rule of law to a debating point.

But Governments and civil liberties lawyers should be doing more research to find areas where a "conscience clause" can be consistent with the public order. Our society, democracy and individual freedom will benefit if we do.

Essentially, then, I'm saying that the commitment to legality which is essential to our way of life imposes obligations on public authority as well as on the individual. Laws which are unjust and which deny fundamental rights and liberties - as is the case in Queensland - contribute more to the erosion of legality and order than those who break the law.

The second recent controversy which I believe has important implications for the right of dissent in this country was the so called "Special Branch Affair" in South Australia.

Unfortunately the central facts of this case were buried by what amounted to one of the most sustained and vicious campaigns against me personally.

But let us briefly take a look at what were the fundamental issues at stake.

Last September the former Commissioner of Police, Mr. Salisbury, told S.A.'s Chief Secretary that the Police Special Branch conducted no surveillance on matters of pure politics. Instead, he said that Special Branch officers were concerned only with subversive activities which constituted a danger to the community, in the form of political violence.

Mr. Salisbury further declared that Special Branch records held information on organisations, groups and individuals whose overt actions had shown a tendency to commit, or incite others to commit, acts of violence or damage at gatherings or demonstrations.

This information was accepted in good faith and responses to questions in Parliament were based upon it.

However, following further press comment and speculation the Government decided to appoint Mr. Acting Justice White to enquire into the nature and extent of Special Branch operations.

White's report revealed that for many years Special Branch records and procedures had intruded seriously on the basic civil rights, privacy and freedom of expression of political views of South Australians.

Mr. Acting Justice White personally examined a significant number of the dossiers and files held on individuals and groups, and he found that Special Branch records had no connection whatsoever with genuine security matters. Indeed, a significant proportion of the files related to political and trade union matters.

So, instead of potential terrorists and saboteurs South Australia's Special Branch was opening and maintaining files on "security risks" that included Supreme Court Judges, Former Governors, Ministers of the Crown, all Labor Party candidates, Ministers of Religion who had attended prayer meetings for peace and - horror of horrors - members of the Council of Civil Liberties.

Over many years Special Branch had infringed the Civil Liberties of thousands of innocent, law abiding South Australians and had been engaged in political surveillance of a most biased kind.

In particular Special Branch considered suspect or subversive persons and organisation deemed to be more radical and to the left of a point arbitrarily fixed by Special Branch personnel themselves.

To make matters worse Acting Justice White found that the dossiers contained material which he knew to be inaccurate and sometimes scandalously so. It was this kind of information which was also being fed to ASIO.

The S.A. Government did not hesitate to take action to correct this situation and lay down strict guidelines for the future.

Under powers provided for under the Police Offences Act we issued a policy directive ordering the destruction of records and other material held by Special Branch in violation of the civil liberties of South Australians.

Mr. Acting Justice White was asked to supervise the culling, removal and destruction of the thousands of dossiers and cards which had no relevance to genuine security matters and which did not meet our strict criteria.

In addition the Government's directive stipulated that no material of any sort would in future be provided by Special Branch to ASIO or any other police force, organisation or individual without the written permission of the Chief Secretary.

I believe the action we took was a fundamental blow for individual freedom and the right of dissent in this country.

But the "Special Branch Affair" also had crucial implications for the responsibility of the executive arm of Government to Parliament and to the people.

Both the White inquiry and the recent Royal Commission, which completely vindicated the Government in its dismissal of Mr. Salisbury, found that the former Police Commissioner had intentionally misled the Government about the nature and extent of Special Branch activities.

No democratically elected Government can tolerate a situation where its officers deliberately provided it with misleading, inaccurate, and untruthful information

about matters which are of serious concern to the State and its people.

My Government has always made quite clear our view that concern for democracy lies at the very heart of our philosophy.

We are a civil libertarian Government and we believe that people should have an effective say in the decisions affecting their lives.

Naturally, we're proud that it was South Australia that paved the way in advancing aboriginal, womens, homosexual and consumer rights, and we have made our constitution the most democratic of any State.

But we know only too well that preservation of that democracy requires constant care and attention.

I believe it's good for orthodoxies to be challenged by dissent constantly because we will never live satisfactory lives as human beings unless we are prepared to question not only other people's but our own assumptions. In fact, I think people are intellectually and emotionally dead once they stop questioning their own assumptions. It's by such a process of questioning that I changed my own views on the mining of uranium.

In South Australia, as a Government, we've tried to encourage diversity of life style, culture and opinions. We are not frightened to let our flowers bloom because we believe our State will be richer and more colourful - as a result.

Thank you for inviting me to speak with you tonight.