



9-19-1968

"The Limits of Dissent." Presentation delivered September 19, 1968

Arthur R. Landever
a.landever@csuohio.edu

Follow this and additional works at: https://engagedscholarship.csuohio.edu/fac_presentations

 Part of the [Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

Original Citation

Arthur R. Landever, "The Limits of Dissent", Presentation delivered September 19, 1968.

This Presentation is brought to you for free and open access by the Faculty Scholarship at EngagedScholarship@CSU. It has been accepted for inclusion in Law Faculty Presentations and Testimony by an authorized administrator of EngagedScholarship@CSU. For more information, please contact research.services@law.csuohio.edu.

Presentation delivered September 19, 1968

“The Limits of Dissent”

Mass demonstrators are confronting police; students are seizing school buildings; individuals are refusing to pay taxes.

What are the limits of dissent? When is dissent morally justifiable? When should a legal system permit it? Is dissent justifiable when it takes the form of disruption? Disobedience to law? Violence?

Like any other person, or scholar, I am biased. I come into this discussion with a particular perspective, developed through family, group, and social environment, as well as ideological influence. So for example, the Rhodesian of Dutch parentage, however highly educated, can justify to himself the apartheid or separation of white and black. A particular educational instruction, even schools of learning transmit biases. In law school, we were taught that ours is a government of law and the rule of law is a cherished bulwark of our liberty. In graduate school of political science, my teachers felt more at home in considering the law as an ass, confused, unfair, stubborn. Ours was not a government of laws but a government of lawyers. Laws were selectively enforced; many like of those [during] Prohibition were and have for a long time been flouted.

Several issues arise in considering the limits of dissent, issues that may be philosophical, factual, or strategic. Philosophically, we ask: What is a free society? What is freedom? What is justice? What should be the criteria for dissent and the particular manner of dissent? What moral code should guide my conscience? We can turn to works in religion, ideological manifestos, works in political philosophy, jurisprudence. And in our very selection of sources to go to (or in the limitation of sources by a society_ our ultimate conclusions will be determined.

Not only are there philosophical issues, but factual ones, as well. What is social reality in America? Are our institutions basically performing well? Are there adequate means of exercising dissent short of disruption? Is the American system fundamentally corrupt and oppressive? Is disruption a vital force in providing law and order, or necessarily undermining the social order?

A group of persons view a policeman clubbing a demonstrator. One sees the reality of excessive brutalizing force. Another sees necessary force to maintain law and order. A third sees it as an example of a pattern of interaction between culturally diverse and antagonistic groups; a fourth sees it as part of an historical pattern of violence accompanying social change; a fifth sees it as undermining the voluntary supports of the legal system. And how one views the reality markedly affects what he will answer in terms of the limits of dissent. Where should we go to uncover the significant reality—not the superficial, the incidental, but the essential reality? To the popular journals? To the articles in scientific journals? To the streets? To foreign studies? To statistics? To participant observation? Where and When?

Listen to these conflicting assertions of what fact is. Depending upon one's perspective. a person may accept one view or another:

1. Civil peace is the first responsibility of government.
2. For substantial reform in a system, violence must accompany it.
3. There are adequate ways of expressing dissent meaningfully without resort to civil disobedience or violence.
4. Only by adherence to an obedience to law generally can a society be stable. Only by generally effective enforcement of law can there be effective government, and only by effective government can civil liberties be assured.

5. The American system fundamentally is oppressive and corrupt in failing to provide freedom and justice for millions. Only by tearing down the institutions can this corruption be cleansed.

Not only are there philosophical and factual issues, but there is a basic strategic question as well: What is the point at which dissent will be counterproductive? (That is, invite suppression rather than enlarging liberty) How do we find that out?

What is my biased position upon the limits of dissent?

A free society cherishes dissent as a social force for community progress, as a protection of minority rights to be heard and assured protection of fundamental rights, and as an aspect of human worth and dignity against pressures of conformism.

The goal of such a society is the release of the creative energy and potential of each individual..

Where a society provides a generally effective and just government with adequate means of expressing criticism without disobedience and there are means of governmental change, order is a necessary element, since it is basic to governmentally enforced civil liberties.

The American reality in 1968, as I see it, does provide a generally just system for the great majority.[But] I am not convinced in my own mind that the millions who admittedly are deprived have adequate means of demonstration without disruption. [However, I believe] that avenues of access to the public via the airwaves and the potential threat to withhold their services suggest that the means available are growing in dimensions. [Regrettably] I am convinced of the real danger of repressive response and reaction by leaders [who might well opt] for meeting disruption by counter militance. Thus, increased disruptions by vocal minorities provide no assurance of reaping greater liberty.

In such an emotion-charged atmosphere, one does well to ponder the implications of civil disobedience. It may be that disruptive dissent and civil disobedience may at times be morally justifiable. Perhaps a free society should expect groups with strong moral commitment to engage in disruptive dissent. But it must somehow be brought back within the confines of the system. And the proper response of government may be repeal of certain laws which do not have community support, rather than repressive enforcement, or a changing course of action.

But one who would engage in disruptive dissent must recognize that he is engaging in intolerant interference with others (perhaps a majority) because he believes his course is the true one. But democracy, in the long run, probably must be based upon the proposition that no group possesses the truth which would be intolerant of the lives of others—that functioning in a democracy requires a compromise of diverse strains, perspectives and cultures, under a general understanding as to the basic questions of freedom, justice and opportunity. Each should be allowed to survive and dissent in the public arena under a rule of law which as much as possible should aim toward impartiality.

The disruptive dissenter, the practitioner of civil disobedience in America has a heavy burden to make certain that his methods do not result in a greater evil—enlarge the deprivation of liberty. Both from a moral and strategic viewpoint, actions which have that effect should be rejected.

In the long run, a viable and just political system requires the active support of the great majority. At times that majority may be moved by the visible picture of an evil even through disruption, provided

they do not feel themselves endangered by a change in a government position. But the great majority may well react with militance and an appetite for repression where they perceive a vocal minority seeking to interfere with their lives without any clear moral justification accompanying the disruption.

Thus who, like this speaker, cry out against the injustice within our system would do well to try to win over, [to enlist the support] of the great mass hostile to the substantial changes that must be made to achieve our goal. [That goal is] releasing the creative energy and potential of each individual— [whether] black, poor white, Mexican-American, Indian. That is no simply task, but it appears the task history has given to us as we enter the 1970s, requiring understanding [of those] institutions essential [to fulfill our goals].