

Sedition and the Question of Freedom of Speech

Sarah Sorial*

Since September 11 2001, the Australian Federal Government has passed a number of pieces of legislation designed to fight terrorism.¹ Included in the legislative package is an expansion of laws that target sedition. The law of sedition prohibits speech or writing that is intended to lead to violent conduct, or to 'incite' violence against and 'hatred' of elected governments. Given that sedition presents limitations and prohibitions against freedom of speech — widely recognised as one of the most fundamental freedoms of liberal democratic societies — the law of sedition presents a series of problems in the context of western liberal democracies.

There are two general arguments used to justify sedition laws and the constraints they impose on freedom of speech. On one argument, words that advocate violence and civil disobedience are dangerous in themselves, irrespective of whether any actual violence occurs. This argument is based on the idea that all speech is a type of action, and that the expression of an opinion is the same as an intention to affect that opinion. It is an idea, indeed, that has been advanced by the High Court.² The second justification, and perhaps the more convincing one, is that seditious words are likely to incite or provoke acts of violence or civil disobedience and are thus necessary to protect the public interest. Using JL Austin's theory of 'speech acts' I suggest that neither of these interpretations of sedition laws justifies them. If the concern is that the words themselves are acts of civil disobedience (on the basis that all speech is an action of some kind), then two criteria must be met, according to speech act theory. First, there has to be an appropriate context, insofar as the words uttered in that particular context will lead to certain violent acts, and secondly, an actual *act* has to take place. Given that sedition laws cannot meet either of these objectives, as will be demonstrated, they cannot be defended on the argument that there is no clear separation between speech and action.

The second and related argument is that the words are inherently dangerous because they can incite civil disobedience. While this argument is more convincing, it is also insufficient, on its own, to justify sedition offences. To ensure that these laws are not subject to abuse, specific criteria must be met, or as the US Supreme Court has held, the speech must satisfy

* Sarah Sorial BA (Hons) LLB (Macquarie University) PhD (UNSW), Lecturer, Faculty of Arts, School of English Literatures, Philosophy & Languages, The University of Wollongong, sarah_sorial@uow.edu.au. I would like to thank the issue editor and reviewers at *CICJ* for their comments on earlier versions of this paper.

1 For an excellent analysis of other aspects of this legislative package, see Michael Head 2002 and Jude McCulloch & Joo-Cheong Tham 2005.

2 This argument was used by Latham CJ in the case of *R v Sharkey* (1949) 79 CLR 121. The current provisions also appear to advocate a similar justification for sedition, as will be demonstrated.

the test of 'direct incitement'.³ That is, the speech inciting violence must be accompanied by other criminal offences against property or persons.

The first part of this paper examines the history of sedition in Australian criminal law and gives an overview of the current legislative changes in order to highlight the way in which the laws have been expanded. The second section examines the significance of freedom of speech and why this principle, above all others, should be protected using the arguments made by John Stuart Mill in defence of freedom of speech. It also considers on what grounds, if any, a law of sedition can be defended within the context of western liberal democracies. It does this by examining the relationship between speech and conduct using Austin's speech act theory. The third section examines the way in which sedition has been used in Australian legal history to suppress unpopular political opinion, that is, nevertheless, innocuous. In light of the political nature of modern democracies, where it is an accepted right of citizens to criticise and challenge governmental policies, this paper concludes that sedition laws in their current form have serious and problematic implications.

The Law of Sedition

The law of sedition prohibits words or conduct that are intended to incite discontent or rebellion against the authority of the state. Historically, sedition described a number of common law or statutory offences such as uttering seditious words, publishing or printing seditious words, or undertaking a seditious enterprise (Kyer 1979:266-267). But the legal elements of sedition were not clearly defined. The vagueness with which sedition laws have been framed and the ambiguity of the *mens rea* (seditious intention), makes it difficult to discern with any certainty what a seditious offence is. As Kellock J stated in *Boucher v The Queen*, 'probably no crime has been left in such vagueness of definition' (at 382). Historically, sedition has been used to punish a range of behaviour, including satirical comment and criticism of authority. As Barendt points out, 'what used to be regarded as a clear case of seditious libel in both England and the United States is now generally considered to be merely the vehement expression of political opinion, and therefore the classic instance of constitutionally protected speech' (Barendt 2005:163). The vagueness and ambiguity of such offences, coupled with the way in which they have traditionally been used, suggests that sedition laws may have been intentionally left vague so that more unpopular political dissenters could be brought in under its umbrella.

Australia has had a codified law of sedition since 1920 in ss24A-24F of the *Crimes Act 1914* (Cth). These sections made it an offence punishable by up to three years imprisonment to write, print, utter or publish seditious words. Section 24A of the Act defined a 'seditious intention' as words that bring the Sovereign into hatred or contempt, or that incite disaffection against the Government and the Constitution. Section 24C and 24D made it an offence to engage in a seditious enterprise with a seditious intention or to write, print, utter or publish seditious words with a seditious intention. These laws did not require proof of a

3 In the case of *Brandenburg v Ohio*, the US court held that such speech must satisfy the 'direct incitement and dangerous requirements'. This test means that speech, on its own, is insufficient to evoke a seditious offence: the speech must be accompanied by additional conduct, such as the commission of other specific public order offences, in addition to general criminal law offences against person and property. The conclusion that can be drawn from this is that sedition, as a category of offence, is irrelevant. If it is the case that speech must lead to some action (an action that falls under the category of general criminal offences, incitement, and other public order offences) and if there are criminal laws in place to prohibit such offences, then sedition laws are unnecessary.

sedition and did not require incitement to violence or public disturbance. The *Crimes Act* was further amended in 1926 to include s17 which prohibited 'unlawful associations' that advocated the doing of any act purporting to have as an object the carrying out of a seditious intention. Federal sedition laws coincided with the foundation of the Communist Party of Australia (CPA) and it seems likely that the Bolshevik Revolution and its impact on radical socialist activity in Australia prompted the provisions (Maher 1994; Ricketson 1976).

Amendments to the *Crimes Act* 1914 (Cth) in 1986 redefined the *mens rea* of the offences, placing the onus on the prosecution to prove that the seditious conduct of the accused was carried out 'with the intention of causing violence or creating public disorder or a public disturbance'. While it is not clear what constituted 'public disorder' or 'public disturbance', it is clear that the prosecution would need to prove in a prosecution that the person actually engaged in the conduct in question and that there was an intention to do so. Carelessness or recklessness would not be sufficient, nor would it be sufficient to encourage others to engage in seditious activities (Gray 2005:2). Moreover, it was clear that there had to be a clear connection between the words that were spoken or written and the violent conduct or action that was to ensue as a consequence.⁴

Section 24F provided that it is not unlawful for a person acting in good faith, to show the government that it is mistaken in its policies, or to bring about a change in government by lawful means or to protest in relation to an industrial dispute.

The current sedition laws in Schedule 7 of the *Anti-Terrorism Act (No 2) 2005* (Cth) repeal the aforementioned sections of the *Crimes Act* 1914. In their place, the Act includes new provisions in Division 80 of the *Criminal Code Act* 1995. Division 80, prior to the *Anti-Terrorism Act* 2005, only dealt with the subject matter of treason. Schedule 7 amends Division 80 to include both treason and sedition. It defines seditious intention as the intention to affect any of the following purposes:

- (a) To bring the Sovereign into hatred or contempt;
- (b) To urge disaffection against the following:
 - (i) The Constitution;
 - (ii) The Government of the Commonwealth;
 - (iii) Either House of the Parliament;
- (c) To urge another person to attempt to procure a change, otherwise than by lawful means, to any matter established by the law of the Commonwealth;
- (d) To promote feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth.

Section 80.2 covers a variety of offences, including attempting to do any of the above acts, or to assisting a country or organisation at war with Australia. The common element to these very different offences is that seditious conduct is not necessarily the publishing of seditious words *oneself*, but the urging of *another* person to engage in various unlawful activities.

Section 80.2(1) and (3) deal with behaviour closely aligned to treason insofar as they prohibit urging others to overthrow the government. Subsection (1) states the following:

4 As the court indicated in *R v Chief Metropolitan Stipendiary Magistrate*: 'Proof of an intention to promote feelings of ill will and hostility between different classes of subjects does not alone establish a seditious intention. Not only must there be proof of an incitement to violence in this connection, but it must be violence or resistance or defiance for the purpose of disturbing a constituted authority' (at 453).

- (1) A person commits an offence if the person urges another person to overthrow by force or violence:
 - (a) the Constitution; or
 - (b) the Government of the Commonwealth, a State or a Territory; or
 - (c) the lawful authority of the Government of the Commonwealth.

Section 80.2(3) is directed more at protecting political freedoms in general by making it an offence to urge others to interfere in parliamentary elections:

- (3) A person commits an offence if the person urges another person to interfere by force or violence with lawful processes for an election of a member or members of a House of the Parliament.

A fundamental change in these two provisions is that a person does not have to engage in these acts him or her self, but merely has to 'urge' another person to engage in the proscribed acts. A problem here is that such 'urging' is not defined by the *Anti-Terrorism Act* 2005 or the *Criminal Code* 1995 and it has yet to become the subject of judicial consideration or interpretation. In his consideration of what might constitute 'urging' another person, Peter Gray SC pointed out that both the *Macquarie Dictionary* and *Shorter Oxford* define the meaning of 'urge' as '[the endeavour to induce or persuade] as by entreaties or earnest recommendations'. The dictionaries also include a number of subsidiary meanings, for example, 'to press by persuasion or recommendation, as for acceptance, performance, or use; recommend or advocate earnestly'. To 'urge' someone to engage in the acts in question is not therefore limited to making a positive or express recommendation to that person, but could include indirect 'urging' and persuasion by way of analogy, metaphor, and humour, or any of the other techniques used by artists, journalists, and writers to persuade or move people to act in certain ways (Gray 2005:3). Moreover, these two provisions suggest that it is sufficient to show that the accused 'urged' another person to do the acts in question, irrespective of whether that person responded or acted in accordance with the 'urging'. The failure to define words like 'urge' or 'urging', coupled with the fact that there is no direct correlation between urging another person to commit the acts in question and the person actually committing them shows that the words themselves are inherently dangerous, irrespective of the effects they may have, or even the likelihood of them leading to violence or civil disobedience. This justification for sedition, as will be demonstrated, relies on a misunderstanding of the relation between speech and action, and for this reason, is untenable.

Section 80.2(5) deals with urging inter-group violence and is a new offence although it bears close resemblance to the former offence in the *Crimes Act* 1914 (Cth) which proscribed 'seditious intent' as including the promotion of 'feelings of ill-will and hostility between different classes of His Majesty's subjects so as to endanger the peace, order or good government of the Commonwealth'. The new provision in s80.2(5) is more specific: concepts such as 'feelings of ill-will and hostility' are replaced with urging 'violence or force' and 'classes' is defined in terms of specific groups.

Section 80.2(5) states that:

- (5) A person commits an offence if:
 - (a) the person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished); and
 - (b) the use of force or violence would threaten the peace, order and good government of the Commonwealth.

In its examination of this provision, the Australian Law Reform Commission found that this new offence overlaps with existing state and federal anti-vilification laws (ALRC 2006:9.4). These laws render unlawful public acts, which would incite others to hate, hold in contempt or seriously ridicule a person or a group of people. While this new provision could be seen as an attempt to fulfil Australia's obligations under international law to criminalise incitement or national, racial and religious hatred, the fact that it is enacted from within the anti-terror framework rather than anti-vilification is problematic. As Bronitt points out in his consideration of s80.2(5), 'an offence which attempts to combine security/anti-terrorism and anti-discrimination rationales is not only incoherent, it is also likely to be ineffective' (Bronitt 2006:7). This is the case because the mere existence of offences like sedition will intensify surveillance and policing of particular communities and this is likely to increase resentment amongst the target class.

Sections 80.2(7) and (8) prohibit a person from urging another person to engage in conduct that would assist a country or organisation at war with Australia:

- (7) A person commits an offence if:
- (a) the person urges another person to engage in conduct; and
 - (b) the first mentioned person intends the conduct to assist, by any means whatever, an organisation or country; and
 - (c) the organisation or country is:
 - (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and
 - (ii) specified by Proclamation made for the purpose of paragraph 80.1(1) to be an enemy at war with the Commonwealth.
- (8) A person commits an offence if:
- (a) the person urges another person to engage in conduct; and
 - (b) the first-mentioned person intends the conduct to assist, by any means whatever, an organisation or country; and
 - (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

The ambiguity of terms such as 'urging', 'assisting' and 'persuading' and the fact that there is no direct correlation between the intent to 'assist' and the intent to do violence suggests that a person can be convicted of sedition for expressing an opinion that, for example, criticises the government's 'war on terror', or that expresses an opinion that supports the insurgency in Iraq or sympathises with the aims of so-called 'terrorist' organisations. The scope for prosecution is thus broadened.

Both ss80.2(7) and (8) require proof of an intention to act in a way that is prejudicial by 'assisting' a country at war with Australia, but they are left deliberately vague. For example, this 'assistance' is 'by any means whatsoever'. This means that a subjective intention on the part of the accused can be proven even if it was peaceful and non-violent. As Gray points out, 'encouragement; expressions of regret or remorse; publication of accurate factual material sympathetic to such an organization or country; expressions of opinion about factors which might lie behind the policies or actions of such an organization or country; all of these activities, among countless others, would be very likely to amount to such "assistance," and thus to expose someone who "urged" another person to engage in such conduct to a 7 year goal sentence' (Gray 2005:4).

Section 80.3 includes a defence for acts of speech done in good faith, which leaves s24F of the *Crimes Act 1914* largely intact. This applies where the person:

- (a) Tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions:
 - i. The Sovereign;
 - ii. The Governor-General;
 - iii. The Governor of a state;
 - iv. The Administrator of a territory;
 - v. An advisor of any of the above;
 - vi. A person responsible for the government of another country.

In considering a defence under this section, the court may have regard to any relevant matter, including whether the acts were done:

- (a) For a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or
- (b) With the intention of assisting an enemy;
- (c) With the intention of assisting another country, or an organization that is engaged in armed hostilities against the Australian Defence Force; or
- (d) With the intention of assisting a proclaimed enemy of a proclaimed country;
- (e) With the intention of assisting persons specified in paragraphs 24AA(2)(a) and (b) of the *Crimes Act 1914* or; with the intention of causing violence or creating public disorder or a public disturbance.

However, the good faith exception appears to involve a reversal of the onus of proof. As Barker QC argues, the practical effect of the new legislation is that a person accused of doing any of the aforementioned things in s80.2 bears the onus of showing he or she did *not* act with a seditious intent (Barker QC 2005:1).

Schedule 7 thus expands the law of sedition and changes it in a number of important ways. First, the provisions are an attempt to ‘modernise’ the federal sedition laws and adapt them to the counter-terrorism context (Prime Minister 2005). While sedition laws have not been used in the last 50 years in Australia, and were long deemed archaic and obsolete, the Australian Government stated that in the counter-terrorism context, ‘sedition was just as relevant as it ever was’, in particular, to ‘address problems with those who communicate inciting messages directed against other groups within our community, including against Australia’s forces overseas and in support of Australia’s enemies’ (Prime Minister 2005). Secondly, the penalties for sedition are harsher. While the initial legislation makes sedition an offence punishable for up to three years, the current legislation makes sedition punishable for up to seven years.

Thirdly, and perhaps more problematically, are the changes to the *mens rea* for the offence of sedition. With the exception of s80.2(7) and (8), the prosecution is no longer required to prove any subjective intention on the part of the accused to cause violence, or to create public disorder or public disturbance. The offence will be committed by engaging in conduct, of whatever kind, which constitutes ‘urging’ another person to engage in the aforementioned acts and they can be committed by mere recklessness. This is a significant change from the 1986 amendment to the *Crimes Act 1914* (Cth), which specifically addressed the question of intent. Under this section, there had to be an *intention* to bring the Sovereign into hatred, or to excite disaffection against the government. Moreover, there were various offences committed with *that intention*, such as using seditious words with the

intention of creating public disorder. Barker QC writes: '... to commit an offence, one had to do one of the things proscribed and at the same time have a seditious intent. That will no longer be the case' (Barker QC 2005:1). Under the previous sedition laws, recklessness on its own was not sufficient proof of intent. However, subs80.2(2), (4) and (6) expressly state that recklessness applies to all the aforementioned offences.

The scope of the new laws attracted widespread criticism, particularly by the media, civil liberty groups and the arts communities. Concern was raised about the impact of the sedition provisions on freedom of speech, and whether the provisions were consistent with the Australian Constitution. In response, the government requested the Australian Law Reform Commission (ALRC) to undertake a review of the new provisions. In its examination of the constitutional validity of the sedition offences, the ALRC came to the conclusion that while the offences were not unconstitutional, it is theoretically possible to conceive of a person being prosecuted under subs80.2(7) or (8) for 'political speech' that neither incites violence nor directly threatens the institutions of government in Australia (ALRC 2006).⁵ It is also possible to conceive of a situation where a person is prosecuted for providing political advice to a country at war with Australia.⁶ This suggests that the likelihood of speech causing violence is not really the issue here, but that the speech itself constitutes a criminal act.

In submissions made to the ALRC by various organisations, it was generally held that the offences, on the whole, are likely to interfere with freedom of speech, particularly if they are interpreted broadly. The Australian Muslim Civil Rights Advocacy Network (AMCRAN), for example, submitted that 'the sedition offences lead to a significant chilling effect on the Muslim community in expressing legitimate support for self-determination struggles around the world' (AMCRAN 2006:54). AMCRAN further notes that these offences 'have a particular effect on Muslim community groups who may wish to express solidarity with Muslims who live under oppressive regimes or various kinds of occupying

5 Although it should also be noted that while the ALRC held that such a situation is theoretically permissible, the approach of the High Court in *Coleman v Power* suggests that if there is an attempt to use these provisions to prosecute protected political speech, a court is likely to adopt a narrower construction of the offence provision.

6 For these reasons, John Stanhope, the Former Chief Minister of the ACT for example, has submitted that the sedition provisions, 'if passed locally [in the ACT] would be inconsistent with the *Human Rights Act 2004*'. Section 16 of the *Human Rights Act 2004* states that:

1. Everyone has the right to hold opinions without interference.
2. Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

The Former Chief Minister argued that the provisions would fail the test of proportionality for the following reasons: first, while it is legitimate for governments to attempt to curb terrorism, it is not 'legitimate to suppress mere commentary, even radical commentary, on such issues'. Secondly, there is 'no rational connection between the offences and the legitimate objective of preventing the spread of terrorist activities'. Thirdly, the provisions do not represent the least restrictive means possible of achieving the legitimate aim of preventing terrorism because they are too vague and too broad. The offences should contain a requirement that a person charged with sedition must 'intend that the conduct urged be in fact carried out'. Moreover, 'assist' in subs80.2(7) and (8) is 'too wide and too imprecise'. Finally, the provisions do not provide adequate protection for legitimate expression. See *Submissions SED* 44, 13 April 2006.

forces. This is particularly the case as the law makes no distinction between legitimate liberation and independence movements and terrorism' (AMCRAN 2006:54).⁷

The central concern here is that the law of sedition, in its expanded form, is fundamentally hostile to the principle of freedom of speech. For this reason, sedition presents liberal western democracies with a problem. If it is the case that freedom of speech is one of the fundamental principles of liberal theory, then governments must present convincing justifications for limiting it beyond the assumption, upon which sedition law rests, that there is little difference between the ideas expressing violence and the actual violence. The justification traditionally used is that just saying something, irrespective of the consequences, is sufficient to limit such speech. As Maher points out 'it is the mere *tendency*, however remote, of the advocacy of subversive or revolutionary ideas to disrupt or damage the orderly processes of the state, or to promote insurrection, that has been central to the definition of the common law and statutory offences of sedition in Australia' (Maher 1992:291). So there does not have to be a direct correlation between the speech or writing advocating subversive acts and the acts of violence themselves. This, I suggest, relies on a misunderstanding of the relation between speech and action. Such a misunderstanding means that a person can be convicted under schedule 7 of the *Anti-terrorism Act* 2005 for expressing an opinion that is unpopular, but nevertheless, innocuous.

The Principle of Freedom of Speech

The idea of freedom of speech emerges from the liberal idea that there should be a space where the individual is free from social coercion. One of the central tenets of this line of thought is that the only good reason for interfering with an individual's liberty of action is where that action could harm others.⁸

This sphere that is free from coercion includes the 'liberty of conscience, in the most comprehensive sense' (Mill 1884:63). This is the view that everyone is not only entitled to an opinion on all subjects be they practical, speculative, moral or theological, but that individuals are at liberty to express those opinions, notwithstanding how unpopular, offensive or harmful these opinions may be, excepting those circumstances where they do actual harm to others. A society in which these liberties are not, on the whole, respected, cannot call itself a free society, irrespective of the form of government it has. Freedom of the press and freedom of discussion are thus two of the most important liberties necessary for any open society and therefore any liberal democracy.

These principles of freedom of speech are theoretically constitutive of liberal theory. In an effort to set up a true liberal democratic society and heavily influenced by the recent events in France, the 'Founding Fathers' of the United States entrenched these principles in its First Amendment. They clearly saw this principle as essential for a free society as evidenced by the fact that it is the subject of the First Amendment and not further down the list. The theory underlying this law is that free speech enables us to discover the truth.

7 Similarly, the National Association for the Visual Arts submitted that 'organisers and speakers at the huge protest marches and gatherings of thousands of Australian citizens which took place immediately prior to the commitment by the Australian government to join the "Coalition of the Willing" in sending troops to Iraq, could now be regarded as urging conduct which assists a country at war with Australia and therefore seditious under this law' (NAVA 2006:30).

8 For example, in *On Liberty*, John Stuart Mill writes: 'The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others' (Mill 1884:63).

Censorship hinders our access to truth. For the most part then, courts of law follow Mill in that they treat liberty of expression as a fundamental liberty on account of the central role open discussion plays in public deliberations. Because these liberties of expression are so fundamental, the court protects them by either closely examining legislation that may interfere with it or subject them to a specific standard such as the 'direct incitement' test used in US Supreme Court sedition cases such as *Brandenburg v Ohio* (1969). Such a test means 'the mere abstract teaching ... of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action. A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments' (at 7). Laws in Australia, as will be demonstrated, do precisely that: they fail to draw a distinction between speech advocating violence and violent conduct.

While there is no codified bill of rights in Australia there is certainly a common law guarantee. Freedom of speech and freedom of political communication are implied 'freedoms' in the Constitution, and have been affirmed in a series of High Court judgments.⁹ In *Australian Capital Television Pty Ltd v Commonwealth* (1992), Mason CJ affirmed the importance of freedom of political communication, in particular, the freedom of political discussion. He held that 'only by exercising that freedom can the citizen criticise government decisions and actions, seek to bring about change, call for action where none has been taken, and in this way, influence the elected representatives' (at 106). However, this freedom of speech and political communication is not an absolute right or an unqualified right. Mason CJ also argued that while there is an implied guarantee of freedom of speech and political communication, this is not one that always and necessarily prevails over the competing interests of the public. Laws infringing on this guarantee may be held constitutionally valid on the grounds that they harm the social or public interest in some way.¹⁰

Arguably, sedition laws fall under this exception insofar as the advocacy of subversive and violent overthrow of government potentially threatens the social interest. For this reason, defenders of the law of sedition have claimed that it is necessary and right as a matter of principle to retain sedition offences for the purposes of protecting the state and its citizens. The state, it is argued, should not wait until insurrection and violence break out, but should eliminate the threat as it arises (Maher 1992:290-291). At the heart of this argument is an assumption that there is little difference between the expression of violence and actual violence. There is a difference between words that may incite violence or lead to violence and words that *are themselves* violent acts. For example, a speech given during a riotous protest that incited people to attack police officers and damage property — acts that were then subsequently carried out — would be a case where the speech may have encouraged people to commit violent acts. Here, there is a clear connection between the words and the acts that they advocate by virtue of a specific situational context, or 'enabling' context. It is precisely this enabling context that is overlooked by the sedition law: in their current form and it is this oversight that enables us to conclude that the sedition

9 In *Miller v TCN Channel Nine Pty Ltd* (1986), for example, Murphy J held that: 'The Constitution also contains implied guarantees of freedom of speech and other communications ... such freedoms are fundamental to a democratic society. They are necessary for the proper operation of the system of representative government at the federal level ... the implication is not merely for the protection of individual freedom; it also serves a fundamental societal or public interest' (at 581).

10 For a further discussion on freedom of speech and political communication in the Australian Constitution, see Nicholas Arony (1998) and Michael Chesterman (2000).

laws are little more than an attempt to silence political dissent based on the weak justification that the speech itself is an action in these specific cases of sedition.

The relation between speech and action is one that Austin draws attention to in his work, *How to Do Things with Words* (1955). Austin argues against a long held assumption in philosophy that words or statements only serve the function of describing a state of affairs or a fact about something, or express a command, a wish or a concession. Austin suggests that if we examine the context in which our statements occur, we find a closer relation between the words we use and the actions that we perform. For Austin, we *do* things with words. In the context of a marriage ceremony, for example, the words 'I do' perform the act of marrying. The statement 'I name this ship *Queen Elizabeth*' uttered in front of a group of people while smashing a bottle against the bow performs the act of naming the ship. The point, for Austin, is that these sentences do more than simply describe marriage or the naming of a ship. They are not intended to inform, or make a statement but rather they are intended to do the acts in question — namely, to marry and to name. Austin writes: 'to name the ship *is* to say (in the appropriate circumstances) the words "I name" ... When I say, before the register or alter ... "I do," I am not reporting on a marriage: I am indulging in it' (Austin 1962:6). Austin refers to utterances of this type as 'performative' sentences to indicate that the issuing of the utterance is also the performing of an action.

The sedition laws, as they have been interpreted by the High Court in Australian legal history, and in their 'modernised' form, seem to rely on a version of Austin's account of 'speech acts'. That is, the offence is not so much the likelihood of the speech causing violence, but the speech itself is an act of violence. The problem here is that while some speech does in fact, constitute action, not all speech does. The sedition laws, however, allow words themselves to be deemed seditious.

Sedition and Legal History

The High Court's responses to cases of sedition appear to echo Austin's concept of speech acts. The High Court has maintained that any advocacy of subversive communist ideas and opinions is, in itself, an inherent danger to the stability of the government. This interpretation was made on the basis that there is no difference between the expression of an opinion and the intention to act on that opinion.¹¹ The way in which such reasoning has been used in Australian legal history suggests that such laws do not have the public interest in mind, insofar as they are concerned to protect citizens from violence and civil disobedience, but are more concerned with stifling countervailing political opinions. As Maher points out, 'archival and other evidence amply demonstrates that sedition is invariably used in an oppressive manner. In twentieth century Australia the history of the law of sedition is a history of repeated injustice meted out to left wing radicals' (Maher 1992:295).

11 The US District Court also held such a position before it was overturned in favour of the 'clear and present danger test', which required the performance of specific criminal offences against persons and property in addition to the words spoken. For example, in *Masses Publishing Co v Paten*, Hand J argued that incitement could occur because of something inherent in the particular words used, irrespective of the speaker's intention and without the speaker having to actually perform any further act. He writes: '[W]ords are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state' (at 540). This position was abandoned in *Schenck v US* (1919); *Whitney v California* (1927); *Fiske v Kansas* (1927).

One such radical convicted under sedition laws was Gilbert Burns. Burns, who was a member of the Queensland State Committee of the Communist Party of Australia (CPA), had participated in a public debate in 1948 on the topic 'That Communism is not Compatible with Personal Freedom' before an audience of 200 people.¹² At the conclusion of the debate the chairman invited questions from members of the audience. One of the questions he was asked was: 'If the Communists gained control in Australia, what would be the position of the monarchy?' (at 5) Burns replied: 'The monarchy is all right. We have nothing against it. But if the communists gained control in Australia and it was found that the monarchy was in the way, the monarchy would have to go' (at 5). Burns was then asked: 'We all know that we could become embroiled in a third war in the immediate future between the Western Powers and Soviet Russia. In the event of such a war what would be the attitude and actions of the Communist Party of Australia?' (at 5) Burns initially answered this question cautiously, stating: 'If Australia was involved in such a war, it would be between Soviet Russia and American and British Imperialism. It would be a counter-revolutionary war. We would oppose that war. It would be a reactionary war.' Unsatisfied with Burns' response, the questioner demanded a direct answer to the question. Burns replied: 'We would oppose that war: we would fight on the side of Soviet Russia. That is a direct answer' (at 5). Burns was convicted in 1948 for uttering seditious words at the debate and was sentenced to six months imprisonment.

The prosecution of Burns involved a serious injustice for a number of reasons. First, the debate in which he had participated was promoted by the Queensland Peoples' Party (QPP), which was to become the Queensland branch of the Liberal Party. Archival evidence suggests that the QPP, together with other anti-communist factions, organised the debate in order to trap the CPA and prompt criminal charges against it.¹³ The QPP openly acknowledged that it had set up the debate in order to show that the CPA was a treasonable conspiracy on account of its loyalty to the USSR.

Second, given the highly charged political climate in 1948 and the growing apprehension about the 'communist menace' -- not unlike the current political climate, with apprehension over the 'threat of terrorism' -- the CPA was subjected to close surveillance by the Commonwealth Investigation Service (CIS).¹⁴ During this time, the CIS was subjected to criticism over its inability to deal with the growing 'menace'. The debate was attended by several CIS members, who, in an attempt to demonstrate that they were making efforts to deal with the CPA, gave an assessment that Burns constituted a genuine threat to Australian interests and thus should be prosecuted. This was affirmed by the Acting Attorney-General at the time, despite his obtaining legal advice to the effect that Burns had not committed an offence under s24D of the *Crimes Act* 1914. The reason for this, as Maher points out, was to secure a political advantage for the Commonwealth Government. '[B]y making an example of Burns the Chifley Government was able to send a clear message to

12 While the CPA had not had much success at the polls, it did have considerable power within the trade union movement during this early Cold War period. Consequently there was a push to outlaw the CPA on the basis that it was a subversive instrument of the USSR. Between 1920 and 1950, the Commonwealth passed a number of Acts and made several regulations in order to deal with the alleged threat posed by the CPA such as the *War Precautions Repeal Act* 1920 (Cth) s12, *Crimes (Amendment) Act* 1926 (Cth); *Crimes (Amendment) Act* 1932 (Cth); *National Security (Subversive Associations) Regulations* 1940 (Cth); *Communist Party Dissolution Act* 1950 (Cth). For a comprehensive examination of this history, see Roger Douglas (2002).

13 *Daily Telegraph*, 18 September 1948; Interview, JD Killen, 16 September 1988 cited in Maher 1992:296.

14 See Frank Cain (2004).

the Opposition, to the public, and to the CPA that communist “extremism” would not be tolerated’ (Maher 1992:300).

The conviction of Burns was followed by the case of Laurence Louis Sharkey, who was the General Secretary of the CPA, for making similar comments to those made by Burns. In 1949, Sharkey was contacted by a journalist from the Daily Telegraph, and asked to comment on a statement attributed to a French Communist Party leader, in which he had claimed that the French working class would side with Soviet forces in the event of aggression. Sharkey replied:

Australian workers would welcome Soviet forces pursuing aggressors as the workers welcomed them throughout Europe when the Red troops liberated the people from the power of the Nazis. I support the statements made by the French Communist leader ... Invasion of Australia by forces of the Soviet Union seems very remote and hypothetical to me (at 16).

These remarks appeared on the front-page headlines the following day and again, the government was concerned of criticism that it was ‘soft’ on communism. Sharkey’s case was somewhat different to that of Burns insofar as his language was less direct and less aggressive. For example, he used the term ‘welcome’ rather than ‘fight’, and his comments were not made in the context of a public debate where the atmosphere could have been more charged such that the language used could have incited or urged members of the CPA present at the meeting to violence or civil disobedience. However, from a political perspective, Sharkey was a leader in the CPA and was, therefore, a more important target than Burns.¹⁵

In his defence, Sharkey argued that his only intention was to state his views, or those of his party, and that the mere expression of an opinion could not demonstrate any intention to effect any violent purpose, other than the expression of such an opinion (at 20). The court rejected this reasoning. In his judgment, Latham CJ conflated the expression of an opinion with an intention to effect that opinion. He wrote: ‘[W]henver a person utters words with an intention to effect a particular purpose he expresses an opinion of some kind with respect to the purpose which he intends to effect. The two categories are not mutually exclusive’ (at 21). The issue here is not so much that the words are likely to incite acts of violence, but that the expression of such words constitutes an act in and of itself. Given the position of the speaker as the general secretary of the Communist Party, the statement was found to be directed towards the recommendation and approval of an action in the event of war with the Soviet Union. It was not, the High Court held, the statement of an ‘... abstract theoretical opinion. It was a statement made by the accused “officially” recommending what he described as the policy of the Communist Party. Thus it was a statement which was intended to effect a purpose and was not a set of abstract intellectual propositions which had no relation to action by any person or persons’ (at 23).

In my view, it would seem that the words here did not constitute an action by the simple fact that there was no action; nor was there any evidence to suggest that the words could have incited such action. The likelihood of Australia being invaded by the USSR was remote and the fear of such an eventuality was unfounded.

Sharkey was convicted on charges of sedition and sentenced to three years hard labour, later reduced to eighteen months on appeal. Dixon J’s dissenting judgment was the only one to argue that the words were not expressive of an intention to effect disaffection against the

¹⁵ A further consideration of the abuse of sedition law is legal history is outside the scope of this paper. For an excellent discussion of other cases and archival evidence, see Maher 1992:306–309.

Sovereign, either House of Parliament or the Constitution. However, these, he claimed, were questions of fact that the jury had to decide, and determining questions of fact was not the function of the High Court (at 12–13).

What is notable about these sedition cases is that there was no actual evidence of an actual seditious intention as described in s24A of the *Crimes Act* 1914. The words uttered in Burns' case were in the context of a public discussion. There was no evidence to suggest that the audience were riotous, violent, or that there was any propensity to civil disobedience. Rather, the words were spoken in the context of a debate and were intended to provoke public debate, not acts of violence. Similarly, Sharkey's written statement was requested by a journalist and was extensively discussed with him during eleven telephone conversations. Once again, there was no evidence that the words were intended to incite disaffection or violence, or that there was a likelihood that they would. However, as Maher argues: '[I]n each case the law of sedition was used to punish individual left-wing non-conformists for precipitating those debates. In each case the real target was the CPA and it suited the political convenience of the Chifley and Menzies Governments to exploit the opportunities that these cases presented in their respective campaigns against the CPA' (Maher 1992:309).

The law of sedition as it was used in these cases and in its current form relies heavily on the idea that there is no difference between violent utterances and violent acts. However, for this concept of 'speech acts' to apply, there has to be an enabling context such that there is a real possibility that the words spoken will lead to violent conduct.

Moreover, for there to be a correlation between speech and action in the way that the court have suggested in the aforementioned cases, and the way in which the legislation implies, there must not only be an enabling context, but the words have to perform a certain act; they have to *be* the act. On this reasoning, it is difficult to see how the alleged seditious words constituted acts of violence. Thus there is little justification for prosecuting people on the basis that there is no difference between the expression of an opinion and the intention to perform that opinion. That is, seditious words in the aforementioned cases and in the current legislation are *not* acts, and as such, should not attract prosecution.

The alternative response to these laws is that the words do not *constitute* the acts themselves, but they can *lead* to violent acts. It would seem that there are stronger justifications for this position, as traditionally, the only justification for curtailing freedom of speech has been in the event that it causes harm to others. As John Stuart Mill argues: '[O]pinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act' (Mill 1974:119). For example, an opinion that corn dealers starve the poor or that private property is robbery ought to be allowed if these opinions are circulated within the press, but may incur punishment if delivered orally to an excited mob assembled outside the home of a corn dealer. As Mill explains:

[A]cts, of whatever kind, which without justifiable cause do harm to others may be, and in the most important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited: he must not make himself a nuisance to other people (Mill 1974: 119).

While there is immunity to opinions and their expression, this can, under certain conditions, be lost. These conditions are, however, limited to certain situations and contexts where, to use the words of the US Supreme Court, there is a 'direct incitement', which means that the words have to be accompanied by actual violence, or will most certainly lead to violence

given the context in which they were uttered. Incitement, as a category of its own, is a highly ambiguous and legally dubious concept, as expressed in the dissenting judgment in *Gitlow v New York* (1925).¹⁶ Over the next fifty years, the US Supreme Court took a narrow approach to the law of sedition, by maintaining that revolutionary, subversive or violent speech will only be considered criminal if such speech is accompanied by other conduct. That is, there has to be what I have been referring to as a situational or ‘enabling context’ for such limitations to freedom of speech.

It could be argued in response to this argument that such an enabling context did in fact exist in the aforementioned cases, given the threat of communism, and does exist now, in light of the alleged threat of ‘terrorism’. Latham CJ drew attention to this in *Sharkey* when he argued that intention is not necessarily judged by the words the speaker used, but by the context in which they were made. For example, he claims that the ‘earnest’ advice of a disinterested bystander to an excited crowd about to attack another person ‘Don’t duck him in the horse trough’ can be interpreted in some circumstances as an incitement to the action, which the speaker professes to discourage (at 26). Similarly, the court held that the words spoken by Sharkey ‘were uttered in March 1949 at a time of acute tension between Soviet Russia and powers with which Australia is most closely associated. The jury could, if it thought proper, reject as dishonest and insincere the references to the Soviet forces pursuing aggressors into Australia ...’ (at 26). There was, however, no specific or tangible threat of a communist revolution in Australia, despite the success of the Bolshevik Revolution. The fear of communism was based on an unfounded assumption that the mere advocacy of communist ideas was inherently dangerous and sufficient to overthrow the existing government. I therefore argue that sedition laws are more concerned with prosecuting unpopular political opinion rather than criminal conduct. As Roger Douglas points out, sedition is the paramount ‘political crime’, which has been used through history ‘to punish people for what they think (or what they are thought to think) rather than on the basis of the degree to which their activities actually pose a threat to social order (however defined)’ (Douglas 2004:248).

The Federal Government has also used the ‘enabling context’ of terrorism to justify some of the more draconian aspects of the anti-terror legislative package, such as sedition. The Attorney General Phillip Ruddock has claimed that the ‘heightened security threat following 11 September 2001 has challenged our fundamental human rights in more ways than one ... the Government has sometimes compromised on these points [civil liberties] to achieve the overriding goal of enacting new laws to combat terrorism’ (Ruddock 2004:255). However, it is not entirely clear how the anti-terror laws in general, and the sedition offences in particular, are supposed to protect the country from a terrorist attack. The Law Council of Australia and the civil liberties councils of New South Wales and Victoria have questioned the relevance and the need for the legislative changes, given that, at the time that the Bills were introduced, the government repeatedly admitted that it had no evidence of

16 In this case, *Gitlow* was charged with infringing a criminal advocacy statute by advocating the forcible overthrow of government. Holmes J and Brandeis J argued in their joint dissent the following: ‘Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting the present conflagration. If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and their way’ (at 673).

specific terrorist threats.¹⁷ This, however, changed in November 2005, when the Federal government claimed it had specific intelligence of an imminent terrorist attack. However, as Andrew Lynch, a terrorism and law specialist at UNSW stated:

If the advice that the PM has received is about a specific planned terrorist attack, then these laws will not actually add anything to the existing suite of laws that are already on the books and are able to deal with that situation. It's already an offence under Australian law to plan or prepare for or train for, or possess a thing which may be used in a particular or specific terrorist attack. So if there is information about an attack with sufficient detail, then really, charges should be laid under the laws as they presently stand. There's no need for this new bill.¹⁸

Even if we were to take the government's claims that there is a serious threat to Australian security such that the condition of an 'enabling context' is met in the more general sense, the more specific context (that being the real threat of violence as a consequence of the words spoken or written) has not been met by the current legislation. In order to justify the offence of sedition, and to ensure that people are not prosecuted under these laws for expressing a 'radical' political opinion, or for expressing support for the insurgency in Iraq, or criticising the government, a specific enabling context (such that the words spoken or written would directly incite violence) is necessary to justify limiting freedom of expression. A general climate of fear and hysteria over 'terrorism' is not sufficient to meet the criteria.

This paper has argued that the ambiguity with which the sedition laws are framed in schedule 7 of the *Anti-Terrorism Act 2005* suggests that the legislation is an attempt to suppress unpopular political opinion rather than protect the public interest. Protection of the public interest has been the general argument put forward by the government to justify the legislative reform. However, it remains unclear how these new measures in general, and the modernisation of the sedition laws in particular, are meant to achieve such an objective. I have explored two possible ways in which sedition laws could be used to protect the public interest.

On one account, speech inciting violence, civil disobedience, or the forcible overthrow of government is dangerous in and of itself. The implication of this reasoning is that the speech *is* the act of violence. However, as has been demonstrated, while some speech does constitute specific acts, two conditions need to be met for this to be the case. First, there has to be an appropriate situation or context, and secondly, an act has to take place. The words 'I do' uttered flippantly in the context of a casual conversation with one's partner do not constitute the act of marriage. In the appropriate context, these words take on a performative function insofar as they do something; namely, marry another person. Using this argument, I have suggested that seditious speech does not have a performative element insofar as it is *not* an act.

Alternatively, the more convincing justification used is that such words will incite, or provoke acts of violence or civil disobedience, and that an enabling context — namely, terrorism — does exist, thereby increasing the likelihood of words leading to action that would threaten the security of the elected government. But this argument is also insufficient to justify sedition laws. Given the importance placed on the principle of freedom of speech to open societies, and hence, to liberal democracies, there needs to be more than just a

17 Submissions to Senate Legal and Constitutional Legislation Committee, Parliament of Australia, Canberra, Inquiry into the Security Legislation Amendment (Terrorism) Bill 2002 and Related Bills (2002) vol 1, 157-165 (Cameron Murphy, NSW Council for Civil Liberties Inc) in Michael Head (2002:668).

18 The 7.30 Report Broadcast: 03/11/2005 ABC.

general context such as terrorism. There has to be a specific context such that the words used do actually lead to some act of civil disobedience. As the US Supreme Court held in the case of *Brandenburg v Ohio*, the words have to be accompanied by specific criminal acts against person and property for them to count as seditious. The test of 'direct incitement' favoured by the court is a tough test to meet, but it was the only one deemed sufficient to protect the First Amendment right to freedom of speech.

In the absence of specific legal criteria or judicial consideration of sedition laws, it is not entirely clear what the impact of these new laws will be. It could be the case that the laws would be interpreted narrowly, such that a person would not be convicted for the mere expression of an opinion or for the provision of political advice to an organisation or country at war with Australia. However, the fact that the new provisions broaden the scope for prosecution, reverse the onus of proof in the good faith exception, and fail to define central terms such as 'assisting', 'urging' and 'persuading', suggests that the impact of these laws is quite insidious. They do, for example, leave us uncertain about the nature and rights of citizenship, about the extent to which we can criticise and challenge governmental policies (especially when they pertain to questions of terrorism) and about how our rights as citizens need to be negotiated. If such rights are so fundamental to the nature of our institutions and to liberal culture that we are willing to fight wars on their behalf, then surely they should not be sacrificed too readily in the face of fear or in the name of the fight against terrorism.

Cases

Abrams v United States 250 US 616 (1919).

Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106.

Boucher v The Queen [1951] 2 DLR 369, 382.

Brandenburg v Ohio SC 395 US 444 (1969).

Burns v Ransley [1949] HCA 45; (1949) 79 CLR 101.

Fiske v Kansas 274 US 380 (1927).

Gitlow v New York 268 US 652 (1925).

Masses Publishing Co v Patten 244 F 535 (SDNY 1917).

Miller v TCN Channel Nine Pty Ltd (1986) 161 CLR 556.

R v Chief Metropolitan Magistrate; ex parte Choudhury [1991] 1 QB 429.

R v Sharkey (1949) 79 CLR 121.

Schenck v US, 249 US 47 (1919).

Whitney v California 274 US 315 (1927).

References

- Arony, N (1998) *Freedom of Speech in the Constitution*, Policy Monograph 4: The Centre for Independent Studies.
- Austin, JL (1955) *How To Do Things With Words*, Clarendon Press, Oxford.
- Australian Broadcasting Corporation, The 7.30 Report, 'Government Introduces Anti-Terror Legislation' Broadcast 03/11/2005.
- Australian Law Reform Commission (2006) 'Fighting Words: A Review of Sedition Laws in Australia', Australian Law Reform Commission, Sydney.
- Australian Muslim Civil Rights Advocacy Network (2006) *Submissions*, Submission No 54, 17 April 2006.
- Barendt, E (2005) *Freedom of Speech*. Oxford University Press, Oxford.
- Barker QC, I (2005) 'Sedition', Seminar by the Australian Centre for Independent Journalism, University of Technology, Sydney, 11 November 2005.
- Brink, DO (2001) 'Millian Principles, Freedom of Expression, and Hate Speech', *Legal Theory*, vol 7, no 2, pp 119-157.
- Bronitt, S (2006) 'New Sedition Laws: Defending or Subverting Freedom?' Unpublished paper presented to the *Public Forum Program of Civil Liberties Australia (ACT) Inc and Independent Scholars Association of Australia*, National Library of Australia, Canberra.
- Cain, F (2004) 'Australian Intelligence Organisations and the Law: A Brief History', *University of New South Wales Law Review*, vol 27, no 2, pp 296-316.
- Chesterman, M (2000) *Freedom of Speech in Australian Law: A Delicate Plant*. Ashgate, England.
- Douglas, R (2002) 'Saving Australia from Sedition: Customs, the Attorney-General's Department and the Administration of Peacetime Political Censorship', *Federal Law Review*, vol 30, pp 135-175.
- Douglas, R (2004) 'The Ambiguity of Sedition: The Trials of William Fardon Burns', *Australian Journal of Legal History*, vol 9, pp 227-248.
- Gray SC, P (2005) 'Re: The Anti-Terrorism Bill 2005. Sedition and Creative and Artistic Expression', Blackstone Chambers.
- Head, M (2002) 'Counter-Terrorism' Laws: A Threat to Political Freedom, Civil Liberties and Constitutional Rights', *Melbourne University Law Review*, vol 26, no 3, pp 666-689.
- Howard, John, Prime Minister, 'Counter-terrorism Laws Strengthened' (Press Release, 8 September 2005) in Australian Law Reform Commission. 'Origins and History of Sedition Law', para 2.49.
- Jacobson, D (2001) 'Speech and Action: Replies to Hornsby and Langton', *Legal Theory*, vol 7, pp 179-201.

- Jacobson, D (2002) 'Mill on Liberty, Speech and the Free Society', *Philosophy and Public Affairs*, vol 29, no 3, pp 276–309.
- Kyer, C (1979) 'Sedition through the ages: A note on Legal Terminology', *University of Toronto Faculty of Law Review*, vol 37, pp 266–270.
- Ladenson, RF (1997) 'Is the right of free speech special?', *Social Theory and Practice*, vol 23, no 2, pp 251–276.
- Maher, L (1994) 'Dissent, Disloyalty and Disaffection: Australia's Last Cold War Sedition case', *Adelaide Law Review*, vol 1, no 12, pp 1–79.
- Maher, L (1992) 'The Use and Abuse of Sedition', *Sydney Law Review*, vol 14, pp 287–317.
- McCulloch, J & Tham, J-C (2005) 'Secret State, Transparent Subject: The Australian Security Intelligence Organisation in the Age of Terror', *The Australian and New Zealand Journal of Criminology*, vol 38, no 3, pp 400–416.
- Mill, JS (1884) *On Liberty*, Longmans, Green & Co, London (reprinted 1974).
- National Association for the Visual Arts (2006) Submissions to ALRC Submission no 30, 11 April 2006.
- Ricketson, S (1976) 'Liberal Law in a Repressive Age: Communism and the Law 1920-1950', *Monash University Law Review*, vol 101, no 2, pp 101–134.
- Ruddock, P MP (2004) 'Australia's Legislative Response to the Ongoing Threat of Terrorism', *UNSW Law Journal*, vol 27, no 2.
- Scanlon, T (1972) 'A Theory of Freedom of Expression', *Philosophy and Public Affairs*, vol 1, pp 204–226.
- The New South Wales Council for Civil Liberties Inc (2006) Submissions to ALRC Submission no 10, April 2006.