THE COMBINED ONSLAUGHT OF TERRORISM, POLITICAL CORRECTNESS, AND THE DICTATORSHIP OF BUREAUCRACY

TONY MORRIS QC*

I INTRODUCTION

The ancient Greeks imagined a monstrous creature, a ferocious three-headed dog which they called Cerberus, or the Hound of Hades. Cerberus guarded the gates of the Underworld, fawning on those who entered Hell voluntarily, but devouring those who attempted to leave. The Hound is mentioned in ancient myths recounted by the Greek writers Homer, Euripides and Apollodorus — also Xenophon, who should not be confused with the Australian Senator of the same name — and by the Roman poets Virgil, Horace, Ovid and Seneca. They tell that it was one of the Twelve Labours of Hercules — either the last or the second-last, and therefore one of the more challenging — to capture the creature and bring it back to Greece.

Today, the Hercules who goes into battle for human rights faces a similarly fearsome, but very real, triple-headed opponent. The ancient Hercules enjoyed the help of at least two of the Gods of Olympus and various other legendary heroes. But the modern Hercules can hope for little support except from (occasionally) the press and media, and from the general public. In place of the supernatural wisdom and powers at the disposal of the ancient Hercules, his modern equivalent must rely largely on his own wits and intellectual dexterity. But, like Hercules of old, the modern champion of human rights has one small advantage over his powerful opponent: the certain knowledge that right and justice are firmly on his side.

II TERRORISM

Of the modern Cerberus's three heads, that which has the largest teeth is on the right. It is labelled 'TERRORISM'.

Now, of course, the threat of terrorist atrocities is no greater in the case of a person fighting for human rights than it is for any other citizen — all of us are equally vulnerable and exposed to that threat. But the ancient Greek sources tell us that the teeth of Cerberus were not only large and powerful; they also dripped with poison. And terrorism had spewed forth a form of poison on Australian society — and on the societies of other liberal democracies — which has ultimately done more damage than all the bomb-blasts, all the knife and gun attacks, all the out-of-control vehicles, for which terrorists have claimed responsibility.

More Australians continue to die each week in motor accidents, more continue to die each month from suicide, than are killed in a full year as a direct result of terrorism. But — make no mistake — terrorists have succeeded in achieving their real objective. Terrorists have succeeded in making Australians fearful — blindly, irrationally, misguidedly fearful — in a way which plays directly into their hands.

---

* Speech delivered at the Annual Mayo Lecture, James Cook University 2017.

Terrorists have achieved this, not in spite of the best efforts of politicians and public figures, but with their active assistance and connivance. When blind, irrational, misguided fear plays into the hands of terrorists, it also plays into the hands of those who desire greater powers for our police forces, our security services, and our intelligence agencies.

I might have chosen to illustrate this with the example of Mr Turnbull's recent announcement that his government intends to introduce a cybersecurity law forcing global technology companies like Facebook, Google and Apple to help law-enforcement agencies unscramble encrypted messages. But, if I were to pursue that particular example, I could fairly be accused of picking a soft target. Mr Turnbull has already shot himself in the foot with his (apparently) serious pronouncement that, whilst 'the laws of mathematics are very commendable', 'the only law that applies in Australia is the law of Australia'.

You may recall the legend of King Knut, the monarch who supposedly set his throne by the seashore and commanded the incoming tide to halt and not wet his feet and robes. The sound which you heard as Mr Turnbull made that remark could well have been the sound of King Knut turning in his grave.[1]

To take what may be a fairer example, let us consider a little Act with a big title: the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth) ('*Data Retention Act*'). For the first time, this legislation introduced the concept of a 'journalist information warrant', allowing some 21 different government agencies and departments — 21 of them! — to apply for warrants allowing them to snoop on journalists by accessing metadata from their telephones and computers.

At the time, Mr Turnbull, then Communications Minister, explained that this supposed protection for journalists — as compared with other citizens, including lawyers, whose metadata can be accessed without a warrant — was justified because 'Journalists really are in a special situation where protecting their sources is essential … you have to draw the line somewhere'.[2] He added that:

> All of us understand the work that journalists do in our democracy is just as important as the work that we do as legislators or the work that public servants do … our democracy depends absolutely, fundamentally on a free press and journalists being able to do their work.[3]

So far so good. But turn the calendar forward two years, when the Chief Commissioner of the Australian Federal Police, Andrew Colvin, had to admit that his officers have been illegally accessing journalists' metadata, without even going to the trouble of jumping through the hoops — very low-slung and large hoops though they are — to obtain a 'journalist information warrant'.[4]

---

[1] Incidentally, when I was at school the king's name was spelt CANUTE, though it may surprise you to learn that he was no longer king by that time. These days, it is commonly given as CNUT or sometimes KNUT. Either way, it is one word which I suggest you do not attempt to run through your computer's spell-checking program.

[2] Lenore Taylor and Daniel Hurst, 'Malcolm Turnbull says access to journalists' metadata "a special case"', *The Guardian* (online, 19 March 2015) [7] <https://www.theguardian.com/australia-news/2015/mar/19/malcolm-turnbull-says-access-to-journalists-metatdata-a-special-case>.

[3] Ibid [17].

[4] Mark Schliebs and Rachel Baxendale, 'AFP admits illegally obtaining journalist's phone records', *The Australian* (online, 29 April 2017) [2] <https://www.theaustralian.com.au/news/nation/afp-admits-illegally-obtaining-journalists-phone-records/news-story/3e75986ca0ce383bcccc72a8c191677d>.

Well, you might say, at least that instance of illegal access was discovered and disclosed, and the officers concerned were presumably disciplined, if not charged, over their admittedly illegal actions.

But no. No charges. Not even disciplinary action. This was explained by Chief Commissioner Colvin on the footing he was satisfied there was no 'ill will or malice or bad intent', and that the officers concerned were merely unfamiliar with the 'full suite' of the legislative amendments passed 18 months earlier.[5]

Oh, and neither the journalist whose metadata was unlawfully accessed — nor the confidential informant with whom the journalist had been communicating — would be told about this illegal breach of their privacy, either.

I may be missing something here: I am, after all, merely a QC, not a police commissioner. I was under the vague impression that ignorance of the law is no excuse — not even for the average citizen, let alone for the AFP officer who is given unsupervised access to covertly recorded metadata. But it seems that illegally breaching a journalist's personal and professional privacy in order to uncover a confidential informant is okay, so long as the AFP officer is careful not to familiarise himself or herself with the protocols — admittedly, not very onerous or exacting protocols — which Parliament has put in place.

There has been no suggestion that any journalist concerned was party to or complicit in any act of terrorism, any drug trafficking or child abuse, anything remotely illegal or improper; indeed, no suggestion that any journalist concerned was doing anything more or less than his or her job of gathering information, in the public interest — information which, it would seem, some person in authority did not wish ever to see the light of day.

We will never know if the confidential informant was an Edward Snowden or a Chelsea Manning: by which I mean somebody who — whether or not you agree with their motives — was unlawfully divulging classified information. But, even if that were the case, two wrongs cannot make a right; and it would be somewhat ironic if the journalist's metadata was unlawfully accessed and utilized in order to find out if somebody else had been unlawfully accessing and utilizing confidential information. But there is one thing you can be sure of: if it turns out to have been another Edward Snowden or another Chelsea Manning, you can be confident that the Commissioner of the AFP will not be waiving all charges on the basis that there was no 'ill will or malice or bad intent'.

More likely, however, the confidential informant was what is known in the trade as a 'low level source': a junior clerk or secretary, or some other minor functionary, who had become aware of some wrongdoing within government, and felt a moral duty to reveal that information to the media, but, at the same time, did not wish to have his or her identity revealed. Maybe there was a fear of jeopardising his or her continued employment, or some other form of workplace retaliation; maybe a reluctance to create disharmony with his or her co-workers; maybe just a perfectly ordinary and natural desire to keep out of the spotlight. Whatever the reason, the probability is that the journalist's metadata was unlawfully accessed in order to identify an informant who had done nothing unlawful at all.

[5] Ibid [7].

Ultimately, all of this occurred for one reason, and one reason only: because the Parliament passed a bad law, encroaching on the right of privacy, under the pretext of providing Australia's law enforcement agencies with the resources which they need to combat terrorism and other high-level crimes. Nor can the blame be attributed exclusively to one side of politics, since the *Data Retention Act* passed the Senate with bipartisan support.

More recently, there has been the announcement that a new, all-powerful government department is to be created: a Department of Home Affairs, which will gather together in one portfolio all the resources of the domestic spy agency ASIO, the Australian Federal Police, the Australian Border Force, the Australian Criminal Intelligence Commission, AUSTRAC, and the office of transport security.

It is no exaggeration to say that this will confer on a single minister — Mr Dutton — a level of individual control over the nation's law-enforcement, investigative, security and intelligence resources which actually exceeds that of Maximilien Robespierre during the Reign of Terror which followed the French Revolution; that of Felix Dzerzhinsky and subsequently Lavrentiy Beria during the Red Terror; that of Heinrich Himmler in the Nazi regime. Not even the US Department of Homeland Security enjoys such a concentration of police and espionage powers.

Common-sense tells us all that laws like the *Data Retention Act*, and monstrosities like the proposed Department of Home Affairs, have no place in a liberal western society like Australia; that they are a blot on our democratic system of government and our long-standing and deservedly cherished tradition of civil liberty and the rule of law. But common-sense goes out the window when people are afraid. Such fear is the poison which oozes from the right-side head of the modern-day Cerberus, that which is labelled 'TERRORISM'.

III Political Correctness

Balancing the right head is one on the left. It may appear to be more benign, more likely to give you a warm lick than even a playful nip. And, in truth, that is precisely how it operates. No fangs are bared; no poison is drooled. The left head takes over where the right one has failed, by making you feel warm about yourself; by making you feel appreciated; by making you feel that you are a good person, one of the right-thinking majority. The attack mounted by the left-side head is not physical, but psychological. It is labelled 'POLITICAL CORRECTNESS'.

Political correctness is at once the most pervasive and the most stultifying force in the known Universe. Like gravitational radiation emanating from a black hole, it cannot be seen, heard, smelt, tasted, or even felt, and some will doubt its very existence. Yet its pull is ever-present, and, at its source, almost infinitely powerful. Political correctness draws its strength from a primordial and immutable feature of the human psyche: the desire to be respected, to be acknowledged and appreciated, to be recognized and included as a member of the herd or the pack.

Political correctness works very simply. In essence, it involves nothing more than the propagation of a message: This is how you are expected to conduct yourself; if you act accordingly, you are one of us; if not, you are an outsider, a reprobate, an outcast, a pariah.

The message does not have to be objectively valid, or correct, or intellectually sustainable, or even cogent or convincing. The trick is to convince your audience that it represents the majority consensus. That, alone, is enough, at least for the overwhelming preponderance of humankind.

There is nothing new about this technique of persuasion. Organized religion, in its various forms, has practised the same technique since the beginning of recorded history. Sometimes it was found necessary to burn a few heretics at the stake, or to pronounce a fatwā against a group of dissenters. But, for the most part, mass adherence to a particular brand of religious orthodoxy has been achieved merely by reassuring the faithful that they are members of God's Flock, the Chosen Ones, God's Anointed, Hallowed, Sanctified, Ordained, Consecrated, Beatified, Canonized, in perpetual communion with the Angels and Archangels and with all the company of Heaven.

Occasionally, adherence to a particular brand of religious orthodoxy may be further encouraged by the reward of being admitted to eternal paradise in the company of 72 virgins, each of whom — so the faithful are reassured by the relevant Qur'anic text – will be blessed with the added incentive of (and I am quoting here) 'full grown', 'swelling' or 'pear-shaped' breasts which are (again I quote) 'not inclined to hang'. Regrettably for the ABC's token hijab-wearing female Islamist, Yassmin Abdel-Magied — the one who insists that 'Islam is the most feminist religion' — this reward is only available to men; the Qur'an make it clear that a woman who earns a special place in paradise will be provided with only one man, and (yet again, I quote) she 'will be satisfied with him'.[6]

Historically, this type of mass indoctrination was almost always a top-down process, with the relevant message being channelled by society's leaders, whether they be popes, princes, prelates, prime ministers, presidents, or even professors. Occasionally there were bottom-up messages which temporarily took hold of the public imagination, as was the case with the Peasants' Revolt, or Wat Tyler's Rebellion, in England of 1381, and, with greater long-term consequences, the French Revolution of 1789, and the Petrograd Revolution of February 1917. But it was, much more commonly, a means for those who controlled society to maintain and enhance their control.

The rise of totalitarian dictatorships in the 20th century let to unprecedented developments in the techniques of mass indoctrination, pioneered in Soviet Russia and Fascist Italy, but brought to a peak of efficiently by the brilliantly evil Dr Joseph Goebbels, Reich Minister for Public Enlightenment and Propaganda in Hitler's Nazi regime. Central to these techniques was to foster a sense of belonging, a sense of national unity, a sense of 'them and us'.

This explains — amongst other things — the Nazis' abhorrent racial theories. It explains their puerile fetish for uniforms, symbols, rituals and insignia. It explains their attempts to associate the (so-called) Third Reich with Germany's actual and mythological history. It explains, even, their banal fascination with the occult, and with Germanic Neopagan and Völkisch folklore.

[6] Qur'an, Ch 43 verse 71 (Fatwa 11419) <https://islamqa.info/en/answers/11419/the-female-martyr-and-the-male-martyrs-reward-of-seventy-two-hoor-al-iyn>.

The abominable success of these measures is frightfully demonstrated by this chilling observation: Germans of the 1930s and 1940s were, on any view, a civilized and cultured people; surely nothing less could have convinced them to tolerate — let alone actively to participate in — the persecution and attempted extermination of an entire race.

The modern adaptation of the same technique of persuasion is much more subtle, but no less efficacious; in fact, due to its subtlety, perhaps somewhat more so. It involves no more than the propagation of certain doctrines or principles, in a way which admits of no doubt that anyone who questions those doctrines or principles is either wicked or obtuse, and most probably both. There is no room for discussion or debate, or to take a middle course between blind adherence and fervent rejection. To believe or think otherwise than the received consensus is not just false or outlandish: it is quintessentially 'un-Australian' and can only be explained by the most despicable and repugnant of motives.

The subtlety of this process lies in the fact that many of the relevant doctrines or principles are self-evidently incontestable: that racism is bad, for example; or that domestic violence is unacceptable; or that one should be kind to the elderly, the disabled, and defenceless animals. The inclusion of such truisms in the inventory of politically correct dogma simply adds credibility to those doctrines or principles which are less obviously sustainable.

A *Israel*

Take, for example, the politically correct proposition that Israel is an evil militaristic state, because it dares to defend itself against unprovoked terrorist attacks from Palestine. I do not hold strong views, one way or the other, regarding the correctness of this proposition; nor have I studied the question closely enough to advocate an opinion one way or the other. But, from all that I have read, of this much I am certain: it is not a 'cut and dried' issue, which admits of only one arguable conclusion; rather, it is the sort of question upon which fair-minded and intelligent people, having taken the time and trouble to inform themselves of the relevant facts, might conceivably reach different conclusions. But the dictates of political correctness admit of no such vacillation or ambivalence: unless you accept without question that Israel is an evil militaristic state, you must either be an imbecile who has been duped by Zionist propaganda, or a secret sympathizer with Israel's evil militaristic intentions.

B *Invasion Day*

Or take, as another example, the politically correct proposition that Governor Arthur Philip's establishment of a penal colony on the Australian continent is properly characterized as an 'invasion'. Some would say that it was the strangest invasion in all history, when a contingent of some 1,480 men, women and children — the vast majority of them unarmed convicts, guarded by a mere 245 armed marines — invaded a continent then occupied by, according to different estimates, between 300,000 and 750,000 indigenous Australians.

My own view, on this topic, is very clear: it is purely a matter of semantics. If, by an 'invasion', you mean something akin to Julius Caesar's invasion of Britain in 55 BC, or the Norman incursion which led to the Battle of Hastings in 1066, or the D-day Normandy landings of 6 June 1944, then the arrival of the First Fleet was nothing like an 'invasion'. But if, by an 'invasion', you mean simply an uninvited and unwelcome foray into lands

already occupied by another people, then 26 January 1788 was as much an invasion as the landing of the Mayflower at Plymouth Rock on 9 November 1620.

Such an answer, however, could never satisfy the dictates of political correctness: either you accept that it was an 'invasion', or you are an unashamed apologist from all the evils of British colonialism.

C *Global warning*

Or take, as yet another example, the politically correct position on climate change and global warming. As a non-scientist — a person who has neither the skill and training, nor the experimental and investigative facilities necessary to arrive at my own conclusions on this subject — it is simply impossible for me to have any view other than one based on a choice between two diametrically contrary bodies of expert opinion. Most people are in the same boat.

It may be accepted that there is a majority opinion, reflected in the published conclusions of the Intergovernmental Panel on Climate Change, and endorsed by many other scientific bodies. But to describe this as a 'scientific consensus' is literally incorrect. Significant numbers of scientists — apparently reputable, and even distinguished scientists — subscribe to different conclusions. These include, in Australia, Ian Plimer, professor emeritus of earth sciences at the University of Melbourne, and professor of mining geology at the University of Adelaide; Garth Paltridge, an atmospheric physicist, emeritus professor at the Institute of Antarctic and Southern Oceans Studies of the University of Tasmania; William Kininmonth, meteorologist and former head of the National Climate Centre at the Australian Bureau of Meteorology; Michael Asten, professorial fellow in the school of geosciences at Monash University; and your own hometown hero, Bob Carter, adjunct professor of geology at James Cook University.

These eminent Australians are amongst countless scientists — numbering in the thousands, if not tens of thousands, worldwide — whom the politically correct orthodoxy would label as 'climate change sceptics' or, worse still, 'climate change deniers'. But it would be a sheer impertinence for me — indeed, for most of us — to discount or disregard all their views, merely because a so-called 'scientific consensus' thinks otherwise.

But that is not how political correctness works. There is one accepted position; all others are anathema. It matters not whether you question the projections of climate modelling, which, after all, are no more than projections; whether you argue that the phenomenon of global warming, although real, is primarily caused by natural processes rather than anthropogenic means; whether you contend that global warming, if it occurs, will have a limited negative impact, and, on balance, may even be beneficial to humanity as a whole; or whether you have faith in the capacity of human ingenuity to redress, and even profit from, the impacts of global warming. No matter how impressive the credentials of the scientist presenting such an argument — no matter how well-researched, methodical and sober the argument may be — all of these positions amount to denial or, at best, scepticism, and must therefore be denounced and execrated.

Consider Bjørn Lomborg, the Danish political scientist and economist, visiting professor at the Copenhagen Business School. Lomborg is not — nor does he claim to be — a climate scientist. On the subject of climate change, he is neither a denier nor a sceptic; indeed, he

is a true believer. His argument is purely an economic one: that the cost of reducing carbon emissions to prevent global warming — if that were even possible — will far exceed the cost of short-term adaptation to temperature rises, and of research and development to find longer-term environmental solutions; also, that the world faces far more pressing problems, such as AIDS, malaria and malnutrition, which can effectively be addressed at a fraction of the cost of so-called 'climate change action', saving many more lives and producing the greatest good for the greatest number.

I am not here to proselytize in favour of Lomborg's views, much less to argue that they are correct. But it just so happened that I do know a little about economics, which is a little more than I know about climate science. And, at least at first blush, it strikes me that Lomborg's hypothesis is at least arguable — I might even say plausible or credible — I might even go so far as to say persuasive. Nor is it easy to dismiss Lomborg as a right-wing nut-job: not only is he a vegetarian; he is also 'out and proud' gay.

Now, if Lomborg were shown to be correct, it necessarily follows that the Kyoto Protocol and the Paris Accord have committed the global community to expenditure of trillions of dollars — I repeat, trillions, not billions — which could be applied much more effectively in other ways and may well be totally wasted. So, even if there is one chance in a hundred that Lomborg might be right — nay, one chance in a thousand, even one chance in a million — his ideas are worth listening to, and worth evaluating on their merits.

But no; that is not the politically correct way of going about these things. Lomborg stands outside the received view of climate change orthodoxy, so he does not deserve a hearing; he must be silenced. In 2014, the Abbott Government offered the University of Western Australia $4 million to establish a 'consensus centre' with Lomborg as director, and the university initially accepted the offer. But the resulting firestorm of opposition from the climate science mafia compelled the university to reverse its decision and reject the offer.

I am reminded of the case of Ignaz Semmelweis, the Hungarian physician and obstetrician who, in 1847, came up with a bizarre and counter-intuitive notion: the idea that the spread of infection within a maternity ward could be reduced by the simple expedient of having medical personnel wash their hands. Despite published results showing that hand-washing reduced mortality to below 1%, Semmelweis's theory was in conflict with established scientific and medical opinion; it was rejected by the medical community; it was ridiculed in contemporary medical journals; and Semmelweis himself was scorned, derided and ostracised by his professional colleagues. Evidently suffering from severe depression or a nervous breakdown, he was forcibly committed to an insane asylum, where he was secured in a straitjacket and confined to a darkened cell. He died, aged 47, less than 2 weeks later — ironically, from infection of a wound, probably inflicted in one of numerous beatings by asylum guards.

D *Same-sex marriage*

But let's move to one final example of political correctness in operation: the issue of same-sex marriage or, as the forces of political correctness prefer to call it, 'marriage equality'. Needless to say, there is only one politically correct position to adopt on this issue. And, on this occasion, I have the good fortune to be on the winning side. I am broadly in favour of same-sex marriage. I personally cannot see any reason why the gay and lesbian

community should be deprived of the opportunity to experience the same suffering, the same torment, the same heartache and anguish which has been the result of so many heterosexual marriages. I therefore have no objection to same-sex marriage, so long as it is not made compulsory.

Yet, at the same time, I have just a few slight reservations:

Firstly, given that the Turnbull government was elected on the strength on an unequivocal promise to offer Australians a plebiscite on this issue, I feel that it would be a betrayal of trust to proceed without a plebiscite. Of course, that will change, either if the present government is re-elected with a different policy platform, or if a different government is elected.

Secondly — and regardless of my own views in the matter — I accept that there are people who genuinely hold to a different position. This is, after all, an issue of conscience, a moral choice. If a person of deep religious convictions believes that applying the word 'marriage' to any relationship other than that between a man and a woman is a form of blasphemy or sacrilege, then I respectfully disagree. But my respectful disagreement does not make that person's opinion any less genuine or valid as a moral position.

Thirdly, whilst I continue to have an open mind on the subject, I am yet to be fully convinced that it is desirable for same-sex couples to adopt a child who is not a blood relative of one partner. This is not to cast any doubt on the fitness of gay men or lesbians to be good and caring parents for adopted children, and I certainly accept that it is better for a child to be brought up in the home of a loving couple — regardless of their sex — than to be brought up in a single-parent home or an institution. And if one member of the relationship is the natural parent of the child concerned, or if there is another close connection — say, where one member of the relationship is the brother or sister of an orphan child's deceased parent –then nothing could be more appropriate. But part of me is sufficiently old-fashioned to cling to a belief that, all else being equal, it is possibly an advantage for a child to grow up with role-models of both sexes. That is clearly indicated by an examination of cases of domestic violence, in which men who grew up without role-models of both sexes are disproportionately represented as perpetrators. Now, any one of these reservations would be enough to attract boos and hisses from the politically correct lobby; admitting to all three is tantamount to painting a target on my own back. Yet I cannot see that any of my reservations is so hopelessly misconceived, so decidedly obtuse or perverse, so obviously the product of some deeply-rooted homophobic bigotry, that they should not even be discussed in polite society.

Yet, in May of this year, a deservedly celebrated Australian — the tennis player who amassed more major titles than any other player in history — dared to raise her head above the parapet and express a personal opinion about same-sex marriage issues, based on her own religious beliefs as an ordained Pentecostal minister. Margaret Court was not even articulating a view against same-sex marriage; she was merely making the point that Alan Joyce, the openly gay CEO of Qantas, should not be using the company's name and resources to advocate for a particular position on a contentious political topic. So, what happened? Margaret Court was duly pilloried, culminating in calls for the de-naming of the Margaret Court Arena within the National Tennis Centre at Melbourne Park.

E *The politics of political correctness*

You may have noticed — indeed, it is hard not to notice — that politically correct ideologies all tend to emanate from the left-of-centre side of the political spectrum. But it was not always thus.

As I have said, throughout most of history, the ruling classes set the tone of public discourse and opinion, and not only with respect to purely political issues. As we have seen, religious conformity was achieved in the same way. In fact, the ruling classes determined the public mindset on practically every issue, from scientific and medical advances, to music, literature and the arts, to matters as commonplace as the rules of grammar and syntax, table manners, dress codes, and mores of social and sexual interaction.

Indeed, I would suggest that the last half-century or so is the only period in human history — at least the only period of which we are aware — when the power of political correctness has been exclusively exercised by anyone other than the ruling classes. I say 'the last half-century or so', bearing in mind that, as recently as the 1950s and early 1960s, received opinion throughout the Western World was virulently anti-communist. Anyone who cares to refresh their memories of plays, novels, movies and television shows produced before about 1965 — with just a few exceptions, such as the novels of George Orwell — will be startled by the degree of compliance with what would now be regarded as distinctly right-of-centre political and social ideologies.

The reasons for this tectonic shift are not immediately apparent. No doubt it is partly due to the rise of democratic socialist political parties like the ALP in this country. Bear in mind that the Queensland Labor Government of Anderson Dawson, sworn in on 1 December 1899, was the first parliamentary socialist government anywhere in the world. It lasted for precisely six days.

The success of various minority movements throughout the Twentieth Century has also doubtless played a part: the trade union movement, for the benefit of the working classes; the women's suffrage movement; the black power movement; the anti-apartheid movement; the women's liberation movement; and the gay rights movement — to name only the most prominent and effective examples.

Perhaps the biggest impact, however, has been the fact that the leaders of thought in our society are no longer members of — or people who identify with — what used to be termed the 'ruling classes'. These days, the most diffident school-teacher or university academic, the most unassuming scribbler for the local news-rag, the most reticent television or radio reporter, has more influence on public opinion than the combined forces of the entire Royal Family, aristocracy, landed gentry, business community, professional classes, armed forces and priesthood.

It is also the fact that, at the present moment in time, those leaders of thought in our society tend, more often than not, to emerge from — or perhaps gravitate towards — a position on the political spectrum somewhat to the left of what Mr Turnbull, quoting his predecessor Mr Abbot, calls 'the sensible centre'.

The clearest example is probably the ABC. When I was a child, even when I was a teenager, the ABC was so right-wing that it would probably make Pauline Hansen blush. (Or perhaps not.) More recently, visiting English journalist James Delingpole commented that the ABC

in Australia 'swings so far to the left that it makes the BBC look like Fox News'. Professor James Allan, from the Faculty of Law at the University of Queensland, has repeatedly pointed out that the ABC is in clear beach of its statutory duty of political impartiality, with 'not a single right-of-centre presenter or producer on any of its big ticket current affairs shows, including the biggest of all, Q&A'.[7]

Time will tell whether this trend continues. The rise of social media, enabling consumers of news and information to choose their own sources in accordance with their own political and socio-economic positions — and enabling political mavericks, like President Trump in the United States, President Macron in France, and UK opposition leader Jeremy Corbyn, to bypass the media altogether — has the potential to be a game-changer. For present purposes, however, it suffices to note that, of our modern-day Cerberus, the right-leaning head labelled 'TERRORISM' is effectively counterbalanced by the left-leaning head labelled 'POLITICAL CORRECTNESS'.

IV The Dictatorship of Bureaucracy

Which brings us to the middle head, the one which is strictly apolitical — it leans neither left nor right — but which controls the great beast's massive and powerful body. Karl Marx and Friedrich Engels famously predicted a 'dictatorship of the proletariat' — a prediction which is yet to be fulfilled, even in those parts of the world under governments which have claimed to be communist. What has occurred, instead, is something which nobody predicted: a *dictatorship of the bureaucracy*. This is the label attached to the beast's middle head.

It is easy to be deceived by this head. It may seem very slow-moving. This is no optical illusion: in truth, it is very slow-moving for most of the time, and spends much of its time soundly asleep. But this merely conceals an ability to react with lightning speed and great force when it feels threatened or challenged. It may also seem basically unintelligent. Again, this is not an illusion, so long as you don't confuse intellectual attainments with the craftiness and cunning of a sewer-rat: unintelligent the head labelled 'BUREAUCRACY' may be, but there is no shortage of slyness and guile.

Many people who approach the modern Cerberus assume that the middle head is their ally — the only thing which stands between the sheer ferocity of the right, and the insidious power of the left — almost as if its existence were somehow a service to the public.

But then, the term 'public service' is — generally speaking — something of an oxymoron. There are two types of employees on the public payroll: those who actually provide a service to the public, and those who don't. But the ones who actually provide a service to the public never call themselves 'public servants', whether they fix our roads; maintain our parks and gardens; ensure that water is available when we turn on the tap, or that sewerage processing facilities are available when we flush the lavatory; whether they drive trains or council busses; whether they are doctors or nurses in our public hospitals, or members of our police forces, out ambulance services, our emergency response teams, or our defence services, or teachers in our public schools, TAFE colleges or universities; whether they

[7] James Allan, *Balance Through ABC Eyes,* https://quadrant.org.au/opinion/qed/2015/06/balance-abc-eyes/, 23 June 2015.

guard our prisons, or care for the physically or mentally disabled in our community; whether they collect our taxes or dole out our social security benefits. Only people who sit in offices writing memoranda, planning strategies and convening committee meetings – people who seldom, if ever, actually deal with the public — people who never actually provide any form of service, or do anything else productive for the benefit of the public — in other words, bureaucrats — choose to call themselves 'public servants'.

And any notion of public service is quickly dispelled if you have the misfortune to become entangled with the bureaucracy.

That said, the central head of Cerberus it is not nearly so proactively aggressive as the left and right heads. In fact, all it really seeks is the quiet life: to be well-fed, pampered and mollycoddled, and to enjoy its extended periods of rest and relaxation. The best approach is that suggested by the old saying, 'let sleeping dogs lie'. Even if you do manage to attract its attention, there is a good chance that you will escape unscathed if it feels a reassurance that it can go back to sleep without endangering its sources of sustenance and its creature-comforts.

But rouse it, and the result will be a slow and agonising excoriation. And the technique is as simple as it is effective. Using the full resources of the massive and well-fed body which stands behind it, the head labelled 'bureaucracy' will just lock you in the vice-like grip of its jaws, and then quietly go back to sleep, leaving you to bleed slowly to death. Nothing, from the most pitiful entreaties to the most assiduous threats, can make it release you from its hold.

If you are very, very lucky — if you do not wriggle or squirm too much, so as to disturb its repose — it may eventually wake up of its own accord. If it feels you are no longer a threat, it may possibly just spit you out, so that it can gorge itself on some other hapless victim. But even in this scenario, you will come away from any encounter much poorer, much weaker, and a great deal more frustrated that when you first made the central head's acquaintance. More likely, you will end your days still waiting for the monster to rouse itself from its almost permanent state of somnolence.

Now, you probably suspect I am exaggerating the extent of the problems in dealing with bureaucrats in this country. I would not blame you for entertaining some doubts. Were it not for my professional experience, I, too, would be circumspect about believing that the problem is quite so bad as I have described.

To understand the other problems which I have mentioned, you only have to keep minimally abreast of current affairs. All of us are aware of the world-wide scourge of terrorism; and it doesn't take a lot of thought to 'join the dots' and see how right-wing politicians and commentators — in Australia and elsewhere — have used the threat of terrorism as a pretext for enhancing and entrenching oppressive laws and ever-increasing powers for government security forces. Likewise, anyone who even occasionally reads a newspaper, watches a news or current affairs programme on TV, or listens to a radio station other than 4MMM, will be aware of the phenomenon of political correctness; and, once again, it doesn't take a lot of thought to 'join the dots' and see how left-wing politicians and commentators — in Australia and elsewhere –have utilized and manipulated political correctness as a means to supress the most fundamental of democratic liberties: freedom of speech, freedom of action, and freedom of thought.

By contrast, you will not gain any real sense of what it is like to deal with the bureaucracy in this country, however closely you follow the press and media. Only personal experience can expose to you the full horrors. But, following press and media reports very closely — and reading between the lines — you may be able to pick up a few clues.

A *The NDIS*

Take, just as one example, the National Disability Insurance Scheme. Few people would, I suspect, cavil with the proposition that the NDIS was one of the great achievements of the Gillard Government. In the 21st Century, it would be a scandal if a wealthy country like Australia did not make fair and adequate provision for the care and benefit of our country's most disadvantaged citizens. The idea of an NDIS was inspired; only the implementation of that idea has been a disaster. In March of this year, the ABC reported on the progress of the NDIS roll-out. I emphasise, this is a report by the national broadcaster, the ABC, not some know-nothing Facebook posting or twitter feed, nor the product of the fervid imagination of some right-wing agitator. According to the ABC:

> The National Disability Insurance Scheme (NDIS) stopped processing thousands of applications from service providers, critical staff were untrained and properties were not ready when the scheme's nationwide rollout began, documents have revealed.
>
> A much-publicised IT meltdown saw people with disabilities wait weeks for their care packages to be approved while payments to providers froze.
>
> …
>
> Between 3,000 and 4,000 businesses and not-for-profit providers were blocked from entering the scheme because applications could not be transferred to a new IT system.
>
> '[Data was] needed to inform [the] process but information has not been provided,' one document stated.
>
> 'Agency is not able to process new providers until this issue is resolved.'[8]

In other words — to quote Little Britain — 'COMPUTER SAYS NO'.

I would add that, if my own experience of bureaucratic ineptitude is any guide, bureaucrats tend to use statistics in the same way that a drunk uses a lamp-post: for support, rather than for illumination. Each statistic furnished by an administrative organ of government which casts doubt on their efficiency can safely be doubled, while any statistic which suggests they are operating efficiently can safely be halved. When they admit that they 'stopped processing thousands of applications from service providers', the true number is probably tens of thousands; when they concede that '[b]etween 3,000 and 4,000 businesses and not-for-profit providers were blocked from entering the scheme', the true number is probably closer to 6 or 8 thousand.

[8] Dan Conifer and Michael McKinnon, 'National Disability Insurance Scheme rollout plagued with problems, FOI documents reveal', *ABC News* (Web Page, 17 March 2017) [1]-[6] <https://www.abc.net.au/news/2017-03-12/ndis-rollout-plagued-with-problems-foi-documents-reveal/8346892>.

We are rapidly reaching the point where every cent raised specifically to fund the NDIS, by way of a 0.5 percentage point increase in the Medicare levy, is being spent on administration, and nothing is left to trickle through to people who actually have disabilities.

B *The NBN*

Whilst we are dealing with Federal bureaucracies known by their acronyms, let me mention another well-known TLA. A TLA, for those who do not know, is a Three Letter Acronym, like ABC, or ATO, or ABS, or RBA, or AAT.

The particular Three Letter Acronym which I have in mind is the NBN, the National Broadband Network, the largest infrastructure project in our country's history. Since being announced by the Rudd Government a decade ago, the NBN has maintained a perfect record of missing every target. Meanwhile, every revised projection — without exception — offers a reduced service, at an increased cost, at a remoter time in the future. Projected broadband speeds have fallen from 1 Gigabit per second down to 100 Megabits per second; before being downgraded again to 25 Megabits per second — a 40-fold reduction in the level of service originally promised. At the same time, the projected cost has soared, from an initial estimate of $15 billion, to a revised estimate of $43 billion, or close to triple. In 2015, after the Abbott Government had dramatically scaled back the size of the project so as to provide only 'fibre to the node', the cost had risen to a figure reported as 'up to $56 billion': that is, the cost has been multiplied by three and three-quarters, whilst the level of service has been divided by 40. Concurrently, the projected completion date continues to be extended out to the never-never: originally, 98% of Australian premises were to be serviced by June 2021. Now, even the NBN's own chairman admits that meeting government targets will require what he calls an 'heroic' effort. For 'heroic', read, 'it ain't gonna happen'.

And, whilst the completion date is indefinitely postponed, at least some of the blame can be attributed to the selective way that the NBN has been rolled out in some regions but not others. To quote, again, from the ABC:

> … Labor's NBN rollout lacked any market discipline: there was no attempt to target those areas that were readiest to pay for fast broadband, such as business precincts. Instead, some unlikely regional areas were targeted, and while this might have been defensible for nation-building reasons, it also undoubtedly made the rollout much more expensive for taxpayers.[9]

When you hear that 'unlikely regional areas were targeted', but that this is 'defensible for nation-building reasons', you may take it that the expression 'unlikely regional areas' is code for 'marginal electorates'.

Still, there have to be some winners. And the biggest winner of all is the NBN's chief executive, Bill Morrow, on an annual salary of $3.6 million. In February of this year, it emerged that Mr Morrow's bonuses tripled in 2015-2016, from $483,000 in the preceding year, to some $1.2 million. And if that sounds like a lot of money, just imagine the size of the bonus which he would receive, in the unlikely event that he was ever able to meet any one of what might be supposed to be the relevant performance criteria: either completing

[9] Paddy Manning, 'What has gone wrong with the NBN?', *ABC News* (Opinion, 2 March 2016) [14] <https://www.abc.net.au/news/2016-03-01/manning-what-went-wrong-with-the-nbn/7210408>.

the project on time, or completing it on budget, or actually achieving the much-reduced performance standard of 25 Megabits per second.

C *The 'CYA'*

Why does this kind of thing happen? Why is our bureaucracy incapable of even overseeing a programme as apparently simple as a scheme of taxpayer-funded home roofing insulation — the so-called 'Energy Efficient Homes Package' — without leaving tens of thousands of Australian homes at risk of fire or electrocution from the substandard installation of metallic foil insulation, and, in the process, killing four workers in separate incidents? Why is our bureaucracy so inept that even the straightforward task of spending taxpayer funds to build school halls and libraries –the so-called 'Building the Education Revolution' programme — resulted, according to the government's own review of the programme, in BER projects in New South Wales, Queensland and Victoria overpaying for buildings by more than 25% on average compared with Catholic schools, and more than 55% compared with Independent schools?

One explanation is reflected in another of those TLAs. If there were a public service coat of arms, it would probably carry the Latin motto, 'Protegas Ano Est'. But, instead of PAE, we have a much simpler English version of the relevant Three Letter Acronym, which is actually CYA. It stands for 'Cover Your Arse'.

Covering your arse involves the application of three basic techniques, which are inculcated into all public servants from their first day on the job.

The first is to make sure all the boxes are ticked, whether they are relevant or not. For a project like the disastrous 'Energy Efficient Homes Package', for instance, one can feel confident that project, as implemented, was scrutinised with the utmost diligence and care to ensure that it was being conducted in a manner that was inclusive of all genders, races and sexual orientations; that it took proper account of indigenous customs and sensitivities; that provision was made for access by people from non-English-speaking backgrounds; that appropriate consideration was given to the needs of disabled Australians; that it met international standards on achieving renewable energy targets; that only renewable resources, such as plantation timbers, were used; that a privacy policy had been established to the satisfaction of the Information Commissioner's office; that a complaints-handling protocol had been created in consultation with the Federal Ombudsman's office; that appropriate systems were in place to monitor and review staff performance; and so on and so forth. Once that was done, all that remained was to pay a graphic designer to come up with a nifty logo, and an internet technician to produce a really stunning website. Needless to say, practical details — details like ensuring that people are not killed, or that houses don't burn down — did not have a separate box to be ticked, and were therefore ignored.

The second technique is to avoid, wherever and whenever possible, making any decision at all. If you do something, you can be blamed if it goes wrong. If you do nothing, all you have to do is to come up with an excuse for not doing anything. If all else fails, it is easy enough to identify a box which cannot yet be ticked with absolute confidence: for example, those pink batts being imported from Asia, we still need to be satisfied that the were not produced using under-aged labour. That should be enough to hold off making a decision

for one or two years, at least, and may even furnish the excuse for a fact-finding mission (to be headed by the responsible Minister, of course) to the country of origin.

Thirdly, if a decision does have to be made — sometimes, unfortunately, it is unavoidable — it is vital to spread the potential blame as far and as widely as possible. External consultants are your best bet, of course: get in an independent firm, at the taxpayer's expense, to advise the person who is being paid to make a decision what decision he or she should be making.

By the way, if you think I am being wise after the event, let me say that the last sentence was written prior to the recent disclosure that, in the past 12 months alone, the Federal Government has spent $420 million on external consultants. That is equal to $2.4 million per day for every working day of the year.

If you can't justify hiring an external consultant, refer the matter to a committee, preferably a high-level committee, and most desirably a committee which includes the head of the relevant organization: it is unlikely that he or she will ever actually attend any committee meetings, but merely to have his or her name on the list of committee members gives that person 'ownership' of the decision, and therefore an incentive to defend the decision in the event that 'The Ship Hits the Sand' (so to speak).

And, most importantly of all, make sure your documentation is in place: there must be memos to each of your superiors, outlining the arguments for and against the proposed decision, offering an 'on balance' recommendation, but, at the same time, emphasising that there are risks either way. The most critical item of documentation is the Ministerial briefing paper: important, not because the Minister is actually expected to read it — heaven forbid! — but because it is always necessary to leave a paper-trail showing that the Minister was alerted to a potential problem well before it hit the press or media: otherwise, how could you count on the Minister to defend the decision after the event?

The only strategy which is even more effective is to generate some kind of litigious conflict: something which is not always possible, but which, when it does happen, is an answer to everyone's prayers. Then, the relevant tribunal — it does not matter, for this purpose, whether it is a low-level administrative review body, or the High Court of Australia — whatever the tribunal is, it can be blamed for the decision if things miscarry.

Covering your arse is not, of course, a phenomenon confined to bureaucracy; it also happens in the private sector. The difference is that, in the private sector, it has been found over time that the best way to cover your arse is to focus exclusively on making good decisions: then, if you have the misfortune to stuff things up on one occasion, you can point to a long track-record of competent decision-making in the past. By contrast, bureaucratic CYA protocols are not about making good decisions; they are about making defensible decisions; the actual merits of the decision are entirely irrelevant. The objective is not to produce the best possible result, or the most efficient use of taxpayer funds, or the outcome which will result in the greatest good for the greatest number; it is simply to ensure that the decision will not come back to bite the bureaucrat on the most frequently-used part of his or her anatomy.

D *The OAIC*

I alluded earlier to my professional experience in dealing with bureaucrats and bureaucracies. I want to complete this part of my lecture by illustrating my experience with two 'war stories', involving two quite separate and distinct bureaucracies — one Federal and one State — dealing with entirely unrelated areas of public policy. But I am not going to trouble you with ancient history: both of these instances have arisen within the past three months.

The first concerns the OAIC, the Office of the Australian Information Commissioner. One of the OAIC's statutory duties is to review the performance by Federal government departments and agencies of their compliance with FOI — that is yet another TLA, standing for Freedom of Information — laws. If you ask a Federal bureaucracy to disclose documents and they refuse, or if you have reason to suppose that they have failed to disclose all relevant documents, you can ask the OAIC to review the matter.

Now, you are all — I imagine — aware of the QUT case, in which seven students, just like yourselves, were sued in the Federal Circuit Court, for a quarter of a million dollars, over allegedly insulting or offensive comments posted on a university-related Facebook page. I represented two of those students. Thankfully, they have now been totally vindicated. But that all happened after the AHRC — the Australian Human Rights Commission — provided an object lesson in how bureaucracies work in this country.

The alleged incidents of racial vilification occurred at the end of May 2013. The complainant, a person who identifies as indigenous, was so hurt by the alleged incidents that she waited until the last possible moment, 12 months later, to lodge a complaint with the AHRC at the end of May 2014. For the next 14 months, the AHRC did nothing — literally nothing — in respect of the complaint. Despite having a statutory duty to investigate complaints, no investigation was undertaken. The seven students were not even told about the complaint. Finally, after sitting on the matter for 14 months, the AHRC decided to hold a conciliation conference. It was scheduled for 3 August 2015.

The complainant and the principal respondent, QUT — each of which had known about the complaint from the day it was lodged, and each of which had legal representation — were given plenty of advance warning; at least two months. Indeed, the AHRC even checked that the date was suitable for those parties and their lawyers before it was locked in.

The students were not so lucky. Some of them — including one of my clients — learnt about the complaint, for the first time, by the same email which invited them to attend the conciliation conference, a few days before it was scheduled to occur. Some of them — including the other of my clients — were not told about it at all, and only learnt of the complaint, and of the so-called conciliation conference, after it was over and the AHRC had closed its file.

That is all ancient history. Happily, as I have said, my clients were fully vindicated, but only after the matter proceeded to court. Yet a few questions still remain. Why wasn't the complaint referred to the President of the AHRC, Professor Gillian Triggs, as the Act requires? Why wasn't the complaint investigated, as the Act also expressly requires? To the extent that there was an attempt to conciliate — also a statutory requirement — why

did the AHRC close its file before all seven students have been given a chance to participate in conciliation? And, most of all, why were the seven students deliberately kept in the dark for upwards of 14 months?

As to the last of those questions — why were the students kept in the dark? — I sought disclosure of relevant documents from the AHRC under Federal FOI law. The AHRC responded, asserting a 'practical refusal reason' under the FOI Act: in short, they claimed that there were too many documents to be reviewed in order to work out which are relevant and which are not, and that this would amount to a disproportionate diversion of resources away from the AHRC's other responsibilities.

I lodged a review application with the OAIC.

After five months of no progress whatsoever towards a resolution of the matter, I received one of the most bizarre documents I have ever seen. It was described as a 'preliminary view', proposing that the review application be dismissed.

The reason for the proposed dismissal of the review application happened to be the diametric opposite of the grounds upon which the AHRC initially refused disclosure. As you will recall, the AHRC asserted a 'practical refusal reason', claiming that there were too many documents. But the OAIC somehow managed to arrive at the conclusion that the review application should be dismissed because the AHRC does not hold a single document — not one — which falls within the FOI request.

Needless to say, I promptly advised the OAIC that my clients rejected the 'preliminary view'. Another three months went by, with repeated apologies from the OAIC for their delay, and repeated assurances that a final decision could be expected imminently. Then, on 16 May 2017, almost nine months after application was made for review of the AHRC's decision, I received a letter from a senior officer of the OAIC — an Assistant Commissioner, no less — advising that the OAIC had formed the view that it should not make any decision on the review application, and that my clients and the AHRC should be left to start again from scratch in the Administrative Appeals Tribunal.

After waiting for nine months — and in light of the resources which each party had already expended in dealing with the OAIC review process — both the AHRC and I urged the OAIC to proceed and make the decision which, as we had each been assured, was imminent. But the Assistant Commissioner concluded that we had failed to provide any 'new information that would lead [him] to change [his] view', so the decision would stand.

Needless to say, our next port of call will be a courtroom.

E *The LSC*

Moving to my other recent example, some of you may have heard of the Legal Services Commission or, to use its Three Letter Acronym, the LSC. It is the statutory body set up to deal with issues of professional misconduct or unprofessional conduct involving barristers and solicitors in this state. If I were to describe it as 'barely competent', I would be guilty of excessive generosity. A couple of years ago, I represented a solicitor who faced six professional disciplinary charges. Without troubling you with all the details, let us just say that two of the six charges were totally misconceived. And if that does not seem like such a big deal, consider this: all along, the LSC had the documentation on its file which

showed, beyond a doubt, that the charges were misconceived. On at least four separate occasions, my client drew to the attention of the LSC the documents which showed, beyond a doubt, that the charges were misconceived. Moreover, those documents even became exhibits to an Affidavit made and filed by a solicitor from the LSC, more than a year before the case came on for hearing. Yet the charges remained.

On the first morning of the hearing, I pointed these matters out to the Tribunal. The matter was stood down for half an hour, so that the LSC's barrister could 'obtain instructions'. For those of you who are not familiar with the expression, 'obtain instructions', in this context, is code for 'read his brief'. But when the hearing resumed, the charges were still not withdrawn.

Later that day, a solicitor from the LSC — the same solicitor who had sworn an affidavit, more than a year earlier, exhibiting the documents which showed that the charges were totally groundless — was called to give evidence. Under cross-examination, she could offer no explanation, other than sheer incompetence, for the fact that these charges had not been withdrawn.

Eventually, one of the misconceived charges was withdraw. At first instance, my client was acquitted on four of the remaining five charges. Only one of the charges was found to have been made out, though it should not have been. The adverse finding on that single charge was later unanimously overturned by the Court of Appeal, as being entirely unsupported by the evidence, and also as having no basis in law.

Now, given that the function of the LSC is to deal with issues of professional misconduct or unprofessional conduct involving barristers and solicitors in this state, what happens when a solicitor who is one of their own staff — along with a barrister retained to represent the LSC — are demonstrably guilty of such a gross dereliction of their professional duties and responsibilities? The answer, you may not be surprised to hear, is that, if left to its own devices, the LSC would do nothing at all.

In my view — and leaving to one side the solicitors who, from time to time, are found to have stolen clients' money from their Trust Accounts — about the worst abuse of one's professional position which can be committed by any lawyer is to prosecute a criminal or disciplinary charge for which there is no evidence. According to the tradition in England and Australia, a prosecutor is a 'minister of justice', whose sole function is to assist the court in arriving at the correct decision on the evidence; quite different from the American DAs whom one sees in so many television shows, who apparently have a licence — or regard themselves as having a licence — to secure a conviction at any price.

No citizen, in our system of justice, should ever be put to the expense or ignominy of having to defend a charge, let alone be put in peril of a wrongful conviction, unless the prosecutor has conscientiously and diligently satisfied himself or herself that there is evidence to support the charge. If there is evidence which is capable of supporting the charge, but also evidence to the contrary, then it is a matter for the trier of fact — the magistrate, the jury, or the disciplinary tribunal — to decide which body of evidence to accept. But a charge which has no evidentiary basis should never be preferred.

So heart-felt is my belief in these principles, so passionately do I hold to them, that, following the withdrawal of count 1, I lodged a formal complaint with the LSC against the

relevant LSC solicitor and the LSC's counsel. At the end of the hearing, I added a further formal complaint regarding the other misconceived charge. And what do you think happened then?

If you guess that the LSC immediately moved into action, determined to demonstrate to the profession and the public that the LSC holds its own people to the same rigorous standards of ethical and professional behaviour that it requires from practising members of the private profession, then I should like to be able to tell you that you have guessed correctly. Of course, that is precisely what the LSC should have done. As I say, I should like to be able to tell you that you guessed correctly; but I can't, because the LSC's reaction was a very different one. For 18 months, I was in regular contact with the LSC, enquiring as to the progress of my complaints. For 18 months, I was given the run-around, fobbed off with meaningless platitudes and specious assurances.

I have since learnt what really happened. You will recall that, in discussing the three main techniques which bureaucrats use to cover their own arses, I said this: 'External consultants are your best bet, of course: get in an independent firm, at the taxpayer's expense, to advise the person who is being paid to make a decision what decision he or she should be making'. Sure enough, the LSC sub-contracted the Queensland Law Society to investigate the complaint against the LSC's in-house solicitor, and the Bar Association to investigate the complaint against the LSC's barrister. There was, of course, nothing to investigate, since the LSC was already fully aware of what happened, and held copies of every relevant document.

I am yet to learn precisely what the Bar Association advised. But, using Queensland's version of the Federal *Freedom of Information Act 1982* (Cth) — known as the *Right to Information Act 2009* (Qld) — I have managed to secure a copy of the Queensland Law Society's report. Never in my career have I read such a blistering denunciation from a professional body. In all, it runs for 20 closely-typed pages. You can read, for yourselves, a few choice excerpts from the LSC report. For present purposes, however, it suffices for me to go to the bottom line. The Queensland Law Society concluded its report with these observations:

> All of the circumstances listed above are not a single incidence of a lack of competence. This is a course of conduct in circumstances where due enquiry should have been made and the relevant evidence easily found and at least questioned in the face of more than sufficient provocation to do so. It is a series of events, contained within one procedure which clearly falls below the standards of competence and diligence required of a practitioner. It is submitted that [the lawyer's] conduct of this matter constitutes unsatisfactory professional conduct.

This report from the Queensland Law Society was dated 18 July 2016. It bears a date stamp showing it was received by the LSC on 20 July 2016. So how long would you expect that the LSC would sit on such a report, before commencing disciplinary proceedings against its own employee? A week? Two weeks? A month, at the outside? Try 11 months, going on for 12, before a single charge was filed. Section 450 of the *Legal Profession Act 2007* (Qld) sets out the relevant duty of the LSC. It is, I think you will agree, fairly unambiguous. It says:

> **450 Duty to deal with complaints efficiently and expeditiously**
>
> The commissioner must, under this Act, deal with complaints as efficiently and expeditiously as is practicable.

The expression 'as efficiently and expeditiously as is practicable' invites comparison with how quickly the LSC can function when it wants to. Well, after 18 months of being given the run-around by the LSC, and fobbed off with meaningless platitudes and specious assurances, I got a bit stroppy. Yes, I admit it. I didn't quite lose my temper, but nor was I a happy little Vegemite. This is some of what I said in my letter to Mr Paul Clauson, the former National Party Attorney-General who now heads the LSC:

> I appreciate, Mr Clauson, that … the responsibilities of your own position, as Commissioner, are burdensome. Indeed, I was personally assured by the then Attorney-General (Hon Jarrod Bleijie, MLA), at the time of your appointment as a full-time Commissioner, that you had undertaken to visit your office not less than twice every week. …So, can you tell me this, Mr Clauson. Assume that one does not have the good fortune to be a misguided member of the public who brings to the LSC an utterly misconceived complaint; in which case, I accept, the LSC may swing into action with some alacrity, albeit unaccompanied by either efficiency or competence. In any other circumstance, what does one have to do in order to get some action from the LSC?
>
> I have complied with your 'Complaints About Us Policy' to absolutely no avail. Does one really have to go to the Queensland Ombudsman? Or to the Crime and Corruption Commission? Or must one bring an application under the *Judicial Review Act 1991* (Qld) … simply to compel compliance with the LSC's mandatory obligation under section 450 of the *Legal Profession Act 2007* (Qld)? Or should I be lodging a further disciplinary complaint with the LSC against those LSC functionaries who are members of the legal profession — yourself included — and who are in continuing breach of their statutory obligations with respect to the investigation of complaints against (inter alia) another member of the LSC staff?

Mr Clauson did not much like my letter. I don't know why — I actually thought it was a pretty good letter. But at least, in the result, it showed how quickly the LSC can move when it wants to. Less than a month later, breaking all records, Mr Clauson was in a position to make his own disciplinary complaint — against me! — for 'lack of professionalism in communication with another practitioner', namely Mr Clauson himself.

In case you are wondering, Mr Clauson's complaint was referred to the Bar Association. I responded on the very day that I received it. The Bar Association produced its report in under a week. On 27 April, Mr Clauson wrote to me, advising that he had received the Bar Association's report, and that he was considering it. He promised to 'write again in due course to advise what, if any, further action I propose to take in respect of this matter'.

As I have said, that was on 27 April. I have heard nothing further since then.

V How to Deal with the Three-Headed Beast

Well, now you know what the modern Cerberus is, how he behaves, what he is like, you are probably wondering — how can I deal with him?

The best answer I can give, for those of you planning a career in the legal profession, is not to bother. There are plenty of well-paid jobs in the legal profession which do not involve championing human rights. And championing human rights is not a very lucrative sphere of activity. If you want a quiet life, as well as a comfortable income, there are so many other things you can do: cottage conveyancing, for instance; or drafting wills and administering deceased estates; or Family Court litigation; or pursuing damages claims for

injured workers, or for passengers and pedestrians in motor accident cases. None of this is intellectually very challenging, but what's wrong with a little boredom so long as you are adequately remunerated for it?

Sadly, there may be a few of you who share with me an absurd delusion — the delusion that there is more to the practice of law than conveyancing, deceased estates, divorce cases and personal injuries claims — the delusion that, if members of the legal profession have anything really useful to contribute to our society, it is to stand up for the rights of our fellow citizens. If you do have the misfortune to share that absurd delusion, then you really should think about getting out now, before you start down the path which leads inevitably to becoming a tired, moth-eaten, cantankerous, and ever so slightly unhinged lawyer like me.

But, given that warning, if you really want to know the answer, here it is. There is only one weapon in our society which is capable of overpowering the three-headed monster, and that is the courts. The courts are untainted by any paranoid fear of terrorism; they care nothing for political correctness; they are impervious to the dictatorship of bureaucracy.

When Hercules in the ancient Greek legend had to tackle Cerberus, he was burdened with an added condition: he was forbidden to use any weapon made of iron — which was, of course, the hardest substance known to the ancients. So he had to abandon his sword, and tackle Cerberus using only a wooden club, and a bow and arrow. Even the arrows had to be modified, replacing the iron tips with tips made of stone.

Yet those weapons proved sufficient.

You can see him here. I am sure you will understand why I identify with Hercules, given the unmistakeable — you might say uncanny — physical resemblance, down to the tiniest detail. Only, I do generally try to dress myself more fully before I go into battle.

However, no weapon is self-acting. The courts will not take on the modern three-headed beast by themselves; they need a warrior who is prepared to take him on. In short, they need you, the lawyer, to use every ounce of your skill and diligence, every moment of your time, every scintilla of your drive and energy, to mount the attack. Just as Hercules could wield a wooden club, and a bow with stone-tipped arrows, you can use the courts as your weapon of choice in defeating his modern descendant. But it is up to you to know how, and when, to utilise the ultimate weapon to best effect.

Sometimes, the courts will let you down — or you will feel that they have let you down — by appearing to side with the forces of darkness. However disappointed you may feel at the time, it rarely, if ever, happens that the courts do not have good reasons for doing so. My own assessment, based on almost 35 years of experience as a barrister, is that the courts get the right answer more than 85% of the time, which is a far better strike-rate than any other institution in our society, at least any that I can think of.

And on those occasions — fewer than three out of every twenty cases — where the courts arrive at the wrong outcome, you can at least feel reasonably confident that it was the result of a genuine error, oversight, or mistake. I cannot bring to mind a single occasion when I have even had reason to suspect that an adverse decision was the result of a court genuflecting or cow-towing to the right, the left, or the bureaucracy.

So, ladies and gentlemen, if you will heed my advice, it is to place your confidence in our judicial system. It may not be perfect — nothing devised by humankind ever is. But it is the nearest thing to perfection which any of us is likely to encounter, at least in this life.