

**‘The Long March Through the Institutions
— Doctors and Lawyers as Threatened
Species**

by

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The Chairman of the meeting was the President
Mr. G. Gronow

Mr. Chairman, Ladies and Gentlemen:

As you all know, my topic this evening is the 'The Long March Through the Institutions: Doctors and Lawyers as Threatened Species'.

Those of you familiar with the Marxist pantheon will recognise the first part of that title as being associated with the writings of one of the so-called 'Western Marxist', Antonio Gramsci, who was imprisoned by Mussolini late in 1926 and died, still in prison, 10 years later in 1937.

Gramsci's name is much less familiar, particularly in the English-speaking world, than that of other figures in that pantheon, such as Marx himself, Engels, Lenin, Trotsky and so on. Nevertheless, there's a case for saying that, in the last 40 years, his writings have had more real influence on the course of the development (or retrogression) of Western societies than those writings of any of those better known figures.

Tonight then I wish to say something, first, about those teachings of Gramsci which relate to the steady process of decline in the public standing of our professions, including, (but not confined to) medicine and the law, and which I believe therefore underly that reference to you as 'threatened species'.

Secondly, I shall try to say something about the nature and extent of that decline in public standing; and finally, I propose to utter some views, which I fear may be somewhat controversial, about some more general reasons why, short of a major behavioural change amongst the members of those professions, that decline seems likely to continue.

Before embarking on those remarks, however, I think I should say two things by way of generally clearing the ground.

First, while I recognise that this distinguished society has no political affiliations, I make no apology for the fact that my remarks this evening will, in places, necessarily take on a political edge. It's not possible to address the topic agreed between us without doing so.

Secondly, I shall have one or two rather harsh things to say this evening about some aspects of the behaviour over the past 25 years (say) of both doctors and lawyers taken collectively — and I emphasise that word 'collectively'. I should therefore make clear at the outset where I personally stand in regard to them, and to the professions generally.

Without spending undue time in doing that, let me therefore simply say that I believe very strongly in the role of the professions within any 'civil society'. At their best, they stand for scholarship, and other forms of high intellectual attainment, for professional standards, and ethical standards more generally; for honourable conduct, impartiality, a capacity for disinterested assessment; for charitable and even benevolent behaviour; and for standards of civilised conduct which are perhaps most simply summarised in the term, 'good manners'.

It's not too much to say that a society without professions would be a barbarous society. More relevantly, perhaps, a society with professions which fail to live up to these descriptions will be a society which, to that extent, has already taken the first rever- sionary steps towards barbarism, or at least collectivism (which is not, in the end, so very different from barbarism).

In short, ladies and gentlemen, if later this evening I shall utter some words of criticism, that will not be because I detest the professions which you represent, but rather because I admire what those professions should be, and feel saddened — as well as, in some degree, alarmed — by their current fall from grace.

That said, let me now return to the first portion of my remarks this evening — the teachings of Gramsci, at any rate, those of them which are relevant to my topic.

The bare bones of Antonio Gramsci's life may be briefly stated. He was born in Sardinia in 1891 and educated at Turin. At an early aged he joined the Italian Socialist Movement, and in 1921 was one of the prime movers in forming the Italian Communist Party. In 1922, when the facists under Mussolini seized power in Italy, he was in Moscow, but returned to become leader of the PCI in 1924. In 1926 he was arrested and tried on what I think can fairly be described as political charges, and sentenced to 20 years imprisonment. Between 1929 and 1935 he wrote, in prison, what came to be called his 'Prison Notebooks', which were subsequently published, after the Second World War, during the period 1948–51.

The central question to which Gramsci, and indeed the other so-called 'Western Marxists' addressed themselves arose in the first instance from the stark contrast between the triumph of the Bolschovik revolution in Russia in 1917, on the one hand, and the subsequent abject failures of the Communist movements to come equally to power in western Europe, on the other.

In Germany, even a state so recently defeated in a 1914–18 war had little difficulty in dealing with the attempted uprisings of the Communist trade unions, and the activities of Rosa Luxemburg and her fellow conspirators.

In Italy, when confronted in 1922 with the choice between the so-called 'organisation of the working class', and the socialist movement more generally, on the one hand, and Mussolini's fascists, on the other, the people unhesitatingly chose the latter. By the time Gramsci had written his last notebook, Germany too had succumbed not to communism, but to facism.

As for the non-continental European west — in particular, Britain and the USA — the predicted 'workers' revolt' not only never came, but was never seriously in contemplation.

All this, to Marxist intellectuals, presented a serious problem in fact, two serious problems. Not merely was there the practical problem that the Russian communist state was going to have to 'go it alone', but also, and in some ways almost more importantly, there was an intellectual problem. Why, if Marx's 'iron law of history' could be said to have been shown to be correct in Russia, should it not have been equally fulfilled in other countries? — in most of which, indeed, the 'industrial proletariat' were relatively far more numerous than they had been in Russia.

Gramsci himself, it should be said, did not subscribe to the Marxist view about the 'iron law of history'. Nevertheless, for him also these two problems — the intellectual one, and the practical one — required an answer. If the Marxist revolution was seen to have failed in the west, what were the reasons for that failure, and how could society be so transformed as to remove the barriers which had brought about that failure?

This was, in one sense, the same question — or at least a very similar question — as that which had been addressed 30 years or so earlier by the British Fabians — the Webbs, Bernard Shaw and others; but apart from the different nature of that question pre-1917 and post-1917, the other major differences between the British Fabians and the principally Continental European 'Western Marxists' need not detain us here.

As one recent essaist on Gramsci has said:

'His distinctive and original contribution to social theory is his

theory of politics — *or how power works* — in the modern state (Emphasis added).’

Gramsci stated the view that, in the final analysis, the reason for the failures of the Communist revolutionary movements in Western European countries lay in their inability to carry the people of those countries with them in overturning the power of the State. He asked himself two questions about this popular ‘consensus’ in support of the modern State. First, (and again I quote the same author):

‘Why and how does the modern state enjoy this consensus in its rule among the majority of the population?’

And secondly:

‘How can a socialist ensure that this consensus is made into a new consensus in favour of socialist values?’.

In the words of another writer about ‘Western Marxism’, more generally, Gramsci’

‘. . . longed for a movement capable of using the state to carry out the national transformation which the Italian bourgeoisie had failed to lead’.

With that in mind Gramsci first set out to analyse the nature of the modern state (or at any rate, the State as he knew it in pre- and post- World War I period). Within such a State, he distinguished between institutions of state, on the one hand, and the institutions of ‘civil society’, on the other.

The institutions of State comprised, in effect, the executive, the legislature, the judiciary, the police, the armed forces, and so on. In imperial Russia these institutions of State were to all intents and purposes all-powerful; in effect there *was* no ‘civil society’.

In the West, by contrast, Gramsci wrote, these institutions of State were:

‘. . . just an ‘outer ditch’ in a formidable network of fortresses — social, economic and cultural world of a sturdy civil society’.

Whereas, by definition, the institutions of State find their being in the various agencies of State power, ‘civil society’ finds its being in

private institutions, such as the churches, schools, universities, trade unions and the professions.

It was the 'cultural consensus' (or 'hegemoni' as Gramsci called it), generated by these *private* institutions which constituted 'the mainstay of rule in the west, where (in the 1920s at least) a robust civil society is not dwarfed by State power'.

In the words of yet another writer on Gramsci, it was the view of the latter that:

'Since hegemony pertains to civil society and [Western] civil society prevails over the State, it is the cultural ascendancy of the ruling class that essentially ensures the stability of a capitalist order'.

It is none of my purpose here this evening to analyse these views of Gramsci's, or to attempt to set them within the wider stream of Marxist thought. Rather, having stated them thus shortly, I wish simply to point to the power of such ideas during the post War period, within the context of this address.

One immediate attraction of the Gramscian view is, of course that it provides an answer to the conundrum mentioned earlier — namely, the contrast between the revolutionary triumph of the Russian Bolschoviks on the one hand, and the disastrous failures of their Western European immitators, on the other. While Lenin's rush to power had succeeded in overthrowing the institutions of State in Zharist Russia in 1917, in Western countries the 'formidable network of fortresses' within that 'outer ditch', had stood fast while the revolutionary tide dashed itself to impotence against their ramparts.

Even more importantly, for those in the West dreaming about a socialist future rather than nostalgically analysing the past, the Gramscian thesis suggested the outline for a program of action based on the proposition that, in the west, 'Social predominance [of any desired cultural view] must precede political domination' of those wishing that cultural view to triumph'.

Specifically, an acceptance of the Gramscian thesis suggested two distinct, but in the end converging, lines of action.

First, there was a need to promote the process of 'intrusion of the institutions of State . . . into the realm hitherto regarded as *private*, or outside the regulatory concerns of the State'. By gradually lessening the relative significance of 'civil society'

vis-a-vis the State itself, this process would weaken the role of those inner earthworks as defenders against the revolutionary invaders.

Secondly, and more subtly, there was a need to infiltrate the institutions of 'civil society' directly, and to seek to change from within the cultural mores prevailing within those institutions. To the extent that this could be achieved, there would be so much the less need for any later revolutionary onslaught. In effect, the defenders of those inner earthworks would lay down their arms and come forward to join their revolutionary comrades to undermine that 'outer ditch' and overthrow the institutions of State from within.

The first of these lines of action was, of course, already well and truly in train by the time of Gramsci's death, and, in the post-War period it has progressed apace in line with the growth of the Welfare State. More and more, the institutions of State have encroached upon territory which was previously largely or wholly within the private domain.

Long before Gramsci wrote about these matters, this line of action was already well advanced. Once you set up Government employment offices, for example, you almost entirely drive private employment agencies to the wall. Once you set up State schools, you go a long way to driving privately-funded schools out of business.

The post-war period however has seen a quantum leap in this advance. The Beveridge Report which of course was published in Britain long before Gramsci had, (I imagine) ever been heard of there by other than a tiny handful of individuals, ushered in the Welfare State. Once it becomes assumed that the State is responsible for people's welfare, the role of private benevolence becomes attenuated and 'charity' even takes on the redolence of a dirty word. Once you create among the people a mental state of dependency, you create a people dependent upon the State.

It can therefore be argued that it was the second line of action, mentioned above, that Gramsci's writing made the greater, and more distinctive, contribution. Consciously or unconsciously, the institutions of 'civil society' have been penetrated by those having collectivist goals in view. The Victorian Certificate of Education, or the so called 'vocational reforms' now flowing from the report of the Committee bearing the name of Mr. Lawrie Carmichael, are

merely two recent examples of this penetration in the area of the education profession.

Wherever you look today in our society, you will find that every institution which, even 50 years ago, formed part of that 'cultural consensus' which, taken as a whole, was predominant over the institutions of State, has now been infiltrated by those who argue for collectivist approaches (of some kind or another) to the concerns of those institutions.

Although my topic here this evening relates only to the medical and legal professions, this process of Gramscian institutional infiltration has of course been by no means confined to those professions nor to the professions alone.

As already noted in that reference to the Victorian Certificate of Education, the teaching profession has been a key target. Through the teacher unions, through the process of 'curriculum capture', and in other ways, there has developed a steady process of infusion into our schools — and via our schools, into our young people — of the view that no aspect of our society should be beyond the reach of the State. If there be a problem — or if a problem be perceived, which is by no means the same thing — the state should automatically be called upon to 'fix' it.

These developments were originally to be seen principally in the system of State education. Over the past couple of decades, however, the same tendencies have emerged in the private schools, where the growth of quite militant teachers' unions is once again being followed by the steady infusion of collectivist projects of one kind or another.

Consider also the state of our universities, whose Governance, (with a few honourable exceptions) has degenerated almost continuously over the past 30 years or so — ever since they began their massive expansion as a result of the Murray Report in 1958, but particularly since their almost total loss of discipline during the Vietnam years and beyond.

There once was a time when on any great matter of public moment, you could rely on some respected academic person of authority and public standing coming forward to state a view, and give a lead to the public debate. Nowadays, our universities — or at any rate, their humanities departments — are so filled up with chattering collectivists that their views are always totally predictable and are, partly as a consequence, less and less authoritative —

although by no means less and less sought. One result has been the steady decline in public standing of our universities, so that, when the so called 'Dawkins reforms' with their wholly collectivist motivations, were imposed upon the tertiary education sector, there was little public sympathy for institutions which, by their own previous actions, had largely forfeited the right to such sympathy.

Although the position differs from case to case, the same is broadly true of our churches. Even the Catholic church — of which I am not a member, but which I had always tended to respect as being at least one 'inner earthwork' which would always stand out against being 'taken over' by the State — has been far from immune. In particular the Jesuits — who were at one time regarded as perhaps the most intellectually accomplished standard-bearers of catholicism — appear to have been totally 'captured' by every left-wing collectivist doctrine known to man — if not, I suspect, to God. My own church, nominally at least, the Anglican Church of Australia, has simply become a laughing stock as it promotes one kind of Politically Correct nostrum or another — homosexual priests (not to mention Bishops!) one week, a 'gender neutral' liturgy the next, and so on. Leaderless, intellectually pedestrian, it staggers on largely from sheer inertia, awaiting the advent of some 21st Century Australian Martin Luther to provide it once again with some purpose in the world.

And then, of course, there are the professions — the law, medicine, engineering, dentistry, accounting and so on.

Within our universities, the most serious Gramscian infiltration, and most pitiable decline in academic standards, have been seen in the humanities, whereas the sciences and technologies have tended to be more resistant to these intellectual infections. Within the professions also the extent of these developments has been less marked in such professions as engineering, surveying, accounting and so on, than in the law. Medicine, which on that basis one might also have expected to remain relatively immune, has not wholly succeeded in doing so, for reasons which I shall come to later.

The essence of any professional relationship is to be found in the nature of the link between the person who provides the professional service involved, and his or her client. That is, in its very nature, a *private* relationship. So fundamental is the privacy of

that relationship held to be within the legal profession, at least, that a whole doctrine of 'legal professional privilege' has grown up around it, and been enshrined within the case law of the land. Significantly, that doctrine too is now coming under attack from the forces of collectivism within the profession's own walls, who argue that a 'greater good', (i.e. a collective one) must, at least in some circumstances, prevail.

Before coming to such matters as that, however, I promised earlier that I would say something about the nature and extent of the decline in the standing of the professions — including, but not confined to, medicine and the law. So, let me now try to do that.

In an address almost a year ago to the National Conference dinner of the Australian Medical Association in Canberra, I referred to a then just recently published Morgan Gallup poll in which 1343 Australians had been asked to rate various occupations on grounds of honesty and ethical standards according to ratings ranging from 'Very High' through 'High' to 'Very Low'. That poll, which has been conducted in broadly similar form each year since 1976, contains some very interesting information.

First then let me give half of you, at any rate, the good news. Doctors (as they are described in the polling question) rated second highest among all the occupations listed, with 69% of respondents ranking them in either the 'High' or 'Very High' categories.

Moreover, and this is in some ways even more encouraging to the medicos among you, this ranking was only just below the highest ever ranking for 'doctors' in the history of a poll (70 per cent, in 1990); and better still, was appreciably above the 62 per cent ranking achieved in the first such poll in 1976.

Incidentally — and although this is largely a digression — I cannot forbear from mentioning to you that Federal and State Members of Parliament — each of which categories had rated around the already low level of 20 per cent in 1976 — had in each case, by 1992, fallen to only 10 per cent. At that level, they ranked just above estate agents, advertising people, trade union leaders (on 8 per cent) and newspaper journalists.

Now let me turn to the other half of you. Even in 1976, you will be sorry to learn that lawyers rated only 43 per cent — that is, only two-thirds as highly as 'doctors' at that time. Even in those days,

they were also outranked in public esteem by such people as University lecturers (though only just), police, engineers, school teachers, dentists and bank managers. The latter and I find this fascinating in those days outranked even 'doctors' to top the poll in public appraisal of their ethics and honesty. (Today, I should add, among all these categories they outrank only lawyers!)

For lawyers, however, the bad news does not, I fear stop there. By 1992 lawyers had fallen even further in the rankings, so that only 34 per cent of respondents gave them either 'High' or 'Very High' ratings. That is to say, unlike 'doctors' who had actually improved their ratings by 7 percentage points, those of lawyers had fallen by 9 percentage points. While they still, as it happens, occupied the same place in the sort of occupational pecking order, the 'gaps' between them and those occupations still above them in that order (included now also pharmacists, engineers and accountants, who have been included in the polling since 1976) has widened significantly.

The first thing to say about this *relative* disparity between the public esteem in which lawyers and medicos, respectively, are held is that it seems to bear out, or any rate be consistent with, the contrast I drew earlier between the decline of academic standards in our centres of higher learning among the humanities, versus the relative maintenance of standards amongst the science and technologies. Despite its professional status, which might have been expected to protect it from this erosion of standards to a considerable extent, the law is clearly numbered among the humanities rather than the science technologies, and I judge that it has not been immune to the influences working upon the former.

My second point is more in the nature of a speculation rather than a conclusion. Although 'doctors' ranked *relatively* highly in 1976, I suspect that in (say) 1966, before the Nimmo Report and, later, Medibank, they would have ranked even higher. The very fact that as already mentioned, bank managers ranked somewhat above them in 1976 bears, I think, some testimony to that. Bank managers *were* highly respected in the 1960s (and the 1970s also), but not, unless my personal recollection fails me, as highly as 'doctors' were in those days.

Those things said, it's time to return to my main theme, and to focus again now on those two courses of action which, as noted earlier, the writings of Gramsci suggested as the paths by which to

effect his 'long march through the institutions' half of my title is a phrase of his, a long march through the institutions of 'civil society'. Those were, you will recall, to promote the encroachment of the State itself upon what had previously been the private domain of those institutions; and to promote the infiltration of collectivist views into the very culture of those institutions themselves. There's not the slightest doubt that, in both cases, a great deal of ground has been made over the past 40 years or so. That is why, incidentally, the shrieks of rage are now so well orchestrated whenever, in Victoria today, there seems any likelihood that some of the ground may be lost (if only temporarily, perhaps).

As to the first phenomenon the growth of the State (insofar as it relates to medicine and the law), I don't imagine anyone in this audience will need much convincing.

Consider first, the case of medicine. At the time of the publication of Gramsci's *Prison Notebooks*, the role of the State in Australian medicine was relatively limited. There were of course public hospitals — and very good ones — and the medical schools within those Universities which, at that time, boasted them were already considerably State-subsidized. There was a small Commonwealth Department of Health, almost wholly concerned with such matters as quarantine regulations, public servants' health regulations, and the immigration program. Apart from these, and a few public hospital permanent professional employees, the profession was almost entirely private. General practitioners, specialists and surgeons alike had little or nothing, at that time, to do with the State.

Consider what a revolution a mere 40 years — indeed, a mere 25 years or so since the publication of the Nimmo Report — have wrought.

The Nimmo report, you will remember, was produced under the Prime Ministership of Mr (now Sir John) Gorton, one of Australia's most prominent collectivists. It took the view that, in the medical field at any rate, nobody in the land, from the poorest to the richest, should be required to find more than five dollars for a medical consultation.

Now there is of course a case — and a strong one — to be made for the view that anyone in our society who is faced with a medical contingency of a 'catastrophic' kind should be assisted in the

financing of that contingency, or — and preferably — that private medical facilities should be available to cater for just such contingencies.

There is, I suggest, no case whatsoever — other than doctrinal collectivism *per se* — for the view that the State (i.e. the general body of taxpayers) should assist financially those who wish to purchase medical services of an 'everyday' kind, unless the person concerned is so financially indigent that it would be unreasonable to expect him or her to be able to pay for such services (or insure against their need).

This distinction is of course now a familiar one throughout all aspects of the Welfare State debate. Should the State (i.e. the general body of taxpayers) be called upon to 'cover' everyone? — or should such State intervention be restricted only to the genuinely needy?

From an economic policy viewpoint there is no doubt as to the answer. Interestingly, even a Labor Government has, over the past ten years, increasingly decided to 'target' the provision of most welfare services more and more narrowly. While they are still far from being restricted to the genuinely needy, they are certainly no longer universal.

Significantly, this change in philosophical stance on Labor's part has *not* been extended to the health arena. Indeed, when the then Minister for Health, Dr Brian Howe, sought to introduce a co-payment charge for medical services — which might have been seen as the first, very tentative step towards 'targeting' in this area also — Mr Keating used this development to attract the few Left faction votes which he needed to defeat Mr Hawke for the Leadership of the Labor Party.

However that may be, the outcome of the Nimmo Report was a major increase in the degree of State intervention in the medical profession. Although much of the administration of the scheme was carried out through the health insurance funds, and in that sense still remained 'private', nevertheless the role of the State also increased, in at least three ways.

First, there was a major increase in the Commonwealth Department of Health bureaucracy; secondly, the stage was set for the growth of 'subsidized medicine' — that is, the demand for medical services began to be artificially inflated; and thirdly, because it was now beginning to pay the piper, the Federal Government — that

is, politicians — began to believe that they had a right to start calling the tune.

From this stage it was but a short step, a few years later, to Mr Whitlam's Medibank. The argument now was that two million Australians, or thereabouts, remained uninsured and that therefore 'social justice' demanded that the whole population should be swept up in a great trawling operation in order that they too should be within the net. The fact that, of those uninsured, a very high proportion chose not to be, as a matter of intelligent choice, was neither here nor there. For example, well-to-do people saw no need to insure themselves against medical contingencies which they were quite capable of paying for themselves; young people in good health (quite rightly) regarded the health funds' insurance rates, based on the collectivist 'community rating' principle, as exorbitant in their case; and so on. None of that, however, mattered. Those who were used to the cry 'One out, all out' were equally comfortable with its collectivist equivalent 'One in, all in'.

The intrusion of the State did not stop there. We now saw the establishment of a State-owned insurance fund, to compete with the private funds and hence reduce even their role in the scheme of things. So-called 'bulk-billing' for certain categories of patients began the process of removing any direct financial relationship between the users of medical services, and their providers. Hence it also began the process of rendering those providers mere servants of the State.

The Fraser Government interregnum saw a series of more or less ineffectual actions snipping away at the more marginal aspects of this edifice but leaving its foundation, and indeed most of its superstructure, basically untouched. Then, with the advent of the Hawke Government in 1983, Medicare came into being, and remains in being to this day. It is now firmly established, and reaches into all our lives.

I have set down this very brief, and of course in some respects inadequate, narration of events in order to make the point that, more and more, the institutions of State themselves now bestride the medical profession. We do not (yet) have 'nationalized medicine', in the sense that our medicos (or most of them) are directly servants of, and in the employ of, the State. We do however have a situation in which a very high proportion of them is now

dependent upon the State for their incomes. In the eyes of a Gramsci (or in this case equally, a Sidney Webb) the medical profession has come a long way towards the State collectivism for which they pined.

In addition to this growth of State power from the outside, the medical profession itself has been infiltrated from the inside by collectivist views. Perhaps the most obvious example was via the establishment of the so-called Doctors Reform Society, which took up at all times an openly collectivist approach to the developing debate, and actively sought to undermine the standing of the Australian Medical Association (a body which, however, was doing a fairly good job in that regard itself). Not surprisingly, the Doctors Reform Society, which is and always has been essentially a small Labor Party front group, was accorded a status out of all proportion to its numbers, and was significantly successful in having itself seen as 'the caring face of the medical profession'.

The Australian Medical Association, by contrast, has been a great deal less effective in presenting, to the public and the politicians alike, a credible case for resisting the collectivist tide. Indeed, while it is not for me to speculate about the internal 'policies' of the AMA, it has been obvious for many years to the detached observer that the AMA appears to lack any coherent core of principle upon such matters.

Part of the problem appears to lie in the over-close relationship, over the years, between the AMA and the health insurance funds. The funds, which have generally been much better at playing politics than at providing quality health insurance of the kind that consumers really want, have been by no means popular, and some of their unpopularity has undoubtedly washed off on the medical profession.

For example, there never has been any justification, other than the bureaucratic convenience of the funds themselves, for the so-called 'community rating principle' — an approach to setting insurance rate-scales which is in fact entirely devoid of principle.

So long however as the funds cling limpet-like to 'community rating', they have no hope of competing with any agency offering health insurance cover on genuine insurance (i.e. actuarially based) principles. This has led the funds, with the AMA generally

trailing in their wake, to oppose bitterly any proposals to allow the general insurance companies to offer health insurance policies. Yet as we saw when, for a brief period, that was permitted, such policies achieved growing popularity. This was not surprising; they offered different categories of consumers what they wanted.

When therefore the AMA suggest that one 'solution' to the problems of Medicare is to increase the role of the health insurance funds, it should hardly be surprised that such an approach is chiefly greeted with a resounding yawn. Rightly or wrongly, the health funds are now widely perceived as largely self-interest bureaucracies, and a common public response is therefore to say that, if we can only choose between half a dozen private bureaucracies and one public one, we may as well choose the latter. (I personally don't happen to agree with that, but it is not a self-evidently silly view).

The medical profession is sometimes criticized also for its alleged 'restrictive' attitude towards acceptance of the qualifications of foreign-trained medicos. I personally have no wish at all to have medicos who do not come up to Australian professional standards, practising in Australia and although it is obviously necessary to ensure that no merely 'restrictive practices' are involved, I therefore do not share this criticism.

A more substantive criticism arises from the growing evidence that medical treatments are, to some extent, 'supply driven' — that is, generated by the growing ratio of medicos to population. While this is too large a topic to be dealt with here, a couple of points may be worth making.

First it seems to me that, whenever this accusation is made, spokesmen (or women) for the profession should *not* deny it — as they most invariably do. Rather, they should concede that, as in any other sample drawn from the population, there are ethical doctors (mainly) and not so ethical doctors (in a minority). However — and this is the point — the capacity of the latter to generate otherwise doubtfully necessary consultations, or specific treatments, is directly related to the existence of a State-provided scheme which renders patients financially indifferent to such practices (where bulk billing occurs), or nearly so (even where it does not).

The second point which might be made is this. Rather than

attempting to deal with this problem by restricting entry to our medical schools (thereby cutting back the supply of doctors, but at the same time again generating suspicion about 'restrictive practices'), the medical profession might do much better to argue that anyone should be free to undertake a medical degree providing that they (and not the general body of taxpayers), pay for it themselves. (There should of course be some scholarships to ensure that the profession is not then closed to all but the children of the well-to-do). Of course, one problem there is that a significant proportion of those medical students currently studying for highly subsidised degrees in medicine are themselves the sons and daughters of present medicos . . .

Let us now turn to the lawyers, reminding ourselves in doing so of those earlier facts which suggest a much greater decline in their public standing than in the case of medicos.

We do not have, in the case of the law, anything in the same category as Medicare, whereby the State pays for such legal services as the citizens demand. In that sense, it could be said that the institutions of State have intruded less widely into the law than they have into medicine.

That notwithstanding, there is a clear perception that, these days, we have a great deal more law than we used to have — and a great many more lawyers to go with it. On every hand, the law and lawyers have been intruding more and more into what used to be thought of as our private lives. This is despite the fact that one body of lawyers now make a tidy living out of the civil liberties industry, and that assorted proposals for so-called 'Bill of Rights' are brought forward with monotonous regularity, ostensibly at least to protect our privacy by employing even more lawyers to do so.

Perhaps the most obvious index of expansion of the law is to be found in the volume of legislation passed each year by our Parliaments. As anyone who has ever looked at a set of Consolidated Acts on a bookshelf knows, the pace of law creation has clearly accelerated enormously in recent years.

One obvious area where that acceleration has been most evident — partly because it affects us all directly — is the law relating to taxation. In addition, however, we have environmental law, consumer protection law, family law, anti-discrimination law, and so on. We are now even threatened with anti-vilification

law; indeed, in NSW such law already exists, and various commissars are already bullying people under its aegis.

So clearly we have, operating within the legal domain, a similar phenomenon to that which we have seen operating within the medical one — in short, the proposition that governments can fix things. Having spent 30 years of my life working for successive governments at the federal level, I can only say that the longer I did so, the less convinced of that proposition I became.

One example may suffice, the so-called *War Crimes Amendment Act* of 1989. Under this legislation, a couple of very old men are now being prosecuted in Adelaide on charges that, 50 years ago or thereabouts, in a country on the other side of the globe, with a legal system quite different from our own, they committed acts which we have subsequently defined as war crimes. Untold millions have been spent in arriving at these prosecutions (one or two others having already been dismissed, or lapsed), and it is said that, whatever their outcome, they will be the last — that is, the Act will then become redundant.

The Act is said to have been necessary in order that ‘war criminals’ should not escape the consequences of their deeds. In order however to pursue this phantom objective, the Australian Parliament has enacted a law which, it is fair to say, we might otherwise have expected from the hands of a Stalin, or a Pol Pot, seeking to produce more criminals for their respective Gulags (or whatever may be the Khmer equivalent of Gulag).

Now it may be said that, while the legislation in question is an affront to any concept of the law as we once thought we knew it, no great harm will ensue because the courts are unlikely to find anyone charged under it ‘Guilty’ in these circumstances.

That remains to be seen. Meanwhile, however, the defendants will have spent some years of their lives defending themselves, not to mention presumably all of their assets. The lives of their families will have been ruined. The courts, where justice is already slow to be had, will have been clogged up further to no purpose, and so on.

Of course, if you believe that our Commonwealth prosecutors, and those who prepared their briefs, would not have brought these actions unless the men in question really were guilty of the atrocities with which they are charged, then none of that will concern you greatly even if the courts do declare them innocent in due

course. They will have 'got what they deserved'. But in that case, whatever happened to our concepts of fair play, the presumption of innocence, and so on?

I do not want to spend more time on this obscure example, but I have chosen it because I think that, more than any other I can think of, it reflects the totalitarian temper of the times so far as the legal profession is concerned. (To be fair, I should point out that a number of representatives of the legal profession did object to the legislation in question at the time.) More and more, and albeit on a smaller but in one sense more effective scale, we are seeing such totalitarianism in our legal system. This has now reached the absurd point where even our Prime Minister seriously proposes that our judges should all be sent off for various forms of brain-washing, to render them all more 'sensitive' to women's issues, Aboriginal issues, ethnic issues, or whatever other faddish topic happens to enter the heads of our legislators at the time.

The point I want to make to you is that these are the signs of a legal system — and inevitably therefore a legal profession — in decay. It is said, and I think truly, that justice delayed is justice denied. It might equally be said, I think, that justice pursued to such absurd lengths as these, is oppression enthroned.

If however the institutions of State have now expanded widely into the arena of the law, what can be said about the more distinctly Gramscian phenomenon, the infiltration of the legal profession itself by those who believe in various forms of State collectivism?

The most obvious evidence that such a process of infiltration has been proceeding has been the growth of the fraternity (and these days, increasingly the sorority) of so-called Lawyers for Labor. These are people who, whether they admit it or not, see the law not as a profession, keeping a wary distance from the organs of the State, but as a means of changing society in a philosophically leftward (if not always totally Gramscian) direction. They also see their membership of such a body as a stepping-stone to personal advancement when, increasingly these days, suitable appointments of one kind or another are being handed out by Labor governments, federal or State.

It ought to have been obvious, I should have thought, that any body of persons calling themselves Lawyers for Labor cannot, by definition, be seen any longer as professionals. They have, by their

own affirmations, foresworn detachment and embraced political partisanship, abandoning in the process that every objectivity and disinterestedness which are among the hallmarks of any profession, and which certainly should be among the hallmarks of the legal profession in particular.

This process of de-professionalisation has not stopped there. We now have whole firms of solicitors who are known to be 'Labor' firms. Every lawyer here tonight could name a number of such firms without any difficulty — I personally can think of three, at least, in this city alone.

At the other end of the scale we have, I regret to say, the High Court itself — nowadays a highly politicized body which, accountable to nobody and no longer even subject to any appeal against its judgments, has begun to bring the highest judicial organ in the land into widening disrepute.

The degradation of the once proud role of the law — the role which made people of my generation, at least, proud to claim that our society was one which enjoyed 'the rule of law' — is however most visibly seen in lawyers' self-interested clamour for more and more legal processes in defence or more and more 'rights' of more and more categories of people. The 'rights' of illegal immigrants; the 'rights' of potential victims of child abuse; the 'rights' of women against potential male violence; 'natural rights' more generally; the 'rights' for any criminal to be defended in the courts at the expense of those very taxpayers upon whom he has been preying; and so on. With every one of these 'rights' comes a further squadron of two lawyers, a further swelling of the judiciary or the magistracy, a flock of additional taxes to pay for both, and a general increase in the intrusion of the organs of State into the lives of its citizens. Yet despite all of these new and additional protections, does any of us feel safer, or more at ease in our society, than we did, say, 50 years ago? Not a bit of it?

In the end, the people are not fools and they can see a con job as well as the next lawyer. They note that with every new call for the government to 'do something' about this or that, there comes a new flock of lawyers to help them do so. Not surprisingly in these circumstances, the reputation of the profession as a whole, first gradually, then more rapidly, declines.

Where greed, and personal advancement, enter in, professional standards depart. It would be a brave person who would argue

today that both greed, and considerations of personal advancement, have not already entered significantly into the profession of the law, particularly, and to a lesser degree that of medicine also.

To the extent that they have — and that, as a result, both professions are being lowered in the eyes of the public — the truly professional members of both (and there are still a lot of them in both cases) are becoming, each in their own way, a 'threatened species'.

On that unhappy note, Ladies and Gentlemen, I must close. Thank you for your courteous attention.