

## **The role of the professions in modern society**

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### **Introduction**

The place of the great professions in our modern society is a theme of the utmost importance and it is one which is being considered not only in this country but in many parts of the Continent and the rest of the world. Recently I attended the ceremonies of the Council of the Paris Bar in Paris, which mark the opening of their legal year. There the government have recently passed some laws which affect the Bar without prior consultation with them and as a result for the first time members of the Paris Bar went on strike and a number of lawyers wearing their court robes paraded through the streets with placards in protest against the government's action. It is not necessary to go into the whys and wherefores of the strike, but it indicates, I think, as clearly as any words I could utter the gravity of the problem of the relations between an independent profession and the State. It also shows that the dispute with the government in Britain in which your profession is involved is not an isolated phenomenon.

### **The Law Society**

The position of my society, the Law Society, may be seen as rather different from the professional organizations with which you are familiar in the medical profession, though you will notice similarities in respect of, say, the Royal College of Surgeons of England. In the first place the society is a voluntary body and its members pay an annual subscription which varies in amount depending on whether they practise in London or in other parts of the country.

All members, irrespective of the field in which they practise, are entitled to receive or to make use of the various services of the society—for example, the luncheon and other club facilities, the *Gazette* and the *Guardian Gazette*, continuing education

courses, the library, and the advice given in various departments. All solicitors who wish to practise as such and whether members of the society or not have to take out an Annual Practising Certificate at a fee approved by the Master of the Rolls.

But as well as being a voluntary members' club the society also possesses considerable statutory powers conferred by Parliament which relate to the education, admission to practice, and discipline of solicitors. It was as long ago as 1729 that a movement took place to form a society for solicitors and this was known as the Society of Gentlemen Practicers in the Courts of Law and Equity. In their opening statement they declared 'their utmost abhorrence and detestation of all male [mal] and unfair practice' and resolved to use their 'utmost endeavours to detect and discountenance the same'.

This statement emphasizes one of the fundamental facts incidentally about a professional body—namely, that it should lay down and maintain standards of conduct for its members based upon the best thinking of those members as to what constitutes proper conduct for the member of the profession concerned. The enforcement of the standards is carried out by the profession itself, although different professions differ in detail as to the way in which this is done. The Law Society itself was formed in 1825 and received its Royal Charter 20 years later and, according to one of the recitals, it is established for the purpose of 'promoting professional improvement and facilitating the acquisition of legal knowledge'. Those are very wide terms of reference and they have always been interpreted as requiring the society to set, maintain, and, where necessary, improve professional standards, to deal with complaints, and, where appropriate, to initiate disciplinary action against those who appear to be in breach of those professional standards. It is important for all members of

the profession, particularly those recently admitted and those undergoing training with a view to entering the profession, to understand that it is in the interests of the profession itself that the rules of professional conduct, which are designed to govern the behaviour of honourable men and women and thus to protect the public, are enforced, since if this were not so the reputation of the profession as a whole would decline and its standing in the community would be damaged. I know that the work of your College lies primarily in the maintenance of standards to which I have just referred and in teaching and research.

During the 19th century the Law Society was entrusted by Parliament with even wider powers of administration and control over the training and discipline of solicitors. Complaints are considered by a committee of the Council which, in appropriate cases, causes applications to be made against the solicitor to the Disciplinary Committee, which was first set up under the Solicitors Act, 1888. The Disciplinary Committee, or as it is called since 1974 the Solicitors Disciplinary Tribunal, is an independent body whose members, and they include laymen, are appointed by the Master of the Rolls, the head of the Court of Appeal.

Among the other important functions of the society is the issue of remuneration certificates, where a member of the public asks his solicitor to obtain a certificate from the society that a bill of costs in a non-contentious matter is fair and reasonable or, if not, what would be a fair and reasonable sum to charge. There is no similar provision, incidentally, with regard to contentious bills and only the courts can pronounce on these. In the Solicitors Act, 1974, the society was given power to make rules for a compulsory scheme for insurance of solicitors against negligence, and we have recently introduced an indemnity insurance scheme, which becomes compulsory next September, under which all principals will have to insure for a stated sum as a minimum. This compulsory scheme is a major landmark in the history of the profession and, indeed, of any profession in the Western hemisphere. This leads me on to mention our Compensation Fund, which was introduced in 1941, under which the profession underwrites the rare acts of dishonesty of its members.

We have a large department at the society

which investigates complaints against solicitors, and some of you may be aware that our procedures have been under criticism. This is no new thing, as what is really involved is the extent of the powers which the society exercises. The public do not understand the difference between professional conduct on the one hand, where a breach may involve disciplinary action, and a matter of negligence which is or may be one for the courts, which can in appropriate cases award damages. What some members of the public appear to want, and this has been ventilated on television recently, is for the professional body itself to act as an adjudicator in cases of negligence and award the aggrieved party some financial compensation. This proposal has been ventilated from time to time in Parliament and elsewhere and was described by the previous Lord Chancellor as 'the fifth wheel of the judicial coach'.

In the last Solicitors Act, in 1974, with our agreement and after long discussions between our society and the government, we had an ombudsman set up to look at complaints by those who were dissatisfied with the decisions of our Professional Purposes Committee, which deals with all complaints, but not of course in the decisions of the Disciplinary Tribunal. The Lay Observer, as he is called, is shortly due to report to the Lord Chancellor after his first year in operation and it will be interesting to see what he has to say. Persistent complainants are a source of a terrible waste of time to any organization, and where the law is concerned the scope for complaint seems to be rather wider than elsewhere because, as is well known, the law is not an exact science.

I would not like it to be thought, however, from what I have said that the only thing we are concerned about in the Law Society is discipline. This is the basis of a profession's life, but there are many other and more exciting fields of activity in which we engage. Law reform, for example, is one upon which we spend a great deal of time and money, all the more so since Britain became a member of the EEC. We also give advice to solicitors, whether members of the society or not, on a wide range of matters from professional conduct to professional practice and contentious and non-contentious costs, and our Professional and Public Relations Department helps to provide material for solicitors who are asked

to address local bodies of one kind or another. It also provides material on matters of public interest regarding the law itself to local newspapers throughout the country. We have an international relations side which has lately been much concerned, in company with our barrister and solicitor colleagues in the rest of the United Kingdom, with the proposed Directive on lawyers' services which has emanated from the EEC. We have been active in suggesting amendments to this Directive, which is concerned with only a very limited range of activities—occasional visits to each other's countries rather than the setting up of permanent offices—and the omens seem fairly good that some at least of our proposals will find acceptance. We followed with interest your medical Directive and have pointed out to the powers that be in Brussels on more than one occasion that it is not correct to lump all professions together and try to treat them in the same way. The idea of a lawyer in France being able to come over here and practise as an English solicitor or barrister permanently without having first qualified himself in English law and practice is one which we think cannot seriously be entertained. It does not yet appear, however, that this basic fact of the difference between the legal and medical professions has yet fully been understood.

### **The professions and society**

Now I must turn to the question of the position of the professions in society today. In the Victorian era the great independent professions in this country were extended and established and were undoubtedly of very great influence and importance. It may be worth repeating the definition of what is a profession which we have often used: 'It is a body of men and women identifiable by a reference to some register or record, recognized as having a special skill and learning in some field of activity in which the public needs protection against incompetence, standards of skill and learning to be prescribed by the profession itself, holding themselves out as being willing to serve the public, voluntarily submitting themselves to self-imposed standards of conduct beyond those required by the ordinary citizen law, and undertaking to accept personal responsibility

to those whom they serve for their actions and to their profession for maintaining public confidence'.

It cannot be too often repeated that the hallmark of the professional man must be his integrity and his independence, although a solicitor must have regard to his client's interests and he also has a duty to the courts and the community. The Ormerod Committee in their report on legal education in 1971 said that 'a profession involves a particular kind of relationship with clients or patients arising from the complexity of the subject matter which deprives the client of the ability to make informed judgments for himself and so renders him to a large extent dependent upon the professional man. A self-imposed code of professional ethics is intended to correct the imbalance in the relationship between the professional man and his client and resolve the inevitable conflicts between the interests of the client and the professional man or of the community at large'. I believe that in both our professions we have accepted for the protection of the public limitations of freedom of behaviour imposed by the basic principles. Certainly so far as solicitors are concerned it is true to say that we are subject to ill-informed, unjustified, and sometimes malicious criticism. I believe this is due to an ignorance of why our profession exists and what its basic objects are. The legal profession in this country exists to serve the cause of justice, without which there can be no freedom. It is clear that in many spheres our national freedoms are the subject of attack. Because of our vocation as lawyers we must always be in the forefront of those who seek to maintain the rule of law.

As I said at our National Conference last September, I believe it is high time that it was recognized that the future welfare of this country depends not only on big battalions, whether of union or employer, but very much on the small businesses and the self-employed who have always been the backbone of the country.

### **The professions and government**

We have not, so far, in this country adopted the full-scale, full-blown system east of the Iron Curtain where people are rated according to a prearranged league table of public service decreed by the government or party

machine. How do you assess the worth of a factory worker as compared, say, with the worth of a transport driver? How do you equate the work of a solicitor with that of a dentist? The Civil Service some years ago set up a comparability unit to examine the pay of those in other walks of life and from this they sought to say how much civil servants should earn. But one wonders whether we should be wise to consider the matter in this way. I have mentioned that independence is one of the most important attributes of the professional man. Once governments acquire control over any organization or profession, as you are so well aware, then it is very difficult to restrict their influence and limit their power. It is now a common practice that when something needs doing we look to government to do it—hence the increase in government activity and the fact that the number of civil servants has increased so spectacularly.

It is interesting that the legal profession after the war was ready with an alternative scheme to a national legal service and that until very recently nobody questioned the soundness of the decisions made in 1949 when the Legal Aid Scheme was set up. Admittedly, we complained and lots of other people complained that the perpetual economic crises which had dogged us since the end of the war prevented the full implementation of the original scheme, but that was something quite apart from the question of its administration. Now, however, we have demands by a small but vociferous group of lawyers, social workers, and others and from some members of Parliament for the administration of legal aid itself to be taken out of the hands of the Law Society, which everyone accepts has handled the matter extremely competently and economically, and to create what they term a Legal Services Commission which would introduce non-lawyers into the administration of the system and no doubt end up in a large number of civil servants doing at far greater cost and with questionably no greater efficiency what is at the moment undertaken by members of the profession. Last year we celebrated the 25th anniversary of our Legal Aid Scheme, which has undoubtedly exercised a profound influence on the schemes in other parts of the world. It is unfortunate that our recurrent national

economic crises have held back full extension of the scheme as we would wish.

It must always be remembered that the work of the lawyer is to help those who consult him to avoid or overcome the frustrations and difficulties that arise from potential or actual conflicts of interest, whether between individuals or between citizens and the State or some other authority. It is noticeable how governments in recent years have taken away more and more aspects of what used to be the work of the courts and placed them in the hands of administrative tribunals or removed them from controversy altogether by extending the powers of a minister. At our last conference in September we were told by one European authority, when we were discussing the question of whether we needed a Bill of Rights to safeguard the fundamental rights of the subject, that in no other country in Europe had such widespread powers been delegated by Parliament to ministers who could rule by decree. This brings to mind the famous words of William Pitt who, on the 18th November 1783, said: 'Necessity is the plea for every infringement of human freedom. It is the argument of tyrants, it is the creed of slaves'.

It is this which makes the role of the independent legal profession of such importance in our society because, ultimately, it is the lawyer who stands between the individual citizen and the State or between the individual and the local authority. It is tempting to say that the State should extend legal aid and that the salaries of the lawyers should be paid by the State or the local authority. But how in that case will the independence of the lawyer be preserved? Furthermore, it has to be recognized that if private property and the private sector in our society become of less importance and the State becomes more omnipotent we may face the sort of situation which now exists in Eastern Europe, where the legal profession is not independent and its activities are circumscribed.

One of the reasons why I think the future of the professions in this country may be in some jeopardy is because of the increasing power of the State over every aspect of the life of the individual. The professional man owes his duty in your case to his Hippocratic Oath and in our case to the law.