

CHAPTER 15

LOOKING AHEAD

If the argument of this book is accepted the consultant professions are seen as far more than mere providers of services to be bought and sold in the market place. They set an example, and give a tone to society the effect and influence of which is far-reaching. Even if they are looked on solely as providers of services, however, their importance is growing. Within the vital field of health, rights and property there is an increasing demand for advisory services. This is illustrated by the growth in numbers of practising professionals. The number of architects grew by 50% between 1950 and 1966 (1) and in the six years ending in the latter year the number of practising barristers grew by 17%. (2) This rate of growth is expected to continue, and may well be inadequate to meet the real needs of the public. If the professions grow in numbers and importance, so will the significance to society of the way they are organised and operate. If, as we contend, this way is not only the most satisfactory for the immediate purpose but also has valuable social side-effects, it follows that society needs to ensure that conditions are right for its future wellbeing.

Because the professional system we have described is right and natural we need not be surprised to find it extending to other fields. Wherever there is scope for consultancy services concerning health, rights or property we may expect to see the continued development of new consultant professions organised on similar lines to those of long standing. This is an evolving process. In comparatively recent times professions such as accountancy and surveying have, on the lines of older professions, established themselves firmly. We may expect the process to continue as new specialisms are evolved to meet new needs. Since the process is imitative there is a responsibility on the older professions to ensure that the example they set is in every way the best possible. They will thus spread the social good of professionalism widely through society, benefitting many others as well as themselves.

Some consultants may continue to stand aloof from professional organisations. Although their role as consultants is increasing, economists have so far declined to form a professional organisation. Their 230

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231 current influence in matters of finance and property is of course immense but the objects of setting up a professional institute, notably the pooling of ideas and experience and forging of an agreed set of principles, are not attempted. Perhaps this is why economists so often fail to agree, and why their advice does not always have the effect intended.

The prospective expansion of British professional practices is not limited to Britain itself. The major professions have long acted as training grounds for students from the Commonwealth, most of whom return to their own countries on qualifying. They often retain membership of the British institute — the Institute of Chartered Accountants has for example more than 5,000 overseas members. It is natural that British professional ideas, thus exported, should take root in the developing countries of the Commonwealth. They are fostered by numerous Commonwealth associations of which the constituent members are autonomous professional bodies. Such associations flourish in the fields of medicine and architecture, and an association is currently being set up for surveyors. Other professions, such as law, have organisations which are international and not merely Commonwealth in ambit.

To help improve the effectiveness, the standards and the prestige of the professions in the Commonwealth, and particularly in the under-developed countries, the Commonwealth Foundation was established in 1966. The governments of the Commonwealth, in setting up the Foundation, agreed to provide it with an annual

income of a quarter of a million pounds. This is used to make grants, particularly to organisations in the newer Commonwealth countries. Part of this money has been used to set up lectureships to encourage the spread of professional ideals. Another proposal is to create professional centres in developing countries. These are designed to meet the problem that emergent professional groups in these countries lack finance and have only small memberships. They are therefore unable to afford the necessary premises and secretarial services. The professional centres will each consist of suites of offices to be shared by all professional bodies willing to take part. Staff will also be employed on a shared basis. The first two centres are planned at Kampala and Port-of-Spain. (3)

The exporting process is not of course limited to ideas and methods. Many British firms are establishing branches on the continent of Europe and elsewhere. Despite many difficulties the value of British professional ideals is coming to be appreciated in Europe. The advantages of this in economic terms and prestige are obvious, and it is a trend to be encouraged. To help on this process within the field of construction, the British Overseas Engineering Services Bureau was set up in 1967 on the

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PROFESSIONAL ETHICS initiative of the Association of Consulting Engineers. The Bureau promotes the overseas work of British consultants. Its main function is to ensure that the possibility of employing British consultants is considered by foreign clients, and to recommend firms to those clients. Half the administrative costs are met by the Board of Trade.

A further aspect of the importance of healthy professions lies in their peripheral advantages to the public. Campaigning by professional bodies for social improvements can have a decisive effect. The British Medical Association can claim the credit for the introduction of compulsory registration of births, marriages and deaths and the introduction of universal vaccination. (4) The setting up of the British Standards Institution, which has been of inestimable value to industry, can be traced to the initiative of the engineering profession. (5) Facilities such as professional libraries are often made freely available to the public. This is the case, for example, with the R.I.B.A. library — one of the two largest architectural libraries in the world, with a stock of over 70,000 books and 500 current periodicals, not to mention the world's largest collection of architectural drawings. (6) Firms themselves often make wide-ranging contributions; the quantity surveying firm of Munk and Dunstone have done pioneering work of great value in computers. The public work of individual practitioners in serving on Government committees and similar bodies is of undoubted importance. In the long run, all such contributions to the public welfare depend ultimately on the health of the professions. *The Institutes and the Future*

Being convinced of the rightness of their cause, and the importance of their success, how should the institutes seek to bring this about? They certainly need to take every opportunity to allay hostility and soothe public disquiet. In face of growing egalitarian pressures this will not be easy. Some commentators have stigmatised the professions as a socially divisive, institutionalised elite. Their members are accused of being superior beings addicted to ritual and mystery. Other attacks have come from the realm of business. Lord Campbell of Eskan, in a speech in 1966, criticised the tendency of the professions to behave as “a sort of priesthood apart from the hurly-burly of the business or political world”. He went on to ask for more competition between consultants and less prudishness about advertising. These criticisms are easy to make and difficult to counter effectively. This is particularly true when, as not infrequently happens, they come from professional people themselves. People who are disgruntled with their profession often rush to attack it in print; those who regard their profession with approval are usually too busy

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233 practising it to sing its praises. As Mr. Arabin found in Barchester Towers: “It is so easy to condemn; and so pleasant too; for eulogy charms no listeners as detraction does.”

There is certainly a need for professional people, fully instructed about the content and justification for their code, to adopt a positive, rather than a defensive posture. In order to convince others it is first necessary to

convince oneself. While it is part of the professional nature to see things objectively and judicially, and to avoid extremism, this should not be carried beyond the process of making up one's mind. Once there is conviction, it needs to be acted upon.

An extraordinary illustration of the tendency of professional people to undervalue themselves was contained in proposals for the redevelopment of the Whitehall area of London, published in 1965. Prepared by a distinguished team of architects, led by Sir Leslie Martin, the plan at one point recommended the removal of two professional institutions which had occupied their sites near Parliament Square for around a hundred years on the argument that such bodies were of insufficient importance in the national life to warrant their occupation of such a position. That professional men should have reached this conclusion is startling. Lack of self-confidence in the importance of one's role in affairs does not lead to success in convincing others.

The professions must learn to react more positively to attacks. Under recent public interference, some of it intolerable, their leaders have grumbled but not spoken out. The attitude of the solicitors and architects, for example, to wide-ranging proposals (based on obviously inadequate information and experience) from the Prices and Incomes Board was one of pained but dignified reproach. This got them nowhere. Contrast the reaction of university teachers to a similar report affecting their future. Immediately on the publication, in December 1968, of the Board's report on university teachers' pay, which included a suggestion that the remuneration of lecturers should vary according to students' estimates of their ability, the Vice-Chancellor of Liverpool University announced his resignation in protest. Other protests quickly followed. Professor Andrew Young, of Ulster University, declared that the report was a fundamental attack on the autonomy and freedom of the universities and should be considered in a spirit of contempt. The Association of University Teachers secured an interview with the Minister responsible for education, who gave an undertaking that the Government would not accept the objectionable features of the report. By its immediate and violent response the academic world reduced the report to the level of importance it deserved. (7)

We have considered the need to publicise professional services, and

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PROFESSIONAL ETHICS the staffing and financial difficulties this involves. The burdens could be lessened by concerted action. Hitherto, owing to the tradition of exclusiveness of the professional bodies, moves have generally been made in isolation, are very often duplicated, and undoubtedly lose their force and effectiveness by dispersion, with its concomitant of scattered timing and feeble impact.

In this book we have treated rules of conduct operated by the consultant professions as a single code, on the premise that while there are of course individual variations these are minor in comparison with the common ground. If this is right it justifies, indeed demands, unified action by the professions in relation to the code. The common features, which predominate, could be reduced to a single formulation. This basic code, being the same for all, could be explained and defended very much more easily. Individual institutes could adopt the basic code with minor variations (if really deemed necessary), and could add additional rules of their own. The cost of disciplinary proceedings could be reduced by having a common procedure and a shared staff to administer the common code. It might be necessary to have different tribunals, so that each accused could be judged by his peers, but even this could be dispensed with at least in some cases. There seems no obvious reason why an accountant found guilty of toutings or undercutting should be dealt with differently from an architect or a solicitor.

There are many other matters which could be dealt with on common lines with a saving of money and a gain in efficiency. Proposals for legislation affecting the professions, particularly on taxation, could be examined jointly and representations to government made with one voice. Sometimes a professional body seeks to promote legislation. If it does so in isolation its effort will be weakened and may not succeed. Or, if it succeeds, other professions who would equally have benefited may be excluded. This happened in the case of legislation to deal with the situation caused by the decision in *Brown v. Inland Revenue Commissioners*, (8) where the court held that a professional firm was not entitled to retain interest on money held in its client's account. The principle of this was not challenged, but legislation was required to remove certain

practical difficulties. A bill was promoted in Parliament by the Law Society, and passed; but it applied only to solicitors. Other professions equally affected by the decision have not shared in the remedy. The ineffectiveness of separate representations was illustrated when Selective Employment Tax was introduced in 1966. Although each professional body made strong protests to the Government they were uncoordinated. The arguments were not always the same, and the Government were easily able to disregard them.

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Other matters of common concern arise from the fact that a private firm has much the same problems in financing itself, organising its offices, handling clerical and administrative staff and coping with rating, tax and planning problems, whatever the nature of the practice carried on by it. Advice to practitioners on these problems could be given on a uniform basis.

Another field in which the consultant professions could co-operate more closely is that of public relations. Between them, the institutes employ a considerable number of staff engaged in various aspects of public relations and there would be an obvious increase in effectiveness if, on points concerning the professions generally, the public relations resources could operate collectively rather than making individual, and possibly even inconsistent, forays.

The professions have banded together in one way or another in a number of countries. On the continent of Europe there are professional groups recognised and even sponsored by governments. In Australia attempts are currently being made to set up a Council of the Professions. This is by extension of the New South Wales Council of the Professions which has been in existence some years. In the Republic of Ireland there was set up in 1966 a Federation of Professional Associations.

It is suggested that the institutes in Britain would do well to establish a Council of Consultant Professions. This should not detract from the autonomy of the individual institutes. It would be a body with advisory functions, coupled with executive duties under authority granted by the constituent bodies. It would need to have a permanent staff and premises. Just as the Confederation of British industries operates effectively without detracting from the independence of member companies, and the Trades Union Council serves, rather than is served by, the independent unions, so the Council of Consultant Professions could operate as a valuable adjunct, in no way diminishing the self-determination of the professional institutes. Where any clash threatened between two institutes, as in the case of "demarcation" disputes, the Council could mediate with advantage.

In their submission to the Monopolies Commission the Consumer Council suggested that professional bodies tended to impose rules on their members which did not operate in the public interest, and that a Government department should be set up to deal with this, headed by a registrar of professional societies. The registrar would supervise conditions of entry and the rules and disciplinary procedures of professional bodies. This function is to some extent performed in relation to chartered bodies only by the Clerk of the Privy Council, and it therefore seems unnecessary to establish a new department." It would be better

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PROFESSIONAL ETHICS to extend the jurisdiction of the Clerk of the Privy Council, if really considered necessary, so that it embraced all professional bodies. It is suggested however that this step would not be required if a Council of Consultant Professions were set up. This could operate in the same way as a unifying factor, and could include independent members who would draw attention to rules which seemed to be operating adversely to the public interest. It would have the great advantage that control would remain, where it belongs, in the hands of the professions. The Council would no doubt consult from time to time, if so required, with an appropriate Government department and in practice the public interest would be fully safeguarded.

Apart from its other advantages, the setting up of a Council of Consultant Professions would demonstrate to the public the concern of the institutes that their house should be put and kept in order. In this respect it might be compared to the establishment in 1946 of the Retail Trading-Standards Association. This voluntary body, set up by retailers and manufacturers, played a prominent part in dealing with traders in false trade descriptions. It proceeded by issuing warning notices, and even launching prosecutions against offenders. It has published codes for its members on such merchandise as fabrics, clothing, furniture and domestic hardware. (9) The State Intervenes

The constant carping at the professions, ill-founded though most of it is, has had its effect. Public sympathy has been forfeited, even though undeservedly. A climate of opinion has been brought into being against the professions, so that a defence of the code is described by headline writers as “clinging to restrictive practices”. Editorial writers rebuke institutes for presuming to stand up for their practices. Authors of books are rude in chapter headings.* Any stick will do to beat the professions with.

It was in these circumstances that the Government decided to refer the question of professional restrictions to the Monopolies Commission. This was done under powers conferred on the Board of Trade by the Monopolies and Mergers Act, 1965, s.5, under which the Board can require the Commission to submit a report on the general effect on the public interest of practices of a specified class which are commonly

* Chapter XV of *Lawyers and the Courts* by Abel-Smith and Stevens (London, 1967) severely criticises recent efforts by the Bar Council to increase remuneration. It is headed “The Barristers’ Trade Union in Action”. Yet these authors would think a trade union a worthy body if representing manual workers. Is this snobbery?

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237 adopted as a result of, or for the purpose of preserving, conditions of monopoly, or of any specified practices which appear to the Board to have the effect of preventing, restricting or distorting competition in connection with the production or supply of goods or services. The reference was made on 30th January 1967 and at the time of writing the report has not yet appeared. The professional practices covered by the reference include practices regulating entry, fees, incorporation or partnership, terms of service and advertising. In announcing the reference the Government indicated in Parliament that it was intended to be followed by legislation, where the need for this was indicated.

The terms of reference of the Monopolies Commission preclude an all-round examination of the professions: the Commission are directed to concentrate on so-called restrictive practices only. As this book has attempted to show, the practices of the professions need to be seen as a whole. Their true operation cannot be assessed by looking at so-called restrictive practices in isolation — this is bound to produce a distorted view. Distortion is also likely to result from entrusting the examination of professional practices to a body whose very name seems to some extent to prejudge the issue. As we have shown above the word “monopoly” is inappropriate in relation to the professions. To begin an examination of this kind on the assumption that conditions of monopoly are likely to exist, and using techniques hitherto employed in relation to commercial companies, is to start the enquiry with a bias from which it might easily not recover. Whether the Commission succeeds in overcoming this obstacle has yet to be seen.

At the time of writing, the outcome of State intervention remains in doubt. So far, despite a large dose of socialisation, the medical, dental and legal professions have retained their essential nature. The operations of State boards and commissions have not yet proceeded to the extent of taking autonomy from any professional institutes. Danger flags are fluttering in the breeze however. One delusion may prove critical. It is the delusion that because standards of conduct are now high they will remain so although their supports are forcibly dismantled. The code of professional ethics is not scaffolding to be removed from a building now complete. It is the steel framework integral to the structure.