

Are the liberal professions dead, and if so, does it matter?

Lord Phillips of Sudbury

I am endeavouring to persuade my own profession to adopt a qualifying oath for solicitors – common in many countries but unknown here. The Editor has asked me to think aloud about that and about the nature of professionalism generally. I do so with deference to the ancient commitment of the medical profession to explicit ethical declarations originating with the Hippocratic oath, and as modernised by several teaching hospitals and other bodies, of which that of Imperial College is perhaps the latest.

It would be perverse not to acknowledge the avidity of some patients and their lawyers in pursuing medical malpractice cases, but I will not follow that up here beyond observing that this is yet another manifestation of the hard commercialisation of life. That, in turn, makes the need to shore up and, in my profession's case, to restore professional altruism, a pressing one.

I set up my own law firm 33 years ago in London. The one partner function I have retained is recruitment of trainees. Not only is their selection crucial to the firm's future, for we try to 'grow our own', but it provides a fascinating, if glancing, insight into the mores of successive generations.

I have never been able to resist asking bright-eyed applicants, 'What is it that you want to profess in seeking to enter the legal profession?' What, indeed, should one expect by way of response in an age when many entrants no longer hope for 'a good living' (which was the general expectation when I qualified) but the highest paid one. For example, last year roughly 2,500 solicitors in the Square Mile earned over £700,000 at a time when the legal aid scheme, our mini-mini-NHS, is in deep crisis.

In today's world one does not need to be a sceptic to wonder whether the very notion of a profession is not fanciful. Some young lawyers and accountants, for example, would appear to favour a simple 'business' approach which sticks to the one essential – the 'bottom line.' Yet new professional associations proliferate, amongst the latest being arts therapists and salespeople.

Less than 100 years ago, as shrewd a social historian as Tawney observed that 'the professions are organised, imperfectly indeed, but nonetheless genuinely, for the performance of duties'.¹ Whether he would say that today, when many professionals

are as acquisitive as anyone, is a moot point. Not long ago, for example, lawyers attracted a trifling 1% support in a Community Service Volunteers' poll which asked young people which profession made the most difference to people's lives.²

Of course, George Bernard Shaw's quip about 'all professions [being] conspiracies against the laity' fed off generations of public hostility, as in the sixteenth century *Utopia* where 'they utterly exclude and banish all attorneys so shall there be less circumstance of words, and the truth shall sooner come to light'. Doctors were never quite as dispensable!

At the same time as Sir Thomas More was writing *Utopia*, Erasmus, in Holland, noted that 'nowadays the rage for possession has got to such a pitch that there is nothing in the realm of nature, whether sacred or profane, out of which profit cannot be squeezed'. *Plus ça change!*

Though most of today's professions require heavy study, it is hard to see how they can still be called 'liberal'. The universities are ever more vocationally driven (the search for business funding sees to that) with the philosophical and moral underpinnings of, for example, law being all but ignored even at Oxbridge.

Furthermore, the burgeoning legal, regulatory and technical complexity which now confronts us has led to ever narrower specialisation, in the process marginalising those personal qualities of character and practical wisdom which were, even in my time, the most sought-after attributes of professionals. That specialisation, be it noted, deprives its practitioners of that breadth of experience which is the feedstock of broad judgement, and the stimulus to wider engagement with their profession and society. The almost complete withdrawal of the professional classes from local government, for example, is one parlous effect of the privatised, work-obsessed world which is now the lot of so many.

Solicitors, for example, are rarely any longer *hommes d'affaires*, but more legal technicians. Whilst that has most to do with the ineffable complexity of legislation and the decommunalisation of most specialist firms, plus the impersonal, transaction-based work they undertake, it is also cause and effect of a declining professional ethos.

Anthony Kronman, Dean of Yale Law School, in

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his fierce book *The lost lawyer – failing ideals of the legal profession*,³ talks of the dying breed of US lawyers committed ‘to the simple but potent idea that lawyers have an obligation to service the public good. Failing this, the practice of law loses its status as a calling and degenerates into a tool with no more inherent moral dignity than a hammer or a gun.’ A comparable critique of professional values here would reverberate across the professions generally and, dare I say it, touch the medical profession, particularly perhaps at the Harley Street end. Indeed, when did one last hear of medicine or law referred to as ‘a vocation’?

Kronman’s analysis fuels the questioning engendered by the multifarious banking and accounting scandals, mainly but far from exclusively US derived, which are far from over. At last the question is being asked as to whether one achieves the best results by micro-rules or via value-based principles. In accountancy, for example, does one rely more on voluminous technical auditing requirements or on broader accounting criteria, which engage the judgemental integrity of auditors? Of course this is not an either/or situation, but the bias must lean towards the latter.

It seems self-evident to me that the essence of professionalism is to be able to call upon the honour, probity and principled judgement of the practitioner. A self-respecting, fully functioning profession would surely profess just that, and deal with inevitable failures. The alternative, namely external regulatory dependence, implacably leads, as Fred Hirsch acutely observed over 25 years ago, to ‘a rising mass of codified petty regulation, swollen by the need for rules to enforce rules and to counter their avoidance.’⁴ The very equality of treatment such regulatory complexity is nobly designed to ensure in fact makes it impossible. What is more, state regulation in such areas is apt to drive out self-policing and the force of individual conscience.

That we are going down precisely that blind alley in parliamentary, and hence national, terms is clear from the statistics. As I put it in the Queen’s Speech debate on 2 December 2003:

I obtained from the Library today the statistics for 2000, the latest year for which we have figures. In that year we passed no fewer than 12,552 pages of new law – that is raw law, without notes or indices – and I estimate that only about 2,000 pages of old law went out. So we were left with a net increase of more than 10,000 pages of statute law to add to the 10,000 net pages of statute law of the year before [and so on].

This aggregation of statutory and legal complexity is choking democracy and disaffecting citizens. It is making life out there impossible to lead without a wholly unwanted and expensive resort to so-called experts. To that must be added case law and tidal waves of EU directives and regulations.

A lawyer cannot resist the envious comparison with doctors, where at least the human corpus remains much the same from year to year!

The temptation for legislators to believe that societal ills can generally be countered effectively by state intervention is an understandable one. Sometimes it is true. The creation of the National Health Service is itself a prime example. But, as such landmark structural reforms have been laid down, and widespread primary disadvantage replaced by the secondary, or rela-

tive, variety, the sustainable natural order, as one might call it, needs to reassert and look after itself. In particular, the professions need to wrest responsibility for their affairs back from the well-meaning but incompetent (in the literal sense) state. We need, in the process, to acknowledge and attend organically to the values we collectively profess, or should profess.

As Professor Sir George Alberti, former President of the Royal College of Physicians wrote last year, ‘we need to affirm our professionalism as never before.’⁵ In materialism, incidentally, the professions face a far more formidable threat than in the politicians.

A challenging test of some of these ideas appears to me to underlie the ‘Assisted Dying (Patients) Bill’, which has this year been debated earnestly in the House of Lords. Its chief proponent, Lord Joffe, is a distinguished ex-lawyer who is a thoughtful advocate of euthanasia heavily protected by legislative safeguards. Those of my view, and debate was evenly split, believe that this approach places a burden on the law, which it cannot sustain. Either it will be too general, or flexible, to cope with the myriad circumstances thrown up in practice, in which case it will inadvertently allow widespread, but lawful, abuse (*pace* the abortion laws, perhaps). Or it will seek to prevent that by creating micro-regulation, which will lead to self-defeating inflexibility and insensitivity. In short, I believe that there is no substitute for honest clinical judgement informed by an ethos and practice, which have evolved gradually in response to hard experience. There are, of course, other issues around perceived (rightly or illusorily) pressure on old people to ‘end it all’ for their relatives’ sakes.

Many professionals today work in private entities where the only common goal is ever more profit. It is a world of billing targets, intensified by intra-firm and inter-firm competition. Culturally, it is as if our moral ozone layer has been punctured and is being depleted by noxious concentrations of commercialism and managerialism.

Whatever view one took of communism and socialism (now deceased) they at least put market capitalism on its moral mettle. Christianity, too, provided some constraint on free enterprise. Today, however, bereft of those forces, the professions need consciously to refashion their own ethical foundations.

Lawyers, one might have thought, are so harnessed to justice by education and training that it would naturally shape their professional outlook. The truth is that for an increasing number justice has become privatised, confined to the interests of their paying clients. That may be true of parts of the medical world, where even some of the charitable organisations eschew all needs but those that can be fully paid for.

There are opposite temptations in an essay such as this. The first is to believe that everything is for the worst, and the better days are all behind. The other is to take the fatalistic view that nothing much changes one way or another, and that somehow all will work out for the best.

My view of history is that every age confronts different challenges, some of them acute and culture-threatening. Our particular genius has been to hold the development of religious and political freedoms and of economic liberalism in some sort of

dynamic tension. As Montesquieu wrote 250 years ago, Britain has 'progressed furthest of all people in three important things – piety, commerce and freedom'.

As I have endeavoured to show, that balance has been all but crushed by a materialism that has gone far towards destroying concepts of professionalism, beyond a view of it confined to standards of work and efficiency (hence profit).

To restore the balance will require more than moral utopianism, which glosses over unaccommodating reality, or worse still succumbs to a skin deep conversion, driven principally by public relations. The rest of us have much to learn from the world of medicine, but perhaps it too has some reflecting to do.

References:

- 1 Tawney RH. *Religion and the rise of capitalism: a historical study*. New York: Hartcourt, Brace and Company, 1926.
- 2 Community Service Volunteers' Poll, 2003.
- 3 Kronman A. *The lost lawyer – failing ideals of the legal profession*. Cambridge, Mass: Harvard University Press, 1993.
- 4 Hirsch F. *Social limits to growth*. Cambridge, Mass: Harvard University Press, 1976.
- 5 Alberti G. Professionalism – time for a new look. *Clin Med* 2002;2:91.