

THE  
PROFESSIONS

BY  
A. M. CARR-SAUNDERS  
AND  
P. A. WILSON

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## PREFACE

MUCH study has been devoted to trade unions; the history of the trade union movement as a whole and of many individual unions has been written, while the social and economic problems have received considerable attention. Professional associations, on the other hand, have been almost entirely neglected; there has been no study of the historical development of professional association or of the social, economic, and ethical problems involved. This is all the more astonishing inasmuch as the greater skill and responsibility of professional men as compared with members of trade unions render their associations far more interesting and important. Within the ranks of the professions are to be found most of those upon whose special skill the functioning of modern society depends. Moreover, the problems involved are of enduring interest to the public and are frequently discussed in the press. Indeed, events move so rapidly in the professional world that, since the manuscript of this book was completed, certain passages have already become out of date and some important steps have been taken that are not mentioned; this is the inevitable penalty for treating a living problem. Thus the General Council of the Bar has agreed to a modification of the two-thirds rule, the new procedure has been introduced into the High Court, and the Lord Chancellor has set up a committee to consider legal education and its relation to the universities. In other professions developments are taking place with equal rapidity, and in this connexion it must be borne in mind that, whenever facts and figures relating to the present are given, the picture which we attempt to draw is that of the professional world in the earlier part of last year.

Every profession lives in a world of its own. The language which is spoken by the inhabitants, the landmarks so familiar to them, their customs and conventions can only be thoroughly learnt by those who reside there. But no man is a citizen of more than one country, and we have been mere hurried visitors to the homes of others. There is no excuse for inaccuracy in the reports of what we have seen, but we realize that we may not have learnt the native idioms. We may call things by unfamiliar names and in a thousand ways betray our foreign origin. We would plead with those of our readers who belong to one of these worlds to be indulgent

when we describe it, and fail to speak as though we also resided there.

During the preparation of this book we have frequently asked for assistance and have received in every case the most generous and ungrudging help. We have been provided with documentary material, libraries have been placed at our disposal, and interviews granted. Moreover, every section of the first part of the book has been read through by at least one member of the profession concerned. It would be pleasant to acknowledge by name and in full all those who have helped us. But most of them occupy administrative positions in their professional organizations, and many of them have intimated to us that they would prefer that their names should not be mentioned; though we are entirely responsible for the criticisms and suggestions, the errors and omissions, the mention of their names might seem to associate them not only with the latter but also with the former. Since therefore we must perforce omit the names of most of those who assisted us, it seems that the only course is to omit them all. In so doing we wish to place on record our deep obligations and to express our profound thanks.

A. M. C.-S.

P. A. W.

WATER EATON MANOR  
OXFORD.

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## ABBREVIATIONS

- B.M.A.** = British Medical Association.  
**G.M.C.** = General Medical Council.  
**N.U.T.** = National Union of Teachers.  
**R.C.V.S.** = Royal College of Veterinary Surgeons.  
**R.I.B.A.** = Royal Institute of British Architects.



## INTRODUCTION

'I HOLD', said Bacon, 'every man a debtor to his profession, from the which as men do of course seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and an ornament thereunto.'<sup>1</sup> To Bacon the term profession indicated certain vocations with peculiar characteristics, and in this sense it has been in use for centuries. Moreover, in Bacon's day the term was full of content, indicating the profound interest which these vocations had already aroused. During the last century there has been a quickening of interest; and to members of the professions and to the public alike the term is pregnant with meaning. The group formed by the professions is therefore no mere sociological abstraction; indeed the public has long been in advance of the sociologist in that it has recognized the essential interest and importance of professionalism.

Of late years the interest of the public in professionalism has become more direct and immediate, because numerous practical problems relating to the organization of the professions and to the availability of professional services have had to be faced. The problems of a public medical service and of legal aid for the poor have been widely discussed; the place of professional education in universities has received renewed attention; each session since the War Parliament has had before it at least one bill proposing to set up a state register for some profession not hitherto regulated by the State. Proposals of the latter kind raise questions connected with the 'closure' of professions, and public controversy has recently been aroused in relation to certain persons alleged to have been hardly treated by existing methods of closure. It is not only in relation to practical problems that the professions are now of interest; the position of associations within the State has become one of the themes most debated by political theorists, and there are few associations more important or powerful than those formed by professional men.

It can scarcely have escaped the notice of any student of contemporary affairs that there is no informed guidance when these practical problems come up for discussion. There has been, for instance, no attempt to define the conditions under which closure is desirable; there is no general understanding of the methods of closure now employed or of the manner in which they work. Not only is there no widespread acquaintance with the organization of

<sup>1</sup> Francis Bacon, *Maxims of the Law, Works*, ed. Spedding, vol. vii, p. 319.

the professions, but there is the greatest divergence of view about the value of professionalism and of all for which the professions stand. To one writer of great authority and influence they are objects of deep suspicion; to another, of less authority but of much influence, they are 'conspiracies against the public'. On the other hand, in the view of an author, whose political affiliations are the same as those of the writers to whom allusion has just been made, the professionalization of business is one of the most promising methods of social reform. This state of affairs is to be explained, at least in part, by the fact that information about the professions is almost wholly lacking. No adequate history of any one of the professions exists; we are speaking, of course, of the history of the practitioners and not of their techniques. We possess no more than a brief outline of the history of one or two professions and a few studies of special periods. In these circumstances it is not surprising that no analysis or appraisal of professionalism has been attempted, if we except the work of Mr. and Mrs. Sidney Webb which, though of great value, is admittedly slight and incomplete.<sup>1</sup> Until many investigators, approaching the subject from different angles, have worked upon it, generalizations can have little behind them; and such opinions as those to which we have referred can be no more than expressions of like or dislike of certain aspects of professionalism which, from lack of investigation, may not have been thoroughly understood.

There is thus need for the study of professionalism on many sides. Our concern is with professionalism in the society of to-day and of to-morrow, and we propose to direct our attention to the services which the professions can render and to the organization under which their services can best be performed. Our object is analysis, followed by constructive criticism, of the position at the present time. But since descriptive material is lacking, we must attempt to provide it; and our first task is a survey of the facts. It is not only the facts of the present day that are relevant, but also, to some extent at least, those of past times; therefore we have been compelled to widen our survey and to include some account of the origin and development of existing professions. In attempting to trace the process of development, we have had reason to regret the neglect of this field by students of social history. An adequate study of the rise of one of the great professions with its roots deep in the past would be the work of a lifetime; and we can do no more than attempt to disentangle the essential threads in

<sup>1</sup> *New Statesman*, supplements, 25th September and 2nd October, 1915, 21st April and 28th April, 1917.

the story of each profession, well aware that, lacking guides, and having time only for superficial investigation, even the main elements of each story may not have been properly grasped.

What are the limits of the field to be surveyed? There is no more agreement about the boundaries of professionalism than there is about its value. Any attempt to define professionalism would be premature until the material is before us. But what material shall we investigate? There are certain vocations of ancient lineage which by common consent are called professions, law and medicine among the foremost; they are the typical professions, and we must begin with them. There are many other vocations which, though more recently and therefore less firmly established, are nevertheless usually granted professional rank; all such vocations, architecture, engineering, chemistry, accountancy, and surveying for example, require mention. Looking farther afield, we discover vocations upon which the State has imposed a form of organization similar to that which it has imposed upon some typical professions; midwives are an example of such a vocation, and they deserve to be included, if only because the methods and results of this form of state intervention demand the most careful study. We also discover vocations which have built up voluntary organizations, closely resembling those found among established professions, and on this account some mention must be made of brokers and others. Finally there are a large number of vocations which claim professional status. But they offer little that is of interest to the present study, however significant they may be in their own sphere, and we propose to omit them from consideration. We also omit the Church and the Army. The former is left out because all those functions related to the ordinary business of life, education among them, which used to fall to the Church, have been taken over by other vocations. The functions remaining to the Church are spiritual, and we are only concerned with the professions in their relation to the ordinary business of life. The Army is omitted, because the service which soldiers are trained to render is one which it is hoped they will never be called upon to perform.

With this material before us, we shall be in a position to examine and evaluate all that is characteristic of professionalism. This is our aim; that being so, it is enough to survey the established professions and those other vocations which for any reason throw light upon professional organization and activity. It is no part of our purpose to attempt to draw a line between professions and other vocations; we are not concerned to say what vocations are

professions and what are not. We are therefore absolved from the necessity of examining all those vocations which claim professional rank in order that we may decide upon their true position. Indeed, the drawing of a boundary-line would be an arbitrary procedure, and we shall not offer, either now or later, a definition of professionalism. Nevertheless when we have completed our survey, it will emerge that the typical profession exhibits a complex of characteristics, and that other vocations approach this condition more or less closely, owing to the possession of some of these characteristics fully or partially developed.

The first part of this book is occupied with a survey of this field. We have attempted to group related professions together; we begin with the distinct legal group and go on to the equally well-marked medical group. Outside the vocations in these groups there are two others closely regulated by the State which it is convenient to treat next, namely the merchant navy and mine management. Among the remaining professions we can distinguish a clearly marked scientific group. Those which follow are not easy to classify; but certain professions within the world of business stand apart, and we take them last. Those which are situated between the scientific and the business professions have been distributed among two groups. The professions falling within each of these two latter groups have clearly something in common; so long as this is so, it is not worth while to attempt to specify that which relates them, since this classification is only made for purposes of presentation and has no other significance. The amount of space devoted to each profession is not proportional to its importance. Some professions have been treated at greater length than others because they happen to illustrate points of general interest. Moreover, those professions which are taken first occupy more space than the others; all professions show certain similarities, and it is possible to describe more briefly those professions which are treated later because those aspects of their history and organization, which are, so to say, of common form, can be passed over with a reference to what has already been said of other professions.

In Part II we attempt to draw together the threads so far as the emergence of professions is concerned. The segregation out of professions, which has been in progress since early mediæval times, is still going on; and certain features of the process do not come to light until we examine the phenomenon of emergence as a whole. In Part III we are concerned with the analysis and evaluation of professional organization and activities. We have made our constructive proposals whenever in the course of the description or the

analysis we have discovered apparent gaps in the organization or matters which seem to deserve criticism. There only remain some questions concerning the place which professions might occupy in the society of the future, and they form the subject-matter of Part IV.

We have primarily in view the professions of England and Wales. The organization of certain professions, the medical profession, for example, is similar throughout Great Britain, and in such cases our treatment holds good for a wider area. But where organization is different outside England and Wales, we have made no attempt to describe it except in a few cases where Scottish conditions illuminate those prevailing in England. In Appendix I will be found an estimate of the number of those belonging to the various groups with which we have dealt.

## APPENDIX VI

### CONDITIONS OF SERVICE OF DOCTORS UNDER THE NATIONAL HEALTH INSURANCE SCHEME

THE divided allegiance of the panel doctor to the State on the one hand and to his professional standards on the other has necessitated the erection of a complicated system of checks and safeguards. These are to be found partly in the Act and partly in regulations made under the Act. The regulations are made by the Minister; and he is not bound before making them to consult representatives either of the panel practitioners or of the medical profession as a whole. By way of machinery the Act sets up in every county and county borough an insurance committee. Representatives of insured persons must form the majority of every insurance committee; while the minority is composed as to one-half of representatives of the local authority and as to the remaining half of representatives of the Ministry and of the medical profession.<sup>1</sup> The Act also provides for the setting up of two committees representative of the doctors in each area, the local medical committee and the panel committee. The purpose of the local medical committee is to represent all registered medical practitioners in the area, whether panel practitioners or not; and it must be consulted by the insurance committee on 'all general questions affecting the administration of medical benefit'.<sup>2</sup> If in any area no local medical committee has been formed, the panel committee may be recognized as the local medical committee for that area. The panel committee is representative of panel practitioners only; and in certain more detailed questions of administration it is the duty of the insurance committee to consult the panel committee.<sup>3</sup> These three committees are statutory. The regulations go farther and provide that every insurance committee shall appoint a sub-committee, known as the medical service sub-committee, consisting of representatives in equal numbers of insurance practitioners and insured persons, with an impartial chairman.<sup>4</sup>

It is the duty of the insurance committee, after consultation with the local medical and panel committees, to draw up the terms upon which practitioners are to be invited to serve. These must be approved by the Minister, and except in special circumstances, they must incorporate certain provisions laid down in the regulations.<sup>5</sup> When the practitioner has accepted service and had his name placed on the medical list, two types of dispute may arise. In considering the safeguards for competency in professions where the practitioner serves private clients and employers, it was found possible to draw a sharp distinction between the legal

<sup>1</sup> 14 & 15 Geo. V, c. 38, s. 48 (3).

<sup>2</sup> *Ibid.*, s. 51.

<sup>3</sup> *Ibid.*, s. 52.

<sup>4</sup> *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 31.

<sup>5</sup> *Ibid.*, article 3.

sanction of an action for negligence or breach of contract and the professional sanction contained in the right to strike off the register. In the case of doctors serving under the National Health Insurance Act the distinction between these two types of sanction is still discernible though it is by no means so sharp. There are quasi-civil proceedings for the recovery of monetary penalties analogous to damages where there is an allegation of negligence or of failure to observe the terms of service, and there are quasi-criminal proceedings for the removal of a practitioner's name from the list. But whereas in the typical self-governing professions the power to strike off resides in some organ of the profession itself, and is exercisable only in the event of failure of moral, not technical, competency, under the National Health Insurance scheme the ultimate decision in all cases rests with the Minister alone, while the power to strike off is aimed at technical as well as moral offences inasmuch as it is exercisable wherever the 'continued inclusion in the list of any medical practitioner would be prejudicial to the efficiency of the medical service of the insured'.<sup>1</sup>

Beyond giving the Minister power to remove from the list, the Act is silent in regard to penalties and the manner in which disputes are to be investigated. These matters are left to be dealt with by regulation. Under the regulations now in force, 'any matter relating to . . . the discharge by any practitioner of his duties under the terms of service' is generally, and if the panel committee so desire must be, investigated in the first instance by the medical service sub-committee.<sup>2</sup> Certain special issues, if they arise, are referred to the panel committee or the local medical committee, for instance the question of over-prescribing to the former,<sup>3</sup> that of whether an operation or other service rendered or advised was within the scope of the practitioner's obligations to the latter.<sup>4</sup> From a decision of the panel committee on a question of over-prescribing there is an appeal to a person or body of persons, not being officers of the Ministry, of whom one must be a registered medical practitioner;<sup>5</sup> while a question of whether any treatment was within the scope of the practitioner's obligations may be referred to three referees, two of whom must be insurance practitioners and one a practising barrister or solicitor, and must be so referred if the insurance committee and local medical committee disagree. On the facts as found by the medical service sub-committee, or by the panel or local medical committee subject to appeal, the insurance committee can do one of three things. They can, after consultation with the panel committee, impose a limit on the number of insured persons to be included in the practitioner's list;<sup>6</sup> they can make a representation to the Minister that there has been failure or neglect

<sup>1</sup> 14 & 15 Geo. V, c. 38, s. 24 (2) (i).

<sup>2</sup> *National Health Insurance (Medical Benefit) Consolidated Regulations (1928)*, article 32.

<sup>3</sup> *Ibid.*, article 42.

<sup>4</sup> *Ibid.*, article 43.

<sup>5</sup> *Ibid.*, article 42 (5).

<sup>6</sup> *Ibid.*, article 34 (a) (a).

to comply with the terms of service;<sup>1</sup> or they can represent to the Minister that the continued inclusion of the practitioner's name in the medical list would be prejudicial to the efficiency of the medical service of the insured,<sup>2</sup> in which case an inquiry must be held in accordance with the procedure shortly to be described. If they impose a limit on the number of the practitioner's panel patients, or represent that he has failed or neglected to comply with the terms of service, there is an appeal to the Minister,<sup>3</sup> who may, if he thinks fit, refer the matter to a body of three or more persons to report to him thereon.<sup>4</sup> Where the report of the insurance committee includes a finding that the practitioner failed to exercise 'reasonable skill and care in the treatment of a patient', then at least one of the persons appointed to hear the appeal and report to the Minister must be an insurance practitioner.<sup>5</sup> Subject to this right of appeal, the decision of the insurance committee to impose a limit upon the number of a practitioner's panel patients is final. Where failure or neglect to comply with the terms of service has been proved, the imposition of a penalty, which takes the form of a fine analogous to damages, rests with the Minister, whose decision is final.<sup>6</sup>

In the case of the quasi-criminal proceedings for the removal of a practitioner's name the machinery is less complicated. Proceedings can be set on foot by any person or body, including the Minister himself. If the charge is brought by an insurance committee, local medical committee, or panel committee, an inquiry must be held.<sup>7</sup> In other cases the Minister has power to dismiss the case summarily.<sup>8</sup> Where an inquiry is held, the Minister is bound to appoint an inquiry committee, composed of two doctors and a practising barrister or solicitor;<sup>9</sup> but judgement and sentence remain to the Minister.<sup>10</sup>

In the current regulations the doctors secured a further concession, which they did not enjoy before 1928. This takes the form of an advisory committee, which the Minister must appoint, consisting of three medical officers of the Ministry and three insurance practitioners.<sup>11</sup> In the case of an inquiry which may result in the removal of the practitioner's name from the medical list, and in the case of any proceeding arising out of alleged failure or neglect to comply with the terms of service, where the allegation is one of failure to exercise reasonable skill and care in the treatment of a patient, the Minister, before coming to his

<sup>1</sup> *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 34 (2) (c). The effect of a 'recommendation' with regard to the withholding of money under article 42 (7) appears to be identical with that of a representation that there has been failure or neglect under article 34.

<sup>2</sup> *Ibid.*, article 34 (2) (d).

<sup>3</sup> *Ibid.*, article 38 (1).

<sup>5</sup> *Ibid.*, articles 39 (3) and 41 (5).

<sup>7</sup> Unless it is based solely upon an allegation that the practitioner has been convicted of a criminal offence; *ibid.*, article 68.

<sup>8</sup> *Ibid.*, articles 47 and 49.

<sup>9</sup> *Ibid.*, article 54 (1).

<sup>10</sup> 14 & 15 Geo. V, c. 38, s. 24.

<sup>11</sup> *National Health Insurance (Medical Benefit) Consolidated Regulations* (1928), article 41 (2) and (3).



decision, is bound to refer the case to the advisory committee, and to consider any report which they may make to him thereon.<sup>1</sup> Where failure to comply with the terms of service is alleged, but failure to exercise reasonable skill and care is not alleged, it is still open to him to refer the case to the advisory committee if he thinks fit.<sup>2</sup> The 1928 regulations have introduced a further innovation in giving the practitioner whose name is liable to be removed from the list the right to submit evidence as to his personal character and professional standing, and the Minister is bound to have regard to such evidence before coming to his decision.<sup>3</sup>

<sup>1</sup> Ibid., article 41 (2) and rule 66 (1).

<sup>2</sup> Ibid., article 41 (2).

<sup>3</sup> Ibid., article 66 (2).

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