

OUR PROFESSIONS AND THE FUTURE

BY R. N. VROLAND, BARRISTER AND SOLICITOR

A GENERAL Meeting of the Medico-Legal Society of Victoria was held on Saturday, March 29, 1941, at 8.30 p.m., at the British Medical Society Hall, East Melbourne. The President, Mr. Justice Lowe, occupied the chair. The President, on behalf of the Society, welcomed as guests Sir Kenneth Beattie, late Chief Justice of Gibraltar, and Professor English, Professor of Obstetrics, Singapore. Mr. R. N. Vroland delivered an address on "Our Professions and the Future."

Mr. Vroland said: Some time ago I heard of a small boy starting to make his way in the world. He called in at a grocer's shop and asked for the use of the phone. He was allowed this and when he connected with the person he called he was heard by the grocer to say—"Is that the Big Store? You were advertising for a messenger boy a few days ago. Are you suited? Are you sure? Is he quite satisfactory? Is there any chance at all? None at all?" At the end of the conversation the grocer said to the boy: "I'm sorry you didn't get the job, sonny." The boy replied: "That's all right, mister. I'm the boy they gave the job, but I was just checking up to make sure they were satisfied!"

Now, before I draw the moral of the story let me say this: A perusal of the records of proceedings of this Society shows that while there have been numerous addresses on specific subjects of general interest to both professions and of special interest to one, little or no attempt has been made to analyze the functions of the professions in society or to point the way to future development. In fact, a search through the records of proceedings of various legal societies throughout Australia and even in Great Britain shows that, while individual lawyers have interested themselves in these matters, the legal profession as a body has shown only a passing interest.

In marked contrast, the records of the proceedings of legal societies in U.S.A., whilst showing an intense interest in the practice of law and all the difficulties which face the lawyers, show also an ever-increasing concern with their function in society. One finds addresses by really prominent lawyers entitled "Lawyers' General Responsibility to Society and Government," "Lawyers and the Rights of Citizens—A Call to Service for the Common Man," and numerous others similarly entitled. And it is a curious thing that when eminent British lawyers and judges visit America they seem to sense the American lawyer's interest in his duty to society and direct their remarks to that aspect of professional life. And now for the moral of my story. Just as the small boy was doing a little checking up, I believe that it is time we paused a little to check up on our professions—to see whether we have done our jobs satisfactorily; to see where we have failed and to discover how we may more fully consummate our real purpose in society. This, I believe, would be a useful enquiry at any time. It becomes urgent and necessary that we should undertake it in this time of national crisis.

There is a call to service now for both professions. It will continue, and when this war is ended and all sections of the community are war-weary and exhausted it will be incumbent on our two professions to be strong and virile, to have a clear conception of their duty to society and to be organized ready to do it.

The present fight is waged to preserve our democratic ideals—freedom of thought, freedom of speech, freedom of worship and freedom of action. And we must beware lest in winning the fight we lose the prize we fight for.

The present emergency demands that great restriction on our civil liberties, an ever-increasing control by government over the conduct of our business, even of our lives, so that the whole of our human, industrial and financial resources shall be placed at the disposal of the government for the successful prosecution of the war.

It is inevitable that this invasion by the government into the realm of individual liberty will not end when peace

comes. The problems of post war reconstruction will be as gigantic as those of the war, and it is certain that government will seek to extend its control more and more in an attempt to organize society to meet these problems. Who knows what the effect of this will be upon our democracy? May not the most important task of the lawyer in the future be to act as the bulwark of the citizen against the State, not only to ensure that justice be done to him, but also to preserve those very civil liberties for which we are now fighting?

And then the doctors. Are the doctors going to show to government the solution of the urgent medical problems now before them? Or are they going to let government, in its own unaided wisdom, devise a plan which is likely to be as inadequate as it is impracticable? How do they propose to extend and develop their medical services so that they shall be available to all? Have they given this problem all the consideration it deserves?

It is no part of my purpose to expound any political, social or economic theory, but it seems clear to me that if we are to successfully manage our country in the future there are certain essential matters to which our policy must be directed. We must improve:

1. Our living standards.
2. Our social services; and
3. Our general level of culture.

We boast of our high standard of living. In fact, it is inferior to that in some countries and not so superior to that in others as to give us any particular cause for satisfaction.

The improvement of our living standards reduces the gap between the so-called higher and lower classes in the community, ensures greater stability and lays the foundation for improvement in the other two directions I have named. Inequalities and injustices in the community are breeding grounds of discontent and unrest. In this world of ever-

improving means of production, of ever-increasing supplies of food, how can we justify a system which permits any man, woman or child to go hungry when a fair distribution would ensure sufficient for all?

While it may not be possible for our professions, as such, to take action to improve the standards of living, the members of each profession, in their daily practice, see the tragic effect of poverty in the community both from the health and economic standpoints, and should have an informed opinion and not hesitate to demand improvement.

And then the social services? The social services of to-day leave much room for improvement. The medical services available to the community are limited and inadequate. Hospital accommodation is insufficient. As every medical man knows, those who are less fortunate in the community do not receive the medical attention which is necessary to safeguard and guarantee their health. Even those who can pay are not always able to obtain complete medical service. As at present organized, there is a limit to the free service which medical men can give to their patients, and I for one believe that if the truth were known the record of that profession for generosity is one which would give it pride of place in the annals of charitable service in this community. The problem is one of economics. Doctors must live, and to live they must be paid for their services.

I will not attempt to catalogue all the directions in which medical services must be extended, but it seems clear that there must be further provision made for:

1. Hospital facilities.
2. Medical services for widows and orphans.
3. Extending medical services in outlying districts.
4. Pre-natal and after care for mothers.
5. The full use of the work of medical science in preventive as well as curative medicine.

If the solution of these and other problems of medical services can only be found by nationalization of the medical

profession, then that must be accepted. If, in the opinion of the profession, nationalization will not solve the problem, then it is the duty of the profession to show to government what the solution is.

In the words of Lord Baldwin, the problems of the next fifty years are the problems of government, and "government is the most intricate, exacting and important work in the community."

We in the professions, in common with others, complain that we are badly governed and speak mostly in contemptuous terms of the politician. In his turn, the politician has treated our professions with scant courtesy and his habit is to ignore them in public affairs. This state of affairs will become increasingly worse so long as the professions fail to understand their true function in society and fail to discharge it. If we want better treatment from government, if we want improvements in the standards of living and the social services of the community, we must change our whole attitude and recognize that the business of governing this community is just as much our concern as it is of anyone else, and that it is our duty to use our special knowledge and training to help government to solve its problems.

I repeat that the problems of the next fifty years will be the problems of government, and it follows that more and more emphasis will be placed upon public service. In the language of Bergson, a profession can only justify itself by the degree of its usefulness to the public and so we must consider our professions and their usefulness to society. Do they serve merely a useful purpose? Or is their function such that they are absolutely necessary to society? The answer clearly is that not only are they useful and necessary, but that the skilled advice of the lawyer and the doctor is of such first rate importance that society could not exist as it does to-day without it.

The function of medicine in the community is so obvious that it requires little elaboration. Its great contribution to the relief of human suffering, its constant battle with disease, the tradition by which medical discoveries are dedicated to

the use of mankind and are not turned to the private account of the discoverer, are all eloquent testimony of the service it renders to mankind.

The functions of the legal profession in the community and the service it renders to society are neither so obvious nor so well understood. In the words of Professor Laski, the practice of law "is a mystery which rarely yields its secrets to the outsider," and yet this should not be so, for law constitutes the rules and regulations by which our community lives. The practice of the law brings us in touch with the whole range of human experience. As it was said of Cleopatra, so it may be said of the law, its charm lies in its "infinite variety." We often come into contact with man in every phase of life—success and failure, prosperity and adversity, sickness and health, joy and sorrow, life and death. There is, in fact, no side of life which does not bare itself to the lawyer. His assistance is necessary and recognized:

1. On the formulation of the rules or laws by which we live and the periodical adaptation of those laws to changes and developments in the community.
2. On the administration of the laws in their application to particular occasions.
3. In advice to individual citizens as to the requirement of the laws.

Put in another way, the lawyer is an essential part of the machinery of our present social order. It is his duty to see that our social order works without friction. He is just as essential as the primary producer or the merchant. He is the mechanic who oils and greases the machine and thereby ensures that it runs smoothly. He is the tester. Without him legislators would run riot, for there would be no check upon their work. I would add that when he sees a defect in the machine he should immediately insist upon its removal.

In many respects the legal profession has performed its function very well indeed; nevertheless it is subjected to a good deal of criticism, some of which is very well merited

but other of which proceeds from misunderstanding on the part of some and malice on the part of others. The outlook of the lawyers in the past has not helped the profession to improve its position in the eyes of the public. While lawyers have devoted themselves faithfully and tirelessly to the cause of their clients, they have failed too often "to think in terms of human welfare, of the rights, the security and the happiness of the common man." The laws of society are in their nature designed to protect the interests of those who hold predominant power in the community. It follows that it is to the interests of those persons to maintain the *status quo* and to resist change and development. For economic reasons, if for no other, there is a closer liaison between the lawyers and the privileged classes of the community than there is with the others. The lawyers have, as a result, been conservative in their outlook. Their instinct has been to protect the property rights and interests of their clients. With notable exceptions, they have come to look at the world through reactionary glasses. Added to this, the very nature of his profession enjoins the lawyer to caution, and because some lawyers have been lacking in courage their caution has been degraded into timidity. Thus we have in our profession a conglomerate mass of men, some conservative, many cautious, some timid, with here and there outstanding figures whose courage has enabled them to break the bonds of conservatism and assume the role of law reformers, and, sad to say, with some whose courage, wholly unfortified by knowledge, has led them to foolhardiness and rashness, costing both them and their clients dear.

I repeat that this somewhat unpromising material has performed its function well. The lawyers have busily concerned themselves with the smooth and proper administration of the law and have been anxious to see justice done. With few exceptions they have served their clients to the best of their ability and the limit of their endurance. One of the greatest services the lawyer can render his client is to keep him out of litigation. Litigation is almost always expensive and is rarely satisfying. Although it is not

generally recognized, the lawyer of to-day and of the times gone by has almost invariably made it his aim, by wise counsel and careful and skilful negotiation, to restore peace and harmony between disputants before their tempers have been made short, hatreds kindled and blind unreason let loose. The most successful work of the lawyer is not seen by the public. He is really only seen by the public at work when, for reasons beyond his control, he has failed to prevent friction and litigation has ensued. It is this fact which has resulted in bitter criticism of the lawyer in terms not warranted by the truth. Disappointed litigants, with only themselves to thank, see in their legal adviser the author of their ills. Others whose activities and desires have been frustrated by the discipline of the law, lay all the blame at the lawyer's feet, and yet another class bears a smouldering resentment against them because they see in the lawyer a selfish, unsocial being who bars the way to social progress and advancement. It is this latter criticism which we really have to fear. To deal with it successfully is one of the main problems of the future.

It has been put to me that it is amazing how often the decisions of the judges are just plain common sense, but that it is more amazing that the same decisions had been reached by the common man forty years before. This is not strictly accurate, of course, but it does represent the sort of feeling many people have towards the law.

The achievements of the law over the past seventy or eighty years have shown its remarkable capacity to grow and adapt itself to changing circumstances. But the social changes and developments of the same period have been so rapid, mechanical power and means of transport and communication have so revolutionized our way of life, that the mind of the average man has been prepared for change and he accepts it without question. In this he has outstripped the lawyer, whose conservative mind reacts more slowly to changes, with the result that the changes in the law have always lagged behind social changes. The attitude of the Bench, the Bar and the profession generally to

changes in the law to meet new conditions has been conceived by the common man as an attempt to deny him his rights. This has added to the feeling of resentment and distrust of the lawyer. Be it said that, despite this, it is curiously true that the individual client displays a faith and confidence in his individual lawyer which is the antithesis of such resentment.

If lawyers and judges, as a class, had had a better conception of the social changes which were taking place during the industrial revolution and of their effect upon the common man, I believe that, as a class, we would have stood much higher in the community to-day. The record of the period I have mentioned shows that we have, in fact, often fought bitterly against the development of the law to meet changes in social and economic conditions, all of which changes redounded to the benefit of the common people. Our fight to maintain the *status quo* was noted and resented by them. We fought changes in the law of master and servant, changes which were to result in the liability of the master for the wrongs of his servant. The resistance to this change was based on the horror with which lawyers viewed increasing opportunity to litigate against the master class. It did so result; but who to-day will deny the justice of the law which makes the master liable for the wrongs of his servant if committed in the course of his employment and within the real or apparent scope of his authority?

We placed a limited and narrow interpretation on the workers' compensation laws, resulting in untold injustice to many workers when the laws were first introduced. The English Act of 1897 provided that a worker could not receive compensation if he were guilty of "serious or wilful misconduct." A strained interpretation was placed on those words and it was held that a worker guilty of contributory negligence was deprived of compensation. The whole idea of the Act was to meet cases of hardship arising from the ever-increasing number of accidents in industry and to give a worker the right to compensation if injured in connection with his work. It is not hard to find an element of negligence

in almost every accident, and this was an unfair interpretation which worked wholesale hardship. This did not help the reputation of the lawyer with the worker, and the harm which was done was not undone by the subsequent liberal interpretation given to those words.

We invented the rule of common employment, which implied an agreement between workers to run the risks of the consequence of each other's negligence, and thereby again protected the master class from many claims which now can be made against them.

If the lawyer, while abating no whit of his loyalty to his client's cause, had in the past thought in the terms of human welfare, the rights, the security and the happiness of the average man, many of the criticisms of his profession could have been avoided to the benefit of both the lawyer and society.

I would add that, because the lawyer was regarded as upholding the master class and because the doctor was also regarded as its henchman, many of the genuine attempts on the part of each profession to improve existing conditions have been viewed with suspicion and mistrust as being actuated by self interest rather than by a desire to serve the public. Unfortunately, the suspicion and mistrust have been accentuated, because many have regarded their professions as vested interests without imposing and corresponding social obligation. This attitude has developed within the profession an entirely unsocial group whose influence must be destroyed before we can hope to deal with the problems of the future.

The cumulative effect of these varying influences at work in our professions is that to-day we find, in addition to being criticized and disliked by the public, we are both ignored by the legislature in matters on which we are specially qualified to advise. For instance, we find government instituting law reform without first consulting the lawyers and constantly refusing to act upon their advice in these matters. We also find government endeavouring to introduce a national health insurance scheme without first consulting the medical

profession, which, as the facts showed, was not opposed to national health insurance but recognized it as of urgent necessity. Government actually went so far as to appoint a commission which did not have a qualified medical representative on it. The result was that a scheme was submitted to which the medical profession had well-founded objections. When it voiced its objections this was, of course, immediately branded as hostile, reactionary and unsocial.

Lawyers complain very bitterly of the competition of unqualified persons. Our attitude towards certain competitors when first they came into conflict with us is, I believe, responsible for a number of our present difficulties, and we must now change our attitude towards them if we are to save ourselves from further inroads. I refer, in particular, to accountants and patent attorneys. We have treated them as usurpers, rascallions and rogues, which we could never have done had we understood the causes which brought them into being. They, in their turn, now find it to their advantage to criticize us and to encourage others to do the same. These callings came into being because of the great changes in industry and commerce caused by the industrial revolution, which, don't forget, is still continuing and shows no sign of abatement. They are specialist activities involving training in commercial practices which are really specialized sections of legal practice.

Law is an evolution and the methods by which the law is practised must forever change. The structure is the same but the specifications alter, and unless and until we learn that to successfully practise the law we must co-operate with all those agencies in the community which make for the smoother and better administration of law, we will be continuously subjected to competition from ever-increasing specialists in legal practice. We must carefully scrutinize their activities and, if it appears that they do improve legal practice, absorb them or bring them within our control. If they do not improve legal practice, then we must oppose them—not insult them.

I am convinced that until our professions can build for

themselves a firm foundation of public confidence, they will always be subject to attack and criticism and their difficulties with government and the public will increase. The problem of the future is how to obtain this confidence. It is a problem which only we ourselves can solve. The burden is upon us and us alone to solve it. The first step must come from within. We must consciously study our own function in society. We must develop a social sense. The doctor and the medical student must be trained and educated to see in his profession not only a means of obtaining a livelihood but also a great power working to relieve the suffering of mankind. Each must regard himself as the servant of that power.

The lawyer and the law student must be trained to understand the intimate relation which his profession bears to man himself. Each must recognize that it is only through the administration of the laws that society exists at all; that it is a human institution created by human agents to serve human ends. Each must realize that "if the law fails to keep pace with the growth and development of society injustices and hardship will follow."

Because I believe that the emphasis in the future will be upon public service, I assert that it is only when we have developed a full sense of our responsibility to society that we will be able to deal adequately with the problems of the future.

To achieve our end, a great deal of organization will be necessary. Already the medical profession has its British Medical Association with branches in all States, and the legal profession has its Australian Law Society with affiliated Law Societies in all the States. These organizations must be revitalized, and through them the professions must become articulate on matters pertaining to their own spheres of action, whether they be of national, state or municipal concern. If they are unwilling to do the job, then we must form new societies which will.

It naturally follows that the organization must be on such lines as will enable any statements issued on behalf of

the professions to proceed from a skilled and careful examination of the subject on hand. This would involve the formation of committees charged with the duty of investigating the problem and making their reports thereon. These reports would be considered by a full assembly and, as ultimately agreed upon, would be issued as the official view of the profession.

I do not advocate that the professions, as such, should invade the realms of politics, but I believe that if the politicians saw the professions seriously working at problems which they were qualified to tackle, they would soon come to welcome their deliberations and decisions, and to that extent the impress of the professions would have begun to show itself in society in a favourable light.

The first and most important committee would be one designed to promote the public relations of the professions. Its duty would be to continuously watch changes and developments in the social sphere and also to make contact with the public and the government with a view to establishing harmonious relations. It would, in effect, be the Department of Information and Public Relations of each profession.

This is the sort of way in which the organization would function. The British Medical Association would have a section charged with the duty of studying and annually reporting on hospital accommodation. Its report would be considered and finally adopted with or without amendment by the Association. The ultimate finding would then be issued in a public statement by the appointed officer. If such a committee had been functioning now, would we have been in the present difficulty as to hospital accommodation for maternity cases? I venture to suggest that the profession has known for a long time of this particular difficulty. Had it been articulate, the public outcry would have been so great as to have compelled government to act long before this.

The legal profession knows that want of uniformity in the divorce laws of the Commonwealth is a cause of great hardship. Had it been able to make an authoritative and

official declaration on this matter, surely government must have been awakened to its responsibility.

The medical profession knows that some scheme for the continuance of civil medical services by those practitioners not engaged in war service will ultimately have to be introduced. How valuable would it be to the public and to the profession to have a well conceived plan prepared and ready for immediate action?

The legal profession is well aware that there are grave defects in prison administration and that many youths having their first experience of gaol cannot but leave it as hardened criminals instead of reformed characters. How can the profession justify its complete lack of interest in this important matter? How valuable would it be not only to the profession but to the public to receive and hear the regular report of some active committee of investigation?

There is also plenty of room for the establishment of joint committees of our two professions to consider and report on medico-legal problems—as for instance the administration of lunacy laws, the proper provision for sexual offenders.

One could easily imagine a host of other matters which are of particular interest to the professions and the public, e.g., problems relating to nutrition, national health insurance and law reform of every description.

If the professions were articulate on these matters I believe that public confidence would quickly be obtained. No doubt the views of the professions would be unacceptable to some and they would still be subjected to criticism. To put it least favourably, the criticism could be no more harmful than it is at present, and even though it were, the professions would at least have the satisfaction that they knew and attempted to give public expression to their function and responsibility to society.

There is another matter to which I would like to direct your attention, and that is the duty of the professions to the poor. I know that many doctors and many lawyers give generous assistance to the poor and less fortunate members

of society. The doctor in particular is in a dreadful dilemma as to this. He is human and he cannot turn away the appeal for aid, backed up as it is so often by suffering which he and the sufferer alone can understand. This dilemma is increased by the fact that almost every development in medical science increases the doctor's power to relieve suffering and restore health. Human considerations demand that medical aid shall be denied to none. As I said earlier in this address, if nationalization is the only solution then it must be accepted. If the profession thinks otherwise, then it must provide the solution itself. I would add that it must waste no time in doing so.

The lawyer is in a different position and I do not believe that it is sophistry to argue that it is essential that he shall at all times be independent of the State. He is the bulwark of the rights of the citizens. As servant of the State, how can he fight his master, particularly if that master is an autocratic Minister ruthlessly asserting his will? The lawyer, however, does face the possibility of nationalization because it is vital that the poor and the needy have legal aid. Unless he tackles this problem urgently he will ultimately be nationalized too.

The judge swears to do equal justice to the rich and to the poor. While society exists as at present equal justice is not always done to the rich and the poor alike, because the poor cannot afford to assert their rights before the courts. On the occasions when they are able to do so the judges do administer equal justice to them and whether they are legally represented or appear in person.

The duty of the judge to the unrepresented litigant is explained if not exemplified by the story told recently by a certain judge about to hear a case. The plaintiff was represented by counsel. The defendant had briefed counsel but he was unable to appear. The defendant applied for an adjournment, which was opposed by plaintiff's counsel. The judge, by way of urging him not to oppose the application, told him that he was fully aware that it was his duty to refuse the adjournment if the opposition were

persisted in. He added, "But let me tell you this, about a week ago this same situation arose and I was compelled to refuse the adjournment. As you know, it became my duty to assist the defendant, and believe me, we won." If the lawyer is to justify his position in society he must be prepared to give legal aid. It is his part in the maintenance of our democratic ideals, for where there is inequality in the laws, and we find one law for the rich and another for the poor, there is no democracy. As Heber Smith, in his book *Justice and the Poor*, puts it, "differences in the ability of classes to use the machinery of the law if permitted to remain, lead inevitably to disparity between the rights of classes in the law itself, and when the law recognizes and enforces a distinction between classes, revolution ensues or democracy is at an end."

The legal profession must busy itself in promoting and developing legal aid work. It has commenced in England and has been in operation in U.S.A. since about 1920. There the profession has established over eighty legal aid offices and yearly they care for over 300,000 applications for legal assistance.

It is futile for us lawyers to object that we cannot afford to give legal aid. Why, since June, 1940, the Law Institute of Victoria has rendered legal aid to over 2,000 soldiers and their dependants and has taken the work in its stride. We cannot afford not to do legal aid work.

And now I must end. I do not ask that either of our professions shall do more than take their proper place in society. I do ask that we shall all honour those great traditions in which we have been nurtured and trained, that we shall strengthen them by conceiving and embracing a fuller and richer ideal of service, and that we shall at all times co-operate to help and serve our fellow-man.

DISCUSSION

Dr. Cyril Dickson said it was one of the aptest addresses he had heard, because there was a growing realization in both professions that if they did not do something about

the matters it raised the public and the legislature would. There was no question that the majority of the members of both professions always lagged behind advanced thought and even popular thought, with the consequent risk of lagging behind legislative action, although exceptional individuals in both had been leaders in reform. Unfortunately men engaged in these two professions tended to become individualists and to act accordingly. Their training and traditions were conservative, and a conservative is not a good person to reform himself or the world. As the late Premier of Tasmania (Mr. Ogilvie) once said, "No pain is so acute as the pain of a new idea." The members of the professions must be ready to bring about reforms. The first question was: Were the right people coming into the professions? They were recruited firstly from the families of those who could afford to give their children the necessary training, secondly from those who followed a family tradition, thirdly from those with character and ambition, who mostly succeeded, and fourthly from the "What shall we do with Willie?" group. The last-named were the sons of people who had made money in commerce and resolved to make doctors or lawyers of their progeny. There were possibilities of reform in liberalizing the entrance to the medical profession. One way was to go to the school, select lads of intelligence and character, and steer them through the University. That meant the provision of many more free places, and this would have to be financed. The way of the transgressor in both professions was not nearly hard enough, and it was incumbent on them to discipline wrongdoers and deal with them in the most drastic manner possible. A man who did a bit of honest burgling got five years, whereas the man who embezzles trust funds, to the ruin of widows and orphans, was generally treated much more leniently. Among doctors there were certain scamps who were known but who were flourishing, and something should be done to handle them. The present haphazard system of recruiting people to the professions might well be reformed. There were faults in the law, as he found in his experience, because people who came to him about accounts which they considered unjust and unfair told him it was no use their going to the courts; they had no chance, being poor, and would rather pay. That was wrong, because the courts should be there to provide justice for everyone. There were too many delays in the courts. This had often struck medical men who had

attended to give evidence. On one occasion he attended the Criminal Court at ten o'clock, the time named in his subpoena. The whole morning was taken up in empanelling the jury, and the trial did not begin until the afternoon. He had noticed the extraordinarily slow and cumbersome way of recording evidence except in courts where shorthand writers were provided. An article by Mr. Barry in the *Australian Law Journal*, on *The Child En Ventre Sa Mère*, reminded him that it had taken the law some hundreds of years to do what a committee of this Society could have arrived at in a few hours. As to the reform of the medical profession, in England, where national insurance had been in force for 25 years, many medical men said they were in reality public servants, working 24 hours a day as servants of the State, with practically no rights, and would sooner be acknowledged public servants with reasonable hours and provision for their old age. In New Zealand the same question was a very burning one. When the reform of the medical profession was mentioned, many people said, "Let us nationalize it." It was very questionable whether medical service should be one of the first to be nationalized. Many other things, including housing, food and clothing, should be nationalized first. If that were done, a nationalized medical profession would perhaps no longer be necessary. In Australia many men in the army were doing public work already and there was no fear that if the profession was nationalized good work would not be done. One advantage would be a better geographical distribution of the profession. Tasmania had developed a system of nationalization to provide medical service to remote country areas, and this was working very well. So long, however, as we maintained our non-co-operative attitude in this country, it was not fair to pick on the medical profession and nationalize it without nationalizing other sections. If it was to be nationalized, then nationalize the lot. If the medical profession was properly distributed there would be many more doctors in the suburbs north of the Yarra than in those south of the Yarra, but doctors must go where they can earn the money to provide for themselves and their families. There was a growing sense in both professions that reform must come, and, if they were to be saved, reform must come from within.

Professor Paton said few would care to disagree with many of Mr. Vroland's criticisms; nevertheless the outlook

was not entirely black. The fact that such a challenging address could be given to-night showed that the main evil of complacency was not present in the law. Many members of the legal profession had drafted schemes for legal reform but these had no popular political appeal and had been pigeonholed. What both professions needed was a greater liaison with politics, in order to secure the passing of the necessary legislation on topics which might not be of great political appeal at the moment but each of which individually had its importance for the future. There had been a great change in this century in the attitude both of those who taught the law and of the judges who administered it, as instanced by the fact that the House of Lords in a judgment in 1940 showed its sympathy with the working class. Although the change had not perhaps been speedy enough, it nevertheless augured well for the future. As to the proper attitude of the University towards the type of problems that arose in the law faculty, firstly the University must try to keep itself free from all political doctrines, and its next task was to induce a real love, admiration and reverence for the law, which, after all, had achieved a great deal through the centuries. The University course must go even further, and endeavour to teach law as a branch of social practice, to show the law in action and to induce in the student an attitude of what he might call cynical idealism. One very dangerous view, which should not be encouraged, was that the young student was told that the law was a very jealous mistress and that he must confine himself to the law in a very narrow sense. That, if carried too far, led to danger. In addition to bringing about reform within the law, the profession must give leadership within the community itself, and that applied also to the medical profession. It may be said the record of public service of the Australian Bar compared unfavourably with that of the English Bar, but the criticism was often unfair because the personnel of the English Bar was much more numerous and many of them were able to live without their earnings from the law. The recruitment of the legal profession in Melbourne was on a very democratic basis, much more so than in the case of medicine, the training for which was the most expensive that the University provided. If, as the lecturer suggested, the legal profession was responsible for the judges, then the Universities must recognize their responsibilities, because they were responsible for the legal profession. They were at least the main

access to the legal profession, and the views taken of law in them would have results, not immediate, but in thirty or forty years. The lecturer was not alone in thinking that the end of this war would see the end of a system which permitted success to be gained by those who did not merit it, and more would be expected of those who had been trained for the professions.

Professor Marshall Allen said previous speakers had raised the question of the recruitment to the professions, particularly the medical profession, and that was a question that gave those who had to do the teaching some concern. In the last few years there had been a complete change in the type of future practitioners in medicine. The University might try to teach them the ethics of the profession, but everyone saw what they did when they got out. The "Get-rich-quick Wallingford" type was more numerous than it should be and was difficult to curb. The professors, as teachers, were doing their best. Although they were said to be academic only, they knew something of practice, and they must endeavour to show students that there was something more than working for a degree so that they could make their living afterwards. They must be made to recognize that they had a responsibility to the State. Medical men were worried about the future of the profession and were doing their best to influence politics and politicians, but they were already suspect. One successful aspect of medical practice in this State was the Bush Nursing Association. Its success was due to the people in the country not going cap in hand to the Government for everything, but combining together to see that they obtained adequate medical service in their particular localities. If we had more of that spirit and of the spirit shown by the vast majority of the doctors in those areas, who were encouraged by the local support and respect shown to them, it would help to curb the present urge towards nationalization. Perhaps some of us would work better under a nationalized service, but the fear was that that would not bring out the best in many of us. Medical men were essentially individualists, as he knew only too well through working with a team of individualists at the Women's Hospital. The lecture was a most timely one, because this was a changing world and after the war there would be even bigger changes, and the professions must be ready with their schemes so that they would not be caught unawares. They had had warnings in New Zealand and

other States of the probable trend in the future and should do their best to educate the Government and the public in these important matters.

Mr. F. W. Eggleston said the professions owed a duty of leadership to the community. They were the only sections which could give leadership on certain very important matters, but he felt very strongly that that capacity for leadership came very largely from their independence, from the fact that they were carrying on their professions as men of science and men of learning, and anything in the shape of nationalization would be a mistake, because it would destroy that independence. There were of course particular functions which could be discharged by State officers in both professions, and men carefully chosen in that respect would do work scientifically and in as disinterested a way as men working on their own account. In any nationalization of medicine and law, questions of appointment would be very serious indeed; and, if one could judge by political appointments, the matter was fraught with the utmost danger. Victoria on the whole got better medical service to the community in its hospitals through the voluntary system and charitable effort than was the case in some of the other States where much more State revenue was spent on the hospital services. Victoria provided voluntarily £400,000 to £500,000 a year for its hospitals but in some of the other States the raising of a thousand pounds in a hospital appeal would be regarded as a red letter day. It would be a good thing to place into categories the responsibilities of the profession. There were three main heads: that the profession should do its work according to the highest scientific standard; that its public relations should be set on a proper and satisfactory basis; and that it should promote and lead in methods of improving and extending the services which it could render to the community. As to what the legal profession might do, he did not consider the law to be framed on a scientific basis and very much more could be done by the profession to put it on a more scientific basis. There had been some remarkable developments in America. One was the *Re-statement of Law*. In Canada another good piece of work was an attempt to get the legal rules adopted in each of the provinces on the same lines and on the same basis and stated in similar language. In England there was a Committee on the Revision of the Law, some of whose conclusions had already been brought into legislative form.

In Australia there had been singularly few instances of judicial formulations of principles which had taken their place side by side with the great formulations by the English Bench. A great deal could be done in the law in regard to its relations with the public. We had failed entirely to deal with the question of the defaulting solicitor. This was a crying scandal. Attempts were being made to do something, but they were quite inadequate. Then there was the question of the legal phases of economic adjustments. Lawyers could not justify their existence unless they could lead and help the community in solving problems such as arose after the great depression of 1930-1932. The last question was how they could increase their service to the community. Every lawyer should be a reformer. They should realize the maladjustments that came from the present legal rules and have some ideas as to how these could be improved. They could well follow the example of England in the reform of the law of property. Very few lawyers in Australia had done much in the way of reform. One who had done a great deal was the late Sir John Mackey. Such things should be a commonplace in the profession. As to the medical profession, he regretted that no solution of the question of national health insurance had been reached, and it was not a sufficient answer to the demand for this to say that the medical profession was not consulted beforehand by the Government. That legislation should have gone through and then could have been adjusted if it bore too hardly on the doctors. Another direction in which the medical profession could assist the community was the cost of hospitals. There was more extravagance in the building of hospitals throughout Australia than in almost any other phase of construction work. It should not cost £2,000 per bed in one State as against only half that amount in another, nor could he understand why it should take over £1,000,000 to add 100 beds to the Melbourne Hospital accommodation in changing from the old to the new site. These were the kinds of questions to which the professions, if they were to justify themselves, should devote their energies.

Mr. Victor Hurley said we were faced with the present world war and its tremendous implications and the widely held view in the community was that, whatever else did result from the war, there would be a completely altered social order. They would all be keenly desirous to know in what way that altered order would affect the future of the

professions. The last world war had not succeeded in making the world safe for democracy and a place fit for heroes to live in, and there were at work in this world war forces which were such that the most fundamental changes were likely to occur in the whole social structure, including the professions, and no professions would be more greatly affected than law and medicine. From the medical point of view, one of the first things that happened when we engaged in a war such as this or the last was that a large proportion of medical men came under the direct control of the government of the day. At least 25 to 30 per cent. were in that case already, and the percentage would reach 40 or 50 before the war was over. Thus practically half of those practising medicine would be completely divorced from the ordinary civil way of life, and their services would be entirely at the disposal of the community on conditions of service which approximated in many ways to nationalization. So, too, a very large proportion of the community was being cared for by them in a way which most sections of the people would like to enjoy in ordinary times. Nothing was spared which would in any way increase the physical efficiency for service of every member of the fighting units. The best was available to them without cost. After the war the community as a whole would expect, so far as medical service was concerned, that it should be made possible for every person, rich or poor, to obtain as complete and efficient medical attention as could possibly be provided, and probably the community would demand that the State should provide it. That could be accomplished only in one of two ways, either by a whole-time nationalization of the profession, which would be a mistake, or a properly thought-out scheme of national insurance by which every member of the community could get efficient medical service at a cost within his means. It was a thousand pities that the last scheme did not come off. It could have been established with a little more tact, but some form of national insurance would be demanded not only by the profession but by the public, and that was the objective to which the profession should now direct its attention. England had already appointed a committee to begin planning what should be done after the war. All this could be done without sacrificing the medical man's own individuality or depriving him of control of his own affairs. He could still have freedom to develop and carry out his own work without being under onerous bureaucratic control. It went even

deeper than that because fundamental conditions, such as those of housing and diet, including the ability of the ordinary man on the ordinary wage to get the necessary food to maintain himself and his family in decent health, must come within any proper national insurance scheme. These were all social problems which would have to be handled quite apart from the medical side, but they must be handled if a complete nationalized medical service for the community was to be accomplished. As to the ever-increasing cost of medical care and of building hospitals, the cost of hospital care to the ordinary individual in Australia was very much lower than in England, Canada or the United States of America. The cost of hospital construction here was also lower than in America, and very little different from the cost in Canada. In the United States the ordinary ruling rate for a patient in a hospital which was by no means de luxe was 8 to 10 dollars a day, as against from 8 to 10 guineas a week here. The fees charged by specialists in Australia were considerably lower than those charged in the United States of America, Canada or England. In regard to the re-building of the Royal Melbourne Hospital, he could speak with inside knowledge. The decision to build was arrived at only after the most careful consideration, and the cost was the minimum compatible with giving what the State of Victoria deserved, an up-to-date first-class modern hospital. With the transfer to the new site, the value of the old one had to be brought into the calculation, and not a penny was being spent extravagantly.

Sir Owen Dixon said he thought that in the case of both professions a good deal of the interest lay in a study of the past. In the legal profession this was peculiarly profitable because it taught the lawyer something about the profession he was proposing to practise. In any discussion of the service which a profession could do to the community it was necessary to bear in mind that a profession was a branch of expert knowledge to obtain which was very difficult and took a good deal of time. The reason why a profession stood apart from the other parts of the community was that it was a branch of esoteric knowledge, and the best thing anyone practising it could do was to get as firm and close a grasp of that knowledge as possible. Nothing was better than that a man should practise his profession efficiently. That was the first reform which lawyers could make.

The contribution which the profession had made to the progress of the law through the judges was generally misunderstood. It was not the duty of a judge to alter the law. He must administer the law as he found it. Professor Paton, by his speech and particularly by an interjection, had seemed to think that the Universities were being held responsible for the unsatisfactory condition of the law. It was true that to a limited extent the academical teaching of the law had led to a more abstract consideration of the problems of the law, and to a great deal of the work of the law being done in a way which might be described as tailing off; it lacked technique and also failed to settle questions in the concrete. For over 600 years able lawyers had studied and preserved and improved and handed down the law, bringing it to the high standard which prevailed in the middle of last century. Something had been said about the failure of judges to move with the times, but this was not due to their being either judges or lawyers but, at all events in more recent times, to their advanced age, which brought about a refusal to agree that the world was in a better condition than when the judge first came into it. Unfortunately a great political divergence of view was attributed to judges, not in actual open and acknowledged political views, but in their political tendencies and standpoint. He did not agree with what Mr. Vroland had said as to the attitude of the Bench towards the Workers' Compensation Acts. The main cause of complaint was that political partisans were appointed to the Bench. All law reform might be approached from two different points of view. Particular anomalies might be attacked by reformers or, on the other hand, fundamental changes might be attempted in the content of the law or the judicial system. In our time, it might quite safely be said, the thought and outlook of the lawyers were such that the lawyers and the philosophers were not suited for fundamental attempts at legal reform. The period was a wrong one. They were perhaps able to do it in the sixties and seventies of last century. Not much had been done about it since, and it would be a great pity in this era to allow great reforms to be attempted by reformers who hold strong political views but were not trained in the history of the law. It would be better to wait until all the present disturbing influences in the world were no longer able to interfere with what was primarily a philosophical task. One might even take the view that we have been going completely in the wrong

direction in this century, and that the hole in which we found ourselves was largely due to the tendency of the reformers of the 20th century to concern themselves altogether with ameliorating the conditions of one class or another and disregarding the necessity for discipline, order, compactness, national spirit, aspiration and achievement. The lecturer to-night appeared to be pursuing the same lines of thought that had developed and had been pursued during the last 70 years, and that were perhaps at their peak in September, 1939. What had taken place since did not tend to confirm the wisdom of that philosophy. The proper view of the law courts was that they stood as a conservative body whose main aim had been discipline and order and the keeping of society in a cemented condition. That was the reason why lawyers were accused of sacrificing justice to law. As a whole, speaking over a long period of time, lawyers had been quite aware of the nature of the implement they were using, the seeming injustices it inflicted, the inability of the poor man to wrestle with it, and the enormous cost. A possible answer was that it was just as well that it should be so. We had a settled body of doctrine known to the people who administered it, and a large number of the people who came to the law courts to litigate and so experienced the weight of the law had only themselves to thank for it.

A vote of thanks to Mr. Vroland was moved by Dr. Ostermeyer and seconded by Dr. Coppel, and carried.

Mr. Vroland, in reply, said that he had been accused of not raising any new problem. That was his complaint, that the problems were very old ones and for hundreds of years nothing had been done about them. Mr. Hurley had indicated the danger of an ill-considered scheme of nationalization. If the doctors did not want it, and he personally did not favour it, they had better get busy and do something about it. As to what he had said of the judges, his complaint was that they not only interpreted from a conservative outlook the scheme embodied in any new industrial legislation, but also failed to understand the scheme of social development aimed at. No judge should try to whittle away the true principle of an Act in such a way as to destroy its effectiveness. As to what the House of Lords had done in 1940, in recognition of the rights of the workers, his point was that it took the House of Lords 100 years to reach that stage. His view generally was that lawyers should know more about the law and doctors

should know more about their profession so that they might be able, as skilled advisers, to tender sound advice to the politicians.

Dr. Gerald Weigall offered to the President congratulations on his recent appointment as Chancellor of the University of Melbourne, and congratulated the University on his consenting to take the position. (Applause.)

The President expressed his gratitude for the vote of congratulation and his thanks for the encouragement it gave him in the new task he had undertaken.