Book Reviews

*Mental Health Law Policy and Practice, by Peter Bartlett and Ralph Sandland*

*Published by Blackstone Press Ltd. (2000) £24.95*

This is a long, complex and demanding book that repays many times over those with persistence

who read all of its 447 pages. Alternatively, it is set out in such a way that the rather more selective

dip into a discrete subject area is made easy and rewarding.

Bartlett and Sandland take the view that mental health law cannot be studied in a vacuum: indeed

they suggest that perhaps more than any other area of law “it would be almost immoral to divorce

the study of mental health law from the social situation of the people directly involved”. Mental

Health Law Policy and Practice at the conceptual stage started life as a text book for the authors’

students at the University of Nottingham. In realising that objective, they have provided a book

that will take its place alongside those of Brenda Hoggett, Anselm Eldergill and Richard Jones as

an essential part of the armamentarium of anybody seriously interested in this important and

riveting subject.

The first three chapters discuss some of the “big issues” that lie at the core of mental health law

and commences with a recent review of what the authors identify as a central paradox at the heart

of the study of mental health and illness: the centrality of the medical model and its imposition

of “a scientific order onto the profoundly un-ordered world of the mad”. “All this” they go onto

assert “is a construction of the reasoned, and reflects the world of the reasoned; to the insane

person, it is an alien landscape”. Similarly, mental health law, like psychiatry is also a language “of

reason about madness” and whilst at times law and psychiatry are uneasy bedfellows they are both

“paradigms of rationality in their way, and thus each is faced with the same problem: how to

impose order onto madness; a realm which would seem ex hypothesi to be lacking order, to be

irrational”. Foucault speaks loudly in these debates and whether or not you are a fully signed up

member of his fan club, his insights (briefly and not uncritically referred to by the authors in the

opening chapter) provide an important part of the foundation for the approach they take.

Conceptualising mental health law, the problem of definition of mental disorder and the

contemporary mental health systems provide the gist of the opening three chapters. In focusing on

what some might see to be the essentially non-legal (in the strict rather formalistic meaning of the

word) content of the opening section of Mental Health Law Policy and Practice, it is important to

emphasise that this is a book for lawyers and the law is entwined at every point into these rather

more discursive chapters that clearly set out the context of social issues and professional practice.

At the outset, the authors engage with the alleged beneficiaries of all this effort with a discussion

entitled “Who are the insane?”. Quoting from published accounts of the reality of mental illness

by those who have experienced it, the significance of the view of mental illness as intrinsic to self

(for many the alternative to the disorder is “a void, a nullity”) is highlighted and follows through

to the judicial acknowledgement this received in *B v Croydon District Health Authority* (1994) 22

BMLR 13 (the High Court hearing). Thorpe J referred to the relationship between the individual

and their personality. Citing an expert witness he asked “Have we the right to remove the only

mechanism that remains to her without the prospect of being able to help her to cope in other

ways?” The man-must-be-mad test referred to by Lord Justice Lawton in *W v L* [1974] QB 711

receives rather more positive analysis than that provided by Brenda Hoggett, in a discussion about

the challenges posed to lawyers and others by the failure to define mental illness in the Mental

Health Act. The authors then go on to very clearly identify the fundamental problem attached to

using medical terms as a basis for determining the application of legal intervention. Whilst

sympathetic to the medical and professional objectives of classifications such as DSM-IV and

ICD10, they lucidly debate whether “a medical model can formulate what is in the end, a social

choice both as to what constitutes an illness or disorder and as to when intervention or differential

treatment is warranted”. Devoting perhaps excessive attention to the opening three chapters can

only be justified if, in doing so, it highlights (and in the case of this reviewer, applauds) the powerful

policy, social and administrative context which the authors set for the discussion of the relevant

legal rules themselves. As they convincingly argue “the intellectual appeal of mental health law lies

not merely in the legal rules, but in the tensions between the rules, psychiatric practice, social

administration, and the ways in which mental illness is characterised and understood by

professional and lay people alike”.

Chapters four to eight deal with admission to hospital, civil confinement, mental disorder and

criminal justice, treatment in hospital and leaving hospital respectively. Extensive legal analysis is

firmly rooted in the political and organisational reality. The chapter on mental disorder and

criminal justice starts with the depressing finding by the Health Education Authority that mental

disorder and criminality are often viewed by the general public and the media as natural

bedfellows. A critical review of the policy of diversion follows and it is in that context that the

relevant legal provisions are explained, examined and evaluated. Similarly, the chapter on leaving

hospital takes a particular theme - the limitations on the ability of the law to act as an independent

constraint on the exercise of medical discretion - and presents an analysis of the law within that

framework.

Chapter nine deals with care, control and community and in its initial examination of the

underlying tensions between welfareism and managerialism and, more topically, between treatment

and control as well as the law itself, provides a useful basis for the critical appraisal of the

implementation of the government’s current policy objective of “breaking the automatic link

between compulsory care and treatment and detention in hospital” (Reform of the Mental Health

Act 1983 - Proposals for Consultation; CM4480; (1999)). Similarly the position of mental capacity

has recently achieved a higher profile as a professional and legal issue by way of the proposals of

the expert group examining the Mental Health Act (Review of the Mental Health Act; Report of

the Expert Committee; DOH; (1999)) that it should be a part of any criteria for admission to

compulsion in any new mental health law. In chapters ten and eleven, the authors offer an

exhaustive analysis of the concept and in doing so give full recognition to the fact that

“investigation of the concept ...... overlays mental illness with a new set of criteria” and that it can

be raised in a “multitude of legal contexts”. Perhaps for this reason the policy context is more

lightly applied in these chapters, although the discussion culminates in a review and endorsement

of the proposals of the Law Commission (Mental Incapacity; Law Commission (1995); Law. Com,

No 231; London: HMSO).

Mental Health Law Policy and Practice concludes with a brief review of the main forms of legal

redress and also advocacy for clients and thus comes full circle back to the people who are the

central focus of this discourse and activity. They issue a challenge to legal advocates to provide

clients with mental health problems with the representation they deserve, and not the sort of

approach implicit in Lord Denning’s pronouncement in *Richardson v London County Council* [1957]

1 WLR 751 that “...... much as a small child or a dumb animal resents being given medicine for its

own good, .... they [the mentally ill] are apt to turn around and claw and scratch the hand that gives

it”. Amongst many other things, Mental Health Law Policy and Practice should ensure that future

generations of mental health lawyers, like most (but possibly not all) of the current generation, will

find such an attitude unacceptable.

William Bingley,

Professor of Mental Health Law and Ethics, University of Central Lancashire.