

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 system 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.

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