

we are all familiar with in order to protect a valuable evidence-based treatment. One thing at least is clear: if we are to ensure the sustained availability of ECT, professionals working in mental health must actively counter the prevailing culture of increasing restrictions on its use.

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MENTAL HEALTH LAW PROFILES

Mental health law profiles

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In this issue we sail to three countries that provide the Atlantic border at the western end of Europe: France, Ireland and Portugal.

Readers may be surprised that until recently the land of *liberté* and the 'rights of man' (France) fell short of complying with the standards of the European Convention on Human Rights with respect to the compulsory detention and treatment of people with mental disorders. This former gap is unlikely to have surprised Michel Foucault, the author of *History of Madness* (2006; originally published in 1961 as *Folie et déraison: Histoire de la folie à l'âge classique*). He was a student of power and ideology and had a keen eye for inconsistencies between rhetoric and reality. Had he been around he might even have raised an eyebrow when reading the name of the office that has now been called in to address this shortcoming, namely 'the Judge for Liberties and Detention'! On the other hand,

the repeated barbarous terrorist attacks on Paris in November 2015 underline how precarious the balance of liberty and safety is at all times.

Foucault's *History of Madness*, published in English in full only 45 years after its publication in France, is an original, radical and important piece of work. Restricted to a few sentences one can only caricature its rich content, which is in turns lucid, scholarly, surprising, complex and obscure and even overburdened with empty rhetoric sometimes. A main thesis of Foucault appears to be that although there has been a tradition of recognising mental illness in medicine and law since classical antiquity, this tradition played no significant part during the 'Age of Reason' (in the 17th and 18th centuries) when European societies (his evidence refers mainly to France but also England) undertook a 'great confinement' of 'unreason' in institutions, which, late in this period and during

the 19th century, evolved into what became recognised as the psychiatric asylums. He argues that the category of 'unreason' included a variety of people identified by such things as poverty, prostitution, homosexuality, criminality and 'madness', the last being an undifferentiated category and bearing an uncertain relation to scholarly conceptions of mental illness. The arrival and engagement of doctors in institutions of confinement, argued Foucault, had nothing to do with psychiatric expertise and much to do with public fears and the exercise of authority. Public fears included those of infection spreading from the institutions to nearby populations. The need for authority became acute following the French Revolution, when King and Church lost theirs. As to Philippe Pinel's legendary fame for removing the chains from his patients, Foucault puts forward complex social theories and processes as to why this happened and challenges narratives that attribute it to medical benevolence and enlightenment.

Readers with an interest in the history of psychiatry can make their own minds up about competing or complementary explanations but psychiatrists will do well to be aware of Foucault's scepticism about the history of our profession, while at the same time reflecting on the balance of cynicism and idealism in human affairs and remaining appropriately and severely critical of his romanticising of 'madness'.

The authors of the paper on mental health law in Ireland remind us of the all too real need for services for people with mental health problems. They seem to endorse views put forward by

Amnesty International (2010) that laws intended to protect the liberty of people with mental health problems may need to be complemented by laws to specify, develop and constantly improve services to this population and argue that such is the case in Ireland. In his foreword to the Amnesty International (2010) document, L. O. Gostin writes:

For the majority of people, the words 'mental health and human rights' bring to mind issues around liberty, privacy, bodily integrity and non-discrimination. The right to adequate mental health service is often overlooked, but it is an essential component of the human right to health. So too do human rights require governments to provide mental health services in ways that are transparent, cost effective, and accountable. By providing supports and services in the community, States can enable people to realise their right to live and participate in the community and avoid the social exclusion and discrimination that destroys so many lives.

The need for practical follow-through is also highlighted by the paper on Portugal. This country is reported to have made significant progress in legislation and service development. The almost complete lack of data on implementation reported by Almeida and Molodynski is deeply troubling nevertheless. Is the law applied as intended? Has it made a difference to how people are compulsorily treated? Are there opportunities to improve practice further?

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The new French mental health law regarding psychiatric involuntary treatment

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The French Republic has had four laws governing the detention of people with a mental illness. The first dates from 1838 and remained in place until 1990. The most recent one was issued on 27 September 2013; it confirmed the role of the judge and strengthened the legal procedures. This new French mental health law is an attempt to find a balance between the protection of patients' rights and the need for treatment.

On 27 September 2013 France enacted a new mental health law regarding psychiatric involuntary treatment. It is the fourth French

mental health law on this matter. The first was issued on 30 June 1838 under the influence of Esquirol, Pinel's pupil and the father of French psychiatry. This historic law was replaced only on 27 June 1990, after several previous attempts, unsuccessful because of the advantages seen by many in the 1838 law and because of the difficulties in dealing with involuntary treatments in a democratic country. A new law was then issued on 5 July 2011. It introduced an important innovation: the supervision of the limitation of liberty imposed by psychiatric involuntary treatment was shifted from the administrative authority (the prefect, a local representative of the state) to a judge (the Judge of Liberties and Detention). The last law was issued