

Mental Health Law: 'Legalism' and 'Medicalism' – 'Old' and 'New'

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Introduction

The 1959 Mental Health Act represented, by any standard, a 'paradigm shift' in the way in which mental illness was construed, not just in Britain but anywhere.

Its predecessor was the Lunacy Act of 1890. Kathleen Jones, in her influential *History of the Mental Health Services* characterised that Act thus:

The Act itself is an extremely long and intricate document, which expresses few general principles and provides detail for almost every known contingency. Nothing was left to chance, and very little to future development.

...

From the legal point of view it was nearly perfect ... From the medical and social viewpoint, it was to hamper the progress of the mental-health movement for nearly 70 years.¹

Laws governing detention and treatment in the nineteenth century were developed in the setting of the expanding asylum system. The early enthusiasm for 'moral treatment' failed to live up to its promise. The numbers of those detained in the asylums grew far beyond what was originally envisaged.

Under the Lunacy Act 1890 admission to an asylum or licensed house depended on whether the case was *private* (involving a justice of the peace and two medical certificates) or *pauper* (involving a Poor Law receiving officer or the police, a medical certificate and a justice of the peace).²

Admission by inquisition, whose origins dated back to the fourteenth century applied to so-called Chancery lunatics – expensive and affordable only to those with large estates and great wealth. The alleged lunatic could request a trial of their sanity by jury.

There were detailed regimes of visitation by Lunacy Commissioners – unannounced, at an hour, day or night. A report book for instances of mechanical restraint was kept; a medical certificate was necessary for each instance.

Discharge arrangements were complex and could differ for private versus pauper patients. They might involve the person signing the petition for the reception, the authority responsible for the maintenance of the pauper patient, two Lunacy Commissioners – one legal and one medical – or three members of the visiting Local Authority committee.

The Mental Treatment Act 1930 followed a Royal Commission on Lunacy and Mental Disorder 1924–6.³ It proposed that mental illness should be viewed like any other illness, and its recommendation that treatment should not necessarily be contingent upon certification was accepted. The Lunacy Act was amended but earlier legislation was not replaced. The Act introduced 'voluntary admission' by written application to the person in charge of